

Threat Offences in Victoria: Sentencing Outcomes and Reoffending

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Threat Offences in Victoria: Sentencing Outcomes and Reoffending

Published by the Sentencing Advisory Council
Melbourne, Victoria, Australia

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ISBN 978-1-925071-62-7 (Online)

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

Copyedited and typeset by Catherine Jeffreys AE

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

This report reflects the law as at 31 May 2021.

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Acknowledgments

The Council would like to thank Court Services Victoria and the Crime Statistics Agency for providing the data used in this report. The Council would also like to thank the following for their invaluable contributions and insights: the Magistrates' Court of Victoria, Victoria Police, Associate Professor Troy McEwan (Swinburne University of Technology), Victoria Legal Aid, Domestic Violence Victoria, the Department of Justice and Community Safety, and the Office of Public Prosecutions.

Executive summary

Threat offences – most notably threats to kill or seriously injure another person – are common and serious. They often occur in breach of court orders, and are frequently linked to family violence and a variety of other offences. To date, however, they have received little attention as a discrete form of offending.

This report presents the first empirical analysis of threat offences recorded and sentenced in Victoria, along with an analysis of the offending trajectories of sentenced threat offenders.

Understanding threat offences

This report investigates five threat offences: threat to kill and threat to inflict serious injury (and their Commonwealth counterparts), threat to destroy or damage property, threat to commit a sexual offence, and threat to assault an emergency worker. Their maximum penalties are between five and 10 years' imprisonment.

Research suggests that these types of threats not only cause immediate fear to victims but also often involve further and ongoing harms (such as limiting victims' freedom of choice). They also indicate a risk that the offender will commit violence. These harms are particularly acute when the threatener and the victim are in a close relationship.

A review of case law shows that courts are aware of the harms and risks associated with threat offences. A threat is considered more objectively serious when it is made in person, is explicit, is premeditated, involves a breach of trust, involves the use of a weapon, has had a severe effect on the victim or is supported by circumstances suggesting the threat will be carried out. Courts have also especially recognised the severity of threats in the context of family violence, where such threats are often a breach of trust made in the context of coercive control and associated with a real risk of further offending.

Recorded threat offences in Victoria

In the eight years to 31 December 2019, police recorded just over 66,000 threat offences in Victoria, with the number recorded each year increasing during that time. Nearly two-thirds (64%) of recorded threat offences were threats to kill, and more than half were associated with family violence.

Sentenced threat offences in Victoria

In the five years to 31 December 2019 (the reference period), 18,775 threat charges were sentenced in 13,846 cases in Victoria. In 37% of cases, the threat offence was the principal (most serious) offence in the case, while in the other 63% the threat was co-sentenced with a more serious offence. Like recorded threat offences, most *sentenced* threat offences were threats to kill (54%) and most were linked to family violence (58%). The vast majority of threat charges were sentenced in the Magistrates' Court (87%), while 10% were sentenced in the Children's Court and 3% were sentenced in the higher courts.

Most sentenced threat offenders (88%) were males. Their threat offending tended to be more serious: they more commonly were sentenced for threat to kill, more commonly made their threats in a family violence context, and more often were sentenced in the higher courts.

Sentencing outcomes

In the Magistrates' Court, the most frequently imposed sentencing outcome was imprisonment (35% of charges), followed by a community correction order (31%). The rate of imprisonment in the Magistrates' Court increased over time, perhaps due to changes in bail legislation resulting in more short (even time served) prison sentences, as well as increases in the number of threats that occurred in a family violence context. In the Magistrates' Court, custodial sentences were especially associated with family violence and gender (with men and family violence offenders receiving more prison sentences). This is probably linked to the prevalence of aggravating features in family violence cases involving threats against intimate partners.

In the higher courts, three-quarters (75%) of threat charges received prison sentences.

In contrast, custodial sentences were rare in the Children's Court, with just 7% of threat offences receiving a youth justice centre order or youth residential centre order. Moreover, threat cases with a family violence indicator in the Children's Court received less serious sentencing outcomes than non-family violence cases. This is most likely because the dynamics of children's family violence offending differ significantly from the gendered intimate partner dynamics of adult family violence cases in the Magistrates' Court; family violence sentenced in the Children's Court often occurs within the parent-child relationship, and child perpetrators tend to be vulnerable.

Offences co-sentenced alongside threats

Threat offences are rarely sentenced alone. Just 8% of the 13,846 cases involving threat offences during the reference period had a single offence in total, while the other 92% of cases involved multiple offences. Indeed, there were 105,179 charges sentenced in those cases in total: an average of 7.6 charges per case.

Where property damage or violence offences were co-sentenced alongside threat offences, they usually took place on the same day (60% and 76% respectively). Co-sentenced breaches of family violence orders, in contrast, had more often occurred sometime *after* the threat offence (39% after compared to 36% on the same day). This suggests that a threat offence is an indicator of future family violence.

The offence types co-sentenced alongside threat offences varied slightly by jurisdiction. In the Magistrates' Court, the most common co-sentenced offences were assault, bail-related offences, breaches of family violence orders and property damage, each of which was especially prevalent in family violence cases. In the higher courts, more than one-third of threat offenders were co-sentenced with causing injury, followed by property damage and assault. The number of charges per case in the Children's Court was especially high (averaging 11.5), with the most common offences being assault, property damage and bail-related offences. However, any analysis of co-sentenced offences in the Children's Court should be regarded with caution as multiple cases are often consolidated and sentenced together.

Given that assault/causing injury offences and property damage are closely related to the most common types of threat offences (threat to harm and threat to damage property), this profile of co-sentenced offending suggests that many sentenced threat offenders do follow through with threats to damage property or to commit violence.

Reoffending

Threat offenders had very high rates of prior and subsequent offending. One-third were sentenced again within 12 months of being sentenced for a threat offence. Half were sentenced again within two years, and 58% within three years. This reoffending rate is double the rate for all offenders in Victoria. Prior offending rates were also high (52% had been sentenced in the previous three years). Just 30% of threat offenders had neither a prior nor a subsequent offence within three years of their threat offence.

Reoffending rates were higher for children than for adults, and for men than for women; however, there was no substantial difference in reoffending rates between family violence and non-family violence offenders. Prior offending was a strong predictor of subsequent offending. And prior violence was a strong predictor of subsequent violence. The most common subsequent offences were bail-related offences and breaches of family violence orders, though violent reoffending was also common (32% of all threat offenders).

Implications of findings

Risk assessment protocols in Victoria frequently flag threats as a significant risk factor for future, ongoing or escalating offending, particularly in a family violence context. Similarly, courts are clearly aware of the seriousness of threat offending; in the adult courts, imprisonment is the most frequently imposed sentence for threat offences, particularly in family violence cases.

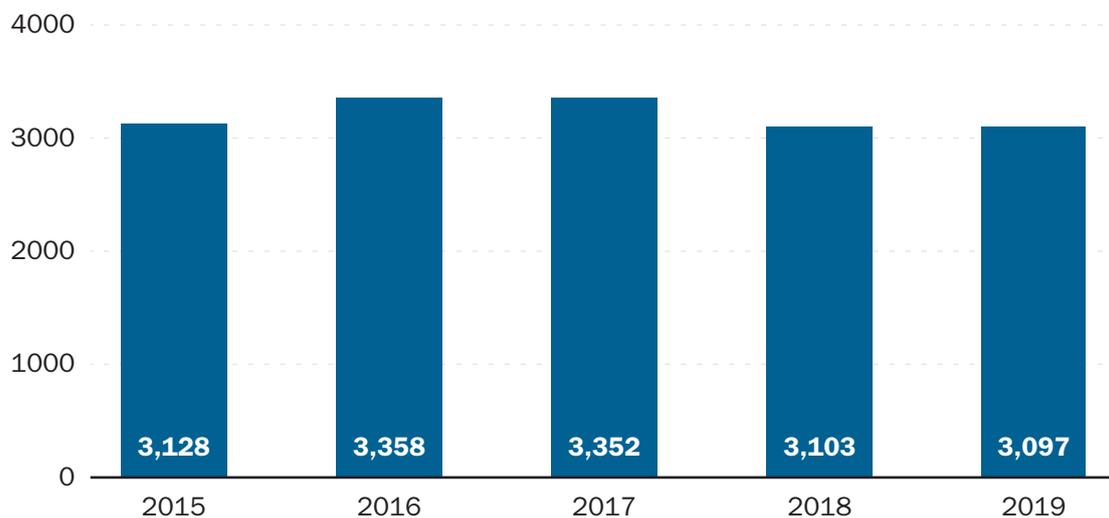
The data in this report confirms the seriousness of threat offending – it is linked to serious harms for victims and frequently occurs in a family violence context. The extraordinarily high reoffending rates associated with threat offending suggest it is perhaps even more of a risk factor for ongoing or escalating offending than previously understood. Many stakeholders consulted by the Council suggested that threat offending, especially where it occurs outside a family violence context, is linked to poverty, homelessness, addiction, neurodisability and other forms of criminogenic need.

In this context, it appears that more research into threat offending may be useful, where it is treated as a distinct type of offending rather than as a subset of violent offending, the greater numbers of which may obscure the characteristics of threat offending specifically. It may also be useful for those responsible for risk assessment protocols in Victoria – especially, but not exclusively, in family violence risk assessment – to review those protocols in light of the findings in this report and consider further emphasising the significance of threats as a risk factor and/or more clearly distinguishing between threatened and actual violence.

1. Introduction

I.1 Threats to kill or seriously injure another person – as well as other types of threats – are common and very serious. More than 3,000 charges of threat to kill or threat to inflict serious injury are sentenced each year in Victoria (see Figure 1). Over the five years to 31 December 2019 (the reference period), threat offences were present in 3% of cases sentenced in the Magistrates' Court, 4% of cases sentenced in the higher courts and 7% of cases sentenced in the Children's Court.¹

Figure 1: Number of charges of threat to kill and threat to inflict serious injury sentenced in Victoria, all courts, 2015 to 2019



- I.2 Previous research by the Council has found that threat to kill and threat to inflict serious injury are the two most common serious offences committed by people serving a community correction order:² They are common prior and subsequent offences among offenders who breach family violence orders,³ and among children who reoffend following sentence.⁴ Threats are also well-recognised risk factors for future family violence.⁵
- I.3 Despite the evident significance of threat offending, however, analysis of sentencing outcomes for threat offences in Victoria has so far been limited. This report addresses that gap.

1. Over this period, 507,596 cases were sentenced in total: 479,936 in the Magistrates' Court, 8,987 in the higher courts and 18,673 in the Children's Court.

2. Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2018–19* (2020) 11; Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2017–18* (2019) 9; Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2016–17* (2018) 10; Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2019–20* (2021) 11.

3. Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016) 30, 35–36.

4. Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016) 29.

5. See for example, Victorian Government, *Family Violence Multi-Agency Risk Assessment and Management Framework* (2018) 28.

Scope and aims of this report

- 1.4 Chapter 2 of this report reviews the legal and criminological literature on the harms and sentencing of threat offending. The report then analyses police and court data for the five years to 31 December 2019 to identify the following:
- **Prevalence:** How many threat offences are recorded by Victoria Police each year? How many threat offences are sentenced by courts each year?
 - **Demographics:** What was the age and gender of threat offenders, and did age and gender vary between recorded and sentenced threat offences?
 - **Family violence:** What proportion of recorded and sentenced threat offences was committed in a context suggestive of family violence? Did this vary between cases involving male and female offenders?
 - **Sentencing:** What sentences were imposed for threat offences?
 - **Co-sentenced offences:** Which offences were most commonly co-sentenced with threat offences? Did these vary between family violence and non-family violence cases, or cases involving men and cases involving women?
 - **Prior and subsequent offending:** Which other offences were committed by threat offenders in the three years before and after their index threat offence? Did offending vary between family violence and non-family violence cases, or cases involving male and female offenders?

Emphasis and exclusions

- 1.5 This report focuses primarily on what the Council describes as *pure threat offences*: offences where the threat is the whole underlying offence. These include:
- Threat to kill;⁶
 - Threat to inflict serious injury;⁷
 - Threat to destroy or damage property;⁸
 - Threat to commit a sexual offence;⁹ and
 - Threat to assault an emergency worker.¹⁰
- 1.6 Terrorism, terrorism-related offences (such as bomb hoaxes), blackmail and extortion are excluded, as these offences involve either additional elements beyond the threat itself or a threat that is not necessarily made against a specific, identifiable victim. Threats to share intimate images are excluded because the Council recently investigated those threats in a separate report.¹¹ Assaults by threatened imminent application of force (psychic assault) are also excluded because the available data does not distinguish them from assault by application of force. The latter exclusion is unlikely to result in any significant loss of data for analysis; police data on offences against emergency workers suggests that almost all assaults occur by application of force, rather than by threat of force.¹²

6. *Crimes Act 1958 (Vic)* s 20. For some purposes, the Commonwealth offence of using a carriage service to make a threat to kill is also analysed: *Criminal Code Act 1995 (Cth)* s 474.15(1).

7. *Crimes Act 1958 (Vic)* s 21. For some purposes, the Commonwealth offence of using a carriage service to make a threat to seriously injure is also analysed: *Criminal Code Act 1995 (Cth)* s 474.15(2).

8. *Crimes Act 1958 (Vic)* s 198(a). Threats to damage the offender's own property have been excluded because the offence includes an additional mental element: *Crimes Act 1958 (Vic)* s 198(b). There were very low numbers of the offence under section 198(b): 30 recorded offences and three sentenced offences during the reference period.

9. *Crimes Act 1958 (Vic)* s 43.

10. *Crimes Act 1958 (Vic)* s 31(1)(b). Threats to assault persons assisting an emergency worker have been excluded due to low numbers.

11. Sentencing Advisory Council, *Sentencing Image-Based Abuse Offences in Victoria* (2020).

12. Between 2015 and 2019, 12,919 physical assaults on police and emergency workers were recorded, compared to 494 threats to assault under section 31(1)(b) of the *Crimes Act 1958 (Vic)* (4%).

2. Legal analysis and literature on harm

- 2.1 This chapter outlines the legal context of threat offences in Victoria, including the legislation criminalising threats and the case law on sentencing threat offences.
- 2.2 This chapter then discusses the nature of the harms involved in threat offending. It identifies three main harms associated with threat offending and discusses the ways in which case law responds to those harms. It also discusses the criminological and psychological research on threat offences, their motivation and their association with future serious offending.

Offence elements and maximum penalties

- 2.3 This report addresses five types of threat offences. Table 1 identifies those five types, their associated maximum penalties and (for comparison) the maximum penalties for the substantive counterpart to each threat offence (i.e. the offence committed if the offender intentionally carries out the threatened behaviour).

Table 1: Maximum penalties for threat offences and corresponding substantive offences¹³

Offence description	Maximum penalty (threat)	Maximum penalty (substantive offence)
Threat to kill	10 years ^(a)	Life (murder) ^(b)
Threat to inflict serious injury	5 years (Vic) ^(c) 7 years (Cth) ^(d)	20 years (causing serious injury intentionally) ^(e)
Threat to commit a sexual offence	5 years ^(f)	25 years (rape) ^(g) 10 years (sexual assault) ^(h)
Threat to destroy or damage property	5 years ⁽ⁱ⁾	10 years (destroy or damage property) ^(j)
Threat to assault an emergency worker	5 years ^(k)	5 years (assault an emergency worker on duty) ^(l)

(a) *Crimes Act 1958* (Vic) s 20; *Criminal Code Act 1995* (Cth) s 474.15(1).

(b) *Crimes Act 1958* (Vic) s 3(1)(a). The standard sentence for murder is 25 years in most cases: *Crimes Act 1958* (Vic) s 3(2).

(c) *Crimes Act 1958* (Vic) s 21.

(d) *Criminal Code Act 1995* (Cth) s 474.15(2).

(e) *Crimes Act 1958* (Vic) s 16. Causing serious injury recklessly carries a maximum penalty of 15 years: *Crimes Act 1958* (Vic) s 17. Causing injury intentionally carries a maximum penalty of 10 years, and causing injury recklessly carries a maximum penalty of five years: *Crimes Act 1958* (Vic) s 18.

(f) *Crimes Act 1958* (Vic) s 43. While this offence is described as a threat to commit a sexual offence generally, the provision specifies that it is premised specifically on threats to 'rape or sexually assault' the victim or another person: *Crimes Act 1958* (Vic) s 43(1)(a).

(g) *Crimes Act 1958* (Vic) s 38(2). The standard sentence for rape is 10 years: *Crimes Act 1958* (Vic) s 38(3).

(h) *Crimes Act 1958* (Vic) s 40.

(i) *Crimes Act 1958* (Vic) s 198(a).

(j) *Crimes Act 1958* (Vic) s 197(1).

(k) *Crimes Act 1958* (Vic) s 31(1).

(l) *Crimes Act 1958* (Vic) s 31(1).

13. For the purposes of Table 1, substantive offences assume the offender intended the harm caused. Where multiple offences might correspond, the closest matching offence has been selected.

- 2.4 Each of the above threat offences encompasses a threat made by a person to another person, to harm the victim or a third person.¹⁴ None requires that the victim *actually* believes that the threat will be carried out, only that the threatener has the requisite state of mind and that the threat expresses the threatened conduct in a sufficiently clear way. For example, a threat to 'shoot' a victim may not be sufficiently clear to support a charge of threat to kill; it would, however, support a charge of threat to inflict serious injury.¹⁵
- 2.5 Threats may be conditional, so long as they are sufficiently credible to support the mental elements of the offence.¹⁶ Threats may be made by words or conduct or both; they may be explicit or implicit, so long as an intention to carry out the specified conduct is conveyed.¹⁷ This also means that verbal threats that would not otherwise support a threat charge may be rendered sufficiently clear by the surrounding conduct.¹⁸ Finally, it is not necessary for the threatener to be the person who would cause the harm.¹⁹
- 2.6 The mental elements of the offences vary. Threat to kill, threat to inflict serious injury and threat to commit a sexual offence require intention or recklessness as to whether the victim believes the threat will be carried out, with recklessness defined as a belief that the victim will probably believe the threat will be carried out.²⁰ Threat to destroy or damage property, however, requires intention; recklessness about whether the victim believes the threat will be carried out does not suffice.²¹ In each case, the mental element distinguishes genuinely criminal threats from the more common joking or exaggerated threats that may arise in ordinary interactions.²²
- 2.7 The offence of threat to commit a sexual offence came into operation on 1 July 2015, replacing the previous offence of threat to assault with intent to rape.²³ The previous offence was considered unclear.²⁴ Unlike the other offences, threats to destroy or damage property valued over \$100,000 are not triable summarily.²⁵

14. Threats to damage property include property jointly owned by the threatener and another. It is arguable that threats to kill or seriously injure might also cover a threat of suicide, but if so, the charge does not appear to be regularly applied in that way: in *Ballantyne v The Queen*, the offender threatened to kill both himself and his victim, but only the threat against the victim resulted in a charge of threat to kill: *Ballantyne v The Queen* [2020] VSCA 115 (11 May 2020) [2], [7]. Such threats, when made over the phone or internet, are also sometimes charged using the Commonwealth offence of using a carriage service to menace, harass or cause offence: see Sentencing Advisory Council (2020), above n 11, 43; *Criminal Code Act 1995* (Cth) s 474.17.

15. *R v Leece* [1995] ACTSC 28 (30 March 1995) [33]; Ian Freckelton and Kerryn Cockroft, *Indictable Offences in Victoria* (7th ed., 2020) 253.120.

16. *R v Leece* [1995] ACTSC 28 (30 March 1995) [37]; Judicial College of Victoria, '7.4.10: Threats to Kill', *Criminal Charge Book* (Judicial College of Victoria, 2012) <<https://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#4983.htm>> at 10 May 2021, [8]; Judicial College of Victoria, '7.4.11: Threats to Inflict Serious Injury', *Criminal Charge Book* (Judicial College of Victoria, 2015) <<https://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#4988.htm>> at 10 May 2021, [10]. Some conditional threats may constitute the use of 'standover tactics', an aggravating feature of the offence: see *Latorre v R* [2012] VSCA 280 (23 November 2012) [191]. On the other hand, a conditional threat where the threatened person is entitled *not* to comply with the condition might be characterised either as hypothetical or as justifying the threat in self-defence: *R v Leece* [1995] ACTSC 28 (30 March 1995) [25], [37]; *Crimes Act 1958* (Vic) s 322K.

17. *Crimes Act 1958* (Vic) s 43(2); *R v Rich* (Victorian Court of Appeal, Winneke P, Brooking and Buchanan JJA, 19 December 1997), 9; Judicial College of Victoria (2012), above n 16, [9]–[17]; Judicial College of Victoria (2015), above n 16, [11]–[19].

18. For example, in *Gale v The Queen* [2014] VSCA 168 (7 August 2014) [36], the court stated: '[i]f viewed in isolation, the phrase "I will f**k you up" lacks precision, and could not possibly form a proper basis for a threat to inflict serious injury. However, that phrase takes on a different complexion when considered in light of the circumstances surrounding the applicant's offending. He had, less than an hour before sending the text to Mr Edgell, broken into his estranged partner's home, under cover of darkness, wielding a cattle prod ... [O]ne cannot ignore the fact that the text was sent as part of a course of conduct that involved stalking and the commission of an aggravated burglary'.

19. *Barbaro v Quilty* [1999] ACTSC 119 (11 November 1999) [62]–[63].

20. For threats to commit a sexual offence, this definition of recklessness is legislated. *Crimes Act 1958* (Vic) ss 20, 21 43; *R v Crabbe* [1985] HCA 22 (26 May 1985) [10]; *R v Campbell* [1997] 2 VR 585 (22 August 1995), 592; *R v Nuri* [1990] VR 641 (1 December 1989), 643–644; *R v Sofa* (Victorian Court of Appeal, Crockett, O'Bryan and McDonald JJ, 15 October 1990), 12; Judicial College of Victoria (2012), above n 16, [18]–[23]; Judicial College of Victoria (2015), above n 16, [20]–[25].

21. *Crimes Act 1958* (Vic) s 198; *Criminal Code Act 1995* (Cth) s 474.15.

22. See Lisa J. Warren et al., 'Threats to Kill: A Follow-up Study' (2007) 38 *Psychological Medicine* 599, 603.

23. *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic) s 4, repealing the offence of threat to assault with intent to rape in *Crimes Act 1958* (Vic) s 40 (repealed) and replacing it with the offence of threat to commit a sexual offence in *Crimes Act 1958* (Vic) s 43.

24. This is particularly in respect of its mental elements: Department of Justice, *Review of Sexual Offences: Consultation Paper* (2013) 125–128.

25. *Criminal Procedure Act 2009* (Vic) s 28, sch 2 cl 4.23.

Threats to assault an emergency worker

- 2.8 Threats to assault an emergency worker (or anyone assisting an emergency worker) differ from the other threats discussed in this report in that the victim must be a person who has a certain role. The definition of *emergency worker* is quite broad. It includes an emergency worker on duty, a youth justice custodial worker on duty, a custodial officer on duty, and any person assisting such a worker on duty.²⁶
- 2.9 Threats to assault an emergency worker must be made both to and regarding the victim; it is not sufficient that the offender threatened, even credibly, to assault a third party. Threats to assault an emergency worker (or anyone assisting them) also require knowledge or recklessness as to the victim's status; the offender must know or be reckless about whether the other person is an emergency worker.²⁷ Further, there must be an intention that the victim will believe the threat; recklessness will not suffice.²⁸
- 2.10 The offence of threat to assault an emergency worker is contained in the same section as the substantive offence of assault (or resist or obstruct) an emergency worker; the definition of 'assault' in that section requires the actual application of force.²⁹ Because of the lack of statutory distinction between assault, threat to assault, resist and obstruct, there can be some overlap between them.³⁰ This suggests that the 'threat to assault' part of this section may be aimed at threats of the immediate application of force more than threats of intentional action in the more distant future.³¹ This may go some way to explaining the relative rarity of these cases compared to both physical assaults of emergency workers and other threats: it may be rare that an offender who threatens to assault an emergency worker fails to actually assault or resist the emergency worker, or it may be that offence descriptions do not always distinguish a threatened assault from a physical assault.

The psychology and criminology of threats: What is the harm caused?

- 2.11 Most criminal offences can be divided into two categories: substantive offences, where the offence is a criminal action that is actually accomplished, and inchoate offences, where the offence is incomplete but the offender has taken steps towards a substantive offence (and in doing so has demonstrated a willingness to accomplish it).³² With inchoate offences, the criminal law intervenes to mitigate the risk that the offender might actually accomplish a similar offence in future.
- 2.12 Threat offences, however, occupy a middle ground between inchoate and substantive offence: they are harmful in and of themselves but also portend a serious risk of more substantive offending. While they do not necessarily involve actual *physical* harm to the victim, the victim is nevertheless often seriously and directly affected.

26. *Crimes Act 1958* (Vic) s 31(2A); *Sentencing Act 1991* (Vic) s 10AA(8).

27. *Crimes Act 1958* (Vic) s 31(b), 31(ba).

28. See *Spiteri v The Queen* [2018] VSCA 254 (8 October 2018), in which 'raising' a handgun towards an officer was not sufficient to constitute obstructing a police officer, which is a closely related offence under the same provision, whereas 'pointing' a handgun would have been: *ibid* [53].

29. *Crimes Act 1958* (Vic) s 31(2).

30. See for example, *Spiteri v The Queen* [2018] VSCA 254 (18 October 2018), where the means by which the officer was obstructed was a perceived threat.

31. For example, in *Folino v The Queen* [2017] VSCA 295 (19 October 2017), the 'assault' consisted of pointing a gun at a police officer (unknown to the police officer; the gun was unloaded).

32. Jeremy Horder, *Ashworth's Principles of Criminal Law* (9th ed., 2019) 492–493.

Consequently, threats are often combined with the substantive offence threatened. However, combining threat offences with substantive offences in this way can mean that substantive offences dominate any combined analysis and therefore diminish the insight that can be gleaned separately into threat offences.³³

- 2.13 The harms caused by threat offences may be expressed as belonging to three distinct types:
- the fear that the victim experiences as a result of the threat;
 - the effect of the threat on the victim's perceived or actual ability to make free choices (in many cases, causing this effect may be the real motivation for making the threat); and
 - the risk that the threat will eventually be carried out.³⁴
- 2.14 The harm intended by the threatener may not necessarily be the same harm that eventuates to the victim. However, research does suggest that these types are also the three main *intended* harms.
- 2.15 Threateners have been classified into five main groups: shockers, schemers, signallers, screamers and shielders.³⁵ 'Screamers' use threats to express emotion rather than intent to harm,³⁶ and 'shielders' aim to deter aggression from others by reasserting their own dangerousness.³⁷ Both could be expected to be less likely to have their threats interpreted as serious and thus face criminal sanction, though that will not always be the case.³⁸
- 2.16 The remaining three groups' intended effects map more closely to the harms identified among victims:
- 'shockers' threaten in order to frighten and produce an immediate impact on the victim, create immediate anxiety or, occasionally, attract attention;³⁹
 - 'schemers' threaten in order to coerce others into compliance, often in a premeditated and explicitly conditional way;⁴⁰ and
 - 'signallers' threaten in order to indicate intended future violence.⁴¹

33. For example, the ABS Personal Safety Survey defines physical threats as an aspect of physical violence and sexual threats as an aspect of sexual violence: see Australian Bureau of Statistics, *Personal Safety, Australia* (2016), 'Experience of Violence'.

34. See Peter Alldridge, 'Threats Offences: A Case for Reform' (1994) 8 *Criminal Law Review* 176, 182; Horder (2019), above n 32, 526–527; see also Troy E. McEwan et al., 'Advances in Stalking Risk Assessment' (2011) 29(2) *Behavioural Sciences and the Law* 180, 186. The risk that the threat will be carried out is congruent with threats as inchoate offences; the other harms suggest that threats should primarily be considered conceptually separately from their substantive counterparts. On the impact of threats and fear on freedom of choice in family violence situations, see Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007) 250.

35. Lisa J. Warren, Paul E. Mullen and Troy E. McEwan, 'Explicit Threats of Violence' in J. Reid Meloy and Jens Hoffmann, *International Handbook of Threat Assessment* (2013) 19–20.

36. *Ibid* 19–20, 31. This can, however, escalate to the point of violence, at which point it might become either a threat with immediate impact or a threat which presages a future assault of some kind.

37. *Ibid* 20, 33. These people are generally trying to avoid confrontation, but depending on the nature of the threat they perceive, may sometimes still escalate.

38. For example, the Council's *Crossover Kids* reports found that much offending by children in out-of-home care was associated with the expression of emotion, and violent offences including threats were very common among this group: Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System Report 2* (2020) 86–87; Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System Report 3* (2020) 13–15. Stakeholders also pointed out that people whose offending is related to poverty, homelessness or certain other vulnerabilities might be more likely to experience a criminal response to emotional or defensive threats, especially if those threats are made towards law enforcement officers: Stakeholder Roundtable (7 April 2021). There is also, of course, some overlap between the groups.

39. Warren et al. (2013), above n 35, 20, 32. These threats are unlikely to escalate if they achieve their goal.

40. *Ibid*. Some among this group may require improvements in their communication skills, while others may be more committed to their end goal and thus willing to enact violence to achieve it.

41. *Ibid* 20, 33. Some in this group attempt to avoid confrontation by uttering the threat, but there is often a predisposition to violent action.

- 2.17 Other harms vary depending on the case, and the harm intended or perceived by the offender may not always match the harm actually caused. For example, many family violence perpetrators, lacking insight into the seriousness of their behaviour, characterise their threats as an 'anger management' strategy.⁴² And an impulsively made threat to damage property, if viewed in isolation and without context, might not be considered objectively serious. However, if that threat is – as the substantive offence often is – associated with family violence and/or coercive control, then the effects on the victim can be profound and ongoing.⁴³ This suggests that a threatener may perceive themselves to be a 'screamer', but the actual impact of their behaviour may be closer to that of a 'schemer' or a 'signaler'.
- 2.18 As with all offences, threat offences can potentially harm people other than the victim of the threat. This includes the threat to community safety posed by someone whose threat offending indicates a more general risk of offending and who may go on to commit future threat (and other) offences against other victims. Many threat offenders offend repeatedly, often against multiple targets.⁴⁴ This means that the threat to community safety is significant and that not all non-threat offending by threat offenders can be explained in terms of threat typologies that relate a particular threat to a particular victim.

Direct harm: the victim's fear

- 2.19 The direct fear that the victim of a threat experiences is the most obvious and immediate harm resulting from that threat. Threats can cause substantial immediate fear and anxiety and can contribute to longer-term psychological harm, including diagnosable psychiatric conditions such as clinical anxiety and post-traumatic stress disorder.⁴⁵ The impact of a threat against any particular victim cannot necessarily be foreseen. Threats are situationally dependent, and people vary considerably in their resilience to threats.⁴⁶ However, some factors can be isolated as being particularly important.
- 2.20 Research suggests that repeated threats are associated with higher levels of long-term harm to physical and mental functioning.⁴⁷ Threats often occur in the context of family violence, stalking or both, which suggests an association with a longer-term course of conduct and thus greater harm to victims.⁴⁸ More generally, violence (including threats) that occurs within close personal relationships and lasts for a longer time tends to be more harmful.⁴⁹ Research on stalking also bears this out: higher rates of threats and fear are associated with stalking by current or former partners than with stalking by others.⁵⁰

42. Lisa J. Warren, James R.P. Ogloff and Paul Mullen, 'The Psychological Basis of Threatening Behaviour' (2013) 20(3) *Psychiatry, Psychology and Law* 329, 339.

43. In this context, it is significant also that a threat to harm a pet may be charged as a threat to destroy or damage property.

44. Warren et al. (2013), above n 35, 22.

45. The risk of ongoing psychological harm is greater where the victim experiences multiple threats: Oddgeir Friberg et al., 'Violence Affects Physical and Mental Health Differently: The General Population Based Tromsø Study' (2015) *PLoS One* (DOI 10.1371/journal.pone.0136588) <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0136588>> at 10 May 2021, 5, 8–9; Lars Peter Andersen et al., 'Work-Related Threats and Post-Traumatic Symptoms in Four High-Risk Occupations: Short- and Long-Term Symptoms' (2019) 92 *International Archives of Occupational and Environmental Health* 195, 203–204.

46. Friberg et al. (2015), above n 45, 7.

47. *Ibid* 9.

48. On the prevalence of threats in the context of family violence and stalking, see Troy E. McEwan et al., 'Risk Factors for Stalking Violence, Persistence, and Recurrence' (2017) 28(1) *Journal of Forensic Psychiatry & Psychology* 38, 45–46; in relation to family violence only, see [4.12]. On the greater harm from threats, see Friberg et al. (2015), above n 45, 9.

49. See Friberg et al. (2015), above n 45, 2.

50. Troy E. McEwan et al., 'Approach and Escalation in Stalking' (2012) 23(3) *Journal of Forensic Psychiatry & Psychology* 392, 401–402; T.K. Logan, 'Examining Stalking Experiences and Outcomes for Men and Women Stalked by (Ex)partners and Non-partners' (2020) 35(3) *Journal of Family Violence* 729, 737.

- 2.21 Threats are also associated with symptoms of post-traumatic stress disorder, even where the threats occur outside family violence contexts.⁵¹ In fact, threats alone seem to have a stronger association with poor mental health than does physical violence.⁵² This could be because threats are more common than physical violence, and many people experience repeated threats.⁵³ It might also be due to the impact of threats made against loved ones rather than directly against the victims and/or threats potentially being unlimited in place and time.⁵⁴
- 2.22 Finally, threats are sometimes used in the context of perpetrators' other criminal activity, including to control events, maintain possession of property and maintain authority.⁵⁵ There has been little research on this area specifically. However, the use of threats with other offending tends to suggest that the threats are likely to be credible (in that they might be carried out) and unlikely to be reported to law enforcement.

Indirect harm: the victim's freedom

- 2.23 Threats can also affect victims' autonomy. For example, a threatener might make a threat to harm the victim unless an express or implied demand is complied with. Sometimes, this will meet the statutory definition of blackmail or extortion.⁵⁶ However, many situations involving threats will lack one or more of the elements of those offences. For example, where a threat forms part of a coercive situation that induces the victim to remain in a relationship but that objective is not referenced when the threat is made, the lack of a specific demand may make it difficult to establish extortion or blackmail.⁵⁷
- 2.24 Threats can also be made without express or implied demands because the immediate goal is to cause fear in the victim – particularly in the context of coercive control or stalking. Nevertheless, such threats can cause the victim to take or not take particular actions in the medium to long term. For instance, evidence frequently shows that many women in prison have a prior history of abuse,⁵⁸ and may have committed offences partly 'because they were pressured to do so by a violent partner'.⁵⁹

51. These findings come from research into threats experienced at work: Andersen et al. (2019), above n 45, 202.

52. See Friberg et al. (2015), above n 45, 8.

53. This is so even though physical violence may more often be reported. Andersen et al. (2019), above n 45, 203–204; see also Sentencing Advisory Council (2020), above n 11, 7.

54. Andersen et al. (2019), above n 45, 203–204; Friberg et al. (2015), above n 45, 2; see also Sentencing Advisory Council (2020), above n 11, 7.

55. See for example, *Zerafa v The Queen* [2013] VSCA 42 (4 March 2013), in which the offender made a threat against the informant after the former was imprisoned.

56. *Crimes Act 1958* (Vic) ss 27, 28, 87.

57. For blackmail specifically, an additional issue may be the presence of the element of 'a view to gain for [the threatener] or loss to another': *Crimes Act 1958* (Vic) s 87. However, implicit demands can support a blackmail charge: '7.5.15: Blackmail', *Criminal Charge Book* (Judicial College of Victoria, 2015) <<https://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#4988.htm>> at 10 May 2021, [3]–[11].

58. Corrections Victoria, *Women in The Victorian Prison System* (2019) 4.

59. Victoria, Royal Commission into Family Violence, *Report and Recommendations*, vol. 5 (2016) 237; see also Corrections Victoria, *Strengthening Connections: Women's Policy for the Victorian Corrections System* (2017) 8. Other research has found that women who continue offending tend to have greater exposure to violence, more adversarial interpersonal relationships, and more mental health problems than do those who desist: Elizabeth Cauffman et al., 'Pathways to Persistence: Female Offending from 14 to 25' (2015) 1(3) *Journal of Developmental and Life-Course Criminology* 236, 261.

- 2.25 Ongoing or implicit threats may also occur in contexts other than family violence. For example, threats may be used to maintain order or hierarchies in criminal enterprises or organisations or to control the way criminal activity occurs, in the absence of conventional means of maintaining and enforcing rules.⁶⁰
- 2.26 Whatever the context, threats – including those associated with, or perceived as being associated with, a demand – can have pervasive and profound effects. This is because threats can be, or can be perceived as, unlimited in time and context;⁶¹ they can hang over the victim longer term, occasioning greater overall stress, and affect the victim's autonomy and psychological wellbeing.⁶² In a family violence context, these types of threats often contribute to victim-survivors remaining in or recommencing a relationship with the perpetrator;⁶³ thereby exposing the victim to further coercion, harm and loss.

Future harm: the risk of a substantive offence

- 2.27 Finally, threats imply a risk that the perpetrator will follow through with the threatened behaviour. Research shows, for example, that those who make threats to kill are far more likely to commit violent offences, including homicide, than those who do not make threats to kill;⁶⁴ conversely, victims of a completed or attempted homicide have often previously received threats to kill from the perpetrator.⁶⁵
- 2.28 Research on threats other than threats to kill is more limited. Further, the research that does exist does not always identify whether threats occurred before, alongside or after any substantive offending. Therefore, the direction of the relationship between threats and physical violence is not always as clear as might be expected.

Direct harm to the victim of the threat

- 2.29 The likelihood of a threat to kill being made, and the possibility of that threat being carried out, become stronger when the relationship between threatener and victim is closer. This phenomenon is known as the *intimacy effect*.⁶⁶
- 2.30 Threats are a strong predictor of further violence and homicide where the victim is the partner or family member of the threatener. A number of studies have found that, among victims killed by a partner or stalker, many were known to have received a threat to kill before the homicide occurred.⁶⁷ One study found that 90% of victims of attempted murder had been threatened by the offender before the attempted murder.⁶⁸ A 2007 study found that among Victorians convicted for threat to kill in 1993–1994, more than half (54%) received further convictions within 10 years: 44% were convicted for violent offences and 14% for offences committed against the victim of the original threat.⁶⁹

60. See for example, *DPP (Cth) v Merrill (A Pseudonym)* [2015] VSCA 52 (1 April 2015), in which the offender had trafficked methamphetamine under duress due to threats made against his family (and he received a less severe sentence as a result).

61. Friborg et al. (2015), above n 45, 2, 8–9.

62. Ibid 8. In some cases, the gravity of these effects may even outweigh the harm that would be caused if the threatener actually carried out the threat: Sentencing Advisory Council (2020), above n 11, 7.

63. Stark (2007), above n 34, 250–251; Victoria, Royal Commission into Family Violence, *Report and Recommendations*, vol. 1 (2016) 20–21.

64. Warren et al. (2007), above n 22, 603.

65. J. Reid Meloy et al., 'Warning Behaviours and their Configurations Across Various Domains of Targeted Violence' in J. Reid Meloy and Jens Hoffmann, *International Handbook of Threat Assessment* (2013) 46.

66. Ibid 46; Warren et al. (2013), above n 35, 30.

67. Meloy et al. (2013), above n 65, 46.

68. Ibid 46.

69. Warren et al. (2007), above n 22, 601. This included five completed and three attempted murders against the original victims (2%).

Research also suggests that threats in stalking cases predict violence.⁷⁰ This is particularly apposite in family violence cases: threats occur more commonly in stalking cases where the perpetrator is an ex-intimate partner of the victim than where the perpetrator is not, and in those cases, threats predict physical violence.⁷¹

- 2.31 Conversely, the weaker the relationship between threatener and victim, the less likely a threat is to presage physical violence. Where the victim is a public figure, few perpetrators threaten the victim before committing violence against them.⁷²
- 2.32 Threats made at a distance (for example, over the internet or phone) are sometimes treated as less credible than those made in person.⁷³ Research suggests that this should not be the case. Statistics may imply that threats made at a distance can be less credible, but that can be explained more directly by the intimacy effect. People who make face-to-face threats are more likely to carry them out; however, this may simply be because face-to-face threats occur more often where a close relationship exists between threatener and victim.⁷⁴ A more nuanced approach would be to view the medium of the threat in the context of both its substance and the relationship between the threatener and the victim.

Community safety: threats and other criminal offending

- 2.33 Threats are associated with a wide range of criminal behaviour against a variety of victims. Previous research has shown that in the 12 months after people were referred to mental health services for making threats to kill, their most commonly recorded offences were violent offences, with other frequent subsequent offences including theft and driving offences.⁷⁵ In the 10 years after a *conviction* for threat to kill, violent offences were the most common offence category, present in almost half of cases.⁷⁶ Completed or attempted homicide, stalking and further threats to kill were also observed. For almost three-quarters of those who were convicted of at least one further offence, the victim of the threat was not the victim of the subsequent offending. This implies that threats present a substantial risk to the community at large.⁷⁷

70. McEwan et al. (2017), above n 48, 50. This effect was stronger when threats occurred alongside property damage or a previous intimate relationship between stalker and victim.

71. McEwan et al. (2012), above n 50, 401–402 (the study found three times the rate of threats among ex-intimate partners as among non-intimate partners, albeit with a small sample); McEwan et al. (2017), above n 48, 50–51 (the combination of two or more threats, property damage, a previous intimate relationship and loitering or spying on a previous intimate partner victim strongly predicted violence). See also Caroline Flowers et al., 'Identifying the Characteristics Associated with Intimate Partner Stalking: A Mixed Methods Structured Review and Narrative Synthesis' (2020) 31(6) *The Journal of Forensic Psychiatry & Psychology* 889, 915–916.

72. Michèle T. Pathé et al., 'Assessing and Managing the Threat Posed by Fixated Persons in Australia' (2015) 26(4) *The Journal of Forensic Psychiatry & Psychology* 425, 426.

73. See *Brooks v The Queen* [2020] VSCA 93 (21 April 2020); Warren et al. (2013), above n 35, 30.

74. Warren et al. (2013), above n 35, 30.

75. Lisa J. Warren et al., 'A Clinical Study of Those Who Utter Threats to Kill' (2011) 29 *Behavioural Sciences and the Law* 141, 148.

76. Warren et al. (2007), above n 22, 601.

77. *Ibid.*

- 2.34 Threats may also be associated with other specific offending patterns besides family violence. For example, threats are sometimes used by those distributing illicit drugs to enforce payment (licit debt collection methods being unavailable in this context).⁷⁸ Threats are also common in the context of armed robberies and aggravated burglaries.⁷⁹ Research suggests that these types of threats may be made in an effort to accomplish the desired goals without physical violence,⁸⁰ but the threateners' need for such threats to be taken seriously creates a high potential for escalation to violence.
- 2.35 Finally, threatening behaviours frequently occur in contexts where medical and other support might be required in addition to, or instead of, criminal justice intervention. The rates of severe mental illness and substance abuse are far higher for those who are referred for professional assessment after making threats than for the general population.⁸¹ This group is far likelier than the general population to experience, as well as commit, violence and homicide in the year following their threat.⁸² They are also far likelier than the general population to die by homicide or take their own lives.⁸³

Threats in case law

- 2.36 Threats to kill or seriously injure, commit a sexual offence or destroy or damage property are made in a variety of contexts, including family violence, ongoing criminal enterprises, vigilantism and once-off and spontaneous offending. Different types of threats are often made as part of the same course of conduct and are often sentenced together in the same case.⁸⁴ Threats can also be contextually relevant to the sentencing of other offending, even where they are not separately charged and sentenced.⁸⁵ The courts take into account a number of interrelated factors in the complex task of assessing the seriousness of threat offending.

78. See for example, *Short v The Queen* [2016] VSCA 210 (7 September 2016) [55]; Kim Moeller and Sveinung Sandberg, 'Debts and Threats: Managing Inability to Repay Credits in Illicit Drug Distribution' (2017) 34(2) *Justice Quarterly* 272, 286–289, 291.

79. See for example Sentencing Advisory Council, *Aggravated Burglary: Current Sentencing Practices* (2011) 11 (finding that 12% of aggravated burglary cases involved a co-sentenced threat to kill); *DPP v Huynh* [2013] VCC 499 (26 April 2013); in consultation, stakeholders confirmed that many non-family violence threats were associated with thefts or robberies: meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021).

80. Moeller and Sandberg (2017), above n 78, 288.

81. Warren et al. (2013), above n 42, 335, 339. Rates of psychotic illness were particularly high.

82. Warren et al. (2011), above n 75, 147–148.

83. *Ibid*; Warren et al. (2007), above n 22, 602–603.

84. For example, *DPP v Sullivan* [2014] VSCA 222 (17 September 2014), which involved a threat to seriously injure the offender's domestic partner, a threat to kill the partner's daughter, and a threat to blow up the family home.

85. See for example, *DPP v Kendall* [2020] VCC 74 (24 January 2020), in which uncharged threats to kill were still relied on as context evidence for other offending: *ibid* [9].

The manner of the threat and circumstances in which it is made

2.37 The specific way in which the threat is made bears on its objective seriousness. The following factors have often been identified as potentially aggravating features of threat offences:

- a threat made in person (as opposed to remotely);⁸⁶
- an explicit threat (rather than an implicit one);⁸⁷
- premeditated threats;⁸⁸
- use of a weapon⁸⁹ or another circumstance suggesting the threat is likely to be carried out;⁹⁰
- repeated threats and threats made over a long period of time, particularly in the context of family violence or coercive control;⁹¹
- threats that involve a breach of trust, especially in the context of family violence or coercive control;⁹²
- threats that cause the victim to fear for the safety of others (such as their children or other family members) in addition to their own safety, especially in the context of family violence or coercive control;⁹³
- a threat made while the threatener was subject to a court order such as a family violence intervention order, bail order, suspended sentence or community correction order;⁹⁴ and
- threats that occur in the context of other offending, such as causing injury offences, endangerment offences or sexual assaults, because this context makes the threat more credible (especially if the offence was violent and preceded the threat)⁹⁵ and heightens the fear experienced by the victim.⁹⁶

86. *Brooks v The Queen* [2020] VSCA 93 (21 April 2020).

87. *DPP v Natoli* [2016] VSCA 35 (11 March 2016) [41].

88. See for example, *Devereaux v The Queen* [2019] VSCA 6 (31 January 2019), in which the sentencing court found the offending was 'planned': *ibid* [15], and *Aitkin v The Queen* [2017] VSCA 103 (8 May 2017) [103], a blackmail case in which the main focus was the menaces rather than the demand – the duration of offending and use of multiple accounts, including to circumvent the victim's attempts to block the offender's accounts, demonstrated careful planning. In comparison, threats made in an immediate response to emotionally distressing circumstances (eviction) were not considered to be very serious examples: *DPP v Stokes* [2019] VCC 1518 (16 September 2019) [70].

89. See for example, *Doherty v The Queen* [2017] VSCA 215 (25 August 2017) [25], [48] and *DPP v Monks* [2013] VCC 1465 (27 September 2013) [14], [18], both of which involved the use of knives, and *DPP v Natoli* [2016] VSCA 35 (11 March 2016) which involved a loaded firearm: *ibid* [41].

90. *DPP v Oksuz* [2015] VSCA 316 (25 November 2015), a blackmail case in which the offender threatened to have the victim's son stabbed in prison by criminal associates; it was 'not in issue on the plea that the respondent had such contacts within the prison that he could call upon'. In the event, further violence did ensue against other victims. All these features of the offending were aggravating: *ibid* [107], [112].

91. *DPP v Bao (A Pseudonym)* [2020] VCC 1508 (18 September 2020) [42]. In contrast, though, threats made over a comparatively short period of time are not necessarily less serious, especially if the threats are persistent and intense: see for example, *Devereaux v The Queen* [2019] VSCA 6 (31 January 2019), in which the offender (who was a relative of the victim) made 24 separate phone calls over 27 hours; this 'had the effect of terrifying the victim. He became physically ill and was hospitalised for three days': *ibid* [29].

92. *Aitkin v The Queen* [2017] VSCA 103 (8 May 2017) [102]: the victim was a young woman whom the offender 'had known since she was a baby and with whom he initially had a relationship akin to that of father and daughter'.

93. For example, *Latorre v R* [2012] VSCA 280 (23 November 2012) [191], in which the victims 'feared for their lives and for the safety of their families and property'.

94. *Devereaux v The Queen* [2019] VSCA 6 (31 January 2019) [26].

95. *Brooks v The Queen* [2020] VSCA 93 (21 April 2020); *Doherty v The Queen* [2017] VSCA 215 (25 August 2017). However, the presence of the substantive violent offence in the case may cause the court to impose a lower sentence on the threat offence as a result of totality: see for example, *Devereaux v The Queen* [2019] VSCA 6 (31 January 2019) [32]. The extent to which uncharged threats can be taken into account as circumstances surrounding the offence is also necessarily limited: see *Jackson v The Queen* [2020] VSCA 95 (24 April 2020) where a sentence was overturned on appeal because two threats to commit a sexual offence and one threat to inflict serious injury were not separately charged but treated as aggravating factors in relation to a home invasion; the conduct was so separate from the charges that this constituted punishment for offences that the appellant was not convicted of.

96. *DPP v Bao (A Pseudonym)* [2020] VCC 1508 (18 September 2020) [39]–[42].

The effect of the threat on the victim

- 2.38 Although threat offences do not require that the victim believed the threat would be carried out, a finding that a victim *actually* had such a belief increases the objective seriousness of the offending, particularly where the victim believed that the threat would be carried out *imminently*.⁹⁷ Conversely, where the victim indicates that they did not take the threat seriously, the objective seriousness of the offending is generally moderated by that fact.⁹⁸ Ongoing psychological consequences, too, are an indicator of seriousness.⁹⁹ And if a victim is particularly vulnerable (for example, due to age), that too may be aggravating.¹⁰⁰

The offender's motivations for making the threat

- 2.39 The offender's motivations for making a threat can increase their moral culpability. As discussed at [2.18], threats are often made to cause fear in the victim, to induce or coerce the victim to do or refrain from doing a particular thing, or to foreshadow future violence. These motivations can be aggravating, particularly when the threat is directed against a domestic partner in a family violence context (see [2.41]–[2.44]), aimed at deterring the victim from reporting other offending to police or cooperating in an investigation,¹⁰¹ or borne out of personal hostility towards the victim.¹⁰² Conversely, a misguided sense of retribution or a 'noble cause' (in the absence of self-defence) may at best help to explain the conduct, but it would not be considered a mitigating circumstance. Indeed, some such cases call for a sentence that deters future vigilantism.¹⁰³
- 2.40 In cases where the offending is random and fuelled by drug intoxication, the absence of a clear motive translates to the absence of a corresponding circumstance of aggravation. However, such offending is still likely to attract a sentence that emphasises general and specific deterrence.¹⁰⁴

Threats in the context of family violence

- 2.41 For some time, courts have recognised the prevalence and significant and lasting harm of serious offending committed in the context of family violence, overwhelmingly by male offenders acting possessively, coercively and violently.¹⁰⁵ That a threat is made in such a context (including where the threat is a breach of a family violence order) of itself aggravates the offending, with deterrence (general and specific), denunciation and community protection (in some cases) being dominant considerations in sentencing.

97. *Marrah v The Queen* [2014] VSCA 119 (18 June 2014) [10], [22]; *Doherty v The Queen* [2017] VSCA 215 (25 August 2017) [25].

98. See for example, *DPP v Stokes* [2019] VCC 1518 (16 September 2019) [70].

99. For example, *DPP v Bao (A Pseudonym)* [2020] VCC 1508 (18 September 2020), in which the judge specifically highlighted the victim's comment that 'I live forever with the experience of having been ... abused ... and left dealing with the effects and impact of post-traumatic stress disorder': *ibid* [52].

100. *Aitkin v The Queen* [2017] VSCA 103 (8 May 2017) [109]. The victim in this case was vulnerable due to her youth and the breach of trust involved in the offending.

101. This may see the threat accompanied by charges of attempting to pervert the course of justice: see for example, *DPP v Maalin* [2017] VCC 1191 (25 August 2017) [11]–[12].

102. *DPP v Stokes* [2019] VCC 1518 (16 September 2019) [72].

103. For example, the fact that the threats were made in response to being told that the victim had sexually abused another person 'cannot be regarded as a mitigating circumstance': *Devereaux v The Queen* [2019] VSCA 6 (31 January 2019) [28], n 16. *Shaw v The Queen* [2012] VSCA 78 (2 May 2012) [60] ('The aggravated burglary offence was a relatively serious example of the offence for the reasons identified by the sentencing judge and because of the vigilante character of the offenders' behaviour' (emphasis added)).

104. See for example, *DPP v Savage* [2015] VCC 1673 (19 November 2015), in which the offender, after an evening of drinking and socialising with his victim and an acquaintance (and while suffering from a methamphetamine addiction) confronted and attacked them about supposedly stolen 'gunpowder': *ibid* [46].

105. *Kalala v The Queen* [2017] VSCA 223 (30 August 2017) [55]–[63].

In *Marrah v The Queen*, the Victorian Court of Appeal held:

[t]he gravity of the offending was aggravated by the fact that the applicant was at the time the subject of an intervention order, which he flagrantly disregarded. Offending of this nature is too often perpetrated by men whose response to difficulties in a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. The sentences must convey the unmistakable message that male partners have no right to subject their female partners to threats or violence. The sentences must be of such an order as to strongly denounce violence within a domestic relationship.¹⁰⁶

- 2.42 Where a threat is accompanied by causing injury offences, the threat is often the focus of the sentencing exercise, as it can be most reflective of the pattern of coercive and controlling behaviour and can therefore place the whole of the offending in context.¹⁰⁷ This implies a recognition of not only the direct harm in the form of the victim's fear for their life or wellbeing but also the indirect harm in the form of the pervasive effect of the threat on the victim's behaviour, agency and decision-making in the context of the domestic relationship, which is perhaps more significant.
- 2.43 Offending in the context of family violence is often further aggravated by the breach of trust involved in offending against one's intimate partner or family member. Sentencing remarks recognise the victim's entitlement to care, love and security, which is denied by the offender's conduct, particularly where the violence is committed in the victim's home.¹⁰⁸ Offending is also aggravated where it is committed in the presence of the offender or victim's children;¹⁰⁹ committing family violence in the presence of children also constitutes committing family violence against those children.¹¹⁰
- 2.44 In summary, threats made in the context of family violence tend to be very credible and tend to occur in circumstances that can elevate the threat to the 'highest end' of seriousness.¹¹¹

Threats to damage property

- 2.45 Threats to damage property commonly involve threats that imply some level of physical danger to the victim. For example, a charge of threatening to damage property may arise out of a threat to destroy or damage the victim's home,¹¹² or to harm a pet.¹¹³ Threats to damage property are also often made in the context of threatening behaviour against a person and as such may be experienced by the victim as an indirect threat against them.¹¹⁴

106. *Marrah v The Queen* [2014] VSCA 119 (18 June 2014) [25]. This passage is regularly cited in sentencing remarks and in appeals relating to offending in the context of family violence (especially threats to kill): see for example, *Uzun v The Queen* [2015] VSCA 292 (27 October 2015) [40]; *DPP v Natoli* [2016] VSCA 35 (11 March 2016) n 9; *DPP v Hull (A Pseudonym)* [2019] VCC 1474 (11 September 2019) [49]; *DPP v Papaioannou* [2019] VCC 1978 (29 November 2019) n 7; *DPP v Matovic* [2020] VCC 371 (2 April 2020) [193].

107. As such, the context in which the threat was made also aggravates the gravity of the other offending: see for example, *DPP v Bao (A Pseudonym)* [2020] VCC 1508 (18 September 2020) [46].

108. *DPP v Bao (A Pseudonym)* [2020] VCC 1508 (18 September 2020) [41]; *DPP v Natoli* [2016] VSCA 35 (11 March 2016) [45].

109. *DPP v Hull (A Pseudonym)* [2019] VCC 1474 (11 September 2019) [22]–[24], [52].

110. *Family Violence Protection Act 2008* (Vic) s 5(1)(b).

111. *Doherty v The Queen* [2017] VSCA 215 (25 August 2017) [25]. In that case, the offender was also charged with burglary. The offender, dressed in dark clothing and equipped with ties and a 20-centimetre knife, waited for the victim to return home. He pinned her down, held the knife to her throat and said, 'I'm going to f**king kill you'. In *DPP v Natoli* [2016] VSCA 35 (11 March 2016), the threat to kill 'was explicit ("I'm going to f**king kill you")', was accompanied by multiple acts of furious abuse and violence and was made after the offender had earlier brandished a firearm and told the victim it was loaded. The threat was considered to be a 'serious example' of the offence: *ibid* [40]–[47].

112. *DPP v Stokes* [2019] VCC 1518 (16 September 2019) [11]; *DPP v Sullivan* [2014] VSCA 222 (17 September 2014) [10]; *DPP v Memedovski* [2015] VCC 1541 (27 October 2015) [18]. In the case of family violence offending, the home in question may be the home in which both victim and offender have been living (the offence captures threats involving jointly owned property): *Crimes Act 1958* (Vic) s 198(a).

113. *Shaw v The Queen* [2012] VSCA 78 (2 May 2012) [11]; the threat was to 'burn your house and shoot your dogs'. Threats to harm pets are recognised in many family violence risk assessment instruments, including the Multi-Agency Risk Assessment and Management Framework, as presaging potential physical violence against human victims: Victorian Government (2018), above n 5, 28.

114. For example, a threat to blow up one's home implies at least a possibility of harm coming to the inhabitant: *DPP v Sullivan* [2014] VSCA 222 [10].

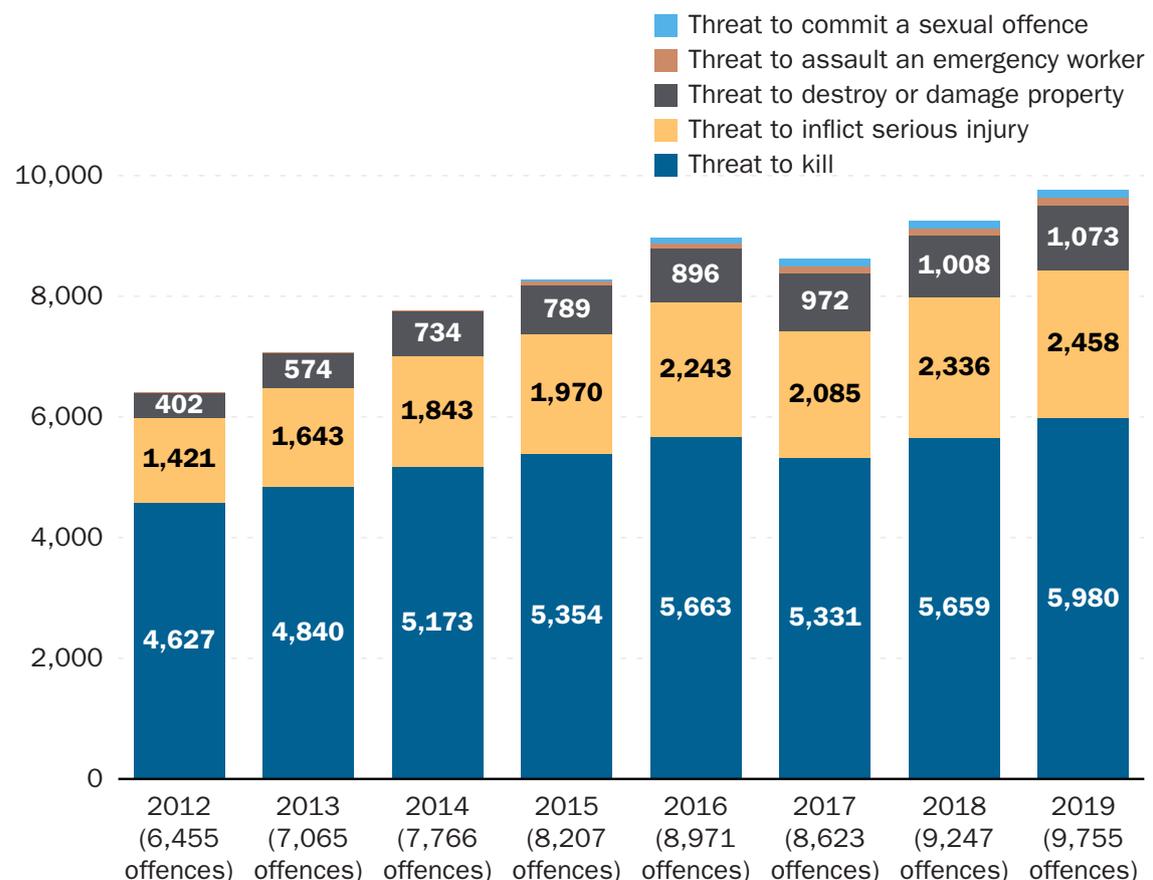
3. Recorded threat offences

3.1 This chapter discusses the number of alleged threat offences recorded by police between 2012 and 2019, the types of threat offences, who committed those threat offences, and the relationships those threat offences occurred within. The data in this chapter was provided by the Crime Statistics Agency.

Number of recorded threat offences

3.2 In the eight years to 31 December 2019, police recorded 66,089 threat offences in Victoria (Figure 2).¹¹⁵ The number of threat offences increased by 51% during that period. Threats to kill made up almost two-thirds of all recorded threat offences (64%), followed by threat to inflict serious injury (24%) and threat to destroy or damage property (10%).¹¹⁶ Threat to assault an emergency worker and threat to commit a sexual offence were not very common (together, they made up 1.5% of recorded threat offences).

Figure 2: Threat offences recorded by police in Victoria, 2012 to 2019, by threat offence type (66,089 offences)¹¹⁷



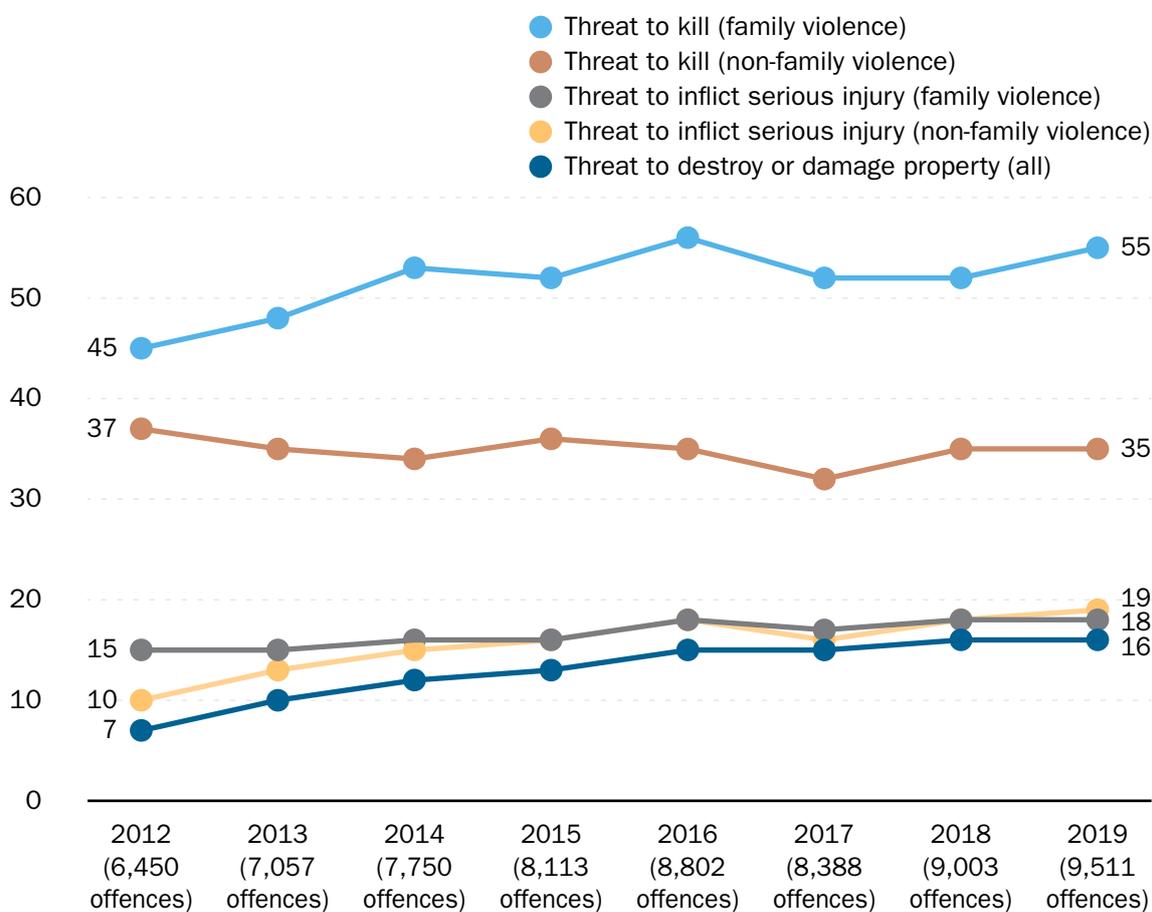
115. This figure includes only those offences under section 31(b) of the *Crimes Act 1958* (Vic) for which the offence description denotes a *threat*. These are a small percentage of all offences under section 31(b).

116. Commonwealth threat offences are included with their Victorian counterparts.

117. Commonwealth threat offences are included with their Victorian counterparts. Threat to commit a sexual offence was not recorded prior to 2015 because the offence only came into force in 2015 as a result of the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic). Threats to assault an emergency worker have been extracted from data on section 31(b) assaults more generally.

3.3 The rate of threat offences per head of population in Victoria has also increased, primarily due to an increase in threats to kill or seriously injure in a family violence context (Figure 3). This increase is most likely attributable to efforts to encourage reporting of family violence and to hold perpetrators to account, including Victoria Police initiatives.¹¹⁸ However, the rate appears to have plateaued since 2016. This is perhaps surprising given that the Royal Commission into Family Violence might have been expected to further increase the awareness and willingness of victims and others to report family violence offending to police.

Figure 3: Number of offences of threat to kill, threat to inflict serious injury and threat to destroy or damage property recorded by police, per 100,000 people in Victoria, by family violence indicator, 2012 to 2019



118. Meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021).

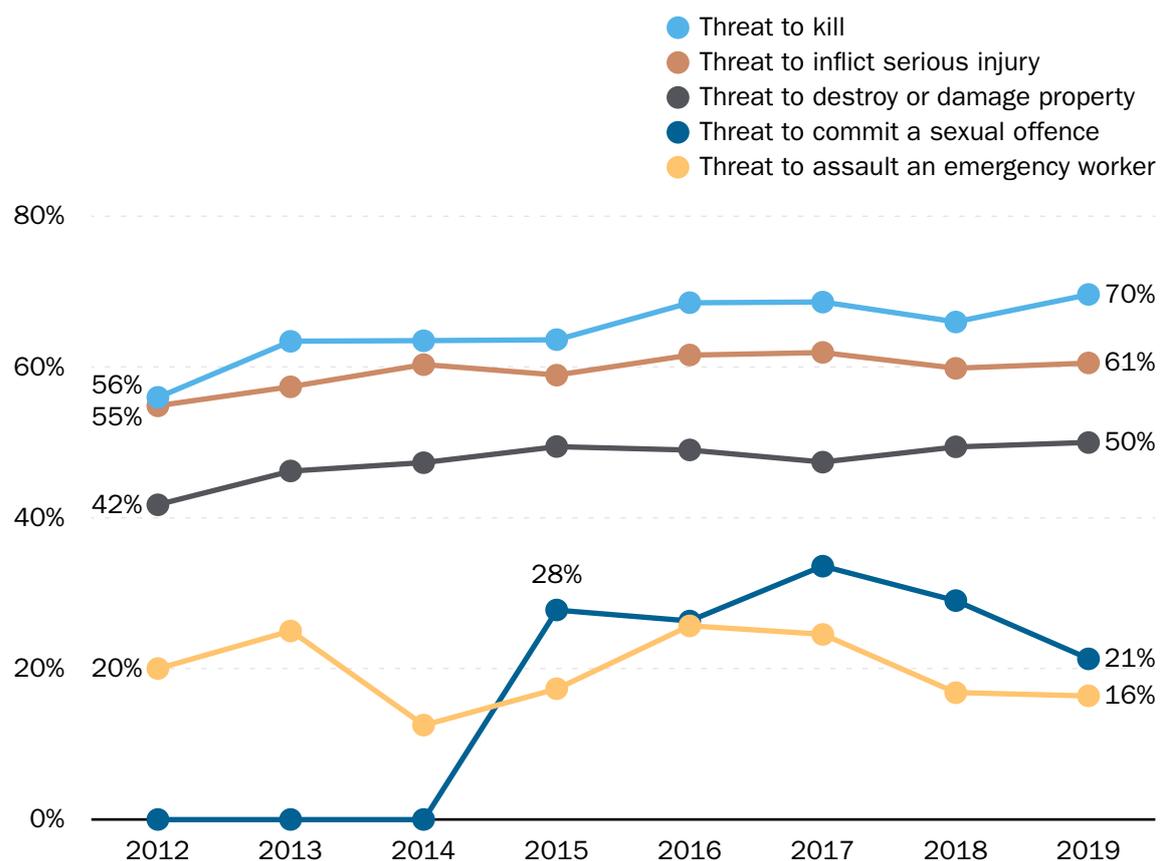
Gender of recorded threat offenders

3.4 Data was available on the gender of offenders for 57,068 recorded threat offences between 2012 and 2019. Of these offences, 86% were committed by men. Due to low numbers, a gender breakdown was not available for threat to commit a sexual offence or threat to assault an emergency worker.

Recorded threat offences and family violence

3.5 The majority of recorded threat offences occurred in a family violence context (Figure 4). Two-thirds (66%) of threat to destroy or damage property recorded offences were associated with family violence. This was followed by threat to kill (60%) and threat to inflict serious injury (48%).

Figure 4: Percentage of recorded threat offences occurring in the context of family violence, by threat offence type, 2012 to 2019¹¹⁹



119. In Figure 4, Commonwealth threat charges are included with their Victorian equivalents. Threats to commit a sexual offence were not recorded prior to 2015 because the offence was enacted in that year by the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic).

- 3.6 There were comparatively few recorded threats to commit a sexual offence or threats to assault an emergency worker; these offences occurred much less often in a family violence context. Almost all threats to assault an emergency worker related to police or protective services officers (91%, with a further 8% relating to unspecified emergency workers). Stakeholders suggested that the absence of recorded threat offences against correctional workers could be because assaults and threats in prisons are often resolved with disciplinary charges, rather than through the justice system.¹²⁰

¹²⁰ Stakeholder Roundtable (7 April 2021).

4. Sentenced threat offences

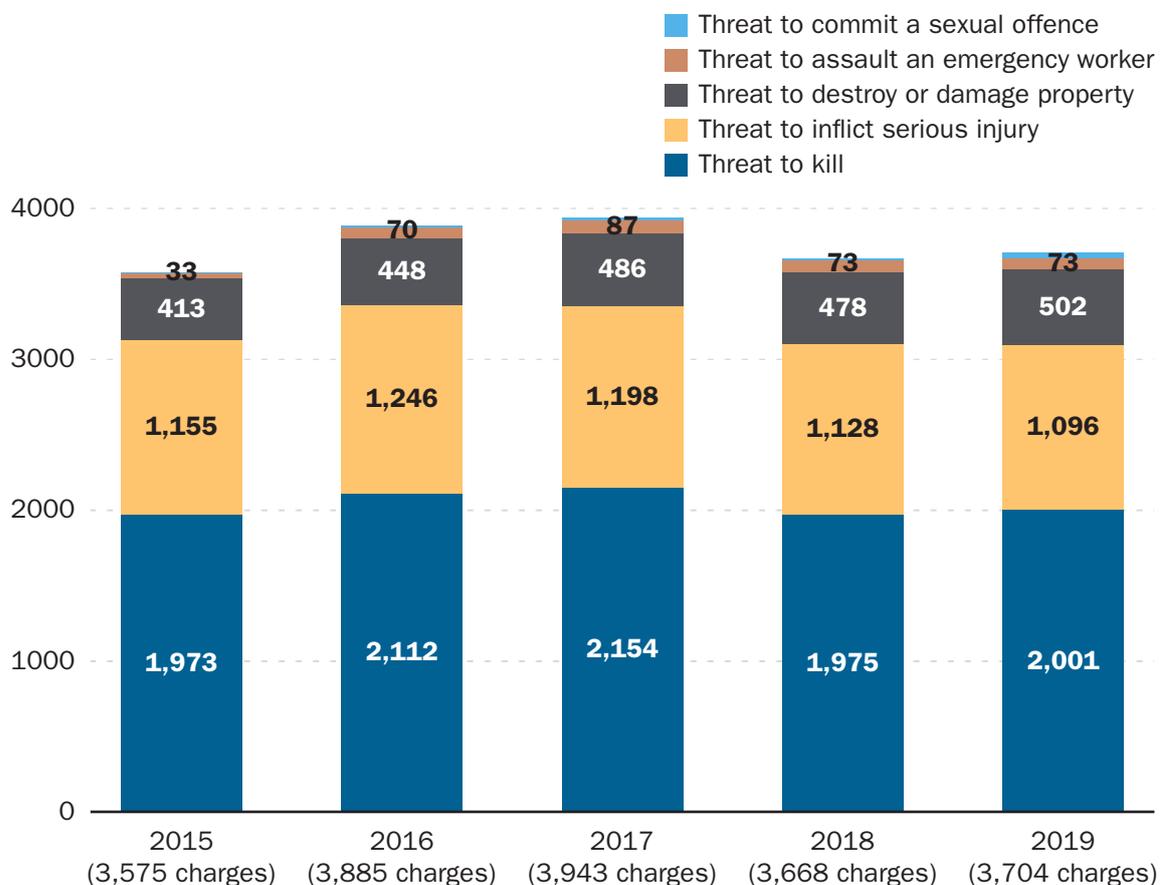
4.1 Using court data, this chapter examines who was sentenced for threat offences, which threat offences they were sentenced for, and which court they were sentenced in. Where relevant, this includes comparisons between male offenders and female offenders, and between family violence cases and non-family violence cases.

How many threat offences were sentenced?

4.2 Between 1 January 2015 and 31 December 2019 (the reference period), 18,775 threat charges were sentenced in 13,846 cases. The threat offence was the principal proven offence in 5,163 cases,¹²¹ meaning another offence was the most serious offence in 8,683 cases.

4.3 As shown in Figure 5, the most common threat offence sentenced during the reference period was threat to kill (55% of threat offences). This was followed by threat to inflict serious injury (31%) and threat to destroy or damage property (12%). The remaining offences of threat to assault an emergency worker and threat to commit a sexual offence made up the remaining 2%.

Figure 5: Number of threat offences sentenced in Victoria, all courts, 2015 to 2019¹²²



121. The principal proven offence is the offence that received the most serious penalty in the case.

122. Commonwealth threat charges are included with their Victorian equivalents in Figure 5.

- 4.4 This is broadly consistent with the relative numbers of the various threat offences recorded by police. The low number of sentenced threats to assault an emergency worker is also consistent with research recently undertaken in Queensland, finding that 4% of assaults of public officers were threats.¹²³ Threats to inflict serious injury were, though, more common in sentenced offence data than in recorded offence data (31% of sentenced threat offences compared to 24% of recorded threat offences), and threats to kill were less common (55% compared to 65%). This could suggest that offences initially recorded as threat to kill are often resolved during plea negotiations to threat to inflict serious injury.
- 4.5 In consultation, stakeholders commented that the sentences imposed on threat to kill and threat to inflict serious injury depended more on the underlying nature of the threat than on the specific charge. Indeed, many threats are ambiguous enough that they could arguably be classified as either threat to kill or threat to inflict serious injury; this could explain the near parity in sentence types imposed for these two threat offences.¹²⁴ The lower incidence of threat to kill in sentenced offence data compared to recorded offence data is most likely attributable to ambiguity in the nature of many threats. In addition, offenders are more likely to plead guilty to threat to inflict serious injury than to threat to kill. This is principally because threat to inflict serious injury has a lower maximum penalty (five years' imprisonment) than threat to kill (10 years' imprisonment); and because threat to kill is considered a 'serious violent offence' under the *Sentencing Act 1991 (Vic)*,¹²⁵ which can significantly affect how the court sentences the offence.¹²⁶
- 4.6 The proportion of recorded threat offences that are eventually sentenced appears to be relatively high. Nearly 45,000 threat offences were recorded between 2015 and 2019, and 18,775 threat charges were sentenced in Victoria in that same timeframe. This is not a proper attrition analysis because it does not follow individual charges as they progress through the justice system; however, it tentatively suggests that about 42% of recorded threat offences go on to be sentenced. This is high compared to image-based sexual abuse and contact sexual offences,¹²⁷ even compared to threat offences in other jurisdictions.¹²⁸ The proportion of recorded offences to sentenced offences varied by offence, though, ranging from 15% for threat to commit a sexual offence to 68% for threat to assault an emergency worker.¹²⁹ The low proportion of threats to commit a sexual offence that are ultimately sentenced is consistent with the high attrition rates for sex offences generally.¹³⁰

123. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers* (2020) 42. As in Victoria, threats against emergency workers are captured by the same section criminalising assaults: *Criminal Code Act 1899 (Qld)* s 340(1)(b).

124. Stakeholder Roundtable (7 April 2021); on the relative specificity of threats to kill, see also [2.4].

125. *Sentencing Act 1991 (Vic)* Sch 1 cl 3.

126. *Sentencing Act 1991 (Vic)* ss 6A–6F; Stakeholder Roundtable (7 April 2021). Threats to kill in a family violence context are also Schedule 2 offences, placing defendants in a reverse onus position in applying for bail: *Bail Act 1977 (Vic)* s 4AA, sch 2 cl 7.

127. See for example, Sentencing Advisory Council (2020), above n 11, 31; Sentencing Advisory Council, *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms* (2021) 77.

128. Roger Bowles, Maria G. Reyes and Nuno Garoupa, 'Crime Reporting Decisions and the Costs of Crime' (2009) 15 *European Journal on Criminal Policy and Research* 365, 372 (the estimated reporting rates for threats in the United Kingdom is 32%).

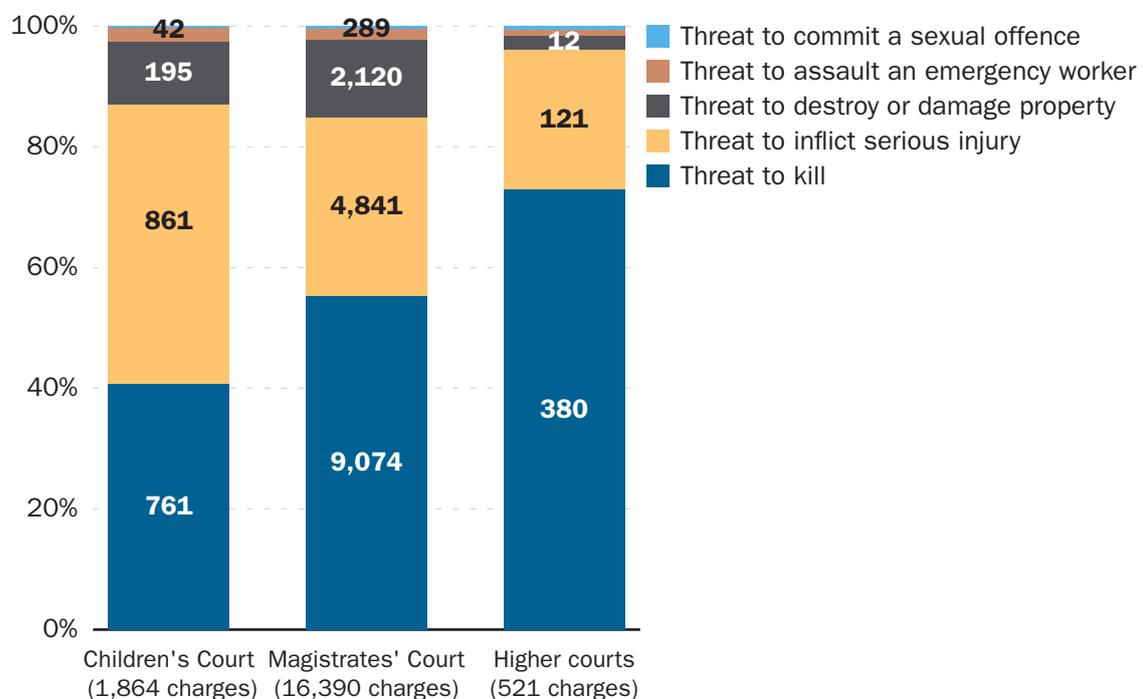
129. For the other threat offences, the rough attrition rates were 53% (threat to inflict serious injury), 49% (threat to destroy or damage property) and 37% (threat to kill).

130. See for example, Melanie Millsteed and Cleave McDonald, *Attrition of Sexual Offence Incidents Across the Victorian Criminal Justice System* (2017) 9 (8.9% of recorded sexual assaults resulted in a conviction in the Magistrates' Court, and a further 9.3% were transferred to the higher courts with undisclosed outcomes at trial). In New Zealand, 11% of recorded sexual violence victimisations were found to lead to a conviction: New Zealand Ministry of Justice, *Attrition and Progression: Reported Sexual Violence Victimisations in the Criminal Justice System* (2019) 2.

Courts sentencing threat offences

- 4.7 The vast majority of threat offences (16,390 or 87%) were sentenced in the Magistrates' Court, while 1,864 (10%) were sentenced in the Children's Court and 521 (3%) were sentenced in the higher courts.
- 4.8 The types of threat offences sentenced varied by jurisdiction. In the higher courts, threats to kill constituted nearly three-quarters (72%) of threat offences sentenced, whereas they constituted 55% of threat offences in the Magistrates' Court and 41% of threat offences in the Children's Court. In the Children's Court, threats to inflict serious injury were more common than threats to kill (46% of threat offences).

Figure 6: Number of threat offences sentenced in each court in Victoria, by offence type, 2015 to 2019¹³¹



Gender of threat offenders

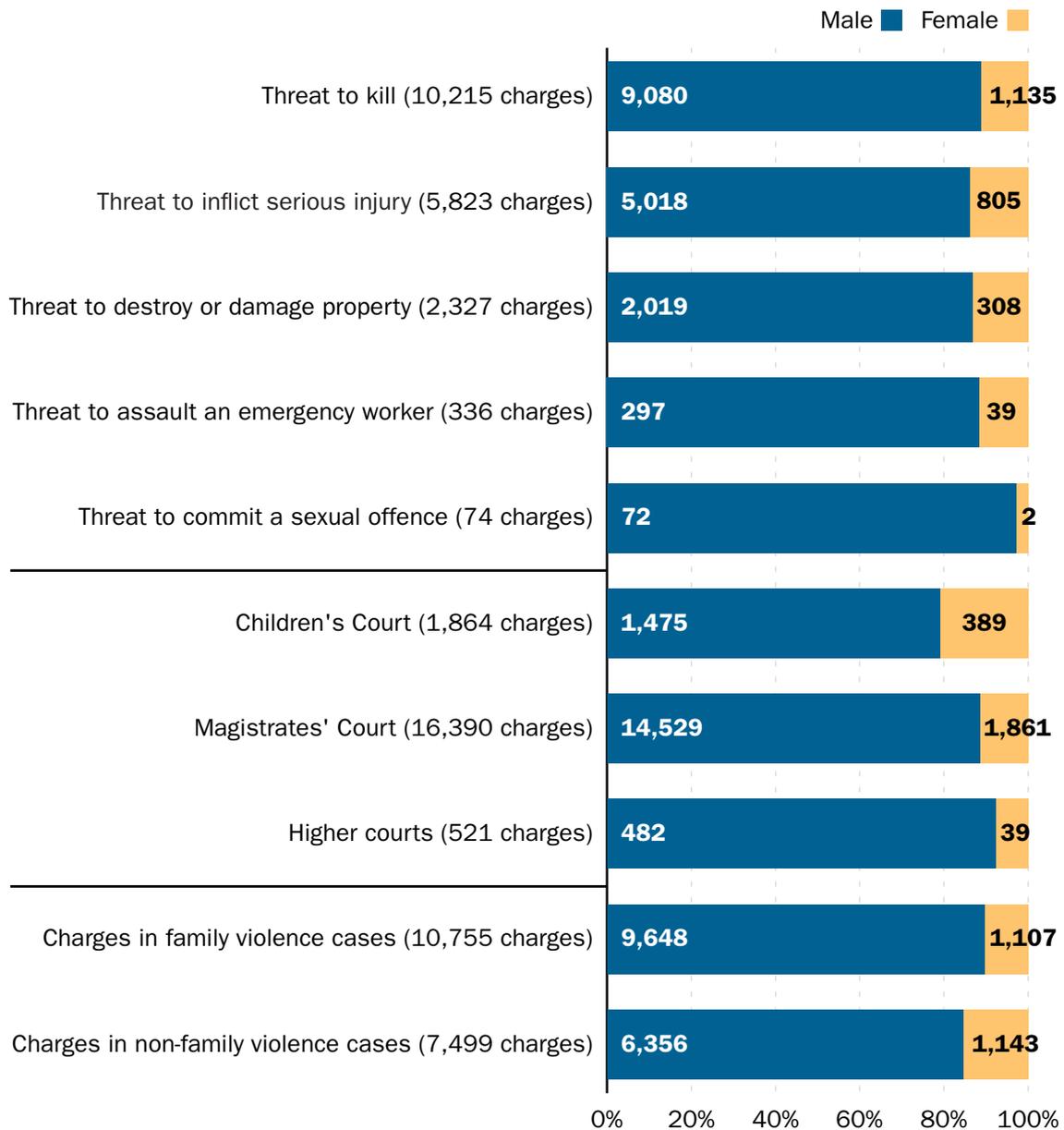
- 4.9 During the reference period, males' threat offending was more commonly sentenced than females' threat offending. Males were sentenced for 16,846 threat offences in 12,120 cases (88%).¹³² Females were sentenced for 2,289 threat charges in 1,726 cases. Males' threat offending was also more serious than females' threat offending (Figure 7, page 22), indicated collectively by the jurisdiction that males were sentenced in, the types of threats they were sentenced for, and the rates of family violence in their cases. Males were least commonly sentenced in the Children's Court (78%) and most commonly sentenced in the higher courts (94%). Males were sentenced slightly more often than females for threat to kill (54% of males' threat offences compared to 50% for females' threat offences).

131. Commonwealth threat charges are included with their Victorian equivalents in Figure 6.

132. These cases involved 92,516 or 88% of the 105,179 total charges sentenced.

4.10 More males than females had made a threat in a family violence context (57% of males' threat offences compared to 48% of females' threat offences). Overall, male offenders were responsible for 90% of all threat charges in family violence cases (Figure 7).¹³³

Figure 7: Proportion of threat charges by gender of the offender, threat offence type, jurisdiction and family violence indicator, 2015 to 2019¹³⁴



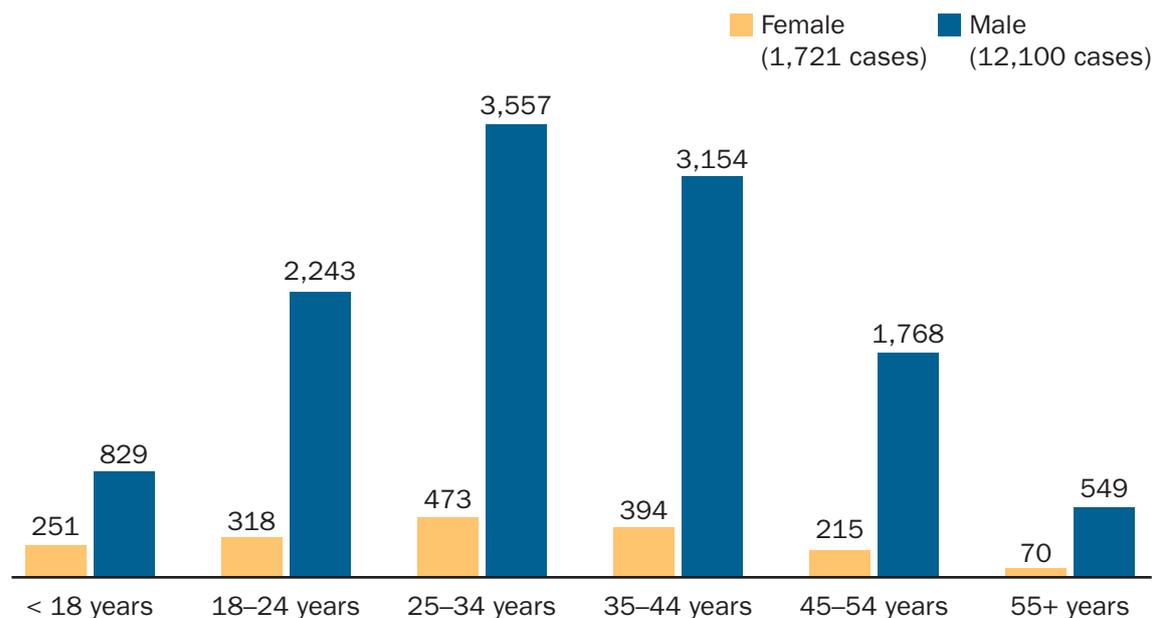
133. In 2019–20, males were recorded as the 'other party' in 76% of family violence incidents compared to 24% for females: Crime Statistics Agency, 'Family Violence Data Portal: Victoria Police' (crimestatistics.vic.gov.au, 2021), Table 'Other Parties' <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/victoria-police>> at 10 May 2021.

134. Commonwealth threat charges are included with their Victorian equivalents in Figure 7.

Age of threat offenders

4.11 Figure 8 shows the age distribution, by gender, of offenders in the 13,821 threat cases. Threat offenders were, on average, aged 33.5 years, with men slightly older (34 years) than women (32 years).¹³⁵ This small difference is partly because twice the proportion of female threat offenders were aged under 18 (15% of female threat offenders compared to 7% of male threat offenders). The high rate at which younger females are sentenced for threat offences is consistent with the Council's recent research. Teenage girls involved with the criminal justice system are often particularly vulnerable; they have higher rates and levels of child protection involvement, even compared to other 'crossover children' of the same age, and their offending is often a result of their trauma and living circumstances.¹³⁶ This high rate is also consistent with stakeholder comments and academic research suggesting an ongoing convergence in the volume and seriousness of offending by young women and young men, even though male offenders outnumber female offenders in every age group.¹³⁷

Figure 8: Age and gender of offenders in threat cases in Victoria, all courts, 2015 to 2019



Family violence

4.12 In threat cases where family violence data was available, 58% (7,819 cases) had a family violence indicator. As shown in Figure 9 (page 24), a family violence indicator was especially prevalent in cases involving threats to destroy or damage property (66%), followed by threats to kill (62%), whereas a family violence indicator was least prevalent in cases involving threats to assault an emergency worker (29%) and threats to commit a sexual offence (32%). About half of cases involving a threat to inflict serious injury (52%) had a family violence indicator.

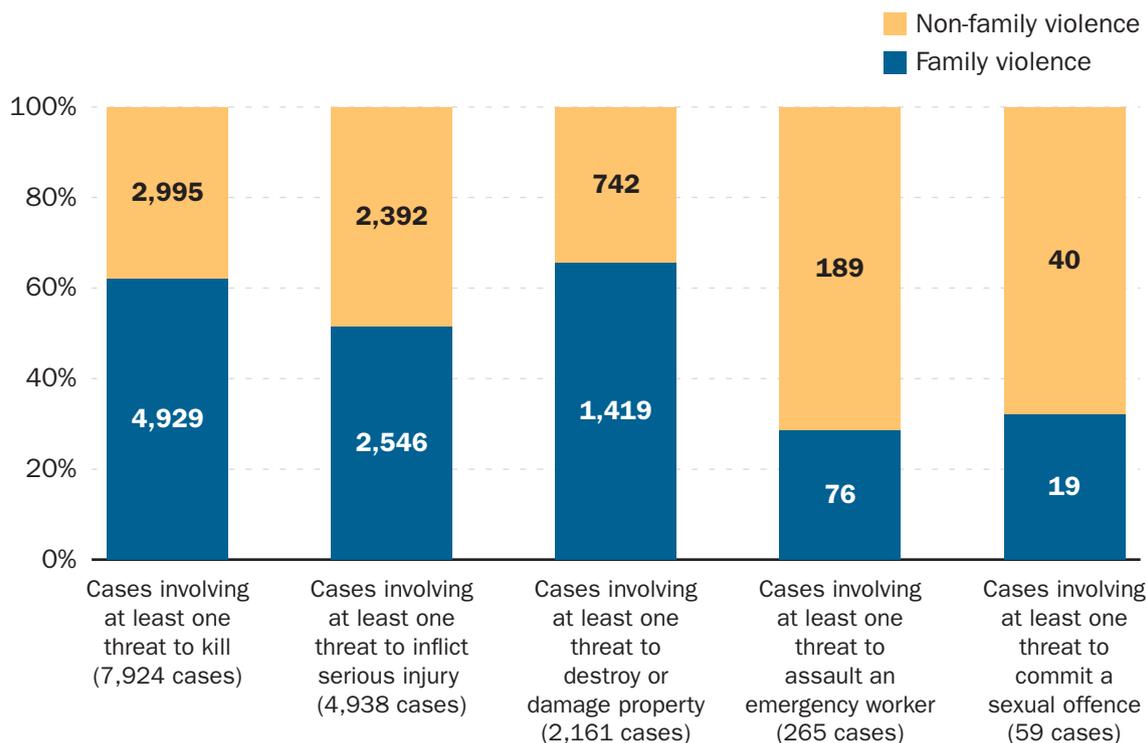
135. A full breakdown of cases by offender year of age is available in Appendix 2.

136. Sentencing Advisory Council (2020), above n 38, 39–40, 57–58, 82–83. See also Stephane M. Shepherd et al., 'An Analysis of High-Risk Offending Pathways for Young Females in Custody' (2019) 26(2) *Psychiatry, Psychology and Law* 194, 195, 201–202.

137. Meeting with Magistrates' Court (1 April 2021); see also Tony Beaton et al., 'Gender Crime Convergence over Twenty Years: Evidence from Australia' (2018) 109 *European Economic Review* 275, 279–281, 286. Some stakeholders also speculated that pervasive use of social media might contribute to threats, specifically among girls in this age group.

In cases with a family violence indicator, threats to assault an emergency worker were most likely related to situations where police were called to a family violence incident and were threatened as they responded to that incident, rather than to situations where the emergency worker was a victim of family violence.

Figure 9: Proportion of threat cases with a family violence indicator, Magistrates' Court and Children's Court, 2015 to 2019, by threat offence type, 2015 to 2019¹³⁸



4.13 The prevalence of family violence indicators varied by jurisdiction. While the prevalence of family violence in higher courts threat cases is undetermined, family violence indicators were attached to twice the percentage of cases in the Magistrates' Court (61%) as in the Children's Court (29%). Further, in the Children's Court the rate of cases with a family violence indicator was similar for male offenders (29%) and female offenders (28%); in the Magistrates' Court, cases involving male offenders were more often linked to family violence (62%) than cases involving female offenders (53%). This most likely reflects changing family dynamics with age: children's family violence is typically directed at siblings and parents and is less strongly gendered, whereas adults' family violence is more often intimate partner violence, which is usually perpetrated by males against females.¹³⁹

138. Commonwealth threat charges are included with their Victorian equivalents in Figure 9. As the higher courts dataset does not include a family violence indicator, higher courts cases are excluded. Some cases may include more than one type of threat, and as such a case may appear more than once in Figure 9.

139. Victoria, Royal Commission into Family Violence (2016), above n 63, 57–58; Victoria, Royal Commission into Family Violence, *Report and Recommendations*, vol. 4 (2016) 151–155.

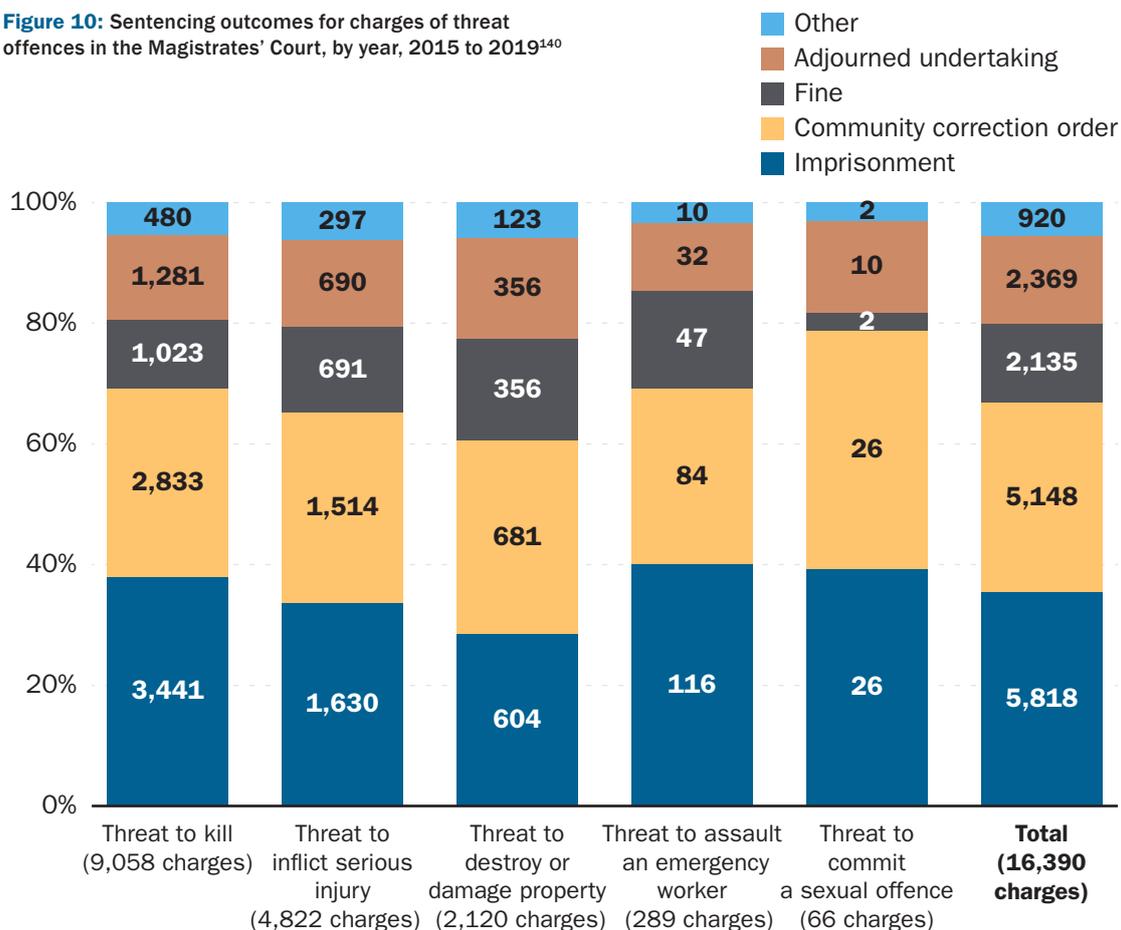
5. Sentencing outcomes

5.1 This chapter examines the sentences imposed on threat offenders, including sentence types and imprisonment lengths. The analysis is arranged by the court in which the sentence was imposed; it includes comparisons between male offenders and female offenders, and between family violence cases and non-family violence cases, where relevant.

Sentencing in the Magistrates' Court

5.2 Between 1 January 2015 and 31 December 2019 (the reference period), 16,390 threat offences were sentenced in 12,223 cases in the Magistrates' Court. A threat offence was the principal proven offence (receiving the most serious penalty) in 4,815 cases.

Figure 10: Sentencing outcomes for charges of threat offences in the Magistrates' Court, by year, 2015 to 2019¹⁴⁰



5.3 In the Magistrates' Court, the most frequent sentencing outcome for threat offences was imprisonment (35% of all charges), followed by a community correction order (31%) (10). The rate of imprisonment was driven, at least partly, by threat offences being co-sentenced with more serious offending. The rate of imprisonment was lower (25%) in cases where the threat offence was the principal proven offence.¹⁴¹

140. Commonwealth threat offences are only included in the 'total' column in Figure 10.

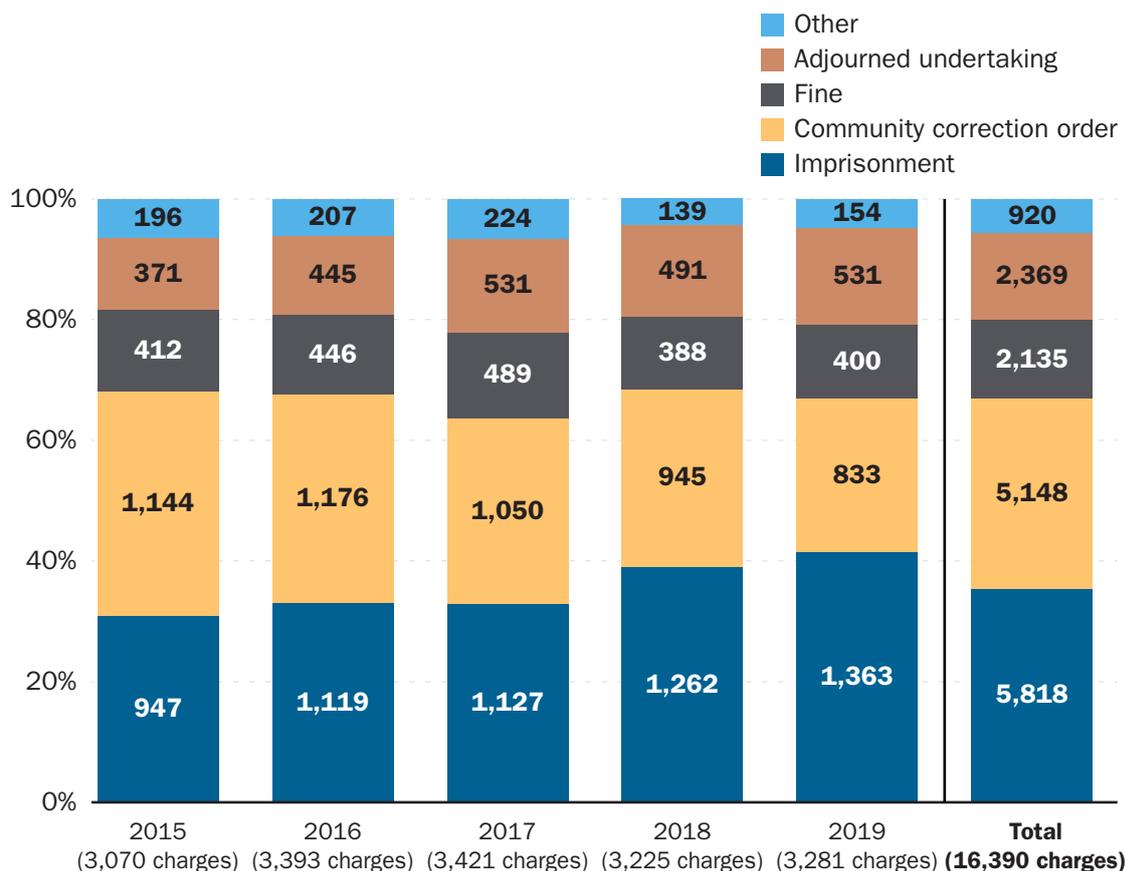
141. The offence types co-sentenced with threat offences in the Magistrates' Court are outlined in Chapter 6.

5.4 The sentence types imposed also varied slightly by offence type. The rate of imprisonment, for example, ranged from 28% of threats to destroy or damage property to 40% of threats to assault an emergency worker. Threats to destroy or damage property may not necessarily be perceived as being as serious as threats to kill or seriously injure, but they can occur in very serious circumstances, such as threats to harm pets or burn down a house. This – along with co-sentenced offences – is most likely why 28% of charges of threat to destroy or damage property received imprisonment. Threats to destroy or damage property also occur in a family violence context more frequently than do all other threat offences.

Sentence type over time

5.5 In the Magistrates' Court, the proportion of prison sentences and adjourned undertakings increased over time, while the proportion of community correction orders decreased (Figure 11).

Figure 11: Sentencing outcomes for charges of threat offences in the Magistrates' Court, by year, 2015 to 2019¹⁴²



5.6 Rather than necessarily being reflective of a change in how threat offences are sentenced, these changes in sentencing outcomes are consistent with changes in how offences are sentenced in the Magistrates' Court overall; the number of community correction orders decreased each year in the three years to 2019–20, from about 10,000 to 6,500.¹⁴³

¹⁴². Commonwealth threat offences are only included in the 'total' column in Figure 11.

¹⁴³. Sentencing Advisory Council, 'Sentencing Outcomes in the Magistrates' Court' (sentencingcouncil.vic.gov.au, 2021) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/sentencing-outcomes-magistrates-court>> at 10 May 2021.

- 5.7 Stakeholders commented that, in addition to the increasing proportion of cases linked to family violence, this change is likely to be related to recent changes in bail laws:¹⁴⁴

It seems to correspond with the changes to the bail laws. We find a lot more clients remanded who otherwise wouldn't have been remanded, and either they spend a couple of days in custody before being sentenced on a plea – in which case they might be given an adjourned undertaking, taking into account the time they served in custody without that time being reckoned – or the time is reckoned. Whether they spend a couple of days and then they're sentenced in the bail and remand court or their matter gets adjourned for a month or so and then they're sentenced, we are seeing a lot more clients in those circumstances receiving short imprisonment terms or receiving very low sentences to take into account the fact that they have served some time in custody. Often it is very common for clients that fall into this category, particularly in the family violence context, to be refused bail in the first instance, or to have lower prospects of bail, usually because of a history of making similar threats, and as we know it's much more difficult to get bail in that context in the current climate ... that probably accounts for both outcomes, at the low end and the high end.¹⁴⁵

- 5.8 Other factors could also contribute to the use of short sentences of imprisonment, including the use of remand to remove a perpetrator from the home in family violence cases.¹⁴⁶ Consolidated hearings could also contribute to higher numbers of offences and consequently the use of remand and sentences of imprisonment, including time served prison sentences.¹⁴⁷

Sentence type by gender

- 5.9 Figure 12 (page 28) shows that sentences varied substantially by gender. In cases where the threat offence was the principal proven offence, Males received imprisonment three times more often (27% of cases) than females (10% of cases).¹⁴⁸ Males also received more community correction orders and fines. In contrast, women received higher proportions of adjourned undertakings and other dispositions (primarily court-ordered diversion).
- 5.10 A number of factors are likely to contribute to female offenders receiving less severe penalties for threat offences, including the higher likelihood of male offenders having a prior criminal history, the perceived credibility of the threat, and the particularly strong role of past trauma in offending by females.¹⁴⁹ Stakeholders commented that female offenders were not only less likely to have a criminal history (see Table 8, page 45) but also less likely to have a history of violence convictions when they *do* have a criminal history.¹⁵⁰ Further, women are often primary carers for children.¹⁵¹ They are less likely to make threats in a family violence context; when they do, a threat is often made in a context where they are primarily a victim who acted defensively.¹⁵²

144. *Bail Amendment (Stage One) Act 2017* (Vic); *Bail Amendment (Stage Two) Act 2018* (Vic). In particular, threats to kill in a family violence context are not Schedule 2 offences, placing defendants in a reverse onus position when applying for bail: *Bail Act 1977* (Vic) s 4AA, sch 2 cl 7.

145. Participant at Stakeholder Roundtable (7 April 2021).

146. Meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021).

147. Meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021). Stakeholders also observed that case consolidation could further contribute to inflated charge counts because it was often not worthwhile to negotiate the withdrawal of individual charges among a large collection.

148. This analysis uses the case-level counting rule for the principal proven offence on the assumption that when a threat offence is the principal proven offence, it is likely to have been a driving influence on the sentence type imposed.

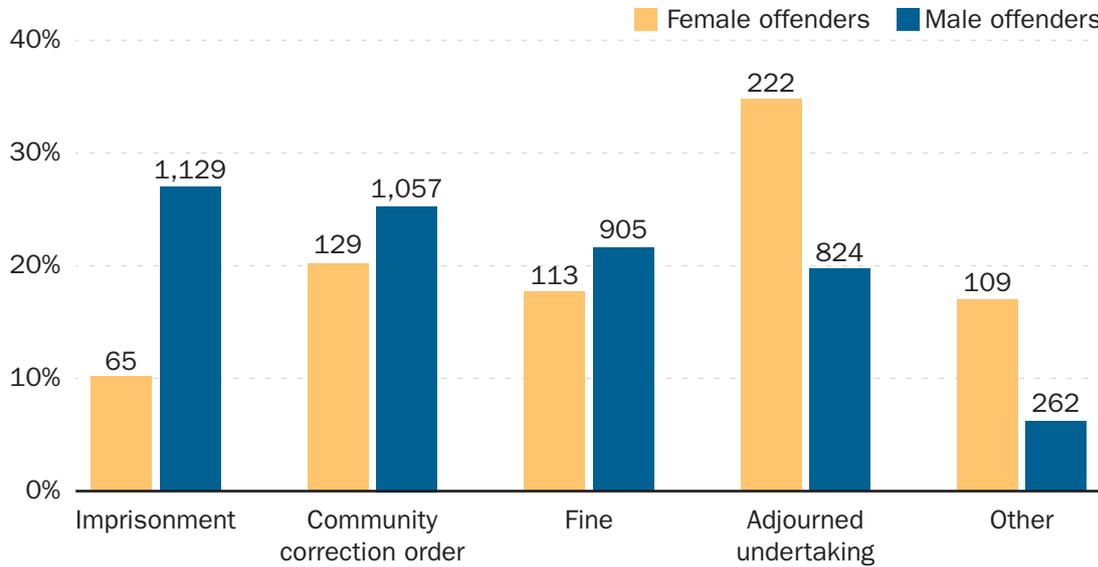
149. Corrections Victoria (2019), above n 58, 13. On the comparative rates of prior offending, see [7.7].

150. Meeting with Magistrates' Court (1 April 2021).

151. Meeting with Magistrates' Court (1 April 2021).

152. Meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021).

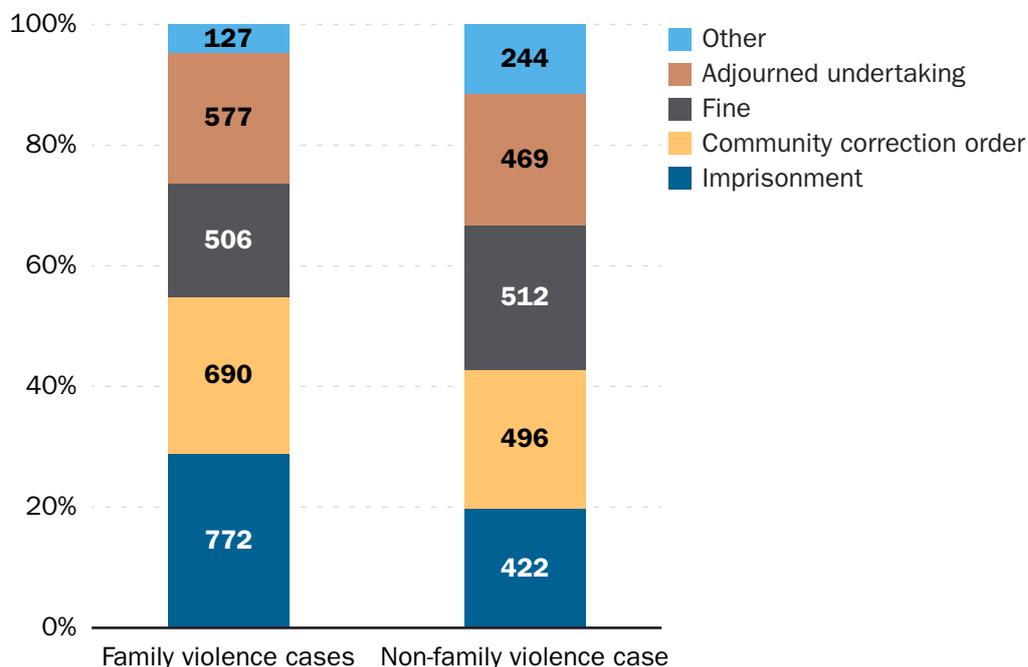
Figure 12: Number and percentage of threat cases resulting in each sentence type in the Magistrates' Court, by gender, 2015 to 2019



Sentence type by family violence indicator

5.11 The sentence type imposed on threat offenders also varied by whether the case had a family violence indicator (Figure 13). When a threat offence was the principal proven offence in a case, family violence offenders received imprisonment and community correction orders in 29% and 26% of cases respectively, whereas non-family violence offenders received imprisonment and community correction orders in 20% and 23% of cases. Non-family violence offenders instead received higher rates than family violence offenders of fines and other dispositions, especially court-ordered diversion.

Figure 13: Sentencing outcomes in cases where a threat offence was the principal proven offence, by family violence indicator, Magistrates' Court, 2015 to 2019



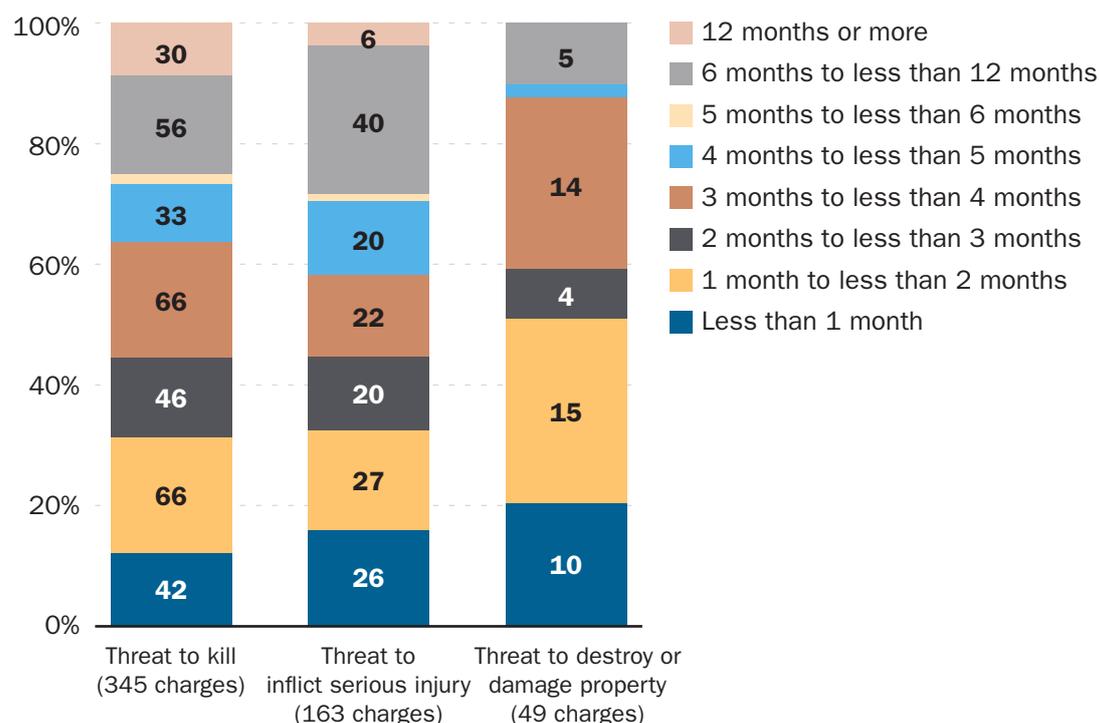
Lengths of imprisonment terms: charge level

- 5.12 There was a very high rate of aggregate sentences for threat offences in the Magistrates' Court. Of the 5,818 threat charges that resulted in a sentence of imprisonment, 90% were part of an aggregate imprisonment term.¹⁵³ However, 567 threat offences received a non-aggregate imprisonment term, making it possible to analyse the lengths of imprisonment terms imposed on those offences.
- 5.13 Table 2 outlines the shortest, longest and average prison sentences for the three most common threat offences in the Magistrates' Court.¹⁵⁴ Figure 14 illustrates the distribution of sentence lengths for those offences. They show that threats to damage property tended to receive shorter prison sentences than threats to kill or injure. While threats to kill or seriously injure are usually sentenced very similarly, a small number of threat to kill cases received especially long prison sentences: 9% were 12 months or longer compared to 4% of prison sentences for threat to inflict serious injury.

Table 2: Shortest, longest and average non-aggregate imprisonment terms imposed for threat to kill, threat to inflict serious injury and threat to destroy or damage property, Magistrates' Court, 2015 to 2019

Offence	Number of charges	Shortest term	Longest term	Average (mean) term
Threat to kill	345	2 days	24 months	4 months
Threat to inflict serious injury	163	1 day	12 months	4 months
Threat to destroy or damage property	49	4 days	10 months	2 months

Figure 14: Distribution of non-aggregate imprisonment lengths for threat to kill, threat to inflict serious injury and threat to destroy or damage property, Magistrates' Court, 2015 to 2019



153. Fines too were often aggregated: of the 2,135 fines imposed on threat charges in the Magistrates' Court, 80% were aggregate fines.

154. Eight charges of threat to assault an emergency worker received non-aggregate imprisonment terms ranging from two months to four months, and two charges of threat to commit a sexual offence received non-aggregate imprisonment terms of five months and nine months.

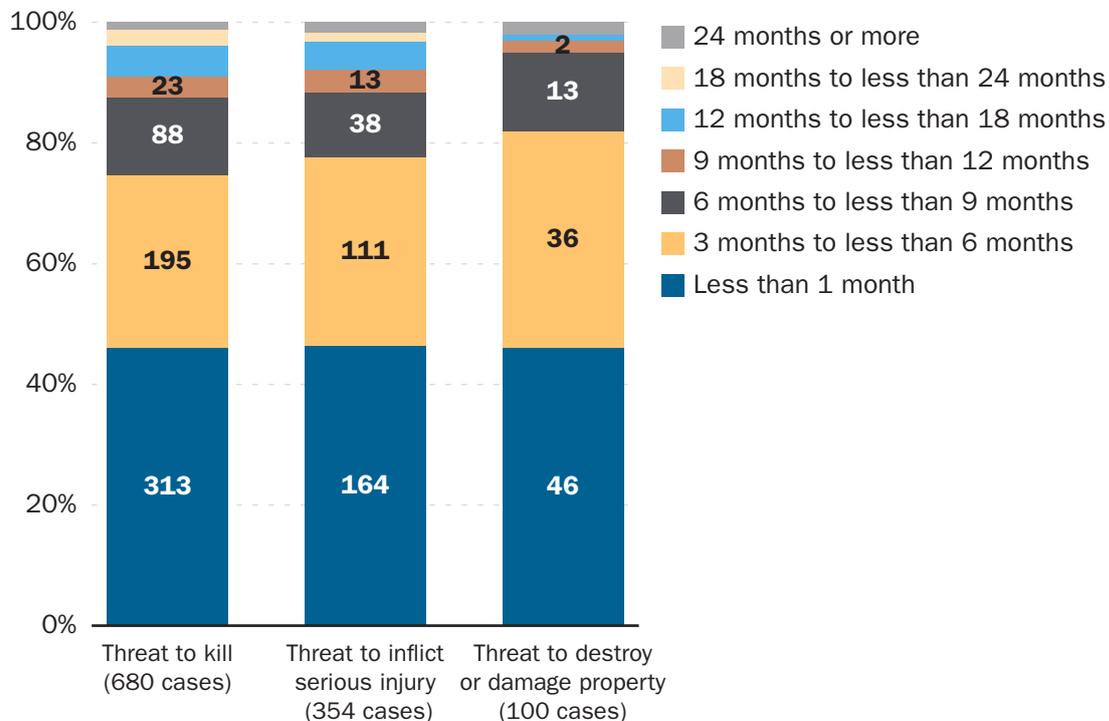
Lengths of imprisonment terms: total effective sentences

5.14 When an offence is the principal proven offence in a case, this usually suggests that it is the main driver of the type and length of sentence imposed. A threat to kill, threat to inflict serious injury or threat to destroy or damage property was the principal proven offence in 4,623 cases; the offender received an imprisonment term in 1,134 of these cases. Table 3 outlines the shortest, longest and average total effective sentence of imprisonment in those cases, while Figure 15 illustrates the distribution of the total effective sentence lengths by the threat offence type.

Table 3: Total effective sentences of imprisonment imposed in cases where threat to kill, threat to inflict serious injury or threat to destroy or damage property was the principal proven offence, Magistrates' Court, 2015 to 2019

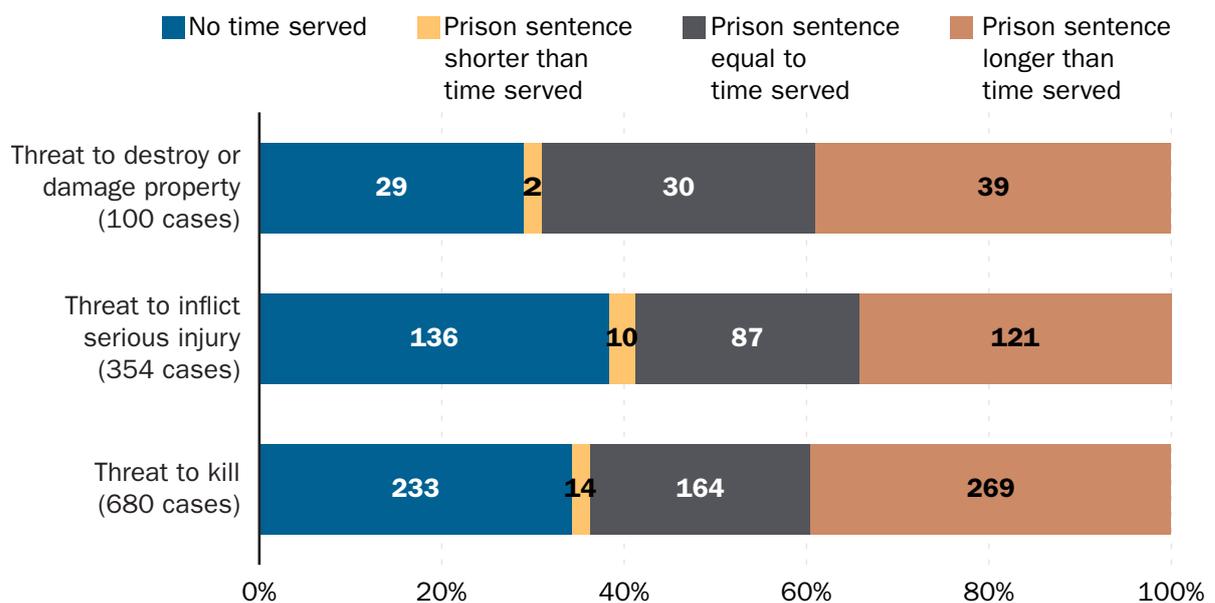
Offence	Number of cases	Shortest term	Longest term	Average (mean) term
Threat to kill	680	1 day	27 months	4.2 months
Threat to inflict serious injury	354	1 day	39 months	4.1 months
Threat to destroy or damage property	100	1 day	24 months	3.5 months

Figure 15: Distribution of total effective imprisonment lengths for cases where threat to kill, threat to inflict serious injury or threat to destroy or damage property was the principal proven offence, Magistrates' Court, 2015 to 2019



- 5.15 There is a remarkable similarity in the length of total effective sentences imposed on threat offenders regardless of the threat offence type they were sentenced for. In cases involving each threat offence type, 46% of total effective sentence lengths were less than three months. The case-level sentences were also remarkably similar to the charge-level sentences shown in Table 2 (page 29). Slightly longer prison sentences were imposed in cases involving threats to kill or seriously injure than in cases involving threats to destroy or damage property. And cases involving threats to destroy or damage property, in turn, received longer prison sentences than *charges* of threat to destroy or damage property; this is consistent with the use of threats in family violence cases as being reflective of the entirety of the offending.
- 5.16 The short duration of these total effective sentences raises the question of how many might have been time served prison sentences, where the length of the sentence imposed is identical to the amount of time the offender spent on remand. Figure 16 shows that 25% of prison sentences imposed on threat offenders were time served prison sentences. Most were shorter than three months (231 of 281 time served prison sentences in threat cases). This is slightly higher than the overall rate of time served prison sentences in Victoria (20% of all prison sentences in 2017–18).¹⁵⁵

Figure 16: Prison sentences in cases with a threat offence as the principal proven offence, by threat offence type and relative length of imprisonment term, Magistrates' Court, 2015 to 2019¹⁵⁶



- 5.17 Stakeholders also commented that prison sentences of one or two days' duration were most likely to have resulted from a plea in a bail court, with offenders who had been remanded in custody pleading guilty and being released immediately.¹⁵⁷

155. Sentencing Advisory Council, *Time Served Prison Sentences in Victoria* (2020) 17.

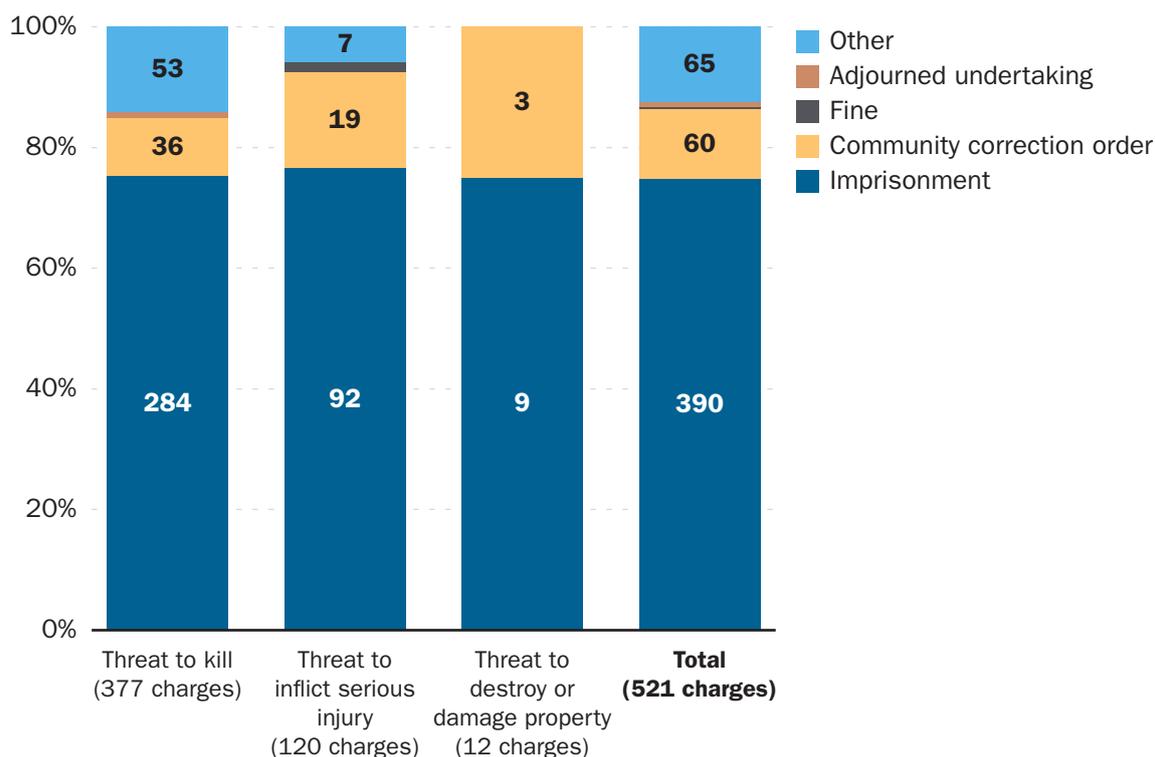
156. Where the total effective sentence was within two days of the time declared as pre-sentence detention, the two figures were taken to be identical. This accounts for administration processing times and clerical errors.

157. Stakeholder Roundtable (7 April 2021).

Sentencing in the higher courts

- 5.18 In the higher courts, 521 threat offences were sentenced in 368 cases during the reference period. Many of these were threats to kill (72%). Of those 521 charges, 75% received an imprisonment term (Figure 17). Although threat to inflict serious injury carries a lower maximum penalty (five years' imprisonment) than threat to kill (10 years' imprisonment), slightly higher rates of prison sentences were actually imposed for threats to inflict serious injury. This could be because the sentences in those cases were driven primarily by the co-sentenced offences. A threat offence was the principal proven offence in very few cases in the higher courts (48 of the 368 cases, 39 of which were threats to kill and nine of which were threats to inflict serious injury).
- 5.19 Very few threat offences sentenced in the higher courts were committed by female offenders (39 of the 521 charges). Female threat offenders received imprisonment at a much lower rate (28%) than male threat offenders (79%).¹⁵⁸ Higher courts data does not include a family violence indicator.

Figure 17: Sentencing outcomes for threat offences in the higher courts, by threat offence type, 2015 to 2019¹⁵⁹



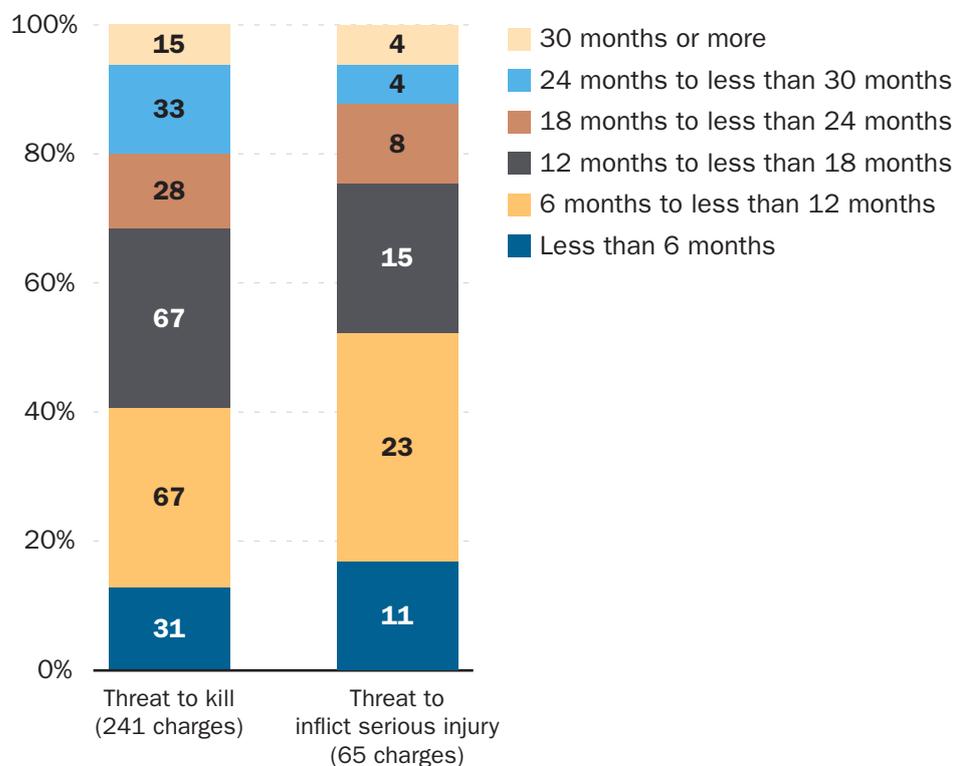
158. A woman was sentenced for a threat offence as the principal proven offence in just two cases in the higher courts; both cases received imprisonment for threats to kill, with total effective sentences of nine months and 15 months, respectively.

159. Offences with five or fewer charges in the reference period are not presented in Figure 17, but they are included in the totals: threat to assault an emergency worker (five charges), threat to commit a sexual offence (three charges), and Commonwealth threats to kill (three charges) and seriously injure (one charge).

Length of imprisonment terms: charge level

- 5.20 Aggregate sentences were much less common in the higher courts than in the Magistrates' Court: 19% of prison sentences imposed in the higher courts for threat offences were part of an aggregate sentence. During the reference period, 316 threat offences received non-aggregate imprisonment terms (241 threats to kill, 65 threats to inflict serious injury, and 10 other threat offences).¹⁶⁰
- 5.21 Given how few threat offences were the principal proven offence in the higher courts, there is little utility in analysing the total effective sentence lengths imposed. There are, however, a sufficient number of *charges* to examine charge-level non-aggregate sentence lengths (Figure 18). Prison sentences for threat to inflict serious injury ranged from two months to 45 months, with an average of 12 months. And prison sentences for threat to kill ranged from one month to 48 months, with an average of 14 months. Unlike the prison sentence lengths for threats to inflict serious injury and threats to kill in the Magistrates' Court, where the two offences received quite similar sentences, the prison sentence lengths for offences in the higher courts were more clearly delineated. Threats to kill received slightly longer prison sentences than threats to inflict serious injury: 59% of threats to kill resulted in imprisonment terms of 12 months or longer, compared to 48% of threats to inflict serious injury.

Figure 18: Distribution of non-aggregate imprisonment terms for threat to kill and threat to inflict serious injury, higher courts, 2015 to 2019

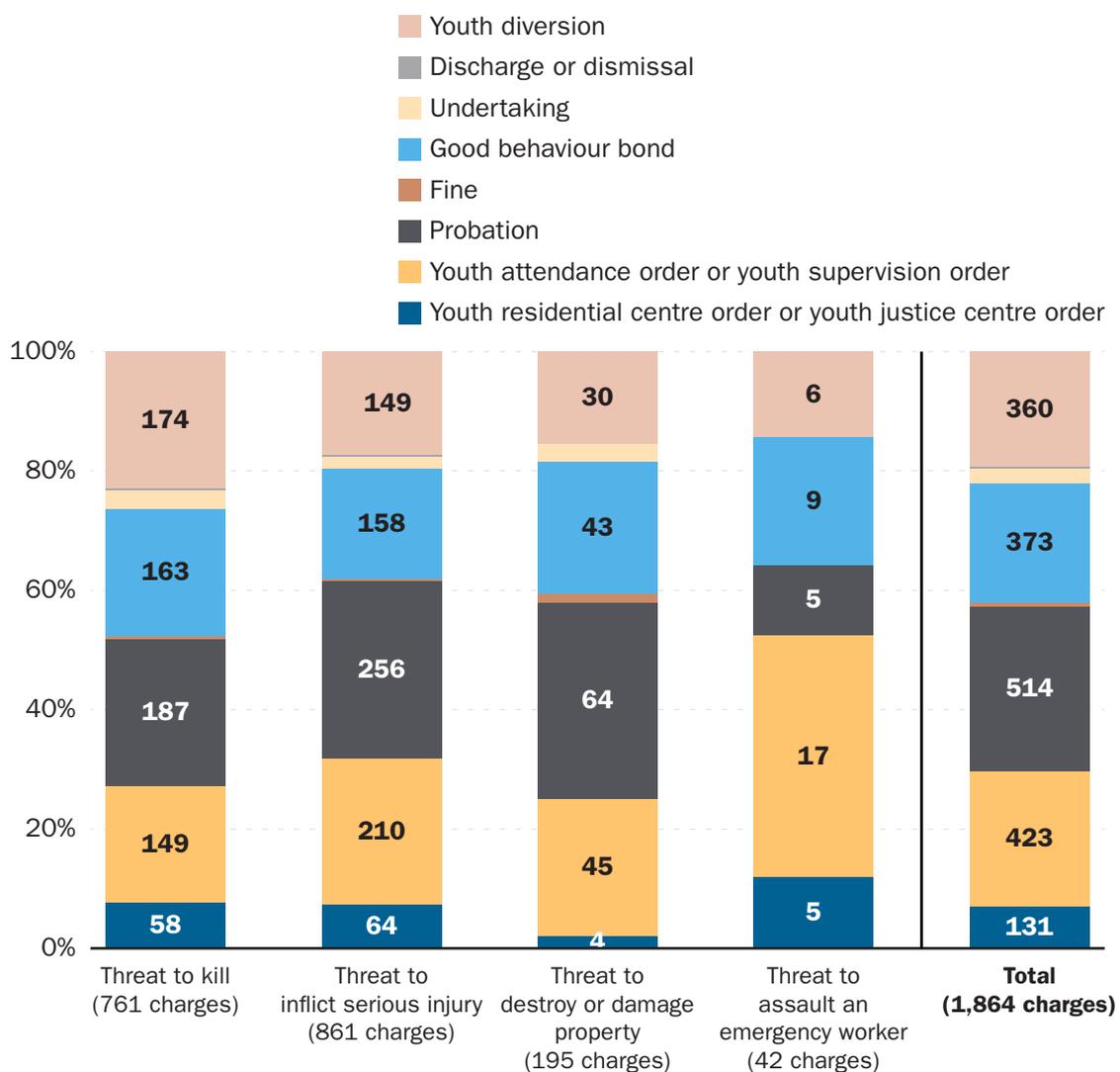


160. These included five threats to damage property (two months, three months, six months, six months and nine months), one threat to assault an emergency worker (six months), three threats to commit a sexual offence (three months, 10 months and 18 months) and one Commonwealth offence making a threat to kill (12 months).

Sentencing in the Children's Court

5.22 In the Children's Court, 1,864 threat offences were sentenced in 1,255 cases. The threat offence was the principal proven offence in 300 of those cases. The most frequently imposed sentence was probation (514 charges or 28% of all threat offences). Custodial sentences were relatively infrequent (131 charges or 7%). Figure 19 shows the sentences imposed on each threat charge sentenced in the Children's Court during the reference period.

Figure 19: Sentence types imposed on charges of threat offences in the Children's Court, by threat offence type, 2015 to 2019¹⁶¹

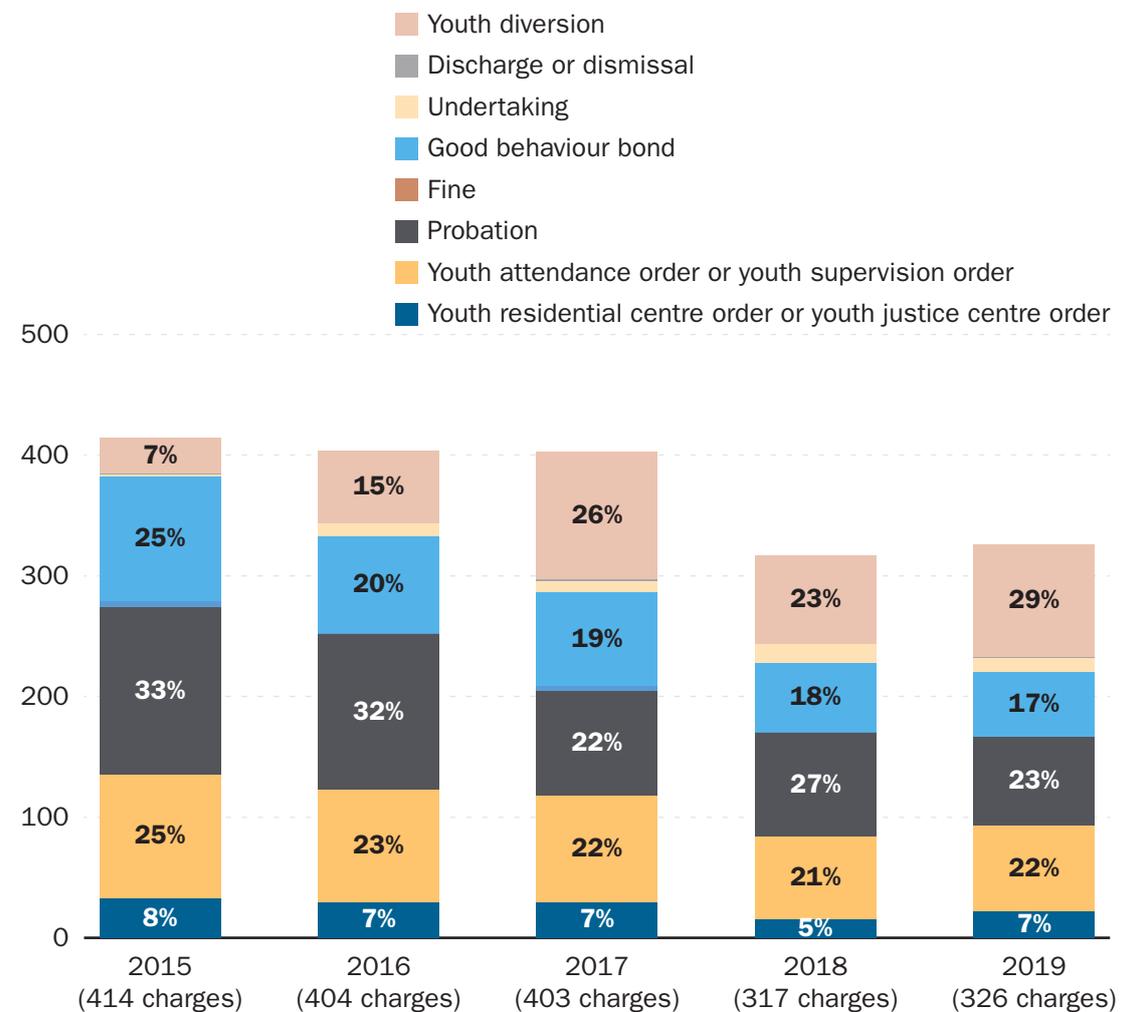


161. Offences with 20 or fewer charges in the reference period are not presented in Figure 19, but they are included in the totals: threat to commit a sexual offence (five charges). Diversions are not strictly sentences, but they are included as they are case outcomes.

5.23 In the 300 cases where a threat was the principal proven offence, the sentences were less severe: 2% (seven cases) received a custodial sentence, 15% (44 cases) received a youth attendance order or youth supervision order, and 23% (68 cases) received a probation order. Good behaviour bonds (28%) and youth diversion orders (26%) were the most common outcomes and together made up more than half of all outcomes in these cases.

5.24 Figure 20 shows the change in the sentence types imposed for charges of threat offences in the Children's Court during the reference period. There was a drop in the rates of probation orders, fines and youth attendance orders or youth supervision orders, and a substantial increase in the rate of youth diversion orders. This is consistent with an overall trend in Children's Court outcomes, with youth diversion orders increasing from 19% of all outcomes in 2015–16 to 37% of all outcomes in 2018–19.¹⁶²

Figure 20: Sentence types imposed on charges of threat offences in the Children's Court, 2015 to 2019



¹⁶² Sentencing Advisory Council, 'Sentencing Outcomes in the Children's Court' (sentencingcouncil.vic.gov.au, 2021) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/sentencing-outcomes-childrens-court>> at 10 May 2021.

5.25 Stakeholders commented that the increasing rates of diversion, particularly the even higher rates of diversion in family violence cases, suggested that therapeutic options were increasingly being used, especially to respond to adolescent family violence. Stakeholders saw this as a positive development, in contrast to the increasing use of prison sentences in the Magistrates' Court.

Family violence

5.26 In the Children's Court, threat cases with a family violence indicator tended to receive less severe sentences than threat cases without one. Of the 300 cases where a threat was the most serious offence, 78 had a family violence indicator while 222 did not. Of those cases with a family violence indicator, none received a youth justice centre order or a youth residential centre order, while 3% of non-family violence cases received those sentence types. This is most likely due to the different family violence case profile among children compared to adults. Children whose cases are linked to family violence are often primarily victims rather than perpetrators of family violence, and children who perpetrate family violence tend to be especially vulnerable.¹⁶³ Stakeholders also commented that in the Children's Court, much of the violence perpetrated by children was most likely violence by a child against a parent. Such violence often receives less severe outcomes than intimate partner violence for various reasons, potentially including the wishes of the victim, the vulnerability of the child, and the availability of supports and therapeutic options prior to sentence.¹⁶⁴

Gender

5.27 In the Children's Court, female offenders tended to receive less severe sentences than their male counterparts where the principal proven offence was a threat offence. However, the difference appeared less pronounced than that in the adult courts. Young males, for example, received twice the proportion of youth attendance orders or youth supervision orders as young females did (16% of cases with a threat offence as the principal proven offence compared to 8%). Both groups, though, had similar rates of custodial sentences (2% of cases involving males and 3% of cases involving females). Again, this is most likely attributable to the differences between adults' and children's experiences of family violence, as well as the particular vulnerability of young female offenders.

163. Victoria, Royal Commission into Family Violence (2016), above n 139, 152–156.

164. Stakeholder Roundtable (7 April 2021). See also Elena Campbell et al., *The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home (AVITH)*, ANROWS Research Report Issue 4 (2020) 30–32.

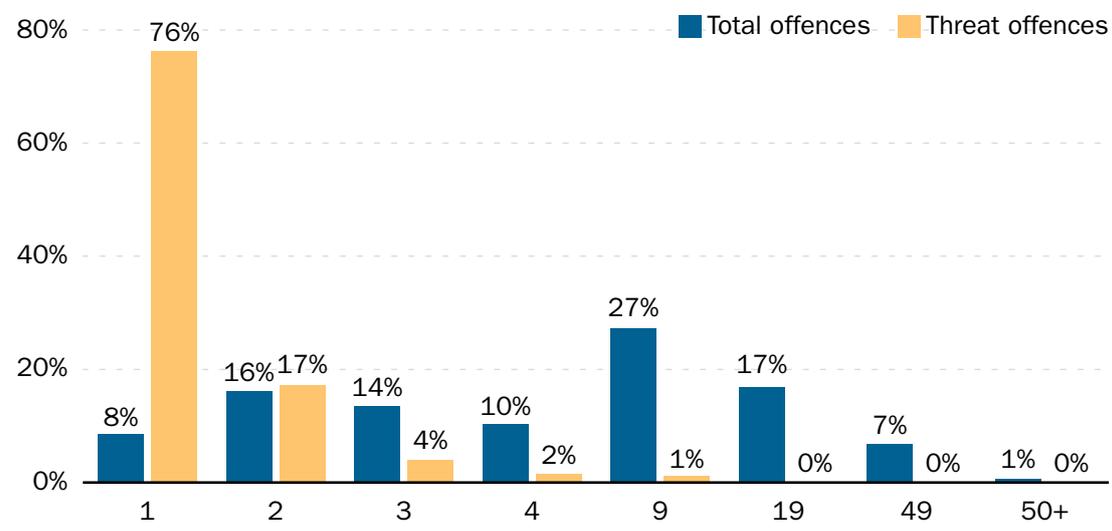
6. Co-sentenced offences

- 6.1 Between 1 January 2015 and 31 December 2019 (the reference period), 105,179 offences in total were sentenced in 13,846 cases involving a threat offence. This chapter examines the other charges that were co-sentenced with threat offences in each jurisdiction, including whether the types of co-sentenced offences in the Magistrates' Court varied between family violence cases and non-family violence cases, and between the various threat offence types.
- 6.2 This chapter also includes an analysis of the offence dates for different charges sentenced in the same case. This analysis aims to gauge how many offenders threaten and then offend violently later, as opposed to threaten as part of an outburst that also includes violence.
- 6.3 In the Children's Court – and to a lesser extent in the Magistrates' Court – multiple, unrelated cases are sometimes consolidated for procedural reasons. As a result, co-sentenced offences may appear more often simply because they are common overall,¹⁶⁵ rather than because they are specifically related to threats. Case consolidation can also affect the family violence designation of a case: if just one of the cases consolidated together has a family violence indicator, that indicator also applies to the consolidated case. The co-sentenced offences in these jurisdictions should therefore be regarded with caution.

Number of charges per case

- 6.4 Overall, threat cases involved high numbers of offences per case: an average of 7.2 in the Magistrates' Court and higher courts, and 11.3 in the Children's Court. This was not merely due to a few prolific offenders: more than half of threat cases involved four or more offences in total (Figure 21). However, the high numbers in the Children's Court are most likely linked to the common practice in that court of consolidating unrelated charges into a single case.¹⁶⁶ Most threat offenders were sentenced for a combination of a single threat offence and some other offence type.

Figure 21: Number of threat charges and total charges per threat case, all courts, 2015 to 2019



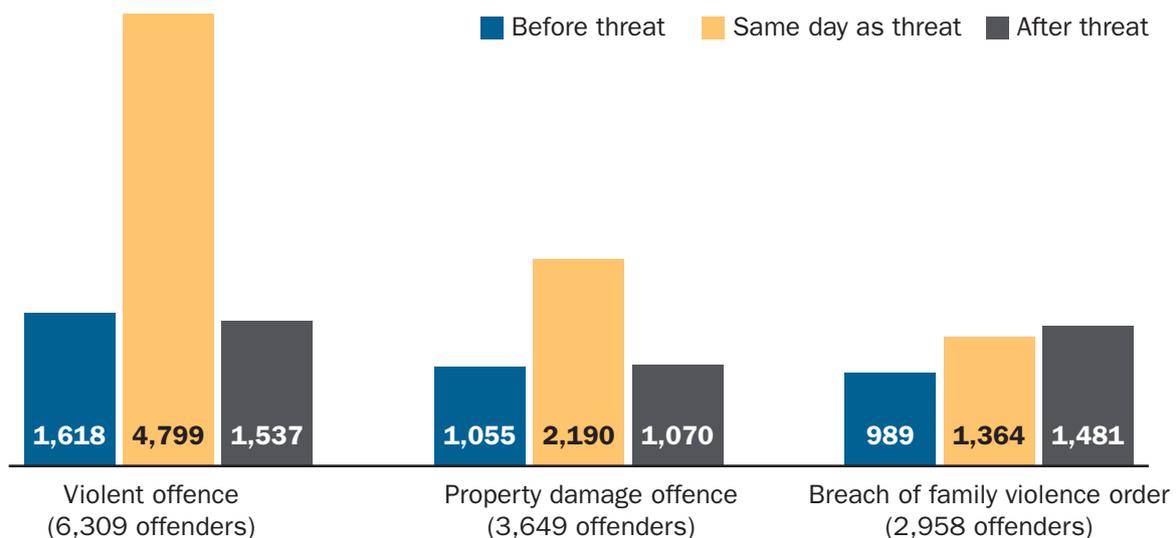
¹⁶⁵ Meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021).

¹⁶⁶ Many cases in the Children's Court (including 81% of those for which children were held on remand in 2017–18) involve two or more cases that were consolidated by the time of sentencing; this is done for efficiency and to better deal with the child's offending behaviour: see Sentencing Advisory Council, *Children Held on Remand in Victoria* (2020) 39.

Timing of co-sentenced offences

- 6.5 This section analyses offenders who were sentenced for a threat offence along with a violent offence, a property offence or breach of family violence order in the same case. It compares the offence date for the threat with the offence date for the other offence.¹⁶⁷
- 6.6 Of the 12,332 offenders sentenced for at least one threat offence during the reference period, offence dates were available for the threats of 11,337 (92%). Among these, 6,309 (56%) had a co-sentenced violent offence for which an offence date was available; 3,649 (32%) had a co-sentenced property damage offence for which an offence date was available; and 2,958 (26%) had a co-sentenced breach of family violence order for which an offence date was available.¹⁶⁸
- 6.7 Figure 22 shows the distribution of offenders who committed a specified offence before, on the same day as, or after their threat offence.

Figure 22: Number of offenders whose co-sentenced offences occurred before, on the same day as and after their threats, all courts, 2015 to 2019



- 6.8 This shows that most offenders who were sentenced for a violent offence (76%) or a property damage offence (60%) alongside a threat offence committed that offence on the same day as the threat offence. Further, the proportion of offenders who offended before making the threat was roughly the same as the proportion of offenders who offended after making the threat. This suggests that if threateners make a threat to kill, seriously injure or destroy or damage property and then carry it out in whole or in part, they are often doing so rapidly, most likely as part of the same incident. This is consistent with stakeholder comments

167. In consolidated data, each offender is counted only once by their most serious threat. However, because some people may have offended repeatedly, the percentages may add up to more than 100% when data is split into categories. The percentages outlined at [6.6] and in Figure 22 may vary from those in the co-sentenced offence tables because they are restricted to co-sentenced offences for which offence dates are available.

168. A violent offence was defined as any offence falling under ANZSOC subdivision code 021 (excluding threats). A property damage offence was defined as any offence falling under ANZSOC code 1211 or 1219: Australian Bureau of Statistics, *Australian and New Zealand Standard Offence Classification (ANZSOC)*, cat. no. 1234.0 (2011) Division 02, Division 12. A breach of family violence order was defined as any offence against the *Family Violence Protection Act 2008 (Vic)* ss 37(1), 37(2), 37A(2), 125A(1), 123(2), 123A(2), 129(5) or 130(4).

that violence and property damage often occur at the same time as the threat and increase the seriousness of the threat.¹⁶⁹ It also supports comments by stakeholders that people who threaten, especially outside the family violence context, often offend repeatedly and that their threats are not particularly targeted.¹⁷⁰

- 6.9 However, for breaches of family violence orders, a different trend emerges. Offenders sentenced for a threat offence and a breach of family violence order in the same case had most often committed the breach offence on a date *after*, rather than before or on the same day as, the threat offence. This suggests that threats predict breaches of family violence orders in the short term; this is consistent with the categorisation of threats as a risk factor by Victoria's Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM).¹⁷¹

Types of co-sentenced offences

- 6.10 The 10 most common offences sentenced alongside threat offences in each court during the reference period are set out in Table 4 (page 40). As is often the case, the highest rates of co-sentenced offences were in the Children's Court: more than half of children sentenced for threat offences were also co-sentenced for either unlawful assault or criminal damage. In the Magistrates' Court, unlawful assault was the most common co-sentenced offence, followed by bail-related offences. And in the higher courts, causing injury was the most common co-sentenced offence, followed by criminal damage.¹⁷²

Co-sentenced offences by family violence indicator: Magistrates' Court

- 6.11 Table 5 (page 41) highlights the differences in the offence types co-sentenced with threat offences in the Magistrates' Court by whether or not the case had a family violence indicator. Almost half (47%) of family violence offenders sentenced in threat cases were also co-sentenced for breach of family violence order, and nearly as many (44%) were co-sentenced for an assault offence. Bail-related offences (38%) and property damage (32%) were also common. This suggests that the likelihood of threat offenders being co-sentenced for closely related substantive offences (actually causing injury or damaging property) is greater when the threat is made in a family violence context.
- 6.12 Theft was the only co-sentenced offence that was more common in non-family violence cases than in family violence cases (and even then, not by much). Stakeholders commented that this could occur in scenarios similar to robbery, as a result of plea negotiations or where the threat took place after the property was taken.¹⁷³

169. Meeting with Magistrates' Court (1 April 2021).

170. Meeting with Magistrates' Court (1 April 2021); Stakeholder Roundtable (7 April 2021).

171. Victorian Government (2018), above n 5, 28.

172. While not presented in Table 4, threats were co-sentenced with rape offences in 7% of higher courts cases (27 cases).

173. For example, a threat may be made to prevent a victim from reporting to the police, rather than to have the victim hand over the property; Stakeholder Roundtable (7 April 2021).

Table 4: Percentage of all threat cases in each court in which other offence types were co-sentenced, by 10 most common non-threat offence types, 2015 to 2019¹⁷⁴

Co-sentenced offence	Magistrates' Court (12,223 cases)	Higher courts (368 cases)	Children's Court (1,255 cases)
Unlawful assault ^(a)	39%	16%	53%
Bail-related offences ^(b)	35%	18%	44%
Breach of family violence order ^(c)	31%	20%	16%
Criminal damage ^(d)	29%	25%	52%
Second threat ^(e)	23%	27%	28%
Theft ^(f)	17%	16%	37%
Causing injury intentionally or recklessly ^(g)	15%	37%	18%
Possess a drug of dependence ^(h)	12%		
Using a carriage service to menace, harass or cause offence ⁽ⁱ⁾	10%		
Aggravated assault ^(j)	8%		20%
Common law assault ^(k)		24%	
Aggravated burglary ^(l)		23%	
False imprisonment ^(m)		16%	
Possess a controlled weapon ⁽ⁿ⁾			13%
Wilful damage ^(o)			13%

(a) *Summary Offences Act 1966* (Vic) s 23.

(b) *Bail Act 1977* (Vic) ss 30, 30A, 30B. In all courts, the most common of these was committing an indictable offence whilst on bail (present in just over 80% of cases involving a bail-related offence in the higher courts and Children's Court, and just over 60% of those in the Magistrates' Court).

(c) *Family Violence Protection Act 2008* (Vic) ss 37, 37A, 123, 123A, 125A, 129(5), 130(4). Most of these cases involved charges of breach of family violence intervention order or family violence safety notice. Persistent contraventions were charged in 34% of these cases in the Magistrates' Court, 29% in the higher courts and just 14% in the Children's Court. Breaches of family violence intervention orders with intent to cause harm or fear were charged in 26% of these cases in the Magistrates' Court, 25% in the higher courts and 28% in the Children's Court.

(d) *Crimes Act 1958* (Vic) s 197(1).

(e) Any case in which more than two index threat offences are sentenced is considered to involve a second threat. The second threat need not be of a different type from the first threat.

(f) *Crimes Act 1958* (Vic) s 74.

(g) *Crimes Act 1958* (Vic) s 18. In the Magistrates' Court and Children's Court, more than three-quarters of these cases involved causing injury recklessly and just under one-third involved causing injury intentionally; in the higher courts, those proportions were reversed.

(h) *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73.

(i) *Criminal Code Act 1995* (Cth) s 474.17.

(j) *Summary Offences Act 1966* (Vic) s 24.

(k) *Crimes Act 1958* (Vic) s 320: the maximum penalty for this assault offence is five years' imprisonment.

(l) *Crimes Act 1958* (Vic) s 77.

(m) *Crimes Act 1958* (Vic) s 320: the maximum penalty for this offence is 10 years' imprisonment.

(n) *Control of Weapons Act 1990* (Vic) s 6(1). Controlled weapons are legal to possess in certain contexts (for example, kitchen knives at home) rather than weapons that are illegal or require a licence (for example, firearms).

(o) *Summary Offences Act 1966* (Vic) s 9.

174. Cells left blank intentionally as offences are not among the 10 most commonly co-sentenced offences for each respective threat.

Table 5: Percentage of all threat cases in the Magistrates' Court in which other offence types were co-sentenced, by 10 most common non-threat offence types and family violence indicator, 2015 to 2019

Co-sentenced offence	Family violence cases	Non-family violence cases
Breach of family violence order ^(a)	47%	5%
Unlawful assault ^(b)	44%	31%
Bail-related offences ^(c)	38%	32%
Criminal damage ^(d)	32%	24%
Second threat ^(e)	25%	21%
Causing injury intentionally or recklessly ^(f)	17%	12%
Theft ^(g)	15%	21%
Possess a drug of dependence ^(h)	12%	12%
Using a carriage service to menace, harass or cause offence ⁽ⁱ⁾	10%	8%
Aggravated assault ^(j)	7%	9%

(a) *Family Violence Protection Act 2008* (Vic) ss 37, 37A, 123, 123A, 125A, 129(5), 130(4). Most of these cases involved charges of breach family violence intervention order or family violence safety notice; persistent breaches were charged in 34% of these cases, and breaches of family violence intervention orders with intent to cause harm or fear were charged in 26% of cases.

(b) *Summary Offences Act 1966* (Vic) s 23.

(c) *Bail Act 1977* (Vic) ss 30, 30A, 30B. Of these, 62% had a charge of committing an indictable offence whilst on bail, 49% had a charge of fail to answer bail, and 31% had a charge of contravene a conduct condition of bail.

(d) *Crimes Act 1958* (Vic) s 197(1).

(e) Any case in which more than two index threat offences are sentenced is considered to involve a second threat. The second threat need not be of a different type from the first threat.

(f) *Crimes Act 1958* (Vic) s 18. Of these, 79% had a charge of causing injury recklessly and 28% had a charge of causing injury intentionally.

(g) *Crimes Act 1958* (Vic) s 74.

(h) *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73.

(i) *Criminal Code Act 1995* (Cth) s 474.17.

(j) *Summary Offences Act 1966* (Vic) s 24.

6.13 It is also notable that stalking does not appear as one of the most common co-sentenced offences alongside threat offences, in either family violence cases (5.5%) or non-family violence cases (3.1%).¹⁷⁵ It might have been expected that stalking would be often co-sentenced with threats: research suggests that stalking is strongly associated with threats and that threats made by stalkers are of particular concern.¹⁷⁶ The low rate of co-sentenced stalking offences may be because stalking is a course of conduct offence, and one that legislation expressly recognises might include threats to the victim. This means that the stalking charge already encompasses the threat.¹⁷⁷ However, one stakeholder commented that the top four offences in Table 5, along with using a carriage service to menace, harass or cause offence, were typical of both stalking and family violence where they were committed against the same victim. This could suggest that some offenders whose behaviour may have amounted to stalking may have been charged with these discrete offences instead.¹⁷⁸

175. A stalking offence was co-sentenced alongside threat offences in 4.5% of all threat cases sentenced in the Magistrates' Court during the reference period.

176. Flowers et al. (2020), above n 71, 911, 915–916.

177. *Crimes Act 1958* (Vic) ss 21A(2)(da), 21A(2)(g)(ii).

178. Stakeholder Roundtable (7 April 2021).

Co-sentenced offences by threat offence type: Magistrates' Court

6.14 The offence types co-sentenced alongside threat offences also varied by threat offence type (Table 6). The most common offence co-sentenced alongside each type of threat offence was unlawful assault. Perhaps unsurprisingly, however, threats to commit violence (kill or seriously injure) were most strongly associated with actual violence (causing injury and assault) while threats to damage property were most strongly associated with criminal damage (their substantive counterpart).

Table 6: Percentage of threat cases where other offence types were co-sentenced, by 10 most common offence types, Magistrates' Court, 2015 to 2019¹⁷⁹

Co-sentenced offence	Threat to kill cases (6,959 cases)	Threat to inflict serious injury cases (3,590 cases)	Threat to damage property cases (1,372 cases)
Unlawful assault ^(a)	41%	37%	36%
Bail-related offences ^(b)	34%	37%	36%
Breach of family violence order ^(c)	33%	27%	31%
Criminal damage ^(d)	29%	26%	34%
Second threat ^(e)	22%	17%	14%
Causing injury intentionally or recklessly ^(f)	18%	13%	10%
Theft ^(g)	15%	21%	17%
Possess a drug of dependence ^(h)	12%	12%	12%
Using a carriage service to menace, harass or cause offence ⁽ⁱ⁾	9%	10%	12%
Aggravated assault ^(j)	8%		
Possess a controlled weapon ^(k)		9%	
Driving while disqualified ^(l)			10%

(a) *Summary Offences Act 1966* (Vic) s 23.

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

(c) *Family Violence Protection Act 2008* (Vic) ss 37, 37A, 123, 123A, 125A, 129(5), 130(4). Most of these cases involved charges of breach family violence intervention order or family violence safety notice; persistent breaches were charged in 34% of these cases, and breaches of family violence intervention orders with intent to cause harm or fear were charged in 26% of cases.

(d) *Crimes Act 1958* (Vic) s 197(1).

(e) Any case in which more than two index threat offences are sentenced is considered to involve a second threat. The second threat need not be of a different type from the first threat.

(f) *Crimes Act 1958* (Vic) s 18. In the Magistrates' Court, more than three-quarters of these cases involved causing injury recklessly and just under one-third involved causing injury intentionally.

(g) *Crimes Act 1958* (Vic) s 74.

(h) *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 73.

(i) *Criminal Code Act 1995* (Cth) s 474.17.

(j) *Summary Offences Act 1966* (Vic) s 24.

(k) *Control of Weapons Act 1990* (Vic) s 6(1).

(l) *Road Safety Act 1986* (Vic) s 30.

179. Cells left blank intentionally as offences are not among the 10 most commonly co-sentenced offences for each respective threat.

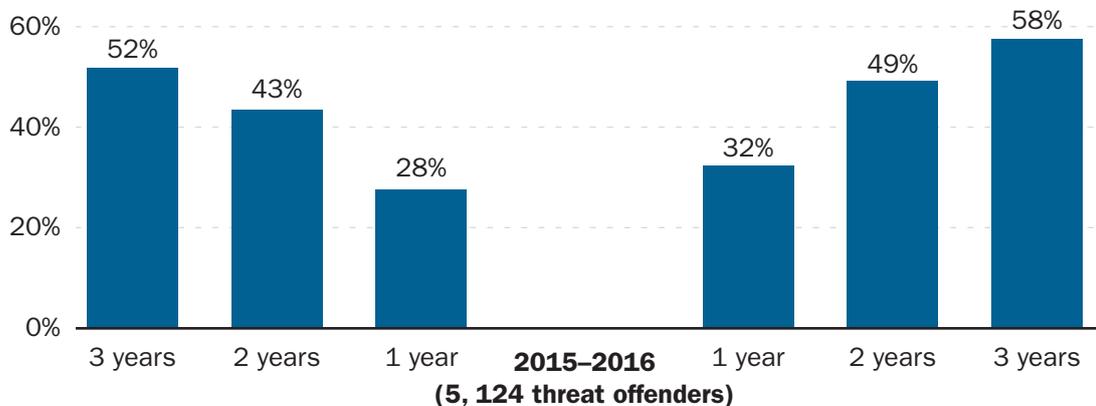
7. Prior offending and reoffending by threat offenders

- 7.1 This chapter examines the prior and subsequent offending patterns of the 5,124 unique offenders who were sentenced in either 2015 or 2016 for at least one threat offence. It includes an analysis of how many offenders were sentenced for any other offending in the three years before and after they were sentenced for a threat offence, how soon that other offending occurred, and the offence types for which they were sentenced.
- 7.2 Each unique threat offender was counted just once, on their first sentence date for one of the relevant index threat offences (threat to kill, threat to inflict serious injury, threat to destroy or damage property, threat to commit a sexual offence or threat to assault an emergency worker) during 2015 and 2016. The three-year period is either side of the sentence date for a threat offence to ensure an identical follow-up time for all offenders, regardless of their sentence date.
- 7.3 Because the analysis is conducted using sentence dates, rather than offence dates, case consolidation does not artificially inflate reoffending numbers. However, it may affect the proportion of offenders whose index threat offence is categorised as family violence-related, because a family violence indicator in any component case is applied to the whole consolidated case.

Threat offenders with prior or subsequent offending

- 7.4 Of the 5,124 people sentenced for a threat offence in 2015 or 2016, 32.2% were sentenced again within 12 months, 49.2% (almost half) within two years, and 57.5% within three years (Figure 23). This is significantly higher than Victoria's general reoffending rate, which has been measured at 10% within 12 months and 28% within three years.¹⁸⁰ It is also higher than the reoffending rates for animal cruelty offenders, family violence offenders who breach intervention orders, and children and young people.¹⁸¹

Figure 23: Percentage of all threat offenders sentenced in Victoria in the three years before and/or after the sentence for their index threat offence in 2015 or 2016, all courts



180. Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) 8. This is distinct from data published by the Productivity Commission that sets out the two-year reoffending rate (defined as a return to custody or to community corrections) among prisoners on release. Restricting the dataset to offenders who have been *imprisoned* results in far higher reoffending rates. In Victoria in 2019–20, 44.2% of prisoners returned to prison within two years, and a further 10.6% did not return to prison but returned to community corrections: Productivity Commission, *Report on Government Services 2021: C Justice* (2021) Data Tables CA.4.

181. For an overview of reoffending rates within four years for each of those categories, see Sentencing Advisory Council, *Animal Cruelty Offences in Victoria* (2019) 58.

- 7.5 Table 7 shows that just 29% (1,481) of those 5,124 threat offenders had *neither* a prior *nor* a subsequent offence in the three years before or after their sentence for a threat offence. That is, seven in 10 threat offenders were sentenced more than once in the six-year period (3,643 offenders). Indeed, just over half (54%) were sentenced more than *twice* (2,752 offenders). This suggests that threat offences tend to occur not as isolated incidents but as part of a trajectory of offending.

Table 7: Number of offenders sentenced for a threat offence in 2015 or 2016, by how many prior or subsequent sentences they had in the three years before and after their index threat offence, all courts

	Number of prior sentences (total)							Total
	0	1	2	3	4	5	> 5	
0	1,481	400	192	66	24	9	7	2,179
1	491	321	172	81	47	23	19	1,154
2	274	191	146	91	38	24	15	779
3	111	145	96	50	29	20	12	463
4	59	62	53	32	18	14	19	257
5	28	47	26	8	11	7	9	136
> 5	31	32	26	20	14	12	21	156
Total	2,475	1,198	711	348	181	109	102	5,124

- 7.6 Stakeholders commented that the combination of high rates of imprisonment (see [5.2]–[5.8]) with high rates of reoffending suggested that sentencing was not operating as an effective intervention to stem reoffending. And indeed, for some types of threat offenders, ongoing offending could not realistically be addressed using a specific deterrence-focused approach. On the other hand, stakeholders saw possible opportunities to reduce reoffending – particularly poverty-related offending – using therapeutic and rehabilitative outcomes and supports.¹⁸²

182. Stakeholder Roundtable (7 April 2021).

Prior and subsequent sentence rates by gender, age, family violence indicator, threat offence type and court

7.7 Table 8 displays the percentage of threat offenders who were sentenced in the three years before or after they were sentenced for a threat offence.¹⁸³ It shows the rates for certain categories (gender, age, family violence indicator and threat offence type). It also shows the rate at which threat offenders were subsequently sentenced for a *violent offence*.¹⁸⁴

Table 8: Percentage of offenders sentenced for a threat offence in 2015 or 2016 and sentenced on another occasion in the three years before and after their index threat offence, by gender, age, family violence indicator and threat offence type, all courts

Group	Total (n)	Prior sentence	Subsequent sentence	Subsequent sentence involving a violent offence
All threat offenders	5,124	52%	58%	32%
Female	582	39%	48%	25%
Male	4,455	53%	58%	33%
Children <18	377	52%	80%	57%
Adults 18+	4,733	52%	56%	27%
Family violence indicator	2,582	52%	59%	28%
No family violence indicator	2,408	51%	56%	30%
Threat to destroy or damage property	506	53%	59%	28%
Threat to kill	2,887	49%	56%	27%
Threat to inflict serious injury	1,640	55%	60%	32%
Threat to assault an emergency worker	72	63%	60%	28%
Magistrates' Court	4,541	51%	56%	27%
Higher courts	134	60%	46%	19%

183. This reoffending rate calculation does not track the *number* of subsequent offences committed by any given offender nor their association with any particular victim. It simply tracks whether or not an offender was sentenced on at least one occasion for a qualifying offence.

184. This is defined as any offence attracting an ANZSOC classification code of 021 (assault) other than threat offences or an ANZSOC classification code of 01 (homicide and related offences) aside from 0132 (driving causing death): Australian Bureau of Statistics (2011), above n 168, Division 01.

Prior and subsequent offending: by age

7.8 Children aged under 18 had the highest rates of reoffending within three years, both overall (80%) and for violent offences (57%). Their prior sentencing rates were similar to those for other categories of offender, though the rates might have been expected to be lower given the diversionary options available for children and the likelihood that some children would have been quite young when previously sentenced. This suggests that children sentenced for threat offending have an elevated risk of offending both before and after their threat offence. Stakeholders suggested that the higher reoffending rate was most likely related to a comparatively small number of children, often in residential care, who tend to cycle through the criminal justice system repeatedly.¹⁸⁵ It may also be slightly inflated because children are less likely to be held in detention and may therefore have more opportunity to reoffend. In contrast, offenders sentenced in the higher courts are more likely to be imprisoned and have less opportunity to reoffend.

Prior and subsequent offending: by gender

7.9 The reoffending rate was higher for male threat offenders (58%) than for female threat offenders (48%). Of all categories of offenders in Table 8 (page 45), female threat offenders had the lowest rates of prior sentences (39%), subsequent sentences (48%) and subsequent sentences for violent offences (25%).

Prior and subsequent offending: by family violence and threat type

7.10 The prior and subsequent sentence rates did not vary significantly by family violence indicator or threat offence type.¹⁸⁶ Stakeholders commented that the similarity between reoffending rates for family violence offenders and non-family violence offenders was most likely because many *non*-family violence threat offenders had high 'criminogenic needs': vulnerabilities such as poverty, homelessness, addiction, trauma and neurodisability that meant they would very likely continue to offend repeatedly and at a high volume. As such, the comparable reoffending rates did not suggest that family violence offenders were being effectively dealt with but rather that there were two overlapping groups of offenders who were likely to reoffend for different reasons:

You've got two groups of reoffenders: one group is your family violence reoffenders who are either reoffending within the same relationship or moving to a new relationship and reoffending, and you've got your group of ... poverty-related or high criminogenic need offending, who are reoffending in a very different context ... both of those have got similar rates of reoffending, but for arguably quite different reasons.¹⁸⁷

7.11 The extraordinarily high reoffending rate for threat offenders overall – including those whose offending is family violence-related – illustrates why Victoria's Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) places such a strong emphasis on threats as a serious risk factor.¹⁸⁸

185. Stakeholder Roundtable (7 April 2021); see also Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System Report 1* (2019) 37–39; Sentencing Advisory Council (2020), above n 38, 16–26.

186. The one exception, threat to assault an emergency worker, was based on very few offenders.

187. Participant at Stakeholder Roundtable (7 April 2021).

188. Victorian Government (2018), above n 5 (this includes threats to harm the victim or family members, threats to kill the victim, threats to harm or kill pets or other animals, and threats to self-harm or of suicide).

Subsequent offence rates by prior criminal history

7.12 Table 9 shows the reoffending and violent reoffending rates for three groups of threat offenders: those who had not been sentenced in the three years prior to being sentenced for a threat offence, those who had been sentenced in the three years prior but not for a violent offence, and those who had been sentenced in the three years prior for one or more violent offences.

Table 9: Percentage of offenders sentenced for a threat offence in 2015 or 2016 who were sentenced again within three years, by prior criminal history in the three years before the sentence for their index threat offence, all courts

Group	Total (number)	Any reoffending (percentage)	Violent reoffending (percentage)
Offenders previously sentenced for a violent offence	1,172	79%	47%
Offenders previously sentenced but not for a violent offence	1,477	70%	33%
Offenders not previously sentenced	2,475	40%	17%

7.13 Almost half (48%) of threat offenders had not been sentenced in the three years prior to their sentence for a threat offence. Of the remaining 52%, slightly more offenders had only non-violent prior offences (29%) than had one or more violent prior offences (23%).

7.14 A prior criminal history was a strong predictor of subsequent offending. Threat offenders who had not been sentenced in the three years prior to being sentenced for a threat offence had the lowest rates of subsequent offending (40%). Next were those with a non-violent criminal history (70% reoffended) and then those with a violent criminal history (79% reoffended). This suggests that many threat offenders who go on to commit violence do so as part of a pre-existing pattern of behaviour.

How many offenders carried out their threats?

7.15 The number of threat offenders who went on to engage in conduct that amounts to carrying out their threat was also investigated.¹⁸⁹ Of the 3,048 people who were sentenced for threat to kill in 2015 or 2016, five (0.2%) went on to be sentenced for a homicide offence (four murders and one manslaughter).¹⁹⁰ None of the seven people sentenced for threat to commit a sexual offence went on to be sentenced for a contact sexual offence. But of the 761 people sentenced for threat to destroy or damage property, 161 (21%) were sentenced for criminal damage.¹⁹¹

189. Due to the number of potential substantive charges that could correspond to a threat to inflict serious injury, this analysis was not conducted for that threat type. However, the overall violent reoffending rate of 33% following a threat to inflict serious injury provides a ceiling.

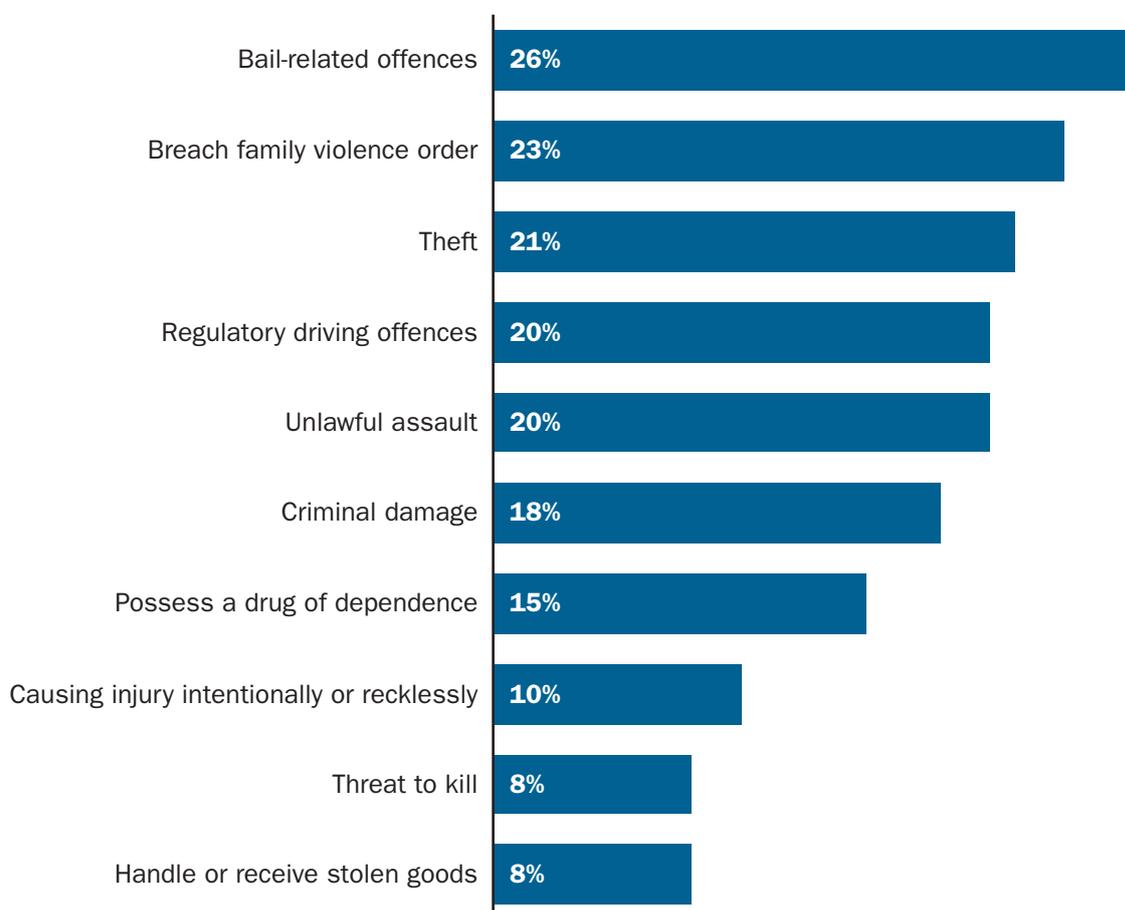
190. The threats and the homicides were not necessarily committed against the same victim – sentencing data does not track victim identity. Though only a small percentage of threat offenders committed homicide, academic research suggests that a large percentage of homicide victims were threatened before they were killed: see [2.27]–[2.30].

191. The threat offence and the substantive offence were not necessarily committed against the same victim.

Most common offences in subsequent sentences

7.16 Figure 24 shows the 10 most common offences for which offenders were sentenced in the three years after the sentence for their index threat offence. These were high-volume offences that stakeholders considered typical of family violence offenders and offenders with high criminogenic needs.¹⁹² Just over one-quarter (26%) were sentenced for a bail-related offence. Breaches of family violence orders, thefts, regulatory driving offences, unlawful assaults and criminal damage offences were also particularly common. Subsequent threat offences were not particularly common (13% for all index threat offences combined).

Figure 24: Percentage of threat offenders sentenced for the 10 most common subsequent offence types within three years of sentence for their index threat offence, all courts¹⁹³



192. Stakeholder Roundtable (7 April 2021).

193. Regulatory driving offences include driving while disqualified or suspended, using an unregistered motor vehicle and unlicensed driving: *Road Safety Act 1986* (Vic) ss 7(1)(a), 18(1)(a), 30(1). Other regulatory driving offences could also be included in this category, but these three were especially prevalent.

8. Concluding remarks

- 8.1 This report has reviewed how threat offences were sentenced from 2015 to 2019. It includes an account of the number and type of threat offences recorded by police and sentenced by Victorian courts, the age and gender of threat offenders, how threat offences were sentenced, the offence types sentenced alongside threat offences, and the prior and subsequent offending of threat offenders. It has also, where relevant, distinguished between threats in family violence contexts and threats in non-family violence contexts.
- 8.2 Key findings include the following:
- the number of *recorded* threat offences increased significantly (51%) between 2012 and 2019, largely driven by an increase in the number of threats made in family violence contexts, though that trend has stabilised since 2016;
 - the number of *sentenced* threat offences increased by 4% between 2015 and 2019, from 3,575 offences to 3,704 offences, and this was probably driven largely by an increase in the number of threats occurring in a family violence context;
 - the majority of threat offences sentenced during the reference period were sentenced in cases with a family violence indicator (58%), were sentenced in the Magistrates' Court (87%) and were committed by males (88%);
 - threat offending by male offenders tended to be more serious, in that they were more often sentenced in the higher courts, sentenced in a case involving family violence, sentenced for threats to kill (as opposed to threats to seriously injure) and sentenced to imprisonment;
 - the most frequent sentence for threat offending was imprisonment in the higher courts (75%) and in the Magistrates' Court (35%), and probation in the Children's Court (28%);
 - the average non-aggregate imprisonment terms for a threat offence in the Magistrates' Court varied by threat offence type – two months for threat to destroy or damage property and four months for threat to kill or threat to inflict serious injury – though these findings must be treated with caution given that 90% of prison sentences for threat offences in the Magistrates' Court were aggregate sentences;
 - the average non-aggregate imprisonment terms for threat offences sentenced in the higher courts were much longer than for those sentenced in the Magistrates' Court – 12 months for threat to inflict serious injury and 14 months for threat to kill;
 - threat offences are almost always co-sentenced with other offence types, especially bail-related offences, breach of family violence orders, assault and criminal damage, and threats were commonly co-sentenced with their substantive counterparts or other closely related substantive offences (for example, threat to destroy or damage property was frequently co-sentenced with actual criminal damage, and threats to kill or seriously injure were frequently co-sentenced with assault and causing injury offences); and
 - most co-sentenced violence and property damage offences occurred on the same day as the threat offence in the case, but breaches of family violence orders sentenced alongside threat offences tended to occur on a date after the threat offence.

Reoffending

- 8.3 More than half of threat offenders were sentenced on another occasion in the three years before (52%) and after (58%) being sentenced for threat offending. These rates are exceptionally high: double the rate for all offenders following sentence in Victoria. Of note too is that while threat offences frequently occurred in a family violence context, there was very little variation in the reoffending rates of offenders whose threat offence did or did not occur in a family violence context. Stakeholders consulted by the Council suggested this was because there are two distinct but overlapping groups, both of which are prone to high rates of reoffending: family violence offenders generally and non-family violence offenders with high criminogenic needs.

Threats and risk

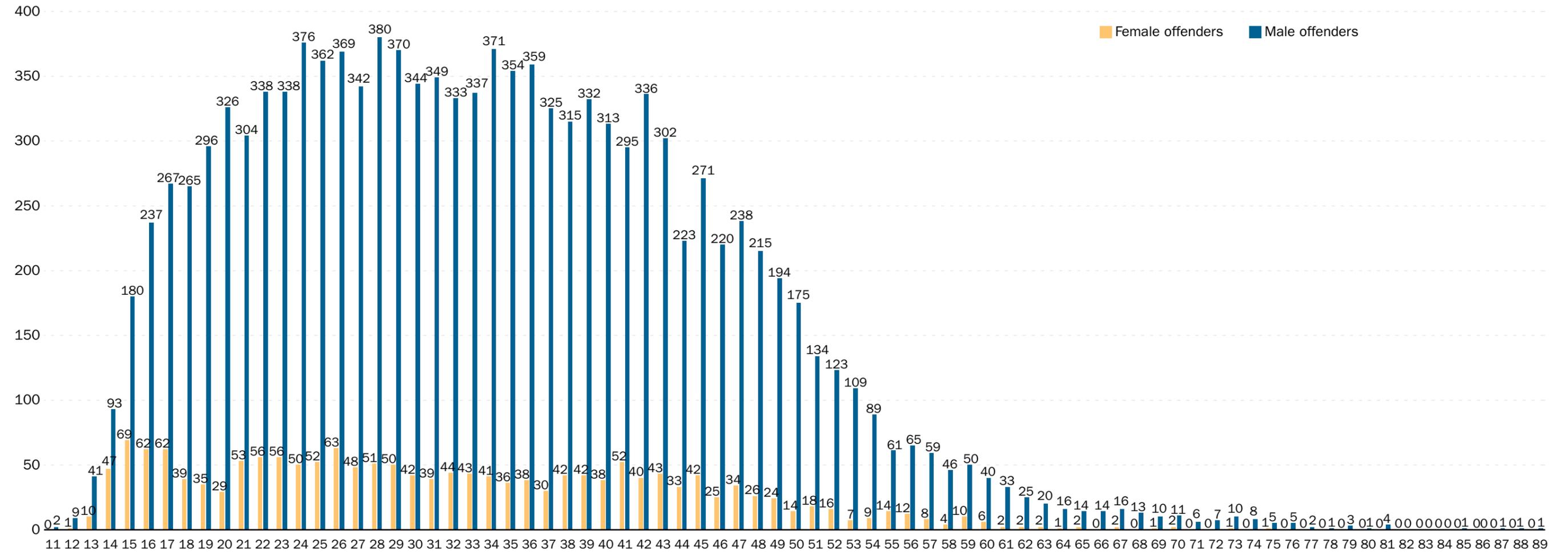
- 8.4 The findings in this report may help to inform the way in which threats are accounted for in risk assessments, both in family violence contexts and in non-family violence contexts. Though threats are well-recognised risk factors for future family violence, the findings of this report – particularly the high rates of family violence, high rates of imprisonment, high rates of reoffending and high rates of subsequent breaches of family violence orders – highlight the *extent* of that risk. Similarly, the extraordinarily high rate of reoffending by non-family violence threat offenders suggests that threat offending in general should be regarded as a strong indicator of future and/or ongoing offending, regardless of whether it occurs in a family violence context. In that sense, this report may provide a basis to review risk assessment protocols in Victoria to determine whether threats are adequately emphasised, and/or whether they should be more clearly distinguished from actual violence, rather than grouping the two together.

Appendix 1: Consultation

Meeting	Date
Meeting with Magistrates' Court	1 April 2021
Stakeholder Roundtable	7 April 2021

Appendix 2: Age and gender of threat offenders

Figure A1: Age and gender of offenders sentenced in threat cases in Victoria, all courts, 2015 to 2019



Appendix 3: Methodology

Recorded threat offences

Recorded threat offences are reported in terms of offences and the offender incidents those offences are part of. The analysis of recorded offences focuses on offences. Since one offender incident can include many offences, just as one case can include many charges, recorded offences are most comparable to sentenced charges.

Sentencing outcomes

Because cases often involve more than one charge – often a threat charge and one or more unrelated charges – some cases' sentences are primarily influenced by charges far more serious than the threat charge for which they were included in the analysis. This may influence whether analysis is conducted using all threat charges, all cases that include at least one threat charge, or only charges that are the most serious (principal) offence in their case.

Chapter 4 focuses on the demographics of all threat offenders. In order to make sure that all threat offenders are included, but to isolate differences between different offence types without excessively double-counting individuals, most of the analysis in this chapter looks at all cases where one or more threat offences were sentenced. Where the data is categorised by each different threat type in this chapter, some cases may be counted more than once. For example, a case with a threat to kill and a threat to inflict serious injury is both a threat to kill case and a threat to seriously injure case, and in an analysis where those case types are separated, it will appear twice.

In order to understand the sentences offenders actually received for their threat offence, most of the analysis in Chapter 5 focuses on the 5,163 cases where the threat offence was the most serious (principal) offence in the case. This means that each charge and case can only appear once. Charge-level analysis of all 18,775 charges in the dataset are presented first, however, to contextualise this data.

Co-sentenced offences

Chapter 6 focuses on the offences in threat cases that are not threat offences. As such, it takes an 'all case' view of the data. However, because cases cannot be both family violence and non-family violence cases, nor sentenced in multiple courts, each case appears only once in Tables 4 and 5. Table 6 uses a primary threat analysis, meaning that where a case contains more than one threat offence, it is categorised under the principal (most serious) threat in the case. The most serious threat is defined by in order of priority: the sentencing outcomes and lengths imposed for each charge in the case; if those are equal, the maximum penalties; if those are equal, the National Offence Index (NOI) ranking; and if those are equal, by charge number.

Co-sentenced offences are identified using the case number. This means they can include a number of cases that were consolidated together at any point in the criminal justice process up to sentencing.

The 'second threat' category counts the proportion of cases in which at least two index threat offences were sentenced, regardless of threat type. For this analysis, if a case involved two (or more) threats to kill, it would be counted only once as a case with a second threat. A case involving a threat to kill and a threat to inflict serious injury would similarly be counted only once as a case with a second threat.

The 'different threat type' category refers to threats of a type other than the index threat offence. For example, if a case involved two threats to kill, neither would count as a different threat. For a case involving a threat to kill and a threat to inflict serious injury, each would count as a 'different threat type' from the perspective of the other.

Offence date analysis

The offence date analysis deals only with cases for which the offence date is known both for the threat and for at least one charge of the other specified offence(s). Offence dates are known for around 90% of all offences.

A violent offence was defined as any offence falling under ANZSOC subdivision code 021 (excluding threats). A property damage offence was defined as any offence falling under ANZSOC code 1211 or 1219 (again, excluding threats). A breach of family violence order was defined as any offence against the *Family Violence Protection Act 2008* (Vic). This included offences against sections 37(1), 37(2), 37A(2), 125A(1), 123(2), 123A(2), 129(5) or 130(4).

Many threat cases involve a large number of offences, each of which may have a different offence date. This means that some offenders may have committed a specified offence on multiple dates, and as such may have offences falling into more than one of the categories. The percentages may therefore not sum to 100%.

Some offence dates may fall outside the reference period for the report, which is defined using sentence dates.

Reoffending analysis

The reoffending analysis examines the 5,124 unique offenders who were sentenced in either 2015 or 2016 for at least one threat offence. Each unique threat offender was counted just once during 2015 and 2016, on the first occasion during those two years that they were sentenced for one of the relevant index threat offences (threat to kill, threat to inflict serious injury, threat to destroy or damage property, threat to commit a sexual offence or threat to assault an emergency worker).

A prior offence is defined as a sentence imposed during the three years before the sentence for the index threat offence, and a subsequent offence is defined as a sentence imposed during the three years following the sentence for the index threat offence.

The follow-up period runs for exactly three years either side of the date of the index threat offence, to ensure that it is the same for each offender. However, a time-at-risk analysis was not conducted. This most likely affects the relative reoffending chances between courts.

Some offenders committed an offence A, committed a second offence B, then were sentenced for offence A and subsequently sentenced for offence B. The subsequent sentence for offence B would be counted as reoffending. However, over 86% of charges in the reoffending sample related to an offence date after the sentence for the index threat offence; many of the remainder were contained in a case where a charge was after the index sentence.

Where an offender commits one offence, then a second offence, and the two offences are consolidated into a single case, the second offence will not be considered a subsequent offence because it will have the same sentence date as the first offence.

A violent offence was defined in the same way as for the offence date analysis, using ANZSOC subdivision code 021 (excluding threats). Adults were defined as those aged 18 or older at the time of sentence, while children were defined as those aged under 18. The Children's Court was excluded from the analysis because of the substantial overlap with the category of children aged under 18 at sentence.

Each offender is only counted once. Where an offender committed more than one threat type, and the data is split by threat type, they are assigned to the category corresponding to their principal (most serious) threat. The most serious threat is defined by in order of priority: the sentencing outcomes and lengths imposed for each charge in the case; if those are equal, the maximum penalties; if those are equal, the National Offence Index (NOI) ranking; and if those are equal, by charge number.

Because the analysis is conducted using sentence dates, rather than offence dates, case consolidation should not artificially inflate reoffending numbers. However, it may affect the proportion of offenders whose index threat offence is categorised as family violence-related, because a family violence indicator in any component case is applied to the whole consolidated case.

Glossary

Accused	A person who is charged with a criminal offence.
Adjourned undertaking	A sentencing order for which the court adjourns a proceeding for up to five years after the offender gives an undertaking with conditions. If the offender complies with the conditions of the undertaking, when the proceeding is heard the court must discharge the offender. If the offender does not comply, they may be brought back before the court for sentencing.
Aggregate sentence	A single sentence imposed on multiple charges in one case. The value of an aggregate sentence (for example, length of imprisonment term or fine amount) relates to at least two charges sentenced in the same case. The individual sentence for each charge is not specified.
Case	In this report, one or more charges against a person that are sentenced or diverted at one hearing.
Charge	In this report, a single count of an offence.
Community correction order	A sentencing order, available since 16 January 2012, that may require the offender to comply with a range of conditions, including unpaid community work, treatment, supervision, curfews and restrictions on the offender's movements and associates.
Criminogenic needs	Needs, problems or issues that contribute to the likelihood that a person will criminally offend. These often include vulnerabilities like poverty, homelessness, addiction, neurodisability and a history of trauma.
Custodial sentence	In this report, a general term for a sentence that deprives the offender of their liberty by holding them in a facility.
Discharge	An order dismissing a proven charge without recording a conviction or imposing a penalty.
Dismissal	An order unconditionally releasing an offender after a conviction has been recorded, but without further penalty.
Fine	A sentence that requires an offender to pay a sum of money to the state.
Higher courts	In this report, the County Court of Victoria and the Supreme Court of Victoria.
Homicide	An offence that involves killing a person. In this report, the homicide category (discussed at [7.15]) includes murder, attempted murder and manslaughter, but it excludes driving causing death.

Inchoate offence	An offence that involves preparation for, or steps towards, committing an offence. Attempts and conspiracy are examples of inchoate offences.
Index threat offence	The threat offence that led to the offender being included in the report or in the reoffending study (see Chapter 8). Prior and subsequent offending are measured three years before and after the date of the index threat offence.
Principal proven offence	The most serious offence for which an offender is sentenced at one hearing. In this report, the principal proven offence is determined using in order of priority: the sentencing outcomes and lengths imposed for each charge in the case; if those are equal, the maximum penalties; if those are equal, the National Offence Index (NOI) ranking; and if those are equal, the charge number.
Prior offence	An offence sentenced in the three years before the index threat offence of an offender who was part of the reoffending study (see Chapter 8).
Property damage offence	In this report, any offence falling under ANZSOC code 1211 or 1219, except a threat.
Pure threat	In this report, a threat offence in which a threat is made against an individual, the victim need not have a specific status, and the threat is the whole substantive offence (rather than an element of an offence with additional elements such as extortion with threat). Pure threat offences include threat to kill, threat to inflict serious injury, threat to destroy or damage property and threat to commit a sexual offence.
Recorded offence	An alleged offence recorded by police.
Reference period	In this report, 1 January 2015 to 31 December 2019.
Subsequent offence	An offence sentenced in the three years after the index threat offence.
Substantive offence	In this report, the offence that would occur if a threat were carried out. For example, the substantive offence related to a threat to kill is homicide.
Threat offender	An offender who was sentenced for a threat offence during the reference period.
Violent offence	In this report, any offence falling under ANZSOC subdivision code 021, except a threat.

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