

Serious Offending by People Serving a Community Correction Order: 2019–20

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1. The Council's reporting requirements and the focus of this report

This report addresses a requirement in the *Corrections Act 1986* (Vic) that:

[f]or each financial year commencing on or after 1 July 2016, the Sentencing Advisory Council must report for that year the number of persons convicted during that year of a serious offence committed while subject to a community correction order.¹

This report identifies the number of people sentenced in 2019–20 for a serious offence committed while the person was serving a community correction order (CCO). It updates *Serious Offending by People Serving a Community Correction Order: 2018–19*.

This is the Council's fourth report on serious offending by people serving a CCO.² The Council has also published reports on how courts use CCOs.³

This report examines some important issues relating to people sentenced for a serious offence while serving a CCO, including:

- the prevalence of different types of serious offences committed by people while serving a CCO;
- the total number of people sentenced in 2019–20 for committing a serious offence; and
- the time between when people commenced a CCO and when they committed a serious offence.

2. Community correction orders in Victoria

The CCO is a non-custodial sentence available in the Victorian higher courts (the County and Supreme Courts) and Magistrates' Court. It is not available in the Children's Court.

The purpose of the CCO is to 'provide a community-based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender'.⁴

A court may only impose a CCO if:

- the offender has been convicted or found guilty of an offence punishable by more than five penalty units; and
- the court has received a pre-sentence report (if required) and has had regard to any recommendations, information or matters identified in the pre-sentence report; and
- the offender consents to the order.⁵

Under the *Sentencing Act 1991* (Vic), the CCO is considered more severe than an adjourned undertaking or a fine but less severe than a custodial sentence. In practice, the severity of a CCO varies according to the conditions and length of the specific CCO imposed.

1. *Corrections Act 1986* (Vic) s 104AA(2).

2. The three previous reports are Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2016–17* (2018); Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2017–18* (2019); Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2018–19* (2020).

3. Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (2014); Sentencing Advisory Council, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions* (2014); Sentencing Advisory Council, *Community Correction Orders: Second Monitoring Report (Pre-Guideline Judgment)* (2015); Sentencing Advisory Council, *Parole and Sentencing: Research Report* (2016); Sentencing Advisory Council, *Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)* (2016).

4. *Sentencing Act 1991* (Vic) s 36(1).

5. *Sentencing Act 1991* (Vic) ss 37(a)–(c).

Changes to the community correction order

The CCO became available to the courts on 16 January 2012.⁶ Since its introduction, the CCO has been affected by a number of amendments to the *Sentencing Act 1991* (Vic):

- The courts were encouraged in September 2014 to use a CCO in place of a suspended sentence.⁷
- Initially, the maximum length of a CCO that could be imposed in the higher courts was equal to the maximum term of imprisonment available for the offence,⁸ but in March 2017 the maximum length of a CCO was set at five years in respect of one, or more than one, offence.⁹
- Initially, the maximum term of imprisonment that could be combined with a CCO (a ‘combined order’) was set at three months,¹⁰ but it was increased to two years in September 2014¹¹ and reduced to one year in March 2017.¹²
- The courts’ use of CCOs was limited in March 2017 for two classes of serious offences, described as Category 1 offences and Category 2 offences.¹³ The courts must impose a custodial order when sentencing Category 1 offences (for example, murder, rape). The courts are prohibited from imposing a combined order for Category 1 offences. Similarly, the courts must impose a custodial order for Category 2 offences (for example, manslaughter, culpable driving causing death) unless there are special reasons.¹⁴ If there are special reasons, a CCO or combined order remain available as sentencing options.

In addition to these legislative changes, the Victorian Court of Appeal’s first guideline judgment offered guidance to the courts on the purposes, strengths and limitations of the CCO.¹⁵

Conditions of a community correction order

All CCOs have a set of *mandatory (core) conditions*, including that the offender does not reoffend.

The court must attach at least one *discretionary condition* to the CCO for all or part of the duration of the order.

Mandatory conditions (attached to all CCOs) include requiring the offender to:

- not reoffend
- not leave Victoria without permission
- report to a community corrections centre
- comply with written directions from the Secretary to the Department of Justice and Community Safety

6. At the same time, a number of other orders were abolished, including the community-based order, the intensive correction order, the combined custody and treatment order and the home detention order.

7. *Sentencing Act 1991* (Vic) s 36(2), as inserted by *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 17.

8. *Sentencing Act 1991* (Vic) s 38(1)(b)(i), as amended by *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) s 21.

9. *Sentencing Act 1991* (Vic) s 38(1)(b), as amended by *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 10.

10. *Sentencing Act 1991* (Vic) s 44(1), as amended by *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic) s 21.

11. *Sentencing Act 1991* (Vic) s 44(1), as amended by *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 18(1).

12. *Sentencing Act 1991* (Vic) s 44(1), as amended by *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 12(1).

13. *Sentencing Act 1991* (Vic) ss 5(2G), (2H), as inserted by *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 4(1).

14. *Sentencing Act 1991* (Vic) s 5(2H), as inserted by *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 4(1).

15. *Boulton v The Queen* [2014] VSCA 342 (22 December 2014).

Length of a community correction order

The maximum length of a CCO imposed on a single offence is five years in the higher courts¹⁶ and two years in the Magistrates' Court.¹⁷

A CCO may be imposed on multiple offences, provided the offences 'are founded on the same facts or form or are part of a series of offences of the same or a similar character'.¹⁸

Where a CCO is imposed on multiple offences in the higher courts, the maximum length of the CCO remains five years. In the Magistrates' Court, the maximum length is four years in relation to two offences and five years in relation to three or more offences.¹⁹

Sentences in addition to a community correction order

A court may impose a fine²⁰ or a sentence of imprisonment in addition to a CCO.²¹

If a court imposes a sentence of imprisonment in addition to a CCO, the term of imprisonment must not exceed one year.²²

Contravention of a community correction order

Contravention (breach) of a CCO without a reasonable excuse is a criminal offence with a maximum penalty of three months' imprisonment.²³

If a person contravenes their CCO, either through committing a new offence or through failing to comply with another condition of the order, they face a number of potential consequences.

If the person is found guilty of the offence of contravention of a CCO, the court must decide how to deal with the original CCO. If the contravention is due to new offending, the offender is also sentenced for the new offence or offences.

Discretionary conditions include requiring the offender to:

- undertake medical treatment or other rehabilitation
- not enter licensed premises (such as a hotel, club or restaurant)
- complete unpaid community work up to a total of 600 hours
- be supervised, monitored and managed by a corrections worker
- abstain from contact or association with particular people (for example, co-offenders)
- live (or not live) at a specified address
- stay away from nominated places or areas
- abide by a curfew, remaining at a specified place for between two and 12 hours each day
- undergo electronic monitoring
- be monitored and reviewed by the court to ensure compliance with the order
- pay a bond – a sum of money that may be given up wholly or partly if the offender fails to comply with any conditions imposed

16. *Sentencing Act 1991* (Vic) s 38(1)(b).

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

18. *Sentencing Act 1991* (Vic) s 40(1).

19. *Sentencing Act 1991* (Vic) ss 38(1)(a)(ii)–(iii).

20. *Sentencing Act 1991* (Vic) s 43.

21. *Sentencing Act 1991* (Vic) s 44.

22. *Sentencing Act 1991* (Vic) s 44(1). This restriction does not apply to arson offences listed in *Sentencing Act 1991* (Vic) sch 1 cl 5 (*Sentencing Act 1991* (Vic) s 44(1A)).

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

3. Serious offences

This report identifies the number of serious offences committed by people serving a CCO. Serious offences²⁴ include:

- serious violent offences²⁵ such as armed robbery, aggravated burglary, arson causing death and false imprisonment; conspiracies, attempts and incitements of these offences; and similar offences committed in Victoria or elsewhere that contain elements of these offences; and
- sexual offences²⁶ such as rape, sexual assault and sexual penetration of a child aged under 16.

The definition of *serious offence* changed in 2019–20 with the inclusion of:

- extortion with threat to kill (*Crimes Act 1958* (Vic) s 27) in the list of serious violent offences²⁷; and
- directing sexual activity (*Crimes Act 1958* (Vic) s 48) in the list of sexual offences.²⁸

Specific information is required in the source data to determine whether an offence is serious. However, this information was not available for a small number of offence types. These include burglary, which, if sexually motivated, falls within the definition of a serious offence, and offences relating to the commission of an indictable offence where the indictable offence is not specified. In these instances, the offence has been classified as not serious and therefore has been excluded from the analysis.

4. Meaning of the term convicted

The *Corrections Act 1986* (Vic) uses the term *convicted* in relation to the serious offences committed by people on CCOs that the Council must report on. Two meanings of the term are relevant. One is a finding of guilt made by a court against a person; the other is a recording made by a court following a finding of guilt.²⁹

In this report, *convicted* is defined as a finding of guilt made by a court. This definition excludes findings at special hearings under the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic), such as not guilty due to mental impairment or a qualified finding of guilt.³⁰ The report also excludes offences that are dealt with in the Magistrates' Court using a court-ordered diversion – there is no formal finding of guilt even though the accused must take responsibility for the offence before a diversion can be granted.³¹

The date of conviction is required for a count of convicted persons within a given period. However, the date of conviction was not available in the data used for this report.

The closest available date to the date of conviction is the date of sentence. Therefore, the date of sentence is used in this report as a proxy for the date of conviction.

24. *Corrections Act 1986* (Vic) s 104(AA)(3). The Council has published a comprehensive list of serious offences for 2019–20 on its website: Sentencing Advisory Council, *Serious Offences Current between 16 January 2012 and 30 June 2020* (2021).

25. *Corrections Act 1986* (Vic) s 3(1); *Sentencing Act 1991* (Vic) sch 1 cl 2.

26. *Corrections Act 1986* (Vic) s 3(1); *Serious Offenders Act 2018* (Vic) sch 1.

27. *Corrections Act 1986* (Vic) s 3(1), as amended by *Justice Legislation Amendment (Serious Offenders and Other Matters) Act 2019* (Vic) s 19(3).

28. *Serious Offenders Act 2018* (Vic) sch 1, as amended by *Justice Legislation Amendment (Serious Offenders and Other Matters) Act 2019* (Vic) s 17(1).

29. *Sentencing Act 1991* (Vic) s 8.

30. *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic) ss 17–18.

31. *Criminal Procedure Act 2009* (Vic) s 59.

5. Reference period

The reference period for this report is 1 July 2019 to 30 June 2020. This period covers the date on which a sentence was *imposed* rather than the date on which an offence was *committed*. The date on which an offence was committed is irrelevant to the Council's reporting obligation, which only requires that the relevant offence was committed by a person who:

- was serving a CCO at the time; and
- was convicted (sentenced) in the reference period.

Some serious offences sentenced in the reference period may have been committed prior to the reference period. There is always some delay between the commission of an offence and the sentence for that offence. For example, a person who committed a serious offence on 30 May 2018 while serving a CCO may not have been sentenced for the offence until 1 July 2019. Court operations during the 2019–20 financial year were also significantly affected by the COVID-19 pandemic.³² Some criminal matters were delayed while courts adjusted their operating capacity to ensure hearings were conducted safely for all parties involved. The findings of the analysis for the 2019–20 financial year should be seen within this broader context.

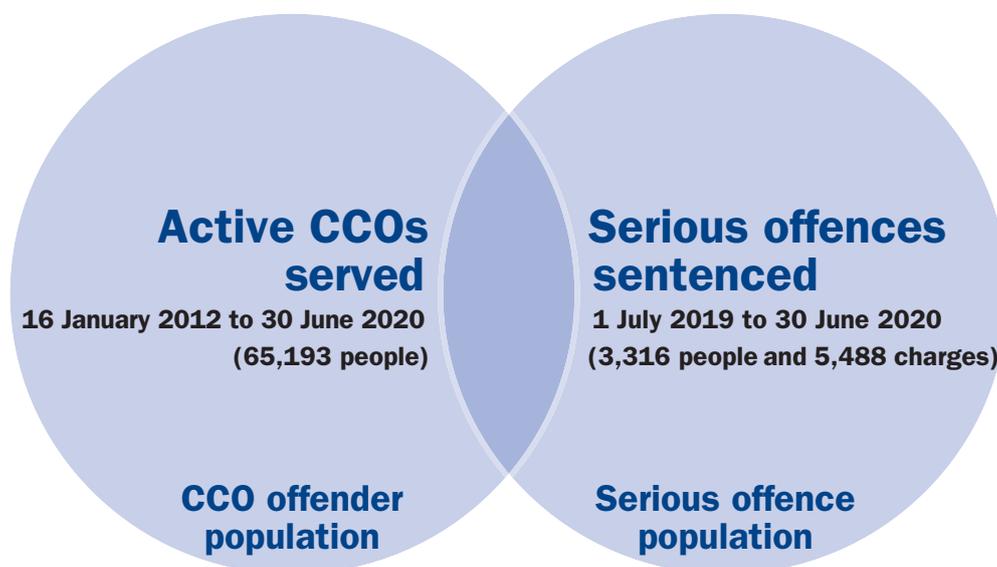
6. Methodology

The analysis in this report measures the overlap between two populations (see Figure 1):

- the population of offenders serving a CCO (the *CCO offender population*); and
- the population of offenders who committed a serious offence (the *serious offence population*).

The CCO offender population comprises all people who served a CCO from the introduction of the order on 16 January 2012 to the end of the reference period on 30 June 2020. If the one person received two or more CCOs during that time, they would be counted once within the CCO offender population.

Figure 1: Populations used to identify people sentenced in 2019–20 for a serious offence committed while serving a CCO



32. Court Services Victoria, *Annual Report 2019–20: Delivering Excellence in Court and Tribunal Administration* (2021) 32.

The number of people in the CCO offender population is 65,193. This number includes people who may have received two or more CCOs.

The serious offence population comprises all proven charges of a serious offence committed by any person and sentenced in the Magistrates' Court or in the higher courts from 1 July 2019 to 30 June 2020. The number of people in the serious offence population is 3,316, and they committed 5,488 proven charges of a serious offence.

The number of people sentenced for serious offending (and the number of proven charges) in 2019–20 was the lowest since 2016–17, when the Council began reporting annually on serious offending committed by people serving a CCO. The number of people in the serious offence population (and the number of proven charges) was highest in 2017–18 (4,032 people and 6,570 charges).³³ In comparison to the figures in 2018–19 (3,875 people and 6,218 proven charges),³⁴ the figures in 2019–20 represent a 14.4% decrease in people sentenced for serious offences and an 11.7% decrease in proven charges of serious offending.

Data limitations

There are a number of limitations in the data used for this analysis.

Exclusions

Due to data limitations, serious offences have been excluded if the offence was:

- committed outside Victoria (it is possible for a person serving a CCO to depart Victoria and commit a serious offence in another jurisdiction);
- committed while the person was serving a CCO but no link was established between the serious offence population and the CCO offender population; and/or
- insufficiently described in the source data (for example, burglary is not classed as a serious offence even though it falls within the definition of a serious offence in some circumstances).

Each of these exclusions may result in an undercount of the number of people who committed a serious offence while serving a CCO.

Inclusions

Due to data limitations, serious offences have been included if:

- the convictions for the offences were subsequently quashed by an appellate court;
- offenders had proceedings initiated against them for contravention of a CCO and were awaiting a court decision, even though they may not necessarily have been under active supervision; and/or
- the relevant CCO was cancelled before the serious offence was committed, but the cancellation date was not available in the source data at the time of writing.

Each of these inclusions may result in an overcount of the number of people who committed a serious offence while serving a CCO.

33. Sentencing Advisory Council (2019), above n 2, 5–6.

34. Sentencing Advisory Council (2020), above n 2, 6–7.

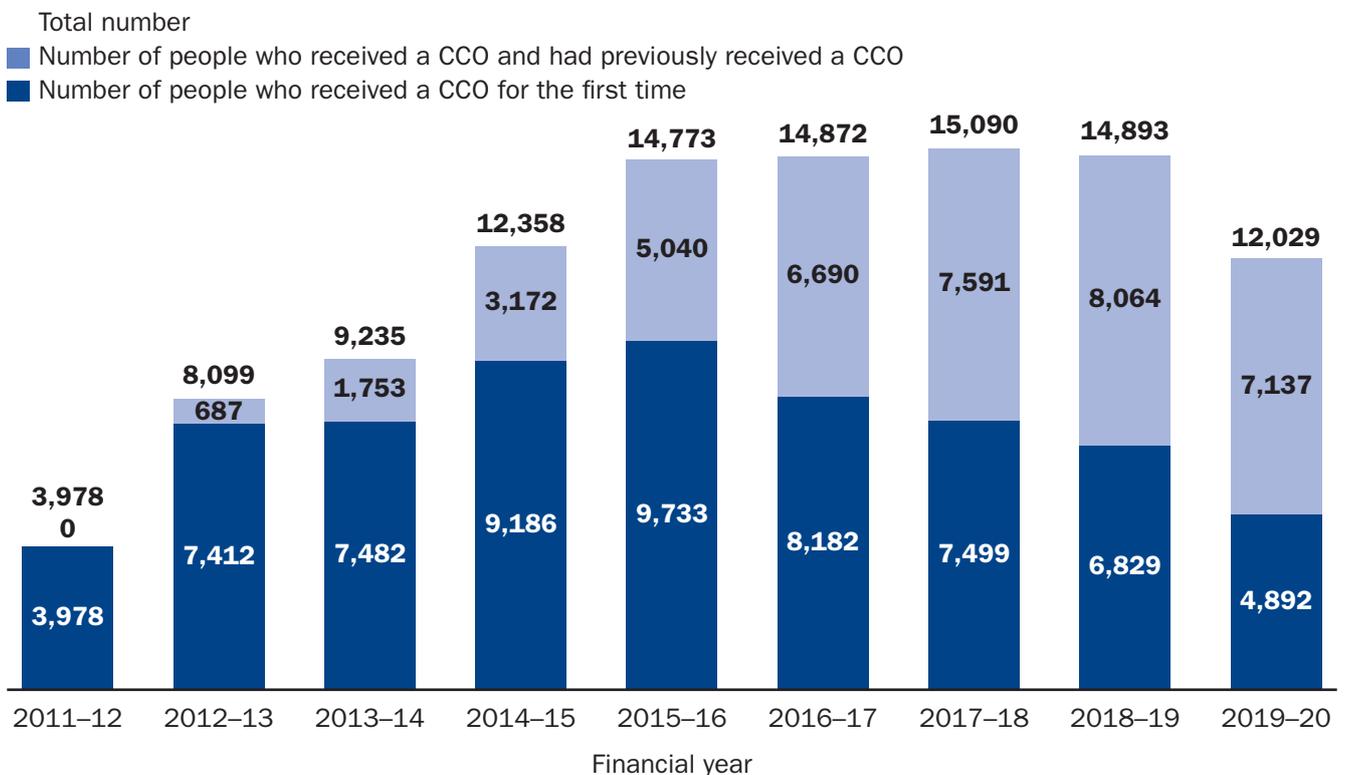
7. All people serving a community correction order

Figure 2 shows the number of people who received a CCO each financial year from 2011–12 to 2019–20, based on the date of sentence. It also shows whether the person had previously received a CCO. A total of 65,193 people received a CCO for the first time from 16 January 2012 to 30 June 2020 (see the lower part of each bar in Figure 2). A subset of these people (40,134 of 65,193 people or 62%) received a second or subsequent CCO during a different financial year between 16 January 2012 and 30 June 2020 (see the upper part of each bar in Figure 2). Some of these 40,134 people were counted more than once as they may have received a new CCO over multiple years. The number of *unique individuals* who received a CCO over multiple years was 25,840 people or 40% of the overall number of 65,193 people.

The total number of people who received a CCO plateaued in the four years to 30 June 2019 (around 15,000 people each year) before decreasing markedly in 2019–20 to just over 12,000 people. As noted previously, this decrease is most likely due to a reduction in the number of criminal matters heard in the courts due to COVID-19 restrictions.

Figure 2 also shows a steady increase in the proportion of people who received a second or subsequent CCO each year since the order was introduced on 16 January 2012. In 2012–13, 8% of people were on their second or subsequent CCO (687 of 8,099 people). The percentage of people receiving a second or subsequent CCO continued to increase each year, such that by 2019–20, 59% of people who received a CCO in that year were on their second or subsequent CCO. The increase in the percentage of people receiving a second or subsequent CCO is not entirely unexpected. This is because people have a greater chance of accumulating more CCOs the longer this sentencing option is available to the courts.

Figure 2: Number of people who received a CCO from 16 January 2012 to 30 June 2020, by financial year and whether the person had previously received a CCO³⁵

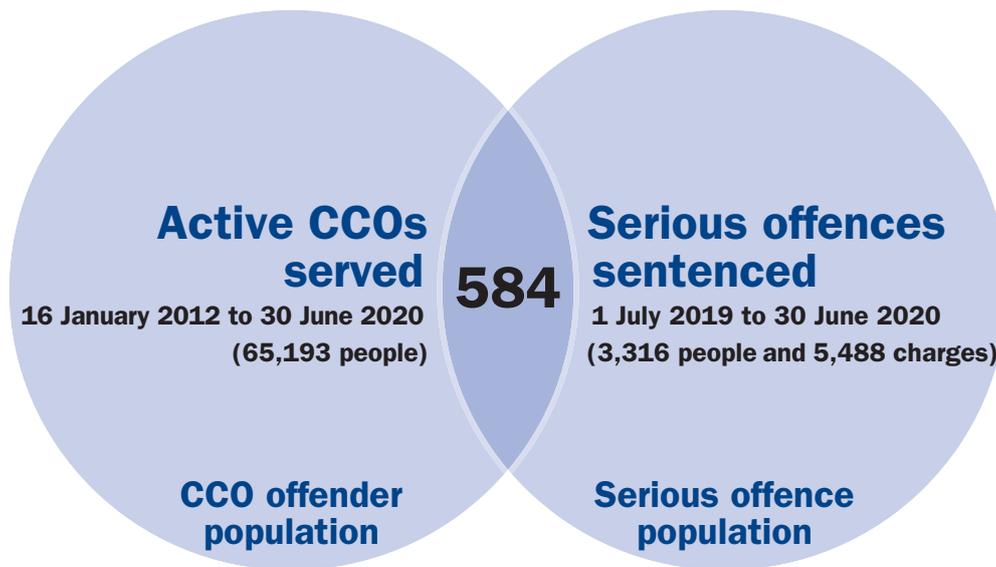


35. The numbers in Figure 2 are subject to change. Some orders may not have been entered into the case management system at the time that the data was extracted and/or additional data quality checks may have improved the count of unique individuals. The number in 2011–12 is substantially lower than in other years because the CCO was only introduced part way through that financial year on 16 January 2012.

8. People sentenced for a serious offence committed while serving a community correction order

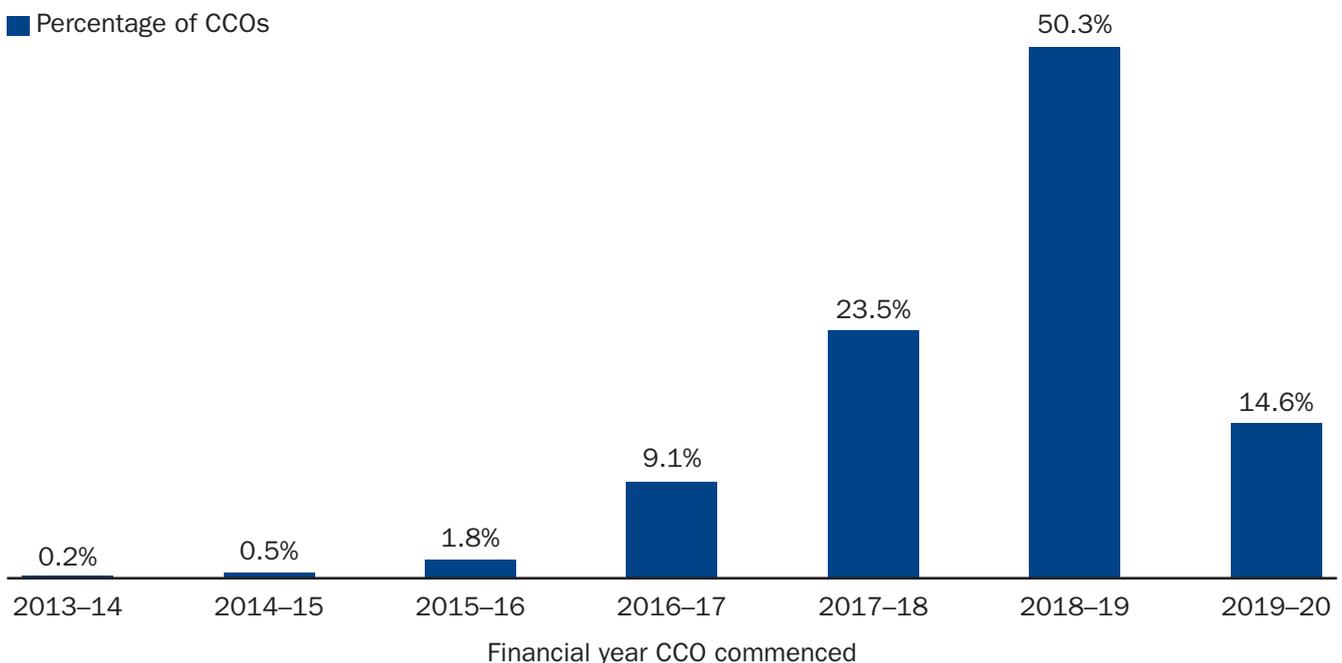
Of the 65,193 people who received a CCO from 16 January 2012 to 30 June 2020, 584 were sentenced in 2019–20 for a serious offence committed while the person was serving a CCO (see Figure 3).

Figure 3: Populations used to identify the number of people sentenced in 2019–20 for a serious offence committed while serving a CCO



CCO commencement dates varied widely for people sentenced in 2019–20 for a serious offence committed while serving a CCO, ranging from 23 September 2013 to 9 May 2020. However, as Figure 4 shows, the vast majority of CCOs (88.4%) commenced from 2017–18 to 2019–20.

Figure 4: Percentage of total CCOs contravened by people sentenced in 2019–20 for committing a serious offence, by financial year in which CCO commenced



The 584 people sentenced in 2019–20 for a serious offence committed while serving a CCO represent a 10.3% decrease on the 651 people sentenced in 2018–19.³⁶ The number of people sentenced in 2019–20 was the second lowest number since 2016–17 (see Figure 5). Again, this decrease was most likely due to COVID-19 restrictions and the limits these placed on court operations.

Rate of contravention of community correction orders by serious offending

It is not possible to calculate an accurate rate of CCO contravention by serious offending using the reference period that the Council is required to report on. This is because the reference period is:

- based on the date of sentence for a serious offence, which results in non-standardised follow-up periods; and
- restricted to a single financial year, meaning serious offending sentenced outside the reference period is excluded.

This report adopts the methodology from the previous three reports in this series to estimate a proxy for the rate of CCO contravention by serious offending: it only considers CCOs imposed in the three years to the end of the reference period (i.e. 1 July 2017 to 30 June 2020). A total of 31,528 people received a CCO over the three-year period; of these, 527 were sentenced in 2019–20 for a serious offence committed while serving a CCO.

The estimated rate of CCO contravention by serious offending for 2019–20 is 1.7%, which is the same percentage as in last year's report (see Figure 6).³⁷ The proportion of people who committed a serious offence while serving a CCO remained stable each year, despite a fall in the number of people committing a serious offence in 2019–20 (see Figure 5). One reason for this stability may be that the fall in the number of people committing a serious offence coincides with a fall in the number of people being placed on a CCO (see Figure 2). Both have been affected by the COVID-19 restrictions that impacted court operations in 2019–20.

It is important to note that these percentages most likely underestimate the true rates of CCO contravention by serious offending. Some people who committed a serious offence while serving a CCO imposed in the three-year period may have been sentenced either before or after 2019–20.

Figure 5: Number of people sentenced for a serious offence committed while serving a CCO, by financial year

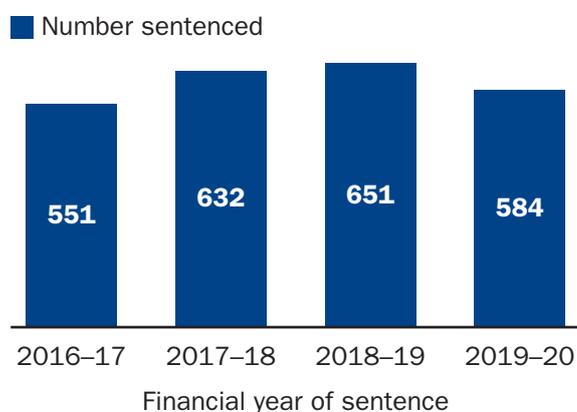
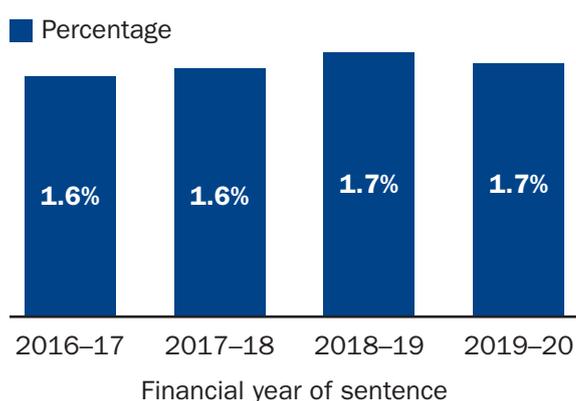


Figure 6: Estimated rate of CCO contravention by serious offending, by financial year of sentence for serious offence



36. Sentencing Advisory Council (2020), above n 2, 10.

37. Ibid.

9. Types of serious offences committed while serving a community correction order

This analysis looks at the types of serious offences committed by people serving a CCO. It considers all *sentenced charges* of a serious offence committed by a person serving a CCO. *Sentenced charges* contrast with all *people sentenced* for a serious offence committed while serving a CCO, which was the focus earlier in this report.

In 2019–20, the courts sentenced 830 charges of serious offences committed by people serving a CCO. This represents a 9.2% decrease on the 914 charges from 2018–19.³⁸ The number in 2019–20 was still slightly higher than in 2016–17, which had the lowest number of charges (794 charges) from 2016–17 to 2019–20.³⁹

Figure 7 (page 12) presents the number of charges sentenced in the four years to 30 June 2020 for serious offences committed by people serving a CCO, according to the 10 most common serious offences sentenced in 2019–20.⁴⁰ The appendix gives a full list of serious offences sentenced in 2019–20 that were committed by people serving a CCO.

Three offences stand out from the most common serious offences committed by people serving a CCO in 2019–20:

- make threat to kill (280 charges);
- make threat to inflict serious injury (158 charges); and
- aggravated burglary (127 charges).

All three offences were also the most common serious offences sentenced in 2016–17, 2017–18 and 2018–19 for people who had committed a serious offence while serving a CCO.⁴¹

The number of charges of make threat to kill in 2019–20 represents a 12.2% decrease on the 319 charges in 2018–19. This number is still slightly higher than the number of charges in 2016–17 (258 charges).

The number of charges of make threat to inflict serious injury and aggravated burglary in 2019–20 decreased compared to the numbers in 2018–19. Both offences were at their lowest levels within the four-year period. The number of charges of make threat to inflict serious injury in 2019–20 decreased by 15.5% compared to the number in 2018–19, and the number of charges of aggravated burglary in 2019–20 decreased by 8.0% compared to the number in 2018–19.

The most common sexual offences in 2019–20 were knowingly possess child abuse material (18 charges), use a carriage service for child pornography material (16 charges), sexual assault (11 charges) and indecent act with or in the presence of a child aged under 16 (11 charges). The number of charges of knowingly possess child abuse material and use a carriage service for child pornography material increased during the four-year period, albeit from a small base, and were both highest in 2019–20. On the other hand, the number of charges of sexual assault and indecent act with or in the presence of a child aged under 16 fluctuated on a yearly basis. The numbers in 2019–20 were relatively similar to the numbers in 2016–17.

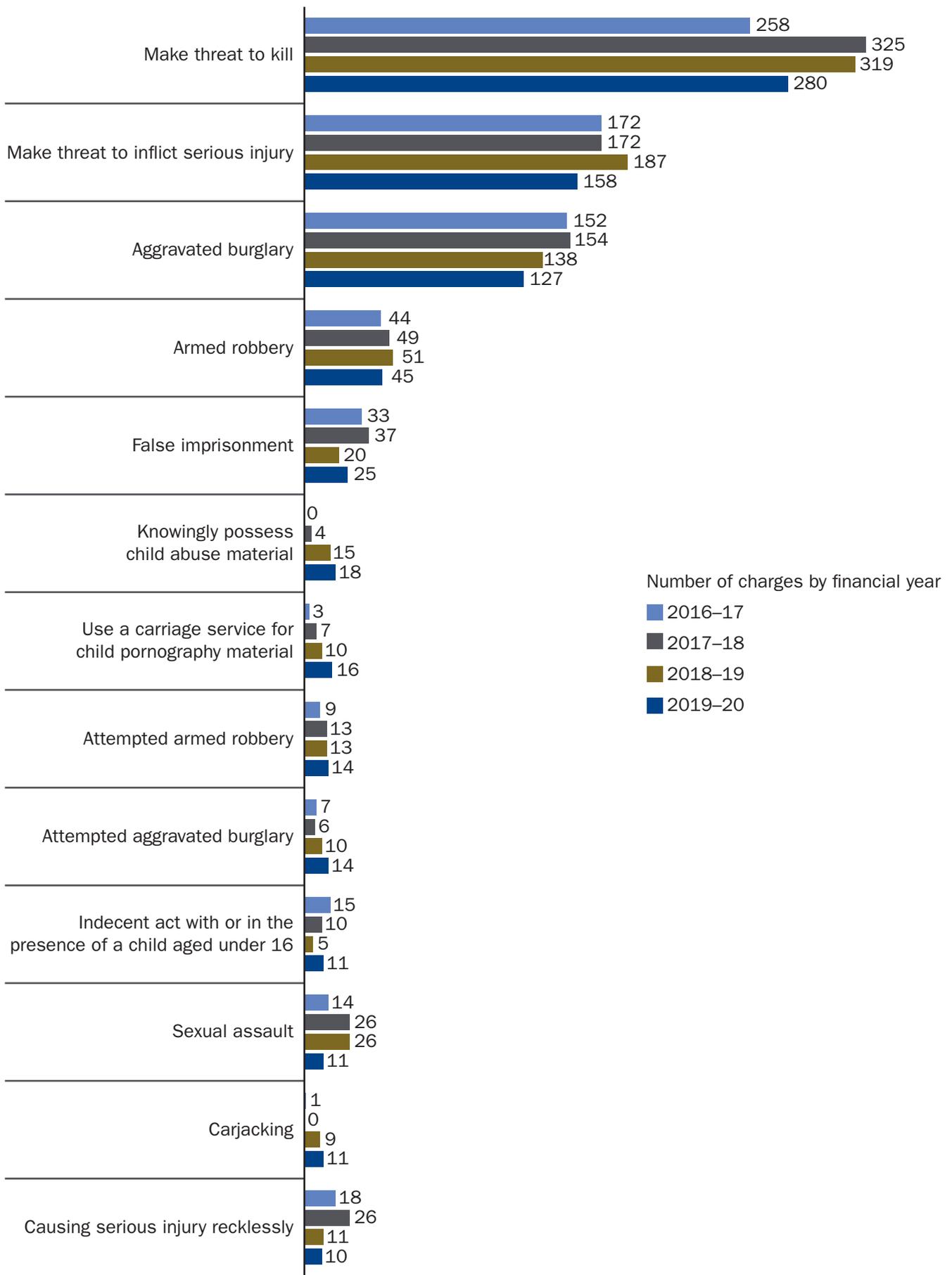
38. Ibid 11.

39. Sentencing Advisory Council (2018), above n 2, 9.

40. Thirteen offences are listed because two offences were the eighth most frequent offence and three offences were the ninth most frequent offence.

41. Sentencing Advisory Council (2020), above n 2, 11.

Figure 7: Number of sentenced charges of a serious offence committed by people serving a CCO according to the 10 most common serious offences sentenced in 2019–20, by type of serious offence and financial year of sentence



In addition, the courts sentenced two charges of murder,⁴² two charges of manslaughter⁴³ and two charges of rape⁴⁴ committed by people serving a CCO. Overall, the number of charges of murder, manslaughter and rape committed by people serving a CCO represented:

- 8.7% of all murder charges sentenced in 2019–20;
- 13.3% of all manslaughter charges sentenced in 2019–20; and
- 2.8% of all rape charges sentenced in 2019–20.

Caution should be used when comparing yearly changes in the percentage of people who were sentenced for murder, manslaughter or rape offences while serving a CCO. The small number of people (and charges) sentenced each year for committing these offences while serving a CCO may result in large fluctuations in percentage. This is despite the number of people or charges remaining stable over the four financial years to 2019–20. Consequently, a simple comparison of the change in percentage each year may be misleading.

The percentage of sentenced murder charges in 2019–20 committed by people serving a CCO was slightly higher than the percentage in 2018–19 (5.7%) but substantially lower than the percentage in 2017–18 (16.7%).⁴⁵ The number of sentenced murder charges committed by people serving a CCO was consistent, ranging from two in 2016–17⁴⁶, 2018–19⁴⁷ and 2019–20, to four in 2017–18.⁴⁸

The percentage of sentenced charges of manslaughter in 2019–20 committed by people who were serving a CCO was slightly higher than the percentage in 2018–19 (9.5%) and very similar to the percentage in 2017–18 (13.3%).⁴⁹ The number of sentenced charges of manslaughter committed by people serving a CCO ranged from one in 2016–17⁵⁰ to two in 2017–18,⁵¹ 2018–19⁵² and 2019–20.

The percentage of sentenced rape charges in 2019–20 committed by people serving a CCO was much lower than the percentage in 2018–19 (7.8%) but still slightly higher than the percentage in 2017–18 (1.9%).⁵³ The number of sentenced rape charges committed by people serving a CCO ranged from two in 2017–18⁵⁴ and 2019–20 to eight in 2018–19 (six of these charges involved a single offender and a single victim).⁵⁵

42. Additional details relating to these two charges of murder are as follows:

1. A murder was committed approximately two months into a CCO (combined with imprisonment) that was originally given for dishonesty and firearm offences.
2. A murder was committed approximately 10 months into two CCOs that the offender was serving simultaneously. Both CCOs were of 12 months duration and were for a mixture of assault, public order, justice procedures and property damage offences.

43. Additional details relating to these two charges of manslaughter are as follows:

1. A manslaughter was committed approximately five months into a 12-month CCO for drug trafficking, driving and firearms offences.
2. A manslaughter was committed by a person who was serving a CCO that had been extended due to breach proceedings. The offender had originally been placed on a 12-month CCO for theft, deception and driving offences but subsequently had their CCO increased to 24 months. The offender committed the manslaughter approximately 11 months into their original CCO and three months into their extended 24-month CCO.

44. Additional details relating to these two charges of rape are as follows:

1. A rape was committed three months into a two-year CCO combined with imprisonment. The original combined order was for offences including property damage, assault and injury, and contravention of family violence safety notices.
2. A rape was committed nine months into a three-year CCO. The offender's original CCO was also for rape.

45. Sentencing Advisory Council (2020), above n 2, 13.

46. Sentencing Advisory Council (2018), above n 2, 9.

47. Sentencing Advisory Council (2020), above n 2, 13.

48. Sentencing Advisory Council (2019), above n 2, 10.

49. Sentencing Advisory Council (2020), above n 2, 13.

50. Sentencing Advisory Council (2018), above n 2, 10.

51. Sentencing Advisory Council (2019), above n 2, 10.

52. Sentencing Advisory Council (2020), above n 2, 13.

53. *Ibid.*

54. Sentencing Advisory Council (2019), above n 2, 10.

55. Sentencing Advisory Council (2020), above n 2, 13.

10. Gender and age of people committing a serious offence while serving a community correction order

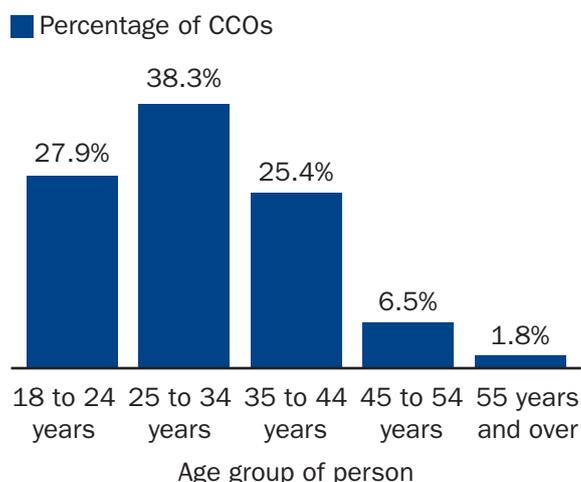
A total of 545 males (93% of people) and 39 females (7% of people) were sentenced in 2019–20 for a serious offence committed while serving a CCO. This is consistent with patterns observed in the three previous reports,⁵⁶ which found that the majority (90% or more) of people committing a serious offence while serving a CCO were also male.

The majority of people sentenced for a serious offence committed while serving a CCO were aged between 18 and 44 when their CCO was imposed. This represents just over 91% of all CCOs imposed on people who committed a serious offence while serving a CCO. A large contingent of this group was aged under 35 (66.3%) (see Figure 8).

People sentenced for a serious offence committed while serving a CCO had a median age of 30 years when their CCO was imposed. Ages ranged from 18 to 80 years when CCOs were imposed.

As Figure 8 shows, the most prevalent age group was 25 to 34 years (38.3%), and the least prevalent age group was 55 years and over (1.8%). The patterns in Figure 8 are almost identical to the patterns observed in the three previous reports.⁵⁷ The most prevalent age group is 25 to 34 years, and the least prevalent age group is 55 years and over.

Figure 8: Percentage of total CCOs contravened for people sentenced in 2019–20 for a serious offence committed while serving a CCO, by the person's age when the CCO was imposed⁵⁸

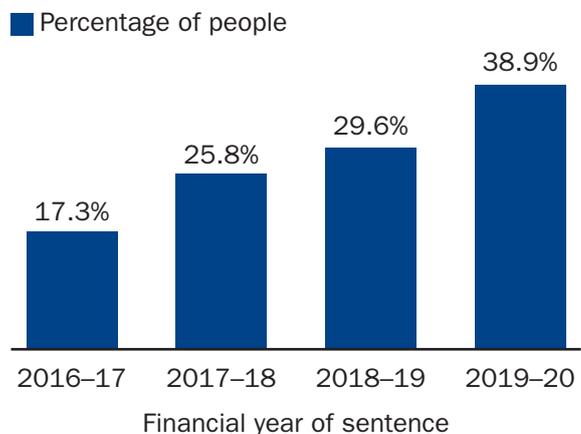


11. Community correction orders combined with imprisonment

In 2019–20, 38.9% of people sentenced for a serious offence committed while serving a CCO (227 of 584 people) were on a CCO combined with imprisonment ('combined orders'). This percentage is higher than the percentage in all previous years. The percentage for each year has consistently trended upward since 2016–17 (see Figure 9).

While the trend in Figure 9 has no single cause, drivers of the percentage increase in combined orders may be from a combination of changes to legislation, sentencing practices, offending profiles, the offender's prior criminal history and/or the offender's prospects of rehabilitation.

Figure 9: Percentage of people sentenced for a serious offence committed while serving a CCO combined with imprisonment, by financial year



56. Sentencing Advisory Council (2018), above n 2, 8; Sentencing Advisory Council (2019), above n 2, 11; Sentencing Advisory Council (2020), above n 2, 14.

57. Ibid.

58. Percentages in Figure 8 may not add to 100% due to rounding.

Additionally, Figure 2 indicates that a higher percentage of people received a second or subsequent CCO in more recent years (peaking at 59% of people in 2019–20). It is possible that people serving their second or subsequent CCO may be more likely to receive a combined order. Combined orders reflect an escalation in the severity of an offender's penalty on the sentencing hierarchy and the courts' view that an offender's repeat offending may require a more severe sentence than a standalone CCO.

Other factors may have led to a higher proportion of people serving a CCO in the form of a combined order, such as the availability of combined orders as a sentencing option in recent years and the use of 'time served' imprisonment sentences⁵⁹ combined with CCOs for people who have been on remand. The greater proportion of people serving a CCO in the form of a combined order may, in turn, have increased the likelihood that people who committed a serious offence while serving a CCO were serving a combined order.

The remaining 61.1% (357 people) sentenced in 2019–20 for a serious offence committed while serving a CCO contravened a CCO that was not combined with imprisonment.

12. Time to first serious offence

The median time between the start of a CCO and the commission of the earliest serious offence was 131 days (just over 4 months) for people sentenced in 2019–20 for a serious offence committed while serving a CCO. This is shorter than in previous years, when the median time between the start of a CCO and the commission of the earliest serious offence ranged from 140 days in 2016–17 to 166 days in 2017–18.⁶⁰ Note that a person is counted only once even if they were serving multiple CCOs when they committed a serious offence, based on the shortest amount of time between the start of the CCO and the commission of the serious offence.

The maximum time between the start of a CCO and the commission of the earliest serious offence was 1,356 days (3 years and 8 months) for people sentenced in 2019–20. In comparison, the maximum time was 881 days in 2016–17, 1,368 days in 2017–18 and 1,455 days in 2018–19.⁶¹

As Figure 10 (page 16) shows, the majority (61.3%) of people sentenced in 2019–20 committed their first serious offence within six months of their CCO commencing, and 90.1% committed their first serious offence within the first year of their CCO commencing. In general, people sentenced in 2019–20 took shorter times to commit their first serious offence than people in previous years. The 2019–20 group had the highest percentage of people committing a serious offence within three months of their CCO commencing (36.8%) and also the highest percentage of people committing a serious offence within six months of their CCO commencing (61.3%). The most comparable group was sentenced in 2016–17, when 34.6% of people committed a serious offence within three months of their CCO commencing and 61.1% committed a serious offence within six months. The 2019–20 group became more similar to the 2018–19 group as more time passed; both groups had approximately 76% to 77% of people committing a serious offence within nine months of their CCO commencing.

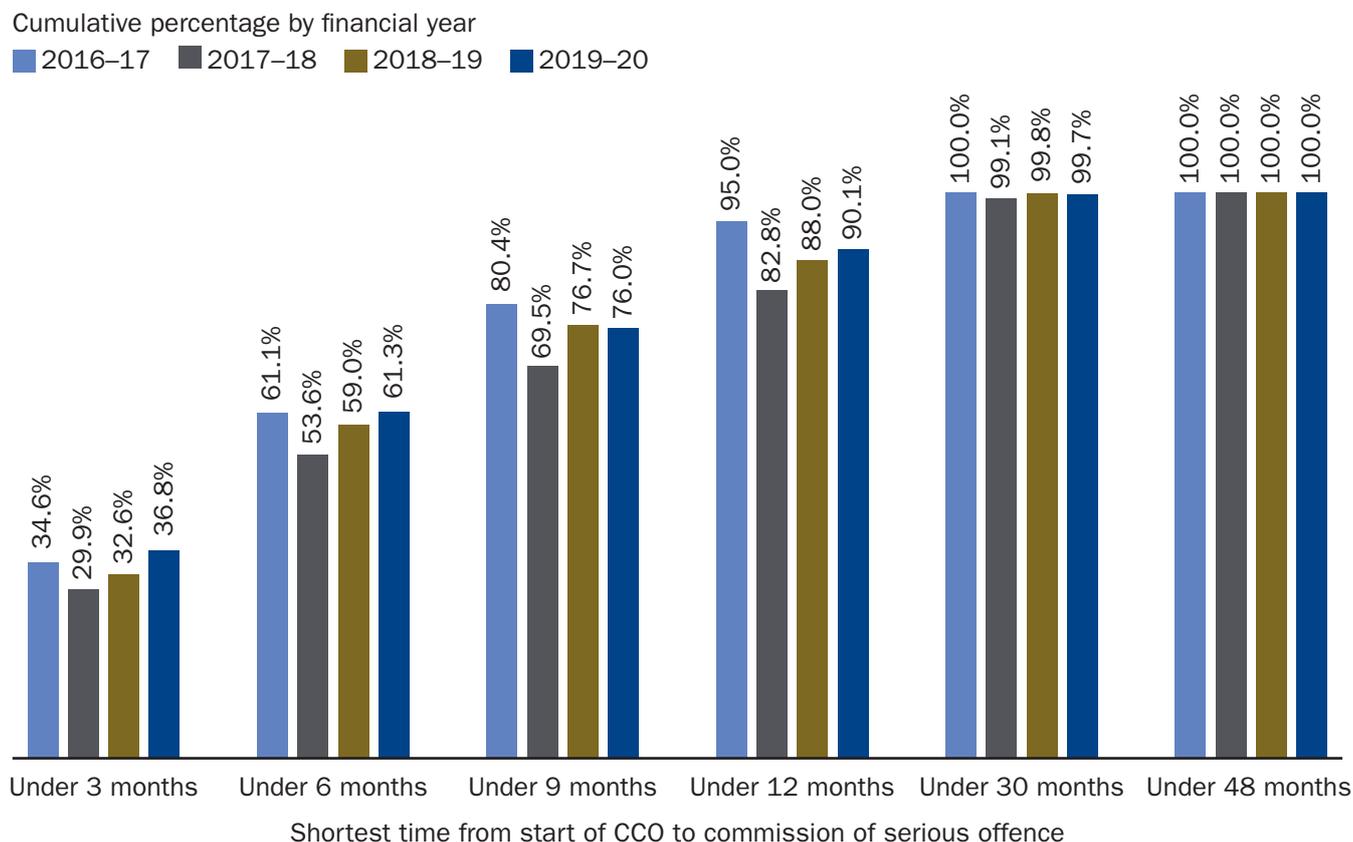
59. Sentencing Advisory Council, *Time Served Prison Sentences in Victoria* (2020) 9–10.

60. Sentencing Advisory Council (2018), above n 2, 9; Sentencing Advisory Council (2019), above n 2, 12; Sentencing Advisory Council (2020), above n 2, 15–16.

61. *Ibid.*

Almost all people who committed a serious offence while serving a CCO had done so within 30 months of their CCO commencing.

Figure 10: Cumulative percentage of people sentenced for a serious offence committed while serving a CCO, by shortest time from start of CCO to commission of serious offence, by financial year



13. Summary

Of the 65,193 people who received a CCO between 16 January 2012 and 30 June 2020, 584 were sentenced in 2019–20 for a serious offence committed while serving a CCO. This was the second lowest number of people sentenced for committing a serious offence while serving a CCO in the four years to 30 June 2020. This number (584 people) also represented a 10.3% decrease compared to the number of people in 2018–19 (651 people). The lowest number of people sentenced for a serious offence committed while serving a CCO was in 2016–17 (551 people).

The lower number of people sentenced for committing a serious offence while serving a CCO may be related to a decrease in the number of unique individuals committing serious offences in 2019–20 overall (3,316 people and 5,488 charges). This is the lowest number of people and sentenced charges of serious offending in the four years to 30 June 2020. The *number of people* sentenced for committing serious offences in 2019–20 represented a 14.4% decrease compared to 2018–19 (3,875 people), and the *number of sentenced charges* of serious offending in 2019–20 represented an 11.7% decrease compared to 2018–19 (6,218 charges). If fewer people were sentenced for committing serious offences overall, then it stands to reason that the number of people sentenced for committing serious offences while serving a CCO would also decrease. The number of people sentenced for serious offending, or being placed on a CCO, may have been affected by changes in legislation and sentencing practices, as well as events such as the COVID-19 pandemic and the resulting restrictions placed on court operations. This, in turn, may have further affected the results in this report.

The estimated rate of CCO contravention by serious offending has remained relatively steady over the four financial years to 30 June 2020. The rate rose from 1.6% in 2016–17 and 2017–18 to 1.7% in 2018–19 and 2019–20. As previously discussed, this proxy rate is likely to underestimate the true rate of CCO contravention by serious offending.

Of greater concern is the continued upward trend in the proportion of people who commit a serious offence while serving a CCO combined with imprisonment. The percentage rose from 17.3% in 2016–17 to nearly 40% (38.9%) in 2019–20. Although the estimated rate of contravention remains relatively low at 1.7%, it is apparent that a higher proportion of people who commit a serious offence while serving a CCO are doing so after serving a period of imprisonment as part of a combined order. While the reasons for this increase are open to speculation, at least some of it may be due to the increasing use of combined orders as a sentencing option in recent years, including the use of ‘time served’ imprisonment sentences combined with a CCO for people who have been held on remand.

Overall, people were sentenced in 2019–20 for 830 charges of a serious offence committed while serving a CCO. This represents a 9.2% decrease compared to 2018–19 (914 charges), but it was still slightly higher than 2016–17, which had the lowest number of charges in the four years to 30 June 2020 (794 charges).

The three most common serious offences sentenced in 2019–20 for people serving a CCO were consistent with previous years. The offences included make threat to kill (280 charges), make threat to inflict serious injury (158 charges) and aggravated burglary (127 charges). The most common serious sexual offences in 2019–20 included knowingly possess child abuse material (18 charges), use a carriage service for child pornography material (16 charges), sexual assault (11 charges) and indecent act with or in the presence of a child aged under 16 (11 charges).

In addition, the courts sentenced two charges of murder, two charges of manslaughter and two charges of rape committed by people serving a CCO.

For people sentenced in 2019–20, the median time between the start of a CCO and the commission of their earliest serious offence was 131 days. Thus, the people sentenced in 2019–20 took the shortest time to commit a serious offence compared to people sentenced in previous years. The median time between the start of a CCO and the commission of the earliest serious offence ranged from 140 days for people sentenced in 2016–17 to 166 days for people sentenced in 2017–18.

Appendix: Serious offences committed while serving a community correction order

Table 1: Charges of serious offences sentenced in 2019–20, by number of charges committed by people serving a CCO and number of charges committed by any person

Offence	Sentenced charges of serious offences committed by people serving a CCO		Sentenced charges of serious offences committed by any person	
	Number	Percentage of total charges committed by people serving a CCO	Number	Percentage of charges of a specific offence committed by people serving a CCO
Make threat to kill	280	33.7%	1,601	17.5%
Make threat to inflict serious injury	158	19.0%	800	19.8%
Aggravated burglary	127	15.3%	468	27.1%
Armed robbery	45	5.4%	196	23.0%
False imprisonment	25	3.0%	141	17.7%
Knowingly possess child abuse material	18	2.2%	104	17.3%
Use a carriage service for child pornography material	16	1.9%	65	24.6%
Attempted armed robbery	14	1.7%	57	24.6%
Attempted aggravated burglary	14	1.7%	29	48.3%
Indecent act with or in the presence of a child aged under 16	11	1.3%	264	4.2%
Sexual assault	11	1.3%	236	4.7%
Carjacking	11	1.3%	35	31.4%
Causing serious injury recklessly	10	1.2%	81	12.3%
Home invasion	7	0.8%	42	16.7%
Use a carriage service to groom a child aged under 16 for sexual activity	7	0.8%	19	36.8%
Aggravated carjacking	6	0.7%	23	26.1%
Causing serious injury intentionally	5	0.6%	17	29.4%
Attempted carjacking	5	0.6%	15	33.3%
Direct sexual activity to cause fear or distress to another person ^a	5	0.6%	12	41.7%

Offence	Sentenced charges of serious offences committed by people serving a CCO		Sentenced charges of serious offences committed by any person	
	Number	Percentage of total charges committed by people serving a CCO	Number	Percentage of charges of a specific offence committed by people serving a CCO
Use a carriage service to transmit indecent communications to a child aged under 16	4	0.5%	38	10.5%
Distribute child abuse material	4	0.5%	21	19.0%
Attempted aggravated carjacking	4	0.5%	5	80.0%
Sexual penetration of a child aged under 16	3	0.4%	73	4.1%
Produce child abuse material	3	0.4%	31	9.7%
Sex offender loiter near school or public place frequented by children	3	0.4%	16	18.8%
Incest by parent, step-parent or lineal ancestor	2	0.2%	74	2.7%
Rape	2	0.2%	71	2.8%
Murder	2	0.2%	23	8.7%
Make threat to commit a sexual offence	2	0.2%	21	9.5%
Groom child or child's carer to facilitate a sexual offence	2	0.2%	16	12.5%
Manslaughter	2	0.2%	15	13.3%
Intentionally distribute intimate images ^b	2	0.2%	13	15.4%
Kidnapping (common law)	2	0.2%	12	16.7%
Procure sexual act by fraud	2	0.2%	6	33.3%
Causing serious injury recklessly in circumstances of gross violence	2	0.2%	3	66.7%
Attempted home invasion	2	0.2%	2	100.0%
Sexual assault of a child aged under 16	1	0.1%	104	1.0%
Use a carriage service to procure child aged under 16 for sexual activity	1	0.1%	18	5.6%
Aggravated home invasion	1	0.1%	15	6.7%

Offence	Sentenced charges of serious offences committed by people serving a CCO		Sentenced charges of serious offences committed by any person	
	Number	Percentage of total charges committed by people serving a CCO	Number	Percentage of charges of a specific offence committed by people serving a CCO
Kidnapping (<i>Crimes Act 1958</i> (Vic))	1	0.1%	9	11.1%
Encourage a child aged under 16 to engage in or be involved in sexual activity	1	0.1%	8	12.5%
Access child abuse material	1	0.1%	7	14.3%
Threaten to distribute intimate images ^c	1	0.1%	7	14.3%
Accessory to murder	1	0.1%	4	25.0%
Assault with intent to commit a sexual offence	1	0.1%	4	25.0%
Use a carriage service to engage in sexual activity with a child aged under 16	1	0.1%	2	50.0%
Attempted kidnapping	1	0.1%	1	100.0%
Procure sexual act by threat	1	0.1%	1	100.0%
Other serious offences	0	0.0%	663	0.0%
Total	830	100.0%	5,488	15.1%

- a. This only includes a count of offences committed on or after 20 November 2019. Before this date, the offence was not defined as a 'serious offence'.
- b. This only includes a count of offences committed before 3 September 2018, after which this offence was no longer defined as a 'serious offence'.
- c. Ibid.

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Authored by Dennis Byles, Sentencing Advisory Council.

Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

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ISBN: 978-1-925071-59-7 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne.

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