

Sentencing Breaches of Family Violence Intervention Orders and Safety Notices Third Monitoring Report

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Sentencing Breaches of Family Violence Intervention Orders and Safety Notices Third Monitoring Report

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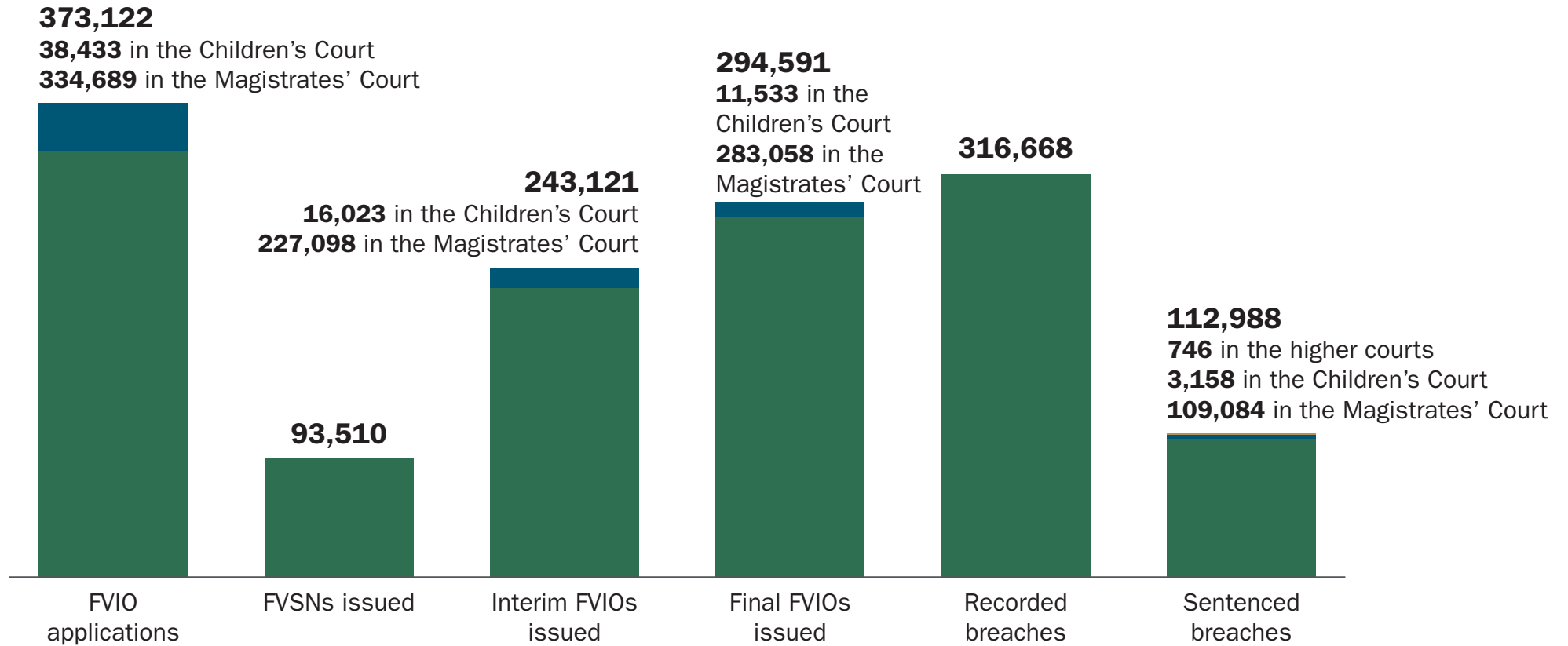
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Family violence safety notices and intervention orders in Victoria, 2011 to 2020



Executive summary

In February 2021, the government asked the Victorian Law Reform Commission (VLRC) to investigate criminal justice responses to stalking and breaches of intervention orders, including how those offences are sentenced in Victorian courts. The Council agreed to produce three reports to assist the VLRC in developing its recommendations. The first two reports – on stalking and breaches of personal safety intervention orders (PSIOs) – were published earlier this year. This is the third and final report, and it focuses on breaches of family violence safety notices (FVSNs) and intervention orders (FVIOs).¹

It has been a number of years since the Council published its last report on breaches of FVSNs and FVIOs. Much has happened since then, including the ongoing implementation of the 227 recommendations of the Royal Commission into Family Violence, described as a ‘catalytic’ inquiry, ‘an instigator of significant policy change’.² This report presents police and court data on how many FVSNs and FVIOs were issued in Victoria in the 10 years to 2020 (the reference period), how many breaches were recorded by police and sentenced by courts, and how those breaches were sentenced.

Altogether, there were 631,000 FVSNs, interim FVIOs and final FVIOs issued, 317,000 recorded breaches (by 84,000 people) and 113,000 sentenced breaches (by 39,000 people). While no doubt of significant interest to readers, how many FVSNs and FVIOs were or were not breached (to give an indication of overall breach rates) could not be identified because this would have required prohibitively resource-intensive data linkage.

The effect of a changing policy setting in Victoria

The decade to 2020 was a period of significant transformation in responses to family violence in Victoria. Confirming recent findings by Satyen et al.,³ there was a considerable increase in help-seeking behaviours. In particular, there was a remarkable increase in the

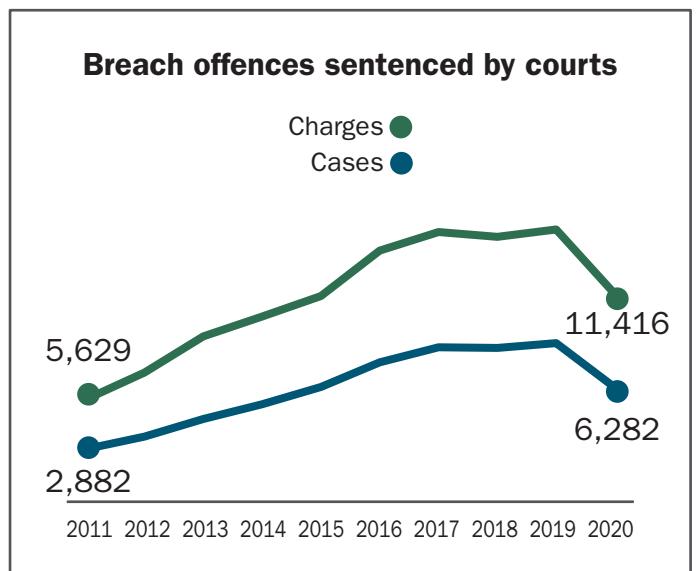
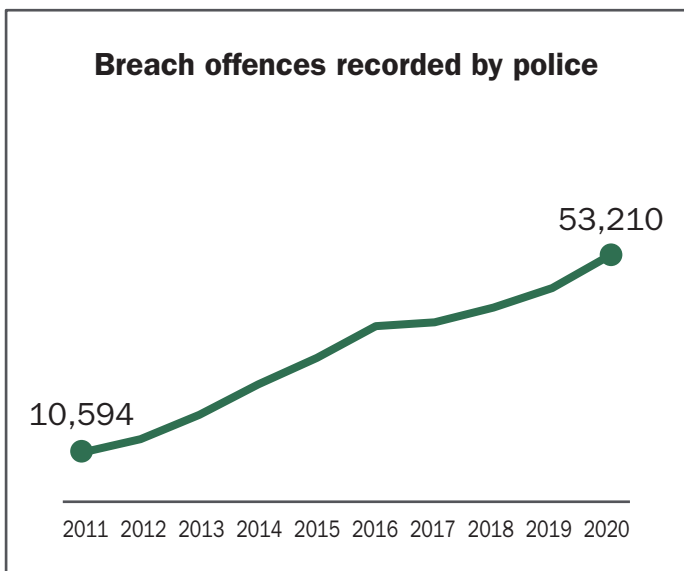
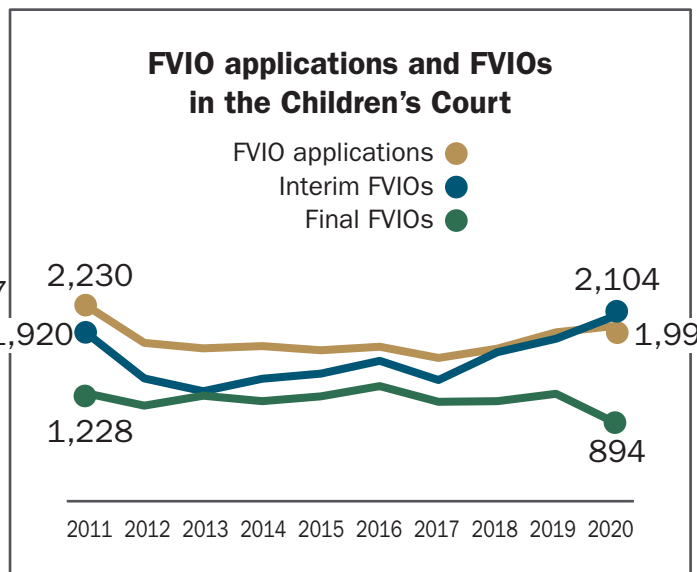
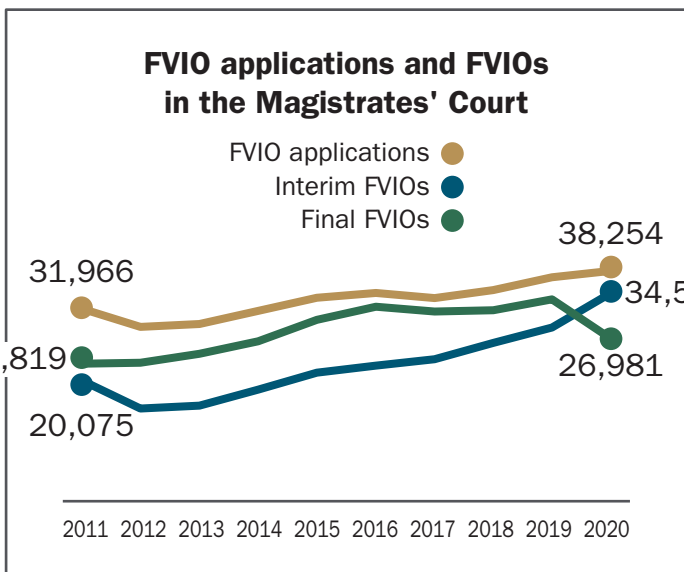
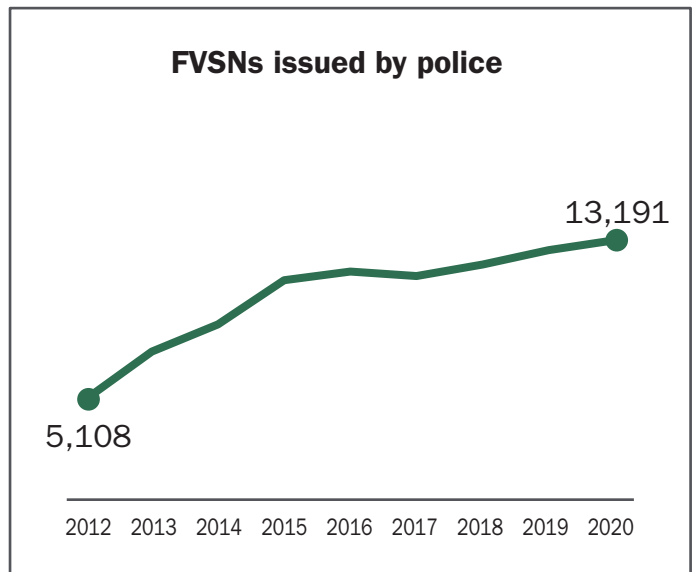
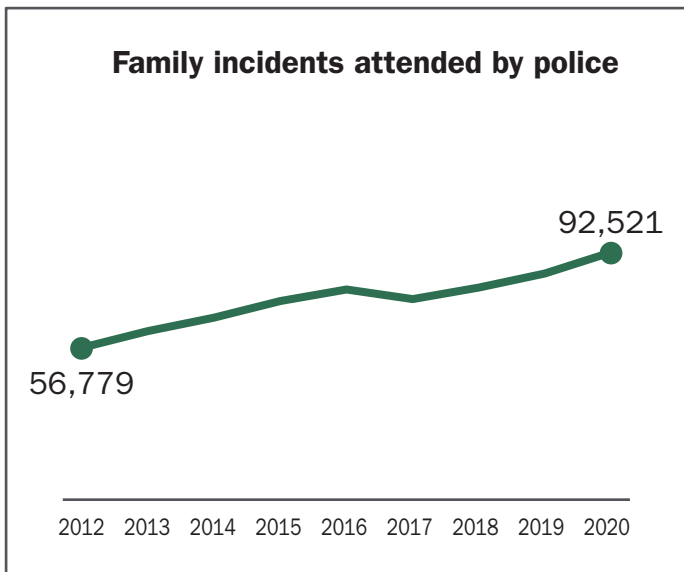
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1. There are five distinct offences for breaches of FVSNs and FVIOs in the *Family Violence Protection Act 2008* (Vic): breach of a FVSN (section 37), breach of a FVSN while intending to cause harm or fear for safety (section 37A), breach of a FVIO (section 123), breach of a FVIO while intending to cause harm or fear for safety (section 123A) and persistent breach of FVSNs and FVIOs (section 125A).
 2. Sophie Yates, ‘A Critical Frame Analysis of Victoria’s Royal Commission into Family Violence’ (PhD Thesis, University of New South Wales, 2018) 125. See also Sophie Yates, ‘Public Inquiries as Procedural Policy Tools’ (2021) 40(3) *Policy and Society* 345.
 3. Lata Satyen et al., ‘The Royal Commission into Family Violence: Trends in the Reporting of Intimate Partner Violence and Help-Seeking Behavior’ (2021) 36(23–24) *Journal of Interpersonal Violence* 11009.

yearly number of FVIO applications, FVIOs and recorded and sentenced breaches of FVSNs and FVIOs during the reference period:

- the number of FVSNs issued by police between 2012 and 2020 more than doubled, most of which was due to a correspondingly significant increase in the number of family incidents attended by police;
- the number of FVIO applications in the Magistrates' Court between 2011 and 2020 increased from 31,966 to 38,254, almost all of which was due to the increase in FVSNs issued by police (a FVSN is treated as an application for a FVIO);
- the number of FVIOs issued by the Magistrates' Court between 2011 and 2019 increased each year, with interim FVIOs increasing by 47% and final FVIOs increasing by 44% (2020 is excluded due to the effect of COVID-19 on court operations);
- five times as many breaches of FVSNs and FVIOs were recorded by police in 2020 than in 2011 (a 402% increase);
- the number of breaches of FVSNs and FVIOs sentenced by courts between 2011 and 2020 more than doubled (a 103% increase), such that about one in 11 cases sentenced in the Magistrates' Court each year now involves a breach of a FVSN or FVIO; and
- the number of sentenced cases involving breaches of FVSNs and FVIOs between 2011 and 2019 more than doubled in the Children's Court (from 97 to 245), more than quadrupled in the County and Supreme Courts (from 16 to 65) and more than tripled in the Magistrates' Court (from 2,769 to 8,419) (again excluding 2020 due to the effect of COVID-19 on court operations).

At a roundtable that the Council hosted in February 2022, stakeholders said they were not surprised at these increases.⁴ They said they have observed 'greater willingness [for victim survivors and others] to report' and 'greater willingness for police to lay charges', particularly for behaviours that 'might in the past have been considered minor contraventions such as sending a text'. And this is, at least in part, because the Royal Commission, especially 'the form in which it was conducted, as a public inquiry', led to 'greater awareness' about family violence, the relationships within which family violence occurs, and the broad range of abusive behaviours that family violence can involve, particularly non-physical abuse and coercive control.

4. Stakeholder Roundtable (4 February 2022).



The gendered nature of family violence

There is no question that family violence is an extremely gendered phenomenon. It is overwhelmingly perpetrated by males and predominantly experienced by females, especially in the context of intimate partner relationships. The findings of this report provide further evidence of this:

- males made up the clear majority of respondents to FVSNs (82%), respondents to FVIOs issued in the Magistrates' Court (82%), breach offenders recorded by police (85%) and breach offenders sentenced by courts (87%);
- in contrast, females made up the majority of protected persons in both FVSNs issued by police (76%) and FVIOs issued in the Magistrates' Court (80%); and
- most protected persons in FVIOs issued in the Magistrates' Court were either the respondent's children or step-children (41%) or the respondent's current or former partner (together 37%).

The rate at which females were respondents to a FVIO (18%) was higher than the rate at which they were recorded as breaching a FVSN or FVIO (15%) or sentenced for breaching a FVSN or FVIO (13%). The lower proportion of breaches may be explained by some of the original FVSNs and FVIOs being issued in circumstances (through either mistaken identification or a cross-application) where the male was actually the primary aggressor.

Family violence intervention orders in the Children's Court

While sharing similar traits, family violence committed by adolescents often differs from that committed by adults. It is more commonly perpetrated against parents and siblings than against intimate partners, it is less gendered, and it often coincides with property damage offences. Key findings in relation to FVIOs in the Children's Court include that:

- almost three-quarters of respondents to FVIOs were male (73%) and two-thirds of protected persons were female (66%);
- there was an overrepresentation of rural and regional child respondents in FVIOs, with children living in rural and regional Victoria accounting for 48% of child respondents to final FVIOs despite just 24% of Victoria's child population living in those areas;
- most protected persons were either the respondent's parents/step-parents (27%) or siblings/step-siblings (25%);

- a property damage offence was co-sentenced with a breach of a FVSN or FVIO in 53% of cases in the Children's Court, compared with 20% of cases in the Magistrates' Court; and
- across the whole reference period, the most common outcomes for breach of a FVSN or FVIO were probation (27%) and a good behaviour bond (26%), but as of 2020, diversion was the most common, accounting for over one-third of outcomes.

Changes in sentencing practices: Magistrates' Court

The vast majority of breaches of FVSNs and FVIOs were sentenced in the Magistrates' Court (97%). The most common sentencing outcome in the Magistrates' Court was imprisonment (26%), though community orders (24%) and fines (21%) were also common. There were, though, changes in the rate of imprisonment and community orders, while the rate of fines remained stable.

The stable rate of fines

The Council has observed on multiple occasions that it is concerning to see so many breaches of FVSNs and FVIOs receiving fines. While there seemed to be a decrease in the use of fines in the late 2000s, there has been a fairly stable rate of fines of between 21% and 25% imposed on non-aggravated breaches of FVSNs and FVIOs each year since 2011. The Council again reiterates its cautions against the use of fines in a family violence context (especially if fines are likely to be paid out of communal family funds or affect the ability of the offender to pay child support) and also notes the protective advantages – as one roundtable stakeholder observed – of a court-ordered good behaviour order 'hanging over [the offender's] head'.

The increasing rate of imprisonment

There was a significant increase in prison sentences for breaches of FVSNs and FVIOs during the reference period. Whereas just 14% of breach offences had received a term of imprisonment in 2011, that increased to 40% by 2020. Part of that can be explained by the introduction in 2013 of new aggravated and persistent breach offences, which carry a higher maximum penalty of five years' imprisonment than the maximum penalty of two years' imprisonment for non-aggravated breach offences. But the imprisonment rate for non-aggravated breach offences *also* increased, to 34%, independently of those new offences.

The report finds that the increase in imprisonment is not attributable to gender, age, region or co-sentenced violence. Instead, it appears to be due to a change in the lengths of prison sentences being imposed. In particular, there has been a tenfold increase in the number of offenders receiving *short* prison sentences (less than six months), especially prison sentences shorter than four months. And while half of the increase in short prison sentences seems to be driven by an increase in time served prison sentences, it is almost equally being driven by an increase in short prison sentences requiring offenders to spend more time in custody after already having spent *some* time on remand. Stakeholders at the Council's roundtable cautioned, however, against assuming that short prison sentences requiring more time in custody are not appropriate. Such sentences may be the product of discussions between offenders, the court and corrections staff about the time required to put an appropriate plan in place for an offender's safe transition back into the community.

1. Introduction

I.1 This is the seventh report the Council has published on breaches of family violence safety notices (FVSNs) and/or family violence intervention orders (FVIOs).⁵ The family violence landscape, including how family violence is sentenced, has shifted considerably since the Council's last report was published. The current report analyses how many FVSNs were issued by police and how many FVIOs were issued by the courts in the 10 years to 2020, how many breaches of FVSNs and FVIOs were recorded by police, how many breaches were sentenced by courts, and the sentencing outcomes for those breaches.

Context of the report

I.2 On 17 February 2021, the Victorian Law Reform Commission (VLRC) received terms of reference from the Victorian Government to investigate responses to stalking, harassment and similar conduct, and the related use of personal safety intervention orders (PSIOs).⁶ The VLRC was specifically asked to consider, among other things:

the law on stalking, harassment or similar conduct including:

- operation of the *Personal Safety Intervention Orders Act 2010*, including consideration of how the legislative framework and operation differs from the scheme for Family Violence Safety Notices and Family Violence Intervention Orders under the *Family Violence Protection Act 2008*

...

- sentencing practices and available sentencing options.⁷

I.3 To assist the VLRC to understand current sentencing practices relating to these various offences, the Council agreed to publish three statistical reports: one on stalking contrary to section 21A of the *Crimes Act 1958* (Vic), one on breaches of PSIOs contrary to section 100 of the *Personal Safety Intervention Orders Act 2010* (Vic) and one on breaches of FVSNs and FVIOs under the *Family Violence Protection Act 2008* (Vic).

5. Sentencing Advisory Council, *Breaching Intervention Orders: Report* (2008); Sentencing Advisory Council, *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (2009); Sentencing Advisory Council, *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009); Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention: Monitoring Report* (2013); Sentencing Advisory Council, *Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report* (2015); Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016).

6. Pursuant to section 5 of the *Victorian Law Reform Commission Act 2000* (Vic).

7. Victorian Law Reform Commission, *Stalking: Consultation Paper* (2021) viii–ix.

Aim and research questions

- 1.4 The aim of this report is to examine current sentencing practices for breaches of FVSNs and FVIOs contrary to sections 37, 37A, 123, 123A and 125A of the *Family Violence Protection Act 2008* (Vic). Chapter 2 presents an overview of the legal framework within which FVSNs and FVIOs are issued and breaches of FVSNs and FVIOs are sentenced. Then, using police and court data for the 10 years to 2020 (the reference period), the remainder of this report addresses the following research questions:
- 1. FVSNs issued by police and FVIOs issued by courts (Chapter 3):**
During the reference period, how many FVSNs were issued by police? How many interim and final FVIOs were issued by courts? What were the demographics of respondents and protected persons? What was the relationship between respondents and protected persons?
 - 2. Breaches of FVSNs and FVIOs recorded by police (Chapter 4):**
During the reference period, how many breaches of FVSNs and FVIOs were recorded by police? What were the demographics of recorded breach offenders?
 - 3. Breaches of FVSNs and FVIOs sentenced by courts (Chapter 5):**
During the reference period, how many breaches of FVSNs and FVIOs were sentenced in Victoria? What were the demographics of breach offenders? What types of offences were breaches co-sentenced with? How were breaches sentenced when co-sentenced with other offences?
- 1.5 While reoffending was a focus in the reports on stalking and breaches of PSIOs, there is no analysis of reoffending in this report as the Council has already conducted an in-depth analysis of reoffending by people sentenced for breaching FVSNs and FVIOs.⁸

8. Sentencing Advisory Council (2016), above n 5.

2. Legal framework for family violence intervention orders and safety notices and sentencing breaches of those orders

2.1 This chapter provides an overview of the legislative framework within which family violence safety notices (FVSNs) and family violence intervention orders (FVIOs) are issued in Victoria and how breaches of FVSNs and FVIOs are sentenced.

Scope of family violence safety notices and intervention orders in Victoria

2.2 Legislation in Victoria provides for family violence safety notices and intervention orders. The more common is a FVIO. This is issued by the Magistrates' Court or Children's Court and may be made on an interim or final basis.⁹ In comparison, a FVSN is a temporary notice issued by police until a court can decide whether to issue an interim or a final FVIO. Both FVSNs and FVIOs are designed to respond to *family violence*,¹⁰ which arises between *family members*.¹¹ If an order is required to ensure a person's personal safety but no family relationship is involved, the personal safety intervention order (PSIO) framework applies instead.¹²

What is *family violence*?

2.3 The term *family violence* is defined expansively in Victoria's legislation, and the definition is generally considered clear and comprehensive.¹³ Family violence includes behaviour directed at a family member that is physically, sexually, emotionally, psychologically or economically abusive; is threatening; is coercive;

9. The County Court and Supreme Court can, in certain circumstances, issue an interim FVIO, but the proceeding for the final order must be transferred to the Magistrates' Court or Children's Court for determination: *Family Violence Protection Act 2008* (Vic) ss 60B, 60C, 60K.

10. *Family violence* is defined in *Family Violence Protection Act 2008* (Vic) s 5.

11. *Family member* is defined in *Family Violence Protection Act 2008* (Vic) s 8.

12. See Sentencing Advisory Council, *Sentencing Breaches of Personal Safety Intervention Orders in Victoria* (2022).

13. See, for example, Parliament of New South Wales, Joint Select Committee on Coercive Control, *Coercive Control in Domestic Relationships*, Report 1/57 (2021) 29–31; State of Victoria, Royal Commission into Family Violence, *Volume I: Report and Recommendations* (2016) 15–16.

or in any other way controls or dominates the family member and causes that family member to feel fear for their own or another person's safety or wellbeing.¹⁴ Family violence also includes conduct that causes a child to witness or be exposed to such behaviour.¹⁵ Behaviour may also constitute family violence even if it does not otherwise constitute a criminal offence.¹⁶

Who are *family members*?

2.4 The term *family member* is also defined expansively. As well as spouses and domestic partners, relatives and children, family members include former spouses, relatives and children; people who have, or have had, an intimate personal relationship with the relevant person; children of such people; and children who currently reside, or previously resided, with the relevant person on a normal or regular basis.¹⁷ Family members also include anyone a person reasonably regards as being like a family member,¹⁸ such as a carer in the person's home or residential facility, or anyone who under Aboriginal and Torres Strait Islander tradition or contemporary social practice is the person's relative.¹⁹

Family violence safety notices

2.5 FVSNs are issued by police officers. Specifically, police officers responding to a family violence incident may apply to another officer of the rank of sergeant or higher to issue a FVSN.²⁰ An officer must not make an application if they have reasonable grounds to believe that the respondent is a child or has a cognitive impairment, a FVIO is already in place²¹ or the proposed terms of the FVSN would be inconsistent with the conditions of a community correction order (CCO) or the conditions of a child protection order under the *Family Law Act 1975* (Cth).²²

14. *Family Violence Protection Act 2008* (Vic) s 5(1)(a).

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

16. *Family Violence Protection Act 2008* (Vic) s 5(3).

17. *Family Violence Protection Act 2008* (Vic) s 8(1). An 'intimate personal relationship' need not be sexual in nature: s 8(2).

18. *Family Violence Protection Act 2008* (Vic) s 8(3).

19. *Family Violence Protection Act 2008* (Vic) s 10(1)(b).

20. *Family Violence Protection Act 2008* (Vic) s 24.

21. A FVSN can be made despite a recognised domestic violence order being in place between the same respondent and protected person: *Family Violence Protection Act 2008* (Vic) s 26A(1). If the police officer believes such an order is in place, they must make reasonable enquiries before the first mention date: ss 26A(2).

22. *Family Violence Protection Act 2008* (Vic) ss 24(c), (da).

- 2.6 The officer who receives the application can then issue a FVSN if they believe on reasonable grounds that the FVSN is necessary to ensure the safety of the affected family member, to preserve their property or to protect a child who has been subjected to family violence by the respondent.²³ The officer may also choose to hear from the respondent or affected family member before making a decision.²⁴ The previous requirement that FVSNs could only be applied for outside court hours was removed in 2014.²⁵
- 2.7 A FVSN may include any of the conditions that can be included in a FVIO, except some conditions about weapons and firearms.²⁶ Any condition restricting the respondent from being near certain places must be practical in the circumstances.²⁷ Police must consider the accommodation needs of the respondent, the protected person and any dependent children in deciding whether to impose a residence exclusion condition; police must also take reasonable steps to ensure access to temporary accommodation if required.²⁸
- 2.8 If the FVSN is granted, it must be served on, and explained to, the respondent and protected person.²⁹ The FVSN is treated as an application for a FVIO, and the respondent is required to attend the first court date for that application.³⁰ A FVSN comes into effect when it is served on the respondent. It continues until the first court date, at which time the court may dismiss the application, adjourn the proceeding and make an interim FVIO, or replace the FVSN with a FVIO.³¹ The maximum duration of a FVSN is 14 days, having been increased in 2018 from five days.³²

23. *Family Violence Protection Act 2008* (Vic) ss 24(e), 26.

24. *Family Violence Protection Act 2008* (Vic) s 26(2)(c).

25. *Family Violence Protection Amendment Act 2014* (Vic) s 5(b).

26. *Family Violence Protection Act 2008* (Vic) s 29(1).

27. *Family Violence Protection Act 2008* (Vic) ss 29(2), 81(2)(a)–(f).

28. *Family Violence Protection Act 2008* (Vic) s 36.

29. *Family Violence Protection Act 2008* (Vic) ss 34, 35.

30. *Family Violence Protection Act 2008* (Vic) s 31.

31. *Family Violence Protection Act 2008* (Vic) s 30.

32. *Family Violence Protection Act 2008* (Vic) s 31(3)(b), as amended by *Family Violence Protection Amendment Act 2017* (Vic) s 32(b).

Family violence intervention orders

2.9 An *affected family member* can apply to the Children's Court or the Magistrates' Court for a FVIO to protect themselves from harm committed by another family member.³³ With the affected family member's consent, another person (including a police officer or a prosecutor at a sentencing hearing) may also apply on an affected family member's behalf.³⁴ Parents and guardians can also apply on behalf of children, and children can be included in an application that relates to their parent.³⁵ The court can also make a FVIO on its own initiative when hearing applications or appeals relating to bail³⁶ or in a criminal proceeding.³⁷

Interim FVIOs

2.10 At any time before deciding whether to make a final FVIO, a court can make an interim FVIO³⁸ if it is satisfied, on the balance of probabilities, that:

- an interim FVIO is necessary pending a final decision to ensure the safety or preserve the property of the affected family member or to protect an affected family member who is a child and has been subjected to family violence by the respondent;
- the parties consent to, or do not oppose, the making of an interim FVIO; or
- a FVSN has been issued and there are no circumstances that would justify discontinuing the protection of the person before a final decision about the FVIO application is made.³⁹

2.11 When an interim FVIO is made, it must be explained to the respondent and the protected person.⁴⁰ The court must list the hearing for a decision about the final FVIO 'as soon as practicable'.⁴¹ If the interim FVIO is made on the court's own

33. *Family Violence Protection Act 2008* (Vic) ss 42, 45. Interim FVIOs may be made for more than one affected family member: *Family Violence Protection Act 2008* (Vic) s 56. There are special requirements when children are involved: ss 53AA, 53AB.

34. *Family Violence Protection Act 2008* (Vic) s 45. This includes the issuing of a FVSN, which automatically becomes a police application for a FVIO.

35. *Family Violence Protection Act 2008* (Vic) ss 45, 47.

36. *Family Violence Protection Act 2008* (Vic) s 60B.

37. *Family Violence Protection Act 2008* (Vic) s 60C.

38. If there is a PSIO in place and either the respondent or the affected family member is a respondent under that PSIO, the court cannot make an interim PSIO: *Family Violence Protection Act 2008* (Vic) s 53A(1). An exception exists whereby an interim FVIO can be made if there is an existing *interim* PSIO protecting the respondent in the FVIO application: *Family Violence Protection Act 2008* (Vic) s 53A(2).

39. *Family Violence Protection Act 2008* (Vic) s 53.

40. *Family Violence Protection Act 2008* (Vic) ss 57, 57A.

41. *Family Violence Protection Act 2008* (Vic) s 59.

motion in the course of a criminal proceeding, the court must list the hearing within 14 days of making the interim FVIO or the interim FVIO being served on the respondent.⁴² The interim FVIO remains in force until a final FVIO is made and (where applicable) served on the respondent, the application for a final FVIO is refused, the application for a final FVIO is withdrawn, or the interim FVIO is revoked by the court.⁴³

Final FVIOs

- 2.12 A court hearing an application for a FVIO may make a final order if satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to continue to do so or do so again.⁴⁴ The court may also make a final FVIO if the parties consent to, or do not oppose, the making of the order.⁴⁵
- 2.13 Courts deciding whether to make a final FVIO must consider whether any children have been subjected to family violence committed by the respondent.⁴⁶ If a child has been subjected to family violence, the court must list the child as a protected person under the final FVIO if the child's need for protection is substantially the same as the primary affected family member's, or it must make a separate FVIO for the child.⁴⁷ Even if the court does not make a final FVIO for the primary affected family member(s), the court may still make a final FVIO protecting the child.⁴⁸
- 2.14 The court may specify the period for which a final FVIO remains in force. In making this decision, the court's paramount consideration is the safety of the protected person.⁴⁹ The court must also take into account any assessment by the applicant of the level and duration of the risk from the respondent. If the applicant is not the protected person, the court considers the protected person's views, including their assessment of the level and duration of the risk from the respondent.⁵⁰

42. *Family Violence Protection Act 2008* (Vic) s 60L.

43. *Family Violence Protection Act 2008* (Vic) s 60.

44. *Family Violence Protection Act 2008* (Vic) s 74.

45. *Family Violence Protection Act 2008* (Vic) s 78: if the respondent is a child, the application must meet the conditions in section 74 or 76, as applicable. A final FVIO cannot, however, be made where there is an existing PSIO in place between the affected family member and the respondent: *Family Violence Protection Act 2008* (Vic) s 53A(1).

46. *Family Violence Protection Act 2008* (Vic) s 73I.

47. *Family Violence Protection Act 2008* (Vic) ss 77, 77A.

48. *Family Violence Protection Act 2008* (Vic) s 77B.

49. *Family Violence Protection Act 2008* (Vic) s 97.

50. *Family Violence Protection Act 2008* (Vic) s 97(2).

The court may also take into account any matters raised by the respondent that are relevant to the duration of the order.⁵¹ If the respondent is a child, the maximum duration of the final FVIO is 12 months unless there are exceptional circumstances.⁵² If the court does not specify the period for which the final FVIO remains in force, unless the order is varied, it endures until it is revoked by the court or set aside on appeal.⁵³

2.15 When a court makes a final FVIO, it may also make *associated final orders* against additional respondents who would fall under the *Family Violence Protection Act 2008* (Vic) if they were a family member of the applicant, or in favour of additional applicants if they were a family member of the respondent.⁵⁴

Conditions of orders

2.16 A court imposing an interim or final FVIO⁵⁵ can include any conditions that appear to be necessary or desirable in the circumstances.⁵⁶ This may include conditions:

- prohibiting the respondent from committing family violence against the protected person;
- excluding the respondent from the protected person's residence;
- relating to the use of personal property;
- restricting contact with the protected person;
- prohibiting the respondent from being anywhere within a specified distance of the protected person or a specified place;
- prohibiting the respondent from causing another person to engage in conduct prohibited by the order; and
- suspending or cancelling firearms authorities, weapons approvals or weapons exemptions.⁵⁷

51. *Family Violence Protection Act 2008* (Vic) s 97(3).

52. *Family Violence Protection Act 2008* (Vic) s 98.

53. *Family Violence Protection Act 2008* (Vic) s 99.

54. *Family Violence Protection Act 2008* (Vic) s 76.

55. The same conditions are available whether the order is interim or final: *Family Violence Protection Act 2008* (Vic) ss 11, 81.

56. *Family Violence Protection Act 2008* (Vic) s 81(1).

57. *Family Violence Protection Act 2008* (Vic) s 81(2).

- 2.17 In making a decision about whether to include a residence exclusion condition, the court must have regard to all the circumstances of the case.⁵⁸ Additional considerations apply to exclusion conditions if the respondent is a child.⁵⁹ The court must also enquire as to the existence of any firearms authority, weapons approval or weapons exemption that the respondent may have.⁶⁰
- 2.18 If a final FVIO is made and the affected family member is a legally competent adult who does not consent to the making of the order, the conditions that can be imposed are restricted.⁶¹ If the court decides to make a FVIO and the protected person or respondent is the parent of a child, the court must also enquire as to whether there is a *Family Law Act* order or child protection order in relation to the child, and vary any *Family Law Act* order if necessary.⁶² The court must also decide whether or not the safety of the protected person or child may be jeopardised by the child living with, spending time with or communicating with the respondent.⁶³

Interaction between FVSNs, FVIOs and other orders

- 2.19 A respondent in a FVSN or FVIO may from time to time be subject to a number of court orders, such as a PSIO, a CCO, bail, parole, a post-sentence supervision order, a *Family Law Act* order and/or a child protection order. FVIO conditions prevail over those of a FVSN,⁶⁴ a PSIO,⁶⁵ a child protection order⁶⁶ and bail orders,⁶⁷ and they prevail over certain conditions of a CCO⁶⁸ and certain conditions of a supervision order under the *Serious Offenders Act 2018* (Vic) unless the condition of the supervision order is necessary to reduce the risk of reoffending or address a reasonable concern of a victim of the offender,⁶⁹ to the extent of any inconsistency.

58. *Family Violence Protection Act 2008* (Vic) s 82.

59. *Family Violence Protection Act 2008* (Vic) s 83.

60. *Family Violence Protection Act 2008* (Vic) s 94.

61. *Family Violence Protection Act 2008* (Vic) s 75(2). The conditions cannot include a residence exclusion, a condition relating to the use of personal property, contact restriction or a condition prohibiting the respondent from being anywhere within a specified distance of the protected person or a specified place.

62. *Family Violence Protection Act 2008* (Vic) ss 89, 90.

63. *Family Violence Protection Act 2008* (Vic) s 91.

64. *Family Violence Protection Act 2008* (Vic) s 39.

65. *Family Violence Protection Act 2008* (Vic) 176C.

66. *Family Violence Protection Act 2008* (Vic) s 173. However, when hearing a child protection order application, the Children's Court may vary or revoke the FVIO to the extent that the FVIO would be inconsistent with the proposed child protection order.

67. *Family Violence Protection Act 2008* (Vic) s 175AB. A child protection order also prevails over bail conditions: s 175.

68. *Sentencing Act 1991* (Vic) ss 48G(5), 48H(4), 48I(4).

69. *Serious Offenders Act 2018* (Vic) ss 30(1)(b), (2).

A *Family Law Act* order that provides for a child to spend time with a person takes precedence over a FVIO if there is inconsistency;⁷⁰ however, both the court making the *Family Law Act* order and the court making the FVIO have a shared power to vary the order in such circumstances.⁷¹ Like FVIO conditions, FVSN conditions prevail over bail conditions,⁷² but legislation is silent as to whether they prevail over a PSIO, a child protection order, CCO conditions or a supervision order.⁷³

Interstate and New Zealand domestic violence orders

2.20 On 25 November 2017, a National Domestic Violence Order Scheme was introduced to recognise and enforce all domestic violence orders (DVOs) issued in Australia. The scheme allows for interstate and New Zealand DVOs to be recognised in Victoria as if they were FVIOs. A FVSN can be issued even if there is a recognised DVO in place,⁷⁴ and the respondent must comply with both the recognised DVO and the FVSN unless there is a conflict, in which case the FVSN prevails.⁷⁵ Similarly, a FVIO can be made even if there is an existing recognised DVO.⁷⁶ Respondents who have been punished elsewhere for conduct that is a breach of both a recognised DVO and a FVSN or FVIO may not be punished again for the same breach.⁷⁷

The breach offences

2.21 There are five breach offences under the *Family Violence Protection Act 2008* (Vic): two each in respect of FVIOs and FVSNs (an aggravated and a non-aggravated breach offence), as well as one persistent breach offence, which applies in respect of persistent breach of either a FVSN or FVIO or both. The five breach offences, their relevant sections of the *Family Violence Protection Act 2008* (Vic) and maximum penalties are set out in Table I (page 11).

70. *Family Law Act 1975* (Cth) s 68Q.

71. *Family Law Act 1975* (Cth) s 68R; *Family Violence Protection Act 2008* (Vic) s 90.

72. *Family Violence Protection Act 2008* (Vic) s 175AA; *Bail Act 1977* (Vic) s 5AAA(2)(c).

73. *Family Violence Protection Act 2008* (Vic) ss 173, 176C; *Sentencing Act 1991* (Vic) ss 48G(5), 48H(4), 48I(4); *Serious Offenders Act 2018* (Vic) s 30.

74. *Family Violence Protection Act 2008* (Vic) s 26A.

75. *Family Violence Protection Act 2008* (Vic) s 40.

76. *National Domestic Violence Order Scheme Act 2016* (Vic) s 14.

77. *Family Violence Protection Act 2008* (Vic) s 125B.

Table 1: Breach offences, statutory references and maximum penalties

Offence	Section	Maximum penalty
Breach of a FVSN	37	2 years' imprisonment and/or 240 penalty units
Breach of a FVIO	123	2 years' imprisonment and/or 240 penalty units
Breach of a FVSN while intending to cause harm or fear for safety	37A	5 years' imprisonment and/or 600 penalty units
Breach of a FVIO while intending to cause harm or fear for safety	123A	5 years' imprisonment and/or 600 penalty units
Persistent breach of FVSNs and FVIOs	125A	5 years' imprisonment and/or 600 penalty units

2.22 The non-aggravated breach offences do not require a specific mental element; however, a recent Magistrates' Court decision suggests that they are not, at least, strict liability offences.⁷⁸ The aggravated breach offences in sections 37A and 123A apply if the respondent committed the breach while intending to cause, or knowing their conduct would probably cause, harm (including mental harm) to the protected person or cause the protected person to fear for their own or anyone else's safety.⁷⁹

2.23 Persistent breaches of FVSNs and FVIOs were added as a separate offence in 2013.⁸⁰ The offence requires at least three distinct breaches within a 28-day period, and each breach must amount to a breach of a FVSN or FVIO.⁸¹ If the breaches persist longer than 28 days, the legislation requires that the further behaviours be prosecuted as multiple offences, despite the behaviour appearing to be a single, continuous course of conduct.⁸²

78. *DPP v Cope (A Pseudonym)* [2021] VMC 14.

79. *Family Violence Protection Act 2008 (Vic)* ss 37A, 123A.

80. *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012 (Vic)* s 11.

81. *Family Violence Protection Act 2008 (Vic)* s 125A(2).

82. See, for example, *DPP v Alexander (A Pseudonym)* [2020] VCC 124, in which the offender was sentenced for four consecutive 28-day persistent breach offences over a four-month period. See also *DPP v Cook* [2016] VCC 1006, [12], in which a single persistent breach offence covered a two-and-a-half-month period. As a point of comparison, the recently enacted offence of persistently engaging in family violence in Western Australia requires three or more occasions in a 10-year period: *Family Violence Legislation Reform Act 2020 (WA)* s 6, inserting *Criminal Code Act Compilation Act 1913 (WA)* ss 299–300. And in Tasmania, the offence of persistent family violence requires the offender to have committed unlawful family violence against their spouse or partner on at least three occasions, without a specified time period: *Criminal Code Act 1924 (Tas)* s 170A.

If the elements of the persistent breach offence are not proven, but one of the other breach offences is, the accused may be convicted of the other breach offence.⁸³ Otherwise, the accused cannot be separately prosecuted for an individual breach that makes up part of the alleged persistent breach offence.⁸⁴

Sentencing breaches of FVSNs and FVIOs

2.24 In 2009, the Council published *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders*, suggesting that the primary purpose of sentencing for breach of a FVIO should be to achieve compliance with the order (or future orders), which ensures the safety and protection of the victim survivor.⁸⁵

2.25 The Council also recommended certain factors that should be considered relevant in sentencing breaches of FVIOs, including:

- the nature of the breach and its impact on the victim survivor;
- whether the offender used violence;
- whether the breach occurred in the home;
- any abuse of power;
- the presence of children;
- any special vulnerability of the victim survivor;
- the offender's culpability; and
- prior convictions, especially for other breaches.⁸⁶

2.26 The Council further recommended that the attitude of the victim survivor should not generally influence the sentence. However, depending on the dynamics of the relationship and contact, the fact that the victim survivor initiated contact might be relevant, and the offender's previous good character should be given very little weight where there is a proven pattern of family violence.⁸⁷

2.27 The Victorian Government submitted the Council's approach to the Australian Law Reform Commission and New South Wales Law Reform Commission's wide-ranging review into family violence, and noted that the guidelines were developed in consultation with stakeholders, including judicial officers,

83. *Family Violence Protection Act 2008* (Vic) s 125A(4).

84. *Family Violence Protection Act 2008* (Vic) s 125A(5).

85. Sentencing Advisory Council (2009), above n 5, 3.

86. *Ibid* 4–5.

87. *Ibid*.

were not intended to displace judicial discretion and were endorsed by the Chief Magistrate at the time.⁸⁸ The Commissions considered these guidelines 'an instructive model for guiding judicial discretion in the sentencing for breach of protection order offences' and suggested that they 'could form the basis of material to be included in a national bench book'.⁸⁹

- 2.28 Since then, the *National Domestic and Family Violence Bench Book* has been created, and it is regularly updated.⁹⁰ It specifies a number of considerations that may be relevant to sentencing breaches of family violence orders, specifically building on the Council's guiding principles published in 2009.⁹¹
- 2.29 The Judicial College of Victoria has also published its own *Family Violence Bench Book*, which outlines similar principles and cites with approval the Council's 2009 *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report*.⁹² The *Family Violence Bench Book* also notes the importance of the effective enforcement of intervention orders and imposition of appropriate sentences for breaches to ensuring that victim survivors are protected,⁹³ as well as the general social importance of dissuading violence by males against females in the context of a current or former relationship.⁹⁴

Co-sentencing other offences with breaches of FVSNs and FVIOs

- 2.30 In some instances, breach offences (such as sending a non-threatening text message in breach of a non-contact condition) are only criminal because there is an intervention order in place, while other breaches are premised on behaviour that also constitutes a crime in its own right (for example, a property damage offence or a threat to kill). Where this occurs, there are two possible charging options.

88. Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Final Report*, vol. I (2010) 545.

89. Ibid 555.

90. Australian Institute of Judicial Administration, *National Domestic and Family Violence Bench Book* (Australian Institute of Judicial Administration, 2021) <<https://dfvbenchbook.aija.org.au/contents>> at 15 March 2022.

91. Australian Institute of Judicial Administration, '9.3.1 Sentencing Considerations – Breaches of Protection Orders', *National Domestic and Family Violence Bench Book* (Australian Institute of Judicial Administration, 2021) <<https://dfvbenchbook.aija.org.au/sentencing/sentencing-considerations-breaches-of-protection-orders/>> at 15 March 2022.

92. Judicial College of Victoria, '4.1.1.2 – Sentencing Contravention Offences', *Family Violence Bench Book* (Judicial College of Victoria, 2020) <<https://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34471.htm>> at 15 March 2022, citing *DPP v Johnson* [2011] VSCA 288, [5], referring to Sentencing Advisory Council (2009), above n 5, 135.

93. Judicial College of Victoria, '4.1.1.2 – Sentencing Contravention Offences', *Family Violence Bench Book* (Judicial College of Victoria, 2020) <<https://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34471.htm>> at 15 March 2022, citing *DPP v Johnson* [2011] VSCA 288, [5].

94. Ibid, citing *DPP v Smeaton* [2007] VSCA 256, [21]; *Filiz v The Queen* [2014] VSCA 212, [21].

First, the offender can be charged *only* with the breach offence, such that the court typically imposes a relatively severe sentence to reflect the additional criminality of the breach. Second, the offender can *also* be charged with the other offence, such that some cumulation is appropriate between the two offences, particularly given that the distinct element of the behaviour occurred in disobedience of a court order.⁹⁵ However, the cumulation must not be so significant as to amount to double punishment.⁹⁶

95. *Maher v The Queen* [2011] VSCA 136, [16]; *DPP v Johnson* [2011] VSCA 288, [53].

96. *Woods v The Queen* [2017] VSCA 34, [18]–[33]; *R v Duncan* [2007] VSCA 137.

3. Family violence safety notices issued by police and family violence intervention orders issued by courts

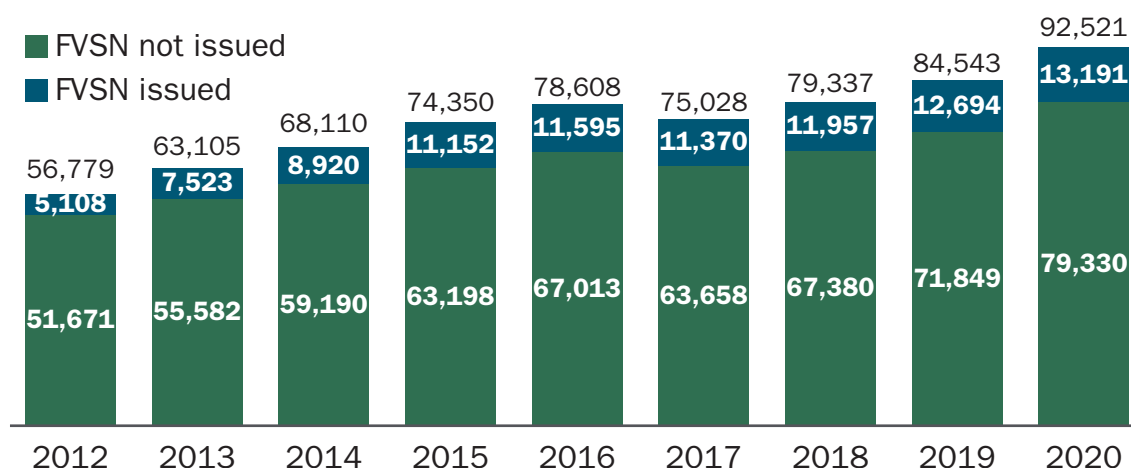
3.1 This chapter discusses *family violence safety notices* (FVSNs) issued by police between 2012 and 2020 (data was available for nine years of the 10-year reference period) and *family violence intervention orders* (FVIOs) issued by courts between 2011 and 2020 (data was available for the whole 10-year reference period). The chapter includes how many FVSNs and FVIOs were issued each year, the age and gender of respondents, the age and gender of primary affected family members (in FVSNs) and protected persons (in FVIOs), and the basis on which FVIOs were issued. Data relating to FVSNs was provided by the Crime Statistics Agency, and data relating to FVIOs was provided by Court Services Victoria.

FVSNs issued by police

3.2 In the nine years from 2012 to 2020, Victoria Police attended 672,381 family incidents, on average almost 75,000 per year. As shown in Figure 1, police issued a FVSN following 13.9% of attendances (93,510 family incidents). While the number of family incidents attended by police each year increased – from about 57,000 to 93,000 – the proportion of incidents resulting in a FVSN remained relatively stable at between 13% and 15% every year since 2014.

**Police issued over
93,500 FVSNs between
2012 and 2020**

Figure 1: Number of family incidents attended by Victoria Police, 2012 to 2020, by whether the attendance resulted in a FVSN being issued (672,381 family incidents, 93,510 FVSNs)



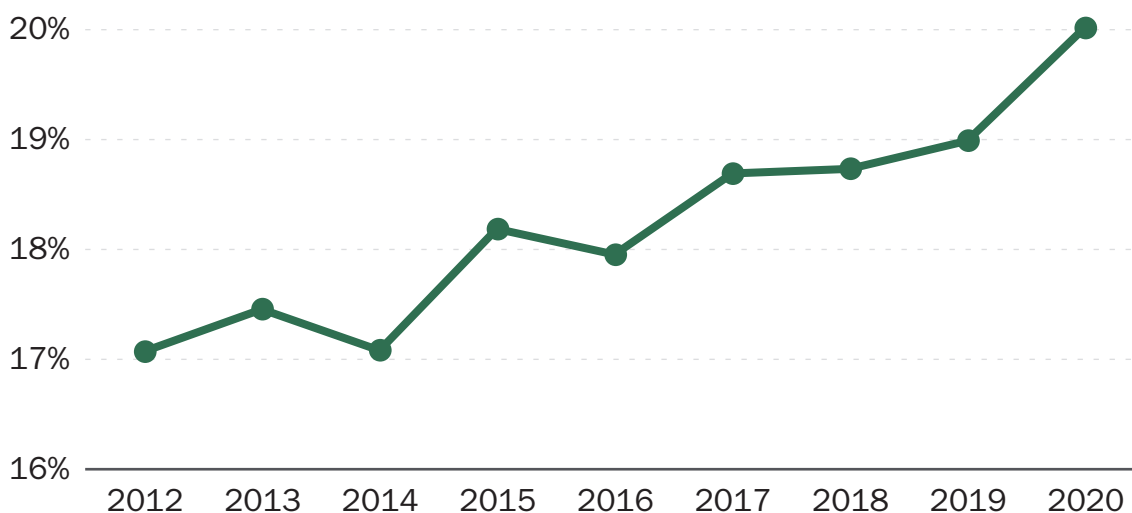
Age and gender of respondents in FVSNs

3.3 Of the 93,510 FVSNs issued, the age and gender of the respondent were recorded for over 99% (92,772 FVSNs). Of those, respondents in 81.6% were male (Figure 3, page 19).

3.4 There was a slight increase in the rate of females recorded as respondents in FVSNs in recent years, increasing steadily from 17.1% in 2012 to 20.0% in 2020 (Figure 2). This is largely driven by an increase in the number of female respondents aged 20 to 39. At first glance, this would appear to be inconsistent with the intentional policy of trying to *reduce* the number of female respondents in FVSNs and FVIOs who are misidentified as the primary (or reciprocal) aggressor in the relationship.⁹⁷ For instance, the Royal Commission into Family Violence recommended trying to reduce the rate of mistaken identification of females as predominant aggressors by providing police with 'suitable guidance on identifying family violence primary aggressors'.⁹⁸

82% of respondents in FVSNs were male

Figure 2: Percentage of female respondents in FVSNs issued by police, 2012 to 2020



97. Madeleine Ulbrick and Marianne Jago, 'Officer She's Psychotic and I Need Protection: Police Misidentification of the 'Primary Aggressor' in Family Violence Incidents in Victoria (2018); Ellen Reeves, 'Family Violence, Protection Orders and Systems Abuse: Views of Legal Practitioners' (2020) 32(1) *Current Issues in Criminal Justice* 91; Ellen Reeves, "'I'm Not at All Protected and I Think Other Women Should Know That, That They're Not Protected Either': Victim-Survivors' Experiences of "Misidentification" In Victoria's Family Violence System' (2021) 10(2) *International Journal for Crime, Justice and Social Democracy* 39; No to Violence, *Predominant Aggressor Identification and Victim Misidentification: Discussion Paper* (2019); Australian Broadcasting Corporation, 'When Police Misjudge Domestic Violence, Victims Are Slapped with Intervention Order Applications', *ABC News* (Melbourne) 15 August 2018 <<https://www.abc.net.au/news/2018-08-15/domestic-violence-victims-mistaken-for-perpetrators/10120240>> at 15 March 2022.

98. State of Victoria, Royal Commission into Family Violence, *Volume III: Report and Recommendations* (2016) 37–38 (Recommendation 41).

- 3.5 Victoria's Family Violence Reform Implementation Monitor recently noted that it is difficult to measure the exact prevalence of misidentification.⁹⁹ However, they also observed that there is evidence that misidentification does occur: Victoria Police believes it occurs in about 12% of family incidents attended; the Crime Statistics Agency has identified a high rate of recent victimisation for female respondents named as perpetrators during police call-outs; research by Women's Legal Service Victoria shows that 10% of their clients had been misidentified as respondents in police applications for FVIOs; and FVIO applications are more than twice as likely to be struck out or withdrawn when the respondent is female.¹⁰⁰
- 3.6 The issue may also be especially pronounced in culturally and linguistically diverse communities. In February 2022, InTouch Multicultural Centre Against Family Violence estimated 'that at least one-third of our clients have experienced misidentification at some point during their engagement with law enforcement and the justice system'.¹⁰¹ Stakeholders at the Council's roundtable also suggested that, anecdotally, misidentification of females as FVSN respondents was 'becoming more and more prevalent':
- I think it's become a bit of a tactic, too. Male respondents commit family violence and then they ring police and say 'look, she's out of control, she's hysterical, you need to get around here'. And then police turn up, and that's what they see. The person who's contacted police is calm and behaving themselves, and the other person's upset and crying.¹⁰²
- 3.7 There is an important caveat to the data in Figure 2 on the gender of FVSN respondents. It does not distinguish the relationships between respondents and affected family members. More research would be required to understand whether this is an increase in females being named as respondents in *intimate partner* contexts, which would be concerning, or whether this instead reflects an increase in the number of females named as respondents in other family relationships, such as adolescent family violence¹⁰³ or parents whose female child is the respondent. That said, the low number of FVSN respondents aged 0 to 19 (Figure 3, page 19) suggests that family violence perpetrated by young females is not a common context in which FVSNs are issued.

99. Family Violence Reform Implementation Monitor, *Monitoring Victoria's Family Violence Reforms: Accurate Identification of the Predominant Aggressor* (2021) i.

100. *Ibid* 11 (citations omitted).

101. InTouch Multicultural Centre Against Family Violence, *The Causes and Consequences of Misidentification on Women from Migrant and Refugee Communities Experiencing Family Violence: Position Paper* (2022) 1.

102. Stakeholder Roundtable (4 February 2022).

103. For instance, the Council recently found that more than half of crossover children (53%), that is, children who have contact with both the child protection and the youth justice systems, were sentenced for breach of an intervention order: Sentencing Advisory Council, *'Crossover Kids': Vulnerable Children in the Youth Justice System Report 2: Children at the Intersection of Child Protection and Youth Justice across Victoria* (2020) 41–46.

Age and gender of primary affected family members in FVSNs

3.8 When police issue a FVSN, they also record a primary affected family member. This is the person police have ‘deemed to be [most] affected by events occurring during the incident’, that is, the person who most needs protection.¹⁰⁴ Sometimes they record additional family members as well, such as children, but the data below relates only to primary affected family members.

3.9 Of the 93,518 FVSNs issued, the age and gender of the primary affected family member were recorded in 92,266 (98.7%) FVSNs. The rate at which females were primary affected family members was stable from 2012 to 2020, at between 75% and 77% each year. Females were most likely to be primary affected family members while aged 20 to 39, whereas male affected family members were more evenly distributed across the age groups, from 20 to 54 years (Figure 4, page 19). Therefore, while age seems to be a key risk factor for females being named a primary affected family member in a FVSN (with the risk declining from age 35 onwards), it is less of a risk factor for males.

76% of primary affected family members in FVSNs were female

Relationships between respondents and primary affected family members in FVSNs

3.10 When police issue a FVSN, they also record the relationship between the respondent and the primary affected family member, with the options of current partner, former partner, family, non-family member and unknown (Figure 5, page 20). Across the reference period, current partners made up 51.0% of respondents, family members made up 34.0%, former partners made up 14.0%, and non-family members and unknown together made up just 1.0%. The rates did, though, change during the reference period.

3.11 There are two interesting observations to make about how those rates changed. The first is that, while the number of respondents who were a *current* partner more than doubled from 2,348 to 5,988, the number of respondents who were a *former* partner increased even more substantially, from 410 to 2,321.¹⁰⁵

104. Crime Statistics Agency, ‘Explanatory Notes & Definitions’ (crimestatistics.vic.gov.au, 2021) <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/explanatory-notes-definitions>> at 15 March 2022.

105. Similarly, the number of stalkers in recorded police data who were former partners has increased significantly in the last 10 years, while the number of current partners has remained stable, even declining slightly in recent years: Sentencing Advisory Council, *Sentencing Stalking in Victoria* (2022) 27.

Figure 3: Age and gender of respondents in FVSNs issued by police, 2012 to 2020 (92,772 respondents)

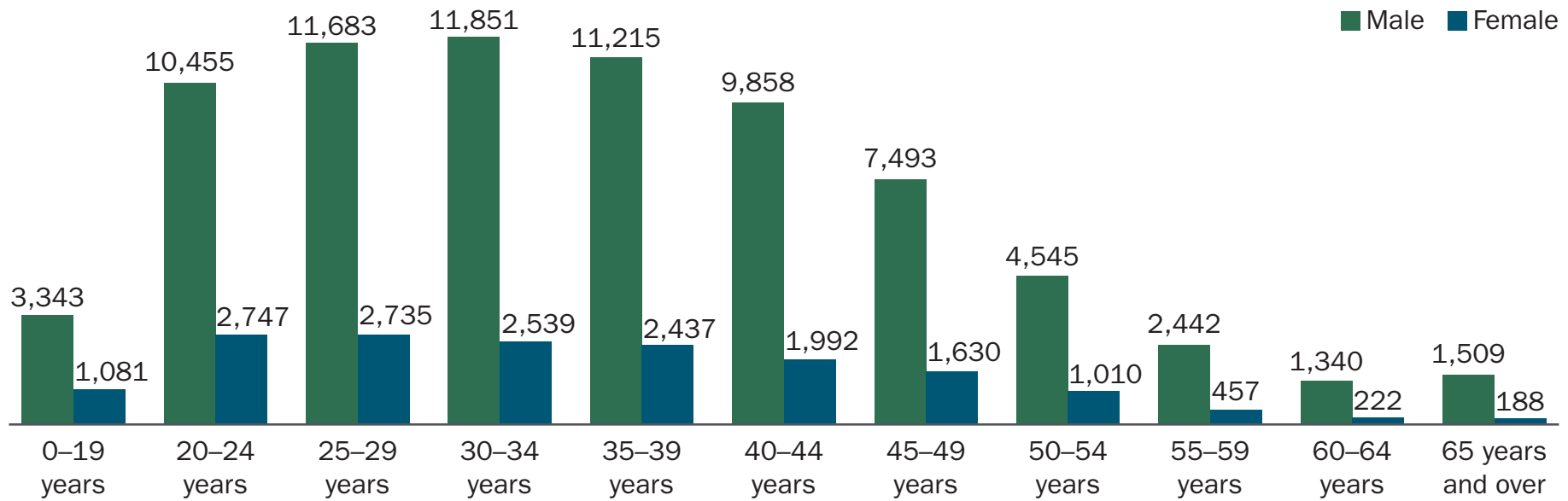
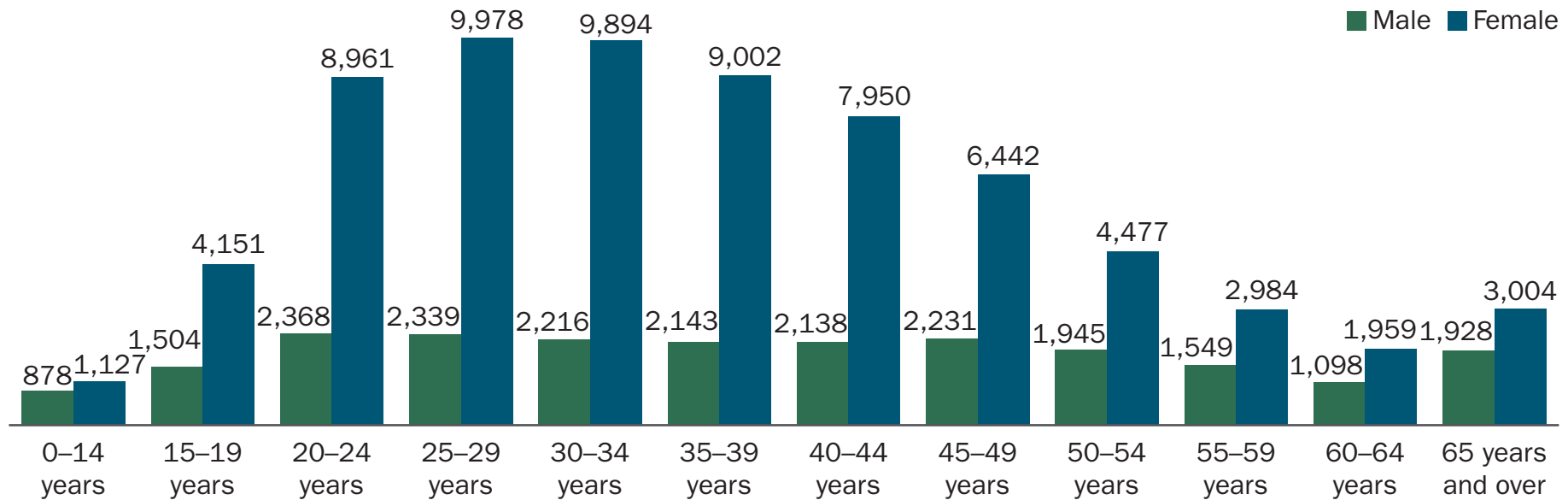


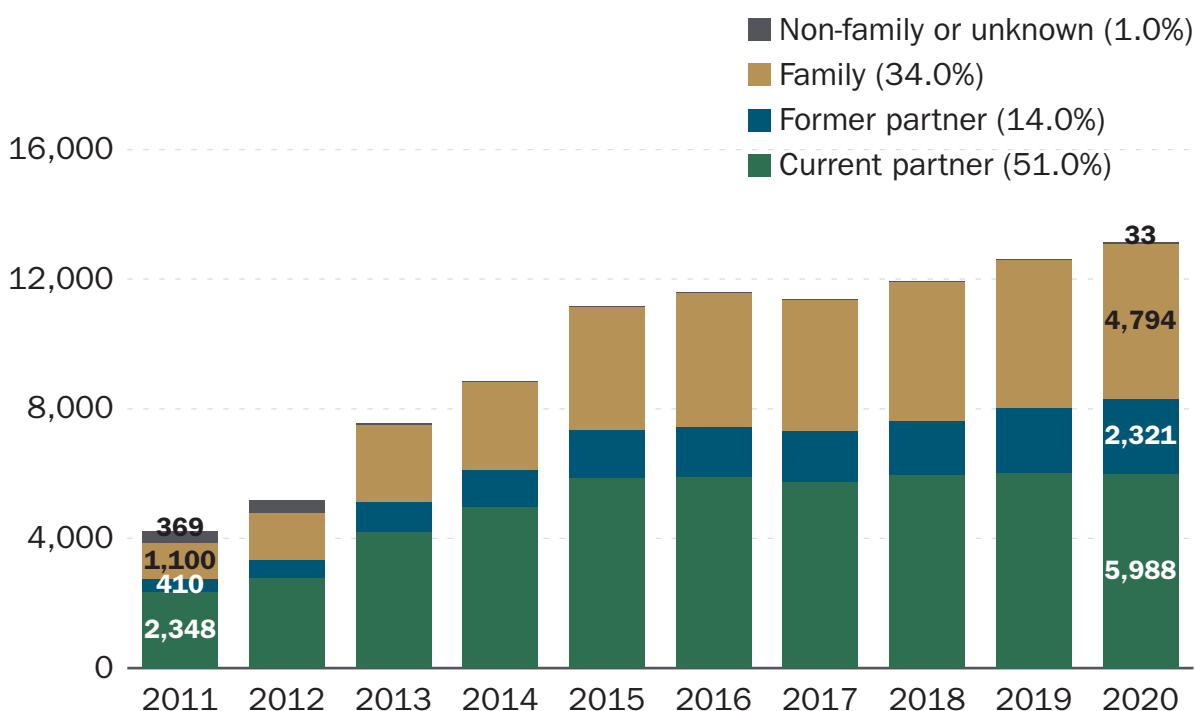
Figure 4: Age and gender of primary affected family members in FVSNs issued by police, 2012 to 2020 (92,266 affected family members)



Alongside an increase in family violence between current partners, the quintupling in the number of former partners who were respondents in FVSNs most likely reflects a positive and changing perception by police of the serious risk posed by former partners, justifying an increased response by police, particularly in the period immediately following the end of a relationship.

3.12 The second observation is that the number of 'family' members other than current or former intimate partners also more than quadrupled, from 1,100 to 4,794. This could reflect any number of possible relationship types. However, if the data on relationship types in FVIOs issued in the Magistrates' Court is indicative (see [3.21]), then this could reflect an increased rate of children and step-children being named as primary affected family members in FVSNs. Whatever the case, the data suggests that there has been a significant broadening in the types of relationships that police conceptualise as family violence: whereas current partners made up more than half (56%) of FVSN respondents in 2011, the proportion steadily declined to less than half (46%) in 2020. This could represent a welcome by-product of the ongoing campaign to educate the community about not only the prevalence of family violence but also what it looks like and the relationships within which it occurs.

Figure 5: Relationships between respondents and primary affected family members in FVSNs issued by police, 2011 to 2020 (97,638 recorded relationships)

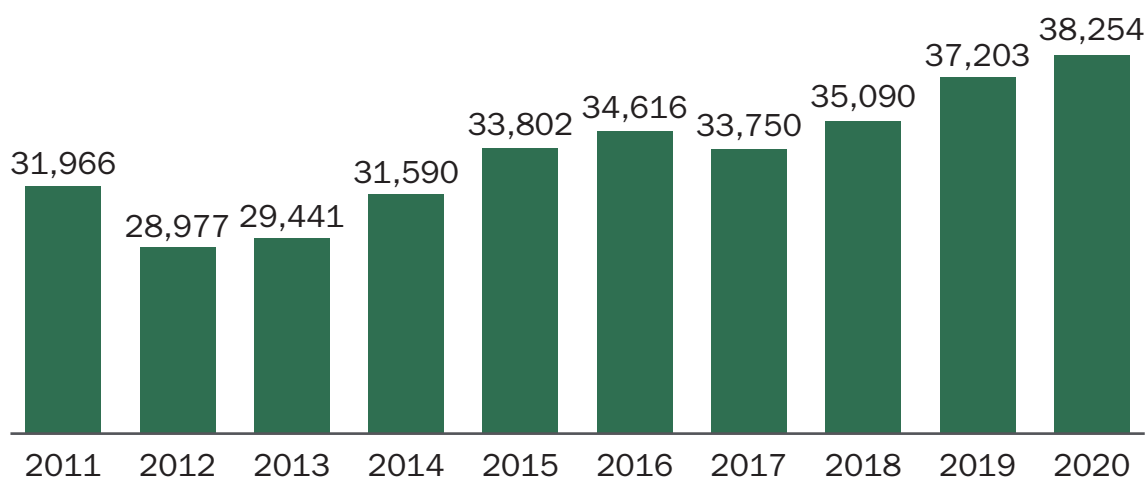


FVIOs in the Magistrates' Court

FVIO applications

3.13 There were 334,689 applications for FVIOs in the Magistrates' Court between 2011 and 2020, an average of about 33,000 each year. The number of FVIO applications made each year, though, increased steadily. Almost all of this increase is because of the increase in FVSNs issued by police (see [3.2]). When police issue a FVSN, this is taken to be a FVIO application (see [2.8]). By 2020, there were just over 8,000 more FVSNs issued by police compared to the number in 2012, which is effectively identical to there being just over 8,000 more FVIO applications in 2020 than in 2012.

Figure 6: Number of FVIO applications in the Magistrates' Court, by year, 2011 to 2020 (334,689 FVIO applications)

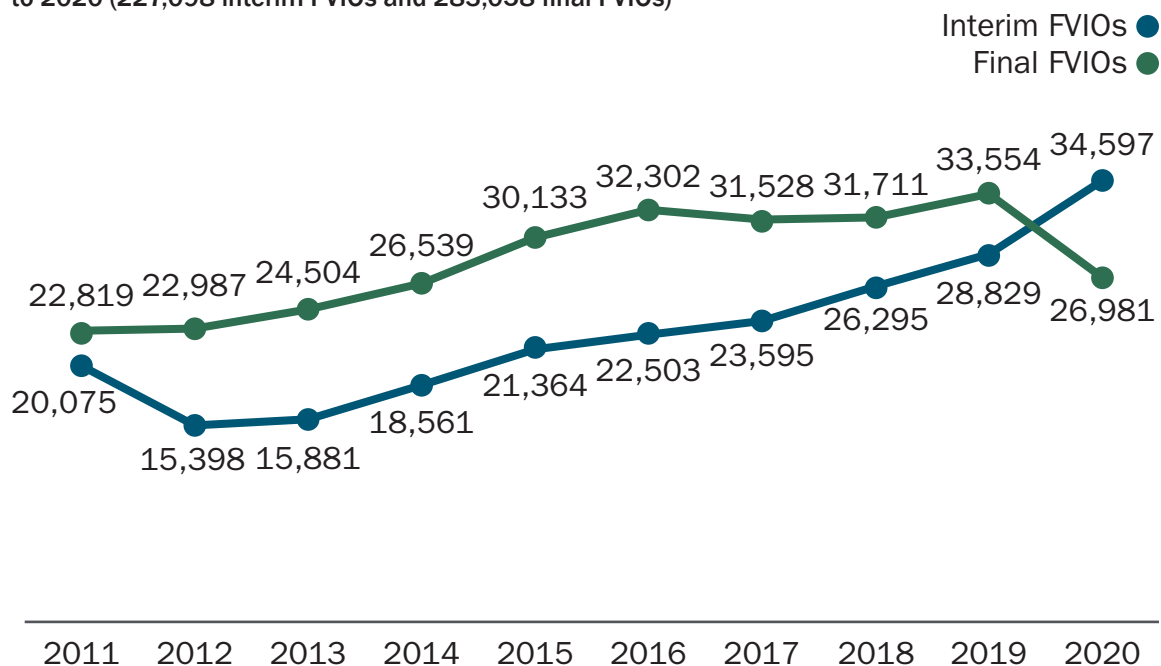


FVIOs issued

3.14 Between 2011 and 2020, just over 227,000 interim FVIOs and 283,000 final FVIOs were issued by the Magistrates' Court (Figure 7, page 22). The number of interim and final FVIOs issued increased each year, with a few exceptions. Of particular note, the number of final FVIOs issued in 2020 dropped considerably (a 19.6% reduction from 2019). This was almost certainly due to COVID-19 limiting the ability of courts to hear and determine FVIO applications. However, in 2020 the number of interim FVIOs increased by 20%, suggesting that courts issued interim FVIOs to ensure victim survivors were protected despite disruptions to court processes caused by the pandemic. This is consistent with the trend in interim and final *non-family violence intervention orders* in 2020.¹⁰⁶

106. Sentencing Advisory Council (2022), above n 12, 77.

Figure 7: Number of interim FVIOs and final FVIOs issued in the Magistrates' Court, by year, 2011 to 2020 (227,098 interim FVIOs and 283,058 final FVIOs)



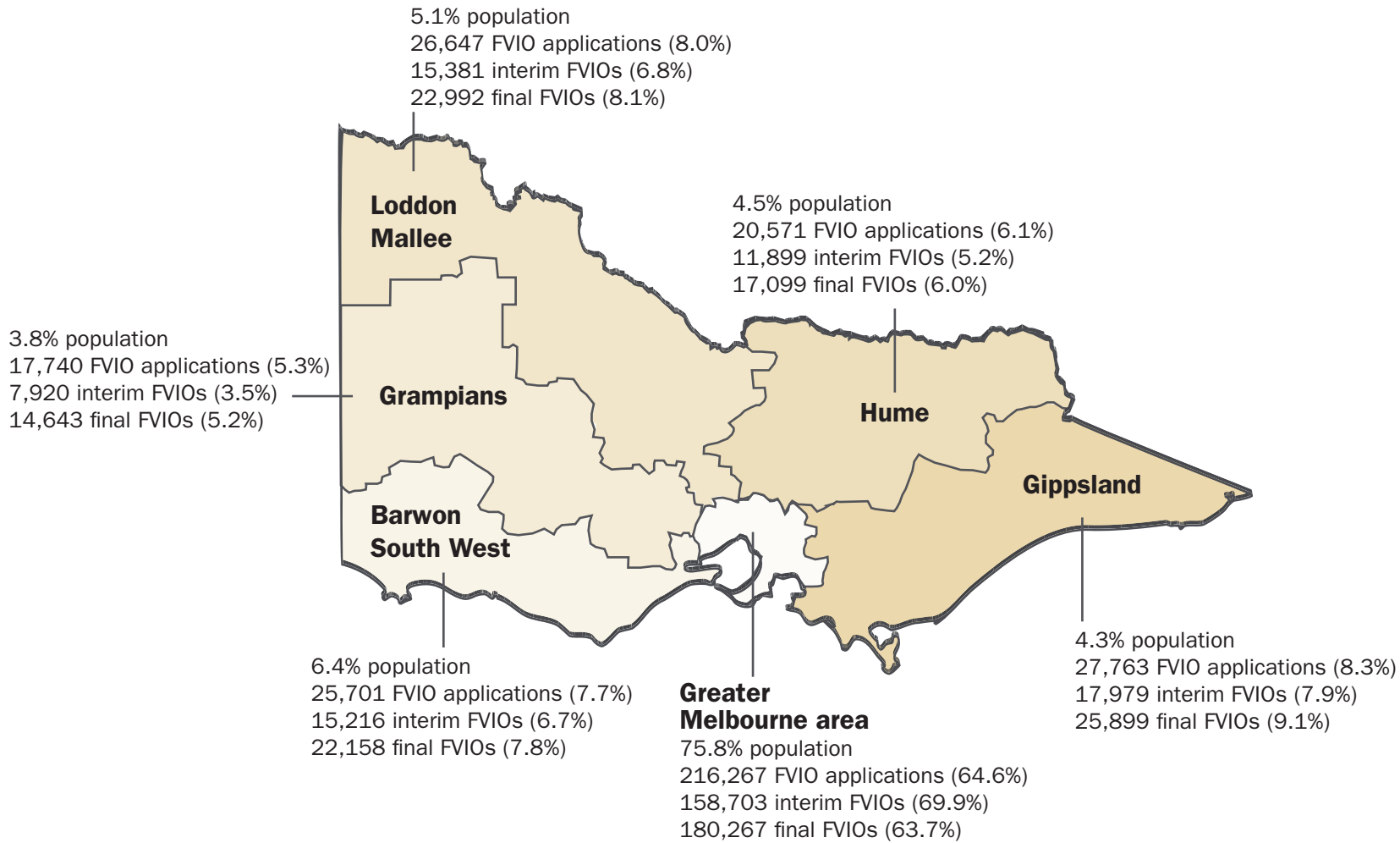
FVIO applications and FVIOs issued: a regional comparison

3.15 During the 10-year period, almost two-thirds of FVIO *applications* (64.6%) were made in courts in the Greater Melbourne area, while the other 35.4% were made in rural and regional Victoria (Figure 8, page 23). This is disproportionate to the 24% of Victoria's population living in rural and regional areas, with the disparity most apparent in Gippsland. This accords with, and provides further specificity around, research consistently finding that '[r]ates of domestic and family violence in regional, rural and remote locations are higher than in urban areas' due to a combination of geographical factors (for example, limited service availability) and social norms and attitudes.¹⁰⁷ The Royal Commission into Family Violence also heard that family violence is more prevalent in non-urban areas. This is due to a combination of geographical and social isolation, the position of the perpetrator within the community, higher rates of economic vulnerability and dependence, the increased rate of firearm ownership in non-urban communities, the enhanced effects of natural disasters, the increased potential for people to live in close proximity to state borders, which results in administrative complexity in recognising domestic violence orders from other jurisdictions, and cultural norms and gendered stereotypes.¹⁰⁸

107. Monica Campo and Sarah Tayton, *Domestic and Family Violence in Regional, Rural and Remote Communities: An Overview of Key Issues* (2015) 7.

108. State of Victoria, Royal Commission into Family Violence, *Volume V: Report and Recommendations* (2016) 216–219.

Figure 8: Number and proportion of FVIO applications, interim FVIOs and final FVIOs in the Magistrates' Court, 2011 to 2020 (334,689 applications, 227,098 interim FVIOs, 283,058 final FVIOs)



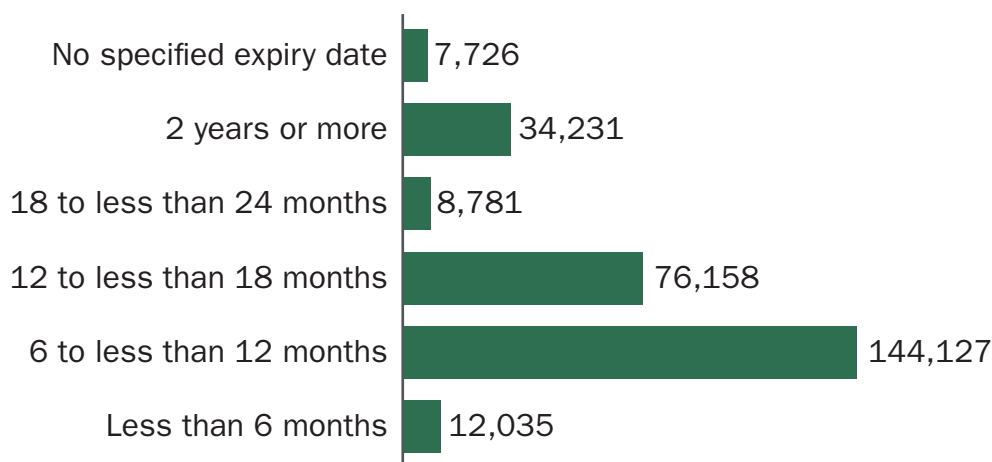
3.16 These disparities highlight the importance of rolling out specialist family violence courts across Victoria. There are currently five specialist family violence courts in operation across Victoria, three in the Greater Melbourne area (Frankston, Heidelberg, Moorabbin), one in Hume (Shepparton) and one in the Grampians (Ballarat). There is currently no specialist family violence court in Loddon Mallee, Barwon South West or Gippsland. But following a recommendation of the Royal Commission into Family Violence, additional family violence courts are expected to be in operation or development in those regions by the end of 2022.¹⁰⁹

Duration of final FVIOs

3.17 When courts issue a final FVIO, they must specify how long the FVIO is to be in place. The data suggests that just over half of all FVIOs (50.9%) were six months to less than one year (Figure 9). Following discussions with stakeholders and the Magistrates' Court, the Council is of the view that many of the FVIOs appearing as six months to less than one year would actually be precisely 12 months, and that this small disconnect stems from how the data is recorded.¹¹⁰ As one stakeholder said during the Council's roundtable:

I'm really surprised by that. I think you would find the vast majority of that 144,000 are 12 months.¹¹¹

Figure 9: Duration of FVIOs issued in the Magistrates' Court, 2011 to 2020 (283,058 FVIOs)



109. The Victorian Government maintains a website about progress of recommendations of the Royal Commission into Family Violence: State of Victoria, 'Extend the Functions of Family Violence Court Division Courts to Other Courts' (vic.gov.au, 2021) <<https://www.vic.gov.au/family-violence-recommendations/extend-functions-family-violence-court-division-courts-other-courts>> at 17 March 2022. Regional family violence court locations will include Geelong, Latrobe Valley and Bendigo.

110. The Council received duration data as days from issue to expiry of FVIO: less than 180 days, 180 to 365 days, 365 to 544 days, 545 to 729 days and 730 days or longer. For convenience, these have been translated into increments of month and year.

111. Stakeholder Roundtable (4 February 2022).

Further:

I think the '12 months' is a culture that's developed whereby it's become the standard thing. Lawyers will advise their clients that's the usual length of time for an intervention order, rather than being based on anything else. And I think that's probably a culture shared between police and lawyers, and magistrates making the orders.¹¹²

And:

[o]ne of the things I found in practice was that people seem to believe, on a misread of the legislation, that 12 months is the recommended timeframe. And I think that comes from the fact that an order against a child cannot be made for more than 12 months.¹¹³

- 3.18 There was relatively little variation in the proportion of FVIOs within each duration during the reference period; FVIOs did not get tangibly longer or shorter.
- 3.19 Given the short lifespan of many of these FVIOs, it may be that many FVIO applications each year are in fact applications to revive expired FVIOs rather than entirely new FVIO applications, particularly as an extension application can require a certain amount of advance planning. Applications to extend or renew a final FVIO require victim survivors to stay aware of expiry dates, undertake the not insubstantial administrative burden¹¹⁴ of reapplying for, or extending, the FVIO (even with the new online application portal)¹¹⁵ and potentially re-engage with the perpetrator.¹¹⁶ As one stakeholder observed: 'sometimes there's been a break in contact between the two and the order's been working but the re-initiation puts them back in the same room again'.¹¹⁷
- 3.20 Further research would be required to determine how many FVIOs are in fact extended/renewed. But if the proportion is significant, it may be that court efficiency and victim survivor safety could each be improved through the issuing of longer FVIOs in appropriate cases, especially perhaps where an intimate

112. Stakeholder Roundtable (4 February 2022).

113. Stakeholder Roundtable (4 February 2022).

114. See, for example, Pamela Herd and Donald P. Moynihan, *Administrative Burden: Policymaking by Other Means* (2018); Julian Christensen et al., 'Human Capital and Administrative Burden: The Role of Cognitive Resources in Citizen-State Interactions' (2020) 80(1) *Public Administration Review* 127.

115. State of Victoria, 'Magistrates' Court Roll Out an Online Application Form for Intervention Orders' (vic.gov.au, 2021) <<https://www.vic.gov.au/family-violence-recommendations/magistrates-court-roll-out-online-application-form-intervention>> at 15 March 2022; Magistrates' Court of Victoria, 'Apply for a Family Violence Intervention Order (FVIO)' (mcv.vic.gov.au, 2021) <<https://fvio.mcv.vic.gov.au/>> at 15 March 2022.

116. Meeting with Geraldine Bilston, Deputy Chair of the Victim Survivor Advisory Council (6 December 2021). The person applying to extend the FVIO must again establish on the balance of probabilities that the respondent is likely to commit family violence against the protected person if the FVIO is not extended: *Family Violence Protection Act 2008* (Vic) s 106. The court can impose an interim extension order for up to 28 days pending the decision whether to extend the final FVIO, but only if the final FVIO has not already expired: *Family Violence Protection Act 2008* (Vic) s 107.

117. Stakeholder Roundtable (4 February 2022).

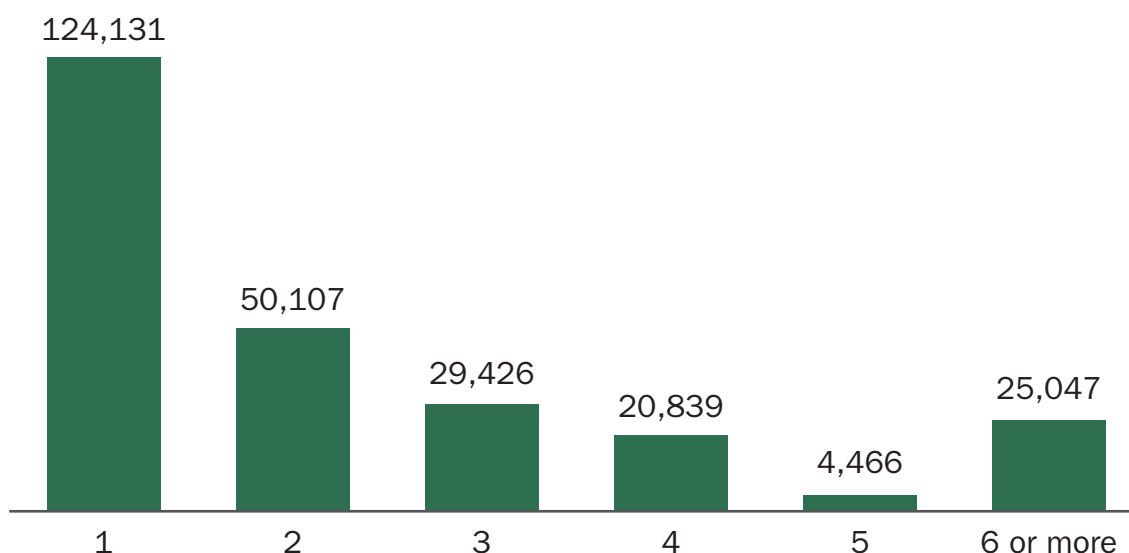
relationship has ended with no related children, and the burden on the respondent would be minimal. It would also be useful to know, but it was beyond the scope of this report to discover, how long FVIOs were truly in force, by adding the duration of interim FVIOs and final FVIOs together. Some stakeholders advised the Council of some interim FVIOs being in force for up to two years, such that a 12-month final FVIO might actually represent three years of a FVIO being in force.¹¹⁸

Protected persons in final FVIOs

3.21 Data on the number of protected persons in each FVIO was available for 89.7% of FVIOs (Figure 10). There were at least¹¹⁹ 616,311 people named as protected persons in FVIOs during the reference period. Just under half of all FVIOs named a single person as being protected by the order (48.9%). Another fifth named two protected persons (19.7%). Almost one-third (31.4%) named three or more people as protected persons, with over 25,000 FVIOs naming six or more as protected persons.

80% of adult protected persons in FVIOs were female

Figure 10: Number of people named as protected persons in final FVIOs in the Magistrates' Court (254,016 FVIOs)

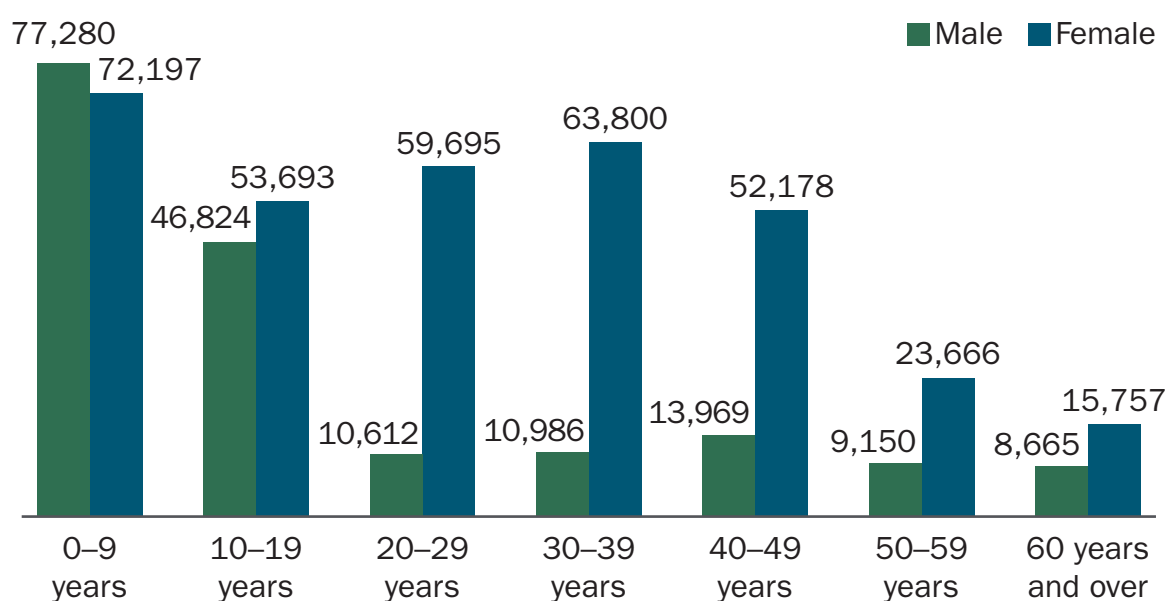


118. Stakeholder Roundtable (4 February 2022).

119. There were 29,042 FVIOs for which data on the number of protected persons was not available. In addition, there were 5,005 FVIOs for which the number of protected persons was recorded as '11 or more', so to report on minimum numbers it was assumed that each of these had precisely 11 people recorded as protected persons.

3.22 Data on age and gender was available for 518,472 of those protected persons (Figure 11). This includes *all* protected persons, not just *primary* protected persons. While one-third of protected persons were male (34.2%), they were mostly constituted by male children aged 19 and under, who were probably the children of primary protected persons. In contrast, males made up just 19.9% of *adult* protected persons (aged 20 and over).

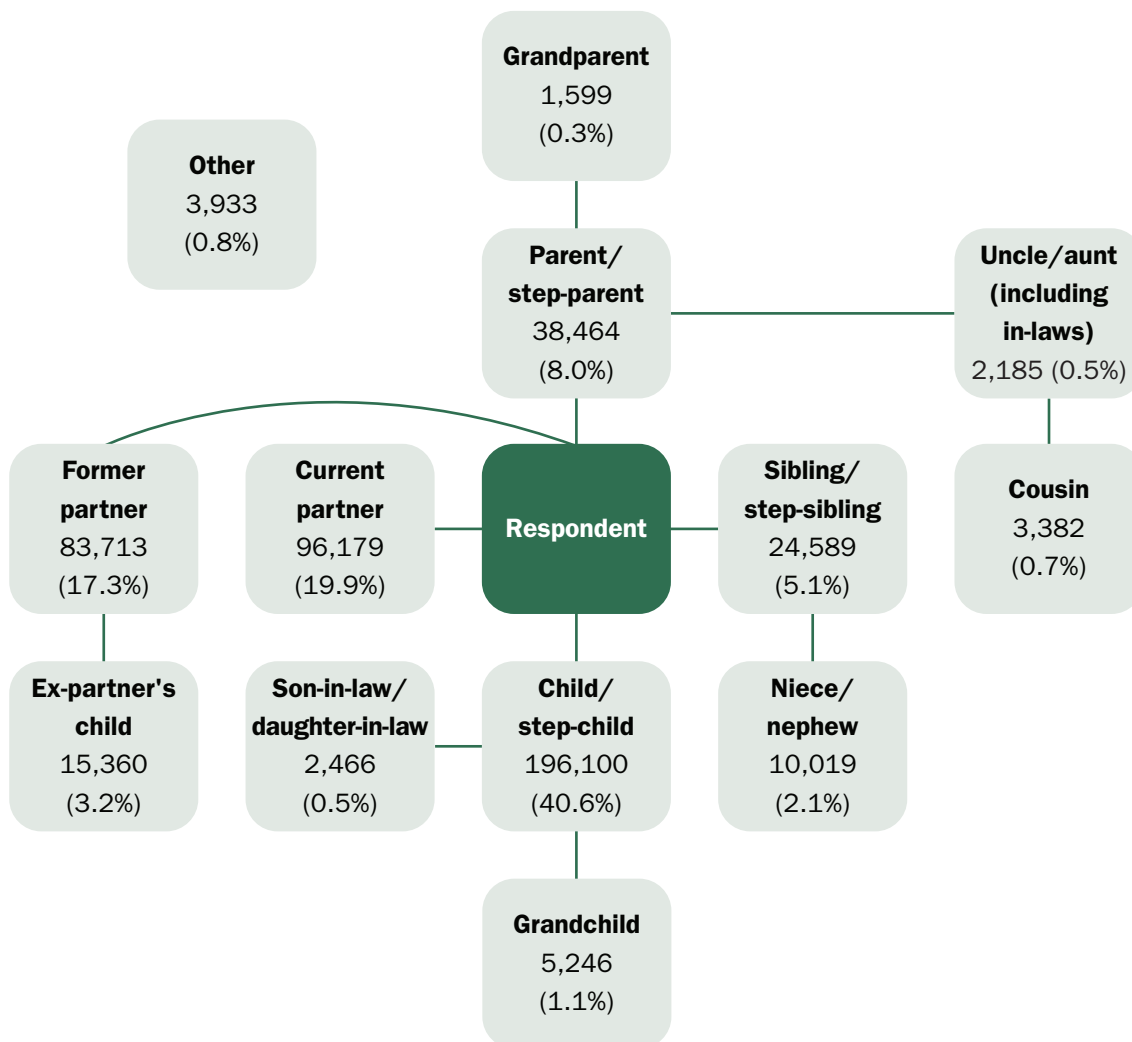
Figure 11: Age and gender of protected persons named in FVIOs issued in the Magistrates' Court, 2011 to 2020 (518,472 protected persons)



3.23 For 483,235 protected persons, the data specified their relationship to the respondent (Figure 12, page 28). The most common relationship was for the protected person to be a child or step-child of the respondent (40.6% of protected persons). As mentioned, they would often have been the children of the primary protected person, but there has been an increased willingness 'to include the children in the order ... because they're being exposed to the effects of family violence'.¹²⁰ Current and former partners were the next most common, at relatively similar rates (37.2% together). After that were parents and step-parents of the respondent (8.0%), siblings and step-siblings (5.1%) and children of the respondents' ex-partner (3.2%).

120. Stakeholder Roundtable (4 February 2022).

Figure 12: Relationship of protected persons to respondents in FVIOs issued in the Magistrates' Court, 2011 to 2020 (483,235 protected persons)



Respondents in final FVIOs

3.24 Data was available to identify the gender of the respondent in 171,420 final FVIOs.¹²¹ More than four in five respondents were male (81.9%). Between 2013 and 2019, there was a slight but stable trend of females increasingly being named as respondents, from 16.8% to 18.1%.

82% of respondents in final FVIOs in the Magistrates' Court were male

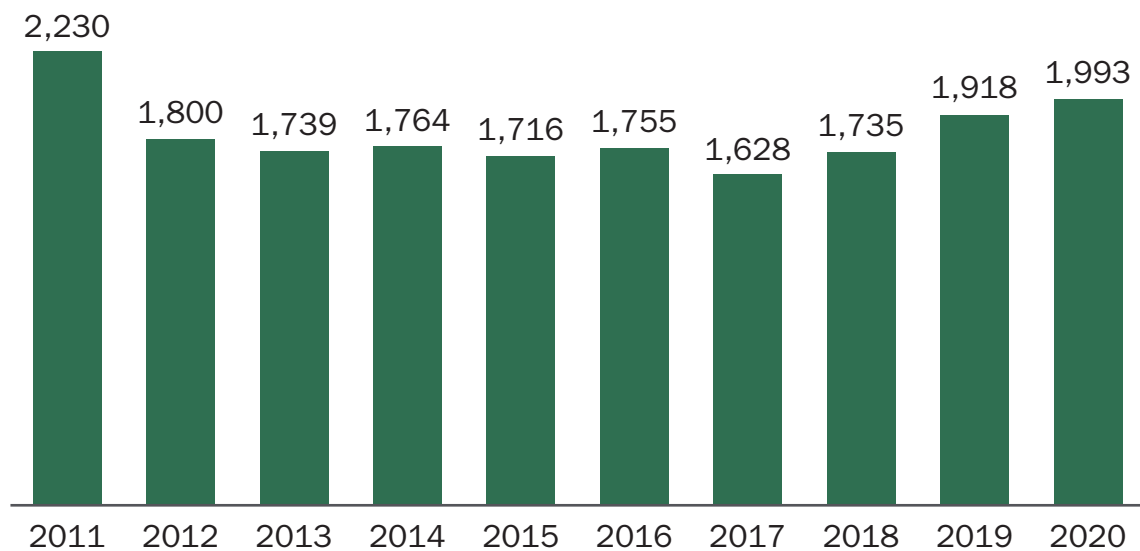
121. Data relating to the age of respondents was considered too unreliable to report. There was also a steadily declining rate of FVIOs for which data on the gender of the respondent was available, from 77.9% in 2011 to 52.0% in 2020.

FVIOs in the Children's Court

FVIO applications

3.25 There were 18,278 FVIO applications in the Children's Court between 2011 and 2020. After a drop in the number of FVIO applications in 2012 (largely in Geelong and Bendigo), the number of applications stayed fairly stable until 2018. There was an increase in the number of applications in 2019 and 2020 (again, largely in Geelong and Bendigo), which may be indicative of an emerging trend.

Figure 13: Number of FVIO applications in the Children's Court, by year, 2011 to 2020 (18,278 FVIO applications)

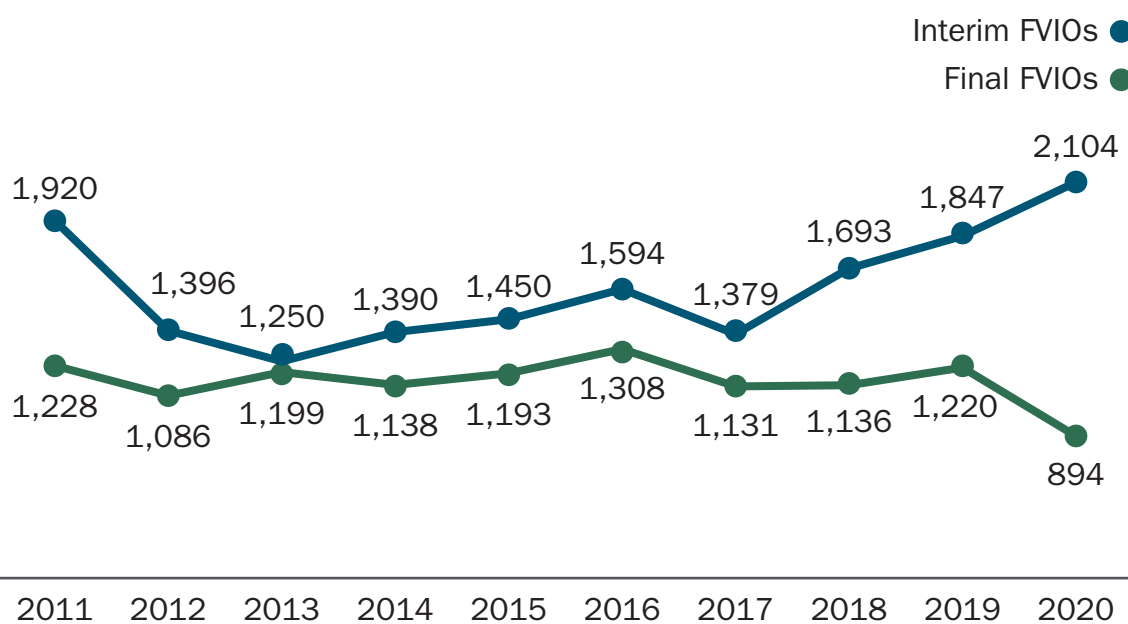


FVIOs issued

3.26 During the reference period, 27,556 FVIOs were issued in the Children's Court, including 16,023 interim FVIOs (58.1%) and 11,533 final FVIOs (41.9%). That is, unlike in the Magistrates' Court, in the Children's Court there were more interim FVIOs than there were final FVIOs, particularly since 2017 (Figure 14, page 30). This seems to suggest that there are a significant number of interim FVIOs being issued in the Children's Court that, for whatever reason, do not become final FVIOs.

Stakeholders suggested this may be due to magistrates in the Children's Court keeping a close eye on respondents' progress through some form of judicial monitoring during the period of an interim FVIO, and 'if the interim [FVIO] has dealt with the issue, there's no need for a final [FVIO], because it's a pretty serious order against a child'.¹²²

Figure 14: Number of interim FVIOs and final FVIOs issued in the Children's Court, by year, 2011 to 2020 (16,023 interim FVIOs and 11,533 final FVIOs)



FVIO applications and FVIOs issued: a regional comparison

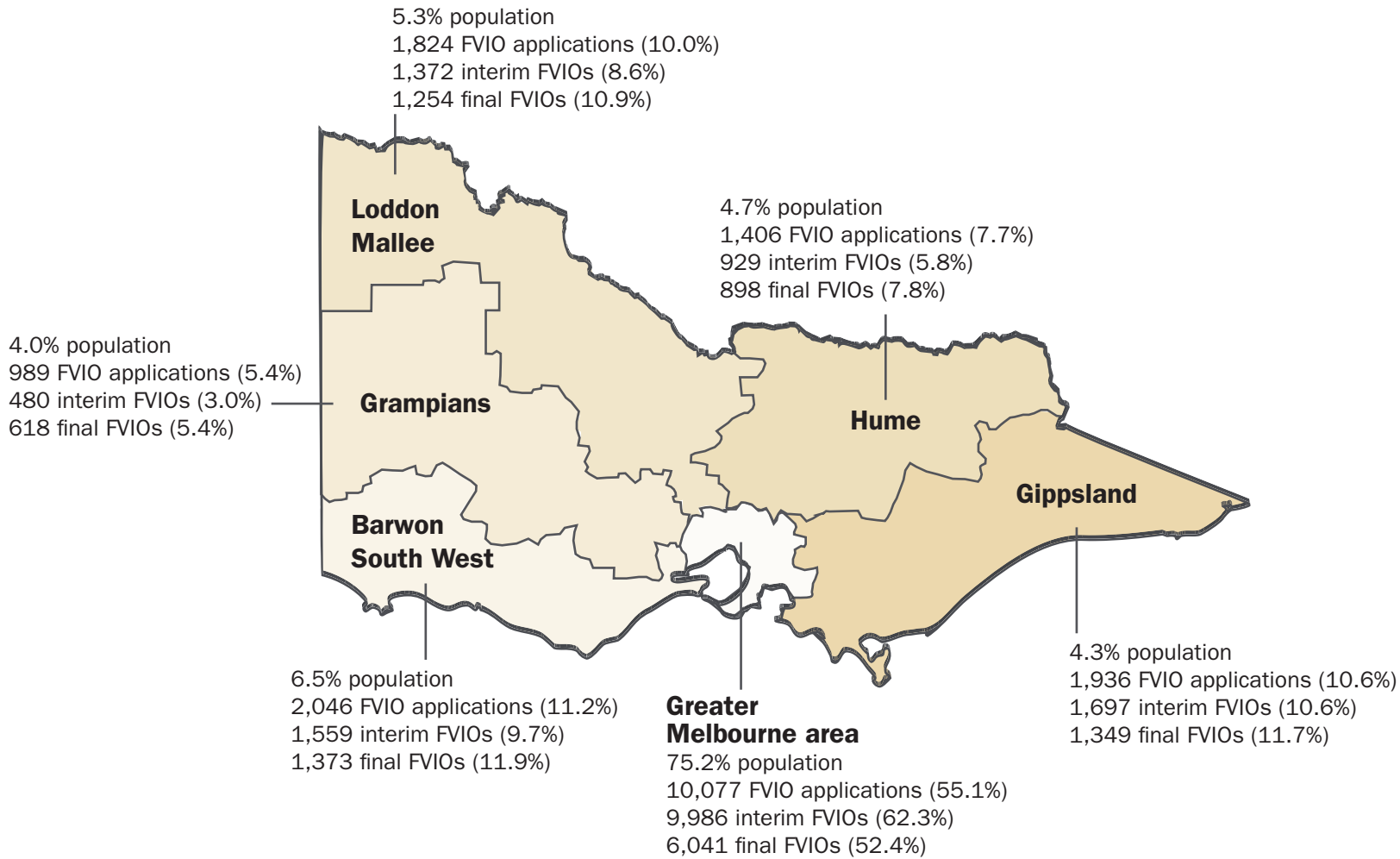
3.27 The disproportionate number of FVIO applications, interim FVIOs and final FVIOs in rural and regional Victoria was particularly pronounced in the Children's Court. Just 24.2% of Victoria's child population lives in rural and regional Victoria, but they accounted for 44.9% of FVIO applications, 37.7% of interim FVIOs and 47.6% of final FVIOs (Figure 15, page 31). A child in rural and regional Victoria is effectively more than twice as likely as a child in the Greater Melbourne area to be a respondent to a FVIO, especially in Gippsland, Loddon Mallee and Barwon South West. Stakeholders indicated that this can often be due to:

[un]availability of services ... [E]verybody would be focused on a therapeutic outcome for children and finding a good outcome for the family [but] if the services aren't available, that may lead to more of a default to the intervention order.¹²³

122. Stakeholder Roundtable (4 February 2022).

123. Stakeholder Roundtable (4 February 2022).

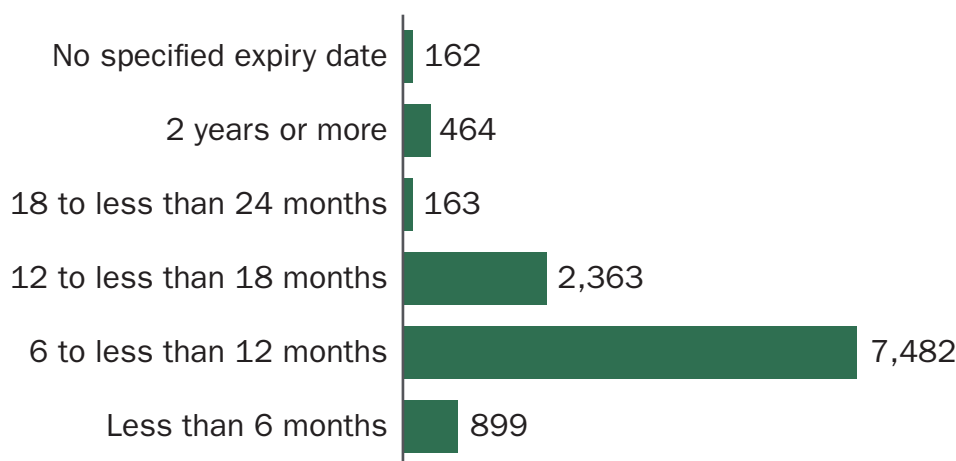
Figure 15: Number and proportion of FVIO applications, interim FVIOs and final FVIOs in the Children's Court, 2011 to 2020 (18,278 applications, 16,023 interim FVIOs, 11,533 final FVIOs)



Duration of final FVIOs

3.28 The most common durations of final FVIOs issued in the Children's Court were six to less than 12 months (64.9%), 12 to less than 18 months (20.5%) and less than six months (7.8%). The remaining 6.8% of orders were 18 months and over (Figure 16). The short duration of most of these final FVIOs is not surprising given that legislation does not permit a final FVIO to remain in force for longer than 12 months if the respondent is a child, unless there are exceptional circumstances.¹²⁴

Figure 16: Duration of final FVIOs issued in the Children's Court, 2011 to 2020 (11,533 final FVIOs)



Protected persons in final FVIOs

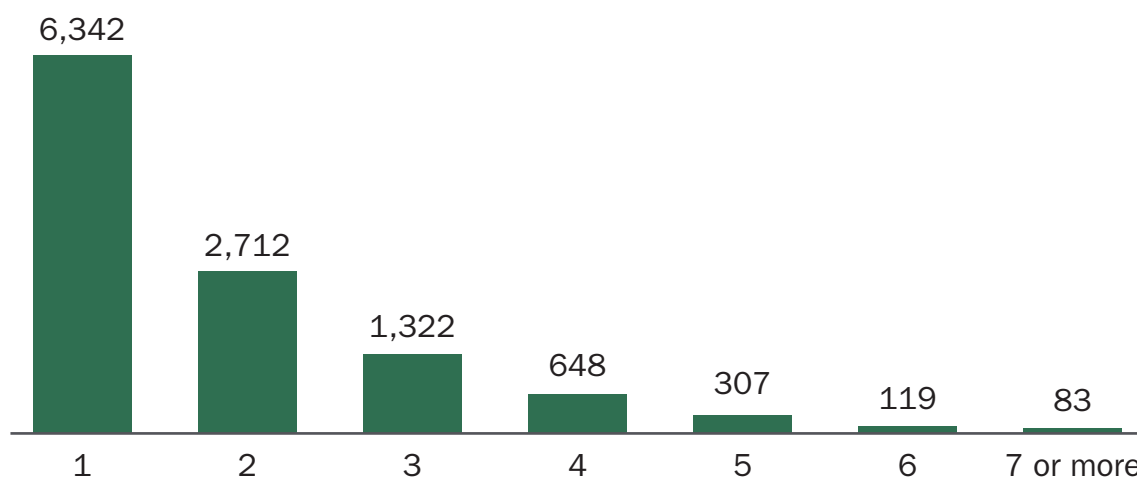
3.29 Data on the number of protected persons in each final FVIO was available for all 11,533 final FVIOs (Figure 17, page 33). There were at least¹²⁵ 21,154 people named as protected persons in those FVIOs. Just over half of all final FVIOs in the Children's Court named a single person as the protected person (55.0%). Another quarter named two people (23.5%). There were, though, 2,479 final FVIOs (21.5%) that named three or more people as protected persons.

3.30 Data on age and gender was available for 19,482 protected persons named in final FVIOs issued in the Children's Court (Figure 18, page 33). Two-thirds of protected persons were female (66.4%) and one-third were male (33.6%). The most common age range for both male and female protected persons was 10 to 19 (40.2% for males and 36.4% for females). However, the second most common age range for female protected persons was 40 to 49 (23.5%) while for males it was 0 to 9 (27.5%).

124. *Family Violence Protection Act 2008* (Vic) s 98. As mentioned at [3.17], some or many of those FVIOs of six to less than 12 months may also be precisely 12 months despite not appearing as such in the data.

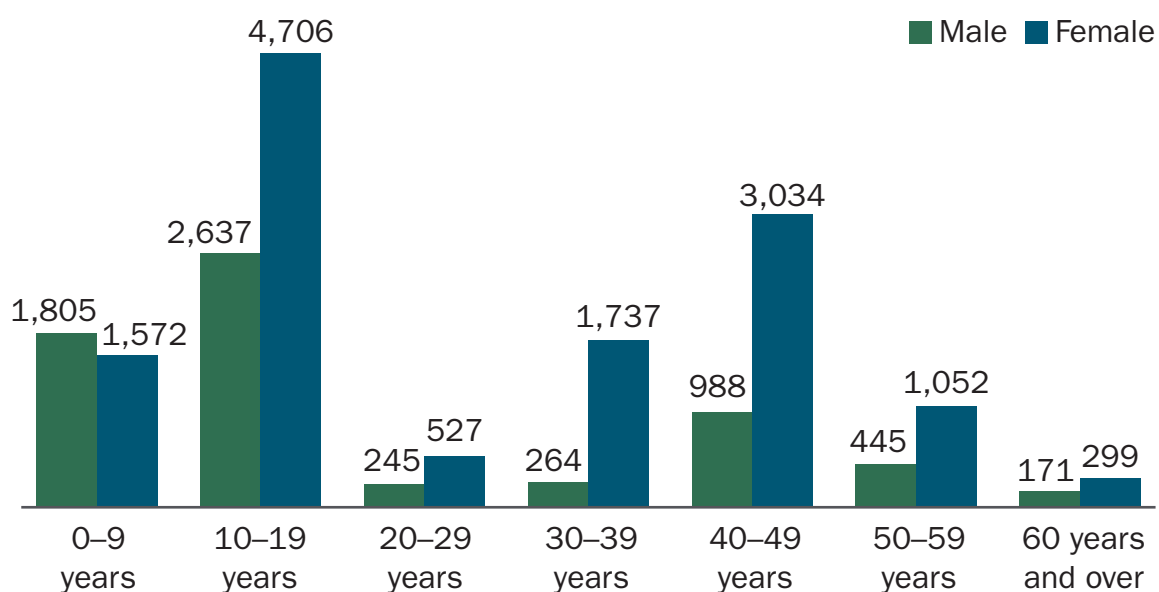
125. There were 83 FVIOs for which the number of protected persons was recorded as 'seven or more', so to report on minimum numbers it was assumed that each of these had precisely seven people recorded as protected persons.

Figure 17: Number of protected persons named in final FVIOs in the Children's Court (11,533 final FVIOs)



As to why a significant number of women aged 30 to 59 may be seeking FVIOs in the Children's Court, stakeholders suggested this was most likely due to higher rates of adolescent family violence committed by children against adult females. This, in turn, would mainly be attributable to the continually high rates of women in primary caregiver roles.¹²⁶

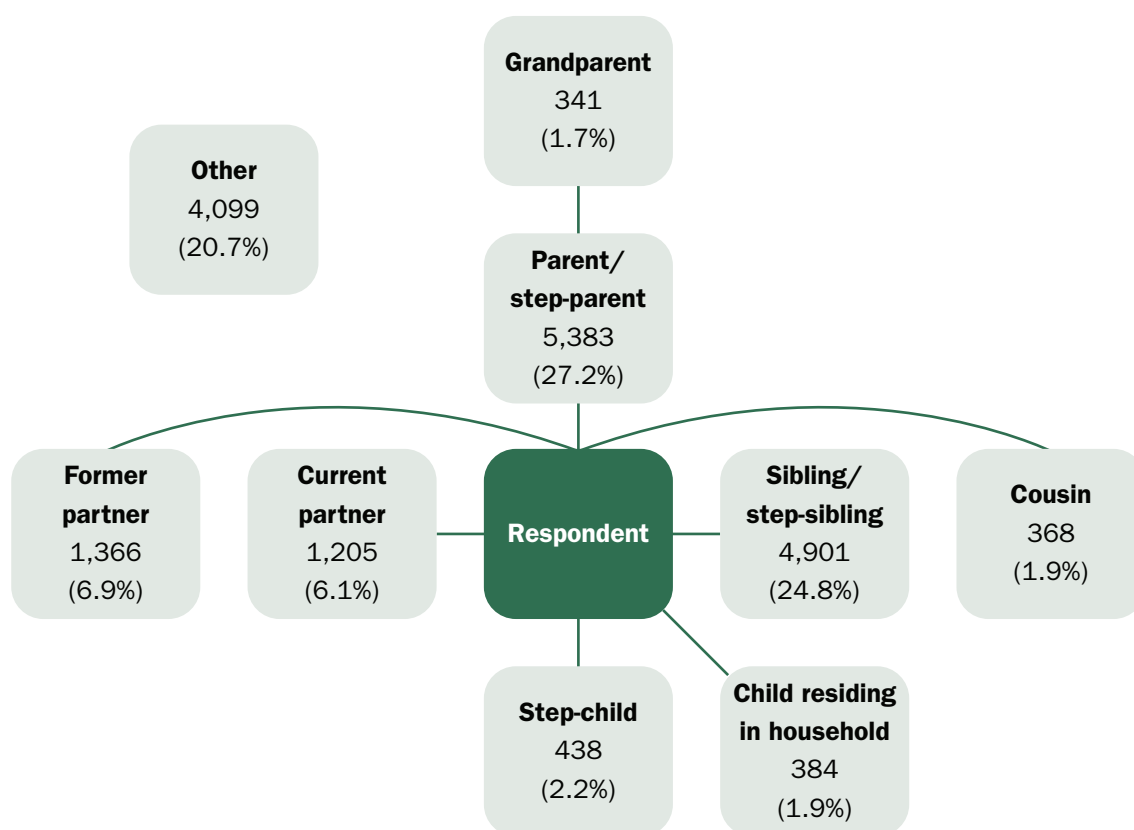
Figure 18: Age and gender of protected persons named in final FVIOs issued in the Children's Court, 2011 to 2020 (19,482 protected persons)



126. Stakeholder Roundtable (4 February 2022). See also Elena Campbell et al., *The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home (AVITH)* (2020) 21 (noting that adolescent family violence 'is also highly structurally gendered ... in part because most "parenting" labour in many families is still undertaken by women and because the relationships affected by an adolescent's use of violence are therefore more likely to involve women as caregiver victims/survivors').

3.31 For 21,190 protected persons, the data specified their relationship to the respondent (Figure 12). Siblings and parents were the most commonly protected persons in final FVIOs issued in the Children's Court. Together, parents and step-parents (25.4%)¹²⁷ and siblings and step-siblings (23.1%) made up more than half of all protected persons in final FVIOs issued in the Children's Court.

Figure 19: Relationship of protected persons to respondents in final FVIOs issued in the Children's Court, 2011 to 2020 (21,190 protected persons)



Respondents in final FVIOs

3.32 Data was available to identify the gender of the respondent in 11,523 final FVIOs (all except 10 FVIOs).¹²⁸ Almost three-quarters of respondents were male (73.1% or 8,423 respondents). This gender ratio stayed stable each year of the reference period.

73% of respondents in final FVIOs issued in Children's Court were male

127. This is most likely an underestimation. While mothers, fathers and step-fathers were specified in the data, the number of protected step-mothers was not specified. Nor were uncles or aunts. They may have all been included in the 'other' category, which made up 21% of final FVIOs.

128. Data relating to the age of respondents was not available.

4. Breaches of family violence intervention orders and safety notices recorded by police

4.1 This chapter discusses the number of breaches of family violence safety notices (FVSNs) and family violence intervention orders (FVIOs) recorded by police in the 10 years to 2020.

Number of recorded offences

4.2 There were 316,688 recorded breaches of FVSNs and FVIOs between 2011 and 2020, at about 32,000 per year. Of those, 8.1% were aggravated breach offences, meaning the offender intended to cause, or was reckless about causing, harm or fear for safety. Another 8.5% were persistent breach offences, meaning the offender breached a FVSN or FVIO at least three times in a 28-day period.

4.3 During the 10-year reference period, the number of breach offences recorded by police each year increased more than fivefold, from about 10,000 in 2011 to over 53,000 in 2020. Police also more regularly recorded the breach offence type. The breach offence of *contravene FVIO (unspecified)* accounted for 9,424 of the 13,495 breach offences in 2012, but by 2015, no breach offences of this type were recorded.¹²⁹ Between 2015 (the first year in which each breach offence type was reliably recorded) and 2020, almost all breach offence types increased:¹³⁰

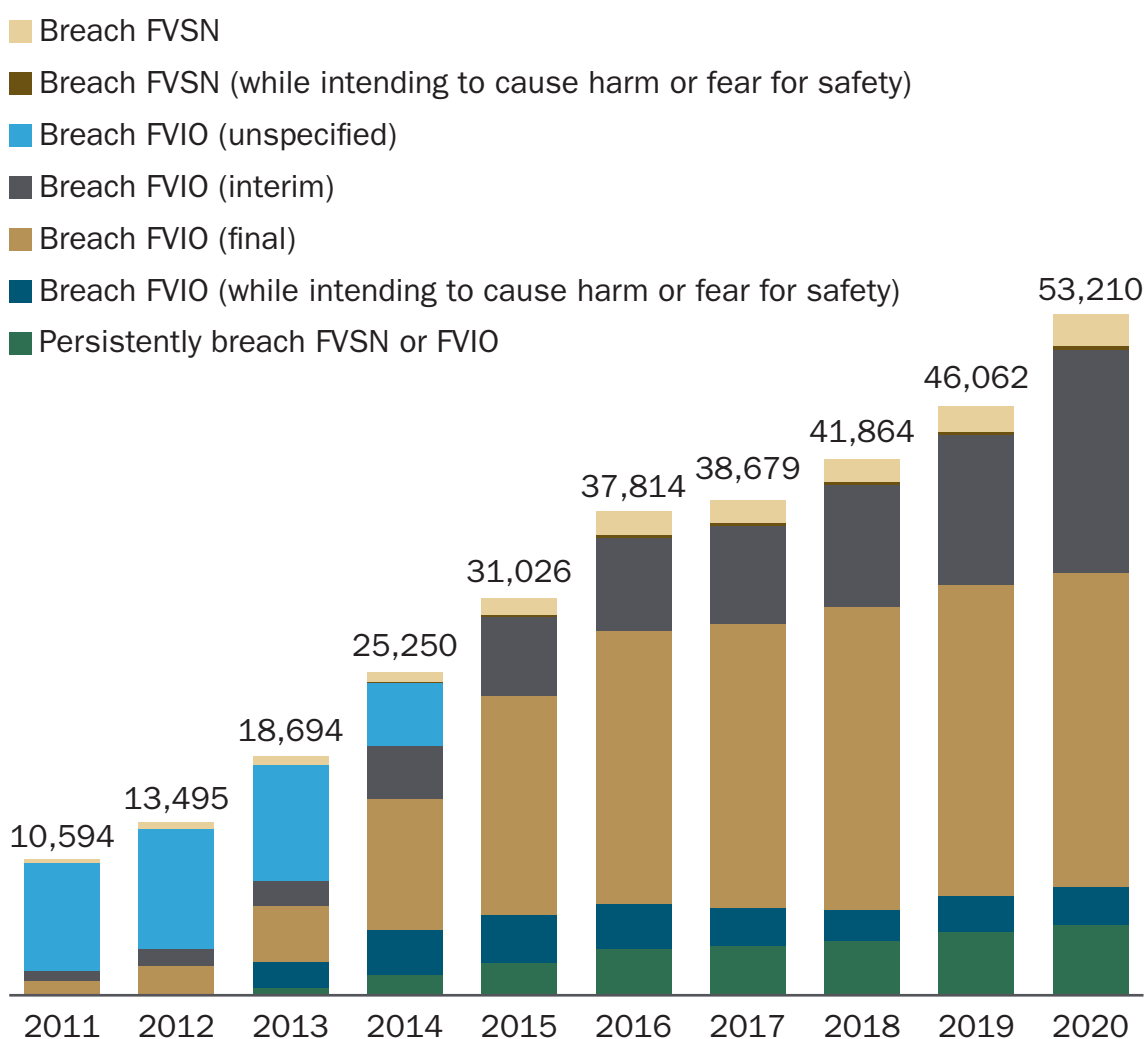
- breaches of interim FVIOs increased by almost 300%, from 6,216 to 17,385;
- breaches of final FVIOs increased by almost 50%, from 17,070 to 24,582;
- breaches of FVSNs almost doubled, from 1,274 to 2,437;
- breaches of FVSNs while intending to cause harm or fear for safety doubled, from 153 to 308; and
- persistent breaches of FVIOs more than doubled, from 2,523 to 5,478.

129. Victoria Police advised the Council that this option was removed from the system in 2015 so that officers had to specify whether the breach was of an interim FVIO or final FVIO.

130. The only breach offence that did not increase between 2015 and 2020 was breach of a FVIO while intending to cause harm or fear for safety, which decreased from 3,790 to 3,020.

4.4 There was a consensus at the Council's roundtable that these increases are due to an 'increased awareness and willingness to report breaches': 'police ... [are] called more often, even by neighbours who are overhearing things', partly because there is 'more confidence in the justice system overall', and police then more frequently '[take] those breaches seriously'.¹³¹

Figure 20: Breach offences recorded by police, 2011 to 2020, by breach offence type (316,688 recorded breach offences)



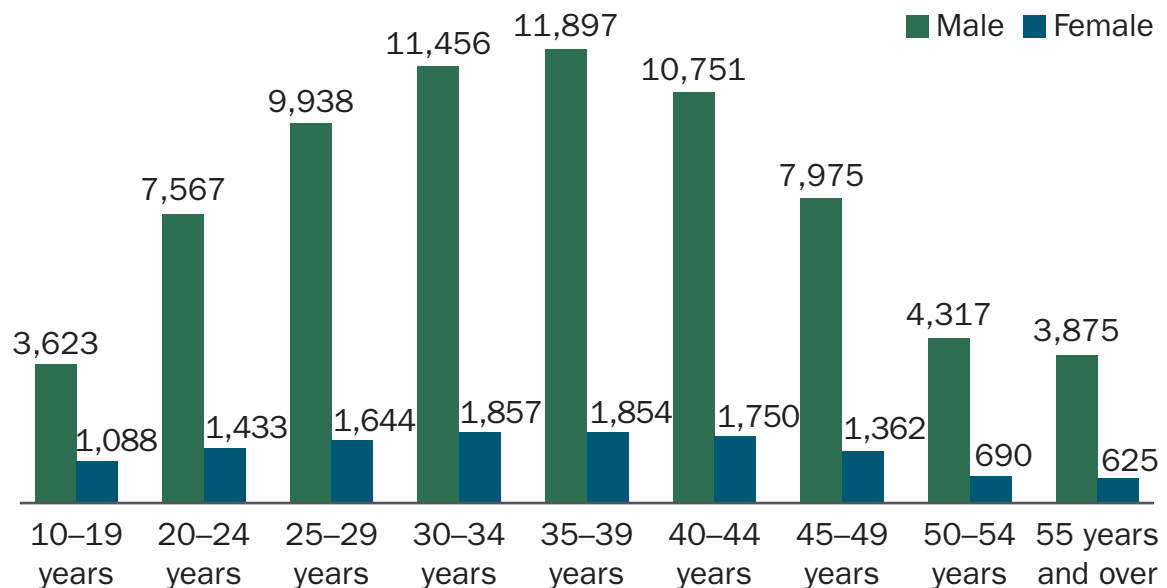
¹³¹. Stakeholder Roundtable (4 February 2022).

Age and gender of recorded breach offenders

4.5 There were 84,237 people recorded as committing the 316,688 breaches of FVSNs and FVIOs between 2011 and 2020.¹³² Data on age and gender was available for over 99% of breach offenders (83,702). Of those, 85.3% were male. The gender distribution of recorded breach offenders was relatively stable over time. About half of male (47.8%) and female (44.4%) recorded breach offenders were aged 30 to 44 (Figure 21).

85% of recorded breach offenders were male

Figure 21: Age and gender of people recorded by police for breach of a FVIO or FVSN, 2011 to 2020 (83,702 people)

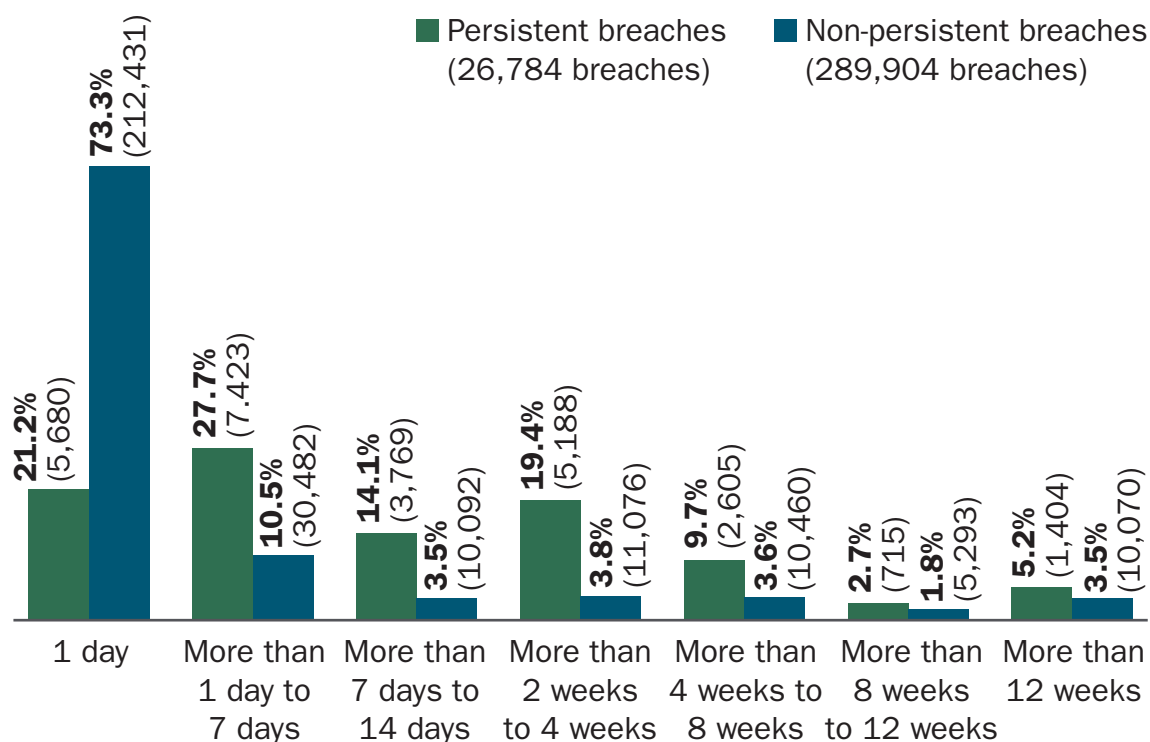


¹³² These are not necessarily unique offenders. If the same person was recorded as breaching a FVSN or FVIO in two separate years, they would be counted twice. This should therefore be considered an overestimation of the number of unique people who breached a FVSN or FVIO during the reference period.

Duration of recorded breach offences

- 4.6 Figure 22 shows the duration of persistent and non-persistent breaches of FVSNs and FVIOs during the reference period. About three-quarters of non-persistent breach offences were recorded as occurring on a single day (73.3%). In contrast, just 21.2% of persistent breach offences had a single offence date recorded. At the other end of the spectrum, almost 11,500 breach offences were recorded as lasting longer than 12 weeks, with each breach most likely encapsulating a significant amount of breach behaviour over that period.
- 4.7 Police recorded almost 5,000 persistent breach offences as lasting longer than the maximum 28-day period set by the legislation. This is most likely just a reflection of police recording the true duration of the alleged breaching behaviours at the time, but later prosecuting those behaviours via multiple consecutive (or near-consecutive) persistent breach charges in 28-day blocks.¹³³

Figure 22: Duration of breach offences recorded by police, by whether the offence was a persistent or non-persistent breach, 2011 to 2020 (316,688 breach offences)



133. See, for example, *DPP v Alexander (A Pseudonym)* [2020] VCC 124, [7]–[11], [15]–[18]; *DPP v Swanson* [2020] VCC 2073; *DPP v Caldwell (A Pseudonym)* [2021] VCC 760, [11]–[19].

5. Breaches of family violence intervention orders and safety notices sentenced by courts

5.1 This chapter describes the number of breaches of family violence safety notices (FVSNs) and intervention orders (FVIOs) sentenced in Victorian courts during the reference period. It includes the age and gender of offenders sentenced for breach offences, the other offences co-sentenced with breach offences and the sentencing outcomes breach offenders received. Cases sentenced in the Children's Court, Magistrates' Court and higher courts (the County and Supreme Courts) are analysed separately wherever possible.

Sentenced charges and cases

5.2 Table 2 (page 40) outlines the number of breaches of FVSNs and FVIOs sentenced in the Children's Court, Magistrates' Court and higher courts each year from 2011 to 2020, both by jurisdiction and by the specific breach offence. Some key points emerge from that data:

112,988 breach offences were sentenced in **62,298** cases involving **38,612** unique offenders

- there were 112,988 breaches of FVSNs and FVIOs sentenced in Victoria from 2011 to 2020, at an average of about 11,300 per year;
- the vast majority of breach offences were sentenced in the Magistrates' Court (96.5%), followed by the Children's Court (2.8%) and the higher courts (0.7%);
- the number of breach offences sentenced in each jurisdiction increased markedly between 2011 and 2019 (excluding 2020 because of the effect of COVID-19 on court operations):
 - 313% in the higher courts, from 24 to 99;
 - 128% in the Children's Court, from 176 to 402; and
 - 167% in the Magistrates' Court, from 5,429 to 14,482;
- the most common breach offence sentenced in each jurisdiction was the non-aggravated offence of breach of a FVIO (84.5% in the Children's Court, 72.3% in the Magistrates' Court and 61.1% in the higher courts); and
- the second most common breach offence sentenced in the adult jurisdictions was persistent breach of FVSNs and FVIOs (15.5% in the Magistrates' Court and 20.9% in the higher courts), while in the Children's Court it was breach of a FVIO while intending to cause harm or fear for safety (9.1%).

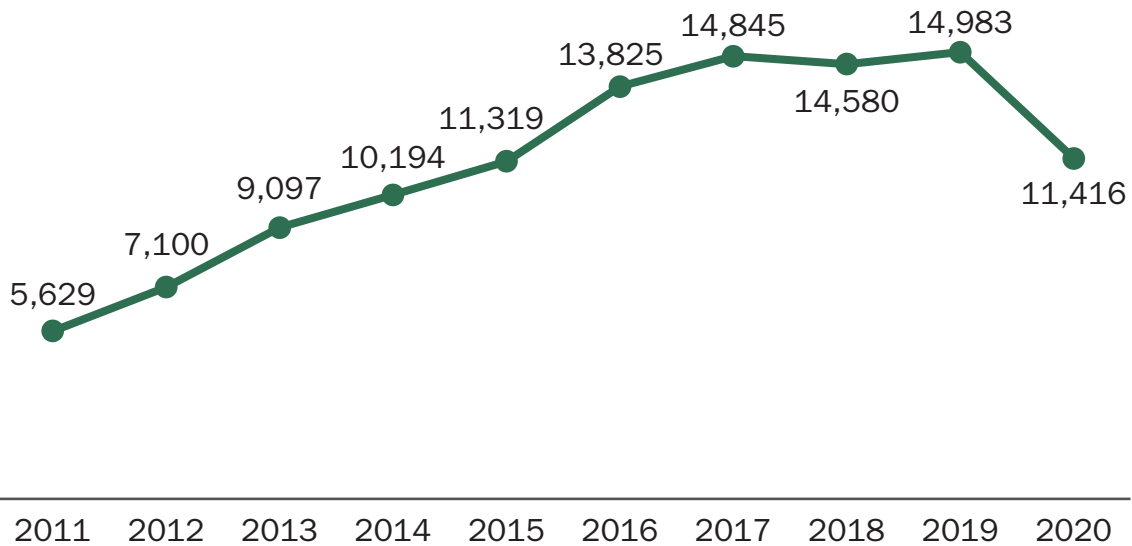
Table 2: Number of breaches of FVSNs and FVIOs sentenced in Victoria, by jurisdiction, year and breach offence, 2011 to 2020

Breach offence	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Children's Court											
Breach of a FVSN	1	5	0	1	1	0	4	0	1	0	13 (0.4%)
Breach of a FVSN while intending to cause harm or fear for safety	–	–	0	0	1	2	0	0	0	0	3 (0.1%)
Breach of a FVIO	175	194	304	258	244	336	316	295	331	216	2,669 (84.5%)
Breach of a FVIO while intending to cause harm or fear for safety	–	–	16	46	38	62	26	18	43	37	286 (9.1%)
Persistent breach of FVSNs and FVIOs	–	–	5	28	13	33	29	25	27	27	187 (5.9%)
Total	176	199	325	333	297	433	375	338	402	280	3,158 (100%)
Magistrates' Court											
Breach of a FVSN	206	269	361	395	530	684	796	794	805	600	5,440 (5.0%)
Breach of a FVSN while intending to cause harm or fear for safety	–	–	5	65	69	92	95	78	90	97	591 (0.5%)
Breach of a FVIO	5,223	6,583	7,935	7,675	7,598	8,939	9,536	9,438	9,262	6,667	78,856 (72.3%)
Breach of a FVIO while intending to cause harm or fear for safety	–	–	190	807	1,165	1,267	1,120	879	983	864	7,275 (6.7%)
Persistent breach of FVSNs and FVIOs	–	–	213	851	1,584	2,344	2,837	2,937	3,342	2,814	16,922 (15.5%)
Total	5,429	6,852	8,704	9,793	10,946	13,326	14,384	14,126	14,482	11,042	109,084 (100%)

Breach offence	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Higher courts											
Breach of a FVSN	0	1	4	8	2	7	6	1	0	2	31 (4.2%)
Breach of a FVSN while intending to cause harm or fear for safety	–	–	0	0	0	0	0	1	0	1	2 (0.3%)
Breach of a FVIO	24	48	61	51	51	30	47	55	60	29	456 (61.1%)
Breach of a FVIO while intending to cause harm or fear for safety	–	–	0	7	10	14	11	28	15	16	101 (13.5%)
Persistent breach of FVSNs and FVIOs	–	–	3	2	13	15	22	31	24	46	156 (20.9%)
Total	24	49	68	68	76	66	86	116	99	94	746 (100%)

5.3 Most of the increase in breach offences sentenced each year occurred from 2011 to 2016, after which the numbers stabilised, with the exception of 2020, during which the number dropped due to COVID-19 (Figure 23).

Figure 23: Yearly number of breach offences sentenced in Victoria, 2011 to 2020 (112,988 charges)



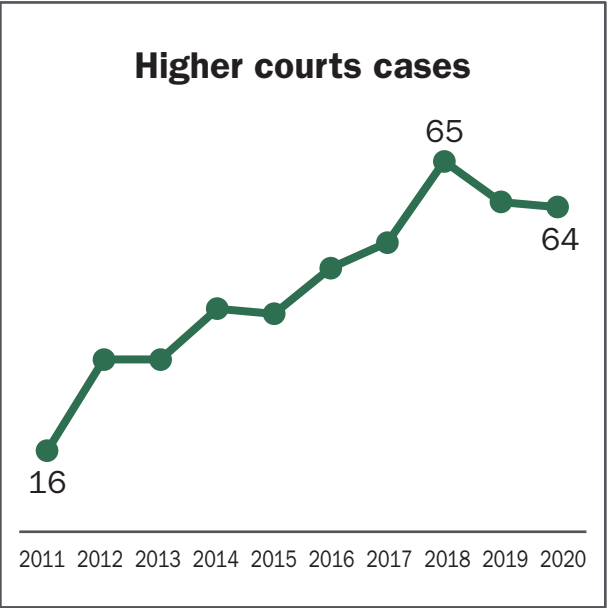
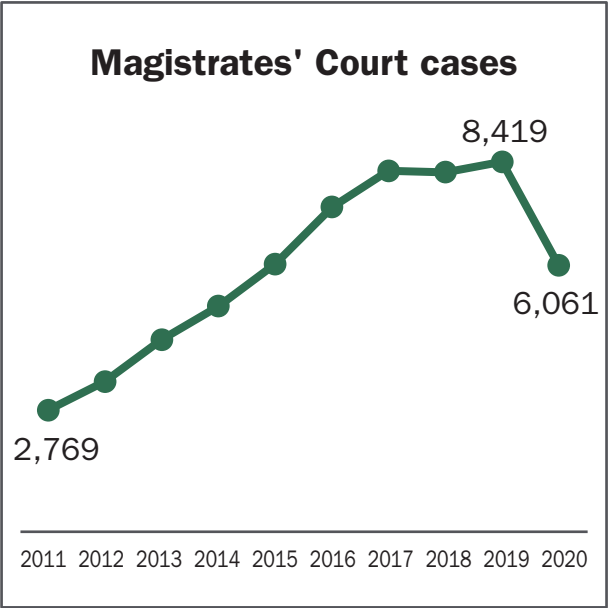
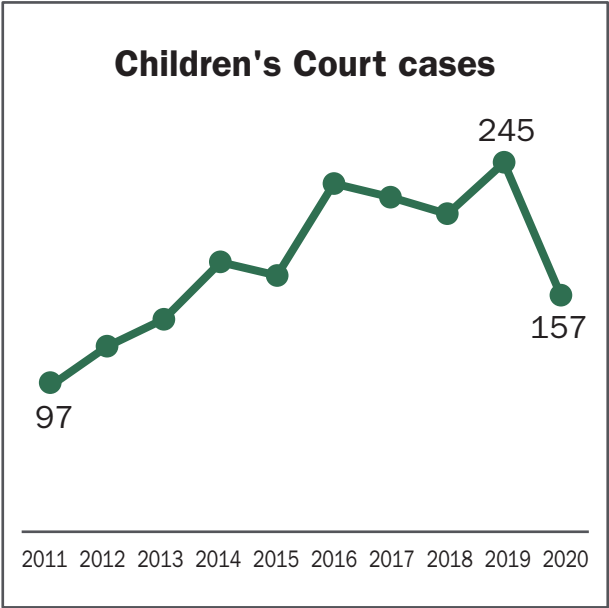
5.4 Figure 24 (page 43) shows the number of cases in each jurisdiction in which at least one breach offence was sentenced between 2011 and 2020. There were 62,298 total cases involving at least one breach offence sentenced during the reference period: 60,040 in the Magistrates' Court, 1,776 in the Children's Court and 482 in the higher courts. In each of those jurisdictions, the specific number of cases sentenced in 2011 and 2019 are shown, as these are indicative of a trend. The numbers for 2020 have also been included to illustrate the effect of COVID-19 on that trend and normal court operations, significantly reducing the number of cases sentenced that year:

5.5 There was a significant increase in the number of cases with a breach offence sentenced each year from 2011 to 2019: cases more than doubled in the Children's Court, more than tripled in the Magistrates' Court and more than quadrupled in the higher courts. Stakeholders suggested this could be partly due to changes in charging practices: 'what might in the past have been charged as an unlawful assault is now charged as an unlawful assault *and* a breach of an intervention order'.¹³⁴ But they also suggested it was due to police taking 'coercive control type behaviour' more seriously. Where previously charges might have only been laid if there was physical violence of some sort, police are now laying charges for behaviours such as 'the sending of texts, the driving past houses, those sorts of things'.¹³⁵ And that:

134. Stakeholder Roundtable (4 February 2022).

135. Stakeholder Roundtable (4 February 2022).

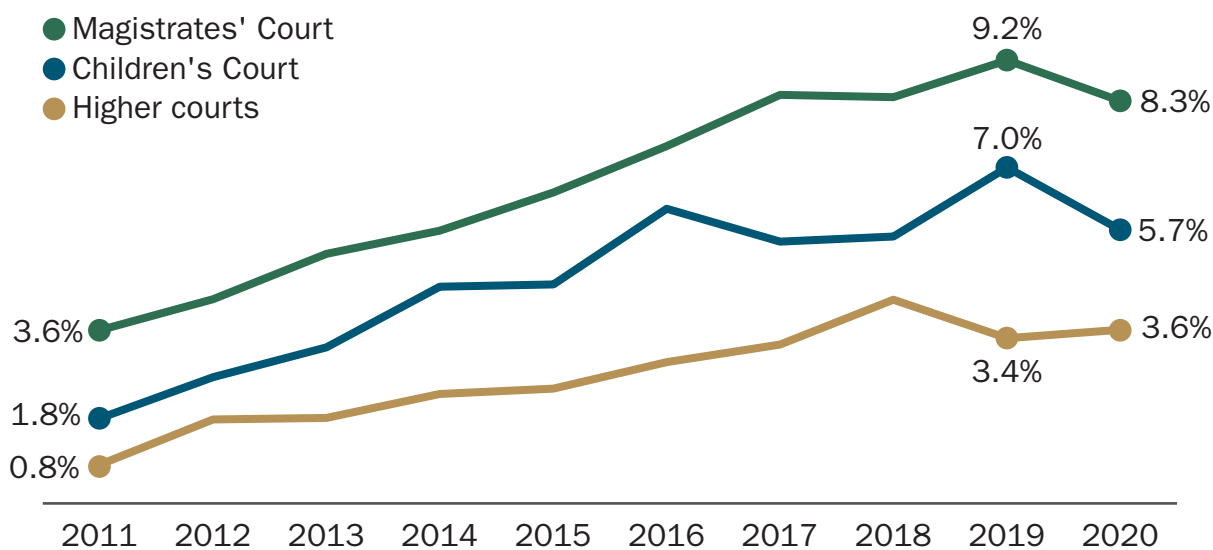
Figure 24: Number of sentenced cases involving at least one breach offence each year, by jurisdiction, 2011 to 2020 (62,298 cases)



police are probably a bit more proactive in asking ... if there's an intervention order in place, they'll ask if there's been unwanted texts or calls, then they'll ask to check the phone, and it's a lot easier for police to prosecute because they've got the record of all the calls on all the dates over the period.¹³⁶

5.6 In addition to the increase in the *number* of cases involving breaches of FVSNs and FVIOs sentenced each year, there was also an increase in the *proportion* of all cases sentenced each year that involved at least one breach offence (Figure 25). Due to reporting differences, the number of all cases sentenced each year is measured in financial years¹³⁷ while the number of cases with a breach offence is measured in calendar years, consistent with the rest of this report. Figure 25 should therefore be seen as indicative of a trend rather than precisely accurate, particularly the number of sentenced cases with breach offences in 2020, which would have been considerably reduced due to COVID-19.

Figure 25: Proportion of all cases sentenced in Victoria involving a breach offence, by year and jurisdiction, 2011 to 2020 (944,359 total cases, 62,298 cases with breach offences)



5.7 Nevertheless, the trend in each jurisdiction was consistent. In the higher courts, the proportion of cases with a breach offence increased from 0.8% of cases in 2011 to 3.4% in 2019. In the Children's Court, the proportion increased from 1.8% to 7.0% of all cases. And in the Magistrates' Court, the proportion of cases with a breach offence more than doubled, from 3.6% to 9.2%, such that about one in every 11 cases sentenced in the Magistrates' Court each year now involves a breach offence.

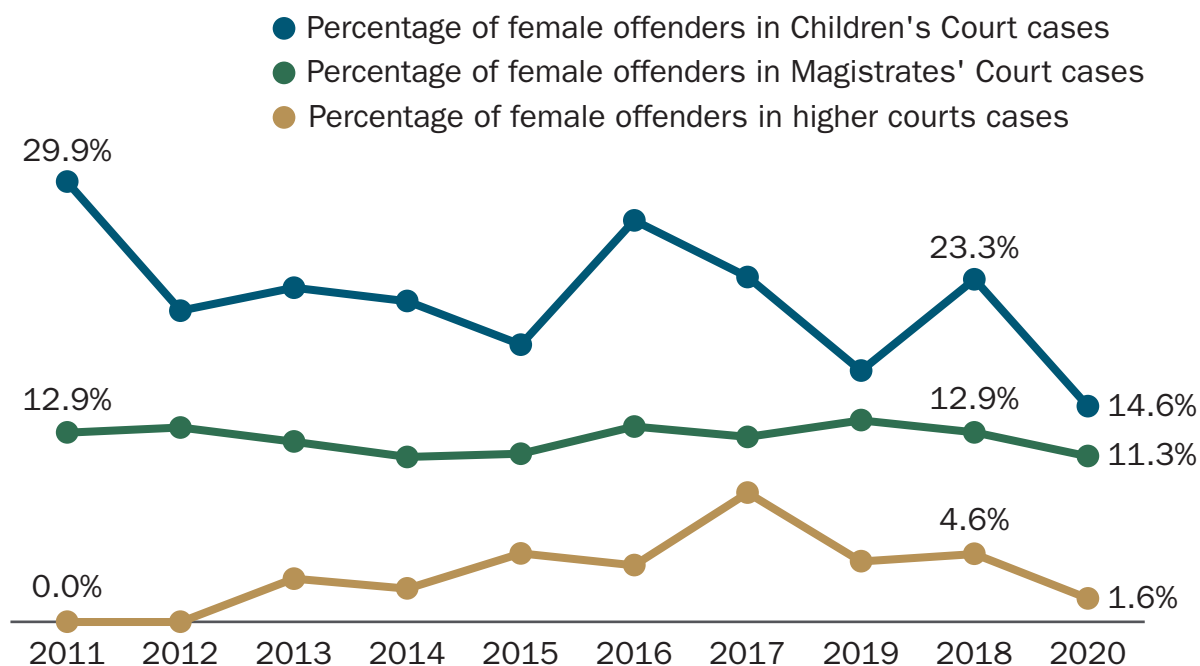
136. Stakeholder Roundtable (4 February 2022).

137. The number of cases sentenced each financial year are sourced from Court Services Victoria data published on our website: Sentencing Advisory Council, 'General Trends in Sentencing for Victorian Courts' (sentencingcouncil.vic.gov.au, 2021) <<https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/general-trends-sentencing-for-victorian-courts>> at 15 March 2022.

Age and gender of sentenced breach offenders

5.8 Of the 62,297 cases in which the breach offender's gender was recorded,¹³⁸ 12.7% involved female offenders (7,919 cases) while the other 87.3% involved male offenders (54,378 cases). This varied by jurisdiction, though: female offenders represented 3.7% of breach offenders in the higher courts, 12.5% in the Magistrates' Court and 21.9% in the Children's Court. During the reference period, the proportion of females sentenced in the Children's Court for breach of a FVSN or FVIO declined from 29.9% in 2011 to 23.3% in 2019, while the proportion of females sentenced in the Magistrates' Court fluctuated within a small and stable range of between 11.2% and 13.7% each year. There were too few breach offenders sentenced in the higher courts for the yearly data to be indicative of a trend.

Figure 26: Proportion of cases with breach offences involving a female offender sentenced in Victoria, by year and jurisdiction, 2011 to 2020



¹³⁸ Gender was not recorded in one case in the higher courts.

- 5.9 In the Magistrates' Court, data on age and gender was available for 59,896 cases (Figure 27, page 47).¹³⁹ Both males and females were most likely to be sentenced for breach of a FVSN or FVIO while aged 25 to 44, the number of breach offenders thereafter declining with age. With the small exception of breach offenders aged under 20 (16.7% of whom were female), the proportion of female breach offenders in each age range was remarkably consistent (between 12% and 13%). The oldest females sentenced in the Magistrates' Court for breach of a FVSN or FVIO were aged 80 (three cases), while the oldest males were aged 87 (4 cases).
- 5.10 Figure 28 (page 47) shows the age and gender of the 1,776 children sentenced for breach of a FVSN or FVIO. There were 39 children, 32 of whom were male, sentenced for a breach offence while aged under 14 (all of the 11- and 12-year-olds were male). The number of male children sentenced for breach of a FVSN or FVIO increased markedly for those aged 13 to 17, whereas the number of female children sentenced was quite stable for those aged 15 to 17. This is consistent with past research showing the disproportionate engagement with the justice system (and child protection system) by female children aged 14 to 15 compared with male children of the same age.¹⁴⁰
- 5.11 There were not enough people sentenced in the higher courts to warrant a detailed analysis of the age of sentenced breach offenders. However, the median age of male breach offenders (463 cases) and female breach offenders (18 cases) was similar: 34 for males and 35 for females, with the oldest female being 47¹⁴¹ and the oldest male being 65.

**87% of sentenced
breach offenders
were male**

139. Data was unavailable or unreliable in 144 cases.

140. See, for example, Sentencing Advisory Council, *Children Held on Remand in Victoria: A Report on Sentencing Outcomes* (2020) 35; Sentencing Advisory Council (2020), above n 103, 28.

141. *DPP v Allen & Diaz* [2014] VCC 1662.

Figure 27: Age and gender of breach offenders in sentenced cases involving at least one breach offence, Magistrates' Court, 2011 to 2020 (59,896 cases)

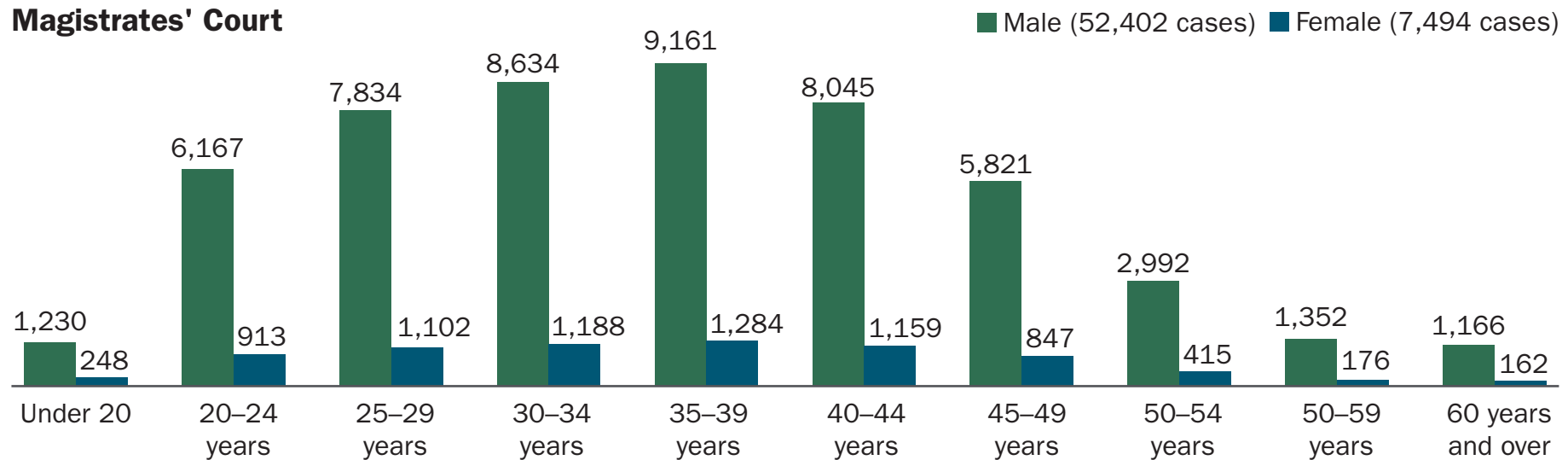
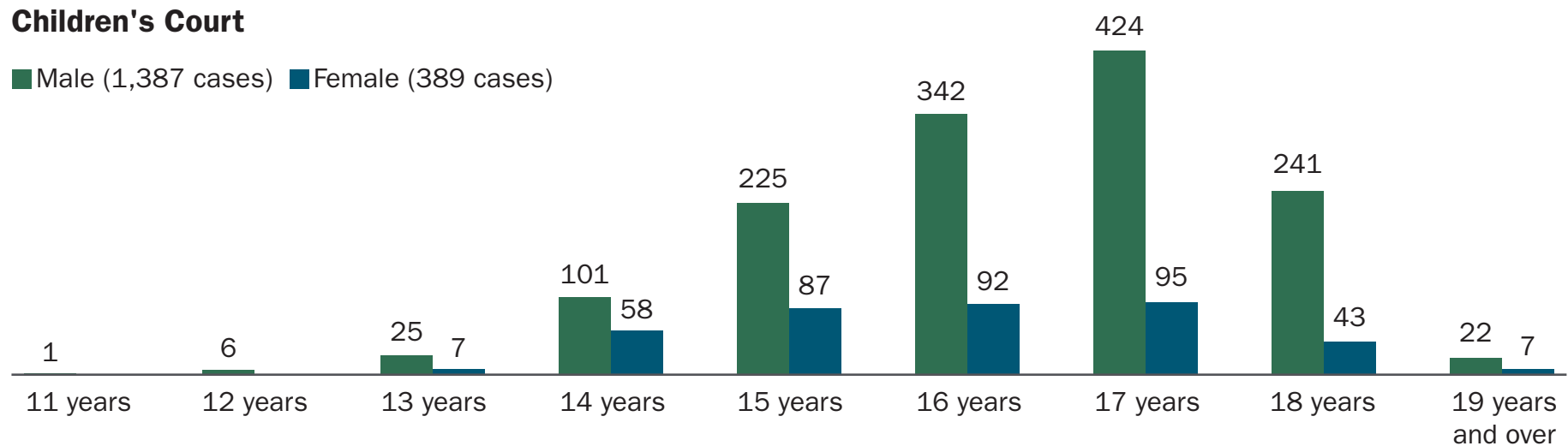


Figure 28: Age and gender of breach offenders in sentenced cases involving at least one breach offence, Children's Court, 2011 to 2020 (1,776 cases)



Offences co-sentenced with breaches of FVSNs and FVIOs

- 5.12 Figure 29 (page 49) shows the number of breach charges per case in each jurisdiction. While cases with a single breach charge were rare in the higher courts (1.1% of cases), they made up 12.5% of cases with breach offences in the Children's Court and 28.6% in the Magistrates' Court. Nevertheless, it was still far more common in each jurisdiction for someone to be co-sentenced for at least one other offence alongside the breach offence. High-volume cases (those with 10 charges or more of any offence type) were common in the adult jurisdictions (13.3% in the Magistrates' Court and 15.5% in the higher courts) and even more so in the Children's Court (25.6%). The most charges sentenced in a single case in each jurisdiction were 28 charges in the higher courts,¹⁴² 129 charges in the Children's Court and 393 charges in the Magistrates' Court (this was an outlier case; the next highest number of charges in the Magistrates' Court was 128).
- 5.13 Table 3 (page 50) shows which offence types were most commonly co-sentenced with breach offences in each jurisdiction, including a comparison of gender for breach offenders in the Children's Court and the Magistrates' Court (there were too few females sentenced in the higher courts for a reliable comparison). These offence types are largely based on the Australian Bureau of Statistics' offence classification system¹⁴³ but with some minor variations.¹⁴⁴

142. *DPP v Field (A Pseudonym)* [2018] VCC 1550 (involving dangerous driving while pursued by police, theft, property damage, making a threat to kill, causing injury intentionally, common assault, attempted aggravated burglary, committing an indictable offence whilst on bail, breach of a FVIO, trespass and road traffic offences).

143. Australian Bureau of Statistics, *1234.0 – Australian and New Zealand Standard Offence Classification (ANZSOC)* (abs.gov.au, 2011) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0>> at 15 March 2022.

144. In particular, additional breaches of FVSNs and FVIOs, which are otherwise a subset of 'breaches of violence and non-violence orders' are counted separately; so too are bail-related offences, which are otherwise a subset of 'breaches of community-based orders', and threat offences, which are otherwise a subset of 'harassment and threatening behaviour'.

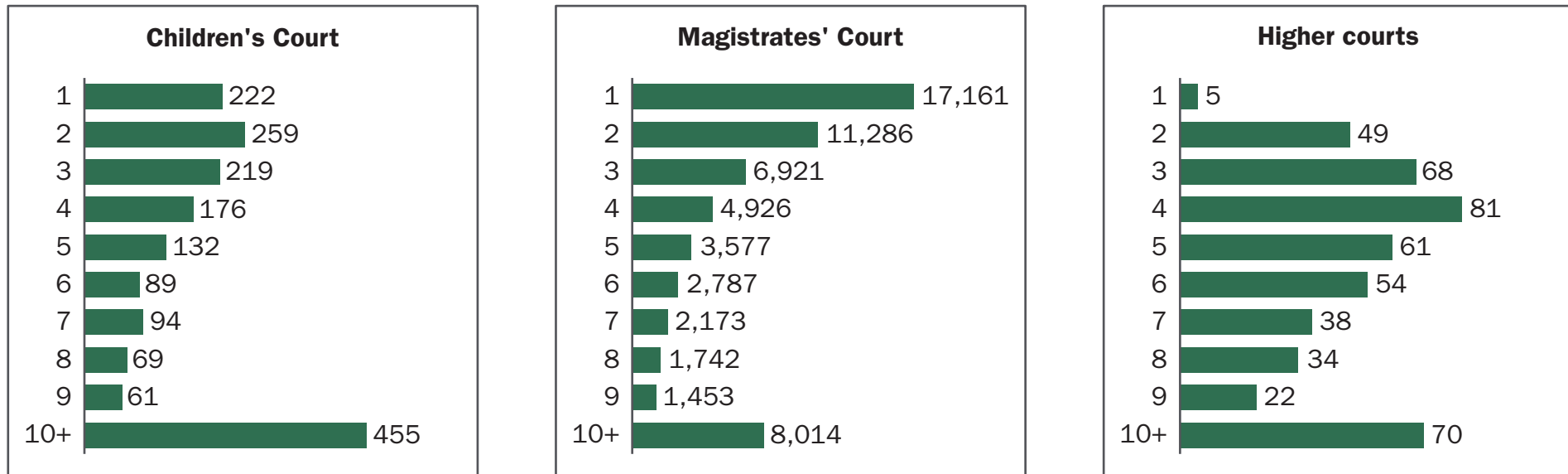
Figure 29: Number of charges in cases involving at least one breach offence, by jurisdiction, 2011 to 2020

Table 3: Offence types most commonly co-sentenced with breaches of FVSNs and FVIOs, by jurisdiction, 2011 to 2020

Jurisdiction and offence	Total number and percentage of cases	Number and percentage of cases with male breach offenders	Number and percentage of cases with female breach offenders
Magistrates' Court	100% (60,040)	100% (52,528)	100% (7,512)
1. Additional breach of a FVSN or FVIO	38.1% (22,880)	38.7% (20,281)	34.6% (2,599)
2. Assault and injury offences	29.6% (17,756)	30.2% (15,866)	25.2% (1,890)
3. Bail-related offences	26.8% (16,087)	27.0% (14,172)	25.5% (1,915)
4. Property damage offences	19.5% (11,723)	19.9% (10,411)	17.5% (1,312)
5. Theft offences	10.3% (6,214)	11.3% (5,942)	9.6% (722)
Children's Court	100% (1,776)	100% (1,387)	100% (389)
1. Assault and injury offences	53.6% (952)	52.4% (727)	57.8% (225)
2. Property damage offences	53.0% (942)	53.8% (746)	50.4% (196)
3. Additional breach of a FVSN or FVIO	38.5% (683)	38.6% (535)	38.0% (148)
4. Bail-related offences	28.9% (512)	29.3% (407)	27.0% (105)
5. Theft offences	26.1% (464)	25.8% (358)	27.2% (106)
Higher courts	100% (482)	–	–
1. Assault and injury offences	63.1% (304)	–	–
2. Burglary offences	36.9% (178)	–	–
3. Property damage offences	33.6% (162)	–	–
4. Additional breach of a FVSN or FVIO	28.4% (137)	–	–
5. Threat offences	25.3% (122)	–	–

- 5.14 In the Magistrates' Court, the most commonly co-sentenced offence type was an *additional* breach of a FVSN or FVIO, in 38.1% of cases, and the rate was slightly higher for males (38.7%) than for females (34.6%). There is no way to tell whether these additional breaches related to the same victim survivor, but they often do.¹⁴⁵ This should not be viewed as indicative of police unresponsiveness to initial breaches; the presence of multiple breach offences in a case is often because, as a psychologist at the Council's roundtable observed, 'from a behavioural perspective, women will tolerate a few breaches ... and when there are multiple breaches, that's when they might actually report it'.¹⁴⁶
- 5.15 In the Children's Court, assault and injury offences were the most common co-sentenced offences, which, along with property damage offences, appeared in more than half of all cases. Stakeholders suggested that one explanation for the high rate of assault and injury offences and property damage offences in Children's Court cases is that:
- often the children are still living with the parent ... so you're not going to have the texts and the like because they're in the same house ... it might be a breach that only reflects the violence and property damage.¹⁴⁷
- 5.16 And in the higher courts, the most common co-sentenced offences were assault and injury offences (in more than half of all cases) and burglary offences (in 36.9% of cases). As to the high rate of burglary offences, the Council has previously observed a pattern of cases in the higher courts involving men aged 20 to 44 who attend their former partner's home (often where children are present), aggressively demand entry (often in an inebriated state) and eventually gain entry (often by damaging a door or window) with the intention of confronting, threatening and/or assaulting the victim survivor.¹⁴⁸

145. As was observed at the Council's roundtable: 'say you've got 20 messages across a number of days, generally it's a charge per day': Stakeholder Roundtable (4 February 2022).

146. Stakeholder Roundtable (4 February 2022).

147. Stakeholder Roundtable (4 February 2022).

148. Sentencing Advisory Council, *Aggravated Burglary: Current Sentencing Practices* (2011) 33.

Most serious offence (higher courts)

- 5.17 As noted at [5.12], very few cases with a breach offence in the higher courts involved a single offence. This is largely because the maximum penalty for a breach offence means the offence would almost invariably be sentenced in the Magistrates' Court if it was the sole offence in the case. Cases are only sentenced in the higher courts when either there is an indictable offence that is not triable summarily in the case (such as armed robbery, with a 25-year maximum penalty) or the most serious offence is triable summarily but the prosecution and/or defence prefer to have the matter finalised in the higher courts (for example, the prosecution may believe the sentencing limits in the Magistrates' Court are not sufficient in that case).
- 5.18 It is therefore not surprising to find that very few of the 482 breach cases in the higher courts involved a single offence (five cases). There were also very few cases in which a breach offence was the most serious offence in the case (28 cases),¹⁴⁹ and most of those were persistent breach offences (17 cases). Instead, the most serious offences tended to be assault and injury offences, especially causing injury intentionally or recklessly (130 cases or 27.0%), burglary offences, especially aggravated burglary (124 cases or 25.7%) and sexual assault offences, especially child sex offences (61 cases or 12.7%).

Case examples in the higher courts

- 5.19 Cases 1 to 4 (page 53) provide examples of breaches of FVIOs that resulted in a non-custodial sentence (Case 1: *Ahern*), a brief and wholly concurrent prison sentence (Case 2: *Brien*), a median and partly cumulative prison sentence (Case 3: *Castillo*) and a lengthy and partly cumulative prison sentence (Case 4: *Bao*). These cases have been chosen to illustrate the range of sentences imposed for breach charges; sentences for cases involving breach offences, especially in the higher courts, are too influenced by other offences co-sentenced in the same case to provide any useful comparison.

149. See, for example, *DPP v Afolayan (A Pseudonym)* [2016] VCC 250 (involving a man who attended his former partner's house, punched a hole in the pane of glass near the front door when she refused him entry, and spat in her face multiple times while arguing once he gained entry); *DPP v Brunning (A Pseudonym)* [2016] VCC 1286 (the offender received 12 months' imprisonment for breaching an intervention order, in the context of a history of breach behaviours involving his former partner, and nine months for aggravated burglary, making the intervention order breach the most serious offence).

Case 1: Three-year community correction order for breach of a FVIO (and other offences)

The offender was the respondent in a FVIO naming his former partner as a protected person. In breach of the order, he attended her home (the breach offence) a year after the end of their relationship.

She told him to leave, but he didn't. He became aggressive, dragged her by her hair, threatened to 'slit her throat' and ripped a gold chain from her neck (robbery). He then called her more than 500 times over the next week (stalking). When she answered the phone on some occasions, he threatened to kill her (threats to kill – rolled up charge).

He pleaded guilty and was assessed as having an intellectual disability. He received a three-year community correction order with 200 hours of community work, an order to attend drug rehabilitation, an order to attend mental health assessment, supervision by correction officers, judicial monitoring for three months after sentence and a justice plan condition.

DPP v Ahern [2014] VCC 849

Case 2: Two weeks' imprisonment for breach of a FVIO while intending to cause harm or fear for safety

Following a 'tumultuous' relationship with the offender (a 49-year-old man), his partner sought a FVIO prohibiting him from being at her house or engaging in family violence against her.

A few weeks later, he was still living with her. One night, when she refused to have sexual intercourse with him, he became verbally and physically abusive, punching, kneeing and biting her. She left the home afterward. He then sent over 600 messages over the next five days pleading for her to return, insulting her, threatening her and threatening to kill himself (charged as stalking).

He received a total effective sentence of 18 months, including 16 months for the assault, six months for stalking (two months cumulative) and two weeks for the two FVIO breaches (wholly concurrent).

DPP v Brien [2017] VCC 89

Case 3: Nine months' imprisonment for breach of an interim FVIO with intent to cause harm or fear for safety

The offender was the respondent in an interim FVIO naming his partner and their daughter as protected persons. In breach of that order, he picked up his partner from work and drove erratically with her in the car, causing her to fear for her life and to plead with him to stop. He punched her and threatened to put her in the boot. He then drove to her mother's house and took their daughter from the home, leaving his partner there.

He was sentenced to 18 months' imprisonment for kidnapping and nine months for breach of a FVIO while intending to cause harm or fear for safety, of which four months were cumulative, resulting in a total effective sentence of 22 months' imprisonment.

DPP v Castillo (A Pseudonym) [2020] VCC 289

Case 4: Two years' imprisonment for breach of a FVIO while intending to cause harm or fear for safety

The offender (a 39-year-old male) was the respondent in a final FVIO naming his former partner and their children as protected persons. He attended her house in breach of the order, and while there argued with her, threw an MP3 player at her face, threatened to 'crack [her] head open and put a bullet in [her] head', wrapped a cord around his hand and threatened to 'use it', and threatened to 'blow [her] brains out'. He had also threatened her with a gun in 2017.

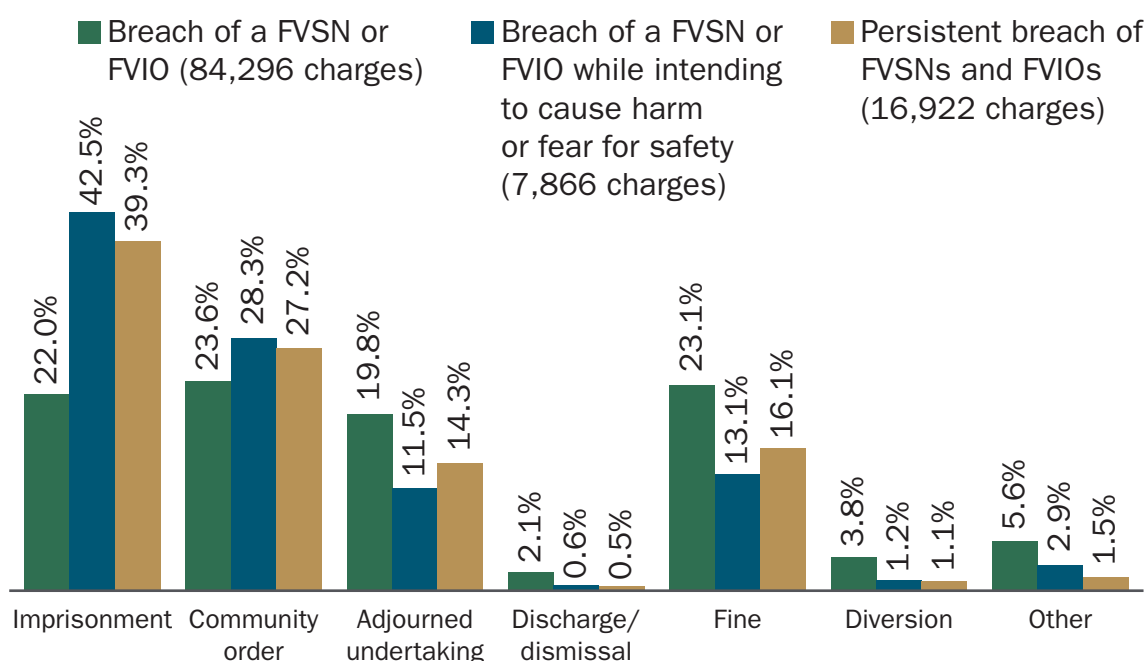
The court said breaches of FVIOs 'must be given effect in sentencing if they are to achieve their desired objectives' and imposed a total effective sentence of six years and four months' imprisonment, including two years for the breach (six months cumulative).

DPP v Bao (A Pseudonym) [2020] VCC 1508

Sentencing outcomes: Magistrates' Court

5.20 Figure 30 shows the types of sentences imposed throughout the reference period for breaches of FVSNs and FVIOs. Half received either a term of imprisonment (26.2%) or a community order (24.5%), currently the two most serious sentencing outcomes for adults in Victoria. Fines (21.3%) and adjourned undertakings (18.4%) were also common, whereas discharge with or without conviction, diversion and 'other' sentence types¹⁵⁰ were relatively rare.

Figure 30: Sentence types imposed in the Magistrates' Court for breaches of FVSNs and FVIOs, by breach offence type, 2011 to 2020 (109,084 charges)

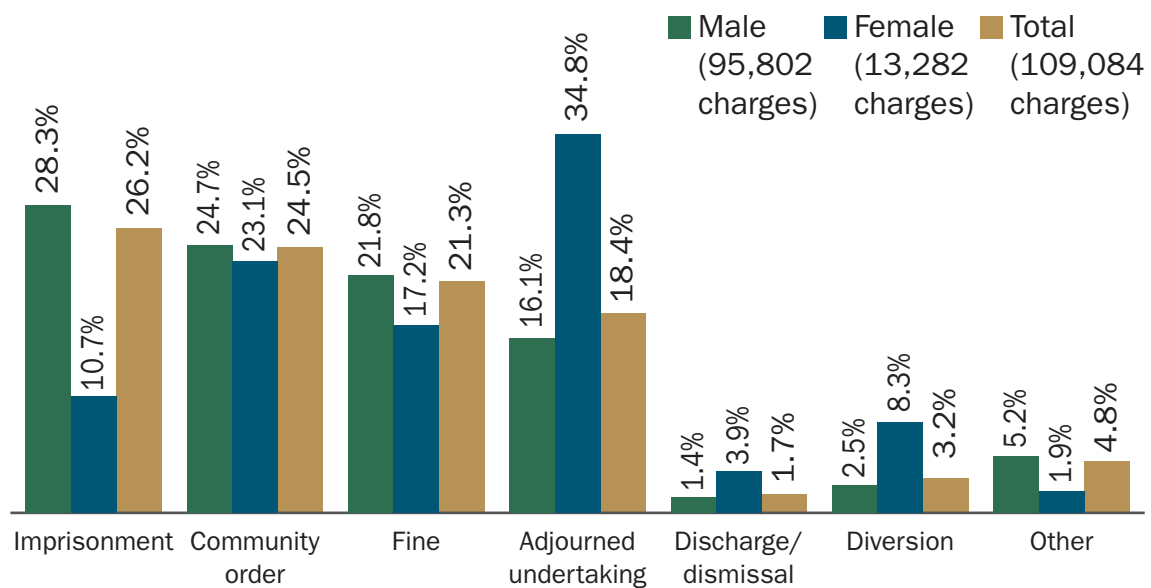


5.21 There was a significant difference in the sentences imposed on male and female offenders (Figure 31, page 55). Males were almost three times more likely than females to receive imprisonment for breach of a FVSN or FVIO, and more than twice as likely to receive a suspended sentence of imprisonment, whereas females were much more likely than males to receive what are sometimes described as 'low-end orders': adjourned undertakings, discharge with or without conviction, and court-ordered diversion. As stakeholders observed at the Council's roundtable, the distinct sentencing outcomes for males and females are likely to reflect a combination of factors. In particular, the gendered nature of family

150. Other sentence types primarily comprised suspended sentences, which were abolished by 2014: *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) s 9.

violence, especially intimate partner abuse, means that men's breach offending (both the breach itself and co-sentenced offending) is frequently more serious than women's, and men typically have lengthier criminal histories than women do.¹⁵¹

Figure 31: Sentence types imposed in the Magistrates' Court for breaches of FVSNs and FVIOs, by gender of breach offenders and total breach offenders, 2011 to 2020 (109,084 charges)



5.22 Stakeholders also suggested that some of the low-end orders that females received for breach offences may be occurring in cases of misidentification. That is, females have been misidentified as the primary aggressor prior to a charge being laid, and although the error is later identified, the charge proceeds to sentencing because of the breach. The fact of misidentification then contributes to a low-end order being imposed.¹⁵² Victoria Police is aware of this issue in some cases and noted that they are trying to reduce its occurrence, instead withdrawing charges in appropriate cases:

What we try and do is get our teams to identify a possible misidentification early, by looking at LEAP records, checking out the entire history of the relationship ... [T]here's a number of projects that we're working with the Magistrates' Court ... We're also trying to re-align our decision-making in terms of withdrawals on the day. So if our lawyers have all the information they need on the day to accept that it's a misidentification, then we can do that [withdraw the charge(s)]. But also, what we're encouraging our lawyers to do is, if we don't have that information, is to work with the respondent lawyers and the courts, to get quick adjournments back, so that we can have the information, assess it, and get them out of the system as soon as practicable.¹⁵³

151. Stakeholder Roundtable (4 February 2022). See also Sentencing Advisory Council, *Gender Differences in Sentencing Outcomes* (2010).

152. Stakeholder Roundtable (4 February 2022).

153. Stakeholder Roundtable (4 February 2022).

5.23 It was also observed that prosecution decision-making in Victoria, at least by the Director of Public Prosecutions, is not simply based on an assessment of whether there is a reasonable prospect of conviction; it is also based on whether a prosecution is in the public interest.¹⁵⁴ And if a woman charged with a breach offence has been misidentified as a primary aggressor, this would be a key factor in deciding that it would not be in the public interest to proceed with the charge:

From the indictable perspective ... misidentification is considered often, considered carefully, and would fit squarely in the Director's role in looking at discontinuance of charges that fall within either her purview or in the summary stream if we're involved in the matter. This is a public interest consideration.¹⁵⁵

Trends in sentencing outcomes in the Magistrates' Court (2011–2020)

5.24 Table 4 (page 57) shows the sentence types imposed for breaches of FVSNs and FVIOs each year between 2011 and 2020. As would be expected, the non-aggravated breach offences with two-year maximum penalties had a much lower imprisonment rate than the imprisonment rates for the persistent and aggravated breach offences: non-aggravated breaches of a FVSN or FVIO (sections 37 and 123) had an imprisonment rate of 22.0%, whereas breaches of a FVSN or FVIO while intending to cause harm or fear for safety (sections 37A and 123A) had an imprisonment rate of 42.4%, and persistent breaches of FVSNs and FVIOs (section 125A) had an imprisonment rate of 39.3%. Non-aggravated breach offences were almost equally as likely to receive imprisonment as they were a community order (23.6%), an adjourned undertaking (19.8%) or a fine (23.1%).

5.25 The higher rate of suspended sentences in the 'other' category¹⁵⁶ for non-aggravated breach offences was in large part due to those offences being operational for the entirety of the reference period (from 1 January 2011). The aggravated and persistent breach offences were only concurrently operational with the availability of suspended sentences for a year and a half between 17 April 2013 (when the offences came into operation¹⁵⁷) and 1 September 2014 (when offences committed on or after this date could no longer receive suspended sentences).¹⁵⁸

154. Director of Public Prosecutions, *Policy of the Director of Public Prosecutions* (2022) 2.

155. Stakeholder Roundtable (4 February 2022).

156. Other sentence types included suspended sentences, youth justice centre orders or youth justice residential centre orders, and dismissals or discharges.

157. *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic) ss 9, 11.

158. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) s 9.

Table 4: Sentence types imposed in the Magistrates' Court for breaches of FVSNs and FVIOs, 2011 to 2020, by breach offence type

Breach offence type and sentencing outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Breaches of FVSNs and FVIOs											
Imprisonment	783 (14.4%)	1,150 (16.8%)	1,406 (16.9%)	1,320 (16.4%)	1,614 (19.9%)	2,223 (23.1%)	2,553 (24.7%)	2,503 (24.5%)	2,525 (25.1%)	2,485 (34.2%)	18,562 (22.0%)
Community order	942 (17.4%)	1,603 (23.4%)	1,940 (23.4%)	2,029 (25.1%)	2,515 (30.9%)	2,670 (27.7%)	2,463 (23.8%)	2,341 (22.9%)	1,999 (19.9%)	1,362 (18.7%)	19,864 (23.6%)
Fine	1,189 (21.9%)	1,587 (23.2%)	1,997 (23.2%)	1,949 (24.2%)	1,933 (23.8%)	2,448 (25.4%)	2,335 (22.6%)	2,258 (22.1%)	2,250 (22.4%)	1,524 (21.0%)	19,470 (23.1%)
Adjourned undertaking	1,247 (23.0%)	1,187 (17.3%)	1,304 (17.3%)	1,302 (16.1%)	1,418 (17.4%)	1,669 (17.3%)	2,201 (21.3%)	2,412 (23.6%)	2,564 (25.5%)	1,406 (19.3%)	16,710 (19.8%)
Diversion	165 (3.0%)	219 (3.2%)	252 (3.2%)	221 (2.7%)	266 (3.3%)	398 (4.1%)	531 (5.1%)	445 (4.3%)	435 (4.3%)	286 (3.9%)	3,218 (3.8%)
Other	1,103 (20.3%)	1,106 (16.1%)	1,397 (16.1%)	1,249 (15.5%)	382 (4.7%)	215 (2.2%)	249 (2.4%)	273 (2.7%)	294 (2.9%)	204 (2.8%)	6,472 (7.7%)
Total	5,429 (100%)	6,852 (100%)	8,296 (100%)	8,070 (100%)	8,128 (100%)	9,623 (100%)	10,332 (100%)	10,232 (100%)	10,067 (100%)	7,267 (100%)	84,296 (100%)
Breaches of FVSNs and FVIOs while intending to cause harm or fear for safety											
Imprisonment	–	–	50 (25.6%)	258 (29.6%)	374 (30.3%)	501 (36.9%)	552 (45.4%)	492 (51.4%)	576 (53.7%)	538 (56.0%)	3,341 (42.5%)
Community order	–	–	56 (28.7%)	229 (26.3%)	455 (36.9%)	417 (30.7%)	338 (27.8%)	256 (26.8%)	246 (22.9%)	232 (24.1%)	2,229 (28.3%)
Fine	–	–	19 (9.7%)	144 (16.5%)	224 (18.2%)	226 (16.6%)	125 (10.3%)	101 (10.6%)	107 (10.0%)	81 (8.4%)	1,027 (13.1%)

Breach offence type and sentencing outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Adjourned undertaking	–	–	23 (11.8%)	89 (10.2%)	126 (10.2%)	174 (12.8%)	164 (13.5%)	93 (9.7%)	133 (12.4%)	102 (10.6%)	904 (11.5%)
Diversion	–	–	3 (1.5%)	11 (1.3%)	10 (0.8%)	25 (1.8%)	25 (2.1%)	7 (0.7%)	8 (0.7%)	4 (0.4%)	93 (1.2%)
Other	–	–	44 (22.6%)	141 (16.2%)	45 (3.6%)	16 (1.2%)	11 (0.9%)	8 (0.8%)	3 (0.3%)	4 (0.4%)	272 (3.5%)
Total	–	–	195 (100%)	872 (100%)	1,234 (100%)	1,359 (100%)	1,215 (100%)	957 (100%)	1,073 (100%)	961 (100%)	7,866 (100%)
Persistent breaches of FVSNs and FVIOs											
Imprisonment	–	–	55 (25.8%)	238 (28.0%)	536 (33.8%)	868 (37.0%)	1,037 (36.6%)	1,128 (38.4%)	1,344 (40.2%)	1,438 (51.1%)	6,644 (39.3%)
Community order	–	–	51 (23.9%)	266 (31.3%)	571 (36.0%)	791 (33.7%)	825 (29.1%)	765 (26.0%)	755 (22.6%)	583 (20.7%)	4,607 (27.2%)
Fine	–	–	28 (13.1%)	131 (15.4%)	275 (17.4%)	367 (15.7%)	503 (17.7%)	493 (16.8%)	520 (15.6%)	400 (14.2%)	2,717 (16.1%)
Adjourned undertaking	–	–	13 (6.1%)	91 (10.7%)	146 (9.2%)	278 (11.9%)	404 (14.2%)	497 (16.9%)	655 (19.6%)	344 (12.2%)	2,428 (14.3%)
Diversion	–	–	–	4 (0.5%)	11 (0.7%)	30 (1.3%)	36 (1.3%)	36 (1.2%)	40 (1.2%)	32 (1.1%)	189 (1.1%)
Other	–	–	66 (31.0%)	121 (14.2%)	45 (2.8%)	10 (0.4%)	32 (1.1%)	18 (0.6%)	28 (0.8%)	17 (0.6%)	254 (1.5%)
Total	–	–	212 (100%)	849 (100%)	1,577 (100%)	2,339 (100%)	2,820 (100%)	2,922 (100%)	3,320 (100%)	2,800 (100%)	16,922 (100%)

The stable rate of fines

5.26 The rate of fines for breaches of FVSNs and FVIOs remains a point of concern. In 2009, the Council raised concerns that fines for breaches of FVSNs and FVIOs can often punish victim survivors as much as they punish offenders; at the time, fines represented 37% of sentencing outcomes for breach offences.¹⁵⁹ Later, in 2013, the Council found that there had been ‘a [positive] shift from financial penalties to sentences with greater potential for intervention in the lives of offenders and, in turn, community and victim protection’; fines had dropped to about 26% of sentencing outcomes by 2012.¹⁶⁰ Then in 2016, the Council found that the rate of fines had stabilised at about 27% between 2011–12 and 2014–15 and again reiterated its concerns about the use of fines to sentence breaches of FVSNs and FVIOs, especially the new persistent and aggravated breach offences.¹⁶¹

5.27 These past rates of fines are not entirely comparable with the rates in this report because counting rules vary between them (for example, the 2016 report only counted one breach offence per case). Nevertheless, the trends are somewhat similar. There was a drop in the rate of fines for *aggravated* breach offences in the last five years (from 17%–18% to 8%–11%). However, from 2011 to 2020, there was a fairly stable rate, of between 21% and 25%, of non-aggravated breach offences receiving a fine, with no apparent trend; this is consistent with the observation in 2016 that rates of fines had stabilised. At the Council’s roundtable, stakeholders echoed previous concerns about fines in the context of family violence, particularly for women:

I’m a bit concerned at the high number of sentences that were dealt with by way of a fine. Women may often still have children in their care. And fines often impact persons other than the accused. And the adjourned undertakings and corrections orders both have the good behaviour component to them, where it leaves something hanging over head for a period of time, and the ability to attach treatment conditions ... [Fines may be appropriate] where parties have separated, are living separate lives, the former husband has been breaching in a lower level way, but hasn’t been doing so persistently ... it may be that a fine, if they’ve got means, and it’s not going to impact on others, they’re living on their own, not paying child support, it might be something that can be considered. [However] I would still probably prefer the good behaviour component you could attach to a bond.¹⁶²

159. Sentencing Advisory Council (2009), above n 5, viii, ix, 44, 51–55 (citing extensively from Heather Douglas, ‘Not a Crime Like Any Other: Sentencing Breaches of Domestic Violence Protection Orders’ (2007) 31(4) *Criminal Law Journal* 220).

160. Sentencing Advisory Council (2013), above n 5, 32, 51.

161. Sentencing Advisory Council (2015), above n 5, 31, 49.

162. Stakeholder Roundtable (4 February 2022).

5.28 Stakeholders also suggested that, while anecdotally it was not a particularly prevalent issue, one possible contributor to the rate of fines for breach offending could be that adjourned undertakings and community correction orders (CCOs) require the offender's consent:¹⁶³ 'so if someone is not going to consent ... you're left with either imprisonment or a fine'.¹⁶⁴ There was a clear appetite from multiple stakeholders for a new intermediate order between imprisonment and a CCO, one that does not require the offender's consent, similar to the now abolished suspended sentence but with mandatory conditions attached. Other jurisdictions sometimes call these conditional suspended sentences.¹⁶⁵

The declining rate of community orders

5.29 As will be discussed below, the proportion of breach offences receiving a term of imprisonment increased significantly over the reference period. In part, this was due to the abolition of suspended sentences for offences committed prior to September 2014. It also, however, appears to have occurred alongside a decrease in the rate of community orders (Figure 32, page 61). As the Council has found in its previous reports on breaches of FVSNs and FVIOs,¹⁶⁶ the use of community orders increased when CCOs were introduced (in 2012)¹⁶⁷ and spiked the year after the Court of Appeal's guideline judgment encouraging their increased use (in 2015).¹⁶⁸ Community orders have declined steadily since then (from 32.3% of outcomes to 19.7%). The decline in CCOs in particular stands in stark contrast to recommendations made in 2016 by magistrates specialising in family violence. They suggested that sentencing outcomes in family violence matters should not only prioritise general deterrence, as has been emphasised in many judgments over the last decade,¹⁶⁹ but also prioritise orders that keep offenders within the

163. *Sentencing Act 1991* (Vic) ss 37(c), 72(1), 75(1).

164. Stakeholder Roundtable (4 February 2022).

165. See Karen Gelb et al., *Community-Based Sentencing Orders and Parole: A Review of Literature and Evaluations Across Jurisdictions* (2019) 118–120 (noting the dearth of literature on the effectiveness of conditional suspended sentences).

166. Sentencing Advisory Council (2013), above n 5, 31; Sentencing Advisory Council (2016), above n 5, 48.

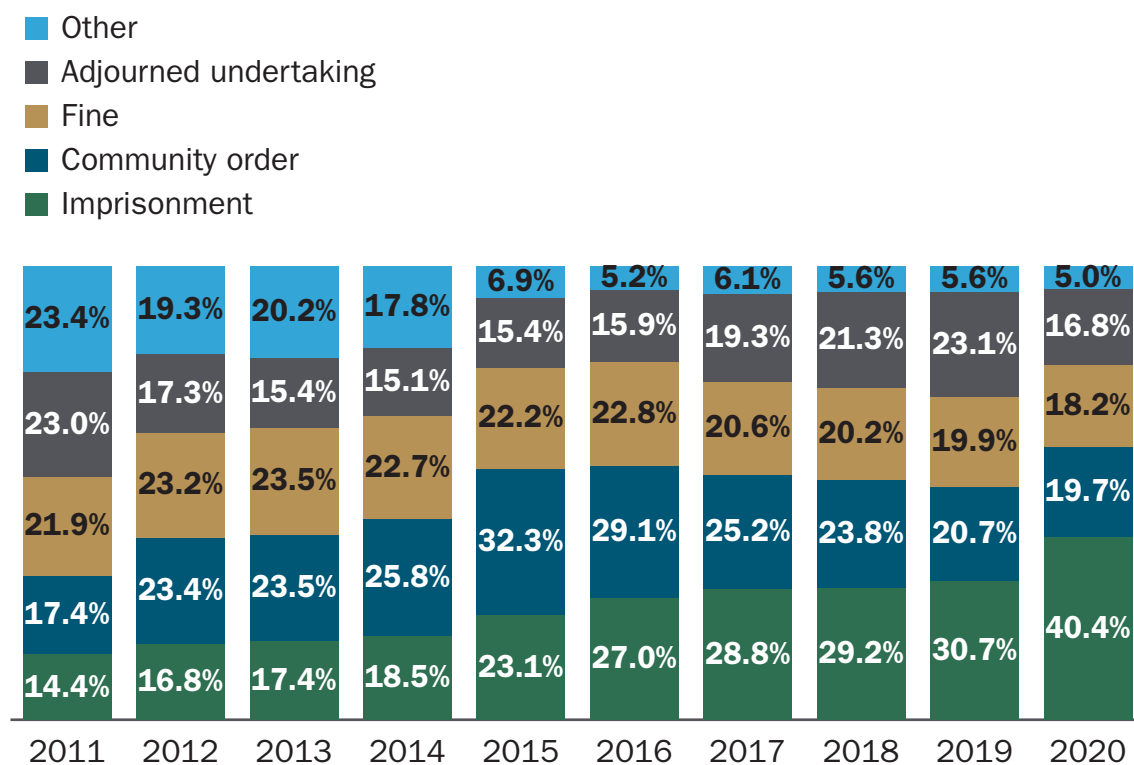
167. *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) s 21.

168. *Boulton & Ors v The Queen* [2014] VSCA 342.

169. See, for example, *Hill v The Queen* [2020] VSCA 220, [5]; *Laa v The Queen* [2020] VSCA 136, [50]; *Forbes (A Pseudonym) v The Queen* [2018] VSCA 341, [42]; *Saxton v The Queen* [2017] VSCA 357, [30]; *Filiz v The Queen* [2014] VSCA 212; *DPP v Meyers* [2014] VSCA 314; *Pasinis v The Queen* [2014] VSCA 97; *DPP v Johnson* [2011] VSCA 288.

court's 'web of accountability',¹⁷⁰ orders such as adjourned undertakings for low-risk, first-time offenders and CCOs (with or without imprisonment) for higher risk and repeat offenders.¹⁷¹

Figure 32: Proportion of sentence types imposed for breach offences, 2011 to 2020



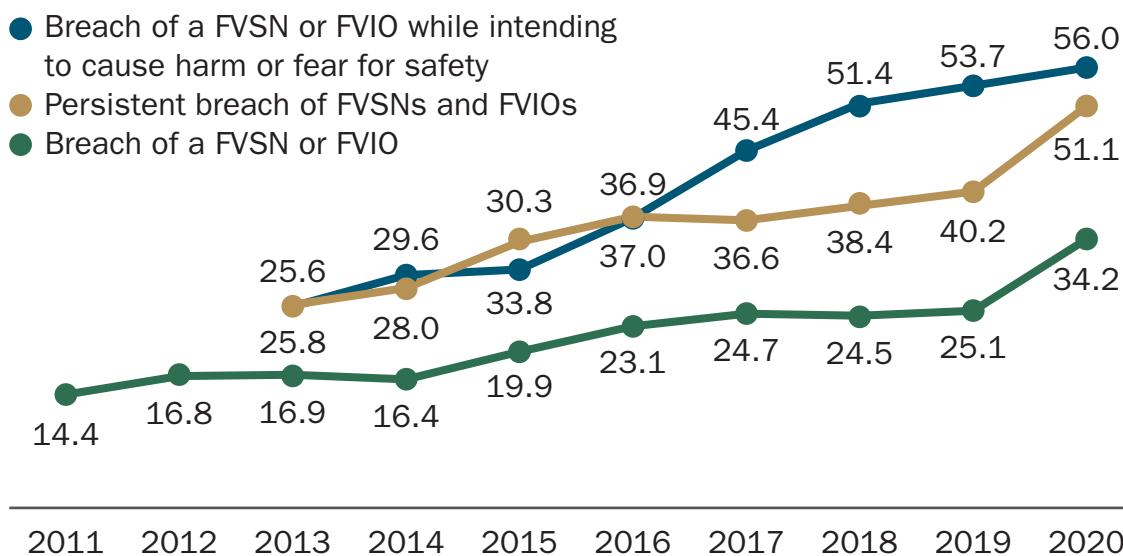
170. Pauline Spencer, 'Strengthening the Web of Accountability: Criminal Courts and Family Violence Offenders' (2016) 41(4) *Alternative Law Journal* 225.

171. Kate Hawkins and Felicity Broughton, 'Sentencing in Family Violence Cases' (Paper presented at 'Current Issues in Sentencing', National Judicial College of Australia Conference, Canberra, 6–7 February 2016) 22–23.

The increase in prison sentences

5.30 One of the key aims in preparing this report was to examine what has been driving the recent increase in prison sentences for breaches of FVSNs and FVIOs. As shown in Figure 33, not only did the *number* of breach offences receiving imprisonment increase in the last decade (see Table 4, page 57) but the *proportion* of all breach offences receiving imprisonment also increased. Even excluding the spike in imprisonment in 2020 (due to COVID-19 requiring courts to prioritise more serious cases), the imprisonment rate almost doubled for persistent and non-aggravated breach offences, and it more than doubled for aggravated breach offences.

Figure 33: Proportion (%) of breach offences receiving imprisonment, by breach offence type, 2011 to 2020



5.31 To some extent, this increase in imprisonment is consistent with an overall trend in the Magistrates' Court: whereas 4.4% of cases resulted in imprisonment in 2010–11, that tripled to 13.1% by 2019–20.¹⁷² Many stakeholders attributed these increasing imprisonment rates to changes in bail laws in recent years:

The changes in the *Bail Act* made it harder for people to get bail ... Often when someone's been in custody for a certain period you'll record a term of imprisonment to reflect the fact of a breach of the court order and the behaviour, but you'll also attach a community correction order to focus on supervision in the community and treatment.¹⁷³

172. Sentencing Advisory Council, 'Sentencing Outcomes in the Magistrates' Court' (sentencingcouncil.vic.gov.au, 2021) <<https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/sentencing-outcomes-magistrates-court>> at 17 March 2022.

173. Stakeholder Roundtable (4 February 2022).

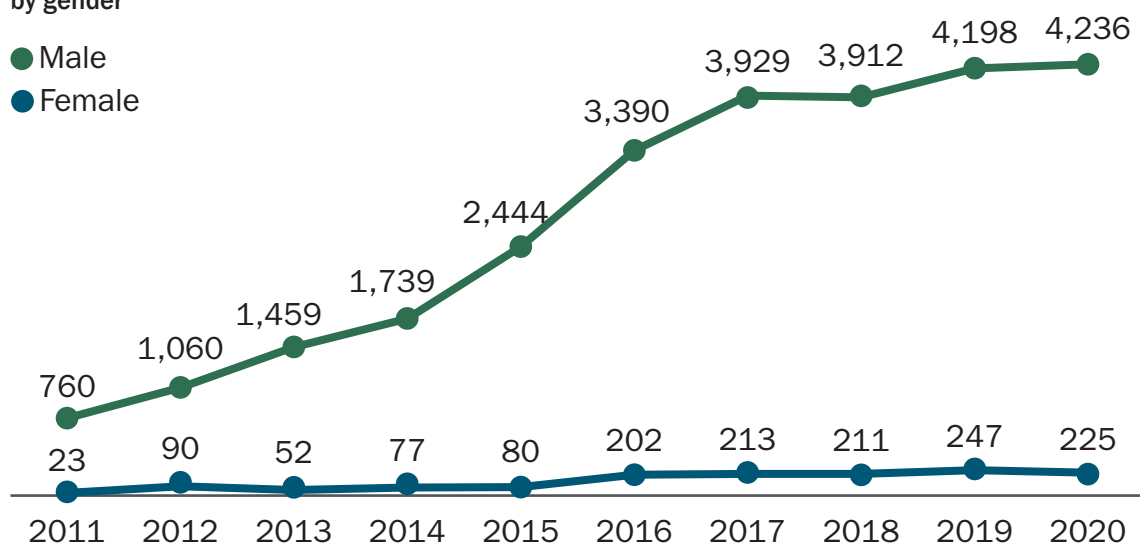
And:

[o]ur experience is that once somebody is in prison, if they haven't been bailed, they're more likely to receive a sentence of imprisonment ... [But] that person hasn't had the opportunity to start any rehabilitation process, or address any of the underlying causes of their offending ... People who are in prison, particularly if you are on remand, you really haven't had access to any programs or opportunity to do so. So, I think that kind of feeds into the sentences that are appropriate and available to that person.¹⁷⁴

5.32 In order to understand what might be specifically driving the increasing imprisonment rates for breach offences, the following figures present the number of breach offences receiving imprisonment by the characteristics of offenders, their offending and where they were sentenced.

5.33 While males received the vast bulk of prison sentences each year, both males and females were much more likely to receive imprisonment by the end of the reference period (Figure 34). The rate of imprisonment for males doubled from 15.9% of all breach offences to 33.3%, and the rate of imprisonment for females almost quadrupled from 3.5% to 13.0% of all breach offences. The overall imprisonment rate for males was 28.3% (27,127 of 95,802 charges) while the overall imprisonment rate for females was 10.7% (1,420 of 13,282 charges).

Figure 34: Number of prison sentences imposed in the Magistrates' Court for breach offences, by gender

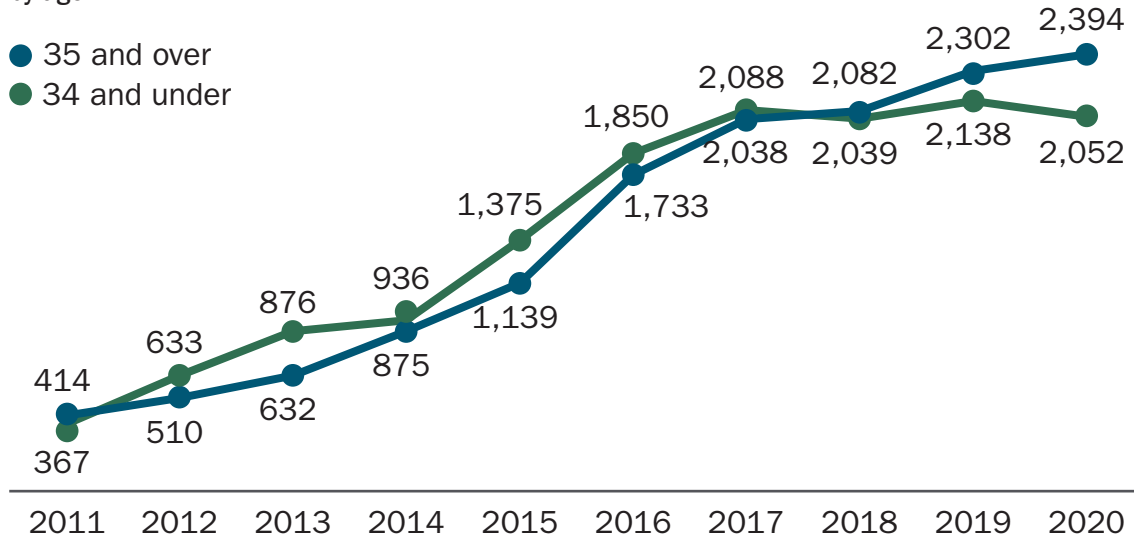


5.34 There was also a significant increase in the number and rate of prison sentences for both breach offenders aged 34 and under and breach offenders aged 35 and over (Figure 35, page 64). The imprisonment rate doubled from 16.9% to 33.5% for breach offenders aged 34 and under, and more than doubled from 12.7% to 28.5% for breach

174. Stakeholder Roundtable (4 February 2022).

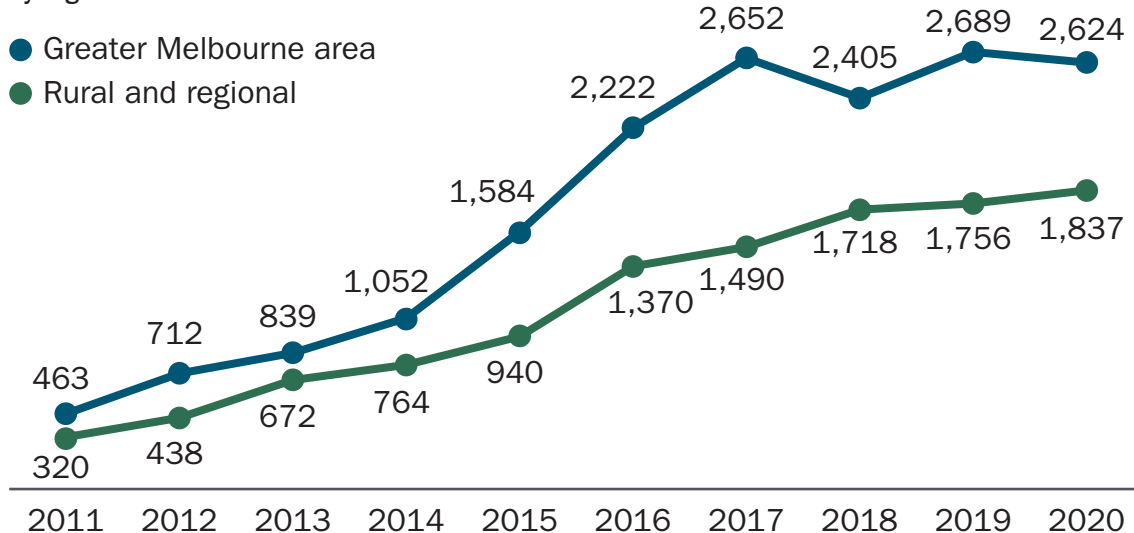
offenders aged 35 and over. The overall imprisonment rate for breach offenders aged 34 and under was 29.2% (14,354 of 49,219 charges) while the overall imprisonment rate for breach offenders aged 35 and over was 23.7% (14,119 of 59,622 charges).

Figure 35: Number of prison sentences imposed in the Magistrates' Court for breach offences, by age



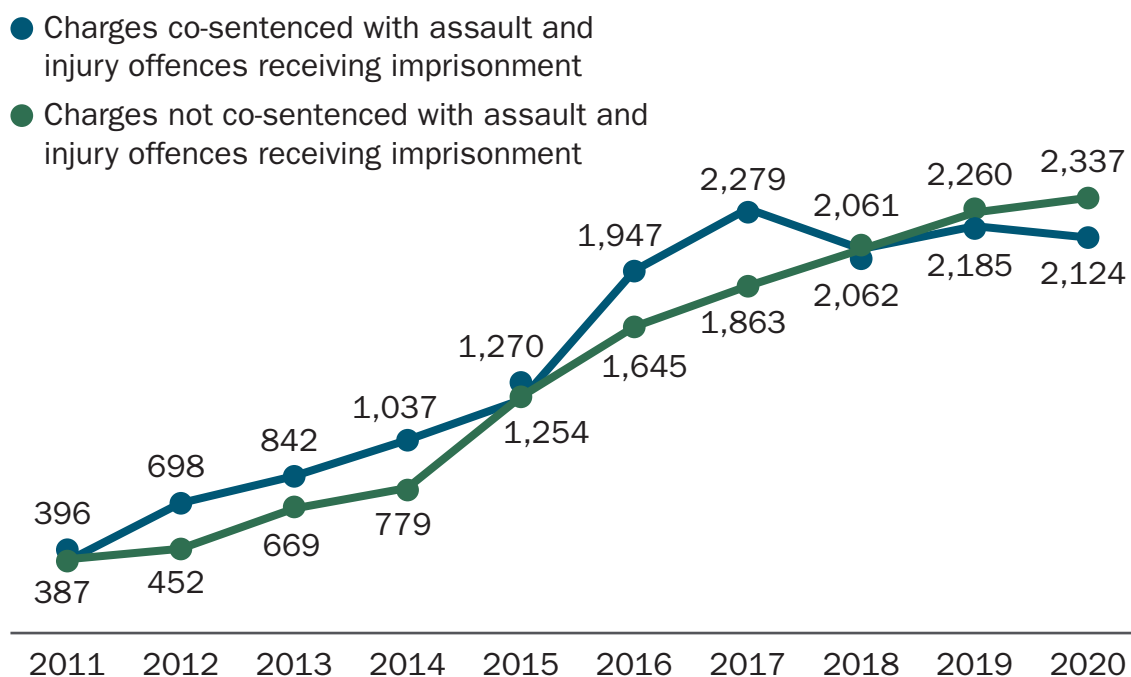
5.35 The proportion of breach offences receiving imprisonment in both the Greater Melbourne area and rural and regional Victoria more than doubled (Figure 36). In 2011, 13.1% of breach offences sentenced in the Greater Melbourne area received imprisonment, as did 16.8% of breach offences sentenced in rural and regional Victoria. By 2019, imprisonment rates had increased to 30.1% in the Greater Melbourne area and 31.6% in rural and regional Victoria. The overall imprisonment rate was 25.6% (17,242 of 67,470 charges) in the Greater Melbourne area and 27.2% (11,305 of 41,614 charges) in rural and regional Victoria.

Figure 36: Number of prison sentences imposed in the Magistrates' Court on breach offences, by region



5.36 Finally, while breach offences were much more likely to receive imprisonment when co-sentenced with assault and injury offences than when *not* co-sentenced with assault and injury offences, the likelihood of imprisonment almost doubled for both: from 25.4% in 2011 to 49.6% in 2019 for breach offences that were co-sentenced with an assault and injury offence and from 10.1% in 2011 to 22.4% in 2019 for breach offences that were not co-sentenced with an assault and injury offence. The overall imprisonment rate was 41.2% (14,815 of 35,957 charges) for breach offences co-sentenced with assault and injury offences, while the overall imprisonment rate was 18.8% (13,732 of 73,163 charges) for breach offences *not* co-sentenced with assault and injury offences.

Figure 37: Number of prison sentences imposed in the Magistrates' Court on breach offences, by co-sentenced violence

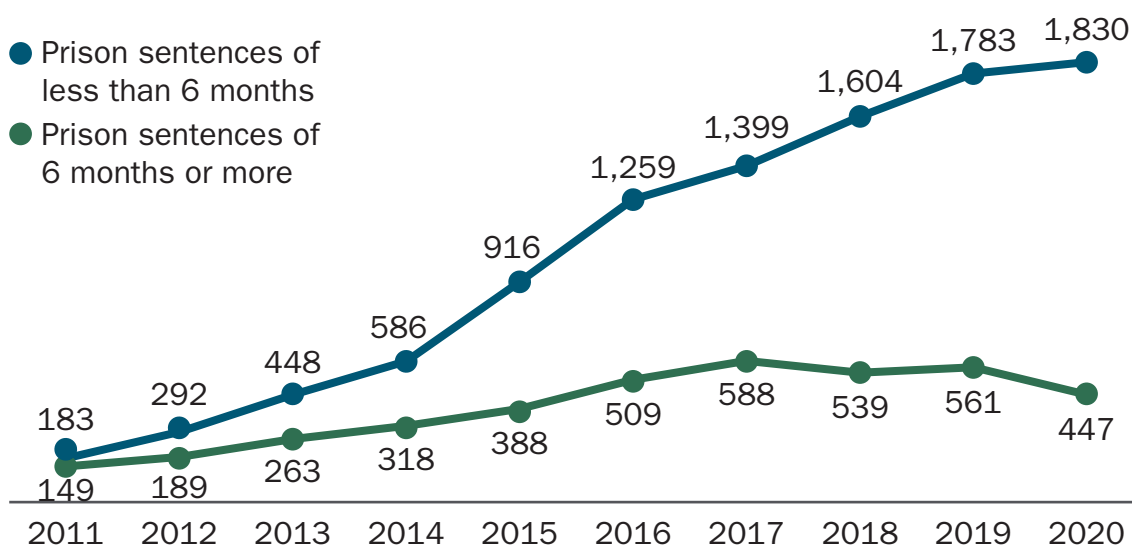


5.37 In effect, the number and rate of breach offences receiving imprisonment have increased at a fairly stable rate regardless of the breach offenders' gender, age or geographic location, or whether the breach offence was co-sentenced with a violent offence.

An increase in short prison sentences

5.38 Instead, it seems that the driver of the increase in prison sentences has been an increase in *short prison sentences*,¹⁷⁵ specifically sentences of six months' imprisonment or less. Figure 38 shows the yearly number of cases in which a breach offender received a total effective sentence of imprisonment (for all the offences in their case) that was either *less than six months*¹⁷⁶ or six months and over. While short prison sentences were almost as common as longer prison sentences in 2011, they have increased significantly since then (there was a tenfold increase in short prison sentences by 2020). Longer prison sentences increased as well but by nowhere near that magnitude, and they have even declined since 2017. By 2020, short prison sentences made up four-fifths (80.4%) of all breach offenders' total effective sentences of imprisonment (compared to 55.1% in 2011).

Figure 38: Number of cases involving breach offences receiving imprisonment each year in the Magistrates' Court, by imprisonment length, 2011 to 2020



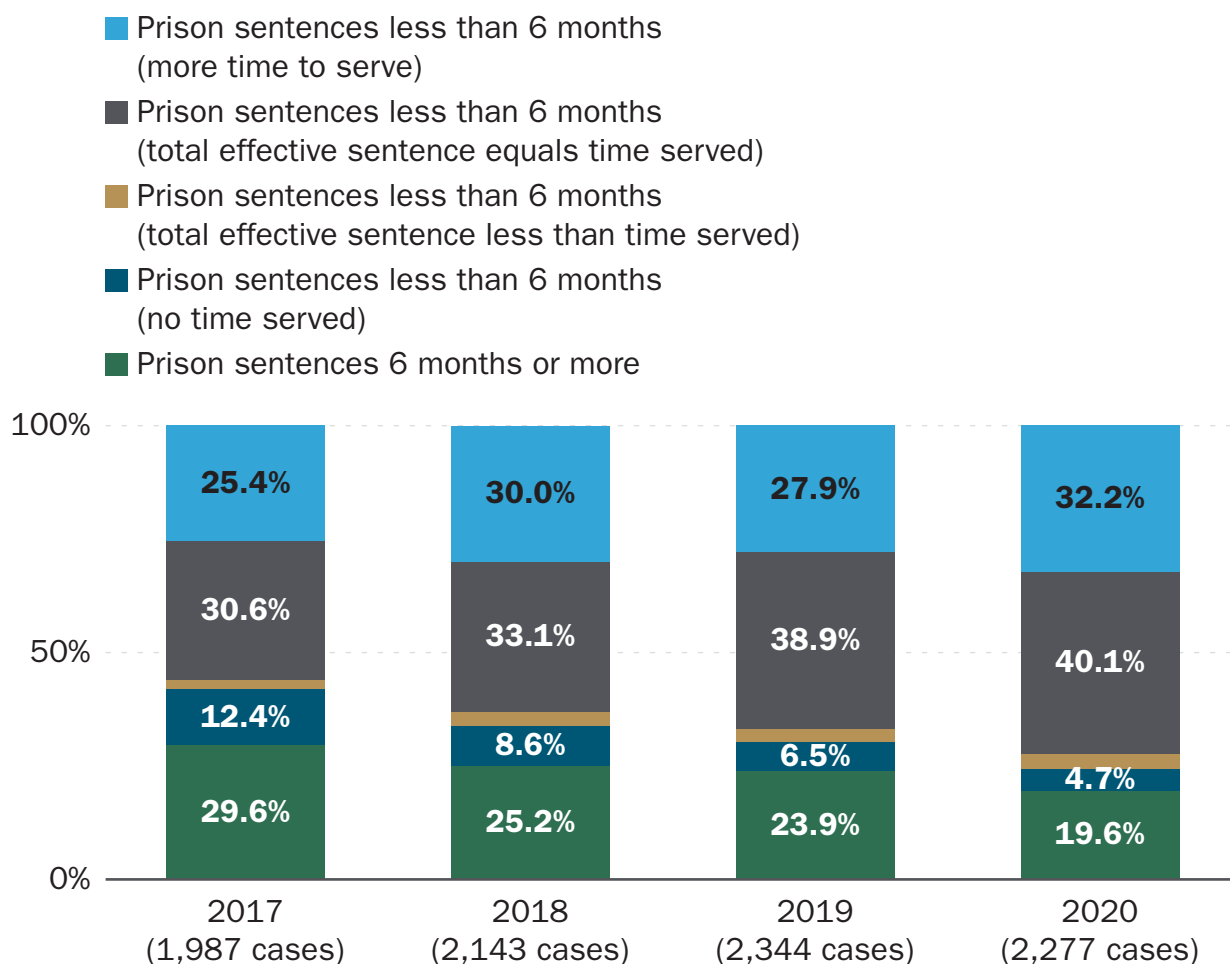
175. See, for example, Productivity Commission, *Australia's Prison Dilemma: Research Report* (2021) 38; New South Wales Sentencing Council, *Abolishing Prison Sentences of 6 Months or Less* (2004); Bronwyn Lind and Simon Eyland, *The Impact of Abolishing Short Prison Sentences*, *Contemporary Issues in Crime and Justice* no. 73 (2002); New South Wales Law Reform Commission, *Sentencing*, Report no. 139 (2013); Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84 (2017) 81–88; *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(2). Short prison sentences of six months or less are abolished in Western Australia: *Sentencing Legislation Amendment and Repeal Act 2003* (WA) s 33(3). Sometimes sentences of 12 months or less are also referred to as short prison sentences, particularly in the UK: see, for example, John Halliday et al., *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (2001); *Criminal Justice and Licensing (Scotland) Act 2010* (Scot) (creating a presumption against prison sentences shorter than 12 months); Scottish Government, *Extended Presumption Against Short Sentences: Monitoring Information July 2019 – December 2019* (2020).

176. Throughout the reference period, short prison sentences of six months or less included 2,346 sentences shorter than one month (22.8% of the 10,266 prison sentences shorter than six months), 2,182 prison sentences of one to less than two months (21.3%), 1,807 prison sentences of two to less than three months (17.6%), 2,121 prison sentences of three to less than four months (20.7%), 1,296 prison sentences of four to less than five months (12.6%) and 514 prison sentences of five to less than six months (5.0%). These proportions did not vary substantially for each year of the reference period.

5.39 The Council has previously found a significant increase in time served prison sentences in recent years, 96% of which were shorter than six months.¹⁷⁷

Figure 39 examines whether time served prison sentences could explain some of the increase in short prison sentences for breach offenders. For data recording and reliability reasons, this analysis is limited to the period from 2017 to 2020. In those four years, there were 8,324 cases in which an offender was sentenced to imprisonment for breach of a FVSN or FVIO.

Figure 39: Proportion of cases involving breach offences receiving imprisonment in the Magistrates' Court, by length of sentence for the case and relationship between time served on remand and the total effective sentence of imprisonment, 2017 to 2020 (8,751 cases)



5.40 The proportion of total effective sentences of imprisonment that were longer than six months decreased significantly, from 29.6% in 2017 to 19.6% in 2020. The proportion of cases also decreased (from 12.4% to 4.7%) where a breach offender had not spent any time on remand but received a total effective sentence of less than six months. Conversely, there was an increase in breach offenders receiving

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

a total effective sentence that was shorter than six months when (a) the time the breach offender spent on remand was longer than the sentence they received (from 2.1% to 3.3%), (b) the breach offender received a time served prison sentence (from 30.6% to 40.1%) and (c) the breach offender still had more time to serve (from 25.4% to 32.2%). In effect, the increase in short prison sentences was driven by both time served prison sentences *and* sentences requiring more time in custody.

- 5.41 Stakeholders cautioned against viewing these short prison sentences, constituted by a combination of time on remand and some additional time in custody, as necessarily inappropriate. Sometimes they can be indicative of a court avoiding artificial outcomes for the sake of expediency:

Sometimes it's a bit artificial to set a term of imprisonment on the day, of the pre-sentence detention. So if you think something is worth four months in prison and [the offender has] served 110 days, you're not going to say 'well I'll release you' ... It's more likely that if a magistrate forms a view that they've served more than enough time, more than the sentence you'd have imposed, that's when you'd release them on a time served sentence.¹⁷⁸

- 5.42 But more importantly, these short prison sentences – involving a brief amount of time in custody beyond the sentencing date – can sometimes be intentionally designed to allow adequate time to plan the offender's transition back into the community:

Sometimes that little bit of extra time, if you're close to the period you've got in mind, is beneficial in assisting some stabilisation, so arrangements for accommodation or family to go and collect them, or the like ... If it's late in the day ... [and] you're sentencing someone at four o'clock, [the prison has] got limited capacity to do that, so it may actually be in the interests of the person you're sentencing and the community in general, even if it's a day extra.¹⁷⁹

Similarly:

[i]t's quite common for there to be a collaborative relationship between the parties and the magistrate. 'Are you ready to come out now? Do you need an extra few days to arrange for some housing?' That does happen, for that planning period to be released, so that [they're] not going back out onto the street, likely to commit more offences.¹⁸⁰

178. Stakeholder Roundtable (4 February 2022).

179. Stakeholder Roundtable (4 February 2022).

180. Stakeholder Roundtable (4 February 2022).

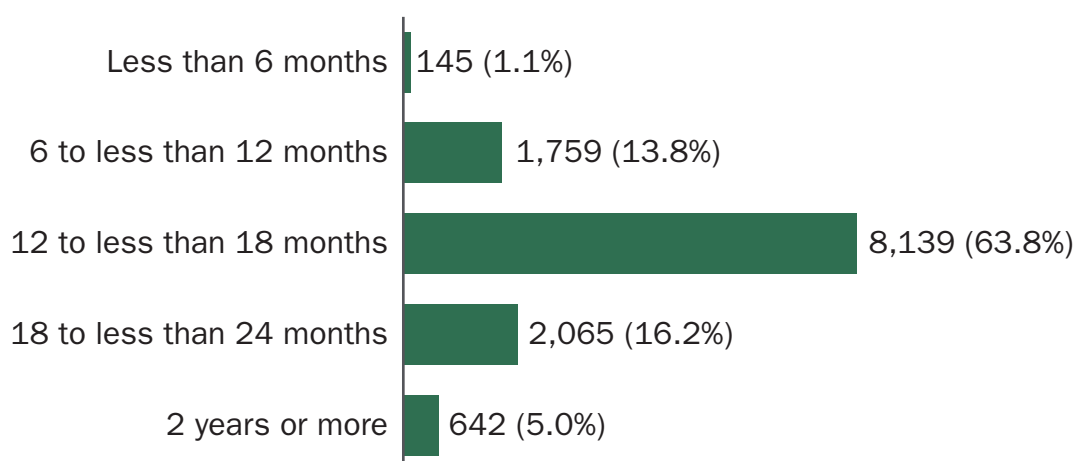
5.43 Stakeholders also suggested that defence counsel sometimes request that the overall term of imprisonment be shorter than six months. This is to ensure that the person has accommodation to return to if they are living in public housing, as there is a six-month cap on how long a public housing property can be held while someone is in prison (or in a rehabilitation facility or nursing home).¹⁸¹

Community correction orders in the Magistrates' Court (2012–)

5.44 CCOs came into effect in January 2012, replacing community-based orders (among other orders). This section analyses the CCOs that were imposed on breaches of FVSNs and FVIOs in the nine years from 2012 to 2020. Each CCO is counted once per case and only if the breach offence itself received a CCO. There were 12,750 cases in which a breach offender received a CCO, with 25,741 breach offences in those cases. Below is an analysis of the duration and conditions of those 12,750 CCOs.

5.45 The most common duration of those CCOs was 12 to less than 18 months (63.8%). Very few CCOs were less than six months (1.1%) or two years and over (5.0%).

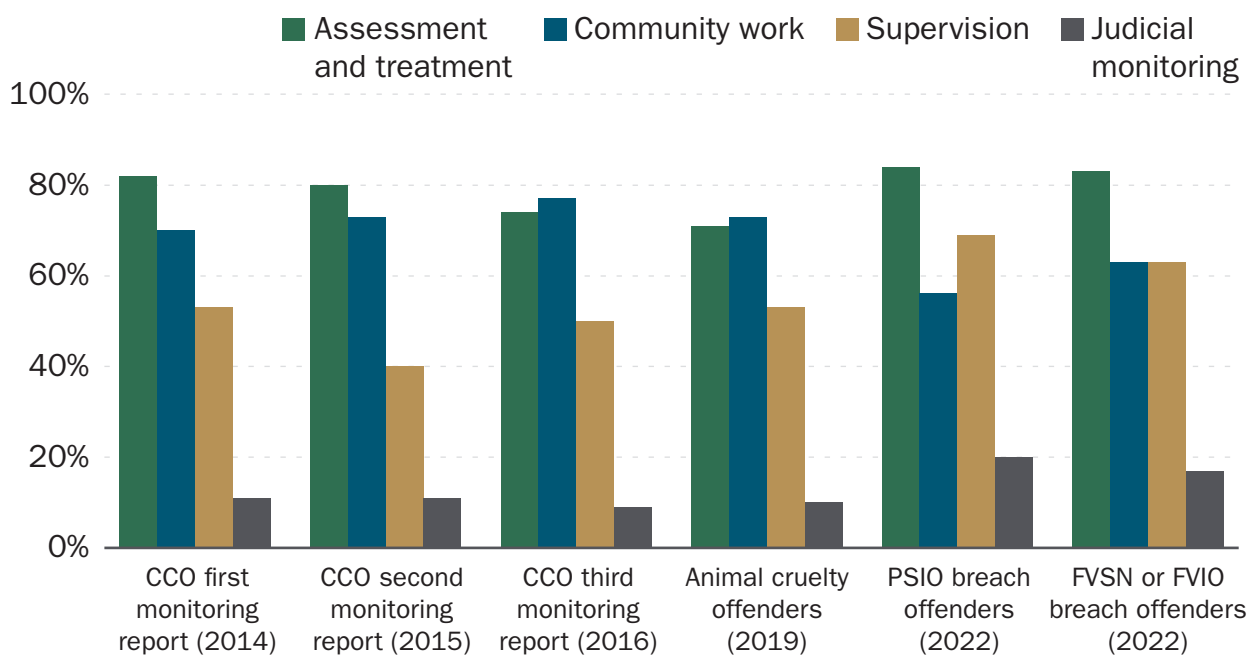
Figure 40: Duration of CCOs imposed on breach offenders in the Magistrates' Court, 2012 to 2020 (12,750 CCOs)



181. Stakeholder Roundtable (4 February 2022). See also Department of Health and Human Services, *Tenancy Management Manual: Temporary Absence Operational Guidelines* (2018) 5.

5.46 Most of the possible conditions that can be attached to CCOs¹⁸² were attached to less than 1% of CCOs: an association restriction (0.8%), a residence restriction (0.3%), a place restriction (0.5%), a curfew condition (0.2%) and an alcohol exclusion condition (0.6%). Justice plan conditions were also fairly uncommon (2.0%). Four conditions were, though, either very or fairly common, and the same four conditions are often attached to CCOs (Figure 41).¹⁸³ The most common condition was assessment and treatment, requiring offenders to undergo assessment for, and/or participate in, treatment and rehabilitation of some sort (82.7%). The next most common were unpaid community work (63.3%) and supervision by correction officers (63.4%). And a judicial monitoring condition was attached to 16.3% of CCOs.

Figure 41: Proportion of CCOs with certain conditions attached imposed in the Magistrates' Court, by different groups of offenders, 2012 to 2020 (12,750 CCOs)¹⁸⁴



182. *Sentencing Act 1991* (Vic) pt 3A div 4.

183. Notably, the conditions attached to CCOs differ from the conditions attached to the now repealed community-based orders. The most common condition attached to community-based orders was community work (82%), followed by supervision (45%) and assessment and treatment (38%): Sentencing Advisory Council, *Exploring the Relationship Between Community-Based Order Conditions and Reoffending* (2014) 14. The conditions attached to CCOs therefore represent a significant shift away from unpaid community work towards more supervisory and rehabilitative conditions.

184. Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (2014) 17; Sentencing Advisory Council, *Community Correction Orders: Second Monitoring Report (Pre-Guideline Judgment)* (2015) 16; Sentencing Advisory Council, *Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)* (2016) 17; Sentencing Advisory Council, *Animal Cruelty Offences in Victoria* (2019) 36–37; Sentencing Advisory Council (2022), above n 12, 58.

- 5.47 As the Council recently found with CCOs imposed for breaches of *non-family* violence intervention orders,¹⁸⁵ CCOs imposed for breaches of FVSNs and FVIOs had a slightly higher rate of assessment and treatment, a slightly lower rate of community work and a slightly higher rate of supervision and judicial monitoring than the rates for all CCOs. This suggests a prioritisation of conditions that facilitate protection of the victim and the community over primarily punitive conditions such as community work.
- 5.48 A number of stakeholders raised concerns about the limited availability of men's behaviour change programs in Victoria, and how that affects the ability of courts to confidently mandate participation in a treatment program as a condition of a breach offender's sentence:

One of the big problems with contraventions is the lack of funding for Corrections and for behavioural change programs. When we sentence someone to a good behaviour bond or a corrections order and make it a mandatory condition that they must engage in drug or alcohol counselling, or men's behaviour change programs, we often get breaches coming back. Or judicial monitoring where they're [still] in the queue waiting for a program. We might have someone on an 18-month order and we're six months in and they still haven't started their counselling ... I think often we see breaches of these sentences because the problems are not addressed at the start. And I think in combination sentences, where people are imprisoned and they're sober or drug-free, that's one of the best times to start programs. You could start them in custody, continue on release, but ... funding is a huge problem. And I think we would see far fewer breaches if treatment was front-ended. If treatment went for longer. If we didn't have people waiting in queues. It's months before they can start them, and breaches happen in that time, and people's safety is affected every day because these programs can't start.¹⁸⁶

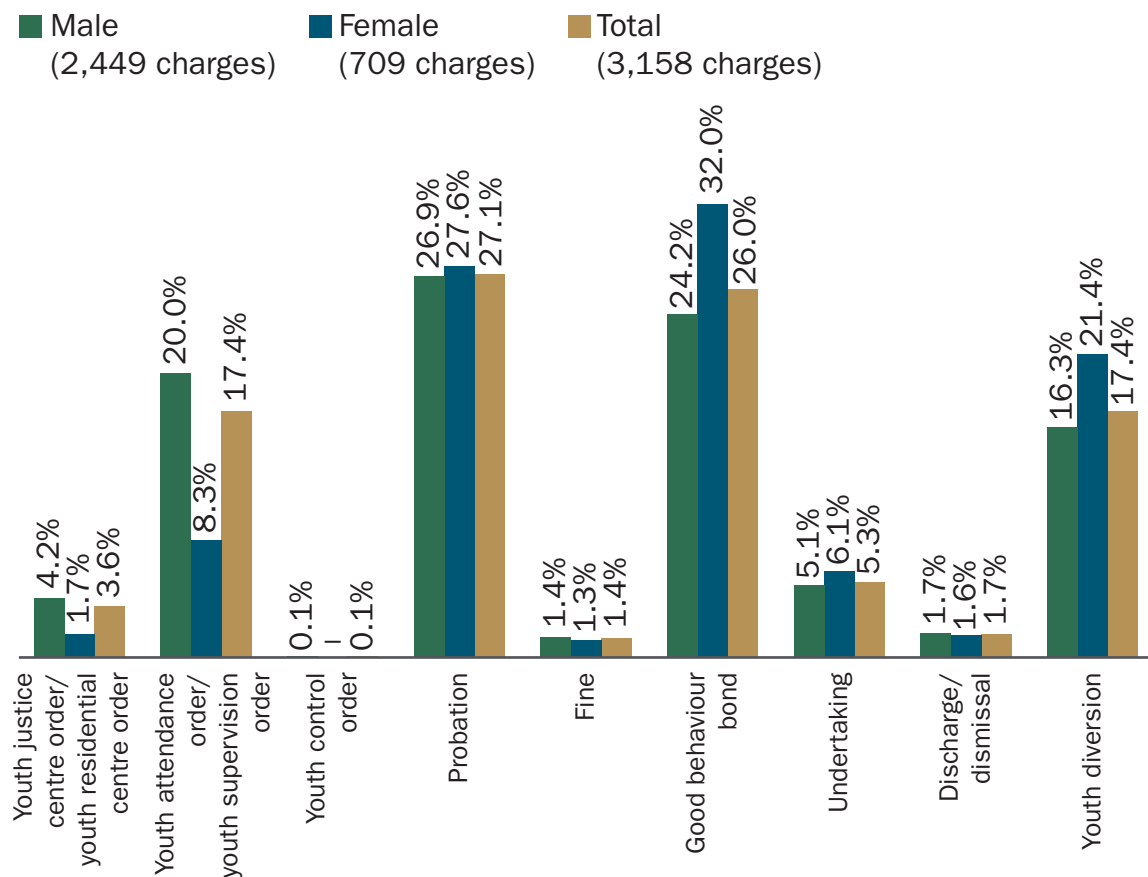
185. Sentencing Advisory Council (2022), above n 12, 58.

186. Stakeholder Roundtable (4 February 2022).

Sentencing outcomes: Children's Court

5.49 There were 3,158 breaches of FVSNs and FVIOs sentenced in 1,776 cases in the Children's Court. Figure 42 shows that, for both male and female children, the most common outcomes were probation and good behaviour bonds. Until recently, they were also the two most common outcomes generally in the Children's Court; diversion, which first became available in 2015 and was rolled out statewide in 2017, now makes up more than one-third of all outcomes for breaches of FVSNs and FVIOs, and more than one-third of all outcomes in the Children's Court generally.¹⁸⁷ Male children were more than twice as likely as female children to receive both a youth justice centre order or a youth justice residential centre order (4.2%) and a youth attendance order or a youth supervision order (20.0%);

Figure 42: Sentence types imposed in the Children's Court for breach offences, by gender, 2011 to 2020 (3,158 charges)



187. Sentencing Advisory Council, 'Sentencing Outcomes in the Children's Court' (sentencingcouncil.vic.gov.au, 2021) <<https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/sentencing-outcomes-childrens-court>> at 17 March 2022.

these orders represent the most severe sentencing options in the Children's Court. In comparison, female children were much more likely than male children to receive a good behaviour bond or diversion.

- 5.50 While the rate of custodial sentences was low in the Children's Court overall (3.6%), it varied by breach offence type: 9.1% for persistent breach offences, 5.2% for aggravated breach offences and 3.1% for non-aggravated breach offences. It also varied by age. None of the 344 breach offences committed by children aged under 15 received a custodial sentence, and custodial sentences were imposed for only three of the 526 breach offences committed by children aged 15.

Sentencing outcomes: higher courts

- 5.51 The most common sentence imposed in the higher courts for breaches of FVSNs and FVIOs was imprisonment (82.8% or 618 of 746 charges), with a high rate of imprisonment for each breach offence type. This was followed by community orders (8.4% or 63 charges) and fines (4.3% or 32 charges). The other 33 charges received conviction and discharge (12 charges), a youth justice centre order or youth training centre order (6), a partially suspended sentence (6), an adjourned undertaking (5), dismissal without conviction (2), discharge without conviction (1) and a hospital security order (1). Male offenders had a higher proportion of prison sentences (83.7%) than did female offenders (60.9% of the 23 female offenders).

83% imprisonment
81% non-aggravated breach offences
83% persistent breach offences
91% aggravated breach offences

Imprisonment lengths

- 5.52 Imprisonment lengths varied between the breach offence types. The median duration of non-aggregate prison sentences was three months for non-aggravated breach offences, but it was six months for both aggravated breach offences and persistent breach offences. The longest prison sentences for a breach offence were two and a half years (a persistent breach offence),¹⁸⁸ two years and two months (a persistent breach offence) and two years (two persistent breach offences)¹⁸⁹

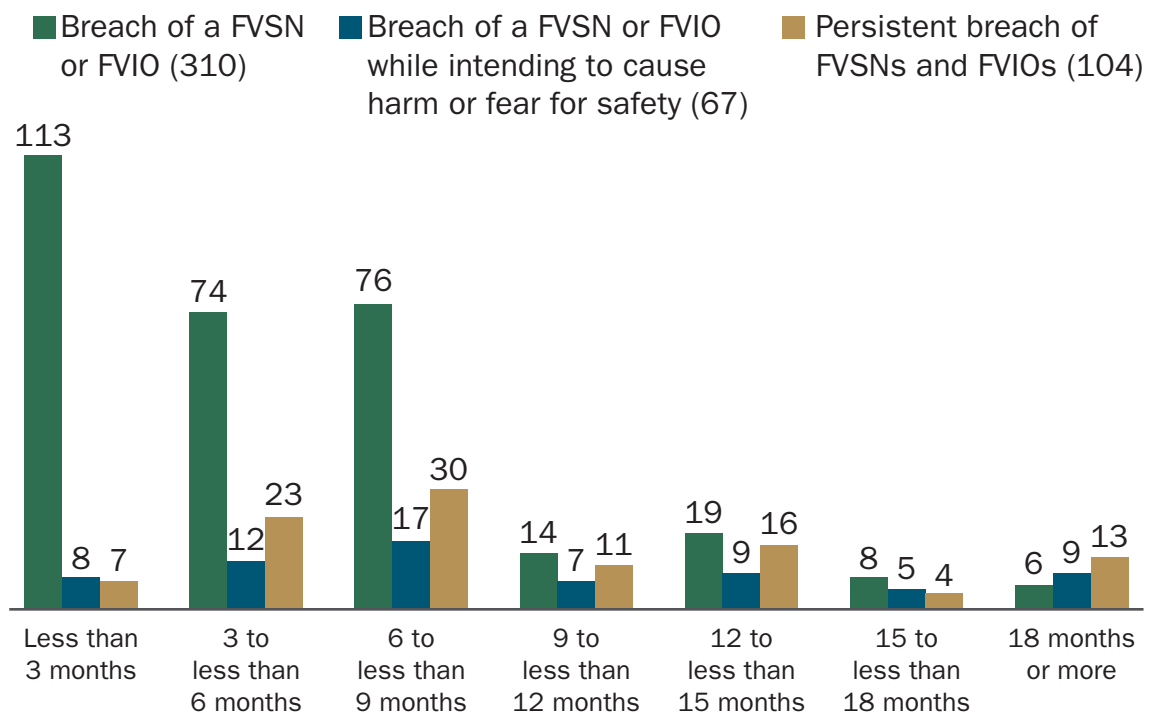
188. *DPP v Bambalis* [2018] VCC 2075.

189. The sentencing remarks in one of these cases are publicly available: *DPP v Sumbul* [2017] VCC 1974.

and three aggravated breach offences¹⁹⁰). The longest prison sentence for a non-aggravated breach offence was 18 months (five charges in three cases¹⁹¹).

5.53 Sentencing remarks were available for 219 non-aggregate prison sentences imposed in the higher courts for breach offences. Of these, 99 (45.2%) were wholly concurrent with other prison sentences in the case, 109 (49.8%) were partly concurrent and partly cumulative, and just six (2.7%) were either the most severe sentence in the case¹⁹² (three prison sentences) or wholly cumulative (three prison sentences). For five charges, the extent of cumulation was unclear.

Figure 43: Lengths of non-aggregate prison sentences imposed in the higher courts for breach offences, 2011 to 2020 (481 non-aggregate prison sentences)



190. *DPP v Ferguson (A Pseudonym)* [2014] VCC 1993 (a rolled up charge); *DPP v Bao (A Pseudonym)* [2020] VCC 1508.

191. The sentencing remarks in one of these cases are publicly available: *DPP v Grima* [2014] VCC 1700.

192. The sentencing remarks in one of these cases were publicly available. The offender suffered from significant mental health issues to the point that they were not fit to stand trial, had been remanded for more than 600 days, pleaded guilty and received a one-month prison sentence for two charges of persistent breach of a FVIO. The judge considered imposing a time served prison sentence to be 'so out of proportion': *DPP v Saunders* [2020] VCC 1859.

Appendix 1: Methodology

This report utilises data provided by the Crime Statistics Agency and Court Services Victoria. Unless otherwise specified, the reference period for the data examined in this report is the 10 years from 1 January 2011 to 31 December 2020.

Data on family violence safety notices issued by police

In response to a data request, the Crime Statistics Agency provided the Council with the following data in relation to family violence safety notices (FVSNs) issued during the reference period:

- the number of FVSNs issued by police each year;
- the relationship between the primary affected family member and the respondent in each FVSN;
- the age and gender of each primary affected family member; and
- the age and gender of each respondent.

Data on family violence intervention orders issued by courts

In response to a data request, Court Services Victoria provided the Council with the following data in relation to family violence intervention order (FVIO) applications and FVIOs during the reference period:

- the number of FVIO *applications* made each year and the court in which each application was made;
- the number of *interim* FVIOs issued by courts each year, and the court issuing the FVIO;
- the number of *final* FVIOs issued by courts each year and for each of those:
 - the justice region in which the FVIO was issued;
 - the number of protected persons named in the order;
 - the age and gender of the protected person(s);
 - the age and gender of the respondent;
 - the relationship between the respondent and the protected person(s); and
 - the duration of the FVIO.

Data on breaches of FVSNs and FVIOs recorded by police

In response to a data request, the Crime Statistics Agency provided the Council with the following data in relation to the offences of breach of a FVSN or FVIO contrary to sections 37, 37A, 123, 123A and 125A of the *Family Violence Protection Act 2008* (Vic):

- the number of breach offences recorded by police during the reference period;
- the duration of recorded breach offences; and
- the age and gender of the alleged breach offender.

Demographic details of any complainants involved in a breach offence are not recorded by police. Neither is the relationship between the respondent and any complainants involved.

Data on breaches of FVSNs and FVIOs sentenced by courts

Court Services Victoria routinely provides the Council with data on sentencing outcomes. The Council cleans and checks the data once it is received. This report incorporates data from all Victorian courts: the Children's Court, the Magistrates' Court, the County Court and the Supreme Court.

Reference is occasionally made in this report to sentencing remarks from cases sentenced in the higher courts. Those references are based on sentencing remarks publicly available via the Australasian Legal Information Institute (AustLII).

Unless otherwise specified, *sentence types* presented in this report represent the most serious penalty imposed for a charge or case. For example, if an offender received imprisonment combined with a community correction order (CCO) pursuant to section 44 of the *Sentencing Act 1991* (Vic), this would be counted as a sentence of imprisonment rather than a community order.

At various points in this report, some of the breach offences have been combined for the purpose of simplifying the analysis. In particular, in analysing sentencing outcomes in the Magistrates' Court, the offences of breach of a FVSN and breach of a FVIO (sections 37 and 123 of the *Family Violence Protection Act 2008* (Vic)) have been combined (described as *non-aggravated breach offences*). This is because the breach offences are almost identical in nature and share a two-year maximum penalty; they differ almost exclusively in who issued the order: police or the courts. Similarly, the aggravated offences of breaches of FVSNs and FVIOs while intending to cause harm or fear for safety have been combined (sections 37A and 123A).

Due to data availability and reliability, lengths of prison sentences imposed in the Magistrates' Court for breaches of FVSNs and FVIOs are not provided in this report. This is because sentence lengths for charges can only be discerned if the court has imposed a non-aggregate (discrete) sentence on the particular offence. There is an extremely high rate of aggregate sentences (over 90%) in the Magistrates' Court, both generally and for breaches of FVSNs and FVIOs. Many of the remaining 10% of sentences for breach charges appear to also be part of aggregate prison sentences despite not being recorded as such.

Time spent on remand

The higher courts record total effective sentences of imprisonment in months and pre-sentence detention in days. The Magistrates' Court records sentence length in months and days and records pre-sentence detention in days. To equate these, a month was considered to be 30.4 days (365 days across 12 months equals 30.4 days per month). To account for differences in measurement, data entry errors and any delays in administrative processing, a total effective sentence of imprisonment was considered equal to the time spent on remand (a *time served prison sentence*) if they were within three days (inclusive) of each other.

Classifying co-sentenced offences

The offences recorded in each court's database are associated with an Australian and New Zealand Offence Classification (ANZSOC) group number, which are defined by the Australian Bureau of Statistics.¹⁹³ The Council undertakes some quality assurance regarding the ANZSOC codes associated with each offence recorded in the sentencing data. Throughout this report, the discussion of 'offence types' refers to ANZSOC subdivisions, being the second-broadest category of offence classification. There are, though, four occasions where customised offence groupings were used to ensure that the data is as meaningful as possible. In particular, most breaches of community orders are bail-related offences, so bail-related offences were analysed separately from other offences relating to breaches of community orders. Similarly, most harassment and threat offences are threat offences, so threat offences were grouped separately from other offences in that category, and this included threats to distribute intimate images, which are otherwise classified in ANZSOC as non-contact sex offences. Finally, breaches of family violence intervention orders and safety notices, the focus of this report, were also analysed separately, as they are otherwise classified as justice procedures offences.

193. Australian Bureau of Statistics (2011), above n 143.

Ethnicity data

While it would be ideal to include data on ethnicity of respondents, affected family members and breach offenders, that data is currently either unavailable or not easily accessible. It is not recorded by police issuing FVSNs or courts issuing FVIOs, nor by courts sentencing breach offenders. It is recorded by corrections staff upon intake of an offender into a correctional facility, but the data would require prohibitively resource-intensive data linkage in order to match it with sentencing outcomes; even then, it would only represent those breach offenders who entered a correctional facility.

Police also often record data on country of birth for recorded offenders; however, as the Crime Statistics Agency has observed, 'knowing a person's country of birth does not necessarily tell you anything definitive about a person's ... ethnic or racial background or ancestry'.¹⁹⁴ The need for improved collection of data on ethnicity by criminal justice agencies, both generally and in the context of family violence offending, was raised as a concern at the Council's roundtable:

We need better data. In relation to ethnicity and cultural differences. It's absolutely essential. Because without that data we can't actually develop enough intervention programs that are culturally relevant, and provide all those other help-seeking services to people from all these different backgrounds.¹⁹⁵

194. Crime Statistics Agency, 'What is Country of Birth Information in Police Recorded Crime Statistics and What Can it Tell You?' (crimestatistics.vic.gov.au, 2021) <<https://www.crimestatistics.vic.gov.au/media-centre/news/what-is-country-of-birth-information-in-police-recorded-crime-statistics-and-what>> at 17 March 2022.

195. Stakeholder Roundtable (4 February 2022).

Appendix 2: Consultation

Date	Meeting
6 December 2021	Meeting with Geraldine Bilston, Deputy Chairperson, Victim Survivor Advisory Council (via Teams)
4 February 2022	<p data-bbox="592 725 1378 777">Stakeholder Roundtable</p> <ul data-bbox="592 777 1378 1563" style="list-style-type: none"> <li data-bbox="592 777 1378 828">• Magistrates' Court of Victoria <li data-bbox="592 828 1378 880">• Victoria Legal Aid <li data-bbox="592 880 1378 931">• Victoria Police <li data-bbox="592 931 1378 983">• Victorian Aboriginal Legal Service <li data-bbox="592 983 1378 1034">• Criminal Bar Association <li data-bbox="592 1034 1378 1086">• Victorian Law Reform Commission <li data-bbox="592 1086 1378 1137">• Safe & Equal <li data-bbox="592 1137 1378 1189">• Family Safety Victoria <li data-bbox="592 1189 1378 1240">• No to Violence <li data-bbox="592 1240 1378 1292">• InTouch <li data-bbox="592 1292 1378 1429">• Deakin Research on Violence Against Women (DRVAW) Hub <li data-bbox="592 1429 1378 1480">• Office of Public Prosecutions <li data-bbox="592 1480 1378 1532">• Law Institute of Victoria <p data-bbox="592 1532 1378 1610">(via Zoom)</p>

Glossary

Affected family member	A person deemed in need of protection by a FVSN or in a FVIO application.
Aggravated breach offence	A collective term used to describe the offences of breaches of FVSNs and FVIOs while intending to cause, or knowing the conduct will probably cause, physical or mental harm, apprehension or fear for safety, contrary to sections 37A and 123A of the <i>Family Violence Protection Act 2008</i> (Vic).
Breach charge	In this report, a charge of breaching a FVSN or FVIO.
Breach offence	In this report, an offence of breaching a FVSN or FVIO.
Breach offender	In this report, a person who has breached a FVSN or a FVIO.
Case	One or more charges against a person that are prosecuted, sentenced or diverted at one hearing.
Charge	A single count of an offence.
Family incident	An incident attended by Victoria Police where a Victoria Police Risk Assessment and Risk Management Report (also known as an LI7 form) was completed and recorded on LEAP.
Family Law Act order	An order, injunction or arrangement referred to in <i>Family Law Act 1975</i> (Cth) s 68R.
Family violence intervention order (FVIO)	As defined in section 11(1) of the <i>Family Violence Protection Act 2008</i> (Vic), an interim FVIO or a final FVIO as per sections 11(2) and 11(3) of the <i>Family Violence Protection Act 2008</i> (Vic).
Family violence safety notice (FVSN)	As defined in section 4 of the <i>Family Violence Protection Act 2008</i> (Vic), a FVSN issued under section 26 of the <i>Family Violence Protection Act 2008</i> (Vic).
Higher courts	In this report, the County and Supreme Courts of Victoria.
Non-aggravated breach offence	A collective term used to describe the offences of breaching a FVSN or breaching a FVIO contrary to sections 37 and 123 of the <i>Family Violence Protection Act 2008</i> (Vic).

Protected person	In this report, a person protected by a FVSN or FVIO.
Primary affected family member	The person deemed to be most in need of protection by a FVSN or FVIO either before or after an order is in force.
Primary protected person	The person deemed to be most in need of protection by a FVSN or FVIO that is in force.
Recorded offence	As defined by the Crime Statistics Agency, 'any criminal act or omission by a person or organization for which a penalty could be imposed by the Victorian legal system ... An offence is counted and included in the data where it: was reported to, or detected by, Victoria Police'.
Reference period	In this report, the 10-year period from 1 January 2011 to 31 December 2020.
Respondent	In this report, a person who has had a FVSN, FVIO application or FVIO made against them.
Total effective sentence	The total term of imprisonment that an offender receives after a sentencing judicial officer has combined all individual terms of imprisonment imposed on charges within a case.
Victim survivor	In this report, a person who has been a victim of family violence.

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