

The impact of COVID-19 on young people in the criminal justice system

Nicholas Chan

AIM

To measure the impact of the COVID-19 pandemic on the interactions of young people with the criminal justice system and the youth custody population.

METHOD

I examine these changes from the commencement of the pandemic response in March 2020 up to September 2020:

- Youth diversion and court proceedings commenced by NSW Police
- Bail decisions involving young people
- Children's Court finalisations
- Young people in youth detention.

RESULTS

There was an overall decline in the number of police legal proceedings during the period of most stringent social distancing measures due to substantial drops in the average weekly number of warnings and infringement notices issued in April 2020. This reduction was predominately due to a drop in proceedings being issued for fare evasion. The volume of youth cautions and court actions remained stable but changes in the offence composition were observed.

Between 15 March and the 28 June the total youth custody population declined by 70 people, a decrease of 25.6%. A 27.3% decline in the remand population (42 people) accounted for the majority of this decrease. A smaller decline of 23.5% (28 people) also occurred in the sentenced custody population.

The fall in the remand population occurred due to a 3.9% increase in the number of discharges to bail in the 15 weeks after 15 March compared to the 15 weeks prior to this date, and a fall in the number of Children's Court bail refusals following breaches of bail.

The decrease in the sentenced custody population after 15 March was largely caused by a decrease in receptions. This was due to a decline in finalised appearances in the Children's Court and a resultant drop in the number of young persons sentenced to custody.

CONCLUSION

The initial COVID-19 pandemic response was associated with substantial declines in both the youth remand and sentenced custody populations. The remand population decreased due to an increase in discharges to bail and fall in the number of young people refused bail following breaches of bail. The sentenced custody population declined due to a reduction in finalised appearances in the Children's Court.

KEYWORDS

COVID-19

young people

remand

sentencing

Children's Court

Young Offenders Act

INTRODUCTION

On 11 March 2020 the World Health Organisation declared the spread of COVID-19 to be a global pandemic. In order to minimise the risk of transmission the Australian and NSW Governments rolled out social distancing and isolation measures from 15 March 2020 onwards.¹ These included orders under the NSW Public Health Act 2010 closing indoor spaces and businesses for non-essential activities,² prohibiting people from leaving their place of residence without reasonable excuse,³ and limiting most outdoor gatherings to two persons.² In addition, from 24 March 2020 public schools transitioned to an online curriculum with parents encouraged to keep their children at home.⁴ This advice remained in place until schools were gradually reopened from 11 May 2020.⁵

Social distancing measures also impacted proceedings in the Children's Court. In order to protect court users and limit the number of people required to attend, the Children's Court vacated court hearings listed between 24 March and 1 May 2020, with exceptions made for defendants in custody who had legal representation.⁶

Since April 2020 we have seen big shifts in many crimes. Kim and Leung (2020) found many significant offences showed double-digit percentage declines in April 2020 including shoplifting, break and enter, non-domestic assault and theft. In contrast offences which are mostly detected through proactive policing remained stable or modestly increased, for instance drug possession and supply and breach AVO.⁷

This report examines the impact of these changes on young people. We consider variations in the size of the NSW youth custody population, offending and police legal proceedings against young persons, and Children's Court activity.

METHOD

This report presents trends in the NSW police proceedings against young persons of interest (POIs), bail refusals, finalised court appearances, and the youth custody population from January 2019 to September 2020.

Weekly data on police proceedings against young POIs were obtained from the NSW Police Force's (NSWPF) Computerised Operational Policing System (COPS). Weekly numbers of finalised court appearances were extracted from the JusticeLink System. JusticeLink is an administrative computer system used by the NSW Local, Children's, District, and Supreme Courts. More recent data from these sources are preliminary and may be subject to revision over time.

Daily counts of young people in custody used in this report were provided by Youth Justice NSW and were extracted from the DCJ/Youth Justice Research Planning and Evaluation Live Database on 26 October 2020. As this data is from a live database, figures are subject to change. Counts of the number of receptions and discharges into youth custody by legal status were also provided.

In order to show the impact of social distancing measures on this data the majority of comparisons were made between the 15 weeks prior to and after 15 March. The 15 week cut-off enabled examination of the immediate impact of the COVID-19 pandemic during the period of more stringent social distancing measures in NSW.

1 <https://www.health.nsw.gov.au/Infectious/factsheets/Factsheets/social-distancing.pdf>

2 https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2020_2020-54.pdf

3 https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2020_2020-65.pdf

4 <https://www.nsw.gov.au/media-releases/new-covid-19-restrictions-begin-as-schools-move-towards-online-learning>

5 <https://www.nsw.gov.au/media-releases/students-start-returning-to-classroom>

6 <https://www.dcj.nsw.gov.au/news-and-media/media-statements/further-update-on-childrens-court-arrangements>

7 https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/Summary-COVID-19-pandemic-and-crime-trends-in-NSW-BB147.aspx

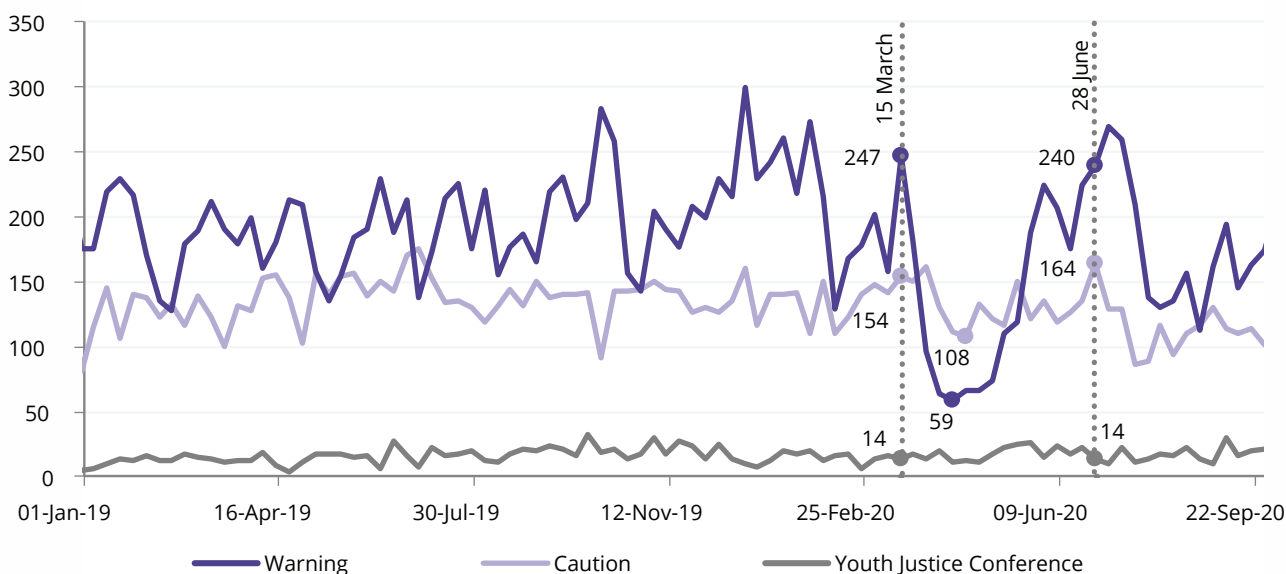
RESULTS

Young person offending and police contacts

Non-court police proceedings

Figure 1 shows the number of POIs proceeded against by way of warnings, cautions, and youth justice conferences from January 2019 to September 2020. These diversionary options are available to young offenders to avoid the young person going to court.

Figure 1. Weekly numbers of young persons proceeded against by police by way of warning, caution, and youth justice conference



The weekly average number of young POIs referred by NSW police to youth justice conferences in the 15 weeks prior to 15 March 2020 was 15. This increased slightly to an average of 18 per week in the 15 weeks after this date. After June this figure remained stable at 17 per week.

The number of cautions issued in the 15 week period after the issuing of social distancing measures remained consistent with pre-pandemic trends. In the 15 weeks prior to 15 March 2020 there were 136 cautions issued each week on average compared with 133 per week in the 15 weeks between 15 March and 28 June.

There were, however, changes in the nature of the offences for which young people received cautions. Comparing the number of POIs issued cautions by offence type in the 15 weeks pre-15 March with the 15 weeks after this date indicates that there was a substantial decrease in cautions issued for theft offences with 92 fewer POIs issued cautions for theft after 15 March (Figure 2a). Figure 2b shows the breakdown of theft offences. Theft from retail stores drove the decline with 93 fewer cautions. There were modest changes in some other theft offences. The number of cautions issued for break and enter increased by 49 in the same time frame.

Figure 2a. Difference in number of POIs issued cautions between the 15 weeks prior and 15 weeks after 15 March by offence type

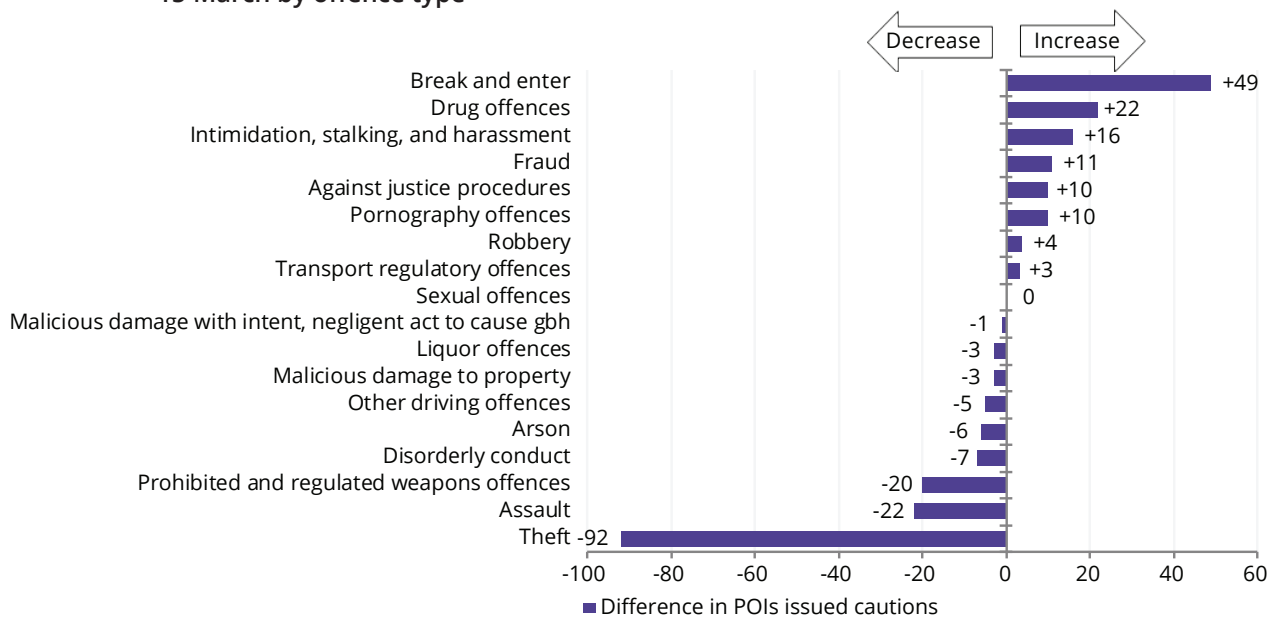
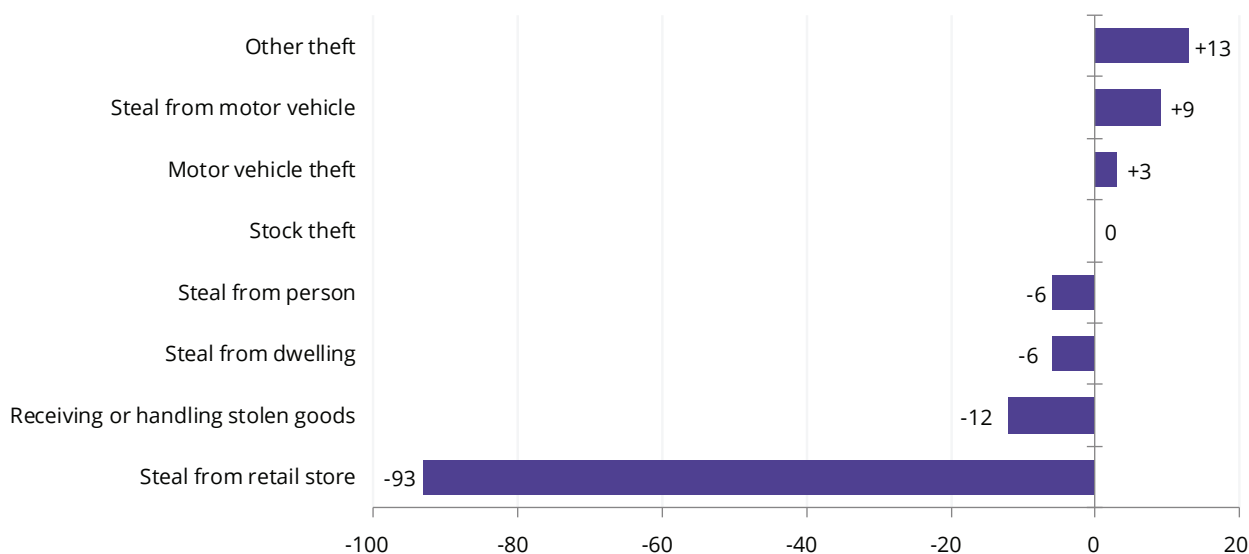


Figure 2b. Difference in number of POIs issued cautions for theft offences between the 15 weeks prior and 15 weeks after 15 March

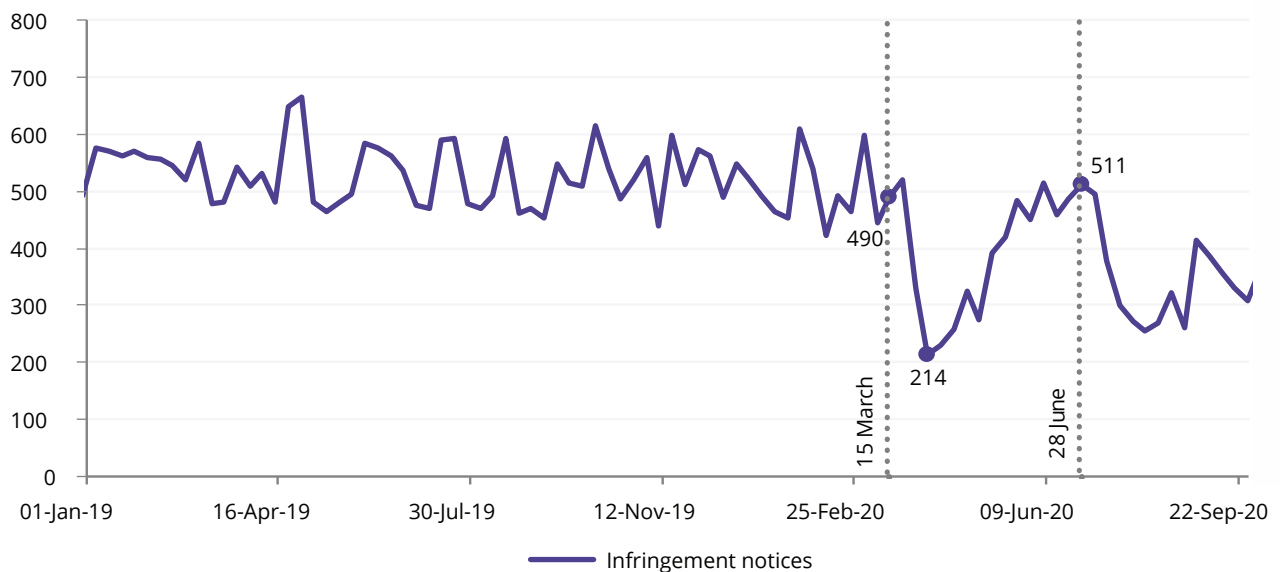


After peaking at the end of June 2020 the weekly number of cautions issued decreased, averaging at 111 per week, largely as a result of decreases in the number issued for break and enter offences and theft.

The number of warnings dropped substantially after 15 March. The average weekly number of warnings issued dropped from 218 in the 15 weeks prior to 15 March to 64 in the month of April, a decrease of 70.5% (see Figure 1). The weekly number of warnings increased after April, peaking in early July.

Figure 3 shows the weekly numbers of young persons issued infringement notices. Average weekly numbers of infringement notices issued dropped from 506 in the 15 weeks prior to 15 March to 256 in April, a decrease of 49.4%. Both the number of warnings and infringement notices issued returned to similar levels to pre-social distancing by the end of May before decreasing again in July.

Figure 3. Weekly numbers of young persons proceeded against by police by way of infringement notices



The sharp decline in warnings and infringement notices in April was largely due to a fall in those issued for fare evasion. The number of warnings and infringement notices issued for fare evasion fell by 74.7% and 72.3% respectively, between February and April 2020, as shown in Table 1. This drop occurred during the period in which the most stringent social distancing measures were in place between the end of March and the gradual return of students to schools from 11 May. The second drop in infringement notices in July was caused by a decrease in the number issued for both fare evasion and driving offences.

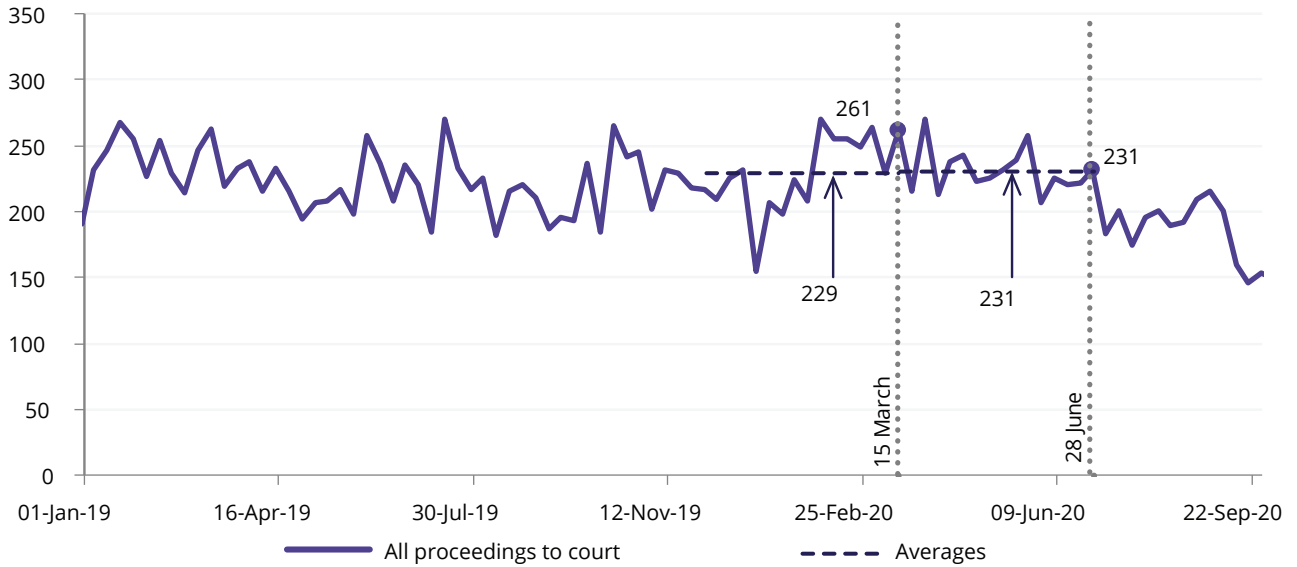
Table 1. Monthly total number of young persons of interest proceeded against by way of warning and infringement notice with numbers issued for fare evasion in 2020

		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Change Feb to Apr (%)
Warnings	Fare evasion	759	463	491	117	451	656	671	419	486	▼ 346 (▼ 74.7%)
	Other	306	221	235	165	210	240	215	248	264	▼ 56 (▼ 25.3%)
	Total	1065	684	726	282	661	896	886	667	750	▼ 402 (▼ 58.8%)
Infringement notices	Fare evasion	1385	1236	1064	343	939	1252	963	728	738	▼ 893 (▼ 72.3%)
	Driving offences	711	690	722	661	778	694	475	559	607	▼ 29 (▼ 4.2%)
	Other	102	79	85	86	86	72	59	48	51	▼ 7 (▼ 8.9%)
	Total	2198	2005	1871	1090	1803	2018	1497	1335	1396	▼ 915 (▼ 45.6%)

Proceedings to court

Weekly data on the number of young persons proceeded against to court by police is shown in Figure 4. There was little change in the number of young persons proceeded to court after 15 March. In the 15 weeks after this date the average weekly number proceeded to court was 231 compared to a weekly average of 229 in the 15 weeks prior. The number of young persons proceeded to court dipped after the end of August, largely as a result of decreases in theft and breaches of bail.

Figure 4. Weekly number of young persons proceeded to court by police



As with cautions, whilst the number of young persons proceeded to court changed little in the 15 weeks immediately before and after 15 March, the mix of offences in this cohort did change. The total number of young persons proceeded against to court in the 15 weeks after 15 March decreased for several offences compared to the number in the 15 weeks prior (see Figure 5a). The largest decreases were for assault (down by 61) and property damage (down by 40). There was a notable increase in the number of young POIs proceeded to court for theft (up by 81). Figure 5b gives more detail about specific theft offences and shows that the increase was largely due to an increase in POIs proceeded to court for stealing from motor vehicles (up by 66). Other offences that increased after 15 March include: driving offences, fraud, justice procedure offences, break and enter, and drug offences.

Figure 5a. Difference in number of POIs proceeded to court between the 15 weeks prior to and 15 weeks after 15 March by offence type

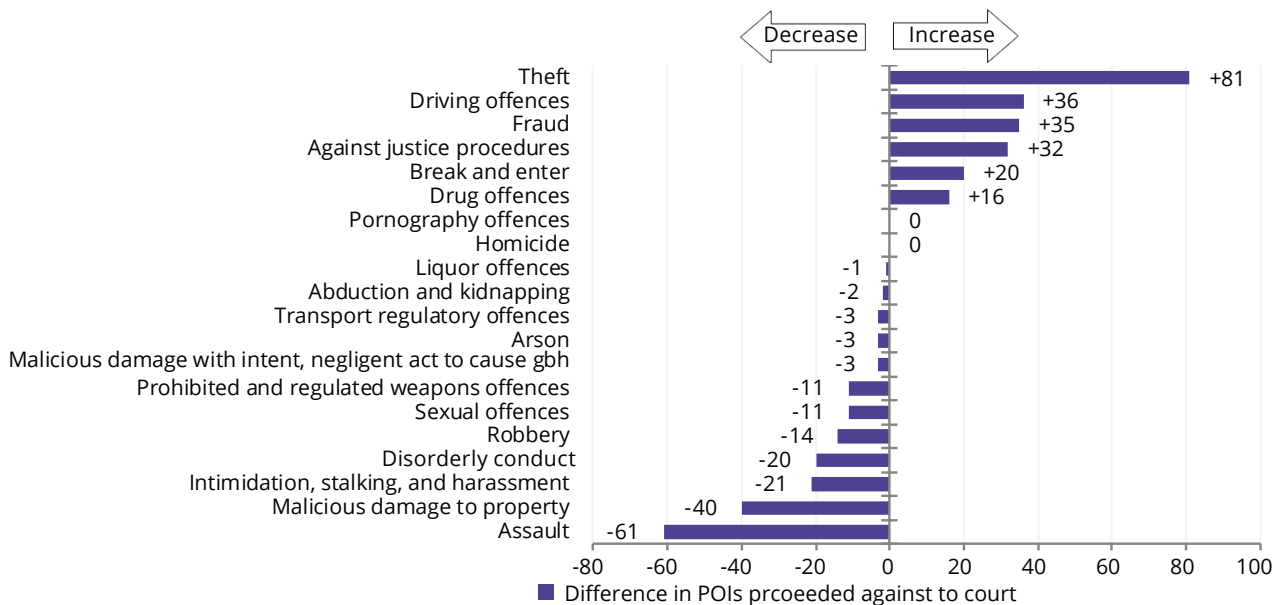
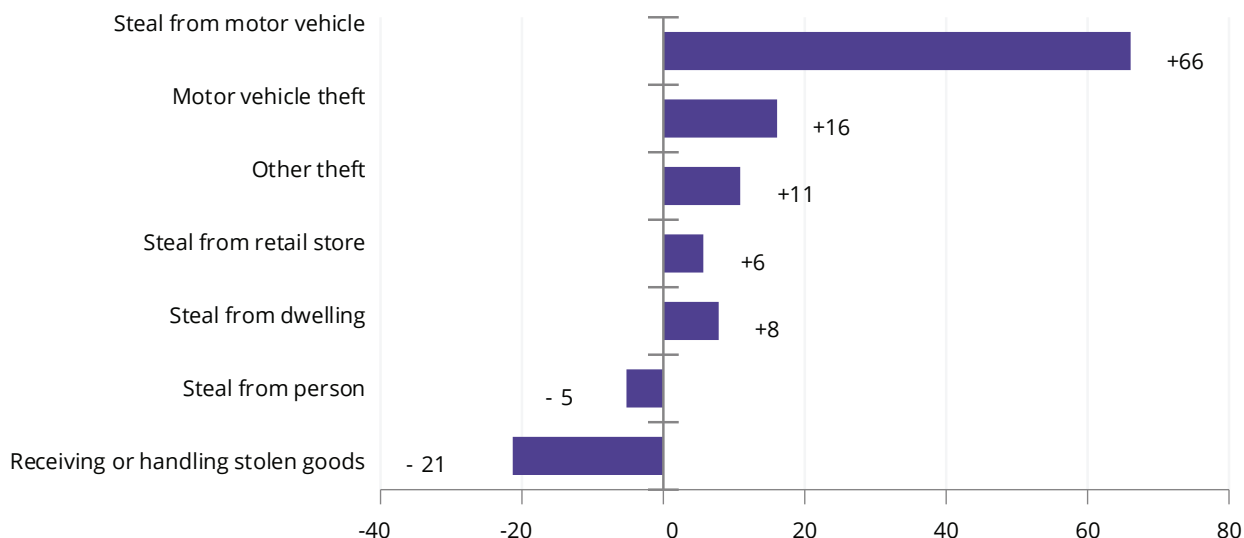


Figure 5b. Difference in number of POIs proceeded to court for theft offences between the 15 weeks prior and 15 weeks after 15 March



Bail decisions

Figure 6a shows the number of young people proceeded against to court who were refused bail by police and the number refused by bail by the Children’s Court following police bail refusal.

While court actions remained relatively stable, the number of young persons refused bail by police decreased slightly from March. The average weekly number of young people refused bail by police was 58 in the 15 weeks prior to 15 March compared with 52 in the 15 weeks after, a 10.0% decrease (see Figure 6a). The median weekly percentage of police bail decisions resulting in bail refusal remained reasonably steady (31.0% bail refused in the 15 weeks prior to 15 March versus 29.7% in the 15 weeks after – see Figure 6b). After the end of June, the number of bail refusals remained lower than the 15 weeks prior to 15 March whilst refusal rates remained stable.

Following police bail refusal defendants are brought before court for an initial court bail decision. Average weekly figures for young persons refused bail at court following police bail refusal remained stable at 20 (Figure 6a). Combined with a decrease in the volume of initial court bail decisions this resulted in an increase in the median weekly bail refusal rate from 35.3% to 38.2% (see Figure 6c). From the end of June there was a slight decrease in the average number of court bail refusals, whilst the refusal rate remained stable.

Figure 6a. Weekly number of young persons bail refused by police and bail refused by court

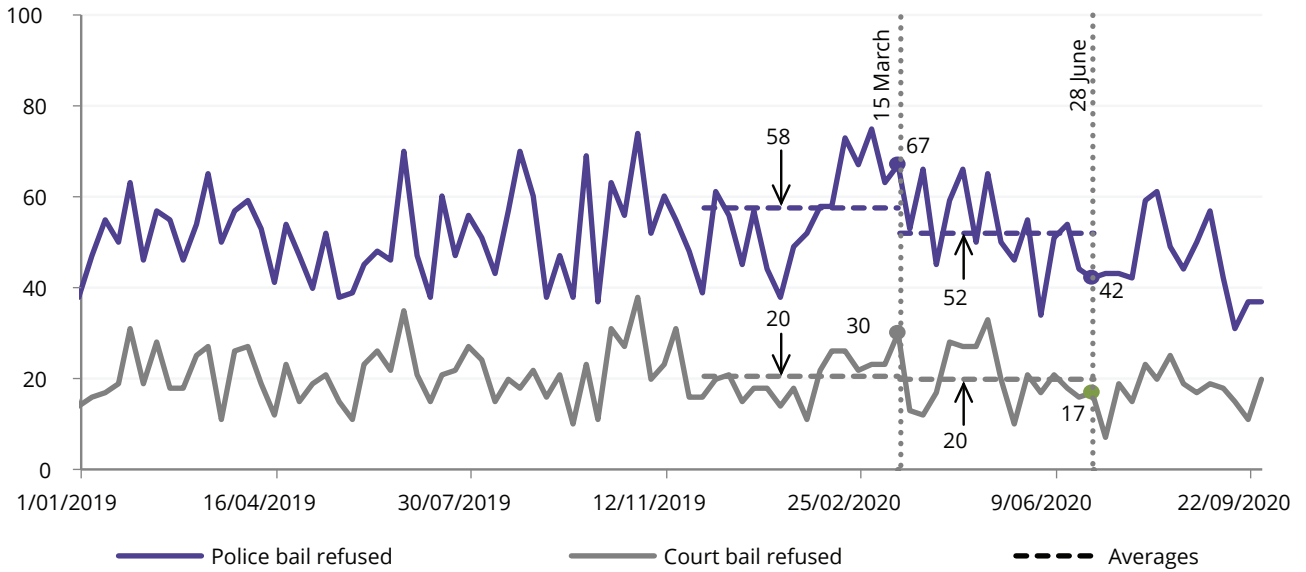


Figure 6b. Weekly percentage of young persons refused bail by police

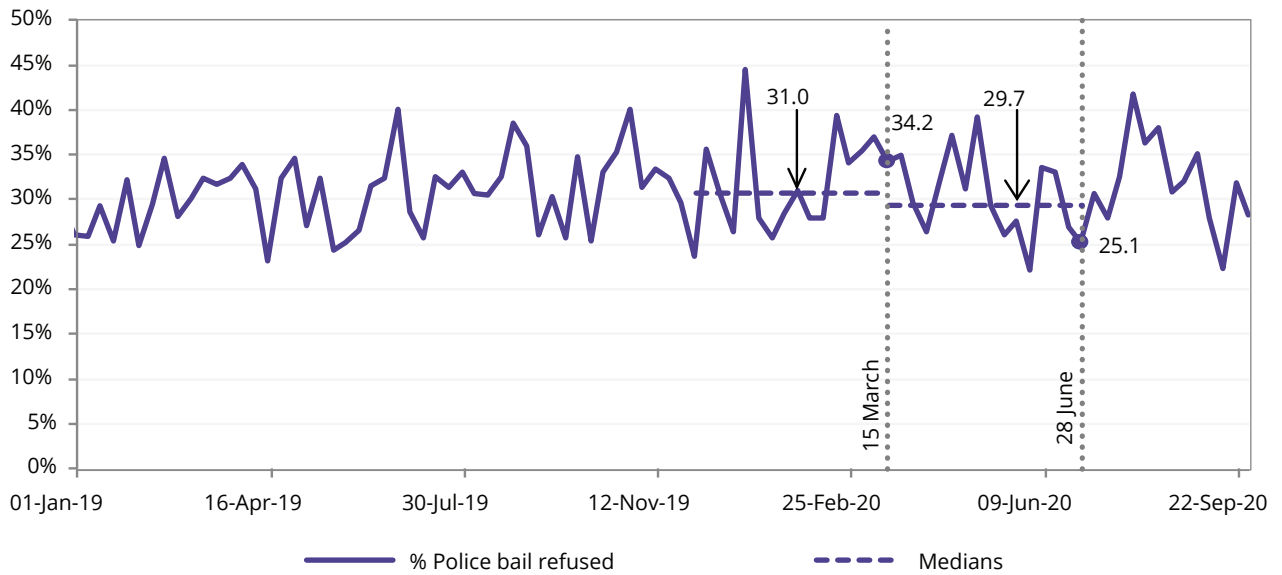


Figure 6c. Weekly percentage of young persons refused bail at first court bail decision

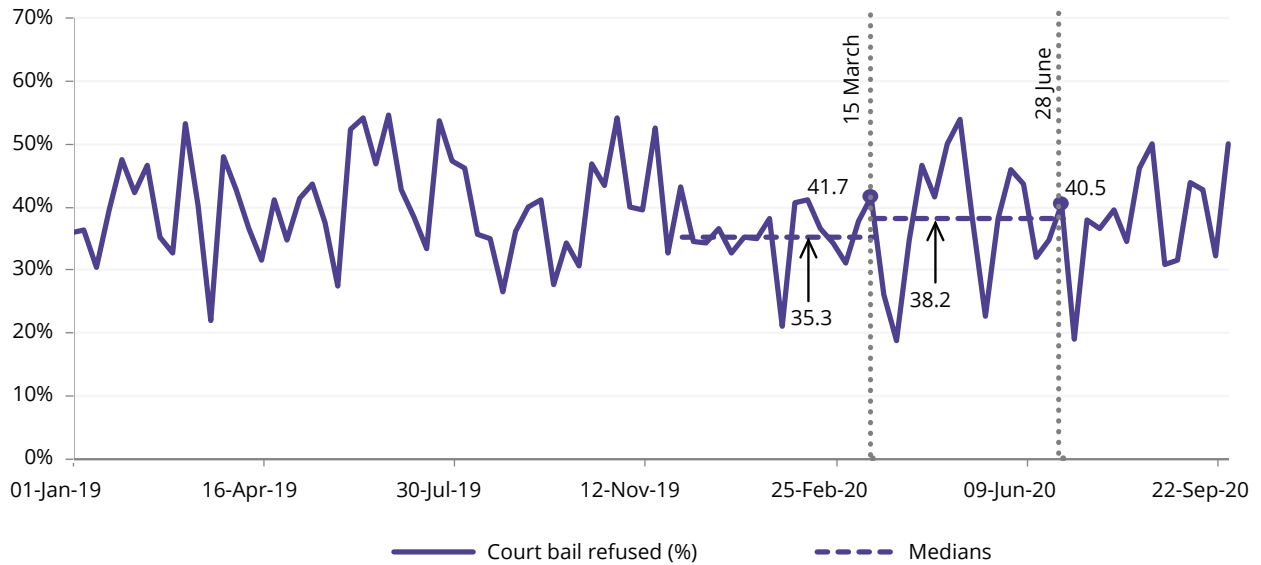
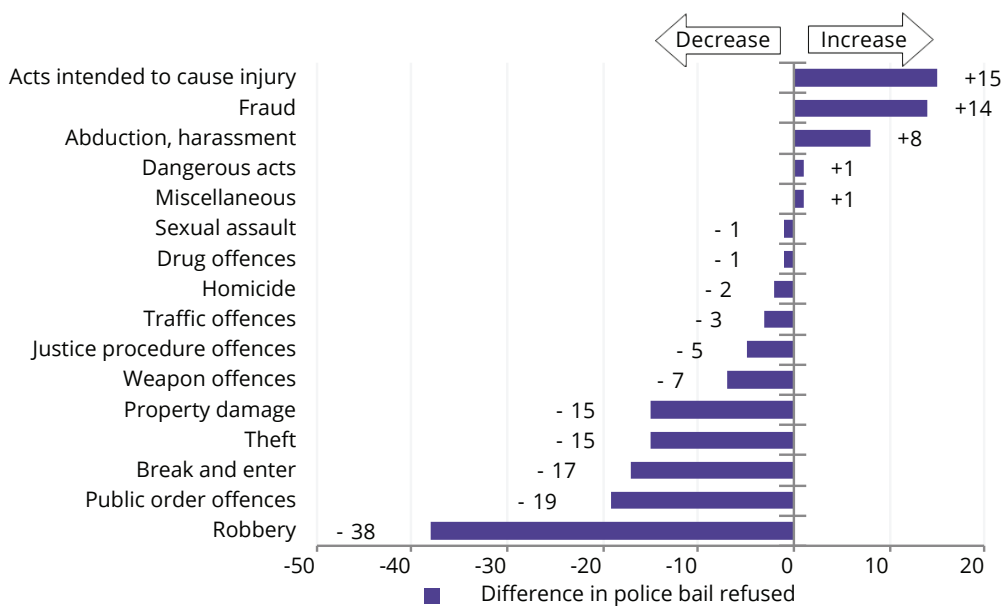


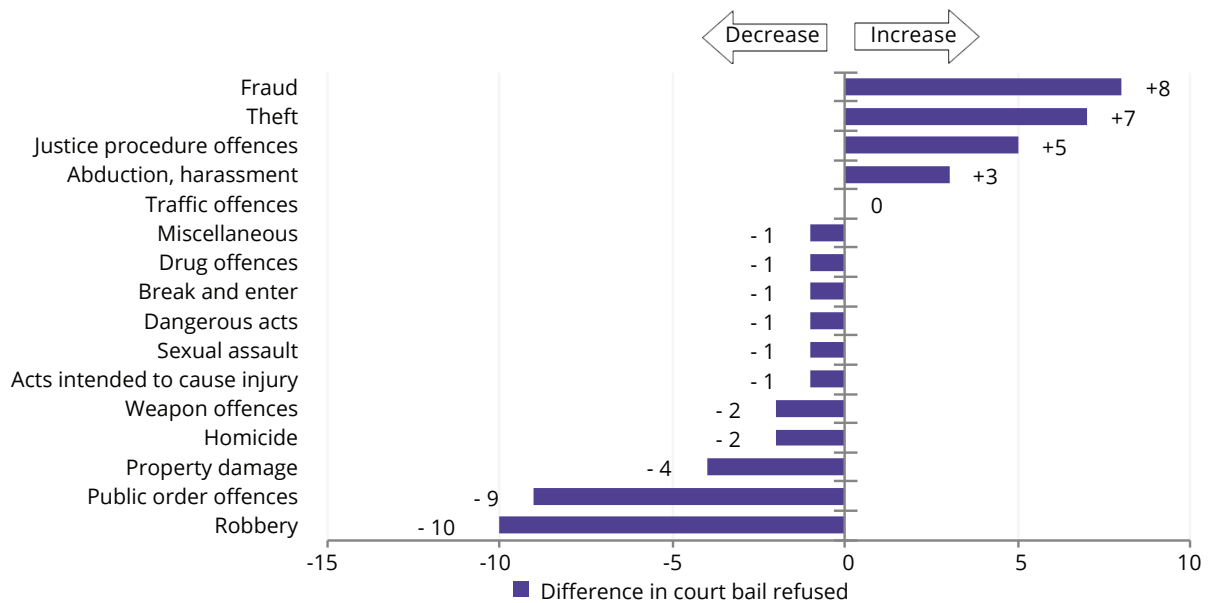
Figure 7 shows that the number of police bail refusals decreased for several offences in the 15 weeks after 15 March, most notably for robbery offences. Decreases also occurred for: public order offences, break and enter, theft, and property damage. These decreases were partially offset by increases in bail refusals for acts intended to cause injury and fraud.

Figure 7. Difference in number of young persons police bail refused between 15 weeks prior and 15 weeks after 15 March by ANZSOC division



First court bail decisions resulting in bail refusal increased slightly for theft and justice procedure offences (see Figure 8) despite a decrease in police bail refusals for these offences. There were notable decreases in the number of court bail refusals for robbery and public order offences.

Figure 8. Difference in number of young persons court bail refused between 15 weeks prior and 15 weeks after 15 March by ANZSOC division



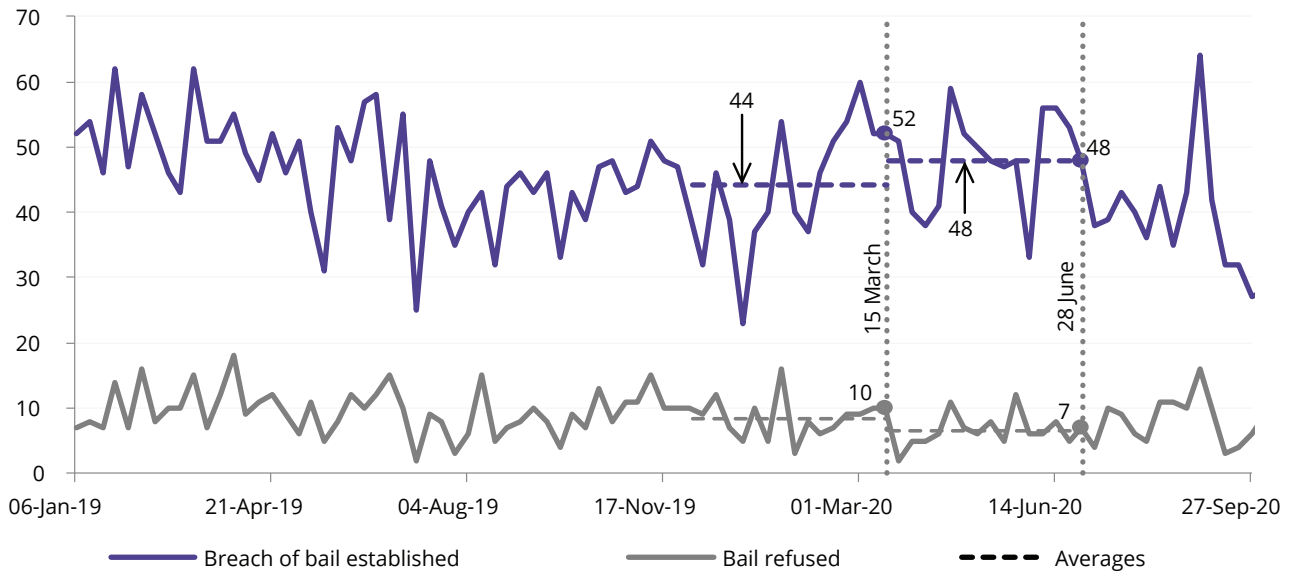
Breach of bail and bail refusal following breaches

Another key driver of young people’s involvement with the criminal justice system is through bail breaches. If a young person is found by the court to have breached their bail the existing bail arrangement is reconsidered and possibly revoked.

Figure 9 shows the number of young people with an established bail breach and the subset of those resulting in a bail revocation since January 2019. Youth bail breaches increased slightly from 15 March (average weekly number was 44 in the 15 weeks prior to 15 March versus 48 in the 15 weeks following). After the end of June the number of established bail breaches decreased, with the exception of a spike in the last week of August.

The total number of bail revocations following a bail breach decreased from 126 in the 15 weeks prior to 15 March to 99 in the 15 weeks after, a decrease of 21.4% (see Figure 9). This result is consistent with a reluctance by the court to incarcerate young people during the pandemic. After the end of June the weekly number of bail revocations following breaches of bail returned to levels similar to prior to 15 March.

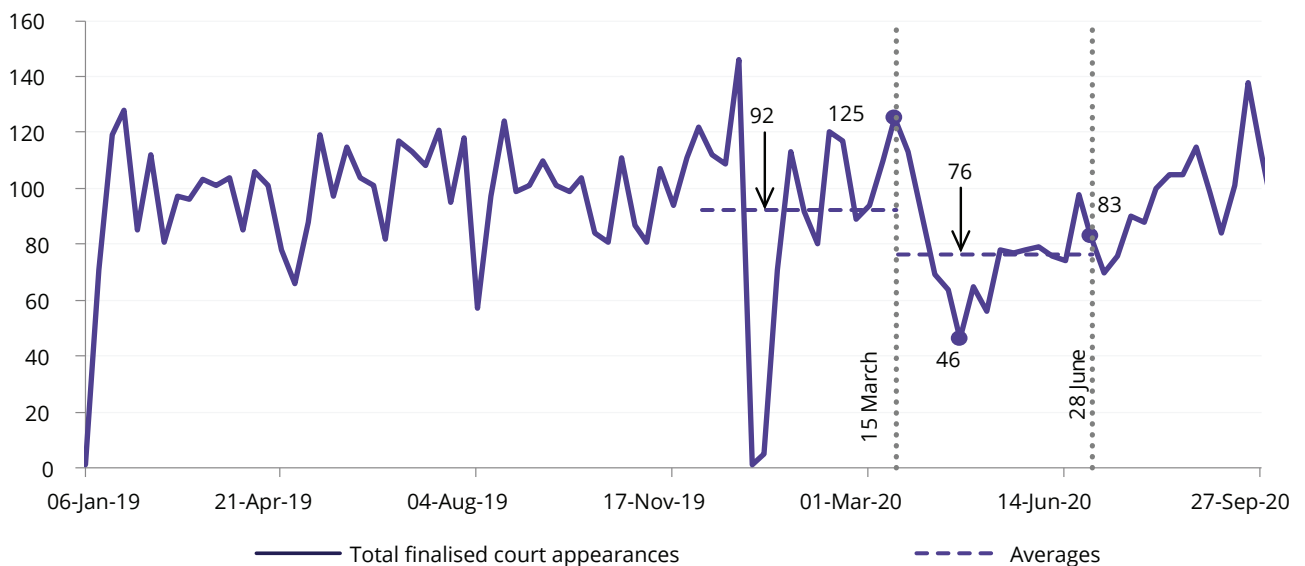
Figure 9. Weekly total number of established breaches of bail in the Children’s Court and bail refusals following breaches



Children’s Court activity and sentencing

The total number of finalised appearances in the NSW Children’s Court dropped substantially after 15 March as shown in Figure 10. The average weekly figure in the 15 weeks prior to 15 March was 92. This figure fell to 76 in the weeks between 15 March and 28 June with the weekly number of finalisations reaching as low as 46 in the week ending 19 April.

Figure 10. Weekly total finalised court appearances in the Children’s Court



The number of finalised appearances in the Children's Court resulting in a custodial penalty also decreased after 15 March (see Figure 11a). The total number of finalisations resulting in custodial penalties in the 15 weeks prior to 15 March was 119. This fell to 98 in the 15 weeks after, with a prolonged period of relatively low figures occurring between the weeks ending 29 March and 7 June.

Figure 11b shows there was little change in the rate at which finalised court appearances resulted in a custodial sentence in the Children's Court. The median rate in the 15 weeks prior to 15 March was 8.5%, this decreased slightly to 7.7% in the 15 weeks after. As such, the reduction in the weekly number of young persons sentenced after 15 March was largely the result of the decrease in overall court finalisations.

After the first week of July the weekly number of finalised appearances increased whilst the number of these resulting in a custodial penalty remained low. As such the rate at which finalised appearances resulted in a custodial penalty decreased.

Figure 11a. Weekly number of finalised court appearances in the Children's Court resulting in a custodial penalty

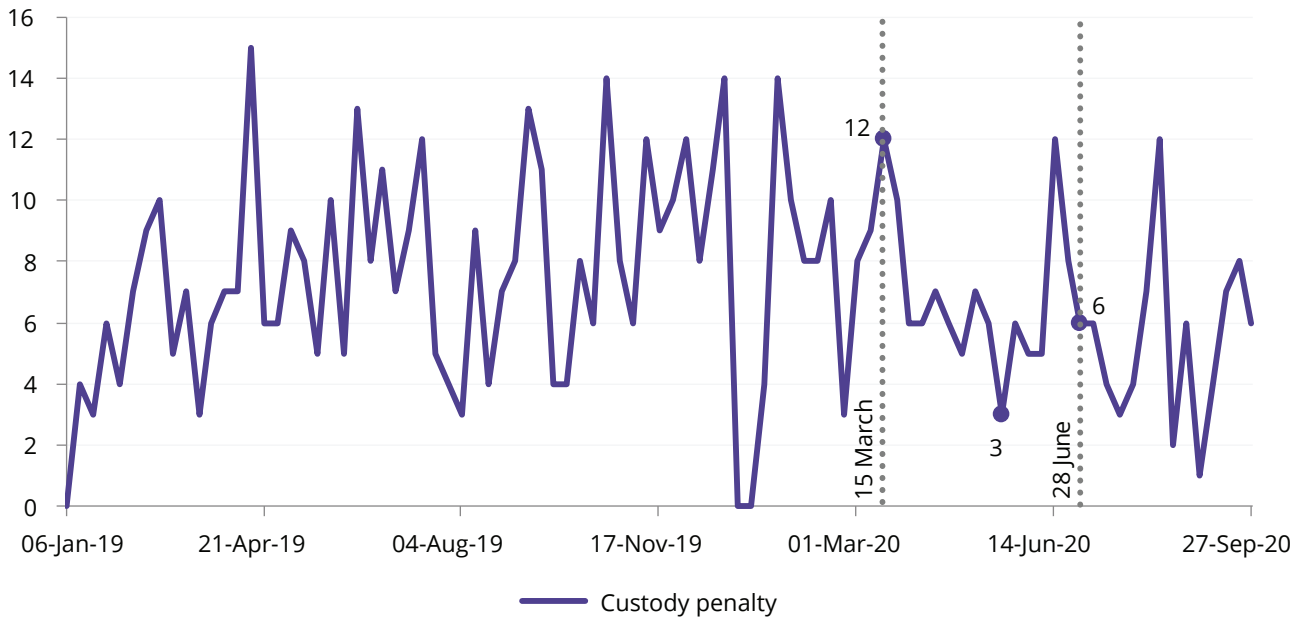
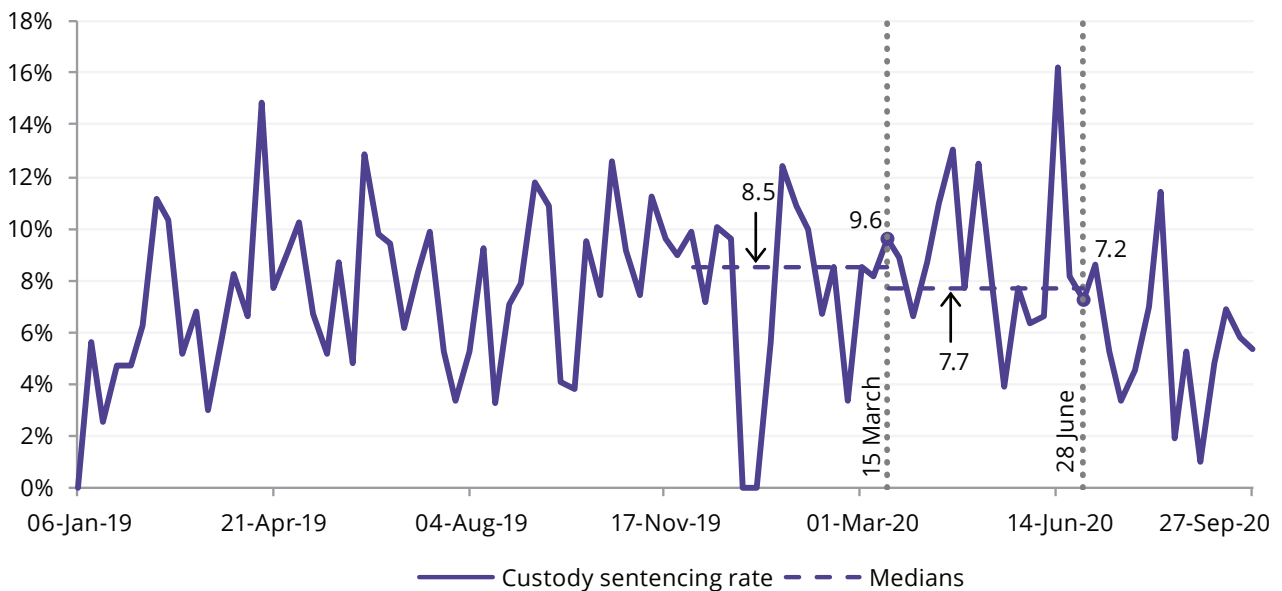


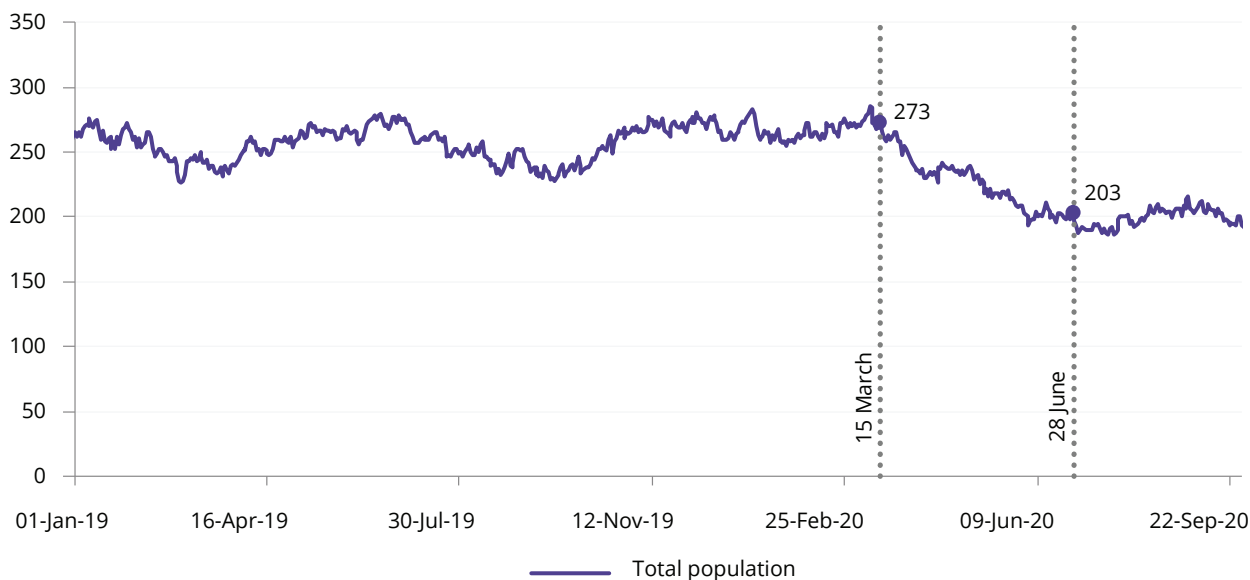
Figure 11b. Weekly rate at which finalised court appearances resulted in a custodial penalty



Custody

Figure 12 shows the NSW youth custody population from January 2019 to the end of September 2020. In the 15 weeks between 15 March 2020 and 28 June 2020 the total youth custody population declined by 70 people, a decrease of 25.6%. After the end of June the population remained relatively stable.

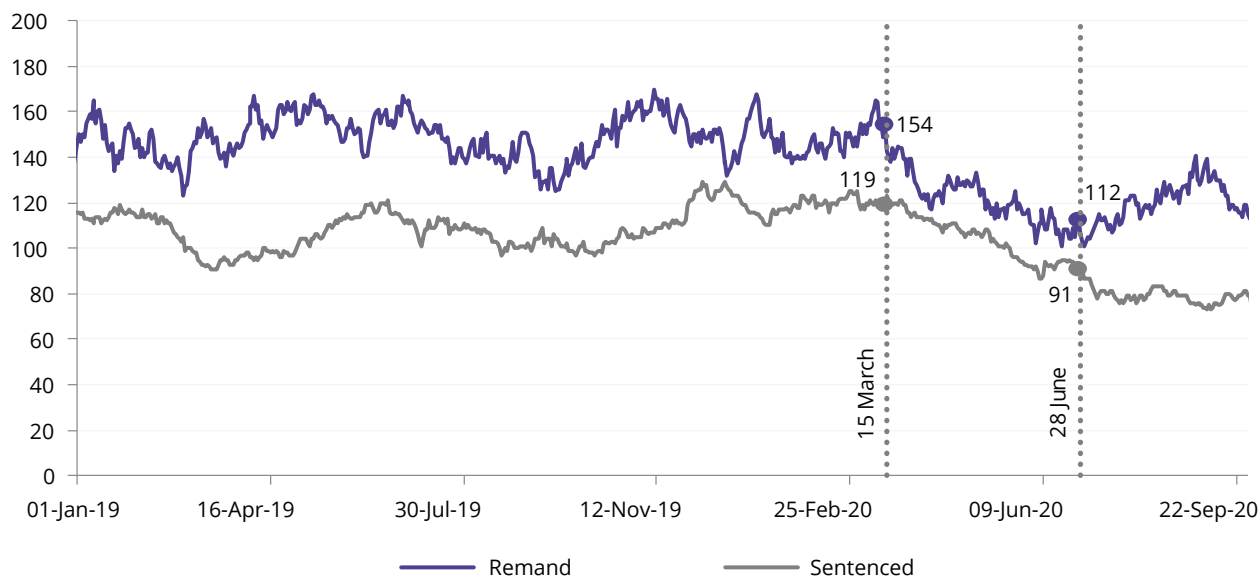
Figure 12. Daily count of young people in custody



The majority of this decline was due to a decrease in the remand population. As shown in Figure 13, the number of young people in remand custody fell by 42 or 27.3%, after 15 March. This accounts for 60.0% of the decline in the total youth custody population during this time frame. The sentenced population fell by 28 (23.5%) over the same period.

After June the remand population increased, peaking at the end of August before a decrease coinciding with drops in the number of young people proceeded to court and established bail breaches. The sentenced population continued to decline after June before stabilising at a daily average of 80 individuals.

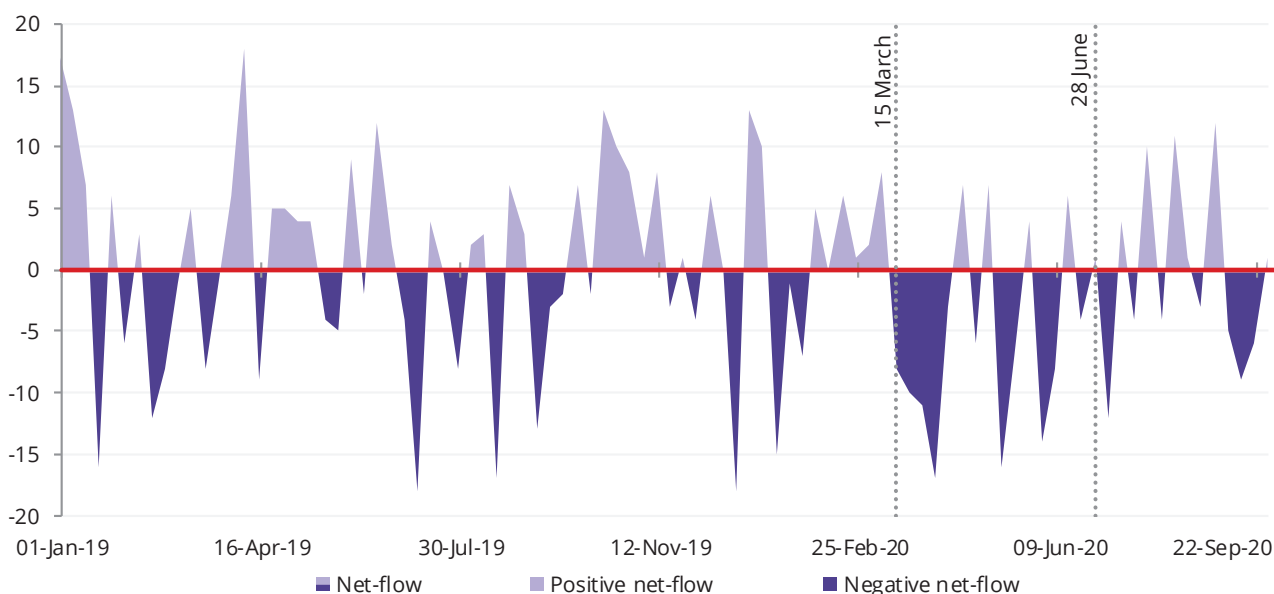
Figure 13. Daily count of young people in custody by legal status



Receptions and discharges

The number of young people in custody declines when the number of discharges from custody exceeds the number of receptions into custody. Figure 14 shows the weekly net flow (receptions minus discharges) from January 2019 to the week ending 27 September 2020. In the 15 weeks prior to 15 March the total number of receptions into custody exceeded discharges by 2, indicating a stable custodial population prior to the pandemic. This pattern changed in the 15 weeks after 15 March with discharges exceeding receptions by 71, resulting in a reduction in the youth custody population (see Figure 12). Between 28 June and 27 September discharges exceeded receptions by 4, again indicating stability consistent with the pattern in Figure 12. The following analysis examines how weekly custody receptions and discharges changed after 15 March.

Figure 14. Weekly net flow into custody (receptions minus discharges)



Two changes could deliver this result: either a decrease in receptions or an increase in discharges.

Figure 15a shows weekly receptions into remand custody. The chart shows an obvious peak in receptions immediately before pandemic mitigation strategies were implemented (between the weeks ending 16 February and 1 March). This peak in receptions contributed to a total of 994 receptions into remand in the 15 weeks prior to 15 March. In the 15 weeks after 15 March there were a total of 953 receptions into remand. Thus, there were 41 fewer remand receptions in the 15 weeks following 15 March compared with the 15 weeks before 15 March (4.1% fewer). The decrease in the number of bail refusals following established breaches of bail likely contributed partly to the decline in remand receptions. After 28 June the average weekly number of receptions decreased despite a spike in receptions in the last week of August.

Receptions into sentenced custody from the community are shown in Figure 15b. This is typically a low-count series as most sentenced prisoners are already on remand prior to their court finalisation. Despite this, the number of receptions fell after 15 March with a total of 16 sentenced custody receptions in the 15 weeks after this date compared to 34 in the 15 weeks prior. This decline was due to the fall in the number of court finalisations which resulted in a decreased number of young persons being sentenced to custody by the Children’s Court. The number of court finalisations resulting in a custodial penalty remained low after 28 June, as a result the number of receptions into sentenced custody also remained low.

Figure 15a. Weekly receptions into remand custody

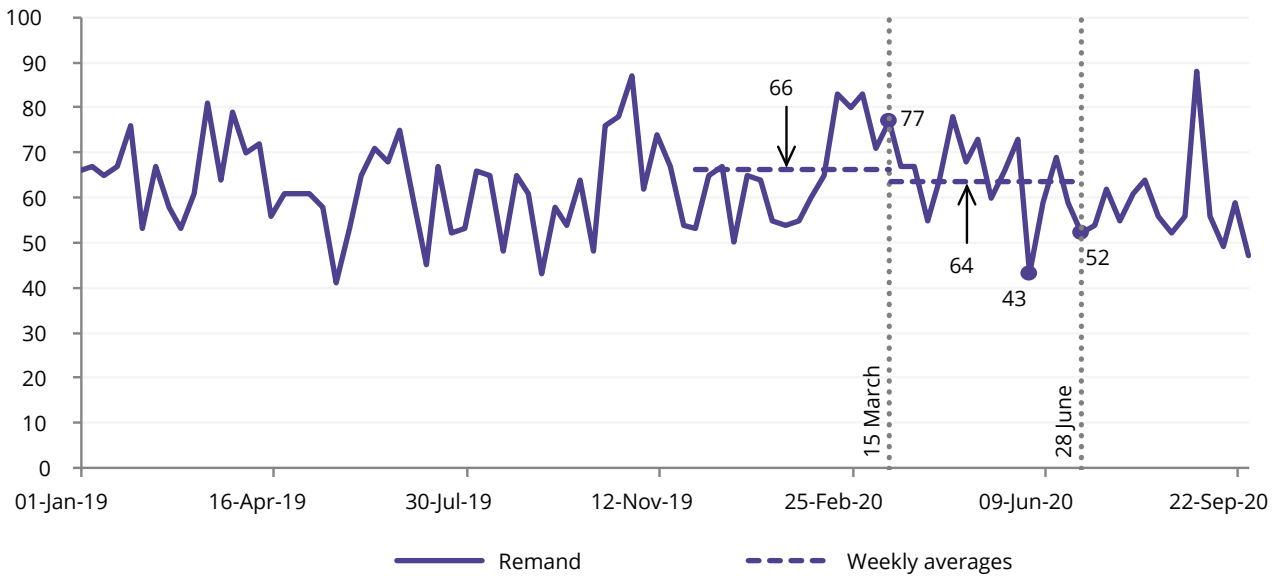
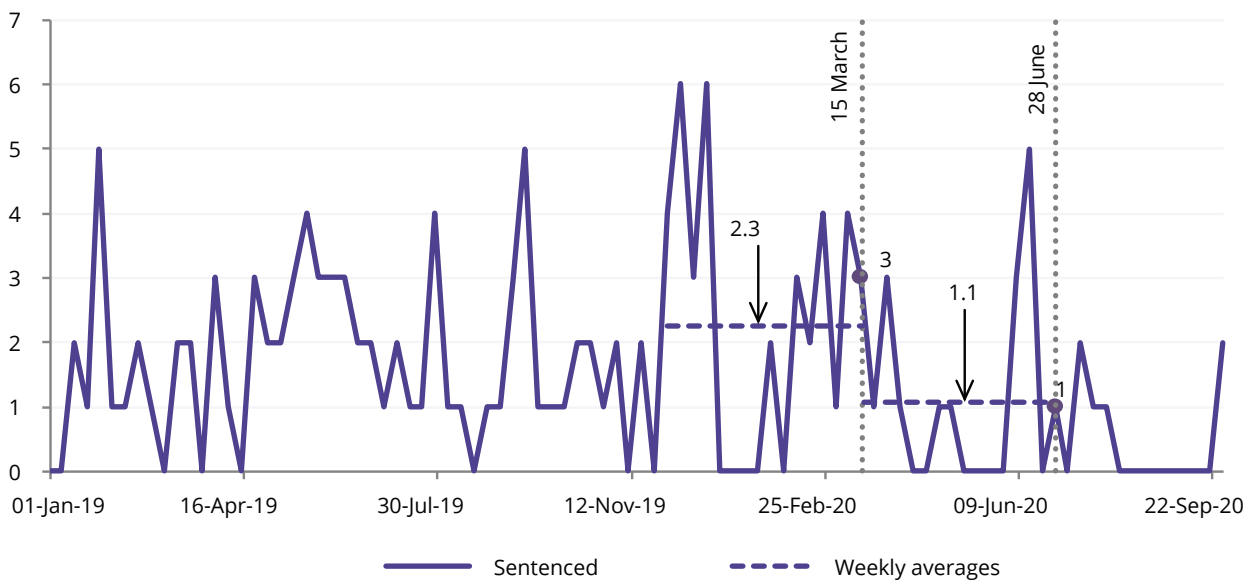


Figure 15b. Weekly receptions into sentenced custody

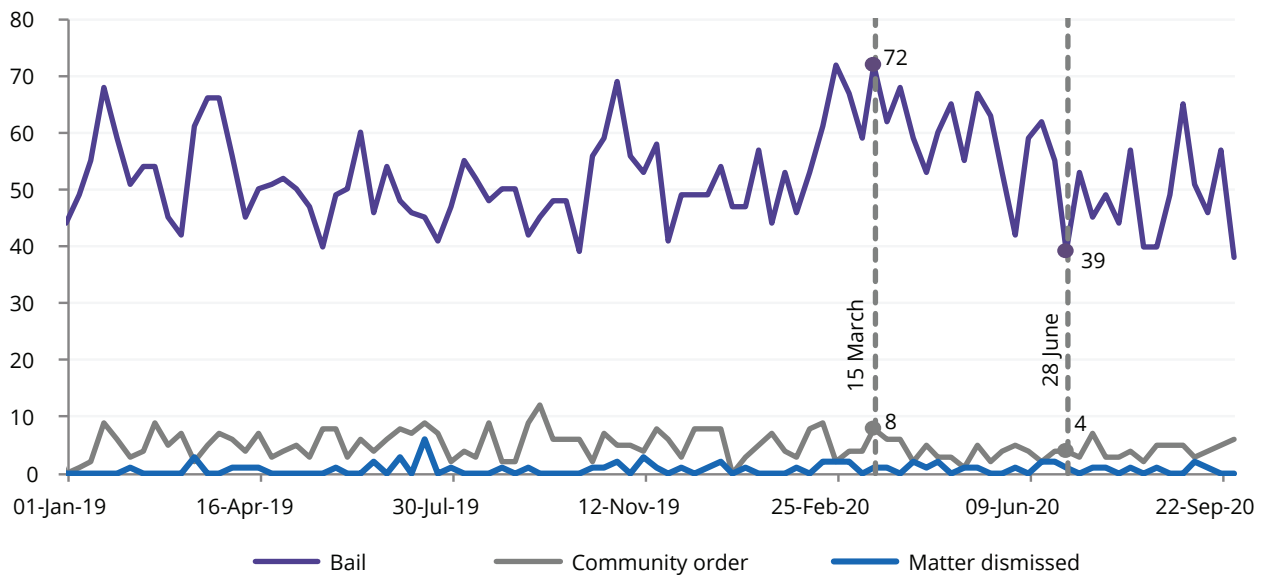


Young people in remand custody can exit custody in a number of ways. Most commonly, after being initially remanded they are granted bail to await their court appearance in the community. Others exit remand after their matter is dismissed in court or after receiving a non-custodial penalty.

Figure 16 shows the weekly number of young people discharged from remand by legal status. In the 15 weeks prior to 15 March the total number of discharges to bail was 830. In the 15 weeks after this date the total number increased by 3.9% to 862. The average weekly number of young people discharged from bail decreased between 28 June and 27 September compared to the period between 15 March and 28 June from 57 per week to 49.

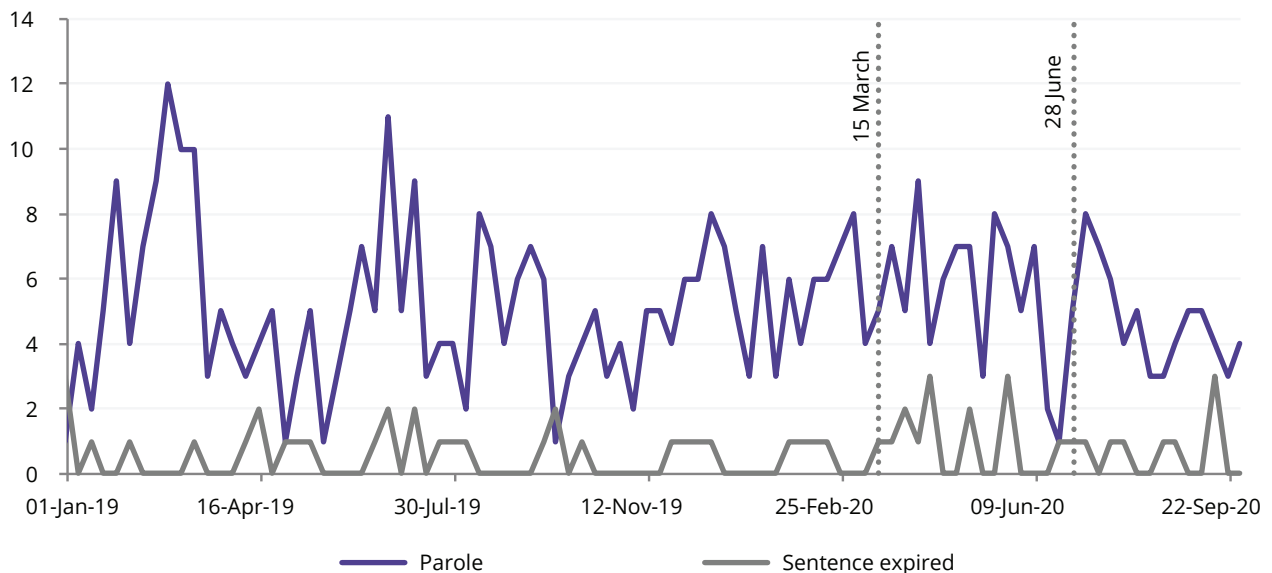
The total number of young people being discharged after receiving a non-custodial penalty decreased from 81 in the 15 weeks prior to 15 March to 56 in the 15 weeks after this date. The weekly number of discharges to non-custodial penalties after 28 June remained stable.

Figure 16. Weekly discharges from remand custody by legal status



Young people in sentenced custody can be discharged having served the entirety of their sentence or they can be released to parole. With the exception of a dip in parole discharges in the 2 weeks between 7 June and 21 June, Figure 17 shows little change in discharges from sentenced custody after the 15 March 2020.

Figure 17. Weekly discharges from sentenced custody by legal status



CONCLUSION

The major criminal justice changes for young people in the 15 weeks following the pandemic response were:

- A 71% decrease in warnings issued and a 49% decrease in infringement notices issued in April 2020. These reductions were largely due to a reduction in fare evasion.
- No change in the total volume of cautions but a change in the offence composition. Increases in the number issued for break and enter, drug offences, intimidation, fraud, and justice procedure offences were offset by a decrease in cautions issued for theft from retail stores, assault, and weapon offences.
- No change in the total volume of court actions initiated by police but a change in the offence composition. An increase in court actions for steal from motor vehicle, driving, fraud and justice procedure offences offset by a reduction in court charges for assault, property damage, intimidation, and disorderly conduct.
- A 10% decrease in the number of young people refused bail by police. There were decreases in the number of police bail refusals for robbery, theft, property damage, public order offences, and break and enter. The decrease for break and enter occurred despite an increase in the number of proceedings for this offence. There was no change in the number of young people refused bail at first court appearance.

The number of young people in custody decreased by a quarter from 273 to 203 between 15 March and 28 June. Both the remand and sentenced custody populations fell with the former accounting for 60.0% of the overall decline. The reduction in the remand population was largely due to an increase in young people being released from remand into the community, with a decrease in bail revocations following breaches of bail partially contributing. The reduction in sentenced young people in custody was due to fewer young people being sentenced to custody as a result of reduced court finalisations.

It is notable that some of the offences which have increased youth legal actions are offences which have fallen considerably since the pandemic. For instance we have seen an increase in young people proceeded against for break and enter, at the same time that the incidence of break and enter in the community fell sharply in April and was still well below 2019 levels in June 2020. This suggests that either young people (but not adults) have increased their offending (but not adults) or that offenders have an increased likelihood of detection during the pandemic.

ACKNOWLEDGEMENTS

Thanks go to Jackie Fitzgerald and Malindi Sayle for their comments and suggestions, Nick Halloran for data extraction and feedback, Amy Pisani and Derek Goh for extraction of bail data, and Florence Sin for desktop publishing.