

# Community Correction Orders Monitoring Report



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# Abbreviations

<b>CBO</b>	Community-based order
<b>CCO</b>	Community correction order
<b>CCTO</b>	Combined custody and treatment order
<b>CMT</b>	Cultivate, manufacture, or traffic
<b>ICO</b>	Intensive correction order

# Glossary

<b>Case</b>	A collection of one or more proven charges for an offender sentenced in court at one hearing.
<b>Charge</b>	A single count of an offence for which an offender is sentenced.
<b>Median</b>	The 'middle' value in a series of numbers that are sequenced in ascending or descending order. Also known as the 50th percentile, the median is the value that 50% of values fall below and 50% of values fall above.
<b>Moving average</b>	A statistical method used to identify trends in a chronological series of data. In this report, moving averages are used to identify trends in monthly sentencing data. For a given month of data, the moving average is the mean of the previous 12 months of data.
<b>Principal offence</b>	The offence within a case that received the most severe sentence. Where multiple charges within a case receive the same sentence, the charge with the most serious offence according to the National Offence Index is selected as the principal offence.
<b>Principal sentence</b>	The most severe sentence imposed on a charge within a case.
<b>Statistical significance</b>	A statistical measurement of the likelihood that the difference between two numbers has not occurred by chance. The most widely used threshold of statistical significance, and the threshold used in this report, is 0.05, which means there is a 5% likelihood that the observed difference occurred by chance alone.

## Executive summary

The community correction order (CCO) was introduced as a sentencing option in Victoria in January 2012. The purpose of a CCO is to provide a non-custodial sentencing option that is more flexible than the orders it replaced, in particular the community-based order (CBO), the intensive correction order (ICO), and the combined custody and treatment order (CCTO). Relative to the orders that have been replaced, CCOs can be imposed for longer maximum durations in the higher courts and all courts can order a higher maximum number of hours for unpaid community work. This allows the courts to use CCOs for a wider range of offending behaviours. Also, a greater range of conditions can be attached to a CCO than to the orders it replaced. This provides the courts with increased capacity to address the specific circumstances of the offender.

The new order was introduced at a time when another sentencing option, the suspended sentence of imprisonment, was being phased out. CCOs are also intended to be a replacement for suspended sentences in cases where the court considers immediate custody unnecessary to fulfil the purposes for which the sentence is imposed.

In light of these sentencing reforms, this report examines three questions:

1. How have sentencers used CCOs and what are the characteristics of offenders who receive them?
2. Have CCOs only replaced CBOs and ICOs in sentencing practice?
3. To what extent, if any, have CCOs replaced suspended sentences of imprisonment in sentencing practice?

The questions have been addressed in relation to the Magistrates' Court and the higher courts (the County and Supreme Courts) through analyses of relevant sentencing data.

### How have CCOs been used and who receives them?

From January 2012 to June 2013, 10,893 offenders received a CCO in the Magistrates' Court. These offenders had a median age of 30 years while 82.3% were male. Among the most common principal offences for which CCOs were imposed were contravening a family violence intervention order (10.2%) and various assault and theft offences. Three-quarters (74.4%) of offenders had been sentenced on at least one occasion prior to receiving a CCO.

In comparison, the 464 offenders who received a CCO in the higher courts tended to be younger (their median age was 26 years) and were slightly more likely to be male (85.6%). The most common offences for which a CCO was imposed in the higher courts were assault, armed robbery, and sexual penetration of a child under 16 years. Approximately 60% of offenders (59.1%) who received a CCO had been sentenced for prior offending.

CCOs were shorter in the Magistrates' Court (the median duration was 12 months), where the maximum available duration is two years, than in the higher courts (the median duration was 24 months), where the maximum duration is equivalent to the maximum imprisonment term available for the offence being sentenced. Fifteen per cent of CCOs in the higher courts exceeded two years; the longest was 10 years.

Unpaid community work, supervision, and assessment and treatment conditions were the most common conditions of CCOs imposed in both court levels. All of these conditions had previously been available for CBOs and ICOs. The courts rarely imposed some of the new conditions available, such as curfew, non-association, and alcohol exclusion. The most frequently used new condition was judicial monitoring (10.6% in the Magistrates' Court and 14.3% in the higher courts).

## Have CCOs only replaced CBOs and ICOs in sentencing practice?

The extent to which CCOs simply replaced CBOs and ICOs in sentencing practice differed across the two court levels. In the Magistrates' Court, there was little difference between the way CCOs were used in 2012 and the way CBOs and ICOs were used in 2011. The volume, rate, duration, and offender profiles for CCOs and CBOs/ICOs were similar. For example, CCOs were imposed on 7,193 offenders in 2012 compared with 7,207 CBOs/ICOs in 2011 (12 offenders received a CCTO in 2011). When the total number of offenders sentenced is considered, the rate at which CCOs were imposed was only marginally lower in 2012 (8.6%) than in 2011 (9.3%). This suggests that in practice CCOs were used as a replacement for CBOs and ICOs in the Magistrates' Court.

In contrast, CCOs were used in the higher courts in substantially greater numbers in 2012 (331 offenders) than CBOs and ICOs in 2011 (259 offenders). As a proportion of all offenders sentenced, community sentences increased from 13.2% in 2011 to 18.3% in 2012. Also, with a mean duration of 21.0 months, CCOs were typically longer than CBOs (a mean duration of 18.4 months) and ICOs (a mean duration of 10.3 months). This suggests that CCOs were used in place of sentencing options in addition to CBOs and ICOs. However, this expanded use of community sentences with the introduction of CCOs did not result in any significant change to the profile of offenders and offences receiving community sentences. On demographic factors, prior offending, and offence type measures, very few statistically significant differences were found between CCOs imposed between January 2012 and June 2013 and CBOs/ICOs imposed between June 2010 and December 2011. The rate of CCO use declined during the first half of 2013.

## To what extent, if any, have CCOs replaced suspended sentences of imprisonment in sentencing practice?

In the Magistrates' Court, where suspended sentences are still available as a sentencing option, there was a decline in the use of suspended sentences in May 2011, and this level was maintained through to June 2013. This decline was primarily due to the change in magistrates' sentencing behaviour following the abolition of the mandatory imprisonment term for a second or subsequent offence of driving while disqualified or suspended. The decline in the imposition of suspended sentences coincided with an increase in the imposition of fines. There was no evidence that CCOs were being used as alternatives to suspended sentences in the Magistrates' Court, although this may be occurring in some cases.

In the higher courts, there was a decline in the use of suspended sentences between late 2011 and June 2013. This was mainly due to the commencement of legislative changes in May 2011 aimed at phasing out suspended sentences. Following the introduction of CCOs in January 2012, there was an increase in the use of community sentences and to a lesser extent imprisonment, indicating that the primary replacement for suspended sentences in 2012 was CCOs. However, a different picture emerged in early 2013 when the use of CCOs declined. Additional research using a longer period for analysis would be required to determine whether this decline continued.



# Chapter 1

## Project Background, Data, and Methodology

Sentencing policy in Victoria has been subject to a substantial amount of reform over the past decade. One of the most significant reforms has been the introduction in January 2012 of a new sentencing option: the community correction order (CCO). The new order replaced a number of existing orders and was introduced during a period when suspended sentences were being phased out. Despite the scale of sentencing reform in Victoria, there has been little research into the effect of these reforms. In this report, the Sentencing Advisory Council (the Council) seeks to address this lack of research by producing a detailed statistical picture of sentencing practices in relation to CCOs.

The primary purpose of this report is to examine how and for whom the CCO has been used by Victorian judges and magistrates. It also seeks to understand whether the order has only been used as a substitute for the abolished orders and whether it has been used to replace other sentences that are adjacent in the hierarchy of sentences. It considers these issues in the context of other ongoing sentencing reforms.

### The origin of CCOs: a brief history of community corrections in Victoria

Sentences that are served in the community under the management or supervision of correctional officers and that involve the offender undertaking rehabilitative programs and community work have a long history in Victoria, going back to the introduction of the attendance centre order in 1975 and the community service order in 1982.

In 1985, those orders were replaced by suspended custodial sentences and the community-based order (CBO).<sup>1</sup> From its introduction, the CBO quickly became a core part of the sentencing repertoire of Victorian courts. During the past decade, Victorian courts imposed approximately 6,000 CBOs each year (comprising about 7% of offenders in the Magistrates' Court and 12% of offenders in the higher courts).<sup>2</sup>

The intensive correction order (ICO) was introduced as a sentencing option in 1991. Unlike the CBO, both the suspended sentence and the ICO were sentences of imprisonment served in the community.

In 1997, the conditional suspended sentence for alcohol and drug dependent persons was abolished and replaced by the combined custody and treatment order (CCTO). Home detention was introduced in 2004 as a further way to serve a sentence of imprisonment under supervision and with conditions in the community. In contrast with the CBO, none of these orders became widely used. The ICO was the most common, used for approximately 2% of offenders in the Magistrates' Court and the higher courts, while the CCTO and home detention were used only for a fraction of 1% of offenders.<sup>3</sup>

<sup>1</sup> Richard G. Fox and Arie Freiberg, *Sentencing: State and Federal Law in Victoria* (2nd ed., 1999) 5.

<sup>2</sup> Sentencing Advisory Council, *Sentencing Outcomes in the Magistrates' Court* (2012) <[https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/sentencing\\_outcomes\\_in\\_the\\_magistrates\\_court.csv](https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/sentencing_outcomes_in_the_magistrates_court.csv)> at 15 January 2014; Sentencing Advisory Council, *Sentencing Outcomes in the Higher Courts* (2012) <[https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/sentencing\\_outcomes\\_in\\_the\\_higher\\_courts.csv](https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/sentencing_outcomes_in_the_higher_courts.csv)> at 15 January 2014.

<sup>3</sup> This discussion does not include the drug treatment order, as that order may be imposed only by the Drug Court, a venue of the Magistrates' Court sitting at Dandenong, and very few such orders are imposed (an average of fewer than 50 each year). It also does not include the intensive correction management order, which was introduced in 2010 but was abolished before it came into operation.

Between 2006 and 2008, the Council examined the operation of those orders in detail in a series of reports<sup>4</sup> on suspended sentences and intermediate sentencing orders.<sup>5</sup> Home detention was abolished in 2011 and CBOs and ICOs were abolished in 2012, replaced by the new CCO in Part 3A of the *Sentencing Act 1991* (Vic).

The purpose of the new 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>6</sup>

The Attorney-General elaborated on this purpose in his Second Reading Speech introducing the new provisions:

Community-based sentences are an important part of the sentencing spectrum. They provide courts with a way to intervene in the lives of offenders who deserve more than a fine, but should not be sent to prison. A community-based sentence allows an offender to remain in the community. Offenders are able to maintain their employment, live at home and draw on the support of their family and friends.

At the same time, offenders are subject to certain obligations – for example, they may have to report to Corrections Victoria, undertake unpaid community work or complete programs that address the reasons for their criminal conduct.<sup>7</sup>

An important element of the new CCO is that, like the CBO, it is a sentence in its own right, rather than a sentence of imprisonment. The relationship between the CCO and imprisonment was explained in the Second Reading Speech:

The CCO will also provide an alternative sentencing option for offenders who are at risk of being sent to jail. These offenders may not yet deserve a jail sentence but should be subject to significant restrictions and supervision if they are going to live with the rest of the community. The broad range of new powers under the CCO will allow courts wide flexibility to tailor their response to address the needs of offenders and set appropriate punishments.

Instead of using the legal fictions of imposing a term of imprisonment that is suspended or served at home, the courts will now openly sentence offenders to jail or, where appropriate, use the CCO to openly sentence the offender to a community-based sentence. Unlike the CCTO and ICO, which are technically sentences of imprisonment, the CCO is a community-based sentence. There is no legal fiction involved. The CCO can be combined with a jail sentence, but it will not pretend to be one. The CCO is a transparent sentence that can be understood by everyone in the community.<sup>8</sup>

The introduction of the new order was accompanied by significant government investment in building the capacity of Community Correctional Services to administer CCOs, with the real net operating expenditure per offender per day increasing by 20% from 2010–11 to 2011–12.<sup>9</sup> This investment has included the adoption of an intensive case management model for high-risk offenders and more detailed pre-sentence assessment reports.

<sup>4</sup> Sentencing Advisory Council, *Suspended Sentences: Final Report—Part 1* (2006); Geoff Fisher, *Community Sentences in Victoria: A Statistical Profile* (2007); Nick Turner, *Suspended Sentences in Victoria: A Statistical Profile* (2007); Sentencing Advisory Council, *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences Final Report—Part 2* (2008).

<sup>5</sup> Taking the form of either 'substitutional' or 'alternative' sanctions, '[i]ntermediate sanctions or punishments in Victoria can generally be understood to be those sentencing orders that fall between immediate imprisonment and dismissals, discharges and adjournments', such as CBOs, periodic detention, and ICOs: Sentencing Advisory Council (2008), above n 4, 49.

<sup>6</sup> *Sentencing Act 1991* (Vic) s 36.

<sup>7</sup> Victoria, 'Sentencing Amendment (Community Correction Reform) Bill', *Parliamentary Debates*, Legislative Assembly, 15 September 2011, 3292 (Robert Clark, Attorney-General).

<sup>8</sup> *Ibid.*

<sup>9</sup> Steering Committee for the Review of Government Service Provision, '8A Correctional Services – Attachment', *Report on Government Services 2013 Volume 1: Child Care, Education and Training; Justice; Emergency Management*, Table 8A.11.

The extent to which the CCO is seen as a credible alternative to imprisonment is an important issue in view of the progressive phasing out of suspended sentences of imprisonment. This process began in 2006, when the *Sentencing Act 1991* (Vic) was amended to limit the power of the higher courts to wholly suspend a sentence of imprisonment for 'serious' offences committed on or after 1 November 2006. A higher court could impose a suspended sentence for such offences only if there were 'exceptional circumstances'.

In 2010 and 2011, further amendments were introduced to completely remove the power of the higher courts to wholly or partially suspend a sentence of imprisonment for a 'serious' offence or for a new category of 'significant' offence. These amendments applied to offences committed on or after 1 May 2011.

In 2013, further amendments were made to remove the power of the Magistrates' Court to wholly or partially suspend a sentence of imprisonment for a 'serious' or 'significant' offence where a higher court had transferred the proceedings for the offence to the Magistrates' Court. Amendments were also made to remove the power of the higher courts to suspend a sentence of imprisonment in any circumstances for any offence committed after 1 September 2013.

The government has announced that, as of 1 September 2014 at the latest, the Magistrates' Court will no longer be able to impose a suspended sentence for any offence committed after that date.<sup>10</sup>

In its final report on suspended sentences and intermediate orders, the Council expressed concern about what it considered to be fundamental flaws with the structure of suspended sentences. However, it also stressed the importance of ensuring that suspended sentences were replaced by credible, community-based alternatives to avoid a substantial increase in the prison population.<sup>11</sup> The limited capacity of Victoria's prisons to absorb new prisoners has been noted in several more recent reports, including reports by the Victorian Auditor-General<sup>12</sup> and the Council.<sup>13</sup>

In 2010, the Council examined the impact of the 2006 reforms on sentencing.<sup>14</sup> Its report compared the use of suspended sentences for three serious offences committed before and after the restriction applied: sexual penetration of a child aged 10 to 16, armed robbery, and intentionally causing serious injury. It found 'no significant change in the use of wholly suspended sentences for those three offences since the amendments to the *Sentencing Act 1991* (Vic)'.<sup>15</sup>

The Council has not been specifically asked to examine the effect of the 2010 and 2011 reforms. However, given these reforms mean suspended sentences cannot be imposed in any circumstances for a wide range of offences provided the offence has been committed after a specific date, it is reasonable to assume no suspended sentences have been or will be imposed for the specified offences committed on or after May 2011. There is always some lag between an offender committing an offence and the sentencing of the offender in court. Consequently, the effect on sentencing patterns would not have occurred immediately from that date.

<sup>10</sup> Robert Clark, 'Next Stage of Suspended Sentences Abolition Begins', Media Release (30 September 2013) 1.

<sup>11</sup> Sentencing Advisory Council (2008), above n 4, 150.

<sup>12</sup> Victorian Auditor-General, *Prison Capacity Planning* (2012).

<sup>13</sup> Sentencing Advisory Council, *Victoria's Prison Population 2002–2012* (2013).

<sup>14</sup> Sentencing Advisory Council, *Suspended Sentences in Victoria*, Monitoring Report (2010).

<sup>15</sup> *Ibid* 54.

## Other recent sentencing reforms

A further reform likely to have affected the use of suspended sentences, at least in the Magistrates' Court, occurred in May 2011. From that date, the mandatory one-month imprisonment term, which sentencers could suspend for a second or subsequent offence of driving while disqualified or suspended under section 30(1) of the *Road Safety Act 1986* (Vic), was abolished.<sup>16</sup>

The common practice of magistrates prior to the change was to suspend the mandatory imprisonment term. This practice contributed substantially to the overall number of suspended sentences imposed in the Magistrates' Court. The Council found that in 2008–09, one-third of suspended sentences imposed in the Magistrates' Court were for the offence of driving while disqualified.<sup>17</sup>

## Imposition of a CCO

There are three prerequisites to the imposition of a CCO:

- It may be imposed only on an offender who has been found guilty or convicted of an offence punishable by more than five penalty units.
- It may be imposed only if the court has received and had regard to a pre-sentence report.
- It may be imposed only if the offender consents to the order.

The first prerequisite is the same as the five-penalty-unit threshold that applied to the imposition of a CBO. However, the threshold is much lower than that for the other intermediate orders, which were only available for offences punishable by imprisonment.

The requirements for a pre-sentence report and the consent of the offender are the same for all of the other intermediate orders.

A CCO can be imposed for up to two years in the Magistrates' Court. The *Sentencing Act 1991* (Vic) does not set a uniform maximum duration for the higher courts: instead, the maximum duration is determined by the maximum term of imprisonment for the relevant offence, although there is provision for the court to specify a shorter intensive compliance period.

A single CCO can cover multiple offences. If a court makes separate CCOs, there is a statutory presumption that they are concurrent.

A court may impose a CCO in addition to a fine or a sentence of imprisonment of up to three months. However, as a result of amendments made in August 2012 to the *Sentencing Act 1991* (Vic), a court cannot suspend the sentence of imprisonment.

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<sup>16</sup> *Sentencing Amendment Act 2010* (No. 77 of 2010) (Vic) s 28.

<sup>17</sup> Sentencing Advisory Council (2010), above n 14, 7.

## Conditions of a CCO

### Core conditions

Every CCO contains the following conditions:<sup>18</sup>

- The offender must not during the period of the order commit, whether in or outside Victoria, an offence punishable by imprisonment.
- The offender must comply with any obligation or requirement prescribed by the regulations. The regulations contain further conditions such as prohibitions on being under the influence of alcohol or drugs while attending at a community corrections office or while performing community service under a CCO.<sup>19</sup>
- The offender must report to, and receive visits from, the Secretary of the Department of Justice during the period of the order.
- The offender must report to the community corrections centre specified in the order within two working days after the order comes into force.
- The offender must notify the Secretary of the Department of Justice of any change of address or employment.
- The offender must not leave Victoria without the permission of the Secretary of the Department of Justice.

The powers and functions of the Secretary of the Department of Justice are delegated to community corrections officers employed by the Department.

These core conditions are essentially the same as the core conditions that applied to CBOs. They are slightly less extensive than the core conditions of the ICO (which included community work or counselling)<sup>20</sup> and the CCTO (which included alcohol or drug treatment),<sup>21</sup> and are much less extensive than the core conditions of the home detention order.

### Other conditions

When ordering a CCO, a court must impose, in addition to the core conditions listed above, at least one other condition from the list below (those listed as 'new' were not available under the previous intermediate orders).

In deciding which of these conditions to attach to the order, the court must consider:<sup>22</sup>

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

<sup>18</sup> *Sentencing Act 1991 (Vic)* s 45.

<sup>19</sup> *Sentencing Regulations 2011 (Vic)* reg 17.

<sup>20</sup> *Sentencing Act 1991 (Vic)* s 20 (now repealed).

<sup>21</sup> *Sentencing Act 1991 (Vic)* s 18R (now repealed).

<sup>22</sup> *Sentencing Act 1991 (Vic)* s 48A.

## Unpaid community work

A court may attach to a CCO a condition requiring the offender to perform up to 600 hours of unpaid community work.<sup>23</sup>

The offender cannot be required to perform more than 20 hours of community work in any seven-day period, although if the offender wishes to work off the hours more quickly, he or she can request to work up to 40 hours in a seven-day period.

The type of task that may be undertaken includes gardening, cleaning (particularly graffiti removal), painting, providing administrative assistance, and helping with open days, fairs, or fundraisers.<sup>24</sup>

While unpaid community work has the potential to fulfil the sentencing purpose of establishing conditions that facilitate the offender's rehabilitation, section 48C(2) of the *Sentencing Act 1991* (Vic) explicitly states that the purpose of attaching an unpaid community work condition is to adequately punish the offender in the community.

Unpaid community work was available as a condition of a CBO and was a core condition of an ICO and a home detention order. It was not available as a condition of a CCTO.

## Treatment and rehabilitation

A court that imposes a CCO may attach a condition requiring the offender to undergo treatment or rehabilitation.<sup>25</sup> The *Sentencing Act 1991* (Vic) lists a wide range of possible forms of treatment and rehabilitation that the court may specify. These include assessment and treatment for abuse of, or dependency on, drugs or alcohol. They also include mental health assessment and treatment, as well as educational, cultural, employment, and personal development programs.

The forms of treatment and rehabilitation listed for CCOs are more detailed and extensive than for the orders they replaced.

## Supervision

A court that imposes a CCO may attach a condition requiring the offender to be supervised, monitored, and managed as directed by the Secretary of the Department of Justice (a function that is delegated to community corrections officers).<sup>26</sup>

This is similar to the power that courts had to attach a supervision condition to the CBO. The statutory purpose of the supervision condition for CBOs was 'to allow for the rehabilitation of an offender in the community and the monitoring, surveillance or supervision of an offender who demonstrates a high risk of re-offending'.<sup>27</sup> Offenders who were at lower risk of reoffending were dealt with through the general, core condition to report to, and receive visits from, a community corrections officer.

In contrast, the statutory purpose of the supervision condition for CCOs is to address the need 'to ensure compliance with the order'.<sup>28</sup> Nevertheless, if a supervision condition is attached, the level of supervision (which can range from weekly to bimonthly meetings with the offender) is determined by Community Correctional Services, which applies intensive supervision, case management, or non-intensive supervision depending on its assessment of the offender's risk of reoffending and level of need.<sup>29</sup>

<sup>23</sup> *Sentencing Act 1991* (Vic) s 48C.

<sup>24</sup> Corrections Victoria, *Judicial Officers' Guide to Corrections* (2013) pt 3.5.1.

<sup>25</sup> *Sentencing Act 1991* (Vic) s 48D.

<sup>26</sup> *Sentencing Act 1991* (Vic) s 48E.

<sup>27</sup> *Sentencing Act 1991* (Vic) s 40 (now repealed).

<sup>28</sup> *Sentencing Act 1991* (Vic) s 48E(2).

<sup>29</sup> Corrections Victoria (2013), above n 24, pt 3.5.3.

## New conditions

A court that imposes a CCO may attach a number of new conditions, including directing the offender to:

- not contact or associate with a person, or a class of people, specified in the order;<sup>30</sup>
- reside at a particular place specified in the order. Alternatively, the court may direct that the offender *not* reside at a particular place specified in the order;<sup>31</sup>
- not enter or remain in a specified area or place.<sup>32</sup> Examples given in the legislation are a specified sporting venue and the central business district of Melbourne;
- remain at a specified place between certain hours.<sup>33</sup> An example given in the legislation is that the offender must remain at home between 9 pm and 6 am each day;
- not enter, remain at, or consume alcohol at specified or unspecified licensed premises or a location of any major event;<sup>34</sup>
- pay a bond;<sup>35</sup>
- be monitored by the court;<sup>36</sup> and
- be electronically monitored.<sup>37</sup>

## Justice plan condition

If an offender has an intellectual disability, the court may, under section 80 of the *Sentencing Act 1991* (Vic), attach a condition directing the offender to participate in services specified in a justice plan prepared in accordance with the objectives and principles of the *Disability Act 2006* (Vic).

## Residual condition

Section 48 of the *Sentencing Act 1991* (Vic) gives a court imposing a CCO a broad power to attach 'any other condition to the order that the court thinks fit'.

The only express qualifications to this power are that a CCO cannot include a condition about making restitution or the payment of compensation, costs, or damages (as those matters are dealt with separately under Part 4 of the Act) and that it cannot overlap with any of the specific conditions set out above.<sup>38</sup>

<sup>30</sup> *Sentencing Act 1991* (Vic) s 48F.

<sup>31</sup> *Sentencing Act 1991* (Vic) s 48G.

<sup>32</sup> *Sentencing Act 1991* (Vic) s 48H.

<sup>33</sup> *Sentencing Act 1991* (Vic) s 48I.

<sup>34</sup> *Sentencing Act 1991* (Vic) s 48J.

<sup>35</sup> *Sentencing Act 1991* (Vic) s 48JA.

<sup>36</sup> *Sentencing Act 1991* (Vic) s 48K.

<sup>37</sup> *Sentencing Act 1991* (Vic) s 48LA.

<sup>38</sup> *Sentencing Act 1991* (Vic) s 48.

## Research questions

In this report, the Council addresses three questions in relation to CCOs:

1. How have sentencers used CCOs and what are the characteristics of offenders who receive them?
2. Have CCOs only replaced CBOs and ICOs<sup>39</sup> in sentencing practice?
3. To what extent, if any, have CCOs replaced suspended sentences of imprisonment in sentencing practice?

## Data

The primary sources of data for this report were the conviction returns database for the County and Supreme Courts and Courtlink data extracts for the Magistrates' Court. In addition, the Council manually gathered data on CCO conditions for the higher courts from conviction returns supplied by the Courts and Tribunals service, Department of Justice.

In addressing the first question, the report examines the eighteen-month period between the introduction of CCOs in January 2012 and the most recent date for which sentencing data were available at the commencement of the project (June 2013).

The second and third questions have been addressed using data from 2008 to June 2013, focusing in particular on the 18 months before and after the introduction of CCOs.

One element of a CCO is the provision for an 'intensive compliance period' fixed under section 39 of the *Sentencing Act 1991* (Vic). If a court imposes a CCO for a period of six months or longer, it may fix a period for the completion of one or more of the conditions attached to the order. Data on this period were only available to the Council for the higher courts, not for the Magistrates' Court.

## Counting rules

This report uses several counting rules as single cases may involve multiple offences and multiple sentence types.

### Offences

Where a case has only a single offence type, regardless of the number of charges of the offence, that case contributes one count to the number of cases of a given offence type. However, where a case has multiple offences, at least two counting methods can be used. One involves counting only the principal or 'most serious' offence per case.<sup>40</sup> The other method involves counting all charges of an offence in a case, regardless of how many charges of the offence occur in a case.<sup>41</sup>

The main disadvantage of the principal offence method is that it is likely to be biased towards more serious offences. The main disadvantage of the all charges method is it counts offences that may be incidental to the final sentence an offender receives. It also favours offence types that are frequently committed multiple times by the one offender.

<sup>39</sup> CCTOs were used at such a low level in court that they were excluded from this question. In 2012, for example, 12 CCTOs were imposed on offenders in the Magistrates' Court and no CCTOs were imposed in the higher courts.

<sup>40</sup> For example, where a CCO is imposed for two charges, one of theft and one of assault, the assault is counted for the case as it is a more serious offence than theft.

<sup>41</sup> For example, if there are three aggravated burglary charges and two theft charges, the case contributes three to the overall count of aggravated burglary and two to the overall count of theft.



This report focuses primarily on the principal offence method of counting offences. The scale used to determine the most serious offence in a case was the National Offence Index.<sup>42</sup> The offence in a case with the lowest rank on the offence seriousness scale (where '1' is the most serious offence) was deemed to be the most serious.

The principal offence is examined at a detailed level and at a broad level. The detailed level refers to the specific statutory reference of an offence. The broad level employs the offence classification used by Victoria Police<sup>43</sup> that groups the many thousands of specific offences into 27 offence categories. This report sets out all offence categories for which there are counts, but when dealing with specific offences, this report only presents data on the most frequent offences.

### Cases with multiple sentences

Cases with multiple sentence types are counted under each sentence type they receive.<sup>44</sup>

### Commonwealth orders

For all analyses, Commonwealth orders have been excluded from the data, as these are not relevant to Victorian sentencing law.

## Methodology

The first question, 'How have sentencers used CCOs and what are the characteristics of offenders who receive them?', was addressed by examining data on the offence, the offender, and the order characteristics for CCOs imposed between the date the orders were introduced (January 2012) and June 2013.

The second question, 'Have CCOs only replaced CBOs and ICOs in sentencing practice?', was addressed by comparing the volume and profiles of CCOs in the 18 months from January 2012 to June 2013 with the volume and profiles of CBOs and ICOs in the 18 months prior to January 2012.

The third question, 'To what extent, if any, have CCOs replaced suspended sentences of imprisonment in sentencing practice?', was addressed by examining recent trends in the use of suspended sentences and comparing these trends with the use of other types of sentences, in particular imprisonment sentences and CCOs. The response to this question also involved a comparison between the offence and offender profiles of CCOs and the offence and offender profiles of wholly suspended sentences over the period from January 2012 to June 2013.

Each question was addressed separately for the Magistrates' Court (Chapter 2) and the higher courts (Chapter 3).

## Statistical techniques

Statistical techniques were used to determine whether differences were statistically significant or whether differences were likely not to have occurred by chance. The chi-square statistic was used to assess the difference between two distributions of categorical data (for example, the offence distribution of CCOs and wholly suspended sentences). The z-statistic was used to assess the difference between the percentages of two specific categories (for example, the percentage represented by assault for CCOs versus wholly

<sup>42</sup> Australian Bureau of Statistics, *National Offence Index*. cat. no. 1234.0.55.001 (2009).

<sup>43</sup> Victoria Police, *Crime Statistics 2011/12* (2012).

<sup>44</sup> For example, if a case receives a fine and a CCO, it will contribute one count to the number of cases that received a fine and one count to the number of cases that received a CCO.

suspended sentences). The t-test was used to assess the statistical significance of differences in groups where a continuous variable was involved (such as age or sentence length). To achieve statistical significance across all statistical tests, there needed to be at least a 95% chance that the difference had not occurred by chance alone.

To examine monthly trends for higher courts data for questions two and three, the twelve-month moving average was calculated. This represents the average of the preceding 12 months for any given month. For example, the twelve-month moving average for January 2012 was the average for each month between February 2011 and January 2012. The reason the twelve-month moving average was used was that higher courts data tend to fluctuate considerably. This is partly due to the relatively small number of cases that the higher courts sentence each month. Also, the County Court does not sit for approximately one month in the December–January period, meaning there are fewer cases sentenced in these months than others, resulting in potentially large fluctuations in the number of cases sentenced in the higher courts. The moving average is a useful tool for assessing trends over time, particularly when large fluctuations occur.

## Chapter 2

# Community correction orders in the Magistrates' Court

### Summary

From January 2012 to June 2013, magistrates imposed community correction orders (CCOs) on approximately 10% of all offenders coming before the Magistrates' Court.

The median age of offenders receiving a CCO was 30 years. Over 80% of offenders receiving a CCO were male (82.3%). Approximately 75% of offenders receiving a CCO had a prior conviction.

Magistrates imposed CCOs for a broad range of offences, but CCOs were most commonly imposed for the offence of contravening a family violence intervention order (where only the principal offence is considered). The median duration of a CCO was 12 months.

In addition to the core conditions, magistrates most commonly imposed the assessment and treatment condition (81.8%), unpaid community work (69.5%), and supervision (53.1%). Judicial monitoring was the most commonly imposed condition of the new conditions available for CCOs, but it was only imposed on one out of 10 offenders who received a CCO (10.6%). The conditions varied with the offender's age but less so with gender. The conditions also varied with offence characteristics. Metropolitan and non-metropolitan courts imposed assessment and treatment orders and unpaid community work conditions at similar rates. Non-metropolitan courts were more likely than metropolitan courts to impose a supervision condition.

Magistrates combined a CCO with another sentence for approximately 25% of offenders, and this was most frequently a fine or imprisonment.

There was little difference in the way CCOs were used in 2012 and the way CBOs and ICOs were used in 2011. The volume, rate, duration, and offender profiles for CCOs and CBOs/ICOs were similar. For example, CCOs were imposed on 7,193 offenders in 2012 compared with 7,207 offenders who received CBOs/ICOs in 2011 (12 offenders received a CCTO in 2011). When all sentenced offenders are considered, the rate at which CCOs were imposed was only marginally lower in 2012 (8.6%) than in 2011 (9.3%). This suggests that, in practice, the new community sentence was used simply as a replacement for the older community sentences in the Magistrates' Court.

Apart from a sharp decline in use in May 2011, changes in the use of suspended sentences in the Magistrates' Court were minor. The decline in May 2011 predated the introduction of CCOs and was due mainly to the abolition of a mandatory imprisonment (suspended or non-suspended) term for a second or subsequent offence of driving while disqualified or suspended. The May 2011 decline coincided with a rise in the use of fines, indicating that fines were primarily being used in place of suspended sentences.

There was a very slight decline in the use of suspended sentences in 2012 followed by a slight increase in early 2013. Overall, however, there is little evidence of any shift away from suspended sentences towards CCOs in the Magistrates' Court. The Magistrates' Court is using CCOs and suspended sentences for different profiles of offenders and different offences.

## How have CCOs been used in the Magistrates' Court and who receives them?

Between January 2012 and June 2013, the community correction order (CCO) was used for 10,893 offenders sentenced in the Magistrates' Court. This section examines these offenders in terms of offender and offence characteristics as well as the characteristics of the order itself.

### Offender and offence characteristics

The median age of offenders who received a CCO in the Magistrates' Court was 30 years, while nearly one-third (30.1%) was aged under 25 years. The oldest offender to receive a CCO was 80 years of age.

Over four in five offenders were male (82.3%), while the remaining 17.7% were female. Three-quarters of offenders (74.4%) had been sentenced for a previous offence in the period between July 2004 and the imposition of their CCO sentence between January 2012 and June 2013.<sup>45</sup>

Figure 1 displays data on the 20 most common specific principal offences to receive a CCO. The most common principal offence was contravene a family violence intervention order<sup>46</sup>, which was the principal CCO offence for 10.2% of offenders. The next most common offence was other theft<sup>47</sup> (8.7%) followed by recklessly cause injury (8.4%). For comparison purposes, the percentages of all CCO sentences imposed in the Magistrates' Court by specific offence (most common 20 offences) are displayed in Appendix A, Figure A1. The most common offences to receive a CCO when all charges were considered were other theft (8.3%), obtain property by deception (7.3%), and theft from a shop (5.1%).

Relative to Figure 1, Figure 2 (page 14) presents broader groupings of principal offences receiving a CCO. Assault offences, which include various assault, causing injury, and causing serious injury offences, made up one in five offences (20.3%), while traffic (16.6%) and theft (15.7%) were the second and third most common broad groupings of offences. Justice procedures offences ranked fourth; this category includes offences against court orders, most commonly contravene a family violence intervention order.

### Order characteristics

Magistrates are required to impose an appropriate timeframe for a CCO, but, consistent with the jurisdictional limit for the Magistrates' Court, the timeframe cannot exceed 24 months.<sup>48</sup>

The median duration of a CCO imposed in the Magistrates' Court was 12 months, and, as Figure 3 shows (page 15), this was the duration used for over two-thirds (68.7%) of orders. One in five (20.2%) was longer than 12 months (the longest was 24 months), while one in 10 (11.0%) was under 12 months, clustering at six and seven months.

Magistrates may impose additional sentences on an offender who receives a CCO. Specifically these include a fine<sup>49</sup> and imprisonment, provided the term of imprisonment does not exceed three months. As of August 2012, the term of imprisonment could not be suspended.<sup>50</sup>

<sup>45</sup> The Council's reoffending database does not contain records prior to July 2004.

<sup>46</sup> For more information on the offence of contravening a family violence intervention order see Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention*, Monitoring Report (2013).

<sup>47</sup> Other theft includes theft other than theft of a motor vehicle, theft of a bicycle, theft from a motor vehicle, and theft from a shop.

<sup>48</sup> *Sentencing Act 1991 (Vic)* s 38(1)(a).

<sup>49</sup> *Sentencing Act 1991 (Vic)* s 43.

<sup>50</sup> *Sentencing Act 1991 (Vic)* s 44.

Figure 1: Percentage of principal CCO sentences by specific principal offence for the 20 most common offences, Magistrates' Court, January 2012 to June 2013 (n = 10,893)

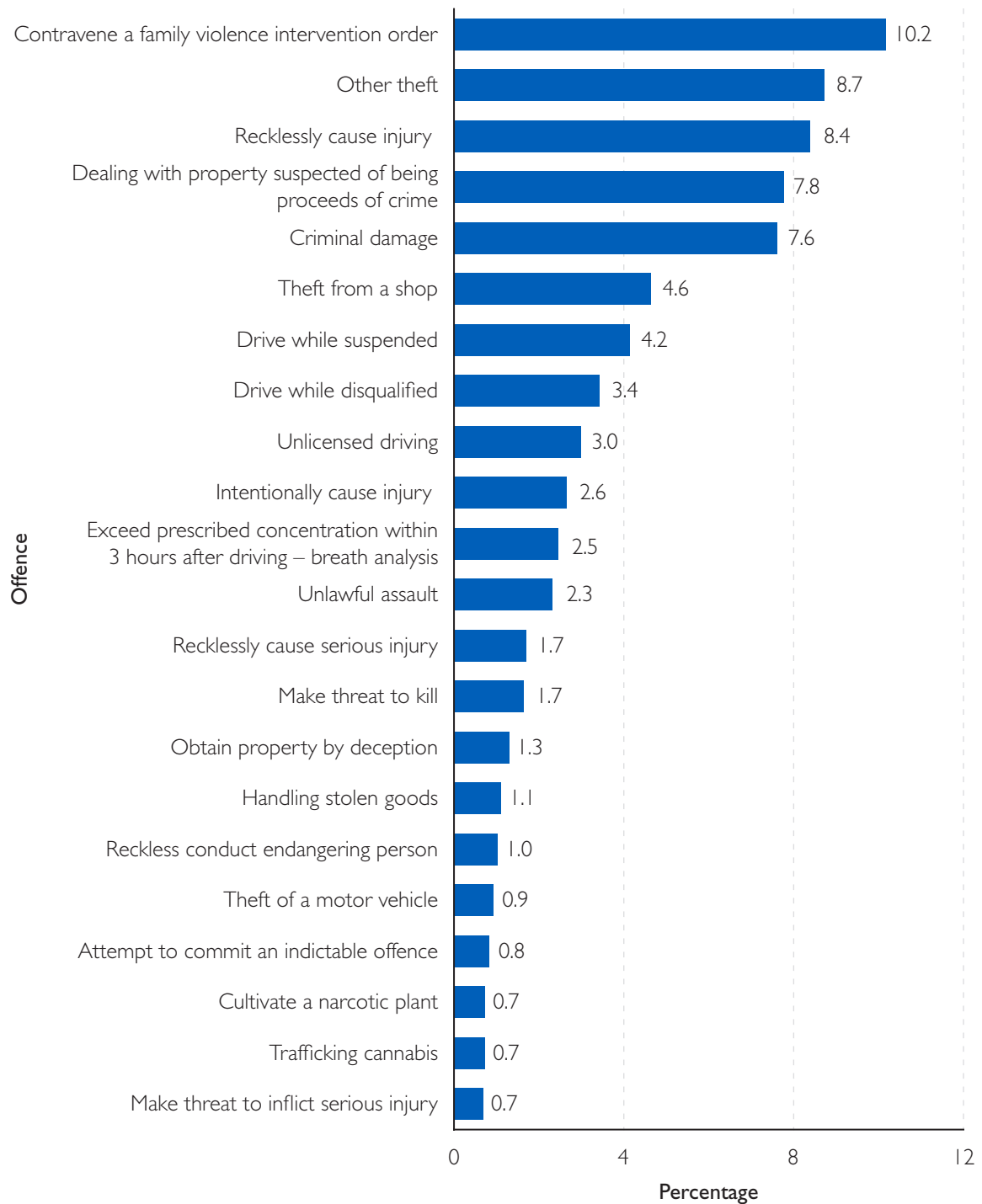
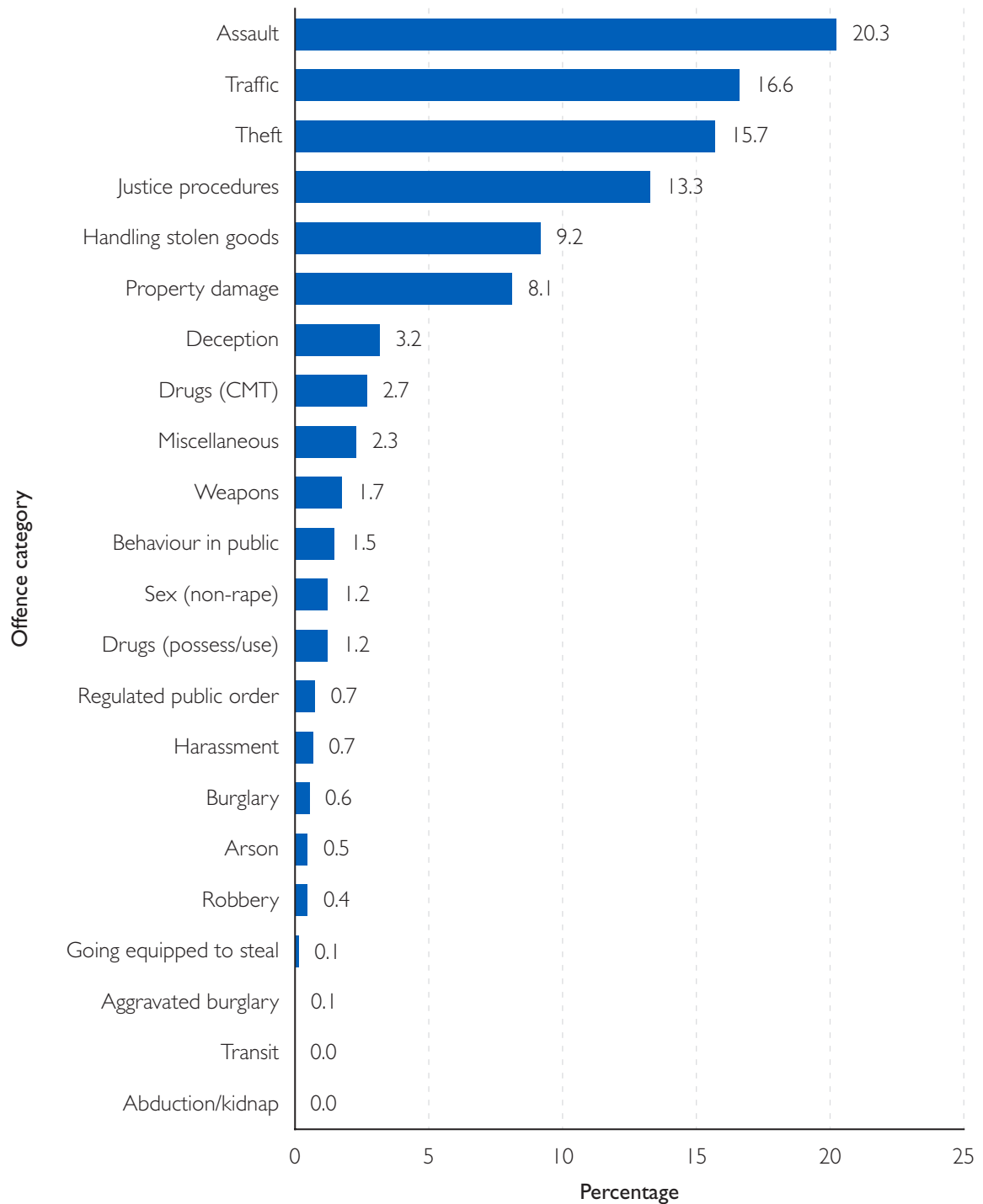


Figure 2: Percentage of principal CCO sentences by broad offence category, Magistrates' Court, January 2012 to June 2013 (n = 10,893)



**Figure 3:** Percentage of offenders by CCO duration, Magistrates' Court, January 2012 to June 2013 (n = 10,893)

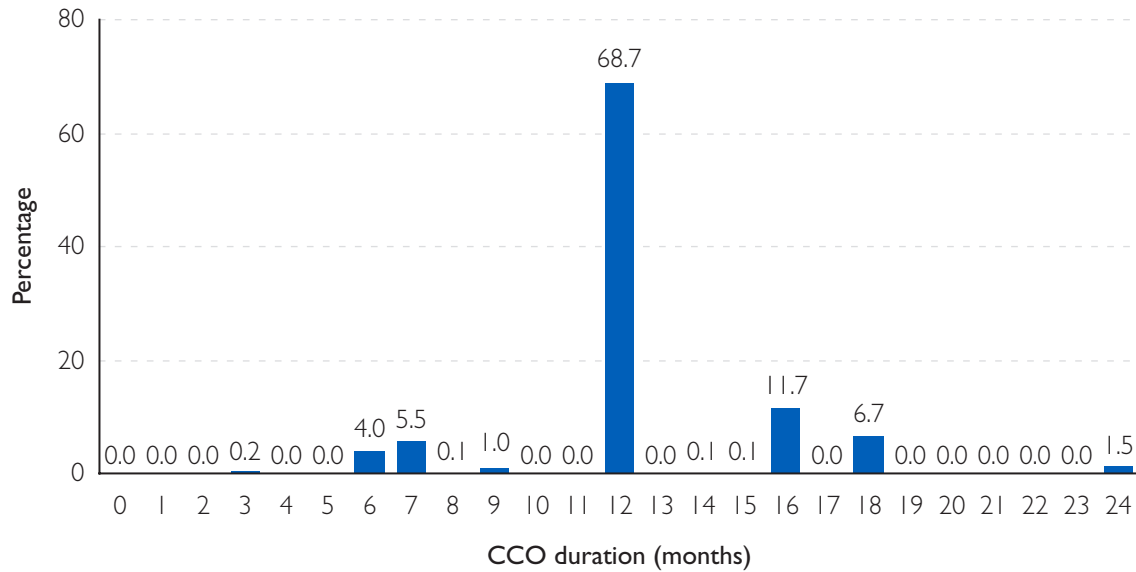
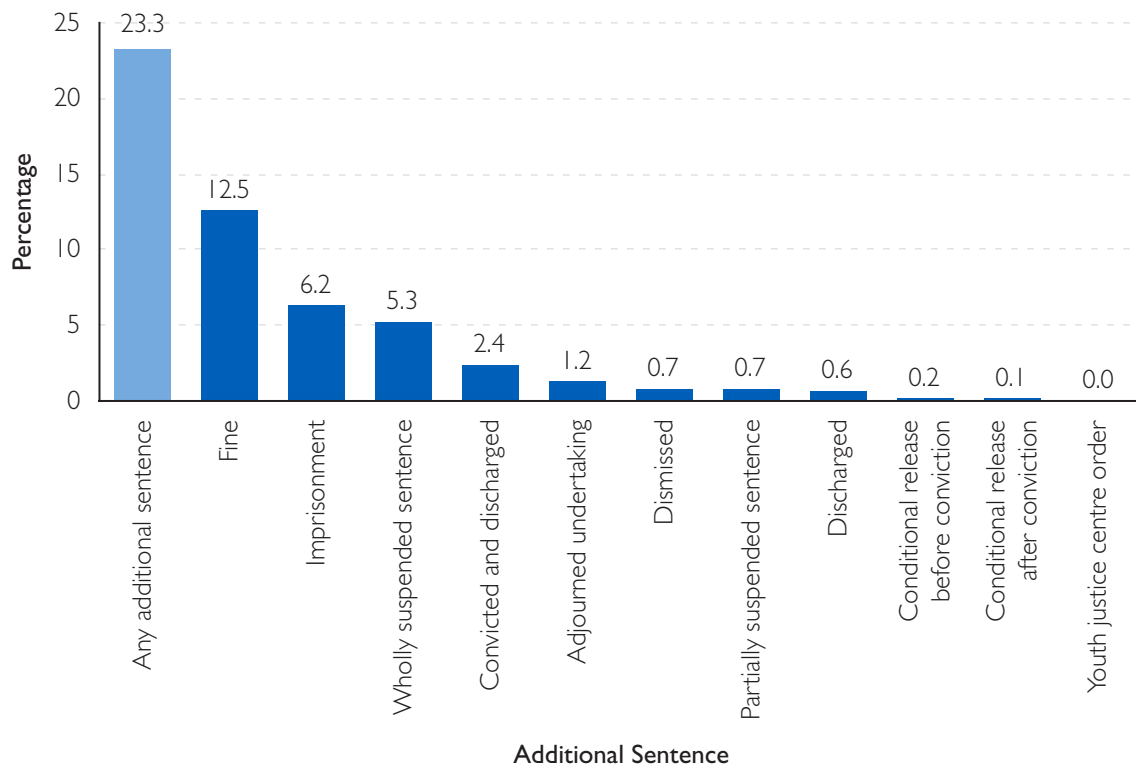


Figure 4 presents the various sentences imposed on offenders in addition to the CCO. Nearly one-quarter of CCOs were imposed along with some other sentence (see the 'any additional sentence' category in Figure 4), most frequently a fine (12.5%) followed by imprisonment (6.2%) and a wholly suspended sentence of imprisonment (5.3%).

**Figure 4:** Percentage of CCOs by additional sentence imposed on the offender, Magistrates' Court, January 2012 to June 2013 (n = 10,893)



As Figure 5 shows, the percentage of CCOs that were imposed along with a wholly suspended sentence peaked at just over 14% in June 2012 before dropping significantly in August and September of the same year to reach a level that was at or below 1% through to June 2013. The decline was due to the requirement that courts no longer combine suspended sentences with CCOs.

**Figure 5:** Percentage of CCOs that were combined with a wholly suspended sentence by month, Magistrates' Court, January 2012 to June 2013



## Conditions

Magistrates are required to impose, in addition to the core conditions, at least one additional condition on a person who receives a CCO.

Figure 6 shows the percentage of CCO offenders according to the discretionary condition imposed. Three condition types stand out: assessment and treatment was the most commonly used condition (81.8% of offenders), followed by unpaid community work (69.5%) and supervision (53.1%). Magistrates imposed judicial monitoring on 10.6% of offenders.

Magistrates rarely imposed the new conditions of non-association (1.4%), alcohol exclusion (1.0%), place restriction (1.0%), curfew (0.5%), and residence restriction (0.4%).

It was common for CCOs to receive multiple conditions. The median number of conditions imposed on a CCO was two. As Figure 7 shows, two-thirds (66.5%) of CCOs had either two or three conditions, while over one-quarter had only one condition (26.6%). Less than 1% of CCOs had more than four conditions (0.8%).

In terms of combinations of conditions used by magistrates, the three most common conditions – supervision, unpaid community work, and assessment and treatment – were used together for 3,582 offenders, representing nearly one-third of CCOs.

Taken separately, each of these three conditions was commonly coupled with some other condition. Of the 7,571 CCOs that included unpaid community work, over three-quarters (77.0%) had at least one other condition type, most commonly supervision (63.5%). A higher proportion of the 7,832 CCOs that included assessment and treatment also included other conditions (87.9%), most commonly unpaid community work (72.6%). Virtually all of the supervision conditions were coupled with at least one other condition (99.5%), with the vast majority combined with assessment and treatment (97.3%) and nearly two-thirds (64.4%) combined with unpaid community work.



Figure 6: Percentage of CCO offenders by condition, Magistrates' Court, January 2012 to June 2013

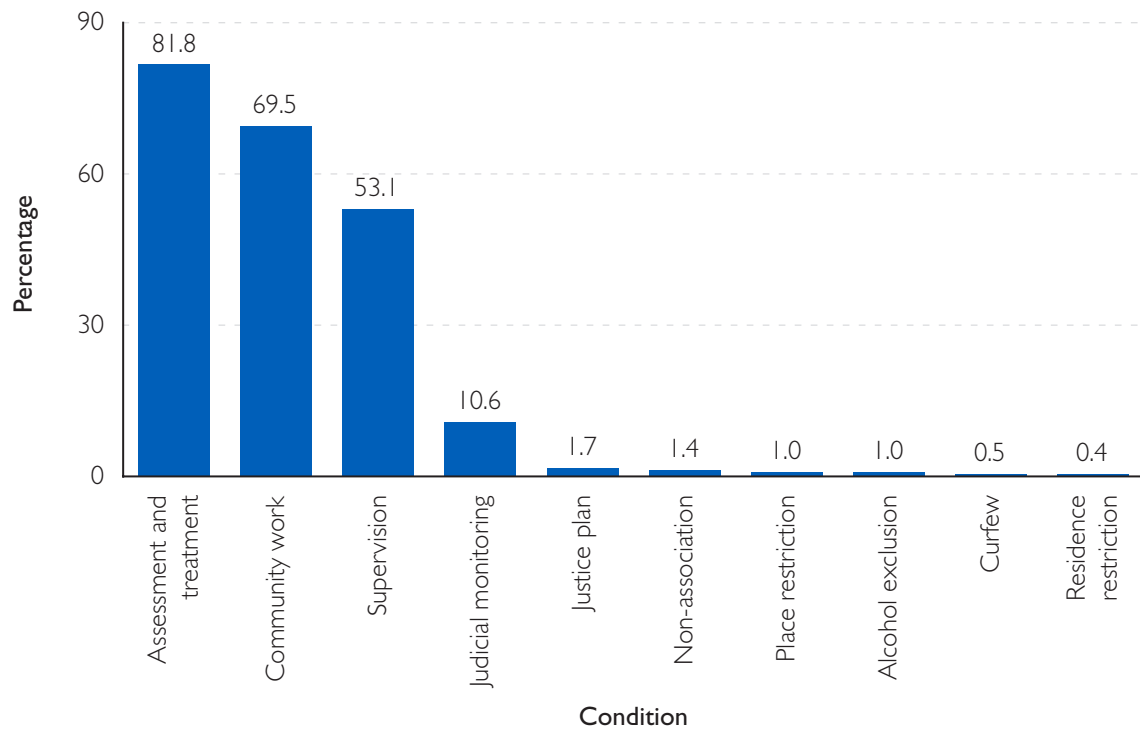
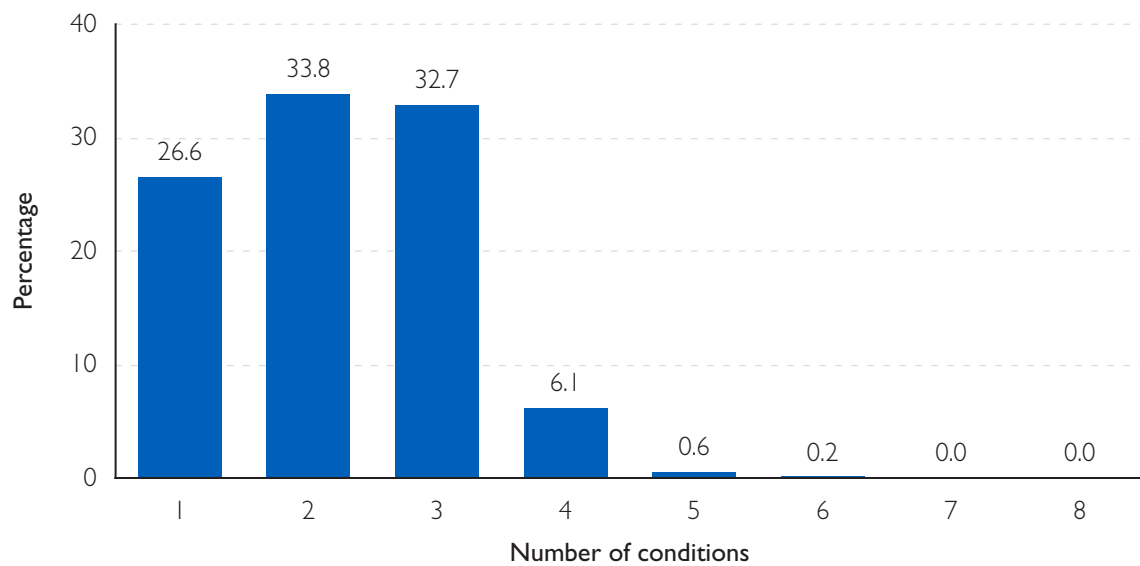


Figure 7: Percentage of CCO offenders by number of conditions, Magistrates' Court, January 2012 to June 2013



### Variation by offender and offence characteristics

The following analysis considers differences in conditions according to the offender's age and gender as well as the offence for which the offender received the CCO. The analysis focuses on the four most common condition types: assessment and treatment, unpaid community work, supervision, and judicial monitoring. The Council examined each factor separately; therefore, it is not possible from this analysis to attribute a causal connection between each factor and the choice of conditions. For example, variation in conditions according to age may be explained by offence type rather than age or gender.

There were some clear differences in the choice of conditions according to the age and gender of the offender. As Figure 8 shows, the percentage of CCOs that included assessment and treatment or a supervision condition tended to decline as the age of the offender increased. Nearly four in five offenders aged 18 to 24 received an assessment and treatment condition (78.7%). This declined for each age group to just over half of offenders aged 55 years or older (54.3%). Nearly two-thirds (65.8%) of offenders aged 18 to 24 received a supervision condition compared with two in five (39.8%) offenders aged 55 years or older.

Judicial monitoring also tended to decrease as the age of the offender increased, aside from the youngest age group. This peaked at 12.7% for offenders aged 25 to 34, and then declined across each older age group to 4.3% for offenders aged 55 years and older.

Unpaid community work varied only marginally by age group but increased from 78.2% for offenders aged 18 to 24 to 85.1% for offenders aged 35 to 44. This then declined to 82.2% for offenders aged 55 years and older.

Figure 9 shows that there was little difference in the percentage of males and females that received the four main condition types. The largest difference was for assessment and treatment, a condition received by a higher percentage of males (71.4%) than females (60.5%).

There was some variation in magistrates' choice of conditions according to offence type. Focusing on the 10 offences that most frequently received a CCO, the following four graphs (Figures 10 to 13) present the relative percentages of the most common conditions.

**Figure 8:** Percentage of CCOs by selected condition and age group of the offender, Magistrates' Court, January 2012 to June 2013

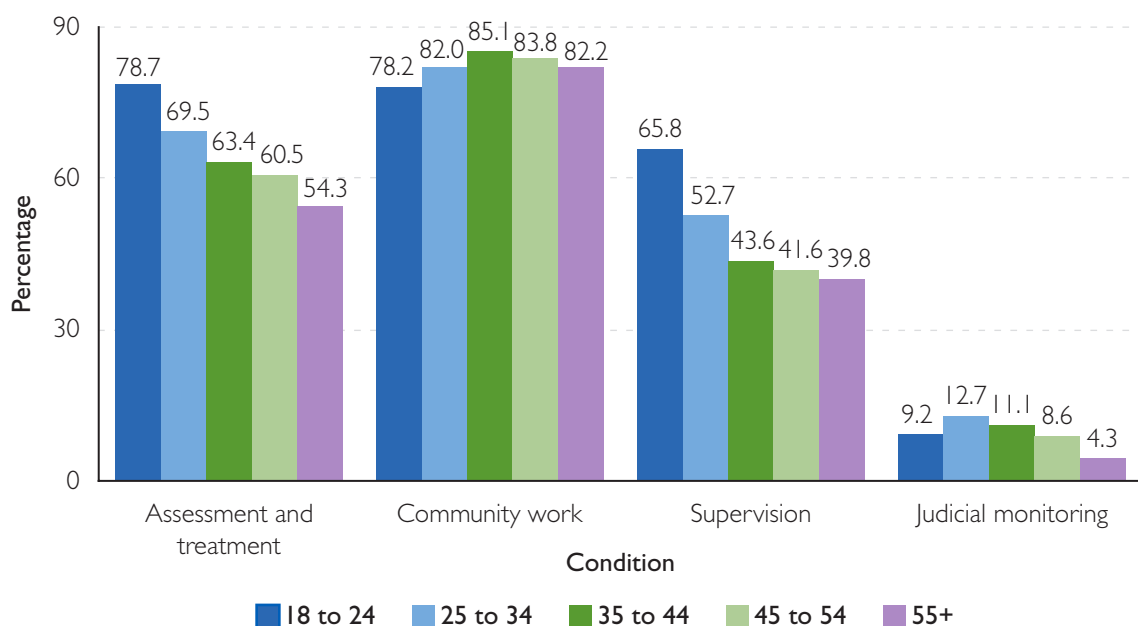


Figure 9: Percentage of CCOs by selected condition and gender of the offender, Magistrates' Court, January 2012 to June 2013

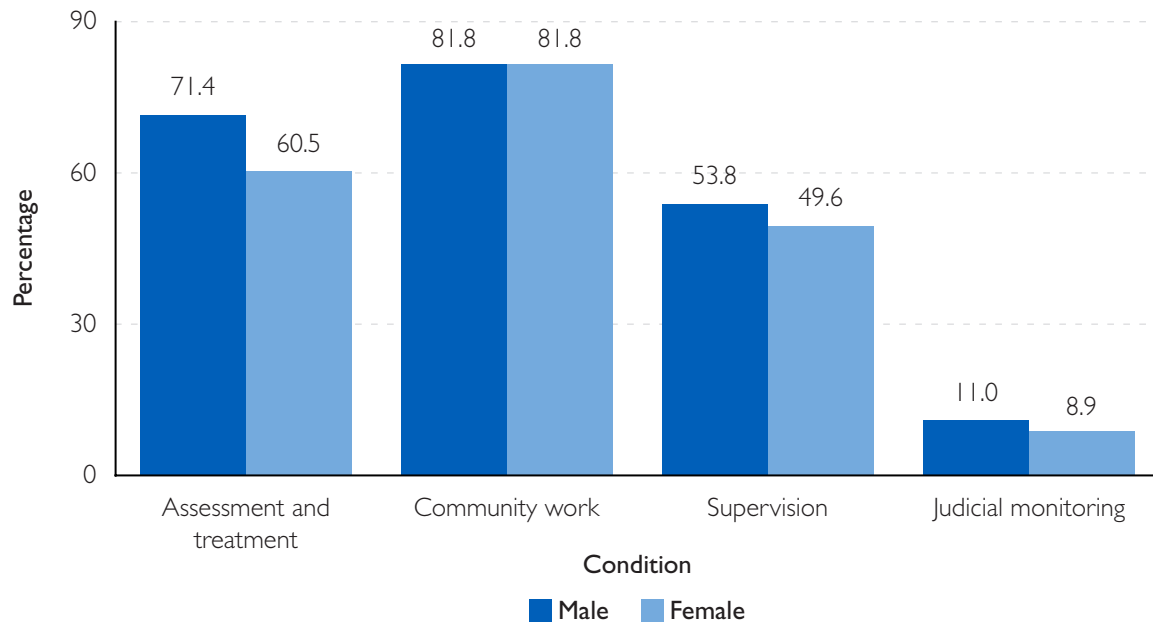
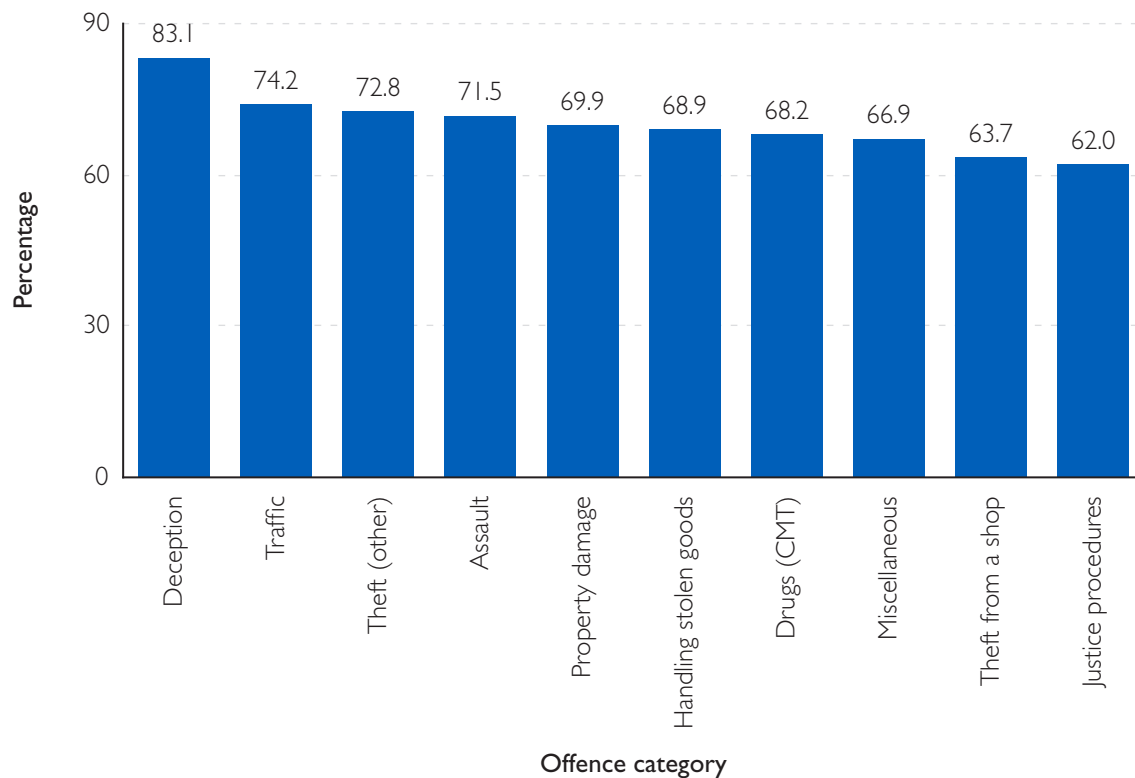


Figure 10: Percentage of CCOs that included a condition of unpaid community work by category of principal offence, Magistrates' Court, January 2012 to June 2013



Unpaid community work is a condition that emphasises the punishment component of a CCO. Figure 10 shows that over 60% of offenders received unpaid community work for all offence types. Unpaid community work was most likely to be used for offenders sentenced for deception offences (83.1%) followed by traffic offences (74.2%). Magistrates were least likely to impose community work as a condition of a CCO for justice procedures offences (62.0%) and theft from a shop (63.7%).

The assessment and treatment condition is intended to be a rehabilitative component of a CCO, and Figure 11 shows that across all offences at least 67.4% of offenders received this condition. Deception and traffic offences were the least likely to receive assessment and treatment (67.4% and 74.9% respectively). These were the offences most likely to receive unpaid community work, which may suggest that magistrates are more likely to emphasise punishment over rehabilitation for offenders who are sentenced for these offences. Drug offences (cultivate, manufacture, or traffic) had the highest level of assessment and treatment (91.1%), suggesting a strong emphasis on a rehabilitative component for offenders who have committed this offence.

Figures 12 and 13 show that the two types of offences least likely to receive supervision and judicial monitoring were the same offences that received the highest levels of unpaid community work and the lowest levels of assessment and treatment: traffic and deception. The offence most likely to receive judicial monitoring was handling stolen goods (18.6%).

**Figure 11:** Percentage of CCOs that included a condition of assessment and treatment by category of principal offence, Magistrates' Court, January 2012 to June 2013

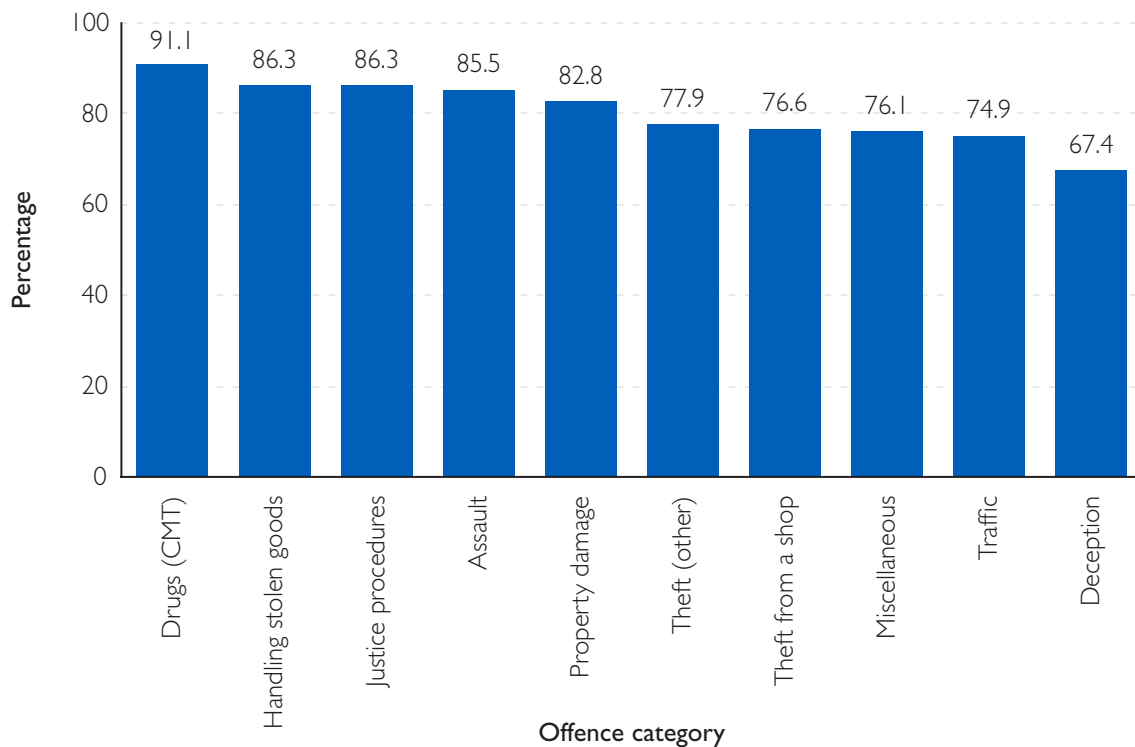


Figure 12: Percentage of CCOs that included a condition of supervision by category of principal offence, Magistrates' Court, January 2012 to June 2013

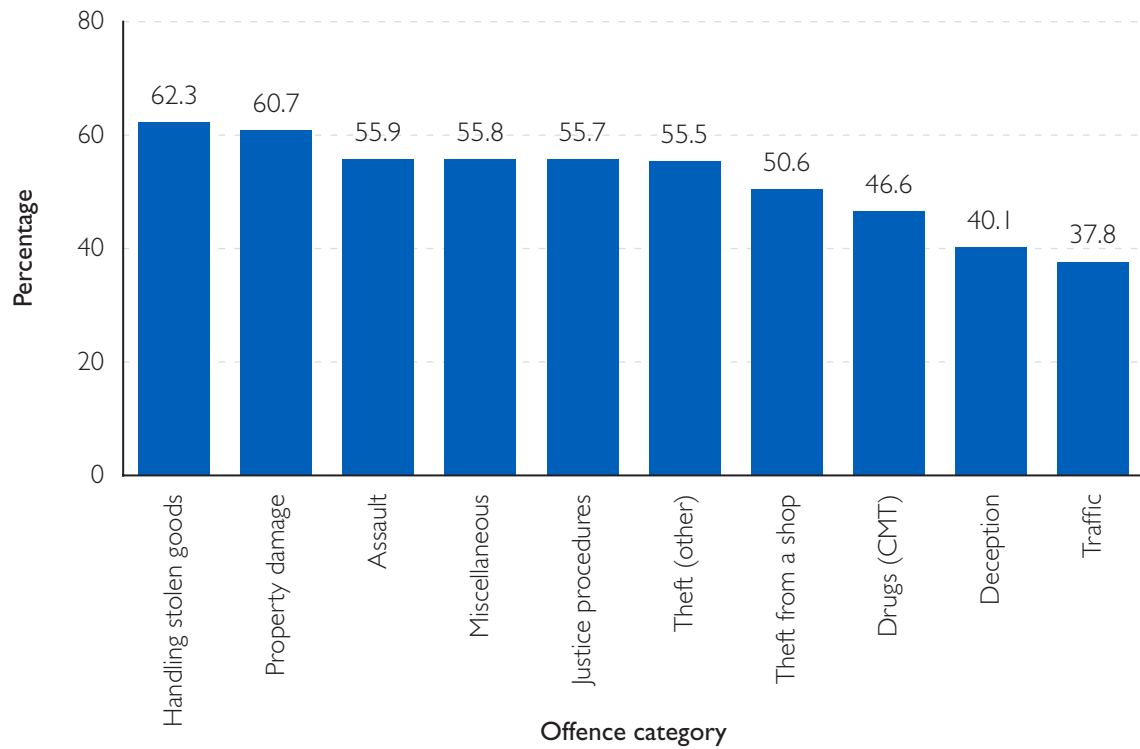
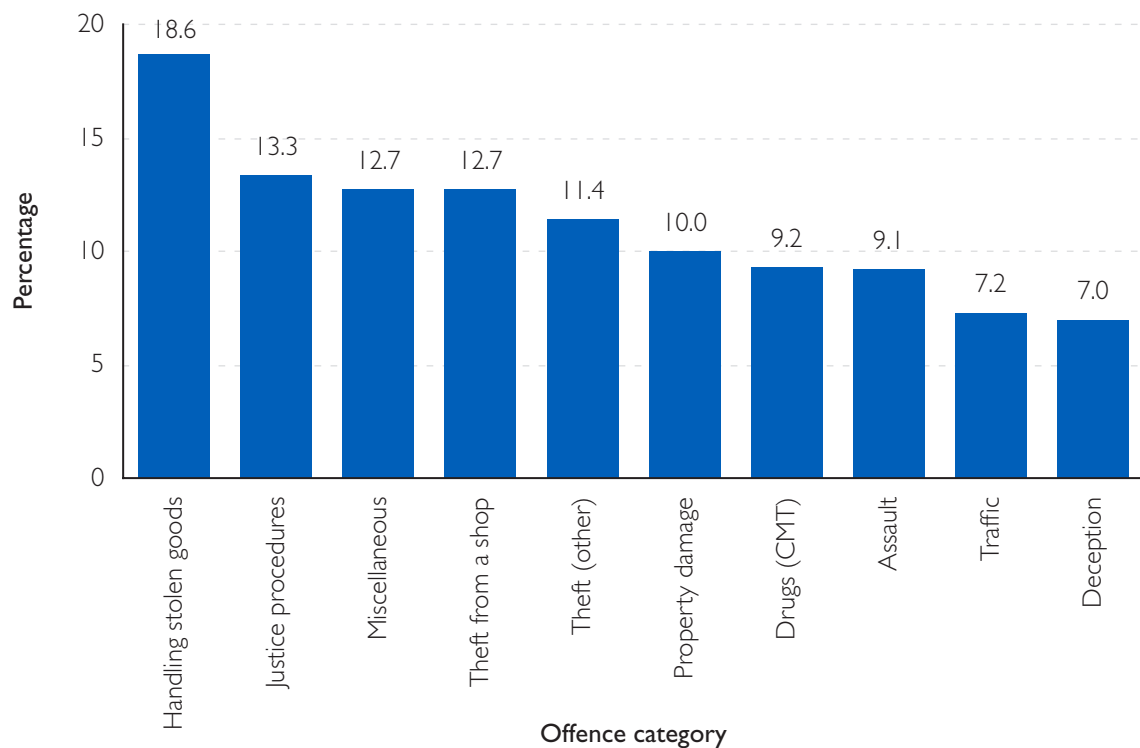


Figure 13: Percentage of CCOs that included a condition of judicial monitoring by category of principal offence, Magistrates' Court, January 2012 to June 2013



Variation over time and court location

The Council also examined variation in the choice of conditions over time and across different court locations. Figure 14 shows that the monthly trend in the use of unpaid community work and assessment and treatment was steady over the eighteen-month period. In contrast, the use of supervision steadily declined. In January 2012, 64.6% of CCOs had supervision attached to them. By June 2013, this had dropped to 37.0%.

Judicial monitoring experienced a gradual rise over the first nine months, from 6.7% in January 2012 to 13.6% in September 2012. From then it remained steady at just over 10%.

Figure 15 shows that metropolitan and non-metropolitan courts impose assessment and treatment orders and community work conditions at similar rates. Non-metropolitan courts were more likely to impose a supervision condition, while the metropolitan courts imposed the judicial monitoring condition at a higher rate. Both the metropolitan and the non-metropolitan courts rarely imposed the other available conditions.

Figure 14: Selected CCO conditions by month, Magistrates' Court, January 2012 to June 2013

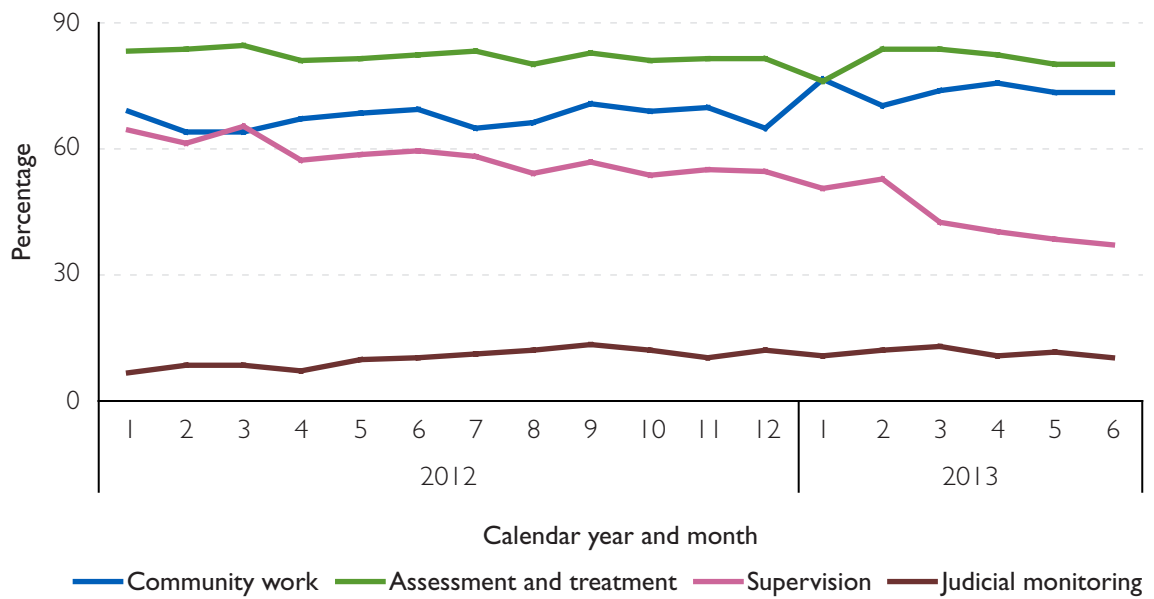
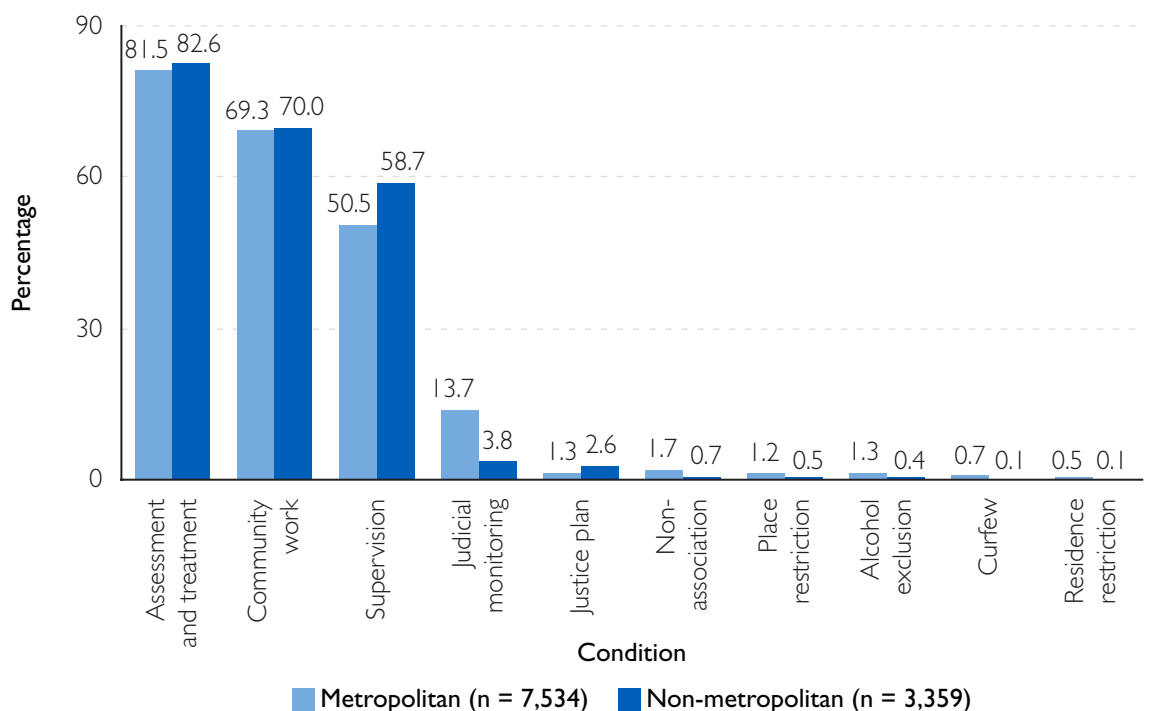


Figure 15: CCO conditions by court region, Magistrates' Court, January 2012 to June 2013



## Have CCOs replaced CBOs and ICOs in sentencing practice in the Magistrates' Court?

In the Magistrates' Court, the key differences between the CCO and the previously available community-based order (CBO) are the greater range of conditions available for a CCO and the inability to combine the new order with a suspended sentence of imprisonment.

The maximum penalty for a CCO in the Magistrates' Court is equivalent to the maximum penalty for a CBO (two years). The rule that the maximum penalty for a CCO is equal to the statutory maximum imprisonment term for an offence only applies in the higher courts.

The Council examined whether CCOs only replaced the orders that were abolished when CCOs were introduced by comparing the volume and profile of CCOs in the period January 2012 to June 2013 with the volume and profile of CBOs and intensive correction orders (ICOs) in the 18 months to December 2011. As combined custody and treatment orders (CCTOs) were used for only 24 offenders, no analysis was performed on this order.

In the following sections, the term 'community sentences' will be used to refer to CCOs, CBOs, and ICOs.

### Volume comparison

Figure 16 shows the annual number of offenders who received a community sentence between 2008 and 2012 (data for the full 2013 calendar year were not available at the time this report was prepared). There was little change in the use of community sentences in the Magistrates' Court following the introduction of CCOs in January 2012. There were 7,193 community sentences imposed in 2012 compared with nearly an identical number (7,207) in 2011 (in 2011 about 20% of community sentences were ICOs and 80% were CBOs). Thus, the CCO was used in much the same volume as the CBO and the ICO had been used previously. As a percentage of all offenders, however, there was a slight reduction in community sentences in 2012 (from 9.3% to 8.6%).

**Figure 16:** Number of offenders that received a community sentence by calendar year, Magistrates' Court, 2008 to 2012

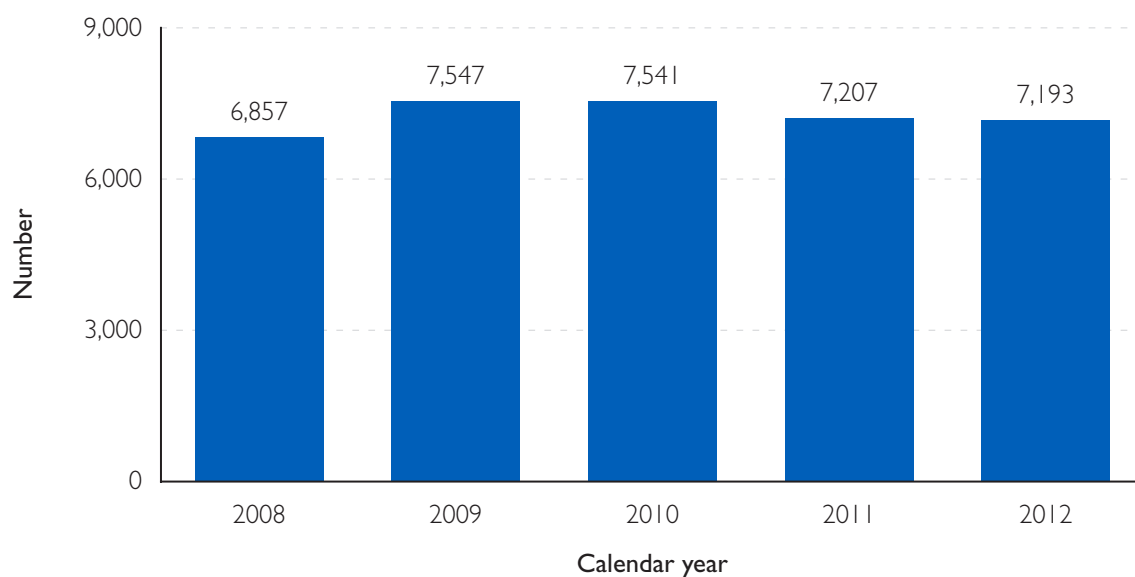
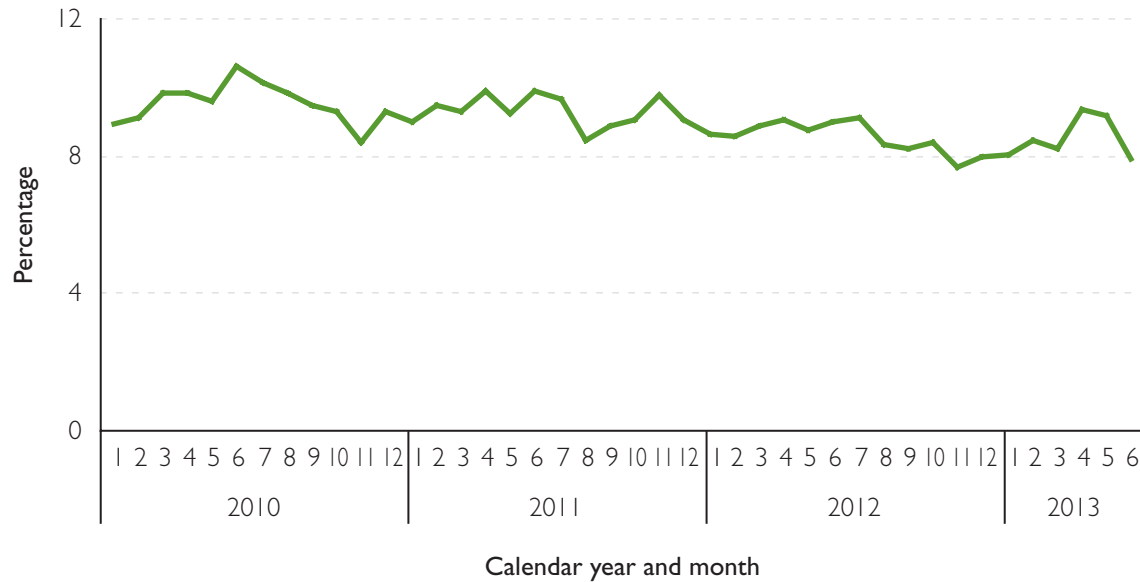


Figure 17 shows the monthly use of community sentences as a percentage of all offenders sentenced in the Magistrates' Court from January 2010 to the middle of 2013. It reveals that there was very little overall change in the use of community sentences from the start of 2012.

**Figure 17:** Percentage of all offenders that received a community sentence by month, Magistrates' Court, January 2010 to June 2013



## Profile comparison

This section compares the profile of offenders receiving CCOs between January 2012 and June 2013 with the profile of offenders receiving CBOs and ICOs between July 2010 and December 2011. It first investigates the gender, age, and prior offending profile for each comparison, and then examines the offence profile.

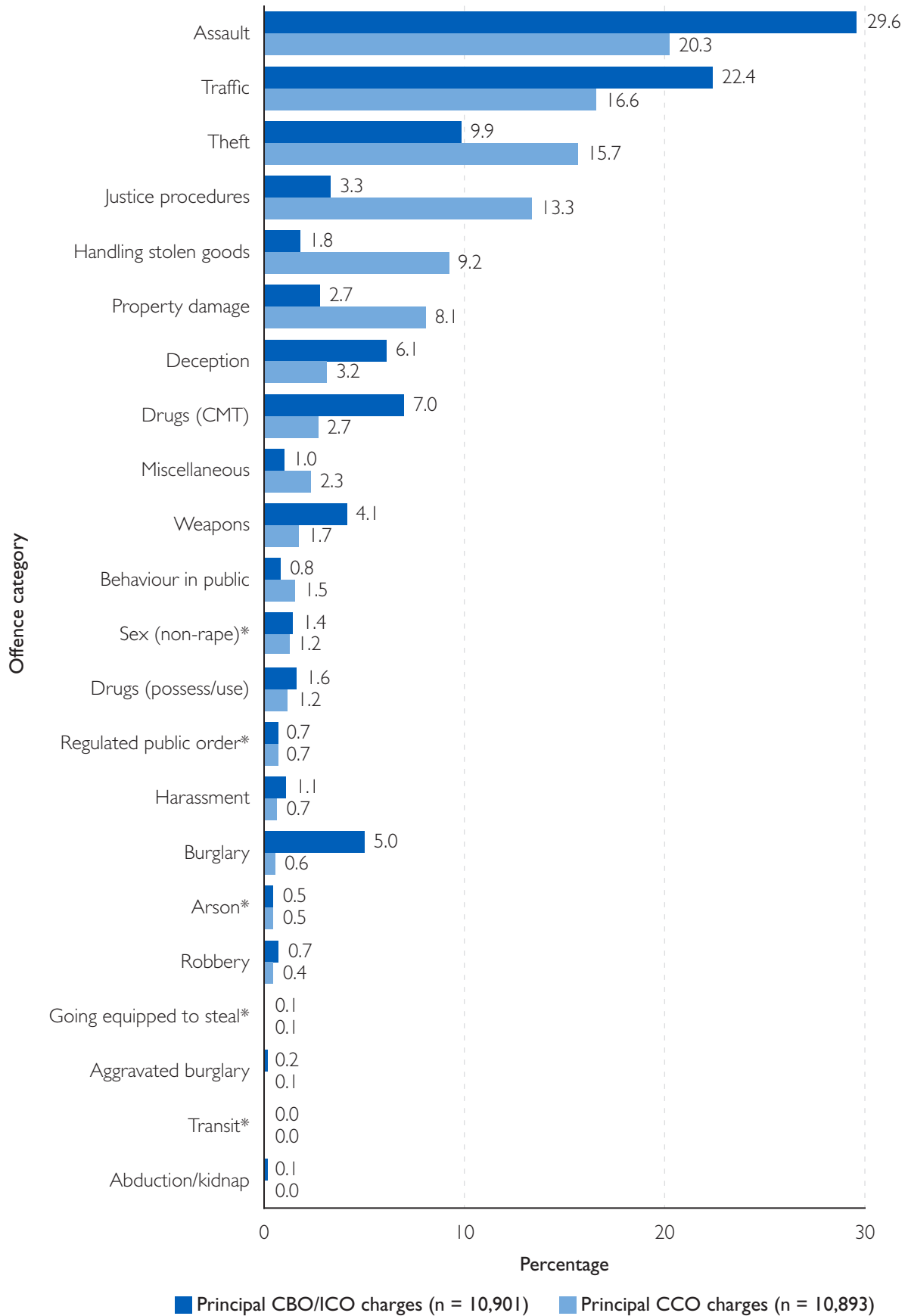
The gender, age, and prior offending profiles of offenders receiving CBOs/ICOs were very similar to those of offenders receiving CCOs. Males comprised 82.9% of offenders who received a CBO/ICO and 82.3% of offenders who received a CCO. For both groups of order, approximately 63% of offenders were aged under 35 years, and there was no statistically significant difference between the mean age of offenders (the mean for CCO offenders was 31.8 years while the mean for CBO/ICO offenders was 31.6 years:  $t(19,024) = 0.995, p = 0.320$ ).

In terms of prior offending, 71.2% of offenders who received a CBO or ICO had prior sentences compared with 74.4% of offenders who received a CCO. The slight difference could be explained by the longer period for which prior sentencing was measured for CCOs compared with CBOs and ICOs (the prior offending window for CBOs and ICOs was up to seven years while the prior offending window for CCOs was up to eight and a half years).

Figure 18 shows the distribution of principal offence categories for CBOs/ICOs and CCOs. It shows differences in the way the offences were distributed and that, in general, the differences were statistically significant. In particular, offenders receiving CBOs/ICOs had substantially higher rates of assault, traffic, deception, and drug (cultivate, manufacture, or traffic) offending and substantially lower rates of theft, justice procedures, handling stolen goods, and property damage offending. Thus, it is reasonable to conclude that, while the age, gender, and prior offending profiles of offenders receiving CCOs are very similar to offenders receiving the community sentences that CCOs replaced, the offence profile is different. Magistrates are imposing CCOs more often than the former community sentences for property offences and less often for violent and drug offending.



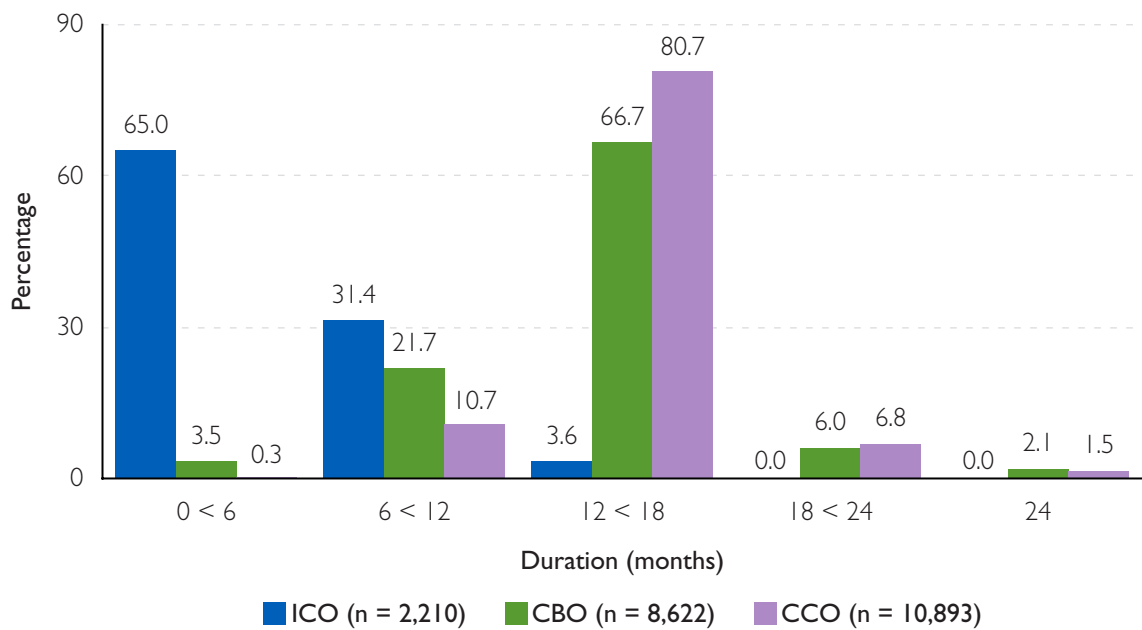
Figure 18: Percentage of principal CCO sentences for CCOs imposed from January 2012 to June 2013 and principal ICO/CBO sentences for ICO/CBOs imposed from July 2010 to December 2011 by offence category, Magistrates' Court



\* Indicates difference was not statistically significant according to the z-statistic.

In terms of the duration of community sentences, CCOs have a maximum term in the Magistrates' Court of two years; this was the same term for CBOs, while ICOs had a maximum term of one year. Figure 19 shows the distribution of order durations for CBOs and ICOs imposed between July 2010 and December 2011 and CCOs imposed between January 2012 and June 2013. Magistrates tended to impose CCOs for a longer duration than CBOs, despite the same maximum penalty. For example, nearly 90% of CCOs were 12 to 24 months in length compared with about three-quarters of CBOs. The mean duration for CCOs was 12.5 months, 1.2 months longer than the mean for CBOs (11.3 months). This difference was found to be statistically significant ( $t(16,902) = 23.841, p < 0.001$ ). Not surprisingly, CCOs were also typically longer than ICOs, which had a lower maximum of one year; two-thirds of ICOs were less than six months. The mean length of ICOs was 4.6 months, which was 7.9 months shorter than the mean for CCOs (a significant difference:  $t(13,101) = 112.943, p < 0.001$ ).

**Figure 19:** Percentage of offenders who received a community sentence by duration and sentence type, Magistrates' Court, July 2010 to December 2011 for CBOs/ICOs and January 2012 to June 2013 for CCOs



## To what extent, if any, have CCOs replaced suspended sentences in sentencing practice in the Magistrates' Court?

This section addresses the question of the extent to which CCOs have replaced suspended sentences. Suspended sentences were available as a sentencing option for magistrates during the period of analysis in this report. It is possible that the introduction of a new order sitting directly beneath suspended sentences in the sentencing hierarchy has encouraged magistrates to use the new order instead of suspended sentences, particularly given the abolition of suspended sentences is on the horizon (in late 2014). Alternatively, any shift away from suspended sentences may have been towards imprisonment or to other sentencing options.

In order to address the question, the Council:

- analysed recent trends in the use of suspended sentences in relation to CCOs and other sentencing options;
- compared the profiles of offenders receiving suspended sentences and CCOs; and
- examined trends in the use of suspended sentences for a particular offence – driving while disqualified or suspended.

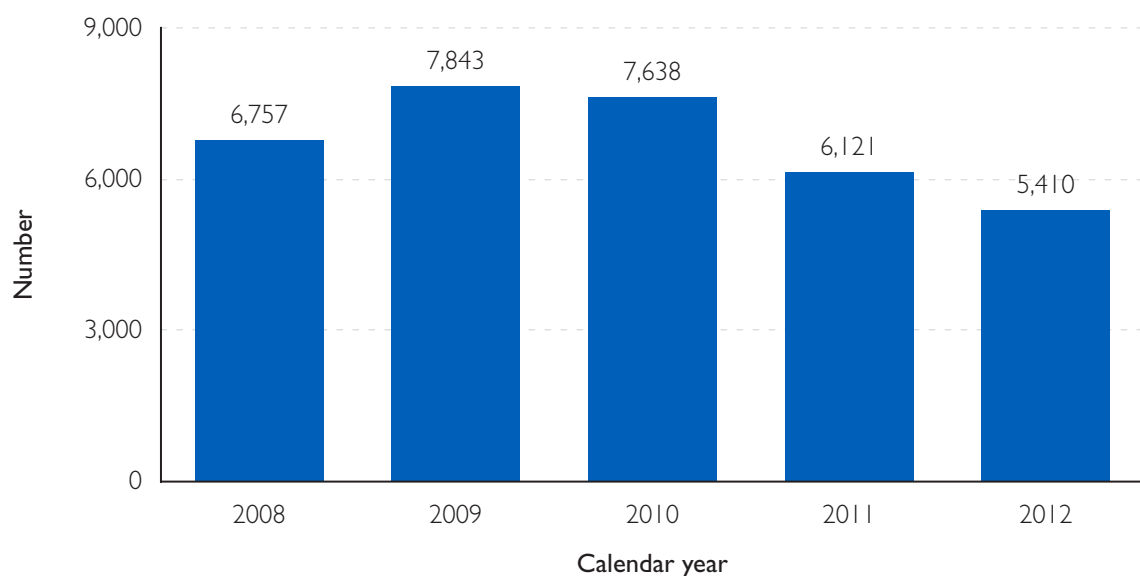
### Recent sentencing trends

In the period between 2008 and 2012, the number of offenders who received a suspended sentence peaked in 2009 at 7,843 before declining each subsequent year to 5,410 in 2012 (see Figure 20). The largest decline occurred between 2010 and 2012, when the number of offenders receiving a suspended sentence dropped by 2,228 or 29.2%.

As a percentage of all offenders in the Magistrates' Court, 9.7% of offenders received a suspended sentence in 2010. This dropped to 6.4% in 2012.

Approximately 90% of suspended sentences were wholly suspended while 10% were partially suspended, meaning the offender was required to spend part of his or her sentence in prison.

**Figure 20:** Number of offenders who received a suspended sentence by calendar year, Magistrates' Court, 2008 to 2012

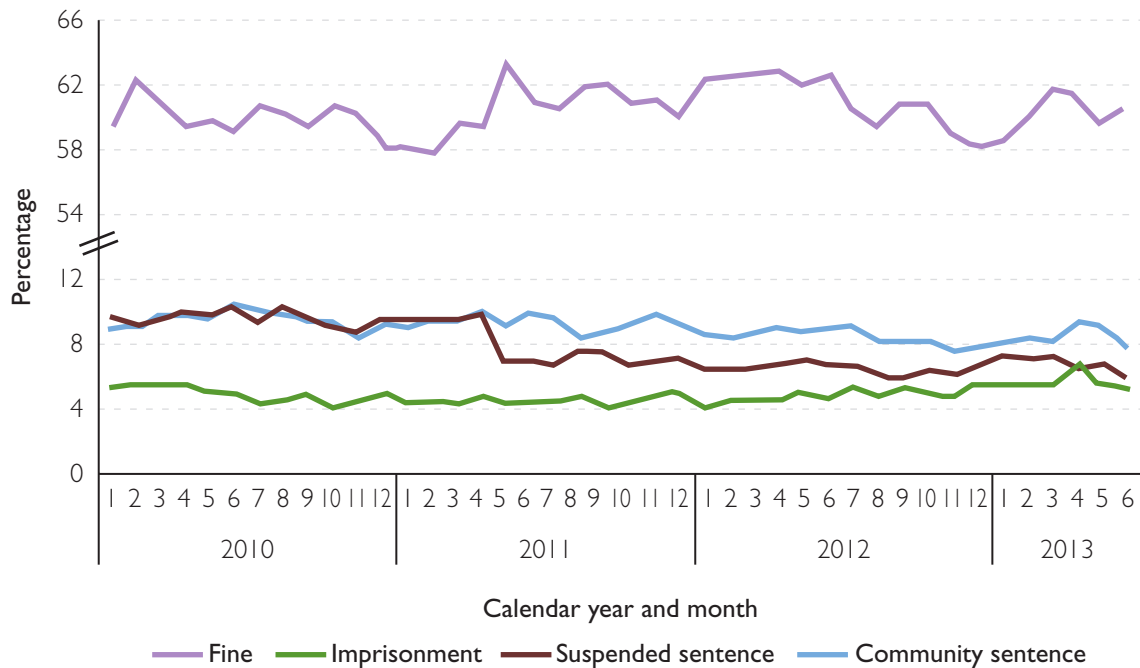


An examination of the monthly trends in various sentence types (see Figure 21) reveals that the key shift in the use of suspended sentences occurred in May 2011, when the percentage of offenders with a suspended sentence declined to 7.0% from 9.9% in April 2011. This coincided with the abolition of the mandatory imprisonment sentence for a second or subsequent offence of driving while disqualified or suspended. The only sentence type to shift upwards in May 2011 was fines, which increased from 59.6% in April 2011 to 63.3% in May 2011. Thus, it appears that magistrates substituted fines for some suspended sentences.

The timing of the introduction of CCOs (January 2012) does not coincide with a clear reduction in the use of suspended sentences; therefore, it is unlikely that CCOs were used to any detectable extent as an alternative to suspended sentences. However, there was a gradual reduction in the percentage of offenders who received a suspended sentence between August 2011 and August 2012, from 7.7% to 6.0%. Over the same period, no other sentence type had an inverse (increasing) trend to suspended sentences. It is therefore likely that the decline in the use of suspended sentences occurred because magistrates were less inclined to combine them with other orders.

The monthly figures for imprisonment sentences (see Figure 21) show that the percentage of offenders who received imprisonment in the Magistrates' Court was relatively stable throughout 2011, at between 4.4% and 5.0%. However, between April 2012 and April 2013 the percentage increased steadily, from 4.7% to 6.7%.

**Figure 21:** Percentage of offenders by selected sentence type (suspended sentence, fine, imprisonment, community sentence) and month, Magistrates' Court, January 2010 to June 2013



## Profile comparison

The Council compared the profiles of offenders receiving CCOs and wholly suspended sentences for the period between January 2012 and June 2013. The purpose of this analysis is to identify parallels between groups of offenders receiving the two sentence types.

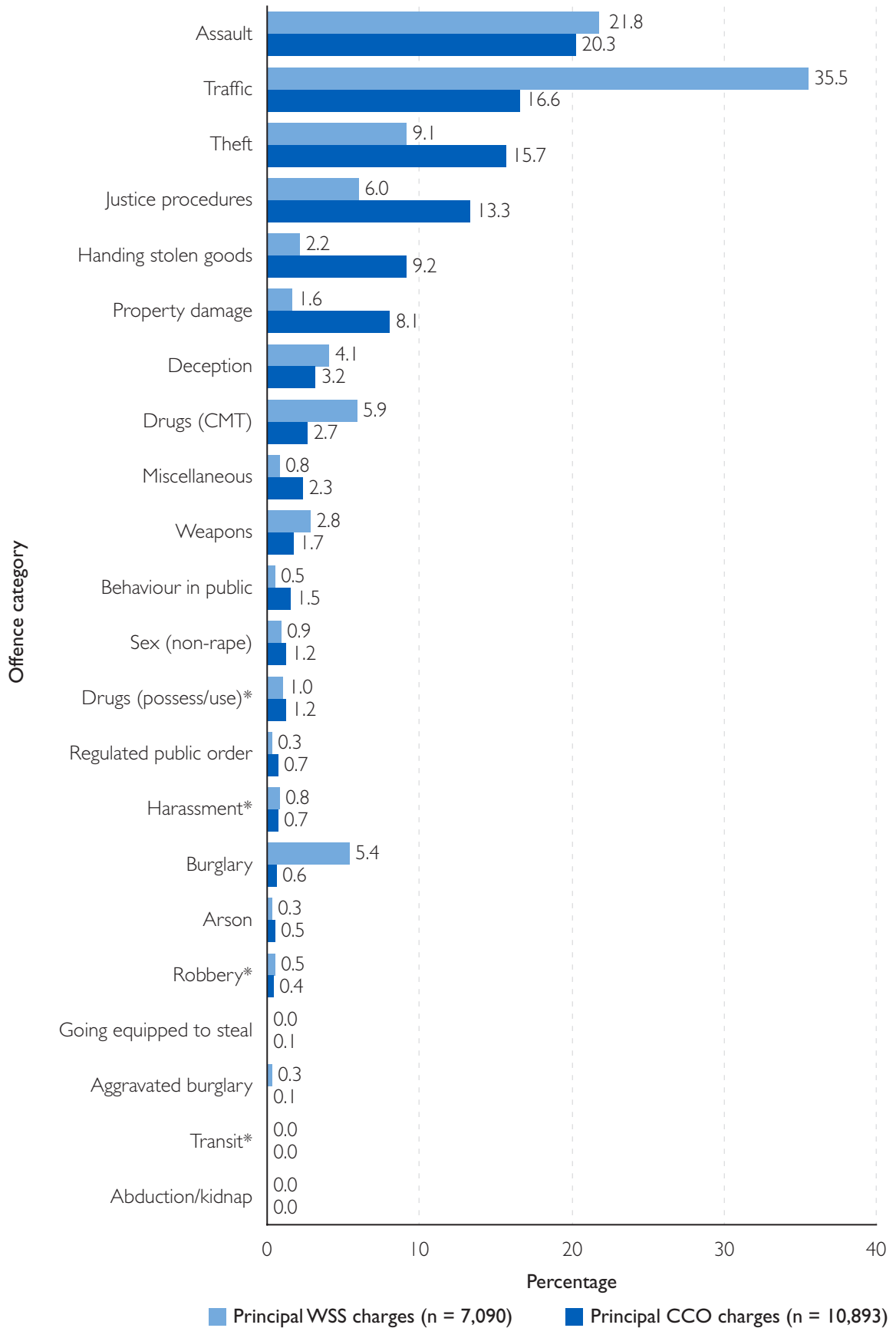
While CCOs and CBOs/ICOs shared similar profiles in terms of age, gender, and prior offending, there were some key differences for wholly suspended sentences. First, the group of offenders receiving wholly suspended sentences had a higher representation of males, 87.3%, compared with 82.3% for CCOs. Second, the age distribution of offenders was older, with 46.7% of offenders who received a wholly suspended sentence aged 35 or older, compared with 36.3% of offenders who received a CCO. The mean age of offenders who received a wholly suspended sentence (34.5 years) was 2.7 years higher than the mean age of offenders who received a CCO (31.8 years), a difference that was statistically significant ( $t(24,999) = -19.809, p < 0.001$ ). Third, offenders who received a wholly suspended sentence had a higher frequency of prior offending at 83.1%, compared with 74.4% of offenders who received a CCO.

In terms of offence profile, both sentence types covered a wide range of offences, as Figure 22 shows (page 30). However, the distributions of offences differed substantially, and these differences were generally statistically significant. Wholly suspended sentences were more likely to be imposed than CCOs for traffic offences (35.5% versus 16.6%;  $z = -28.231, p < 0.001$ ), drug trafficking offences (5.9% versus 2.7%;  $z = -10.021, p < 0.001$ ), and burglary offences (5.4% versus 0.6%;  $z = -17.428, p < 0.001$ ).

In contrast, CCOs were more likely to be imposed for a range of offences including theft (15.7% versus 9.1%;  $z = 13.409, p < 0.001$ ), handling stolen goods (9.2% versus 2.2%;  $z = 21.600, p < 0.001$ ), and justice procedures offences (13.3% versus 6.0%;  $z = 16.874, p < 0.001$ ).

The percentage of principal sentences for assault was similar for suspended sentences (21.8%) and CCOs (20.3%), though the difference still reached statistical significance ( $z = -2.418, p < 0.01$ ). The difference met statistical significance due to the very large sample size, and thus is of little practical importance.

Figure 22: Percentage of principal sentences by offence category and sentence, Magistrates' Court, January 2012 to June 2013



\* Indicates difference was not statistically significant according to the z-statistic.

## Sentencing practices for driving while disqualified or suspended

A factor that appears to have driven the decline in suspended sentences between 2010 and 2012 is a legislative change in May 2011 that abolished a mandatory minimum imprisonment term, which sentencers often suspended, for a second or subsequent offence of driving while disqualified or suspended.

Since its peak in 2009, the volume of suspended sentences imposed for the offence of driving while disqualified or suspended has declined (whether or not the offence was a second or subsequent offence was not stated in the source data). As Figure 23 shows, the number of wholly suspended sentences imposed for the offence dropped marginally in 2010 (by 7.2%), before dropping substantially in 2011 (by 42.4%) and dropping further in 2012 (by 33.0%).

**Figure 23:** Number of offenders who received a wholly suspended sentence for driving while disqualified or suspended by calendar year, Magistrates' Court, 2008 to 2012

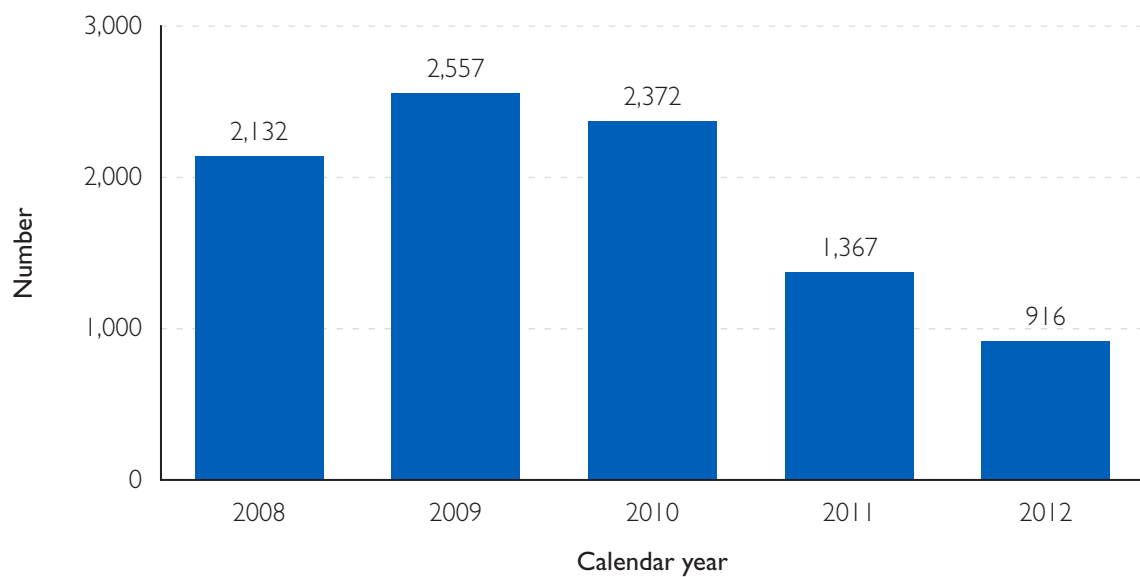
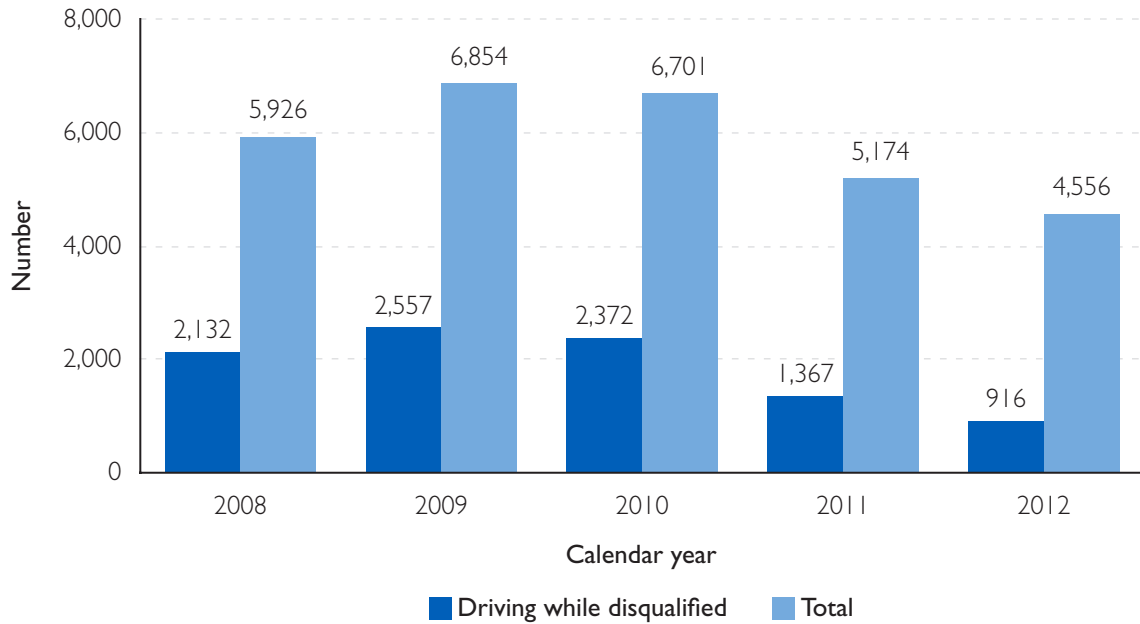


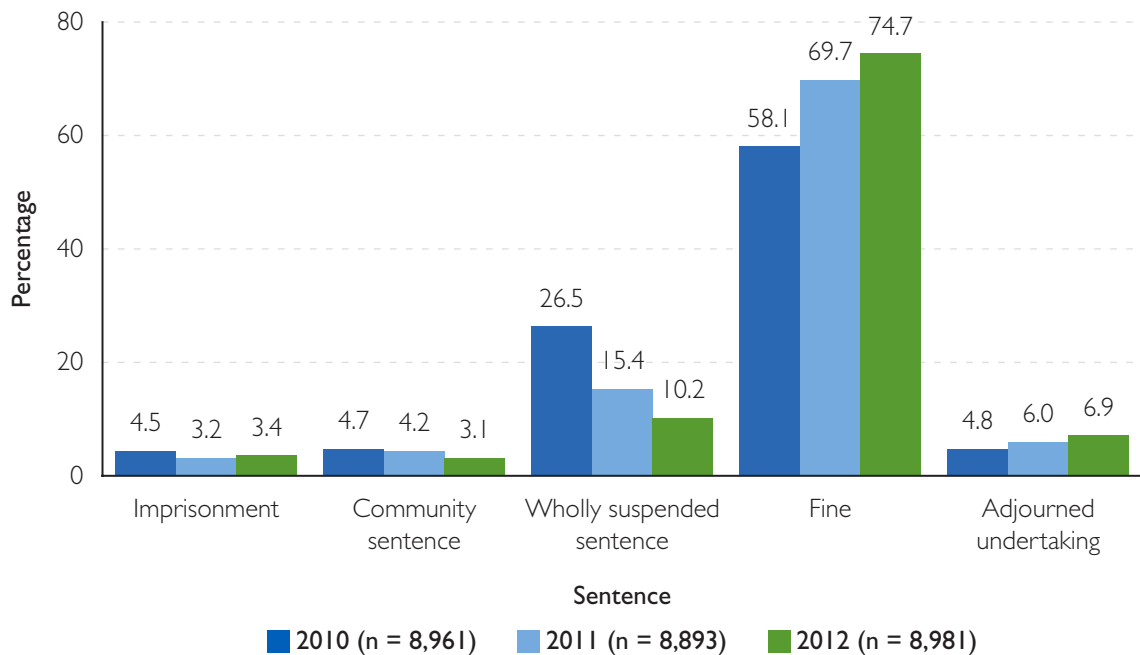
Figure 24 demonstrates the effect of the abolition of mandatory imprisonment for a second or subsequent offence of driving while disqualified or suspended on the overall number of suspended sentences in the Magistrates' Court. In 2011, the overall number of suspended sentences was 1,527 fewer than in 2010. Over the same period, suspended sentences for driving while disqualified or suspended declined by 1,005 offenders. This suggests that the abolition of the mandatory minimum sentence of imprisonment for a second or subsequent offence of driving while disqualified or suspended contributed to approximately two-thirds of the decline in suspended sentences in 2011.

**Figure 24:** Number of offenders who received wholly suspended sentences in total and for driving while disqualified or suspended by calendar year, Magistrates' Court, 2008 to 2012



From the data displayed in Figure 25, it appears that, since 2010, magistrates have been imposing fines instead of wholly suspended sentences for some driving while disqualified or suspended offences. While wholly suspended sentences declined by 16.3 percentage points between 2010 (26.5%) and 2012 (10.2%), fines increased by 16.6 percentage points, from 58.1% to 74.7%.

**Figure 25:** Percentage of driving while disqualified offenders by sentence type and calendar year, Magistrates' Court, 2010 to 2012





# Chapter 3

## Community correction orders in the higher courts

### Summary

A total of 464 offenders received a community correction order (CCO) in the higher courts between January 2012 and June 2013. They had a median age of 26 years, 85.6% were male, and 59.1% had a recent prior sentence. The most common specific principal offence among these offenders was armed robbery (9.5%) followed by sexual penetration of a child under 16 (7.6%). However, the most common broad offence category was assault (35.1%).

The median length for CCOs imposed by the higher courts was two years. In the first 18 months after the CCO was introduced, only 15.0% of CCOs imposed by the higher courts were longer than two years. The most common CCO conditions were assessment and treatment (81.8%), supervision (75.1%), and unpaid community work (74.4%). Judicial monitoring was the fourth most common condition (14.3%).

In 2012, 18.3% of all offenders sentenced in the higher courts received a CCO. This was substantially higher than the 13.2% of offenders in 2011 who received either a community-based order (CBO) or an intensive correction order (ICO), suggesting judges used CCOs more broadly than the community orders the CCO replaced. With a mean duration of 21.0 months, CCOs were typically longer than CBOs (which had a mean of 18.4 months) and ICOs (a mean of 10.3 months). This suggests that CCOs were used in place of other sentencing options in addition to CBOs and ICOs. However, this expanded use of community sentences with the introduction of CCOs did not result in any dramatic change in the profile of offenders and offences receiving community sentences. On demographic, prior offending, and offence type measures, very few statistically significant differences were found between CBOs/ICOs imposed between June 2010 and December 2011 and CCOs imposed between January 2012 and June 2013. The rate of CCO use also declined during the first half of 2013.

Use of suspended sentences declined from late 2011 to mid 2013. The decline was most likely due to the abolition in May 2011 of suspended sentences for serious and significant offences in the higher courts. The decline was accompanied by an initial rise in both imprisonment and community sentences, suggesting CCOs were seen as a credible alternative to suspended sentences for some offenders.

In early 2013, while suspended sentences continued to decline and imprisonment continued to increase, there was also a decline in the use of CCOs and an increase in the use of fines. The reason for this decline is unclear. In order to draw a conclusion, further research would need to be conducted with at least an additional 18 months of data.

A comparison of the profiles of CCOs and wholly suspended sentences revealed some clear differences in the age of offenders and offence distributions. While offenders charged with assault and non-rape sexual offences featured prominently for both sentencing options, drug offences were more common for wholly suspended sentences and robbery was more common for CCOs.

## How have CCOs been used in the higher courts and who has received them?

### Offender and offence characteristics

Between January 2012 and June 2013, 464 offenders received a community correction order (CCO) in the higher courts.

These offenders had a median age of 26 years with 44.8% aged under 25 years. Thus, they tended to be younger than offenders who received a CCO in the Magistrates' Court (the median age was 30 years). The oldest offender sentenced to a CCO in the higher courts was aged 79 years. Most offenders were male (85.6%). Six out of 10 offenders (59.1%) who received a CCO had been sentenced for prior offending between July 2004 and the imposition of the CCO.

The most common principal offence to receive a CCO in the higher courts was armed robbery (9.5%) followed by sexual penetration of a child under 16<sup>51</sup> (7.6%) and intentionally cause injury (7.2%) (see Figure 26). The most common offences to receive a CCO when all charges were considered (see Appendix A, Figure A3) were sexual penetration of a child under 16 (6.7%), armed robbery (6.6%), and aggravated burglary (5.9%).

In terms of broader offence categories, assault (36.4%), non-rape sexual offences (18.5%), and robbery offences (14.2%) were the three most common principal offence categories to be sentenced to a CCO in the higher courts, as Figure 27 shows (page 36). These same three offences were the most common offences to receive a CCO when all CCO charges were considered (see Appendix A, Figure A4).

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<sup>51</sup> For more information on the offence of sexual penetration of a child under 16 and penalties for this offence see Sentencing Advisory Council, *Maximum Penalties for Sexual Penetration with a Child under 16*, Report (2009). Importantly, the Council's data demonstrated that over a quarter of charges in the category of sexual penetration (10 to 16) involve relationships between young people who are close in age, and not predatory conduct of adults in relation to children (p. 61).

Figure 26: Percentage of principal CCO sentences by offence for the 20 most frequent offence types, higher courts, January 2012 to June 2013 (n = 464)

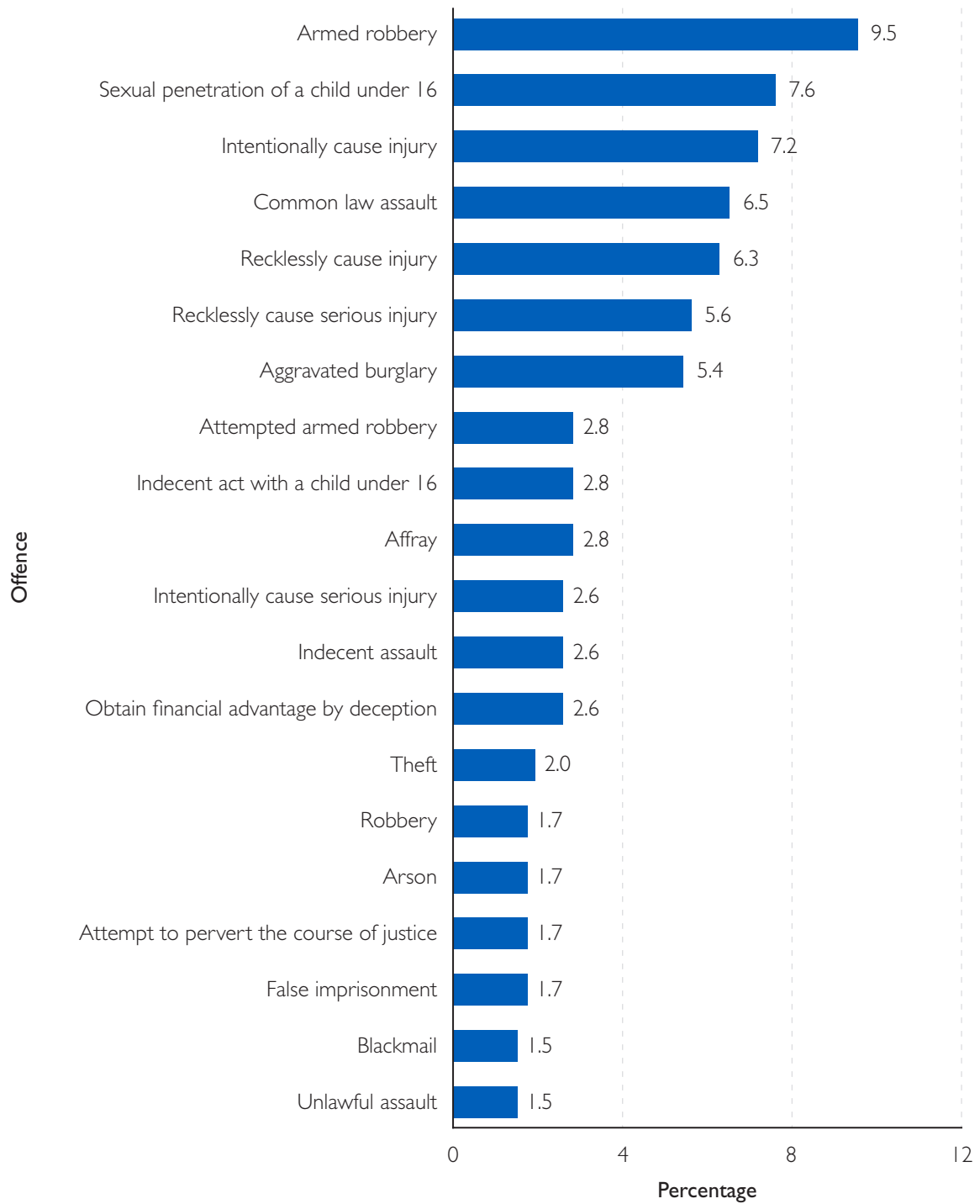
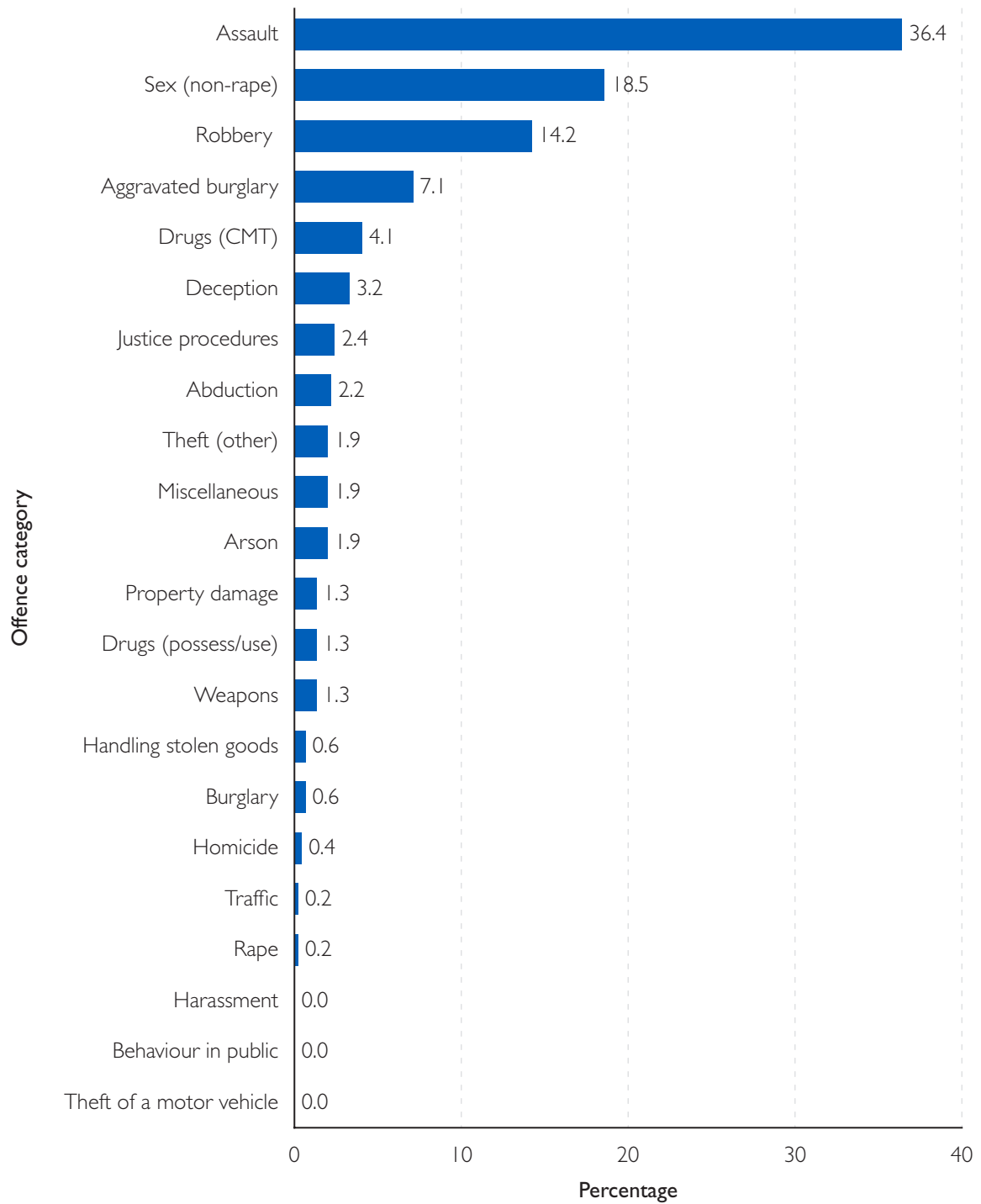


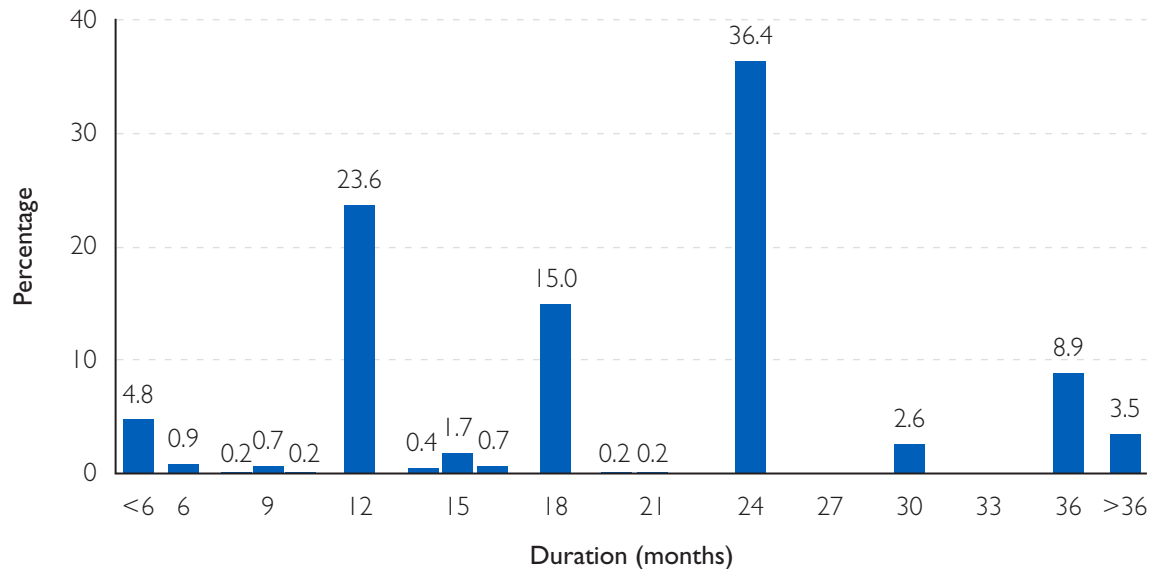
Figure 27: Percentage of principal CCO sentences by offence category, higher courts, January 2012 to June 2013 (n = 464)



## Order characteristics

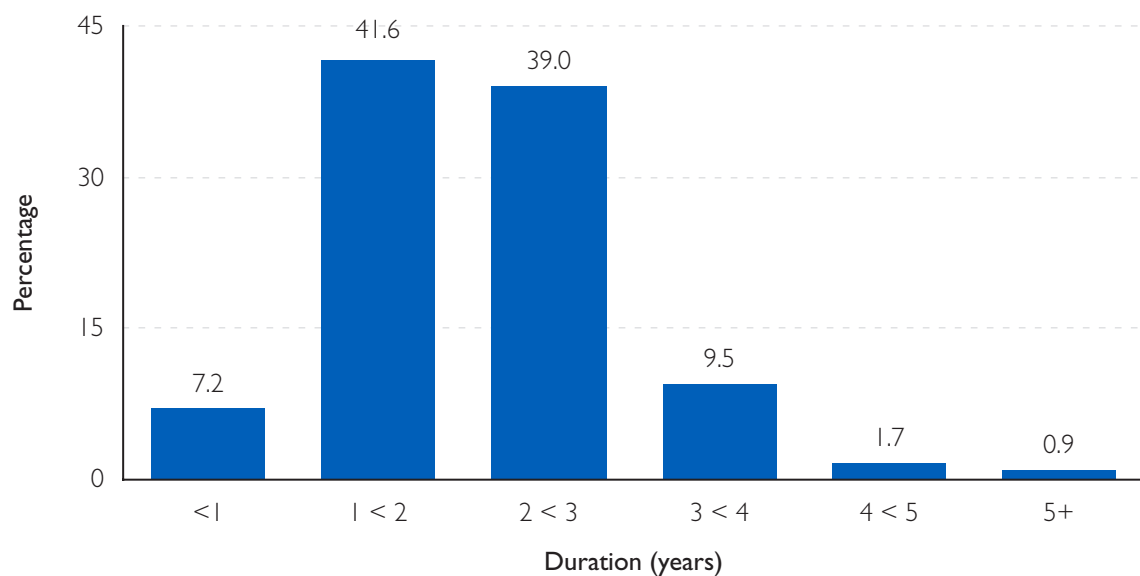
Unlike in the Magistrates' Court, in the higher courts sentencers are able to impose a term on a CCO equal to the duration of the maximum imprisonment term for the offence being sentenced.<sup>52</sup> In fact, from January 2012 to June 2013, 15.0% of CCOs imposed in the higher courts were greater than two years (see Figure 28).

Figure 28: Percentage of offenders by duration of CCO, higher courts, January 2012 to June 2013 (n = 464)



As Figure 29 shows, there was considerable variation in the length of CCOs, with the majority of orders (80.6%) being between one and three years. Approximately one in 10 CCOs were three or more years in duration, with 0.9% of CCOs (five offenders) five years or more in duration.<sup>53</sup> The median length of a CCO imposed in the higher courts was 24 months while the longest period was 10 years.

Figure 29: Percentage of offenders by duration group of CCO, higher courts, January 2012 to June 2013 (n = 464)



<sup>52</sup> *Sentencing Act 1991 (Vic) s 38(1)(b)(i)*.

<sup>53</sup> The defendants in three of these cases have appealed against the length of their CCO. At the time of writing, the Court of Appeal had not determined the appeals.

CCO length varied according to the offence type. As Figure 30 shows, justice procedures offences had the lowest median length at 12 months. Assault, drug offences (cultivate, manufacture, or traffic), and abduction shared a median of 18 months duration, while 24 months was the median duration for offences such as non-rape sexual offences, aggravated burglary, and deception.

Figure 30: Median duration of CCOs by selected offence category of principal CCO offence, higher courts, January 2012 to June 2013 (n = 464)

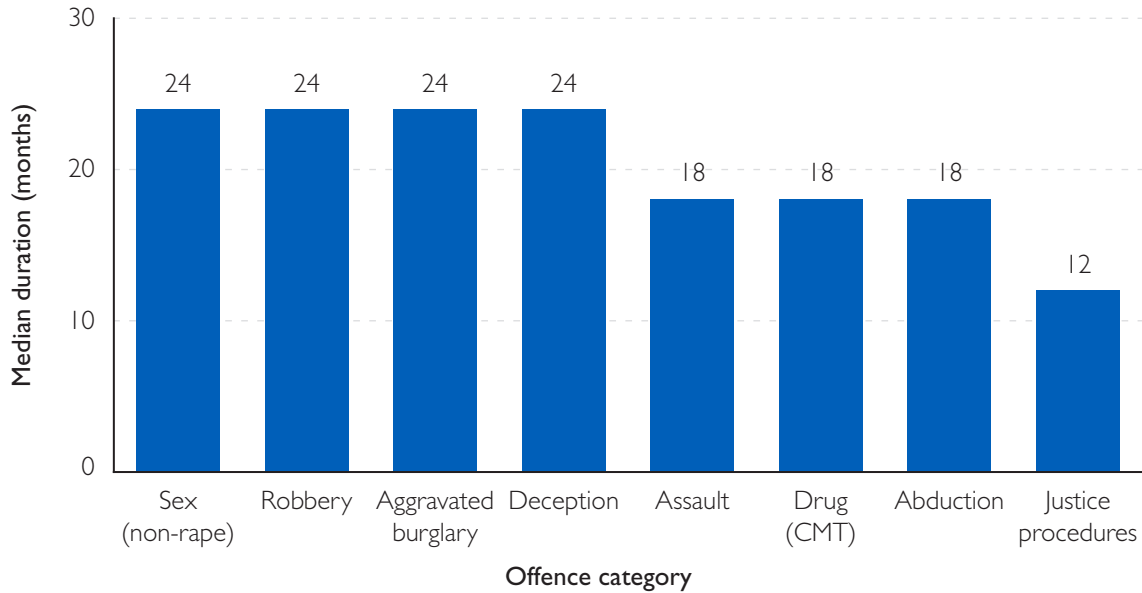
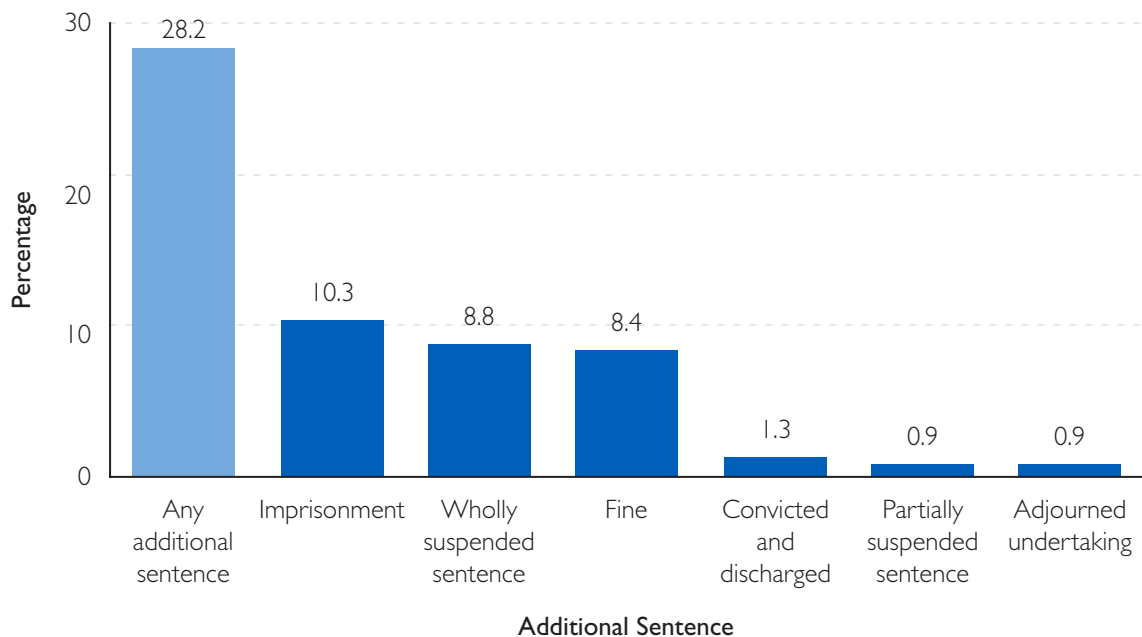


Figure 31 shows the frequency with which a CCO was combined with other types of sentences. Over one-quarter of CCOs were combined with at least one other sentence type. Imprisonment (10.3%), wholly suspended sentences (8.8%), and fines (8.4%) were the most common co-sentences. The ability of sentencers to combine wholly suspended sentences with CCOs was abolished in August 2012, and, as Figure 32 shows, this combination has not been used since July 2012.

Figure 31: Percentage of CCOs combined with other orders for an offender, higher courts, January 2012 to June 2013 (n = 464)



**Figure 32:** Percentage of community sentences that were combined with a wholly suspended sentence by month, higher courts, January 2010 to June 2013



Figure 33 shows the frequency with which different conditions were imposed by judges in the higher courts. As in the Magistrates' Court, in the higher courts assessment and treatment, supervision, and unpaid community work were clearly the most commonly imposed conditions. Supervision was imposed more frequently in the higher courts (75.1%) relative to the Magistrates' Court (53.1%). An intensive compliance period (not displayed) was set for six offenders, representing 1.3% of CCOs.

Use of the new condition types tended to be more common in the higher courts than in the Magistrates' Court. Judicial monitoring was used for 14.3% of CCO offenders in the higher courts compared with 10.6% in the Magistrates' Court. Non-association (4.3% compared with 1.4%) and residence restrictions (3.3% compared with 0.4%) were also more common in the higher courts.

**Figure 33:** Percentage of offenders by condition type, higher courts, January 2012 to June 2013 (n = 464)

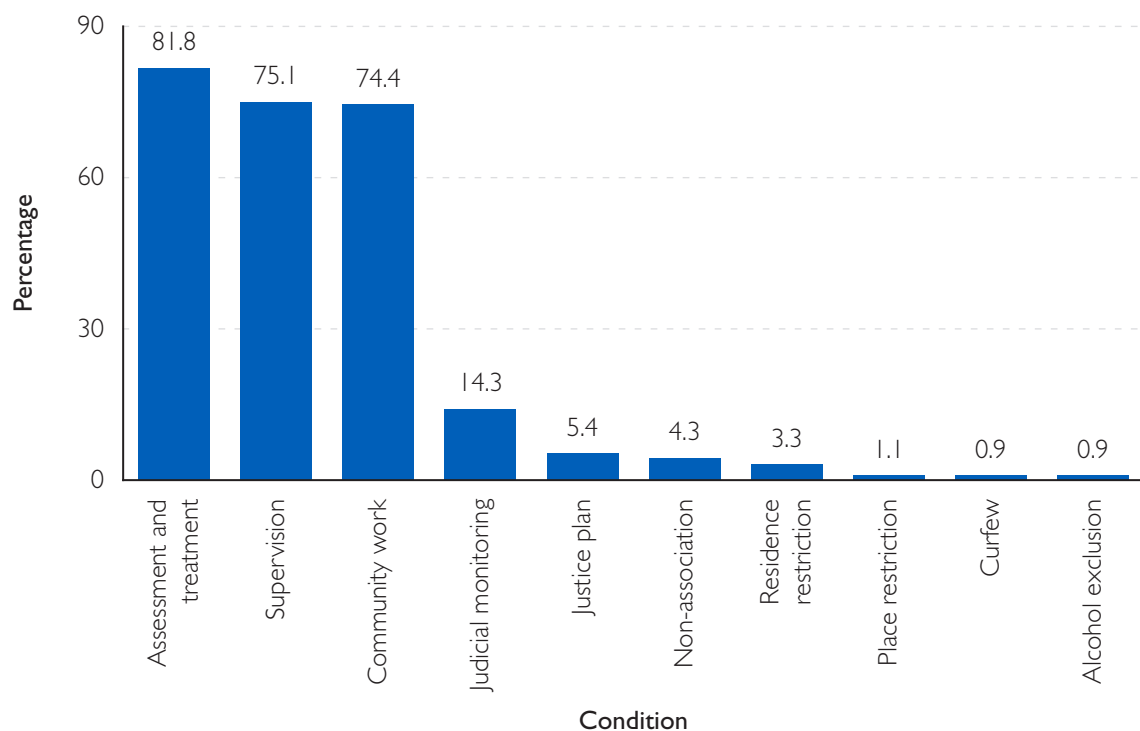
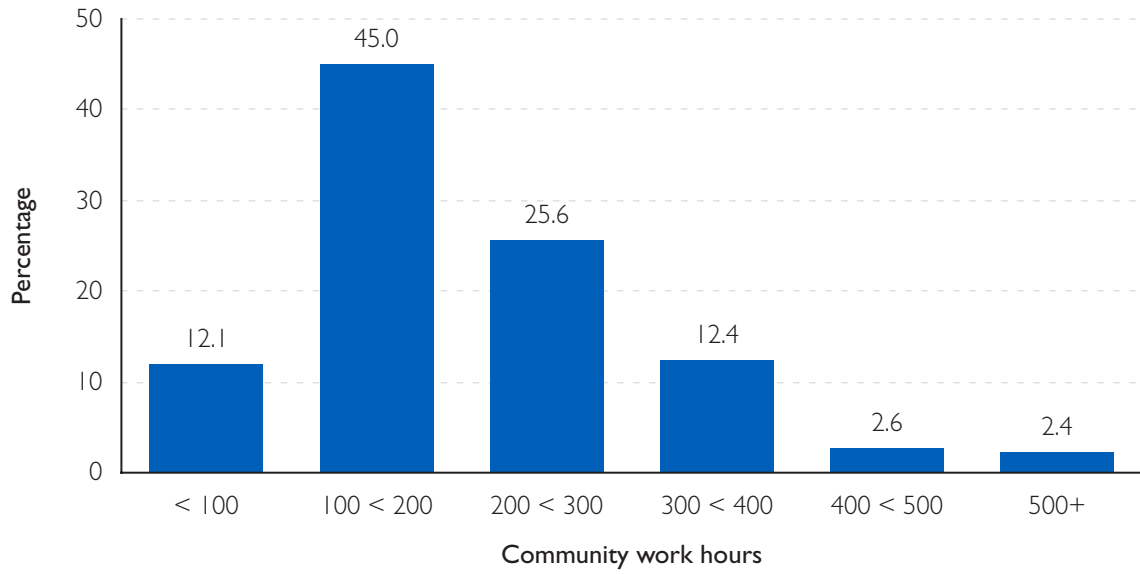


Figure 34 shows the distribution of community work hours for offenders who received an unpaid community work condition as part of their CCO. Nearly half of community work conditions were for a period of 100 to under 200 hours (45.0%), while over a quarter were 200 to under 300 hours (25.6%) and 2.4% were 500 or more hours.

**Figure 34:** Percentage of offenders who received a condition of unpaid community work by number of hours of community work the offender was required to perform, higher courts, January 2012 to June 2013





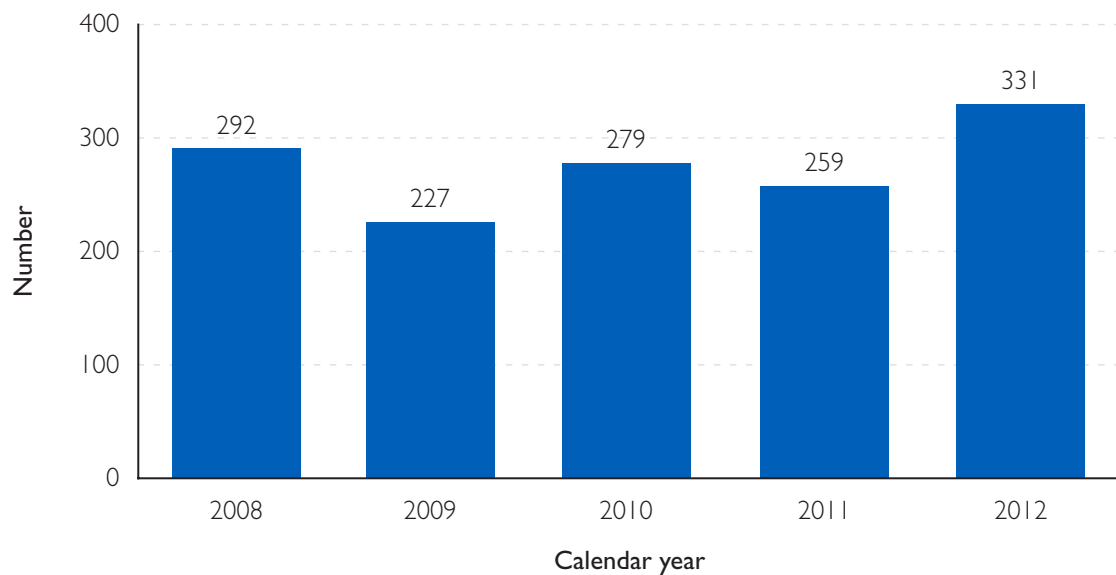
## Have CCOs only replaced CBOs and ICOs in sentencing practice in the higher courts?

### Volume comparison

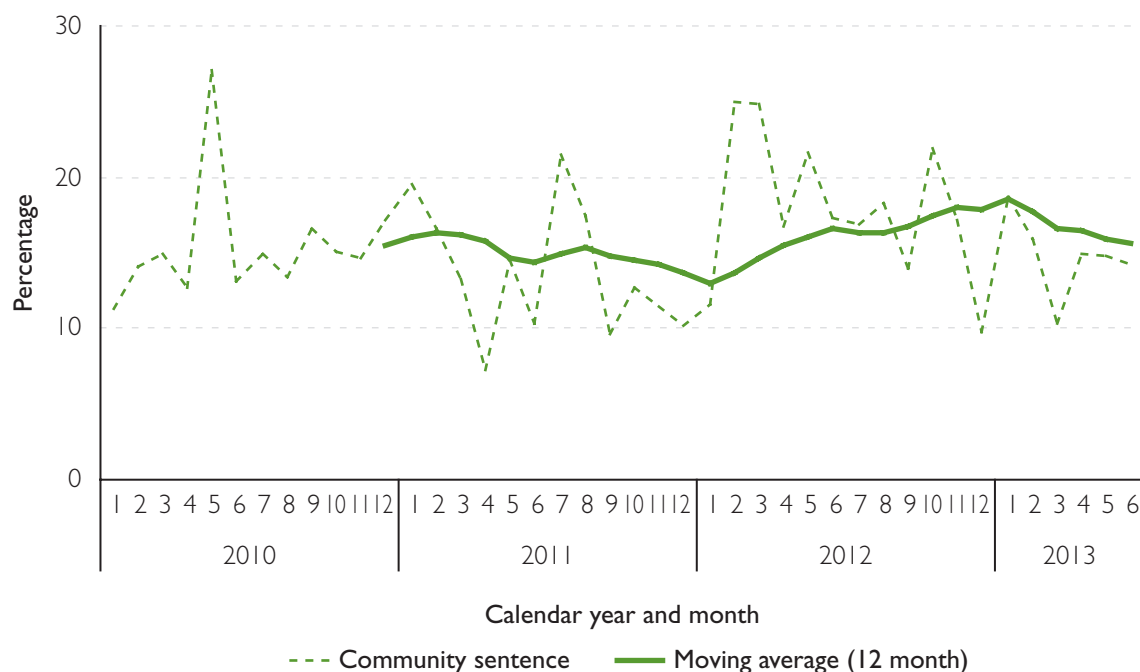
In the higher courts, 331 community sentences were imposed in 2012 compared with 259 in 2011 and 279 in 2010 (see Figure 35). As a proportion of all offenders, those who received community sentences represented 18.3% in 2012, up from 13.2% in 2011. This suggests that, in 2012, CCOs were used more widely than community-based orders (CBOs) and intensive correction orders (ICOs).

The monthly trend shown in Figure 36 generally supports this conclusion: a rise in 2012 followed a decline in 2011. However, it also shows that, in early 2013, there was a declining trend in the use of community sentences.

**Figure 35:** Number of offenders who received a community sentence by calendar year, higher courts, 2008 to 2012



**Figure 36:** Percentage of offenders who received a community sentence by month, higher courts, January 2010 to June 2013

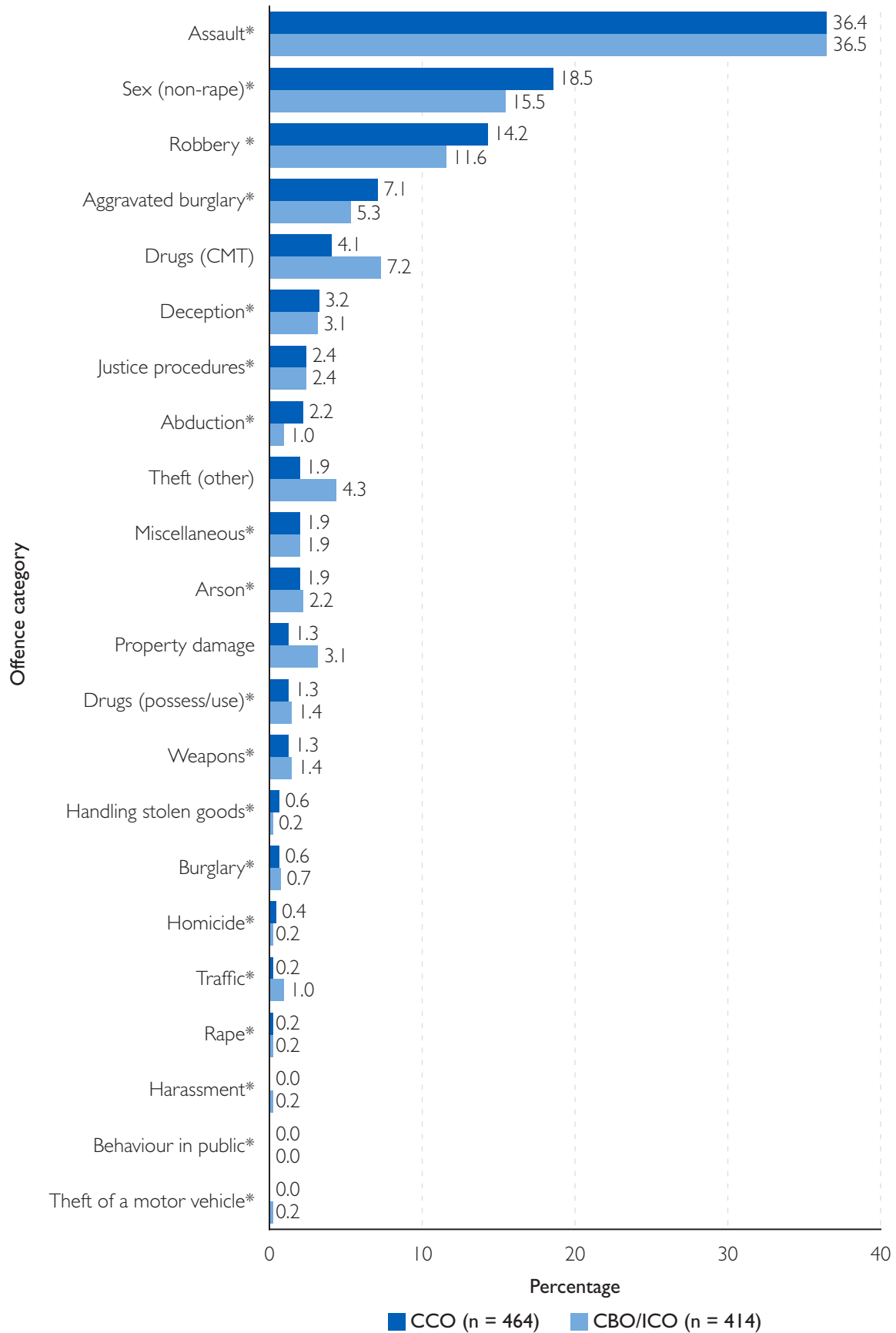


## Profile comparison

The profile of people who received a CCO was similar to the profile of those who received a CBO/ICO in the 18 months prior to the change. The median age of offenders who received either category of order was 26 years. A marginally higher percentage of males received an ICO/CBO (88.6%) than a CCO (85.6%). The two groups also had a similar rate of prior offending: 59.1% of offenders who received a CCO versus 58.0% of offenders who received a CBO/ICO. Finally, as Figure 37 shows, there was also very little variation in the offence types sentenced for CCO and CBOs/ICOs ( $\chi^2(18) = 20.722$ ,  $p = 0.189$ ). Statistically significant differences were only found for property damage ( $z = -2.005$ ,  $p < 0.05$ ), drugs (CMT) ( $z = -2.025$ ,  $p < 0.05$ ), and theft (other) ( $z = -1.838$ ,  $p < 0.05$ ), all of which were more common among CBOs/ICOs than among CCOs.

Figures 38 and 39 (page 44) show the distribution of sentence lengths, grouped and ungrouped respectively, for CCOs imposed from January 2012 to June 2013 and CBOs and ICOs imposed in the 18 months to December 2011. Corresponding to the relative maximum durations allowed for each order (one year for ICOs, two years for CBOs, and up to the maximum sentence length for CCOs), differences were observed between the respective mean durations of each order: 10.3 months for ICOs, 18.4 months for CBOs, and 21.0 months for CCOs. Interestingly, relative to CBOs, more CCOs were imposed with a duration of less than one year (7.1% compared with 2.2%).

Figure 37: Distribution of principal offences for offenders who received a CCO from January 2012 to June 2013 and offenders who received a CBO/ICO from June 2010 to December 2011, higher courts



\*Indicates difference was not statistically significant according to the z-test.

Figure 38: Percentage of community sentences by duration group and order type, higher courts, July 2010 to December 2011 for ICOs and CBOs and January 2011 to June 2012 for CCOs

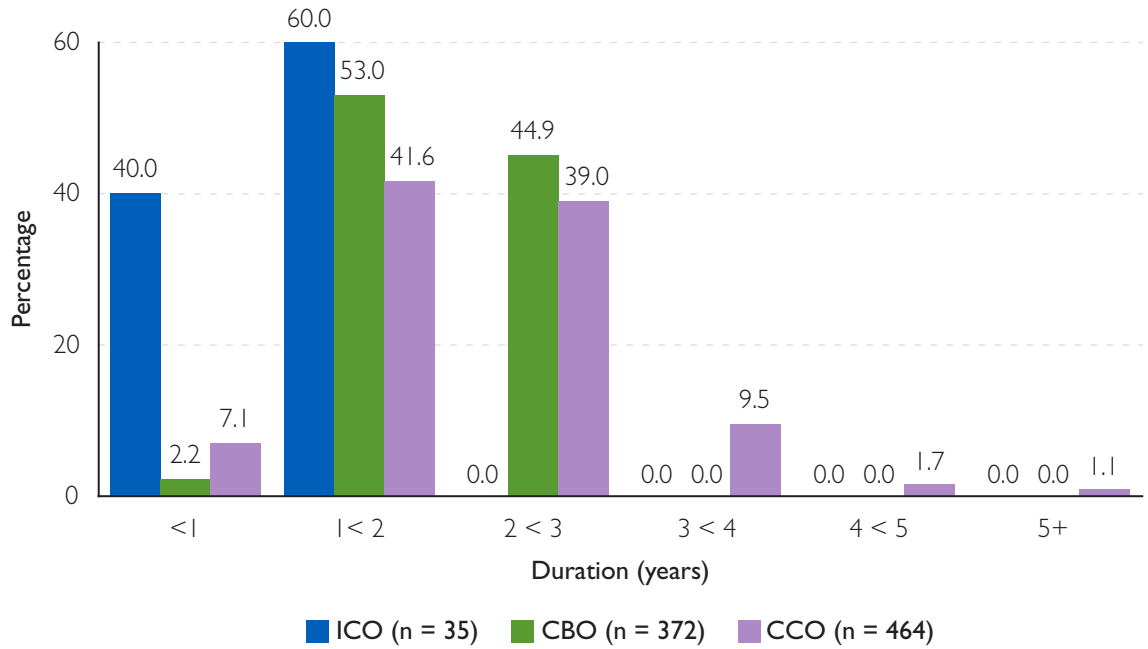
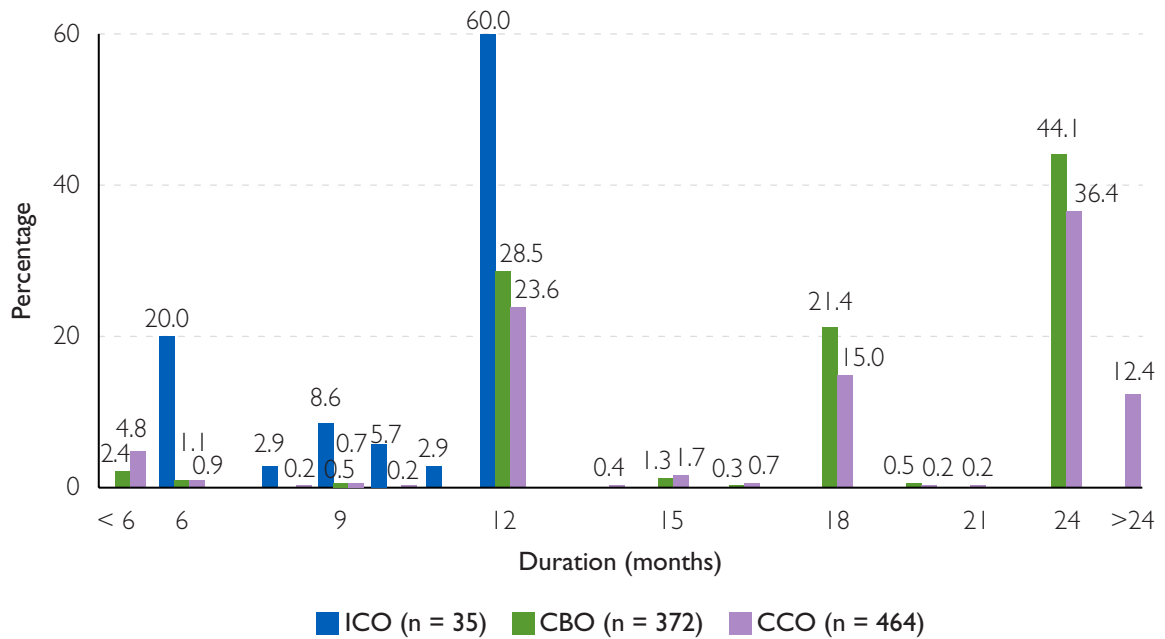


Figure 39: Percentage of community sentences by duration and order type, higher courts, July 2010 to December 2011 for ICOs and CBOs and January 2011 to June 2012 for CCOs



## To what extent have CCOs replaced suspended sentences in sentencing practice in the higher courts?

This section examines the extent to which CCOs have replaced suspended sentences. Unlike in the Magistrates' Court, in the higher courts there have been a number of legislative restrictions placed on the use of suspended sentences. The most important restriction during the period under analysis (January 2010 to June 2013) occurred in May 2011. It removed suspended sentences as a sentencing option for a wide range of indictable offences. The offences included 'serious' and 'significant' offences (these are listed in Appendix B). The restriction applied to offences committed on or after 1 May 2011; offences committed prior to that date were eligible to receive a suspended sentence.

### Recent sentencing trends

Figure 40 shows that there was a large decline in the number of suspended sentences in 2012. The previous year saw 605 offenders receiving a suspended sentence compared with 330 in 2012. Approximately three-quarters of suspended sentences were wholly suspended while the remaining one-quarter were partially suspended.

Figure 41 (page 46) presents the monthly use of suspended sentences in the higher courts between January 2010 and June 2013. Use of suspended sentences for the majority of 2011 showed no particular trend, apart from monthly fluctuations. However, in November 2011, a declining trend emerged: 34% of offenders received a suspended sentence in that month, which was reduced to 13% by June 2013. The decline in suspended sentences was most likely due to the abolition of suspended sentences for 'serious' and 'significant' offences committed on or after 1 May 2011. The lag between the offence commission date and the date of sentence would explain the delay in the effect of the legislative change.

In order to understand which sentences were used as alternatives to suspended sentences, the Council examined recent trends in sentencing practice in the higher courts. Figure 42 (page 46) presents monthly trends in the use of suspended sentences as well as imprisonment and community sentences from January 2010 to June 2013. It shows that both community sentences and imprisonment sentences increased throughout 2012.

**Figure 40:** Number of offenders who received a suspended sentence by calendar year, higher courts, 2008 to 2012

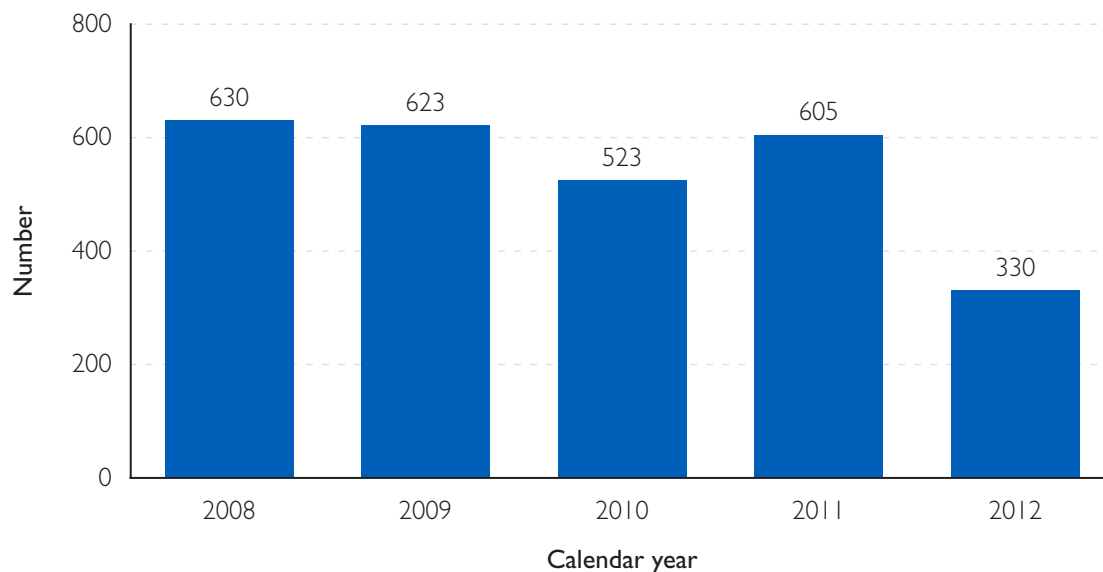


Figure 41: Percentage of offenders who received a suspended sentence by month, higher courts, January 2010 to June 2013

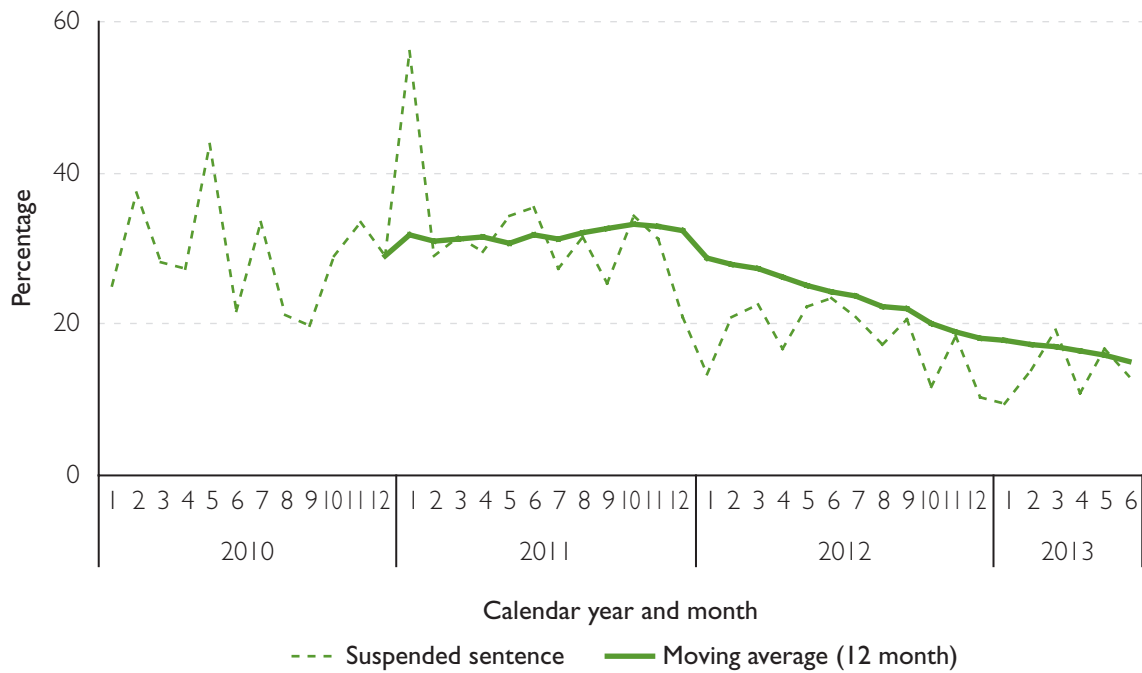


Figure 42: Percentage of offenders sentenced by unique sentence type by month, higher courts, January 2010 to June 2013

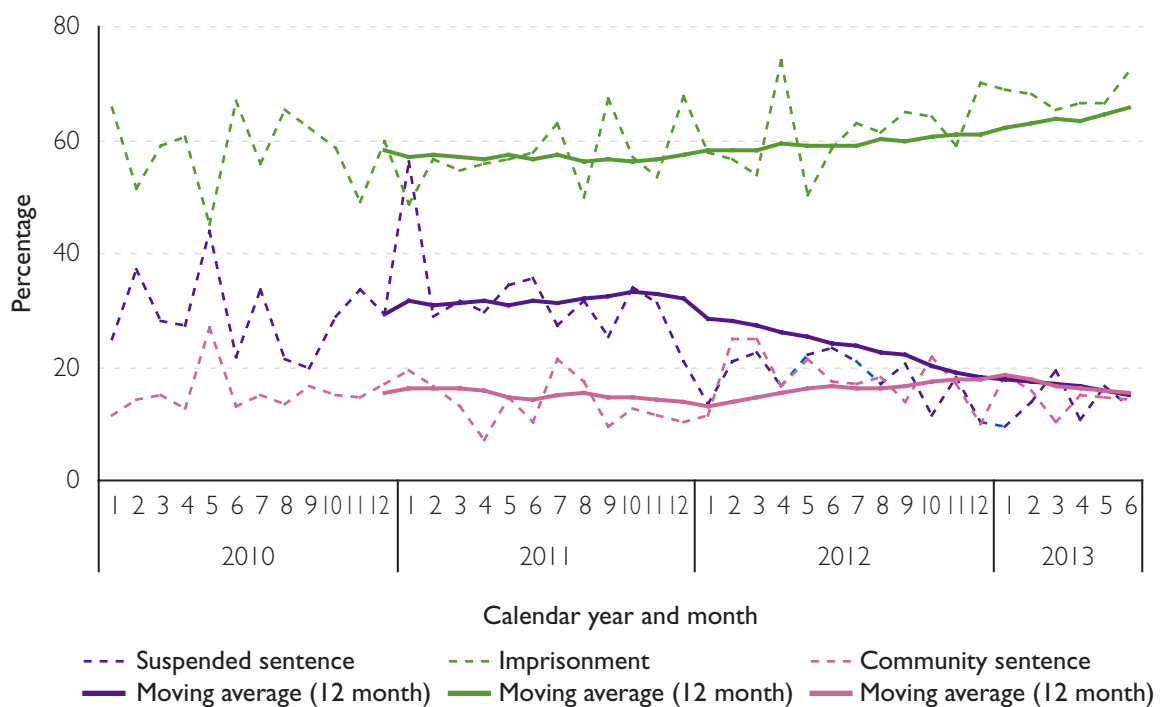
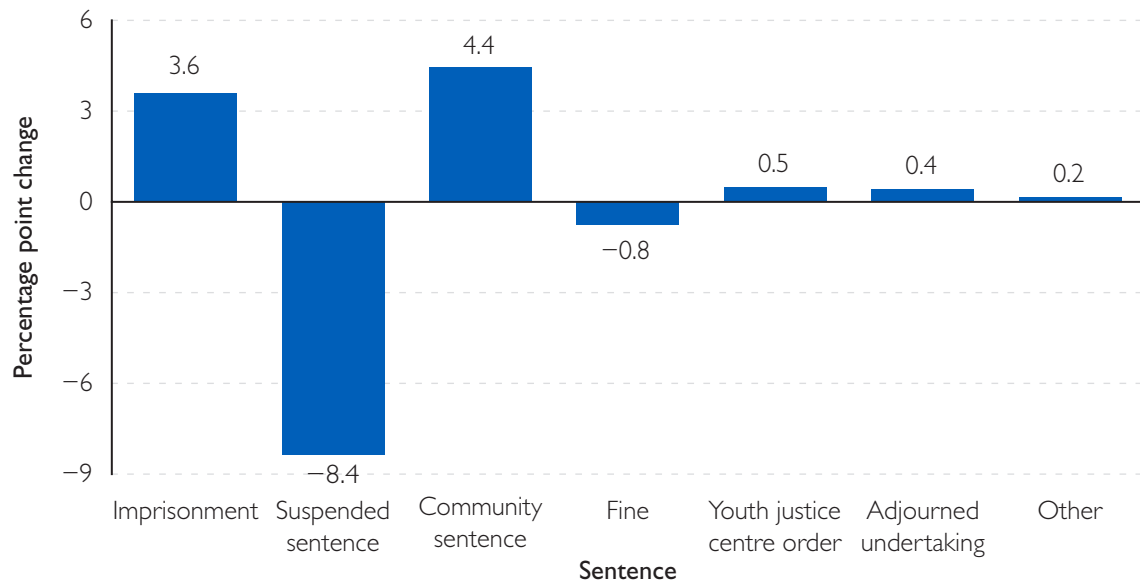


Figure 43 quantifies the change in the moving average for each sentence type in terms of the percentage point change at December 2012 compared with January 2012. The decline in suspended sentences was 8.4 percentage points. There were increases in a number of sentence types, most notably community sentences (4.4 percentage points) and imprisonment (3.6 percentage points). Smaller increases were evident in a number of other sentence types. From this, it is reasonable to conclude that CCOs were the primary replacement used for suspended sentences throughout 2012.

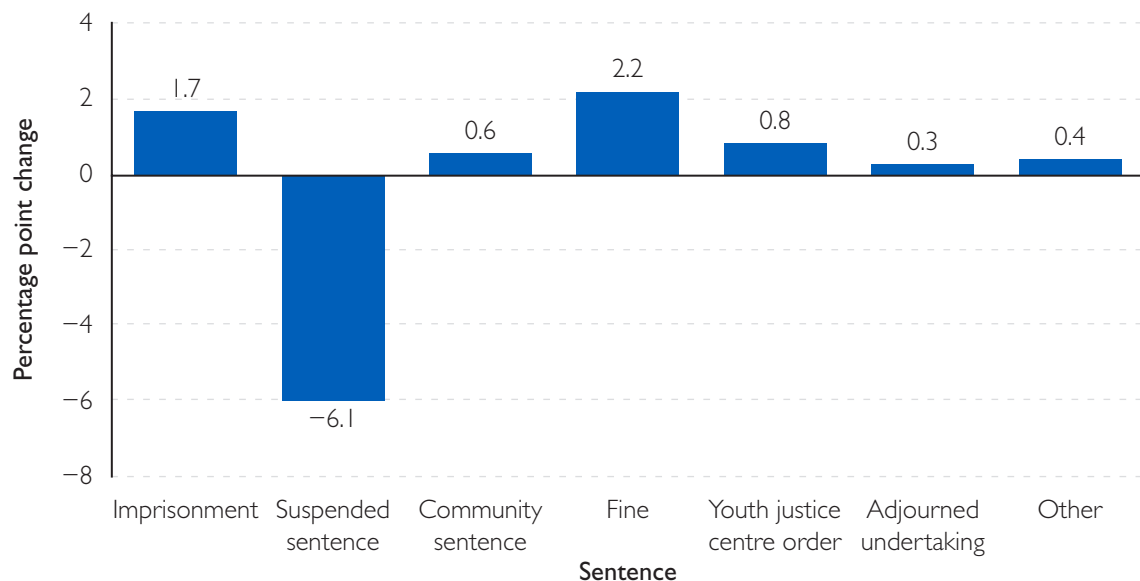
In the first half of 2013, however, there were changes in the pattern of use of sentencing orders. Figure 44 shows the percentage point change between January 2013 and June 2013. The moving average for suspended sentences declined a further 6.1 percentage points. Community sentences, however, only increased by 0.6 of a percentage point, suggesting that they were not being used as replacements for suspended sentences. The most substantial increase in sentence type was for fines (2.2 percentage points) and imprisonment (1.7 percentage points).

The change suggests that imprisonment and fines, rather than CCOs, were used to replace suspended sentences in the first half of 2013. Whether these changes continued in the second half of 2013 is unknown as sentencing data were not available at the time of writing.

**Figure 43:** Percentage point change in the twelve-month moving average of the percentage of unique sentence types<sup>54</sup> by sentence type, higher courts, December 2012 compared with January 2012



**Figure 44:** Percentage point change in the twelve-month moving average of the percentage of unique sentence types<sup>55</sup> by sentence type, higher courts, June 2013 compared with January 2013



<sup>54</sup> Unlike in Figure 42, in this graph the percentage point changes are based on the moving average of the number of offenders who received a given sentence divided by the total number of *unique sentence types*. The moving averages in Figure 42 are based on the number of offenders who received a given sentence divided by the *total number of offenders*. The patterns were very similar using each methodology.

<sup>55</sup> Ibid.

Offence composition

The analysis now considers the change in the composition of offences appearing in the higher courts over this period. The aim is to determine whether the changes in sentencing practice have occurred in the absence of any change in offence severity.

Figures 45 and 46 show the percentage of offenders sentenced in the higher courts according to the principal offence for which they were sentenced. The most serious offence categories – rape, drug (cultivate, manufacture, or traffic), and homicide – are shown in Figure 45. Changes in the trend lines for these three offences were relatively minor between January 2011 and June 2013.

Figure 45: Percentage of offenders sentenced by month for principal offence categories of drug (CMT), rape, and homicide, higher courts, January 2010 to June 2013

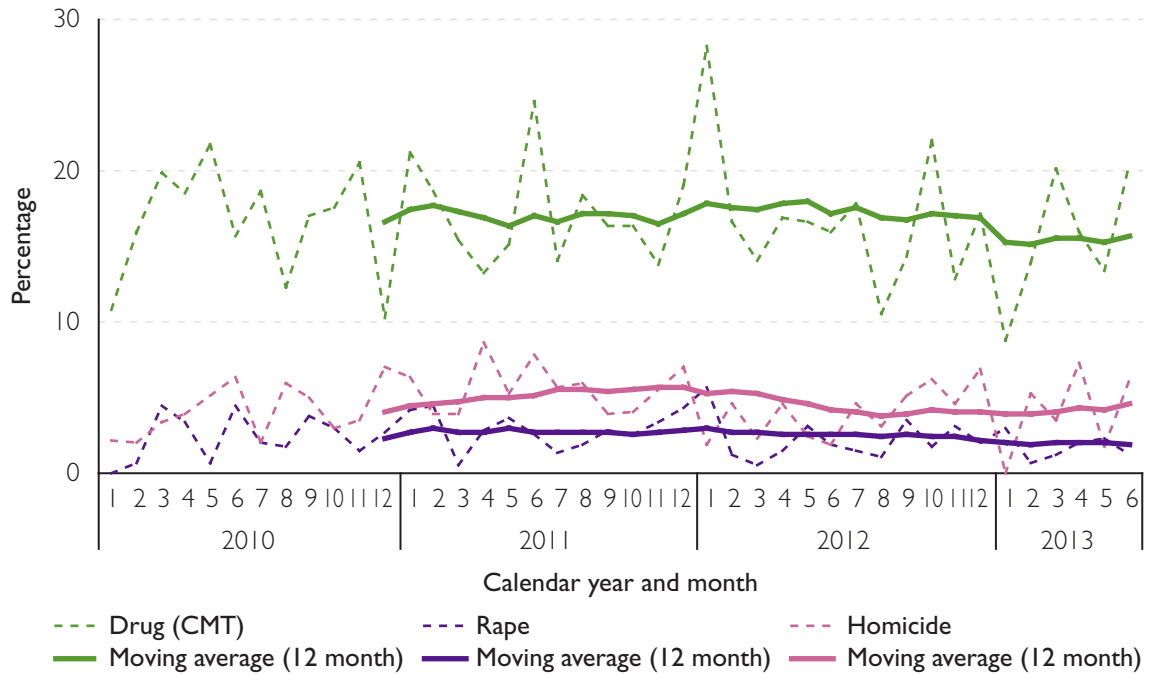
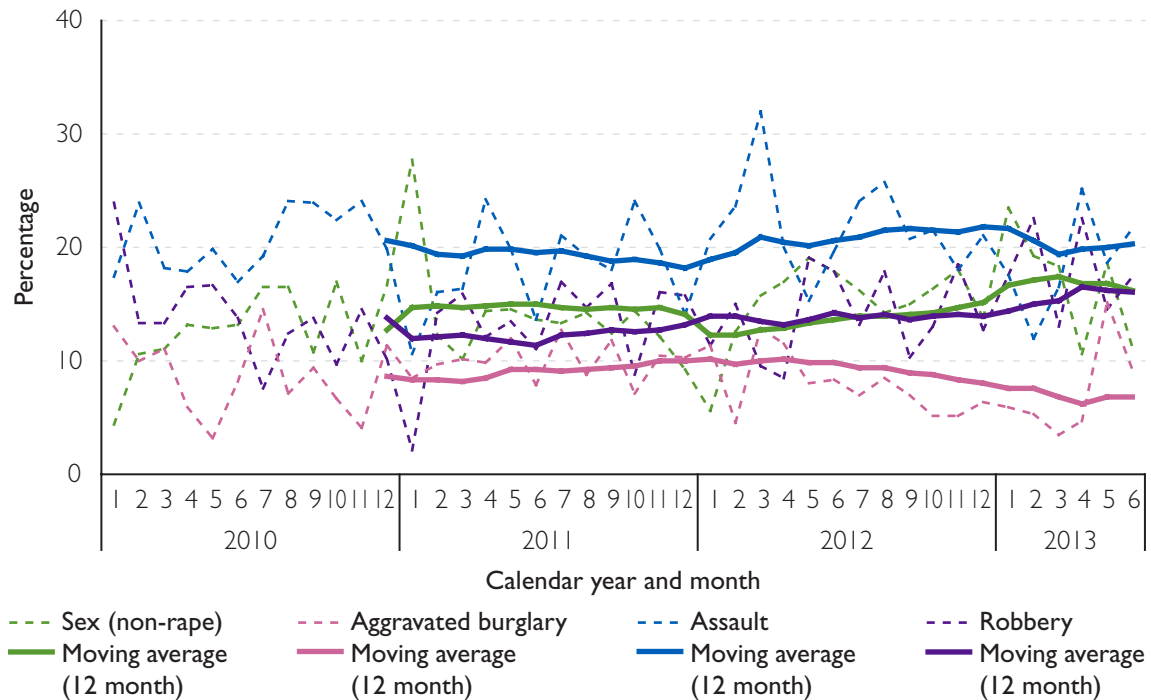


Figure 46: Percentage of offenders sentenced by month for principal offence categories of sex (non-rape), aggravated burglary, robbery, and assault, higher courts, January 2010 to June 2013





Trend lines for non-rape sexual offences, robbery, assault, and burglary are shown in Figure 46. Robbery, which primarily included armed robbery, increased gradually throughout 2011 and 2012 before rising sharply in early 2013. In contrast, aggravated burglary declined throughout 2012 and in early 2013.

Assault and non-rape sexual offences generally increased throughout 2012. However, in early 2013, assault offences declined while non-rape sexual offences continued to rise.

Thus, while there was little change in the most serious offence categories, there were increases in robbery and non-rape sexual offences.

### 'Serious' and 'Significant' offences

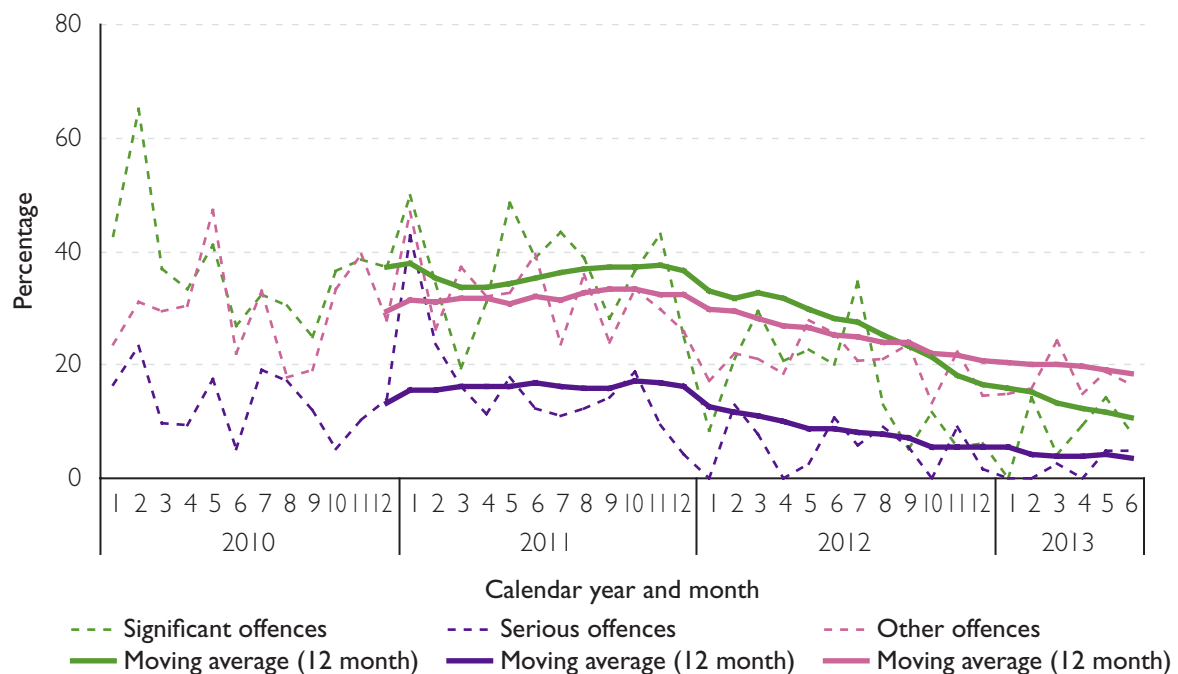
The analysis now turns to the use of suspended sentences for offences classed as 'serious' and 'significant'. An important question here is whether suspended sentences declined for offences not classed as serious or significant.

Figure 47 shows the trend in the use of suspended sentences for 'serious', 'significant', and all other offences. While there were declining trends in the use of suspended sentences for 'serious' and 'significant' offences, there was also a decline for other types of offences.

The trend line for significant offences peaked in November 2011 at approximately 38%, and by June 2013 it had declined to just over 10%. For serious offences, the decline was not as significant, but by June 2013 a much lower percentage of these offences received a suspended sentence (5%).

A declining trend was also evident for other offence types. Use of suspended sentences for these offences peaked at 34% in late 2011 and declined to 19% in June 2013.

**Figure 47:** Percentage of principal sentences that were suspended sentences for 'serious', 'significant', and other offences by month, higher courts, January 2010 to June 2013



### Sentencing by offence type

Given the clear changes to sentencing practices that have occurred in the higher courts, the Council examined how sentencing practices varied according to different offence categories, to explore whether CCOs appeared to be replacing suspended sentences.

For drug trafficking (see Figure 48), the decline in suspended sentences occurred throughout 2012 and into 2013. The trend line for suspended sentences was at 35% in January 2012 and 23% in June 2013. This was mirrored by an increasing trend in imprisonment (54% to 68%) and a very slight increasing trend in the use of community sentences (4% to 6%). This suggests that judges tended to use imprisonment rather than CCOs as a replacement for suspended sentences for drug trafficking offences.

This pattern was similar for robbery offences (Figure 49). The decline in suspended sentences (15% in January 2012 to 1% in June 2013) was matched by the rise of imprisonment sentences (65% to 72%). However, in contrast to drug trafficking offences, there was a rise in the use of community sentences for robbery offences in late 2012 (10% in August 2012 to 15% in January 2013).

For aggravated burglary, the decline in suspended sentences occurred when both community sentences and imprisonment sentences rose (see Figure 50). Between January 2012 and June 2013, the percentage of aggravated burglaries that received a suspended sentence declined from 45% to 10%. In contrast, imprisonment rose from 45% to 64% and community sentences rose from 8% to 18%. Thus, there seems to have been a split between community sentences and imprisonment as alternatives to suspended sentences.

**Figure 48:** Percentage of offenders sentenced for a principal offence of drug trafficking by sentence type and month, higher courts, January 2010 to June 2013

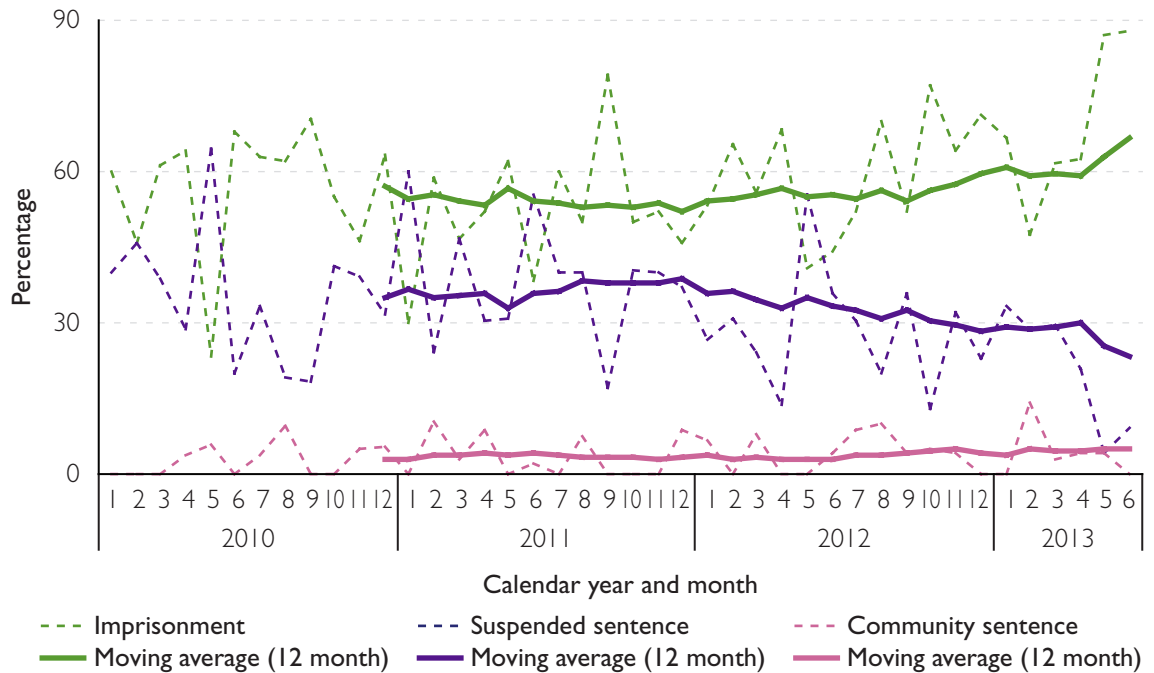


Figure 49: Percentage of offenders sentenced for a principal offence of robbery<sup>56</sup> by sentence type and month, higher courts, January 2010 to June 2013

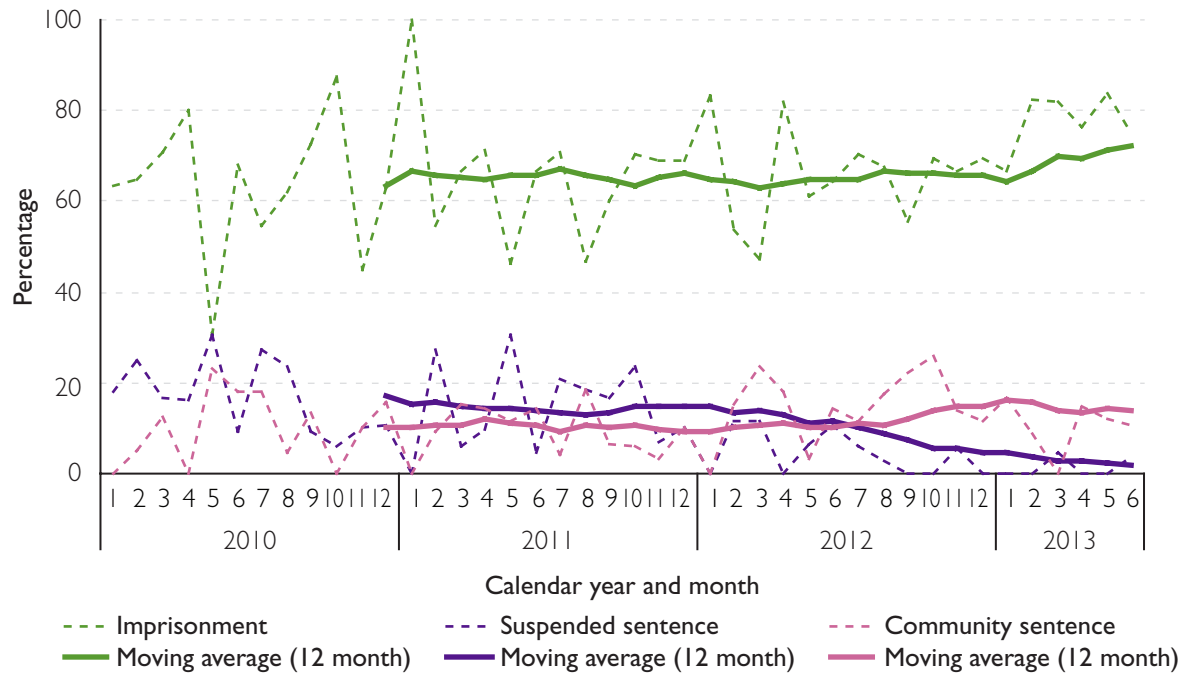
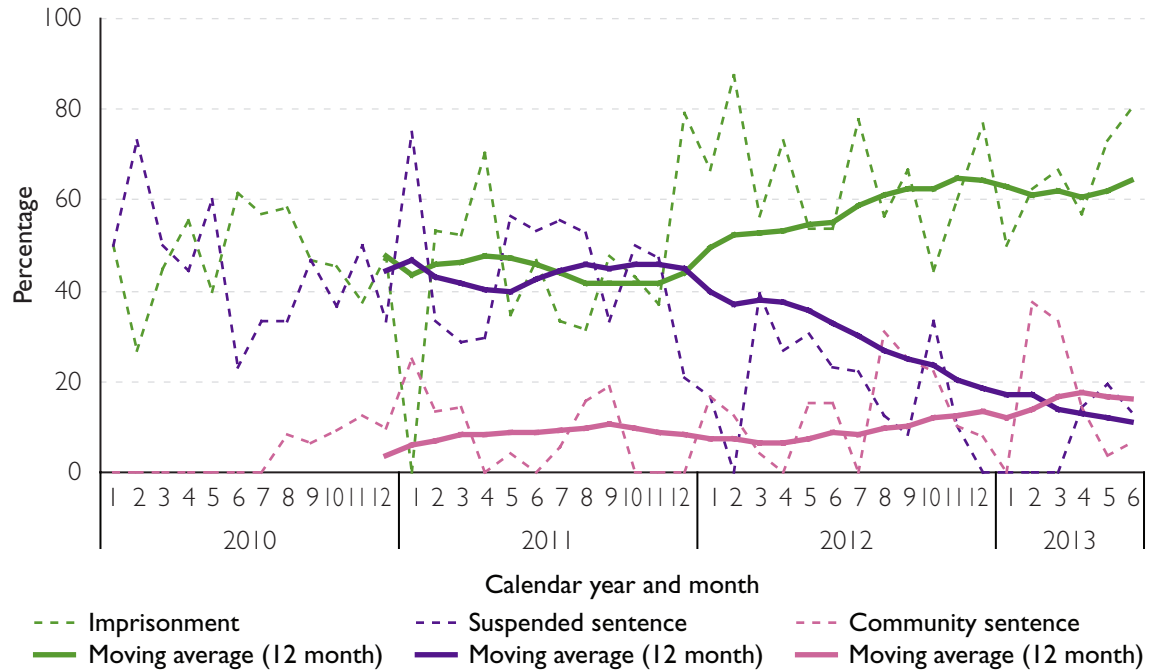


Figure 50: Percentage of offenders sentenced for a principal offence of aggravated burglary by sentence type and month, higher courts, January 2010 to June 2013

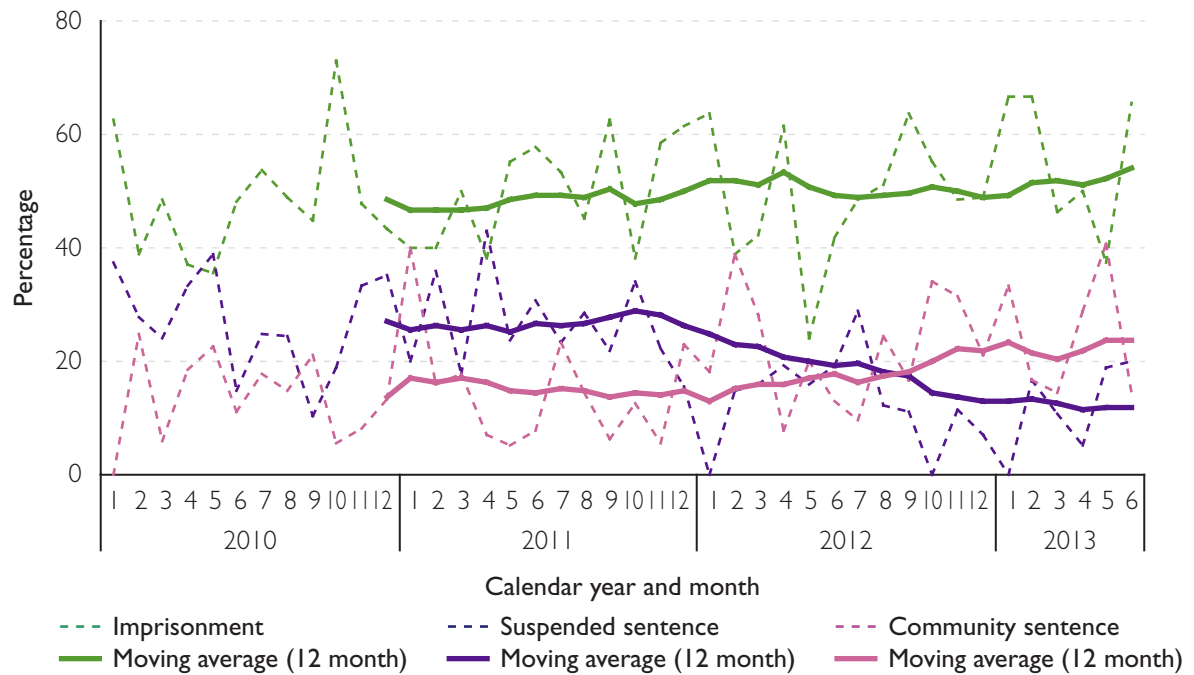


<sup>56</sup> The 'robbery' offence category includes armed robbery as well as robbery. Most offences sentenced in the higher courts in this category were armed robbery.

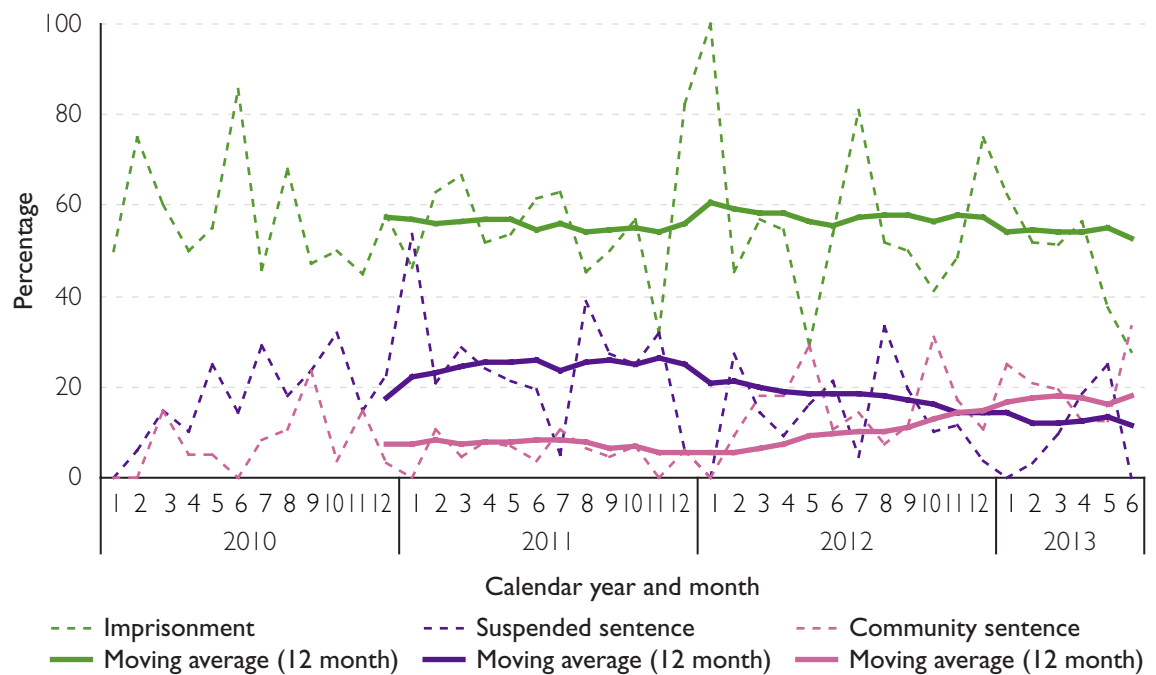
For assault offences (Figure 51), there was little increase in the use of imprisonment as suspended sentences declined from 25% in January 2012 to 11% in June 2013. However, the use of CCOs over this period increased from 12% to 22%, suggesting that, for assault offences, judges were using CCOs rather than imprisonment as a replacement for suspended sentences.

A similar pattern is evident for non-rape sexual offences: as suspended sentences declined between late 2011 and early 2013, community sentences increased while imprisonment sentences remained steady (see Figure 52).

**Figure 51:** Percentage of offenders sentenced for a principal offence of assault by sentence type and month, higher courts, January 2010 to June 2013



**Figure 52:** Percentage of offenders sentenced for a principal offence of sex (non-rape) by sentence type and calendar year, higher courts, January 2010 to June 2013



## Profile comparison

The analysis now turns to a comparison between the profiles of offenders who received CCOs and those who received wholly suspended sentences.

In terms of age, offenders who received a CCO tended to be younger than those who received a wholly suspended sentence. The median age for CCOs was 26 years compared with 31 years for wholly suspended sentences. The difference in the mean of the two groups of offenders was found to be statistically significant; therefore, the younger profile of people who received a CCO is highly unlikely to have occurred by chance ( $t(1,569) = -3.901, p < 0.001$ ).

There was no statistically significant difference with respect to prior offending, despite the fact that offenders who received a CCO were more likely to have at least one recent prior sentence (59.1% compared with 53.6% for wholly suspended sentences).

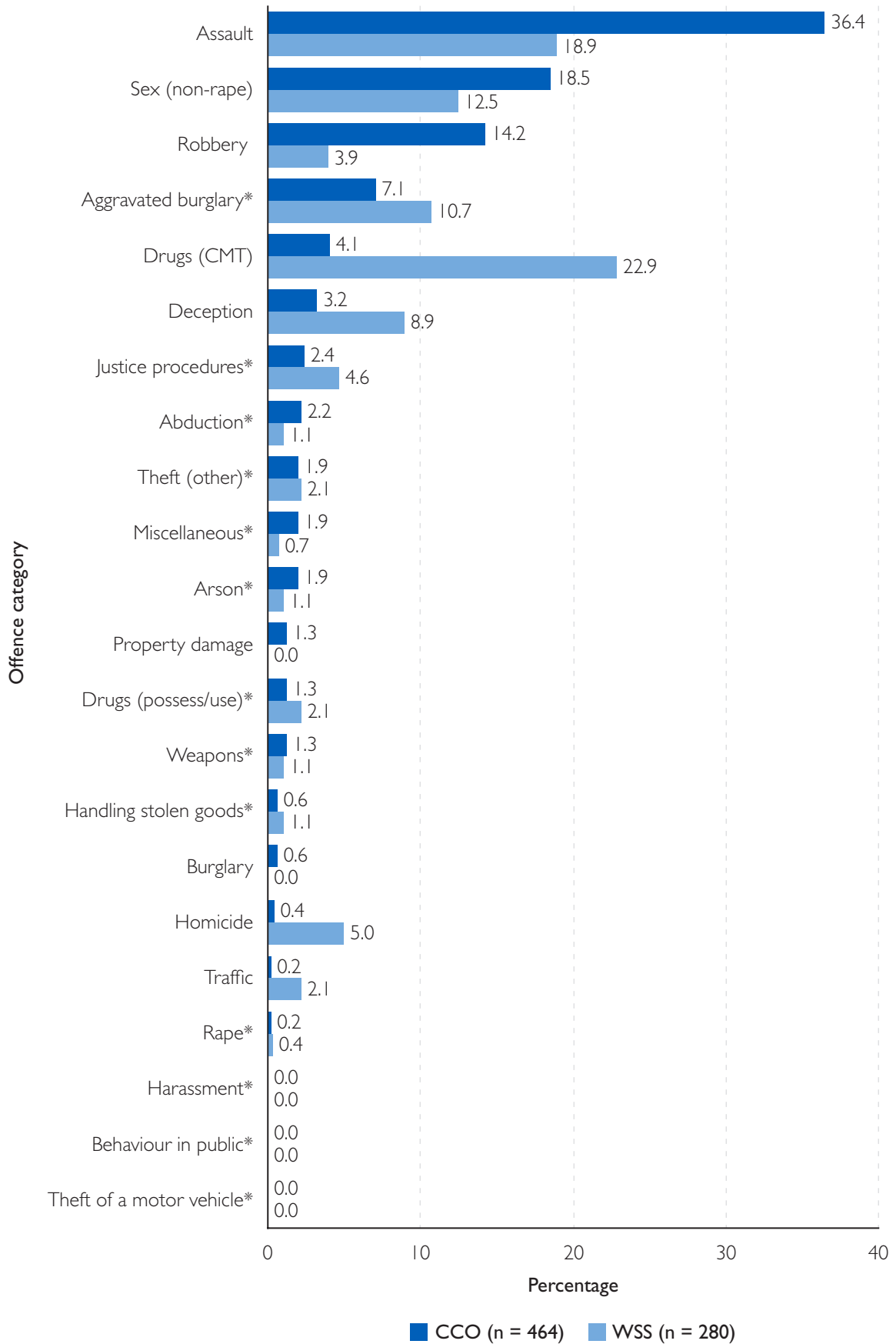
### Offence categories

As Figure 53 shows (page 54), there were clear differences in the offence profiles of the two sentence types. CCOs tended to be imposed more often for offences that involved physical, potentially violent contact between an offender and a specific victim. These offences included:

- assault, which comprised 36.4% of the CCOs imposed but only 18.9% of wholly suspended sentences ( $z = 5.406, p < 0.001$ );
- non-rape sexual offences, which comprised 18.5% of the CCOs imposed but only 12.5% of wholly suspended sentences ( $z = 2.255, p < 0.05$ ); and
- robbery, which comprised 14.2% of the CCOs imposed but only 3.9% of wholly suspended sentences ( $z = 5.406, p < 0.001$ ).

In contrast, wholly suspended sentences were skewed towards offences that did not necessarily involve the offender having physical contact with a specific victim but did involve social or financial harm. The percentage of wholly suspended sentences imposed was substantially higher for drug trafficking offences (22.9% compared with 4.1% for CCOs;  $z = -2.005, p > 0.05$ ) and deception offences (8.9% compared with 3.2%;  $z = -3.011, p < 0.01$ ). The relatively high percentage of drug offenders receiving suspended sentences declined between January 2012 and June 2013.

Figure 53: Percentage of principal sentences by offence category by sentence type, higher courts, January 2012 to June 2013



\*Indicates difference was not statistically significant according to the z-statistic.

## Chapter 4

# Summary and implications

This report has addressed three questions in relation to community correction orders (CCOs) and sentencing more generally.

The answer to the first question provides a picture of how and for whom CCOs have been used in the Magistrates' Court and in the higher courts since the introduction of CCOs in 2012. The answer is based on an examination of data on CCOs imposed between January 2012 and June 2013.

In the Magistrates' Court, offenders who received a CCO had a median age of 30 years while 82.3% were male. Among the most common offences for which CCOs were imposed were contravening a family violence intervention order and various assault and theft offences. Three-quarters of offenders receiving a CCO had a previous conviction.

In comparison, offenders who received a CCO in the higher courts tended to be younger (the median age was 26 years) and were slightly more likely to be male (85.6%). The most common offence category to receive a CCO in both court levels was assault. However, unlike in the Magistrates' Court, in the higher courts armed robbery and sexual penetration of a child under 16 were more common.

Data for both court levels showed that unpaid community work, supervision, and assessment and treatment were the most common conditions imposed. The new condition types were rarely used. The most frequently used new condition was judicial monitoring (10.6% in the Magistrates' Court and 14.3% in the higher courts); others were used for fewer than 5.4% of offenders across both court levels.

CCOs were typically shorter in the Magistrates' Court than in the higher courts; the median duration was 12 months in the Magistrates' Court compared with 24 months in the higher courts. This is to be expected given the shorter maximum sentences that can be imposed and the less serious nature of the offending being sentenced in the Magistrates' Court.

The second question, which was about the relationship in practice between CCOs and the primary orders they replaced, was addressed by examining the volume of community sentences imposed before and after CCOs were introduced in January 2012. The data showed that the volume of the CCOs was very similar to the combined volume of community-based orders (CBOs) and intensive correction orders (ICOs) in the Magistrates' Court. This suggests that magistrates were using CCOs similarly to CBOs and ICOs.

In the higher courts, the volume of CCOs in 2012 was substantially greater than the volume of CBOs and ICOs, but the use of CCOs declined substantially in the first half of 2013. Overall, the offender and offence profile for CCOs was similar to the profiles for CBO and ICOs, suggesting that, while the use of community sentences generally increased following the introduction of CCOs, the nature of offenders and offences receiving community sentences remained similar.

The third question was whether CCOs were replacing suspended sentences of imprisonment. This question is particularly pertinent given suspended sentences have now been abolished in the higher courts and are due to be abolished in late 2014 in the Magistrates' Court. In the Magistrates' Court, there was a decline in the use of suspended sentences in May 2011 to a level that was maintained through to June 2013. However, this decline was primarily due to the change in magistrates' sentencing behaviour following the abolition of the mandatory imprisonment term for a second or subsequent offence of driving while disqualified or suspended. There was no evidence that CCOs were yet being used as alternatives to suspended sentences in the Magistrates' Court.

In the higher courts, there was a decline in the use of suspended sentences between late 2011 and June 2013. This was mainly due to the commencement of legislative changes in May 2011 aimed at phasing out suspended sentences. Following the introduction of CCOs in January 2012, there was an increase in the use of CCOs as well as imprisonment. The rise in both of these sentence types was of a similar magnitude and accounts for much of the decline in suspended sentences. This suggests that judges viewed CCOs, to some extent, as a credible alternative to suspended sentences. However, a different picture emerged in early 2013 when the use of CCOs declined, perhaps suggesting a change in attitude among judges to the order. Further research would be required to provide any conclusive insight into the factors underlying this trend.

## Implications for the abolition of suspended sentences

The seriousness of offences for which suspended sentences will no longer be available is an important consideration when extrapolating the findings of the current report into the future:

- in May 2011, suspended sentences were abolished for 'serious' and 'significant' offences in the higher courts;
- in September 2013, suspended sentences were abolished for all offences sentenced in the higher courts; and
- in September 2014, suspended sentences will be abolished for all offences sentenced in the Magistrates' Court.

This report considered the period when the effects of the May 2011 reforms were taking hold. These reforms were most likely to result in suspended sentences shifting to imprisonment sentences rather than community sentences, as they affected a range of the most serious offences. As the September 2013 and September 2014 reforms apply to less serious offences, the shift is likely to be towards an increase in the imposition of community sentences and possibly fines.

If the pattern evident in 2012, which saw over half of suspended sentences being replaced by CCOs, is extrapolated into the future, more than half of suspended sentences are likely to move to CCOs. If, however, the pattern evident in the first half of 2013, which saw the vast majority of suspended sentences being replaced by imprisonment, is extrapolated, less than half of suspended sentences are likely to move to CCOs.

It is also possible that other lower sentencing options, such as fines, will be imposed rather than CCOs, in the Magistrates' Court in particular. The most common offences to receive a wholly suspended sentence in the Magistrates' Court were traffic-related offences. Given the experience with driving while disqualified, for which magistrates appeared to impose fines instead of suspended sentences, it would perhaps be reasonable to expect fines to be imposed more commonly than CCOs for traffic-related offences.

Two important points need to be made about the Magistrates' Court. First, the time between the offence commission date and the offence sentence date tends to be much shorter than in the higher courts. As a result, the impact of abolishing suspended sentences from September 2014 will be more rapid. Second, the phase-out of suspended sentences in the Magistrates' Court is likely to have a greater impact on the correctional system, either the custodial component or the community component, than the phase-out of suspended sentences in the higher courts. This is because the volume of suspended sentences is over 10 times greater in the Magistrates' Court than in the higher courts. For example, in 2012, over 5,000 offenders received a wholly suspended sentence in the Magistrates' Court compared with under 400 offenders in the higher courts.



## Exclusions and future research

This report did not consider a number of important aspects of CCOs, including the availability of treatment programs, the availability and type of unpaid community work, breach rates, and the effectiveness of CCOs and the various conditions available in reducing the likelihood of reoffending. These topics are suggested for future research.

## Conclusion

The CCO was introduced as a flexible, non-custodial sentencing option at a time when CBOs and ICOs were removed from the sentencing hierarchy and the effects on sentencing practices of the restriction placed on suspended sentences in the higher courts were becoming evident. The evidence in 2012 suggested that judges were, to some extent, using CCOs as an alternative to suspended sentences. However, the clear differences in profiles of offenders receiving suspended sentences and CCOs in both the Magistrates' Court and the higher courts suggest that these two sentences were still viewed by sentencers as appropriate for different cohorts of offenders. This report examined the use of CCOs in the first 18 months that they were available as a sentencing option. Further monitoring of CCOs should be undertaken as additional data becomes available.

## Appendix A

### Offence distributions for all CCO charges

Figure A1: Percentage of all CCO sentences by specific offence for the 20 most common offences, Magistrates' Court, January 2012 to June 2013 (n = 54,852)

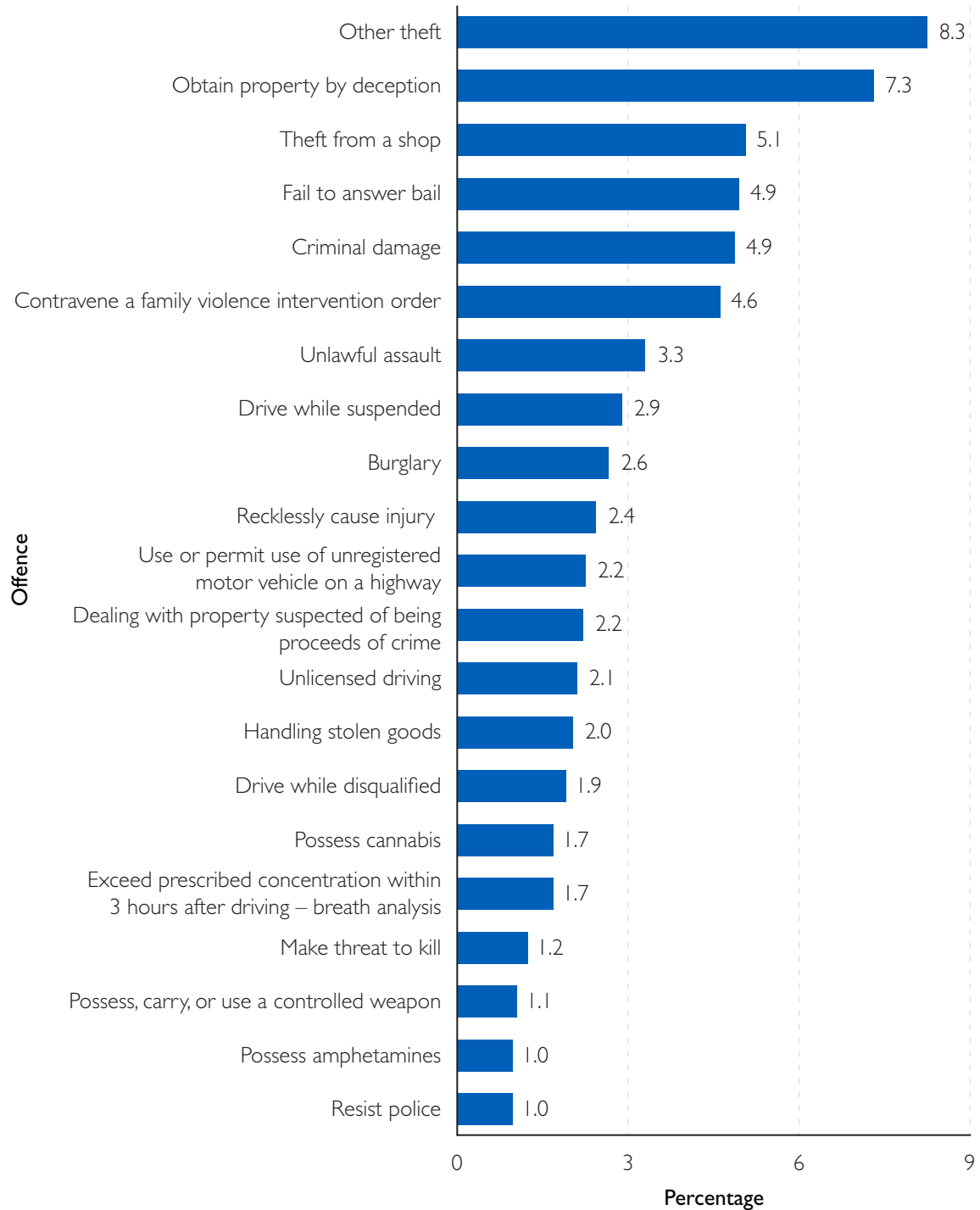


Figure A2: Percentage of CCO sentences by broad offence category, Magistrates' Court, January 2012 to June 2013 (n = 54,852)

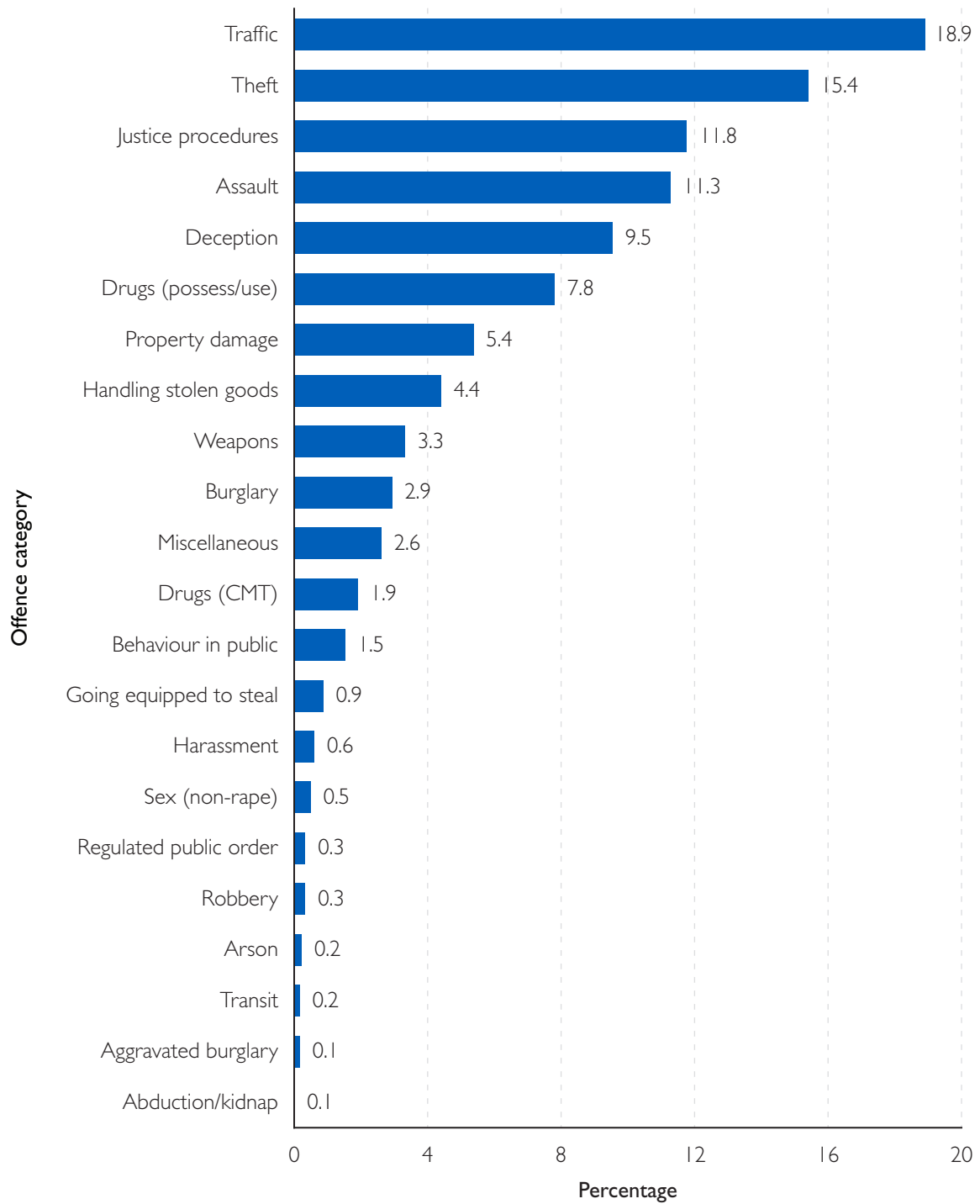


Figure A3: Percentage of all CCO sentences by offence for the 20 most frequent offence types, higher courts, January 2012 to June 2013 (n = 1,066)

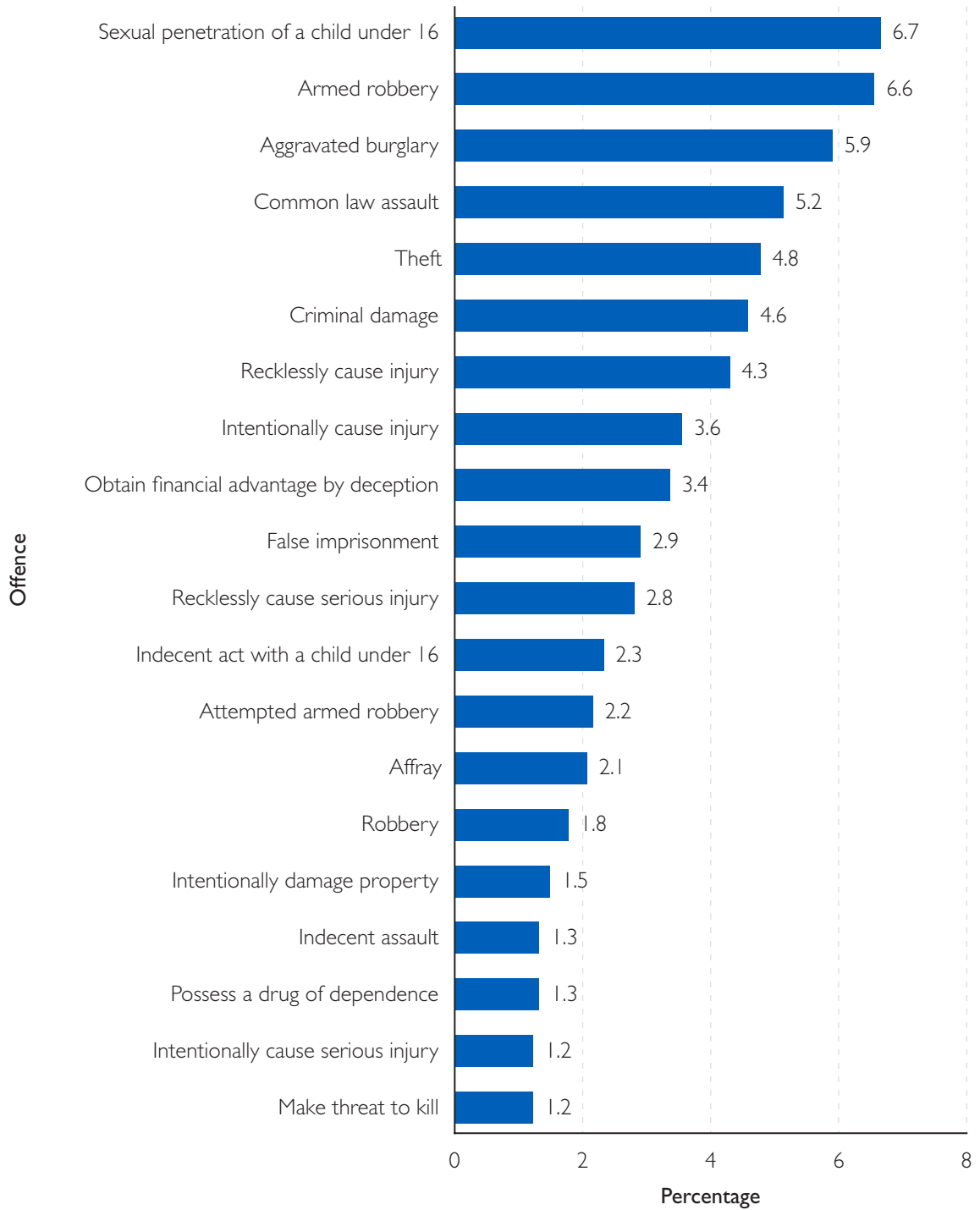
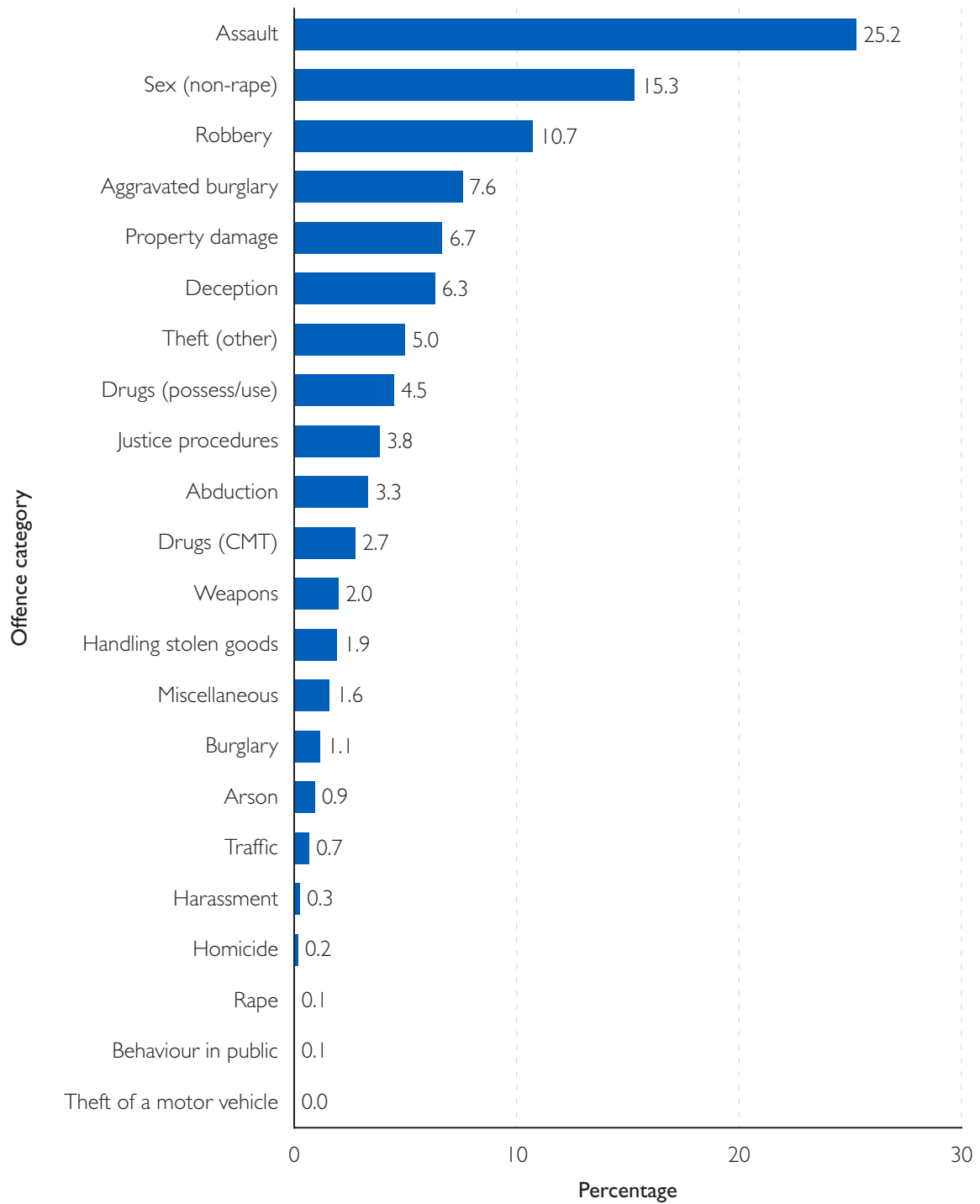


Figure A4: Percentage of all CCO sentences by offence category, higher courts, January 2012 to June 2013 (n = 1,066)



## Appendix B

# ‘Serious’ and ‘significant’ offences

The following list shows offences that are defined as ‘serious’ under section 3 of the *Sentencing Act 1991* (Vic):

- murder;
- manslaughter;
- child homicide;
- defensive homicide;
- causing serious injury intentionally in circumstances of gross violence;
- causing serious injury recklessly in circumstances of gross violence;
- causing serious injury intentionally;
- threats to kill;
- rape;
- incest (other than where both people are aged 18 or older);
- sexual penetration of child under the age of 16;
- persistent sexual abuse of child under the age of 16;
- abduction or detention;
- abduction of child under the age of 16;
- kidnapping;
- armed robbery; and
- assault with intent to rape.

The following list shows offences that are defined as ‘significant’ under section 3 of the *Sentencing Act 1991* (Vic):

- causing serious injury recklessly (unless heard and determined summarily);
- aggravated burglary (unless heard and determined summarily);
- destroying or damaging property by fire (unless heard and determined summarily);
- arson causing death;
- trafficking in a large commercial quantity of a drug of dependence; and
- trafficking in a commercial quantity of a drug of dependence.

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*Road Safety Act 1986* (Vic)

## Quasi-legislative material

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