Children Held on Remand in Victoria: A Report on Sentencing Outcomes
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- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council’s written views on the giving, or review, of a guideline judgment.

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Executive summary

The number of unsentenced children held in custody (on remand) on an average day in Victoria more than doubled between 2010 and 2019, from 48 to 99. To date, published research in Victoria has not examined case outcomes for children who are remanded while awaiting trial. This report fills that gap.

106%

Increase in average daily number of unsentenced children in custody

Examining outcomes for remanded children is important because it can help policymakers identify which children may be ideally targeted by initiatives to help them avoid the pre-trial custodial experience. Being arrested, remanded or sentenced to detention all increase the risk that a child will commit further offences, not only damaging the child’s future but also increasing their risk to the community. To that end, this report identifies all children held on remand in Victoria in a single financial year (2017–18) and tracks their cases to finalisation. The primary aim is to identify how many children receive a custodial sentence and how many do not.

The index population

In 2017–18, 442 children (the index population) were held on remand in Victoria for 660 cases. Almost all were male (89%), but the 11% who were female were more likely to be younger; be Aboriginal and Torres Strait Islander and live in rural and regional areas. In terms of remanded children’s self-reported ethnicity:

- less than half identified as non-Indigenous Australian (43%);
- Aboriginal and Torres Strait Islander children were over-represented (15%), especially in rural and regional areas; and
- children from culturally and linguistically diverse backgrounds accounted for 42% of remanded children, most commonly Sudanese (12%) or New Zealand, Māori and Pasifika children (12%).

Further, at least 94% of remanded children had at least some known prior contact with the justice system before they were remanded. This means they were remanded previously, were sentenced previously and/or were subject to other ongoing criminal proceedings when they were remanded.
Case outcomes

Of the 660 cases for which children were remanded in 2017–18, most (542) were consolidated with one or more other cases. This limits the analysis that might be undertaken because the sentence imposed reflects the combined offending of all the consolidated cases together, not just the case for which a child was remanded.

Nevertheless, the 660 remand cases resulted in 567 unique case outcomes (some remand cases were consolidated with one another). Two-thirds of those outcomes (66%) were non-custodial. This included 21 cases in which all charges were withdrawn or found not proven. Another 5% were time served sentences that required no further time in custody beyond that already spent on remand. The remaining 29% of outcomes were custodial sentences longer than the time children had already spent on remand. The age, gender and Aboriginal and Torres Strait Islander status of remanded children were not correlated with a likelihood that a child would or would not ultimately receive a custodial outcome.

While far from definitive, these findings about how remanded children are sentenced raise some questions about bail decision-making. This report, together with the Council’s consultations, suggests that bail decision-makers may sometimes conclude that a child would be an unacceptable risk on bail because the child does not have access to adequate housing or other support services and arrangements. This has consequences that flow through to sentencing, as a child’s remand experience will often affect how the sentencing discretion is exercised and how the child’s sentence is served.

The relationship between remand factors and sentencing

Some of the key findings around children’s remand experiences were that:

• the initial decision-maker for most remand episodes was a bail justice (54%);
• nearly half of all children’s remand episodes ended in three weeks or less (47%), and one-quarter ended in one week or less (25%);
• the most common reason children exited remand was because they were released on bail (53%), while the remaining children either were sentenced to more time in detention (20%) or had their case finalised in a way that did not require more time (24%); and
• children remanded on the weekend were much more likely to experience a short remand episode of one to three days (36%) than children remanded on a weekday (10%).

By linking remand data and court outcome data, it was possible to determine whether certain factors associated with children’s remand experiences rendered a child more or less likely to receive a custodial sentence. Children released on bail after a period on remand were less likely to receive a custodial sentence (15%) than children who were not released (55%). Further, the longer a child was held on remand, the more likely they were to receive a custodial sentence, especially children held longer than six weeks. These findings are not unexpected. Children held on remand for longer, or held in custody until the end of their proceedings, also tend to have been charged with more serious offending. In addition, or alternatively, they are more likely to have a prior history of offending or non-compliance with court orders and are therefore more likely to receive a custodial sentence. Nevertheless, these findings provide new evidence about the extent of the relationship between such factors and sentencing outcomes.
Offences at remand and finalisation

Nearly half of the cases for which children were remanded (45%) involved six or more offences, while the remainder had fewer than six offences. The most common offence types that children were charged with on entry into remand were theft and related offences (65%), many of which were thefts of motor vehicles, and justice procedures offences (62%), most of which were bail-related offences. The most serious offence in those cases most often was robbery (28% of cases) or theft and related offences (23% of cases). Children whose most serious offence on entry to remand was property damage or a threat offence were the least likely to receive a custodial sentence (12% and 10% respectively). Children whose most serious offence was property damage were also the most likely to have all charges withdrawn or dismissed.

Only a small proportion of cases were flagged as having occurred in the context of family violence (6%). Those cases were less than half as likely to receive a custodial sentence (17%) as other cases (36%).

Implications: stopping the revolving door of youth justice

It is well-established that each contact with the justice system exacerbates the risk of further contact, trapping children in the revolving door of youth justice. This report provides further evidence of that fact. Nearly half of all children remanded in 2017–18 had already experienced remand in 2016–17 (40%). Four in five children were already subject to proceedings for other alleged criminal offences when they entered remand (81%). Nearly two in three children were charged with committing an indictable offence whilst on bail when they entered remand (62%), meaning that these children were not only awaiting finalisation of other criminal proceedings but they were also on bail rather than on summons. And two-thirds had been sentenced for prior offending before they were remanded (66%). In total, just 6% of remanded children did not have a prior remand episode, prior sentence or other ongoing proceedings when they first entered remand.

For many children in the index population, their history and alleged offending would mean that being remanded was almost inevitable. But some of those children would also be well suited for tailored diversionary initiatives, especially those whose case resulted in a non-custodial outcome (66% of remanded children) and children who are from especially vulnerable cohorts. In total, the 442 children in the index population spent nearly 29,000 days on remand, at a cost of approximately $41 million. Nearly 11,000 of those days were experienced by children who did not receive a custodial sentence, at a cost of approximately $15 million.

Children in Victoria appear to be spending longer on remand than they have previously. Even so, the findings in this report show a strong correlation between the amount of time spent on remand and the likelihood of receiving a custodial outcome. Just 9% of children held on remand for a week or less received a custodial outcome, whereas 56% of children held on remand for six weeks or longer received a custodial outcome. This raises the question of whether some children held for short periods were remanded as an unacceptable risk not because of the seriousness of their alleged offending or their prior history but because they did not have access to the necessary support services at the time the decision was made to bail or remand them. This is an especial concern for children remanded outside business hours, when most remand decisions are made and when access to support services is more limited.
Some children were especially vulnerable to the remand experience:

- Aboriginal and Torres Strait Islander children were over-represented in the index population (15% of remanded children identified as Aboriginal and Torres Strait Islander, whereas less than 1% of Victoria’s population identifies as such);

- children living in rural and regional areas were more likely to be younger, female and Aboriginal and Torres Strait Islander;

- children living in rural and regional areas received a higher rate of custodial outcomes (38%) than children whose case was finalised in suburban courts (26%). The higher concentration of custodial sentences in the Melbourne Children’s Court (40%) can be attributed to the transfer of more serious matters to that court from suburban courts, but the higher concentration of custodial sentences in rural and regional areas cannot be explained the same way;

- children aged under 14 were more likely to have all charges dismissed or withdrawn (35% or 14 of 40 cases) than older children (2% or 13 of 620 cases); and

- female remanded children were:
  - twice as likely to be aged 14 or under (30% of female remanded children compared with 15% of male remanded children);
  - more likely to receive a custodial outcome in rural and regional courts (48% of female remanded children compared with 36% of male remanded children); and
  - more likely to be remanded for less serious offending. Female children were over twice as likely as male children to be remanded for a case in which the most serious offence was theft or a related offence (35% compared with 15%) but nearly a third as likely as male children to be remanded for a case in which the most serious offence was a robbery offence (10% compared with 27%).

Based on these findings, as well as comments from stakeholders (see pages xiii–xiv), some possible strategies might reduce the risk of certain children experiencing remand, especially those who go on to receive non-custodial sentences. Such strategies include:

- fully resourcing a 24-hour bail system specifically for children across Victoria to best facilitate children being bailed where possible rather than being remanded, including decision-makers and support services for both the child and their family (where relevant). Support services could incorporate accommodation, including out-of-home care, day programs, bail assessment report writers and independent support persons during children’s time in police custody;

- expanding the specialised Children’s Court to rural and regional headquarter courts across Victoria, as recently suggested by the Council in a separate report; and

- continuing to ensure that specialist services and programs are designed both with and for Aboriginal and Torres Strait Islander children.

These strategies could reduce the costs associated with remanding children, help children avoid the criminogenic effects of custody and improve community safety in the longer term.
“Here we have the most vulnerable in our community that have limited access to the justice system after hours ... a 24-hour support program obviously would be the best case scenario, but even if it could be extended in the short-term to weekend and extended hours similar to the bail court system in the Magistrates’ Court system would be a huge step forward.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“In light of the [over-representation] of girls and [culturally and linguistically diverse] children, you would want to make sure that any bail program is culturally appropriate, trauma-informed and gender-competent as well. You would also almost want extra scaffolding in place for the regional areas to account for the otherwise rural injustice we see. [In light of the economic cost of remanding children] it’s almost a no-brainer.”

Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020)

“Obviously there’s a problem there. Too many people are being remanded over the weekend only to be released on a Monday, so we’ve got a problem with the weekend service settings ... or the decision-making to remand them in the first place.”

Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020)

“There’s no question that release on the weekend isn’t going to happen because services aren’t available ... Magistrates and judiciary want to see that there is something in place: ‘is there after hours support?’ Youth Justice case managers are scrambling to get their reports done where they can illustrate that there are purposeful day activities there.”

Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020)

“I think something else is that in the rural and regional courts you’re less likely to have specifically Children’s Court trained magistrates. And that makes a big difference.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“Regional areas are sadly lacking in a lot of these [bail] services.”

Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020)
“As a bail justice … if there were more services available, I do believe the outcomes would be different.”

Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020)

“Availability of courts on the weekend is non-existent. And even our access to bail justices and the like becomes significantly hindered over the weekend. So we’re carrying a lot of kids in police custody through to Monday.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“The system is still designed predominantly to operate Monday to Friday 9 to 5. So we can have all the best plans in the world. If we don’t have the system support across all agencies joined up outside of those hours, it becomes really difficult to enact those plans in the times of crises as well.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“I know of 213 cases at the start of this year where they couldn’t get a bail justice in the North West.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“It says to me that the system drives what we do rather than the needs of the kids. So if the courts are sitting only on [certain days of the week] … that’s a problem.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“Our position is that we are open to a supervised bail program over remand … We would like to see a whole-of-government approach to this, where these kids are on supervised or intensive bail, which is accessible 24 hours a day.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“It’s the lack of availability of bail justices, it’s bail law reforms, it’s about what the bail justices would now feel confident in bailing, and the absence of bail supports … I would not want to run a bail and remand court that did not have lawyers, that did not have youth justice and did not have specialist prosecutors. It’s not just having a magistrate available for those hours. It’s about having the full complement of services.”

Meeting with the Children’s Court of Victoria (29 June 2020)
1. Introduction

1.1 Victoria currently has the lowest per capita detention rate of children in the country, with nine of every 10,000 children in detention. Nevertheless, there has been an increase in the number of unsentenced children held on remand in Victoria in recent years. On an average day in 2018–19, 90 unsentenced children were held on remand in Victoria, more than double the number 10 years earlier (Figure 1). This increase cannot be explained by the 3.6% increase between the 2011 and the 2016 censuses in the number of children aged 10–19 in the Victorian population.

Figure 1: Number of unsentenced children held on remand in Victoria on an average day, 2008–09 to 2018–19

1.2 The proportion of children in custody in Victoria who are unsentenced has also increased (Figure 2). In 2011–12, 22% of children in custody on an average day were unsentenced (37 of 172 children). By 2018–19, that proportion had more than doubled to 47% (90 of 191 children). This mirrors a similar trend in the proportion of unsentenced adults in custody, which increased from 19% in 2014 to 37% in 2019.

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1. A ‘child’ is defined as someone aged 10–17 at the time of the offending but under 19 at the start of criminal proceedings: Children, Youth and Families Act 2005 (Vic) s 3 (definition of ‘child’, para (a)). While this report is primarily concerned with those who were children at the time of entry into remand, some may have been young offenders (those aged 18 to 20 years old) when they were remanded or when their case was finalised: Sentencing Act 1991 (Vic) s 3 (definition of ‘young offender’).


1.3 A number of attempts have been made to understand the reasons for the increase in children held on remand in Victoria, and in Australia more generally. In 2013, researchers suggested that the following were possible drivers behind the increase in children on remand across Australia:

- children are alleged to have committed further offending or breached a bail condition while on bail for other alleged offending;
- the rate (and seriousness) of offending by young people has increased;
- children’s needs have become increasingly complex;
- young people may not be applying for bail;
- children may have limited access to (specialised) legal representation;
- individual judicial officers may take disparate approaches to the issue of remand;
- increasingly punitive community attitudes may have affected bail and remand practices;
- court processes have been increasingly delayed;
- it may be difficult to locate an adult willing to take responsibility for supporting the child if they are granted bail;
- there may be a level of confirmation bias in courts affirming the initial decision by police, or bail justices, not to grant bail;
- decision-makers’ increasing tendency towards risk aversion may be affecting bail and remand practices;
- the increased criminal justice focus on victims may be affecting bail and remand practices; and
- children and young people may be subjected to an inappropriately high number of bail conditions that are difficult to comply with.\(^8\)

1.4 In 2015, Jesuit Social Services suggested two reasons more specific to Victoria for the increasing number of children on remand: amendments to the *Bail Act 1977* (Vic) in 2013, which specifically criminalised certain bail-related behaviour for children, including contravening a conduct condition of bail and committing an indictable offence whilst on bail;\(^9\) and a clear change in police practices, such that police are “issuing fewer summons and more strictly policing bail.”\(^10\)

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\(^9\) *Bail Amendment Act 2013* (Vic) s 8.

1. Introduction

The decriminalisation of contravening a conduct condition of bail for children in 2016 did not appear to have any noticeable effect on the number of children held on remand in Victoria, however. This suggests at least that the offence of contravening a conduct condition of bail was not directly responsible for more children being on remand.

1.5 More recent amendments to the Bail Act 1977 (Vic) in 2018 would probably have led to further increases in the number of children held on remand, although this is unconfirmed by the data at this stage. One important change is that anyone, including children, charged with an indictable offence committed while on bail or under summons for other alleged offending must now establish a compelling reason why they should be granted bail. That is, the onus of establishing why someone in that situation should be granted bail now falls on the accused, whereas previously the presumption would have been in favour of bail and the onus would have been on the prosecution to establish why remand was appropriate.

Interstate and overseas trends

1.6 The increase in the proportion of children in detention who are unsentenced is by no means unique to Victoria or Australia. Across Australia, the proportion of all children in detention who are on remand on an average day increased from 49% in 2010–11 to 63% in 2018–19 (Figure 3). Victoria had by far the greatest increase in the proportion of unsentenced children in detention, up from 24% to 47%, though it remains the jurisdiction with the lowest proportion of unsentenced children in detention. In that same timeframe, every state and territory, other than Western Australia, also saw an increase in the proportion of unsentenced children in detention: from 58% to 75% in Tasmania, from 62% to 77% in the Northern Territory, from 72% to 87% in Queensland, from 58% to 71% in the Australian Capital Territory, from 45% to 53% in South Australia and from 51% to 56% in New South Wales. The proportion of unsentenced children in detention in Western Australia dropped from 63% to 57%.

1.7 The proportion of children on remand has also increased in overseas jurisdictions. In England and Wales, for example, while there has been a drop of 60% in the overall number of children in custody in the last decade, this was mostly due to a reduction in the number of sentenced children in custody. The proportion who are on remand has actually grown by 7% in that same timeframe. Similarly, in New Zealand, the number of children in custody decreased from 702 in 2010 to 488 in 2018, but the proportion of children on remand increased from 19% to 32% in that same timeframe. In Scotland, the number of children prosecuted in court fell 78% between 2006 and 2016, alongside a similar decrease in the number of children in custody, but the number of children on remand has not declined at the same rate, with remanded children sometimes even outnumbering the number of sentenced children in custody.

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11. Bail Amendment Act 2016 (Vic) s 16(2).
12. Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
13. Bail Act 1977 (Vic) s 4C, sch 2 cl 1, as inserted by Bail Amendment (Stage One) Act 2017 (Vic) and Bail Amendment (Stage Two) Act 2018 (Vic).
14. Youth Justice Board, Ministry of Justice and Office for National Statistics, Youth Justice Statistics 2018/19: England and Wales (2020) Data Table 6.3. Some have argued that the growth in youth remand in England and Wales is due to a ‘more punitive and risk-averse reaction to knife crime’ as well as the prosecution making submissions that a child is ‘involved in a gang’: Penelope Gibbs and Fionnuala Ratcliffe, Path of Little Resistance: Is Pre-Trial Detention of Children Really a Last Resort? (2018) 8.
15. Youth Justice Board, Ministry of Justice and Office for National Statistics (2020), above n 14, Data Table 6.3.
Figure 3: Proportion of children in custody in each Australian jurisdiction on an average day who are unsentenced, 2010–11 to 2018–19

<table>
<thead>
<tr>
<th>Year</th>
<th>New South Wales</th>
<th>Victoria</th>
<th>Queensland</th>
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<th>South Australia</th>
<th>Tasmania</th>
<th>Australian Capital Territory</th>
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In Canada, the number of children in both sentenced and unsentenced detention declined by 66% and 52% respectively between 2008 and 2018; however, the proportion of children who were unsentenced increased from 52% to 60%. In effect, many countries have had a significant decline in the total number of children in detention over the last decade, but the number of unsentenced children in detention has not declined (if at all) at the same rate as sentenced children.

**Aim of this report**

1.8 The aim of this report is to, for the first time, analyse the outcomes of cases for which children are held on remand in Victoria.

1.9 This research is important for a number of reasons. First, there is a strong link between remand and sentencing. On the one hand, time spent on remand can affect the exercise of the sentencing discretion. Courts may consider imposing a custodial sentence, where they may not otherwise, if the child has already been exposed to the custodial environment and/or it would be ‘unduly punitive’ to impose a non-custodial order with conditions if the child has already been in custody for a period of time. On the other hand, bail decision-makers have to take into account the likely sentence that would be imposed for the alleged offending in any given case. Children are less likely to be granted bail if they would probably receive a custodial sentence should they be found guilty of the alleged offences, although this is by no means determinative. The findings in this report provide evidence about the proportion of remanded children who go on to receive custodial sentences, especially how many receive custodial sentences longer than the time they spent on remand.

1.10 Second, this research is important because understanding the experiences of justice-involved children will help policymakers better understand how to reduce the number of children in custody, both in Victoria and elsewhere. As was said during the Don Dale Royal Commission, ‘[o]nce a young person … goes into remand … it introduces the young person to the normalised life of being managed by the criminal justice system’. Contact with the justice system, both as a child and as an adult, is not only a predictor of ongoing contact with the system but also an indirect contributor to it. The remand experience in general is considered ‘one of the most taxing and unstable prison experiences’. And for children in particular, it can lead to separation from family and community, disruption to education and employment, association with sentenced young offenders, being held in inappropriate facilities, being unable to access therapeutic programs, having an increased chance of being placed on remand if arrested again, and having an increased chance of receiving a custodial sentence compared with young people who are granted bail.

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19. For example, an 18-year-old accused received a time served sentence because his time in custody made any further community correction order ‘unduly punitive’: *Farmer v The Queen* [2020] VSCA 140 (2 June 2020) [90].
1.11 Any measures that can reduce the number of contacts that children have with the justice system, or reduce the severity of the justice system’s response to alleged offending, can have significant, positive flow-on effects for society as a whole. This is, for example, why there is a strong presumption of bail in cases involving children,26 to the point of requiring courts to ‘consider all other options before remanding [a] child in custody’.27 Indeed, the Victorian Government recently committed to reducing the number of children on remand in Victoria ‘by analysing the factors contributing to current rates of remand … to prevent young people entering remand where it is appropriate and safe to do so’.28

**Research questions**

1.12 This report addresses the following research questions:

**Demographics**

What was the age, gender, ethnicity and criminal justice history of children held on remand for at least one day in Victoria in 2017–18?

**Case outcomes**

What was the outcome in each case for which a child was held on remand?

**Relationship between remand and sentencing**

Were any features of children’s remand experience correlated with a higher or lower likelihood of receiving a custodial sentence?

**Offences**

What offences were remanded children charged with, and was there much variation between charges on entry to remand and proven charges?

1.13 These questions are addressed in Chapters 4 to 7. Before that, Chapter 2 provides an overview of the legal framework for dealing with justice-involved children in Victoria, and Chapter 3 provides a literature review of past research on children held on remand and the sentences they receive. The methodology used by the Council to address these research questions is in Appendix 3.

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26. See for example, Re FA [2018] VSC 372 (6 July 2018) [23] (‘the custody or detention of a child should be avoided unless unavoidable’); Re JO [2018] VSC 438 (7 June 2018) at [14]–[15].
27. Bail Act 1977 (Vic) s 3B(1)(a).
2. Criminal proceedings involving children in Victoria

2.1 This chapter provides an overview of the structures and processes within which children are prosecuted for alleged offending in Victoria. It includes an overview of which courts hear criminal proceedings involving children; how decisions are made to summons, bail or remand children charged with criminal offences; and how decisions are made about which sentence to impose on children found guilty of criminal offences.

Courts hearing criminal proceedings involving children in Victoria

2.2 In Victoria almost all criminal cases involving children are heard and determined in the Children’s Court. In some circumstances, however, proceedings involving children are heard in the adult jurisdiction. If the proceedings commence when the accused is aged 19 or older, the case must be heard in the adult jurisdiction because the accused is no longer a ‘child’ within the meaning of the relevant Act, even if they allegedly committed the offence while they were a child.29 There are also a number of circumstances in which the court must always,30 must unless there is an exception31 or may32 transfer (or uplift) the case to the adult jurisdiction, even if the accused is aged under 19 at the commencement of the proceedings.

2.3 Regardless of which court hears a matter involving a child accused, the considerations a court must take into account when deciding whether to bail a child, or how to sentence a child, will always differ from the same considerations in the context of adults. For instance, general deterrence is of less relevance when sentencing a child, while rehabilitation takes on a greater role,33 and adult courts can impose sentencing orders under the Children, Youth and Families Act 2005 (Vic).34 Similarly, the Bail Act 1977 (Vic) sets out specific considerations to take into account when deciding whether to bail or remand a child.35

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29. The definition of ‘child’ in the Children, Youth and Families Act 2005 (Vic) s 3 precludes the Children’s Court from having jurisdiction over proceedings that commence when a person is aged 19 years or older.
30. This includes certain homicide offences: Children, Youth and Families Act 2005 (Vic) s 516.
31. This includes where the child was aged 16 years or over when alleged to have committed a Category A serious youth offence such as aggravated home invasion or aggravated carjacking: Children, Youth and Families Act 2005 (Vic) s 3 (definition of ‘Category A serious youth offence’). The charge may only be heard in the Children’s Court if the child or the prosecution requests that the charges be heard and determined summarily; the court is satisfied that the sentencing options under the Children, Youth and Families Act 2005 (Vic) would be sufficient to adequately respond to the alleged conduct, and at least one of the following applies: it is in the interests of the victim(s); the accused is particularly vulnerable because of cognitive impairment or mental illness, or there is otherwise a substantial and compelling reason why the charge should be heard and determined summarily; Children, Youth and Families Act 2005 (Vic) s 356(6). Note that for the purpose of uplifting, the classification of offences as either a Category A serious youth offence or a Category B serious youth offence only applies to offences committed on or after 5 April 2018: see Sentencing Advisory Council, Changes to Sentencing Law in Victoria: An Overview of 2018 (2019) 5–6; Children, Youth and Families Act 2005 (Vic) sch 6 cl 1.
32. This includes Category B serious youth offences, such as rape, home invasion and carjacking: Children, Youth and Families Act 2005 (Vic) s 3 (definition of ‘Category B serious youth offence’). If the charge is brought with a Category B serious youth offence committed while aged 16 years or older, the court is required to consider whether transfer to the adult jurisdiction would be appropriate: Children, Youth and Families Act 2005 (Vic) s 356(8). The court may uplift the case to the adult jurisdiction if there are ‘exceptional circumstances’ that make the case unsuitable to be determined in the summary jurisdiction; Children, Youth and Families Act 2005 (Vic) s 356(3)(b).
34. Children, Youth and Families Act 2005 (Vic) s 586.
35. Bail Act 1977 (Vic) s 3B(1).
Framework for bailing/remanding children in Victoria

2.4 This section discusses the legal framework within which children in Victoria are bailed or remanded, including human rights and other considerations, the decision-making process and the possible conditions of bail.

Human rights considerations

2.5 A number of human rights considerations underlie decisions about detaining children in custody in Victoria. A child charged with a criminal offence has the right to a procedure that takes their age and the desirability of their rehabilitation into account; they also have a right to be detained separately from adults and sentenced children and to be brought to trial as quickly as possible. Further, the detention of a child, including in pre-trial detention, should be a measure of last resort. Wherever possible, detention should be replaced by alternative measures, such as close supervision, intensive care or placement within a family or in an education setting or a home.

Who makes bail/remand decisions?

2.6 When a child is arrested, they must within a reasonable time (but not later than 24 hours) be released unconditionally, be released on bail by a police officer ranked sergeant or above, be brought before the Children’s Court or, if the court is not sitting at a convenient venue, be brought before a bail justice.

40 If a bail justice refuses bail, they must remand the child in custody to appear before a court within one working day, or in some circumstances two working days. Accordingly, courts review within days any bail justice’s decision to refuse bail. There are also certain circumstances in which only a court can grant bail to a child.

2.7 Upon arresting a child, police are required to take into account the presumption in favour of proceeding by summons, which simply requires the child to attend court on a particular date without needing to also be subject to bail conditions (or be remanded). Similarly, upon the filing of a charge sheet against a child, the court registrar must not, in the first instance, issue a warrant to arrest the child unless satisfied that the circumstances are exceptional. The bail decision-making process is illustrated in detail in Figure 4 (page 9).

36. See for example, Woods v Director of Public Prosecutions [2014] VSC 1 (17 January 2014) [3], [8], [20], [29].
37. Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 23(1)–(2), 25(3); Children, Youth and Families Act 2005 (Vic) ss 347(1), 478(a), 482.
39. Children, Youth and Families Act 2005 (Vic) s 346(2)(b); Bail Act 1977 (Vic) s 10. The bail decision-maker must ensure that a parent or guardian of the child, or an independent person, is present during the determination of whether to grant or refuse bail: Bail Act 1977 (Vic) s 10(3).
40. Children, Youth and Families Act 2005 (Vic) s 346(2). A parent or guardian of the child, or an independent person must be present during bail applications made before a bail justice: Bail Act 1977 (Vic) s 10A(3). The wording of section 10(1) of the Bail Act 1977 (Vic) suggests that police are to consider granting or refusing bail only where it is impracticable to bring an accused before a court immediately after being taken into custody, or after being questioned. However, this precondition does not appear in section 346(2) (b) of the Children, Youth and Families Act 2005. The Council was told that, in practice, police will ordinarily consider whether it is appropriate to grant bail regardless of whether it is practicable to bring a child before a court.
41. Bail Act 1977 (Vic) s 10A(6).
42. These include where a child is charged with a Schedule 1 offence, where a child is charged with a Schedule 2 offence in certain circumstances and where a child has a terrorism record: Bail Act 1977 (Vic) ss 4AA(2)(a)–(b), 13(3)–(4), 13A; Children, Youth and Families Act 2005 (Vic) s 346(3).
43. Children, Youth and Families Act 2005 (Vic) s 345.
44. Children, Youth and Families Act 2005 (Vic) s 343(4).
Figure 4: Bail decision-making process for children in Victoria as at 1 July 2020

Detection of alleged offence committed by child

Presumption in favour of summons

Child is arrested

Child taken into police custody

Is the child charged with treason, murder, a Schedule 1 offence or a Schedule 2 offence in certain circumstances, or does the child otherwise have a terrorism record?

Yes

Child must be brought before the Children’s Court as soon as practicable and:

- no later than next working day or
- if proper venue of the court is in prescribed region of the state, within two working days

Child is brought before the Children’s Court

Bail justice called to hear bail application

Child remains entitled to bail but must apply for bail

If no application is made or the application is refused, child is remanded in a remand centre (for a period no longer than 21 clear days)

Upon expiry of the remand order, the child must be brought before the court to extend or renew remand for up to another 21 days. This may recur until the child is sentenced. The child may make subsequent applications for bail

No

Presumption in favour of summons

The child is entitled to be granted bail unless the Bail Act 1977 (Vic) requires the decision-maker to refuse bail. Police must either release the child or bring them before a court or Bail Justice within a reasonable time, and no later than 24 hours after arrest*

Child is brought before a Bail Justice (because the Children’s Court is not sitting at any convenient venue)

Child is released unconditionally on summons or without charge

Child is released on bail with or without conditions

Child is released on bail

*Options are provided by section 346(2) of the Children, Youth and Families Act 2005 (Vic). It is arguable that the wording of the power under section 10A of the Bail Act 1977 (Vic) means that police may consider granting or refusing bail only when it is impracticable to bring an accused child before a court immediately after being taken into custody or after being questioned.
The 21-day rule

2.8 If the Children’s Court refuses bail to a child, it must remand the child to appear before the court at a later date that must be within 21 days.\(^{45}\) If the child is brought back before the court and the 21-day period has expired, the court must not remand the child for a period longer than a further 21 days.\(^{46}\) This requirement is not limited to one further remand period of 21 days; it applies to all subsequent remands. That is, a child cannot remain in custody for longer than 21 days without a court reviewing whether their continued remand is appropriate.

The purposes of bail

2.9 The primary purpose of bail is to ensure that an accused attends court.\(^{47}\) However, statutory reforms since the enactment of the *Bail Act 1977* (Vic) have also made community protection a key driver in decisions about bail and remand. As was recently noted:

> Concern that a person would commit an offence if released on bail or endanger the safety or welfare of members of the public gradually fused into concern about ‘community safety’ and the need for ‘community protection’. This consideration has now become much more prominent in discussions of bail.\(^{48}\)

The presumption of bail

2.10 The starting point of the *Bail Act 1977* (Vic) is an implied presumption in favour of bail.\(^{49}\) However, if the person is charged with a Schedule 1 or a Schedule 2 offence, or has a terrorism record or poses a terrorism risk, this presumption is reversed and the accused must satisfy the decision-maker that bail should be granted (see [2.13]–[2.16]).\(^{50}\) When police initially take a child into custody, the child does not need to apply for bail; if police have made the decision not to proceed by way of summons, they must automatically consider whether to grant or refuse bail. However, if the child has been refused bail by police and is before a bail justice or a court, the child must actively make an application for bail. In the absence of an application for bail on behalf of the child, the police’s application for a remand order proceeds uncontested and is granted.

Relevant factors in making bail decisions

2.11 A number of considerations are unique to the decision about whether to bail or remand a child as opposed to an adult. In particular, when deciding whether to bail or remand a child, decision-makers must take into account:

- the need to consider all other options before remanding the child in custody;
- the need to strengthen and preserve the relationship between the child and the child’s family, guardians or carers;

\(^{45}\) *Bail Act 1977* (Vic) s 12(4)(a).

\(^{46}\) *Bail Act 1977* (Vic) s 12(5).

\(^{47}\) See for example, *Woods v Director of Public Prosecutions* [2014] VSC 1 (17 January 2014) [30].


\(^{49}\) *Bail Act 1977* (Vic) s 4.

\(^{50}\) *Bail Act 1977* (Vic) ss 4AA(1)–(2), Schs 1–2.
• the desirability of allowing the living arrangements of the child to continue without interruption or disturbance;
• the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;
• the need to minimise the stigma to the child resulting from being remanded in custody;
• the likely sentence should the child be found guilty of the offence; and
• the need to ensure that the conditions of bail are no more onerous than necessary and do not constitute unfair management of the child.51

2.12 A bail decision-maker must not refuse bail on the sole ground that the child does not have any, or any adequate, accommodation.52 However, a bail decision-maker may take this into account alongside other factors such that the child’s lack of stable or safe housing combined with one or more other factors can make the child an unacceptable risk under the Bail Act 1977 (Vic).53 A court deciding bail in relation to a child must ensure a parent, guardian or independent person is present during proceedings, and the independent person may arrange accommodation in order to facilitate the child being granted bail.54 The independent person will often be the child’s legal representative given that legislation requires a child to be legally represented in court proceedings,55 but the independent person may be a representative of the Youth Referral and Independent Person Program.56 A decision-maker may take into account any recommendation or information in a report provided by a bail support service.57

Exceptional circumstances and compelling reasons

2.13 If a child is charged with a Schedule 1 offence,58 only a court may grant bail.59 The exceptional circumstances test applies,60 such that the court must refuse bail unless satisfied that exceptional circumstances justify granting bail. The child bears the burden of satisfying the bail decision-maker that those exceptional circumstances exist.61

51. Bail Act 1977 (Vic) s 3B(1). These considerations were inserted by section 10 of the Bail Amendment Act 2016 (Vic).
52. Bail Act 1977 (Vic) s 3B(3).
53. See for example, Jesuit Social Services, Victorian State Election Platform: Youth Justice (2018) 14 (‘Too many young people continue to be locked up on remand simply because alternative accommodation cannot be found’); Richards and Renshaw (2013), above n 8, 65–66.
54. Bail Act 1977 (Vic) ss 10(3)–(4).
56. Through the Youth Referral and Independent Person Program, adult volunteers attend police interviews with young people in police custody when a parent or guardian is not available: Centre for Multicultural Youth, ‘YRIPP: Youth Referral and Independent Person Program’ (cmy.net.au, 2020) <https://www.cmy.net.au/yripp> at 13 July 2020.
57. Bail Act 1977 (Vic) s 3B(2). Section 3 defines a ‘bail support service’ as any service provided to assist an accused to comply with their bail conditions, such as bail support programs, medical treatment, counselling services, treatment services or homelessness services. See [2.23]–[2.27] in this report for an overview of existing bail support services for children.
58. Schedule 1 offences are listed in Schedule 1 of the Bail Act 1977 (Vic) and include treason, murder, aggravated home invasion, aggravated carjacking, terrorism offences and numerous offences related to trafficking or cultivating drugs of dependence.
59. Bail Act 1977 (Vic) s 13(3). For treason, only the Supreme Court may grant bail: Bail Act 1977 (Vic) s 13(1). For murder, only the Supreme Court or a court committing a person for trial may grant bail: Bail Act 1977 (Vic) s 13(2).
60. Bail Act 1977 (Vic) s 4AA(1). The exceptional circumstances test also applies where a child is charged with a Schedule 2 offence and the child has a terrorism record, is at risk of committing a terrorism of foreign incursion offence, or the offence was committed in certain circumstances (for example, while the child had other ongoing criminal proceedings for other Schedule 1 or 2 offences): Bail Act 1977 (Vic) s 4AA(2). Schedule 2 offences are listed in Schedule 2 of the Bail Act 1977 (Vic), which is extensive. It includes a range of indictable offences, as well as any indictable offence alleged to have been committed whilst the accused was on bail, on summons or at large awaiting trial for another indictable offence, while the accused was serving a sentence for another indictable offence, or while the accused was released on a parole order: An offence against the Bail Act 1977 (Vic) is also a Schedule 2 offence.
61. Bail Act 1977 (Vic) ss 4AA(1A)–(2). The Supreme Court has held that the age of a child applying for bail weighs heavily in their favour, and that any assessment of ‘exceptional circumstances’ in the case of a child requires a decision-maker to consider the matters in section 3B(1) of the Bail Act 1977 (Vic): Re JO [2018] VSC 438 (7 June 2018) [14]; Re LJ [2019] VSC 765 (22 November 2019) [20].
2.14 If a child has been charged with a Schedule 2 offence, the show compelling reason test applies. In that case, the child is required to establish that a synthesis or balancing of all relevant matters … compel[s] the conclusion that the[ir] detention in custody is not justified. It does not need to be an ‘irresistible or exceptional’ reason, just ‘one which is forceful and therefore convincing’.

2.15 The Supreme Court has repeatedly confirmed that the special status of child applicants will be a relevant factor in favour of bail when making an assessment about whether there are exceptional circumstances or compelling reasons.

2.16 The legislation classifying offences as either Schedule 1 or Schedule 2 did not commence until 21 May 2018; therefore, it would only have affected a small number of cases analysed in this report (that is, cases in which a child was remanded for a Schedule 1 or 2 offence between 21 May 2018 and 30 June 2018). Nevertheless, a similar test was in place prior to the enactment of the Bail Amendment (Stage One) Act 2017 (Vic), and this test would have applied to a number of children in the index population. The test similarly placed the onus on the accused to ‘show cause’ why they should be granted bail, and it applied to a similar but distinct range of circumstances.

Unacceptable risk

2.17 In all bail applications, including those for which a child has satisfied the exceptional circumstances or show compelling reason tests, the court must consider whether the child would constitute an unacceptable risk of committing certain acts if released on bail. Such acts involve endangering someone else’s safety or welfare, committing an offence while on bail, interfering with a witness or otherwise obstructing justice, or failing to surrender into custody as required. In considering whether the child is an unacceptable risk, the decision-maker must take into account the factors outlined at [2.11], which only apply to children, as well as the surrounding circumstances, which apply to all accused. If the prosecution can establish that the child is an unacceptable risk, the decision-maker must refuse bail.

2.18 For the purposes of determining whether a child is an unacceptable risk, the surrounding circumstances that the court will consider include the nature and seriousness of the alleged offending; the strength of the prosecution case; the child’s criminal history;
the extent to which the child has previously complied with bail conditions; whether the child was on bail, summons, parole or a community correction order at the time of the alleged offence, whether a family violence intervention order or safety notice is in place; the child’s personal circumstances, associations, home environment and background; any special vulnerability of the child; any known views of the alleged victims; the likely period for which the child would be remanded; the likely sentence that would be imposed; and any alleged connection between the child (or their offending) and terrorism.

Conditions of bail

If the child is granted bail, the decision-maker must impose any condition that would reduce the likelihood of the child endangering the safety or welfare of any other person, committing an offence while on bail, interfering with a witness or otherwise obstructing justice, or failing to surrender themselves into custody (attend court) as required. The quality and number of bail conditions must be reasonable having regard to the nature of the alleged offending and the child’s circumstances. Conditions must be consistent with any family violence intervention order or safety notice against the child and must be no more onerous than necessary to reduce the likelihood of the child endangering the safety or welfare of any person or failing to surrender into custody as required.

The bail conditions that the court may impose on a child include:

- reporting to a police station;
- residing at a particular address;
- a curfew (times during which a child must be at their place of residence, so long as the times do not exceed 12 hours in any 24-hour period);
- not contacting specified persons (or classes of persons);
- surrendering their passport;
- geographical exclusion zones that a child may not visit during specified hours;
- attending a bail support service;
- not driving a motor vehicle or not carrying passengers while driving a motor vehicle;
- not consuming alcohol or using a drug of dependence;
- complying with any existing intervention orders; and
- any other condition that the bail decision-maker considers appropriate in the circumstances.

If someone other than a court initially granted bail to a child, the court must, at the first court hearing following that granting of bail, confirm and ensure that the conditions of bail are reasonable, are no more onerous than required to achieve the purposes of bail and are consistent with any family violence intervention orders or safety notices in effect at the time.

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74. This includes a requirement to consider whether the child is an Aboriginal person, in which case the bail decision-maker must consider the child’s cultural background, including any ties to extended family or place, and any other relevant cultural issue or obligation: Bail Act 1977 (Vic) s 3A. The Supreme Court has specifically held that if the child is a young Aboriginal person subject to the exceptional circumstances test, the decision-maker must take into account the desirability of supporting them in exploring their heritage and strengthening family bonds, rather than disrupting these by remanding the child: Application for Bail by LT [2019] VSC 143 (6 March 2019) [66]–[67]. Being a child is also a form of special vulnerability, which requires the decision-maker to take into account the matters in section 3B of the Bail Act 1977 (Vic).

75. Bail Act 1977 (Vic) s 3AAA(1).

76. Bail Act 1977 (Vic) s 5AAA(1).

77. Bail Act 1977 (Vic) s 5AAA(2).

78. Bail Act 1977 (Vic) ss 5AAA(4)–(5).

79. Bail Act 1977 (Vic) ss 5A(2), 5AAA(2). Section SAA was inserted by section 11 of the Bail Amendment Act 2016 (Vic).
2.22 Previously, it was an offence for a child to breach a conduct condition of bail, but that changed in 2016.80 The offence was introduced in 2013, and in its first two years of operation, nearly 3,000 bail condition breach offences were sentenced in the Children’s Court.81 Since the offence was decriminalised, children may no longer be prosecuted for breaching conduct conditions of bail; however, they may still have their bail revoked upon a successful application by the prosecution.

Bail support services

2.23 A number of youth-specific support services can be involved in bail applications by children. These services ensure that children not only can be granted bail where appropriate but also can successfully comply with bail conditions.

2.24 The Youth Justice Court Advice Service (YJCAS) provides advice and support to children applying for bail, as well as advising the courts about a child’s suitability for bail.82 The YJCAS operates during business hours in the Children’s Court, the Children’s Koori Court, the Magistrates’ Court and the higher courts. In after-hours settings, police who are considering refusing bail must notify the Central After-Hours Assessment and Bail Placement Service (CAHABPS), which has a similar role to YJCAS. CAHABPS assesses the suitability of a child for a bail placement, provides support and information to the child about the remand process and court proceedings, assists with arranging bail accommodation and provides referrals to other youth and family support services. The CAHABPS worker may also support the child in bail hearings before a bail justice. In metropolitan areas, the CAHABPS worker attends the police station where the bail hearing is held, or where the child is otherwise being held in custody, while in rural areas, a CAHABPS coordinator typically liaises by phone with the child and police (or the bail justice).83

2.25 The Youth Justice Bail Support Service (YJBSS) offers two programs to support young people who are assessed as suitable for being granted bail if they are given appropriate assistance but pose an unacceptable risk without such assistance.84 Participation in either the Supervised Bail program or the Intensive Bail program may be imposed as a bail condition.85 The Supervised Bail program applies in most cases. It is aimed at young people who have been charged with serious offending and have had no previous contact with the youth justice system as well as young people who have previously responded well to supervised bail. The Intensive Bail program involves more stringent supervision, including after-hours and weekend activities, aimed at young people who have been charged with serious offending and have a substantial prior offending history.86 However, unlike the Court Integrated Services Program (CISP) available in the adult jurisdiction,87

80. Bail Act 1977 (Vic) s 30A(3), as inserted by Bail Amendment Act 2016 (Vic) s 16(2).
82. Bail support services provide bail decision-makers with information and recommendations, which may be taken into account by the bail decision-maker: Bail Act 1977 (Vic) s 3B(2).
84. Department of Justice and Community Safety, ‘Central After Hours Assessment and Bail Placement Service (CAHABPS)’ (justice.vic.gov.au, 2020) https://www.justice.vic.gov.au/justice-system/youth-justice/central-after-hours-assessment-and-bail-placement-service-cahabps at 13 July 2020. The service is available Monday to Friday 5:00 p.m.–9:30 a.m. and on Saturdays, Sundays and public holidays 9:30 a.m.–3:00 a.m. This means that between 3:00 a.m. and 9:00 a.m. on weekdays and between 3:00 a.m. and 9:30 a.m. on weekends, no operating bail support service is available to assist a child who has been arrested and is applying for bail during those times.
86. Ibid.
87. Ibid.
there is no ‘comprehensive statewide bail support program’ for children. Similarly, the Fast Track Remand Court was established in the Melbourne Children’s Court in May 2017, however, it is not a statewide service and it is limited to business hours. In comparison, the Magistrates’ Court’s Bail and Remand Court operates between 10:00 a.m. and 9:00 p.m. seven days a week.

2.26 The Koori Intensive Support Program (KISP) exists to reduce the number of young Aboriginal offenders held on remand. KISP provides intensive support, including drug and alcohol counselling and mental health services, to address factors contributing to unacceptable risk. KISP practitioners also support young Aboriginal people in court and may advise the court about suitable bail options.

2.27 The ongoing provision of these services forms part of the Youth Justice Strategic Plan 2020–2030, an aim of which is to improve diversion and to support ‘early intervention and crime prevention’ through measures including ‘[d]elivering quality court advice to inform bail decisions and delivering effective support and supervision to young people on bail’.

Programs on remand

2.28 Children and young people on remand are held at one of two youth justice facilities: Parkville Youth Justice Centre and Malmsbury Youth Justice Centre. Most are held at the Parkville facility. Currently, up to 80% of children and young people at Parkville are on remand, and only 20% are serving a sentence. The proposed new youth justice centre at Cherry Creek will also accommodate both sentenced and remanded young people.

2.29 Remanded children are already offered generalist rehabilitation programs. In their report on youth justice in Victoria, however, Armytage and Ogloff suggested that ‘Youth Justice should offer rehabilitation programs to address criminogenic risk and interventions that are suitable for young people on remand’. The 2018 parliamentary inquiry into youth justice centres similarly recommended that the then Department of Justice and Regulation ‘develop and implement rehabilitation programs suitable for young people on remand’. In response, the Victorian Government announced that it would commit $8.8 million towards new programs that directly address offending behaviour, including a suite of non-offence specific programs appropriate for remanded young people and psychosocial programs available to both remanded and sentenced young people.
Fast Track Remand Court

On 29 May 2017, the Melbourne Children’s Court established the Fast Track Remand Court to actively case manage the criminal proceedings of children who are held on remand. The aim of the Fast Track Remand Court is to resolve those cases more quickly and to provide earlier access to education and rehabilitation programs, thereby reducing the detrimental consequences that being on remand can have for both the child and the community. The practice note establishing the Fast Track Remand Court requires that all Children’s Court cases in which the child is being held on remand must be finalised within 10 weeks (that is, three weeks to second mention, three weeks to contest mention/plea hearing and four weeks to contested hearing). In the 2019–20 state budget, the government allocated $8.9 million to the continuation of the Fast Track Remand Court.

Framework for sentencing children in Victoria

The sentencing considerations and available dispositions that apply when a court is sentencing a child pursuant to the Children, Youth and Families Act 2005 (Vic) are quite distinct from those that apply when a court is sentencing an adult offender under the Sentencing Act 1991 (Vic).

Relevant factors in sentencing children

When sentencing a child under the Children, Youth and Families Act 2005 (Vic), a court must, as far as practicable, have regard to the following:

a. the need to strengthen and preserve the relationship between the child and the child’s family;

b. the desirability of allowing the child to live at home;

c. the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;

d. the need to minimise the stigma to the child resulting from a court determination;

e. the suitability of the sentence to the child;

f. if appropriate, the need to ensure that the child is aware that they must bear a responsibility for any action by them against the law;

g. the need to protect the community, or any person, from the violent or other wrongful acts of the child:

i. in all cases in which the sentence is for a Category A or B serious youth offence; or

ii. in any other case, if it is appropriate to do so; and

h. if appropriate, the need to deter the child from committing offences while in custody.


102. Children, Youth and Families Act 2005 (Vic) s 362(1). These factors may also apply when an adult court is sentencing a child for offences that are within the jurisdiction of the Children’s Court, and the court determines that the sentencing dispositions under the Children, Youth and Families Act (Vic) are adequate: Children, Youth and Families Act 2005 (Vic) ss 516, 521; CNK v The Queen [2011] VSCA 228 (10 August 2011); Sentencing for offences that are outside the jurisdiction of the Children’s Court (murder; attempted murder; manslaughter; child homicide; arson causing death and culpable driving causing death) must only be done in accordance with the Sentencing Act 1991 (Vic): Children, Youth and Families Act 2005 (Vic) s 516; JPR v The Queen [2012] VSCA 50 (23 March 2012) [25], [49]. If a child falls to be sentenced under the Sentencing Act 1991 (Vic), general deterrence is a relevant consideration, whereas it is not under the Children, Youth and Families Act 2005 (Vic): CNK v The Queen [2011] VSCA 228 (10 August 2011) 12–13.
2.33 Under certain circumstances, a child may participate in a group conference, which is a meeting designed to help the child understand the effect of their offending, reduce the likelihood of reoffending and negotiate an outcome plan. If the child has participated in a group conference, the court must impose a sentence that is less severe than the sentence it would have imposed had the child not participated in a group conference.\textsuperscript{103}

**Available dispositions**

2.34 The available sentences that a court\textsuperscript{104} may impose on a child include, in decreasing order of severity:

- a youth justice centre order (with conviction) for children aged 15 or over;
- a youth residential centre order (with conviction) for children aged under 15;
- a youth control order (with conviction);
- a youth attendance order (with conviction);
- a youth supervision order (with or without conviction);
- probation (with or without conviction);
- a fine (with or without conviction);
- a good behaviour bond (without conviction);
- dismissal and an accountable undertaking (without conviction);
- dismissal and a non-accountable undertaking (without conviction); and
- dismissal (without conviction).\textsuperscript{105}

2.35 The dual track system in Victoria allows an adult court to sentence a young offender (aged under 21 at the time of sentencing) to detention in a youth facility (that is, a youth justice centre or a youth residential centre) instead of in an adult prison. To qualify for dual track, the young person must have reasonable prospects of rehabilitation or be particularly impressionable, immature or likely to be subjected to undesirable influences in adult prison.\textsuperscript{106}

**Maximum duration of custodial sentences**

2.36 The maximum duration of custodial sentences that can be imposed in the Children’s Court on a child aged under 15 is one year in respect of one offence and two years in respect of multiple offences.\textsuperscript{107} From 30 November 2017, the maximum duration of custodial sentences that can be imposed by the Children’s Court on a child aged 15 or over for any single offence increased from two years to three years;

\textsuperscript{103} Children, Youth and Families Act 2005 (Vic) ss 362(3), 415.

\textsuperscript{104} The dispositions available under the Children, Youth and Families Act (Vic) are also available to courts sentencing children for offences uplifted to the adult jurisdiction, provided the offences are within the jurisdiction of the Children’s Court, and the adult court determines that the dispositions are adequate: Children, Youth and Families Act 2005 (Vic) ss 516, 521, 586(1). However, if the County or Supreme Court intends to impose a custodial sentence, it may make a youth justice centre order or a youth residential centre order only if it has received a pre-sentence report, it believes that the child has reasonable prospects of rehabilitation, and it believes that the child is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison: Children, Youth and Families Act 2005 (Vic) s 586(1); Sentencing Act 1991 (Vic) s 32(1).

\textsuperscript{105} Children, Youth and Families Act 2005 (Vic) s 360(1). The difference between conviction and non-conviction is whether the court records a conviction. If a criminal history check asks whether a person has previously been convicted, they can respond in the negative if they have been found guilty but no conviction was recorded; however, they must respond in the affirmative if asked whether they have had any previous findings of guilt.

\textsuperscript{106} Sentencing Act 1991 (Vic) s 32.

\textsuperscript{107} Children, Youth and Families Act 2005 (Vic) s 411.
similarly, the maximum total duration of a custodial sentence that can be imposed for multiple offences increased from three years to four years. The maximum custodial term for young offenders sentenced in the County or Supreme Court to detention in a youth facility under the dual track system is also four years.

**Presumption of detention in a youth justice facility**

2.37 There is a presumption that children sentenced to detention should be detained in a youth justice facility rather than in adult prison. In particular, the Court of Appeal has noted that ‘[a] youthful offender is not to be sent to an adult prison if such a disposition can be avoided … The benchmark for what is serious as justifying adult imprisonment may be quite high in the case of a youthful offender’. In addition, in sentencing a child, the court must impose the least severe sentence possible to achieve the purposes of sentencing. This is known as the principle of parsimony, and it also applies in sentencing adults.

2.38 For certain offences, however, there is a presumption that a child sentenced to detention will be sentenced to adult imprisonment rather than a youth justice facility. This presumption applies if an adult court sentences a child for a Category A or B serious youth offence.

**Children’s Koori Court**

2.39 The Children’s Koori Court is available to Aboriginal and Torres Strait Islander children who plead guilty or are found guilty in the Children’s Court. The court was established to provide a more inclusive and culturally appropriate approach to sentencing Aboriginal and Torres Strait Islander children. Aboriginal Elders and other members of the Indigenous community are involved in the court hearings, which are conducted with as little formality and technicality as possible, among other measures. In 2018–19, the Children’s Koori Court finalised 215 matters involving 126 young offenders. Some stakeholders consulted by the Council suggested that some remanded children, particularly in rural and regional areas, may not have sufficient access to the Children’s Koori Court, which sits at numerous locations but is not yet uniformly available at each Children’s Court location across Victoria.

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108. Children, Youth and Families Act 2005 (Vic) s 413, as amended by the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 (Vic) s 52.
111. Children, Youth and Families Act 2005 (Vic) s 361.
115. Children, Youth and Families Act 2005 (Vic) s 517(3)–(4).
117. Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020).
3. Literature review: children on remand

3.1 This chapter provides an overview of past research and data on children held on remand, particularly in Victoria. It provides important points of comparison for the findings in the present report.

Studies linking remand episodes with case outcomes

3.2 To date, just one Australian study (from New South Wales) has previously linked remand episodes to case outcomes; however, that study was not exhaustive and was not limited to children. The Australian Institute of Health and Welfare (AIHW) reports annually on the number of remanded children who immediately transition from remand to a custodial or non-custodial sentence, but it does not include children released on bail after a period on remand. There has also been some overseas reporting on case outcomes for children held on remand, most notably in England and Wales.

Corrective Services NSW study

3.3 In 2016, Corrective Services NSW published research on judicial outcomes for all accused held on remand in New South Wales in March 2011. It found that:

- linking remand data with court outcome data was a complex, manual and resource-intensive process;
- 60% of accused held on remand had previously experienced incarceration (as either a sentenced or an unsentenced prisoner);
- 72% of remanded accused had been charged with two or more offences;
- the most serious offence in 38% of cases for which accused were held on remand was a physical assault offence, and the next most common most serious offence was an illicit drug offence (10% of cases);
- 60% of accused held on remand were kept in custody until finalisation of the proceedings, and the remaining 40% were released on bail prior to finalisation;
- 70% of accused who were remanded until finalisation received a custodial sentence, while only 27% of accused released on bail received a custodial sentence. This suggests a correlation between a successful pre-finalisation bail application and a higher likelihood of receiving a non-custodial sentence; and
- in total, 53% of remandees received a custodial sentence, 27% received a non-custodial community sentence, 10% were acquitted or had their charges dismissed, and the remaining 10% received a drug court order, a fine or an immigration order, were deceased, or had the case finalised under the Mental Health Act 2007 (NSW).\(^\text{118}\)

Children held on remand in Victoria: a report on sentencing outcomes

Annual Australian Institute of Health and Welfare data

3.4 Annual data published by the AIHW shows that of the 287 children in Victoria whose case was finalised within a day of their remand experience ending, about one-third commenced a custodial sentence (96), and the remaining two-thirds commenced a community-based sentence (191).119

England and Wales

3.5 Youth justice statistics from England and Wales provides detailed information about children held on remand each year. This includes a breakdown of whether children held on remand subsequently received an immediate custodial sentence or a non-custodial outcome in the six years to March 2019. The total number of case outcomes for children on remand has dropped considerably in the most recent six years, from over 2,000 in the year ending March 2014 to about 1,200 in the year ending March 2019; however, the proportion of children who subsequently received a custodial sentence has remained relatively stable at between 34% and 37%. That is, nearly two-thirds of children remanded in England and Wales each year do not go on to receive an immediate custodial sentence. Of the remaining 66% in 2018–19, 32% were acquitted and 34% received a non-custodial sentence.120

Demographics of children on remand

3.6 The majority of children held on remand are male. In Victoria, males account for 89% of children in detention, and across Australia, they account for 87%. It is worth noting though that while numerically more male children are on remand than female children, a larger proportion of female children in detention are on remand. For instance, in the June quarter of 2019, 62% of male children in detention in Australia were on remand compared with 78% of female children.121

3.7 The annual data published by the AIHW also includes a breakdown of the number of children on remand each year by age group on entry (Figure 5, page 21). The vast majority of children on remand are aged 14–17, and there has been a noticeable increase in the number of children on remand in this age group. The numbers of children in the younger (10–13 years) and older (18 years and over) cohorts have remained relatively stable.

119. The AIHW’s methodology does not account for cases in which a child was released on bail before being sentenced or had all charges dismissed. This means that case outcomes were unavailable for nearly half of all children held on remand. Similarly, in 2017 Jesuit Social Services reported that 20% of children remanded in Victoria since 2012–13 had been sentenced to a custodial order, which is lower than that reported by the AIHW. Jesuit Social Services, Submission to the Bail Review (2017). It is, however, clear what data that assertion is based on.

120. Australian Institute of Health and Welfare, Youth Justice in Australia 2017–18 (2018) Data Tables: Detention: S74–S127, Tables S114, S120. This is relatively consistent with the findings of this report (see Chapter 5); however, the rate of non-custodial outcomes for remanded children increases significantly when children bailed before the end of their proceedings are included.


122. This stands in stark contrast to the findings of the present report, in which just 4% of remanded children had all charges dismissed (as discussed in Chapter 5).


124. Ibid Data Table S18.

Over-representation of Indigenous children

3.8 Evidence has consistently shown that Aboriginal and Torres Strait Islander children (and adults) are over-represented at all stages of Victoria’s criminal justice system.126 A similar situation prevails across Australia.127 In the specific context of children on remand, approximately 12% of unsentenced children in detention in Victoria between April and June 2019 were Aboriginal and Torres Strait Islander; nationally, that figure sits at about 57%.128 This effectively means that Aboriginal and Torres Strait Islander children in Victoria are remanded at around eight times the rate of non-Indigenous children.129 This over-representation is even greater at the national level, where Aboriginal and Torres Strait Islander children are remanded at around 25 times the rate of non-Indigenous children.130

Over-representation of children from culturally and linguistically diverse backgrounds

3.9 In its 2017–18 annual report, the Victorian Youth Parole Board disclosed an increasing over-representation of young people from Māori, Pasifika and African communities.131 Of 226 young people in custody on 1 December 2017 (209 males and 17 females), 19% were of African backgrounds, primarily from South Sudan but also from Ethiopia and Somalia, and 15% were of Māori or Pacific Islander backgrounds.
Complex issues of children on remand

3.10 In Victoria, children who have suffered abuse, neglect and/or have been known to the child protection system have been found to be over-represented among children and young people in custody (on sentence and on remand).\textsuperscript{132} So too are children with substance abuse issues, mental health issues and difficulties with cognitive functioning.\textsuperscript{133}

3.11 For example, in its 2018–19 annual report, the Victorian Youth Parole Board indicated that of 174 young people (166 males and eight females) on sentence and remand at the Parkville and Malmsbury Youth Justice Centres on 3 December 2018:

- 67% had been victims of abuse, trauma or neglect;
- 35% had been the subject of a previous child protection order, about half of whom were the subject of a current child protection order;
- 68% had previously been suspended or expelled from school;
- 48% presented with mental health issues, and 27% had a history of self-harm or suicidal ideation;
- 38% presented with cognitive difficulties that affected their daily functioning;
- 7% had a history of alcohol misuse, 22% had a history of drug misuse and 54% had a history of both alcohol and drug misuse, that is, only 17% presented with no history of alcohol or drug misuse;
- 10% had offended while under the influence of alcohol but not drugs, 26% had offended while under the influence of drugs but not alcohol, and 43% had offended while under the influence of both drugs and alcohol, that is, only 21% did not offend under the influence of alcohol or drugs; and
- 25% spoke English as a second language.\textsuperscript{134}

3.12 There has been increasing recognition in Victoria of not only the prevalence of these complex issues among children and young adults in custody but also their effect on a young person’s prospects of being granted bail. In 2010, Jesuit Social Services found that remand was ‘increasingly being used to accommodate Victorians with health and social problems associated with engagement in crime, including mental health problems, alcohol and drug addictions and homelessness’.\textsuperscript{135} Another study found that remandees in general, not just children and young adults, ‘are more likely than other prisoners to be homeless, unemployed or have some form of mental disorder’.\textsuperscript{136}

\textsuperscript{132} See for example, Sentencing Advisory Council, ‘Crossover Kids: Vulnerable Children in the Youth Justice System Report 2: Children at the Intersection of Child Protection and Youth Justice across Victoria (2020) 2, 10. The Council has found that of 5,036 children sentenced or diverted in Victoria in 2016–17, 38% had been the subject of at least one child protection report, 94% before they committed their first sentenced or diverted offence. See also Jesuit Social Services, Thinking Outside: Alternatives to Remand for Children (Research Report) (2013) 40–41. Jesuit Social Services found that all 27 children who were first remanded at age 10 to 12 had a child protection history, 14 of whom before their 3rd birthday.


\textsuperscript{134} Youth Parole Board (2019), above n 94, 20–21.

\textsuperscript{135} Jesuit Social Services (2010), above n 133, 20.

Homelessness and a lack of suitable accommodation have been identified as key barriers to children being granted bail,137 with the New South Wales Law Reform Commission describing a lack of suitable accommodation as a ‘de facto ground for bail refusal’.138 Bail legislation in Victoria prohibits courts from refusing bail to a child ‘on the sole ground that the child does not have any, or any adequate, accommodation’,139 though in practice a lack of accommodation will rarely be the sole factor weighing against the child being granted bail.

**Cases in the Children’s Court**

3.13 The number of children and young people who were found guilty or who otherwise acknowledged responsibility for offending (via diversion) in Victoria’s Children’s Court decreased by 64%, from a peak of 10,658 in 2006–07 to 3,817 in 2017–18 (Figure 6).140 The main cause of the high number of cases around 2006–07 and 2007–08 was a delay in the introduction of the Children and Young Persons Infringement Notice System (CAYPINS), such that the Children’s Court briefly dealt with a large number of fare evasion and transit ticketing offences that would otherwise have been dealt with by way of an infringement notice.141 Even excluding these years and looking only at statistics after the CAYPINS system became operational in November 2007,142 there has still been a 43% decline in the Children’s Court in the number of children and young people who were found guilty or who otherwise acknowledged responsibility for offending, from 6,694 in 2008–09 to 3,817 in 2017–18.

**Figure 6: Number of cases finalised in the Children’s Court of Victoria in which a child was found guilty or otherwise acknowledged responsibility for offending, 2004–05 to 2017–18**

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139. Bail Act 1977 (Vic) s 3B(3).


141. See Sentencing Advisory Council (2012), above n 137, 16.

142. See ibid 46.
Case outcomes in the Children’s Court

3.14 Figure 7 illustrates the proportion of all outcomes in the Children’s Court each year that were specific dispositions. Of note is the significant decline in the rate of fines, from a peak of 67% in 2006–07 (due to the delayed introduction of the CAYPINS system) to 14% in 2017–18. The proportion of accountable undertakings also declined, from 11% in 2009–10 to 4% in 2017–18.\(^{143}\)

**Figure 7:** Proportion of cases finalised in the Children’s Court receiving each outcome type in each financial year from 2004–05 to 2017–18\(^{144}\)

Youth justice centre order/youth residential centre order
Youth attendance order/youth supervision order
Probation
Fine
Good behaviour bond
Accountable undertaking
Youth diversion (court–ordered)
Discharge/dismissal

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\(^{143}\) An accountable undertaking is an undertaking by the child and/or their parent to do or not do something, usually to not reoffend within a specified time period: Children, Youth and Families Act 2005 (Vic) s 365.

\(^{144}\) For an overview of all data represented in Figure 7, see Table 3 in Appendix 2, which includes both the total number and the proportion of each disposition imposed in the Children’s Court each financial year between 2004–05 and 2017–18. Numbers lower than 5% are not shown in Figure 7.
3.15 In contrast, the use of court-ordered youth diversion has significantly increased since it was successfully piloted in 2015 and subsequently rolled out statewide from 1 January 2017, constituting 34% of all Children’s Court outcomes in 2017–18. The proportion of custodial dispositions (that is, youth justice centre orders and youth residential centre orders) has also increased. In the three financial years to 30 June 2018, custodial dispositions constituted 6% or 7% of all outcomes, compared with between 2% and 5% in the previous 11 years.

3.16 In addition to court-ordered youth diversion, which became an available disposition between 2015 and 2017, the youth control order became available on 1 June 2018. This new disposition is the most intensive form of community order for young offenders and is designed to operate as an alternative to detention for children who are otherwise on the cusp of receiving a custodial sentence.

3.17 Looking specifically at case outcomes in the Children’s Court’s Fast Track Remand Court (Table 1) as a proxy for case outcomes for remanded children, the most common sentencing outcome in 2018–19 was a youth justice centre order (43%). Another 1% of outcomes were youth residential centre orders, and the other 56% of outcomes were non-custodial.

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Number</th>
<th>Proportion</th>
</tr>
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<tbody>
<tr>
<td>Youth justice centre order</td>
<td>54</td>
<td>43%</td>
</tr>
<tr>
<td>Youth supervision order</td>
<td>42</td>
<td>34%</td>
</tr>
<tr>
<td>Probation</td>
<td>14</td>
<td>11%</td>
</tr>
<tr>
<td>Youth attendance order</td>
<td>6</td>
<td>5%</td>
</tr>
<tr>
<td>Good behaviour bond</td>
<td>5</td>
<td>4%</td>
</tr>
<tr>
<td>Diversion</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>Youth residential centre order</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Dismissal/discharge</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>125</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>


<sup>146. Sentencing Advisory Council (2019), above n 140. Court-ordered youth diversion involves a child or young offender taking responsibility for their behaviour, participating in a diversion plan aimed at reducing their likelihood of reoffending, and then having the charges dismissed if they complete the plan successfully, thereby avoiding the stigma associated with a criminal history: Children, Youth and Families Act 2005 (Vic) pt 5.2 div 3A.</sup>

<sup>147. Note that a diversion order is not a sentence per se, but it is a disposition in that the child has accepted responsibility for the offending, and a successfully completed diversion plan concludes the proceedings.</sup>

<sup>148. For further information on youth control orders, see Sentencing Advisory Council (2019), above n 31, 9–10.</sup>

<sup>149. Children’s Court of Victoria (2019), above n 100, 36.</sup>
Time to finalisation

3.18 The majority of criminal matters in the Children’s Court are finalised within three months (Table 2). The proportion of matters that are finalised in that timeframe, however, decreased slightly in 2018–19, which corresponded with an increase in the proportion of cases that take three to less than six months to finalise. That is, cases are taking slightly longer to finalise than they have previously. This is possibly because the data describes the time taken to finalise all cases in the Children’s Court, not just cases for which a child is held on remand. As at 30 June 2019, 521 children and young people had appeared in the Fast Track Remand Court. It may be that (appropriately) prioritising cases in which a child is held on remand resulted in other non-remand cases taking longer to finalise. Further, the classification of certain offences as Category A or B serious youth offences may have resulted in more complex applications for summary jurisdiction, thus delaying those matters.

Table 2: Time taken to finalise criminal matters in the Children’s Court of Victoria, 2016–17 to 2018–19

<table>
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<tr>
<th></th>
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<tbody>
<tr>
<td>Less than 3 months</td>
<td>70%</td>
<td>69%</td>
<td>59%</td>
</tr>
<tr>
<td>3 to less than 6 months</td>
<td>17%</td>
<td>18%</td>
<td>26%</td>
</tr>
<tr>
<td>6 months or more</td>
<td>13%</td>
<td>13%</td>
<td>15%</td>
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3.19 Data on the time taken to finalise cases within the Fast Track Remand Court is not yet available. The Children’s Court has reported that, since establishing the Fast Track Remand Court, the number of children and young people spending more than 12 weeks on remand has decreased by 25%; children whose cases were managed in the Fast Track Remand Court have had their stay on remand reduced from an average of 116 days to 47 days; and the number of court events required for cases managed in the Fast Track Remand Court has dropped by 24%.

The remand experience for children

3.20 As discussed at [2.6], a chain of decision-makers is involved in the determination of whether a child is remanded in Victoria: police, possibly bail justices, and courts. Little data is publicly available about the rate at which police grant or refuse bail to children; however, some limited data exists in relation to bail justices and courts.

Bail justice decision-making

3.21 Bail justices are volunteers, some of whom are not legally trained, who can make decisions about bail and remand after, or sometimes during, business hours. Victoria is the only jurisdiction in Australia to feature bail justices as part of its bail system. Their use has been contentious.

150. Children’s Court of Victoria (2019), above n 100, 35.
151. Meeting with the Children’s Court of Victoria (29 June 2020).
152. Children’s Court of Victoria (2019), above n 100, 32. The Children’s Court had planned an evaluation of the Fast Track Remand Court scheduled for the 2019–20 financial year: ibid 36.
153. In 2005, the Victorian Law Reform Commission reported on the number of offenders who were granted bail by police, but those statistics do not indicate the proportion of all decisions that those grants of bail constitute: Victorian Law Reform Commission, Review of the Bail Act: Consultation Paper (2005) 8.
Some have argued that it affords arrestees an opportunity to be granted bail when courts are unavailable, while others have argued that bail justices are unduly risk-averse because they refuse bail more often than not, thereby ‘rubber-stamping’ police decision-making.

3.22 In the available data to 2015–16, the number of bail/remand decisions occurring outside business hours increased. In 2005–06, 69% of children’s remand entries occurred outside business hours, whereas that had increased to 80% in 2015–16 (Figure 8). This is, though, only a rough proxy for the number of decisions made by bail justices. Bail justices sometimes make decisions during business hours, so in this sense the data may be underrepresentative. The data is also based on the time of admission into remand, such that courts may have made the remand decision in some instances but the actual admission occurred after business hours, so in this sense the data may be overrepresentative.

### Figure 8: Proportion of children’s entries into remand in Victoria, by whether the initial decision was made during or after business hours, 2005–06 to 2015–16

<table>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>After hours admissions</td>
<td>31%</td>
<td>28%</td>
<td>31%</td>
<td>29%</td>
<td>27%</td>
<td>21%</td>
<td>23%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>20%</td>
</tr>
<tr>
<td>Business hours admissions</td>
<td>69%</td>
<td>72%</td>
<td>69%</td>
<td>71%</td>
<td>73%</td>
<td>79%</td>
<td>77%</td>
<td>79%</td>
<td>79%</td>
<td>79%</td>
<td>80%</td>
</tr>
</tbody>
</table>

3.23 Bail justices tend to refuse bail more frequently than they grant it. Between 2000–01 and 2004–05, bail justices refused 66% of bail applications by children. That rate of bail refusals has increased further since then. In 2016, bail justices refused to grant children bail in 74% of cases. This is only slightly lower than their average refusal rate for all arrestees (including adults), which sits at ‘around 86% of cases’. Earlier research suggests that, in cases in which bail justices have remanded a child, about half (45%) of those children were released days later when they first appeared before the Children’s Court.

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156. See for example, Victorian Law Reform Commission (2005), above n 153, 40.
158. Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
3.24 Importantly, however, the high rate of bail justices refusing bail to children may simply reflect the fact that children are almost never legally represented in hearings before a bail justice. In addition, services that might have allowed the child to be released are not consistently available outside business hours. Such services include, for example, housing, as illustrated in Case Study 1: Chris. One recent study of bail justices found that they felt too few support services were available outside court hours, forcing them to refuse bail. This is at least partly due to the Central After-Hours Assessment and Bail Placement Service (CAHABPS) not being a 24-hour service, with 11% of arrests occurring outside both court and CAHABPS operating hours. The Children’s Court and Department of Health and Human Services recently indicated that they were attempting to expand CAHABPS to provide 24-hour support.

**Case Study 1: Chris**

Chris was born and raised overseas and came to Australia with his parents and siblings when he was an adolescent. His parents returned to their home country shortly after, leaving Chris in the care of his aunt. Chris didn’t get along with his aunt and found his aunt’s care difficult to live with. After a few years, he left; he was 17. He has been homeless since, sleeping rough or couch surfing, and because he is not an Australian citizen, he does not have access to services to assist with obtaining accommodation.

His offending has all occurred when he was rendered homeless and is largely linked to his homelessness, predominantly charges of stealing food and clothes. Chris was ultimately refused bail and spent over 140 days on remand over the past year for this type of offending for which he ultimately did not receive a custodial sentence. Chris was a child through the period of offending and on remand. Chris’ lawyer estimates that this period of remand would have been halved had he had access to services, particularly accommodation.

The court is not permitted to refuse bail to a child on the sole basis that the child does not have adequate accommodation. However, it seems clear in this instance that the court’s decision to refuse bail was largely due to the perceived risk that Chris would continue to offend in circumstances where he did not have stable accommodation. One of the magistrates who saw Chris expressed extreme concern over the period of time that Chris had spent on remand due to a lack of accommodation.

Chris has recently turned 18. His police charges have resolved and he has been released on a community order. He has been offered employment; however, his prospects of obtaining stable accommodation remain precarious and he is at considerable risk of deportation if he continues to offend.

This example highlights the substantial gap in services for young people who are homeless but are not Australian citizens. Chris would have spent substantially less time in custody and most likely would not have committed many of his minor offences had he been provided with adequate supports to obtain stable accommodation.

*Not the child’s real name*

164. Jesuit Social Services (2017), above n 119, 13. CAHAPBS operates from 5 p.m. to 3 a.m. between Monday and Friday, and from 9:30 a.m. to 3 a.m. on weekends and public holidays: Department of Justice and Community Safety (2020), above n 84.
165. Coghlan (2017), above n 90, 35.
3. Literature review: children on remand

Court decision-making

3.25 From 2000–01 to 2004–05, the Magistrates’ Court refused between 21% and 27% of all bail applications (not just those made by children), out of approximately 3,500 applications each year.\(^{166}\) By 2015–16, courts were refusing bail more frequently, in 33% of cases.\(^{167}\)

3.26 In the context of children specifically, the Department of Justice and Community Safety has provided the Council with more recent and specific data on rates of initial bail applications, grants and refusals between 2014–15 and 2018–19 (Figure 9). The data, which does not include bail justice decisions, suggests that when the court made the initial decision to bail or remand a child, most children made no application for bail (nearly two-thirds in 2018–19). Nearly one-third successfully applied for bail, and between 7% and 9% each year were refused bail. Stakeholders provided various explanations for why so many children appear not to be applying for bail (see page 30).

![Figure 9: Proportion of bail applications at first instance in the Children’s Court, 2014–15 to 2018–19](image)

Duration of remand episodes

3.27 According to AIHW data, in 2017–18 children in Victoria spent an average of 55 days on remand (a week longer than the Australia-wide average of 48 days) and a median of 20 days on remand (two weeks longer than the Australia-wide median of seven days).\(^{168}\) The significantly higher average (55 days), compared to the median (20 days), suggests that the duration of children’s remand episodes in Victoria is positively skewed. That is, a handful of quite lengthy remand periods increased the average, but a much larger cluster of remand episodes of less than three weeks anchored the median.

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166. Victorian Law Reform Commission (2005), above n 153, 8; 2000–01 (27% of bail applications refused); 2001–02 (26% of bail applications refused); 2002–03 (24% of bail applications refused); 2003–04 (22% of bail applications refused); 2004–05 (21% of bail applications refused).


“Sometimes the cases when they don’t apply for bail is because their offences are horrendous and … they know the chances are, from a risk perspective, they’re not going to get bail.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“There will … be times when children will instruct not to apply for bail, and that might be because they don’t want to go back to residential care, it might be because their home’s not safe, it might be because they’re withdrawing from substances and they’re not feeling well.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“When they don’t apply for bail, there are a small majority that actually want to go back in with their mates. They get a bed and food, and get to see their mates in there.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“We’re seeing … kids having a desire to also stay in custody with their mates.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“This is often the kid saying to their lawyer, ‘I’m not going to get bail’ … whatever thought process is inside their head, they’ve decided it’s not worthwhile turning up in court.”

Meeting with the Children’s Court of Victoria (29 June 2020)

“The other tactic is we are seeing a specific cohort of kids who will plea up at the first opportunity just to get back outside, especially in the lead-up to a major event.”

Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020)

“We will have cases where the kids are refusing to come to court. Refuse to get out of bed to come to court. We can’t deal with their bail application if they don’t come to court.”

Meeting with the Children’s Court of Victoria (29 June 2020)

“Another reason, while it may sound perverse, is that they want to go into remand because their [preferred social groups] are already there.”

Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020)
3.28 The AIHW data conforms somewhat with Victorian data published by Jesuit Social Services in 2013 and in Victoria’s Youth Justice Review in 2017. Figure 10 shows the specific duration of 718 remand episodes that children experienced in Victoria in 2010. Almost all episodes were less than six months (99%), and one-quarter of episodes were three days or less. Similarly, Figure 11 shows the specific duration of remand episodes that children experienced in Victoria in 2015–16. Two-thirds of children spent three weeks or less on remand, and 15% of children spent one day or less on remand. While these two publications reported on different remand durations and time periods, some comparisons are possible. Most notably, exactly 64% of children in both reports spent three weeks or less on remand, and exactly 39% of children in both reports spent one week or less on remand.

Figure 10: Proportion of remand episodes served by children in Victoria in 2010, by length of remand

![Figure 10](image)

Figure 11: Proportion of remand episodes served by children in Victoria in 2015–16, by length of remand

![Figure 11](image)

3.29 One factor that seems to contribute to the high rate of short (one to three day) remand episodes is weekend admissions. Children remanded on the weekend were twice as likely as their weekday counterparts to experience one to three day remand episodes (40% compared with 21%).

3.30 Jesuit Social Services has previously found that more than half (58%) of remand orders ended because the child was released on bail, 22% ended because the order expired and 16% ended because the child was sentenced.

Reasons for exit from remand

3.31 Jesuit Social Services has previously found that more than half (58%) of remand orders ended because the child was released on bail, 22% ended because the order expired and 16% ended because the child was sentenced.

172. Ibid 66–67, 110 (Table A28). The findings in the present report (see [6.2]) found that slightly fewer remand episodes (53%) ended because the child was released on remand.
Offences on entry to remand

3.31 There are a number of ways of measuring the types of alleged offences in each case. One common method is to identify the most serious offence in a case, which is usually the offence with the highest maximum penalty. The most serious offence in the case is often a strong indicator of the alleged behaviour that led to the decision to remand a child, certainly giving more of an indication than any minor summary offences for which the child was also charged. Another reason to focus on most serious offences is because police often charge ‘lesser alternative’ offences, such that analysing all of the alleged offences in any given case can give a misleading impression of both the number and the type of alleged offences.

3.32 Previous research in Victoria has examined the most serious offences for children who were remanded for the first time. These children were most commonly charged with:

- assault offences (27%);
- burglaries and other unlawful entries (14%);
- robberies (13%);
- justice procedures offences (11%); and
- thefts (8%).

3.33 Other research in Victoria specifically analysed the most serious offences for children arrested outside business hours. In 2015–16, CAHABPS conducted 857 assessments of bail suitability for children arrested outside business hours. The most common most serious offences were assaults (21%), breaches of community orders (12%), thefts (10%) and thefts of motor vehicles (9%).

3.34 Somewhat similar most serious offences can be seen in other jurisdictions:

- In New South Wales between October and December 2019, the most serious offences that children on remand were charged with were robbery and extortion (23%), acts intended to cause injury (18%) and burglary and other unlawful entries (15%).
- In New Zealand in 2018, the most serious offences that children (aged 12 to 17) on remand were charged with were robbery and extortion (30%), burglary and other unlawful entries (22%), causing injury (14%) and theft (13%).
- In England and Wales in the year ending March 2017, the most serious offences that children on remand were charged with were violence against the person (45%), robbery (21%), burglary and other unlawful entries (10%), drug offences (8%) and sexual offences (7%).

173. Ibid 46, 102 (Table A12).
174. Armytage and Ogloff (2017), above n 97, Part 2, 33–35. The success rate of children seeking bail varied by their most serious offence: 78% of children charged with theft of a motor vehicle as the most serious offence were remanded (58 of 74), compared with 73% of children charged with assault as the most serious offence (133 of 182) and 53% of children charged with property damage as the most serious offence (22 of 41).
176. Ministry of Justice (NZ) (2019), above n 16, Data Table 4.1. Note that the rate at which children charged with these offences were remanded also varied. For example, 51% of children charged with robbery and extortion were remanded, as were 40% of children charged with burglary and other unlawful entries.
4. Children held on remand

4.1 This chapter presents the findings of this report on the characteristics of children held on remand in Victoria in 2017–18, including their age, gender, self-reported ethnicity and previous criminal justice involvement.

The index population

4.2 The Council’s initial analysis identified 465 children who were held on remand in Victoria in the 2017–18 financial year. Of those children, 23 experienced intra-day remand episodes (that is, they were released the same day that they were remanded) and were therefore excluded from the analysis.\textsuperscript{178} As a result, the index population in this report is constituted by 442 children who experienced at least one full day of remand in 2017–18. The 442 children had 660 unique cases for which they were held on remand. Of the 442 children, 288 (65%) were remanded for just one case in 2017–18, while the other 154 (35%) were remanded for more than one case.\textsuperscript{179}

4.3 The 660 cases for which children were remanded involved 669 distinct remand episodes in 2017–18, the reference period for this report.\textsuperscript{180} That is, just eight children, or 2% of the index population, were remanded more than once for the same case in 2017–18 (one child was remanded twice for two separate cases).

4.4 The Council does not have information about the child protection history for each of these children. Recent research and comments by stakeholders at the Council’s roundtables do, though, suggest that many of these children, especially female children, would have been known to the child protection system and may have been in out-of-home care at the time they were remanded.\textsuperscript{182}

\textsuperscript{178} Legislation in Victoria precludes a remand episode of less than one day from constituting a period of pre-sentence detention: \textit{Sentencing Act 1991} (Vic) ss 35(2)(a)–(b).

\textsuperscript{179} This included children remanded for two cases (109 children), three cases (25 children), four cases (16 children), five cases (three children) and nine cases (one child).

\textsuperscript{180} In this report, a remand episode is a contiguous period of remand. If the child ceased being an unsentenced prisoner (whether because they were released from custody or sentenced) and then commenced remand again, this constituted a second remand episode. If, however, a remand episode continued after the requisite 21-day review by a court, this was counted as the same episode.

\textsuperscript{181} It is possible that an additional remand episode for one or more of the 660 cases occurred entirely before or entirely after the reference period. This is unlikely given that children’s proceedings are dealt with relatively quickly, especially when children are held on remand. Even within the 12-month timeframe of this report’s reference period, only eight children experienced more than one remand episode for any given case.

\textsuperscript{182} Sentencing Advisory Council (2019), above n 137; Sentencing Advisory Council (2020), above n 132; Sentencing Advisory Council (2020), above n 33; Meeting with the Children’s Court of Victoria (29 June 2020); Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
Gender of the index population

4.5 Of the 442 children in the index population, 11% were female (50) and 89% were male (392) (Figure 12). These proportions are consistent with the gender of all children in detention in Victoria reported in Australian Institute of Health and Welfare (AIHW) data from 2019 (see [3.6]).\(^{183}\) Notably, however, although the proportion of female remanded children is low, it nevertheless represents nearly double the proportion of remanded females in the adult prison population (6%).\(^{184}\)

Age of the index population

4.6 As shown in Figure 13, of the 442 children in the index population, 80% were aged 15–17 when they first entered remand in 2017–18, another 3% were aged 18 or over and 16% were aged 14 or under.\(^{185}\) This is consistent with AIHW data showing that most remanded children are aged 14–17 (see at [3.7]). Figure 13 also highlights that most children were 16 and 17 years old when they first entered remand.

Figure 12: Proportion of children held on remand in 2017–18 in Victoria, by gender (442 children)

Figure 13: Age of children on first relevant entry into remand in 2017–18 in Victoria (442 children)

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184. As at 30 December 2019, of the 8,101 adult prisoners in Victoria, 522 were female: Corrections, Prisons & Parole (2020), above n 125.
185. The 19-year-old child had their case commence in February 2017, turned 19 in April 2017 and was remanded in October 2017; therefore they were still considered a child during those proceedings.
4.7 The age on entry to remand did, though, vary for male and female children (Figure 14). Female children tended to be younger when they were remanded; their most common ages on entry were 14 and 15 years old. Indeed, female children were twice as likely as male children to be aged 14 or under when they entered remand (30% compared with 15%). In comparison, the most common ages for male children entering remand were 16 and 17 years old.

![Figure 14: Proportion of ages of male and female children on first relevant entry into remand in 2017–18 in Victoria (442 children)](image)

**Ethnicity of the index population**

4.8 During consultation with a case worker on entry to remand, children (and/or their family) are asked to specify their ethnicity. It is a self-identification measure, which is preferable to purportedly objective measures of ethnicity, such as a child’s country of origin. Self-identification can avoid the possibility of inadvertent association between a child and groups to which the child may have little or no social, cultural or economic ties.\(^{186}\)

4.9 Of the 442 children in the index population, 433 self-reported their ethnicity (Figure 15, page 36). Of those, the most common ethnicities were non-Indigenous Australian (43%), Aboriginal and Torres Strait Islander (15%), New Zealander, Māori and Pasifika (12%), Sudanese (12%) and countries in the Horn of Africa (5%).\(^{187}\) This rate of remanded children who identified as Aboriginal and Torres Strait Islander is relatively consistent with AIHW data; that data suggests that in Victoria the proportion of remanded children on an average day who were Aboriginal and Torres Strait Islander in the four years to June 2019 ranged from 8% to 14% each financial year, and the average across those four years was 11%.\(^{188}\)

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187. This included 20 children who self-identified as Māori, 20 as Samoan, five as Tongan and two as Cook Islander.
188. Children identifying with Horn of Africa countries included eight children who identified as Ethiopian, eight as Somali and six as Eritrean. Children identifying as Sudanese include children identifying as being from both Sudan and South Sudan, but the data did not make this distinction. It is, however, possible to give a general indication of the breakdown between the two using their reported country of origin. Of the 50 children identifying as Sudanese, 24 indicated that their country of origin was Sudan, two indicated that their country of origin was South Sudan and the remaining 24 were either unclear or reported another country (including Australia) as their country of origin.
There were also 38 children who self-identified as an ethnicity shared by four or fewer children who were remanded in 2017–18. This data shows that Australian children other than Aboriginal and Torres Strait Islander children (43%) constituted the same proportion of remanded children as children from culturally and linguistically diverse backgrounds (42%). Further, the finding that the most common culturally and linguistically diverse ethnicities were Sudanese and New Zealander; Māori and Pasifika is consistent with prior research that ‘South Sudanese and Pasifika young people … [are] the most likely groups to have contact with police’ in Victoria.

4.10 Male children held on remand were more likely to be Sudanese (13% of male children compared with 4% of female children) as well as from the Horn of Africa (6% of male children compared with no female children). Female children held on remand were more likely to be both non-Indigenous Australian (47% of female children compared with 42% of male children) and Aboriginal and Torres Strait Islander (31% of female children compared with 14% of male children).

Figure 15: Self-reported ethnicity of children remanded in Victoria in 2017–18 (442 children)

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Count (Percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Indigenous Australian</td>
<td>185 (42%)</td>
</tr>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>67 (15%)</td>
</tr>
<tr>
<td>New Zealander, Māori and Pasifika</td>
<td>53 (12%)</td>
</tr>
<tr>
<td>Sudanese</td>
<td>50 (11%)</td>
</tr>
<tr>
<td>Horn of Africa</td>
<td>22 (5%)</td>
</tr>
<tr>
<td>Greek</td>
<td>7 (2%)</td>
</tr>
<tr>
<td>Burmese</td>
<td>6 (1%)</td>
</tr>
<tr>
<td>Turkish</td>
<td>5 (1%)</td>
</tr>
<tr>
<td>Other</td>
<td>38 (9%)</td>
</tr>
<tr>
<td>Not stated</td>
<td>9 (2%)</td>
</tr>
</tbody>
</table>

190. These included Iraqi (four children), Kenyan (three children), Vietnamese (three children), Egyptian (two children), Filipino (two children), Lebanese (two children), Liberian (two children), Timorese (two children), Honduran (one child), Congolese (one child), English (one child), Fijian (one child), Ghanaian (one child), Indian (one child), Japanese (one child), Khmer (one child), Macedonian (one child), Maltese (one child), Peruvian (one child), Serbian (one child), Slovene (one child), Southern Asian (one child), Tibetan (one child), Ugandan (one child) and Zimbabwean (one child).

191. Leanne Weber, ‘Police Are Good for Some People, But Not for Us: Community Perspectives on Young People, Policing and Belonging in Greater Dandenong and Casey’ (2018) 13. See also [3.9] above, with the Victorian Youth Parole Board similarly finding these two groups to be over-represented among justice-involved children.
Other ongoing proceedings

4.11 The trajectory of a child who comes into contact with the criminal justice system is notoriously non-linear. Children do not often neatly experience each set of charges one case at a time, from start to finish. Instead, they frequently experience numerous cases contemporaneously. One factor that often contributes to the decision to remand or bail a child charged with criminal offences is whether they had any other ongoing proceedings at the time the present alleged offending occurred.\(^{192}\) If so, this can weigh against the granting of bail.

4.12 Of the 442 children who entered remand during the reference period, 81% were subject to other ongoing criminal proceedings at the time of at least one of their relevant entries into remand.\(^{193}\) That is, at most, just one in five children in the index population were not subject to other ongoing proceedings on at least one occasion when they were remanded during the reference period. Children whose case was finalised in the Melbourne Children’s Court had a slightly higher rate of being subject to other ongoing proceedings (87%) than children whose case was finalised in suburban courts (83%) and rural or regional courts (82%).\(^{194}\)

Prior remand episodes

4.13 It was possible to determine how many children in the index population (children remanded in 2017–18) had previously experienced remand for a different case in the 2016–17 financial year. It is not an exhaustive account of how many children had prior remand episodes, as some may have experienced remand in earlier financial years (for example, 2014–15 or 2015–16). It is, though, indicative.

4.14 Of the 442 children who were held on remand in 2017–18, at least 40% (178 children) had previously been remanded for a different case in 2016–17. This was especially prominent for children whose case was finalised in either the Melbourne Children’s Court (45%) or suburban courts (41%), compared with 31% of children whose case was finalised in a rural and regional court.\(^{195}\)

\(^{192}\) Bail Act 1977 (Vic) s 3.

\(^{193}\) For the remaining 86 children, it was unclear in five cases whether there were other ongoing proceedings, and 81 had no apparent ongoing proceedings. It is possible that some of these 86 children had other ongoing proceedings that were not included in the data analysed by the Council.

\(^{194}\) Of the 207 outcomes in the Melbourne Children’s Court that were discernible in the data, 181 involved children subject to other proceedings at the time they first entered remand. In comparison, 287 of 347 outcomes in other courts that were discernible in the data involved children subject to other proceedings.

\(^{195}\) Twenty-eight of the 90 children whose case was finalised in rural and regional courts had experienced remand in 2016–17, compared with 75 of 183 children whose case was finalised in suburban courts and 75 of 167 children whose case was finalised in the Melbourne Children’s Court.
Prior offending

4.15 Two-thirds of remanded children (66% or 290 of 442) had been sentenced previously before they first entered remand in 2017–18. The fact of prior offending would have been a relevant consideration in deciding to remand many of these children.196

4.16 In effect, 94% of children remanded in Victoria in 2017–18 had one or more prior contacts with the justice system: a prior sentence (66%), a prior remand episode in the preceding financial year (40%) and/or other ongoing proceedings at the time of entry into remand (81%). This means that just 6% of children held on remand had no known prior contact with the justice system at the time of entry. This does not account for the possibility that children had been cautioned or arrested by police in circumstances that did not lead to a prior sentence, remand episode or other proceedings that were still ongoing when they entered remand.
5. Case outcomes for children held on remand

5.1 This chapter examines what happened to the 660 cases for which children were held on remand in Victoria in 2017–18. This includes an analysis of the rate at which cases were consolidated with other cases, and the type of sentence, if any, children received.

Case consolidations

5.2 Since at least 2001, if a young offender has multiple criminal matters before the Children’s Court to which they intend to plead guilty, those matters can be consolidated and dealt with together. Of the 660 cases for which children in the index population were remanded, the vast majority (81% or 536 cases) were ultimately consolidated with one or more other cases some time prior to finalisation (Figure 16). Of the remaining 124 cases, 118 were not consolidated, two were transferred to the higher courts and four were unable to be identified as either consolidated or not consolidated. Cases were most likely to be consolidated in suburban courts (86% or 229 of 265 cases), though consolidation rates were relatively similar in other courts (82% in the Melbourne Children’s Court and 76% in rural or regional courts).

5.3 Case consolidation serves a number of purposes. It streamlines cases for efficiency. It allows cases to be sentenced on the same date, thereby reducing the number of sentencing events that the child has experienced, which can weigh in their favour if they are sentenced again in the future. It also allows the sentencing court to have a more comprehensive view of the child’s offending and best ensures that children can have the full benefit of the principle of totality.

5.4 Case consolidation, however, obscures the data on the trajectory of individual charges from beginning to end. Once charges are consolidated, it is no longer possible, using current data systems, to track what happens to any particular alleged offence. Consider, for example, Child 405 in Table 3 (page 40). On 6 June 2018, the child was sentenced to a youth attendance order following a consolidation of 10 separate cases. They had previously been remanded for two of those 10 cases, once on 28 February 2018 for 16 days, and then again on 10 April 2018 also for 16 days. On entry to remand for the first case, there were two charges of unlawful assault. On entry into remand for the second case, there was one charge of unlawful assault. Three other alleged unlawful assault offences in some of the child’s other eight cases were consolidated with these two remand cases. At finalisation, however, there was only one proven unlawful assault offence. Due to the cases being consolidated, there is no way to discern which of the six original unlawful assault charges was the one found proven at finalisation.

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197. Children’s Court of Victoria, Annual Report 2001–02 (2002) 17. The practice of consolidating pleas has been a feature of the Courtlink system since at least 2000, and probably earlier: Correspondence with Melbourne Children’s Court (30 June 2020).

198. Meeting with the Children’s Court of Victoria (29 June 2020).

199. The principle of totality holds that in sentencing an offender for multiple offences, a court must ensure that the aggregate term imposed is ‘a just and appropriate measure of the total criminality involved’. This often results in making sentences for individual offences wholly or partly concurrent, or by imposing lower (but not inadequate) terms on the non-principal offences: Postiglione v The Queen (1997) 189 CLR 295; Director of Public Prosecutions v Drake [2019] VSCA 293 ([10 December 2019]) [18]–[21], [25].
Table 3: Example consolidation of charges, Child 405

<table>
<thead>
<tr>
<th>Case number</th>
<th>Case start date</th>
<th>Date remanded</th>
<th>Offences at remand</th>
<th>Date consolidated</th>
<th>Date finalised</th>
<th>Offences at finalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>28 February 2018</td>
<td>28 February 2018</td>
<td>Criminal damage  Carry dangerous article in public place  Unlawful assault  x 2  Use indecent language in public place</td>
<td>6 June 2018 (from 10 original cases)</td>
<td>6 June 2018</td>
<td>Criminal damage  Carry dangerous article in public place  Unlawful assault  Use indecent language in public place</td>
</tr>
<tr>
<td>2</td>
<td>10 April 2018</td>
<td>10 April 2018</td>
<td>Armed robbery  Intentionally cause injury  Recklessly cause injury  Unlawful assault</td>
<td></td>
<td></td>
<td>Armed robbery  Robbery (4)  Recklessly cause injury  Theft (shopsteal) (3)  Enter private place without excuse  Mark graffiti  Commit indictable offence whilst on bail  Make threat to kill  Possess prohibited weapon</td>
</tr>
</tbody>
</table>

5.5 Case consolidation, especially the high rate of case consolidation in the Children’s Court, has significant implications for the current research. First, consolidation makes it difficult to report on the disposition that a child received for a specific case (set of charges) for which they were held on remand. The final disposition in a consolidated case necessarily reflects the totality of the offending in the various cases that were consolidated, not just the charges in the case(s) for which the child was remanded.

5.6 Second, case consolidation means that it is not possible to report on changes to offences between the commencement of a case and finalisation. The trajectory of offences can confidently be tracked if a case was not consolidated because the offences stay relatively consistent and the charge numbers also remain consistent throughout. In contrast, where a remand case was consolidated with one or more other cases, the nature and number of alleged offences in the case change and so too do the charge numbers. This renders it nearly impossible to determine whether all the charges associated with the remand case were found proven, whether only some charges were found proven or even whether all the charges were withdrawn or dismissed.

200 Notably, children in the index population were slightly more likely to receive a custodial sentence in non-consolidated cases (41% or 43 of 106 outcomes) than in consolidated cases (33% or 152 of 454 outcomes). This is contrary to what was expected given that consolidation increases the number of charges before a court. It was unclear in three cases whether the case was consolidated.
5.7 It is nevertheless instructive to examine the outcomes of all remand cases, including cases that were consolidated. Consolidation may have affected some case outcomes, such as increasing the likelihood of a custodial sentence given that more charges might equate to increased overall criminality in the case.\textsuperscript{201} Analysing the outcomes of all remand cases, however, provides a reliable indication of how many result in non-custodial outcomes.

**All outcomes**

5.8 Of the 653 cases that had a known case outcome, there were 567 unique outcomes.\textsuperscript{202} There are fewer outcomes than cases because some remand cases were consolidated and finalised with one another (and possibly other cases). Figure 17 shows the 567 unique outcomes imposed on children remanded in Victoria in 2017–18. The most common outcomes were youth justice centre orders (31%) and youth supervision orders (28%).

*Figure 17: Outcome types for cases for which children were held on remand in Victoria in 2017–18 (567 outcomes)*

- Youth justice centre order: 175
- Youth supervision order: 158
- Probation: 100
- Good behaviour bond: 41
- Youth attendance order: 24
- No charges proven: 21
- Youth residential centre order: 17
- Court-ordered diversion: 11
- Unclear: 7
- Youth control order: 5
- Imprisonment: 4
- Other: 4

\textsuperscript{201} The number of charges in a case is a very rough (and often poor) proxy for the seriousness of a case – each additional charge potentially adds more criminality to the behaviour that the court must eventually sentence. Rather than the number of charges in a case affecting the outcome, a correlation exists between higher volume offending and more serious sentencing outcomes. For example, 57% of the 94 cases in which children were charged with 11 or more offences resulted in a custodial sentence. In comparison, cases in which children were charged with 10 or fewer offences at remand received a custodial outcome at almost half that rate (31% of 528 cases).

\textsuperscript{202} This includes seven cases for which the outcome could not be confirmed from the data on the latest hearing available for the case, including two cases that were committed to the higher courts but could not be identified.
5.9 There is, though, a more useful way of grouping these outcomes: custodial, community and other outcomes. Using these groupings, Figure 18 shows that just over half of all outcomes (58%) were supervised or unsupervised community orders. Another one-third (34%) were custodial sentences, and the remaining 8% of outcomes were either unclear or other orders. These groupings more clearly highlight that two-thirds of children held on remand did not ultimately receive a custodial sentence. And that does not account for the possibility that a custodial sentence was only imposed in some cases because of the totality of charges in a consolidated case, not just because of the charges for which the child was originally remanded.

5.10 Figure 19 shows that remanded children were nearly five times more likely to receive a custodial outcome (34%) than all children sentenced in the Children’s Court in 2017–18 (7%) (see Appendix 2). Remanded children were also more likely to receive a community order (58% compared with 46%). In comparison, all children whose case was finalised in the Children’s Court that year were far more likely than remanded children to receive an outcome classified as ‘other’ (47% of all outcomes). Other outcomes primarily included court-ordered diversions (34%), but they also included fines (6%) and accountable undertakings (4%). Case outcomes for remanded children were thus significantly more serious than case outcomes for non-remanded children, as would be expected given that their being remanded is indicative of the seriousness of their offending.

Figure 18: Proportion of outcome types in cases for which children were held on remand in Victoria in 2017–18 (567 outcomes)

- Community order: 58%
- Custodial sentence: 34%
- Other/unclear: 8%

Figure 19: Proportion of outcome types in 2017–18, remanded children’s outcomes (567) and all outcomes in the Children’s Court (3,817)

- Remanded children (2017–18):
  - Community order: 58%
  - Custodial sentence: 46%
  - Other/unclear: 8%

- All children (2017–18):
  - Community order: 34%
  - Custodial sentence: 7%
  - Other/unclear: 47%

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203. These included youth supervision orders (158), probation (100), good behaviour bonds (41), youth attendance orders (24) and youth control orders (5).

204. These included youth justice centre orders (174), youth residential centre orders (17) and adult imprisonment (4).

205. These included court-ordered diversions (11), unclear orders (7), accountable undertakings (2), one fine, one child found unfit to stand trial due to mental impairment, and one child who had their driver licence cancelled, suspended or disqualified.

206. Indeed, the higher likelihood of remanded children receiving a custodial outcome would actually be even higher than the percentage suggests because many of the remanded children’s outcomes in the index population occurred in the 2017–18 financial year and were therefore included in the statistics about all outcomes in the Children’s Court.
5. Case outcomes for children held on remand

Custodial sentences

5.11 There were 195 custodial sentences imposed on remanded children in the index population.

5.12 The likelihood of receiving a custodial sentence after being remanded was not affected by age, gender or Aboriginal and Torres Strait Islander status. For example, 90% of custodial outcomes were imposed on male children, who accounted for 89% of remanded children. Similarly, 16% of custodial outcomes were imposed on Aboriginal and Torres Strait Islander children, who accounted for 15% of remanded children. And as just one example of age, 9% of custodial outcomes were imposed on children aged 14, who accounted for 11% of remanded children.

5.13 There was some regional variation though. Children whose case was finalised in suburban courts were less likely to receive a custodial outcome (26% of 223 outcomes) than children sentenced in either the Melbourne Children’s Court or rural and regional courts (39% of 336 outcomes combined). Stakeholders suggested that the transfer of more serious matters from suburban courts to the Melbourne Children’s Court could explain the higher rate of custodial outcomes in that court location, while the lack of access to services and fewer specialist magistrates are the most likely causes of the higher rate of custodial outcomes for children in some rural and regional court locations.

5.14 As would be expected, children with a prior sentence were more likely to receive a custodial outcome (42% or 161 of 379 outcomes imposed on children with a prior sentence). In comparison, less than half as many children without a prior sentence received a custodial sentence (18% or 34 of 188 outcomes). Children who had previously been held on remand for another case in 2016–17 were nearly four times more likely to receive a custodial outcome (57%) than children who had not (15%).

5.15 There were four cases in which children were sentenced to a period of adult imprisonment (as opposed to a youth detention facility). Those four children also experienced four of the six longest periods of remand. This suggests that the delay in those cases was most likely a product of the seriousness of the matters (given they were heard in the adult jurisdiction) and the standard processes of adult courts (compared to the Children’s Court).

207. This included 84 of 210 outcomes in the Melbourne Children’s Court and 48 of 126 outcomes in rural or regional courts. Children’s Court Practice Directions also applied at various times during the reference period. The effect of this is that more serious cases (involving Category A and Category B serious youth offences) in suburban courts, as well as cases originating in the Sunshine Children’s Court, would have been transferred to the Melbourne Children’s Court: see [5.25].

208. Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).

209. This included children who had spent 889, 459, 290 and 264 days on remand. Two children received a youth justice centre order after 328 and 285 days on remand. Together, these were the six longest remand episodes.
Duration of custodial sentences

5.16 Figure 20 shows the duration of custodial sentences imposed on remanded children. Most custodial sentences (56%) were less than one year in duration, and one-quarter were shorter than six months (26%). Very few custodial sentences were shorter than one month (4%).

**Figure 20**: Number of custodial sentences imposed on children held on remand in Victoria in 2017–18, by the length of the term (195 custodial sentences)

<table>
<thead>
<tr>
<th>Term</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 month</td>
<td>8</td>
</tr>
<tr>
<td>1 month to less than 3 months</td>
<td>18</td>
</tr>
<tr>
<td>3 months to less than 6 months</td>
<td>24</td>
</tr>
<tr>
<td>6 months to less than 1 year</td>
<td>60</td>
</tr>
<tr>
<td>1 year to less than 2 years</td>
<td>67</td>
</tr>
<tr>
<td>2 years to less than 3 years</td>
<td>14</td>
</tr>
<tr>
<td>3 years or more</td>
<td>4</td>
</tr>
</tbody>
</table>

5.17 It is also useful to contextualise these sentence lengths by the amount of time that the child still had to serve after being sentenced, accounting for time spent on remand. Legislation in Victoria requires a court to declare any time served on remand to be a period of detention already served for the purpose of a custodial sentence, unless the court orders otherwise. The majority of the 195 custodial sentences (83%) were longer than the amount of time that the child had spent on remand (Figure 21), meaning the child had more time to serve after being sentenced. Of those 161 custodial sentences with more time to serve, most (62%) were at least six months longer than the amount of time that the child had spent on remand. Relatively few (15%) custodial sentences required less than an additional three months in custody.

**Figure 21**: Number of custodial sentences imposed on children who experienced remand in Victoria in 2017–18, by the time remaining to serve after sentence (161 custodial sentences with more time to serve)

<table>
<thead>
<tr>
<th>Time Remaining to Serve</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 month</td>
<td>6</td>
</tr>
<tr>
<td>1 month to less than 3 months</td>
<td>17</td>
</tr>
<tr>
<td>3 months to less than 6 months</td>
<td>38</td>
</tr>
<tr>
<td>6 months to less than 1 year</td>
<td>61</td>
</tr>
<tr>
<td>1 year or more</td>
<td>39</td>
</tr>
</tbody>
</table>

5. Case outcomes for children held on remand

Time served sentences

5.18 Of the remaining 34 custodial sentences that did not exceed the amount of time the child spent on remand, 31 were time served sentences (that is, the duration of the custodial sentence was identical to the time served on remand), and two were shorter than the duration that the child had spent on remand. In one case, the relationship between the time spent on remand and the duration of the custodial sentence was unclear. The Council has recently found that 29% of custodial sentences imposed on adults were time served prison sentences;\(^2\) in comparison, 16% of custodial sentences imposed on children were time served sentences. This suggests that children are nearly half as likely as adults to receive a time served sentence. Nevertheless, numerous issues are associated with time served sentences. Most notably, some people who receive a custodial sentence may not have received such a disposition had they not already been held on remand.\(^1\) Also, as the Australian Institute of Health and Welfare has commented, ‘[s]ome sentenced orders are backdated to take into account time already served in unsentenced detention. In these cases … the time available to complete a rehabilitative service is further reduced.’\(^3\)

Supervised community orders

5.19 Supervised community orders available in the Children’s Court include, from most serious to least serious, youth control orders, youth attendance orders, youth supervision orders and probation.\(^4\) Nearly three-quarters of children in the index population were sentenced before youth control orders became available.\(^5\) The results in this report cannot therefore reflect which proportion of children in the index population would have received youth control orders had they been in effect throughout the reference period.\(^6\)

5.20 Nevertheless, just 10% of supervised community orders imposed on remanded children were the most serious forms of such orders (29 youth control orders and youth attendance orders). Instead, the vast majority of supervised community orders imposed on remanded children (90%) were either youth supervision orders (159) or probation (100). Therefore, most children held on remand not only were sentenced to non-custodial orders but also were mostly sentenced to less serious forms of non-custodial orders.

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211. Sentencing Advisory Council (2020), above n 7, 18.

212. See for example, ibid 10. These issues with time served sentences for children were raised by stakeholders during consultation, for example, reduced access to services and programs that can improve children’s prospects of rehabilitation: Roundtable Meeting I with Youth Justice Stakeholders (6 July 2020).


214. Youth attendance orders require a child to attend a youth justice unit for up to 12 months, with a maximum attendance of 10 hours per week, to engage in specific programs. The child must also not reoffend, they must complete up to four hours of community service per week and they must comply with any other conditions set by the court: Children, Youth and Families Act 2005 (Vic) s 397. The court must record a conviction. The object of a youth attendance order is to provide an intermediate option between a custodial disposition and probation: Arie Freiberg, Fox and Freiberg’s Sentencing: State and Federal Law in Victoria (3rd ed., 2014) 949.

215. Youth supervision orders require a child to report as directed, not reoffend, and possibly participate in programs and community service: Children, Youth and Families Act 2005 (Vic) s 389. The court may or may not choose to record a conviction.

216. Probation is the least intensive supervised order: It requires the child to not reoffend and to report as directed, and it may also require them to comply with certain conditions such as attending school, living at a specified residence or being subject to a curfew: Children, Youth and Families Act 2005 (Vic) s 381. The court may or may not choose to record a conviction.

217. In particular, of the 660 cases analysed in the current research, 238 were sentenced after 1 June 2018 (26%), 1% did not have a clear finalisation date, and the remaining 73% were finalised before 1 June 2018.

218. Of note, however, is that, in the first financial year of their operation (2018–19), youth control orders constituted 0.6% of all outcomes in the Children’s Court (12 of 2,079 outcomes): Children’s Court of Victoria (2019), above n 100, 35.
No charges proven

5.21 There were 21 unique outcomes whereby remanded children had all their charges withdrawn or dismissed (that is, no charges were proven). These 21 outcomes stem from 27 original cases. The most serious offence type in those 27 cases varied, but the most common most serious offences were theft and related offences (7 cases), property damage (7 cases), robbery (4 cases) and burglary (3 cases).

5.22 Of the 27 cases resulting in no proven charges, 14 cases involved children aged under 14 on entry into remand. While it is difficult to generalise from such small numbers, this is substantially disproportionate to the rate at which children aged under 14 were remanded overall. Whereas 6% of all cases for which children were remanded involved children aged under 14, they accounted for 52% of remanded children’s cases in which no charges were found proven. This may be due to successful arguments of *doli incapax*, whereby a child is presumed to be ‘incapable of crime’ unless the prosecution can establish that the child was intellectually and morally developed enough to appreciate the difference between right and wrong. Alternatively, given that in 12 of those 14 cases the child spent less than a week on remand (seven were remanded for just one day), it may be that the decision to charge the child was reviewed and considered inappropriate (perhaps due to the child’s age), such that all charges were withdrawn.

Court of finalisation

5.23 The Children’s Court of Victoria hears and determines criminal matters in the specialised Melbourne Children’s Court as well as in dozens of court locations across Victoria. For the purposes of this report, courts finalising criminal proceedings involving children have been grouped in two ways. The first grouping is the number of case outcomes in the Melbourne Children’s Court, nine Melbourne suburban courts and 15 rural and regional courts. This gives the best insight into the distinction between the Melbourne Children’s Court and other suburban courts in the Greater Melbourne area, where most cases are finalised. The second grouping is the number of case outcomes in each of Victoria’s six justice regions. This gives the best insight into any differences between the various regional areas. Cases finalised in these courts or regions were not necessarily always heard in that particular court location as the case progressed. For instance, a case may have commenced in a suburban court but later may have been finalised in the Melbourne Children’s Court, or vice versa.


220. The amounts of time children aged under 14 spent on remand before having no charges proven included 28 days (one child), six days (one child), four days (one child), two days (one child) and one day (four children).

221. These locations are Broadmeadows Children’s Court, Dandenong Children’s Court, Frankston Children’s Court, Heidelberg Children’s Court, Moorabbin Children’s Court, Collingwood Neighbourhood Justice Centre, Ringwood Children’s Court, Sunshine Children’s Court and Werribee Children’s Court.

222. These locations are Ballarat Children’s Court, Bendigo Children’s Court, Cobram Children’s Court, Geelong Children’s Court, Hamilton Children’s Court, Horsham Children’s Court, La Trobe Valley Children’s Court, Mildura Children’s Court, Sale Children’s Court, Seymour Children’s Court, Shepparton Children’s Court, Swan Hill Children’s Court, Wangaratta Children’s Court, Warrnambool Children’s Court and Wodonga Children’s Court.
5. Case outcomes for children held on remand

Grouping by courts

5.24 The court of finalisation was both ascertainable and not an adult court for 559 of the 567 outcomes. Of these 559 outcomes, 38% occurred in the Melbourne Children’s Court (210 outcomes), another 40% occurred in suburban courts (223 outcomes) and the remaining 23% occurred in rural and regional courts (126 outcomes).223

5.25 These findings were affected to a certain degree by two Children’s Court practice directions that were in operation during at least part of the reference period and would have redirected some cases from suburban court locations to the Melbourne Children’s Court. First, Practice Direction 2 of 2018, which came into effect on 5 April 2018, specified that where a child is charged with a Category A serious youth offence and the proper venue for the case is a suburban court location, the matter must be listed for filing hearing at the Melbourne Children’s Court. Where a child is charged with a Category B serious youth offence, the matter is listed for filing hearing at the Melbourne Children’s Court only if the suburban court determines that the charge is not suitable to be heard and determined summarily and should be uplifted to the higher courts. However, no such transfer procedure is prescribed for regional courts.224

5.26 Second, due to a lack of cell holding space at Sunshine Children’s Court, all children arrested and held in custody where that court was the proper venue were remanded to appear at the Melbourne Children’s Court, which would then take carriage of the matter through to finalisation.225 If the child contested the charges, Sunshine Children’s Court would then retake carriage of the matter.226 This procedure was established by a series of practice directions stretching back to 2014.

Grouping by justice regions

5.27 In order to understand any relevant distinctions between court locations in rural and regional areas of Victoria, the Council identified the number of outcomes in each of Victoria’s justice regions. As shown in Figure 22, of the 559 case outcomes for which the court of finalisation was known and was not an adult court, over three-quarters (77% or 433 outcomes) occurred in the Greater Melbourne area. The remaining justice regions, from most outcomes to least outcomes, were Barwon South West (9% or 53 outcomes), Gippsland (5% or 27 outcomes), Hume (4% or 24 outcomes), the Grampians (2% or 13 outcomes) and Loddon Mallee (2% or nine outcomes).

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223. There were five outcomes in the higher courts (three in the County Court and two in the Supreme Court), while in three instances it was unclear which court produced the outcome.
226. Ibid.
Figure 22 also shows the percentage of cases in those justice regions involving female children, the percentage involving Aboriginal and Torres Strait Islander children, and the percentage resulting in a custodial outcome:

- Children whose case was finalised in rural or regional court locations were nearly four times more likely to be Aboriginal and Torres Strait Islander (37%) than children whose case was finalised in the Greater Melbourne area (10%).227 This was especially prominent in Loddon Mallee (56% of 9 outcomes) and Barwon South West (40% of 53 outcomes).
- Cases finalised in rural and regional courts were twice as likely to involve a female child (20% of 126 outcomes) as cases finalised in the Greater Melbourne area (9% of 441 outcomes). This was especially prominent in Barwon South West (30% of 53 outcomes) and Gippsland (26% of 27 outcomes).
- The lowest rate of custodial outcomes was in Barwon South West (30% of outcomes), though this was only slightly lower than the rate in the Greater Melbourne area (33%) and Hume (33%).

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227. Of 126 unique case outcomes in rural or regional courts, 46 involved Aboriginal and Torres Strait Islander children. In comparison, of 433 unique case outcomes in metropolitan court locations, 42 involved Aboriginal and Torres Strait Islander children. A slightly higher proportion of case outcomes involved Aboriginal and Torres Strait Islander children in other metropolitan court locations (13%) than in the Melbourne Children’s Court (7%). For the rate of female and Aboriginal and Torres Strait Islander children in each of Victoria’s justice regions, see Figure 22.
5. Case outcomes for children held on remand

5.29 Although not represented in Figure 22, female remanded children were especially likely to be Aboriginal and Torres Strait Islander in Gippsland (71% or 5 of 7 female children) and in Barwon South West (56% or 9 of 16 female children), and to a lesser extent in the Greater Melbourne area (25% or 10 of 40 female children). No female remanded children in the Grampians, Hume and Loddon Mallee were Aboriginal and Torres Strait Islander. This is consistent with the Council’s previous finding that young female children, especially from an Aboriginal and Torres Strait Islander background, in rural and regional areas are at greater risk of contact with the criminal justice system than their older, male, urban and non-Indigenous counterparts.228

5.30 Stakeholders raised a number of concerns with criminal justice responses for children in rural and regional areas, including:

- the availability of services (for both bail and sentencing orders);
- the high rate of female, Aboriginal and Torres Strait Islander and younger children entering remand in those areas;
- the skill and expertise of remand and sentencing decision-makers, particularly those who do not specialise in Children’s Court matters;
- the unwillingness of the judiciary in those areas to entertain therapeutic options;
- the high rates of child protection for children in rural and regional Victoria;
- changes in the nature of offending that children in those areas engage in (offending has become more serious in recent years); and
- the (previously) limited access to court-ordered diversion, which was not yet available statewide during most of this report’s reference period.229

5.31 Many of these issues are apparent in Case Study 2: Harry.

### Case Study 2: Harry*

Harry is 17 years old and lives in regional Victoria. He identifies as Aboriginal. Harry has never been sentenced to an immediate custodial term; however, he has spent months on remand at various points over the past two years.

Harry’s early life was chaotic. His parents were both substance-dependent and there was family violence in the home. He was put into the care of his grandparents on a Department of Health and Human Services permanent care order when he was a pre-schooler. He continued to have contact with his parents, who had separated. His father introduced him to intravenous drug use before he was a teenager.

Harry’s criminal offending started when he was 15, initially as non-violent breaches of family violence intervention orders. He served his first period on remand when he was 15 after breaching a curfew bail condition, and he spent a week in isolation as there were no beds available in the youth detention facility.

His continued offending after his release. He committed numerous shop thefts for food and in one incident he threatened violence within the context of experiencing psychosis. After further time in secure welfare, Harry was released into the care of his father, and his offending escalated.

Harry was recently remanded into custody on more serious charges. Bail was refused on the basis that he did not have a safe place to reside, following submissions from the informant that when Harry was arrested at his father’s place, there were illicit substances clearly in view.

*Not the child’s real name

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229. Meeting with the Children’s Court of Victoria (29 June 2020); Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
Time taken to finalise cases

5.32 The data in this report suggests that the Children’s Court’s case management approach for remanded children appropriately identifies cases for which children may ultimately receive a non-custodial order. Of cases in which a child was sentenced to a further period of detention, 8% were finalised within three weeks of the child being remanded. In comparison, of cases that resulted in either a non-custodial sentence or a time served sentence, 38% were finalised within three weeks, which is nearly five times the rate for cases in which children received further detention. This suggests that not only are cases prioritised where a child is held on remand (see [3.18]), but those cases also seem to be given even higher priority if the child would probably not receive further time in custody when sentenced.

5.33 There was some variation in the time taken to finalise cases across various courts. The average and median number of days taken to finalise remanded children’s cases were similar in the Melbourne Children’s Court (an average of 121 days; a median of 97 days) and suburban courts (an average of 125 days; a median of 101 days); however, cases tended to be finalised in the shortest time in rural and regional courts (an average of 90 days; a median of 66 days).²³⁰

²³⁰ The time to finalisation was unclear in four cases in rural and regional courts.
6. Relationship between remand factors and case outcomes

6.1 This chapter considers various factors associated with children’s experiences of remand and whether any of these factors were noticeably correlated with a higher likelihood of receiving a custodial outcome.

Initial decision-maker

6.2 The decision to remand a child in custody can be made by either a bail justice or a court (usually the Children’s Court).\(^{231}\) Of the 669 remand episodes experienced by the index population in 2017–18, just over half of the initial decisions to remand a child in custody were made by a bail justice (53%), and almost all of the remaining decisions were made by the Children’s Court (46%) (Figure 23). The initial decision-maker was unclear for two remand episodes.

The high rate of bail justices making remand decisions

6.3 The slight majority of initial decisions to remand a child were made by bail justices, which indicates that they were made in circumstances where ‘the [Children’s] Court is not sitting at any convenient venue’ at the time children are arrested.\(^{232}\) This seems to be less a result of the day on which the arrest occurred (courts do not operate on weekends) or the accessibility of a court, and more a result of those decisions being made outside business hours. As Figure 24 shows, 81% of children entered remand on a weekday, and an increasing number of children were remanded on each subsequent weekday, Friday being the most common day of entry into remand.\(^{233}\) This is consistent with previous findings that 80% of remand admissions occur outside court hours (see at [3.22]), except it further shows that those decisions were more likely to be made on a weekday than on a weekend. It is also worth noting that, while bail justices made the slim majority of decisions to remand children, they still made far fewer of those decisions than in previous years. This appears to be largely due to the reduced number of bail justices available to make decisions: there are now just over 120 active bail justices in Victoria compared with nearly 500 a few years ago.\(^{234}\)

\(^{231}\) A higher court must make the decision in some exceptional circumstances: see at [2.6].

\(^{232}\) Children, Youth and Families Act 2005 (Vic) s 346(2)(d).

\(^{233}\) There was less variance or pattern in the day of exit from remand. An exception is that children were released on a Wednesday (216 of 669 remand episodes) at nearly twice the rate of any other day of the week; the second highest number of exits occurred on a Friday (138 of 669 remand episodes). Stakeholders suggested that most children are likely to be released on a Wednesday because this is the day on which most Children’s Court locations sit across Victoria: Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020). Moreover, the assessments required to support a bail application in respect of a recently remanded child take time to produce, further affecting when a child can realistically be released on bail after the weekend: Meeting with the Children’s Court of Victoria (29 June 2020); Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020).

\(^{234}\) Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020); Meeting with the Children’s Court of Victoria (29 June 2020).
Outcome by decision-maker

There is a perception that bail justices are more risk-averse in their decision-making than courts (see [3.21]). Despite this, there was actually relatively little variation between the types of sentences imposed on children who were first remanded by a bail justice and the types of sentences imposed on children who were first remanded by a court. Children first remanded by a court were only slightly more likely to receive a custodial order (35%) than children first remanded by a bail justice (32%). Even that slight variation can easily be explained by the reduced availability of services outside operating hours for courts and the Central After-Hours Assessment and Bail Placement Service (CAHABPS). This would inevitably result in a higher likelihood of children being remanded by bail justices than by courts, even if children might have a lower chance of receiving a custodial sentence for the alleged offending.

Duration of remand episodes

Figure 25 presents the duration of remand episodes experienced by children remanded in Victoria in 2017–18. One of the 669 remand episodes extended past the time period of data available to the Council, and so this episode was excluded from the analysis. A significant proportion of the remaining 668 remand episodes ended after one to three days (15%). Almost half (47%) ended within 21 days, which is the maximum period for which a child can be remanded before their remand order must be reviewed by a court; there were fewer exits with each subsequent 21-day period. The longest episode recorded in the index population spanned 889 days, which culminated in a sentence of adult imprisonment imposed in the County Court.

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235. The 660 cases that children were remanded for resulted in 567 unique outcomes. Of those 567 outcomes, 300 arose out of cases in which children were initially remanded by a bail justice, and the other 267 arose out of cases in which children were initially remanded by a court.

236. **Bail Act 1977** (Vic) ss 10(4)–(5).
6. Relationship between remand factors and case outcomes

Many stakeholders raised concerns that some children are held on remand for short durations (a few days) to allow for Youth Justice to prepare a report. This can either be due to the timing of their arrest (outside business hours, when Youth Justice is unavailable) or be due to the complexity of their circumstances, requiring more time for Youth Justice to be in a position to best advise the court on the child’s risk and possible supports.237 There was also some concern about a relationship between remand and school holidays.238 This is because schools are less available to assist with report writers’ enquiries and because there are fewer day programs available during these times, such that a child may pose a greater risk to the community if released on bail. Further, as illustrated in Case Study 3: Logan (page 54), the availability of housing, especially for children requiring out-of-home care, also plays a significant role in children being held on remand, even for quite lengthy periods.

Notably, the children in the index population in this report spent longer on remand than the children whose remand experiences were analysed by Jesuit Social Services in 2010 and by Armytage and Ogloff in 2015–16 (see at [3.28]). Both previous reports found that 39% of children were released within one week of being remanded, whereas the current report has found that just 25% of children were released within that same time period. And both previous reports found that 64% of children were released within three weeks, whereas the current report has found that just 47% of children were released within that same time period. That is, more than half of all children remanded in 2017–18 spent longer than three weeks on remand, compared to one-third just a few years earlier. This means that over half of all children held on remand in 2017–18 had their remand confirmed and continued on a second occasion, as required after 21 days. As discussed at [3.19], these longer periods of remand are likely to be due to the increasing number of children being held on remand, and therefore more cases being heard in the Fast Track Remand Court, as well as the increasing complexity of cases involving applications for summary jurisdiction where the child is charged with a Category A or B serious youth offence. Some stakeholders suggested that the longer periods that children are spending on remand may also be a result of children receiving legal advice not to apply for bail in the hopes of improving their chances of receiving either a community order instead of a further period in custody or potentially a time served sentence.239

237. Meeting with the Children’s Court of Victoria (29 June 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
238. Meeting with the Children’s Court of Victoria (29 June 2020); Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
239. Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020). There are, though, recognised issues with time served sentences, including in the context of children: see at [5.16].
Case Study 3: Logan*

Logan recently turned 15 years old. He has spent approximately 60 days on remand due to not being able to access a place in a residential unit; he had no prior criminal history. Logan was a victim of an assault by a group of kids in 2017 when he was 12 years old, and there have been hints at possible past family violence and sexual trauma. Logan has recently been assessed by a psychologist as having post-traumatic stress disorder.

Logan’s offending initially occurred under the care of the Department of Health and Human Services (DHHS), at the residential unit that he was living in. Examples are that Logan was involved in dishonesty offending, including theft of motor vehicles, and was alleged to have spat on a staff member at his residential unit. Logan’s place at the unit was cancelled and he was not able to get another.

While on bail for those allegations, Logan’s offending escalated in the context of group offending. Logan was arrested and could not get bail from the Children’s Court; the magistrate who refused bail said in their reasons that if accommodation had been available, Logan would have been granted bail. In court, DHHS gave evidence that it would take approximately six weeks to arrange a supported accommodation placement with a DHHS owned facility and were of the view that Logan should remain in custody until this accommodation was ready.

Logan was ultimately granted bail by the Supreme Court, into a Secure Welfare unit where his therapeutic interventions and education could continue. The Justice of the Supreme Court stated that Logan was not likely to receive a term of imprisonment for the offending and noted that, while Logan was at the youth justice facility, he was exposed to older children who would likely have had a negative impact on him.

*Not the child’s real name

6.8 Children sentenced in the Melbourne Children’s Court spent a longer average and median time on remand than children whose case was finalised in other courts. In particular, children sentenced in the Melbourne Children’s Court spent an average of 51 days on remand, whereas children sentenced in suburban courts and rural and regional courts spent an average of 35 and 32 days on remand, respectively. Similarly, children sentenced in the Melbourne Children’s Court spent a median time of 35 days on remand, compared to 21 and 19 days for children sentenced in suburban courts and rural and regional courts, respectively. These longer remand periods in the Melbourne Children’s Court are most likely due to appropriate case management processes. Children whose case was finalised in the Melbourne Children’s Court were also the most likely to receive a custodial sentence longer than the time already spent on remand. This is indicative that their cases were more serious. This in turn may be due to, at least partly, the practice direction requiring Category A and B serious youth offences to be transferred to, and finalised in, the Melbourne Children’s Court.
6.9 In total, the 442 children in the index population spent 28,930 days on remand. This means that it cost approximately $41 million to keep unsentenced children in custody in Victoria in 2017–18, at an average of $93,000 per child. Of those, 10,755 days were spent on remand by children who did not receive a custodial sentence, costing approximately $15 million. This does not take into account the long-term criminogenic consequences of those remand episodes or the cost of keeping sentenced children in custody.

“it cost approximately $41 million to keep unsentenced children in custody in Victoria in 2017–18, at an average of $93,000 per child”

Outcome by duration of remand episodes

6.10 Figure 26 illustrates the likelihood of children receiving a custodial outcome based on the amount of time they have spent on remand. Predictably, the longer a remand episode was, the more likely a child was to receive a custodial sentence. Children charged with more serious offending (that is, children who are most likely to receive a custodial sentence) are also likely to be considered a greater risk to themselves and/or the community and be remanded for longer periods.

Figure 26: Proportion of children receiving a custodial outcome, by time spent on remand (668 remand episodes)


241. The same custodial outcome is counted twice in some instances, but those outcomes nevertheless derived from separate remand episodes of different durations.
6.11 There was a particularly stark increase in the proportion of children receiving a custodial outcome after six weeks (43 days or more) on remand. For the first six weeks, the proportion of children who received a custodial outcome gradually increased, from 9% of children remanded for one week or less (14 of 164 remand episodes) to 33% of children remanded for 36 to 42 days (14 of 43 remand episodes). The proportion then increased significantly in week 7, when children became more likely to receive a custodial sentence than not (52%). Of the remaining 186 remand episodes that lasted for 50 days or more, 69% resulted in a custodial outcome. In effect, even for children remanded for seven or more weeks, 44% received an entirely non-custodial disposition. These results could suggest a special need to focus on case management and either bail children or finalise proceedings against them during the first six weeks that they are on remand, as opposed to the first 10 weeks, which is the required time to finalisation in the Fast Track Remand Court.

Reasons for exit from remand

6.12 Figure 27 shows the reasons children exited remand. Of the 668 remand episodes with a recorded end date, more than half (53%) ended because the child was released on bail. One-quarter left remand because they were released from custody as a result of their case being finalised, which involved being sentenced to either a non-custodial sentence or a time served sentence or having all charges dismissed. And one in five children left remand because they were sentenced to more time in custody, and therefore they transitioned from unsentenced detention to sentenced detention.

Figure 27: Proportion of remand episodes in 2017–18, by reason for exit from remand (668 remand episodes)

- Released on bail: 53%
- Case finalised (no more time to serve): 24%
- Case finalised (more time to serve): 20%
- Unclear: 2%
6.13 There was some regional variation in the reason for exiting remand. As shown in Figure 28, children whose case was finalised in the Melbourne Children’s Court were the most likely to exit remand in order to serve more time in custody (27%). Children whose case was finalised in suburban courts were the most likely to be bailed (63%). And children whose case was finalised in rural and regional courts were the most likely to be released because their case was finalised and they had no further time to serve (33%).

Figure 28: Proportion of reasons for which children exited remand in each court region (651 remand episodes)

<table>
<thead>
<tr>
<th>Region</th>
<th>Bailed</th>
<th>Case finalised (no further time in custody)</th>
<th>Case finalised (further time in custody)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melbourne Children's Court</td>
<td>48%</td>
<td>25%</td>
<td>27%</td>
</tr>
<tr>
<td>Melbourne metropolitan area</td>
<td>63%</td>
<td>21%</td>
<td>16%</td>
</tr>
<tr>
<td>Rural and regional areas</td>
<td>47%</td>
<td>33%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Outcome by reason for exit

6.14 Figure 29 illustrates the proportion of children who received a custodial sentence (with or without more time to serve) or a non-custodial outcome by whether they were bailed before the end of their proceedings. For the purpose of this analysis, children whose remand episode ended because their case was finalised were grouped together, regardless of whether they were released or remained in custody.

Figure 29: Proportion of children receiving a custodial outcome, with or without more time to serve in custody, by whether they were bailed before the end of proceedings (665 remand episodes)

<table>
<thead>
<tr>
<th>Reason for Exit</th>
<th>Custodial (more time to serve)</th>
<th>Custodial (time served)</th>
<th>Non-custodial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bailed (361 episodes)</td>
<td>10%</td>
<td>5%</td>
<td>85%</td>
</tr>
<tr>
<td>Not bailed (294 episodes)</td>
<td>48%</td>
<td>7%</td>
<td>45%</td>
</tr>
</tbody>
</table>

242. The reason for exit was unclear for two episodes in the Melbourne Children’s Court and two episodes in suburban courts. The reason for exit was ‘expiry of order’ for two episodes in the Melbourne Children’s Court, six episodes in suburban courts and two episodes in rural and regional courts. The court in which the associated case was finalised was not known for four episodes. These are also not reflected in Figure 28.
6.15 Of the 294 remand episodes that ended upon the child being sentenced, more than half (55%) resulted in a custodial sentence: 7% time served sentences and 48% with more time in custody. In comparison, of the 361 remand episodes that ended because the child successfully applied for bail, just 15% resulted in a custodial sentence: 5% time served sentences and 10% with more time in custody. In other words, children who were granted bail before their proceedings were finalised were nearly four times less likely to receive a custodial sentence (15%) than children who were not bailed before their proceedings were finalised (55%). It would be expected that children held on remand until case finalisation would have committed more serious offending than those granted bail at some stage. Rather than illuminating a novel point, however, the data provides evidence about the extent of the different rates at which bailed and non-bailed children received custodial outcomes.
7. Offences at remand and finalisation

7.1 This chapter examines the types of offences for which children were remanded in 2017–18. It also examines the offences for which children were ultimately sentenced and whether the number, type and seriousness of offences varied between entry into remand and case finalisation, for the 116 cases that were not consolidated.

Offences on children’s entry into remand (all 660 cases)

7.2 Outlined below are two distinct ways of reporting on the types of offences for which children were held on remand: the proportion of children charged with certain offence types and the most serious offence in the case. Both analyses are useful. The most serious offence is the strongest indicator of the type of offending that prompted the bail justice or court to remand the child. The analysis of all offence types gives insights into the overall type of offending that remanded children were alleged to have engaged in.

How many offences were remanded children charged with?

7.3 Figure 30 (page 60) shows the number of offences that remanded children were charged with on entry into remand. Two words of caution should be borne in mind in interpreting the data. First, the remand data did not include multiple charges of the same offence type, for example, two unlawful assaults were only recorded as a single unlawful assault. In that respect, the analysis is an underestimation of the number of offences that each child faced. Second, police and prosecutors regularly lay lesser alternative offences for certain offence types, even though charges are directed at the same conduct, for example, a child may be charged with aggravated burglary and its lesser alternative offence of burglary (the latter accounts for the possibility that the circumstance of aggravation is not proven beyond reasonable doubt). In that respect, the analysis is an overestimation of the number of alleged criminal offences. Nevertheless, the analysis is useful as a rough approximation because the number of alleged offences in a case has been found to be a strong predictor of whether children will be remanded, with one study finding this to be ‘the only variable that had a significant influence on bail decisions in the Children’s Court’.243

7.4 Bearing in mind the above caveats on the data, this supports past research suggesting that remanded children tend to be charged with high-volume offending. Nearly half of all cases for which children were remanded involved six or more offences (45%). Just 5% of cases involved a single offence on entry into remand.

Outcome by number of offences at remand

7.5 A level of correlation was predictable between the number of offences that children were charged with on entry to remand and the type of outcome in the relevant case; this would be expected where the number of offences is a rough proxy for a pattern of offending behaviour. Figure 31 shows that 27% of children charged with one to five offences received a custodial outcome, but this more than doubled to 57% of children charged with 11 or more offences. Children charged with one to five offences were also over twice as likely as children charged with six or more offences to receive a good behaviour bond. This at least suggests that the number of charges affects not only the likelihood of being remanded but also the likelihood of receiving a custodial sentence. While this is expected, Figure 31 shows the extent of the effect that the number of charges can have on the sentence received.
What types of offences were remanded children charged with?

7.6 Figure 32 shows the proportion of the 660 remand cases that contained certain offence types. The most common offence types in those cases were theft and related offences (in 65% of cases)\(^\text{244}\) and justice procedures offences (62%), followed by offences against the person (38%).

**Figure 32: Proportion of cases in which remanded children were charged with each offence type on entry into remand (660 cases)**

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft and related offences</td>
<td>65%</td>
</tr>
<tr>
<td>Offences against justice procedures</td>
<td>62%</td>
</tr>
<tr>
<td>Offences against the person</td>
<td>38%</td>
</tr>
<tr>
<td>Burglary offences</td>
<td>32%</td>
</tr>
<tr>
<td>Robbery offences</td>
<td>32%</td>
</tr>
<tr>
<td>Property damage</td>
<td>20%</td>
</tr>
<tr>
<td>Public order offences</td>
<td>19%</td>
</tr>
<tr>
<td>Traffic and vehicle regulatory offences</td>
<td>17%</td>
</tr>
<tr>
<td>Dangerous or negligent acts endangering persons</td>
<td>13%</td>
</tr>
<tr>
<td>Threats and other offences against the person</td>
<td>12%</td>
</tr>
<tr>
<td>Weapons offences</td>
<td>10%</td>
</tr>
<tr>
<td>Illicit drug offences</td>
<td>8%</td>
</tr>
<tr>
<td>Fraud, deception and related offences</td>
<td>5%</td>
</tr>
<tr>
<td>Sexual offences</td>
<td>2%</td>
</tr>
<tr>
<td>Homicide</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>&lt;1%</td>
</tr>
</tbody>
</table>

7.7 A number of stakeholders commented on a noticeable change in the nature of children’s offending in recent years, with ‘high impact’ offending becoming more common:

> when you think about the increase in crime, it’s actually high impact offending, carjackings, street robberies, those sorts of things. We do see carjackings and theft of a motor vehicle being what we call a ‘trigger offence’ for a spate of more serious offending. Offenders are far more mobilised.\(^\text{245}\)

Furthermore, stakeholders suggested that the increased complexity involved in stealing cars means that children are now more likely to commit burglaries or offences against the person in order to obtain the keys to steal a car.\(^\text{246}\)

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244. Nearly half of the 1,043 theft and related offences in these cases were general theft offences (507), one-third were actual or attempted thefts of motor vehicles (363), and the remainder were proceeds of crime and stolen goods offences (173). Notably, the Council did not include carjacking offences among theft and related offences (as they were originally coded in the raw data); these were instead recoded as robbery offences.

245. Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020).

246. Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020).
As a further point about the types of alleged offences, remanded children were charged with 658 justice procedures offences in 409 cases. More than two-thirds of those charges were related to breaching bail in some way (400 charges of committing an indictable offence whilst on bail, 38 charges of failing to answer bail and 10 charges of contravening a conduct condition of bail). The remaining justice procedures offences were related to driving (10%), breaching family violence orders (10%) and other offences (12%). This high rate of charges of committing an indictable offence whilst on bail suggests that many children had other ongoing proceedings when they were arrested for the offending that led to their remand. In addition, they were on bail rather than summons — summons is the presumptive approach for arrested children, and bail is only supposed to be used for more serious alleged offending. Given the high number of children who had known prior remand episodes (at least 40%) and who were subject to known ongoing proceedings when they were remanded (at least 81%), it seems a reasonable conclusion that the decision to remand many of these children was informed by the nature of their ‘new’ offending as well as their apparent failure to cease offending while on bail for other offences. The Council has previously noted that perhaps the greatest utility of so-called ‘secondary offences’ — offences committed by breaching court orders consequent to contact with the justice system — is that their inclusion on a person’s criminal record ‘substantially improve[s] the information available to future decision-makers about a person’s level of risk or likelihood of complying with conditions’.  

What was the most serious offence remanded children were charged with?

The Council coded the most serious offence for each of the 660 cases for which the children in the index population were held on remand. This was done using the maximum penalty for each offence as an indicator of seriousness. If two offences had the same maximum penalty, an assessment was made of which was likely to be the more serious offence. For example, Child 153 was remanded for a case in which they were charged with six offences (Table 4). Two of these alleged offences had a maximum penalty of 25 years’ imprisonment (armed robbery and aggravated burglary). Of those, armed robbery necessarily involves force or a threat of force against another person, whereas that may not have been the case for the aggravated burglary. The alleged armed robbery offence was therefore considered the most serious offence in the case at the time of entry into remand. For a full list of the offence seriousness hierarchy used by the Council, see Appendix 2.

<table>
<thead>
<tr>
<th>Offence</th>
<th>Maximum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armed robbery (most serious offence)</td>
<td>25 years</td>
</tr>
<tr>
<td>Aggravated burglary</td>
<td>25 years</td>
</tr>
<tr>
<td>Attempted armed robbery</td>
<td>20 years</td>
</tr>
<tr>
<td>False imprisonment</td>
<td>10 years</td>
</tr>
<tr>
<td>Theft of a motor vehicle</td>
<td>10 years</td>
</tr>
<tr>
<td>Theft</td>
<td>10 years</td>
</tr>
</tbody>
</table>

247. Sentencing Advisory Council (2017), above n 81, xi.
7. Offences at remand and finalisation

7.10 Figure 33 shows the most serious offence in all 660 cases for which children were remanded. The most common most serious offences were robberies (28%), thefts and related offences, many of which were thefts of motor vehicles (23%), and burglaries and other unlawful entries (21%). Other common most serious offences included property damage (8%) and assaults (7%). Just 1% of children were remanded for homicide offences, and another 12% were remanded for other types of most serious offences.  

**Figure 33: Most serious alleged offence in each case for which a child was remanded in Victoria in 2017–18 (660 cases)**

- Robbery offences: 28%
- Theft and related offences: 23%
- Burglary and other unlawful entries: 21%
- Property damage: 8%
- Offences against the person: 7%
- Homicide: 1%
- Other: 12%

7.11 Of the 137 burglary offences that were the most serious offence in a case, 59 were aggravated burglaries, 43 were burglaries, 18 were aggravated home invasions, 10 were home invasions and the remaining seven were attempts of those offences. Of the 45 assault offences, six did not involve an injury, 26 involved causing a non-serious injury and 13 involved causing a serious injury. Of the 184 robbery offences, 125 were for actual or attempted armed robbery or aggravated carjacking, and 59 were for actual or attempted robbery without a weapon or carjacking without a weapon. Of the 155 theft offences, 60 involved receiving or handing proceeds of crime, 54 were actual or attempted motor vehicle thefts and 41 were other types of theft. Stakeholders suggested that the high rate of proceeds of crime offences that were most serious offences is likely to be due to offending associated with previous robberies and burglaries, resulting in children being caught with items that may have been stolen by others. Stakeholders further suggested that, in those instances, the child was likely to have been remanded due to some other feature of the case (that is, an offence with a lower maximum penalty) rather than the proceeds of crime offence. The seven homicide offences included three charges of murder, two charges of attempted murder and two charges of culpable driving causing death.

7.12 The high rate of robberies and burglaries as most serious offences for remanded children is consistent with previous research (see at [3.31]–[3.34]). There was, though, a comparatively low rate of assaults as most serious offences, however. This is partly explained by the Council’s methodological approach in determining the most serious offence in each case.

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248. The other offences included making a threat to kill (16), reckless conduct endangering life (13), failing to answer bail or summons (10), weapons offences (six), stalking and harassment (five), affray and other disorderly conduct (five), trafficking drugs (five), sexual assault (three), rape (three), making a threat to inflict serious injury (three), false imprisonment (three), sexual penetration of a child (two), kidnapping (one), possessing a drug of dependence (one), contravening a conduct condition of bail (one), breaching an intervention order (one) and unlicensed driving (one).

249. Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).
This report uses the maximum penalty as the guide for seriousness, whereas other research has typically used the National Offence Index (NOI) and/or the Australian and New Zealand Standard Offence Classification (ANZSOC).

7.13 The type of most serious offence varied by gender. The 50 female children in the index population, who were remanded for 84 unique cases, were over twice as likely as their male counterparts to have a theft or related offence as their most serious offence at remand (35% of cases compared with 15% of cases). In comparison, male children were nearly three times more likely to have a robbery offence as their most serious offence (27% compared with 10%). Given that robbery involves an actual or threatened assault, male remanded children would seem to have engaged in more serious types of offending than female children.

Outcomes by most serious offence on entry into remand

7.14 Figure 34 shows the proportion of cases that resulted in a custodial sentence according to each of the offence types that were most commonly the most serious offence on children’s entry into remand. Most offence types were relatively consistent, ranging from about 30% to 40% for most offence types. Two offence types, however, were noticeably less likely to receive a custodial outcome: cases with property damage as the most serious offence, and cases with all other offences as the most serious offences (especially threat offences).

Figure 34: Proportion of cases for which children were held on remand in Victoria in 2017–18 that received a custodial sentence, by most serious alleged offence type in each case (660 cases)

| Offence Type                                      | Proportion
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Robbery offences (184 cases)</td>
<td>39%</td>
</tr>
<tr>
<td>Theft and related offences (155 cases)</td>
<td>32%</td>
</tr>
<tr>
<td>Burglary and other unlawful entries (137 cases)</td>
<td>41%</td>
</tr>
<tr>
<td>Property damage (51 cases)</td>
<td>12%</td>
</tr>
<tr>
<td>Offences against the person (49 cases)</td>
<td>39%</td>
</tr>
<tr>
<td>Homicide (7 cases)</td>
<td>43%</td>
</tr>
<tr>
<td>Other (77 cases)</td>
<td>23%</td>
</tr>
</tbody>
</table>

250. See for example, Galouzis and Corben (2016), above n 118, 7 (‘most serious or index offence is defined as the offence with the lowest [ANZSOC] code’).

251. The most common cases in the ‘other’ category that tended to receive non-custodial outcomes had a most serious offence of threats to kill or inflict serious injury (18 of 20 threat offence cases resulted in non-custodial outcomes), reckless conduct endangering life (9 of 13 reckless conduct offence cases resulted in non-custodial outcomes) and failing to answer bail (7 of 9 fail to answer bail offence cases resulted in non-custodial outcomes).

252. Of the seven cases in which the most serious offence was a homicide offence, the original charges were murder (three cases), attempted murder (two cases) and culpable driving causing death (two cases). Three of those cases were transferred to the adult jurisdiction and could not confidently be tracked to their outcome. One case of culpable driving causing death was transferred to the adult jurisdiction and received a term of imprisonment. In the remaining three cases, there was no homicide offence at finalisation; instead, the most serious offence in those three cases were reckless conduct endangering serious injury (one case, originally attempted murder, received a youth supervision order) and aggravated carjacking (two cases, both originally murder, received imprisonment).
7.15 The low rate of custodial outcomes in cases in which property damage was the most serious offence warrants further investigation. This is a relatively low-level offence compared with many of the other offences for which children are remanded (for example, home invasion, carjacking, armed robberies), but it is also strongly correlated with children who have experienced some form of trauma, such as those who have a child protection history. Indeed, most stakeholders suggested that these property damage cases most likely occurred in the context of crossover children, particularly those in out-of-home care.

Offences at remand and finalisation (116 non-consolidated cases)

7.16 This research aimed to track cases of remanded children from entry to remand to sentencing to see whether the number, type and seriousness of offences changed from remand to case finalisation, and if so, how. This is important because the number, type and seriousness of offences in each case significantly affect both bail and sentencing decisions. If a significant change occurs between remand and case finalisation, this could explain why a child was remanded but did not ultimately receive a custodial outcome. This comparative analysis of offences between remand and case finalisation was only possible for the 116 non-consolidated cases for which children were held on remand.

Changes in offences between remand and finalisation

7.17 Some observations can be made about changes in the number, type and seriousness of offences between remand and case finalisation for the 116 non-consolidated cases in which the offences could be tracked from the beginning of the case to the end:

- Fewer charges were present at finalisation than on entry into remand; just 5% of cases had a single alleged offence at remand but 31% of cases were finalised with a single proven charge. This reduction in the number of offences is to be expected given, for example, plea negotiations and the laying of lesser alternative offences for the same conduct at the beginning of the case.
- The offence types most likely to have been present at remand but not at finalisation were justice procedures offences (present in 44% of cases at remand but 35% of cases at finalisation) and offences against the person (present in 37% of cases at remand but 21% at finalisation). One possible explanation for the fewer offences against the person at finalisation is that the relevant behaviour may have been covered by other offence types in the case, especially in robbery cases that involve the use of actual or threatened force.
- In most cases, the maximum penalty of the most serious offence on entry into remand was the same as the maximum penalty for the most serious offence at finalisation (59%).

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254. Meeting with the Children’s Court of Victoria (29 June 2020); Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020); Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020). Crossover children have involvement with the child protection system and the youth justice system. Children in cases with property damage as the most serious offence were most likely to have committed the offence while on bail (76% compared to 47% of cases that did not have property damage as the most serious offence). This could explain why many of these children were remanded (breaching bail conditions) and why so few received a custodial outcome (it was less serious offending).
255. It is not possible to track specific offences after consolidation (see [5.4]–[5.7]). Two non-consolidated cases are not included in this section as the child in those cases was found unfit to stand trial.
• Also in most cases, the type of most serious offence on entry into remand was the same as the type of most serious offence at finalisation (62%), especially when the most serious offence was a burglary (78%) or robbery (77%) offence.
• The most common types of most serious offence for which the case was finalised with no charges proven were cases with property damage offence as the most serious offence (six of 12 non-consolidated cases) and cases with theft or related offences as the most serious offence (five of 13 non-consolidated cases).

Cases involving family violence

7.18 Since April 2015, the Magistrates’ Court has flagged whether a case occurred in the context of family violence.256 This does not necessarily mean that all alleged offences in the case occurred in a family violence context, but instead that one or more offences were considered to have occurred in that context. Similarly, Victoria Police flag whether offending is said to have occurred in the context of family violence.257 Together these flagging systems have allowed those analysing criminal justice data in Victoria to obtain a far more coherent impression of family violence than has previously been possible.258

7.19 Of the 660 cases for which children were held on remand in 2017, 6% (41 cases), involving five female children and 36 male children, were flagged by police as occurring in the context of family violence.259 Cases finalised in the Melbourne Children’s Court were about one-third as likely to be flagged as involving family violence (3% or 8 of 237 cases) as cases finalised in suburban, rural and regional courts (8% or 33 of 393 cases).260

7.20 In effect, remanded children sentenced in Victoria were about half as likely as all adults to be prosecuted for offending flagged as occurring in the context of family violence. In 2015–16, 11% of the 99,723 cases sentenced in the Magistrates’ Court were flagged as occurring in a family violence context.261 In 2018–19, 19% of all offences recorded by Victoria Police were flagged as family incident related.262

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259. Of the remaining 619 cases, it was unclear in 25 cases whether the alleged offending occurred in the context of family violence, and police reported the offending as not occurring in the context of family violence in 594 cases.
260. It was unclear whether the case was flagged as involving family violence in 22 cases.
261. See Sentencing Advisory Council (2017), above n 256, 34.
Offences in family violence cases

7.21 Figure 35 illustrates the proportion of family violence cases that included particular types of offences on entry into remand. Of the 41 cases flagged as involving family violence, the most common offence types were justice procedures offences (especially breaching intervention orders) in 71% of cases, offences against the person (especially assault) in 59% of cases, and harassment and threat offences (especially threats) in 39% of cases.

Figure 35: Proportion of all cases flagged as involving (41 cases) or not involving (594 cases) family violence that had each offence type in the case

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Cases not flagged as family violence</th>
<th>Cases flagged as family violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offences against justice procedures</td>
<td></td>
<td>61%</td>
</tr>
<tr>
<td>Offences against the person</td>
<td></td>
<td>36%</td>
</tr>
<tr>
<td>Harassment and threat offences</td>
<td></td>
<td>10%</td>
</tr>
<tr>
<td>Theft and related offences</td>
<td></td>
<td>19%</td>
</tr>
<tr>
<td>Property damage</td>
<td></td>
<td>19%</td>
</tr>
<tr>
<td>Burglary offences</td>
<td></td>
<td>20%</td>
</tr>
<tr>
<td>Robbery offences</td>
<td></td>
<td>17%</td>
</tr>
<tr>
<td>Illicit drug offences</td>
<td></td>
<td>8%</td>
</tr>
<tr>
<td>Public order offences</td>
<td></td>
<td>12%</td>
</tr>
<tr>
<td>Traffic and vehicle regulatory offences</td>
<td></td>
<td>7%</td>
</tr>
<tr>
<td>Weapons offences</td>
<td></td>
<td>7%</td>
</tr>
<tr>
<td>Sexual offences</td>
<td></td>
<td>2%</td>
</tr>
<tr>
<td>Dangerous or negligent acts</td>
<td></td>
<td>1%</td>
</tr>
<tr>
<td>Fraud, deception and related offences</td>
<td></td>
<td>2%</td>
</tr>
</tbody>
</table>

263 Of the 29 cases with justice procedures offences, 10 cases involved both a breach of family violence order offence and a commit an indictable offence whilst on bail offence, eight had only a breach family violence order offence, nine had only a commit indictable offence whilst on bail offence, and two had other justice procedures offences.
Figure 35 also includes, for comparison, the proportion of those same offence types in the 594 cases that were expressly not flagged as family violence (it was unclear whether the case had been flagged as family violence in 25 cases). Children remanded for family violence offending were significantly more likely to have an alleged offence against the person in their case. They were four times more likely to have a harassment or threat offence in their case, twice as likely to have a drug offence in their case, and three times more likely to have a sexual offence in their case. In effect, they were more likely to be charged with interpersonal crimes. In comparison, children whose case was not flagged as family violence were more likely to be involved in property offending such as thefts, burglaries and robberies.

Outcomes in family violence cases

The 41 cases flagged as involving family violence received 35 unique case outcomes. Of those, 17% were custodial (six youth justice centre orders) and 83% were non-custodial (10 youth supervision orders, nine probation orders, four good behaviour bonds and six other orders). While these numbers are low, making it difficult to reach any firm conclusions, children remanded for family violence were half as likely to receive a custodial outcome (17% of 35 outcomes) as other remanded children (36% of 532 outcomes).
8. Concluding remarks

8.1 This report has reviewed the demographic characteristics of all children held on remand in Victoria in the 2017–18 financial year; the various factors associated with their remand experience, and the outcomes in the cases for which they were remanded. In doing so, this report provides the first comprehensive account of outcomes in cases for which children have been held on remand in Victoria.

8.2 In total, 442 children were held on remand in Victoria for at least one day in 2017–18. Those children experienced 669 contiguous remand episodes associated with 660 cases that ultimately resulted in 567 unique outcomes.

8.3 The key finding of this research is that even after a significant amount of case consolidation, two-thirds of cases for which children were held on remand (66%) resulted in a non-custodial outcome. There was also a small but significant proportion of custodial sentences that were time served sentences (5% of all outcomes), such that just 29% of remanded children were sentenced to a custodial sentence longer than the time they had already spent on remand.

8.4 The children who received non-custodial outcomes should be the priority focus of initiatives to reduce the number of children held on remand in Victoria. The remand experience can disrupt children’s housing arrangements, social support structures, employment and education, and it can have a criminogenic effect. It also inhibits sentencing courts’ ability to impose a sentence that accounts for the time a child has spent on remand while also allowing sufficient time for the child to achieve meaningful rehabilitation. In that context, this report identifies which children were most likely to receive a non-custodial outcome.

Children who received non-custodial outcomes

8.5 There was almost no variation in the rate at which non-custodial sentences were imposed on children based on their gender (male children and female children were equally likely to receive non-custodial sentences), their age, their status as Aboriginal and Torres Strait Islander, or the initial decision-maker (whether the decision to remand them was made by a court or bail justice). This is not to say that some groups, especially Aboriginal and Torres Strait Islander children, were not disproportionately represented in the remand population, only that once they were in the index population, they were equally likely to receive a custodial outcome.

8.6 Instead, the factors associated with remanded children receiving a non-custodial sentence were spending less time on remand, having a case finalised in a suburban court, having less prior contact with the justice system and being charged with a property damage or threat offence as the most serious offence in the case:

- **Less time spent on remand**: it was expected that children who spent less time on remand would be more likely to receive a non-custodial sentence. The more serious the alleged offending was, the higher the likelihoods were of the child not being granted bail and of the child receiving a custodial sentence. The proportion of children who received a custodial outcome gradually increased for children remanded for between one week (9%) and six weeks (33%). However, the proportion of children who received a custodial outcome suddenly increased to 56% for children remanded for seven weeks or longer. One-quarter of children’s remand episodes were one week or less, and just 9% of those episodes resulted in a custodial outcome. In this context, stakeholders suggested
that some of these children may have been remanded not because they posed an unacceptable risk to the community in their own right but instead because they posed an unacceptable risk due to systems not being in place to facilitate being granted bail.  

**Cases finalised in suburban courts:** remanded children whose case was finalised in a suburban court were much less likely to receive a custodial outcome (26%) than children whose case was finalised in the Melbourne Children’s Court (40%) or rural and regional courts (38%). The higher rate of custodial outcomes in the Melbourne Children’s Court is likely to be due to more serious cases in the Greater Melbourne area being transferred to the specialised Melbourne venue. In contrast, the higher rate of custodial sentences in regional and rural courts is likely to be a product of the increased vulnerabilities of children in those areas, the more limited access to supports that might otherwise facilitate a non-custodial order, and the nature of cases in rural and regional courts more closely resembling those in the Melbourne Children’s Court than those in suburban courts. It may also be related to the absence of specialist Children’s Court locations in rural and regional areas. The Council has recently raised the possibility of Melbourne’s specialised Children’s Court being expanded to rural and regional headquarter courts. The high rate of custodial sentences for remanded children in rural and regional Victoria reinforces the need for that reform.

**Less contact with the justice system:** as is often the case in criminal justice contexts, a past history of contact with the justice system is the strongest predictor of present or future contact, and of receiving more severe responses when that contact occurs. This report has found that just 6% of remanded children had no known prior contact with the justice system before they entered remand, and this does not account for the possibility that they were cautioned or arrested by police in circumstances not captured by the data. Children with a prior remand experience were nearly four times more likely to receive a custodial sentence (57%) than other children (15%). And children with prior offences were more than twice as likely to receive a custodial sentence (42%) as other children (18%).

**Property damage and threat offences:** the likelihood of receiving a custodial sentence varied somewhat by the most serious offence in the case on entry into remand. For the majority of most serious offence types, this ranged from 32% (theft and related offences) to 47% (offences against the person). But two types of most serious offences were especially correlated with a low rate of custodial sentences: property damage offences (12%) and threat offences (10%).

8.7 The Victorian Government has committed to improving remanded children’s access to rehabilitation programs. It can be difficult, however, to deliver offence-related programs during remand because children have not yet pleaded guilty or been found guilty, and there is no way to anticipate when the child might be released. While improving programs for remanded children may advance rehabilitative goals, it does not address the inherently deleterious effects of an episode in custody. Priority should be given to ensuring that all children have access to specialist decision-makers as well as adequate and appropriate bail support, supervision and accommodation services, especially outside business hours when 80% of remand admissions occur. This will enhance Victoria’s broader diversionary endeavour and ensure that remand is not used for children whose risk can be properly managed in the community.

264. Meeting with the Children’s Court of Victoria (29 June 2020), Roundtable Meeting 1 with Youth Justice Stakeholders (6 July 2020), Roundtable Meeting 2 with Youth Justice Stakeholders (7 July 2020).

265. This conclusion is supported by the following: practice directions that facilitate the transfer of Category A and B cases to the Melbourne Children’s Court; the fact that children whose case is finalised in the Melbourne Children’s Court are more likely to have been subject to other ongoing proceedings when they were remanded; the fact that children spend longer on remand than children whose case is finalised in other courts; and the fact that those children were the most likely to receive a custodial sentence requiring more time in custody.

# Appendix 1: Consultation

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting with the Children’s Court of Victoria</td>
<td>29 June 2020</td>
</tr>
<tr>
<td>Roundtable Meeting 1 with Youth Justice Stakeholders (Commission for Children and Young People, Jesuit Social Services, Royal Victorian Association of Honorary Justices, Victoria Legal Aid)</td>
<td>6 July 2020</td>
</tr>
<tr>
<td>Roundtable Meeting 2 with Youth Justice Stakeholders (Centre for Excellence in Child and Family Welfare, Department of Justice and Community Safety, Office of Public Prosecutions, Victoria Police, Victorian Aboriginal Legal Service, Youth Affairs Council Victoria, YouthLaw)</td>
<td>7 July 2020</td>
</tr>
</tbody>
</table>
### Appendix 2: Outcomes in the Children’s Court

#### Table A1: Case outcomes in the Children’s Court of Victoria, by number and proportion each year, 2004–05 to 2017–18

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth residential centre order/youth justice centre order</td>
<td>161 (3%)</td>
<td>159 (3%)</td>
<td>167 (2%)</td>
<td>197 (3%)</td>
<td>199 (3%)</td>
<td>241 (4%)</td>
<td>239 (4%)</td>
<td>212 (5%)</td>
<td>164 (4%)</td>
<td>140 (4%)</td>
<td>151 (4%)</td>
<td>216 (6%)</td>
<td>238 (6%)</td>
<td>278 (7%)</td>
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</tr>
<tr>
<td>Youth attendance order/youth supervision order</td>
<td>269 (5%)</td>
<td>288 (5%)</td>
<td>319 (3%)</td>
<td>372 (4%)</td>
<td>458 (5%)</td>
<td>526 (8%)</td>
<td>476 (9%)</td>
<td>443 (9%)</td>
<td>372 (9%)</td>
<td>412 (11%)</td>
<td>411 (11%)</td>
<td>443 (11%)</td>
<td>407 (11%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td>581 (12%)</td>
<td>654 (12%)</td>
<td>794 (17%)</td>
<td>854 (14%)</td>
<td>946 (16%)</td>
<td>1,120 (18%)</td>
<td>1,023 (19%)</td>
<td>895 (19%)</td>
<td>851 (20%)</td>
<td>792 (21%)</td>
<td>772 (17%)</td>
<td>652 (14%)</td>
<td>471 (12%)</td>
<td>520 (14%)</td>
<td></td>
</tr>
<tr>
<td>Fine</td>
<td>2,040 (41%)</td>
<td>2,382 (43%)</td>
<td>7,137 (67%)</td>
<td>5,013 (56%)</td>
<td>2,343 (35%)</td>
<td>1,669 (26%)</td>
<td>1,235 (19%)</td>
<td>796 (17%)</td>
<td>750 (20%)</td>
<td>792 (21%)</td>
<td>530 (14%)</td>
<td>415 (11%)</td>
<td>544 (14%)</td>
<td>240 (6%)</td>
<td></td>
</tr>
<tr>
<td>Good behaviour bond</td>
<td>1,345 (27%)</td>
<td>1,587 (28%)</td>
<td>1,688 (36%)</td>
<td>1,815 (35%)</td>
<td>1,954 (35%)</td>
<td>1,945 (32%)</td>
<td>1,757 (19%)</td>
<td>1,671 (17%)</td>
<td>1,517 (20%)</td>
<td>1,351 (14%)</td>
<td>1,038 (11%)</td>
<td>949 (11%)</td>
<td>833 (6%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accountable undertaking</td>
<td>533 (11%)</td>
<td>514 (9%)</td>
<td>549 (5%)</td>
<td>653 (7%)</td>
<td>676 (10%)</td>
<td>685 (11%)</td>
<td>624 (11%)</td>
<td>518 (11%)</td>
<td>476 (11%)</td>
<td>348 (9%)</td>
<td>346 (9%)</td>
<td>201 (5%)</td>
<td>197 (4%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youth diversion (court-ordered)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>22 (1%)</td>
<td>702 (19%)</td>
<td>1,136 (28%)</td>
<td>1,312 (34%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discharge/dismissal</td>
<td>13 (&lt;1%)</td>
<td>25 (&lt;1%)</td>
<td>24 (1%)</td>
<td>45 (2%)</td>
<td>118 (3%)</td>
<td>179 (3%)</td>
<td>134 (3%)</td>
<td>158 (3%)</td>
<td>154 (4%)</td>
<td>172 (4%)</td>
<td>159 (4%)</td>
<td>145 (3%)</td>
<td>114 (3%)</td>
<td>79 (2%)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>4,942 (100%)</td>
<td>5,609 (100%)</td>
<td>10,658 (100%)</td>
<td>8,949 (100%)</td>
<td>6,694 (100%)</td>
<td>6,356 (100%)</td>
<td>5,596 (100%)</td>
<td>4,693 (100%)</td>
<td>4,356 (100%)</td>
<td>3,984 (100%)</td>
<td>3,743 (100%)</td>
<td>3,780 (100%)</td>
<td>4,092 (100%)</td>
<td>3,817 (100%)</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 3: Methodology

This appendix describes the methodology that the Council utilised to identify the index population of all children held on remand in a single year, and to then link the index population’s remand episodes with their associated case outcomes.

Data matching

Collecting and analysing the data necessary to complete this report were complex tasks. The remand data in this report was provided by Youth Justice, which oversees data collection in remand centres, while the court hearing data was provided by Court Services Victoria, which oversees data collection in the Children’s Court of Victoria and the Magistrates’ Court of Victoria. By extracting relevant remand and court data for each individual child and manually identifying their course from remand to court, the Council matched relevant remand episodes with associated court outcomes. The Council undertook extensive quality assurance to enable both the identification of the remandee cohort as unique children and the identification of the outcome connected precisely to each remand episode, according to legal and statistical analysis.

Identifying the index population

There was one criterion for inclusion in the current research, namely that the child must have spent at least one day on remand during the 2017–18 financial year. Because some remand episodes for relevant cases may have occurred before and after the 2017–18 financial year, and the Council wanted to capture the entire trajectory of each case, if not each child, the Council requested from Youth Justice three years of remand data, the reference year and the years immediately before and after (the remand data). Further, because cases may have been finalised within days of the commencement of the reference period, the Council requested two years of court outcome data from Court Services Victoria, including 2017–18 and 2018–19 (the outcome data).

Once the data was provided, the first step was to identify, in the remand data, all children who experienced at least one day of remand in 2017–18. Twenty-three children who were only admitted to and released from remand on the same day and had no other longer remand episodes were excluded. This involved reconciling discrepancies in the identities of children between the remand data and the outcome data. For example, name spelling variations and dates of birth sometimes differed between and within records from both datasets. The Council has regularly used an algorithm

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267. In particular, the Council requested the following in relation to each individual child held on remand between 1 July 2016 and 30 June 2019: case and person identifiers; surname; first name; date of birth; gender; Aboriginal and Torres Strait Islander status; ethnicity/country of birth; date of entry into remand; decision-maker on entry into remand; a list of all offences associated with each remand episode (including charge number, offence name, offence statutory reference, ANZSOC division and subdivision and charge status: active/withdrawn/sentenced/struckout); date of exit from remand; and reason for exit from remand. The Council did not request, or utilise, police data regarding children remanded in police cells. Remand admission is recorded as children enter youth justice facilities.

268. In particular, the Council requested the following in relation to each individual child with a case finalised in the Children’s Court between 1 July 2017 and 30 June 2019: case and person identifiers; all hearings associated with each case (date of hearing, location of hearing, type of hearing); all charges associated with each hearing (including charge number, offence name, offence statutory reference); all orders and sentence types associated with each hearing; surname of child; first name; date of birth; gender; Aboriginal and Torres Strait Islander status; ethnicity/country of birth; the prosecuting agency; whether the case was flagged as involving family violence; pre-sentence detention at the date of finalisation; the sentence imposed; and the duration or value of the sentence imposed. A case was considered finalised when there were no active charges associated with the case, which could have been due to case consolidation (which the Council accounted for), a sentence being imposed, or all of the charges being withdrawn, dismissed or otherwise struckout.
called Soundex\textsuperscript{269} – which matches records with similar names, genders and birthdays – to identify individual children automatically, before manual checking.

In total, once those discrepancies were accounted for, 442 children met the criteria for inclusion in the current research. The next step was to combine remand data for all remandees with all relevant outcome data into a spreadsheet per remandee. Once those 442 spreadsheets had been created, the Council coded the children’s trajectories from remand to relevant court hearings and ultimate outcome.

### Identifying the demographics of the index population

The data provided by Youth Justice relating to all remand episodes for individual children included the name and gender of the remandees as well as their self-reported ethnicity and Aboriginal and Torres Strait Islander status. These data points were used as recorded throughout the analysis except for rare instances in which court data contradicted the gender or the birthdate. For those remandees, the most common gender and date of birth recorded against the confirmed identity of the remandee were coded into the analysis.

### Identifying the outcomes in cases with remand episodes

The most novel aspect of this methodology is the use of alleged offences to connect remand episodes with court outcomes. Given that the remand and outcome datasets both included offence data it was possible to match remand episodes with court hearing data. In coding the association between remand episodes and Children’s Court hearings, the Council considered the similarity of the offences recorded in the remand data and the offences recorded at a hearing that occurred at approximately the same time as remand (either entry or exit). There were several steps to building this association:

- If the hearing date matched with either the entry date or (for short remand durations of one to three days) the exit date of a remand episode, the offences at each event were compared:
  - Then, if the offences were alike, the Council considered that the episode and the hearing matched. If there were more offences in the hearing data than the remand data, the offences in the hearing data were entered into the remandee’s profile as the offences on entry into remand. This was due to remand data recording each type of offence charged (for example, unlawful assault) but not duplicate instances of those charges (for example, two charges of unlawful assault are recorded as just one charge).

- If the hearing date did not match with either the entry or the exit date of a remand episode, the Council considered other hearings available for the child:
  - If the offences recorded for the remand episode were found recorded against a hearing of an unrelated date, the Council considered the episode to match this hearing. In some instances, for example, the episode matched the hearings of a case after consolidation had already occurred.

- The first hearing of the relevant case was coded as the case start date for the matched remand episode. In most instances, the case start date coincided with the commencement of the matched remand episode. There were, though, some instances in which the case start date was substantially earlier than the remand period.

- The relevant case’s final outcome data was used to record the disposition type and date of finalisation. Some cases were resentenced if the child had breached their sentencing order. These subsequent resentencing exercises were not included in the analysis in this research, which was exclusively concerned with case outcomes at first instance.

Appendix 3: Methodology

The Courtlink data entry platform used by the Children's Court of Victoria and the Magistrates' Court of Victoria was accessed at any time that the data matching was not definitive enough for mapping a trajectory and further information was required about an individual and their case.

Identifying the most serious offence at remand/finalisation

In this report, the Council analysed whether there were any significant changes to the nature of the offences that a child was initially charged with compared with the charges found proven at the finalisation of their proceedings. This analysis was conducted to determine the proportion of cases in which the most serious offence that was initially charged might become a less serious offence. It was also conducted to establish whether initial charging practices may be impacting decisions to bail or remand a child, particularly given that it influences the decision-maker’s perception of the seriousness of the alleged offending and the likely sentence the child will receive, both of which are key considerations in deciding whether to bail or remand a child.

In referring to offence types, the Council adopted the language of the Australian Bureau of Statistics and the Australian and New Zealand Standard Offence Classification. In this report, ‘offence type’ refers to the ANZSOC subdivision of an offence. The Council made two changes to the ANZSOC classification of specific offences for the purposes of this report: carjacking offences were classified as robbery offences instead of theft offences, and home invasion offences were classified as burglary offences instead of offences against the person.

In most Council research, the most serious offence is classified by identifying the offence that received the highest penalty in the case upon finalisation. This is not, however, possible in the context of remand episodes since the offences have not yet been finalised or sentenced. As such, the Council reviewed legislation to identify the maximum penalty for the nearly 500 offences that the children in the index population had been charged with. At the time of entry for any given remand episode, the offence with the highest maximum penalty – which is a yardstick for the seriousness of an alleged offence – was considered the most serious offence. Where two or more offences equally had the highest maximum penalty, which occurred in 254 cases, a judgment call was made about which offence type is usually the most serious (for example, threats to kill are usually more serious than criminal damage, despite both offences having a maximum penalty of 10 years’ imprisonment). This is the most reliable means of identifying the most serious offence in a case without reviewing the facts involved in each case and making a subjective assessment about which offence was the most serious.

Table A2: Hierarchy of offences

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Offence</th>
<th>Offence provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sexual penetration of a child under 12 years</td>
<td>Crimes Act 1958 (Vic) s 49A</td>
</tr>
<tr>
<td>2</td>
<td>Rape</td>
<td>Crimes Act 1958 (Vic) s 38</td>
</tr>
<tr>
<td>3</td>
<td>Aggravated carjacking</td>
<td>Crimes Act 1958 (Vic) s 79A</td>
</tr>
<tr>
<td>4</td>
<td>Armed robbery</td>
<td>Crimes Act 1958 (Vic) s 75A</td>
</tr>
<tr>
<td>5</td>
<td>Aggravated home invasion (assault, offensive weapon)</td>
<td>Crimes Act 1958 (Vic) s 77B</td>
</tr>
<tr>
<td>6</td>
<td>Aggravated home invasion (steal, offensive weapon)</td>
<td>Crimes Act 1958 (Vic) s 77B</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Offence</th>
<th>Offence provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Home invasion</td>
<td>Crimes Act 1958 (Vic) s 77A</td>
</tr>
<tr>
<td>8</td>
<td>Aggravated burglary (person present)</td>
<td>Crimes Act 1958 (Vic) s 77</td>
</tr>
<tr>
<td>9</td>
<td>Aggravated burglary (offensive weapon)</td>
<td>Crimes Act 1958 (Vic) s 77</td>
</tr>
<tr>
<td>20-year maximum penalty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Intentionally causing serious injury</td>
<td>Crimes Act 1958 (Vic) s 16</td>
</tr>
<tr>
<td>2</td>
<td>Attempted armed robbery</td>
<td>Crimes Act 1958 (Vic) s 321M</td>
</tr>
<tr>
<td>15-year maximum penalty</td>
<td></td>
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</tr>
<tr>
<td>1</td>
<td>Recklessly causing serious injury</td>
<td>Crimes Act 1958 (Vic) s 17</td>
</tr>
<tr>
<td>2</td>
<td>Carjacking (use force)</td>
<td>Crimes Act 1958 (Vic) s 79</td>
</tr>
<tr>
<td>3</td>
<td>Robbery</td>
<td>Crimes Act 1958 (Vic) s 75</td>
</tr>
<tr>
<td>4</td>
<td>Traffick cocaine</td>
<td>Drugs, Poisons and Controlled Substances Act 1986 (Vic) s 71AC</td>
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<tr>
<td>5</td>
<td>Retain stolen goods</td>
<td>Crimes Act 1958 (Vic) s 88</td>
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<td>10-year maximum penalty</td>
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</tr>
<tr>
<td>1</td>
<td>Attempted robbery</td>
<td>Crimes Act 1958 (Vic) s 321M</td>
</tr>
<tr>
<td>2</td>
<td>False imprisonment</td>
<td>Crimes Act 1958 (Vic) s 320</td>
</tr>
<tr>
<td>3</td>
<td>Stalking</td>
<td>Crimes Act 1958 (Vic) s 21A</td>
</tr>
<tr>
<td>4</td>
<td>Intentionally causing injury</td>
<td>Crimes Act 1958 (Vic) s 18</td>
</tr>
<tr>
<td>5</td>
<td>Making a threat to kill</td>
<td>Crimes Act 1958 (Vic) s 20</td>
</tr>
<tr>
<td>6</td>
<td>Assault</td>
<td>Crimes Act 1958 (Vic) s 31</td>
</tr>
<tr>
<td>7</td>
<td>Burglary</td>
<td>Crimes Act 1958 (Vic) s 76</td>
</tr>
<tr>
<td>8</td>
<td>Reckless conduct endangering life</td>
<td>Crimes Act 1958 (Vic) s 22</td>
</tr>
<tr>
<td>9</td>
<td>Property damage</td>
<td>Crimes Act 1958 (Vic) s 197</td>
</tr>
<tr>
<td>10</td>
<td>Unlawfully possess firearm</td>
<td>Firearms Act 1996 (Vic) s 5(1)</td>
</tr>
<tr>
<td>11</td>
<td>Theft of a motor vehicle</td>
<td>Crimes Act 1958 (Vic) s 74</td>
</tr>
<tr>
<td>12</td>
<td>Theft</td>
<td>Crimes Act 1958 (Vic) s 74</td>
</tr>
<tr>
<td>13</td>
<td>Theft from a motor vehicle</td>
<td>Crimes Act 1958 (Vic) s 74</td>
</tr>
<tr>
<td>14</td>
<td>Theft from a shop</td>
<td>Crimes Act 1958 (Vic) s 74</td>
</tr>
<tr>
<td>15</td>
<td>Obtain property by deception</td>
<td>Crimes Act 1958 (Vic) s 81</td>
</tr>
<tr>
<td>16</td>
<td>Receive stolen mail-receptacle</td>
<td>Crimes Act 1958 (Vic) s 471</td>
</tr>
<tr>
<td>5-year maximum penalty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Recklessly causing injury</td>
<td>Crimes Act 1958 (Vic) s 18</td>
</tr>
<tr>
<td>2</td>
<td>Common law assault</td>
<td>Crimes Act 1958 (Vic) s 320</td>
</tr>
<tr>
<td>3</td>
<td>Affray</td>
<td>Crimes Act 1958 (Vic) s 195H</td>
</tr>
<tr>
<td>4</td>
<td>Threat to inflict serious injury</td>
<td>Crimes Act 1958 (Vic) s 21</td>
</tr>
<tr>
<td>5</td>
<td>Resist police</td>
<td>Crimes Act 1958 (Vic) s 31</td>
</tr>
</tbody>
</table>
Glossary

**Case**
One or more charges heard as part of the same proceedings. Depending on the context, this can refer to a case before or after consolidation. See consolidation.

**Case outcome**
In this report, the end result of a case, which could be a sentence, placement on a court-ordered diversion or a dismissal of all charges.

**Charge**
In this report, a count of an offence that is alleged to have been committed.

**Child**
In this report, a person aged 10–17 at the time of their offending but aged under 19 at the commencement of criminal proceedings. See Children, Youth and Families Act 2005 (Vic) s 3(1) (definition of child).

**Consolidation**
A process whereby children subject to multiple sets of criminal proceedings can plead guilty to some or all of the charges in those proceedings and have them merged into one consolidated case. This can streamline the child’s contact with the court, and it allows charges relating to separate offending to be finalised together. Consolidated cases can be consolidated with other cases. See case.

**Crossover children**
Children who have had contact with both the criminal justice and the child protection systems.

**Dispositions**
The various orders that a court can make to finalise a matter. One of the ways that a court can dispose of a matter is by sentencing the accused.

**Diversion**
A pre-plea option that allows a child who successfully completes a diversion plan to have their charges discharged without a criminal record. The Children’s Court grants an adjournment under the Children, Youth and Families Act 2005 (Vic) div 3A for the child to participate in and complete a diversion program. Eligibility for diversion requires the accused to acknowledge responsibility for the offending, as opposed to entering a guilty plea.

**Horn of Africa**
A peninsula in east Africa containing Djibouti, Eritrea, Ethiopia and Somalia.
**Index population**
In this report, all children who spent at least one day on remand between 1 July 2017 and 30 June 2018. See child.

**Māori and Pasifika**
The term Pasifika is variously used to refer to ethnic groups in the Pacific Islands (predominantly Polynesia), including Samoan, Cook Islander, Māori, Tongan, Niuean, Tokelauan and Tavaluan. In this report, Māori and Pasifika children refers to children who self-identified as Māori, Samoan, Tongan and Cook Islander.

**Reference period**
In this report, the period from 1 July 2017 to 30 June 2018.

**Remand**
Being held in custody pending the finalisation of criminal proceedings. Also known as unsentenced detention.

**Sentence**
An order made by a court and imposed on an accused found guilty of an offence bringing the criminal proceeding to an end (pending any appeal). In this report, not all case outcomes are sentences such as a term of imprisonment or a fine. For example, court-ordered diversion and a dismissal of all charges are not sentences.

**Sentenced detention**
Being held in custody as a result of receiving a custodial sentence.

**Unsentenced child**
A child charged with criminal offences whose case has not yet been finalised, whether or not they are held on remand. See remand.

**Unsentenced detention**
Being held in custody pending the finalisation of criminal proceedings. Also known as remand.
References

Bibliography


**Case law**

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*CNK v The Queen* [2011] VSCA 228 (10 August 2011)

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*Markarian v The Queen* [2005] HCA 25 (18 May 2005)

*Postiglione v The Queen* (1997) 189 CLR 295

*R v Mills* [1998] 4 VR 235

*Re Ceylan* [2018] VSC 361 (29 June 2018)
References

Re DG [2019] VSC 622 (23 September 2019)
Re FA [2018] VSC 372 (6 July 2018)
Re HS [2018] VSC 410 (3 May 2018)
Re JM [2019] VSC 156 (13 March 2019)
Re JO [2018] VSC 438 (7 June 2018)
Re LT [2019] VSC 143 (6 March 2019)
Re NB [2019] VSC 37 (6 February 2019)
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