

Candidate number Pol – 1736

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What is the context of police and court diversion in Victoria and what opportunities exist for increasing police diversion of offenders?

**Submitted in part fulfilment of the requirements for a Master's Degree in
Applied Criminology and Police Management**

December 2018

Word count: 18,000

Research Contract

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Police agency name: Victoria Police

Research Question

What is the context of police and court diversion in Victoria and what opportunities exist for increasing police diversion of offenders?

Sub Questions

RQ 1: To what extent are police and court diversion used in Victoria?

RQ 2: What are the trends and future projections for police and court diversion and for offenders charged by police in the Magistrates' and Children's Courts?

RQ 3: What are the characteristics of cases that proceeded to court that were resolved by the traditional court process compared to cases resolved by diversion by the court?

RQ 4: What proportion of cases does not result in a criminal conviction and therefore potentially may be eligible for diversion?

Research design

A targeting analysis using descriptive statistics including trends, forecasts, percentages and means.

Data and methodology

10 year trends and projections:

Police and court diversion streams over 10 years

Offenders charged over 10 years

The rate of diversion is calculated from the total number of offenders police had sufficient evidence to charge, compared to the number of diversion cases as a percentage.

Case characteristics:

Traditional court cases and court diversion cases found proven at court, with characteristics coded into excel.

Analytic methods:

Frequencies, percentages, means and rank orders of cases

5 year projections calculated from mean % over specified years.

Findings

Extent of diversion:

The overall rate of diversion in Victoria in 2016/17 was 13% which is lower than rates in the USA, UK and NZ. Only 4% of adult offenders were diverted by police.

Trends and projections:

Over 10 years since 2007/8, the combined number of adult and child offenders being diverted by police and courts has reduced from 22,098 cases to 18,165 cases. Over the same period, the rate of police diversion of adult offenders has reduced by 42%, police diversion of child offenders by 41% and adult court diversion by 50%. Over the same period, the number of adult offenders charged by police has almost doubled and is projected to triple over the next 5 years.

There has been a ‘hardening’ in the way in which police dispose of adult and child offenders, with an increased use of bail/remand, a reduction in support for diversion and the use of bail

in one in three cases where an offender receives court diversion. Court sentences relating to child offenders at the same time have reduced in seriousness. The author suggests that legislative hardening of bail laws, a pro-arrest and pro-bail philosophy by police management and a 'tough on crime environment' have influenced police discretion away from diversion.

Diversion case characteristics:

There is a lack of celerity in court diversion cases with cases taking 375 days from offence date to completion of the diversion conditions, compared to traditional cases that take 291 days on average. Court diversion cases have 4.0 hearings compared to 3.7 hearings for traditional cases.

Non- conviction cases

Out of cases proven at court, 56% of cases result in a non-conviction finding of guilt, indicating the potential for an increase in police diversion of offenders.

Policy implications

The overall reduction in the rate of diversion of offenders is a serious concern in Victoria, not limited to police. The reduction in police child cautioning is even more concerning and is contrary to strong evidence in relation to the criminogenic effects of formal system processing. It is also contrary to a recent study by the Crime Statistics Agency, which shows reduced recidivism rates for child offenders who receive police child cautioning. This, combined with the 'hardening' of the disposal of child offenders, is an issue requiring addressing.

The projected increase in offenders charged, will put unprecedented pressure on the criminal justice system. This presents a generational opportunity to develop an expanded policy of

police-led diversion; holding offenders to account, reducing delay, providing meaningful outcomes for offenders and victims, reducing the burden on police and courts and allowing the criminal justice system to focus on high harm offenders.

Police-led diversion has the potential to reduce multiple agency costs associated with formal system processing. The 'Turning Point' approach provides a model of conditional cautioning for consideration, where offenders are placed on an 'offender contract' and a 'deferred prosecution' to encourage desistance. The use of an electronic eligibility tool shows great promise in guiding police decisions and creating greater consistency in the exercise of police discretion.

Key words: Diversion, police diversion, court diversion, out of court disposals, formal system processing.

Word count: 747

Acknowledgement

This thesis was funded by the generous support of the Wakefield Trust and Victoria Police. I was honoured to be the inaugural recipient and I would like to thank each of these institutions for their generous support of police education.

This research was driven by a commitment to reduce crime and harm and at the same time, support police to do their job in the most effective way possible. It was also driven by a passion to use evidence based policing practices to guide future policing responses.

I would like to acknowledge Chief Commissioner Graham Ashton APM, Deputy Commissioner Wendy Steendam APM, Executive Director Andrew Loader, Executive Director Alison Creighton and Commander Neville Taylor, who all supported me to make this possible.

I am however most indebted to Professor Heather Strang, Course Director, Police Executive Program, University of Cambridge, who has guided me with expert advice, encouragement and patience and I feel privileged and honoured to be her student. I must also acknowledge Professor Lawrence W. Sherman for inspiring me to be a 'pracademic' and advocate for evidence based policing. It is individuals like Larry and Heather, who change the world. Sincere thanks to my colleagues from around the world for your friendship along the way including Suzanne Hopper (UK), Bruce O'Brien (NZ) and Aiden McCarthy (Ireland).

Finally I wish to thank my family who have been on this journey with me for the past two years. Thank you Ruby, Flynn and Paris for enthusiastically supporting me along the way. A special heartfelt thank you to Jo, my wife, who never wavered in her support from start to finish and manned the home front while I was in Cambridge, at the local library and locked away for many evenings and weekends.

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Abbreviations

CSA	Victorian Crime Statistics Agency, Department of Justice and Regulation
CCV	Children's Court of Victoria
CSS	Community Safety Statement, Victorian Government
LEAP	Law Enforcement Assistance Program, Victoria Police
MCV	Magistrates' Court Victoria
RCFV	Royal Commission into Family Violence, Victoria
RCT	Randomised control trial
RJC	Restorative justice conferencing

List of terms

Adult	An offender 18 years or older as defined by the Criminal Procedure Act, 2009.
Bail	A legal mechanism requiring an offender's attendance at court through a legal undertaking used in more serious cases.
Brief of evidence	A formal case file completed by police including charge, evidence and prior convictions and used by the prosecutor in the court process.
Case	A general term used throughout this study to reflect the formal brief of evidence and the case presented against an accused.
Charge	The legal wording of the offence alleged against the offender.
Child	An offender between the age of 10 and 17 years as defined by the Children Youth and Families Act (2005). The term is used interchangeably with the term 'juvenile'.
Conviction	Where a charge is proven at court and the court imposes a formal conviction against the offender.
Court diversion	A process where an offender is formally charged and appears at court. The charges do not proceed and the offender undertakes certain conditions and avoids a formal conviction.
Court diversion – adult	Criminal Justice Diversion Program, Magistrates' Court Victoria.

Court diversion – child	Children’s Court Diversion Program, Children’s Court Victoria.
Diversion	A general term for processing an offender in a way that avoids formal prosecution in court.
Formal system processing	Criminal justice processing in the traditional method where offenders are formally charged and processed through the courts.
Juvenile	An offender aged 10 to 17 years (depending on the jurisdiction) term used interchangeably with the Victorian term ‘child’ or ‘young person’.
Non-conviction	Where a charge is found proven against an offender at court, but where the court does not impose a formal conviction against the offender. This is also referred to as a ‘without conviction’ disposition.
Offender	A person formally charged or summons to appear at court or a person subject to a police or court diversion process.
Operation CARA	A RCT of police diversion in Hampshire UK, testing a group treatment for low harm domestic violence offenders as part of a conditional caution.
Operation Checkpoint	A RCT of police diversion, in Durham, UK, testing an offender triage approach linked to deferred prosecution with conditions.

Operation Turning Point	A RCT of police diversion in Birmingham, UK, testing offender contracts and deferred prosecutions with conditions.
Out of court disposals	A UK term meaning the resolution of a case not involving the formal court process and led by police. A term used interchangeably with police diversion.
Police diversion	A process where police directly undertake diversion of offenders without legally charging the offender or directing the offender to court.
Police diversion – adult	Cannabis cautioning, illicit drug diversion or shop steal cautioning.
Police diversion – child	Child cautioning broadly applying to most offences and drug diversion.
Rate of diversion	The proportion of diversion cases compared to offenders charged combined with offenders processed by police diversion. This represents the total cohort of offenders, police had sufficient evidence to proceed against.
Summons	A legal mechanism providing the offender with the charge and requiring the offender to attend court in certain circumstances. This is typically used in less serious offending.
Traditional court process	Cases that are resolved at court through the normal legal process and excludes court diversion and police diversion cases.

Introduction

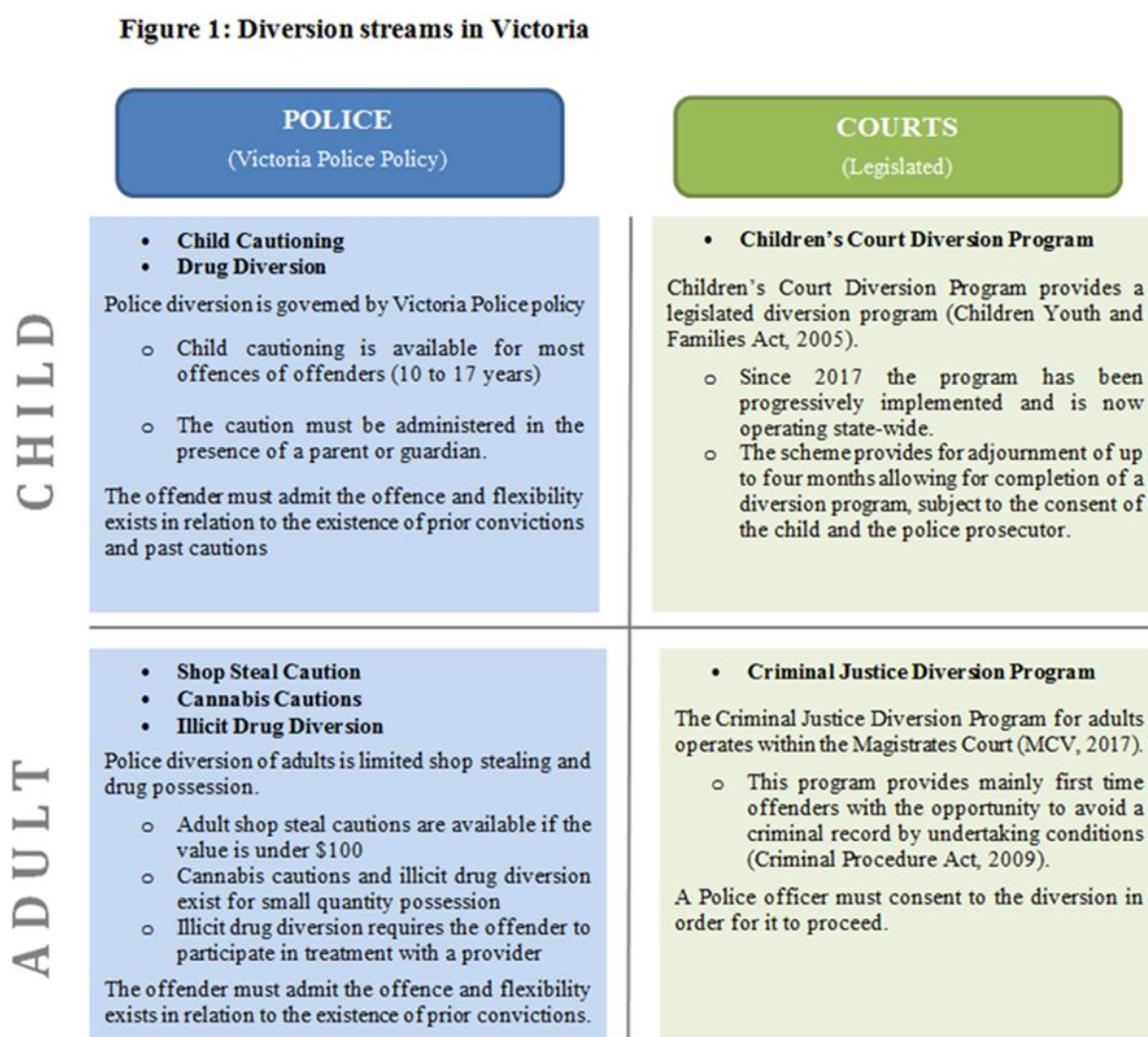
This study of diversion in Victoria provides an evidenced based descriptive analysis of the ‘ecology’ of diversion in this state, whilst also identifying opportunities for the expansion of police diversion of offenders. It provides a holistic view of not only police diversion, but the system in which it operates and has relationships to. This study is also timely, as Victoria Police currently considers how enhancements may be made to police diversion in the future.

The decision not to prosecute in the public interest is a long-standing power of the constable. The decision to work out an informal restitution between the offender and the victim, “outside the king’s justice”, has thousands of years of precedent and the simple view that “police investigate” and “courts decide” is manifestly untrue (Sherman and Neyroud, 2012, p.215). In 1951, Sir Hartley Shawcross, Attorney General in United Kingdom stated, “it has never been the rule in this country, I hope it never will be, that suspected criminal offences must automatically be the subject of prosecution” (House of Commons Debates, 1951). He went on to outline the importance of public interest considerations having regard to the circumstances of offending. Indeed, the current Victorian Director of Public Prosecutions Prosecutorial Guidelines (Office of Public Prosecutions, 2018) contains such a consideration, where the prosecution may only proceed if it is in the public interest to do so. As observed by Petrosino et al. (2010), police have tremendous discretion on how to handle offenders and can decide whether the offender should be officially processed by the justice system or diverted from the system.

The use of diversion has an obvious focus on offenders with the objective of reducing crime but also impacts victims, police resources and the costs of the criminal justice system (Neyroud, 2018). Yet any changes to criminal justice processing and police practices are

significant, and for government to change policy, the evidence that an approach works should be clear (Laycock and Mallender, 2015). Although diversion offers the possibility of great benefits if implemented well, if implemented poorly, diversion presents a range of risks (Slothower, 2014).

Figure 1 outlines the various streams of police and court diversion in Victoria.



Why is police diversion important?

The broader issue of diversion has been a live issue in Victoria in recent years. In 2016, Victoria Police had a focus on police diversion, with the Diversion Alignment Project seeing

policy consistency developed across the various diversion streams. The Community Safety Statement (Victorian Government, 2017), being the Victorian Governments commitment to community safety, also features a commitment to diversion. The Victorian Crime Statistics Agency [CSA] has produced studies on police diversion relating to child cautioning (Shirley, 2017) and drug diversion (Coghlan et al., 2016).

At the same time, the criminal justice system in Victoria is under increasing pressure. The Victorian Government has deployed 1700 additional police and has committed to deploying an additional 3135 police over the next four years (Victorian Government, 2018). The Victorian Government's Community Safety Statement [CSS] also sees the introduction of weekend courts, 18 new magistrates and 98 million dollars for additional police prosecutors, all as a direct result of the increasing demands on the criminal justice system. Over the last decade, the prisoner population in Victoria has increased by 71% (Justice and Regulation, 2018) and family violence incidents have risen dramatically as outlined by the Royal Commission into Family Violence (2016) [RCFV].

It is therefore timely to undertake an evidence based descriptive analysis of trends and projections for police diversion, within the broader context of the criminal justice environment in Victoria. In doing so, this study will identify the opportunities for expanding police diversion of offenders.

Chapter 1: Literature Review

This literature review will explore a broad range of international research studies relevant to diversion and criminal justice processing, as well as criminological theories of deterrence, desistance and celerity which underpins diversion policies. The review will include studies relevant to both adult and juvenile offenders, as well as pre and post charge diversion literature.

Theoretical Issues

It is important to consider how offenders may be deterred from committing crime and how that theory might apply in the context of diversion. The early origins of deterrence theory began with Beccaria (1767) and Bentham (1789) who speculated on the deterrent effect of official sanctions. They argued three key ingredients to the deterrence process are severity, certainty and celerity of punishment. These theories were based on the utilitarian assumption that people are rational self-interested actors, whose primary focus is the avoidance of pain and the pursuit of pleasure. Part of the appeal of deterrence theory, is that it has never strayed very far from the core theoretical principle, that criminal behaviour should decline in the face of state sanctioned punishments that are certain, swift and severe (Nagin et al., 2015). Deterrence has been described as inducing avoidance of a given action through threat of adverse consequences (Bottoms and Shapland, 2011). Deterrence results from balancing the benefits (small) of committing an offence against the (large) cost of sanctions (Apel and Nagin, 2011). Offenders are said to consciously weigh the benefits and costs of offending constrained by factors in the environment, situation and individual (Nagin et al., 2015).

Of the three deterrent ingredients, certainty of punishment is said to have the strongest deterrent effect, subject to certain pre-conditional probabilities (Apel and Nagin, 2011;

Durlauf and Nagin, 2011; Nagin, 2013) the probability of apprehension; the probability of being charged; and the probability of being subjected to formal sanctions. However, as the certainty of punishment is consequent to the certainty of apprehension, Nagin (2013) asserts that the certainty of apprehension is a more effective deterrent than the severity of ensuing legal consequences.

Another element to deterrence is subjective perception; deterrence depends on what offenders believe rather than the reality of what those risks actually are (Bottoms and Von Hirsch, 2012). Unless the perceptions of an offender are altered, however crudely, the desired deterrent effect will not be achieved (Nagin, 2013). The subjective character of deterrence is one of the most important characteristics when introducing policies intending to deter (Bottoms and Von Hirsch, 2012). In making a subjective assessment, offenders have a high discount rate and place a higher value on the present utility and less on future costs (Jolis et al., 1998) and tend to assess the probability of detrimental outcomes very inaccurately (Kahneman and Tversky, 1979). As offenders underestimate the probability of getting caught, this suggests that policing strategies need to provide very clear communication of the reality of risk, associated with offending actions (Piquero and Pogarsky, 2002).

The concept of focussed deterrence provides some insight as to how risk perceptions can be influenced. Focussed deterrence was described by Braga and Weisburd (2012) as increasing risks faced by offenders, while finding creative ways of directly communicating incentives and disincentives to offenders. One example cited relates to gang crime where police made a promise to gang members, that violent behaviour would evoke an immediate and intense response by police. The systematic review of ‘pulling levers’, found that nine out of ten focussed deterrence strategies reported statistically significant reductions in crime (Braga and

Weisburd, 2012). Deterrence theory and focussed deterrence strategies provide important considerations relevant to diversion, but desistance theory is also relevant.

Beyond theories of deterrence

Desistance theory is relevant if police practices are to impact those on a trajectory of re-offending and recidivism. Desistance from crime is inadequately theorised as a single moment (Glueck and Glueck, 1974; Maruna and Farrall, 2004; Farrall, 2002) and has been identified as a process rather than an event. It is suggested that desistance is an outcome of a process that does not always follow a smooth path of deceleration or cessation (Paternoster and Bushway, 2010). Few offenders undergo radical transformations of self, and for reasons connected to relationships and where they reside, often find themselves induced into relapses of criminal activity (Gadd, 2006). Processes of family formation, stable employment and the disintegration of peer groups are changes that tend to emerge at certain stages in life and have been shown to be important for changes in offending (Laub and Sampson, 1993; Farrall, 2002; Gadd, 2006).

Sampson and Laub (1990) highlight the importance of life events and demonstrated that regardless of an individual's delinquent or antisocial background, criminal behaviour was still influenced by institutions of informal social control, such as family or work. However, while transitions into such institutions might foster pro-social behaviour, not only do role transitions often fail to follow an orderly progression (Rindfuss et al., 1987), but reversals of transitions may be common. Laub and Sampson (1993) described how some men experienced declines in job stability and how others, who had married and initially got along well with their spouses, had marriages unravel. Where such circumstances changed, crime and deviance became more pronounced over time due to the severing of social ties to work

and family. Successful desistance depends on various contingencies, including the desire to change and the belief of significant others culminating in feelings of reintegration and earned redemption (Maruna and Farrall, 2004). As a person progresses in life, they can develop strong social bonds which offer social control and links to conformity. The desire to be an accepted member of society grows and becomes a compelling reason to stop offending (Sampson and Laub, 1997).

It is suggested that a feasible means to deter offenders is to defer and delay prosecution, using the threat of prosecution as a “Sword of Damocles” to encourage compliance with programs, desistance from crime and as a warning to the arrestee about what can happen if they commit further crime (Sherman and Neyroud 2012, p.200). The approach is broadly termed ‘offender desistance policing’. Before the issue of diversion generally is considered, it is important to put into context the nature of offending of young people.

Diversion of Juveniles

Desistance among youth and young adults, is a topic that is linked to the so called ‘age crime curve’. The age crime curve is described as an asymmetrical bell shaped curve that rises rapidly during adolescence, peaks in late adolescence and early adulthood, and then demonstrates a gradual downward slope in early to middle adulthood (Tremblay and Nagin, 2005). The right side of the bell curve, or the decelerating portion, poses the question, why do so many emerging adults significantly curtail their involvement in crime during late adolescence. There are a number of theories linked to the shape of the bell curve, including self-control theory (Gottfredson and Hirschi, 1990) where the cause of crime is traced to low self-control, which is formed at an early age through ineffective child rearing. Another theory asserts that delinquency comprises of two distinct categories of individuals, that take different

trajectories in offending, namely “life course persistent” and “adolescent limited” offenders (Moffit, 1993). Other theories assert it could involve increased neurological, psychological and emotional maturity, reduced status anxiety, enhanced opportunities for adult level freedoms and responsibilities, alterations in the risk of severity of apprehension for adult offending and drawing on a realisation that crime “does not pay” (Ulmer and Steffensmeier, 2014; Walters, 2017).

The most common effects of delinquency flow from social processes of family, school and peers (Sampson and Laub, 2003) with the process of ageing identified as a critical desistance factor (Gottfredson and Hirschi, 1990). Events such as marriage or employment appear to turn offenders away from crime and the stronger a person’s social bonds, the greater the person risks by engaging in criminal behaviour (Sampson and Laub, 1993). The normative nature of youth delinquent behaviour, particularly that of boys, (Bongers et al., 2003; Elliot et al., 1983; Moffit, 1993) poses consideration for how police respond in ways that are corrective, whilst limiting an individual’s exposure to the criminal justice system beyond what is necessary (Wilson et al., 2018).

Support for diversion is provided by labelling theory, which emphasises the negative consequences of labelling a youth as ‘delinquent’, creating an expectation of continued anti-social behaviour, which may limit access to opportunities in life, perpetuating ongoing criminal activity (Becker, 1983). Further support for diversion is provided by differential association theory (Cressey, 1952; Sutherland, 1974) which argues that antisocial attitudes and behaviours are acquired through the social learning process and association with peers exhibiting antisocial attitudes and behaviours, which encourages their adoption in youth.

Police diversion

Some empirical studies have focussed on comparing police diversion with court diversion. Although a meta-analysis by Lipsey (2009) did not find consistent results favouring diversion or traditional processing, this study focussed on the treatment within diversion rather than the contexts themselves. Farrington and Bennett (1981) concluded that police cautioning increased the number of youths formally processed, referred to as ‘net widening’ and failed to result in better reoffending rates compared to court. However, they acknowledged their conclusion could only be tentative because of the lack of any randomised controlled trials [RCT].

The Campbell Collaboration systematic review conducted by Wilson et al. (2018) is the most recent and comprehensive study into the effects of police-led diversionary practices, compared to traditional processing for youth. The results were positive, suggesting that police-led diversion reduces the reoffending rate of low-risk youth, relative to traditional processing by slightly more than 10%. Wilson and Hoge (2013) examined 45 studies of youth diversion that captured 73 programs and while they found both pre and post charge diversion to be beneficial, they found a slightly larger beneficial effect for pre-charge diversion compared to post-charge diversion. It was further found that diversion of low risk youth demonstrated significantly greater effectiveness when processed pre-charge rather than post-charge. The Victorian CSA review of child cautioning examined the impact on a young person receiving a simple caution with no referral (Shirley, 2017). Using logistical regression and propensity score matching, it was found that young people who were cautioned by police were less likely to reoffend than those charged. It was also found there was a longer duration between the index incident and their first reoffending incident, for those who were cautioned.

As noted by Wilson et al. (2018) there are fewer evaluations of police diversion of adults than of juvenile offenders. Wilson does note however, that although the factors that influence offending vary between juveniles and adults, those factors are not entirely independent and studies on juveniles may have relevance to young adult offenders. In a comprehensive review of the evidence of adult and juvenile diversion (Neyroud, 2018), it was suggested that ‘out-of-court disposals’ of offenders by police are effective compared to court prosecution, at reducing harm, reducing reoffending and sustaining victim confidence and satisfaction. These findings taken together are consistent in their support for the preventative effects of police diversion. There is also another distinguishing feature of police diversion and that is how swiftly they are administered.

The role of celerity in offender desistance

Court and prosecution systems are notoriously uncertain and slow and always will be, according to Tonry (2008). We have often heard William Gladstone's famous aphorism about ‘justice delayed being justice denied’ (Library of Congress, 2010). Few would argue the question of long delay between arrest and the final disposition in criminal courts in most G7 nations (Sherman and Neyroud, 2012). In fact, the late twentieth century’s focus on the severity of punishment has had the paradoxical effect of actually reducing the certainty and swiftness of punishment (Sherman and Neyroud, 2012). Jeremy Rapke, former Director of Public Prosecutions, Victoria (*Sydney Morning Herald*, 28th October, 2008) asserted that we must confront and demolish the myth that the effluxion of time in criminal proceedings is harmless. He went on to refer to the human cost of delay to victims, offenders, judges and the community, and concluded that when cases finally “meander their way into court”, no one benefits. Out-of-court disposals on the other hand show a promising approach to delivering

swift punishments, rather than the lengthy court process where an offender's outcome is unknown (Slothower, 2014).

Empirical research relating to the celerity of criminal justice is mixed. Research on whether faster executions serve as a deterrent to future homicides, could not find a relationship between homicide rates and timings of executions (Pratt and Turanovic, 2018). The deterrence strategy of combining swift and certain sanctions was applied in Project HOPE in Hawaii, where the imposition of quickly enforced incarceration and graduated sanctions were applied to what a judge considered to be a system of “weak and delayed sanctions” (Hawken, 2011). The evaluation showed that probationers had lower rates of positive drug tests, missed appointments and reoffending (Kleiman, 2009) yet subsequent replications (e.g., Washington and Alaska) could not replicate such positive findings (Pratt and Turanovic, 2018). In two studies in Pennsylvania, two randomly selected groups of delinquents appearing in juvenile court with a 10 to 25-year follow-up (Brown et al., 1987; 1989) showed that the longer the elapsed time between first contact with the juvenile justice system and final adjudication, the worse the prognosis for a criminal conviction in adult life.

In the UK, Operation ‘Turning Point’, a RCT of police diversion, conditions were set within 48 hours of apprehension (Neyroud and Slothower, 2012; 2013; Neyroud, 2017). Analysis comparing the speed of diversion and court processing in the ‘Turning Point’ trial, showed that court processing took substantially longer, often even longer than the four month conditional period. Giller and Tutt (1987) found that instant cautions appeared to be more effective than deferred cautions. Tyler et al. (2014, p.752) identified the point of apprehension as a “key teachable moment” for offenders, rather than the punishment itself. Where long process delays exist, it appears that this ‘teachable moment’ opportunity may be

lost or diminished. Nagin (2013) asserts, the more promptly and closely the punishment follows upon the commission of a crime, the more just and useful it will be.

However, the criminogenic consequences of how swiftly punishment is implemented have overall received less scholarly attention than severity and certainty of punishment (Gibbs, 1975; Grogger, 1991; Nagin, 1998; Nagin et al., 2015). Research in developmental psychology may assist and suggests that the swiftness of punishment should cause the person to associate the sanction with their bad behaviour (Blank et al., 2013). If too much time passes, the potential for the association to form in one's mind is lost and regardless of how certain or severe it is, the punishment risks "losing its bite" (Deater-Deckard et al. 2003, p.351). Psychological research has shown that punishment is most effective when it is immediate, and even brief delays can have a "decaying effect" and significantly compromise the effectiveness of punishment (Abramowitz and O'Leary 1990, p.231).

In this regard, diversion should be characterised as more than a mechanism that 'lets offenders off' with a caution or a 'free kick'. Indeed, in light of the scholarship cited above, diversion should be seen primarily as a swift and effective response to low level offending that is more cost effective and proportionate than criminal justice processing (Sosa, 2012). Overall, although celerity is no doubt an important component of deterrence, there is limited research specifically comparing the speed of police led diversion compared to court led diversion. This thesis aims to address that gap and provide insight into the relative speed of both processes.

Criminal Justice Processing

In considering pre-charge diversion, it is important to understand the context of traditional criminal justice processing and explore whether pre-charge diversion reduces recidivism

more effectively than traditional justice processing. In traditional court processing, one of the most fundamental questions about crime and punishment is how punishment prevents crime. Three fundamental functions of the criminal justice system are said to prevent crime (Nagin, 2013; Apel and Nagin, 2011); general deterrence, specific deterrence and incapacitation. General deterrence is the threat of punishment, deterring the public at large from committing crimes due to fear of criminal sanctions. Specific deterrence is the reduction in reoffending that is presumed to follow from the individual experience of being punished. It is said that the experience will have a chastising effect that reduces future criminality (Nagin, 1998). Specific and general deterrence are said to require a behavioural response by the offender, where would-be offenders balance the benefits and costs of crime (Apel and Nagin, 2011). Finally, incapacitation is described as physical isolation by incarceration, thereby preventing the further commission of crimes by taking the offender out of the community. There is very little evidence of a specific deterrent effect arising from being imprisoned compared to non-custodial sanctions (Nagin, 1998).

A Campbell Collaboration systematic review by Petrosino et al. (2010), examined the effectiveness of formal juvenile justice system processing. compared to alternatives including diversion. Based on the analysis of 29 controlled trials in the USA, their conclusions were that juvenile court prosecution does not appear to have a crime control effect. In fact, across most measures, criminal justice processing of juveniles appeared to increase delinquency rather than reduce it. In assessing deterrence studies over many decades, Bottoms and Von Hirsch (2012) assert that the severity of punishments appear to be only very weakly correlated with crime rates. McAra and McVie (2007) compared two samples of matched youth and found recidivism to be significantly higher over the following year, in the group drawn further into the criminal justice system. Their research showed the deeper a youth

penetrates the formal system, the less likely he or she is to desist from offending. Their research concluded that the key to reducing offending lies in minimal intervention and maximum diversion, suggesting the importance of examining the effects of police led pre-charge diversion. Restorative justice conferencing [RJC] is also a form of diversion, when conducted as an alternative to prosecution and has been found to cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims (Sherman et al., 2007; Strang and Sherman, 2003; Strang et al., 2013).

Eligibility and police discretion

One of the key areas of exploration since the early studies of diversion is identifying the appropriate boundary between out of court disposals and formal prosecution (Steer, 1970). Wilson et al. (2018) acknowledge that overly punitive responses may have the unintended consequence of increasing the likelihood of delinquency, whilst overly lenient responses may fail to serve as corrective for the misbehaviour. Operation ‘Turning Point’ in Birmingham UK focussed on low level offending (Neyroud and Slothower, 2012; 2013; Neyroud, 2017), while operation ‘Checkpoint’, an RCT of police diversion in Durham UK (Routledge, 2015), included both low risk and medium risk offenders for diversion. However it appears that diversion eligibility is also intertwined with police discretion. The experience of Victoria Police in 2016, in piloting an expanded eligibility criterion for adult police diversion at select sites (Victoria Police, 2016), showed an underwhelming uptake of the process. Over a two year period, just 124 offenders were deemed eligible by officers at 36 police stations around the state. As Lipsky (2010, p.8) observed, “street level bureaucrats” like police constables and custody sergeants make most of the decisions that affect people directly and those decisions are often only loosely informed by departmental policy. In the UK, diversion has

been described as largely a matter of “unfettered discretion” (Sandars 1988, p.513), with Neyroud and Slothower (2015) identifying the exercise of police discretion as a risk in the context of police diversion.

Yet improving consistency in police discretion, or what has been referred to as the ‘gateway to criminal justice’, is not simply a matter of increased training or improved guidance to officers (Neyroud and Slothower, 2015). Various approaches to police discretion exist, potentially ranging from relying entirely on the discretion of individual police officers, to strictly prescribing conditions through policy (Slothower, 2014).

It appears that inconsistency of practice is not limited to discretion, with Neyroud (2016; 2017) identifying the setting of conditions and engagement with victims also being critical risks within the diversion process. Different ways of bounding police discretion were tested in the ‘Turning Point’ trial (Slothower 2014). The study by Slothower (2014) compared the conditions set by officers under five discretionary regimes, finding that quality of decision-making was higher based on the measured criteria, when an IT-based decision support system was used, as compared with all non-IT based periods. The use of an electronic eligibility tool, combined with officer feedback and training, appears to be as important as the formal eligibility criteria itself, as it vastly improved consistency (Slothower 2014).

Conclusion

This literature review began by considering the criminological theories of deterrence and desistance and how police led diversion may impact those on a trajectory to re-offending and recidivism. The nature of youth delinquent behaviour and young adult offending poses serious considerations for how police act in ways that are corrective, and limit exposure to the criminal justice system. For adults and youth alike, a police-led diversion program combining

deterrence and desistance strategies, and incorporating certainty and celerity, may provide the best chance of success. ‘Offender desistance policing’ of this kind may not only enable police to directly impact the subjective risk perceptions of offenders, but also provide an opportunity to create potential ‘turning points’ away from reoffending.

Chapter 2: Data and Methodology

This thesis posits the following research questions: what is the context of police and court diversion in Victoria and what opportunities exist for increasing police diversion of offenders? The research questions are answered through a descriptive analysis utilising data from Victoria Police, CSA, Magistrates' Court, Children's Court and the Sentencing Advisory Council. Much of this data is represented over the financial year, since court diversion data is only available in this format, thereby dictating the data collection timeframe.

Australian financial year data from 2016/17 is utilised to explore the extent of police and court diversion in Victoria. The various diversion streams are analysed including their relative proportions. Sub-research question two, looks at the longer term trends for police and court diversion over 10 years. The trends for offenders charged are also presented, as this provides an important relative perspective by showing demand levels in the courts over the same period. The characteristics of cases resolved by court diversion and the traditional court process are also analysed. Finally, the proportions of cases that do not result in a criminal conviction are analysed using data from Court Services Victoria and the specified 24 hour police station.

Rate of diversion

The rate of diversion is a measure that has been used as an indicator of the level of diversion in various jurisdictions, including the UK, by the Criminal Justice Joint Inspectorates (2011). The rate of diversion is calculated from the total number of offenders charged by police combined with the total number of offenders who received police diversion. The combined result represents the total number of offenders that police had sufficient evidence to proceed against an offender. Offenders charged and processed by police represent the pool of

offenders from which all diversion cases are selected. Although this rate could be calculated in a number of different ways, for the purposes of this study, this method was deemed to be the most fair and accurate way to reflect the proportion of diversion cases, relative to offenders charged and processed by police. The current rate of diversion in Victoria, from both police and court perspectives is not known and this study will fill that gap.

Police diversion data

In order to provide a comprehensive description of existing police diversion in Victoria, data was produced separately for adult and child offenders, as well as for each specific police diversion stream.

A request was initially made to Victoria Police Corporate Statistics for annual total numbers of each form of police diversion over the preceding ten years, from 2007/8 to 2016/17. It was then deemed appropriate, due to complexity of the search required that this data be sourced from the independent Victorian CSA. Overall, the utilised data represents police diversion by financial year, for a total period of ten years (2007/8 to 2016/17) for adult and child offenders specific to the various diversion streams.

Data approach

The following data extraction approach was utilised for police diversion data. A Law Enforcement Assistance Program [LEAP] data search (offences reported and offenders processed) was conducted to identify incidents with an outcome of ‘caution’ and then linked to the unique offender population with an associated offence type listed.

The search criteria for offences relevant to shop steal cautions contained three possible offence codes, whilst cannabis cautions contained seven possible offence codes. The range of

possible drug offences relevant to illicit drug diversion is more diverse due to the broad number of illicit substances, therefore the search criteria contained 57 possible offence codes. Child cautions were searched across all offence codes, albeit within a much smaller data set compared to adults.

Each incident identified through this search represents one alleged police diversion offender but may involve multiple victims and offences. One incident may involve offences that occur over a period of time, but if processed by Victoria Police as one incident, it will have a count of one in the data. There may be multiple incidents within the reference period that involve the same individual as an offender.

There are limitations to this data, as the search does not capture diversions made for offences outside official policy. This could occur where police diversion was administered relevant to a small number of officially sanctioned local diversion pilots. It is anticipated that due to the low numbers involved, data quality would not be affected.

As the research question is focussed on the opportunities for expansion of police diversion, it is appropriate to also consider the extent to which various offence categories receive police diversion. Police child cautioning data shows two categories of offences relevant to adults, namely drug possession (comprising cannabis cautions and illicit drug diversion streams) and property crime (comprising adult shop steal cautioning), for the period July 2016 to June 2017 (n=5059). For police child diversion, the offence categories are not evident by virtue of the fact that child cautioning is available for most offences. The recent review by the CSA (Shirley, 2017) identified various offence categories by percentage for police child cautions, for period of April 2016 to March 2017 (n=3908). Whilst it is acknowledged that the above sets of data are derived from separate sources and for different periods, they equally provide a

relevant point of comparison of offence categories by percentage, for police child diversion and police adult diversion, over a 12 month period. The methodology will show differences between a non-restrictive diversion offence policy (police child cautions) and a restrictive and limited diversion offence policy (police adult diversion).

In order to compare the proportion of adult and child offenders that receive police diversion by offence category, the categories outlined in the CSA review of police cautioning (Shirley 2017), are used for this purpose. Offence categories of police diversion of child offenders (n=3908) are sourced from this research (Figure 5). With respect to adult offenders, data sourced from CSA (Figure 5) (n=5059) in reference to cannabis cautions, illicit drug diversion and shop steal cautions, are converted to the matching offence categories specified by Shirley (2017). The drug diversion streams are represented in the 'drug offences' category. Shop steal cautions are represented in the 'property/deceptions' category. This methodology enables a direct comparison of police diversion of adult and child offenders by consistent offence categories, whilst acknowledging the different time parameters.

Magistrates' Court diversion data

Although a police officer must recommend Magistrates' Court diversion for it to proceed, the process of court diversion is managed by the Magistrates' Court and recorded within the 'Courtlink' database. Annual data relevant to Magistrates' Court diversion were sourced from Court Services Victoria, Annual Reports (Court Services Victoria, 2017). Overall, this data provides annual totals of Magistrates' Court diversion by financial year for a total period of ten years from 2007/8 to 2016/17. The process of Magistrates' Court diversion is specified within statute (Criminal Procedure Act, 2009) and is technically available to all criminal prosecuting agencies. Subsequently, one minor limitation to the data is that it may include

court diversions emanating from agencies other than Victoria Police. However, this is considered rare as Victoria Police is the major criminal prosecuting agency in the state.

Data approach

Annual totals by financial year were sourced from the Court Services Victoria, Annual Report (Court Services Victoria, 2017). The raw data was coded into Microsoft Excel in sequential date order.

Children's Court diversion

Prior to June 2015, there was an absence of a state wide diversion program of offenders from the Children's Court. A pilot of Children's Court diversion, referred to as the Youth Diversion Pilot Program (Children's Court of Victoria, 2018), was first available at seven sites in Victoria between June 2015 and December 2016. It became available in all Children's Court locations in January 2017 and was formalised in statute on 20 December 2017 (Children, Youth and Families Act, 2005). Restorative justice conferencing [RJC] has operated in the Children's Court since 2014 (CCV, 2018) as the 'Group Conferencing Program', but has not been analysed in this study, as it is a post-conviction/pre-sentence program.

Children's Court diversion data was sourced from the Sentencing Advisory Council (2018a), and includes data relating to the initial pilot period in mid-2015 and the subsequent state wide expansion in 2017. It is noted that some local programs managed concurrently by courts and police, such as 'Ropes', 'Right Step' and 'GRIPP', are not formally counted as court diversion in the data. However it could be argued they represent child diversion, the lack of formalised data collection processes means that data quality issues prevent their inclusion.

Although some of these programs have been operating for many years and their overall numbers are relatively low and subsequently they do not represent state wide programs.

Data approach

Annual totals by financial year were sourced from the Sentencing Advisory Council (2018a).

The raw data was coded into Microsoft Excel in date order.

Offenders charged

Data was sought from Court Services Victoria in relation to annual totals of offenders charged by police in the Magistrates' and Children's Courts, by financial year over a ten year period, from 2007/8 to 2016/17. Searches were conducted across the Courtlink database to identify the data.

The term 'offenders charged' is a generic term rather than a formal classification. In a more precise sense, offenders charged represents the number of offenders Victoria Police processed, where charges were filed within the court and the court initiated criminal proceedings relevant to an offender. Criminal proceedings against an offender are initiated by either the summons, or the charge process where the offender is bailed or possibly remanded in custody. The data does not distinguish between the bail and remand process, although bail represents a much higher proportion within this subset. The summons and bail/remand process results in what the court refers to as a 'case initiation' for an offender and the case is counted regardless of whether the charges are ultimately proven or not.

Data approach

The following data extraction approach was utilised for data relating to offenders charged:

- The data was specific to adult and child offenders and furthermore to summons and bail/remand cases, in order to show the relative proportions of each category.

- Excluded from the data are civil applications relevant to family violence intervention orders, although where an offender was charged with criminal offences relating to a family violence incident, these cases were included.
- Also excluded from the data were Traffic Camera Office infringement and toll enforcement cases. These are automated offences and do not reflect case demand driven by operational police. As such, they have potential to misrepresent the data. The court requires physical possession of summons or charges in order to initiate process for these offences and the data is considered to be accurate.
- The data was coded in Microsoft Excel format and annual totals for bail/remand and summons were placed in date order. This was also aggregated to a total Figure representing the overall annual number of offenders charged.

Case characteristics data

In order to get sufficient case numbers, 12 months of completed cases relevant to a 24 hour custody station, for the 2017 calendar year, was collected. The metropolitan station was selected because of the support provided by local management and accessibility of facilities to collect the data. The data was collected from completed cases referred to the station after court finalisation. Subsequently it was important to collect finalised cases, rather than cases initiated over this time, since these cases reflect the entire lifecycle of cases to completion.

The data collection commenced in May 2018, by the author and two assistants. A total of 97 archive boxes containing 1497 cases from 2017 were relevant. Each physical case file was examined and if it met the eligibility criteria, was entered into the spreadsheet. A total of 420 cases were determined eligible and entered into the spreadsheet.

Within that dataset, 65 court diversion cases were identified. In order to increase the number of court diversion cases for analysis, an identical data collection process was subsequently implemented over the month of July 2018 at Melbourne Magistrates' Court, where an additional 94 cases were identified. This increased the total number of court diversion cases to 159. The combined data set of the 24 hour Police Station and Melbourne Magistrates' Court cases totalled 514 cases.

Data approach

An examination of Victoria Police systems, including Station Books, Harper Application, Brief Management System and the LEAP database were undertaken to determine if the above data fields were captured. This revealed that a number of data categories, such as full sentencing and diversion details, were not formally recorded in data bases.

Examination of completed physical case files determined that all specified categories of data were contained on the physical file, including hand written notes. It was decided that the most accurate and comprehensive way to obtain the data was to collect and record it from the completed case files.

To achieve this purpose, a spreadsheet containing the above was developed in Microsoft Excel, containing the above categories of data. An initial trial, conducted by the author and two assistants, identified a range of anomalies that required further development of the spreadsheet fields, descriptors and drop-down selections, in order for the data to be more accurately presented.

An eligibility criteria was developed to select cases for inclusion in the data set. The criteria involved uniform general duties cases that were authorised for prosecution in the Children's

or Magistrates' Court, proven at court. The cases could be proven by a conviction, non-conviction finding of guilt, or court diversion disposition.

Cases that were consolidated at court, where the offender had multiple cases outstanding, or where the offender failed to appear, were excluded due to the unique delay associated with these cases and their potential to distort the timeline analysis.

Once the dataset was finalised, the following variables were elicited to understand the characteristics of cases that are resolved by court diversion and how these cases compare to cases resolved by the traditional court process. In order to reflect case characteristics, the author determined the following categories of data as being important:

- offender characteristics: gender, adult /child, age and prior convictions.
- offence characteristics: offence category, family violence, summary/indictable and remand or summons process.
- sentencing outcomes: court diversion, conviction/non-conviction (finding of guilt).
- case timelines: time duration between offence, arrest, court, diversion milestones and number of hearings.

Overall there are a number of limitations to this data set. First local practices, relevant to both the specific police station and court, may influence the results and limit the extent to which the results are generalizable across all police stations and courts. Whilst acknowledging this limitation, one of the attributes of the data set is that it does represent the case output of a 24 hour station over 12 months, which provides a unique perspective. Subsequently, the diversion cases are acknowledged as being derived from multiple sites and where analysis reflects police station output, only the specific station data were utilised. Furthermore, not all

completed cases were captured with consolidations (multiple cases into the one hearing) and ‘fail to appear cases’ were excluded. These were the only categories of proven case that were excluded but will nevertheless impact the data slightly.

Proportion of non-conviction cases

The last category of data relates to identifying the proportion of cases that result in a non-conviction at court and may potentially be eligible for police diversion. Non-conviction cases are cases where a finding of guilt is proven, but where the court does not impose a formal conviction. These could be considered less serious by virtue of their outcome, indicating a potential for diversion.

The proportion of non-conviction cases were considered from two perspectives. The first perspective comprises state wide data for Victoria Police cases initiated in the Magistrates’ Court during 2017, separated into conviction and non-conviction dispositions. The data was sourced from Court Services Victoria and shows the relative proportions from a broad perspective.

A more detailed perspective of the proportion of non-conviction cases were analysed relative to the data collected at the 24 hour police station for the 2017 period. This data puts non-conviction cases in perspective with all the cases police prepare against offenders, including a range that ultimately proceed at court. This data provides perspective over the proportion of non-conviction cases relative to the entire station output of cases over a 12 month period.

Data approach

A search of the Station Books database was conducted relevant to 2017 to supplement the manual data collection process. The Station Books database is a local Microsoft Access database that records all cases prepared by police, including their movements, status and

general outcomes. The search revealed a broad range of categories of cases that do not proceed for various reasons.

These categories include cases not authorised due to insufficient evidence; cases that were withdrawn from prosecution, cases that were found not proven at court, cases that were given police diversion, cases given court diversion and civil cases relevant to family violence.

Descriptive statistics

Overall nominal, categorical and temporal data is displayed using frequency and percentage tables, bar charts, line graphs, pie charts and rank ordered data. In relation to sub-research questions one and two, annual totals and various percentage proportions are calculated to compare police, court diversion and offenders charged. Annual percentage changes along with mean percentage changes are calculated between specified years. The rate of diversion is also calculated by comparing the number of offenders charged and processed by police (as outlined above) compared to the number of diversion cases in their various sub-categories and streams. Projections for diversion and offenders charged are estimated five years into the future and the projected totals are calculated based on percentages from the preceding six years (unless otherwise specified) relevant to that specific category or stream. Case characteristics of diversion and non-diversion cases are compared against offender characteristics, offence type and timeline progression of cases. Finally, the percentage proportion of non-conviction cases is provided for both state wide data as well as station data. This is reflected as a basic two category percentage comparison as well as a more detailed percentage comparison relative to all other case category outcomes.

In conclusion, the data and methods outlined above will provide broad visibility over police and court diversion in Victoria and the broader criminal justice environment, in which

diversion exists. The results and subsequent descriptive analysis will inform the opportunities that exist for increasing police diversion of offenders in Victoria.

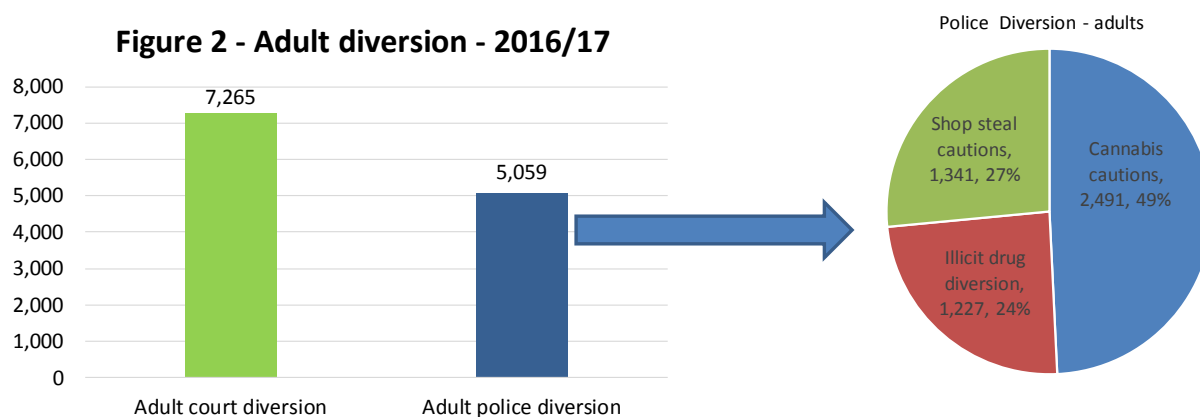
Chapter 3: Results

This chapter will outline the results relating to the research question: what is the context of police and court diversion in Victoria and what opportunities exist for increasing police diversion? The results relevant to each sub research question are presented in order.

RQ 1: To what extent are police and court diversion used in Victoria?

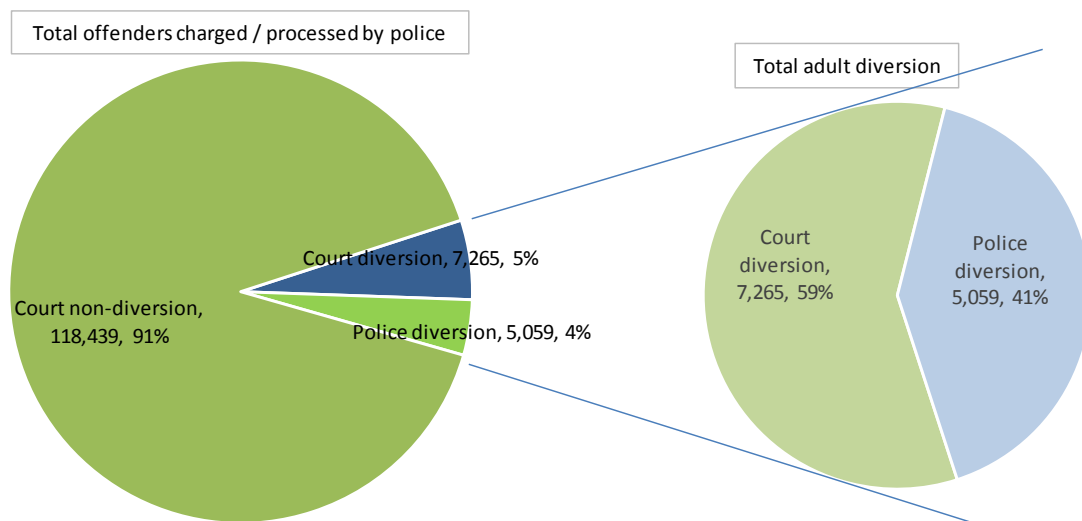
Extent of adult diversion

In relation to diversion of adults (Figure 2), in 2016/17 there were a greater number of offenders diverted by court diversion (n=7,265) than police diversion (n=5,059). Adult police diversion is comprised of three streams, of which cannabis cautions comprise almost half (48%). Shop steal cautions (27%) and cannabis cautions (24%) comprise the remaining 51% in almost similar proportions.



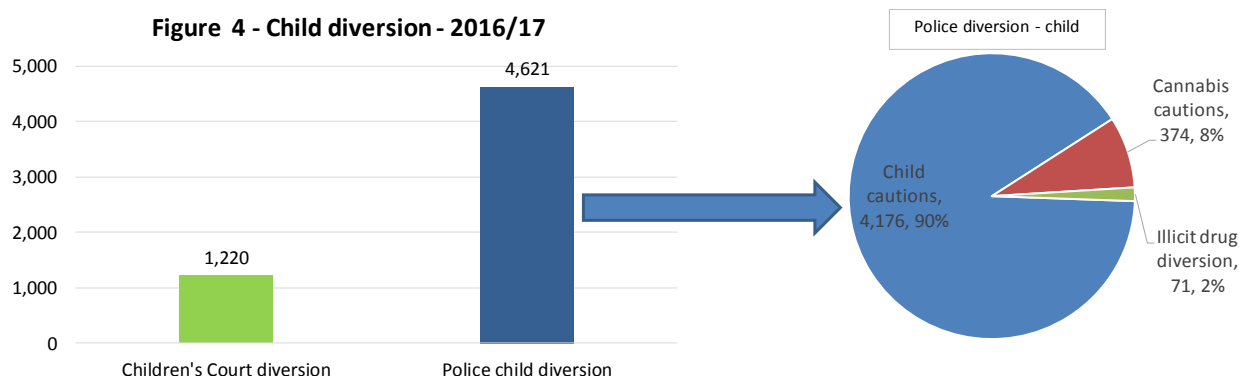
The rate of diversion for adults (Figure 3), relative to adult offenders charged and processed by police, is 9%, comprising 4% (n=7265) police diversion and 5% (n=5050) court diversion. This means that 91% (n=118,439) of adult offenders charged and processed by police had their case proceed by the traditional court process. In relation to adult offenders, court diversion accounts for a larger proportion (59% n=7265) of overall diversion than police diversion (41% n=5059, Figure 3).

Figure 3 - Adult diversion 2016/17



Extent of child diversion

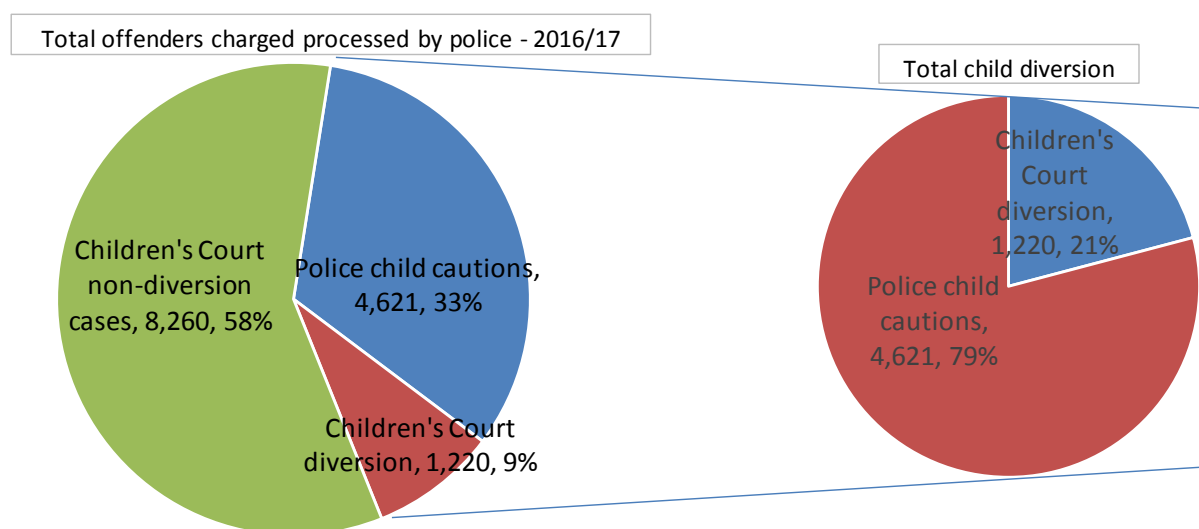
The picture for child diversion reverses the situation (Figure 4), with more police diversion (79% n=4621) than court diversion (21% n=1220). Court diversion of child offenders only commenced in 2015 with the Youth Diversion Pilot Program (Children's Court of Victoria, 2018), which has since been implemented across the Children's Court in Victoria. There are three streams of police diversion of child offenders, with child cautioning representing 90% (n=4176), cannabis cautions representing 8% (n=374) and illicit drug diversion which represents only a very small proportion at 2% (n=71).



The combined rate of child diversion, relative to child offenders charged and processed by police (Figure 5), is 42% (n=5841), which contrasts with the 9% rate of diversion of adults.

Nevertheless, the majority of child offenders (58% n=8260) have their case determined by the traditional court process. The rate of police diversion (33%) is greater than court diversion (9%). Within the cohort of children who received diversion, Figure 4 also illustrates that there are a greater number of offenders diverted by police diversion 71% (n=4,621) than court diversion 21% (n=1220).

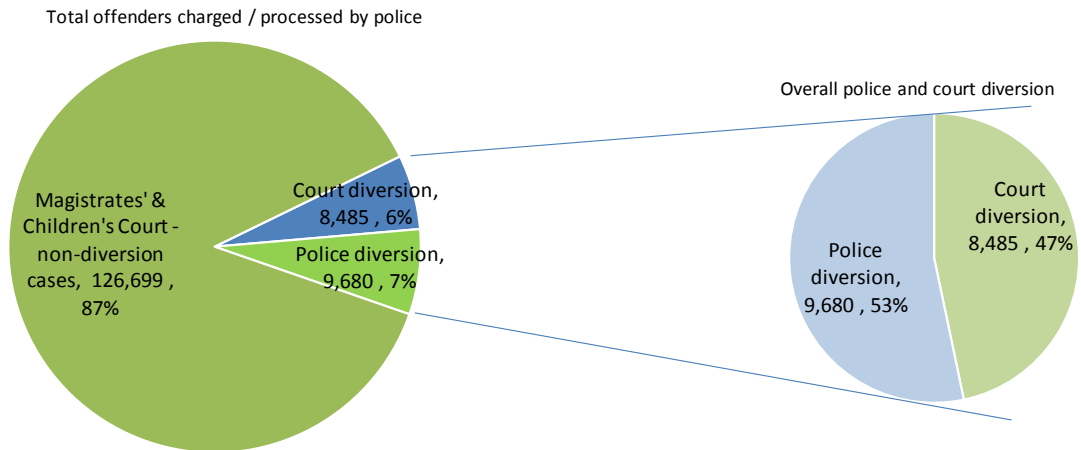
Figure 5 - Child diversion - 2016/17



Extent of overall diversion

When all streams of diversion are combined (police and court), this provides an overall perspective of diversion in Victoria (Figure 6). The rate of diversion for Victoria, relative to overall offenders charged and processed by police, is 13% (n=18,615), with 87% (n=126,699) of cases being processed by the traditional court process. This rate of overall diversion is comprised of 7% (n=9680) police diversion and 6% court diversion. In regards to all diversion cases, police and court diversion represent almost equal proportions, with police diversion representing 53% and court diversion representing 47% of all diversion cases.

Figure 6 - Overall diversion - adult and child - 2016/17



Extent of police Diversion by offence category

Figure 7 shows adult and child diversion represented by offence categories. In respect to police child cautioning, the recent review by the CSA (Shirley, 2017) identified the various offence categories for police child cautions from a cohort of 3050 offenders over 12 months (April 2015 to March 2016). This presents a broad range of offences across six categories for child cautioning. For adults, Victoria Police policy restricts diversion to only two categories namely drug possession (comprising cannabis cautions and illicit drug diversion) and property offences (limited to shop steal cautions). Adult offenders are represented in only two categories of offences, from a cohort of 5050 offenders over 12 months (July 2016 to June 2017).

Figure 7 - Police diversion by offence

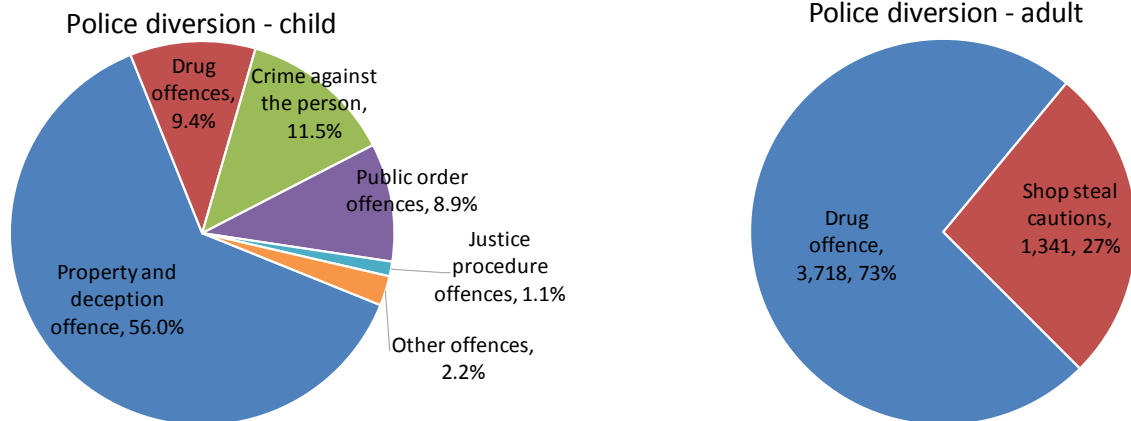
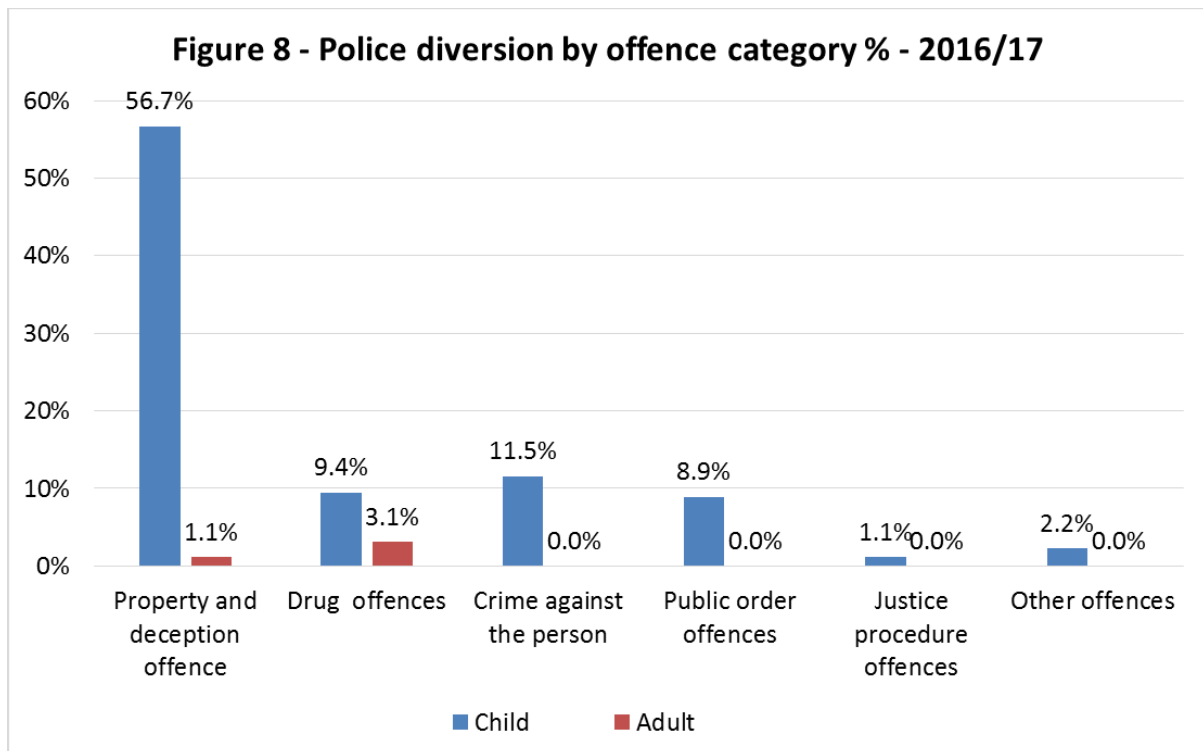


Figure 8 represents the rate at which those offence categories received diversion relative to overall offenders charged and processed by police. For property offences it shows that 23% of child offenders received police diversion whilst only 1% of adults were diverted by police.



In summary, in relation to RQ 1, for adults there is more court diversion than police diversion, reflective of very limited options for police diversion. For example, only 1% of

adults are diverted by police for property offences, whilst 23% of child offenders were diverted, where broad eligibility policy exists. The overall rate of adult diversion is only 9%, being 4% police and 5% court.

With reference to child offenders, the overall rate of child diversion is higher than adults (42%). There is more police diversion than court diversion, reflective of court diversion being relatively new.

When all adult and child offenders are combined, it shows the overall rate of diversion in Victoria is 13% (police 7% and court 6%).

RQ 2: What are the trends and future projections for police and court diversion and for offenders charged by police in the Magistrates' and Children's Courts?

Trends for adult diversion

The 10-year trend for police diversion of adult offenders is represented in Figure 9. The most obvious variation relates to a large reduction in shop steal cautions from 2008/9 to 2013/14 due to the fact that Victoria Police suspended shop steal cautions between 2008 and 2014 due to the legislated infringements trial during this period. From the resumption of shop steal cautions in 2014, they increased to a more consistent level from 2014/15 (n=1307) to 2016/17 (n=1341), although not reverting to the pre-trial level of 2007/8 (n=2242).

Although illicit drug diversion has increased by 71% since 2010, it represents a relative small proportion of adult diversion overall. Table 1 shows that although adult diversion may have risen 51% since 2010/11, this is mostly attributable to the suspension of shop steal cautions. The overall level of adult diversion in 2016/17 (n=5049) is only 9% higher than ten years previous in 2007/08 (n=4633). Taking into account the above factors, the trend for adult police diversion has had marginal growth over the ten year period.

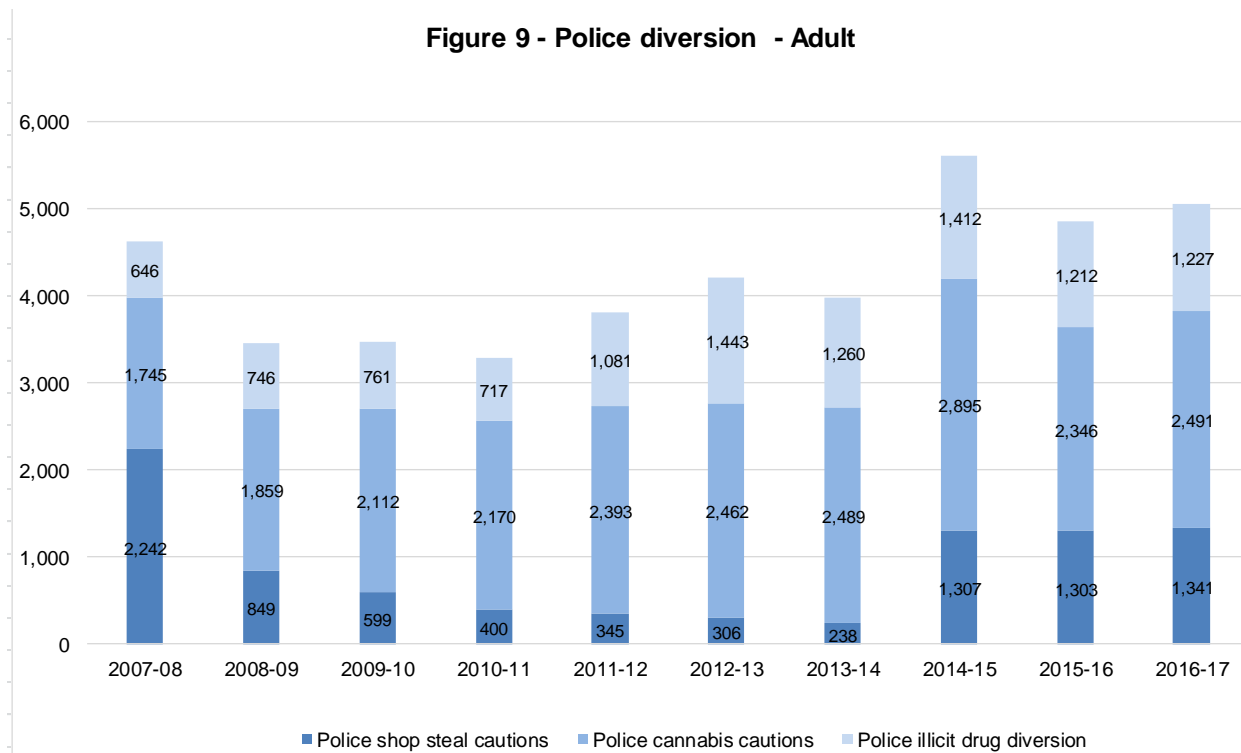


Table 1: Adult police diversion - % change

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2010/11 & 2016/17
Police shop steal cautions	-62.1%	-29.4%	-33.2%	-13.8%	-11.3%	-22.2%	449.2%	-0.3%	2.9%	235.3%
Police cannabis cautions	6.5%	13.6%	2.7%	10.3%	2.9%	1.1%	16.3%	-19.0%	6.2%	14.8%
Police illicit drug diversion	15.5%	2.0%	-5.8%	50.8%	33.5%	-12.7%	12.1%	-14.2%	1.2%	71.1%
Total police diversion	-25.4%	0.5%	-5.3%	16.2%	10.3%	-5.3%	40.8%	-13.4%	4.1%	53.9%

The 10 year trend for court diversion of adults (Figure 10) shows annual decreases from 2007/08 (n=7710) to 2011/12 (n=5932) representing a 25% decrease (Table 2). Although the trend has generally been increasing since 2011/12, at no point over the ten year period, did court diversion exceed the level it was a decade ago.

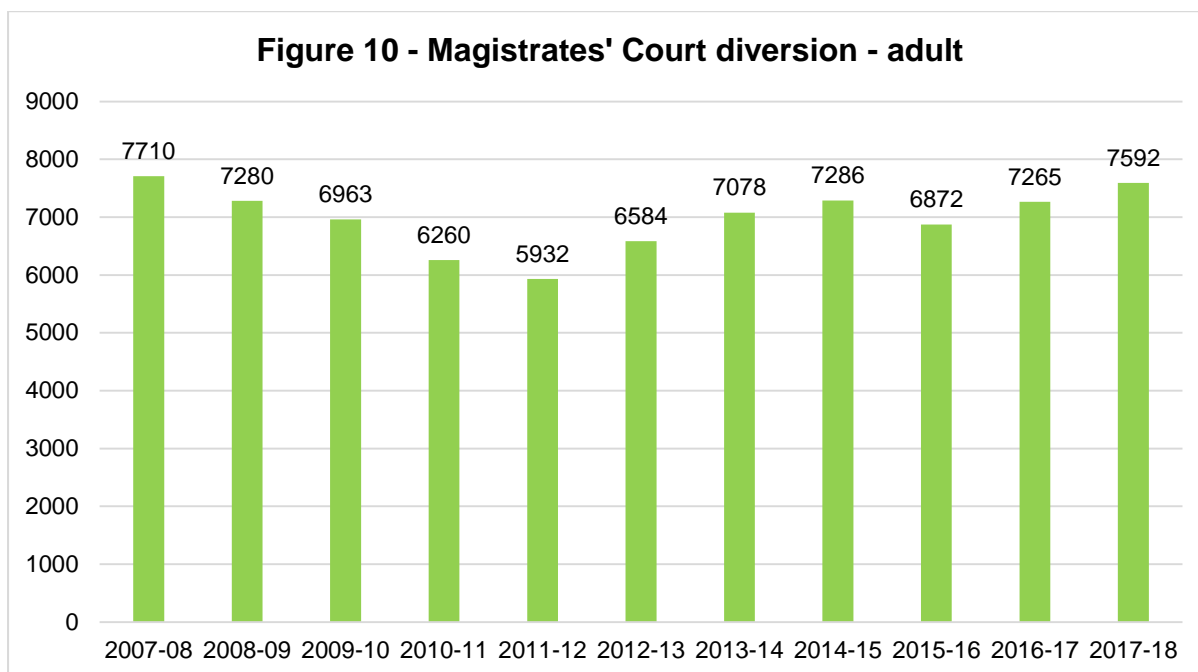


Table 2 shows that court diversion is 6% lower in 2016/17 than in 2007/8. It also shows there was a total 25% gradual reduction in court diversion from 2007/8 to 2010/11.

Table 2: Adult court diversion –% change

Annual % change	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2007/08 & 2016/17
Magistrates' Court Diversions - adult	-6%	-4%	-10%	-5%	11%	8%	3%	-6%	6%	-6%

Figure 11 shows the relative trend police and court diversion of adults and this indicates a reducing gap between the two streams, reflective of the negative growth in court diversion and positive growth in police diversion.

Figure 11 - Police diversion and court diversion - adult

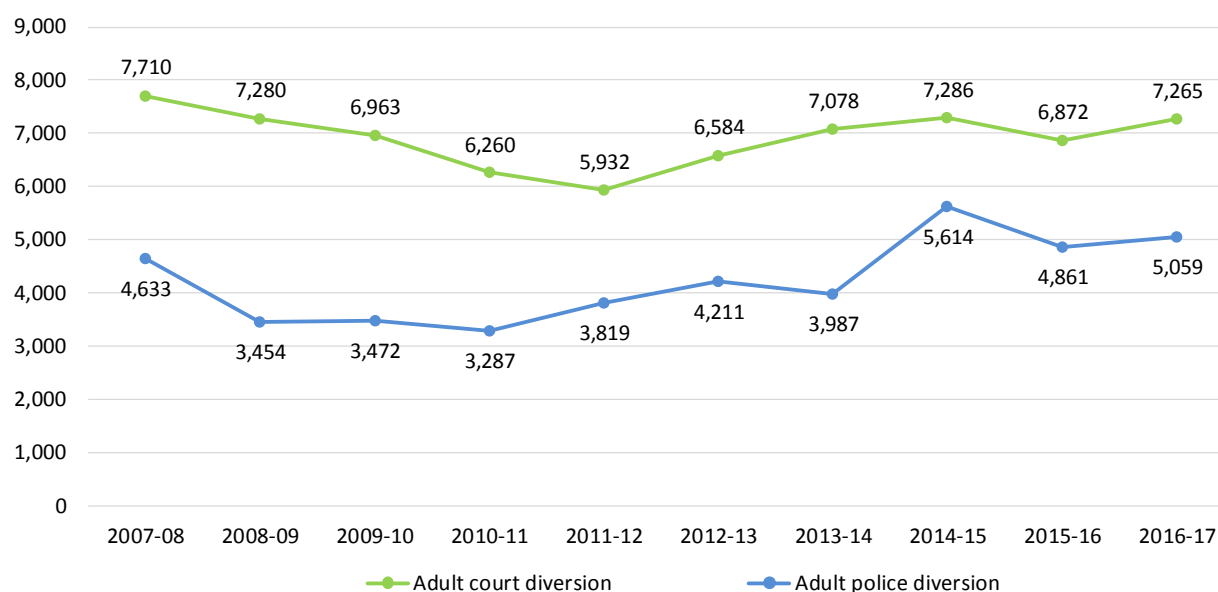


Table 3 shows the annual percentage change for each stream as well as the percentage difference between first year and last year showing court diversion decreasing by 6% and police diversion increasing by 9% over the period.

Table 3: Adult police diversion and court diversion - % change

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2007/08 & 2016/17
Adult court diversion	7,710	7,280	6,963	6,260	5,932	6,584	7,078	7,286	6,872	7,265	
Adult police diversion	4,633	3,454	3,472	3,287	3,819	4,211	3,987	5,614	4,861	5,059	
Annual % change											
Adult court diversion		-6%	-4%	-10%	-5%	11%	8%	3%	-6%	6%	-6%
Adult police diversion		-25%	1%	-5%	16%	10%	-5%	41%	-13%	4%	9%

Trends for child diversion

Police diversion of child offenders (Figure 12) shows a consistent decreasing trend over the period, with decreases in eight of the nine years. Table 4 shows that police child cautioning is by far the largest stream and is also the stream reducing the most, having reduced by 56% since 2007/8. This is the largest change in any diversion category and raises significant concerns for the way in which police dispose of child offenders.

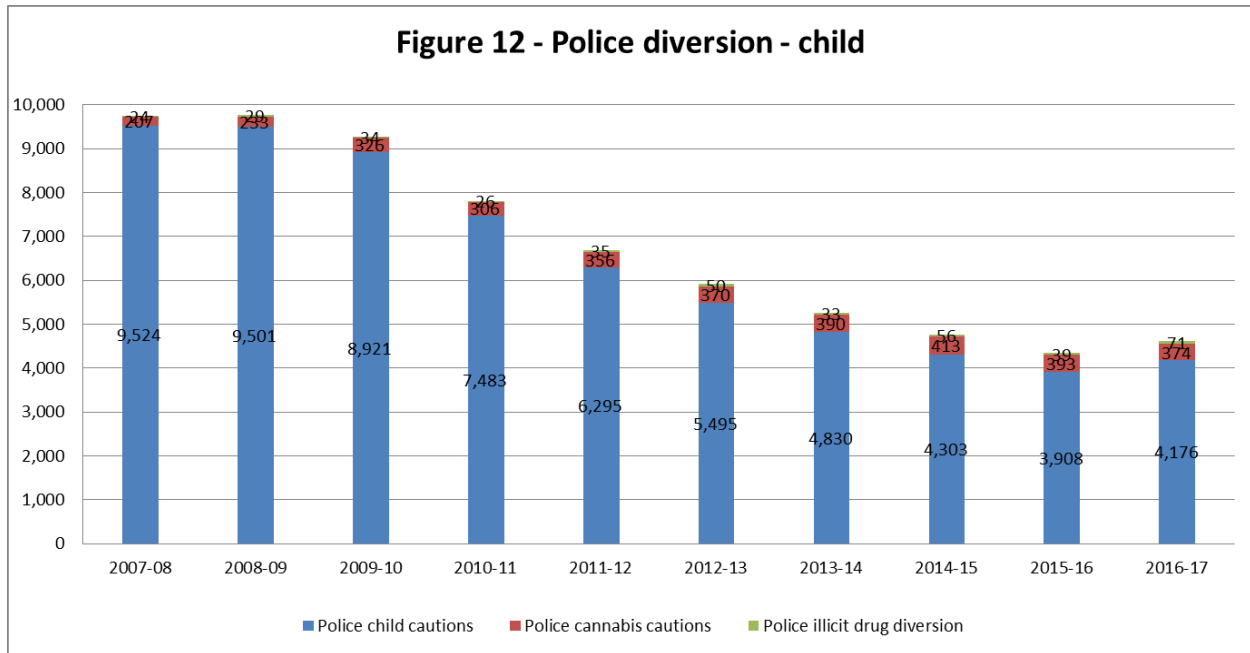
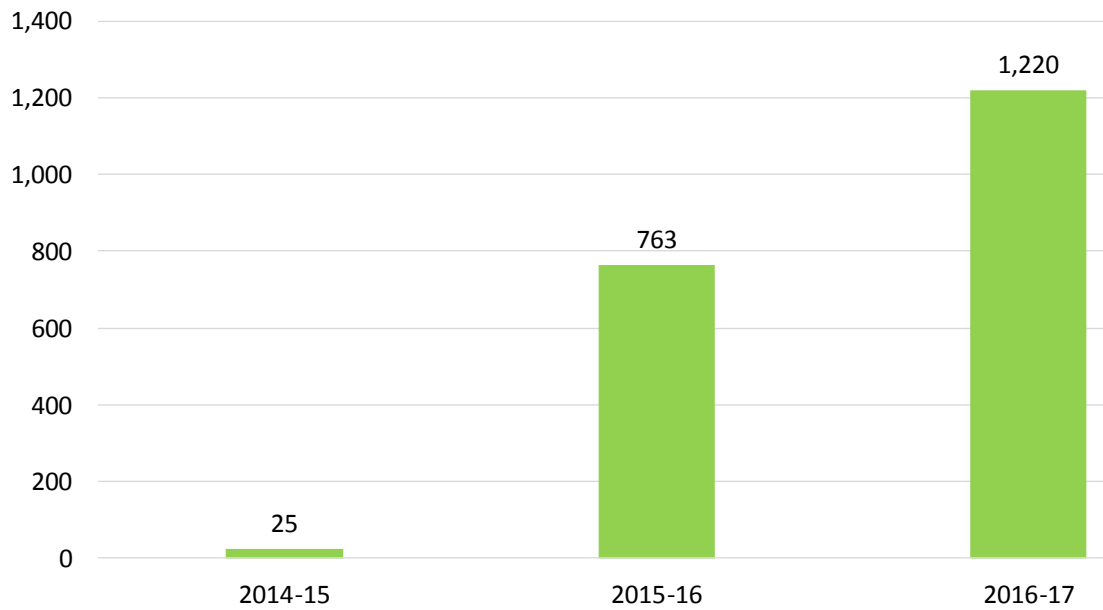


Table 4: Child police diversion - % change

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2007/08 & 2016/17
Police child cautions	9,524	9,501	8,921	7,483	6,295	5,495	4,830	4,303	3,908	4,176	-56.2%
Police cannabis cautions	207	233	326	306	356	370	390	413	393	374	80.7%
Police illicit drug diversion	24	29	34	26	35	50	33	56	39	71	195.8%
Total police diversion - child	9,755	9,763	9,281	7,815	6,686	5,915	5,253	4,772	4,340	4,621	-52.6%

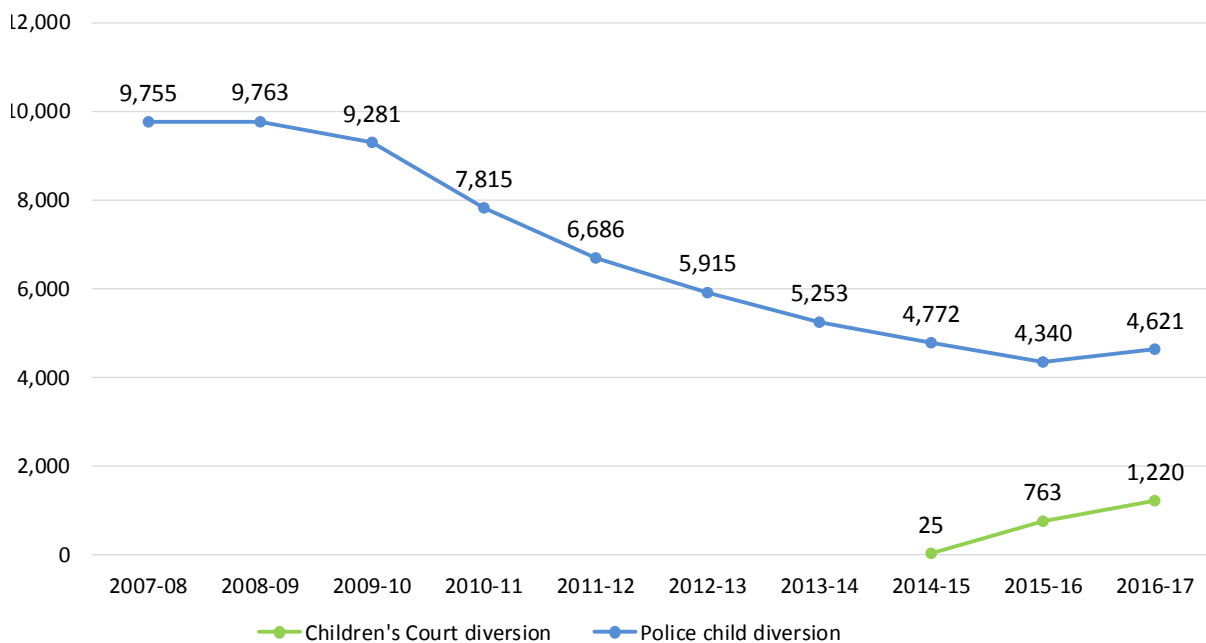
The recent roll out of Children's Court diversion (Children's Court of Victoria, 2018) is shown in Figure 13. 1220 offenders were diverted in 2016/17 representing a 38% increase on the previous year. Although there is insufficient trend data, it is anticipated that growth will continue as the program embeds across the state.

Figure 13 - Children's Court diversion - child



Total police diversion and total court diversion of child offenders (Figure 14) shows the decline in police diversion and the commencement of court diversion. It also highlights that even with the recent introduction of court diversion, the combined level of child diversion is still lower than 2012/13 and the preceding years.

Figure 14 - Police diversion and court diversion - child



Trends for police diversion and court diversion

Figure 15 shows total police diversion and total court diversion. Overall Police diversion has reduced in seven of the nine years, attributable to the negative growth in child cautioning being greater than the positive growth in police adult diversion. Specifically this equates to a reduction of diversion from 14,388 cases to 9,680 cases, a 33% overall reduction in outright numbers of police diversion.

Overall, court diversion had a period of decline between 2007/08 to 2011/12 however, from 2012/13 court diversion has had an increasing trend. In 2016/17, court diversion was 10% higher than it was a decade prior. Although court diversion has increased overall, this is attributable to the positive growth of Children's Court diversion being greater than the negative growth in Magistrates' Court diversion. The difference between the two streams has reduced over the period, driven by the reduction in police diversion and an increase in court diversion. In 2007/8, police diversion was almost double that of court diversion and in 2016/17, this has narrowed to only 10% higher.

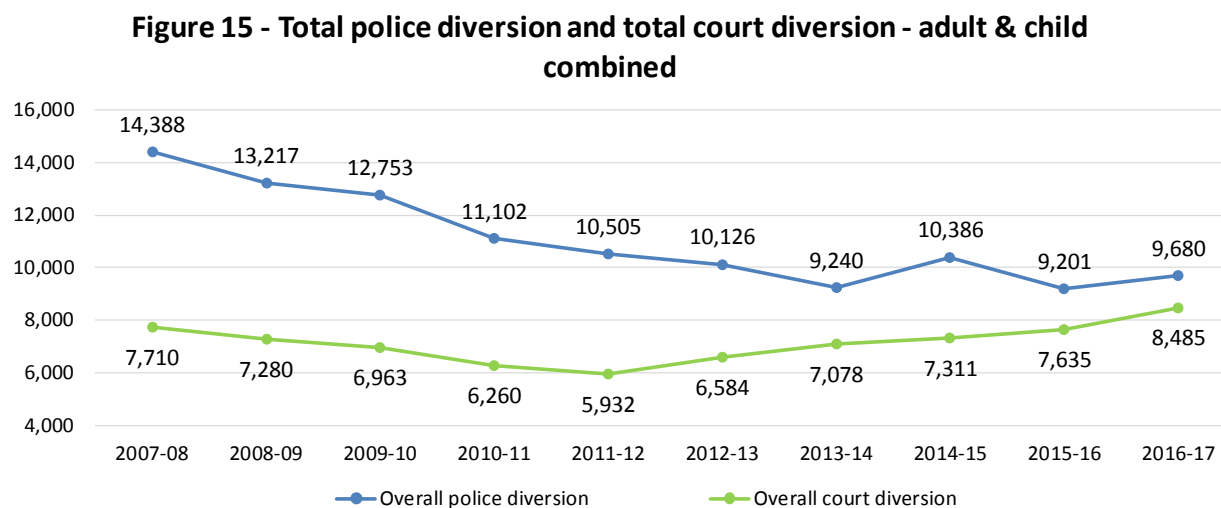


Table 5 shows from 2007/8 to 2016/17 overall police diversion has reduced by 33% and court diversion has increased by 10%.

Table 5: Total police and total court diversion for adult and child offenders - % change

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2007/08 & 2016/17
Overall police diversion	14,388	13,217	12,753	11,102	10,505	10,126	9,240	10,386	9,201	9,680	
Overall court diversion	7,710	7,280	6,963	6,260	5,932	6,584	7,078	7,311	7,635	8,485	
Annual % change											
Overall police diversion		-8%	-4%	-13%	-5%	-4%	-9%	12%	-11%	5%	-33%
Overall court diversion		-6%	-4%	-10%	-5%	11%	8%	3%	4%	11%	10%

Trends for diversion in Victoria

Figure 16 shows all streams of police and court diversion combined to represent the overall level of diversion in Victoria for police and court diversion of adult and child offenders. This shows a reducing trend over the period with reductions occurring in six of the nine years. In outright case numbers, the level of overall diversion reduced from 22,098 cases in 2007/8 to 18,165 cases in 2016/17 representing a reduction of 3,933 cases (-18%) (Table 6). Diversion overall in Victoria remains lower than it was 10 years ago despite the introduction of Children's Court Diversion.

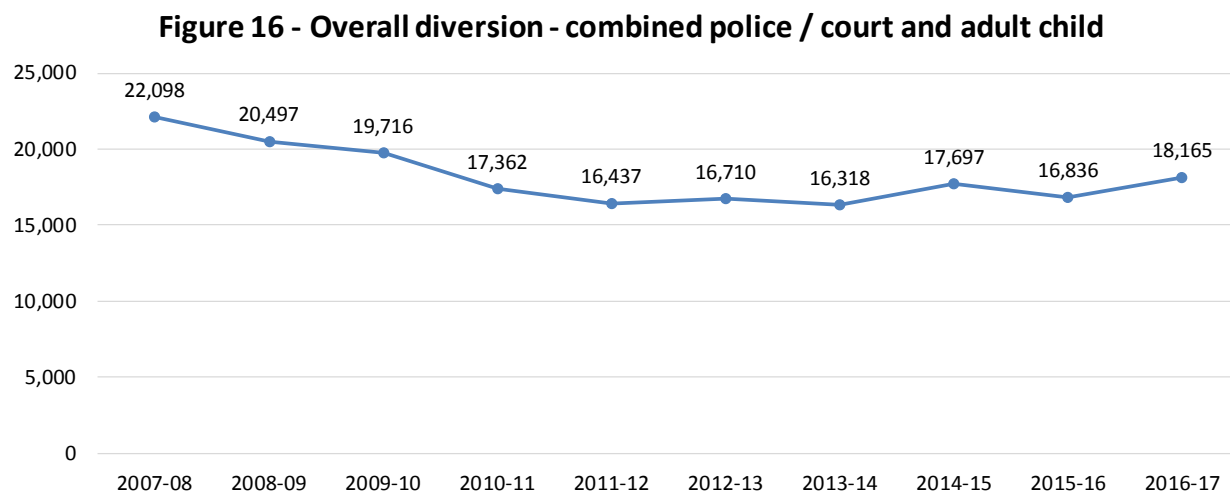
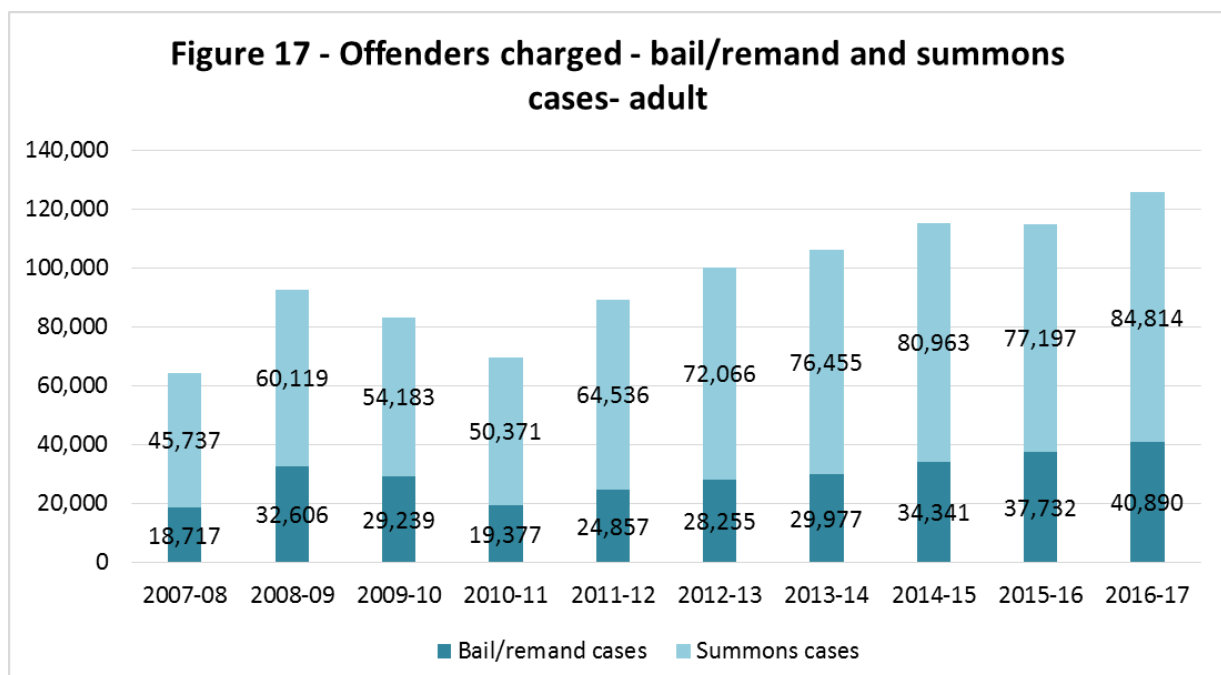


Table 6: Overall diversion in Victoria - % change

Adult & child	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2007/08 & 2016/17
Total court & police diversion	22,098	20,497	19,716	17,362	16,437	16,710	16,318	17,697	16,836	18,165	
Annual % change											
Total court & police diversion		-7%	-4%	-12%	-5%	2%	-2%	8%	-5%	8%	-18%

Trends for offenders charged

Adult offenders charged (Figure 17) increased from an annual total of 64,454 in 2007/8 to 125,704 in 2016/17 (Figure 17 & 19), being a 95% increase (Table 7). It is also notable that since 2010/11, bail/remand cases have increased at a greater rate than summons cases.



The trend for child offenders (Figure 18) charged has some variation with a marginal increasing trend since 2010/11, qualified by higher levels prior to that period. Figure 18 also shows that the proportion of bail/remand cases is increasing, almost equalising with summons cases since 2014/15.

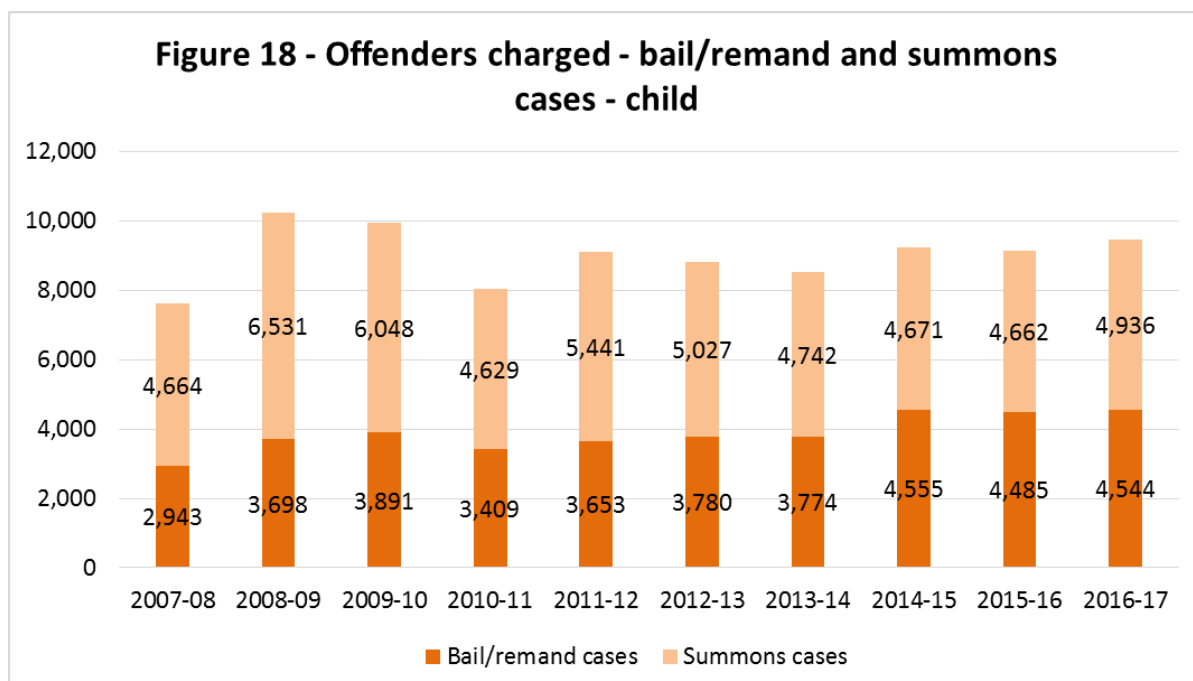


Figure 19 shows the total adult and the total child offenders charged (combining summons and bail/remand cases), indicating a sharp increase particularly for adults since 2010/11. Child offenders charged have been moderately stable over the last seven years.

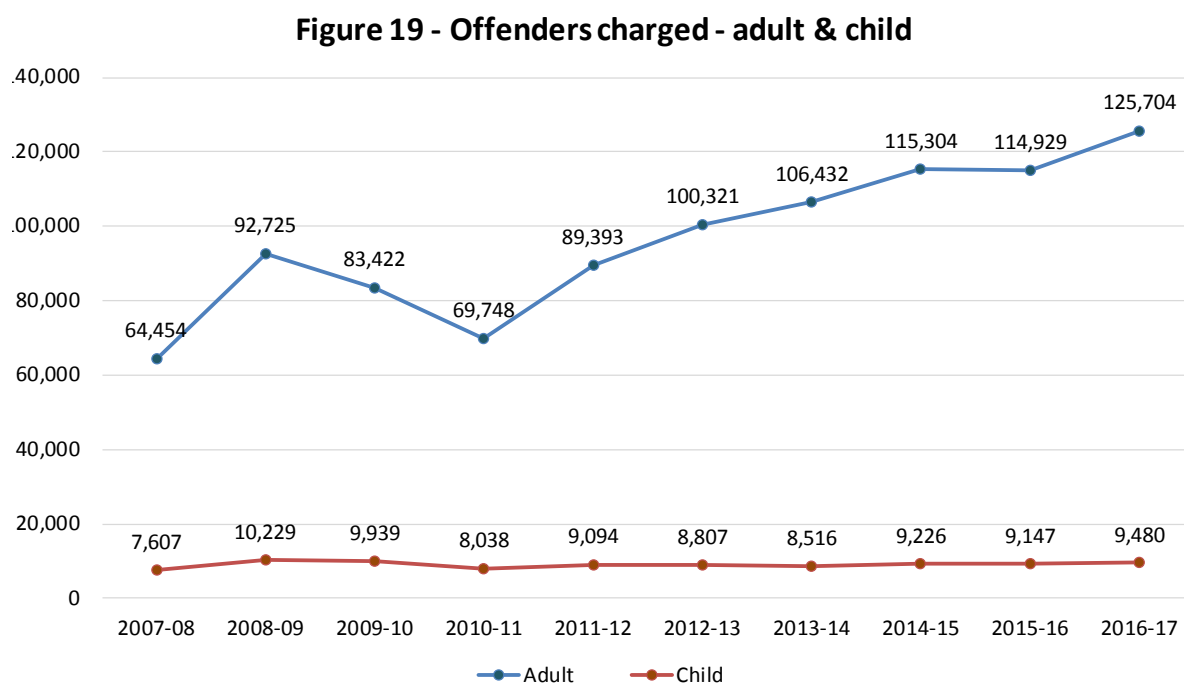


Table 7 shows from 2007/8 to 2016/17 the number of adult offenders charged by police, almost doubled (95% increase). Although child offenders charged shows a 25% increase, if taken from 2008/9 or 2009/10, this demonstrates negative growth.

Table 7: Offenders charged – adult and child offenders - % change

Offenders charged	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	% change between 2007/08 & 2016/17
Adult	64,454	92,725	83,422	69,748	89,393	100,321	106,432	115,304	114,929	125,704	
Child	7,607	10,229	9,939	8,038	9,094	8,807	8,516	9,226	9,147	9,480	
Annual % change											
Adult		44%	-10%	-16%	28%	12%	6%	8%	0%	9%	95%
Child		34%	-3%	-19%	13%	-3%	-3%	8%	-1%	4%	25%

Trend of the rate of diversion

The rate of diversion is calculated by comparing the number of police diversion cases as a proportion of the number of offenders charged and processed by police. As opposed to the pure numbers, the rate of diversion provides a true picture of the proportion of diversion cases relevant to each stream.

The rate of police diversion of child offenders (Figure 20) reduced from 56% in 2007/8 to 33% in 2016/17 representing a 41% reduction. The rate of police diversion of adults has reduced from 6.7% in 2007/8 to 3.9% in 2016/17. Although a lower percentage overall, this still represents a 42% reduction. The rate of court diversion of adults has reduced from 11.2% in 2008/8 to 5.6% in 2016/17 representing a 50% reduction.

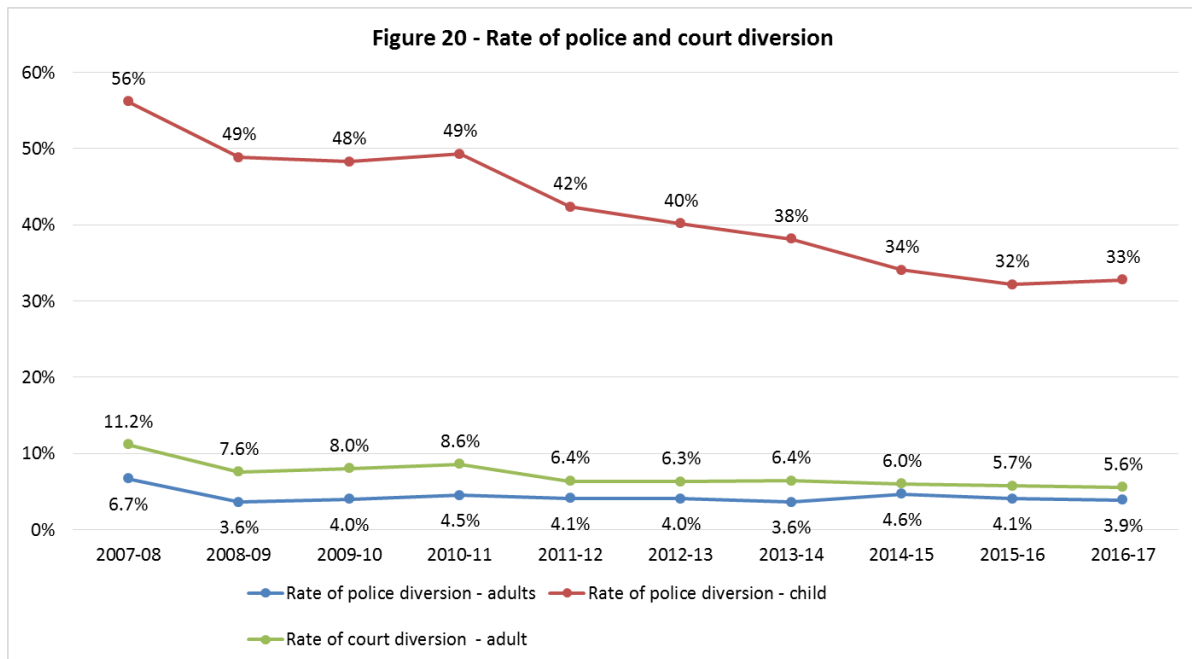
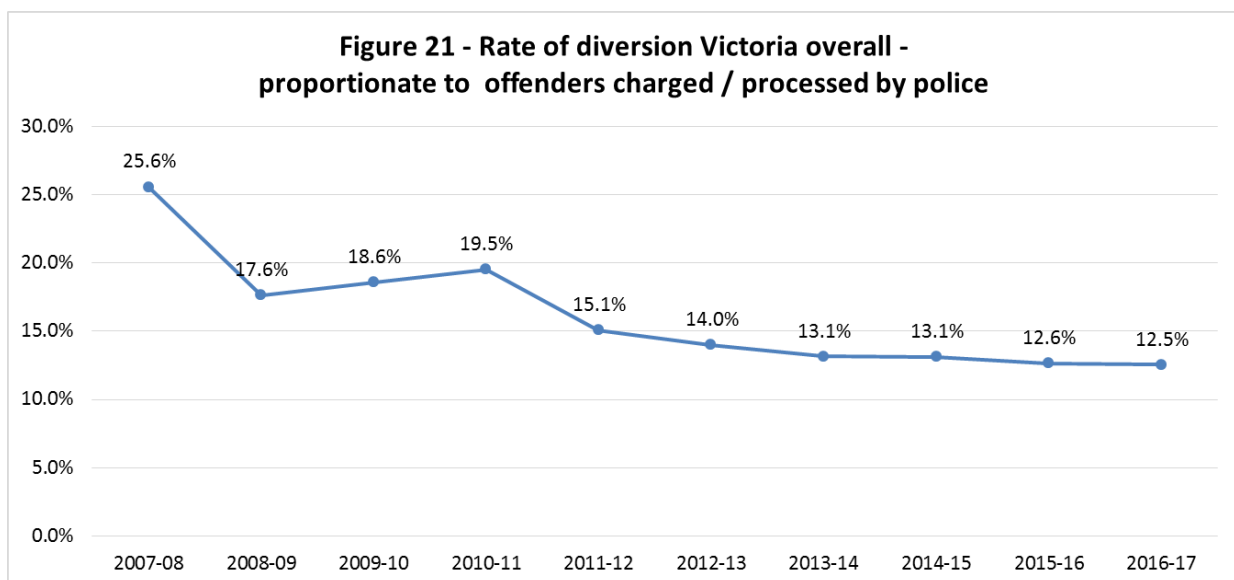


Figure 21 shows the combined overall rate of police and court diversion in Victoria as a proportion of adults and child offenders charged and processed by police. The rate of diversion in Victoria has reduced in six of the nine years and is half the level it was a decade ago.



In relation to child offenders, Figure 22 shows the increasing proportion of child offenders being disposed of by police by bail/remand (as opposed to summons). The percentage of

child offenders on bail/remand has increased from 39% to 48%, which represents a 19% increase. At the same time that the use of bail/remand was increasing, there has also been a 41% reduction in police diversion of child offenders.

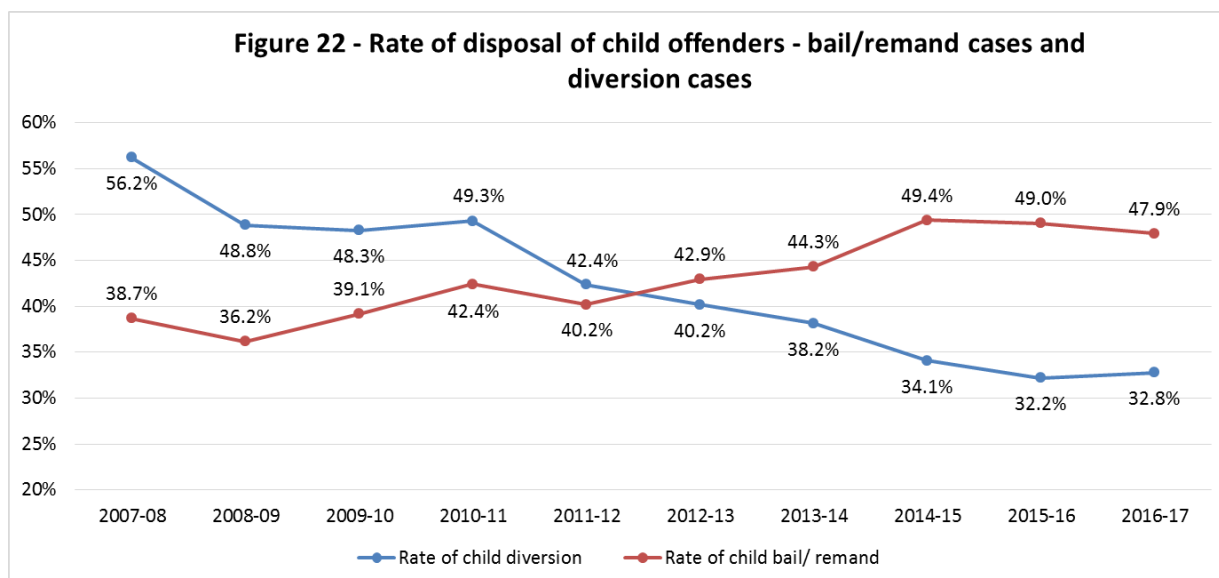
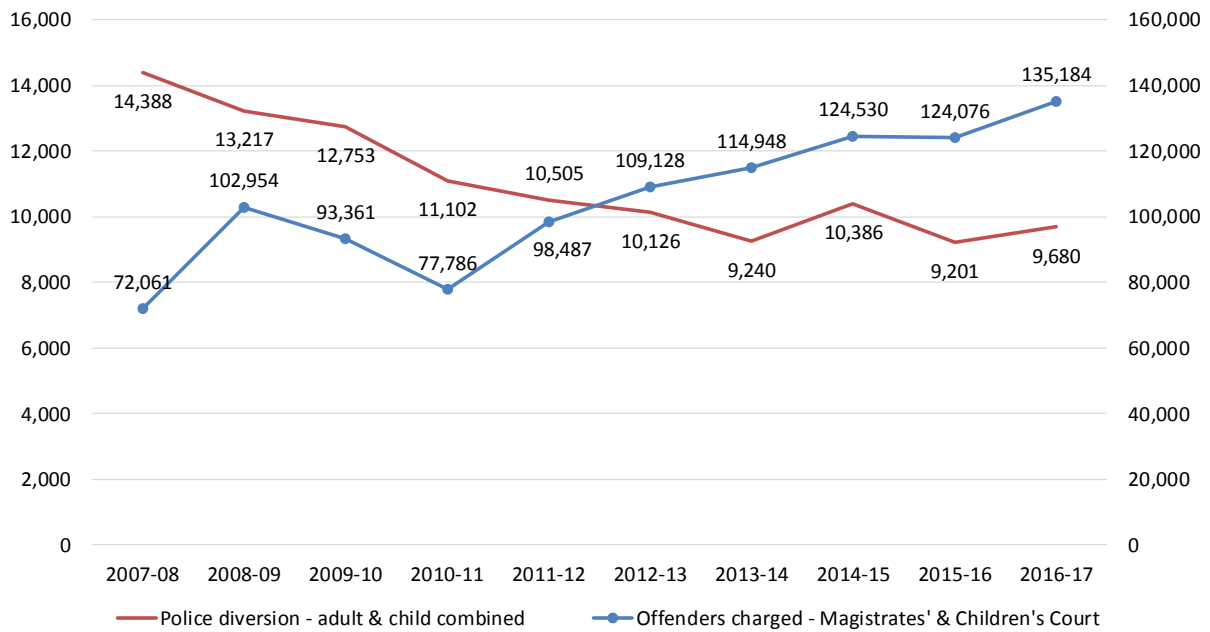


Figure 23 shows the increase in the overall number of offenders charged by police (adult and child) over the same period, as the decreasing number of overall offenders being diverted by police (adult and child). Overall, police diversion has reduced by 33%, whilst at the same time, overall offenders charged has increased by 53%.

Figure 23 - Offenders charged compared to police diversion - adult & child combined



Projections police diversion

Figure 24 shows the projections in case numbers for police diversion of adult and child offenders. Police diversion of child offenders in the future is projected to decrease from 4621 to 3785, representing an 18% reduction. As the trend (Figure 24) indicates a plateauing of reductions over the past 3 years, it is possible that ongoing decreases will not be incurred. Police diversion of adults is projected to increase from 4621 to 7701, representing a 68% increase over the next five years.

Figure 24 - Diversion projections - adult & child

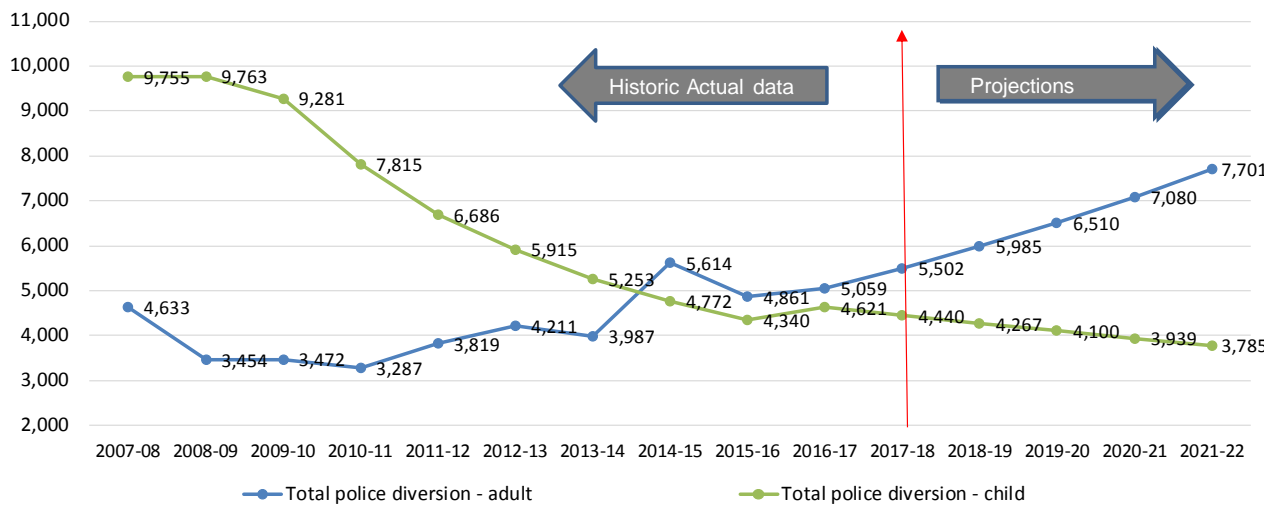
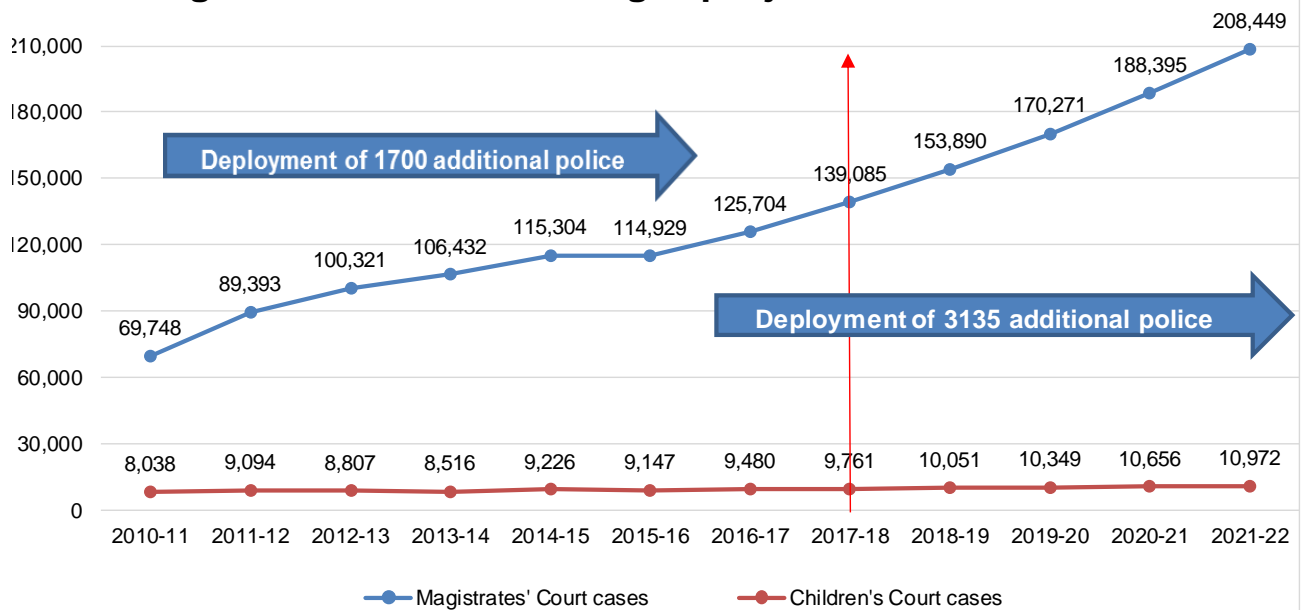


Figure 25 shows the projections for offenders charged for adult and child offenders based on the mean increases since 2010/11 (Appendix 5, adult 10.6%, child 3.0%). This shows an increasing trend for adult offenders since 2010/11, particularly coinciding with the commencement of the deployment of 1700 additional police and subsequently over the following five years of progressive deployment of 3135 police. Child offenders charged (Table 8) are projected to increase at a slower rate: 16% between 2016/17 and 2021/22.

Figure 25 - Offenders charged projection - adult & child



Note: Projections are based on the mean over the last 6 years

Table 8 shows that from 2010/11, the actual and projected percentage increase between the various periods.

Table 8: Offenders charged – increase throughout

	Actual % change between 2007/08 & 2016/17	Actual % change between 2010/11 & 2016/17	Projected % change between 2016/17 & 2021/22	Projected % change between 2007/08 & 2021/22
Magistrates' Court cases	95%	80%	66%	223%
Children's Court cases	25%	18%	16%	44%

Trends for diversion - summary

Court diversion of adults has seen increases over the last five years, although the current level is still lower (-6%) than the level 10 years ago. The trend for police diversion of adults has shown marginal growth (9%) and is projected to increase 68% over the proceeding five years, against a backdrop of significant growth in offenders charged.

Police diversion of child offenders shows a consistent and sharp decreasing trend over the period, with outright numbers reducing by more than half (-56%) since 2007/8. Over the next five years, police diversions of child offenders are projected to decrease or potentially plateau, with no growth based on current trends.

Overall, court diversion combined has only marginally increased (10%) in the preceding five years, even with the recent introduction of Children's Court diversion.

The combined overall number of cases of diversion in Victoria for all offenders has reduced every year for the last six years. The rate of diversion, proportionate to offenders charged and processed by police, shows consistent reductions over the last six years. The rate of overall diversion in Victoria is 12.5%, which is half the rate compared to a decade ago.

Offenders charged - summary

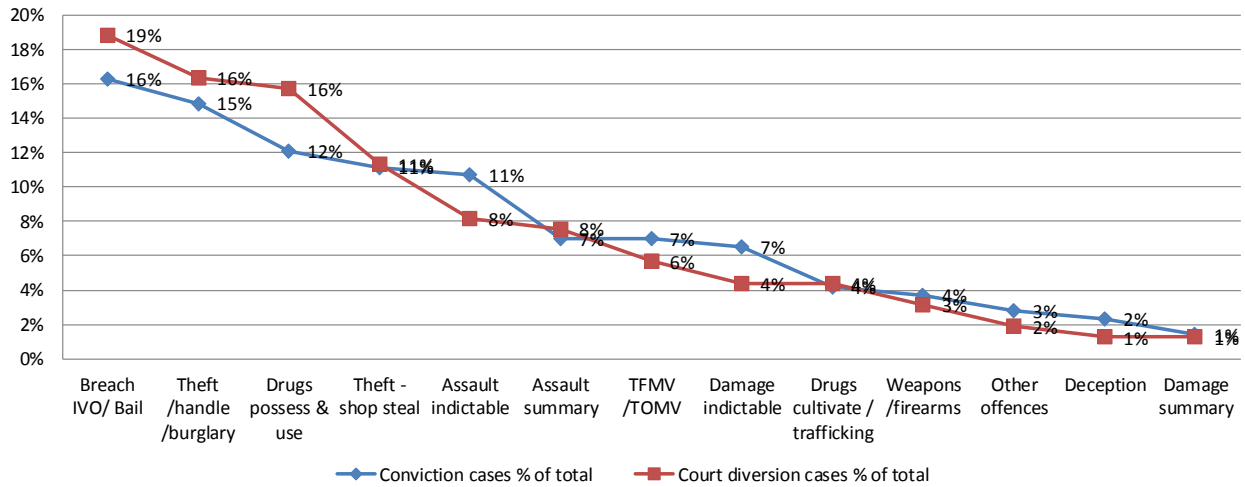
Adult offenders charged have almost doubled (95%) over the last decade and are projected to triple by 2021/22. The trend for child offenders charged sees marginal increases since 2010/11, qualified by higher levels prior to that period and is projected to increase 25% over the next five years. The use of bail/remand in disposing of child offenders has increased 19% over this period. Therefore police are diverting child offenders less and placing them on bail/remand more often, evidencing a 'hardening' in the disposal of child offenders.

RQ 3: In a 24-hour police station over 12 months, what are the characteristics of cases that proceeded to court that were resolved by the traditional court process compared to cases resolved by diversion by the court?

Offence categories

By offence category, Figure 26 shows the percentage of cases resolved by court diversion and the percentage resolved by a traditional court conviction. This tends to show that more serious offences categories are more likely to receive a conviction disposition and less serious offence categories are more likely to receive court diversion. Serious (indictable) assault cases represented 11% of conviction cases and 8% of diversion cases. Minor assault cases represented 8% of diversion cases and 7% of conviction cases. Serious (indictable) damage cases represented 7% of conviction cases and 4% of diversion cases. Simple possession of drugs cases represented 12% of conviction cases and 16% of diversion cases.

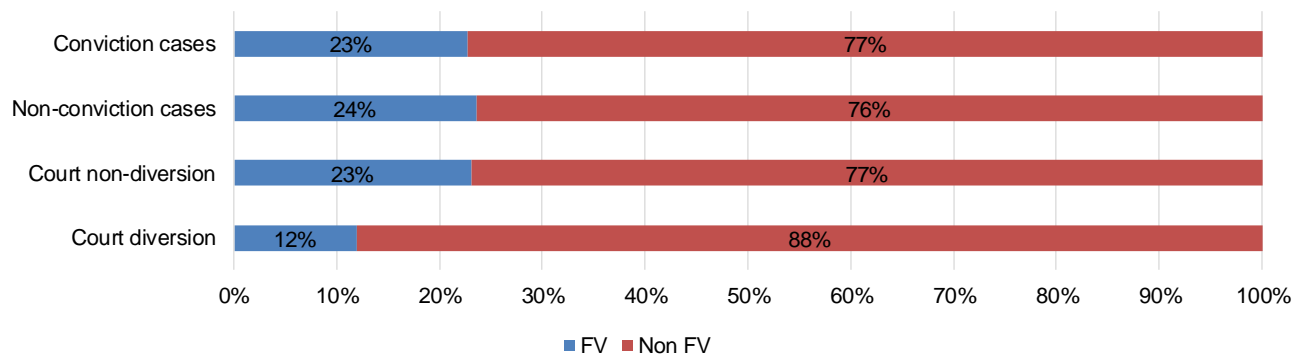
Figure 26 - Court diversion cases and court conviction cases - by offence categories



Family violence characteristics

Figure 27 shows cases that involve offences relating to family violence receive court diversion the least when compared to other sentencing dispositions. Only 12% of family violence cases receive court diversion, compared to 23% of cases that receive a formal court conviction. Family violence cases are diverted at almost half the rate of other court cases.

Figure 27 - Family violence cases - court diversion v traditional court process %



Court diversion by bail or summons

Table 9 shows that one in three court diversion cases, were brought to court by the offender being placed on bail. Bail cases require an undertaking to attend court and are a more serious form of disposal, compared to release pending the service of a summons.

Table 9 – Court diversion disposals by bail or summons

Court diversion disposals	
Bail	57 (36%)
Summons	102 (64%)

Total police and court diversion cases over 12 months

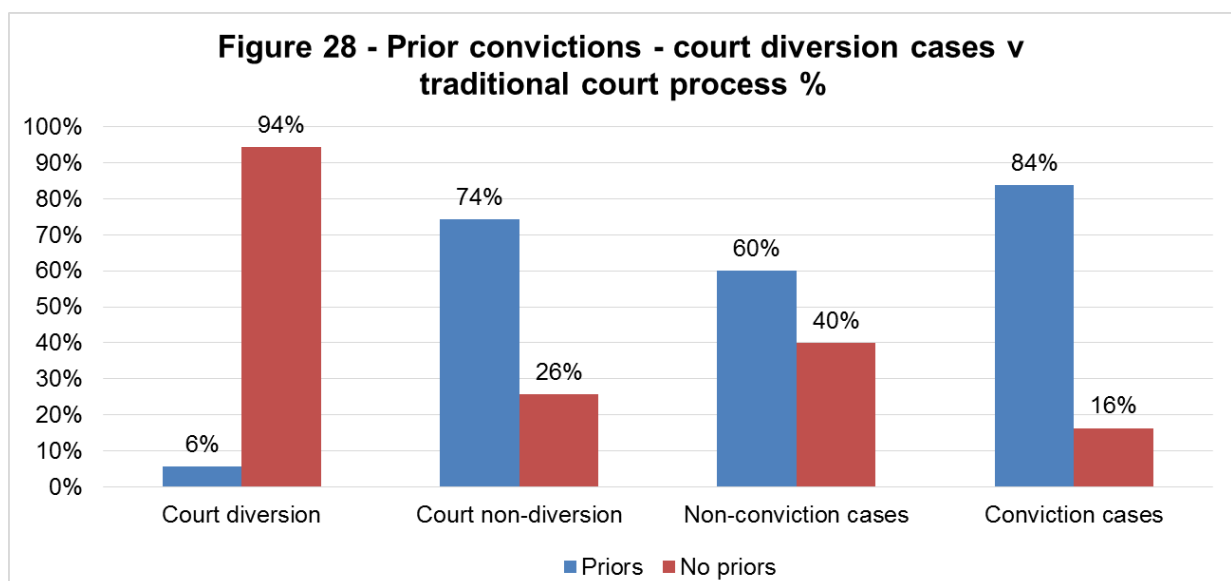
Table 10 shows that at one 24 hour police station over 12 months, there were 36 police diversion cases and 67 court diversion cases, totalling 103 cases overall.

Table 10 – Police and court diversion cases – 24 hour police station

Police and court diversion cases – 24 hour police station over 12 months:	
Police diversion cases (adult and child)	36
Court diversion cases (adult and child)	67
Combined total overall diversion cases	103

Offender characteristics

Offenders with prior conviction history, receive court diversion in only 6% of cases (Figure 28). An offender is 10 times more likely to be dealt with by traditional court processes if they have one or more prior convictions.



Case timelines

Figure 29 shows court diversion cases take 375 days from the offence date to final completion of the court diversion conditions, compared to 291 days for non diversion cases. If the 44 days period to complete the diversion conditions are not taken into account, court diversion cases take 331 days, which is still longer than traditional cases. Court diversion is the slowest court outcome when compared to cases resolved by the traditional court process.

Figure 29 - Total time taken for court diversion cases and traditional court cases - days

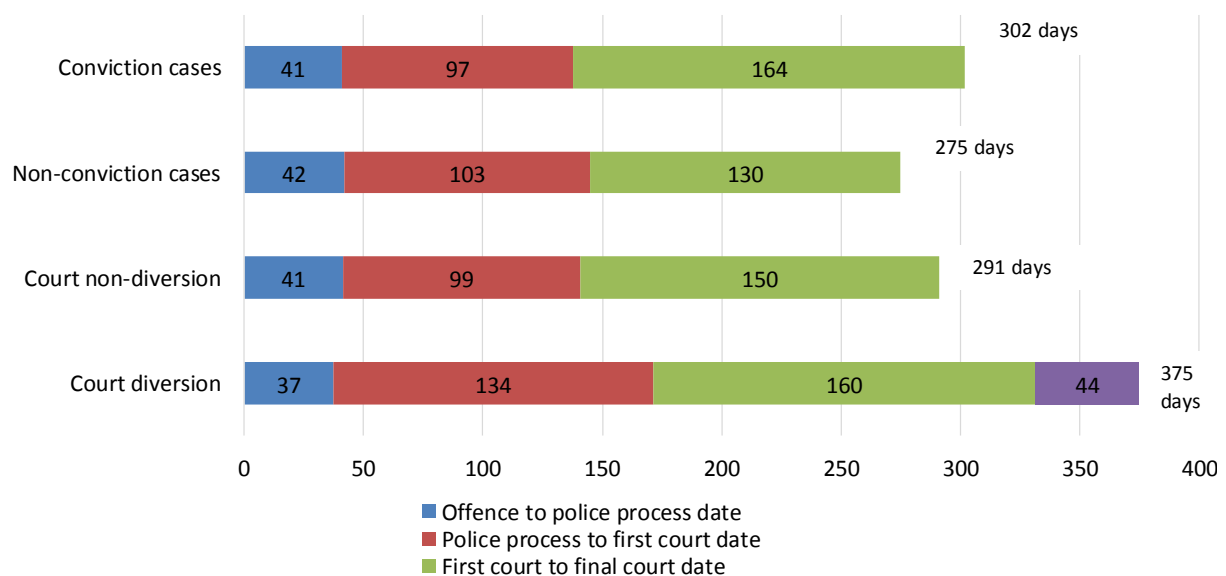


Figure 30 shows the time taken from arrest/processing by police to the court date when the diversion was imposed. This excludes the period where the offender completes the conditions of the diversion. This reveals that court diversion cases take 18% longer (n=44 days) than traditional court cases, from the initial arrest to diversion imposed.

Figure 30 - Police process to final court date - court diversion and traditional court

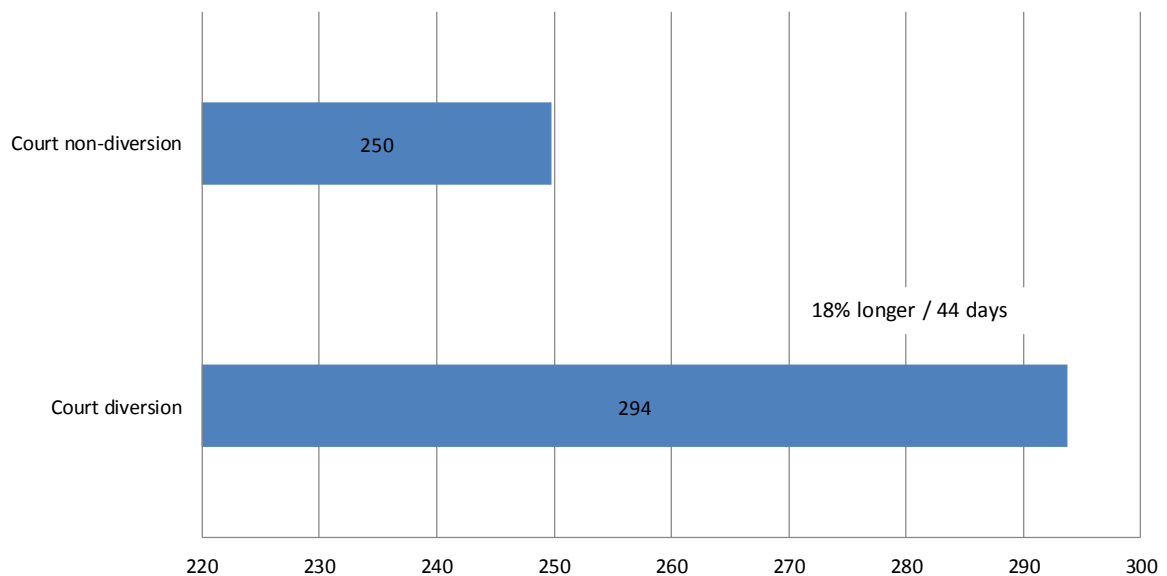


Table 11 shows the average number of court hearings for the various sentencing dispositions. Court diversion cases have on average three hearings in order for the diversion to be granted. This does not include an additional hearing date where the offender has to prove compliance with the diversion conditions. When the additional hearing is counted, court diversion cases have four hearing dates on average.

In regards to court diversion cases, the highest number of hearing dates was nine. The quickest resolution from police processing to diversion imposed was 77 days with one hearing. The longest resolution was 845 days, with the case having eight hearing dates.

Table 11 – Court hearings and resolution time

	Court - diversion cases	Court - non-diversion cases	Non- conviction cases	Conviction cases
Mean number of hearings	3.0*	3.7	3.3	4.0
Maximum number of hearings	9	12	12	12
Quickest case resolution and number of hearings	77 days 1 hearing	28 days 1 hearing	13 days 1 hearing	1 day 1 hearing
Slowest case resolution and number of hearings	845 days 8 hearings	1233 days 9 hearings	1200 days 11 hearings	1233 days 9 hearings
*Does not include additional hearing relating to compliance with diversion plan.				

Time analysis has shown that the court process is slow across all case outcomes, taking 291 days on average from the date of offence to final resolution. Court diversion cases are even slower to resolve, taking 375 days overall to be completed. Court diversion cases on average have three hearing dates plus an additional hearing date upon completion of the diversion conditions.

Research Question 4: What proportion of cases does not result in a criminal conviction and therefore potentially may be eligible for diversion?

Cases prepared by police

For a range of legitimate reasons, out of all the cases prepared against offenders, a portion do not proceed to court and of the cases that do proceed to court, only a portion are ultimately

proven. Figure 31 shows from a 24 hour police station over 12 months, 80% of cases prepared do not result in a criminal conviction. There are a range of attrition categories including cases not authorised, cases withdrawn and cases dismissed. Family violence civil application represents the largest proportion of cases that do not result in a criminal conviction. Out of all the cases police prepare, 14% (n=215) result in a non-conviction disposition.

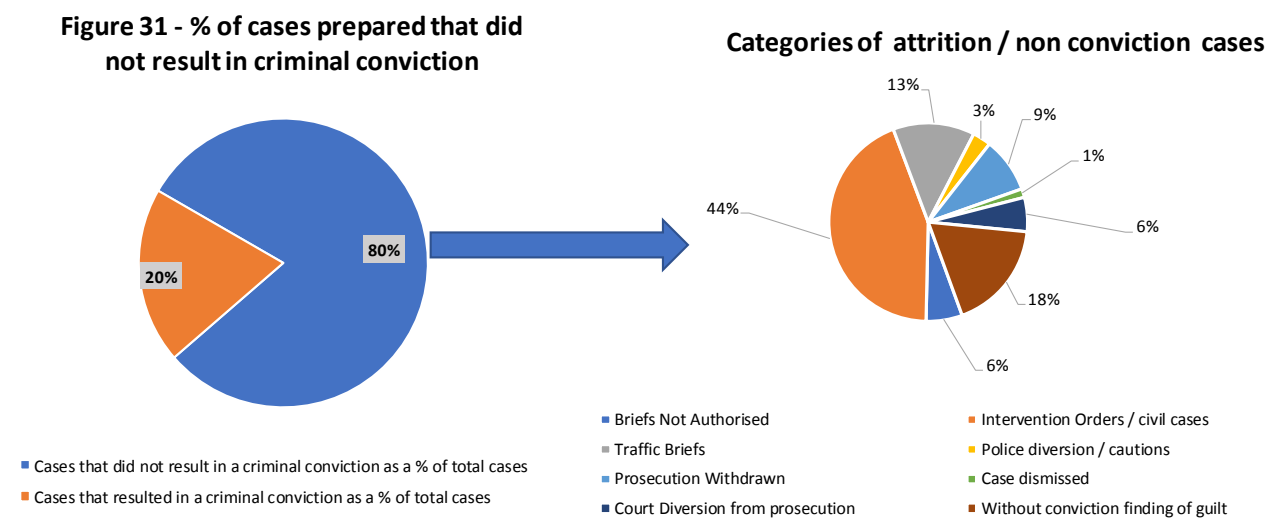
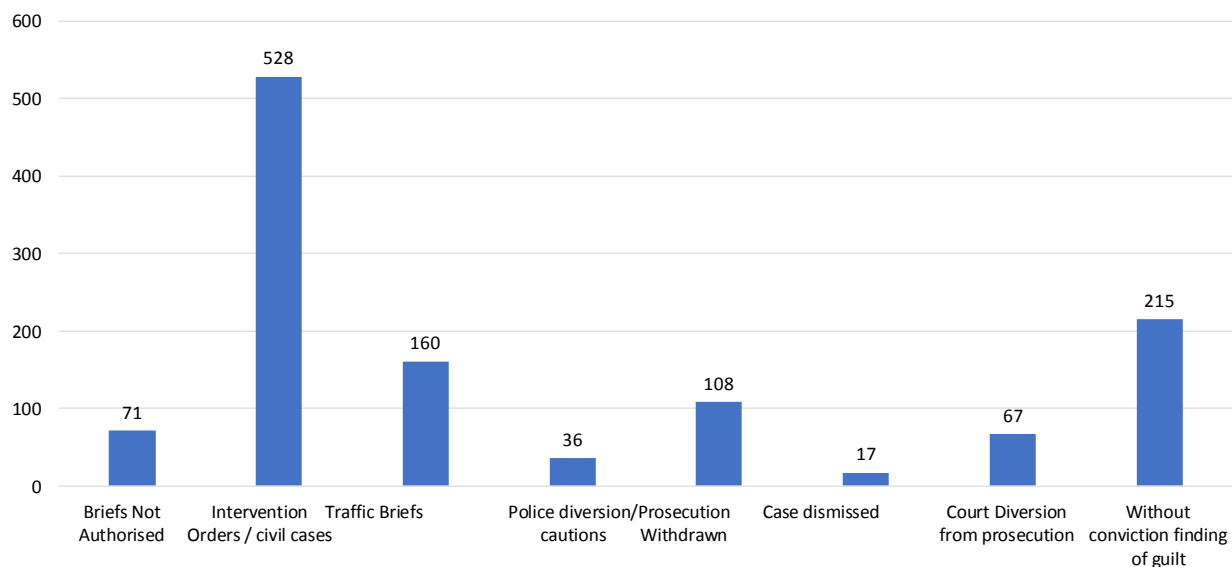


Figure 32 shows from a 24 hour police station over 12 months the various categories of attrition of cases that police prepare by number.

Figure 32 - Categories of non conviction cases - 2017



Cases found proven at court

Cases that are proven at court fall into two categories, namely cases where the court impose a formal conviction against the offender and cases where the court make a finding of guilt, but impose a ‘non-conviction’ disposition. Non-conviction cases do not include court diversion cases. Court diversion cases are not a finding of guilt and are ‘struck out’ upon completion. Non-conviction findings of guilt tend to reflect less serious offending and the absence of, or minimal criminal history. By their nature, they tend to indicate potential for diversion.

Figure 33 shows from a Victoria wide perspective, more than half the police cases found proven in Magistrates’ Court over a 12 month period, result in a non-conviction disposition (58%), with less than half of cases resulting in a formal conviction (42%).

Figure 33 - Magistrates Court proven cases 2017
% conviction cases v non-conviction / finding of guilt

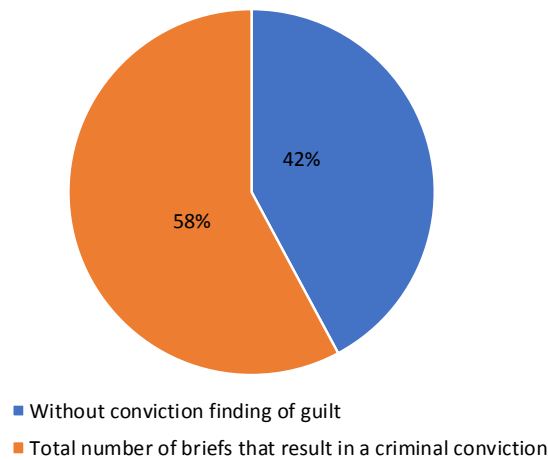


Table 12 shows out of the cases that were proven at court with a non-conviction finding of guilt (n=215), only 10% of cases required the offender to participate in any form of program, namely a community corrections order.

Table 12 – Non-conviction cases by final disposition type

Non-conviction cases	Percentage of cases
Discharged	6%
Fine	32%
Good behaviour bond	52%
Community Corrections order	10%

In summary, in relation to all the cases prepared at a police station over 12 months, only 20% of cases actually result in a conviction at court due to a range of attrition factors and 14% (n=215) receive a non-conviction disposition. From a state wide perspective, out of all the cases proven at court in 12 months, more than half (58%) resulted in a non-conviction finding of guilt. This is reflective of less serious offending and provides an indication of the potential for an expansion of police diversion.

Chapter 4: Discussion

This thesis posits the overarching research question: what is the context of police and court diversion in Victoria and what opportunities exist for increasing police diversion of offenders. This chapter will explore the major findings that emerged from the analysis relevant to the sub-research questions. Sub-research questions one and two are discussed together as they are interrelated, followed by separate discussions for sub-research questions three and four. The opportunities for expanding police diversion are then discussed in the broader context of these findings. Finally, the policy implications and limitations of the research will be discussed.

Research sub-questions 1 and 2: To what extent are police and court diversion used in Victoria? What are the trends and projections for police and court diversion and for offenders charged?

Finding 1: A low and reducing rate of diversion

A low rate internationally

In 2016/17, the overall rate of police and court diversion for Victoria was 13%, with 87% of cases being determined by traditional court processes. The main reason for this low rate is that police diversion of adults only accounts for 4% of offenders charged. This compares poorly to the UK where 38% of offenders are dealt with outside the formal police court process (Criminal Justice Joint Inspectorate, 2009). Not only is the rate of diversion in Victoria low, but the overall number of diversions in Victoria has progressively reduced over the last 10 years, with diversion in 2016/17 being 18% lower than 10 years ago (n=18,165 vs n=22,098), despite the recent introduction of Children's Court diversion.

It is also important to specifically compare the Victorian rate of child diversion with international levels. In 2016/17 the rate of police diversion of child offenders was 33% and court diversion was 9%, resulting in an overall rate of 42% (Chapter 3, Figure 4). In the US in 2005, there were nearly 1.7 million delinquency cases processed at the intake stage by juvenile courts, of which 60% were formally processed, with 40% being diverted or otherwise ‘kicked out’ of the system (National Centre for Juvenile Justice, 2008). Approximately 60% of first arrest juveniles in England and Wales received a police caution rather than formal court processing (Ministry of Justice, 2017). In New Zealand, the Ministry of Justice (2018) reported 70% of juvenile cases were diverted with 35% receiving warnings and 35% resolved by ‘alternative action’ outside formal court processes. In a study in Bremen, Germany, it was reported that approximately 90% of juvenile offenders were diverted from the system before adjudication (Huizinga, et al., 2003). The issue for Victoria is not just that the rate is lower than some international jurisdictions; it is also that there has been a reducing rate of police diversion of child offenders.

Child cautioning halved

There has been a progressive decline in police child cautioning, which has reduced case numbers by more than half (53%) over ten years. In 2007/8 there was 9755 child offenders cautioned by police and in 2016/17 there was 4621. Future projections indicate that police diversion of child offenders will either continue to reduce or plateau at best (Chapter 2, Figure 25), while the outright numbers of offenders charged is projected to increase by 25% (Figure 25), potentially broadening the gap even further. Compared to offenders charged and processed by police, the rate of police diversion of child offenders has reduced by 41%. A decade ago, police diverted one in two child offenders and in 2016/17 this reduced to one in three child offenders.

Adult diversion – a low rate that is reducing

Although police diversion of adult offenders is increasing in outright number, it is not keeping pace with the rate of growth in offenders charged by police. The rate of police diversion of adult offenders has reduced from 6.7% in 2007/8 to 3.9% in 2016/17, representing a 42% reduction. The rate of court diversion of adult offenders (Figure 10) has indeed reduced from 11.2% in 2007/8 to 5.6% in 2016/17, representing a 50% reduction. It is relevant to also consider that court diversion of adult offenders is dependent on police support, so this reduction directly reflects on police decision making.

More serious disposal of offenders

This study analysed 159 cases where court diversion was granted (Chapter 3, Table 9). Surprisingly, offenders were placed on bail in a third of cases ultimately resolved by court diversion. This means for some of the less serious cases in our court system, police used the more serious form of disposal, to require the offender's attendance at court.

This raises the issue of how police are disposing of offenders generally. In relation to child offenders, police increased the use of bail from 36% of cases (2008/9) to 49% (2014/15), thus equating to a 36% overall increase. In 2008/9, more than one in three child offenders were placed on bail by police and in 2014/15 almost half were placed on bail. At the same time, police child cautioning reduced by more than 40%. These trends are both represented in Chapter 3, Figure 22.

Over the last decade, police diversion of adult offenders reduced by more than 40% and court diversion of adult offenders reduced by more than 50%. As police need to endorse adult court diversion, it could be suggested that police support for court diversion has also reduced. At the same time, adults are increasingly being placed on bail as opposed to summons, including

some bail cases resolved by court diversion. These factors indicate a ‘hardening’ of the way in which police dispose of offenders generally, including low harm cases and child offenders.

For child offenders, one explanation may be that the entire cohort of offenders are progressively offending in more serious ways, justifying the ‘hardening’. Not only is such a proposition highly unlikely, it is inconsistent with sentencing analysis (Sentencing Advisory Council, 2018a) which shows between 2010 and 2015, more than half the child offenders received a low sentencing outcome, namely a good behaviour bond (35.1%) or probation (20.7%), while sentences involving detention of child offenders progressively reduced over that period. At the same time, there has been a substantial decline (43%) in the number of offenders ‘formally sentenced’ in the Children’s Court (Sentencing Advisory Council, 2018a). Coupling this with the fact that the number of police cases/child offenders charged have actually been relatively stable over the same period, indicates that the Children’s Court have increasingly resolved cases with less serious dispositions, other than formal sentencing. These indicators run contrary to the ‘hardening’ of the disposal of child offenders by police.

The more likely explanation is that the progressive legislative ‘strengthening’ of bail in Victoria has facilitated an increase in the use of bail by police. These changes include the introduction of various presumptions against bail and other amendments recommended from an independent review of bail (Engage Victoria, 2017). The other factor relates to what could be described as a ‘philosophical emphasis’ by police management in recent years towards a ‘pro-bail’ and ‘pro-arrest’ policy in order to ‘hold offenders to account’. An additional, yet more discrete factor is the ‘tough on crime’ environment.

A ‘tough on crime’ environment

Over the last five years there has been widespread public, political and media debates about increasing crime in Victoria, particularly youth crime (*The Age*, 4th January, 2018). Literature dating back as far as the 1970’s repeatedly demonstrates how youth crime is regularly politicised as a ‘moral panic’, with policing priorities particularly susceptible to political law and order campaigns, spurred on by media reports of crime waves (Cohen, 1972; Collins et al., 2000; Simpson, 1997; Sercombe, 1999). Additionally, it has been suggested that in such a climate, discretionary police cautioning has the potential “to be moved entirely off the agenda” (Jordon and Farrell, 2012, p.425) The author suggests that the convergence of legislative changes to bail, a ‘pro-arrest’ and ‘pro-bail’ emphasis by police management and the influence of a ‘tough-on-crime’ environment, have not only intentionally ‘hardened’ the use of bail, but unintentionally influenced police discretion to limit the use of diversion.

Finding 2: A system under pressure

Growth of offenders charged

At the same time that the rate of overall diversion is decreasing, the numbers of offenders being charged is increasing, particularly adult offenders. Over the past ten years, the number of adult offenders charged by police and brought before the Magistrates’ Court has almost doubled (+95%). In 2007/8, the 64,454 adult offenders charged by police, increased to 125,704 in 2016/17.

A range of factors are considered to be relevant to this growth, including increasing police numbers, growth in family violence incidents and sustained population growth in Victoria. Between 2010/11 and 2015/16, 1700 additional police were deployed across Victoria (Victorian Government, 2017). This coincided with the commencement of an increasing

trend in the number of adult offenders charged, and resulting in an 80% increase over that period (Chapter 3, Table 8).

The Victorian Royal Commission into Family Violence (RCFV, 2016) highlighted sustained increases in family violence incidents over the last ten years. As family violence incidents increase, so do intervention orders, with 65,131 intervention orders sought in 2016/17 (CSA, 2018). The most frequent offence relating to family violence incidents is breaching the order itself, with 40,403 offenders charged in 2016/17 with this offence (CSA, 2018). Thus, as the family violence incidents and intervention orders increase, so do the number of offenders charged.

Population growth is also a major factor with the population of Victoria having increased by 1.2 million people over the last decade (Australian Bureau of Statistics, 2018). Although it is acknowledged there are a complex range of factors influencing the number of offenders charged, it is suggested by the author that additional frontline police, increases in family violence incidents and population growth are highly relevant factors that have, and will continue to influence growth in offenders charged in the future.

Adult offenders projected to triple

In 2017/18, the Victorian Government pledged to deploy an additional 3135 police (Victorian Government, 2018) over a four year period to 2021/22, as depicted in Figure 25 (Chapter 3). Between 2010/11 (the commencement of deployment of the 1700 police) and 2016/17, there was an annual mean increase of 10.6% in adult offenders charged and 3.0% for child offenders charged. These rates have therefore been used to calculate projections five years into the future. The number of adult offenders charged is projected to increase a further 66% (Table 8) over the next five years. Although this appears to be a relatively large increase, it

should be noted that adult offenders charged increased by 80% between 2010/11 and 2016/17, which was a period in which police numbers increased at a lower rate than they are anticipated for the next four years.

Overall, that the number of offenders charged in the Magistrates' Court is projected to increase by triple (221%) between 2007/8 and projected levels in 2021/22. Adult offenders charged will increase from 64,454 in 2007/8 to a projected 208,449 by 2021/22. Alongside this, the number of child offenders charged are projected to increase by 16% (Table 8) over the next five years from 9480 to 10972, thus being classified as a more moderate growth rate.

Within the context of this case growth, the use of police diversion in Victoria is highly relevant for a range of reasons. Firstly, police diversion provides an alternative to traditional criminal justice processing, as police 'pre charge' diversion removes cases directly from the courts. It is evident that decisions about how the police divert offenders, has a significant impact on the wider operation of the criminal justice system (Neyroud and Slothower, 2013). The sustained increases in case numbers over the last decade, alongside future projected growth, will ultimately place unprecedented pressure on courts. Putting aside the potential crime control benefits of diversion, the projected system pressure issues alone, mean that an expanded model of police led diversion is a highly relevant consideration for policymakers.

Research sub-question 3: In a 24-hour police station over 12 months, what are the characteristics of cases that were resolved by the traditional court process compared to cases resolved by court diversion?

Finding 3: Adult court diversions - a slow legal process

Adult court diversion – the slowest outcome

It is no surprise that cases resolved by the traditional court process in Victoria, take considerable time. As Sherman and Neyroud (2012) observe, few would argue the inevitability of long delays between arrest and the final disposition in criminal courts. What is surprising though, is that adult court diversion cases actually take longer than traditional cases. From the date of initial arrest of an adult offender to the final court resolution, court diversion cases take 294 days on average, 44 days and 18% longer than cases resolved by traditional court processes (Figure 29). When the entire process is considered (date of offence to completion of the diversion plan), court diversion takes 375 days on average compared to 290 days for traditional cases resulting in an additional 85 days.

Traditional court processes involve an average of 3.7 hearings, compared to 3.0 hearings for court diversion cases. Furthermore, if the additional hearing, where the offender has to demonstrate the completion of the diversion plan, is included, court diversion cases have on average four court hearings, which are more than traditional court cases.

Compared to traditional court cases, most of the additional time taken for court diversion cases occurs in the police preparation period, where cases require an additional 35 days. The court process also takes an additional ten days for diversion cases. Within that overall timeframe, the court process for diversion cases is longer (n=160 days) than the police

process (n=134 days) by 26 days. Regardless of this, court diversion cases remain the longest case resolution when compared to traditional court cases.

Does celerity matter?

This raises the question of how important celerity is in resolving cases and more specifically, as a deterrent factor. Swift justice as a deterrent is no new concept. Over 3000 years ago, ‘the wisest of all men’, King Solomon wrote "it is because the sentence for wrongdoing is not executed quickly, that men are encouraged to do evil" (Ecclesiastes, 8:11). Deterrence theory is based on the core principle that criminal behaviour should decline in the face of sanctioned punishments that are certain, swift and severe (Nagin et al., 2015). From an efficiency perspective alone, 375 days represents an inordinate amount of time to resolve what are often the least serious cases in the criminal justice system. Research suggests that the swiftness of punishment should cause the person to associate the sanction with their bad behaviour (Blank et al., 2013). If too much time passes, not only does the punishment risk ‘losing its bite’ (Deater-Deckard et al., 2003, p.351), but the opportunity of utilising the point of apprehension as a “key teachable moment” (Tyler et al., 2014, p.752) also diminishes. Research has also shown that the longer the elapsed time between first contact with the juvenile justice system and final adjudication, the worse the prognosis for a criminal conviction in adult life (Brown et al., 1987; 1989). The age crime curve (Tremblay and Nagin, 2005) shows how rapidly offending can escalate and that even 12 months represents a significant period for juveniles and young adults. Perhaps the current discourse on why an offender has committed an offence on bail should be reframed to why the criminal justice system takes so long, ultimately setting an offender up for failure.

Police diversion shows a promising approach to delivering swift punishments as opposed to lengthy court process (Slothower, 2014). In Operation ‘Turning Point’, eligible offenders

were assessed and their conditions set within 48 hours of apprehension (Neyroud and Slothower, 2012; 2013; Neyoud, 2017). In Operation 'Checkpoint' it was found that 48 to 96 hours was more realistic (Routledge, 2015). As a matter of policy (Victoria Police, 2018) Victoria Police diversions are generally administered on the day of arrest or during processing. Ironically, in the 134 days it takes for a court diversion case in Victoria to have its first hearing at court, an offender could have completed a police diversion under a three month deferred prosecution. More importantly, the offender could have met with a specialist officer within two days of apprehension to consider the causal factors behind the offending and agreed to a contract to encourage desistance. It is clear that the long delays associated with court diversion contrasts with the contemporaneous nature of police diversion in Victoria. The risk in Victoria in the current environment is that with increased case load pressures, delays within the courts may increase even further in the future.

Diversion from what?

Separate to the lack of celerity in court diversion, it is relevant to consider the actual experience of court diversion from the perspective of an offender. The process for court diversion cases (MCV, 2017; CCV, 2018) largely mirrors formal criminal justice processing, where a formal 'brief of evidence' is prepared and the offender is either summonsed or bailed to appear at court in the usual manner. Putting aside the formal legal process, it could be said that the actual 'experience' of court diversion is not substantially different from traditional court processes. Indeed, the offender may not even be aware that police are recommending court diversion until they actually appear at court.

This therefore raises the more fundamental question: what is court diversion actually diverting an offender from? It is evident that an offender is not diverted away from the legal process or the experience of being charged as an accused person. Court diversion could more

precisely be described as diversion from formal court sanctions, thereby allowing the offender to avoid a criminal conviction. Despite the opportunity this affords, it is suggested by the author that court diversion remains a legally structured method of formal system processing.

Wilson and Hoge (2013) identify two theoretical supports for diversion from formal system processing: labelling theory and differential association theory. Labelling theory posits that the stigmatizing effect of labelling a youth as delinquent may establish expectations for future delinquent acts and alter their social networks toward more deviant peers (Bemburg et al., 2006; Schur and Maher, 1973; Petrosino et al., 2010). Differential association theory (Sutherland, 1939) posits that youth learn the values, attitudes, and techniques of criminal behaviour through the interaction with delinquent peers and in essence, diverting low-risk youth offender may indeed reduce this exposure. The author suggests that from an offender's experience, 'if it looks like court, feels like court and sounds like court, it is court'. Although court diversion may avoid a formal conviction, the fact that it largely replicates formal criminal processing, risks some of the negative effects it attempts to avert. It is suggested that "true diversion" is reserved for police-led or pre-charge programs where involvement of the criminal justice system is limited the most (Binder and Geis, 1984; Polk, 1984).

Characteristics of court diversion

Cases involving family violence receive court diversion at half the rate of non-family violence cases (Figure 27). Although utilising diversion has generally been discouraged for family violence cases, Westmarland et al. (2017) has suggested, there is, in fact, a widespread use of police diversion "under the radar" for family violence. Although the level of court diversion cases involving family violence is low, at half the rate of other diversion cases (12% v 23%, Chapter 3, Figure 27), the existence of these cases in themselves supports the

findings of Westmarland et al. (2017). Operation CARA (Strang et al., 2017) tested a group session for low harm family violence offenders as part of police conditional cautioning, with results showing a significant effect in reducing crime harm from the treatments. Having regard to these findings, the issue of family violence case eligibility in an expanded model of police diversion remains an important and relevant consideration.

Research sub-question 4: What proportion of cases does not result in a criminal conviction and therefore potentially may be eligible for diversion?

Finding 4 – Low rate of conviction cases

Most cases do not receive a formal conviction at court

Analysis shows that in a 24 hour police station over 12 months, only 20% of cases prepared by police actually result in a formal conviction at court (Chapter 3, Figure 31, 32), largely due to a range of attrition factors.

According to state wide data of all cases proven in the Magistrates' Court (adults) in 2017 (Chapter 3, Figure 33), less than half of these cases (42%) resulted in a formal conviction. Conversely, more than half the cases proven (58%) received a 'non-conviction' disposition, being a finding of guilt, but not judged serious enough to warrant the court imposing a formal conviction.

Of the non-conviction cases proven in court, only 10% involved a disposition that required the offender to participate in any program, this being in the form of a community corrections order (Sentencing Advisory Council, 2018b). Nine out of ten non-conviction cases involved a 'passive' disposition in the form of being discharged, or a fine, or a good behaviour bond. This contrasts with outcomes for offenders under a model of police diversion such as

‘Turning Point’, where ‘active’ conditions are imposed under an offender contract, including referrals and restorative actions with victims. This challenges the perception that police diversion ‘lets off’ offenders lightly when compared to traditional court outcomes (Sandars, 1983, p.527).

Eligibility considerations

In regard to the high proportion of adult non-conviction cases (Figure 33), a central issue is whether a proportion of non-conviction cases could be converted to resolution under a model of police diversion. Although more than half of adult cases receive a non-conviction disposition, it is worth noting that these cases were not deemed appropriate for court diversion after consideration by police and court officials. This indicates that, although these cases may have received a low sentencing outcome, there was some aggravating factors justifying the case being excluded from court diversion, according to current conventions on eligibility.

Some factors that limit eligibility for both police and court diversion include the existence of prior convictions. In relation to court diversion cases, only 6% of offenders with prior convictions received court diversion (Chapter 3, Figure 28). Admissions and cooperation also limit eligibility, particularly where an offender provides a ‘no comment’ interview, denies the offence or is uncooperative with police. Cases that proceed to court that are contested or are subject to legal negotiations, resulting in charges being withdrawn, also limit diversion. Collectively these factors cast light on why a case may receive a non-conviction outcome, but may not ultimately be eligible for either police or court diversion. Despite these factors, the 38% rate of diversion in the UK provides an indication of the potential of police led diversion of offenders beyond the current Victorian rate of police diversion of 7%.

Opportunities for expanding police diversion of offenders

Effects of formal system processing

The central challenge in Victoria is the low rate of diversion overall along with a reducing rate of police diversion of child offenders. In this context it is therefore important to consider how formal system processing influences future offending. In the Campbell Collaboration systematic review conducted by Petrosino et al. (2010), the effects of formal system processing on juveniles were examined, clearly demonstrating that system processing is linked to subsequent delinquency. The Campbell Collaboration systematic review by Wilson et al. (2018), considered the effects of police led diversion and concluded that police led diversion reduces future delinquent behaviour, including reducing frequency and prevalence, of low-risk youth when compared to traditional processing. In addition, the study of child cautions in Victoria by Crime Statistics Agency (Shirley, 2017) identified the positive effects of police cautioning, finding young people cautioned by police were less likely to reoffend compared to those charged. It was also found that there was a longer duration between the index incident and the first reoffending incident for those who were cautioned. Although the reduction in child cautions does not appear to be a deliberate policy decision by Victoria Police, the declining rates of police child cautioning need to be addressed, having regard to the strong evidence and the criminogenic impact of such a trend.

Although the effects on future offending are not as strong for adult offenders, the evidence does provide support for adult diversion (Wilson et al., 2018). In conducting an evidence review of out of court disposals, Neyroud (2018) suggested that police diversion was effective compared to court prosecution, at reducing harm and reoffending and sustaining victim confidence and satisfaction. It was noted that this finding applies to young offenders, young adults and adults. It was also noted that police diversion resulted in 36% less harm

(Neyroud, 2018) as measured by the Cambridge Crime Harm Index (Sherman et al., 2016), when measured two years post arrest.

Wilson and Hoge (2013), in examining 45 studies, found that adult pre-charge diversion with conditions, had lower recidivism rates than judicial processing. Their analysis found slightly larger beneficial effects for pre-charge (police) diversion compared to post charge (court) diversion. The study by the Victorian Crime Statistics Agency (Coghlan et al., 2016) into adult drug diversion found a significant reduction in reoffending compared to the non-treatment group. It is suggested by the author, that this body of evidence presents a strong case, to not only address the reducing rates of police diversion, but for the expansion of police diversion of offenders in Victoria.

The heart of diversion – managing police discretion

An essential question is therefore how police diversion can be expanded in Victoria. The experience of Victoria Police in 2016 in conducting the ‘adult pre-charge diversion trial’ (Victoria Police, 2016) resulted in an ‘underwhelming’ rate of diversion of adult offenders, despite a broad eligibility criteria. There were also examples of questionable offences being diverted and inconsistent approaches to setting conditions. This however is not an isolated experience, with many examples of police diversion being applied inconsistently (Mott, 1983, Laycock and Tarling, 1985, Giller and Tutt, 1987, Sandars, 1988, Evans and Wilkinson, 1990). The use of police diversion has also identified potential risks in relation to ‘net-widening’ (Farrington and Bennett, 1981) and discriminatory practices with marginalised communities (Landau and Nathan, 1983). Dissatisfied victims have also been identified in the police diversion process (Slothower et al., 2015). It is consequently clear that the expansion of police diversion is not simply a policy issue, with police discretion, the management of

conditions, and victim engagement being critical success factors (Slothower et al., 2015, Neyroud, 2016; 2018).

Various approaches exist in relation to police discretion, ranging from relying entirely on the discretion of individual police officers, to strictly prescribing conditions through policy (Slothower, 2014). Utilising discretion can be subject to inequality based on bias and personal traits, enabling individual officers to determine outcomes rather than priorities set by organisational policy. On the other hand, the prescribed policy approach does not allow for the adaptation of individual circumstances (Slothower, 2014).

The use of an electronic eligibility screening tool in the ‘Turning Point’ trial (Slothower, 2014) shows great promise in bounding police discretion and creating organisational consistency. In ‘Turning Point’, police and the research team developed an electronic triage tool to filter the right cases and a prescribing tool for officers to design the best conditions. It was found that officers could deliver highly consistent decisions and conditions when supported by these tools (Slothower, 2014).

Police diversion also provides a promising approach to improving engagement with victims (Slothower et al., 2015). It was shown that discretion alone produced inconsistent decisions and even with training, it was not enough to improve victim satisfaction. When a combination of training, tracking and feedback to officers and supervisors was implemented, victim satisfaction and perceptions of police legitimacy was increased (Slothower et al. 2015; Mazerolle et al., 2013). Overall, despite how compelling the case for change may be, “street level bureaucrats” (Lipsky 2010. p.8) such as frontline police, will not necessarily implement policy change as intended. If the low rate of police diversion in Victoria is to be addressed,

policy change alone will be insufficient and managing and supporting a model of police discretion and decision making will be a critical factor.

‘Turning Point’ - a model of police diversion

The ‘Turning Point’ trial involved using such tools, whilst also providing an example of an expanded model of police diversion (Neyroud and Slothower, 2012, 2013). Offenders would meet with specialist officers within 48 hours of being processed, where factors relevant to the offending were identified. Offender contracts were negotiated between the offender and the specialist officer, which included rehabilitative, restorative or punitive conditions. As a form of desistance, the offender was placed on a ‘deferred prosecution’ over four months, with the police officer making contact with the offender mid-way, and again at the conclusion of the process. Police diversion risks being too lenient to deter offenders if they perceive they are not held responsible (Wilson et al., 2018) and this is why the administration of the diversion and the contract that is set, along with oversight of that process to the end, are so critical.

If the low rate of police diversion in Victoria is to be addressed, not only does ‘Turning Point’ provide a worthy model for consideration, but it also provides a promising way of addressing some of the traditional risks associated with police diversion. If successful, this approach could make offender desistance, rather than prosecution (Sherman and Neyroud, 2012), the principal focus of dealing with low harm offending, whilst creating greater capacity for the courts to deal with high harm offenders.

Cost benefit – police

If such a significant reform is to be considered, the issue of cost benefit is highly relevant. Not only are courts experiencing significant case load pressure, in July 2017 almost one in three prisoners (32%) in Victoria were unsentenced and on remand. Multiple new prisons have been built with more planned, with prisoner numbers having increased by 71% over the

last ten years (Justice and Regulation, 2018). Economic limits alone mandate that we must find more cost effective ways in dealing with offenders rather than by increasing the use of prison (Sherman and Neyroud, 2012). The joint Criminal Justice Inspectorate (CJJI, 2011) acknowledged that out of court disposals cost less than traditional court processing. Studies have shown that police diversion may create operational time efficiencies for police and provide a 45% reduction in police costs alone (Neyroud, 2018). Neyroud and Slothower (2012; 2013) have suggested that there is significant evidence that well designed and implemented diversionary approaches, may be cost-effective.

Police diversion offers the prospects of operational time savings, principally from reduced offender processing requirements, reduced police attendance at court and reduced case demands on police prosecutors. Conversely, if specialist police officers are used in setting diversion contracts with offenders, there may be further demands on police resourcing. It is important to understand what that additional demand would practically equate to. Analysis shows that at a 24 hour police station over 12 months (Chapter 3, Table 10), there were 104 diversion cases undertaken (police diversion n=36, court diversion n=67). If 100% of court diversion cases were converted to police diversion, this would translate to an average of two offenders per week (104 offenders over 52 weeks) required to meet with a specialist police officer. This suggests that the use of specialist officers appears to be feasible and would most likely be offset by the efficiency created for frontline officers, in reduced formal system processing.

From a broader government perspective, when a case is directed to court, a range of agency services are activated, primarily impacting courts, legal aid and corrections. Using the Magistrates' Court as an example, in 2016/17, the average cost of a criminal case (CSV,

2017) was \$647 per case. In 2016/17 there were 7,265 adult court diversion cases in the Magistrates' Court that police supported. If these cases alone were removed from the criminal justice system, the cost saving would equate to \$4,700,455. Although this represents a basic theoretical cost calculation, it does indicate the potential for court cost savings in an expanded model of police diversion.

This does not consider the possibility of new technology such as body worn cameras enabling police diversion of the lowest risk offenders to be dealt with by a 'street resolution' (Neyroud, 2018). Given the increasing cost pressure being placed on the criminal justice system, the potential cost benefit of police diversion is a relevant consideration for government. Petrosino et al. (2010) makes the point that given police diversion may be cheaper than court processing, policy makers need to consider, even if there is a net re-offending gain of zero, police diversion is favoured in a cost-benefit analysis.

Policy Implications

The true rate of diversion has not been known until this study and will be a concern to a range of justice agencies. From a policy perspective, it represents an opportunity for a radical rethink of how we deal with low harm offenders in the criminal justice system. Increased formal system processing of child offenders runs directly contrary to the strong evidence. It has been shown to increase delinquency across all measures and is a criminogenic policy requiring urgent attention. The reducing rate of both police and court diversion of adults also requires addressing. The lack of celerity in court diversion presents a challenge in itself and needs to be rectified. An expanded model of police diversion raises the issue of how police and court diversion can be reconciled. The current dual model raises the issue of how existing court diversion referral pathways might possibly be shared between courts and police, particularly at a rural level where limited services exist.

Testing police diversion in an evidence based way to determine ‘what works’ (Sherman, 1998; 2013) will be essential in order to empirically measure outcomes. Consideration should be given to partnering with academia and the Victorian Behavioural Insights Unit to design and implement a randomised control trial to test a new model of police diversion. Important outcome measures include recidivism rates, time to resolution, victim satisfaction and agency cost benefit.

The projected increase in offenders charged will put unprecedented pressure on the criminal justice system. This presents a generational opportunity for policy makers to work across government to develop an expanded model of police-led diversion; holding offenders to account, reducing delay, providing meaningful outcomes for offenders and victims, reducing the burden on police and courts and allowing the criminal justice system to focus on high harm offenders.

Limitations

It is acknowledged that international rates of diversion are calculated differently, and this limits the extent to which rates can be directly compared. The 10 year trend data did not delineate between bail and remand cases and it is acknowledged this would have provided further insights if those categories were separate.

Limitations exist in relation to the case characteristics data. The specified police station and court may have practices that limit the extent to which the analysis can be generalizable. In relation to court diversion case data, it was necessary to source case data from two sites, namely the specified 24 hour police station, and supplemented with additional cases from the Melbourne Magistrates’ Court in order to generate a sufficient sample size. This data does not reflect exclusively on the specified police station. No findings were made in relation to

court diversion of child offenders within the case characteristics data due to the low sample size and its recent implementation. The court diversion findings reflect adult diversion rather than the relatively new process of Children's Court diversion.

Future projections of diversion and offenders charged are only indicative, in that they are based on past trends over specified periods. The limitations of such statistical forecasting is that they can generally not predict systematic changes from established patterns and this is why judgemental factors are complementary to quantitative ones (Makridakis, 1986). Cost benefit estimates are purely theoretical and indicative.

Finally, this study has relied primarily on the inadequate measure of frequency of crimes and diversions, in which all cases are counted equally. Treating cases of such disparate weight with equal seriousness is unrealistic and a crude indicator of the amount of harm caused. Serious consideration must be given to the development of a crime harm index in Victoria (Sherman et al., 2016), and certainly not limited in application to diversion, but as an indicator for community safety in general.

Conclusion

This study of diversion in Victoria provides an evidenced based descriptive analysis of the ‘ecology’ of diversion in this State, in order to inform the opportunities for the expansion of police diversion of offenders. It provides a holistic view, not only police diversion, but the system in which it operates. This analysis has not previously been undertaken and this thesis fills that knowledge gap. This study is also timely, as Victoria Police currently considers how enhancements may be made to police diversion in the future.

This thesis has highlighted the concerning trend that the overall rate of diversion in Victoria is reducing, has done so in seven of the last nine years and is half the rate it was a decade ago. Further, police diversion of both adult and child streams have reduced by over 40% in the last decade. The Victorian rate of adult police diversion is low compared to international levels, with only 4% of adult offenders being diverted. In relation to child offenders, the reducing rate of police diversion is particularly concerning.

What can’t be ignored is that this trend runs contrary to the strong and growing body evidence (Petrosino et al. 2010; Wilson et al. 20018; Neyroud 2018) that suggests compared to court prosecution, police diversion, whether with conditions or without, is effective at reducing harm, reducing reoffending and sustaining victim confidence and satisfaction. This is particularly so for child offenders although it is suggested that it also applies to young adults and adults as well. Although the current trend may not be driven by a deliberate policy decision, the criminogenic effects cannot be ignored.

What is further concerning is the evidence that suggests a ‘hardening’ in the way in which police dispose of child offenders. This includes the number of police child cautions reducing by half and one out of two child offenders being subject to bail or remand process. This

‘hardening’ is inconsistent with sentencing analysis which shows that child offenders being formally sentenced in the Children’s Court has reduced by 43% (Sentencing Advisory Council, 2018a).

There also appears to be a ‘hardening’ of the disposal of adults with the proportional increase in the use of bail and the reduced rate of police (42%) and court diversion (50%). Further, one in three offenders who receive a court diversion, are placed on bail by police, despite these cases being the least serious in the court system. It is suggested the ‘hardening’ of the disposal of offenders generally is potentially an unintended symptom of a ‘tough on crime’ environment, where the use of police discretion for low level offending has been eroded.

The main concern with court diversion cases is the inordinate amount of time they take to resolve, with the entire process on average taking 375 days and cases having on average four hearings. We must confront the myth that delay in criminal justice processing is harmless.

More than half of the cases found proven at court receive a ‘non-conviction’ finding of guilt, indicating the potential for diverting less serious cases from the court system. In regards to the ‘non-conviction’ cases, 90% of these do not require specific action on behalf of the offender. This contrasts with a model of conditional police cautioning, where diversion is implemented within 48 to 96 hours and offenders have to agree to ‘active’ conditions, as part of an ‘offender contract’.

An expanded model of police diversion presents the potential for government cost benefits, where low level offenders are dealt with by police processes, avoiding the activation of multiple agency case load costs. Putting aside the potential crime control effects, police diversion presents a strong case for cost benefits across the criminal justice system, at a time when it will be under unprecedented case demand and cost pressure.

The opportunity for police diversion of offenders is to not only increase the rate, but to enhance the process itself, with a model of ‘offender desistance policing’. This approach incorporates swift and certain sanctions for low harm cases, deterring offenders from committing crime and encouraging desistance. ‘Offender contracts’ agreed to by offenders and police, bring greater certainty into the process. The threat of a ‘deferred prosecution’ creates desistance by holding the ‘Sword of Damocles’ over offenders. Specialist police bring swift resolutions to cases and celerity in delivering diversion plans. The commitment by the Victorian Government to diversion (CSS, 2017, 2018) and the funding of specialist youth officers, presents an opportunity to engage youth offenders more effectively in an expanded model of police diversion. At the same time, policy makers need to be conscious and realistic as to the risks associated with police diversion and implement evidence based strategies to manage and guide police discretion, create consistency in setting conditions and facilitate legitimate engagement with victims.

Lösel (1998; 2007) has suggested it is never too late or too early to encourage desistance in offenders and an expanded model of police diversion in Victoria presents that very opportunity. If successful, this approach could make offender desistance, rather than prosecution (Sherman and Neyroud, 2012), the principal focus of dealing with low harm offending, whilst creating greater capacity for the police and courts to deal with high harm offenders. Advancing police diversion in a ‘tough on crime’ environment may have its challenges, but we also need to be reminded that too much pessimism in managing criminal offenders is as dangerous as too much optimism (Lösel, 2007).

References

- Abramowitz, A.J. and O'Leary, S.G., (1990). Effectiveness of delayed punishment in an applied setting. *Behaviour Therapy*, 21(2), pp.231-239.
- Apel, R. and Nagin, D. S. (2011). 'General Deterrence' In Torny, M. (ed) *The Oxford Handbook of Crime and Criminal Justice: 179--206*, Oxford University Press.
- Australian Bureau of Statistics, (2018). Population projections Australia 2017. Retrieved on 5th December, 2018 from:
<http://www.abs.gov.au/ausstats/abs@.nsf/0/5A9C0859C5F50C30CA25718C0015182F?OpenDocument>
- Beccaria, C. (1767). 'An essay on crimes and punishments'. London: Printed for J. Almon, opposite Burlington House, Piccadilly. 1767.
- Becker, H. (1983). *Outsiders: Studies in the sociology of deviance*. New York: Free Press.
- Bentham, J. (1789). '*An introduction to the principles of morals and legislation*' London: T. Payne.
- Bernburg, J.G., Krohn, M.D. and Rivera, C.J., (2006). Official labeling, criminal embeddedness, and subsequent delinquency: A longitudinal test of labeling theory. *Journal of Research in Crime and Delinquency*, 43(1), pp.67-88.
- Binder, A. and Geis, G. (1984). Ad populum argumentation in criminology: Juvenile diversion as rhetoric. *Crime and Delinquency* 15, 109-123.
- Blank, Helen, Guido Biele, Hauke R. Heekeren, and Marios G. (2013). "Temporal Characteristics of the Influence of Punishment on Perceptual Decision Making in the Human Brain." *The Journal of Neuroscience* 33: 3939-3952.
- Bongers, I. L. Koot, H. M. van der Endie, J. and Verhulst, F. C. (2003). The normative development of child and adolescent problem behaviour. *Journal of Abnormal Psychology*, 112(2), 197-192.

Bottoms, A. and Shapland, J. (2011). Steps Towards Desistance Amongst Male Young Adult Recidivists. In Farrall, S., Sparks, R., Hough, M. and Maruna, S. (Eds.) *Escape Routes: Contemporary Perspectives on Life After Punishment*. London, UK: Routledge.

Bottoms, A. and Von Hirsch, A. (2012). 'The crime prevention impact of penal sanctions' IN Carne, P and Krtizer, H. M. (eds) *The Oxford Handbook of Empirical Legal Research*: Oxford , Oxford University Press.

Braga, A.A. and Weisburd, D.L. (2012). 'The Effects of "Pulling Leavers" Focused Deterrence Strategies on Crime' *Campbell Systematic Reviews* 2012:6.

Brown, W.K., T.P. Miller, R.L. and R. Jenkins (1987). "The favourable effect of juvenile court adjudication of delinquent youth on the first contact with the juvenile justice system, " *Juvenile and Family Court Journal* 38, p. 21-26.

Brown, W.K., T.P. Miller, R.L., R. Jenkins, and W.A. Rhodes, (1989). "The effect of early juvenile court adjudication on adult outcome," *International Journal of Offender Therapy and Comparative Criminology* 33, 3, p. 177-183.

Children's Court of Victoria, (2018). Youth Diversion Pilot Program. Retrieved on 27th November, 2018 from: <https://www.childrenscourt.vic.gov.au/youth-diversion-pilot-program>

Coghlan, S., Sutherland, P. and Millstead, M. (2016). Evaluation of the Victoria Police Drug Diversion and Cannabis Cautioning Programs: Final Report. Melbourne: CSA.

Cohen S (1972) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, Martin Robertson, Oxford.

Collins J, Noble G, Poynting S, and Tabar P, (2000) *Kebabs, Kids, Cops and Crime: Youth, Ethnicity and Crime*, Pluto Press, Sydney.

Court Services Victoria, (2017). Annual reports. Retrieved on 28th November, 2018 from: <https://www.courts.vic.gov.au/news/csv-annual-report-2016-17-transformation-through-innovation>

Cressey, D. (1952). Application and verification of differential association theory. *Journal of Criminal Law, Criminology and Police Science.*, 43.

Crime Statistics Agency, (2018). Family violence data portal. Retrieved on 5th December, 2018 from: <https://www.crimestatistics.vic.gov.au/family-violence-data-portal>

Criminal Justice Joint Inspectorate (2011). *Exercising discretion: the Gateway to Justice*. London: Criminal Justice Joint Inspectorates.

Deater-Deckard, K., Lansford, J.E., Dodge, K.A., Pettit, G.S. and Bates, J.E., (2003). The development of attitudes about physical punishment: An 8-year longitudinal study. *Journal of Family Psychology*, 17(3), p.351.

Durlauf, S. and Nagin, D. (2011). Imprisonment and Crime: Can both be reduced? *Criminology and Public Policy*, 19,1, 13-54.

Elliot, D. S., Ageton, S., Huizinga, D., Knowles, B. A., and Canter, R. J., (1983). *The prevalence and incidence of delinquent behaviour: 1976-1980*. Boulder, Colorado: Behavioural Research Institute.

Evans, R. and Wilkinson, C., (1990). Variations in police cautioning policy and practice in England and Wales. *The Howard Journal of Criminal Justice*, 29(3), pp.155-176.

Farrall, S. (2002). *Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime*. Cullompton, DeVon: Willan Publishing.

Farrington, D., and Bennett, T., (1981). Police cautioning of juveniles in London. *British Journal of Criminology*. 21, 2. 123-135.

Fitzroy Legal Service, (2018). Reform needed to ensure equal access to vital diversion programs. Retrieved on 6th December, 2018 from: https://www.fitzroy-legal.org.au/diversion_reform_letter

Gadd D. (2006). 'The Role of Recognition in the Desistance Process', *Theoretical Criminology*, vol. 10 (pg. 179-202).

Gibbs, J.P., (1975). *Crime, punishment, and deterrence* (p. 58). New York: Elsevier.

Giller, H. and Tutt, N. (1987). Police cautioning of juveniles: the continuing practice of diversity. *Criminal Law Review*, June, 367-374.

Glueck, S. and Glueck, E. (1974). *Of Delinquency and Crime*. Springfield, IL: Charles C. Thomas.

Gottfredson, M., and Hirschi, T., (1990). *A general theory of crime*. Stanford, CA: Stanford University Press.

Grogger, J., (1991). Certainty vs. severity of punishment. *Economic Inquiry*, 29(2), pp.297-309.

Hawken, A. (2011). "HOPE for Probation: How Hawaii Improved Behavior with High-Probability, Low-Severity Sanctions." *Journal of Global Drug Policy and Practice* 4(3): 1-5.

House of Commons Debates, (1951) Volume 483, 29 (quote of Hartley Shawcross).

Jolis, C., Sunstein, C.R., and Thaler, R. (1998). 'A Behavioural Approach to Law and Economics'. *Stanford Law Review*, 50: 1471---1550.

Jordan, L. and Farrell, J., (2013). Juvenile justice diversion in Victoria: A blank canvas?. *Current Issues in Criminal Justice*, 24(3), pp.419-437.

Justice and Regulation, (2018). Prison population statistics. Retrieved on 27th November, 2018 from:

<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>

Kahneman, D. and Tversky, A. (1979). 'Prospect Theory: An Analysis of Decision under risk'. *Econometrica*, 47(2): 49---63.

Kleiman, M. (2009). *When Brute Force Fails, How to Have Less Crime and Less Punishment*. Princeton, NJ: Princeton University Press.

Landau, S.F. and Nathan, G., (1983). Selecting delinquents for cautioning in the London metropolitan area. *The British Journal of Criminology*, 23(2), pp.128-149.

Laub, J. H. Sampson, R. J. (1993). "Turning points in the life course: Why change matters to the study of crime." *Criminology* 31: 301.

Laycock, G. and Tarling, R., (1985). Police Force Cautioning: Policy and Practice 1. *The Howard Journal of Criminal Justice*, 24(2), pp.81-92.

Laycock, G. and Mallender, J. (2015). 'Right method, right price; the economic value and associated risks of experimentation'. *Journal of Experimental Criminology* 11(4): 1---16.

Library of Congress, (2010). Respectfully quoted: A dictionary of quotations, 183 (citing Laurence J. P, Peter's Quotations 276 (1977) (attributing the maxim's origin to William E. Gladstone).

Lipsey, M. (2009). The Primary factors that characterise Effective Interventions with Juvenile Offenders: A Meta-Analytic Review. *Victims and Offenders*, 4, 124-147.

Lipsky, M., (2010). *Street-level bureaucracy, 30th ann. Ed.: dilemmas of the individual in public service*. Russell Sage Foundation.

Lösel, F. (1998). Treatment and management of psychopaths. In D. J. Cooke, A. E. Forth, and R. Hare (Eds.), *Psychopathy: Theory research and implications for society* (pp. 303-354. Dordrecht, NL: Kluwer.

Loesel, F. (2007), It's never too early and never too late: towards an integrated science of developmental intervention in criminology. *The Criminologist* 32 (5): 1-8.

Magistrates' Court Victoria, (2017). Criminal Justice Diversion Program. Retrieved on 27th November, 2018 from: <https://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program>

Makridakis, S., (1986). The art and science of forecasting An assessment and future directions. *International Journal of Forecasting*, 2(1), pp.15-39.

Maruna, S. and Farrall, S., (2004). *Desistance from crime: A theoretical reformulation*.

McAra, L. and McVie, S., (2007). Youth justice? The impact of system contact on patterns of desistance from offending. *European journal of criminology*, 4(3), pp.315-345.

Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2013). Legitimacy in policing: A systematic review. *Campbell Systematic Reviews*, 9.
<http://www.campbellcollaboration.org/lib/project/141/>

Ministry of Justice (2017). Youth Justice Statistics 2016/17: England and Wales.
London:Ministry of Justice.

Ministry of Justice, (2018). Youth Justice Indicators, Summary Report April 2018. Retrieved on 30th November, 2018 from:

<https://www.justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-201804.pdf>

Moffit, T. E. (1993). Adolescence limited and life course persistent anti-social behaviour. A developmental taxonomy. *Psychological Review*, 100(4). 674-701.

Mott, J., (1983). Police decisions for dealing with juvenile offenders. *The British Journal of Criminology*, 23(3), pp.249-262.

Nagin, D. S. (1998). Criminal Deterrence Research: A review of the research and a research agenda for the outset of the 21st century. In: Torney, M. (ed) *Crime and Justice: An annual review of research*. University of Chicago Press, Chicago.

Nagin, D. S. (2013). 'Deterrence in the twenty first century', in M. Torney (ed) *Crime and Justice: A review of research, Vol 42*, Chicago: University of Chicago Press, pp. 199-263.

Nagin, D.S., Solow, R.M. and Lum, C. (2015). Deterrence, Criminal Opportunities and Police. *Criminology*, 53: 74–100.

National Centre for Juvenile Justice, (2008). Retrieved on 1st Decemer, 2018 from:
<http://www.ncjj.org/Publication/Juvenile-Court-Statistics-2008.aspx>

Neyroud, P.W. and Slothower, M. (2012) 'Operation Turning Point: the first interim report', [Unpublished report, Cambridge: Institute of Criminology].

Neyroud, P.W. and Slothower, M. (2013) 'Operation Turning Point: the second interim report', [Unpublished report, Cambridge: Institute of Criminology].

Neyroud, P.W. and Slothower, M.P. (2015), 'Wielding the Sword of Damocles: The Challenges and Opportunities in Reforming Police Out-of-Court Disposals in England and Wales', In Wasik, M. and Santatzoglou, S. (Eds.) *The Management of Change of Criminal Justice: Who knows best?* Basingstoke: Palgrave MacMillan, pp. 275-293.

Neyroud P. W., (2016). The ethics of field testing: the police professionalism and researching the police. In *Research Ethics in Criminology* (pp. 89-106). Routledge.

Neyroud, P.W., (2017). Learning to Field Test in Policing: Using an analysis of completed randomised controlled trials involving the police to develop a grounded theory on the factors contributing to high levels of treatment integrity in Police Field Experiments (Doctoral dissertation, University of Cambridge).

Neyroud P. W., (2018). Out of Court Disposals managed by the Police: a review of the evidence. Commissioned by the National Police Chief's Council of England and Wales. University of Cambridge.

Office of Public Prosecutions, (2018). Director of Public Prosecutions, Prosecutorial Guidelines. Downloaded on 27th November, 2018 from: <http://www.opp.vic.gov.au/Resources/Policies>.

Paternoster, R. and Bushway, S. (2010). Desistance and the “Feared Self”: Towards and Identity Theory of Criminal Desistance. *Criminology* 99(4): 1103-1156.

Petrosino, A., Turpin-Petrosino, C. and Guckenburg, S. (2010). *Formal System Processing of Juveniles: effects on delinquency*, Campbell Collaboration (Crime and Justice) Systematic Review. Retrieved 27th April 2018 from <https://www.campbellcollaboration.org/library>

Piquero, A. R., and Pogarsky, G. (2002). Beyond Stafford and Warr's reconceptualization of deterrence: Personal and vicarious experiences, impulsivity, and offending behaviour. *Journal of Research in Crime and Delinquency*, 39, 153–186.

Polk, K. (1984). Juvenile Diversion: A look at the record. *Crime and Delinquency*, 30 648-659.

Pratt, T.C. and Turanovic, J.J., (2018). Celerity and deterrence. In *Deterrence, Choice, and Crime, Volume 23* (pp. 197-220). Routledge.

Rindfuss, R.R., Swicegood, C.G. and Rosenfeld, R.A., (1987). Disorder in the life course: How common and does it matter?. *American sociological review*, pp.785-801.

Routledge, G. (2015). A protocol and experimental trial: The Checkpoint Desistance Program in Durham. Thesis submitted in part fulfilment of the requirement for the Master's Degree in Applied Criminology and Police Management. Retrieved on 12 July 2018 from: <http://www.crim.cam.ac.uk/courses/police>

Royal Commission Family Violence, (2016). Report and recommendations. Retrieved on 27th November, 2018 from: <http://www.rcfv.com.au/Report-Recommendations>

Sampson, R.J. and Laub, J.H., (1990). Crime and deviance over the life course: The salience of adult social bonds. *American sociological review*, pp.609-627.

Sampson, R. J. and J. H. Laub (1993). *Crime in the making: pathways and turning points through life*. Harvard: Harvard University Press.

Sampson, R.J. and Laub, J.H., (1997). A life-course theory of cumulative disadvantage and the stability of delinquency. *Developmental theories of crime and delinquency*, 7, pp.133-161.

Sampson, R. J. and J. H. Laub (2003). Life-course desisters? trajectories of crime among delinquent boys followed to age 70. *Criminology* 41, 555–592.

Sandars, A. (1988). The Limits to diversion from prosecution. *British Journal of Criminology*, 28,4, 513-532.

Sentencing Advisory Council, (2018a). Children and young offenders. Retrieved on 28th November, 2018 from: <https://www.sentencingcouncil.vic.gov.au/projects/children-and-young-offenders>

Sentencing Advisory Council, (2018b). Community Correction Order. Retrieved on 11th December, 2018 from: <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-options-for-adults/community-correction-order>

Sercombe H (1999) 'Boots, Gangs and Addictions: Youth Subcultures and the Media' in White R (ed) *Australian Youth Subcultures: On the Margins and in the Mainstream*, Australian Clearinghouse for Youth Studies, Hobart.

Schur, E.M. and Maher, V., (1973). Radical nonintervention: *Rethinking the delinquency problem*. Englewood Cliffs, NJ: Prentice-Hall.

Scott, E., King, B., Saravanan, S., De Witt, D., (2018). Justice Diverted? Prosecutorial discretion and the use of diversion schemes in Victoria. Rights Advocacy Project, Liberty Victoria. Retrieved on 10 July 2018 from

<http://libertyvic.rightsadvocacy.org.au/event/justice-diverted-prosecutorial-discretion-use-diversion-schemes-victoria/>

Sherman, L.W., (1998). Ideas in American Policing. Policing.

Sherman, L.W., Strang, H., Barnes, G., Bennett, S., Angel, C.M., Newbury-Birch, D., Woods, D.J. and Gill, C.E., (2007). Restorative justice: The evidence.

Sherman, L. W. and Neyroun, P. W. (2012). *Offender desistance policing and the sword of Damocles* (London: Civitas).

Sherman, L.W., (2013). The rise of evidence-based policing: Targeting, testing, and tracking. *Crime and justice*, 42(1), pp.377-451.

Sherman, L., Neyroun, P.W. and Neyroun, E., (2016). The Cambridge Crime Harm Index: measuring total harm from crime based on sentencing guidelines. *Policing: A Journal of Policy and Practice*, 10(3), pp.171-183.

Shirley, K. (2017). The Cautious Approach: Police cautions and the impact of youth reoffending. Final Report. Melbourne: CSA. Retrieved on 4 July 2018 from:

<https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/youth-crime/the-cautious-approach-police-cautions>

Simpson, B (1997) 'Youth Crime, the Media and Moral Panic' in Bessant J and Hil R (eds) *Youth, Crime and the Media*, Australian Clearing House for Youth Studies, Hobart.

Slothower, M. P., (2014). 'Strengthening Police Professionalism with Decision Support: Bounded discretion in Out of Court Disposals', *Policing*, 8(4): 353-367.

Slothower, M., Sherman, L.W. and Neyroun, P., (2015). Tracking quality of police actions in a victim contact program: A case study of training, tracking, and feedback (TTF) in evidence-based policing. *International Criminal Justice Review*, 25(1), pp.98-116.

Sosa, K. (2012). *Proceed with caution: use of out of court disposals in England and Wales*. London: Police Exchange.

Strang, H. and Sherman, L.W., (2003). Repairing the harm: Victims and restorative justice. *Utah L. Rev.*, p.15.

Strang, H., Sherman, L.W., Mayo-Wilson, E., Woods, D., Ariel, B., ((2013). Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of. A Systematic Review. Campbell Systematic Reviews, 12.

Strang, H.S, Sherman, L.W., Ariel, B.A., Chilton, S., Braddock, R., Rowlinson, T., Cornelius, N., Jarman, R. and Weinborn, C. (2017) Reducing the Harm of Intimate Partner Violence: Randomised Controlled Trial of the Hampshire Constabulary CARA Experiment. Cambridge Journal of Evidence-based Policing, 1, 2-3, 160-172.

Steer, D., (1970). *Police cautions: A study in the exercise of police discretion*. Oxford: Blackwells.

Sutherland, E. H. (1939). *Principles of Criminology*, Third Edition. Lippincott.

Sutherland, E. (1974). *Criminology* (9th ed.) New York: Lipincott.

Tonry, M. (2008). “Learning from the Limitations of Deterrence in Research.” *In Crime and Justice: A Review of Research*, vol 37, ed. Michael Tonry. Chicago: University of Chicago Press.

Tremblay, R. E. and Nagin, D. S. (2005). The developmental origins of physical aggression in humans. In R. E. Tremblay, W. H Hartup and J. Archer (Eds.), *Developmental origins of aggression* (pp. 83-116). New York, NY: Guilford.

Tyler, T. R., Fagan, J. A., and Geller, A. (2014). “Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men”’s Legal Socialization’’, *Journal of Empirical Legal Studies*, 11(4), 751-785.

Ulmer, J. T. and Steffensmeier, D. (2014). The age crime relationship: Social variation, social explanations. In K. M. Beaver, J. C. Barnes and B. B. Boutwell (Eds.), *The nurture versus the biosocial debate in criminology: On the origins of criminal behaviour and criminality* (pp377-396). Thousand Oaks, CA; SAGE.

Victoria Police, (2012). 2011/12 Victoria Police Annual Report. Downloaded on 1st December, 2018 from: https://www.parliament.vic.gov.au/file_uploads/VicPolice2011-12_1Wj6sWrx.pdf

Victoria Police, (2016). Diversion Alignment Project, Evaluation of adult pre charge diversion pilot. Legal Services Department. 1st November 2016.

Victoria Police, (2018). Policy and Procedures. Retrieved on 27th November, 2018 from: https://www.police.vic.gov.au/content.asp?Document_ID=30299

Victorian Government, (2017). Community Safety Statement 2017. Retrieved on 27th November, 2018 from: https://communitysafety.vic.gov.au/media/1072/djr001_g_css01_lr.pdf

Victorian Government, (2018). Community Safety Statement 2018. Retrieved on 27th November, 2018 from: <https://communitysafety.vic.gov.au/>

Walters, G.D. (2017). Change in the Perceived Certainty of Punishment as an Inhibitor of Post-Juvenile Offending in Serious Delinquents: *Deterrence at the Adult Transition. Crime and Delinquency*, Online First, 1-20.

Westmarland, N., Johnson, K. and McGlynn, C., (2017). Under the Radar: The Widespread use of ‘Out of Court Resolutions’ in Policing Domestic Violence and Abuse in the United Kingdom. *The British Journal of Criminology*, 58(1), pp.1-16.

Wilson, D B., Brennan, I, Olaghere A., (2018). Police-initiated diversion for youth to prevent future delinquent behaviour: A systematic review. *Campbell Systematic Reviews* 2018:5 Retrieved on 7th June 2018 from: <https://doi.org/10.4073/csr.2018.5>

Wilson, H.A., and Hoge, R.D., (2013). The effect of youth diversion programs on recidivism: A meta-analytic review. *Criminal Justice and Behaviour*, 40(5), 497–518.

Statutes

Children, Youth and Families Act, (2005). Victoria.

Criminal Procedure Act, (2009). Victoria.

Appendices

Appendix 1 – Adult – police and court diversion

Adult - police and court diversion	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Adult court diversion	7,710	7,280	6,963	6,260	5,932	6,584	7,078	7,286	6,872	7,265
Police shop steal cautions	2,242	849	599	400	345	306	238	1,307	1,303	1,341
Police cannabis cautions	1,745	1,859	2,112	2,170	2,393	2,462	2,489	2,895	2,346	2,491
Police illicit drug diversion	646	746	761	717	1,081	1,443	1,260	1,412	1,212	1,227
Total adult police diversion	4,633	3,454	3,472	3,287	3,819	4,211	3,987	5,614	4,861	5,059

Appendix 2 – Adult – offenders charged

Magistrates' Court - adult	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Summons cases	45,737	60,119	54,183	50,371	64,536	72,066	76,455	80,963	77,197	84,814
Bail cases	18,717	32,606	29,239	19,377	24,857	28,255	29,977	34,341	37,732	40,890
Overall Magistrates' Court cases - adult	64,454	92,725	83,422	69,748	89,393	100,321	106,432	115,304	114,929	125,704

Appendix 3 – Child – police and court diversion

Child - police and court diversion	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Children's Court diversion	0	0	0	0	0	0	0	25	763	1,220
Police cannabis cautions	207	233	326	306	356	370	390	413	393	374
Police illicit drug diversion	24	29	34	26	35	50	33	56	39	71
Police child cautions	9,524	9,501	8,921	7,483	6,295	5,495	4,830	4,303	3,908	4,176

Appendix 4 – Child – offenders charged

Offenders charged - Children's Court	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Summons cases	4,664	6,531	6,048	4,629	5,441	5,027	4,742	4,671	4,662	4,936
Bail cases	2,943	3,698	3,891	3,409	3,653	3,780	3,774	4,555	4,485	4,544
Overall Magistrates' Court cases - child	7,607	10,229	9,939	8,038	9,094	8,807	8,516	9,226	9,147	9,480

Appendix 5 - Projections – offenders charged

Growth rate - offenders charged	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Magistrates' Court cases	64,454	92,725	83,422	69,748	89,393	100,321	106,432	115,304	114,929	125,704
Children's Court cases	7,607	10,229	9,939	8,038	9,094	8,807	8,516	9,226	9,147	9,480
Annual % change										
Magistrates' Court cases		43.9%	-10.0%	-16.4%	28.2%	12.2%	6.1%	8.3%	-0.3%	9.4%
Children's Court cases		34.5%	-2.8%	-19.1%	13.1%	-3.2%	-3.3%	8.3%	-0.9%	3.6%
Average growth 6 year mean										
Magistrates' Court cases										10.6%
Children's Court cases										3.0%

Appendix 6 – Offender characteristics

OFFENDER CHARACTERISTICS (number of offenders)	Diversion cases	Non-diversion cases	Non-conviction cases	Conviction cases
Total	159	355	140	215
Gender				
Male	101	273	101	172
Female	58	82	39	43
Adult / Child				
Adult	148	320	116	204
Child	11	35	24	11
Adult Gender				
Male	94	248	85	163
Female	54	72	31	41
Child Gender				
Male	7	25	16	9
Female	4	10	8	2
Child age brackets				
10-13	0	1	1	0
14-17	11	34	23	11
Adult age brackets				
18-24	44	67	33	34
25-34	51	92	30	62
35-49	27	134	40	94
50+	26	27	13	14
Prior convictions				
Priors	9	264	84	180
No priors	150	91	56	35

Appendix 7 – Offending characteristics

OFFENDING CHARACTERISTICS (number of offenders)	Diversion cases	Non-diversion cases	Non-conviction cases	Conviction cases
Total	159	355	140	215
Family violence				
FV	19	82	33	49
Non FV	140	273	107	166
Bail				
Bail	57	235	84	151
Summons	102	120	56	64
Offence seriousness				
Indictable offence	95	286	109	177
Summary offence	64	69	31	38

Appendix 8 – Court diversion and non- diversion timelines

TIMELINE (average days)	Diversion cases	Non-diversion cases	Non-conviction cases	Conviction cases
Offence to police process date	37.44	41.25	41.85	40.85
Police process to first court date	133.75	99.49	103.14	97.12
First court to final court date	159.94	150.28	129.56	163.77
Number of adjournments (no.)	3.01	3.72	3.31	3.99
Police process to final court date	293.69	249.77	232.70	260.89
Final court to diversion completion	43.57	N/A	N/A	N/A
Police process to diversion completion	338.61	N/A	N/A	N/A

Appendix 9 – Court Diversion timelines – by offence characteristic

TIMELINE (average days)	Summary or Indictable		Bail or Summons		Family violence	
	Indictable	Summary	Bail	Summons	FV	Non FV
Offence to police process date	36.28	50.92	24.61	60.41	43.97	39.11
Police process to first court date	105.72	122.59	85.48	142.45	98.07	113.03
First court to final court date	148.85	165.92	148.72	159.25	156.18	152.56
Number of adjournments (no.)	3.59	3.26	3.65	3.31	3.68	3.46
Police process to final court date	254.57	288.52	234.21	301.70	254.25	265.59
Final court to diversion completion	53.02	29.69	45.55	42.48	81.74	38.35
Police process to diversion completion	325.70	357.56	309.73	354.46	394.53	330.96