

Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions

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Community Correction Orders
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Glossary

Case	A collection of one or more proven charges for an offender sentenced in court at one hearing.
Charge	A single count of an offence for which an offender is sentenced.
Principal offence	The offence within a case that receives the most severe sentence (as determined, first, by position in the sentencing hierarchy and, second, by duration of sentence). Where multiple charges within a case receive an equivalently severe sentence, the charge with the most serious offence according to the National Offence Index is selected as the principal offence.
Statistical significance	A statistical measurement of the likelihood that the difference between two numbers has not occurred by chance. The most widely used threshold of statistical significance, and the threshold used in this report, is 0.05, which means there is a 5% likelihood that the observed difference has occurred by chance alone.

1. Executive summary

- I.1 This report builds on the findings from the Council's *Community Correction Orders: Monitoring Report*,¹ which examines a range of factors associated with the use of community correction orders (CCOs). This report presents the findings of a quantitative and qualitative analysis of sentencing remarks for CCOs imposed by the Supreme and County Courts (the higher courts) between January 2012 and June 2013 (inclusive). The analysis has been undertaken to identify case variables influencing the imposition of CCOs, long CCOs (over 2 years duration), and the most frequently imposed conditions.
- I.2 The methodology can be summarised as follows:
- the sentencing remarks of 437 of the 460 CCOs imposed in the higher courts over this 18 month period are analysed;
 - the quantitative analysis examines 32 case variables, focusing on the offender, the offence, the victim, and the legal process, and is based on a binary logistic regression;
 - the imposition of CCOs is compared to short terms of imprisonment for armed robbery, aggravated burglary, and cause serious injury (both intentionally and recklessly); and
 - the qualitative analysis considers 157 CCO sentencing remarks and a smaller sample of short terms of imprisonment remarks involving the examination of a range of variables associated with the case characteristics.
- I.3 With respect to the imposition of a CCO relative to a short term of imprisonment, the quantitative analysis finds that:
- the majority of case variables do not predict if a CCO or short term of imprisonment will be imposed;
 - the only variable that consistently increases the likelihood of the imposition of a CCO (although non-significant for armed robbery) is whether the offender is currently employed and/or involved in an educational program; and
 - the involvement of drugs and/or alcohol in the offence has an inconsistent predictive influence, increasing the likelihood of a CCO for aggravated burglary, decreasing the likelihood for armed robbery, and having no consistent predictive influence for serious injury.
- I.4 Examination of the specific case variables collected for the qualitative research reveals that, for certain judges, some additional factors influence the imposition of a CCO relative to a short term of imprisonment for specific cases. For example:
- youth, mental illness, and a significant delay between the offending and sentencing, particularly where accompanied by demonstrated efforts at rehabilitation, influence the imposition of a CCO in some cases; and
 - previous offending and the seriousness of the instant offending consistently influence the imposition of an order of imprisonment.

1. Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (2014).

- 1.5 As each sentencing decision is the result of instinctive synthesis, the differences in the sentences imposed could point to differences in the case facts (for example, offender age, nature and extent of prior offending). However, relevant similarities in those case facts, as evidenced by the sentencing remarks on either side of the dispositional divide, indicate that the difference may also be attributable to differences in the weighting of similar case facts.
- 1.6 With respect to duration, the qualitative analysis of sentencing remarks reveals that the courts provide little explicit guidance on, or clear explanation of, the sentencing purposes intended to be achieved by the imposition of a long CCO. Where comment has been made, the length of the order has been determined by issues of parity, the need to allow appropriate time for completion of rehabilitation courses, or the decision to make the sentence more onerous.
- 1.7 With respect to the combination of conditions attached to each CCO, the majority of quantitative variables do not make a significant contribution to predicting when a particular CCO condition will be imposed. There is also little judicial comment in the sentencing remarks that directly addresses the sentencing purposes for imposing certain CCO conditions.
- 1.8 The methodology examines the subjective and objective factors that interact in the complex sentencing process. There are inherent difficulties in clearly assessing the role of quantitative and qualitative factors in judgments based on instinctive synthesis. However, traditional legal analysis of sentencing remarks – in conjunction with the quantitative and qualitative techniques used in this study – allows certain inferences to be made.
- 1.9 A CCO is a new and different form of sanction. It is not a rebranded version of earlier forms of community-based sanctions. A much broader range of conditions can be imposed on a CCO, and a CCO can be imposed in the higher courts for a period up to the maximum penalty for an offence. However, the duration (85% ≤ 2 years) and conditions attached to CCOs are very similar to those attached to community-based orders (CBOs). An analysis of a range of case factors indicates that the majority of these variables do not contribute to predicting the imposition of a CCO or the duration or conditions attached to a CCO.
- 1.10 Further research is necessary to gain a better understanding of what is influencing sentencing behaviour in the imposition of CCOs.

2. Community correction orders and the focus of this report

- 2.1 In February 2014, the Council published *Community Correction Orders: Monitoring Report*,² which examines a range of factors associated with the use of community correction orders (CCOs) over the first 18 months of their operation. The report examines the use of this new order in the Magistrates' Court and the higher courts.

Background to CCOs

- 2.2 Introduced in January 2012, CCOs replaced a number of existing community sentences.
- 2.3 The purpose of the CCO is 'to provide a community-based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender'.³ The CCO is a sanction, independent of imprisonment, providing a significant and proportionately punitive response to offences falling within the mid range of seriousness.
- 2.4 A CCO can only be imposed if the offending is punishable by a fine of more than five penalty units, a pre-sentence report has been received (if required) and considered by the court, and the offender consents to the order.⁴
- 2.5 A CCO can be imposed in the higher courts for a period up to the maximum penalty for an offence. It can be imposed with or without a conviction being recorded and in combination with other sanctions, including a fine and a term of imprisonment not exceeding three months.⁵
- 2.6 A single CCO can cover multiple offences. If a court makes separate CCOs, there is a statutory presumption that they are concurrent.
- 2.7 There are seven mandatory terms for a CCO.⁶ The offender must not commit an offence punishable by imprisonment, must comply with any obligation prescribed by regulation, must report to the community corrections centre within two days of the order commencing, must report to and receive visits from the Secretary of the Department of Justice, must notify the Secretary of any change of address or employment, must not leave Victoria without permission, and must abide by any order or direction of the Secretary.⁷

2. Sentencing Advisory Council, above n 1.

3. *Sentencing Act 1991* (Vic) s 36.

4. *Sentencing Act 1991* (Vic) s 37.

5. The *Sentencing Amendment (Emergency Workers) Act 2014* commenced on 29 September 2014 amending the power of a court to order a CCO in addition to a term of imprisonment. The Act provides that a court may impose a CCO in addition to a sentence of imprisonment if the term of imprisonment imposed on a person for one (or more than one) offence is two years or less. The restriction does not apply to the sentencing of serious arson offenders, in which case the court may impose a CCO in addition to any sentence of imprisonment (including a term exceeding two years). Where a court imposes a CCO in addition to a term of imprisonment, the Act provides that the CCO is to commence at the completion of the offender's parole period (if one is ordered).

6. *Sentencing Act 1991* (Vic) s 45.

7. *Sentencing Act 1991* (Vic) s 45(1).

2.8 In addition to these terms, when ordering a CCO, a court must impose at least one of the following conditions:

- unpaid community work;⁸
- treatment and rehabilitation;⁹
- supervision;¹⁰
- direction to not contact or associate with a person, or a class of people, specified in the order;¹¹
- direction to (or not to) reside at a particular place specified in the order;¹²
- direction to not enter or remain in a specified area or place;¹³
- direction to remain at a specified place between certain hours;¹⁴
- direction to not enter, remain at, or consume alcohol at specified or unspecified licensed premises or a location of any major event;¹⁵
- direction to pay a bond;¹⁶
- monitoring by the court;¹⁷
- electronic monitoring;¹⁸
- direction to participate in services specified in a justice plan prepared in accordance with the objectives and principles of the *Disability Act 2006* (Vic);¹⁹ and
- a residual condition.²⁰

2.9 In deciding which of these conditions to attach to the CCO, the court must consider:²¹

- the principle of proportionality;
- the purposes for which a sentence may be imposed (being to punish the offender, to deter the offender and others from such conduct, to establish conditions to facilitate the offender's rehabilitation, to denounce the type of conduct in which the offender engaged, and to protect the community from the offender); and
- the purpose of a CCO (being to address the circumstances of the offender).

8. *Sentencing Act 1991* (Vic) s 48C.

9. *Sentencing Act 1991* (Vic) s 48D.

10. *Sentencing Act 1991* (Vic) s 48E.

11. *Sentencing Act 1991* (Vic) s 48F.

12. *Sentencing Act 1991* (Vic) s 48G.

13. *Sentencing Act 1991* (Vic) s 48H.

14. *Sentencing Act 1991* (Vic) s 48I.

15. *Sentencing Act 1991* (Vic) s 48J.

16. *Sentencing Act 1991* (Vic) s 48JA.

17. *Sentencing Act 1991* (Vic) s 48K.

18. *Sentencing Act 1991* (Vic) s 48LA.

19. *Sentencing Act 1991* (Vic) s 80. This condition can only be attached if an offender has an intellectual disability within the meaning of the *Disability Act 2006* (Vic).

20. Section 48 of the *Sentencing Act 1991* (Vic) gives a court imposing a CCO a broad power to attach 'any other condition to the order that the court thinks fit'. The only express qualifications on this power are that a CCO cannot include a condition about making restitution or the payment of compensation, costs, or damages (as these matters are dealt with separately under Part 4 of the *Sentencing Act 1991* (Vic)) and that it cannot overlap with any of the other specific conditions.

21. *Sentencing Act 1991* (Vic) s 48A.

The focus of the current report

- 2.10 Some of the key findings in relation to the use of the CCO in the higher courts are:
- offenders who receive a CCO have a median age of 26 years, 85.6% are male, and 59.1% have a recent prior sentence;
 - the most common principal offence among these offenders is armed robbery (9.5%) followed by sexual penetration of a child under 16 (7.6%);
 - the majority of CCOs (85%) are imposed for two years or less; and
 - the most common CCO conditions are assessment and treatment (81.8%), supervision (75.1%), unpaid community work (74.4%), and judicial monitoring (14.3%).²²
- 2.11 The current report builds on the *Community Correction Orders: Monitoring Report* findings and presents an analysis of the imposition, duration, and conditions attached to CCOs imposed in the higher courts.
- 2.12 The higher courts data included in this report relate to sentences imposed between January 2012 and June 2013 (inclusive). Business Intelligence (Courts and Tribunal Service) provided the data, which is based on conviction returns. Utilising the first 18 months of CCO data, this report examines the factors that influence a judge's choice of:
- a CCO instead of a short term of imprisonment (for three selected offences);
 - the duration of a CCO and, in particular, what distinguishes long CCOs from short CCOs; and
 - the conditions attached to CCOs.

22. Sentencing Advisory Council, above n 1, 33.

3. Methodology

General research approach

- 3.1 The research on the imposition, duration, and conditions associated with community correction orders (CCOs) is based on a quantitative and qualitative analysis of sentencing remarks for higher court cases.
- 3.2 At a macro-level, the quantitative findings identify reliable, consistent differences when considering the data overall, enabling the interactive influence of a range of case characteristics to be assessed. At a micro-level, the qualitative analysis provides additional nuance, with the potential to identify case-specific factors that have influenced the sentencing outcomes in individual cases, regardless of the relevance of these factors to the trends in sentencing decisions when all cases are considered in the aggregate. Separately, these two types of analysis provide different, but complementary, insights. Combined, they provide a more complete picture than either approach in isolation.
- 3.3 The strengths and limitations of this research methodology are discussed at the conclusion of this report, with a focus on the difficulties associated with attempts to disentangle instinctive synthesis for research purposes.

Sampling and coding

- 3.4 Sentencing remarks are available for 437²³ of the 460 CCO cases sentenced in the higher courts between January 2012 and June 2013.²⁴
- 3.5 The quantitative analysis examines 32 case variables, focusing on the offender, the offence, the victim, and the legal process. The specific variables selected within each of these broad categories are:
 - **the offender**
 - the offender's imprisonment history;
 - the offender's criminal history, including whether the offender has been convicted of (a) violent offences, (b) dishonesty or property offences, (c) drug offences, (d) driving offences, (e) firearm offences, or (f) sex offences;
 - the offender's history of (a) mental illness, (b) substance abuse, (c) childhood victimisation (sexual abuse or non-sexual abuse/neglect/severe disruption), (d) adult trauma, or (e) significant health issues;

23. These 437 CCO remarks were delivered by 57 judges, with an average of 7.4 cases presided over per judge (max = 25, min = 1). This is four cases fewer than were included in the analysis in *Community Correction Orders: Monitoring Report* because in the process of undertaking this additional work four duplicate cases (with unique case identification numbers) were identified. Subsequent analysis indicated that these duplications did not significantly alter the patterns reported in *Community Correction Orders: Monitoring Report*; see above n 1.

24. By frequency, the principal CCO offences in each of the 23 cases where sentencing remarks were unavailable for analysis were: intentionally cause injury (4 cases), sexual penetration of a child under 16, indecent assault, and indecent act with a child under 16 (2 cases each), use a server to procure a person under 16 for a sexual act, criminal damage (intent damage/destroy), assault (common law), cause/induce a child to take part in the act of sex work, affray (common law), knowingly possess child pornography, obtain financial advantage by deception (*Crimes Act 1958* (Vic)), rape, recklessly cause injury, recklessly cause serious injury, sexual penetration of a child aged 16 or 17 under care/supervision/authority, aggravated burglary, and unlawfully/indecently assault a girl (superseded) (1 case each).

- the offender’s mental health history, where relevant, including whether (a) the offender has a cognitive impairment/intellectual disability,²⁵ or (b) *Verdins*²⁶ principles apply to the case;
- the offender’s family situation, including whether (a) family support is available, (b) the offender has dependents, and (c) the offender is currently employed or undertaking further education at the time of sentencing;
- **the offence**
 - whether the offence has co-offenders;
 - whether the offence includes use of a weapon; and
 - whether offending behaviour is influenced by drugs and/or alcohol;
- **the victim**
 - whether the victim submits a Victim Impact Statement;
- **the legal processes**
 - whether the offender pleads guilty or assists police; and
 - whether the prosecution agrees that a CCO is appropriate or the court disagrees with a pre-sentence report recommendation that a CCO should not be granted.

The imposition of CCOs

- 3.6 The analysis examines the imposition of CCOs as compared to short terms of imprisonment²⁷ for three offences: armed robbery, aggravated burglary, and cause serious injury (both intentionally and recklessly).²⁸ Of the 437 CCO cases with available remarks, 157 have been allocated to at least one of these offences (35.9% of the sample).
- 3.7 The relative number of cases involved in the quantitative modelling, by offence type and sentence, are displayed in Table 1.

Table 1: Number of remarks analysed by offence category for CCO cases and the sample of short terms of imprisonment cases

Offence category	CCO cases		Imprisonment cases	
	# remarks analysed	% total eligible cases	# remarks analysed	% total eligible cases
Aggravated burglary	69	93%	63	84%
Causing serious injury	39	98%	51	72%
Armed robbery	49	98%	78	89%

25. There were concerns about inconsistency in the use and interpretation of these terms. As a result, for the purposes of the modelling involved in this report, these terms have been treated synonymously.

26. *R v Verdins* [2007] VSCA 102.

27. In an attempt to generate a relevant sample for comparison purposes, imprisonment cases for these offences were initially sampled at random. The intent was to generate a representative set of imprisonment cases within each offence type and produce an imprisonment sample of appropriate size to the CCOs for each offence. However, examination of the remarks captured through this sampling process led to revision of this approach, as the sample characteristics were considered too different from the CCO population to enable relevant conclusions to be drawn with respect to the research questions. Consequently, the sampling approach was revised, with a renewed focus on short duration imprisonment orders (duration ≤ 3 years) to exclude cases where a CCO would not have been a realistic option at the time of sentencing.

28. CCO cases were allocated to these three offences if (a) the case had at least one of the target offences as a charge anywhere in the case, and (b) any of the target offences in the case had received a CCO for that charge. The analysis was limited to the three offence categories, armed robbery, aggravated burglary, and cause serious injury (intentionally and recklessly), to ensure that there were relevant comparison groups to support a meaningful analysis of factors that influenced a judge’s choice of a CCO compared to a short term of imprisonment.

- 3.8 The supplementary findings emerge from the qualitative content analysis of the 157 CCO sentencing remarks and a reduced sample of short terms of imprisonment remarks.²⁹ This qualitative analysis examines the judicial treatment of a range of subjective and objective variables associated with the case characteristics.

Duration and conditions of CCOs

Duration

- 3.9 The *Community Correction Orders: Monitoring Report* shows that CCOs imposed by the higher courts over the first 18 months have a median length of two years, and only 15.0% of higher court CCOs are imposed for a longer period.
- 3.10 As a result, within this analysis, CCO durations have been examined by separating the 437 CCOs into short CCOs (up to 2 years, 85% of cases) and long CCOs (more than 2 years, 15% of cases). These cases are all involved in the quantitative analysis of this issue.
- 3.11 The additional qualitative analysis of 157 CCO sentencing remarks undertaken to examine the imposition of CCOs (relative to a short term of imprisonment) has also been used to supplement the understanding about CCO duration.

Conditions

- 3.12 The second reading speech of the Sentencing Amendment (Community Correction Reform) Bill 2011 (Vic) indicates that the courts should apply the '[CCO] conditions in a way that addresses the circumstances of the offence and the offender in order to reduce the likelihood of reoffending'.³⁰ This Bill was subsequently passed and became the *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic).
- 3.13 The Council's *Community Correction Orders: Monitoring Report* has found that courts have been imposing substantially the same conditions as previously available for community-based orders (CBOs) and intensive correction orders (ICOs) (that is, treatment and rehabilitation, unpaid community work, and supervision). With the exception of judicial monitoring, the new conditions that may be attached to CCOs are being used infrequently.³¹
- 3.14 The patterns of conditions imposed within the 437 CCO cases included in this analysis are consistent with the full set analysed in *Community Correction Orders: Monitoring Report*:
- 81.7% include a treatment and rehabilitation condition;
 - 75.1% include a supervision condition;
 - 73.9% include a community work condition; and
 - 14.2% include a judicial monitoring condition.
- 3.15 Separate analyses have been undertaken to examine the quantitative patterns associated with the imposition of these four CCO conditions. As with the issue of duration, discussed above, the additional qualitative analysis has also been used to supplement the understanding of the imposition of CCO conditions.

29. This qualitative analysis focuses on imprisonment cases where the total effective sentences is less than or equal to 2 years and includes 23 aggravated burglary cases, 17 causing serious injury cases, and 20 armed robbery cases.

30. Victoria, *Parliamentary Debates*, Legislative Assembly, 15 September 2011, 3291–3295 (Robert Clark, Attorney-General).

31. The full set of CCOs analysed in *Community Correction Orders: Monitoring Report* found that 74.4% of CCOs received community work, 81.8% received assessment and treatment, 75.1% received supervision, and 14.3% received judicial monitoring.

General approach to analysis: binary logistic regression modelling

- 3.16 The quantitative analysis undertaken within each offence type is based on a binary logistic regression. These regression models allow the influence of each predictor variable on the sentence outcome to be considered while holding other variables constant. This logistic regression process produces odds ratios, which indicate the likelihood of a CCO being imposed in light of the case variable. The overall modelling findings are displayed graphically (odds ratios and 95% confidence intervals) throughout, with the underlying descriptive statistics included in the Appendix.³²
- 3.17 The remainder of this section is intended to assist readers understand statistical terms used to describe findings in this report.

Odds ratios

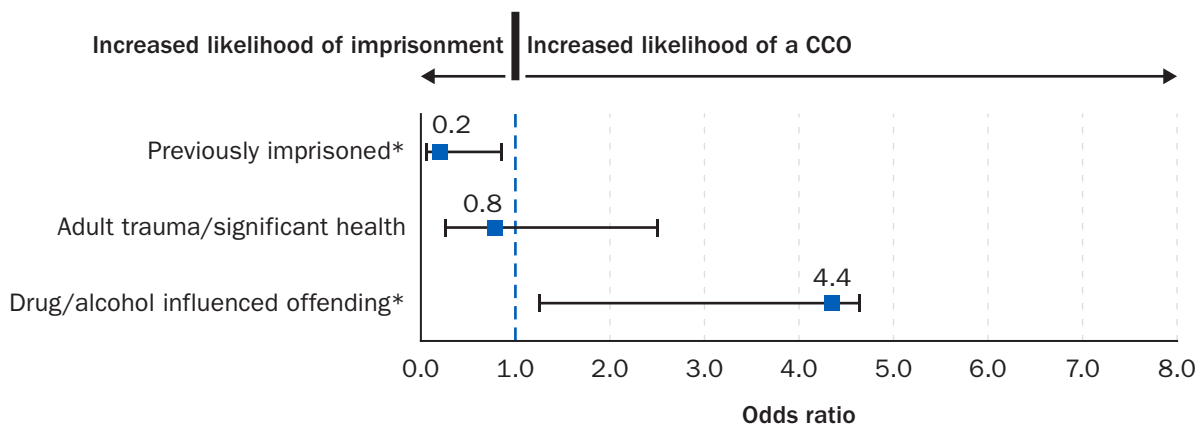
- 3.18 Odds ratios are a measure of the association between a case variable (for example, whether an offender has been previously imprisoned) and an outcome (for example, whether the offender has a CCO or a short term of imprisonment imposed). The odds ratio represents the odds that a CCO will be imposed given the offender *has* previously been imprisoned compared with the odds of a CCO being imposed given the offender *has not* previously been imprisoned. These ratios are used to compare the relative odds of the occurrence of the outcome of interest (for example, a CCO being imposed) given the presence of the case variable of interest (for example, whether the offender has been previously imprisoned).³³
- 3.19 Odds ratios can have a minimum possible value of 0 and a maximum possible value of infinity. When interpreting the findings presented in this report:
- odds ratios with a statistically significant value between 0.0 and less than 1.0 indicate that the presence of the case variable lowers the odds of the outcome;
 - odds ratios with a statistically significant value that equals 1.0 indicate that the presence of the case variable has no consistent effect on the odds of the outcome; and
 - odds ratios with a statistically significant value that is greater than 1.0 indicate that the presence of the case variable increases the odds of the outcome.
- 3.20 Odds ratios need to be interpreted with respect to the 95% confidence intervals. As a function of a number of elements of the analysis (including the sample size involved in the calculation) these intervals give a range of plausible values for the odds ratio in each case. With respect to the points discussed at [3.16]–[3.19], when the 95% confidence interval for an odds ratio includes the value 1.0, this case variable cannot be considered to have reliably influenced the odds of the outcome.³⁴

32. The eight Appendix tables demonstrate the extent to which the frequencies of the case variables are different between the two groups being compared within each logistic regression model.

33. This interprets summaries from Barbara Tabachnick and Linda S. Fidell, *Using Multivariate Statistics*. (4th ed., 2001) and Betty Kirkwood and Jonathan A. C. Sterne, *Essential Medical Statistics* (2nd ed., 2003).

34. Ibid.

Figure 1: Demonstration figure, odds ratios predicting the likelihood of receiving a CCO



*Indicates parameters that made a significant contribution to the variance accounted for by the model.

3.21 Figure 1 shows odds ratios (the value associated with each square) and the 95% confidence intervals (the horizontal lines extending to the left and right of each odds ratio square), relative to a vertical broken line (odds ratio value = 1.0). Using the hypothetical results displayed in Figure 1 as an example,³⁵ the following can be determined:

- offenders who have been previously imprisoned are more likely to receive a short term of imprisonment, relative to a CCO (odds ratio = 0.2, the 95% confidence intervals do not cross the broken blue line, and the asterisk next to the case variable name indicates that it makes a statistically significant contribution to the model);
- information about whether offenders have experienced adult trauma or significant health issues does not reliably predict whether a short term of imprisonment or a CCO will be imposed (odds ratio = 0.8 and the 95% confidence interval crosses the vertical broken line, meaning the case variable does not make a statistically significant contribution to the model); and
- the influence of drugs/alcohol on offending significantly increases the likelihood of the offender receiving a CCO, relative to a short term of imprisonment (odds ratio = 4.4, the 95% confidence intervals do not cross the vertical broken line, and the asterisk next to the case variable name indicates that it makes a statistically significant contribution to the model).

3.22 An odds ratio of 4.4 means that, after accounting for all other variables, the odds of an offender receiving a CCO are 340% greater ($4.4 - 1.0 = 3.4$) than the odds of the offender receiving imprisonment, given that drugs/alcohol have influenced the offending.

3.23 In comparison, an odds ratio of 0.2 means that the odds of an offender receiving a CCO are 80% less ($1.0 - 0.2 = 0.8$) than the odds of the offender receiving imprisonment, given that the offender has previously been imprisoned.

3.24 Each figure presented in this report also has some additional information displayed at the top to indicate what the directionality of the odds ratios means. This is captured in Figure 1 by the 'increased likelihood of imprisonment' and 'increased likelihood of a CCO' labels, with arrows, above the figure.

35. These odds ratios are based on the data presented in Table A1 comparing the imposition of a CCO with a short term of imprisonment for aggravated burglary.

4. CCOs versus short terms of imprisonment

- 4.1 The purpose of a community correction order (CCO) is 'to provide a non-custodial sentence that may be used for a wide range of offending behaviours while having regard to, and addressing, the circumstances of the offender'.³⁶ Its flexibility allows it to be tailored to a broad range of offender characteristics and offending conduct in the mid range of seriousness.
- 4.2 A court must not impose a CCO on an offender unless it is of the opinion that the offence, or the combination of offences, is serious enough to warrant such a sentence. A court must not impose a sentence of imprisonment where a sentence that does not involve confinement of the offender is an available and proportionate sentence.³⁷
- 4.3 The absence of practical guidance, together with the unique flexibility of the CCO, has made the assessment of whether and how a CCO meets the purposes of sentencing a complex task. It has also left judges without assistance in making the choice between a CCO and other available sanctions, such as imprisonment.³⁸
- 4.4 This section compares the imposition of CCOs to short terms of imprisonment across the offences of aggravated burglary, causing serious injury (both intentionally and recklessly), and armed robbery in order to identify what case factors are influencing the imposition of a CCO. The quantitative and qualitative findings regarding all three of these offences are discussed in turn, followed by a summary of the main findings from this section.
- 4.5 While it is true that, '[d]ifficulties arise in relation to any empirical examination of sentencing due to the highly variable and discretionary aspects of the decision-making processes that operate within sentencing',³⁹ these difficulties are exacerbated by the use of an instinctive synthesis methodology.⁴⁰ However, they are not insoluble: this is demonstrated by research in other jurisdictions,⁴¹ and by the quantitative and qualitative techniques used in this analysis.
- 4.6 The qualitative analysis helps expose a range of other case variables demonstrated to be influential factors for certain judges in the imposition of certain CCOs or short terms of imprisonment. This is despite these factors not emerging as significant influences in a constant manner when all CCO cases are considered in aggregation.

36. *Sentencing Act 1991* (Vic) s 36.

37. *Sentencing Act 1991* (Vic) s 5(4). The *Sentencing Amendment (Emergency Workers) Act 2014* (Vic), which commenced on 29 September 2014, extends the principle of parsimony by inserting a new section 5(4C) in the *Sentencing Act 1991* (Vic). The new section states that a court must not impose a custodial sentence if the purpose or purposes of the sentence could be achieved by a CCO combined with one or more of the following conditions: non-association, residency restrictions or exclusions, place or area exclusions, curfews, and/or alcohol exclusions.

38. The *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) has sought to address this concern by providing that a CCO may be an appropriate sentence in cases where a wholly suspended sentence may have been imposed prior to that order being phased out.

39. NSW Bureau of Crime Statistics and Research (BOCSAR), *Robbery: An Analysis of Robbery in New South Wales*, Final Report (NSW Bureau of Crime Statistics and Research, 1987) 133.

40. *Markarian v The Queen* (2005) 228 CLR 357.

41. Lynne A. Barnes and Patrizia Poletti, *Sentencing Robbery Offenders Since the Henry Guideline Judgment* (Judicial Commission of New South Wales, 2007).

Aggravated burglary

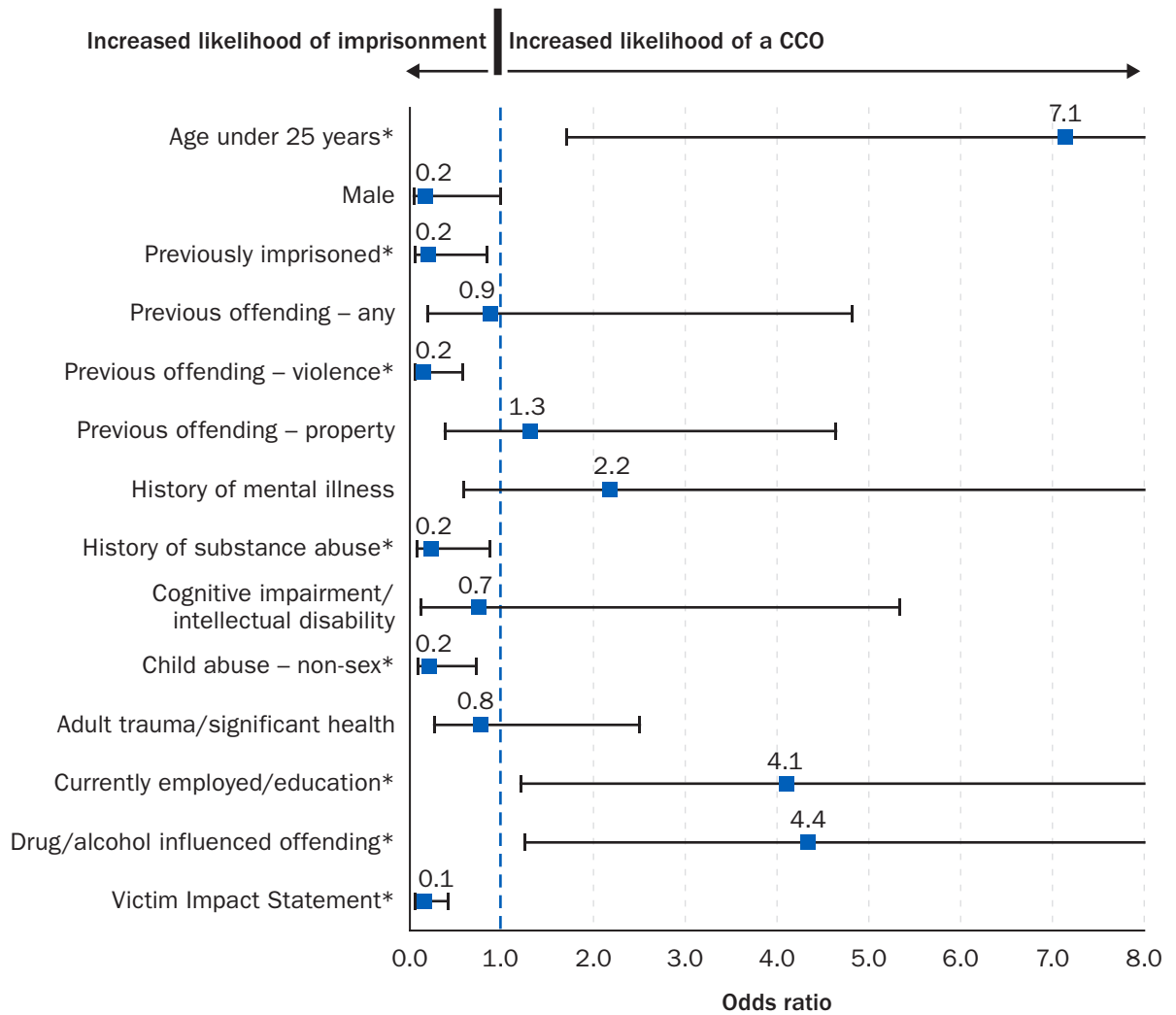
Quantitative analysis

- 4.7 Figure 2 displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of a CCO relative to imprisonment in cases where aggravated burglary is the principal offence. The results⁴² show that the likelihood of a CCO being imposed for aggravated burglary increases if:
- the offender is under the age of 25 years (odds ratio = 7.1, meaning the odds of receiving a CCO are 610% greater);
 - the offender is currently employed and/or engaged in an educational program (odds ratio = 4.1);⁴³ or
 - drugs and/or alcohol are found to have influenced the offending behaviour (odds ratio = 4.4).
- 4.8 The results in Figure 2 also show that the likelihood of a term of imprisonment being imposed for aggravated burglary increases if there is a:
- previous history of imprisonment (odds ratio = 0.2, meaning the odds of receiving a CCO are 80% lower);
 - previous offending history for violence (odds ratio = 0.2);
 - history of substance abuse (odds ratio = 0.2);
 - history of non-sexual child abuse (odds ratio = 0.2); or
 - Victim Impact Statement with respect to the case (odds ratio = 0.1).
- 4.9 None of the other case variables included within this model returned statistically significant odds ratios. Therefore, any effect these other variables have on the sentencing outcome is likely to have occurred by chance alone. Consequently, they are not discussed here.

42. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A1 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit in this case indicates that the significant variables in this model account for 49.6% of the variance.

43. It seems reasonable to assume that this is a proxy measure, capturing a range of other factors associated with availability of support, stability of lifestyle, and likelihood of rehabilitation.

Figure 2: Likelihood of receiving a CCO for aggravated burglary



*Indicates parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.496$.

Qualitative analysis

Mental illness and *Verdins* principles

- 4.10 The quantitative analysis does not identify mental illness as predictive of sentencing outcomes overall for cases of aggravated burglary. However, sentencing remarks indicate that the offender's mental illness is a consideration that influences the decision to impose a CCO instead of a period of imprisonment in some cases. In these instances, this is framed as a need to:
- stabilise and treat offenders suffering from mental illness in order to address the underlying causes of their offending; or
 - continue progress made towards stabilisation and treatment.⁴⁴
- 4.11 The influence of mental illness on the decision to impose a CCO is also framed in terms of the principles in *Verdins*.⁴⁵ In such instances, the CCO is justified on the basis of:
- reduced moral culpability;⁴⁶ and/or
 - the belief that imprisonment would weigh more heavily on the offender due to his or her mental illness;⁴⁷ and/or
 - the understanding that imprisonment would cause further deterioration of the mental illness;⁴⁸ and/or
 - the position that the offenders are not an appropriate vehicle for general and/or specific deterrence;⁴⁹ and/or
 - the belief that the need for denunciation, general deterrence, or specific deterrence is moderated or reduced.⁵⁰
- 4.12 Sometimes these decisions are made in the context of serious or numerous prior convictions.⁵¹ Denunciation and appropriate emphasis on punishment or general or specific deterrence are still achieved through the imposition of punitive conditions, where appropriate,⁵² on the basis that the CCO is not a 'soft option' but one that 'has aspects of real punishment and a capacity for tailored rehabilitation through various programs'.⁵³

44. *DPP v Brown* [2012] VCC 2100 (14 December 2012); *DPP v Bruwer* (Unreported, County Court of Victoria, 30 August 2012); *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Hickleton* [2012] VCC 1151 (13 August 2012); *DPP v Hume* (Unreported, County Court of Victoria, 29 May 2013); *DPP v Mrcic* (Unreported, County Court of Victoria, 5 December 2012); *R v Raymont* [2013] VCC 1034 (30 May 2013); *DPP v Reynolds* (Unreported, County Court of Victoria, 2 August 2012); *DPP v Tantram* [2012] VCC 1671 (23 October 2012); *DPP v Turner* (Unreported, County Court of Victoria, 26 April 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).

45. *R v Verdins* [2007] VSCA 102 [32]; *R v Tsiaras* [1996] 1 VR 398.

46. *DPP v Peterson* [2012] VCC 195 (18 January 2012); *DPP v Tantram* [2012] VCC 1671 (23 October 2012); *DPP v Turner* (Unreported, County Court of Victoria, 26 April 2012).

47. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Hume* (Unreported, County Court of Victoria, 29 May 2013); *DPP v McMaster* [2012] VCC 881 (4 September 2012); *DPP v Peterson* [2012] VCC 195 (18 January 2012); *DPP v Tantram* [2012] VCC 1671 (23 October 2012); *DPP v Turner* (Unreported, County Court of Victoria, 1 June 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).

48. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Hickleton* [2012] VCC 1151 (13 August 2012); *DPP v Hume* (Unreported, County Court of Victoria, 29 May 2013); *DPP v Turner* (Unreported, County Court of Victoria, 1 June 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).

49. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Tantram* [2012] VCC 1671 (23 October 2012).

50. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Hickleton* [2012] VCC 1151 (13 August 2012); *DPP v Peterson* [2012] VCC 195 (18 January 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).

51. *DPP v McMaster* [2012] VCC 881 (4 September 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).

52. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Mobasheri* (Unreported, County Court of Victoria, 3 February 2012); *DPP v Mrcic* (Unreported, County Court of Victoria, 5 December 2012); *DPP v Peterson* [2012] VCC 195 (18 January 2012).

53. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013) [32].

Youth

- 4.13 Consistent with the quantitative modelling results, the qualitative analysis indicates that youth is an important factor influencing the decision to impose a CCO instead of a period of imprisonment.⁵⁴ Various CCO cases refer to the principle that rehabilitation of young offenders is in the community interest.⁵⁵
- 4.14 This consideration takes priority despite the offender's prior criminal history,⁵⁶ lack of remorse and responsibility,⁵⁷ premeditation,⁵⁸ and significant harm to the victim.⁵⁹ In these cases, the CCO is discussed as a sanction that offers the ability to achieve the purposes of denunciation, punishment, and specific and general deterrence while avoiding the criminogenic effects of imprisonment.
- 4.15 There are cases, however, where a decision has been made to imprison similarly situated young offenders. Like some of the CCO offenders, these young offenders have a prior criminal history,⁶⁰ though some have no prior time in custody⁶¹ or adult custody.⁶² In *DPP v Styles*⁶³ and *DPP v Frost*,⁶⁴ the desire to prioritise rehabilitation for young offenders was dealt with by way of a shorter than usual non-parole period. In contrast, in *DPP v Critchlow*,⁶⁵ the 20 year old offender was sentenced to a period of imprisonment equal to the time she had already served on remand.

54. See for example, *DPP v Crole* (Unreported, County Court of Victoria, 3 August 2012); *DPP v Dewys* [2013] VCC 357 (25 March 2013); *DPP v Debono & Ors* [2012] VCC 1663 (29 October 2012); *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012); *DPP v Enery & Anor* (Unreported, County Court of Victoria, 4 September 2012); *DPP v Turner* (Unreported, County Court of Victoria, 26 April 2012); *DPP v Gibbs* (Unreported, County Court of Victoria, 5 November 2012); *DPP v Hare* (Unreported, County Court of Victoria, 24 June 2013); *DPP v Moore & Harrison* (Unreported, County Court of Victoria, 18 June 2013); *DPP v Hexter & Pedder* [2012] VCC 1794 (14 November 2012); *DPP v Ryan & Anor* (Unreported, County Court of Victoria, 13 July 2012); *DPP v Jenkins & Mair* [2012] VCC 1985 (5 December 2012); *R v Lancaster* (Unreported, County Court of Victoria, 12 June 2012); *DPP v Mobasheri* (Unreported, County Court of Victoria, 3 February 2012); *DPP v Nevill* (Unreported, County Court of Victoria, 20 November 2012); *DPP v Phillips* (Unreported, County Court of Victoria, 29 April 2013); *DPP v Testa* (Unreported, County Court of Victoria, 3 May 2012); *DPP v Thornton* (Unreported, County Court of Victoria, 4 October 2012); *DPP v Westerman* (Unreported, County Court of Victoria, 5 March 2013); *DPP v Willett* [2013] VCC 667 (19 April 2013).

55. *DPP v Wright* (Unreported, County Court of Victoria, 25 September 2012); *DPP v Hexter & Pedder* [2012] VCC 1794 (14 November 2012); *DPP v Ryan & Anor* (Unreported, County Court of Victoria, 13 July 2012); *DPP v Thornton* (Unreported, County Court of Victoria, 4 October 2012).

56. *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012); *DPP v Turner* (Unreported, County Court of Victoria, 1 June 2012); *DPP v Gibbs* (Unreported, County Court of Victoria, 5 November 2012); *DPP v Jenkins & Mair* [2012] VCC 1985 (5 December 2012); *DPP v Lancaster* (Unreported, County Court of Victoria, 12 June 2012); *DPP v Testa* (Unreported, County Court of Victoria, 3 May 2012); *DPP v Verlander* (Unreported, County Court, 18 April 2013); *DPP v Willett* [2013] VCC 667 (19 April 2013); *DPP v Westerman* (Unreported, County Court of Victoria, 5 March 2013).

57. *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012).

58. *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012).

59. *DPP v Willett* [2013] VCC 667 (19 April 2013).

60. *DPP v McColl* (Unreported, County Court of Victoria, 22 November 2012); *DPP v Styles* (Unreported, County Court of Victoria, 30 May 2013); *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012).

61. *DPP v McColl* (Unreported, County Court of Victoria, 22 November 2012).

62. *DPP v Styles* (Unreported, County Court of Victoria, 30 May 2013).

63. *DPP v Styles* (Unreported, County Court of Victoria, 30 May 2013).

64. *DPP v Frost* (Unreported, County Court of Victoria, 30 April 2012).

65. *DPP v Critchlow* (Unreported, County Court of Victoria, 31 August 2012).

Prior offending

- 4.16 For offenders who are not considered young offenders, the lack of prior offending, or the lack of relevant prior offending such that the instant offending is found to be out of character, is a factor that influences the decision to impose a CCO⁶⁶ or a suspended sentence⁶⁷ instead of a period of imprisonment.
- 4.17 At the same time, other offenders who also receive a CCO have relevant and/or significant prior criminal histories.⁶⁸ In two cases, this was accompanied by a lack of remorse and responsibility,⁶⁹ and in one case the instant offending was committed while on parole.⁷⁰ The different approaches to this factor could demonstrate differences in circumstances such as age,⁷¹ mental health issues,⁷² assistance to the authorities,⁷³ length of time since the prior offending,⁷⁴ demonstrated rehabilitation since the prior offending,⁷⁵ and/or differences between judges. Punitive conditions have been imposed in these cases for the purposes of specific deterrence as well as denunciation, punishment, and general deterrence.

Seriousness of offending

- 4.18 As it is difficult to objectively quantify offence seriousness in a consistent manner suitable for modelling purposes, this variable has not been included in the quantitative modelling within this report. However, as a consequence of the qualitative analysis, the seriousness of the offending is often highlighted by the courts⁷⁶ as a key consideration in imposing imprisonment:

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66. *DPP v Brown* [2012] VCC 2100 (14 December 2012); *DPP v Bruwer* (Unreported, County Court of Victoria, 30 August 2012); *DPP v Cameron* [2012] VCC 1225 (28 August 2012); *DPP v Dennis* (Unreported, County Court of Victoria, 9 August 2012); *DPP v Handley* (Unreported, County Court of Victoria, 7 May 2013); *DPP v Hickleton* [2012] VCC 1151 (13 August 2012); *DPP v Hooper* (Unreported, County Court of Victoria, 22 April 2013); *DPP v Howell* (Unreported, County Court of Victoria, 10 October 2012); *DPP v Hume* (Unreported, County Court of Victoria, 29 May 2013); *DPP v Huynh* (Unreported, County Court of Victoria, 20 August 2012); *DPP v Jackson* (Unreported, County Court of Victoria, 31 October 2012); *DPP v James* (Unreported, County Court of Victoria, 5 September 2012); *DPP v Jones* (Unreported, County Court of Victoria, 1 March 2013); *DPP v Jenkins & Mair* [2012] VCC 1985 (5 December 2012); *DPP v Moore & Harrison* (Unreported, County Court of Victoria, 18 June 2013); *DPP v Morello* (Unreported, County Court of Victoria, 27 March 2013); *DPP v Thompson & Anor* (Unreported, County Court of Victoria, 31 May 2012); *DPP v Mrcic* (Unreported, County Court of Victoria, 5 December 2012); *DPP v Omerhodic* (Unreported, County Court of Victoria, 15 May 2013); *DPP v Oteamoa* (Unreported, County Court of Victoria, 18 December 2012); *DPP v Peterson* [2012] VCC 195 (18 January 2012); *DPP v Schiffman* (Unreported, County Court of Victoria, 23 August 2012).
67. *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012); *DPP v Fulton* (Unreported, County Court of Victoria, 22 October 2012); *DPP v Searle* (Unreported, County Court of Victoria, 21 August 2012); *DPP v Pratt* (Unreported, County Court of Victoria, 27 May 2013); *DPP v McArthur* (Unreported, County Court of Victoria, 7 March 2012); *DPP v Edwards & Anor* (Unreported, County Court of Victoria, 20 April 2012); *DPP v Arnold* (Unreported, County Court of Victoria, 27 July 2012); *DPP v Yeomans & Brentwood* (Unreported, County Court of Victoria, 16 March 2012).
68. *DPP v Handley & Elliot* [2012] VCC 223 (17 February 2012); *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012); *DPP v King* (Unreported, County Court of Victoria, 9 November 2012); *DPP v McMaster* [2012] VCC 881 (4 September 2012); *DPP v Morgan* (Unreported, County Court of Victoria, 31 May 2012); *DPP v Priest* (Unreported, County Court of Victoria, 17 April 2013); *DPP v Robinson* (Unreported, County Court of Victoria, 26 June 2012); *DPP v Shannon* (Unreported, County Court of Victoria, 11 October 2012); *DPP v Smith* (Unreported, County Court of Victoria, 14 February 2013); *DPP v Tantram* [2012] VCC 1671 (23 October 2012); *DPP v Testa* (Unreported, County Court of Victoria, 3 May 2012); *DPP v Whitburn* (Unreported, County Court of Victoria, 25 January 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).
69. *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012).
70. *DPP v Morgan* (Unreported, County Court of Victoria, 31 May 2012).
71. *DPP v Oram & Emond* (Unreported, County Court of Victoria, 23 May 2012); *DPP v Testa* (Unreported, County Court of Victoria, 3 May 2012).
72. *DPP v McMaster* [2012] VCC 881 (4 September 2012); *DPP v Tantram* [2012] VCC 1671 (23 October 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).
73. *DPP v Smith* (Unreported, County Court of Victoria, 14 February 2013).
74. *DPP v Handley & Elliot* [2012] VCC 223 (17 February 2012); *DPP v Priest* (Unreported, County Court of Victoria, 17 April 2013); *DPP v Robinson* (Unreported, County Court of Victoria, 26 June 2012); *DPP v Shannon* (Unreported, County Court of Victoria, 11 October 2012).
75. *DPP v Whitburn* (Unreported, County Court of Victoria, 25 January 2012).
76. *DPP v Adaman* (Unreported, County Court of Victoria, 24 June 2013); *DPP v Stokes* (Unreported, County Court of Victoria, 17 May 2013); *DPP v Styles* (Unreported, County Court of Victoria, 30 May 2013); *DPP v Tapim* (Unreported, County Court of Victoria, 8 August 2012).

I have formed a view that it is not appropriate that a community correction order be imposed. I am not satisfied that such an order would properly reflect the seriousness of your offending and the grave experience suffered by [the victims].⁷⁷

- 4.19 Similarly, in *DPP v McMillan*, ‘your offending here was too serious for the imposition of a community correction order’.⁷⁸

Delay between offending and sentencing and demonstrated steps towards rehabilitation

- 4.20 Another case variable not included in the quantitative modelling is the delay between offending and sentencing. As with seriousness of offending, delay is identified through the qualitative analysis as a factor that influences the decision to impose a CCO or a suspended sentence instead of a period of imprisonment. This is considered ‘as a powerful mitigatory factor’⁷⁹ in its own right as well as in relation to steps towards rehabilitation made during the extended period of time it takes to hear the case.⁸⁰
- 4.21 In the absence of delay, demonstrated steps taken towards rehabilitation showing an effort to address the underlying factors that caused the offending influences the decision to impose a CCO instead of a period of imprisonment.⁸¹ Progress towards rehabilitation reduces the need for specific deterrence, and judges are reluctant to undermine such progress with a period of imprisonment as has been made clear in *DPP v Schiffman*:

The most important thing, from the community’s perspective, is that you should be permitted to continue to live a worthwhile life in the community rather than your rehabilitation being dramatically interrupted by the stint of a year or so in gaol which would be entirely counter productive in my view.⁸²

Need to stabilise a chaotic lifestyle

- 4.22 The need to stabilise a chaotic lifestyle and/or address factors – such as drug addiction, emotional issues, or mental illness – that led to the offending influences the decision to impose a CCO instead of a period of imprisonment.⁸³

77. *DPP v Doughty* (Unreported, County Court of Victoria, 24 January 2012) [44].

78. *DPP v McMillan* (Unreported, County Court of Victoria, 14 August 2012) [20].

79. *DPP v Bulmer & Anor* (Unreported, County Court of Victoria, 26 April 2013) [47] citing *R v Merrett, Piggot & Ferrari* [2007] VSCA 1.

80. *DPP v Bulmer & Anor* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Turner* (Unreported, County Court of Victoria, 1 June 2012); *DPP v Morgan* (Unreported, County Court of Victoria, 31 May 2012); *DPP v Shannon* (Unreported, County Court of Victoria, 11 October 2012).

81. *DPP v Brown* [2012] VCC 2100 (14 December 2012); *DPP v Bruwer* (Unreported, County Court of Victoria, 30 August 2012); *DPP v Debono & Ors* [2012] VCC 1663 (29 October 2012); *DPP v Dennis* (Unreported, County Court of Victoria, 9 August 2012); *DPP v Gibbs* (Unreported, County Court of Victoria, 5 November 2012); *DPP v Hare* (Unreported, County Court of Victoria, 24 June 2013); *DPP v Hexter & Pedder* [2012] VCC 1794 (14 November 2012); *DPP v Hooper* (Unreported, County Court of Victoria, 22 April 2013); *DPP v Hume* (Unreported, County Court of Victoria, 29 May 2013); *DPP v King* (Unreported, County Court of Victoria, 9 November 2012); *DPP v Lancaster* (Unreported, County Court of Victoria, 12 June 2012); *DPP v Mabasheri* (Unreported, County Court of Victoria, 3 February 2012); *DPP v Morello* (Unreported, County Court of Victoria, 27 March 2013); *DPP v Morgan* (Unreported, County Court of Victoria, 31 May 2012); *DPP v Mrsic* (Unreported, County Court of Victoria, 5 December 2012); *DPP v Phillips* (Unreported, County Court of Victoria, 29 April 2013); *DPP v Schiffman* (Unreported, County Court of Victoria, 23 August 2012); *DPP v Thornton* (Unreported, County Court of Victoria, 4 October 2012).

82. *DPP v Schiffman* (Unreported, County Court of Victoria, 23 August 2012) [39].

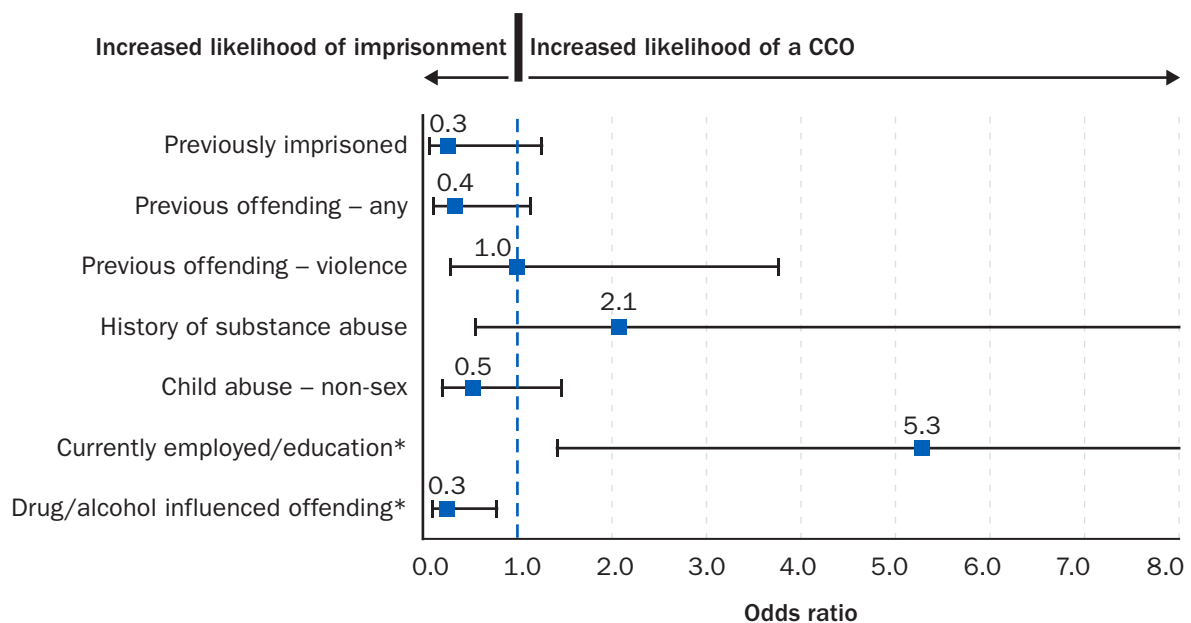
83. *DPP v Bulmer & Anor* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Cameron* [2012] VCC 1225 (28 August 2012); *DPP v Debono & Ors* [2012] VCC 1663 (29 October 2012); *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013); *DPP v Hare* (Unreported, County Court of Victoria, 24 June 2013); *DPP v Moore & Harrison* (Unreported, County Court of Victoria, 18 June 2013); *DPP v Howell* (Unreported, County Court of Victoria, 10 October 2012); *DPP v Jenkins & Mair* [2012] VCC 1985 (5 December 2012); *DPP v Morello* (Unreported, County Court of Victoria, 27 March 2013); *DPP v Phillips* (Unreported, County Court of Victoria, 29 April 2013); *DPP v Smith* (Unreported, County Court of Victoria, 14 February 2013); *DPP v Tantram* [2012] VCC 1671 (23 October 2012); *DPP v Turner* (Unreported, County Court of Victoria, 26 April 2012); *DPP v Willett* [2013] VCC 667 (19 April 2013).

Cause serious injury

Quantitative analysis

- 4.23 Figure 3 displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of a CCO relative to imprisonment in cases where cause serious injury is the principal offence. The results show that the likelihood of a CCO being imposed for causing serious injury increases if the offender is currently employed and/or engaged in an educational program (odds ratio = 5.3, meaning the odds of receiving a CCO are 430% greater).⁸⁴
- 4.24 The results in Figure 3 also show that the likelihood of a term of imprisonment being imposed for causing serious injury increases if drugs and/or alcohol have influenced the offending behaviour (odds ratio = 0.3, meaning the odds of receiving a CCO are 70% lower).
- 4.25 None of the other variables included within this model returned statistically significant odds ratios. They are therefore not discussed here.

Figure 3: Likelihood of receiving a CCO for cause serious injury



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.252$.

84. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A2 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit in this case indicates that the significant variables in this model account for 25.2% of the variance.

Qualitative analysis

Youth

4.26 Although youth has not emerged as a significant factor when the cases are considered overall, the qualitative analysis reveals cases where youth is an influential consideration in imposing a CCO or a suspended sentence. Judges are motivated by rehabilitation over general deterrence. Imposing a CCO for youthful offenders is considered to be in the community's best interest, particularly with respect to the potential first term of imprisonment. On occasion, this has taken priority despite relevant prior criminal history and significant harm to the victim.⁸⁵ Relating to the latter consideration is the policy articulated in *DPP v Tunumafono*:

In my view only in circumstances of the gravest criminal offending and where there is no realistic prospects of rehabilitation, then the mitigatory consideration of youth must be viewed as extinguished.⁸⁶

4.27 In these cases, the CCO is discussed as a sanction that offers the ability to achieve denunciation, punishment, and specific and general deterrence while avoiding the criminogenic effects of imprisonment. This is highlighted in *R v Chand*:

It has been suggested that a term of imprisonment suspended would be an appropriate way of punishing you for this offence. It seems to me that the alternative which is provided by the Victorian Parliament of a community correction order is a better way to go. Quite apart from anything else, it enables me to impose some real and immediate reminder to you by way of punishment that you must not engage in this kind of conduct.⁸⁷

4.28 There are also cases where youth has not prevented a term of imprisonment being imposed. A number of cases make reference to the offender's youth and lack of prior criminal history as important considerations deserving of rehabilitation. However, this has been dealt with by way of a shorter than usual non-parole period.⁸⁸

The punishment must send a message that will make others stop and think rather than engaging in physical violence ... You are young and I accept that the principles set out in Mills case have some application to your situation. I accept that you are vulnerable because of your youth and that this will be the first sentence of imprisonment that you have served. You may be susceptible to bad influences of more experienced criminals. It is to be hoped that you will have the strength of character and support to resist those influences. I accept that you will lose your employment if incarcerated. Your employer would apparently be prepared to re-employ you on your release, but that depends if there is enough work.⁸⁹

85. *DPP v Garang* (Unreported, County Court of Victoria, 6 June 2012); *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012).

86. *DPP v Tunumafono* (Unreported, County Court of Victoria, 16 February 2012) [20].

87. *R v Chand* (Unreported, County Court of Victoria, 24 May 2012) [12].

88. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Baker* [2013] VCC 1116 (6 March 2013); *DPP v Mann* (Unreported, County Court of Victoria, 17 January 2012); *DPP v Tanios & Ors* (Unreported, County Court of Victoria, 11 June 2013); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012); *DPP v Warren & Warren* (Unreported, County Court of Victoria, 5 June 2013); *DPP v White* (Unreported, County Court of Victoria, 30 March 2012).

89. *DPP v Baker* [2013] VCC 1116 (6 March 2013) [19]–[24].

Mental illness and *Verdins* principles

- 4.29 As with aggravated burglary, examples of cause serious injury cases include mental illness as an influential factor in the decision to impose a CCO instead of a period of imprisonment.⁹⁰ In these cases, the court has considered rehabilitation as being in the community's interest.⁹¹ This is the case in the presence⁹² as well as in the absence⁹³ of a reduction of moral culpability due to the connection between the mental illness and the offending.⁹⁴ The impact of mental illness on the decision to impose a CCO is also framed in terms of the principles in *Verdins*.⁹⁵ In such instances, the CCO is justified on the same basis as discussed for aggravated burglary at [4.11].
- 4.30 Sometimes these decisions are made in the context of mitigating factors such as the offender's youth and lack of prior convictions,⁹⁶ while other times they are made in the context of serious or numerous prior convictions.⁹⁷ Denunciation and appropriate emphasis on punishment or general or specific deterrence are still achieved through the imposition of punitive conditions, where appropriate.⁹⁸
- 4.31 Despite the important role that mental illness is found to play in the imposition of a CCO, there are cases where a decision has been made to imprison mentally ill offenders. This is justified in terms of:
- the need for denunciation, punishment, general and/or specific deterrence;⁹⁹ and/or
 - a belief that rehabilitation or treatment could be achieved either in prison or under supervision on release after a shorter than usual non-parole period.¹⁰⁰

Prior offending

- 4.32 For offenders who are not considered young offenders, there are cases where a lack of prior offending, or limited prior offending such that the instant offending is found to be out of character, is a factor that has influenced the decision to impose a CCO instead of

90. *DPP v Dart* (Unreported, County Court of Victoria, 10 February 2012); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Garang* (Unreported, County Court of Victoria, 6 June 2012); *DPP v Germaine* (Unreported, County Court of Victoria, 27 July 2012); *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Rowarth* (Unreported, County Court of Victoria, 13 May 2013); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012); *DPP v Wilson* (Unreported, County Court of Victoria, 27 March 2012).

91. *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012); *DPP v Turner* (Unreported, County Court of Victoria, 1 June 2012).

92. *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Germaine* (Unreported, County Court of Victoria, 27 July 2012); *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Rowarth* (Unreported, County Court of Victoria, 13 May 2013); *DPP v Turner* (Unreported, County Court of Victoria, 1 June 2012).

93. *DPP v Garang* (Unreported, County Court of Victoria, 6 June 2012); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012).

94. *R v Verdins* [2007] VSCA 102, [32]; *R v Tsiaris* [1996] 1 VR 398.

95. *R v Verdins* [2007] VSCA 102, [32]; *R v Tsiaris* [1996] 1 VR 398.

96. *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012).

97. *DPP v Dart* (Unreported, County Court of Victoria, 10 February 2012); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Rowarth* (Unreported, County Court of Victoria, 13 May 2013); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012).

98. *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Rowarth* (Unreported, County Court of Victoria, 13 May 2013); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012).

99. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Edwards* (Unreported, County Court of Victoria, 10 May 2012); *DPP v Flood* (Unreported, County Court of Victoria, 2 March 2012); *DPP v Johnstone* (Unreported, County Court of Victoria, 23 May 2013); *DPP v Mahat* (Unreported, County Court of Victoria, 22 June 2012); *DPP v McGregor* (Unreported, County Court of Victoria, 23 January 2012); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012); *DPP v White* (Unreported, County Court of Victoria, 30 March 2012).

100. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Edwards* (Unreported, County Court of Victoria, 10 May 2012); *DPP v Johnstone* (Unreported, County Court of Victoria, 23 May 2013); *DPP v McGregor* (Unreported, County Court of Victoria, 23 January 2012); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012); *DPP v White* (Unreported, County Court of Victoria, 30 March 2012); *DPP v Williams* (Unreported, County Court of Victoria, 5 October 2012).

a period of imprisonment.¹⁰¹ The court has imposed punitive conditions in these cases for the purposes of denunciation, punishment, and general deterrence, rather than a heavy emphasis on specific deterrence.

- 4.33 At the same time, other offenders with prior criminal histories for relevant offences have also received a CCO.¹⁰² This could be due to mitigating factors, such as the length of time since the prior offending or demonstrated rehabilitation since the prior offending, and it could also be due to different approaches by the court. Punitive conditions have been imposed in these cases for the purposes of specific deterrence as well as denunciation, punishment, and general deterrence.
- 4.34 Despite the presence of prior criminal histories for relevant offences among some offenders who have received a CCO,¹⁰³ this factor is used by some judges to support a decision to impose a sentence of imprisonment.¹⁰⁴

Delay between offending and sentencing accompanied by rehabilitation efforts

- 4.35 Judges regard delay as a powerful mitigating factor in its own right influencing the imposition of a CCO or a suspended sentence. An offender's rehabilitation efforts during the period of delay, intended to address the factors that have caused the offending, are also influential. In these cases, the demonstrated steps towards rehabilitation are evidenced by supporting documentation from experts and reduce the need for specific deterrence, meaning that judges are hesitant to undermine progress with a period of imprisonment.
- 4.36 Demonstrated progress towards rehabilitation, however, is insufficient to prevent a decision to imprison some offenders convicted of cause serious injury.¹⁰⁵

Continuing attack on victims

- 4.37 No coding has been done to include the continuing attack on a victim in the quantitative modelling. The qualitative analysis reveals that, although a continuing attack on a helpless victim is present in cases that received a CCO,¹⁰⁶ this factor is used by some judges to support the decision to impose a term of imprisonment.¹⁰⁷ This decision is made despite the presence of

101. *DPP v Maskell* (Unreported, County Court of Victoria, 3, 5 June 2013); *DPP v Mora-Carranza* (Unreported, County Court of Victoria, 16 April 2013); *DPP v Nguyen* (Unreported, County Court of Victoria, 8 March 2012); *DPP v O'Flynn* [2013] VCC 770 (15 April 2013); *DPP v Perrott* (Unreported, County Court of Victoria, 22 March 2012); *DPP v Quigley* (Unreported, County Court of Victoria, 30 March 2012); *DPP v Wallace* (Unreported, County Court of Victoria, 9 May 2013).

102. *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012); *DPP v Cooper* (Unreported, County Court of Victoria, 18 October 2012); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Garang* (Unreported, County Court of Victoria, 6 June 2012); *DPP v Grima* (Unreported, County Court of Victoria, 19 November 2012); *DPP v Rowarth* (Unreported, County Court of Victoria, 13 May 2013); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012).

103. *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012); *DPP v Cooper* (Unreported, County Court of Victoria, 18 October 2012); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Garang* (Unreported, County Court of Victoria, 6 June 2012); *DPP v Grima* (Unreported, County Court of Victoria, 19 November 2012); *DPP v Rowarth* (Unreported, County Court of Victoria, 13 May 2013); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012).

104. *DPP v Carr* (Unreported, County Court of Victoria, 11 May 2012); *DPP v Flood* (Unreported, County Court of Victoria, 2 March 2012); *DPP v Hall* (Unreported, County Court of Victoria, 19 October 2012); *DPP v Mann* (Unreported, County Court of Victoria, 17 January 2012); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012).

105. *DPP v Edwards* (Unreported, County Court of Victoria, 10 May 2012); *DPP v Hall* (Unreported, County Court of Victoria, 19 October 2012); *DPP v McGregor* (Unreported, County Court of Victoria, 23 January 2012); *DPP v Warren & Warren* (Unreported, County Court of Victoria, 5 June 2013); *DPP v Williams* (Unreported, County Court of Victoria, 5 October 2012).

106. *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Tunumafono* (Unreported, County Court of Victoria, 16 February 2012); *DPP v Quigley* (Unreported, County Court of Victoria, 30 March 2012).

107. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Baker* [2013] VCC 1116 (6 March 2013); *DPP v Mann* (Unreported, County Court of Victoria, 17 January 2012); *DPP v Tanios & Ors* (Unreported, County Court of Victoria, 11 June 2013); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012); *DPP v Williams* (Unreported, County Court of Victoria, 5 October 2012); *DPP v Warren & Warren* (Unreported, County Court of Victoria, 5 June 2013).

the same strongly mitigating factors as in the CCO cases, including being a youthful offender with no prior record,¹⁰⁸ no relevant prior record,¹⁰⁹ youth,¹¹⁰ and mental illness attracting some of the principles in *Verdins*.¹¹¹ These imprisonment sentences predate the commencement of the *Crimes Amendment (Gross Violence Offences) Act 2013* (Vic), in which 'gross violence' is defined, inter alia, as a continuing assault on the victim after he or she is incapacitated.

- 4.38 In the imprisonment cases, the above mitigating factors have been addressed by the imposition of a shorter than usual non-parole period.¹¹² In the CCO cases, these mitigating factors have been addressed by the choice of a non-custodial sanction and the use of rehabilitative conditions alongside those aimed at denunciation, punishment, and/or deterrence.¹¹³

Significant and/or continuing serious injury

- 4.39 Although significant and/or continuing serious injury to the victim is present in many of the cases where a CCO has been imposed,¹¹⁴ this factor is used by some judges to support decisions to impose imprisonment.¹¹⁵

Vigilantism

- 4.40 Where relevant, some judges emphasise and condemn vigilantism.¹¹⁶ This factor is present in some of the CCO cases¹¹⁷ and the imprisonment cases.¹¹⁸ The former cases condemn vigilantism through CCO length and conditions, while emphasising that '[a]ssaults on other people for revenge or vigilantism will not be tolerated by our system of justice',¹¹⁹ that vigilantism 'will require sentences that reflect condemnation by the justice system and general and specific deterrence',¹²⁰ and that it 'must be condemned'.¹²¹

108. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Baker* [2013] VCC 1116 (6 March 2013).

109. *DPP v Tanios & Ors* (Unreported, County Court of Victoria, 11 June 2013); *DPP v Warren & Warren* (Unreported, County Court of Victoria, 5 June 2013).

110. *DPP v Mann* (Unreported, County Court of Victoria, 17 January 2012); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012).

111. *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012).

112. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Baker* [2013] VCC 1116 (6 March 2013); *DPP v Mann* (Unreported, County Court of Victoria, 17 January 2012); *DPP v Tanios & Ors* (Unreported, County Court of Victoria, 11 June 2013); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012); *DPP v Warren & Warren* (Unreported, County Court of Victoria, 5 June 2013).

113. *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Tunumafono* (Unreported, County Court of Victoria, 16 February 2012); *DPP v Quigley* (Unreported, County Court of Victoria, 30 March 2012).

114. *DPP v Sun & Ors* (Unreported, County Court of Victoria, 5 March 2012); *DPP v Polkinghorne, Cocking & Evans* [2012] VCC 109 (7 February 2012); *DPP v Dobson* (Unreported, County Court of Victoria, 26 April 2013); *DPP v Edwards* (Unreported, County Court of Victoria, 28 March 2012); *DPP v Germaine* (Unreported, County Court of Victoria, 27 July 2012); *DPP v Grima* (Unreported, County Court of Victoria, 19 November 2012); *DPP v Hinsley, Hamilton & Harrison-Johnston* [2012] VCC 2104 (15 November 2012, 18 December 2012); *DPP v Kennedy* (Unreported, County Court of Victoria, 17 May 2013); *DPP v Kesper* (Unreported, County Court of Victoria, 31 May 2013); *DPP v Maskell* (Unreported, County Court of Victoria, 3, 5 June 2013); *DPP v O'Flynn* [2013] VCC 770 (15 April 2013); *DPP v Owens* (Unreported, County Court of Victoria, 6 June 2013); *DPP v Perrott* (Unreported, County Court of Victoria, 22 March 2012); *DPP v Sterio* (Unreported, County Court of Victoria, 24 September 2012); *DPP v Wilson* (Unreported, County Court of Victoria, 27 March 2012).

115. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Baker* [2013] VCC 1116 (6 March 2013); *DPP v Tanios & Ors* (Unreported, County Court of Victoria, 11 June 2013); *DPP v Noa* (Unreported, County Court of Victoria, 11 October 2012); *DPP v Warren & Warren* (Unreported, County Court of Victoria, 5 June 2013).

116. *DPP v O'Flynn* [2013] VCC 770 (15 April 2013); *DPP v Carr* (Unreported, County Court of Victoria, 11 May 2012); *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012).

117. *DPP v O'Flynn* [2013] VCC 770 (15 April 2013); *DPP v Nguyen* (Unreported, County Court of Victoria, 8 March 2012); *DPP v Marshall & Edwards* (Unreported, County Court of Victoria, 28 June 2012).

118. *DPP v Azez* (Unreported, County Court of Victoria, 21 March 2012); *DPP v Carr* (Unreported, County Court of Victoria, 11 May 2012).

119. *DPP v Nguyen* (Unreported, County Court of Victoria, 8 March 2012) [14].

120. *DPP v Nguyen* (Unreported, County Court of Victoria, 8 March 2012) [14].

121. *DPP v O'Flynn* [2013] VCC 770 (15 April 2013) [40].

Armed robbery

Quantitative analysis

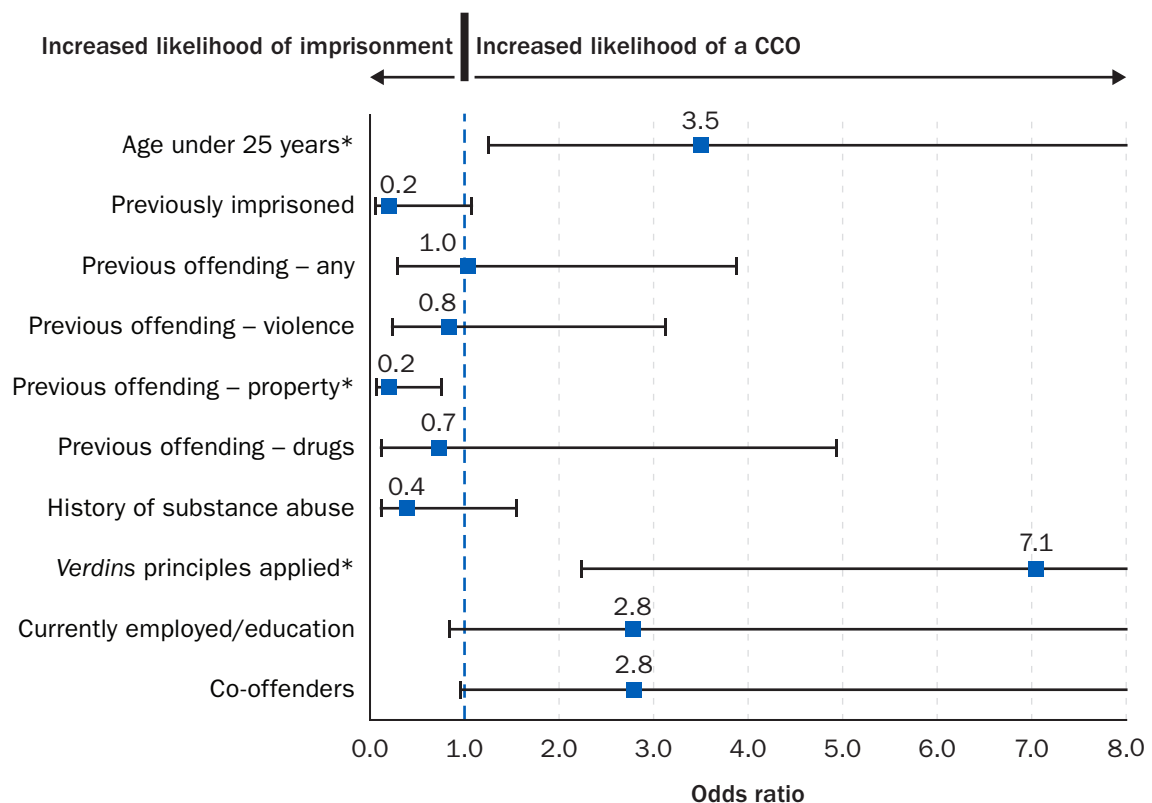
4.41 Figure 4 displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of a CCO relative to imprisonment in cases where armed robbery is the principal offence. The results show that¹²² the likelihood of a CCO being imposed for armed robbery increases if:

- the offender is aged under 25 years (odds ratio = 3.5, meaning the odds of receiving a CCO are 250% greater); or
- *Verdins* principles apply to the offender (odds ratio = 7.1).

4.42 The results in Figure 4 also show that the likelihood of a term of imprisonment being imposed for armed robbery increases if the offender has a previous offending history for property-related crime (odds ratio = 0.2, meaning the odds of receiving a CCO are 80% lower).

4.43 None of the other variables included within the CCO versus imprisonment model for armed robbery returned statistically significant odds ratios.

Figure 4: Likelihood of receiving a CCO for armed robbery



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.404$.

122. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A3 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit in this case indicates that the significant variables in this model account for 40.4% of the variance.

Qualitative analysis

- 4.44 CCOs are often imposed for armed robbery where the offending is relatively unplanned and unsophisticated resulting in easy detection of the offenders.¹²³ This is indicative of the underlying cause of the offending, with offenders more likely either to be under the influence of drugs/alcohol at the time of the offending or to offend to obtain money to feed an addiction. There were examples of cases where these circumstances still resulted in the imposition of a sentence of imprisonment.¹²⁴ Offenders who receive a CCO are also more likely to have acted alone, with no actual violence used against the victims. In cases where an offender acts in concert with others and a CCO is imposed, the offender is more likely to have played a less significant role than others.
- 4.45 About half of the cases involving armed robbery where imprisonment orders are made also involve more sophisticated offending.¹²⁵ This offending can include a disguise, actual violence against the victim, multiple offenders where the offender being sentenced plays an equal or more significant role than any co-accused, or sentencing for more than one armed robbery (including attempts). Of the cases not involving sophisticated offending, the offender often has a history of prior offending, and the purpose of imprisonment is punishment and specific deterrence.

Summary

- 4.46 In examining why the court has imposed CCOs relative to a short term of imprisonment over the first 18 months of this new order, the quantitative analysis has found that:
- the majority of case variables do not predict if a CCO or short term of imprisonment will be imposed;
 - the only variable that consistently increases the likelihood of the imposition of a CCO (although non-significant for armed robbery) is whether the offender is currently employed and/or involved in an educational program; and
 - the involvement of drugs and/or alcohol in the offence has an inconsistent predictive influence, increasing the likelihood of a CCO for aggravated burglary, decreasing the likelihood for armed robbery, and having no consistent predictive influence for causing serious injury.

123. *DPP v Kontochristos & Alaoui* (Unreported, County Court of Victoria, 24 August 2012); *R v Atkinson* (Unreported, County Court of Victoria, 28 March 2012); *DPP v Bebbington* (Unreported, County Court of Victoria, 21 June 2013); *DPP v Loverso & Ors* (Unreported, County Court of Victoria, 24 April 2013); *DPP v Boulton* [2013] VCC 972 (20 June 2013); *DPP v Brewin* (Unreported, County Court of Victoria, 17 February 2012); *DPP v Cuccia* (Unreported, County Court of Victoria, 6 September 2012); *DPP v Harrison* (Unreported, County Court of Victoria, 9 April 2013); *DPP v Hunt* (Unreported, County Court of Victoria, 9 August 2012); *DPP v Tallis & Kavvadas* (Unreported, County Court of Victoria, 7 August 2012); *DPP v Linton & Anor* (Unreported, County Court of Victoria, 3 February 2012); *DPP v Marsh* (Unreported, County Court of Victoria, 27 July 2012); *DPP v Mkhize* (Unreported, County Court of Victoria, 3 July 2012); *R v Omar* (Unreported, County Court of Victoria, 15 November 2012); *DPP v Payne* (Unreported, County Court of Victoria, 17 May 2013); *DPP v Rotariu* (Unreported, County Court of Victoria, 11 February 2013).

124. *DPP v Cakebread* (Unreported, County Court of Victoria, 26 June 2012); *DPP v Derrick* (Unreported, County Court of Victoria, 21 June 2013); *DPP v Honeysett* (Unreported, County Court of Victoria, 26 March 2013); *DPP v Predojevic* (Unreported, County Court of Victoria, 17 May 2012); *DPP v Pursell* (Unreported, County Court of Victoria, 26 November 2012); *DPP v Roseby & Spokes* (Unreported, County Court of Victoria, 18 February 2013); *DPP v Tapeka* (Unreported, County Court of Victoria, 16 July 2012); *DPP v Thorpe & Wandin* (Unreported, County Court of Victoria, 28 August 2012); *R v Webb* (Unreported, County Court of Victoria, 28 September 2012); *DPP v Zakzouk* (Unreported, County Court of Victoria, 19 December 2012).

125. *DPP v Abela* (Unreported, County Court of Victoria, 21 February 2013); *DPP v Godfrey & Anor* (Unreported, County Court of Victoria, 6 September 2012); *DPP v Antonopoulos* [2013] VCC 145 (22 February 2013); *DPP v Bentley* (Unreported, County Court of Victoria, 2 November 2012); *DPP v Campbell* (Unreported, County Court of Victoria, 8 June 2012); *DPP v Critchley & Ors* (Unreported, County Court of Victoria, 30 April 2012); *DPP v Lamb* (Unreported, County Court of Victoria, 18 December 2012); *DPP v Nguyen* [2013] VCC 317 (18 March 2013); *DPP v Fred & Anor* (Unreported, County Court of Victoria, 9 August 2012); *DPP v Roseby & Spokes* (Unreported, County Court of Victoria, 18 February 2013); *DPP v Tapeka* (Unreported, County Court of Victoria, 16 July 2012); *DPP v Thorpe & Wandin* (Unreported, County Court of Victoria, 28 August 2012).

- 4.47 Examination of the specific case variables collected for the qualitative research reveals that some additional factors also influence the sentencing outcome for specific cases. For example:
- youth, mental illness, and a significant delay between the offending and sentencing, particularly where accompanied by demonstrated efforts at rehabilitation, sometimes influence the imposition of a CCO; and
 - previous offending and the seriousness of the instant offending are used by some judges to support decisions to impose imprisonment.
- 4.48 As noted by the Judicial Commission of New South Wales, in the context of conducting a quantitative and qualitative evaluation of the influence of the guideline judgment on armed robbery in that state, it is not possible to quantify (nor consequently measure) judicial discretion, which is 'probably the most important variable in sentencing'.¹²⁶
- 4.49 As stated in *Markarian v The Queen*:
- the task of the sentencer is to take account of all of the relevant factors and to arrive at a single result which takes due account of them all. That is what is meant by saying that the task is to arrive at an 'instinctive synthesis'.¹²⁷
- 4.50 As instinctive synthesis underpins each sentencing decision, the differences in imposed sentences could point to variations in accompanying case facts (for example, offender age, nature, and extent of prior offending). However, relevant similarities in the case facts, as discernible from the sentencing remarks, on either side of the dispositional divide, indicate that the difference may also be attributable to variations in the courts' weighting of similar case facts.
- 4.51 There is also evidence from some sentencing remarks that CCOs are not considered to be a 'soft option', but one that 'has aspects of real punishment and a capacity for tailored rehabilitation through various programs'.¹²⁸ These orders are discussed as ways to achieve community protection, denunciation, punishment, and specific and general deterrence through the imposition of punitive conditions, where appropriate, while avoiding the criminogenic effects of imprisonment.
- 4.52 Judges' individual perceptions about the deterrent value of rehabilitation, prioritisation of rehabilitation over denunciation, and views about the punitiveness and/or efficacy of a non-custodial option may also have played a role in sentencing outcomes.

¹²⁶. Barnes and Poletti, above n 41, 131.

¹²⁷. *Markarian v The Queen* (2005) 228 CLR 357, [374].

¹²⁸. *DPP v Gower* (Unreported, County Court of Victoria, 19 February 2013) [32].

5. CCO duration

- 5.1 The higher courts can impose a community correction order (CCO) for a period up to the maximum penalty for an offence, making it more adaptable than community-based orders (CBOs) for use in more serious cases.
- 5.2 As previously discussed, 85% of CCOs imposed over the first 18 months were 2 years or less in duration. This section compares the imposition of short CCOs (2 years or less) with long CCOs (over 2 years, as outlined at [3.10]).

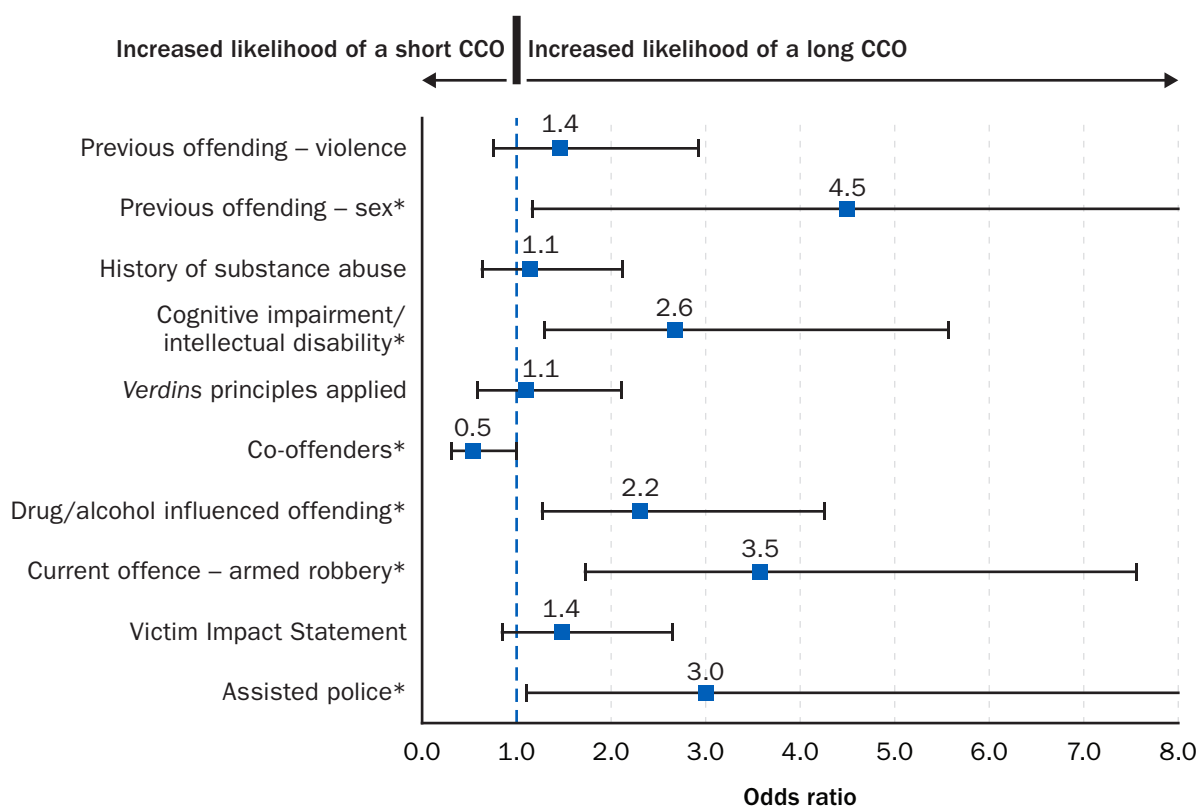
Quantitative analysis

- 5.3 Figure 5 displays the results of the quantitative analysis undertaken to identify variables influencing the duration of a CCO. These results show¹²⁹ that the likelihood of imposing a long CCO increases if:
- the offender has a history of previous sexual offending (odds ratio = 4.5, meaning the odds of receiving a long CCO are 350% greater);
 - the offender is found to have cognitive impairments or an intellectual disability (odds ratio = 2.6);
 - drugs and/or alcohol influences the offending behaviour (odds ratio = 2.2);
 - the instant offence is for armed robbery (odds ratio = 3.5); or
 - the offender is found to have assisted police (odds ratio = 3.0).¹³⁰
- 5.4 The results in Figure 5 also show that the likelihood of a short duration CCO being imposed increases if the offence occurs in the presence of co-offenders (odds ratio = 0.5, meaning the odds of receiving a long CCO are 50% lower). This is likely due to the offender playing a lesser role in the offending.
- 5.5 None of the other variables included within this model returned statistically significant odds ratios.

129. The descriptive statistics that underlie this modelling are displayed in Table A4.

130. One interpretation for this counterintuitive effect is that the positive relationship between helping police and having a longer CCO imposed may reflect the reason why an offender does not receive a term of imprisonment.

Figure 5: Likelihood of receiving a long CCO



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.101$.

Qualitative analysis

- 5.6 The qualitative analysis of sentencing remarks reveals that judges provide little guidance on the sentencing purposes of a long CCO.
- 5.7 Where comment is made, the length of the order has been determined by issues of parity, the need to allow appropriate time for completion of rehabilitation courses, or the decision to make the sentence more onerous.
- 5.8 For example, in *DPP v Boulton*,¹³¹ the conditions imposed (including the length of order) were designed to be onerous as ‘the only alternative provided by parliament ... [is] gaol’. In *DPP v Muzamill*,¹³² a lengthy order was imposed in order to ensure ‘denunciation, deterrence ... as well as [the offender’s] complete reform’.
- 5.9 The lack of judicial comment on the duration of CCOs can be contrasted with the amount of judicial comment typically provided in setting the length of non-parole periods and the purpose of setting a short or long period of parole.

131. *DPP v Boulton* [2013] VCC 972 (20 June 2013) [53].

132. *DPP v Muzamill* (Unreported, County Court of Victoria, 21 May 2013) [12].

6. CCO conditions

- 6.1 A community correction order (CCO) has seven mandatory terms, as discussed at [2.7]–[2.8]. The offender must not commit an offence punishable by imprisonment, must comply with any obligation prescribed by regulation, must report to the community corrections centre within two days of the order commencing, must report to and receive visits from the Secretary of the Department of Justice, must notify the Secretary of any change of address or employment, must not leave Victoria without permission, and must abide by any order of the Secretary.¹³³ The court must also impose one or more conditions¹³⁴ including unpaid community work, treatment and rehabilitation, supervision, non-association, residence restriction or exclusion, place or area exclusion, curfew, alcohol exclusion, payment of a bond, judicial monitoring, justice plan, electronic monitoring, or a residual condition. Again, the number of conditions that may be imposed with a CCO and their scope make it more adaptable for use in more serious cases.
- 6.2 Unpaid community work, treatment and rehabilitation, supervision, and judicial monitoring are the most commonly imposed conditions attached to a CCO (see [3.12]–[3.15]). This section presents the results of both the quantitative and the qualitative analysis examining the case factors that increase the likelihood of the imposition of each of these conditions.

CCOs with unpaid community work

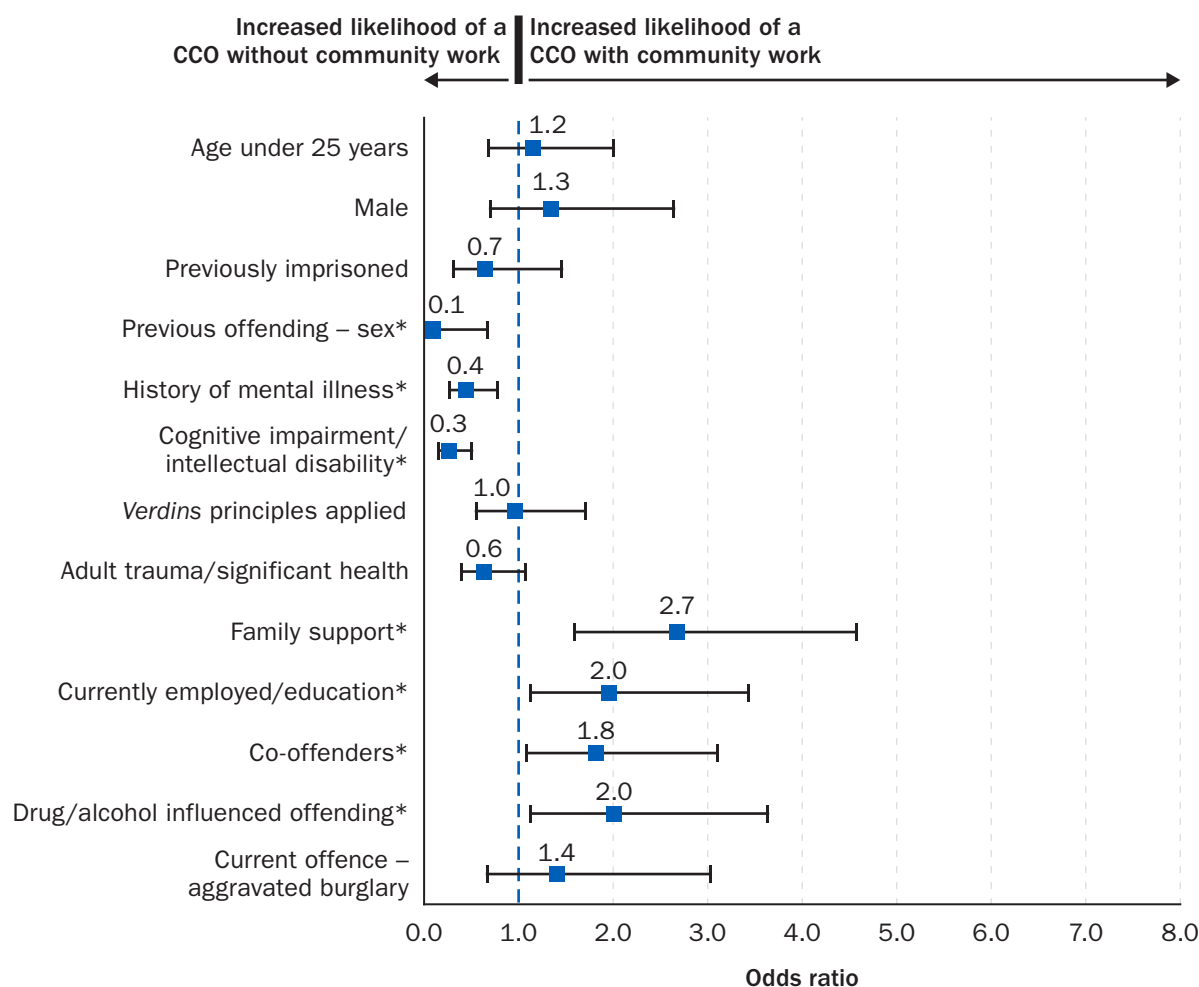
- 6.3 Figure 6¹³⁵ displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of an unpaid community work condition. The results show that the likelihood of unpaid community work being imposed as one of the CCO conditions increases if:
- the offender has family support (odds ratio = 2.7, meaning the odds of receiving a CCO with unpaid community work as a condition are 170% greater);
 - the offender is currently employed or involved in an educational course (odds ratio = 2.0);
 - co-offenders are involved in the offending incident (odds ratio = 1.8); or
 - drugs and/or alcohol are an influencing factor at the time of offending (odds ratio = 2.0).
- 6.4 The results in Figure 6 also show that the likelihood of community work being imposed as one of the CCO conditions decreases if the offender has:
- a previous offending history involving sexual offences (odds ratio = 0.1, meaning the odds of receiving a CCO with unpaid community work as a condition are 90% lower);
 - a history of mental illness (odds ratio = 0.4); or
 - a cognitive impairment or an intellectual disability (odds ratio = 0.3).
- 6.5 None of the other variables included within this model returned statistically significant odds ratios.

133. *Sentencing Act 1991 (Vic)* s 45(1).

134. *Sentencing Act 1991 (Vic)* s 47.

135. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A5 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit for the CCOs with and without community work indicates that the significant variables in this model account for 22.3% of the variance.

Figure 6: Likelihood of receiving a CCO with community work as one of the conditions



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.223$.

CCOs with treatment and rehabilitation

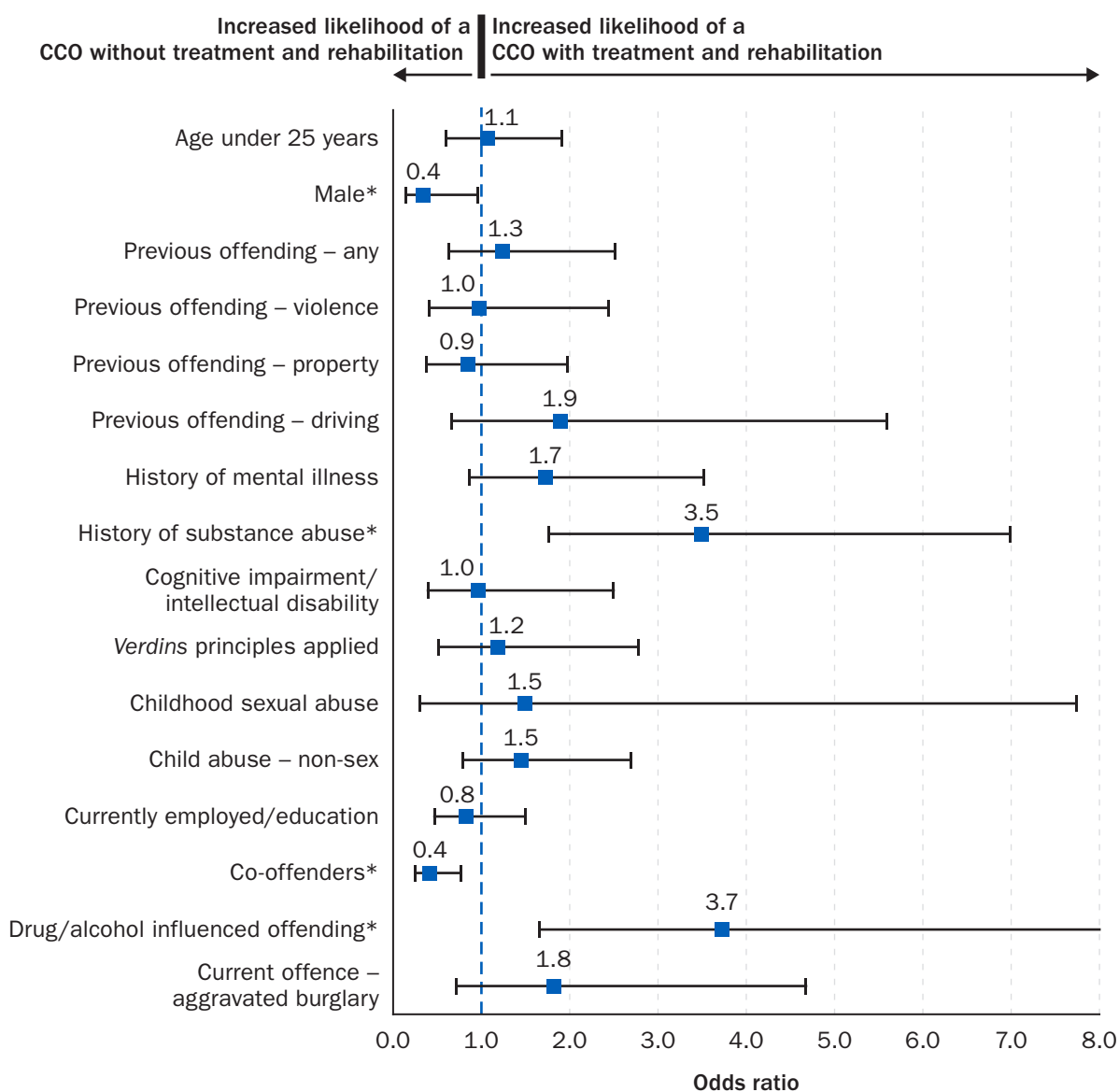
6.6 Figure 7¹³⁶ displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of a treatment and rehabilitation condition. The results show that the likelihood of this condition being imposed as one of the CCO conditions increases if:

- the offender has a history of substance abuse (odds ratio = 3.5, meaning the odds of receiving a CCO with treatment and rehabilitation as a condition are 250% greater); or
- drugs and/or alcohol influence the offending (odds ratio = 3.7).

136. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A6 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit for CCOs with and without treatment and rehabilitation indicates that the significant variables in this model account for 16.7% of the variance. This model returned a significant Hosmer and Lemeshow test: Chi-square (df = 1) = 22.8, $p < .05$, meaning that the results should be interpreted with caution.

- 6.7 The results in Figure 7 also show that the likelihood of treatment and rehabilitation being imposed as one of the CCO conditions decreases if:
- the offender is male (odds ratio = 0.4, meaning the odds of receiving a CCO with treatment and rehabilitation as a condition are 60% lower); or
 - co-offenders are involved with the offence incident (odds ratio = 0.4).
- 6.8 None of the other variables included within this model returned statistically significant odds ratios.

Figure 7: Likelihood of receiving a CCO with treatment and rehabilitation as one of the conditions



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell R² = 0.167.

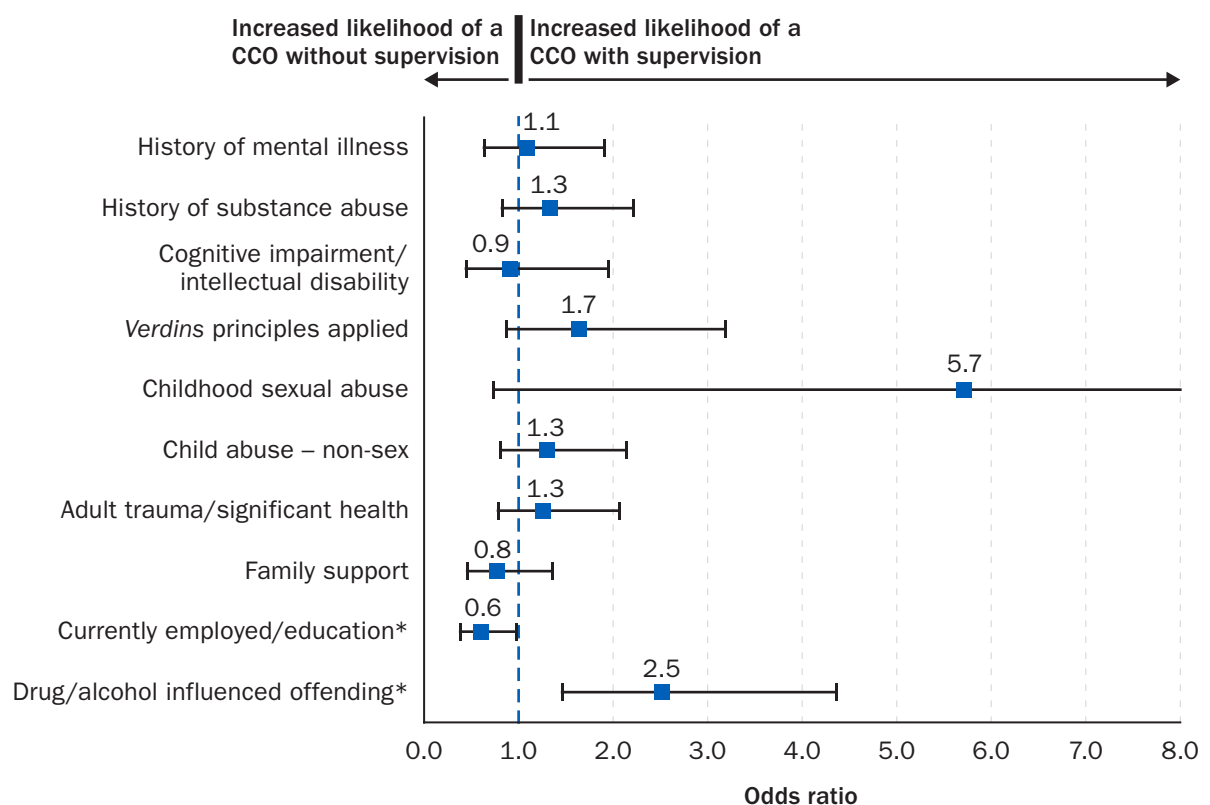
CCOs with supervision

6.9 Figure 8¹³⁷ displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of a supervision condition. The results show that the likelihood of a supervision condition:

- increases if drugs and/or alcohol influence the offending (odds ratio = 2.5, meaning the odds of receiving a CCO with supervision as a condition are 150% greater); and
- decreases if the offender is employed and/or involved in an educational program at the time of sentencing (odds ratio = 0.6, meaning the odds of receiving a CCO with supervision as a condition are 40% lower).

6.10 None of the other variables included within this model returned statistically significant odds ratios.

Figure 8: Likelihood of receiving a CCO with supervision as at least one of the conditions



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.087$.

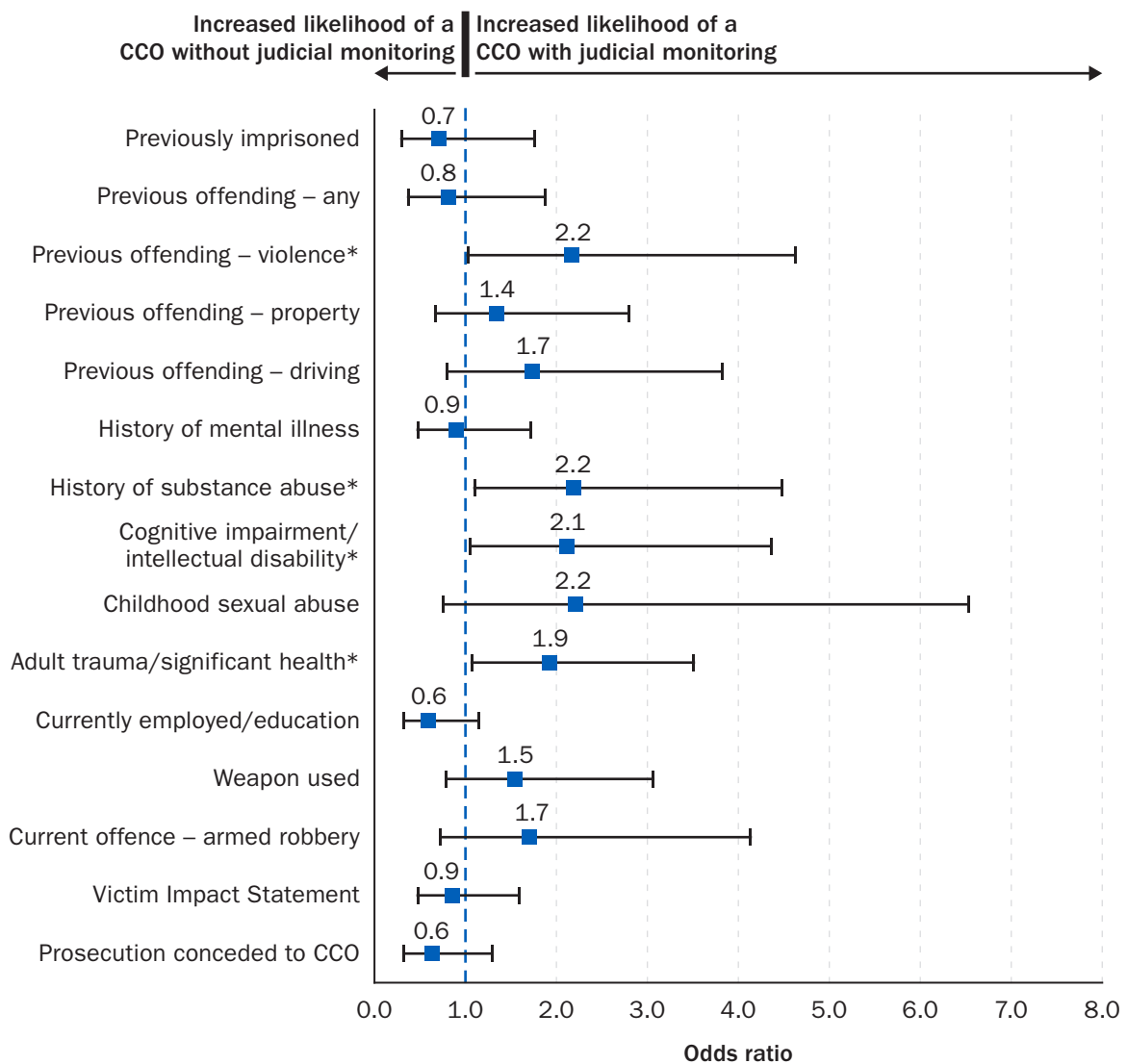
137. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A7 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit for CCOs with and without supervision indicates that the significant variables in this model account for 8.7% of the variance.

CCOs with judicial monitoring

6.11 Figure 9¹³⁸ displays the results of the quantitative analysis undertaken to identify variables influencing the imposition of a judicial monitoring condition. The results show that the likelihood of judicial monitoring being imposed as one of the CCO conditions increases if the offender has:

- a prior history of violence (odds ratio = 2.2, meaning the odds of receiving a CCO with judicial monitoring as a condition are 120% greater);
- a prior history of substance abuse (odds ratio = 2.2);
- a cognitive impairment and/or intellectual disability (odds ratio = 2.1); or
- experience of adult trauma and/or significant health issues (odds ratio = 1.9).

Figure 9: Likelihood of receiving a CCO with judicial monitoring as at least one of the conditions



*Indicates the parameters that made a significant contribution to the variance accounted for by the model: Cox and Snell $R^2 = 0.112$.

138. The relative distributions of each predictor variable as a function of sentence outcome are displayed in Table A8 along with the Chi-square value to indicate the extent to which the percentages of each predictor variable are significantly different. The overall model fit for CCOs with and without judicial monitoring indicates that the significant variables in this model account for 11.2% of the variance.

- 6.12 None of the other variables included within this model returned statistically significant odds ratios.

Qualitative analysis of CCO conditions

- 6.13 The qualitative analysis of a subset of the CCO sentencing remarks reveals that:
- punishment is overwhelmingly dealt with through the imposition of community work as a condition of a CCO;
 - it is very rare to see alcohol exclusion imposed as a condition despite the frequency with which alcohol influences offending;
 - the treatment conditions imposed are often dealt with in a general way to address drug and alcohol addiction and mental health issues, as are any other programs directed towards reducing reoffending. The specifics of the programs and counselling an offender is required to undertake appear to be left to the discretion of Corrections Victoria without a great deal of direction or oversight by the courts; and
 - the residual condition is rarely used for rehabilitative purposes.

Summary

- 6.14 The analysis reveals that the majority of variables do not make a significant contribution to predicting when a particular CCO condition will be imposed.
- 6.15 The only quantitative variable that plays a near-equivalent role in predicting the imposition of each of the four CCO conditions selected for analysis here is the influence of drugs and/or alcohol on offending.
- 6.16 Cognitive impairment/intellectual disability, current employment/involvement in an educational program, and the involvement of co-offenders all have different predictive influences across the imposition of the four CCO conditions.
- 6.17 The analysis has also found that there is little judicial comment in the sentencing remarks that directly addresses the sentencing purposes of imposing certain CCO conditions.

7. Discussion

Overview of main findings

- 7.1 The *Community Correction Orders: Monitoring Report* concludes that community correction orders (CCOs) are imposed:
- at a similar frequency to the previous community orders;
 - for a duration that generally matches the maximum duration under the previous community orders; and
 - with the same conditions generally used under the previous community orders.
- 7.2 These findings form the basis for the analysis presented within this report.
- 7.3 General observations from this report are as follows:
- some case variables are influencing the imposition of a CCO, relative to a short term of imprisonment;
 - cases with very similar characteristics (as determined from sentencing remarks) are resulting in different sentence outcomes;
 - there is little information in sentencing remarks regarding the purpose of duration where long CCOs have been imposed; and
 - there is little information in the sentencing remarks regarding the purpose of the conditions (and combination of conditions) being attached to CCOs.

Limitations of this methodological approach

- 7.4 As with the Judicial Commission of New South Wales' *Sentencing Robbery Offenders Since the Henry Guideline Judgment*,¹³⁹ the present report highlights the complexity of the sentencing process.
- 7.5 The Council's methodology examines the subjective and objective considerations that interact to form the complex sentencing process. Research decisions have been made to develop a methodology aimed at answering the research questions posed for this report. However, as the Judicial Commission of New South Wales notes:

'Difficulties arise in relation to any empirical examination of sentencing due to the highly variable and discretionary aspects of the decision-making processes that operate within sentencing'. However, a broad judicial discretion at sentencing is essential to ensure that the wide variation in circumstances of the offence and the offender are taken into account. Sentences must be individualised.¹⁴⁰

139. Barnes and Poletti, above n 41.

140. Ibid, 148. Citation from NSW Bureau of Crime Statistics and Research (BOCSAR), above n 39, 133.

- 7.6 It is also a crucial element of fair sentencing that similarly situated offenders should receive similar sentencing outcomes:¹⁴¹

Just as consistency in punishment — a reflection of the notion of equal justice — is a fundamental element in any rational and fair system of criminal justice, so inconsistency in punishment, because it is regarded as a badge of unfairness and unequal treatment under the law, is calculated to lead to an erosion of public confidence in the integrity of the administration of justice. It is for this reason that the avoidance and elimination of unjustifiable discrepancy in sentencing is a matter of abiding importance to the administration of justice and to the community.

- 7.7 Although there are inherent difficulties in converting a judgment based on instinctive synthesis into a series of quantitative/qualitative factors, the analytical techniques used in this analysis do allow inferences about the sentencing process to be drawn.

Future work

- 7.8 A CCO is a new and different form of sanction. It is not a rebranded version of earlier forms of community-based sanctions. A much broader range of conditions can be imposed on a CCO, and a CCO can be imposed for a period up to the maximum penalty for an offence in the higher courts. However, over the first 18 months of CCO use in the higher courts, the duration (85% ≤ 2 years) and conditions attached to CCOs were very similar to those attached to community-based orders (CBOs). An analysis of a range of case factors indicates that the majority of these variables do not contribute to predicting the imposition of a CCO or the duration or conditions attached to a CCO. Further research is necessary to gain a better understanding of what is influencing sentencing behaviour in the imposition of CCOs.

141. *Lowe v The Queen* (1984) 154 CLR 606, 610–611 (Mason J).

Appendix

Aggravated burglary – CCOs versus short terms of imprisonment

Table A1: Aggravated burglary cases descriptive statistics (%) for CCOs (n = 69) and imprisonment cases (n = 63)

Variable category	Predictor variable	CCO	Imprisonment	Chi-square
Offender background	Age under 25 years	43.5%	17.5%	10.4*
	Male	84.1%	93.7%	3.0
	Previously imprisoned	8.7%	46.0%	23.6*
	Previous offending – any	60.9%	87.3%	11.8*
	Previous offending – violence	20.3%	63.5%	25.4*
	Previous offending – property	29.0%	50.8%	6.6*
	Previous offending – drugs	14.5%	19.0%	0.5
	Previous offending – driving	14.5%	25.4%	2.5
	Previous offending – firearms	4.3%	6.3%	0.3
	Previous offending – sex	1.4%	3.2%	0.4
	History of mental illness	36.2%	52.4%	3.5
	History of substance abuse	53.6%	79.4%	9.7*
	Cognitive impairment/intellectual disability	2.9%	20.6%	10.3*
	Verdins principles applied	13.0%	23.8%	2.6
	Childhood sexual abuse	2.9%	11.1%	3.5
	Child abuse – non-sex	24.6%	55.6%	13.2*
	Adult trauma/significant health	33.3%	52.4%	4.9*
	Family support	69.6%	58.7%	1.7
	Dependants	34.8%	42.9%	0.9
Currently employed/education	55.1%	20.6%	16.5*	
Offence characteristics	Co-offenders	56.5%	57.1%	0.0
	Weapon used	30.4%	44.4%	2.8
	Drug/alcohol influenced offending	69.6%	50.8%	4.9*
Victim	Victim Impact Statement	34.8%	65.1%	12.1*
Legal processes	Plead guilty	100.0%	88.9%	8.1*
	Assisted police	5.8%	4.8%	0.1
	Prosecution conceded to CCO	33.3%	0.0%	25.4*
	Corrections opposed CCO	0.0%	0.0%	0.0

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

Cause serious injury – CCOs versus short terms of imprisonment

Table A2: Cause serious injury cases descriptive statistics (%) for CCOs (n = 39) and imprisonment cases (n = 51)

Variable category	Predictor variable	CCO	Imprisonment	Chi-square
Offender background	Age under 25 years	35.9%	27.5%	0.7
	Male	89.7%	100.0%	5.5*
	Previously imprisoned	10.3%	31.4%	5.7*
	Previous offending – any	48.7%	78.4%	8.6*
	Previous offending – violence	25.6%	49.0%	5.1*
	Previous offending – property	28.2%	37.3%	0.8
	Previous offending – drugs	15.4%	15.7%	0.0
	Previous offending – driving	10.3%	11.8%	0.1
	Previous offending – firearms	0.0%	0.0%	0.0
	Previous offending – sex	0.0%	2.0%	0.8
	History of mental illness	51.3%	60.8%	0.8
	History of substance abuse	53.8%	74.5%	4.2*
	Cognitive impairment/intellectual disability	10.3%	9.8%	1.3
	Verdins principles applied	38.5%	33.3%	0.3
	Childhood sexual abuse	2.6%	5.9%	0.6
	Child abuse – non-sex	46.2%	64.7%	3.1
	Adult trauma/significant health	41.0%	35.3%	0.3
	Family support	74.4%	66.7%	0.6
	Dependants	28.2%	19.6%	0.9
	Currently employed/education	46.2%	23.5%	5.1*
Offence characteristics	Co-offenders	46.2%	45.1%	0.0
	Weapon used	56.4%	64.7%	0.6
	Drug/alcohol influenced offending	46.2%	62.7%	2.5
Victim	Victim Impact Statement	53.8%	66.7%	1.5
Legal processes	Plead guilty	94.9%	92.2%	0.3
	Assisted police	2.6%	2.0%	0.0
	Prosecution conceded to CCO	20.5%	0.0%	11.5*
	Corrections opposed CCO	0.0%	0.0%	0.0

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

Armed robbery – CCOs versus short terms of imprisonment

Table A3: Armed robbery cases descriptive statistics (%) for CCOs (n = 49) and imprisonment cases (n = 78)

Variable category	Predictor variable	CCO	Imprisonment	Chi-square
Offender background	Age under 25 years	69.4%	37.2%	12.5*
	Male	83.7%	83.3%	0.0
	Previously imprisoned	6.1%	38.5%	16.4*
	Previous offending – any	49.0%	85.9%	20.2*
	Previous offending – violence	16.3%	48.7%	13.7*
	Previous offending – property	20.4%	64.1%	23.1*
	Previous offending – drugs	4.1%	17.9%	5.3*
	Previous offending – driving	16.3%	10.3%	1.0
	Previous offending – firearms	2.0%	3.8%	0.3
	Previous offending – sex	0.0%	1.3%	0.6
	History of mental illness	53.1%	53.8%	0.0
	History of substance abuse	63.3%	92.3%	16.6*
	Cognitive impairment/intellectual disability	18.4%	11.5%	1.2
	Verdins principles applied	46.9%	17.9%	12.3*
	Childhood sexual abuse	10.2%	7.7%	0.2
	Child abuse – non-sex	46.9%	64.1%	3.6
	Adult trauma/significant health	34.7%	39.7%	0.3
	Family support	71.4%	60.3%	1.6
	Dependants	20.4%	34.6%	2.9
	Currently employed/education	34.7%	16.7%	5.4*
Offence characteristics	Co-offenders	61.2%	39.7%	5.6*
	Weapon used	100.0%	96.2%	1.9
	Drug/alcohol influenced offending	34.7%	47.4%	2.0
Victim	Victim Impact Statement	42.9%	38.5%	0.2
Legal processes	Plead guilty	100.0%	97.4%	1.3
	Assisted police	14.3%	3.8%	4.5*
	Prosecution conceded to CCO	30.6%	1.3%	23.5*
	Corrections opposed CCO	0.0%	0.0%	0.0

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

CCO duration – short CCOs versus long CCOs

Table A4: CCO duration modelling descriptive statistics (%) for short CCOs (n = 371) and long CCOs (n = 66)

Variable category	Predictor variable	Short CCOs	Long CCOs	Chi-square
Offender background	Age under 25 years	45.6%	42.4%	0.2
	Male	84.9%	87.9%	0.4
	Previously imprisoned	9.7%	12.1%	0.4
	Previous offending – any	55.0%	63.6%	1.7
	Previous offending – violence	18.3%	27.3%	2.8
	Previous offending – property	23.7%	25.8%	0.1
	Previous offending – drugs	11.1%	7.6%	0.7
	Previous offending – driving	14.0%	13.6%	0.0
	Previous offending – firearms	1.3%	3.0%	1.0
	Previous offending – sex	1.6%	6.1%	4.9*
	History of mental illness	46.4%	51.5%	0.6
	History of substance abuse	48.2%	60.6%	3.4
	Cognitive impairment/intellectual disability	11.9%	30.3%	15.2*
	Verdins principles applied	28.3%	40.9%	4.2*
	Childhood sexual abuse	4.9%	6.1%	0.2
	Child abuse – non-sex	42.3%	31.8%	2.6
	Adult trauma/significant health	36.7%	40.9%	0.4
	Family support	73.3%	74.2%	0.0
	Offence characteristics	Dependants	30.5%	27.3%
Currently employed/education		47.7%	37.9%	2.2
Co-offenders		50.9%	36.4%	4.8*
Weapon used		37.5%	42.4%	0.6
Drug/alcohol influenced offending		30.5%	48.5%	8.2*
Current offence – aggravated burglary		16.2%	22.7%	1.7
Current offence – armed robbery		8.9%	24.2%	13.3*
Victim	Current offence – cause serious injury	8.6%	10.6%	0.3
	Current offence – sexual penetration under 16 years	8.6%	7.6%	0.1
	Victim Impact Statement	35.3%	47.0%	3.3
Legal processes	Plead guilty	95.4%	98.5%	1.3
	Assisted police	4.6%	10.6%	3.9*
	Prosecution conceded to CCO	30.2%	28.8%	0.1
	Corrections opposed CCO	0.8%	0.0%	0.5

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

CCO conditions – community work CCOs versus no community work CCOs

Table A5: Community work modelling descriptive statistics (%) for community work CCOs (n = 323) and no community work CCOs (n = 114)

Variable categories	Predictor variable	No community work	Community work	Chi-square
Offender background	Age under 25 years	32.5%	49.5%	9.9*
	Male	78.9%	87.6%	5.1*
	Previously imprisoned	15.8%	8.0%	5.6*
	Previous offending – any	62.3%	54.2%	2.2
	Previous offending – violence	20.2%	19.5%	0.0
	Previous offending – property	25.4%	23.5%	0.2
	Previous offending – drugs	13.2%	9.6%	1.1
	Previous offending – driving	12.3%	14.6%	0.4
	Previous offending – firearms	0.9%	1.9%	0.5
	Previous offending – sex	7.0%	0.6%	15.4*
	History of mental illness	66.7%	40.2%	23.6*
	History of substance abuse	56.1%	48.0%	2.2
	Cognitive impairment/intellectual disability	32.5%	8.4%	39.1*
	Verdins principles applied	48.2%	23.8%	23.8*
	Childhood sexual abuse	7.9%	4.0%	2.6
	Child abuse – non-sex	45.6%	39.0%	1.5
	Adult trauma/significant health	48.2%	33.4%	7.9
	Family support	56.1%	79.6%	23.7*
	Dependants	28.1%	30.7%	0.3
	Currently employed/education	24.6%	53.9%	29.1*
Offence characteristics	Co-offenders	35.1%	53.6%	11.5*
	Weapon used	35.1%	39.3%	0.6
	Drug/alcohol influenced offending	22.8%	36.8%	7.5*
	Current offence – aggravated burglary	10.5%	19.5%	4.8*
	Current offence – armed robbery	10.5%	11.5%	0.1
	Current offence – cause serious injury	10.5%	8.4%	0.5
	Current offence – sexual penetration under 16 years	8.8%	8.4%	0.0
Victim	Victim Impact Statement	35.1%	37.8%	0.3
Legal processes	Plead guilty	94.7%	96.3%	0.5
	Assisted police	4.4%	5.9%	0.4
	Prosecution conceded to CCO	28.1%	30.7%	0.3
	Corrections opposed CCO	2.6%	0.0%	8.6*

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

CCO conditions – treatment and rehabilitation CCOs versus no treatment and rehabilitation CCOs

Table A6: Treatment and rehabilitation modelling descriptive statistics (%) for treatment and rehabilitation CCOs (n = 357) and no treatment and rehabilitation CCOs (n = 80)

Variable categories	Predictor variable	No treatment and rehabilitation	Treatment and rehabilitation	Chi-square
Offender background	Age under 25 years	53.8%	43.1%	3.0
	Male	92.5%	83.8%	4.0*
	Previously imprisoned	7.5%	10.6%	0.7
	Previous offending – any	41.3%	59.7%	9.0*
	Previous offending – violence	11.3%	21.6%	4.4*
	Previous offending – property	16.3%	25.8%	3.2
	Previous offending – drugs	8.8%	10.9%	0.3
	Previous offending – driving	6.3%	15.7%	4.8*
	Previous offending – firearms	0.0%	2.0%	1.6
	Previous offending – sex	1.3%	2.5%	0.5
	History of mental illness	25.0%	52.1%	19.3*
	History of substance abuse	18.8%	57.1%	38.5*
	Cognitive impairment/intellectual disability	11.3%	15.4%	0.9
	Verdins principles applied	17.5%	33.1%	7.5*
	Childhood sexual abuse	2.5%	5.6%	1.3
	Child abuse – non-sex	28.8%	43.4%	5.8*
	Adult trauma/significant health	32.5%	38.4%	1.0
	Family support	77.5%	72.5%	0.8
	Dependants	23.8%	31.4%	1.8
	Currently employed/education	55.0%	44.3%	3.0
Offence characteristics	Co-offenders	60.0%	46.2%	5.0*
	Weapon used	37.5%	38.4%	0.0
	Drug/alcohol influenced offending	12.5%	37.8%	18.9*
	Current offence – aggravated burglary	8.8%	19.0%	4.9*
	Current offence – armed robbery	7.5%	12.0%	1.4
	Current offence – cause serious injury	10.0%	8.7%	0.1
	Current offence – sexual penetration under 16 years	7.5%	8.7%	0.1
Victim	Victim Impact Statement	40.0%	36.4%	0.4
Legal processes	Plead guilty	93.8%	96.4%	1.1
	Assisted police	5.0%	5.6%	0.0
	Prosecution conceded to CCO	26.3%	30.8%	0.6
	Corrections opposed CCO	2.5%	0.3%	4.7*

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

CCO conditions – supervision CCOs versus no supervision CCOs

Table A7: Supervision modelling descriptive statistics (%) for supervision CCOs (n = 328) and no supervision CCOs (n = 109)

Variable categories	Predictor variable	No supervision	Supervision	Chi-square
Offender background	Age under 25 years	38.5%	47.3%	2.5
	Male	87.2%	84.8%	0.4
	Previously imprisoned	9.2%	10.4%	0.1
	Previous offending – any	49.5%	58.5%	2.7
	Previous offending – violence	17.4%	20.4%	0.5
	Previous offending – property	21.1%	25.0%	0.7
	Previous offending – drugs	11.9%	10.1%	0.3
	Previous offending – driving	14.7%	13.7%	0.1
	Previous offending – firearms	1.8%	1.5%	0.1
	Previous offending – sex	1.8%	2.4%	0.1
	History of mental illness	35.8%	50.9%	7.5*
	History of substance abuse	36.7%	54.6%	10.5*
	Cognitive impairment/intellectual disability	5.5%	8.2%	1.5
	<i>Verdins</i> principles applied	20.2%	33.5%	6.9*
	Childhood sexual abuse	0.9%	6.4%	5.1*
	Child abuse – non-sex	32.1%	43.6%	4.5*
	Adult trauma/significant health	30.3%	39.6%	3.1
	Family support	79.8%	71.3%	3.0
	Dependants	33.9%	28.7%	1.1
	Currently employed/education	58.7%	42.1%	9.1*
Offence characteristics	Co-offenders	47.7%	49.1%	0.1
	Weapon used	37.6%	38.4%	0.0
	Drug/alcohol influenced offending	20.2%	37.5%	11.1*
	Current offence – aggravated burglary	15.6%	17.7%	0.3
	Current offence – armed robbery	7.3%	12.5%	2.2
	Current offence – cause serious injury	8.3%	9.1%	0.1
	Current offence – sexual penetration under 16 years	6.4%	9.1%	0.8
Victim	Victim Impact Statement	33.0%	38.4%	1.0
Legal processes	Plead guilty	94.5%	96.3%	0.7
	Assisted police	3.7%	6.1%	0.9
	Prosecution conceded to CCO	29.4%	30.2%	0.0
	Corrections opposed CCO	0.0%	0.9%	1.0

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

CCO conditions – judicial monitoring CCOs versus no judicial monitoring CCOs

Table A8: Judicial monitoring modelling descriptive statistics (%) for judicial monitoring CCOs (n = 62) and no judicial monitoring CCOs (n = 375)

Variable categories	Predictor variable	No judicial monitoring	Judicial monitoring	Chi-square
Offender background	Age under 25 years	44.5%	48.4%	0.3
	Male	85.3%	85.5%	0.0
	Previously imprisoned	9.1%	16.1%	2.9
	Previous offending – any	53.9%	71.0%	6.3*
	Previous offending – violence	16.8%	37.1%	13.9*
	Previous offending – property	21.6%	38.7%	8.5*
	Previous offending – drugs	9.9%	14.5%	1.2
	Previous offending – driving	12.3%	24.2%	6.3*
	Previous offending – firearms	1.9%	0.0%	1.2
	Previous offending – sex	2.1%	3.2%	0.3
	History of mental illness	45.1%	59.7%	4.6*
	History of substance abuse	46.1%	74.2%	16.8*
	Cognitive impairment/intellectual disability	12.3%	29.0%	12.0*
	Verdins principles applied	29.6%	33.9%	0.5
	Childhood sexual abuse	4.0%	11.3%	5.9*
	Child abuse – non-sex	40.0%	45.2%	0.6
	Adult trauma/significant health	34.7%	53.2%	7.8*
	Family support	73.9%	71.0%	0.2
	Dependants	29.3%	33.9%	0.5
	Currently employed/education	49.1%	29.0%	8.6*
Offence characteristics	Co-offenders	48.8%	48.4%	0.0
	Weapon used	35.7%	53.2%	6.9*
	Drug/alcohol influenced offending	32.8%	35.5%	0.2
	Current offence – aggravated burglary	17.3%	16.1%	0.1
	Current offence – armed robbery	9.6%	21.0%	6.9*
	Current offence – cause serious injury	8.3%	12.9%	1.4
	Current offence – sexual penetration under 16 years	9.3%	3.2%	2.6
Victim	Victim Impact Statement	37.1%	37.1%	0.0
Legal processes	Plead guilty	95.7%	96.8%	0.1
	Assisted police	5.3%	6.5%	0.1
	Prosecution conceded to CCO	31.5%	21.0%	2.8
	Corrections opposed CCO	0.3%	3.2%	6.8*

*Indicates critical Chi-square was exceeded, indicating that a significant difference in percentages was found.

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