

# Serious Offending by People Serving a Community Correction Order: 2020–21

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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.<sup>1</sup>

This report identifies the number of people sentenced in 2020–21 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: 2019–20*.

This is the Council’s fifth report on serious offending by people serving a CCO.<sup>2</sup> The Council has also published reports on how courts use CCOs.<sup>3</sup>

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

- the prevalence of different types of serious offences committed by people serving a CCO;
- the total number of people sentenced in 2020–21 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’.<sup>4</sup>

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.<sup>5</sup>

Under the *Sentencing Act 1991* (Vic), a 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.

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1. *Corrections Act 1986* (Vic) s 104AA(2).  
2. The four 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); Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2019–20* (2021).  
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 CCO

The CCO became available to the courts on 16 January 2012.<sup>6</sup> 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;<sup>7</sup>
- 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,<sup>8</sup> but in March 2017 the maximum length of a CCO was set at five years in respect of one, or more than one, offence in a case;<sup>9</sup>
- initially, the maximum term of imprisonment that could be combined with a CCO (a ‘combined order’) was set at three months,<sup>10</sup> but it was increased to two years in September 2014<sup>11</sup> and reduced to one year in March 2017;<sup>12</sup> and
- 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:<sup>13</sup>
  - the courts must impose a custodial order when sentencing Category 1 offences (for example, murder or rape). The courts are prohibited from imposing a combined order for Category 1 offences; and
  - similarly, the courts must impose a custodial order for Category 2 offences (for example, manslaughter or culpable driving causing death) unless there are special reasons.<sup>14</sup> If there are special reasons, a CCO or combined order remains available as a sentencing option.

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.<sup>15</sup>

## Conditions of a CCO

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

The court must also 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 CCO

The maximum length of a CCO imposed on a single offence is five years in the higher courts<sup>16</sup> and two years in the Magistrates' Court.<sup>17</sup>

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'.<sup>18</sup>

When 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.<sup>19</sup>

## Sentences in addition to a CCO

A court may impose a fine<sup>20</sup> or a sentence of imprisonment in addition to a CCO.<sup>21</sup>

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

## Contravention of a CCO

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

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 offences<sup>24</sup> include:

- serious violent offences<sup>25</sup> 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 offences<sup>26</sup> such as rape, sexual assault and sexual penetration of a child aged under 16.

The definition of *serious offence* changed in 2020–21 with the inclusion of the offence of homicide by firearm.<sup>27</sup>

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. They also include offences relating to the commission of an indictable offence where the underlying 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.<sup>28</sup>

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 being found not guilty due to mental impairment or receiving qualified findings of guilt.<sup>29</sup> The report also excludes offences that are dealt with in the Magistrates' Court using a court-ordered diversion. Court-ordered diversions do not result in a formal finding of guilt even though the person must take responsibility for the offence before a diversion can be granted.<sup>30</sup>

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.

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24. *Corrections Act 1986* (Vic) s 104(AA)(3). The Council has also published a comprehensive list of serious offences for 2020–21 on its website: Sentencing Advisory Council, *Serious Offences Current between 16 January 2012 and 30 June 2021* (2022).

25. *Corrections Act 1986* (Vic) s 3(1).

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

27. The definition of serious violent offence in the *Corrections Act 1986* (Vic) was amended to include the offence of homicide by firearm: *Corrections Act 1986* (Vic) s 3(1) as amended by *Crimes Amendment (Manslaughter and Related Offences) Act 2020* (Vic) s 15. This provision commenced on 1 July 2020.

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

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

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

## 5. Reference period

The reference period for this report is 1 July 2020 to 30 June 2021. This period relates to 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 2019 while serving a CCO may not have been sentenced for the serious offence until 1 July 2020. The Council's last report also noted that court operations during the 2019–20 financial year were significantly affected by the COVID-19 pandemic.<sup>31</sup> This trend continued throughout 2020–21.<sup>32</sup> 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 2020–21 financial year should be seen within this broader context.

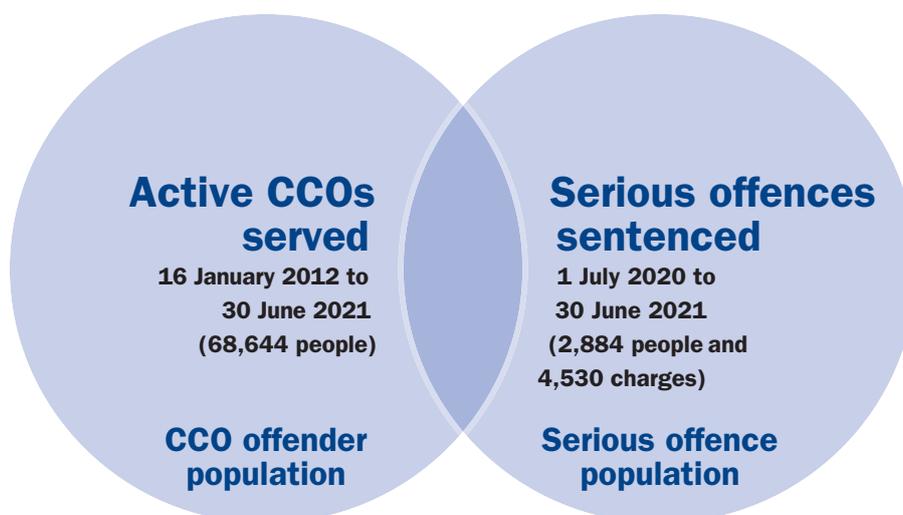
## 6. Methodology

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 2021. 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 2020–21 for a serious offence committed while serving a CCO



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

32. Court Services Victoria, *Annual Report 2020–21: Delivering Excellence in Court and Tribunal Administration* (2021) 38.

The number of people in the CCO offender population is 68,644. 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 2020 to 30 June 2021. The number of people in the serious offence population is 2,884, and they committed 4,530 proven charges of a serious offence.

The number of people sentenced for serious offending (and the number of proven charges) in 2020–21 was the lowest since 2016–17, when the Council began annually reporting on serious offending 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).<sup>33</sup> Compared to the figures in 2019–20 (3,316 people and 5,488 proven charges),<sup>34</sup> the figures in 2020–21 represent a 13.0% decrease in people sentenced for serious offences and a 17.5% 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 certain 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 for the contravention when they committed their serious offence 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.

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

34. Sentencing Advisory Council (2021), above n 2, 6–7.

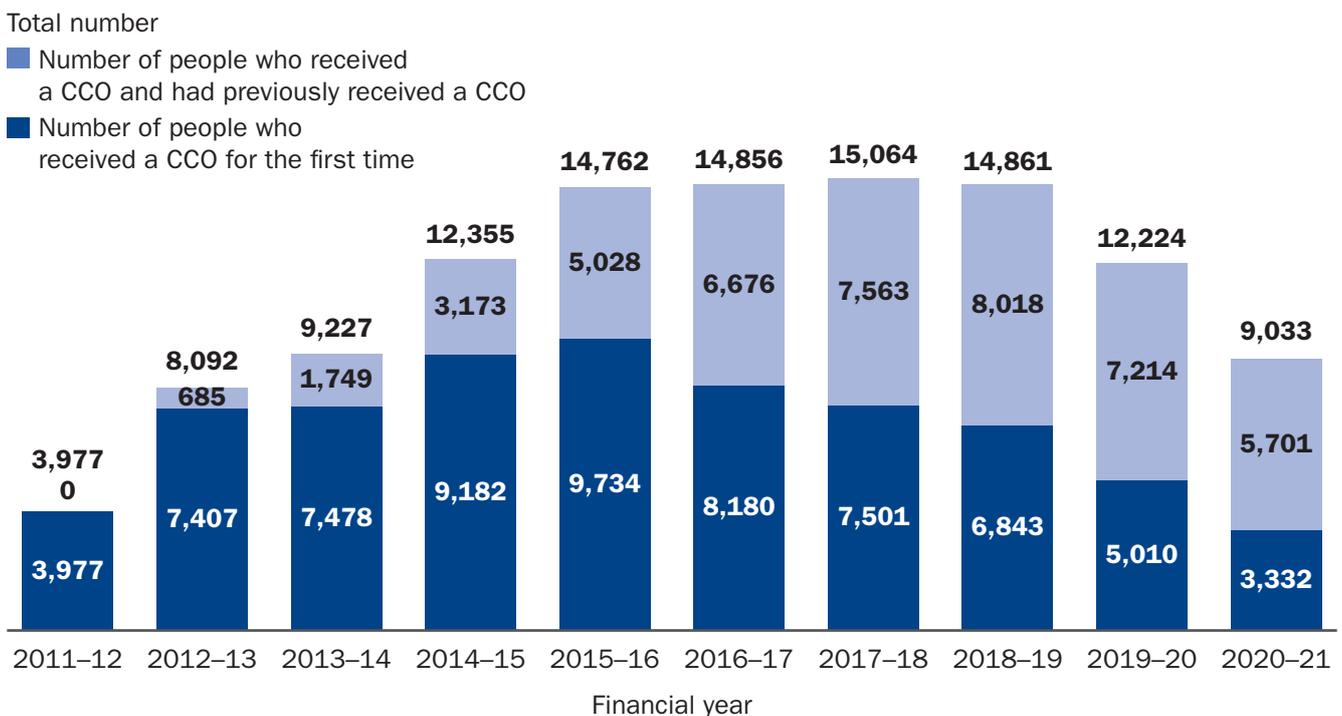
## 7. All people serving a CCO

Figure 2 shows the number of people who received a CCO each financial year from 2011–12 to 2020–21, based on the date of sentence. It also shows whether the person had previously received a CCO. A total of 68,644 people received a CCO for the first time between 16 January 2012 and 30 June 2021 (see the lower part of each bar in Figure 2). A subset of these people (45,807 of 68,644 people or 66.7%) received a second or subsequent CCO during a different financial year between 16 January 2012 and 30 June 2021 (see the upper part of each bar in Figure 2). Some of these 45,807 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 28,468 people or 41.5% of the overall number of 68,644 people.

The total number of people who received a CCO plateaued in the four years to 30 June 2019 (at around 15,000 people each year) before markedly decreasing in the next two years to just over 9,000 people in 2020–21. As noted previously, the downward trend in the last two years is most likely due to COVID-19 restrictions leading to a reduction in the number of criminal matters heard in the courts.

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, 8.5% of people were on their second or subsequent CCO (685 of 8,092 people). The percentage of people who received a second or subsequent CCO continued to increase each year, such that by 2020–21, 63.1% of people who received a CCO in that year were on their second or subsequent CCO. The increase in the percentage of people who received a second or subsequent CCO each year is not entirely unexpected, as 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 between 16 January 2012 and 30 June 2021, by financial year and whether the person had previously received a CCO<sup>35</sup>

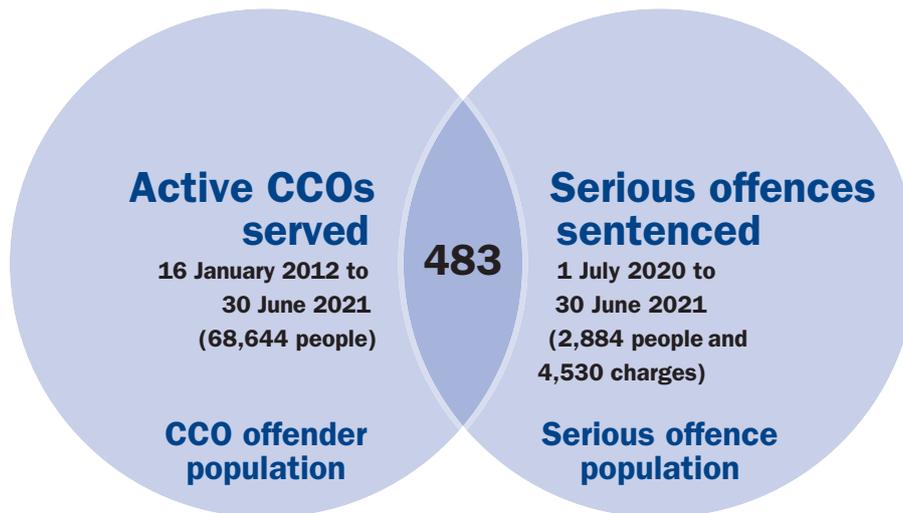


35. The numbers in Figure 2 are subject to change. Some orders may not have been entered into the case management system at the time that the data was extracted and/or additional data quality checks may have improved the count of unique individuals. The number in 2011–12 is substantially lower than in 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 CCO

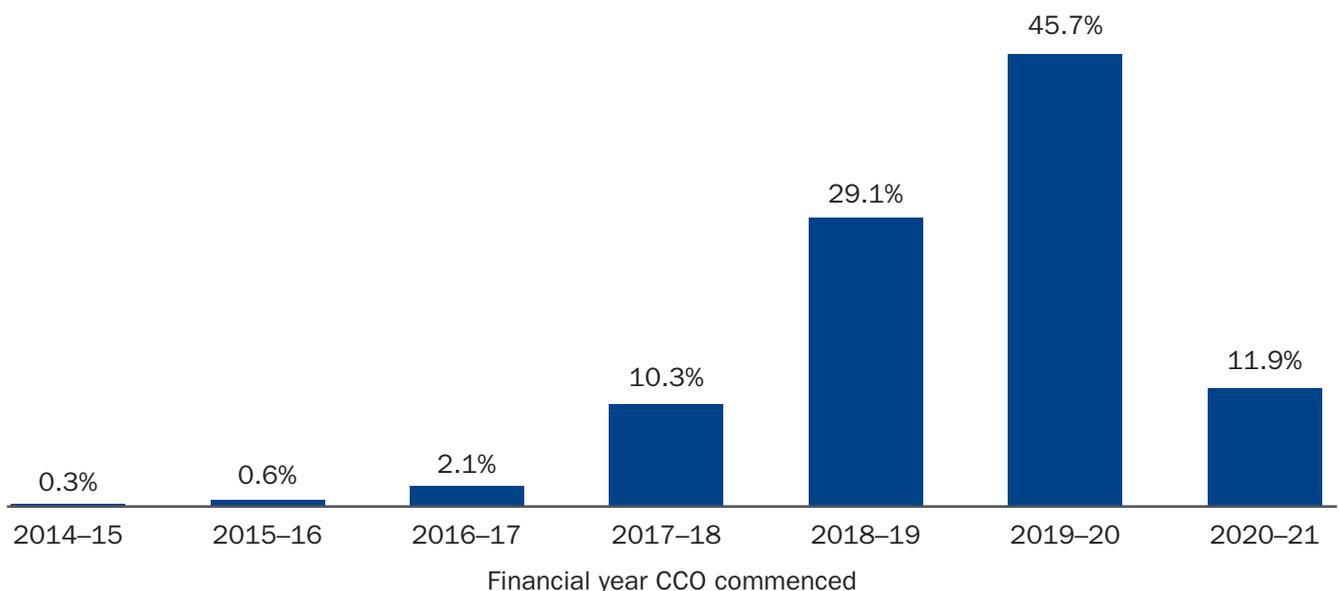
Of the 68,644 people who received a CCO between 16 January 2012 and 30 June 2021, 483 people were sentenced in 2020–21 for a serious offence committed while serving a CCO (see Figure 3).

**Figure 3:** Populations used to identify the number of people sentenced in 2020–21 for a serious offence committed while serving a CCO



Dates on which CCOs commenced varied widely for people sentenced in 2020–21 for a serious offence committed while serving a CCO, ranging from 22 January 2015 to 6 May 2021. However, as Figure 4 shows, the vast majority of CCOs (97.0%) commenced between 2017–18 and 2020–21.

**Figure 4:** Percentage of total CCOs contravened by people sentenced in 2020–21 for committing a serious offence, by financial year in which CCO commenced



The 483 people sentenced in 2020–21 for a serious offence committed while serving a CCO represent a 17.3% decrease compared to the 584 people sentenced in 2019–20.<sup>36</sup> The number of people sentenced in 2020–21 was the lowest since 2016–17 (see Figure 5). Again, the decrease since 2019–20 was most likely due to continuing COVID-19 restrictions and the limits these placed on court operations in the two most recent years.

### Rate of CCO contravention 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:

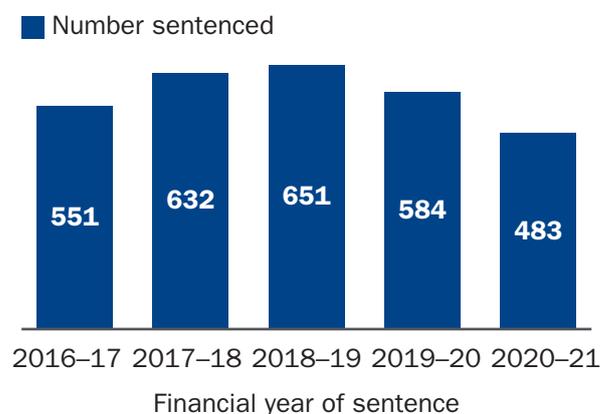
- based on the date of sentence for a serious offence, which results in non-standardised follow-up periods; and
- restricted to a single financial year, meaning serious offending sentenced outside the reference period is excluded.

This report adopts the methodology from the four previous reports in this series to estimate a proxy 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 2018 to 30 June 2021). A total of 27,175 people received a CCO over the three-year period; of these, 428 were sentenced in 2020–21 for a serious offence committed while serving a CCO.

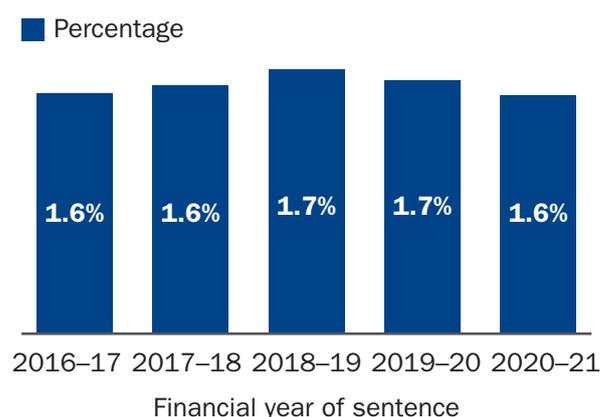
The estimated rate of CCO contravention by serious offending for 2020–21 is 1.6%, which remains very similar to the trend in the previous four years (see Figure 6).<sup>37</sup> The *proportion* of people sentenced for a serious offence committed while serving a CCO remained stable each year, despite a fall in the *number* of people within the underlying population since 2019–20 (see Figure 5). One reason for the stability in these proportions may be the fall in the number of people sentenced for committing a serious offence coinciding with the fall in the number of people being placed on a CCO (see Figure 2, page 8). Both groups may have been similarly affected by the COVID-19 restrictions that impacted court operations in 2019–20 and 2020–21.

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 2020–21.

**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 (2021), above n 2, 10.

37. Ibid.

## 9. Types of serious offences committed by people serving a CCO

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 2020–21, the courts sentenced 640 charges of serious offences committed by people serving a CCO. This represents a 22.9% decrease in the 830 charges from 2019–20.<sup>38</sup> The number of sentenced charges in 2020–21 was the lowest since the Council started reporting in 2016–17 on people sentenced for a serious offence committed while serving a CCO. The second-lowest number of sentenced charges occurred in 2016–17 (794 charges),<sup>39</sup> while the highest number of sentenced charges occurred in 2018–19 (914 charges).<sup>40</sup>

Figure 7 (page 12) presents the number of sentenced charges in the five years to 30 June 2021 for serious offences committed by people serving a CCO, according to the 10 most common serious offences sentenced in 2020–21.<sup>41</sup> The appendix gives a full list of serious offences sentenced in 2020–21 that were committed by people serving a CCO.

Three serious offences sentenced in 2020–21 stand out from the most common serious offences committed by people serving a CCO:

- make threat to kill (237 charges);
- make threat to inflict serious injury (126 charges); and
- aggravated burglary (92 charges).

These three serious offences were also the most common serious offences from 2016–17 to 2019–20 for people sentenced for a serious offence committed while serving a CCO.<sup>42</sup> Also of note for these three serious offences is that the number of sentenced charges was lowest in 2020–21, most likely reflecting the effect of COVID-19 on court operations. The number of sentenced charges of make threat to kill declined by 15.4% in 2020–21 compared to the number of sentenced charges in 2019–20; likewise, make threat to inflict serious injury declined by 20.3%, and aggravated burglary declined by 27.6%.

The most common serious sexual offences sentenced in 2020–21 were sexual assault (12 charges) and engage in sexual activity in the presence of a child aged under 16 (eight charges). The number of sentenced charges of sexual assault peaked in 2017–18 and 2018–19 (26 charges each) but declined in subsequent years. The number of sentenced charges of engage in sexual activity in the presence of a child aged under 16 hovered between zero and three charges per year from 2016–17 to 2019–20, before increasing to eight charges in 2020–21; however, it remains too early to detect whether this is the start of a trend for this offence.

In addition, the courts sentenced two charges of manslaughter,<sup>43</sup> one charge of rape,<sup>44</sup> and one charge of rape by compelling sexual penetration<sup>45</sup> committed by people serving a CCO.

38. Ibid 11.

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

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

41. Eleven offences are listed because two offences (attempted armed robbery and sexual assault) were the seventh most frequent offence (12 sentenced charges each).

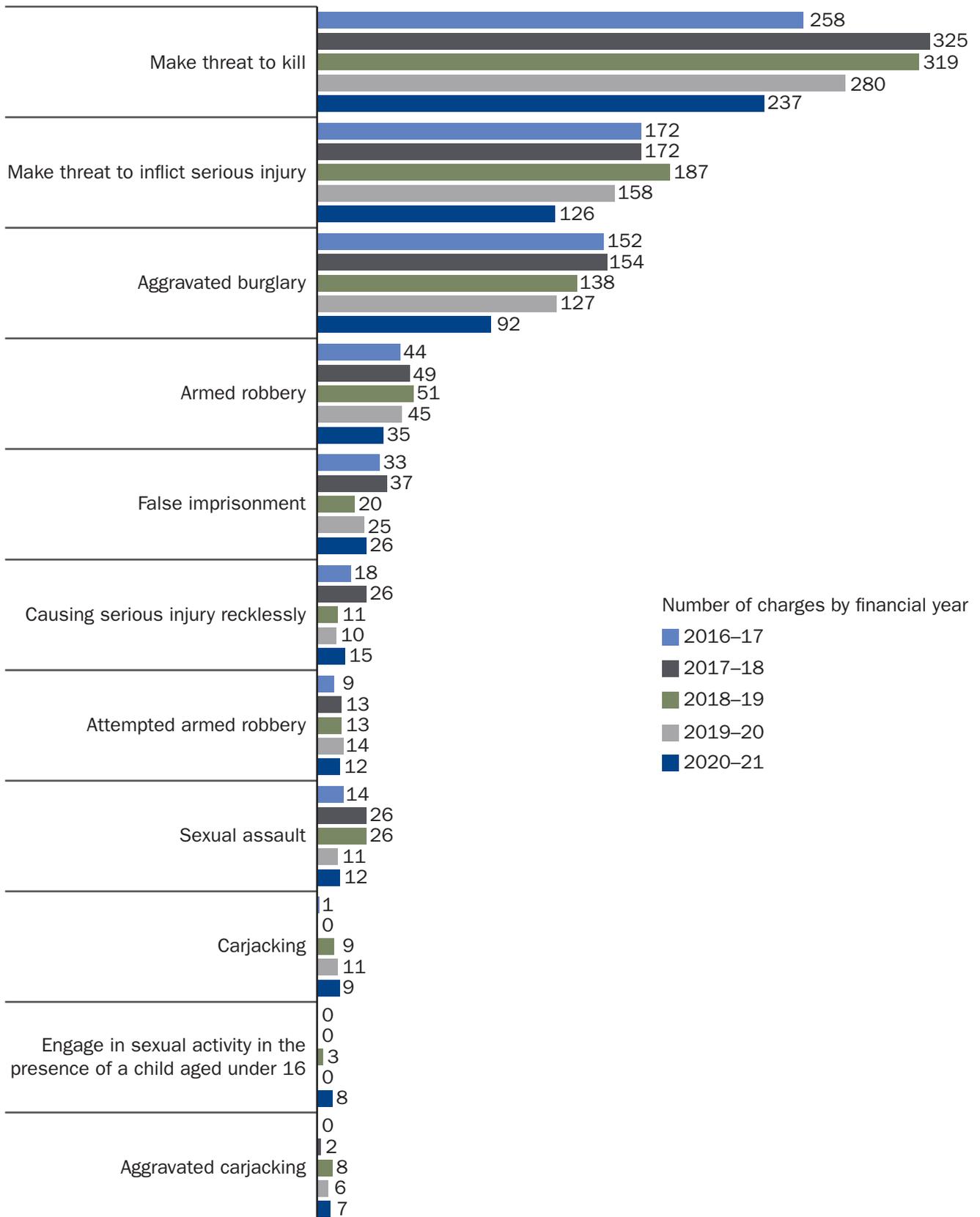
42. Sentencing Advisory Council (2021), above n 2, 11.

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

1. A manslaughter was committed just over one month into a nine-month CCO. The original CCO was given for several drug possession offences, alongside weapons and ammunition offences.
2. A manslaughter was committed six months after the start of a 12-month CCO. The original CCO, which was combined with imprisonment, was for a variety of offences including assault, property damage, theft, weapons and traffic offences.

44. A rape was committed nearly two months into an 18-month CCO. The original CCO was for persistent contravention of a family violence intervention order or safety notice.

**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 2020–21, by type of serious offence and financial year of sentence



No people were sentenced in 2020–21 for an offence of murder committed while serving a CCO. Overall, the number of sentenced charges of murder, manslaughter, rape and rape by compelling sexual penetration committed by people serving a CCO represented:

- 0.0% of all charges of murder sentenced in 2020–21;
- 10.5% of all charges of manslaughter sentenced in 2020–21;
- 2.9% of all charges of rape sentenced in 2020–21; and
- 100% of all charges of rape by compelling sexual penetration sentenced in 2020–21; however, only one charge of this offence was sentenced during the financial year.

Caution should be used when comparing yearly changes in the percentage of people sentenced for murder, manslaughter or rape offences committed 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 sentenced charges remaining stable over the five financial years to 2020–21. Consequently, a simple comparison of the change in percentage each year may be misleading.

The number and percentage of sentenced charges of murder committed by people serving a CCO were at their lowest in 2020–21 (zero charges and 0.0% of all charges of murder sentenced that year) compared to the last four years. The number and percentage of sentenced charges of murder committed by people serving a CCO were at their highest during 2017–18 (four charges representing 16.7% of all sentenced charges of murder that year).<sup>46</sup>

The number of sentenced charges of manslaughter committed by people serving a CCO remained relatively consistent in the last five years, ranging from one sentenced charge in 2016–17<sup>47</sup> to two sentenced charges in each subsequent year,<sup>48</sup> including 2020–21. The percentage of sentenced charges of manslaughter committed by people serving a CCO was 10.5% in 2020–21. This was midway between the lowest percentage (7.7% in 2016–17)<sup>49</sup> and the highest percentage (13.3% in both 2017–18<sup>50</sup> and 2019–20<sup>51</sup>).

The number of sentenced charges of rape committed by people serving a CCO was lowest in 2020–21 (one charge) compared to the previous four years. The lowest percentage of sentenced charges of rape committed by people serving a CCO was in 2017–18 (1.9%),<sup>52</sup> which was only slightly lower than the percentage in 2020–21 (2.9%). The highest number and percentage of sentenced charges of rape committed by people serving a CCO were in 2018–19 (eight sentenced charges representing 7.8% of all charges of rape sentenced that year) with six of the eight sentenced charges being committed by a single offender.<sup>53</sup>

The 2020–21 financial year was also the first time that a sentence was handed down for the offence of rape by compelling sexual penetration committed by a person serving a CCO (one sentenced charge, representing 100% of sentenced charges of this offence in 2020–21).

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45. A rape by compelling sexual penetration was committed 14-months into a 24-month CCO (and just over two months after the original CCO was varied as a result of a separate contravention). The original CCO was for offences of attempt to procure sexual penetration by fraud, carrying on a business as a sex work provider and living on the earnings of sex work without a licence, drug possession and breach of bail conditions.

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

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

48. Sentencing Advisory Council (2021), above n 2, 13.

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

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

51. Sentencing Advisory Council (2021), above n 2, 13.

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

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

## 10. Gender and age of people sentenced for committing a serious offence while serving a CCO

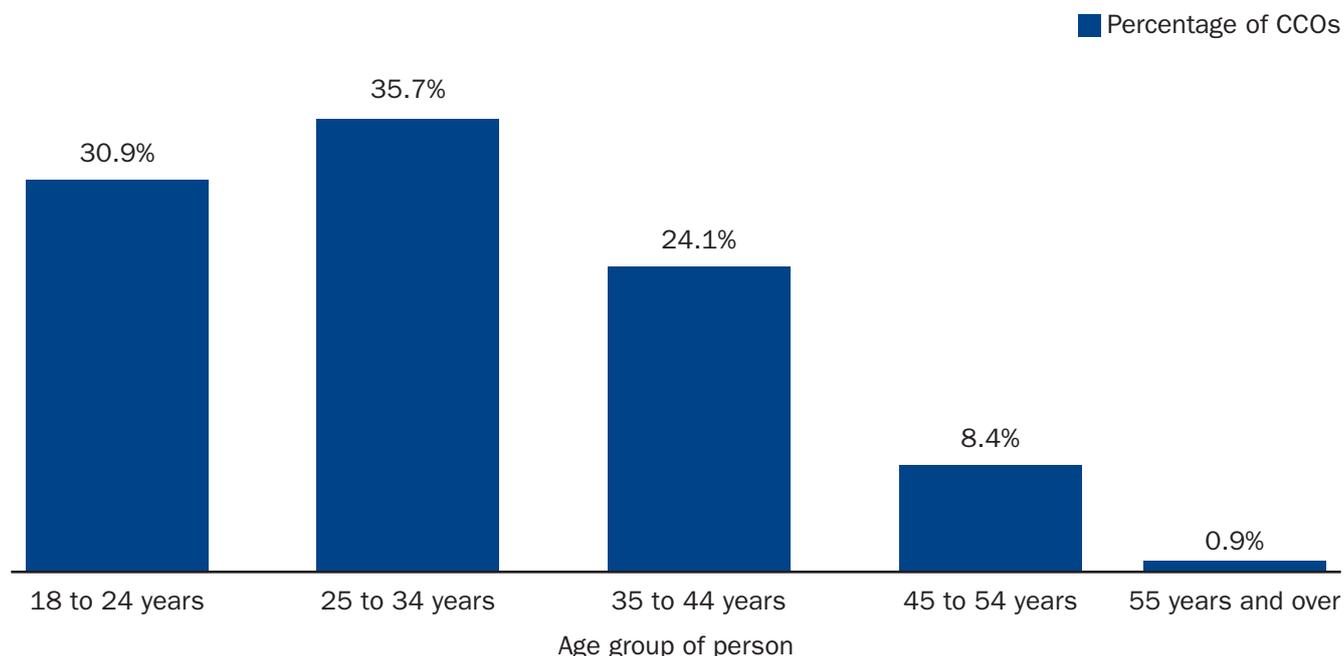
A total of 457 males (94.6% of people) and 26 females (5.4% of people) were sentenced in 2020–21 for a serious offence committed while serving a CCO. This is consistent with patterns observed in the four previous reports,<sup>54</sup> which also found that the majority (90% or more) of people sentenced for a serious offence committed while serving a CCO were 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 age group received 90.7% of the CCOs imposed on people who were subsequently sentenced for a serious offence committed while serving that same CCO. Two-thirds of this group were aged under 35 when their CCO was imposed (66.6%) (see Figure 8).

People sentenced for a serious offence committed while serving a CCO had a median age of 30 when their CCO was imposed. People's age ranged from 18 to 78 when their CCO was imposed.

As Figure 8 shows, the most prevalent age group was 25 to 34 (35.7%), and the least prevalent age group was 55 and over (0.9%). The patterns in Figure 8 are almost identical to the patterns observed in the four previous reports.<sup>55</sup>

**Figure 8:** Percentage of total CCOs contravened by people sentenced in 2020–21 for a serious offence committed while serving a CCO, by the person's age when their CCO was imposed



54. Sentencing Advisory Council (2018), above n 2, 8; Sentencing Advisory Council (2019), above n 2, 11; Sentencing Advisory Council (2020), above n 2, 14; Sentencing Advisory Council (2021) above n 2, 14.

55. Ibid.

## 11. CCOs combined with imprisonment

In 2020–21, 43.9% of people sentenced for a serious offence committed while serving a CCO (212 of 483 people) were on a CCO combined with imprisonment (a ‘combined order’). This percentage is higher than the percentage in the previous four years, although it appears that the rate of increase is slowing down. The percentage for each year has steadily trended upwards since 2016–17 (see Figure 9). Large changes in the percentage of people serving a combined order seem to occur every two years, with a relatively large increase in percentage in 2017–18 and 2019–20 compared to the previous year. It remains to be seen whether another large increase will occur in 2021–22.

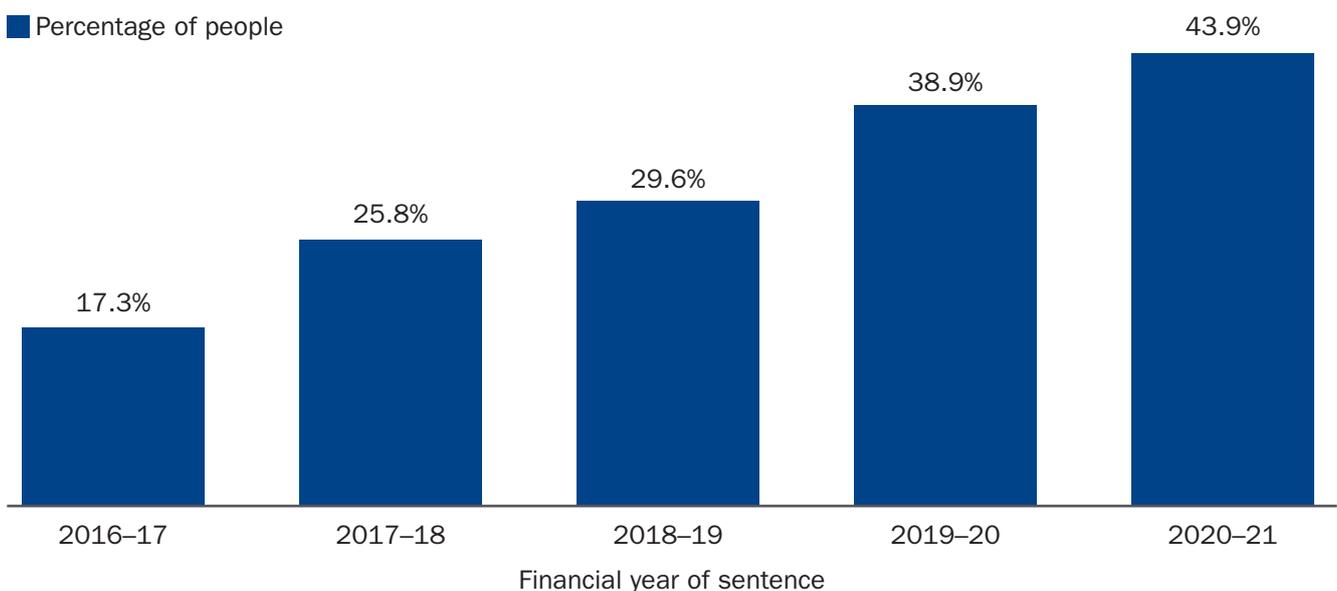
While there is no clear single cause, drivers of the trend in Figure 9 may be a combination of changes to legislation, sentencing practices, offending profiles and/or the unique criminal history and prospects of rehabilitation for offenders sentenced in any given year. Restrictions on court operations during 2020–21 due to COVID-19 may have also led to a slowdown in the growth of sentences for serious offending committed by people serving a combined order.

As noted in the previous report,<sup>56</sup> other factors that could be contributing to the trends in Figure 9 may include:

- the growing percentage of people who received a second or subsequent CCO in recent years (see Figure 2), peaking at 63.1% in 2020–21. It is possible that people serving a second or subsequent CCO may be more likely to be placed on a combined order to reflect the court’s view that repeat offending may require a more severe sentence than a standalone CCO; and
- the use of ‘time served’ prison sentences<sup>57</sup> – sentences of imprisonment equal to the time spent on remand – followed by a CCO when people were released. The greater number of people serving a CCO after a time served prison sentence may consequently increase the likelihood that those who commit a serious offence while serving a CCO may be from this cohort.

The remaining 56.1% (271 people) sentenced in 2020–21 for a serious offence committed while serving a CCO contravened a CCO that was *not* combined with imprisonment.

**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 (2021), above n 2, 15.

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

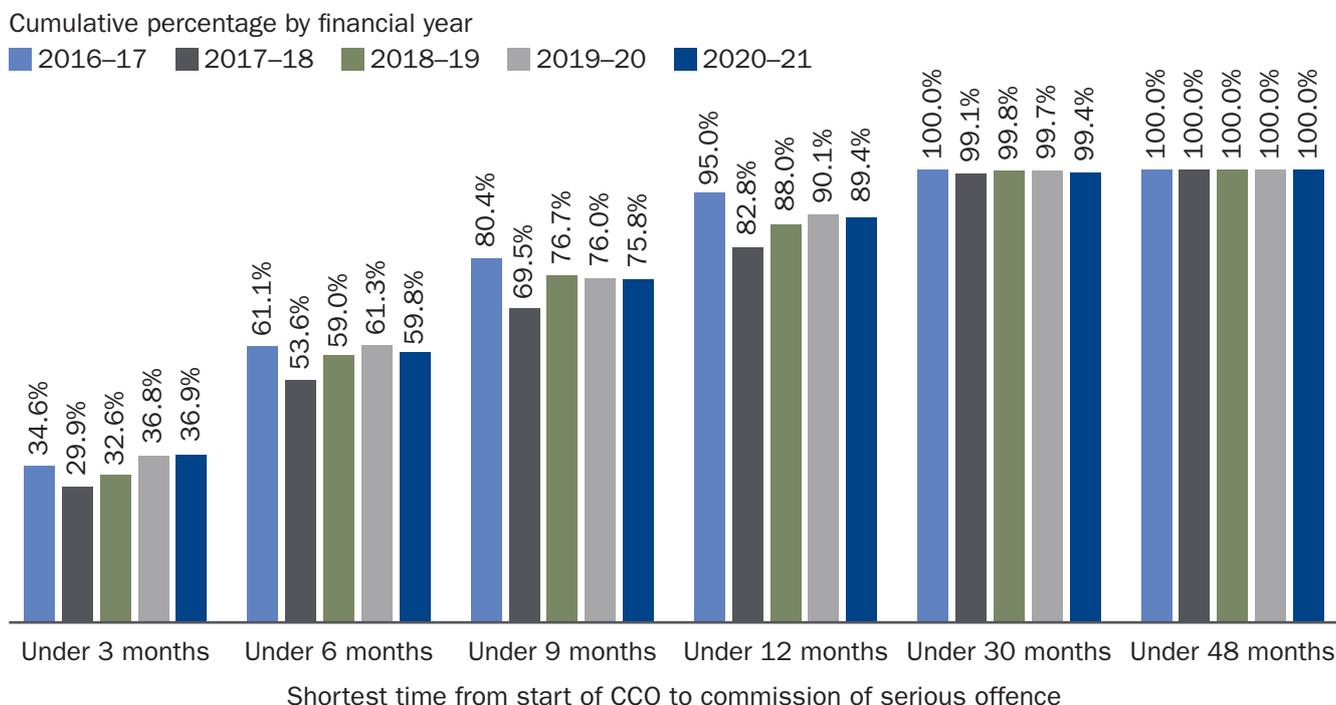
## 12. Time to first serious offence

The median time between the CCO commencing and the commission of the earliest serious offence was 139 days (approximately 4.6 months) for people sentenced in 2020–21 for a serious offence committed while serving a CCO. This is similar to the median time of 140 days in 2016–17.<sup>58</sup> Previous reports found that the median time ranged from 131 days in 2019–20<sup>59</sup> to 166 days in 2017–18.<sup>60</sup> Note that a person who was serving multiple CCOs when they committed a serious offence is counted only once in this section. In these instances, their inclusion would be based on the shortest amount of time between the CCO commencing and the commission of the serious offence.

The maximum time between a CCO commencing and the commission of the earliest serious offence was 1,343 days (approximately three years and eight months) for people sentenced in 2020–21 for a serious offence committed while serving a CCO. This is relatively similar to the results in 2017–18 and 2019–20 (1,368 days<sup>61</sup> and 1,356 days<sup>62</sup> respectively). The maximum time between a CCO commencing and the commission of the earliest serious offence ranged from 881 days in 2016–17<sup>63</sup> to 1,455 days in 2018–19.<sup>64</sup>

As Figure 10 shows, the majority (59.8%) of people sentenced in 2020–21 committed their first serious offence within six months of their CCO commencing, and 89.4% committed their first serious offence within the first year of their CCO commencing. In general, the amount of time taken by people sentenced in 2020–21 to commit their earliest serious offence after commencing a CCO remained relatively similar to the amount of time taken by people sentenced in 2019–20.

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



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

59. Sentencing Advisory Council (2021), above n 2, 15.

60. Sentencing Advisory Council (2019), above n 2, 12.

61. Ibid.

62. Sentencing Advisory Council (2021), above n 2, 15.

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

64. Sentencing Advisory Council (2020), above n 2, 15.

On the other hand, people sentenced in 2017–18 seemed to take the longest amount of time to commit their earliest serious offence after commencing a CCO. Figure 10 shows that they had the lowest cumulative percentage for all time periods until they reached 48 months.

Regardless of when they were sentenced, almost all people who committed a serious offence while serving a CCO had done so within 30 months of their CCO commencing.

## 13. Summary

Of the 68,644 people who received a CCO between 16 January 2012 and 30 June 2021, 483 were sentenced in 2020–21 for a serious offence committed while serving a CCO. This was the lowest number of people sentenced for a serious offence committed while serving a CCO in the five years to 30 June 2021. The 483 people sentenced in 2020–21 also represented a 17.3% decrease compared to the 584 people sentenced in 2019–20.

The lower number of people sentenced for a serious offence committed while serving a CCO may be related to a decrease in the overall number of unique individuals sentenced in 2020–21 for committing serious offences (2,884 people and 4,530 charges). This number of people and sentenced charges of serious offending were the lowest in the five years to 30 June 2021. The *number of people* sentenced in 2020–21 for committing serious offences represented a 13.0% decrease compared to 2019–20 (3,316 people), and the *number of sentenced charges* of serious offending in 2020–21 represented a 17.5% decrease compared to 2019–20 (5,488 charges). If fewer people were sentenced for serious offences overall, then it stands to reason that the number of people sentenced for serious offences committed while serving a CCO would also decrease. The number of people sentenced for serious offending, or 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 may have subsequently affected the results in this report.

The estimated rate of CCO contravention by serious offending remained relatively steady at 1.6% to 1.7% over the five financial years to 30 June 2021. As previously discussed, this proxy rate is likely to underestimate the true rate of CCO contravention by serious offending. Interestingly, the estimated rate remained at similar levels for the time periods before and after COVID-19 restrictions were implemented. One possible reason may be that the number of people sentenced for a serious offence and the number of people given a CCO were affected to a similar degree by COVID-19 restrictions, such that the estimated rate of CCO contravention remained relatively stable on an annual basis.

There was a continued upward trend in the proportion of people who were sentenced for a serious offence committed while serving a CCO combined with imprisonment (a ‘combined order’), although this trend may be starting to slow down. The percentage rose from 17.3% in 2016–17 to 43.9% in 2020–21, although the increase between the percentage in 2019–20 (38.9%) and 2020–21 was relatively small compared to the increase in previous years.

Despite the estimated rate of CCO contravention remaining relatively low at 1.6%, it is apparent that a sizeable proportion of people were sentenced for a serious offence committed while serving a CCO as part of a combined order. While the reasons for the upward trend remain open to speculation, a contributing factor may be the increase in the use of combined orders in recent years, including the use of ‘time served’ prison sentences combined with a CCO. It may be that the greater number of people serving a CCO as part of a combined order makes it more likely that people who committed a serious offence while serving a CCO were doing so as part of a combined order instead of as a standalone CCO. An alternative theory is that people who were on a combined order may have received a custodial sentence due to the nature of the offending or had a more concerning criminal history, both of which may elevate their likelihood of reoffending compared to people who were given a standalone CCO.

Overall, people were sentenced in 2020–21 for 640 charges of a serious offence committed while serving a CCO. This represents a 22.9% decrease compared to the number of sentenced charges in 2019–20 (830 charges); it was also the lowest number of sentenced charges in the five years to 30 June 2021.

The three most common serious offences for people sentenced in 2020–21 for a serious offence committed while serving a CCO remained consistent with those in the previous four years. They included make threat to kill (237 charges), make threat to inflict serious injury (126 charges) and aggravated burglary (92 charges). The most common serious sexual offences sentenced in 2020–21 included sexual assault (12 charges) and engage in sexual activity in the presence of a child aged under 16 (eight charges).

In addition, the courts sentenced two charges of manslaughter, one charge of rape and one charge of rape by compelling sexual penetration. No charges of murder sentenced in 2020–21 were committed by people serving a CCO.

For people sentenced in 2020–21, the median time between a CCO commencing and the commission of their earliest serious offence was 139 days. The median amount of time between a CCO commencing and the commission of the earliest serious offence ranged from 131 days for people sentenced in 2019–20 to 166 days for people sentenced in 2017–18. Regardless of when they were sentenced, almost all people who were sentenced for a serious offence committed while serving a CCO had committed their earliest serious offence within 30 months of their CCO commencing.

## Appendix: Serious offences committed by people serving a CCO

**Table 1:** Charges of serious offences sentenced in 2020–21, 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	237	37.0%	1,408	16.8%
Make threat to inflict serious injury	126	19.7%	731	17.2%
Aggravated burglary	92	14.4%	455	20.2%
Armed robbery	35	5.5%	156	22.4%
False imprisonment	26	4.1%	118	22.0%
Causing serious injury recklessly	15	2.3%	66	22.7%
Sexual assault	12	1.9%	193	6.2%
Attempted armed robbery	12	1.9%	59	20.3%
Carjacking	9	1.4%	40	22.5%
Engage in sexual activity in the presence of a child aged under 16	8	1.3%	35	22.9%
Aggravated carjacking	7	1.1%	21	33.3%
Home invasion	6	0.9%	27	22.2%
Causing serious injury intentionally	5	0.8%	21	23.8%
Use a carriage service for child pornography material	4	0.6%	78	5.1%
Knowingly possess child abuse material	4	0.6%	78	5.1%
Direct sexual activity to cause fear or distress to another person <sup>a</sup>	4	0.6%	43	9.3%
Attempted aggravated burglary	4	0.6%	39	10.3%
Attempted aggravated carjacking	4	0.6%	10	40.0%
Make threat to commit a sexual offence	3	0.5%	21	14.3%
Sex offender loiter near school or public place frequented by children	3	0.5%	18	16.7%
Attempted carjacking	3	0.5%	15	20.0%

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	2	0.3%	81	2.5%
Grooming for sexual conduct with a child aged under 16	2	0.3%	21	9.5%
Manslaughter	2	0.3%	19	10.5%
Distribute child abuse material	2	0.3%	19	10.5%
Accessory to murder	2	0.3%	4	50.0%
Sexual assault of a child aged under 16	1	0.2%	80	1.3%
Use a carriage service for child abuse material	1	0.2%	70	1.4%
Sexual penetration of a child aged under 16	1	0.2%	39	2.6%
Rape	1	0.2%	35	2.9%
Aggravated home invasion	1	0.2%	19	5.3%
Kidnapping (common law)	1	0.2%	8	12.5%
Involve a child in the production of child abuse material	1	0.2%	6	16.7%
Kidnapping ( <i>Crimes Act 1958</i> (Vic))	1	0.2%	4	25.0%
Invite a child aged under 18 to take part in a sexual performance	1	0.2%	2	50.0%
Rape by compelling sexual penetration	1	0.2%	1	100.0%
Attempt to direct sexual activity to cause fear or distress to another person <sup>b</sup>	1	0.2%	1	100.0%
Other serious offences	0	0.0%	489	0.0%
<b>Total</b>	<b>640</b>	<b>100.0%</b>	<b>4,530</b>	<b>14.1%</b>

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 Ibid.

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