



# COMMUNITY-BASED SENTENCING ORDERS AND PAROLE

## A Review of Literature and Evaluations across Jurisdictions

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Prepared for the  
Queensland Sentencing Advisory Council  
by  
Queensland University of Technology



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## List of abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ALRC	Australian Law Reform Commission
BOCSAR	Bureau of Crime Statistics and Research
CBT	Cognitive-behavioural therapy
CCO	Community correction order
CCS	Community Correctional Services
CJG	Community Justice Group
CSO	Community service order
DUI	Driving under the influence
DWI	Driving while intoxicated
EM	Electronic monitoring
GPS	Global Positioning System
HOPE	Hawaii Opportunity Probation with Enforcement
ICO	Intensive correction order
ISP	Intensive Supervision Program
LSI-R	Level of Service Inventory-Revised
MST	Multi-Systemic Therapy
NSW	New South Wales
NSWLRC	New South Wales Law Reform Commission
NT	Northern Territory
NZ	New Zealand
PAU	Probation as usual
QCS	Queensland Corrective Services
QLD	Queensland

QSAC	Queensland Sentencing Advisory Council
RCT	Randomised controlled trial
RNR	Risk-need-responsivity
SA	South Australia
SAC	Victorian Sentencing Advisory Council
SCF	Swift, certain and fair
SCLJ	Standing Committee on Law and Justice
SCRGSP	Steering Committee for the Review of Government Service Provision
TAS	Tasmania
TSAC	Tasmanian Sentencing Advisory Council
UK	United Kingdom
US	United States
VIC	Victoria
WA	Western Australia
WSIPP	Washington State Institute of Public Policy

## Glossary

Logistic regression	A type of linear model that is used when analysing data that are dichotomous (with two categories of outcome, such as yes/no).
Meta-analysis	Meta-analysis mathematically aggregates the statistical results of different studies into a single database, allowing the results to be analysed collectively, rather than individually. Overall effects become more evident, and broad patterns within a body of research are revealed with greater clarity and consistency than is possible with traditional reviews.
Poisson regression	A type of linear model that is used when analysing data that are not normally distributed.
Propensity score matching	A statistical technique that attempts to estimate the effect of a given intervention while taking account of the factors that predict receiving the intervention in the first instance.
Recidivism	Reoffending, operationalised in different ways across different studies.
Statistical significance	The likelihood that a statistical relationship between two variables has not occurred by chance (conventionally measured by whether the probability that the relationship occurred by chance is less than 5%).
Survival analysis	A set of statistical techniques that is concerned with the time it takes for a particular event to occur.
Systematic review	An appraisal and synthesis of primary research papers using a rigorous and clearly documented methodology in both the search strategy and the selection of studies.

## Executive summary

In October 2017, the Queensland Sentencing Advisory Council (QSAC) received a Terms of Reference from the Attorney-General and Leader of the House to examine community-based sentencing orders, imprisonment and parole options. This reference was made in response to recommendations made in the recent review of Queensland's parole system (Sofronoff, 2016). In particular, QSAC was tasked with considering recommendations 2-5 of the report (Sofronoff, 2016, p. 23):

- Recommendation 2: Court ordered parole should be retained.
- Recommendation 3: A court should have the discretion to set a parole release date or a parole eligibility date for sentences of greater than three years where the offender has served a period of time on remand and the court considers that the appropriate further period in custody before parole should be no more than 12 months from the date of sentence.
- Recommendation 4: A suitable entity, such as the Sentencing Advisory Council, should undertake a review into sentencing options and in particular, community based orders to advise the government of any necessary changes to sentencing options.
- Recommendation 5: Court ordered parole should apply to a sentence imposed for a sexual offence.

In response to Recommendation 4, QSAC commissioned a literature review to assist in informing its broader advice to the government. This report presents the findings of the review.

This report contains two components:

- a review of each order to present its legislative and practical framework; and
- a review of existing literature to identify the effectiveness of various sentencing options.

### *Key findings*

#### *The use of imprisonment and parole*

- Prison is the most expensive criminal justice system response to crime, costing more than \$3.4 billion in Australia in 2017-18.
- Despite these costs, the use of imprisonment has increased throughout Australia over the past decade, in contrast to a decrease in the use of custodial terms in other countries.

- While the use of parole varies considerably across jurisdictions, rates of successful completion of parole are relatively high.

#### *The use of suspended sentences*

- Suspended sentences generally account for a small proportion of sentences imposed in both Australian and overseas courts.
- While the use of suspended sentences has declined in Australia over the past decade, it has increased in England and Wales.
- Around one-fifth to one-half of all suspended sentences are breached.

#### *The use of intensive correction orders*

- Intensive correction orders are imposed infrequently in Australia, while the analogous sentence in Canada is also seldom used.
- Around two-thirds of intensive correction orders are successfully completed.
- While some Australian states have recommended against the introduction of intensive correction orders or have repealed them entirely, other states have responded to criticisms of these orders by strengthening them.

#### *The use of home detention*

- Home detention as a front-end order is rarely used in Australia, despite having high rates of successful completion.
- The costs of home detention tend to be higher than for other orders served in the community, primarily due to the cost of electronic monitoring.

#### *The use of community service orders*

- Community service orders are widely used, in Australia and in other countries.
- About three-quarters of community service orders are successfully completed.
- Despite this, the number of community service orders has fallen in some places, while, in others, the order has been replaced by a broader community correction order.

#### *The use of probation*

- Probation as a distinct sentence is not widely available. Where it is available, some jurisdictions impose probation frequently, while others do so sparingly.
- Breach rates for probation orders appear to range between about one-quarter and one-third.

#### *The use of community correction orders*

- In those jurisdictions where community correction orders (or similar) are available, they represent around one in ten of all sentences imposed.
- Around one-half of community correction orders are breached, with between one-quarter and one-third of contraventions being due to further offending.

### *The effectiveness of imprisonment*

- Although imprisonment is undoubtedly effective at punishing offenders and denouncing criminal behaviour, research shows that it is not effective as a deterrent to further offending and it appears to reduce reoffending via incapacitation only to a limited extent.
- There appear to be minimal differences in reoffending between custodial and non-custodial sentences. However, the evidence on this issue is mixed, with some research showing higher rates of recidivism following incarceration.
- At best, imprisonment has a marginal impact on recidivism. At worst, imprisonment increases the likelihood of reoffending.

### *The effectiveness of partially suspended sentences*

- There is no robust research on the effectiveness of partially suspended sentences. What little research exists finds that recidivism rates are higher following a partially suspended sentence than after a wholly suspended sentence.
- There is no research on the impact of partially suspended sentences among vulnerable offenders.
- Recidivism rates following a partially suspended sentence appear to be lower among older offenders and those with no criminal history, but the evidence for this is weak.

### *The effectiveness of parole*

- The effectiveness of supervised parole relative to unsupervised release remains the source of considerable debate. Nonetheless, there is reasonable evidence that parole is more effective at reducing recidivism than unsupervised release.
- There is some evidence that more active supervision can reduce recidivism, but only if the focus is rehabilitation, rather than compliance.
- There is very limited research on the effectiveness of parole for vulnerable cohorts. It appears that parole might be less effective for Aboriginal and Torres Strait Islander offenders. While parole generally appears to be more effective for female offenders than for men, it appears that Caucasian women and older women are more likely to complete parole and probation successfully, while those with substance abuse problems are less likely to be successful. Offenders with a mental illness have been shown to be more likely than healthy offenders to return to custody for either a new crime or a technical violation.
- Although evidence is mixed for some factors, there is consistent evidence that reoffending on parole is more likely among parolees who are young, male, Indigenous, with a criminal history. There is no clear consensus on the effectiveness of court-ordered versus board-ordered parole.
- Most of the research shows that electronic monitoring while on parole reduces recidivism cost-effectively, especially when used as a genuine alternative to

imprisonment and with high-risk sex offenders. Evidence on net-widening with electronic monitoring remains inconclusive.

#### *The effectiveness of wholly suspended sentences*

- Wholly suspended sentences have a small but significant effect on reducing recidivism when compared with imprisonment, especially for repeat offenders. While there is no research on the effectiveness of wholly suspended sentences among vulnerable cohorts, they are considered useful for offenders who are unable to access other community orders, such as those in rural and remote areas.
- Although the evidence is sparse, it appears that wholly suspended sentences might be more likely to be completed by older offenders and those convicted of property offences.

#### *The effectiveness of conditional suspended sentences*

- Although the evidence is very limited, it suggests that people on suspended sentences with conditions might be more likely to reoffend than those without conditions. Without further research, though, this conclusion remains tentative. No further conclusions may be drawn about conditional suspended sentences due to the lack of evidence.

#### *The effectiveness of intensive correction orders*

- Research shows that there is no difference in the effectiveness of intensive correction orders when compared with supervised suspended sentences. There is good evidence, though, that intensive correction orders are more effective at reducing recidivism than either periodic detention or short terms of imprisonment, especially among offenders classified as high risk. There is no evidence on the effectiveness of intensive correction orders among vulnerable cohorts.
- Reoffending following an intensive correction order appears to be more likely among men, Indigenous offenders, those with criminal histories and those classified as high risk.

#### *The effectiveness of home detention*

- Home detention can place unintended burdens on other members of the household. Nonetheless, home detention can ease reintegration following prison, facilitate reconnection with pro-social family and activities, and deter future offending. While there is little research on the effectiveness of home detention among vulnerable cohorts, it may be useful for offenders who are unable to access other orders.
- Intensive case management, using a mix of surveillance and rehabilitative strategies, appears to be important for successful completion of home detention. Findings on other factors affecting completion of home detention have been inconsistent.

### *The effectiveness of community service orders*

- There is a small body of robust evidence on community service, the bulk of which shows that community service reduces recidivism more effectively than a term of imprisonment and a bond, but not as effectively as a fine. There is no evidence on the mechanisms that underlie the effectiveness of this order, and none on the factors that contribute to successful order completion.
- While there is no research on the impact of community service orders on vulnerable offenders, there are substantial concerns around the availability of this order among Aboriginal and Torres Strait Islander communities and offenders in rural and remote areas.

### *The effectiveness of probation*

- Probation is effective at reducing recidivism, and is more effective than a short period of incarceration for both men and women. The criminogenic effect of imprisonment compared with probation is stronger for women than men, and is exacerbated by the presence of stress in family relationships.
- Among offenders with a mental illness, the use of a specialised approach with intensive case management and support appears to reduce the likelihood of recidivism compared with traditional probation supervision. Although the evidence is weak, probation appears to be effective for sex offenders.
- Predictors of failure on probation are similar to those for offending generally, with the strongest predictors being those related to a prior history of offending and drug use. Although the evidence is not strong, probation failure appears to be more likely among probationers on low-level supervision rather than medium-level supervision, and among those with fewer behavioural treatment conditions.
- Swift, certain and fair approaches appear to be effective in reducing rates of non-compliance and recidivism, although the evidence is mixed. They appear to work best when implemented with a focus on support, addressing the underlying causes of offending within a framework of therapeutic jurisprudence. There is no evidence of the impact of this approach on vulnerable offenders.

### *The effectiveness of community correction orders*

- There is, as yet, no evidence on the effectiveness of community correction orders on recidivism, either in general or for vulnerable cohorts. Early analyses have suggested that the order is more likely to be contravened by reoffending when imposed by the Magistrates' Court than the higher courts, when it is longer, and by young offenders and those with a criminal history.
- Despite the lack of evidence on the effectiveness of these orders, it appears that the community correction order holds some intuitive appeal, with NSW replicating the Victorian approach and the ALRC recommending it for Aboriginal and Torres Strait Islander offenders.

### *The effectiveness of community orders generally for vulnerable cohorts*

- Community orders are seen as more appropriate than terms of imprisonment for Aboriginal and Torres Strait Islander offenders, for whom prison can be particularly harmful. But community sentences need to be more accessible and more flexible to provide greater support and to mitigate against higher breach rates. Conditions of community sentences, as well as support and services, need to be culturally appropriate.
- Community orders are also seen as more appropriate for female offenders, who have multiple and complex needs. Community sentences should offer multi-agency wrap-around support and services designed specifically for women, including practical help with issues such as health, housing, childcare and employment.
- Offenders with a mental illness appear to have worse outcomes on community orders than offenders without a mental illness, primarily because they have more of the key risk factors for recidivism. Community sentences for this cohort should therefore focus on the same core correctional principles and interventions as are used for offenders without a mental illness.
- Offenders in rural and remote areas have less access to community sentences, so are more likely to be imprisoned. The availability of community sentences should be expanded to reach this cohort, including a coordinated multi-agency approach to support disadvantaged people in these areas.

### *The effectiveness of treatment*

- There is now a large body of evidence that offender treatment is an effective way to reduce recidivism and improve a range of outcomes for offenders. The most successful programs are those which adopt the risk-need-responsivity approach to rehabilitation, involve cognitive behavioural therapies or include drug treatment, such as therapeutic communities.
- Treatment effectiveness may depend on the nature of participation, with programs having only limited effect when offenders are mandated or coerced into treatment.
- Treatment programs for specific types of offender appear to be mostly effective. The evidence is less positive, however, about the effectiveness of treatment programs for reducing reoffending among family violence offenders and offenders with a mental illness.
- Treatment programs that are gender-informed are more effective than gender-neutral programs for female offenders. Similarly, interventions that are culturally appropriate are more effective for Indigenous offenders.
- Programs that are solely based on discipline, surveillance or punitive practice – without any rehabilitative support – do nothing to reduce recidivism and may instead increase the likelihood of reoffending.

### *The effectiveness of supervision*

- The evidence shows mixed support for the effectiveness of supervised release. Supervision without adequate rehabilitation services and support – that is focused on enforcement – does not reduce recidivism. When combined with critical rehabilitation services such as mental health treatment, drug treatment and housing assistance, supervision focused on service delivery is effective at reducing reoffending.
- The evidence on high-intensity supervision is mixed, with much of the evidence indicating that its heightened surveillance acts to increase both recidivism and technical violations. However, when coupled with therapeutic interventions, high-intensity supervision can be effective, especially for high-risk offenders.
- Although the evidence is sparse, low-intensity supervision, used for low-risk offenders, does not appear to increase recidivism, so may be a cost-effective tool for managing large, low-risk offender cohorts.
- While evidence is limited, it suggests that an environmental corrections approach – whereby supervision is used to reduce offenders' opportunities to reoffend – can effectively reduce recidivism.

## 1. Introduction and background

In October 2017, the Queensland Sentencing Advisory Council (QSAC) received a Terms of Reference from the Attorney-General and Leader of the House to examine community-based sentencing orders, imprisonment and parole options. This reference was given in response to recommendations of the recent review of Queensland's parole system (Sofronoff, 2016). In particular, QSAC was tasked with considering recommendations 2-5 of the report (Sofronoff, 2016, p. 23):

- Recommendation 2: Court ordered parole should be retained.
- Recommendation 3: A court should have the discretion to set a parole release date or a parole eligibility date for sentences of greater than three years where the offender has served a period of time on remand and the court considers that the appropriate further period in custody before parole should be no more than 12 months from the date of sentence.
- Recommendation 4: A suitable entity, such as the Sentencing Advisory Council, should undertake a review into sentencing options and in particular, community-based orders to advise the government of any necessary changes to sentencing options.
- Recommendation 5: Court ordered parole should apply to a sentence imposed for a sexual offence.

In response to Recommendation 4, QSAC commissioned a literature review to assist in informing its broader advice to the government. This report presents the findings of the review.

### 1.1 Scope of the report

The focus of this report is evidence on the effectiveness of community-based sentencing orders – those intermediate orders that fall below imprisonment on the sentencing hierarchy but above fines and other low-end orders. In Queensland, there are three such orders: intensive correction orders (ICOs), community service orders (CSOs) and probation.

Much of the research literature in this field adopts a comparative approach, comparing the relative effectiveness of community orders with the effectiveness of imprisonment. Given that effective community orders can offer a viable alternative to imprisonment for some offenders, it is valuable to consider the effectiveness of imprisonment in this review as well. And, as imprisonment may be combined with court-ordered parole or with board-ordered parole in Queensland, the effectiveness of parole is also within the scope of this review.

While technically a term of imprisonment, suspended sentences are custodial orders that are served either partly or wholly in the community. The three types of suspended sentence available in Queensland – wholly suspended sentences, partially suspended sentences and conditional suspended sentences – are also included in this review.

Orders relating specifically to youth, pre-sentence programs, specialist courts and low-end orders are excluded from this review.

An overview of the legislative framework of each of these orders is presented in Chapter 2.

## 1.2 Methodology

This report contains two components, requiring two different approaches.

The first – the legislative review – involved legal analysis of each order to present its legislative and practical framework.

The second – the literature review – was undertaken as a desktop review of existing literature on community-based sentencing options. It was not intended as a systematic review, but as a broad search of sound evidence on the effectiveness of various sentencing options.

### 1.2.1 Search strategy

Both scholarly research and grey literature<sup>1</sup> were searched for relevant material. The search related to the effectiveness of the following orders: imprisonment, imprisonment with probation, imprisonment with court-ordered parole, imprisonment with board-ordered parole, partially suspended sentences, wholly suspended sentences, conditional suspended sentences, intensive correction orders, home detention, community service, probation and community correction orders. Research on the effectiveness of treatment and supervision conditions was also included.

Key search terms included the name of each type of order plus key words such as *recidivism*, *effectiveness/effect*, *evaluation/evaluate* and *cost*. Searches were repeated with the addition of various terms such as *women*, *mental illness* and the like when looking for research on vulnerable cohorts.

Questions of framework and conditions for each order type were addressed via legislative instruments and public information sites such as the Victorian Sentencing Advisory Council's. Such sites, plus government reports and court annual reports, were also examined for information on the use of each order over time.

While the focus of the literature search was on research produced in Australia, research from the United Kingdom (UK), Canada, the United States (US),<sup>2</sup> New Zealand and Europe was also considered, as appropriate.

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<sup>1</sup> Grey literature includes reports produced by government bodies and other organisations that are not part of the academic system.

<sup>2</sup> Despite differences in the legal system, the United States is a valuable source of research. There is a huge research literature from the US that is methodologically very strong and, unusually, includes cost-benefit assessments. Some of the world's leading authors on the effectiveness of sentencing orders have written extensively on US experiences and research, ensuring that this is a valuable source of evidence.

### 1.2.2 Methodological qualification

This review focuses on studies that are sufficiently sound that they provide reliable and meaningful information. In particular, priority has been given to studies that use robust statistical methods such as randomised controlled trials<sup>3</sup> or quasi-experimental designs using propensity score matching<sup>4</sup> with a control group. For those issues in this review for which such strong evidence is unavailable, this is noted and a more cautious tone is adopted.

### 1.3 Definitions: Effectiveness

Sentences in Queensland may be imposed for one or more of the following purposes: (i) punishment, (ii) rehabilitation, (iii) deterrence, (iv) denunciation and (v) community protection. The effectiveness of sentences may be assessed against any of these.

Punishment and denunciation are purposes relating to the concept of just deserts, such that the sentence becomes an end in itself. These sentences are thus effective in their own right. For the remaining sentencing purposes – rehabilitation, deterrence and community protection – the sentence is imposed in order to achieve a utilitarian purpose, such that the sentence is a means to an end (reducing further offending). The most common definition of effectiveness is based on the future behaviour of the individual offender, and whether the sentence has reduced the likelihood of further criminal behaviour.

One of the major aims of any criminal justice system is to enhance the safety of the community by reducing reoffending. But the measurement of the effectiveness of any system in achieving this aim is fraught, not only in terms of accurately measuring reoffending, but even in the task of defining the meaning of effectiveness.

Effectiveness is often defined in absolute terms: has the criminal justice system (or any specific component of the system) successfully prevented further offending? That is, the system has been proven effective only if offenders do not go on to commit *any* further crimes.

But a more nuanced view of effectiveness suggests that the criminal justice system has been effective in its aim of enhancing public safety if the *nature* or *frequency* of subsequent offending changes: if subsequent offending is less serious or less frequent than previously.

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<sup>3</sup> A randomised controlled trial design is considered the ‘gold standard’ of research. It involves purely random assignment of subjects to different interventions in order to examine the impact of the intervention on the outcome of interest. The random nature of the assignment implies that factors that might influence the outcome are evenly distributed among the different groups; any resulting differences in outcomes are thus wholly attributable to the intervention itself. As one cannot simply randomly assign sentences to examine their effectiveness, pure random designs are rare in research on the effectiveness of sentences. Instead, quasi-experimental designs with a matched control group are able to approximate the effect of random assignment.

<sup>4</sup> Propensity score matching is a statistical technique that attempts to estimate the effect of a given intervention (in this review, a specific sentencing order) while taking account of the factors that predict receiving the intervention in the first instance. It is considered a strong statistical technique that, in the absence of true randomisation, provides reliable results, as it aims to minimise any confounding impact on the outcome through a process of matching subjects with like characteristics.

Effectiveness is most commonly assessed in terms of the likelihood of reoffending (measured in a variety of ways), and, less often, the nature (severity) of the reoffending behaviour or the frequency of reoffending. Measures of reoffending, however, do not represent the full spectrum of possible outcomes that indicate 'effectiveness', which may be defined in broader terms, referencing the offender's social, economic and health status. For example, if an offender is better integrated into social networks, has some employment and stable accommodation, and is faring better with physical and mental health, then one might argue that the system has effectively addressed its aim. These 'social integration' outcome measures,<sup>5</sup> however, have typically been ignored in recidivism research (Killias, Villettaz and Zoder, 2006, p. 4).

While social integration outcomes are important measures of the effect of community sentences, the lack of appropriate data means that such outcomes are rarely seen in the research literature.

In her sweeping review of intensive supervision orders, Bartels (2014) defines effectiveness to include a wide range of considerations (Bartels, 2014, p. 2):

- data on the use of the order and impacts on the use of imprisonment;
- reconviction and breach analyses;
- cost-benefit analyses;
- evidence of decreases in anti-social behaviour (such as drug use) and/or increases in pro-social behaviour (such as engagement with employment); and
- research on the attitudes of a range of stakeholders, including offenders, victims, correctional officers, judicial officers and members of the public.

Although the current review focuses on effectiveness in terms of the first three measures – data on each order's use, methodologically robust reconviction studies and cost-benefit analyses – research on the impact of orders on other forms of anti-social and pro-social behaviour is included where available. The final measure – stakeholders' attitudes to each order – is beyond the scope of this review.<sup>6</sup>

The difficulty of evaluating effectiveness and whether a program is successful is expressed neatly by Cohn (2002, p. 6):

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<sup>5</sup> Cunneen and Luke (2007) argue that these measures have been 'downplayed because of the dominance of the particular paradigm reflected in the criminogenic needs approach'. This approach focuses on discrete needs (such as drug abuse, cognitive difficulties or other needs addressed by structured treatment programs) that are 'often defined in contradistinction to the economic, social and welfare needs of offenders' (Cunneen and Luke, 2007, p. 199). The authors suggested that simple measures of recidivism, while useful, should not be the only measures upon which to rely when assessing effectiveness.

<sup>6</sup> Public opinion on various orders is not included as there is significant evidence that the general public is substantially misinformed when it comes to issues of crime and justice (Gelb, 2006). The opinions of those who work within the criminal justice system, while clearly valuable, is arguably specific to the environment and context of a given jurisdiction, such that using such opinions as evidence of effectiveness is perhaps less than optimal.

From a simplistic perspective, “success” means that a goal or goals have been achieved. But, is a program successful if it achieves only 50 percent or 85 percent of the stated objective? It is critical that both administrators and evaluators clearly recognize that goal attainment may be matters of degree rather than all or none phenomena.

## 1.4 Definitions: Recidivism

Research on the effectiveness of orders varies along a number of methodological dimensions. There are two key issues central to the measurement and quantification of recidivism (Payne, 2007, p. ix):

- Definitional issues – the type of reoffending chosen as an indicator of recidivism.
- Counting rules – the unit of measurement selected to count the indicator event.

### 1.4.1 Type of reoffending

While many studies consider any type of reoffending in their definition of recidivism, some focus on specific offences, such as drug offences or sexual offences. Critically, studies focus on different stages of the criminal justice system at which to examine recidivism: some define recidivism as re-arrest, many more use reconviction in a court to define recidivism, and many adopt a definition of recidivism with a fairly narrow focus on reimprisonment. While each is equally valid to answer different research questions, the definition chosen will determine the amount and nature of the recidivism observed. For example, reimprisonment studies will, by definition, be capturing serious reoffending only, while rearrest studies will capture a broader range of recidivism.

### 1.4.2 Measures of reoffending: recidivism versus desistance

Most recidivism studies measure reoffending as a dichotomous measure – was there or was there not any reoffending? While this measure is a useful starting point, it does not provide as much information as more nuanced measures that consider the severity of reoffending and its frequency, as well as measures of other improvements in offenders’ lives. As Shapland et al. (2012, p. 11) note:<sup>7</sup>

However, any reasoned consideration of the outcome of anything, whether it be probation or some other pursuit, leads one to realise that very few things are likely to be either a complete success or a complete failure. It is more usually the case that the outcome of a venture is a certain degree of success. This point is made more pertinent by the fact that desistance is now generally thought of as a process of moving away from crime, rather than a sudden cessation of offending. By conceptualising probation outcomes in this graduated way, more accurate and subtle measurements may enable us

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<sup>7</sup> Shapland and colleagues are writing here in relation to offenders on probation, but the point is relevant to all offenders.

to identify the salient factors associated with successful outcomes. Despite a further offence being committed, the probationer may have gained something from the order – a reduction in a harmful habit or better employment prospects. These real, beneficial, changes are ‘lost’ when outcomes are considered as being solely about offending and solely as a binary measure. Moreover, using a binary measure makes it very difficult to relate quality to outcomes. This is both because an either/or measure of offending will not pick up the gradual, progressive changes typical of desistance and because one is then tending to assume that quality is also an either/or element.

Despite this salient point, the vast majority of studies of the impact of criminal justice system responses focus on recidivism, and many use a simple dichotomous measure of the presence or absence of reoffending.

Studies also vary in the length of the period during which recidivism is observed. While there is no ‘gold standard’ observation period, much of the research in this area uses a follow-up period of two years to identify reoffending. While this seems to be a fairly standard approach, studies that include a longer follow-up provide a more accurate understanding of recidivism.<sup>8</sup>

Some studies fail to take account of ‘pseudo-reconvictions’ – convictions that are recorded after the index sentence, but that are imposed for offences committed prior to the index sentence. This failure means that rates of recidivism would be over-estimated and the impact of the sentence on future behaviour cannot properly be identified. It is often difficult to identify pseudo-reconvictions in the literature, as only those studies that carefully exclude them tend to discuss them in their reports.

Finally, all measures of recidivism that are based on official data will undercount the true nature of reoffending. Official data gathered at any stage of the criminal justice system reflect local law enforcement policies and practices. While self-reported recidivism provides a more complete and accurate measure, this approach is only rarely adopted.

## 1.5 Definitions: Costs

This review focuses on the financial costs directly associated with each type of order. These might include the cost of building prisons and keeping people in prison, or the costs associated with offenders serving an order in the community. While there are often many non-financial costs associated with a sentencing order, such as the social costs of removing an offender from his family, these are beyond the scope of this review.

## 1.6 Structure of the report

Chapter 2 presents a legislative overview of each sentencing order, discussing its underpinning legislation and the way the order works in practice. It presents the conditions

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<sup>8</sup> Some studies allow five years, and, rarely, up to 15 years.

that may be attached to the order, as well as the financial costs and resource implications of each.

Chapter 3 begins the review of the literature on the effectiveness of orders, starting with imprisonment and a comparison between custodial and non-custodial orders before turning to reviews of the effectiveness of partially suspended sentences and parole. Chapter 4 examines the research on orders fully served in the community – wholly and conditionally suspended sentences, intensive correction orders, home detention orders, community service orders, probation and community correction orders. It also considers the effectiveness of community orders generally for vulnerable offenders.

Finally, Chapter 5 takes a closer look at the most common types of conditions that are typically attached to community orders: treatment and supervision.

## 2. Legislative overview of orders

Key findings on imprisonment and parole are:

- Prison is the most expensive criminal justice system response to crime, costing more than \$3.4 billion in Australia in 2017-18.
- Despite these costs, the use of imprisonment has increased throughout Australia over the past decade, in contrast to a decrease in the use of custodial terms in other countries.
- While the use of parole varies considerably across jurisdictions, rates of successful completion of parole are relatively high.

Key findings on suspended sentences are:

- Suspended sentences generally account for a small proportion of sentences imposed in both Australian and overseas courts.
- While the use of suspended sentences has declined in Australia over the past decade, it has increased in England and Wales.
- Around one-fifth to one-half of all suspended sentences are breached.

Key findings on intensive correction orders are:

- Intensive correction orders are imposed infrequently in Australia, while the analogous sentence in Canada is also seldom used.
- Around two-thirds of intensive correction orders are successfully completed.
- While some Australian states have recommended against the introduction of intensive correction orders or have repealed them entirely, other states have responded to criticisms of these orders by strengthening them.

Key findings on home detention are:

- Home detention as a front-end order is rarely used in Australia, despite having high rates of successful completion.
- The costs of home detention tend to be higher than for other orders served in the community, primarily due to the cost of electronic monitoring.

Key findings on community service orders are:

- Community service orders are widely used, in Australia and in other countries.
- About three-quarters of community service orders are successfully completed.
- Despite this, the number of community service orders has fallen in some places, while, in others, the order has been replaced by a broader community correction order.

Key findings on probation orders are:

- Probation as a distinct sentence is not widely available. Where it is available, some jurisdictions impose probation frequently, while others do so sparingly.
- Breach rates for probation orders appear to range between about one-quarter and one-third.

Key findings on community correction orders are:

- In those jurisdictions where community correction orders (or similar) are available, they represent around one in ten of all sentences imposed.
- Around one-half of community correction orders are breached, with between one-quarter and one-third of contraventions being due to further offending.

This chapter presents a legislative overview of each sentencing order, discussing its underpinning legislation and the way the order works in practice. It identifies the costs and resource implications of each and examines changes in the way each order has been used in various jurisdictions.

## 2.1 Imprisonment and parole

Imprisonment for criminal offences is the most serious sanction that can be imposed under Australian criminal law and in most western countries. It involves the most significant incursion on the ability of offenders to control their own lives, resulting in the most serious reduction of personal freedoms – depriving a person of not only liberty, but other freedoms such as autonomy (Bagaric, Edney and Alexander, 2018, pp. 575-576). Its status as the harshest form of penalty is usually reflected in statutory principles that prescribe imprisonment as a sentence of last resort. Despite such requirements, the rate of imprisonment seems to vary significantly over time and between jurisdictions, perhaps indicating that the concept of ‘last resort’ has political, social and cultural dimensions.

Prisons have historically had three main sorts of function – custodial, coercive and punitive. The custodial function is mainly utilised for the secure holding of people on remand awaiting trial or sentence for more serious offences. The coercive function has declined in modern times and was exercised to compel the payment of civil debt – but this function still applies in relation to fine defaulters who may be detained until the fine is paid, or to those who may be imprisoned until they agree to enter into a recognisance to keep the peace and be of good behaviour for a fixed period.<sup>9</sup> A term of imprisonment has punitive effect in that it removes the offender’s rights to freedom of movement and association within the wider community, restricts or removes some important civil and political rights (such as the right to vote, to

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<sup>9</sup> *Penalties and Sentences Act 1992* (Qld) s 30(1)(b).

manage one's own financial affairs and to paid employment) and generally operates to remove irreplaceable time from a person's wider social and personal life, which is necessarily on hold while incarcerated.

Imprisonment also engenders some well-researched and publicised psychological, emotional and physical risks. Research shows high probabilities that prisoners will suffer the disintegration of existing relationships with family and friends, will often have suicidal thoughts or impulses and will develop a significant loss of confidence in their ability to cope outside prison (Dye, 2010).

Most western jurisdictions, including all Australian states and territories, offer some form of early release from custody by way of parole, following a non-parole period served in prison. In some cases, legislation empowers or requires the sentencing court to determine a parole release date, which is a date upon which the offender is to be released on parole after serving part of their sentence. This is conceptually different to the rest of the sentence being suspended, in that strict conditions are attached to the release. For more serious offences, it is likely that the legislation prescribes a parole eligibility date, which is a date during the custodial sentence upon which the prisoner will be entitled to apply for release on parole.

There are differences across jurisdictions in how non-parole periods are determined and the operation of parole, but it is generally designed both to assist with offender reintegration into the community and to signify the 'minimum period of imprisonment to be served because the sentencing judge considers that the crime committed calls for such detention' (*Power v The Queen*: cited in Bagaric, Edney and Alexander, 2018, p. xx).<sup>10</sup>

There is no prescribed formula for determining a parole release date; the courts, however, have recognised that there is a 'usual' non-parole period, which is 60–75% of the head sentence (Bagaric, Edney and Alexander, 2018, p. XX).<sup>11</sup> In most jurisdictions, it is then up to a local parole board to determine if the offender is ready to be released and, if so, to stipulate the conditions with which the person must comply.

### 2.1.1 Legislative structure and composition

The use of imprisonment and parole is guided by similar legislation around Australia and in other common law jurisdictions. The main differences are found in the use of mandatory sentences, the availability of orders that may be combined with imprisonment and provisions around the operation of parole.

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<sup>10</sup> *Power v The Queen* (1974) 131 CLR 623; 48 ALJR 297; [1974] HCA 26.

<sup>11</sup> *Kumova v The Queen* (2012) 37 VR 538; [2012] VSCA 212.

## Nature of order

### Mandatory sentences

Mandatory sentences are used in many jurisdictions, applying either to certain offences or to a particular type of offender, such as a repeat offender. They are found in most Australian states and territories in various forms (ALRC, 2017, p. 74).<sup>12</sup>

Some jurisdictions apply mandatory minimum terms based on the type of offender. For example, the Northern Territory has increasing minimum imprisonment terms mandated for repeat offenders, such as three months' imprisonment for a first violent offence but 12 months' imprisonment for a second or subsequent violent offence.<sup>13</sup> Western Australia also imposes longer terms on repeat offenders, with a minimum of two years' imprisonment for an adult burglary offender who already has two prior convictions for burglary.<sup>14</sup>

In other jurisdictions, a mandatory minimum sentence applies to certain types of offences. For example, Victoria's provisions for intentionally or recklessly causing serious injury in circumstances of gross violence<sup>15</sup> require a mandatory non-parole period of not less than four years.<sup>16</sup> If the victim is an emergency services worker or custodial officer on duty, the minimum term increases to five years.<sup>17</sup> Western Australia has a slightly different approach, requiring a mandatory minimum term of imprisonment that is set at 75% of the maximum penalty for causing grievous bodily harm during the course of an aggravated home burglary.<sup>18</sup>

Further, both Victoria and NSW have a form of mandatory sentencing in their respective schemes for a number of specified serious offences: the Victorian standard sentence scheme and the NSW standard non-parole period scheme.<sup>19</sup>

Only a small proportion of all offences carry some form of mandatory penalty – the vast majority allow judicial discretion in determining both the form and the quantum of sentence. Nonetheless, the use of imprisonment is constrained by several principles that a court is

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<sup>12</sup> The ALRC offered the following examples: *Migration Act 1958* (Cth) s 236B; *Crimes Act 1900* (NSW) s 19B(4); *Criminal Law Consolidation Act 1935* (SA) s 11; *Misuse of Drugs Act* (NT) s 37(2); *Sentencing Act 1995* (NT) s 78F; *Domestic and Family Violence Act 2007* (NT) s 121(2); *Crimes Act 1958* (Vic) ss 15A, 15B; *Road Traffic Act 1974* (WA) ss 60, 60B(3); *Criminal Code Act Compilation Act 1913* (WA) ss 297, 318.

<sup>13</sup> *Sentencing Act 1995* (NT) ss 78D and 78DA.

<sup>14</sup> *Criminal Code Act Compilation Act 1913* (WA) s 401(4)(b).

<sup>15</sup> *Crimes Act 1958* (Vic) ss 15A (intentional) and 15B (reckless). There are also mandatory minimum terms for other offences, including aggravated home invasion and aggravated carjacking, with minimum terms of three years: *Sentencing Act 1991* (Vic) ss 10AC(1) and 10AD(1).

<sup>16</sup> This minimum term must be imposed unless a 'special reason' exists: *Sentencing Act 1991* (Vic) s 10(1); see further *Sentencing Act 1991* (Vic) s 10A.

<sup>17</sup> *Sentencing Act 1991* (Vic) s 10AA(1).

<sup>18</sup> *Criminal Code Act Compilation Act 1913* (WA) s 297(5).

<sup>19</sup> Discussion of the details of these schemes is beyond the scope of this report. Victoria's standard sentences are guideposts for sentencing 12 serious offences, such as murder and rape. The standard sentence is set at 40% of the maximum penalty for the offence. The non-parole period is fixed at 30 years for a life imprisonment sentence, 70% of the term if it is for 20 years or more, and 60% of the term if it is for less than 20 years: *Sentencing Act 1991* (Vic) s 11A(4). The NSW scheme similarly offers legislative guideposts for non-parole periods for offences in the middle of the range of seriousness: *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 54A-D.

required to consider, including parsimony: that imprisonment should be a sentence of last resort.

Scotland has enshrined this principle in its *Criminal Procedure (Scotland) Act 1995* by imposing restrictions on passing sentences of imprisonment. The Act provides that a court will not impose imprisonment on someone aged over 21 years who has not previously been sentenced to prison 'unless the court considers that no other method of dealing with him is appropriate' and, if the court does impose a prison term, it must give reasons for doing so.<sup>20</sup> Additionally, the law places constraints on the use of short terms of imprisonment: a court must not pass a sentence of imprisonment of three months or less unless it considers that no other method of dealing with the person is appropriate, and must give reasons if it chooses to do so.<sup>21</sup>

### Combination orders

In most jurisdictions, a fine may be imposed in addition to imprisonment. There are some restrictions, however, on the other types of sentences that may be imposed alongside a term of imprisonment.

For example, the Victorian courts may combine a community correction order with a term of imprisonment only when the prison term is for one year or less,<sup>22</sup> while the Tasmanian community correction order may only be imposed with a term of imprisonment of two years or less.<sup>23</sup>

An intensive correction order may not be added to a term of imprisonment in NSW if the term exceeds two years for a single offence or three years for an aggregate sentence.<sup>24</sup> In Western Australia, a similar order may not be combined with imprisonment at all: an order for conditional suspended imprisonment may not be imposed if the offender is serving or about to serve a term of imprisonment.<sup>25</sup> The ACT also does not allow an intensive correction order to be combined with full-time imprisonment.<sup>26</sup> It does, however, allow other combinations for offences punishable by imprisonment, including two or more of the following: full-time imprisonment, a suspended sentence order, a good behaviour order, a fine, a licence disqualification order, a reparation order or a non-association or place restriction order.<sup>27</sup> There are thus numerous orders that may be imposed alongside a term of imprisonment.

Internationally, New Zealand allows a sentence of imprisonment to be combined with a sentence of reparation or a fine. Imprisonment may not be combined with supervision,

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<sup>20</sup> *Criminal Procedure (Scotland) Act 1995* ss 204(2) and 204(3).

<sup>21</sup> *Criminal Procedure (Scotland) Act 1995* ss 204(3A) and 204(3B). The Scottish Government has announced that this presumption against short sentences will be extended in 2019 from three months to 12 months.

<sup>22</sup> *Sentencing Act 1991* (Vic) s 44.

<sup>23</sup> *Sentencing Act 1997* (Tas) s 8(1)(a).

<sup>24</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 68.

<sup>25</sup> *Sentencing Act 1995* (WA) s 81(3)(b).

<sup>26</sup> *Crimes (Sentencing) Act 2005* (ACT) s 29(1)(b).

<sup>27</sup> *Crimes (Sentencing) Act 2005* (ACT) s 29(1).

community work, community detention or intensive supervision.<sup>28</sup> Canada allows a term of probation to be imposed in combination with an intermittent term of imprisonment of 90 days or less and, in a form akin to parole, allows a post-release probation order following a term of imprisonment of two years or less.<sup>29</sup> A court can also order a fine in addition to a minimum term of imprisonment.<sup>30</sup>

## Parole

All jurisdictions in Australia have some form of parole scheme, with many prohibiting the fixing of a non-parole period for terms of imprisonment of less than 12 months.

The ACT, Western Australia, the Northern Territory, Tasmania and Victoria all have discretionary parole systems, where release decisions are made by the parole board.

In the ACT, the court must set a non-parole period on an imprisonment term that is one year or longer,<sup>31</sup> unless it would be inappropriate in the circumstances.<sup>32</sup> The court is also able to recommend conditions for parole.<sup>33</sup> Western Australian courts may set a non-parole period and impose a 'parole eligibility order' for a term of imprisonment of 12 months or longer,<sup>34</sup> with the offender required to serve half the term of imprisonment before becoming eligible for parole for terms of four years or less, and two years before the end of the sentence for longer terms.<sup>35</sup> Similarly, the Northern Territory has a statutory presumption that a term of imprisonment greater than 12 months will include a non-parole period;<sup>36</sup> any non-parole period must not be less than 50% of the period of imprisonment to which it is attached and may not be less than eight months.<sup>37</sup> While Tasmanian law gives the court discretion whether to allow parole, if the court does decide to allow parole, the provisions stipulate that it must not be less than half of the period of the sentence of imprisonment.<sup>38</sup> Victorian courts also face a minimum imprisonment term of one year for setting a non-parole period, but there is some discretion for longer sentences: for terms between one and two years, a non-parole period may be set, while for terms two years or more, a non-parole period must be set, unless it is inappropriate to do so. The non-parole period must be at least six months less than the term of the sentence.<sup>39</sup>

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<sup>28</sup> *Sentencing Act 2002* (NZ) s 19.

<sup>29</sup> *Criminal Code*, RSC 1985, c C-46 s 731(1)(b).

<sup>30</sup> *Criminal Code*, RSC 1985, c C-46 s 734(1)(b).

<sup>31</sup> *Crimes (Sentencing) Act 2005* (ACT) s 65(1).

<sup>32</sup> *Crimes (Sentencing) Act 2005* (ACT) s 65(4).

<sup>33</sup> *Crimes (Sentencing) Act 2005* (ACT) s 67.

<sup>34</sup> Terms of imprisonment of six months or less generally cannot be imposed: *Sentencing Act 1995* (WA) s 86.

<sup>35</sup> *Sentencing Act 1995* (WA) s 89(1)-(2); s 93.

<sup>36</sup> *Sentencing Act 1995* (NT) s 53(1)(a)-(b).

<sup>37</sup> *Sentencing Act 1995* (NT) s 54.

<sup>38</sup> *Sentencing Act 1997* (Tas) s 17(2)(a)-(b); s 17(3).

<sup>39</sup> *Sentencing Act 1991* (Vic) s 11. This is in addition to the provisions of the standard sentences scheme; above n 19.

The parole systems in South Australia and NSW involve early release from prison without consideration by the parole board.<sup>40</sup>

South Australia stipulates that a non-parole period must not be fixed for a person serving a term of 12 months or less, but for a life term of imprisonment, the non-parole period must be set at a minimum of 20 years.<sup>41</sup> Further, for an offender being sentenced for a serious offence against the person, there is a mandatory minimum non-parole period of four-fifths of the sentence length.<sup>42</sup> For offenders serving imprisonment terms of less than five years, the parole board must release the person no later than 30 days after the non-parole period expires.<sup>43</sup> For short prison sentences of three years or less, the NSW parole system includes a statutory parole order, which directs release at the end of the non-parole period.<sup>44</sup> Courts may not set a non-parole period if the prison term is six months or less.<sup>45</sup> The parole period cannot normally exceed one-third of the non-parole period, except in special circumstances.<sup>46</sup> The court must take into account the standard non-parole period for specified offences.<sup>47</sup>

Queensland is unique in Australia in that it has two forms of parole: discretionary board-ordered parole, as in the other states and territories, and court-ordered parole.<sup>48</sup> The original intention of court-ordered parole was to address the over-representation of low-risk prisoners serving short imprisonment sentences – prisoners who created substantial turnover in the prison population. Court-ordered parole would divert this cohort away from custody, while providing post-release support and supervision (QCS, 2013, p. 3).

Court-ordered parole involves a sentencing court setting a definite date for an offender's release on a parole order – the person is automatically released on that date, without any application to a parole board, assuming that no breaches or other offences come to light while the person is in custody. It only applies to sentences of three years or less and must not be used for serious violent or sexual offences.<sup>49</sup> Where an offender has been sentenced to a term of three years or less, the court must fix a parole date; where the sentence is three years or more, the court may fix a parole date.<sup>50</sup>

In New Zealand, the UK and Canada, the early release schemes operate in a similar fashion to those in South Australia and NSW, with provisions for early release without parole board involvement.

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<sup>40</sup> The UK, New Zealand and Canada also have early release provisions that do not involve the parole board.

<sup>41</sup> *Sentencing Act 2017* (SA) ss 47(1)(a), 47(5)(a)(i) and 47(5)(b).

<sup>42</sup> *Sentencing Act 2017* (SA) s 47(5)(d).

<sup>43</sup> *Correctional Services Act 1982* (SA) s 66(1).

<sup>44</sup> *Crimes (Administration of Sentences) Act 1999* (NSW) s 158.

<sup>45</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 46.

<sup>46</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 44(2). This is in addition to the provisions of the standard non-parole period scheme; above n 19.

<sup>47</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 54A-D; above n 19.

<sup>48</sup> *Penalties and Sentences Act 1992* (Qld) pt 9, div 3.

<sup>49</sup> *Penalties and Sentences Act 1992* (Qld) s 160B.

<sup>50</sup> *Penalties and Sentences Act 1992* (Qld) ss 160B-160D.

New Zealand's system requires statutory release after half the term is served for offenders on a short-term sentence of under two years. They are not released on parole, but on conditions set by the court, with the probation office monitoring compliance. The court has further powers for sentences of less than 12 months, deciding whether the offender should be placed under supervision.<sup>51</sup> For a term of more than two years, the court may set a minimum period of imprisonment. This non-parole period is one-third of the length of the sentence (or 10 years for a sentence of life imprisonment).<sup>52</sup>

In the UK, there are several forms of early release from prison, creating a complicated regime. Unconditional release half-way through the sentence is available for some offenders, such as those aged 18 who are serving a term less than 12 months. Older offenders in these circumstances are released on licence and are subject to post-sentence supervision. Release on licence half-way through the term applies to offenders serving a term of two years or more. Post-sentence supervision applies to offenders serving less than two years: following release at the half-way point of their sentence, the offender is supervised for 12 months in the community.<sup>53</sup>

Scotland classifies its determinate prison sentences into short-term (less than four years) and long-term (four years or more). People given a short-term sentence are normally automatically released from prison after serving half their sentence. Supervision is not required unless the offender is a sex offender convicted on indictment or is placed on a supervised release order.<sup>54</sup> A person given a long-term sentence can serve all but the final six months of the sentence in prison, unless the parole board recommends that they should be released earlier. In this case, the offender is released on licence and must comply with the conditions attached to the release, including supervision by the probation office.

In Canada, offenders become eligible for parole after serving one-third of their sentence, or seven years (whichever is less). For those on a life sentence, parole eligibility is set by the court, with mandatory minimum terms of 25 years for first-degree murder and 10 to 25 years for second degree murder (Correctional Service Canada, 2014). If someone has not yet been released, the parole board will grant parole after two-thirds of the sentence has been served, to be placed under supervision. Federal offenders are subject to a statutory release scheme, where they are to be released under supervision after serving two-thirds of their sentence, if parole has not already been granted.<sup>55</sup>

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<sup>51</sup> *Parole Act 2002* (NZ) s 86(1).

<sup>52</sup> *Parole Act 2002* (NZ) ss 84(1) and 84(3).

<sup>53</sup> Provisions relating to release, licences, supervision and recall are found in *Criminal Justice Act 2003* (UK) ch 6.

<sup>54</sup> A supervised release order may be imposed by the court for people convicted of serious offences for up to 12 months. It is designed to protect the public and includes conditions that, if breached, can lead to a return to prison. The order may only be imposed if the offender is sentenced to a short-term sentence and the offence is not a sex offence: *Criminal Procedures (Scotland) Act 1995* s 209(1).

<sup>55</sup> This provision relates to prisoners who did not apply for parole or who were denied release on parole: *Corrections and Conditional Release Act* (SC 1992, c. 20) s 127(3).

## Conditions

In all jurisdictions where some form of release is available following a term of imprisonment, there are a range of conditions that may be attached to the order, some of which are mandatory and some optional.

Mandatory conditions generally include being subject to supervision, reporting requirements, notification of change of contact details and not reoffending.<sup>56</sup> Additional conditions include such options as electronic monitoring<sup>57</sup> or a requirement to live in a community-based residential facility (a 'half-way house') (Correctional Service Canada, 2018).

In Queensland, despite the court being able to impose an order for court-ordered parole, it may not impose conditions: the mandatory statutory conditions may not be changed.<sup>58</sup> The parole board, however, does have the power to add, remove or amend conditions as needed, even on court-ordered parole.<sup>59</sup>

In New Zealand, it is the court that has the power to suspend or vary conditions or impose new conditions.<sup>60</sup>

## Revocation, termination and breach

Jurisdictions vary both in terms of the authority that has responsibility to monitor and respond to breaches of parole and the way in which the breach is handled.

Failure to comply with conditions attached to early release – whether through court-ordered parole, board-ordered parole or various release on licence schemes – may result in recall to prison.

In those jurisdictions where discretionary parole applies, the local parole authority is generally able to vary, suspend or revoke the order for failure to comply with the order.

In South Australia, the parole board may impose community service for breach of parole (instead of cancelling the order), if there is no community service condition already attached.<sup>61</sup>

Breaching parole is not a separate offence in most jurisdictions. However, breaching the conditions of a statutory release order in New Zealand may result in a one-year term of imprisonment or a fine up to \$2,000.<sup>62</sup>

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<sup>56</sup> Some jurisdictions have additional mandatory requirements for some offenders, such as compulsory polygraph tests for high-risk serious sexual offenders on licence in England and Wales: *Offender Management Act 2007* (UK) ss 28-30.

<sup>57</sup> *Sentencing Act 2002* (NZ) s 93(3A).

<sup>58</sup> *Corrective Services Act 2006* (Qld) s 200(1).

<sup>59</sup> *Corrective Services Act 2006* (Qld) s 205(1)(b).

<sup>60</sup> *Sentencing Act 2002* (NZ) s 94(3).

<sup>61</sup> *Correctional Services Act 1982* (SA) ss 74AA(1)-(2).

<sup>62</sup> *Sentencing Act 2002* (NZ) s 96(1).

## 2.1.2 Practical application – use and breach

### *The use of imprisonment and parole in Australia*

Imprisonment rates across Australia vary substantially. The most recent data show that, as of December quarter 2018, the Northern Territory had the highest imprisonment rate: 904.5 prisoners per 100,000 adult population. The lowest rate was in the ACT, at 147.3 per 100,000 adult population.

**Table 1: Imprisonment rate per 100,000 adult population, Australian states and territories, December quarter 2018**

State/Territory	Imprisonment rate
NSW	213.4
Vic	158.4
Qld	228.6
SA	211.2
WA	343.7
Tas	155.4
NT	904.5
ACT	147.3
<i>Australia</i>	<i>219.6</i>

*Source: ABS (2019a), Table 3*

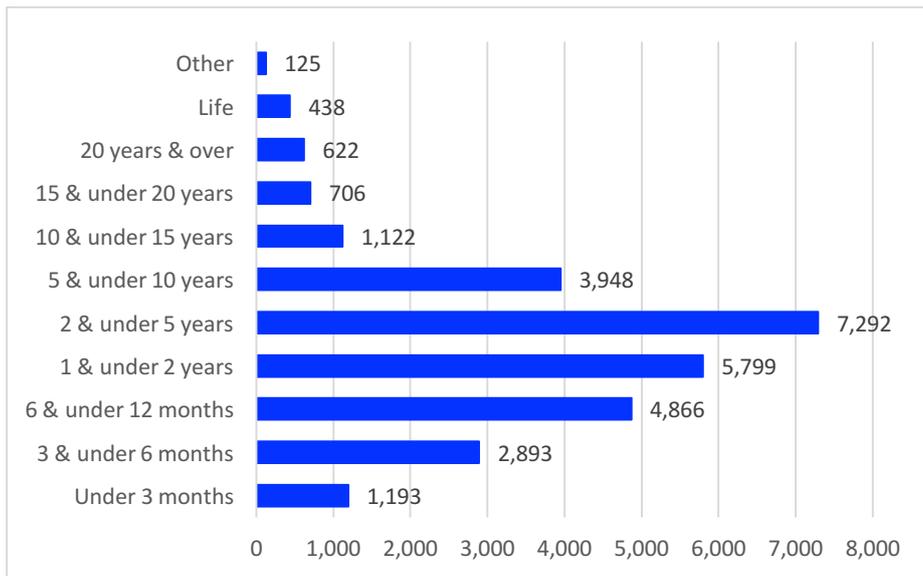
The median term of imprisonment being served by Australian prisoners as at 30 June 2018 was 1.9 years, while the average was 3.7 years (ABS, 2018, Table 28).<sup>63</sup> The most common expected time to serve was between two and five years.<sup>64</sup>

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<sup>63</sup> Sentence lengths for prisoners who are included in the annual prisoner census (on 30 June each year) tend to be longer than for prisoners who are included in the quarterly data; by its annual nature, the census captures people who are serving longer terms.

<sup>64</sup> The period of imprisonment that a convicted prisoner is expected to serve refers to the time between the date of reception and the earliest date of release. This is also the minimum sentence length for a convicted prisoner.

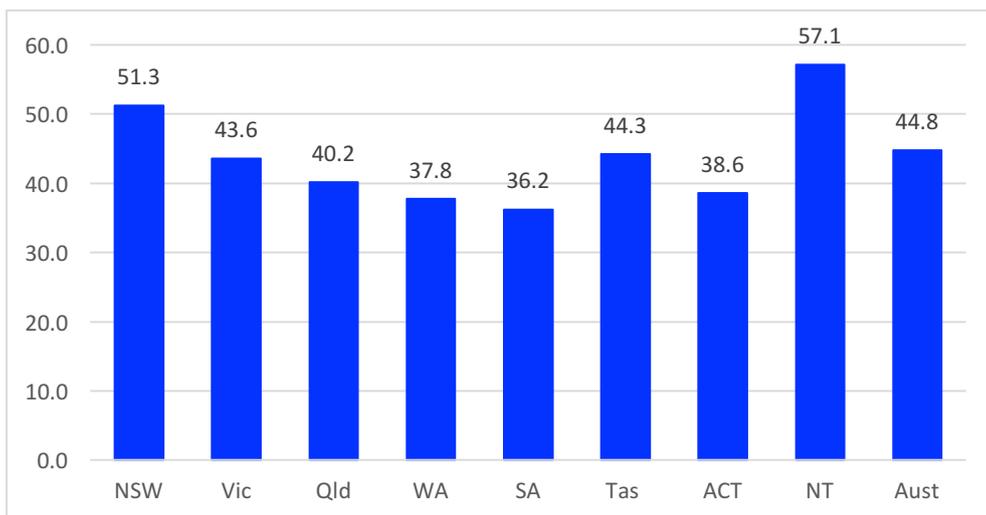
**Figure 1: Sentenced prisoners, Australia, expected time to serve, 30 June 2018**



Source: ABS (2018), Table 28

National data on successful completion of terms of imprisonment are not available, but the most recent data from the Report on Government Services show that the Northern Territory had by far the highest proportion of adults who had been released then returned to prison under sentence in 2016-17, with the lowest in South Australia (SCRGSP, 2019, Table CA.4).<sup>65</sup>

**Figure 2: Adults released from prison who return to prison with a new sentence within two years (%), Australia, 2016-17**



Source: SCRGSP (2019), Table CA.4

<sup>65</sup> These figures refer to all prisoners released following a term of sentenced imprisonment including prisoners subject to correctional supervision following release; that is, offenders released on parole or other community corrections orders. Data include returns to prison resulting from the cancellation of a parole order.

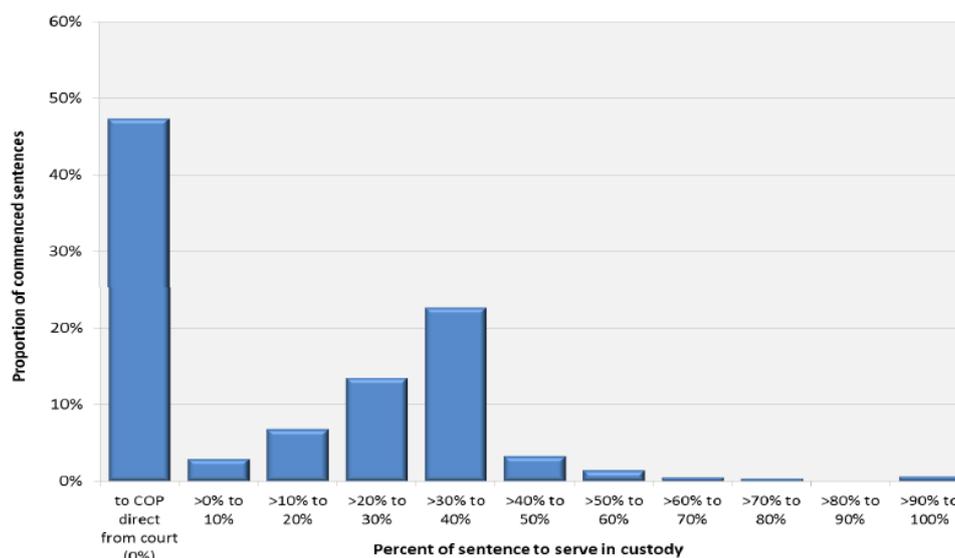
Data on the use of parole are not reported in any national collections, but do tend to be included in jurisdictions' annual reports. The following parole data are presented only for Queensland and Victoria, as both have undergone recent reviews of their parole systems.

In Queensland, court-ordered parole accounted for 72.9% of parole orders in 2018 (5,042 out of a total 6,914). Of all court-ordered parole orders completed in 2017-18, 70.3% were completed successfully, compared with 67.4% of board-ordered parole orders (QCS, 2018, pp. 122-123).

Data from 2016-17 show that more than half (58%) of breaches of court-ordered parole involved a technical breach, with 42% involving new offending (Petrie, 2018, p. 24).

Court-ordered parole orders were most commonly directed to start immediately, with almost half of offenders released to court-ordered parole directly from court (Petrie, 2018, p. 18).

**Figure 3: Proportion of sentence served in custody to court-ordered parole release date, Queensland, 2016-17**



Source: Petrie (2018)

In Victoria, 1,680 prisoners applied for parole in 2017-18 and 53% of these were granted. Parole was successfully completed by 79% of prisoners, while the Adult Parole Board cancelled parole for 156 prisoners (Adult Parole Board Victoria, 2018, p. 4). There were 55 prisoners on parole who were arrested for suspected breaches during this period (Adult Parole Board Victoria, 2018, p. 27).

### *The use of imprisonment and parole in other jurisdictions*

The most extensive data on imprisonment and parole are found for Canada. On an average day in 2016-17, there were 39,873 adults in custody in Canada, resulting in an imprisonment rate of 136 adults per 100,000 adult population. The imprisonment rate has been broadly declining since 2012-13 (Statistics Canada, 2018, Table 1).

More than one-third (35.1%) of full parole applications were granted by the Parole Board of Canada in 2016-17; the grant rate was 46.8% for women and 34.2% for men (Public Safety Canada, 2018, Table D3). A high proportion of parole orders were completed successfully in 2016-17 (89.7%), with 7.8% revoked for breach of conditions, 2.2% revoked for a non-violent offence and 0.3% revoked for a violent offence (Public Safety Canada, 2018, Table D9).

### 2.1.3 Costs and resource implications

In Australia, the average net operating cost in 2017-18 of providing corrective services for a person in prison was \$223.38 per day (SCRGSP, 2019, Table 8A.17). With a daily average population of 41,867 prisoners (SCRGSP, 2019, Table 8A.4), the total cost of prison across Australia in 2017-18 was more than \$3.4 billion (SCRGSP, 2019, Table 8A.2).

**Table 2: Recurrent expenditure per prisoner per day and real net operating expenditure (\$'000), Australian states and territories, 2017-18**

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	<i>Aust</i>
Daily net operating expenditure	181.85	323.82	181.55	241.21	228.68	305.14	283.48	206.60	223.38
Annual net operating expenditure	888,259	858,397	572,223	596,497	255,167	68,350	49,108	127,833	3,415,834

*Source: SCRGSP (2019), Tables 8A.2 and 8A.17*

Morgan (2018) calculated the costs and benefits of imprisonment and community orders. Including both direct sentence costs and other costs such as lost productivity and workplace disruption, Morgan found that the net cost of imprisonment in Australia was \$391.18 per day, or \$61,179 per prisoner – about 20% higher than the direct sentence costs alone (Morgan, 2018, p. 40).

**Table 3: Average cost of imprisonment (sentenced period; 2014-15 dollars)**

Cost item	Average value per day	Average value per prisoner
<b>Costs</b>		
Net operating expenditure	\$268.59	\$42,006.49
Capital costs	\$59.46	\$9,299.02
Lost productivity (paid work)	\$62.19	\$9,725.85
Lost productivity (unpaid work)	\$39.66	\$6,203.07
Workplace disruption and replacement	\$39.51	\$6,179.05
Prison assaults	\$2.60	\$406.73
<b>Savings</b>		
Reduced government payments	\$30.17	\$4,718.69
Incapacitation effect of imprisonment	\$8.99	\$1,406.36
Value of work completed in prison	\$33.22	\$5,196.10
Reduction in illicit drug use by prisoners	\$2.62	\$409.65
Reduction in alcohol use by prisoners	\$5.82	\$910.55
<b>Total net cost of imprisonment</b>	<b>\$391.18</b>	<b>\$61,178.86</b>

*Source: Morgan (2018), p. 40*

In 2016-17, the total cost of adult correctional services in Canada was more than \$4.7 billion. In the provincial and territorial system, custodial services accounted for 81% of all correctional expenditure even though the custodial population accounted for only 22% of the correctional services population. The cost of prison for an adult was \$288 per day for federal prisoners (or \$105,286 per year) and \$213 per day for provincial and territorial prisoners (or \$77,639 per year) (Statistics Canada, 2018, Table 7).

#### 2.1.4 Changing use of imprisonment and parole

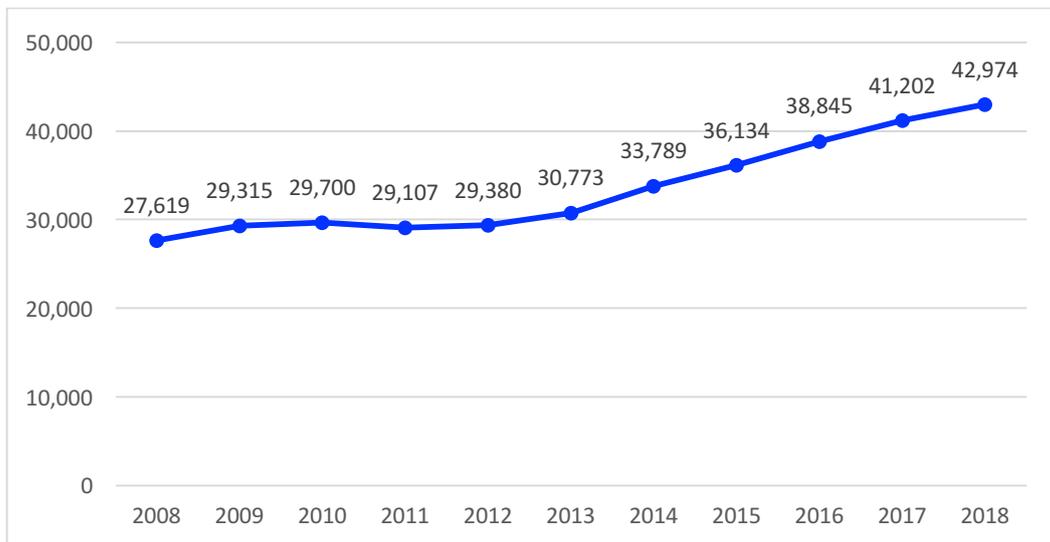
The last decade has seen two (arguably) opposing trends in some jurisdictions: on the one hand, there have been ongoing legislative reforms to increase sentence severity by limiting judicial discretion through the use of various forms of mandatory sentencing; on the other, there have been calls to eliminate short terms of imprisonment.<sup>66</sup>

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<sup>66</sup> Scotland discourages the use of imprisonment of three months or less; above n 21. Western Australia is the only jurisdiction in Australia to have abolished short prison sentences – initially (in 1995) of three months or less, since increased to six months or less (in 2003): *Sentencing Act 1995* (WA) s 86 (with limited exceptions: ss 86(a)-(c)). The Australian Law Reform Commission (2017) considered the abolition of short terms of imprisonment for Aboriginal and Torres Strait Islander offenders. Short prison sentences expose minor offenders to more serious offenders in prison; fail to deter offenders; have significant negative impacts on the offender's family, employment, housing and income; and may increase the risk of recidivism through stigmatisation and the flow-on effects of having served time in prison. On the other hand, the abolition of short prison sentences may lead to sentence creep and restrict judicial discretion (ALRC, 2017, p. 85). Accordingly, the Commission recommended that such options not be abolished until community-based sentences are uniformly available. Similarly, the NSW Sentencing Council (2004) and the NSW Law Reform

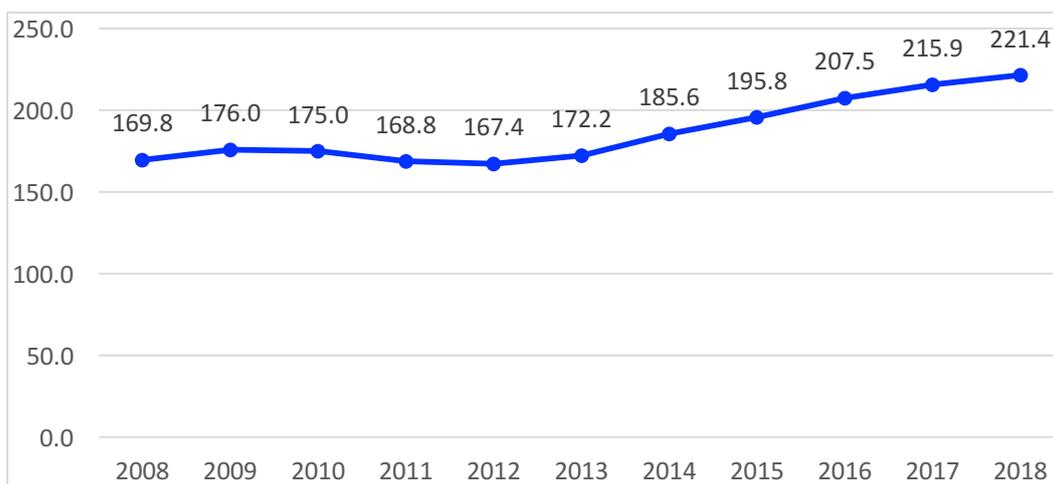
In Australia, these trends have arisen in the context of a prison population that is at its highest-ever recorded level. Over the past decade, the number and rate of people imprisoned across all Australian states and territories has risen rapidly. On 30 June 2008, there were 27,619 people in Australian prisons, representing 169.8 prisoners per 100,000 adults. By 30 June 2018,<sup>67</sup> this had increased 55.6% to 42,974 people, or 221.4 per 100,000 adults (ABS, 2018, Table 2).

**Figure 4: Prison population, Australia, 2008-2018**



Source: ABS (2018), Table 2

**Figure 5: Imprisonment rate, Australia, 2008-2018**



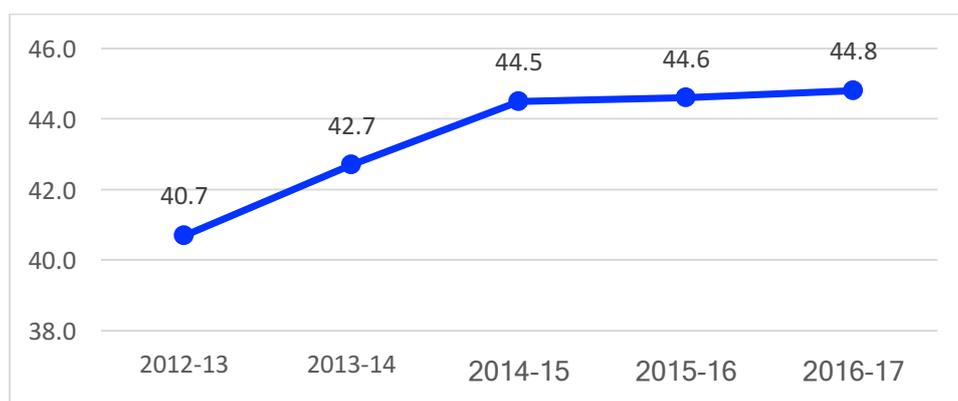
Source: ABS (2018), Table 2

Commission (2013) both examined whether sentences of six months or less should be abolished, but also stopped short of recommending their abolition until alternatives to custody would be uniformly available throughout the state.

<sup>67</sup> The most recent data show that the Australian imprisonment rate has fallen slightly, to 219.6 for the December quarter 2018 (ABS, 2019a, Table 3).

While national data on successful completion of terms of imprisonment per se are not available in Australia, analogous data may be drawn from the annual Report on Government Services. The most recent report shows a steady increase over the past five years in the proportion of adults who are released then returned to prison under sentence (SCRGSP, 2019, Table CA.4).<sup>68</sup>

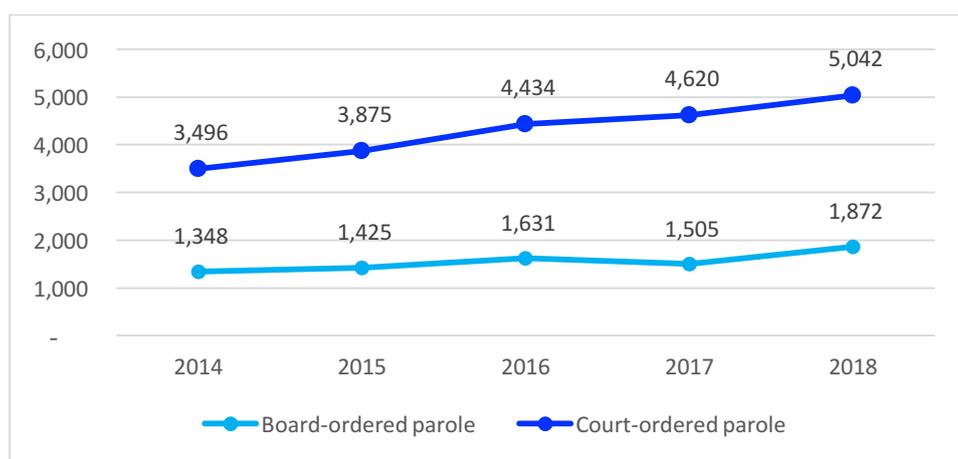
**Figure 6: Adults released from prison who return to prison with a new sentence within two years (%), Australia, 2012-13 to 2016-17**



Source: SCRGSP (2019), Table CA.4

Data from individual jurisdictions show how the use of parole has changed over time. In Queensland, the number of board-ordered parole orders increased by 38.9% from 2014 to 2018, while the number of court-ordered parole orders increased by 44.2% during this period. On average, court-ordered parole made up almost three-quarters of all parole orders issued.

**Figure 7: Number of board-ordered and court-ordered parole orders, Queensland, 2014 to 2018**

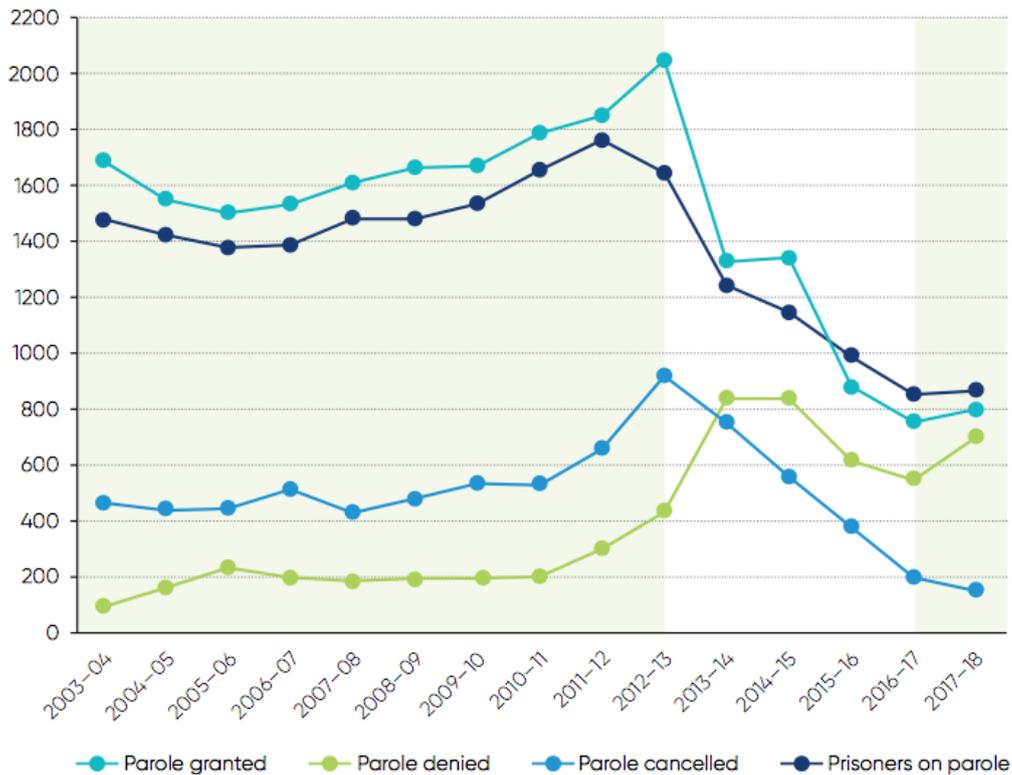


Source: QCS (2018), Table 12

<sup>68</sup> These figures refer to all prisoners released following a term of sentenced imprisonment including prisoners subject to correctional supervision following release; that is, offenders released on parole or other community corrections orders. Data include returns to prison resulting from the cancellation of a parole order.

Victorian parole data show the impact of the 2013 Callinan review of parole. From 2012-13, the number of parole orders granted fell dramatically (by 63%), from a peak of 2,051 in 2012-13 to 757 in 2016-17 (Adult Parole Board Victoria, 2018, p. 24).

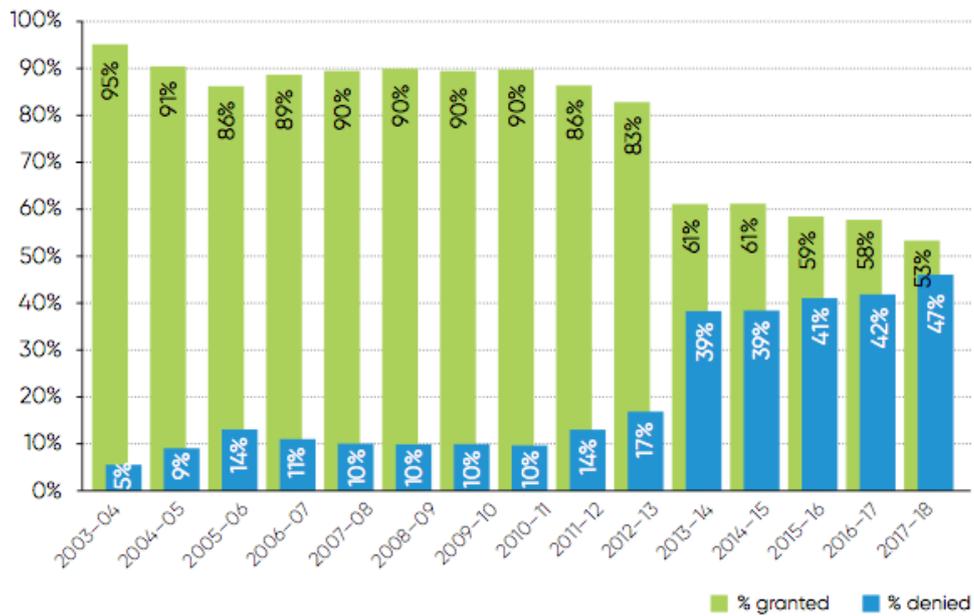
**Figure 8: Number of parole orders granted, denied, and cancelled, along with the number of prisoners on parole, Victoria, 2003-04 to 2017-18**



Source: Adult Parole Board Victoria (2018), Figure 1

The ratio of parole applications granted to those denied also changed markedly following the review (Adult Parole Board Victoria, 2018, p. 25).

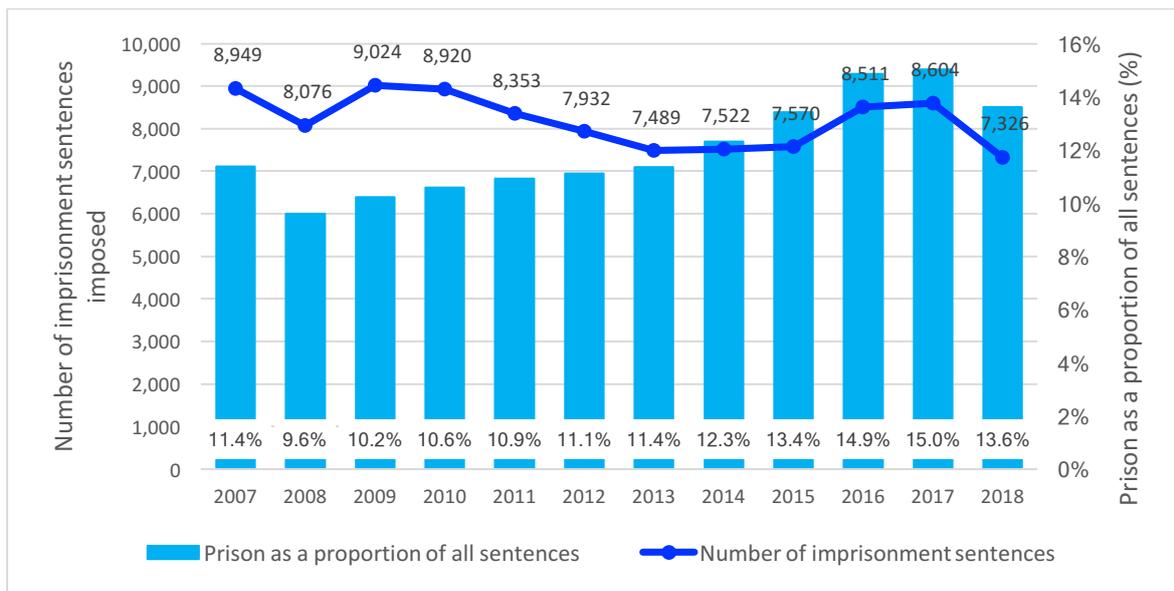
**Figure 9: Decisions to grant and decisions to deny parole (%), Victoria, 2003-04 to 2017-18**



Source: Adult Parole Board Victoria (2018), Figure 2

New Zealand data show that the number of imprisonment terms imposed has fluctuated over the past decade, with an overall decreasing trend since 2007. In contrast, the proportion of all sentences that are prison terms has steadily increased during this period, notwithstanding a recent fall from 15.0% in 2017 to 13.6% in 2018 (Stats New Zealand, 2018).

**Figure 10: Number of imprisonment terms imposed and prison as a proportion of all sentences (%), New Zealand, 2007 to 2018**



Source: Stats New Zealand (2018)

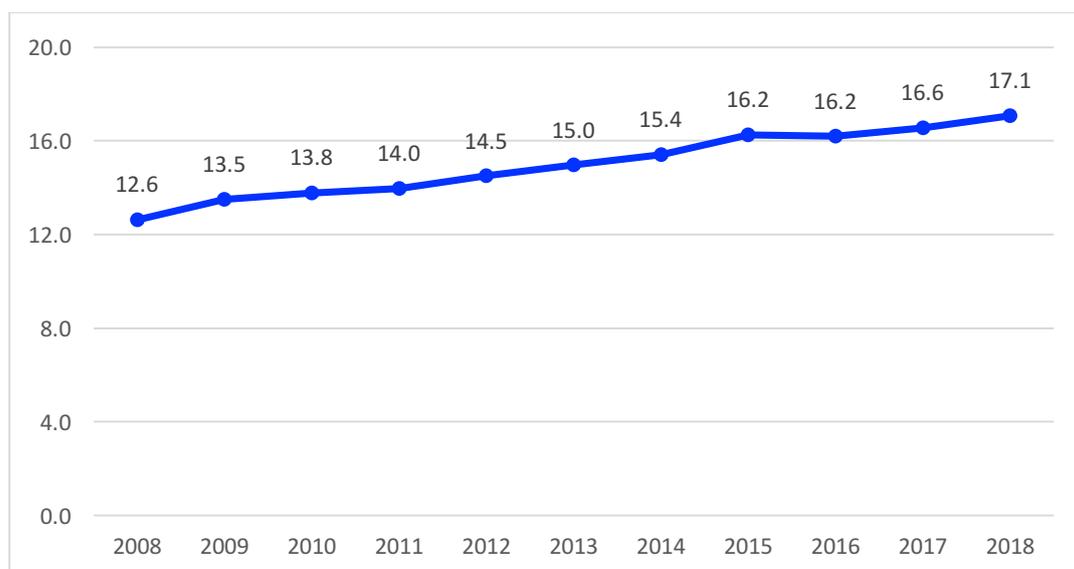
In England and Wales, the trend is even more complex. Fewer people are being sentenced to immediate custody than previously, and the custody rate has decreased from a high of 8.2% in 2012 to 6.9% in 2018. However, the average custodial sentence has increased more than 35% in the last decade, from 12.6 months in 2008 to 17.1 months in 2018 (Ministry of Justice [UK], 2018/2019, Tables Q5.2a-Q5.2c).

**Figure 11: People sentenced to custody and custody rate (%), England and Wales, 2008 to 2018**



Source: Ministry of Justice [UK] (2018/2019), Tables Q5.2a-Q5.2b

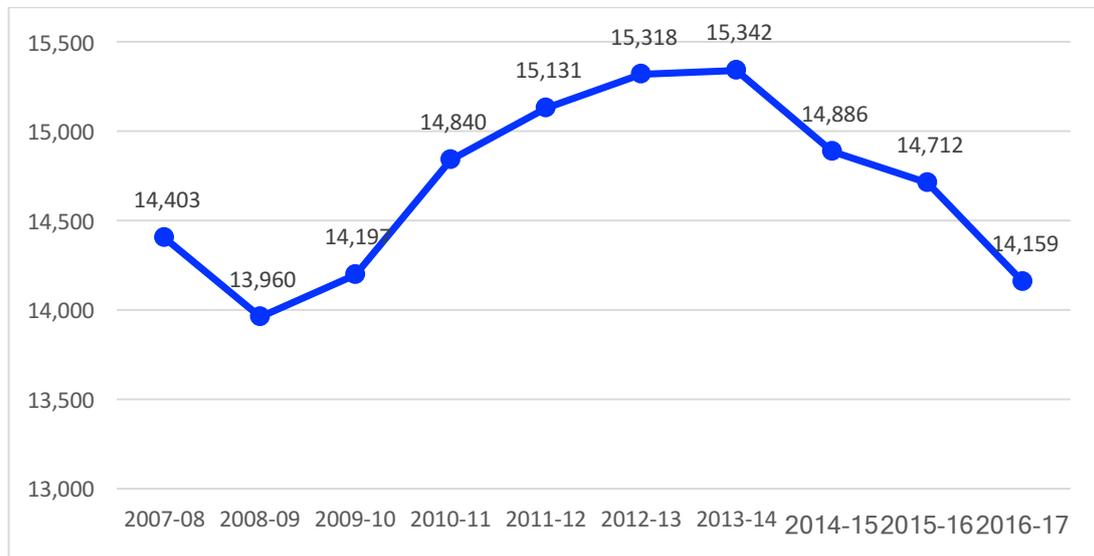
**Figure 12: Average length of custodial sentence (months), England and Wales, 2008 to 2018**



Source: Ministry of Justice [UK] (2018/2019), Table Q5.2c

Canadian data show that the prison population has fallen over the past few years, following a sustained increase from 2008-09 to 2013-14.

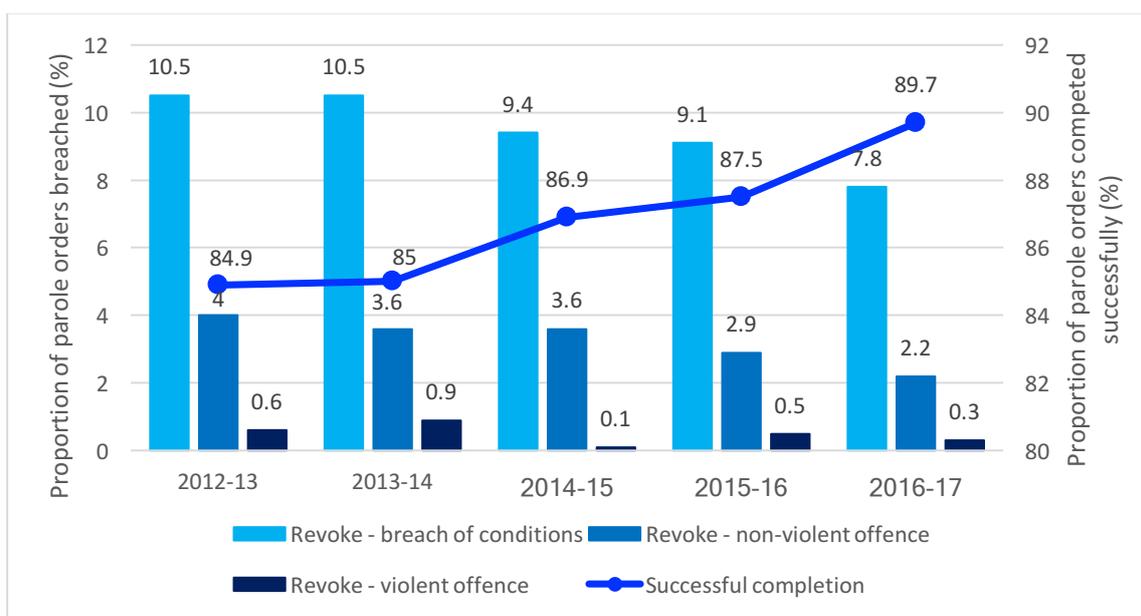
**Figure 13: Number of people in custody in a Correctional Service Canada facility, 2007-08 to 2016-17**



Source: Public Safety Canada (2018), Table C2

The grant rates for full parole in Canada have increased substantially during this time, increasing from 20.6% in 2007-08 to 35.1% in 2016-17. At the same time, there has been a substantial increase in successful completion of parole, from 84.9% in 2012-13 to 89.7% in 2016-17 (Public Safety Canada, 2018, Tables D3 and D9).

**Figure 14: Federal full parole outcomes, Canada, 2012-13 to 2016-17**



Source: Public Safety Canada (2018), Table D9

## 2.2 Suspended sentences

A suspended sentence is a term of imprisonment, the execution of which is either wholly or partly suspended. The person does not have to enter custody, on the condition that they do not reoffend for a specified period. The suspension of the custodial term is designed to act as an incentive for rehabilitation.

As a term of imprisonment, the suspended sentence sits high in the sentencing hierarchy; it is intended to be a tough penalty,<sup>69</sup> to be used where a sentence of immediate custody may be too disruptive to the offender's chances of community-based rehabilitation. It is not suitable for offenders requiring close supervision, for whom some other order or combination of orders may be better suited.

The main purpose in suspending a sentence is to encourage the offender's reform; a central consideration in determining whether to suspend a sentence of imprisonment is thus the person's prospects of rehabilitation (Bagaric, Edney and Alexander, 2018, pp. 684-686):<sup>70</sup>

A sentencing court, therefore, must recognise that a sentence of imprisonment can be a significant and effective punishment even where the execution of that sentence is suspended... That is why, in the hierarchy of sentencing alternatives, a suspended sentence is considered as more severe than a community service order even though it may appear on its face to be less punitive.

... although the purpose of punishment is the protection of the community, that purpose can be achieved in an appropriate case by a sentence designed to assist in the rehabilitation of the offender at the expense of deterrence, retribution and denunciation. In such a case a suspended sentence may be particularly effective and appropriate.

Suspended sentences were always intended to have limited application in practice, but in some jurisdictions they have, at times, accounted for up to about one-quarter of all sentences imposed in higher courts.

Suspended sentences are available as a sentencing option in all Australian jurisdictions, except Victoria (for all offences committed on or after 1 September 2014)<sup>71</sup> and New South Wales (since 24 September 2018).<sup>72</sup> Tasmania has legislated that suspended sentences will be phased out for a range of serious offences; this reform, however, is pending a report to Parliament by the Tasmanian Sentencing Advisory Council (TSAC) on the operation of the new community correction order and home detention order.<sup>73</sup>

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<sup>69</sup> *R v H* (1993) 66 A Crim R 505 at 510; *Paterson v Stevens* (1992) 57 SASR 213 at 216.

<sup>70</sup> *R v NJK* [2011] NSWCCA 151, [31]–[32].

<sup>71</sup> *Sentencing Amendment (Abolition of Suspended Sentences & Other Matters) Act 2013* (Vic).

<sup>72</sup> *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW).

<sup>73</sup> *Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017* (Tas).

## 2.2.1 Legislative structure and composition

### *Nature of order*

Given that a sentence of suspended imprisonment is considered to be a sentence of imprisonment, it is applied where the offence is objectively serious and the subjective, mitigating factors do not justify a non-custodial sentence.

The sentencing court first establishes that no other penalty but imprisonment will achieve the purposes for which the sentence is being imposed. If the court settles on a term of imprisonment, then the discretion to suspend that sentence either wholly or partly becomes available.<sup>74</sup> In Queensland,<sup>75</sup> the Northern Territory<sup>76</sup> and Western Australia,<sup>77</sup> the maximum imprisonment term that may be suspended is five years. There is no legislated maximum imprisonment term or operational period for the suspended sentence order in the ACT<sup>78</sup> or Tasmania, while South Australia has a maximum of two years for a proscribed offence and no specific limit for other offences.<sup>79</sup>

In the UK, suspended sentence orders have a maximum in the higher court of two years, 12 months for multiple offences in the Magistrates' Court and six months for a single offence in the Magistrates' Court.<sup>80</sup> They have a maximum operational period of two years and a minimum of six months.

In all Australian jurisdictions that retain the suspended sentence option, there is statutory authority to combine a suspended sentence with other sentencing orders or penalties, either expressly or as part of a general power to combine sentencing orders (which is usually subject to certain limits).<sup>81</sup> A suspended sentence is typically able to be combined with a pecuniary

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<sup>74</sup> Among the jurisdictions discussed in this section, partly suspended sentences are not available in Western Australia or the UK.

<sup>75</sup> *Penalties and Sentencing Act 1992* (QLD) s 144(1). The maximum operational period is also five years.

<sup>76</sup> The maximum is five years either as a single term or an aggregate term: *Sentencing Act 1995* (NT) s (40)(4). The maximum operational period is also five years.

<sup>77</sup> The maximum is five years either as a single term or an aggregate term: *Sentencing Act 1995* (WA) ss 76(1) and 81(1). The maximum operational period is only two years, with no more than two years suspended.

<sup>78</sup> *Crimes (Sentencing) Act 2005* (ACT) ss 12, 13.

<sup>79</sup> *Sentencing Act 2017* (SA) pt 4, div 2. Partly suspended sentences may not be imposed for 12 months or longer (s 96(4)).

<sup>80</sup> *Criminal Justice Act 2003* (UK) ss 189(1) and 189(2). This applies to England and Wales and Northern Ireland.

<sup>81</sup> In South Australia, the *Sentencing Act 2017* (SA) s 25(2) provides that, even where there is some express statutory prohibition against the substitution or mitigation of a penalty, a sentencing court may impose more than one type of sentence if it thinks that a good reason exists for departing from the penalty provided for the offence. In the Northern Territory, the *Sentencing Act 1995* (NT) s 7 empowers a court to make one or more of the orders contained in that provision, while s 7(g) empowers the court to record a conviction and order that the offender serve a term of imprisonment that is suspended either wholly or partly. The Western Australian *Sentencing Act 1995* (WA) s 39 lists the sentencing orders available to the court, including suspended sentences at 39(2). Section 39(4) then provides that 'a court must not use more than one of the sentencing options in subsection (2) when sentencing an offender for an offence except where section 41 or 42 applies'. These later provisions limit the use of multiple orders to situations where the court is imposing sentence for an offence with a statutory penalty of imprisonment, either with or without the addition of a fine.

penalty.<sup>82</sup> In the UK, a court that imposes a suspended sentence may not also impose a community sentence for that offence or any other offence of which the person is convicted or otherwise 'dealt with' by the court. The court may, however, attach one or more community requirements to the suspended sentence order, provided that the supervision period relevant to those requirements will not end later than the operational period of the suspended sentence.<sup>83</sup>

When considering combining a suspended sentence with another order, and determining the type of additional order that should be imposed, the court must consider the viability of compliance with each of the different sentences.<sup>84</sup> For example, if an offender serving both a suspended sentence and a community service order breaches the suspended sentence, the court may order the person into custody – making it impossible to comply with the community service order.<sup>85</sup>

Despite the fact that orders for community service may be made concurrently with orders for short terms of imprisonment (either wholly or partly suspended), a body of authority developed that orders for suspended sentences could not be made concurrently with probation orders.<sup>86</sup> Nonetheless, Jerrard JA in *Hood*<sup>87</sup> held that:

There is no inconsistency or difficulty in compliance where an offender is released upon a suspended sentence at the same time as the offender is placed upon probation. There is no prohibition in the Act against both ordering probation (whether immediate or after serving a sentence of up to one year's imprisonment) for one offence, and a (wholly or partially) suspended sentence for another offence.

In the ACT, suspended sentences may be combined with a term of immediate imprisonment, licence disqualification, reparation orders and non-association or place restriction orders. In addition to allowing combinations with fines, Tasmanian suspended sentences may be also combined with a community correction order, rehabilitation order or driving disqualification order. Similarly, Western Australia allows a combination of a suspended sentence with an intensive supervision order, a community-based order and a conditional release order.

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<sup>82</sup> See *R v Harvey-Sutton* [2003] QCA 229 as an example of a matter in which the Queensland Court of Appeal considered that it was appropriate to combine a wholly suspended sentence of two years' imprisonment, with a fine of \$7,500 plus a five-year driver's licence disqualification. In that case, the offender had a blood alcohol concentration of 0.247 per cent and had two prior convictions for driving while under the influence of alcohol. Davies JA at [50] said that 'looking at the whole of the sentence, it is in my view well within the exercise of a sound sentencing discretion'.

<sup>83</sup> *Criminal Justice Act 2003* (UK) ss 189(5) and (4).

<sup>84</sup> This was the position articulated by the Queensland Court of appeal in *R v Daly* (2004) 147 A Crim R 440; [2004] QCA 385.

<sup>85</sup> In *Vincent*, the respondent was sentenced to three months' imprisonment wholly suspended for 12 months, together with 80 hours of community service on another count. The Court held that the Queensland Act did not prohibit such a combination. If, prior to completing the community service, the offender committed another offence thereby activating the suspended sentence, the balance of the community service could be performed after the offender's release: *R v Vincent; ex parte Attorney-General* [2001] 2 Qd R 327; [2000] QCA 250.

<sup>86</sup> *Sysel v Dinon* [2003] 1 Qd R 212; *R v Arana* [2000] QCA 184; *R v Craig Hughes* [2000] QCA 16.

<sup>87</sup> *R v Hood* [2005] QCA 159 at [48].

Finally, the UK allows a suspended sentence to be combined with a fine and a term of immediate imprisonment.

### Conditions

All but one<sup>88</sup> of the Australian jurisdictions in which suspended sentences are available allow (or, in some cases, require) offenders to be subject to conditions during the operational period of the order. This is generally achieved in one of two ways:

- The court suspends a term of imprisonment, conditional upon the person entering into a good behaviour order/bond (the ACT<sup>89</sup> and South Australia<sup>90</sup>).
- The court attaches conditions directly to the suspended sentence order (the Northern Territory,<sup>91</sup> Tasmania<sup>92</sup> and Western Australia<sup>93</sup>).

Mandatory conditions that must be imposed are broad and general in some jurisdictions, requiring the offender not to commit another offence or to comply with conditions that are ordered. In others, mandatory conditions are specified, such as a firearm restriction that must be imposed in South Australia.<sup>94</sup> Western Australia requires a raft of specific conditions to be attached to its conditional suspended imprisonment order, including the 'standard' reporting and notification conditions and not leaving the state, as well as obligations such as drug and alcohol restrictions.<sup>95</sup> The court must also impose at least one of a program requirement, a supervision requirement or a curfew condition.<sup>96</sup>

Each jurisdiction (except Queensland) has a range of additional conditions that may be imposed.<sup>97</sup> These may include community service, supervision, treatment or rehabilitation program participation, residence restrictions, drug or alcohol testing and prohibition, a curfew or electronic monitoring.<sup>98</sup>

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<sup>88</sup> There is no requirement or power in Queensland for additional supervisory, program or community service conditions to attach to a suspended sentence or to another order made in combination with a suspended sentence.

<sup>89</sup> *Crimes (Sentencing) Act 2005* (ACT) s 12(3).

<sup>90</sup> *Sentencing Act 2017* (SA) s 96(1).

<sup>91</sup> *Sentencing Act 1995* (NT) s 40(2).

<sup>92</sup> *Sentencing Act 1997* (Tas) s 24.

<sup>93</sup> Western Australia allows both suspended imprisonment and a separate order for conditional suspended imprisonment: *Sentencing Act 1995* (WA) pt 11 and pt 12.

<sup>94</sup> *Sentencing Act 2017* (SA) s 96(2).

<sup>95</sup> The 'standard' obligations under a conditional sentence of imprisonment include to comply with s 76 of the *Sentence Administration Act 2003*, under which these and other additional obligations are found: *Sentencing Act 1995* (WA) s 83(1)(d).

<sup>96</sup> *Sentencing Act 1995* (WA) ss 83-84.

<sup>97</sup> The Northern Territory simply stipulates that additional conditions may be imposed as the court thinks fit: *Sentencing Act 1995* (NT) s 40(2).

<sup>98</sup> *Crimes (Sentencing) Act 2005* (ACT) s 13(3); *Sentencing Act 2017* (SA) s 98(1); *Sentencing Act 1997* (Tas) s 24; *Sentencing Act 1995* (WA) ss 84A-84C; *Criminal Justice Act 2003* (UK) ss 199-213 (requirements available for all offenders).

### *Revocation, termination and breach*

Breach of a suspended sentence by committing a new crime is not a separate offence in Australia or in the UK. Breach by failure to comply with conditions is also not a separate offence,<sup>99</sup> except in Western Australia, where breach of a requirement of a conditional sentence of imprisonment is an offence punishable by a fine up to \$1,000.<sup>100</sup>

Generally, the powers that a court may exercise on breach of a suspended sentence are the same regardless of the way in which the offender has breached the order. In response to breach by reoffending, most jurisdictions<sup>101</sup> have a presumption in favour of activating the term of imprisonment held in suspense, commonly requiring that the suspended term be activated unless the court is of the opinion that it would be unjust to do so.<sup>102</sup>

### 2.2.2 Practical application – use and breach

In most jurisdictions where suspended sentences are available, they constitute a relatively small proportion of all sentences imposed.

#### *The use of suspended sentences in Australia*

The most recent data on the use of suspended sentences across Australia are available in the ABS' annual courts statistics. Data from 2017-18 show that suspended sentences are more common in the Australian higher courts (where they comprise 13.1% of all principal sentences imposed) than in the Magistrates' Court (accounting for just 3.4% of all principal sentences imposed). In both court jurisdictions, Tasmania makes the most use of suspended sentences, accounting for 25.7% of all principal sentences imposed in their higher courts and 10.3% in their Magistrates' Court in 2017-18.

The most common offence for which a suspended sentence was imposed in the Australian higher courts in 2017-18 was an illicit drug offence, accounting for 714 of the total 2,010 fully suspended sentences (or 35.5%) imposed in that court level (ABS, 2019b, Table 10).

The most common offence for which a suspended sentence was imposed in the Australian Magistrates' Courts in 2017-18 was an act intended to cause injury, accounting for 3,866 of

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<sup>99</sup> See, however, *Sentencing Act 1995* (NT) s 43(4AB), which gives police powers *as if* the breach of conditions were a separate offence.

<sup>100</sup> *Sentencing Act 1995* (WA) ss 84J(1) and 84K(1).

<sup>101</sup> In Tasmania, the presumption in favour of the whole of the sentence held in suspense being activated on breach does not apply to a failure to comply with conditions, in which case the court may either activate all or part of the sentence that is held in suspense, order a substituted sentence take effect, vary the conditions of the order, or make no order: *Sentencing Act 1997* (Tas) s 27(4E). Similarly, in Western Australia, there is no presumption that the term of imprisonment be activated where the offender has failed to comply with conditions: *Sentencing Act 1995* (WA) s 84L.

<sup>102</sup> *Penalties and Sentences Act 1992* (Qld) s 147(2); *Sentencing Act 1995* (NT) s 43(7); *Sentencing Act 1997* (Tas) ss 27(4B)–(4C); *Sentencing Act 1995* (WA) ss 80(3) and 84F(3); *Criminal Justice Act 2003* (UK) sch 12, para 8.

the total 16,104 fully suspended sentences (or 24.0%) imposed in the lower courts (ABS, 2019b, Table 10).

**Table 4: Suspended sentences as a principal sentence in the higher courts, Australian states and territories, 2017-18**

	Principal sentence - total	Principal sentence - Fully suspended sentence	Suspended sentences as a proportion of all sentences
NSW	4,009	497	12.4%
Vic	1,651	58	3.5%
Qld	5,181	684	13.2%
SA	1,171	163	13.9%
WA	2,413	463	19.2%
Tas	327	84	25.7%
NT	414	31	7.5%
ACT	183	29	15.8%
<i>Aust</i>	<i>15,340</i>	<i>2,010</i>	<i>13.1%</i>

*Source: ABS (2019b), Table 8*

**Table 5: Suspended sentences as a principal sentence in the Magistrates' Court, Australian states and territories, 2017-18**

	Principal sentence - total	Principal sentence - Fully suspended sentence	Suspended sentences as a proportion of all sentences
NSW	131,188	4,760	3.6%
Vic	92,485	206	0.2%
Qld	120,855	4,779	4.0%
SA	23,150	1,991	8.6%
WA	78,742	2,449	3.1%
Tas	10,358	1,063	10.3%
NT	8,615	655	7.6%
ACT	4,343	212	4.9%
<i>Aust</i>	<i>469,727</i>	<i>16,104</i>	<i>3.4%</i>

*Source: ABS (2019b), Table 8*

Data on the use and breach of suspended sentences in both Tasmania and Victoria have been reported extensively by the respective Sentencing Advisory Councils.<sup>103</sup>

The Tasmanian Sentencing Advisory Council examined breach rates by further offending punishable by imprisonment for fully suspended sentences imposed in the Supreme Court in 2011. By September 2014, more than one-third (44 people, or 34%) of the 128 offenders had breached their order. Of the 44 offenders who breached their order by reoffending with an imprisonable offence, 24 (55%) were subject to breach action; the suspended sentence was activated in full for 10 of these 24 offenders (TSAC, 2016, p.24).

The Victorian Sentencing Advisory Council found that, for the 12,089 people who received suspended sentences during 2000-01 and 2001-02, the overall breach rate after five years was 27.5% (or 3,327 people). Breach rates varied considerably by court level: in the Magistrates' Court, 28.7% of wholly suspended sentences and 31.8% of partially suspended sentences were breached by the commission of a new offence during this period, compared with 8.2% of wholly suspended sentences and 10.0% of partially suspended sentence imposed in the higher courts. The overall breach rate in the Magistrates' Court was 29.1% during this time, compared with 8.6% in the higher courts (SAC, 2008, p. 36).

Of all the people who initially received a suspended sentence, 17.2% had the suspended prison term wholly or partially restored following a breach by further offending.

Of the 3,327 people who breached their suspended sentence by further offending, 2,088 (62.8%) had the suspended prison term wholly or partially restored, while 331 people (9.9%) had the operational period of the order extended. There was no order made for 908 (27.3%) of the people who breached their suspended sentence. Restoration rates were very similar across court levels: 62.7% in the Magistrates' Court and 65.5% in the higher courts. Substantial differences were seen, however, in the proportion of breaches where no order was made: 27.4% in the Magistrates' Court and 21.4% in the higher courts (SAC, 2008, pp. 37-38).

Similar analyses were performed by the NSW Sentencing Council, in its examination of suspended sentences imposed in 2008. Analyses of Local Court data showed that, through December 2010, 26.7% of offenders given a suspended sentence with supervision breached their order, while 22.1% of those on a suspended sentence without supervision subsequently breached. Overall, 24.5% of offenders given a suspended sentence in the Local Court in 2008 committed an offence during the operational period of their suspended sentence. A term of imprisonment was imposed on 69%-79% of people following breach of a suspended sentence during the period 2001-2010 (NSW Sentencing Council, 2011, pp. 23-24).

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<sup>103</sup> The analyses undertaken by both Councils cover multiple reports and many dozens of pages. The results are not discussed in detail here; rather, some key points are summarised to provide a brief overview of the practical application of suspended sentences in each jurisdiction.

### *The use of suspended sentences in other jurisdictions*

In Northern Ireland, a suspended custodial term was imposed for 15.8% of convictions in all courts in 2017, with 3,376 (or 15.1% of all convictions) in the Magistrates' courts and 358 (or 26.9%) in the Crown Court. Suspended custodial terms were the second most commonly imposed sentence in the Crown Court, after an immediate custodial term, which was imposed for 48.9% of convictions in that jurisdiction. A suspended term was also the second most frequently imposed in the Magistrates' courts, behind a monetary penalty (58.7%) (Department of Justice [Northern Ireland], 2018, Table 5a).

The most recent data available show that suspended sentences were the fourth most frequently imposed sentence in all courts, behind fines, community sentences and immediate custody: for the year ending September 2018, 45,187 suspended sentences were imposed, representing 3.8% of all sentences (Ministry of Justice [UK], (2019), Table Q5.1b).

### 2.2.3 Costs and resource implications

For those versions of suspended sentences with few or no conditions other than not to commit a further offence, there are virtually no associated costs or resources required. For those jurisdictions where conditions may (or must) be imposed, the required resources may be considerable, depending on the conditions attached. Jurisdictions that make frequent use of intensive supervision, electronic monitoring and regular program participation will incur higher costs than those in which such orders are less common. There is a dearth of information, however, on the frequency of different types of conditions that are most commonly attached to suspended sentence orders.

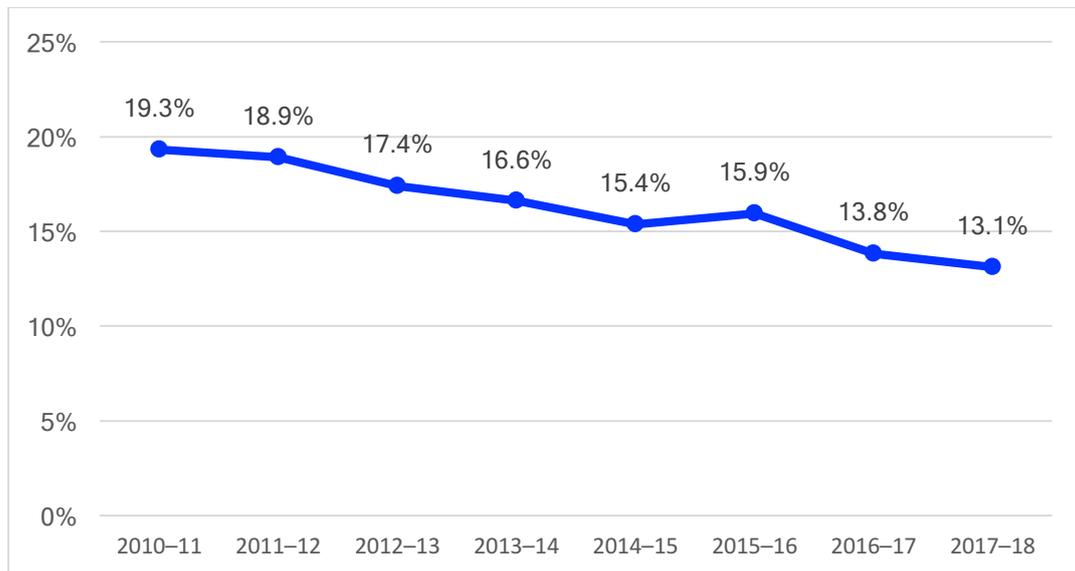
NSW is one of the few jurisdictions for which at least some level of information is available. With the courts able to impose suspended sentences both with supervision and without (until September 2018), administrative data on sentencing outcomes capture the number of such sentences imposed. Annual criminal courts data show that, in 2017, 55.3% (3,546 orders) of suspended sentences imposed in all courts included a supervision component: 65.5% in the District Court and 53.6% in the Local Court (BOCSAR, 2018, Table 5). Depending on the intensity of the supervision, costs associated with suspended sentences for these 3,546 people could be considerable. Without data on the nature of the supervision condition, though, the costs and required resources associated with this order cannot be measured (although data on the costs of community-based supervision in general are broadly applicable).

### 2.2.4 Changing use of suspended sentences

Across Australia, the use of suspended sentences has been decreasing for the past decade. In addition to those states in which suspended sentences have so far been abolished (Victoria

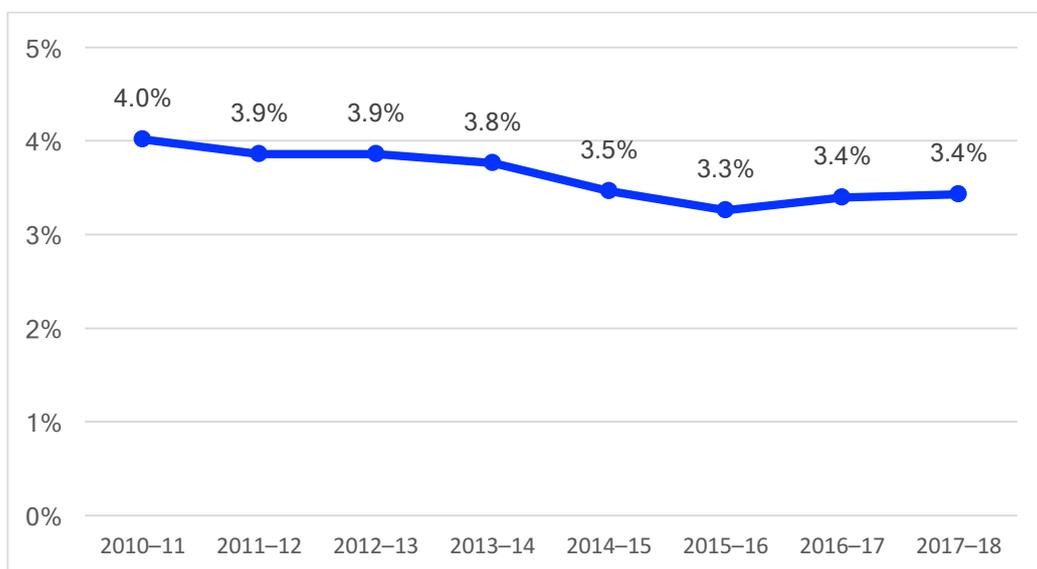
and NSW, with Tasmania pending), there has been a general move away from suspended sentences across the nation, in both higher and lower court jurisdictions.

**Figure 15: Proportion of all sentences that are fully suspended sentences, higher courts, Australia, 2010-11 to 2017-18**



Source: ABS (2019b), Table 7

**Figure 16: Proportion of all sentences that are fully suspended sentences, Magistrates' Courts, Australia, 2010-11 to 2017-18**

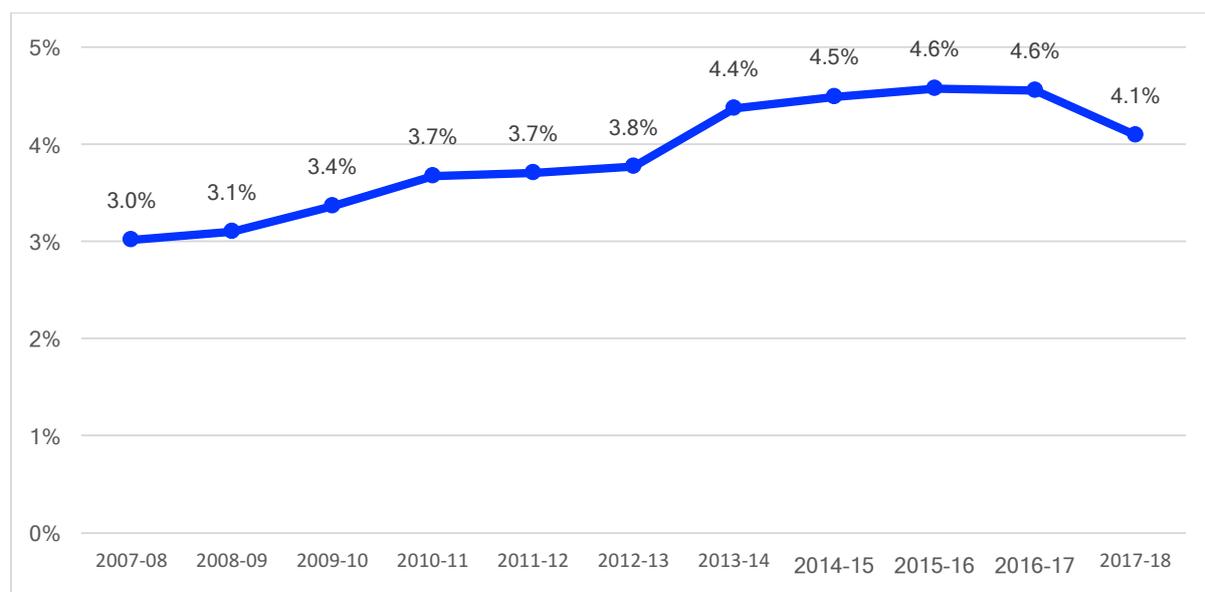


Source: ABS (2019b), Table 7

Overall, the number of suspended sentences imposed across Australia in all courts fell from 21,992 in 2010-11 (representing 4.3% of all sentences imposed) to 18,590 in 2017-18 (or 3.7% of all sentences imposed) (ABS, 2019b, Table 7).

In contrast, England and Wales has seen an increase in the proportion of people receiving suspended sentences over the past decade, from 3.0% (41,894) in 2007-08 to 4.1% (48,389) in 2017-18.

**Figure 17: Proportion of all people sentenced in England and Wales who received a suspended sentence, all courts, 2007-08 to 2017-18**



Source: Ministry of Justice [UK], 2018/19, Table Q5.1b

### 2.3 Intensive correction orders

An intensive correction order (ICO) is a term of imprisonment that is served in the community instead of in prison. As the name suggests, it typically includes an intensive regime of both supervision and conditions or requirements that are imposed on the offender.

An ICO is intended to be a punitive order that also provides ‘correction’ via supervision and conditions. They are typically used for offenders at significant risk of reoffending, for whom intensive supervision and targeted interventions are intended to ameliorate this risk. The conditions associated with the order are not intended to be punitive, but to secure the rehabilitation of the offender; it is the term of imprisonment itself that is the punitive aspect of the order.<sup>104</sup>

The ICO is designed for an offender who, although warranting a term of imprisonment, may benefit from an opportunity outside of a custodial environment to engage in a supervisory

<sup>104</sup> See, for example: *R v Pogson* (2012) 82 NSWLR 60; 218 A Crim R 396; [2012] NSWCCA 225 at [104]–[115].

order with a significant rehabilitative component. The expectation is that this may prevent further offending by facilitating rehabilitation while avoiding the negative aspects of the prison environment (Bagaric, Edney and Alexander, 2018, p. 678).

The NSW Law Reform Commission (NSWLRC) noted several advantages of ICOs (NSWLRC, 2013, pp. 199-200):

- They cost less than imprisonment.
- They allow an offender to remain in employment, maintain contact with family and retain housing.
- They avoid the potential contaminating effects of imprisonment, particularly for first-time offenders.
- They combine benefit to the community (through community service work) with rehabilitation and an element of punishment.

ICOs are available in most jurisdictions in Australia. They are known as ICOs in Queensland,<sup>105</sup> the ACT,<sup>106</sup> NSW<sup>107</sup> and South Australia,<sup>108</sup> while the Northern Territory<sup>109</sup> uses the name community custody orders. In Western Australia, the conditional suspended imprisonment is analogous, in that it is used where imprisonment would be appropriate.<sup>110</sup> Similarly, Canada's conditional sentence of imprisonment is a term of imprisonment that is served in the community under close supervision and other conditions.<sup>111</sup> It is designed to reduce the courts' reliance on incarceration and to facilitate the restorative objectives of the sentence.<sup>112</sup>

In each of these jurisdictions, the order is classified as a term of imprisonment, but it is served in the community. The following section considers those jurisdictions in which this kind of order may be imposed.

### 2.3.1 Legislative structure and composition

ICOs and conditional sentences of imprisonment share many features across different jurisdictions. This section discusses the legislative structure and composition of these orders by providing a general overview of their similarities, followed by discussion of the ways in which the orders differ across jurisdictions.

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<sup>105</sup> *Penalties and Sentences Act 1992* (Qld) ss 111-119, 120-142.

<sup>106</sup> *Crimes (Sentencing) Act 2005* (ACT) ss 76-80L.

<sup>107</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 64-73A.

<sup>108</sup> *Sentencing Act 2017* (SA) ss 79-91.

<sup>109</sup> *Sentencing Act 1995* (NT) ss 48A-48Q.

<sup>110</sup> *Sentencing Act 1995* (WA) ss 81-84R.

<sup>111</sup> *Criminal Code*, RSC, 1985, c C-46 ss 742-742.7.

<sup>112</sup> See, for example, the guideline judgment in *R v Proulx* [2000] 1 SCR 61, 126.

### *Nature of order*

In Australia, ICOs are available if a sentence of imprisonment is imposed. The maximum length of the imprisonment term that may be served as an ICO varies: 12 months in Queensland<sup>113</sup> and the Northern Territory,<sup>114</sup> with a maximum of two years in the ACT<sup>115</sup> and South Australia.<sup>116</sup> In NSW, an ICO may be imposed for up to two years for a single offence and three years for an aggregate term of imprisonment.<sup>117</sup> Western Australia has the longest possible ICO – it may be imposed for a term of imprisonment of up to five years, with no more than two years suspended.<sup>118</sup>

In NSW, the ICO is not available for offenders who are under 18 years, or who have committed certain offences, such as murder and manslaughter, terrorism offences, weapon offences or a sexual offence against a child.<sup>119</sup>

In Canada, a conditional sentence of imprisonment may be imposed only if the offence does not have a prescribed minimum sentence, the maximum sentence of imprisonment for the offence is less than two years and the court is satisfied that the offender would not endanger the safety of the community.<sup>120</sup>

In most jurisdictions, an ICO may be combined with another order, although due to the intensive nature of the supervision and interventions that are usually required as part of the order, combinations are limited and are relatively rare. The Northern Territory allows combination with a fine,<sup>121</sup> as does Queensland<sup>122</sup> and the ACT, which also allows combination with a range of orders, such as non-association, place restriction, reparation and disqualification orders.<sup>123</sup> Given that the ICO is intended to be a punitive order (despite its focus on rehabilitation), a fine may be less likely than a restitution order to be added. NSW provides for ICOs, community correction orders and conditional release orders to be in force at the same time if imposed for separate offences.<sup>124</sup>

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<sup>113</sup> *Penalties and Sentences Act 1992* (Qld) s 112.

<sup>114</sup> *Sentencing Act 1995* (NT) s 48A(1)(b).

<sup>115</sup> *Crimes (Sentencing) Act 2005* (ACT) s 11(2). ICOs may be imposed if the sentence of imprisonment is up to four years if the court considers it appropriate to do so: *Crimes (Sentencing) Act 2005* (ACT) s 11(3).

<sup>116</sup> *Sentencing Act 2017* (SA) s 81.

<sup>117</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 68.

<sup>118</sup> *Sentencing Act 1995* (WA) s 81(1).

<sup>119</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 67(1).

<sup>120</sup> *Criminal Code*, RSC, 1985, c C-46 s 742.1.

<sup>121</sup> *Sentencing Act 1995* (NT) s 48B(4).

<sup>122</sup> *Penalties and Sentences Act 1992* (Qld) s 45. Community service hours are a required condition of an ICO in Queensland by virtue of s 114(1)(e), which must then be performed cumulatively with any other community service the offender is required to perform as a result of other orders (s 141). The offender is expected to perform community service for two-thirds of the time directed (s 1412A(b)).

<sup>123</sup> *Crimes (Sentencing) Act 2005* (ACT) s 29.

<sup>124</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17F.

## Conditions

ICOs may include both punitive conditions (such as compulsory work requirements) and also rehabilitative ones that compel the offender to undertake counselling programs.

Mandatory conditions attached to ICOs are broadly consistent across jurisdictions, such as not offending, reporting to corrective services officers as required, obeying directions and not leaving the state. Queensland,<sup>125</sup> the Northern Territory<sup>126</sup> and South Australia<sup>127</sup> mandate community service, while South Australia also has mandatory firearm restriction conditions.<sup>128</sup> In NSW, an ICO must also include one additional condition (unless there are exceptional circumstances), such as home detention, electronic monitoring, a curfew, community work, rehabilitation or treatment, and non-association or place restriction conditions.<sup>129</sup>

Discretionary conditions may include, for example, conditions relating to medical, psychiatric or psychological treatment<sup>130</sup> and electronic monitoring.<sup>131</sup> In Canada, offenders may be required to provide a bodily substance for analysis.<sup>132</sup>

## Revocation, termination and breach

When an ICO is breached, courts normally have a wide range of powers in relation to re-sentencing the offender, including amending or extending the order, revoking the order and re-sentencing the offender using any option that would have been available initially. As the ICO is a term of imprisonment, the court may order that the remaining period be served in custody.

The ICO is unusual in that, in some states, it is not the court that deals with failure to comply, but another authority. For example, in the ACT the Sentence Administration Board has powers to warn, suspend or cancel an ICO and return the offender to prison.<sup>133</sup> Similarly, in NSW the Parole Authority may impose, vary or revoke ICO conditions.<sup>134</sup> It may also suspend an ICO, record a breach with no further action, issue a formal warning or revoke the ICO entirely in the event of breach.<sup>135</sup>

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<sup>125</sup> *Penalties and Sentences Act 1992* (Qld) s 114.

<sup>126</sup> *Sentencing Act 2005* (NT) s 48E.

<sup>127</sup> *Sentencing Act 2017* (SA) s 82(1)(j) – if the person is unemployed.

<sup>128</sup> *Sentencing Act 2017* (SA) ss 82(1)(e)-82(1)(f).

<sup>129</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 73A(2).

<sup>130</sup> For example, *Penalties and Sentences Act 1992* (Qld) s 115(a).

<sup>131</sup> For example, *Sentencing Act 2005* (NT) s 48F(2)(b) and *Sentencing Act 2017* (SA) s 82(2)(b).

<sup>132</sup> *Criminal Code*, RSC, 1985, c C-46 s 742.3(2)(a.2).

<sup>133</sup> *Crimes (Sentence Administration) Act 2005* (ACT) ss 62-73.

<sup>134</sup> *Crimes (Administration of Sentences) Act 1999* (NSW) ss 81(b), 81A.

<sup>135</sup> *Crimes (Administration of Sentences) Act 1999* (NSW) s 164.

Breach of an ICO is a separate offence in Queensland,<sup>136</sup> South Australia<sup>137</sup> and Western Australia.<sup>138</sup>

### 2.3.2 Practical application – use and breach

ICOs and analogous orders are widely available in Australia, in all jurisdictions except Victoria and Tasmania.<sup>139</sup> Available data show that they are imposed only infrequently by the courts.

#### *The use of intensive correction orders in Australia*

In 2017-18, there were 152 ICOs imposed in Queensland, representing less than 1% of supervised orders.<sup>140</sup> More than two-thirds (70.1%) of ICOs were successfully completed in 2016-17 and 70.8% were successfully completed in 2017-18. This is lower than supervised orders overall (73.3%) – it is lower than probation (76.2%) but higher than court-ordered parole (70.3%) and board-ordered parole (67.4%) (QCS, 2018, pp. 122-123).

NSW court statistics show that 1,805 defendants received an ICO as their principal sentence in 2017, accounting for 1.4% of the total 127,693 sentenced defendants. Of these, 384 (21%) people had been sentenced in the District Court (accounting for 10% of the 3,876 defendants sentenced) and 1,420 were sentenced in the Local Court (1.2% of the 118,401 defendants sentenced) (BOCSAR, 2018, Table 5).<sup>141</sup>

Corrective Services data show that 2,166 offenders were sentenced to 5,996 ICOs in NSW in 2017.<sup>142</sup> As a proportion of penalties imposed, ICOs were imposed most frequently in major cities and least frequently in very remote regions (NSW Sentencing Council, 2018, p. 35). The average length of ICOs in 2017 was 10.6 months in Local Court and 19.2 months in District Court (NSW Sentencing Council, 2018, p. 43).

The three most common offences for which ICOs were imposed in 2017 were acts intended to cause injury (681, or 31.2% of all ICOs imposed), traffic and vehicle regulatory offences (413, or 18.9%) and illicit drug offences (321, or 14.7% of ICOs imposed) (NSW Sentencing Council, 2018, p. 45).

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<sup>136</sup> *Penalties and Sentences Act 1992* (Qld) s 123(1).

<sup>137</sup> *Sentencing Act 2017* (SA) s 91.

<sup>138</sup> *Sentencing Act 1995* (WA) s 84J.

<sup>139</sup> The Tasmanian Sentencing Advisory Council's review of suspended sentences recommended against introducing an ICO, due to the following barriers to use: the rigorous nature of the suitability criteria excludes offenders with cognitive impairment, mental illness, substance dependency or homelessness or unstable housing; the lack of availability of intensive correction orders in rural and remote areas; issues with the mandatory community service work requirement; the substitutional nature of the sanction; and insufficient resources to support the sanction, causing sentencers to lose confidence in it (TSAC, 2016, pp. 83-84).

<sup>140</sup> There were 11,080 probation orders, 5,042 orders for court-ordered parole and 1,872 board-ordered parole orders (QCS, 2018, p. 122).

<sup>141</sup> One person was sentenced to an ICO in the Children's Court, with no ICOs imposed in the Supreme Court (BOCSAR, 2018, Table 5).

<sup>142</sup> The data for NSW vary slightly due to the different sources: BOCSAR presents courts data, while the NSW Sentencing Council presents Corrective Services data.

Finally, of the 4,559 ICOs discharged in 2017, 3,039 (66.7%) were discharged as the result of successfully completing the order, 1,381 (30.3%) were revoked and 139 (3.0%) were discharged for other reasons. Of the 937 breaches of mandatory conditions that led to a revocation in 2017, 274 (29.2%) involved breaching a condition to be of good behaviour/not commit any offence, 245 (26.2%) involved breach of a community work condition and 187 (2.0%) were breach of a condition to comply with supervisor directions (NSW Sentencing Council, 2018, pp. 47-48).

ICO-type orders are also infrequently used in the Northern Territory, where 37 community custody orders were imposed in 2016-17, representing 2.9% of all programs in Community Corrections' caseload (NT Government, 2018, p. 10).

### *The use of intensive correction orders in other jurisdictions*

Canadian statistics reveal that conditional sentences of imprisonment are used slightly more frequently than in Australia: the most recent data show that 8,021 conditional sentences of imprisonment were imposed out of a total of 226,231 sentences in 2016-17, representing 3.6% of all sentences imposed (Statistics Canada, 2019, Table 35-10-0030-01).<sup>143</sup>

### 2.3.3 Costs and resource implications

The costs of ICOs as a distinct sentence are difficult to separate from the general costs of supervising offenders in the community. As ICOs involve a more intensive form of intervention and supervision than community orders generally, both the costs and the resources required for this order are likely to be higher than they are for other forms of community orders.

New Zealand has published information on the costs of intensive supervision. While these data do not specifically reflect the costs of ICOs as a substitutinal sanction,<sup>144</sup> they may at least be indicative of the costs associated with the supervisory component of ICOs.

The estimated cost per offender under supervision in New Zealand in 2015-16 was \$15.75 per day, while the cost for intensive supervision was \$21.13 per day (New Zealand Government, 2017, p. 11).

### 2.3.4 Changing use of intensive correction orders

The ICO has fallen into disfavour in some jurisdictions. For example, the Victorian Sentencing Advisory Council found that ICOs had only ever been used in a very small proportion of cases, at least in part due to structural problems and a possible lack of court confidence in its

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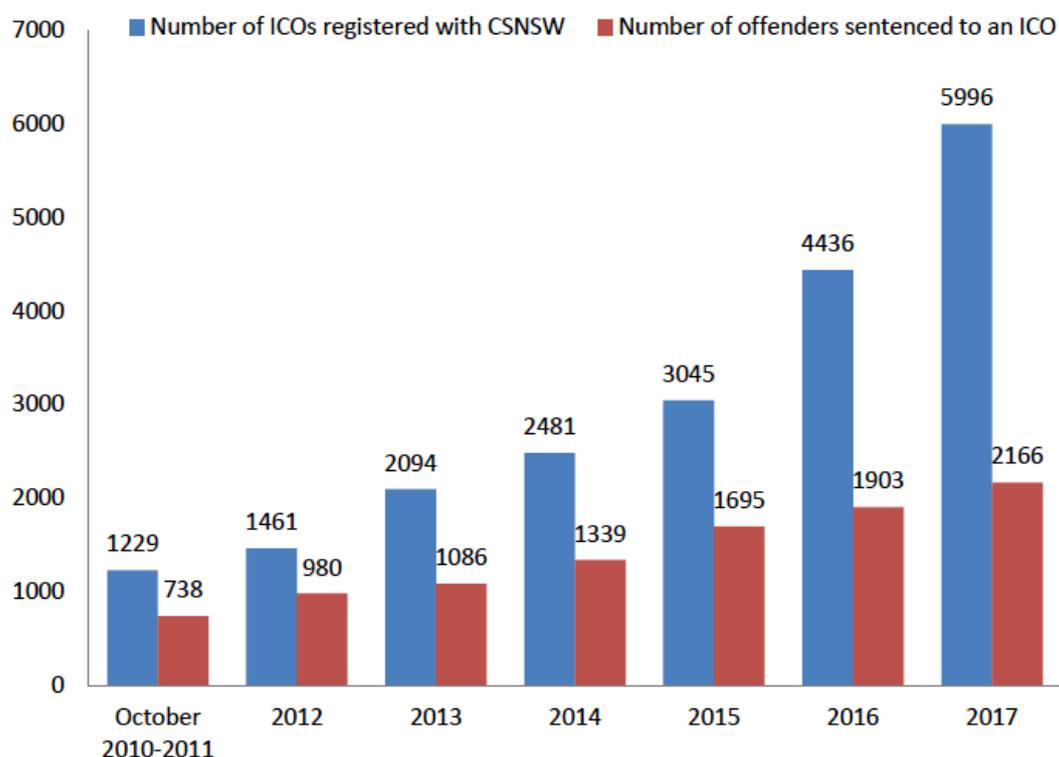
<sup>143</sup> These data do not include Quebec or the Northwest Territories, as they do not report on conditional sentences (Statistics Canada, 2019, Table 35-10-0030-01).

<sup>144</sup> While New Zealand has an intensive supervision order that could be labelled as an ICO, the order is an actual community order, rather than a term of imprisonment that is served in the community. It is therefore not included in the analysis in this ICO section; it is used only to provide some indication of costs.

effectiveness (SAC, 2008, p. 109). The Tasmanian Sentencing Advisory Council recommended against its adoption for similar reasons (TSAC, 2016, p. 83). Similarly, the Queensland Drug and Specialist Courts Review found considerable stakeholder concern about the short duration of a sentence that legally sits high in the sentencing hierarchy, thus representing a serious penalty (Freiberg et al., 2016, p. 169). And the NSW Law Reform Commission also recommended that ICOs be repealed as they were underused and inappropriately targeted, with limited opportunities for rehabilitation and community work in some rural and remote areas contributing to limitations on their use (NSWLRC, 2013, pp. 195, 201-202).

Nonetheless, ICOs have been retained in NSW and strengthened under the September 2018 reforms. Data from Corrective Services NSW show that there has been steady growth each year in the number of offenders sentenced to an ICO, almost tripling from 738 in 2010-11 to 2,166 in 2017. At the same time, there has been a substantial growth in the number of ICOs registered with Corrective Services NSW each year, from 1,229 to 5,996 – a 388% increase over the seven years, including a 97% increase since 2015 (NSW Sentencing Council, 2018, p. 38).

**Figure 18: The number of offenders sentenced to an ICO and the number of ICOs registered with Corrective Services NSW, 2010-2017**



Source: Corrective Services NSW (2018)

NSW courts data show that the number of ICOs issued as the principal penalty has steadily increased each year since 2011, as has the percentage of ICOs issued, as a proportion of total principal penalties. Despite the numerical increases, offenders on ICOs continue to represent

only a small proportion of the offender population in NSW (NSW Sentencing Council, 2018, p. 40).

**Table 6: The number and proportion of people receiving an ICO as the principal penalty in all NSW courts, 2011-2017**

Year	Number of penalties issued	Number of persons receiving an ICO	ICOs as a percentage of total penalties
2011	112,481	620	0.6
2012	105,837	898	0.8
2013	107,013	1032	1.0
2014	110,702	1285	1.2
2015	118,121	1337	1.1
2016	124,623	1528	1.2
2017	127,696	1805	1.4

Source: BOCSAR (2018)

The proportion of ICOs that are successfully completed has been steadily falling in NSW, from 78.5% in 2010-12 to 66.7% in 2017 (NSW Sentencing Council, 2018, p. 47).

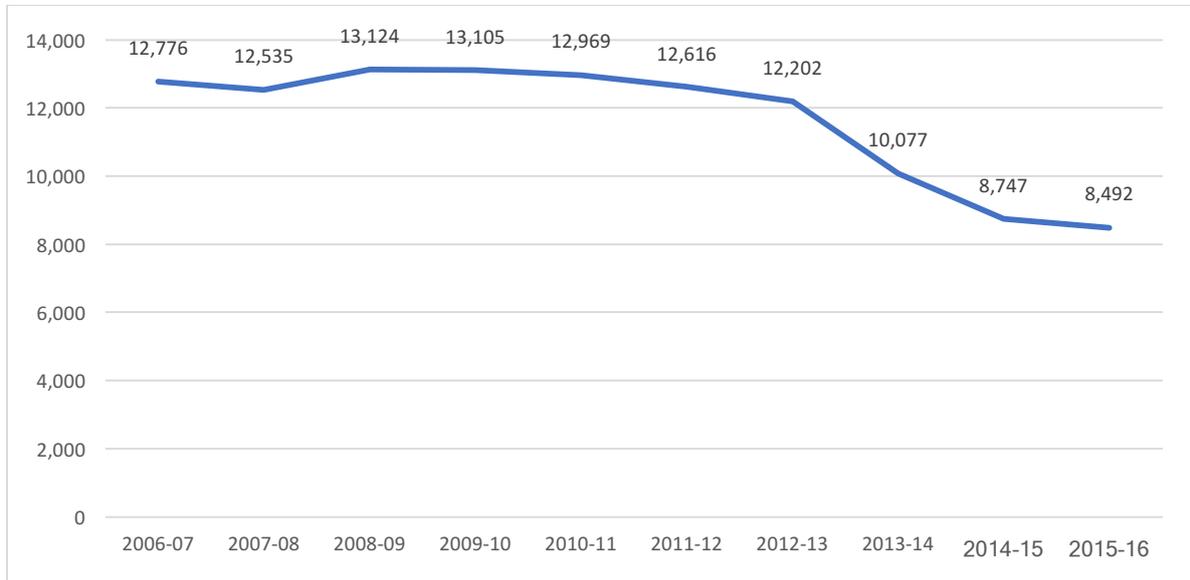
**Table 7: Discharges of ICOs, NSW, 2010-2017**

Reason for discharge	2010 - 2012		2013		2014		2015		2016		2017	
	No	%										
ICOs successfully completed	1032	78.5%	1262	72.8%	1570	70.9%	1917	71.3%	2233	70.2%	3039	66.7%
ICOs Revoked	261	19.8%	436	25.2%	589	26.6%	717	26.7%	896	28.1%	1381	30.3%
ICO discharged for other reasons	22	1.7%	35	2.0%	54	2.4%	54	2.0%	54	1.7%	139	3.0%
<b>TOTAL</b>	<b>1315</b>	<b>100%</b>	<b>1733</b>	<b>100%</b>	<b>2213</b>	<b>100%</b>	<b>2688</b>	<b>100%</b>	<b>3183</b>	<b>100%</b>	<b>4559</b>	<b>100%</b>

Source: Corrective Services NSW (2018)

The use of conditional sentences of imprisonment in Canada has also been decreasing steadily over the past decade. In 2006-07, there were 12,776 conditional sentences of imprisonment imposed; by 2015-16, this had fallen 33.5%, to 8,492 (Public Safety Canada, 2018, p. 75).<sup>145</sup>

**Figure 19: Average monthly number of offenders on a conditional sentence of imprisonment, Canada, 2006-07 to 2015-16**



Source: Public Safety Canada (2018), Table C22

## 2.4 Home detention orders

Home detention is designed to confine offenders in their home instead of in prison, thus avoiding the costs and consequences of imprisonment. The New South Wales Court of Criminal Appeal made the point that home detention is a significantly lighter sanction than imprisonment. In *R v Jurisic* (1998), Sully J stated:<sup>146</sup>

I accept that the standard conditions of a home detention order are burdensome; but it seems to me that they are burdensome in the sense of being, by and large, inconvenient in their disruption of what would be the normal pattern and rhythm of the offender's life in his normal domestic and vocational environment. Any suggestion that such inconvenient limitations upon unfettered liberty equate in any way at all to being locked up full-time in the sort of prison cell and within the sort of gaol that are normal in New South Wales could not be accepted, in my respectful view, by anybody who has had the opportunity of going behind the walls of any one of those prison establishments; and of seeing, even from the limited point of view of a casual visitor, what is really entailed by a full-time custodial sentence.

<sup>145</sup> Data from the Statistics Canada (2019) online statistics are slightly different from data reported in the Public Safety Canada (2018) *2017 Annual Report*, likely due to updated figures.

<sup>146</sup> *R v Jurisic* (1998) 45 NSWLR 209; 101 A Crim R 259; 29 MVR 49 at 295 (A Crim R).

Home detention takes different forms and can be utilised at various stages of the criminal justice process: as a component of bail designed to ensure the defendant's appearance at trial and non-interference with witnesses, in sentencing following conviction as a 'front-end' alternative to incarceration (when offenders have their sentences of imprisonment fully suspended and are instead sentenced to serve their time at home), and, more commonly, for eligible offenders on the 'back end' of sentences after a specific period of incarceration, as part of parole or as a distinct stage in the sentence. At this post-custody stage, home detention is most frequently targeted at low-to-medium risk, non-violent offenders (Cale and Burton, 2018, p. 37).

Home detention as a sentence or post-sentence option is currently available in three Australian jurisdictions:<sup>147</sup> Tasmania, South Australia and the Northern Territory.<sup>148</sup> In New South Wales, home detention is no longer a discrete sanction, but may be incorporated as a component of an intensive correction order.<sup>149</sup> Home detention has not been available in Victoria since 2012, before which it was available both as a stand-alone front-end sentence and as a back-end part of parole (SAC, 2008, p. 81).

England and Wales has a back-end home detention curfew scheme, under which eligible prisoners are released early under strict monitoring conditions and a 7pm to 7am curfew. It is available for prisoners who are not sex offenders and who are serving a term of imprisonment of less than four years. Similarly, the Scottish home detention curfew scheme allows prisoners (mainly those on short sentences) to serve up to a quarter of their sentence on licence in the community while under electronic monitoring (Scottish Prison Service, nd).

After abolishing home detention as a back-end option in October 2007, New Zealand now offers home detention as a sentence in its own right, positioning the order below a term of imprisonment in the sentencing hierarchy and above community-based sentences.<sup>150</sup> It is therefore not linked to a term of imprisonment. The order was designed as an alternative to short sentences of imprisonment, giving greater flexibility to judges (Bullock, 2011, p. 1).

In Canada, home detention is imposed as a condition of another order: conditional sentences often include a component of 'house arrest' – a sentence of imprisonment served in the community, with one component served at home. The purpose of the Canadian conditional sentence is to reduce the reliance on incarceration as a sanction and increase restorative justice objectives.<sup>151</sup>

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<sup>147</sup> Home detention is also available in Western Australia as a pre-trial condition of bail: *Bail Act 1982* (WA) s 13(2).

<sup>148</sup> *Sentencing Act 1997* (TAS) pt 5A; *Sentencing Act 2017* (SA) div 7, subdiv 1; *Sentencing Act 1995* (NT) pt 3, div 5, subdiv 2.

<sup>149</sup> *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) (Act No 53, 2017).

<sup>150</sup> *Sentencing Act 2002* (NZ) s 10A.

<sup>151</sup> As the Canadian conditional sentence is arguably most similar to an intensive correction order in Australia, details of the order are discussed in detail under section 2.3 of this report on intensive correction orders.

### 2.4.1 Legislative structure and composition

Home detention as a ‘front-end’ order has been given similar legislative form in numerous jurisdictions. Differences arise in terms of whether home detention is a substitution for imprisonment or a sentence in its own right, and in details such as the maximum allowable duration of an order or the specific offences for which it may/may not be imposed. While conditions on home detention orders vary slightly to suit local contexts, they are broadly similar across jurisdictions. One main difference lies in whether electronic monitoring of home detention offenders is mandatory or optional.

#### *Nature of order*

Since December 2018, home detention orders have been available in Tasmania as a discrete sentencing option. A home detention order may be imposed if the court considers that, were it not to make an order for home detention, it would have sentenced the offender to a term of imprisonment.<sup>152</sup> It may not be imposed for family violence offences, a violent or sexual offence against a victim who resides at a potential home detention location, or if the court finds that there is a high risk of a violent or sexual offence being committed during the order.<sup>153</sup> The operational period of a home detention order may not be more than 18 months.<sup>154</sup>

In South Australia, home detention became available for sentences imposed on or after 1 September 2016.<sup>155</sup> It is designed to allow a court to impose a custodial sentence but to direct that it be served in the home instead of prison. The court must first decide that a term of imprisonment is to be imposed, but that the term not be suspended under a bond. It is not available for offenders being sentenced for murder, treason, terrorism-related offences or for those serving a sentence of indeterminate length, or for any other offence for which mitigation or substitution of sentence is prohibited.<sup>156</sup> Home detention is also not available for serious organised crime offences, specified offences against police or serious sexual offences unless there is a special reason for imposing the order.<sup>157</sup>

Home detention is also a substitutional sanction in the NT, where a term of imprisonment is first imposed then suspended; if the offender does not comply, they will be sent to prison to serve the full sentence. The order may only be imposed where the total term of imprisonment is less than 12 months, with the court specifying the premises where the offender must live. A court may only make a home detention order if the proposed premises are suitable, the order is unlikely to inconvenience or put at risk other people living there or the community in

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<sup>152</sup> *Sentencing Act 1997* (TAS) s 42AC(1)(b).

<sup>153</sup> *Sentencing Act 1997* (TAS) s 42AC(3).

<sup>154</sup> *Sentencing Act 1997* (TAS) s 42AF(2).

<sup>155</sup> Prior to this, home detention in South Australia was applied as a ‘back-end’ option for people who had served at least half of the non-parole period of their term of imprisonment (Cale and Burton, 2018, p. 38).

<sup>156</sup> *Sentencing Act 2017* (SA) s 70(1).

<sup>157</sup> *Sentencing Act 2017* (SA) s 71(2)(b).

general, and the offender consents.<sup>158</sup> A home detention order may be made in addition to imposing a fine on the offender.<sup>159</sup>

A home detention order may be reviewed at any time by a court. If it appears to be in the interests of justice to do so – having regard to circumstances that have arisen since the order was made – the court may vary the terms and length of the order, discontinue it and require that the offender complete their sentence in prison, or revoke the order and sentence the offender anew.<sup>160</sup>

Similar provisions exist for home detention in New Zealand, where a sentence of home detention may be imposed for between 14 days and 12 months,<sup>161</sup> for any offence for which home detention is expressly provided,<sup>162</sup> and for any offence punishable by imprisonment – in particular, in circumstances where the court would otherwise have sentenced the offender to a short term of imprisonment.<sup>163</sup> Unlike in Australia, there are no specific offence exclusions; this broad provision allows home detention to be available for very serious offences in New Zealand, including manslaughter.<sup>164</sup>

Home detention is seen as a versatile order, and may be combined with a fine, reparation of community work,<sup>165</sup> enabling a wide application of the order and ensuring that the least restrictive sentence is imposed (Bullock, 2011, p. 2). Electronic monitoring is a standard condition of sentences of home detention.<sup>166</sup>

In NSW, home detention is now taken to be an intensive correction order that is subject to standard ICO conditions plus a home detention condition. It is the intensive correction order that is the substitutional sentence: section 7(1) *Crimes (Sentencing Procedure) Act 1999* (NSW) provides that a court that has sentenced an offender to imprisonment may make an

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<sup>158</sup> *Sentencing Act 1995* (NT) s 45(1).

<sup>159</sup> *Sentencing Act 1995* (NT) s 48B(4).

<sup>160</sup> *Sentencing Act 1995* (NT) s 47(1).

<sup>161</sup> *Sentencing Act 2002* (NZ) s 80A(3).

<sup>162</sup> *Sentencing Act 2002* (NZ) s 80A(1).

<sup>163</sup> *Sentencing Act 2002* (NZ) s 15A(1). A short term of imprisonment means a term of two years or less: *Sentencing Act 2002* (NZ) s 4; *Parole Act 2002* (NZ) s 4(1).

<sup>164</sup> See, for example: *Mouat v R* Court of Appeal, Clifford J, Dobson J, Collins J [2017] NZCA 603. In this case, a man returned home drunk to his wife, who pushed him out of the door, causing him to fall and receive a fatal head injury. After applying mitigating factors to the initial 22 months' imprisonment sentence, the head sentence was 17 month' imprisonment, which was then converted to 11 months of home detention. An appeal on the grounds of manifest excess was unsuccessful. This case highlights that, despite being unavailable for homicide offences in Australia, it is available for such offences in New Zealand. In contrast, an appeal of a refusal to grant leave to apply for home detention was unsuccessful for a man convicted of indecent assault on a child under 12 due to the seriousness of his offending and his attitude to the offending. In this case, the Court of Appeal held that the question of whether home detention was an adequate response to offending was a matter of judgment for which judges had significant margin to decide (*Twomey v R* Court of Appeal, Williams J, Venning J, Mander J [2018] NZCA 206).

<sup>165</sup> *Sentencing Act 2002* (NZ) s 19(8).

<sup>166</sup> *Sentencing Act 2002* (NZ) s 80C(2).

ICO directing that the sentence be served by way of intensive correction in the community (Judicial Commission of NSW, 2018, section 3-600).<sup>167</sup>

### *Conditions*

Home detention can come with significant conditions attached, in addition to those specifying where the offender must live and remain. For example, where appropriate, the offender will be required to undergo drug, alcohol and gambling counselling. Offenders can still leave home to participate in approved activities such as employment or further education. To ensure compliance with the order, the offender will typically (though not always) be subject to electronic monitoring, wearing a signal-transmitting bracelet that will automatically notify authorities of a breach of any curfew or other requirements (Bagaric, Edney and Alexander, 2018, p. 690).

Conditions attached to home detention orders are broadly consistent in all jurisdictions where home detention may be imposed.

New Zealand, however, provides for the imposition of both standard and special post-detention conditions for no more than 12 months on offenders who have completed their sentences of home detention.<sup>168</sup> Although special post-detention conditions may include any condition that the court thinks fit to reduce the likelihood of further offending,<sup>169</sup> courts may not impose a special post-detention condition that the offender submit to electronic monitoring.<sup>170</sup> This prohibition does not prevent the court from imposing a drug or alcohol condition that requires continuous monitoring to detect any substance use.<sup>171</sup>

New Zealand also allows the imposition of a judicial monitoring condition,<sup>172</sup> and specifically acknowledges restorative justice activities within the scheme by allowing home detention offenders to leave their residence to attend a restorative justice conference or undertaking.<sup>173</sup>

### *Revocation, termination and breach*

Generally, the court retains considerable discretion in responding to failures to comply or breaches of a home detention order.

If an offender on home detention in South Australia has breached a condition or if the residence is no longer suitable and no other is available, the court must revoke the order and the balance of the sentence be served in prison.<sup>174</sup> However, the court retains discretion

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<sup>167</sup> As home detention is now part of an intensive correction order in NSW, it is discussed in detail under section 2.3 of this report on intensive correction orders.

<sup>168</sup> *Sentencing Act 2002* (NZ) s 80N.

<sup>169</sup> *Sentencing Act 2002* (NZ) s 80P(2)(d).

<sup>170</sup> *Sentencing Act 2002* (NZ) s 80P(4).

<sup>171</sup> *Sentencing Act 2002* (NZ) s 80P(4A).

<sup>172</sup> *Sentencing Act 2002* (NZ) s 80D(3).

<sup>173</sup> *Sentencing Act 2002* (NZ) s 80C(3)(c).

<sup>174</sup> *Sentencing Act 2017* (SA) s 73(1).

around breach: if the failure to comply is trivial or may be excused, revocation is not required.<sup>175</sup> It is an offence to fail to comply with a condition or contravene the home detention order, with a maximum penalty of \$10,000 or two years' imprisonment.<sup>176</sup>

In the NT, if a home detention order is breached, by either reoffending or non-compliance, the offender may be required to serve the outstanding balance of the sentence in prison. If the breach is a further offence, the offender must serve the suspended sentence. However, if the further offence is a regulatory offence or is not punishable by imprisonment, the court does not have to order that the suspended sentence be served. Any prison term incurred for the new offence must be served cumulatively.<sup>177</sup> Where other breaches occur, the court can revoke the home detention order, allow it to continue, extend the period it is in force or vary it.

#### 2.4.2 Practical application – use and breach

As part of its review of suspended sentences and intermediate sentencing orders, the Victorian Sentencing Advisory Council examined the use of home detention in both Australian and international jurisdictions. They found that home detention was seldom used in Australia at the time: as at 1 March 2007, there were 221 offenders subject to home detention or some other form of restricted movement in NSW and 34 such offenders in the NT. When still available as a 'back-end' order in Queensland, there were 4,218 offenders on home detention over the ten years to 2004-05.

Nonetheless, home detention programs appear to have had substantial success. The Tasmanian Sentencing Advisory Council cited successful completion rates of 88.5% for orders in NSW in 2012-13, 96.6% for orders in Victoria in 2011-12, and 80% for orders in the NT in 2012-13 (TSAC, 2016, p. 63).

##### *The use of home detention in Victoria*

Most of the orders made in Victoria were 'back-end' rather than 'front-end': of the 138 home detention orders made over the two years to 2006–07, less than half (40.6%) were ordered by the court. In 2006–07, of the 42 home detention orders made by way of sentence, 40 were ordered by the Magistrates' Court and two by the County Court. During 2006–07, the Adult Parole Board revoked nine orders, all due to positive urinalysis results (SAC, 2008, p. 90).

The SAC's analysis showed that the most common offence for which home detention was used in the Magistrates' Court was for the offence of driving while disqualified or suspended, mostly of three to four months in duration. Other offences for which a home detention order was imposed in the Magistrates' Court included drink driving offences, and some minor drug trafficking offences. Of the two home detention orders imposed in the County Court, one was

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<sup>175</sup> *Sentencing Act 2017* (SA) s 73(2).

<sup>176</sup> *Sentencing Act 2017* (SA) s 78.

<sup>177</sup> *Sentencing Act 1995* (NT) s 48(13).

imposed for trafficking in a drug of dependence and the other for defrauding the Commonwealth (SAC, 2008, p. 90).

The nexus between imprisonment and home detention, and the penal equivalence of the two, were identified as key issues in limiting its use in Victoria. Notably, the SAC found that the use of home detention was limited due to a number of issues with its conceptualisation (SAC, 2008, pp. 90-91):

- the requirement that a court must first impose a term of imprisonment before the offender's suitability for home detention is assessed, which limits the information available to a sentencer at the time of sentencing and removes the discretion to impose another form of sentence if the offender is found ineligible or unsuitable to serve the sentence by way of home detention;
- the stringent eligibility criteria, which result in a number of offenders being found ineligible for the order due to the nature of their current or past offending, despite these offenders being at low risk of reoffending, and the availability of the order only to offenders living within a 40 kilometre radius of the Melbourne CBD; and
- a lack of clarity on the part of sentencers concerning the intended target group for the order.

The SAC ultimately recommended that home detention be recast as a separate sentencing order in its own right (SAC, 2008, p. 97).

An evaluation of the Victorian home detention pilot program found that breach and revocation rates were low, with only five serious breaches leading to revocation of an order, and a further 15 minor breaches. Three orders were also revoked because co-residents withdrew consent and/or the offender was unable to provide suitable accommodation. Breach and revocation rates were much lower on the post-prison component of the program than on the sentence component (SAC, 2008, p. 89).

#### *The use of home detention in NSW*

Analysis of NSW data found that only 2.4% of all supervised community-based orders that were discharged in 2003 and 2004 were for home detention (an annual average of 399 orders). Of these, 109 were for offences against good order, 132 were for driving offences and 122 were imposed for theft offences (Potas, Eyland and Munro, 2005, p. 9).

An average of 82.7% of home detention orders were successfully completed each year – more than for community service orders (76.5%) but less than suspended sentences (83.8%) or bonds (88.9%).<sup>178</sup> The median length of successful home detention orders was six months, compared with seven months for home detention orders that were revoked (Potas, Eyland and Munro, 2005, pp. 5-7).

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<sup>178</sup> These figures should be treated with caution as offenders on the different orders were not matched, such that there may have been differences between the groups in the likelihood of receiving each type of order in the first place. These differences may, in turn, have affected the likelihood of successful order completion.

More recent data show even higher rates of success in NSW, with completion of ‘restricted movement orders’ at 90.5% for 2017-18 (SCRGSP, 2019, Table 8A.19).

While the NSW Law Reform Commission noted that home detention had some advantages over full-time imprisonment, especially in terms of allowing an offer to retain employment and housing and to remain in contact with family, it nonetheless acknowledged a number of issues that affected its use. In particular, obstacles to the use of home detention in NSW included (NSW Law Reform Commission, 2013, pp. 199-217):

- the lack of availability of home detention in many regional and remote locations;
- the broad offence exclusion criteria;
- the short maximum duration of the order; and
- various barriers to suitability.

These issues are broadly similar to those identified by the Victorian Sentencing Advisory Council in its earlier review.

#### *The use of home detention in South Australia*

Cale and Burton (2018) provided a statistical overview of the profile of all 317 prisoners released in 2014-15 under ‘back-end’ home detention as part of parole in South Australia. Their analysis revealed how infrequently this form of parole was being used: only 317 offenders were released to home detention between June 2014 and June 2015.

Home detention prisoners had been incarcerated most commonly for drug-related offences (30.9%), although violent offences (21.8%) and administrative offences (19.2%) were also common. About one in 12 prisoners on home detention (15.8%) had breached their order: 17.2% of males and 8% of females, with most new offences being administrative offences (82.3%) and only 8.1% breaching with a violent offence (Cale and Burton, 2018, pp. 43-45).<sup>179</sup>

More recent data show somewhat lower completion rates for ‘restricted movement orders’ in South Australia – 79.4% for 2017-18 (SCRGSP, 2019, Table 8A.19).

#### *The use of home detention in other jurisdictions*

Since the introduction of the home detention scheme in New Zealand in late 2007, the number of people on home detention orders increased to a monthly average of around 1,500 to 1,600 by 2011.

Home detention has typically been used in New Zealand for a wide range of offences. In relation to home detention sentences imposed over the 2007-2010 period, the two largest groups were those convicted of dangerous acts and traffic offences (26.4%) and property and environmental offences (25.2%). Violent offences (primarily assault) accounted for 20.3% of home detention sentences, with 13.6% of such sentences imposed for drug offences and 8.4%

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<sup>179</sup> This difference was not statistically significant.

for against justice offences. Only 3.1% of home detention sentences were imposed for sexual offences, primarily indecent assault (Ministry of Justice [NZ], 2011, pp. 12-13).

In rare instances (less than 2% of cases), home detention orders have been imposed for very serious offences: between 2007 and 2010, home detention was imposed for one murder, four manslaughters, 43 sexual offences and 90 drug offences (Ministry of Justice [NZ], 2011, p. 23).

As part of its review of suspended sentence and intermediate sentencing orders, the SAC found that the annual rate of recall of offenders on home detention in New Zealand was around 1%-1.5% (SAC, 2008, p. 90). However, other sources suggest that more than one-quarter (27%) of detainees breached their conditions, although it is likely that many of these breaches were minor (Bullock, 2011, p. 6). Indeed, data from the New Zealand Department of Corrections show that 21.0% of those sentenced to a home detention order were convicted of an offence while on the order. They note, however, that the vast majority of these offences related to the administration of the sentence rather than other criminal offences and were of low seriousness (Ministry of Justice [NZ], 2011, p. 18). Ultimately, the Department of Corrections deemed more than 80% of home detention sentences served during 2008-09 and 2009-10 to have been successfully completed, although this does not necessarily mean that there was no breach action taken at some point (Ministry of Justice [NZ], 2011, p. 16).

The home detention curfew scheme in England and Wales does not appear to be used as commonly as first thought. From the time the scheme was introduced in 1999, aiming to provide a managed transition from prison to community for offenders serving short sentences, it was expected that release to the scheme would be a normal part of the sentence for most eligible offenders. However, 2016 data showed that only 21% of offenders potentially eligible for the scheme were in fact released (Ministry of Justice [UK], 2018).

### 2.4.3 Costs and resource implications

While home detention is acknowledged as the most expensive and intensive community-based sentencing option, it is also consistently and significantly cheaper than a term of imprisonment. A report by the NSW Auditor-General found that the net operating expenditure per person per day on home detention was about \$47 compared to about \$187 for an offender in a minimum/medium security prison (Audit Office of NSW, 2010, p. 26). In New Zealand, the costs of home detention were compared with the costs associated with administering other types of sentences. Data from the Ministry of Justice show the daily cost of administering a sentence and the costs for a six-month order:

**Table 8: Cost per offender of administering home detention sentence, New Zealand**

Sentence	Daily cost* \$	Six month term \$
Home detention	58	10,486
Community detention	17	3,046
Intensive supervision	17	3,116
Supervision	12	2,243
Community work	7	1,242
Imprisonment	249	45,500

\* Daily costs are rounded to nearest dollar

*Source: Ministry of Justice [NZ] (2011), p. 9*

In New Zealand, the total management cost for home detention as at October 2015 was \$77.22 per offender per day, with \$20.50 of that attributable to the electronic monitoring component (TSAC, 2016, p. 66). These figures illustrate that the costs and resource implications of home detention vary according to the nature of the conditions associated with the order, particularly around the use of electronic monitoring.

Electronic monitoring accrues costs related to purchasing and maintaining equipment, installation, monitoring, responding to notifications and staff training. For example, the Urban Institute has estimated the cost of GPS equipment to range from \$1 to \$12 per day, while the cost of monitoring was estimated at \$8 per day, giving a total cost of electronic monitoring in Washington DC ranging from \$9 to \$20 per day (Urban Institute, 2012, p. 7). In California, the cost of GPS monitoring of high-risk sex offenders has been estimated at \$36 per day, compared with \$27.50 for traditional supervision. However, the reduction in arrests associated with electronic monitoring – 14% versus 26% rearrest rate – arguably makes this option cost-effective in the longer term (Gies et al., 2012). Electronic monitoring has also been shown to be significantly more cost-effective than a short term of imprisonment: one study in Florida found that the cost of one inmate in prison was comparable to six on GPS monitoring and 28 on radio frequency monitoring (Bales et al., 2010).

According to Bullock (2011), it was estimated in 2006 that a stand-alone sentence of home detention would save some 310 prison beds, offering the potential for significant fiscal savings. The cost of monitoring a person sentenced to home detention at that time was \$21,640 per annum, compared with \$59,170 for a minimum-security prisoner. Further, if an offender remains working the Government retains tax revenue (Bullock, 2011, p. 6).

In 2007, the Victorian home detention program was estimated to cost \$1.6 million per year to operate. Based on the program operating at full capacity (80 offenders), the cost per offender per year was estimated at \$20,000, compared with more than \$50,000 annually to house a prisoner in a minimum-security prison (Corrections Victoria: cited in Sentencing Advisory Council, 2008, p. 82). The evaluation of Victoria's pilot program found that it returned \$1.80 in benefits for every \$1 spent, and also resulted in low parole breach rates, reduced cost of crime and improved family outcomes (Melbourne Centre for Criminological Research and Evaluation, 2006, p. 70).<sup>180</sup>

#### 2.4.4 Changing use of home detention

Although home detention was originally provided for in some jurisdictions as a front-end sentence – either substitutional or discrete – it has rarely been used as such. The Tasmanian Sentencing Advisory Council found that the use of home detention in NSW had halved between 2005 and 2012, to only 161 offenders. Home detention accounted for only 1.4% of the caseload of community corrections in the Northern Territory in 2013, while in Victoria, the court made only 10 home detention orders in 2009-10 (TSAC, 2016, p. 66).

Reflecting its infrequent use, home detention is no longer available in either Victoria (where it was repealed with the advent of community correction orders) or NSW (where it is now simply a component of an intensive correction order).

This is not to suggest that home detention is likely to disappear entirely. Indeed, in 2016, the Tasmanian Sentencing Advisory Council recommended that home detention be introduced as a sentencing option for offenders currently on suspended sentences who are typically unsupervised in the community (TSAC, 2016, p. 71):

Home detention is an effective sentencing option in other jurisdictions with high completion rates and relatively low recidivism rates. It is able to address multiple aims of sentencing and provides an onerous sentencing order that both punishes an offender, deters the offender and others from committing offences, and assists in addressing the offender's rehabilitative needs. It allows the offender to maintain family and community connections and remain in employment. Conditions attached to the order also provide community protection by the supervision requirement and the restrictions placed on the movement and activities of the offender.

For offenders on a fully suspended sentence, the Tasmanian Sentencing Advisory Council believes that 'home detention is likely to be a more onerous sanction, as offenders who receive home detention do not 'walk free' but are subject to considerable restriction in the community' (TSAC, 2016, p. 72). Amendments to the *Sentencing Act 1997* (TAS) were proclaimed in December 2018.

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<sup>180</sup> The measured costs of the program included the recurrent operating costs and the supply and maintenance of the equipment. It appears that additional components of home detention programs, such as support services, drug and alcohol monitoring and treatment programs, were not included in the costing.

In suggesting that home detention be adopted as a credible alternative to fully suspended sentences, the Tasmanian Sentencing Advisory Council closely modelled its proposal on the New Zealand experience of home detention.

The New Zealand version of home detention – where it is a sentence in its own right and not a substitute for a term of imprisonment – appears to have enjoyed broad acceptance by the courts: rates of use of home detention have increased from 3.1% of all adults convicted in 2008 (or 2,633 adults sentenced to home detention) to 5.5% in 2018, with 2,982 adults sentenced to home detention (Stats NZ, 2018).

The availability of home detention as a viable alternative to imprisonment in New Zealand was highlighted by the Court of Appeal in *R v Iosefa*<sup>181</sup> (cited in TSAC, 2016, p. 67), in which it was stated that home detention:

carries with it in considerable measure, the principles of deterrence and denunciation. It is clear parliamentary policy that for short-term sentences, those of two years or less, the restriction on liberty through home detention can more appropriately be imposed by a sentence of home detention than by imprisonment.

## 2.5 Community service orders

A community service order is an intermediate sanction that requires the offender to perform some form of unpaid work. When imposing such orders, the sentencing court also often has a discretion to compel the offender to participate in appropriate training or support, such as a drug rehabilitation program.

These sanctions are variously named across Australia, but are most commonly known as community service orders. As with most other intermediate sanctions, they can only be imposed with the consent of the offender (Bagaric, Edney and Alexander, 2018, p.666). The court will only impose a community service order if it is satisfied that the offender is suitable and able to undertake the work required.

The effect of a community service order is that the offender is required to perform unpaid work in the community for the number of hours stated in the order. The specific nature of the work to be performed is determined by the local corrective services agency, and will depend on both the capabilities of the individual offender and the opportunities available within the community.

Community service orders attempt to meet a number of sentencing objectives. The work requirement may be viewed as satisfying the punitive purposes of deterrence and retribution. In addition, by performing work, this type of order allows for the community to be compensated in an indirect manner for the offending, facilitating reparation. This aim is given

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<sup>181</sup> [2008] NZCA 453.

explicit recognition in the Northern Territory, which provides that the purpose of community work orders is:<sup>182</sup>

to reflect the public interest in ensuring that a person who commits an offence makes amends to the community for the offence by performing work that is of benefit to the community.

Community service orders as a distinct sentence were available in most jurisdictions in Australia,<sup>183</sup> until NSW and Tasmania replaced their respective community service orders with community correction orders in late 2018.<sup>184</sup> Both jurisdictions adopted the approach taken in Victoria, where there is no separate community service order – unpaid community work may be imposed as a condition of a community correction order.<sup>185</sup> In NSW, community service work is now an optional condition that may be attached to an intensive correction order<sup>186</sup> or a community correction order.<sup>187</sup> In Tasmania, community service is now a special condition that may be attached to a community correction order.<sup>188</sup> Similarly, Western Australia provides for a community service requirement that may be attached to a community-based order<sup>189</sup> or to an intensive supervision order,<sup>190</sup> as does the ACT with its good behaviour order.<sup>191</sup>

As a result of these most recent reforms, only three of the states and territories in Australia now offer community service as a distinct sentence – Queensland, South Australia and the Northern Territory – while it is an optional condition in the remaining five states.

Among other common law nations, Northern Ireland<sup>192</sup> has a community service order while New Zealand<sup>193</sup> legislation provides for a community work sentence. In the UK, unpaid community work may be imposed as a condition (or ‘requirement’ as it is termed) of a community order.<sup>194</sup> Similarly, community service may be imposed in Canada as an optional

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<sup>182</sup> *Sentencing Act 1995* (NT) s 33A.

<sup>183</sup> They are known as community service orders in Queensland (*Penalties and Sentences Act 1992* (QLD) ss 100-110) and South Australia (*Sentencing Act 2017* (SA) s 105), and as community work orders in the Northern Territory (*Sentencing Act 1995* (NT) ss 33A-39). Community service in South Australia may also be imposed as a condition of a bond (*Sentencing Act 2017* (SA) s 105(1)).

<sup>184</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 7; *Sentencing Act 1997* (Tas) pt 5B. The new community correction order in each jurisdiction is discussed in section 2.7 of this report.

<sup>185</sup> *Sentencing Act 1991* (Vic) s 48C.

<sup>186</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 73A(2)(d).

<sup>187</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 89(2)(b).

<sup>188</sup> *Sentencing Act 1997* (Tas) s 42AP(1)(d).

<sup>189</sup> Every community-based order must contain at least one of the primary requirements of supervision, program participation or community service: *Sentencing Act 1995* (WA) s 64.

<sup>190</sup> Every intensive supervision order must contain at least one of the primary requirements of program participation, community service or a curfew: *Sentencing Act 1995* (WA) s 72.

<sup>191</sup> *Crimes (Sentencing) Act 2005* (ACT) s 13(3)(b).

<sup>192</sup> *Criminal Justice (Northern Ireland) Order 1996* ss 13-15.

<sup>193</sup> *Sentencing Act 2002* (NZ) ss 55-69A.

<sup>194</sup> *Criminal Justice Act 2003* (UK) s 199.

condition of a probation order<sup>195</sup> or a conditional sentence order<sup>196</sup> and in Scotland as a requirement of a community payback order.<sup>197</sup>

The following section focuses on those jurisdictions in which a discrete sentence involving unpaid community work may be imposed.

### 2.5.1 Legislative structure and composition

Community service orders in their various guises in different jurisdictions share many features. This section discusses the legislative structure and composition of these orders by providing a general overview of their similarities, before offering details of the ways in which the orders differ across jurisdictions.

#### *Nature of order*

In Australia, community service orders are limited in their duration and constrained in the number of hours of work that may be required. The South Australian community service order may be imposed for up to 18 months,<sup>198</sup> with between 15 and 300 hours of work required.<sup>199</sup> Queensland courts may impose an order that requires between 40 and 240 hours of unpaid work (to be completed within 1 year from the making of the order, unless the court provides for an extension),<sup>200</sup> while the Northern Territory community work order may require up to 480 hours of work.<sup>201</sup>

In both South Australia and the Northern Territory, there are no constraints on the seriousness of the offence for which a community service order may be imposed. In Queensland, however, a community service order may be imposed if the court convicts an offender of an offence punishable by imprisonment<sup>202</sup> or a regulatory offence.<sup>203</sup> In addition, certain public order offences and offences of personal violence attract mandatory community service penalties in Queensland, regardless of whether the court also makes another order.<sup>204</sup>

The approach in the Northern Territory differs from other Australian jurisdictions in that the community work order is directed solely to punitive and reparative aims. It does this as the court is not empowered to make any order additional to community work; it therefore cannot include orders to participate in programs or be subject to additional supervision. In this regard, the Northern Territory is unique in not providing a nexus between the treatment and

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<sup>195</sup> *Criminal Code*, RSC 1985, c C-46 s 732.1(3)(f).

<sup>196</sup> *Criminal Code*, RSC 1985, c C-46 s 742.3(2)(d).

<sup>197</sup> *Criminal Justice and Licensing (Scotland) Act 2010* s 227A(2)(c).

<sup>198</sup> *Sentencing Act 2017* (SA) s 105(1)(c).

<sup>199</sup> *Sentencing Act 2017* (SA) s 105(1)(a).

<sup>200</sup> *Penalties and Sentences Act 1992* (Qld) ss 103(2)(a)-103(2)(b).

<sup>201</sup> *Sentencing Act 1995* (NT) s 34(1).

<sup>202</sup> This constraint also applies in New Zealand and Northern Ireland.

<sup>203</sup> *Penalties and Sentences Act 1992* (Qld) s 101.

<sup>204</sup> *Penalties and Sentences Act 1992* (Qld) s 108B.

punitive aspects of this type of intermediate sanction (Bagaric, Edney and Alexander, 2018, p. 675).

The Tasmanian community service order also provides for an element of restorative justice, in that a probation officer may arrange for an offender who is subject to a community service order to perform community service for the benefit of the victim of his or her offending.<sup>205</sup>

The community service order in Northern Ireland has some constraint on the type of offending for which it may be imposed, as it is available for offenders convicted of an offence punishable by imprisonment for which there is no fixed penalty.<sup>206</sup> In both New Zealand and Northern Ireland, the minimum number of hours of community work required is 40; the maximum in New Zealand is 400,<sup>207</sup> while in Northern Ireland it is 240.<sup>208</sup>

Community service orders in Northern Ireland must all be completed within 12 months.<sup>209</sup> Community work sentences in New Zealand, however, may vary in duration depending on the number of hours required. Orders that involve fewer than 100 hours of work must be served within six months; if the order requires more than 100 hours, the offender must perform at least 100 hours of work in every six-month period.<sup>210</sup>

Of particular interest are the New Zealand provisions for offenders serving orders requiring at least 80 hours of community work that allow the probation officer to direct that work hours be converted to training in basic work and living skills.<sup>211</sup> With the offender's consent to undertake the training, up to 20% of the required hours may be acquitted in this way.<sup>212</sup> New Zealand is also unusual in allowing up to 10% remission of hours for offenders who have a good record of compliance.<sup>213</sup>

Finally, Northern Ireland allows a community service order to be combined with a probation order in the interests of securing rehabilitation or protecting the public.<sup>214</sup> In such circumstances, an offender may be under the supervision of a probation officer for one to three years, performing between 40 and 100 hours of community work.<sup>215</sup>

### Conditions

Conditions attached to community service orders are broadly consistent across jurisdictions and similar to the sorts of supervisory requirements associated with other community-based orders, such as not offending during the period of the order, reporting to corrective services

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<sup>205</sup> *Sentencing Act 1997* (Tas) s 33.

<sup>206</sup> *Criminal Justice (Northern Ireland) Order 1996* s 13(1).

<sup>207</sup> *Sentencing Act 2002* (NZ) s 55(2).

<sup>208</sup> *Criminal Justice (Northern Ireland) Order 1996* s 13(2).

<sup>209</sup> *Criminal Justice (Northern Ireland) Order 1996* s 14(2).

<sup>210</sup> *Sentencing Act 2002* (NZ) s 58.

<sup>211</sup> *Sentencing Act 2002* (NZ) s 66A.

<sup>212</sup> *Sentencing Act 2002* (NZ) s 66A(2).

<sup>213</sup> *Sentencing Act 2002* (NZ) s 67.

<sup>214</sup> *Criminal Justice (Northern Ireland) Order 1996* s 15(2).

<sup>215</sup> *Criminal Justice (Northern Ireland) Order 1996* s 15(1).

officers as required, obeying directions and performing the community work in a satisfactory fashion.

The only unusual condition in the jurisdictions examined in this section is found in New Zealand, where offenders who are subject to a sentence of community work must, if directed, allow the collection of biometric information.<sup>216</sup>

### *Revocation, termination and breach*

The sorts of conduct likely to result in a breach hearing will depend on the statutory conditions attached to the order. There are some minor variations in these between jurisdictions. In Tasmania, for example, the requirement that an offender not commit an offence during the period of the order is limited to offences that are punishable by imprisonment,<sup>217</sup> whereas in Queensland the proscription is against committing ‘another offence’.<sup>218</sup>

As with all community-based orders, the effectiveness of the community service order is contingent upon the attitude of the offender who has undertaken to comply with the conditions. As the commitment to undertake community work is ongoing, over a period of a year or more, the offender needs to maintain a level of commitment and self-discipline to be able to complete the order. Reasons for breaching the order can vary, and so the enabling legislation usually provides the court with a significant degree of discretion to select a response to the breach that it believes is suitable in the circumstances. Responses may include extending the order, revoking the order to deal with the offender using any option that would have been available initially, or imposing a term of imprisonment.

South Australian courts have an additional power on failure to comply: the court may cancel all or some of the unperformed hours.<sup>219</sup> Community service orders in South Australia are also unusual in that attendance at an educational or recreational course of instruction may be taken to be performance of community service, with no restriction on the number of hours that may be converted.<sup>220</sup>

## 2.5.2 Practical application – use and breach

Community service orders are widely used, both throughout Australia and in other jurisdictions.

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<sup>216</sup> *Sentencing Act 2002* (NZ) s 59A.

<sup>217</sup> *Sentencing Act 1997* (Tas) s 28(a).

<sup>218</sup> *Penalties and Sentences Act 1992* (Qld) s 103(1)(a).

<sup>219</sup> *Sentencing Act 2017* (SA) s 115(7)(b)(iii).

<sup>220</sup> *Sentencing Act 2017* (SA) s 105(1)(j). Similar provisions exist in New Zealand, except with limits on the number of hours that may be spent in training in lieu of work: *Sentencing Act 2002* (NZ) s 66A.

### *The use of community service orders in Australia*

The most recent data (December quarter 2018) show that 10,627 people were undertaking community service<sup>221</sup> across Australia (ABS, 2019a, Table 17). Nationwide, community service orders accounted for about 13% of all community orders in that quarter.<sup>222</sup>

**Table 9: Number of people undertaking reparation/community service, Australian states and territories, December quarter 2018**

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Aust
Dec Quarter 2018	3,263	2,254	2,333	700	743	1,047	143	142	10,627

*Source: ABS (2019a), Table 17*

Although the community service order has now been replaced by the community correction order in NSW, it was a commonly-used order in that state: NSW accounted for the largest proportion of all people serving a community service order in 2018, at 29.6%. An earlier analysis of NSW data found that 27.0% of all supervised community-based orders that were discharged in 2003 and 2004 were community service orders (an annual average of 4,544 orders) – 1,690 were for driving offences, 1,364 were for theft offences and 846 were imposed for assault (Potas, Eyland and Munro, 2005, p. 9). Of these, an average of 76.5% were successfully completed each year – more than for Drug Court orders (58.7%) but less than bonds (88.9%), suspended sentences (83.8%) or home detention orders (82.7%).<sup>223</sup> The median length of both successful and unsuccessful community service orders was 12 months (Potas, Eyland and Munro, 2005, pp. 5-7).

### *The use of community service orders in other jurisdictions*

In New Zealand, 22.3% of offenders (or 11,990 adults) received a community work sentence as their most serious sentence in 2018 – a decrease of 13% from the previous year (Stats NZ, 2018).

In Northern Ireland, a community service order was imposed for 3.7% of convictions in all courts in 2017, with 839 (or 3.8% of all convictions) in the Magistrates' courts and 42 (or 3.2%) in the Crown Court. There were 435 combination orders (probation plus a community service

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<sup>221</sup> The ABS defines community service as follows: This category of community-based corrections orders includes sentencing options requiring offenders to undertake a specified number of hours of unpaid, supervised work to benefit the community on an approved project. Community service is a sub-category of Reparation, which refers to all offenders with an order that requires them to undertake unpaid, justice agency-approved community service work (ABS, 2019a, Glossary). That is, these data do not differentiate between offenders performing community service work as part of a distinct community service order sentence and those doing so as a requirement or condition of a different order.

<sup>222</sup> The most prevalent order was sentenced probation (59% of all community orders), followed by parole (21%): ABS (2019a), Table 17.

<sup>223</sup> These figures should be treated with caution as offenders on the different orders were not matched, such that there may have been differences between the groups in the likelihood of receiving each type of order in the first place. These differences may, in turn, have affected the likelihood of successful order completion.

order) across all courts, comprising 1.8% of all convictions: 350 were imposed in the Magistrates' courts and 85 in the Crown Court (Department of Justice [Northern Ireland], 2018, Table 5a).

### 2.5.3 Costs and resource implications

The costs of community service as a distinct sentence are difficult to separate from the general costs of supervising offenders in the community.

Several jurisdictions publish information on the costs of supervision more generally. While these data do not specify the cost of community service alone, they are indicative of the costs associated with any order requiring a level of supervision by community corrections officers. The primary component of these costs is the staff required to manage each jurisdiction's caseload.

In Australia, the average net operating cost in 2017-18 of providing corrective services for an offender in the community was \$23.25 per day (SCRGSP, 2019, Table 8A.17), with a total daily average population of 69,634 offenders (SCRGSP, 2019, Table 8A.8).

Morgan (2018) calculated the costs and benefits of imprisonment and community orders. He found that the net cost per day of a community order in Australia was \$18.30, or \$6,516.04 per offender (Morgan, 2018, p. 41).<sup>224</sup>

**Table 10: Average cost of community orders (sentenced period; 2014-15 dollars)**

Cost item	Average value per day	Average value per offender
<b>Costs</b>		
Net operating expenditure	\$20.64	\$7,349.24
Capital costs	\$1.12	\$398.52
Breach actions (for breach of conditions only)	\$0.37	\$132.87
<b>Savings</b>		
Impact of supervision on offending	\$1.43	\$508.96
Value of community work	\$2.40	\$855.63
<b>Total net cost of community order</b>	<b>\$18.30</b>	<b>\$6,516.04</b>

*Source: Morgan (2018), p. 41*

New Zealand reports that the unit cost for 2015-16 per offender per day under supervision is \$15.75, while the cost for intensive supervision is \$21.13. Annually, it costs a total of \$65,644,068 for all New Zealand offenders to be supervised (New Zealand Government, 2017, p. 1).

<sup>224</sup> This includes savings of \$1.43 per day (\$508.96 per offender) for the impact of supervision on offending, as well as \$2.40 per day (\$855.63 per offender) for the value of community work performed (Morgan, 2018, p. 41).

#### 2.5.4 Changing use of community service

In Australia, trends in the number of people performing unpaid community service have varied across jurisdictions. In some, including Victoria, Queensland and Tasmania, the number of people increased over the decade to 2018. In others, including South Australia, Western Australia, the Northern Territory and the ACT, the number of people has fallen over that period.

**Table 11: Number of people undertaking reparation/community service, Australian states and territories, 2008 to 2018**

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	<i>Aust</i>
2008	3,979	679	1,854	1,005	1,473	500	184	161	9,835
2009	4,180	741	1,943	1,146	1,449	584	166	190	10,399
2010	3,836	686	2,236	1,113	1,330	752	124	204	10,280
2011	3,050	623	1,977	1,129	1,085	970	138	206	9,177
2012	2,726	613	1,712	956	976	1,178	153	150	8,461
2013	2,784	688	1,750	797	691	1,315	185	154	8,365
2014	2,916	877	2,071	855	625	1,224	206	185	8,959
2015	2,814	1,332	2,294	941	680	1,059	190	181	9,492
2016	2,946	1,765	2,847	978	817	1,010	185	176	10,723
2017	3,032	2,066	2,741	854	868	1,009	180	171	10,920
2018	3,231	2,361	2,397	729	829	1,041	162	158	10,909

*Source: ABS (various), Catalogue No. 4512*

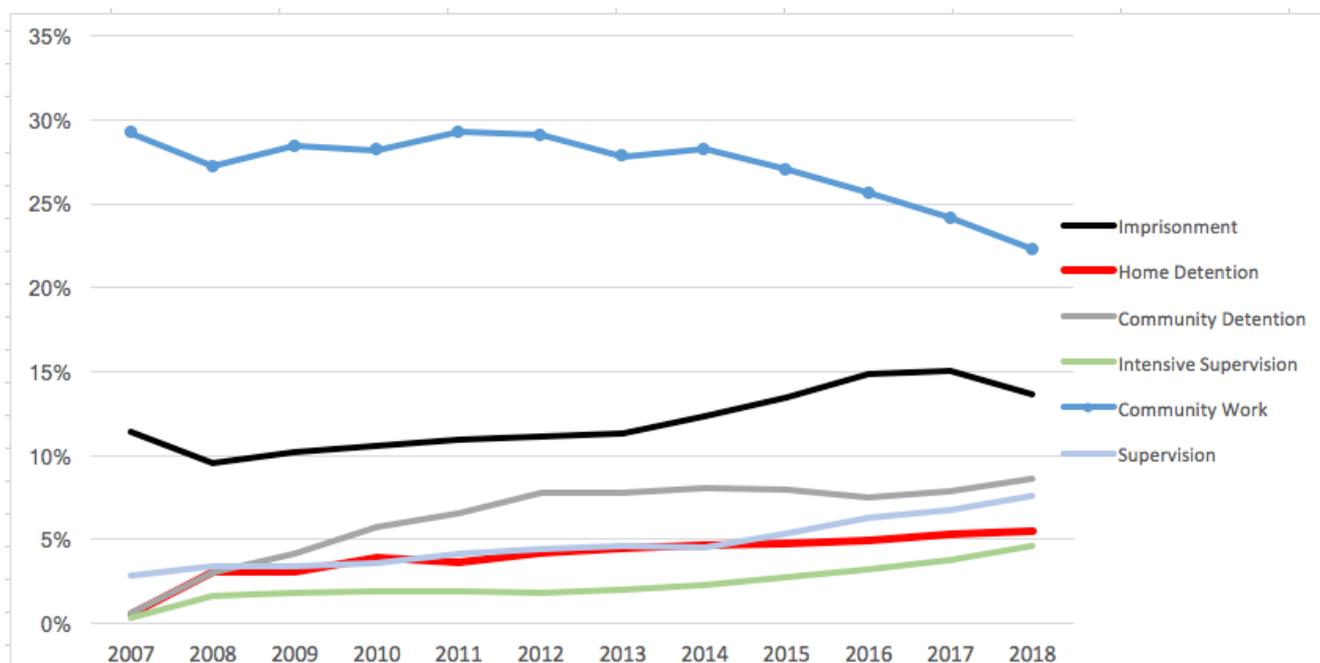
In both NSW and Tasmania, sentencing reforms in 2018 replaced community service orders with community correction orders. In both jurisdictions, governments have shifted from a more specific form of order to a broader and perhaps more flexible order. Arguably, this move to a more general form of supervisory order provides the court with greater simplicity in its decision-making task, allowing sentencers to impose the same type of order in a wide range of offender and offending circumstances.

The New Zealand community work order is widely used by the courts: almost one-quarter of all adults received a community work order in 2018. However, both the number of these orders and their proportion of all orders imposed have both fallen over the past decade.

The number of adults sentenced to community work orders in New Zealand fell from 22,973 in 2007 (or 29.2% of adults sentenced) to 11,990 in 2018 (or 22.3% of adults sentenced) (Stats NZ, 2018).<sup>225</sup>

<sup>225</sup> Figure 20 does not include monetary orders, which account for the largest proportion of all sentences, to facilitate clarity in the figure. These orders are, however, included in Table 12 for the sake of completeness.

**Figure 20: Adults convicted in New Zealand courts by sentence type, 2007 to 2018**



Source: Stats NZ

**Table 12: Adults convicted in New Zealand courts by sentence type, 2007 to 2018**

	Imprisonment	Home Detention	Community Detention	Intensive Supervision	<b>Community Work</b>	Supervision	Monetary
2007	8,949	447	472	291	<b>22,973</b>	2,236	43,261
2008	8,076	2,633	2,596	1,381	<b>22,893</b>	2,848	43,738
2009	9,024	2,758	3,683	1,634	<b>25,089</b>	3,016	43,055
2010	8,920	3,301	4,828	1,617	<b>23,778</b>	3,053	38,825
2011	8,353	2,801	5,047	1,481	<b>22,400</b>	3,212	33,244
2012	7,932	3,023	5,574	1,338	<b>20,753</b>	3,153	29,649
2013	7,489	2,961	5,126	1,339	<b>18,338</b>	3,044	27,655
2014	7,522	2,832	4,905	1,413	<b>17,233</b>	2,780	24,351
2015	7,570	2,703	4,500	1,576	<b>15,256</b>	3,008	21,787
2016	8,511	2,840	4,304	1,830	<b>14,677</b>	3,590	21,537
2017	8,604	3,027	4,504	2,186	<b>13,818</b>	3,895	21,245
2018	7,326	2,982	4,666	2,498	<b>11,990</b>	4,111	20,279

Source: Stats NZ

## 2.6 Probation orders

Probation involves the application of supervision and control of offenders in combination with programs to assist and rehabilitate them. It generally involves an offender being under the

personal supervision of a probation officer and participating in some form of treatment to prevent further offending.

Probation is designed to promote rehabilitation by allowing the offender to maintain normal family and community contacts, while avoiding the financial and social costs of custody. Traditionally, the aim of probation has been to reform offenders, rather than to punish them (Tullet, 1991: cited in Figgis, 1998, pp. 11-12):

Probation reflects the 'welfare' approach to criminal justice and emphasises the need to treat offenders as individuals. Probation evolved to facilitate those individuals whose offending is regarded as being more the outcome of social disadvantages or disorganisation. They often lack the social, economic, emotional and family supports which protect or prevent them from developing criminal associations and then criminal behaviour. The welfare model regards rehabilitation as the best protection for the community when it is applied to those offenders who have the capacity to be rehabilitated.

Despite this, probation in its various guises seems to have transformed over the years from a rehabilitative model to a more punitive, controlling focus (Figgis, 1998, p. 11).

Probation takes different forms and can be utilised as a discrete sentence, as a supervision-focused condition of a community order, or to provide supervision following release from prison (akin to parole).

Probation as a sentencing order (named as this) is currently available in only one Australian jurisdiction<sup>226</sup> – Queensland.<sup>227</sup> Internationally, it appears that probation is available in Northern Ireland as a distinct non-custodial sentence, while a sentence of probation had been available in Scotland until 2011. Probation in Canada acts as a conditional discharge or suspended sentence form of the order.

### 2.6.1 Legislative structure and composition

Probation is available in numerous jurisdictions around the world, but in only a handful as a distinct sentencing option; it is far more commonly used as a supervision condition, either attached to a community order or following release from prison. Where it is (or has recently been) available as a sentence, the order shared a number of similarities across jurisdictions, including its inherent nature as a conditional sentence, its raft of available conditions and the possible responses to its breach.

The main difference in the form of probation orders appears to be around whether there are prohibitions on the types of offences for which the order may be imposed.

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<sup>226</sup> Probation is also available in the ACT as a condition of a good behaviour order: *Crimes (Sentencing) Act 2005* (ACT) s 13(3)(d). Probation was available in Tasmania until 14 December 2018, when it was replaced by the community correction order, following the recommendation of the Tasmanian Sentencing Advisory Council (TSAC, 2016, p. 102): *Sentencing Act 1997* (Tas) s 36B.

<sup>227</sup> *Penalties and Sentences Act 1992* (Qld) ss 90-99.

### Nature of order

Prior to the replacement of probation orders with community correction orders<sup>228</sup> in Tasmania, the order was similar in nature to the Canadian version. It was an intermediate sanction that could be imposed alone, in conjunction with imprisonment<sup>229</sup> (including a suspended term) or, if the court imposed a community service order, it could also impose a probation order.<sup>230</sup> When a probation order was imposed, the court had discretion about recording a conviction;<sup>231</sup> if a conviction was recorded, a fine could be added to the probation order.<sup>232</sup> As in Canada, the Tasmanian probation order had a maximum duration of three years.

In Northern Ireland, probation is a type of non-custodial sentence.<sup>233</sup> A probation order may not be imposed on certain offences, including those attracting a mandatory sentence and certain firearms, violent and human trafficking offences.<sup>234</sup> It is designed both to aid rehabilitation and to protect the public from further offending.<sup>235</sup> Probation requires an offender's consent<sup>236</sup> to be supervised by a probation officer in the community for a period of between six months and three years.<sup>237</sup> For offenders aged over 16 convicted of an offence punishable by imprisonment, probation orders can be combined with community service orders: the probation part of the order may last between one and three years, and the community service part for between 40 and 100 hours, to be completed within one year.<sup>238</sup>

Probation orders were available in Scotland until February 2011, when they were replaced by community payback orders.<sup>239</sup> They were designed to allow criminal justice social work services to focus on the offending behaviour and its underlying causes. Prior consent of the person was required, and the order needed to be informed by a mutually-agreed action plan. The probation order could last between six months and three years.

Despite replacing probation orders, community payback orders operate in a very similar fashion. They may be imposed when a person is convicted of an offence punishable by

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<sup>228</sup> The Tasmanian community correction order is based closely on its previous probation order. Detailed discussion of the CCO is provided in section 2.7 of this report.

<sup>229</sup> *Sentencing Act 1997* (Tas) s 8(1)(a)–(b).

<sup>230</sup> Community service orders are higher in the sentencing hierarchy than probation orders: *Sentencing Act 1997* (Tas) ss 7(c) and 7(d).

<sup>231</sup> *Sentencing Act 1997* (Tas) ss 7(c) and 7(d).

<sup>232</sup> *Sentencing Act 1997* (Tas) s 8(3).

<sup>233</sup> Probation was previously also available in the form of supervision following a term of imprisonment of one year or more, with supervision of one to three years (*Criminal Justice (Northern Ireland) Order 1996* s 10(1)). The custody probation order was repealed in 2009 and replaced with release on licence under the *Criminal Justice (Northern Ireland) Order 2008* ch 4.

<sup>234</sup> *Criminal Justice (Northern Ireland) Order 1996* s 10(1).

<sup>235</sup> *Criminal Justice (Northern Ireland) Order 1996* s 10(1).

<sup>236</sup> 'Willingness to comply' with the order is required for offenders aged 14 and above: *Criminal Justice (Northern Ireland) Order 1996* s 10(3).

<sup>237</sup> *Criminal Justice (Northern Ireland) Order 1996* s 10(1).

<sup>238</sup> *Criminal Justice (Northern Ireland) Order 1996* s 15(1).

<sup>239</sup> Community payback orders replaced community service, probation and supervised attendance orders for offences committed on or after 1 February 2011: *Criminal Justice and Licensing (Scotland) Act 2010* s 14.

imprisonment,<sup>240</sup> and may be imposed in addition to a fine.<sup>241</sup> An order must not be imposed prior to the court receiving a pre-sentence report about the offender's circumstances,<sup>242</sup> to ensure that the requirements imposed are appropriate.

In Canada, when an offender is convicted of an offence, and there is no statutory minimum punishment prescribed for that offence, the court may suspend passing a sentence and instead release the offender on the conditions set out in a probation order.<sup>243</sup> This is essentially a discharge with conditions.<sup>244</sup> The court may also issue a probation order where it does pass sentence, in combination with other specified penalties – either a fine or a term of imprisonment of two years or less.<sup>245</sup> This latter order is more akin to a parole order, although the intensity of supervision available under a post-release probation order is greater due to the wider range of conditions open to the court.

Probation may also be combined with an intermittent term of imprisonment of 90 days or less, during which the offender must comply with the probation order conditions when not in custody. The court may also require compliance on release from prison following the intermittent sentence.<sup>246</sup>

The maximum duration of a probation order is three years,<sup>247</sup> but the court may vary its duration or the optional conditions attached.<sup>248</sup>

### Conditions

Conditions attached to probation orders are broadly consistent in those jurisdictions where probation may be imposed. Prior to the replacement of probation orders with community correction orders in Tasmania, the available conditions were similar to those in other jurisdictions. Mandatory conditions included not committing an offence punishable by imprisonment, submitting to the supervision of a probation officer and reporting to the officer, not leaving or staying outside Tasmania without permission, complying with the directions of the probation officer and reporting change of address or employment. Probation could also include special conditions in relation to educational programs, assessment and treatment for alcohol or drug dependency, submission to testing for drugs and alcohol, and submission to medical, psychological or psychiatric assessment or treatment (TSAC, 2016, p. 42).

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<sup>240</sup> *Criminal Procedure (Scotland) Act 1995* s 227A(1).

<sup>241</sup> *Criminal Procedure (Scotland) Act 1995* s 227A(4).

<sup>242</sup> *Criminal Procedure (Scotland) Act 1995* s 227B(4).

<sup>243</sup> *Criminal Code*, RSC 1985, c C-46 s 731(1)(a).

<sup>244</sup> An offender who is discharged of an offence is deemed not to have been convicted: *Criminal Code*, RSC 1985, c C-46 s 730(3).

<sup>245</sup> *Criminal Code*, RSC 1985, c C-46 s 731(1)(b).

<sup>246</sup> The intermittent sentence appears to be akin to periodic detention, while the requirement to comply with a probation order following release arguably translates the probation to a kind of parole: *Criminal Code*, RSC 1985, c C-46 s 732(1).

<sup>247</sup> *Criminal Code*, RSC 1985, c C-46 s 732.2(2)(b).

<sup>248</sup> *Criminal Code*, RSC 1985, c C-46 s 732.2(3).

Similarly, in Northern Ireland the court may apply additional requirements such as attending an alcohol or drug rehabilitation centre or participating in medical treatment or counselling. Failure to comply may result in the offender returning to court where a fine or any other sentence can be imposed.

Probation orders in Scotland could be used very flexibly by the courts and could include additional conditions such as unpaid work and attendance at an alcohol or drug treatment program. Similarly, community payback orders can consist of one or more of nine requirements including offender supervision, compensation, unpaid work or other activity, mental health treatment, drug treatment and alcohol treatment.<sup>249</sup>

Canadian probation orders have both mandatory and optional conditions. Restrictions must be imposed on communication with victims, witnesses or others as identified in the order, unless express consent is given, or, in exceptional circumstances, such restrictions are deemed not to be appropriate. Similarly, movement restrictions must be imposed unless they are not considered appropriate.<sup>250</sup> Optional conditions include reporting requirements, abstaining from designated substances and submitting to testing to ensure compliance, firearm restrictions, caring for or supporting dependents, community service work for up to 240 hours over a maximum period of 18 months, participation in a treatment program or consenting to the use of an alcohol ignition interlock device.<sup>251</sup>

#### *Revocation, termination and breach*

Generally, the court retains considerable discretion in responding to breaches of a probation order in keeping with its status as a rehabilitative rather than punitive order.

On breach of a probation order in Tasmania the court could confirm the order, increase its duration, vary the special conditions or cancel the order and deal with the offender as it could have initially (TSAC, 2016, pp. 42-43).

If an offender fails to comply with a requirement of a community payback order in Scotland, the court may impose a fine, revoke the order and sentence the offender as it could have initially,<sup>252</sup> revoke the order and impose a term of imprisonment,<sup>253</sup> or impose a new requirement or vary existing ones.<sup>254</sup>

Similarly, if an offender on probation in Canada is convicted of an offence, the court that originally imposed the probation order may revoke the discharge. This means that the offender is convicted of the offence for which the conditional discharge originally applied. As a result, the court may then impose any sentence that could have been imposed had the

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<sup>249</sup> *Criminal Procedure (Scotland) Act 1995 s 227A(2).*

<sup>250</sup> *Criminal Code, RSC 1985, c C-46 s 732.1(2).*

<sup>251</sup> *Criminal Code, RSC 1985, c C-46 s 732.1(3).*

<sup>252</sup> If the offender was sentenced under s 227A(1): *Criminal Procedure (Scotland) Act 1995 s 227ZC(7)(b).*

<sup>253</sup> If the offender was sentenced under s 227A(4): *Criminal Procedure (Scotland) Act 1995 s 227ZC(7)(c).*

<sup>254</sup> *Criminal Procedure (Scotland) Act 1995 s 227ZC(7)(d).*

person been convicted initially.<sup>255</sup> Alternatively, the court may change the optional conditions or extend the order's duration by up to one year.<sup>256</sup> It is an offence to fail or refuse to comply with a probation order.<sup>257</sup>

## 2.6.2 Practical application – use and breach

### *The use of probation in Tasmania*

Prior to the replacement of probation orders with community correction orders, probation in Tasmania was rarely used, with only 717 offenders (1.3%) receiving a probation order in the Magistrates' Court from January 2011 to June 2014 (TSAC, 2016, p. 16). A combined imprisonment plus probation order was made in approximately 30 cases in the Supreme Court during this period (TSAC, 2016, p. 107).

Earlier analysis showed that a fully suspended sentence was combined with a probation order in 11% of cases in the Tasmanian Supreme Court and 16% of cases in the Magistrates' Court in the period 2002 to 2004 (Bartels, 2008: cited in TSAC, 2016, p. 23).

While data on the proportion of probation orders successfully completed are not available, completion of community corrections orders as a whole is high in Tasmania, hovering around 86-88% over the past decade. Rates of completion of all community orders nationally have remained around 70-72% throughout this period (SCRGSP, 2019, Table 8A.19).

### *The use of probation in other jurisdictions*

In Northern Ireland, a probation order or supervision order was imposed for 4.5% of convictions in all courts in 2017, with 941 (or 4.2% of all convictions) in the Magistrates' courts and 116 (or 8.7%) in the Crown Court. There were 435 combination orders (probation plus a community service order) across all courts, comprising 1.8% of all convictions: 350 were imposed in the Magistrates' courts and 85 in the Crown Court (Department of Justice [Northern Ireland], 2018, Table 5a).

Probation sentences, and the community payback orders that replaced them, are more frequently imposed in Scotland. Probation and other community sentences accounted for just over half of all community sentences imposed from 2007-08 to 2009-10. From the time they replaced probation and community service orders, the number of community payback orders imposed rose rapidly, and represented 86% of all community sentences by 2016-17 (Scottish Government, 2019, p. 59).

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<sup>255</sup> *Criminal Code*, RSC 1985, c C-46 s 732.2(5)(d).

<sup>256</sup> *Criminal Code*, RSC 1985, c C-46 s 732.2(5)(e).

<sup>257</sup> *Criminal Code*, RSC 1985, c C-46 s 733.1(1).

**Table 13: Number of people convicted by main penalty imposed, Scotland, 2007-08 to 2016-17**

	Probation and other community sentences	Community payback order
2007-08	9,131	
2008-09	10,109	
2009-10	9,140	
2010-11	8,211	461
2011-12	2,428	10,380
2012-13	318	14,940
2013-14	89	16,379
2014-15	48	16,769
2015-16	29	16,763
2016-17	27	15,918

*Source: Scottish Government (2019), p. 59*

Given that Canadian probation orders may take the form of conditional or suspended orders or may be attached to imprisonment or fines, it is difficult to identify how many are imposed as discrete orders. For example, in Ontario, probation officers in 120 offices supervise approximately 41,000 probationers on any given day (Ministry of Community Safety and Correctional Services [Ontario], 2018), but this number includes offenders given probation in all its forms.

Nonetheless, national data show that sentences such as probation or a requirement to abide by a condition are the most commonly imposed by the Canadian courts (Boyce, 2013; Dauvergne, 2013: cited in Burczycka and Munch, 2015, p. 4).

Breach of probation was the second most frequently-reported offence against the administration of justice in 2014, representing almost a quarter (22%) of all offences in this category. The rate of breach of probation declined by 28% over the decade from 2004, moving from 149 incidents per 100,000 (2.0% of all police-reported incidents, with 47,476 offences) to 108 in 2014 (2.1% of all police-reported incidents, with 38,232 offences) (Burczycka and Munch, 2015, p.22).

In terms of cases, where an administration of justice offence represented one or more of the charges, failure to comply with an order (50%) and breach of probation (33%) were the most frequently finalized by the courts in 2013-14. These proportions remained fairly stable over time (Burczycka and Munch, 2015, p. 13).

### 2.6.3 Costs and resource implications

The costs of probation as a distinct sentence are difficult to separate from the general costs of supervising offenders in the community. The only jurisdiction for which data appear to be available specifically on probation is Scotland, where the average cost of implementing a probation order in 2009-10 was £1,398 (Audit Scotland, 2011, p. 18).

Several jurisdictions publish information on the costs of supervision more generally. While these data do not specify the cost of probation alone, they are indicative of the costs associated with any order requiring a level of supervision by community corrections officers. The primary component of these costs is the staff required to manage each jurisdiction's caseload.

In Australia, the average net operating cost in 2017-18 of providing corrective services for an offender in the community was \$23.25 per day (SCRGSP, 2019, Table 8A.17), with a total daily average population of 69,634 offenders (SCRGSP, 2019, Table 8A.8).

In Canada, it cost \$31,000 to maintain an offender in the community during 2015-16 (or about \$85 per day), with an average of 8,233 people supervised by Correctional Service Canada in the community (Correctional Service Canada, 2017).

New Zealand reports that the unit cost for 2015-16 per offender per day under supervision is \$15.75, while the cost for intensive supervision is \$21.13. Annually, it costs a total of \$65,644,068 for all New Zealand offenders to be supervised (New Zealand Government, 2017, p. 1).

### 2.6.4 Changing use of probation

Probation as a distinct sentence is not widely available. While courts in Scotland and Canada appear to make frequent use of probation orders, those in Northern Ireland do so sparingly.

Although probation itself was rarely used in Tasmania, the new community correction order has drawn heavily on probation in its legislative configuration, indicating that many of the key aspects of probation were considered valuable. Similarly, the community payback order in Scotland functions much like the probation order had previously. In both jurisdictions, governments have shifted from a more specific form of order to a broader and perhaps more flexible order. Arguably, this move to a more general form of supervisory order provides the court with greater simplicity in its decision-making task, allowing sentencers to impose the same type of order in a wide range of offender and offending circumstances.

## 2.7 Community correction orders

The community correction order (CCO) is a non-custodial intermediate sentencing order in its own right that has become more common in Australia in recent years. It is generally imposed for offences for which a custodial sentence would not ordinarily be in range, but it may also

be appropriate for more serious offences for which a term of imprisonment may previously have been imposed. Indeed, the guideline judgment issued by the Court of Appeal in Victoria stated that:<sup>258</sup>

sentencing judges should proceed on the basis that there is a very broad range of cases in which it will be appropriate to impose a suitably structured CCO ... including cases where a sentence of imprisonment would formerly have been regarded as the only option.

In those Australian jurisdictions where CCOs have been implemented, they have replaced most (or all) of the other intermediate orders, such as probation and community service orders. Instead, the CCO offers such options (and many others) as conditions that may be attached as appropriate, with significant discretion to impose one or more of a variety of optional conditions. This reflects a move away from more focused, specific sentence types to broader, more general orders that are applicable to a wider range of offender and offending circumstances but that can be closely tailored for each individual via the associated conditions.

The CCO is designed to achieve both rehabilitation and punishment purposes, and to provide maximum flexibility for the sentencer to craft a sentence that directly addresses each person's particular offending circumstances, criminogenic needs, and causes and correlates of offending. This was articulated in the guideline judgment, which stated that the CCO is:<sup>259</sup>

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

CCOs were first introduced in Victoria in 2012.<sup>260</sup> Both NSW<sup>261</sup> and Tasmania<sup>262</sup> followed suit in 2018, basing their versions of the order closely on the Victorian model.

England and Wales adopted a similarly broad order in 2005, with its community sentence.<sup>263</sup> However, unlike the Australian jurisdictions, the community sentence operates alongside, rather than in place of, suspended sentences.

### 2.7.1 Legal structure and composition

As there are substantial similarities between the three versions of a CCO in Australia, this section focuses on the legal structure and composition of the Victorian order, and highlights differences in the NSW and Tasmanian versions as appropriate.

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<sup>258</sup> *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) app 1 [30].

<sup>259</sup> *Boulton v The Queen* [2014] VSCA 342 (22 December 2014) [2].

<sup>260</sup> *Sentencing Act 1991* (Vic) pt 3A.

<sup>261</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 7.

<sup>262</sup> *Sentencing Act 1997* (Tas) pt 5B.

<sup>263</sup> *Criminal Justice Act 2003* (UK) ss 177-180.

### *Nature of order*

The Victorian CCO legislation contains more specific constraints across a number of areas than is seen in the other jurisdictions.

In Victoria, CCOs may be imposed on offences punishable by more than five penalty units.<sup>264</sup> They may not be imposed on offences that are classified as Category 1 offences (such as murder, gross violence offences and rape),<sup>265</sup> and may only be imposed on Category 2 offences (such as manslaughter, armed robbery and commercial drug offences) in exceptional circumstances.<sup>266</sup> Offender consent is required before a CCO can be imposed.<sup>267</sup>

In NSW and Tasmania, as in England and Wales, there are no restrictions on the offences for which a CCO may be imposed, and the offender does not need to consent for it to be imposed.

The maximum duration of a Victorian CCO is five years in the higher courts,<sup>268</sup> and between two and five years in the Magistrates' Court.<sup>269</sup> For both NSW<sup>270</sup> and Tasmania,<sup>271</sup> as well as in England and Wales,<sup>272</sup> the maximum duration is three years.

The Victorian CCO may be imposed in addition to a fine<sup>273</sup> or a prison term,<sup>274</sup> while Tasmania allows combination with imprisonment,<sup>275</sup> home detention<sup>276</sup> or a fine.<sup>277</sup>

### *Conditions*

With its stated aim of providing a flexible sentence that can be tailored to reflect the nature of the offender and the offence, CCOs can include a range of conditions designed to hold offenders to account and reduce their risk of reoffending. There are both mandatory conditions and optional ones.

Under the mandatory terms (or conditions) that must be attached to both the Victorian and Tasmanian CCO, the offender must not reoffend, must comply with directions, report as required, not leave the state and notify of any changes in address or employment.<sup>278</sup> Tasmania also mandates that at least one of two special conditions be imposed: to be supervised by a probation officer or to complete a maximum of 240 hours of community

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<sup>264</sup> *Sentencing Act 1991* (Vic) s 37.

<sup>265</sup> *Sentencing Act 1991* (Vic) s 3(1).

<sup>266</sup> *Sentencing Act 1991* (Vic) s 3(1).

<sup>267</sup> *Sentencing Act 1991* (Vic) s 37(c).

<sup>268</sup> *Sentencing Act 1991* (Vic) s 38(1)(b).

<sup>269</sup> The maximum duration is two years for a single offence, four years for two offences and five years for three or more offences: *Sentencing Act 1991* (Vic) s 38(1)(a).

<sup>270</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 85(2).

<sup>271</sup> *Sentencing Act 1997* (Tas) s 42AQ(2).

<sup>272</sup> *Criminal Justice Act 2003* (UK) s 177(5).

<sup>273</sup> *Sentencing Act 1991* (Vic) s 43.

<sup>274</sup> *Sentencing Act 1991* (Vic) s 44.

<sup>275</sup> *Sentencing Act 1997* (Tas) s 8(1)(a), but only if the term of imprisonment is for less than two years.

<sup>276</sup> *Sentencing Act 1997* (Tas) s 42AC(4).

<sup>277</sup> *Sentencing Act 1997* (Tas) s 8(3)(a).

<sup>278</sup> *Sentencing Act 1991* (Vic) s 45(1); *Sentencing Act 1997* (Tas) s 42AO.

service.<sup>279</sup> In NSW, there are only two broad standard conditions that must be imposed on every CCO: not to reoffend and appear before the court if required.<sup>280</sup>

In Victoria, the court must choose at least one additional condition.<sup>281</sup> Any additional conditions are chosen to reflect the circumstances of the offender, the nature of the offence, the principle of proportionality and the purposes that the court is trying to achieve in the sentence (for example, rehabilitation or deterrence).

Additional conditions can include:

- unpaid community work up to 600 hours;
- participation in a treatment or rehabilitation program;
- supervision;
- non-association, residence, movement and alcohol exclusion restrictions;
- a curfew;
- payment of a bond; and
- judicial and/or electronic monitoring.<sup>282</sup>

In both Tasmania<sup>283</sup> and NSW,<sup>284</sup> the list of optional special conditions is very similar.

England and Wales also offer a wide list of requirements from which to choose, with a general requirement for offenders to keep in contact with their probation officer and advise of a change of residence. Courts may choose from a list of requirements, such as unpaid community work, participation in rehabilitation programs, curfew conditions, electronic monitoring, residence conditions, and treatment such as mental health or drug and alcohol programs.<sup>285</sup> However, the court must, except in exceptional circumstances,<sup>286</sup> include at least one requirement imposed for the purpose of punishment or impose a fine, or both.<sup>287</sup>

In all these jurisdictions, community service and probation are now conditions of a CCO, rather than stand-alone orders.

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<sup>279</sup> *Sentencing Act 1997* (Tas) s 42AP(2).

<sup>280</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 88(2).

<sup>281</sup> *Sentencing Act 1991* (Vic) s 47.

<sup>282</sup> *Sentencing Act 1991* (Vic) ss 48A-48LA .

<sup>283</sup> *Sentencing Act 1997* (Tas) s 42AP(1).

<sup>284</sup> *Crimes (Sentencing Procedure Act 1999* (NSW) s 89(2). NSW expressly prohibits electronic monitoring, curfew or home detention to be imposed on a CCO: *Crimes (Sentencing Procedure) Act 1999* (NSW) s 89(3).

<sup>285</sup> *Criminal Justice Act 2003* (UK) s 177(1). Where a curfew requirement or an exclusion requirement are imposed, electronic monitoring must also be imposed unless it is inappropriate to do so: *Criminal Justice Act 2003* (UK) s 177(3).

<sup>286</sup> *Criminal Justice Act 2003* (UK) s 177(2B).

<sup>287</sup> *Criminal Justice Act 2003* (UK) s 177(2A).

### *Revocation, termination and breach*

Victorian offenders who breach a condition of their CCO may be returned to court. The court may vary the order and its conditions, or the offender may be resentenced for the original offence. Breaching the conditions of a CCO is a separate offence. This offence has a maximum penalty of three months' imprisonment.<sup>288</sup>

Similar provisions for variation and cancellation exist in Tasmania<sup>289</sup> and NSW,<sup>290</sup> although there is no separate offence for breaching CCO conditions in either state.

In England and Wales, failure to comply may result in the court imposing more onerous requirements, extending the duration of the order or imposing any other sentence that could have been imposed initially.<sup>291</sup> The order may also be revoked, either with or without resentencing.<sup>292</sup>

## 2.7.2 Practical application – use and breach

### *The use of community correction orders in Victoria*

In 2017-18, CCOs were the second most frequently imposed sentence in the Victorian higher courts (13.7%), following sentences of imprisonment (72.1%). In the Magistrates' Court, they accounted for 10.2% of all sentences – the third most common outcomes, following adjourned undertakings (14.7%) and fines (54.0%) (SAC, 2018).

In 2015, CCOs were most commonly used for assault offences in both the higher courts and the Magistrates' Court (accounting for just under 31% of principal offence categories in both courts). In the Magistrates' Court, 19.2% of CCOs were imposed for traffic offences, 13.8% for theft and deception and 8.9% for drug offences. In the higher courts, 20.9% of CCOs were imposed for sexual offences, 19.6% for robbery and burglary offences and 9.2% were imposed for drug offences (SAC, 2016, pp. 15, 19).

In the higher courts, combined orders were more likely than principal orders to be used for robbery and burglary offences and less likely to be used for sexual offences. In the Magistrates' Court, combined orders were more likely than principal orders to be used for drug offences, assaults, and robbery and burglary offences and less likely to be used for traffic and theft and deception offences (SAC, 2016, pp. 23, 25).

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<sup>288</sup> *Sentencing Act 1991* (Vic) s 83AD(1).

<sup>289</sup> *Sentencing Act 1997* (Tas) ss 42AU-42AW.

<sup>290</sup> *Crimes (Sentencing Procedure Act 1999* (NSW) ss 89(1)(b), 90(1)(b), 107C-107E.

<sup>291</sup> *Criminal Justice Act 2003* (UK) ss 9(1), 9(3), 10(1) and 10(3). These provisions do not apply to an offender with a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement who reasonably refuses to undergo treatment; in these circumstances, the court may amend the requirement if the offender is willing to comply with the requirement as amended (*Criminal Justice Act 2003* (UK) s 11).

<sup>292</sup> *Criminal Justice Act 2003* (UK) ss 13(2) and 14(2).

When imposed as a combined order, CCOs were less likely to involve a condition of unpaid community work and more likely to involve supervision. In the Magistrates' Court, unpaid community work was used for 32.0% of combined CCOs and 76.6% of CCOs imposed as principal sentences. Conversely, a supervision condition was imposed in 56.0% of combined orders and 49.7% of principal orders (SAC, 2016, pp. 24-25).

Of offenders sentenced to a CCO in 2012-13, 59% of those sentenced in the higher courts and 49% in the Magistrates' Court had complied with their order. More than one-quarter (28%) of offenders sentenced in the higher courts contravened their CCO by further offending, with 36% of those in the Magistrates' Court reoffending by 30 June 2016. Finally, a small proportion in each jurisdiction (13% in the higher courts and 15% in the Magistrates' Court) failed to comply with a term or condition of their CCO (SAC, 2017, p. 73).

Of the 53,257 people who received a CCO from 16 January 2012 to 30 June 2018, 632 were sentenced in 2017-18 for a serious offence<sup>293</sup> committed while the person was on the order (SAC, 2019, p. 7). There were 912 charges of serious offences during that year, with making a threat to kill (325 charges), making a threat to inflict serious injury (172) and aggravated burglary (154) the three most common sentenced charges in 2017-18 (SAC, 2019, p. 9).

The most recent data available show that the proportion of completed community corrections orders<sup>294</sup> in Victoria has decreased over the last four years. In 2017-18, only 59.2% of orders were successfully completed – the lowest of any state or territory – while the national average completion rate was 72.9% (SCRGSP, 2019, Table 8A.19).

### *The use of community sentences in England and Wales*

The most recent data available show that community sentences were the second most frequently imposed sentence in all courts, behind fines:<sup>295</sup> for the year ending September 2018, 90,617 community sentences were imposed, representing 7.7% of all sentences (Ministry of Justice [UK], (2019), Table Q5.1b).

Recidivism data have shown that about one-third (35%) of people serving a community order committed a further offence within 12 months of their order commencing. The main types of offences committed were acquisitive (theft, burglary or fraud accounted for 36% of recidivist offences) followed by violent crimes (accounting for 20% of recidivist offences) (Wood et al., 2015, p. 15).

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<sup>293</sup> Serious offences include violent offences such as armed robbery and aggravated burglary, and sexual offences such as rape and sexual assault (SAC, 2019, p. 4).

<sup>294</sup> This is a generic name that includes all people supervised in the community by Corrections Victoria, not just those on a CCO.

<sup>295</sup> Fines represented 76.2% of all sentences imposed during this period.

### 2.7.3 Costs and resource implications

In his review of the management of CCOs in Victoria, the state's Auditor-General found that CCO management costs were \$27.55 per person per day in 2014–15, compared with \$360.91 for a prisoner (VAGO, 2017, p. vii). More recent data from the Productivity Commission show higher costs: the average net operating cost in 2017-18 of providing corrective services for an offender<sup>296</sup> in the community was \$32.40 per day in (SCRGSP, 2019, Table 8A.17), with a total daily average population of 14,561 offenders (SCRGSP, 2019, Table 8A.8).

The Auditor-General also noted the impact of legislative changes and sentencing practices on the number of CCOs imposed, finding that the number of offenders on CCOs almost doubled from 5,871 in 2013 to 11,730 in 2016. In response to this increase, Corrections Victoria conducted an internal review of its Community Correctional Services (CCS). The review identified several challenges in the Victorian CCO system (VAGO, 2017, p. viii):

- system challenges in managing unexpected growth;
- legislative changes driving higher-risk offender profiles;
- broadening expectations of the services that CCS delivers—community corrections being seen as both one step away from prison and an early intervention option for offenders;
- constrained CCS resources and access to community treatment options;
- challenges in recruiting and training appropriately qualified staff; and
- case management roles for managing serious offenders being filled by inexperienced staff.

In addition to increasing caseloads, there have been increases in the complexity of managing offenders on CCOs. The report found that 27% of offenders on CCOs at 30 June 2016 had been classified as high-risk, while almost 40% had previously been in prison. Further, almost 85% of CCOs included conditions relating to alcohol and other drugs. An increase in the number of orders with rehabilitation conditions has led to increasing demand for support programs and services and, in turn, significant waiting times (VAGO, 2017, pp. ix-x).

The resource implications associated with effectively managing offenders serving a CCO are substantial.<sup>297</sup> While significant state government funding has been invested in extensive reforms to Corrections Victoria's human resources, work processes, facilities and technologies, it is unclear whether the reforms have had the desired impact. However, the Auditor-General believed that, if implemented effectively, these reforms should reduce high caseloads and improve offender management (VAGO, 2017, p. viii).

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<sup>296</sup> Offenders in the community include all people supervised in the community by Corrections Victoria, not just those on a CCO.

<sup>297</sup> As with all orders served in the community, CCOs are only as effective as funding and other resourcing allows. Nonetheless, costs and resources associated with community orders remain far lower than for custodial terms.

#### 2.7.4 Changing use of community correction orders

The SAC has summarised the history of changes made to the Victorian CCO as follows (SAC, 2019, pp. 2-3):<sup>298</sup>

The CCO became available to the courts in Victoria on 16 January 2012. At the same time, a number of other orders were abolished, including the community-based order, the intensive correction order, the combined custody and treatment order and the home detention order.

Since its introduction, the CCO has been affected by a number of amendments to the *Sentencing Act 1991* (Vic):

- The courts were encouraged in September 2014 to use a CCO in place of a suspended sentence.
- Initially, the maximum length of a CCO in the higher courts was equal to the maximum term of imprisonment available for the offence, but in March 2017 the maximum length of a CCO was set at five years for all offences
- Initially, the maximum term of imprisonment that could be combined with a CCO was set at three months, but it was increased to two years in September 2014 and reduced to one year in March 2017.
- The courts' use of CCOs was limited in March 2017 for two classes of serious offences, described as Category 1 offences and Category 2 offences.

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

Initially, Victorian courts seemed somewhat reluctant to use CCOs, with few orders imposed. Following the abolition of suspended sentences, however, the CCO was increasingly used: between 2014 and 2015, the number of offenders who received a CCO as a principal sentence increased by 36% in the Magistrates' Court and by 15% in the higher courts (SAC, 2016, p. x).

Following the 2014 increase in the maximum term of imprisonment that could be combined with a CCO, the number of combined orders imposed increased substantially: between 2014 and 2015, there was a 100% increase in the Magistrates' Court and a 370% increase in the higher courts in the number of combined orders imposed (SAC, 2016, p. x). This increase was also driven by the courts' preference for using a combined order rather than fixing a non-parole period with an imprisonment sentence: in the higher courts, the proportion of imprisonment terms of one to under two years that included a CCO increased from 5.3% to 81.3% between the September quarter of 2014 and the December quarter of 2015, while the proportion that had a non-parole period decreased from 89.5% to 10.7% during the same period (SAC, 2016, p. xii).

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<sup>298</sup> Citations omitted.

Other changes to sentencing practice were also observed during this period. The proportion of CCOs with a supervision condition increased from 28.8% in 2014 to 49.7% in the Magistrates' Court.<sup>299</sup> The duration of orders also increased slightly: in the Magistrates' Court, the average duration of orders increased from 12.4 months in 2014 to 12.7 months in 2015, while in the higher courts, it increased from 2.0 years in 2014 to 2.3 years in 2015 (SAC, 2016, pp. 16, 20).

The 2014 reforms also seemed to affect the offence profile of offenders who received a CCO, as it 'shifted modestly' away from non-sexual violent offences between 2014 and 2015: there was a small shift away from assault offences towards traffic and weapons offences in the Magistrates' Court and away from assault and robbery offences towards theft and deception offences in the higher courts (SAC, 2016, p. xi).

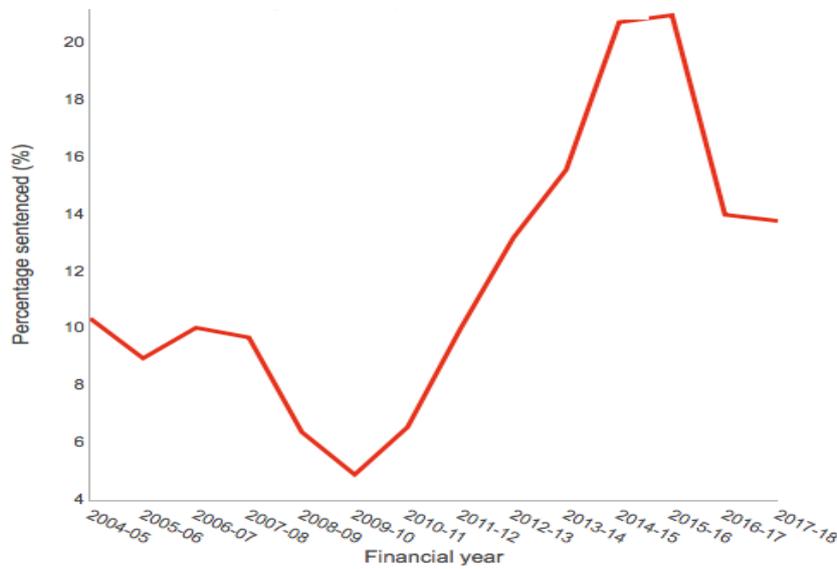
The SAC attributed changes in the number of CCOs imposed as a principal sentence primarily to the abolition of suspended sentences. Further, the SAC attributed the increased duration and intensity of conditions of CCOs, as well as the increased use of combined orders, to the guideline judgment, which was handed down in December 2014 (SAC, 2016, pp. xi-xii).

In the Victorian higher courts, the use of CCOs has risen and fallen substantially over the past five years. In 2011-12, 9.9% of cases sentenced in the higher courts received a community-based order/community correction order. The percentage of cases sentenced to a CCO rose over the following years before peaking at 20.9% in 2015-16. By 2017-18, cases receiving a CCO had fallen to 13.7% (SAC, 2018).

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<sup>299</sup> There was no increase, however, in the use of unpaid the community work condition, and new conditions such as curfews and electronic monitoring continued to be used infrequently (SAC, 2016, p. x).

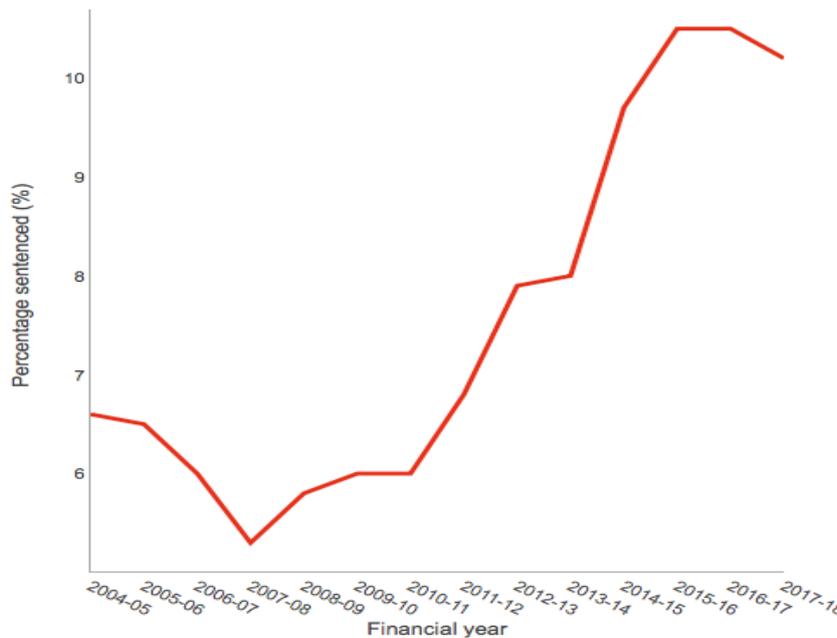
**Figure 21: Proportion of cases sentenced to a community-based order/community correction order in the Victorian higher courts, July 2004 to June 2008**



Source: SAC (2018)

A similar pattern is seen in the Victorian Magistrates' Court. In 2011-12, 6.8% of cases sentenced in the Magistrates' Court received a community-based order/community correction order. The percentage of cases sentenced to a CCO rose over the following years before peaking at 10.5% in 2015-16 and 2016-17. By 2017-18, cases receiving a CCO had fallen slightly, to 10.2% (SAC, 2018).

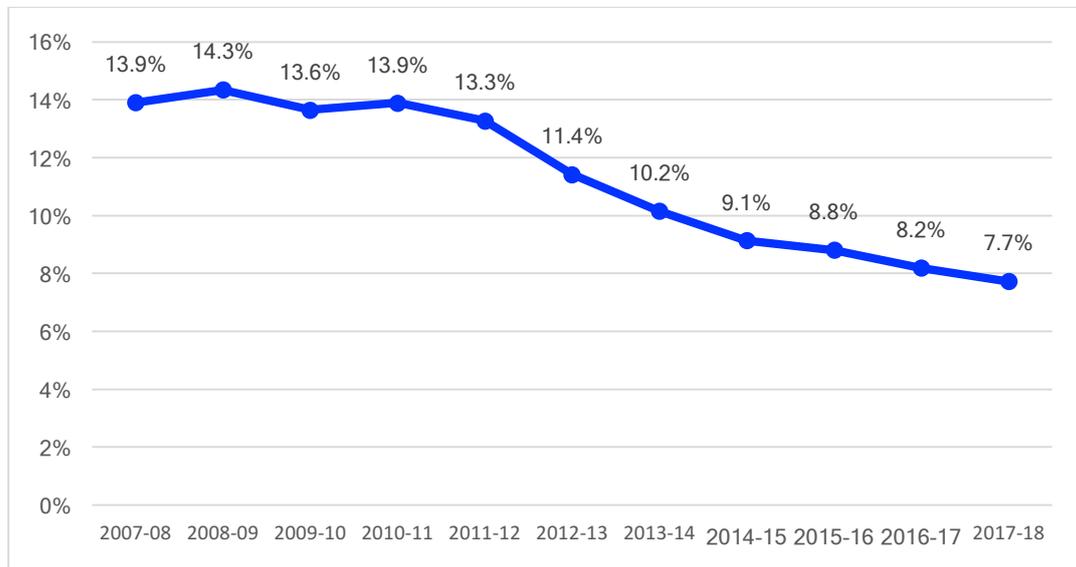
**Figure 22: Proportion of cases sentenced to a community-based order/community correction order in the Victorian Magistrates' Court, July 2004 to June 2008**



Source: SAC (2018)

In England and Wales, the proportion of people receiving community sentences has fallen substantially over the past decade, from 13.9% (193,298) in 2007-08 to 7.7% (91,293) in 2017-18.

**Figure 23: Proportion of all people receiving a community sentence in all courts, England and Wales, 2007-08 to 2017-18**



Source: Ministry of Justice [UK] (2018/19), Table Q5.1b

### 3. Effectiveness of custodial orders

Key findings on the effectiveness of imprisonment are:

- Although imprisonment is undoubtedly effective at punishing offenders and denouncing criminal behaviour, research shows that it is not effective as a deterrent to further offending and it appears to reduce reoffending via incapacitation only to a limited extent.
- There appear to be minimal differences in reoffending between custodial and non-custodial sentences. However, the evidence on this issue is mixed, with some research showing higher rates of recidivism following incarceration.
- At best, imprisonment has a marginal impact on recidivism. At worst, imprisonment increases the likelihood of reoffending.

Key findings on the effectiveness of partially suspended sentences are:

- There is no robust research on the effectiveness of partially suspended sentences. What little research exists finds that recidivism rates are higher following a partially suspended sentence than after a wholly suspended sentence.
- There is no research on the impact of partially suspended sentences among vulnerable offenders.
- Recidivism rates following a partially suspended sentence appear to be lower among older offenders and those with no criminal history, but the evidence for this is weak.

Key findings on the effectiveness of parole are:

- The effectiveness of supervised parole relative to unsupervised release remains the source of considerable debate. Nonetheless, there is reasonable evidence that parole is more effective at reducing recidivism than unsupervised release.
- There is some evidence that more active supervision can reduce recidivism, but only if the focus is rehabilitation, rather than compliance.
- There is very limited research on the effectiveness of parole for vulnerable cohorts. It appears that parole might be less effective for Aboriginal and Torres Strait Islander offenders. While parole generally appears to be more effective for female offenders than for men, it appears that Caucasian women and older women are more likely to complete parole and probation successfully, while those with substance abuse problems are less likely to be successful. Offenders with a mental illness have been shown to be more likely than healthy offenders to return to custody for either a new crime or a technical violation.
- Although evidence is mixed for some factors, there is consistent evidence that reoffending on parole is more likely among parolees who are young, male,

Indigenous, with a criminal history. There is no clear consensus on the effectiveness of court-ordered versus board-ordered parole.

- Most of the research shows that electronic monitoring while on parole reduces recidivism cost-effectively, especially when used as a genuine alternative to imprisonment and with high-risk sex offenders. Evidence on net-widening with electronic monitoring remains inconclusive.

This chapter presents an overview of the literature on the effectiveness of custodial sentences – sentences served in whole or in part in custody. Included in this chapter are the following:

- Imprisonment
- Partially suspended sentences<sup>300</sup>
- Parole<sup>301</sup>

The chapter begins by examining the effectiveness of imprisonment in achieving two key sentencing purposes (deterrence and incapacitation), then considers the relative effectiveness of short custodial terms compared with community orders. The chapter then presents a review of the effectiveness of partially suspended sentences and parole.

There is a large body of research that examines the effectiveness of imprisonment at achieving different sentencing purposes. While there is no doubt that prison is effective in punishing offenders and denouncing criminal behaviour, there is little evidence to suggest that it works well as a deterrent. There is evidence that it reduces offending via incapacitation to only a small extent.

The effectiveness of prison compared with non-custodial sentences is critical, with significant financial and social costs associated with incarceration. Sydes, Eggins and Mazerolle (2018, p. 16) note the tension inherent in the use of imprisonment.<sup>302</sup>

A key concern for government and policymakers is whether offender outcomes vary if their sentence is served in custody or in the community. On the one hand, custodial sanctions are argued to reduce reoffending by (1) specifically deterring inmates from committing crimes that will lead to re-incarceration (Becker, 1968); (2) incapacitating inmates who would otherwise commit crimes in the community (Owens, 2009; Sweeten & Apel, 2007); and (3) providing an opportunity for offenders to undergo rehabilitative treatment. On the other hand, some argue that prison can be particularly criminogenic. There is extensive evidence to suggest time spent in prison can stigmatise offenders

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<sup>300</sup> Wholly suspended sentences and conditional suspended sentences are discussed in Chapter 4 as they are orders served entirely in the community.

<sup>301</sup> Although parole itself is served in the community, it is included in this chapter as it only exists as part of an imprisonment sentence.

<sup>302</sup> Scattered throughout this report is material reproduced directly from the Sydes, Eggins and Mazerolle (2018) report, with permission from Queensland Corrective Services. These sections explicitly reference Sydes, Eggins and Mazerolle (2018) and are taken verbatim from their report.

thereby making re-integration post-release difficult (Braithwaite, 1989; Cullen, Jonson & Nagin, 2011; Gaes, Bales & Scaggs, 2016; Loeffler, 2013). Additionally, imprisonment can reinforce an offender's criminal thinking attitudes through extended time spent socialising with deviant peers. Understanding the implications of these sanctions is thus important (Sydes, Eggins and Mazerolle, 2018, p. 16).

## 3.1 Imprisonment

This section<sup>303</sup> considers the evidence on the effectiveness of imprisonment in reducing reoffending and achieving the sentencing aims of deterrence and incapacitation.

### 3.1.1 Imprisonment and deterrence

Deterrence is an oft-cited justification for sentencing in contemporary cases. Two kinds of deterrence have been posited to act to discourage people from committing crimes: general deterrence, in which the threat of punishment deters the general population from criminal behaviour; and specific deterrence, in which an individual's previous experience with sentencing deters that person from reoffending in the future. Underlying the specific deterrence hypothesis is the premise that more severe sentences will have a greater deterrent effect than less severe sentences.

The essential premise of deterrence theory is that offenders weigh the costs and benefits of their actions and make a rational decision about which course to adopt. But such rational decision-making cannot be said to be characteristic of many offenders who may not be capable of rational thought: drug affected or intoxicated offenders, offenders with a cognitive impairment, or those who act spontaneously or opportunistically without forethought. For these people, the central premise of rational decision-making does not apply.

Several significant reviews of research on the deterrent effect of imprisonment may be found in the criminological literature. For example, Gendreau, Goggin and Cullen (1999) undertook a meta-analysis of 50 studies on the question of deterrence to determine whether prison could reduce the likelihood of further offending. Their research showed that imprisonment actually produced a slight increase in reoffending following release. The authors concluded that imprisonment not only had no specific deterrent effect, but that it had the potential to affect prisoners – especially younger, lower-risk offenders – negatively. These results were confirmed by a study that showed that prison either had no effect on reoffending or had a mildly criminogenic effect when compared with non-custodial options, increasing the likelihood of reoffending (Nagin, Cullen and Johnson, 2009).

Research on reoffending in Victoria has shown that, compared with offenders who were matched on characteristics such as age, gender, offence type and prior offending history, the likelihood of reoffending following a sentence of imprisonment was 24.6% higher than for

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<sup>303</sup> Parts of section 3.1 are drawn from Gelb (2013).

those who received a wholly suspended sentence (Sentencing Advisory Council [SAC], 2013, p. 25). People who were sentenced to a term of imprisonment not only were most likely to reoffend, but they were likely to reoffend most quickly (SAC, 2013, p. 29).

The report concludes that imprisonment fails to deter people from committing further crimes: 'of the various purposes for which a term of imprisonment may be imposed, dissuading an offender from further offending via specific deterrence is unlikely to yield its intended result' (SAC, 2013, p. 31).

Imprisonment has been postulated to exert a criminogenic effect in a number of ways (Nagin, Cullen and Johnson, 2009). Most commonly, it is suggested that prison acts as a 'school for crime', providing a criminal learning environment. Young or first-time prisoners may be especially susceptible to these learning effects, as they are exposed to hardened criminals. Imprisonment may also act to stigmatise and label offenders, making it more difficult for them to find employment or stable accommodation upon release or to regain pro-social relationships. Finally, imprisonment may not assist in addressing the underlying causes of people's offending behaviour: without adequate treatment programs for issues such as substance use, mental illness or victimisation experiences, prison is unlikely to deter people from further offending.

The bulk of the evidence suggests that increases in the severity of punishment do not provide an increased general deterrent effect; increases in the certainty of apprehension, however, do appear to be effective in deterring people from offending (Ritchie, 2011).

At best, then, imprisonment has no deterrent effect on reoffending. At worst, it can increase recidivism when compared with alternative sentence types.

### 3.1.2 Imprisonment and incapacitation

While prison undoubtedly is effective at incapacitating individual offenders, thus preventing them from committing crimes against the community while they are inside prison walls, it is less clear whether prison's incapacitative effect can actually reduce overall levels of offending.

Research in this area has divided the incapacitative effect into two distinct components: collective incapacitation and selective incapacitation. Collective incapacitation involves increasing the severity of sentences for all offenders who are convicted of a particular offence, focusing on the offence itself without considering an individual's risk of further offending. Selective incapacitation, on the other hand, identifies individual offenders who pose the greatest risk of reoffending and selects those individuals for imprisonment (or a longer term of imprisonment) on the basis of the prediction.

Measuring the effectiveness of imprisonment in reducing crime based solely on incapacitation has proven to be difficult, with several methodological issues affecting the research. One of these issues is how to measure the 'replacement effect', in which some

offences with a strong demand market – such as drug or weapons offences – tend to see offenders in the community taking the place of those who are imprisoned, such that there is no reduction in the total amount of crime due to incapacitation. Nonetheless, several consistent conclusions have been reached.

Collective incapacitation that increases the use and length of prison sentences without differentiating among offenders based on their risk of reoffending is generally ineffective in reducing crime. The costs of such policies – which tend to sweep large numbers of both low- and high-risk offenders into prison – may outweigh the initial benefits of removing offenders from the streets. Studies have shown that a 1% increase in the imprisonment rate would lead to no more than one-third of 1% decrease in the crime rate (Spelman, 2000: cited in Ritchie, 2012, p. 13).

Thus, indiscriminate and widespread use of imprisonment as a means of collective incapacitation has been shown to be ineffective in reducing crime.

Selective incapacitation, on the other hand, that targets high-risk offenders has been shown to be more effective in reducing crime. Past behaviour is known to be the strongest predictor of future behaviour (Kurlychek, Brame and Bushway, 2006), so targeting individuals based on their future risk of reoffending holds some inherent logic. It also, however, presents serious practical and ethical dilemmas. Predicting future behaviour, even using the most sophisticated of actuarial tools and the best clinical judgment, is notoriously difficult.<sup>304</sup> Even if one were able to predict future behaviour perfectly, the ethical (and legal) dilemma arises of punishing someone for crimes yet to be committed.

The Sentencing Advisory Council concludes its report on incapacitation with the following caution: ‘until the necessary research has been conducted, far-reaching expectations regarding the crime-reducing effects that might be expected from the use of imprisonment as a means of incapacitation must be tempered with an appreciation of its limitations and cost’ (Ritchie, 2012, p. 19).

### *Incapacitation and dosage effects*

Sydes, Eggins and Mazerolle (2018) review recent research on crimes prevented through incapacitation. The following is reproduced from their report (Sydes, Eggins and Mazerolle, 2018, p. 17):

Though most research on incarceration effectiveness focuses on recidivism, another method involves examining ‘incapacitation effects’—that is, crimes prevented due to offenders’ incarceration (Tollenaar, van der Laan & van der Heijden, 2014). Tollenaar and colleagues (2014) sought to estimate the impact of a severe custodial sanction (known as the ISD) for high-frequency offenders in the Netherlands, compared to a matched sample of high-frequency offenders released from a standard prison. The ISD – translated from Dutch to mean the Institution for Habitual Offenders – allowed for the incarceration of

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<sup>304</sup> For an overview of difficulties associated with risk assessment, see Sentencing Advisory Council (2007), section 2.2.

high frequency offenders for a two-year period for even minor offences. Offenders were deemed eligible for the program if they had 11 or more contacts with police in the preceding 5 years. Based on reconviction within the control group, the authors estimated that participation in the ISD sanction prevented 2.5 convictions and 4 recorded offenses per year (Tollenaar, van der Laan & van der Heijden, 2014).

Another topic of concern for researchers studying incarceration is the effect of 'dosage'— that is, the relationship between time served in prison and recidivism outcomes. In the aforementioned Dutch study by Tollenaar et al. (2014), the longer sentence time mandated by the ISD was associated with significantly lower recidivism rates post-release. After two years, 72% of high-frequency offenders amongst the ISD cohort (average confinement of 834 days) were reconvicted compared to 84-88% of comparable offenders released from standard short-term imprisonment (average confinement of 102- 108 days). A similar deterrent effect was found amongst a representative adult sample in Ohio, USA (Meade, Steiner, Makarios & Travis, 2013), where offenders confined for longer periods of time had lower odds of recidivism. However, the authors noted that recidivism odds were only significantly reduced amongst offenders who were confined for 5 years or more (reduction of 8% compared to offenders confined for two years). Furthermore, offenders who were confined for 13-24 months had the highest odds of recidivism in the sample (Meade et al., 2013), indicating that the dosage effect of imprisonment is not linear (Sydes, Eggins and Mazerolle, 2018, p. 17).

Earlier studies that were not included in the Sydes, Eggins and Mazerolle (2018) review offer some explanation for varying rates of recidivism following sentences of different durations. The Ministry of Justice in the UK found that, among those sentenced to a term of imprisonment, reoffending rates decreased as the length of the sentence increased: offenders with sentences of two to four years had lower reoffending rates than those sentenced to a term of one to two years, who in turn had lower reoffending rates again than those sentenced to a term of less than 12 months. The report suggests that offenders who are sentenced to short terms of imprisonment of less than 12 months do not typically have access to offender management programs and are not subject to any supervision upon release. It is implied that it is this lack of treatment and supervision that may be leading to higher rates of reoffending among the short imprisonment cohort, rather than any possible deterrent effect of longer sentences (Ministry of Justice [UK], 2011, p. 17).

The lack of treatment available for short-term prisoners was also highlighted by a study in the UK examining effective alternatives to short sentences. The Revolving Doors Agency's (2012) briefing identifies that not only do short-sentence prisoners have very high rates of reoffending, but they also exhibit high levels of substance misuse, homelessness, poverty and debt. Compared with prisoners serving sentences of one to four years, short-sentence prisoners were more likely to have used illegal drugs immediately prior to custody (44% of the short-sentence prisoners compared with 35% of those serving longer sentences), more likely to have been homeless (17% compared with 9%) and less likely to have been employed in the year prior to custody (50% compared with 58%) (Revolving Doors Agency, 2012, p. 3). Given the lack of access to offender management programs and other activities to reduce

reoffending, it is not surprising that this particularly vulnerable cohort reoffends at a high rate.

### 3.1.3 Comparing community sentences with custodial sentences

There is a substantial body of research that locates its subject as the line between a custodial and a non-custodial sentence. This approach is based on the premise that sentencers, in deciding whether to impose a short term of imprisonment, might instead decide on a community order as a viable alternative to prison. Apart from the common legislative requirement to use imprisonment as a sentence of last resort, research shows that community orders are just as effective at reducing recidivism as a short term of imprisonment, without the high financial costs and the potential for harm to the offender.

Systematic reviews of the most methodologically sound studies have found that results in favour of community sentences are less consistent. As part of the Campbell Collaboration's Systematic Reviews<sup>305</sup> series, Killias, Villettaz and Zoder (2006) examined abstracts of more than 3,000 studies concerning the effects of custodial and non-custodial sanctions on reoffending. Finding only 23 studies that met the strict conditions of an experimental or quasi-experimental design for inclusion in the Campbell Review, the authors identified the contradictory findings. For those studies in which a statistically significant difference was found between custodial and non-custodial sanctions, 11 out of 13 significant results showed that reoffending was lower following a non-custodial sanction. Overall, however, of the 27 statistical comparisons, 14 showed no statistically significant difference between the two types of sanction (Killias, Villettaz and Zoder, 2006, p. 29).

In an update to this systematic review, Villettaz, Gilliéron and Killias (2015) again examined the effects of custodial and non-custodial sanctions on reoffending. Conducting a meta-analysis on the highest quality studies (four randomised controlled trials and one natural experiment), they found no significant differences in reoffending following different types of sentences. However, analysing eight quasi-experimental studies that used propensity score matching to give matched comparison groups showed that recidivism was higher following a term of imprisonment than after a community-based sanction. Given the differences in results based on the different methodologies employed, the authors concluded that the 'most credible interpretation of the evidence' is that there is minimal difference in outcomes between these sentence types (Villettaz, Gilliéron & Killias, 2015, p. 50).

Similar results have been found in Australian research. In an examination of the effect of prison on adult reoffending, Weatherburn (2010) measured time to reconviction among 96

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<sup>305</sup> The Campbell Collaboration is an international network of researchers that prepares and disseminates systematic reviews of high-quality research on social interventions. High-quality research is defined as those studies that employ experimental and quasi-experimental research designs. The purpose of a systematic review is to synthesize the best available research on a specific question. This approach is based on that of the Cochrane Collaboration, which initiated the systematic review of high-quality experimental and quasi-experimental research in the field of medicine.

matched pairs of convicted burglars and 406 matched pairs of offenders convicted of non-aggravated assault in New South Wales (NSW) in 2003 and 2004. Pairs were matched in that one offender in each received a prison sentence, while the other received some form of non-custodial sentence. Other factors, such as offence type, prior offending and bail status, were also matched to ensure that any differences in rates of reconviction could be ascribed to differences in sentence types, rather than to other possible influences.

Controlling for a number of factors, including sentence type, gender, age, prior offending and plea entered, results of regression analyses showed that offenders who received a prison sentence were slightly more likely to be reconvicted than were those who received some form of non-custodial sentence. The effect of sentence type was significant for non-aggravated assault, although it was not significant for burglary. Although the full model for non-aggravated assault only just reached statistical significance, nonetheless offenders who received a prison term were 22% more likely to be reconvicted than were those who received a non-custodial sentence (Weatherburn, 2010, p. 8).

Also adopting a propensity score matching method, the Ministry of Justice in the UK examined the relative effectiveness of different sentence types in terms of proven reoffending among matched pairs of offenders. Results showed that offenders who were sentenced to a community order had lower rates of reoffending after one year (56.2%) than those given a term of imprisonment of less than 12 months (62.5%). Offenders sentenced to a community order also committed fewer offences per person (2.44 offences compared with 3.39) and were less likely to be returned to custody (33.3% compared with 44.4%). Differences between the two cohorts were evident soon after prisoners had been released (Ministry of Justice [UK], 2013, p. 14).

Similarly, offenders who were sentenced to a suspended sentence also had lower rates of reoffending than those given a short term of imprisonment (53.9% compared with 62.5%), and committed fewer offences per person (2.23 compared with 3.37). However, offenders given a suspended sentence were more likely to return to custody (55.5% compared with 44.4%) (Ministry of Justice [UK], 2013, p. 16).

Among those who served time in prison, offenders who served between one and four years in custody had lower rates of reoffending than those serving less than one year (Ministry of Justice [UK], 2013, p. 19). Within the group serving less than one year, offenders sentenced to six months or less in custody had higher reoffending rates than those who served six to 12 months (55.2% compared with 50.3%) and a higher frequency of reoffending (2.64 versus 2.34) (Ministry of Justice [UK], 2013, p. 21). It has been suggested that particularly poor outcomes for offenders serving short terms of imprisonment are due to the lack of sufficient

time for appropriate rehabilitation work to be undertaken at the same time as family relationships and support are disrupted (Kay, 2019).<sup>306</sup>

A subsequent replication of the study confirmed these results (Mews, Hillier, McHugh and Coxon, 2015, p. 1).

Sydes, Eggins and Mazerolle (2018, pp. 16-17) review one study that compared recidivism rates following imprisonment with those following community sentences among felony drug offenders. This study is valuable in its focus on a particularly vulnerable yet prominent cohort in the criminal justice system:

Mitchell, Cochran, Mears and Bales (2017) looked at the consequences of incarceration for felony drug offenders in Florida. In this study, they found that imprisonment was not associated with recidivism for most offenders when compared to those sentenced to community sanctions (Mitchell, Cochran, Mears & Bales, 2017). Indeed imprisonment did not have a significant effect on the probability of a felony reconviction or felony drug reconviction within a 3-year follow-up period (Mitchell et al., 2017). However, there were some indications that imprisonment significantly increased recidivism among white and young white male offenders. For this group, prison increased the probability of both general reconviction and drug reconviction (Mitchell et al., 2017). With the exception of white drug offenders, the authors concluded that imprisonment for this sample did not appear to significantly decrease or increase the likelihood of recidivism (Sydes, Eggins and Mazerolle, 2018, pp. 16-17).

These findings replicate those of an earlier study of felony drug offenders in Missouri, which found that drug offenders sentenced to prison had higher rates of recidivism and reoffended more quickly than did drug offenders placed on probation. The authors also found that imprisonment had a more pronounced criminogenic effect on drug offenders than on other types of offender (Spohn and Holleran, 2002).

There has been very limited research on the role of gender in the effect of prison on recidivism. One notable exception is the work of Mears, Cochran and Bales (2012), who used propensity score matching on a large sample of men and women in Florida to compare the effect of prison with the effects following intensive probation and probation. They found that, compared with the two community orders, incarceration was associated with a greater likelihood of property and drug recidivism within three years. Prison did not increase the likelihood of violent or other recidivism. While analyses found that the criminogenic effect of prison was no greater for females or males, prison was more likely to increase drug recidivism among men and property offending among women (Mears, Cochran and Bales, 2012).

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<sup>306</sup> Kay (2019) noted, however, the failure of probation to offer an effective alternative to short terms of imprisonment due to overwhelming offender numbers and significant staff shortages. He believes that 'the only way any reduction in the use of short sentences will work is if the probation service is fixed first'.

### 3.1.4 Summary of the research on prison

Undoubtedly, prison is an effective option when aiming to achieve the sentencing purposes of punishment and denunciation. But the evidence on its ability to be effective at reducing crime via deterrence or incapacitation suggests that prison is not an effective deterrent and is limited in its incapacitative effect. The value of imprisonment for rehabilitative purposes is also questionable, as research has shown that treatment programs offered in a community setting tend to perform better at reducing reoffending than those offered within prisons. It has been suggested that community programs are more effective as they include both the cognitive-behavioural and relapse prevention aspects of treatment that are found in prison programs, but additionally they may involve a longer treatment period and include helping offenders develop a network of supportive family and friends (Gelb, 2007, p. 35).<sup>307</sup>

Regardless of the effectiveness of imprisonment in achieving its various purposes, it also has negative impacts on broader communities that are difficult to quantify and are often overlooked. In particular, research has shown that children suffer a host of negative consequences when a parent is incarcerated: they are at an increased risk of abuse and neglect, are far more likely to engage in criminal behaviour themselves, are more likely to be in foster care and are more likely to display aggression and other emotional and behavioural problems over both the short term and the longer term (La Vigne, Davies and Brazzell, 2008). Such 'collateral consequences' of imprisonment for the children and family of offenders are perhaps even more pronounced for families in rural and regional areas, where access to services may not be as well developed as in metropolitan areas.

## 3.2 Partially suspended sentences

There is no methodologically strong research on the effectiveness of this version of a suspended sentence, which combines a term in custody with a suspended term served in the community. Only two studies were found that consider this question, and neither involved the strongest of the robust methodologies.

Bartels (2009b) examined reoffending following different types of suspended sentences in Tasmania, using a logistic regression method. The analysis showed that 44.4% of the partly suspended sentence sample was reconvicted within two years, compared with 41.9% of the wholly suspended sentence sample. The difference was not statistically significant (Bartels, 2009b, p. 81).

In the Netherlands, Aarten and colleagues (Aarten, Denkers, Borgers and van der Laan, 2013) compared reconviction rates within five years for offenders who received fully or partly

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<sup>307</sup> While the Gelb (2007) review of treatment programs focused on treatment of sex offenders, the findings specific to this group of offenders are more broadly applicable to other programs as well, such as drug treatment or mental health programs. The effectiveness of treatment is discussed in Chapter 5 of this report.

suspended prison sentences, with or without special conditions.<sup>308</sup> Using a survival analysis method, they found that offenders given a partly suspended sentence had a 26% greater risk of reconviction than those given a wholly suspended sentence. Offenders who were given a special condition had a greater risk of reconviction than those given only the general condition of not reoffending (Aarten et al., 2013, p. 151).

Examining the risk of reconviction for the combinations of the two classifications, analyses found no difference in reconviction rates between wholly and partly suspended sentences with and without special conditions. Suspended sentences without special conditions had significantly lower reconviction rates compared with suspended sentences that included special conditions that were solely control-orientated (Aarten et al., 2013, p. 154).

The partially suspended sentence is thought to have a superior capacity to deter offenders from reoffending than a wholly suspended sentence, 'with the more tangible experience provided by the actual "clang of the prison gates" followed by a "short sharp and...nasty taste of prison"' (Dignan, 1984, p. 191). By incorporating a period of actual imprisonment, it is also argued that it constitutes a deterrent to others, provides a substantial punitive component and allows an element of denunciation that is perhaps absent from a wholly suspended sentence (Dignan, 1984, p. 192). However, given the findings of the Aarten study, it appears that the theorised additional deterrent value of a partially suspended sentence compared with a wholly suspended sentence is not supported.

### 3.2.1 Effectiveness of partially suspended sentences among vulnerable cohorts

Given the dearth of methodologically strong evidence on the partially suspended sentence, the separate literatures on imprisonment and wholly suspended sentences represent the best available research on effectiveness for this order.

There appears to be no research on the effectiveness of partially suspended sentences for vulnerable offenders.

### 3.2.2 Factors affecting successful completion of a partially suspended sentence

Only a single study was found that presents analysis of recidivism following a partially suspended sentence by offender characteristics.<sup>309</sup> Bartels (2009a) found that people with no prior record performed best on a partially suspended sentence, with 25% of the sample reoffending. The reconviction rate among those with a minor criminal record was 45%, while for offenders with a significant criminal history the rate was 82%. Older offenders were more

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<sup>308</sup> The authors divide possible conditions into those that control and/or restrict the behaviour of the offender and those that focus on changing behaviour through interventions and therapy (Aarten et al., 2013, p. 144).

<sup>309</sup> Bartels (2009a) primarily focused on comparing recidivism rates following different sentence types – full time imprisonment, partially suspended sentence, wholly suspended sentence and non-custodial order – but analysis included a brief examination of recidivism rates by prior record and by age group, providing at least some evidence of factors affecting successful completion of these orders.

successful at completing their partially suspended sentence, with no reconvictions among those aged 45 and older, compared with 55% reconviction among the 18- to 24-year age group. Recidivism rates decreased as age group increased (Bartels, 2009a, p. 4).<sup>310</sup>

There appears to be no other research on the factors affecting successful completion of a partially suspended sentence.

### 3.2.3 Gaps in research on the effectiveness of partially suspended sentences

There is no methodologically strong evidence at all on the effectiveness of partially suspended sentences, its use among vulnerable offenders or factors affecting successful completion. While other research might be applicable in its stead (such as research on imprisonment and wholly suspended sentences), ideally there would be direct evidence on partially suspended sentences themselves.

### 3.2.4 Summary of the research on partially suspended sentences

In the absence of robust evidence on partially suspended sentences, any conclusions about their effectiveness are necessarily tentative. It appears that recidivism rates following a partially suspended sentence are higher than those following a wholly suspended sentence, and that recidivism is more likely among younger offenders and those with a criminal history.

## 3.3 Parole

Parole supervision has two primary functions: to provide treatment to meet the needs of the parolee by facilitating access to appropriate services (such as education, employment or drug/alcohol treatment), and to ensure surveillance to monitor the parolee's behaviour so that there is no reoffending (Vito, Higgins and Tewksbury, 2017, pp. 628-629). Although parole is widely used in western countries, it has been said that it remains 'unclear whether parole release has a beneficial effect on recidivism' (Shute, 2004: cited in Wan, Poynton, van Doorn and Weatherburn, 2014, p. 1).

In their review of 'what works' in corrections, Sydes, Eggins and Mazerolle (2018) examined research comparing recidivism outcomes for offenders released from prison to a supervised parole or probation period with those released unconditionally at the end of their entire sentence. The following is their description of the evidence on the efficacy of supervised release (Sydes, Eggins and Mazerolle, 2018, pp. 83-85):

Prisoners can be released back to the community through either supervised release on parole or unconditional release upon the completion of their entire sentence. The efficacy of these two options is the source of considerable debate. As such, a number of studies have compared recidivism outcomes for offenders who are released to the community

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<sup>310</sup> There is no mention of whether these differences are statistically significant.

partway through their sentence on parole (i.e., supervised offenders) with offenders who are released from prison after completing their full sentence, with no supervision requirements (i.e., non-supervised offenders) (Clark et al., 2016; Lai, 2013; Ostermann, 2012; Schlager & Robbins, 2008; Wright & Rosky, 2011). These studies explore whether offenders who are subject to supervision have higher or lower rates of recidivism than those who are not subject to supervision post-release. Although the findings in this area are mixed, there is reasonable evidence to support the efficacy of supervised release as a means of reducing rates of reoffending.

A number of studies report favourable recidivism outcomes for supervised offenders (Lai, 2013; Ostermann, 2012; Schlager & Robbins, 2008). In a study comparing New Jersey parolees with “maxed out” prisoners (i.e., prisoners who served their entire sentence in prison, without early release), Schlager and Robbins (2008) found that offenders released on discretionary parole were rearrested, reconvicted, and reincarcerated at lower rates than unsupervised offenders. These findings are consistent with another study in New Jersey which reported that offenders who voluntarily forewent parole consideration (and therefore were released with no supervision requirements at the end of their sentence) were rearrested and/or reconvicted at a significantly higher rate than paroled offenders (Ostermann, 2012). Beyond the United States, a study of offenders released on a period of probation supervision in England and Wales also reported positive supervision effects, with reoffending rates being between 14 and 17 percentage points lower for supervised offenders (Lai, 2013).

Other studies, however, report mixed findings with respect to the utility of supervised release. In a study comparing two forms of supervised release (split supervision and conditional release supervision) with prisoners released with no form of supervision, Clark et al. (2016) found that offenders released to any form of post-prison supervision were approximately 11 to 20% less likely to be arrested for any crime (felony or misdemeanour, excluding technical violations of supervision), and 30 to 44% less likely to be convicted for a felony offence. However, offenders who were subject to post-prison supervision were also 7 to 20% more likely to be arrested for a felony, and 67 to 360% more likely to be returned to prison than those with no supervision requirements. As Clark et al. (2016) explain, the significant increase in the likelihood of reimprisonment may be due, at least in part, to the nature of supervision – whereby supervised offenders may be returned to prison for technical violations of their supervision order or as a result of a new sentence.

Finally, a study by Wright and Rosky (2011) examined the effect of an early release policy introduced in Montana in 2002. In this case, hundreds of low-risk offenders were granted conditional release from prison in an attempt to mitigate a large budget deficit. Unlike offenders who were released pursuant to traditional board-ordered parole, these offenders were released at the discretion of the Montana Department of Corrections and supervised by its Community Corrections Division. Wright and Rosky (2011) compared reoffending rates for offenders classified as one of four release statuses – (1) traditional parole from prison, (2) traditional parole from a community setting, (3) conditional release from prison, or (4) conditional release from a community setting. Their research revealed that offenders who were conditionally released from prison in accordance to the new policy were most likely to reoffend (36.4%), and to have the quickest median time to failure. The offenders released through traditional parole from a community setting were second most likely to reoffend (36.2%), followed by those on conditional release from a community setting (34.2%), and finally, those released from traditional parole from prison (30.2%). The authors concluded that the early release policy would likely have only

exacerbated the financial strain already being experienced, as a result of the increased rates of recidivism (Sydes, Eggins and Mazerolle, 2018, pp. 83-85).

Beyond the work of Sydes, Eggins and Mazerolle (2018), there appears to be only a single Australian study that considers the relative effectiveness of parole using a robust methodology. Wan, Poynton, van Doorn and Weatherburn (2014) used propensity score matching to examine the role of parole supervision in reoffending among almost 8,000 offenders in NSW. They found that a significantly higher proportion (51%) of offenders who were released unconditionally (and who were therefore unsupervised) had at least one proven indictable offence, compared with 46% of those released on parole and under supervision. The unsupervised group reoffended more frequently, and with more serious offences (Wan et al., 2014, p. 4).

Comparing supervision intensity and type (either compliance-focused or rehabilitation-focused), analyses found no difference in the proportion reoffending, time to reoffending or mean number of new offences for the high-level and low-level supervision groups for compliance-focused supervision. For rehabilitation-focused supervision, people receiving high-intensity supervision took 1.4 times longer to reoffend than those receiving low-level supervision. There was no difference in the proportion reoffending (Wan et al., 2014, p. 5).

The authors concluded that more active supervision can reduce parolee recidivism, but only if it focuses on rehabilitation rather than compliance (Wan et al., 2014, p. 6).

### 3.3.1 Effectiveness of parole among vulnerable cohorts

Research on the differential effectiveness of parole is limited. There is only one study of recidivism following conditional release among Indigenous offenders, one for female offenders, and one methodologically strong study examining recidivism among mentally ill parolees. There appears to be no robust recidivism research for other vulnerable cohorts.

#### *Aboriginal and Torres Strait Islander offenders*

There appears to be no research on the effectiveness of parole for Aboriginal and Torres Strait Islander offenders in Australia. What is known, however, is that Aboriginal and Torres Strait Islander prisoners are less likely to apply for, and less likely to be granted, parole than non-Indigenous prisoners (ALRC, 2017, p. 302). Despite being eligible for parole, some Aboriginal and Torres Strait Islander prisoners serve their entire sentence in prison before being released into the community without supervision. Given the evidence that people on parole tend to have lower rates of recidivism than those who are released from prison unsupervised, this lower rate of parole among Aboriginal and Torres Strait Islander prisoners has significant implications for their rates of return to prison.

To maximise the number of eligible Aboriginal and Torres Strait Islander prisoners released on parole, the ALRC recommended (Recommendation 9-2: ALRC, 2017, p. 303) that state and territory governments should:

- introduce statutory regimes of automatic court-ordered parole for sentences of under three years, supported by the provision of prison programs for prisoners serving short sentences; and
- abolish parole revocation schemes that require the time spent on parole to be served again in prison if parole is revoked.

This approach should assist Aboriginal and Torres Strait Islander prisoners in being released on parole under supervision, which, in turn, should contribute to reductions in recidivism. In addition, extra support services and a refocus on rehabilitation rather than overly stringent supervision would assist with transitioning successfully back in to the community. Finally, the use of Aboriginal and Torres Strait Islander organisations and parole officers in parole processes is also seen as important to increase the chance of parole success for this cohort (ALRC, 2017, pp. 309-310).

While there is no research on parole for Indigenous populations in Australia, there is one study of factors related to revocations following conditional release for Aboriginal offenders in Canada.<sup>311</sup> Thompson, Forrester and Stewart (2015) examined revocation data for all federal offenders released from prison<sup>312</sup> over a three-year period. They found that non-Aboriginal women had the lowest rates of return to custody (24%), with non-Aboriginal men having a rate of 36%. Aboriginal men had the highest rates (56%), which were similar to those of Aboriginal women (54%). Rates of revocation by reoffending were low across all groups: 4% of non-Aboriginal women and 6% of non-Aboriginal men were revoked for reoffending, compared with 12% of both Aboriginal men and women. For all four groups, a large proportion of revocations occurred within six months of release, with the majority of revocations taking place within the first year. Aboriginal men and women were more likely to experience a revocation within the first six months of release than their non-Aboriginal counterparts (Thompson, Forrester and Stewart, 2015, p. 8).

Among Aboriginal men, the likelihood of any kind of revocation was higher for those who were single and younger, had an institutional offence, had a release condition related to substance abuse problems and had been released on statutory release, rather than discretionary parole. For Aboriginal women, the risk of any kind of revocation was higher for those needing substance abuse treatment, who had incurred an institutional offence and for those who had been released from a higher security prison or on statutory release (Thompson, Forrester and Stewart, 2015, pp. 9-11).

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<sup>311</sup> While research on Canadian Aboriginal populations is broadly applicable to Australian Aboriginal and Torres Strait Islander offenders, there may be differences between the two groups that suggest caution in applying Canadian evidence to Australia. But given similar situations of criminal justice over-representation of Indigenous offenders in the two countries, Canadian research is considered valuable in this review.

<sup>312</sup> The sample included prisoners released on day parole, full parole or statutory release, but it does not present revocation rates by release type (Thompson, Forrester and Stewart, 2015, p. 1). Statutory release is very similar to full parole, with both requiring supervision and compliance with conditions (Thompson, Forrester and Stewart, 2015, p. 3).

The likelihood of revocation due to reoffending among Aboriginal men<sup>313</sup> was higher for those whose first release suspension was for a failure to report, who had a need related to community functioning, who were younger and who had an institutional offence. Being on statutory rather than discretionary release more than doubled the likelihood of revocation by reoffending, but having a condition to follow some sort of treatment reduced revocation for an offence by half (Thompson, Forrester and Stewart, 2015, p. 31).

Based on this research, all that can be concluded is that Aboriginal offenders appear to have higher rates of parole failure than non-Aboriginal offenders, suggesting that parole might be less effective for this cohort.

### *Female offenders*

Traditionally, treatment options and correctional programming have been designed around the risks and needs of male offenders, despite studies that suggest that female offenders have unique and different causes and correlates of offending. The majority of women in the criminal justice system have been victimised at least once in their lives, with many reporting a long history of victimisation from early childhood. Many women also report mental disorder and substance abuse, often as a direct result of their traumatic histories. Rates of victimisation, mental disorder and substance abuse are higher among female offenders than among their male counterparts (Hall et al., 2013, p. 32).

Despite known differences in the underlying causes of offending, 'women offenders have been largely invisible or forgotten in a system designed to control and rehabilitate men' (Cain, 1990, p. 2: cited in Carmichael et al., 2005, p. 75). This invisibility has translated into the literature on the effectiveness of criminal justice interventions for women, with notable gaps in the research around the impact of specific orders on female offenders. Nonetheless, there is some evidence about the effectiveness of parole for women.

There is 'little evidence' that probation and parole programs<sup>314</sup> are designed to be gender-responsive. The limited research that exists on probation and parole for female offenders suggests that (Carmichael et al., 2005, p. 77):

there are different factors that contribute to the successful completion of probation and parole for female offenders compared to male offenders and that women's social

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<sup>313</sup> There were too few reoffending women to undertake this analysis (Thompson, Forrester and Stewart, 2015, p. 12).

<sup>314</sup> Carmichael et al. (2005) discuss both parole and probation; their data did not differentiate between the two. Despite this methodological shortcoming, the research is included in this review as there is little evidence available on the impact of different orders on female offenders. This conflation of the two orders is not unusual in the effectiveness literature, which tends to be framed around the work of community corrections (involving both parole and probation supervision). Caution needs to be used, however, when generalising research findings from one context to the other, as parole may involve a higher-risk cohort than probation (Prins and Draper, 2009, p. 3). In this review, studies that examine both parole and probation together are presented here; the discussion of probation at section 4.6 contains only that research which pertains specifically to probation.

relationships, such as those with husbands, children, family, and peers, can have a large impact on probation and parole success, more so than male offenders.<sup>315</sup>

Using a sample of 503 women completing community correction sentences in South Carolina, the authors examined the factors that significantly predict successful completion of probation and parole. Logistic regression analyses found that Caucasian women were more likely than non-white women to complete their probation or parole successfully, as were older women. Additionally, women with substance abuse problems<sup>316</sup> were less likely to complete probation or parole successfully. There was no statistically significant effect on the likelihood of successful completion for substance abuse treatment or mental health treatment (pp. 86-87).<sup>317</sup>

### *Offenders with a mental illness*

People with mental illnesses are over-represented in parole and probation populations at rates ranging from two to four times those seen in the general population. Research has shown that the prevalence rate of serious mental illness in the general population is 5%; studies of people on parole or probation have found rates ranging from 11% to 19%. People under community corrections supervision who have a mental illness are also more likely than those without such an illness to have a co-occurring substance use disorder (Prins and Draper, 2009, p. 11).

In addition to clinical problems, people with mental illnesses generally are more likely to report prior traumatic experiences, with high rates of physical and/or sexual abuse victimisation. Rates of trauma are especially high for women with mental illnesses who are under probation supervision. People with mental illness under community corrections supervision are also likely to face socio-economic challenges such as homelessness, unemployment and reliance on public assistance (Prins and Draper, 2009, p. 13).

Clearly, then, people with a mental illness who are involved in community corrections supervision represent a particularly vulnerable cohort with multiple forms of disadvantage. The effectiveness of parole and probation for this cohort will thus depend on thorough understanding of these complexities and adequate resourcing to be able to intervene across multiple domains.

However, Lurigio (2001) argues that people with serious mental illnesses on parole are an 'underidentified and underserved' population (Lurigio, 2001, p. 453). But he believes that, with additional resources and training for parole officers, parole could be an effective supervision mechanism for this cohort, acting as a platform for services, mandated mental

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<sup>315</sup> Citations omitted.

<sup>316</sup> This is defined as those women who reported that drug or alcohol use 'had a negative impact on their ability to function' (Carmichael et al., 2005, p. 86).

<sup>317</sup> The authors cited several studies to note that women who do not successfully complete their community sanctions are more likely to have their probation or parole revoked because of technical violations rather than for new arrests, which are more common for males: violating conditions of parole is the most common reason for women returning to prison (Carmichael et al., 2005, p. 80).

health treatment and other related interventions as conditions of supervision (Lurigio, 2001, p. 453). Given the multiple problems generally experienced by parolees with serious mental illnesses, parole services need to address a broad range of offender needs to address substance abuse, developmental disability, poor physical health, housing and financial difficulties, homelessness, joblessness and a lack of social support (Veysey, 1996: cited in Lurigio, 2001, p. 456).

In the only robust study found on the effectiveness of parole for mentally ill offenders, those with a mental illness were significantly more likely than healthy offenders to have a parole or probation order suspended or revoked. Eno Louden and Skeem (2011) analysed data on almost 45,000 people released to parole in California in 2004 and found that parolees with a mental illness had 3.28 times the odds of returning to custody for either a new crime or a technical violation than were parolees without a mental illness, after controlling for demographic and criminal history factors (Eno Louden and Skeem, 2011, p. 5).<sup>318</sup> Psychiatric symptoms predicted parole failure (return to custody), but they did not predict new offending: offenders with a mental illness were equally likely as those without to be rearrested for a new offence. While offenders with a mental illness had a disproportionate risk of parole failure overall, those under intensive supervision<sup>319</sup> were 'uncommonly likely' to return to prison for a technical violation – possibly due to being kept on a 'tighter leash' (Skeem et al., 2014, p. 211).

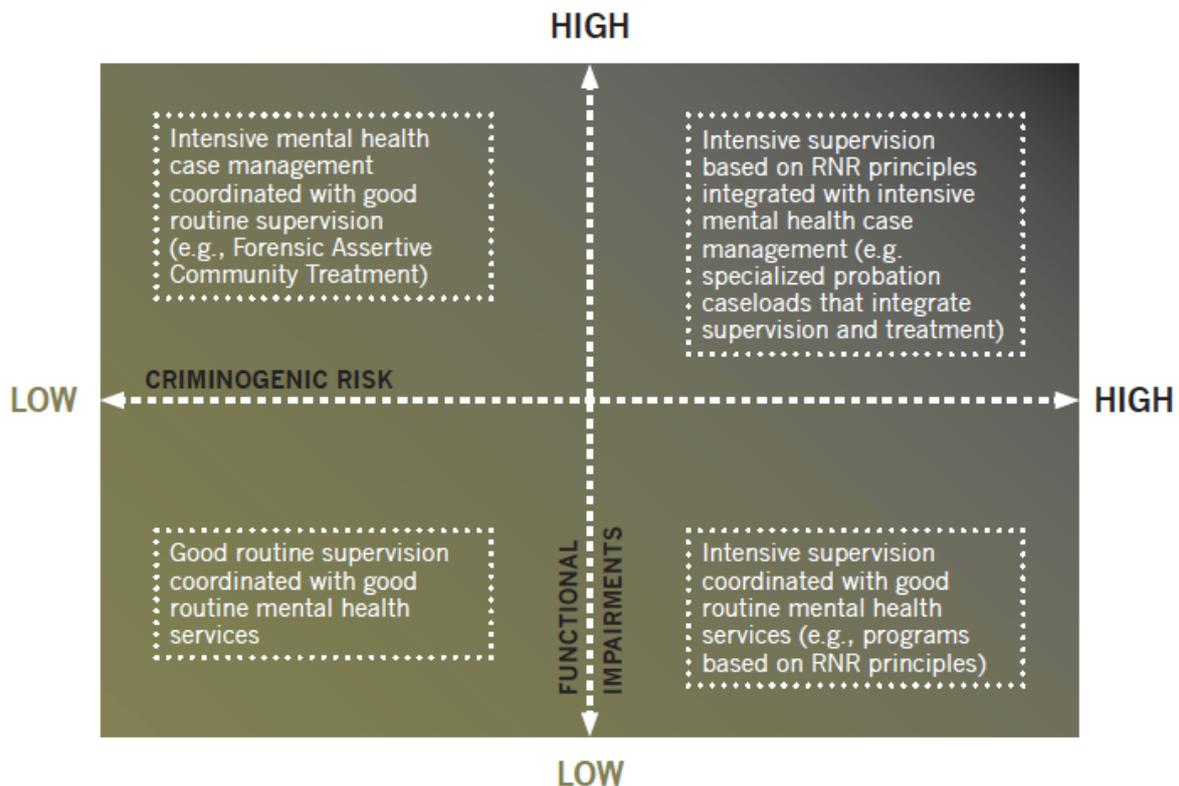
Prins and Draper (2009) propose a two-by-two matrix (criminogenic risk by functional impairment) as a framework for improving outcomes for people with mental illnesses under community corrections supervision. Two other features of potential interventions – response intensity and integration of corrections and mental health agencies – are also represented. This matrix provides a conceptual approach for matching supervision and treatment options to varying degrees of risk and impairment, integrating the criminal justice and mental health system responses.

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<sup>318</sup> In terms of percentages, results showed the following: 53% of parolees with mental disorders and 30% of those without disorders returned to custody for any reason; for violent offences, rates were 14% versus 8%; for property offences, rates were 15% versus 10%; for drug offences, rates were 23% versus 14%; for minor offences, rates were 10% versus 6%; and for technical violations, 24% of mentally disordered parolees were returned to custody, compared with 11% of non-disordered parolees. These differences were all statistically significant.

<sup>319</sup> In this study, intensive supervision meant offenders whose illness was sufficiently acute that they were involved in an 'enhanced outpatient program' that required additional parole outpatient clinic appointments (Skeem et al., 2014, p. 214).

**Figure 24: Tailoring evidence-based practices to the specific criminogenic risks and functional impairments of people with mental illnesses to improve public safety and public health outcomes**



Source: Prins and Draper (2009), p. 20

There are a range of approaches to integrating community corrections supervision with mental health treatment and some empirical support that integration can improve outcomes. Specialised probation caseloads, in particular, have received strong empirical support.<sup>320</sup>

### 3.3.2 Factors affecting successful completion of parole

Weatherburn and Ringland (2014) examined predictors of reoffending among people still serving their parole sentence. They found that parolees were more likely to offend on parole if they: were male, Indigenous and/or young; had spent less than 180 days in prison (during the current episode); had a higher Level of Service Inventory - Revised score; had a non-drug offence as their principal offence; had six or more prior court appearances; had been imprisoned before; or had a prior conviction for drug use and/or possession. While there was no statistically significant difference in rates of return to court based on release authority, there was a difference in rates of return to custody: those released to parole by the court were less likely to be re-imprisoned than those released by the Parole Authority

<sup>320</sup> This approach is further discussed in the section on probation: section 4.6 below.

(Weatherburn and Ringland, 2014, p. 8). This finding might be explained by the possibility that those released on board-ordered parole may be more likely to have their parole revoked for a technical breach than people on court-ordered parole, thus returning them to custody at a higher rate (Weatherburn and Ringland, 2014, p. 13).

In an earlier study, Jones, Hua, Donnelly, McHutchison and Heggie (2006) present broadly similar findings about factors that predict recidivism among parolees. In their analysis of recidivism among close to 3,000 parolees in NSW, Jones et al. (2006) found that reoffending occurred more quickly among offenders who had more prior prison sentences, those who had one or more prior drug convictions, younger offenders and Indigenous offenders. Reoffending was also faster among those who had been serving sentences for violence, property crimes or for breaching justice orders. There was no difference in time to reoffending by gender. Notably, offenders who had been released with a parole order issued by a court (as opposed to the NSW Parole Authority) were also likely to reoffend more quickly and were 1.35 times more likely to reoffend at any time following release from custody: after one year, recidivism rates were 58% for court-ordered parole compared with 48% for board-ordered parole, while the rates after two years were 74% and 63% respectively (Jones et al., 2006, pp. 7-9). The authors suggested that 'it could appear that the Parole Authority is better placed than sentencing courts to assess re-offending risk. This makes intuitive sense given that the Parole Authority is placed more proximately to the end of an offender's non-parole period and is therefore privy to more information about factors that might relate to the parole candidate's risk of re-offending' (Jones et al., 2006, p. 10). They continued, however, to suggest that the difference might be 'a manifestation of selection bias' (Jones et al., 2006, p. 10):

In other words, there could be something about the nature of Parole Authority-issued parole orders that makes them more effective in preventing recidivism than court-issued parole orders. For example, the length and intensity of parole supervision is likely to be much greater among parolees who receive their parole orders from the Parole Authority, given that their crimes were of sufficient seriousness to result in prison sentences greater than three years in length. This supervision intensity, then, might be causing these delays in offending rather than the Parole Authority's superior ability to predict who is likely to go on to commit further offences.

This finding on the impact of the release authority is opposite to the conclusion drawn by Weatherburn and Ringland (2014). It is possible that this is due to the slightly different sample used: Jones et al. (2006) examined reoffending by parolees, some of whom may have already completed their parole and had reoffended after parole had ended. Weatherburn and Ringland (2014) examined reoffending while still on parole.

This discrepancy in the role of releasing agency is addressed directly by Stavrou, Poynton and Weatherburn (2016), who used propensity score matching to examine the relationship between parole release authority and recidivism. Consistent with the work of Jones et al. (2006), they found that parolees released by the court were 19% more likely to reoffend at any point in time than parolees released by the State Parole Authority (46% versus 39%). Although there was no difference in rates of reoffending during the parole period itself,

reoffending after the parole period had ended was again higher among those released by the court, who were more than 50% more likely to reoffend (32% versus 20%) (Stavrou, Poynton and Weatherburn, 2016, p. 7).

The authors suggested that the discrepancy in findings with the Weatherburn and Ringland (2014) study might be due to differences in the cohort. Stavrou, Poynton and Weatherburn (2016) focused on offenders who had served a custodial term of 18 to 36 months, while nearly 70% of the Weatherburn and Ringland (2014) cohort had served a short term of one year or less (Stavrou, Poynton and Weatherburn, 2016, p. 10). This suggests that the reductions in recidivism seen among those on board-ordered parole might apply for those serving longer imprisonment sentences but not for those on terms of less than one year.

Stavrou, Poynton and Weatherburn (2016, p. 10) noted that, 'absent experiment, it is difficult to tell whether (a) the Parole Board is better at gauging risk than a sentencing court or (b) the prospect of parole refusal (by a Parole Board) motivates offenders to participate in rehabilitation programs, which then have the effect of lowering their risk of re-offending'.

Some US studies have considered the effectiveness of parole for offenders with different offending profiles. Vito, Higgins and Tewksbury (2017) used data from Kentucky to examine five-year recidivism outcomes for over 20,000 people. They adopted a propensity score matching approach to compare offenders who served their entire sentences with those released on parole. Analyses showed that people released on parole were 61% less likely to be reincarcerated than those who completed their full term in prison. Offenders who were classified as a drug offender were 50% less likely to return to prison than those who were not, as were older people. Offenders with a prior record of imprisonment were far more likely to be reincarcerated, as were those with lower levels of education. The authors suggested that treatment provided during parole often has a positive effect, or that the process of supervision itself might act as a deterrent to offending (Vito, Higgins and Tewksbury, 2017, p. 633).

There was no statistically significant difference in recidivism rates for people classified as violent offenders (Vito, Higgins and Tewksbury, 2017, p. 635), suggesting that parole worked better for drug offenders than for violent offenders in this sample.

Verbrugge et al. (2002) conducted one of the few studies to consider predictors of parole outcome for female offenders. In their study of substance-abusing women who had been granted conditional release in Canada,<sup>321</sup> they undertook logistic regression analyses to predict revocation. Although the model was only moderately successful in predicting revocation,<sup>322</sup> the results are nonetheless informative in offering a rare analysis of factors associated with parole failure for this cohort.

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<sup>321</sup> 'Conditional release' included day parole, full parole and statutory release from prison (Verbrugge et al., 2002, p. 1).

<sup>322</sup> The final model predicted only 16% of the variance in revocations ( $R^2 = 0.16$ ) with 72.6% of offenders correctly classified (Verbrugge et al., 2002, p. 11).

The analysis showed that older women were 25% less likely to have their release revoked. Having a property offence at admission increased the likelihood of revocation by a factor of three, while having a higher score on the criminogenic needs assessment tool more than doubled the chance of revocation (Verbrugge et al., 2002, pp. 11-12).

### 3.3.3 Electronic monitoring

Queensland is currently expanding its use of electronic monitoring with parolees.<sup>323</sup> As with all other Australian jurisdictions that use electronic monitoring, Queensland uses GPS technology rather than the earlier radio-frequency monitoring (Bartels and Martinovic, 2017, p. 81).

While there appears to be only one study on the effectiveness of electronic monitoring in Australia (Williams and Weatherburn, 2019), there have been many robust studies undertaken in other jurisdictions.<sup>324</sup>

#### *Impact on recidivism*

In their recent systematic review of 17 studies of the impact of electronic monitoring, Belur et al. (2017) found no overall significant impact on recidivism rates or time to reoffending (Belur et al., 2017, pp. 25-27).<sup>325</sup> However, when assessing the impact on these findings of different measures of recidivism, analyses showed that electronic monitoring was in fact effective at reducing reoffending when defined as reconviction or re-imprisonment (but not when recidivism was measured by re-arrest or parole violation) (Belur et al., 2017, p. 30).

The review found that recidivism reductions were brought about by both situational mechanisms (such as increasing the risk of getting caught) and behavioural mechanisms (such as encouraging pro-social behaviours) (Belur et al., 2017, p. 33).

No differences in these mechanisms were found for different types of technology, the dosage of monitoring or its duration (Belur et al., 2017, pp. 38-41). However, analysis revealed that

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<sup>323</sup> Queensland has used electronic monitoring since 2011 with dangerous sex offenders under the *Dangerous Prisoners (Sexual Offenders) Act* 2003. Following the Sofronoff review, the government has committed to expanding GPS monitoring technology to monitor up to 500 parolees across the state. The intention is to enhance supervision and monitoring of compliance with parole conditions to allow case managers to work with offenders on reducing their risk to the community (Queensland Government, 2017). Most recently, the Queensland Productivity Commission has suggested the introduction of sentences involving home detention and that both electronic monitoring and home detention be made available to encourage confidence in, and greater use of, bail (Queensland Productivity Commission, 2019, Draft Recommendation 4, p. 161 and Draft Recommendation 6, p. 178).

<sup>324</sup> Studies of electronic monitoring often include instances in which the monitoring was used as a condition of home detention. It can therefore be difficult to separate out the effect of one from the other. Studies discussed in this section focus on the electronic monitoring component; those which focus on the home detention component (with or without electronic monitoring) are discussed in section 4.4 below.

<sup>325</sup> In a sensitivity analysis, neither publication bias nor evidence quality affected these results: the impact of electronic monitoring on recidivism rates remained non-significant. The same was found for the use of alternative control groups (Belur, 2017, pp. 28-29).

electronic monitoring was effective when specifically used as an alternative to prison (possibly by reducing the negative effects of the prison environment),<sup>326</sup> and with people convicted of sexual offences (Belur et al., 2017, p. 45). It was also effective when combined with counselling and therapy.

The authors concluded (Belur et al., 2017, p. 62):

This systematic review of the literature and evidence indicates that EM has been shown to produce positive effects for certain offenders (such as sex offenders), at certain points in the criminal justice process (post-trial instead of prison), and perhaps in combination with other conditions attached (such as geographic restrictions) and therapeutic components. It may not work so well for other subgroups or under different conditions.

Renzema and Mayo-Wilson (2005) undertook a meta-analysis of the impact of electronic monitoring on recidivism among moderate to high-risk offenders. To be considered in their review, a study must have included one or more appropriate comparison groups receiving traditional probation or parole, intensive supervision probation or parole, incarceration or an intervention other than parole or incarceration, along with matched or randomly allocated groups (Renzema and Mayo-Wilson, 2005, pp. 200-221). This resulted in only three studies of moderate to high-risk offenders being included in the review. While one of the three showed promising results, the other two studies found no long-term impact on recidivism. When combining the three studies, the results were classed as 'grim', with no benefit to electronic monitoring (Renzema and Mayo-Wilson, 2005, p. 230).

Researchers from Florida State University's Center for Criminology and Public Policy Research compared the experiences of more than 5,000 medium- and high-risk offenders who were monitored electronically to more than 266,000 offenders placed on other forms of community supervision without monitoring during a six-year period. Using propensity score matching, they found a 31% decline in the risk of failure<sup>327</sup> among those being monitored while under community supervision, relative to offenders placed on other forms of community supervision (Bales et al., 2010, p. x).

Overall, electronic monitoring had less of an impact on violent offenders than on sex, property, drug and other types of offenders and was particularly effective for serious sex offenders. In addition, electronic monitoring had similar effects across age groups and with different types of supervision (Bales et al., 2010, p. x).

Looking beyond reoffending outcomes, interviews with probation officers and offenders uncovered a belief that monitoring had a negative impact on people's relationships with their

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<sup>326</sup> The authors also noted that, while electronic monitoring is more expensive than standard probation and parole, it is less expensive than prison (Belur, 2017, pp. 51-52).

<sup>327</sup> Outcomes included absconding, revocations for technical violations, and revocations for misdemeanour or felony arrests (Bales et al., 2010, p. ix).

family and friends, leading to a sense of shame and stigmatisation.<sup>328</sup> They also felt that the visibility of the monitors made it far more difficult for offenders to find and then keep jobs (Bales et al., 2010, p. xi). The researchers concluded that electronic monitoring should be reserved only for high-risk offenders who pose the most risk to the public.

In the only Australian study to measure recidivism following electronic monitoring, Williams and Weatherburn (2019) adopted a different form of quasi-experimental approach to examine electronic monitoring as a front-end alternative to a custodial sentence served in prison for non-violent offenders. They explain their approach as one that ‘exploits plausibly exogenous variation in sentencing outcomes generated by quasi-random assignment of cases to judges who differ in their tendency to use the sentencing options of electronic monitoring and prison’ (Williams and Weatherburn, 2019, p. 2).<sup>329</sup>

Analysis showed that serving a sentence under electronic monitoring rather than in prison reduced reoffending within 24 months from 58% to 42%.<sup>330</sup> The effect was strongest for offenders aged under 30, for whom electronic monitoring reduced reoffending from 64% to 21%. Notably, the analysis was extended to consider outcomes over a much longer duration than is typically found in recidivism research. Examining recidivism within ten years, the authors found long-term changes in offending behaviour: the reduction in reoffending persisted to five years of free-time, and even further (to eight years) for offenders aged under 30 (Williams and Weatherburn, 2019, p. 2).

In addition to examining recidivism outcomes, Williams and Weatherburn (2019) prepared ‘back-of-the-envelope calculations’ to identify cost savings from electronic monitoring. They found that each offender who served their sentence under electronic monitoring rather than in prison saved almost \$30,000 on reduced supervision and future court and prison costs (Williams and Weatherburn, 2019, p. 24). They concluded (2019, pp. 25-26):

This underlines the strong case for consideration of the use of electronic monitoring as an alternative to imprisonment for less serious, non-violent offenders.

...

It is important to note that in the context we study, electronic monitoring both diverts offenders from prison and provides individually tailored rehabilitation programs along with intense supervision while the offender is living and working within the general community. With this in mind, and given the strong case for both the internal and external validity of findings, the policy implications are clear. They indicate that combining close

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<sup>328</sup> Media reports in the US about electronic monitoring tend to focus on sexual offences; offenders thought media reports would make people believe that everyone on monitoring is a sex offender (Bales et al., 2010, p. xi).

<sup>329</sup> The authors noted that this is a similar approach to that used in other studies on the impact of sentencing options (Williams and Weatherburn, 2019, p. 2). While it is not widely used, it is nonetheless a fairly robust method.

<sup>330</sup> The analysis took account of differential time in the community with the opportunity to reoffend. Results were not driven by those offenders who had a history of prior imprisonment (Williams and Weatherburn, 2019, p. 2).

monitoring and prescribed rehabilitation for non-violent and non-serious offences, as occurs under electronic monitoring in the context we study, has sustained crime reducing effects. Given that it reduces criminal justice costs as well as reoffending, we conclude that electronic monitoring is a viable alternative to imprisonment.

In a study of Californian high-risk sex offenders, Gies et al. (2012) used propensity matching methods to compare compliance and recidivism rates among 516 subjects equally divided into treatment (parole plus electronic monitoring) and parole only. They found clear differences between the two groups, with those being monitored achieving significantly better outcomes. In terms of compliance, rates of technical violations were nearly three times greater for offenders on traditional parole compared with those on monitored parole. In terms of recidivism, arrests were more than twice as high among offenders on traditional parole, while parole revocation and any return-to-custody event were 38% higher among those on traditional parole. Although they found that electronic monitoring was more expensive than traditional parole (\$35.96 per day per monitored parolee compared with \$27.45 for traditional parolees), they concluded that the monitoring program was more effective.

In a recent quasi-experimental study of the role of electronic monitoring on recidivism in Europe, Henneguëlle, Monnery and Kensey (2016) estimated the effect of serving a prison sentence entirely under electronic monitoring in France.<sup>331</sup> Their research found that electronic monitoring reduced the probability of reconviction by 9% to 11% (Henneguëlle, Monnery and Kensey, 2016, p. 36).

There was no difference in the effect of electronic monitoring among offenders of different age groups or employment status. However, the benefit of monitoring was found to be greatest among parents and among those who had been sentenced to prison previously. The authors also found that this beneficial effect of monitoring is greater among offenders who were more closely supervised (and for longer periods), received control visits at home from parole officers while being monitored, and were required to work while under surveillance (Henneguëlle, Monnery and Kensey, 2016, pp. 28-29). They concluded that the reduction in reoffending is not merely a function of short-term incapacitation at home but reveals 'more profound change (desistance from crime, with less recidivism and less serious new offenses), where both rehabilitation and deterrence play an active role' (Henneguëlle, Monnery and Kensey, 2016, p. 4).

In an unusual study that examined broader social outcomes in addition to reoffending, Killias, Gillie'ron, Kissling and Villettaz (2010) compared outcomes for offenders following a period of community service and those who had been subject to electronic monitoring. The study was based on a controlled experiment in Switzerland with 240 people randomly assigned either to community service or to radio frequency electronic monitoring (under a curfew order) as a way of executing short custodial sentences of no more than three months. Both

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<sup>331</sup> In France, electronic monitoring is a proper alternative to imprisonment as judges can fully convert any short prison sentence to one served at home (Henneguëlle, Monnery and Kensey, 2016, p. 3).

groups also received assistance from the probation service and therapeutic support such as alcohol and drug treatment. Measures of outcome included reconvictions, self-reported delinquency and several measures of social integration such as marriage, income and debts (Killias et al., 2010).

Results showed that people who had been assigned to electronic monitoring reoffended less than those assigned to community service, that they were more often married and lived under more favourable financial circumstances, although the differences were of marginal significance ( $p < 0.10$ ).<sup>332</sup> The authors concluded that electronic monitoring may be an effective alternative to other forms of non-custodial sanctions (Killias et al., 2010).

While US research has shown that offenders on electronic monitoring have higher successful completion rates and lower recidivism rates than those without electronic monitoring, it may not be the technology alone that is having the positive impact. Martinovic (2016, p. 96) suggested that, for sex offenders at least, it is the mandatory treatment provisions associated with electronic monitoring – substance abuse treatment, sex offender treatment, anger management treatment, mental health counselling and employment assistance – that are likely to have played a major role in impact:

Hence, GPS-EM technology should not be viewed as a deterrent tool in itself. Instead, GPS-EM technology should be utilized as an inherently managerial-surveillance strategy in the context of a sanction, combined with treatment and rehabilitative methods as an overall goal.<sup>333</sup>

Martinovic (2016) also emphasised the need for appropriate funding and resources to allow electronic monitoring to operate effectively, with best practice indicating the importance of an effective centralised monitoring centre to manage the large amount of data that is generated and to respond adequately to alerts. She concluded (Martinovic, 2016, p. 97):

Even though Australian GPS-EM sanctions may comprise United States' components of best practice, there is no guarantee that in the Australian correctional landscape these sanctions are operating effectively. Hence, it is very problematic that to date, no studies have assessed the operation of these sanctions. It is imperative that this research now be conducted as a matter of some urgency in a rigorous, independent, and transparent manner.

### *Cost-effectiveness*

Electronic monitoring is generally considered a cost-effective option, especially when compared with incarceration. In one of the few studies of the effectiveness of electronic monitoring outside the United States, Anderson and Anderson (2014) studied the impact on

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<sup>332</sup> Some authors, such as Weisburd (2000), have argued that experimental research should be subject to relaxed standards of statistical significance, using the 10% level rather than the standard 5% level, arguing that too rigid a stance would 'lead to the rejection of almost all hypotheses tested through randomised trials and produce, thus, unacceptably high risks of type-2 errors' (cited in Killias et al., 2000, p. 1161). Taking the findings of the Killias et al. (2010) study conservatively, it may at least be concluded that community service does not reduce reoffending more than electronic monitoring.

<sup>333</sup> Citations omitted.

social welfare of serving a sentence under electronic monitoring rather than in prison.<sup>334</sup> They found that electronic monitoring reduced welfare dependency among young offenders (less than age 25) by four to seven percentage points in the first year after release, amounting to 14 to 26 days less dependency and reducing welfare expenditure by up to \$3,500 each year. Electronic monitoring had no effects on dependency among older offenders (Anderson and Anderson, 2014, p. 368).

The District of Columbia Crime Policy Institute examined both the costs and benefits of electronic monitoring (including savings from reduced recidivism), relative to standard probation. Undertaking a meta-analysis of previous rigorous research, Roman, Liberman, Taxy and Downey (2012) found that, on average, electronic monitoring reduced arrests by 24% for program participants. Costs per participant were reduced, on average, by \$580 for local agencies and \$920 for federal agencies. There was an 84% chance that a program of probation with electronic monitoring serving 800 people would prevent at least one arrest each year, would yield agency savings and would produce societal benefits from averted victimisation. The average expected net benefit of electronic monitoring for probationers was found to be \$4,600 per person (Roman et al., 2012, p. 3).

The Washington State Institute of Public Policy (2017a) compared people on parole plus electronic monitoring with similar individuals who received intensive supervision, parole, or continuation of sentence without electronic monitoring. Their analysis showed a significant crime reduction effect across the various studies, with benefits minus costs<sup>335</sup> calculated at \$9,352 and a 100% chance that the program would produce benefits greater than costs (WSIPP, 2017a, p. 1).

An even greater saving was found for electronic monitoring for people on probation, with benefits minus costs of \$15,035 and a 93% chance that the program would produce benefits greater than costs (WSIPP, 2017b, p. 1).<sup>336</sup>

### *Net-widening*

Net-widening refers to the expansion of the scope of the criminal justice system – in this case, the corrections system – as well as an increase in the use of harsh dispositions (Padgett, Bales and Blomberg, 2006). According to Tonry and Lynch (1996: cited in Padgett, Bales and

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<sup>334</sup> In Denmark, electronic monitoring is a way of serving a prison sentence of less than three months in one's own home under intensive surveillance and control, including regular unannounced visits that involve testing for alcohol and drugs. While the limited prison term may make comparisons with Australia difficult, almost two-thirds of all prison sentences in Denmark are shorter than three months (Anderson and Anderson, 2014, p. 352).

<sup>335</sup> There is no benefit to cost ratio calculated for this program as the 'costs' of the program are actually positive, as total program cost was calculated per participant assuming 30 days on monitoring in lieu of 30 days in confinement, which is more expensive than monitoring. The 'costs' of the program are thus savings over incarceration (WSIPP, 2017a, p. 2).

<sup>336</sup> Again, there is no benefit to cost ratio calculated for this program. Program participants were compared with those on intensive supervision, parole, continuation of sentence or home confinement without electronic monitoring (WSIPP, 2017b, p. 1).

Blomberg, 2006, p. 64) there are both ‘front-end’ and ‘back-end’ net-widening consequences of intermediate sanctions generally: the former is defined as the use of enhanced penalties for offenders who would not otherwise have received a prison sentence, while the latter is the increased likelihood of an eventual prison sentence for technical violations among offenders who are subject to more intensive surveillance.

Bartels (2017) noted the mixed findings on the issue of net-widening and electronic monitoring, with some research finding that low-risk offenders (who would not have been imprisoned) were being placed on electronic monitoring, while other research has found that electronic monitoring works as a genuine prison diversion (although this is often due to early release of prisoners directly to a monitoring sanction). Bartels (2017, p. 84) concluded that:

the mere existence of GPS monitoring sanctions, which are typically imposed on offenders after serving their sentence, has widened the net of social control. This is because, prior to the existence of extended supervision with GPS monitoring, these offenders would have simply been released into the community after their prison sentence or would have been subject to basic probation or parole.

The question of the net-widening impact of electronic monitoring has yet to be definitively resolved.

#### 3.3.4 Gaps in research on the effectiveness of parole

The primary gaps in the research on the effectiveness of parole are about its impact on certain cohorts. No research was found on the effectiveness of parole for offenders with substance abuse issues, sex offenders or those in rural and remote areas.<sup>337</sup> More research is also needed on the impact of court-ordered versus board-ordered parole, as evidence to date is contradictory.

#### 3.3.5 Summary of the research on parole

There is sufficient robust evidence to conclude that parole is more effective at reducing recidivism than unsupervised release. This is particularly so for rehabilitation-focused supervision, rather than compliance-focused supervision. However, evidence on the effectiveness of parole for vulnerable cohorts is sparse. Parole may be less effective for Aboriginal and Torres Strait Islander offenders, male offenders and offenders with a mental illness, but a lack of robust research precludes any definitive conclusion.

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<sup>337</sup> While there are certainly other types of vulnerable offenders, these are the main cohorts that have attracted at least some attention in the effectiveness literature. Other vulnerable groups include, among others, offenders with a cognitive impairment, people with childcare responsibilities, and those whose vulnerabilities lie across group boundaries.

While there is consistent evidence that parole failure is more likely among parolees who are young, male, Indigenous and have a criminal history,<sup>338</sup> there is no consensus on the relative effectiveness of court-ordered versus board-ordered parole.

Most of the research on electronic monitoring of parolees shows that it reduces recidivism cost-effectively, especially when used as an alternative to a term of imprisonment and with certain cohorts such as sex offenders. While some researchers have expressed concern about net-widening, mixed findings preclude a definitive conclusion on this issue.

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<sup>338</sup> These are the same factors that have been shown to increase the likelihood of offending generally.

## 4. Effectiveness of non-custodial orders

Key findings on the effectiveness of wholly suspended sentences are:

- Wholly suspended sentences have a small but significant effect on reducing recidivism when compared with imprisonment, especially for repeat offenders. While there is no research on the effectiveness of wholly suspended sentences among vulnerable cohorts, they are considered useful for offenders who are unable to access other community orders, such as those in rural and remote areas.
- Although the evidence is sparse, it appears that wholly suspended sentences might be more likely to be completed by older offenders and those convicted of property offences.

Key findings on the effectiveness of conditional suspended sentences are:

- Although the evidence is very limited, it suggests that people on suspended sentences with conditions might be more likely to reoffend than those without conditions. Without further research, though, this conclusion remains tentative. No further conclusions may be drawn about conditional suspended sentences due to the lack of evidence.

Key findings on the effectiveness of intensive correction orders are:

- Research shows that there is no difference in the effectiveness of intensive correction orders when compared with supervised suspended sentences. There is good evidence, though, that intensive correction orders are more effective at reducing recidivism than either periodic detention or short terms of imprisonment, especially among offenders classified as high risk. There is no evidence on the effectiveness of intensive correction orders among vulnerable cohorts.
- Reoffending following an intensive correction order appears to be more likely among men, Indigenous offenders, those with criminal histories and those classified as high risk.

Key findings on the effectiveness of home detention are:

- Home detention can place unintended burdens on other members of the household. Nonetheless, home detention can ease reintegration following prison, facilitate reconnection with pro-social family and activities, and deter future offending. While there is little research on the effectiveness of home detention among vulnerable cohorts, it may be useful for offenders who are unable to access other orders.

- Intensive case management, using a mix of surveillance and rehabilitative strategies, appears to be important for successful completion of home detention. Findings on other factors affecting completion of home detention have been inconsistent.

Key findings on the effectiveness of community service orders are:

- There is a small body of robust evidence on community service, the bulk of which shows that community service reduces recidivism more effectively than a term of imprisonment and a bond, but not as effectively as a fine. There is no evidence on the mechanisms that underlie the effectiveness of this order, and none on the factors that contribute to successful order completion.
- While there is no research on the impact of community service orders on vulnerable offenders, there are substantial concerns around the availability of this order among Aboriginal and Torres Strait Islander communities and in rural and remote areas.

Key findings on the effectiveness of probation orders are:

- Probation is effective at reducing recidivism, and is more effective than a short period of incarceration for both men and women. The criminogenic effect of imprisonment compared with probation is stronger for women than men, and is exacerbated by the presence of stress in family relationships.
- Among offenders with a mental illness, the use of a specialised approach with intensive case management and support appears to reduce the likelihood of recidivism compared with traditional probation supervision. Although the evidence is weak, probation appears to be effective for sex offenders.
- Predictors of failure on probation are similar to those for offending generally, with the strongest predictors being those related to a prior history of offending and drug use. Although the evidence is not strong, probation failure appears to be more likely among probationers on low-level supervision rather than medium-level supervision, and among those with fewer behavioural treatment conditions.
- Swift, certain and fair approaches appear to be effective in reducing rates of non-compliance and recidivism, although the evidence is mixed. They appear to work best when implemented with a focus on support, addressing the underlying causes of offending within a framework of therapeutic jurisprudence. There is no evidence of the impact of this approach on vulnerable offenders.

Key findings on the effectiveness of community correction orders are:

- There is, as yet, no evidence on the effectiveness of community correction orders on recidivism, either in general or for vulnerable cohorts. Early analyses have suggested that the order is more likely to be contravened by reoffending when

imposed by the Magistrates' Court than the higher courts, when it is longer, and by young offenders and those with a criminal history.

- Despite the lack of evidence on the effectiveness of these orders, it appears that the community correction order holds some intuitive appeal, with NSW replicating the Victorian approach and the ALRC recommending it for Aboriginal and Torres Strait Islander offenders.

Key findings on the effectiveness of community orders for vulnerable cohorts are:

- Community orders are seen as more appropriate than terms of imprisonment for Aboriginal and Torres Strait Islander offenders, for whom prison can be particularly harmful. But community sentences need to be more accessible and more flexible to provide greater support and to mitigate against higher breach rates. Conditions of community sentences, as well as support and services, need to be culturally appropriate.
- Community orders are also seen as more appropriate for female offenders, who have multiple and complex needs. Community sentences should offer multi-agency wrap-around support and services designed specifically for women, including practical help with issues such as health, housing, childcare and employment.
- Offenders with a mental illness appear to have worse outcomes on community orders than offenders without a mental illness, primarily because they have more of the key risk factors for recidivism. Community sentences for this cohort should therefore focus on the same core correctional principles and interventions as are used for offenders without a mental illness.
- Offenders in rural and remote areas have less access to community sentences, so are more likely to be imprisoned. The availability of community sentences should be expanded to reach this cohort, including a coordinated multi-agency approach to support disadvantaged people in these areas.

Sentences served in the community may achieve a range of sentencing purposes, including a punishment component, a strong and clear rehabilitative component and possibly some level of denunciation. Community sentences cannot achieve incapacitation and may or may not deter people from further offending.<sup>339</sup>

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<sup>339</sup> The ability of community sentences to deter has not been subject to specific testing. However, part of the principle behind the use of visible road-side 'chain gangs' in the United States in the mid-twentieth century was for the public to see what happens to those who break the law. While prison-based chain gangs were mostly gone by the 1950s (despite a resurrection in Alabama in the mid-1990s), offenders undertaking unpaid community work today as part of a community sentence are sometimes required to wear identifying clothing, possibly as a way of providing general deterrence. The effectiveness of this approach remains unknown.

This chapter presents the evidence on the effectiveness of orders that are served entirely in the community. For the purposes of this review, the following orders are considered to be community orders:

- Wholly suspended sentences<sup>340</sup>
- Conditional suspended sentences
- Intensive correction orders<sup>341</sup>
- Home detention orders<sup>342</sup>
- Community service orders
- Probation

For comparative purposes, this chapter also includes an analysis of the effectiveness of community correction orders, which span (conceptually) all of the above non-custodial orders.

#### 4.1 Wholly suspended sentences

Suspended sentences are considered to ‘exploit the deterrent effects of prison while avoiding some of its human and financial costs’ (Weatherburn and Bartels, 2008, p. 667). Studies examining this deterrent effect on reoffending, however, ‘have been few in number and methodologically weak’ (Weatherburn and Bartels, 2008, p. 667).

There has been some methodologically robust Australian research on the effectiveness of suspended sentences in terms of their impact on reoffending,<sup>343</sup> primarily conducted in NSW using a propensity score matching approach.

In their research on reoffending following suspended sentences in NSW, the Bureau of Crime Statistics and Research examined the issue of whether suspended sentences have the same deterrent effect on reoffending as prison sentences. Lulham, Weatherburn and Bartels (2009)

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<sup>340</sup> While wholly suspended sentences and conditional suspended sentences are formally (and legally) terms of imprisonment, the term is entirely served in the community. These orders are therefore considered in this section of the report.

<sup>341</sup> As with wholly suspended sentences, intensive correction orders are also terms of imprisonment served entirely in the community. This ‘substitutional’ sanction is used in Queensland and other Australian jurisdictions, including NSW, South Australia and the ACT. There are analogous orders in other jurisdictions, such as the community custody order in the Northern Territory, conditional suspended imprisonment in Western Australia and the conditional sentence of imprisonment in Canada.

<sup>342</sup> Home detention orders may be used as ‘front-end’ orders (either as a substitutional order or as a stand-alone order, independent of imprisonment) or they may be imposed as a ‘back-end’ option following release from prison. They are discussed in this chapter as they are orders served in the community.

<sup>343</sup> Measuring ‘effectiveness’ in terms of reoffending does not address other, broader purposes of sentencing, which may include the ability to garner confidence in the criminal justice system among the public. The issue of public trust in suspended sentences has been analysed at length; it is clear that people do not have much faith in the idea of a suspended sentence as a term of imprisonment (see, in particular, the extensive body of work of the Victorian and Tasmanian Sentencing Advisory Councils on suspended sentences).

compared rates of reoffending for offenders who received suspended sentences with those for a matched group who were immediately imprisoned. For offenders who had no prior prison sentence, there was no statistically significant difference in reoffending between the two groups. Among those who had previously been to prison, however, there were statistically significant differences: those who received a prison sentence were more likely to reoffend (77.9% versus 69.3% of the suspended sentence group) and to reoffend more quickly. The authors concluded that their findings are inconsistent with the deterrent hypothesis: there is no evidence that imprisonment exerts a greater specific deterrent effect than a suspended sentence of imprisonment. Given that prison is far more expensive than a suspended sentence, a suspended sentence is more cost-effective (Lulham, Weatherburn and Bartels, 2009, p. 12).

These findings do not suggest, however, that suspended sentences are necessarily more effective in reducing reoffending than all other orders. Earlier research on NSW data, for example, showed no difference in reconviction rates or time to reoffending for those given a suspended sentence and those receiving a supervised bond, contradicting the deterrent theory of suspended sentences (Weatherburn and Bartels, 2008).<sup>344</sup> Taking into account the length of orders, Poynton and Weatherburn (2012) found no significant differences in reoffending or in time to first offence between long suspended sentences (one year or more) and long bonds (two years or more). This finding held for both supervised and unsupervised cohorts (Poynton and Weatherburn, 2012, pp. 22-23).

The Sentencing Advisory Council's analysis of reoffending following sentencing in the Victorian Magistrates' Court found a small but statistically significant reduction in the likelihood of reoffending following a wholly suspended sentence. For offenders who shared similar offending histories but who received different sentences, those who received a wholly suspended sentence were 8.4% less likely to reoffend than were those who received a fine (SAC, 2013, p. 22). When comparing offenders who received a suspended sentence with those who served an immediate term in prison, those sent to prison exhibited a 24.6% increase in the likelihood of reoffending compared with similar, matched offenders who received a wholly suspended term (SAC, 2013, p. 25).

Adopting a propensity score matching approach, Aarten, Denkers, Borgers and van der Laan (2013) compared risk of reconviction of offenders sentenced in the Netherlands to either a fully suspended sentence or short-term imprisonment. They found no significant differences in the risk of reconviction. However, they found that their results varied depending on offenders' criminal histories: first offenders given fully suspended sentences had more than double the risk of being reconvicted than first offenders sentenced to short-term imprisonment. The opposite was found for repeat offenders: those sentenced to a term of imprisonment had a higher risk of reconviction (Aarten et al., 2013, p. 715).

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<sup>344</sup> The authors explained this finding by suggesting that neither sanction exerts any effect at all on the risk of further offending – an explanation that is consistent with evidence that the threat of imprisonment is not an effective deterrent (Weatherburn and Bartels, 2008, p. 679).

#### 4.1.1 Effectiveness of wholly suspended sentences among vulnerable cohorts

There appears to be no research on the effectiveness of wholly suspended sentences among vulnerable cohorts. Nonetheless, this order has been promoted as useful for those offenders who are unable to access other orders served in the community.

#### *Aboriginal and Torres Strait Islander offenders*

There is no evidence on the effectiveness of wholly suspended sentences for Aboriginal and Torres Strait Islander offenders. However, the ALRC (2017, p. 264) found that Aboriginal and Torres Strait Islander offenders may be disproportionately represented in receiving suspended sentences.

One of the advantages of the wholly suspended sentence for Aboriginal and Torres Strait Islander people living in rural and remote communities is that it is a uniformly available community sentence option, overcoming the multiple difficulties in compliance that are seen with other orders. Suspended sentences are seen as especially useful for Aboriginal and Torres Strait Islander women as they can be structured to have few onerous conditions, making them more suitable for offenders with kinship and cultural obligations. This is particularly the case for women with parenting or caring responsibilities and obligations (ALRC, 2017, p. 266).

#### 4.1.2 Factors affecting successful completion of a wholly suspended sentence

As with partially suspended sentences, there is little research on factors affecting successful completion of a wholly suspended sentence.

Using propensity score matching to examine recidivism among offenders given long (one year and longer) versus short (less than 12 months) suspended sentences, Poynton and Weatherburn (2012) found that, after matching offenders and controlling for other factors, those on longer suspended sentences were less likely to be found guilty of a new offence and took longer to reoffend (Poynton and Weatherburn, 2012, pp. 20-21).

In her comparison of reconviction outcomes following different sentence types in Tasmania, Bartels (2009a) found that people with no prior record<sup>345</sup> performed best on a wholly suspended sentence, with 32% of the sample reoffending. The reconviction rate among those with a minor criminal record was 49%, while for offenders with a significant criminal history the rate was 68%.<sup>346</sup> Older offenders were more successful at completing their wholly suspended sentence, with no reconvictions among those aged 55 and older, compared with

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<sup>345</sup> These findings contradict those of the Lulham, Weatherburn and Bartels (2009) and Aarten et al. (2013) studies, both of which are methodologically more robust.

<sup>346</sup> It is interesting to compare reconviction rates for those on a partially suspended sentence with those on a wholly suspended sentence. For those with no or a minor criminal record, reconviction rates were lower following a partially suspended sentence. For those with a significant criminal record, reconviction rates were lower following a wholly suspended sentence (Bartels, 2009a, p. 4).

53% reconviction among the 18- to 24-year age group. Recidivism rates decreased as age increased (Bartels, 2009a, p. 4).<sup>347</sup>

Bartels (2009b) found that wholly suspended sentences performed better than the other sentences for those convicted of a property offence: 41% of those on a wholly suspended sentence for a property offence were reconvicted, compared with 45% on a partially suspended sentence and 74% on an unsuspended custodial term (Bartels, 2009b, p. 87). This suggests that offenders convicted of a property offence might be likely to be successful with this order.

#### 4.1.3 Gaps in research on the effectiveness of wholly suspended sentences

There are significant gaps in the research on wholly suspended sentences. Further research is needed to understand the factors associated with successful completion of a wholly suspended sentence, and to identify offenders for whom the order is most effective. There is no research on the effectiveness of wholly suspended sentences for vulnerable offenders.

#### 4.1.4 Summary of the research on wholly suspended sentences

It appears that wholly suspended sentences may have a small but statistically significant effect for at least some offenders, particularly when compared with terms of imprisonment. One explanation for this effect may be that the suspended sentence avoids the negative consequences of imprisonment, allowing offenders to maintain family and community ties, continue any employment and avoid losing accommodation.

Although the evidence is sparse, it appears that wholly suspended sentences might be more likely to be completed by older offenders and those convicted of property offences.

## 4.2 Conditional suspended sentences

There appear to be only two analyses of the impact of conditional suspended sentences on recidivism, both presenting simple recidivism rates for different orders.<sup>348</sup> Potas, Eyland and Munro (2005) examined conditional suspended sentences, presenting successful completion rates for various supervised orders in NSW. Bartels (2009b) examined reconviction following different types of suspended sentence on a small sample in Tasmania, including those with supervision orders attached.

Potas, Eyland and Munro (2005) examined a large sample of all offenders supervised by NSW Probation and Parole Service in 2003 and 2004 who were serving a bond, a community service

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<sup>347</sup> There is no mention of whether these differences are statistically significant.

<sup>348</sup> With this simple methodology, results should be treated with caution.

order, a supervised suspended sentence or home detention.<sup>349</sup> Analysis found that bonds were most likely to be completed successfully, with a revocation rate of 11%, supervised suspended sentences had a revocation rate of 16%, while 24% of community service orders were revoked (Potas, Eyland and Munro, 2005, p. 5).

Bartels' (2009b) Tasmanian research found that more than half of the offenders who received a wholly suspended sentence also received at least one additional order, including a community service order and probation. Arguably, the addition of these orders creates a de facto conditional suspended sentence.<sup>350</sup>

Analysis showed that increasing the number of additional orders increased the likelihood of reconviction: 38% of people on a wholly suspended sentence alone were reconvicted, compared with 42% of people who received one additional order and 48% of those with two additional orders. Two-thirds (67%) of those who received three additional orders were reconvicted (Bartels, 2009b, p. 89).

Among those who also received a community service order, 48% were reconvicted (n = 44), while 58% (n = 19) of people who were also placed on probation were reconvicted. Unsupervised offenders performed better on their wholly suspended sentence than those who were supervised, while people on a separate probation order were especially likely to be reconvicted of serious offences: 38% of offenders on a wholly suspended sentence with no supervision were reconvicted, 54% with a supervision condition were reconvicted, while 58% of offenders with a probation order were reconvicted.

#### 4.2.1 Effectiveness of conditional suspended sentences among vulnerable cohorts

With the dearth of research on the effectiveness of conditional suspended sentences generally, there appears to be no evidence at all on their effectiveness for vulnerable cohorts.

#### 4.2.2 Factors affecting successful completion of a conditional suspended sentence

Only two studies were found on factors affecting successful completion of a conditional suspended sentence (in the form of a supervised suspended sentence).

Poynton and Weatherburn (2012) used propensity score matching to examine recidivism among offenders given long versus short supervised suspended sentences. After controlling for other factors, there was no significant effect of sentence length on the likelihood of reoffending or on the time to first new offence for offenders who received a suspended sentence with supervision (Poynton and Weatherburn, 2012, p. 21).

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<sup>349</sup> Home detention is included in the study as offenders on this order are also supervised by NSW Probation and Parole Service (Potas, Eyland and Munro, 2005, p. 2).

<sup>350</sup> In the absence of direct evidence on conditional suspended sentences, this study is at least informative, if not definitive.

In a less robust study, Potas, Eyland and Munro (2005) found no difference in successful completion rates by length of order for bonds or community service orders, and only a small difference for supervised suspended sentences: the median duration of completed suspended sentences was nine months, while the median duration of revoked suspended sentences was 11 months (Potas, Eyland and Munro, 2005, p. 7). This suggests that slightly shorter supervised suspended sentences might be more effective.<sup>351</sup>

Significant differences in order outcome were seen by age: offenders who successfully completed a bond, a community service order and a supervised suspended sentence had significantly higher median age than those whose orders were revoked (Potas, Eyland and Munro, 2005, p. 11). This suggests that these orders are more effective for older offenders. Only small differences were found in overall completion rates by gender and by location (metropolitan versus country).<sup>352</sup>

Logistic regression showed that the age of the offender and the type of order significantly predicted outcome on supervised community orders overall, but as the model was found to be a poor fit for the data, the authors concluded that the factors examined do not accurately predict the outcomes of these orders (Potas, Eyland and Munro, 2005, p. 13).

#### 4.2.3 Gaps in research on the effectiveness of conditional suspended sentences

There is little research of any kind on the effectiveness of conditional suspended sentences in reducing recidivism. Given the absence of methodologically robust research on conditional suspended sentences, no firm conclusions may be drawn on any of the issues examined in this review. Arguably, it may be more useful to consider the research on the effectiveness of supervision generally to understand predictors of outcomes for this order. This body of research is presented below at section 5.2.

#### 4.2.4 Summary of the research on conditional suspended sentences

Although the evidence is sparse, it suggests that people on suspended sentences with conditions might be more likely to reoffend than those without conditions. Without further research, though, this conclusion remains tentative.

No further conclusions may be drawn about conditional suspended sentences due to the lack of direct evidence on this sentence.

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<sup>351</sup> There is no mention of whether this difference is statistically significant, so firm conclusions cannot be drawn.

<sup>352</sup> There is no mention of whether this difference is statistically significant, so firm conclusions cannot be drawn.

### 4.3 Intensive correction orders

There are two robust studies on intensive correction orders undertaken by the Bureau of Crime Statistics and Research in NSW. Given the similarity of the orders in NSW and Queensland, this statistically robust research is of direct relevance to this review.

Ringland and Weatherburn (2013) examined the risk of reoffending among those who received an intensive correction order, relative to those who received a periodic detention order or a suspended sentence with supervision. Using propensity score matching to match cohorts on demographic and offending characteristics, as well as risk assessment scores,<sup>353</sup> the authors examined the risk of reoffending in terms of the time to first subsequent offence from the date of being sentenced.

Initial analysis showed that people who received an intensive correction order had around 36% less risk of reoffending than those on a supervised suspended sentence: 12 months after finalisation, 29% of people who received a suspended sentence had reoffended, compared with 19% of those on an intensive correction order. However, further analysis showed that there was no statistically significant difference once offenders were also matched on LSI-R assessment scores.<sup>354</sup> People on intensive correction orders had around 33% less risk of reoffending than those on periodic detention: 12 months from sentence, 26% of those who received periodic detention had reoffended, compared with 18% of those on an intensive correction order (Ringland and Weatherburn, 2013, pp. 9-12).

Continuing work on the relative effectiveness of intensive correction orders in NSW, Wang and Poynton (2017) used propensity score matching<sup>355</sup> to compare reoffending within two years following intensive correction orders and short terms of imprisonment<sup>356</sup> of up to two years.<sup>357</sup> They found that 36% of those who received an intensive correction order and 60% of those who had spent time in prison had reoffended within two years. The results from the strongest of their models showed that there was a 27% reduction in the odds of reoffending for people who received an intensive correction order compared with people who had been sentenced to imprisonment (Wang and Poynton, 2017, p. 8).

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<sup>353</sup> NSW uses the Level of Service Inventory – Revised (LSI-R) to assess people coming into contact with Corrective Services NSW. This is an actuarial assessment tool designed to identify offenders’ risks and needs, classifying people in terms of their risk of reoffending and identifying their particular criminogenic needs. It is a standard assessment tool that is fairly widely used.

<sup>354</sup> Subsequent work on intensive correction orders by Wang and Poynton (2017, p. 2) suggested that this lack of difference might be due to the close similarity of the supervision model used in the two orders: if offenders on intensive correction orders were receiving the same level of community corrections contact and treatment as those serving supervised suspended sentences, it is not surprising that no difference was found in the analysis that controlled for risk level.

<sup>355</sup> The authors used a series of additional statistical procedures on the data to deal with issues of selection bias and to ensure that their propensity score modelling was as robust as possible. The result was an exceptionally sound basis for their analysis.

<sup>356</sup> Reoffending following imprisonment was measured for two years following release, providing a measure that takes into account ‘free time’.

<sup>357</sup> They also undertook a sensitivity analysis, creating a separate model for offenders who were in medium to high risk categories, with the imprisonment group restricted to those on terms of six months or shorter.

A series of supplementary analyses were undertaken on a cohort of only those offenders with medium to high LSI-R risk scores and only those prisoners who had served a term of six months or less.<sup>358</sup> The three additional analyses examined the impact of an intensive correction order on the risk of reoffending for the following:

- medium to high LSI-R risk offenders: intensive correction order compared with short prison sentence up to two years;
- intensive correction order compared with fixed prison sentence up to six months (offenders in all risk categories); and
- medium to high LSI-R risk offenders: intensive correction order compared with fixed prison sentence up to six months.

The first analysis found a 20% to 30% reduction in the odds of reoffending for medium- to high-risk offenders who received an intensive correction order compared with a term of imprisonment. The second analysis revealed an estimated 25% to 43% reduction in the odds of reoffending associated with an intensive correction order for offenders in all risk categories. Finally, the third analysis found an estimated 33% to 35% reduction for offenders in medium to high LSI-R risk categories who had received an intensive correction order compared with those who had been imprisoned (Wang and Poynton, 2017, p. 9).

The authors concluded that their results ‘further strengthen the evidence base suggesting that supervision combined with rehabilitation programs can have a significant impact on reoffending rates, and further, that programs targeting offenders at high risk of reoffending produce larger reductions in reoffending than those targeting offenders at medium or low risk’ (Wang and Poynton, 2017, p. 10).

#### 4.3.1 Effectiveness of intensive correction orders among vulnerable cohorts

As with other types of orders, there is little research on the effectiveness of intensive correction orders among vulnerable cohorts. The only cohort-specific discussion relates to Aboriginal and Torres Strait Islander offenders, but does not specifically refer to effectiveness.

##### *Aboriginal and Torres Strait Islander offenders*

Aboriginal and Torres Strait Islander offenders are under-represented among those who receive an intensive correction order, possibly due (in part) to accessibility issues: offenders in this cohort are more likely to live in remote areas, and some intensive correction order facilities may lack reliable and appropriate public transport options (Ringland, 2012, p. 9). As

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<sup>358</sup> This restriction was imposed to remove offenders who had been released to parole and who would have received some form of supervision from community corrections – supervision that would have closely resembled that provided to offenders in the intensive correction order group. Restricting the prison group means that this cohort would have received no supervision, thus maximising the model’s ability to discriminate between the two groups.

these orders are not intended to be restricted to those who live in metropolitan areas, this becomes an issue of equitable access to justice.<sup>359</sup>

#### 4.3.2 Factors affecting successful completion of an intensive correction order

Wang and Poynton (2017) compared reoffending for intensive correction orders with short terms of imprisonment. Their research appears to be the only study that examines the likelihood of reoffending by offender characteristics. They found a significantly higher likelihood of reoffending was associated with being male; identifying as Aboriginal and Torres Strait Islander; having a proven theft or domestic violence-related offence at the index court appearance; having more court appearances with proven offences in the previous five years; having prior offences of break and enter, dangerous or negligent acts endangering persons, theft, illicit drug, breach of public order or against justice procedures; having previously been in prison; and being classified in risk assessment in higher-risk categories (Wang and Poynton, 2017, p. 9).

While there is no other robust predictive research on factors affecting successful completion of an intensive correction order, there are some descriptive statistics on outcomes of conditional sentences from Canada.

Canada introduced the conditional sentence of imprisonment in 1996, with the aim of reducing the number of offenders committed to custody. The order is intended to be both rehabilitative and punitive, with both compulsory and optional conditions crafted for the specific offender (Roberts and LaPrairie, 2000, pp. 1-3). It is thus broadly comparable to the intensive correction order.

In the first four years on their availability, four-fifths of conditional sentences were terminated without violation of the conditions (Roberts, 2005: cited in Armstrong et al., 2013, p. 27), but breach rates varied substantially across the country.

Johnson (2006) examined outcomes of probation and conditional sentences for five provinces in Canada. Examining outcomes of the two orders combined, she found breach rates of 25% in Saskatchewan and 37% in Alberta. Aboriginal people tend to be over-represented on conditional sentences (compared with probation) and had higher rates of breach of community orders than non-Aboriginal offenders. Breach rates decreased as offender age increased; breaches were higher for Aboriginal offenders across all age groups. Women had lower breach rates than men. The highest breach rates of conditional sentences were for robbery and break and enter offences and the lowest for sexual offences, drug offences and traffic offences (Johnson, 2006).

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<sup>359</sup> The Australian Law Reform Commission's (2007) report includes extensive discussion of access to community orders; see section 4.8.1 below.

### 4.3.3 Gaps in research on the effectiveness of intensive correction orders

Again, there is no evidence on the effectiveness of intensive correction orders among vulnerable cohorts, other than the finding that Indigenous status increases the likelihood of reoffending. Further research is also needed on the factors associated with successful completion of an intensive correction order to extend existing evidence.

### 4.3.4 Summary of the research on intensive correction orders

Research shows that there is no difference in the effectiveness of intensive correction orders when compared with supervised suspended sentences. There is good evidence, though, that intensive correction orders are more effective at reducing recidivism than either periodic detention or short terms of imprisonment, especially among offenders classified as high risk.

There is no evidence on the effectiveness of intensive correction orders among vulnerable cohorts, and little on the factors that predict completion. There is some evidence that reoffending is more likely among men, Indigenous offenders, those with criminal histories and high-risk offenders, but more evidence is needed on this issue.

## 4.4 Home detention

While many jurisdictions around the world make some use of home detention, the nature of the schemes varies considerably. Most jurisdictions use home detention as a ‘back-end’ option, where prisoners are released into the community but are subject to substantial restrictions and supervision. Fewer jurisdictions have a ‘front-end’ version of home detention, where it acts as a custodial order during which the offender is detained in a specified residence during specified times under strict supervision and other conditions. As a front-end sentence, home detention may be substitutional – a means of serving a term of imprisonment – or it may be available as a stand-alone sanction, independent of imprisonment.<sup>360</sup> Typically (although not always), home detention includes electronic monitoring to ensure compliance (TSAC, 2015, p. 58).

Home detention has spread widely, particularly in the US, where approximately 20% of community-based sanctions involve ‘electronic monitoring home detention’; its effectiveness in reducing recidivism, however, remains uncertain (Avdija and Lee, 2014, p. 3).

Home detention is said to offer several advantages as an alternative to imprisonment. It allows offenders to remain in the community and to retain pro-social connections, such as work, family and housing – all factors that can support rehabilitation and reintegration. It can

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<sup>360</sup> Home detention may also be used as a condition of bail. The Queensland Productivity Commission has suggested that home detention could be made available to encourage confidence in, and greater use of, bail. It also suggested that use of an electronic monitoring component could achieve the same effect (Queensland Productivity Commission, 2019, Draft Recommendation 6, p. 178). There appears to be no evidence, however, of the effectiveness of home detention as a bail condition.

satisfy multiple sentencing purposes, such as punishment, restoration and rehabilitation. Home detention appears to have good completion rates and is a cheaper option than imprisonment, albeit a more expensive option than other forms of community order (TSAC, 2015, pp. 61-64). Early qualitative analysis of the home detention curfew program in England and Wales illustrates the positive aspects of home detention. Interviews of offenders on home detention following imprisonment, their family and supervising probation officers showed that the scheme eased the transition from custody into the community, allowing offenders to be present at home and negating the need for families to visit prisons (Dodgson et al., 2001, p. v).

Critics of home detention, however, argue that it has significant (and often forgotten) effects on others in the household. Martinovic (2007), for example, examined the research on home detention and found several distinct onerous effects experienced by co-residing family members, caused by feeling responsible for helping the offender to comply or being embarrassed about living with a detainee, having governmental control in their home with the associated strained social interactions, and experiencing the intrusive control of electronic and other surveillance strategies (Martinovic, 2007, pp. 93-99). The qualitative work of Gibbs and King (2003) in New Zealand illustrates this. Their interviews with family and offenders on home detention following imprisonment showed that home detention created additional stress in the household, including for children. This was especially so in the case of offenders being monitored electronically who experienced emergency or unexpected situations that led them to break the conditions of their orders (Gibbs and King, 2003a, pp. 204-205).

There is very little robust evidence on recidivism following home detention as a sentence, whether as a substitutional or stand-alone order. More evidence is available about its effectiveness as an early-release mechanism following a term of imprisonment. However, much of the research uses weak methodologies, such as examining simple reoffending rates (often measured by return to prison), without any matched control group or other more robust statistical approach.

This section focuses on the handful of studies that adopt either robust methodologies or offer some different, qualitative insight into the effectiveness of home detention. Research on both front-end and back-end home detention is included.<sup>361</sup>

Evaluations of the effectiveness of home detention following release from prison have produced mixed results. Early studies used weak research designs and examined programs with low integrity that focused only on low-risk offenders; they found a re-arrest rate of about 5%. More recent studies have adopted better designs and have also found low recidivism rates (Development Services Group, 2014, p. 4). Completion rates – the most common

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<sup>361</sup> Arguably, the two types of home detention would be used for two different types of offender, such that findings from one type of scheme might not be relevant to those interested in the other. However, this discussion will be explicit about the positioning of each scheme and will note where issues arise about target cohort.

measure used to evaluate home detention – have been high, especially for back-end home detention (Gibbs and King, 2003b, p. 4).

The single meta-analysis on the effect of front-end or back-end home confinement (house arrest and electronic monitoring) on recidivism found that home detention was effective at reducing recidivism. Examining 14 effect sizes from 11 studies that included some form of comparison group, the pooled analysis of the whole sample found a strong, positive and statistically significant result: offenders who participated in home confinement either as a full alternative to prison (front-end) or as an early release from prison (back-end) were significantly less likely to reoffend than offenders released from custody without any home confinement intervention (Bouchard and Wong, 2018, p. 595). Sensitivity analysis showed that the results were the same – strong, positive and statistically significant – when examining re-arrest as the measure of recidivism. Results were medium-sized and statistically significant for reconviction outcomes, but were not statistically significant for reincarceration: those who participated in a home confinement program were no more likely to be reincarcerated than those who served their full sentence in closed custody. The authors concluded that, as the outcome increased in severity (from arrest to conviction to imprisonment), the effect of home confinement diminished (Bouchard and Wong, 2018, pp. 599-601).

The findings suggest that home confinement helps adult offenders successfully reintegrate into the community on release from custody and that it deters future offending. The authors concluded (Bouchard and Wong, 2018, p. 602):

Notably, the majority of programs investigated in the pooled analyses demonstrated positive effect sizes, suggesting that, across sites, home confinement programs are consistent in producing a beneficial impact. As such, in addition to the cited economic and social benefits of home confinement when compared with incarceration (e.g., substantially less expensive, ability to maintain/develop social ties, and ability to participate in activities such as treatment, work, and school), the empirical evidence discussed herein suggests that home confinement is effective at maintaining public safety and reducing recidivism. Home confinement should therefore be considered a strong candidate for a viable community-based deterrent and reintegration strategy for the types of adult offenders included in this study.<sup>362</sup>

In contrast, another fairly strong study found no impact of back-end home detention on recidivism. Marie, Moreton and Goncalves (2011) examined data on 63,384 offenders discharged from prison to home detention<sup>363</sup> between 2000 and 2006 in England and Wales. Using a quasi-experimental evaluation design,<sup>364</sup> they compared reoffending outcomes for those receiving home detention with a sample of offenders who were not eligible<sup>365</sup> for early

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<sup>362</sup> Citations omitted.

<sup>363</sup> Known in England and Wales as 'home detention curfew'.

<sup>364</sup> Regression Discontinuity Design uses a pre-defined cut-off point in a quantifiable measure; in this instance, the cut-off was a sentence of three months (Marie, Moreton and Goncalves, 2011, p. 6).

<sup>365</sup> The scheme was only available to offenders serving a sentence of between three months and four years. Analyses compared offenders on either side of the three-month threshold (Marie, Moreton and Goncalves, 2011, p. 2). While the authors argued that characteristics influencing recidivism should therefore be similar for

release on home detention. Analyses showed that 10% were recalled to prison while they were on home detention: 8% for breaching their conditions and 2% for reoffending while on home detention. Despite being out of prison for longer, with more time to reoffend, offenders on home detention were no more likely to engage in criminal behaviour than offenders who were released straight into the community without home detention.<sup>366</sup>

Finally, Avdija and Lee (2014) found that home detention *increased* the likelihood of recidivism: offenders who successfully completed the electronic monitoring home detention program in Indiana were two times more likely to reoffend than those who did not successfully complete the program. However, the small sample size (293 people) and low explanatory power of the model<sup>367</sup> means that these results must be treated with caution; this study is included here to illustrate the conflicting nature of the evidence on the effectiveness of home detention.

### *Cost effectiveness*

There is little recent information on the costs and benefits of home detention schemes. One exception is an analysis of the back-end home detention curfew scheme in England and Wales, which was examined after one year in operation. Costs were accrued by risk assessment processes, contractor operations for the electronic monitoring, and recalls to prison, while savings were primarily achieved in keeping offenders out of prison. Net benefits were estimated to be over 60 million pounds in the first year (Dodgson et al., 2001, p. viii).

In Australia, the Melbourne Centre for Criminological Research (2006) evaluated the first year of Victoria's pilot electronic monitoring-home detention scheme. It found that rates of technical violations and recidivism were low and there was no evidence of significant risk to offenders' co-residing family members. Cost-benefit analysis showed that, for every \$1.00 spent on the program, it returned a benefit of \$1.80. After declaring the pilot a success, the scheme became permanent. However, very low numbers,<sup>368</sup> especially for front-end orders, meant that program costs remained high, with the strong emphasis on case management rather than just compliance management (Melbourne Centre for Criminological Research, 2006).

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the two groups, their analysis found some important differences: offenders released to home detention were more likely to be female and older and half as likely to have previous offences and previous breaches (Marie, Moreton and Goncalves, 2011, p. 3).

<sup>366</sup> Analysis showed that recidivism among home detention offenders was four percentage points lower after one year and 2.6 percentage points lower after two years, but neither difference was statistically significant (Marie, Moreton and Goncalves, 2011, p. 4).

<sup>367</sup> The model only explained 19% of the variance in recidivism and correctly classified 75% of cases (Avdija and Lee, 2014, p. 8).

<sup>368</sup> From 2004 until 2010 a total of 229 offenders were placed on home detention in Victoria (Smith and Gibbs, 2013: cited in Martinovic, 2014, p. 16). The order was ultimately abolished in 2011.

#### 4.4.1 Effectiveness of home detention among vulnerable cohorts

In the only study that considers the impact of home detention among vulnerable cohorts, King and Gibbs (2003) interviewed seven women and 14 men who had been placed on home detention following release from prison. While most women were positive about the scheme, they were more likely than the men to feel ashamed of being on home detention and to feel stigma in public when their electronic monitoring anklet was visible. While men were more likely to find outdoor tasks and leisure activities to occupy them during their detention, women were more likely to focus on housework and their children's needs. And with 18 of the 21 detainees having women as their sponsors, the authors concluded that 'in the main, it is women who are burdened the most by home detention'. King and Gibbs (2003, p. 123) suggest that:

Women detainees and sponsors clearly stated that more support from home detention probation officers is desirable; that more notice needs to be taken of the requirements of mothers and children restrained in homes for long periods of time; and that the regulations need to make allowances for 'time-out' to preserve family relationships.

While this study involved a tiny sample, it offers a valuable discussion of differential effects of home detention on women and men.

#### 4.4.2 Factors affecting successful completion of home detention

There is a small body of research from several countries on the factors that affect successful completion of home detention. Findings, however, have not been consistent.

To identify factors associated with breaches of home detention following release from prison in South Australia, Cale and Burton (2018) examined all prisoners released to back-end home detention in 2014-15 and tracked the cohort for breaches of conditions and returns to custody for a new offence up to June 2017. Descriptive analyses showed that men were more likely than women to breach a home detention order (17.2% compared with 8%; 15.8% overall) and to be returned to custody for a new offence following completion of the home detention order, although these differences were not statistically significant. Younger offenders, those with less education and offenders who had been incarcerated for a violent offence were more likely to breach their home detention, as were those with longer home detention sentences and longer non-parole periods (Cale and Burton, 2018, pp. 45-48). Logistic regression analysis on breaches showed that, net of other factors, offenders who left prison with a security rating of medium/high were 2.6 times more likely to breach home detention than those with a low rating. In addition, for every unit increase in the risk of reoffending score an individual was about 15% more likely to breach, and for every day longer on the home detention sentence there was a 1% increase in the likelihood of breach. Demographic factors, the type of index offence and participation in behavioural change programs did not significantly predict breach of home detention (Cale and Burton, 2018, p. 48).

Younger offenders and those of Aboriginal and Torres Strait Islander background were more likely to return to custody for a new offence following the discharge of their home detention order, as were those who had multiple prior sentences (especially for theft, administrative (breach of justice) orders, driving or home detention breach offences) and those with a high risk of reoffending score. Logistic regression showed that each prior sentence in an individual's history was associated with a 50% increase in the likelihood of a return to custody. People who had a previous violent offence were 79% less likely to return to custody compared with those who did not commit a violent offence, and those who had breached their previous home detention were 2.75 times more likely to return to custody than those who did not. Each unit increase in risk of reoffending score resulted in a 19% increase in the likelihood of return to custody (Cale and Burton, 2018, pp. 51-52).

Similarly, in their analysis of UK data, Marie, Moreton and Goncalves (2011) showed that recall to prison from home detention was more likely among offenders with burglary or robbery as their current conviction, offenders who had previous breaches and those who had more prior offences (Marie, Moreton and Goncalves, 2011, p. 4).

In their qualitative study of back-end home detention in New Zealand, Gibbs and King (2003b) found several factors that helped detainees to complete their home detention successfully: keeping busy, a belief that they would be returned to prison if they broke the rules, having concrete plans about the future, recognising the negative impact of their crimes on their own lives and those of their families, a recognition of the importance of support and an ability to deal with the restrictions associated with home detention (Gibbs and King, 2003b, p. 12).

These factors are similar to those found by Henderson (2006) in her study of home detention in Australia and New Zealand. Her consultations with home detention case managers found that intensive case management, using a mix of surveillance and rehabilitative strategies, were critical for successful completion of home detention. In particular, the following case management practices were identified as critical success factors for successful home detention programs (Henderson, 2006, p. 49):

an intensive case management approach combining monitoring/supervision with guidance/counselling; an effective case management approach based on one to one personal contact; and ensuring 'a constructive day' through work or other activities. Another noted the importance of consistent policy and practice so that everyone is aware of expected standards and boundaries.

In US research with a sample comprised mainly of convicted drunk drivers and other minor offenders, Stanz and Tewksbury's (2000) logistic regressions showed that older offenders were more likely to complete their home incarceration program successfully, and – contrary to other research – that longer detention was also predictive of successful completion. In another finding that conflicts with previous research, offenders convicted of multiple offences were more likely to succeed in home incarceration than those with only one offence. Offenders with technical violations were more likely to fail to complete their order: as the number of violations increased, the likelihood of completion decreased significantly. Finally,

offenders living in a high-crime and high-unemployment area were more likely to fail their home incarceration program. Given the high rates of successful completion (85%) but also of re-arrest upon release from the program (69%), the authors suggested that ‘any deterrent effects of home incarceration do not continue after participants are released...home incarceration may temporarily incapacitate offenders, but does not deter future crime’ (Stanz and Tewksbury, 2000, p. 340).

#### 4.4.3 Gaps in research on the effectiveness of home detention

Given the variation in home detention across jurisdictions – in conditions, timing (front-versus back-end) and the use of electronic monitoring – it is not surprising that findings about its impact on recidivism are mixed. The primary gap in the research on home detention is a lack of clarity in conceptualisations of the order. There is no clear body of research on front-end home detention that compares it with other genuine alternatives to prison. Likewise, there is no coherent body of research that considers only back-end home detention and compares it with straight release from custody. And there is certainly no clarity about the mechanisms of home detention as distinct from electronic monitoring: research on the effectiveness of the former often presents findings on the effectiveness of the latter, resulting in a poor understanding of whether it is the home detention or the surveillance that has an impact on recidivism.

As with many other sentencing options, there is little research on the impact of home detention on vulnerable cohorts. This is a particularly notable gap when considering alternatives to imprisonment for Aboriginal and Torres Strait Islander offenders and those from rural and remote areas, for whom alternatives to custody are particularly valuable to improve access to justice.

There is also little consideration of outcomes other than reoffending. As some of the main advantages of home detention revolve around opportunities for reintegration and supporting strengthened family relationships, it is perhaps surprising that there appears to be no robust research on these broader social outcomes. Indeed, Henderson (2006) found that program managers who work in home detention programs suggested that community reintegration and positive family relationships should be used as indicators of successful home detention outcomes (Henderson, 2006, p. 80).

#### 4.4.4 Summary of the research on home detention

Despite mixed results and findings of increased stressors within the home detention household, the strongest of the research studies show that the advantages of home detention outweigh the disadvantages: home detention can aid in reintegration, can facilitate reconnection with pro-social family and activities, and can deter future offending. Its use for vulnerable cohorts and its impact on other members of the household – particularly women

and children – all need further research and close consideration to guide home detention development, implementation and use.

#### 4.5 Community service orders

In many countries, community work is used as a mid-level penalty to replace short terms of imprisonment for moderately serious crimes. It has a punitive component that generally meets with widespread public approval, it visibly contributes some public value, and it generally has enough flexibility to be applicable to a range of offence seriousness.

Despite these apparent benefits, little research has been conducted on the effect of unpaid community work on reoffending: evidence on this issue is ‘sparse and dated’ (Davis et al., 2008, p. 21).

The few studies that have examined the effect of unpaid work on reoffending have shown little or no effect, with studies that have compared community service to a short term of imprisonment finding similar reoffending rates for the two sentence types (Davis et al., 2008, p. 21). However, in the decade since Davis et al.’s (2008) assessment, a methodologically strong study by Klement (2015)<sup>369</sup> of a sample of Danish offenders found that imprisonment was associated with significantly higher recidivism rates than community service after both one year and three years (Klement, 2015, p. 249).

In one of the few studies in the literature to use a controlled experimental design, Killias, Aebi and Ribeaud (2000)<sup>370</sup> examined the comparative effects of community service and prison sentences of up to 14 days, based on 123 Swiss offenders who were randomly assigned to one of the two sanctions. Recidivism was measured in terms of both rearrest and reconviction within two years, as well as the offenders’ subsequent professional and personal life circumstances and their attitudes toward the criminal justice system.

No statistically significant differences were found between the two groups in either prevalence or incidence of reconviction, although the prevalence of reconviction was slightly higher in the prison group (25.6% compared with 21.4% for the community group), as was the incidence of reconvictions. The same pattern was found for police arrest data (38.5% prevalence of rearrest for the prison group compared with 33.3% for the community group). Overall, the analysis showed more favourable outcomes for community orders (Killias, Aebi and Ribeaud, 2000, pp. 45-48).

Using a follow-up written questionnaire, both groups of offenders were asked about objective measures of social change (such as employment status) and subjective ratings about

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<sup>369</sup> Klement (2015) used a quasi-experimental design with propensity score matching and an ‘unprecedented assortment’ of individual background data (including prior offending, alcohol abuse, drug abuse, mental health, physical health, employment, education, family type, marital status, housing situation, immigration/emigration and geography), providing ‘powerful controls’ over potential selection mechanisms (Klement, 2015, p. 237).

<sup>370</sup> Although this study is somewhat dated now, it is included here due to its experimental design.

professional and personal life circumstances in the time following their sentences compared with the time before their sentences. No statistically significant differences were found between the two groups in employment or perceptions of life circumstances. There were differences, however, in offender attitudes towards the criminal justice system. Offenders who had served a community service sentence were significantly more likely to feel that their sentence actually reduced the likelihood of recidivism, while prisoners were significantly more likely to feel that their sentence (and indeed, the experiment itself) had been unfair (Killias, Aebi and Ribeaud, 2000, pp. 49-50).

Although not all the findings reached statistical significance in this study (likely due to the small number of offenders involved), the patterns are clear: community service sentences were more effective than short terms of imprisonment at reducing future offending, while imprisonment was more likely to lead to negative attitudes towards the criminal justice system.

Wermink et al. (2010) compared the effects of community service and short-term imprisonment on recidivism rates among 4,246 offenders in the Netherlands. Controlling for possible confounding variables with propensity score matching, the study found that recidivism rates were significantly lower following a community service sentence than after a sentence of imprisonment. Recidivism for property crimes after five years was 53.9% lower following a community service sentence, while recidivism for violent crimes was 45.0% lower following a community sentence. These differences were statistically significant both in the short term (after one year) and in the longer term (after eight years) (Wermink et al., 2010, p. 344).

In a study that examined broader outcomes following a community work sentence, Morris and Sullivan (2015) compared the impact on both recidivism and employment outcomes for New Zealand offenders sentenced to community work and those who received a fine.<sup>371</sup> The comparison of community work and fines is unusual in the literature; the most common comparison is with a short term of imprisonment. Using propensity score matching, three-year impacts were estimated separately for four different offence types<sup>372</sup> plus a pooled offence model. Analysis found an impact of sentence type on new offending for three of the four offence types,<sup>373</sup> with offenders who had been sentenced to community work being four to seven percentage points more likely to be reconvicted for new offending than those who had been fined, and eight to 21 percentage points more likely to be reconvicted for breach of an order. No differences were found in employment and earnings outcomes for the two

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<sup>371</sup> The authors highlighted the paucity of local research on the effectiveness of sentences: 'there is little evidence from New Zealand to quantify the impact of different types of sentences on the subsequent outcomes of offenders' (Morris and Sullivan, 2015, p. ii).

<sup>372</sup> Offence types were aggravated drink-driving (a third or subsequent conviction), drink-driving (first or second offence), shoplifting (estimated value under \$500) and common assault (manual) (Morris and Sullivan, 2015, p. ii).

<sup>373</sup> No difference was found for common assault (Morris and Sullivan, 2015, p. 35).

cohorts,<sup>374</sup> however people who received a community work sentence were more likely to be on welfare benefits following conviction, by about five percentage points (Morris and Sullivan, 2015, pp. 35-36). Analysis of sub-groups found no differences in any of the estimates by age or the duration of the community work sentence, and no differences in benefit receipt, employment or reconvictions for breach by gender or ethnicity. There were, however, differences in new offending by order type for males (but not females) and for Māori (but not Europeans). That is, men and Māori who had been convicted of drink driving were more likely to be reconvicted for new offending following a community work sentence than a fine (Morris and Sullivan, 2015, p. 41).<sup>375</sup>

In another study that used a different comparator sentence, Snowball and Bartels (2013) used propensity score matching to compare adults given a community service order in NSW with those on a bond. In comparison with bonds, community service orders were found to result in a lower likelihood of reoffending, holding other relevant characteristics equal (Snowball and Bartels, 2013, p. 6).

#### 4.5.1 Effectiveness of community service orders among vulnerable cohorts

There is little research on the effectiveness of community service among vulnerable cohorts, although issues have been identified about the availability of these orders for Aboriginal and Torres Strait Islander offenders and those in rural and remote areas.

##### *Aboriginal and Torres Strait Islander offenders*

The only evidence about the effectiveness of community service orders for Aboriginal and Torres Strait Islander offenders comes from an evaluation of a program that supervises Aboriginal and Torres Strait Islander offenders on these orders.

Aboriginal and Torres Strait Islander offenders who are serving a community service order in Queensland may be supervised by the Queensland Community Justice Group (CJG) Program. This program aims to develop justice strategies, reduce Aboriginal and Torres Strait Islander people's contact with the criminal justice system and support victims of crime.

An evaluation of the CJG by KPMG (2010) found that the program assisted approximately one-quarter of all offenders in Queensland each year who identify as Aboriginal and Torres Strait Islander. It found, however, that the quality and effectiveness of the program is 'severely constrained by poor program resourcing and governance arrangements', with 'variable program delivery across the state' (KPMG, 2010, p. 4). While there was widespread support

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<sup>374</sup> There was, however, one short-term effect: drink drivers who were fined were more likely to be employed in the first year following conviction than drink drivers on community work. This difference did not persist beyond the first year (Morris and Sullivan, 2015, p. 36).

<sup>375</sup> This analysis focused on people convicted of drink driving due to the larger number of offenders, providing a large enough sample for sub-group comparison. The same gender pattern was seen for shoplifting and aggravated drink driving, although no ethnic differences were found for these two offences (Morris and Sullivan, 2015, p. 42).

for the program among community leaders, providers and criminal justice system stakeholders, the evaluation made a series of recommendations so that the program would be strengthened by 'refining its goal, better targeting its resourcing to priority activities, and implementing more robust governance and performance management frameworks' (KPMG, 2010, p. 5).

The report notes that, while Indigenous justice initiatives are generally perceived to contribute to efforts to reduce recidivism, there is no conclusive evidence available to this effect. Research on recidivism rates for offenders at the Rockhampton Murri Court found that sentencing orders that required offenders to attend CJG and/or other community-based rehabilitation that involved Indigenous community Elders were more effective than those which did not involve ongoing community contact (Cunneen, Collings and Ralph, 2005: cited in KPMG, 2010, p. 15). Anecdotal evidence on the use of Indigenous community members to supervise non-custodial orders has found that community people are able to work with offenders to address underlying behaviours and attitudes contributing to offending. However, an earlier study found no conclusive evidence of a measurable impact on recidivism (Cunneen, 2001: cited in KPMG, 2010, p. 16).<sup>376</sup>

While the report notes that there is limited evidence of the success of Indigenous justice programs in reducing offending rates, reviews have recognised the need for a more integrated approach with an increased focus on resources to support interventions and treatments that help Aboriginal and Torres Strait Islander offenders to address the underlying causes of their offending (KPMG, 2010, p. 21).

### *Offenders in rural and remote areas*

There is no robust research on the effectiveness of community service orders for offenders in rural and remote areas. This is likely due to the general scarcity of opportunities for community service in these locations.

Community service orders have limited effectiveness for offenders in rural and remote areas as they are not uniformly available: there are insufficient work placements available in smaller communities outside of metropolitan areas, and a lack of transport to access the placements that are available (SCLJ, 2006, p. 74).<sup>377</sup> In the absence of appropriate work opportunities, a community service order may not be imposed, with the resulting risk of sentence inflation.<sup>378</sup>

Snowball (2008) examined NSW data to determine if the lack of alternatives to custody increase the risk of a prison sentence. After controlling for legally relevant factors, analysis

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<sup>376</sup> There were, however, impacts on other outcomes: reductions in juvenile offending and truancy, reductions in family and community disputes and violence, increases in community empowerment and self-esteem, offering better support for offender re-integration and generating cost savings for justice agencies (Cunneen, 2001: cited in KPMG, 2010, p. 16).

<sup>377</sup> The Standing Committee on Law and Justice focused on NSW, but the situation is likely to be similar – or even more extreme – for Queensland, with its large geographical area.

<sup>378</sup> In this instance, sentence inflation refers to an offender receiving a harsher sentence than necessary (in particular, imprisonment) simply due to the lack of adequate work opportunities.

showed that an offender's area of residence did affect their likelihood of imprisonment, but that the effect was in the opposite direction than expected: remote and regional offenders were less likely to receive a prison sentence than offenders in inner metropolitan areas. The most likely explanation offered is that courts in regional and remote areas are sensitive to the shortage of local community-based sentencing options so are more sparing in their use of imprisonment (Snowball, 2008, p. 4).

#### 4.5.2 Factors affecting successful completion of a community service order

There appears to be no research on factors affecting successful completion of a community service order. However, some researchers have argued that community service orders and other structured programs that bring together a mix of first-time and repeat offenders are likely to increase future offending by 'contamination', or amplifying deviance, as younger offenders may be negatively influenced by the anti-social attitudes and behaviours of their potentially older, more hardened peers (Andrews et al., 1990, p. 376). For example, Trotter (1995) found that offenders who undertook unpaid community work in a group with other offenders were more likely to breach their orders than those working alone. This difference remained significant, even when controlling for the fact that offenders placed on group worksites were more likely to be high-risk offenders (Trotter, 1995, p. 21).

#### 4.5.3 Gaps in research on the effectiveness of community service orders

While the evidence shows that community service orders are effective at reducing recidivism, there is no research on the mechanisms that underlie its success, and none on the factors that contribute to successful order completion, including whether the order is effective for different vulnerable cohorts. So, while the research finds that community service 'works', it does not identify 'for whom' or 'under what circumstances'.

#### 4.5.4 Summary of the research on community service orders

While little attention has been paid to community service orders in the effectiveness literature, existing quality studies find that community service reduces recidivism more effectively than either a term of imprisonment or a bond, but less effectively than a fine. There are concerns, however, about the order in terms of access to justice for Aboriginal and Torres Strait Islander offenders and those in rural and remote areas, as there may be fewer opportunities available for community work placements. In such circumstances, adequate resourcing becomes critical to provide equal opportunities, regardless of offender location.

## 4.6 Probation

Unlike for some other sentencing orders, there is a substantial body of evidence on the effectiveness of probation, particularly among vulnerable cohorts. While much of the research has focused on the impact of the supervision component of probation, there have also been studies of various models of probation, with the use of graduated sanctions drawing considerable attention.

Smith and colleagues (2018) undertook a rapid evidence assessment<sup>379</sup> of the research on the effectiveness of probation supervision in reducing reoffending. They cited several studies (Smith et al., 2018, pp. 4-5) that argue that supervision practice has changed considerably in both the UK and abroad, shifting from methods oriented toward social care to those which focus on punishment, risk management and public protection – increasing workloads and time constraints have prioritised risk (via monitoring and enforcement) over rehabilitation.<sup>380</sup> The authors caution that ‘the concept of supervision is complex as it can include functions and goals such as monitoring offenders, enforcing court sentencing, ensuring public protection and reducing reoffending’ (Smith et al., 2018, p. 3), which can increase the complexity of identifying its impacts. In the absence of a single, unified model of supervision, there is substantial heterogeneity in studies examining the effectiveness of probation supervision.

In their meta-analysis of 13 studies<sup>381</sup> from the US, UK, Canada and Australia, Smith et al. (2018, p. 14) showed that probation supervision was associated with a 30% lower likelihood of reoffending in the supervision group after two years compared with offenders who were not supervised.

In a study that examined the impact of probation on reoffending using self-report data, MacKenzie, Browning, Skroban and Smith (1999)<sup>382</sup> found that, compared to the year prior to arrest, the number of offenders self-reporting criminal activity in the first six months of probation declined, as did the rate of offending among those who continued to offend. The

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<sup>379</sup> A rapid evidence assessment aims to survey a body of research in a short, intensive period, usually about three months. A systematic review adopts a longer timeframe, usually around 12 months. The latter can thus provide an exhaustive search, while the former offers more of an overview of key research.

<sup>380</sup> A similar shift has been seen across the criminal justice system, in which a rise of new managerialism and a concomitant increase in risk aversion has led to increasingly punitive responses to offending. See, for example, Bartels, Gelb, Spiranovic, Sarre and Dodd (2018) for a discussion of this shift with regard to bail in Australia.

<sup>381</sup> Smith et al. (2018, p.15) noted that there is ‘a paucity of research given the long history and prevalence of probation supervision worldwide’.

<sup>382</sup> While this kind of pre-post within-group design would not normally be considered sufficiently robust in a review of this kind, its use of self-report offending data means that this study offers insight into recidivism that is not available from studies that use official data (although this study also examined official criminal history records at the end of one year of probation). In fact, this was the first study to use self-reports of offending among probationers. While having only a tiny sample of 107 probationers for both interviews, the study’s finding that probation was effective in reducing both the incidence and frequency of reoffending complements existing findings based on official data.

impact of probation was seen primarily on property and drug dealing offences, with no significant reductions in crimes against the person or forgery/fraud offences.

#### 4.6.1 Effectiveness of probation among vulnerable cohorts

Unlike for other order types, there is some research on the effectiveness of probation for specific cohorts. Studies have examined the impact of probation on female offenders, offenders with a mental illness and sex offenders.

##### *Female offenders*

Caudy, Tillyer and Tillyer (2018) addressed a substantial gap in the research on gender differences in the effectiveness of various sentences by examining the relative impact of jail<sup>383</sup> and probation on recidivism for men and women separately, as well as other potential moderators including age, risk level, employment status and social ties. Conducting gender-specific multivariate logistic regressions<sup>384</sup> and survival analyses on a large sample of adult offenders in the US, the authors found an increased risk of rearrest for people sentenced to a short term in custody compared with similar offenders who had been sentenced to a period of probation. For men, the odds of rearrest following jail were 2.40 times higher than following a probation sentence, while for women the odds of rearrest following jail were 2.17 times higher (Caudy, Tillyer and Tillyer, 2018, p. 957). For both men and women, the criminogenic effect of jail was strongest for offenders who had been classified as a high risk for recidivism, although the interaction between jail and risk score was only statistically significant for women. The criminogenic effect of a jail sentence on recidivism was significantly exacerbated by the dynamic risk factors (and thus treatment needs) of family stress, drug abuse and alcohol abuse for men, while family stress significantly exacerbated the impact of a jail sentence for women. There was no significant interaction effect of unemployment, severe financial difficulties, negative friendship associations, emotional instability or mental deficiency (Caudy, Tillyer and Tillyer, 2018, p. 961).

The authors concluded (Caudy, Tillyer and Tillyer, 2018, pp. 963-964):

The findings from our gender-specific analyses also have implications for correctional policy and practice. The growth of women's incarceration rates over the last four decades has been well documented. This growth, coupled with increased attention to the experiences of women in the criminal justice system, has led to increasing calls for improved gender responsiveness in the corrections system. Our findings indicating that the criminogenic effect of jail incarceration, relative to probation, is stronger for women

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<sup>383</sup> In the US, jails are used for short custodial terms up to one year, while prisons are for longer terms. The comparison of short-term custody with probation (rather than prison with probation) makes this study particularly valuable, as most prior research has not differentiated between jail and prison cohorts.

<sup>384</sup> While this study did not involve an experimental or quasi-experimental design, it is included in this review as it is rare to find research that compares the impact of custody and probation based on gender. In addition, the analyses controlled for a range of demographic and criminal history variables that are typically correlated with recidivism, including sex, race, prior convictions, pre-trial detention, offence type and risk classification (Caudy, Tillyer and Tiller, 2018, p. 956).

than men suggest the criminogenic environment of jails may be particularly impactful on women offenders...

Evidence that major disruption or stress in marital and family relationships significantly interacted with jail incarceration for both men and women indicates that a jail sentence, relative to probation, may be particularly challenging to overcome for offenders who experience high levels of relationship stress prior to sentencing. Among women offenders, traumatic relationships, histories of victimization or abuse, and disruption of parental roles have been identified as gender-responsive needs associated with poor adjustment to incarceration and subsequent negative outcomes. Our findings add to the already robust body of literature that calls for increased access to programming that addresses the unique histories and relationship needs of incarcerated women. Specific policy recommendations for jail administrators interested in limiting the criminogenic effect of incarceration on women offenders include embracing rehabilitative rather than punitive ideals, hiring staff who are treatment oriented and display positive interpersonal skills, offering programming (e.g., trauma-informed care, relationship programs) that addresses women's criminogenic needs, and providing gender-responsive re-entry programming that helps prepare women for the unique challenges they face upon release.<sup>385</sup>

Despite large increases in female prison populations, 'probation is where most female offenders end up' – women are much more likely than men to receive a probation sentence (Olson, Alderden and Lurigio, 2003, p. 34). However, probation assessment tools and case management strategies have traditionally been constructed without consideration of gender differences, limiting practitioners' ability to address female probationers' needs effectively.

Examining the role of gender in predicting probation recidivism, Olson, Alderden and Lurigio (2003) examined data on more than 3,000 adults discharged from probation supervision in Illinois, including nearly 700 women. Women were less likely than men to be rearrested while on probation, although there was no gender difference in the likelihood of technical violations. There were, however, differences in the factors that predicted rearrest and technical violations. Separate logistic regression analyses were conducted for men and women. Analyses of rearrest data showed that male recidivists were likely to be younger, single, gang members and high school dropouts. They were also more likely to have previous convictions, to have been convicted of felonies and to have current substance abuse problems. For women, the only statistically significant predictors of rearrest were lower levels of education, having prior convictions, being convicted of a more serious (felony) offence and having current substance abuse problems. Unlike for men, age and marital status had no relationship to rearrests for women. As many of the risk assessment instruments that are used to determine supervision levels include age and marital status, the lack of predictive significance of these two factors among female probationers suggests that women may be at risk of both over-classification and inappropriately high levels of supervision (Olson, Alderden and Lurigio, 2003, pp. 41-44).<sup>386</sup>

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<sup>385</sup> Citations omitted.

<sup>386</sup> Similar results were found for the prediction of technical violations. For men, significant variables included age, race, education, income, gang membership, prior convictions, substance abuse problems, and jurisdiction

These findings have important implications for correctional programming. The authors (Olson, Alderden and Lurigio, 2003, p. 48) suggested that:

Indeed, this understanding of subpopulation responsiveness to various correctional programs is of even greater importance as policymakers and practitioners increasingly create specialized programs for subpopulations of offenders, such as female-focused programs, programs for drug law violators, or other groups. However, without research specifically designed to examine these subpopulations (e.g., large enough samples), results will continue to be tentative and of limited practical utility.

Given the paucity of research on the effectiveness of specific sentencing options for female offenders, these two studies offer important insights into the gender-specific impact of sentencing and highlight the need for interventions that are appropriate for this vulnerable cohort.

### *Offenders with a mental illness*

In response to the disproportionate involvement of people with serious mental illness in the criminal justice system, community corrections agencies in some jurisdictions have developed specialised probation units over the past thirty years, involving smaller, dedicated caseloads, probation officers with mental health training and targeted programs for people with serious mental illness (Lurigio et al., 2012, p. 317). However, little is known about the effectiveness of this approach (Castillo and Alarid, 2011, p. 99); studies have been ‘poorly designed and focused on limited outcomes’ (Lurigio et al., 2012, p. 321).

There are two notable exceptions to this. Skeem et al. (2009) adopted a quasi-experimental design, comparing 183 offenders in a specialty program with 176 in a traditional program. Analysis using propensity score matching showed that people in the speciality program had lower rates of rearrest (30% compared with 42%) during one year of probation. However, there was no statistically significant difference in probation revocation once propensity scores had been controlled. In the only true experiment on the impact of specialised probation units, Burke and Keaton (2004: cited in Lurigio et al., 2012, p. 320) randomly assigned 449 probationers with mental illnesses to a specialised program<sup>387</sup> or to ‘treatment-as-usual’. Program participants – especially those who actually completed the program – were significantly less likely to be jailed for a new offence.

Skeem (2009) suggested that specialty probation programs reduce the risk of probation failure not by reducing symptoms or improving functioning, but by increasing the number of mental health sessions and by adopting core, evidence-based correctional practices: targeting criminogenic needs, using cognitive-behavioural techniques, ensuring proper program

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type (with higher recidivism among urban probationers). For women, only education level and substance abuse history were significant predictors (Olson, Alderden and Lurigio, 2003, p. 45).

<sup>387</sup> The specialised program involved a small caseload of 10 clients per officer, and paired probation officers with social workers to deliver intensive case management services, including supportive services, direct mental health care, emergency psychiatric responses, and substance use interventions. These features are unlikely to be used in most specialised probation programs (Lurigio et al., 2012, p. 322).

implementation and focusing on high-risk offenders. Specialised programs are able to link people with serious mental illnesses with evidence-based services to meet their criminogenic, treatment and practical needs (Lurigio et al., 2012, p. 324).

### *Sex offenders*

There is little research on the effectiveness of probation for sex offenders as most research on sex offender recidivism does not differentiate outcomes by sentence type, instead focusing on offenders released from prison.<sup>388</sup> One exception, however, is the study by Meloy (2005), who examined outcomes of community supervision for a national sample of 917 convicted male sex offenders on probation in the US. She found that 16% of the cohort reoffended, but only 4.5% committed a new sexual offence.<sup>389</sup> Meloy concluded that, 'under the right set of conditions, probation is the most appropriate criminal sanction for some types of sex offenders' (Meloy, 2005, p. 211).

Hepburn and Griffin (2004) examined data on 419 male sex offenders on probation and reached similar conclusions: only 2.2% of the probationers were arrested for a new sexual offence, and 13.1% were arrested for a new criminal offence of any kind. However, 48.0% committed a technical violation of their probation conditions (Hepburn and Griffin, 2004, p. 38). Survival analysis found that 95% of probationers remained successful after 200 days, 85% were successful at 400 days and about 75% remained successful at 800 days (Hepburn and Griffin, 2004, p. 84).

These two studies are informative in that there are very few that evaluate the effectiveness of probation for sex offenders (Meloy, 2005, p. 211). But while they are useful in identifying recidivism rates for sex offenders on probation, neither is particularly robust methodologically; without a comparison group, it is impossible to know if probation is truly effective for this cohort.

#### 4.6.2 Factors affecting successful completion of probation

In a sample of 1,500 probationers from Michigan, Gray, Fields and Maxwell (2001) used survival analysis to identify probation failure (violations) and Cox regression to identify predictors of failure. They found that technical violations of probation happened sooner among non-White probationers, drug-using probationers, those with lower levels of educational attainment and those on probation for assaultive offences. New offending was

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<sup>388</sup> Hepburn and Griffin (2004, p. 8) noted: 'Almost invariably, the research to date focuses on sex offenders released from state or federal prisons and/or prison-based treatment programs. As such, most of our extant knowledge about sex offender recidivism applies to those whose criminal history and instant offense are serious enough to receive a lengthy period of confinement. Sex offenders sentenced to probation (or to a short jail sentence followed by probation) may differ in important ways from those sentenced to prison'. While the Meloy (2005) study is not methodologically strong, it remains valuable in trying to address this research gap.

<sup>389</sup> These rates are comparable to those found in meta-analyses of overall sex offender recidivism; see Gelb (2007) for a review of the relevant literature.

committed more quickly among probationers who were unemployed and those on probation for assaultive offences, as well as those who had more technical violations. Probationers on medium-level supervision committed new crimes significantly later than those who were initially assigned to minimum-level supervision (Gray, Fields and Maxwell, 2001, p. 552).

Olson and Lurigio (2000) examined probation outcomes among 2,400 adult probationers in Illinois to identify predictors of rearrest, technical violation and revocation using measures of various probationer characteristics, offence type and sentence characteristics. Logistic regression analyses showed that all three types of probation failure were more likely among younger probationers, those with lower incomes and those being supervised in an urban (rather than rural) environment. The strongest predictors, however, were those measuring criminal history. Prior convictions more than doubled the likelihood of both probation revocation and rearrest and increased the chance of technical violations by 84%. Probationers with a history of drug abuse or dependence were more than twice as likely as those with no such history to register technical violations or probation revocations, and were more than 60% more likely to be arrested for new crimes while on probation (Olson and Lurigio, 2000, pp. 81-82).

Meloy (2005) narrowed the scope of her study to focus on predictors of recidivism among male sex offenders. Regression analyses found several significant predictors of overall probation failure (recidivism for all types of offences): failure was less likely for older, married, White offenders who had residential stability and whose probation order included more behavioural/treatment conditions, while failure was more likely for those with a history of drug use and who had more prior felonies.<sup>390</sup> When considering non-sexual recidivism only, there were fewer significant predictors, with age, drug use history, number of prior felonies and number of conditions predicting failure (more behavioural treatment conditions predicted a lower likelihood of probation failure).<sup>391</sup> Prediction of sex offence recidivism, however, was less successful:<sup>392</sup> the only significant predictor of chronic sex offending was the imposition of a jail term<sup>393</sup> as a condition of probation (Meloy, 2005, p. 223).

While previous research such as these three studies has tended to examine static and demographic characteristics, Degiorgio and DiDonato (2014) considered dynamic factors as predictors of probation revocation among a large US national sample, identifying potential

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<sup>390</sup> The strongest predictors of all recidivism were a history of drug use and age.

<sup>391</sup> The strongest predictors of non-sexual recidivism were number of prior felonies and age.

<sup>392</sup> As there were only 41 new arrests for a sexual offence, it is possible that the lack of predictive power for this model was due to the low base rate of sexual recidivism.

<sup>393</sup> While probation is most commonly used as an alternative to incarceration, in some cases in the US probation can take the form of a combined sentence of incarceration followed by a period of community supervision (Maruschak, 2014, p. 2), arguably making the order more akin to a partially suspended sentence or parole in Australia. In this study, 56% of probationers had some jail time imposed as part of their sentence (Meloy, 2005, p. 220). It is unclear whether this characteristic of the study sample renders the research more relevant to understanding the effectiveness of partially suspended sentences or parole than to probation. Nonetheless, the research is presented in this section of the review as its stated focus is on probation and the inclusion of jail time in the probation order was almost evenly split across the sample.

targets for intervention. Using Poisson regression,<sup>394</sup> they found that, after controlling for demographic and static characteristics, three factors on a multidimensional probationer risk assessment tool were positively related to the number of lifetime probation revocations. The largest predictor was antisocial behaviour, with the number of probation revocations increasing 6.7% for every 10% increase in antisocial behaviour. The use of violence was also a significant predictor of probation revocation, accounting for a 4.6% increase in the number of revocations for every 10% increase in violent behaviour. Finally, a 10% increase in reported stress accounted for a 5.3% increase in revocations. Aggression was not significantly related to the number of probation revocations (Degiorgio and DiDonato, 2014, p. 102).

Of the static characteristics, probation revocations were significantly predicted by several criminal history factors: people with higher numbers of overall arrests, felony arrests and prior stays in prison had more probation revocations. A history of drug or alcohol use was also related to increased probation revocation (Degiorgio and DiDonato, 2014, p. 102).

Also examining both static and dynamic risk factors, but focusing specifically on sex offenders, Hepburn and Griffin (2004) identified risk factors for arrest for any new offence,<sup>395</sup> technical violations of conditions and a petition by the probation officer to the court to revoke probation.<sup>396</sup> Additional outcome measures were probationers' termination status following revocation and the length of probation before failure (Hepburn and Griffin, 2004, p. 33).

Logistic regression analysis of both static and dynamic factors combined showed that sex offenders who were married prior to entering probation and those with positive social supports were less likely to commit a technical violation. Sex offenders with current substance abuse problems and those assessed as 'immature' were more likely to commit a technical violation (Hepburn and Griffin, 2004, p. 76).<sup>397</sup>

Risk factors for a new criminal offence included age and prior criminal history: older offenders were slightly less likely to be rearrested, while those with a prior arrest as an adult were more likely to reoffend. Sex offenders on probation who had a current substance abuse problem were five times more likely to commit a new offence (Hepburn and Griffin, 2004, p. 77).

Finally, survival analysis showed that sex offenders on probation who were married, who had social supports and who were employed full time while on probation remained successful on probation for significantly longer before failing than did those without these characteristics.

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<sup>394</sup> Poisson regression is a type of linear model that is used when analysing data that are not normally distributed. The number of probation revocations – a 'count' variable – was verified as appropriate for this form of analysis (Degiorgio and DiDonato, 2014, p. 100).

<sup>395</sup> Given the low base rate of sexual recidivism (2.2%), analysis of risk factors did not include this outcome (Hepburn and Griffin, 2004, p. 39).

<sup>396</sup> A petition to revoke may be filed for either a technical violation of conditions, for a new crime, or for both reasons. It is thus the broadest outcome measure (Hepburn and Griffin, 2004, p. 32). Results of this part of the analysis are not presented in this review as they are very similar to the results found for the analyses of the separate outcomes, which are more useful in understanding risk factors for probation failure.

<sup>397</sup> The strongest predictors were substance abuse problems and positive social supports (Hepburn and Griffin, 2004, p. 76).

Probationers with current substance abuse problems had significantly shorter survival times: at the 1000<sup>th</sup> day, more than 85% of those with no substance abuse issues remained successful on probation, compared with only 60% of those with substance abuse issues (Hepburn and Griffin, 2004, pp. 88-90).

These two studies are valuable in identifying dynamic factors that contribute to probation failure – factors that are amenable to change – and may assist in determining the most appropriate target cohorts for probation.

In summary, the research suggests that the strongest risk factors for failure on probation appear to be a prior history of offending and substance abuse problems.

#### 4.6.3 The effectiveness of swift, certain and fair sanctions

Swift, certain, and fair (SCF) punishments for offenders who violate the conditions of their supervised community order involves the immediate imposition of known, modest sanctions. This approach often includes the use of graduated sanctions, with more serious consequences being imposed for offenders who continue to violate their order conditions.

The use of SCF approaches in probation and parole has spread in recent years as a way to mitigate the effects of rising revocation rates and to respond to criticism that inconsistent and/or delayed sanctions in response to order violation does little to deter offenders. According to this thinking, immediate and high-probability threats of mild punishment offer a more effective deterrent than low-probability threats of severe punishment at some point in the future (Hawken and Kleiman, 2009).

A growing body of research suggests that an SCF approach, combined with graduated sanctions, can be an effective tool to increase offender compliance and reduce rates of revocation and return to prison. But while there is ‘considerable evidence to support the efficacy of graduated sanctions in improving community supervision outcomes, little is known about how these sanctions can be implemented to achieve the best results’ (Wodahl, Boman and Garland, 2015, p. 242).

#### *Hawaii’s Opportunity Probation with Enforcement program*

The most widely-cited model of SCF responses to non-compliance is Hawaii’s Opportunity Probation with Enforcement (HOPE) program, which focuses high-intensity supervision on probationers with drug addictions who are at a high risk for violating probation.

HOPE begins with a direct and formal warning from a judge, with probationers assigned a colour code at the hearing. Offenders are required to call the HOPE hotline every weekday morning to find out which colour code has been selected for that day; those whose colour code is chosen must appear at their probation office before 2pm, where a drug test is administered. As part of the program, the court also ensures that probationers receive the drug, mental health, or other health treatments that they require. Violations result in an

immediate and brief jail stay, with consequences for each subsequent violation escalating, such as with a longer period in jail (McEvoy, 2013, p. 2). Compliance results in lessening of supervision intensity, such as less regular drug testing (Bartels, 2014, p. 19).

An early evaluation of HOPE found that the use of short jail sentences for non-compliance was associated with several positive outcomes, including reduced positive drug tests, fewer missed appointments and lower revocation rates. Compared with a control group of probationers who were not in the program, after one year HOPE participants were 55% less likely to be arrested for a new crime, 72% less likely to use drugs, 61% less likely to skip appointments with their supervising officer and 53% less likely to have their probation revoked. As a result, HOPE probationers served 48% fewer days in prison on average (Hawken and Kleiman, 2009).

On the basis of early positive results, the HOPE program has been replicated throughout the US. Its principles have also been noted in the UK, where the Policy Exchange organisation has advocated for its application (Lockyer, 2014). In Australia, SCF approaches have been adopted for offenders in the Northern Territory<sup>398</sup> and Queensland, and have been announced, trialled or considered in relation to community-based orders in NSW and Victoria<sup>399</sup> (ALRC, 2017, p. 260).

More recent evaluations, however, have found less positive results. In a four-site randomized control trial that tested the effectiveness and replicability of HOPE programs, more than 1,500 probationers from communities in Arkansas, Massachusetts, Oregon, and Texas were randomly assigned to either HOPE-style probation or probation as usual (PAU). While the study found that SCF probation programs can be successfully implemented to produce greater accountability among probation populations, it found no significant differences between HOPE and PAU probationers in the likelihood of rearrest, the time to re-arrest, probation revocation or new conviction (Lattimore et al., 2016).

The authors concluded that 'probation based on a model of strict accountability with non-draconian penalties for violations of conditions can be successfully implemented in a variety of settings. But this supervision approach will not reduce recidivism rates or costs' (Lattimore et al., 2016, p. 8). It is possible that this lack of impact is due to the focus of some SCF programs on compliance in the absence of attempts to address the underlying causes of offending behaviour: the judge who established the original HOPE program has argued that replications

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<sup>398</sup> The approach was expanded to include parolees after a successful trial with offenders on suspended sentences.

<sup>399</sup> The Victorian Sentencing Advisory Council (2017b) considered and rejected the SCF approach for family violence offenders, but did find broad support among stakeholders for greater use of judicial monitoring as a condition of CCOs for this cohort to provide greater flexibility to respond to concerns about the escalation of risk. The SAC also recommended fast-tracking of charges alleging a contravention of a family violence-related CCO.

have not included efforts to support probationers materially,<sup>400</sup> instead adopting a punitive focus on sanctions (Alm, 2016: cited in Phelps and Curry, 2017, p. 19). In such programs, the benefits appear to last only as long as the testing and sanctions, rather than leading to lasting behavioural change (Bartels, 2014, p. 27).

It is also possible that such programs will work only with the leadership of particularly charismatic judges or motivational court officials, or only for probationers who have documented histories of extensive drug abuse (Doleac, 2018).

The underlying principles of HOPE have been tested in numerous jurisdictions around the world. Sydes, Eggins and Mazerolle (2018, p. 89) discuss two studies of programs for adults based on the HOPE model:

Kilmer et al. (2013) examined the impact of South Dakota's Sobriety Project, a program that requires individuals arrested for or convicted of alcohol-related offenses to submit to twice daily breathalyser tests or to wear an alcohol monitoring bracelet. Offenders who tested positive for alcohol consumption were subjected to swift and certain, but modest, sanctions. The study also reported favourable intervention results, with a 12% reduction in repeat arrests for driving under the influence and a 9% reduction in domestic violence-related arrests. However, findings relating to subsequent traffic crashes were mixed. In light of those findings, it was concluded, "in community supervision settings, frequent alcohol testing with swift, certain, and modest sanctions for violations can reduce problem drinking and improve public health outcomes" (Kilmer et al., 2013, p. 37).

Positive results for the use of swift and certain sanctions were also reported in a recent quasi-experimental evaluation of the Swift and Sure Sanctions Probation Program (SSSPP) (DeVall et al., 2017). The Michigan-based program was designed to reduce recidivism among high-risk probationers by ensuring swift responses to probation violations. A comparison of SSSPP participants with a group of offenders who received standard probation revealed that SSSPP participants were 36% less likely to reoffend upon program completion (DeVall et al., 2017) (Sydes, Eggins and Mazerolle, 2018, p. 89).

Most of the studies on SCF approaches and graduated sanctions have focused exclusively on the effectiveness of graduated custodial sanctions, while few have included community sanctions – such as electronic monitoring, written assignments, or increased treatment participation – into their analyses. To address this gap in the research, Wodahl, Boman and Garland (2015) examined whether community-based graduated sanctions were as effective as custodial graduated sanctions in increasing offender compliance.

Using violation data of a random sample of 283 probationers and parolees<sup>401</sup> in Wyoming, the authors found that jail sanctions did not perform significantly better than community-based sanctions in extending the time to the offender's next violation event, reducing the number of future violations or facilitating successful program completion. They concluded that the

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<sup>400</sup> In her submission to the ALRC (2017) *Pathways to Justice* review, Bartels noted that the original HOPE program 'adopted the principles of therapeutic jurisprudence...the judge provided extensive encouragement, praise and support to participants' (ALRC, 2017, p. 262).

<sup>401</sup> While this is a single study with a small sample of offenders, it is unusual in its comparison of community-based and custodial-based graduated sanctions, so is included in this review.

lack of additional deterrent effect of custodial graduated sanctions, and the financial, social and potentially criminogenic effects of jail, ‘calls into question the use of jail as a means of punishing persons on community supervision’ who fail to comply (Wodahl et al., 2015, p. 248).

### *Swift, certain and fair sanctions for vulnerable offenders*

In addition to mixed results on the effectiveness of the SCF model, concerns have been raised about its impact for specific cohorts and the implications of short periods in custody. The Victorian Sentencing Advisory Council (2017b) noted that some cohorts might be disproportionately affected by an SCF approach to family violence offending (Sentencing Advisory Council, 2017b, pp. 77-79):

- Low-risk offenders might be drawn away from pro-social factors such as employment and education, and into contact with higher-risk offenders.
- Offenders with cognitive disabilities may fail to adhere to conditions of orders due to difficulties with understanding and meeting the demands asked of them.
- Short terms of imprisonment pose an acute risk for Aboriginal and Torres Strait Islander offenders, who are already overrepresented in Australian prisons.<sup>402</sup>
- Female offenders are often themselves victim survivors of family violence and are also more likely to have primary carer responsibilities.

No other research is available on the effectiveness of SCF approaches with vulnerable offenders.

### *Cost-effectiveness of swift, certain and fair sanctions*

The Washington State Institute for Public Policy has undertaken two separate benefit-cost analyses of SCF supervision. One analysis found benefits minus cost of \$9,229 per participant, with an 87% chance that the program would produce benefits greater than the costs. With the meta-analysis of program effects finding significant effects on technical violations and illicit drug use, benefits would arise from changes to crime, labour market earnings associated with illicit drug abuse and health care associated with illicit drug abuse (WSIPP, 2017g).

A second analysis of SCF case management for drug-involved offenders found even larger benefits. The benefit minus cost estimate was \$15,422, with a 100% chance that the program would produce benefits greater than the costs. The meta-analysis found significant effects of the program on crime, illicit drug use and technical violations (WSIPP, 2017h).

These analyses suggest that SCF approaches work best when focused on drug-involved offenders, for whom case management goals include improved collaboration between

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<sup>402</sup> While there appears to be no research on the effectiveness of probation for Aboriginal and Torres Strait Islander offenders, the ALRC (2017) noted the potential of the HOPE model of probation. In her submission to the ALRC, Bartels suggested that ‘the program model may hold significant promise for Aboriginal and Torres Strait Islander populations if it is implemented as intended, that is, as a therapeutic program that supports and encourages participants’ (ALRC, 2017, p. 262).

correctional staff and treatment staff and increased participation in substance abuse treatment (WSIPP, 2017h, p. 1).

#### 4.6.4 Gaps in research on the effectiveness of probation

While there is some evidence of the effectiveness of probation for various vulnerable cohorts and on factors that affect successful completion, there remain gaps in the research around the mechanisms involved, particularly around the types of probation intervention that are more or less effective.

Similarly, there remain gaps in the evidence on the effectiveness of graduated sanctions and swift, certain and fair approaches for different types of offenders and offences, and the impact of judicial involvement in such approaches.

Research on the effectiveness of judicial monitoring is relevant to understanding SCF approaches. There is ample research on the effectiveness of drug courts that shows that the judicial monitoring component is critical for the positive outcomes that have been found in evaluations across multiple jurisdictions.<sup>403</sup> If judicial monitoring is indeed a key to success in drug courts, it is possible that it also is critical to success in models based on graduated sanctions and SCF responses to non-compliance. The failure of HOPE to achieve the same success in other jurisdictions may well be a function of lower (or lower quality) levels of judicial monitoring. This remains untested in the literature and is a key gap in the research.

#### 4.6.5 Summary of the research on probation

Probation has attracted considerable research attention, with strong evidence that it is more effective at reducing recidivism than imprisonment. Probation appears to be effective for vulnerable offenders, including women and offenders with a mental illness, and possibly for sex offenders as well. Failure appears to be more likely among those with a criminal history or substance abuse issues, and may be more likely with low-level supervision and fewer treatment conditions.

Swift, certain and fair approaches appear to be effective in reducing rates of non-compliance and recidivism, but appear to work best if implemented with a focus on support, addressing the underlying causes of offending within a therapeutic jurisprudence framework.

### 4.7 Community correction orders

The Victorian Community Correction Order (CCO) encompasses many of the components of Queensland's intensive correction orders, community service orders and probation orders,

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<sup>403</sup> Research on the effectiveness of drug courts, including the impact of judicial monitoring, is reviewed in Gelb (2016).

with a wide range of possible conditions. It is designed to be used in instances of both less serious and more serious offending<sup>404</sup> and to offer judges and magistrates substantial flexibility in crafting sentences. It is thus useful to examine the evidence about the use and effectiveness of the Victorian CCO.

The Victorian Sentencing Advisory Council has undertaken a series of reviews that have monitored the use of community correction orders since their inception in January 2012. In its third (and most recent) monitoring report (SAC, 2016), analysis showed that most offenders who receive a CCO as a principal sentence are over the age of 25: 69% of people in the higher courts and 76% in the Magistrates' Court. The average duration of CCOs in the Magistrates' Court in 2015 was 12.7 months, with half of the orders including a supervision condition, three-quarters including community work and three-quarters an assessment and treatment condition. Judicial monitoring was used in 10% of orders, but newer conditions, such as curfews and electronic monitoring, were used very infrequently. In the higher courts, the average duration of a principal sentence CCO in 2015 was 2.3 years, with 78% of orders including a supervision condition and between 86% and 88% receiving a treatment or community work condition. Judicial monitoring was imposed in 18% of higher court CCOs in 2015, while electronic monitoring was not used at all (SAC, 2016, pp. 16-21).

When combined with a term of imprisonment, CCOs were imposed for longer durations than when imposed as a principal sentence in the Magistrates' Court (14.6 months), although the average duration for the combined order in the higher courts was no different than for the principal CCO. Offenders who received a combined CCO were more likely to be male and were typically older than those who received a CCO as a principal sentence. Combined CCOs were less likely to involve a community work condition and more likely to involve a supervision condition than principal sentence CCOs (SAC, 2016, pp. 24-26).

There are no methodologically strong studies on the effectiveness of CCOs in Victoria, likely due to their being introduced relatively recently. However, there are data on rates of contravention, which show failure rates for the order.

Examining data on the contravention of CCOs, the SAC (2017a) found that 51% of offenders who received a CCO in 2012-13 had contravened their order by June 2016. The most common type of contravention was by further offending, with 35% committing at least one imprisonable offence while on their CCO.<sup>405</sup> A further 15% of offenders contravened their CCO by failing to comply with the terms or conditions of the order. While rates of contravention by non-compliance were similar in the Magistrates' Court (15%) and higher courts (13%), the

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<sup>404</sup> *Boulton v The Queen* [2014] VSCA 342 (22 December 2014).

<sup>405</sup> The SAC's 2019 report on serious offending by people serving a CCO found a proxy rate of CCO contravention by serious offending for 2017-18 of 1.6%. However, the SAC cautions that the rate is likely to be higher due to the restrictions on the reference period used for the analysis: offending is measured as people sentenced in 2017-18 who had been on a CCO in the previous three years. There may, however, be people who committed a serious offence while on a CCO who were sentenced outside of the 2017-18 reference period (SAC, 2019, p. 8). Nonetheless, the rate suggests that committing a serious offence while on a CCO is much less frequent than committing an imprisonable offence.

rate of contravention by further offending were higher in the Magistrates' Court (36%) than in the higher courts (28%). Overall, 51% of Magistrates' Court CCOs were contravened, compared with 41% of higher courts CCOs (SAC, 2017a, p. xii).<sup>406</sup>

While the Victorian CCO scheme has yet to be evaluated formally, its flexible structure and applicability to a wide range of offending seriousness has already garnered attention. NSW introduced its own version of the CCO (similar to Victoria's) in September 2018 as part of a consolidation of orders,<sup>407</sup> although it also retained and expanded its intensive correction order at the more serious end of the sentencing hierarchy, which Victoria abolished. And Tasmania introduced a CCO in December 2018, replacing suspended sentences, community service orders and probation.

#### 4.7.1 Effectiveness of community correction orders among vulnerable cohorts

As the CCO was only implemented in Victoria in recent years, there is no evidence yet on its effectiveness for vulnerable cohorts. However, the Australian Law Reform Commission, in its report on the incarceration of Aboriginal and Torres Strait Islander peoples, has pointed to the CCO regime as potentially appropriate for this cohort (ALRC, 2017).<sup>408</sup>

#### 4.7.2 Factors affecting successful completion of a community correction order

Using regression analyses to examine factors associated with contravention of CCOs by further offending, the SAC (2017, p. 44) found that, in the Magistrates' Court:

- Offenders with prior convictions were nearly three times more likely to contravene by further offending than offenders without prior convictions.
- Offenders whose CCO was combined with imprisonment were more than twice as likely to contravene by further offending than offenders whose CCO was not combined with imprisonment.
- Offenders aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders.
- Offenders on CCOs for longer than 12 months were more than 1.5 times more likely to contravene by further offending than offenders on shorter CCOs.

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<sup>406</sup> The difference in contravention rates was attributed to the different types of cases heard in the two court jurisdictions. In the higher courts, CCOs are likely to be imposed for offences at the low end of seriousness or on offenders with compelling mitigating circumstances and good prospects of rehabilitation. Analysis showed that two-thirds of offenders sentenced to a CCO in the Magistrates' Court had prior convictions, compared with half of those sentenced in the higher courts. These differences in offender and case characteristics are likely to have affected contravention rates, and perhaps have implications for the effectiveness of these orders with different cohorts.

<sup>407</sup> The NSW CCO occupies the same space in the sentencing hierarchy that was formerly taken by good behaviour bonds, community service orders and non-association and place restriction orders. The ICO has replaced home detention orders, suspended sentences and the old intensive correction order (ALRC, 2017, p. 231).

<sup>408</sup> This is further discussed at section 4.8.1 below.

- Offenders serving a CCO for a weapons offence as the most serious offence had the highest rate of contravention by further offending, while the second highest rate of contravention by further offending was associated with CCOs imposed for breach of an intervention order.

There were no gender differences in rates of contravention by further offending in the Magistrates' Court.

In the higher courts, the following factors were associated with contravention by further offending (SAC, 2017, pp. 44-45):

- Offenders with prior convictions were five times more likely to contravene by further offending than those without prior convictions.
- Offenders aged 18 to 24 years were nearly twice as likely to contravene by further offending than older offenders.
- Offenders whose CCO was imposed for a sexual offence had a relatively high rate of contravention by further offending (44%), most commonly by failing to meet the reporting obligations of being on the Sex Offender Register.
- Offenders whose CCOs were two years or longer were 1.7 times more likely to contravene by further offending than those with shorter CCOs.

Again, there were no differences in contravention rates by gender, and no difference by whether the CCO was a principal sentence or combined with imprisonment.

Looking at contravention by non-compliance, analyses of Magistrates' Court data showed that (SAC, 2017, p. 45):

- Offenders aged 18 to 24 years were 1.7 times more likely than older offenders to contravene by non-compliance.
- Offenders with prior convictions were 1.4 times more likely than those without prior convictions to contravene by non-compliance.
- Offenders who were female were 1.2 times more likely than males to contravene by non-compliance.
- Offenders whose CCO included no community work condition were more than six times more likely to contravene by non-compliance than offenders whose CCO only included a community work condition.
- Compared with CCOs imposed for an offence against the person, the only offence type that was associated with an increased likelihood of contravention by non-compliance was breach of an intervention order (1.5 times more likely), while CCOs imposed for road safety offences were associated with a decreased likelihood of contravention by non-compliance (21%).

The likelihood of contravention by non-compliance was not significantly associated with the type of CCO or its duration.

Only two factors were statistically significantly related to changes in the likelihood of contravention by non-compliance in the higher courts (SAC, 2017, p. 45):

- Offenders aged 18 to 24 were 1.1 times more likely to contravene by non-compliance than older offenders.
- Offenders whose CCO included no community work condition were more than nine times more likely to contravene by non-compliance than offenders whose CCO only included a community work condition

#### 4.7.3 Gaps in research on the effectiveness of community correction orders

There is, as yet, no evidence on the effectiveness of community correction orders on recidivism, either in general or for vulnerable cohorts. While the Victorian Sentencing Advisory Council is monitoring the order's use, it has yet to undertake analysis of its effectiveness.

#### 4.7.4 Summary of the research on community correction orders

The only evidence of the effectiveness of community correction orders are the rates of contravention published by the Victorian Sentencing Advisory Council, showing that the order was more likely to be contravened when imposed in the Magistrates' Court than in the higher courts. This perhaps suggests that the order is more effective for more serious offending or offenders, but this is purely speculative.

Factors that appear to be associated with contravention of a community correction order by reoffending appear to be similar to those which predict offending more generally, including being young and having a history of criminal behaviour. Longer orders appear to be associated with a higher likelihood of reoffending. In contrast to findings in the general recidivism literature, men appear to be no more likely than women to contravene an order by reoffending, although women appear to be more likely to contravene an order by non-compliance.

Despite the lack of evidence on the effectiveness of orders, it appears that the community correction order holds some intuitive appeal, with NSW closely following Victoria's scheme and the ALRC recommending it for Aboriginal and Torres Strait Islander offenders.

### 4.8 The effectiveness of community orders generally for vulnerable cohorts

Community orders of all types are typically seen as more appropriate than terms of imprisonment for vulnerable cohorts, such as Aboriginal and Torres Strait Islander offenders

and women, for whom prison can be a particularly harmful experience.<sup>409</sup> This section considers the evidence on the effectiveness of community-based sentences generally for particular cohorts.

#### 4.8.1 Aboriginal and Torres Strait Islander offenders

In its 2017 *Pathways to Justice* report, the ALRC considered a range of ways in which Aboriginal and Torres Strait Islander over-representation in the criminal justice system could be addressed, including increasing the use of community-based sentences instead of prison.

Aboriginal and Torres Strait Islander peoples are less likely than non-Indigenous offenders to receive a community sentence; when they do, they appear to be more likely to breach the conditions and end up in prison (ALRC, 2017, p. 230).<sup>410</sup> The focus of the ALRC (2017) recommendations was on the need to make community sentences more accessible and flexible for Aboriginal and Torres Strait Islander offenders to provide greater support and to mitigate against breach. Flexibility was seen as critical for offenders with complex needs,<sup>411</sup> as inflexible regimes would ‘either exclude offenders with complex needs or result in high rates of breach and revocation’ (ALRC, 2017, p. 234).

The ALRC identified several reasons for the lower likelihood of receiving a community sentence among Aboriginal and Torres Strait Islander offenders. A key issue is that only 35% of Aboriginal and Torres Strait Islander people live in a major city with access to programs and services (such as appropriate work opportunities and rehabilitation services), compared with 71% of non-Indigenous people. Without the required supports in regional and remote areas, Aboriginal and Torres Strait Islander people are sentenced to a term of imprisonment that would not have been imposed had they lived in a major city (ALRC, 2017, p. 235).

To expand the availability of community sentences to Aboriginal and Torres Strait Islander offenders, the ALRC (2017) recommended working with local regional and remote communities to expand the range of programs and services that support offenders on community orders, as well as using electronic supervision to help offenders meet various

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<sup>409</sup> Corrective services agencies around the world are increasingly identifying the need for distinct programs, services, supports and strategies for Aboriginal and Torres Strait Islander offenders and female offenders, due to the particular vulnerabilities with which they present.

<sup>410</sup> Differences in breach rates are often explained in terms of inappropriate conditions being imposed with which Aboriginal and Torres Strait Islander offenders are less likely to be able to comply, as well as a lack of culturally appropriate programs. The ALRC identifies some of the factors that may affect compliance, including cultural and intergenerational factors that result in transience, a lack of coordinated and culturally appropriate services in regional areas, the setting of irrelevant conditions that are not focused on providing services, and the impact of cognitive impairment in understanding and meeting conditions (ALRC, 2017, p. 255).

<sup>411</sup> Aboriginal and Torres Strait Islander offenders are more likely than non-Indigenous offenders to have complex needs and experience multiple forms of disadvantage such as trauma, unstable accommodation, illiteracy, mental health problems, substance dependency and cognitive impairment. Offenders with complex needs like these are typically found ineligible for a community sentence due to the impact of their disadvantage on their ability to comply. Instead, they are likely to be sentenced to a term of imprisonment (ALRC, 2017, p. 240).

conditions (ALRC, 2017, pp. 238-240). As Aboriginal and Torres Strait Islander offenders are also more likely to have complex needs, so are often assessed as unsuitable for a community order, loosening suitability requirements would allow more Aboriginal and Torres Strait Islander offenders to access these orders.<sup>412</sup>

To make community sentences more effective for Aboriginal and Torres Strait Islander offenders, the ALRC offered several options to assist this cohort with successful completion of orders. Pre-work programs for offenders with complex needs would involve programs that allow corrective services to address issues such as substance dependency, illiteracy or other issues that prevent access to community service. Allowing community service requirements to be fulfilled by participation in mental health treatment, substance abuse counselling, vocational or pre-vocational training, or other life skills courses would both facilitate successful completion of community sentences and reduce the risk of reoffending (ALRC, 2017, pp. 243-245).

Other options to improve completion rates and reduce the rate of breach of community sentences include the use of holistic, wrap-around services at a single location<sup>413</sup> and the use of graduated sanctions as an alternative to imprisonment for breach (ALRC, 2017, p. 256).<sup>414</sup>

Recommendation 7-3 (ALRC, 2017, p. 253) specifically addressed the issue of reducing breach of community sentences:

State and territory governments and agencies should work with relevant Aboriginal and Torres Strait Islander organisation to provide the necessary programs and support to facilitate the successful completion of community-based sentences by Aboriginal and Torres Strait Islander offenders.

The ALRC recommended community-based sentencing options (such as Victoria's community correction order) that provide the greatest flexibility in sentencing structure and the imposition of appropriate conditions to reduce recidivism for Aboriginal and Torres Strait Islander offenders (Recommendation 7-2: ALRC, 2017, p. 234). Its discussion of community-based sentences is summarised in recommendation 7-1 (ALRC, 2017, p. 234):

State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to improve access to community-based sentencing options for Aboriginal and Torres Strait Islander offenders by:

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<sup>412</sup> The ALRC (2017) noted that suspended sentences were particularly favoured in consultations for use with Aboriginal and Torres Strait Islander women as they allow few reporting obligations or onerous conditions, making them more suitable than other community sentences for women with kinship and cultural obligations (ALRC, 2017, p. 266).

<sup>413</sup> This is the approach adopted by the Neighbourhood Justice Centre in Victoria, which has been shown in several evaluations to be more effective at reducing recidivism and increasing community order compliance than mainstream Magistrates' Courts (see, for example, Ross, 2015).

<sup>414</sup> Although findings on the effectiveness of graduated sanctions have been mixed, the ALRC recommends their use for Aboriginal and Torres Strait Islander offenders as a way to offer more flexible responses than an 'all or nothing' approach to breach (ALRC, 2017, p. 260). Evidence on the effectiveness of graduated sanctions is discussed in this review at section 4.6.3 above.

- expanding the geographic reach of community-based sentencing options, particularly in regional and remote areas;
- providing community-based sentencing options that are culturally appropriate; and
- making community-based sentencing options accessible to offenders with complex needs, to reduce reoffending.

There are several key components to ensuring that interventions are culturally appropriate. These may be summarised as follows (ALRC, 2017, pp. 296-301):<sup>415</sup>

- Programs should be designed, developed and delivered by Aboriginal and Torres Strait Islander people and organisations where possible. This ensures that approaches are local, holistic (providing legal and family assistance with ‘one-stop shop’ support and case management) and trauma-informed. Programs should be well-resourced and consistent, supported by staff who are trained in cultural awareness, and designed around Aboriginal understandings of health, which includes mental, physical, cultural and spiritual health, as well as an understanding that land is central to wellbeing.
- Programs should be trauma-informed, especially in the case of Aboriginal and Torres Strait Islander women, to accommodate their needs and experiences of trauma, abuse and family violence.
- Programs should focus on practical skills, address offending behaviours and provide case management, including throughcare<sup>416</sup> that offers support and assistance beyond the end of a sentence. Programs to provide practical assistance might include those which focus on basic literacy and numeracy, trauma and grief, and loss. Others might involve practical needs such as accommodation, finances and employment, as a way of addressing social and welfare concerns such as improving social connections and ameliorating poverty. Targets of programs to address offending behaviours might include substance dependency, emotional intelligence, intergenerational trauma, family violence, accommodation and positive thinking.

Conditions that are imposed on community sentences should also be culturally appropriate. It can be difficult for Aboriginal and Torres Strait Islander offenders to comply with conditions, especially where they clash with cultural obligations or prevent reconnection with family and

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<sup>415</sup> While the ALRC presents information on culturally appropriate programs in the context of prison programs, the principles are equally relevant for other justice system interventions.

<sup>416</sup> Throughcare aims to support successful reintegration following release from prison. It involves intensive one-to-one rehabilitation support, individual structured assessments and individual case plans created before release and followed through in the community to support transition. Throughcare models ‘are more likely to be successful for Aboriginal and Torres Strait Islander people if they are culturally competent, strength based, and utilise Aboriginal and Torres Strait Islander controlled organisations and/or ex-prisoner organisations’ (ALRC, 2017, p. 315). They need to be tailored for Aboriginal and Torres Strait Islander women, who have social and cultural obligations in family and community that mainstream agencies cannot case manage.

community. Difficulties can be exacerbated for people living in non-metropolitan areas who rely on limited public transport to meet condition requirements, such as reporting obligations, visiting a Centrelink office or attending interviews (ALRC, 2017, pp. 311-312).

In order to enhance the success of Aboriginal and Torres Strait Islander offenders serving community orders with conditions, the conditions should be culturally appropriate and designed to support rehabilitation. Factors that particularly affect this cohort should be considered at sentence (ALRC, 2017, p. 312):

- remoteness;
- substance abuse;
- mental health issues;
- poor literacy skills;
- lack of access to appropriate programs;
- difficulty in obtaining suitable long-term housing;
- difficulty in finding stable employment; and
- issues around family violence, especially for Aboriginal and Torres Strait Islander women.

The need for a trauma-informed and culturally appropriate approach is especially acute in designing and delivering strategies to address offending among Aboriginal and Torres Strait Islander women, whose offending takes places within a context of intergenerational trauma, family and sexual violence, child removal, mental illness, disability and poverty. Responses to their offending need to take into account the ‘multiple and layered nature of the disadvantage they face’ (ALRC, 2017, p. 351). The ALRC noted that Aboriginal and Torres Strait Islander women appear to engage most effectively with an intersectional approach that recognises their needs both as women and as Aboriginal and Torres Strait Islander people. It recommended (Recommendation 11-1: ALRC, 2017, p. 358):

Programs and services delivered to female Aboriginal and Torres Strait Islander offenders within the criminal justice system—leading up to, during and post-incarceration—should take into account their particular needs so as to improve their chances of rehabilitation, reduce their likelihood of reoffending and decrease their involvement with the criminal justice system. Such programs and services, including those provided by NGOs, police, courts and corrections, must be:

- developed with and delivered by Aboriginal and Torres Strait Islander women; and
- trauma-informed and culturally appropriate.

Given the extensive consultation process undertaken for the ALRC (2017) review, adopting (and successfully implementing) its recommendations should significantly enhance the effectiveness of community sentences for Aboriginal and Torres Strait Islander offenders.

#### 4.8.2 Female offenders

There is now widespread understanding of good practice with women in corrections, both in prison and in the community. The UK House of Commons Justice Committee (2013, p. 3) began its review of responses to women's offending by noting that:

it is well recognised that women face very different hurdles from men in their journey towards a law abiding life, and that responding appropriately and effectively to the problems that women bring into the criminal justice system requires a distinct approach.

Appropriate and effective responses to women's offending include an explicit focus on their 'multiple and complex needs, including health, housing, drugs, victim support, childcare, training, skills and employment, as well as criminal justice interventions' (Ministry of Justice [UK], 2007, p. 4).

In her original review of women with particular vulnerabilities in the criminal justice system, Baroness Corston called for a distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach to female offenders. She recommended maximising the use of community orders for women, designing community sentences to take account of women's particular vulnerabilities and domestic/childcare commitments, and the development of 'one-stop-shop' community centres to support women in the criminal justice system by offering multi-agency wrap-around support and services (Corston, 2007, p. 9).<sup>417</sup>

Trotter and Flynn (2016) undertook a systematic review<sup>418</sup> of the literature on best practice with women offenders on behalf of Corrections Victoria. They noted, however, that 'rigorous research with control groups and recidivism measures is even more sparse when the search is limited to interventions for women' (Trotter and Flynn, 2016, p. 9); the small proportion of women in the criminal justice system means that not only are there challenges in providing appropriate programs to women but also difficulties in evaluating programs to build a solid research base.

Nonetheless, Trotter and Flynn (2016, pp. 43-45) identified the following evidence-informed approaches when responding to female offenders:

- Surveillance-oriented, punitive and blaming interventions are ineffective and have the potential to increase recidivism.
- The skills of community corrections workers are critical, including problem-solving skills, collaboration and a focus on women's strengths.

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<sup>417</sup> The Corston Report included 43 recommendations on governance, sentencing, community provision, prison and health for women in the criminal justice system. Nearly all of the recommendations were accepted by government (Ministry of Justice [UK], 2007, p. 4).

<sup>418</sup> The authors noted, however, that 'the lack of rigorous peer reviewed research' resulted in the inclusion of studies without robust methodologies (Trotter and Flynn, 2016, p. 8). In addition, they were not able to locate research on best practice for women with a disability or for Indigenous women (Trotter and Flynn, 2016, p. 45).

- Programs for female offenders need to have high integrity – to be delivered as intended.
- Risk assessment instruments may work better if they are adapted to include or emphasise gender-sensitive items such as family and children.
- Services for women should be holistic, addressing the multiple issues that women face.
- Prison-based services should be linked to community-based services, particularly at the time of transition.
- Family-focused interventions may be particularly helpful, especially those which focus on quality relationships with non-criminal family members and with children.
- Mentoring programs can be beneficial if they are delivered correctly and include sufficient contact with mentors.
- Housing interventions and those which focus on trauma can be beneficial.

In their conclusion, the authors cited Worrall and Gelsthorpe (2009) on the supervision of women in the community (cited in Trotter and Flynn, 2016, p. 45):

Services should be for women only, integrated with non-offenders, empower women to address their own problems, meet the learning styles of women, holistic, address offence related problems, link women with mainstream agencies, provide ongoing assistance where required, provide mentors for personal support and provide practical help. Programs should address women's needs including transportation, protection from abuse, child care and relationships.

At an even more foundational level, Convery (2009, pp. ii-iii) suggested that best practice in women's offending is achieved in approaches underpinned by:

- Empowerment: described as a process through which women gain insight into their situation, identify their strengths, and are supported and challenged to take positive action to gain control of their lives.
- Meaningful and responsible choices: based on the view that with appropriate information, resources, and understanding of the implications of their choices, women can make meaningful and responsible choices.
- Respect and dignity: seen to accrue from a reciprocal relationship and are most obvious when a person gains self-respect and is able to respond to others.
- Supportive environment: seen as a prerequisite to accessible services, which, in turn, enable the generation of meaningful and responsible choices.
- Shared responsibility: requires that all formal and informal services, that is government, corrections, community, public and private organisations have some part to play in supporting women's efforts to participate as contributing members of society.

Convery (2009) summarised her research on responding to female offenders in the community in Northern Ireland (Convery, 2009, p. iv):

best practice is reflected in the provision of community-based, women-only centres for both offenders and non-offenders, based on multi-agency co-operation, providing services which address the identified multiple and complex needs of women in a supportive and safe environment. Service users should actively participate in the assessment of their needs and plans to address these needs, and should have ongoing access to services when required. Practical help with issues such as accommodation, childcare and transport should be provided.

#### 4.8.3 Offenders with a mental illness

Offenders with a mental illness appear to have worse outcomes on community orders than offenders without a mental illness. But it is not mental illness per se that leads to recidivism. Bonta, Law and Hanson (1998) conducted a meta-analysis to examine whether the predictors of recidivism for mentally disordered offenders were different from the predictors for non-disordered offenders. Effect sizes were calculated for 35 predictors of general recidivism and 27 predictors of violent recidivism drawn from 64 unique samples. The authors found that the major predictors of recidivism were the same for both cohorts: having a criminal history, being young, abusing substances and antisocial personality were far stronger predictors than clinical factors related to mental illness<sup>419</sup> (Bonta, Law and Hanson, 1998, p. 9). The difference, however, lies in the prevalence of these factors among mentally ill offenders: offenders with a mental illness have significantly more of the 'central eight' factors for recidivism<sup>420</sup> than those without a mental illness, and it is these factors that predict recidivism more strongly than factors unique to mental illness (Skeem, Nicholson and Kregg, 2008; Skeem et al., 2014).<sup>421</sup>

A subsequent meta-analysis by Bonta, Blais and Wilson (2014) resulted in similar findings. All domain categories from the central eight significantly predicted general recidivism,<sup>422</sup> with the strongest being past and current substance abuse, pro-criminal attitudes and cognitions, and antisocial personality pattern. Individual predictors within the domain categories were examined separately. Within the Education/Employment domain, problems with employment significantly predicted general recidivism. Within the Family/Marital domain, both being single and having family problems were significantly predictive of general recidivism. And in the Substance Abuse domain, drug use was a significantly better predictor of general recidivism than issues related specifically to alcohol, even though both predictors

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<sup>419</sup> Clinical factors included measures of variables such as intelligence, mood disorder, treatment history, a diagnosis of psychosis and a history of psychiatric admissions (Bonta, Law and Hanson, 1998, p. 7). Severe mental disorders such as psychosis were inversely related to recidivism, while mood disorders showed no relationship to recidivism.

<sup>420</sup> These factors are: having a criminal history; an anti-social personality pattern of behaviour; pro-criminal attitudes; anti-social associates; poor use of recreational time; alcohol or drug problems; problematic circumstances at home; and problematic circumstances at school/work (Bonta, Law and Hanson, 1998).

<sup>421</sup> Despite this, Bonta, Law and Hanson's (1998) meta-analysis noted that mentally disordered offenders, on average, had lower recidivism rates than general offenders.

<sup>422</sup> Similar results were found for violent recidivism (Bonta, Blais and Wilson, 2014, p. 283).

were significant. As with the earlier study, clinical variables were not significant predictors of general recidivism. Exceptions were having an intellectual impairment (which showed a small positive relationship with recidivism), and having a personality disorder or an antisocial personality/psychopathic disorder (which both predicted recidivism at a moderate level). Finally, when comparing recidivism rates between mentally disordered offenders and general offenders, the presence of a mental disorder did not significantly predict general recidivism (Bonta, Blais and Wilson, 2014, pp. 282-283).

The implication of these studies is that community orders for offenders with a mental illness should focus on the same core correctional principles as with non-mentally disordered offenders. Indeed, with regard to treatment, Bonta, Blais and Wilson (2014, p. 286) suggested that 'there is little evidence to suggest that treatments for mentally disordered offenders that focus on clinical variables reduce recidivism'.

#### 4.8.4 Offenders in rural and remote areas

The NSW Standing Committee on Law and Justice (2006) examined the use of community-based sentencing options for rural and remote areas and disadvantaged populations. The Committee found considerable gaps in the availability of community-based sentences in many rural and remote parts of NSW, with orders such as community service orders simply not available. In the absence of appropriate orders, offenders were more likely to be imprisoned than their metropolitan counterparts (6.7% of rural offenders versus 5.7% of metropolitan offenders), with disadvantaged groups (Aboriginal and Torres Strait Islander offenders, people with an intellectual disability or mental illness, and female offenders) being disproportionately affected (SCLJ, 2006, pp. 33-34). Even where community sentences were available, these cohorts faced considerable barriers to accessing them, including restrictive eligibility criteria and a lack of appropriate services to support offenders to complete their orders (SCLJ, 2006, pp. 51-59).

The SCLJ recommended the expansion of community-based sentencing options across the state, including a co-ordinated multi-agency approach to support disadvantaged cohorts. For rural Aboriginal and Torres Strait Islander offenders, it recommended the establishment of new correctional centres based on a successful model in NSW – the Yetta Dhinnakkal Correctional Centre – which targets first time young Aboriginal and Torres Strait Islander offenders through culturally relevant intensive case management (SCLJ, 2006, p. 51).<sup>423</sup> For all disadvantaged cohorts, it recommended improving knowledge among correctional officers regarding the needs of these offenders and the crafting of carefully tailored orders (SCLJ, 2006, p. 64).

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<sup>423</sup> The centre is a working farm and educational facility that offers programs and substance abuse counselling (SCLJ, 2006, p. 51).

## 5. Conditions attached to non-custodial orders

Key findings on the effectiveness of treatment are:

- There is now a large body of evidence that offender treatment is an effective way to reduce recidivism and improve a range of outcomes for offenders. The most successful programs are those which adopt the risk-need-responsivity approach to rehabilitation, involve cognitive behavioural therapies or include drug treatment, such as therapeutic communities.
- Treatment effectiveness may depend on the nature of participation, with programs having only limited effect when offenders are mandated or coerced into treatment.
- Treatment programs for specific types of offender appear to be mostly effective. The evidence is less positive, however, about the effectiveness of treatment programs for reducing reoffending among family violence offenders and offenders with a mental illness.
- Treatment programs that are gender-informed are more effective than gender-neutral programs for female offenders. Similarly, interventions that are culturally appropriate are more effective for Indigenous offenders.
- Programs that are solely based on discipline, surveillance or punitive practice – without any rehabilitative support – do nothing to reduce recidivism and may instead increase the likelihood of reoffending.

Key findings on the effectiveness of supervision are:

- The evidence shows mixed support for the effectiveness of supervised release. Supervision without adequate rehabilitation services and support – that is focused on enforcement – does not reduce recidivism. When combined with critical rehabilitation services such as mental health treatment, drug treatment and housing assistance, supervision focused on service delivery is effective at reducing reoffending.
- The evidence on high-intensity supervision is mixed, with much of the evidence indicating that its heightened surveillance acts to increase both recidivism and technical violations. However, when coupled with therapeutic interventions, high-intensity supervision can be effective, especially for high-risk offenders.
- Although the evidence is sparse, low-intensity supervision, used for low-risk offenders, does not appear to increase recidivism, so may be a cost-effective tool for managing large, low-risk offender cohorts.
- While evidence is limited, it suggests that an environmental corrections approach – whereby supervision is used to reduce offenders' opportunities to reoffend – can effectively reduce recidivism.

This chapter examines conditions that are commonly attached to non-custodial orders. While these orders can have a wide range of conditions attached to them that are designed to address the specific circumstances of each offender and offence, the most common types of conditions are those which offer some form of treatment or supervision. The most appropriate interventions to apply are typically informed by use of actuarial risk assessment instruments.

Understanding the effect of various types of conditions that may be attached to non-custodial orders has become increasingly important, as some researchers have identified that courts have been increasing the number of conditions that they attach to community sentences (Petersilia and Turner, 1993a). While imposing a larger number of conditions may be seen as providing a more punitive sanction, in reality it may be argued that imposing multiple conditions simply increases the likelihood of failure, setting offenders up to fail – that ‘few in the general public could successfully comply with them’ (Clear and Hardyman, 1990: cited in Petersilia and Deschenes, 1994, p. 322). Indeed, offenders themselves have suggested that, while a single condition on its own is not difficult to comply with, when conditions are stacked together, often over long periods, the order becomes far more difficult to complete successfully (Petersilia and Deschenes, 1994, p. 322).

## 5.1 The effectiveness of treatment

It is now accepted among most researchers studying the effects of correctional interventions that punishment, on its own, will not have a significant effect on reoffending. Even supervision will not be effective in reducing reoffending if it is not combined with treatment: ‘without a rehabilitation component, reductions in recidivism are elusive’ (Petersilia, 1998, p. 89). That is, reoffending can only be reduced via some form of human intervention or service provision (Latessa and Lowenkamp, 2006, p. 521). But while a large body of research has provided evidence that treatment is more effective than punishment in reducing reoffending, there is substantial variation in the effectiveness of different types of treatment program. This variation is compounded by the impact of coercion in treatment participation. Sydes, Eggins and Mazerolle (2018, p. 41) discuss the issue of treatment coercion:

In light of the well-established literature that certain correctional treatment programs are effective in improving recidivism outcomes, it is not surprising that government and policymakers have taken steps to make treatment a mandatory component of sentencing. However, questions do arise surrounding the efficacy of mandated treatment. If offenders are unwilling and unmotivated to change, it is likely that their involvement in treatment programs will have a limited impact on their behaviour. On the other hand, it is argued that few offenders may take up treatment without explicit direction (Parhar, Wormith, Derksen and Beaugard, 2008). In their systematic review, Parhar et al. (2008) conducted a meta-analysis of 129 studies interested in whether the nature of participation in treatment programs (i.e. voluntary, coerced or mandated) impacted recidivism outcomes. Here they found that mandated and coerced treatment programs were largely ineffective in reducing recidivism, particularly in custodial settings. By comparison, voluntary

treatment was linked to lower recidivism in both community and custodial settings. These findings suggest that any element of coercion may limit the overall effectiveness of treatment programs in achieving their aims (Sydes, Eggins and Mazerolle, 2018, p. 41).

Despite the concern with coercive treatment, overall, 'the scientific evidence is unmistakably clear. A variety of programs, properly targeted and well-implemented, can reduce recidivism and enhance public safety' (Przybylski, 2008, p. 36).<sup>424</sup>

The strength of this effect is not large. Indeed, McGuire (2002) suggested that 'the mean effect taken across a broad spectrum of treatment or intervention types is relatively modest' at around nine or 10 percentage points (McGuire, 2002, p. 13). Given that this is an average effect size, some interventions have been shown to have smaller effects, while others have proven to have much larger effects.

Distinguishing between statistical significance and practical significance, McGuire continued by noting that these modest effect sizes compare reasonably well with those found in other studies: some healthcare interventions that are generally regarded as producing worthwhile benefits have lower average effect sizes (McGuire, 2002, p. 20). Thus, while statistical effect sizes in this field may be only 'modest', there are those interventions that nonetheless have been found to have an effect on rates of reoffending.

### 5.1.1 Treatment programs that work

In the recidivism literature, meta-analysis has been used to examine the issue of 'what works' in corrections. Unfortunately, research to date has been dominated by the question of whether anything at all works in reducing reoffending, with relatively little attention being paid to the study of 'what works best, for whom, under what circumstances, and why' (Lipsey and Cullen, 2007, p.15).

Despite this, consistent findings have emerged about interventions that have proven successful in reducing reoffending. The most effective are those that adopt a risk-need-responsivity approach to rehabilitation, use cognitive-behavioural programs and provide appropriate treatment for drug dependence.

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<sup>424</sup> It should be noted at the outset that the vast majority of the research literature in this field examines the effect of treatment on male offender populations only. Despite rapidly increasing numbers, women still represent a small minority (around 7% in Australia) of the total prison population. As a result, lower priority tends to be given to developing and providing gender-specific rehabilitation services. This is seen by some as surprising, given that women offenders present more severe and complex problems as a group than male offenders (Sorbello et al., 2002, p. 198). In order to 'move beyond our preoccupation with adult white males' (Ogloff, 2002, p. 247), researchers have proposed rehabilitation programs designed specifically for women that address issues of physical and sexual abuse, mental health, children and families, vocation, life skills and substance abuse in order to enhance offender capabilities (Sorbello et al., 2002, p. 198). Given that women offenders typically present in the criminal justice system with a constellation of psychological and social difficulties (see, for example, Gelb, 2010), programs that address such complex clusters of needs should prove to have an effect in reducing women's reoffending.

### *A risk-need-responsivity approach to rehabilitation*

There is now substantial evidence that rehabilitation programs work. Effective programs are those which are structured, focused on developing skills and use behavioural methods (in particular, cognitive-behavioural approaches) that reinforce clearly identified, pro-social behaviours. Effective programs must provide meaningful contact between the participant and the treatment providers, must be designed to address the criminogenic needs of the offenders, and must have integrity in terms of delivering treatment that is consistent with the planned design of the program (MacKenzie, 2000, p. 464).

This approach, known as the 'risk-need-responsivity' approach, involves targeting treatment to the offender's level of risk (the most intensive treatment and intervention programs should be reserved for high-risk offenders), addressing those needs that are criminogenic (dynamic risk factors that predict future criminal behaviour, such as antisocial attitudes and peers, poor self-control and drug dependency), and delivering programs in a way that is responsive to the learning styles and characteristics of the offender (Andrews et al., 1990, pp. 374-375).

The appropriate assessment of risk of reoffending is a critical one. Not only are greater reductions in reoffending typically found for offenders at high and moderate risk of reoffending, but, conversely, when low-risk offenders are placed in more intensive treatment programs, their rates of reoffending are often actually increased (Latessa and Lowenkamp, 2006, p. 522). While the more intensive programs should be reserved for higher-risk offenders, offenders with a low risk of reoffending benefit more from interventions such as life skills programs (Petersilia, 2007, p. 2). Researchers have suggested that, optimally, treatment programs should be at least 100 hours in duration and should take place over at least a three- to four-month period (Gendreau and Andrews, 1996: cited in Day and Howells, 2002, p. 43). Indeed, there is now a growing consensus that programs that run for 90 days or longer have better programmatic outcomes (Taxman, 2002, p. 19).

Overall, meta-analyses of treatment programs have found average effect sizes representing reductions in reoffending around 20%, with some finding reductions of more than 40%. Typically, the reduction in reoffending is greater for those programs delivered in the community than for those delivered in a residential setting (Lipsey and Cullen, 2007, p.10). McGuire (2002)'s overview of 20 meta-analytic reviews identified that programs delivered in community settings substantially out-performed those delivered in institutional settings: reductions in recidivism were greater in community settings by a ratio of 3.5:2 (McGuire, 2002, p. 202).

The Washington State Institute of Public Policy (2017c) found that supervision involving a risk-need-responsivity approach with individuals classified as high- or moderate-risk had a benefit to cost ratio of \$6.95, with a 98% chance that the program would produce benefits greater than costs (WSIPP, 2017c, p. 1).

With the risk-need-responsivity approach now being thoroughly accepted in the corrections context, the use of valid and accurate risk assessment tools is critical. However, most of the

tools in current use to assess criminogenic risks and needs have been developed and tested on Caucasian male offenders. The use of these tools for assessing risk in other cohorts has recently come under examination.

### *Risk assessment for Aboriginal and Torres Strait Islander offenders*

The assumption that recidivism risk factors are the same for all offenders has been described as ethnocentric, resulting in misclassification of minority offenders and potentially affecting their ability to receive adequate treatment (Shepherd, McEntyre, Adams and Walker, 2014). Studies have attempted to determine whether this assumption is in fact valid.

Empirical research has shown that the central eight group of risk factors is broadly successful in predicting reoffending among minority offenders, such as predicting violent recidivism among North American Aboriginal offenders (Gutierrez, Wilson, Ruge, and Bonta, 2013). However, one of the most robust findings in the literature on Indigenous offenders is that they tend to score significantly higher than non-Indigenous offenders on most risk factors (Gutierrez, Helmus and Hanson, 2017, p. 5). And while meta analyses have shown that risk tools do predict recidivism for Indigenous offenders, their predictive accuracy is lower than for non-Indigenous offenders (Gutierrez, Helmus and Hanson, 2017, p. 6).

Wilson and Gutierrez (2014) argued that the unique current and historical circumstances of Indigenous peoples are not taken into account in contemporary risk assessment tools. For example, they suggested that broader understandings of family in Indigenous communities may not be incorporated when assessing risk factors in the family/marital domain, such that the meaning of these indicators may be different. Similarly, whereas substance abuse may reflect self-regulation problems for non-Indigenous offenders, it may reflect self-medication to cope with trauma or other adverse conditions among Indigenous offenders.

It may be that there are risk factors unique to Indigenous offenders that are not adequately captured in current risk scales. This suggests that risk scales specific to Indigenous offenders should be developed and implemented, or that culturally-specific risk factors should be incorporated into current assessments.<sup>425</sup>

For Australian Aboriginal and Torres Strait Islander offenders, Shepherd, McEntyre, Adams and Walker (2014, p. 285) found broad cross-cultural regularity of core risk factors for violence. They also noted, however, that:

violence risk factors for Aboriginal Australians may have unique precursory origins, notably the disruption of social and emotional wellbeing...risk assessment must be considered within a broader cultural context and with regard to enduring legacies of colonization.

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<sup>425</sup> Allen and Dawson (2002) developed a risk assessment tool for Aboriginal and Torres Strait Islander offenders that included just three factors that successfully predicted recidivism: having unrealistic long-term goals, an unfeasible release plan and poor coping skills. While discussion of their series of reports is beyond the scope of this review, it is worth noting that risk factors specific to Aboriginal and Torres Strait Islander violent reoffending and sexual reoffending have been identified.

### *Risk assessment for female offenders*

Research on the validity of standard risk assessment tools for female offender populations has reached similar conclusions. While the Canadian Model targeting the central eight gives priority to the assessment and treatment of criminal thinking, antisocial associates and impulsive personality traits, an alternative paradigm questions its relevance to women, suggesting that it is 'lacking in appropriate attention to women's different pathways to crime, thereby underestimating the importance of mental health, poverty, trauma, and dysfunctional relationship patterns' (Van Voorhis, Wright, Salisbury and Bauman, 2010, p. 280).

Evidence on this issue has been mixed. Smith, Cullen and Latessa (2009) conducted a meta-analysis of studies examining the applicability of the LSI-R to female offenders. Their analysis of 25 studies with over 14,000 female offenders showed that the relationship between LSI-R scores and recidivism was similar for males and females, supporting the idea that a gender-neutral risk assessment instrument has predictive validity for the female offender population. Nonetheless, the authors recommended the construction and validation of gender-specific instruments.

Gould, Pate and Sarver (2011) highlighted the danger of inaccuracy in risk decisions involving female offenders, primarily based on the risk of over-classification. Hannah-Moffat (1999: cited in Gould, Pate and Sarver, 2011, pp. 253-254) noted a tendency among Canadian correctional officials to confound the needs of female offenders, such as dependency, low self-esteem, substance abuse, and parental responsibilities, with risks. Confounding risks and needs is problematic for the management of female offenders, potentially resulting in inappropriate supervision and treatment.

In response to the various criticisms of gender-neutral risk assessments, Van Voorhis, Wright, Salisbury and Bauman (2010) created a series of gender-specific assessment models to test their contributions to existing assessment tools. Applying their gender-responsive scales to probationers,<sup>426</sup> they found promising results for parental stress, family support, self-efficacy, educational assets, housing safety, anger/hostility, and current mental health factors. While gender-neutral risk factors were indeed predictive for women offenders, 'the addition of gender-responsive factors appears to create even more powerful prediction models' (Van Voorhis et al., 2010, p. 281).<sup>427</sup>

Notably, the addition of the gender-responsive risk factors suggests different treatment priorities for men and women. For women, there was little to suggest that attitudes or associates should be a priority treatment target. Instead, among women in community correctional settings, factors most closely predictive of reoffending – and those most appropriate as treatment targets – were substance abuse, economic difficulties, educational

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<sup>426</sup> Separate models were applied to prisoners and to released inmates.

<sup>427</sup> The incremental validity of the added variables was, in most cases, statistically significant, showing that these gender-responsive factors were significant predictors of recidivism outcomes for women, over and above the gender-neutral factors (Van Voorhis et al., 2010, p. 281).

deficits, parental stress and mental health problems (Van Voorhis et al., 2010, p. 281). The authors noted the implications of these findings for supervision strategies, recommending more intensive case management to offer wrap-around community support and more appropriate interventions.

The importance of women's status as caregivers has received little attention in the recidivism literature. In a notable exception, Wolfe (2015) explored the predictors of community supervision failures among female offenders in the US with data on more than 1,000 female offenders who had served at least one year on probation, supervised released, and/or parole. Hierarchical logistic regression showed that women who were younger, single and who were not primary caregivers for dependent children were more likely to fail their community supervision. There was no difference in failure rates based on substance use, childhood trauma and prior treatment for mental health or substance use issues (Wolfe, 2015, p. 76). This study is valuable in identifying the protective effect of being a primary caregiver among female offenders, and suggests the possible importance of including such a measure in gender-specific risk assessments.

While the validation literature has grown, there remains debate about the applicability of gender-neutral instruments to female offenders.

### *Cognitive-behavioural therapy*

A thorough review of the literature on the effect of different types of community order was undertaken by Davis et al. (2008) in their work for the National Audit Office in the UK. The synthesis involved reviewing research on 10 of the most common conditions or requirements that are typically attached to community orders.

The authors identified two areas in which there is both clear consensus and rigorous research that treatment leads to a reduction in reoffending: cognitive-behavioural therapy and drug treatment.

Broadly, cognitive-behavioural therapy is based on the assumption that the cognitive deficits and distortions that are characteristic of offenders are learned rather than innate. It is designed to help offenders to understand their motives and to develop new ways of controlling their behaviour.

Cognitive-behavioural therapy aims to change dysfunctional patterns of thoughts, altering criminogenic thought patterns that influence the way offenders perceive the world and that prevent them from moving to pro-social behaviour. Such therapy addresses strategies for self-improvement and self-control, as well as strategies for anticipating, preventing and coping with relapse. It focuses on changing perceptions of moral responsibility and helping to learn appropriate interpersonal problem-solving techniques. Typically, cognitive-behavioural therapy involves exercises designed to alter dysfunctional thinking patterns, such as a focus on dominance in relationships, feelings of entitlement, self-justification, blame displacement

and unrealistic expectations about the consequences of anti-social behaviour (Lipsey and Cullen, 2007, p.9).

Pearson et al. (2002) undertook a meta-analysis of 69 research studies. The 44 studies that examined cognitive-behavioural interventions specifically found that groups receiving treatment were 14.4 percentage points more successful than the comparison groups (Pearson et al., 2002, p. 489). Similar results were found by Aos, Miller and Drake (2006), who found that general and specific cognitive-behavioural programs reduced recidivism by more than 8% (Aos, Miller and Drake, 2006, p. 3). In another review of the research, offenders who participated in a cognitive-behavioural program were about half as likely to reoffend as were offenders in control groups (Lipsey, Chapman and Landenberger, 2001: cited in Davis et al., 2008, p. 6). Cognitive-behavioural therapy has been shown to be effective in the treatment of particularly serious offenders, such as sex offenders (MacKenzie, 2000; Aos, Miller and Drake, 2006) and violent offenders (Vennard, Sugg and Hedderman, 1997). Further, a meta-analysis by Landenberger and Lipsey (2005) of 58 experimental and quasi-experimental studies of the effects of cognitive-behavioural therapy found that larger reductions in recidivism were associated with treatment of higher-risk offenders, high quality treatment implementation, and a program that included anger control and interpersonal problem solving components (but not victim impact or behaviour modification components) (Landenberger and Lipsey, 2005, pp. 464-469).

The Washington State Institute of Public Policy (2017d) found that cognitive behavioural therapy for individuals classified as high- or moderate-risk had a benefit to cost ratio of \$6.33, with a 100% chance that the program would produce benefits greater than costs (WSIPP, 2017d, p. 1).

### *Drug treatment*

The underlying premise of court-mandated drug treatment in the community is that community-based approaches to rehabilitation are better able to break the cycle of addiction, crime and repeat imprisonment. Given the clear association found in the literature between drug use and criminal involvement (Payne and Gaffney, 2012, p. 1), addressing drug dependency represents a critical issue for criminal justice (and health sector) intervention.

Considering those studies with a strong methodological design, it appears that drug treatment is especially effective in reducing offending for men and for younger offenders. Methadone treatment, heroin treatment, therapeutic communities, psychosocial approaches, drug courts and supervision are among the more effective approaches (Davis et al., 2008, p. 11). In addition to programs designed to treat the immediate addiction, relapse prevention techniques, concerned with developing longer-term coping strategies (especially those using cognitive-behavioural techniques), have also been found to be effective, with both drug and alcohol dependency (Vennard, Sugg and Hedderman, 1997, p. 22).

Aos, Miller and Drake's (2006) meta-analysis of 291 evaluations showed that drug treatment in the community reduced reoffending by more than 12% (Aos, Miller and Drake, 2006, p. 3).

A subsequent, larger meta-analysis of 545 evaluations, however, identified reductions of just over 8% (Drake, Aos and Miller, 2009, p. 185). Nonetheless, both meta-analyses provide clear evidence that drug treatment is effective in reducing recidivism.

### 5.1.2 Programs for specific cohorts

As understanding of the treatment evidence has progressed, more and more treatment programs have been designed for specific cohorts of offenders. Such programs target particular types of offending, such as sex offending or violent offending, or particular types of offender, such as female offenders or those with a mental illness.<sup>428</sup>

This section presents a review of the evidence on treatment programs for specific cohorts. The material below is drawn directly from the work of Sydes, Eggins and Mazerolle (2018, pp. 47-53; 55-57) on behalf of Queensland Corrective Services:<sup>429</sup>

#### Sex offender programs

Reducing the risk of recidivism amongst sex offenders is a key priority for corrective services agencies globally. As these offenders pose a high risk to community safety, considerable resources are invested into the development of treatment programs. We identified several systematic reviews in our search which evaluated the effectiveness of treatment programs delivered to sex offenders (Hanson, Bourgon, Helmus & Hodgson, 2009; Losel & Schmucker, 2005; Reitzel & Carbonell, 2006; Schmucker & Losel, 2017). Together, this research demonstrates some promising findings pertaining to the efficacy of sex offender treatment programs.

In an early review of the sex offender treatment literature, Losel and Schmucker (2005) conducted a meta-analysis of 80 independent comparisons drawn from 69 studies. Overall, they found that while results vary across studies, most indicated that sex offender treatment was effective. Specifically, offenders who received treatment were 37% less likely to reoffend when compared to the control groups. Yet program effectiveness varied across program type. While support was found for both physical interventions (i.e. surgical castration and hormonal medication) and psycho-social treatment (e.g. CBT), physical interventions had a greater impact on recidivism. Interestingly, programs designed explicitly for sex offenders were more effective than generalised programs. Despite these promising findings, the authors identified several methodological challenges (specifically, the research included is largely quasi-experimental).

More recently, Schmucker and Losel (2017), conducted an updated review of sex offender treatment programs, restricting inclusion to RCTs and high quality quasi-experimental

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<sup>428</sup> Often, though, programs classify offenders by a single characteristic, such that issues that cross these classification boundaries may not be adequately addressed. For example, it might be difficult to offer an evidence-based treatment regime to a female sex offender with a mental illness who is Aboriginal or Torres Strait Islander. There is very little evidence on what works best in such cases of intersectionality. In a simpler (and more common) example, there is no evidence about the effectiveness of offender programs (or any other interventions) for women who are primary care-givers for children.

<sup>429</sup> This section reproduces the material from Chapter 6 of the Sydes, Eggins and Mazerolle (2018) report, with permission from Queensland Corrective Services. The report's sub-section on juvenile offenders has been excluded as this cohort is out of scope for the current review.

research with matched comparison groups. In their meta-analysis of 29 comparison groups drawn from 27 studies, they found rates of recidivism were lower amongst sex offenders who received treatment. Indeed, treated offenders were 26% less likely to reoffend after treatment compared to non-treated offenders. Unlike their previous work (Losel and Schmucker, 2005), no evaluation of pharmacological treatment met the eligibility criteria. As such, only psychosocial treatments were included as part of the meta-analysis. A large number of these studies reported on outcomes for cognitive behavioural therapies. While results varied across studies, overall CBT was linked to a significant (yet moderate) effect on recidivism (Schmucker and Losel, 2017). The strongest effects were seen for Multi-Systemic Therapy (MST) treatments for juvenile sex offenders - although only two studies captured in the review assessed this approach. Nevertheless, these findings for juvenile sex offender treatment are more promising than results provided in earlier reviews focused explicitly on this population (see Reitzel and Carbonell, 2006). Beyond CBT and MST, other treatment approaches did not significantly impact recidivism. Additional analysis revealed effects varied across correctional settings. In particular, treatments delivered in the community were more effective than treatments offered in custody. Interestingly, they also found that group programs that included individual sessions were best suited to addressing offender needs.

Other reviews have considered the importance of the RNR principles in sex offender treatment. In their review of 23 studies, Hanson and colleagues (2009) categorised programs based on how closely they aligned with RNR principles. Programs were deemed to meet the Risk principle if they focused on high risk offenders; the Need principle if treatment goals were aligned with reducing recidivism; and the Responsivity principle if treatment was delivered to participants in a style consistent with their learning approaches. In considering rates of sexual and general recidivism, Hanson and colleagues (2009) found treated offenders were less likely to engage in additional offending behaviour than non-treated offenders. Further still, programs consistent with the RNR principles were most effective.

#### Violent offender programs

Violent offenses are regarded by many to be one of the most serious types of offending, due to the harm suffered by the victim and the broader costs to society as a result of this anti-social behaviour (Jolliffe & Farrington, 2007). Although violent offenders tend to make up only a relatively small proportion of all offenders, research suggests this group is responsible for a disproportionate amount of both violent and non-violent crimes (Wolfgang, Figlio, & Sellin, 1972). For these reasons, identifying effective intervention programs for this group of offenders is of particular importance.

As part of this review, we identified one systematic review which evaluated the effectiveness of treatment programs delivered specifically to violent offenders. This review examined 11 studies of violent offender interventions involving adult males to determine the effect, if any, of those interventions on both general and violent reoffending (Jolliffe & Farrington, 2007). Although each intervention varied in its approach, common to most interventions was anger control, cognitive skills, role play activities, and empathy training.

Overall, the review produced some promising findings. With respect to general reoffending, Jolliffe and Farrington (2007) reported that the interventions resulted in significant reductions in general reoffending, with an 8 to 11% reduction in reoffending for those who received treatment compared to those who did not. The review also found

a statistically significant reduction in violent reoffending. In particular, violent reoffending was reduced by about 7 to 8% for the treatment group. They concluded that interventions of greater overall duration tended to result in better recidivism outcomes, as did interventions which focused on anger control, cognitive skills, role-play, relapse prevention, and included homework tasks (Jolliffe & Farrington, 2007).

#### Domestic violence offender programs

Since the 1980s there has been a substantial increase in the number of interventions aimed at reducing recidivism amongst domestic violence offenders (Babcock, Green, & Robie, 2004). This increase coincides with rising concerns about the large number of women, in particular, who suffer physical and mental abuse at the hands of their former or current partner, as well as the ongoing psychological effects this type of abuse can have. We identified a number of systematic reviews which evaluated the efficacy of treatment programs targeted at male domestic violence offenders (Babcock, Green, & Robie, 2004; Feder, 2005; 2006; Miller, Drake & Nafziger, 2013; Smedslund, Dalsbø, Steiro, Winsvold, & Clench-Aas, 2007; Vigurs, Schucan-Bird, Quy, & Gough, 2016, but see Akoensi, Koehler, Lösel, & Humphreys, 2012 for a review of treatment effectiveness for both male and female offenders).

In an early systematic review, Babcock, Green and Robie (2004) examined the findings of 22 studies that evaluated the effectiveness of batterer intervention programs on reducing violent recidivism for male domestic violence offenders. Included in the review were studies following the Duluth Domestic Abuse Intervention Project approach, a program based on feminist psychoeducational principles that locates the cause of domestic violence in patriarchal ideologies. In that approach, the treatment focus is on identifying and challenging the offender's perceived right to control or dominate their partner. Also included were interventions based on CBT models, whereby focus is given to "unlearning" violent behaviour and adopting alternative, non-violent behaviour. This review found only a small effect size with respect to the effect of the various treatment interventions on recidivism rates, with treated offenders showing some improvement in recidivism compared to non-treated offenders. No significant differences in effect size were found between interventions based on the Duluth model and those based on CBT principles.

A subsequent systematic review focusing on the effectiveness of CBT programs on male domestic violence offenders was conducted by Smedslund et al. (2007). The strict inclusion criteria adopted in this review restricted the findings to six randomised controlled trials - four studies where CBT interventions were compared with a no treatment control group, and two studies comparing CBT with an alternative treatment. A small, significant effect in favour of CBT compared to the no treatment group was found. However, results were inconclusive when CBT was compared to other treatment types. As a result of the small number of trials included in the analysis, broad conclusions were drawn regarding the effectiveness of CBT programs.

Akoensi et al. (2012) conducted a systematic review of European evidence regarding the effectiveness of treatment interventions for male and female domestic violence offenders. This review included 12 studies (predominantly from the United Kingdom and Spain), all of which were based on a mixture of CBT, educational, and pro-feminist ideas. Of the 12 studies included, only one included a comparison group evaluation design. Due to this, and other methodological issues, Akoensi et al. (2012) concluded that while there were some positive treatment effects, those positive results could not necessarily be attributed to the interventions.

A review by Miller, Drake and Nafziger (2013) identified 11 evaluations that examined whether domestic violence treatments are effective in reducing recidivism. Of the 11 evaluations, six tested the effectiveness of Duluth-type treatments. In that regard, no treatment effects for this treatment type were detected. The remaining 5 evaluations were based on a variety of approaches (including CBT, couples group therapy, and substance abuse treatment) and were found, on average, to reduce recidivism by 33%.

The most recent systematic review, conducted by Vigurs et al. (2016), evaluated 10 evaluations of domestic violence treatment programs, including Duluth and CBT-based programs. Overall, they concluded that, as a result of methodological weaknesses, those evaluations were “unable to identify a clear impact of domestic violence perpetrator programs on criminal justice or victim related outcomes” (Vigurs et al., 2016, p. 27).

Together, these reviews show small effect sizes, at best, for the various interventions targeting domestic violence offenders. While this may seem discouraging, it is important to note that a number of the reviews identified methodological issues which may have affected the viability of their conclusions. As such, while no conclusive evidence yet exists regarding effective interventions for reducing recidivism amongst domestic violence offenders, there are some promising findings with respect to interventions based on CBT, couples therapy, and substance abuse treatment (Miller, Drake, & Nafziger, 2013).

#### Persistent and prolific offender programs

Persistent and prolific offenders are chronic offenders or persons who have extensive criminal histories. Not surprisingly, reconviction rates for this group are high. Research indicates that persistent and prolific offenders are likely to experience problems with drug and alcohol abuse. Additionally, this group is likely to start offending young and fall within the 18 to 24 year age bracket (Perry et al., 2009). While this group makes up only a small proportion of the total population of offenders, they commit a disproportionate amount of crime (Perry et al., 2009). For these reasons, identifying effective intervention programs for persistent and prolific offenders is of particular importance.

As part of this review, we identified one rapid evidence assessment which evaluated the effectiveness of treatment programs and interventions delivered to persistent and prolific offenders. That review synthesised 42 studies and assessed whether interventions targeted specifically at persistent and prolific offenders could lead to reductions in reoffending. Although each intervention varied in its approach, they broadly fit into the following categories: (1) prison-based therapeutic communities; (2) community-based interventions for persistent offenders with substance abuse problems and; (3) cognitive skills training.

Overall, Perry et al. (2009) found mixed results of treatment programs for persistent and prolific offenders. There was positive evidence to suggest that community-based interventions and prison-based therapeutic communities that targeted substance abuse were more likely to reduce reoffending than the treatment groups to which they were compared. Further, there was some evidence to suggest that cognitive skills training (both within prison and within the community) also reduced offending behaviour. In addition, Perry et al. (2009) also examined whether other types of treatment, such as case management or different levels of probation supervision produced an effect on offending behaviour, but evidence to support this was insufficient. The authors concluded that some types of interventions do reduce offending behaviour for persistent and prolific offenders, particularly those which target offenders' substance use.

## Driving while under the influence offender programs

In the last few decades, there have been a number of successful campaigns aimed at reducing the prevalence of drinking and driving. Despite the success of these campaigns, drinking and driving remains a serious public safety concern (Rauch, Ahlin, Zador, Howard & Duncan, 2010). Chronic drunk drivers, in particular, constitute not only a threat to public safety, but can also contribute to correctional issues like prison overcrowding (Pratt, Holsinger, & Latessa, 2000). These offenders pose a unique treatment challenge, since the offender's underlying alcohol abuse issues must be addressed, as well as strategies put in place to minimise the likelihood they will reoffend.

An early intervention targeted at chronic DWI offenders is the Turning Point Multiple DUI Treatment Program. As part of this program, offenders were placed into residential care for a period of 4 weeks. During that time, they participated in education sessions and individual and group treatments, and were subjected to 6 months of aftercare treatment and 1 year of probationary supervision. A 10-year follow up evaluation of the program reported positive findings, with Turning Point offenders almost 30% more successful than a comparison group in avoiding any new offense and roughly 9% more successful in avoiding new arrests for DWI (Pratt et al., 2000).

Another intervention which has demonstrated success in reducing reoffending by chronic DWI offenders is the ignition interlock license restriction program trialled in Maryland (Rauch et al., 2010). In this program, an ignition interlock device was installed in the vehicle of a repeat DWI offender. This device required the driver to pass an initial breath test before the car would start, as well as additional breath tests while the car was being driven. Using a RCT, Rauch et al. (2010) evaluated how effective this intervention was in reducing reoffending rates amongst drivers who had committed two or more alcohol-related traffic violations. Over a 4 year period (consisting of a 2 year period where the interlock was installed, and a 2 year period following removal of the device), there was a 32% reduction in recidivism for the experimental group compared to the control group.

A further intervention which aims to reduce DWI reoffending involves Victim Impact Panels. These panels, which are often organised by the Mothers Against Drunk-Driving group, operate on the perspective that offenders who drive whilst intoxicated should, as part of their punishment, be required to engage in face-to-face communications with people whose lives have been negatively affected by the actions of a drunk driver. These panels are typically used for first-time DWI offenders (Wheeler, Rogers, Tonigan and Woodall, 2004). An evaluation of the effectiveness of the panels conducted by Wheeler et al. (2004) found no statistically significant differences between a group of first-time offenders who had participated in the intervention and those who did not.

## Female offender programs

Because female offenders represent a relatively small, albeit growing, proportion of all prisoners (ABS, 2017), they have tended to be neglected in the research regarding 'what works' in corrections-based practices (Gobeil, Blanchette, & Stewart, 2016). Thus, whilst we know a great deal about the efficacy of different interventions for male offenders, much less is known with respect to female offenders. Over the last decade, however, a number of 'gender-informed' or 'gender-responsive' correctional programs and other interventions for female offenders have been introduced (Gobeil et al., 2016). In this review, we have identified one systematic review that evaluated the effectiveness of female-specific interventions in reducing recidivism (Gobeil et al., 2016).

Gobeil et al. (2016) examined the effectiveness of gender-informed interventions across 37 studies and close to 22,000 female offenders. The interventions included in that review focused on areas including substance use, trauma, cognitive skills, and education. A number of interventions targeted multiple needs. Results from their meta-analysis, showed overall positive results for the interventions. Women in the intervention groups had lower rates of reoffending than women who participated in standard probation supervision, regular work release, or treatment as usual. Specifically, the intervention participants had greater odds (between 22% and 35%) of succeeding upon their re-entry to the community. Interventions targeting issues of substance abuse were found to produce the strongest effects (increasing the odds of community success by 52%). Gobeil et al. (2016) also examined whether an offender's participation in a gender-informed (as opposed to gender-neutral) intervention increased their likelihood of successful re-entry. In that regard, while participation in either type of intervention was found to significantly improve the offenders' chances of success, an analysis including only high-quality studies, revealed a larger effect size for gender-informed interventions (68%) than gender-neutral interventions (19%). Together, these results indicate that whilst female offenders respond well to any intervention, their odds of successful community re-entry are maximised when interventions are informed by the specific treatment needs of women (Gobeil et al., 2016).

#### Ethnic minority offender programs

A meta-analysis conducted by Usher & Stewart (2014) examined research exploring the effectiveness of CBT corrections programs for different ethnic groups. Eight studies were identified that compared CBT treatment outcomes for Caucasian, Aboriginal, Black, and 'Other' ethnic groups. Results indicate that these interventions result in reduced recidivism for offenders across all ethnic categories (Usher & Stewart, 2014). Offenders with Aboriginal backgrounds benefited from both general and Indigenous-specific programs, however, specific effective program characteristics could not be identified and further verification of comparable positive outcomes for Aboriginal offenders and Caucasians outside of Canada is recommended (Usher & Stewart, 2014).

Additional evaluations of the Tupiq program for Canadian Inuit sex offenders have found that this culturally tailored CBT program can reduce recidivism for general and sexual offenders when compared to offenders undertaking alternative or no treatments (Stewart, Hamilton, Wilton, Cousineau, & Varrette, 2015; Stewart, Hamilton, Wilton, Cousineau, & Varrette, 2009). This intervention incorporated Inuit language, values, and Elders into the 18 week, 290 contact hour program co-facilitated by an Inuit correctional officer. The program itself involved group therapy, individual counselling, and skill development (Stewart et al., 2015). It was further found that Inuit offenders were significantly more likely to complete this culturally specific program than alternate, general sex offender programs (Stewart et al., 2009).

#### Programs for offenders with mental illnesses

Mentally ill offenders are increasingly overrepresented in the criminal justice system, with some countries having more mentally ill persons in corrections than in psychiatric facilities (Morgan et al., 2012). Considering the prevalence of mentally ill inmates, it is imperative that correctional facilities employ evidenced based practices to maximise outcomes for both staff and offenders. Morgan et al. (2012) provided a synthesis of 26 studies that examined services for mentally ill offenders. The duration of the interventions reviewed here ranged from 1.5 weeks to 78 weeks, with each session between 45 minutes to 4

hours. Inmates completed between 3.5 – 30 hours of treatment in total. While most of these studies solely aimed to treat diagnosed mental illness, the majority measured both mental health and offending outcomes in their analyses. Most interventions reviewed aimed to do a combination of the following: increase awareness, develop skills, and reduce symptoms. Treatment was mostly structured, with a number of studies utilising strategies such as homework activities and behavioural practicing.

It was concluded that the interventions reduced distress for offenders, led to improved behaviour, and improved coping capabilities (Morgan et al., 2012). The treatment programs that contained admission policies and structured strategies were more effective. For example, programs that included homework components produced greater effects than those that did not. Results for the effect on psychiatric recidivism were positive, however, they were inconclusive for reoffending. The authors of this review emphasised that programs which treat co-occurring mental illness and criminality are needed.

### 5.1.3 Treatment programs that do not work

There is general consensus among researchers in this field that sanctions focused purely on punishment, without providing any treatment component, are ineffective in reducing reoffending. In particular, surveillance, control, deterrence, and discipline-based interventions do not reduce reoffending, while those based upon restorative principles and skills-building interventions are more likely to be effective.

For example, there is no evidence that programs that emphasize structure, discipline and challenge (such as boot camps) can reduce reoffending (MacKenzie, 2000, p. 466). In some instances, the more punitive approaches have shown the opposite effect, increasing rates of reoffending (Lipsey and Cullen, 2007, p.1).

In an unusual reversal of research focus, Barnett and Howard (2018) undertook a review of 21 meta-analyses and systematic reviews to identify interventions that do not work to reduce recidivism. Examining interventions for people with substance misuse problems, they found that drug testing orders and prison-based opioid maintenance treatment have been proven to be ineffective for this cohort in reducing recidivism (Barnett and Howard, 2018, p. 122).<sup>430</sup>

Barnett and Howard (2018, p. 124) concluded:

- Punitive or deterrence-based interventions are less likely to reduce reoffending, and if delivered without rehabilitative support can make people more likely to commit crime in future.
- Discipline-based approaches delivered without rehabilitative support are not likely to reduce reoffending.

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<sup>430</sup> Differences have been found depending on the type of pharmacological intervention used, with methadone being less effective and naltrexone being more effective. While opioid treatment may not be effective at reducing recidivism per se, there is some evidence that it is effective at reducing heroin use, drug injecting and related blood-borne viruses, and drug-driven crime (Barnett and Howard, 2018, p. 22).

- For those monitored in the community, increased supervision or surveillance without rehabilitative support may be ineffective.

Although ineffective interventions vary considerably, they share some common themes. Barnett and Howard (2018) identified five common characteristics of such programs:

- They do not build skills that can help people to behave differently in the future. Simply helping people to see the impact of their crimes, the consequences of their decisions or preventing them from engaging in certain behaviours for a limited amount of time does not appear to help people change behaviour in the long term.
- They reinforce a criminal identity, or do not help people create a pro-social identity to help negotiate difficulties associated with reintegrating into the community following a conviction.
- They do not target those factors which have been proven to be linked to reoffending, ignoring the central eight factors.
- They develop only extrinsic motivation, which can undermine intrinsic motivation – when people feel that they have made an autonomous decision to desist because such change aligns with their values or identity.
- They are poorly implemented, which can render even the most evidence-based intervention ineffective or even harmful.

#### 5.1.4 Gaps in research on the effectiveness of treatment

While advances have been made in our understanding of what works, for whom, and under what circumstances, there remain uncertainties about the precise nature of effective treatment for specific cohorts.<sup>431</sup>

For example, there is a lack of methodologically strong research on the impact of culturally relevant programming for Indigenous offenders. A recent meta-analysis (Gutierrez, Chadwick and Wanamaker, 2018) found only seven studies that were sufficiently methodologically robust to be included in the analysis.<sup>432</sup>

There are also gaps in the research about the effectiveness of treatment across group membership – issues of intersectionality are not often addressed. As offenders often present

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<sup>431</sup> For example, there is no consensus about the optimal duration of treatment for different cohorts of offender.

<sup>432</sup> The authors originally identified 32 studies in the initial screening. However, 25 of these had to be eliminated due to failure to include an Indigenous comparison group that participated in an alternate treatment program, failure to disaggregate Indigenous from non-Indigenous offenders, and/or missing recidivism information. Of the remaining seven studies, only one received a quality rating of ‘good’, while the remaining six were rated as ‘weak’ due to major methodological limitations. Although the meta-analysis found that Indigenous offenders who participated in culturally relevant programs had significantly lower odds of recidivism (39% compared with 48% for those participating in generic programs), they concluded that ‘additional research of higher methodological quality is needed to further evaluate culturally relevant programs and determine with greater confidence how correctional interventions best work for this population’ (Gutierrez, Chadwick and Wanamaker, 2018, p. 322).

with multiple criminogenic risks and needs, they are often treated with multiple interventions at once. There is little evidence about the kinds of ‘packages’ of treatment that are effective. Concerns about the applicability of risk assessment instruments to key vulnerable cohorts – particularly women and Indigenous offenders – have not resulted in conclusive evidence on this issue. Further research is needed to identify conclusively whether existing tools are valid for various sub-populations; if not, new tools or supplementary instruments need to be developed, tested and implemented.

### 5.1.5 Summary of the research on treatment

Sydes, Eggins and Mazerolle (2018, p. 57) conclude:

Together, these studies demonstrate that there are not only a number of different treatment options available to offenders, but many experience improved outcomes when compared to non-treated individuals. In particular, several meta-analyses of cognitive behavioural therapies reveal largely consistent results – that is, those who engage in cognitive behavioural therapy generally fare better than those who do not (Wilson et al., 2005). Therapeutic communities are another promising intervention with evidence to suggest that substance using offenders who engage in the program are less likely to reoffend post-release when compared to non-program participants (Mitchell et al., 2012). However, the efficacy of treatment may depend on participation type. In cases where offenders are mandated or coerced into treatment, the program is likely to have limited effect. The results from the offender specific analyses further demonstrate the importance of tailoring treatment programs to meet offender needs (Sydes, Eggins and Mazerolle, 2018, p. 57).

## 5.2 The effectiveness of supervision

Offender supervision can fulfil several purposes. Supervision may have a rehabilitative component, as supervisors work with offenders to link them with appropriate services and help them at difficult times. Supervision may also have a punitive component, as offenders are required to live under the watchful eye of their supervising officers who will monitor compliance with their orders.

Supervision of offenders is often considered a supplementary or ‘background’ condition that is used in conjunction with other, more programmatic conditions such as cognitive-behavioural therapy or drug treatment. Studies on the effectiveness of supervision have typically compared supervision orders to those without supervision components.

The Washington State Institute for Public Policy conducted a systematic review of the literature to identify ‘what works’ in community supervision (Drake, 2011). Drake noted that the goals of offender supervision have changed: from a focus on surveillance and monitoring in the 1980s, to the addition of programs such as drug treatment or cognitive-behavioural

treatment in the 1990s, to the current behavioural management approach seen today, which incorporates the risk-need-responsivity model into supervision (Drake, 2011, p. 7).

Examining studies on each of these three supervision strategies, Drake (2011, p. 1) concluded that:

intensive supervision focused on surveillance achieves no reduction in recidivism; intensive supervision coupled with treatment achieves about a 10 percent reduction in recidivism; and supervision focused on the Risk Need and Responsivity approach achieves a 16 percent reduction in recidivism.

Analysis also showed that the effect of treatment on recidivism varied based on the frequency of face-to-face contact: more contacts were associated with greater reductions in recidivism (Drake, 2011, p. 6).

Cost-effectiveness studies have found that, when the risk-need-responsivity approach is used to supervise moderate- and high-risk offenders, almost five dollars of crime-reduction benefits are returned for every dollar of costs (Aos and Drake, 2013, p. 4).

In order to assess the effectiveness of supervision, Weatherburn and Trimboli (2008) conducted regression analyses on matched groups of offenders to compare both rates of reconviction and time to reconviction among adults placed on supervised bonds with those for adults placed on unsupervised bonds.

Examining data on almost 13,000 offenders convicted in a NSW Local Court, the analysis found that the risk of reconviction was no different for offenders who received a supervised order and those serving a non-supervised order, and in some instances the risk of reconviction was higher for offenders on a supervised order. Similarly, survival analysis found no significant difference in time to reconviction between the two types of offender, apart from a single instance where offenders on supervised orders were reconvicted more quickly (Weatherburn and Trimboli, 2008, p. 6). The authors concluded that, all things being equal, offenders placed on supervised bonds were no less likely to be reconvicted than a matched group of offenders given non-supervised orders, with no difference in time to reconviction among those who did reoffend. A follow-up study involving surveys of NSW parole officers found that inadequate treatment and support were most likely to blame for this failure of supervision to reduce the risk of reoffending. That is, insufficient access to the most critical services for rehabilitation – mental health treatment, drug and alcohol treatment and assistance with secure and affordable housing – presented significant barriers to offender rehabilitation (Weatherburn and Trimboli, 2008, p. 17).

Similar conclusions were drawn by Bonta and his colleagues (2008) in their study of probation officers in Manitoba, Canada and the recidivism rates of their clients over a three-year follow-up period. The researchers began with a meta-analysis of 15 studies published between 1980

and 2006, yielding an average effect size (phi coefficient)<sup>433</sup> of just 0.22. The decrease in recidivism associated with community supervision found in these 15 studies was thus small. The authors concluded that, 'on the whole, community supervision does not appear to work very well' (Bonta et al., 2008, p. 251).

When investigating why supervision seems to fail at reducing recidivism, Bonta and his colleagues found that the Canadian probation officers demonstrated poor adherence to some of the basic principles of effective intervention based on the principles of risk, need and responsivity. Too much time was spent on the enforcement aspect of supervision while not enough time was spent on the service delivery component. As with Weatherburn and Tromboli's (2008) study, failures in service delivery were seen to lead to failures in rehabilitation (Bonta et al., 2008, pp. 265-268).

Similar findings have been reported in Europe as well. For example, a study in the Netherlands compared recidivism rates for people sentenced to an unsupervised community order with those of people sentenced to supervision, and found that unsupervised offenders reoffended less frequently and less severely than people placed under supervision (WODC, 2014, p. 112).

Ringland and Weatherburn (2013, p. 3) reiterated the importance of the nature of supervision, rather than simply the fact of supervision per se:

Although treatment-oriented intensive supervision programs can reduce reoffending, the effectiveness of any rehabilitation program is likely to vary according to the level of supervision under which offenders are placed, and the quality, duration and appropriateness of any treatment/support provided.

In a study that complements this principle, Lowenkamp et al. (2010) applied meta-analytic techniques to examine the effectiveness of fifty-eight intensive supervision programs to determine whether program philosophy and treatment integrity were associated with reductions in recidivism. The results indicated that human service-oriented programs had a statistically significant (though not large) impact on recidivism reduction, while deterrence-oriented programs on average increased the likelihood of recidivism. Programs with high treatment integrity (adherence to the principles of effective intervention) were more likely to reduce recidivism, while those that combined a human service-orientation with high treatment integrity significantly increased the beneficial effects of correctional treatment programming (Lowenkamp et al., 2010, pp. 372-373). The authors concluded (Lowenkamp et al., 2010, p. 374):

The results from this research suggest that ISPs can be effective at reducing recidivism if they meet certain criteria. Specifically, this research found that when ISPs were categorized as abiding by the principles of effective intervention and operated using a human service philosophy, they were more effective at reducing recidivism. Further, the results indicated that merely possessing characteristics that were indicative of treatment

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<sup>433</sup> The phi coefficient is used in meta-analysis to measure the association between two dichotomous variables (such as a reconviction/no reconviction measure). It may be interpreted in a similar way to a Pearson correlation (Bonta et al., 2008, p. 251). A phi coefficient value of 0.22 is therefore fairly small.

integrity was not enough if the program had a philosophical orientation towards deterrence.

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In short, the findings here suggest that program philosophy may be just as important as treatment integrity. Therefore, in addition to bringing the program's components themselves up to par regarding treatment integrity, it may be of equal importance to insure that staff truly embrace a human service approach to treatment and completely understand the rehabilitative ideal.

### 5.2.1 Supervision intensity

Supervision intensity typically varies based on an assessment of an offender's level of risk – a practice founded in the principles of the risk-need-responsivity (RNR) model – so that the supervision imposed is tailored to the individual offender. The findings of studies that examine the relationship between supervision intensity and recidivism outcomes have produced mixed results (Sydes, Eggins and Mazerolle, 2018).

The following discussion of the impact of supervision intensity on recidivism outcomes is reproduced from Sydes, Eggins and Mazerolle (2018, pp. 85-86):

#### High intensity supervision

Interventions that involve more intensive supervision of offenders are often referred to as Intensive Supervision Programs (ISPs). These programs involve an increased number of office contacts, home visitations, and drug screenings. ISPs also focus on small caseloads for probation/parole officers and increased reporting requirements for offenders. We identified several studies which evaluated the effectiveness of ISPs on offenders on probation and parole. These studies, emanating from the United States, United Kingdom, and Canada, have returned mixed findings with respect to the relationship between the high intensity supervision of offenders and rates of recidivism. Notably, a number of studies have reported weak or inconsistent correlations between higher intensity supervision and recidivism (Hyatt & Barnes, 2017; Lussier et al., 2014; Mackenzie & Brame, 2001). For instance, Hyatt and Barnes (2017) compared recidivism outcomes between a group of offenders who were subject to an intensive probation program and a group of offenders assigned to standard probation. Their study found no difference between these two groups in rates of recidivism (across a range of offence types, including violent, non-violent, property, and drug offenses) during a 12 month follow-up period.

Conversely, Pearson et al. (2011) found that offenders who participated in the UK 'Citizenship' program, a structured probation supervision program based on 'what works' principles, had significantly lower rates of recidivism than offenders who received traditional probation supervision. The time to violation of a supervision order was also significantly longer among the treatment group. The authors found the 'Citizenship' program was most effective with low-medium and medium-high risk offenders, but not with the higher risk group.

There is also evidence to suggest that the relationship between ISPs and lower levels of recidivism may be indirect. Mackenzie and Brame (2001) reported that the intensity of an

offender's supervision was positively associated with that offender's involvement in prosocial activities, which in turn decreased the offender's involvement in new criminal activities. Prosocial activities included achieving residential and financial stability and making satisfactory progress in education and treatment programs. It is also important to note that the studies exploring the relationship between ISPs and recidivism have tended to evaluate the short-term impact of high intensity supervision (with a typical follow up period of 12 months). As a result, whether these programs have long-term impacts on recidivism is not known. In addition, these studies also tend to examine the impact of ISP on predominantly or exclusively male offender populations, with the exception of Chan et al. (2005). In their study, the authors evaluated the effectiveness of the Probation Case Management intervention in San Francisco, where probation officers were trained to adopt a therapeutic case management style and to provide intensive supervision for drug-involved female offenders. Here they found Probation Case Management produced no better outcomes than standard probation (Sydes, Eggins and Mazerolle, 2018, pp. 85-86).

In an early study that falls outside the scope of the Sydes, Eggins and Mazerolle (2018) review, Petersilia and Turner (1993b)<sup>434</sup> report on an American randomised field experiment undertaken by the RAND Corporation that evaluated a national demonstration project on intensive supervision programs across 14 sites in nine states.<sup>435</sup> The primary focus of the various programs was a close monitoring of offenders on probation or parole, including some combination of multiple weekly contacts with a supervising officer, unscheduled drug testing, strict enforcement of conditions, and requirements to attend treatment, to work and to perform community service (Petersilia and Turner, 1993b, p. 282).

Examining both new offending (rearrest, reconviction and reimprisonment) and technical violations during the 12 months after program assignment, analysis showed that, 'at no site did ISP participants experience arrest less often, have a longer time to failure, or experience arrests for less serious offenses than did offenders under routine supervision' (Petersilia and Turner, 1993b, pp. 310-311). At the end of the 12-month follow-up period, the authors found that (Petersilia and Turner, 1993b, p. 311-315):

- ISPs did not reduce recidivism. About 37% of ISP participants had a new arrest for subsequent offending, compared with 33% under routine supervision. In fact, in 11 of the 14 sites, arrest rates were higher for ISP offenders than for those in the control group.
- Technical violations were also more prevalent among program participants (65%) than among routine supervision offenders (38%). The authors suggested that this might be due to the increased surveillance, rather than any additional reoffending.

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<sup>434</sup> Although this study is now quite dated, it is included in this review as it is one of the few studies on this issue to include a randomised experiment. People on parole/probation ISPs were compared with offenders on parole/probation with routine supervision. Those on an ISP as an alternative to imprisonment were compared with those who were sent to prison. After the jurisdictions selected the pool of offenders who were eligible for ISPs, the researchers assigned them randomly to one or the other of the two groups. This is thus a particularly strong research design.

<sup>435</sup> Most of these states used ISPs for offenders on parole or probation, with only two implementing ISPs as a front-end prison diversion program with lower-risk offenders.

Nonetheless, increased technical violations may lead to increased use of custody as punishment for the violation.

- ISP participants were more likely to participate in some form of drug and alcohol counselling and were more likely to be employed. Participation in such programs was correlated with reductions in recidivism in at least some of the test sites.
- The assumptions that ISPs can reduce prison crowding, save money and reduce recidivism may not have been well-founded.
- Although ISPs were effective in increasing surveillance of offenders, there was no straightforward relationship between contact levels and subsequent recidivism.
- ISPs were viewed by offenders as more punitive and restrictive of freedom than prison.
- Examining the impact of ISPs based on sex, race, age, risk of recidivism, prior record, living arrangement, drug treatment needs and employment, the research found no consistent differences in recidivism for any subgroup.<sup>436</sup>

The researchers concluded that, despite the programs being well-implemented, intensive supervision did not decrease either the frequency or the seriousness of new arrests and it actually increased the incidence of technical violations and hence new jail terms being imposed (Petersilia and Turner, 1993b, p. 281). They suggested that ISPs may have such close surveillance that they increase the probability that crimes (and technical violations) will be detected, thus increasing officially recorded recidivism. Even if an offender on an ISP commits fewer crimes than someone on routine supervision, it may be that differences in the probability of arrest create observed differences in recidivism.

Although advocates for intensive supervision programs have long held that more restrictive conditions and closer supervision would control crime more effectively than routine supervision, the results of this rigorous experiment show otherwise.

Part of the difficulty of clearly identifying the impact of intensive supervision on recidivism is that it has been used on different cohorts. Some of the models implemented in the US apply ISPs to probationers, some to parolees, and others use ISPs as an alternative to imprisonment. ISPs designed for diversion target lower-risk incoming inmates and act as a substitute for prison. In contrast, ISPs as 'enhancement' programs select people already on probation or parole and provide an enhanced, more intensive form of supervision than is standard. People who are placed on such an ISP tend to be those who have failed under routine supervision or who have committed more serious offences (Petersilia and Turner, 1993a, p. 2). With such different cohorts, the inconsistency of findings across recidivism studies is not surprising.

Gendreau, Goggin, Cullen and Andrews (2000) conducted a meta-analysis on the impact of ISPs in reducing recidivism and came to similar conclusions. Examining data on close to 20,000

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<sup>436</sup> The authors did note, however, that their samples were fairly homogeneous in terms of prior record, age and drug use. When all offenders are similar, offender-program interactions are difficult to find (Petersilia and Turner, 1993b, p. 313).

offenders, they showed that, at best, ISPs had no effect on recidivism, with a mean effect size of .00. At worst, compared with standard probation, ISPs led to a 6% increase in recidivism (Gendreau et al., 2000, p. 11).

Similarly, a meta-analysis of 38 randomised trials and nine quasi-experiments by Gill, Hyatt and Sherman (2009) found no effect of intensive supervision probation on new arrests across the randomised trials and only a small, non-significant reduction in arrests among the quasi-experiments. Their analysis also showed that intensive supervision for probationers increased the likelihood of a technical violation across all studies, most likely due to the increased surveillance that results from enhanced supervision. They concluded that, while generally intensive supervision probation strategies are ineffective in reducing recidivism, newer initiatives that were built around behavioural management techniques rather than a search for the optimal caseload size or number of contacts 'showed more promise' (Gill, Hyatt and Sherman, 2009, p. 1).

The Washington State Institute for Public Policy's (WSIPP) cost-benefit analysis of intensive supervision with surveillance and treatment (2017e) included only studies of programs that delivered intensive supervision in concert with treatment such as cognitive behavioural therapy, chemical dependency treatment, or education and life skills training. The analysis found a benefit to cost ratio of \$16.21, with 100% chance that benefits would exceed costs (WSIPP, 2017e, p. 1). When analysing intensive supervision programs based on surveillance only, however, the benefit to cost ratio fell to \$3.68, with only 53% chance of benefits outweighing costs (WSIPP, 2017f, p. 1).

As Bartels (2014, p. 73) states:

In other words, the 'intensive' component of an intensive supervision order should relate to intensive support for offenders that seeks to address their underlying risks and needs, rather than intensive surveillance.

### *Low intensity supervision*

Sydes, Eggins and Mazerolle (2018, pp. 86-87) also review the evidence on low intensity supervision:

Not all offenders require intensive supervision. Indeed, some probation and parole interventions involve lower intensity supervision of low-risk offenders (Barnes et al., 2010; Barnes et al., 2012). Typically, low intensity supervision interventions may involve a reduced frequency of office contact visits and/or telephone contacts between a probation or parole officer and their clients (Ahlman & Kurtz, 2009), or assigning officers with larger caseloads, so that they are unable to supervise their offenders in the traditional manner (Wilson, Naro, & Austin, 2007).

Two studies, both examining the Philadelphia Low-Intensity Community Supervision Experiment, explored the impact of low intensity supervision programs on offender recidivism. In the first study, Barnes et al. (2010) conducted a randomised controlled trial involving low-risk probationers who were assigned to either standard or reduced supervision conditions. The low-intensity supervision group were typically required to

attend an office contact visit with their probation officer every 6 months, and a telephone contact every 3 months. In contrast, the standard supervision group attended one office visit per month, had more frequent telephone contacts, and were subject to random drug testing at the discretion of their probation officer. Comparing the prevalence, frequency, seriousness, and time-to-failure of arrests for new crimes for the two groups during a 12 month follow-up period, Barnes et al. (2010) found no significant differences between the standard and low-intensity supervision groups.

These findings were confirmed by Barnes et al. (2012) using 18 months of follow-up data. In particular, they reported that low intensity supervision did not increase the prevalence or frequency of offending among low-risk probationers, and as a result, did not result in any additional risks to public safety. As a result, low-intensity supervision may be a cost effective tool for managing large, low-risk offender populations (Sydes, Eggins and Mazerolle, 2018, pp. 86-87).

### 5.2.2 Environmental corrections: a reconceptualisation of supervision

Cullen, Eck and Lowenkamp (2002) argued that effective correctional intervention must be based on effective criminological research and theory. Borrowing from environmental criminology – a theory that links crime to the presence or absence of opportunities to offend – they proposed the paradigm of environmental corrections. The authors suggested that ‘the key aspect of environmental corrections is not its revolutionary character but its novel use of the insights of environmental criminology to illuminate how correctional supervision can lower recidivism by reducing offenders’ opportunities to offend’ (Cullen, Eck and Lowenkamp, 2002, p. 30).

Environmental criminology provides a theoretical framework for reconceptualising the goals and means of offender supervision. It posits that two key ingredients must converge: a motivated offender who has the propensity to commit a crime, and an opportunity to do so (Cohen and Felson, 1979; Felson, 1998: cited in Cullen, Eck and Lowenkamp, 2002, p. 30).

There is a large body of research that clearly articulates ‘what works’ to address the propensity to offend. Correctional intervention programs – especially those delivered in the community – reduce recidivism, particularly when they use cognitive-behavioural interventions, target known predictors of recidivism, focus on higher-risk offenders, apply a sufficient dosage of treatment and provide appropriate aftercare (Cullen, Eck and Lowenkamp, 2002, p. 30). There has been less focus, however, on systematically identifying how to reduce *opportunities* for offending.

Opportunity reduction involves problem solving to identify how best to keep individual offenders away from situations in which opportunities for crime may exist. But existing efforts that focus on intensive supervision are based on deterring offenders through the threat of punishment and sanctions for non-compliance, changing only the amount of supervision and monitoring imposed. As Cullen, Eck and Lowenkamp (2002, p. 31) noted, ‘whether the literature involves narrative reviews, meta-analyses, or randomized experimental evaluations, the results are clear in showing that deterrence-oriented intensive supervision

simply does not reduce recidivism'. Instead, it is the *nature* of supervision that needs to change.

Cullen, Eck and Lowenkamp (2002, p. 31) offered the following as the core proposition of the paradigm of environmental corrections:

The effectiveness of probation and parole supervision will be increased to the extent that officers systematically work with offenders, family and community members, and the police to reduce the extent to which offenders are tempted by and come into contact with opportunities for crime.

They suggested the following ideas on how supervision might be modified to incorporate the identification and reduction of opportunities to offend (Cullen, Eck and Lowenkamp, 2002, pp. 33-34):

- Risk-needs assessments should include a diagnosis of the role that opportunity plays in the offender's criminal behaviour, identifying specific activities, situations and places in which opportunities for crime arise.<sup>437</sup>
- The focus of supervision would include three components of working closely with each individual: working to disrupt specific (and specified) routine activities that increase crime opportunities, replacing inappropriate behaviour with preferred pro-social activities, and using positive reinforcements and a relationship with individuals as a way of exercising informal social control.
- Each offender's family, pro-social friends and community members should be enlisted to help design opportunity reduction plans, offering positive reinforcements on a daily basis.
- Finally, as a method for averting trouble, 'community place managers' such as bartenders, store owners, police and others in the community,<sup>438</sup> can be used to contact probation and parole officers when problems arise with supervised offenders in the places that they oversee.

The original ideas of Cullen, Eck and Lowenkamp (2002) have recently been revitalised by Schaefer, Cullen and Eck (2016): 'Environmental Corrections thus repositions community corrections officers as problem-solvers that seek to understand and reorganise the routines of probationers and parolees so that crime opportunities are avoided altogether and resisted when encountered' (Schaefer, 2018, p. 23). Adopting this approach, the conditions of probation and parole orders are tailored to reflect the unique opportunities for reoffending for each person under supervision, such that the motivated offender is kept away from suitable targets or areas where there are no capable guardians. While steering offenders away from crime-conducive places, associations and activities, offenders are also exposed to a pro-social lifestyle and to agents of informal social control. To address offender propensity

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<sup>437</sup> This includes the use of tools such as activity calendars and geographical mapping of offender activities.

<sup>438</sup> Proponents of environmental criminology have identified 'handlers' as those who supervise a potential offender (such as parents) and 'place managers' as those who can monitor offenders' presence in problem locations (such as landlords, bus drivers or restaurant owners) (Felson, 1995: cited in Miller, 2014, p. 1237).

to reoffend, probation and parole staff use their meetings with offenders as ‘mini-interventions’ (Schaefer, 2018, p. 24):

through cognitive restructuring and skills training, officers can (1) help probationers and parolees to *avoid* situations that are likely to contain crime opportunities (e.g., through offence mapping and consequential thinking skills development), and (2) *resist* chances to reoffend that do arise (e.g., through teaching emotion regulation skills).<sup>439</sup>

This approach offers more than a new theoretical foundation to offender supervision. The strategies ‘fundamentally alter the goal of supervision meetings’ (Schaefer, 2018, p. 24). Corrections staff can help change the way that offenders think about their opportunities for relapse and, together with the offender, can develop plans to avoid problematic environments and situations.<sup>440</sup> Instead of monitoring compliance or referring offenders to external service providers, staff ‘work actively as change agents with each supervisee’ – they ‘identify each supervisee’s specific precipitators for reoffending, developing case plan conditions and offender routines that avoid situations where these risks are located...[and] work to disrupt the criminogenic needs...that would lead the probationer or parolee to exploit the crime opportunities that remain’ (Schaefer, 2018, p. 24).<sup>441</sup>

In the only evaluation found of the environmental corrections model,<sup>442</sup> Schaefer (2018) examined a six-month pilot test of the model implemented in one location in Brisbane. Using a control group of offenders supervised at a comparable office who were matched with the treatment group using propensity score matching, Schaefer (2018) found significantly lower cumulative rates of reoffending at six months post-intervention in those being supervised under the environmental corrections model (25% compared with 35% of the control group, with an overall reduction in recidivism of 28%). There was no statistically significant difference between the two groups in the rate of technical violations/contraventions. Moreover, qualitative analysis showed that offenders responded positively and felt better supported in avoiding trouble, while staff also preferred the new model (Schaefer, 2018, pp. 29-30).

While the author noted the encouraging nature of the results, she also cautioned that other factors may have contributed to the observed reduction in recidivism, such as differences in the aptitude of case managers or the role of the format of the model as distinct from the content of the model; that is, recidivism may have decreased due to the changed nature of

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<sup>439</sup> Emphasis in original.

<sup>440</sup> This approach appears similar to those underlying other programs that enlist the support of key individuals to help the person identify, avoid and resist problem situations. In the context of offending behaviour, the Circles of Support and Accountability approach operates in a similar fashion with sex offenders. More broadly, Alcoholics Anonymous has been using this kind of approach for decades.

<sup>441</sup> Schaefer (2018) noted that, while this framework is new, it aligns with many evidence-based core correctional practices, such as the risk-need-responsivity approach and the need for appropriate treatment (Schaefer, 2018, p. 24).

<sup>442</sup> Miller (2014, p. 1237) suggested that, ‘although far from influential in the field of community corrections, the principles of environmental criminology have secured a small foothold’.

the staff-offender meeting, becoming a more structured intervention with a focus on long-term desistance (Schaefer, 2018, p. 30).

Despite the lack of empirical evidence for this approach, community corrections in the US has shifted toward a more community-oriented model, adopting the principles of environmental corrections. Partnerships with local organisations such as schools and businesses, assignment of community corrections officers to specific geographical areas where offenders live and spend time, and an increasing emphasis on direct engagement with familial supports all reflect the principles of environmental corrections (Miller, 2014, p. 1238). Increased use of GPS technology to monitor offenders' location and enforce geographical and temporal movement restrictions is also (arguably) evidence of this approach.

Using data from a national survey of community corrections practitioners in the US, Miller (2014) found that opportunity-focused supervisions practices (such as helping probationers to avoid places and activities where they are at risk of offending) were already common, typically involving strategies to harness place managers and capable guardians to help steer offenders away from crime opportunities. Adoption of this strategy was more common when probation officers had low caseloads (allowing them more time to engage in outreach), were working with youth and were located in a rural area<sup>443</sup> (Miller, 2014, p. 1248).

While this study is indicative of the perceived intrinsic value of environmental corrections, the effectiveness of this approach remains unknown. As Miller (2014) asked about such practices: 'Do they provide an additional advantage over contemporary rehabilitation-focused best practice models? If so, how might they best be integrated with them?' (Miller, 2014, p. 1252). With only a single empirical evaluation published, these questions remain unanswered, although the approach seems promising.

### 5.2.3 Gaps in research on the effectiveness of supervision

The focus of much of the research on supervision has been around its impact for high-risk offenders, with little evidence about the most effective aspects of supervision for low-risk offenders. There appears to be no evidence that further disaggregates the high-risk offender group to identify supervision practices that are most effective for various sub-groups, such as high-risk Indigenous offenders or high-risk women.

Further research is also needed on the effectiveness of the environmental corrections approach, especially as its adoption appears to be spreading.

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<sup>443</sup> Miller posits that this finding may reflect the character of social relationships in rural settings, which may be more conducive to family and community engagement (Miller, 2014, p. 1250).

#### 5.2.4 Summary of the research on supervision

The most successful forms of supervision are those that adopt a focus on rehabilitation rather than surveillance or monitoring alone. The evidence on high-intensity supervision is mixed, while there is little evidence on the effectiveness of low-intensity supervision.

Sydes, Eggins and Mazerolle (2018, p. 97) conclude:

The evidence presented here showed mixed support for the efficacy of supervised release (Clark et al., 2016; Lai, 2013; Ostermann, 2012; Schlager & Robbins, 2008). For high risk offenders, high supervision intensity appeared most effective when coupled with therapeutic interventions (Paparozzi and Gendreau, 2005). For low risk offenders, low supervision intensity did not increase rates of recidivism (Barnes et al., 2010; Barnes et al., 2012) (Sydes, Eggins and Mazerolle, 2018, p. 97).

While evidence is limited, it suggests that an environmental corrections approach that reduces offenders' opportunities to reoffend can effectively reduce recidivism. This might be a promising development in the field of offender supervision.

## 6. References

Aarten, P., Denkers, A., Borgers, M. and van der Laan, P. (2013). Reconviction rates after suspended sentences: Comparison of the effects of different types of suspended sentences on reconviction in the Netherlands. *International Journal of Offender Therapy and Comparative Criminology*, 59(2): 143-158.

Aarten, P., Denkers, A., Borgers, M. and van der Laan, P. (2014). Suspending re-offending: Comparing the effects of suspended prison sentences and short-term imprisonment on recidivism in the Netherlands. *European Journal of Criminology*, 11(6): 702-722.

Adult Parole Board Victoria (2018). *Annual report 2017-18*. Melbourne.

Ahlman, L. and Kurtz, E. (2009). *The APPD randomized controlled trial in low risk supervision: The effects of low risk supervision on rearrest*. Philadelphia: Adult Probation and Parole Department.

Akoensi, T., Koehler, J., Lösel, F. and Humphreys, D. (2013). Domestic violence perpetrator programs in Europe, Part II: A systematic review of the state of evidence. *International Journal of Offender Therapy and Comparative Criminology*, 57(10): 1206-1225.

Allan, A. and Dawson, D. (2002). *Developing a unique risk of violence tool for Australian Indigenous offenders*. CRC report 6/00-01.

Anderson, L. and Anderson, S. (2014). Effect of electronic monitoring on social welfare dependence. *Criminology and Public Policy*, 13(3): 349-379.

Andrews, D., Zinger, I., Hoge, R., Bonta, J., Gendreau, P. and Cullen, F. (1990). Does correctional treatment work? A clinically relevant and psychologically informed meta-Analysis. *Criminology*, 28(3): 369-404.

Aos, S. and Drake, E. (2013). *Prison, police and programs: Evidence-based options that reduce crime and save money*. Olympia, Washington: Washington State Institute for Public Policy.

Aos, S., Miller, M. and Drake, E. (2006). *Evidence-based adult corrections programs: What works and what does not*. Olympia, Washington: Washington State Institute for Public Policy.

Armstrong, S., Mclvor, G., McNeill, F. and McGuinness, P. (2013). *International evidence review of conditional (suspended) sentences final report*. Scottish Centre for Crime and Justice Research.

Audit Office of NSW (2010). *NSW Auditor-General's Report Performance Audit: Home Detention*. Sydney: Audit Office of NSW.

Audit Scotland (2011). *An overview of Scotland's criminal justice system*.

Australian Bureau of Statistics (ABS) (2018). *Prisoners in Australia, 2018*. Catalogue No. 4517.0. Canberra: Australian Government.

Australian Bureau of Statistics (ABS) (2019a). *Corrective Services, Australia, December Quarter 2018*. Catalogue No. 4512.0. Canberra: Australian Government.

Australian Bureau of Statistics (ABS) (2019b). *Criminal Courts, Australia, 2017-18*. Catalogue No. 4513.0. Canberra: Australian Government.

Australian Law Reform Commission (ALRC) (2017). *Pathways to justice—inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples, final report no 133*. Australian Law Reform Commission, Canberra.

Avdija, A. and Lee, J. (2014). Does electronic monitoring home detention program work? Evaluating program suitability based on offenders' post-program recidivism status. *Justice Policy Journal*, 11(1): 1-15.

Babcock, J., Green, C. and Robie, C. (2004). Does batterers' treatment work? A meta-analytic review of domestic violence treatment. *Clinical Psychology Review*, 23(8): 1023-1053.

Bagaric, M., Edney, R. and Alexander, T. (2018). *Sentencing in Australia (6<sup>th</sup> edition)*. Sydney: Thomson Reuters.

Bales, W., Mann, K., Blomberg, T., Gaes, G., Barrick, K., Dhungana, K. and McManus, B. (2010). *A quantitative and qualitative assessment of electronic monitoring*. Florida State University Center for Criminology and Public Policy Research.

Barnes, G., Ahlman, L., Gill, C., Sherman, L., Kurtz, E. and Malvestuto, R. (2010). Low-intensity community supervision for low-risk offenders: A randomized, controlled trial. *Journal of Experimental Criminology*, 6(2): 159-189.

Barnes, G., Hyatt, J., Ahlman, L. and Kent, D. (2012). The effects of low-intensity supervision for lower-risk probationers: Updated results from a randomised controlled trial. *Journal of Crime and Justice*, 35(2): 200-220.

Barnett, G. and Howard, F. (2018). What doesn't work to reduce reoffending? A review of reviews of ineffective interventions for adults convicted of crimes. *European Psychologist*, 23(2): 111-129.

Bartels, L. (2009a). *Suspended sentences in Tasmania: Key research findings*. Canberra: Australian Institute of Criminology.

Bartels, L. (2009b). The weight of the Sword of Damocles: A reconviction analysis of suspended sentences in Tasmania. *Australian and New Zealand Journal of Criminology*, 42(1): 72-100.

Bartels, L. (2014). *Literature review on intensive supervision orders: A report prepared for the ACT Justice and Community Safety Directorate*. Canberra: University of Canberra.

Bartels, L., Gelb, K., Spiranovic, C., Sarre R. and Dodd, S. (2018). Bail, risk and law reform: A review of bail legislation across Australia. *Criminal Law Journal*, 42: 91-107.

- Bartels, L. and Martinovic, M. (2017). *Electronic monitoring: The experience in Australia. European Journal of Probation, 9(1): 80-102.*
- Becker, G. (1968). Crime and punishment: An economic approach. *Journal of Political Economy, 76(2): 169-217.*
- Belur, J., Thornton, A., Tompson, L., Manning, M., Sidebottom, A. and Bowers, A. (2017). *A systematic review of the effectiveness of the electronic monitoring of offenders.* London, UK: What Works Centre for Crime Reduction.
- Bonta, J., Blais, J. and Wilson, H. (2014). A theoretically informed meta-analysis of the risk for general and violent recidivism for mentally disordered offenders. *Aggression and Violent Behavior, 19: 278-287.*
- Bonta, J., Law, M., and Hanson, C. (1998). The prediction of criminal and violent recidivism among mentally disordered offenders: A meta-analysis. *Psychological Bulletin, 123(2): 123-142.*
- Bonta, J., Rugge, T., Scott, T.L., Bourgon, G. and Yessine, A. (2008). Exploring the black box of community supervision. *Journal of Offender Rehabilitation, 47(3): 248-270.*
- Bouchard, J. and Wong, J. (2018). The new panopticon? Examining the effect of home confinement on criminal recidivism. *Victim & Offenders, 13(5): 589-608.*
- Braithwaite, J. (1989). *Crime, shame and reintegration.* New York: Cambridge University Press.
- Bullock, D. (2011). Home detention as a stand-alone sentence. *New Zealand Law Students' Journal, 2: 603-616.*
- Burczycka, M. and Munch, C. (2015). Trends in offences against the administration of justice. *Juristat, 85-002-X.*
- Bureau of Crime Statistics and Research (BOCSAR) (2018). *NSW Higher, Local and Children's Criminal Courts Jan 2013–Dec 2017.* Sydney: BOCSAR.
- Cale, J. and Burton, M. (2018). Factors associated with breaches of home detention and returns to custody post-home detention in South Australia. *Current Issues in Criminal Justice, 30(1): 35-56.*
- Cale, J., Hilferty, F., Lafferty, L., Zmudzki, F. and Valentine, K. (2017). *Evaluation of home detention in South Australia: Research report 1 (baseline analysis).* Sydney: University of NSW.
- Callinan, I. (2013). *Review of the parole system in Victoria.* Melbourne: Department of Justice – Corrections Victoria.
- Carmichael, S., Gover, A., Koons-Witt, B. and Inabnit, B. (2005). The successful completion of probation and parole among female offenders. *Women & Criminal Justice, 17(1): 75-97.*

- Caudy, M., Tillyer, M. and Tillyer, R. (2018). Jail versus probation: A gender-specific test of differential effectiveness and moderators of sanction effects. *Criminal Justice & Behavior*, 45 (7): 949-968.
- Chan, M., Guydish, J., Prem, R. P., Jessup, M., Cervantes, A. and Bostrom, A. (2005). Evaluation of probation case management (PCM) for drug-involved women offenders. *Crime & Delinquency*, 51(4): 447-469.
- Clark, K., and Rydberg, J. (2016). The effect of institutional educational programming on prisoner misconduct. *Criminal Justice Studies*, 29(4): 325-344.
- Cohn, A. (2002). Managing the correctional enterprise: The quest for 'what works'. *Federal Probation*, 66(2): 4-9.
- Convery, U. (2009). *Addressing offending by women a literature review*. NIO Research and Statistical Series Report No. 21. Belfast: Northern Ireland Office Statistics and Research Branch.
- Correctional Service Canada (2014). *Types of release*. Available at: <https://www.csc-scc.gc.ca/parole/002007-0003-eng.shtml> (last access 2 April 2019).
- Correctional Service Canada (2017). *CSC statistics: Key facts and figures*. Available at: <https://www.csc-scc.gc.ca/publications/005007-3024-eng.shtml> (last accessed 21 March 2019).
- Correctional Service Canada (2018). *Community-based residential facilities*. Available at: <https://www.csc-scc.gc.ca/facilities-and-security/001-0001-eng.shtml> (last access 2 April 2019).
- Corston, J. (2007). *The Corston report*. London: Home Office.
- Cullen, F., Eck, J. and Lowenkamp, C. (2002). Environmental corrections – a new paradigm for effective probation and parole supervision. *Federal Probation*, 66(2): 28-37.
- Cullen, F. T., Jonson, C. L., and Nagin, D. S. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91(3\_suppl): 48S-65S.
- Cunnen, C. and Luke, G. (2007). Recidivism and the effectiveness of criminal justice interventions: Juvenile offenders and post release support. *Current Issues in Criminal Justice*, 19(2): 197-210.
- Davis, R., Rubin, J., Rabinovich, L., Kilmer, B. and Heaton, P. (2008). *A synthesis of literature on the effectiveness of community orders*. Santa Monica, California: RAND Corporation.
- Day, A. and Howells, K. (2002). Psychological treatments for rehabilitating offenders: Evidence-based practice comes of age. *Australian Psychologist*, 37(1): 39–47.
- Dignan, J. (1984). The Sword of Damocles and the clang of the prison gates: Prospects on the inception of the partly suspended sentence. *Howard Journal of Criminal Justice*, 23(3): 183-200.

- Degiorgio, L. and DiDonato, M. (2014). Predicting probationer rates of reincarceration using dynamic factors from the substance abuse questionnaire — adult probation III (SAQ-adult probation III). *American Journal of Criminal Justice*, 39 (1) 94-108.
- Department of Justice [Northern Ireland] (2018). *Court prosecutions, convictions and out of court disposals: Statistics for Northern Ireland, 2017*.
- DeVall, K., Lanier, C., Hartmann, D., Williamson, S. and Askew, L. (2017). Intensive supervision programs and recidivism: How Michigan successfully targets high-risk offenders. *The Prison Journal*, 97(5): 585-608.
- Development Services Group (2014). *Home confinement and electronic monitoring*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.
- Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N. and Weiner, M. (2001). *Electronic monitoring of released prisoners: An evaluation of the home detention curfew scheme*. Home Office Research Study 222. London: Home Office Research, development and Statistics Directorate.
- Doleac, J. (2018). *Strategies to productively reincorporate the formerly-incarcerated into communities: A review of the literature*. IZA Institute of Labor Economics.
- Drake, E., Aos, S. and Miller, M. (2009). Evidence-based public policy options to reduce crime and criminal justice costs: Implications in Washington State. *Victims and Offenders*, 4: 170-196.
- Dye, M. (2010). Deprivation, importation, and prison suicide: Combined effects of institutional conditions and inmate composition. *Journal of Criminal Justice*, 38(4): 796-806.
- Eno Louden, J. and Skeem, J. (2011). Parolees with mental disorder: Toward evidence-based practice. *The Bulletin*, 7(1): 1-9.
- Feder, L. and Wilson, D. (2005). A meta-analytic review of court-mandated batterer intervention programs: Can courts affect abusers' behavior? *Journal of Experimental Criminology*, 1(2): 239-262.
- Feder, L. and Wilson, D. (2006). Mandated batterer intervention programs to reduce domestic violence. In Welsh, B. C. and Farrington, D. P. (eds.) *Preventing crime* (131-145). New York: Springer.
- Figgis, H. (1998). *Probation: An overview*. Briefing Paper No 21/98. Sydney: NSW Parliamentary Library Research Service.
- Freiberg, A., Payne, J., Gelb, K., Morgan, A. and Makkai, T. (2016). *Queensland drug and specialist courts review*. Brisbane: Queensland Department of Justice and Attorney-General.
- Gaes, G. G., Bales, W. D., and Scaggs, S. J. (2016). The effect of imprisonment on recommitment: An analysis using exact, coarsened exact, and radius matching with the propensity score. *Journal of Experimental Criminology*, 12(1), 143-158.

- Gelb, K. (2006). *Myths and misconceptions: Public opinion versus public judgment about sentencing*. Melbourne: Sentencing Advisory Council.
- Gelb, K. (2007). *Recidivism of sex offenders*. Melbourne: Sentencing Advisory Council.
- Gelb, K. (2010). *Gender differences in sentencing outcomes*. Melbourne: Sentencing Advisory Council.
- Gelb, K. (2013). *The perfect storm? The impacts of abolishing suspended sentence in Victoria*. Report prepared for Catholic Social Services Victoria.
- Gelb, K. (2016). *Solution focused interventions for drug-related offending (Appendix C)*. Brisbane: Queensland Department of Justice and Attorney-General.
- Gendreau, P., Goggin, C. and Cullen, F.T. (1999). *The effects of prison sentences on recidivism*. Solicitor General Canada, User Report: 1999–3.
- Gendreau, P., Goggin, C., Cullen, F. and Andrews, D. (2000). The effects of community sanctions and incarceration on recidivism. *Forum on Corrections Research, Research Brief*, 12.
- Gibbs, A. and King, D. (2003a) Home detention with electronic monitoring: The New Zealand experience. *Criminal Justice*, 3(2): 199–211.
- Gibbs, A. and King, D. (2003b) The electronic ball and chain? The operation and impact of home detention with electronic monitoring in New Zealand. *Australian & New Zealand Journal of Criminology*, 36(1): 1–17.
- Gies, S., Gainey, R., Cohen, M., Healy, E., Duplantier, D., Yeide, M. and Hopps, M. (2012). *Monitoring high-risk sex offenders with GPS technology: An evaluation of the California supervision program, final report*. Washington D.C.: Office of Research and Evaluation – National Institute of Justice.
- Gill, C., Hyatt, J. and Sherman, L. (2009). *Probation intensity effects on probationers' criminal conduct (summary)*. Oslo, Norway: Campbell Systematic Reviews.
- Gobeil, R., Blanchette, K., and Stewart, L. (2016). A meta-analytic review of correctional interventions for women offenders. *Criminal Justice and Behavior*, 43(3): 301-322.
- Gould, L., Pate, M. and Sarver, M. (2011). Risk and revocation in community corrections: The role of gender. *Probation Journal*, 58(3): 250-264.
- Gray, M., Fields, M. and Maxwell, S. (2001). Examining probation violations: Who, what and when. *Crime and Delinquency*, 47(4):537-557.
- Gutierrez, L., Chadwick, N. and Wanamaker, K. (2018). Culturally relevant programming versus the status quo: A meta-analytic review of the effectiveness of treatment for Indigenous offenders. *Canadian Journal of Criminology and Criminal Justice*, 60(3): 321-353.
- Gutierrez, L., Helmus, L.M. and Hanson, R.K. (2017). *What we do and don't know about risk assessment with offenders of Indigenous heritage*. Research Report 2017-R009. Ottawa: Public Safety Canada.

- Gutierrez, L., Wilson, H., Rugge, T. and Bonta, J. (2013). The prediction of recidivism with Aboriginal offenders: A theoretically informed meta-analysis. *Canadian Journal of Criminology and Criminal Justice*, 55(1): 55-99.
- Hall, M., Golder, S., Conley, C. and Sawning, S. (2013). Designing programming and interventions for women in the criminal justice system. *American Journal of Criminal Justice*, 38: 27-50.
- Hanson, R. K., Bourgon, G., Helmus, L., and Hodgson, S. (2009). *A meta-analysis of the effectiveness of treatment for sexual offenders: Risk, need, and responsivity*. Ottawa: Public Safety Canada.
- Hawken, A. and Kleiman, M. (2009). *Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE*. Washington D.C.: National Institute of Justice.
- Henderson, M. (2006). *Benchmarking study of home detention programs in Australia and New Zealand*. Melbourne: National Corrections Advisory Group.
- Henneguelle, A., Monnery, B. and Kensey, A. (2016) *Better at home than in prison? The effects of electronic monitoring on recidivism in France*. Working paper GATE 2016-03.
- Hepburn, J. and Griffin, M. (2004). *An analysis of risk factors contributing to the recidivism of sex offenders on probation*. U.S. Department of Justice.
- House of Commons Justice Committee (2013). *Women offenders: After the Corston Report, second report of session 2013-14*. London: The Stationery Office.
- Hyatt, J. and Barnes, G. (2017). An experimental evaluation of the impact of intensive supervision on the recidivism of high-risk probationers. *Crime & Delinquency*, 63(1): 3-38.
- Johnson, S. (2006). Outcomes of probation and conditional sentence supervision: An analysis of Newfoundland and Labrador, Nova Scotia, New Brunswick, Saskatchewan and Alberta, 2003/2004 to 2004/2005. *Juristat*, 26(7): 1-24.
- Jolliffe, D. and Farrington, D. (2007). *A systematic review of the national and international evidence of the effectiveness of interventions with violent offenders: Ministry of Justice Research Series*. London: Ministry of Justice.
- Jones, C., Hua, J., Donnelly, N., McHutchison, J. and Heggie, K. (2006). Risk of re-offending among parolees. *Crime and Justice Bulletin*, 91. Sydney: NSW Bureau of Crime Statistics and Research.
- Judicial Commission of NSW (2018). *Sentencing Bench Book*. Sydney: Judicial Commission of NSW.
- Kay, C. (2019). Short prison sentences as a last resort won't work unless the probation service is fixed. *The Conversation*, 29 January 2019. Available at <https://theconversation.com/short-prison-sentences-as-a-last-resort-wont-work-unless-the-probation-service-is-fixed-110480> (last accessed 29 January 2019).

Killias, M., M. Aebi and D. Ribeaud (2000). Does community service rehabilitate better than Short-Term imprisonment? Results of a controlled experiment. *The Howard Journal*, 39(1): 40-57.

Killias, M., Gillie´ron, G., Kissling, I. and Villettaz, P. (2010). Community service versus electronic monitoring—what works better? Results of a Randomized Trial. *British Journal of Criminology*, 50(6): 1155-1170.

Killias, M., Villettaz, P. and Zoder, I. (2006). *The effects of custodial vs non-custodial sentences on reoffending: A systematic review of the state of knowledge*. Oslo, Norway: Campbell Systematic Reviews.

Kilmer, B., Nicosia, N., Heaton, P. and Midgette, G. (2013). Efficacy of frequent monitoring with swift, certain, and modest sanctions for violations: Insights from South Dakota’s 24/7 Sobriety Project. *American Journal of Public Health*, 103(1): e37-43.

King, D. and Gibbs, A. (2003). Is home detention in New Zealand disadvantaging women and children? *Probation Journal*, 50(2): 115-126.

Klement, C. (2015). Comparing the effects of community service and imprisonment on reconviction: Results from a quasi-experimental Danish study. *Journal of Experimental Criminology*, 11(2): 237-261.

KPMG (2010). *Evaluation of the community justice group program: Final report*. Queensland Department of Justice and Attorney General.

Kurlychek, M., Brame, R. and Bushway, S.D. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy*, 5(3): 483-504.

Lai, K. (2013). *Does supervision after release from prison reduce re-offending?* London: Ministry of Justice.

Landenberger, N. and Lipsey, M. (2005). The positive effects of cognitive–behavioral programs for offenders: A meta-analysis of factors associated with effective treatment. *Journal of Experimental Criminology*, 1: 451-476.

Latessa, E.J. and Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal*, 3(3): 521-535.

Lattimore, P., Dawes, D., Tueller, S., MacKenzie, D., Zajac, G. and Arsenault, E. (2016). *Summary findings from the national evaluation of the honest opportunity probation with enforcement demonstration field experiment: The HOPE DFE evaluation*. RTI International and Penn State Justice Center for Research.

La Vigne, N., Davies, E. and Brazzell, D. (2008). *Broken bonds: understanding and addressing the needs of children with incarcerated parents*. Washington: The Urban Institute.

Lipsey, M. (1995). What do we learn from 400 research studies on the effectiveness of treatment with juvenile delinquents? In McGuire, J. (ed.), *Wiley series in offender*

rehabilitation. *What works: Reducing reoffending: Guidelines from research and practice*. Oxford, England: John Wiley & Sons: 63-78.

Lipsey, M.W. and Cullen, F.T. (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science*, 3.

Lockyer, K. (2014). *Swift and certain: A new paradigm for criminal justice*. London: Policy Exchange.

Loeffler, C. (2013). Does imprisonment alter the life course? Evidence on crime and employment from a natural experiment. *Criminology*, 51(1): 137-166.

Lösel, F. and Schmucker, M. (2005). The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis. *Journal of Experimental Criminology*, 1(1): 117-146.

Lowenkamp, C., Flores, A., Holsinger, A., Makarios, M. and Latessa, E. (2010). Intensive supervision programs: Does program philosophy and the principles of effective intervention matter? *Journal of Criminal Justice*, 38(4): 368-375.

Lulham, R., Weatherburn, D. and Bartels, L. (2009). The recidivism of offenders given suspended sentences: A comparison with full-time imprisonment. *Crime and Justice Bulletin*, 36. Sydney: NSW Bureau of Crime Statistics and Research.

Lurigio, A. (2001). Effective services for parolees with mental illnesses. *Crime and Delinquency*, 47(3): 446-461.

Lurigio, A., Epperson, M., Canada, K. and Babchuk, L. (2012). Specialised probation programs for people with mental illnesses: A review of practices and research. *Journal of Crime and Justice*, 35(2): 317-326.

Lussier, P., Gress, C., Deslauriers-Varin, N. and Amirault, J. (2014). Community risk management of high-risk sex offenders in Canada: Findings from a quasi-experimental study. *Justice Quarterly*, 31(2): 287-314.

MacKenzie, D. (2000). Evidence-based Corrections: Identifying what works. *Crime and Delinquency*, 46(4): 457-471.

Mackenzie, D. and Brame, R. (2001). Community supervision, prosocial activities, and recidivism. *Justice Quarterly*, 18(2): 429-448.

MacKenzie, D., Browning, K., Skroban S. and Smith, D. (1999). The impact of probation on the criminal activities of offenders. *Journal of Research in Crime and Delinquency*, 36(4): 423-453.

Marie, O., Moreton, K. and Gonclaves, M. (2011). *The effect of early release of prisoners on home detention curfew (HDC) on recidivism*. London: Ministry of Justice.

Martinovic, M. (2007). Home detention: Issues, dilemmas and impacts for detainees' co-residing family members. *Current Issues in Criminal Justice*, 19(1): 90-105.

Martinovic, M. (2014). Abolishing electronic monitoring in Australia. *Criminal Justice Matters*, 95: 16-17.

- Martinovic, M. (2016). GPS-EM sanctions for serious sex offenders: The application and outcomes in the United States and Australia. *Journal of Technology in Human Services*, 34(1): 82-101.
- Maruschak, L. and Parks, E. (2014). *Probation and parole in the United States, 2011*. Washington D.C.: Bureau of Justice Statistics.
- McEvoy, K. (2012). HOPE: A swift and certain process for probationers. *NIJ Journal*, 269: 16-17.
- McGuire, J. (ed.) (2002). *Offender rehabilitation and treatment: Effective programmes and policies to reduce reoffending*. West Sussex: John Wiley & Sons.
- Meade, B., Steiner, B., Makarios, M., and Travis, L. (2013). Estimating a dose-response relationship between time served in prison and recidivism. *Journal of Research in Crime and Delinquency*, 50(4), 525-550.
- Mears, D., Cochran, J. and Bales, W. (2012). Gender differences in the effects of prison on recidivism. *Journal of Criminal Justice*, 40: 370-378.
- Melbourne Centre for Criminological Research and Evaluation (2006). *Home detention in Victoria: Final evaluation report*. Melbourne: Corrections Victoria.
- Meloy, M. (2005). The sex offender next door: An analysis of recidivism, risk factors, and deterrence of sex offenders on probation. *Criminal Justice Policy Review*, 16(2): 211-236.
- Mews, A., Hillier, J., McHugh, M. and Coxon, C. (2015). *The impact of short custodial sentences, community orders and suspended sentence orders on re-offending*. London: Ministry of Justice.
- Miller, J. (2014). Probation supervision and the control of crime opportunities: An empirical assessment. *Crime and Delinquency*, 60(8): 1235-1257.
- Miller, M., Drake, E., and Nafziger, M. (2013). *What works to reduce recidivism by domestic violence offenders?* Olympia: Washington State Institute for Public Policy.
- Ministry of Community Safety and Correctional Services [Ontario] (2018). *Community Corrections: Probation*. Available at [https://www.mcscs.jus.gov.on.ca/english/corr\\_serv/comm\\_corr/probation/probation.html](https://www.mcscs.jus.gov.on.ca/english/corr_serv/comm_corr/probation/probation.html) (last accessed 21 March 2019).
- Ministry of Justice [NZ] (2011). *Home detention: A review of the sentence of home detention 2007-2011*. Wellington: New Zealand Government.
- Ministry of Justice [UK] (2007). *The Government's response to the report by Baroness Corston of a review of women with particular vulnerabilities in the criminal justice system*.
- Ministry of Justice [UK] (2013). *2013 Compendium of re-offending statistics and analysis*.
- Ministry of Justice [UK] (2018). *Home detention curfew assessment process*.

Ministry of Justice [UK] (2018/2019). *Criminal justice statistics – Quarterly update: The year ending June 2018*. Available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2018> (last accessed 25 March 2019).

Ministry of Justice [UK] (2019). *Criminal justice statistics – Quarterly update: The year ending September 2018*. Available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-september-2018> (last accessed 25 March 2019).

Mitchell, O., Cochran, J., Mears, D., and Bales, W. (2017). The effectiveness of prison for reducing drug offender recidivism: A regression discontinuity analysis. *Journal of Experimental Criminology*, 13(1): 1-27.

Morgan, A. (2018). *How much does prison really cost? Comparing the costs of imprisonment with community corrections*. Research Report 05, Canberra: Australian Institute of Criminology.

Morgan, R., Flora, D., Kroner, D., Mills, J., Varghese, F. and Steffan, J. (2012). Treating offenders with mental illness: A research synthesis. *Law and Human Behaviour*, 36(1): 37-50.

Morris, M. and Sullivan, C. (2015). *The impact of sentencing on adult offenders' future employment and re-offending – community work versus fines*. New Zealand Treasury Working Paper 15/04. Wellington: New Zealand Government.

Nagin, D., Cullen, F. and Jonson, C. (2009). Imprisonment and reoffending. *Crime and Justice*, 38: 115-200.

New South Wales Law Reform Commission (NSWLRC) (2013). *Sentencing*. Report No. 139. Sydney: New South Wales Law Reform Commission.

New South Wales Sentencing Council (2004). *Abolishing prison sentences of 6 months or less*. Sydney: NSW Sentencing Council.

New South Wales Sentencing Council (2011). *Suspended Sentences: Report*. Sydney: NSW Sentencing Council.

New South Wales Sentencing Council (2018). *Sentencing trends and practices: Annual Report 2017*. Sydney: NSW Sentencing Council.

New Zealand Government (2017). *Supervision and intensive supervision: Evidence brief*.

Northern Territory Government (2018). *Northern Territory Correctional Services annual statistics 2016-2017*. Darwin: Northern Territory Government.

Ogloff, J. (2002). Offender rehabilitation: From 'nothing works' to what next? *Australian Psychologist*, 37(3): 245-252.

Olson, D. and Lurigio, A. (2000) Predicting probation outcomes: Factors associated with probation rearrest, revocations, and technical violations during supervision. *Justice Research & Policy*, 2(1): 73-86.

- Olson, D., Alderden, M. and Lurigio, A. (2003). Men are from Mars, women are from Venus, but what role does gender play in probation recidivism? *Justice Research & Policy*, 5(2): 33-54.
- Ostermann, M. (2012). Recidivism and the propensity to forgo parole release. *Justice Quarterly*, 29(4): 596-618.
- Owens, E. (2009). More time, less crime? Estimating the incapacitative effect of sentence enhancements. *Journal of Law & Economics*, 52(3): 551-579.
- Padgett K., Bales, W. and Blomberg, T. (2006) Under surveillance: An empirical test of the effectiveness and consequences of electronic monitoring. *Criminology and Public Policy* 5(1): 61-92.
- Paparozi, M. and Gendreau, P. (2005) An intensive supervision program that worked: Service delivery, professional orientation, and organizational supportiveness. *The Prison Journal*, 85(4): 445-466.
- Parhar, K., Wormith, J., Derkzen, D. and Beauregard, A. (2008). Offender coercion in treatment: A meta-analysis of effectiveness. *Criminal Justice and Behaviour*, 35(9): 1109-1135.
- Payne, J. (2007). *Recidivism in Australia: Findings and future research*. Canberra: Australian Institute of Criminology.
- Payne, J. and Gaffney, A. (2012). How much crime is drug or alcohol related? Self-reported attributions of police detainees. *Trends and Issues in Crime and Criminal Justice*, 439.
- Pearson, F. et al. (2002). The effects of behavioural/cognitive-behavioural programs on recidivism. *Crime and Delinquency*, 48(3): 476-496.
- Pearson, D., McDougall, C., Kanaan, M., Bowles, R. and Torgerson, D. (2011). Reducing criminal recidivism: Evaluation of citizenship, an evidence-based probation supervision process. *Journal of Experimental Criminology*, 7(1): 73-102.
- Perry, A., Newman, M., Hallam, G., Johnson, M., Sinclair, J. and Bowles, R. (2009). *A rapid evidence assessment of the evidence on the effectiveness of interventions with persistent/prolific offenders in reducing re-offending*. London: Ministry of Justice.
- Petersilia, J. (1998). A decade of experimenting with intermediate sanctions: What have we learned? *Federal Probation*, 62(2): 39.
- Petersilia, J. (2007). What works in community corrections. *Expert Q&A No. 2*. Washington D.C.: The Pew Center on the States.
- Petersilia, J. and Deschenes, E. (1994). Perceptions of punishment: Inmates and staff rank the severity of prison versus intermediate sanctions. *The Prison Journal*, 74(3): 306-328.
- Petersilia, J. and Turner, S. (1993a). Evaluating intensive supervision probation/parole: Results of a nationwide experiment. *National Institute of Justice Research in Brief*.

- Petersilia, J. and S. Turner (1993b). Intensive probation and parole. *Crime and Justice*, 17: 281-335.
- Petrie, K. (2018). *The court-ordered parole experience in Queensland from a corrections perspective*. Available at: [https://www.sentencingcouncil.qld.gov.au/\\_data/assets/pdf\\_file/0006/580263/Kate-Petrie-QCS-presentation.pdf](https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0006/580263/Kate-Petrie-QCS-presentation.pdf) (last accessed 2 April 2019).
- Phelps, M. and Curry, C. (2016). Supervision in the community: Probation and parole. *Oxford Research Encyclopedia of Criminology and Criminal Justice*, April: 18-56.
- Potas, I., Eyland, S. and Munro, J. (2005). Successful completion rates for supervised sentencing options. *Sentencing Trends & Issues*, 33: 1-16.
- Poynton, S. and Weatherburn, D. (2012). *Bonds, suspended sentences and reoffending: Does the length of the order matter?* Report to the Criminology Research Council.
- Pratt, T., Holsinger, A. and Latessa, E. J. (2000). Treating the chronic DUI offender: 'Turning Point' ten years later. *Journal of Criminal Justice*, 28(4): 271-281.
- Prins, S. and Draper, L. (2009). *Improving outcomes for people with mental illnesses under community corrections supervision: A guide to research-informed policy and practice*. New York: The Council of State Governments Justice Center.
- Przybylski, R. (2008). *What works: Effective recidivism reduction and risk-focused prevention programs*. Denver: Colorado Division of Criminal Justice.
- Public Safety Canada (2018). *2017 Annual Report: Corrections and conditional release statistical overview*. Available at: <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/ccrso-2017/index-en.aspx> (last accessed 2 April 2019).
- Queensland Corrective Services (QCS) (2013). *Court ordered parole in Queensland*, Research Paper No.4. Brisbane: Queensland Government.
- Queensland Corrective Services (QCS) (2018). *Annual Report 2017-2018*. Brisbane: Queensland Government.
- Queensland Government (2017). *GPS electronic monitoring for parolees*. Available at <https://news.correctiveservices.qld.gov.au/2017/03/06/gps-electronic-monitoring-for-parolees/> (last accessed 27 November 2018).
- Queensland Productivity Commission (2019). *Inquiry into imprisonment and recidivism: Draft report*. Brisbane: Queensland Productivity Commission.
- Rauch, W., Ahlin, E., Zador, P., Howard, J. and Duncan, G. (2011). Effects of administrative ignition interlock license restrictions on drivers with multiple alcohol offenses. *Journal of Experimental Criminology*, 7(2): 127-148.

- Reitzel, L. and Carbonell, J. (2006). The effectiveness of sexual offender treatment for juveniles as measured by recidivism: A meta-analysis. *Sexual Abuse: A Journal of Research and Treatment*, 18(4): 401-421.
- Renzema, M. and Mayo-Wilson, E. (2005). Can electronic monitoring reduce crime for moderate to high-risk offenders? *Journal of Experimental Criminology*, 1: 215-237.
- Revolving Doors (2012). *Integrated offender management: Effective alternatives to short sentences*. England: Revolving Doors.
- Ringland, C. (2012). Intensive correction orders vs. other penalties: Offender profiles. *Crime and Justice Bulletin*, 163. Sydney: NSW Bureau of Crime Statistics and Research.
- Ringland, C. and Weatherburn, D. (2013). The impact of intensive correction orders on reoffending. *Crime and Justice Bulletin*, 176. Sydney: NSW Bureau of Crime Statistics and Research.
- Ritchie, D. (2011). *Does imprisonment deter? A review of the evidence*. Melbourne: Sentencing Advisory Council.
- Ritchie, D. (2012). *How much does imprisonment protect the community through incapacitation?* Melbourne: Sentencing Advisory Council.
- Roberts, J. and LaPrairie, C. (2000). *Conditional sentencing in Canada: An overview of research findings*. Department of Justice Canada.
- Roman, J., Liberman, A., Taxy, S. and Downey, P. (2012). *The costs and benefits of electronic monitoring for Washington D.C.* District of Columbia Crime Policy Institute.
- Ross, S. (2015). Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program. *Trends and Issues in Crime and Criminal Justice*, 499. Canberra: Australian Institute of Criminology.
- Schaefer, L. (2018). Environmental corrections: An application of environmental criminological theories to community corrections practices. *Advancing Corrections Journal*, 5: 22-33.
- Schlager, M. and Robbins, K. (2008). Does parole work? Revisited: Reframing the discussion of the impact of postprison supervision on offender outcome. *The Prison Journal*, 88(2): 234-251.
- Schmucker, M. and Lösel, F. (2015). The effects of sexual offender treatment on recidivism: an international meta-analysis of sound quality evaluations. *Journal of Experimental Criminology*, 11(4): 597-630.
- Scottish Government (2019). *Criminal proceedings in Scotland, 2016-17*. Available at: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubCriminalProceedings> (last accessed 19 March 2019).

Scottish Prison Service (nd). *Home detention curfew*. Available at: <http://www.sps.gov.uk/Corporate/Information/HomeDetentionCurfew.aspx> (last accessed 19 March 2019).

Sentencing Advisory Council (SAC) (2007). *High-risk offenders: Post-sentence supervision and detention Final Report*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (SAC) (2008). *Suspended sentences and intermediate sentencing orders: Suspended sentences final report part 2*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (SAC) (2013). *Reoffending following sentencing in the Magistrates' Court of Victoria*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (SAC) (2016). *Community Correction Orders: Third monitoring report (post-guideline judgment)*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (SAC) (2017a). *Contravention of Community Correction Orders*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (SAC) (2017b). *Swift, certain and fair approaches to sentencing family violence offenders: Discussion paper*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (SAC) (2018). *Sentencing outcomes in the higher courts*. Available at: <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-higher-courts> (last accessed 24 March 2019).

Sentencing Advisory Council (SAC) (2019). *Serious offending by people serving a community correction order: 2017-18*. Melbourne: Sentencing Advisory Council.

Shapland, J., Bottoms, A., Farrall, S., McNeill, F., Priede, C. and Robinson, G. (2012). *The quality of probation supervision – a lit review*. Sheffield: University of Sheffield Centre for Criminological Research.

Shepherd, S., McEntyre, E., Adams, Y. and Walker, R. (2014). Violence risk assessment in Australian Aboriginal offender populations: A review of the literature. *Psychology, Public Policy and Law*, 20(3): 281-293.

Sherman, L. et al. (1997). *Preventing crime: What works, what Doesn't, what's promising*. Washington D.C.: National Institute of Justice.

Skeem, J. (2009, March). *Offenders with mental illness: What (really) works? Part I*. Workshop provided at the biennial meeting of the Forensic Mental Health Association of California (Seaside, CA).

Skeem, J., Manchak, S. and Peterson, J. (2011). Correctional policy for offenders with mental illness: Creating a new paradigm for recidivism reduction. *Law and Human Behavior*, 35: 110-126.

Skeem, J., Nicholson, E., and Kregg, C. (2008, March). Understanding barriers to re-entry for parolees with mental disorder. In Kroner, D. (Chair), *Mentally disordered offenders: A special*

*population requiring special attention*. Symposium conducted at the meeting of the American Psychology-Law Society (Jacksonville, FL).

Skeem, J. L., Winter, E., Kennealy, P. J., Eno Loudon, J. and Tatar, J. (2014). Offenders with mental illness have criminogenic needs, too: Toward recidivism reduction. *Law and Human Behavior*, 38(3): 212-224.

Smedslund, G., Dalsbø, T., Steiro, A., Winsvold, A. and Clench-Aas, J. (2007). Cognitive behavioural therapy for men who physically abuse their female partner. *Cochrane Database of Systematic Reviews*.

Smith, A., Heyes, K., Fox, C., Harrison, J., Kiss, Z. and Bradbury, A. (2018). The effectiveness of probation supervision towards reducing reoffending: A rapid evidence assessment. *Probation Journal*.

Smith, P., Cullen, F. and Latessa, E. (2009). Can 14,737 women be wrong? A meta-analysis of the LSI-R and recidivism for female offenders. *Criminology & Public Policy*, 8(1): 183-208.

Snowball, L. (2008). Does a lack of alternatives to custody increase the risk of a prison sentence? *Crime and Justice Bulletin*, 111. Sydney: Bureau of Crime Statistics and Research.

Snowball, L. and Bartels, L. (2013). Community service orders and bonds: A comparison of reoffending. *Crime and Justice Bulletin*, 171. NSW Bureau of Crime Statistics and Research, Sydney.

Sofronoff, W. (2016). *Queensland parole system review: Final report*. Brisbane: Queensland Government.

Sorbello, L., Eccleston, L., Ward, T. and Jones, R. (2002). Treatment needs of female offenders: A review. *Australian Psychologist*, 37(3): 198-205.

Spohn C. and Holleran, D. (2002). The effect of imprisonment on recidivism rates of felony offenders: A focus on drug offenders. *Criminology*, 40(2): 329-358.

Standing Committee on Law and Justice (SCLJ) (2006). *Community based sentencing options for rural and remote areas and disadvantaged populations*. Sydney: The Committee.

Stanz, R. and Tewksbury, R. (2000). Predictors of success and recidivism in a home incarceration program. *The Prison Journal*, 80(3): 326-344.

Statistics Canada (2018). *Adult and youth correctional statistics in Canada, 2016/2017*. Available at: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm> (last accessed 2 April 2019).

Statistics Canada (2019). *Adult criminal courts: Guilty cases by type of sentence*. Available at: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510003001> (last accessed 28 March 2019).

Stats NZ (2018). *Adults convicted and sentenced: Data highlights for 2017/2018*.

Stavrou, E., Poynton, S. and Weatherburn, D. (2016). Parole release authority and re-offending. *Crime and Justice Bulletin*, 194. Sydney: NSW Bureau of Crime Statistics and Research.

Steering Committee for the Review of Government Service Provision (SCRGSP) (2019). *Report on government services 2019*. Canberra: Productivity Commission.

Stewart, L., Hamilton, E., Wilton, G., Cousineau, C. and Varrette, S. (2009). *An examination of the effectiveness of Tupiq: A culturally specific program for Inuit sex offenders*. Ottawa: Correctional Service of Canada.

Stewart, L., Hamilton, E., Wilton, G., Cousineau, C. and Varrette, S. (2015). The effectiveness of the Tupiq Program for Inuit sex offenders. *International Journal of Offender Therapy and Comparative Criminology*, 59(12), 1338-1357.

Sweeten, G. and Apel, R. (2007). Incapacitation: Revisiting an old question with a new method and new data. *Journal of Quantitative Criminology*, 23(4): 303-326.

Tasmanian Sentencing Advisory Council [TSAC] (2015). *Phasing out of suspended sentences: Consultation Paper*. Hobart: Tasmanian Sentencing Advisory Council.

Tasmanian Sentencing Advisory Council [TSAC] (2016). *Phasing out of suspended sentences: Final Report*. Hobart: Tasmanian Sentencing Advisory Council.

Taxman, F.S. (2002). Supervision: Exploring the dimensions of effectiveness. *Federal Probation*, 66(2): 14-27.

Thompson, J., Forrester, T., and Stewart, L. (2015). *Factors related to community supervision outcomes: Revocations* (Research Report R-304). Ottawa, Ontario: Correctional Service of Canada.

Tollenaar, N., Van der Laan, A. M., and Van der Heijden, P. G. M. (2014). Effectiveness of a prolonged incarceration and rehabilitation measure for high-frequency offenders. *Journal of Experimental Criminology*, 10(1), 29-58.

Trotter, C. (1995). *The supervision of offenders: what works?* Report to the Australian Criminology Research Council.

Trotter, C. and Flynn, C. (2016). *Literature review: Best practice with women offenders*. Melbourne: Monash University Criminal Justice Research Consortium.

Usher, A. and Stewart, L. (2014). Effectiveness of correctional programs with ethnically diverse offenders: A meta-analytic study. *International Journal of Offender Therapy and Comparative Criminology*, 58(2): 209-230.

Van Voorhis, P., Wright, E.M., Salisbury, E. and Bauman, A. (2010). Women's risk factors and their contributions to existing risk/needs assessment: The current role of a gender responsive supplement. *Criminal Justice and Behavior*, 37(3): 261-288.

- Vennard, J., Sugg, D. and Hedderman, C. (1997). *Changing offenders' attitudes and behaviour: What works?* Home Office Research Study No. 171. London: Home Office.
- Verbrugge, P., Nunes, K., Johnson, S. and Taylor, K. (2002). *Predictors of revocation of conditional release among substance abusing women offenders*. Ontario: Correctional Service Canada.
- Victorian Auditor-General [VAGO] (2017). *Managing community correction orders*. Melbourne: Victorian Government.
- Vigurs, C., Schucan-Bird, K., Quy, K. and Gough, D. (2016). *A systematic review of motivational approaches as a pre-treatment intervention for domestic violence perpetrator programmes (No. 4)*. London: College of Policing.
- Villettaz, P., Gilliéron, G., and Killias, M. (2015). The effects on re-offending of custodial vs. non-custodial sanctions: An updated systematic review of the state of knowledge. *Campbell Systematic Reviews*, 11(1), 1-93.
- Vito, G., Higgins, G. and Tewksbury, R. (2017). The effectiveness of parole supervision: Use of propensity score matching to analyse reincarceration rates in Kentucky. *Criminal Justice Policy Review*, 28(7): 627-640.
- Villettaz, P., Killias, M. and Zoder, I. (2006). *The effects of custodial vs. non-custodial sentences on reoffending: A systematic review of the state of knowledge*. Oslo, Norway: The Campbell Collaboration.
- Wan, W-Y., Poynton, S., van Doorn, G., and Weatherburn, D. (2014). Parole supervision and reoffending. *Trends and Issues in Crime and Criminal Justice*, 485.
- Wang, J. and Poynton, S. (2017). Intensive correction orders versus short prison sentence: A comparison of reoffending. *Crime and Justice Bulletin*, 207. Sydney: NSW Bureau of Crime Statistics and Research.
- Washington State Institute for Public Policy (2017a). *Electronic monitoring (parole)*. Olympia, WA: Washington State Institute for Public Policy.
- Washington State Institute for Public Policy (2017b). *Electronic monitoring (probation)*. Olympia, WA: Washington State Institute for Public Policy.
- Washington State Institute for Public Policy (2017c). *Risk need and responsivity supervision (for individuals classified as high- or moderate-risk)*. Olympia, WA: Washington State Institute for Public Policy.
- Washington State Institute for Public Policy (2017d). *Cognitive-behavioral therapy (for individuals classified as high- or moderate-risk)*. Olympia, WA: Washington State Institute for Public Policy.
- Washington State Institute for Public Policy (2017e). *Intensive supervision (surveillance and treatment)*. Olympia, WA: Washington State Institute for Public Policy.

- Washington State Institute for Public Policy (2017f). *Intensive supervision (surveillance only)*. Olympia, WA: Washington State Institute for Public Policy.
- Washington State Institute for Public Policy (2017g). *'Swift, certain and fair' supervision*. Olympia, WA: Washington State Institute for Public Policy.
- Washington State Institute for Public Policy (2017h). *Case management ('swift, certain and fair') for drug-involved persons*. Olympia, WA: Washington State Institute for Public Policy.
- Weatherburn, D. (2010). The effect of prison on adult reoffending. *Crime and Justice Bulletin*, 143. Sydney: NSW Bureau of Crime Statistics and Research.
- Weatherburn, D. and Bartels, L. (2008). 'The Recidivism of Offenders Given Suspended Sentences in New South Wales, Australia'. *British Journal of Criminology*, 48(5): 667–683.
- Weatherburn, D. and Ringland, C. (2014). Reoffending on parole. *Crime and Justice Bulletin*, 178. Sydney: NSW Bureau of Crime Statistics and Research.
- Weatherburn, D. and Trimboli, L. (2008). Community supervision and rehabilitation: Two studies of offenders on supervised bonds. *Crime and Justice Bulletin*, 112. Sydney: NSW Bureau of Crime Statistics and Research.
- Wermink, H., Blokland, A., Nieuwbeerta, P., Nagin, D. and Tollenaar, N. (2010). Comparing the effects of community service and short-term imprisonment on recidivism: A matched samples approach. *Journal of Experimental Criminology*, 6(3): 325-349.
- Wetenschappelijk Onderzoek-en Documentatiecentrum (WODC) (2014). *Recidivism following probation or a Community Service Order: Overview of the relapse into crime of adult offenders dealt with by the Dutch Probation Services in 2002–2009*. The Hague: Ministerie van Veiligheid en Justitie.
- Wheeler, D., Rogers, E., Tonigan, J. and Woodall, W. (2004). Effectiveness of customised Victim Impact Panels on first-time DWI offender inmates. *Accident Analysis & Prevention*, 36(1): 29-35.
- Williams, J. and Weatherburn, D. (2019). *Can electronic monitoring reduce reoffending?* IZA Discussion Paper No. 12122. Bonn, Germany: IZA Institute of Labor Economics.
- Wilson, D., Bouffard, L. and MacKenzie, D. (2005). A quantitative review of structured, group-oriented, cognitive-behavioral programs for offenders. *Criminal Justice and Behaviour*, 32(2): 172-204.
- Wilson, H. and Gutierrez, L. (2013). Does one size fit all?: A meta-Analysis examining the predictive ability of the level of service inventory (LSI) With Aboriginal Offenders. *Criminal Justice and Behavior*, 41(2), 196-219.
- Wilson, J., Naro, W. and Austin., J. (2007). *Innovations in probation: Assessing New York City's automated reporting system*. Washington D.C.: The JFA Institute.

Wodahl, E., Boman, J. and Garland, B. (2015). Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions? *Journal of Criminal Justice*, 43: 242-250.

Wolfe, F. (2015). *Predictors of community supervision failures among female offenders*. Doctor of Philosophy, Psychology thesis, Walden University.

Wolfgang, M., Figlio, R. and Sellin, T. (1972). *Delinquency in a birth cohort*. Chicago: University of Chicago Press.

Wood, M. et al. (2015). *Re-offending by offenders on Community Orders: results from the Offender Management Community Cohort Study*. London: Ministry of Justice.

Wright, K. and Rosky, J. (2011). Too early is too soon: Lessons from the Montana Department of Corrections Early Release Program. *Criminology & Public Policy*, 10(4): 881-908.

