

Contravention of Community Correction Orders

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Contravention of Community Correction Orders

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Abbreviations

CCO community correction order

n number

Glossary

Adjourned undertaking	A sentencing order that allows a person to be released into the community unsupervised, but under conditions, for up to five years.
Average	In this report, a reference to an average is a reference to a mean (see further 'mean').
Breach of bail	In this report, an offence category comprising offences such as fail to answer bail and commit indictable offence whilst on bail.
Breach of an intervention order	In this report, an offence category comprising offences such as contravene a family violence intervention order.
Charge	In this report, a single proven allegation of an offence.
Combined order	In this report, a CCO that is imposed on an offender along with a term of imprisonment.
Community-based order	A flexible, non-custodial sentence that included community service, supervision and other conditions. This order was replaced by the community correction order on 16 January 2012.
Community correction order (CCO)	A sentencing order available since 16 January 2012 that may require the offender to comply with a range of conditions, including unpaid community work, treatment and supervision by a community corrections officer. A CCO may also include curfews and restrictions on the offender's movements and whom the offender may associate with.
CCO type	In this report, CCOs are divided into two types: a CCO only (a 'stand-alone CCO') and a CCO that is combined with imprisonment (a 'combined order').
Community work	A condition that a court may attach to a CCO requiring the offender to undertake a specified number of hours of unpaid community work over a specified period.
CCO condition	In this report, the requirements that an offender must fulfil as part of a CCO. In addition to the terms that apply to all CCOs, a court must attach at least one of a range of conditions, such as unpaid community work or treatment and rehabilitation.
Contravention by further offending	In this report, a proven imprisonable offence committed while serving a CCO.
Contravention by non-compliance	In this report, a proven charge of the offence of contravening a CCO and no other proven imprisonable offences committed while serving the CCO. The report assumes that, in these cases, the contravention involved failing to comply with the terms or conditions of a CCO (for example, failing to complete unpaid community work).
Contravention of a CCO	In this report: <ul style="list-style-type: none"> • a proven charge of contravening a CCO under section 83AD of the <i>Sentencing Act 1991</i> (Vic); and/or • any new proven imprisonable offence that was committed while the offender was serving a CCO, regardless of whether the offender was also charged with the offence of contravening a CCO.
Contravention type	In this report, contraventions are divided into two groups based on the broad type of contravention: contravention by further offending and contravention by non-compliance.

Convicted and discharged	A sentencing order that involves the court recording a conviction but unconditionally releasing the offender without further penalty.
Court level	In this report, one of two levels of court(s): the higher courts and the Magistrates' Court.
Drug offence	In this report, an offence category relating to illicit drugs, such as possess or traffick a drug of dependence.
Fine	A monetary penalty imposed by a court as a sentence.
Higher courts	In this report, the County Court of Victoria and the Supreme Court of Victoria. The County Court hears most indictable offences, such as culpable driving causing death, rape and armed robbery. The Supreme Court hears the most serious indictable offences, such as murder and manslaughter.
Higher courts sentencing database	The database used by Court Services Victoria to record sentencing decisions made by the higher courts.
Imprisonable offence	An offence that is punishable by imprisonment (that is, the court is allowed to sentence the offender to a term of imprisonment for the offence).
Imprisonment	A sentencing order that involves confining an offender in prison.
Indictable offence	A serious offence heard in a higher court. Some indictable offences may be triable summarily (that is, in the Magistrates' Court).
Intensive correction order	A term of imprisonment of up to one year served by way of intensive correction in the community. This order was replaced by the community correction order on 16 January 2012.
Length of CCO	The period of time that an offender is required to serve a CCO as set by a court. In relation to the CCOs imposed on the study group in this report, the maximum length of a CCO in the higher courts was the maximum imprisonment term for the offence or two years (whichever was greater). In the Magistrates' Court, a CCO can be imposed for a maximum of two years for one offence, four years for two or more offences and five years for three or more offences.
Logistic regression	A statistical technique that allows the relationship between individual factors and an outcome to be assessed in terms of both magnitude and statistical significance.
Magistrates' Court	The court jurisdiction in Victoria that deals with less serious offences and some indictable offences that may be tried summarily, such as burglary.
Mean	A measure of the central tendency of a distribution of values, also known as the 'average'.
Most severe sentence (for contravention)	In this report, the sentence type imposed that is the highest on the sentencing hierarchy when all aspects of a contravention are considered, including the sentence imposed on separate offending that was committed while serving the CCO.
Non-parole period	The period of imprisonment set by the court that must be served in prison before the offender is eligible for release on parole.
Offence against the person	In this report, an offence category that comprises offences such as unlawful assault, recklessly cause injury and make threat to kill.
Offender	A person who has been found guilty of an offence.
Operational period	The time an offender is required to serve their CCO as set by a court and managed by Community Correctional Services.
Original offence	The offence for which the original CCO was imposed.

Parole	Supervised and conditional release of an offender from prison before the end of the prison sentence. While on parole, the offender is still serving the sentence and is subject to conditions designed to help with rehabilitation and reintegration into the community and to reduce the risk of reoffending.
Partially suspended sentence	A term of imprisonment that is in part suspended (that is, not activated) for a specified period (the 'operational period'). If an offender reoffends during this period, they could be imprisoned for the total length of the sentence. Partially suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
Principal offence	The offence in a case that received the most severe sentence according to the sentencing hierarchy and the length of sentence imposed.
Prior conviction	A sentence imposed on an offender prior to the imposition of a CCO.
Property damage	In this report, an offence category that comprises offences such as intentionally damage/destroy property.
Proven and dismissed	A sentencing order whereby a court dismisses a charge without recording a conviction or imposing a penalty against the offender.
Road safety offence	In this report, an offence category that comprises all offences directly related to road safety, such as drive while disqualified and unlicensed driving.
Sexual offence	In this report, an offence category that comprises offences such as indecent assault and sexual penetration with a child aged 12 to 16.
Stand-alone CCO	A CCO that is imposed without imprisonment.
Statistical significance	An assessment based on a 95% likelihood that a statistical relationship between two variables in a sample of data has not occurred by chance.
Study group	In this report, offenders sentenced to a CCO in the Victorian Supreme Court, County Court or Magistrates' Court from 1 July 2012 to 30 June 2013.
Study period	In this report, the period from 1 July 2012 to 30 June 2016.
Study year	In this report, the first full financial year after CCOs were introduced: 1 July 2012 to 30 June 2013.
Suspended sentence	A term of imprisonment that is suspended (that is, not activated) wholly or in part for a specified period (the 'operational period'). An offender who reoffends during this period risks being imprisoned for the total length of the sentence. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
Theft/dishonesty offence	In this report, an offence category that comprises offences such as theft of a motor vehicle, burglary, obtain property by deception and handle/receive/dispose of stolen goods.
Weapons offence	In this report, an offence category that comprises offences such as possess controlled weapon without excuse.
Wholly suspended sentence	A term of imprisonment that is entirely suspended (that is, not activated) for a specified period (the 'operational period'). If an offender reoffends during this period, they could be imprisoned for the total length of the sentence. Wholly suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
Youth justice centre order	A sentencing order for offenders aged 15–20 years at the time of sentencing requiring detention in a youth justice centre.

Executive summary

The community correction order (CCO) is a sentencing order that provides for an offender's punishment and rehabilitation in the community. An offender's failure to comply with a CCO without a reasonable excuse is a criminal offence with a maximum penalty of three months' imprisonment.

CCOs became available as a sentencing option in Victoria on 16 January 2012, replacing a number of community orders, such as the community-based order and the intensive correction order, and coinciding with the progressive phasing out of suspended sentences of imprisonment. Previously, sentencing courts had a suite of community orders of increasing severity sitting below imprisonment. In contrast, the CCO is designed as a single order that a court can make more or less severe through the length of the order and the conditions attached to it. CCOs may also be combined with a sentence of imprisonment (a 'combined order'), making them an option for serious offences.

Since the introduction of CCOs, there has been considerable research into their use, which has increased substantially, and into the effect of subsequent changes to sentencing law and practice, which have been extensive. However, there has been very little research into offenders' compliance with their CCOs.

Quantifying the proportion of offenders who contravene their CCOs, including by further offending, is a first step to understanding whether CCOs are operating effectively. Similarly, identifying factors that might be associated with contravention and analysing the courts' responses to contraventions are important aspects of understanding how the orders are working in practice.

This report assesses how many offenders contravene their CCO by committing a new imprisonable offence or by failing to comply with another term or condition of the CCO, such as failing to turn up for community work. The report also assesses factors associated with, and court responses to, contraventions.

In this report, an offender is classified as having contravened their CCO if they have been sentenced for:

- a charge of contravening a CCO (under section 83AD of the *Sentencing Act 1991* (Vic)); and/or
- a separate imprisonable offence committed while on their CCO.

This report is confined to contraventions that are *proven and sentenced* in court and therefore excludes contraventions dealt with administratively by Corrections Victoria. This means that, in this report, the proportion of offenders found to have contravened their CCO may underestimate the true rate of non-compliance.

The report focuses on all offenders in Victoria who received a CCO from 1 July 2012 to 30 June 2013: a total of 7,645 offenders. Using sentencing data, the Council tracked each offender's proven offending activity while their CCO was in operation to 30 June 2016.

Contravention rate and type

Contravention rate

An offender was deemed to have contravened a CCO if at any point after the commencement of the CCO (to 30 June 2016) the offender was sentenced for:

- the offence of contravening a CCO; and/or
- a new imprisonable offence that was committed during the *operational period* of the CCO, that is, while the offender was serving their CCO, regardless of whether they were also charged with the offence of contravening a CCO.

The report found an even split between offenders who contravened their CCO and offenders who complied with their CCO. Of the 7,645 offenders who received their CCO in 2012–13, 51% contravened their CCO (3,866 offenders) and 49% complied (3,779 offenders) in that they were not sentenced for contravening their CCO or for a new imprisonable offence during the operational period of their CCO (to 30 June 2016).

Contravention type

The most common contravention type was by further offending ('contravention by further offending'). Just over one-third (35%) of all offenders committed at least one imprisonable offence while serving their CCO. Another 15% of offenders contravened their CCO by failing to comply with a term or condition of the CCO ('contravention by non-compliance'), for example, failing to complete community work.

Differences in contravention rate by court level

The vast majority of offenders were sentenced to their CCO in the Magistrates' Court (96% or 7,340 offenders). The remaining 305 offenders (4%) were sentenced to their CCO in the higher courts (all CCOs imposed in the higher courts in 2012–13 were imposed in the County Court, with none imposed in the Supreme Court).

The rate of contravention by non-compliance was similar for both court levels (15% in the Magistrates' Court and 13% in the higher courts). However, the rate of contravention by further offending was substantially higher in the Magistrates' Court (36%) than in the higher courts (28%), which contributed to the difference in the overall contravention rate between the two court levels (51% in the Magistrates' Court and 41% in the higher courts).

The finding that more CCOs imposed in the Magistrates' Court were contravened by further offending than CCOs imposed in the higher courts is likely to reflect the different types of cases that typically receive a CCO in the two court levels.

The higher courts have jurisdiction over more serious offences than the Magistrates' Court, and most offenders sentenced in the higher courts receive imprisonment. Therefore, in many cases CCOs are likely to be imposed for offences at the low end of seriousness for the higher courts jurisdiction and/or on offenders with compelling mitigating circumstances and good prospects of rehabilitation. For example, this report found that offenders who received CCOs in the higher courts were less likely to have prior convictions than those sentenced to a CCO in the Magistrates' Court (two-thirds of offenders sentenced to a CCO in the Magistrates' Court had prior convictions compared with one-half of their counterparts in the higher courts).

The Magistrates' Court has jurisdiction over less serious offences than the higher courts, with most offenders sentenced in the Magistrates' Court receiving an adjourned undertaking or a fine. Therefore, CCOs are likely to be usually reserved for offenders with relatively serious offences for that jurisdiction and/or offenders with aggravating circumstances, such as a long history of offending.

How many offenders who contravened a community correction order were also sentenced for the offence of contravening a CCO?

Just over two-thirds of the 3,866 offenders who contravened their CCO did so by further imprisonable offending (70% or 2,705 offenders), representing just over one-third of all offenders sentenced to a CCO in 2012–13 (35%). These offenders may have also contravened some other CCO condition.

Not surprisingly, the majority of offenders who contravened their CCO by further offending were also sentenced for an offence of contravening a CCO (83% of the 2,705 offenders who contravened by further offending, or 2,241 offenders). However, a substantial minority of those who contravened their CCO by further offending did not have a separate proven contravention offence (17% representing 464 offenders). In cases in which the CCO was contravened by further offending, a separate contravention charge was more likely if the CCO had been imposed in the Magistrates' Court (83% of cases had a separate charge of contravention of a CCO) than if the CCO had been imposed in the higher courts (63%).

There are a range of possible reasons why an offender who contravenes a CCO by further offending may not be also sentenced for an offence of contravening a CCO. For example, the time limit for charging an offender with contravening a CCO might have expired by the time the offender is sentenced for the new offence. Another example is that if an offender has been charged with a separate offence of contravening a CCO but has failed to appear, the outstanding charge will not be included in the Council's sentencing database. There was insufficient data to identify the exact reason for the lack of a separate contravention charge in individual cases.

Time to first offence

The period immediately after a CCO commences proved to be critical in terms of managing an offender's risk of reoffending. Nearly half (44%) of offenders who contravened their CCO by further offending did so within the first three months of their CCO commencing. Four per cent reoffended in the first week and 18% reoffended in the first month. Over nine out of 10 contraventions by further offending (92%) occurred within the first 12 months of commencement. These findings highlight how crucial it is to actively engage offenders early during their CCO.

Number of imprisonable offences on the community correction order

The 2,705 offenders who contravened their CCO by further offending committed 15,941 proven imprisonable offences between them (not including the offence of contravening a CCO). This equates to an average of 5.9 offences per offender. Around one-quarter of these offenders committed one offence on their CCO; the remainder committed two or more offences.

Offence types committed on community correction orders

The most common imprisonable offence types committed on a CCO were theft/dishonesty offences (38% of charges), followed by road safety offences (14%) and offences against the person (10%).

If court levels are examined separately, the most common imprisonable offence committed on CCOs imposed in both court levels was theft (9% for the Magistrates' Court and 12% for the higher courts). Fail to answer bail was the second most common offence on a CCO imposed in the Magistrates' Court (9%) followed by possess a drug of dependence (6%).

For CCOs imposed in the higher courts, fail to comply with reporting obligations under the *Sex Offenders Registration Act 2004* (Vic) was the second most common offence committed on a CCO, after theft. Unsurprisingly, all of the 21 offenders who had a new offence of fail to comply with reporting obligations under the *Sex Offenders Registration Act 2004* (Vic) had received their CCO for a sexual offence.

Factors associated with contravention

A number of factors relating to the offender, the CCO itself and the offence for which the offender received the CCO were associated with contravention of a CCO by further offending.

Community correction orders imposed in the Magistrates' Court

Factors identified for CCOs imposed in the Magistrates' Court include the age of the offender and prior conviction status, as well as CCO type, length and conditions:

- Offenders with prior convictions were nearly three times more likely to contravene by further offending than offenders without prior convictions.
- Offenders whose CCO was combined with imprisonment were over twice as likely to contravene by further offending than offenders whose CCO was not combined with imprisonment.
- Offenders aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders.
- Offenders on CCOs for longer than 12 months were over 1.5 times more likely to contravene by further offending than offenders on shorter CCOs.
- Offenders serving a CCO for a weapons offence as the *principal offence* (that is, as the most serious offence in the case) had the highest rate of contravention by further offending, with half committing a new imprisonable offence while on their CCO. If contraventions by non-compliance are included, two-thirds of offenders on a CCO for a weapons offence contravened their CCO overall. The second highest rate of contravention by further offending was associated with CCOs imposed for breach of an intervention order (44% of those offenders committed a new imprisonable offence while on their CCO and a further 12% contravened their CCO by failing to comply with a condition).

Community correction orders imposed in the higher courts

For CCOs imposed in the higher courts, contravention by further offending was associated with the age of the offender, prior convictions, CCO conditions and the offence type. Offenders aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders. Offenders with prior convictions were five times more likely to contravene by further offending than offenders without prior convictions. Offenders whose CCO was imposed for a sexual offence had a relatively high rate of contravention by further offending (44%). For these offenders, the offence most commonly committed while serving a CCO was failing to meet the reporting obligations of being on the Sex Offender Register.

Young adult offenders

A key finding of the report is that young adult offenders (offenders aged 18 to 24 years) are substantially more likely than older offenders to contravene their CCOs. Looking at CCOs imposed in all courts, young adult offenders were almost twice as likely as their older counterparts to contravene their CCO by further offending. Young adult offenders with prior convictions were particularly likely to contravene their CCO by further offending (49% or 640 of 1,318 young adult offenders contravened their CCO by further offending, compared with 28% or 2,065 of 6,327 of offenders aged 25 and over). This finding suggests the need for a differential, evidence-informed approach to sentencing and/or managing young adult offenders on CCOs.

Sentencing contraventions of a community correction order

Sentencing contraventions of a CCO is complex due to the multiple consequences that an offender may face for the behaviour that contravenes the CCO. For example, if an offender steals property while serving a CCO, for that one act of theft the offender is likely to face:

- an order in relation to the original CCO (for example, the original CCO may be confirmed, varied or cancelled);
- a new sentence for the original offences (if the original CCO is cancelled);
- a sentence for the new offence of theft; and
- a sentence for the offence of contravening a CCO.

Order in relation to the original community correction order and the original offences

In over half (56%) of the cases in which a CCO imposed in the Magistrates' Court was contravened, the court cancelled the CCO and resented the offender for the original offence. Of the resented cases, the most common new sentence was imprisonment (31%) followed by a wholly suspended sentence (28%)¹ and a fine (20%).

Similarly, when the higher courts cancelled the CCO and resented the offender (which occurred for 40% of contraventions), the most commonly imposed sentence for the original offence was imprisonment (57%).

1. As suspended sentences are no longer available in Victoria, subsequent studies of contravention of CCOs will find a different distribution of sentence outcomes.

Sentence for the new offence that contravened the community correction order

In cases in which the offender committed a new imprisonable offence while serving a CCO imposed in the Magistrates' Court, the most severe sentences imposed on new offences were most commonly imprisonment (32%), a fine (23%) and a further CCO (19%).

For CCOs imposed in the higher courts, the most frequently imposed sentences on new imprisonable offences were fines (32%) followed closely by imprisonment (31%).

The imposition of a fine for new offences is likely to indicate that the new offences in those cases were less serious than the original offence or offences that received the CCO.

The additional offence of contravening a community correction order

Of the 3,402 offenders who were sentenced for the specific offence of contravening a CCO, the vast majority received a sentence of proven and dismissed (82% in the Magistrates' Court and 86% in the higher courts). In most of the cases studied, the main tool that courts used to punish the offender for contravention of a CCO was cancelling the original CCO, resentencing the offender (most commonly to imprisonment) and sentencing any new charges (which were most commonly sentenced to imprisonment). Another common outcome, particularly for contraventions by non-compliance, was to order the offender to continue to serve the CCO (sometimes after making it longer or adding tougher conditions). The separate charge of contravening a CCO was not the primary mechanism used for punishing offenders, with most contravention charges being proven and dismissed.

Key findings of this report are discussed in more detail in Chapter 8.

1. Importance of studying contraventions of community correction orders

- 1.1 The community correction order (CCO) is a sentencing order that provides for an offender's punishment and rehabilitation in the community. CCOs sit immediately below imprisonment in the Victorian sentencing hierarchy. Failure by an offender to comply with a CCO without a reasonable excuse is a criminal offence with a maximum penalty of three months' imprisonment.²
- 1.2 CCOs became available as a sentencing option in Victoria on 16 January 2012, replacing a number of community orders, such as the community-based order and the intensive correction order. The introduction of CCOs coincided with the progressive phasing out of suspended sentences of imprisonment. Previously, sentencing courts had a suite of community orders of increasing severity sitting below imprisonment. In contrast, the CCO is designed as a single order that a court can make more or less severe through the length of the order and the conditions attached to it. CCOs may also be combined with a sentence of imprisonment (a 'combined order'), making them an option for serious offences.
- 1.3 The flexibility of the CCO (as to length and conditions) and the ability to combine CCOs with imprisonment mean that CCOs can overlap substantially with fines at the lower end of the sentencing hierarchy and with imprisonment at the upper end. In practice, CCOs have predominantly taken up the position previously occupied by community-based orders, intensive correction orders and suspended sentences.
- 1.4 Since the introduction of CCOs, there has been a considerable amount of research into their use (use has increased substantially) and into the effect of subsequent changes to sentencing law and practice (changes have been extensive).³ Some of these changes are discussed at [1.56]–[1.65] and are illustrated in Figure 3 (page 13).
- 1.5 There has been very little published research, however, into offenders' compliance with their CCOs. Unanswered questions include: How many offenders sentenced to a CCO in Victorian courts obey the conditions of the order and stop offending? What happens to offenders if they do not obey the conditions? Are some offenders more likely than others to contravene their CCO?

2. *Sentencing Act 1991* (Vic) s 83AD.

3. A timeline of key changes is provided in Appendix I. Legislative changes since the introduction of CCOs include: (a) the removal of the court's power to combine a CCO with a wholly suspended sentence (August 2012); (b) the abolition of suspended sentences (from September 2013 in the higher courts and from September 2014 in the Magistrates' Court); (c) an increase in the maximum imprisonment term that may be combined with a CCO from three months to two years (September 2014) and then a decrease in it to one year (March 2017); (d) a change to the maximum length of a CCO from the maximum length of imprisonment for the offence to five years (March 2017); and (e) the removal or restriction of the CCO as a sentencing option for specific categories of offence (March 2017). See further Sentencing Advisory Council, *Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)* (2016); Sentencing Advisory Council, *Community Correction Orders: Second Monitoring Report (Pre-Guideline Judgment)* (2015); Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (2014).

Research questions

1. What proportion of offenders contravene their CCO? More specifically:
 - (a) What proportion of offenders contravene their CCO by further offending?
 - (b) What type and quantity of offences are committed when a CCO is contravened by further offending?
 - (c) How long after their CCO commences do offenders commit a new offence?
2. How do contravention rates vary according to factors relating to the CCO and the offender?
3. What sentences do courts impose when a CCO is contravened?

Aims of this report

- 1.6 This report examines all offenders sentenced to a CCO in the first financial year after CCOs were introduced (1 July 2012 to 30 June 2013 inclusive). The report has three aims:
 1. calculating how many offenders contravene their CCO, including by committing a new offence;
 2. identifying factors associated with contravention of a CCO; and
 3. examining the courts' responses to contraventions of a CCO.
- 1.7 Quantifying the proportion of offenders who contravene their CCOs, including by further offending, is a first step to understanding whether CCOs are operating effectively. Similarly, identifying factors that might be associated with contravention and analysing the courts' responses to contraventions are important aspects of understanding how the orders are working in practice.
- 1.8 As CCOs were introduced in January 2012, 2012–13 was the first full financial year of their operation. Selecting this as the study year allows a long follow-up period in which to monitor compliance, and provides a useful baseline for future research into the effect of legal and policy changes on contravention rates for CCOs imposed in subsequent years.
- 1.9 Since 2012–13, the policy, practice and administration of CCOs have changed substantially (as discussed at [1.56]–[1.65] and illustrated in Figure 3 (page 13)). These changes are likely to affect the characteristics of the offenders who are sentenced to CCOs. Therefore, future studies may find a different contravention rate due to the changing characteristics of offenders serving a CCO at any one time. For example, in September 2014, the period of imprisonment that courts were permitted to impose alongside a CCO was increased from three months to two years, which meant that CCOs could be imposed on more serious offenders, who may have different compliance rates to the group that received a CCO in 2012–13. The maximum imprisonment term that courts may combine with a CCO has since been reduced to one year, and the maximum length of a CCO imposed in the higher courts has been reduced to five years.⁴
- 1.10 The Council's approach to answering the research questions is set out briefly in Chapter 2, and the data methodology is discussed in detail in Appendix 2.

4. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) ss 12 (amending *Sentencing Act 1991* (Vic) s 44), 10–11 (amending *Sentencing Act 1991* (Vic) ss 38(1)(b), 41A).

What is a community correction order?

I.11 Sitting below imprisonment in the Victorian sentencing hierarchy,⁵ a CCO:

is a non-custodial order, to which are attached certain mandatory conditions laid down by the legislature. In addition, the sentencing court can attach to a CCO a range of conditions which are variously coercive, prohibitive, intrusive and rehabilitative.

The CCO is a flexible sentencing option, enabling punitive and rehabilitative purposes to be served simultaneously. The CCO can be fashioned to address the particular circumstances of the offender and the causes of the offending, and to minimise the risk of re-offending by promoting the offender's rehabilitation.⁶

Terms and conditions of community correction orders

I.12 Each CCO has core terms, the first being that the offender must not commit an offence that is punishable by imprisonment.⁷

I.13 The court must also attach at least one discretionary condition to a CCO for all or part of its length, for example, that the offender does unpaid community work or undertakes a treatment or rehabilitation program.⁸

When may a court impose a community correction order?

I.14 A court may only impose a CCO if:

- an offender has been found guilty, or has been convicted of, an offence punishable by more than five penalty units;
- the court has received and has had regard to a pre-sentence report; and
- the offender consents to the order.⁹

Core terms (of all CCOs) are that the offender must:

- not commit an offence punishable by imprisonment;
- report to a specified community corrections centre within two working days of the CCO coming into force;
- report to, and receive visits from, the Secretary to the Department of Justice during the period of the order;
- notify the Secretary to the Department of Justice of any change of address or employment within two working days after the change;
- comply with any direction given by the Secretary to the Department of Justice;
- not leave Victoria without the permission of the Secretary to the Department of Justice.

Sentencing Act 1991 (Vic) s 45

5. *Sentencing Act 1991 (Vic)* ss 5(4)–(4C), 7. Strictly speaking, drug treatment orders sit between imprisonment and CCOs; however, drug treatment orders are only available in limited circumstances.

6. *Boulton v The Queen* (2014) 46 VR 308, 311. A court's power to order a community correction order is provided in Part 3A of the *Sentencing Act 1991 (Vic)*.

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

8. *Sentencing Act 1991 (Vic)* ss 47–48LA.

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

Discretionary conditions (at least one of which *must* be attached to a CCO) include that the offender:

- undertakes a treatment or rehabilitation program;
- must not enter, remain at, or consume alcohol at a specified or unspecified licensed premises (such as a hotel) or any major event;
- performs unpaid community work;
- is supervised by a community corrections officer;
- abstains from contact or association with specified people (for example, a co-offender);
- lives (or does not live) at a specified address;
- stays away from a nominated place or area;
- abides by a curfew, remaining at a specified place for between two and 12 hours each day;
- pays a bond (money) that may be given up if the offender fails to comply with the CCO;
- is monitored by the court to ensure compliance;
- is electronically monitored.

Sentencing Act 1991 (Vic) ss 47–48LA

A community correction order may be combined with imprisonment

- 1.15 A court may sentence an offender to a CCO on its own or may combine a CCO with imprisonment (a 'combined order') or with a fine.¹⁰
- 1.16 When it was introduced in January 2012, a CCO could be combined with a fine or with a sentence of imprisonment of up to three months.¹¹ This is the law that applied at the time that the CCOs studied in this report were imposed (1 July 2012 to 30 June 2013). The maximum term of imprisonment that could be combined with a CCO was later increased to two years (with exceptions),¹² and has since been decreased to one year.¹³

Length of a community correction order

- 1.17 In 2012–13, when the CCOs studied in this report were imposed, the maximum length of a CCO in the higher courts was the same as the maximum term of imprisonment for the offence, or two years (whichever was greater).¹⁴ For example, a court could potentially sentence an offender to a CCO of up to 10 years (the maximum length of imprisonment) for the offence of theft. The maximum term of a CCO has since been reduced to five years.¹⁵

1.18 In the Magistrates' Court, a single CCO can be imposed for a maximum of:

- two years (in relation to one offence);
- four years (in relation to two offences); and
- five years (in relation to three or more offences).¹⁶

10. *Sentencing Act 1991 (Vic) ss 43–44.*

11. *Sentencing Act 1991 (Vic) s 44 (since amended).*

12. *Sentencing Amendment (Emergency Workers) Act 2014 (Vic) s 18.*

13. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016 (Vic) s 12.*

14. Recent changes to the *Sentencing Act 1991 (Vic)* limit the use of CCOs by mandating imprisonment for specified 'Category 1 offences', reducing the amount of imprisonment that can be combined with a CCO and restricting the maximum length of CCOs to five years (including cumulative CCOs); see *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016 (Vic)*. This Act commenced on 20 March 2017.

15. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016 (Vic) s 10.*

16. *Sentencing Act 1991 (Vic) s 39.*

Can a single community correction order be imposed for multiple offences?

- I.19 A single CCO may be imposed for multiple offences if the offences are founded on the same facts or if they form, or are part of, a series of offences of the same or a similar character.¹⁷
- I.20 If a person is sentenced to more than one CCO, the court may order that the conditions of those CCOs are to be served cumulatively (one after the other) or concurrently (at the same time). If a court makes separate CCOs, there is a statutory presumption that the conditions are concurrent.¹⁸
- I.21 If the Magistrates' Court imposes multiple CCOs for offences committed at the same time, the maximum period of the cumulative CCOs is five years. In contrast, there originally appeared to be no limit on the total period of cumulation for multiple CCOs imposed for offences that were *not* committed at the same time. However, a recent amendment applies the five-year maximum period for cumulative CCOs to all cases, regardless of whether the sentenced offences were committed at the same time.¹⁹

Variation of a community correction order

- I.22 An application to vary a CCO may be made to the court that imposed the CCO. The application may be made by the offender, the Director of Public Prosecutions, the Secretary to the Department of Justice and Regulation, police (including the Chief Commissioner of Police and the informant or police prosecutor) and a community corrections officer. The court may:

- confirm the CCO or a part of the CCO;
- cancel the CCO and make no further order;
- cancel the CCO and resentence the offender for the original offence or offences;
- vary the CCO;
- cancel, suspend, vary or reduce a CCO condition; or
- impose a new program for the offender to do.²⁰

Circumstances that may justify the court varying or cancelling a CCO include:

- the circumstances of the offender materially altering since the order was made, resulting in the offender being unable to comply with any condition of the order;
- the offender's circumstances being inaccurately presented to the court or the author of a pre-sentence report or drug and alcohol report before the court made the order;
- the offender no longer being willing to comply with the order;
- the rehabilitation and reintegration of the offender being advanced by varying or cancelling the order; or
- the continuation of the CCO being no longer necessary in the interests of the community or the offender.

Sentencing Act 1991 (Vic) s 48M

17. *Sentencing Act 1991 (Vic) s 40.*

18. *Sentencing Act 1991 (Vic) s 41.*

19. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016 (Vic) s 16.*

20. *Sentencing Act 1991 (Vic) s 48M(2).* See further Judicial College of Victoria, '14.10 – Variation of CCO', *Victorian Sentencing Manual* (Judicial College of Victoria, 2015) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#7166.htm>> at 26 May 2017.

Management of offenders on community correction orders

Community Correctional Services

1.23 Offenders who are serving CCOs are managed by Community Correctional Services, a division of Corrections Victoria, which is part of the Department of Justice and Regulation. The daily total cost of managing an offender on a CCO was \$27.55 in 2014–15 (or just over \$10,000 per year). This is considerably less than the \$360.91 per day (over \$131,700 per year) that it cost to manage an offender in prison.²¹

Department of Health and Human Services

1.24 The Department of Health and Human Services (DHHS) 'oversees the delivery of alcohol and drugs assessment and treatment programs for offenders on CCOs',²² using:

- the Community Offender Advice and Treatment Service (COATS) to arrange treatment programs through community-based providers;²³ and
- the Australian Community Support Organisation (ACSO) to monitor offenders' attendance and progress on the alcohol and other drug program.²⁴

Reforms to Corrections Victoria's Community Correctional Services (CSS) service model for managing offenders on community correction orders

1.25 Since 2012–13, the study year for this report, Corrections Victoria has reformed their Community Correctional Services (CCS) service model, following significant growth in the number of offenders sentenced to a CCO. These changes were rolled out from 16 January 2017.²⁵

1.26 The reforms introduce a new framework for case management that aims to utilise evidence-based practices to reduce reoffending. Research relied upon in developing the framework shows that intensive intervention with high-risk offenders reduces their risk of reoffending, while intensive intervention with lower-risk offenders can increase their risk of reoffending.²⁶ Intensive interventions can draw low-risk offenders away from the pro-social supports that have led to their assessment as low risk, such as stable employment and positive community or family relationships, and instead bring them into contact with higher-risk offenders and increase their risk of moving into social groups for which offending behaviours are normalised.

1.27 Under the reformed service model, Corrections Victoria will continue to assess an offender's risk level using an actuarial risk assessment tool – the Level of Service/Risk, Need, Responsivity (LS/RNR) Scoring Guide – which provides an indication of the risk of general reoffending based on a comparison of an individual offender's characteristics with the characteristics of offenders who reoffend at particular rates. There are also targeted reoffending tools for particular categories of offenders. For example, for family violence offenders, Corrections Victoria administers the Spousal Assault Risk Assessment (SARA), but this only applies to family violence offenders who engage in physical assault, not to other kinds of family violence offending.

21. Victorian Auditor-General, *Managing Community Correction Orders* (2017) vii, 3; referring to Productivity Commission, *Report on Government Services* (2016).

22. Victorian Auditor-General (2017), above n 21, 7.

23. *Ibid* 28.

24. *Ibid* 28.

25. The discussion in this section of the report is drawn directly from Sentencing Advisory Council, Swift, *Certain and Fair Approaches to Sentencing Family Violence Offenders: Discussion Paper* (2017) 54–55.

26. *Ibid* 54–55. See for example, Clifford R. O'Donnell et al., 'The Buddy System: Review and Follow-Up' (1979) 1(2) *Child & Family Behavior Therapy* 161; James Bonta et al., 'A Quasi-Experimental Evaluation of an Intensive Rehabilitation Supervision Program' (2000) 27(3) *Criminal Justice and Behavior* 312; Brian Lovins et al., 'Applying the Risk Principle to Sex Offenders: Can Treatment Make Some Sex Offenders Worse?' (2009) 89(3) *The Prison Journal* 344.

- I.28 An offender's assessed risk level informs the level of case management and supervision that they receive. Advanced case managers will now handle offenders who have been sentenced to a CCO in combination with a term of imprisonment, sex offenders on CCOs and high-risk or complex offenders. Advanced case managers are more experienced and have lower caseloads so that they are able to provide more intensive case management. Low-risk offenders will be managed by case officer staff, who meet with offenders on commencement of the CCO, but otherwise manage offenders administratively.
- I.29 Unlike under the previous service model, high-risk offenders under the reformed service model will be given prioritised access to treatment or programs, such as men's behaviour change programs.
- I.30 At a broad level, Corrections Victoria has indicated that higher-risk offenders will be subject to 'swift' responses for non-compliance with a CCO condition. Corrections Victoria's aim is to support the offender to continue on their CCO where appropriate, rather than immediately returning the offender to court upon any contravention. Nevertheless, if a high-risk offender were to contravene a CCO condition and it was the advanced case manager's assessment that their risk level had increased to the extent that the offender could not continue on the CCO, contravention proceedings could commence.
- I.31 Under the reformed service model, prosecutions of contraventions of a CCO will be undertaken by specialist staff from the Court Assessment and Prosecutions Service. Specialist staff are anticipated to be in a position to objectively determine whether to initiate contravention proceedings, and they may propose that other steps be taken prior to initiating contravention proceedings (such as initiating an administrative review hearing).
- I.32 In line with the reforms discussed above, Corrections Victoria also intends to reduce the level of prescriptiveness in their approach to managing an offender's non-compliance with CCO conditions. Staff are provided with a decision-making framework within which the staff member will use their professional judgment to make ongoing assessments about appropriate responses to an offender's non-compliance.
- I.33 This report provides a base contravention rate against which changes to the law and management of CCOs can be measured in the future.

Failure to comply with a community correction order

- I.34 Under the previous system, when an offender failed to comply with a CCO condition (such as attend an appointment), it was generally expected that the 'event' of non-compliance would be investigated within five working days of notification and would be 'resolved' within three weeks of the instance of non-compliance.²⁷
- I.35 There were no fixed responses to non-compliance. Decisions were guided by the Offender Management Framework, as well as by guidelines issued by the Deputy Commissioner of Corrections Victoria. Consequently, an offender could fail to comply with the conditions of their CCO more than once before there was a consequence. The decision about how many instances of non-compliance constitute an event was informed by an assessment of the reasons for an offender's non-compliance, whether non-compliance was likely to escalate to reoffending and considerations relevant to the offender's risk level.
- I.36 Under both the previous service model and the reformed service model, Corrections Victoria follows a case management approach to non-compliance. Case managers take a holistic approach to

27. The discussion in this section of the report is drawn directly from Sentencing Advisory Council (2017), above n 25, 55.

offender management and aim to achieve offender compliance with the CCO by proactive modelling of good behaviour, as opposed to taking a punitive, or strict, approach to CCO management.

I.37 The Council has previously acknowledged 'the importance of retaining a range of responses to non-compliance, from administrative sanctions through to the commencement of formal breach proceedings', recognising that:

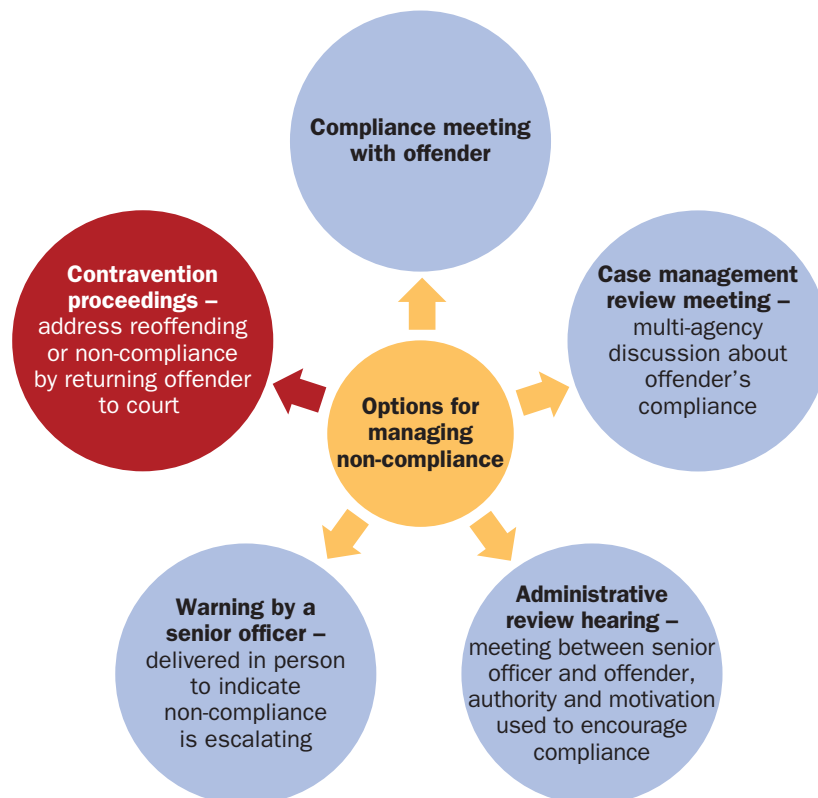
enforcement practices have a strong impact on sentencers' and community confidence in community sanctions. Strategies that allow breaches of orders to be detected and dealt with quickly and consistently are important to the credibility of orders as they ensure that offenders must complete their orders as intended, or face the consequences.²⁸

I.38 There are a number of possible responses once Corrections Victoria has discovered that an offender has failed to comply with a CCO condition (Figure 1). These options include (in order of escalating seriousness):

- calling a 'compliance meeting' with an offender to review their compliance and the consequences of non-compliance;
- having a senior staff member issue a warning to the offender;
- initiating an administrative review hearing (ARH); or
- formally initiating proceedings for contravention of a CCO.²⁹

I.39 The most serious response to an offender's non-compliance that is available to Corrections Victoria is to charge the offender with the offence of contravening a CCO, thereby commencing contravention proceedings in court.

Figure 1: Options for managing an offender's non-compliance with a CCO



28. Sentencing Advisory Council, *Suspended Sentences and Intermediate Sentencing Orders, Suspended Sentences: Final Report – Part 2* (2008) 250.

29. Victorian Auditor-General (2017), above n 21, 31.

The offence of contravening a community correction order

- I.40 Contravening a CCO without a reasonable excuse is a criminal offence with a maximum penalty of three months' imprisonment.³⁰ If an offender is serving multiple CCOs concurrently, the contravention of each CCO is an independent offence even if the contraventions are based on substantially the same facts.³¹ As with any other criminal charge, the offence must be proven by the prosecution beyond reasonable doubt.
- I.41 If an offender contravenes a CCO by committing an offence that is punishable by imprisonment, the offender is liable to be charged with both the new offence and the offence of contravening a CCO. The new offence must be proven before the charge of contravening a CCO can be heard.
- I.42 Figure 2 (page 10) provides an overview of the types and consequences of contravention.

Commencing contravention proceedings

- I.43 Proceedings for the offence of contravening a CCO begin with an authorised charging authority filing a charge-sheet in the Magistrates' Court.³²

If there are no new imprisonable offences

- I.44 If the contravention is due to a failure to comply with a CCO condition (and not by further imprisonable offending) and the Magistrates' Court did not make the original CCO, the court must transfer the proceeding to the court that imposed the CCO.³³ In most instances, this will be the County Court.

If there are new imprisonable offences sentenced in the higher courts

- I.45 If an offender is found guilty in the County or Supreme Court of an imprisonable offence that contravenes a CCO imposed in the same court, the charge of contravening a CCO may be filed and heard in that court.³⁴
- I.46 If an offender is found guilty in the County or Supreme Court of an imprisonable offence that contravenes a CCO imposed in the Magistrates' Court, the contravention proceeding can be initiated and determined in the relevant higher court.³⁵

The following persons may file a contravention charge-sheet:

- the Director of Public Prosecutions;
- a member of the police force, including the Chief Commissioner of Police and the informant in the original sentencing proceeding;
- a Crown prosecutor and lawyer employed in the Office of Public Prosecutions;
- the Regional Manager of the region in which the community corrections centre specified in the CCO is located;
- a community corrections officer; and
- the Secretary to the Department of Justice.

Sentencing Act 1991 (Vic), 83AG(2)

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

31. Judicial College of Victoria, '14.11.5 – Breach of Concurrent CCOs', *Victorian Sentencing Manual* (Judicial College of Victoria, 2015) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#7172.htm>> at 12 May 2017; *R v Nguyen* (1996) 85 A Crim R 510, 515.

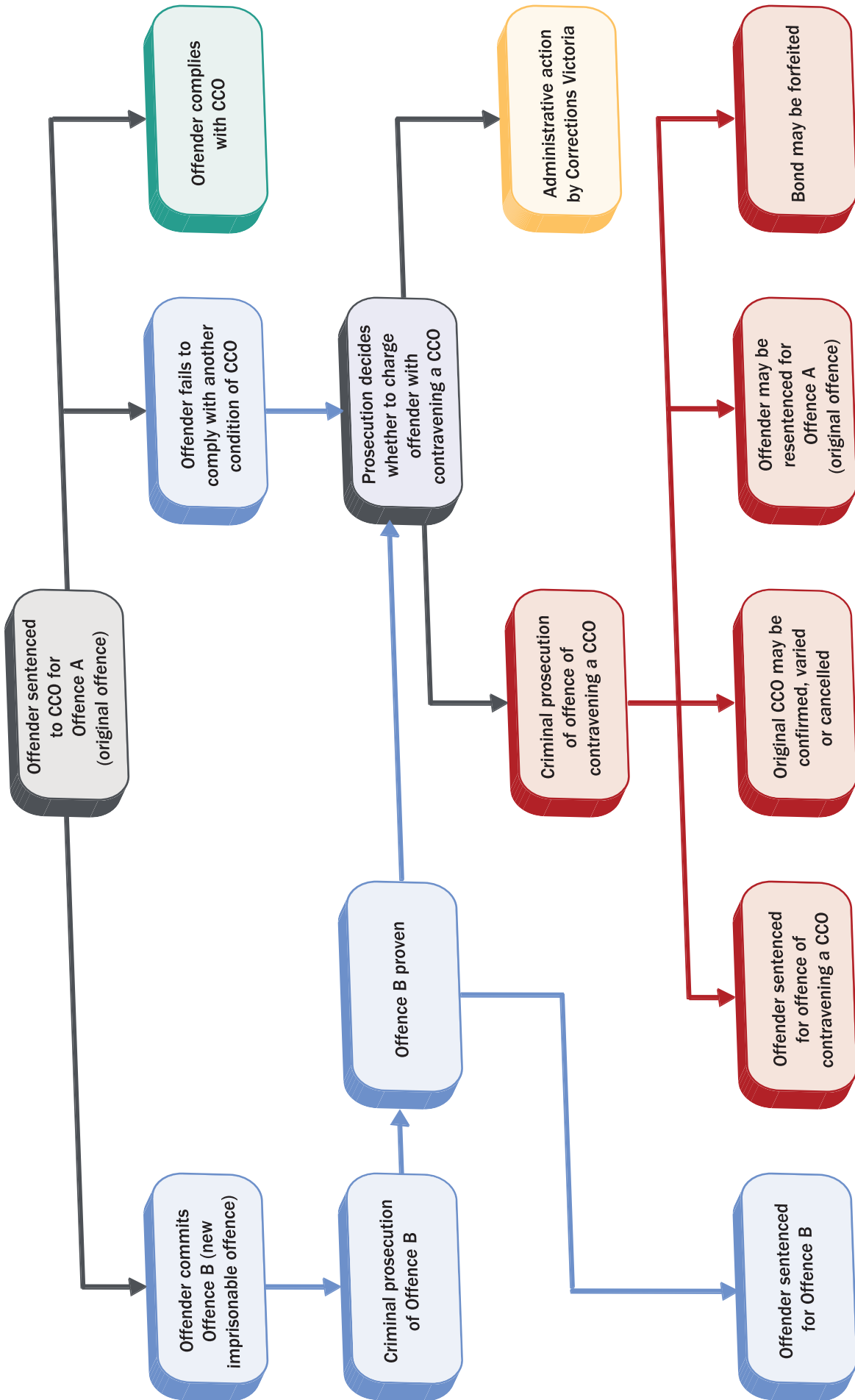
32. *Sentencing Act 1991 (Vic)* s 83AG(1). If the new offence is heard and proven in the County or Supreme Court and the CCO was imposed in the same court, the charge-sheet may be filed in that court: *Sentencing Act 1991 (Vic)* s 83AL.

33. *Sentencing Act 1991 (Vic)* s 83A(1). If the Court of Appeal imposed the CCO, the original sentencing court should deal with the contravention charge: *Sentencing Act 1991 (Vic)* s 48Q.

34. *Sentencing Act 1991 (Vic)* s 83AL. The persons who may file a charge-sheet in these circumstances are set out in *Sentencing Act 1991 (Vic)* s 83AL(2).

35. *Sentencing Act 1991 (Vic)* s 83AM. See further Judicial College of Victoria, '14.11.2 – Procedures for Determining CCO Contravention Charges', *Victorian Sentencing Manual* (Judicial College of Victoria, 2015) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#7169.htm>> at 12 May 2017.

Figure 2: Types and consequences of contravention



If there are new imprisonable offences sentenced in the Magistrates' Court

I.47 If an offender is found guilty in the Magistrates' Court of an imprisonable offence that contravenes a CCO, the charge of contravening a CCO is determined in the court that imposed the CCO.³⁶

Time limit for bringing contravention proceedings

If there are new imprisonable offences

I.48 For contravention by further offending, the contravention proceeding must be commenced:

- within six months of the conviction or finding of guilt for the new offence; and
- no more than two years after the CCO ceases to be in force.³⁷

If there are no new imprisonable offences

I.49 For contraventions by non-compliance (that is, contraventions that do not involve new imprisonable offending),³⁸ the proceeding must be commenced within one year of the CCO ceasing to be in force.³⁹

Sentencing contraventions of a community correction order

I.50 If a court finds an offender guilty of contravention of a CCO, either by further imprisonable offending or by contravention of another condition ('contravention by non-compliance') (or a combination of both), the offender faces a number of potential consequences.

I.51 If an offender has been found guilty of contravention of a CCO by further imprisonable offending, the court must sentence the offender for the new offence (the fact that the offence was committed while the offender was serving a CCO is an aggravating factor).⁴⁰ The formal charge of contravening a CCO can only be determined once the new offence has been proven.

I.52 If an offender is found guilty of the offence of contravening a CCO, the court must:

- sentence the offender for the offence of contravening a CCO;
- consider whether to forfeit any bond money that was paid as a CCO condition; and
- consider which order to make in relation to the original CCO (whether to cancel the CCO and resentence the offender for the original offences, cancel the CCO with no further order, vary the CCO or confirm the CCO).⁴¹

Where the offender has paid a bond as a condition of the CCO:

- if the court has decided to vary or confirm the original CCO, the court *may* order that all or a part of the bond is forfeited to the Crown; or
- if the court has decided to cancel the CCO and resentence the person for the original offences, the court *must* order that all or part of the bond is forfeited to the Crown.

Sentencing Act 1991 (Vic) s 83AS(4)

36. *Sentencing Act 1991 (Vic)* ss 83AG, 83AI–83AJ.

37. *Sentencing Act 1991 (Vic)* ss 83AH(1)–(2).

38. *Sentencing Act 1991 (Vic)* s 45(1)(a).

39. *Sentencing Act 1991 (Vic)* s 83AH(1)(b).

40. *Haddara v The Queen* [2016] VSCA 168 (18 July 2016) [83].

41. *Sentencing Act 1991 (Vic)* ss 83AD(1), 83AS(1), 83AS(4).

Powers in relation to the original community correction order

- 1.53 The court's powers on finding a person guilty of an offence of contravening a CCO are broadly the same as the court's powers in an application to vary the CCO. The court must:
- vary the CCO;
 - confirm the CCO (in other words, make no change to the original CCO);
 - cancel the CCO (if it is still in force) and resentence the offender for the original offences; or
 - cancel the CCO and make no further order in relation to the original offences.⁴²
- 1.54 These powers depend on the offender being charged with contravening a CCO under section 83AD of the *Sentencing Act 1991* (Vic). If an offender commits an imprisonable offence while on a CCO but is not prosecuted for the separate offence of contravening a CCO, the court's only mechanism for punishing the offender for their contravening behaviour is the sentence imposed for the new offence (the fact that the offender was serving a CCO when they committed the offence is an aggravating factor⁴³). Without a separate contravention charge, the court does not have the power to resentence the offender for the original offence.
- 1.55 Considerations that are relevant to the court's decision about how to treat the original CCO include:
- the extent to which the offender had complied with the CCO before the contravention;⁴⁴
 - whether the CCO imposed a manifestly excessive burden so unreasonable as to be likely to result in contraventions of the order; and⁴⁵
 - the circumstances of the contravention, whereby the offender's failure to 'take the earlier chance' afforded by the imposition of a CCO may have seriously undermined the court's original assessment of the offender's prospects of rehabilitation and/or whether the original leniency was justified, particularly if the contravention involved further offending.⁴⁶

42. *Sentencing Act 1991* (Vic) s 83AS(1).

43. *Haddara v The Queen* [2016] VSCA 168 (18 July 2016) [83].

44. *Sentencing Act 1991* (Vic) s 83AS(2). The court generally gives significant weight to the fact that the offender has completed the punitive components of a CCO, such as unpaid community work. However, the court may still resentence the offender to imprisonment for the original offences if that is the just sentence in all the circumstances: *R v Nguyen* (1996) 85 A Crim R 510, 515–516; *R v Bala* [1996] VicSc 549 (19 November 1996) 5–6 (Phillips JA), 11–12 (Tadgell JA); *R v Wise* (2000) 2 VR 287, [31] (Ormiston JA); *R v Coates* [1998] VicSC 212 (5 May 1998) 2–3.

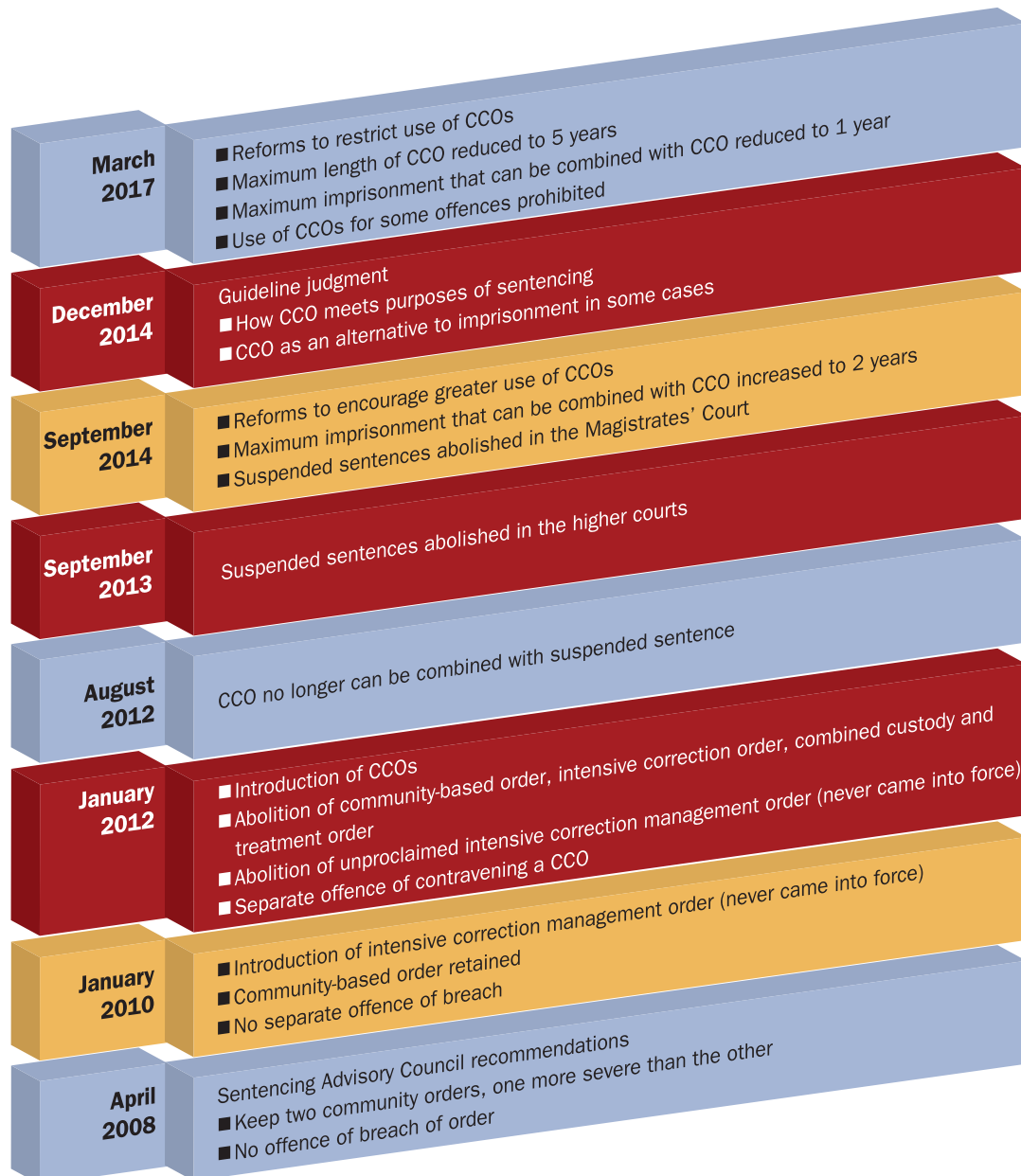
45. *R v Sanerive* [1995] VicSC 315 (23 June 1995).

46. *R v Shaw* [1980] VicSC 5 (4 February 1980) 8–9; *R v Zidlicky* [2001] VSCA 186 (18 October 2001) [15] (Chernov JA); *R v Sanerive* [1995] VicSC 315 (23 June 1995) 29–30; *R v Brain* [2000] VSCA 246 (12 December 2000) [15] (Brooking JA); *R v Wise* (2000) 2 VR 287, [31] (Ormiston JA). See also Judicial College of Victoria, '14.13.3 – Seriousness of CCO Contravention', *Victorian Sentencing Manual* (Judicial College of Victoria, 2015) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#7177.htm>> at 13 June 2017.

Key changes to sentencing law and practice

I.56 The changes to sentencing law since the introduction of CCOs in January 2012 have been extensive, as illustrated in Figure 3 and detailed in Appendix I.

Figure 3: Key changes to CCOs



- 1.57 The dynamic environment in which CCOs have been operating has implications for the type of offenders and offences sentenced to a CCO in a particular year. In turn, the changing characteristics of offenders serving a CCO (particularly in terms of the seriousness of their offences) have implications for the contravention rate. This report provides a baseline contravention rate for future comparison, as it quantifies the contravention rate for CCOs imposed in the first financial year after the introduction of the order.
- 1.58 The introduction of CCOs coincided with the abolition of community-based orders, intensive correction orders and combined custody and treatment orders, as well as the progressive phasing out of suspended sentences of imprisonment.
- 1.59 From January 2012 to June 2013 (which includes the study year in this report), the Magistrates' Court imposed CCOs in similar numbers and for similar types of cases to the community orders that CCOs had replaced – primarily community-based orders and intensive correction orders.⁴⁷ In this period, suspended sentences were still available in the Magistrates' Court.
- 1.60 In contrast, in 2012 the higher courts used CCOs in place of not just community-based orders and intensive correction orders but also some suspended sentences, which were declining in use. However, in the first half of 2013, the number of CCOs in the higher courts gradually declined while imprisonment increased, suggesting that the higher courts became more inclined to use imprisonment than CCOs to replace suspended sentences.⁴⁸
- 1.61 For the purposes of this report, the pool of CCOs imposed in the higher courts in the first half of the study year (1 July 2012 to 31 December 2012) may involve more serious offences than the pool from the second half of the study year (1 January 2013 to 30 June 2013).
- 1.62 After 2012, changes to sentencing law expanded the use of CCOs as an option for more serious crimes. Suspended sentences were abolished as a sentencing option in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.⁴⁹ Also in September 2014, a number of legislative changes took effect, which encouraged greater use of CCOs and made it clear that courts could impose CCOs in cases that previously may have received a suspended sentence.⁵⁰ The *Sentencing Act* was amended to expressly provide that a court must not impose a sentence involving the confinement of an offender if the purposes of sentencing can be achieved by a CCO with certain conditions attached.⁵¹ The maximum period of imprisonment that courts could impose with a CCO increased from three months to two years.⁵² These changes increased the range of cases that could attract a CCO – either as a stand-alone CCO or as a combined order – to include more serious cases (and potentially higher-risk offenders who may be more likely to contravene the CCO).
- 1.63 The effect of these legal changes on sentencing practices quickly became apparent. Between the September quarter of 2014 and the December quarter of 2014, the number of imprisonment sentences combined with a CCO more than trebled (from 18 to 61) in the

47. Sentencing Advisory Council (2014), above n 3.

48. Ibid. Suspended sentences were removed as a sentencing option in the higher courts for all offences committed on or after 1 September 2013 by the *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic). From 1 September 2014, suspended sentences were no longer available in the Magistrates' Court for all offences committed on or after that date.

49. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).

50. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 17, inserting section 36(2) into the *Sentencing Act 1991* (Vic).

51. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 16, inserting section 5(4C) into the *Sentencing Act 1991* (Vic). The conditions referred to are non-association, residence restrictions or exclusions, place or area exclusions, curfews and/or alcohol exclusions.

52. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 18. This has since been reduced to one year; *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 12 (see further this report at [1.65]).

higher courts and increased by nearly two-thirds (from 239 to 388) in the Magistrates' Court.⁵³ In the last three months of 2014, the use of CCOs in the Magistrates' Court expanded into the domain previously occupied by suspended sentences. The substantial increase in the number of combined orders in the higher courts and the Magistrates' Court is shown in Figures 4 and 5.

Figure 4: Number of CCOs by CCO type and sentencing year, Magistrates' Court, 2012 to 2015

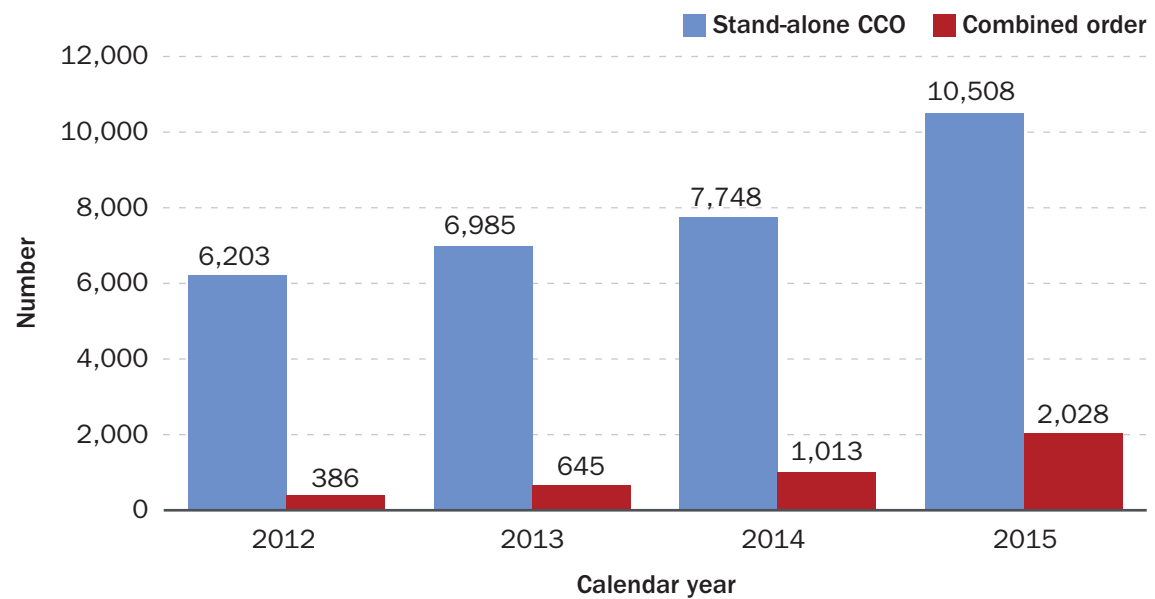
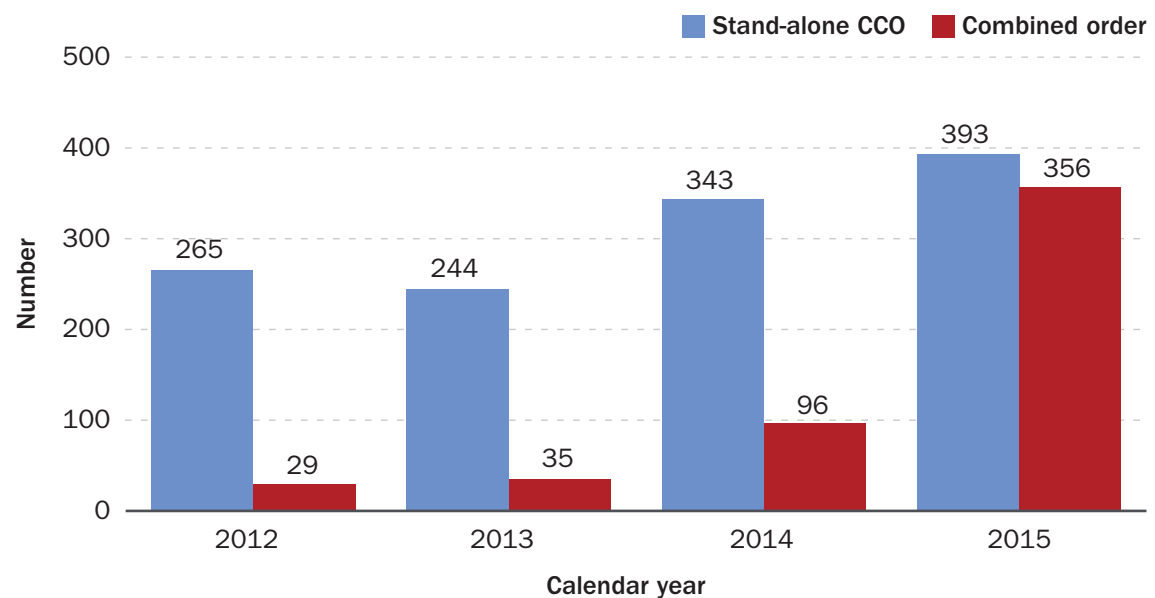


Figure 5: Number of CCOs by CCO type and sentencing year, higher courts, 2012 to 2015



53. Sentencing Advisory Council (2015), above n 3, 10, 17.

- 1.64 In 2016, the Council found that combined orders had, to some extent, replaced sentences involving a short term of imprisonment (of one to less than two years) with a non-parole period.⁵⁴ The increased use of combined orders was also attributable in part to the guideline judgment on CCOs handed down by the Victorian Court of Appeal in *Boulton v The Queen*.⁵⁵ The guideline judgment is also likely to have contributed to some extent to the increased use of stand-alone CCOs, although this use was influenced more by the abolition of suspended sentences than the guideline judgment.⁵⁶
- 1.65 Recent changes to sentencing law, which commenced operation on 20 March 2017, have limited the use of CCOs in more serious cases: the imprisonment term that may be combined with a CCO has been reduced to one year, the maximum length of a CCO has been restricted to five years and the use of CCOs has been prohibited for 'Category 1' offences and limited for 'Category 2' offences.⁵⁷ At the same time, changes to the Community Correctional Services (CSS) service model for managing offenders are being rolled out (as discussed at [1.25]–[1.32]). The effect of these changes on sentencing practices remains to be seen.

Council research on contravention of other orders

- 1.66 The Council previously has examined contravention of other sentencing orders, including contravention rates from nearly a decade ago for three sentence types that have since been repealed: the intensive correction order, the community-based order and the suspended sentence.
- 1.67 The analysis of intensive correction orders and community-based orders was limited to the higher courts, and contravention was defined as the presence of a proven charge of contravening the order. The Council found that over a three-year period, one-quarter of community-based orders (25.4%) and just over one-third of intensive correction orders were contravened (35.0%).⁵⁸ Community orders imposed in the Magistrates' Court were not included in the analysis.
- 1.68 The Council's report on contravention of suspended sentences defines contravention as the presence of a charge of contravene a suspended sentence heard in the Magistrates' Court and higher courts. The report found that, after five years, just over one-quarter of all suspended sentences were contravened (27.5%).⁵⁹ The rate was substantially higher for suspended sentences imposed in the Magistrates' Court than for those imposed in the higher courts (29.1% and 8.6% respectively).⁶⁰ The rate was also substantially higher for offenders aged under 25 years than for offenders aged 25 and over (for example, 34.3% and 26.9% respectively in the Magistrates' Court).⁶¹ The contravention rate was slightly higher for partially suspended sentences than for wholly suspended sentences and for males than for females.⁶² As suspended sentences did not have any program conditions, they could only be contravened by further offending.

54. Sentencing Advisory Council, *Parole and Sentencing: Research Report* (2016) 28–29. For imprisonment terms of one to less than two years, courts have the discretion as to whether or not to impose a non-parole period (*Sentencing Act 1991* (Vic) s 11(2)). In late 2014 and early 2015, there was a clear decline in the proportion of imprisonment sentences that included a non-parole period and a concurrent increase in the proportion that were combined with a CCO.

55. *Boulton v The Queen* (2014) 46 VR 308.

56. Sentencing Advisory Council (2016), above n 3, 32.

57. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) ss 4, 6, 10–12. See further Appendix 1.

58. Sentencing Advisory Council, *Community Sentences In Victoria: A Statistical Profile* (2007) 1.

59. Sentencing Advisory Council, *Suspended Sentences In Victoria: A Statistical Profile* (2007) 8.

60. Sentencing Advisory Council (2007), above n 58, 8–9.

61. *Ibid* 10.

62. *Ibid* 9.

2. Approach to addressing the research questions in this report

Study group

- 2.1 Offenders are included in the study group if they were sentenced to a CCO in any Victorian court from 1 July 2012 to 30 June 2013 (inclusive). Each offender is counted only once for this reference period (the 'study year'), regardless of how many times they received a CCO.⁶³

Calculating the contravention rate

- 2.2 In this report, an offender is deemed to have contravened a CCO if at any point after the start of the CCO (to 30 June 2016) the offender was sentenced for:
- the offence of contravening a CCO under section 83AD of the *Sentencing Act 1991* (Vic); and/or
 - a new imprisonable offence that was committed during the *operational period* of the CCO, that is, while the offender was serving a CCO, regardless of whether they were also charged with the offence of contravening a CCO.
- 2.3 The Council has a high threshold for defining whether a CCO has been contravened. To be included, the contravention must have been *proven in court*. Contraventions handled internally by Corrections Victoria are not included in the definition of 'contravention of a CCO' for the purposes of this report. This means that the proportion of offenders found to have contravened their CCO may underestimate the true contravention rate.
- 2.4 To estimate contravention rates, the Council tracked an offender's proven offending over the operational period of their CCO, to 30 June 2016, which was the limit of the available data at the time of the analysis.

Contravention type

- 2.5 The severity of contraventions can vary considerably. Therefore, contraventions are classified into two categories:⁶⁴
1. 'contravention by further offending': the offender is sentenced for at least one new imprisonable offence committed during the operational period of the CCO. This category is further broken down according to whether or not the offender was also sentenced for the offence of contravening a CCO; and
 2. 'contravention by non-compliance': the offender is sentenced only for the offence of contravening a CCO and not for any new imprisonable offences. The offender is assumed to have failed to comply with a term or condition of the CCO (other than the core term of not committing a new imprisonable offence).
- 2.6 This report examines the type of imprisonable offences committed by offenders while serving a CCO for cases involving contravention by further offending.

63. Appendix 2 includes detailed information about the methodology for selecting the study group and measuring contravention, including the determination of the operational period of the CCO, the approach to cases with no recorded offence date and the classification of offences punishable by imprisonment.

64. The classification of contravention types is explained further at [4.5]–[4.8], [4.16]–[4.17].

Factors associated with contravention of a community correction order

2.7 This report aims to identify factors associated with contravention of a CCO. The data includes factors relating to the offender and the CCO.

2.8 Factors relating to the offender include:

- age – the age of the offender when they received their CCO;
- gender;
- original offence – the principal (most serious) offence that received the original CCO; and
- prior conviction – whether the offender had been sentenced for offences prior to receiving a CCO.

2.9 Factors relating to the CCO include:

- the court level that imposed the sentence – the Magistrates' Court or the higher courts;
- the CCO type – a combined order (a CCO combined with imprisonment) or a stand-alone CCO;
- the length of the CCO; and
- the discretionary conditions attached to the CCO, with a focus on whether the offender was required to do unpaid community work. For this analysis, CCOs are divided into three categories:
 - (a) community work only (no other discretionary conditions);
 - (b) community work and at least one other discretionary condition (most commonly assessment and treatment); and
 - (c) no community work but at least one discretionary condition (most commonly assessment and treatment and supervision).

2.10 This report examines *associations* between factors and the contravention rate. The report does not, however, attempt to draw *causal connections* between factors and contravention. This recognises that, firstly, most factors interrelate and, secondly, many other factors that are not recorded in the data may also influence a person's propensity to contravene a CCO, for example, homelessness, addiction, a chaotic or dysfunctional lifestyle and the timely availability of suitable programs to address the causes of the offending.

Court responses to contraventions

2.11 This report also examines court responses to contraventions of a CCO. Outcomes are considered in terms of:

- the sentence imposed for the **offence of contravening a CCO**;
- whether the **original CCO was confirmed, varied or cancelled** because of the contravention;
- where the original CCO was cancelled, whether the offender received a new sentence for the **original charges that received the CCO**; and
- the sentence imposed for the **new imprisonable offences** that contravened the CCO (if relevant).

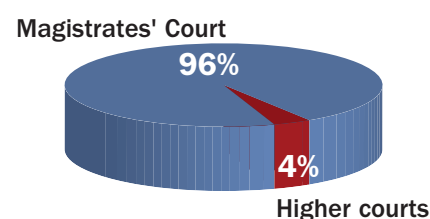
3. The study group

- 3.1 This chapter examines factors relating to the study group in terms of the offender, the type of offending and the CCO type, length and conditions. There were 7,645 offenders in the study group, comprising all offenders sentenced to a CCO in a Victorian court in the 2012–13 financial year.
- 3.2 The factors are examined for the study group as a whole, as well as for each court level: the higher courts (Supreme and County Courts) and the Magistrates' Court.
- 3.3 As the higher courts deal with more serious offences than the Magistrates' Court, the offenders sentenced to a CCO in the higher courts are likely to be very different from those sentenced to a CCO in the Magistrates' Court. The sentence most commonly imposed in the higher courts is imprisonment; for example, in 2012–13, 60.5% of cases sentenced in the higher courts received a sentence of imprisonment.⁶⁵ Therefore, in many cases, CCOs imposed in the higher courts are likely to be reserved for offenders with good prospects of rehabilitation and where there are strong mitigating factors, for instance, young adult offenders with no prior convictions. Such factors are relevant to the likelihood of an offender complying with their CCO.
- 3.4 In the Magistrates' Court, fines and adjourned undertakings are the most common sentences. For example, in 2012–13, fines were imposed in 55.7% of cases.⁶⁶ Therefore, CCOs may be more commonly imposed in the Magistrates' Court in cases in which offenders have relatively serious offending (for that court level), a large number of charges and/or prior convictions. Such factors are relevant to the likelihood of an offender contravening their CCO.
- 3.5 For the reasons above, it is important to examine court levels separately.

Court in which the community correction order was imposed

- 3.6 Ninety-six per cent of offenders in the study group were sentenced to their CCO in the Magistrates' Court (7,340 offenders) while only 4% received their CCO in the higher courts (305 offenders) (Figure 6). All of these 305 offenders received their CCO in the County Court. No CCOs were imposed in the Supreme Court in 2012–13.
- 3.7 Seventeen offenders were sentenced to CCOs in both court levels during the 2012–13 financial year. For these offenders, only the CCO imposed in the higher courts is included in the analysis.

Figure 6: Proportion of CCOs in the Magistrates' Court and higher courts, 1 July 2012 to 30 June 2013



65. Sentencing Advisory Council, *Sentencing Outcomes in the Higher Courts* (Sentencing Advisory Council, 2017) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-higher-courts>> at 5 June 2017.

66. Sentencing Advisory Council, *Sentencing Outcomes in the Magistrates' Court* (Sentencing Advisory Council, 2017) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-magistrates-court>> at 5 June 2017.

Factors relating to the offender

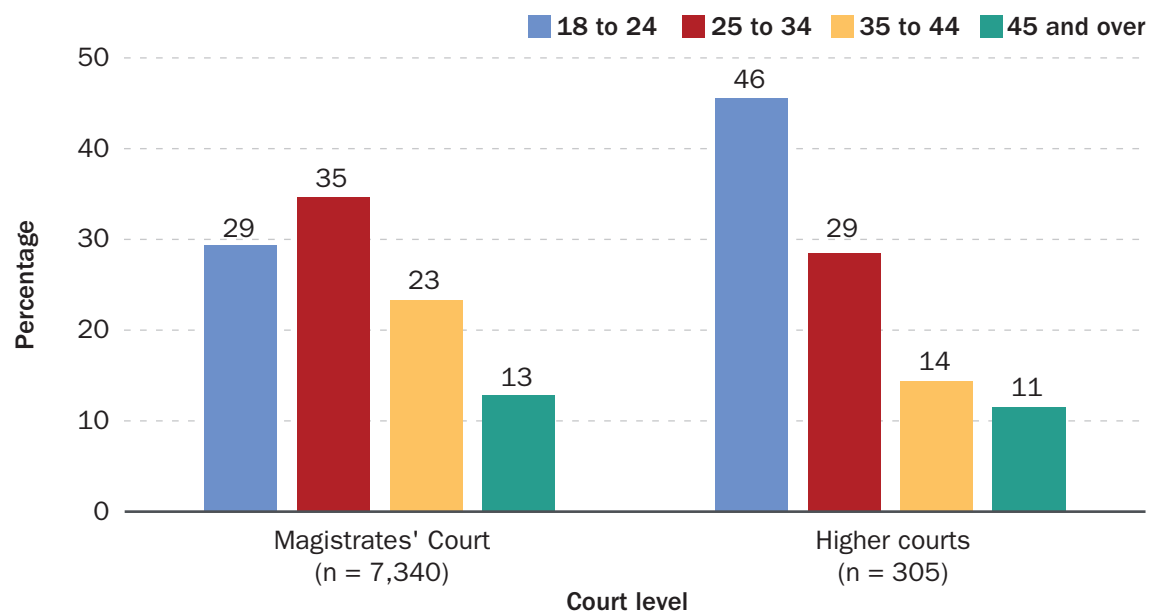
Gender

- 3.8 The majority of CCO recipients in both the higher courts and the Magistrates' Court were men (83% of the study group).
- 3.9 There was little difference in the proportion of male offenders for each court level (86% of CCO recipients in the higher courts were men compared with 82% of CCO recipients in the Magistrates' Court).

Age

- 3.10 The average (mean) age of all offenders at the time of receiving their CCO was 32 years, while just under one-third of offenders were aged 18 to 24 years (30%).
- 3.11 Offenders sentenced to a CCO in the higher courts tended to be younger than offenders who received a CCO in the Magistrates' Court (Figure 7):
- The average age of the 7,340 offenders who received a CCO in the Magistrates' Court was 32 years, and 29% were aged 18 to 24 years.
 - The average age of the 305 offenders who received a CCO in the higher courts was 30 years, and 46% were aged 18 to 24 years.

Figure 7: Age of CCO recipients in the Magistrates' Court and the higher courts, 1 July 2012 to 30 June 2013



- 3.12 The finding that, on average, offenders sentenced to a CCO in the higher courts were younger than offenders sentenced to a CCO in the Magistrates' Court is likely to reflect the more serious nature of offences heard in the higher courts. In that jurisdiction, offenders are likely to receive imprisonment unless there are compelling reasons why a CCO is a more appropriate sentence. The emphasis on rehabilitation as a primary purpose of sentencing young adult offenders⁶⁷ may justify imposing a CCO for offences that would otherwise attract a sentence of imprisonment (see the Case Study for an example).
- 3.13 Due to their immaturity, young adult offenders are considered less culpable than adult offenders and therefore often receive less severe sentences. In many cases, the rehabilitation of the young adult offender is considered the most important of the sentencing purposes, recognising that positive behavioural change is still possible and it is in the community's long-term interests:

Youth of an offender, particularly a first offender, should be a primary consideration for a sentencing court where that matter properly arises.

In the case of a youthful offender rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending. Thus, for example, individualised treatment focusing on rehabilitation is to be preferred. (Rehabilitation benefits the community as well as the offender.)

A youthful offender is not to be sent to an adult prison if such a disposition can be avoided, especially if he is beginning to appreciate the effect of his past criminality. The benchmark for what is serious as justifying adult imprisonment may be quite high in the case of a youthful offender; and, where the offender has not previously been incarcerated, a shorter period of imprisonment may be justified. (This proposition is a particular application of the general principle expressed in s. 5(4) of the *Sentencing Act*.)⁶⁸

Case Study

The offender pleaded guilty to two charges of sexual penetration with a child aged under 16 years, involving four separate instances. The offender and victim were in a relationship. The victim was almost 16 years of age at the time of the offending conduct and the offender was about two years and three weeks older than her. Had she been a few weeks older or the offender a few weeks younger, there would not have been an offence. However, the judge emphasised that this did not excuse the offender's conduct and that the offending took advantage of a vulnerability in the victim.

The judge said that rehabilitation must be a significant factor in sentencing youthful offenders. In light of the offender's good prospects of rehabilitation – including his employment, his family support, his lack of prior convictions and his lack of subsequent offending in the four years between the offences and the sentence – the judge sentenced the offender to a 12-month CCO with the core terms as well as 70 hours of unpaid community work.

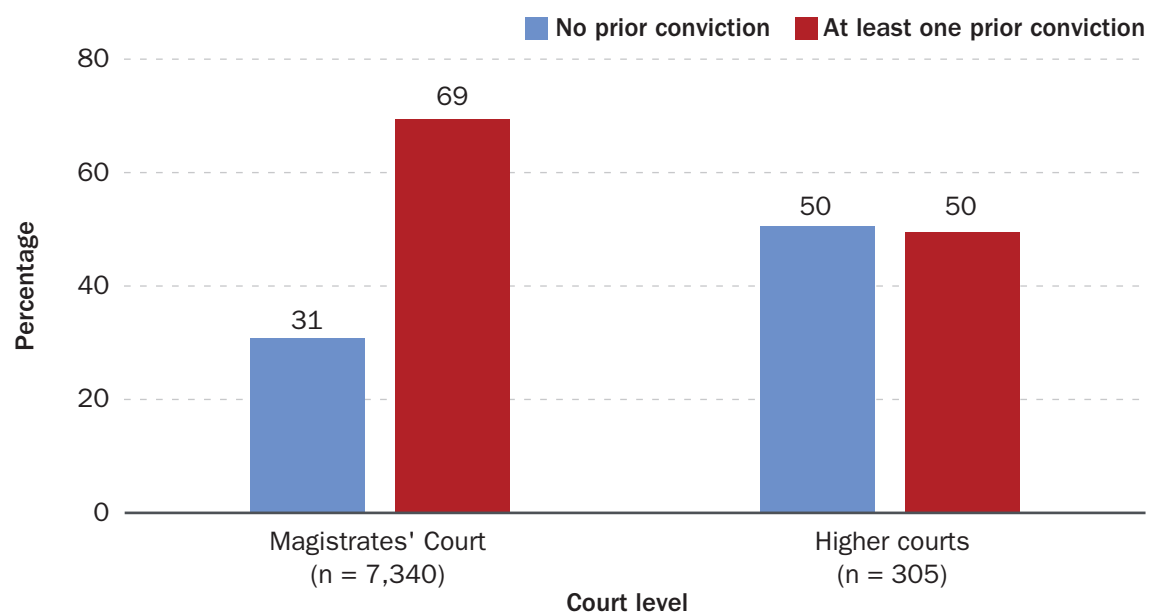
67. *R v Mills* [1998] 4 VR 235, 241–242.

68. *R v Mills* [1998] 4 VR 235, 241. The general principle in section 5(4) of the *Sentencing Act 1991* (Vic) is that a court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a sentence that does not involve the confinement of the offender. The Victorian Court of Appeal recently cited these propositions with approval in its guideline judgment on CCOs: *Boulton v The Queen* (2014) 46 VR 308, 348–350.

Prior convictions

- 3.14 Prior convictions were relatively common among offenders who received a CCO. Just over two-thirds of all offenders who received a CCO had at least one prior conviction (69%).
- 3.15 Offenders who received their CCO in the Magistrates' Court were more likely to have prior convictions than those who were sentenced in the higher courts (Figure 8). Just over two-thirds of offenders sentenced in the Magistrates' Court had prior convictions (69%) compared with one-half of offenders sentenced in the higher courts (50%).
- 3.16 This finding suggests that the absence of prior convictions is a more significant factor in determining whether to impose a CCO in the higher courts than in the Magistrates' Court. This is to be expected: because of the more serious nature of offences that are sentenced in the higher courts, the court would have to be persuaded that there are compelling reasons why a CCO should be imposed rather than a sentence of imprisonment. The offender's lack of prior convictions would support a submission that the offence is out of character and the offender has good prospects of rehabilitation, particularly in cases in which the offender is aged under 25 years. The lack of prior convictions is one of the factors relied on by the court in the Case Study (page 21).
- 3.17 In contrast, a CCO imposed in the Magistrates' Court often represents the offender's escalation up the sentencing hierarchy. Therefore, it is not surprising that two-thirds of CCOs imposed in the Magistrates' Court were for cases in which the offender had prior convictions.

Figure 8: Proportion of offenders with and without prior convictions (known cases only), 1 July 2012 to 30 June 2013⁶⁹

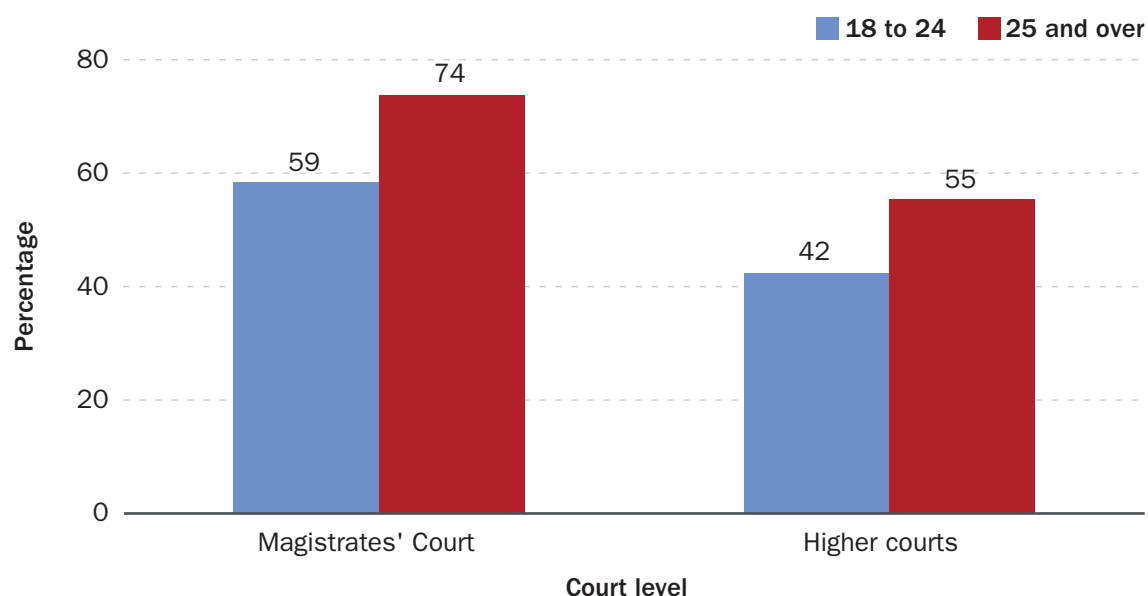


69. Twenty-nine of the 7,460 cases in the Magistrates' Court and eight of the 305 cases in the higher courts were excluded from this analysis due to insufficient data about whether the offender had prior convictions.

Relationship between youth and prior convictions

- 3.18 The Council explored the relationship between age and prior convictions for offenders who received a CCO. Figure 9 shows the percentage of offenders within each age group that had prior convictions. For both court levels, older offenders were more likely to have prior convictions than younger offenders. For example, in the Magistrates' Court, 74% of offenders aged 25 and over had prior convictions compared with just 59% of offenders aged 18 to 24 years.
- 3.19 This finding suggests that for CCOs imposed on older offenders in the higher courts, factors other than youth or the absence of prior convictions have been contributing to the reasons why a CCO is justified.

Figure 9: Percentage of offenders with prior convictions by age group of offender and court level, 1 July 2012 to 30 June 2013⁷⁰



Offence type

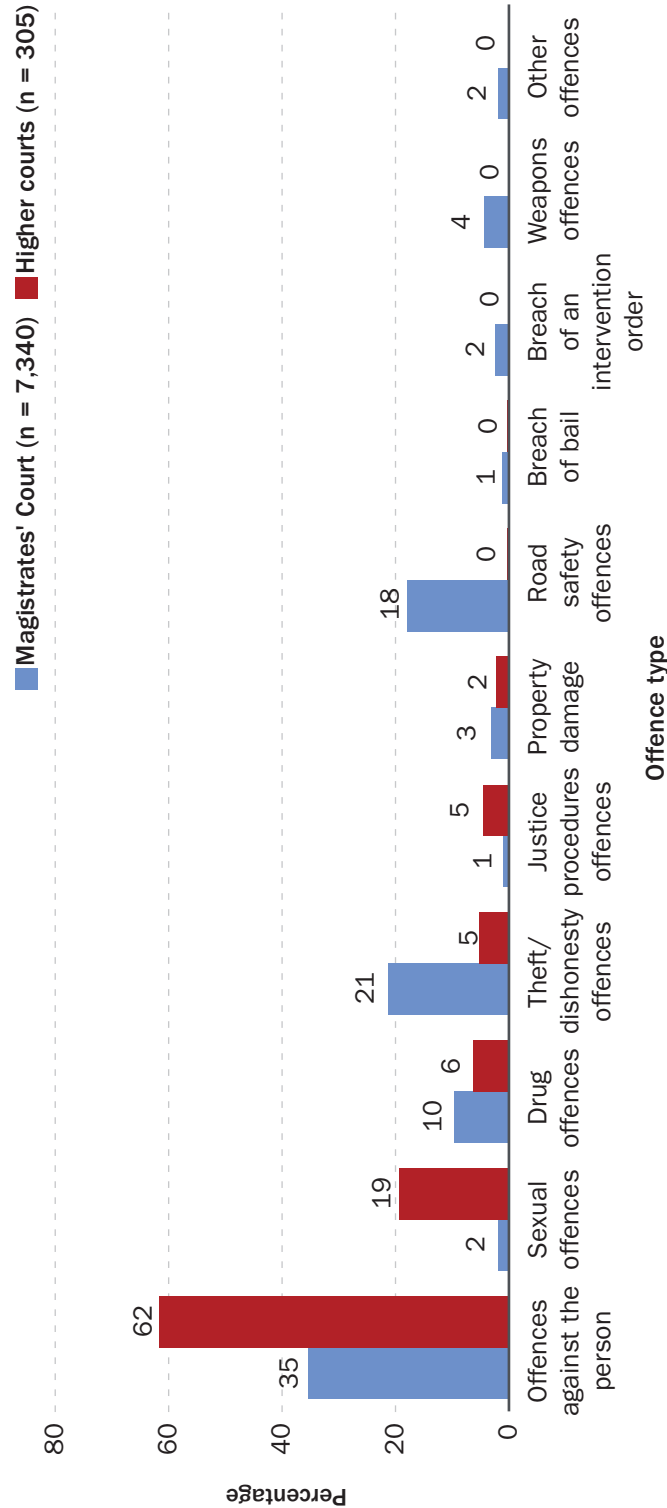
- 3.20 The following discussion analyses each offender's principal (most serious) offence that received a CCO, grouped into 11 offence types.⁷¹
- 3.21 The offence type that received the most CCOs across all courts was offences against the person (36% of CCOs). This was followed by theft/dishonesty offences (21%) and road safety offences (17%). Together, these offence types comprised nearly three-quarters of all principal offences that received a CCO across all courts.
- 3.22 Comparing the two court levels (Figure 10):
- CCOs for offences against the person were far more prominent in the higher courts than in the Magistrates' Court (62% and 35% respectively), as were sexual offences (19% and 2% respectively); and in contrast
 - CCOs for theft/dishonesty offences and road safety offences were more prominent in the Magistrates' Court than in the higher courts.

70. Twenty-nine of the 7,340 cases in the Magistrates' Court and eight of the 305 cases in the higher courts were excluded from this analysis due to insufficient data about whether the offender had prior convictions.

71. The principal offence is the offence that receives the most severe sentence in a case. Where multiple offences receive the same most severe sentence, the offence deemed most serious on the National Offence Index is the principal offence.

3.23 These findings reflect the different jurisdictions of each court level, with more serious offences sentenced in the higher courts. Along with the findings about age and prior convictions, these findings show the very different profiles between CCO recipients in the higher courts and CCO recipients in the Magistrates' Court.⁷²

Figure 10: Principal proven offence for which a CCO was imposed (by offence type), 1 July 2012 to 30 June 2013



72. See further [3.3]–[3.4], [3.12], [3.15]–[3.17], [3.42].

Factors relating to community correction orders

Type of community correction order

3.24 The Council classified CCOs into two types:

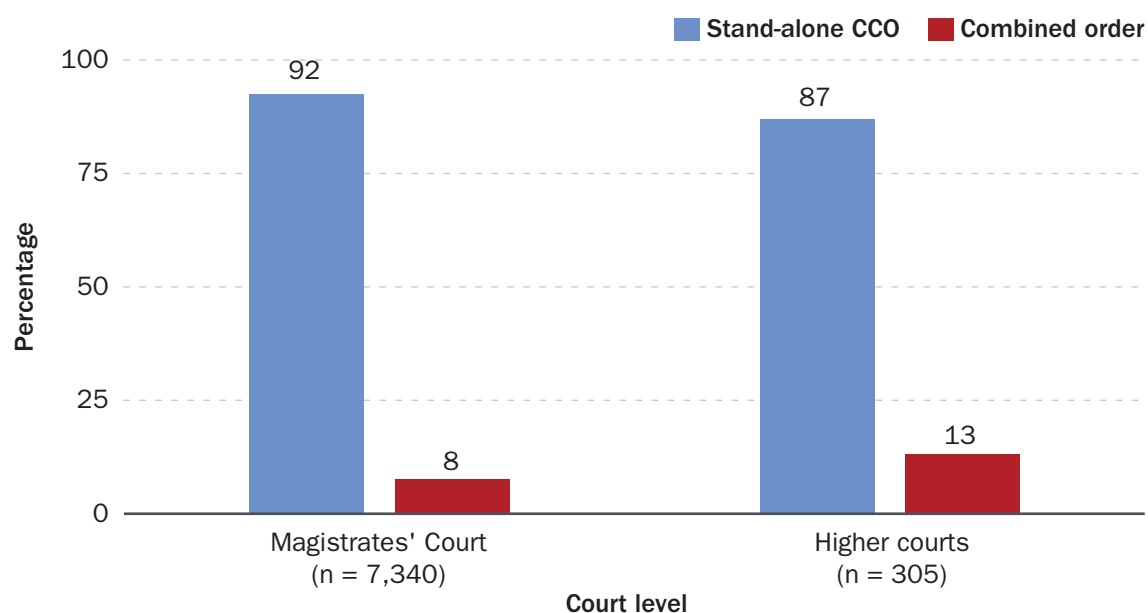
1. a combined order (a CCO imposed with a period of imprisonment under section 44 of the *Sentencing Act 1991 (Vic)*); and
2. a stand-alone CCO (a CCO imposed without imprisonment). Some of these CCOs were imposed with a fine under section 43 of the *Sentencing Act 1991 (Vic)*.

3.25 During the study year (1 July 2012 to 30 June 2013), a CCO could be combined with a term of imprisonment of three months or less. The maximum term of imprisonment that may be combined with a CCO was increased to two years in September 2014⁷³ and was decreased to one year in March 2017.⁷⁴

3.26 Of the CCOs imposed across all courts in 2012–13, most were stand-alone CCOs without a term of imprisonment, rather than a combined order (Figure 11).⁷⁵

3.27 The higher courts were more likely than the Magistrates' Court to combine a CCO with imprisonment. Forty offenders representing 13% of CCOs imposed in the higher courts had their CCO combined with imprisonment compared with 554 offenders representing 8% of CCOs imposed in the Magistrates' Court. This difference is likely to reflect the more serious nature of offences sentenced in the higher courts.

Figure 11: CCO type by court level, 1 July 2012 to 30 June 2013



73. *Sentencing Amendment (Emergency Workers) Act 2014 (Vic)* s 18.

74. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016 (Vic)* s 12 (amending the *Sentencing Act 1991 (Vic)* s 44).

75. Since 2012–13, the proportion of CCOs combined with a sentence of imprisonment has been steadily increasing (see Figures 4 and 5 above).

The length of community correction orders

The maximum permissible length of a community correction order

3.28 In 2012–13, the study year for this report, the maximum length of a CCO in the higher courts was the same as the maximum term of imprisonment for the offence, or two years (whichever was greater).⁷⁶

3.29 In the Magistrates' Court, a single CCO could (and still can) be imposed for a maximum of:

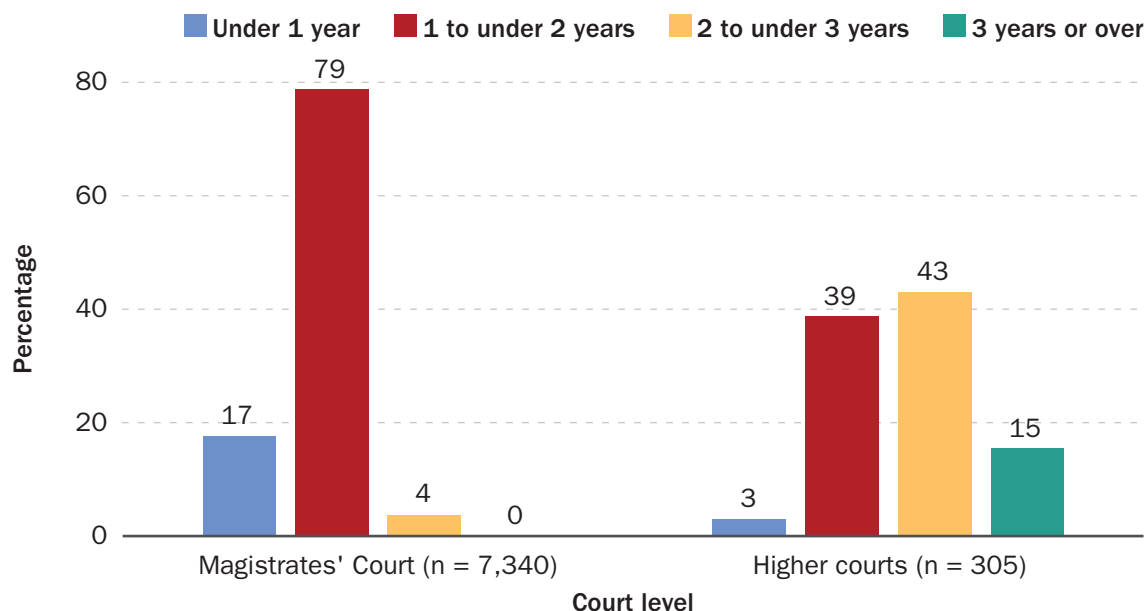
- two years (in relation to one offence);
- four years (in relation to two offences); and
- five years (in relation to three or more offences).⁷⁷

The length of community correction orders for the study group

3.30 The average length of a CCO imposed on offenders in the study group across all courts was slightly over one year (12.7 months).

3.31 It is not surprising that CCOs imposed in the higher courts were longer on average than CCOs imposed in the Magistrates' Court (Figure 12), given the cap on the length of CCOs imposed in the Magistrates' Court and the more serious offences dealt with in the higher courts. The average length of a CCO in the higher courts was just under two years (23.1 months) and was just over one year in the Magistrates' Court (12.3 months). Nearly one in six CCOs imposed in the higher courts were three years or over (15%), whereas no CCOs imposed in the Magistrates' Court were three years or over.

Figure 12: Length of CCOs imposed in the Magistrates' Court and higher courts, 1 July 2012 to 30 June 2013



76. See further [1.17]–[1.18]. Recent changes to the *Sentencing Act 1991* (Vic) limit the use of community correction orders by mandating imprisonment for specified 'Category 1 offences', reducing the amount of imprisonment that can be combined with a CCO and restricting the maximum length of CCOs to five years (including cumulative CCOs): *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic). This Act commenced on 20 March 2017.

77. *Sentencing Act 1991* (Vic) s 38(1)(a).

- 3.32 The longest CCO imposed in 2012–13 was 10 years, a term that was later reduced to six years on appeal.⁷⁸ The second longest CCO was eight years (combined with a three-month imprisonment term), which was reduced to three years on appeal.⁷⁹

Community correction order conditions

Conditions attached to community correction orders in the study group

- 3.33 Each CCO has core terms and at least one discretionary condition.⁸⁰ The range of discretionary conditions currently available to the courts for CCOs is wider than the range previously available for community-based orders, allowing the CCO to be used for a greater range of offending. New discretionary conditions include abstaining from contact with a specified person, restrictions on place of residence, judicial monitoring and alcohol exclusion.
- 3.34 In practice, the courts have used these new conditions relatively infrequently. The uptake of new conditions in the study year – the first financial year after CCOs were introduced in January 2012 – was relatively slow. Of the 7,645 offenders sentenced to a CCO in 2012–13, less than 1% included at least one of the conditions of non-association, alcohol exclusion, place restriction, curfew and residential restriction.
- 3.35 The most commonly used new condition was judicial monitoring, which was applied in one in 10 CCOs. Overall, the most commonly used conditions were assessment and treatment (80%), unpaid community work (73%) and supervision (40%).
- 3.36 Unpaid community work is generally included as a CCO condition to give effect to sentencing purposes such as punishment and the denunciation of the offender's behaviour. In contrast, assessment and treatment is one of many potential conditions that are designed to facilitate the offender's rehabilitation and protect the community from the offender's future offending. For the purposes of this analysis, CCO conditions are grouped into three categories centred around whether or not the offender was required to do community work:
1. community work only (no other discretionary conditions);
 2. community work and at least one other discretionary condition (most commonly assessment and treatment); and
 3. no community work but at least one more other discretionary condition (most commonly assessment and treatment and supervision).
- 3.37 Just over half of the offenders in the study group had a combination of community work and other conditions attached to their CCO (54%). Just over one-quarter did not have community work attached to their CCO (28%) (the most common conditions attached to the CCO in these cases were supervision and assessment and treatment). Finally, 18% had community work only attached to their CCO (with no other conditions), the least common category.

78. *Boulton v The Queen* (2014) 46 VR 308, 368. Regarding the three appellants, Boulton had been sentenced to three months' imprisonment and an eight-year CCO, Clements had been sentenced to a 10-year CCO and a \$4,000 fine and Fitzgerald had been sentenced to a five-year CCO. All three appellants were successful in their appeal against sentence.

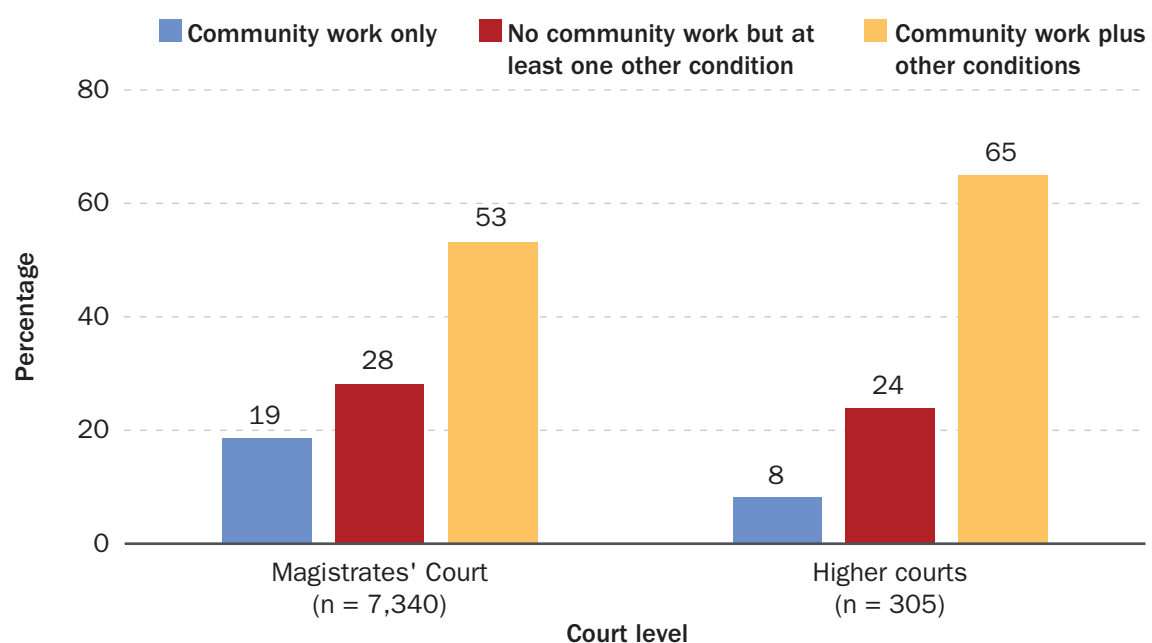
79. *Boulton v The Queen* (2014) 46 VR 308, 362.

80. *Sentencing Act 1991* (Vic) ss 45–48. See further [1.12]–[1.13].

Differences in conditions according to court level

- 3.38 The CCO conditions imposed on offenders differed according to court level.
- 3.39 Similar proportions of offenders in each court level received community work (72% in the Magistrates' Court and 73% in the higher courts); however, community work was more likely to be combined with other conditions in the higher courts than in the Magistrates' Court. Sixty-five per cent of CCOs imposed in the higher courts included community work with at least one other condition compared with 53% of CCOs imposed in the Magistrates' Court (Figure 13).
- 3.40 Conversely, the Magistrates' Court was more likely than the higher courts to impose community work as the only CCO condition.
- 3.41 In each court level, however, the relative ranking of conditions was the same: CCOs with community work only were the least common, CCOs with no community work were in the middle, and CCOs with community work plus one or more other conditions were the most common category (Figure 13).
- 3.42 The differences in the conditions imposed on CCOs between the two court levels reflect the differences in the cases that are likely to attract a CCO at each court level, and consequently the different interaction of sentencing factors and purposes.⁸¹ For example, a CCO imposed on a young adult offender for a relatively serious offence in the higher courts may have community work attached to reflect the need to punish the offender along with conditions designed to support their rehabilitation. A CCO with community work only imposed in the Magistrates' Court may reflect the court's need to move up the sentencing hierarchy because of an offender's prior convictions or a high volume of offences; however, in some such cases there may be a lack of issues such as drug addiction or mental health problems that need addressing through other tailored conditions.

Figure 13: Percentage of offenders by condition category and court level, 1 July 2012 to 30 June 2013



81. See further [3.3]–[3.4], [3.12], [3.15]–[3.17], [3.23].

4. Contravention rate and type

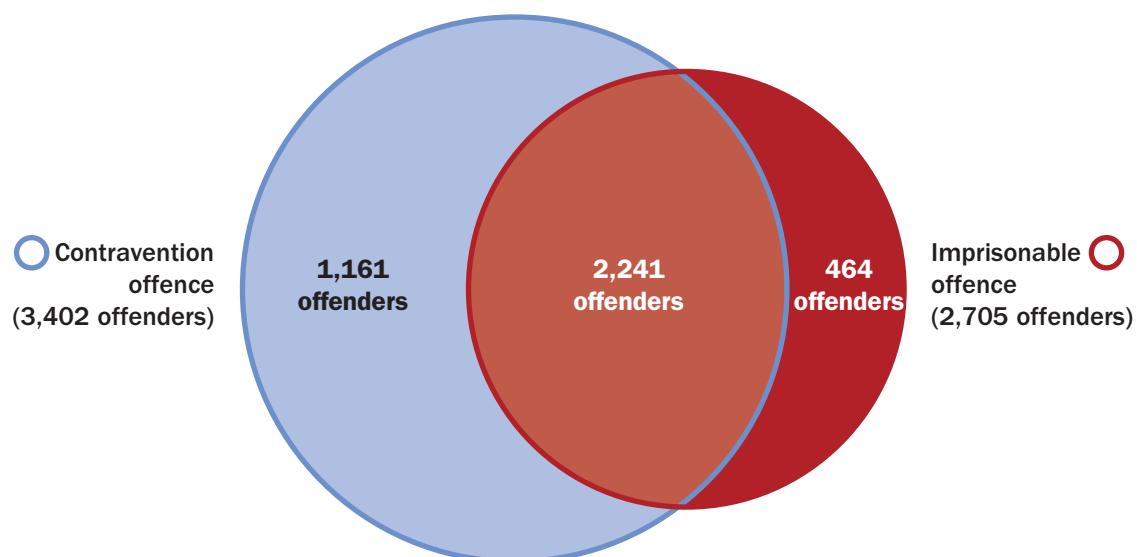
Contravention rate

- 4.1 Of the 7,645 offenders in the study group, around half complied with their CCO, in that they did not contravene⁸² their CCO in the study period (49% or 3,779 offenders).
- 4.2 The other half of the study group contravened their CCO (51% or 3,866 offenders), either by committing a new imprisonable offence (35% of all offenders)⁸³ or by failing to comply with another CCO condition (15% of all offenders).
- 4.3 Offenders sentenced to a CCO in the higher courts had a higher compliance rate (59%) than those sentenced to a CCO in the Magistrates' Court (50%).
- 4.4 The different compliance rates for the two court levels is likely to reflect the nature of cases heard in each.⁸⁴

Contravention type

- 4.5 The Council used two methods to identify whether an offender had contravened their CCO:
- the offender had a proven charge of contravening a CCO; and/or
 - the offender committed a proven imprisonable offence while serving a CCO.
- 4.6 Figure 14 shows that there was a high degree of overlap between offenders when identified through these methods. Of the 3,866 offenders who contravened their CCO, 58% had both a proven charge of contravening a CCO and a proven imprisonable offence (2,241 offenders), while 30% had only a contravention offence (1,161 offenders) and 12% had only an imprisonable offence (464 offenders).

Figure 14: Overlap of contravention types, all courts, 1 July 2012 to 30 June 2013



82. See Glossary and at [2.2] for a discussion of the term 'contravention of a CCO' as used in this report.

83. Offenders were classified as having contravened by further offending if they were sentenced for at least one imprisonable offence committed while serving their CCO. Some of these offenders may have also contravened other conditions of their CCO. However, for the purpose of classification, the contravention by further offending took priority. See further at [4.5]–[4.8].

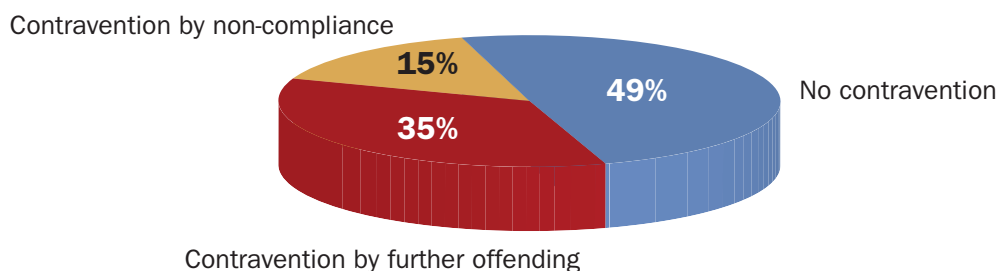
84. See further at [3.3]–[3.4]. See also the comparison of factors relating to the offender between the two court levels at [3.8]–[3.19]; [3.23], [3.42].

4.7 In order to simplify analysis of the contravention type, the Council classified contraventions into two groups:

1. 'Contravention by non-compliance' – the offender was found guilty of the offence of contravening a CCO, but was not found guilty of any new imprisonable offences. In these cases, it was inferred that the contravention consisted of failing to comply with a condition of the CCO (other than the condition of not committing a new imprisonable offence). There were 1,161 cases that fell into this group.
2. 'Contravention by further offending' – the offender was found guilty of a new imprisonable offence committed while serving their CCO. In some of these cases, the offender was also sentenced for the offence of contravening a CCO, which may have been triggered by the further offending or by a separate failure to comply with other terms or conditions of the CCO. However, for the purpose of classification, the further offending was prioritised over the failure to comply with another condition, and the case was classified as a contravention by further offending. There were 2,705 cases that fell into this group.

4.8 Using this classification, Figure 15 shows that just under half of the offenders in the study group complied with their CCO (49%), 35% contravened the CCO by further offending and 15% contravened the CCO by failing to comply with another condition ('contravention by non-compliance').

Figure 15: Contravention status and type, all courts, 1 July 2012 to 30 June 2013 (n = 7,645)



Contravention by non-compliance

4.9 Just under one-third of the 3,866 offenders who contravened their CCO did so by non-compliance (30% or 1,161 offenders). As Figure 15 shows, this represents just under one-sixth of all offenders in the study group (15%). Offenders in this group had a proven charge of contravening their CCO but no proven imprisonable offences committed while they were serving their CCO.

Contravention by further offending

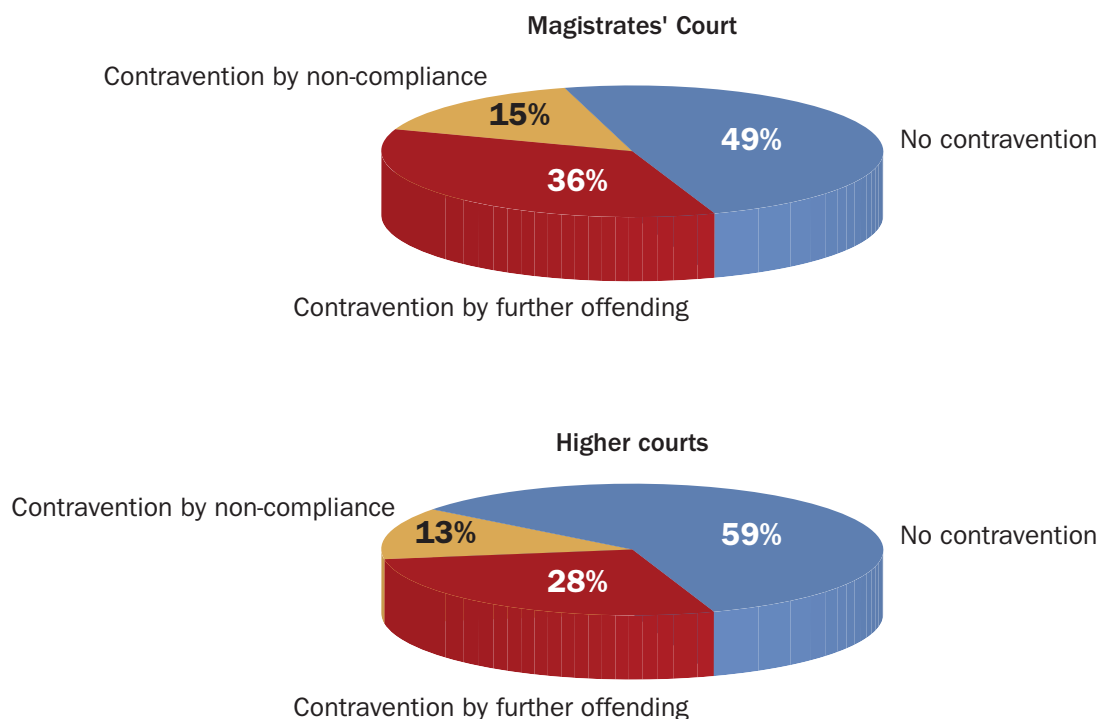
4.10 Just over two-thirds of the 3,866 offenders who contravened their CCO did so by further imprisonable offending (70% or 2,705 offenders). As Figure 15 shows, this represents just over one-third of all offenders in the study group (35%). These offenders may have also contravened some other term or condition of their CCO.

4.11 Not surprisingly, the majority (83%) of offenders who contravened their CCO by further offending were also sentenced for an offence of contravening a CCO (2,241 of the 2,705 offenders who contravened their CCO by further offending). However, a substantial minority (17% or 464 offenders) of those who contravened their CCO by further offending did not have a separate proven contravention offence. The reasons why these offenders were not sentenced for a separate proven contravention offence in the study period are discussed at [4.15]–[4.17].

Comparison of court level

- 4.12 While the rate of contravention by non-compliance was similar for both court levels (15% in the Magistrates' Court and 13% in the higher courts), the rate of contravention by further offending was substantially higher in the Magistrates' Court (36%) than in the higher courts (28%) (see Figure 16).
- 4.13 The finding that contravention by further offending is more common for CCOs imposed in the Magistrates' Court than for CCOs imposed in the higher courts is likely to reflect the different types of cases that typically receive a CCO in the two court levels.⁸⁵ For example, offenders who received a CCO in the higher courts were less likely to have prior convictions than offenders sentenced to a CCO in the Magistrates' Court (two-thirds of offenders sentenced to a CCO in the Magistrates' Court had prior convictions compared with one-half of their higher courts counterparts).
- 4.14 The different characteristics of offenders sentenced to CCOs in the higher courts and the Magistrates' Court are relevant to the likelihood that offenders will contravene their CCO.

Figure 16: Proportion of offenders who contravened their CCO by further offending or by non-compliance, 1 July 2012 to 30 June 2013 (n = 7,340 in the Magistrates' Court; n = 305 in the higher courts)



85. See further [3.3]–[3.4], [3.12], [3.15]–[3.17], [3.23], [3.42].

Likelihood of contravention charge upon further offending

4.15 As discussed at [4.11], 17% of offenders who contravened their CCO by further offending (464 offenders) were not sentenced for an offence of contravening a CCO.

Reasons for a lack of charges of contravening a community correction order

4.16 There are multiple reasons why an offender may not have been sentenced for an offence of contravening a CCO in the study period after being found guilty of a new imprisonable offence committed while on a CCO:

- **CCO inactive or suspended.** The CCO may have been inactive or suspended when the new offence was committed, with the effect that the new offence did not contravene the CCO (because it was not operational at the time).⁸⁶ Therefore, some of the 464 offenders classified as having contravened their CCO by further offending without a separate contravention charge may not in fact have been serving the CCO on the date that they committed the offence. This could have the effect of slightly inflating to above the actual rate the contravention rate described in this report.
- **Time limit expired.** The time limit for charging the person with the offence of contravening a CCO may have expired before the charging authority could initiate proceedings.⁸⁷
- **Corrections Victoria discretion.** If an offender contravenes a CCO imposed in the Magistrates' Court by committing a further offence but has otherwise complied with the CCO, Community Correctional Services has the discretion to not issue contravention proceedings (in other words, to not charge the offender with the offence of contravening a CCO) in certain circumstances. Factors relevant to a recommendation to not issue contravention proceedings include that the new offence is less serious than the offence that received the CCO or the disposition for the new offence is a fine. This discretion may only be exercised once during a CCO. All contraventions of CCOs imposed in the higher courts must be brought before the court.⁸⁸
- **Prosecutorial discretion.** If the CCO was imposed in the higher courts or the new contravening charges were heard in that jurisdiction, the Office of Public Prosecutions may have decided to not proceed with the prosecution of the contravention charge. The Director's policy provides that:

A prosecution may only proceed if: there is a reasonable prospect of a conviction; and a prosecution is required in the public interest ...

86. A CCO may be suspended by Corrections Victoria (in fact, approximately 1,000 CCOs were suspended during the 2016 calendar year). If an offender commits an imprisonable offence while their CCO is suspended, the offence in itself would not constitute a contravention.

87. If during the operation of the CCO the contravention consists of a new offence punishable by imprisonment, the proceeding must be commenced within six months of the conviction or finding of guilt for the later offence, and no more than two years after the CCO ceases to be in force: *Sentencing Act 1991 (Vic)* s 83AH.

88. Corrections Victoria, 'Deputy Commissioner's Instruction 5.16: Breach/Contravention and Applications' (2014 [unpublished]) 17–18. While this policy has since been reviewed, it is the policy that applied at the time that the offenders studied in this report were serving a CCO. Corrections Victoria has since reformed their Community Correctional Services (CCS) service model: Sentencing Advisory Council (2017), above n 25, 54.

If the prosecutor is satisfied that there is a reasonable prospect of a conviction, the prosecution should proceed unless there are public interest factors tending against prosecution which outweigh those tending in favour. Public interest factors include ... whether a sentence has already been imposed on the offender which adequately reflects the criminality of the episode.⁸⁹

For example, for a CCO imposed in the higher courts, an offender who contravened the CCO by further offending could be sentenced to imprisonment for the new offences or could have the original CCO cancelled and be sentenced to imprisonment for the original offences. In such a case, the Office of Public Prosecutions may exercise its discretion to not proceed with the contravention charge on the basis that the court has already adequately punished the offender for the contravening behaviour. However, the Office of Public Prosecutions has indicated that this rarely happens in practice:

The Director does not ordinarily decline to prosecute contravention charges, and in particular does not do so simply because the offender has already been adequately punished, or because of assessments as to whether the contravention charge is or is not likely to lead to additional punishment.⁹⁰

- **Involvement of multiple agencies.** If, for example, a CCO is imposed in the higher courts and new offences that contravene the CCO are heard in the Magistrates' Court, the charge of contravening a CCO must be heard in the higher court that imposed the CCO.⁹¹ Consequently, numerous agencies and jurisdictions are responsible for different aspects of the case. In these circumstances, there sometimes may be communication issues between the agencies responsible for prosecuting the contravention charge, particularly if the CCO has expired by the time that the new offences are heard.
- **Offender's failure to appear.** The offender may have been *charged* with the offence of contravening a CCO but may have failed to appear at court or may have an outstanding warrant, resulting in a contravention hearing that is yet to be finalised (which would not appear in the data).
- **Administrative reasons or issues.** The contravention proceeding may not have been initiated or finalised due to administrative reasons or other issues.

4.17 For all but the first reason (CCO inactive or suspended), the further offending would be a contravention of the CCO, despite the lack of a sentenced charge of contravening a CCO.

89. Director of Public Prosecutions Victoria, *Director's Policy: Prosecutorial Discretion* (2014) [2]–[5].

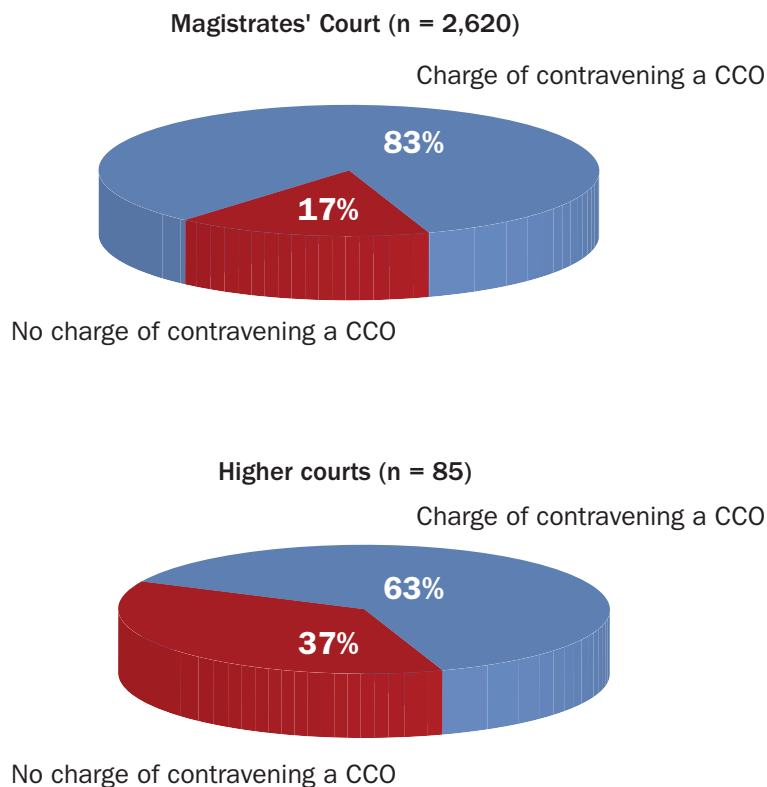
90. Email from Office of Public Prosecutions to Sentencing Advisory Council, 11 May 2017.

91. *Sentencing Act 1991* (Vic) ss 83AG, 83AI–83AJ.

Was there a difference between court levels in the proportion of cases with a separate contravention charge?

- 4.18 Cases in which an offender contravened by further offending on a CCO imposed in the higher courts were less likely to have a separate contravention charge than cases involving CCOs imposed in the Magistrates' Court (Figure 17). Over one-third of offenders who contravened by further offending on a CCO imposed in the higher courts did not have a proven charge of contravening a CCO (37%) compared with one-sixth of offenders on CCOs imposed in the Magistrates' Court (17%).
- 4.19 It is difficult to ascertain from the data alone why over one-third of CCOs imposed in the higher courts that were contravened by further offending did not have a separate sentenced charge of contravening a CCO. Some of the reasons for a lack of separate contravention charges are discussed at [4.16] above. Why these reasons may manifest differently in the higher courts than in the Magistrates' Court is uncertain.
- 4.20 In most (80 of 85) cases involving a CCO imposed in the higher courts that was contravened by further offending, the new offences were heard in the Magistrates' Court. It is possible that the lack of a separate contravention charge reflects the involvement of multiple agencies and jurisdictions. Another possible explanation may be the relatively small number of higher courts cases, which means that it only takes a few cases without a separate contravention charge to influence the proportion.

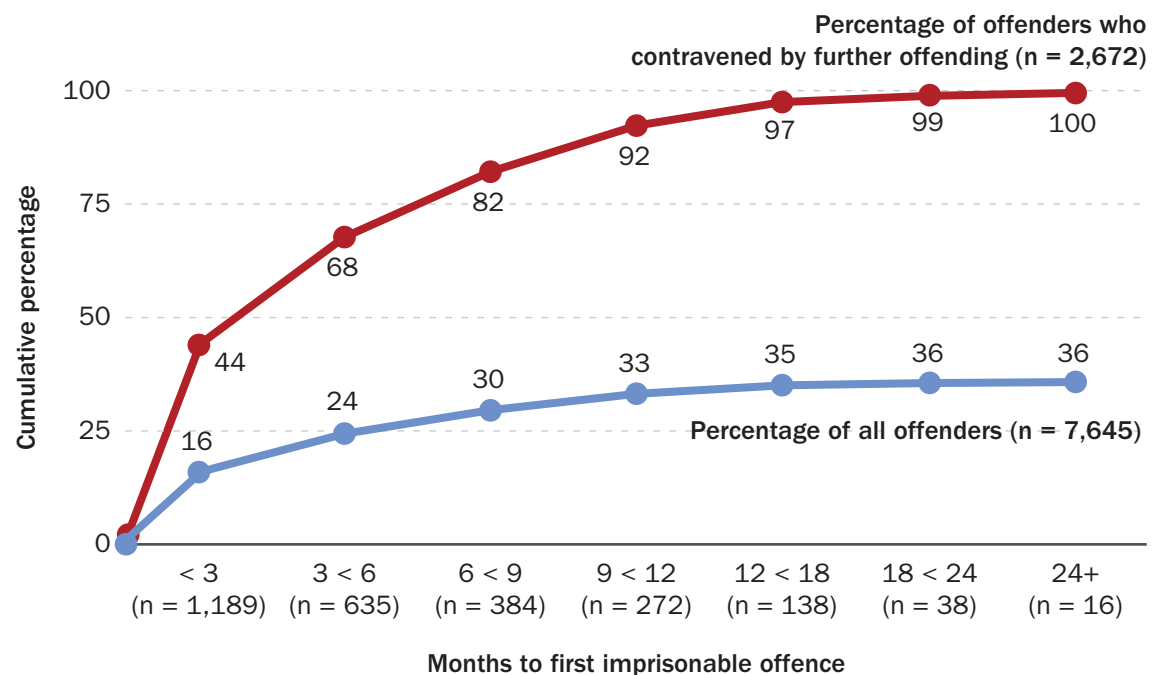
Figure 17: Proportion of offenders with new offending, by whether they were charged with contravening a CCO, by court level in which CCO originated, 1 July 2012 to 30 June 2013



How long does it take offenders to offend on their CCO?

- 4.21 The first three months of an offender's CCO proved critical in terms of managing their risk of reoffending. Nearly half (44%) of the offenders who contravened their CCO by further offending did so within the first three months of their CCO commencing (Figure 18). Four per cent reoffended within the first week of their CCO and 18% reoffended in the first month. Over two-thirds (68%) of those who reoffended committed their first imprisonable offence within the first six months of their CCO, while nine out of 10 (92%) contraventions by further offending occurred within the first 12 months of the CCO commencing.
- 4.22 These findings highlight how crucial it is to engage offenders early during their CCO and, where relevant, to assess them and place them into treatment programs as soon as possible. Offenders must report to a community corrections centre within two working days of their CCO coming into force;⁹² however, many of the earliest offenders committed their first new offence before Corrections Victoria had time or an opportunity to start addressing the factors that contribute to the offending behaviour.

Figure 18: Percentage of offenders who contravened their CCO by further offending according to the time in months between the CCO commencement date and the date of their first imprisonable offence, all courts, 1 July 2012 to 30 June 2013 (n = 2,672)⁹³



92. Sentencing Act 1991 (Vic) s 45(1)(c).

93. The date of the further imprisonable offence was unknown for 33 offenders. These have been excluded from the analysis.

Volume and type of further offending

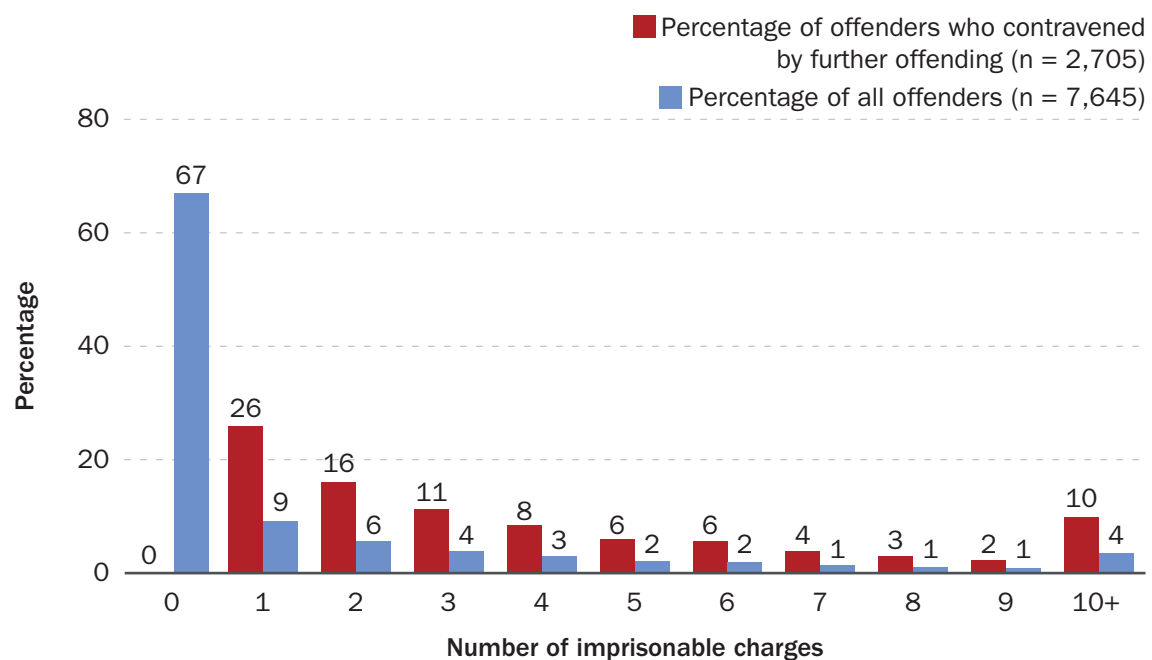
All courts

Volume of further offending

4.23 The 2,705 offenders who contravened their CCO by further offending were responsible for 15,941 separate proven imprisonable charges committed on a CCO (not counting the offence of contravening a CCO). This represents an average of 5.9 proven imprisonable charges per offender who contravened their CCO by further offending.⁹⁴

4.24 Around two-thirds of the offenders in the study group did not commit any imprisonable offences on their CCO. Nine per cent of offenders in the study group (701 offenders) committed just one proven imprisonable charge while serving their CCO, comprising 26% of those who contravened by further offending. A further 15% (1,128 offenders) committed between two and five imprisonable charges, and another 4% (268 offenders) committed 10 or more imprisonable charges while serving their CCO (Figure 19).

Figure 19: Percentage of offenders by the number of imprisonable charges committed on a CCO, all courts, 1 July 2012 to 30 June 2013 (n = 2,705)



94. For the volume of offences on CCOs imposed in the higher courts see [4.32] and on CCOs imposed in the Magistrates' Court see [4.37].

Type of further offending

- 4.25 Table 1 shows the types of proven imprisonable offence that were committed by the 2,705 offenders who contravened their CCO by further offending. The table organises offences into 11 broad offence types, showing the number of offenders in the study group with at least one proven charge of an offence type. Offenders who committed multiple offence types are counted once within each offence type. Table 1 also shows the number of proven charges of each offence type committed by an offender on their CCO. Individual offences are discussed at [4.33]–[4.34] and [4.38]–[4.39] in relation to each court level.
- 4.26 The most common offence type committed on a CCO was theft/dishonesty offences, with 6,074 proven charges (38% of all proven charges) of this offence type committed by 1,183 offenders while serving their CCOs. The second most frequently committed offence type was imprisonable road safety offences, with 2,289 proven charges (14% of all proven charges) committed by 1,043 offenders.
- 4.27 Offences against the person was the third most common offence type committed on a CCO, with 1,586 proven charges (10% of all proven charges) committed by 830 offenders, while breach of bail was fourth, with 1,332 charges committed by 728 offenders.
- 4.28 The least frequent imprisonable offence type committed on a CCO was sexual offences. Nineteen offenders in the study group committed 47 proven charges of a sexual offence while serving their CCO (0.7% of offenders who contravened their CCO by further offending or 0.2% of all offenders in the study group). These sexual offences were predominantly indecent assault (seven offenders), indecent act with a child under 16 (four offenders) and sexual penetration with a child under 16 (four offenders).

Table 1: Number of offenders and charges by type of proven offence committed on a CCO, all courts, 1 July 2012 to 30 June 2013

Offence type	Number of offenders	Percentage of all offenders	Percentage of offenders who committed further offences	Number of charges
Theft/dishonesty offences	1,183	15.5	43.7	6,074
Road safety offences	1,043	13.6	38.6	2,289
Offences against the person	830	10.9	30.7	1,586
Breach of bail	728	9.5	26.9	1,332
Drug offences	549	7.2	20.3	1,228
Breach of an intervention order	522	6.8	19.3	1,223
Property damage	447	5.8	16.5	698
Weapons offences	352	4.6	13.0	599
Other offences	271	3.5	10.0	488
Justice procedures offences	238	3.1	8.8	377
Sexual offences	19	0.2	0.7	47
Offenders who contravened CCO by further imprisonable offending	2,705	35.4	100.0	15,941
Total	7,645	100.0	n.a.	n.a.

- 4.29 During consultation, a stakeholder observed that illicit drug use, particularly methamphetamine use, is likely to be a major contributing factor to offending in Victoria.⁹⁵ This view is consistent with the views of Council members. Although not quantifiable in the available data, many of the offences committed on a CCO (and presented in Table 1) possibly relate to drug use. In addition to the 1,228 drug offences committed on a CCO, it is likely that many of the 6,074 charges of theft/dishonesty offences were related to drug use, for example, to gain money to purchase drugs. Similarly, some of the 599 charges of weapons offences are likely to have been directly or indirectly related to drug use or trafficking.
- 4.30 The link between drug use, in particular methamphetamine use, and offending was highlighted by the findings of a recent study by the Australian Institute of Criminology. In 2014–15, exactly half of police detainees surveyed in the study reported that they had consumed methamphetamines in the 12 months prior to being interviewed.⁹⁶ This compares with 2.1% of the general population.⁹⁷ Furthermore, 21% of detainees reported that methamphetamine use in the 30 days prior to detention contributed to their current detention by police. In 2014–15, the rate was three and a half times higher than the rate in 2009 (6%).⁹⁸

Community correction orders imposed in the higher courts

Volume of further offending

- 4.31 Of the 305 offenders sentenced to a CCO in the higher courts, 85 offenders contravened their CCO by further offending. These 85 offenders were responsible for 481 separate proven imprisonable offences (not counting the offence of contravening a CCO). This amounted to an average of 5.7 imprisonable offences on their CCO per offender who contravened by further offending.

Type of further offending

- 4.32 While Table 1 shows the distribution of all offences across 11 offence types, Table 2 shows the most common individual offences committed on CCOs imposed in the higher courts.
- 4.33 The most common proven imprisonable offence committed on a CCO imposed in the higher courts was theft (26 offenders committed 84 proven offences) (Table 2). This was followed by the offence of fail to comply with reporting obligations under the *Sex Offenders Registration Act 2004* (Vic) (18 offenders committed 39 proven offences – see further Table 6 and [5.44]), drive while suspended (15 offenders committed 21 proven offences) and unlawful assault (14 offenders committed 21 proven offences).

Court in which further offending was heard

- 4.34 Imprisonable offending on CCOs imposed in the higher courts was usually sentenced in the Magistrates' Court. Of the 85 offenders who committed an imprisonable offence on a CCO imposed in the higher courts, 80 (94%) were sentenced for that offence in the Magistrates' Court while five offenders were sentenced in the higher courts.
- 4.35 This finding, together with findings about the offence types committed on CCOs imposed in the higher courts, suggests that most offending on CCOs imposed in the higher courts was less serious than the offence or offences for which the CCO was originally imposed.

95. Stakeholder Data Presentation (12 May 2017).

96. Australian Institute of Criminology, *Statistical Bulletin 03: Australian Methamphetamine User Outcomes* (2017) 8.

97. *Ibid* 6.

98. *Ibid* 8.

Table 2: 10 most frequent offences committed on a CCO imposed in the higher courts, number of offenders and charges by type of proven offence, 1 July 2012 to 30 June 2013

Offence	Number of offenders	Percentage of all offenders	Percentage of offenders who committed further offenders	Number of charges
Theft	26	8.5	30.6	84
Fail to comply with reporting obligations (<i>Sex Offenders Registration Act 2004</i> (Vic))	18	5.9	21.2	39
Drive while suspended	15	4.9	17.6	21
Unlawful assault	14	4.6	16.5	21
Fail to answer bail	13	4.3	15.3	18
Intentionally damage/destroy property	10	3.3	11.8	15
Burglary	9	3.0	10.6	11
Resist police	8	2.6	9.4	9
Possess a drug of dependence	8	2.6	9.4	16
Deal property suspected proceed of crime	6	2.0	7.1	7
Offenders who contravened CCO by further imprisonable offending	85	27.9	100.0	481
Total	305	100.0	n.a.	n.a.

Community correction orders imposed in the Magistrates' Court

Volume of further offending

4.36 Of the 7,340 offenders sentenced to a CCO in the Magistrates' Court, 2,620 offenders committed further imprisonable offences while serving their CCO.

4.37 These 2,620 offenders committed 15,460 separate imprisonable offences on their CCOs, an average of 5.9 imprisonable offences each.

Type of further offending

4.38 As Table 3 shows, the most common proven imprisonable offences committed by offenders serving a CCO imposed in the Magistrates' Court were:

- theft (846 offenders were sentenced for 2,513 charges);
- fail to answer bail (656 offenders were sentenced for 1,010 charges);
- possess a drug of dependence (437 offenders were sentenced for 810 charges); and
- contravene a family violence intervention order (391 offenders were sentenced for 855 charges).

4.39 A number of imprisonable road safety offences were also frequently committed by offenders serving a CCO imposed in the Magistrates' Court (for example, drive while disqualified).

Table 3: 20 most frequent offences committed on a CCO imposed in the Magistrates' Court, number of offenders and charges by type of proven offence, 1 July 2012 to 30 June 2013

Offence	Number of offenders	% of all offenders	% of further offenders	Number of charges
Theft	846	11.5	32.3	2,513
Fail to answer bail	656	8.9	25.0	1,010
Possess a drug of dependence	437	6.0	16.7	810
Contravene a family violence intervention order	391	5.3	14.9	855
Drive while disqualified	373	5.1	14.2	657
Intentionally damage/destroy property	357	4.9	13.6	528
Drive while suspended	341	4.6	13.0	526
Unlawful assault	305	4.2	11.6	408
Unlicensed driving	294	4.0	11.2	471
Deal property suspected proceed of crime	272	3.7	10.4	414
Burglary	214	2.9	8.2	474
Recklessly cause injury	183	2.5	7.0	207
Obtain property by deception	171	2.3	6.5	1,047
Possess controlled weapon without excuse	163	2.2	6.2	212
Handle/receive/dispose of stolen goods	128	1.7	4.9	191
Theft of a motor vehicle	127	1.7	4.8	188
Resist police	121	1.6	4.6	163
Go equipped to steal/cheat	119	1.6	4.5	155
Commit indictable offence whilst on bail	110	1.5	4.2	192
Possess prohibited weapon without exemption/ approval	107	1.5	4.1	133
Offenders who contravened CCO by further imprisonable offending	2,620	35.7%	100.0	15,460
Total	7,340	100.0	n.a.	15,460

Court in which further offending was heard

- 4.40 Imprisonable offending on CCOs imposed in the Magistrates' Court was usually sentenced in the Magistrates' Court. Of the 2,620 offenders who committed an imprisonable offence on a CCO imposed in the Magistrates' Court, 2,529 or 97% were sentenced for that offence in the Magistrates' Court, while just 91 or 3% were sentenced in the higher courts.
- 4.41 This finding, together with the finding that there was a wide variety of offences committed on CCOs imposed in the Magistrates' Court, means that it is not possible to infer whether those who offended while on CCOs imposed in the Magistrates' Court committed more or less serious offences than the offence for which the CCO was originally imposed.

5. Factors associated with contravention

- 5.1 This chapter explores the relationship between factors relating to the CCO and the offender and the likelihood of the offender contravening the CCO, either by further offending or by failing to comply with another condition ('contravention by non-compliance').
- 5.2 This chapter takes two approaches to examining the association between offender/CCO factors and contravention:
1. **Combined factors.** The first approach considers the association between each factor and the likelihood of contravention, holding other factors constant.
 2. **Individual factors.** The second approach considers each factor in isolation from other factors and involves basic comparisons between contravention rates across components of each factor. The limitation with the second approach is that, while it might be easier to interpret, it does not take into account the interrelationships between factors. Therefore, these results should be read with the discussion of combined factors.
- 5.3 The factors are divided into three groups:
1. **Factors relating to the offender** at the time they were sentenced to their CCO, including their age and gender, the principal offence for which they received the CCO, and whether or not they had prior convictions at the time their CCO was imposed.
 2. **Factors relating to the offence**, looking at the offence type for the principal (most serious) offence that received the CCO.
 3. **Factors relating to the CCO**, including the type and length of the CCO, the conditions attached to the CCO, and the court that imposed the CCO.
- 5.4 CCOs imposed in the Magistrates' Court and CCOs imposed in the higher courts are analysed separately in the discussion of individual factors, due to the considerable differences between offenders and offences sentenced to CCOs at each court level. Given that most CCOs are imposed in the Magistrates' Court, separating the court levels ensures that the factors associated with contravention in the Magistrates' Court do not obscure those in the higher courts due to the larger offender population.

Combined factors

5.5 Four different regression models have been created to determine the extent to which different factors are associated with contravention, according to the contravention type and the court level that imposed the CCO. A detailed discussion of the regression analyses and results is presented in Appendix 3.

5.6 An overview of the results of the four models is presented in Table 4 and discussed at [5.7]–[5.17].

Table 4: Association between factors and likelihood of contravention by contravention type and court level

Variable	1. Contravention by further offending	2. Contravention by non-compliance	3. Contravention by further offending	4. Contravention by non-compliance
	CCOs imposed in the Magistrates' Court		CCOs imposed in the higher courts	
Offender factors				
Age of offender (18 to 24)	Increased likelihood	Increased likelihood	Increased likelihood	No change in likelihood
Gender of offender (female)	No change in likelihood	Increased likelihood	No change in likelihood	No change in likelihood
Prior convictions	Increased likelihood	Increased likelihood	Increased likelihood	No change in likelihood
CCO type and length				
CCO type (combined with imprisonment)	Increased likelihood	No change in likelihood	No change in likelihood	No change in likelihood
CCO length (Magistrates' Court > 12 months, higher courts ≥ 24 months)	Increased likelihood	Increased likelihood	Increased likelihood	No change in likelihood
CCO conditions				
No community work (vs community work only)	No change in likelihood	Decreased likelihood	Increased likelihood	Increased likelihood
Community work + other (vs community work only)	Increased likelihood	No change in likelihood	Increased likelihood	No change in likelihood

Variable	1. Contravention by further offending	2. Contravention by non- compliance	3. Contravention by further offending	4. Contravention by non- compliance
	CCOs imposed in the Magistrates' Court		CCOs imposed in the higher courts	
Offence type (higher courts)				
Sexual offences vs offences against the person	–	–	Increased likelihood	Decreased likelihood
Drug offences vs offences against the person	–	–	No change in likelihood	No change in likelihood
Theft/dishonesty offences vs offences against the person	–	–	No change in likelihood	No change in likelihood
Weapons offences vs offences against the person	–	–	No change in likelihood	No change in likelihood
Offence type (Magistrates' Court)				
Breach of an intervention order	Increased likelihood	No change in likelihood	–	–
Breach of bail vs offences against the person	No change in likelihood	No change in likelihood	–	–
Road safety offences vs offences against the person	Decreased likelihood	No change in likelihood	–	–
Drug offences vs offences against the person	No change in likelihood	No change in likelihood	–	–
Justice procedures offences vs offences against the person	No change in likelihood	No change in likelihood	–	–
Weapons offences vs offences against the person	Increased likelihood	Increased likelihood	–	–
Property damage vs offences against the person	No change in likelihood	No change in likelihood	–	–
Sexual offences vs offences against the person	Decreased likelihood	No change in likelihood	–	–
Theft/dishonesty offences vs offences against the person	Increased likelihood	No change in likelihood	–	–

Contravention by further offending

5.7 Across the higher courts and the Magistrates' Court, the most important factors associated with the likelihood of contravention of a CCO by further offending were prior convictions and the offender's age.

Community correction orders imposed in the Magistrates' Court

- 5.8 For CCOs imposed in the Magistrates' Court, after controlling for other factors, an increased likelihood of contravention by further offending was associated with (in order of significance):
- **Prior convictions.** Offenders who had prior convictions were three times more likely to contravene by further offending than offenders without prior convictions.
 - **CCO type.** Offenders whose CCO was combined with a sentence of imprisonment were more than twice as likely to contravene by further offending than offenders whose CCO was not combined with a sentence of imprisonment.
 - **The age of the offender.** Offenders aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders.
 - **CCO length.** Offenders on CCOs of 12 months or over were over 1.5 times more likely to contravene by further offending than offenders on shorter CCOs.
 - **CCO conditions.** Offenders whose CCO included community work and other discretionary conditions were 1.3 times more likely to contravene by further offending than offenders whose only CCO condition was community work. There was no significant difference in the likelihood of contravention by further offending for CCOs with no community work component and CCOs with community work only.
 - **Offence type.** Compared with offenders whose CCO was imposed for an offence against the person, the likelihood of contravention by further offending was:
 - higher for weapons offences (1.5 times), breach of an intervention order (1.5 times) and theft/dishonesty offences (1.4 times); but
 - lower for road safety offences (23%) and sexual offences (37%).
- 5.9 The above associations were found to be statistically significant.
- 5.10 The likelihood of contravention by further offending was not associated with the gender of the offender or with CCOs that had no community work condition compared with CCOs that only had a community work condition.

Community correction orders imposed in the higher courts

- 5.11 For CCOs imposed in the higher courts, after controlling for other factors, an increased likelihood of contravention by further offending was associated with (in order of significance):
- **Prior convictions.** Offenders with prior convictions were five times more likely to contravene by further offending than offenders without prior convictions.
 - **The age of the offender.** Offenders aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders.
 - **Offence type.** Compared with offenders whose principal offence was an offence against the person, offenders whose principal offence was a sexual offence were 2.5 times more likely to contravene by further offending (no other offence types had a statistically significant effect).
 - **CCO length.** CCOs that were two years or over were 1.7 times more likely to be contravened by further offending than shorter CCOs.

- **CCO conditions.** Compared with CCOs with community work only, CCOs with no community work component were over six times more likely to be contravened by further offending, and CCOs with a community work condition as well as other conditions were nearly five times more likely to be contravened by further offending.
- 5.12 The above associations were found to be statistically significant.
- 5.13 The likelihood of contravening by further offending on a CCO imposed in the higher courts was not associated with the gender of the offender or the CCO type.

Contravention by non-compliance

Community correction orders imposed in the Magistrates' Court

- 5.14 For CCOs imposed in the Magistrates' Court, after controlling for other factors, contravention by non-compliance was associated with (in order of significance):
- **The age of the offender.** Offenders aged 18 to 24 years were 1.7 times more likely than older offenders to contravene by non-compliance.
 - **Prior convictions.** Offenders with prior convictions were 1.4 times more likely than offenders without prior convictions to contravene by non-compliance.
 - **Gender.** Offenders who were female were 1.2 times more likely than males to contravene by non-compliance.
 - **CCO conditions.** Offenders whose CCO included no community work condition were over six times more likely to contravene by non-compliance than offenders whose CCO only included a community work condition.
 - **Offence type.** Compared with CCOs imposed for an offence against the person, the only offence type that was associated with an increased likelihood of contravention by non-compliance was breach of an intervention order (1.5 times more likely), while CCOs imposed for road safety offences were associated with a decreased likelihood of contravention by non-compliance (21%).
- 5.15 The above associations were found to be statistically significant.
- 5.16 The likelihood of contraventions by non-compliance was not found to be associated with the CCO type or length at a statistically significant level.

Community correction orders imposed in the higher courts

- 5.17 For CCOs imposed in the higher courts, very few of the factors in the model were associated with a significant change in the likelihood of contravention by non-compliance. Only two factors were found to be statistically significant:
- **The age of the offender.** Offenders aged 18 to 24 were 1.1 times more likely to contravene by non-compliance than older offenders; and
 - **CCO conditions.** Offenders whose CCO included no community work condition were over nine times more likely to contravene by non-compliance than offenders whose CCO only included a community work condition.
- 5.18 Other factors relating to the offender, including gender and prior convictions, were not related to contraventions by non-compliance; neither were factors relating to the offence type. One possible explanation for the lack of significant differences in the likelihood of contravention may be the low number of higher courts cases.

Individual factors

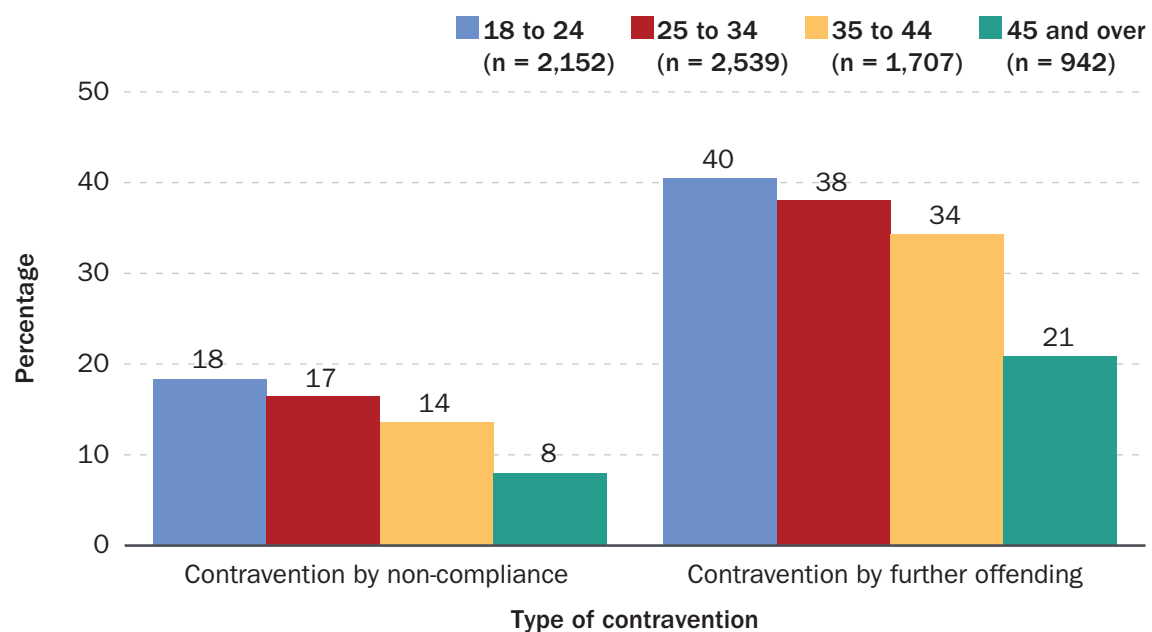
Age of offender

- 5.19 Offenders sentenced to a CCO in the higher courts tended to be younger than offenders who received a CCO in the Magistrates' Court (Figure 7). While 29% of those sentenced to CCOs in the Magistrates' Court were aged 18 to 24 years, almost half (46%) of those sentenced to CCOs in the higher courts were aged 18 to 24 years.
- 5.20 It is interesting that the likelihood of contravention by further offending was associated with youth, given that offenders sentenced in the Magistrates' Court are older and that a higher proportion of CCOs imposed in the Magistrates' Court are contravened by further offending. This anomaly is likely to be explained by the presence of prior convictions: offenders aged 18 to 24 years who received a CCO in the higher courts were less likely to have prior convictions than their Magistrates' Court counterparts (42% and 59% respectively).
- 5.21 There was a clear linear relationship between the age of the offender and contravention rates. In both the Magistrates' Court (Figure 20) and the higher courts (Figure 21), contravention rates declined as the age of the offender increased.

Community correction orders imposed in the Magistrates' Court

- 5.22 Of the youngest group of offenders (aged 18 to 24 years) sentenced to a CCO in the Magistrate Court, 40% contravened their CCO by further offending. This was nearly double the contravention rate (21%) of the oldest group of offenders (45 years and older). A similar pattern was found for rates of contravention by non-compliance for CCOs imposed in the Magistrates' Court.
- 5.23 After controlling for other factors, offenders aged 18 to 24 years who were sentenced to a CCO in the Magistrates' Court were nearly twice as likely to contravene by further offending and 1.7 times more likely to contravene by non-compliance than older offenders.

Figure 20: Contravention rates by age group of offender and contravention type, Magistrates' Court, 1 July 2012 to 30 June 2013

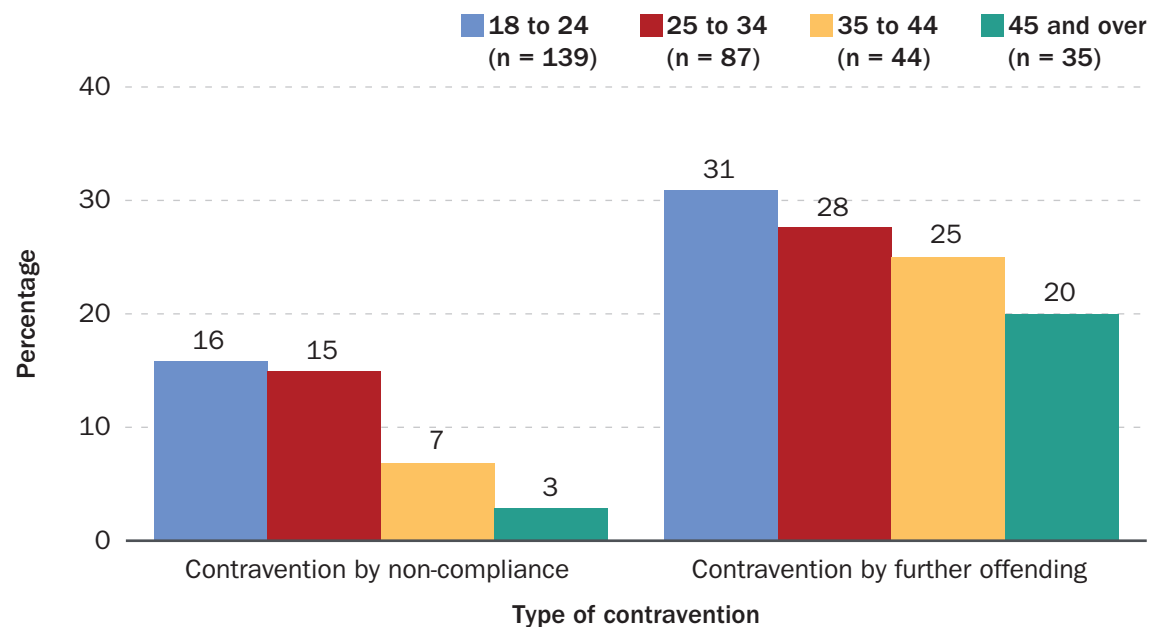


Community correction orders imposed in the higher courts

5.24 Similarly, for CCOs imposed in the higher courts, the rate at which offenders contravened their CCO by further offending declined from 31% of offenders aged 18 to 24 years to 20% of offenders aged 45 and over. Offenders in each of the three age groups under 45 years had lower rates of contravention by further offending than their Magistrates' Court counterparts (Figure 21).

5.25 After controlling for other factors, offenders sentenced in the higher courts who were aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders, but they were not significantly more likely to contravene by non-compliance.

Figure 21: Contravention rates by age group of offender and contravention type, higher courts, 1 July 2012 to 30 June 2013



Gender

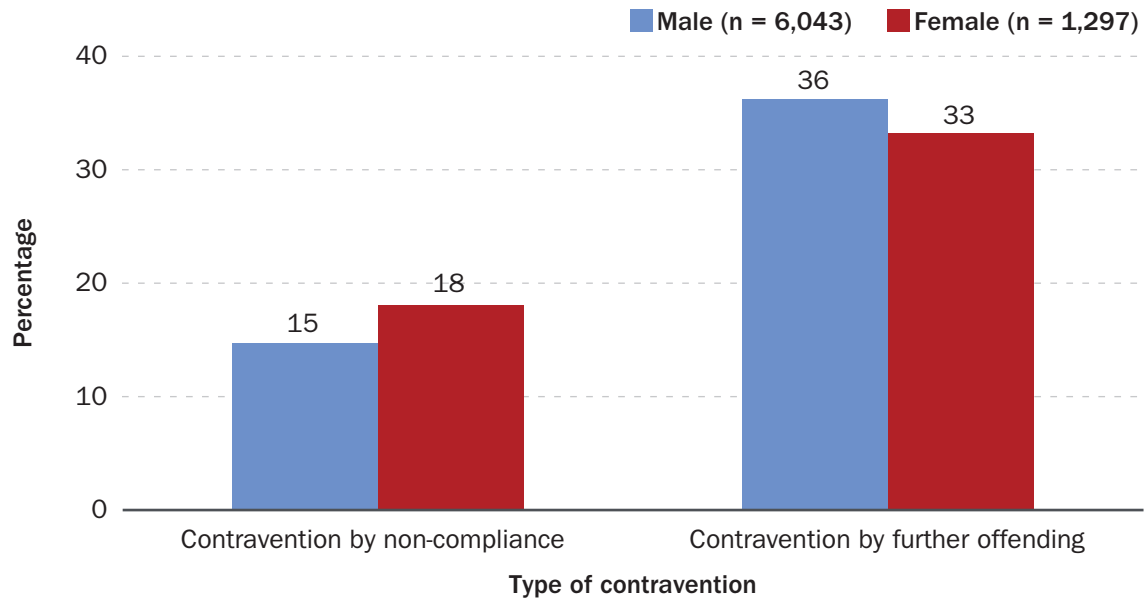
5.26 There was very little difference in contravention rates according to the gender of the offender.

Community correction orders imposed in the Magistrates' Court

5.27 The contravention rate was similar for males and females who were sentenced to CCOs in the Magistrates' Court, both for contravention by further offending (36% and 33% respectively) and for contravention by non-compliance (15% and 18% respectively; see Figure 22).

5.28 After controlling for other factors, female offenders were 1.2 times more likely to contravene by non-compliance than male offenders. The analysis found no statistically significant difference according to gender in the likelihood of contravention by further offending.

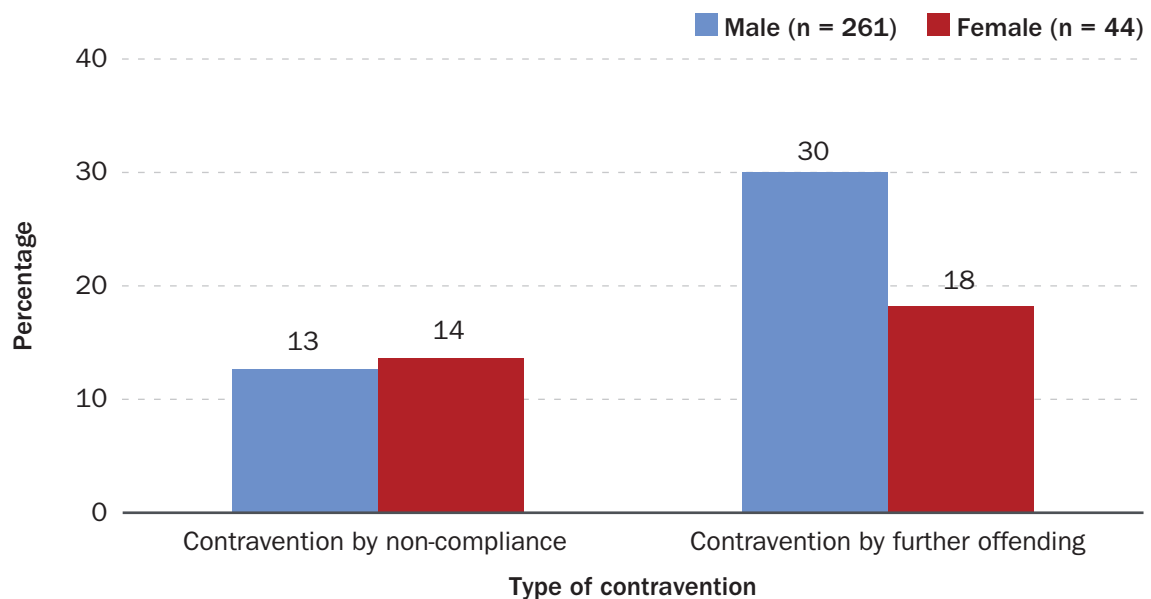
Figure 22: Contravention rates by gender of offender and contravention type, Magistrates' Court, 1 July 2012 to 30 June 2013



Community correction orders imposed in the higher courts

5.29 There are apparent gender differences in rates of contravention by further offending for CCOs imposed in the higher courts (Figure 23). Despite this, the regression model found that, after taking into account other factors, the association between gender and contravention by further offending was not statistically significant and therefore may have occurred by chance. This finding may be explained by the low number of higher courts cases, or it may reflect the influence of other factors, such as prior convictions, on the rate of contravention by further offending.

Figure 23: Contravention rates by gender of offender and contravention type, higher courts, 1 July 2012 to 30 June 2013



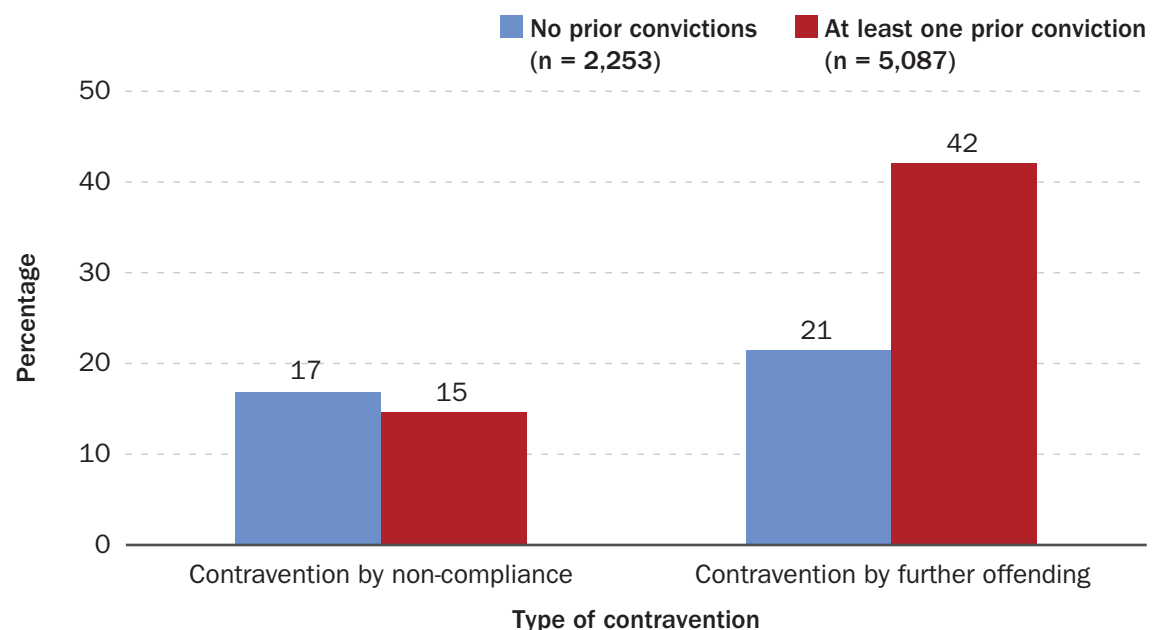
Prior convictions

5.30 Offenders who received their CCO in the Magistrates' Court were more likely to have prior convictions than those sentenced to a CCO in the higher courts (Figure 8, page 22). Just over two-thirds of offenders sentenced to a CCO in the Magistrates' Court had prior convictions (69%) compared with one-half of offenders sentenced to a CCO in the higher courts (50%). In light of the link between prior convictions and the likelihood of contravention, the proportion of cases with prior convictions is likely to have influenced the different rates of contravention by further offending between the higher courts and the Magistrates' Court (see below).

Community correction orders imposed in the Magistrates' Court

- 5.31 For CCOs imposed in the Magistrates' Court, the rate of contravention by further offending for offenders with prior convictions was double that for offenders with no prior convictions (Figure 24).
- 5.32 After controlling for other factors, offenders with prior convictions were nearly three times more likely to contravene their CCO by further offending than offenders with no prior convictions.
- 5.33 There was no relationship between prior convictions and the likelihood of contravention by non-compliance.

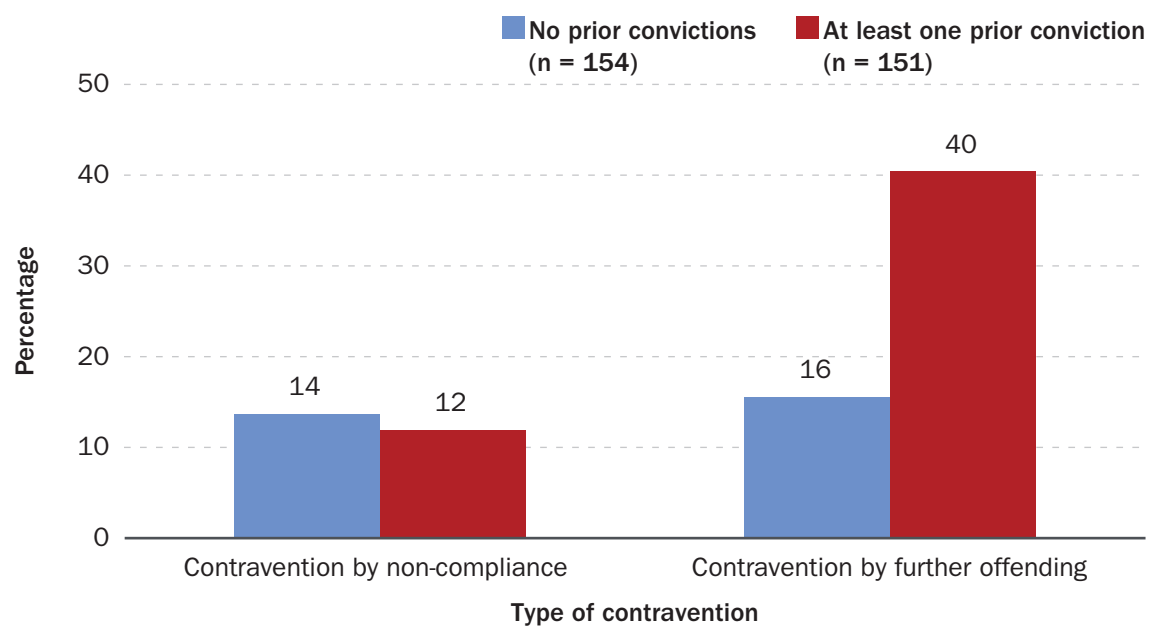
Figure 24: Contravention rates by prior convictions and contravention type, Magistrates' Court, 1 July 2012 to 30 June 2013



Community correction orders imposed in the higher courts

- 5.34 For CCOs imposed in the higher courts, 40% of offenders with prior convictions contravened their CCO by further offending. This was nearly three times the rate for offenders with no prior convictions (Figure 25).
- 5.35 After controlling for other factors, the likelihood of a contravention by further offending was five times greater for offenders with prior convictions than for with offenders without prior convictions.

Figure 25: Contravention rates by prior convictions and contravention type, higher courts, 1 July 2012 to 30 June 2013



Offence for which the community correction order was imposed

Community correction orders imposed in the Magistrates' Court

- 5.36 For CCOs imposed in the Magistrates' Court, there were differences in contravention rates according to offence type.
- 5.37 The rate at which offenders contravened their CCO by further offending was highest for CCOs imposed for weapons offences (50%), followed by breach of an intervention order (44%) and theft/dishonesty offences (40%) (Figure 26). The rates for contravention by further offending were lowest for CCOs imposed for sexual offences (25%), justice procedures offences (28%) and road safety offences (30%).
- 5.38 CCOs imposed for breach of bail had the highest rate of contravention by non-compliance (28%), while CCOs imposed for sexual offences had the lowest rate (5%).
- 5.39 Table 5 (page 52) shows the types of imprisonable offence committed by offenders on a CCO imposed in the Magistrates' Court, according to the principal offence that received the CCO. Two examples are discussed after the table (weapons offences and breach of an intervention order).

Figure 26: Contravention rates by offence type and contravention type, Magistrates' Court, 1 July 2012 to 30 June 2013

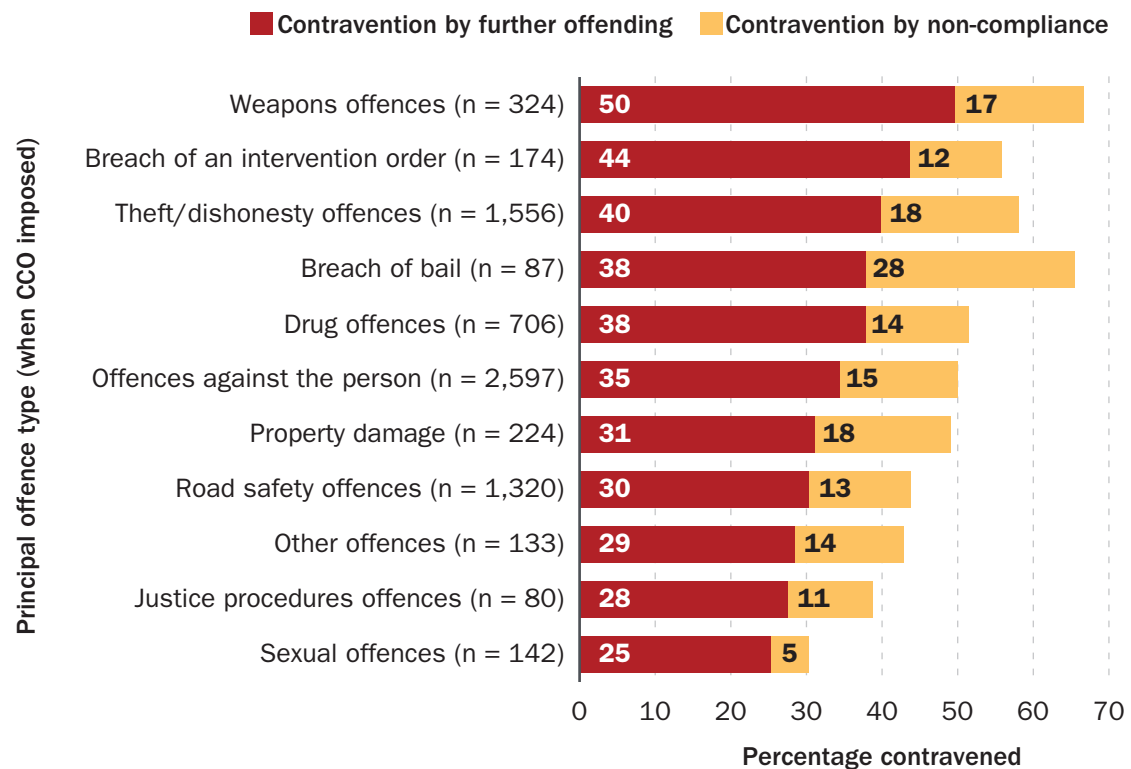


Table 5: Percentage of all offenders according to the offence type committed on a CCO and selected principal offences that received the CCO, Magistrates' Court, 1 July 2012 to 30 June 2013

Principal offence for which CCO was imposed												
Offence type committed on CCO	Weapons	Breach of an intervention order	Theft/dishonesty	Breach of bail	Offences against the person	Drug offences	Road safety offences	Justice procedures offences	Other offences	Property damage	Sexual offences	Total
Theft/dishonesty	25%	6%	26%	14%	12%	18%	11%	9%	11%	9%	2%	16%
Road safety offences	23%	10%	13%	18%	11%	18%	19%	11%	9%	8%	3%	14%
Offences against the person	11%	17%	10%	5%	14%	8%	8%	4%	10%	15%	7%	11%
Breach of bail	14%	10%	13%	21%	8%	12%	8%	4%	9%	7%	1%	10%
Drug offences	14%	3%	8%	9%	5%	17%	6%	6%	5%	2%	1%	7%
Breach of an intervention order	5%	26%	3%	2%	11%	4%	4%	3%	5%	13%	4%	7%
Property damage	7%	10%	5%	3%	8%	4%	4%	4%	2%	11%	0%	6%
Weapons offences	13%	3%	5%	3%	4%	9%	3%	3%	5%	3%	2%	5%
Other offences	5%	2%	4%	3%	4%	3%	2%	0%	6%	4%	3%	4%
Justice procedures offences	4%	4%	2%	1%	3%	2%	1%	8%	4%	5%	12%	3%
Sexual offences	0%	0%	0%	0%	0%	0%	0%	0%	1%	0%	4%	0%
Total offenders who contravened by further offending	50%	44%	40%	38%	35%	38%	30%	28%	29%	31%	25%	36%
Total offenders who contravened by non-compliance	17%	12%	18%	28%	15%	14%	13%	11%	14%	18%	5%	15%
Total offenders who contravened	67%	56%	58%	66%	50%	51%	44%	39%	43%	49%	30%	51%
Total number of offenders (number)	324	174	1,556	87	2,594	706	1,320	80	133	224	142	7,340

This table is colour-coded to show the prevalence of each offence type committed by offenders while serving a CCO (rows) according to the principal offence type for which offenders received their CCO (columns). Prevalence is indicated by the number of offenders who committed a given offence type while serving a CCO expressed as a percentage of all offenders who received a CCO for a given principal offence type. The darkest shade shows the most prevalent combination, with each successively lighter shade indicating less prevalent combinations.

Community correction orders for weapons offences

5.40 There were 324 offenders who received a CCO for a weapons offence in the Magistrates' Court (80% of whom received their CCO for a non-firearms-related weapons offence). At the time that their CCO was imposed, a substantial majority had at least one prior conviction (73%) and over one-quarter were aged 18 to 24 years (29%). While serving their CCO, these offenders most commonly committed theft/dishonesty offences (25% of offenders sentenced to a CCO for weapons offences) and road safety offences (23%). Breach of bail (14%), drug offences (14%) and further weapons offences (13%) were also relatively common among this group of offenders.

Community correction orders for breach of an intervention order

5.41 CCOs were imposed in the Magistrates' Court on 174 offenders for the principal offence of breach of an intervention order. At the time of receiving their CCO, these offenders were highly likely to have at least one prior conviction (89%) and to be relatively older offenders, with 93% aged 25 and over and 62% aged 35 and over. For this group of offenders, the most common type of imprisonable offence committed on a CCO was a repeat offence of breach of an intervention order (26% of offenders sentenced to a CCO for breach of an intervention order committed another offence of breach of an intervention order while serving their CCO). This was followed by offences against the person (17%).⁹⁹

Community correction orders imposed in the higher courts

5.42 Offences against the person was the offence category most likely to receive a CCO in the higher courts. Of the 188 offenders who received a CCO for an offence against the person, 27% contravened the CCO by further offending and 15% contravened by non-compliance. As Table 6 shows, the most common new offence committed by these offenders was a theft/dishonesty offence (15%), followed by a new offence against the person (12%) and road safety offences (11%).

5.43 Across the five most common offence types that received a CCO in the higher courts, offenders who received their CCO for drug offences had the lowest rate of contravention by further offending (5%) (Table 6).

5.44 The highest rate of contravention by further offending was for sexual offences. Of the 59 offenders sentenced to a CCO in the higher courts for a sexual offence, 26 offenders (44%) committed a new imprisonable offence while they were serving their CCO. As Table 6 shows, the most common offence type committed by these offenders was a justice procedures offence (36% of offenders who received a CCO for a sexual offence or 21 offenders). The most frequently committed justice procedures offence was fail to comply with reporting obligations under the *Sex Offenders Registration Act 2004* (Vic), (19 offenders). The second most common offence type committed by this group was an offence against the person (14% or nine offenders) while two offenders committed further sexual offences while serving their CCO. In part, the contravention rate for offenders sentenced to CCOs for sexual offences may reflect the close monitoring of these offenders and their prosecution if they fail to report or update their details or otherwise comply with monitoring requirements.

99. This finding is consistent with the findings in the Council's previous study of reoffending by people sentenced for contravene a family violence intervention order or safety notice; Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016).

Table 6: Percentage of all offenders according to the offence type committed on a CCO and selected principal offences that received the CCO, higher courts, 1 July 2012 to 30 June 2013

Offence type committed on CCO	Principal offence for which CCO was imposed					Total
	Sexual offences	Justice procedures offences	Offence against the person	Theft/dishonesty offences	Drug offences	
Theft/dishonesty offences	2%	21%	15%	6%	5%	11%
Offences against the person	14%	14%	12%	0%	5%	11%
Justice procedures offences	36%	14%	4%	6%	5%	11%
Road safety offences	3%	0%	11%	6%	5%	9%
Breach of bail	8%	0%	5%	6%	5%	6%
Property damage	2%	7%	6%	6%	0%	5%
Other offences	5%	0%	3%	0%	5%	3%
Drug offences	0%	7%	4%	13%	0%	3%
Weapons offences	0%	0%	3%	6%	5%	3%
Breach of an intervention order	7%	0%	2%	0%	0%	3%
Sexual offences	3%	0%	0%	0%	0%	1%
Total offenders who contravened by further offending	44%	29%	27%	19%	5%	28%
Total offenders who contravened by non-compliance	3%	14%	15%	19%	5%	9%
Total offenders who contravened	47%	43%	42%	38%	10%	37%
All offenders (number)	59	14	188	16	19	305

This table is colour-coded to show the prevalence of each offence type committed by offenders while serving a CCO (rows) according to the principal offence type for which offenders received their CCO (columns). Prevalence is indicated by the number of offenders who committed a given offence type while serving a CCO expressed as a percentage of all offenders who received a CCO for a given principal offence type. The darkest shade shows the most prevalent combination, with each successively lighter shade indicating less prevalent combinations.

Type of community correction order (combined with imprisonment or stand-alone)

5.45 At the time that the study group received their CCOs (from 1 July 2012 to 30 June 2013), the maximum term of imprisonment that courts could combine with a CCO was three months. Therefore, the difference between offenders who received a CCO combined with imprisonment ('a combined order') and offenders who received a CCO on its own (a 'stand-alone CCO') would not have been as great as in subsequent years.¹⁰⁰ Consequently, any differences in the likelihood of contravention associated with CCO type are likely to become more significant in the future.

100. The maximum term of imprisonment that may be combined with a CCO was increased from three months to two years in September 2014 and it was decreased from two years to one year in March 2017. See [1.9] and Appendix I.

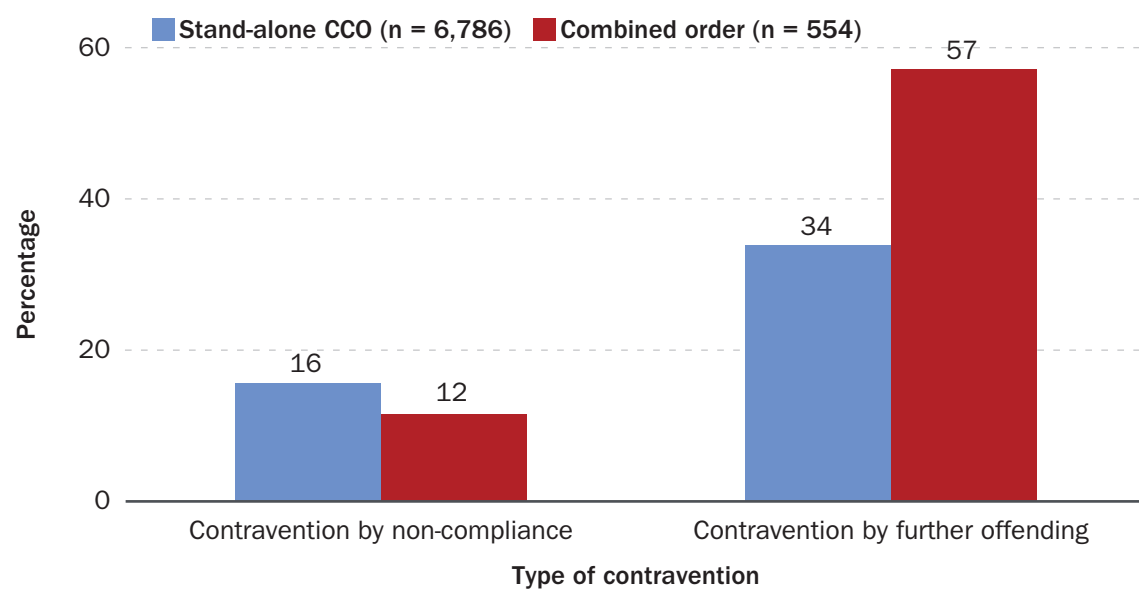
Community correction orders imposed in the Magistrates' Court

5.46 Of the combined orders imposed in the Magistrates' Court, 57% were contravened by further offending, nearly double the rate for stand-alone CCOs (Figure 27).

5.47 After controlling for other factors, compared with offenders who received a stand-alone CCO, offenders who received a combined order:

- were 2.2 times more likely to contravene the CCO by further offending;
- were not found to be statistically more likely to contravene the CCO by non-compliance.

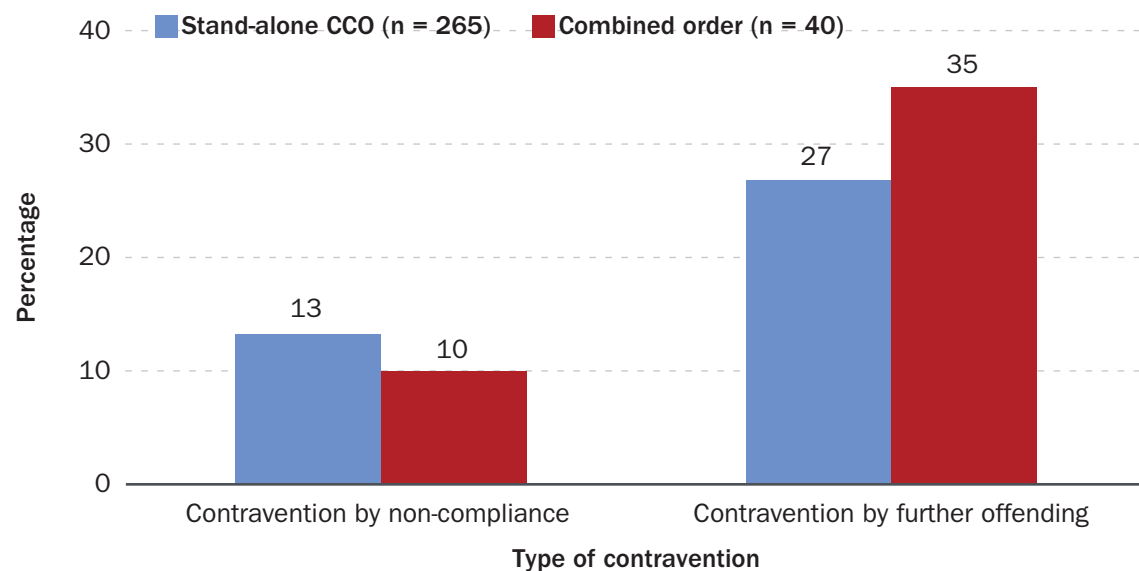
Figure 27: Contravention status by CCO type, Magistrates' Court



Community correction orders imposed in the higher courts

5.48 Figure 28 suggests that, in the higher courts, there were differences in the likelihood of contravention according to the CCO type.

Figure 28: Contravention status by CCO type, higher courts



5.49 The regression analysis, however, found these differences not to be statistically significant. The lack of statistical significance could be explained, in part, by the relatively small number of contravention cases in the higher courts, and the fact that combined orders were more common in the higher courts. Alternatively, it could reflect the influence of other factors.

Condition type

5.50 The relationship between CCOs with a community work condition and the likelihood of contravention varied according to the contravention type and court level.

5.51 Contraventions were analysed with reference to whether the CCO conditions included unpaid community work. CCOs were divided into three categories, according to whether the CCO conditions involved:

- community work only (no other discretionary conditions);
- community work and at least one other discretionary condition (most commonly assessment and treatment); and
- no community work but at least one other discretionary condition (most commonly assessment and treatment and supervision).

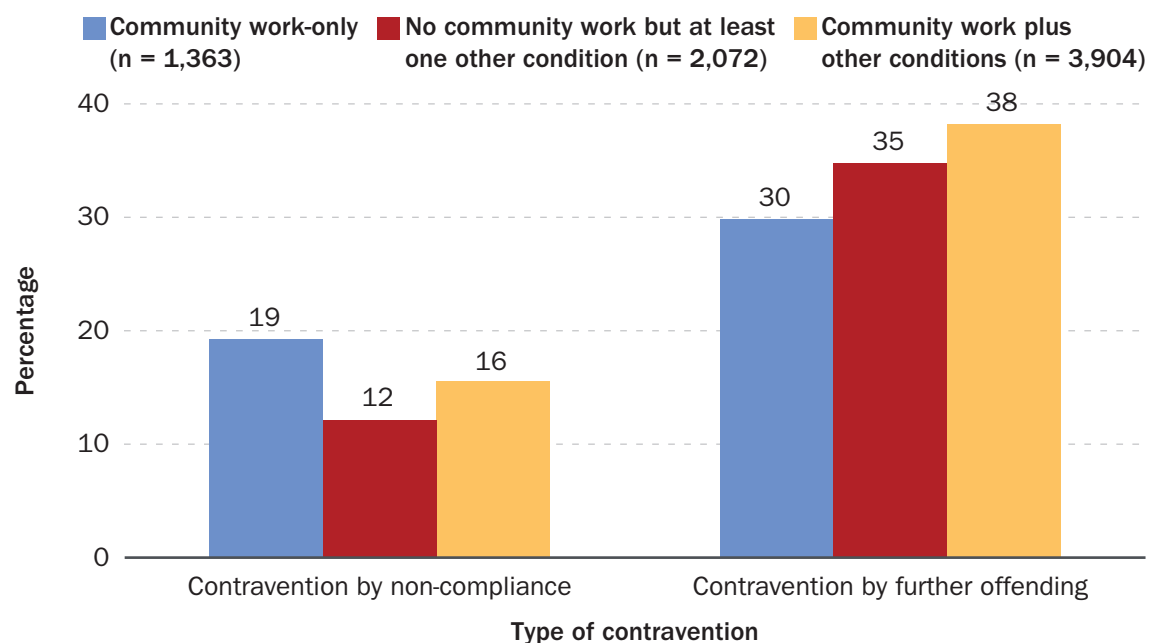
Community correction orders imposed in the Magistrates' Court

Likelihood of contravention by further offending

5.52 CCOs that had a combination of community work and other conditions (typically assessment and treatment) were more likely to be contravened by further offending than CCOs that only included a community work condition. This is illustrated in Figure 29, which shows that 38% of offenders whose CCO had a combination of community work and at least one other condition contravened by further offending compared with 30% of offenders whose CCO only had a community work condition.

5.53 After controlling for other factors, the likelihood of contravention by further offending was 1.3 times higher for offenders whose CCO included a combination of community work and at least one other condition than for offenders whose CCO only included community work.

Figure 29: Contravention rates by category of CCO condition, Magistrates' Court, 1 July 2012 to 30 June 2013



Likelihood of contravention by non-compliance

5.54 CCOs with community work only were more likely to be contravened by non-compliance (19% were contravened) than CCOs with no community work (12%).

Community correction orders imposed in the higher courts

Likelihood of contravention by further offending

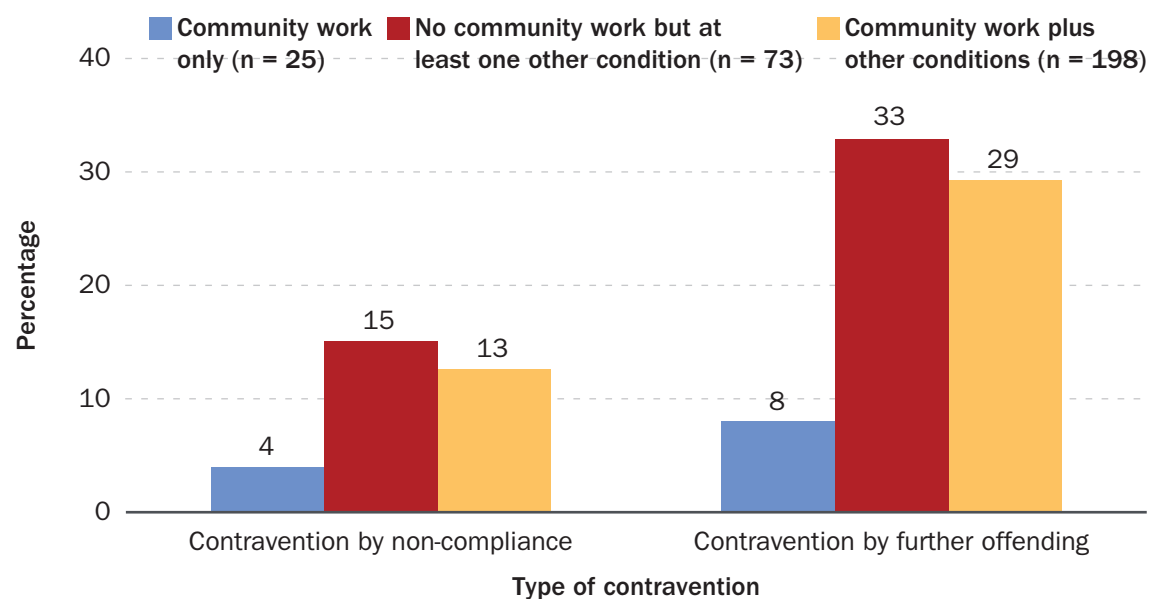
5.55 CCOs with community work only imposed in the higher courts were less likely than other CCOs imposed in the higher courts to be contravened by further offending (see Figure 30).

5.56 After controlling for other factors, CCOs that included no community work and CCOs that included a combination of community work and at least one other discretionary condition were substantially more likely to be contravened by further offending than CCOs with community work only.

Likelihood of contravention by non-compliance

5.57 Contravention by non-compliance was more likely for offenders whose CCO included no community work condition than offenders whose CCO only included a community work condition.

Figure 30: Contravention rates by category of CCO condition, higher courts, 1 July 2012 to 30 June 2013



Length of community correction orders

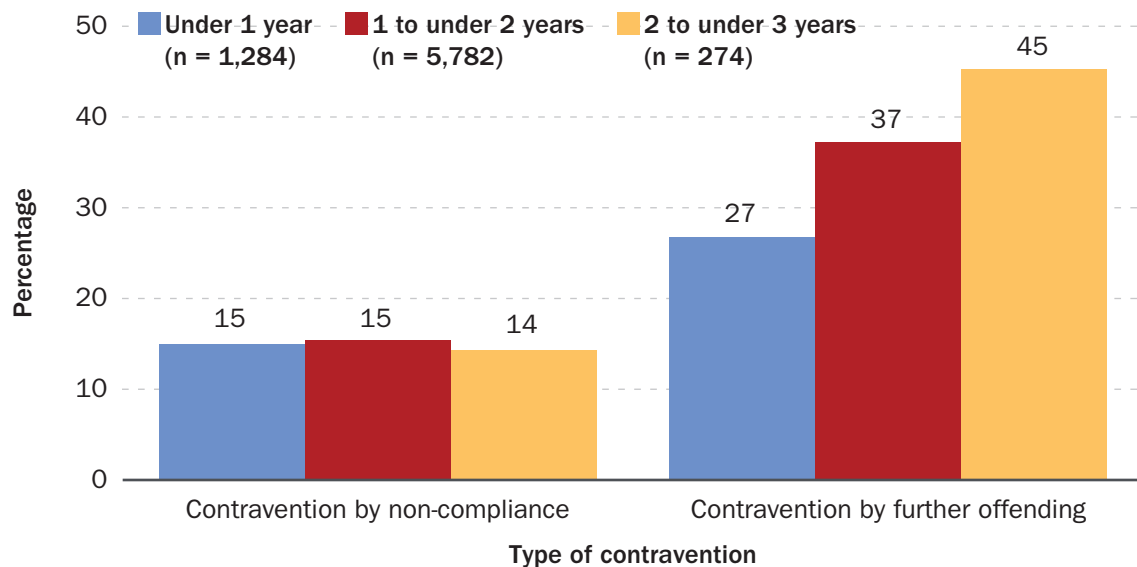
5.58 The length of CCOs was associated with the likelihood of offenders contravening CCOs imposed in the Magistrates' Court and the higher courts.

Community correction orders imposed in the Magistrates' Court

5.59 For CCOs imposed in the Magistrates' Court, the longer a CCO was, the more likely it was to be contravened by further offending. The contravention rate progressively increased with the length of CCO, from 27% of CCOs of under 12 months and 37% of CCOs of one to under two years to 45% of CCOs of two to under three years (Figure 31).

5.60 This relationship has been confirmed by the regression analysis, which found that offenders on CCOs of 12 months or over were 1.5 times more likely to contravene by further offending than offenders on shorter CCOs.

Figure 31: Contravention rates by contravention type and length of CCO, Magistrates' Court, 1 July 2012 to 30 June 2013

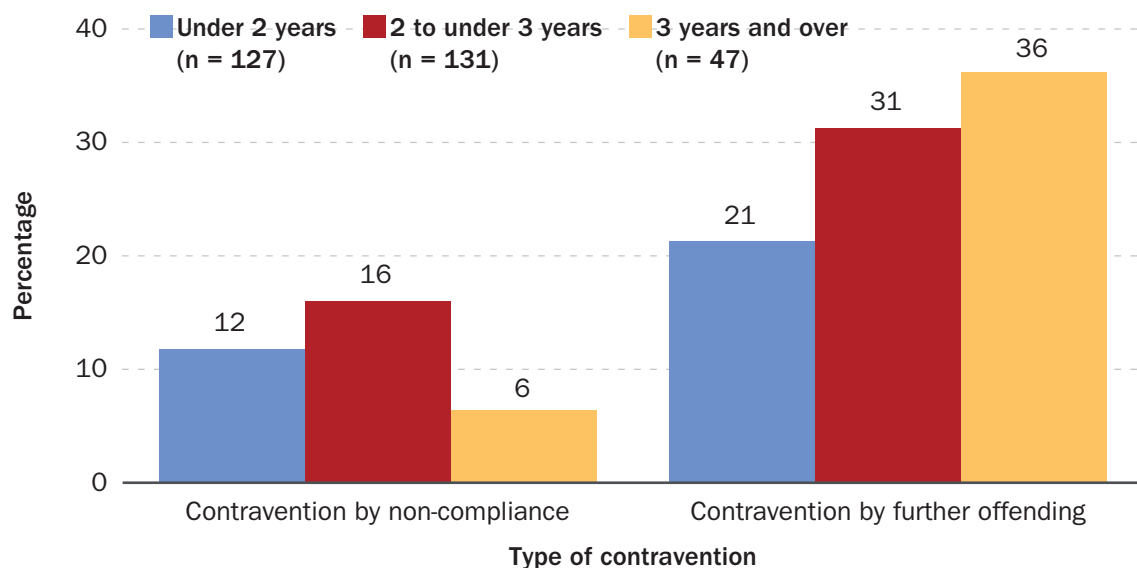


Community correction orders imposed in the higher courts

5.61 There was a near statistically significant relationship between the length of a CCO imposed in the higher courts and the likelihood of contravention by further offending. After controlling for other factors, CCOs that were two years or over were 1.7 times more likely to be contravened by further offending than shorter CCOs.¹⁰¹

5.62 As Figure 32 shows, 36% of offenders who received a CCO of three years or over contravened by further offending compared with just 21% of offenders whose CCO was under two years.

Figure 32: Contravention rate by length of CCO and contravention type, higher courts, 1 July 2012 to 30 June 2013



101. The significance value was $p = 0.084$, which is close to the threshold for significance ($p = 0.05$).

6. Sentences for contraventions of CCOs imposed in the Magistrates' Court

- 6.1 Figure 2 (page 10) illustrates the possible consequences that an offender may face if found guilty of contravention of a CCO, particularly if that contravention involved new offending.
- 6.2 The different consequences potentially triggered by a single new offence that contravenes a CCO complicates the sentencing exercise. In sentencing an offender, a court must have regard to factors including the nature and gravity of the offence, the impact of the offence on the victim and any mitigating or aggravating factors concerning the offender.¹⁰² A sentencing judge must impose a sentence that is proportionate to the gravity of the offence.¹⁰³ Where a court imposes multiple sentences, the court must consider the principle of 'totality', in other words, the court must 'ensure that the total sentence remains "just and appropriate" for the whole of the offending'.¹⁰⁴ The court is prohibited from sentencing an offender twice for the same conduct, but the law recognises that a 'single action may cause multiple harms, and thereby comprise multiple criminal acts that justify separate punishment'.¹⁰⁵
- 6.3 In this chapter, the analysis of contraventions of CCOs imposed in the Magistrates' Court considers four types of court orders:
1. the order made in relation to the **original CCO** as a consequence of the contravention (that is, whether the original CCO was confirmed, varied or cancelled);
 2. the new sentence imposed on the offender in **resentencing** the original offences that received a CCO (where the original CCO was cancelled and the offender was resentenced);
 3. the most serious sentence for the **new offence** that contravened the CCO (where the contravention involved further offending); and
 4. the sentence for the **offence of contravening a CCO** (where the offender was separately charged with an offence of contravening a CCO under section 83AD(1) of the *Sentencing Act 1991* (Vic)).
- 6.4 Of the 3,742 offenders who were found to have contravened a CCO imposed in the Magistrates' Court, 3,311 offenders (88%) had at least one proven charge of contravening the CCO (Figure 33). Of these:
- 2,189 offenders (66%) were also found guilty of an imprisonable offence that was committed while they were serving their CCO. This group of offenders was liable to be punished through an order in relation to the original CCO (including resentencing the offender for the original offences), a sentence for the new offences and a sentence for the offence of contravening a CCO.

102. *Sentencing Act 1991* (Vic) s 5(2).

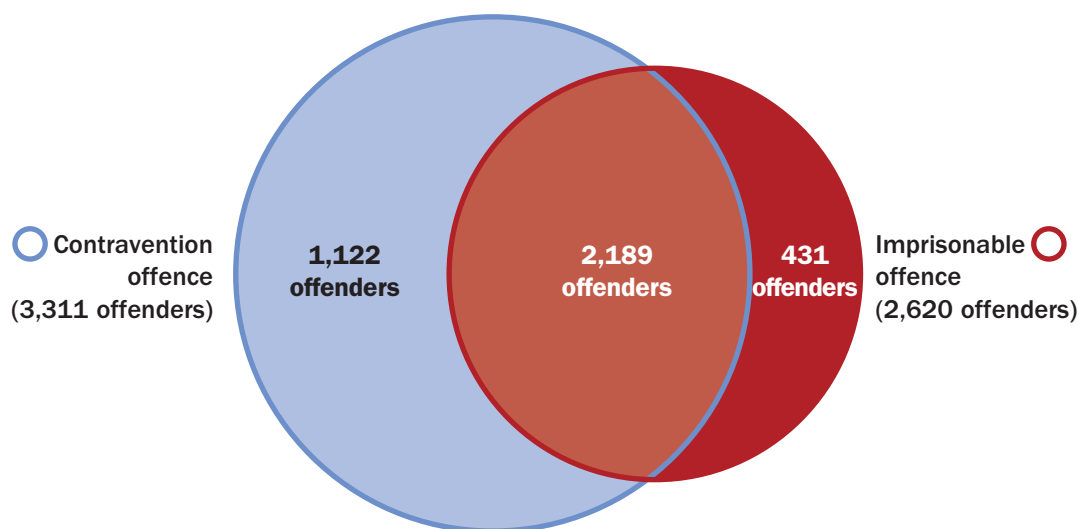
103. *Veen v The Queen [No 2]* (1987) 164 CLR 465.

104. Judicial College of Victoria, '6.4 – The Totality Principle', *Victorian Sentencing Manual* (Judicial College of Victoria, 2015) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#14959.htm>> at 15 June 2017.

105. Judicial College of Victoria, '6.5 – Double Punishment', *Victorian Sentencing Manual* (Judicial College of Victoria, 2015) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#14988.htm>> at 15 June 2017.

- 1,122 offenders (34%) were sentenced for a charge or charges of contravening a CCO only, suggesting that they contravened the CCO by failing to comply with another CCO condition, rather than by further offending (contravention by non-compliance). This group of offenders was liable to be punished through an order in relation to the original CCO (including resentencing the offender for the original offences) and through the sentence for the offence of contravening a CCO.
- 6.5 A further 431 offenders were sentenced for a new imprisonable offence committed while serving their CCO but were not separately charged with the offence of contravening a CCO (Figure 33). For these offenders, the court's power to punish the contravention would have been limited to the sentence imposed for the new offence. However, the fact that the offence contravened a CCO could have been taken into account as an aggravating factor in sentencing.¹⁰⁶
- 6.6 To gain a complete picture of the consequences that offenders faced when they contravened a CCO, the sentences imposed for a charge of contravening the CCO (if there was one) must be viewed together with:
- the sentence for the new offence (if there was one);
 - whether the original CCO was confirmed, varied or revoked; and
 - whether the offender was resentenced for the original offence.
- 6.7 For example, a finding that a charge of contravening a CCO was proven and dismissed has little meaning without understanding that the offender's original CCO was cancelled because of the contravention and the offender was resentenced to a term of imprisonment for the original offences. Therefore, before separately examining individual outcomes, the outcomes have been combined to identify the most severe sentence that each offender faced for their contravening behaviour.

Figure 33: Relationship between contravention types, CCOs imposed in the Magistrates' Court, 1 July 2012 to 30 June 2013 (n = 3,742)



106. *Haddara v The Queen* [2016] VSCA 168 (18 July 2016) [83].

Overview: most severe outcome for contravention

6.8 In order to meaningfully assess sentencing outcomes for contraventions, the Council classified offenders according to the most severe consequence that they faced for contravention of a CCO imposed in the Magistrates' Court (after combining all of the outcomes that offenders faced). For example:

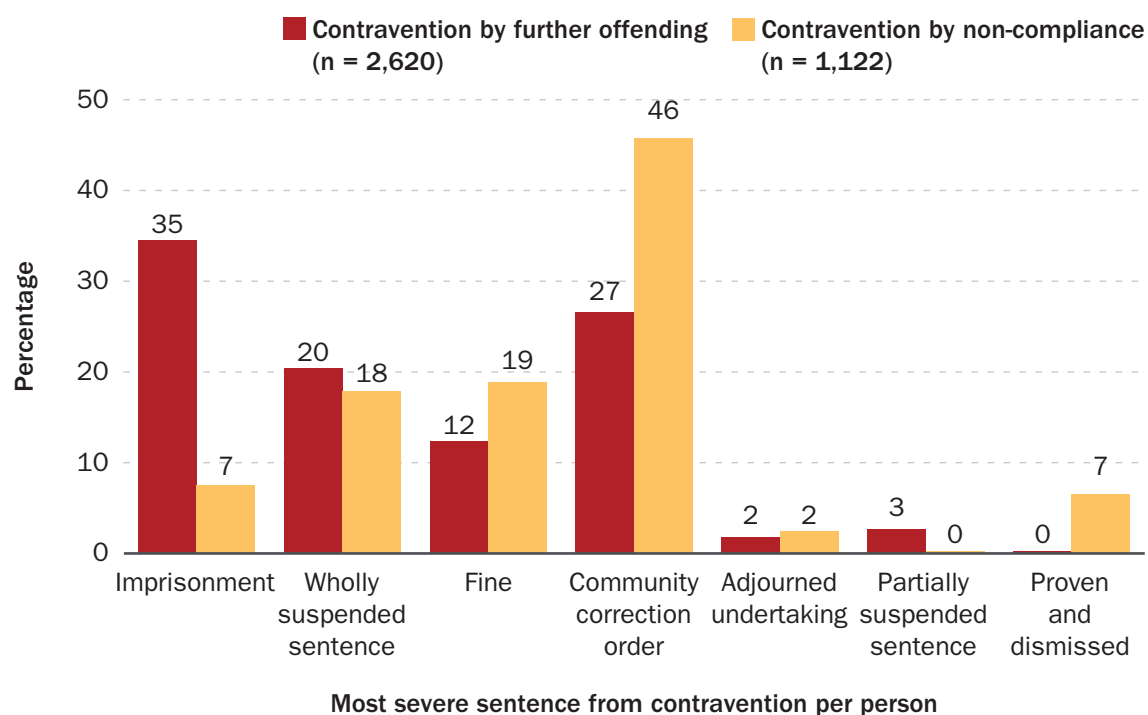
- an offender is classified in the 'imprisonment' category if their original CCO was cancelled, they were sentenced to imprisonment for the new charges that contravened their CCO and they had their charge of contravening a CCO proven and dismissed;
- an offender is classified in the 'CCO' category if their original CCO was confirmed and they were fined for the offence of contravening the CCO; and
- an offender is classified in the 'fine' category if their original CCO was cancelled with no further order and they were fined for the offence of contravening the CCO.

6.9 Using this approach, the Council examined the most severe sentences for the 3,742 offenders who contravened a CCO imposed in the Magistrates' Court by further offending or by non-compliance (Figure 34).

6.10 The most severe sentence associated with contravention by further offending was most commonly imprisonment (35%), which was only the fourth most common sentence for contravention by non-compliance (7%). In contrast, the most severe sentence associated with contravention by non-compliance was most commonly the confirmation or variation of the original CCO (46%).

6.11 Further information about the way in which the different consequences faced by offenders interrelate is provided in Appendix 2 (Tables A3–A5).

Figure 34: Distribution of most severe sentence by contravention type, CCOs imposed in the Magistrates' Court, 1 July 2012 to 30 June 2013

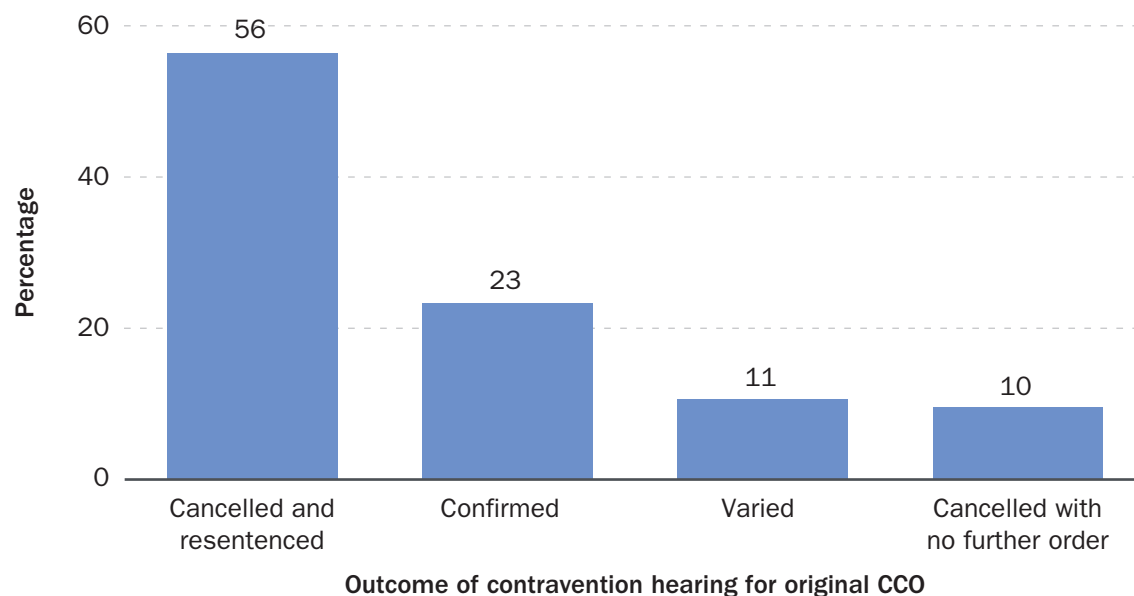


- 6.12 Table A3 examines sentences imposed for the 1,122 offenders who contravened by non-compliance, looking at both the order made in relation to the original CCO and the sentence imposed for the offence of contravening a CCO. The most common outcome was for the original CCO to be cancelled, the offender to be resentenced for the original offences and the charge of contravening the CCO to be proven and dismissed (45% of this group). Offenders in this group who were resentenced for the original offences were most commonly sentenced to fines, wholly suspended sentences and imprisonment. Another common outcome was for the original CCO to be confirmed or varied and the charge of contravening a CCO to be proven and dismissed (28% of the 1,122 offenders in this group).
- 6.13 Tables A4 and A5 examine sentences imposed for the 2,189 offenders who contravened their CCO by further offending and were also sentenced for the offence of contravening a CCO. Both tables show the orders made in relation to the original CCO. Table A4 also shows the sentences imposed for the offence of contravening a CCO and Table A5 also shows the most severe sentence imposed on any new imprisonable offences committed on the CCO. The most common outcome for these 2,189 offenders was a sentence of imprisonment for the new offences in addition to the cancellation of the original CCO and a sentence of imprisonment for the original offences (20% of offenders in this group received this combination of outcomes).

Order made in relation to the original community correction order

- 6.14 A proven charge of contravening a CCO gives the court the power to confirm or vary the original CCO or to cancel the original CCO and resentence the offender for the original charges.
- 6.15 Of the 3,311 offenders with a proven charge of contravening a CCO imposed in the Magistrates' Court, over half (56%) had their original CCO cancelled and were resentenced for the original offences (Figure 35). Just under one-quarter of the group had their original CCO confirmed (that is, the offender was ordered to continue serving the CCO). Approximately one in 10 had their original CCO varied and one in 10 had the original CCO cancelled without being resentenced for the original offences.

Figure 35: Percentage of offenders who had a proven charge of contravening a CCO by outcome of contravention hearing, CCOs imposed in the Magistrates' Court, 1 July 2012 to 30 June 2013 (n = 3,311)



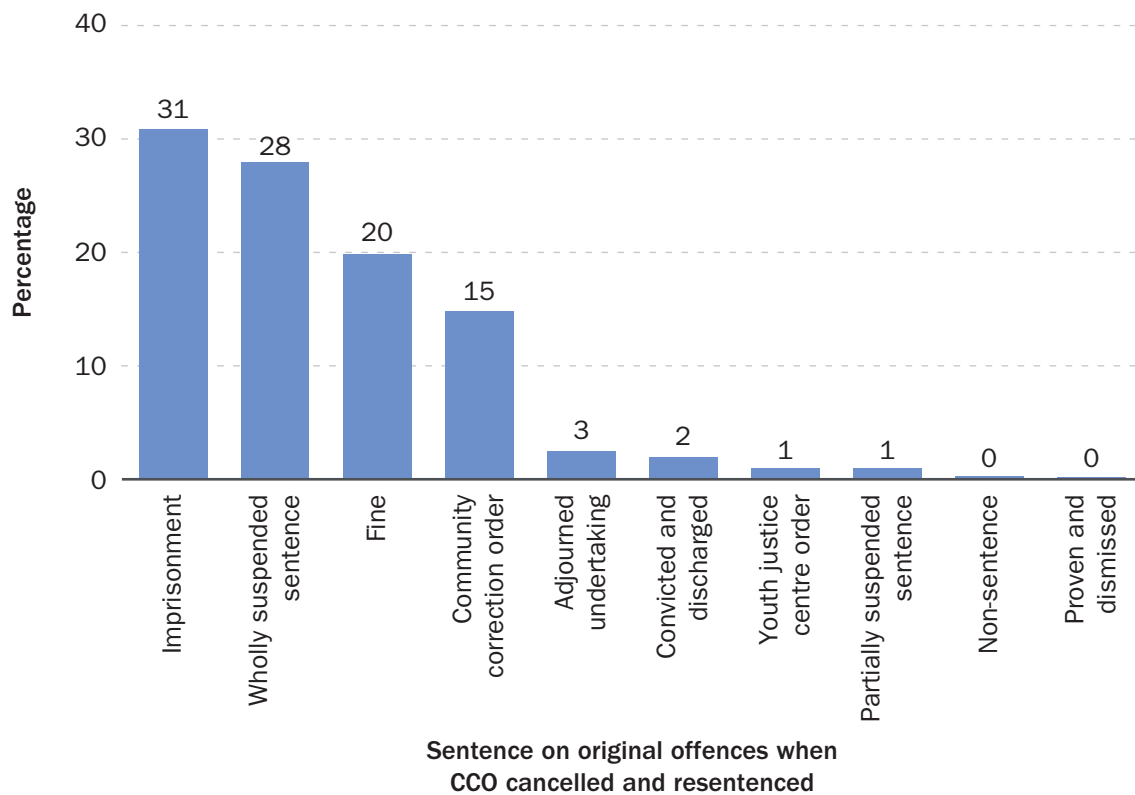
6.16 Comparing contraventions by further offending and contraventions by non-compliance, there was very little difference in the orders made in relation to the original CCO. For both types of contravention, 56% of the original CCOs were cancelled and the offender was resentenced, while nearly one-quarter of CCOs were confirmed (24% for contravention by further offending and 21% for contravention by non-compliance). However, where the CCO was cancelled and the offender was resentenced, there were differences in the distribution of sentence types according to whether the contravention was by further offending or by non-compliance, as discussed next.

Resentencing the original offences

6.17 Of the 3,311 who were sentenced for the offence of contravening a CCO imposed in the Magistrates' Court, 1,870 offenders had their original CCO cancelled and were resentenced for the original offences.

6.18 For the 1,870 offenders who were resentenced, the sentence most commonly imposed on the original offences was imprisonment (31%), followed by a wholly suspended sentence (28%) and a fine (20%) (Figure 36).

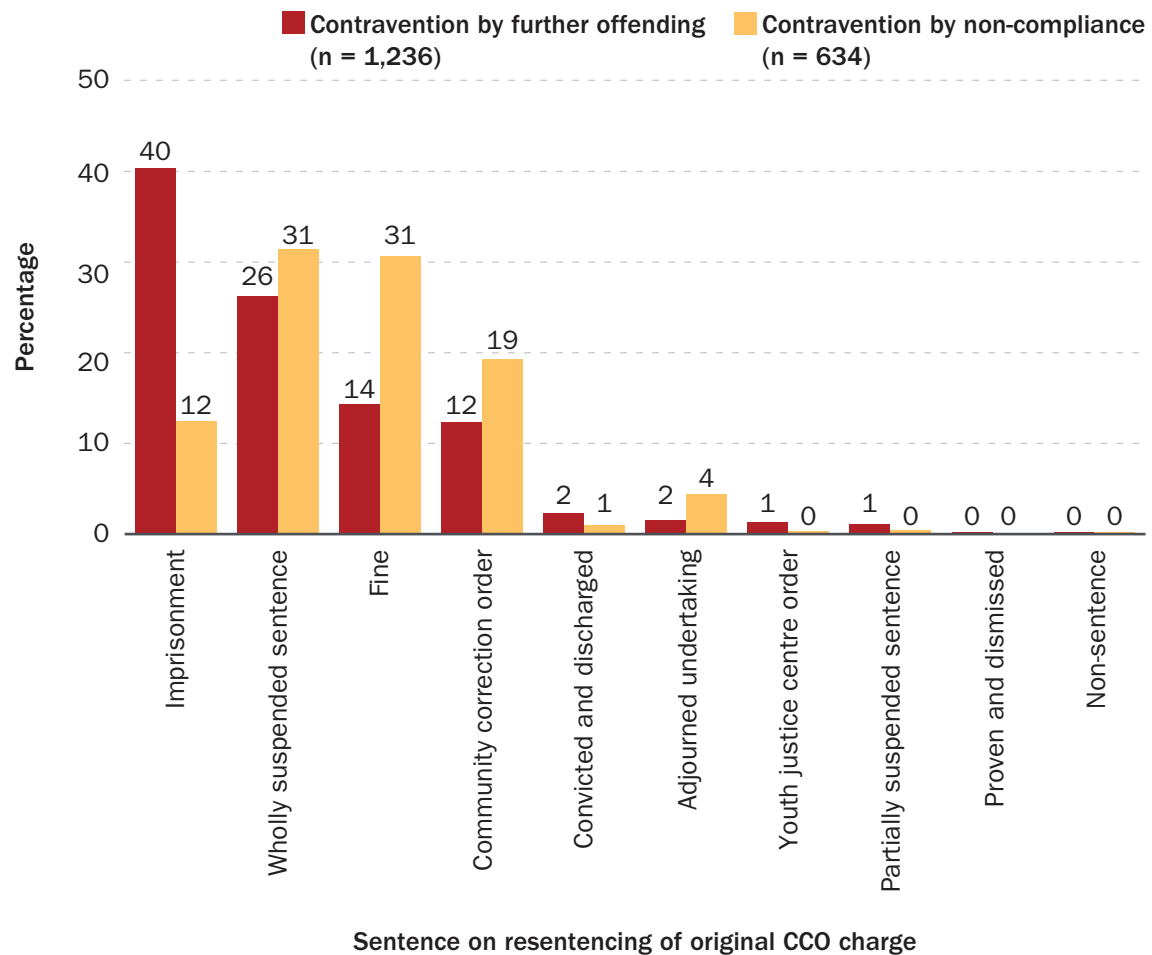
Figure 36: Percentage of offenders who had their CCO cancelled and were resentenced for the original offences, by the new sentence imposed on original charges, CCOs imposed in the Magistrates' Court, 1 July 2012 to 30 June 2013 (n = 1,870)



6.19 Figure 37 adds more details to the sentences shown in Figure 36. It separates resented cases according to the contravention type, showing that:

- where there was a contravention by further offending, the most commonly imposed sentence on the original offences was imprisonment (40% of resented offenders); and in contrast
- where there was a contravention by non-compliance, the most commonly imposed sentence on the original offences was a wholly suspended sentence (31%) and a fine (31%).

Figure 37: Percentage of offenders who had their CCO cancelled and were resented for the original offences, by the new sentence imposed on original charges and contravention type, CCOs imposed in the Magistrates' Court, 1 July 2012 to 30 June 2013



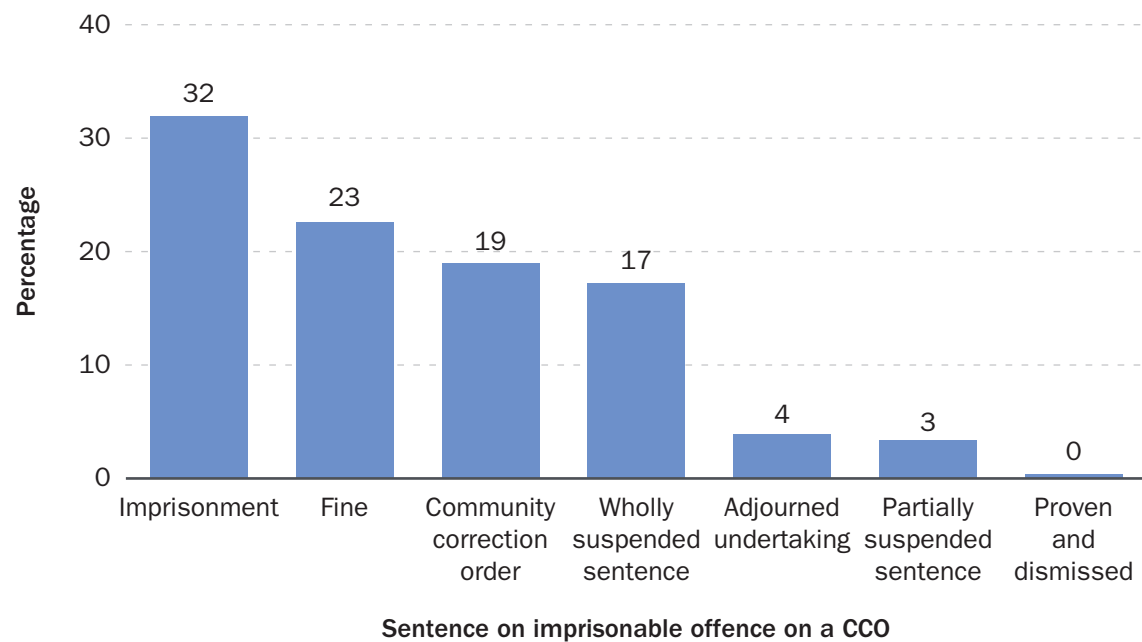
Sentence for the new offences

6.20 Imprisonable offending on CCOs imposed in the Magistrates' Court was usually also sentenced in the Magistrates' Court (see [4.40]). Of the 2,620 offenders who committed an imprisonable offence while serving a CCO imposed in the Magistrates' Court, 2,529 offenders (97%) were sentenced for that offence in the Magistrates' Court, while 91 offenders (3%) were sentenced in the higher courts.

6.21 For their new offences, these 2,620 offenders were more likely to be sentenced to imprisonment than any other sentence type, with 32% receiving a sentence of imprisonment in relation to the new offences (Figure 38). As discussed at [6.19], offenders in this group who had their original CCO cancelled were also more likely to be resentenced to imprisonment than any other sentence type.

6.22 Fines, CCOs and wholly suspended sentences were each imposed in approximately 20% of cases (23%, 19% and 17% respectively). A sentence of proven and dismissed was imposed on less than 1% of offenders who committed a further imprisonable offence on a CCO.

Figure 38: Percentage of all offenders who committed a proven imprisonable offence on a CCO imposed in the Magistrates' Court by sentence imposed on imprisonable offences committed on the CCO, 1 July 2012 to 30 June 2013 (n = 2,620)



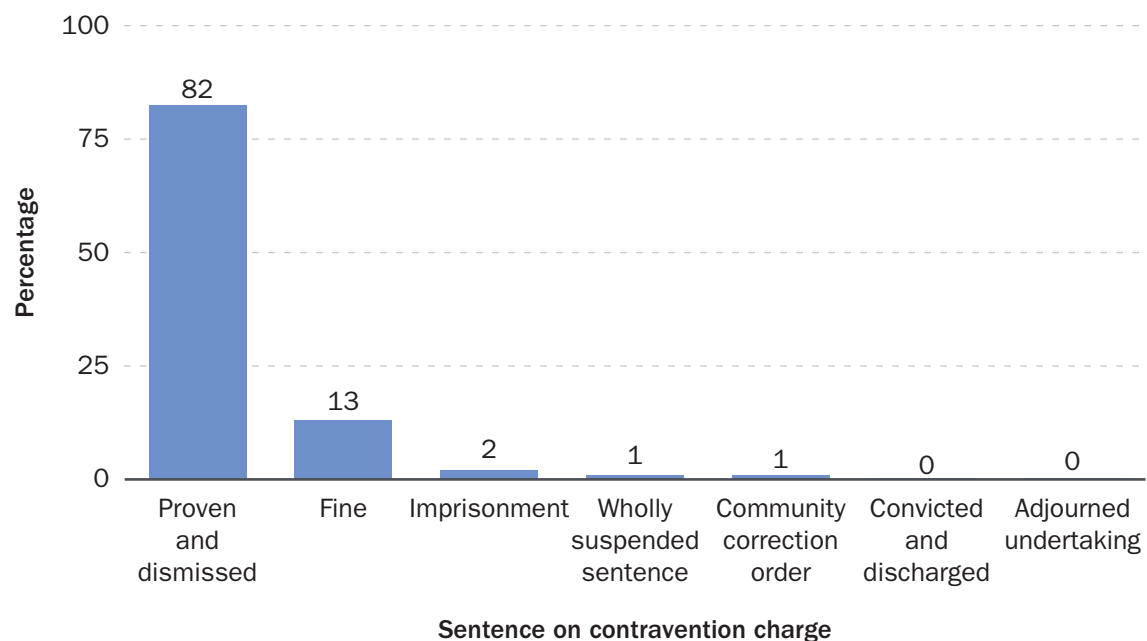
Sentence for the charge of contravening a community correction order

6.23 In contrast to the sentence on the new offences that contravened the CCO (if the contravention was by further offending) and on the original offences (if the offender was resentenced), sentences imposed for charges of contravening a CCO were predominantly relatively low on the hierarchy of sentences available to the courts. As Figure 39 shows, 82% of the 3,311 offenders who had a proven charge of contravening a CCO received a sentence of proven and dismissed on that charge.

6.24 The relatively large number of outcomes of proven and dismissed must be interpreted in conjunction with the above findings about the orders made in relation to the original CCO, whether the offender was resentenced for the original offences and the sentence imposed on any new offences. Of the offenders whose charge of contravening a CCO was proven and dismissed:

- 30% also received a sentence of imprisonment;
- 19% also received a wholly suspended sentence;
- 17% also received an order to continue to serve their CCO, either as originally imposed or with some variation; and
- 14% also received a fine.

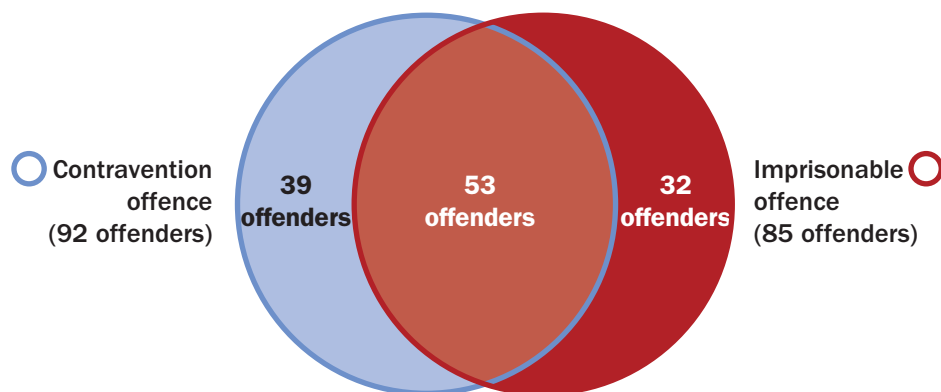
Figure 39: Proportion of offenders with at least one charge of contravening a CCO by sentence type imposed on the charge, CCOs imposed in the Magistrates' Court, 1 July 2012 to 30 June 2013 (n = 3,311)



7. Sentences for contravention of CCOs imposed in the higher court

- 7.1 The analysis of sentences for contraventions of CCOs imposed in the higher courts considers four types of outcomes, as in the previous chapter (see [6.3]):
1. the order made in relation to the **original CCO**;
 2. the new sentence imposed on the offender in **resentencing** the original offences that received a CCO (where the original CCO was cancelled and the offender was resentenced);
 3. the most serious sentence for the **new offence** that contravened the CCO (if the contravention involved offending); and
 4. the sentence for the **offence of contravening a CCO** (where the offender was separately charged for the offence of contravening a CCO).
- 7.2 A total of 124 offenders contravened a CCO imposed in the higher courts, with 92 of these having a proven charge of contravening a CCO (Figure 40). The remaining 32 did not have a proven charge of contravening a CCO but they did have a proven charge of an imprisonable offence committed while their CCO was operational.¹⁰⁷

Figure 40: Relationship between contravention type, CCOs imposed in the higher courts, 1 July 2012 to 30 June 2013

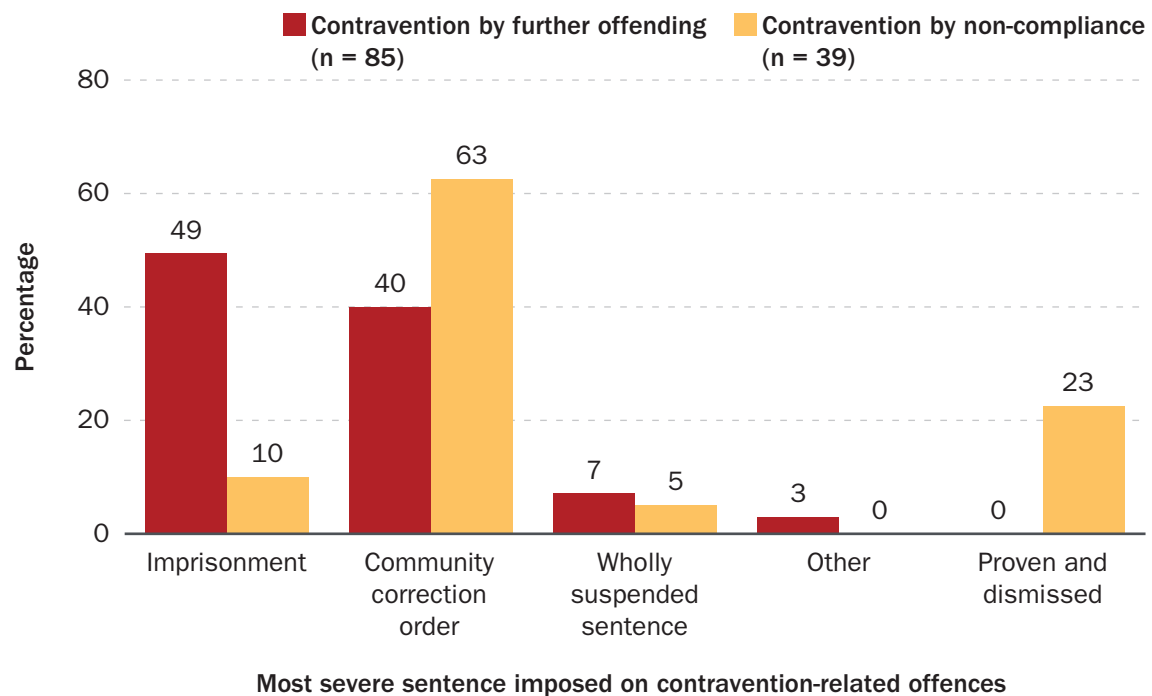


¹⁰⁷ See further the discussion at [4.15]–[4.20]. More information about the relationship between proven charges of contravening a CCO and proven imprisonable offences committed on a CCO is in Appendix 2.

Overview: most severe outcome for contravention

- 7.3 For offenders who contravened a CCO imposed in the higher courts by further offending, their severest sentence was most commonly imprisonment (49%), followed by a CCO (either a new CCO or an order to continue to serve the original CCO as imposed or with variations (40%)). See Figure 41.
- 7.4 In contrast, offenders who contravened by non-compliance most commonly remained on a CCO (either a new CCO or the confirmation or variation of the original CCO (63%)) or had the contravention proven and dismissed (23%).

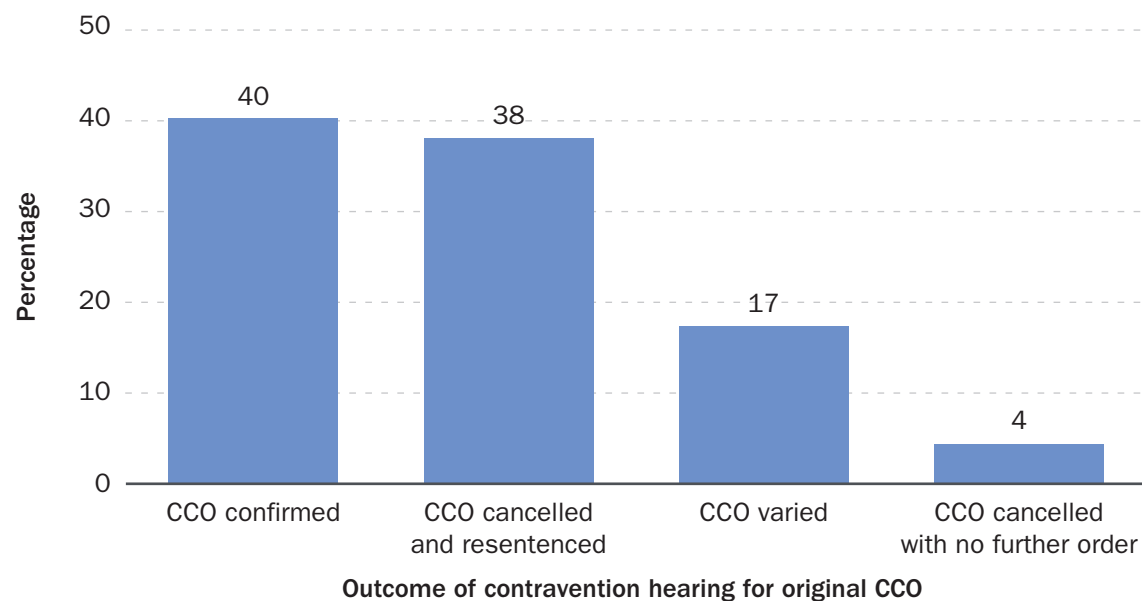
Figure 41: Most severe outcome for offenders who contravened a CCO imposed in the higher courts by contravention type, 1 July 2012 to 30 June 2013



Order made in relation to the original community correction order

- 7.5 The number of offenders sentenced for the offence of contravening a CCO imposed in the higher courts (92 offenders) was far smaller than the number sentenced for contravening a CCO imposed in the Magistrates' Court (3,311 offenders).
- 7.6 Of the 92 offenders with a proven charge of contravening a CCO imposed in the higher courts, 40% had their original CCO confirmed (in other words, they were ordered to continue to serve the CCO) while 38% had their original CCO cancelled and were resentedenced for the original offences (Figure 42).
- 7.7 Sixteen offenders (17%) had their original CCO varied (they were ordered to continue to serve the CCO but the length or conditions were changed; for example, additional community work was added). Only four offenders had the original CCO cancelled with no further order.
- 7.8 The findings in Figure 42 suggest that offenders who contravened a CCO imposed in the higher courts were more likely to be ordered to continue serving the original CCO than offenders who contravened a CCO imposed in the Magistrates' Court. In the higher courts, over half (58%) of offenders remained on their CCO, either as it was or with a variation. In contrast, in the Magistrates' Court only a third (34%) of offenders remained on their original CCO, while over half (56%) had the original CCO cancelled.
- 7.9 In some cases, this difference is likely to reflect the different offender dynamics in the two court levels.¹⁰⁸ In the higher courts, in many cases a CCO is more likely to be imposed on a young adult offender with a view to securing the long-term protection of the community through the offender's rehabilitation. If that offender commits a relatively minor (but still imprisonable) offence while on a CCO, the court is likely to give the offender a second chance in the interests of continuing the offender's rehabilitation with a view to diverting them from a life of crime. In contrast, in the Magistrates' Court CCOs are likely to represent an escalation in sentencing for offenders with prior convictions. If the offender commits a new offence on the CCO, the court may be less likely to give the offender a second chance.

Figure 42: Percentage of offenders who had a proven charge of contravening a CCO by outcome of contravention hearing, CCOs imposed in the higher courts, 1 July 2012 to 30 June 2013 (n = 92)

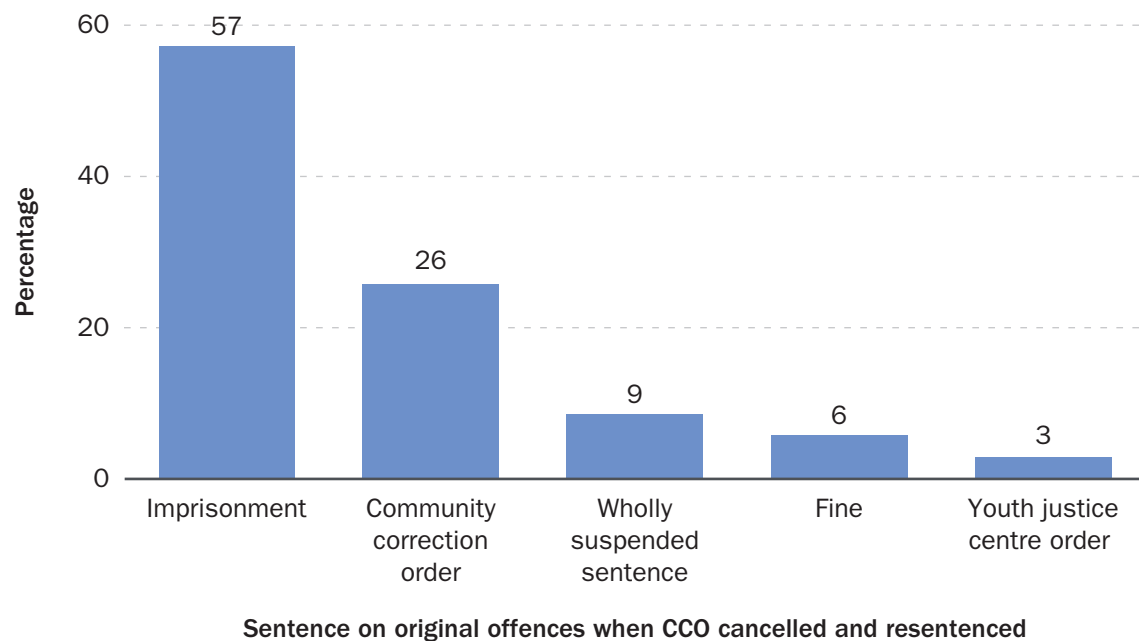


108. See further [3.3]–[3.4], [3.12], [3.15]–[3.17], [3.23], [3.42], [4.13].

Resentencing the original offences

7.10 Thirty-five of the 92 offenders who were sentenced for the offence of contravening a CCO imposed in the higher courts had their CCO cancelled and were resentenced for the original offences. Of these, over half received a sentence of immediate imprisonment and one-quarter received a new CCO (see Figure 43).

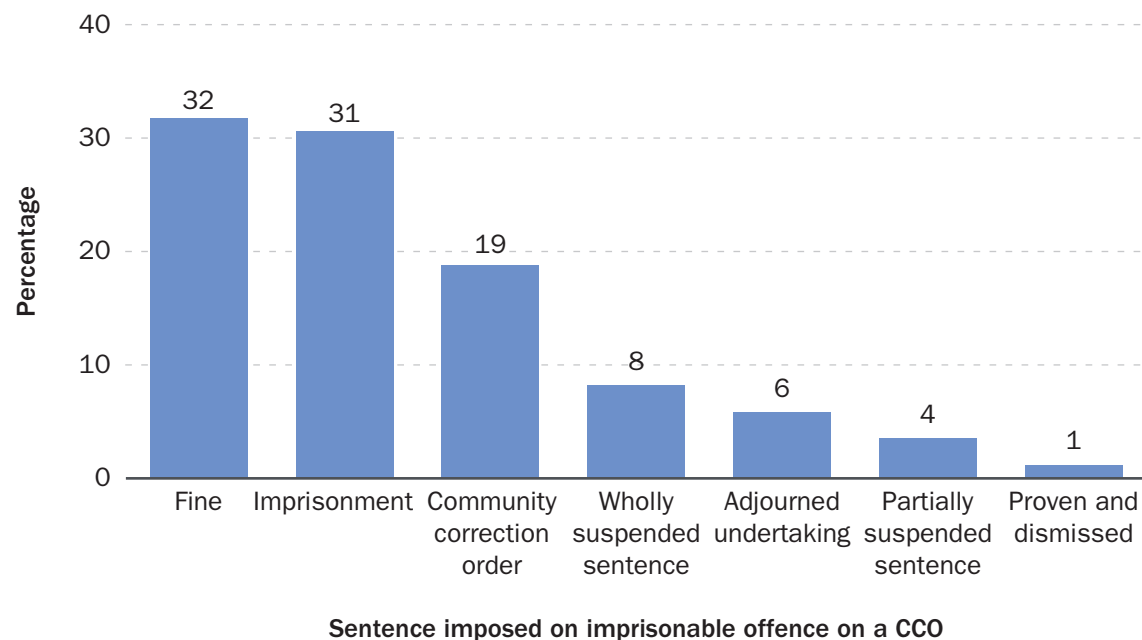
Figure 43: Percentage of offenders who were resentenced as a result of a contravention of a CCO by the new sentence imposed on offences that originally received the CCO in the higher courts, 1 July 2012 to 30 June 2013 (n = 35)



Sentence for the new offences

- 7.11 Imprisonable offending on CCOs imposed in the higher courts was generally sentenced in the Magistrates' Court. Of the 85 offenders who committed an imprisonable offence on a CCO imposed in the higher courts, 80 (94%) were sentenced for that offence in the Magistrates' Court while only five were sentenced in the higher courts. This suggests that offenders who contravened CCOs imposed in the higher courts by further offending usually committed less serious offences than the original offence for which the CCO was imposed.
- 7.12 Figure 44 presents the sentence distribution for the new imprisonable offences committed by these offenders on their CCO. Fines and imprisonment were the most frequently imposed sentences (32% and 31% respectively) followed by a CCO (19%).

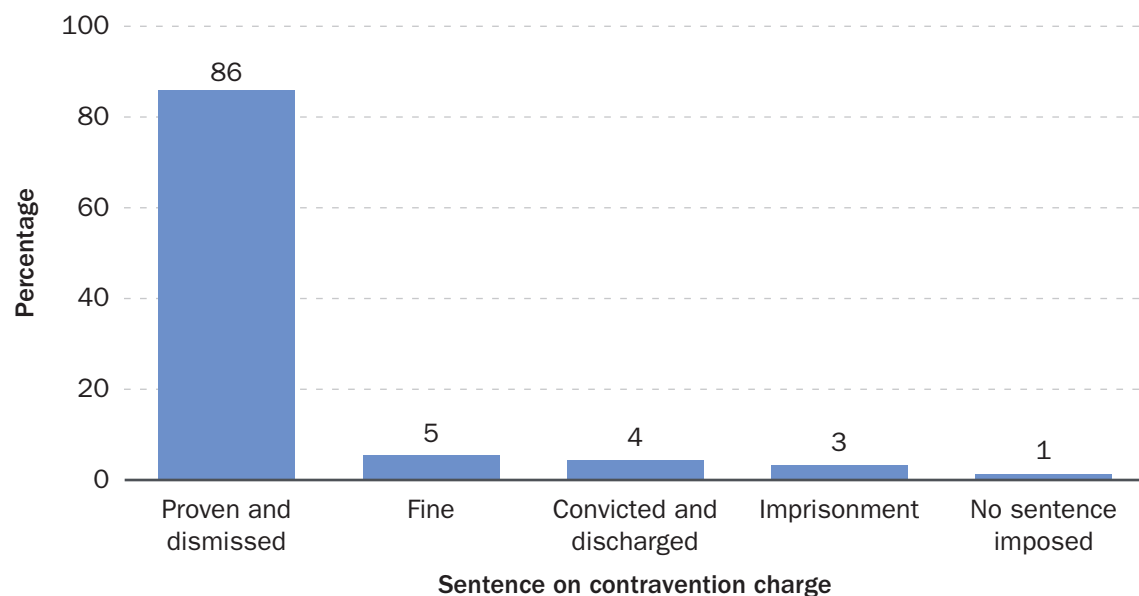
Figure 44: Percentage of all offenders who committed a proven imprisonable offence on a CCO imposed in the higher courts by sentence imposed on the new imprisonable offences, 1 July 2012 to 30 June 2013 (n = 85)



Sentence for the charge of contravening a community correction order

7.13 As for contraventions of CCOs imposed in the Magistrates' Court, contraventions of CCOs imposed in the higher courts were primarily addressed by orders made in relation to the original CCO (including resentencing the original offences in some cases) and by sentences imposed for any new offences (usually in the Magistrates' Court). The separate offence of contravening a CCO was not the main mechanism used for punishing an offender for a contravention. As Figure 45 shows, in 86% of cases, the court found the charge of contravening a CCO proven and dismissed. This is a similar proportion to the Magistrates' Court.

Figure 45: Percentage of offenders with a proven charge of contravening a CCO imposed in the higher courts by sentence imposed on the contravention charge, 1 July 2012 to 30 June 2013 (n = 92)



8. Discussion of key findings

- 8.1 The legal framework governing CCOs and the systems in place for managing offenders who are serving CCOs have frequently changed since the order was introduced in January 2012.
- 8.2 Corrections Victoria has recently implemented a new framework to improve its management of offenders on CCOs.¹⁰⁹ The Victorian Auditor-General has also recommended changes to the management of offenders on CCOs, including that Corrections Victoria 'review the way it manages offenders who breach the conditions of their community correction orders' and 'reduce wait times for support programs and services'.¹¹⁰
- 8.3 In addition, legislation that commenced in March 2017 contains a raft of new changes to CCOs, including reducing the maximum term of imprisonment that courts may combine with a CCO from two years to one year, and restricting the use of CCOs for particular serious offences.¹¹¹
- 8.4 These changes, both individually and in combination, are likely to directly influence the contravention rate because they affect the types of cases that may be sentenced to a CCO and the way that offenders are managed and treated while serving a CCO.
- 8.5 This report examines the contravention rate for CCOs imposed in the first financial year after the introduction of the order, providing a benchmark for future assessments of whether changes to sentencing law and practice and management of CCOs will make a difference to the contravention rate.
- 8.6 The report examines the contravention rate, contravention types, factors associated with contravention and court responses to contravention for all offenders in Victoria who received a CCO during the period from 1 July 2012 to 30 June 2013, a total of 7,645 offenders. The report tracks each offender's proven imprisonable offending during the operational period of their CCO to 30 June 2016.

Contravention rate and type

- 8.7 Around half of the offenders sentenced to a CCO in 2012–13 (the study group) complied with their CCO (49%), in that they were not sentenced for contravention of a CCO or for a new imprisonable offence committed while serving their CCO (to 30 June 2016).
- 8.8 Just over one-third of offenders in the study group contravened their CCO by further offending (35%) and one-sixth (15%) contravened their CCO by failing to comply with another condition ('contravention by non-compliance').

Court level

- 8.9 The rate of contravention by non-compliance was similar for CCOs imposed in both court levels (15% for CCOs imposed in the Magistrates' Court and 13% for CCOs imposed in the higher courts). In contrast, the rate of contravention by further offending was substantially higher for CCOs imposed in the Magistrates' Court (36%) than for CCOs imposed in the higher courts (28%). This has a flow-on effect on the overall contravention rate (50% and 41% respectively).

109. Sentencing Advisory Council (2017), above n 25, 54–55. See also at [1.25]–[1.32] in this report.

110. Victorian Auditor-General (2017), above n 21, xii.

111. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic).

- 8.10 The finding that more CCOs imposed in the Magistrates' Court were contravened by further offending than CCOs imposed in the higher courts is likely to reflect the different types of cases that typically receive a CCO in the two court levels.¹¹²
- 8.11 The higher courts have jurisdiction over more serious offences than the Magistrates' Court, and most offenders in the higher courts are sentenced to imprisonment.¹¹³ Therefore, in many cases the higher courts may be more likely to impose CCOs for offences at the lower end of seriousness relative to other cases in that jurisdiction and/or offenders with compelling mitigating circumstances and good prospects of rehabilitation. For example, compared with offenders who received a CCO in the Magistrates' Court, offenders who received a CCO in the higher courts were likely to be younger, were less likely to have prior convictions (two-thirds of offenders sentenced to a CCO in the Magistrates' Court had prior convictions compared with one-half of their higher courts counterparts) and were more likely to be given CCO conditions relating to rehabilitation, rather than community work alone.
- 8.12 The Magistrates' Court has jurisdiction over less serious offences than the higher courts, with most people sentenced in the Magistrates' Court receiving an adjourned undertaking or a fine.¹¹⁴ Therefore, CCOs imposed in the Magistrates' Court are more likely to be reserved for offenders with relatively serious offences for that jurisdiction and/or aggravating circumstances, such as a long history of offending.
- 8.13 The different characteristics of offenders sentenced to CCOs in the higher courts and the Magistrates' Court are relevant to the likelihood that offenders will contravene their CCO.

How long do offenders take to offend on their CCO?

- 8.14 As observed at [4.24], most offenders who contravened their CCO by further imprisonable offending committed their first offence early in the operational period of their CCO.
- 8.15 Nearly half of offenders who contravened their CCO by further imprisonable offending did so within the first three months of their CCO (44%). Four per cent offended in the first week and 18% offended in the first month. Over nine out of 10 contraventions by further offending occurred within the first 12 months of commencement (92%).
- 8.16 These findings highlight how crucial it is to engage offenders early during their CCO. While offenders must report to a community corrections centre within two working days of their CCO coming into force, many offenders are likely to commit their first new offence before Corrections Victoria has had an opportunity to start to address their offending behaviour.
- 8.17 This finding supports the concerns expressed in the Victorian Auditor-General's recent report *Managing Community Correction Orders*:

Increasing demand for support programs and services means that offenders may face significant wait times before they can access support. This is concerning, as timely access to support programs and services reduces the risk of offenders on CCOs committing further crimes.¹¹⁵

112. See further [3.3]–[3.4], [3.12], [3.15], [3.17], [3.23], [3.42], [4.13].

113. In 2012–13, 60.5% of cases sentenced in the higher courts received a sentence of imprisonment: Sentencing Advisory Council (2017), above n 65.

114. In 2012–13, 55.7% of cases sentenced in the Magistrates' Court received a fine and 12.2% of cases received an adjourned undertaking. In contrast, 7.9% of cases received either a community-based order (since abolished) or a community correction order: Sentencing Advisory Council (2017), above n 66.

115. Victorian Auditor-General (2017), above n 21, 26.

Volume of further offences

- 8.18 The volume of offences committed by offenders who contravened their CCO by further offending was substantial. The 2,705 offenders who contravened by further offending committed a total of 15,941 separate imprisonable offences while their CCO was operational. While this volume of further offending is substantial, much of the offending is likely to have been at a relatively low level of seriousness. For example, the most common offence type committed on a CCO was a theft/dishonesty offence (38%). The second most common offence type was a road safety offence (14%). Ten per cent of offences were an offence against the person and less than 0.5% was a sexual offence.
- 8.19 Whether this volume of offending continues subsequent to changes to sentencing law and practice, and to the management of CCOs, will be of interest and should be the subject of further research.

Type of further offences

- 8.20 The vast majority of offences committed by offenders on CCOs were sentenced in the Magistrates' Court (over 94%) rather than in the higher courts, regardless of the court in which the original CCO had been imposed.
- 8.21 The most common offences committed on a CCO imposed in the Magistrates' Court were theft (12%), fail to answer bail (9%) and possess a drug of dependence (6%). Theft was also the most common offence committed on a CCO imposed in the higher courts (9%), followed by fail to comply with reporting obligations under the *Sex Offenders Registration Act 2004* (Vic) (6%) and drive while suspended (5%).
- 8.22 Among the most common offences committed by offenders on a CCO in each court jurisdiction were 'secondary offences'. Such offences are tied to a person being suspected of, or convicted of, committing another (primary) criminal offence. The secondary offence of fail to answer bail was the second most common offence committed on a CCO imposed in the Magistrates' Court (9%) and the secondary offence of fail to comply with reporting obligations under the *Sex Offenders Registration Act 2004* (Vic) was the second most common offence committed on a CCO imposed in the higher courts. The Council is studying the prevalence of, and sentencing outcomes for, secondary offences in a separate project.

Community correction orders imposed for weapons offences and for offences of breach of an intervention order

- 8.23 CCOs imposed in the Magistrates' Court for weapons offences were more likely to be contravened by further offending than CCOs imposed in the Magistrates' Court for other offence types. Fifty per cent of offenders who were sentenced in the Magistrates' Court to a CCO for weapons offences contravened the CCO by further offending. A further 17% contravened by non-compliance. Overall, two-thirds of the 324 CCOs imposed in the Magistrates' Court for weapons offences were contravened, a concerning finding that merits further research. Key questions include why CCOs for weapons offences have higher contravention rates and how CCOs for weapons offences may be better tailored to reduce the likelihood of contravention.

- 8.24 Also concerning is the high contravention rate for CCOs imposed in the Magistrates' Court for the offence of breaching a family violence intervention order. A total of 174 offenders were sentenced to a CCO in the Magistrates' Court for breach of an intervention order. Nearly nine out of 10 of these offenders had at least one prior conviction. Over half (56% or 97 offenders) contravened their CCO: 44% contravened by further offending and 12% contravened by non-compliance. The Council is separately studying the current framework in Victoria for managing family violence offenders on a CCO as part of a broader project on sentencing family violence offenders.¹¹⁶
- 8.25 The relatively high contravention rate associated with CCOs imposed for weapons offences and for offences of breach of an intervention order supports the decision by Corrections Victoria to reform their Community Correctional Services (CCS) service model, with changes being rolled out since January 2017.¹¹⁷ The new case management framework aims to utilise evidence-based practices to reduce reoffending, assessing an offender's risk level based on certain characteristics and managing different risk groups in different ways. The findings in this report add to the body of evidence available to inform risk assessment and offender management practices.

The separate offence of contravening a community correction order

- 8.26 Contravening a CCO without a reasonable excuse is a criminal offence with a maximum penalty of three months' imprisonment.¹¹⁸ The offence must be proven by the prosecution beyond reasonable doubt.
- 8.27 Where the contravention does not involve a new offence, but rather the offender's failure to comply with another CCO condition, Corrections Victoria may decide that the contravention should be dealt with in court, in which case the offender is charged with an offence of contravening a CCO. Consequently, all of the 'contraventions by non-compliance' in this report involved a proven charge of contravening a CCO.
- 8.28 Where the contravention is by new imprisonable offending committed on the CCO, the offender may be charged with both the new offence and the offence of contravening a CCO. The prosecution must prove the new offences before a charge of contravening a CCO can be heard. Therefore, charging an offender with a separate offence of contravening a CCO is not a prerequisite for dealing with an offender in court for contravening behaviour. Instead, in those circumstances, the separate charge of contravening a CCO is ancillary to the main offending.
- 8.29 For contravention by further offending, 17% of cases in the Magistrates' Court and 37% in the higher courts did not have a separate proven charge of contravening a CCO. There are many reasons as to why an offender who contravenes a CCO by further imprisonable offending may not be also charged with the offence of contravening a CCO. However, the importance of charges of contravening a CCO being brought to court and the need for improved communication between different agencies were recently highlighted by the Victorian Auditor-General.¹¹⁹

116. See further Sentencing Advisory Council (2017), above n 25.

117. See *ibid* 54–55.

118. *Sentencing Act 1991 (Vic)* s 83AD(1). See further [1.39]–[1.54].

119. Victorian Auditor-General (2017), above n 21, 23.

- 8.30 Charging an offender with the offence of contravening a CCO not only acts as a mechanism for bringing the offender back to court but it also enlivens the court's powers to make orders in relation to the original CCO. Without the charge of contravening a CCO, the court's power to punish the offender for contravention of a CCO is limited to the sentence imposed for the new imprisonable offence. A proven charge of contravening a CCO also alerts courts to the offender's failure to comply with their CCO, which is relevant to such things as future applications for bail or submissions about sentencing the offender to another CCO.
- 8.31 Charging an offender with contravening a CCO has a utility in bringing the person back to court and enlivening the court's discretion to change or cancel the original CCO. However, the sentence imposed for the charge of contravening a CCO itself is often not the only, or primary, mechanism used by courts to punish the offender for conduct that contravenes a CCO.
- 8.32 This report has found that the most severe consequence faced by an offender relates to the sentence imposed for the new offence (most commonly imprisonment) and to changes made to the original CCO, including resentencing the original charges in some cases (again, most commonly to imprisonment).
- 8.33 Where offenders in the study group were separately charged with contravening a CCO and the charge was proven, the most common sentence was to find the charge proven and dismiss it. This was the outcome for 82% and 86% of charges of contravening a CCO sentenced in the Magistrates' Court and in the higher courts respectively. This finding is likely to reflect a number of sentencing principles (see further [1.50]–[1.55]), including that a sentencing judge must avoid imposing double punishment when sentencing an offender for two offences that involve the same or overlapping conduct.¹²⁰ For example, a contravention of a CCO by further offending may result in an offender being sentenced for the new offence, having their CCO cancelled and being resentenced for the original offence, and therefore the court must avoid imposing double punishment in sentencing the offender for the separate offence of contravening a CCO when founded on the same facts and circumstances.
- 8.34 Submissions made to the Council in its review of suspended sentences and intermediate orders between 2004 and 2008 argued that "treating breach of an order as a criminal offence risks sentence escalation and "double penalties" for an offender".¹²¹ The Council recommended against a separate offence of contravening an order,¹²² on the basis that an administrative mechanism could be created to bring an offender back before a court for contravention (similar to the current process for applying to vary or cancel a CCO) without the need for a separate contravention offence.¹²³ Avoiding the risk of double punishment is likely to form part of the explanation for two findings in this report:
- in many cases involving contravention by further offending, the offender was not separately charged with an offence of contravening a CCO; and
 - where offenders were charged with, and found guilty of, a charge of contravening a CCO, the charge was most commonly proven and dismissed.

120. *Pearce v The Queen* (1998) 194 CLR 610; *Loader v The Queen & Anor* [2011] VSCA 292 (28 September 2011); *Woods v The Queen* [2016] VSCA 293 (25 November 2016). See also Judicial College of Victoria (2015), above n 105.

121. Sentencing Advisory Council, *Suspended Sentences: Final Report – Part 1* (2006) [4.205] referring to Submission 1.39 (Federation of Community Legal Centres) and Submission 1.41 (Youthlaw).

122. Sentencing Advisory Council (2008), above n 28, 255 (Recommendation 12–1).

123. Under section 48N of the *Sentencing Act 1991* (Vic), the informant, police prosecutor, Director of Public Prosecutions or other prescribed persons can apply to the court to vary the CCO or to cancel the CCO and resentence the offender for the original offences. See further [1.22]. This recommendation is consistent with the recommendations of the earlier Victorian Sentencing Review that reported in 2002: Arie Freiberg, *Pathways to Justice: Sentencing Review 2002* (2002) 116–119.

Young adult offenders

- 8.35 In its final report on suspended sentences and intermediate orders from 2008, the Council recommended a separate community-based order for young adult offenders to facilitate their rehabilitation and reintegration. The Council found that:
- the rehabilitative focus on this age group largely manifests itself in the type of disposition courts impose. For example, young adult offenders are less likely to receive a custodial sentence than their adult counterparts. However, the high breach rate of community sentences by this age group would suggest that the current orders are not adequately providing the level of intervention and type of support that is required. While the criminogenic factors that can increase the likelihood of breaching orders/reoffending have been identified, it is not clear that the current orders available to the courts address these factors adequately.¹²⁴
- 8.36 The findings in the current report tend to suggest that the issues raised by the Council in 2008 are still relevant today, with young adult offenders (aged 18 to 24 years) substantially more likely than older offenders to contravene their CCOs. For example, young adult offenders were almost twice as likely as their older counterparts to contravene their CCO by further offending. Young adult offenders with prior convictions were particularly likely to contravene their CCO by further offending (49% contravened their CCO by further offending compared with 28% of all other offenders).
- 8.37 Within the group of young adult offenders, there was also considerable variation. For example, the two court levels imposed CCOs on young adult offenders with very different criminal profiles. A greater proportion of CCOs were imposed on younger offenders in the higher courts than in the Magistrates' Court. However, offenders aged 18 to 24 years who were sentenced to a CCO in the higher courts were less likely to have prior convictions than their Magistrates' Court counterparts (42% and 59% respectively). Furthermore, the offences for which young adult offenders (aged 18 to 24 years) received a CCO were concentrated around offences against the person (65%) and sexual offences (22%), which together made up 86% of principal offences that received a CCO. In contrast, offenders aged 18 to 24 years who were sentenced to a CCO in the Magistrates' Court had committed relatively varied offences, with four offence types making up 86% of principal offences: offences against the person (41%), theft/dishonesty offences (20%), road safety offences (15%) and drug offences (11%).
- 8.38 In Victoria, a 'dual track' system operates for young offenders who are under the age of 21 at the time of sentencing. The dual track system provides adult courts with the option to sentence a young offender to detention in a youth justice centre or a youth residential centre rather than an adult prison, in particular circumstances.¹²⁵ However, there are no specific non-custodial sentencing options tailored to young offenders sentenced in adult courts. In 2008, the Council concluded that:
- It is clear from the relevant literature and the Council's consultations that young adult offenders have distinct needs from older offenders within the correctional system. Consistent with the emerging trend, both here and in other jurisdictions to recognise these needs and put into place arrangements that reflect and are able to respond to the dynamic nature of the transition into adulthood, the Council recommends the introduction of a new ... [community order] to be available to adult courts in sentencing young offenders.¹²⁶
- 8.39 In light of the findings in this report, further consideration of a community order specific to young offenders in the adult jurisdiction may be warranted. Alternatively, the findings suggest the need for differential responses in the management of young adult offenders serving CCOs.

124. Sentencing Advisory Council (2008), above n 28, 223.

125. *Sentencing Act 1991* (Vic) s 32(1). The Council notes that significant changes to the dual track system have been proposed by the Victorian Government in the Children and Justice Legislation Amendment (Youth Justice Reform) Bill 2017 (Vic).

126. Sentencing Advisory Council (2008), above n 28, 223.

Appendix 1: timeline of changes to community correction orders

Community correction orders have been the subject of a number of changes since their introduction in 2012. It is useful to track the genesis of these changes, particularly in considering the offence of contravening a CCO and the implications for the operation of CCOs.

A consequence of the reforms to CCOs since their introduction in January 2012 is that the composition of offenders serving a CCO at any given time since then has also changed (particularly in terms of offence seriousness, which relates to the permissible length of accompanying imprisonment terms). The changing population of offenders on a CCO is likely to affect the proportion of offenders who contravene their CCO, depending on the period of time examined.

April 2008: Sentencing Advisory Council's final report on suspended sentences

In April 2008, as part of a review of suspended sentences of imprisonment, the Council published part 2 of its final report, containing a package of recommended reforms to intermediate sentencing orders,¹²⁷ including recommendations relevant to the eventual introduction of the CCO:

- Intensive correction orders and community-based orders should be retained as separate sentencing orders, rather than being combined into a single, broad order (the Council had originally recommended combining the two orders in its interim report and this ultimately occurred with the introduction of the CCO). Intensive correction orders should be more severe and onerous than community-based orders, and they should be recast as an order in their own right (rather than treated as a form of 'prison' sentence) and targeted at offences of relatively high seriousness and at offenders who are at medium to high risk of reoffending.¹²⁸
- There should no longer be an offence of breaching a sentencing order, such as a community-based order. If an offender breaches a sentencing order, the court should be able to vary the order or resentence the offender for the original offences and sentence the offender for any new offences. This was deemed sufficient.¹²⁹

January 2010: introduction (and abolition) of the intensive correction management order

The Council's recommended reforms to intensive correction orders were reflected in the *Sentencing Amendment Act 2010* (Vic), which was to have replaced the intensive correction order with an 'intensive correction management order' while retaining the community-based order as a separate sentencing order.

127. The Council received a reference on suspended sentences from the then Attorney-General in August 2004. The Council released a discussion paper in April 2005 and an interim report in October 2005 after extensive community consultations. The Council released part 1 of its final report in May 2006, focusing on suspended sentences. Recommendations included limiting the availability of suspended sentences for serious offences. That recommendation was adopted in the same year. The Council released part 2 of its final report in April 2008, focusing on improvements to other intermediate sentencing orders and containing the Council's final recommendations on suspended sentences. See further Sentencing Advisory Council (2008), above n 28. Suspended Sentences have since been totally abolished in Victoria.

128. Sentencing Advisory Council (2008), above n 28, 136, 195 (Recommendations 5 and 9).

129. Sentencing Advisory Council (2008), above n 28, xxxiii, 255 (Recommendation 12-1). See further [8.34].

Consistent with the Council's recommendations, there was not a separate offence of breaching an order. Instead, an offender who breached an intensive correction management order was to be brought before the court, and a presumption was created that the appropriate response to the breach was to resentence the offender for the original offences.

Although the *Sentencing Amendment Act 2010* (Vic) was passed, there was a change of government and the Act was not proclaimed.

May 2011: abolition of suspended sentences for 'significant' and 'serious' offences

May 2011 saw the first stage of the phasing out of suspended sentences in Victoria, with suspended sentences removed in the higher courts for serious and significant offences committed on or after 1 May 2011.¹³⁰

January 2012: introduction of community correction orders

Community correction orders were introduced on 16 January 2012, by the *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic). The CCO replaced a number of previous 'intermediate' sentencing orders, including community-based orders, intensive correction orders and combined custody and treatment orders. The CCO also replaced the new unproclaimed intensive correction management order, which consequently never came into force.¹³¹

At the time of its introduction, the CCO could be combined with a fine or an imprisonment sentence of up to three months.¹³²

The introduction of the new order was accompanied by significant government investment in building the capacity of Community Correctional Services to administer CCOs, with the real net operating expenditure per offender per day increasing by 20% from 2010–11 to 2011–12.¹³³

The *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) also introduced the offence of contravening a CCO.¹³⁴

August 2012: community correction order no longer to be combined with a suspended sentence of imprisonment

In August 2012 (the second month of the financial year studied in this report), amending legislation took effect clarifying that courts could not suspend a sentence of imprisonment that was combined with a CCO.¹³⁵ This amendment resulted in an immediate cessation of the practice of combining a CCO with a suspended sentence.¹³⁶ Suspended sentences of imprisonment have since been abolished.¹³⁷

130. *Sentencing Amendment Act 2010* (Vic).

131. A court's power to order a community correction order is provided in Part 3A of the *Sentencing Act 1991* (Vic). For further background, see Sentencing Advisory Council (2014), above n 3, 1–3.

132. *Sentencing Act 1991* (Vic) ss. 43, 44 (since amended).

133. Steering Committee for the Review of Government Service Provision, '8A Correctional Services – Attachment', *Report on Government Services 2013 Volume 1: Child Care, Education and Training; Justice; Emergency Management* (2013) Table 8A.11.

134. *Sentencing Act 1991* (Vic) s 83AD.

135. *Road Safety and Sentencing Acts Amendment Act 2012* (Vic) s 8, amending *Sentencing Act 1991* (Vic) s 44.

136. Sentencing Advisory Council (2014), above n 3, 16, 39.

137. Suspended sentences were abolished by the *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).

September 2013: abolition of suspended sentences in higher courts

On 1 September 2013, suspended sentences were abolished in the higher courts. This meant that the higher courts could not impose a suspended sentence for any offence committed on or after 1 September 2013.¹³⁸

September 2014: reforms to encourage greater use of community correction orders, including increasing the maximum period of imprisonment for combined orders

In September 2014, a number of changes commenced that encouraged greater use of CCOs and clarified that CCOs were an appropriate sentence in circumstances where a court previously would have imposed a suspended sentence of imprisonment. Key changes included:

- an increase in the maximum term of imprisonment with which a CCO could be combined from three months to two years;¹³⁹
- the introduction of a provision confirming that a court must not impose a sentence involving the confinement of an offender if the purposes of sentencing can be achieved by a CCO with one or more of the following conditions attached: non-association, residence restrictions or exclusions, place or area exclusions, curfews and/or alcohol exclusions;¹⁴⁰ and
- a new provision expressly allowing that a CCO may be considered an appropriate sentence in cases in which a wholly suspended sentence may have been imposed prior to suspended sentences being abolished.¹⁴¹

September 2014: abolition of suspended sentences in the Magistrates' Court

Also in September 2014, suspended sentences were abolished in the Magistrates' Court.¹⁴² The Magistrates' Court cannot suspend a sentence of imprisonment for any offence committed on or after 1 September 2014. This change completed the phasing out of suspended sentences as a sentencing option for all future offending in Victoria.

22 December 2014: the guideline judgment

On 22 December 2014, the Court of Appeal handed down *Boulton v The Queen*,¹⁴³ a guideline judgment on how the CCO can serve the purposes of sentencing. The guideline judgment was intended to promote a consistent approach to the use of CCOs and to highlight their potential as an alternative to imprisonment.

138. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).

139. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 18.

140. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 16, inserting section 5(4C) into the *Sentencing Act 1991* (Vic).

141. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 17, inserting section 36(2) into the *Sentencing Act 1991* (Vic).

142. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).

143. *Boulton v The Queen* (2014) 46 VR 308.

The guideline judgment states that a court, after turning its mind to the objective nature and gravity of the offence and the moral culpability of the offender, should consider whether:

- the crime is so serious that nothing short of a sentence wholly comprised of an immediate term of imprisonment will satisfy the requirements of just punishment; or
- a CCO, either alone or in conjunction with a sentence of imprisonment, would satisfy the requirements of just punishment.¹⁴⁴

The court considered that, due to the punitive nature of the order, a CCO can provide general and specific deterrence.¹⁴⁵ The court also considered it 'neither necessary nor desirable to seek to define any outer limits on the suitability of a CCO as a sentencing option'.¹⁴⁶ The court advised that sentencing judges should proceed on the basis that there was 'now a very broad range of cases in which it will be appropriate to impose a suitably structured CCO, either alone or in conjunction with a shorter term of imprisonment, including cases where a sentence of imprisonment would formerly have been regarded as the only option'.¹⁴⁷

2015: requirement for the Sentencing Advisory Council to report on the number of people convicted of serious offences while subject to a CCO

2015 saw a change not to the operation of CCOs but to the monitoring of their use, with the Sentencing Advisory Council required to report annually on the number of offenders convicted of a serious offence committed while subject to a CCO.¹⁴⁸

2016: amendments restricting the use of CCOs, including decreasing the maximum period of imprisonment for combined orders

In 2016, changes were introduced that will limit the use of CCOs by mandating imprisonment for 'serious offences' and limiting the amount of imprisonment that can be combined with a CCO. The *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) commenced on 20 March 2017. Key changes in the Act include:

- restricting the maximum length of CCOs to five years (including cumulative CCOs);¹⁴⁹
- reducing the maximum term of imprisonment that can be combined with a CCO to one year;¹⁵⁰
- prohibiting the setting of a non-parole period for combined orders;¹⁵¹

144. *Boulton v The Queen* (2014) 46 VR 308, 375.

145. *Boulton v The Queen* (2014) 46 VR 308, 337.

146. *Boulton v The Queen* (2014) 46 VR 308, 377.

147. *Boulton v The Queen* (2014) 46 VR 308, 377–378.

148. *Corrections Legislation Amendment Act 2015* (Vic) s 43.

149. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) ss 10–11, amending *Sentencing Act 1991* (Vic) ss 38(1)(b), 41A).

150. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 12 (amending the *Sentencing Act 1991* (Vic) s 44).

151. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 6.

- prohibiting the use of CCOs for offences specified as 'Category 1' offences including murder, rape and offences involving cultivating or trafficking a large commercial quantity of a drug of dependence/narcotic plant.¹⁵² In effect, this change creates a regime of mandatory imprisonment for these offences;¹⁵³ and
- limiting the use of CCOs by creating a presumption in favour of a custodial sentence for offences specified as 'Category 2' offences including manslaughter and intentionally causing serious injury.¹⁵⁴ For these offences, a custodial order must be made unless the case falls under one of the specified exceptions (for example, if the offender was aged 18–20 years at the time of the offence and has a particular psychosocial immaturity or there are 'substantial and compelling circumstances against making a custodial order'¹⁵⁵).

152. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 4. The Category 1 offences are murder, causing serious injury intentionally in circumstances of gross violence, recklessly cause serious injury in circumstances of gross violence, rape, rape by compelling sexual penetration, incest (victim under 18), incest – de facto (victim under 18), sexual penetration with a child under 12; persistent sexual abuse of a child under 16; traffick a large commercial quantity of a drug of dependence; cultivate a large commercial quantity of a narcotic plant.

153. The sentencing guidelines provision (*Sentencing Act 1991* (Vic) s 5) is amended to state that, for Category 1 offences, a court must make an order under Division 2 of Part 3 (Custodial Orders) other than a combined order. Division 2 of Part 3 includes orders relating to aggregate imprisonment, indefinite sentences, drug treatment orders and youth justice centre orders.

154. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 4. The Category 2 offences are manslaughter, child homicide, intentionally cause serious injury, kidnapping, kidnapping (common law), arson causing death, traffick a commercial quantity of a drug of dependence, cultivate a commercial quantity of a narcotic plant, provide documents or information facilitating terrorist acts.

155. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 4.

Appendix 2: methodology for estimating contravention of a community correction order

Community correction orders included in the sample

The fundamental counting rule used in this report was the 'offender count', whereby each offender is counted once during the study year (1 July 2012 to 30 June 2013), regardless of how many times they received a CCO.

To be included in the sample, an offender must have received a CCO at least once during the study year, regardless of whether the CCO was imposed at first instance (when the original charges were first sentenced) or after a contravention of a previous sentencing order, including a previous CCO.

The only exception to inclusion of subsequent CCOs in the sample was for CCOs imposed at second or subsequent contravention hearings in the higher courts. At the time of publication, data on these CCOs was unavailable.

Contraventions of a community correction order included in the report

Contravention action is initiated when an offender has been non-compliant with at least one of the terms or conditions of a CCO. This report focuses only on contraventions that have been *proven* in court. For example, it does not include non-compliance that has not resulted in formal contravention proceedings being initiated, or contraventions that are dealt with administratively by Corrections Victoria via 'discretionary contravention' proceedings or cases in which an offender is charged with contravening a CCO but that charge has not been proven.

The Council defines contravention of a CCO as:

- a proven charge of contravening a CCO under section 83AD of the *Sentencing Act 1991* (Vic); or
- a proven charge of an offence that (a) is punishable by imprisonment and (b) is committed while the offender is serving a CCO (regardless of whether the offender is separately charged with contravening the CCO). Such an offence contravenes a core term of the CCO.

There are three common scenarios in cases in which new proven charges contravene a CCO:

- In some cases a charge of contravening the CCO is sentenced alongside the new charges that constituted the contravention.
- In some cases a charge of contravening the CCO is filed, heard and sentenced after the date on which the new charges (that constitutes the contravention) are sentenced.
- In some cases the offender is not sentenced for a separate charge of contravening a CCO, despite being found guilty of offences that are punishable by imprisonment during the operational period of the CCO.

Reasons why an offender may not be sentenced for the offence of contravening a CCO after being found guilty of new offences committed during the operational period of their CCO include:

- the CCO was inactive or suspended at the time that the new offence was committed, with the effect that the new offence did not contravene the CCO (because it was not operational at the time);
- the time limit for charging the offender with the offence of contravening a CCO had expired before the charging authority initiated proceedings;¹⁵⁶
- Corrections Victoria decided to not initiate contravention proceedings, which only applies to CCOs imposed in the Magistrates' Court under certain circumstances (this policy is currently under review);
- the Office of Public Prosecutions decided to not proceed with the prosecution of the charge of contravening a CCO where the contravention related to a CCO imposed in the higher courts;
- communication issues between agencies where multiple agencies were involved;
- the offender may have been charged with the offence of contravening a CCO but failed to appear at court or may have an outstanding warrant, resulting in a contravention hearing that was yet to be finalised (this would not appear in the data); and
- the contravention proceeding may not have been initiated or finalised due to administrative reasons or other issues.

Data issues

Recording the offence of contravening a community correction order

Two datasets were used for this report: a Magistrates' Court dataset made up of extracts from the Courtlink case management system and a higher courts dataset extracted from the higher courts sentencing database. In both datasets, where the offence of contravening a CCO is proven in court, the offence and associated information (such as the hearing date and outcomes) are contained in fields relating to a 'contravention hearing' and linked to the original CCO by a case identifier.

Where multiple contravention hearings occur for a case, the two datasets contain varying levels of information about each contravention hearing. In Courtlink (and therefore the Magistrates' Court dataset), there is no limit to the number of contravention hearings that can be associated with a case, and each contravention hearing includes information about the date and outcomes of the contravention hearing.

In the higher courts sentencing database (and therefore the higher courts dataset), information is recorded about only the first two contravention hearings that occur for a case. For the first contravention hearing, this information includes the date and outcomes of the contravention hearing. The only information recorded about the second contravention hearing is the date of the hearing. No information at all is recorded about the third and subsequent contravention hearings.

156. If the contravention consists of a new offence punishable by imprisonment during the operation of the CCO, the proceeding must be commenced within six months of the conviction or finding of guilt for the later offence, and no more than two years after the CCO ceases to be in force: *Sentencing Act 1991 (Vic)* s 83AH.

Measuring contravention where there is no charge of contravening a community correction order

A significant issue that affects measurement of the number of contraventions is that in some instances, proven offences that contravene a CCO do not result in a proven offence of contravening a CCO. The Council's preliminary analysis found that, of the CCOs that had a proven imprisonable offence committed during the operational period, approximately one-quarter did not have an accompanying offence of contravening a CCO. For example, one CCO had a proven offence of theft committed during the operational period of the CCO, but there was no proven offence of contravening a CCO recorded.

To overcome this issue with the recording of the offence of contravening a CCO, the Council adopted two criteria to establish whether a contravention had occurred:

- the presence of a proven offence of contravening a CCO; and/or
- the presence of a new proven offence sentenced within the operational period of the CCO (to 30 June 2016) that constitutes a contravention of the CCO, even if no proven offence of contravening a CCO is recorded.

The second criterion above raised a number of issues around determining whether a proven charge of an offence constitutes a contravention of a CCO where no offence of contravening a CCO is recorded. There are a number of reasons why such a contravention can be difficult to determine:

- other than the offence of contravening a CCO, proven offences that constitute a contravention of a CCO are recorded under a *different* case identifier from the case identifier of the CCO – the only link available is the name and date of birth of the offender; and
- once cases belonging to the same offender are linked together, a number of elements need to be determined, including:
 - the operational period of the CCO (that is, start and end dates);
 - the date on which the new proven offences were committed; and
 - whether the new proven offences were punishable by imprisonment.

The following discussion outlines how the Council determined these three elements of contraventions of a CCO.

Process for determining the operational period of a community correction order

This report focuses on the length of CCOs as imposed by the court. However, to ascertain whether new offences can be interpreted as contraventions of the CCO, the Council needed to calculate the actual operational period of CCOs in light of circumstances such as variation of the CCO length after imposition. For this analysis, the end date of CCOs sometimes needed to be adjusted, for example, if the CCO was cancelled before its original end date.

Determining the operational period of a CCO relies on information recorded by a court about when the CCO commences and when the CCO ends. Any changes to the operational period of a CCO that are not processed and recorded by the courts (such as those made by the Secretary of the Department of Justice and Regulation) are not captured. According to Corrections Victoria, in 2016 just over 1,000 CCOs were suspended, with an average suspension time of two months per CCO. Changes to the operational period of a CCO that are imposed by a court (for example, cancelling or varying a CCO at a contravention hearing) are addressed as follows.

Magistrates' Court

In the Courtlink extracts supplied to the Council, there was a specific field that contains data on the **CCO start date** ('DATEOFCOMMENCEMENT'). However, no equivalent field exists for the **CCO end date**.

The **CCO end date** was determined using the CCO start date plus the length of the CCO minus 1 day. For example, a 12-month CCO with a start date of 1 July 2012 will have an end date of 30 June 2013.

The CCO end date was only adjusted if the operational period of the CCO was changed as a result of a contravention hearing. This resultant **adjusted CCO end date** was determined according to the following rules.

Original community correction order cancelled

Table A1 shows the effect on the CCO end date of a number of scenarios in which the original CCO was cancelled.

Table A1: Effect on CCO end date according to contravention scenarios

Timing of contravention hearing	Orders made at contravention hearing	Effect on CCO end date
Contravention hearing <i>before</i> the CCO end date	<ul style="list-style-type: none"> Original CCO cancelled No further sentencing order made 	CCO end date adjusted to the date of the contravention hearing
Contravention hearing <i>before</i> the CCO end date Contravention charge is the only charge sentenced at the contravention hearing	<ul style="list-style-type: none"> Original CCO cancelled New sentencing order made that cannot be identified in the data (could be a CCO or another order) 	CCO end date adjusted to the date of the contravention hearing
Contravention hearing <i>before</i> the CCO end date	<ul style="list-style-type: none"> Original CCO cancelled New sentencing order made other than a CCO (e.g. a fine or imprisonment) 	CCO end date adjusted to the date of the contravention hearing
Contravention hearing <i>before</i> the CCO end date	<ul style="list-style-type: none"> Original CCO cancelled New CCO imposed 	CCO end date adjusted to the date of the contravention hearing The new CCO treated as a separate CCO, provided the start date is within the study year
Contravention hearing <i>after</i> the CCO end date	<ul style="list-style-type: none"> Original CCO cancelled New CCO imposed that starts <i>after</i> the end date of the original CCO 	CCO end date unchanged The new CCO treated as a separate CCO, provided the start date is within the study year

Original community correction order confirmed

If the original CCO was confirmed, the CCO end date was not adjusted.

Original community correction order varied

If the original CCO was varied (in which case the contravention hearing date will be before the end date of the CCO), the CCO end date was adjusted to the end date of the varied CCO.

Higher courts

The rules developed for the Magistrates' Court for calculating the operational period of the CCO were used for the higher courts, with one key exception. In the higher courts data, there was no field that contained data on the **CCO start date**. Therefore, under the following two scenarios, the date of sentence was used to represent the CCO start date:

- Where no imprisonment or partially suspended sentence was imposed in combination with the CCO, the sentence date was used as the CCO start date.
- Where imprisonment or a partially suspended sentence was imposed in combination with the CCO, the CCO start date was calculated by adding the imprisonment term (or part to serve for partially suspended sentences) to the date of sentence after deducting any time served on remand.

An issue with this methodology is that a CCO does not always commence on the date on which it is imposed. Under section 38 of the *Sentencing Act 1991* (Vic), the court may delay the commencement date by up to three months from the date on which the order is made. However, this information is not provided in the higher courts data. The implication of this data 'gap' is twofold. As an example, an offender is sentenced to a 12-month CCO that commences three months from the date on which it was imposed:

- firstly, if the offender commits an offence two months after the CCO is imposed (and therefore one month before it commences), this offence is treated as a contravention of the CCO, even though the offender is not subject to the CCO when the offence is committed. In this scenario, the contravention rate would be *over-reported*; and
- secondly, due to its delayed commencement, the CCO finishes 15 months from the date on which it is imposed, but it is treated as finishing 12 months after it is imposed, due to the missing data on commencement date. If the offender commits an offence 14 months after the CCO is imposed, this offence is not counted as an offence that contravenes the CCO, even though the offender is still serving the CCO when the offence is committed. In this scenario, the contravention rate would be *under-reported*.

Once the CCO start date was determined for each CCO, the **CCO end date** was determined using the same rules as proposed for the Magistrates' Court data.

In addition to the absence of a CCO start date, higher courts data also lacked information about outcomes of a second or subsequent contravention hearing. This has a number of implications:

1. the operational period of the CCO is not adjusted if a CCO is varied or cancelled at a second or subsequent contravention hearing; and
2. any CCO first imposed at a second or subsequent contravention hearing is not counted in the sample.

Process for determining offence dates

The date on which an offence was committed (the offence date) is critical for determining whether the offence occurred while an offender was serving a CCO. Not all offences have recorded offence dates in the available data. Approximately 9% of offences in the Magistrates' Court dataset lack offence dates while all offences in the higher courts dataset lack offence dates.

Offences with recorded offence dates

For offences that have recorded offence dates, if the date fell within the operational period of the CCO (defined above), the offence was deemed to have been committed during the operational period of a CCO (whether the offence was 'imprisonable' and therefore constituted a contravention is determined subsequently).

Offences without recorded offence dates

For higher courts offences that did not have a recorded offence date, offence dates were collected from sentencing remarks.

Due to the absence of sentencing remarks for Magistrates' Court cases, it was not feasible to collect offence dates for offences heard in the Magistrates' Court that did not already have recorded offence dates.

For offences heard in the Magistrates' Court (and in the higher courts, if there were any), if the offence did not have a recorded offence date, a set of rules were applied for determining whether the offence was likely to have occurred during the operational period of a CCO. An offence was only classified as having been committed during the operational period of a CCO if the following criteria were met:

- there was at least one sentenced charge of contravening a CCO;
- the offence was sentenced after the start date of the CCO; and
- the offence was sentenced before or on the date that the latest offence of contravening a CCO was sentenced.

If no offence date was available and no contravention offence was recorded, the new offence was deemed to have been committed outside the operational period of the CCO. This ensured that offences that took place before a CCO was imposed but were only heard and sentenced after the CCO had commenced were not included as contraventions (which could lead to over-reporting the contravention rate).

Offences 'punishable by imprisonment'

An imprisonable offence is an offence that, at the time the offence is committed, has a maximum penalty of a term of imprisonment. This was determined by checking the relevant legislation for over 1,000 different offences that appeared to have been committed by offenders who were subject to a CCO.

Based on the information available in the sentencing data, the vast majority of offences were easily categorised as 'imprisonable' or 'non-imprisonable'. However, it was not possible to categorise some offences. For instance, some offences are imprisonable only under certain circumstances, such as if the offence is the offender's second or subsequent offence of its type (see Table A2 for examples).

Table A2 presents how the Council classified offences for which there was insufficient information in the description.

Table A2: Classification of offences as imprisonable or non-imprisonable

Offence	Issue	Classification
Offences involving alcohol or other drugs, section 49 of the <i>Road Safety Act 1986</i> (Vic) (e.g. drive under the influence, refuse to undergo breath test)	Only imprisonable if offence is second or subsequent, otherwise non-imprisonable	Non-imprisonable
Possess cannabis, section 73(1) of the <i>Drugs, Poisons and Controlled Substances Act 1981</i> (Vic)	Imprisonable unless the amount is a small quantity and the offence is unrelated to trafficking	Non-imprisonable
Possess a drug of dependence (not named), section 73(1) of the <i>Drugs, Poisons and Controlled Substances Act 1981</i> (Vic)	Imprisonable unless the drug is cannabis, the amount is a small quantity and the offence is unrelated to trafficking, otherwise non-imprisonable	Imprisonable
Conspiracy to defraud, section 321(1) of the <i>Crimes Act 1958</i> (Vic)	Various rules apply to maximum penalty for conspiracy offences	Imprisonable
Aid or abet public transport graffiti offence, section 223B.5 of the <i>Transport (Anti-Graffiti) Act 1990</i> (Vic)	Only imprisonable if assisting offence under s 223B.1 of Act, otherwise non-imprisonable	Non-imprisonable
Fail to furnish approved form, section 8C(1)(a) of the <i>Tax Administration Act 1953</i> (Cth)	Only imprisonable if person has been convicted of 2 or more relevant offences	Non-imprisonable

Court outcomes

Isolating individual outcomes for offenders who contravene a CCO – such as their sentence for the charge of contravening a CCO or their sentence for the new offences – provides part of, but not the whole of, the picture of the consequences they faced for contravening their CCO. For example, a finding that a charge of contravening a CCO was proven and dismissed has little meaning without understanding that the offender's original CCO was cancelled as a result of the contravention and the offender was resentenced to a term of imprisonment. Therefore, before separately examining individual factors, the Council looked at common combinations of these factors.

The following three tables provide an overview of common consequences faced by offenders in the study group who contravened their CCO, and how these consequences interrelate. Table A3 shows the outcomes for offenders who contravened their CCO by non-compliance. Tables A4 and A5 show outcomes for offenders who contravened their CCO by further offending. Both tables show the orders made as a result of the contravention, in relation to the original CCO and the original offences. Table A4 also shows the sentence imposed for the contravention charge, while Table A5 also shows the most severe sentence imposed on the new offences that contravened the CCO.

Outcomes for contravention by non-compliance

Table A3: Percentage of offenders who had a proven charge of contravening a CCO and no proven charge of further offending, sentence for contravention charge and order made in relation to original CCO, Magistrates' Court (n = 1,122)

Order on original CCO	Sentence for charge of contravening a CCO							
	Proven and dismissed	Convicted and discharged	Adjourned undertaking	Fine	Community correction order	Wholly suspended sentence	Imprisonment	
Confirmed	15.6	-	0.2	5.2	-	0.1	0.1	0.1
Varied	11.9	-	-	2.0	-	-	-	0.3
Cancelled – no further order	6.7	-	-	1.5	0.2	-	-	-
Cancelled and resentenced								
Convicted and discharged	0.4	0.1	-	-	-	-	-	-
Adjourned undertaking	2.2	-	0.2	0.1	-	-	-	-
Fine	13.8	-	-	3.4	-	0.1	-	-
Community correction order	8.5	-	-	0.6	1.5	0.1	-	0.1
Wholly suspended sentence	13.0	0.1	0.2	3.7	-	0.7	-	-
Partially suspended sentence	0.2	-	-	0.1	-	-	-	-
Youth justice centre order	0.2	-	-	-	-	-	-	-
Imprisonment	6.9	-	-	-	-	-	-	0.2

Tables A3, A4 and A5 are colour-coded to show the prevalence of each offence type committed by offenders while serving a CCO (rows) according to the principal offence type for which offenders received their CCO (columns). Prevalence is indicated by the number of offenders who committed a given offence type while serving a CCO expressed as a percentage of all offenders who received a CCO for a given principal offence type. The darkest shade shows the most prevalent combination, with each successively lighter shade indicating less prevalent combinations.

Outcomes for contravention by further offending

Table A4: Percentage of offenders who had a proven charge of contravening a CCO and a proven charge of further offending, sentence for contravention charge and order made in relation to original CCO, Magistrates' Court (n = 2,189)

	Sentence for charge of contravening a CCO						
	Proven and dismissed	Convicted and discharged	Adjourned undertaking	Fine	Community correction order	Wholly suspended sentence	Imprisonment
Confirmed	20.0	< 0.1	-	4.1	-	0.2	0.1
Varied	7.7	< 0.1	-	1.0	< 0.1	-	0.1
Cancelled – no further order	8.4	-	-	1.2	-	< 0.1	0.5
Cancelled and resentenced							
Proven and dismissed	0.1	-	-	-	-	-	-
Convicted and discharged	1.2	-	-	-	-	-	< 0.1
Adjourned undertaking	0.8	-	-	< 0.1	-	-	-
Fine	6.2	-	< 0.1	1.6	-	0.1	0.1
Community correction order	5.8	-	-	0.7	0.5	-	-
Wholly suspended sentence	12.2	< 0.1	-	1.8	-	0.7	-
Partially suspended sentence	0.6	-	-	< 0.1	-	-	-
Youth justice centre order	0.7	-	-	-	-	-	-
Imprisonment	19.9	0.1	-	0.8	< 0.1	-	1.9

Table A5: Percentage of offenders who had a proven charge of contravening a CCO and a proven charge of further offending, sentence for new offence and order made in relation to original CCO, Magistrates' Court (n = 2,189)

Overall outcome\order on original CCO		Sentence for charge of further offending									
	Proven and dismissed	Convicted and discharged	Adjourned and undertaking	Fine	Community correction order	Wholly suspended sentence	Partially suspended sentence	Drug treatment order	Youth justice centre order	Imprisonment	
Confirmed	-	< 0.1	1.3	5.5	8.1	5.4	0.4	0.2	< 0.1	3.4	
Varied	-	< 0.1	0.5	2.3	2.7	1.8	0.1	-	-	1.6	
Cancelled – no further order	-	< 0.1	0.2	1.4	2.8	1.4	0.7	< 0.1	< 0.1	3.5	
Cancelled with further order											
Proven and dismissed	-	-	-	< 0.1	-	-	-	-	-	0.1	
Convicted and discharged	-	0.1	< 0.1	0.2	0.2	0.1	0.1	< 0.1	-	0.4	
Adjourned undertaking	-	-	0.3	0.2	0.2	< 0.1	-	-	-	0.1	
Fine	-	-	0.1	3.1	1.0	2.0	0.3	-	-	1.6	
Community correction order	< 0.1	-	0.3	1.4	2.3	1.0	0.3	-	-	1.7	
Wholly suspended sentence	0.1	0.2	0.3	2.6	1.7	5.1	0.9	< 0.1	< 0.1	3.8	
Partially suspended sentence	-	-	-	0.1	-	0.2	0.1	-	-	0.3	
Youth justice centre order	-	-	-	< 0.1	-	< 0.1	-	-	0.6	< 0.1	
Imprisonment	-	-	0.1	0.5	0.5	0.9	1.0	-	-	19.8	

Appendix 3: regression analysis

A logistic regression analysis was employed in order to isolate the relationship between various factors associated with the offender and the CCO and contravention of a CCO. Logistic regression allows the extent to which factors are associated with a binary outcome (such as contravention or no contravention) to be measured when the association between other factors in the model and the outcome are accounted for.

Two groups of factors were assessed. Factors relating to the offender comprise age at sentence, gender, prior convictions and the type of principal offence for which the offender received their CCO. Factors relating to the CCO comprise the CCO length, CCO conditions, court in which the CCO was imposed and CCO type.

Two logistic regression models were constructed to examine the likelihood of (a) contravention by further offending and (b) contravention by non-compliance. The two models were created separately for CCOs imposed in the Magistrates' Court and CCOs imposed in the higher courts.

Results

Table A6 shows the results for the Magistrates' Court. Factors associated with any contravention include age, prior convictions, offence type, CCO type, CCO length and CCO conditions.

For the model for contraventions by non-compliance, age and gender were both associated with contraventions; however, prior convictions were not. While length and CCO type were not related to contraventions by non-compliance, CCO conditions were. Compared with CCOs with no community work component, contravention rates were higher for CCOs with community work only and CCOs with community work and one or more other conditions (58.8% and 25.1% respectively).

Table A6: Standardised regression coefficient (and 95% confidence interval) for each factor in regression models predicting (a) contravention by further offending and (b) contravention by non-compliance for CCOs imposed in the Magistrates' Court

Independent variable	Contravention by further offending vs no contravention	Contravention by non-compliance vs no contravention
Age (18 to 24/25 and over)	1.893 (1.677 to 2.137)	1.689 (1.453 to 1.964)
Gender (female/male)	1.015 (0.878 to 1.174)	1.237 (1.037 to 1.475)
Prior convictions (yes/no)	2.986 (2.629 to 3.392)	1.351 (1.164 to 1.568)
CCO type (combined order/stand-alone CCO)	2.174 (1.777 to 2.661)	1.338 (0.982 to 1.823)
CCO length (12 months or over/under 12 months)	1.508 (1.307 to 1.741)	1.434 (0.967 to 2.128)
Conditions (community work only)		
No community work but at least one other condition	1.013 (0.858 to 1.197)	0.622 (0.506 to 0.765)
Community work plus one or more other conditions	1.309 (1.127 to 1.152)	0.907 (0.760 to 1.083)
Offence type (offences against the person)		
Breach of an intervention order	1.451 (1.033 to 2.038)	1.024 (0.620 to 1.693)
Breach of bail	1.355 (0.799 to 2.298)	2.568 (1.468 to 4.490)
Driving offences	0.765 (0.654 to 0.895)	0.790 (0.644 to 0.970)
Drug offences	1.129 (0.934 to 1.365)	0.953 (0.738 to 1.230)
Justice procedures offences	0.727 (0.429 to 1.232)	0.656 (0.317 to 1.356)
Weapons offences	1.504 (1.194 to 1.894)	1.350 (1.001 to 1.822)
Property damage	0.862 (0.625 to 1.188)	1.076 (0.733 to 1.580)
Sexual offences	0.633 (0.416 to 0.963)	0.262 (0.119 to 0.578)
Theft/dishonesty offences	1.427 (1.230 to 1.656)	1.380 (1.146 to 1.662)

Table A7 shows the results of the two regression models for the higher courts. After controlling for other factors, an increased likelihood of contravention by further offending was associated with (in order of significance): prior convictions, the age of the offender, offence type, CCO length and CCO conditions. Gender of the offender was not associated with contravention by further offending. For contravention by non-compliance, only two factors were found to be statistically significant: the age of the offender and CCO conditions. Other factors relating to the offender, including gender and prior convictions, were not related to contraventions by non-compliance; neither were factors relating to the offence type.

Table A7: Standardised regression coefficient (and 95% confidence interval) for each factor in regression models predicting (a) contravention by further offending and (b) contravention by non-compliance for CCOs imposed in the higher courts

Independent variable	Contravention by further offending vs no contravention	Contravention by non-compliance vs no contravention
Age (18 to 24/25 and over)	1.932 (1.044 to 3.578)	2.029 (0.937 to 4.392)
Gender (female/male)	0.601 (0.236 to 1.530)	0.671 (0.244 to 1.849)
Prior convictions (yes/no)	4.981 (2.595 to 9.560)	1.210 (0.565 to 2.592)
CCO type (combined order/stand-alone CCO)	1.058 (0.460 to 2.430)	0.747 (0.227 to 2.461)
CCO length (2 years or over/under 2 years)	1.737 (0.929 to 3.247)	1.479 (0.682 to 3.209)
Conditions (community work only)		
No community work but at least one other condition	6.345 (1.230 to 32.732)	9.404 (1.046 to 84.560)
Community work plus one or more other conditions	4.822 (1.026 to 22.652)	0.907 (0.760 to 1.083)
Offence type (offences against the person)		
Sexual offences	2.519 (1.212 to 5.234)	0.208 (0.045 to 0.968)
Drug offences	0.182 (0.021 to 1.563)	0.661 (0.135 to 3.236)
Theft/dishonesty offences	1.081 (0.237 to 4.919)	1.309 (0.305 to 5.622)
Other	1.499 (0.422 to 5.329)	0.625 (0.071 to 5.500)

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