

# The Criminal Justice Diversion Program in Victoria Second Statistical Profile

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## **Acknowledgement of Country**

The Sentencing Advisory Council acknowledges the Traditional Owners of the lands and waters on which we live and work, and we pay our respects to them, their culture and their Elders past and present.

## **Stakeholder acknowledgments**

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- Law Institute of Victoria (Diversion Working Group);
- Magistrates' Court of Victoria;
- Victoria Legal Aid;
- Victoria Police; and
- Women's Legal Service Victoria.

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## Executive summary

This statistical profile presents data on the use of the Criminal Justice Diversion Program (CJDP) in the Magistrates' Court in the 10 years to 30 June 2021. It includes the demographics of people receiving diversion plans, the principal proven offences people were prosecuted for, the conditions of their diversion plans, and their criminal history before and after receiving the diversion plan. It also updates the findings of our first CJDP statistical profile published in 2008.

Key findings include:

- more than 50,000 people received a diversion plan in the 10 years to 30 June 2021;
- during the 10 years, there was a numerical and proportional increase in the use of diversion plans, making up 6.6% of all Magistrates' Court outcomes by 2020–21 (there were almost 6,000 diversion plans in the year before COVID-19 affected court operations);
- while men made up the majority of people receiving diversion plans (67.3% of diversion plans), women were much more *likely* than men to receive diversion plans (8.7% of all women's cases, compared to 5.2% of men's), especially in cases with a family violence flag (17.3% of women's cases with a family violence flag, compared to 5.2% of men's cases with a family violence flag);
- both younger people (aged 18 to 19) and older people (aged 65 and over) were more likely to receive diversion plans (16.8% and 10.8% respectively) than people aged 20 to 64 (6.1%), most likely because of the unique mitigating factors associated with people who offend early or later in life;
- a diversion plan was most commonly imposed in cases involving property offences, such as theft and criminal damage (13.9%), and least commonly imposed in cases involving traffic offences, such as speeding (1.6%), which is likely because there are significant restrictions on the availability of diversion plans for traffic offences;
- diversion plans have gotten longer over time, from an average of 3.6 months in 2011–12 to 5.4 months in 2020–21 (the legislated maximum is 12 months);
- the vast majority of diversion plans are successfully completed (93.3%);
- the four most common conditions of diversion plans are to be of good behaviour (68.0% of diversion plans), to make a donation to either the Court Fund or a charitable organisation (63.6%), to write a letter of apology to the victim or a letter of gratitude to the police informant (47.1%), and to compensate the victim (12.8%);
- there were some significant changes over time in the types of conditions included in a diversion plan, with the letter of apology or gratitude condition almost halving (from 64.6% to 38.4%) and the good behaviour condition almost doubling (from 44.8% to 87.2%);

- people who received a diversion plan were significantly less likely to have any prior offences in the last five years (11.0%) than people receiving other court outcomes (35.8%); and
- people who received a diversion plan were also significantly less likely to reoffend in the next five years (21.3%) than people receiving other court outcomes (40.2%).

# 1. Introduction

The Criminal Justice Diversion Program (CJDP) is a pre-plea diversion program available for eligible defendants in the Magistrates' Court of Victoria,<sup>1</sup> and is primarily (but not exclusively) aimed at first-time offenders.<sup>2</sup> It involves adjourning proceedings for up to 12 months so that the person can complete a diversion plan, which will involve certain conditions. Examples of conditions include apologising to the victim, compensating the victim, completing an education course, undertaking counselling or treatment, or donating to a charitable organisation.

The CJDP began as a pilot program in 1997 in Broadmeadows Magistrates' Court. It became available statewide in 2001 and formally became ongoing in July 2003.<sup>3</sup> A 2004 evaluation showed positive results, with a 94% completion rate.<sup>4</sup> In addition, our 2008 analysis found that over 90% of participants successfully completed their diversion plans.<sup>5</sup>

To be eligible for a diversion plan, the defendant must acknowledge responsibility for the offending,<sup>6</sup> the offending must not preclude the defendant from accessing the CJDP,<sup>7</sup> the court must consider it appropriate to make the order,<sup>8</sup> and the prosecution and the defendant must consent.<sup>9</sup> The prosecution's decision whether to consent to a diversion plan is guided by the 'diversion matrix' established by Victoria Police. A copy of the current matrix, which has been revised over time, is included in the Appendix. The requirement of prosecutorial consent for a diversion plan is a controversial one, with many justice system stakeholders advocating for its removal, and a recent parliamentary inquiry into the Victorian criminal justice system recommending that prosecutorial consent be reviewed.<sup>10</sup>

If a defendant receives a diversion plan and completes it to the satisfaction of the court, they are discharged without receiving a finding of guilt or a conviction.<sup>11</sup>

1. *Criminal Procedure Act 2009* (Vic) s 59. Previously, *Magistrates' Court Act 1989* (Vic) s 128A (repealed).
2. Magistrates' Court of Victoria, 'Diversion' ([mcv.vic.gov.au](http://mcv.vic.gov.au), 2022).
3. Sentencing Advisory Council, *Criminal Justice Diversion Program in Victoria: A Statistical Profile* (2008) 2.
4. Silvia Alberti et al., *Court Diversion Program Evaluation: Final Report* (2004) 6–8.
5. Sentencing Advisory Council (2008), above n 3, 3.
6. *Criminal Procedure Act 2009* (Vic) s 59(2)(a).
7. *Criminal Procedure Act 2009* (Vic) s 59. A diversion plan is not available for offences against section 49(1) of the *Road Safety Act 1986* (Vic) (driving under the influence of alcohol or drugs) or offences punishable by minimum or fixed sentences or penalties, including licence suspensions, disqualifications and cancellations. However, it is still available for driving offences that attract demerit points: *Criminal Procedure Act 2009* (Vic) s 59(1).
8. The court will seek the views of any victims in the matter, and a court registrar will interview the defendant: Magistrates' Court of Victoria (2022), above n 2.
9. *Criminal Procedure Act 2009* (Vic) s 59(2)(c).
10. Parliament of Victoria, Legislative Council, Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System* (2022) 218–227, 495–502. See also Liberty Victoria, *Justice Diverted? Prosecutorial Discretion and the Use of Diversion Schemes in Victoria* (2018).
11. *Criminal Procedure Act 2009* (Vic) s 59(4).

If they do not complete the diversion plan to the satisfaction of the court, the matter continues as a contested matter (unless the defendant pleads guilty), and their previous acknowledgment of responsibility cannot be used as evidence against them.<sup>12</sup> If they later plead guilty or are found guilty, the court must take into account at sentencing the extent to which they complied with the CJDP.<sup>13</sup>

### Other types of diversion in Victoria

The CJDP is not the only diversionary initiative in Victoria. Other initiatives include police cautions for adults,<sup>14</sup> drug diversion cautions for adults,<sup>15</sup> police cautions for children,<sup>16</sup> infringement notices and official warnings,<sup>17</sup> prosecutorial discretion not to proceed with charges,<sup>18</sup> and Children’s Court youth diversion.<sup>19</sup> The Magistrates’ Court’s Assessment and Referral Court (ARC) List also enables participants to have their case adjourned for up to one year to allow them to receive psychological, health, disability, housing, or drug and alcohol treatment services.<sup>20</sup> Similar to successful completion of a diversion plan, successful participation in an ARC plan allows the court to discharge the offender without making a finding of guilt.<sup>21</sup>

Each of these initiatives operates at different stages of the criminal justice system and has different requirements and rules. The focus of this statistical profile, however, is exclusively the CJDP.

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12. *Criminal Procedure Act 2009* (Vic) s 59(3).

13. *Criminal Procedure Act 2009* (Vic) s 59(5).

14. These are formal procedures available for people who have admitted relatively minor offending, but they are currently limited to low-level cannabis and shop-theft offending: Victoria Police, ‘Cautions’, *Victoria Police Manual* (2022) 2–4.

15. These are similar to police cautions but require the person to successfully participate in a treatment program if they are found in possession of a small quantity of illicit drugs: *ibid* 3, 6–7.

16. If the child’s parent or guardian consents, the police officer can have an informal discussion with the child and their parent or guardian about inappropriate behaviour and its consequences: Victoria Police, ‘Disposition of Offenders’, *Victoria Police Manual* (2022) 3. A police caution may also involve referrals to appropriate support agencies.

17. Police officers can issue an infringement notice or official warning to someone who has committed certain offences in the *Summary Offences Act* or the *Bail Act*: *ibid* 5–6.

18. Victoria Police, ‘Brief Preparation and Management’, *Victoria Police Manual* (2022) 6; Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions* (2023) 3–5.

19. This allows the court to adjourn the proceedings for up to 6 months to allow the child to complete a diversion program: *Children, Youth and Families Act 2005* (Vic) ss 356B, 356D(2). This can include requirements such as engaging in sport or music activities, receiving support to improve school attendance, writing a letter of apology, or participating in counselling: Children’s Court of Victoria, ‘Youth Diversion Service’ ([childrenscourt.vic.gov.au](http://childrenscourt.vic.gov.au), 2022). As with the CJDP in the Magistrates’ Court, successful participation in a youth diversion plan requires the court to discharge the child without a finding of guilt, and unsuccessful participation requires the court to consider the extent of participation if the child is later found guilty: *Children, Youth and Families Act 2005* (Vic) s 356I.

20. *Magistrates’ Court Act 1989* (Vic) ss 4S, 4T.

21. *Magistrates’ Court Act 1989* (Vic) s 4Y.

## The Council's first statistical profile on the CJD (2008)

In 2008, we published a statistical profile of all 5,201 people who received a diversion plan in the 2006–07 financial year (accounting for 7.2% of all Magistrates' Court outcomes that year).<sup>22</sup> Some of the key findings in that statistical profile included that:

- 91.3% of diversion plans were successfully completed (the other 8.7% were not successfully completed, and the person was sentenced for their offending);
- the vast majority of diversion plans (84.5%) were 4 months or less (51.3% were 3 to 4 months, and 33.2% were 1 to 2 months), and just 2.0% were 9 months or longer;
- while men made up the majority of people receiving diversion plans (71.2%), women were much more likely than men to receive diversion plans (11.0% compared to 6.4% of men);
- both younger people (aged 17 to 19) and older people (aged 65 and over) were most likely to receive a diversion plan as the outcome in their case (17.4% and 16.1% respectively), both more than twice the rate of adults aged 20 to 64 (6.9%);
- the offence type most likely to result in a diversion plan was a property offence such as theft (14.4% of cases involving a property offence received a diversion plan), and the offence type least likely to result in a diversion plan was a traffic offence (3.4% of cases involving traffic offences received a diversion plan);
- the five most common offences in cases resulting in a diversion plan (*diversion cases*), collectively accounting for 39.4% of all diversion cases, were careless driving (13.7%), theft (8.1%), shop-theft (7.3%), unlawful assault (5.8%) and criminal damage (4.5%); and
- the most common conditions in diversion plans were making a donation (71.7% of diversion plans), making an apology (33.1%), writing a letter of gratitude to the police informant (24.0%) and compensating the victim or victims (17.7%).

## Aim of this statistical profile

The aim of this statistical profile is to update our 2008 report and examine whether there have been any changes in the use of diversion plans since then. It has been 16 years since the 2008 report was published, and much has changed in the Victorian criminal justice system in that time. In addition, this statistical profile will introduce three novel analyses that were unavailable in 2008:

- analysis of trends over time for a number of variables, made possible by the use of a larger, 10-year reference period (1 July 2011 to 30 June 2021);
- an analysis of diversion plans in family violence cases, made possible by the introduction of a family violence indicator in the Magistrates' Court database in 2015; and
- an examination of prior offending and reoffending by people receiving diversion plans, made possible by our reoffending database, which was developed in 2012.

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22. Sentencing Advisory Council (2008), above n 3.

## Methodology

The statistics in this report derive from two extracts of Magistrates' Court's data: one from the Courtlink system, which has information about cases dealt with in the criminal division,<sup>23</sup> and another from the Platypus database, which contains details of diversion plans imposed in the Magistrates' Court.<sup>24</sup> A data-matching operation was conducted to link the two datasets together using unique identifiers and key dates. There were 50,988 cases receiving a diversion plan in the Courtlink dataset during the 10-year reference period. The data-matching operation was successful in matching 46,671 (91.5%) of these Courtlink cases with their corresponding records in the Platypus database such that the diversion plans for this subgroup were reliably linked to their associated conditions.

The index population in this statistical profile is everyone identified in Courtlink as having received a diversion plan in the 10 years from 1 July 2011 to 30 June 2021 (i.e. people involved with the 50,988 cases that received a diversion plan). The index population excludes people who were initially considered for a diversion plan but did not, for whatever reason, receive one (e.g. because the prosecution did not consent, or the court did not consider it appropriate).

In some parts of this statistical profile, other populations are used as a point of comparison (e.g. people who received outcomes other than a diversion plan). And in other parts, subsets of the index population are examined (e.g. people receiving diversion plans in particular years). Platypus data was only included in this statistical profile where a reliable linkage could be established with one of the 50,988 cases in the Courtlink dataset.

Reliable data became available in 2015 to identify whether a Magistrates' Court case involved family violence; as such, the analysis of family violence cases is limited to 2015–16 onwards. Where a case has a family violence flag, this indicates that at least one offence in the case occurred in a family violence context, but not which offence or offences in that case. The family violence flag is variously described throughout this statistical profile as either a 'family violence flag' or a 'family violence indicator'.

This statistical profile focuses exclusively on the duration and conditions of diversion plans at first instance as this reflects what the court originally regarded as an appropriate response to the offending. In some instances, a case may involve more than one diversion plan, or the original diversion plan changes over time (e.g. due to a change in circumstance); however, these events are not within the scope of this profile.

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23. Courtlink is the current case management system for criminal matters heard in the Magistrates' Court. It contains information such as the age and gender of the defendant, the number and type of offences they have been charged with, and the sentence or disposition given for each charge once the matter has been finalised.

24. The Platypus case management system records information about the conditions, durations and successful completion rates of diversion plans.



## 2. The characteristics of diversion cases

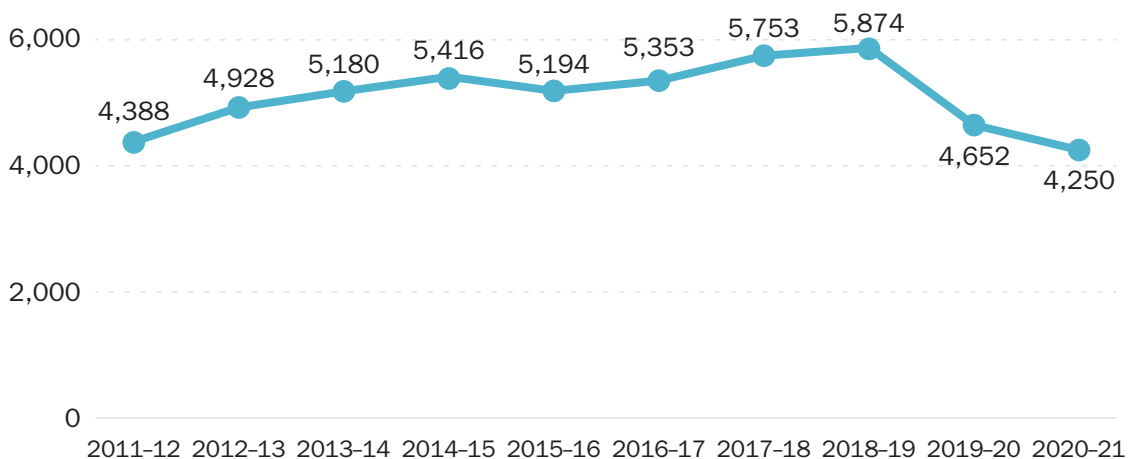
This chapter focuses on the characteristics of all cases that received a diversion plan (*diversion cases*). Importantly, the data does not illustrate the *likelihood* of receiving diversion plans for these characteristics (for that analysis, see Chapter 3). For instance, the data in this chapter shows that men constituted the majority of people receiving diversion plans, but that is because of their over-representation in the criminal justice system generally. In comparison, the data in Chapter 3 shows that women were more *likely* to receive diversion plans than men were. Nevertheless, the data in this chapter is important in painting a picture of who is receiving diversion plans.

### Number of diversion plans

In the 10 years to June 2021, people received a diversion plan in 50,988 cases.

The number of diversion cases each year has increased steadily since 2011–12 (Figure 1). The number peaked at almost 6,000 people in 2018–19 and declined thereafter. However, the recent decrease is almost certainly due to the effect of COVID-19 on court operations. In particular, from March 2020, courts had reduced capacity to manage their workloads, and they prioritised more serious cases that were less likely to receive a diversion plan, especially where people were being held on remand or were facing imprisonment.

**Figure 1:** Number of diversion cases, by year (50,988 cases)



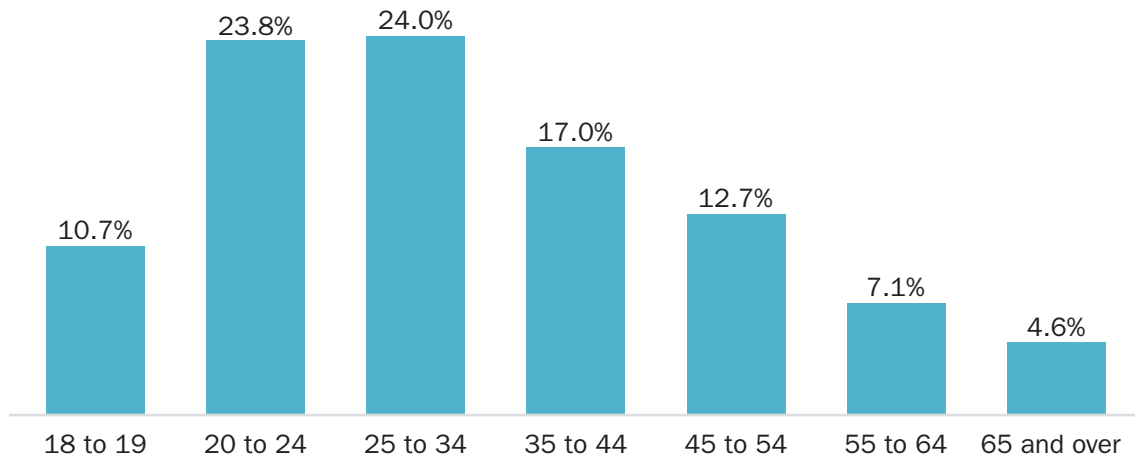
## Age and gender of people receiving diversion plans

Two-thirds of people receiving diversion plans in the 10 years to 2020–21 were men (67.3%).<sup>25</sup> This is slightly less than our finding in 2008 that 71.2% of people receiving diversion plans were men.<sup>26</sup>

**Two-thirds of people receiving a diversion plan were men**

Almost half of all people receiving diversion plans (47.8%) were aged between 20 and 34 (Figure 2), though a significant proportion were aged 18 or 19 (10.7%).<sup>27</sup> These rates are also broadly similar to those in our 2008 profile,<sup>28</sup> suggesting that, as with our finding on gender, the ages of people receiving diversion plans have not changed much over the years.

**Figure 2:** Ages of people receiving diversion plans (50,630 cases)



## Successful completion rates

It was possible to determine the successful completion rates for the 46,671 cases that were reliably matched with Courtlink data. Of those 46,671 diversion plans, 93.3% were successfully completed (43,545 diversion plans). The remaining 6.7% were not (3,126 diversion plans). This high success rate is largely consistent with the successful completion rates found in the 2004 and 2008 reviews of the CJD (94% and 91% respectively).<sup>29</sup>

**93% of diversion plans are successfully completed**

25. This percentage excludes 68 people whose gender was unknown. These 68 people were excluded from subsequent analyses relating to gender. If this group had been included, they would have accounted for 0.1% of the diversion population.

26. Sentencing Advisory Council (2008), above n 3, 5.

27. This percentage excludes 358 people whose age was unknown. These 358 people were also excluded from subsequent analysis relating to age. If this group had been included, they would have accounted for 0.7% of the diversion population.

28. Sentencing Advisory Council (2008), above n 3, 5.

29. Ibid 3; Silvia Alberti et al. (2004), above n 4, 6.

### Diversion cases with a family violence flag

A reliable family violence flag has been available for Magistrates’ Court cases since mid-2015. That flag indicates that at least one of the offences in a case occurred in a family violence context. Of the 31,076 cases resulting in a diversion plan in the six years to 30 June 2021, 5,381 (17.3%) involved at least some family violence related offending.

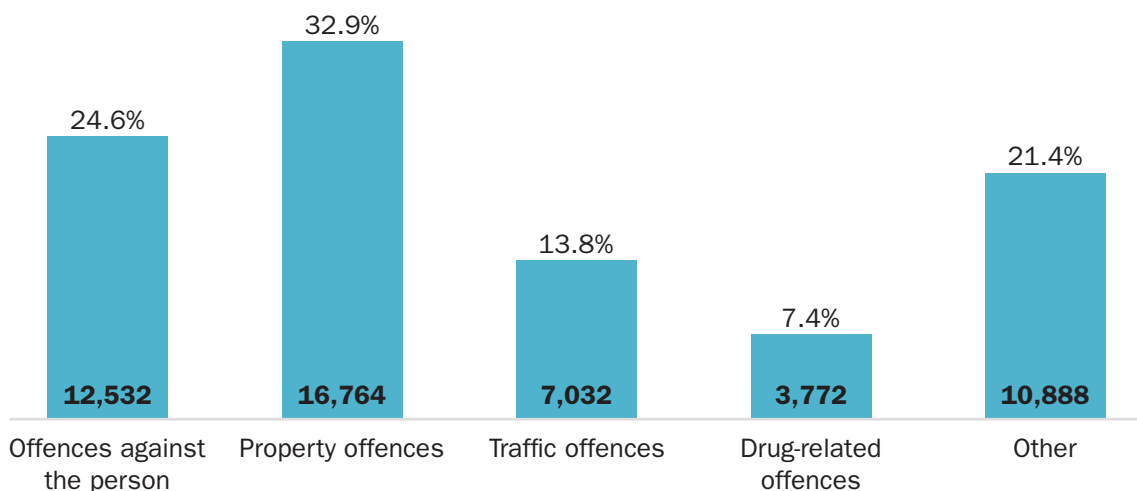
**17% of diversion cases had a family violence flag**

### Offence types in diversion cases

Only principal proven offences have been examined in analysing the offence types in the 50,988 cases resulting in a diversion plan. The *principal proven offence* is the most serious offence in each case, as measured by the offence receiving the most serious penalty or having the most serious ranking according to the National Offence Index.<sup>30</sup>

Property offences, such as theft and fraud, represented one-third of all diversion cases (Figure 3), and offences against the person another one-quarter. This suggests that there have been some significant shifts in the offence profile of diversion cases since 2006–07.<sup>31</sup> In particular, the prevalence of offences against the person more than doubled (from 11.6% to 24.6% of diversion cases), drug-related offences substantially increased (from 4.7% to 7.4%) and traffic offences reduced significantly (from 21.7% to 13.8%).

**Figure 3:** Offence types in diversion cases, 2011–12 to 2020–21 (50,988 cases)



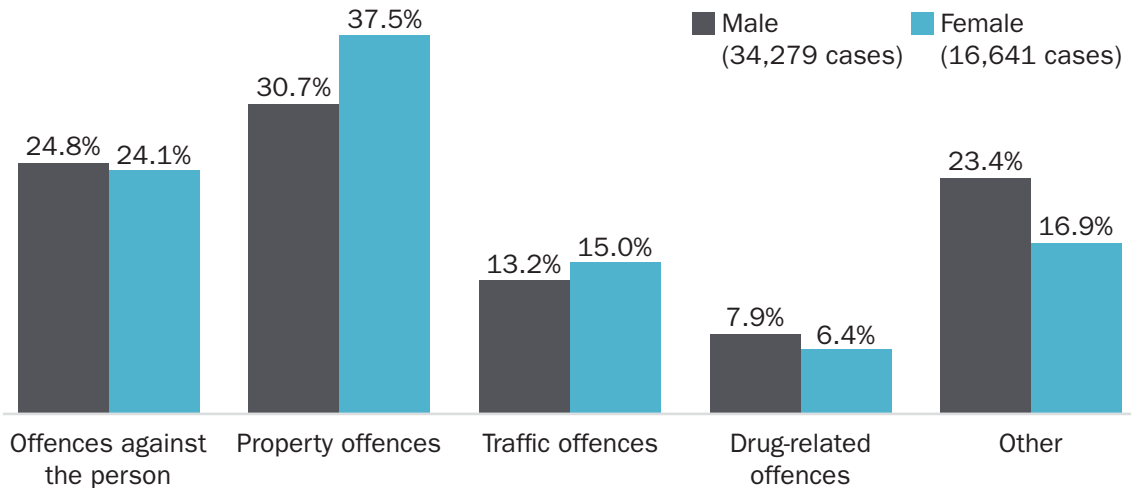
30. Australian Bureau of Statistics, ‘National Offence Index’ (abs.gov.au, 2018). If two or more charges were at the same level of severity in the National Offence Index, then the principal proven offence was allocated to the offence with the lowest charge number on the charge sheet for the case (e.g. charge 1 rather than charge 2).

31. Sentencing Advisory Council (2008), above n 3, 6.

These rates also varied by the demographics and characteristics of the relevant people and cases:

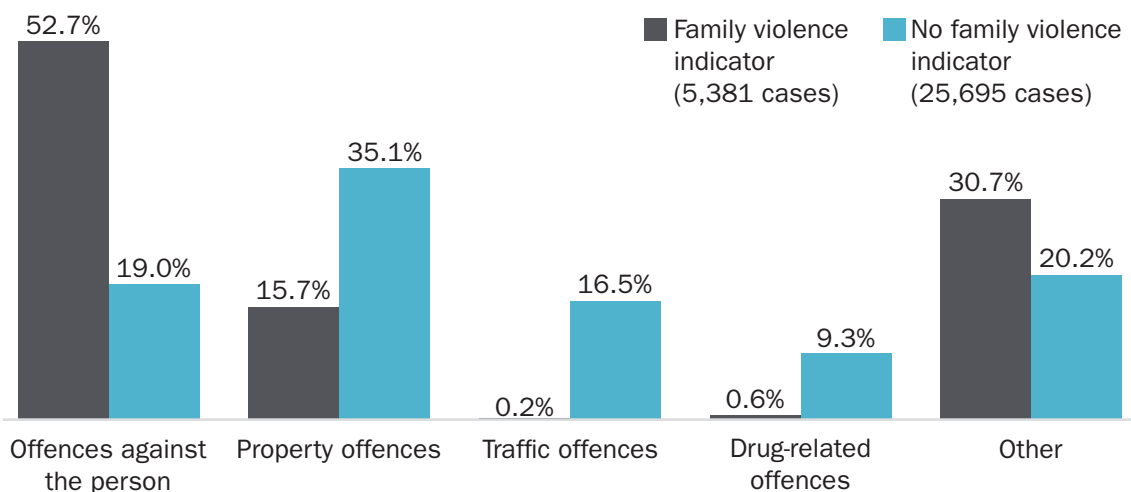
- **Gender:** property offences were the most common offence types in both men's and women's diversion cases, but at a higher proportion for women than for men (37.5% and 30.7% respectively) (Figure 4).

**Figure 4:** Offence types in diversion cases, by gender



- **Family violence:** between July 2015 and June 2021, offences against the person made up just over half of all diversion cases with a family violence flag (52.7% compared to 19.0% of diversion cases with no family violence flag) (Figure 5). In comparison, property offences, traffic offences and drug-related offences made up a much larger proportion of diversion cases with no family violence flag. This is consistent with the offence profile of family violence cases generally. The vast majority of family violence offences tend to be assaults and breaches of court orders (with the latter classified here as part of the 'other' offences).<sup>32</sup>

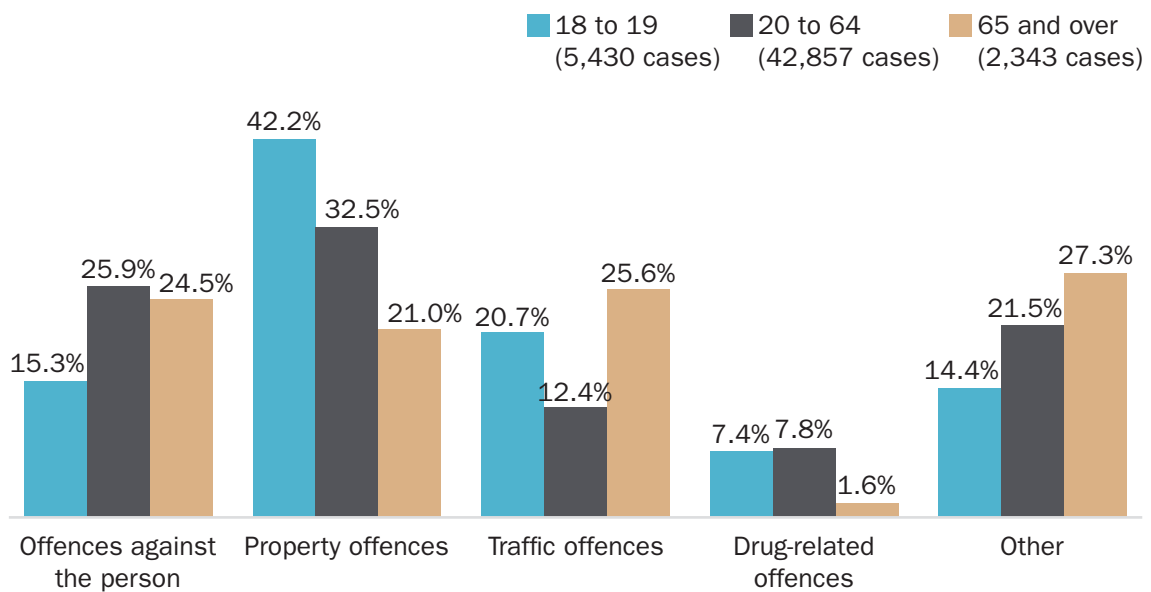
**Figure 5:** Offence types in diversion cases, by family violence indicator



32. See, for example, Sentencing Advisory Council, *Reforming Adjourned Undertakings: Consultation Paper* (2022) 25 (finding that, together, assault and injury offences and justice procedure offences accounted for over 80% of family violence cases resulting in an adjourned undertaking).

- Age:** for offenders aged 18 to 19, almost half of diversion cases involved property offences (42.2%), whereas this age group had a relatively low rate of offences against the person (15.3%) (Figure 6). In comparison, for offenders aged 65 and over, the most common offence type (excluding ‘other’) in diversion cases was traffic offences (25.6%). Notably, this represents a significant decrease in the proportion of traffic offences in diversion cases for this age group since 2006–07, from 41.2% to 25.6%, and a doubling in offences against the person, from 12.2% to 24.5%.<sup>33</sup>

**Figure 6:** Offence categories in diversion cases, by age group



### Specific offences in diversion cases

Beyond high-level offence groupings, it is also useful to examine which *specific* offences were most common in diversion cases. The three most common principal proven offences in all diversion cases were unlawful assault<sup>34</sup> (14.1% or 7,164 cases), theft<sup>35</sup> (13.5% or 6,861 cases) and careless driving<sup>36</sup> (7.8% or 3,968 cases) (Figure 7, page 10). Effectively, unlawful assault and careless driving have switched places in prevalence since 2006–07, when careless driving was the most common offence in diversion cases (13.7%) and unlawful assault was the fourth most common (5.8%).<sup>37</sup>

33. Sentencing Advisory Council (2008), above n 3, 14.

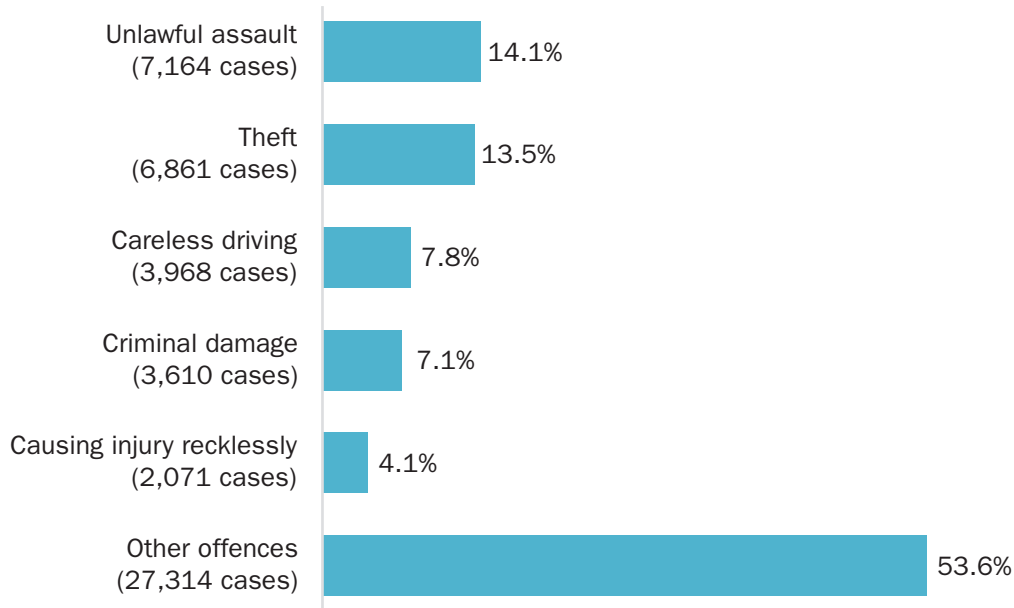
34. *Summary Offences Act 1966* (Vic) s 23.

35. *Crimes Act 1958* (Vic) s 74. This includes shop-theft (3,529 cases), theft of a motor vehicle (249 cases), theft from a motor vehicle (130 cases), theft of a bicycle (79 cases), theft of a trailer (13 cases), theft of a boat or maritime vessel (3 cases), and theft where there was no further information available on what was stolen (2,858 cases).

36. *Road Safety Act 1986* (Vic) s 65.

37. Sentencing Advisory Council (2008), above n 3, 6.

**Figure 7:** The five most common principal proven offences in diversion cases (50,988 cases)



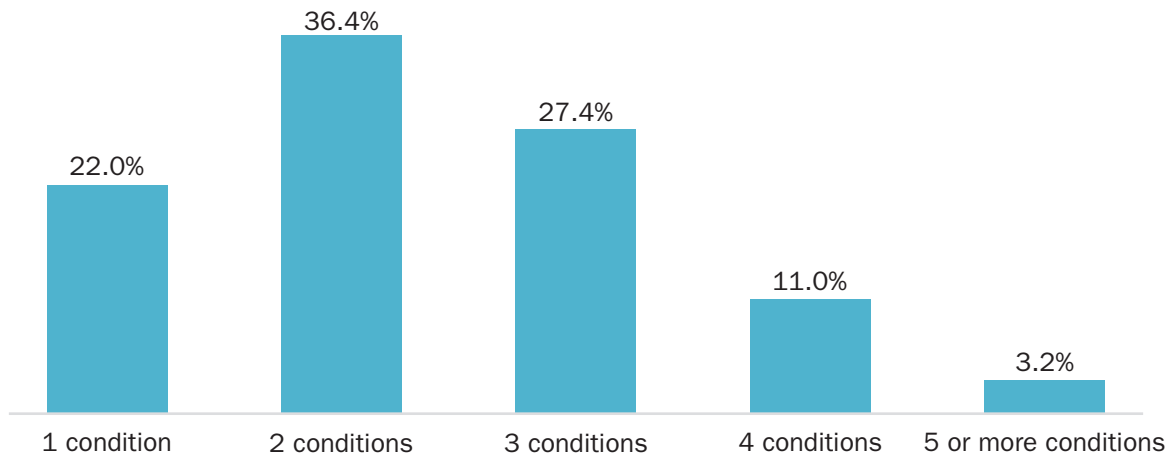
The offence types in diversion cases varied by offender demographics and case characteristics:

- **Gender:** unlawful assault was the most common offence in both men's and women's diversion cases (14.2% and 13.8% respectively). However, the offence of shop-theft was four times more prevalent in women's diversion cases (13.6%) than in men's (3.7%), whereas criminal damage was more common in men's diversion cases (8.1% compared to 5.0% of women's diversion cases).
- **Age:** in diversion cases for offenders aged 18 to 19, the most common offence was careless driving (15.5%), followed by criminal damage (9.3%) and unlawful assault (7.4%). The offence profile for younger people receiving diversion plans was therefore notably different from the offence profile for older people, for whom unlawful assault was the most common offence in diversion cases. For instance, for people aged 65 and over, the most common offences in diversion cases were unlawful assault (14.6%) and careless driving (9.4%), and for people aged 20 to 64, the most common offences were unlawful assault (14.9%), criminal damage (7.1%) and shop-theft (6.9%) with careless driving being the fourth most common offence (6.8%).
- **Family violence:** noting that a family violence indicator was only available from July 2015 onwards (31,076 diversion cases), unlawful assault was still the most common offence in diversion cases both with and without a family violence flag, but at vastly different rates (36.1% of diversion cases with a family violence flag, and 10.6% of diversion cases without a family violence flag). Unsurprisingly, breaching a family violence intervention order or safety notice, including breaches intended to cause harm or fear, and persistent breaches, represented another one-quarter of diversion cases with a family violence flag (25.4%), whereas the next most common offences were shop-theft (9.0%) and careless driving (8.7%) in diversion cases without a family violence flag.

### Conditions of diversion plans

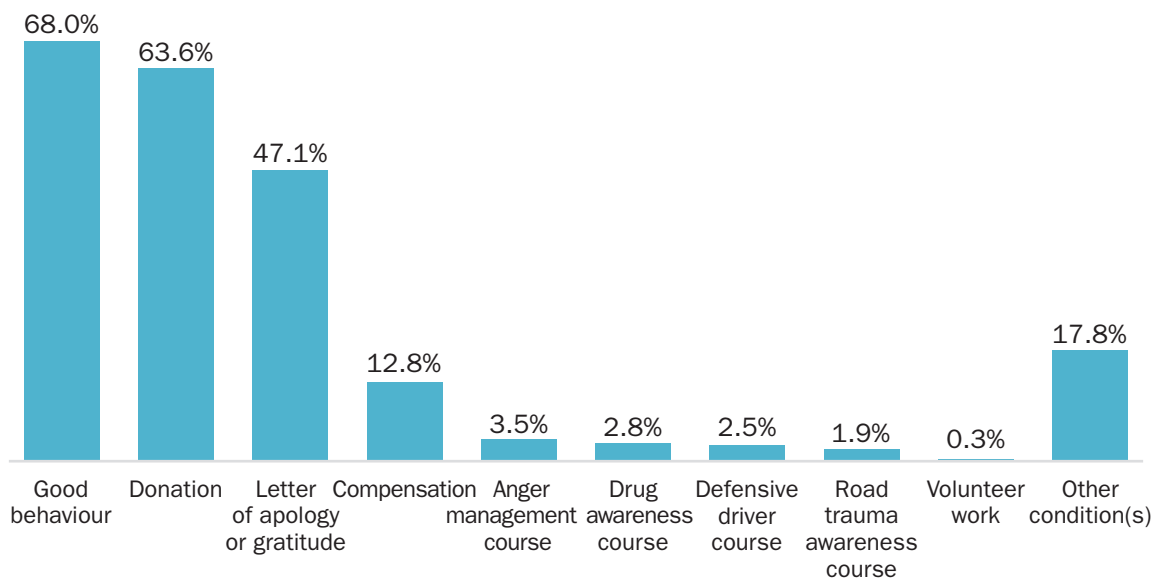
Most diversion plans had three or fewer conditions (85.8%), with a median of two conditions per diversion plan (Figure 8).<sup>38</sup> There were 13 cases involving 10 or more conditions, the most being 17 conditions (in two cases). The defendants in these two cases both had 13 separate compensation conditions, two letters of apology or gratitude, one donation condition and one good behaviour condition.

**Figure 8:** Number of conditions in diversion plans (46,612 cases)



As shown in Figure 9, the three most common conditions of diversion plans were to be of good behaviour (68.0%), to make a donation to either the Court Fund or a particular charity (63.6%),<sup>39</sup> and to write a letter of apology to the victim or a letter of gratitude to the informant (47.1%).

**Figure 9:** Conditions of diversion plans (46,671 cases)



38. There were 59 diversion plans for which the data suggested there were zero conditions.

39. For an overview of the difference between donations to the Court Fund and donations to particular charities, see Sentencing Advisory Council (2022), above n 32, 47–54.

The values of the donations were specified for 28,982 of the 29,660 diversion plans with a known donation condition. Across the 10-year period, there was a total of \$9,004,439.23 in donations ordered across those 28,982 diversion plans. That is an average of \$311 per donation, ranging from \$10 (in 7 cases) to \$66,838 (in 1 case). The latter donation was a significant outlier given the next highest donation was \$26,795 (1 case) – the defendant was a corporation in both cases. For natural persons, the largest donation was \$10,000 (1 case). The median donation for the 28,892 cases was \$250.

**In 10 years, there was a total of:**

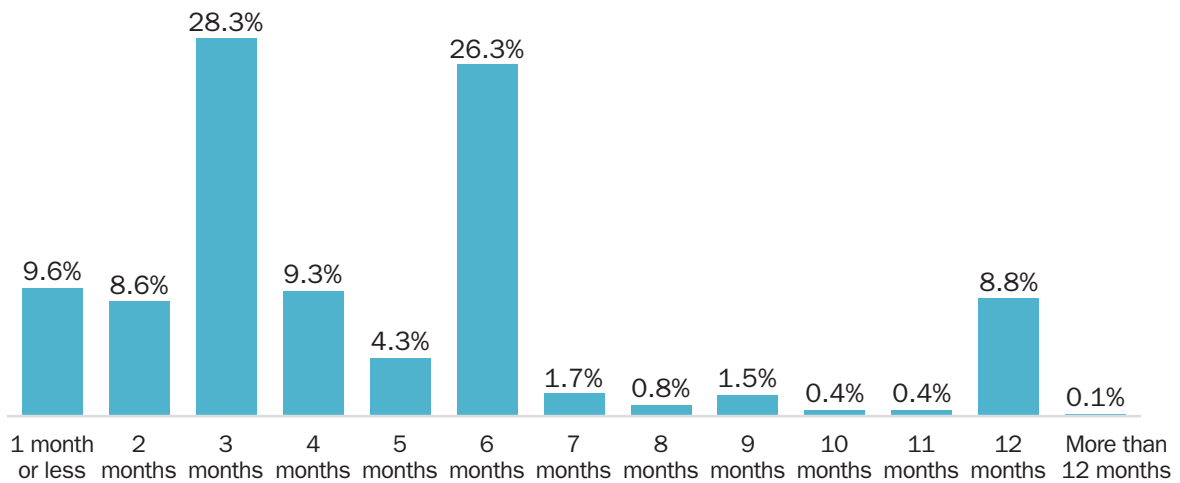
- **\$9,004,439.23 in donations (in 28,982 diversion plans)**
- **\$5,623,013.21 in compensation (in 5,941 diversion plans)**

Compensation amounts were recorded for 5,941 of 5,984 diversion plans with a known compensation condition. In total, compensation conditions amounted to \$5,623,013.21. Compensation amounts ranged from \$0.01 (in 2 cases) to \$35,920.93 (in 1 case), with a median of \$450.

### Durations of diversion plans

The duration of diversion plans was determined by calculating the number of days between a diversion hearing (in the 50,988 cases that received a diversion plan) and the ‘return’ or ‘adjourned to’ date.<sup>40</sup> The clear majority of diversion plans were intended to run for 6 months or less (86.3%), with the most common durations being 3 months (28.3%) and 6 months (26.3%) (Figure 10).<sup>41</sup>

**Figure 10:** Duration of diversion plans (50,978 cases)



40. While some diversion plans also had ‘extension dates’, this analysis only presents data on the initial intended duration. We excluded 10 cases from our analysis here because they were not given a definitive return date when the defendant initially received the diversion plan.

41. This was calculated by determining the number of days between the diversion hearing and the intended return date, dividing that number by 30.4375 (to account for the different number of days in each month), then rounding the result to the nearest month (e.g. 1.4 months as 1 month).



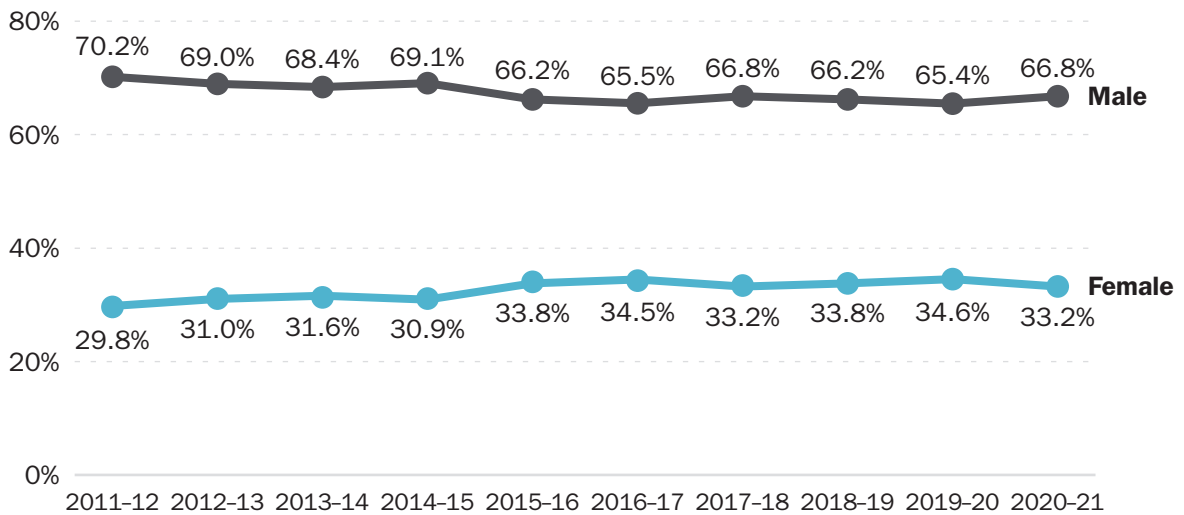
A significant number of diversion plans (4,491) also ran for 12 months.<sup>42</sup> The shortest diversion plan was one day, in 123 cases (potentially suggesting a condition that could be fulfilled almost immediately, such as making a charitable donation), and the median duration was 4 months.

### Trends in the characteristics of diversion cases

The last 10 years has seen some notable changes in the characteristics of people receiving diversion plans, as well as the characteristics of their cases:

- **Gender:** there has been a slight increase in the proportion of women receiving diversion plans, from 29.8% of diversion cases to 33.2% (Figure 11).

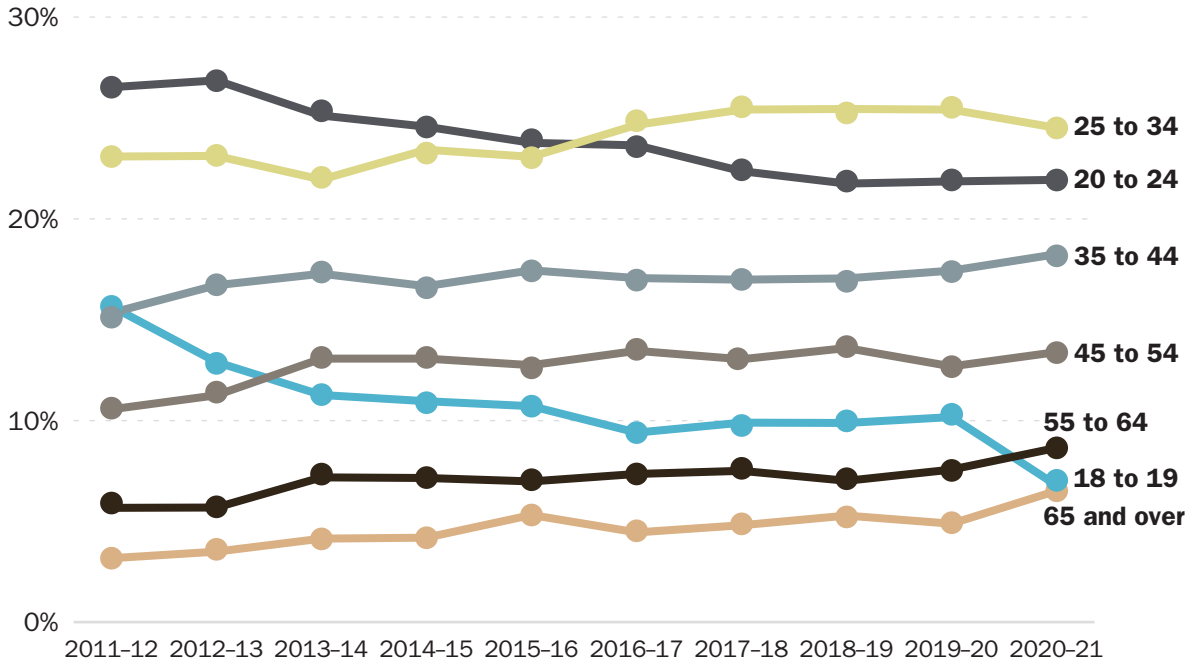
**Figure 11:** Trends in the percentage of diversion cases (50,920 cases), by gender



42. While the maximum duration of a diversion plan is 12 months, there were 40 cases where the data suggested that the intended duration of the diversion plan was 13 months or more (up to 25 months in 1 case).

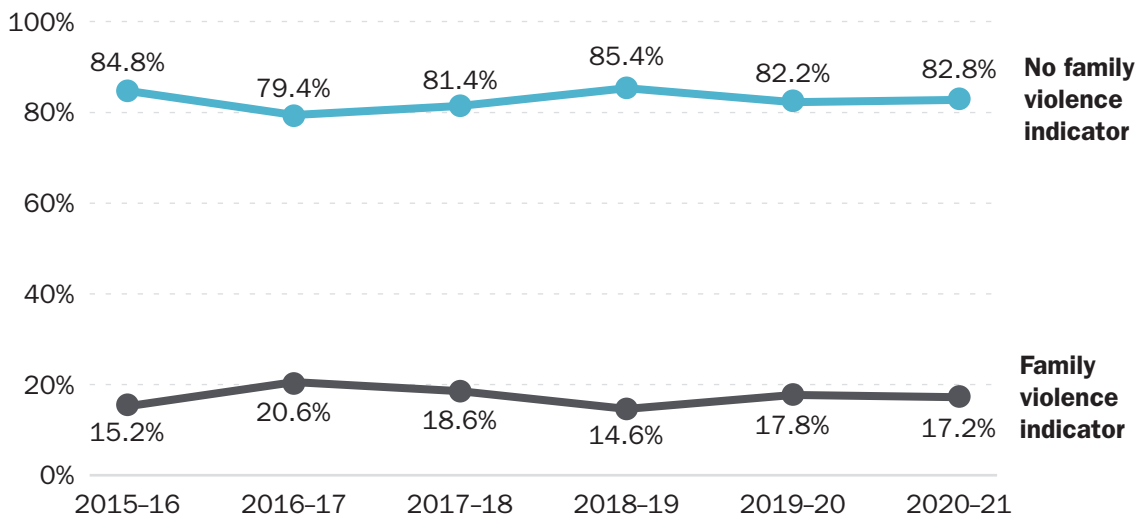
- **Age:** the diversion population seems to have gotten older (Figure 12). People aged 18 to 19 and people aged 20 to 24 were the two age groups that decreased as a proportion of diversion cases by 2020–21 (together decreasing from 42.2% of diversion cases to 28.7%). In contrast, the proportion of every other age group increased, with the proportion of people aged 65 and over doubling from 3.2% of diversion cases to 6.5%.

**Figure 12:** Trends in the percentage of diversion cases (50,630 cases), by age



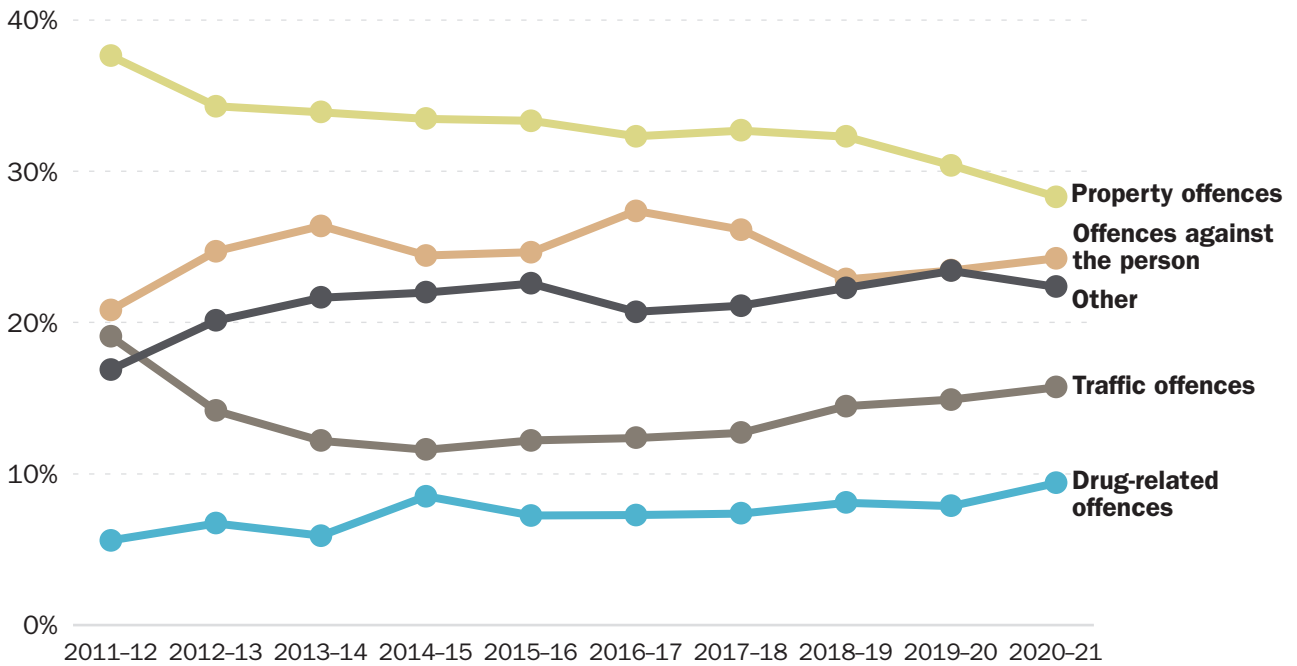
- **Family violence indicator:** the proportion of diversion cases with a family violence indicator has been relatively stable since 2015–16 (Figure 13), with family violence cases fluctuating between 14.6% (in 2018–19) and 20.6% (in 2016–17).

**Figure 13:** Trends in the percentage of diversion cases (31,076 cases), by family violence indicator



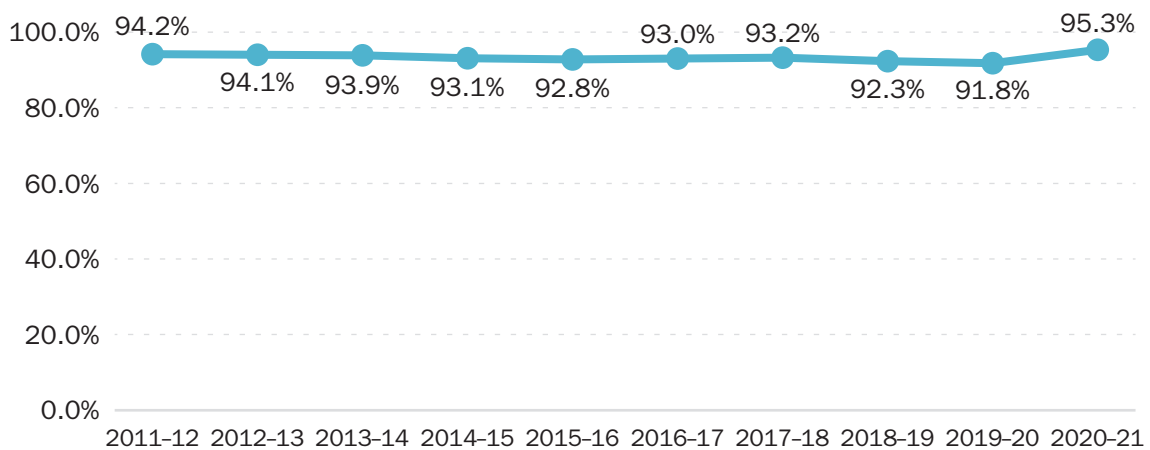
- Offence types:** the most notable changes in offence types were a decrease in the proportion of diversion cases involving property offences (from 37.6% of diversion cases to 28.3%), and an increase in drug-related offences (from 5.6% of diversion cases to 9.4%) (Figure 14). There has also been an increase in traffic offences since 2014–15 (from 11.6% of diversion cases to 15.7%), although this increase is still lower than the peak in 2011–12 (19.1%).

**Figure 14:** Trends in the percentage of diversion cases (50,988 cases), by offence type



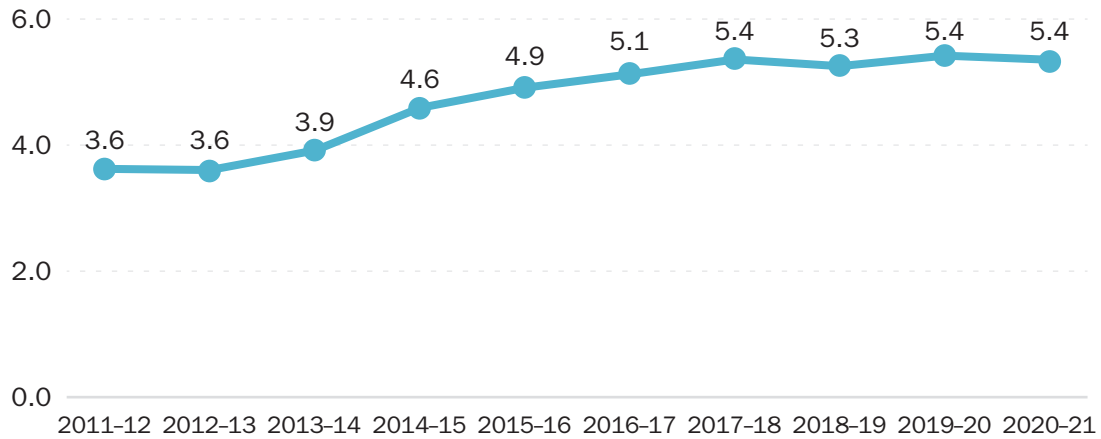
- Successful completion:** the rate of successful completion of diversion plans was quite stable, ranging from 91.8% of diversion cases to 95.3% (Figure 15). The lowest and highest completion rates were both in the two most recent years examined.

**Figure 15:** Trends in successful completion of diversion plans (46,671 cases)



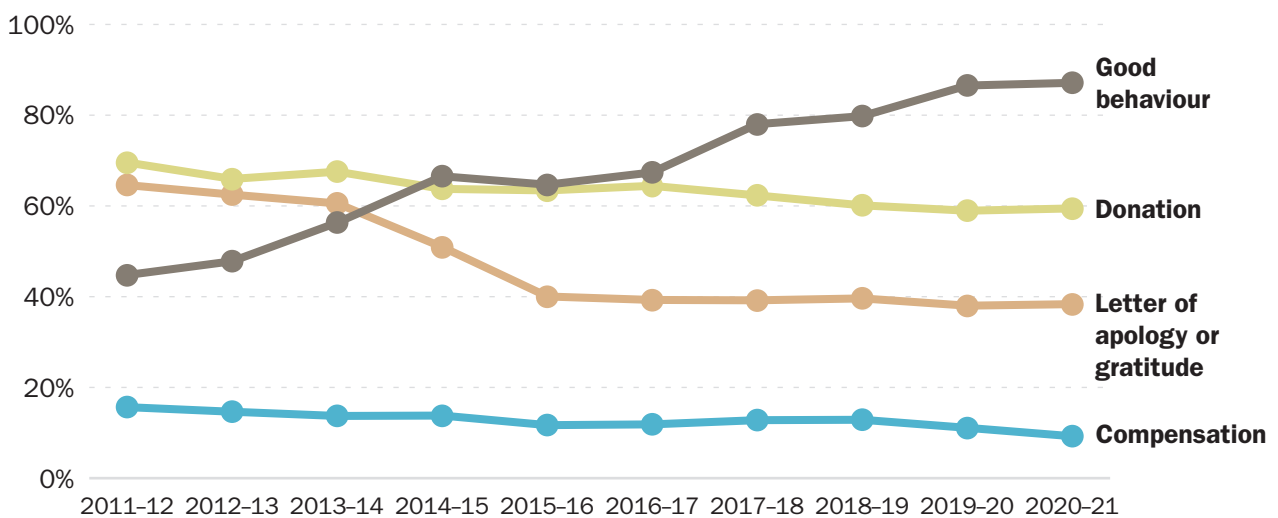
- **Duration:** there was a noticeable increase in the average (mean) duration of diversion plans, from 3.6 months in 2011–12 to 5.4 months in 2020–21 (Figure 16).

**Figure 16:** Trends in average duration (months) of diversion plans (50,978 cases)



- **Conditions:** Figure 17 presents the proportion of diversion plans with each of the four most common conditions each year. During the 10-year period, there was a decline in the rate of compensation conditions (15.7% to 9.3%) and donation conditions (69.6% to 59.4%). The proportion of diversion plans requiring a letter of apology (to the victim) or gratitude (to the informant) dropped significantly, from 64.6% in 2011–12 to 40.0% in 2015–16, and it has been relatively stable since then. And the proportion of diversion plans requiring the person to be of good behaviour has doubled over time, from 44.8% to 87.2%.

**Figure 17:** Trends in the types of conditions in diversion plans (46,671 cases)



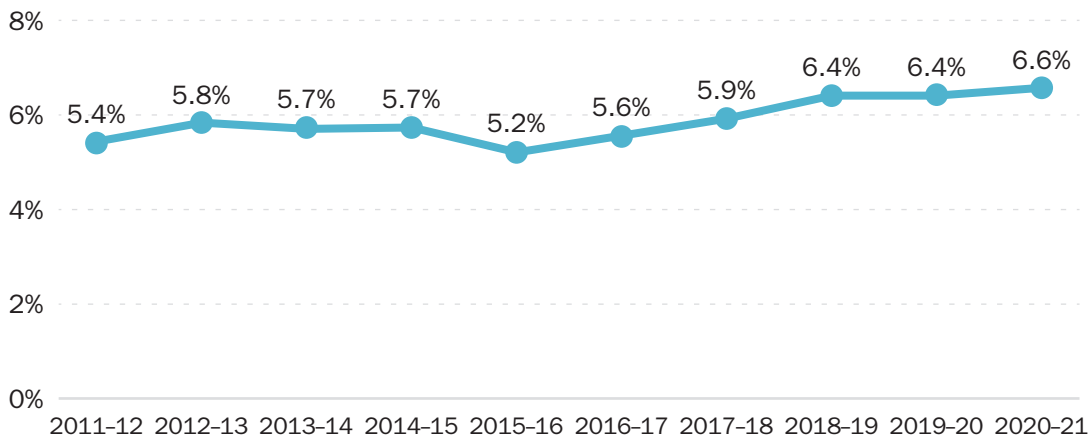
### 3. The prevalence of diversion plans

In Chapter 2, we examined the characteristics of the 50,988 cases that resulted in a diversion plan in the 10 years to 2020–21. Those statistics tell us *who* is receiving diversion plans, but not who is *most likely* to receive diversion plans. To do that, we need to examine the prevalence of diversion plans in all cases involving certain offenders or offences. That is the focus of this chapter.

#### Prevalence of diversion plans in all criminal proceedings

A fine is by far the most common outcome in the Magistrates' Court. Fines accounted for over half (54.8%) of all Magistrates' Court outcomes in the 10 years to 30 June 2021 (this includes diversion plans, which are not a sentence but nevertheless represent an end to proceedings). Diversion plans were the fifth most common outcome in that period (5.8%), after fines (54.8%), adjourned undertakings (13.7%), community correction orders (8.7%) and imprisonment (7.9%). The prevalence of diversion plans as a proportion of all outcomes has, though, increased slightly, particularly since 2015, from 5.2% of all outcomes to 6.6% (Figure 18).<sup>43</sup> This trend has been relatively consistent, and it does not seem to have been affected by COVID-19.

**Figure 18:** Prevalence of diversion plans as an outcome in the Magistrates' Court, 2011–12 to 2020–21

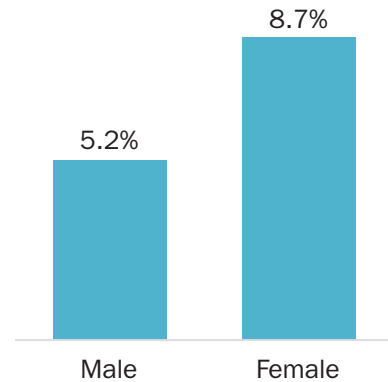


43. In our previous statistical profile, we found that diversion plans made up an even higher proportion of all outcomes in 2006–07 (7.2%): Sentencing Advisory Council (2008), above n 3, 3.

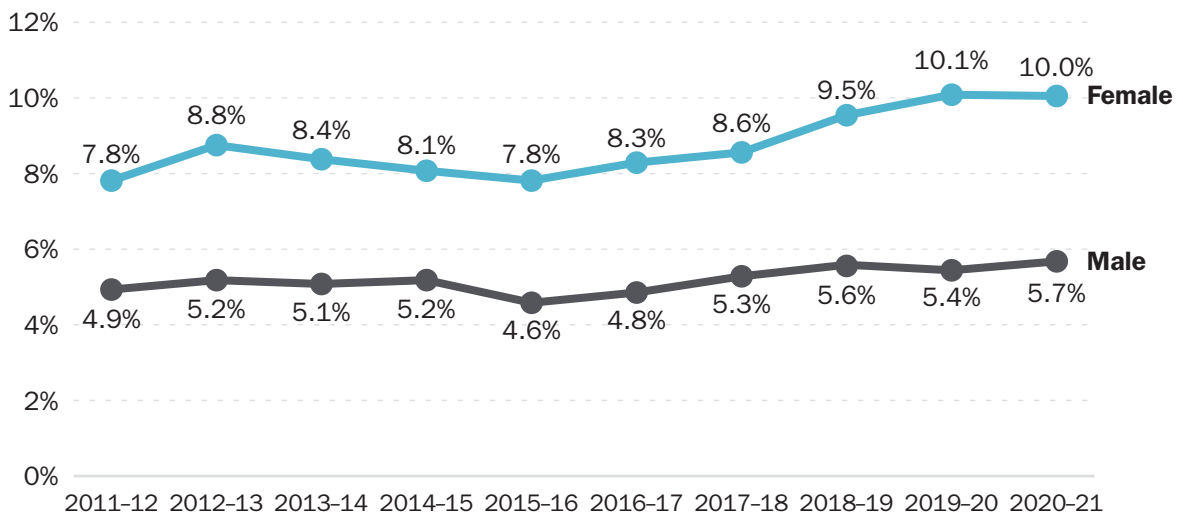
### Prevalence of diversion plans for men and women

Diversion plans made up a higher proportion of outcomes for women (8.7%) than for men (5.2%) (Figure 19). This was consistent throughout the reference period (Figure 20), with the gap even widening in more recent years. The prevalence of diversion plans increased for both men and women in that time, but for men it increased by just 0.8%, whereas for women it increased by 2.2%. Indeed, in the two most recent years, the prevalence of diversion plans reached a point where one in 10 women received a diversion plan as their outcome in the Magistrates' Court. This seems to be a return to the prevalence of diversion plans for women from earlier years: 11.0% in 2006–07<sup>44</sup> and 9.5% in 2008–09.<sup>45</sup>

**Figure 19:** Prevalence of diversion plans for men and women, 2011–12 to 2020–21



**Figure 20:** Trends in the percentage of cases that received a diversion plan, by gender



### Prevalence of diversion plans by age

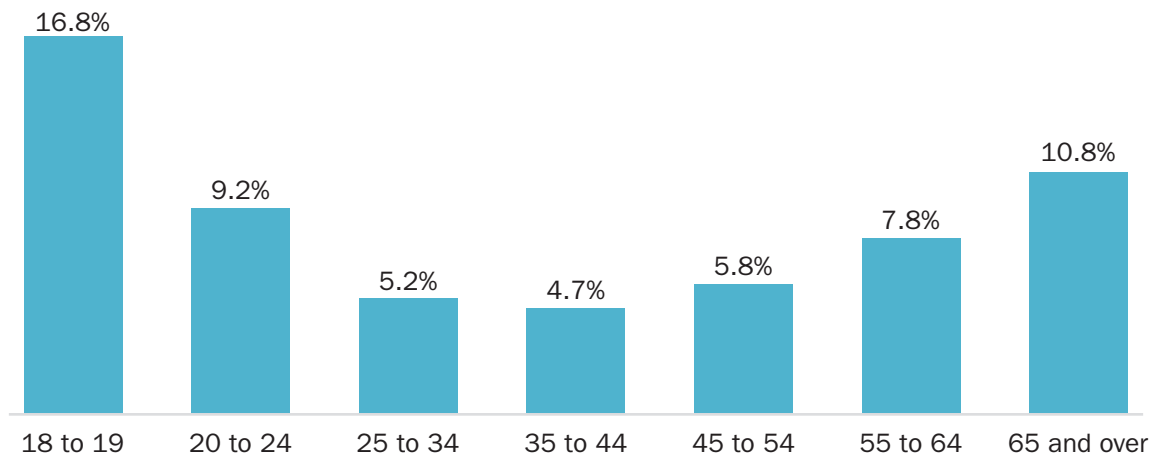
Figure 21 (page 19) shows the proportion of cases that received a diversion plan as an outcome in the Magistrates' Court, according to the age group of the offender. People aged 18 to 19 had the highest likelihood of receiving a diversion plan as an outcome (16.8% of diversion cases) compared to other age groups, and that proportion has increased in recent years to 19.4% in 2020–21 (see Figure 22, page 19). This likely reflects the unique value of diversion plans for younger and first-time offenders, potentially preventing them becoming entrenched in

44. Ibid 4.

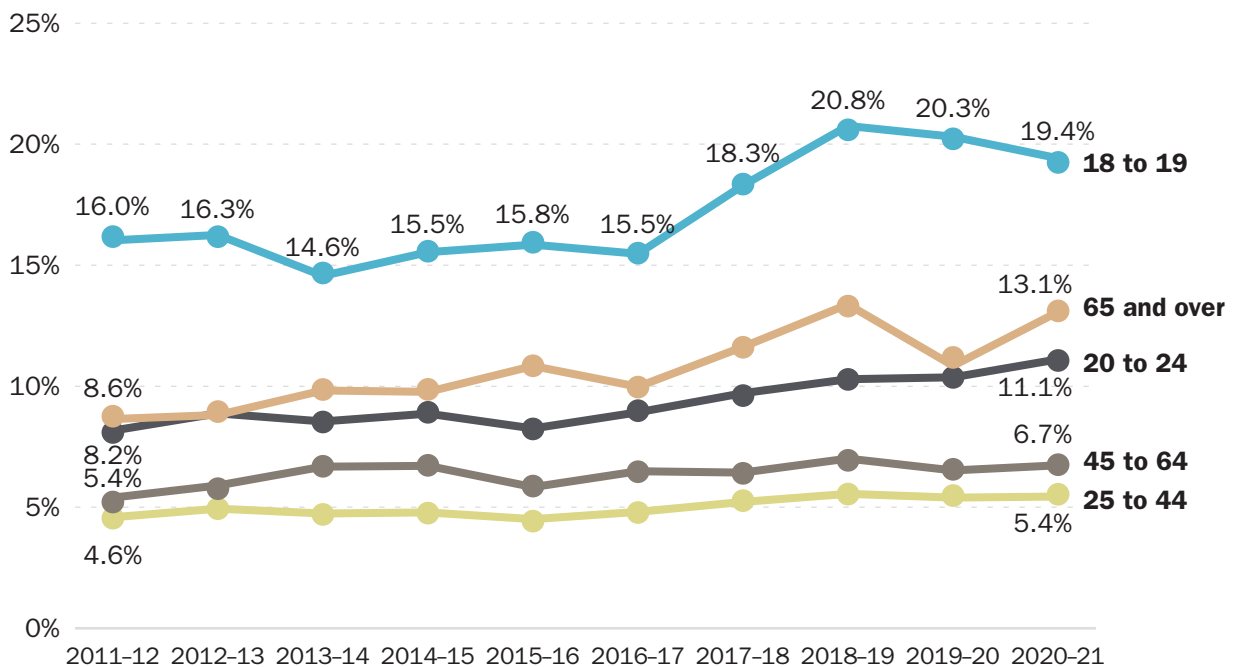
45. Sentencing Advisory Council, *Gender Differences in Sentencing Outcomes* (2010) 13 fn 5.

the criminal justice system.<sup>46</sup> People aged 65 and over were the next most likely age group to receive a diversion plan (10.8% of their cases). This could reflect some of the unique mitigating circumstances that this age group may have,<sup>47</sup> such as having little to no criminal history for most of their lifetime, prior to the current offending. The proportion of people aged 65 and over receiving a diversion plan also increased during the reference period (from 8.6% to 13.1%) – indeed, the proportion receiving a diversion plan increased for all age groups.<sup>48</sup>

**Figure 21:** Prevalence of diversion plans by age group, 2011–12 to 2020–21



**Figure 22:** Trends in the percentage of cases that received a diversion plan, by age group



46. See, for example, Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 51–75; Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System – Report 3: Sentencing Children Who Have Experienced Trauma* (2020) 5–30; Sentencing Advisory Council, *Rethinking Sentencing for Young Adult Offenders* (2019) 5–19.

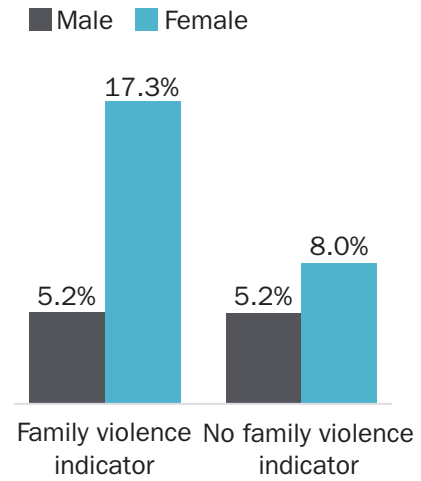
47. See, for example, Sentencing Advisory Council, *Sentencing Older Offenders in Victoria* (2021) 5–8.

48. That said, even 13.1% is still lower than the rate of 16.1% in 2006–07 for people aged 65 and over: Sentencing Advisory Council (2008), above n 3, 4.

### Prevalence of diversion plans by family violence indicator

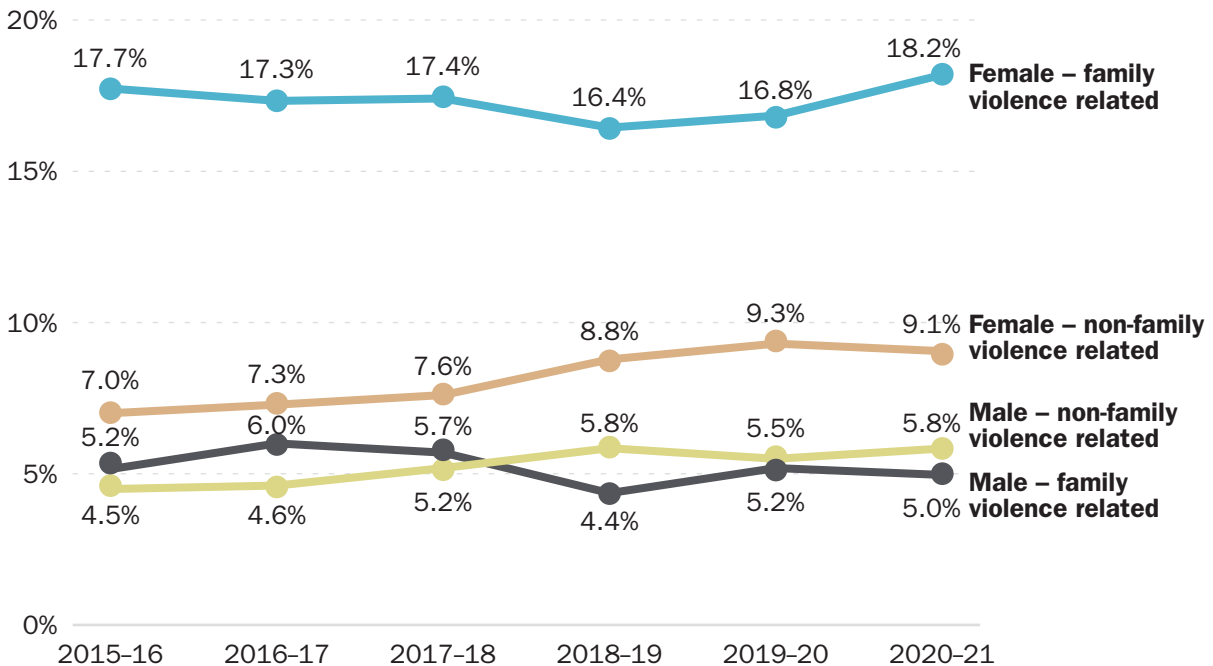
In the six years to 2020–21, 7.0% of cases with a family violence indicator resulted in a diversion plan, a slightly higher rate than for cases without a family violence indicator (5.8%). This did, though, vary significantly by gender. While women were more likely than men to receive diversion plans in both cases with and without a family violence indicator, the difference was most stark in cases with a family violence indicator (Figure 23). Women were over three times more likely than men to receive a diversion plan in family violence cases (17.3% compared to 5.2%). This high rate of diversion plans for women prosecuted for family violence offending is in line with our recent finding for breaches of intervention orders between 2011 and 2020: the rate of diversion plans for women prosecuted for breach of intervention order was more than three times the rate for men (8.3% compared to 2.5%).<sup>49</sup>

**Figure 23:** Prevalence of diversion plans by gender and family violence indicator, 2015–16 to 2020–21



The trends in Figure 24 also distinguish between cases for men and women that either did or did not have a family violence indicator. The trends illustrate that female family violence offenders receive diversion plans at a much higher rate than any other offenders. Research on women’s use of violence indicates that this could be due to a number of

**Figure 24:** Trends in the percentage of cases that received a diversion plan, by family violence indicator and gender



49. Sentencing Advisory Council, *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices: Third Monitoring Report* (2022) 55.

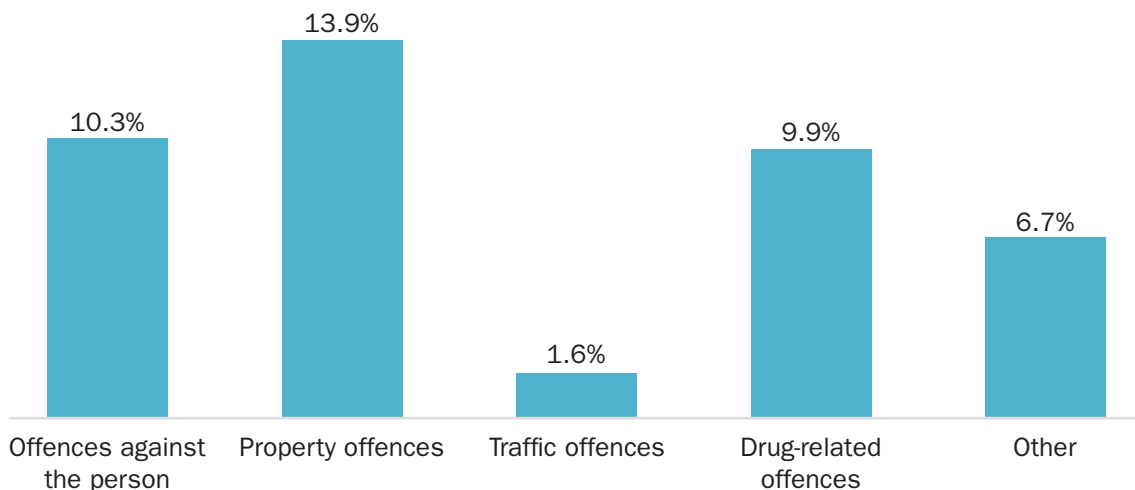


factors, including that women’s offending is often less serious than men’s, and women tend to have less criminal history.<sup>50</sup> There is, though, another likely contributor here: when men commit family violence, they are typically the primary aggressor in the relationship, either with or without occasional retaliatory violence from their partner. Conversely, when women commit family violence, it often occurs in the context of a relationship where they are the primary victim and their male partner is actually the primary aggressor.<sup>51</sup> In those circumstances, it may be that the parties in these proceedings ultimately consider a diversion plan an appropriate outcome, balancing the fact that the alleged offending did indeed occur with recognition of the context in which it occurred.

### Prevalence of diversion plans for each offence type

Property offences were the offence type most likely to result in a diversion plan (13.9% of cases where a property offence was the principal proven offence) (Figure 25). These were followed by offences against the person (10.3% of cases) and drug-related offences (9.9% of cases). In comparison, a diversion plan was quite rare for traffic offences (1.6% of cases where a traffic offence was the principal proven offence),<sup>52</sup> which instead were much more likely to result in a fine (74.8%).

**Figure 25:** Prevalence of diversion plans by offence type, 2011–12 to 2020–21



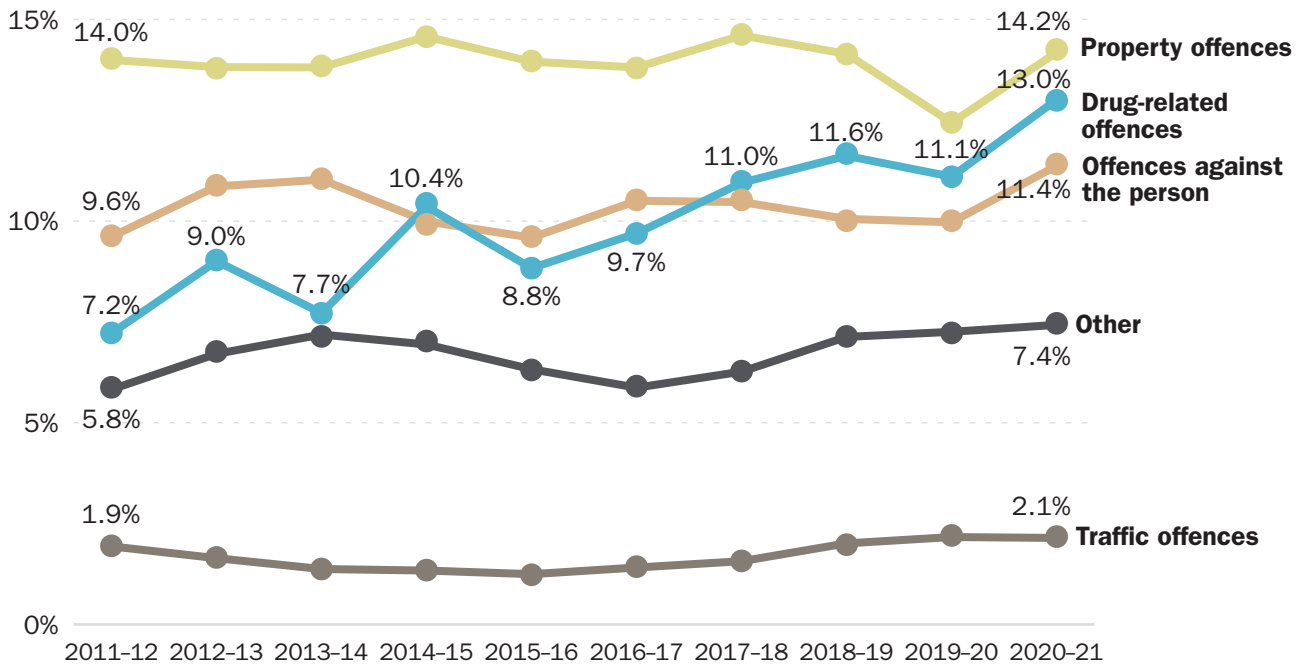
50. Sentencing Advisory Council (2010), above n 45, 16, 56.

51. Kris Henning et al., ‘Victim or Offender? Heterogeneity Among Women Arrested for Intimate Partner Violence’ (2006) 21 *Journal of Family Violence* 351; Suzanne C. Swan et al., ‘A Review of Research on Women’s Use of Violence with Male Intimate Partners’ (2008) 23(3) *Violence and Victims* 301, 301; Susan Miller, *Victims as Offenders: The Paradox of Women’s Violence in Relationships* (2005). On the importance of identifying the primary aggressor in family violence offending, see, for example, Parliament of Victoria, Legislative Council, Legal and Social Issues Committee (2022), above n 10, 232–243; Women’s Legal Service Victoria and Monash University, ‘Officer She’s Psychotic and I Need Protection’: *Police Misidentification of the ‘Primary Aggressor’ in Family Violence Incidents in Victoria* (2018); Family Violence Reform Implementation Monitor, *Monitoring Victoria’s Family Violence Reforms: Accurate Identification of the Predominant Aggressor* (2021); Ellen Reeves, ‘A Culture of Consent: Legal Practitioners’ Experiences of Representing Women Who Have Been Misidentified as Predominant Aggressors on Family Violence Intervention Orders in Victoria, Australia’ (2023) 31 *Feminist Legal Studies* 369.

52. The rate of diversion plans for traffic offences was notably higher in 2006–07, at 3.4%: Sentencing Advisory Council (2008), above n 3, 3.

The rate of diversion plans remained relatively stable for most offence types during the reference period, with mostly minor fluctuations (Figure 26). The one exception, though, was drug-related offences, for which there was a clear and sustained increase in the use of diversion plans, almost doubling from 7.2% of all cases with a drug-related offence as the principal proven offence to 13.0%.

**Figure 26:** Trends in the percentage of cases that received a diversion plan, by offence type

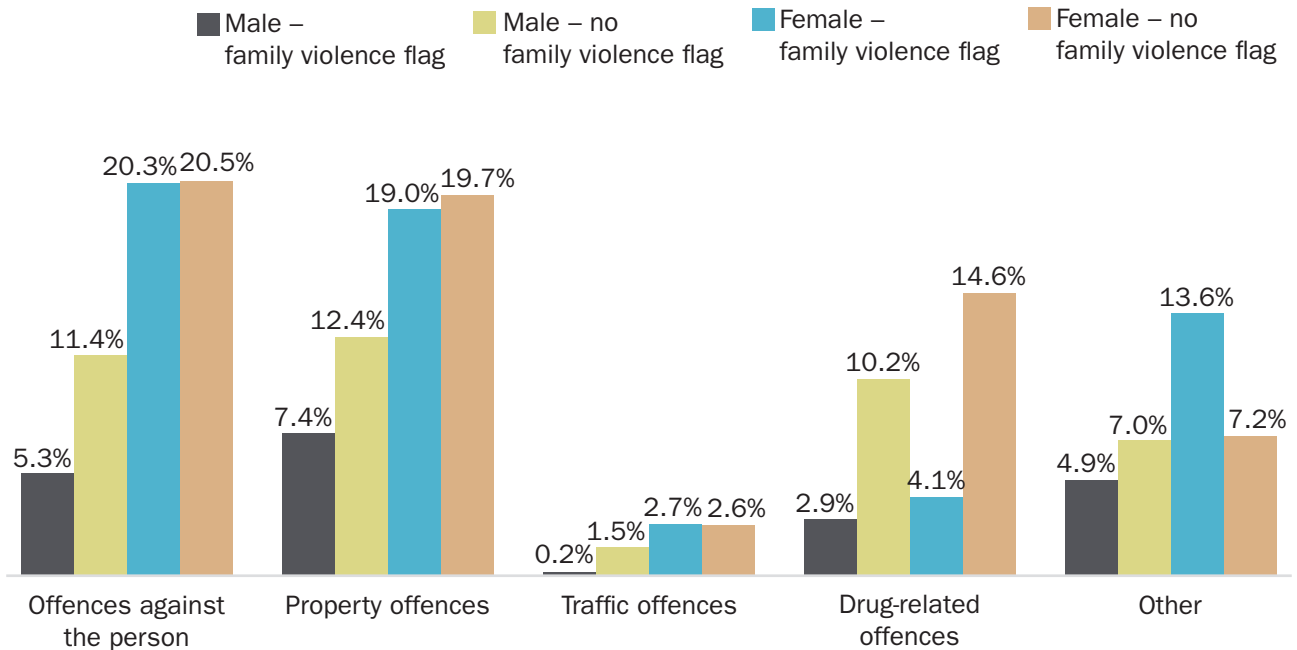


The prevalence of diversion plans often varied for each offence type based on the defendant’s characteristics. Being female was strongly associated with a higher likelihood of diversion plans for almost all offence types (with a very small exception in the context of drug-related offences<sup>53</sup>). Male family violence offenders consistently had the lowest rate of diversion plans of all offenders, regardless of offence type (Figure 27, page 23). Male non-family violence offenders had the second lowest rate, again with that very small exception in the context of drug-related offences. As we recently found in the context of stalking offences,<sup>54</sup> it seems that gender is an even stronger predictor of court outcomes than a family violence indicator.

53. This is likely in part because of how few female family violence offenders had a drug-related offence as their principal proven offence (148 cases, only six of which received a diversion plan), limiting the utility of any comparisons.

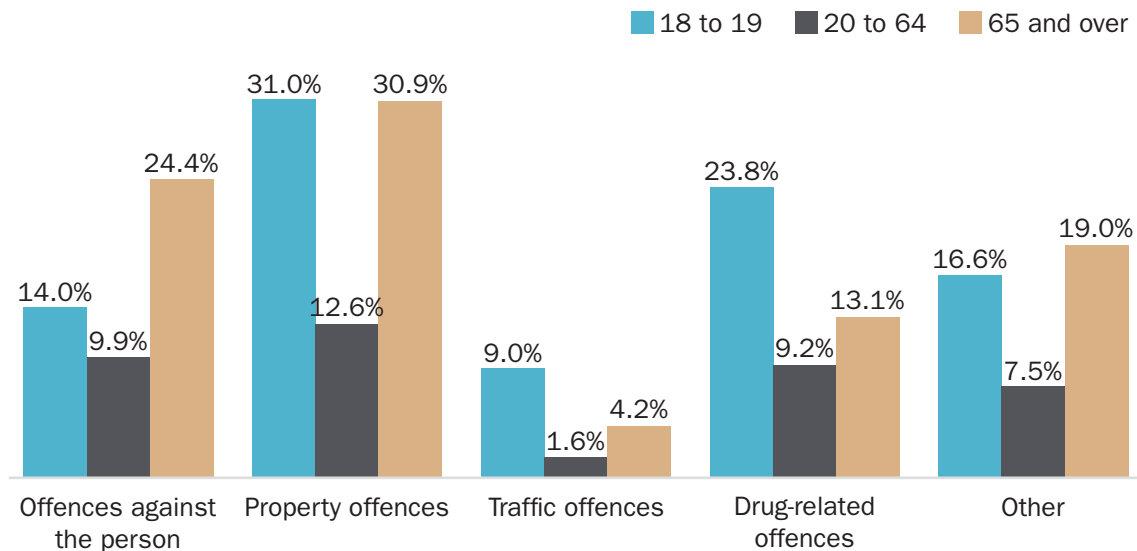
54. Sentencing Advisory Council, *Sentencing Stalking in Victoria* (2022) 44.

**Figure 27:** Prevalence of diversion plans by offence type, gender and family violence indicator, 2015–16 to 2020–21



Offenders aged 20 to 64 were least likely to receive diversion plans across all offence categories, compared to both younger offenders (aged 18 to 19) and older offenders (aged 65 and over). However, younger and older offenders received diversion plans at different rates depending on the offence type. Both younger and older offenders were most likely to receive diversion plans for property offences (31.0% and 30.9% respectively of people prosecuted for property offences in those age groups). But younger offenders were much more likely to receive diversion plans for drug-related offences (23.8%) and traffic offences (9.0%), whereas older offenders were more likely to receive a diversion plan for offences against the person (24.4%).

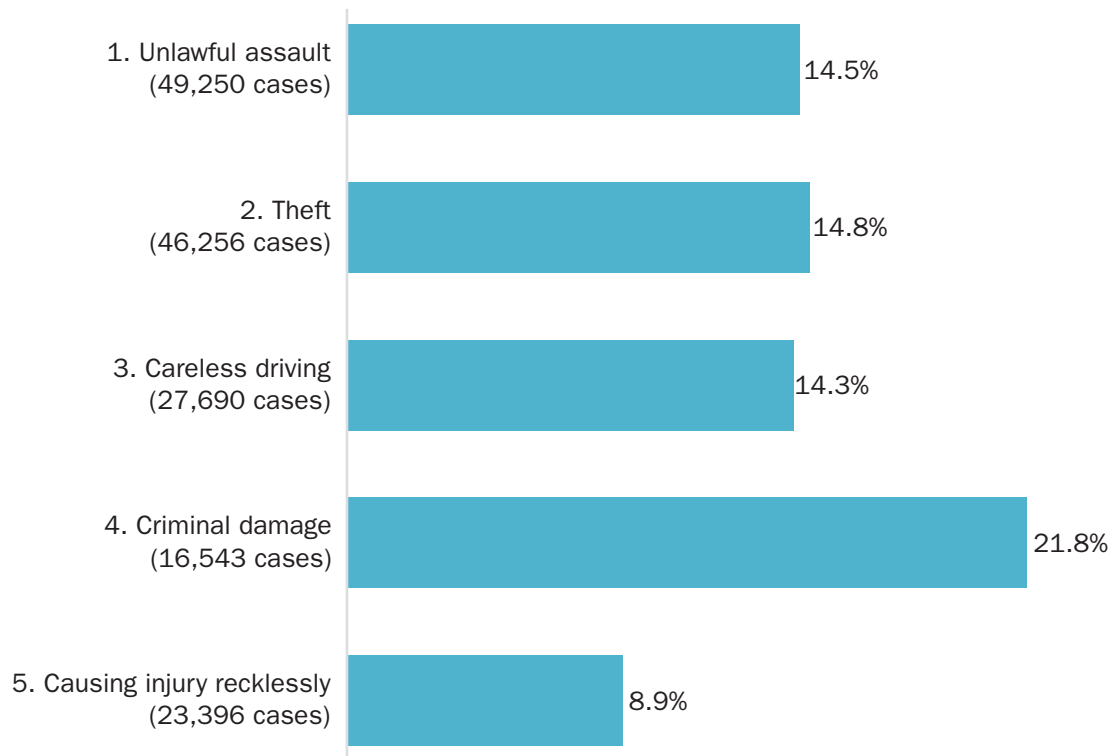
**Figure 28:** Prevalence of diversion plans by offence type and age, 2011–12 to 2020–21



## Prevalence of diversion plans for specific offences

In Chapter 2, we found that the five most common offences in diversion cases were unlawful assault, theft, careless driving, criminal damage and causing injury recklessly. The prevalence of these offences in diversion cases, though, is driven, at least to some extent, by their prevalence in the criminal justice system more generally. There were, for example, 49,250 cases involving unlawful assault as the principal proven offence in the 10 years to 2020–21; of those cases, 14.5% resulted in a diversion plan (Figure 29). Criminal damage was the principal proven offence in comparatively fewer cases during that 10-year period (16,543 cases), but cases involving criminal damage had a much higher rate of diversion plans (21.8%).<sup>55</sup>

**Figure 29:** Prevalence of diversion plans by specific offence, 2011–12 to 2020–21

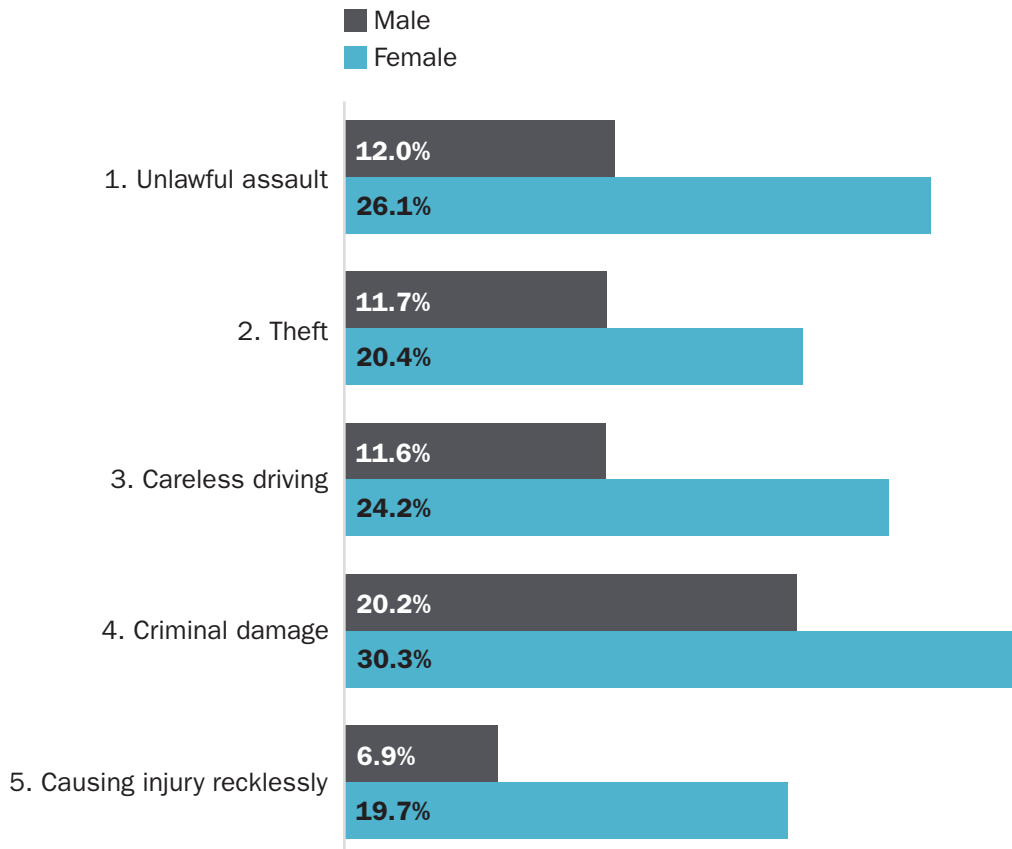


55. Interestingly, the similar offence of wilfully damaging property valued at less than \$5,000 – a summary version of criminal damage – was even more likely to receive a diversion plan, at 23.1% of the 3,931 cases that had this as the principal proven offence: *Summary Offences Act 1966* (Vic) s 9(1)(c).

Again, though, these rates varied by the demographics of the person receiving a diversion plan:

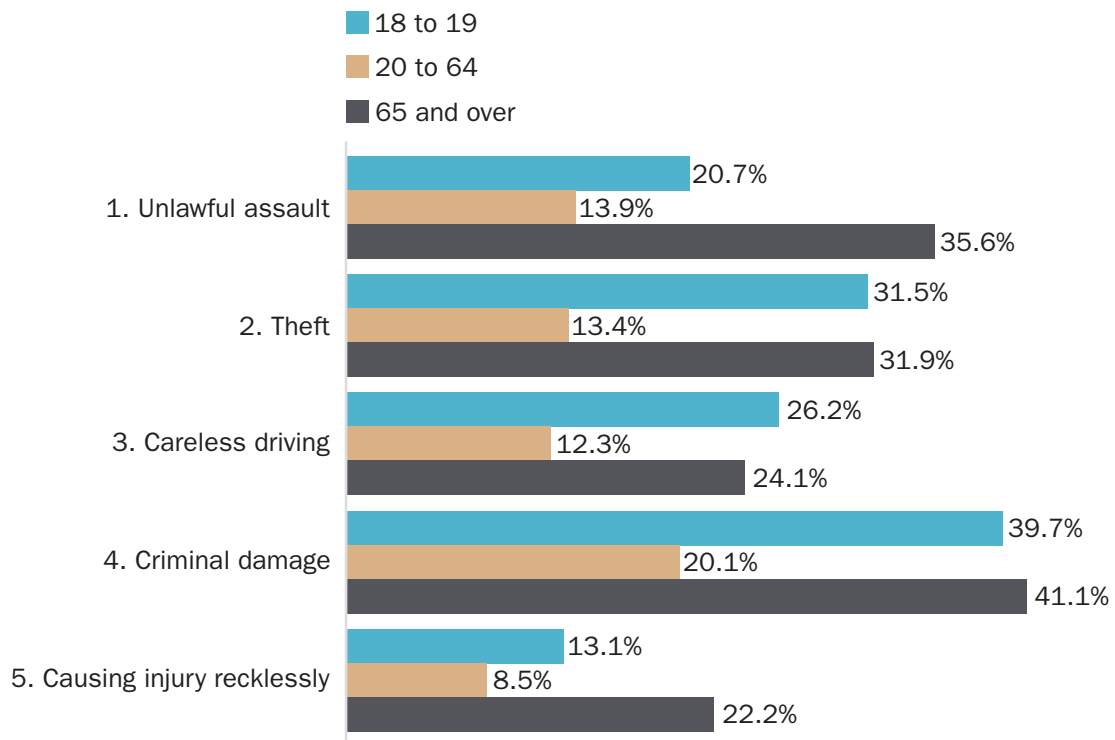
- **Gender:** women were much more likely than men to receive diversion plans for each of the five most common offences in diversion cases (Figure 30). A diversion plan was the outcome in 11.6% of cases where men had careless driving as their principal proven offence. In comparison, the rate of diversion plans doubled to almost one-quarter of cases (24.2%) where women had careless driving as their principal proven offence. Even more strikingly, women (19.7%) were almost three times more likely than men (6.9%) to receive diversion plans for causing injury recklessly.

**Figure 30:** Prevalence of diversion plans by specific offence and gender, 2011–12 to 2020–21



- **Age:** both younger defendants (aged 18 to 19) and older defendants (aged 65 and over) were much more likely than defendants aged 20 to 64 to receive diversion plans for each of the five most common offences resulting in a diversion plan.<sup>56</sup> Both younger and older defendants had a similar likelihood of receiving diversion plans for three of the five offences. But the main exception was unlawful assault: older defendants were much more likely to receive diversion plans (in 35.6% of cases where unlawful assault was their principal proven offence) than younger defendants (20.7% of cases). Similarly, but to a smaller degree, older defendants (22.2%) were more likely than younger defendants (13.1%) to receive diversion plans for causing injury recklessly. When older defendants commit these types of offences, the offences tend to be less serious and involve more mitigating factors, and the defendants have less risk of similar further offending,<sup>57</sup> which may help explain the higher rates of diversion plans for assault and injury offences in cases involving older defendants.

**Figure 31:** Prevalence of diversion plans by specific offence and age, 2011–12 to 2020–21



56. During data analysis, one of the highest rates of diversion plans we found was for defendants aged 65 and over where the principal proven offence was lighting a fire in the open air during a fire danger period: *Country Fire Authority Act 1958* (Vic) s 37. In the 115 cases involving that age group and offence, 67.8% received a diversion plan (78 cases).

57. See, for example, Sentencing Advisory Council (2021), above n 47, 53–55.

## 4. Prior offending and reoffending

This chapter compares the prior offending and reoffending rates of people who received diversion plans with people who were otherwise sentenced in the Magistrates' Court during the same time period.

### Methodology for this analysis

For the purposes of this analysis, the *index population* included anyone who received a diversion plan, or a sentencing outcome other than a diversion plan, in the two financial years 2015–16 and 2016–17 (the *index period*). A related concept, the *index outcome*, describes the earliest occasion on which a person in the index population received a diversion plan within the two-year period. If a person received a diversion plan more than once, the earliest diversion plan is used as the index outcome. For comparisons with sentenced offenders (those who received an outcome other than a diversion plan), their *index outcome* is also the earliest occasion on which they were sentenced within the two-year period.

We used a two-year index period for this analysis as it allows for a five-year follow-up period both before and after each person received their index outcome in the Magistrates' Court. These people were matched to our reoffending database to identify whether they had been sentenced or had received a diversion plan at any stage in the five years before or after the index outcome date.<sup>58</sup>

Prior offending and reoffending are defined as being sentenced or receiving a diversion plan for other offending (as opposed to being arrested, charged, etc.) and are measured by the date on which the person was sentenced or received a diversion plan for that other offending (as opposed to the date on which the offence occurred).

### The index population

During the two-year index period to 30 June 2017, there were 149,268 unique people who received any form of index outcome in the Magistrates' Court. This included 10,393 people who received a diversion plan, and 139,906 people who received an outcome other than a diversion plan. These two numbers combined are slightly larger than the total number of people dealt with during the period because there is some overlap between the two cohorts; some people (in 1,031 cases) received both a diversion plan and another type of outcome during the two-year period.

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58. Our reoffending database uses the Soundex algorithm to match unique people based on identifiable details such as name and date of birth, while accounting for data entry discrepancies: see, for example, Jiuzhao Hua and Jacqueline Fitzgerald, *Matching Court Records to Measure Reoffending*, Crime and Justice Bulletin no. 95 (2006).

### Prior offending and reoffending

Of the 10,393 people who received a diversion plan as their index outcome in the two-year period, almost three-quarters (72.7%) did not receive any other outcome on any other occasion in the five years before or after receiving their diversion plan. Another 6.0% had prior offences but did not reoffend, 16.3% had no prior offences but did reoffend, and 5.0% both had prior offences *and* did reoffend. As a point of comparison, of the 139,906 people who received an outcome other than a diversion plan as their index outcome, just 46.5% had no prior offences and did not reoffend. Another 13.2% had prior offences but did not reoffend, 17.7% had no prior offences but did reoffend, and 22.5% both had prior offences *and* did reoffend. In other words, people receiving diversion plans were over 1.5 times more likely to have *no* prior offences and to not reoffend than people who were sentenced. In contrast, people who were sentenced were 4.5 times more likely to have received another court outcome on another occasion *both* before and after their index outcome.

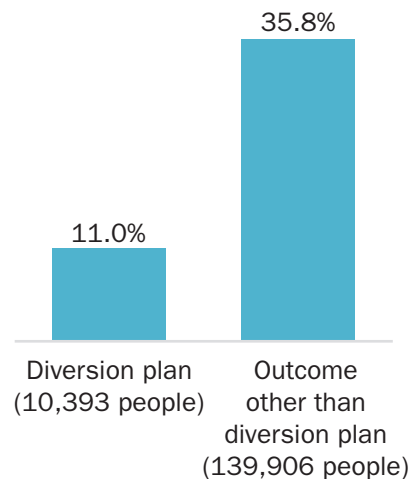
**How many people were *not* sentenced (or diverted) again for any other offences at all in the five years before or after ...**

<b>... receiving a diversion plan?</b>	<b>72.7%</b>
<b>... being sentenced?</b>	<b>46.5%</b>

### Prior offending

Figure 32 shows the rate of offending in the previous five years for people who received a diversion plan and people who received outcomes other than a diversion plan. People receiving diversion plans were one-third as likely as people receiving other court outcomes to have a prior offence in the last five years. The presence and nature of a person’s criminal history will often influence the accessibility of diversion plans, especially with the requirement of prosecutorial consent, so it would be expected that there would be a significant discrepancy in the prior offending histories between those two groups.

**Figure 32:** Prior offending rates of people receiving either a diversion plan or another court outcome

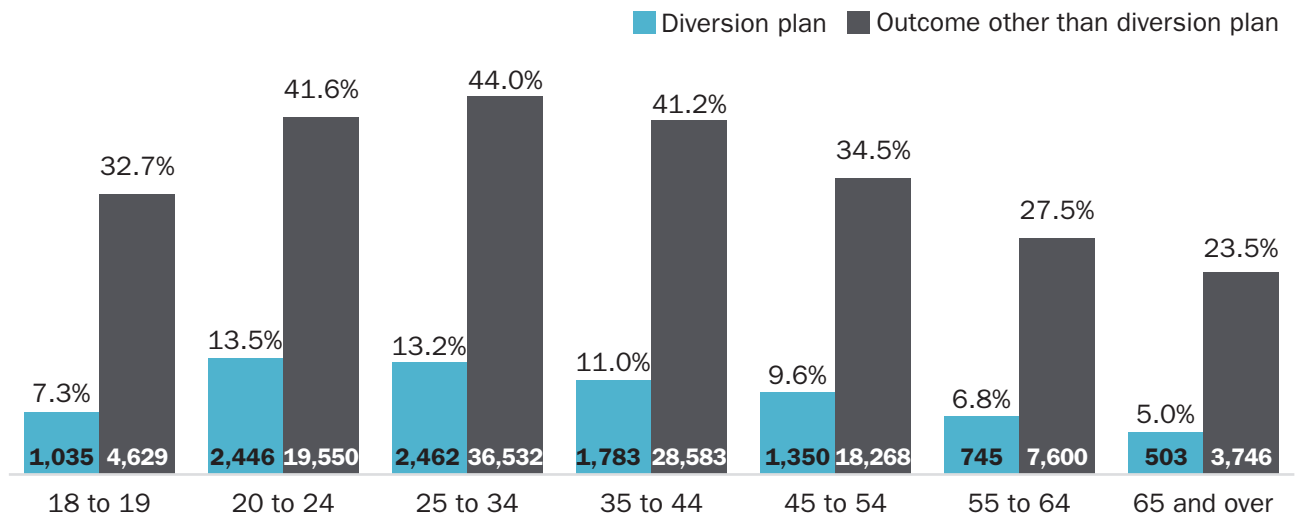




Those prior offending rates varied by the demographics of the offenders, but the difference in prevalence was about the same: people who received outcomes other than diversion plans were consistently about three to four times more likely than people receiving diversion plans to have received another court outcome in the previous five years:

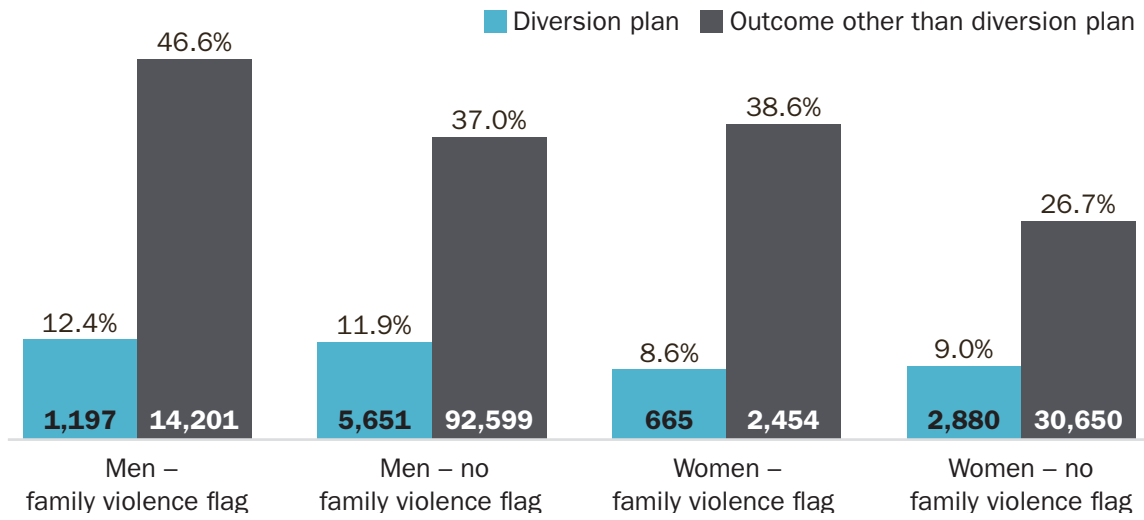
- **Age:** for each age group, people receiving diversion plans had a lower rate of prior offending than people receiving other court outcomes (Figure 33). This was especially pronounced for both younger and older people. For instance, just 7.3% of people aged 18 to 19 who received diversion plans had received another court outcome in the previous five years, whereas 32.7% of sentenced people aged 18 to 19 had received another court outcome in the previous five years. Similarly, just 5.0% of people aged 65 and over who received diversion plans had prior offences, compared to 23.5% of sentenced people aged 65 and over. For all age groups, there was a starkly higher rate of prior offending for people receiving court outcomes other than diversion plans.

**Figure 33:** Prior offending rates of people receiving diversion plans, by age



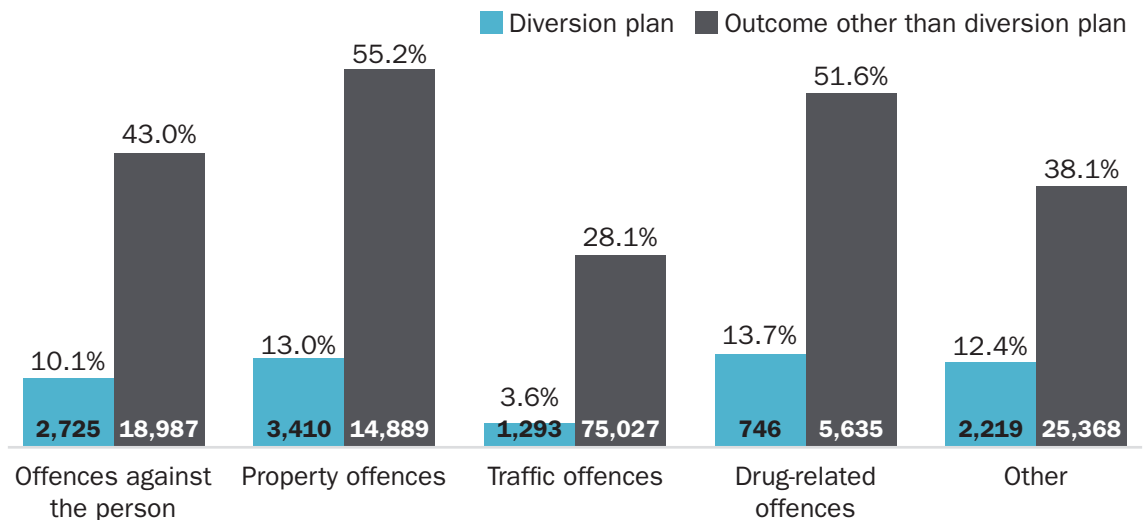
- Gender and family violence:** the cohort with the highest rate of prior offending was men in family violence cases who received outcomes other than a diversion plan (46.6% had received another court outcome in the previous five years), and the cohort with the lowest rate was women in family violence cases who received diversion plans (8.6%), followed closely by women in non-family violence cases who received diversion plans (9.0%) (Figure 34).

**Figure 34:** Prior offending rates of people receiving diversion plans, by gender and family violence flag



- Offence category:** people who received diversion plans during the two-year index period were much less likely to have any prior offences within the previous five years compared to people who received any other court outcome, regardless of their principal offence type (Figure 35). The disparity was especially stark for those who received a court outcome for traffic offences: 3.6% of people receiving diversion plans had prior offences, whereas people receiving another court outcome were almost eight times more likely to have prior offences (28.1%). This suggests that a recent criminal history is a significant barrier to receiving a diversion plan for traffic offences.

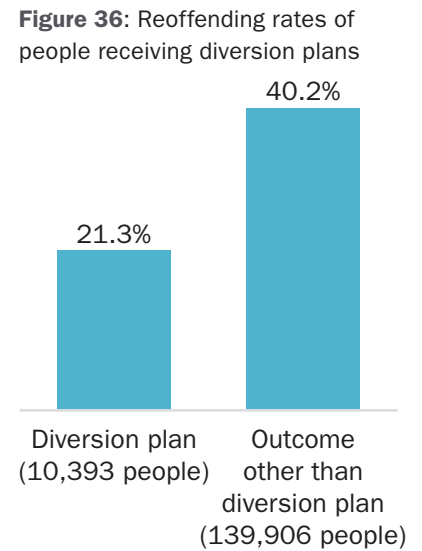
**Figure 35:** Prior offending rates of people receiving diversion plans or another court outcome in 2015–16 and 2016–17, by principal offence type



### Reoffending

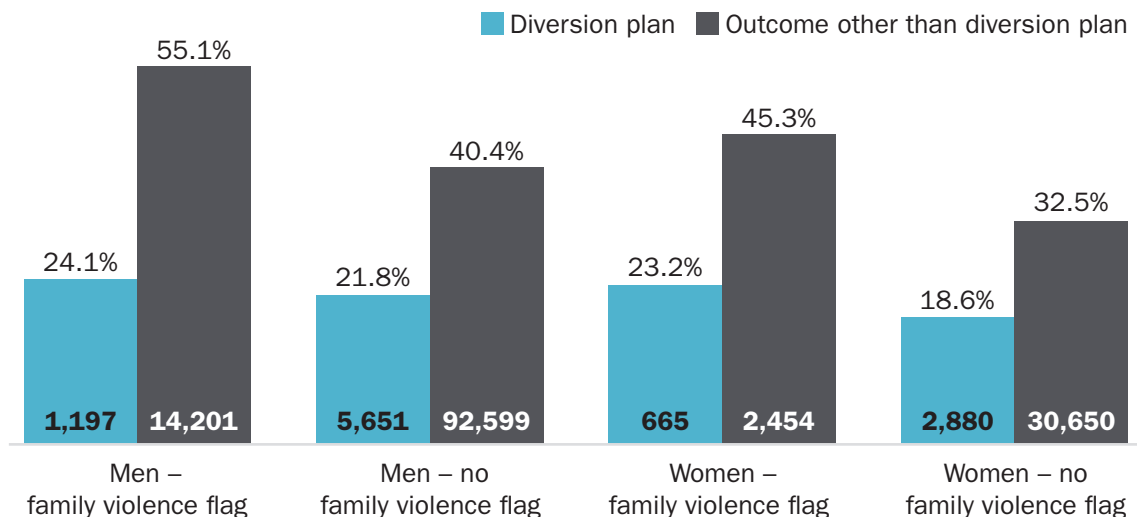
This section examines the reoffending rates of people who received a diversion plan and compares those rates to the reoffending rates of people who received another court outcome. As an important caveat, people who receive diversion plans are a distinct cohort – they are more likely to be women, have committed non-violent offences and have no prior criminal history. Each of these factors are associated with the person having an inherently lower risk of reoffending, regardless of the outcome of their case. It is therefore to be expected that the diversion population would have a lower rate of reoffending. The results below, however, illustrate *how much* less likely the diversion population was to reoffend.

Figure 36 shows the rate at which people received a court outcome in the next five years after receiving a diversion plan or another court outcome. People receiving diversion plans were almost half as likely to reoffend (21.3%) as those receiving other court outcomes (40.2%).



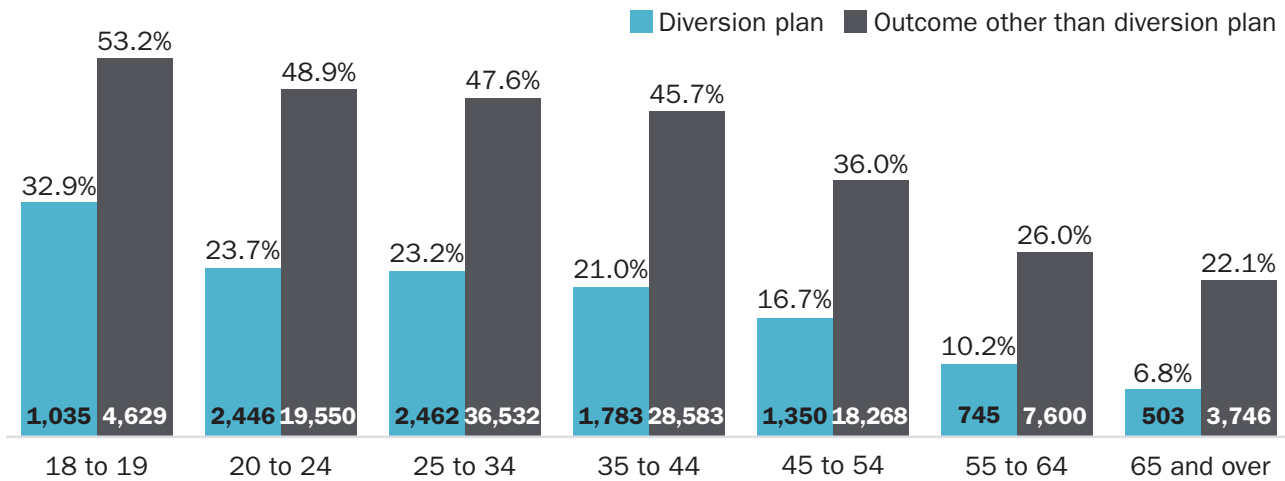
This was true for both men and women: 22.2% of men who received a diversion plan reoffended compared to 42.3% of men who received another court outcome, and 19.4% of women who received a diversion plan reoffended compared to 33.4% of women who received another court outcome. Moreover, reoffending rates also remained lower for people who received a diversion plan in cases with and without a family violence flag. For instance, about one-quarter of men who received a diversion plan in family violence cases went on to reoffend (24.1%), whereas that figure more than doubled (to 55.1%) for men who received other court outcomes in family violence cases.

**Figure 37:** Reoffending rates of people receiving diversion plans, by gender and family violence flag



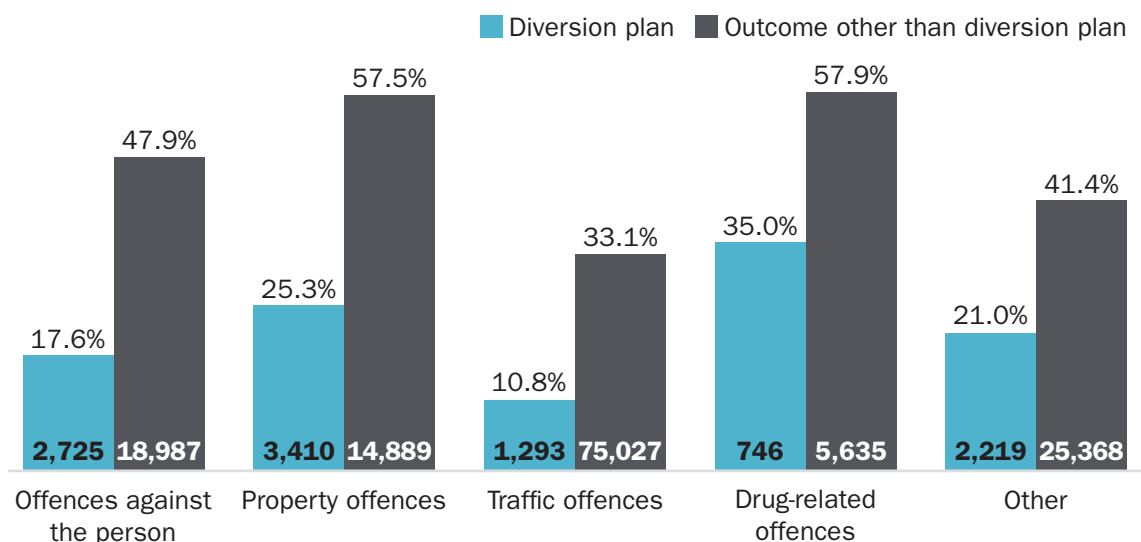
People aged 18 to 19 were the group most likely to reoffend (32.9% of people receiving diversion plans and 53.2% of people receiving other court outcomes), with the reoffending rate consistently declining for people in older age groups, especially those aged 45 and over. This was true, however, for both those receiving diversion plans and those receiving other court outcomes. Those who received diversion plans were consistently less likely to reoffend than those who received other court outcomes, regardless of age.

**Figure 38:** Reoffending rates of people receiving diversion plans, by age



People who received diversion plans were consistently less likely to reoffend within the next five years compared to people receiving other court outcomes, regardless of their principal offence type. People involved with drug-related offences were the most likely to reoffend within five years, both for those who received a diversion plan (35.0%) and for those who received another court outcome (57.9%). People with a traffic offence had the largest proportional difference in reoffending rates: people who received a court outcome other than a diversion plan were three times more likely to reoffend (33.1%) than people who received a diversion plan (10.8%).

**Figure 39:** Reoffending rates of people receiving diversion plans or other court outcomes in 2015–16 and 2016–17, by principal offence type



## 5. Concluding remarks

This statistical profile has presented data on the Magistrates' Court's Criminal Justice Diversion Program in the 10 years to 2020–21. This has included an analysis of:

- the number of people receiving diversion plans each year;
- who is receiving diversion plans;
- who is *most likely* to receive diversion plans;
- the most common conditions attached to diversion plans;
- the duration of diversion plans;
- the type of offending most common in diversion cases;
- the type of offending *most likely* to result in a diversion plan; and
- the prior offending and reoffending of people receiving diversion plans.

This analysis has led to a number of key findings.

First and foremost, the findings are strongly indicative of the effectiveness of diversion plans, or at the very least, the findings strongly indicate that the cases in which a diversion plan has been utilised were appropriately targeted. Over 93% of people who receive diversion plans successfully complete the various conditions. Moreover, people who receive diversion plans have much lower prior offending and reoffending rates than people who receive other court outcomes. Each of the stakeholders we consulted about these findings found the results very encouraging, especially given that the increased use of diversion plans and changes in the use of conditions have not detracted from the very high successful completion rates each year.

Second, a diversion plan has become an increasingly common outcome of criminal proceedings in Victoria. In the eight years to 2018–19 (the financial year before COVID-19 affected court operations), the number of diversion plans increased by 34%, from 4,388 to 5,874. Further, while the total number of cases finalised in the Magistrates' Court increased in that same timeframe, the proportion of court outcomes that were diversion plans also increased, from 5.4% of all outcomes to 6.4%. As mentioned above, successful completion rates have remained largely stable, meaning that the increased use of diversion plans does not seem to have affected successful completion rates.

Third, women are more likely than men to receive diversion plans (8.7% of all cases involving women compared to 5.2% involving men), regardless of the type of offending involved. This was true for all principal offence types, and for cases both with and without a family violence flag. Indeed, female family violence offenders had the highest rate of diversion plans, about double the rate for female non-family violence offenders,

and more than three times the rate for all male offenders (family violence offenders and non-family violence offenders). There are likely numerous reasons for this, including women's offending profiles being different from men's, and female family violence offenders often committing their offences in the context of a relationship where they are the primary victim and their male partner is the primary aggressor.

Fourth, while the use of diversion plans has remained relatively stable, their nature has changed somewhat. It is still far more likely that a person will receive a diversion plan if they are female, are younger, are older and/or have committed a property offence. But diversion plans have, on average, gotten longer (from about 3.5 to 5.5 months). Further, the conditions attached to diversion plans have changed, with fewer compensation conditions, donation conditions and letters of apology or gratitude conditions, co-occurring with a significant increase in good behaviour conditions, which are now included in 87.2% of diversion plans.

Finally, a diversion plan is extremely rare for traffic offences (1.6% of cases with a traffic offence as the principal proven offence). This is likely because section 59(1) of the *Criminal Procedure Act* expressly precludes from the CJDP (a) any matter involving an offence with a mandatory licence suspension or disqualification, and (b) any matter involving an offence under section 49(1) of the *Road Safety Act* (drink and drug driving offences). While diversion has occasionally been advocated as a useful response to driving-related offences,<sup>59</sup> a number of studies have found diversion to be surprisingly ineffective in reducing further driving-related offending (other than licence offences).<sup>60</sup> Moreover, it has been argued that diversion can perpetuate inequalities in the criminal justice system if people are required to participate in an 'offender-funded' driver education program.<sup>61</sup> That said, people who received diversion plans for traffic offences were one-third less likely to reoffend in the next five years (10.8%) than people who received other court outcomes (33.1%). This could suggest that diversion plans are an under-utilised but effective response to traffic offences, but without accounting for the differences in those cases and people, it is difficult to say so definitively.

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59. See, for example, Thalia Anthony and Harry Blagg, *Addressing the 'Crime Problem' of the Northern Territory Intervention: Alternative Paths to Regulating Minor Driving Offences in Remote Indigenous Communities*, Report to the Criminology Research Advisory Council (2012) 75.

60. See, for example, Grace Skrzypiec et al., *Magistrates Court Diversion Program: An Analysis of Post-Program Offending* (2004) 29; Jeremy Broughton et al., *The Effects of the National Drivers Improvement Scheme on Re-Offending Rates* (2005).

61. Sammi Nachtigal, 'The Potholes of Offender-Funded Driving Diversion: How Minnesota's Driving Diversion Program Fails the People It Is Supposed to Help' (2019) 37(2) *Law & Inequality: A Journal of Theory and Practice* 443.

## Appendix: The diversion matrix

### Magistrates Court Diversion Criteria Matrix

In making the assessment for diversion, Prosecutors must have consideration to the Victoria Police Manual and other relevant policy documents, along with this Diversion Criteria Matrix.

There are 4 specific offence categories that require additional consideration prior to recommending diversion:

1. *Firearm offences.* A diversion or withdrawal of charges should not be offered to the accused or their counsel without first consulting with an Inspector or above at the Licensing & Regulation Division – (03) 9247 3231. PBEA – LRD-Diversions-Manager-OIC
2. Offences where the accused is a *Private Security Operator* or *Private Security Business Owner*. A diversion or withdrawal of charges should not be offered to the accused or their counsel without first consulting with an Inspector or above at the Licensing & Regulation Division – (03) 9247 3231. PBEA – LRD-Diversions-Manager-OIC
3. *Liquor Licence offences* - A diversion should not to be offered to an accused or their counsel where a licensee or BYO permittee has been charged under the *Liquor Control Reform Act* for a 'non-compliance incident offence' without first gaining written approval of the OIC of the Liquor Licensing Unit - (03) 9098 5101.
4. *Emergency Worker Harm Offences:* Careful consideration must be given, after reviewing all relevant information regarding the seriousness of the charge, its impact on the victim, the intent of the legislation and the circumstances in which the offending occurred. Prosecutors must seek approval for diversion of emergency worker harm offences from their Work Unit manager who is to ensure an appropriate record is made as to the rationale in support of the decision.

		OFFENCE SERIOUSNESS		
		1 MINOR	2 MEDIUM	3 MAJOR
FUTURE OFFENDING RISK	3 MAJOR	POSSIBLY SUITABLE	GENERALLY NOT SUITABLE	NOT SUITABLE
	2 MEDIUM	POSSIBLY SUITABLE	POSSIBLY SUITABLE	GENERALLY NOT SUITABLE
	1 MINOR	SUITABLE	POSSIBLY SUITABLE	GENERALLY NOT SUITABLE



## Offence Seriousness Table

Rating	Description
3 MAJOR	<ul style="list-style-type: none"> <li>• Family violence matters may only be diverted if exceptional circumstances exist.<sup>1</sup></li> </ul> <p>As a general rule, the following offences <i>*should</i><sup>2</sup> be included in the major category:</p> <ul style="list-style-type: none"> <li>• Sex offences.</li> <li>• Traffic Drug of Dependence.</li> <li>• Any offence attracting a mandatory penalty (e.g mandatory licence disqualification).</li> <li>• Any offence involving a serious injury.</li> <li>• Any offence incurring ‘vehicle impoundment’ provisions.</li> <li>• Any offence with a penalty of 15 years or more.</li> </ul>
2 MEDIUM	As a general rule, all other indictable offences should be included in the medium category.
1 MINOR	Any Summary Offences (other than those attracting a mandatory penalty).

<sup>1</sup> Unit Managers must be consulted and make the final decision as to whether exceptional circumstances exist

<sup>2</sup> *\*Should* – In each individual case, it is necessary to look behind the circumstances and apply the ‘diversion principles’ outlined in the VPM and other Victoria Police policy documents to see whether there are ‘serious concerns’.

### Future Offending Risk Table

Rating	Description
<b>3 MAJOR</b>	<p>As a general rule, the likelihood of future offending is to be regarded as Major if:</p> <ul style="list-style-type: none"> <li>• the accused has been found guilty by a court within the preceding 5 years.</li> </ul>
<b>2 MEDIUM</b>	<p>As a general rule, the likelihood of future offending is to be regarded as Medium if:</p> <ul style="list-style-type: none"> <li>• The accused has been subject to a previous diversion/caution or warnings.</li> <li>• The accused has been processed by way of penalty notice.</li> <li>• The accused has a prior finding of guilt/conviction that is 5 years or older.</li> </ul>
<b>1 MINOR</b>	<p>As a general rule, the likelihood of future offending is to be regarded as Minor if:</p> <ul style="list-style-type: none"> <li>• The accused has no court priors.</li> </ul>

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## **Legislation**

*Children, Youth and Families Act 2005 (Vic)*

*Country Fire Authority Act 1958 (Vic)*

*Crimes Act 1958 (Vic)*

*Criminal Procedure Act 2009 (Vic)*

*Magistrates' Court Act 1989 (Vic)*

*Road Safety Act 1986 (Vic)*

*Summary Offences Act 1966 (Vic)*

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