

Secondary Offences in Victoria

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- gauge public opinion on sentencing
- consult on sentencing matters
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Secondary Offences in Victoria

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Glossary

Aggregate sentence	A single sentence imposed for multiple offences.
Bail	Conditional release of a person while awaiting trial.
Breach	In this report, non-compliance with a court-ordered condition.
Charge	In this report, a single proven count of an offence.
Case	In this report, one or more charges against a person that are sentenced at the one hearing.
Community correction order	A sentencing order available since 16 January 2012 that may require the offender to comply with a range of conditions including undertaking unpaid community work, undergoing treatment and being supervised by a community corrections officer.
Contravention	In this report, non-compliance with a court-ordered condition.
Data period	In this report, the five financial years from 2011–12 to 2015–16.
Fine	A monetary penalty imposed by a court as a sentence.
Higher courts	In this report, the County and Supreme Courts of Victoria.
Offender	A person who has been found guilty of an offence.
Parole	Supervised and conditional release of an offender from prison before the end of their imprisonment sentence.
Secondary offence	An offence that meets the following criteria: (1) the offence applies to a person who has been suspected or convicted of an offence, (2) because of that involvement with the criminal justice system, the person is subject to special conditions and (3) non-compliance with those special conditions constitutes a punishable offence.

Executive summary

A person who is suspected of committing a criminal offence can be arrested, prosecuted and punished. In this process, the person may also be made subject to additional conditions while in the community. People on bail or offenders on parole must comply with certain conditions. Similarly, offenders who receive a community-based sentence, or who are suspected or convicted of certain sex offences, are also subject to conditions, the purpose of which is usually to protect the community by reducing the risk of offenders committing further crimes.

In recent years in Victoria, there has been an increasing trend to render non-compliance with these conditions criminal offences. In addition to possibly having their bail revoked, having their parole cancelled or being resentenced, offenders who do not comply with most court-ordered conditions can now also have their non-compliance separately punished as a discrete offence.

The Council has termed this category of offences 'secondary offences' because they arise *secondarily* to a person's primary involvement in the criminal justice system through the commission, or alleged commission, of a substantive offence.

The Council has identified 20 secondary offences that were in effect between 2011–12 and 2015–16 (the data period for this report). These offences have been assigned into four categories: bail-related secondary offences, sentence-related secondary offences, a parole-related secondary offence and sex offender secondary offences (secondary offences that only apply to persons suspected or convicted of certain sex offences).

This report presents statistics on the number of secondary offences throughout the data period and sentencing outcomes for those offences.

Increasing number of secondary offences

Between 2011–12 and 2015–16, secondary offences became an increasing part of court workloads in Victoria. Victorian courts sentenced offenders for 100,860 secondary offences:

- in the County Court and Supreme Court, secondary offences increased from 0.65% (44) of all charges sentenced each year to 6.33% (404);
- in the Magistrates' Court, secondary offences increased from 5.87% (11,610) of all charges sentenced each year to 9.67% (28,465); and
- in the Children's Court, secondary offences increased from 2.83% (590) of all charges sentenced each year to 14.34% (2,993).

There were 12,244 secondary offences sentenced in all courts in 2011–12, and by 2015–16 that number had increased to 31,862. These offences have increased the burden on police, prosecutors, defence lawyers, correctional staff, courts and court administrative staff.

Concurrent imprisonment sentences for secondary offences

Despite becoming an increased part of the workload for those involved in the criminal justice system, secondary offences have not contributed significantly to Victoria's prison population. Of the 100,860 secondary offences sentenced between 2011–12 and 2015–16, only 17,401 (17%) received a term of imprisonment. Further, of those secondary offences that received imprisonment, the majority of sentences were either:

- an aggregate sentence of imprisonment (that is, the secondary offences were part of a group of offences that received a single term of imprisonment); or
- a term of imprisonment that was wholly concurrent with other terms of imprisonment (for secondary offences that were sentenced individually).

There are legislative presumptions that imprisonment sentences for most secondary offences (especially those committed while on bail or parole) are to be served cumulatively on, not concurrently with, other terms of imprisonment. However, there are a number of reasons that explain the high levels of concurrency of imprisonment terms for secondary offences. These reasons include that secondary offences:

- often have relatively low maximum penalties;
- usually involve behaviours (such as being a few hours late for court) that are not serious enough to justify a severe punishment, therefore invoking the principle of parsimony;
- are usually sentenced alongside other more serious offences (such as armed robbery), therefore invoking the principle of totality; and
- are often constituted by the same behaviour as those more serious offences (for example, an offender may have breached their parole by committing an armed robbery), therefore invoking the prohibition on double punishment.

In summary, the relatively low maximum penalties, the broad spectrum of behaviours underlying most secondary offences and the principles of parsimony, totality and double punishment together often militate against offenders being sentenced to spend additional time in custody for secondary offences.

Age of offenders sentenced for secondary offences

The Council's findings in relation to individual offenders sentenced for secondary offences support most past research about the relationship between youth and the likelihood of failing to comply with court-ordered conditions. Young offenders who fail to comply with court orders tend to do so more than once. For each category of offences discussed in this report, offenders aged under 25 were most likely to be sentenced for multiple charges of the same category of offences during the data period. For example, while offenders aged under 25 were sentenced for an average of 2.8 bail-related secondary offences each, this number gradually declined with age, with those aged 60 and over sentenced to an average of 1.6 charges each.

The utility and effectiveness of secondary offences

Over the last 15 years or so, there has been disagreement about the utility and effectiveness of secondary offences, especially those involving breaches of sentencing orders. On the one hand, it has been argued that secondary offences deter people on bail, parole or a community-based disposition from breaching the conditions attached to their orders, especially the condition not to commit an imprisonable offence. On the other hand, it has been argued that if deterring further offending is the real target of secondary offences, then the possibility of an additional few months' imprisonment does not add much to the deterrent value of possibly having bail revoked, having parole cancelled, being resentenced or being sentenced for the new offending behaviour.

Further, those who have opposed the criminalisation of condition breaches have suggested that:

1. the purpose of such offences is more about bringing people back to court than it is about punishing the breach;
2. such offences potentially expose offenders to three punishments for the same behaviour, because the offender can be sentenced for the new offending, sentenced for the separate breach offence and resentenced for the original offending; and
3. because of this overlap with other offences, courts often impose only small penalties for the separate breach offence.

In contrast, those who have advocated the criminalisation of condition breaches have suggested that such offences substantially improve the information available to future decision-makers about a person's level of risk or likelihood of complying with conditions. When a decision-maker at a bail, parole or sentencing hearing is considering the appropriate decision, the presence of secondary offences in the person's criminal record will indicate a history of proven non-compliance.

Even this advantage, though, has been a matter of dispute. Because secondary offences are proven criminal offences, the future decision-maker can be assured that the secondary offences have been proven beyond reasonable doubt, avoiding the potential injustice of taking into account unproven or excusable condition breaches in an administrative record. Conversely, it might be more appropriate to capture this information in some other fashion without resorting to the criminal law.

1. Introduction: definitions, research aims and methodology

This chapter outlines:

- the Council's definition of secondary offences;
- the importance of secondary offences as the focus of this report;
- the aims of this report;
- the 20 operational secondary offences identified by the Council; and
- the methodology used to examine secondary offences.

Defining secondary offences

The Council has defined particular offences as 'secondary offences' when they have met the following criteria:

1. a person has been suspected or convicted of a criminal offence;
2. because of that involvement with the criminal justice system, the person is subject to special restrictions or requirements that do not apply to others in the community; and
3. the contravention of those special restrictions or requirements is a discrete offence.

This category of offending represents offences that arise *secondarily* to a person's involvement in the criminal justice system.

Secondary offences are a subcategory of what are often referred to as 'justice procedures offences' (or justice system offences), a broad term used to describe all offences that somehow relate to the justice system. Justice procedures offences therefore include all secondary offences, but they capture a broader range of offending and also include offences such as perjury and escape from custody.

Excluded offences

A number of offences that might be considered secondary offences are not examined in this report, specifically, some driving offences and contraventions of intervention orders and safety notices. Driving-related offences such as 'drive while suspended'¹ are not examined because many licence suspensions are the result of regulatory infringements (and the resulting accumulation of demerit points) and data available to the Council does not distinguish between offences following demerit licence suspension and offences following suspension of a licence as part of a sentencing order.² In addition, the sheer volume of those offences warrants a separate report.³

1. *Road Safety Act 1986* (Vic) s 30(1).

2. See for example, an order for suspension of a driver licence under section 89A of the *Sentencing Act 1991* (Vic).

3. See for example, Sentencing Advisory Council, *Driving While Disqualified or Suspended: Report* (2009).

Further, this report does not examine the offences of contravening a family violence intervention order, contravening a family violence safety notice or contravening a personal safety intervention order.⁴ This is because the Council has previously reported extensively on the sentencing of contraventions of family violence intervention orders and safety notices,⁵ and, more critically, those offences do not meet the Council's criteria for secondary offences. The Council has defined secondary offences as offences that arise secondarily to an offender's involvement in the criminal justice system, and intervention orders are *civil*, rather than criminal, orders. Respondents subject to intervention orders are not necessarily involved in the criminal justice system until, for example, they are alleged to have contravened the conditions of the order.

The importance of examining secondary offences

There is little to no research available on 'secondary offences',⁶ in Australia or elsewhere. Secondary offences are, however, worthy of examination for at least three key reasons: first, to determine whether secondary offences are having an effect on crime rates, imprisonment rates and court workloads; second, to underline that many secondary offences are new criminal offences and warrant close scrutiny; and third, to assess whether secondary offences may be having a criminogenic effect.

Possible effect on crime rates, imprisonment rates and court workloads

The first reason for examining secondary offences relates to the effect this category of offences may be having on current crime rates, imprisonment rates and court workloads.

Crime rates are increasing in Victoria: the total number of offences recorded by Victoria Police in 2016 increased by more than 10% from the previous year (from 500,971 to 552,005).⁷ The offence categories driving this increase primarily included crimes against the person (such as assault), property and deception offences (such as theft) and justice procedures offences. The number of justice procedures offences rose from 28,361 in 2012 to 72,446 in 2016, a 155% increase (Figure 1). A substantial part of this increase in justice procedures offences recorded by police is due to secondary offences.

New South Wales has also experienced a significant increase in justice procedures offences: there were 41,912 proven charges in 2012 and 61,940 in 2016 (a 47.8% increase).⁸

Court workloads are also being affected by the increase in justice procedures offences. In the Children's Court, justice procedures offences have increased from 4.5% of the court's workload in 2010 to 18.5% in 2015.⁹

4. *Family Violence Protection Act 2008* (Vic) ss 37–37A, 123–123A; *Personal Safety Intervention Orders Act 2010* (Vic) s 100.

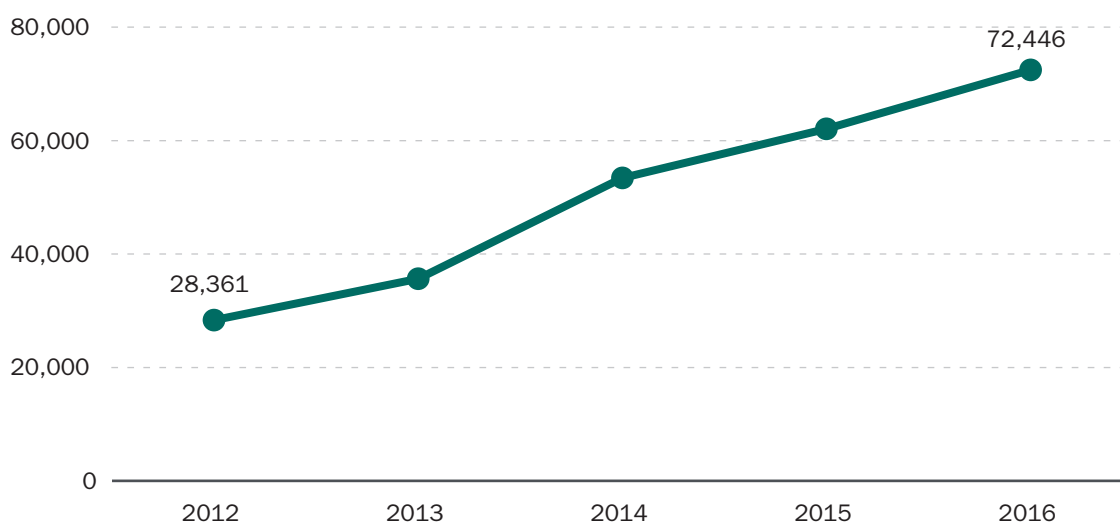
5. Sentencing Advisory Council, *Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report* (2015); Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention* (2013); Sentencing Advisory Council,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

6. The term 'secondary offences' has not been used consistently. Jason Payne has used 'secondary offending' to mean recidivism: Jason Payne, *Recidivism in Australia: Findings and Future Research*, Research and Public Policy Series no. 80 (2007) 5; and the New South Wales Sentencing Council has used 'secondary offending' to refer to offences that come into operation after a driver has previously received a sanction, such as driving while unlicensed or failing to pay a fine: New South Wales Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-Imposed Fines and Penalty Notices: Interim Report* (2006) 153.

7. Crime Statistics Agency (Victoria), 'Year Ending 31 December 2016' (Crime Statistics Agency, 2017) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-crime-data/year-ending-31-december-2016>> at 2 August 2017.

8. Bureau of Crime Statistics and Research (NSW), 'Criminal Court Statistics' (Bureau of Crime Statistics and Research, 2017) <http://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/bocsar_court_stats.aspx> at 2 August 2017.

9. Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report* (2016) xii, 20.

Figure 1: Justice procedures offences recorded by Victoria Police, by calendar year, 2012–2016

Source: Crime Statistics Agency Victoria¹⁰

Research outside Australia is also beginning to consider the relationship between secondary offences (without specifically describing them by that term) and high crime and imprisonment rates. The Marshall Project, a criminology research group in the United States, recently found that over 61,000 inmates in the country were in custody because they had breached a 'technical condition' of their parole.¹¹ In 25 of the states where data was available, the researchers found that more than 6% of the prison population was in custody due solely to a technical parole violation.

Similarly, the Sentencing Council for England and Wales is currently consulting on draft sentencing guidelines for 'breach offences' (many of which would be considered secondary offences according to the Council's definition).¹² The draft guidelines are the result of a survey of 216 magistrates and judges who 'indicated that they would like comprehensive sentencing guidelines for breaches of orders, presented in a consistent format and clearly identifiable as a breach guideline'.¹³ The United Kingdom's House of Commons Justice Committee has raised concerns that the new guidelines could 'generate an increase in custodial sentences'.¹⁴

Scrutiny of new criminal laws

The second reason why secondary offences merit investigation is that close scrutiny is warranted when the criminal law is extended to capture new behaviours that were not previously criminal. Criminalisation is the most coercive tool at the state's disposal,¹⁵ and criminal law theorists have stated that the criminal law should be a last resort that is only used if there are no other mechanisms available to achieve what that particular criminal law is trying to achieve.¹⁶

10. Crime Statistics Agency (Victoria) (2017), above n 7.

11. Eli Hager, 'At Least 61,000 Nationwide Are in Prison for Minor Parole Violations' (The Marshall Project, 2017) <<https://www.themarshallproject.org/2017/04/23/at-least-61-000-nationwide-are-in-prison-for-minor-parole-violations>> at 23 August 2017. The Marshall project is a non-profit and non-partisan organisation dedicated to criminal justice news in the United States.

12. Sentencing Council for England and Wales, *Breach Offences Guideline: Consultation* (2016).

13. *Ibid* 7.

14. House of Commons (UK) Justice Committee, *Draft Sentencing Guideline on Breach Offences: Thirteenth Report of Session 2016–17*, HC 1105 (2017) 7, 17.

15. Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (7th ed., 2013) 33.

16. Nils Jareborg, 'Criminalization as Last Resort (*Ultima Ratio*)' (2004) 2 *Ohio State Journal of Criminal Law* 521, 521–534; Douglas Husak, 'Criminal Law as Last Resort' (2004) 24(2) *Oxford Journal of Legal Studies* 207, 207–235.

A number of secondary offences in Victoria have been only very recently legislated. Close scrutiny of these offences may help mitigate the risk of them contributing to what has been described as 'overcriminalisation', which some have argued is a trend in many jurisdictions towards prohibiting trivial behaviours and/or excessively punishing offenders.¹⁷

While the Council draws no conclusions as to whether secondary offences in Victoria represent overcriminalisation, the data presented in this report may better inform community discussion around these issues.

Possible criminogenic effect

The third reason for examining secondary offences is the risk that additional criminal prohibitions on people already in the criminal justice system could increase, rather than decrease, criminal behaviours. In part, this is because crime rates are likely to increase when a previously lawful behaviour becomes a criminal offence. When the criminal law is extended to capture behaviours that would not previously have given rise to an offence, this increases the number of offences people are sentenced for and may also increase the number of interactions that people have with the criminal justice system. In addition, if people who commit secondary offences are sentenced to a term of imprisonment (or to a longer term of imprisonment), this could in turn increase their risk of reoffending due to the criminogenic effect of prison.¹⁸

Aims of this report

This report examines data for offenders who were sentenced for secondary offences in the period 2011–12 to 2015–16. The three overarching aims of the report are to:

1. examine the **number** of secondary offences in Victoria (including the number of sentenced charges and the number of unique offenders);
2. examine the **sentencing outcomes** for secondary offences in Victoria; and
3. inform the **dialogue** about the utility and effectiveness of secondary offences in Victoria.

Secondary offences in Victoria

In order to identify secondary offences in effect in Victoria, the Council examined a number of Acts¹⁹ and compared offences in those Acts against the three criteria for defining a secondary offence outlined above. Twenty offences met the criteria to classify as a secondary offence. While this list may not be exhaustive, the Council considers it highly representative, and it likely covers the vast majority of secondary offences in Victoria.

17. Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (2008); Erik Luna, 'The Overcriminalization Phenomenon' (2005) 54(3) *American University Law Review* 703, 703–743.

18. Francis T. Cullen, Cheryl Lero Jonson and Daniel S. Nagin, 'Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science' (2011) 91(3) *The Prison Journal* 485, 485–655.

19. *Crimes Act 1958* (Vic); *Bail Act 1977* (Vic); *Corrections Act 1986* (Vic); *Magistrates' Court Act 1989* (Vic); *Sentencing Act 1991* (Vic); *Sex Offenders Registration Act 2004* (Vic); *Children, Youth and Families Act 2005* (Vic); *Family Violence Protection Act 2008* (Vic); *Criminal Procedure Act 2009* (Vic); *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic).

The Council assigned these 20 secondary offences into four categories based on the stage of the criminal justice process to which they relate or on their subject matter:

1. bail-related secondary offences;
2. sentence-related secondary offences;
3. the parole-related secondary offence; and
4. sex offender secondary offences.

The Council based the first three categories on the stage of the criminal justice process to which the secondary offences relate (on bail, under sentence or on parole). The Council based the fourth category on the type of offender; in that there are a number of offences that apply only to people charged with or convicted of registrable sex offences, offences that operate outside the usual timeline of criminal justice proceedings.

Table 1 (pages 6–7) describes each of the secondary offences identified by the Council that were in effect during the data period.

At the beginning of the data period (1 July 2011) there were 12 identified secondary offences in Victoria. Six had a maximum penalty of a term of imprisonment, and the remaining six could only be punished with a fine.

Over the following five years, there was an increase in both the number of secondary offences and the penalties for those offences. These changes were the result of a number of legislative reforms:

- in 2011, the offence of contravening a community correction order was introduced, and the maximum penalties for breaching a number of old sentencing orders were increased from a fine to imprisonment;²⁰
- in 2013, the offences of contravening a conduct condition of bail and committing an indictable offence whilst on bail were introduced;²¹
- in 2013, the offence of breaching a prescribed condition of parole was introduced;²²
- in 2014, the offence of contravening an alcohol exclusion order was introduced;²³
- in 2014, the maximum penalty for furnishing false or misleading information was increased from two years' imprisonment to five years' imprisonment for registrable sex offenders;²⁴
- in 2016, the maximum penalty for failing to answer bail was increased from 12 months' imprisonment to two years' imprisonment,²⁵ and children were removed from the category of persons who could be held liable for contravening a conduct condition of bail;²⁶ and
- in 2016, a mandatory minimum sentence of 12 months' imprisonment was introduced for intentional or reckless failures to comply with a restrictive condition of a supervision order.²⁷

By the end of the five-year data period (30 June 2016), there were 16 identified secondary offences in Victoria. Of those, 12 had a maximum penalty of a term of imprisonment, and four had a maximum penalty of a fine.

20. *Sentencing Act 1991* (Vic) s 83AD, as inserted by *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) s 43; *Sentencing Act 1991* (Vic) sch 3 cls 7–10, as inserted by *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) s 54.

21. *Bail Act 1977* (Vic) ss 30A–30B, as inserted by *Bail Amendment Act 2013* (Vic) s 8.

22. *Corrections Act 1986* (Vic) s 78A, as inserted by *Corrections Amendment (Breach of Parole) Act 2013* (Vic) s 3.

23. *Sentencing Act 1991* (Vic) s 89DF, as inserted by *Summary Offences and Sentencing Amendment Act 2014* (Vic) s 7.

24. *Sex Offenders Registration Act 2004* (Vic) s 47, as amended by *Sex Offenders Registration Amendment Act 2014* (Vic) s 18.

25. *Bail Act 1977* (Vic) s 30, as amended by *Bail Amendment Act 2016* (Vic) s 8.

26. *Bail Act 1977* (Vic) s 30A(3), as inserted by *Bail Amendment Act 2016* (Vic) s 16.

27. *Sentencing Act 1991* (Vic) s 10AB, as inserted by *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic) s 40.

Table 1: Secondary offences operational in Victoria between 2011–12 and 2015–16

Offence	Statutory reference	Maximum penalty	Operational dates
Bail-related secondary offences			
Failing to answer bail	<i>Bail Act 1977</i> (Vic) s 30	12 months' imprisonment	Before 2 May 2016
		2 years' imprisonment	From 2 May 2016
Contravening a conduct condition of bail	<i>Bail Act 1977</i> (Vic) s 30A	3 months' imprisonment or 30 penalty units	From 20 December 2013
Committing an indictable offence whilst on bail	<i>Bail Act 1977</i> (Vic) s 30B	3 months' imprisonment or 30 penalty units	From 20 December 2013
Failing to notify the Director of Public Prosecutions of a change of address whilst on bail	<i>Bail Act 1977</i> (Vic) s 29(4)*	3 months' imprisonment or 15 penalty units	Entire data period
Sentence-related secondary offences			
Breaching a home detention order	<i>Sentencing Act 1991</i> (Vic) sch 3 cl 8*	3 months' imprisonment	Between 16 January 2012 and 15 January 2013
Breaching a combined custody and treatment order	<i>Sentencing Act 1991</i> (Vic) s 18W*	Level 10 fine	Before 16 January 2012
	<i>Sentencing Act 1991</i> (Vic) sch 3 cl 7*	3 months' imprisonment	Between 16 January 2012 and 15 January 2013
Breaching an intensive correction order	<i>Sentencing Act 1991</i> (Vic) s 26*	Level 10 fine	Before 16 January 2012
	<i>Sentencing Act 1991</i> (Vic) sch 3 cl 9*	3 months' imprisonment	Between 16 January 2012 and 15 January 2013
Breaching a community-based order	<i>Sentencing Act 1991</i> (Vic) s 47*	Level 10 fine	Before 16 January 2012
	<i>Sentencing Act 1991</i> (Vic) sch 3 cl 10*	3 months' imprisonment	Between 16 January 2012 and 15 January 2014
Contravening a suspended sentence	<i>Sentencing Act 1991</i> (Vic) s 83AB*	3 months' imprisonment	Between 16 January 2012 and 31 August 2016

Offence	Statutory reference	Maximum penalty	Operational dates
Contravening an adjourned undertaking	<i>Sentencing Act 1991</i> (Vic) s 79*	Level 10 fine	Before 16 January 2012
	<i>Sentencing Act 1991</i> (Vic) s 83AC	Level 10 fine	From 16 January 2012
Contravening a community correction order	<i>Sentencing Act 1991</i> (Vic) s 83AD	3 months' imprisonment	From 16 January 2012
Failing to follow a written direction of the Secretary	<i>Sentencing Act 1991</i> (Vic) s 83AF	Level 11 fine	From 16 January 2012
Contravening an alcohol exclusion order	<i>Sentencing Act 1991</i> (Vic) s 89DF	2 years' imprisonment	From 1 September 2014
Parole-related secondary offence			
Breaching a prescribed condition of parole	<i>Corrections Act 1986</i> (Vic) s 78A	3 months' imprisonment, 30 penalty units or both	From 1 July 2014
Sex offender secondary offences			
Failing to comply with a supervision order	<i>Serious Sex Offenders (Detention and Supervision) Act 2009</i> (Vic) s 160	5 years' imprisonment	Entire data period
Failing to comply with reporting obligations	<i>Sex Offenders Registration Act 2004</i> (Vic) s 46	5 years' imprisonment	Entire data period
Furnishing false or misleading information	<i>Sex Offenders Registration Act 2004</i> (Vic) s 47	2 years' imprisonment or 240 penalty units	Before 1 June 2015
	<i>Sex Offenders Registration Act 2004</i> (Vic) s 47	5 years' imprisonment	From 1 June 2015
Applying for or engaging in child-related employment	<i>Sex Offenders Registration Act 2004</i> (Vic) s 68	2 years' imprisonment or 240 penalty units	Entire data period
Failing to disclose a registrable offence charge to an employer	<i>Sex Offenders Registration Act 2004</i> (Vic) s 69	60 penalty units	Entire data period
Applying to change name without permission	<i>Sex Offenders Registration Act 2004</i> (Vic) 70C(1)	5 penalty units	Entire data period

* Denotes a legislative provision that has been repealed.

Abolished sentencing orders

A number of the sentence-related secondary offences were no longer in effect at the end of the data period. This was because a number of sentencing dispositions were abolished between 2012 and 2014: home detention orders, community-based orders, intensive correction orders, combined custody and treatment orders and suspended sentences. Because these dispositions were no longer available, the *offences* of breaching these dispositions were also gradually abolished. There was, though, a transitional period during which offenders already subject to these dispositions continued to be subject to the conditions of the orders (and were also liable for the offences of breaching the orders).

Because these sentence-related secondary offences are no longer in operation in Victoria, they are not a key focus of this report. The offences are, however, still relevant for the purpose of understanding the total number of sentence-related secondary offences committed during the data period, as well as the number of unique offenders sentenced for those offences.

Methodology

This section outlines the Council's data methodology for examining secondary offences.

Sentencing outcomes for secondary offences

The Council identified the sentences imposed on charges of secondary offences in all Victorian courts. All sentences imposed between July 2011 and June 2016 that resulted in a finding of guilt were included in the analysis. For all analyses of sentence type, only the most serious penalty imposed on a charge was counted. For example, sentences of imprisonment combined with a community correction order were counted as sentences of imprisonment.

The Council also ascertained the following additional information to provide a more detailed overview of sentencing outcomes for secondary offences:

1. for terms of imprisonment, whether the charge was part of an aggregate sentence;
2. for *non-aggregate* terms of imprisonment, the length of the term imposed as well as whether the imprisonment term was concurrent with, or cumulative on, other imprisonment terms; and
3. for charges of breaching a sentencing order, any additional actions the court took in response to the behaviour (such as varying the original sentencing order).

The methodology used to ascertain these three sentencing variables from the data is outlined below. Notably, the process of recording these additional sentencing variables differs across Victorian courts.

Aggregate sentences and concurrency

When a court sentences an offender for two or more offences that are founded on the same facts, or are part of a series of offences of the same character, the court can sentence the offender to an aggregate sentence of imprisonment, representing a single penalty for multiple offences.²⁸ When imposing an aggregate sentence, the court is not required to identify the sentences that would have been imposed for each offence separately.²⁹ As a result, where a court has included a secondary offence within an aggregate sentence of imprisonment, it is not possible to determine the length imposed for that individual charge, or whether the sentence for that charge was concurrent with, or cumulative on, other sentences imposed.

28. *Sentencing Act 1991* (Vic) s 9(1).

29. *Sentencing Act 1991* (Vic) s 9(4)(b).

Information about the concurrency or cumulation of non-aggregate sentences was only available in the Magistrates' Court data. The concurrency of a term of imprisonment was recorded as either wholly concurrent or partly concurrent with the base sentence or as the base sentence itself (on which all other charges were either concurrent or cumulative). As with aggregation, concurrency was recorded for each penalty imposed on a charge. Each non-aggregate sentence of imprisonment imposed had a specific length recorded.

Additional responses to contraventions of sentencing orders

Where the secondary offence was a contravention of a sentencing order, the Council also collected data about additional actions that courts took in response to proven contraventions. In most instances, when an offender breaches a sentencing order, not only are the courts empowered to punish the breach offence itself with a distinct penalty but the courts can also often take additional action (and in some cases are legislatively required to do so). For example, courts can confirm, vary or cancel the original sentencing order, and in the case of suspended sentences, they can restore some or all of the suspended term. This additional response to the breaching behaviour can often be a more serious punishment than the penalty for the breach offence itself, particularly if the original offending is resentenced. As a result, the data on additional court responses is necessary to accurately reflect the consequences of breaching behaviours. Where a court did not specify whether the original order was confirmed, varied or cancelled, this was taken to be an implied confirmation of the original order.

The number of sentence-related secondary offences is, however, under-representative of the total number of such charges sentenced in the Magistrates' Court and higher courts due to recording practices for these offences. In the Magistrates' Court data, unique charges could not be matched with their penalties. It was therefore only possible to determine which *types* of sentence-related secondary offences were sentenced within each case. It was not possible to determine the individual sentence outcomes for each of the multiple charges of any particular offence. For example, two charges of contravening a community correction order in a single case would only be counted as one charge.

In the higher courts, it was only possible to determine the number of *cases* in which a sentence-related secondary offence was sentenced. It could not be determined which sentencing order was breached from a case that contained multiple sentencing orders. As a result, the Council classified these cases as a breach of the least severe disposition, on the basis that the least severe sentence is the one most likely to have been breached, as it requires the minimum breaching behaviour on the part of the offender.

The following illustrates how this has affected the data. If an offender was sentenced in a single case for two charges of contravening a community correction order and one charge of contravening an adjourned undertaking, then this was counted in the Magistrates' Court data as one of each charge type (contravening a community correction order and contravening an adjourned undertaking), and in the higher courts data as one charge of the least serious offence (contravening an adjourned undertaking). In the higher courts, there were 41 cases in which an offender sentenced for a sentence-related secondary offence was, at the time, subject to two separate sentencing orders that might have been the basis for the breach.

Identifying individual offenders

In order to determine how many unique individuals were sentenced for secondary offences, the Council identified multiple records of the same name and date of birth appearing in the database as unique offenders. To address problems with alternative spellings of names and errors in dates of birth, the Council used a series of rules to allow matching, based on the Soundex process developed by the New South Wales Bureau of Crime Statistics and Research for its recidivism database.³⁰

For an analysis of the age and gender of the offender within each secondary offence category, each offender was identified once, at the date of their first sentence during the data period.

Excluded data

There are two possible interpretations of sentencing outcomes coded as 'dismissed' in the Magistrates' Court and higher courts data. First, this might indicate that the Magistrates' Court or the higher courts exercised their discretion under section 76 of the *Sentencing Act 1991* (Vic) to dismiss a charge without recording a conviction despite being satisfied that the person was guilty of an offence. If this were the only interpretation of charges that were dismissed, they could safely be included in the data in this report. However, a sentencing outcome of 'dismissed' can also indicate that the case was dismissed for other reasons, including that the case was not proven or the prosecution withdrew the charges. It was not possible to discern which charges were dismissed pursuant to section 76 (such that the charge was proven) and which charges were dismissed for other reasons (such that the charge may not have been proven). As a result, because the Council could not reliably assert which of these charges had been proven, 24 charges in the Magistrates' Court and higher courts were excluded from the analysis.

30. Jiuzhao Hua and Jacqueline Fitzgerald, *Matching Court Records to Measure Reoffending*, Crime and Justice Bulletin no. 95 (2006) 2. The Council has previously used this approach to identify unique offenders: Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016) 80.

2. Bail-related secondary offences

At the beginning of the data period (1 July 2011) there were two bail-related secondary offences in Victoria: failing to notify the Director of Public Prosecutions of a change of address (home or business) whilst on bail, and failing to answer bail (not attending court when required). It was not otherwise an offence to contravene the conditions of bail. On 20 December 2013, two further bail-related secondary offences came into operation: contravening a conduct condition of bail and committing an indictable offence whilst on bail.³¹

The Council identified four bail-related secondary offences, including the two new offences, that were operational during the data period from 2011–12 to 2015–16:

1. **Failing to notify the Director of Public Prosecutions of a change of address whilst on bail:** offenders on bail were previously required to notify the Director of Public Prosecutions if the address of their place of residence or business changed while they were awaiting trial. Failing to do so was an offence punishable by three months' imprisonment.³² The offence was repealed on 20 March 2017.³³
2. **Failing to answer bail:** it is an offence for an accused person on bail to fail to attend court when required to do so, without a reasonable excuse.³⁴ For most of the data period, the maximum penalty was 12 months' imprisonment, but that increased to two years as at 2 May 2016.³⁵
3. **Contravening a conduct condition of bail:** accused people on bail may be required to comply with certain conditions, such as residing at a particular address or not contacting specified persons.³⁶ While previously it was not a punishable offence to contravene a condition of bail (instead, the person could, for example, be issued a warning or have their bail revoked), as at 20 December 2013, contravening certain bail conditions also became an offence punishable by three months' imprisonment.³⁷
4. **Committing an indictable offence whilst on bail:** new legislation that came into effect on 20 December 2013 now renders it a discrete offence to commit an indictable offence whilst on bail.³⁸ For example, if an accused person on bail were to be convicted of theft,³⁹ they would then also be liable for the additional crime of committing an indictable offence whilst on bail.

31. *Bail Act 1977* (Vic) ss 30A–30B, as inserted by *Bail Amendment Act 2013* (Vic) s 8.

32. *Bail Act 1977* (Vic) ss 29(2)–(4) (since repealed).

33. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 18.

34. *Bail Act 1977* (Vic) s 30.

35. *Bail Amendment Act 2016* (Vic); Attorney-General Martin Pakula, MP, stated that:

The primary purpose of bail is to ensure that people attend court for trial or sentencing. When a person deliberately absconds in breach of their bail, the community is rightly concerned. This bill aligns our laws with public expectation by increasing the consequences for failing to appear when on bail.

The maximum penalty for the offence of 'failure to appear' will be increased from 12 months to two years. This will afford greater flexibility to courts to impose higher sentences where this is warranted by the particular circumstances of the case.

Victoria, *Parliamentary Debates*, Legislative Assembly, 25 November 2015, 4968 (Martin Pakula, Attorney-General).

36. *Bail Act 1977* (Vic) s 5.

37. *Bail Act 1977* (Vic) s 30A. There are two exclusions from this offence: first, the offence does not apply to people who fail to attend and participate in bail support services and, second, as at 2 May 2016 children can no longer be held liable for this offence: *Bail Act 1977* (Vic) ss 30A(2)–(3).

38. *Bail Act 1977* (Vic) s 30B.

39. *Crimes Act 1958* (Vic) s 74 (punishable with 10 years' imprisonment).

There was some debate surrounding the introduction of the two new offences. In 2007, the Victorian Law Reform Commission recommended against the introduction of a new bail-related secondary offence on the basis that it might have a disproportionate effect on vulnerable persons, especially those with drug issues, those with mental health issues, those experiencing homelessness and young offenders who may not yet appreciate the seriousness of adhering to conditions.⁴⁰ Further, it was questioned whether the new offences, each with a maximum penalty of three months' imprisonment, would be capable of deterring accused people on bail from committing offences, above and beyond the deterrent value of bail revocation.⁴¹

It was suggested at the time of their introduction that the new offences would send a clear message of denunciation to offenders who contravened bail obligations, help inform future decision-makers about a person's past compliance with bail conditions and deter those on bail from contravening their conditions.⁴²

Number of bail-related secondary offences sentenced

There were a total of 70,235 charges of bail-related secondary offences sentenced during the five-year data period (Table 2).

This comprised 45,640 charges of failing to answer bail, 14,336 charges of committing an indictable offence whilst on bail and 10,259 charges of contravening a conduct condition of bail. There were no charges in any court of failing to notify the Director of Public Prosecutions of a change of address whilst on bail. The most common bail-related secondary offence was failing to answer bail (65%), though this is to be expected given that the offence was operational for the entire data period, while the other two were only operational for half of the data period.

Overall, and individually, the number of sentenced charges of bail-related secondary offences increased considerably during the five-year data period:

- between 2011–12 and 2015–16, the total number of bail-related secondary offences sentenced each year rose from 7,085 to 24,320 (a 243% increase);
- between 2011–12 and 2015–16, the number of charges of failing to answer bail rose from 7,085 to 10,408 (a 47% increase); and
- between 2014–15 and 2015–16, the combined number of charges of the two new bail-related secondary offences rose from 9,195 to 13,912 (a 51% increase).⁴³

Some of the overall increase in bail-related secondary offences was due to the introduction of the two new offences in 2013; however, this was not the sole cause. Alongside a considerable increase in the number of charges of the two new offences, there has also been a gradual increase in the number of charges of the offence of failing to answer bail (Figure 2, page 14).

40. Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (2007) 128.

41. Sue Pennicuik, MP, stated that:

I fail to see, and certainly the Victorian Law Reform Commission has made the point that it is very difficult to see, how making it an offence to not comply with a bail condition or to breach a bail condition would be a deterrent when there is already the deterrent of being remanded in custody or of having more onerous conditions attached to your bail ...

It just makes it more difficult for the offenders who are struggling to comply with conditions in the first place, and in terms of recalcitrant, violent, wilful offenders I do not think it would be a deterrent. I do not think that a penalty of up to three months and perhaps less than three months is going to deter someone who is at the higher end of offending. In terms of that I am not convinced of its efficacy as a deterrent for high-level offenders, but I think it is going to make problems for people who are struggling to comply with their conditions.

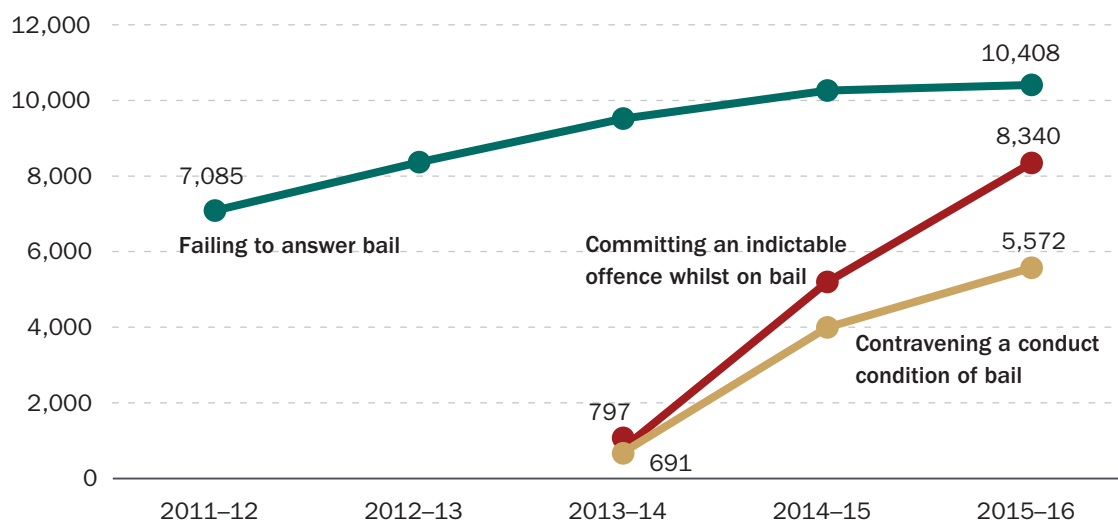
Victoria, *Parliamentary Debates*, Legislative Council, 22 August 2013, 2486–2489 (Sue Pennicuik, Southern Metropolitan).

42. Victoria, *Parliamentary Debates*, Legislative Council, 27 June 2013, 2296 (Gordon Rich-Phillips, Assistant Treasurer); Victoria, *Parliamentary Debates*, Legislative Assembly, 17 April 2013, 1265–1266 (Robert Clark, Attorney-General).

43. The 2014–15 financial year was used as the starting point for the two new offences because it was the first full financial year in which the two offences were operational.

Table 2: Number of bail-related secondary offences sentenced, by offence and court, 2011-12 to 2015-16

Offence	Court	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Committing an indictable offence whilst on bail	Magistrates' Court	-	-	616	4,218	7,079	11,913
	Higher courts	-	-	0	38	92	130
	Children's Court	-	-	181	943	1,169	2,293
	Subtotal	-	-	797	5,199	8,340	14,336
Contravening a conduct condition of bail	Magistrates' Court	-	-	449	2,731	4,177	7,357
	Higher courts	-	-	1	26	35	62
	Children's Court	-	-	241	1,239	1,360	2,840
	Subtotal	-	-	691	3,996	5,572	10,259
Failing to answer bail	Magistrates' Court	6,472	7,749	8,949	9,704	9,911	42,785
	Higher courts	24	51	37	34	34	180
	Children's Court	589	565	534	524	463	2,675
	Subtotal	7,085	8,365	9,520	10,262	10,408	45,640
Total		7,085	8,365	11,008	19,457	24,320	70,235

Figure 2: Number of bail-related secondary offences sentenced, by offence and financial year, all courts, 2011–12 to 2015–16

The increase in bail-related secondary offences does not simply reflect an overall increase in the number of all offences sentenced during the five-year data period. Rather, as discussed in Chapter 6, these offences represent a growing proportion of all charges sentenced in Victoria.⁴⁴

For the 7,808 charges of bail-related secondary offences sentenced in the Children's Court:

- the number of charges of failing to answer bail dropped from 589 in 2011–12 to 463 in 2015–16 (a 21% decrease);
- the number of the two new bail-related secondary offences increased slightly, with a combined 16% increase between 2014–15 and 2015–16;⁴⁵ and
- in the most recent financial year, the two new bail-related secondary offences were both much more common (39% and 45%) than failing to answer bail (15%).

For the 62,055 charges of bail-related secondary offences sentenced in the Magistrates' Court:

- the number of charges of failing to answer bail increased substantially, from 6,472 in 2011–12 to 9,911 in 2015–16 (a 53% increase);
- the combined number of the two new bail-related secondary offences also increased substantially, from 6,949 in 2014–15 to 11,256 in 2015–16 (which represents a 68% increase in charges of committing an indictable offence whilst on bail, and a 53% increase in charges of contravening a conduct condition of bail); and
- in the most recent financial year, the offence of failing to answer bail was more common (47%) than the two new bail-related secondary offences (33% and 20%).

For the 372 charges of bail-related secondary offences sentenced in the higher courts:

- the number of charges of failing to answer bail remained relatively steady, with an anomalous spike of 51 in 2012–13;
- the combined number of the two new bail-related secondary offences increased from 64 in 2014–15 to 127 in 2015–16 (representing a 142% increase in committing an indictable offence whilst on bail and a 35% increase in contravening a conduct condition of bail); and
- in the most recent financial year, the offence of committing an indictable offence whilst on bail was far more common (57%) than the other two bail-related secondary offences (22% and 21%).

44. See Chapter 6 for a discussion of how secondary offences have increased as an overall proportion of court workloads.

45. The two most recent financial years were used to assess the number of the two new bail-related secondary offences in order to account for their being active for only half of the data period.

This data suggests that bail-related secondary offences not only increased overall but they also increased within each jurisdiction. In the Children's Court in particular, the two new bail-related secondary offences quickly surpassed the offence of failing to answer bail in number. However, a marked decline is likely to be observed in the number of charges of contravening a conduct condition of bail in the Children's Court in future years, as a result of a recent legislative amendment that excludes children from this offence.⁴⁶

Sentencing outcomes for bail-related secondary offences

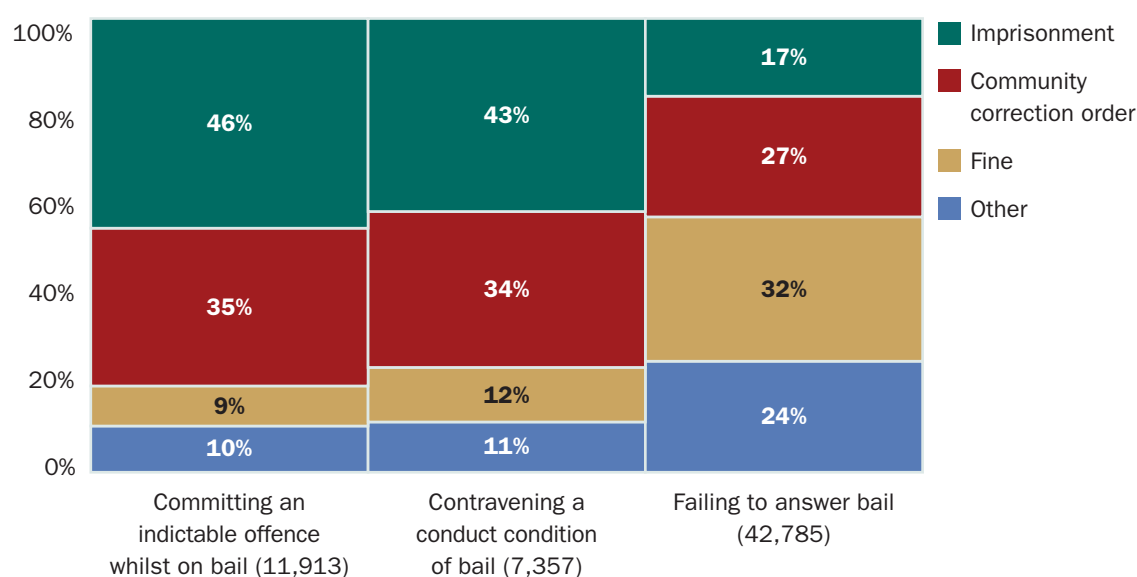
The majority of bail-related secondary offences were sentenced in the Magistrates' Court (88%), with the remainder sentenced in the Children's Court (11%) and the higher courts (1%). Table 3 (pages 16–17) outlines the sentencing outcomes for these offences.

In Table 3:

- the 'other' category in the Magistrates' Court and the higher courts includes adjourned undertakings (9% of all sentencing outcomes), convicted and discharged (2%), youth justice centre orders (1%), diversions (1%) and drug treatment orders (<1%);
- for the offence of failing to answer bail, the 'other' category in the Magistrates' Court and the higher courts also includes a number of repealed sentencing orders: suspended sentences (5%), community-based orders (1%), combined custody and treatment orders (<1%) and intensive correction orders (<1%); and
- the 'other' category in the Children's Court includes fines (3%), accountable undertakings (3%), unaccountable undertakings (<1%) and convicted and discharged (<1%).

In the Magistrates' Court (Figure 3), the most common sentencing outcomes for the two new bail-related secondary offences – committing an indictable offence whilst on bail and contravening a conduct condition of bail – were imprisonment (46% and 43%) and community correction orders (35% and 34%). In contrast, the most common sentencing outcomes for failing to answer bail were fines (32%) and community correction orders (27%), with imprisonment being the third most common sentencing outcome (17%). The high proportion of 'other' sentences for failing to answer bail was primarily made up of adjourned undertakings.

Figure 3: Sentence types imposed for bail-related secondary offences, Magistrates' Court, 2011–12 to 2015–16



46. *Bail Act 1977* (Vic) s 30A(3), as inserted by *Bail Amendment Act 2016* (Vic) s 16.

Offence	Sentence	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Committing an indictable offence whilst on bail	Youth justice centre order Youth attendance order/ youth supervision order Probation Good behaviour bond Other	- - - - - -	- - - - - -	24 61 82 11 3	63 386 360 126 8	147 432 422 138 30	234 879 864 275 41
Contravening a conduct condition of bail	Youth justice centre order Youth attendance order/ youth supervision order Probation Good behaviour bond Other	- - - - - -	- - - - - -	36 68 108 23 6	113 460 473 163 30	101 450 525 270 14	250 978 1,106 456 50
Failing to answer bail	Youth justice centre order Youth attendance order/ youth supervision order Probation Good behaviour bond Other	44 99 158 192 96	21 116 159 184 85	21 87 152 188 86	34 95 131 189 75	32 97 130 169 35	152 494 730 922 377

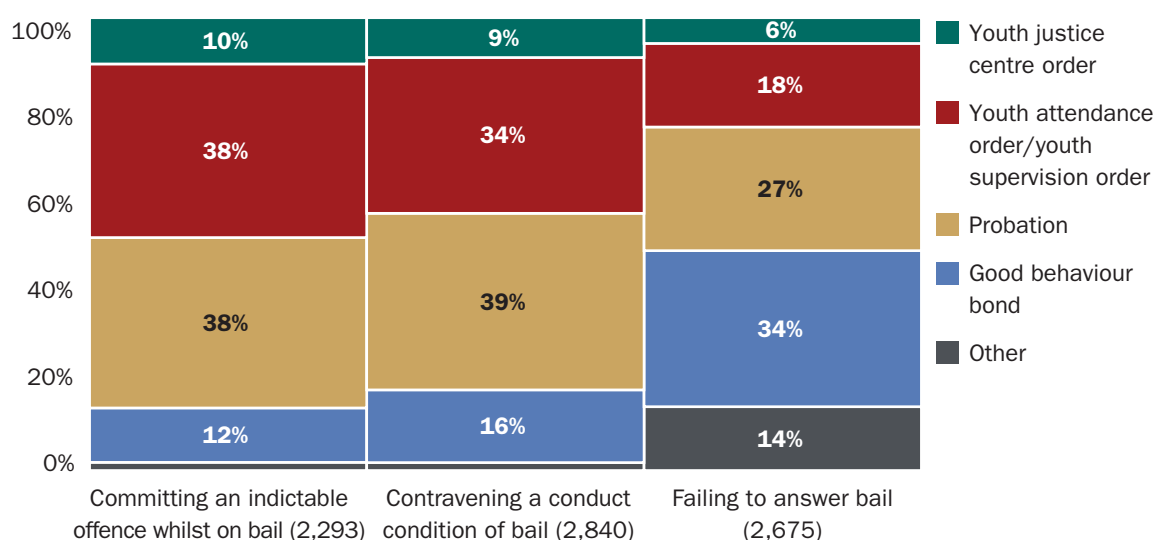
Children's Court

Table 3: Sentencing outcomes for bail-related secondary offences, all courts, 2011-12 to 2015-16

Offence	Sentence	2011-12	2012-13	2013-14	2014-15	2015-16	Total	
Magistrates' Court	Committing an indictable offence whilst on bail	Imprisonment	-	-	238	1,893	3,369	5,500
		Community correction order	-	-	159	1,435	2,557	4,151
		Fine	-	-	70	378	603	1,051
		Other	-	-	149	512	550	1,211
	Contravening a conduct condition of bail	Imprisonment	-	-	181	1,118	1,828	3,127
		Community correction order	-	-	110	903	1,518	2,531
		Fine	-	-	61	316	506	883
		Other	-	-	97	394	325	816
	Failing to answer bail	Imprisonment	1,007	1,229	1,309	1,725	2,048	7,318
		Community correction order	795	1,825	2,346	2,940	3,485	11,391
		Fine	2,197	2,575	2,903	3,009	2,916	13,600
Other		2,473	2,120	2,391	2,030	1,462	10,476	
Offence	Sentence	2011-12	2012-13	2013-14	2014-15	2015-16	Total	
Higher courts	Committing an indictable offence whilst on bail	Imprisonment	-	-	0	21	68	89
		Community correction order	-	-	0	7	8	15
		Fine	-	-	0	2	6	8
		Other	-	-	0	8	10	18
	Contravening a conduct condition of bail	Imprisonment	-	-	0	16	19	35
		Community correction order	-	-	1	1	12	14
		Fine	-	-	0	6	2	8
		Other	-	-	0	3	2	5
	Failing to answer bail	Imprisonment	20	19	24	25	24	112
		Community correction order	0	8	6	3	5	22
		Fine	1	8	6	2	5	22
Other		3	16	1	4	0	24	

In the Children's Court (Figure 4), the most common sentencing outcomes for both of the new bail-related secondary offences were probation (38% and 39%) and youth attendance orders/youth supervision orders (38% and 34%), with good behaviour bonds being the third most common sentencing outcome (12% and 16%). In contrast, the most common sentencing outcomes for failing to answer bail were good behaviour bonds (34%) and probation (27%), with youth attendance orders/youth supervision orders being the third most common sentencing outcome (18%).

Figure 4: Sentence types imposed for bail-related secondary offences, Children's Court, 2011–12 to 2015–16



In both of the high volume jurisdictions, then, failing to answer bail was consistently sentenced to less serious penalties than the two new bail-related secondary offences. This was an unexpected finding, as failing to answer bail at all times had a higher maximum penalty (12 months, increasing to two years in May 2016) than the other two offences (three months).

It was therefore anticipated that failing to answer bail would, in general, have received more serious penalties than the other two offences. A number of stakeholders at the Council's roundtable discussion forum suggested that this is likely because the substantive offences sentenced alongside failing to answer bail are usually less serious than the substantive offences sentenced alongside the other two bail-related secondary offences.⁴⁷

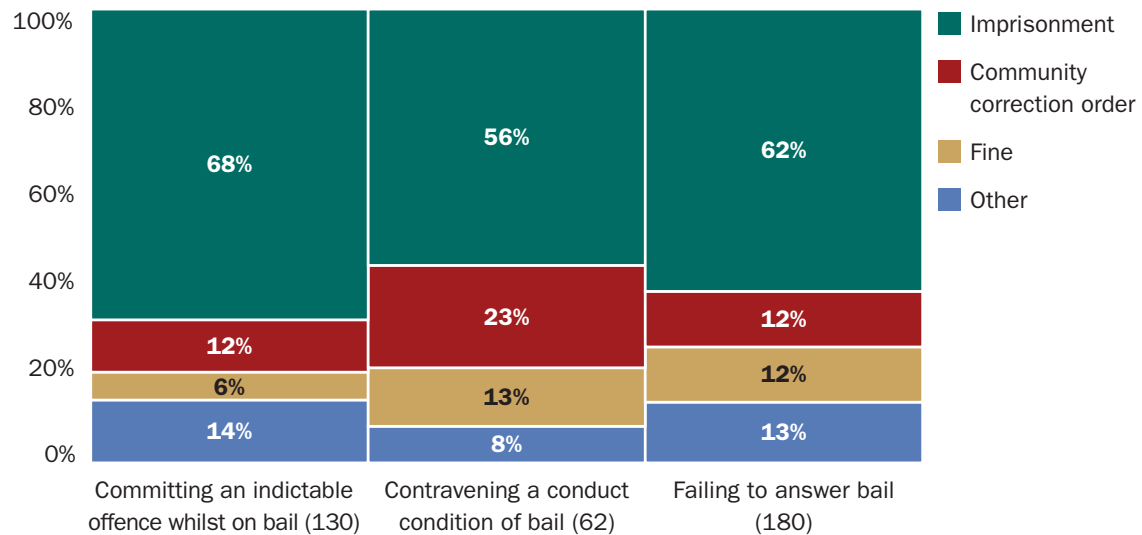
In the higher courts (Figure 5, page 19), the most common sentencing outcome for all three bail-related secondary offences was imprisonment (68%, 56% and 62%). In contrast with the other jurisdictions, in the higher courts the sentencing outcomes for failing to answer bail were relatively similar to the sentences imposed on the two new bail-related secondary offences.

Imprisonment for bail-related secondary offences

A term of imprisonment was imposed for 15,945 bail-related secondary offences sentenced in the Magistrates' Court (26%) and 236 bail-related secondary offences in the higher courts (63%).

For most bail-related secondary offences that received a term of imprisonment in the Magistrates' Court, the charge was sentenced as part of an aggregate sentence (87% or 13,797 charges). That is, the offence was one of multiple charges that together received a single term of imprisonment. The remaining charges (13% or 2,148 charges) received a non-aggregate term of imprisonment. In the higher courts, non-aggregate terms of imprisonment were more common, with 80% (189 charges) of imprisonment sentences for bail-related secondary offences being sentenced individually.

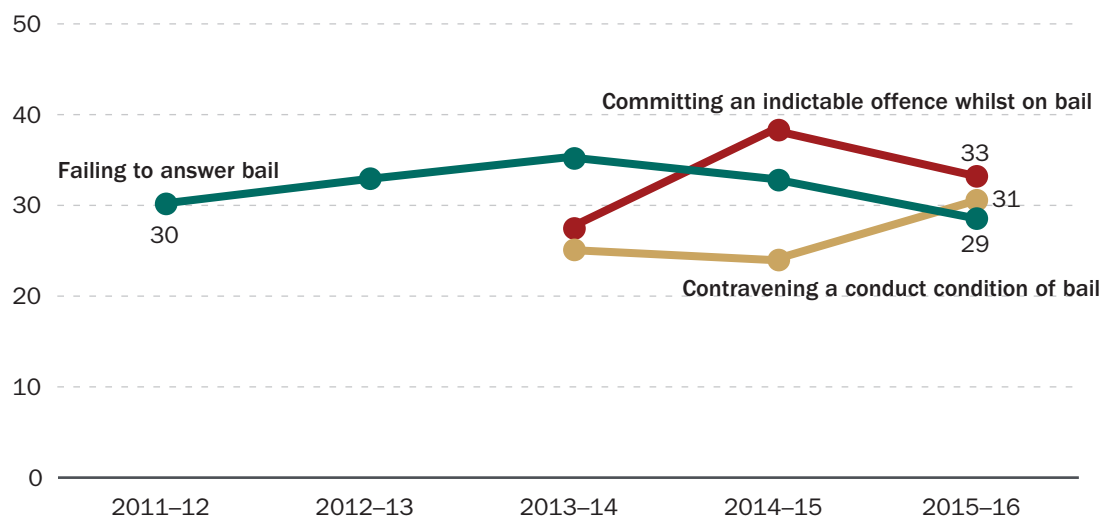
47. Roundtable Discussion Forum (7 June 2017).

Figure 5: Sentence types for bail-related secondary offences, higher courts, 2011–12 to 2015–16

Length of imprisonment

Approximately 14% of charges of bail-related secondary offences were sentenced to a non-aggregate term of imprisonment in the Magistrates' Court, so it is difficult to draw strong conclusions about the average length of imprisonment or the level of concurrency or cumulation for those charges. For the 2,337 charges (in both court levels) that did receive a non-aggregate term of imprisonment:

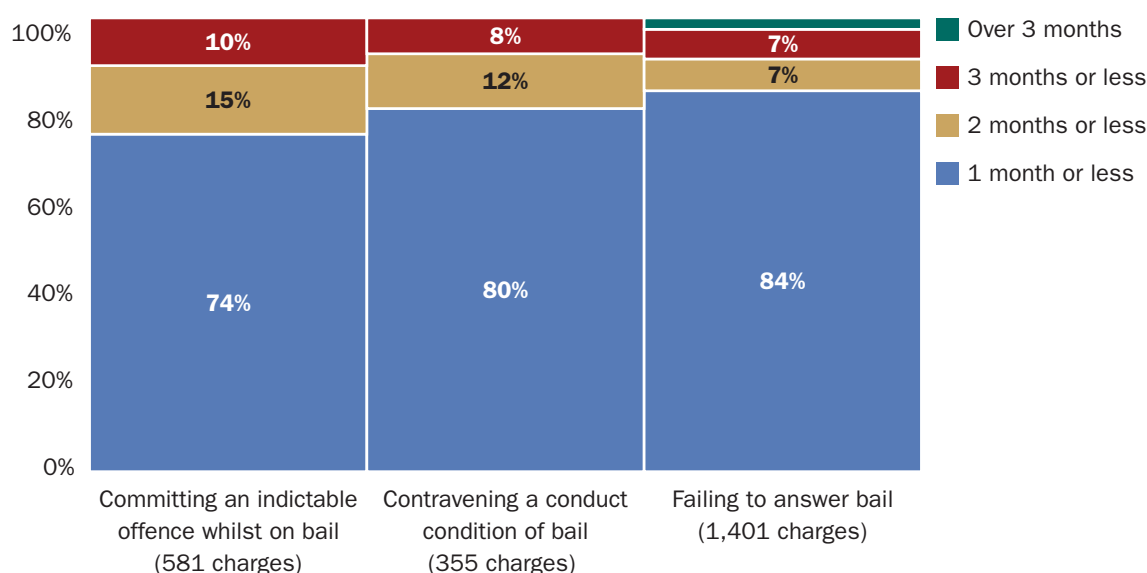
- committing an indictable offence whilst on bail received a relatively similar average term of imprisonment in the Magistrates' Court (34 days) as in the higher courts (36 days);
- contravening a conduct condition of bail received a slightly longer average term of imprisonment in the Magistrates' Court (28 days) than in the higher courts (23 days);
- failing to answer bail received a shorter average term of imprisonment in the Magistrates' Court (31 days) than in the higher courts (45 days); and
- the average length of imprisonment for bail-related secondary offences throughout the data period was approximately one month, ranging from 24 to 38 days (Figure 6).

Figure 6: Average length of imprisonment (in days) for bail-related secondary offences, Magistrates' Court and higher courts, 2011–12 to 2015–16

When bail-related secondary offences were sentenced to a non-aggregate term of imprisonment, the term was most often one month or less (Figure 7). Only 2% of charges of failing to answer bail received *more* than three months' imprisonment, including four months' imprisonment (9 charges), five months' imprisonment (1 charge), six months' imprisonment (19 charges), nine months' imprisonment (4 charges) and two charges that received the statutory maximum (at the time) of 12 months' imprisonment.

Again, the offence of failing to answer bail appears to have been sentenced more leniently than the other two bail-related secondary offences. For the two new offences, 25% and 20% of charges sentenced to imprisonment received a term longer than one month. For failing to answer bail, on the other hand, despite the higher maximum penalty, only 16% of charges sentenced to imprisonment received a term of more than one month.

Figure 7: Non-aggregate imprisonment lengths for bail-related secondary offences, Magistrates' Court and higher courts, 2011–12 to 2015–16



Concurrency and cumulation

When courts sentence an offender for multiple charges, and more than one of those charges attracts a non-aggregate term of imprisonment, the court must specify whether the sentences are to be served cumulatively, concurrently or as a combination of both (partial concurrency and partial cumulation).

There is a presumption in Victoria that, unless a court directs otherwise, a sentence of imprisonment for an offence committed while a person is on bail (including any of the bail-related secondary offences) must be served cumulatively on any other terms of imprisonment.⁴⁸ This was not observed for any of the three offences. Almost all non-aggregate sentences of imprisonment for bail-related secondary offences were ordered to be served wholly concurrently (Table 4).

For both offences of committing an indictable offence whilst on bail and contravening a conduct condition of bail, 94% of charges received a wholly concurrent term of imprisonment. And for failing to answer bail, 90% of charges received a wholly concurrent term of imprisonment. The remaining non-aggregate imprisonment penalties for the three offences were wholly cumulative (6%), partly cumulative (1%) or the base sentence (1%).

48. *Sentencing Act 1991* (Vic) s 16(3C).

Table 4: Concurrency and cumulation of imprisonment sanctions for bail-related secondary offences, Magistrates' Court, 2011–12 to 2015–16

Offence	Base sentence	Cumulative	Partly cumulative	Concurrent
Committing an indictable offence whilst on bail	1	29	2	483
Contravening a conduct condition of bail	5	16	0	309
Failing to answer bail	13	87	27	1,176
Total	19	132	29	1,968

A similar trend was observed in the higher courts, though the Council only had access to sentencing remarks for 21 of the 189 charges of bail-related secondary offences that received a non-aggregate term of imprisonment. The majority of these 21 imprisonment sentences (15 charges or 71%) were wholly concurrent, four were wholly cumulative and two were partly cumulative.

Offenders committing bail-related secondary offences

The following data describes how many unique offenders were sentenced for bail-related secondary offences during the data period, as well as their age, their gender and how many bail-related charges each offender was sentenced for.

The Council was able to identify the offender for 70,084 of the 70,235 charges of bail-related secondary offences. The data available for the other 151 charges did not include the offender's date of birth, so it was not possible to determine whether the people sentenced for those charges were already accounted for elsewhere in the data. Those charges were excluded.

In total, 28,603 unique offenders were sentenced for the 70,084 charges (an average of 2.45 charges per offender). The majority of offenders were male (80% or 22,805), and the remaining offenders were female (20% or 5,798). Both male and female offenders were sentenced for exactly the same average number of bail-related secondary offences per offender (2.45).

Figure 8 (page 22) outlines both the number of individual offenders sentenced for bail-related secondary offences and the number of charges for which offenders in that age group were sentenced. The average age of offenders sentenced for bail-related secondary offences was 31 years. The age groups responsible for the most bail-related secondary offences were 20–24 years (5,738 offenders) and 25–29 years (5,402 offenders). There was also a statistically significant relationship between age and the number of charges per offender. Offenders aged under 20 committed an average of 3.6 bail-related secondary offences each. That number dropped markedly to 2.4 charges per offender for those aged 20–24 years and then more gradually for subsequent age groups: 25–29 years (2.4 charges), 30–34 years (2.4 charges), 35–39 years (2.2 charges), 40–44 years (2.1 charges), 45–49 years (2 charges), 50–54 years (1.8 charges), 55–59 years (1.8 charges) and 60 years and over (1.6 charges).

Figure 8: Offenders sentenced for bail-related secondary offences by age at date of first sentence and number of charges offenders were sentenced for, all courts, 2011–12 to 2015–16

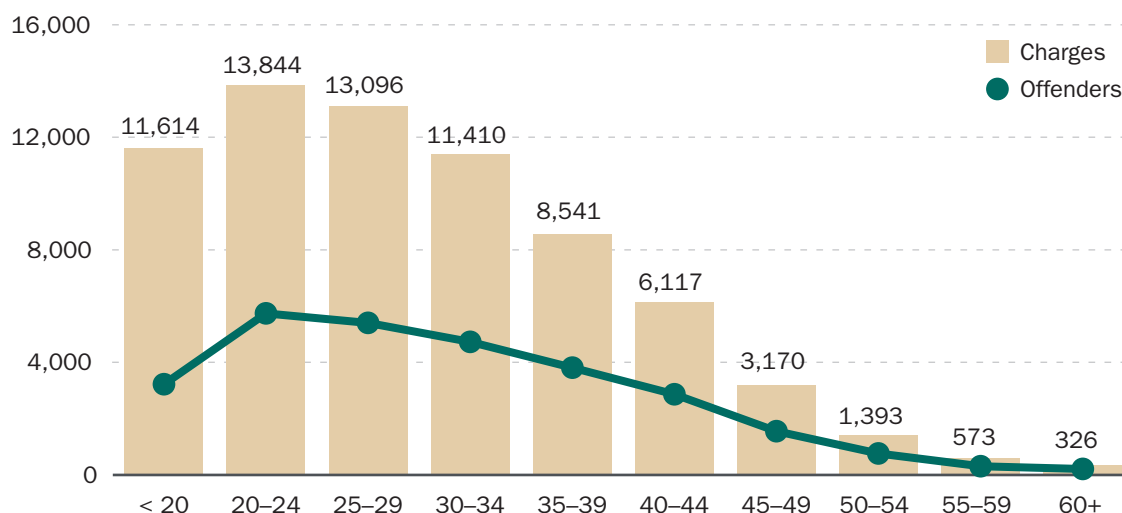
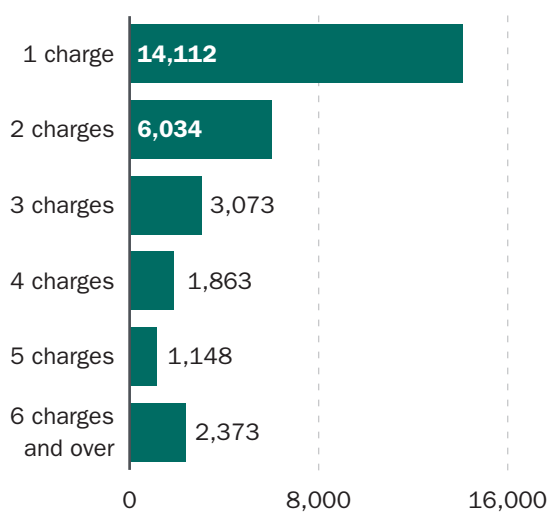


Figure 9 shows that nearly half of offenders sentenced for a bail-related secondary offence were only sentenced for a single offence. The remaining 51% of offenders were sentenced for more than one bail-related secondary offence each, with 8% of offenders being sentenced for more than five bail-related secondary offences each. The most bail-related secondary offences for which any single offender was sentenced included contravening a conduct condition of bail (55 charges), committing an indictable offence whilst on bail (34 charges), failing to answer bail (24 charges) and all three offences (57 charges).

Figure 9: Offenders sentenced for bail-related secondary offences, by the number of charges sentenced, all courts, 2011–12 to 2015–16



3. Sentence-related secondary offences

The landscape of sentence-related secondary offences in Victoria changed considerably between 2011–12 and 2015–16. Community correction orders replaced three previous sentencing dispositions: community-based orders, combined custody and treatment orders and intensive correction orders. Home detention orders were abolished, suspended sentences were progressively phased out and the offence of contravening an alcohol exclusion order came into effect. In total, the Council identified nine sentence-related secondary offences that were in effect during the data period:

1. **Breaching a home detention order:** previously, courts were able to impose a home detention order such that a person could serve a custodial sentence at their residential premises.⁴⁹ Offenders who breached the order could have their home detention order confirmed, varied or cancelled.⁵⁰ Home detention orders were abolished as a sentencing option on 16 January 2012,⁵¹ however, from that date breaches of existing home detention orders became punishable by three months' imprisonment (whereas previously there was no specific penalty for the offence).⁵²
2. **Breaching a combined custody and treatment order:** previously, if a sentencing court was satisfied that an offender's substance addiction had contributed to the commission of an offence, the court could impose a combined custody and treatment order.⁵³ That order would begin with a term of six to 12 months' imprisonment, which would then be followed by a period in the community during which the offender would undergo treatment. As at 1 July 2011, offenders who breached that order could be punished with a Level 10 fine (10 penalty units), and the court was also required to either confirm the combined custody and treatment order or order that the community-based period of the sentence be served in custody instead.⁵⁴ If the basis of the breach was that the offender committed an imprisonable offence, the court was required to order that the remaining community-based period be served in custody, unless there were exceptional reasons not to do so.⁵⁵ On 16 January 2012, the combined custody and treatment order was abolished as a sentencing option, and the maximum penalty for breaching combined custody and treatment orders that were already in effect increased to three months' imprisonment.⁵⁶
3. **Breaching a community-based order:** previously, courts could sentence offenders to a community-based order, and the offender would serve their sentence in the community while subject to certain mandatory and optional conditions.⁵⁷ As at 1 July 2011, offenders who breached their order were liable to a Level 10 fine (10 penalty units), and the court could also confirm, vary or cancel their community-based order.⁵⁸ On 16 January 2012, community-based orders were abolished as a sentencing option, and the maximum penalty for breaching any community-based orders that were already in effect increased from a fine to three months' imprisonment.⁵⁹

49. *Sentencing Act 1991* (Vic) s 26M (repealed). Home detention orders were previously in section 18ZT of the *Sentencing Act*, as inserted by *Corrections and Sentencing Acts (Home Detention) Act 2003* (Vic).

50. *Sentencing Act 1991* (Vic) s 26ZK (repealed).

51. *Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011* (Vic).

52. *Sentencing Act 1991* (Vic) sch 3 cl 8(1).

53. *Sentencing Act 1991* (Vic) s 18Q (repealed), as inserted by *Sentencing and Other Acts (Amendment) Act 1997* (Vic).

54. *Sentencing Act 1991* (Vic) s 18W(5) (repealed).

55. *Sentencing Act 1991* (Vic) s 18W(6) (repealed).

56. *Sentencing Act 1991* (Vic) sch 3 cl 7(1).

57. *Sentencing Act 1991* (Vic) pt 3 div 3 (repealed).

58. *Sentencing Act 1991* (Vic) s 47(3A) (repealed).

59. *Sentencing Act 1991* (Vic) sch 3 cl 10.

4. **Breaching an intensive correction order:** the intensive correction order was similar to the community-based order, in that offenders were to serve their sentence in the community while subject to certain conditions. The intensive correction order was intended to include more stringent conditions than a community-based order. Offenders who breached a condition of their intensive correction order were liable to a Level 10 fine (10 penalty units), and the court was also required to confirm, vary or cancel the order.⁶⁰ In addition, if the offender breached their intensive correction order by further offending, the court was required to commit the offender to prison for the unexpired portion of the intensive correction order at the date of the breach, unless there were exceptional circumstances.⁶¹ On 16 January 2012, intensive correction orders were abolished as a sentencing option, and the maximum penalty for breaching intensive correction orders already in effect increased from a fine to three months' imprisonment.⁶²
5. **Contravening a suspended sentence:** previously, courts sentencing an offender to a term of imprisonment could suspend some or all of that term so that the offender would remain in the community.⁶³ It was an offence to contravene a suspended sentence, and in response courts could 'activate' some or all of the imprisonment term, extend the suspended term or confirm the order. Suspended sentences were phased out as a sentencing option in 2013 and 2014;⁶⁴ however, from 16 January 2012, contraventions also became punishable with an additional penalty of three months' imprisonment (whereas previously there was no discrete penalty for the contravention).⁶⁵
6. **Contravening a community correction order:** on 16 January 2012, the community correction order (a new sentencing order) came into operation,⁶⁶ with the intention that it would replace combined custody and treatment orders, community-based orders and intensive correction orders.⁶⁷ The Court of Appeal has described the community correction order as 'a flexible sentencing option, enabling punitive and rehabilitative purposes to be served simultaneously' because it can be fashioned based on the particular circumstances of the offender and the offending.⁶⁸ It is an offence to contravene a community correction order without a reasonable excuse, punishable by up to three months' imprisonment.⁶⁹
7. **Failing to follow a written direction of the Secretary:** offenders sentenced to a community correction order are required to follow written directions from the Secretary to the Department of Justice and Regulation (and his or her delegates) if the direction relates to a number of specified requirements.⁷⁰ Separate from the offence of contravening a community correction order, it is also an offence to fail to comply with those written directions without a reasonable excuse, punishable by up to a Level 11 fine (5 penalty units).⁷¹

60. *Sentencing Act 1991* (Vic) s 26(3A) (repealed).

61. *Sentencing Act 1991* (Vic) s 26(3B) (repealed).

62. *Sentencing Act 1991* (Vic) sch 3 cl 9.

63. *Sentencing Act 1991* (Vic) s 27 (repealed).

64. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic). See also *Sentencing Amendment Act 2010* (Vic) (abolishing suspended sentences for all serious and significant offences committed on or after 1 May 2011).

65. *Sentencing Act 1991* (Vic) s 83AB (repealed). Section 149D(3) of the *Sentencing Act 1991* (Vic) provides that contraventions of suspended sentences are to be dealt with in accordance with section 83AB, despite that provision being repealed as at 1 September 2014.

66. Community correction orders were introduced by the *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic).

67. See for example, *Director of Public Prosecutions v Leys & Leys* [2012] VSCA 304 (12 December 2012) [30]–[40].

68. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* (2014) 46 VR 308, 311.

69. *Sentencing Act 1991* (Vic) s 83AD(1).

70. *Sentencing Act 1991* (Vic) s 46.

71. *Sentencing Act 1991* (Vic) s 83AF(1).

8. **Contravening an adjourned undertaking:** offenders sentenced to an adjourned undertaking serve their sentence in the community under three conditions: (1) they must attend court if required to do so, (2) they must be of good behaviour during the period of the adjournment (which can be up to five years) and (3) they must comply with any special conditions imposed on them (such as participation in a justice plan).⁷² If the offender complies with all of the conditions of the adjourned undertaking, the case is dismissed (with or without conviction) at the end of the adjournment period. If, on the other hand, the offender fails to comply with a condition of their adjourned undertaking, not only can they be resentenced for the original offending, but they can also receive a Level 10 fine (10 penalty units) because the contravention is also an offence.⁷³
9. **Contravening an alcohol exclusion order:** as at 1 September 2014, sentencing courts have, in certain cases, the power to impose an ancillary alcohol exclusion order for a two-year period.⁷⁴ The order prohibits persons convicted of a 'relevant offence'⁷⁵ from entering or consuming liquor in specified premises in Victoria.⁷⁶ It can only be imposed if alcohol was a significant contributing factor to the offending. It is an offence to contravene an alcohol exclusion order (unless the circumstances were beyond the person's control and they took reasonable steps to avoid the contravention), punishable by up to two years' imprisonment.⁷⁷ The purpose of the order and offence is to act as a deterrent to people committing violent offences while intoxicated.⁷⁸ According to data published by Victoria Police, the number of alcohol exclusion orders increased from eight in 2014–15 to 44 in 2015–16, and only one person has been charged with contravening an alcohol exclusion order.⁷⁹

Most of these sentence-related secondary offences constitute what have previously been termed 'breach offences', that is, offences involving a contravention of a sentencing order. Following an extensive review of sentencing law in Victoria in 2002, it was recommended that breach offences should no longer constitute an offence,⁸⁰ for three key reasons:

[First] the purpose of the breach offence is procedural rather than punitive, that is, it is a mechanism to allow the person to be brought back before the court rather than to punish him or her for the breaching behaviour ...

[Second] the current breach provisions ... create a triple jeopardy situation for offenders who breach conditional orders by committing further offences. This occurs because they can be dealt with: for the original offence which brought them before the court; for the offence created by the breach of the order; [and] for the offence which breached the order ...

[Third] in the majority of cases, the sanction for the [breach] offence ... is dealt with by a small fine, while the substantive sanction is a combination of the re-sentencing for the original offence and the sentence for the breaching offence.⁸¹

72. *Sentencing Act 1991* (Vic) ss 72, 75.

73. *Sentencing Act 1991* (Vic) s 79 (repealed as at 16 January 2012); *Sentencing Act 1991* (Vic) s 83AC (in effect since 16 January 2012).

74. *Sentencing Act 1991* (Vic) ss 89DC–89DH, as inserted by *Summary Offences and Sentencing Amendment Act 2014* (Vic) s 7. The alcohol exclusion order is similar to the alcohol exclusion condition that courts can attach as a condition of a community correction order: *Sentencing Act 1991* (Vic) s 48J.

75. *Sentencing Act 1991* (Vic) s 89DC (definition of 'relevant offence').

76. *Sentencing Act 1991* (Vic) s 89DE.

77. *Sentencing Act 1991* (Vic) s 89DF.

78. Victoria, *Parliamentary Debates*, Legislative Assembly, 12 December 2013, 4683 (Robert Clark, Attorney-General); Victoria, *Parliamentary Debates*, Legislative Council, 20 February 2014, 479 (Gordon Rich-Phillips, Assistant Treasurer). There was some disagreement over the new legislation. For example, the Flemington and Kensington Community Legal Centre suggested that the two-year penalty was 'disproportionate to any deterrence and punishment that could be justified for such a breach'; Flemington and Kensington Community Legal Centre, Submission to the Scrutiny of Acts and Regulations Committee, *The Summary Offences and Sentencing Amendment Bill 2013*, 30 January 2014, 7.

79. Victoria Police, *Annual Report 2015–16* (2016) 110.

80. Arie Freiberg, *Pathways to Justice: Sentencing Review 2002* (2002) 119.

81. *Ibid* 116–117.

In 2008, the Council endorsed this recommendation and reiterated that breach of a sentencing order should no longer constitute a separate offence.⁸² The Council further recommended that, rather than having a breach offence to capture information about offenders' non-compliance with sentencing orders, some other mechanism should be put in place to keep proper records of offenders' non-compliance. Since that recommendation, no breach offences have been repealed (unless the sentencing disposition itself was repealed), and in a number of instances, the maximum penalty for a breach offence has increased from a fine to a term of imprisonment.

Number of sentence-related secondary offences sentenced

For seven of the sentence-related secondary offences, there were 25,057 charges sentenced during the data period (Table 5). The most common sentence-related secondary offence was contravening a community correction order (60%), which represented 14,782 of the 25,057 identifiable charges of sentence-related secondary offences. There were no charges (in any court) for breaching a home detention order or for failing to follow a written direction of the Secretary.

The vast majority of sentence-related secondary offences were sentenced in the Magistrates' Court (98%), and all of the remaining charges were sentenced in the higher courts (2%).

As discussed in the methodology, the data on sentence-related secondary offences in both the higher courts and the Magistrates' Court is likely to under-represent (though not to a great extent) the total number of charges sentenced during the data period.

For the 24,639 charges sentenced in the Magistrates' Court:

- the number of breaches of repealed sentencing orders slowly declined (this was expected);
- the number of charges of contravening a community correction order gradually increased, from 1,818 in 2012–13 to 5,364 in 2015–16;⁸³ and
- the number of charges of contravening an adjourned undertaking remained relatively steady, with a slight decrease in 2012–13 and 2013–14, and an increase in 2014–15 and 2015–16.

Of the 418 charges sentenced in the higher courts:

- the number of charges of breaches of repealed sentencing orders slowly declined (this again was expected); and
- the number of charges of contravening a community correction order gradually increased, from 43 in 2012–13 to 103 in 2015–16.

There were no charges of sentence-related secondary offences in the Children's Court. This was to be expected given that the range of sentencing options in the Children's Court differs considerably from the sentencing options in other courts. Offenders in the Children's Court could not be sentenced to any of the sentences presented in Table 5.

82. Sentencing Advisory Council, *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences Final Report – Part 2* (2008) 253–255.

83. The 2012–13 financial year was used as the starting point here (rather than 2011–12) because that was the first full financial year during which community correction orders were operational as a sentencing option.

Table 5: Number of sentence-related secondary offence charges, by offence and court, 2011-12 to 2015-16

Offence	Court	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Contravening an adjourned undertaking	Magistrates' Court	408	368	338	436	465	2,015
	Higher courts	0	2	1	0	0	3
	Subtotal	408	370	339	436	466	2,018
Breaching a community-based order	Magistrates' Court	2,862	1,717	506	184	69	5,338
	Higher courts	10	28	9	4	0	51
	Subtotal	2,877	1,747	515	188	69	5,389
Contravening a community correction order	Magistrates' Court	49	1,818	3,272	4,279	5,364	14,782
	Higher courts	2	43	85	87	103	320
	Subtotal	51	1,862	3,358	4,366	5,467	15,102
Breaching an intensive correction order	Magistrates' Court	671	361	121	43	29	1,225
	Higher courts	2	0	1	0	0	3
	Subtotal	673	361	122	43	29	1,228
Breaching a combined custody and treatment order	Magistrates' Court	7	13	0	1	0	21
	Higher courts	0	0	0	0	0	0
	Subtotal	7	13	0	1	0	21
Contravening a suspended sentence	Magistrates' Court	337	352	237	191	140	1,257
	Higher courts	1	5	18	11	6	41
	Subtotal	367	400	272	206	149	1,298
Contravening an alcohol exclusion order	Magistrates' Court	-	-	-	0	1	1
	Higher courts	-	-	-	0	0	0
	Subtotal	-	-	-	0	1	1
Total		4,349	4,707	4,588	5,236	6,177	25,057

The increase in the number of charges of contravening a community correction order in both the Magistrates' Court and the higher courts during the data period is likely a direct result of an increase in the number of offenders on community correction orders. After the order was introduced in January 2012, further legislative changes in September 2014 encouraged courts to impose community correction orders in cases in which a suspended sentence would have previously been imposed. These legislative changes also increased the maximum term of imprisonment that could be combined with a community correction order to two years.⁸⁴ These changes increased the number of community correction orders imposed, further adding to the number of offenders on community correction orders, which in turn would have increased the number of contraventions.⁸⁵

Sentencing outcomes for sentence-related secondary offences

For the 24,639 identifiable sentence-related secondary offences sentenced in the Magistrates' Court during the data period, the most common offences were contravening a community correction order (60%), breaching a community-based order (22%) and contravening an adjourned undertaking (8%).

Of the 418 charges of sentence-related secondary offences sentenced in the higher courts, the majority were charges of contravening a community correction order (77%).

Tables 6 and 7 (pages 29–30) outline the combination of both the penalty for the breach offence itself and any additional response from the court in confirming, varying or cancelling the original sentencing order. Together, these tables illustrate the importance of considering the entire outcome for offenders sentenced for sentence-related secondary offences. If only the specific penalty for the breach offence is considered, it might wrongly be concluded that a large number of offenders had received a very minor (or even no) recorded penalty for their breaching behaviour.

For example, Table 6 shows the entire outcome for sentence-related secondary offences sentenced in the higher courts. Of the 418 sentenced charges for this category of offences, the court did not impose a specific penalty in 361 cases (86%). However, for the offence of contravening a community correction order, which in 86% of cases was proven without any penalty (such as a fine or imprisonment), the offender was often resentenced for the original offending (39%) or had their community correction order varied (26%). Variation of the community correction order in these circumstances would usually involve attaching more stringent conditions.

In a detailed report on community correction order contraventions published in 2017, the Council found that community correction orders imposed in 2012–13 were varied in 11%–17% of contravention cases between 2012–13 and 2015–16.⁸⁶ In contrast, data in the present report examines community correction orders *imposed* over a longer period, and community correction orders were varied in 26% of contravention cases. Acknowledging the difference in the approach to the data between the two reports, this may suggest that courts are increasingly utilising their power to vary a community correction order.

84. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) pt 5. In March 2017, the maximum term of imprisonment that may be combined with a community correction order was reduced to one year: *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic).

85. Sentencing Advisory Council, *Community Correction Orders: Second Monitoring Report (Pre-Guideline Judgment)* (2015) 20.

86. Sentencing Advisory Council, *Contravention of Community Correction Orders* (2017) 62, 69.

Table 6: Sentencing outcomes for sentence-related secondary offences, higher courts, 2011–12 to 2015–16

Offence	Penalty for breach offence	Additional response on original order			
		Confirm	Vary	Cancel	Resentence
Contravening an adjourned undertaking	Imprisonment	–	–	–	–
	Fine	–	–	–	–
	Proven	2	–	–	1
	Other	–	–	–	–
Breaching a community-based order	Imprisonment	–	–	–	–
	Fine	1	–	–	–
	Proven	18	8	–	21
	Other	1	–	–	2
Contravening a community correction order	Imprisonment	5	1	1	7
	Fine	10	6	1	4
	Proven	86	72	11	106
	Other	7	–	–	3
Breaching an intensive correction order	Imprisonment	–	–	–	–
	Fine	–	–	–	–
	Proven	–	1	–	2
	Other	–	–	–	–
		Confirm	Extend	Restore (part)	Restore (whole)
Contravening a suspended sentence	Imprisonment	–	–	–	3
	Fine	1	–	–	–
	Proven	14	1	–	18
	Other	1	1	–	2

Table 7: Sentencing outcomes for sentence-related secondary offences, Magistrates' Court, 2011–12 to 2015–16

Offence	Penalty for breach offence	Additional response on original order			
		Confirm	Vary	Cancel	Resentence
Contravening an adjourned undertaking	Imprisonment	–	–	–	–
	Fine	86	10	23	170
	Proven	405	207	256	821
	Other	14	–	12	11
Breaching a community-based order	Imprisonment	1	–	–	7
	Fine	307	56	–	294
	Proven	1,477	504	–	2,678
	Other	4	–	–	10
Contravening a community correction order	Imprisonment	32	68	65	364
	Fine	508	241	155	625
	Proven	2,988	2,777	1,246	5,679
	Other	9	2	2	21
Breaching a combined custody and treatment order	Imprisonment	–	–	–	–
	Fine	–	–	–	–
	Proven	9	–	–	12
	Other	–	–	–	–
Breaching an intensive correction order	Imprisonment	15	–	–	–
	Fine	97	45	–	3
	Proven	286	303	–	475
	Other	–	–	–	1
		Confirm	Extend	Restore (part)	Restore (whole)
Contravening a suspended sentence	Imprisonment	–	1	–	8
	Fine	4	–	–	1
	Proven	182	72	22	489
	Other	114	53	6	305

Similarly, when the offence of breaching a community-based order was proven with no specific penalty imposed, the court often resentenced the original offending (45%) or varied the conditions of the order (17%). Further, for the offence of contravening a suspended sentence, the most common outcome was to restore the entirety of the suspended sentence (56%).

In the Magistrates' Court, resentencing was again the most common response to charges of sentence-related secondary offences (Table 7). Although specific penalties for these offences were relatively minor (most often proven and dismissed without a specific penalty), for *each* type of sentence-related secondary offence, the court most often resentenced the offender for the original offending or, in the case of contravening a suspended sentence, breaching an intensive correction order and breaching a combined custody and treatment order, activated the custodial period. Offenders were resentenced for their original offending in half of the cases involving contravening an adjourned undertaking, 56% of cases involving breaching a community-based order and 45% of cases involving contravening a community correction order. For contravening a suspended sentence, 66% of cases involved the offender having some or all of their sentence of imprisonment activated.

In both tables, a number of charges of breaching an intensive correction order and breaching a combined custody and treatment order were coded as 'proven and resentenced'. This is usually indicative of sentencing courts having exercised their mandate under either section 18W(6) or section 26(3B) of the *Sentencing Act 1991* (Vic) (both sections are now repealed) to cancel the original order and commit the offender to prison for the remainder of their sentence when the offender breached their intensive correction order or combined custody and treatment order by committing an imprisonable offence.

Imprisonment for sentence-related secondary offences

There are no requirements or presumptions that offenders sentenced to imprisonment for sentence-related secondary offences receive a wholly cumulative term of imprisonment. As a result, the default position applies, such that any term of imprisonment imposed is normally served concurrently with other terms of imprisonment, unless the court directs otherwise.⁸⁷

It was not possible, however, to analyse the imprisonment sanctions for sentence-related secondary offences due to recording practices for those offences, with imprisonment lengths not specified for any individual charge of a sentence-related secondary offence.

Offenders committing sentence-related secondary offences

During the data period, 18,029 unique identifiable offenders were sentenced for sentence-related secondary offences in 24,422 cases (representing an average of 1.4 cases per offender). The most common age groups of people sentenced for these offences were under 25 years (5,321 offenders sentenced in 7,768 cases) and 25–29 years (3,727 offenders sentenced in 5,008 cases).

Figure 10 (page 32) outlines the number of offenders sentenced for a sentence-related secondary offence and the number of cases in which they were sentenced. Offenders aged under 25 were sentenced in an average of 1.46 cases each. The number of cases per offender then declined as the age of offenders increased: 25–29 years (1.34 cases), 30–34 years (1.35 cases), 35–39 years (1.30 cases), 40–44 years (1.26 cases), 45–49 years (1.25 cases), 50–54 years (1.18 cases), 55–59 years (1.17 cases) and 60 years and over (1.18 cases).

⁸⁷. *Sentencing Act 1991* (Vic) s 16(1).

Figure 10: Offenders sentenced for sentence-related secondary offences, by age at date of first sentence and number of cases offenders were sentenced in, Magistrates' Court and higher courts, 2011–12 to 2015–16

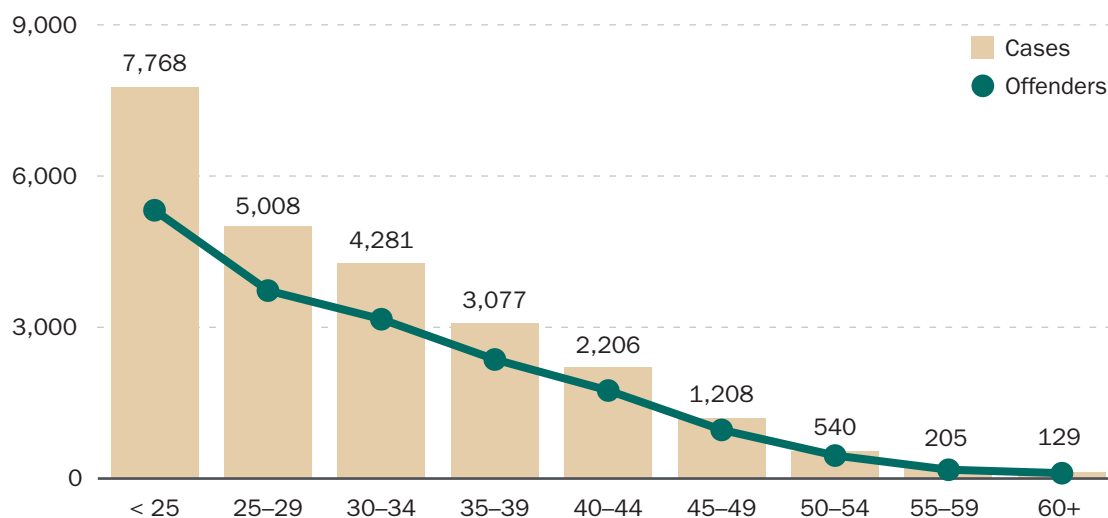
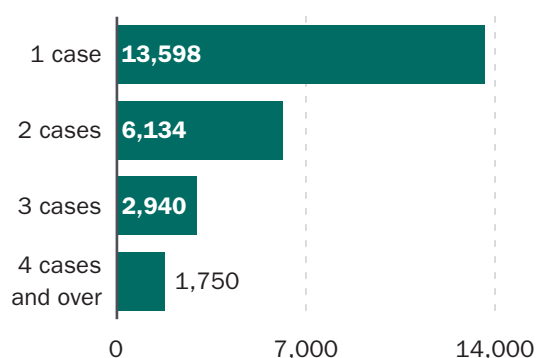


Figure 11 shows that most offenders sentenced for a sentence-related secondary offence (56%) were only dealt with for these offences in a single case during the data period (though as mentioned previously, there may have been some cases in which there were multiple charges of these offences in a single case). The remaining offenders were sentenced in two (25%), three (12%) or four or more separate cases (7%).

Figure 11: Offenders sentenced for sentence-related secondary offences, by the number of cases sentenced, all courts, 2011–12 to 2015–16



4. Parole-related secondary offence

At the beginning of the data period (1 July 2011) it was not a separate criminal offence to breach a condition of parole. An offender who breached the conditions of their parole would, instead, be brought back before the Adult Parole Board, and the Board would consider whether the offender should have their parole cancelled and be returned to custody.

In July 2014, the new offence of breaching a prescribed condition of parole without a reasonable excuse came into effect.⁸⁸ The offence is punishable by up to three months' imprisonment, and there is a requirement that any imprisonment sentence imposed for the offence be served cumulatively on other imprisonment sentences, unless there are exceptional circumstances.⁸⁹ Not all conditions of parole are 'prescribed' conditions.

The following conditions *are* prescribed, which means that breaching these conditions *will* constitute an offence:

- not breaking any law;
- attending a community corrections centre when directed in writing to do so;
- not leaving Victoria without written permission;
- not consuming alcohol;
- not entering or remaining in the vicinity of a prohibited area or place;
- remaining in the vicinity of a specified area or place;
- not contacting a particular person or class of persons;
- not residing at a prohibited residence; and
- residing at a specified residence.⁹⁰

In contrast, the following conditions *are not* prescribed, such that breaching these conditions *will not* constitute an offence:

- reporting to a community corrections officer within two working days of the parole order coming into force;
- notifying a community corrections officer within two working days of any change of address or employment;
- being under the supervision of, reporting to, receiving visits from and being available for interviews with, a community corrections officer;
- complying with any directions given in order to ensure that the parolee complies with their parole order;
- undergoing treatment for alcohol abuse, drug abuse or other medical, psychological or psychiatric treatment;
- submitting for alcohol or drug testing;
- reporting to the supervising community corrections officer;
- not using or accessing the internet; and
- participating in programs or training.⁹¹

88. *Corrections Act 1986* (Vic) s 78A, as inserted by *Corrections Amendment (Breach of Parole) Act 2013* (Vic) s 3. Although the legislation uses the words 'term or condition', there is no difference between the two: Parliamentary debates, Victoria, *Parliamentary Debates*, Legislative Council, 5 September 2013, 2783 (Edward O'Donohue, Minister for Corrections).

89. *Sentencing Act 1991* (Vic) s 16(3BA).

90. The first three are mandatory conditions for all parolees: *Corrections Regulations 2009* (Vic) rr 88A(a)–(c), 83A(1)(a), (h)–(i). The remaining six are optional conditions that can be attached to a parole order: *Corrections Regulations 2009* (Vic) rr 88A(d), 83B(1)(a), (e)–(g), (i)–(j), (m)–(o).

91. The first four are mandatory conditions attached to all parole orders: *Corrections Regulations 2009* (Vic) r 83A(1)(b)–(g), (j). The remaining five are optional conditions that can be attached to a parole order: *Corrections Regulations 2009* (Vic) r 83B(1)(b)–(d), (h), (k), (l).

Given that half of the conditions that can be attached to a parole order are not prescribed and breaching them does not constitute an offence, this would likely have affected the number of charges of the parole-related secondary offence during the two years.

As with the new bail-related secondary offences, there was some contention surrounding the introduction of the new parole-related secondary offence. It was questioned whether the new offence and its maximum penalty of three months' imprisonment would be capable of deterring violent offenders from committing further violent offences while on parole.⁹²

It was stated, however, that the new offence would send the message that parole is a privilege and not a right.⁹³ There was also a suggestion that the new offence could help ensure that future decision-makers – for example, at bail hearings, sentencing hearings and parole hearings – would be aware of parolees' past non-compliance with conditions.⁹⁴

Number of parole-related secondary offences sentenced

A total of 215 charges of breaching a prescribed condition of parole were sentenced during the two years between the date on which the offence came into effect (1 July 2014) and the end of the data period (30 June 2016). One of these charges was sentenced in the Children's Court, another was sentenced in the higher courts,⁹⁵ and the remaining 213 charges were sentenced in the Magistrates' Court: 81 in 2014–15 and 132 in 2015–16.

For 56 of the charges sentenced in the Magistrates' Court, the Council was able to discern which of the prescribed conditions of parole was breached. Of those 56 charges, 36 involved breaching the condition not to commit an imprisonable offence while on parole. The next most common condition breaches involved the offender consuming alcohol (8 charges), contacting a specified person (5 charges) or failing to reside at a specified residence (4 charges).

Sentencing outcomes for the parole-related secondary offence

The two proven charges of breaching a prescribed condition of parole sentenced in the higher courts and the Children's Court received a term of imprisonment and a youth justice centre order, respectively.

Of the 213 charges that were sentenced in the Magistrates' Court (Figure 12, page 35), 107 were sentenced to a term of imprisonment, 78 were sentenced to a fine and 16 were sentenced to a community correction order. Of the remaining 12 charges, three received a wholly suspended sentence, four received an adjourned undertaking and five were convicted and discharged. Between 2014–15 and 2015–16, fines increased from 27% to 42% of all sentencing outcomes for this offence, and community correction orders and imprisonment decreased slightly.

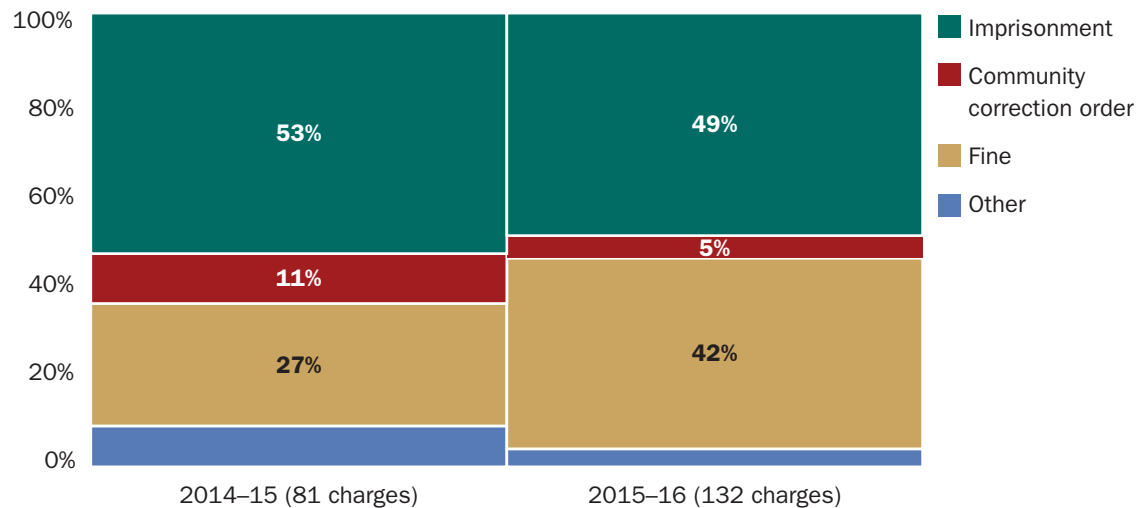
For the 107 offenders who received a term of imprisonment, 44 received a non-aggregate term of imprisonment (41%) with an average length of 1.21 months per charge.

92. Victoria, *Parliamentary Debates*, Legislative Council, 5 September 2013, 2773 (Sue Pennicuik, Southern Metropolitan). The New South Wales Law Reform Commission recently recommended against introducing a similar offence in New South Wales on the basis that it would not have any deterrent value above and beyond the existing power to cancel parole: New South Wales Law Reform Commission, *Parole*, Report 142 (2015) 246–247.

93. Victoria, *Parliamentary Debates*, Legislative Assembly, 27 June 2013, 2457 (Kim Wells, Minister for Police and Emergency Services); Victoria, *Parliamentary Debates*, Legislative Council, 22 August 2013, 2500 (Gordon Rich-Phillips, Assistant Treasurer).

94. Victoria, *Parliamentary Debates*, Legislative Assembly, 21 August 2013, 2667 (Christine Fyffe, Evelyn).

95. There were, though, two reported cases in the higher courts in 2016–17: *The Queen v Semaan & Ors* [2016] VSC 667 (4 November 2016) (the offender was convicted of murder and committing an imprisonable offence while on parole) and *Director of Public Prosecutions (Cth) v Tsui* [2017] VCC 68 (9 February 2017) (the offender was convicted of dealing with proceeds of crime and committing an imprisonable offence while on parole).

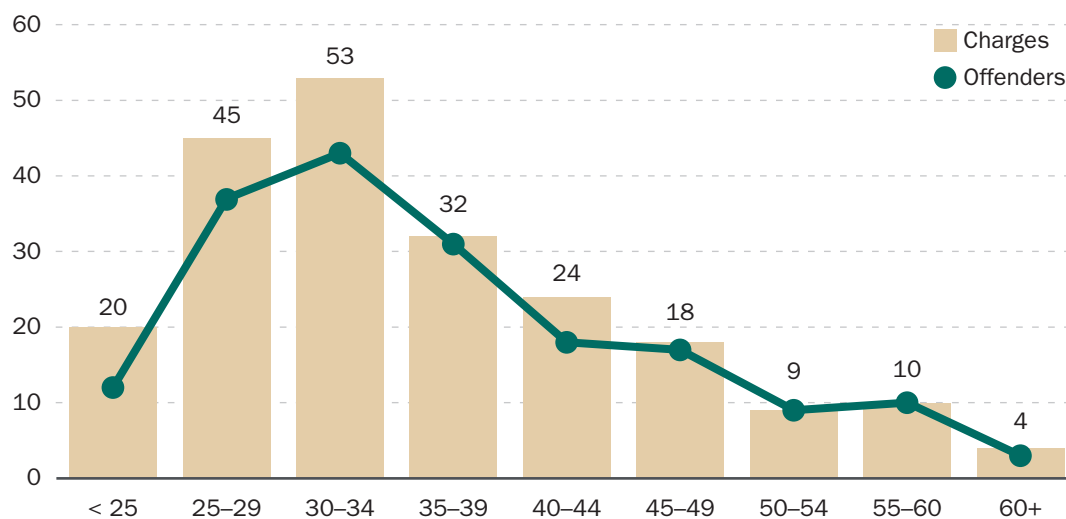
Figure 12: Sentence types imposed for the parole-related secondary offence, Magistrates' Court, 2011–12 to 2015–16

Any term of imprisonment imposed for breaching a prescribed condition of parole is usually required to be served cumulatively, unless there are exceptional circumstances for not doing so.⁹⁶ Of the 44 charges that received a non-aggregate term of imprisonment, only nine were partly or wholly cumulative; the remaining 35 were wholly concurrent.

Offenders breaching a prescribed condition of parole

The 215 proven charges of breaching a prescribed condition of parole during the data period were committed by 180 unique offenders and were sentenced in 182 cases. Only two offenders were sentenced on more than one occasion for the offence. Most offenders were male (167 offenders or 93%). The first sentence for this offence was imposed on 14 July 2014, less than two weeks after the offence came into operation.

The average age of offenders sentenced for this offence, overall and for both genders, was 37 years. Figure 13 shows that the two most common age groups were 25–29 years and 30–34 years, representing 80 offenders sentenced for 98 charges of breaching a prescribed condition of parole.

Figure 13: Offenders sentenced for the parole-related secondary offence, by age at date of first sentence and number of charges offenders were sentenced for, all courts, 2014–15 to 2015–16

⁹⁶ *Sentencing Act 1991* (Vic) s 16(3BA).

Stakeholders at the Council's roundtable discussion forum noted that this age distribution essentially mirrors the age distribution of Victoria's prison (and therefore parole) population.⁹⁷ The rate of sentenced charges of breaching a prescribed condition of parole per offender was relatively stable across the age groups; offenders aged under 25 were sentenced for an average of 1.7 charges per offender, while all other age groups were sentenced for an average of 1 to 1.3 charges each.

Figure 14 shows that the majority of offenders sentenced for this offence (87%) were sentenced for a single charge. Only 24 offenders were sentenced for more than one charge of breaching a prescribed condition of parole, six of whom were sentenced for three or more charges.

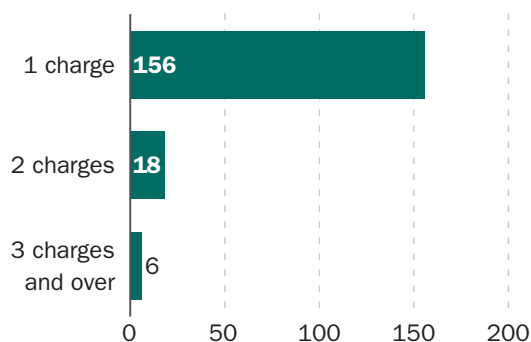
There was also a slight increase in the proportion of parolees who were sentenced for this offence. As at 30 June 2014, there were 1,233 offenders on parole,⁹⁸ and 66 parolees were sentenced for this offence during the 2014–15 financial year, meaning approximately 5% of parolees were sentenced for breaching a prescribed condition of their parole that year.

The following year, at 30 June 2015, there were 1,138 offenders on parole,⁹⁹ and 115 offenders were sentenced for this offence in 2015–16, representing approximately 10% of parolees.

This increase in the proportion of parolees sentenced for the offence of breaching a prescribed condition of parole was to be expected. As some stakeholders noted during consultation, the offence only came into operation on 1 July 2014, so there was likely to be a lag in the detection, prosecution and sentencing of the offence.¹⁰⁰ In addition, stakeholders suggested that the Adult Parole Board now imposes more conditions on parolees and has increasingly utilised technology such as electronic monitoring, which makes condition breaches easier to detect and prove.¹⁰¹

Further, there were far more parolees who had their parole cancelled than there were parolees sentenced for this offence. In 2015–16, the Adult Parole Board cancelled parole for 387 parolees,¹⁰² and cancelled parole for 569 parolees the year prior.¹⁰³ Just as offenders who committed sentence-related secondary offences were more likely to be resentenced or to have their original sentence varied than to receive a distinct penalty for the secondary offence, so too were parolees more likely to have their parole cancelled than to be sentenced for breaching a prescribed condition of parole.

Figure 14: Offenders sentenced for the parole-related secondary offence, by the number of charges sentenced, all courts, 2011–12 to 2015–16



97. Roundtable Discussion Forum (7 June 2017).

98. Adult Parole Board of Victoria, *Annual Report 2015–16* (2016) 6.

99. Ibid 6.

100. Roundtable Discussion Forum (7 June 2017).

101. Roundtable Discussion Forum (7 June 2017).

102. Adult Parole Board of Victoria (2016), above n 98, 23.

103. Adult Parole Board of Victoria, *Annual Report 2014–15* (2015) 12.

5. Sex offender secondary offences

The final category of secondary offences examined in this report relates to sex offenders. These offences tend to apply outside standard criminal justice timelines. One of the offences (failing to disclose a registrable offence charge to an employer) is effective from the moment a person is charged with an offence. Another offence (failing to comply with a supervision order) can last for up to 15 years after the order is imposed. The remaining four offences are in effect while a person is a registered or registrable offender.¹⁰⁴

In total, the Council identified six sex offender secondary offences that were operational during the data period:

1. **Failing to disclose a registrable offence charge to an employer:** if a person engaged in child-related employment is charged with a 'registrable offence',¹⁰⁵ they must disclose the charge to their employer (or prospective employer). Failing to do so is an offence punishable by up to 60 penalty units.¹⁰⁶
2. **Failing to comply with reporting obligations:** in order to reduce the risk of reoffending, sex offenders can be made subject to special reporting obligations, such that they must notify police of their whereabouts and their personal details ('registrable sex offender').¹⁰⁷ It is an offence for a registrable sex offender to fail to comply with these reporting obligations without a reasonable excuse, punishable by up to five years' imprisonment,¹⁰⁸ or two years if the information relates to their name, date of birth, vehicle, tattoos or travel plans.¹⁰⁹
3. **Furnishing false or misleading information:** a registrable sex offender must not provide false or misleading information. Doing so is an offence punishable by two to five years' imprisonment, depending on whether the information relates to a number of specified details.¹¹⁰
4. **Applying for or engaging in child-related employment:** a registered sex offender is prohibited from knowingly applying for, or engaging in, child-related employment. Doing so is an offence punishable by two years' imprisonment.¹¹¹
5. **Applying to change name without permission:** a registrable sex offender is prohibited from applying to change their name without the written approval of the Chief Commissioner of Police. Applying to change name without permission is an offence punishable by five penalty units.¹¹²
6. **Failing to comply with a supervision order:** if an offender has previously been sentenced for a specified offence,¹¹³ and the court is satisfied that the offender is an unacceptable risk to the community unless a supervision order is in place, the court may order a supervision order for up to 15 years.¹¹⁴ A supervision order imposes certain

104. *Sex Offenders Registration Act 2004* (Vic) ss 6 (definition of 'registrable offender'), 67 (definition of 'registered sex offender').

105. *Sex Offenders Registration Act 2004* (Vic) s 7 (definition of 'registrable offence').

106. *Sex Offenders Registration Act 2004* (Vic) s 69.

107. Victorian Law Reform Commission, *Sex Offenders Registration: Final Report* (2011) 14, 23.

108. *Sex Offenders Registration Act 2004* (Vic) ss 46(1)–(1A).

109. *Sex Offenders Registration Act 2004* (Vic) s 46(1B).

110. *Sex Offenders Registration Act 2004* (Vic) s 47(2). False or misleading information that can result in a five-year maximum imprisonment sentence includes such details as usual address, telephone number, email address, internet service provider and online user names, as well as the name of each child the offender comes in contact with (and their details) and employment details.

111. *Sex Offenders Registration Act 2004* (Vic) s 68.

112. *Sex Offenders Registration Act 2004* (Vic) s 70C(1).

113. *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) sch 1.

114. *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9, 12.

conditions on the offender to reduce their risk of reoffending, including any condition that the court considers appropriate to reduce the risk of reoffending or to provide for the reasonable concerns of the victims.¹¹⁵ It is an offence to fail to comply with a condition of a supervision order without a reasonable excuse, normally punishable by up to five years' imprisonment.¹¹⁶ If, however, the County Court or the Supreme Court grants a summary hearing for the matter, the maximum penalty for the offence is reduced to two years' imprisonment.¹¹⁷ The number of offenders subject to supervision orders continues to increase: 116 offenders were subject to a supervision order as at 14 August 2015,¹¹⁸ and 127 as at 30 June 2016.¹¹⁹

Number of sex offender secondary offences sentenced

There were 5,353 sex offender secondary offences sentenced during the data period (Table 8, page 39). The Magistrates' Court handled the vast majority of these offences (4,990 charges or 93%), with two charges dealt with in the Children's Court and 361 charges (7%) dealt with in the higher courts.

During the data period, the most common sex offender secondary offence was, by far, failing to comply with reporting obligations (92%), especially for charges sentenced in the Magistrates' Court. The most common sex offender secondary offence sentenced in the higher courts was failing to comply with a supervision order (78%). The County and Supreme Courts have exclusive jurisdiction to hear proceedings for that offence. There were no charges in any court during the data period for failing to disclose a registrable offence charge to a current or prospective employer.

For 546 charges of failing to comply with reporting obligations sentenced in the Magistrates' Court (11%), the Council was able to discern which specific obligation had been breached (Table 9, page 40).

The three most common were:

- failing to report telephone contact details (111);
- failing to report electronic or online identity details (107); and
- failing to report address details (99).

In contrast with the data for failing to comply with reporting obligations, which included information about the behaviours underlying the offence, the data for failing to comply with a supervision order did not include the conditions of supervision orders that sex offenders had failed to comply with. However, the Council reviewed a number of reported judgments in which offenders were sentenced for failing to comply with a supervision order. The following cases provide an illustration of factual circumstances in which offenders have failed to comply with their supervision order:

- One offender ran away from supervising officers while on a scheduled outing from a correctional facility that houses sex offenders and removed his GPS monitoring bracelet in the process.¹²⁰
- One offender left the state without permission for nearly a year (and lived with three children under 16), accessed the internet without permission for nearly two years (including pornography sites) and took nude photos of an adult woman on his mobile phone.¹²¹
- One offender used heroin.¹²²

115. *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 16–20.

116. *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 160.

117. *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 172(5).

118. David Harper et al., *Advice on the Legislative and Governance Models under the Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) (2016) vii.

119. Adult Parole Board of Victoria (2016), above n 98, 36.

120. *Heath (A Pseudonym) v The Queen* [2014] VSCA 319 (11 December 2014).

121. *Secretary to the Department of Justice and Regulation v Crowe* [2015] VCC 1657 (18 September 2015).

122. *Director of Public Prosecutions v Ghebrat* [2015] VCC 1617 (11 November 2015).

Table 8: Number of charges of sex offender secondary offences sentenced, by offence and court, 2011-12 to 2015-16

Offence	Court	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Failing to comply with reporting obligations	Magistrates' Court	784	1,070	984	936	1,058	4,832
	Higher courts	3	20	11	11	21	66
	Children's Court	1	0	0	0	1	2
	Subtotal	788	1,090	995	947	1,080	4,900
Furnishing false or misleading information	Magistrates' Court	19	28	18	39	38	142
	Higher courts	0	0	1	0	13	14
	Children's Court	0	0	0	0	0	0
	Subtotal	19	28	19	39	51	156
Applying for or engaging in child-related employment	Magistrates' Court	1	3	1	8	2	15
	Higher courts	0	0	0	0	0	0
	Children's Court	0	0	0	0	0	0
	Subtotal	1	3	1	8	2	15
Applying to change name without permission	Magistrates' Court	0	1	0	0	0	1
	Higher courts	0	0	0	0	0	0
	Children's Court	0	0	0	0	0	0
	Subtotal	0	1	0	0	0	1
Failing to comply with a supervision order	Higher courts	2	34	52	94	99	281
	Subtotal	2	34	52	94	99	281
Total		810	1,156	1,067	1,088	1,232	5,353

- One offender, on various occasions, left the state without permission, failed to wear his ankle bracelet, drank alcohol, missed curfew and used illegal drugs.¹²³
- One offender was found to have child pornography on his phone.¹²⁴
- One offender telephoned three children he saw in a photograph in a local newspaper and asked them to have sexual conversations with him.¹²⁵

Table 9: Reporting obligations breached, Magistrates' Court, 2011–12 to 2015–16

Nature of breach	Number
Not specified	4,286
Failing to report telephone contact details	111
Failing to report electronic or online identity details ^a	107
Failing to report address details	99
Failing to report vehicle details	50
Failing to report employment details	43
Failing to report personal details (general)	35
Failing to report internet service provider details	18
Failing to report travel details ^b	14
Failing to report a child in the household	13
Failing to file an annual report	11
Failing to report release from custody ^c	11
Failing to report a change in tattoo details	10
Failing to report passport details	6
Failing to report within 14 days of return to Victoria	6
Failing to report within seven days of sentence	5
Failing to report contact with a child	5
Failing to report a change of name	1
Failing to report improper expiry of reporting obligations	1
Total	4,832

a. This includes failing to report an instant messenger user name, chat room user name, internet username or email address.

b. This includes failing to report travel frequency, travel destination, an intended absence from Victoria, a reason for travelling or a change in travel plans.

c. This included two codes from the Magistrates' Court database: 'fail rep chng w/in 28dys release custody' and 'fail report w/in 7 days release custody'.

Sentencing outcomes for sex offender secondary offences

Table 10 (page 41) details the sentencing outcomes for sex offender secondary offences by court jurisdiction and offence.

In the Magistrates' Court, 4,990 charges of sex offender secondary offences were sentenced during the data period, the overwhelming majority of which (97%) were for failing to comply with reporting obligations.

In the higher courts, 361 charges of sex offender secondary offences were sentenced during the data period, the most common of which was failing to comply with a supervision order (78%).

123. *Kelly (A Pseudonym) v The Queen* [2015] VSCA 340 (9 December 2015).

124. *Secretary to the Department of Justice and Regulation v Lecornu* [2016] VCC 606 (12 May 2016).

125. *Acting Secretary to the Department of Justice v McKane* [2012] VSC 459 (9 October 2012).

Table 10: Sentencing outcomes for sex offender secondary offences, Magistrates' Court and higher courts, 2011-12 to 2015-16¹²⁶

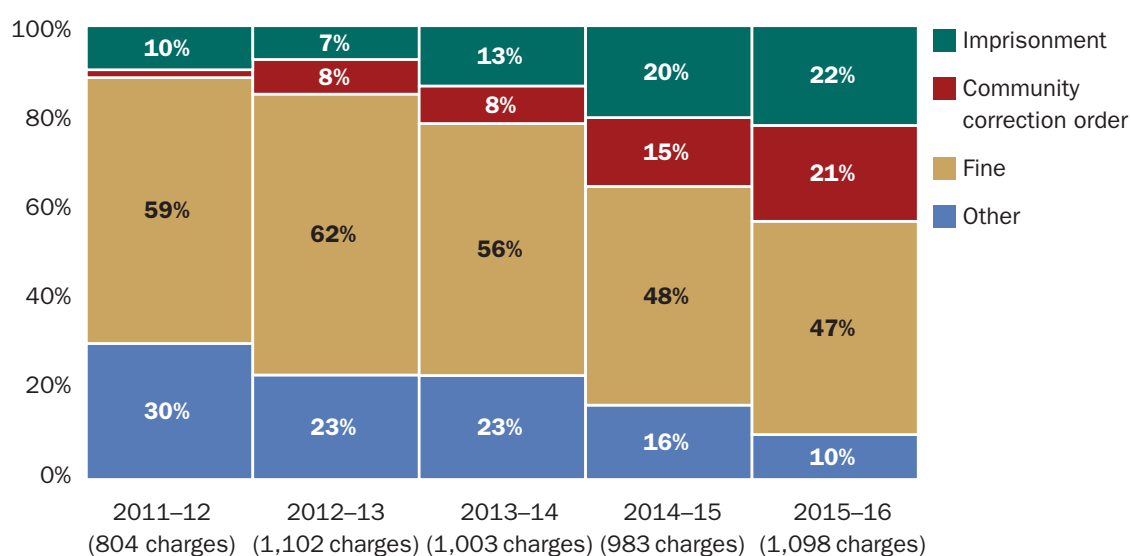
Offence	Sentence	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Failing to comply with reporting obligations	Imprisonment	75	80	129	186	232	702
	Community correction order	14	79	83	139	217	532
	Fine	459	666	550	455	504	2,634
	Other	236	245	222	156	105	964
	Total	754	1,070	1,184	1,736	1,058	6,102
Furnishing false or misleading information	Imprisonment	2	2	3	9	8	24
	Community correction order	0	5	0	9	15	29
	Fine	12	15	7	16	11	61
	Other	5	6	8	5	4	28
Applying for or engaging in child-related employment	Imprisonment	1	0	1	4	1	7
	Community correction order	0	0	0	1	0	1
	Fine	0	1	0	3	1	5
	Other	0	2	0	0	0	2
Applying to change name without permission	Adjourned undertaking	0	1	0	0	0	1
Offence	Sentence	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Failing to comply with reporting obligations	Imprisonment	2	17	8	10	14	51
	Community correction order	0	0	2	1	7	10
	Fine	0	0	1	0	0	1
	Other	1	3	0	0	0	4
Furnishing false or misleading information	Imprisonment	0	0	1	0	13	14
	Community correction order	0	0	0	0	0	0
	Fine	0	0	0	0	0	0
	Other	0	0	0	0	0	0
Failing to comply with a supervision order	Imprisonment	2	26	42	63	61	194
	Community correction order	0	0	0	5	0	5
	Fine	0	0	1	9	17	27
	Other	0	8	9	17	21	55

126. In this table, 'other' sentence types in the Magistrates' Court include suspended sentences, adjourned undertakings, diversion, intensive correction orders, community-based orders and convicted and discharged. In the higher courts, 'other' sentence types include suspended sentences, adjourned undertakings, youth justice centre orders and convicted and discharged.

Unsurprisingly, given the rarity of sexual offending by children,¹²⁷ the Children's Court sentenced only two charges of sex offender secondary offences,¹²⁸ both of which were failures to comply with reporting obligations. Of the two charges, one was sentenced to a fine and one to a youth justice centre order.

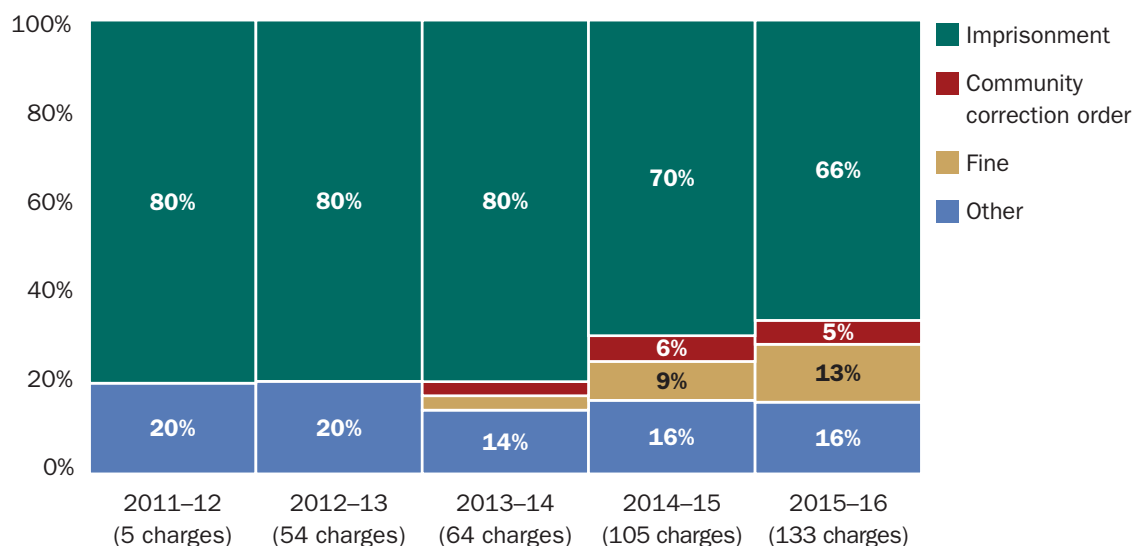
In the Magistrates' Court (Figure 15), the imposition of sentences of imprisonment and community correction orders for sex offender secondary offences increased during the data period, and there was a corresponding decrease in the number of fines over the same five years. That said, fines still represented nearly half (47%) of all sentencing outcomes for the 1,098 sex offender secondary offences sentenced in the Magistrates' Court in 2015–16.

Figure 15: Sentencing outcomes for sex offender secondary offences, Magistrates' Court, 2011–12 to 2015–16



In the higher courts (Figure 16), there was a modest decline in the use of imprisonment for sex offender secondary offences during the data period and a corresponding increase in the use of fines. This was likely in response to the increasing number of offences in this category that were sentenced in the higher courts, leading to a broader spectrum of behaviours underlying those offences, including relatively minor breaches. Community correction orders were rarely imposed for these offences in the higher courts.

Figure 16: Sentencing outcomes for sex offender secondary offences, higher courts, 2011–12 to 2015–16



127. Sentencing Advisory Council (2016), above n 9, 19.

128. Sex Offenders Registration Act 2004 (Vic) ss 66K–66L (provisions for children to be registered as sex offenders).

Imprisonment for sex offender secondary offences

In total, 992 charges of sex offender secondary offences received a term of imprisonment during the data period: 259 in the higher courts and 733 in the Magistrates' Court. In the higher courts, 64% (166) received a non-aggregate term of imprisonment, and in the Magistrates' Court, 18% (130) received a non-aggregate term of imprisonment.

Length of imprisonment

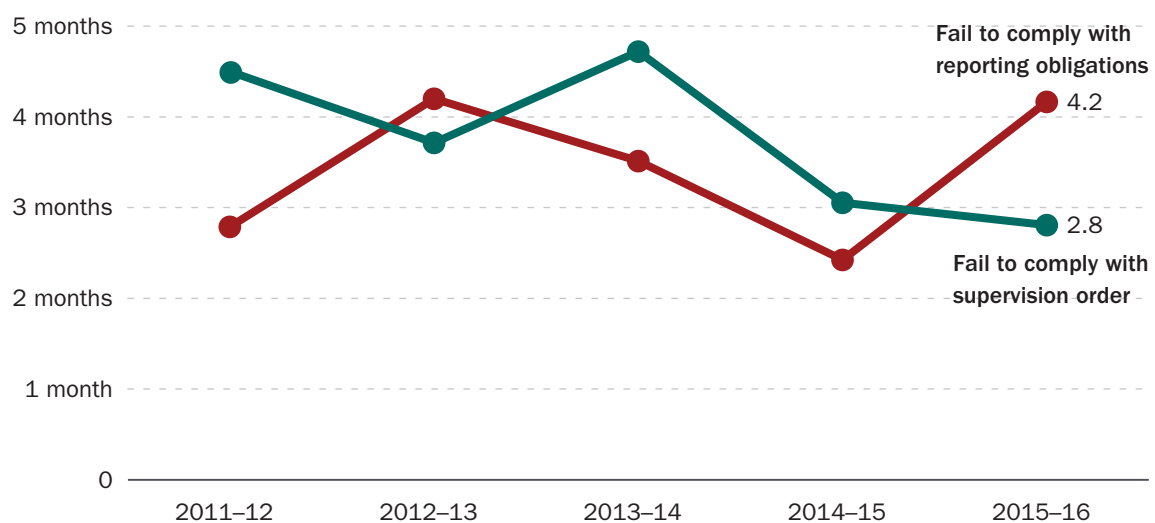
The average length of imprisonment for failing to comply with reporting obligations and for failing to comply with a supervision order is outlined in Figure 17. For failing to comply with reporting obligations, the average length of imprisonment was 3.4 months (based on the 175 charges that received a non-aggregate term of imprisonment); this fluctuated between 2.4 months and 4.2 months. For failing to comply with a supervision order, the average term of imprisonment was 3.7 months (based on the 112 charges that received a non-aggregate term of imprisonment); aside from a spike in 2013–14, this tended to decline throughout the data period, from 4.5 months to 2.8 months.

The relative similarity in sentence lengths for failing to comply with reporting obligations and failing to comply with a supervision order was somewhat surprising. The criteria for being made subject to a supervision order are much more stringent (and indicative of higher risk) than the criteria for being made subject to reporting obligations. It was therefore anticipated that the penalties for breaching a supervision order would reflect a greater emphasis on deterring non-compliance.

There were also eight charges of furnishing false or misleading information, which were sentenced to an average of six months each.

The longest term of imprisonment imposed on any one charge of a sex offender secondary offence was 50 months (much higher than the second longest term of 20 months) for failing to comply with a supervision order.

Figure 17: Average length of imprisonment (in months) for sex offender secondary offences, Magistrates' Court and higher courts, 2011–12 to 2015–16



Concurrency and cumulation

There are certain sexual offenders for whom any term of imprisonment imposed must be served cumulatively, unless a court directs otherwise.¹²⁹ It is not, however, possible to discern which of the 296 offenders that received a non-aggregate term of imprisonment fell into this category.

Of the 130 charges sentenced to a non-aggregate term of imprisonment in the Magistrates' Court, 114 (88%) received a wholly concurrent term of imprisonment. The remaining charges either were the base sentence (4) or received a wholly cumulative term of imprisonment (7) or a partly cumulative term of imprisonment (5).

As at 1 June 2016, if an offender is intentional or reckless in failing to comply with a restrictive condition of their supervision order, the court sentencing the breach must impose a term of imprisonment of at least 12 months unless there is a special reason for not doing so.¹³⁰ One Victorian practitioner has commented on the possibility that this reform could lead to imprisonment sentences for relatively minor breaches:

The long term consequences of the restrictive condition provisions are yet to be seen however there is a very real risk that offenders committing seemingly minor breaches (compared with those who commit relevant or violent offences) could end up in an ongoing cycle of breaching and then serving the mandatory minimum or longer.¹³¹

Although these reforms would not have had a noticeable effect on the data in this report, the effect of these reforms on sentencing of sex offender secondary offences may warrant future examination.

Offenders committing sex offender secondary offences

In examining the profile of offenders sentenced for sex offender secondary offences, the Council has distinguished between offenders sentenced for the four offences under the *Sex Offenders Registration Act 2004* (Vic),¹³² and offenders sentenced for failing to comply with a supervision order under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic).

Offenders sentenced for failing to comply with a supervision order warrant separate analysis because individuals subject to such an order are likely to be of a higher risk profile and are subject to a more stringent condition compliance regime than offenders suspected or convicted of a sex offender registry offence.

Offenders sentenced for sex offender registry offences

The Council was able to identify the offender for 5,011 of the 5,072 charges of the four offences under the *Sex Offenders Registration Act 2004* (Vic).¹³³ In total, the Council was able to identify that 1,955 offenders were sentenced for those charges, at an average of 2.6 charges each. Almost all of these offenders were male (1,914 or 98%). The most charges any one offender was sentenced for was 33 charges, which included a combination of all four registry offences.

129. *Sentencing Act 1991* (Vic) ss 6E (requirement for cumulation for serious offenders), 6B (definition of 'serious offender' to include serious sex offenders, and definition of 'serious sex offenders' to include offenders convicted of two or more sexual offences for which they are sentenced to a term of imprisonment or detention in a youth justice centre, or a sexual offence and a violent offence for which they are sentenced to a term of imprisonment or detention in a youth justice centre).

130. *Sentencing Act 1991* (Vic) s 10AB, as inserted by *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic). The circumstances qualifying as 'special reasons' are enumerated in section 10A of the *Sentencing Act 1991* (Vic); the 'restrictive conditions' are those specified in sections 16(2)(a)–(ad) of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic).

131. Emily Clark, *Breaching Supervision Orders: Restrictive Conditions and Mandatory Minimums* (2016) 8.

132. As discussed above, the Council identified five sex offender secondary offences under the *Sex Offenders Registration Act 2004* (Vic) but there were no charges of failing to disclose a registrable offence charge to an employer sentenced in any court during the data period.

133. These offences were failing to comply with reporting obligations, furnishing false or misleading information, applying for or engaging in child-related employment and applying to change name without permission.

The average age of offenders sentenced for sex offender registry offences was 42 years, though the most common age group for offenders sentenced for sex offender registry offences was 25–29 years (270 offenders).

Figure 18 shows the number of offenders sentenced for sex offender registry offences by age at date of first sentence and number of charges sentenced. Offenders aged under 25 were sentenced for an average of 3.8 charges each, and this number gradually declined as the age of offenders increased: 25–29 years (3.1 charges), 30–34 years (3.0 charges), 35–39 years (2.3 charges), 40–44 years (2.4 charges), 45–49 years (2.3 charges), 50–54 years (2.4 charges), 55–59 years (2.1 charges), 60–64 years (1.8 charges), 65–69 years (1.8 charges) and 70 years and over (1.5 charges).

Figure 18: Offenders sentenced for secondary offences under the Sex Offenders Registration Act 2004 (Vic), by age at date of first sentence and number of charges offenders were sentenced for, all courts, 2011–12 to 2015–16

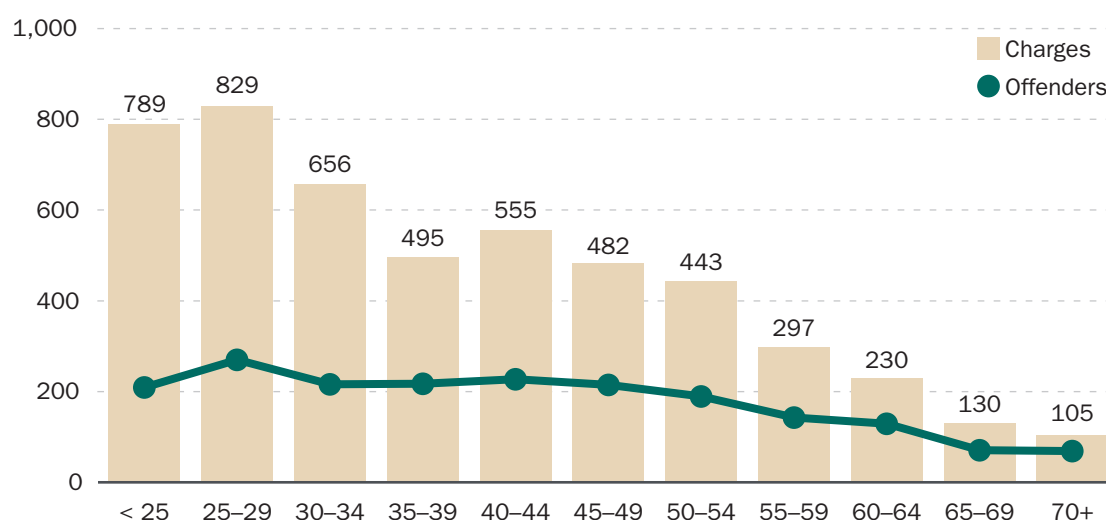
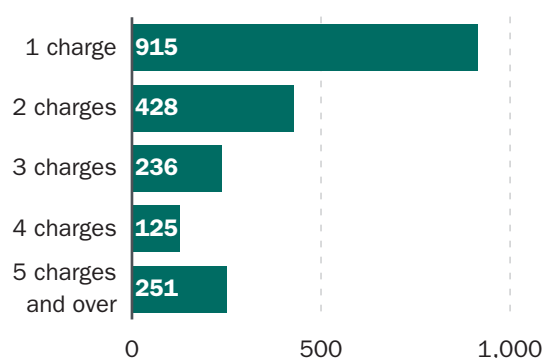


Figure 19 shows that nearly half of the offenders (47%) were sentenced for just one sex offender registry offence during the data period. The remaining offenders were sentenced for two charges (22%), three charges (12%), four charges (6%) or five or more charges (13%). The 251 offenders sentenced for five or more charges were responsible for 41% of sex offender registry offence charges (2,032).

Figure 19: Offenders sentenced for secondary offences under the Sex Offenders Registration Act 2004 (Vic), by the number of charges sentenced, all courts, 2011–12 to 2015–16



Offenders who failed to comply with a supervision order

The Council was able to identify the offender for 254 of the 281 charges of failing to comply with a supervision order. Those 254 charges were sentenced in 85 separate cases involving 60 unique offenders, at an average of 4.2 charges per offender. All but three offenders, whose gender was unidentified in the data, were male. A considerable proportion of offenders sentenced for failing to comply with a supervision order (24 offenders or 40%) were also sentenced for failing to comply with reporting obligations during the data period.

For the 60 offenders whose age the Council was able to discern, the average age at the date of first sentence was 41 years, with only three offenders aged under 25. Figure 20 shows the number of sentenced charges according to the age group of offenders at first sentence.

The most common age groups of offenders sentenced for this offence were 25–29 years and 45–49 years (10 offenders each); however, those aged 25–29 years were sentenced for many more charges (86) than those aged 45–49 years (27). This was largely due to one offender in the 25–29 group who was sentenced for 35 charges of failing to comply with a supervision order on 12 separate occasions, significantly more than the second highest number of charges for any single offender (13 charges). As with all other offence categories in this report, the average number of charges of failing to comply with a supervision order per offender declined with age, with offenders aged 25–29 years sentenced for an average of 8.6 charges each: 30–34 years (5.1 charges), 35–39 years (3.8 charges), 40–44 years (2.9 charges), 45–49 years (2.7 charges), 50–54 years (3.2 charges) and 55–59 years (1.3 charges). During the data period, four offenders aged over 59 at their first sentence were sentenced for 16 charges of failing to comply with a supervision order (4 charges each).

Figure 20: Offenders sentenced for failing to comply with a supervision order, by age at date of first sentence and number of charges offenders were sentenced for, all courts, 2011–12 to 2015–16

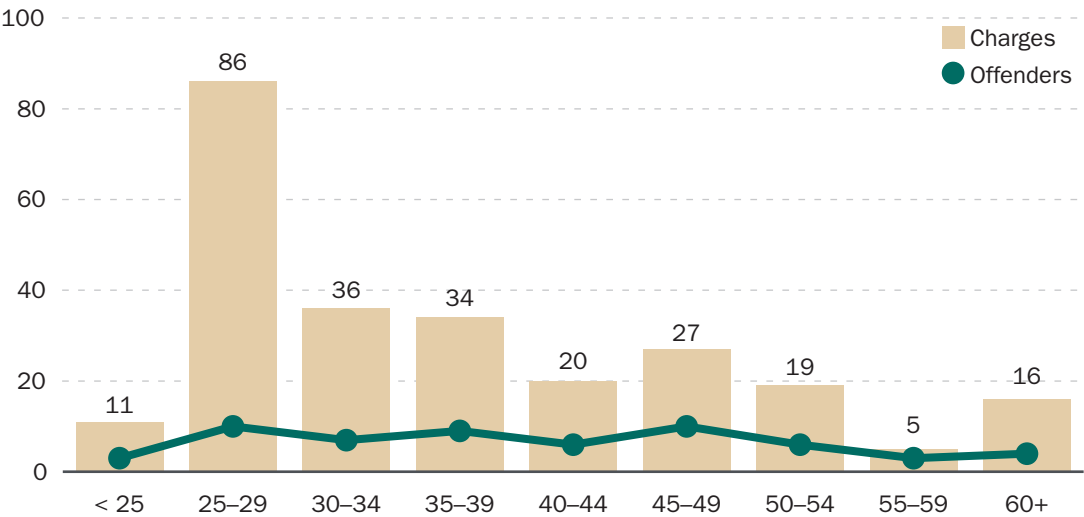
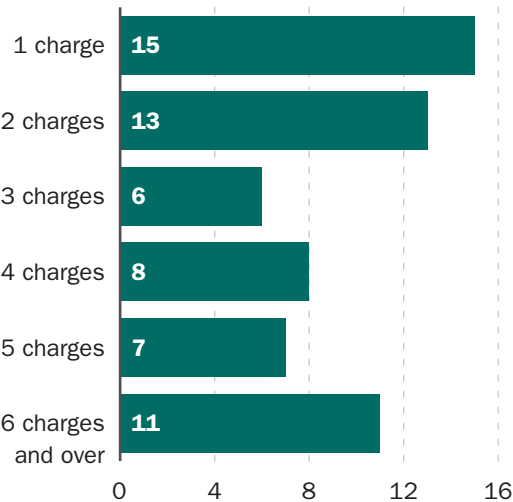


Figure 21 shows that multiple charges were common for failing to comply with a supervision order. Most offenders sentenced for this offence (75%) were sentenced for more than one charge of the offence, with one in five offenders sentenced for six or more charges.

Figure 21: Offenders sentenced for failing to comply with a supervision order, by the number of charges sentenced, all courts, 2011–12 to 2015–16



6. Key findings

In Chapters 2 to 5 of this report, the Council described the number of sentenced charges, as well as their sentencing outcomes, for four categories of secondary offences: bail-related secondary offences, sentence-related secondary offences, the parole-related secondary offence and sex offender secondary offences (offences that apply only to offenders who have been charged with or convicted of a registrable sex offence). The Council also described the age and gender of offenders who committed secondary offences, and how many of each offence category those offenders committed.

This final chapter discusses some of the key findings that have arisen from the Council's analysis.

Total number of secondary offences

In total, 100,860 identifiable secondary offences were sentenced during the data period (Table 11). Most of these (70%) were bail-related secondary offences. The remainder were sentence-related secondary offences (25%), sex offender secondary offences (5%) and the parole-related secondary offence (<1%). Between 2011–12 and 2015–16, there was a substantial increase of 160% in the annual number of secondary offences sentenced in Victorian courts, from 12,244 charges in 2011–12 to 31,862 in 2015–16.

Table 11: Number of secondary offences sentenced, by category of secondary offence and court jurisdiction, 2011–12 to 2015–16

Secondary offence category	Court	Number of sentenced charges	Total
Bail-related secondary offences	Magistrates' Court	62,055	70,235
	Higher courts	372	
	Children's Court	7,808	
Sentence-related secondary offences ^a	Magistrates' Court	24,639	25,057
	Higher courts	418	
	Children's Court	0	
Parole-related secondary offence	Magistrates' Court	213	215
	Higher courts	1	
	Children's Court	1	
Sex offender secondary offences	Magistrates' Court	4,990	5,353
	Higher courts	361	
	Children's Court	2	

^a As discussed above, the number of sentence-related secondary offences is likely to be under-representative because the Council was only able to count the number of cases involving a sentence-related secondary offence in the higher courts and the number of unique sentence-related secondary offences *within each case* in the Magistrates' Court.

The vast majority of secondary offences were sentenced in the Magistrates' Court (91%). The remainder were sentenced in either the Children's Court (8%) or the higher courts (1%).

In the Magistrates' Court (91,897 charges), bail-related secondary offences were the most common category of secondary offences (68% or 62,055 charges), followed by sentence-related secondary offences (27% or 24,639 charges) and sex offender secondary offences (5% or 4,990 charges). The 213 charges of the parole-related secondary offence represented just 0.2% of all secondary offences sentenced in the Magistrates' Court.

In the higher courts (1,152 charges), sentence-related secondary offences were the most common category (36% or 418 charges), followed by bail-related secondary offences (32% or 372 charges) and sex offender secondary offences (31% or 361 charges). There was only one charge of the parole-related secondary offence in the higher courts.

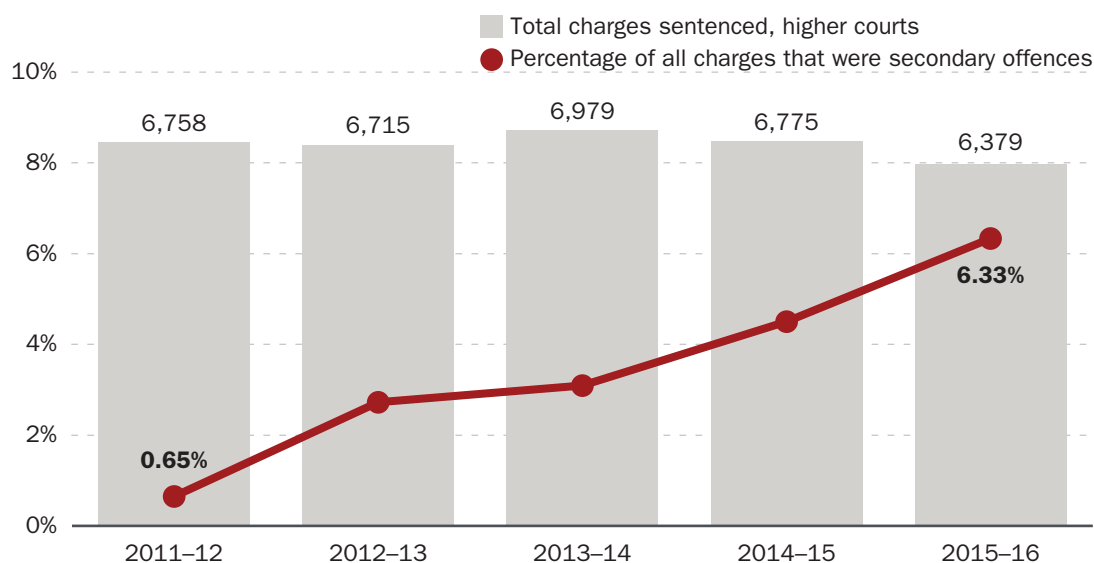
In the Children's Court (7,811 charges), bail-related secondary offences were overwhelmingly the most common category of secondary offences sentenced during the data period (7,808 charges); there were also two sex offender secondary offences, one parole-related secondary offence and no sentence-related secondary offences.

Secondary offences as a proportion of court workloads

During the data period, secondary offences became a substantially more common component of court workloads.

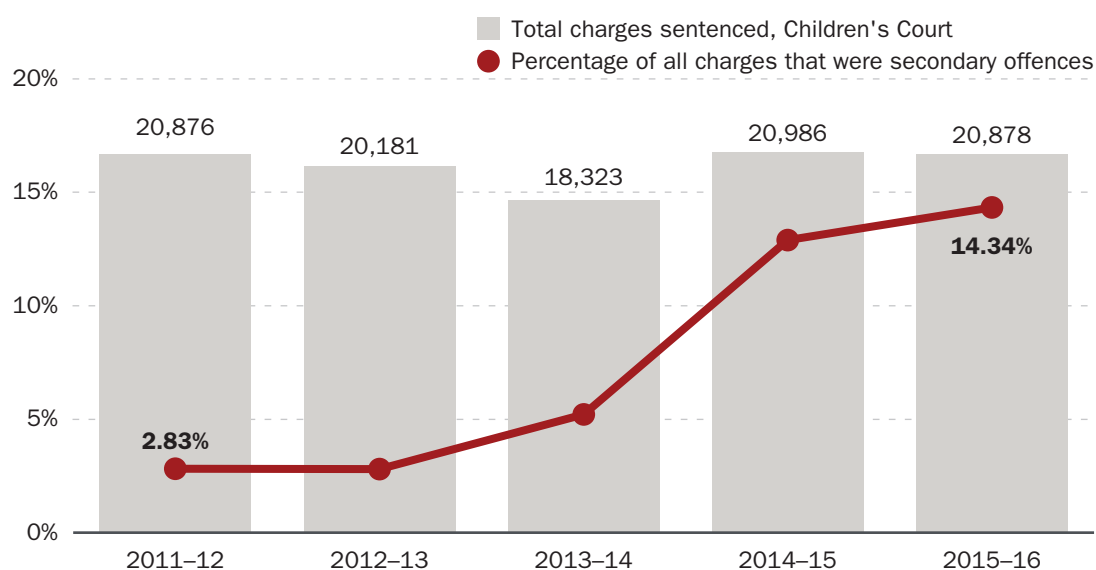
In the higher courts, the total number of charges of all offences sentenced each year (not just secondary offences) remained relatively steady (Figure 22). However, the proportion of those charges that were secondary offences increased markedly. In 2011–12, secondary offences constituted just 0.65% (44 charges) of all charges sentenced in the higher courts, but by 2015–16 they represented 6.33% (404 charges) of all charges.

Figure 22: Secondary offences as a proportion of all charges sentenced, higher courts, 2011–12 to 2015–16



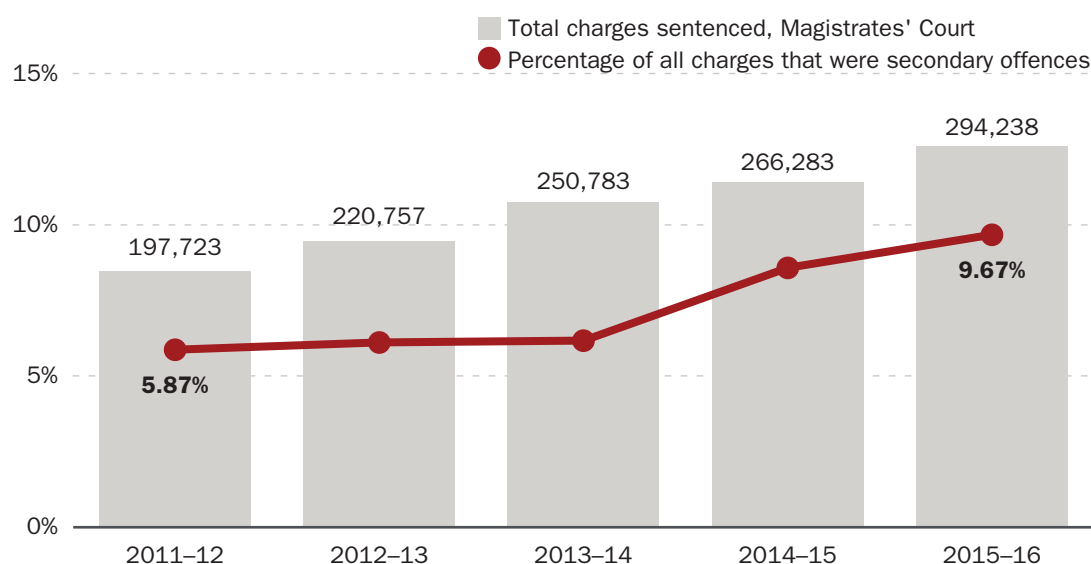
A similar trend was observed in the Children's Court. While the total number of charges sentenced each year remained relatively constant (at around 20,000 charges each year), the proportion of those charges that were secondary offences increased substantially (Figure 23). In 2011–12, secondary offences constituted just 2.83% (590 charges) of the 20,876 charges sentenced in the Children's Court that year, but by 2015–16 secondary offences constituted 14.34% (2,993 charges) of the 20,878 charges sentenced that year. This represents a four-fold increase in the proportion of offences in the Children's Court that were secondary offences.

Figure 23: Secondary offences as a proportion of all charges sentenced, Children's Court, 2011–12 to 2015–16



In contrast, in the Magistrates' Court over the same period, the total number of charges sentenced each year increased substantially, from 197,723 in 2011–12 to 294,238 in 2015–16 (a 49% increase). Despite this increase in the number of charges sentenced in the Magistrates' Court, the proportion of those charges that were secondary offences also increased substantially: from 5.87% (11,610 charges) of all charges sentenced in 2011–12 to 9.67% (28,465 charges) in 2015–16.

Figure 24: Secondary offences as a proportion of all charges sentenced, Magistrates' Court, 2011–12 to 2015–16



These figures demonstrate that secondary offences have, over a relatively short period of time, become a much larger part of courts' workloads. In large part, this is due to the introduction of a number of new offences, especially the two new bail-related secondary offences introduced in 2013. There has, however, also been an increase in charges of secondary offences that were already operational prior to the data period.

Another possible contributing factor to the increase in secondary offences, which was raised by a number of stakeholders at the Council's roundtable discussion forum, was an increasing trend of 'condition breaches' (that is, breaches not involving further offending) being prosecuted when there has been further offending, long after detection of the condition breach.¹³⁴

Sentencing of secondary offences

In general, secondary offences were sentenced to relatively low-level sentencing orders, and they usually only received a term of imprisonment when sentenced alongside other offences. In addition, when secondary offences did receive a term of imprisonment, it was often part of an aggregate sentence. Further, when the secondary offence received a non-aggregate term of imprisonment, it was usually wholly concurrent with other terms of imprisonment imposed in the case.

The high proportion of aggregate terms of imprisonment seems to be consistent with comments from a number of stakeholders about a growing trend in Victorian courts, especially in the Magistrates' Court, to impose aggregate sentences of imprisonment.¹³⁵ During the data period, the percentage of *all offences* sentenced to imprisonment in the Magistrates' Court that were part of an aggregate sentence (84% or 131,394 of 156,413 offences) was very similar to the percentage of *secondary offences* sentenced to imprisonment that were part of an aggregate sentence (86% or 14,514 of 16,875 offences). In the higher courts, there was slightly more disparity: for secondary offences sentenced to imprisonment, 28% (140 of 496 offences) were part of an aggregate sentence, while the overall percentage of charges sentenced to an aggregate term of imprisonment was 9% (2,164 of 23,601 offences).

In addition to high rates of aggregate sentences of imprisonment, courts also regularly ordered non-aggregate terms of imprisonment to be served wholly concurrently. This might initially appear contradictory to the provisions of the *Sentencing Act 1991* (Vic), which require cumulation for most secondary offences unless 'the court orders otherwise', or in the case of breach of parole, there are 'exceptional circumstances' not to cumulate the term of imprisonment.¹³⁶

There are, however, four key reasons that would explain the high levels of concurrency:

- **Low maximum penalties:** during the data period, the maximum penalty for most secondary offences was either a low level of imprisonment or a fine. Only five secondary offences (contravening an alcohol exclusion order, failing to answer bail and three sex offender secondary offences) could be sentenced to longer than three months' imprisonment.
- **Totality:** when an offender is being sentenced for multiple offences, the court must ensure that the total sentence is 'just and appropriate'. That is, the court must compare the whole of the offending being sentenced against the whole of the sentence being imposed, and confirm that in all the circumstances the total sentence 'is not excessive'.¹³⁷

¹³⁴. Roundtable Discussion Forum (7 June 2017).

¹³⁵. Roundtable Discussion Forum (7 June 2017).

¹³⁶. *Sentencing Act 1991* (Vic) ss 6B, 6E (applying to terms of imprisonment imposed on serious sexual offenders), 16(3B) (applying to offences committed while a person is on parole), 16(3C) (applying to offences committed while a person is released on bail).

¹³⁷. *Azzopardi v The Queen; Baltatzis v The Queen; Gabriel v The Queen* [2011] VSCA 372 (18 November 2011); *Mill v The Queen* (1988) 166 CLR 59; Judicial College of Victoria, '6.4 – The Totality Principle', *Victorian Sentencing Manual* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#14959.htm>> at 2 August 2017.

- **Double punishment:** where an offender has committed a single act that is covered by two separate offences, the court must avoid convicting or punishing the offender twice for the same conduct. Similarly, if there are two partially overlapping offences, the court may impose separate sentences but should avoid doubly punishing the elements of the offences that are overlapping.¹³⁸
- **Broad range of behaviours:** because of the nature of secondary offences, many of which are premised on condition breaches, there is a broad range of behaviours that can underlie these offences. For example, someone failing to appear at court might have written down the wrong time in their calendar and might have been just a few hours late, or they might have absconded to another country entirely in order to avoid prosecution. In addition, stakeholders mentioned that a large number of charges of failing to comply with reporting obligations are a product of genuine oversights that are voluntarily disclosed by the offender to the authorities.¹³⁹

All of the above factors likely explain why there were high levels of concurrency during the data period when most secondary offences were sentenced to a term of imprisonment. Legislative presumptions of cumulation are an important factor to be taken into account, but they are just one factor in what is often a complex sentencing exercise that involves balancing several competing principles.

For the offence of breaching a prescribed condition of parole, the Council was unable to examine whether there were 'exceptional circumstances' in the 35 (of 44) non-aggregate imprisonment sentences for that offence that were ordered to be served wholly concurrently. However, that finding warrants further investigation.

Further, the 6,226 charges of secondary offences that received adjourned undertakings (5,903 of which were for bail-related secondary offences) are likely the result of what are often 'minor, technical or trivial'¹⁴⁰ condition breaches. As discussed above, condition breaches can range from relatively minor behaviours (such as missing a curfew by an hour) to very serious behaviours (such as further offending). The *Sentencing Act 1991* (Vic) specifically provides that one of the purposes of adjourned undertakings is 'to take account of the trivial, technical or minor nature of the offence committed'.¹⁴¹

Given the recent interest in secondary offences – such as the Sentencing Council for England and Wales' current consultation on prospective sentencing guidelines for breach offences – the above data may inform similar guidelines that might be implemented in Victoria. In their draft guidelines for consultation, the Sentencing Council for England and Wales specifically noted that developing the draft guidelines was a 'challenging project', in large part because '[d]ata was unavailable to enable a thorough examination of current sentencing practice' for certain breach offences.¹⁴²

The utility and effectiveness of secondary offences

There has, over the last 15 years or so, been disagreement about the utility of secondary offences, or the capacity of secondary offences to achieve their stated purposes, especially secondary offences involving breaches of sentencing orders.

138. *Interpretation of Legislation Act 1984* (Vic) s 51; *Pearce v R* (1998) 194 CLR 610; Judicial College of Victoria, '6.5 – Double Punishment', *Victorian Sentencing Manual* (Judicial College of Victoria, 2017) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#I4988.htm>> at 2 August 2017.

139. Roundtable Discussion Forum (7 June 2017).

140. *Sentencing Act 1991* (Vic) s 70(1)(b) (one purpose of adjourned undertakings is 'to take account of the trivial, technical or minor nature of the offence committed').

141. *Sentencing Act 1991* (Vic) s 70(1)(b).

142. Sentencing Council for England and Wales (2016), above n 12, 7.

Some have argued in favour of secondary offences, suggesting that these offences:

- can deter people on bail, parole or a community-based disposition from breaching the conditions attached to their orders, especially the condition not to commit an imprisonable offence;
- can act as a means of denouncing the behaviours of people who fail to comply with court-ordered conditions; and
- substantially improve the information available to future decision-makers about a person's level of risk or likelihood of complying with conditions.

In contrast, others have argued against the utility and effectiveness of secondary offences, suggesting that:

- if the real purpose of secondary offences is to deter further offending, then it is unlikely that the possibility of an additional few months' imprisonment will increase the existing deterrent value of, for example, bail revocation, parole cancellation, resentencing or sentencing for new offending behaviour;
- where secondary offences prohibit condition breaches not involving further offending, the primary purpose seems to more appropriately be to bring offenders back to court rather than punishing the condition breach;
- in certain circumstances, secondary offences potentially expose offenders to three punishments for the same behaviour, because the offender can be sentenced for the new offending, sentenced for the separate breach offence and resentenced for the original offending; and
- because of the overlap between secondary offences and other substantive offences, courts often impose only small penalties for the breach offence itself to avoid double punishment for the same behaviour.

There was general consensus at the Council's roundtable discussion forum that secondary offences substantially improve the quality of information available to decision-makers about a person's risk level. That is, when a decision-maker at a bail hearing, parole hearing or sentencing hearing is considering the appropriate decision, the presence of secondary offences in the person's criminal record will indicate a history of proven non-compliance. For example, one judicial officer said that:

When I come to consider issues about bail, when I come to look at suitability for community-based dispositions, I will often look to see whether they have been found guilty of these secondary offences.¹⁴³

Even this advantage, though, has been a matter of dispute. On the one hand, because secondary offences are based on proven criminal offences, the decision-maker can be assured about the integrity of the non-compliance record. Secondary offences must be proven beyond reasonable doubt, and therefore they avoid the potential injustice of unproven or excusable condition breaches being present in an administrative record and being taken into account by decision-makers.

On the other hand, ensuring the integrity of the information about condition compliance may not be a sufficient justification to criminalise these condition breaches. That is, condition compliance could perhaps be recorded using a mechanism other than the criminal law.

The Council draws no conclusions on the utility or effectiveness of secondary offences. There does, however, appear to be little evidence to support the proposition that secondary offences add any additional deterrent value above and beyond the existing punishments for engaging in further offending. Research suggests that offenders demonstrate a diminishing sensitivity to increasingly severe punishments, such that incremental increases in the maximum punishment for committing a further offence would be of relatively little value.¹⁴⁴

143. Roundtable Discussion Forum (7 June 2017). See also Sentencing Advisory Council (2017), above n 86, 77 (noting that a proven charge of contravening a community correction order is relevant to future bail applications and sentencing hearings).

144. Sentencing Advisory Council, *Does Imprisonment Deter? A Review of the Evidence* (2011) 10.

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