

‘Crossover Kids’: Vulnerable Children in the Youth Justice System

Report 2: Children at the Intersection of Child Protection and Youth Justice across Victoria

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‘Crossover Kids’:
Vulnerable Children in the
Youth Justice System
Report 2: Children at the
Intersection of Child Protection
and Youth Justice across Victoria

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Contents

Contributors ix

Acknowledgments ix

Glossary xi

Executive summary xv

Aim xv

Report 1 xv

Report 2 research questions xv

Research question 1: timing xvi

Discussion xvi

Research question 2: demographics xvii

Discussion xviii

Research question 3: offences xix

Discussion xx

Research question 4: court location xxi

Discussion xxii

1. About this project 1

Report 1 1

Report 2 2

Aims 2

Research questions 3

Report 3 4

The Council's approach 4

What is child protection? 4

What is a *crossover kid*? 5

Study group 6

Data matching 7

Consultation 8

2. Do crossover children start in child protection or youth justice? 9

Introduction 9

First offence date 9

Which came first: child protection reports or offending? 10

Most crossover children were known to child protection before they first offended 10

Even for children first reported to child protection at or above the age of criminal capacity, child protection involvement was usually first 11

Which came first: child protection orders or offending? 12

Almost all children with child protection orders were known to child protection before they first offended 12

Even for children first reported to child protection at or above the age of criminal capacity, most had not offended before their first child protection order 12

Which came first: out-of-home care or offending? 13

Most children who experienced out-of-home care were placed in care before they first offended 13

One in two children who offended after experiencing out-of-home care were on a care placement when they first offended 14

Even for children first reported at or above the age of criminal capacity, more than half had not offended before placement in out-of-home care 14

Which came first: residential care or offending? 14

Most children who experienced residential care had not offended before being placed in residential care 14

Even for children first reported at or above the age of criminal capacity, almost half had not offended before being placed in residential care 15

Time from first residential care placement to first offence date 16

Discussion and conclusion 25

3. Child protection backgrounds of crossover children 27

Introduction 27

Children who entered the youth justice system early (aged 10–13) were most likely to be known to child protection 28

Children who experienced residential care entered youth justice earlier 28

Which children had the highest levels of child protection involvement? 29

Aboriginal and Torres Strait Islander girls who entered the youth justice system early had the highest level of child protection involvement 29

Children aged 10–13 at first sentence or diversion were most likely to experience out-of-home care 30

Children aged 10–13 and girls aged 14–15 at first sentence or diversion were most likely to experience residential care 30

Number of child protection reports 30

Aboriginal and Torres Strait Islander crossover children were younger at first child protection report 30

Younger crossover children were more likely to be Aboriginal and Torres Strait Islander children 31

Type of harm reported and substantiated 32

The most common reported and substantiated harm was emotional harm 33

Nearly half of crossover children had a substantiated report of physical harm 33

One in two children had at least one report of neglect, but far fewer had reports substantiated on this basis 33

Around one-third of children were reported based on sexual harm 34

A very small proportion of children were reported due to their own alleged sexually abusive behaviour 34

Most children in care had multiple carers 34

Children first sentenced or diverted aged 10–13 experienced more carers 35

Children with more carers entered the youth justice system earlier 35

Discussion and conclusion 36

Vulnerability of children first sentenced or diverted aged 10–13 36

Children who experience multiple carers are more likely to enter the youth justice system early 36

The relevance of child protection factors to sentencing 38

4. Offence type and child protection involvement 39

Introduction 39

Offences with the highest proportions of crossover children and children who have experienced residential care 40

Breach intervention order 41

Children with breach intervention order offences were most likely to be known to child protection 43

Most crossover children with breach intervention order offences were known to child protection before they committed their first sentenced or diverted offence 43

Children who experienced residential care were more likely than other sentenced and diverted children to have a breach intervention order offence 44

Discussion 44

Property damage offences 46

Children who experienced residential care were most likely to have a property damage offence 46

Discussion 47

Drug offences	48
Children who experienced residential care were most likely to have a drug offence	49
Of children with drug offences, those who experienced residential care were more likely to have drug use offences and less likely to have drug <i>traffick</i> offences	49
Discussion	49
Weapons offences	50
Children who experienced residential care were most likely to have weapons offences	51
Discussion	51
Bail-related offences	51
One in two children who experienced residential care had a bail-related offence	51
Of children who experienced residential care and had a bail-related offence, most were sentenced or diverted for commit indictable offence on bail	52
Children in residential care were most likely to be sentenced or diverted for contravene conduct condition of bail	52
Discussion	53
Offences against the person and resisting, hindering or assaulting police or emergency workers	53
Almost three-quarters of sentenced and diverted children who experienced residential care had an offence against the person	54
Of children who had offences against the person, those who experienced residential care were most likely to have assaulted police or emergency workers	54
Children who experienced residential care were more likely to be sentenced or diverted for resisting or hindering police or emergency workers	55
Discussion	55
Discussion and conclusion	57
5. Geographical differences	59
Introduction	59
Children's Court locations	59
Metropolitan courts	60
Regional courts	60
Children's Koori Court	61
Most children in the study group were sentenced or diverted in the Melbourne metropolitan area	61
Child protection involvement	63
Regional areas had a higher proportion of crossover kids than the Melbourne metropolitan area	63
One in two sentenced and diverted children were known to child protection in some regional courts	63
At least one in five children sentenced or diverted in some court locations had been the subject of a child protection order	63
Around one in six children sentenced or diverted in some court locations experienced residential care	63
Discussion	65
Aboriginal and Torres Strait Islander children	67
Aboriginal and Torres Strait Islander children were over-represented in most Victorian court locations, particularly in regional Victoria	67
Discussion	67
Children first sentenced or diverted aged 10–13	69
Discussion	71
Discussion and conclusion	72
6. Final observations	73
Factors associated with early youth justice involvement	74
Aboriginal and Torres Strait Islander children	75
Offence type, child protection and residential care	75
Geographical differences in the prevalence of crossover children	77

Appendix 1: consultation 79**Appendix 2: methodology** 80

Data 80

Data linkage 80

Exclusions 81

Chapter 3 methodology 81

Level of child protection involvement 83

Number of reports to the Child Protection Service 83

Number of placements and carers 84

Chapter 4 methodology 86

Offences committed by the study group 86

Offence type and child protection history 88

References 91

Bibliography 91

Case law 96

Legislation 97

Victoria 97

Commonwealth 97

Quasi-legislative materials 97

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Glossary

Accused

A person who is charged with a criminal offence.

Age of criminal capacity

The age at which children are criminally responsible for their behaviour. Children aged under 10 are, at law, not criminally responsible and cannot be prosecuted for their behaviour.¹ Once they reach the age of 10, a child may be prosecuted for their behaviour. However, for children aged 10–13 at the time of the offence, the presumption of *doli incapax* applies. See **Doli incapax**.

Case

In this report, one or more charges against a person that are sentenced or diverted at the one hearing.

Charge

In this report, a single count of an offence.

Child

In this report, a person aged 10–17 inclusive at the time of an alleged offence and aged under 19 when a proceeding for the offence is commenced in the Children's Court: *Children, Youth and Families Act 2005* (Vic) s 3(1).

Child protection²

In this report, the system for reporting and addressing concerns about a child's safety. See **Child Protection Service**.

Child protection order

In this report, a collective description for four categories of orders made by the Family Division of the Children's Court of Victoria under the *Children, Youth and Families Act 2005* (Vic): protection orders, interim accommodation orders, therapeutic treatment orders and permanent care orders.

Child protection report

In this report, a report to the Child Protection Service raising concerns that a child is in need of protection.

Child Protection Service (Victoria)

A service with functions including investigating reports that a child is at risk of harm and making a protection application to the Children's Court if it is believed that the child's safety cannot be ensured in parental care. The Child Protection Service is part of the Department of Health and Human Services.

1. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of 'child'), 344, 516.

2. Terms relating to child protection in this glossary are primarily drawn from Department of Health and Human Services, 'Services' (dhhs.vic.gov.au, 2019) <services.dhhs.vic.gov.au> at 6 February 2020 and Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services, *Out-of-Home Care Education Commitment: A Partnering Agreement between Department of Health and Human Services, Department of Education and Training, Catholic Education Commission of Victoria, Independent Schools Victoria, Victorian Aboriginal Child Care Agency, Centre for Excellence in Child and Family Welfare* (2018) 3–5.

‘Crossover kid’

A term that has been used (along with ‘crossover child’) in research to describe children with involvement in both the criminal justice system and the child protection system. There is no uniform definition of ‘crossover kid’. This project examines several different categories of child protection involvement for sentenced and diverted children. In this report, children in the study group are described as ‘crossover kids’, ‘crossover children’ or ‘known to child protection’ if they were the subject of at least one report to the Child Protection Service in their lifetime – whether before, at the time of or after their offence – even if their child protection and youth justice involvements were not concurrent.

Custody to Secretary order

An order that granted sole custody of a child to the Secretary to the Department of Health and Human Services. Custody to Secretary orders (now called family reunification orders) were made by the Family Division of the Children’s Court under section 275 of the *Children, Youth and Families Act 2005* (Vic). The order did not affect the guardianship of the child. It remained in force for a period not exceeding 12 months, and it could include conditions that the Children’s Court considered to be in the best interests of the child.

Diversion

A pre-plea option that allows a child who completes a diversion plan to be discharged without a criminal record. The Children’s Court grants an adjournment under section 356D of the *Children, Youth and Families Act 2005* (Vic) for the child to participate in and complete a diversion program.

Doli incapax

Someone presumed to be ‘incapable of crime’. Children aged 10–13 (inclusive) at the time of an alleged offence are considered to be *doli incapax*, unless the prosecution successfully rebuts the presumption and proves that the child knew that their conduct was morally wrong, as opposed to childish naughtiness or mischief.³

Family Services

Support and assistance services to vulnerable children, young people and their families in cases where there are concerns about the wellbeing of the child or young person (0–17 years, including an unborn child) or their family.⁴ Integrated Family Services operates alongside child and family information, referral and support teams (Child FIRST), and both are funded by the Department of Health and Human Services.

Fine

A sentence that requires an offender to pay a sum of money to the state. There are limits on the level of fines that can be imposed on children: *Children, Youth and Families Act 2005* (Vic) s 373.

First offence date

The earliest date on which a child committed a sentenced or diverted offence.

First sentence or diversion

The date of the first sentence or diversion recorded in the Children’s Court for a child in the study group on or after 1 July 2004.

3. *R (A Child) v Whitty* (1993) 66 A Crim R 462; *RP v The Queen* [2016] HCA 53 (21 December 2016) [8]–[9]; *R v ALH* (2003) 6 VR 276, 281. See further Peter Power, ‘Chapter 10: Criminal Division – Procedure’, *Children’s Court Research Materials* (Children’s Court of Victoria, 2019) 10.43 <<https://www.childrenscourt.vic.gov.au/legal/research-materials/criminal-procedure>> at 6 February 2020.

4. Better Health Channel, ‘Family and Child Support Services’ (betterhealth.vic.gov.au, 2020) <<https://www.betterhealth.vic.gov.au/health/ServicesAndSupport/family-and-child-support-services>> at 6 February 2020.

First sentenced or diverted offence

The first offence, or offences, for which a sentence or diversion was recorded.

Interim accommodation order

An interim (temporary) order made after a protection application has been issued and the court has decided that an interim order is needed to keep the child safe until the application is determined: *Children, Youth and Families Act 2005* (Vic) s 262. These orders specify where the child must live until the next court date and usually include conditions: *Children, Youth and Families Act 2005* (Vic) s 263.⁵

Investigation (by Child Protection Service)

An investigation of a matter following an allegation that a child is at risk of harm. Every report made to the Child Protection Service (raising concerns about a child's welfare) is assessed by a child protection practitioner in an intake service. The child protection practitioner gathers information and assesses whether the child appears to be in need of protection. If the child is assessed to be at significant risk of harm, the report is investigated. If child wellbeing concerns exist, the Child Protection Service may refer the child and their family to Family Services or other specialist supports.

Kinship care

Care provided by relatives or a member of a child's social network when a child cannot live with their parents. Statutory kinship care placements follow child protection intervention and a decision to place a child with relatives or a significant friend. Kinship care may also involve an order made by the Children's Court.⁶

Known to child protection

In this report, a term used to describe a child in the study group who has been the subject of at least one report to the Child Protection Service – whether before, at the time of or after their offence – regardless of whether their child protection and youth justice involvements were concurrent. See **'Crossover kid'**.

Median

A measure of central tendency. The median is the middle value in an ordered set or a distribution of values. For example, in the set of values 1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7, the median value is 4, representing a midpoint where half of the values (1, 2, 2, 3, 3) are below the median and half of the values (5, 5, 6, 6, 7) are above the median. If a set has an even number of values, the two middle values (sometimes called the *lower median* and the *upper median*) are averaged to find the median.

Out-of-home care

A temporary, medium or long-term living arrangement for children and young people who cannot live with one or both parents and who are on statutory care orders or voluntary child care agreements (whereby the parent retains parental responsibility but places the child in out-of-home care).⁷ Children and young people living in statutory out-of-home care may be subject to a child protection investigation, protective intervention or a Children's Court order (with oversight by the Department of Health and Human Services).⁸ The term *out-of-home care* was in use in the study period for this report (2016 and 2017). In Victoria, this term is changing to *care services*.

5. See further Department of Health and Human Services, 'Child Protection Orders' (dhhs.vic.gov.au, 2019) <<https://services.dhhs.vic.gov.au/child-protection-orders>> at 6 February 2020.

6. Department of Health and Human Services, 'Kinship Care' (dhhs.vic.gov.au, 2019) <<https://services.dhhs.vic.gov.au/kinship-care>> at 18 February 2020.

7. Early Childhood and School Education Group et al. (2018), above n 2, 5.

8. Department of Health and Human Services, 'Out-of-Home Care' (dhhs.vic.gov.au, 2019) <<https://providers.dhhs.vic.gov.au/out-home-care>> at 7 February 2020.

Probation

An order requiring an offender to report to a youth justice unit, obey the instructions of a youth justice worker and refrain from offending. The order must not last for more than one year (or more than 18 months for offences with a maximum penalty of more than 10 years) and cannot extend beyond the offender's 21st birthday. The order can include special conditions, such as counselling and treatment programs: *Children, Youth and Families Act 2005* (Vic) ss 380–386.

Protection order

A final order made where the court has found a child to be in need of protection or there is a substantial and irreconcilable difference between the child and their carer: *Children, Youth and Families Act 2005* (Vic) ss 274–275.

Residential care

Out-of-home care provided by paid staff, usually in a residential home. A variety of community service organisations run these homes, which are funded by the Department of Health and Human Services.⁹

Study group

In this report, the 5,063 offenders sentenced or diverted for at least one charge in the Children's Court in 2016 or 2017. Each child was counted only once. If a child had more than one sentence or diversion in the two-year study period, the first sentence or diversion was counted as the *index sentence*.

Substantiation (by Child Protection Service)

The substantiation of a report to the Child Protection Service. A report is substantiated if upon its investigation the protective intervener is satisfied – based on one or more of the grounds defined in section 162 of the *Children, Youth and Families Act 2005* (Vic) – that the child is in need of protection. If necessary, the Child Protection Service makes a protection application to the Children's Court.

Undertaking (accountable or unaccountable)

A sentencing order for up to one year requiring agreement from the child to abide by certain conditions: *Children, Youth and Families Act 2005* (Vic) ss 363–366.

Youth attendance order

An alternative order to detention for young offenders aged 15–20 on the day of sentencing. The order requires an offender to report to youth justice and comply with intensive reporting and attendance conditions. The court may attach special conditions, such as education, counselling or treatment, or may direct the offender to engage in community service: *Children, Youth and Families Act 2005* (Vic) ss 397–409.

Youth supervision order

An order requiring an offender to be under a higher level of supervision than for a probation order but a lower level of supervision than for a youth attendance order. Conditions include attending a youth justice unit, participating in programs, reporting to youth justice, obeying the instructions of a youth justice worker and refraining from offending: *Children, Youth and Families Act 2005* (Vic) ss 387–395.

9. Victoria Legal Aid, *Care Not Custody: A New Approach to Keep Kids in Residential Care out of the Criminal Justice System* (2016) 5.

Executive summary

This is the second of three reports by the Sentencing Advisory Council ('the Council') examining *crossover children* in Victoria: children who were sentenced or diverted in the Children's Court of Victoria between 1 January 2016 and 31 December 2017 (youth justice system involvement) and who were known to child protection, in that they were the subject of at least one report to the Child Protection Service (child protection involvement). Of the 5,063 children sentenced or diverted in Victoria in 2016 and 2017, 1,938 were the subject of at least one report to the Child Protection Service. This report also analyses aspects of children's child protection involvement such as out-of-home care and, specifically, residential care.

Aim

The project aims to explore the pathways that lead children into the criminal justice system and to better understand the backgrounds of children who are sentenced or diverted in the Children's Court. Understanding the context of children's offending is vital to identifying opportunities for early intervention to prevent vulnerable children from entering the youth and adult justice systems. Understanding the circumstances associated with children's offending is also relevant to the development of sentencing policy, including the principles, purposes and factors that courts consider when sentencing children.

Report 1

Report 1¹⁰ was released in June 2019. A key finding of the report was that 38% of children in the study group (1,938 of 5,063 children sentenced or diverted in the Children's Court in 2016 and 2017) were the subject of at least one child protection report between June 1996 and September 2018. The report also found that 15% of children in the study group (767 children) experienced at least one out-of-home care placement in their lifetime and 10% experienced residential care (children who experienced residential care are a subset of the group of children who experienced out-of-home care). Children who enter the youth justice system early (aged 10–13) and children sentenced to custodial orders were more likely than other children to be known to child protection.

Report 2 research questions

This report answers four research questions:

1. **Timing.** Which occurred first: child protection involvement or youth justice involvement? This analysis is conducted against different levels of child protection involvement: child protection report, child protection order, out-of-home care and residential care.
2. **Demographics.** What were the child protection profiles of crossover children? This includes how child protection histories varied according to children's age, gender and Aboriginal and Torres Strait Islander status.
3. **Offences.** Was there any association between offence type and the existence and extent of child protection involvement?

10. Sentencing Advisory Council, 'Crossover Kids: Vulnerable Children in the Youth Justice System: Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court (2019).

4. **Court location:** Was there any difference between regional and metropolitan courts, or between individual court locations, in the prevalence of (1) children known to child protection among sentenced and diverted children, (2) Aboriginal and Torres Strait Islander children among sentenced and diverted children known to child protection and (3) children first sentenced or diverted aged 10–13 among sentenced and diverted children?

Research question 1: timing

A child's first offence date was measured against the key dates of the child's first report to the Child Protection Service, first child protection order, first out-of-home care placement and first residential care placement. The first offence date refers to the earliest date on which the child committed a sentenced or diverted offence. A child's first sentenced or diverted offence is one measure of first contact with the youth justice system: it represents the first offence for which a child has been held responsible by the court system. However, some children are likely to have had contact with police prior to committing their first sentenced or diverted offence.

Of the 1,938 children known to child protection, 94% were the subject of at least one **child protection report** before their first sentenced or diverted offence. That is, for almost every crossover child in the study group, their involvement in the child protection system preceded their involvement in the youth justice system.

Of the 892 sentenced and diverted children who were the subject of a **child protection order**, 98% were known to child protection before their first sentenced or diverted offence, and most (77%) were already the subject of a child protection order before their first offence. Only 2% of children who were the subject of a child protection order had offended before they were known to child protection.

Of the 767 sentenced and diverted children who experienced **out-of-home care**, 98% were known to child protection before their first sentenced or diverted offence, and 74% did not offend before being placed in out-of-home care. Only 2% of children who experienced out-of-home care had offended before they were known to child protection. Of the 569 children who first offended after first being placed in out-of-home care, 50% were living in an out-of-home care placement at their first offence date, although their offending may not have taken place in the care home.

Of the 525 sentenced and diverted children who experienced **residential care** (a subset of the 767 children who experienced out-of-home care), 98% were known to child protection before their first sentenced or diverted offence, and 55% did not offend before being placed in residential care. Of the 287 children who first offended after being placed in residential care, 61% were living in a residential care placement at their first offence date, although their offending may not have taken place in the residential care home.

Discussion

The overwhelming majority of crossover children were known to the Child Protection Service before their first sentenced or diverted offence, although some may have been cautioned by police at an earlier date. For these children, there may have been more opportunities for concerted and coordinated action across service systems before the child started offending. Further, more than half of children experiencing out-of-home care or residential care only offended during or after being placed in care. This finding suggests that, while the experience of trauma and maltreatment is likely to be a causal factor in children's offending behaviour, the experience of care itself may be a contributing factor for many children.

The relationship between placement in residential care and the commencement of offending is complex: these factors may share causality as well as contributing to one another. For example, a child's unresolved trauma, complex needs and high-risk and challenging behaviours may contribute to difficulties in placing or keeping them in care, other than residential care, and both their behaviour and their placement in residential care may also lead to increased contact with police, resulting in charges. Police involvement and placement instability may compound trauma and affect behaviour, leading to further placement instability and police involvement.

Research question 2: demographics

Previous research, including Report 1 for this project, suggests that the likelihood and extent of a child's protection history may differ according to factors such as age at first contact with the youth justice system and Aboriginal and Torres Strait Islander status. This report supports that earlier research.

The younger children were at first sentence or diversion, the more likely they were to be known to child protection. Of children first sentenced or diverted aged 10–13, 54% were known to child protection. Of those first sentenced or diverted aged 16 or over, 31% were known to child protection, and of those first sentenced or diverted aged 14–15, 47% were known to child protection.

Children aged 10–13 at first sentence or diversion also experienced higher levels of child protection involvement than older children and were likely to experience more carers, with a median of seven. In comparison, children aged 16 or over at first sentence or diversion who experienced out-of-home care had a median of four carers.

Conversely, the more carers a child had, the more likely the child was to have entered the youth justice system at an earlier age. Children aged 10–13 at first sentence or diversion comprised 7% of children who did not experience out-of-home care, 17% of children who experienced one carer, 16% of children who experienced two to 14 carers, 38% of children who experienced 15 to 19 carers and 52% of children who experienced 20 or more carers.

Girls were more likely than boys to be known to child protection among children first sentenced or diverted aged 14 or over. Gender was associated with some aspects of child protection involvement, and gender differences became more apparent with increased age at first sentence or diversion. Of children first sentenced or diverted aged 14 or over, 46% of girls and 34% of boys were known to child protection. In contrast, for children aged 10–13, an equal proportion of boys and girls were known to child protection (54%).

Of crossover children first sentenced or diverted aged 10–13, one in four were Aboriginal and Torres Strait Islander children. Of crossover children first sentenced or diverted aged 16 or over, 8% were Aboriginal and Torres Strait Islander children, which is highly disproportionate to the population of Aboriginal and Torres Strait Islander children in that age group in Victoria. However, the proportion of Aboriginal and Torres Strait Islander children tripled to 24% for children first sentenced or diverted aged 10–13. The median age at first child protection report for Aboriginal and Torres Strait Islander children was three years, much lower than the median for non-Aboriginal and Torres Strait Islander children (seven years).

More than three-quarters of children who were the subject of a substantiated child protection report were found to have experienced emotional harm. The most common type of harm reported and substantiated was emotional harm: 91% of reported children were the subject of at least one report with emotional harm as the primary reported harm, and 78% of children with a substantiated child protection report had emotional harm as the primary substantiated harm. Emotional harm is the ground for child protection commonly used in family violence cases. The next most common forms of primary substantiated harm were physical harm (41% of children with substantiated reports), neglect (19%) and sexual harm (9%).

Almost seven in eight children who experienced care had multiple placements and carers.

The overwhelming majority of children from care backgrounds who entered the youth justice system experienced multiple carers in their lifetime (whether before, during or after their offending). Of the 767 children who experienced out-of-home care, only 16% experienced just one placement and carer. Almost half (49%) experienced five or more carers, and one in four experienced 10 or more carers (23%). One child experienced 50 out-of-home care placements involving 36 unique carers. In these counts, a residential care home is considered one unique carer, so the actual number of adults looking after children in care is likely to exceed the number of recorded carers.

Discussion

The findings for research question 2 suggest that a range of complex and interrelated factors can propel a child into both the child protection and the youth justice systems, with many such factors relating to disadvantage. Addressing the needs of vulnerable children early is an essential component of ensuring that they do not transition into the youth justice system.

However, once children known to child protection are involved in the youth justice system, it is important that youth justice sentencing legislation recognises the strong relevance of trauma and child protection involvement to sentencing children. Relevant sentencing factors may include:

- a child's experience of trauma, including the effect of that trauma on the child's development and capacity to avoid problematic behaviour;
- the child's removal from family, home, community and school;
- the child's experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers and the need for the child to have safe, stable and secure living arrangements; and
- the child's age, including developmental age, when they first offended and at their current offence and sentence.

Such factors may be appropriate for inclusion in any new Youth Justice Act, such as that proposed by Armytage and Ogloff in 2017.¹¹

11. Penny Armytage and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending* (2017) part 2: 5 (Recommendation 6.1).

Research question 3: offences

Offences committed by children in the study group in 2016 and 2017 were divided into 13 categories. Children in the study group were then divided into overlapping subgroups according to whether they were sentenced or diverted for a particular offence type at least once between 1 January 2016 and 31 December 2017. For each offence subgroup (for example, children sentenced or diverted for an offence against the person), the proportion of children known to child protection was then calculated.

As context, crossover children constituted 38% of the overall study group. The offence categories with the highest proportion of children known to child protection included breach intervention order (53%), property damage (49%), drug offences (46%), weapons offences (48%), bail-related offences (48%) and offences against the person (44%).

Children who experienced residential care were around twice as likely as other children to be sentenced or diverted for certain offence types.

Children who experienced residential care were approximately twice as likely as children not known to child protection to have at least one offence in the categories of breach intervention order, property damage, drug offences and weapons offences (although not all of this offending occurred during the residential care placement and the offending did not necessarily take place in the residential care unit). Children who experienced residential care were three times more likely to have committed a breach intervention order offence (17%) than children not known to child protection (6%). There were also high proportions of bail-related offences among children in the study group who experienced residential care, with 50% having at least one bail-related offence, which was more than double the proportion of children not known to child protection with a bail-related offence (22%). While not all these bail-related offences would have occurred during or in a child's residential care placement, the high incidence of bail-related offences among children who experience residential care suggests that, in some cases, offending in residential care may fast-track some vulnerable children into custody.

Of children who experienced residential care, 66% were sentenced or diverted for a property damage offence compared with 29% of children who were not known to child protection. Of children with drug offences, while those who experienced residential care were more likely to have offences involving drug use (37%) than children not known to child protection (28%), they were less likely to have offences involving drug trafficking (10%) than children not known to child protection (16%). Even though a higher proportion of children in residential care are sentenced or diverted for certain offences, such as property damage and drug use, this does not necessarily mean that they commit those offences more frequently than children who are not known to child protection. Previous research and stakeholders consulted by the Council suggest that there is a lower tolerance for reporting behaviours to police in out-of-home care (and especially in residential care), whereas the same behaviours in the home (minor drug use, minor property damage) would be likely to remain private matters dealt with by the family without police involvement.

Children who experienced residential care were more likely than other children to be sentenced or diverted for an offence against the person.

In 2016 and 2017, over 9,000 violent offences committed by children were sentenced or diverted in Victoria. Children in residential care were more likely than other children to be sentenced or diverted for an offence against the person. Almost three-quarters (72%) of the children who experienced residential care were sentenced or diverted at least once between 1 January 2016 and 31 December 2017 for an offence against the person compared with less than half (45%) of children not known to child protection.

A considerable proportion of offences against the person were committed by children in the context of their own complex and traumatic background, evidenced by the proportion of children known to child protection with such offences. However, that does not diminish the effect of those offences on their victims, some of whom would have been other children in residential care or themselves survivors of trauma. Understanding the factors that contribute to violent behaviour by children and adolescents is fundamental to preventing such behaviour from developing or continuing. Many of the children who commit such offences are themselves victims of violent crimes, often perpetuated against them over years. Such children may still be operating in a state of high trauma when they respond violently to perceived threats or participate in violence with their peers in a misplaced desire to belong.

Children who experienced residential care were more likely to be sentenced or diverted for resisting, hindering or assaulting police or emergency workers. The proportion of assaults on police or emergency workers committed by children who experienced residential care (20% of offences against the person) was double that of children not known to child protection (11% of offences against the person). Similarly, the proportion of children who experienced residential care who were sentenced or diverted for resisting or hindering police or emergency workers (16%) was almost three times that of children who were not known to child protection (6%). This finding is consistent with research suggesting that calling police in relation to minor incidents in residential care, or the (necessary) involvement of police where a vulnerable child has run away from care, may expose traumatised children in care to more serious offences, such as resist or assault police, if the arrival of police triggers a trauma response in the child.

Discussion

The association between child protection involvement and particular offence types suggests an association between trauma and some offending, particularly for children who experienced residential care. Stakeholders commented that their experience was consistent with the finding that children who experience residential care were more likely than other children to be sentenced or diverted for offences such as property damage and drug use. Stakeholders observed that children in care were sometimes prosecuted for behaviour that might not be reported to police if the child lived with their family. For children who experienced residential care, there may be potential for reducing their over-representation in some offence categories through changes in practice in relation to handling and reporting incidents in residential care to police and the approach of police once called. The *Framework to Reduce the Criminalisation of Young People in Residential Care*, which was launched by the Minister for Child Protection, Luke Donnellan, and the Minister for Youth Justice and Crime Prevention, Ben Carroll, on 13 February 2020,¹² is a positive step in this direction. The findings of this report will provide a baseline against which progress under the framework can be measured in the future.

It is also important to recognise that trauma, abuse and distress may contribute to some children offending prolifically, violently and seriously, with their behaviour causing considerable harm to members of the community. The finding that children who experienced residential care were more likely than other sentenced and diverted children to have an offence against the person suggests that many of the children who experience residential care and youth justice involvement have complex needs and entrenched, trauma-related, challenging behaviours.

12. Department of Health and Human Services, *Framework to Reduce Criminalisation of Young People in Residential Care* (2020); Victorian Aboriginal Child Care Agency, 'New Framework to Reduce Criminalisation of Young People in Residential Care Will Help Stem the Levels of Incarceration of Indigenous Young People', Media Release (13 February 2020) <<http://www.medianet.com.au/releases/release-details.aspx/?id=927913>> at 14 February 2020.

Effectively addressing childhood trauma early and increasing support when children enter out-of-home care are key crime prevention strategies that may prevent highly traumatised children from developing into prolific and/or violent offenders.

Where a child has offended in the context of a background of abuse, trauma and child protection involvement, just and effective sentencing requires that the court is provided with adequate information about the child's history and the context of the offending. One measure to strengthen practice around sentencing crossover children is to ensure that the proposed Youth Justice Act includes sentencing factors relating to a child's experience of trauma, developmental issues and care history.

Research question 4: court location

Children sentenced or diverted in regional areas were more likely to be known to child protection. Regional areas had a higher proportion (44%) of sentenced and diverted children who were known to child protection than in the Melbourne metropolitan area (35%). Children in regional areas were also more likely to have experienced out-of-home care (19%) and residential care (13%) than children in the Melbourne metropolitan area (14% and 9% respectively). There was, though, substantial variation in the proportion of sentenced and diverted children known to child protection in various court locations. In some locations, approximately half of children were known to child protection, including Wangaratta (57%), Bendigo (50%), Horsham (48%), Sale (48%), Latrobe Valley (47%) and Geelong (45%). Other regional locations, such as Bairnsdale and Mildura, had rates of crossover children comparable to the Melbourne metropolitan area (35%).

Crossover children sentenced or diverted in regional areas were more likely to be Aboriginal and Torres Strait Islander children. The proportion of Aboriginal and Torres Strait Islander crossover children in the Melbourne metropolitan area (9%) was less than that across regional Victoria. The Loddon Mallee area had the highest proportion of Aboriginal and Torres Strait Islander crossover children (27%). Even accounting for higher Aboriginal and Torres Strait Islander populations in some parts of regional Victoria, these findings amount to a substantial and concerning over-representation of Aboriginal and Torres Strait Islander crossover children in most court locations.

Children sentenced or diverted in regional areas were more likely to be younger at their first sentence or diversion. Children sentenced or diverted in regional courts were far more likely than children sentenced or diverted in the Melbourne metropolitan area to be aged 10–13 at their first sentence or diversion. For example, the proportion of children first sentenced or diverted while aged 10–13 in Gippsland (18%) and the Grampians (17%) was almost four times that of the Melbourne metropolitan area (5%). As additional context, 9% of the entire study group were aged 10–13 at their first sentence or diversion. The highest proportions of sentenced and diverted children aged 10–13 were in Horsham (29%), Bairnsdale (24%) and Latrobe Valley (19%). The lowest proportions were in Werribee, Moorabbin, Sunshine, Broadmeadows and Heidelberg (between 2 and 4%).

Discussion

Stakeholders commented that many regional areas suffer from a lack of comprehensive support services, meaning that there are fewer responses available to assist families who are struggling or children who present with developmental issues or problematic behaviours. This lack of support may increase the likelihood of families being reported to the Child Protection Service and their children going into care, and the continuing lack of support may increase the likelihood that the child will eventually end up in the youth justice system. Similarly, stakeholders suggested that there may be inconsistent police practices in exercising the discretion to apply diversion or a caution to children, and that this might be contributing to the over-representation of children known to child protection among children sentenced or diverted in some regional areas. Stakeholders also commented that this finding may reflect differences in the likelihood of families being reported, and varying child protection practices, in some areas. The factors raised in consultation are likely to combine differently in different areas of Victoria.

The over-representation of Aboriginal and Torres Strait Islander crossover children in regional court locations was a particularly concerning finding. This may be linked to factors including increased disadvantage, postcolonial and intergenerational trauma and systemic racism. This increased complexity of need may compound the impact of the regions' comparative lack of access to services. Just as child protection factors may be a useful inclusion in any new Youth Justice Act, so too may it be useful to include the unique systemic and background factors affecting Aboriginal and Torres Strait Islander children.

Also very troubling was the larger proportion of children first sentenced or diverted aged 10–13 in some regional areas, particularly because the trajectories of those first sentenced or diverted aged 10–13 are poor. The Council's youth reoffending study found that '[t]he younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to adult imprisonment before their 22nd birthday'.¹³ It is possible that the availability of the specialised Children's Court in Melbourne contributes to the reduced prevalence of both crossover children and children aged 10–13 at first sentence or diversion. The Melbourne Children's Court offers specialist knowledge, support and resources such as specialist magistrates and legal practitioners, a degree of information sharing and specialist services via the Children's Court Clinic. The Children's Court Clinic provides clinical assessments and services to children and families at Children's Court locations across Victoria when ordered by a judge or magistrate.¹⁴ However, assessments are typically conducted on site in Melbourne; staff usually only travel where there is a 'special need' to do so, which is raised with the magistrate or judge before the order is made.¹⁵ In practical terms, the requirement to travel in order to access the Children's Court Clinic is likely to affect accessibility for children in remote and regional locations.

The findings in this report also provide support for revisiting the recommendation of the 1984 Carney Review to separate Children's Court facilities from adult facilities in regional areas, at least in headquarter court locations. Whether or not separate Children's Court facilities are provided in regional areas, it is vital that courts hearing criminal matters relating to children are provided with adequate evidence about the context of children's offending, including comprehensive information about their child protection history and the effect of trauma on their development.

13. Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016) xiii.

14. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019). The Children's Court Clinic 'conducts psychological and psychiatric assessments of children and families for the Children's Court of Victoria. In some cases, limited treatment is also provided. The Clinic also conducts assessments relating to the impact of drug use on a young person and may make recommendations about appropriate treatment'. Children's Court of Victoria, 'Children's Court Clinic' (childrenscourt.vic.gov.au, 2020) <<https://www.childrenscourt.vic.gov.au/jurisdictions/criminal/childrens-court-clinic>> at 28 January 2020.

15. Peter Power, 'Chapter 12 – Children's Court Clinic', *Children's Court Research Materials* (Children's Court of Victoria, 2015) 12.3 <<https://www.childrenscourt.vic.gov.au/legal/research-materials/childrens-court-clinic>> at 6 February 2020.

1. About this project

- I.1 This is the second of three reports by the Sentencing Advisory Council ('the Council') examining the child protection backgrounds of every child who was sentenced or diverted¹⁶ in the Children's Court of Victoria between 1 January 2016 and 31 December 2017. There were 5,063 children in the study group.
- I.2 This project aims to explore the pathways that lead children as young as 10 to become involved in the criminal justice system and to better understand the vulnerable backgrounds of children who are sentenced or diverted in the Children's Court. The first report provided a high-level view of the prevalence of crossover kids in the youth justice system. This report focuses more closely on the relationship between child protection factors, demographic factors and youth justice factors.
- I.3 This introductory chapter provides a brief overview of the key finding in the project's first report (Report 1), the aims and research questions of this report (Report 2), the intended aims of the third report (Report 3) and the approach to analysing the data in this project.

Report 1

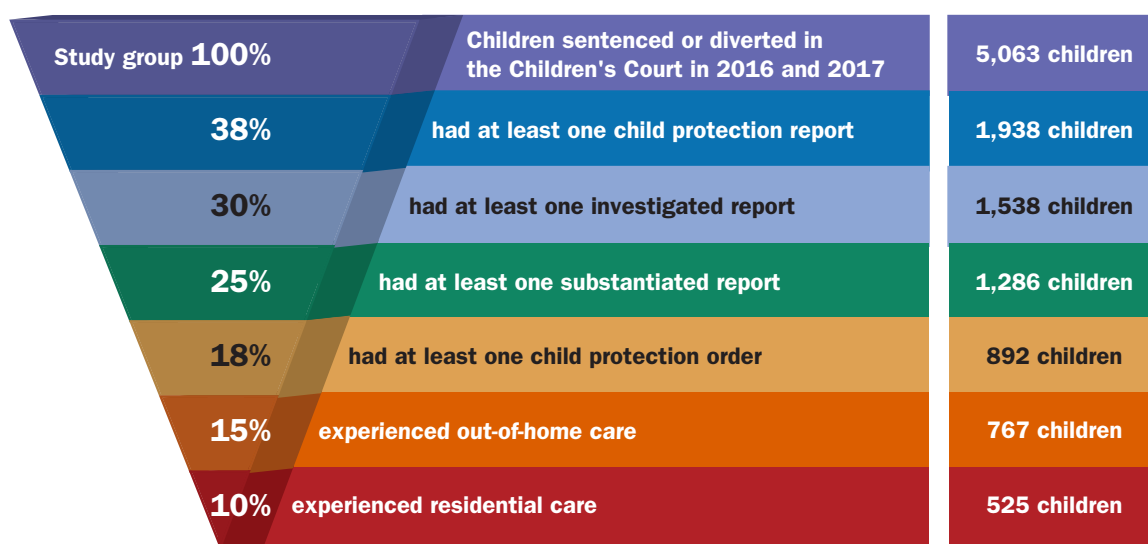
- I.4 Report 1 of the project, released in June 2019, examined how many children in the study group were known to the Child Protection Service (Department of Health and Human Services) and the extent of their child protection history. The report also examined whether Aboriginal and Torres Strait Islander children were over-represented among crossover kids, whether children with certain sentence types were more likely to be known to child protection and whether age at first sentence or diversion was associated with the likelihood and degree of child protection involvement.
- I.5 As shown in Figure 1 (page 2), Report 1 found that of the 5,063 children in the study group:
 - 38% (1,938 children) were the subject of at least one report to the Child Protection Service at any time in the 22-year period from June 1996 to early September 2018, including uninvestigated and unsubstantiated reports. Of these 1,938 children, 89% were the subject of multiple reports, and 30% were the subject of 10 or more reports;
 - 15% (767 children) had at least one recorded out-of-home care¹⁷ placement in their lifetime, whether before, during or after their offence and sentence. Most of these 767 children experienced multiple placements in their lifetime; and
 - 10% (525 children, a subset of the 767 children who experienced out-of-home care) experienced residential care at least once in their lifetime.

16. Children's Court youth diversion is a pre-plea option that allows a child who acknowledges responsibility for an offence to the Children's Court and completes a diversion plan to have their charges discharged without a criminal record. The diversion program started as a 12-month pilot program before becoming available in all Victorian Children's Court locations from January 2017. It was given a formal statutory basis under *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 3A, introduced by the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) s 59, commencing 28 November 2017. Prior to that, diversion in the Children's Court was governed by *Criminal Procedure Act 2009* (Vic) s 59 read in conjunction with *Children, Youth and Families Act 2005* (Vic) s 528.

17. Out-of-home care is a temporary, medium or long-term living arrangement for children and young people who cannot live with one or both parents and who are on statutory care orders or voluntary child care agreements; the parent retains guardianship but places the child in out-of-home care: Early Childhood and School Education Group et al. (2018), above n 2, 5. The term *out-of-home care* was in use during the study period for this report (2016 and 2017). This term is changing to *care services*.

1.6 Report 1 also found that Aboriginal and Torres Strait Islander children were substantially over-represented at the intersection of the child protection and youth justice systems.

Figure 1: Prevalence and level of child protection involvement among children in the study group from 18 June 1996 to 3 September 2018¹⁸



Report 2

Aims

1.7 The aims of Report 2, the current report, are to:

- explore the relative timing of child protection involvement and youth justice involvement to identify opportunities for intervention in the offending trajectories of the study group (Chapter 2);
- explore child protection histories of sentenced and diverted children with reference to their age at first sentence or diversion, gender and Aboriginal and Torres Strait Islander status to identify the child protection factors that might be associated with early criminal justice involvement (Chapter 3);
- examine associations between offence type and child protection involvement, to identify offences of concern and/or opportunities for intervention (Chapter 4); and
- examine regional differences in the prevalence of children who are known to child protection among sentenced and diverted children to inform discussion on services and resources for various court locations and regions (Chapter 5).

18. Sentencing Advisory Council (2019), above n 10, 46 (Figure 9).

I.8 This project builds on past research, focusing on questions that previously have been difficult to answer due to the unavailability of data. By linking the full child protection histories of all children sentenced or diverted in a two-year period, the Council has been able to include in the project:

- **all sentenced and diverted children** in a given period (2016 and 2017) in every Children's Court location in Victoria, rather than a subset such as children sentenced or diverted in a particular court location or children in custody;
- **all sentencing orders**, from the least to the most severe, so that children sentenced or diverted for less serious offences, such as criminal damage, are included. The project also includes children who received a diversion in the Children's Court;
- the **full child protection history** of each child from birth (including unborn child reports), extending beyond child protection involvement proximate to the criminal hearing. The inclusion of children with no known child protection history provides a point of comparison with children who have a child protection history;
- the **level of child protection involvement**, including out-of-home care and residential care; and
- **child protection factors, criminal justice factors and personal characteristics** to consider associations, for example, between the level of child protection involvement (such as residential care) and offence type (such as criminal damage). Child protection factors include the primary harm reported, age at first child protection report and number of carers. Criminal justice factors include offence type and criminal justice outcome. Personal characteristics include age at first sentence or diversion and gender.

Research questions

I.9 To achieve the above aims, this report addresses the following research questions:

Research question 1: Which occurred first: child protection involvement or youth justice involvement?

- Of the 1,938 children sentenced or diverted in the Children's Court in 2016 and 2017 who were known to child protection, what proportion had their first child protection report before their first offence date?
- Of the 892 sentenced and diverted children who were the subject of a child protection order,¹⁹ what proportion had their first child protection order before their first offence date?
- Of the 767 sentenced and diverted children who experienced out-of-home care, what proportion were placed in out-of-home care before their first offence date?
- Of the 525 sentenced and diverted children who experienced residential care, what proportion:
 - were placed in residential care before their first offence date?
 - committed their first sentenced or diverted offence while in a residential care placement?

19. In this report, the term *child protection order* is used in a broad sense to refer collectively to four categories of orders made by the Family Division of the Children's Court of Victoria under the *Children, Youth and Families Act 2005* (Vic): protection orders, interim accommodation orders, permanent care orders and therapeutic treatment orders. See further Sentencing Advisory Council (2019), above n 10, 11–12.

Research question 2: What were the child protection profiles of crossover children?

How did the child protection histories of the children known to child protection differ according to age, gender and Aboriginal and Torres Strait Islander status?

Research question 3: Was there any association between offence type and child protection involvement?

Of the offences committed by the study group and sentenced or diverted in 2016 and 2017, was there any association between offence type and the existence and extent of a child protection history?

Research question 4: Were there geographical differences in the prevalence of sentenced and diverted children known to child protection?

Were there differences between regional and metropolitan courts, and between individual court locations, in terms of:

- the prevalence of crossover children among sentenced and diverted children?
- the over-representation of Aboriginal and Torres Strait Islander children among sentenced and diverted children known to child protection?
- the proportion of children aged 10–13 at first sentence or diversion?

Report 3

- 1.10 Report 3 in this project (forthcoming) will examine some of the policy implications of the findings in Reports 1 and 2 in the context of the legal framework for sentencing children who are known to the Child Protection Service.

The Council's approach

- 1.11 The project examines the child protection history of a cohort of children who were sentenced or diverted in the Children's Court between 1 January 2016 and 31 December 2017.

What is child protection?

- 1.12 Any person who has a significant concern for the safety of a child may make a report to the Child Protection Service of the Victorian Department of Health and Human Services or to a member of Victoria Police.
- 1.13 A child is considered to be 'in need of protection' if the child has been abandoned, the child's parents are dead or incapacitated or the child has suffered, or is likely to suffer, harm and the child's parents have not protected the child or are unlikely/unable to protect the child.²⁰
- 1.14 Every report made to the Child Protection Service is recorded at the intake phase by a child protection practitioner, who can gather information. The Secretary considers whether the child may be in need of protection and if so may determine that the report is a protective intervention report, requiring further investigation. An investigation involves contact with the child who is the subject of the report.²¹ After the investigation, if the Child Protection Service

20. *Children, Youth and Families Act 2005* (Vic) s 162.

21. Department of Health and Human Services, 'Investigation Phase: Advice', *Child Protection Manual* (Department of Health and Human Services, 2017) <<http://www.cpmmanual.vic.gov.au/advice-and-protocols/advice/investigation/investigation-phase>> at 6 February 2020.

is satisfied on reasonable grounds that the child is in need of protection, a decision will be made to substantiate the report. If necessary, the Child Protection Service will also make a protection application to the Children's Court.²²

What is a *crossover kid*?

- I.15 The term *crossover kid* or *crossover child* has been used in research to describe children with involvement in both the criminal justice system and the child protection system.²³ As Victoria Legal Aid has pointed out, however, the term *crossover kid* is 'not a term of art' and has no uniform definition.²⁴ The term is used in different ways in different studies to describe children crossing between the criminal justice system and the child protection system. One of the most common uses of the term is to describe children who are charged with criminal offences while also the subject of a child protection application to the Children's Court. Another common use of the term is to describe children in out-of-home care who face criminal charges.²⁵
- I.16 Exactly which group of children is defined as *crossover children* usually depends on the data available to a particular researcher. The Council was provided with comprehensive child protection data in relation to the children who had been the subject of at least one child protection report. Therefore, the project was not limited to only one group of crossover children (for example, children who had been the subject of a child protection order). Instead, the project includes children with *any* report to the Child Protection Service in a child's lifetime. The Council identified the following broad categories of child protection involvement for sentenced and diverted children in the study group, which are examined separately for the project:
- (a) reports to the Child Protection Service, including unborn child reports;²⁶
 - (b) investigated reports;
 - (c) substantiated reports;
 - (d) child protection orders made in the Children's Court (including interim accommodation orders²⁷ and permanent care orders²⁸); and
 - (e) out-of-home care (including residential care).

22. Department of Health and Human Services, 'Substantiation: Advice', *Child Protection Manual* (Department of Health and Human Services, 2018) <<https://www.cpmmanual.vic.gov.au/advice-and-protocols/advice/investigation/substantiation-and-risk-level>> at 6 February 2020; Department of Health and Human Services, 'Substantiation Judgement Matrix', *Child Protection Manual* (Department of Health and Human Services, 2017) <<https://www.cpmmanual.vic.gov.au/advice-and-protocols/tools-checklists/substantiation-judgement-matrix>> at 6 February 2020.

23. For more information about Victoria's child protection system, see Sentencing Advisory Council (2019), above n 10, 9–16.

24. Suzanne Bettink, 'Crossover Kids in Victoria: Problems for the Children's Court of Victoria in Taking an Integrated Approach to Young People with Multiple Issues' (Paper presented at Doing Justice for Young People: Issues and Challenges for Judicial Administration in Australia and New Zealand, the Australasian Institute of Judicial Administration, Brisbane, 23–25 August 2012).

25. Ibid 1–2.

26. If a woman is pregnant and a person has a significant concern for the wellbeing of her child before the child's birth, that person may make a confidential report to child protection (under the *Children, Youth and Families Act 2005* (Vic) s 29) or a confidential referral to a Child and Family Information Referral and Support Team (Child FIRST) before the child is born: *Children, Youth and Families Act 2005* (Vic) s 32.

27. An interim accommodation order may be made in a number of circumstances, including after a protection application is filed and the court has decided that an interim order is needed to keep the child safe until the application is determined: *Children, Youth and Families Act 2005* (Vic) pt 4.8 div 5.

28. A permanent care order is made by the Children's Court appointing a specified person or persons as having parental responsibility for the child. The order may continue until the child turns 18 or marries, whichever happens first: *Children, Youth and Families Act 2005* (Vic) pt 4.10.

- 1.17 In this report, children in the study group are described as crossover kids, crossover children or known to child protection if they were the subject of at least one report to the Child Protection Service in their lifetime, even if their child protection and youth justice involvements were not concurrent.

Study group

- 1.18 The study group of 5,063 children, drawn from the Children's Court Courtlink database, comprises all children who offended aged 10–17 (inclusive) and received a sentence or diversion in the Children's Court of Victoria between 1 January 2016 and 31 December 2017 (their index sentence). The study group includes 3,404 sentenced children and 1,659 children dealt with under the diversion program at their index sentence. While diversion is not a sentencing order *per se*, it requires a child to take responsibility for the offence. It is therefore included in this report as a disposition used by the Children's Court to respond to a child's offending. In addition to children who received diversion, the study group includes children sentenced to fines and low-end orders such as good behaviour bonds.²⁹ Low-end orders, fines and diversion make up the bulk of dispositions imposed in the Children's Court.³⁰

Index sentence

- 1.19 A child's first (or only) sentence or diversion in 2016 or 2017 was classified as their *index sentence*. Each child was counted once only for the purpose of allocating an index sentence. Sections of the report that do not use index sentences may count each child more than once.

First sentence or diversion

- 1.20 A child's first sentence or diversion on or after 1 July 2004 was classified as the child's *first sentence or diversion*.

Age

- 1.21 The Criminal Division of the Children's Court hears and determines charges against children and young people if the alleged offence was committed on or after the person's 10th birthday but before their 18th birthday. Children who are:
- aged under 10 are, at law, not criminally responsible and cannot be prosecuted for their behaviour;
 - aged 10–13 (inclusive) are considered to be *doli incapax* (incapable of crime) unless the prosecution can establish that the child knew their conduct was morally wrong, as opposed to childish naughtiness or mischief; and
 - aged 19 by the time the case commences in the Children's Court have their case transferred to the Magistrates' Court.³¹

29. A good behaviour bond is an order postponing a child's sentence for up to one year (or up to 18 months if the child is aged 15 or over and the circumstances are exceptional). During this period, the child must be of good behaviour and meet any special conditions imposed by the court. If the child complies with the bond, the charges must be dismissed: *Children, Youth and Families Act 2005* (Vic) pt 5.3 div 4.

30. For example, in the Council's youth reoffending study, 80% of children sentenced in 2008–09 received low-end orders (dismissals, discharges, undertakings, good behaviour bonds and fines): Sentencing Advisory Council (2016), above n 13, 15. In this report, as in the youth reoffending study, the data only includes fines imposed as a sentence in the Children's Court, not fines from the Children and Young Persons Infringement Notice System (CAYPINS) under *Children, Youth and Families Act 2005* (Vic) sch 3.

31. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of 'child'), 344, 516(4)–(5).

- I.22 Some children in the study group were aged 18–20 by their first sentence or diversion, although they were under 18 at their first offence date. These children are included in the study group. They are described in this report as ‘children’ despite their age at first sentence or diversion because they were children at the time of their offence. A small group of 30 children were excluded from the study group because their age at their first sentence or diversion was unknown or could not be verified.³²
- I.23 Of the 5,063 children in the study group, at their first sentence or diversion 438 were aged 10–13 (9%), 1,672 were aged 14–15 (33%) and 2,953 were aged 16 or over (58%). The study group included 1,273 girls (25%) and 3,790 boys (75%).

Aboriginal and Torres Strait Islander children

- I.24 Previous research suggests that Aboriginal and Torres Strait Islander children are over-represented among children in the child protection system (including in out-of-home care)³³ and in the youth justice system (including in custody).³⁴ In the period 1 July 2014 to 30 June 2016, Aboriginal and Torres Strait Islander children Australia-wide were 16 times more likely than other children to be both involved in the child protection system and under youth justice supervision.³⁵
- I.25 The Council has data on Aboriginal and Torres Strait Islander status for children who were the subject of a report to the Child Protection Service. The Council does not have data on Aboriginal and Torres Strait Islander status for children who were not known to the Child Protection Service.

Data matching

- I.26 This project links the 5,063 children in the study group with:
- 22 years of data from the Department of Health and Human Services's child protection system, from 18 June 1996 (the date of the earliest report about a child in the study group) to 3 September 2018 (the date of the data extraction);
 - sentencing data from the Children's Court Courtlink database; and
 - the Council's reoffending database.³⁶

32. These 30 children accounted for only 0.6% of the original study group of 5,093 children; therefore their exclusion is unlikely to affect results.

33. Report 1 found that Aboriginal and Torres Strait Islander children were over-represented in every sentence type and child protection category: Sentencing Advisory Council (2019), above n 10, xxiv. See also Australian Institute of Health and Welfare, *Child Protection Australia 2016–17*, Child Welfare Series no. 68 (2018) vii, 14–15; Productivity Commission, *Report on Government Services 2017: Volume F: Community Services* (2017) 16.3; Natalie Lewis et al., *The Family Matters Report 2018: Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (2018) 9.

34. Sentencing Advisory Council (2019), above n 10, xxiv, 42–43; Australian Institute of Health and Welfare, *Youth Detention Population in Australia*, Bulletin no. 145 (2018) 2; Adam Dean, *The Intersection between the Child Protection and Youth Justice Systems: CFCA Resource Sheet* (2018), adapted from Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 2015–16*, Data Linkage Series no. 23 (2017); Mark Marien, “Cross-Over Kids”: Childhood and Adolescent Abuse and Neglect and Juvenile Offending (Paper presented at the National Juvenile Justice Summit, Melbourne, 26–27 March 2012) 7–9.

35. Dean (2018), above n 34, Figure 3, adapted from Australian Institute of Health and Welfare (2017), above n 34, 9, 11. Those publications only included young people aged 10–16 on 1 July 2014. The data also excluded New South Wales and the Northern Territory.

36. The Council maintains its own reoffending database of unique offenders, which combines sentencing records from the Children's Court, Magistrates' Court and higher courts from July 2004 onwards. The reoffending database allocates a unique person identifier for each sentenced court case (using matching identifying information such as the person's name, date of birth and sentencing date) to allow linkage of cases belonging to one offender.

- I.27 Matching child protection and sentencing data allowed the Council to determine the prevalence and level of child protection involvement of children in the study group, analyse the backgrounds of children at the nexus of the two systems and compare the offending profiles of children known and not known to the Child Protection Service. The data includes child protection events that occurred before, concurrently with or after the offences sentenced in the study period (due to the availability of child protection data for the period 18 June 1996 to 3 September 2018).
- I.28 The Council did not have data on remand, education factors, mental health or impairment, disability, culturally and linguistically diverse backgrounds or charges that were withdrawn or struck out due to submissions relating to *doli incapax*. The data on gender was restricted to the categories of *male* and *female*. Data on non-binary gender categories is not currently available.
- I.29 The methodology for this report is set out in Appendix 2.

Consultation

- I.30 The Council consulted key youth justice and child protection stakeholders to discuss the project and its findings, including hosting four roundtable consultation forums (two in April 2019 and two in December 2019). Stakeholders included representatives of the Department of Justice and Community Safety (Youth Justice), the Department of Health and Human Services, the Children's Court of Victoria, Victoria Police, Victoria Legal Aid, Victorian Aboriginal Legal Service, the Commission for Children and Young People, the Victims of Crime Commissioner, the Crime Statistics Agency, Jesuit Social Services, the Centre for Excellence in Child and Family Welfare, the Centre for Multicultural Youth, Dr Kath MacFarlane, Dr Susan Baidawi, Professor Rosemary Sheehan, CREATE Foundation, the Human Rights Law Centre, the Law Institute of Victoria, Monash University (Department of Social Work), the Children's Court Bar Association, the Justice-involved Young People Network, The University of Melbourne, Whitelion, Youth Law, and Youth Support and Advocacy Service.
- I.31 The Council also visited the Parkville Youth Justice Centre to observe firsthand how children are managed in custody and discuss some of the issues faced by children with child protection backgrounds.

2. Do crossover children start in child protection or youth justice?

Introduction

- 2.1 Based on the 5,063 children in the study group, this chapter examines the timing of offending against child protection involvement for:
- the 1,938 children who had been the subject of at least one report to the Child Protection Service in their lifetime;
 - the subset of 892 children who were the subject of at least one child protection order;
 - the subset of 767 children who experienced out-of-home care; and
 - the subset of 525 children who experienced residential care (and for these children (1) the number that committed their first offence while in a residential care placement and (2) the time from their first residential care placement to their first offence date).
- 2.2 Previous research has suggested that many vulnerable children may find themselves on a 'care-to-criminalisation' pathway, in that they start in the child protection system but eventually move into the youth justice system.³⁷ This chapter examines whether the 1,938 children with both child protection and youth justice involvements were more likely to start off in the child protection system or the youth justice system.
- 2.3 A child's first offence date is measured against the key dates of a child's first report to the Child Protection Service, first child protection order, first out-of-home care placement and first residential care placement.

First offence date

- 2.4 The first offence date refers to the earliest date on which the child committed a sentenced or diverted offence. A child's first sentenced or diverted offence is one measure of first contact with the youth justice system: it represents the first offence for which a child has been held responsible by the court.
- 2.5 It is acknowledged that many children may have had contact with police prior to committing their first sentenced or diverted offence. For example, recent research into the use of police cautions and court diversion has found that of all child offenders processed by police in 2016–17, 33% of cases resulted in a police caution, 9% resulted in a Children's Court diversion and 58% were otherwise heard in the Children's Court.³⁸ Based on this finding, at least some of the children categorised in this chapter as committing their first sentenced or diverted offence after contact with the child protection system may have had previous contact with police, potentially even before they were known to child protection.

37. See for example, Victoria Legal Aid (2016), above n 9, 1; Kath McFarlane, 'Care-Criminalisation: The Involvement of Children in Out-of-Home Care in the New South Wales Criminal Justice System' (2018) 51(3) *Australian & New Zealand Journal of Criminology* 412; Anna Stewart et al., *Pathways from Child Maltreatment to Juvenile Offending*, Trends and Issues in Crime and Criminal Justice no. 241 (2002); Anna Stewart et al., 'Transitions and Turning Points: Examining the Links between Child Maltreatment and Juvenile Offending' (2008) 32(1) *Child Abuse & Neglect* 51; Catia Malvaso et al., 'The Child Protection and Juvenile Justice Nexus in Australia: A Longitudinal Examination of the Relationship between Maltreatment and Offending' (2017) 64 *Child Abuse & Neglect* 32; Australian Institute of Health and Welfare (2017), above n 34; Judy Cashmore, 'The Link between Childhood Maltreatment and Adolescent Offending: Systems Neglect of Adolescents' (2011) 89 *Family Matters* 31, 35.

38. David Cowan, 'What Is the Context of Police and Court Diversion in Victoria and What Opportunities Exist for Increasing Police Diversion of Offenders?' (Master's Thesis, Selwyn College, 2018) 51.

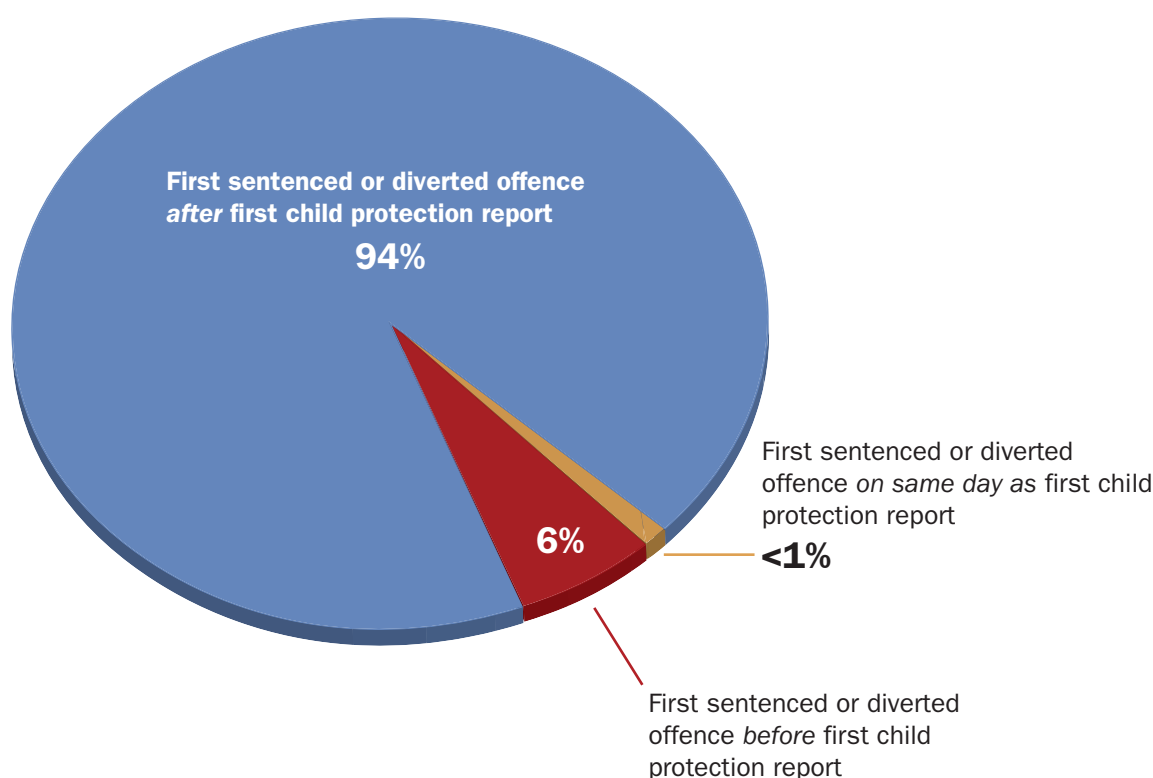
Which came first: child protection reports or offending?

Most crossover children were known to child protection before they first offended

2.6 As shown in Figure 2, of the 1,938 sentenced and diverted children who were the subject of a child protection report during their lifetime:

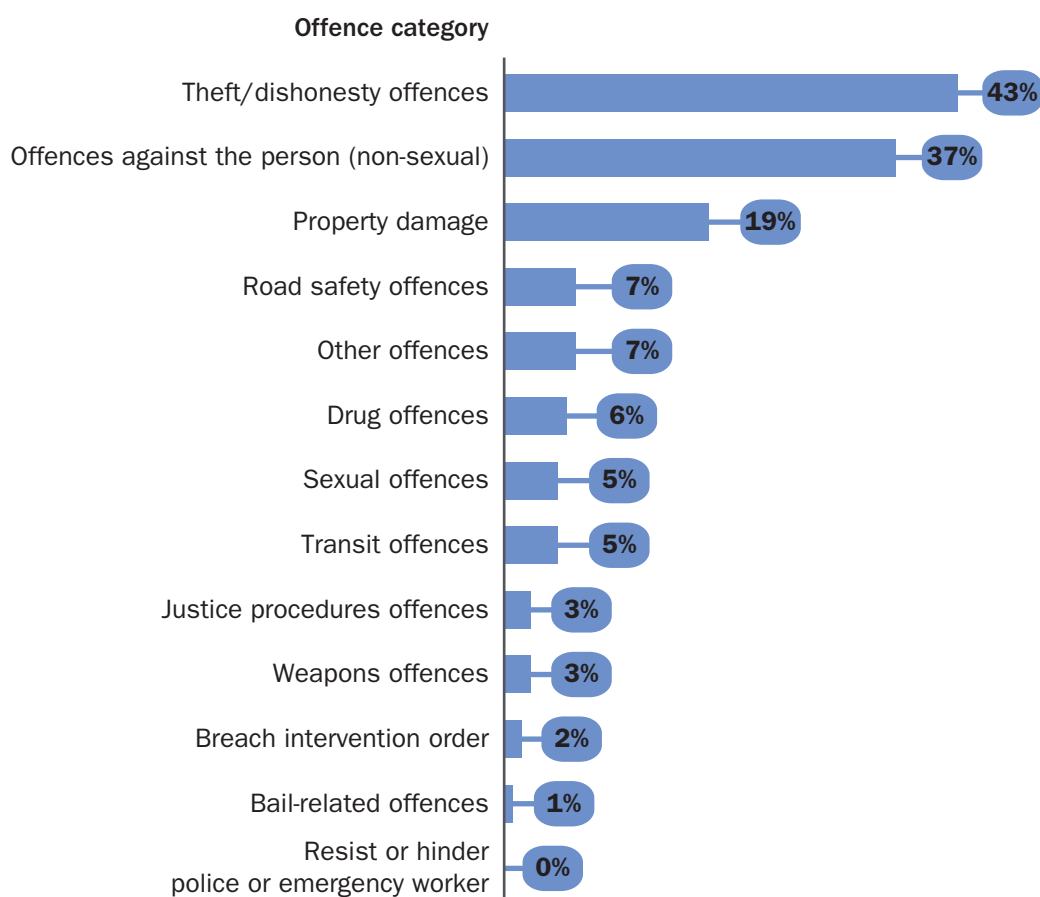
- 94% (1,813 children) were the subject of a child protection report before they committed their first sentenced or diverted offence;
- 0.4% (seven children) committed their first sentenced or diverted offence on the same day as their first child protection report. For six of these children, their first sentenced or diverted offence included at least one offence against the person; and
- 6% (118 children) committed their first sentenced or diverted offence before they were the subject of a child protection report. The most common first offence types among these 118 children were theft/dishonesty (43% had committed at least one theft/dishonesty offence at their first offence date) and offences against the person (37%) (Figure 3, page 11).³⁹

Figure 2: Children reported to child protection (1,938 children), by the proportion who committed their first sentenced or diverted offence before, at the same time as, or after their first child protection report



39. In this report, offences against the person do not include sexual offences, which are a separate offence category. See further Appendix 2.

Figure 3: Children in the study group known to child protection who committed their first sentenced or diverted offence before their first child protection report (118 children), by offence type



Even for children first reported to child protection at or above the age of criminal capacity, child protection involvement was usually first

- 2.7 A child can be the subject of a report to the Child Protection Service at any time from before birth to age 17; however, a child only has criminal capacity from age 10. Therefore, from a statistical perspective, the *window* for a child to become known to child protection is wider than the *window* for a child to be drawn into the youth justice system. To control for the different child protection and offending windows, the timing of first child protection and youth justice contacts was analysed separately for the 722 children aged 10 or over at the time of their first child protection report. These 722 children comprised 37% of the 1,938 children who were the subject of a report to the Child Protection Service.
- 2.8 Looking only at these 722 children, most were known to child protection before their first sentenced or diverted offence:
- 83% (597 children) first offended *after* their first child protection report;
 - 16% (118 children) first offended *before* their first child protection report; and
 - 1% (7 children) first offended *on the same day* as their first child protection report.
- 2.9 This cohort of 722 children were slightly more likely to first offend *before* their first child protection report compared with all crossover children in the study group (16% compared with 6%). However, the above analysis suggests that the high prevalence of child protection reports preceding youth justice involvement is not explained by the different age windows.

- 2.10 The above finding – that 83% of children aged 10 or over when first reported to child protection did not offend until after their first child protection report – is consistent with other research. A recent Australian Institute of Health and Welfare study found that, of 4,035 Australian children aged 10–17 who received child protection services and youth justice supervision from 1 July 2014 to 30 June 2018, 81% were known to child protection before entering youth justice supervision.⁴⁰

Which came first: child protection orders or offending?

- 2.11 In this project, the term *child protection order* refers collectively to four categories of orders made by the Family Division of the Children's Court of Victoria:
- interim accommodation orders;
 - protection orders;
 - permanent care orders; and
 - therapeutic treatment orders.⁴¹
- 2.12 Almost one in five of the 5,063 children in the study group were the subject of at least one child protection order in their lifetime (18% or 892 children). This comprised almost half of the 1,938 children who were reported to the Child Protection Service (46% or 892 children). Almost all these children were the subject of at least one *protection order* (833 children or 16% of the study group). This is a final order made by the Children's Court once it is satisfied that the child is in need of protection based on one or more grounds in section 162 of the *Children, Youth and Families Act 2005* (Vic).

Almost all children with child protection orders were known to child protection before they first offended

- 2.13 Of the 892 sentenced and diverted children who were the subject of a child protection order:
- 77% (685 children) were the subject of a child protection order before their first sentenced or diverted offence;
 - 21% (190 children) offended before they were the subject of a child protection order but after their first child protection report;
 - <1% (two children) offended on the same day as their first child protection report; and
 - only 2% (15 children) offended before their first child protection report.
- 2.14 Overall, 98% of the 892 children with child protection orders were known to child protection before their first offence date.

Even for children first reported to child protection at or above the age of criminal capacity, most had not offended before their first child protection order

- 2.15 Of the 892 sentenced and diverted children who were the subject of a child protection order, 187 were first reported to child protection aged 10 or over. Of these 187 children, over half (54% or 101 children) committed their first sentenced or diverted offence after their first child protection order. Overall 91% were known to child protection before their first offence date.⁴²

40. Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision: 1 July 2014 to 30 June 2018* (2019) 6, 8.

41. For a discussion of these orders, see Sentencing Advisory Council (2019), above n 10, 11–12.

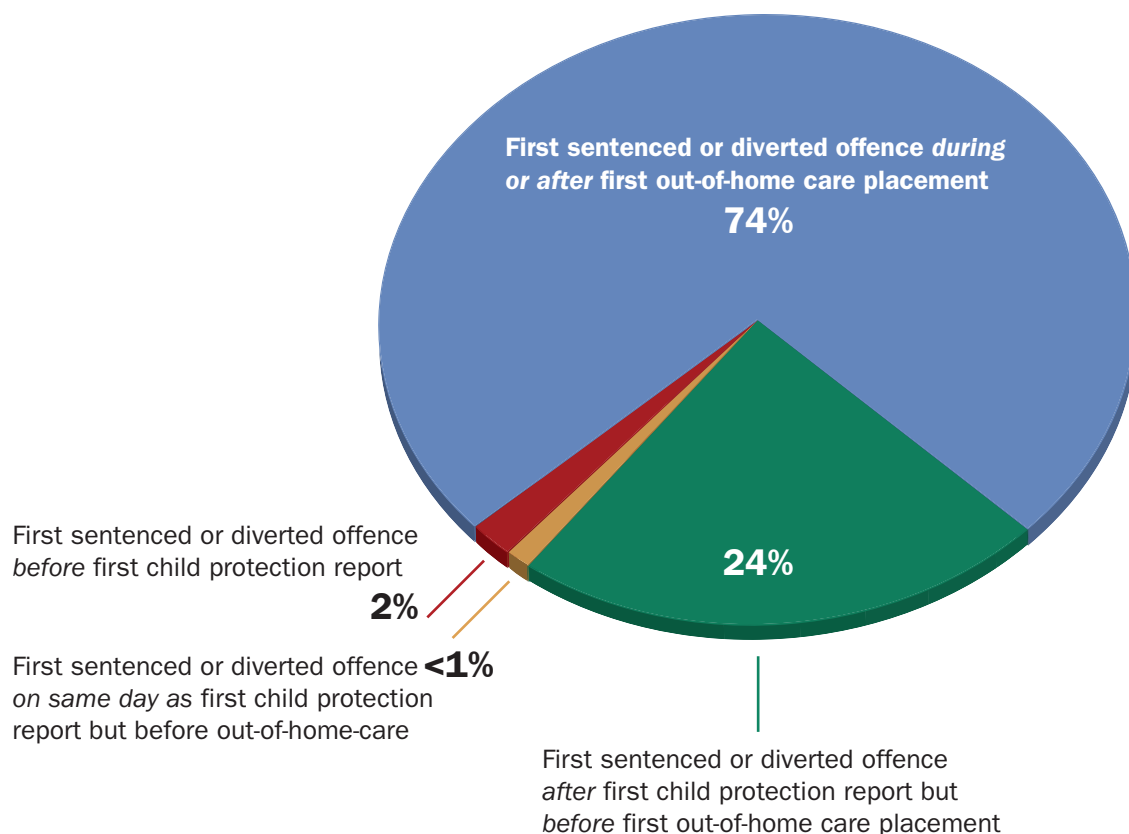
Which came first: out-of-home care or offending?

Most children who experienced out-of-home care were placed in care before they first offended

2.16 Most sentenced and diverted children who experienced out-of-home care only started offending during or after their first care placement. As shown in Figure 4, of the 767 sentenced and diverted children who experienced out-of-home care:

- 74% (569 children) first offended after being placed in out-of-home care;
 - 24% (182 children) committed their first sentenced or diverted offence before their first out-of-home care placement but after their first child protection report;
 - <1% (two children) offended on the same day as their first child protection report; and
 - only 2% (14 children) offended before any contact with the Child Protection Service.
- The remaining 98% (751 children) were known to child protection before their first offence date.

Figure 4: Children who experienced out-of-home care (767 children), by the proportion who committed their first sentenced or diverted offence before, during or after their first out-of-home care placement



42. Of the 187 children first reported aged 10 or over, 37% committed their first sentenced or diverted offence before their first child protection order but after being the subject of a report to the Child Protection Service (69 children); 8% offended before their first child protection report (15 children); and 1% committed their first sentenced or diverted offence on the same day as their first child protection report (2 children).

One in two children who offended after experiencing out-of-home care were on a care placement when they first offended

- 2.17 Of the 569 children who first offended after being placed in out-of-home care:
- 50% (287 children) were living in an out-of-home care placement at their first offence date (42 children committed their first sentenced or diverted offence during their *first* out-of-home care placement, and 245 committed their first sentenced or diverted offence during a *subsequent* out-of-home care placement); and
 - 50% (282 children) first offended after their first out-of-home care placement but were no longer in out-of-home care at their first offence date.
- 2.18 Overall 37% of the 767 children in the study group who experienced out-of-home care first offended while living in a care placement (287 children), although the offending may not have taken place in the unit.

Even for children first reported at or above the age of criminal capacity, more than half had not offended before placement in out-of-home care

- 2.19 The analysis considered the 169 children who experienced out-of-home care and were first reported to the Child Protection Service aged 10 or over. The findings were broadly consistent with those for children who experienced out-of-home-care overall: 59% did not offend until after they were placed into out-of-home care. Therefore, even controlling for the different windows within which a child can become involved with the child protection system or the youth justice system, most sentenced and diverted children who experienced out-of-home care started offending during or after their first out-of-home care placement.⁴³

Which came first: residential care or offending?

Most children who experienced residential care had not offended before being placed in residential care

- 2.20 As shown in Figure 5 (page 15), of the 525 sentenced and diverted children who experienced residential care:
- 55% (287 children) committed their first sentenced or diverted offence during (41 children) or after (246 children) their first residential care placement. Of the 246 children who committed their first sentenced or diverted offence after their first residential care placement, 135 were on an active residential care placement at their first offence date;
 - 43% (225 children) committed their first sentenced or diverted offence before their first residential care placement but after their first child protection report;
 - <1% (two children) offended on the same day as their first child protection report; and
 - only 2% (11 children) offended before any contact with the Child Protection Service (Figure 5).

43. Of those 169 children, 59% (100 children) committed their first sentenced or diverted offence during (14 children) or after (86 children) their first out-of-home care placement; 31% committed their first sentenced or diverted offence before their first out-of-home care placement but after their first child protection report (53 children); 8% committed their first sentenced or diverted offence before their first child protection report (14 children); and 1% (2 children) committed their first sentenced or diverted offence on the same day as their first child protection report.

2.21 Overall, 98% of the 525 sentenced and diverted children who experienced residential care were known to child protection before their first offence date (512 children).

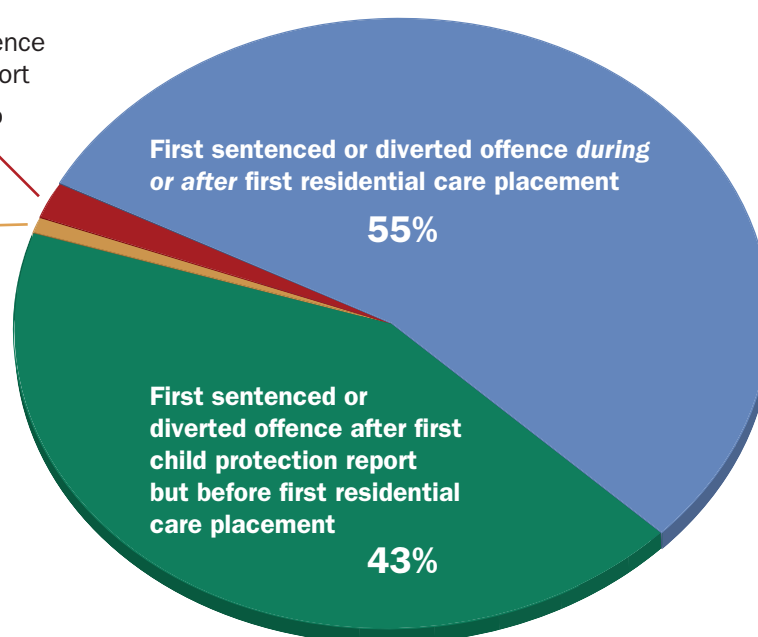
Figure 5: Children who experienced residential care (525 children), by the proportion who committed their first sentenced or diverted offence before, during or after their first residential care placement

First sentenced or diverted offence
before first child protection report

2%

<1%

First sentenced or diverted offence
on same day as first
child protection report but
before first residential care
placement



Even for children first reported at or above the age of criminal capacity, almost half had not offended before being placed in residential care

2.22 The analysis considered the 130 children in the study group who were first reported to the Child Protection Service aged 10 or over and experienced residential care. The findings were broadly consistent with those for children who experienced residential care overall: almost half (47%) did not offend until after placement in residential care, and 90% were known to child protection before their first sentenced or diverted offence.⁴⁴ Case Study I, from Victoria Legal Aid's *Care Not Custody* report,⁴⁵ provides an example of a child who offended while in residential care.

44. Of the 130 children who experienced residential care and were first reported to the Child Protection Service aged 10 or over, 47% (61 children) committed their first sentenced or diverted offence during or after their first residential care placement; 43% committed their first sentenced or diverted offence before their first residential care placement but after their first child protection report (56 children); 8% committed their first sentenced or diverted offence before their first child protection report (11 children); and 2% committed their first sentenced or diverted offence on the same day as their first child protection report (2 children).

45. Victoria Legal Aid (2016), above n 9.

Case Study 1: 'Jess'

Jess grew up exposed to domestic violence. Notifications to DHHS [Department of Health and Human Services] were made from when Jess was a few months old, and DHHS was involved at various stages through her childhood. When Jess was 10, her stepfather started to abuse her, physically and mentally. 'He used to smash things over my head [...] He also used to take everything out of my room that could entertain me. I was just told to sit there. I was only allowed out for dinner. I was then told to go to bed. This happened for about a year'.

Jess was eventually placed in out-of-home care aged 13 when her school found out what was happening to her. After being moved through multiple foster homes, she was placed in residential care. She describes being in residential care as initially feeling like she was in jail. She was a 'scared little kid' and 'didn't talk to anyone'. She was surprised to find cupboards were locked and she wasn't allowed to use the phone.

In the next unit she was moved to, Jess had her first contact with drugs and was assaulted by another resident. Feeling no-one cared about her, she went into a downward spiral. She began smoking a lot of marijuana and skipping school. 'I went really out of control at that unit ... Life was nothing. Workers in that unit didn't care about the kids taking drugs. They would just sit in their office'. At the next unit she was moved to, she had a scuffle with a worker and got her first criminal charge. This charge was subsequently withdrawn.

Jess moved unit again, and this time it was a positive change. Staff turnover was lower, and workers at the residence would drive her to visits with her mother. One night, however, she came home late and was grounded for a month. This meant the workers would no longer drive her to see her mother and it was too far for Jess to go on public transport. Jess was trying to improve her relationship with her mother and this upset her considerably. During that month, Jess got into a dispute with a worker in the unit about using the phone to call her mother. The unit had a policy limiting phone calls to 10 minutes in length. At the end of the 10 minutes, Jess walked off with the cordless phone, and the worker disconnected it. Angry that she couldn't get to see her mother or even talk with her on the phone, Jess threw the phone at the wall. The phone broke, the workers called police, and Jess was charged with criminal damage and discharging a missile. Despite offering to pay for the cost of replacing the phone, Jess now has a criminal record relating to this incident.

Source: Victoria Legal Aid, *Care Not Custody: A New Approach to Keep Kids in Residential Care out of the Criminal Justice System* (2016) 11.

Time from first residential care placement to first offence date

- 2.23 One-third of sentenced and diverted children who experienced residential care were living in their first or a subsequent residential care placement when they first offended (34% or 176 children). Most (135 children) were on their second or subsequent placement when they first offended; the remaining 41 children first offended during their first residential care placement.
- 2.24 Of the 176 children who first offended during a residential care placement, most first offended within 12 months of their first day in residential care (61% or 107 children). Four children (2%) first offended within one day of entering residential care, 11% (19 children) first offended within one month of their first day of residential care, 22% (39 children) first offended within 3 months of their first day of residential care and 41% (73 children) first offended within six months of their first day of residential care.

- 2.25 The four children who committed their first sentenced or diverted offence within one day of first entering residential care were two girls aged 14, one boy aged 12 and one boy aged 14. None of these four children was recorded as being Aboriginal and Torres Strait Islander children. Data was not available on the exact time of placement or offence. For example, a child might have offended in the morning and been placed into residential care that afternoon after being arrested by police. Conversely, a child might have been removed from their home into residential care in the morning and offended that afternoon. Table 1 describes the offences committed by or alleged against these four children on their first day (within 24 hours) of residential care.

Table 1: First sentenced or diverted offence(s) committed by four children within 24 hours of their first day in a residential care placement

Children	Offences
Child 1: boy aged 12 ('Jack' in Case Study 2)	Within 24 hours of entering residential care (the next day), Child 1 engaged in behaviour that resulted in seven charges. Five of the charges were struck out (recklessly cause serious injury, assault in company, unlawful assault, assault with instrument and theft from shop), but two charges remained (affray and handle stolen goods). More than a year later, he was sentenced to 10 months' probation for these two charges.
Child 2: boy aged 14	On the same day as entering residential care, Child 2 engaged in behaviour that resulted in eight charges. Four charges of threat to kill were ultimately struck out. Approximately six months after the offending, he was sentenced to a 12-month good behaviour bond for one charge of theft, one charge of criminal damage and two charges of contravene family violence intervention order.
Child 3: girl aged 14	On the same day as entering residential care, Child 3 engaged in behaviour that resulted in four charges. Approximately four months later, she was sentenced to a 12-month good behaviour bond for one charge of theft from shop and two charges of assault emergency worker on duty. A further charge of assault emergency worker on duty was struck out.
Child 4: girl aged 14	On the same day as entering residential care, Child 4 engaged in behaviour that resulted in four charges. More than a year later (14 months), she was granted a court-ordered diversion for two charges of assault with weapon, one charge of threat to kill and one charge of contravene family violence intervention order.

- 2.26 The circumstances of Child 2 and Child 4 are consistent with evidence suggesting that some children enter residential care in the context of ongoing conflict in their family home.⁴⁶ Such cases may culminate in the child being placed on and breaching a family violence intervention order and the child's parent or carer surrendering the child into the out-of-home care system. While the child's violence may contribute to their movement into residential care, research suggests that this behaviour is typically associated with exposure to past violence and other trauma and/or cognitive impairment.⁴⁷

46. See further [4.8]. See also Stewart et al. (2008), above n 37; Cashmore (2011), above n 37; Emily Hurren et al., 'Transitions and Turning Points Revisited: A Replication to Explore Child Maltreatment and Youth Offending Links within and across Australian Cohorts' (2017) 65 *Child Abuse & Neglect* 24; Malvaso et al. (2017), above n 37, 40; Dean (2018), above n 34.

47. State of Victoria, Royal Commission into Family Violence, *Volume IV: Report and Recommendations* (2016), 149, 156; Susan Baidawi and Rosemary Sheehan, 'Cross-Over Kids: Effective Responses to Children and Young People in the Youth Justice and Statutory Child Protection Systems' (2019), 43–44, 95–96.

- 2.27 Child 1 and Child 3 offended for the first time in other ways on the day they first entered residential care. Case Study 2 ('Jack') highlights the circumstances of Child 1, and Figure 6 (pages 19–24) sets out a timeline of Child 1's known child protection, offending and sentencing history. Child 1 was chosen at random from Table 1 to study more closely. For privacy reasons, exact dates have been removed, and Jack is not his real name.

Case Study 2: 'Jack'

Jack first had concerns raised about his welfare when he was one year old, with a report to the Child Protection Service that he was being neglected. Over the next 11 years, a further five reports about Jack were made to the Child Protection Service, but they were either uninvestigated or unsubstantiated. A sixth child protection report, made when Jack was aged 12, was investigated and substantiated, and it was determined that protective intervention was required. After two interim accommodation orders in quick succession, Jack was placed in out-of-home care for the first time, just before his 13th birthday (one month after the relevant child protection report was made). Jack went straight into residential care and committed his first sentenced or diverted offence the next day (affray and handle stolen goods). Jack was removed from his residential care placement that day, with the court making a new interim accommodation order. He was not sentenced for the offences until approximately 16 months after committing them, at which time he received 10 months' probation.

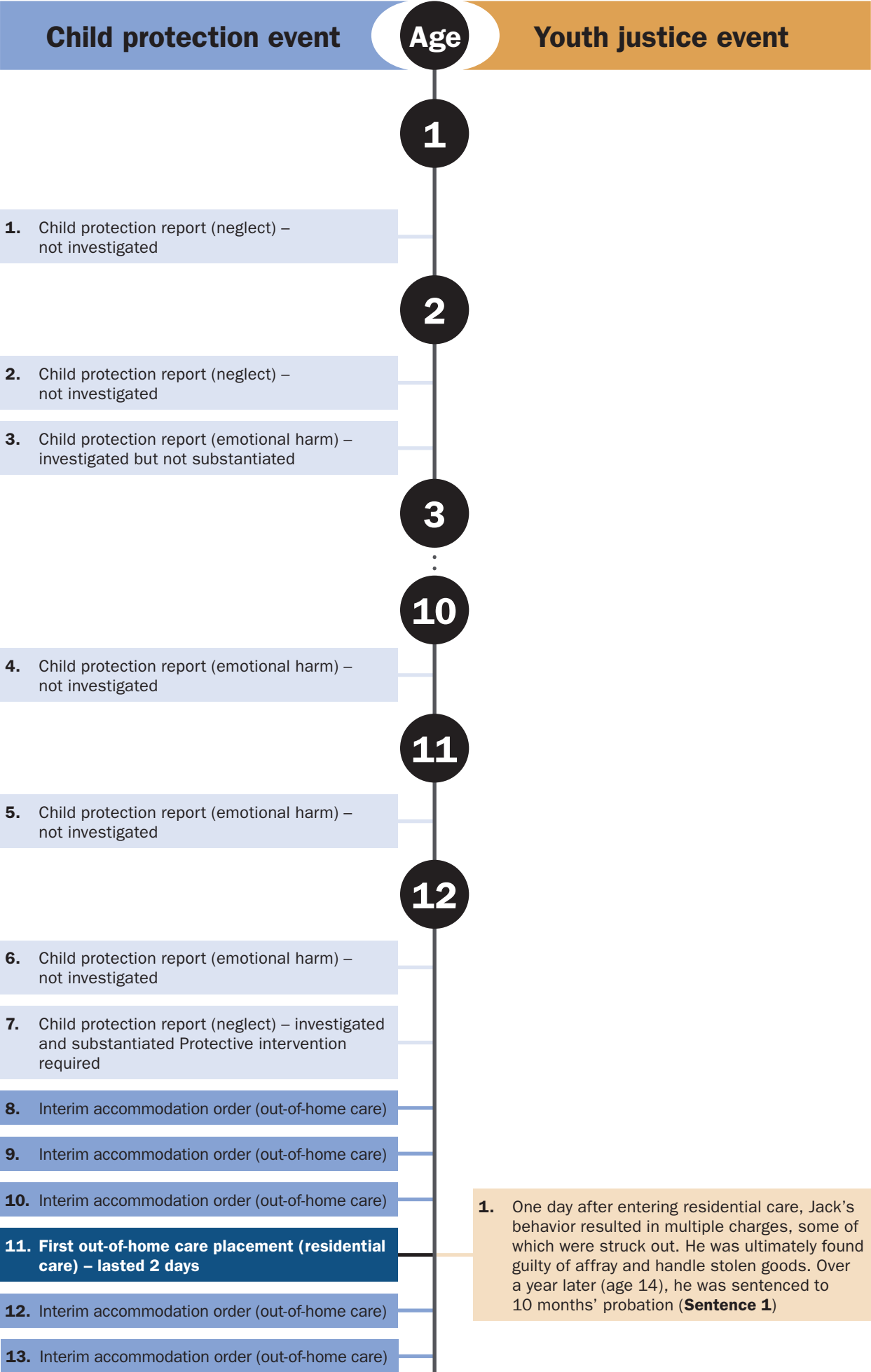
In the six years from Jack's first residential care placement aged 12, he had nine residential care placements across seven different residential care homes. The shortest placement was his first one, which lasted two days. The longest placement lasted 17 months. Jack left residential care for the last time around one month before his 18th birthday. Jack prolifically offended (including violently) during this time, appearing eight times for sentencing in the Children's Court. Jack's Children's Court history is set out in Figure 6.⁴⁸

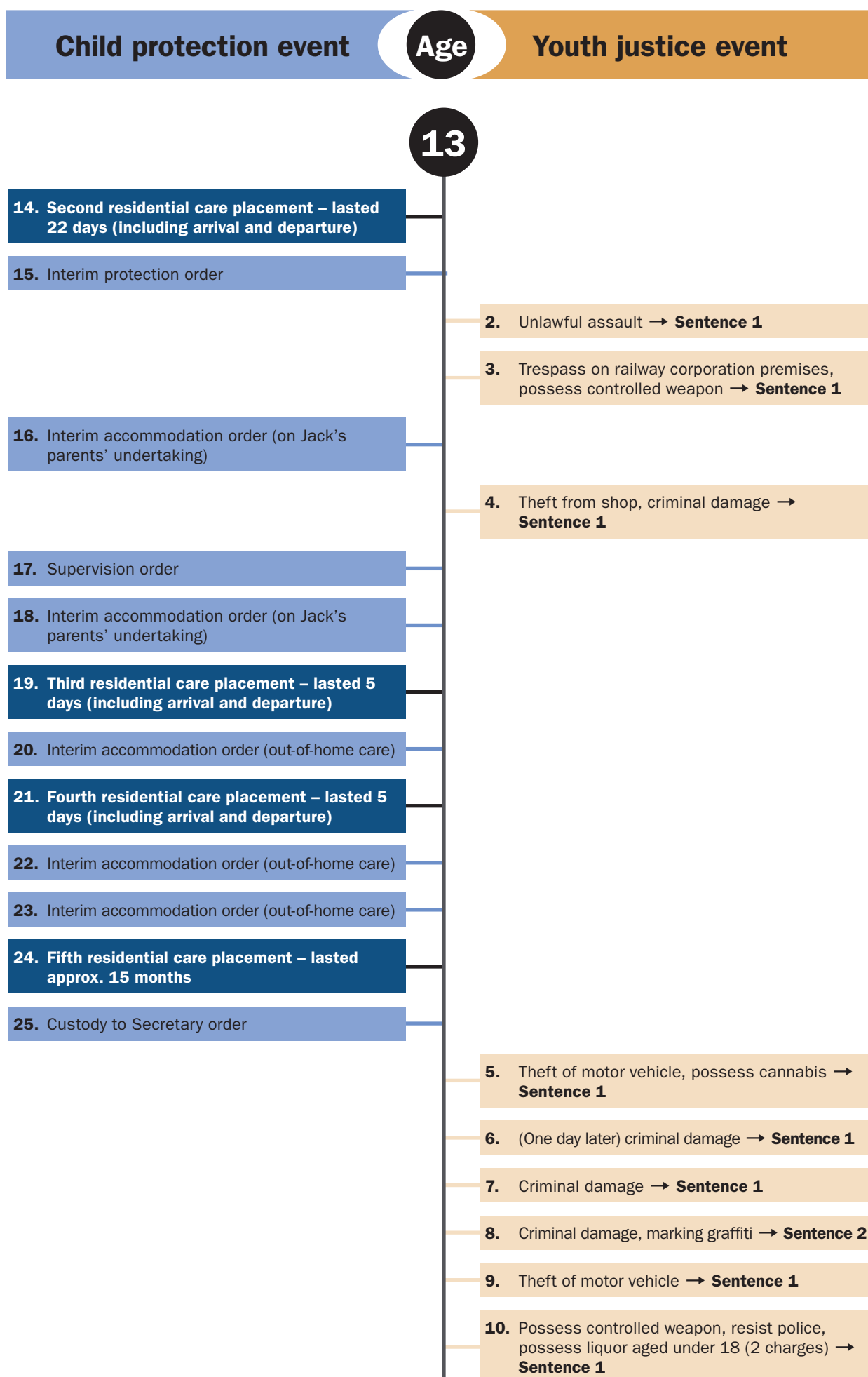
After turning 18, Jack continued to offend and was sentenced to his first term of adult imprisonment aged 20. He received 165 days imprisonment with a 12 month community correction order for numerous offences, including criminal damage, offences against the person (including against police), contravene family violence intervention order and breach bail. He had already served 162 days on remand at the time of his sentence.

- 2.28 Case Study 2 illustrates the several opportunities for positive intervention for Jack well before his entry into the youth justice system. While reports about Jack were not substantiated until he was 12, other interventions may have occurred that are not included in the data, such as the provision of early childhood services, education services or Family Services. The case study also illustrates the volume of offending in which Jack engaged between each sentence and the passage of time between offences and their sentence date. Many of his offences were not sentenced for months or in some cases over a year; by this time, Jack had amassed further offences, and the opportunity for the court to meaningfully intervene had arguably diminished. The case study suggests that neither the child protection system nor the youth justice system was able to quickly and positively intervene in Jack's case to address the risks posed to – and eventually risks posed by – Jack before they became entrenched.

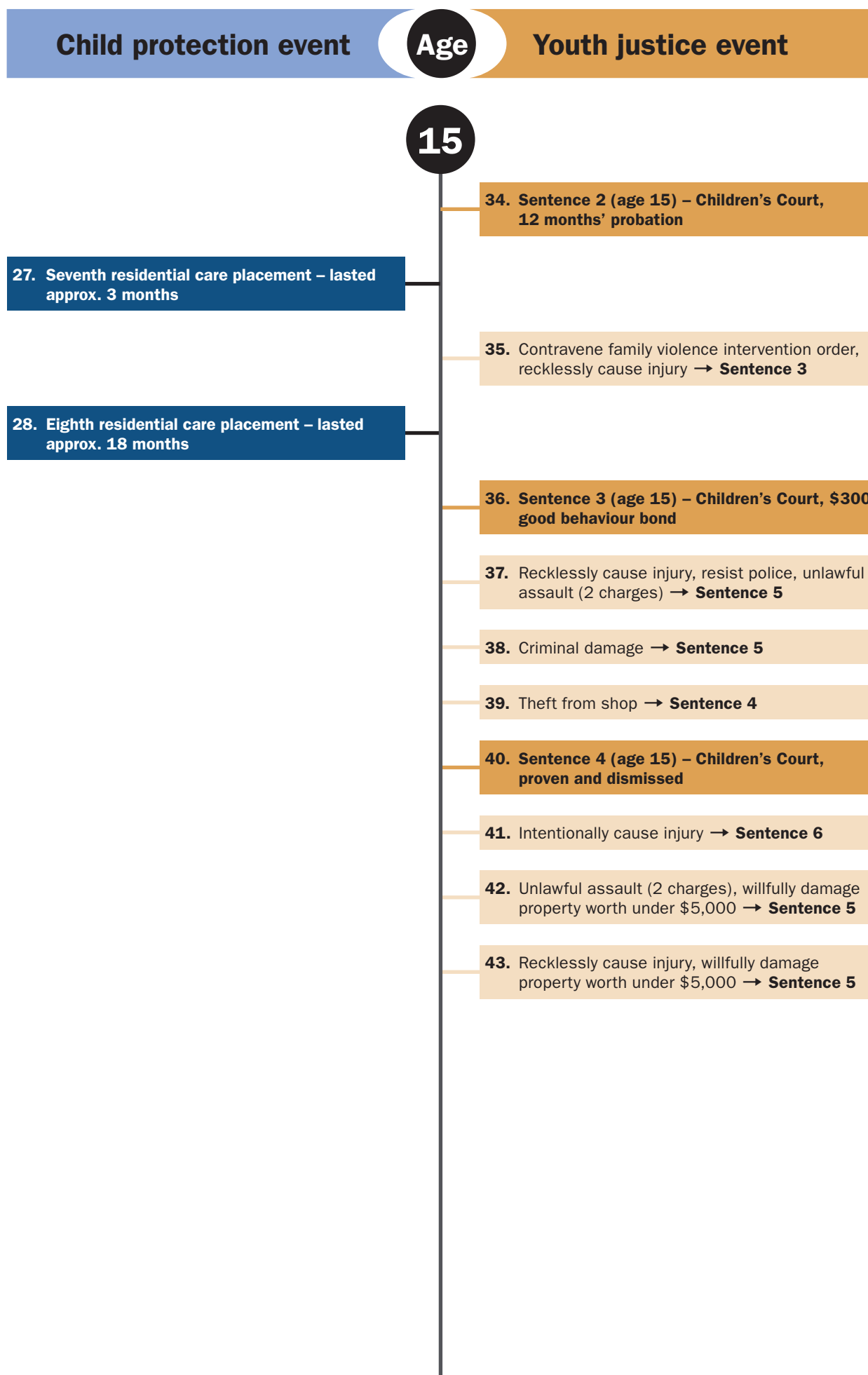
48. Extensive changes to the suite of available child protection orders came into effect 1 March 2016 (during the study period for this report). Interim protection orders, custody to third-party orders and supervised custody orders were all abolished 1 March 2016, and a number of other orders were renamed, for example, supervision orders became family preservation orders: see further Sentencing Advisory Council (2019), above n 10, 57–66. The timeline in Figure 6 includes orders made before these changes came into effect.

Figure 6: Timeline of Jack’s child protection history and youth justice involvement

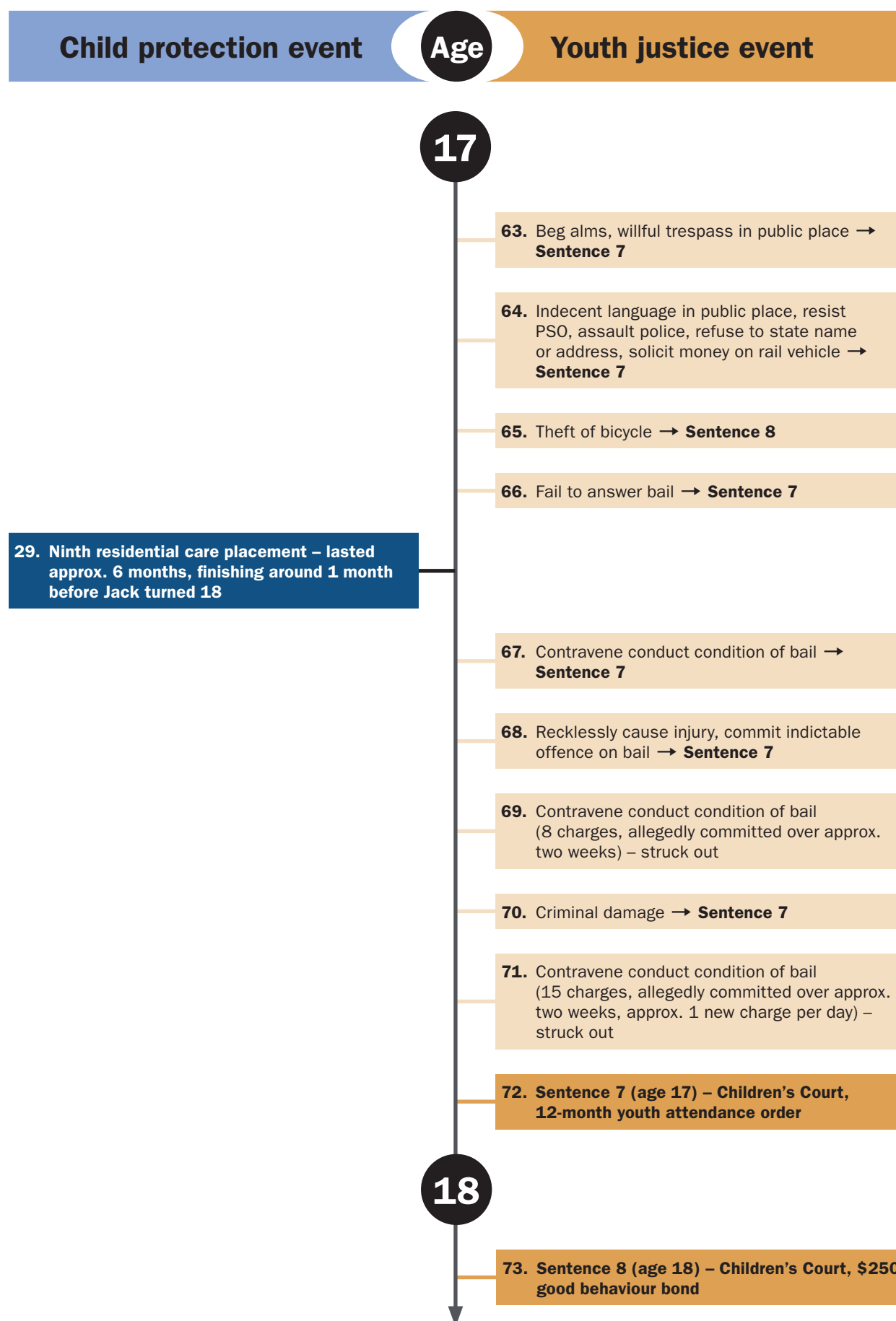








Child protection event	Age	Youth justice event
	16	<p>44. Criminal damage, throwing a missile → Sentence 6</p> <p>45. Threat to kill, unlawful assault, criminal damage, commit indictable offence on bail → Sentence 5</p> <p>46. Sentence 5 (age 16) – Children’s Court, 12 months’ probation</p> <p>47. Criminal damage, unlawful assault, throwing a missile → Sentence 6</p> <p>48. Criminal damage, commit indictable offence on bail → Sentence 6</p> <p>49. Robbery, commit indictable offence on bail, contravene conduct condition of bail → Sentence 6</p> <p>50. Willfully damage property worth under \$5,000 → Sentence 6</p> <p>51. Criminal damage, commit indictable offence on bail → Sentence 6</p> <p>52. Willful obscene exposure in public → Sentence 7</p> <p>53. Sentence 6 (age 16) – Children’s Court, 12-month youth supervision order</p> <p>54. Willful obscene exposure in public → Sentence 7</p> <p>55. Contravene family violence intervention order → Sentence 7</p> <p>56. Recklessly cause injury, drunk and disorderly in public, assault police, resist police, unlawful assault → Sentence 7</p> <p>57. Contravene conduct condition of bail → Sentence 7</p> <p>58. Criminal damage, commit indictable offence on bail → Sentence 7</p> <p>59. Criminal damage, commit indictable offence on bail → Sentence 7</p> <p>60. Contravene conduct condition of bail → Sentence 7</p> <p>61. Resist emergency worker → Sentence 7</p> <p>62. Unlawful assault → Sentence 7</p>



2.29 Jack continued to offend after he turned 18 and was sentenced to his first term of adult imprisonment aged 20.

Discussion and conclusion

- 2.30 Report 1 of this project found that, of all children sentenced or diverted in the Children's Court of Victoria in 2016 and 2017, one in six experienced out-of-home care, and one in 10 experienced residential care (a subset of those who experienced out-of-home care).⁴⁹
- 2.31 The data analysed in this chapter found that the overwhelming majority of 'crossover children' were known to the Child Protection Service before their first sentenced or diverted offence, although some may have been cautioned by police at an earlier date. This suggests that, for the 1,813 children who were known to the Child Protection Service before their first sentenced or diverted offence, there were early opportunities for concerted and coordinated action across service systems before the child started offending. Similarly, almost all children who experienced out-of-home care, including residential care, were known to the Child Protection Service before they started offending, and the majority did not offend before they were placed in care. This finding supports previous research suggesting that the experience of trauma and maltreatment is only one potential causal factor for children's offending behaviour.⁵⁰ For many children, the experience of care itself may be a contributing factor to their crossover into the youth justice system.
- 2.32 Roundtable participants commented that a contributing factor to children first offending after placement in care was the criminalisation of behaviour that may not have resulted in police charges had the child been living at home. Behaviour discussed in this context included children running away from care and being charged with resist, hinder or assault police when police tried to return them to care. It also included less serious criminal damage offences, such as breaking a cup when upset, and drug offences arising from 'self-medication'.⁵¹ One participant commented that sometimes carers involved police not because a child's behaviour was severe but because of its frequency, which could lead carers to eventually call police because they were 'fed up'.⁵² Another participant emphasised that 'entry into residential care can be a really tumultuous time for young people and behaviours can escalate during that time'.⁵³
- 2.33 Other contributing factors raised in consultation included the lack of stability (for example, multiple placements and carers and children being moved with little notice); the compounding effect of separation from siblings on children who have already experienced significant trauma; the lack of capacity to 'match' the children placed together in residential care homes; and the destabilising consequences of removing a child, such as changing schools, moving

I've seen young people placed in residential homes with other young people who may not be appropriate to be placed with. I've also seen individualised placements where there's consistency of the carer, stability in the care, real structure to the care arrangement. Offending just stops. I think that's an important indicator or predictor of the offending: quality of the care placement and de-escalation techniques, and the training and quality of staff.

Roundtable 4 (12 December 2019)

49. Sentencing Advisory Council (2019), above n 10, xxii.

50. Dean (2018), above n 34. See also Stewart et al. (2002), above n 37; Cashmore (2011), above n 37; Hurren et al. (2017), above n 46; Malvaso et al. (2017), above n 37, 40; Victorian Auditor-General, *Residential Care Services for Children* (2014) ix; McFarlane (2018), above n 37, 415; Philip Mendes et al., *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System: Phase Three Report* (2014) 26, 32–34; Joseph Ryan et al., 'Adolescent Neglect, Juvenile Delinquency, and the Risk of Recidivism' (2013) 42(3) *Journal of Youth and Adolescence* 454; Carolyn Smith et al., 'Adolescent Maltreatment and Its Impact on Young Adult Antisocial Behaviour' (2005) 29(10) *Child Abuse and Neglect* 1099; Victoria Legal Aid (2016), above n 9, 7, 11; New South Wales Government, *Joint Protocol to Reduce the Contact of Young People in Residential Out-of-Home Care with the Criminal Justice System* (2016) 5, 15; Gene Griffin and Sarah Sallen, 'Considering Child Trauma Issues in Juvenile Court Sentencing' (2013) 34(1) *Children's Legal Rights Journal* 1, 9–10.

51. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019).

52. Roundtable 3 (10 December 2019).

53. Ibid.

away from friends and loss of community. Many children in care also have cognitive, speech, hearing and language impairments that can impede their ability to understand instructions, communicate their feelings and de-escalate situations. The quality, training and qualifications of residential care staff were seen as a protective factor in some circumstances, such as where residential care staff are able to de-escalate situations and calm down a traumatised child who is exhibiting problematic behaviour.

- 2.34 The relationship between placement in residential care and the commencement of offending is complex: these factors may share causality as well as contributing to one another. For example, a child's unresolved trauma, complex needs and high-risk and challenging behaviours may contribute to difficulties in placing or keeping them in care, other than residential care, and both their behaviour and their placement in residential care may lead to increased contact with police, resulting in charges. In turn, police involvement and placement instability may compound trauma and affect behaviour, leading to further placement instability and police involvement.

- 2.35 Finally, Case Study 2 illustrates a lack of adequate early interventions and ongoing support for children and families at risk or in need of assistance. Roundtable participants highlighted inadequate early support and intervention as key factors contributing to the eventual transfer of at-risk children into the youth justice system.⁵⁴ Case Study 2 shows the difficulty of halting children's offending once it starts, which is compounded by delays in sentencing proven offences, in turn weakening the effectiveness of youth justice interventions. As the President of the Children's Court commented, 'by the time many children come before the Children's Court we are playing "catch- up"'.⁵⁵

I do think it's an incredibly sad trajectory ... The placement system is incredibly hard on them because there's not enough foster care ... It's very hard to get family care ... these kids are often sitting in offices until 10, 11 at night while [child protection workers] are trying to find them somewhere to stay.

When we think about what that might be like ... as a child ... you might have had multiple placement changes, you've had so many new people come into your life or whatever the case may be – it's hardly an environment that is conducive to wellbeing or the type of recovery that you might need, because you didn't come into the system without there being significant trauma to you. You know, we're asking kids to heal themselves in some ways, even though ... there's lots of things in place and agencies are pretty amazing in how they try and support these children, but the longer that you're in there the harder it is.

Roundtable 3 (10 December 2019)

54. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019).

55. Meeting with Judge Amanda Chambers, President, Children's Court of Victoria (4 December 2019).

3. Child protection backgrounds of crossover children

Introduction

- 3.1 This chapter identifies child protection factors that may increase the likelihood of early youth justice involvement by children who are known to child protection (research question 2). While most children known to child protection do not go on to offend, some children end up moving into the youth justice system. Intervening early and effectively, targeting support to meet the needs of such children, is an important crime prevention strategy. Understanding the circumstances associated with early and prolonged youth justice involvement may also assist in identifying factors relevant to sentencing children, including factors relevant to children's rehabilitation and the prevention of future offending.
- 3.2 Previous research, including Report 1 of this project, suggests that the likelihood and extent of a child's protection history may differ according to their gender, age at first contact with the youth justice system and Aboriginal and Torres Strait Islander status.⁵⁶ Aboriginal and Torres Strait Islander children have been found to be over-represented among children both in the child protection system (including in out-of-home care) and in the youth justice system (including in custody) (see [1.24]).
- 3.3 The reasons for this over-representation are complex and interrelated. Factors include:
- underlying issues that contribute to offending and criminal justice responses, such as the continuing effects of colonisation, intergenerational trauma, systemic racism and high rates of poverty; and
 - offence patterns and criminal justice responses, such as 'a greater likelihood of coming into contact with police and justice systems'.⁵⁷
- 3.4 This chapter explores differences in the child protection histories of the 1,938 children in the study group who were known to child protection. It considers their age at first sentence or diversion, gender and Aboriginal and Torres Strait Islander status (see further Table A1, page 81).

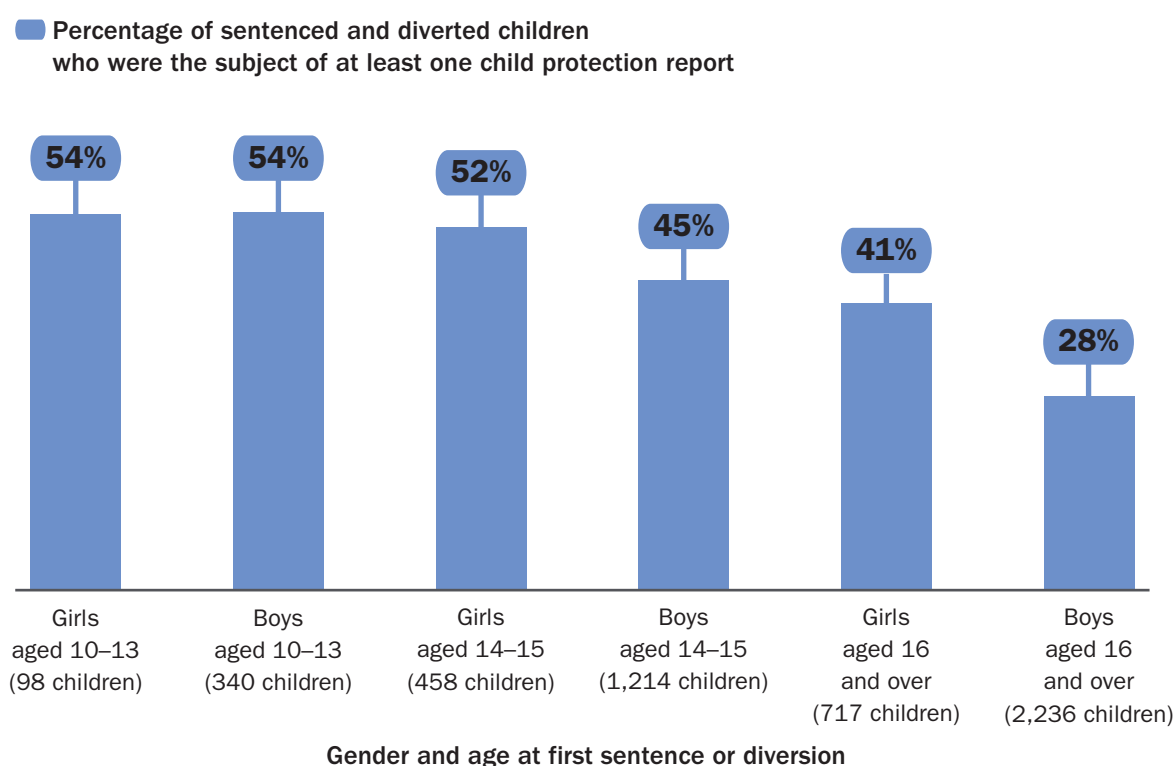
56. Sentencing Advisory Council (2019), above n 10, xxiv, 35–39, 87; Cashmore (2011), above n 37, 35; Australian Institute of Health and Welfare (2018), above n 33, vii, 14–15; Productivity Commission (2017), above n 33, 16.3; Lewis et al. (2018), above n 33, 9.

57. Dean (2018), above n 34. See also Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report*, vol. 1 (2017) 166–180; Harry Blagg et al., *Systemic Racism as a Factor in the Over-Representation of Aboriginal People in the Victorian Criminal Justice System* (2005).

Children who entered the youth justice system early (aged 10–13) were most likely to be known to child protection

3.5 The younger children in the study group were at first sentence or diversion, the more likely they were to have been the subject of a child protection report at least once in their life (Figure 7). More than half (54%) of children aged 10–13 in the study group were the subject of at least one child protection report; however, the proportion dropped to 41% (for girls) and 28% (for boys) aged 16 or over.

Figure 7: The proportion of the 5,063 children in the study group who were the subject of at least one child protection report, by age and gender



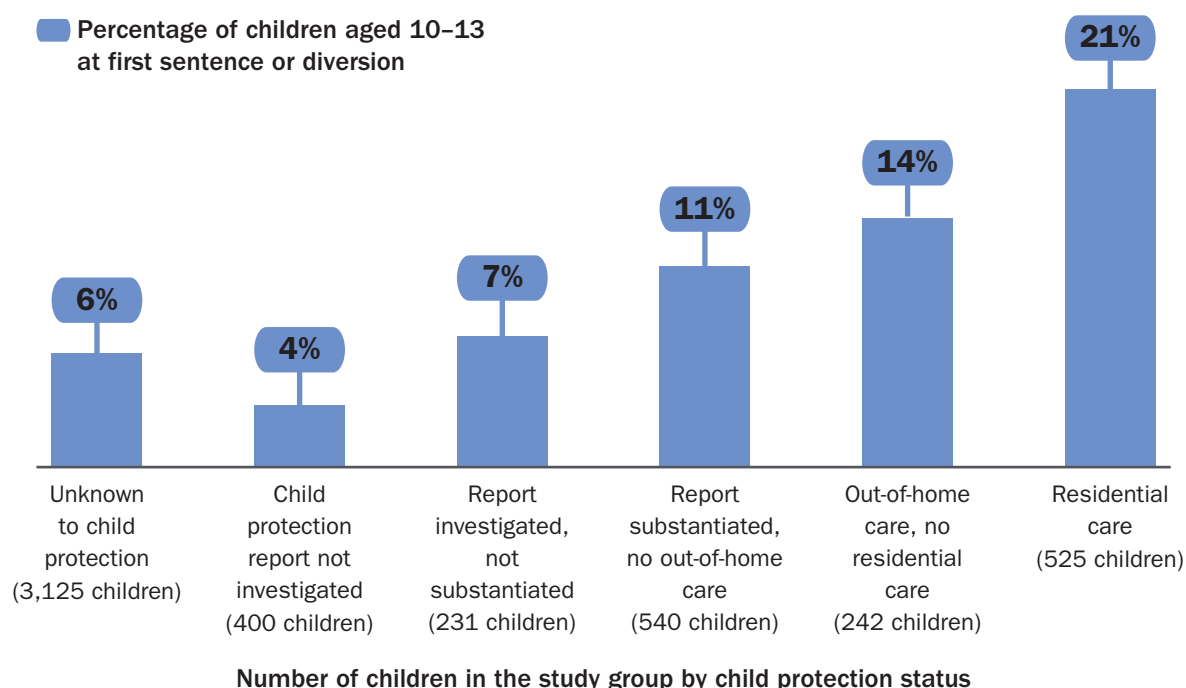
3.6 Children who were younger at first sentence or diversion were more likely to have been the subject of an investigated or substantiated child protection report and a child protection order, and they were more likely to have experienced out-of-home care and residential care (see Figure A1, page 82).

3.7 For children first sentenced or diverted aged 14 or over, there was also an association between gender and child protection involvement: girls who were sentenced or diverted were more likely than boys to be known to child protection (Figure 7).

Children who experienced residential care entered youth justice earlier

3.8 Sentenced and diverted children who experienced residential care were far more likely than other crossover children to enter the youth justice system early. Of children who experienced residential care, 21% were aged 10–13 at their first sentence or diversion. In comparison, of children who were unknown to child protection, 6% were aged 10–13 at their first sentence or diversion (Figure 8, page 29).

Figure 8: Highest level of child protection involvement (if any) among children in the study group and proportion of children in each child protection category aged 10–13 at first sentence or diversion



Which children had the highest levels of child protection involvement?

- 3.9 Of the 1,938 sentenced and diverted children known to child protection, girls generally experienced more child protection involvement than boys. In addition, children who were younger at first sentence or diversion generally experienced more intervention than older children, and Aboriginal and Torres Strait Islander children generally experienced more intervention than non-Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander girls who entered the youth justice system early had the highest level of child protection involvement

- 3.10 Of all children in the study group known to child protection, Aboriginal and Torres Strait Islander girls aged 10–13 at first sentence or diversion (16 girls) experienced the highest level of child protection involvement. All 16 girls were the subject of at least one *investigated* report. Of these, 15 had at least one *substantiated* report, had at least one child protection order and had experienced out-of-home care, while 11 had also experienced residential care (see Figure A1, page 82). Caution should be taken with this finding due to the small numbers. However, it is consistent with the overall finding that gender, young age at first sentence or diversion and Aboriginal and Torres Strait Islander status all appeared to be associated with increased child protection involvement.
- 3.11 Aboriginal and Torres Strait Islander girls who were known to child protection and first sentenced or diverted aged 16 or over also had relatively high rates of child protection orders (78%) and out-of-home care (56%) compared with their peers of the same age at first sentence or diversion (see Figure A1, page 82).

Children aged 10–13 at first sentence or diversion were most likely to experience out-of-home care

- 3.12 Of the 1,938 children known to child protection, Aboriginal and Torres Strait Islander children aged 10–13 at first sentence or diversion experienced the highest proportion of out-of-home care (94% for girls and 73% for boys). The third highest proportion of out-of-home care was experienced by non-Aboriginal and Torres Strait Islander girls first sentenced or diverted aged 10–13 (61%).

Children aged 10–13 and girls aged 14–15 at first sentence or diversion were most likely to experience residential care

- 3.13 Of children known to child protection, those aged 10–13 at first sentence or diversion had far higher rates of residential care than older children, and girls aged 14–15 at first sentence or diversion had far higher rates of residential care than their male counterparts (see Figure A1, page 82).

Number of child protection reports

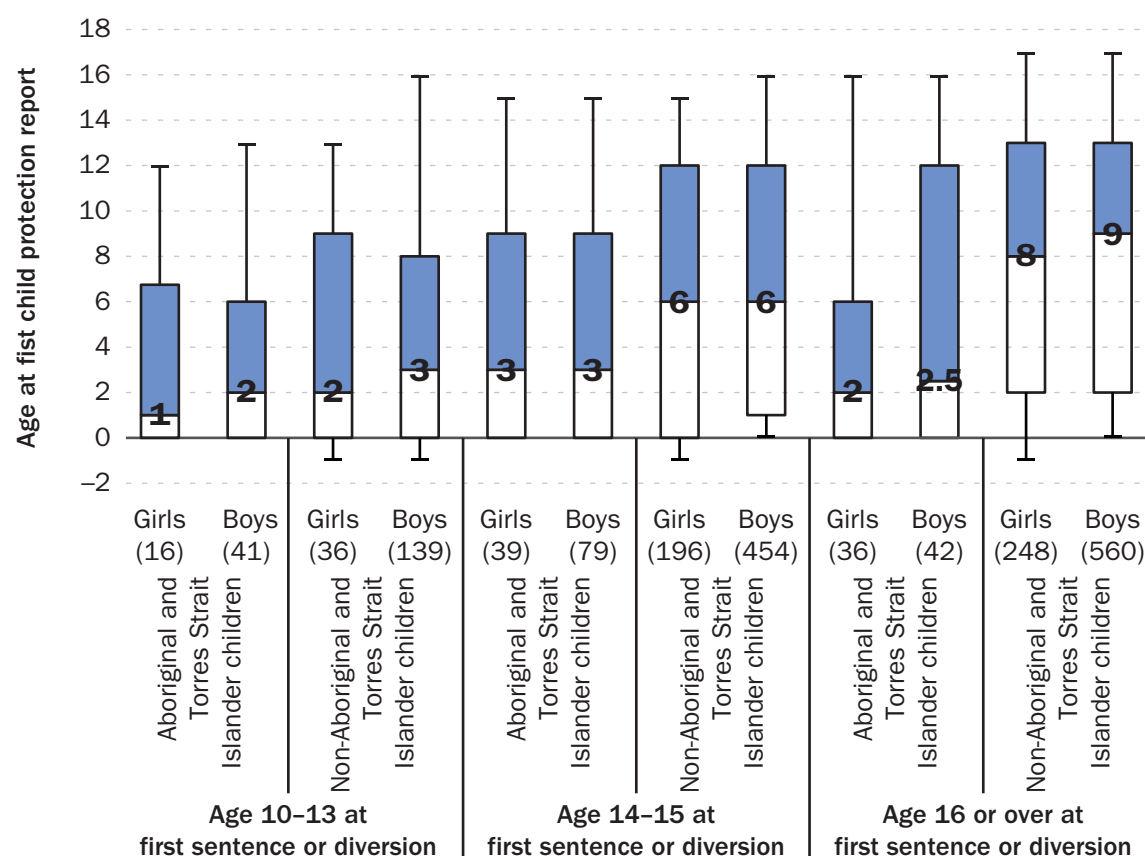
- 3.14 The median number of child protection reports in the child's lifetime was similar for all crossover children first sentenced or diverted aged under 16, varying between seven (for children first sentenced or diverted aged 14–15) and nine (for children first sentenced or diverted aged 10–13).
- 3.15 Among children first sentenced or diverted aged 16 or over, the median number of child protection reports was higher for girls than for boys and was higher for Aboriginal and Torres Strait Islander children than for other children. For example, the median number of child protection reports for Aboriginal and Torres Strait Islander girls (9 reports) was more than double that for non-Aboriginal and Torres Strait Islander boys (4 reports) (see Figure A2, page 83).

Aboriginal and Torres Strait Islander crossover children were younger at first child protection report

- 3.16 The age at which children in the study group were first reported to the Child Protection Service ranged from before birth (via an unborn child report) to 17 years. The median age at first report for all 1,938 children known to child protection (including 49 children with unborn child reports) was six years. This was the same for boys and girls.
- 3.17 The median age at first child protection report was substantially lower for Aboriginal and Torres Strait Islander children than for other children:
- the 253 Aboriginal and Torres Strait Islander children had a median age of two years at first child protection report (including 10 children with unborn child reports); and
 - the 1,633 non-Aboriginal and Torres Strait Islander children had a median age of seven years at first child protection report (including 38 children with unborn child reports).

- 3.18 Among non-Aboriginal and Torres Strait Islander children, those first sentenced or diverted aged 10–13 were more likely than older children to have entered the child protection system early (before age 4). In contrast, Aboriginal and Torres Strait Islander children had a median age of three years or under at first child protection report, regardless of their age at first sentence or diversion. As a result, the difference between Aboriginal and Torres Strait Islander children and non-Aboriginal and Torres Strait Islander children was most apparent among those first sentenced or diverted aged 16 or over: Aboriginal and Torres Strait Islander children had a median age of 2–2.5 years at first report while non-Aboriginal and Torres Strait Islander children had a median age of 8–9 years at first report (Figure 9).

Figure 9: The 1,938 sentenced and diverted children known to child protection, by age at first sentence or diversion, gender and Aboriginal and Torres Strait Islander status and age at first child protection report⁵⁸



Younger crossover children were more likely to be Aboriginal and Torres Strait Islander children

- 3.19 Aboriginal and Torres Strait Islander children comprised:

- 24% of crossover children first sentenced or diverted aged 10–13;
- 15% of crossover children first sentenced or diverted aged 14–15; and
- 8% of crossover children first sentenced or diverted aged 16 or over.

58. See Appendix 2 for an explanation of 'box-and-whiskers-plots', such as in Figure 9. Figure 9 shows that for the 560 non-Aboriginal and Torres Strait Islander boys first sentenced or diverted aged 16 or over, the minimum age at first child protection report is 0 (the bottom whisker), and the maximum is 17 years (the top whisker). The 25th quartile is two years and the 75th quartile is 13 years, represented by the bottom and top of the box respectively, and the median is nine years, represented by the line dividing the box into two compartments. Fifty-two children (3%) were excluded from the graph because their Aboriginal and Torres Strait Islander status was unknown. Unborn child reports are included in this graph, causing some of the whiskers (representing the minimum) to go below 0 years of age.

Type of harm reported and substantiated

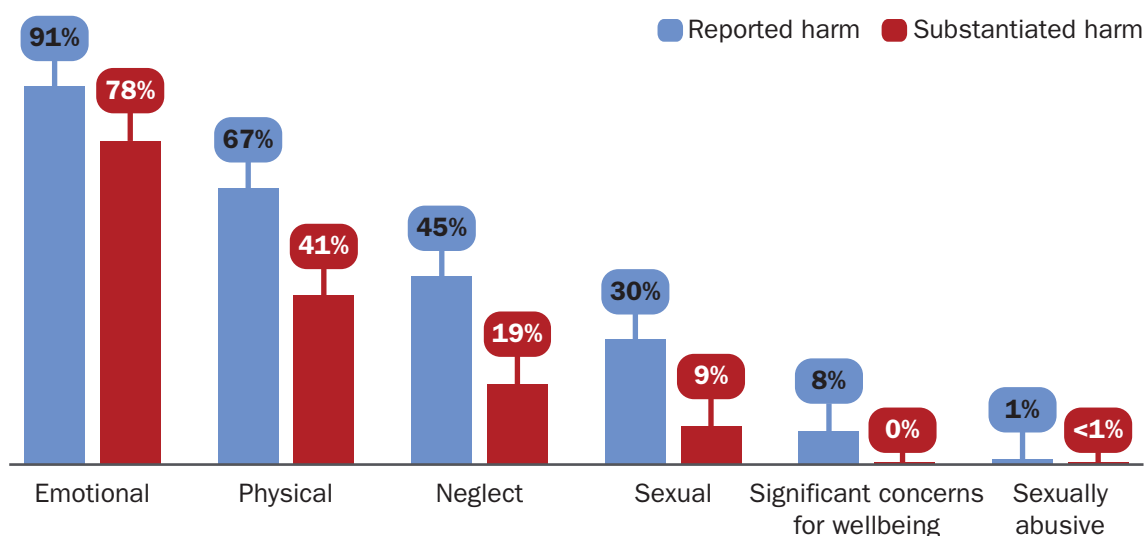
3.20 As discussed at [1.13], a child is considered in need of protection if any of the following grounds exist:

- the child's parent has abandoned the child and can't be found or is dead or incapacitated and there is no other suitable carer;
- the child has suffered, or is likely to suffer, significant harm due to physical injury or sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from such harm;
- the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind as to significantly damage, or risk damaging, the child's emotional or intellectual development and the child's parents have not protected, or are unlikely to protect, the child from such harm; and
- the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, or are unlikely to provide or allow, basic medical or remedial care.

3.21 The 'primary reported harm'⁵⁹ in a child protection report is classified into the following categories based on the grounds for child protection: emotional, physical, neglect, sexual, 'significant concerns for wellbeing' and sexually abusive.

3.22 Figure 10 shows the primary *reported* harm in all child protection reports relating to the 1,938 sentenced and diverted children known to child protection (many children experienced more than one report). It also shows the primary *substantiated* harm in all *substantiated* reports relating to the 1,286 sentenced and diverted children with at least one substantiated report.

Figure 10: Primary reported harm for children in the study group with at least one child protection report (1,938 children) and primary substantiated harm for children with at least one substantiated report (1,286 children), by percentage with each category of harm⁶⁰



59. A child protection report may disclose multiple areas of harm or risk relating to a child. Each report is classified by the Department of Health and Human Services according to the main, or 'primary', area of harm or risk reported. Figure 10 shows the primary harm in all reports for the 1,938 children in the study group with at least one report and the primary harm in all substantiated reports for the 1,286 children with at least one substantiated report. Children may have had more than one type of primary harm reported or substantiated as most children had more than one child protection report and many had more than one substantiated report, that is, the categories overlap. For example, a child with three reports alleging emotional harm and one report alleging physical harm would be counted once in the emotional harm category and once in the physical harm category.

60. A very small percentage of reports (involving 1% of children) had 'not stated' as their primary reported harm. These reports were excluded from Figure 10.

The most common reported and substantiated harm was emotional harm

- 3.23 For children in the study group who were known to child protection, emotional harm was the most common primary *reported* harm: 91% of the 1,938 reported children had at least one child protection report with emotional harm as the primary reported harm. Emotional harm was also the most common primary *substantiated* harm: 78% of the 1,286 children with substantiated reports had at least one with emotional harm as the primary substantiated harm. Emotional harm includes exposure to family violence.⁶¹
- 3.24 The levels of reported emotional harm did not vary substantially based on age, gender or Aboriginal and Torres Strait Islander status. The proportion of children with at least one report of emotional harm ranged from 87% (non-Aboriginal and Torres Strait Islander boys first sentenced or diverted aged 16 or over) to 98% (Aboriginal and Torres Strait Islander boys first sentenced or diverted aged 16 or over).

Nearly half of crossover children had a substantiated report of physical harm

- 3.25 Around two-thirds (67%) of the children in the study group who were known to child protection were the subject of at least one report raising concerns about physical harm. For children with substantiated reports, 41% had at least one substantiated report of physical harm. The children most likely to have at least one report of physical harm were children first sentenced or diverted aged 10–13 (regardless of gender or Aboriginal and Torres Strait Islander status) and Aboriginal and Torres Strait Islander girls first sentenced or diverted aged 14–15 (over 80% of children in these categories had at least one report with physical harm the primary reported harm).

One in two children had at least one report of neglect, but far fewer had reports substantiated on this basis

- 3.26 Almost half (45%) of the 1,938 children known to child protection were the subject of at least one report with neglect being the primary reported harm. However, far fewer child protection reports were substantiated by the Child Protection Service on the basis of neglect: only 19% of children with *substantiated* reports had at least one with neglect being the primary substantiated harm.
- 3.27 In relation to age at first sentence or diversion, Aboriginal and Torres Strait Islander boys were more likely than other children in that age group to have at least one report based on neglect. For example, of children first sentenced or diverted aged 10–13, 71% of Aboriginal and Torres Strait Islander boys were the subject of at least one report based on neglect, compared with 50% of Aboriginal and Torres Strait Islander girls in the same age group.
- 3.28 Some roundtable participants suggested that for Aboriginal and Torres Strait Islander children, reports based on 'neglect' may reflect community attitudes that label culturally appropriate parenting practices as 'neglectful'.⁶² This may explain, at least partially, the far lower proportion of substantiated reports with neglect as the primary substantiated harm (19%).

61. Australian Institute of Family Studies, *Child Protection and Aboriginal and Torres Strait Islander Children*, CFCA Resource Sheet (January 2020) 6; Lewis et al. (2018), above n 33, 11, 68.

62. Roundtable 3 (10 December 2019).

Around one-third of children were reported based on sexual harm

3.29 Of the 1,938 children known to child protection, 30% had at least one report based on sexual harm. However, of the 1,286 children with at least one *substantiated* report, only 9% had a report *substantiated* based on sexual harm. This lower proportion is likely to reflect difficulties and complexities in investigating and substantiating sexual abuse allegations, particularly when children are young. Where multiple grounds are available to support a protective application, the Child Protection Service may be more likely to select a ground that is easier to establish and involves less trauma to the child.

A very small proportion of children were reported due to their own alleged sexually abusive behaviour

3.30 A very small proportion of children (1% or 24 children: 22 boys and two girls) were reported to the Child Protection Service due to their own alleged sexually abusive behaviour (for example, towards another child) (Figure 10, page 32). The two girls and 18 of the 22 boys were also the subject of at least one other reported child protection ground, meaning that concerns were raised that these children themselves were the victim of neglect or physical, emotional or sexual harm. Of the 24 children with at least one report based on their own alleged sexually abusive behaviour, only five had a report substantiated on this basis (an additional child had a *substantiated* report of their own sexually abusive behaviour following a report alleging emotional harm). Of the 24 children with reports based on their own alleged sexually abusive behaviour, three children (all boys) were sentenced or diverted for a sexual offence in 2016 or 2017.

Most children in care had multiple carers

- 3.31 Previous research suggests that the greater the disruption to care placements experienced by a child, the more likely that child is to enter the youth justice system, and to enter it early.⁶³
- 3.32 Most of the 767 sentenced and diverted children who experienced out-of-home care had multiple placements and carers:
- only one in six (16%) had just one placement and one carer (124 children);
 - one in two (49%) experienced five or more carers (379 children);
 - one in four (23%) experienced 10 or more carers (175 children); and
 - two children experienced more than 30 carers. Of these, one experienced 50 placements involving 36 separate carers and one experienced 46 placements involving 32 separate carers (Table 2A, page 81).
- 3.33 Each residential care home was classified as one 'carer', even though children are looked after by multiple people within a residential care home.

63. See for example, Victoria Legal Aid (2016), above n 9, 1; McFarlane (2018), above n 37; Stewart et al. (2002), above n 37, 5; Stewart et al. (2008), above n 37; Malvaso et al. (2017), above n 37, 40–41; Australian Institute of Health and Welfare (2017), above n 34; Cashmore (2011), above n 37, 35.

Children first sentenced or diverted aged 10–13 experienced more carers

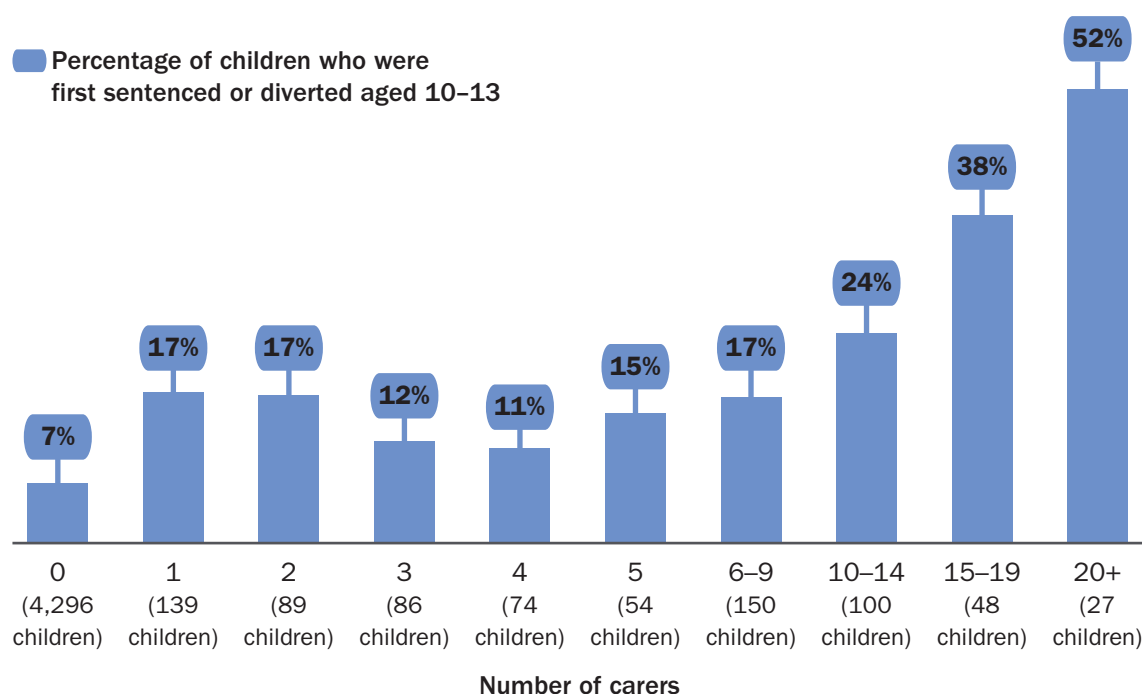
3.34 Children first sentenced or diverted aged 10–13 were more likely than older children to experience a greater number of carers. The highest median number of unique carers (nine) was experienced equally by Aboriginal and Torres Strait Islander boys first sentenced or diverted aged 10–13 and *all* girls first sentenced or diverted aged 10–13 (Figure A3, page 85).

Children with more carers entered the youth justice system earlier

3.35 The experience of out-of-home care, including multiple placements, not just increases the likelihood of entering the youth justice system at all; it may also increase the likelihood of children entering the youth justice system *earlier* than other children.⁶⁴ As shown in Figure 11, children first sentenced or diverted aged 10–13 comprised:

- 7% of the 4,296 children who did not experience out-of-home care;
- 17% of children who experienced one carer;
- 15% of children who experienced two to nine carers;
- 24% of children who experienced 10 to 14 carers;
- 38% of children who experienced 15 to 19 carers; and
- 52% of children who experienced 20 or more carers.

Figure 11: Percentage of children aged 10–13 at first sentence or diversion, by number of unique carers



64. Stewart et al. (2002), above n 37; Cashmore (2011), above n 37, 35; Kath McFarlane, 'Care-Criminalisation: The Involvement of Children in Out of Home Care in the NSW Criminal Justice System' (PhD Thesis, University of New South Wales, 2016) 84–86; McFarlane (2018), above n 37, 412–433; Susan Baidawi and Rosemary Sheehan, 'Crossover Kids: Offending by Child Protection-Involved Youth, Trends and Issues in Crime and Criminal Justice no. 582 (2019) 17; Fernando Lima et al., *Exploring Outcomes for Young People Who Have Experienced Out-of-Home Care* (2018) 40–43.

Discussion and conclusion

3.36 Addressing the needs of vulnerable children early is an essential component of ensuring that they do not transition into the youth justice system. The child protection factors associated with early entry into the youth justice system discussed in this chapter are relevant to sentencing policy, including the principles, purposes and factors to which courts must have regard when sentencing children.

Vulnerability of children first sentenced or diverted aged 10–13

3.37 The findings in this chapter, together with the Council's youth reoffending research,⁶⁵ indicate that children first sentenced or diverted aged 10–13 are the most likely to be known to child protection and are a particularly vulnerable, traumatised, high-needs and high-risk group. Crossover children first sentenced or diverted aged 10–13 were more likely than older crossover children to:

- have entered the child protection system earlier, with a median age of two years at first child protection report, including unborn child reports, whereas children first sentenced or diverted aged 16 or over had a median age of eight years at first child protection report;
- be Aboriginal and Torres Strait Islander children: 24% were Aboriginal and Torres Strait Islander children, whereas for crossover children first sentenced or diverted aged 16 or over, 8% were Aboriginal and Torres Strait Islander children;
- have been the subject of at least one child protection report alleging physical harm: 83% had a report based on physical harm, whereas for crossover children first sentenced or diverted aged 16 or over, 59% had a report based on physical harm;
- have at least one child protection order: 71% had at least one child protection order, whereas for crossover children first sentenced or diverted aged 16 or over, 34% had at least one child protection order;
- have experienced out-of-home care and residential care: 61% experienced out-of-home care and 47% experienced residential care. In comparison, of crossover children first sentenced or diverted aged 16 or over, 28% experienced out-of-home care and 16% experienced residential care;
- have experienced more out-of-home care placements, with a median of nine placements, whereas children first sentenced or diverted aged 16 or over had a median of 4 placements; and
- have experienced more carers: children first sentenced or diverted aged 10–13 comprised 7% of children who did not experience out-of-home care but 52% of children with 20 or more carers.

Children who experience multiple carers are more likely to enter the youth justice system early

3.38 Previous research suggests that multiple care placements and a lack of stability increase the likelihood of a child entering the youth justice system at all and entering the youth justice system early.⁶⁶ Consistent with that research, this chapter found that the more carers a child experiences, the more likely that child is to enter the youth justice system early. More than half of the children who experienced 20 or more carers were aged 10–13 at their first sentence or diversion.

65. Sentencing Advisory Council (2016), above n 13.

66. See further Stewart et al. (2002), above n 37; Cashmore (2011), above n 37, 35; McFarlane (2016), above n 64, 84–86; McFarlane (2018), above n 37, 412–33; Baidawi and Sheehan (2019), above n 64, 17; Lima et al. (2018), above n 64, 40–43.

In comparison, 7% of children who did not experience out-of-home care were aged 10–13 at their first sentence or diversion.

- 3.39 The relationship between the number of placements and early entry into the youth justice system is likely to be complex and circular. Multiple placements and youth justice involvement may share causality rather than, or in addition to, one contributing to the other. For example, a child's trauma history, age and complexity of needs (such as communication, severe behavioural problems and mental ill-health) may make placement stability difficult to achieve and increase the child's likelihood of youth justice involvement. At the same time, placement instability, trauma and complex need and youth justice involvement may have a cyclical relationship, with each compounding the other and adding to the child's trauma and level of need. This finding illustrates the importance of stability for children placed in out-of-home care, suggesting that a lack of placement stability may have a compounding effect on trauma and increase the risk of children crossing into the youth justice system. For some children, this finding may also reflect a trajectory in which children who have experienced trauma and/or have complex needs enter the youth justice system at a young age, continue offending through adolescence and find it increasingly difficult to secure stable out-of-home care placements (such as Jack in Case Study 2).
- 3.40 Roundtable participants made the following observations in relation to the findings discussed in this chapter:
- a lack of appropriate support services was a contributing factor to vulnerable children entering the youth justice system early – the link between early youth justice involvement and multiple carers can be 'self-perpetuating';
 - it is important to genuinely meet the needs of children who have experienced trauma;
 - children with intellectual disabilities who experienced residential care are 'less likely to have sophisticated coping mechanisms', making them more likely to run away, be charged and keep being moved around because of their behaviour;
 - a lack of placement stability for children has flow-on effects, such as school interruption and removal from friends and community;
 - the less stability children have in terms of carers, the less likely they may be to have a trusted adult at court with them to provide support and encourage them to properly consider the advice of their legal practitioners and the ramifications of not following that advice (for example, not pursuing a *doli incapax* submission);⁶⁷ and
 - multiple carers and a lack of placement stability constitute additional traumas in their own right, which is likely to affect a child's development and so continue the cycle.⁶⁸
- 3.41 The findings in this chapter highlight the crucial importance of thoroughly and effectively addressing childhood trauma and developmental issues early, both for the sake of the child and their family and as a crime prevention measure that will prevent harm and save costs in the long-term. Measures to address childhood trauma and to ensure those in out-of-home care achieve stable, trauma-informed, therapeutic placements are likely to benefit not only these children and their families but also the broader community.

I think what we're actually looking at ... is a proxy for complexity of need. As the complex needs go up, you see this pattern of poor outcomes. I think we need to get better in our response to need, because currently what we predicate everything on is risk. They're related, but they're different. We need to get way better at responding to need.

Roundtable 4 (12 December 2019)

67. Children aged 10–13 (inclusive) at the time of an alleged offence are considered *doli incapax* ('incapable of crime') unless the prosecution successfully rebuts the presumption and proves that the child knew that their conduct was morally wrong, as opposed to childish naughtiness or mischief. See further Fitz-Gibbon and O'Brien (2019), above n 67, 23–25; Bettink (2012), above n 24, 7.

68. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019).

It's self-perpetuating ... The more traumatised the child, the harder they are to manage, the more likely a relative is to have to relinquish care, and then they go to another placement, then they're more traumatised again.

It's not just the continuity of carers, though that is a factor when children move around from placement to placement. It's breaking the continuity of school, breaking the continuity of friendships. So it's a proxy for breaking the continuity of all the other potentially protective factors in their lives ... It's a compounder in so many ways ... I actually find it quite distressing to look at some of those stats. Because they actually are worse, when you think about that – it's not just the family connections that are broken.

I think there's two critical things to make a distinction about. One is intellectual disability, or things that may be present since birth that affect developmental levels, and the other thing that we need to consider is that ... for a child to develop, you need stability, you need peer involvement, you need support from family and friends, et cetera. And at the pointy end there, that is actually a mechanism to impair development in a child ... There's good evidence to suggest that [placement instability and disruption] delays communication, development, all these things that we need to function in society and stay out of youth justice.

Roundtable 4 (12 December 2019)

The relevance of child protection factors to sentencing

- 3.42 Sentencing children is arguably one of the most difficult, complex and important tasks faced by the judiciary. The focus on rehabilitation recognises the unique opportunity for diverting children away from offending as they develop and, crucially, the importance of preventing their criminal behaviour from escalating.⁶⁹ Critical to any meaningful attempt at rehabilitating a child is understanding and addressing the context and causes of their offending. This includes the effects of trauma on the child's development, their ability to comply with a sentencing order and their capacity to refrain from offending without therapeutic intervention.
- 3.43 The child protection factors associated with early entry into the youth justice system in this chapter are relevant to the sentencing factors that might be included in the new Youth Justice Act proposed by Armytage and Ogloff in their 2017 youth justice review.⁷⁰ For example, relevant sentencing factors might include a child's experience of trauma (including type, severity, duration and the child's age at the time; the effect of that trauma on the child's development and capacity to avoid problematic behaviour); the child's removal from family, home, community and school; the child's experience of out-of-home care, particularly foster care and residential care (including the number of placements and carers); and the child's age when they first offended and at their current offence and sentence.
- 3.44 Aboriginal and Torres Strait Islander children emerged as a particularly vulnerable cohort of crossover children; they were over-represented in every level of child protection and youth justice involvement, especially among children who experienced the highest levels of such involvement (residential care and custody). The development of a new Youth Justice Act may offer an opportunity to consider how particular combinations of systemic and background factors affecting Aboriginal and Torres Strait Islander children might be relevant to sentencing.

69. *R v Evans* [2003] VSCA 223 (19 December 2003) [44] (Vincent JA); *Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016) [7]–[9]; Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., 2014) 925–933.

70. In their 2017 youth justice review, Penny Armytage and Professor James Ogloff AM recommended the creation of a new Youth Justice Act, separate from the *Children, Youth and Families Act 2005* (Vic), the Act 'provide[ing] a clear statement of the purpose, role and principles for Youth Justice': Armytage and Ogloff (2017) above n 11, 5 (Recommendation 6.1).

4. Offence type and child protection involvement

Introduction

- 4.1 This chapter explores whether children known to child protection, particularly those who experienced residential care, were more likely than other children in the study group to be sentenced or diverted for particular offence types.⁷¹ This analysis is relevant to understanding why children known to child protection are over-represented among sentenced and diverted children. It is also relevant to the factors considered in sentencing children.
- 4.2 Previous research suggests that children known to child protection may be more likely to exhibit trauma-related behaviour that may constitute an offence, such as substance abuse or aggression.⁷² Childhood trauma also influences children's development and ability to regulate their behaviour. This might result in, for example, heightened vigilance, stress intolerance, antisocial behaviour and exaggerated fight-or-flight responses to triggers.⁷³ Further, children known to child protection may be more likely than other children to find themselves in the youth justice system in relation to particular offences, sometimes committed in circumstances where children might not have been charged had they been living in the family home.⁷⁴
- 4.3 Offences that have been highlighted in the context of childhood trauma and care involvement include:
- **breach intervention order:** recent research suggests that family violence intervention orders are increasingly being issued against adolescents who exhibit violent behaviour.⁷⁵ A criticism of this approach to children is that it may criminalise behaviours that stem from trauma and/or developmental issues, rather than assessing, supporting and treating children to prevent them becoming entrenched into the youth and adult justice systems;⁷⁶
 - **criminal damage and minor drug use:** trauma experienced by children in out-of-home care may increase their likelihood of engaging in behaviour such as criminal damage (for example, during a trauma-related outburst) and minor drug use (for example, as self-medication to escape trauma).⁷⁷ This behaviour can result in criminal charges in circumstances where they might not be reported to police if they lived at home;
 - **resist, hinder, assault police or emergency worker:** some children who experience childhood trauma develop a fear or dislike of police and emergency workers. Children may, for example, associate police with the removal of a parent in frightening circumstances or their own removal into out-of-home care.

71. This chapter divides offences into 13 broad categories. See further Appendix 2 for a description of the offence categories and examples of offences.

72. McFarlane (2018), above n 37, 415; Mendes et al. (2014), above n 50, 26; Ryan et al. (2013), above n 50; Smith et al., above n 50; Victoria Legal Aid (2016), above n 9, 7.

73. New South Wales Government (2016), above n 50, 5, 15–16; Victoria Legal Aid (2016), above n 9, 11; Mendes et al. (2014), above n 50, 32–34; Griffin and Sallen (2013), above n 50, 9–10. Report 3 will discuss in more detail how childhood trauma can contribute to offending.

74. Cashmore (2011), above n 37, 35; Malvaso et al. (2017), above n 37, 41; Dean (2018), above n 34; Victoria Legal Aid (2016), above n 9, 7.

75. Baidawi and Sheehan (2019), above n 47, 139–141; State of Victoria (2016), above n 47, 151, 158–160.

76. State of Victoria (2016) above n 47; Roundtable 3 (10 December 2019).

77. Baidawi and Sheehan (2019), above n 47, 139, 227–228.

When this is combined with heightened vigilance, stress intolerance, antisocial behaviour and exaggerated fight-or-flight responses to triggers,⁷⁸ children may be more likely to fight or resist police when they are called in to defuse a situation or to retrieve a child who has run away.⁷⁹ Another consideration is that, once a child is reported missing, Victoria Police must make a missing persons report.⁸⁰ Victoria Police policy identifies children missing from out-of-home care as an especially vulnerable group who 'must be considered at a greater risk of sexual exploitation'.⁸¹ Further, Victoria Police policy provides that the investigating member must start an immediate search for a child aged under 10 or at high risk due to a physical or mental condition, which would apply in some cases involving children running away from care.⁸² The new *Framework to Reduce the Criminalisation of Young People in Residential Care* acknowledges that running away, combined with personal histories of trauma, places children at increased risk of further harm. Accordingly, critical reflection should take place after each missing persons episode to help 'build an understanding of the behaviour and the potential responses to it', which includes a 'return to care conversation' with the child.⁸³ Guiding Principle 8 states that '[c]riminal charges will not be pursued if there's a viable alternative' and '[d]iscretion will be exercised when police intervention is required',⁸⁴ and

- **violent offences:** because childhood trauma can negatively affect children's ability to regulate their behaviour and accurately assess danger, they may be more likely than other children to respond violently to perceived threats.⁸⁵ When this is coupled with developmental delays that affect decision-making and communication, vulnerable children may overreact, potentially violently, to triggers.⁸⁶

- 4.4 The fact that children's behaviour, particularly violent behaviour, stems from a background of trauma does not make it any less harmful to their victims, especially when those children are approaching adulthood and may have the physique of adults, even though they are still children. The benefits of addressing childhood trauma early extend beyond traumatised children and their families. Measures to respond early to childhood trauma, and to intensify support when children's behaviour escalates, should be seen as essential components of an effective crime prevention strategy.

Offences with the highest proportions of crossover children and children who have experienced residential care

- 4.5 All offences committed by the 5,063 children in the study group in 2016 and 2017 were analysed and grouped into broad offence categories.⁸⁷ Children were divided into overlapping subgroups according to whether they were sentenced or diverted for a particular offence

78. Baidawi and Sheehan (2019), above n 47, 75–76; Sara Jaffee, 'Child Maltreatment and Risk for Psychopathology in Childhood and Adulthood' (2017) 13 *Annual Review of Clinical Psychology* 525, 530–536.

79. Roundtable 4 (12 December 2019); Baidawi and Sheehan (2019), above n 47, 75–76.

80. Victorian Government, *Protecting Children: Protocol between Department of Human Services – Child Protection and Victoria Police* (2012) 29.

81. Victoria Police, 'Missing Persons Investigations', *Victoria Police Manual – Procedures and Guidelines* (2019) 3 (as at 29 April 2019).

82. *Ibid* 3.

83. Department of Health and Human Services (2020), above n 12, 23.

84. *Ibid* 19.

85. Jaffee (2017), above n 78, 530–531, 533–534; Pia Pechtel and Diego Pizzagalli, 'Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature' (2011) 214(1) *Psychopharmacology* 55, 64–65.

86. Roundtable 4 (12 December 2019).

87. See further Appendix 2 for a description of the offence categories and examples of offences.

type at least once in the two years.⁸⁸ For each subgroup (for example, children sentenced or diverted for an offence against the person), the Council calculated the proportion of children who were the subject of a report to child protection, had an investigated or substantiated report, were the subject of a child protection order, experienced out-of-home care and experienced residential care.⁸⁹

- 4.6 Children known to child protection were most disproportionately over-represented for the following offences (percentages indicate the proportion of children sentenced or diverted for that offence in 2016 and 2017 who were the subject of at least one child protection report):
- breach intervention order (53%);
 - property damage (49%);
 - resist, hinder or assault police or emergency worker (49%);
 - justice procedures offences (48%);
 - weapons offences (48%);
 - bail-related offences (48%); and
 - drug offences (46%).⁹⁰
- 4.7 The offences with the highest proportion of children known to child protection were also the most likely to be committed by children who experienced residential care (some of these offences are examined in more detail in Figure 12, page 42). While some offence types were more prevalent than others, the overarching pattern remained the same: children who experienced residential care were more likely than other children to be sentenced or diverted for that offence type.

Breach intervention order

- 4.8 Previous research suggests that some children enter out-of-home care as a consequence of their own violent behaviour in the home.⁹¹ Difficulties managing their adolescent children's problematic behaviour may lead parents (or others) to involve police. Police or family members may initiate an application for a family violence intervention order under the *Family Violence Protection Act 2008* (Vic). In some circumstances, the intervention order may exclude the child from the family home, which may trigger child protection involvement. However, while children's own violence may contribute to their move into care, many children who become violent in adolescence may already be known to child protection. This may be due to language, developmental or mental health issues and/or their experience of abuse, neglect or trauma, including exposure to family violence in the home.⁹²
- 4.9 Of the 5,063 children in the study group, 405 were sentenced or diverted at least once any time in 2016 and 2017 for 917 charges of breach intervention order between them. The most common specific offence within this category was contravene family violence intervention order (interim or final) contrary to section 123(2) of the *Family Violence Protection Act 2008* (Vic) (652 of 917 charges).

88. Each child was counted only once in a particular category, regardless of whether they had one or more offences in that category. If a child had an offence in more than one offence category, the child was counted once in each of the categories. For example, a child with two sentenced charges of breach intervention order and three sentenced charges of property damage would be counted once in the category of breach intervention order and once in the category of property damage. See further Figure A5, page 89.

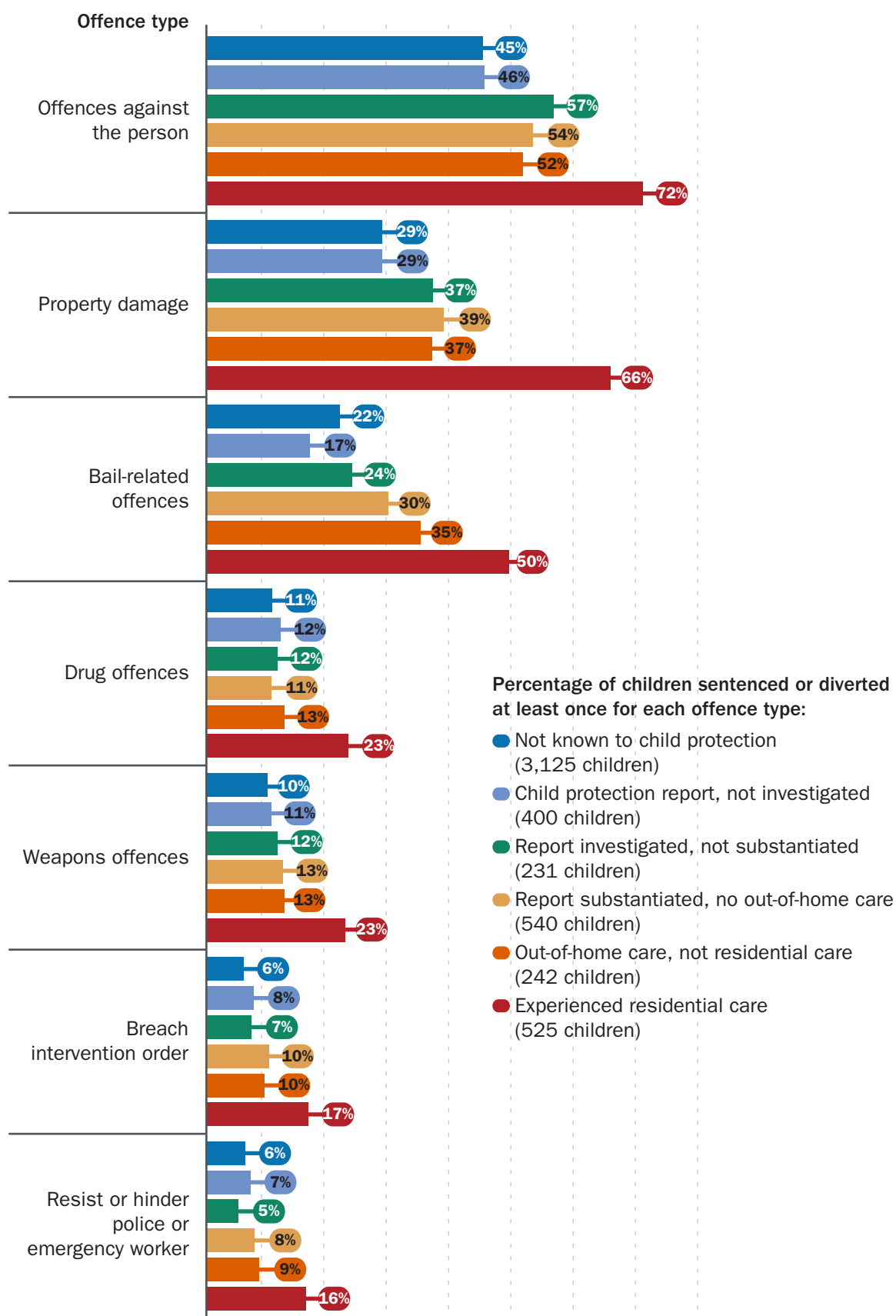
89. The results of this analysis and details about the methodology are shown in Figure A5, page 89.

90. See Figure A5, page 89. Also see Appendix 2 for a description of the offence categories.

91. Baidawi and Sheehan (2019), above n 47, 95–96.

92. Ibid 43–44, 95; State of Victoria (2016), above n 47, 149, 156.

Figure 12: Children in the study group (5,063 children), by percentage in each child protection category with at least one offence against the person, property damage offence, bail-related offence, drug offence, weapons offence, breach intervention order offence and resist or hinder police or emergency worker offence in 2016 or 2017⁹³



93. Children in Figure 12 were grouped into mutually exclusive categories according to their most serious level of child protection involvement. Children were counted once in each applicable offence category. For example, if a child who experienced residential care was sentenced for two offences against the person and one property damage offence, the child would be counted once in each offence category.

Children with breach intervention order offences were most likely to be known to child protection

- 4.10 The offence category of breach intervention order had the highest proportion of children who were known to child protection. Of the 405 children in the study group who were sentenced or diverted for a breach intervention order offence at any time in 2016 and 2017:
- 53% were the subject of at least one child protection report (215 children);
 - 32% were the subject of at least one child protection order (129 children);
 - 27% experienced out-of-home care (111 children); and
 - 22% experienced residential care (88 children).

The level of child protection involvement may have occurred before, on the same day or after the child breached the intervention order (see Figure A5, page 89).

Most crossover children with breach intervention order offences were known to child protection before they committed their first sentenced or diverted offence

- 4.11 Of the 215 children known to child protection who were sentenced or diverted for at least one breach intervention order offence:
- 92% (198 children) were known to child protection before their first offence date (including offences committed before 2016);
 - 16 children (7%) committed their first sentenced or diverted offence before their first child protection report; and
 - one child committed their first sentenced or diverted offence on the same day as their first child protection report.
- 4.12 A qualification to the discussion at [4.11] is that a court can only make a family violence intervention order against a child excluding them from the home if satisfied that the child will have appropriate care, supervision and alternative accommodation.⁹⁴ Prior to making an exclusion order for a child under the *Family Violence Protection Act 2008* (Vic), the court may request the Department of Health and Human Services to provide a report about accommodation, with such reports recorded in the data as a child protection report. As this process occurs before the child protection order can be breached, it is possible that some children with breach intervention order offences were the subject of a child protection report as part of the process for applying for an intervention order. For example, the Centre for Innovative Justice's Positive Interventions for Perpetrators of Adolescent Violence in the Home project noted that 33% of cases where a family violence intervention order was issued against a young person included a condition that excluded the young person from the home.⁹⁵ However, further analysis of the 215 crossover children with a breach intervention order offence showed that they had a median age of five years at first child protection report, and 138 of the 215 were aged under 10 at their first child protection report (64% including children with unborn child reports). Therefore, this qualification is unlikely to apply in the majority of cases.

94. The court may request a report from the Secretary of the Department of Health and Human Services and must inform the Secretary if an exclusion condition is made: *Family Violence Protection Act 2008* (Vic) ss 82–84.

95. Elena Campbell, 'The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home' (Paper presented at the ANROWS 2nd National Research Conference, ANROWS, Sydney, 15–17 May 2018).

- 4.13 These findings suggest that most crossover children who breach intervention orders do not necessarily enter the child protection system as a result of their own violent behaviour. On the contrary, most already had been the subject of a child protection report before they began offending. This is consistent with previous research suggesting that many children who use violence in the home do so after their own exposure to family violence, including witnessing intimate partner violence against their mother as well as being the direct victim of violence.⁹⁶

Children who experienced residential care were more likely than other sentenced and diverted children to have a breach intervention order offence

- 4.14 Of the 525 children who experienced residential care, 17% were sentenced or diverted for at least one breach intervention order offence. This is nearly three times the proportion of children not known to child protection who were sentenced or diverted for at least one breach intervention order offence (6%) (Figure 12, page 42).

Discussion

- 4.15 The finding that sentenced and diverted children with breach intervention order offences are most likely to be known to child protection, and that most were known to child protection before they started offending, is consistent with previous research suggesting a link between childhood exposure to family violence and adolescent use of violence in the home.⁹⁷ Adolescent family violence may coexist with family violence perpetrated by others, including intimate partner violence witnessed by the child against their mother as well as direct violence against the child and/or other children in the home.⁹⁸ In its submission to the Royal Commission into Family Violence, Victoria Police stated that a high percentage of children who used violence against a parent in 2014 had previously been victims of family violence.⁹⁹

Most of these kids are survivors/victims themselves, we know that, and this behaviour is their learned behaviour. They don't have the skills or strategies to respond in a different way when there is that conflict. So it's again setting kids up to fail because this is what they've been experiencing all their lives.

Roundtable 4 (12 December 2019)

In this report, most crossover children who breached intervention orders already had child protection concerns raised about them before they began offending.

- 4.16 Even where the child's violence is part of a broader pattern of family violence in the home, including violence by adults responsible for the child's care, the child may become the subject of a family violence intervention order, '[precipitating] the child's exclusion from the family home, and entry into out-of-home care'.¹⁰⁰ The Royal Commission into Family Violence noted that the power dynamics involved in adolescent violence in the home are distinct from those

96. State of Victoria (2016), above n 47, 149, 156.

97. Ibid.

98. Ibid 149.

99. Ibid 156.

100. Susan Baidawi and Rosemary Sheehan, 'Maltreatment and Delinquency: Examining the Contexts of Offending amongst Child-Protection Involved Children' (2019) *British Journal of Social Work* 12.

involved in parental violence towards children or intimate partner violence.¹⁰¹ For example, the primary victim of the violence may also be the primary carer for the child who is using the violence.

- 4.17 For some parents, guilt and shame prevent them from seeking assistance until they reach crisis point. When parents do contact police, they often do so due to a perceived lack of options, rather than a desire to trigger a criminal justice response.¹⁰² In extreme cases, parents sometimes surrender children due to 'seemingly insurmountable barriers' to obtaining support 'in an attempt to protect the safety of the young person, and their family'.¹⁰³

- 4.18 Roundtable participants were concerned about the use of intervention orders for children, especially where the child has language or other developmental issues that may make it difficult for them to understand the terms of the order and the consequences of breach. Without adequate early support, children's behaviour may spiral out of control, leading to breach intervention orders and eventually creating a pathway into the youth justice system via a charge of this offence.¹⁰⁴ In its 2011 submission to the Victorian Equal Opportunity Commission, National Disability Services reported that:

[i]t can be particularly challenging for families supporting children (mainly boys) with severe autism who exhibit behaviours of concern on a regular basis. These behaviours often become more violent from about

12 years onwards as they enter puberty and become physically stronger. The need for behaviour intervention programs can increase at this stage, and these are often not available.¹⁰⁵

- 4.19 As mentioned at [4.12], recent Victorian research found that 33% of cases where a family violence intervention order was issued against a young person included a condition that excluded the young person from the home.¹⁰⁶ In such cases, children risk being charged with breach intervention order if they return home, even if they were themselves the victim of violence in the home and were invited to return by their parents in the context of trying to rebuild their relationship.

We've applied a very adult-centric model of family violence response into a child space ... The breaching can be running away from care and going back to mum. Sometimes mum and dad might say 'hey, come and visit us', thinking it's all going to be okay – they might be at a placement, 'come and pick up some clothes' or whatever, and then boom, everything explodes again and it's breach of the intervention order. Sometimes I've seen cases where children are encouraged to have contact by the parents, and been reported for breaches when some of those old behaviours and issues resurface, but it could just be, you know, children missing parents and wanting to go home, and then it's a breach.

A lot of these are children with disabilities that we're putting under several orders simultaneously, all with different conditions, that a trained lawyer would have difficulty understanding.

Roundtable 3 (10 December 2019)

101. State of Victoria (2016), above n 47, 152–154.

102. Ibid 153, 159. The PIPA project found that '[i]n cases where the person using violence is an adolescent and is the child of the [affected family member] ... virtually all applications that come before the courts are made by police, with a very small number directly sought by [affected family member]'s themselves': Elena Campbell, et al., *The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home (AVITH)*, Research Report (2020) 56.

103. Ibid 155.

104. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019).

105. Victorian Equal Opportunity and Human Rights Commission, *Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria* (2012) 28, citing National Disability Services Victoria, *Submission to Victorian Equal Opportunity and Human Rights Commission* (2011) 2.

106. Campbell (2018), above n 95.

4.20 The Royal Commission into Family Violence recommended that, rather than increasing police powers to address adolescent family violence, the following principles should guide Victoria's approach to this issue:

- adolescent violence in the home should be recognised by the family violence system as different from adult-perpetrated family violence;
- involvement with the criminal justice system for adolescents who use violence in the home should be a last resort. Therapeutic responses should be adopted instead; and
- removal of the young person from the family home should be avoided as much as possible. Where there is no other option but for the young person to leave the home, appropriate supported accommodation should be provided to them.¹⁰⁷

4.21 Several of the Royal Commission's recommendations in relation to adolescent family violence have been implemented, including the establishment of a statutory youth diversion scheme¹⁰⁸ and the introduction of family violence applicant and respondent worker positions at the Melbourne Children's Court.¹⁰⁹ Further recommendations are in progress, such as the development of additional accommodation options for adolescents who use violence at home.¹¹⁰ In light of concerns about the use of intervention orders to manage children's behaviour, it may be worth revisiting whether intervention orders and related breach offences are the most appropriate mechanisms for addressing adolescent family violence. This is particularly so in the context of children's own exposure to violence and issues relating to language, development, mental health and impairment.

Property damage offences

4.22 Of the 5,063 children in the study group, 1,755 were sentenced or diverted at least once in 2016 and 2017 for 5,671 charges of property damage between them. The most common property damage offences were criminal damage (4,096 charges), wilfully damage property (508 charges) and marking graffiti (372 charges).¹¹¹

4.23 Of the 1,755 children who were sentenced or diverted for at least one property damage offence in 2016 or 2017:

- one in two (49%) were known to child protection;
- one in four (25%) experienced out-of-home care; and
- one in five (20%) experienced residential care (see Figure A5, page 89).

Children who experienced residential care were most likely to have a property damage offence

4.24 Children who experienced residential care were responsible for 28% of all charges of property damage sentenced or diverted in 2016 and 2017, although they comprised 10% of all sentenced and diverted children in those two years. Further, 66% of children who experienced residential care (349 of 525 children) had a property damage offence. This is more than double the

107. State of Victoria (2016), above n 47, 166.

108. Ibid 174 (Recommendation 127).

109. Ibid 173 (Recommendation 126).

110. Ibid 170 (Recommendation 124). The RMIT Centre for Innovative Justice is also examining responses to adolescent family violence from the justice and service system, with its report *The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home* released in early March 2020: Centre for Innovative Justice, RMIT, 'Positive Interventions for Perpetrators of Adolescent Violence in the Home' (cij.org.au, 2018) <<https://cij.org.au/research-projects/positive-interventions-for-perpetrators-of-adolescent-violence-in-the-home-the-pipa-project/>> at 28 February 2020.

111. *Crimes Act 1958* (Vic) s 197(1) (criminal damage); *Summary Offences Act 1966* (Vic) s 9(1)(c) (wilfully damage property); *Graffiti Prevention Act 2007* (Vic) s 5 (mark graffiti on property without consent).

proportion of sentenced and diverted children not known to child protection who had at least one property damage offence (29% of 3,125 children) (Figure 12, page 42). Even children experiencing other forms of out-of-home care (but not residential care) had a far lower proportion of property damage offences (37%). This suggests an association between residential care and charges of property damage, although causality may also be shared in terms of the level of trauma experienced by the child and the effect of that trauma on the child's behaviour.

- 4.25 Of the 349 children who experienced residential care and were sentenced or diverted for a property damage offence, 60% committed their property damage offence during an active residential care placement (210 children). However, there was no data on whether these offences occurred on residential care premises or elsewhere.

Discussion

- 4.26 This report has found that children who experienced residential care were far more likely than other children to be sentenced or diverted for a property damage offence, and most of those children were on a residential care placement when they committed the offence. These findings are consistent with previous research suggesting that children in residential care may be prosecuted for criminal damage offences in circumstances where they may not have faced charges if they were living with their families.¹¹²
- 4.27 Not all property damage offences are minor. Property damage can be substantial; it may also be a form of family violence, control and intimidation when committed against family members.¹¹³ However, for relatively minor property damage offences committed in residential care homes, these findings support the need for initiatives that increase support to children in residential care, address trauma-related behaviours and reduce criminalisation for behaviour that might not result in police charges if the child was living in their family home.
- 4.28 Current initiatives to reduce police involvement in residential care include:
- the Victorian Government's commitment to transform residential care into an 'intensive trauma-informed behaviour support service';¹¹⁴
 - a shared commitment to the *Framework to Reduce the Criminalisation of Young People in Residential Care* between the Department of Health and Human Services, the Department of Justice and Community Safety, Victoria Police, the Victorian Aboriginal Child Care Agency and the Centre for Excellence in Child and Family Welfare, an aim of which is 'to reduce unnecessary and inappropriate police contact with young people in residential care', where such contact is the result of 'behaviours manifesting from childhood traumatic experiences';¹¹⁵ and
 - the pilot of the *Building Resilience in Children and Young People Initiative*, a collaborative approach between the Department of Health and Human Services, the Department of Justice and Community Safety and Victoria Police that aims to 'improve interactions between police and children in residential care' and reduce the levels of criminalisation among those children.¹¹⁶

112. See further Cashmore (2011), above n 37, 35; Malvaso et al. (2017), above n 37, 41; Dean (2018), above n 34; Victoria Legal Aid (2016), above n 9, 7.

113. Baidawi and Sheehan (2019), above n 100.

114. Victoria Legal Aid (2016), above n 9, 15. See further Victorian Government, *Roadmap for Reform: Strong Families, Safe Children: The First Steps* (2016); Victorian Government, *Roadmap for Reform: Children and Families: Progress and Directions 2018* (2018).

115. Department of Health and Human Services (2020), above n 12, 8–9. See also Commission for Children and Young People, *In Our Own Words: Systemic Inquiry into the Lived Experience of Children and Young People in the Victorian Out-of-Home Care System* (2019) 27.

116. Commission for Children and Young People (2019), above n 115, 28; Richard Watkins and Soula Kontomichalos-Eyre, 'Community around the Child' (Presentation at the 2018 ANZSOC Conference, The University of Melbourne, 3 December 2018). The pilot operates in the East Division (Goulburn Area, Ovens Murray Area, Outer Eastern Melbourne Area, Inner Eastern Melbourne Area).

- 4.29 The *Framework to Reduce Criminalisation of Young People in Residential Care* provides:
- guiding principles that reinforce trauma-informed responses, connection to culture and a positive behaviour approach to inform local practices and procedures;
 - a decision-making guide for residential care workers to determine whether police involvement is necessary;
 - an agreed approach for police when responding to non-crisis events in residential care homes; and
 - agreed roles and responsibilities across the Department of Health and Human Services, the Department of Justice and Community Safety, Victoria Police and residential care service providers to improve coordination in supporting young people in residential care.¹¹⁷
- 4.30 The *Building Resilience in Children and Young People Initiative* includes a guide that instructs case workers, team members and police in how 'to support our young people in residential care during times of crisis'. The guide suggests a 'non-crisis response' to property damage to the house that is unlikely to involve police. The response requires that residential care workers:
- ensure their own safety and the safety of children involved in the incident and other children in the home;
 - support the child during the incident based on pre-identified strategies set out in the child's *profile on a page* document;
 - contact the residential care house supervisor to seek advice and discuss the effectiveness of the strategies in the child's profile on a page;
 - follow the house instructions on whether to proceed with police charges; and
 - review the incident at the next care team meeting to determine follow-up support for the child and any changes that might be needed to the child's profile on a page.¹¹⁸
- 4.31 The *Building Resilience* pilot is showing promising early signs of improving the approach to children in residential care.¹¹⁹ It provides an example of an alternative approach to children's trauma-related behaviour in residential care that may reduce the likelihood of those children being propelled into the criminal justice system.

Drug offences

- 4.32 In this report, drug offences include offences under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) and the *Criminal Code Act 1995* (Cth). The most common drug offences committed by children in the study group were possessing or using a drug of dependence, particularly cannabis. Children in the study group were sentenced or diverted for:
- 789 charges of possess a drug of dependence,¹²⁰ most commonly cannabis (508 charges) followed by methylamphetamine (106 charges);
 - 212 charges of use a drug of dependence,¹²¹ most commonly cannabis (142 charges) followed by methylamphetamine (38 charges); and
 - 118 charges of traffick a drug of dependence,¹²² most commonly cannabis (61 charges) followed by ecstasy (20 charges).

117. Department of Health and Human Services (2020), above n 12, 9.

118. Department of Health and Human Services, East Division, *Building Resilience in Children and Young People Initiative* (2020) 10; Watkins and Kontomichalos-Eyre (2018), above n 116.

119. Watkins and Kontomichalos-Eyre (2018), above n 116.

120. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73; *Criminal Code Act 1995* (Cth) s 308.1.

121. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 75.

Children who experienced residential care were most likely to have a drug offence

- 4.33 Almost one-quarter (23%) of the 525 children who experienced residential care were sentenced or diverted for at least one drug offence in 2016 and 2017; this is more than double the proportion of children not known to child protection (11%) (Figure 12, page 42). Possessing cannabis (102 charges) and using cannabis (29 charges) were the most common drug offences for which children who experienced residential care were sentenced or diverted.

Of children with drug offences, those who experienced residential care were more likely to have drug use offences and less likely to have drug traffick offences

- 4.34 Of all children sentenced or diverted for drug offences in 2016 and 2017, children who experienced residential care were *more* likely to be sentenced or diverted for drug *use* offences (37%) than children not known to child protection (28%). They were also *less* likely to be sentenced or diverted for drug *traffick* offences (10%) (including attempted trafficking) than children not known to child protection (17%).

Discussion

- 4.35 Children sentenced or diverted for drug offences who experienced residential care were more likely to have drug *use* charges and less likely to have drug *traffick* charges. This finding is consistent with previous research suggesting that children in residential care may:
- enter residential care with prior drug exposure or addiction;
 - be more likely to develop substance use disorders due to issues including trauma, peer pressure, separation from family and anxiety about being in residential care; and
 - be criminalised for drug possession in circumstances where they might face parental discipline or intervention but not criminal charges if they were living in the family home.¹²³
- 4.36 Baidawi and Sheehan's recent research into crossover children found that 25% of children in the study had a current or prior drug offence.¹²⁴ By analysing qualitative case file data, they observed that crossover children sometimes used drugs as a consequence of their situation, which often contributed to further offending:

Substance misuse among cross-over children often appeared to be a coping strategy for acutely challenging internal and external experiences ... Children reported using substances to 'block stuff out', 'escape', 'sleep', 'self-medicate', 'cope', 'numb feelings', and to 'feel invincible', providing context as to why cessation of substance misuse is so challenging for this group. Both substance misuse, and 'hard' drug use were significantly more prevalent (approximately double) among children who had a deceased parent.¹²⁵

They also observed that:

[f]our factors were evident in the association between substance misuse and offending in cross-over children: offending in the context of drug and alcohol-related disinhibition; being charged with drug-related offences; offending to repay drug debts, often to older youth and adults; and, involvement in sexually exploitative relationships to access substances, leading to exposure and involvement in crime via these relationships.¹²⁶

122. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 71 AA (trafficking in a commercial quantity of a drug of dependence), 71AB (trafficking in a drug of dependence to a child), 71AC (trafficking in a drug of dependence).

123. Baidawi and Sheehan (2019), above n 47, 12, 72, 94.

124. *Ibid* 94.

125. *Ibid* 72.

A lot of it is that they self-medicate, that's how they start. To calm themselves, or to deal with their anxiety, or the trauma, or whatever. They begin to self-medicate with cannabis or whatever, and then other things.

We've got children that actually have terrible addictions, and they are often given substances as a way of coercing them into offending, coercing them into sexual exploitation, a range of other things – because they're children, often, with disconnection – the need to belong is greater than the need to stay in a residential unit.

Many of these kids are exposed to [methylamphetamine] because they're sitting in homes where it's being smoked. So they mightn't actually be using the substances initially themselves, but they are getting exposed to it, and they do have the agitation.

Roundtable 3 (10 December 2019)

- 4.37 Roundtable participants commented that the reasons why children in residential care may be more likely to face charges for drug use include prior exposure to drugs in their family home, self-medicating to cope with trauma and a need to belong leading them to accept drugs when offered by peers.¹²⁷
- 4.38 The guide to the *Building Resilience in Children and Young People Initiative* (see [4.29]) suggests the following approach where carers in a residential care home seize personal use quantities of drugs from a child:
- Residential care workers place the drugs in a tamper evidence audit bag provided by police, keep the bag secure and inform the residential manager or supervisor. They complete a notice of abandonment form, including summarising the surrounding circumstances, and contact police as soon as possible to organise the collection of the substance. Under this approach, there is no need for residential care workers to name the child involved.
 - Police collect and destroy the substance, compile an information report for intelligence and, if the substance is something other than cannabis, consider analysis for intelligence purposes only. Based on their discussion with the residential house team leader or supervisor, police exercise their discretion regarding whether to prosecute.

- The child's care team reviews the incident at the next care team meeting and determines follow-up support for the child and any change necessary to the child's profile on a page document (in which case the updated document is forwarded to police and the Department of Health and Human Services).¹²⁸

- 4.39 This suggested approach arguably mimics the response that a parent may take, minimising direct contact between the child and police. Providing support and treatment to children with minor drug offences, rather than prosecution, is likely to benefit the child and the community in the long run by addressing the trauma experienced by the child and diverting them away from the youth justice system.

Weapons offences

- 4.40 Of the 5,063 children in the study group, 604 were sentenced or diverted for 895 charges of weapons offences in 2016 and 2017 (Figure A4, page 87). The most common weapons offences were possess controlled weapon without lawful excuse (459 charges), possess prohibited weapon without exemption or approval (136 charges) and possess dangerous article in public (65 charges).¹²⁹

¹²⁶. Ibid 12.

¹²⁷. Roundtable 3 (10 December 2019).

¹²⁸. Department of Health and Human Services (2020), above n 115, 10.

¹²⁹. *Control of Weapons Act 1990* (Vic) ss 5AA (possess, use or carry a prohibited weapon), 6(1) (possess, carry or use a controlled weapon), 7(1) (possess or carry a dangerous article).

Children who experienced residential care were most likely to have weapons offences

- 4.41 Almost one in four children who experienced residential care (23%) were sentenced or diverted for at least one weapons offence in 2016 and 2017 (Figure 12, page 42). Children who experienced residential care were about twice as likely as other children in the study group – including those not known to child protection (10%) and those experiencing out-of-home care other than residential care (13%) – to have been sentenced or diverted for a weapons offence.

Discussion

- 4.42 Roundtable participants suggested that the factors causing children who experienced residential care to be more likely to be sentenced or diverted for weapons offences include:
- an increased likelihood of detection due to police searches, for example, police attending the residential care unit searching for something else;
 - drug use, which can increase disinhibition; and
 - a need to feel safe, including in residential care, while running away from residential care or when experiencing homelessness after leaving residential care, particularly in the context of past exposure to violence. Children who have been exposed to family violence may have a particularly strong and legitimate reason for wanting to feel safe.¹³⁰

I think about the high proportion of children who have been impacted by family violence; they often feel the need to protect themselves. It's legitimate, it's not paranoia. They live in very, very dangerous environments. To call it a weapons offence doesn't take into account the danger that these children are regularly in.

Many of them have come to child protection with family violence as a part of [their] history, and whether they have had that perpetrated against them, or whether they've observed the disregard for women, for children, or whatever the experience of the child might be, that will certainly impact on how they feel they need to look after themselves.

Roundtable 3 (10 December 2019)

Bail-related offences

- 4.43 Of the 5,063 children in the study group, 1,313 were sentenced or diverted for 4,754 charges of bail-related offences in 2016 and 2017. The most common bail-related offences were commit indictable offence on bail (2,809 charges), fail to answer bail (1,056 charges) and contravene conduct condition of bail (889 charges).¹³¹
- 4.44 Of the children sentenced or diverted for a bail-related offence, 48% were known to child protection and 20% experienced residential care (see Figure A5, page 89).

One in two children who experienced residential care had a bail-related offence

- 4.45 Children who experienced residential care were far more likely than other children to be sentenced or diverted for a bail-related offence. Half of the 525 children who experienced

¹³⁰. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019).

¹³¹. The offences of contravene conduct condition of bail and commit indictable offence on bail were introduced into the *Bail Act 1977* (Vic) in 2013; however, children were subsequently excluded from liability for contravene conduct condition of bail in May 2016: *Bail Act 1977* (Vic) ss 30A–30B. See also Sentencing Advisory Council, *Secondary Offences in Victoria* (2017) 5. It is therefore highly unlikely that contravening a conduct condition of bail offences would be as prevalent in recent years, though there may be some outstanding charges and proceedings for offences that occurred before the 2016 legislation took effect.

residential care were sentenced or diverted at least once in 2016 and 2017 for a bail-related offence (50% or 260 children). In comparison, 22% of children not known to child protection were sentenced or diverted for a bail-related offence (Figure 12, page 42).

Of children who experienced residential care and had a bail-related offence, most were sentenced or diverted for commit indictable offence on bail

- 4.46 Of the 260 children who experienced residential care and had a bail-related offence, four in five were sentenced or diverted at least once for commit indictable offence on bail (79% or 205 children). Although data was not available on the particular indictable offence that the child committed on bail, data was available on the offences that the child committed on the same day, at least one of which was likely to be the indictable offence committed on bail. Of the 205 children who experienced residential care and were sentenced or diverted for commit indictable offence on bail:
- just over half committed an offence against the person (on its own or alongside other offence types) on the same day they breached bail by committing an indictable offence (109 children). These children comprised 21% of all children who experienced residential care. In comparison, less than 10% of children in any other child protection category breached bail by committing an indictable offence on the same day that they committed an offence against the person; and
 - just under half breached bail by committing an indictable offence without committing an offence against the person on the same day (96 children). These 96 children were most likely to have committed a theft/dishonesty offence (70%), a property damage offence (43%) and/or a drug offence (21%) on the same day that they breached bail by committing an indictable offence.

Children in residential care were most likely to be sentenced or diverted for contravene conduct condition of bail

- 4.47 Of the 4,754 charges of bail-related offences committed by 1,313 children in the study group, 889 were for contravene conduct condition of bail. This offence was abolished in relation to children in May 2016.¹³² Contravene conduct condition of bail includes behaviour such as running away from home in breach of a curfew, associating with children that a child has been barred from associating with or using alcohol or a drug of dependence. For example, Baidawi and Sheehan's research into crossover children found that one 13-year old girl breached her bail conditions by running away from her family home in which she was alleged to have been physically abused and exposed to family violence from the age of five.¹³³
- 4.48 Children who experienced residential care were most likely to have an offence of contravene conduct condition of bail: 14% were sentenced or diverted for this offence at least once in 2016 and 2017 compared with 5% of children not known to child protection. Children in residential care were responsible for 26% of the 889 charges of contravene conduct condition of bail (234 charges).

132. During the study period of this report (in May 2016), children were removed from the category of persons who could be held liable for contravene conduct condition of bail: *Bail Act 1977* (Vic) s 30A(3), as inserted by *Bail Amendment Act 2016* (Vic) s 16(2). Children may no longer be prosecuted for contravene conduct condition of bail, although they may still have their bail revoked upon a successful application by the prosecution.

133. Baidawi and Sheehan (2019), above n 47, 121.

Discussion

- 4.49 Children who experienced residential care were far more likely than other children to be sentenced or diverted for a bail-related offence: 50% were sentenced or diverted for at least one bail-related offence in 2016 and 2017 compared with 22% of children who were not known to child protection. Not all of these bail-related offences would have occurred during or in a child's residential care placement. However, the high incidence of bail-related offences among children who experienced residential care suggests that, in some cases, offending in residential care may fast-track some vulnerable children into custody.
- 4.50 Numerous studies have shown that children who experience trauma have difficulties with executive functioning, including working memory, learning and inhibitory control.¹³⁴ This may account for the relatively high proportion of contravene conduct condition of bail offences among children who experienced residential care compared with other children. This finding may also reflect the possibility that children in residential care were more likely to be reported for breaching a conduct condition (for example, returning home after curfew) than children living with their family.
- 4.51 Difficulties with executive functioning is likely to affect a child's ability to understand and follow conditions of orders, particularly where the child is experiencing multiple disruptions, placements and carers. Such evidence raises questions about the appropriateness of secondary offences such as fail to answer bail for children, particularly in light of other mechanisms for varying or cancelling their bail. Even breaches constituted by further offending do not require a separate bail-related offence for the child to face consequences. The child is liable to be sentenced for the new offence; the fact that the offence was committed on bail may be treated as an aggravating factor; and the child may have their bail cancelled or conditions tightened as a result of the new offence. A proven bail-related offence on a child's record makes it more difficult to obtain bail in the future.¹³⁵ Consequently, even relatively minor indictable offences committed on bail, such as minor property offences in residential care, may place a child onto a rapid pathway into custody. A crucial step in interrupting this pathway for children in residential care is to identify opportunities for therapeutic interventions that support them to heal from their trauma, as well as identifying alternatives to police charges for behaviour such as property damage, particularly when committed while the child is in an emotional state triggered by trauma.

Offences against the person and resisting, hindering or assaulting police or emergency workers

- 4.52 Of the 5,063 children in the study group, around half (2,529 children) were sentenced or diverted for 9,059 charges of an offence against the person between them in 2016 and 2017. The most common offences against the person were unlawful assault (2,659 charges), recklessly cause injury (816 charges) and robbery (673 charges).¹³⁶

134. Rosanne Op den Kelder et al., 'Executive Function as a Mediator in the Link between Single or Complex Trauma and Posttraumatic Stress in Children and Adolescents' (2017) *Quality of Life Research* 26(7) 1687, 1693; Pechtel and Pizzagalli (2011), above n 85, 61–62; Michael de Bellis and Abigail Zisk, 'The Biological Effects of Childhood Trauma' (2014) 23(2) *Child and Adolescent Psychiatric Clinics* 185, 201–205.

135. When determining whether there is an unacceptable risk for the purposes of granting bail, the bail decision-maker must take into account the accused's criminal history and the extent to which they have complied with conditions of any earlier grant of bail: *Bail Act 1977* (Vic) ss 3AAA(1)(c)–(d).

136. *Summary Offences Act 1966* (Vic) s 23 (unlawful assault); *Crimes Act 1958* (Vic) ss 18 (recklessly cause injury) and 75 (robbery).

4.53 Of the 2,529 children sentenced or diverted for at least one offence against the person in 2016 and 2017:

- almost half were the subject of at least one child protection report (44% or 1,108 children);
- one in five experienced out-of-home care (20% or 503 children); and
- one in six experienced residential care (15% or 377 children) (Figure A5, page 89).

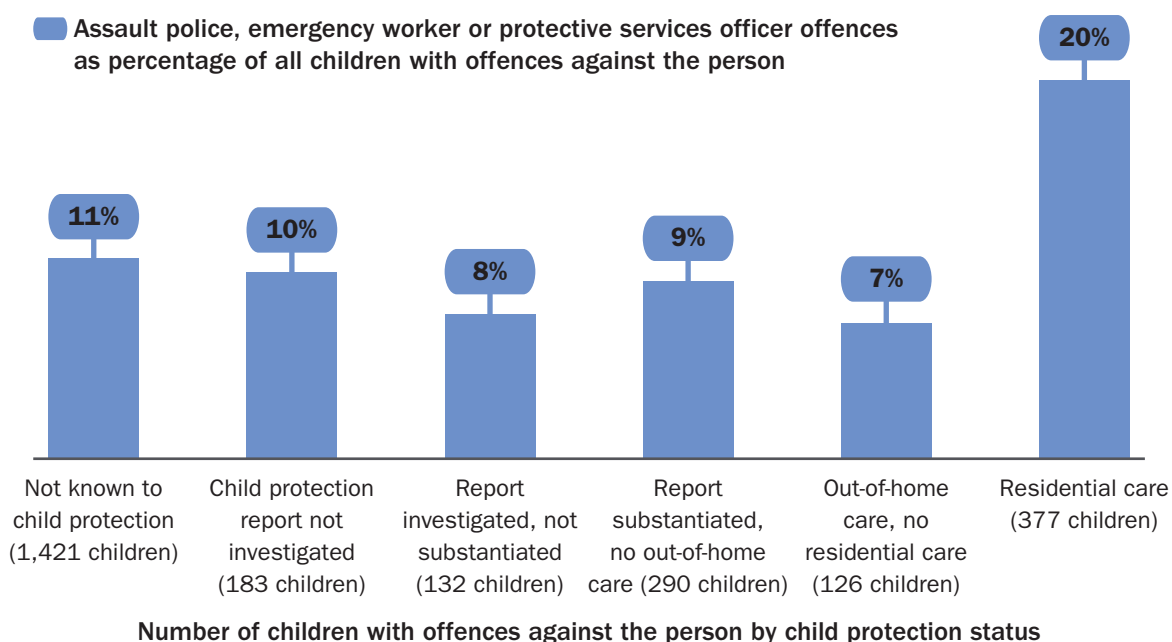
Almost three-quarters of sentenced and diverted children who experienced residential care had an offence against the person

4.54 Children who experienced residential care were far more likely than other children in the study group to be sentenced or diverted for an offence against the person. Almost three-quarters (72%) were sentenced or diverted at least once in 2016 or 2017 for an offence against the person compared with less than half (45%) of children not known to child protection (Figure 12, page 42).

Of children who had offences against the person, those who experienced residential care were most likely to have assaulted police or emergency workers

4.55 One in 20 charges of an offence against the person involved assaulting a police officer, an emergency worker on duty or a protective services officer.¹³⁷ Of children sentenced or diverted for offences against the person, those who experienced residential care were twice as likely as other children to have assaulted police or emergency workers (Figure 13).

Figure 13: Children sentenced or diverted for offences against the person in 2016 and 2017 (2,529 children), by the percentage of children in each child protection category with at least one offence against the person involving assault police, emergency worker or protective services officer



137. These 494 charges comprised 223 charges under *Crimes Act 1958* (Vic) s 31(1)(b) and 271 charges under *Summary Offences Act 1966* (Vic) ss 51(2), 52(1) (repealed).

Children who experienced residential care were more likely to be sentenced or diverted for resisting or hindering police or emergency workers

- 4.56 Children who experienced residential care were also far more likely than other sentenced and diverted children to have charges of *resist or hinder* police or emergency worker, consistent with the findings above in relation to *assault* police or emergency worker. The proportion of children who experienced residential care and were sentenced or diverted for resist or hinder police or emergency worker (16%) was almost three times the proportion of children who were not known to child protection (6%).

Discussion

Offences against the person

- 4.57 Children known to child protection, particularly those who experienced residential care, were more likely than other children to be sentenced or diverted for an offence against the person. This finding is consistent with research suggesting that childhood trauma, including child abuse and neglect, is a risk factor for future violent outcomes. This is in part due to the negative effect of trauma on children's mental health and neurological and psychological development.¹³⁸ Baidawi and Sheehan recently observed that:
- Cross-over children's early police charges were regularly acquired as a result of emotional and behavioural regulation challenges, for example perpetrating family violence in the home, and similar behaviours in residential care; challenges also contributing to children's school exclusion and poor peer relationships ... Professionals attributed these outcomes to the compounded effects of trauma, attachment, behavioural, and mental health challenges, and disability. Emotional and behavioural regulation challenges for these children had been typically present from early childhood.¹³⁹
- 4.58 The experience of childhood trauma can lead to a tendency to overreact or underreact to emotional stimuli.¹⁴⁰ Children may have difficulty recognising emotions, for example, misrecognising others' expressions as fear or hostility. They may also attribute hostile intent to others' actions more readily than is justified (known as *hostile attribution bias*).¹⁴¹ This can contribute to aggression if children mistakenly feel a need to protect themselves or if they interpret innocent actions as provocative. These elements may be particularly relevant to children in residential care, who are surrounded by unfamiliar adults and children who may have the same hostile attribution bias, and they may therefore help explain the high proportion of offences against the person (72%) among sentenced and diverted children who experienced residential care.
- 4.59 The removal of children into care, away from their family, friends and community, may also cause them to simultaneously fear and seek approval from their new peers in residential care. Children in this situation may have an increased likelihood of participating in violent offences with their peers, such as robberies and assaults in public.

138. Lucy Fitton et al., 'Childhood Maltreatment and Violent Outcomes: A Systematic Review and Meta-Analysis of Prospective Studies' (2018) *Trauma, Violence and Abuse* (DOI 10.1177/1524838018795269) 12 <<https://journals.sagepub.com/doi/10.1177/1524838018795269>> at 13 February 2020.

139. Baidawi and Sheehan (2019), above n 47, 12.

140. Bellis and Zisk (2014), above n 134, 193; Eamon McCrory et al., 'Annual Research Review: Childhood Maltreatment, Latent Vulnerability and the Shift to Preventative Psychiatry – the Contribution of Functional Brain Imaging' (2017) 58(4) *Journal of Child Psychology and Psychiatry* 338, 351–353.

141. Pechtel and Pizzagalli (2011), above n 85, 64; Tyler Hein and Christopher Monk, 'Research Review: Neural Response to Threat in Children, Adolescents, and Adults after Child Maltreatment – a Quantitative Meta-Analysis' (2017) 58(3) *Journal of Child Psychology and Psychiatry* 222, 226–227; Jaffee (2017), above n 78, 531, 533–534.

[Police] are often called when there's an incident happening, and then ... the situation escalates, and there's not enough strategies to defuse escalated behaviour, and then kids lash out or try and resist an intervention by ... police, [or] the emergency worker. And then there's lots of mental health issues as well.

So many times ... it's a really simple precipitating event. The young person thought they were going to see their mum that weekend, and then all of a sudden they're told it's not going to happen, [without] care or thought ... that that's actually going to trigger them, and then it escalates into an incident.

Fear of police is a huge one as well, particularly for Aboriginal kids. I'm not being melodramatic when I say that most Aboriginal kids know somebody who went into custody and didn't come out. So if police turn up, they're terrified. They hear stories about [how] police stations are not safe places for Aboriginal people. And huge numbers of Aboriginal kids are in care. When the Police show up – and they're traumatised, they don't have healthy coping mechanisms to begin with – they lose it. And I'm not at all saying that it's okay to assault emergency workers, but I'm saying that quite often, it's a fight-or-flight terrified reaction.

Roundtable 4 (12 December 2019)

Resist, hinder, assault police or emergency worker

- 4.60 Of children sentenced or diverted for offences against the person, those who experienced residential care were more likely to have a charge that involved assaulting police or emergency workers.
- 4.61 Roundtable participants commented that some police involvement stemmed from a minor incident in residential care that escalated due to the inexperience of residential care workers and junior police in managing trauma-related behaviour. Therefore, calling police in relation to minor incidents, or to trauma-related behaviour, may quickly escalate into more serious offences if the arrival of police triggers a trauma-related response in the child. Running away from care was also identified by stakeholders as something that can escalate and result in charges of resist, hinder, assault police or emergency worker when the child is located.¹⁴²
- 4.62 Some children are genuinely scared of police, for example, if they associate police with their removal into out-of-home care or others' removal into custody, such as family or members of their community or other children in care.¹⁴³ Other children may come from families known to police and have grown up surrounded by negative attitudes towards police. Children who have experienced trauma are often sensitive to any potential threat, and they may display a fight-or-flight response with less provocation than other children. This may also partially explain the higher proportion of resist or hinder police offences among children who experienced residential care.
- 4.63 The *Protecting Children* protocol between the Child Protection Service and Victoria Police provides that where a child is missing from a care placement, a missing persons report should only be made to Victoria Police 'where the child's whereabouts are unknown, and there is a genuine fear for the child's

safety or wellbeing', taking into account a child's age or vulnerability.¹⁴⁴ The protocol provides that when running away is 'part of a regular pattern of behaviour, for example, where a child usually [runs away] from his or her placement and returns to [the] placement after a short period of time', the Child Protection Service, or the relevant community service organisation, should 'develop an appropriate response plan for this behaviour, including consideration of when a missing persons report should be made'.¹⁴⁵

¹⁴². Roundtable 3 (10 December 2010); Roundtable 4 (12 December 2019).

¹⁴³. Roundtable 4 (12 December 2019).

¹⁴⁴. Victorian Government (2012), above n 80, 29.

¹⁴⁵. Ibid.

- 4.64 Once a child is reported missing, in accordance with the above criteria, Victoria Police must conduct an investigation into the report.¹⁴⁶ As mentioned at [4.4], Victoria Police policy identifies children missing from out-of-home care as an especially vulnerable group.¹⁴⁷ Also, Victoria Police policy provides that the search must start immediately for children aged under 10 and those at high risk due to a physical or mental condition, which would apply in some cases to children running away from care.¹⁴⁸
- 4.65 The new *Framework to Reduce Criminalisation of Young People in Residential Care* acknowledges that contact with police can trigger memories of trauma for some children and provides that police involvement 'must focus on harm minimisation'.¹⁴⁹ Guiding Principle 8 states that '[c]riminal charges will not be pursued if there's a viable alternative' and '[d]iscretion will be exercised when police intervention is required'.¹⁵⁰ The framework promotes proactive prevention and de-escalation strategies and provides practice advice addressing how to respond to children who run away or go missing from residential care. It states that 'the most effective interventions for young people displaying behaviours of concern are therapeutic and must be considered'.¹⁵¹ Further, it provides that a 'return to care conversation' should take place with the child, not to reprimand them or reinforce rules but to emphasise 'care and concern' for the child. The conversation should also address any immediate health, emotional and safety needs.¹⁵²
- 4.66 The framework states that Victoria Police's approach to pursuing missing persons reports and Children's Court warrants should be 'trauma-informed' and should avoid further stigmatising the child. Police should consider discretionary powers – such as warnings, child cautions or supporting applications for diversion – as alternatives to criminal charges. Furthermore, the framework suggests that residential care workers include police in the return to care conversation, as it is an opportunity for the young person to engage and build relationships with local police.¹⁵³

Discussion and conclusion

- 4.67 The findings in this chapter support previous research suggesting that for some vulnerable children the experience of care itself may contribute to their entering the youth justice system. In particular, this chapter has found that children who experienced residential care were more likely than children not known to child protection to be sentenced or diverted for breach intervention order, property damage, weapons offences, bail-related offences, offences against the person, and resist, hinder, assault police or emergency worker offences. For nearly all those offence categories, children who experienced residential care were twice as likely to have committed those offence types than children not known to child protection.
- 4.68 These findings support previous research also suggesting that:
- children who have experienced trauma, particularly family violence, may start behaving violently, especially when their trauma has contributed to or is coupled with brain injury, developmental delays or behavioural issues. When such children behave violently in their

¹⁴⁶ Ibid.

¹⁴⁷ Victoria Police (2019), above n 81, 3.

¹⁴⁸ Ibid.

¹⁴⁹ Department of Health and Human Services (2020), above n 12, 24.

¹⁵⁰ Ibid 19.

¹⁵¹ Ibid 24.

¹⁵² Ibid 23.

¹⁵³ Ibid 23, 27.

homes, police or family members may apply for intervention orders, which may rapidly bring the children into the youth justice system. Children sentenced or diverted for breach intervention order had the highest proportion of child protection involvement in the study group. Most of these children were already known to child protection before their first sentenced or diverted offence, consistent with evidence that many children who perpetrate violence in their home were themselves victims of violence, neglect or other trauma;

- children who experience residential care may be criminalised for behaviour such as minor criminal damage or minor drug use in circumstances where they might not have contact with police if they were living with their families.¹⁵⁴ Guiding Principle 8 of the new *Framework to Reduce Criminalisation of Young People in Residential Care* provides that '[c]riminal charges will not be pursued if there's a viable alternative' and '[discretion] will be exercised when police intervention is required';¹⁵⁵
- the involvement of police when children in residential care run away (see [4.63]–[4.64]) or exhibit problematic behaviour may escalate, rather than de-escalate, the situation and result in the child facing charges of resist, hinder or assault police or emergency worker. The new framework promotes proactive prevention and de-escalation strategies for responding to children who display behaviours of concern, run away or go missing from residential care;¹⁵⁶ and
- the availability of the separate offence of commit indictable offence on bail may be fast-tracking some vulnerable children into custody. A child who breaches bail by committing an indictable offence is already liable to have their bail cancelled or conditions tightened as well as facing prosecution and sentencing for the indictable offence.

- 4.69 These findings suggest that some vulnerable children may be drawn into the youth justice system for minor offences in circumstances where their behaviour could more effectively be addressed through alternative solution-based approaches. These approaches should address the underlying causes of potential offending, particularly for those who have experienced trauma and/or have developmental issues.
- 4.70 It is also important to recognise that trauma, abuse and distress may contribute to some children offending prolifically, violently and seriously, with their behaviour causing considerable harm to members of the community. The finding that children who experienced residential care were more likely than other sentenced and diverted children to have an offence against the person suggests that many of the children who experience residential care and cross into the youth justice system have complex needs and entrenched, trauma-related, challenging behaviours. Effectively addressing childhood trauma early and increasing support when children enter out-of-home care are key crime prevention strategies that may prevent highly traumatised children from developing into prolific and violent offenders.
- 4.71 When vulnerable children do move across into the youth justice system, just and effective sentencing requires that the court is provided with adequate information about the child's history and the context of offending. One measure to strengthen practice around sentencing crossover children is to ensure that the proposed Youth Justice Act includes sentencing factors relating to a child's experience of trauma, developmental issues and care history.¹⁵⁷

154. See further Victoria Legal Aid (2016), above n 9; McFarlane (2018), above n 37; Stewart et al. (2002), above n 37; Stewart et al. (2008), above n 37; Malvaso et al. (2017), above n 37; Australian Institute of Health and Welfare (2017), above n 34; Cashmore (2011), above n 37.

155. Department of Health and Human Services (2020), above n 12, 19.

156. Ibid 24. See further [4.65].

157. See further [3.43]–[3.44], [6.7] and Report 3 (forthcoming).

5. Geographical differences

Introduction

- 5.1 This chapter focuses on Children's Court locations throughout Victoria to determine which have:
- the highest proportions of crossover children among sentenced and diverted children;
 - the highest concentrations of Aboriginal and Torres Strait Islander children among crossover children; and
 - the highest proportions of children who were aged 10–13 at first sentence or diversion.
- 5.2 Previous research suggests that children appearing in regional and remote court locations may be disadvantaged by a lack of resources, specialisation and services compared with their city-based counterparts.¹⁵⁸ For example, unlike metropolitan practitioners who appear in the Children's Court in Melbourne, regional practitioners may be less likely to practice exclusively in the Children's Court. Similarly, magistrates who sit exclusively in the Children's Court jurisdiction have a greater opportunity, at least partly because of workload, to develop specialist knowledge in areas such as child development, communication with children and the availability of relevant child, youth and family services. Vulnerable families in regional areas may also have less support and services available to them, which may increase the chance of their children becoming known to child protection.
- 5.3 The analysis in this chapter is relevant to the future consideration of services and resources currently provided to regional court locations and how these locations may be better resourced.

Children's Court locations

- 5.4 The Child Welfare Practice and Legislation Review Committee, established in 1982 by the Victorian Government and chaired by Dr Terry Carney of Monash University,¹⁵⁹ recommended the establishment of a specialist Children's Court which should be regionalised throughout the state and that, in the long term, there should be 'provision for separate facilities for Children's Court hearings independent of adult Magistrates' courts'.¹⁶⁰ To date, the Children's Court in Melbourne is the only fully specialised facility that has been established in Victoria. All other Children's Court locations are based in metropolitan and regional Magistrates' Court locations.¹⁶¹ Consequently, in many Children's Court locations around Victoria, children are sentenced by magistrates who may more commonly hear adult criminal matters.

158. Fitz-Gibbon and O'Brien (2019), above n 67, 23–25; Baidawi and Sheehan (2019), above n 47, 172–173; 187–188.

159. Child Welfare Practice and Legislation Review Committee (Victoria), *Child Welfare Practice and Legislation Review: Report* (1984). For further information about the Children's Court, see Sentencing Advisory Council (2019), above n 10, 17–30.

160. Child Welfare Practice and Legislation Review Committee (Victoria) (1984), above n 159, vol. 1, 15 (Recommendations 256–257).

161. Children's Court of Victoria, 'Court Locations' (childrenscourt.vic.gov.au, 2020) <<https://www.childrenscourt.vic.gov.au/about-us/court-locations>> at 13 February 2020.

- 5.5 Previous research has explored the geographical indicators of disadvantage, including criminal offending.¹⁶² Metropolitan and regional Magistrates' Court locations are often situated in or near areas identified as being among the most disadvantaged in Victoria, for example, regional centres like Shepparton and Morwell and urban hubs like Dandenong, Broadmeadows and Sunshine.¹⁶³ The analysis in this chapter focuses on court locations rather than where the sentenced and diverted children lived or offended.

Metropolitan courts

- 5.6 The metropolitan Children's Court locations are based within Magistrates' Court locations in Broadmeadows, Dandenong, Frankston, Moorabbin, Dromana, Heidelberg, Ringwood, Sunshine and Werribee. Children's Court matters are also heard in the Neighbourhood Justice Centre in Collingwood. Magistrates hearing Children's Court criminal matters in these locations undergo additional training in the Melbourne Children's Court.
- 5.7 Broadmeadows and Moorabbin Children's Court locations also hear child protection matters on a daily basis, with specialist magistrates appointed to these locations from the central court. The Children's Court in Broadmeadows became the first Australian court to establish a Koori Family Hearing Day, known as Marram-Ngala Ganbu ('We are One' in Woi wurrung language). It aims to improve outcomes for Koori children in child protection proceedings, providing a culturally appropriate process to assist in decision-making. It also aims to improve adherence to the Aboriginal Child Placement Principle in the *Children, Youth and Families Act 2005* (Vic). A Koori services coordinator organises Marram-Ngala Ganbu and provides information and referrals to relevant services for Koori children and their families. Marram-Ngala Ganbu commenced 12 July 2016 and sits every Tuesday.¹⁶⁴

Regional courts

- 5.8 In regional Victoria, court locations are divided into five key regions, each with a headquarter court:
- **Barwon South West region** includes courts at Geelong (headquarter court) Colac, Hamilton, Portland and Warrnambool;
 - **Gippsland region** includes courts at Latrobe Valley (Morwell) (headquarter court) and Bairnsdale, Sale, Orbost, Omeo, Korumburra and Wonthaggi;
 - **Grampians region** includes Ballarat (headquarter court), Bacchus Marsh, Ararat, Stawell, Horsham, Nhill, St Arnaud, Edenhope and Hopetoun;
 - **Hume region** includes Shepparton (headquarter court), Benalla, Seymour, Wangaratta, Wodonga, Cobram, Corryong, Mansfield and Myrtleford; and
 - **Loddon Mallee region** includes Bendigo (headquarter court), Kyneton, Castlemaine, Maryborough, Echuca, Swan Hill, Kerang, Mildura, Robinvale and Ouyen.

162. See for example, Tony Vinson et al., *Dropping Off the Edge 2015: Persistent Communal Disadvantage in Australia* (2015).

163. Ibid 70–71. The report found that a limited number of Victorian postcodes accounted for a disproportionate number of 'top' (that is, most disadvantaged) rank positions, with 11 postcodes (1.6% of the total) accounting for more than 13.7% of the top rank positions: ibid 59.

164. Children's Court of Victoria, *Annual Report 2016–2017* (2018) 5, 18; Peter Power, 'Chapter 4: Family Division – General', *Children's Court Research Materials* (Children's Court of Victoria, 2020) 4.9.6 <<https://www.childrenscourt.vic.gov.au/legal/research-materials/family-general>> at 14 February 2020.

Children's Koori Court

- 5.9 The Children's Koori Court hears charges (other than sexual offences) within the jurisdiction of the Criminal Division where Aboriginal and Torres Strait Islander children plead guilty, intend to plead guilty or are found guilty.¹⁶⁵ Youth justice diversion is available in the Children's Koori Court.¹⁶⁶
- 5.10 The Children's Koori Court was established to provide a more inclusive and culturally relevant sentencing process for young Aboriginal and Torres Strait Islander children charged with offences, by involving Aboriginal Elders and other members of the Indigenous community in the court hearing (among other measures).¹⁶⁷ As with the Koori Divisions of the Magistrates' Court and the County Court, one of the aims of the Children's Koori Court is to reduce the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, including in custody.¹⁶⁸ The same sentencing laws apply in the Children's Koori Court as in the Children's Court.¹⁶⁹

Koori court locations

The Children's Koori Court sits at:

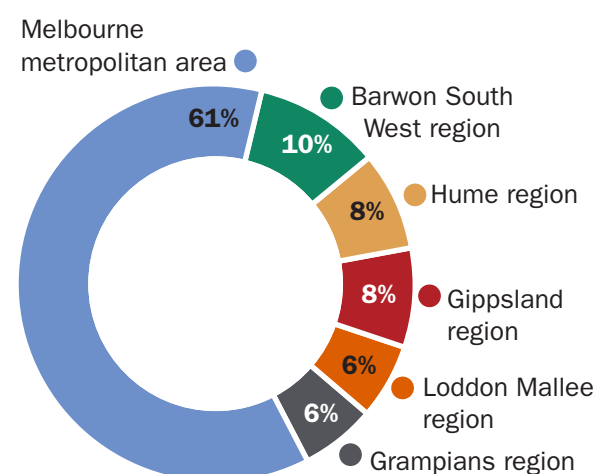
- Melbourne
- Heidelberg
- Dandenong
- Mildura
- Latrobe Valley (Morwell)
- Bairnsdale
- Warrnambool
- Portland
- Hamilton
- Geelong
- Swan Hill
- Shepparton

Source: www.childrenscourt.vic.gov.au

Most children in the study group were sentenced or diverted in the Melbourne metropolitan area

- 5.11 The 5,063 children in the study group were sentenced or diverted for 7,988 cases across Victoria in 2016 and 2017. Of these, 90% (4,561 children) were sentenced or diverted in only one court location in the two years. The remaining 10% (502 children) were sentenced or diverted in more than one court location in that time.
- 5.12 Of the 7,988 cases sentenced or diverted in 2016 and 2017:
- most (61% or 4,894 cases) were sentenced or diverted in the Melbourne metropolitan area, with 16% (1,245 cases) heard at the Melbourne Children's Court itself; and
 - the remaining cases were split fairly evenly across the other five court regions, with Barwon South West having the second largest proportion of cases (10%) (Figure 14).

Figure 14: Proportion of children sentenced or diverted in Victoria, by court region



165. *Children, Youth and Families Act 2005* (Vic) s 519(1). See further Jennifer Bowles, *Sentencing in the Children's Court of Victoria* (2013) 3–5.

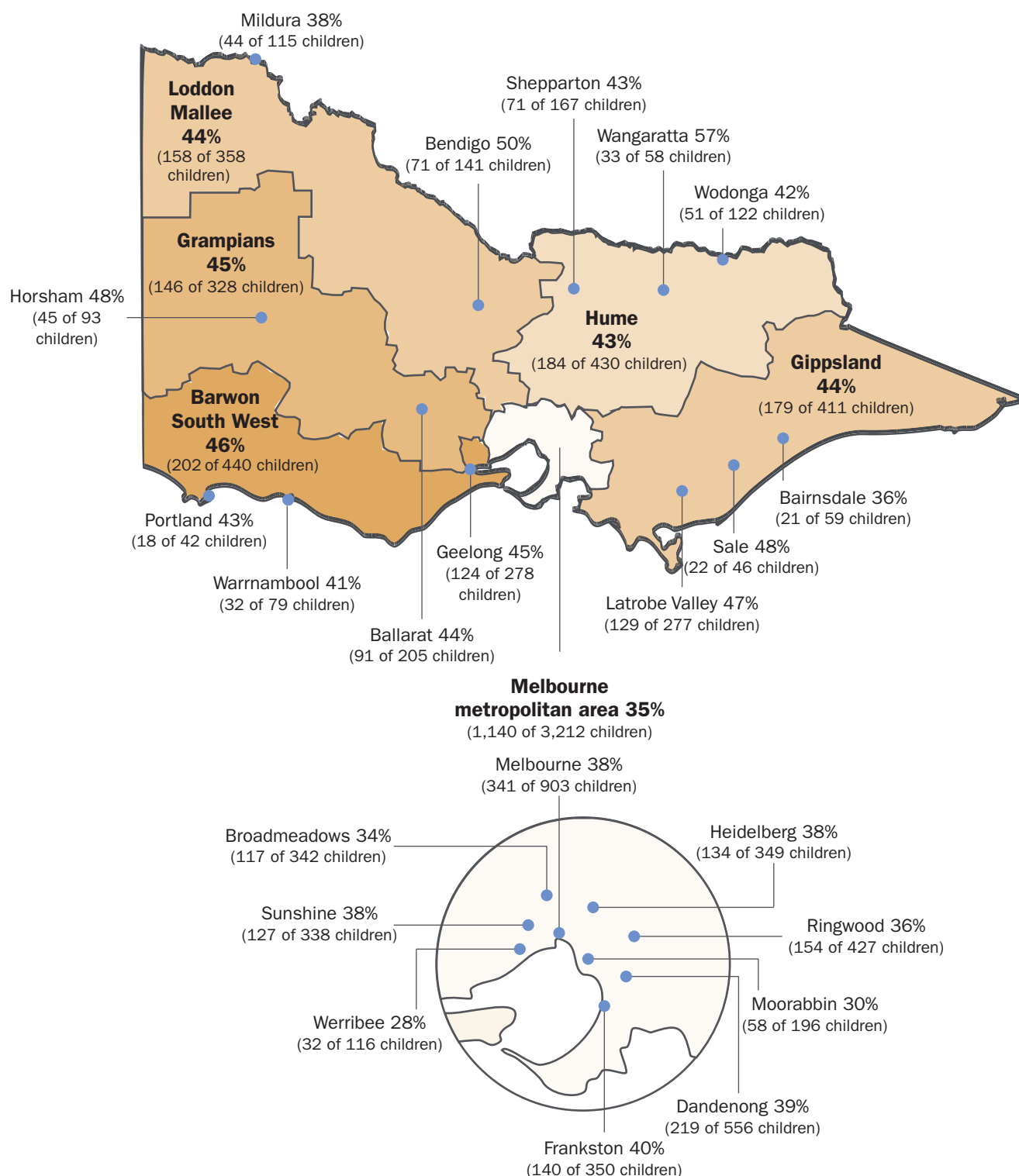
166. *Children, Youth and Families Act 2005* (Vic) ss 518A(c)(iv), 519(1)(c)(iv).

167. *Children and Young Persons (Koori Court) Act 2004* (Vic) s 1; Victoria, 'Children and Young Persons (Koori Court) Bill', Parliamentary Debates, Legislative Assembly, 3 November 2004, 1196–1199 (Sherryl Garbutt, Minister for Community Services).

168. Victoria, 'Children and Young Persons (Koori Court) Bill', *Parliamentary Debates*, Legislative Assembly, 3 November 2004, 1196 (Sherryl Garbutt, Minister for Community Services).

169. *Children, Youth and Families Act 2005* (Vic) s 517(1).

Figure 15: Number and proportion of children sentenced or diverted in Victoria in 2016 and 2017 who were known to child protection, by court region and Children's Court location¹⁷⁰



170. The 5,063 children in the study group were counted once in each court location or court region in which they were sentenced or diverted. Therefore, a child was counted multiple times if they were sentenced or diverted in more than one region or court location in 2016 or 2017. For example, if a child had three cases – one in Frankston and two in Werribee – the child would be counted once in Frankston and once in Werribee for Figure 15. Additionally, that child would be counted once in the Melbourne metropolitan area. The total number of children in each region (for example, Melbourne metropolitan area) may be lower than the sum of children for all individual courts in that region because a child may be sentenced or diverted in multiple courts within that same region.

Child protection involvement

Regional areas had a higher proportion of crossover kids than the Melbourne metropolitan area

- 5.13 Children sentenced or diverted in regional Victoria in 2016 and 2017 were more likely to be known to child protection (44%) than children sentenced or diverted in the Melbourne metropolitan area (35%). Of the regional areas, Barwon South West had the highest proportion of sentenced and diverted children known to child protection (46%) (Figure 15, page 62).
- 5.14 Children sentenced or diverted in regional Victoria in 2016 and 2017 were also more likely than children sentenced or diverted in the Melbourne metropolitan area to have experienced:
- out-of-home care (19% in regional areas compared with 14% in the Melbourne metropolitan area); and
 - residential care (13% in regional areas compared with 9% in the Melbourne metropolitan area).

One in two sentenced and diverted children were known to child protection in some regional courts

- 5.15 As shown in Figure 16 (page 64), the courts with the highest proportion of crossover children (excluding courts with fewer than 40 sentenced and diverted children) were Geelong (45%), Horsham (48%), Bendigo (50%), Latrobe Valley (47%), Sale (48%) and Wangarratta (57%).

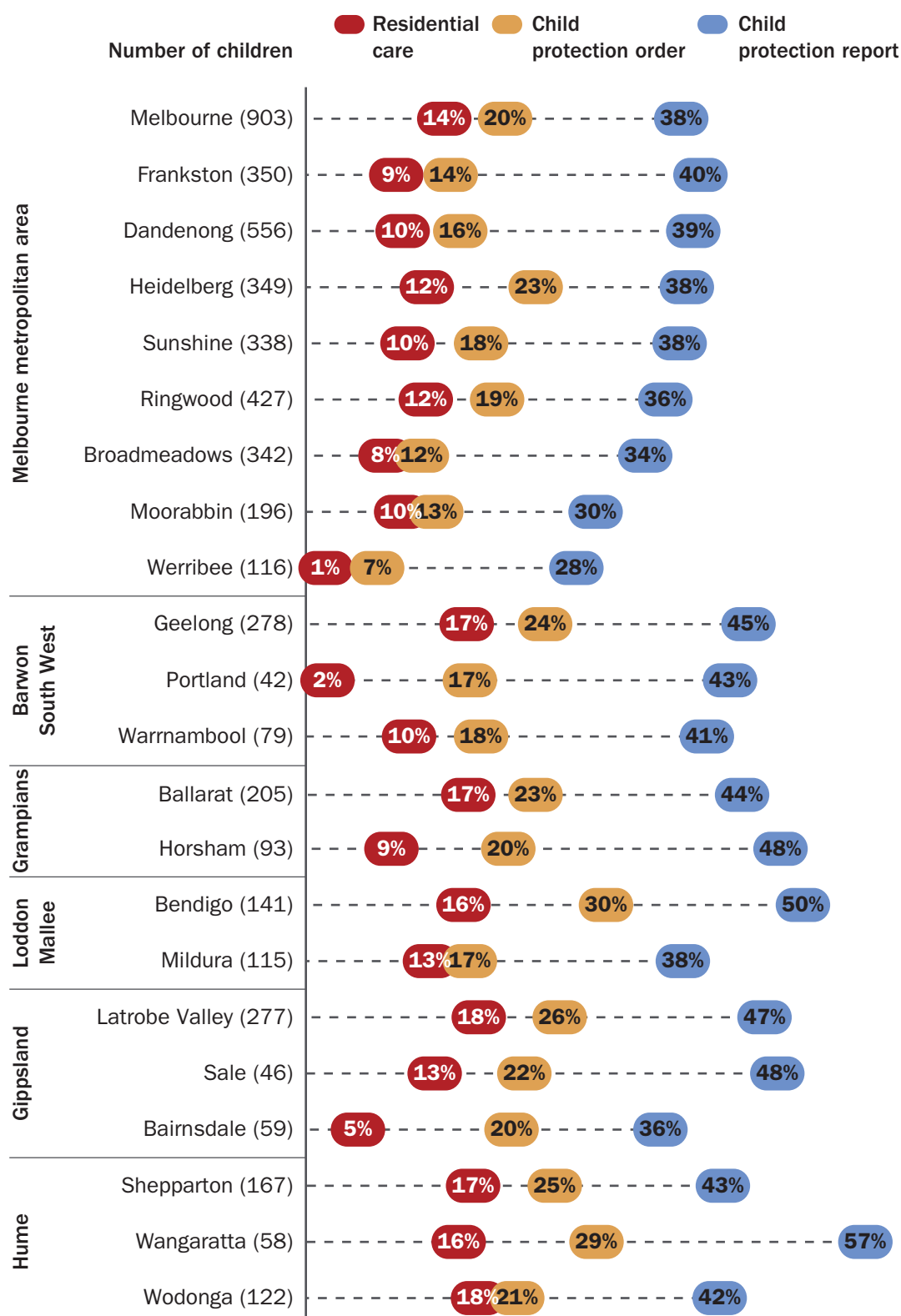
At least one in five children sentenced or diverted in some court locations had been the subject of a child protection order

- 5.16 As shown in Figure 16, at least one in five sentenced and diverted children were the subject of a child protection order in Melbourne (20%), Heidelberg (23%), Geelong (24%), Ballarat (23%), Horsham (20%), Bendigo (30%), Latrobe Valley (26%), Sale (22%), Bairnsdale (20%), Shepparton (25%), Wangarratta (29%) and Wodonga (21%).

Around one in six children sentenced or diverted in some court locations experienced residential care

- 5.17 Figure 16 shows that residential care was experienced by around one in six children sentenced or diverted in Geelong (17%), Ballarat (17%), Bendigo (16%), Latrobe Valley (18%), Shepparton (17%), Wangarratta (16%) and Wodonga (18%).

Figure 16: Number and proportion of sentenced and diverted children in Victoria, by Children's Court location and whether the child was the subject of a child protection report, was the subject of a child protection order or experienced residential care (courts with fewer than 40 children were excluded)



Discussion

5.18 Roundtable participants attributed the higher levels of child protection involvement in regional courts to a number of factors, including:

- a lack of services in regional areas, particularly family support services. This makes the Child Protection Service more likely to get involved if there are concerns about a child, whereas in the Melbourne metropolitan area concerns might be addressed by referring the family to appropriate support services;
- differences in policing. For example, there was a perception that, in some areas, children may be more likely to be charged if their family are already known to police due to intergenerational trauma, protection issues and offending. In other areas, police were perceived to be at the forefront of helping keep vulnerable children out of the youth justice system. A roundtable participant highlighted the relatively low proportion of children who experienced residential care among sentenced and diverted children in Bairnsdale (5%), attributing this in part to a 'powerfully effective' diversion program led by local police that 'collaborated with schools and local non-government agencies to divert children away from court, and it worked really well';¹⁷¹
- legal practitioners in some regional areas may be less likely to practice exclusively in the Children's Court. This may provide practitioners with less opportunity to develop specialist knowledge in areas such as child development and the association between trauma, developmental issues and problematic behaviour;
- a lack of fully specialised Children's Courts in regional areas. High workloads in some regional areas and a lack of regionally based additional court services, such as Children's Court Clinic assessments, may disadvantage crossover children in regional areas. The Children's Court Clinic was identified as a key resource that provides court-ordered clinical assessments and services to children and families for Children's Court locations across Victoria.¹⁷² However, assessments are usually conducted on site in Melbourne; staff usually only travel where there is a 'special need' to do so, which is raised with the magistrate or judge before the order is made.¹⁷³ In practical terms, the requirement to travel to access the Children's Court Clinic may affect accessibility for children in remote and regional locations; and
- a lack of information sharing. For example, there are obstacles to providing sufficient information to criminal courts about a child's protection history, particularly in regional areas.

I would come back to this issue of whether there is an impact of a lack of specialist Children's Court magistrates in the regions. And other things, for example, access to Children's Court Clinic assessments, the amount of time that children have to travel, and families, to access specialist assessments that might support their Criminal Division matters is very disadvantageous to children and families in non-metropolitan locations.

Having witnessed ... magistrates having to flick between children's and adults' matters in what we're calling a specialist Children's Court approach, I think, is very demanding on magistrates as well. Having to pause a matter of a child to allow an adult video link to come through while the child is sitting there witnessing all this! We can't say that we're truly adopting a child-centred approach in court if that's the nature of the system that we're still dealing with.

When you think about what's available to those families to support them with their children, you can understand why child protection's much more involved.

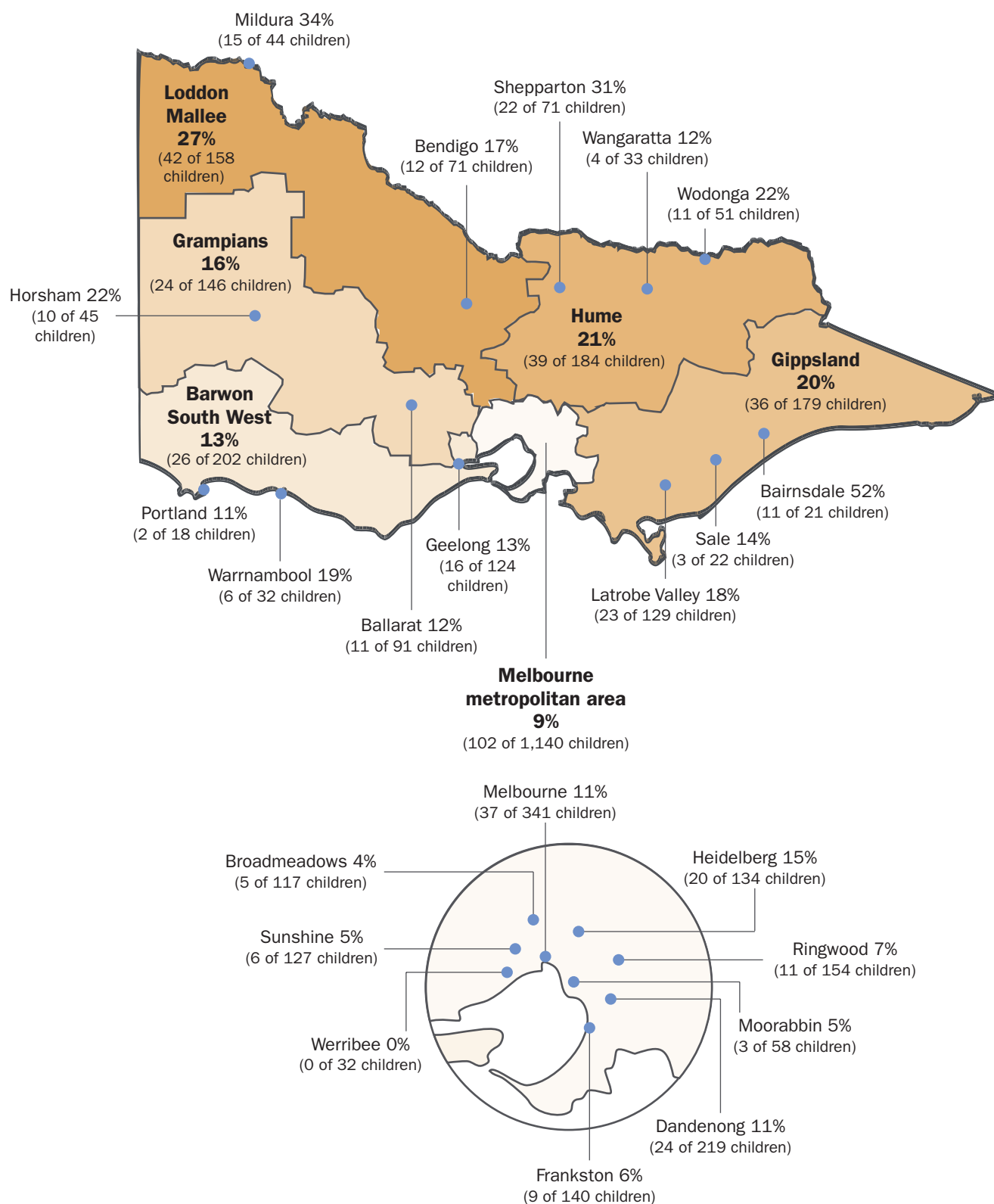
Roundtable 3 (10 December 2019)

171. Roundtable 3 (10 December 2019).

172. Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019). The Children's Court Clinic 'conducts psychological and psychiatric assessments of children and families for the Children's Court of Victoria. In some cases, limited treatment is also provided. The Clinic also conducts assessments relating to the impact of drug use on a young person and may make recommendations about appropriate treatment': Children's Court of Victoria (2020), above n 14.

173. Power (2015), above n 15, 12.3.

Figure 17: Number and proportion of crossover children (1,938 children) who were Aboriginal and Torres Strait Islander children, by court region and Children's Court location¹⁷⁴



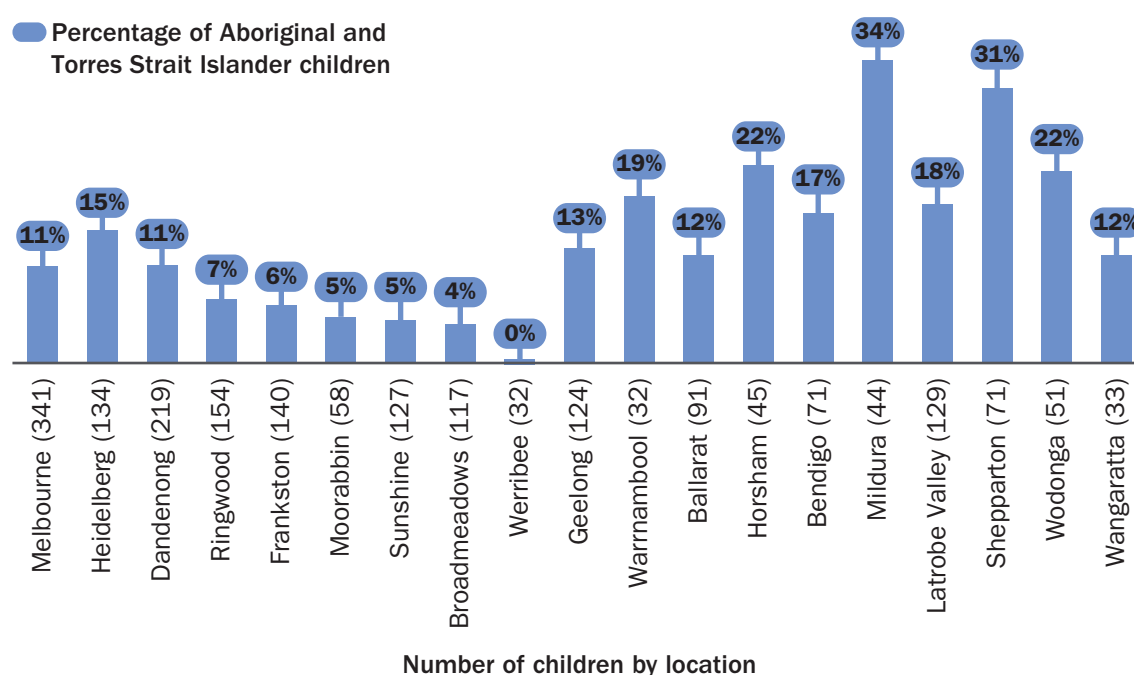
174. See above n 170 for the counting rules in this map (and minor discrepancies). Note that this map is restricted to the group of children known to child protection (1,938 children) because Aboriginal and Torres Strait Islander status was not known for the group of children who were not known to child protection.

Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children were over-represented in most Victorian court locations, particularly in regional Victoria

- 5.19 Previous research, including Report 1 of this project, has found Aboriginal and Torres Strait Islander children to be over-represented among children in the child protection system, including in out-of-home care, and in the youth justice system, including in custody.¹⁷⁵
- 5.20 The proportion of Aboriginal and Torres Strait Islander crossover children in the Melbourne metropolitan area (9%) was less than that across regional Victoria. Loddon Mallee had the highest proportion of Aboriginal and Torres Strait Islander crossover children (27%) (Figure 17, page 66).
- 5.21 The court locations with the highest proportion of Aboriginal and Torres Strait Islander crossover children were Bairnsdale (52%), Mildura (34%) and Shepparton (31%) (Figure 18). The court locations with the lowest proportion of Aboriginal and Torres Strait Islander crossover children were Werribee (0%), Broadmeadows (4%) and Sunshine and Moorabin (both 5%). Courts with fewer than 30 crossover children were excluded.

Figure 18: Proportion of crossover children (1,938 children) who were Aboriginal and Torres Strait Islander children, by court location



Discussion

- 5.22 The higher concentration of Aboriginal and Torres Strait Islander peoples in communities in regional Victoria may help explain the higher proportion in some court locations of Aboriginal and Torres Strait Islander crossover children who are known to child protection.¹⁷⁶

¹⁷⁵ See Sentencing Advisory Council (2019), above n 10; Australian Institute of Health and Welfare (2018), above n 33; Productivity Commission (2017), above n 33; Lewis et al. (2018), above n 33; Australian Institute of Health and Welfare (2018), above n 34; Dean (2018), above n 34; Marien (2012), above n 34.

¹⁷⁶ Roundtable 4 (12 December 2019).

As at 30 June 2016, Aboriginal and Torres Strait Islander peoples comprised:

- 1% of young people aged 10–19 in Melbourne;
- 1.1% of young people aged 10–19 in major Victorian cities (including Geelong);
- 1.6% of young people aged 10–19 across Victoria;
- 3.1% of young people aged 10–19 in 'inner regional' Victoria (including Latrobe Valley, Shepparton and Wodonga); and
- 5.5% of young people aged 10–19 in 'outer regional and remote' Victoria (including Horsham and Mildura).¹⁷⁷

5.23 Therefore, while there is a higher concentration of Aboriginal and Torres Strait Islander peoples in some parts of regional Victoria, this does not account for the substantial and concerning over-representation of Aboriginal and Torres Strait Islander children among crossover children in most court locations, compared with the general population.

There's a whole range of factors, [from] systemic racism at one end, and a whole raft of issues that are ultimately about intergenerational trauma ... [including] higher levels of multiple risk factors for children in some Aboriginal families, including substance abuse and family violence.

Roundtable 1 (2 April 2019)

Yeah, so those sorts of places where there were missions and reservations, and places where there's trauma throughout the generations of dispossession and disadvantage, that probably has a fair bit to do with it as well. And also systemic racism, in terms of the way people are treated, the way that they're treated when they go into shops, the way that they're treated when police are walking around. Those things really vary across the regions as well.

Roundtable 4 (12 December 2019)

5.24 Roundtable participants were troubled by the over-representation of Aboriginal and Torres Strait Islander children among crossover children across Victorian court locations. Participants commented that, to some extent, this finding corresponds to the proportion of children coming into care generally, not just those who also appear in the youth justice system, and that some regional areas have higher rates of removal of Aboriginal and Torres Strait Islander children than other areas. Roundtable participants discussed factors that possibly contributed to the higher proportion of Aboriginal and Torres Strait Islander children among crossover children who experienced out-of-home care, including:

- inter-generational trauma, dispossession and disadvantage;
- pre-existing trauma, health and welfare issues coupled with insufficient assessment and treatment prior to contact with the criminal justice system;
- different community thresholds for reporting Aboriginal and Torres Strait Islander children (compared with non-Aboriginal and Torres Strait Islander children);
- a predisposition of child protection to continue involvement in families with previous protection issues, including child protection involvement of the parents when they were children; and
- systemic differences in responses to Aboriginal and Torres Strait Islander families, such as institutional attitudes that label culturally appropriate parenting practices as deficient (for example, extended families living together in the same home being deemed inappropriate because the house was 'too crowded' and children had to share rooms).¹⁷⁸

177. Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*, cat. no. 3238.0.55.001 (2018) (Estimated Resident Aboriginal and Torres Strait Islander and Non-Indigenous Population, Indigenous Regions – 30 June 2016, Table 1, Table 3; Estimated Resident Aboriginal and Torres Strait Islander and Non-Indigenous Population, States and Territories, Remoteness Areas – 30 June 2016, Table 1, Table 3).

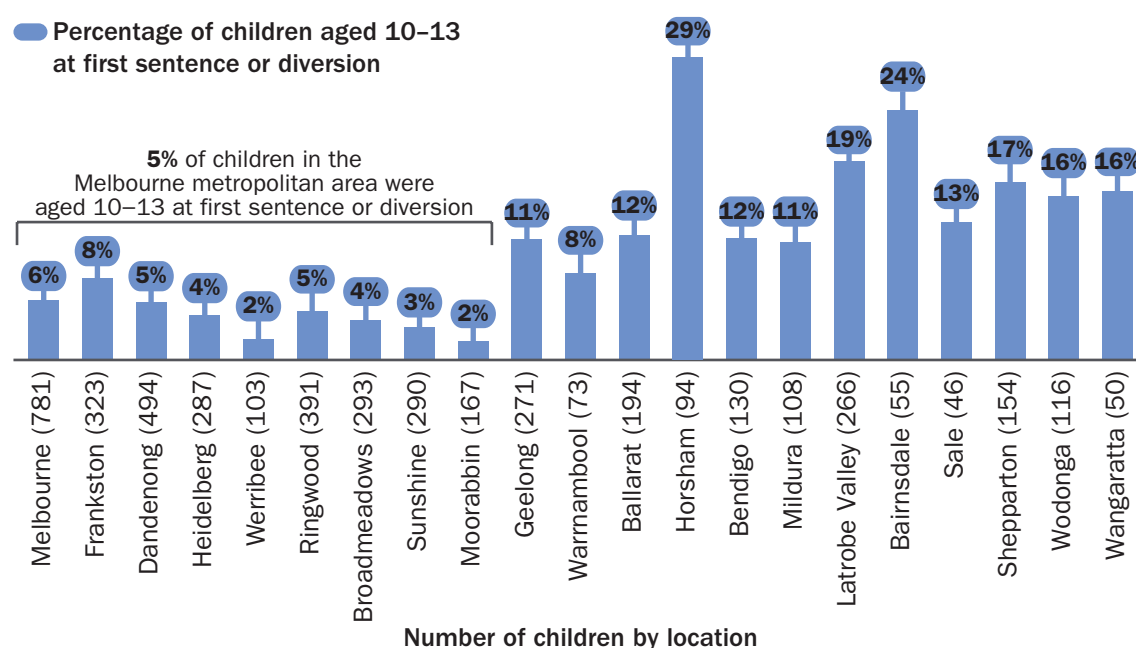
178. Roundtable 1 (2 April 2019); Roundtable 2 (4 April 2019); Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019).

- 5.25 A number of roundtable participants were hopeful that the shift towards the new Victorian Aboriginal Children in Aboriginal Care program will reduce the over-representation of Aboriginal and Torres Strait Islander children in care and, by extension, reduce the over-representation of Aboriginal and Torres Strait Islander children among crossover children.¹⁷⁹

Children first sentenced or diverted aged 10–13

- 5.26 Whereas the previous sections of this chapter have discussed the location where children were sentenced or diverted in 2016 and 2017, this section examines the court location where the 5,063 children in the study group were *first* sentenced or diverted.
- 5.27 Children sentenced or diverted in regional areas were far more likely than children sentenced or diverted in the Melbourne metropolitan area to be aged 10–13 at their first sentence or diversion. The proportion of children first sentenced or diverted aged 10–13 in Gippsland (18%) and the Grampians (17%) was almost four times that in the Melbourne metropolitan area (5%) (Figure 20, page 70).
- 5.28 The proportion of children first sentenced or diverted aged 10–13 in the following court locations was more than triple the proportion in Melbourne (Figure 19):
- Horsham (29% of 94 children);
 - Bairnsdale (24% of 55 children);
 - Latrobe Valley (19% of 266 children);
 - Shepparton (17% of 154 children);
 - Wodonga (16% of 116 children); and
 - Wangaratta (16% of 50 children).

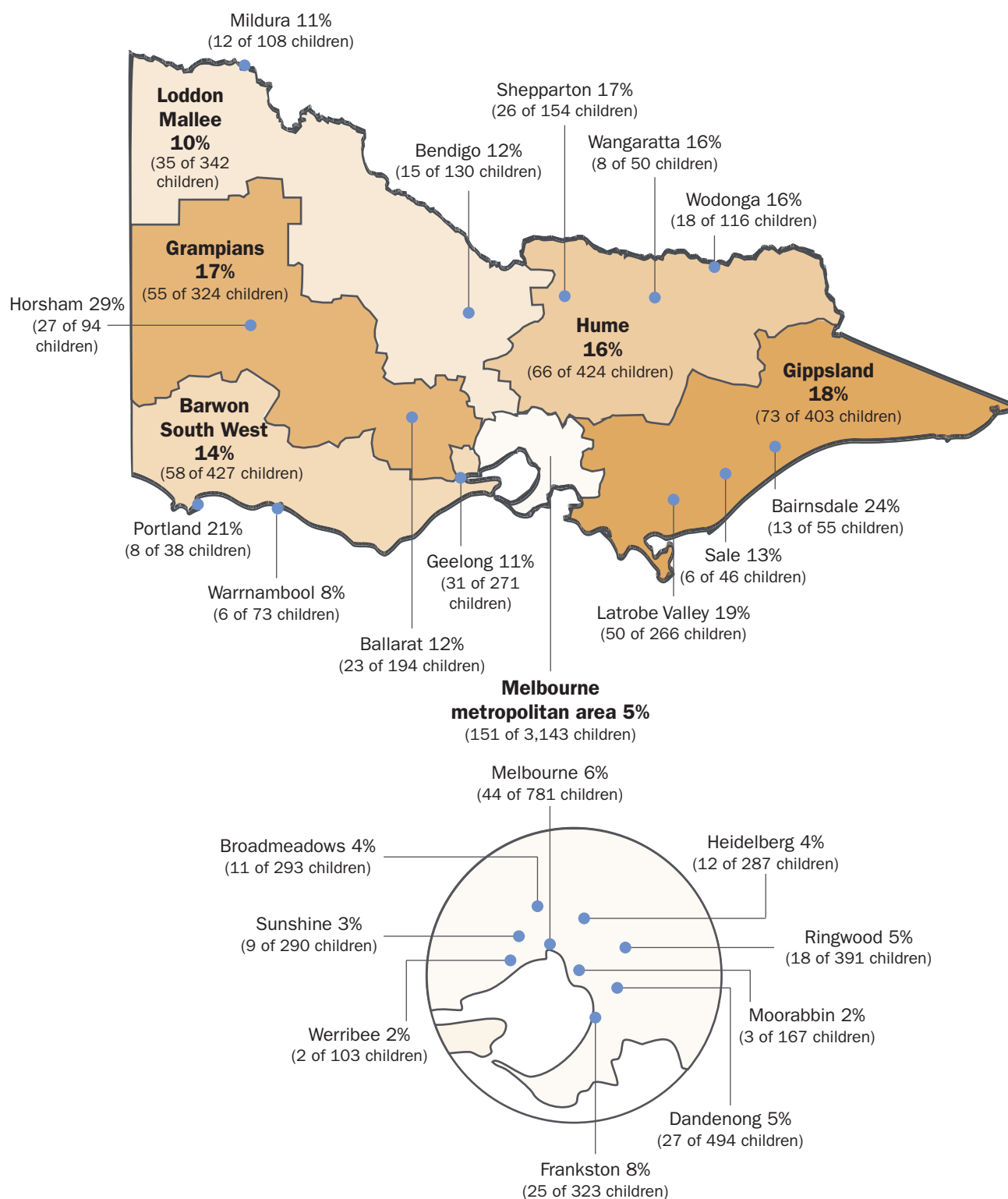
Figure 19: Proportion of children in the study group who were aged 10–13 at first sentence or diversion, by court region and Children's Court location¹⁸⁰



179. See further Department of Health and Human Services, *Aboriginal Children in Aboriginal Care: Information Sheet* (2017); Sentencing Advisory Council (2019), above n 10, 42–43.

180. Courts that sentenced or diverted fewer than 40 children were excluded from the graph. For each court location with 40 or more children, Figure 19 shows the proportion of children aged 10–13 at first sentence or diversion.

Figure 20: Proportion of children in the study group aged 10–13 at first sentence or diversion, by court region and Children's Court location¹⁸¹



181. This map is based on the court location for each child's first sentence or diversion, so each child is only counted once for each court location and once for each court region. For example, a child sentenced in Frankston at their first sentence or diversion would be counted once in Frankston and once for the Melbourne metropolitan area. If that child received a second sentence in Geelong, that location would not be counted in this map as it would not be the location of the child's first sentence or diversion.

Discussion

- 5.29 Compared with courts in the Melbourne metropolitan area, most regional courts had substantially higher proportions of children first sentenced or diverted aged 10–13, an age at which the onus is still on the prosecution to prove that the child knew that their behaviour was morally wrong. Roundtable participants raised a range of factors as possibly contributing to this finding, including:
- cumulative disadvantage and complexity of issues faced by families in some regions;
 - a lack of services in regional areas, including early support at the ‘mums and bubs’ stage, even where children are identified as being at risk and/or as having developmental and other issues;
 - greater visibility of children whose families are known to police, which in some areas might lead to less use of police discretion to caution younger children who exhibit offending behaviour;
 - children aged 10–13 being the most likely to experience out-of-home care.¹⁸² This may result in their attendance at court without a family member or other trusted adult to encourage them to properly consider the advice of their legal practitioners and the ramifications of not following that advice (for example, not pursuing a *doli incapax* submission);¹⁸³ and
 - regional practitioners being less likely to practice exclusively in the Children’s Court, unlike legal practitioners appearing in the Children’s Court at Melbourne. Similarly, as mentioned at [5.2], magistrates who sit exclusively in the Children’s Court have a greater opportunity to develop specialist knowledge in, for example, child development and the availability of child, youth and family services. Some stakeholders perceived that the increased opportunity for specialisation in Melbourne may contribute to the lower proportion of children first sentenced or diverted aged 10–13.¹⁸⁴

182. Sentencing Advisory Council (2019), above n 10, 87 (Figure 27).

183. Children aged 10–13 (inclusive) at the time of an alleged offence are considered *doli incapax* (‘incapable of crime’) unless the prosecution successfully rebuts the presumption and proves that the child knew that their conduct was morally wrong, as opposed to childish naughtiness or mischief. See further Fitz-Gibbon and O’Brien (2019), above n 67, 23–25; Bettink (2012), above n 24, 7.

184. Roundtable 3 (10 December 2019).

In the Latrobe Valley ... they were looking at children where they had concerns there was going to be early justice involvement ... They kind of knew – they saw these children present when parents were getting arrested, they saw them present with other people who were doing crime, when these children might have been six, seven, eight years old. They knew that there were going to be issues when that child hit 10, but there was ... no effective means to respond when they could already see that there was going to be a likely issue by the age of 10. I’ll say as well that early involvement in the justice system ... is associated with cumulative harm, and we know it’s associated with neurodisability. [These issues are] compounded with the reduced availability of services to respond to the greater complexity that’s present where children and families are experiencing cumulative disadvantage, cumulative harm, cumulative adversity in those areas; the service delivery is just not available to respond to the need out there.

It’s impossible to actually set these families up for success without these services being there, so you know what it is you’re working with, so that you can actually provide the right interventions for the individual child. But ... families’ attitudes and exposure to offending is also really key. So police will know the families, and if there’s nothing that allows them to divert or get support, then those cycles continue.

You don’t have the same suite of options for services in the smaller towns that you would in the metro areas. It’s just not there, they don’t exist. To be able to respond quickly to school disengagement and have plenty of options of other services, quite often in those areas, the only way the kid’s going to get support is through a youth justice order.

Roundtable 3 (10 December 2019);
Roundtable 4 (12 December 2019)

I wonder whether there are advocates in courts that are really exploring the doli incapax issue in the regions, because [in] my experience ... it's either ignored or not understood properly, and it's not explored. Reports aren't requested and you've got a lot of younger children being charged and those charges are being proven and dealt with where doli hasn't been properly explored ... In the metro regions, certainly defence, and I think police, are a lot more open and understanding about the rules about doli and pursue those.

The challenge of actually spreading specialty across the state is ... something that VicPol and the courts and Legal Aid and other practitioners share. You've got lawyers ... geographically isolated, some of them might be sole practitioners, they don't have access to a community of practice that you have at Melbourne. I think that's something that's a factor ... And this is that issue of postcode injustice. You look at a young person, their priors, it is not uncommon to see young people in some of these areas having had one, two, three court entries where you would have had none had they appeared in a metro court.

It's cultures of practice that build up in the regions. And they're actually hard to shift. Because you know you should be asking for an adjournment for a doli assessment but the culture of practice surrounding that means that it's pretty difficult, and that you'll be shot down, often.

Roundtable 4 (12 December 2019)

Discussion and conclusion

- 5.30 The analysis in this chapter suggests that, compared with the Melbourne metropolitan area, a higher proportion of cases sentenced or diverted in regional Victoria involve:
- children known to the Child Protection Service (44% in regional areas compared with 35% in the Melbourne metropolitan area);
 - children who experienced out-of-home care (19% in regional areas compared with 14% in the Melbourne metropolitan area) and residential care (13% in regional areas compared with 9% in the Melbourne metropolitan area);
 - Aboriginal and Torres Strait Islander crossover children (19% of crossover children in regional areas compared with 9% in the Melbourne metropolitan area); and
 - children first sentenced or diverted aged 10–13 (15% in regional areas compared with 5% in the Melbourne metropolitan area).
- 5.31 Roundtable participants attributed the higher proportion of younger children in regional areas in part to a higher likelihood of disadvantage, including children with complex needs compounded by a lack of services, including for mothers and babies.
- 5.32 There were contrasting views among stakeholders as to the extent to which there might be regional differences in the approach to children aged 10–13 when they start offending and in the practice of *doli incapax* assessments and applications. Some roundtable participants questioned whether this may, by extension, partially explain the differing proportions of children first sentenced or diverted aged 10–13, as found in this report.¹⁸⁵ While it is likely that the reasons for the differing proportions are many, complex and interrelated, the variation in proportions between locations and the high proportions in some areas are troubling findings, given the known criminal justice trajectory of children who are first sentenced or diverted at a young age. Further, when these children progress into custody, they are likely to be moved to Melbourne, away from the support of their families and communities.

185. Roundtable 1 (2 April 2019); Roundtable 2 (4 April 2019); Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019). See also Fitz-Gibbon and O'Brien (2019), above n 67, 23–24.

6. Final observations

- 6.1 Many of the findings of this report confirm and build on prior research and anecdotal evidence about crossover kids. For example, previous research has found that children who are placed in out-of-home care are 'grossly over-represented in the juvenile justice system'.¹⁸⁶ This is particularly the case for children placed in residential care.¹⁸⁷
- 6.2 Report 1 found that 1,938 of the 5,063 children who were sentenced or diverted in the Children's Court in 2016 and 2017 were the subject of at least one child protection report. Of these crossover children, 94% were already known to child protection before they committed their first sentenced or diverted offence. Even controlling for the age of criminal capacity (see [2.15], [2.19], [2.22]), 83% of children only offended after their first child protection report. In addition, most sentenced and diverted children who experienced out-of-home care only started offending during or after their first care placement.
- 6.3 While these are concerning findings, they do not necessarily indicate that contact with the Child Protection Service in and of itself is the cause, or the sole cause, of contact with the youth justice system. Instead, child protection involvement can be viewed as a proxy for trauma: the findings of this report suggest that many children in the youth justice system are themselves victims of abuse, severe neglect, emotional harm, family violence and other harm and trauma.
- 6.4 The reasons that children in care are over-represented in the youth justice system are complex and are likely to vary from child to child. Children in out-of-home care (particularly residential care) are likely to be the children with the most complex backgrounds and trauma histories and the most challenging behaviours, which could lead to contact with the youth justice system. However, at the same time, the findings in this report support previous research suggesting that, for some vulnerable children, the experience of care itself may contribute to their crossing over into the youth justice system.

94% of crossover children were already known to child protection before they committed their first sentenced or diverted offence

186. Marien (2012), above n 34, 1, 6–8. See also Australian Institute of Health and Welfare (2017), above n 34, 14; Victoria Legal Aid (2016), above n 9, 9; Commission for Children and Young People (2019), above n 115, 27; Devon Indig et al., *2009 NSW Young People in Custody Health Survey: Full Report* (2011) 31; McFarlane (2016), above n 64; Elizabeth Fernandez et al., 'Children's Court Challenges and Possibilities: A Study of the Children's Court of New South Wales' (Paper presented at the Association of Children's Welfare Agencies (ACWA) Best Practice Forum, Sydney, 23 July 2014); Kelly Richards and Lauren Renshaw, *Bail and Remand for Young People in Australia: A National Research Project*, Australian Institute of Criminology Research and Public Policy Series no. 125 (2013).

187. Victoria Legal Aid, 'Action Needed to Stop Children in State Care Entering Youth Justice', Media Release (26 September 2018) <<https://www.legalaid.vic.gov.au/about-us/news/action-needed-to-stop-children-in-state-care-entering-youth-justice>> at 13 May 2019; McFarlane (2018), above n 37; Sarah Wise and Samuel Egger, *The Looking After Children Outcomes Data Project: Final Report* (2008) 17.

Factors associated with early youth justice involvement

6.5 The complexity of the circumstances of many crossover children is confirmed by the research on associations between child protection factors, gender, age at first contact with the youth justice system and Aboriginal and Torres Strait Islander status. This report has found that crossover children who entered the youth justice system early (first sentenced or diverted aged 10–13) were more likely than older crossover children to:

- have also entered the child protection system earlier (a median age of two years at first child protection report compared with eight years for children first sentenced or diverted aged 16 or over);
- be Aboriginal and Torres Strait Islander children (24% of crossover children first sentenced or diverted aged 10–13 compared with 8% of crossover children first sentenced or diverted aged 16 or over);
- be the subject of at least one child protection report alleging physical harm (83% of children first sentenced or diverted aged 10–13 compared with 59% of children first sentenced or diverted aged 16 or over);
- have at least one child protection order (71% of crossover children first sentenced or diverted aged 10–13 compared with 34% of crossover children first sentenced or diverted aged 16 or over);
- have experienced out-of-home care (61% of crossover children first sentenced or diverted aged 10–13 compared with 28% of crossover children first sentenced or diverted aged 16 or over) and residential care (47% of crossover children first sentenced or diverted aged 10–13 compared with 16% of crossover children first sentenced or diverted aged 16 or over);
- have experienced more out-of-home care placements (median of nine placements, compared with four placements for children first sentenced or diverted aged 16 or over);
- have experienced more unique carers (children first sentenced or diverted aged 10–13 comprised 7% of children who did not experience out-of-home care but 52% of children with 20 or more carers); and
- have been sentenced or diverted in a regional court (15% of children first sentenced or diverted in a regional court were aged 10–13 compared with 5% of children first sentenced or diverted in the Melbourne metropolitan area).

Children who entered the youth justice system early were a particularly vulnerable group, with more child protection involvement than older children

6.6 In other words, children first sentenced or diverted aged 10–13 generally had more child protection involvement – early entry, more child protection orders, out-of-home care, residential care, more placements and more carers – than older children.

6.7 Sentencing children is arguably one of the most difficult, complex and important tasks faced by the judiciary. The focus on rehabilitation recognises the unique opportunity for diverting children away from offending as they develop and, crucially, the importance of preventing their offending from escalating. Critical to any meaningful attempt at rehabilitating a child is understanding and addressing the context and causes of their offending, including the effects of trauma on the child's development, their ability to comply with a sentencing order and

their capacity to refrain from offending without therapeutic intervention. Understanding the factors associated with early and prolonged youth justice involvement may contribute to the consideration of sentencing factors that should be included in the new Youth Justice Act proposed by Armytage and Ogloff in their 2017 youth justice review.¹⁸⁸ Factors relevant to sentencing that have emerged from the analysis in this report include:

- the context of and background to a child's offending;
- a child's experience of trauma, including the type, severity and duration of trauma and the child's age at the time of the trauma;
- childhood development generally, as well as specific developmental issues experienced by the child, including the effect of trauma and disruption on the child's development and capacity to avoid problematic behaviour;
- the child's removal from family, home, community and school, and the effect of the removal on the child's physical and emotional wellbeing and behaviour;
- the child's experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers and whether the offence occurred in a care home, and the need to ensure that the child has a safe, stable and secure living arrangement; and
- the child's age, including their developmental age, when they first offended and at their current offence and sentence.

Aboriginal and Torres Strait Islander children

- 6.8 Aboriginal and Torres Strait Islander children emerged as a particularly vulnerable cohort of crossover children. They were over-represented in every level of child protection and youth justice involvement, especially among children who were the subject of a child protection order and received custodial dispositions. Aboriginal and Torres Strait Islander crossover children were also more likely to be younger at first sentence or diversion than children who were not Aboriginal and Torres Strait Islander children. Of crossover children who were Aboriginal and Torres Strait Islander children, 23% were 10–13 at first sentence or diversion. In comparison, of crossover children who were not Aboriginal and Torres Strait Islander children, 11% were 10–13 at first sentence or diversion. The development of a new Youth Justice Act, as proposed by Armytage and Ogloff,¹⁸⁹ may offer an opportunity to consider how particular combinations of systemic and background factors affecting Aboriginal and Torres Strait Islander children might be relevant to sentencing.

Offence type, child protection and residential care

- 6.9 Prior research suggests that children known to child protection may be more likely than other children to find themselves in the youth justice system in relation to particular offences.¹⁹⁰ This report found that children with any child protection involvement were somewhat more likely to have committed certain offences than children with no child protection involvement. However, the most noticeable finding was that children who experienced residential care were about twice as likely to have committed certain offences than other children, including those who experienced out-of-home care other than residential care.

188. See Armytage and Ogloff (2017), above n 11, 5 (Recommendation 6.1).

189. Ibid.

190. Stewart et al. (2002), above n 37; Cashmore (2011), above n 37; Hurren et al. (2017), above n 46; Malvaso et al. (2017), above n 37, 40; Dean (2018), above n 34.

In particular, of the 5,063 children sentenced or diverted in the Children's Court in 2016 or 2017:

- 72% of children who experienced residential care had committed an offence against the person compared with 45% of children not known to child protection (of children with an offence against the person, 20% of children who experienced residential care had an offence of assault police or emergency worker compared with 11% of children not known to child protection);
- 66% of children who experienced residential care had committed property damage compared with 29% of children not known to child protection;
- 50% of children who experienced residential care had committed a bail-related offence compared with 22% of children not known to child protection;
- 23% of children who experienced residential care had committed a drug offence compared with 11% of children not known to child protection;
- 23% of children who experienced residential care had committed a weapons offence, compared with 10% of children not known to child protection; and
- 17% of children who experienced residential care had a breach intervention order offence compared with 6% of children not known to child protection.

Children who experienced residential care were about twice as likely as any other child to have committed most offence types

- 6.10 Collectively, the above findings suggest that some vulnerable children may be drawn into the youth justice system for offences committed in circumstances where their behaviour could more effectively be addressed through alternative solution-based approaches. These approaches should address the underlying causes of potential offending, particularly for those who have experienced trauma and/or developmental issues. The involvement of police when children in residential care run away or exhibit problematic behaviour may escalate, rather than de-escalate, the situation and result in the child facing charges of resist, hinder, assault police or emergency worker. Children who experienced residential care were far more likely than other children to be sentenced or diverted for resist, hinder, assault police or emergency worker. Further, the availability of the separate offences of fail to answer bail and commit indictable offence on bail for children may be fast-tracking vulnerable children into custody. Where a child breaches bail by committing an indictable offence, the child is already liable to have their bail cancelled or conditions tightened as well as facing prosecution and sentencing for the new offence.
- 6.11 The prevalence of offences against the person in general, and among children who experienced residential care in particular, is of great concern. There are reasons why children who experience residential care may be more likely than other children to face charges for offences against the person. Nonetheless, they do not diminish the effect of those offences on their victims, some of whom would have been other children in residential care who were themselves survivors of trauma and had a right to feel safe. However, understanding the factors that contribute to violent behaviour by children and adolescents is fundamental to preventing such behaviour from developing or continuing. Many of the children who commit such offences are themselves victims of violent crimes, often perpetuated against them over many years. Such children may still be operating in a state of high trauma when they respond violently to perceived threats or participate in violence with their peers in a misplaced desire to belong.

Investing in early interventions to assist children to heal from trauma, including abuse and severe neglect, and increasing support when children enter out-of-home care are likely to benefit our community far beyond the individual children who are directly assisted. Supporting the children in our community who are the most traumatised and the most vulnerable should be viewed as a key crime prevention strategy.

- 6.12 For children in residential care, there also may be potential for reducing their over-representation in some offence categories through changes in practice to handling and reporting incidents in residential care to police and the approach of police once called. The *Framework to Reduce the Criminalisation of Young People in Residential Care*, released 13 February 2020, is a positive step in this direction. The findings of this report will provide a baseline against which progress under the framework can be measured in the future.
- 6.13 Where a child has offended in the context of a background of abuse, trauma and child protection involvement, just and effective sentencing requires that the court is provided with adequate information about the child's history and the context of the offending. One measure to strengthen practice around sentencing crossover children is to ensure that the proposed Youth Justice Act includes sentencing factors relating to a child's experience of trauma, developmental issues and care history (as discussed at [6.7]).

Geographical differences in the prevalence of crossover children

- 6.14 A higher proportion of cases involving children known to child protection were sentenced or diverted in regional areas (44%) than in the Melbourne metropolitan area (35%). Regional courts also sentenced and diverted a higher proportion of children who experienced out-of-home care and residential care. A higher proportion of crossover children were Aboriginal and Torres Strait Islander children in regional areas (19%) than in the Melbourne metropolitan area (9%). The proportion of Aboriginal and Torres Strait Islander crossover children sentenced or diverted in these courts represents a substantial and concerning over-representation compared with the general population.
- 6.15 This report also found that a far larger proportion of children were aged 10–13 at their first sentence or diversion in regional areas than in the Melbourne metropolitan area. This finding is likely to reflect a combination of complex factors that play out differently in different regions, including:
 - a lack of early intervention supports for vulnerable families to prevent at-risk children moving into the child protection and youth justice systems;
 - differences in policing, particularly the use of cautions for younger children;
 - children aged 10–13 being most likely to experience out-of-home care, which may mean they attend court without a family member or other suitable adult to encourage them to consider the advice of legal practitioners and the ramifications of not following that advice (for example, not pursuing a *doli incapax* submission); and
 - regional practitioners being less likely to practice exclusively in the Children's Court, which may lead to less opportunities for specialisation. Similarly, magistrates who sit exclusively in the Melbourne Children's Court may have a greater opportunity to develop specialist knowledge. Stakeholders held a range of views about the extent to which differing opportunities for specialisation might flow-on to the practice in relation to *doli incapax* and whether this was a contributing factor to the varying proportions of children first sentenced or diverted aged 10–13 in different court locations across Victoria.¹⁹¹

191. Roundtable 1 (2 April 2019); Roundtable 2 (4 April 2019); Roundtable 3 (10 December 2019); Roundtable 4 (12 December 2019). See also Fitz-Gibbon and O'Brien (2019), above n 67, 23–24.

- 6.16 A crucial component of youth justice specialisation is understanding children's developmental milestones and the effect of abuse, neglect, disrupted attachment and other trauma on children's development. The consideration of whether a child aged 10–13 had criminal capacity at the time of their offence includes understanding the context of their offending and the factors that may have affected their awareness of what is morally wrong and their ability to avoid criminal behaviour.
- 6.17 The findings in this report may provide support for revisiting the recommendation of the 1984 Carney Review to separate Children's Court facilities from adult facilities in regional areas, at least in headquarter court locations. In areas where the number of Children's Court matters is too low to justify a dedicated specialist court, consideration could be given to providing specialist Children's Court services on circuit. Ideally, specialised Children's Courts could include specialist court staff, such as a dedicated child protection worker able to provide courts with reports about crossover children's protection histories. Whether or not separate Children's Court facilities are provided in regional areas, it is vital that courts hearing criminal matters relating to children are provided with adequate evidence about the context of children's offending, including comprehensive information about their child protection history and the effect of trauma on their development.

Appendix 1: consultation

Meeting	Date
Meeting with representatives of the Crime Statistics Agency	27 February 2018
Meeting with representatives of the Department of Health and Human Services	13 March 2018
Meeting with Dr Susan Baidawi and Professor Rosemary Sheehan, Monash University	29 March 2018
Meeting with representatives of the Children's Court of Victoria	15 May 2018
Meeting with representatives of the Department of Health and Human Services	29 May 2018
Meeting with Superintendent Richard Watkins, Victoria Police, Eastern Region, Division 1, and Dr Renee O'Donnell, Monash University	7 August 2019
Meeting with representatives of Jesuit Social Services	21 September 2018
Meeting with representatives of Victoria Legal Aid	24 September 2019
Observer at Community around the Child Forum (Victoria Police, Residential Care Staff, Department of Health and Human Services and Department of Justice and Community Safety)	8 November 2018
Meeting with Dr Kath McFarlane, Kath McFarlane Consulting	4 December 2018
Meeting with representatives of the Department of Health and Human Services	1 April 2019
Roundtable 1: 'Crossover Kids' Stakeholder Roundtable Discussion Forum	2 April 2019
Meeting with representatives of the Children's Court of Victoria	3 April 2019
Roundtable 2: 'Crossover Kids' Stakeholder Roundtable Discussion Forum	4 April 2019
Meeting with representative of the Department of Health and Human Services	29 July 2019
Visit to Parkville Youth Justice Centre	30 August 2019
Meeting with representative of the Department of Health and Human Services	24 September 2019
Meeting with representatives of the Children's Court of Victoria	4 December 2019
Roundtable 3: 'Crossover Kids' Stakeholder Roundtable Discussion Forum	10 December 2019
Roundtable 4: 'Crossover Kids' Stakeholder Roundtable Discussion Forum	12 December 2019

Appendix 2: methodology

Data

The 5,063 children in the study group were drawn from the Children's Court Courtlink database.¹⁹² Those children were then matched against child protection data held by the Department of Health and Human Services, which led to an identification of 1,938 crossover children who appeared in both datasets.

Data linkage

The research project required linkage between Children's Court data held on Courtlink and child protection data held by the Department of Health and Human Services. To facilitate the data linkage process, the Council, the Children's Court and the Department of Health and Human Services signed a deed of confidentiality that governed how data would be shared and used in order to answer the research questions for this project.

The project drew on 22 years of child protection data from 18 June 1996 (the date of the earliest report about a child in the study group) to the date of the data extraction (3 September 2018, although the most recent record was dated 1 September 2018). This data was matched with sentencing data from the Children's Court Courtlink database and the Council's own reoffending database, both of which have data (at the time of performing the data linkage) from July 2004 to June 2018.

For the purposes of the research project, the Council prepared a dataset ('the Council's dataset') using data extracts from the Courtlink case management system, which the Children's Court provides to the Council on a quarterly basis as part of a separate agreement between the Council and the Children's Court.

The Council's dataset contained records for just over 5,000 children sentenced or diverted in the Children's Court of Victoria in 2016 and 2017, including the name, gender and date of birth of each person sentenced, as well as a case identifier, a list of offences and a list of charges and sentence outcomes for each charge and the overall case.

A new dataset ('the linkage dataset') was created from the Council's dataset. The linkage dataset contained only the names, gender and dates of birth of people sentenced in the Children's Court in 2016 and 2017. The linkage dataset did not contain offences, charges, sentence outcomes or case identifiers. Each record in the linkage dataset was assigned a serial number in place of the original Courtlink case identifier. This was to allow the child protection data to be linked back into the Council's dataset without revealing offence or sentence details of individual cases to non-judicial stakeholders.

The Council provided the linkage dataset to the Department of Health and Human Services. The Department conducted the data linkage process, which involved identifying records in the child protection dataset (the Child Protection CRIS – Client Relationship Information System) that relate to records of people in the linkage dataset and extracting the data. The Department created a new dataset ('the DHHS linked dataset') that contained the relevant child protection information for each matched person in the linkage dataset. On completion of the data linkage process, the Department provided the DHHS linked dataset to the Council.

192. Four times a year, Court Services Victoria sends the Council extracts from the Courtlink case management system containing sentencing data from the Criminal Division of the Children's Court. The Council has sentencing data from July 2004 onwards.

The Council integrated records of children in the DHHS linked dataset into the Council's dataset. This became the dataset used for the project. The Council also performed data-cleaning and quality assurance checks to ensure the linkage operation was successful, and to address other issues such as inconsistencies and missing data (for example, checking to make sure that each unique person only had one date of birth recorded).

The child protection data also included information about the Aboriginal and Torres Strait Islander status of children who had been the subject of a report to the Child Protection Service. The Council did not have data on Aboriginal and Torres Strait Islander status for children who were not known to child protection.

After Report 1 was released, additional data on out-of-home placements and out-of-home carers was requested from and provided by the Department of Health and Human Services for Report 2.

Exclusions

The Council did not have data on remand,¹⁹³ education factors, mental health or impairment, disability, culturally and linguistically diverse backgrounds, or the rate at which charges were withdrawn or struck out due to submissions relating to *doli incapax* (see further [1.21]). The data on gender was restricted to the two categories of 'male' and 'female'. Data on non-binary gender categories is not currently available.

Chapter 3 methodology

Children were divided into the 12 subgroups according to their age at first sentence or diversion, their gender and whether they were Aboriginal and Torres Strait Islander children (Table A1). Where relevant, Chapter 3 compares the level of contact with the child protection system across several key child protection factors, according to each subgroup below.

Table A1: Crossover kids according to age at first sentence or diversion, gender and whether they were Aboriginal and Torres Strait Islander children¹⁹⁴

Aged 10–13 at first sentence or diversion (232 children)		Aged 14–15 at first sentence or diversion (768 children)		Aged 16 or over at first sentence or diversion (886 children)	
Aboriginal and Torres Strait Islander girl	Non-Aboriginal and Torres Strait Islander girl	Aboriginal and Torres Strait Islander girl	Non-Aboriginal and Torres Strait Islander girl	Aboriginal and Torres Strait Islander girl	Non-Aboriginal and Torres Strait Islander girl
16 girls	36 girls	39 girls	196 girls	36 girls	248 girls
Aboriginal and Torres Strait Islander boy	Non-Aboriginal and Torres Strait Islander boy	Aboriginal and Torres Strait Islander boy	Non-Aboriginal and Torres Strait Islander boy	Aboriginal and Torres Strait Islander boy	Non-Aboriginal and Torres Strait Islander boy
41 boys	139 boys	79 boys	454 boys	42 boys	560 boys

193. The Council will be examining the use of remand for children in a separate report.

194. Aboriginal and Torres Strait Islander status was unknown for 52 people. These were excluded from all analysis involving comparisons between those who were and were not Aboriginal and Torres Strait Islander children. These 52 people were included in analyses that did not compare children based on their Aboriginal and Torres Strait Islander status (for example, comparisons of gender or age at first sentence or diversion, where data on these variables was deemed reliable).

Figure A1: Proportion of crossover children with each level of child protection involvement, by age at first sentence or diversion, gender and Aboriginal and Torres Strait Islander status (1,938 children)



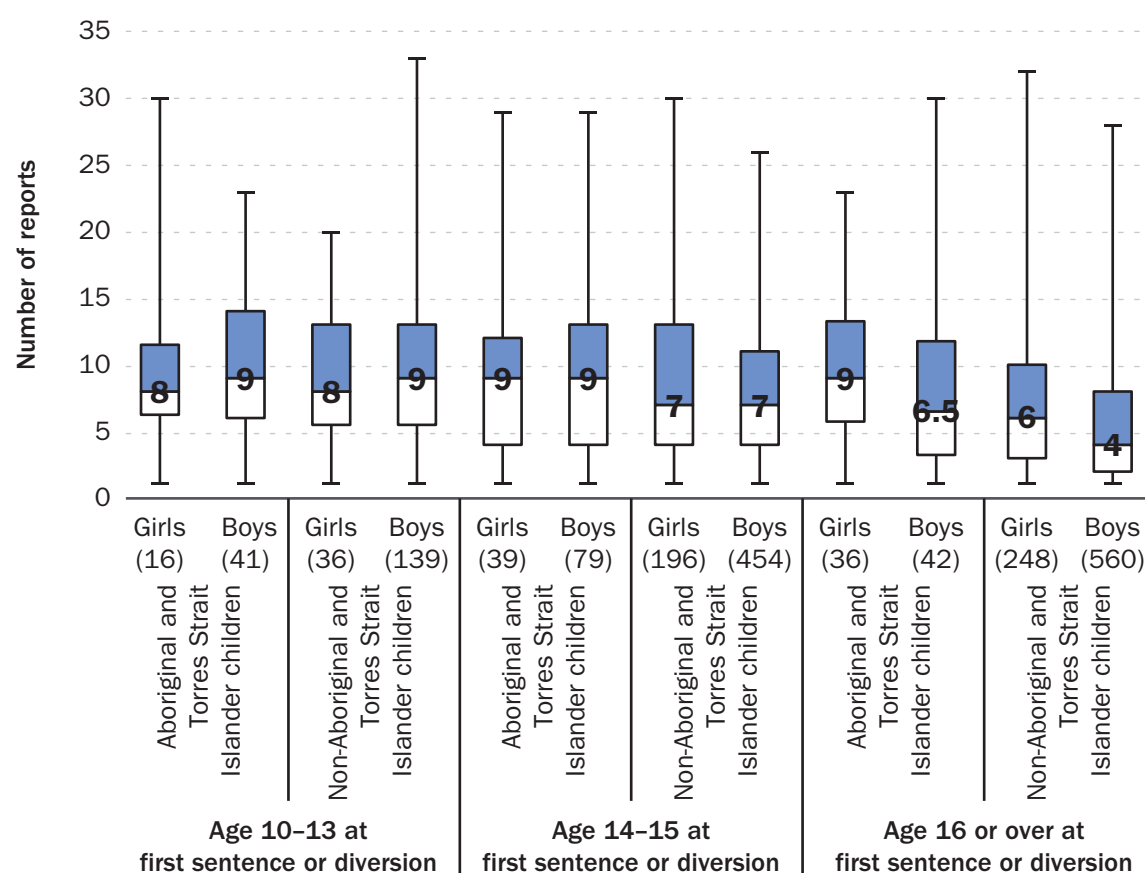
Level of child protection involvement

Figure A1 (page 82) examines the degree of child protection involvement experienced by the 1,938 sentenced and diverted children known to child protection, according to their age at first sentence or diversion, gender and whether they were Aboriginal and Torres Strait Islander children (excluding 52 children with unknown Aboriginal and Torres Strait Islander status). As Figure A1 only includes children known to child protection, 100% of each subgroup are shown to have been the subject of a report to child protection. The percentages show the proportion of children known to child protection with the particular level of intervention, for example, the proportion of children known to child protection who experienced out-of-home care.

Number of reports to the Child Protection Service

Figure A2 divides the 1,938 crossover children in the study group into mutually exclusive groups according to their age at first sentence or diversion, gender and Aboriginal and Torres Strait Islander status. For each group, the graph shows the range in terms of the number of child protection reports relating to children in that group, with the median number at the centre of the 'box and whiskers'.¹⁹⁵

Figure A2: Median number of reports to the Child Protection Service for children known to child protection (1,938 children), by age at first sentence or diversion, gender and Aboriginal and Torres Strait Islander status



195. Box-and-whiskers-plots display the minimum value (the bottom whisker), the 25th quartile (the bottom of the box), the median (the line that divides each box into two compartments), the 75th quartile (the top of the box) and the maximum value (the top whisker). The 25th quartile represents the point at which 25% of the values are below that score, and the 75th quartile represents the point at which 75% of the values are below that score. The median (also known as the 50th quartile) represents the point at which 50% of scores are below that score and 50% of values are above that score.

Number of placements and carers

The 767 sentenced and diverted children who experienced out-of-home care were divided according to the number of placements and number of unique carers that they experienced (Table A2, page 85).

Calculation of number of out-of-home care placements

The Council calculated the number of unique out-of-home care placements for each child in the care group. The number of placements was calculated by counting separate placement IDs in the child protection dataset. Each placement ID represents a new placement for the dates specified on the placement record. For example, in the case of a child who was first placed with their maternal grandmother then placed with an aunt and then moved back to their maternal grandmother, each placement would have its own unique placement ID, even though two of the placements were with the same person, namely the maternal grandmother. This is because the two placements with the maternal grandmother occur on different dates. So for this child, the data would show three out-of-home care placements. Therefore, while each new placement represents the child changing placements, it does not necessarily represent a *new carer*. The separate placement IDs in the data:

- include respite care placements (temporary short-term placements) that occur between other longer-term placements; and
- do not include respite care placements that occur within, or parallel to, longer-term placements for example, where a child's primary out-of-home care placement is supported by them being, periodically looked after by a second set of carers. Respite care placements that occurred within the course of a longer-term placement were excluded from the data.

Care should be taken when using data about the number of out-of-home care placements experienced by a child where those placements occurred before 2008–09. Prior to 2008–09, data about out-of-home care placements was recorded in a decentralised system named FACTS that was separate from the child protection system. Recording of out-of-home care placements in FACTS had less strict business and data entry rules than CRIS. Consequently, data entry practice was variable from one care provider to another. In some instances, this resulted in an overstatement of the number of placements experienced by a child compared with placements in CRIS, which since 2008–09 have been subject to rigorous and uniform business and data entry rules.

Calculation of the number of unique carers

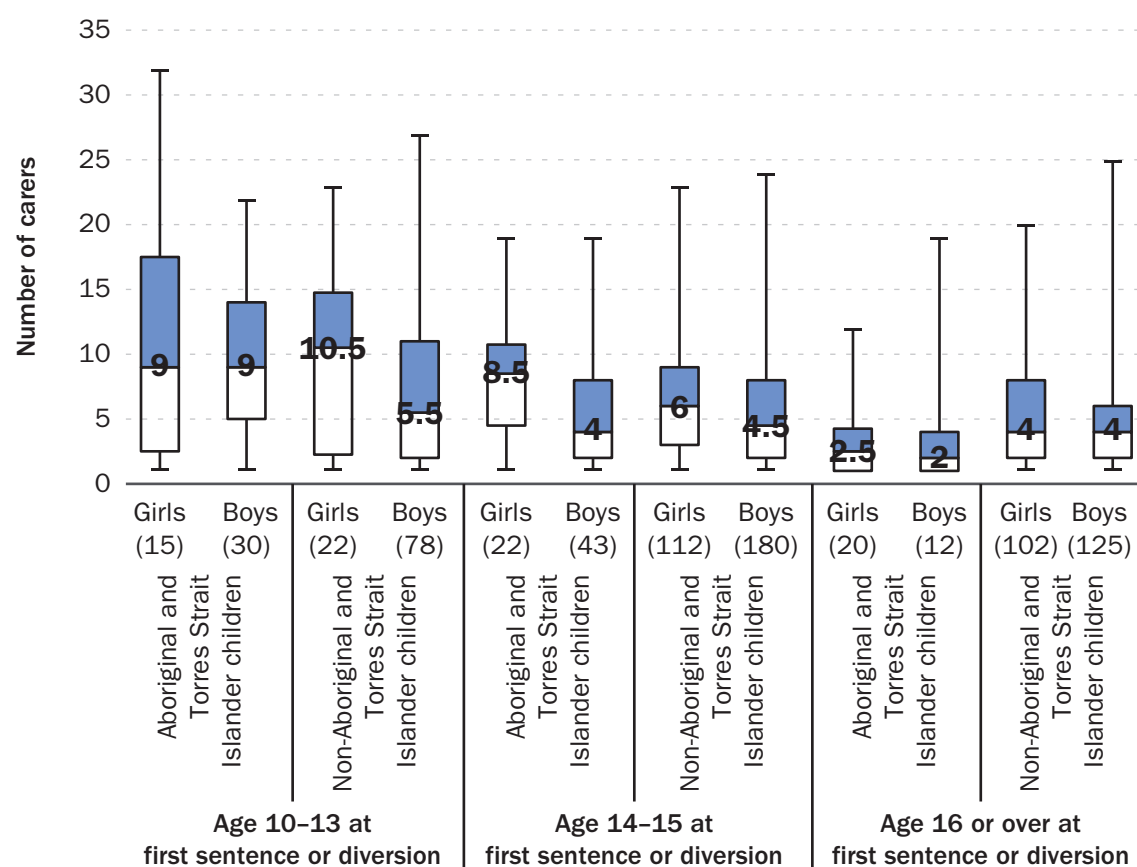
The number of carers was calculated by adding the number of unique carers recorded for the child in the child protection dataset. Each carer was counted only once. Therefore, if a child went into kinship care with an aunt, moved to kinship care with grandparents, moved back to kinship care with the aunt and then moved to residential care, this would be counted as four placements but three carers. Each residential home is regarded as one carer, not the employees who work at the home. Therefore, if a child moves from residential care unit one to residential care unit two and back to unit one, that is counted as two carers.

The 767 children who experienced out-of-home care were divided according to their age at first sentence or diversion, gender and whether they were Aboriginal and Torres Strait Islander children. The median number of unique carers was then calculated for each of these subgroups, using the same counting rules as for Table A1. Six children were excluded from this analysis because their Aboriginal and Torres Strait Islander status was unknown.

Table A2: Sentenced and diverted children who experienced out-of-home care (767 children), by the number of care placements and unique carers that they experienced (shaded cells show the prevalence of placements and carers, with darker shades indicating the most prevalent combinations of carers and placements)

		Number of carers									
		1	2	3	4	5	6	7	8	9	10+
Number of placements	1	16%	0%	0%	0%	0%	0%	0%	0%	0%	0%
	2	2%	8%	0%	0%	0%	0%	0%	0%	0%	0%
	3	<1%	2%	8%	0%	0%	0%	0%	0%	0%	0%
	4	0%	1%	2%	5%	0%	0%	0%	0%	0%	0%
	5	0%	0%	1%	2%	2%	0%	0%	0%	0%	0%
	6	0%	<1%	<1%	1%	2%	2%	0%	0%	0%	0%
	7	0%	0%	<1%	1%	1%	2%	1%	0%	0%	0%
	8	0%	0%	0%	<1%	1%	1%	1%	1%	0%	0%
	9	0%	0%	<1%	<1%	0%	1%	1%	1%	<1%	0%
	10+	0%	<1%	<1%	1%	<1%	1%	2%	2%	4%	23%

Figure A3: Number of unique carers for sentenced and diverted children who experienced out-of-home care (767 children), by age, gender and Aboriginal and Torres Strait Islander status



Chapter 4 methodology

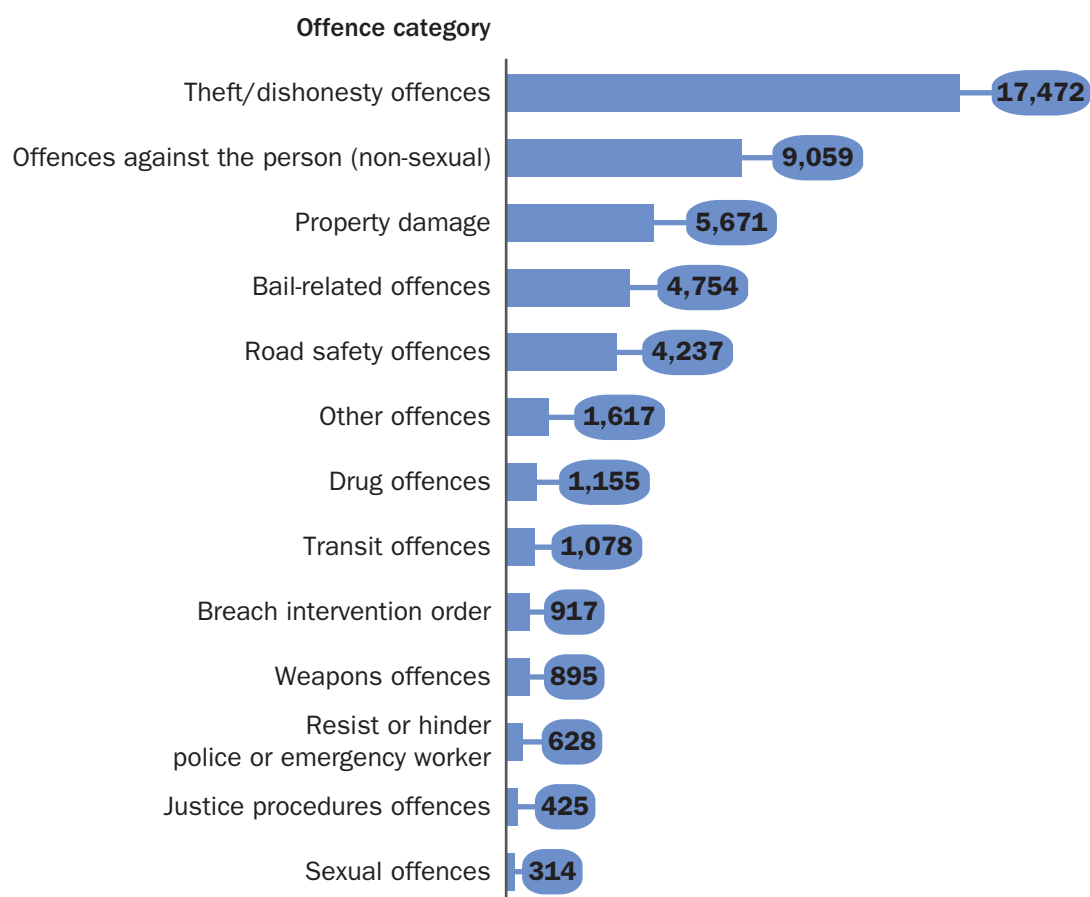
Offences committed by the study group

The 5,063 children in the study group were sentenced or diverted for 48,222 charges in 2016 and 2017, an average of 9.5 sentenced or diverted charges per child over the two-year period. The 525 children who experienced residential care comprised 10% of the study group but were responsible for 21% of all sentenced or diverted charges (10,114 charges).

Offences committed by the study group were divided into 13 offence categories:

1. Theft/dishonesty offences include offences involving theft or deceptive conduct aimed at depriving someone of their property, for example, theft (*Crimes Act 1958* (Vic) s 74) and burglary (*Crimes Act 1958* (Vic) s 76).
2. Offences against the person are non-sexual offences against the person involving the infliction of physical harm or threat to inflict physical harm on other people. The most common offences committed by the study group in this category included unlawful assault (*Summary Offences Act 1966* (Vic) s 23), recklessly cause injury (*Crimes Act 1958* (Vic) s 18) and robbery (*Crimes Act 1958* (Vic) s 75).
3. Property damage offences include offences relating to unlawfully damaging or destroying another person's property such as intentionally damaging/destroying property (*Crimes Act 1958* (Vic) s 197), wilfully damaging property (*Summary Offences Act 1966* (Vic) s 9) and marking graffiti on property (*Graffiti Prevention Act 2007* (Vic) s 5).
4. Bail-related offences include offences relating to contravening conditions of bail such as committing an indictable offence on bail (*Bail Act 1977* (Vic) s 30B), failing to answer bail (*Bail Act 1977* (Vic) s 30) and contravening a conduct condition of bail (*Bail Act 1977* (Vic) s 30A).
5. Road safety offences include offences related to controlling or driving a vehicle. This includes unlicensed driving (*Road Safety Act 1986* (Vic) s 18(1)(a)), using an unregistered motor vehicle on a highway (*Road Safety Act 1986* (Vic) s 7) and being a learner driver driving a vehicle without an accompanying supervising driver (*Road Safety (Drivers) Regulations 2009* (Vic) reg 47(2)).
6. 'Other' is a catch-all category for offences that did not sit neatly into the more specific offence categories. This includes attempting to commit an (unspecified) indictable offence (*Crimes Act 1958* (Vic) s 321M), enter a private place or scheduled public place without lawful authority (*Summary Offences Act 1966* (Vic) s 9(1)(e)) and behave in an offensive manner in a public place (*Summary Offences Act 1966* (Vic) s 17(1)(d)).
7. Drug offences include offences relating to the possession, use or trafficking of drugs of dependence mainly under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) and the *Criminal Code Act 1995* (Cth). The most common drug offences by children in the study group included possessing or using a drug of dependence, particularly cannabis and methylamphetamine (*Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73), using drugs of dependence, particularly cannabis (*Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 75) and trafficking, particularly in cannabis (*Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71AC).
8. Transit offences include offences relating to travelling on public transport vehicles or premises associated with public transport such as train stations. Offences include not having a valid ticket (*Transport (Ticketing) Regulations 2006* (Vic) reg 7(2)), failing to produce evidence of entitlement to concession tickets (*Transport (Ticketing) Regulations 2006* (Vic) reg 9(3)) and placing feet on seats (*Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015* (Vic) reg 35(2)).

Figure A4: Charges for which children in the study group were sentenced or diverted in 2016 and 2017 (48,222 charges), by number of charges in each offence category



9. Breach intervention order relates to offences involving contravening the conditions of a family violence or personal safety intervention order. The most common offences include contravening a final or interim family violence intervention order (*Family Violence Protection Act 2008* (Vic) s 123(2)), contravening a family violence intervention order intending to cause harm or fear (*Family Violence Protection Act 2008* (Vic) s 123A(2)) and persistent contravention of a family violence intervention order (*Family Violence Protection Act 2008* (Vic) s 125A).
10. Weapons offences involve the possession or use of weapons (including firearms) without a lawful excuse. Some examples include possessing controlled weapons without a lawful excuse (*Control of Weapons Act 1990* (Vic) s 6(1)), possess a prohibited weapon without a lawful exemption (*Control of Weapons Act 1990* (Vic) s 5AA) and possess a dangerous article in a public place (*Control of Weapons Act 1990* (Vic) s 7(1)).
11. Resist or hinder police or emergency worker relates to offences involving resisting or hindering police or emergency workers while they are carrying out their duties. Offences include resisting police or emergency workers on duty (*Summary Offences Act 1966* (Vic) s 51(2)), resisting police or emergency workers on duty (*Crimes Act 1958* (Vic) s 31(1)(b)) and hindering police or emergency workers on duty (*Summary Offences Act 1966* (Vic) s 51(2)).
12. Justice procedures offences include offences relating to contravening a lawful direction or order issued by the courts or police and other enforcement agencies (with the exception of bail or intervention orders that have their own categories). Some examples include stating a false name to a police or protective service officer (*Crimes Act 1958* (Vic) s 456AA(3)(b)),

refusing to comply with a request to provide a name to a police or protective service officer (*Crimes Act 1958* (Vic) s 456AA(3)(a)) and acting in a manner prejudicial to the security, good order or management of a jail (*Corrections (Police Goals) Regulations 2015* (Vic) reg 15(1)(a)).

13. Sexual offences relate to offending of a sexual nature, including either physical contact or pornography-related offences. Some examples include sexual penetration of a child aged under 16 (*Crimes Act 1958* (Vic) s 45(1) (repealed)), indecent acts with a child aged under 16 (*Crimes Act 1958* (Vic) s 47(1) (repealed)) and sexual assault (*Crimes Act 1958* (Vic) s 40(1)).

Offence type and child protection history

Figures A5 and A6 show the relationship between child protection history and offence type for all the offences for which children in the study group were sentenced or diverted in 2016 and 2017.

Figure A5 (page 89) shows the proportion of *children* sentenced or diverted for particular offence categories who were known to child protection and the extent of their child protection involvement. This figure divides all children in the study group into overlapping groups according to whether they were sentenced or diverted for a particular offence type at least once in 2016 or 2017.

All offences for which children in the study group were sentenced or diverted at any time from 1 January 2016 to 31 December 2017 were included in this analysis. If a child had at least one offence in a particular category, that child was included in the category. Each child was counted only once in a particular category, regardless of whether they had one offence or more than one offence in that category. If a child had an offence in more than one offence category, that child was counted once in each category. For example, a child with two sentenced charges of breach intervention order and three sentenced charges of property damage would be counted once in the category of breach intervention order and once in the category of property damage.

For each group of children (for example, children sentenced for an offence against the person), Figure A6 (page 90) shows the proportion of that group with each level of child protection involvement (child protection report, investigated report, substantiated report, child protection order, out-of-home care and residential care). For instance, of all 5,063 children sentenced or diverted in 2016 and 2017, 1,755 children had a property damage offence. Of those 1,755 children, 49% were the subject of a child protection report. This means that although children known to child protection constituted 38% of the overall study group, they constituted 49% of children with a sentenced or diverted property damage offence.

The proportion of children *not* known to child protection in each offence category can be calculated by subtracting from 100% the proportion of children with at least one child protection report. For example, of the 405 children sentenced or diverted for breach intervention order, 53% were the subject of at least one child protection report. Therefore, 47% were not known to child protection.

The child protection categories shown in Figure A6 are subsets of one another; in that all of the children who experienced residential care also experienced out-of-home care, were the subject of at least one child protection order and were the subject of at least one investigated and substantiated child protection report.

Figure A6 analyses the proportion of *charges* in each offence category that were committed by children who were known to child protection. For example, Figure A5 shows that, of the 1,755 children sentenced or diverted for property damage offences, 20% experienced residential care (349 children). At the same time, Figure A6 demonstrates that those 349 children were responsible for 28% of sentenced or diverted property damage charges (1,572 of 5,671 charges of property damage).

Figure A5: Proportion of children with each level of child protection involvement, by offence type for which children were sentenced or diverted

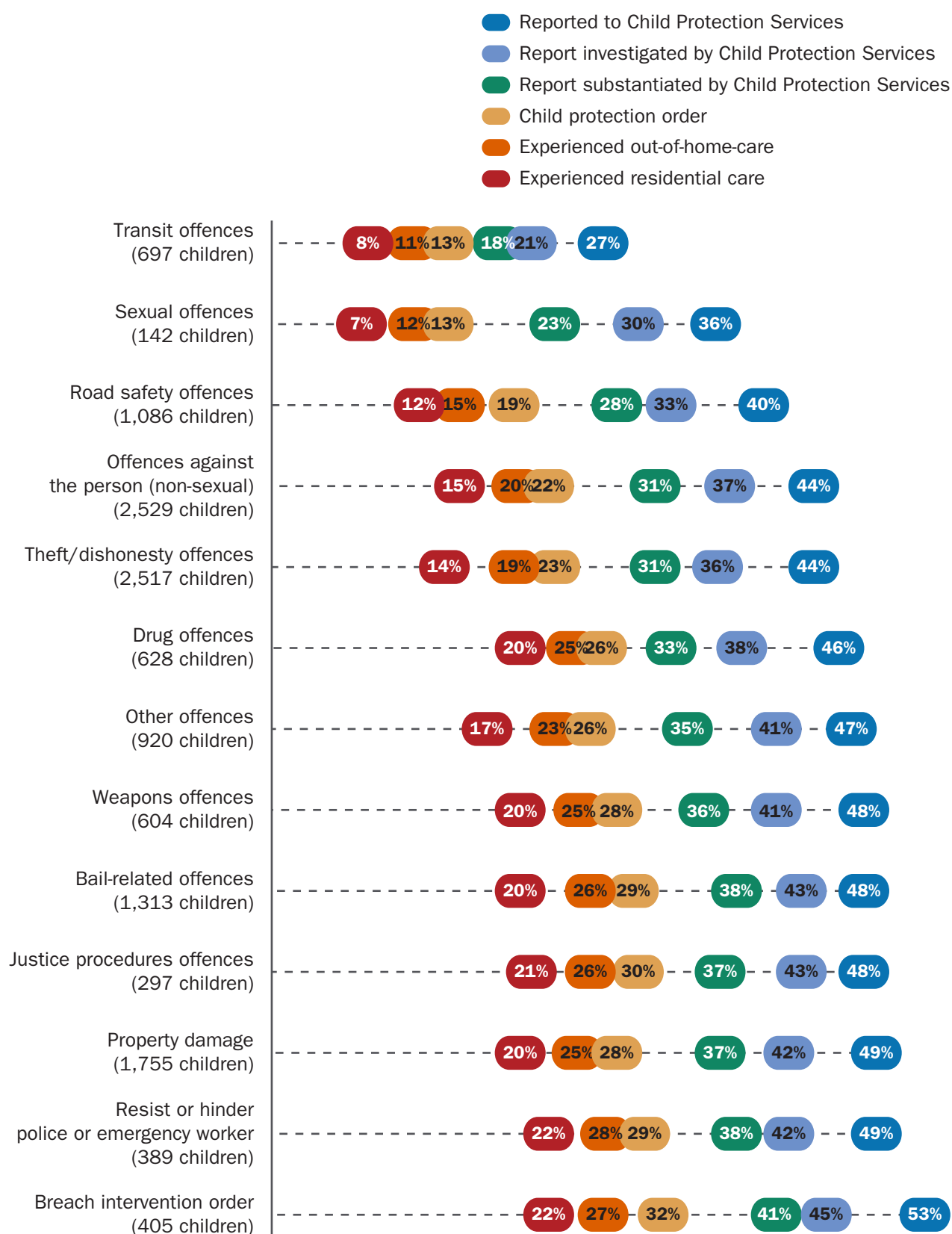
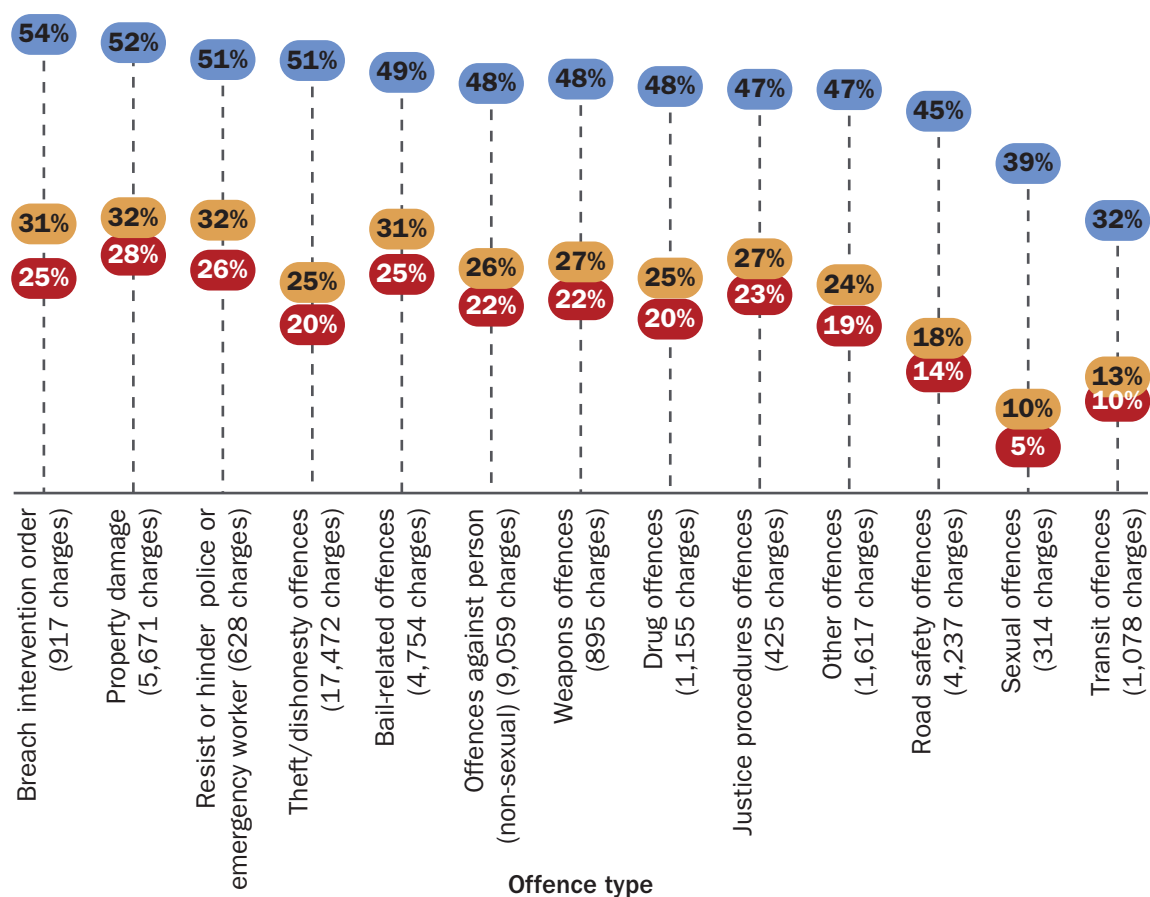


Figure A6: Proportion of sentenced or diverted charges of particular offence types that were committed by children in the study group who were known to child protection, were the subject of a child protection order and experienced residential care

Percentage of charges committed by children with:

- Child protection report
- Child protection order
- Residential care



References

Bibliography

Armytage, Penny and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending* (Victorian Government, 2017) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending>>.

Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*, cat. no. 3238.0.55.001 (2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>>.

Australian Institute of Family Studies, *Child Protection and Aboriginal and Torres Strait Islander Children*, CFCA Resource Sheet (Australian Institute of Family Studies, 2020) <<https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>>.

Australian Institute of Health and Welfare, *Child Protection Australia 2016–17*, Child Welfare Series no. 68 (Australian Institute of Health and Welfare, 2018) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/contents/table-of-contents-print-report>>.

Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 2015–16*, Data Linkage Series no. 23 (Australian Institute of Health and Welfare, 2017) <<https://www.aihw.gov.au/reports/youth-justice/young-people-in-youth-justice-supervision-2015-16/contents/table-of-contents>>.

Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision: 1 July 2014 to 30 June 2018* (Australian Institute of Health and Welfare, 2019) <<https://www.aihw.gov.au/reports/child-protection/young-people-in-youth-justice-supervision-2014-18/contents/table-of-contents>>.

Australian Institute of Health and Welfare, *Youth Detention Population in Australia*, Bulletin no. 145 (Australian Institute of Health and Welfare, 2018) <<https://www.aihw.gov.au/reports/juv/128/youth-detention-population-in-australia-2018/contents/table-of-contents>>.

Baidawi, Susan and Rosemary Sheehan, 'Crossover Kids': *Offending by Child Protection-Involved Youth*, Trends and Issues in Crime and Criminal Justice no. 582 (Australian Institute of Criminology, 2019) <<https://www.aic.gov.au/publications/tandi/tandi582>>.

Baidawi, Susan and Rosemary Sheehan, 'Cross-Over Kids': *Effective Responses to Children and Young People in the Youth Justice and Statutory Child Protection Systems* (Australian Institute of Criminology, 2019) <<https://crg.aic.gov.au/reports/201920.html>>.

Baidawi, Susan and Rosemary Sheehan, 'Maltreatment and Delinquency: Examining the Contexts of Offending amongst Child-Protection Involved Children' (2019) *British Journal of Social Work* 12.

Better Health Channel, 'Family and Child Support Services' (betterhealth.vic.gov.au, 2020) <<https://www.betterhealth.vic.gov.au/health/ServicesAndSupport/family-and-child-support-services>>.

Bettink, Suzanne, 'Crossover Kids in Victoria: Problems for the Children's Court of Victoria in Taking an Integrated Approach to Young People with Multiple Issues' (Paper presented at Doing Justice for Young People: Issues and Challenges for Judicial Administration in Australia and New Zealand, the Australasian Institute of Judicial Administration, Brisbane, 23–25 August 2012).

Blagg, Harry, Neil Morgan, Chris Cunneen and Anna Ferrante, *Systemic Racism as a Factor in the Over-Representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, 2005) <<https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1391-systemic-racism-as-a-factor-in-the-over-representation-of-aboriginal-people-in-the-victorian-criminal-justice-system-sep-2005>>.

Bowles, Jennifer, *Sentencing in the Children's Court of Victoria* (Children's Court of Victoria, 2013) <<http://www.childrenscourt.vic.gov.au/sentencing-childrens-court-victoria>>.

Campbell, Elena, 'The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home' (Paper presented at the ANROWS 2nd National Research Conference, ANROWS, Sydney, 15–17 May 2018).

Campbell, Elena, Jessica Richter, Jo Howard and Helen Cockburn, *The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home (AVITH)* (ANROWS 2020) <https://www.anrows.org.au/publication/the-pipa-project-positive-interventions-for-perpetrators-of-adolescent-violence-in-the-home-avith/attachment/campbell_rr_pipa/>.

Cashmore, Judy, 'The Link between Childhood Maltreatment and Adolescent Offending: Systems Neglect of Adolescents' (2011) 89 *Family Matters* 31.

Centre for Innovative Justice, RMIT, 'Positive Interventions for Perpetrators of Adolescent Violence in the Home' (cij.org.au, 2018) <<https://cij.org.au/research-projects/positive-interventions-for-perpetrators-of-adolescent-violence-in-the-home-the-pipa-project/>>.

Child Welfare Practice and Legislation Review Committee (Victoria), *Child Welfare Practice and Legislation Review: Report* (The Committee, 1984).

Children's Court of Victoria, *Annual Report 2016–2017* (2018) <<https://www.childrenscourt.vic.gov.au/annual-report-2016-2017>>.

Children's Court of Victoria, 'Children's Court Clinic' (childrenscourt.vic.gov.au, 2020) <<https://www.childrenscourt.vic.gov.au/jurisdictions/criminal/childrens-court-clinic>>.

Children's Court of Victoria, 'Court Locations' (childrenscourt.vic.gov.au, 2020) <<https://www.childrenscourt.vic.gov.au/about-us/court-locations>>.

Commission for Children and Young People, *In Our Own Words: Systemic Inquiry into the Lived Experience of Children and Young People in the Victorian Out-of-Home Care System* (2019) <<https://ccyp.vic.gov.au/upholding-childrens-rights/systemic-inquiries/in-our-own-words/>>.

Cowan, David, 'What Is the Context of Police and Court Diversion in Victoria and What Opportunities Exist for Increasing Police Diversion of Offenders?' (Master's Thesis, Selwyn College, 2018).

Dean, Adam, *The Intersection between the Child Protection and Youth Justice Systems: CFCA Resource Sheet* (Australian Institute of Family Studies, 2018) <<https://aifs.gov.au/cfca/publications/intersection-between-child-protection-and-youth-justice-systems/youth-justice>>.

De Bellis, Michael and Abigail Zisk, 'The Biological Effects of Childhood Trauma' (2014) 23(2) *Child and Adolescent Psychiatric Clinics* 185.

Department of Health and Human Services, *Aboriginal Children in Aboriginal Care: Information Sheet* (Department of Health and Human Services, 2017) <<https://dhhs.vic.gov.au/publications/aboriginal-children-aboriginal-care-program>>.

Department of Health and Human Services, *Child Protection Manual* (Department of Health and Human Services, 2015–) <<http://www.cpmanual.vic.gov.au/>>.

Department of Health and Human Services, 'Out of Home Care' (dhhs.vic.gov.au, 2019) <<https://providers.dhhs.vic.gov.au/out-home-care>>.

Department of Health and Human Services, 'Child Protection Orders' (dhhs.vic.gov.au, 2019) <<https://services.dhhs.vic.gov.au/child-protection-orders>>.

Department of Health and Human Services, 'Services' (dhhs.vic.gov.au, 2019) <services.dhhs.vic.gov.au>.

Department of Health and Human Services, *Framework to Reduce Criminalisation of Young People in Residential Care* (Department of Health and Human Services, 2020) <<https://providers.dhhs.vic.gov.au/framework-reduce-criminalization-young-people-residential-care-word>>.

Department of Health and Human Services, 'Kinship Care' (dhhs.vic.gov.au, 2019) <<https://services.dhhs.vic.gov.au/kinship-care>>.

Early Childhood and School Education Group, Department of Education and Training, and Youth and Families Division, Department of Health and Human Services, *Out-of-Home Care Education Commitment: A Partnering Agreement between Department of Health and Human Services, Department of Education and Training, Catholic Education Commission of Victoria, Independent Schools Victoria, Victorian Aboriginal Child Care Agency, Centre for Excellence in Child and Family Welfare* (Department of Education and Training and Department of Health and Human Services, 2018) <<https://www.education.vic.gov.au/school/teachers/health/Pages/oohcpartneragreement.aspx>>.

Fernandez, Elizabeth, Jane Bolitho and Patricia Hansen, 'Children's Court Challenges and Possibilities: a Study of the Children's Court of New South Wales' (Paper presented at the Association of Children's Welfare Agencies (ACWA) Best Practice Forum, Sydney, 23 July 2014).

Fitton, Lucy, Rongqin Yu, Seena Fazel, 'Childhood Maltreatment and Violent Outcomes: A Systematic Review and Meta-Analysis of Prospective Studies' (2018) *Trauma, Violence and Abuse* (DOI 10.1177/1524838018795269) <<https://journals.sagepub.com/doi/10.1177/1524838018795269>>.

Fitz-Gibbon, Kate and Wendy O'Brien, 'A Child's Capacity to Commit Crime: Examining the Operation of *doli incapax* in Victoria (Australia)' (2019) 8(1) *International Journal for Crime, Justice and Social Democracy* 18.

Freiberg, Arie, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., Thomas Reuters, 2014).

Griffin, Gene and Sarah Sallen, 'Considering Child Trauma Issues in Juvenile Court Sentencing' (2013) 34(1) *Children's Legal Rights Journal* 1.

Hein, Tyler and Christopher Monk, 'Research Review: Neural Response to Threat in Children, Adolescents, and Adults after Child Maltreatment – a Quantitative Meta-Analysis (2017) 58(3) *Journal of Child Psychology and Psychiatry* 222.

Hurren, Emily, Anna Stewart and Susan Dennison, 'Transitions and Turning Points Revisited: A Replication to Explore Child Maltreatment and Youth Offending Links within and across Australian Cohorts' (2017) 65 *Child Abuse & Neglect* 24.

Indig, Devon, Claudia Vecchiato, Leigh Haysom, Rodney Beilby, Julie Carter, Una Champion, Claire Gaskin, Eric Heller, Shalin Kumar, Natalie Mamone, Peter Muir, Paul van den Dolder and Gilbert Whitton, *2009 NSW Young People in Custody Health Survey: Full Report* (Justice Health and Juvenile Justice, 2011) <www.justicehealth.nsw.gov.au/publications/ypichs-full.pdf>.

Jaffee, Sara, 'Child Maltreatment and Risk for Psychopathology in Childhood and Adulthood' (2017) *13 Annual Review of Clinical Psychology* 525.

Lewis, Natalie, John Burton, Janelle Young, Nadeshda Jayakody, Emma Brathwaite, Clare Tilbury, Brian Jenkins, Tracey Smith, Aron Shlonsky, Wei Wu Tan, Arno Parolini and Deborah Brennan, *The Family Matters Report 2018: Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (SNAICC and Family Matters, 2018) <<http://www.familymatters.org.au/family-matters-report-2018-the-family-matters-report-2018-urges-that-investment-in-prevention-is-critical-to-stopping-our-national-child-removals-crisis/>>.

Lima, Fernando, Miriam Maclean and Melissa O'Donnell, *Exploring Outcomes for Young People Who Have Experienced Out-of-Home Care* (Telethon Kids Institute, 2018) <<https://www.telethonkids.org.au/globalassets/media/documents/projects/developmental-pathways-project/dcpfs-outcomes-report-final.pdf>>.

Malvaso, Catia, Paul Delfabbro and Andrew Day, 'The Child Protection and Juvenile Justice Nexus in Australia: A Longitudinal Examination of the Relationship between Maltreatment and Offending' (2017) *64 Child Abuse & Neglect* 32.

Marien, Mark, "'Cross-Over Kids': Childhood and Adolescent Abuse and Neglect and Juvenile Offending' (Paper presented at the National Juvenile Justice Summit, Melbourne, 26–27 March 2012) <http://www.childrenscourt.justice.nsw.gov.au/Documents/2012%20clnv%20cross_over_kids_2012.pdf>.

McCrory, Eamon, Mattia Gerin and Essi Viding, 'Annual Research Review: Childhood Maltreatment, Latent Vulnerability and the Shift to Preventative Psychiatry – the Contribution of Functional Brain Imaging' (2017) *58(4) Journal of Child Psychology and Psychiatry* 338.

McFarlane, Kath, 'Care-Criminalisation: The Involvement of Children in Out-of-Home Care in the New South Wales Criminal Justice System' (2018) *51(3) Australian & New Zealand Journal of Criminology* 412.

McFarlane, Kath, 'Care-Criminalisation: The Involvement of Children in Out of Home Care in the NSW Criminal Justice System' (PhD Thesis, University of New South Wales, 2016) <<https://researchoutput.csu.edu.au/ws/portalfiles/portal/9319354>>.

Mendes, Philip, Susan Baidawi and Pamela Snow, *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System: Phase Three Report* (Monash University, 2014).

National Disability Services Victoria, *Submission to Victorian Equal Opportunity and Human Rights Commission* (National Disability Services Victoria, 2011).

New South Wales Government, *Joint Protocol to Reduce the Contact of Young People in Residential Out-of-Home Care with the Criminal Justice System* (New South Wales Government, 2016).

Op den Kelder, Rosanne, Judith Ensink, Geertjan Overbeek, Marija Maric and Ramón Lindauer, 'Executive Function as a Mediator in the Link between Single or Complex Trauma and Posttraumatic Stress in Children and Adolescents' (2017) *Quality of Life Research* 26(7) 1687.

Pechtel, Pia and Diego Pizzagalli, 'Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature' (2011) 214(1) *Psychopharmacology* 55.

Productivity Commission, *Report on Government Services 2017: Volume F: Community Services* (Commonwealth of Australia, 2017) <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2017/community-services>>.

Power, Peter; *Children's Court Research Materials* (Children's Court of Victoria, 2015–) <<http://www.childrenscourt.vic.gov.au/legal/research-materials>>.

Richards, Kelly and Lauren Renshaw, *Bail and Remand for Young People in Australia: A National Research Project*, Research and Public Policy Series no. 125 (Australian Institute of Criminology, 2013).

Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, 2017) <<https://www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory>>.

Ryan, Joseph, Abigail Williams-Butler and Mark Courtney, 'Adolescent Neglect, Juvenile Delinquency, and the Risk of Recidivism' (2013) 42(3) *Journal of Youth and Adolescence* 454.

Sentencing Advisory Council, *'Crossover Kids': Vulnerable Children in the Youth Justice System: Report I: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court* (Sentencing Advisory Council, 2019) <<https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system>>.

Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (Sentencing Advisory Council, 2016) <<https://www.sentencingcouncil.vic.gov.au/publications/reoffending-children-and-young-people-victoria>>.

Sentencing Advisory Council, *Secondary Offences in Victoria* (Sentencing Advisory Council, 2017) <<https://www.sentencingcouncil.vic.gov.au/publications/secondary-offences-victoria>>.

Smith, Carolyn, Timothy Ireland and Terence Thornbury, 'Adolescent Maltreatment and Its Impact on Young Adult Antisocial Behaviour' (2005) 29(10) *Child Abuse and Neglect* 1099.

State of Victoria, Royal Commission into Family Violence, *Volume IV: Report and Recommendations* (State of Victoria, 2016) <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.

Stewart, Anna, Michael Livingstone and Susan Dennison, 'Transitions and Turning Points: Examining the Links between Child Maltreatment and Juvenile Offending' (2008) 32(1) *Child Abuse & Neglect* 51.

Stewart, Anna, Susan Dennison and Elissa Waterson, *Pathways from Child Maltreatment to Juvenile Offending*, Trends and Issues in Crime and Criminal Justice no. 241 (Australian Institute of Criminology, 2002) <<https://aic.gov.au/publications/tandi/tandi241>>.

Victoria Legal Aid, 'Action Needed to Stop Children in State Care Entering Youth Justice', Media Release (26 September 2018) <<https://www.legalaid.vic.gov.au/about-us/news/action-needed-to-stop-children-in-state-care-entering-youth-justice>>.

Victoria Legal Aid, *Care Not Custody: A New Approach to Keep Kids in Residential Care out of the Criminal Justice System* (Victoria Legal Aid, 2016) <<http://www.legalaid.vic.gov.au/about-us/research-and-evaluation/evaluation-projects/care-not-custody-report>>.

Victoria Police, *Victoria Police Manual – Procedures and Guidelines* (Victoria Police, 2019).

Victorian Aboriginal Child Care Agency, 'New Framework to Reduce Criminalisation of Young People in Residential Care Will Help Stem the Levels of Incarceration of Indigenous Young People', Media Release (13 February 2020) <<http://www.medianet.com.au/releases/release-details.aspx?id=927913>>.

Victorian Auditor-General, *Residential Care Services for Children* (Victorian Auditor-General's Office, 2014) <<https://www.audit.vic.gov.au/report/residential-care-services-children>>.

Victorian Equal Opportunity and Human Rights Commission, *Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria* (Victorian Equal Opportunity and Human Rights Commission, 2012) <<https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/153-desperate-measures-the-relinquishment-of-children-with-disability-into-state-care-in-victoria-may-2012>>.

Victorian Government, *Protecting Children: Protocol between Department of Human Service – Child Protection and Victoria Police* (Victorian Government, 2012) <<https://www.cpmanual.vic.gov.au/advice-and-protocols/protocols/police-courts-legal-services/police>>.

Victorian Government, *Roadmap for Reform: Children and Families: Progress and Directions 2018* (Victorian Government, 2018) <<https://dhhs.vic.gov.au/sites/default/files/documents/201905/Roadmap-for-Reform-children-and-families-May-2018.pdf>>.

Victorian Government, *Roadmap for Reform: Strong Families, Safe Children: The First Steps* (Victorian Government, 2016) <<https://dhhs.vic.gov.au/publications/roadmap-reform-strong-families-safe-children>>.

Vinson, Tony, Margot Rwsthorpe, Adrian Beavis and Matthew Ericson, *Dropping Off the Edge 2015: Persistent Communal Disadvantage in Australia* (Jesuit Social Services and Catholic Social Services Australia, 2015) <<https://dote.org.au/findings/full-report/>>.

Watkins, Richard and Soula Kontomichalos-Eyre, 'Community around the Child' (Presentation at the 2018 ANZSOC Conference, The University of Melbourne, 3 December 2018).

Wise, Sarah and Samuel Egger, *The Looking After Children Outcomes Data Project: Final Report* (Australian Institute of Family Studies, 2008).

Case law

R (A Child) v Whitty (1993) 66 A Crim R 462

R v ALH (2003) 6 VR 276

R v Evans [2003] VSCA 223 (19 December 2003)

RP v The Queen [2016] HCA 53 (21 December 2016)

Webster (A Pseudonym) v The Queen [2016] VSCA 66 (11 April 2016)

Legislation

Victoria

Bail Act 1977 (Vic)

Bail Amendment Act 2016 (Vic)

Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 (Vic)

Children and Young Persons (Koori Court) Act 2004 (Vic)

Children, Youth and Families Act 2005 (Vic)

Control of Weapons Act 1990 (Vic)

Crimes Act 1958 (Vic)

Criminal Procedure Act 2009 (Vic)

Drugs, Poisons and Controlled Substances Act 1981 (Vic)

Family Violence Protection Act 2008 (Vic)

Graffiti Prevention Act 2007 (Vic)

Summary Offences Act 1966 (Vic)

Commonwealth

Criminal Code Act 1995 (Cth)

Quasi-legislative materials

Victoria, *Parliamentary Debates*, Legislative Assembly, 3 November 2004 (Sherryl Garbutt, Minister for Community Services).

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