

Sentencing Children in Victoria

Data Update Report

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.

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Data Update Report

Published by the Sentencing Advisory Council
Melbourne, Victoria, Australia

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ISBN 978-1-925071-22-1 (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 1 July 2016.

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Acknowledgments

The Council would like to thank the President and staff of the Children's Court of Victoria. The Council would also like to thank Sarah Ward for her assistance in the preparation of this report.

Abbreviations

AUT	Accountable undertaking
CAD	Convicted and discharged
CAYPINS	Children and Young Persons Infringement Notice System
DIM	Dismissal
FIN	Fine
GBB	Good behaviour bond
PRO	Probation order
UUT	Unaccountable undertaking
YAO	Youth attendance order
YDPP	Youth diversion pilot program
YJCO	Youth justice centre order
YRCO	Youth residential centre order
YSO	Youth supervision order

Glossary

Case	In this report, a collection of one or more proven charges against a person sentenced at the one hearing.
Charge	In this report, a single proven allegation of an offence.
Child	In this report, a person aged 10 to under 18 years at the time of committing an offence.
Children's Court	The Children's Court of Victoria.
Fine	A monetary penalty imposed by a court as a sentence.
Higher courts	In this report, the County Court of Victoria and the Supreme Court of Victoria.
Indictable offence	A serious offence that, for adults, is heard before a judge in a higher court. For children, all indictable offences may be heard in the Children's Court except for the automatically excluded fatal offences.
Offender	A person who has been found guilty of an offence.
Principal charge	The charge in a case that receives the most severe sentence.
Principal offence	The offence for the charge in a case that receives the most severe sentence.
Reference period	Unless otherwise stated, the six calendar years from 2010 to 2015 (inclusive).
Summary offence	A less serious offence than an indictable offence. For children, all summary offences are heard in the Children's Court.
Suspended sentence	A term of imprisonment that is suspended (that is, not activated) wholly or in part for a specified period (the 'operational period'). If the offender reoffends during this period, they could be imprisoned for the total duration of the sentence. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
Total effective sentence (TES)	The product of individual sentences (and orders for cumulation or concurrency of those sentences) imposed on a person on the same occasion. In a case involving a single charge, the total effective sentence is the sentence imposed for that charge. The total effective sentence is also known as the 'head sentence'.

Youth detention

In this report, youth justice centre orders (YJCOs) and youth residential centre orders (YRCOs) collectively.

Young adult offender

An offender aged over 18 but under 21 at the time of sentencing.

Key findings

This report updates select data from the Sentencing Advisory Council's 2012 report *Sentencing Children and Young People in Victoria*. Specifically, it focuses on offenders aged under 18 at the time of offending (and under 19 at the time of commencement of proceedings) who were sentenced in either the Children's Court or the higher courts for the calendar years from 2010 to 2015 (inclusive). This report does not examine young adult offenders sentenced under the 'dual track' system in the higher courts.

Sentenced offending by children in 2015

Sentenced offending by children in Victoria is rare. In 2015, 0.6% of the Victorian population aged 10 to 17 received a sentence in the Children's Court. This is less than one-third of the rate for adults: in the same year, 2.1% of the adult population of Victoria (aged 18 years and over) were sentenced in either the Magistrates' Court or the higher courts.

Of those offenders sentenced in the Children's Court, 103 (or 0.02% of the youth population) received a sentence of detention.

In 2015, only one child was sentenced in either of the higher courts.

Recent trends between 2010 and 2015

Cases and charges

Between 2010 and 2015 (the 'reference period') there was a marked reduction, of approximately 43%, in the number of children sentenced in the Children's Court of Victoria.

The number of charges sentenced in the Children's Court also declined between 2010 and 2013. There has been an increase in the number of charges since 2013; however, a substantial proportion of that increase is a consequence of the introduction of new offences associated with bail, in particular the offence of contravene a conduct condition of bail. This offence has now been repealed in respect of children.

The average number of charges per case has increased since 2013, even after accounting for the new bail-related offences. This indicates that a smaller number of offenders are being sentenced for more offences in the Children's Court.

Over the reference period, 38 children were sentenced in the higher courts. The relatively low numbers mean that it is difficult to determine any real trends in the data. However, there has been a year-on-year decline in the number of children sentenced in either the County Court or the Supreme Court since 2011, from 11 children in that year, to one child in 2015.

Sentence types

The most common sentence types imposed in the Children's Court were a good behaviour bond (in 35.1% of cases) followed by a probation order (20.7%), fines (15.7%), youth supervision orders, (11.3%) and accountable undertakings (6.6%).

In the higher courts, the most common sentence types imposed on children were imprisonment (15 cases, or 39.5%) and a youth justice centre order (12 cases, or 31.6%). Four cases (10.5%) were sentenced to a probation order while three (7.9%) received a youth supervision order.

Sentenced offences

In the Children's Court, offences against property consistently comprised the most common category of offending, comprising 50% of all charges over the reference period. Offences against property ranged from 46.4% in 2015 to 51.6% in 2010, representing more than double the proportion of the second most common category. In 2015, the second most common category was justice procedures offences (18.5%). In all other years, the second most common category was offences against the person (non-sexual) (ranging from 15.7% in 2011 to 18.4% in 2013). Traffic and 'other' offences were the only other categories representing more than 5% of all charges in each year. Drug offences did not exceed 2% of all charges each year. Sexual offences represented less than 1% of all charges in each year (ranging from 0.6% in 2015 to 0.9% in 2014).

These findings are consistent with the overall trends reported by the Council in its 2012 report (excluding the trends observed in relation to transit offences, which are now primarily enforced as infringement penalty notices under CAYPINS).

While most offence categories represent a relatively constant proportion of charges from year to year, there are some exceptions. Most notably, justice procedures offences have increased markedly, from 4.5% of all charges in 2010 to 18.5% in 2015. This increase coincides with the introduction of bail-related offences including the offence of contravention of a conduct condition of bail. It is anticipated that this category of offending is likely to reduce over time in light of the 2016 repeal of this offence for children.

Over the reference period, traffic offences have declined, from 13.9% to 7.8% of all charges. The proportion of sexual offences, offences against property, transit offences, and 'other' offences have also declined, but by relatively small margins.

The higher courts hear and determine several fatal offences that are automatically excluded from the jurisdiction of the Children's Court as well as other serious offences. Culpable driving causing death (six cases) was the most common principal offence for children sentenced in the higher courts, followed by intentionally causing serious injury (four cases) and manslaughter (three cases). There were two or fewer cases for all other principal offences.

A comparison of the mix of offences sentenced in the higher courts since the Council's 2012 report shows that, while the number of excluded fatal offence (or other death-related offence) cases per year has remained relatively constant, there has been a reduction in the overall proportion of these cases from 79% of cases to 34%. The substantial decline in these offences as a proportion of the cases committed by children sentenced in the higher courts indicates that different offending (with a broader range of seriousness) is being resolved in those jurisdictions.

Children on remand

Over the most recent five financial years for which data are available, the number of children held in detention while on remand in Victoria on an average day increased by 25%, from 43 children in 2010–11 to 54 children in 2014–15.

1. Introduction

- I.1 This report presents an overview of data relating to the sentencing of offenders in the Children's Court of Victoria ('Children's Court') along with some brief analysis of the sentencing of children in the higher courts (the County and Supreme Courts). It covers the six calendar years from 2010 to 2015 (the 'reference period') and includes detailed analysis of sentences imposed during 2015.
- I.2 The report represents an update of select sentencing data presented in the Council's 2012 report *Sentencing Children and Young People in Victoria*, which examined sentencing in the Children's Court for the 10 years from 2000 to 2009.¹ This update arises within a context of recent observations of a decline in youth offending, both in Victoria and in other Australian and international jurisdictions, including New South Wales, the United States, and the United Kingdom.²
- I.3 This report does not examine young adult offenders (aged 18 to under 21) sentenced to youth justice detention under the 'dual track' system (see [5.7]–[5.9]). The Council's recent report, *Changes to Sentencing Practice: Young Adult Offenders*, demonstrated a large decline in the number of young adult offenders sentenced in Victoria in recent years.³

Children and the criminal justice system

- I.4 Only a very small proportion of children in Victoria come into contact with police, or with the criminal justice system, as offenders.
- I.5 Figure 1 (page 2) presents a summary of children's involvement in the criminal justice system in 2015. It shows that 1.4% of young people in Victoria were processed by police that year. This includes all alleged offenders for whom (depending on the type of alleged offence committed and the outcomes of investigation) Victoria Police initiated either a court or a non-court legal action. Non-court legal actions comprise such things as informal or formal cautions or warnings and the issuing of infringement penalty notices, which do not require an appearance in court.
- I.6 In 2015, only 0.6% of the Victorian population aged 10 to 17 received a sentence in the Children's Court. In comparison, this is less than one-third of the rate for adults: in the same year, 2.1% of the adult population of Victoria (aged 18 years and over) were sentenced in either the Magistrates' Court or the higher courts.⁴
- I.7 Of those child offenders sentenced by the Children's Court in 2015, 103 (or 0.02% of the youth population) received a sentence of detention.
- I.8 During 2015, one child was sentenced in the higher courts in Victoria, receiving a non-custodial sentence.

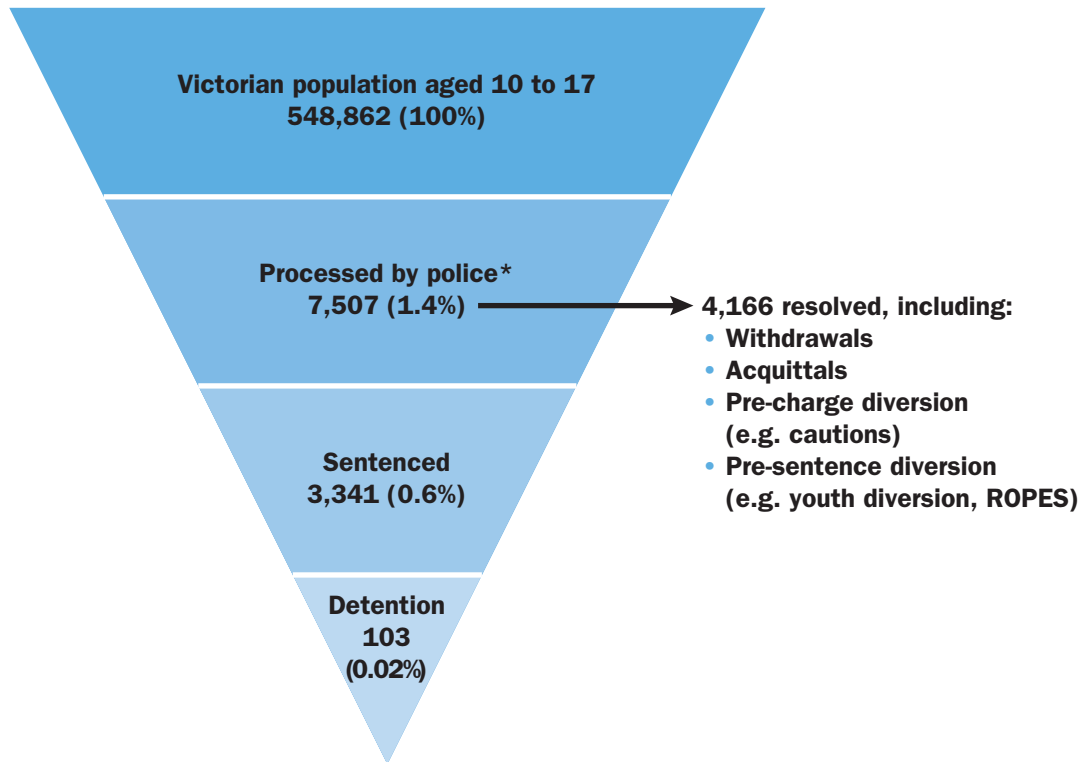
1. Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012).

2. See Crime Statistics Agency Victoria, *Downward Trend in the Number of Young Offenders, 2006 to 2015*, In Fact no. 1 (2016) 1.

3. Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders* (2015).

4. In 2015, a total of 99,768 cases were sentenced in the Magistrates' Court and the higher courts combined, equivalent to 2.1% of the adult population in Victoria of 4,643,844 people in 2015. (Note: a person is counted multiple times if the person has been sentenced in more than one case during the reference period.)

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



*This statistic represents the number of unique alleged offenders; data provided by the Crime Statistics Agency Victoria.⁵

5. A unique alleged offender is defined as a person who has been involved in one or more alleged offender incidents within the relevant period. (An alleged offender incident is an incident involving one or more offences to which a person has been linked as an alleged offender.) One unique alleged offender may be involved in more than one offender incident during the relevant period, but will have a count of one in the data presented in this figure. If there are multiple unique alleged offenders related to a criminal event, each unique offender will be counted once.

2. Sentencing in the Children's Court

- 2.1 A detailed discussion of the Children's Court of Victoria, and the framework for sentencing offenders in that jurisdiction, is presented in Chapters 5 and 6 of the Council's 2012 report *Sentencing of Children and Young People in Victoria*.
- 2.2 In summary, the Children's Court operates as a specialist court under a legislative scheme set out in the *Children, Youth and Families Act 2005* (Vic). The framework for sentencing children in the Children's Court represents a specialised response to crime, informed by the different and distinct nature of youth and youth offending, compared with adults.
- 2.3 Children sentenced under the *Children, Youth and Families Act 2005* (Vic) are subject to different sentencing principles and sanctions from the principles and sanctions used for offenders (almost always adults) sentenced under the *Sentencing Act 1991* (Vic). For example, the Children's Court places particular emphasis on the rehabilitation of offenders and the need to divert young people from custody and from further involvement in the criminal justice system.⁶

Children's Court criminal jurisdiction

- 2.4 The Children's Court has jurisdiction to hear and determine charges against young people aged 10 to under 18 at the time of committing the alleged offence. By law, children under the statutory threshold of 10 years of age are unable to commit a criminal offence.⁷ If a young person has turned 19 by the time their court case is commenced in the Children's Court, the case will be transferred to the Magistrates' Court.⁸
- 2.5 The Children's Court can hear and determine charges for all summary offences and indictable offences committed by children, other than several fatal offences that are automatically excluded.⁹ In exceptional circumstances¹⁰ (or if the child objects to the matter being heard summarily¹¹), the Children's Court can also exclude a matter involving any other indictable offence from its jurisdiction and refer it to the higher courts.

CAYPINS

- 2.6 The Children and Young Person's Infringement Notice System (CAYPINS) is also part of the Children's Court's criminal jurisdiction. This system deals with young people who fail to pay infringement penalty notices issued by Victoria Police, the Department of Transport, Planning and Local Infrastructure (most often for transit ticketing offences) and other agencies. The

6. See further, Peter Power, *Research Materials* (Children's Court of Victoria, 2015) <<http://www.childrencourt.vic.gov.au/legal/research-materials/sentencing>> at 9 March 2016 [11.1.4].

7. *Children, Youth and Families Act 2005* (Vic) s 3(1).

8. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of 'child'), 516.

9. The offences of murder, attempted murder, manslaughter, child homicide, arson causing death, and culpable driving causing death must be heard and determined in the Supreme Court or the County Court: *Children, Youth and Families Act 2005* (Vic) s 516(1)(b). The Children's Court can, however, conduct committal proceedings in respect of these excluded offences: s 516(1)(c).

10. *Children, Youth and Families Act 2005* (Vic) s 356(3)(b).

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

Council's 2012 report contains detailed information about the CAYPINS procedure.¹² A detailed discussion of the enforcement of infringement penalty notices against children is also contained in Chapter 10 of the Council's 2014 report *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria*.¹³

- 2.7 In summary, CAYPINS allows for the enforcement of infringement penalty notices against children by a registrar, without the need for proceedings before a magistrate in open court.¹⁴
- 2.8 CAYPINS came into effect on 1 July 2005.¹⁵ Prior to this time, the Children's Court dealt with infringement matters through the issue of a summons and then proceedings in open court. There was a delay in the implementation of CAYPINS in the Children's Court, which led to an influx of transit matters heard in open court in 2007 and a corresponding spike in the number of cases determined that year and the following year. The Council examined, in its 2012 report, the effect of the delays in implementation on the number of cases finalised in the Children's Court over the period from 2000 to 2009.¹⁶
- 2.9 This report does not include analysis of CAYPINS matters, as they are not included as sentenced matters within the dataset used for this report. There have been no significant changes to CAYPINS since the publication of the Council's report in 2012.

Children's Court sentencing principles, sanctions, and processes

- 2.10 Section 362 of the *Children, Youth and Families Act 2005* (Vic) sets out the principles to be taken into account in sentencing children. Although not specifically mentioned in that section, 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 education and employment, and the minimisation of stigma.¹⁷
- 2.11 The principle of parsimony and the particular emphasis on rehabilitation in the Children's Court mean that (as with adults) detention operates as a sanction of last resort.¹⁸ The maximum period of detention that can be imposed by the Children's Court for children aged above 15 is two years in a youth justice centre where the case involves a single charge, and three years in a youth justice centre where the child is convicted of more than one charge in a case.¹⁹

Sentencing orders available in the Children's Court

- 2.12 Reflecting the different applicable principles, the sentencing orders for children under the *Children, Youth and Families Act 2005* (Vic) are different from those available for (primarily) adults under the *Sentencing Act 1991* (Vic). This difference recognises that young people are generally less mature than adults, and less able to make moral judgments. Further, young people are generally less aware than adults of the consequences of their actions.

12. Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 46–47.

13. Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (2014) 305–323.

14. A child may still request that the infringement matter be heard before a magistrate in the Children's Court. A child may also request a review by a magistrate of an enforcement order made by a registrar. Similarly, if a child does not comply with an enforcement order, the matter will proceed to be heard before a magistrate in the Children's Court: see *Children, Youth and Families Act 2005* (Vic) sch 3.

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

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

17. *Children, Youth and Families Act 2005* (Vic) ss 362(a)–(d).

18. *Children, Youth and Families Act 2005* (Vic) s 361.

19. *Children, Youth and Families Act 2005* (Vic) ss 413(2)–(3).

- 2.13 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. The orders are set out in brief below, in order of increasing severity.
- 2.14 There are four sentencing orders that are non-custodial and do not involve a supervision element:
- Dismissal (DIM) – 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.²⁰
 - Undertakings – 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 (AUT) means the child may have to return to court if they breach the undertaking. An unaccountable undertaking (UUT) means the child does not have to return to court if the order is breached.²¹
 - Good behaviour bond (GBB) – 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 15 years or over). During this period, the child must be of good behaviour, meet any special conditions imposed by the court, and pay an amount of money to the court. If the child complies with the order, the court dismisses the charge, returns the bond amount to the child, and does not record a conviction. If the child does not comply with the order, the court may keep the money and impose a further sentencing order.²²
 - Fine (FIN) – the Children's Court may impose a financial penalty in the form of a fine, described in penalty units.²³ For children aged under 15 years, the maximum fine is one penalty unit for one offence and two penalty units for more than one offence. For children aged 15 or over, the maximum fine is five penalty units for one offence and 10 penalty units for more than one offence.
- 2.15 Three sentencing orders involving supervision in the community are available, depending on the age of the child at the time of sentencing. These are:
- Probation order (PRO) – for a child of any age, this is an order requiring an offender to report to a youth justice unit, obey the instructions of a youth justice worker and to 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, including conditions to undertake counselling or treatment programs.²⁴
 - Youth supervision order (YSO) – for a child of any age, this is 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

20. *Children, Youth and Families Act 2005* (Vic) s 360(1)(a).

21. *Children, Youth and Families Act 2005* (Vic) ss 365–366.

22. *Children, Youth and Families Act 2005* (Vic) ss 367–372.

23. *Children, Youth and Families Act 2005* (Vic) ss 373–379. 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.

24. *Children, Youth and Families Act 2005* (Vic) ss 380–386.

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.²⁵

- Youth attendance order (YAO) – for offenders aged 15 to 20 years, 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, he or she may go into detention.²⁶

2.16 Finally, the Children's Court cannot impose a sentence of imprisonment. Detention is the most severe sentence that can be imposed on a child, and is therefore a sentence of last resort. There are two types of detention orders available, depending on the age of the child at the time of sentencing:

- Youth residential centre order (YRCO) – 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.²⁷
- Youth justice centre order (YJCO) – for offenders aged 15 to 20 years, 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 to engage in employment.²⁸

Changes to the criminal jurisdiction of the Children's Court

2.17 Since the Council's 2012 report, there have been a number of changes to the criminal jurisdiction of the Children's Court, described below.

Unfitness to stand trial and mental impairment

2.18 From 23 September 2014, the Children's Court has had jurisdiction to determine the fitness of an accused child to stand trial as well as the defence of mental impairment in any matters where the court has jurisdiction to determine an indictable offence.²⁹ Previously, the court had jurisdiction to determine criminal responsibility where a child raised the defence of mental impairment,³⁰ but did not have the jurisdiction to determine a child's fitness to stand trial.³¹

25. *Children, Youth and Families Act 2005* (Vic) ss 387–395.

26. *Children, Youth and Families Act 2005* (Vic) ss 396–409.

27. *Children, Youth and Families Act* (2005) ss 410–411.

28. *Children, Youth and Families Act* (2005) ss 412–413.

29. *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 5A, pt 5A as inserted by *Criminal Organisations Control and Other Acts Amendment Act 2014* (Vic) pt 5.

30. *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 5(1), later amended by the *Criminal Organisations Control and Other Acts Amendment Act 2014* (Vic) s 121; *Children, Youth and Families Act 2005* (Vic) s 528(1).

31. This limitation was set out in the decision of *CL, A Minor (by his Litigation Guardian) v Director of Public Prosecutions (on behalf of Tim Lee)* [2011] VSCA 227 (5 August 2011) [31]–[49]; see further Victorian Law Reform Commission, *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 and the Children's Court of Victoria*, Supplementary Consultation Paper (2013) 21–27.

- 2.19 The previous limit on the Children's Court jurisdiction may be reflected in an increase in the number of indictable matters involving children being transferred to, and dealt with by, the higher courts from 2011 (when the jurisdictional limit was identified) until the change in the law in 2014. As a result of this change, there may be more indictable matters being determined in the Children's Court, where there are issues of unfitness to stand trial, after 2015. Data are not available, however, to determine the precise effect of this change.

Children's Koori Court

- 2.20 The Children's Koori Court was established in 2005 to address the over-representation of young Koori people in the criminal justice system. The framework and the operation of the Children's Koori Court are discussed in detail in the Council's 2012 report in Chapter 5.³²
- 2.21 Since the Council's 2012 report, the Children's Koori Court has expanded from two to nine court locations across Victoria: Bairnsdale, Dandenong, Geelong, Heidelberg, Melbourne, Morwell, Shepparton, Swan Hill, and Warrnambool (Hamilton and Portland); a Koori Youth Day is also held at Mildura.³³

Bail and remand

- 2.22 In Victoria, the *Bail Act 1977* (Vic) applies to both adults and children in terms of the relevant general considerations in granting or refusing bail and the conditions that can be imposed on bail. There are, however, additional considerations that apply to bail decisions in relation to children. The *Children, Youth and Families Act 2005* (Vic) contains a number of protective mechanisms relating specifically to children and young people.³⁴ For example, a child taken into custody must, within 24 hours, be released unconditionally, released on bail, or brought before the Children's Court or bail justice.
- 2.23 Other protective mechanisms relating to bail for children also now apply in the *Bail Act 1977* (Vic), having been moved in 2016 from the *Children, Youth and Families Act 2005* (Vic).³⁵ For example, section 3B now sets out the considerations a court must take into account when making a determination on bail, and section 12(1AA) states that if a court refuses bail to a child, the maximum period of time it may remand the child in custody is 21 days.
- 2.24 There are now also differences in the bail-related offences that apply to children, compared with those that apply to adults. Section 30 of the *Bail Act 1977* (Vic) specifies that it is an offence to fail to answer bail. In 2013, the Act was amended to make it an offence to contravene certain conduct conditions of bail (imposed under section 5(2A) of the Act)³⁶ and to commit an indictable offence whilst on bail. Both offences are punishable by 30 penalty units or three months imprisonment.³⁷ These new provisions were in operation from 20 December 2013 and the new offences applied to children granted bail in the Children's Court.

32. Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 44; see also Children's Court of Victoria, *Koori Court* (Children's Court of Victoria, 2016) <<http://www.childrencourt.vic.gov.au/jurisdictions/koori-court>> at 21 June 2016.

33. Children's Court of Victoria, *Annual Report 2012–2013* (2013) 4; Children's Court of Victoria, *Annual Report 2013–2014* (2014) 4; Children's Court of Victoria, *Annual Report 2014–2015* (2015) 4 (The Koori Children's Court was launched at Heidelberg on 27 August 2014 and at Dandenong on 12 September 2014).

34. See Kelly Richards and Lauren Renshaw, *Bail and Remand for Young People in Australia: A National Research Project*, Research and Public Policy Series no. 125 (2013) for an overview of the then Victorian and national bail frameworks for children and young people.

35. This occurred by way of amendments made by the *Bail Amendment Act 2016* (Vic) and include *Bail Act 1977* (Vic) ss 3B, 5AA, 10(1B), 10(1C), 12(1AA), 12(1AB), 12(3), 12(4), 16B, 24(3A). See *Children Youth and Families Act 2005* (Vic) s 346(6).

36. *Bail Act 1977* (Vic) s 3 (definition of 'conduct condition').

37. *Bail Act 1977* (Vic) ss 30A, 30B, inserted by *Bail Amendment Act 2013* (Vic) s 8.

- 2.25 In its 2014–15 annual report, the Children’s Court noted that, in contrast to the declining number of offenders found guilty in that financial year, ‘the number of alleged young offenders being admitted to remand increased alarmingly following the commencement of amendments to the Bail Act’.³⁸ Representatives of youth justice advocates were also reported to have expressed concerns about the high rates of children and young people on remand as a result of the operation of these bail provisions. In particular, it was reported that children were being detained for trivial breaches of bail conditions and, as a result, approximately 25% of young people on remand were being detained for bail breaches.³⁹
- 2.26 In February 2016, the Victorian Government passed legislation to amend the 2013 changes in relation to child offenders. The changes were made in direct response to observed increases in the number of children being held on remand and ‘very serious concerns that were raised with the Government by the Children’s Court that the number of kids in remand had blown out substantially’.⁴⁰
- 2.27 The *Bail Amendment Act 2016* (Vic) provisions exclude children from the offence of contravene certain conduct conditions of bail under section 30A of the *Bail Act 1977* (Vic).⁴¹ Children who breach bail conditions can still be brought back before the Children’s Court and have bail revoked, and can also, if relevant, be charged with the offences of fail to answer bail and committing an indictable offence whilst on bail.⁴² These provisions apply regardless of when the breach is alleged to have been committed.
- 2.28 The *Bail Amendment Act 2016* (Vic) also amended the bail provisions in the *Children, Youth and Families Act 2005* (Vic). The amendments create an express presumption in favour of proceeding by summons (rather than a warrant to arrest) in bail matters, if the accused is a child, and require that police have regard to this presumption in commencing a criminal proceeding against a child.⁴³ These amendments also operate from 2 May 2016.

Changes to diversion programs for children and young people

- 2.29 One limitation of court-based sentencing statistics is that they do not reflect the full range of dispositions utilised by the criminal justice system in relation to young offenders, and in particular, programs aimed at diversion of young people from the criminal justice system and from future offending.
- 2.30 Consistent with one of the key sentencing principles in the *Children, Youth and Families Act 2005* (Vic) to ‘minimise stigma to the child resulting from a court determination’⁴⁴ there have been continuing efforts aimed at diverting young people away from the criminal justice system. This is reflected in the ongoing development of pre-charge and pre-sentence diversion, including the introduction of court diversion, for young offenders.

38. Children’s Court of Victoria, *Annual Report 2014–2015* (2015) 3.

39. See, for example, Stephanie Anderson, ‘Changes to Victoria’s Bail Laws Won’t Send Wrong Message to Child Offenders: State Government’, *The Age* (Melbourne) 2 May 2016 <<http://www.abc.net.au/news/2016-05-02/victorian-government-defends-changes-to-bail-laws-for-youth/7376868>>; Law Institute of Victoria, ‘Changes to Child Bail Laws in Question’, *Law Institute Journal* (1 June 2016) <<http://www.liv.asn.au/Staying-Informed/LIJ/LIJ/June-2016/Changes-to-child-bail-laws-in-question>> at 15 June 2016.

40. Stephanie Anderson, ‘Changes to Victoria’s Bail Laws Won’t Send Wrong Message to Child Offenders: State Government’, *The Age* (Melbourne) 2 May 2016 <<http://www.abc.net.au/news/2016-05-02/victorian-government-defends-changes-to-bail-laws-for-youth/7376868>> at 15 June 2016.

41. *Bail Act 1977* (Vic) s 30A(3), as inserted by the *Bail Amendment Act 2016* (Vic) s 16(2).

42. *Bail Act 1977* (Vic) ss 30, 30B.

43. *Children, Youth and Families Act 2005* (Vic) s 345, as substituted by *Bail Amendment Act 2016* (Vic) s 20.

44. *Children, Youth and Families Act 2005* (Vic) s 362(1)(d).

2.31 In addition to the specialised court jurisdiction of the Children's Court, there are a range of pre-charge and pre-sentence diversionary practices available in Victoria, including police cautioning, group conferencing and the 'ROPES' program. The Council detailed these practices and programs in its 2012 report.⁴⁵ The 2012 report also identified that, apart from police cautioning, these practices and programs were somewhat ad hoc and, at the time of the writing of that report, there was no comprehensive, state-wide pre-sentence diversion program for young people.

Changes to group conferencing

2.32 The Group Conferencing Program operates as a pre-sentence option in the Children's Court. Group Conferencing is based on restorative justice principles and aims to help the young person avoid further or more serious offending. A group conference involves a child who has pleaded guilty (to offences other than homicide, manslaughter, or sexual offences) and who both consents to the conference and has been assessed as suitable. A group conference is attended by the child (along with their family and/or supports), the victim and/or their representative, family and/or supports of the victim, the child's legal representative, the police prosecutor, community members (where appropriate) and the convenor.⁴⁶

2.33 At the conference, the child and the other participants talk about what happened and will agree on what needs to be done about the harm caused by the offence. At the end of the conference, an outcome plan will be prepared that sets out the agreements that were made. The convenor then writes a report, which explains what happened in the conference, and this is presented to the Children's Court. When deciding on an appropriate sentence, the court will take into account the contents of the group conference outcome plan.⁴⁷

2.34 Commencing 9 September 2014, amendments to the group conferencing provisions in the *Children, Youth and Families Act 2005* (Vic) have broadened the range of matters that can be adjourned for a group conference. Previously, the Children's Court could only consider deferral of sentencing for the purpose of the child's participation in a group conference if the court was contemplating a probation order or a youth supervision order. Following the amendments, the court can also adjourn a matter for a group conference where the court is considering imposing a youth attendance order or a period of detention by way of a youth residential centre order or a youth justice centre order.⁴⁸

New court diversion program – pilot and expansion into state-wide program

2.35 In 2015, a 12 month youth diversion pilot program ('YDPP') commenced operation in the Children's Court. The program operated in four metropolitan courts (Dandenong, Broadmeadows, Sunshine, and Werribee) and three courts in the Grampians region (Ballarat, Ararat, and Stawell). Jesuit Social Services was the main service provider.⁴⁹ The pilot commenced in the metropolitan locations on 1 June 2015 and, shortly after, in the three regional locations in July 2015.⁵⁰

45. Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 27–35.

46. For a detailed description of group conferencing, see Children's Court of Victoria, *Group Conferencing* (Children's Court of Victoria, 2016) <<http://www.childrenscourt.vic.gov.au/jurisdictions/criminal/group-conferencing>> at 7 July 2016.

47. *Ibid.*

48. *Children, Youth and Families Act* (2005) s 415(1). The amendments were made by the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) s 103, which came into operation on 9 September 2014.

49. Children's Court of Victoria, 'Commencement of Youth Diversion Pilot Program', Media Release (13 April 2015).

50. Children's Court of Victoria, *Annual Report 2014–2015* (2015) 4.

- 2.36 After 12 months of operation, 330 young people had been referred into the program. RMIT's School of Global, Urban and Social Studies and the Centre for Market Design (Department of Treasury and Finance) are working in partnership to evaluate the YDPP. This is a three-stage project: profiling young people appearing in the Children's Court; identifying future criminal justice system contact; and evaluating program effectiveness, process and governance.⁵¹
- 2.37 In the 2016–17 budget the Victorian Government announced funding to deliver a state-wide youth diversion program following the successful completion of the 12-month pilot.⁵² The Children's Court has extended the pilot to 31 December 2016 to allow for design and implementation of the state-wide youth diversion program.
- 2.38 The target group for the program is young offenders who acknowledge their offending and who have little or no prior history of offending. Key objectives of the program are to:
- offer diversion options for young people with little or no criminal history appearing in the Children's Court Criminal Division;
 - provide an opportunity for early intervention and support;
 - address the underlying causes of offending behaviour; and
 - provide a coordinated and comprehensive approach to diverting young people from the criminal justice system.
- 2.39 The program is also designed to avoid a finding of guilt being recorded (for those young people who successfully complete the program) and to assist young people to address problems that may lead to further offending.
- 2.40 The youth diversion program operates through court referrals of eligible young people to Jesuit Social Services for in-court assessment as to their suitability for diversion. If a young person is deemed suitable, recommendations are made to the court about a 'broad-ranging' tailored diversion plan. Diversion plans focus on links to family, school, and community and may include:
- program components to address the young person's circumstances and/or needs and the offences before the court;
 - a time-limited support program for the young person; and
 - reporting to the court on the young person's compliance with, and completion of, any diversion plan.⁵³

Discharge following therapeutic treatment

- 2.41 Although unchanged since the Council's 2012 report, another form of pre-sentence diversion is the Children's Court's power to refer particular children (appearing in criminal proceedings) for investigation under the protection interventions in the *Children, Youth and Families Act 2005* (Vic).
- 2.42 A 'therapeutic treatment order' is an order under the *Children, Youth and Families Act (2005)* for a child aged 10–14 years who has 'exhibited sexually abusive behaviours', requiring the child to attend and participate in an appropriate therapeutic treatment program.⁵⁴

51. Information provided to the Council by the Children's Court of Victoria, 22 June 2016.

52. Children's Court of Victoria, *Youth Diversion* (Children's Court of Victoria, 2016) <<http://www.childrencourt.vic.gov.au/jurisdictions/criminal/youth-diversion>> at 15 June 2016.

53. Children's Court of Victoria, *Youth Diversion* (Children's Court of Victoria, 2016) <<http://www.childrencourt.vic.gov.au/jurisdictions/criminal/youth-diversion>> at 15 June 2016.

54. *Children, Youth and Families Act 2005* (Vic) ss 244–251.

- 2.43 If a therapeutic treatment order is made in respect of such a child, and the court has not made a finding in relation to the criminal charges, it must adjourn the proceedings until the end of the therapeutic treatment order. If the child attends and participates in the order or voluntarily attends or participates in a therapeutic treatment program, the court must discharge the child without any further hearing of the criminal proceedings.⁵⁵

Other initiatives

Education Justice Initiative

- 2.44 Although not a form of pre-charge or pre-sentence diversion, a further recent development is the commencement of the Education Justice Initiative, launched on 1 September 2014 at the Melbourne Children's Court. The Initiative is a partnership between Parkville College and Melbourne Children's Court and is directed at young people who appear in the criminal division of the court who 'at the time are either totally or partly disengaged from education'.⁵⁶ As part of the initiative, representatives of the Department of Education attend court on a daily basis to assist young people to re-engage with education, where they wish to do so.⁵⁷

55. *Children, Youth and Families Act 2005* (Vic) ss 349–355.

56. Parkville College, *Melbourne Children's Court* (Parkville College, 2016) <http://parkvillecollege.vic.edu.au/?page_id=44> at 7 July 2016.

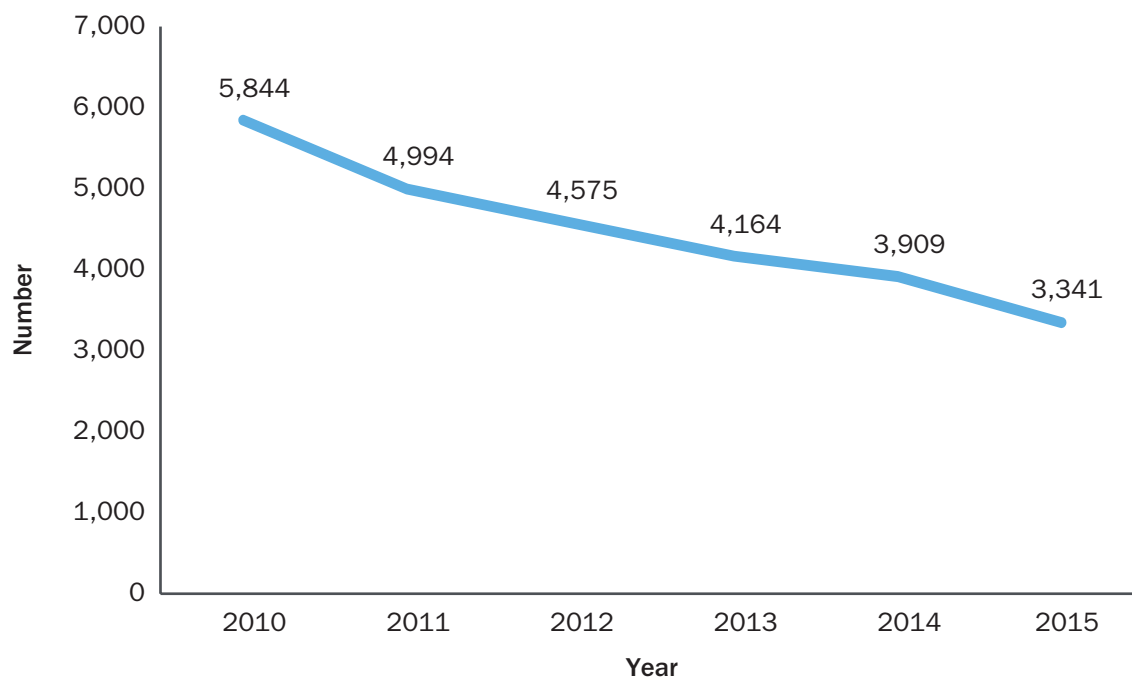
57. Children's Court of Victoria, *Annual Report 2014–2015* (2015) 4.

3. Children's Court sentencing overview

Cases and charges

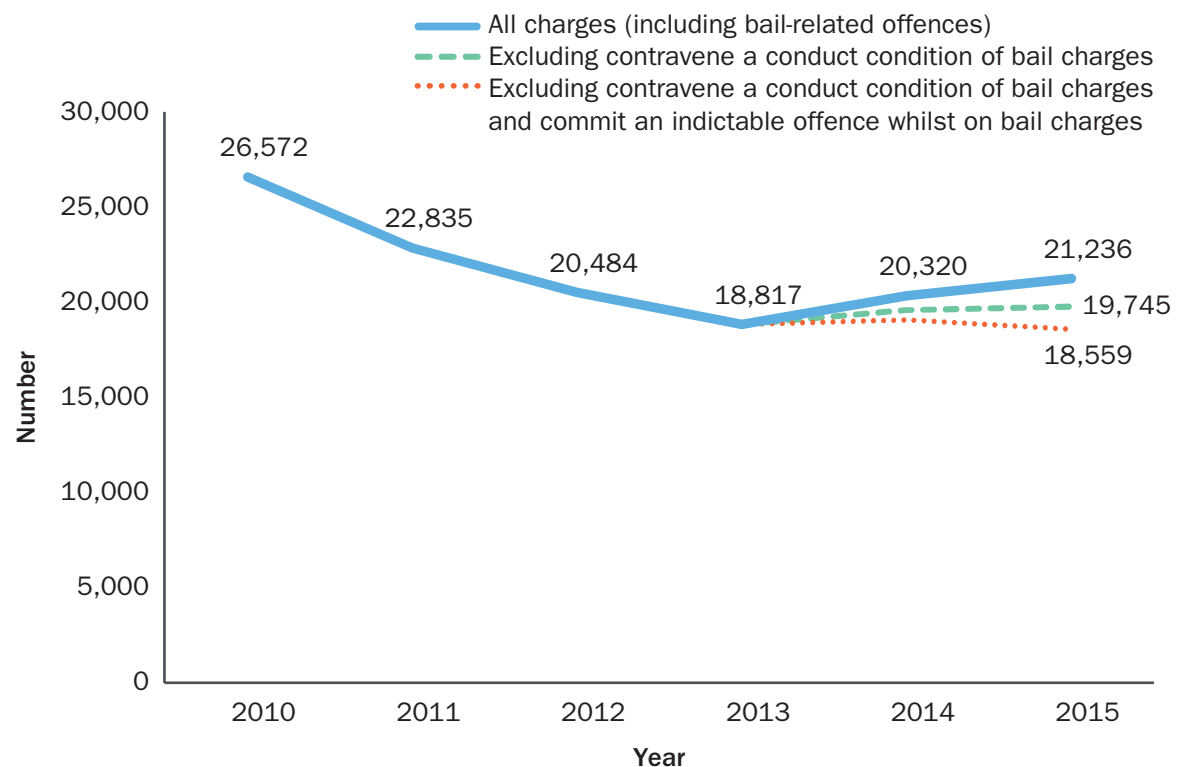
- 3.1 Figure 2 shows that between 2010 and 2015 there was a substantial decline, of approximately 43%, in the number of cases sentenced in the Children's Court. The number of cases steadily declined from 5,844 in 2010 to 3,341 in 2015.
- 3.2 The number of charges sentenced each year in the Children's Court (Figure 3, page 13) declined between 2010 and 2013 (from 26,572 charges to 18,817 charges), but since that time the number has increased, to 21,236 charges in 2015.
- 3.3 Taken together, Figures 2 and 3 may indicate that, although the number of sentenced offenders has decreased, those offenders are committing more offences. A substantial proportion of the increase in charges, however, is attributable to justice procedures offences, and in particular, the offence of contravention of a conduct condition of bail.
- 3.4 As Figure 3 demonstrates, when the offence of contravene a conduct condition of bail (now repealed in respect of children) is excluded, the number of charges sentenced in the Children's Court (shown as the green dashed line) has still increased since 2013, but to a lesser extent.
- 3.5 Further, Figure 3 also shows that, when the new offence of commit an indictable offence whilst on bail (which has *not* been repealed in respect of children) is also excluded, the number of charges sentenced in the Children's Court (shown as the red dotted line), has decreased since 2013. Excluding the two new bail-related offences, the total number of charges sentenced in the Children's Court in 2015 (18,559) was less than in 2013 (18,817).

Figure 2: Number of cases sentenced in the Children's Court by year, 2010 to 2015



- 3.6 These data demonstrate that the majority of the increase in the number of charges since 2013 can be attributed to the new bail-related offences introduced in that year, and not an increase in the commission of other offences.
- 3.7 Consistent with Figures 2 and 3 (showing a decline in the number of cases while the number of charges remained relatively constant), Figure 4 (page 14) shows that the average number of charges per case sentenced in the Children's Court has recently increased. This figure has increased from a consistent average of around 4.5 charges per case for the years 2010 to 2013, to an average of 5.2 charges per case in 2014 and then 6.4 charges per case in 2015.
- 3.8 These findings are consistent with those reported in 2016 by the Crime Statistics Agency Victoria in its analysis of age-specific trends in the number of alleged young offenders, offending incidents, and offences over a 10-year period from July 2005 to June 2015. The Crime Statistics Agency Victoria reported that for 10 to 14 year olds, there was a decrease in the number of alleged offenders over the period examined and an overall decrease in the total number of alleged offences. However, there was a 22.9% increase in the average number of alleged offending incidents per offender and a corresponding 40.4% increase in the average number of alleged offences per offender.⁵⁸
- 3.9 The decline in the number of cases (as demonstrated in Figure 2) has outpaced the slight decline in the number of charges when the new bail-related offences are excluded (as demonstrated by Figure 3). As a result, Figure 4 shows that there has been an increase in the average number of charges per case since 2013, even when the new bail-related offences are excluded.
- 3.10 While it is not possible to determine from the data, the increase in the average number of charges per case may also reflect changed charging practices by Victoria Police.

Figure 3: Number of charges sentenced in the Children's Court by year, both including and excluding new bail-related offences, 2010 to 2015



58. Crime Statistics Agency Victoria, *Downward Trend in the Number of Young Offenders, 2006 to 2015*, In Fact no. 1 (2016) 1–2.

Figure 4: Average number of charges per case sentenced in the Children’s Court by year, both including and excluding new bail-related offences, 2010 to 2015

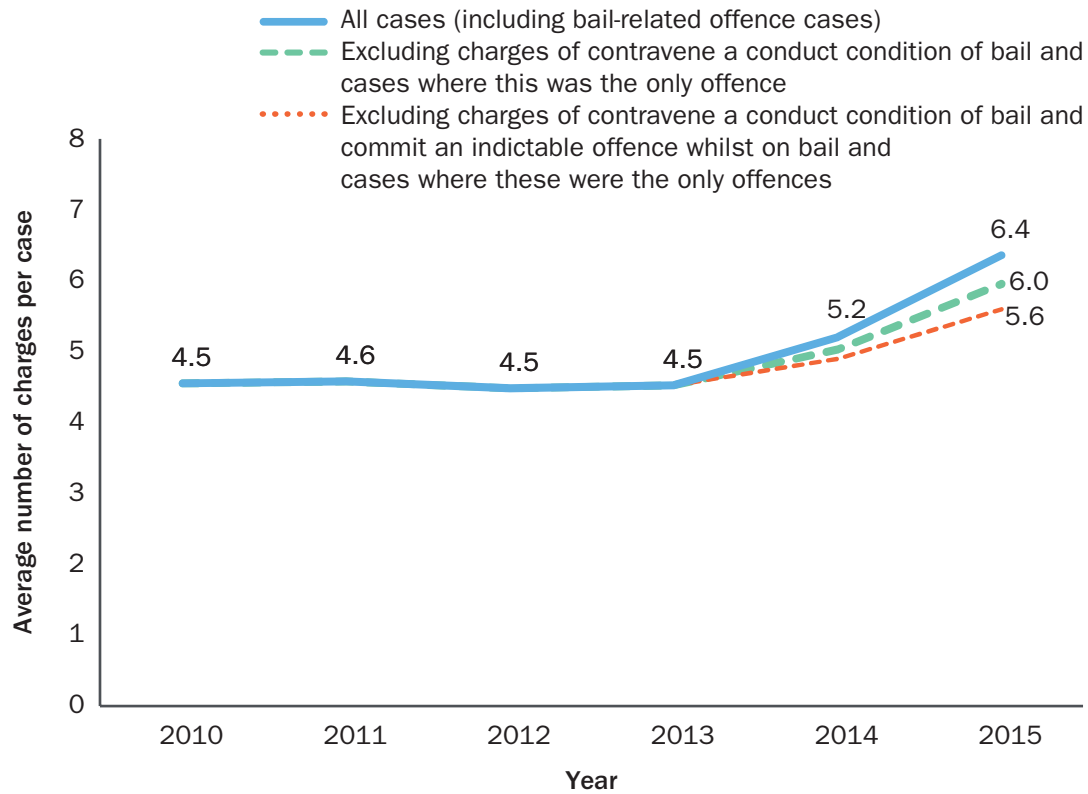
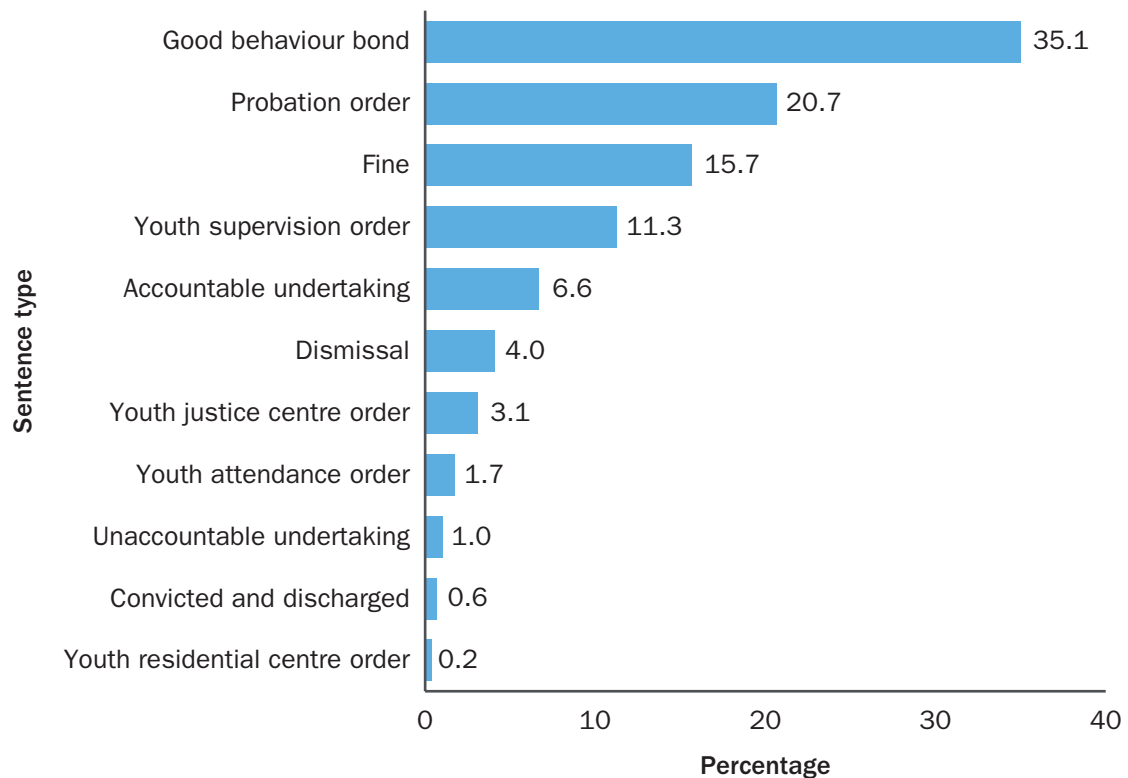


Figure 5: Percentage of cases by most serious sentence type in case, Children’s Court, 2015



Distribution of sentence types in 2015

- 3.11 Figure 5 (page 14) presents the distribution of sentence types imposed in the Children's Court by the most serious sentence imposed in a case in 2015 (the most recent year in the dataset). For example, if a single case received both a fine and a youth supervision order, the youth supervision order (as the most serious sentence imposed), has been recorded as the sentence for the case.
- 3.12 Good behaviour bonds were the most common sentence imposed (in 35.1% of cases) followed by probation orders (20.7%), fines (15.7%), youth supervision orders (11.3%), and accountable undertakings (6.6%). The remaining sentencing orders were each applied in less than 5% of cases. The most serious sentences available – detention in either a youth justice centre (where the offender is under 15) or a youth residential centre (where the offender is 15 and over) – were imposed in 3.1% and 0.2% of cases, respectively.

Offences receiving a dismissal or discharge

- 3.13 In its 2012 report, the Council excluded 'dismissals', 'discharges', and 'convicted and discharged' dispositions from its analysis. Dismissals and discharges were excluded because of advice received by the Council from the Department of Justice and Regulation⁵⁹ that the data for these dispositions included a small number of matters that were not proven. For this report, the Council has included data on dismissals after conducting additional analysis to ensure that all of those matters receiving a dismissal were, in fact, sentences for a proven matter.
- 3.14 The Council notes that the sentence 'convicted and discharged', while appearing in small numbers within the dataset (0.6% of sentenced cases), is not a sentence that can be imposed under the *Children, Youth and Families Act 2005* (Vic).⁶⁰ The dataset, however, indicates that these sentences have been recorded against children as a sentencing outcome in the Children's Court. Accordingly, for transparency, the Council has separately reported the very small proportion of these dispositions imposed, rather than combining these dispositions with 'dismissal'.

Distribution of sentence types over time

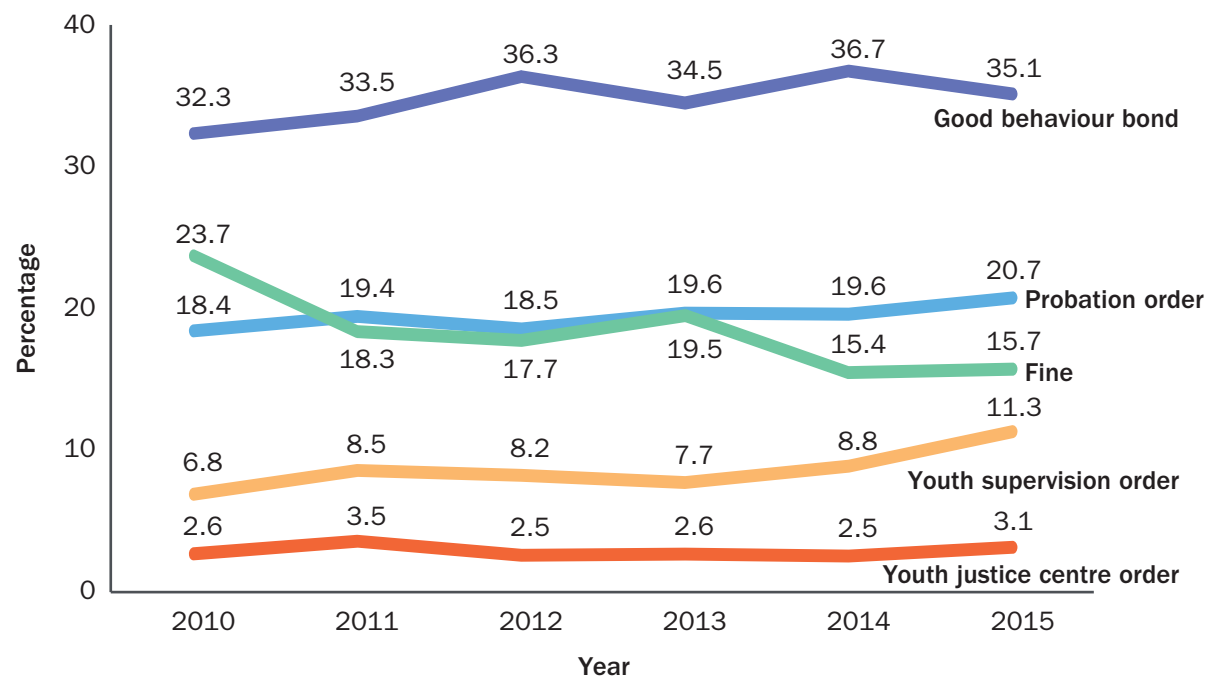
- 3.15 Table 1 (page 16) presents the number and percentage of cases imposed for the six years from 2010 to 2015 by most severe sentence type. The sentence types are displayed in order of severity, from the most severe (orders for detention in a youth justice centre or a youth residential centre) at the top, to the least severe (dismissal) at the bottom.
- 3.16 As shown in the table, the most severe sentence received for the majority of cases tended to fall within the middle of the sentencing hierarchy: a probation order, a fine, or a good behaviour bond. For the six years examined, these orders comprised between 71% and 74% of sentences imposed for cases in each year.

59. Described in the report as the Department of Justice, as it then was.

60. The Council noted the same issue in its 2012 report: see Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 203.

- 3.17 Figure 6 presents the distribution of selected most serious sentence types by case for the calendar years 2010 to 2015.
- 3.18 The most common sentence type, a good behaviour bond, varied only slightly from year to year, ranging between 32.3% and 36.7% of the most serious sentence type imposed in all cases. While the use of probation orders and youth justice centre orders has remained relatively consistent, there has been an increase in the use of youth supervision orders (from 6.8% to 11.3% of cases) alongside a reduction in the use of fines (from 23.7% to 15.7% of cases).
- 3.19 The reduction in the use of fines is of note, given that, in its 2012 report, the Council found that stakeholders were 'generally unimpressed with fines as a sentencing option for children'.⁶¹ Further, the Council's 2014 report on fines identified that only around one-third of fines imposed in the Children's Court were ever fully paid.⁶²
- 3.20 The Council has been advised by the Children's Court that the majority of Children's Court fines are imposed when the young person does not appear at the court hearing, and the offending is not deemed serious enough for the court to compel the young person's attendance by issuing a warrant to arrest. As discussed at [4.13]–[4.48], fines make up a very small percentage of sentences imposed for most offence categories, with the exception of transit offences and traffic offences.

Figure 6: Percentage distribution of selected most serious sentence type per case by year, Children's Court, 2010 to 2015



61. Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 114–115.

62. Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (2014) 313.

4. Offences sentenced in the Children's Court

New offence categories

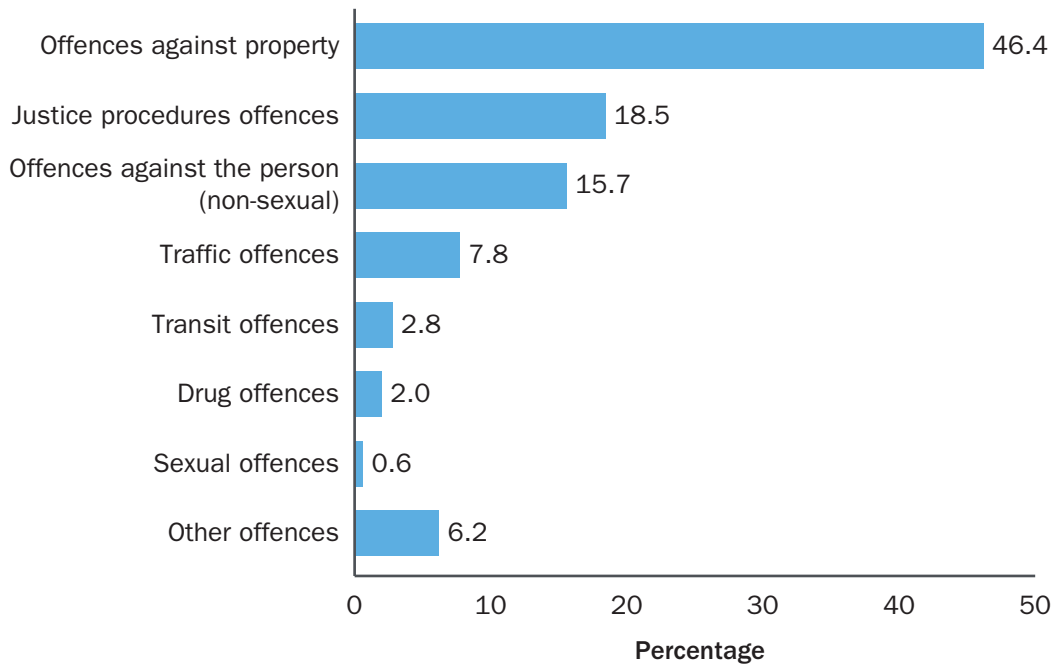
- 4.1 The Council has adopted a different method of categorising offences than that presented in its 2012 report *Sentencing of Children and Young People in Victoria*. This new methodology has been applied for a number of reasons, including that:
- the reference period for the 2012 report covered a time period prior to the introduction of CAYPINS⁶³ (which removed infringement matters from the general criminal jurisdiction of the Children's Court), and as a result, identification of transit and ticketing offences was particularly important in order to isolate a large volume of offences;
 - the increased prevalence of justice procedures offences warrants a distinct category; and
 - the adoption of more refined categories can provide a greater insight into the trends for offending behaviour sentenced in the Children's Court.
- 4.2 Consequently, the Council has analysed offences using the following eight categories:
1. non-sexual offences against the person (for example, assault or causing injury offences);
 2. sexual offences (for example, rape or child pornography offences);
 3. offences against property (for example, theft or burglary);
 4. drug offences (for example, possession or trafficking of drugs);
 5. justice procedures offences (for example, breach of a conduct condition of bail, or breach of a family violence intervention order);
 6. traffic offences (for example, speeding or drink driving offences);
 7. transit offences (for example, failure to have a valid ticket, or have a valid concession on public transport); and
 8. 'other' offences (for example, possession of weapons or being drunk in a public place).

Charges sentenced by offence category

- 4.3 Figure 7 (page 20) presents the percentage of all charges sentenced in the Children's Court in 2015 by offence category. The largest single offence category is offences against property (46.4%), more than twice the nearest category of justice procedures offences (18.5%). Non-sexual offences against the person represented 15.7% of all charges. Apart from 'other' offences (6.2%), the only remaining category with greater than 5% of all charges (7.8%) was traffic offences. Drug offences represented 2% of all charges, while sexual offences represented less than 1% (0.6%) of all charges.
- 4.4 Table 2 (page 19) presents a breakdown of all charges sentenced in the Children's Court by offence category, for the six years from 2010 to 2015. Offence categories are presented in order of their prevalence in 2015, as shown in Figure 7. Although the drug offences and sexual offences categories are less prevalent than the 'other' offences category, they are listed first to reflect their importance as distinct categories.

63. For a detailed discussion of the history and operation of CAYPINS, see Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (2014) 305–323; see also Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 46–47.

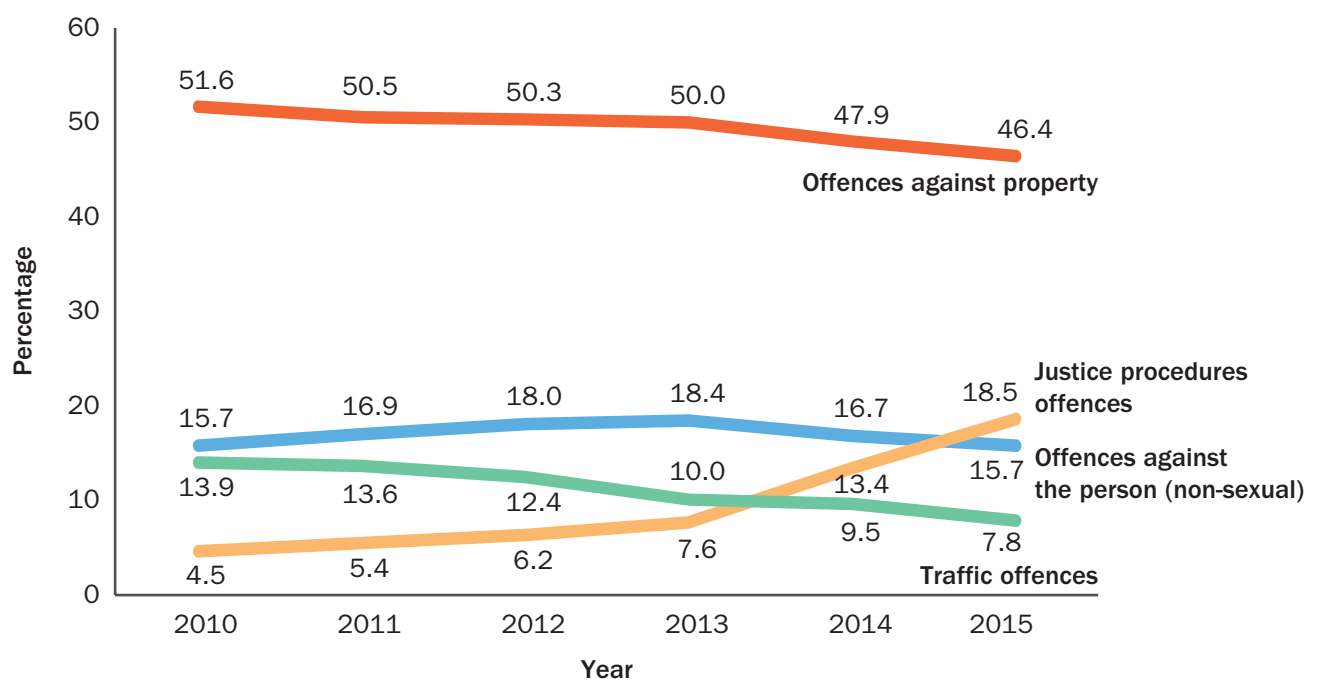
Figure 7: Percentage of all charges by offence category, by prevalence, Children's Court, 2015



4.5 Over the reference period, to varying degrees, there has been a decline in the number of sentenced charges for all offence categories (other than justice procedures offences).

4.6 In terms of percentages, while most offence categories represent a relatively constant proportion of charges from year to year, there are some exceptions. Most notably, justice procedures offences have increased markedly, from 4.5% of all charges in 2010 to 18.5% in 2015. Traffic offences have declined, from 13.9% to 7.8% over the same period. Sexual offences, offences against property, transit offences, and 'other' offences have also declined as a proportion of all offences, but by relatively small margins.

Figure 8: Percentage of all charges by selected offence category and year, Children's Court, 2010 to 2015

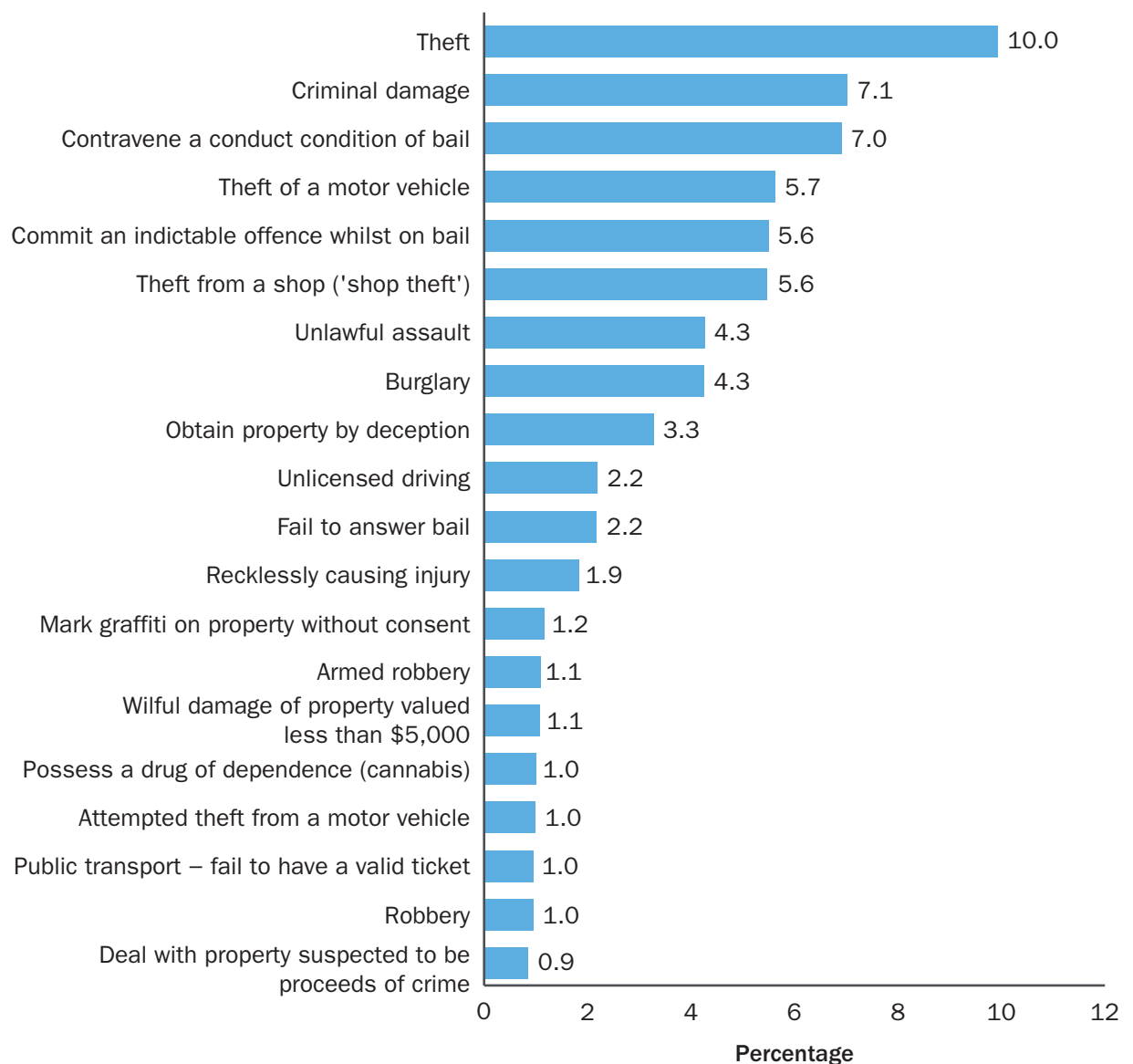


- 4.7 Figure 8 (page 20) presents the proportion of charges sentenced for select offence categories to show the change in proportions over time. The marked increase in justice procedures offences from 2013 (increasing from 7.6% of all charges in 2013 to 18.5% of all charges in 2015) coincides with the introduction of the bail-related offences discussed at [2.22]–[2.28]. It is anticipated that this category of offending is likely to reduce over time in light of the reforms introduced by the *Bail Amendment Act 2016* (Vic).

Twenty most frequently sentenced offences in 2015

- 4.8 Figure 9 presents the 20 most frequently sentenced offences in the Children's Court for 2015. This figure demonstrates that offending sentenced in the Children's Court is concentrated among a relatively small number of offences. The top 20 offences represent 67.5% of all offences sentenced; the top 10 represent more than half (55.1%) of all offences sentenced.

Figure 9: Percentage of charges for the 20 most frequent offences sentenced, Children's Court, 2015



- 4.9 Theft is the most common offence, representing 10% of all charges sentenced in 2015, followed by the offence of criminal damage (7.1%), contravene a conduct condition of bail (7%), and theft of a motor vehicle (5.7%). Theft from a shop ('shop theft') and commit an indictable offence whilst on bail each represented 5.6% of offences (and were the only remaining offences representing more than 5% of offences).
- 4.10 Figure 10 presents the proportion of charges over the reference period for select offences in order to demonstrate changes over time. In particular, the figure shows the sudden increase in the offence of contravene a conduct condition of bail, introduced in 2013, which by 2015 represented 7% of all charges sentenced in the Children's Court. From 2 May 2016, children cannot be charged with this offence, regardless of when the contravention is alleged to have been committed.
- 4.11 There has also been a marked increase in obtain property by deception, which has more than tripled as a proportion of all sentenced charges, from 0.7% in 2010 to 3.3% in 2015. Also increasing, but to a lesser extent, is theft of a motor vehicle (from 3.8% in 2010 to 5.7% in 2015). Over the same period, criminal damage declined from 9.7% of charges sentenced in 2010 to 7.1% in 2015.
- 4.12 Table 3 (page 23) presents the number and percentage of charges for the 20 most frequently sentenced offences by year (ordered by descending frequency in 2015).

Figure 10: Percentage of charges by selected offences and year, Children's Court, 2010 to 2015

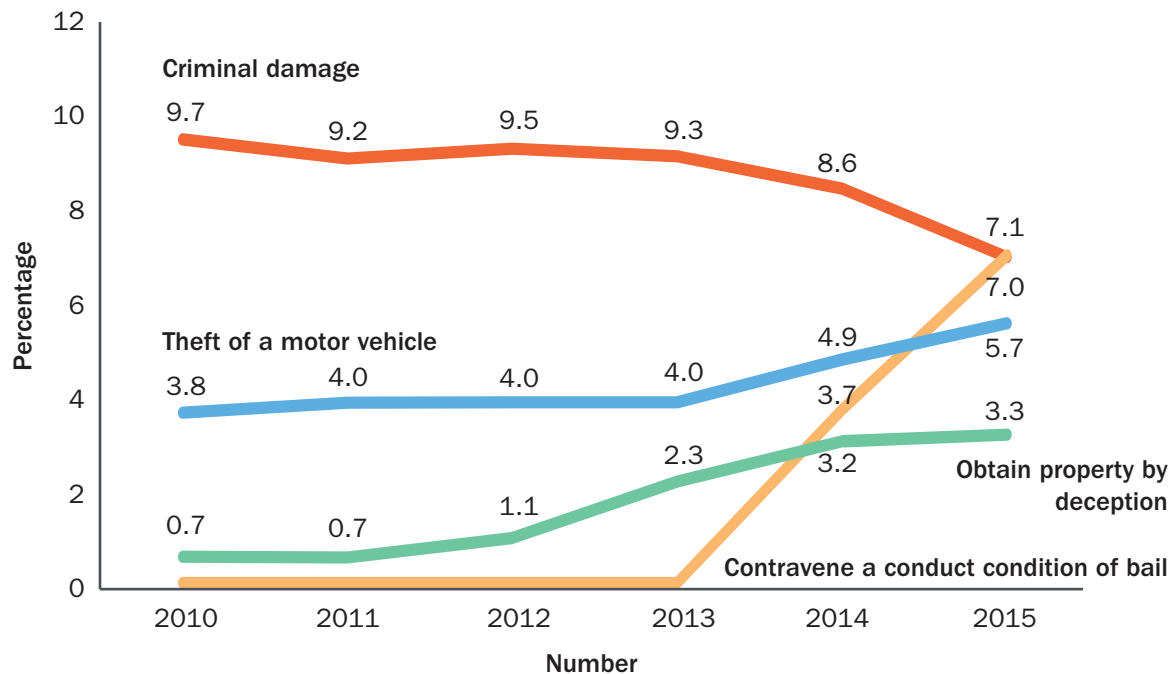


Table 3: Number and percentage of charges for the 20 most frequently sentenced offences by year (ordered by descending frequency in 2015), Children's Court, 2010 to 2015

Rank	Offence	Number & Percentage						
		2010	2011	2012	2013	2014	2015	
1	Theft	3,302 (12.4%)	2,646 (11.6%)	2,417 (11.8%)	2,095 (11.1%)	2,002 (9.9%)	2,113 (10%)	
2	Criminal damage	2,566 (9.7%)	2,112 (9.2%)	1,938 (9.5%)	1,750 (9.3%)	1,748 (8.6%)	1,515 (7.1%)	
3	Contravene a conduct condition of bail	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	754 (3.7%)	1,491 (7.0%)
4	Theft of a motor vehicle	1,010 (3.8%)	917 (4.0%)	824 (4.0%)	757 (4.0%)	1,004 (4.9%)	1,214 (5.7%)	
5	Commit an indictable offence whilst on bail	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	513 (2.5%)	1,186 (5.6%)
6	Theft from a shop ('shop theft')	1,653 (6.2%)	1,420 (6.2%)	1,347 (6.6%)	1,207 (6.4%)	1,194 (5.9%)	1,179 (5.6%)	
7	Unlawful assault	834 (3.1%)	859 (3.8%)	902 (4.4%)	864 (4.6%)	922 (4.5%)	920 (4.3%)	
8	Burglary	1,736 (6.5%)	1,455 (6.4%)	1,173 (5.7%)	980 (5.2%)	925 (4.6%)	915 (4.3%)	
9	Obtain property by deception	189 (0.7%)	160 (0.7%)	228 (1.1%)	439 (2.3%)	649 (3.2%)	708 (3.3%)	
10	Unlicensed driving	694 (2.6%)	620 (2.7%)	609 (3.0%)	440 (2.3%)	552 (2.7%)	472 (2.2%)	
11	Fail to answer bail	531 (2.0%)	595 (2.6%)	602 (2.9%)	602 (3.2%)	597 (2.9%)	469 (2.2%)	
12	Recklessly causing injury	637 (2.4%)	629 (2.8%)	522 (2.5%)	488 (2.6%)	408 (2.0%)	395 (1.9%)	
13	Mark graffiti on property without consent	212 (0.8%)	326 (1.4%)	147 (0.7%)	102 (0.5%)	160 (0.8%)	250 (1.2%)	
14	Armed robbery	195 (0.7%)	218 (1.0%)	217 (1.1%)	148 (0.8%)	116 (0.6%)	233 (1.1%)	
15	Willfully damage property valued less than \$5,000	267 (1.0%)	195 (0.9%)	199 (1.0%)	165 (0.9%)	236 (1.2%)	232 (1.1%)	
16	Possess a drug of dependence (cannabis)	171 (0.6%)	170 (0.7%)	160 (0.8%)	183 (1.0%)	232 (1.1%)	219 (1.0%)	
17	Attempted theft from a motor vehicle	213 (0.8%)	146 (0.6%)	134 (0.7%)	146 (0.8%)	123 (0.6%)	215 (1.0%)	
18	Public transport – fail to have a valid ticket	409 (1.5%)	233 (1.0%)	248 (1.2%)	292 (1.6%)	217 (1.1%)	206 (1.0%)	
19	Robbery	349 (1.3%)	320 (1.4%)	356 (1.7%)	308 (1.6%)	232 (1.1%)	204 (1.0%)	
20	Deal with property suspected to be proceeds of crime	244 (0.9%)	212 (0.9%)	205 (1.0%)	187 (1.0%)	189 (0.9%)	183 (0.9%)	
	Other	11,360 (42.8%)	9,602 (42%)	8,256 (40.3%)	7,664 (40.7%)	7,547 (37.1%)	6,917 (32.6%)	
	Total	26,572 (100%)	22,835 (100%)	20,484 (100%)	18,817 (100%)	20,320 (100%)	21,236 (100%)	

Sentencing outcomes and most commonly sentenced principal offences, by offence category

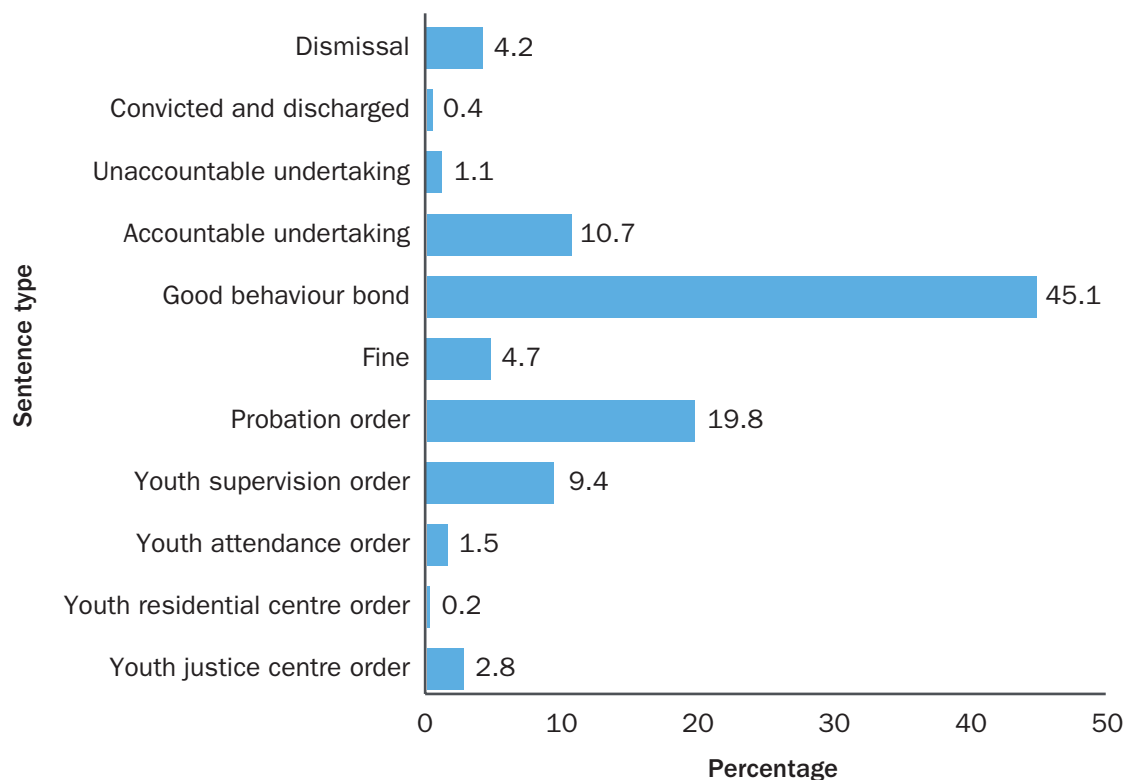
- 4.13 The following analysis presents the sentencing outcomes in the Children's Court for the calendar year 2015 according to the offence category of the principal offence in a case. The principal offence is the offence for the charge in a case that receives the most severe sentence. The data are presented in order of the prevalence of offence categories in 2015, as shown in Figure 7 (page 20).
- 4.14 The analysis also presents a ranking of the most common principal offences sentenced in 2015 for each offence category. For most offence categories, the top 10 most common principal offences are presented. For four offence categories (justice procedures offences, transit offences, drug offences, and sexual offences) the small number of offences means that the most common principal offences listed comprise all of the principal offences for that category, sentenced in 2015.

Offences against property

Sentence distribution

- 4.15 Figure 11 presents the distribution of sentences in the Children's Court for cases involving a principal offence against property for 2015 (n = 1,053). The most common sentence imposed was a good behaviour bond (45.1%) followed by a probation order (19.8%) and an accountable undertaking (10.7%).

Figure 11: Sentence distribution for principal offences against property, Children's Court, 2015



Most commonly sentenced offences

- 4.16 Table 4 shows the top 10 most common principal offences against property sentenced in the Children's Court in 2015. It shows that burglary was the most commonly sentenced offence (n = 219 cases). This offence comprised 20.8% of the 1,053 cases that had a property offence as the principal offence.
- 4.17 Theft was a very prevalent offence, comprising almost 40% of cases (n = 415) in the top 10 most common offences against property. Theft is split into three different forms of the offence in Table 4: shop theft, theft of a motor vehicle, and theft. Shop theft was the most common theft offence, with 184 charges sentenced.⁶⁴
- 4.18 Offences involving damage to property also featured in the top 10 most common principal offences against property. Criminal damage was the third most common property offence (n = 164), comprising 15.6% of cases. The property damage offences of wilfully damage property valued less than \$5,000, criminal damage by fire (arson) and wilfully enter private property without authorisation or lawful excuse were the eighth, ninth and tenth most common property offences, respectively. Other offences that featured in the top 10 cases involving offences against property were obtain property by deception and handling stolen goods.

Table 4: Top 10 most common principal offences against property sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Burglary	<i>Crimes Act 1958</i> (Vic) s 76(1)	219
2	Theft from a shop (shop theft)	<i>Crimes Act 1958</i> (Vic) s 74	184
3	Criminal damage	<i>Crimes Act 1958</i> (Vic) s 197(1)	164
4	Theft of a motor vehicle	<i>Crimes Act 1958</i> (Vic) s 74	132
5	Theft	<i>Crimes Act 1958</i> (Vic) s 74	99
6	Obtain property by deception	<i>Crimes Act 1958</i> (Vic) s 81(1)	58
7	Handling stolen goods	<i>Crimes Act 1958</i> (Vic) s 88(1)	42
8	Wilfully damage property valued less than \$5,000	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(c)	37
9	Criminal damage by fire (arson)	<i>Crimes Act 1958</i> (Vic) s 197(6)	22
10	Wilfully enter private property without authorisation or lawful excuse	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(e)	15

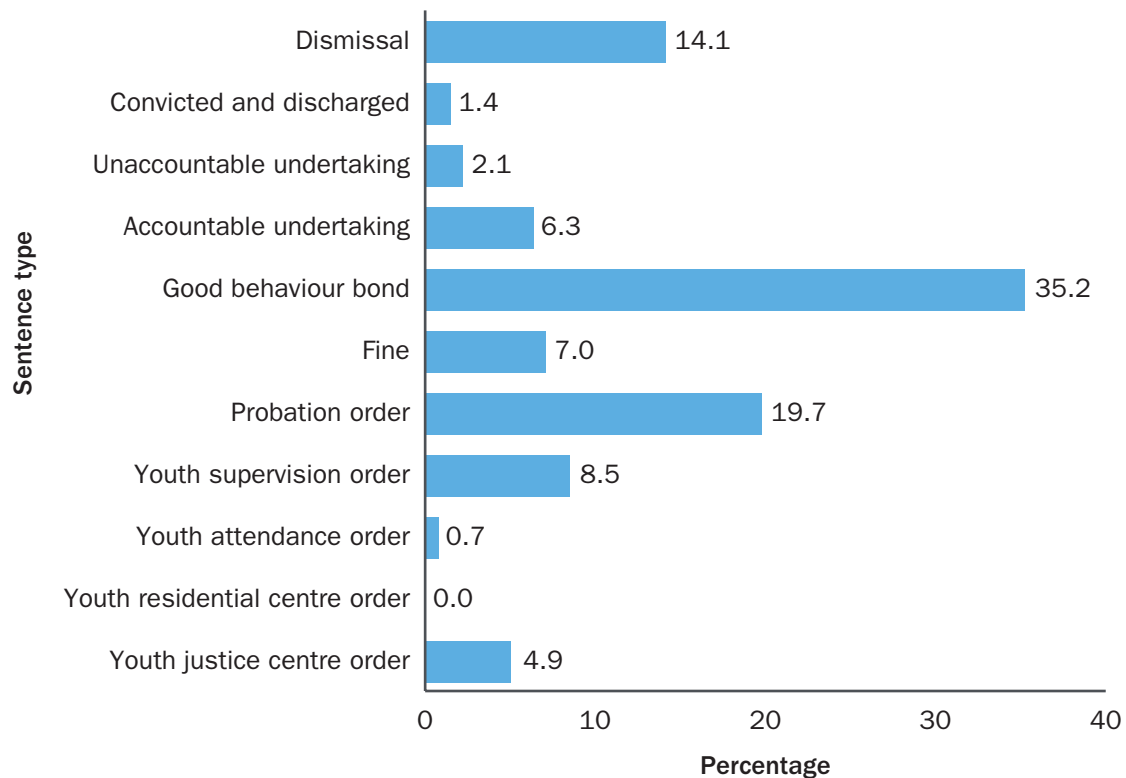
64. The repealed offence of 'shop theft' under section 74A of the *Crimes Act 1958* (Vic) provided for a trial scheme allowing a police officer to issue an infringement notice for theft in particular circumstances (essentially 'shoplifting' from a retail premises). The section, however, expressly prohibited an infringement notice to be issued to a person under 18 years. As a result, children accused of shoplifting would still be charged with the general offence of theft under s 74(1) of the *Crimes Act 1958* (Vic). The dataset, however, identifies 'shop theft' as the offence description in a substantial number of cases, and, for transparency, the Council has replicated the data. The repeal of section 74A, provided for in the *Justice Legislation Amendment (Infringement Offences) Act 2011* (Vic) s 5 (as amended), occurred on 1 July 2014.

Justice procedures offences

Sentence distribution

- 4.19 Figure 12 presents the distribution of sentences in the Children's Court for principal justice procedures offences for 2015 (n = 142). The most common sentence imposed for this offence category was a good behaviour bond (35.2%) followed by a probation order (19.7%). Of note is that, compared with all of the other offence categories, this category had the highest proportion of dismissals (14.1%).
- 4.20 This offence category includes the offence of contravene a conduct condition on bail discussed at [2.22]–[2.28] above. While, according to stakeholders, that offence has resulted in more children being remanded, the vast majority (95.1%) of sentencing outcomes where the principal offence was in this offence category are non-custodial.

Figure 12: Sentence distribution for principal justice procedures offences, Children's Court, 2015



Most commonly sentenced offences

- 4.21 Table 5 (page 27) shows the most common principal justice procedures offences sentenced in the Children's Court in 2015 (comprising all principal justice procedures offences sentenced that year). The most commonly sentenced principal offence was the summary offence of resist, obstruct, hinder, delay emergency worker (including police) on duty. There were 47 cases with this offence as the principal offence, comprising 33.1% of the 142 justice procedures cases sentenced in 2015. The indictable form of this offence also featured, with a further nine cases with this offence as the principal offence sentenced in 2015.
- 4.22 Significantly, in light of the discussion at [2.22]–[2.28], bail-related offences featured: contravene a conduct condition of bail (n = 36) was the second most common and fail to answer bail (n = 17) was the third most common principal offence in this category. The offence of commit an indictable offence whilst on bail also featured, but with only three cases involving this offence as the principal offence.

- 4.23 Offences relating to contraventions of civil orders also featured, with 12 instances of contravene a family violence intervention order (final/interim) and seven instances of contravene a personal safety intervention order (final/interim).
- 4.24 There were a number of justice procedures offences that were ranked equal tenth in prevalence, (each with only one instance of that offence), many of which involved giving false information to authorities such as to the police or the fire brigade.

Table 5: Most common principal justice procedures offences sentenced in the Children's Court, 2015

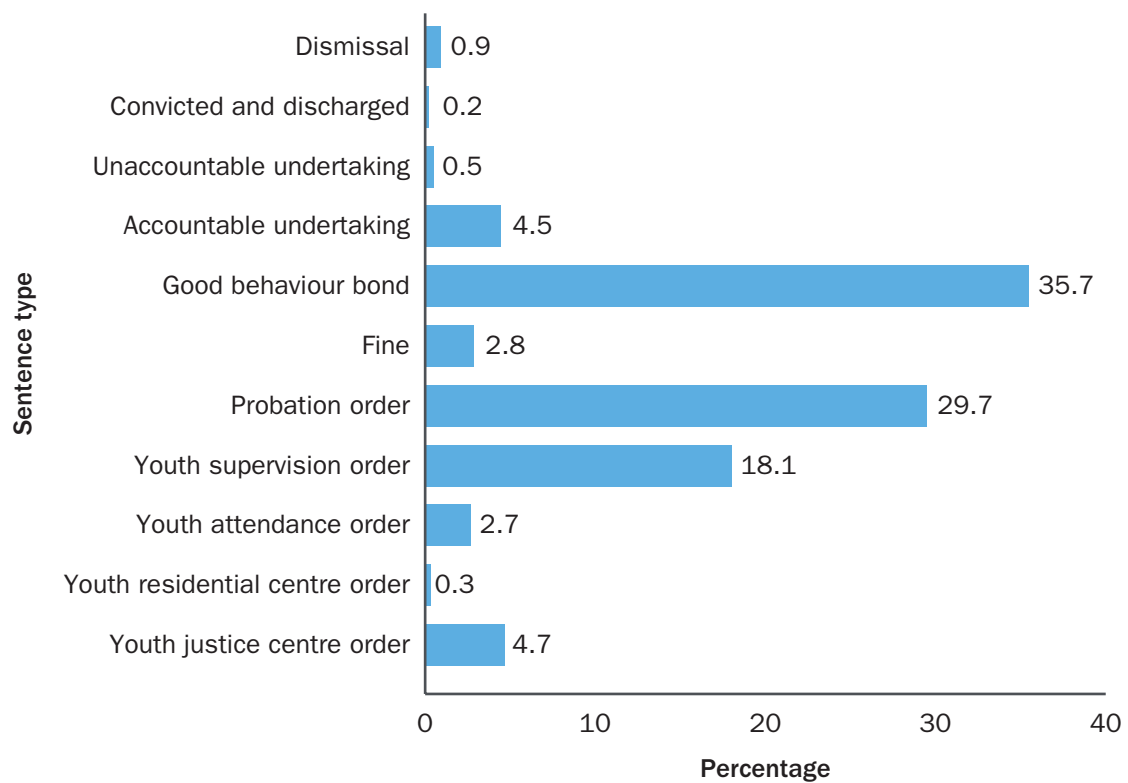
Rank	Offence description	Act and section	Total
1	Resist, obstruct, hinder, delay emergency worker (including police) on duty	<i>Summary Offences Act 1966</i> (Vic) ss 51(2), s 52(1) (repealed)	47
2	Contravene a conduct condition of bail	<i>Bail Act 1977</i> (Vic) s 30A(1)	36
3	Fail to answer bail	<i>Bail Act 1977</i> (Vic) s 30(1)	17
4	Contravene a family violence intervention order (final/interim)	<i>Family Violence Protection Act 2008</i> (Vic) s 123(2)	12
5	Resist, obstruct emergency worker (including police) on duty	<i>Crimes Act 1958</i> (Vic) s 31(1)(b)	9
6	Contravene a personal safety intervention order (final/interim)	<i>Personal Safety Intervention Orders Act 2010</i> (Vic) s 100(2)	7
7	Commit an indictable offence whilst on bail	<i>Bail Act 1977</i> (Vic) s 30B	3
8	State false name when requested	<i>Crimes Act 1958</i> (Vic) s 456AA(3)(b)	2
9	Fail to produce licence on request	<i>Road Safety Act 1986</i> (Vic) s 59(2)(a)	2
Equal 10	Act or threaten to act in a way prejudicial or threatening to security, good order, management of police gaol	<i>Corrections (Police Gaols) Regulations 2005</i> (Vic) r 13(1)(a)(i) (repealed)	1
Equal 10	Give brigade a false report of fire	<i>Country Fire Authority Act 1958</i> (Vic) s 107B(1)	1
Equal 10	Contravene a family violence intervention order – intending harm or fear for safety	<i>Family Violence Protection Act 2008</i> (Vic) s 123A(2)	1
Equal 10	Persistent contravention of family violence intervention orders or safety notices	<i>Family Violence Protection Act 2008</i> (Vic) s 125A(1)	1
Equal 10	State false name or address to police	<i>Road Safety Act 1986</i> (Vic) s 59(2)(b)	1
Equal 10	Make false report to police	<i>Summary Offences Act 1966</i> (Vic) s 53(1)	1
Equal 10	Contravene a police direction to move on	<i>Summary Offences Act 1966</i> (Vic) s 6(4)	1

Offences against the person (non-sexual)

Sentence distribution

4.25 Figure 13 presents the distribution of sentences in the Children's Court for principal non-sexual offences against the person for 2015 (n = 1,231). The most common sentence was a good behaviour bond (35.7%) followed by a probation order (29.7%) and a youth supervision order (18.1%).

Figure 13: Sentence distribution for principal offences against the person (non-sexual), Children's Court, 2015



Most commonly sentenced offences

- 4.26 Table 6 shows the top 10 most common principal non-sexual offences against the person sentenced in the Children's Court in 2015. It shows that the most common offence was unlawful assault with 323 cases involving that offence as the principal offence (26.2% of all offences in this category). Aggravated forms of assault, also featured in this category, include aggravated assault with a weapon (n = 68), by kicking (n = 41), or in company (n = 37). Assault of an emergency worker (including police) on duty, also an aggravated form of assault, was ranked seventh of the top 10 sentenced offences (n = 53).
- 4.27 The two causing injury offences also featured in the top 10 most common offences, with the reckless form of the offence more prevalent than the intentional form (273 cases compared with 76 cases).
- 4.28 Robbery offences were also relatively prevalent with 68 cases involving robbery as the principal offence and 61 cases involving the more serious offence of armed robbery as the principal offence.

Table 6: Top 10 most common principal offences against the person (non-sexual) sentenced in the Children's Court, 2015

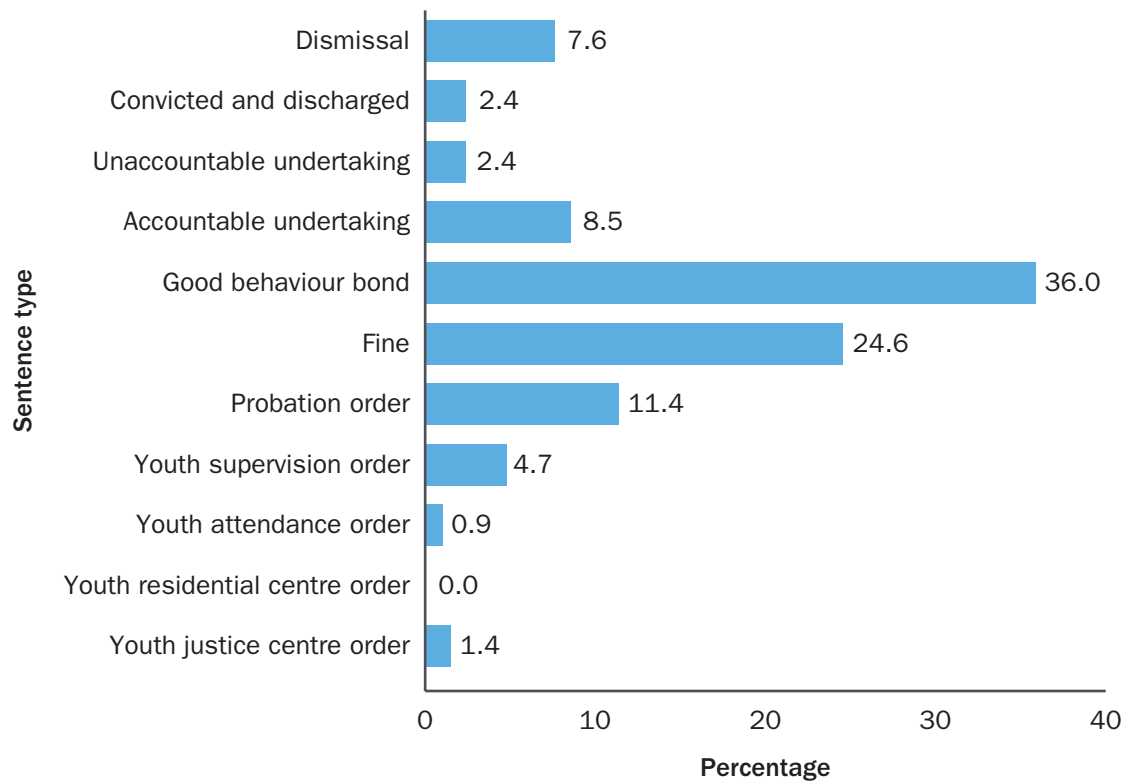
Rank	Offence description	Act and section	Total
1	Unlawful assault	<i>Summary Offences Act 1966</i> (Vic) s 23	323
2	Recklessly causing injury	<i>Crimes Act 1958</i> (Vic) s 18	273
3	Intentionally causing injury	<i>Crimes Act 1958</i> (Vic) s 18	76
4	Aggravated assault (with weapon)	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	68
5	Robbery	<i>Crimes Act 1958</i> (Vic) s 75	68
6	Armed robbery	<i>Crimes Act 1958</i> (Vic) s 75A	61
7	Assault emergency worker (including police) on duty	<i>Summary Offences Act 1966</i> (Vic) ss 51(2); 52(1) (repealed)	53
8	Aggravated assault (by kicking)	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	41
9	Aggravated assault (in company)	<i>Summary Offences Act 1966</i> (Vic) s 24(2)	37
10	Make threat to kill	<i>Crimes Act 1958</i> (Vic) s 20	29

Traffic offences

Sentence distribution

4.29 Figure 14 presents the distribution of sentences in the Children's Court for principal traffic offences for 2015 (n = 211). The most common sentence imposed for this offence category was a good behaviour bond (36%). This offence category had a high proportion of fines (24.6%) compared with other categories (aside from transit offences below). Traffic offenders appearing in the Children's Court are more likely (but not exclusively) to be older children, and therefore a fine may be considered more appropriate based on the age of the child. The third most common sentence for traffic offences was a probation order (11.4%).

Figure 14: Sentence distribution for principal traffic offences, Children's Court, 2015



Most commonly sentenced offences

- 4.30 Table 7 shows the top 10 most common principal traffic offences sentenced in the Children's Court in 2015. Unlicensed driving was the most common offence, comprising 18% (n = 38) of cases in the traffic offence category. Another licencing offence that featured in the top 10 (ranked third most common) was the offence of learner driver driving a vehicle without an experienced driver (n = 16).
- 4.31 Second in prevalence, with only one less instance, was the offence of careless driving of a motor vehicle. This was followed by dangerous driving (in a manner dangerous) (n = 27). Another form of dangerous driving (by speed) also featured in the top 10, with six cases involving this offence as the principal offence.
- 4.32 Offences related to driving while under the influence of alcohol or drugs also featured in the top 10, but were less prevalent relative to the other driving offences. There were 12 cases involving drink driving as the principal offence and five cases involving drug driving as the principle offence.

Table 7: Top 10 most common principal traffic offences sentenced in the Children's Court, 2015

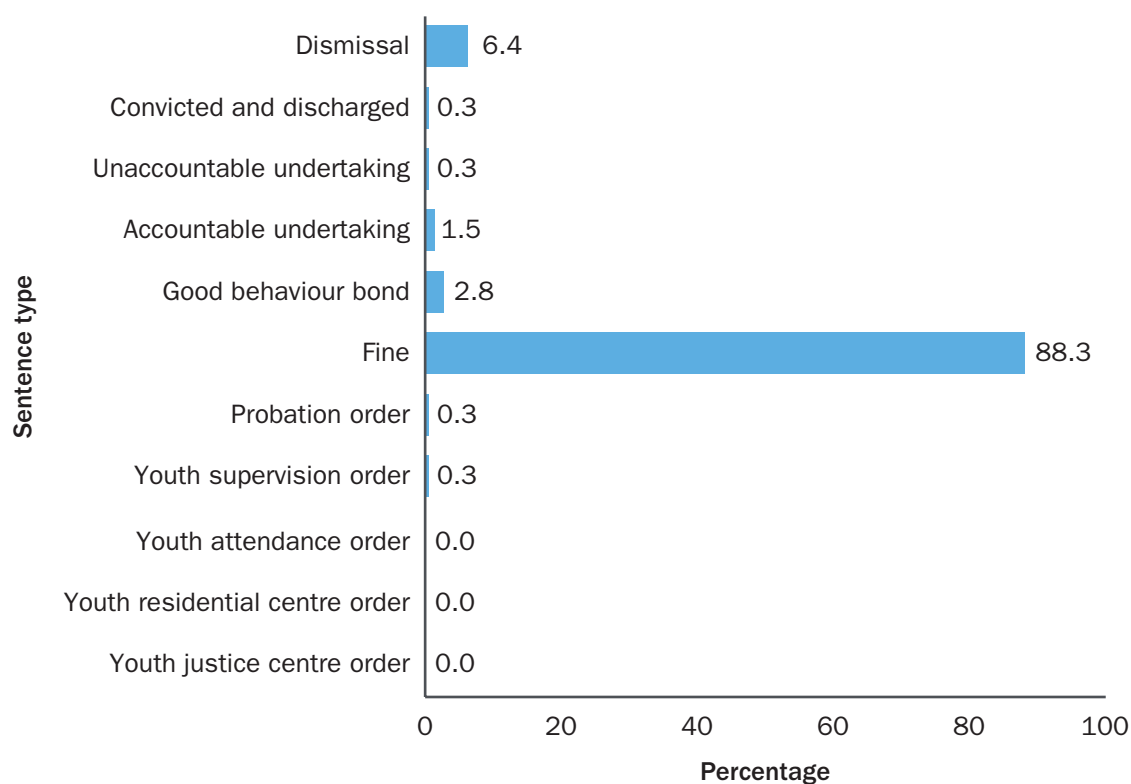
Rank	Offence description	Act and section	Total
1	Unlicensed driving	<i>Road Safety Act 1986</i> (Vic) s 18(1)(a)	38
2	Careless driving of a motor vehicle	<i>Road Safety Act 1986</i> (Vic) s 65(1)	37
3	Dangerous driving (manner dangerous)	<i>Road Safety Act 1986</i> (Vic) s 64(1)	27
4	Learner driver driving vehicle without experienced driver	<i>Road Safety (Drivers) Regulations 2009</i> (Vic) r 46(2)	16
5	Drink driving	<i>Road Safety Act 1986</i> (Vic) s 49(1)	12
6	Fraudulently alter or use any identification document or label	<i>Road Safety Act 1986</i> (Vic) s 72(1)(b)	12
7	Drive while disqualified	<i>Road Safety Act 1986</i> (Vic) s 30(1)	8
8	Dangerous driving (speed)	<i>Road Safety Act 1986</i> (Vic) s 64(1)	6
9	Fail to wear approved bicycle helmet	<i>Road Safety Rules 2009</i> (Vic) r 256(1)	5
10	Drug driving	<i>Road Safety Act 1986</i> (Vic) s 49(1)	5

Transit offences

Sentence distribution

4.33 Figure 15 presents the distribution of sentences in the Children's Court for principal transit offences for 2015 (n = 392). The vast majority of transit offence cases received a fine (88.3%), followed by a dismissal (6.4%) with very small proportions of other sentencing orders. The prevalence of fines for this category of offending is unsurprising given that most transit offences would ordinarily be prosecuted using an infringement penalty and enforcement through CAYPINS.

Figure 15: Sentence distribution for principal transit offences, Children's Court, 2015



Most commonly sentenced offences

4.34 Table 8 (page 33) shows the most common principal transit offences sentenced in the Children's Court in 2015 (comprising all principal transit offences sentenced that year). It shows that fare evasion offences are the most common transit offences for which children were sentenced. There were 269 cases involving the offence of fail to have a valid ticket, comprising 68.6% of the 392 transit offence cases in 2015. A further 22.7% of transit offence cases involved the offence of fail to have a valid concession (n = 89).

4.35 The third most prevalent offence was the offence of 'feet on seats' on public transport, with 17 cases sentenced with this offence as the principal offence.

4.36 For the remaining offences in this category, there were only a few instances of each offence, including graffiti-related offences on public transport.

Table 8: Most common principal transit offences sentenced in the Children's Court, 2015

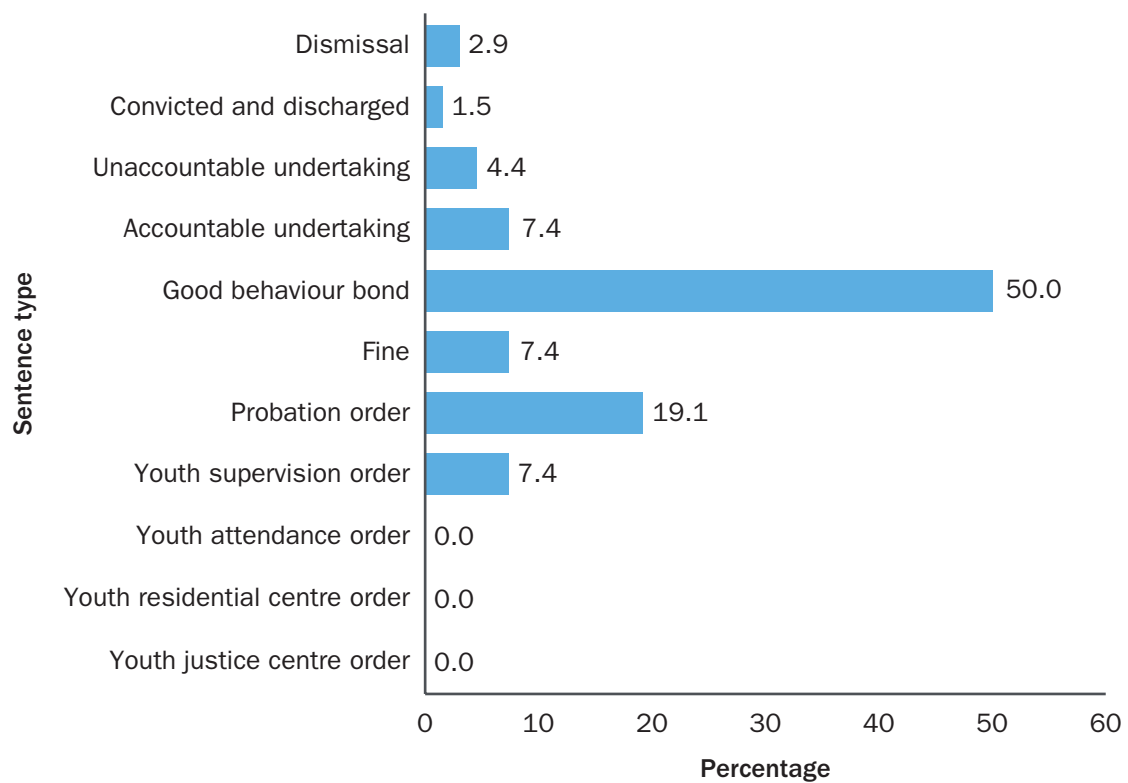
Rank	Offence description	Act and section	Total
1	Fail to have valid ticket – public transport	<i>Transport (Ticketing) Regulations 2006 (Vic)</i> rr 6(1)–(2), 7(2), 8(2)	269
2	Fail to have valid concession – public transport	<i>Transport (Ticketing) Regulations 2006 (Vic)</i> rr 9(3), 10(3)	89
3	Place feet on seats – public transport	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 27B(1) (repealed)	17
4	Possessing a prescribed graffiti implement – on transport company property	<i>Graffiti Prevention Act 2007 (Vic)</i> s 7(1)(a) and <i>Transport Act 1983 (Vic)</i> s 223B(3) (repealed)	3
5	Use indecent, obscene, offensive or threatening language – on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 28(a) (repealed)	3
6	Write any word – on a rail vehicle (graffiti)	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 27 (repealed)	2
7	Travel on place not meant for travel – road or rail vehicle	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic)</i> s 221ZE(1)	2
Equal 8	Interfere with locked gate – on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 46(c) (repealed)	1
Equal 8	Jump over any barrier – on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 34(3) (repealed)	1
Equal 8	Mount place not meant for travel – road or rail vehicle	<i>Transport (Compliance and Miscellaneous) Act 1983 (Vic)</i> s 221ZD(1)	1
Equal 8	Prevent automatic doors from opening – on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 47(a)	1
Equal 8	Ride bicycle – on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 35(1)	1
Equal 8	Smoke where 'no smoking sign' displayed – on public transport property	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 24A(2)	1
Equal 8	Spitting – on rail premises	<i>Transport (Conduct) Regulations 2005 (Vic)</i> r 26(1)	1

Drug offences

Sentence distribution

4.37 Figure 16 presents the distribution of sentences in the Children's Court for principal drug offences for 2015 (n = 68). The most common sentence imposed was a good behaviour bond (50%) followed by a probation order (19.1%). Given the low number of cases, it is difficult to draw reliable conclusions as to sentencing trends for this offence category.

Figure 16: Sentence distribution for principal drug offences, Children's Court, 2015



Most commonly sentenced offences

4.38 Table 9 (page 35) shows the most common principal drug offences sentenced in the Children's Court in 2015 (comprising all principal drug offences sentenced that year). It shows that the majority of drug offence cases involved possession and trafficking of the drug cannabis. Of the 68 cases sentenced:

- just over half (52.9%, n = 36) had a principal offence of possession of cannabis;
- almost a quarter (23.5%, n = 16) had a principal offence of trafficking in cannabis; and
- a further 7.4% (n = 5) had a principal offence of cultivating a narcotic plant (cannabis).

4.39 There were very few cases involving the possession and trafficking of other drugs (such as methylamphetamine, ecstasy, heroin, or amphetamines), with such offences each featuring only once among all principal drug offences sentenced.

Table 9: Most common principal drug offences sentenced in the Children's Court, 2015

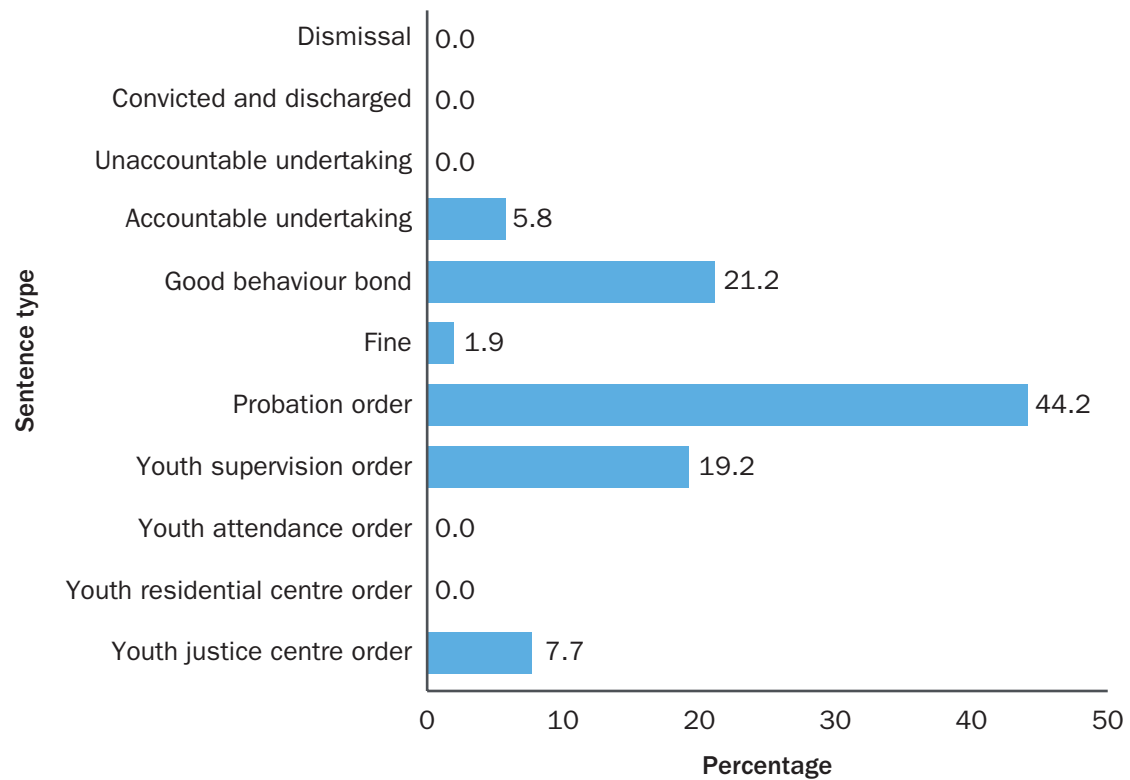
Rank	Offence description	Act and section	Total
1	Possessing a drug of dependence (cannabis)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	36
2	Trafficking in a drug of dependence (cannabis)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	16
3	Cultivating a narcotic plant (cannabis)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 72B</i>	5
4	Possessing a drug of dependence (methamphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	2
Equal 5	Trafficking in a drug of dependence (drug not specified)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	1
Equal 5	Trafficking in a drug of dependence (ecstasy)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	1
Equal 5	Trafficking in a drug of dependence (methamphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	1
Equal 5	Possessing a drug of dependence (amphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	1
Equal 5	Possessing a drug of dependence (ecstasy)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	1
Equal 5	Possessing a drug of dependence (heroin)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	1
Equal 5	Possessing a drug of dependence (prescription drug)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	1
Equal 5	Possessing a drug of dependence (drug not specified)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)(c)</i>	1
Equal 5	Using a drug of dependence (methamphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 75</i>	1

Sexual offences

Sentence distribution

4.40 Figure 17 presents the distribution of sentences in the Children's Court for principal sexual offences for 2015 (n = 52). The most common sentence was a probation order (44.2%) followed by a youth supervision order (19.2%). This category of offending had the highest proportion of youth justice centre orders (7.7%). However (as with drug offences), given the very low numbers of sexual offences, it is difficult to draw reliable conclusions as to sentencing trends for cases sentenced within this offence category.

Figure 17: Sentence distribution for principal sexual offences against the person, Children's Court, 2015



Most commonly sentenced offences

- 4.41 Table 10 shows the most common principal sexual offences sentenced in the Children's Court in 2015 (comprising all principal sexual offences sentenced that year). The majority of the small number of sexual offences cases involved offences with victims who were also children.
- 4.42 The most common offence was indecent act with a child under 16 (n = 17), followed by indecent assault (n = 11).⁶⁵ There were nine cases involving the offence of sexual penetration with a child under 16; however, it was not possible to distinguish which form of the offence these cases involved (that is, whether the offence was committed with a child under 12, a child aged 12–16 under care, supervision, or authority, or a child aged 12–16).⁶⁶ There were seven cases where the offence of rape was the principal offence.
- 4.43 There were also four sexual offence cases where the principal offence was knowingly possess child pornography.
- 4.44 For the remaining offences shown in Table 10, there was only one instance of each offence appearing as the principal offence, comprising mainly offences related to child pornography.

Table 10: Most common principal sexual offences sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Indecent act with a child under 16	<i>Crimes Act 1958</i> (Vic) s 47(1)	17
2	Indecent assault	<i>Crimes Act 1958</i> (Vic) s 39(1) (repealed)	11
3	Sexual penetration with a child under 16	<i>Crimes Act 1958</i> (Vic) s 45(1)	9
4	Rape	<i>Crimes Act 1958</i> (Vic) s 38(1)	7
5	Knowingly possess child pornography	<i>Crimes Act 1958</i> (Vic) s 70(1)	4
Equal 6	Incest – sibling or half-sibling	<i>Crimes Act 1958</i> (Vic) s 44(4)	1
Equal 6	Causes a minor to be concerned in making or production of child pornography	<i>Crimes Act 1958</i> (Vic) s 69(1)(c)	1
Equal 6	Publication or transmission of child pornography	<i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i> (Vic) s 57A	1
Equal 6	Using a carriage service to access child pornography material	<i>Criminal Code Act 1995</i> (Cth) s 474.19(1)	1

65. The offence of indecent assault has been repealed and replaced with the offence of 'sexual assault' under the *Crimes Act 1958* (Vic) s 40: *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic).

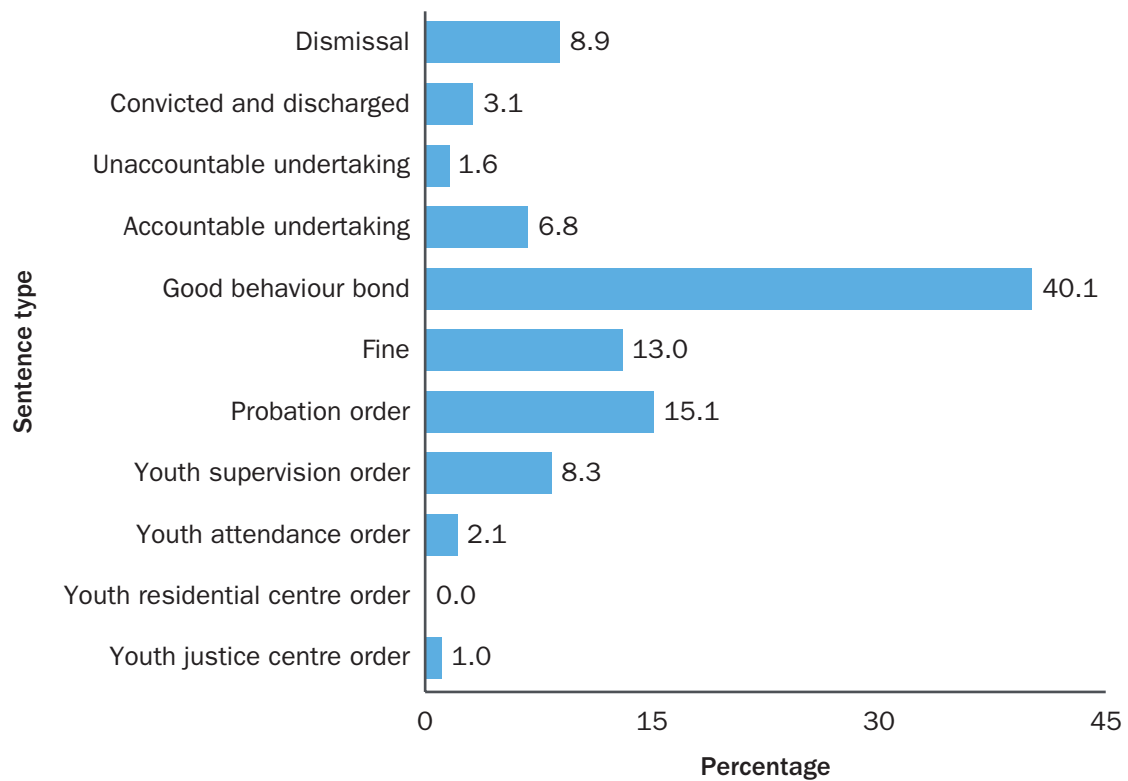
66. In the dataset, the aggravated forms of sexual penetration with a child under 16 that apply when the child is under 12 (*Crimes Act 1958* (Vic) s 45(2)(a)) or under the care, supervision or authority of the offender (*Crimes Act 1958* (Vic) s 45(2)(b)) are not distinguished.

Other offences

Sentence distribution

4.45 Figure 18 presents the distribution of sentences in the Children's Court for 'other' principal offences for 2015 (n = 192). The most common sentence imposed was a good behaviour bond (40.1%) followed by a probation order (15.1%) and fine (13%).

Figure 18: Sentence distribution for other principal offences, Children's Court, 2015



Most commonly sentenced offences

- 4.46 Table 11 shows the top 10 most common principal 'other' offences sentenced in the Children's Court in 2015. Weapons offences comprise 42.7% of the top 10 most common principal offences in this category. The offence of possessing, carrying, or using a controlled weapon was the principal offence in 51 cases and the offence of possessing, carrying, or using a prohibited weapon in 24 cases. Further, ranked fourth in prevalence was the offence of possessing, carrying or using dangerous article in a public place (n = 7).
- 4.47 The third most prevalent offence was a graffiti offence (n = 19). A graffiti offence was also one of the two offences ranked equal tenth in prevalence (n = 4).
- 4.48 The majority of the remaining offences in the top 10 were public order offences, such as being drunk in a public place, behaving in an offensive manner, using threatening words, and wilful and obscene exposure.

Table 11: Top 10 most common other principal offences sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Possessing, carrying or using a controlled weapon	<i>Control of Weapons Act 1990</i> (Vic) s 6(1)	51
2	Possessing, carrying or using a prohibited weapon	<i>Control of Weapons Act 1990</i> (Vic) s 5AA	24
3	Marking graffiti on property without consent	<i>Graffiti Prevention Act 2007</i> (Vic) s 5	19
4	Possessing, carrying or using dangerous article – public place	<i>Control of Weapons Act 1990</i> (Vic) s 7(1)	7
5	Ride or drive vehicle on council land	Local government offence	7
6	Behave in an offensive manner – public place	<i>Summary Offences Act 1966</i> (Vic) s 17(1)(d)	6
7	Drunk – public place	<i>Summary Offences Act 1966</i> (Vic) s 13	6
8	Light fire in open air – country area during fire danger period	<i>Country Fire Authority Act 1958</i> (Vic) s 37	6
9	Wilful and obscene exposure – public place	<i>Summary Offences Act 1966</i> (Vic) s 19	5
Equal 10	Possessing a graffiti implement with intent to mark graffiti	<i>Graffiti Prevention Act 2007</i> (Vic) s 8	4
Equal 10	Use threatening words – public place	<i>Summary Offences Act 1966</i> (Vic) s 17(1)(c)	4

5. Children sentenced in the higher courts

When are children sentenced in the higher courts?

- 5.1 A child may be convicted and sentenced in the higher courts (the County Court or the Supreme Court) when:
- charged with an offence that is automatically excluded from the Children's Court jurisdiction;
 - the Children's Court has excluded its summary jurisdiction on the basis of 'exceptional circumstances'; or
 - the child (or in some cases the parent) has requested that the matter be heard in a higher court.
- 5.2 In those circumstances an offender is both a 'child' for the purposes of the *Children, Youth and Families Act 2005* (Vic)⁶⁷ and a 'young offender' for the purposes of the *Sentencing Act 1991* (Vic).⁶⁸
- 5.3 A higher court may sentence a child under either the *Children, Youth and Families Act 2005* (Vic) or the *Sentencing Act 1991* (Vic). However, if the court wishes to impose a sentence of detention, it must sentence the child under the *Sentencing Act 1991* (Vic).⁶⁹ Youth detention can only be imposed by the higher courts pursuant to sections 32–35 of the *Sentencing Act 1991* (Vic). Under these sections, the maximum period of detention that may be imposed by the County Court or the Supreme Court (regardless of how many charges the child is sentenced for in the same proceeding) is three years.⁷⁰
- 5.4 Children may also be sentenced by a higher court to imprisonment under the *Sentencing Act 1991* (Vic). Depending on the particular charges, the court may impose a sentence of imprisonment up to the statutory maximum (life imprisonment).
- 5.5 As with adults, if a higher court sentences a child to a term of imprisonment of two years or more, it must fix a non-parole period, unless it considers the fixing of such a period to be inappropriate.⁷¹
- 5.6 When a child is sentenced under section 7(1) of the *Sentencing Act 1991* (Vic), the County Court or the Supreme Court takes into account the purposes, principles, and factors set out in section 5 of the Act.⁷² However, the court may also be guided by factors set out in the legislative framework for sentencing children in the *Children, Youth and Families Act 2005* (Vic).⁷³

67. *Children, Youth and Families Act 2005* (Vic) s 3(1) (definition of 'child').

68. A 'young offender' is a person under the age of 21 years at the time of sentencing: *Sentencing Act 1991* (Vic) s 3(1).

69. *Children, Youth and Families Act 2005* (Vic) s 586.

70. *Sentencing Act 1991* (Vic) s 32(3).

71. *Sentencing Act 1991* (Vic) ss 11(1)–(2).

72. *Director of Public Prosecutions v SJK* [2002] VSCA 131 (23 August 2002) [50], [60] (Philips CJ, Chernov and Vincent JJA). See further Peter Power, *Research Materials* (Children's Court of Victoria, 2015) <<http://www.childrencourt.vic.gov.au/legal/research-materials/sentencing>> at 9 March 2016 [11.1.13].

73. *R v KMW & RJB* [2002] VSC 93 (15 March 2002) [57] (Coldrey J), referring to the then legislative framework, the *Children and Young Persons Act 1989* (Vic) s 139.

Young adult offenders sentenced to youth detention

- 5.7 As discussed above, the *Sentencing Act 1991* (Vic) provides the option of sentencing ‘young offenders’ (defined in section 3 of the *Sentencing Act 1991* (Vic) as offenders aged under 21), who satisfy the eligibility criteria, to detention in a youth justice centre, rather than an adult prison.⁷⁴ As a result, young adult offenders (that is, offenders over the age of 18 but under 21) may be eligible for a sentence of detention in a youth justice centre.
- 5.8 This ‘dual track’ system is intended to prevent immature and vulnerable offenders from entering the adult prison system. 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.’⁷⁵ 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.’⁷⁶
- 5.9 The maximum period of detention that a court may order a young offender to serve in a youth justice centre is two years for the Magistrates’ Court and three years for the County Court or the Supreme Court.⁷⁷ These maxima apply regardless of how many charges the young offender is sentenced for in the same proceeding.⁷⁸

Recent trends in the sentencing of young adult offenders

- 5.10 Sentencing outcomes for young adult offenders are not examined in this report. The Council most recently reported on the sentencing of young adult offenders in its 2015 report *Changes to Sentencing Practice: Young Adult Offenders*.⁷⁹
- 5.11 Among other findings, that report found that, from 2009–10 to 2013–14:
- the number of young adult offenders sentenced in the Children’s Court, the Magistrates’ Court, and the higher courts decreased by approximately 26%;
 - the decrease in the number of young adult offenders sentenced appears to be the result of a range of factors, including a decrease in offending behaviour coming to the attention of police and an increased use of cautions by Victoria Police;
 - the decrease in the number of young adult offenders sentenced in the Magistrates’ Court and the higher courts cannot be explained by either an increase in the number of 18 year olds sentenced in the Children’s Court or an increase in offenders participating in the Criminal Justice Diversion Program;
 - when sentences were imposed in the higher courts, as a percentage of sentences imposed each year, there was a decrease in imprisonment, YJCOs, and suspended sentences, and a large increase in community orders, which coincided with the introduction of community correction orders (CCOs); and
 - when sentences were imposed in the Magistrates’ Court, as a percentage of sentences imposed each year, there was a decrease in fines and suspended sentences, and a comparable increase in the imposition of CCOs, adjourned undertakings and other low-end orders.⁸⁰

74. *Sentencing Act 1991* (Vic) s 32.

75. *Sentencing Act 1991* (Vic) s 32(1).

76. *Sentencing Act 1991* (Vic) s 32(2).

77. *Sentencing Act 1991* (Vic) s 32(3).

78. *Sentencing Act 1991* (Vic) s 32(4).

79. Sentencing Advisory Council, *Changes to Sentencing Practice: Young Adult Offenders* (2015).

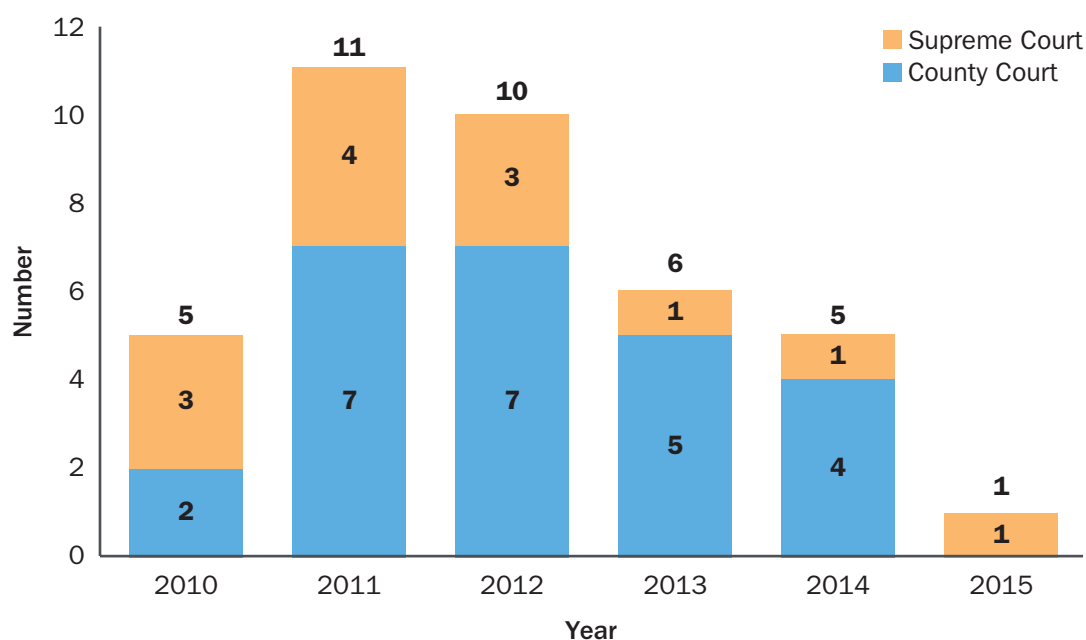
80. *Ibid* 17.

Children sentenced in the higher courts

Number of children sentenced in the higher courts

- 5.12 Figure 19 shows the number of children sentenced in the higher courts over the reference period, including whether the child was sentenced in the County Court or Supreme Court. Overall, 38 children were sentenced in the higher courts in the six-year period (an average of 6.3 children per year). This compares with 29 children sentenced in the higher courts over the 10-year period from 2000 to 2009 (an average of 2.9 children per year).
- 5.13 The relatively low numbers mean that it is difficult to determine any real trends in the data. However, since 2011 there has been a year-on-year decline in the number of children sentenced in the higher courts, from 11 children that year to one child in 2015.
- 5.14 The majority (25) of the 38 children were sentenced in the County Court, while 13 were sentenced in the Supreme Court.
- 5.15 Figure 19 includes three children who received a non-custodial supervision order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)*, after a finding of unfitness to stand trial and/or not guilty because of mental impairment (shown in Figure 20, page 43). While this order is not a sentence, these three cases have been retained in the data as they fall within the period when the Children's Court did not have jurisdiction to determine fitness to stand trial in indictable matters (see [5.19]–[5.20]).

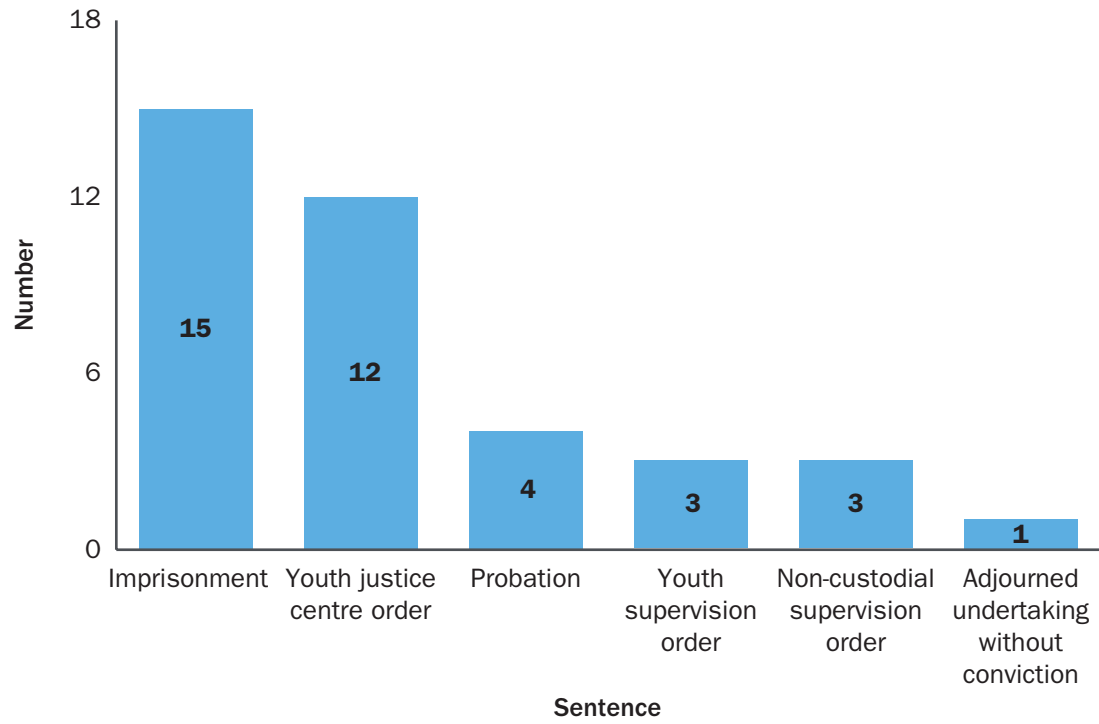
Figure 19: Number of children sentenced in the higher courts by year and court level, 2010 to 2015



Sentencing outcomes in the higher courts

- 5.16 Figure 20 shows the sentencing outcomes for the 38 children sentenced in the higher courts from 2010 to 2015. The most common sentences imposed were imprisonment (15 cases, or 39.5%) and youth justice centre orders (12 cases, or 31.6%). Four cases (10.5%) were sentenced to a probation order while three (7.9%) received youth supervision orders. Three cases (7.9%) received non-custodial supervision orders (discussed below). One case received an adjourned undertaking without conviction.

Figure 20: Number of people sentenced as children in the higher courts, by sentence type, 2010 to 2015



5.17 Figure 21 presents measures for the 15 cases involving children sentenced in the higher courts that received a total effective sentence of imprisonment, including the highest sentence (14 years), the lowest (3 years), the middle 50% of sentences (from 5 years to 6 years and 6 months), and the median imprisonment sentence length (6 years).

5.18 The three longest total effective imprisonment sentences were for 14, 13, and 10 years. The cases receiving these sentences involved the offences of murder or manslaughter, and were sentenced in the Supreme Court.

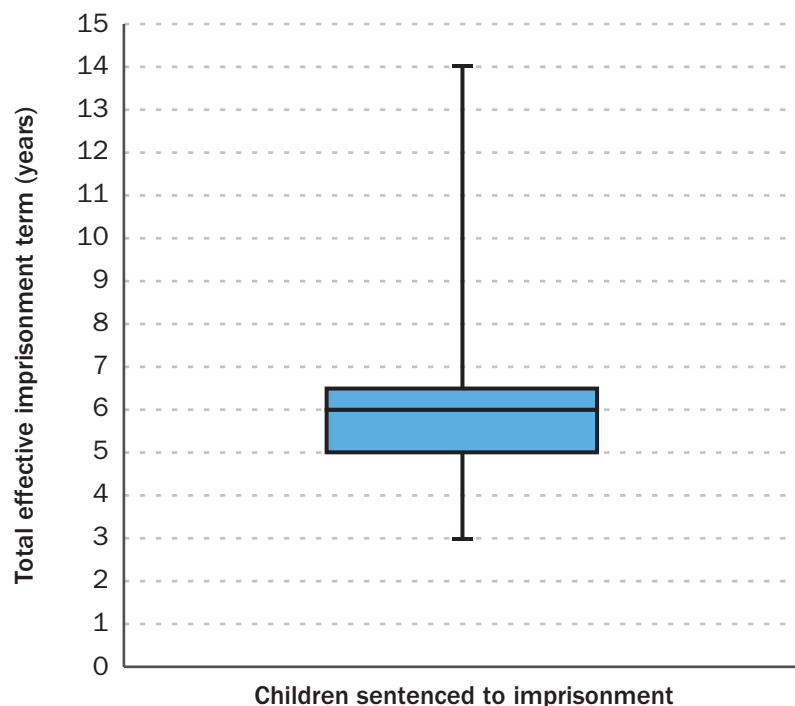


Figure 21: Measures of the length of total effective imprisonment sentences imposed on children, higher courts, 2010 to 2015

Non-custodial supervision orders

- 5.19 In three cases, the court imposed a non-custodial supervision order. This is an order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) that requires the child to be subject to supervision in the community, comply with certain conditions, and engage with treatment or services for a mental condition, such as a mental illness or intellectual disability. A child may be placed on a non-custodial supervision order if they are found not guilty of an offence because of mental impairment, or because they were found to be unfit to stand trial (or both).
- 5.20 The three cases that received a non-custodial supervision order involved the offences of theft, burglary, and incest between siblings. It may be unexpected for cases involving such offences to be transferred to and heard by a higher court, as they are of similar seriousness to other indictable offences determined by the Children's Court. As discussed at [5.15] however, these matters were finalised during the period in which the Children's Court did not have jurisdiction to determine fitness to stand trial. The disposition imposed in both cases of a non-custodial supervision order implies that a finding of unfitness to stand trial and/or not guilty because of mental impairment was made under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).

Offending sentenced in the higher courts

- 5.21 Table 12 (page 45) shows a breakdown of cases involving children sentenced in the higher courts by principle offence type. The offences are a combination of the fatal offences excluded from the Children's Court jurisdiction and other indictable offences that are likely to have been transferred to the higher courts under the exceptional circumstances provision.
- 5.22 A number of cases where the principal offence is not an excluded fatal offence may also be a result of acquittal of a charge of a more serious offence (including an excluded offence), and either a finding of guilt for a lesser form of the charge, or a finding of guilt for other offences within the case (or both).
- 5.23 For example, a child charged with culpable driving causing death (an offence that is excluded from the Children's Court jurisdiction) might be acquitted on that charge, but found guilty of dangerous driving causing death, or even the lesser charge of dangerous driving.
- 5.24 Table 12 presents the number of children sentenced in the higher courts by principal offence, that is, the offence within the case that received the most severe sentence. The most common offences were culpable driving causing death (six cases), intentionally causing serious injury (four cases), and manslaughter (three cases). There were two or fewer cases for all other principal offences.

Table 12: Number of children sentenced in the higher courts by principal offence, 2010 to 2015

Offence	Statutory reference	Number	Percentage
Culpable driving causing death	<i>Crimes Act 1958</i> (Vic) s 318(1)	6	15.8
Intentionally causing serious injury	<i>Crimes Act 1958</i> (Vic) s 16	4	10.5
Manslaughter	Common law	3	7.9
Intentionally causing injury	<i>Crimes Act 1958</i> (Vic) s 18	2	5.3
Reckless conduct endangering life	<i>Crimes Act 1958</i> (Vic) s 22	2	5.3
Reckless conduct endangering serious injury	<i>Crimes Act 1958</i> (Vic) s 23	2	5.3
Sexual penetration with a child under 16	<i>Crimes Act 1958</i> (Vic) s 45(1)	2	5.3
Armed robbery	<i>Crimes Act 1958</i> (Vic) s 75A	2	5.3
Murder	Common law	2	5.3
Dangerous driving	<i>Road Safety Act 1986</i> (Vic) s 64(1)	2	5.3
Theft	<i>Crimes Act 1958</i> (Vic) s 74	1	2.6
Dangerous driving causing death	<i>Crimes Act 1958</i> (Vic) s 319(1)	1	2.6
Attempted rape	<i>Crimes Act 1958</i> (Vic) s 321M	1	2.6
Assist offender – murder	<i>Crimes Act 1958</i> (Vic) s 325(1)	1	2.6
Assist offender – serious indictable offence	<i>Crimes Act 1958</i> (Vic) s 325(1)	1	2.6
Incest – sibling or half-sibling	<i>Crimes Act 1958</i> (Vic) s 44(4)	1	2.6
Burglary	<i>Crimes Act 1958</i> (Vic) s 76(1)	1	2.6
Defensive homicide	<i>Crimes Act 1958</i> (Vic) s 9AD	1	2.6
Theft (of Commonwealth property)	<i>Criminal Code Act 1995</i> (Cth) s 131.1(1)	1	2.6
Common assault	Common law	1	2.6
Kidnapping	Common law	1	2.6
Total		38	100.0

Excluded and other death-related offences

- 5.25 As discussed at [5.1]–[5.6] several fatal offences are excluded from the Children’s Court jurisdiction, and are required to be heard and determined in the higher courts. Other offences may be transferred to the higher courts under the exceptional circumstances provisions.
- 5.26 The mix of offences committed by children sentenced in the higher courts between 2010 and 2015 has changed when compared with the period between 2000 and 2009.
- 5.27 Between 2000 and 2009, excluded and other death-related offences (comprising, in descending order of charges, manslaughter, murder, and culpable driving causing death) represented 23 of 29 (or approximately 79%) of all cases involving children sentenced in the higher courts. Between 2010 and 2015, however, excluded and other death-related offences (comprising, in descending order of charges, culpable driving causing death, manslaughter, murder, dangerous driving causing death, and defensive homicide) represented 13 of 38 (or approximately 34%) of all cases involving children sentenced in the higher courts.
- 5.28 At the same time, however, the average number of children sentenced in the higher courts each year for excluded and other death-related offences has declined only slightly, from an average of 2.3 cases per year between 2000 and 2009 to an average of 2.16 cases per year between 2010 and 2015.
- 5.29 The substantial decline in excluded and other death-related offences as a proportion of the overall cases committed by children sentenced in the higher courts indicates that different offending, with a broader range of seriousness, is being sentenced in those courts.

Dangerous driving cases

- 5.30 Given its prevalence as the principal offence in two higher court cases, despite the relatively low level of seriousness of the offence, the Council investigated further the cases with a principal offence of dangerous driving. This revealed that both cases involved the same offender sentenced on two separate occasions within the reference period.
- 5.31 In both cases, in addition to the principle charge of drive in a manner dangerous, the offender was sentenced for a range of other charges in each case (a total of 30 charges and 27 charges respectively). In both cases, the charges were primarily for traffic offences⁸¹ and offences against property.⁸² The offender received a youth supervision order for the first case, and a more severe sentence, a youth justice centre order, for the subsequent case.

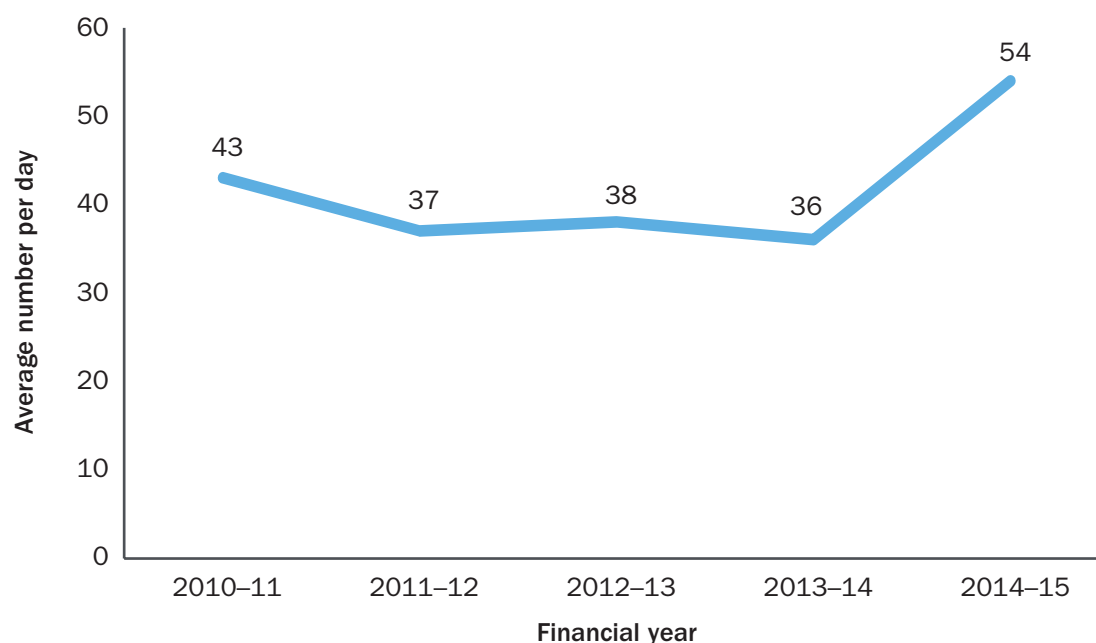
81. For example, unlicensed driving and use unregistered vehicle.

82. For example, theft, burglary and handling stolen goods.

6. Children held on remand

- 6.1 The Australian Institute of Health and Welfare publication *Youth Justice in Australia 2014–15* contains the most recent published data on the number of children held on remand in Victoria.⁸³ That report uses the term ‘number on an average day’ to mean the average number on any given day over the period examined. The Council has used the same term to be consistent with the data source.
- 6.2 For the financial year 2014–15, the number of unsentenced children in detention in Victoria on an average day was 54.⁸⁴ This number is the highest across the last five years of available data. The total number of unsentenced children received into detention in Victoria throughout the financial year 2014–15 was 472.⁸⁵
- 6.3 Figure 22 shows the number of children on remand in Victoria on an average day for the five financial years, 2010–11 to 2014–15. After a decline from 2010–11, the number of children on remand on an average day between 2011–12 and 2013–14 remained relatively constant (between 36 and 38 children); in 2014–15, however, it increased substantially to 54.

Figure 22: Number of unsentenced children in detention in Victoria, on an average day, 2010–11 to 2014–15



Source: Australian Institute of Health and Welfare.

83. Australian Institute of Health and Welfare, *Youth Justice in Australia 2014–15*, AIHW Bulletin no. 133, cat. no. AUS 198 (2016).

84. Australian Institute of Health and Welfare, *Youth Justice in Australia 2014–15*, AIHW Bulletin no. 133, cat. no. AUS 198 (2016) Supplementary tables – Detention: S74 to S127, Table S115a.

85. Australian Institute of Health and Welfare, *Youth Justice in Australia 2014–15*, AIHW Bulletin no. 133, cat. no. AUS 198 (2016), Supplementary tables – Detention: S74 to S127, Table S115b. Note, this statistic may include the same offender received into remand on multiple occasions.

- 6.4 These data are consistent with, and demonstrate, the concerns expressed by the Children's Court and representatives of youth justice advocates discussed at [2.24]–[2.26] in relation to the increase in remand rates of children following the 2013 changes to the *Bail Act 1977* (Vic). As discussed, these changes made it an offence to contravene certain conduct conditions of bail or to commit an indictable offence whilst on bail, and applied to both adults and children.
- 6.5 There may be a range of factors that have contributed to increases in remand of children (including, for example, a lack of appropriate accommodation outside custody).⁸⁶ The data presented earlier in this report, however, suggest that the new bail offences that applied to children from December 2013 are linked to the higher rates of remand in 2014–15.
- 6.6 The data on the number of charges sentenced in the Children's Court (Figure 3, page 13) demonstrate that while there has been an increase in the number of charges since 2013, this has been almost entirely a result of the new bail-related offences (and not an increase in the commission of other offences). Excluding the new bail-related offences, there was a slight decline in the total number of charges sentenced in the Children's Court in 2015 (18,559) compared with 2013 (18,817).
- 6.7 The changes recently made by the Victorian Government to exclude children from the offence of contravene certain conduct conditions of bail (discussed at [2.27]–[2.28]), were made in direct response to the concerns about the sudden increase in the rate of remand for children. It will be important to monitor the effect of this change on rates of remand for 2015–16 and for future years.

86. Bail must not, however, be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation: *Bail Act 1977* (Vic) s 3B(1)(3).

7. Interstate comparisons of children under supervision

Overall rate of children under justice supervision

7.1 Table 13 presents the overall rate of young people aged 10 to 17 under justice supervision (whether sentenced or unsentenced) on an average day in 2014–15. Victoria had the lowest rate (at 14.4 children per 10,000 people aged 10 to 17) while the highest rate was in the Northern Territory (at 54.1 children per 10,000).⁸⁷

Jurisdiction	Rate
Northern Territory	54.1
Queensland	29.2
Western Australia	28.5
Australian Capital Territory	21.9
Tasmania	20.6
New South Wales	18.8
South Australia	18.4
Victoria	14.4

Table 13: Rate of young people aged 10–17 under supervision on an average day (per 10,000 people aged 10–17), states and territories, 2014–15

Source: Australian Institute of Health and Welfare.

Sentenced children under supervision in the community

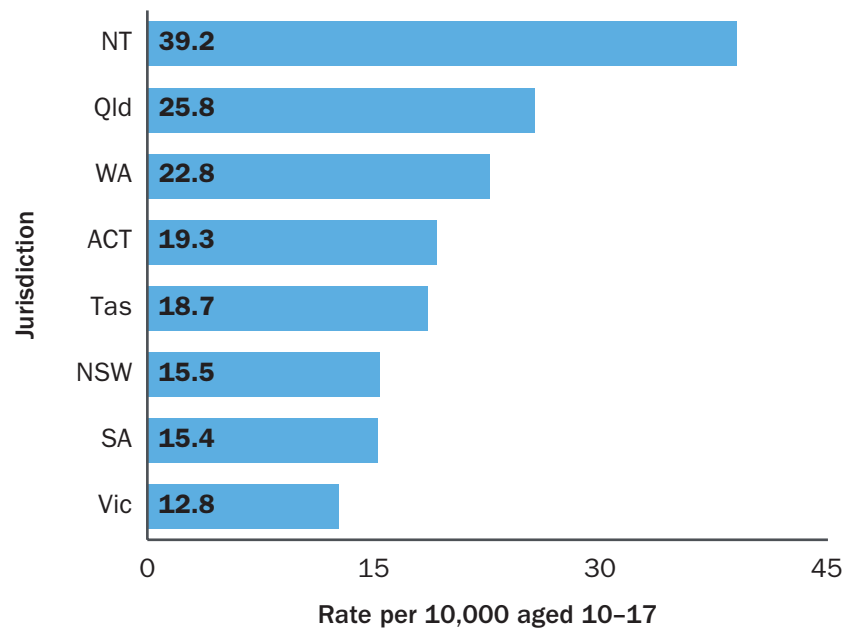
7.2 Figure 23 (page 50) presents a comparison between different Australian jurisdictions of the rate of sentenced children under supervision in the community per 10,000 people aged 10 to 17. In 2014–15, the rate of young people aged 10 to 17 in community-based supervision on an average day ranged from 12.8 children per 10,000 in Victoria (the lowest of all Australian jurisdictions) to 39.2 children per 10,000 in the Northern Territory.

Sentenced children in detention

7.3 Figure 24 (page 50) presents a comparison for 2014–15 between different Australian jurisdictions of the rate of sentenced children in detention per 10,000 people aged 10 to 17. This rate ranged from 1.5 children in detention per 10,000 in Victoria (again, the lowest of all Australian jurisdictions) to 15.6 children per 10,000 in the Northern Territory.

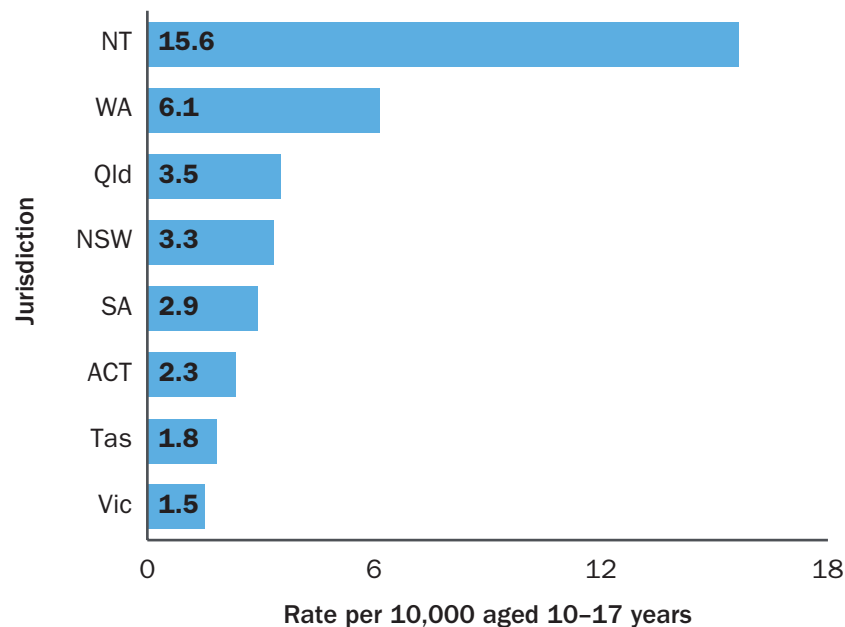
⁸⁷ Australian Institute of Health and Welfare, *Youth Justice in Australia 2014–15* (2016) 5.

Figure 23: Rate per 10,000 people aged 10–17, of children supervised in the community, by jurisdiction, average day, 2014–15



Source: Australian Institute of Health and Welfare.

Figure 24: Rate per 10,000 people aged 10–17, of children in detention, by jurisdiction, average day, 2014–15



Source: Australian Institute of Health and Welfare.

8. Summary and implications

- 8.1 Between 2010 and 2015, the number of cases sentenced in the Children's Court declined substantially, by approximately 43%. This trend mirrors observations in other jurisdictions, where there has been a marked reduction in youth offending in recent years, and is consistent with the Council's findings of a similar reduction in young adult offending.
- 8.2 Despite this reduction in the number of cases, there has been an increase in the number of children held on remand. For the financial year 2014–15, the number of unsentenced children held on remand in detention in Victoria on an average day was 54, a 25% increase from the number in 2010–11 of 43.
- 8.3 While the number of charges sentenced in the Children's Court has increased since 2013 (albeit to a level that is still lower than that in 2010) a substantial proportion of this increase can be attributed to the introduction of new bail-related offences, and in particular, the offence of contravene a conduct condition of bail. This offence has now been repealed in respect of children.
- 8.4 Between 2010 and 2015, 38 children were sentenced in the higher courts. The relatively low numbers mean that it is difficult to determine any real trends in the data. However, there has been a year-on-year decline in the number of children sentenced in either the County Court or the Supreme Court since 2011, from 11 children in that year, to one child in 2015.
- 8.5 Since the Council's last examination, there has been a very slight reduction in the average number of children sentenced in the higher courts each year for cases involving the excluded and other death-related offences. These offences, however, now represent a much smaller proportion of all cases involving children sentenced in the higher courts. As a result, the mix of offences committed by children sentenced in the higher courts represents a much broader range of seriousness.
- 8.6 These observed differences in the mix of sentenced offences may reflect patterns in the recidivism and complex histories of the very small number of children who are sentenced in the higher courts in Victoria. For a forthcoming report, the Council will be analysing data to explore trends in the reoffending of children and young people, as part of its ongoing work examining reoffending following sentence.
- 8.7 The data in this report provide a better understanding of how changes to the law can potentially have unintended consequences for particular offending populations. Specifically, the findings illuminate the impact of the new bail-related offences on children, including the consequences for remand rates and the number of sentenced charges.
- 8.8 Both youth offending and the number of children being sentenced in the Children's Court have declined substantially over the reference period. Further, there is no evidence that sentenced youth offending is becoming more serious overall. While any localised increases in crime by children are of concern to the community, the current evidence suggests a need to implement targeted crime reduction strategies, rather than widespread or systemic reforms.

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