

INTENSIVE CORRECTION ORDERS AND COMMUNITY CORRECTION ORDERS AS ALTERNATIVES TO IMPRISONMENT

Queensland Supreme Court

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Queensland Sentencing
Advisory Council


Inform. Engage. Advise.

THE LEGISLATIVE FRAMEWORK

	Legislation	Maximum length
NSW (ICO)	<i>Crimes (Sentencing Procedure) Act 1999 s 7, Pt 5</i>	2 yrs
Vic (CCO)	<i>Sentencing Act 1991 Pt 3A</i>	MC: 2yrs for 1 off, 4 yrs for 2 offences, 5 yrs for 3+ offences Higher courts: 5 yrs
Qld (ICO)	<i>Penalties and Sentences Act 1992 Pt 6</i>	1 yr
SA (ICO)	<i>Sentencing Act 2017 Div 7, Subdiv 2</i>	2 yrs
NT (Cmty Custody)	<i>Sentencing Act Div 5, Subdiv 2A</i>	1 yr
ACT	<i>Crimes (Sentencing) Act 2005 s 11, Pt 5.4</i>	4 yrs


THE LEGISLATIVE FRAMEWORK

Mandatory ICO conditions (NSW)

- Be of good behaviour and not commit any offences
 - Report to Community Corrective Services (CCS) on fixed date
 - Reside only at prescribed premises
 - Not to leave NSW without permission of CCS
 - Not to leave Australia without permission of the State Parole Authority (SPA)
 - Receive supervisor for home visits
 - Authorise doctor or therapist to provide supervisor with relevant information
 - Submit to searches of places or things under offender's immediate control
 - Not to obtain or abuse unlawful drugs
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THE LEGISLATIVE FRAMEWORK

Mandatory ICO conditions (NSW) ctd

- Submit to tests for drug and alcohol abuse
 - Not to possess a firearm or offensive weapon
 - Submit to surveillance or monitoring
 - Not to tamper with surveillance equipment
 - Comply with curfew as directed
 - Minimum of 32 hours per week community service work
 - Participate in programs to address offending behaviour as directed
 - Comply with all reasonable directions by supervisor
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THE LEGISLATIVE FRAMEWORK

Optional ICO conditions (NSW)

- Accept any direction by supervisor in relation to maintenance of or obtaining employment
 - Authorise contact between employer and supervisor
 - Comply with direction as to kinds of employment in which the offender may not engage
 - Comply with direction not to associate with specified persons
 - Not to consume alcohol
 - Comply with direction not to go to specified places
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DATA ON USE

- 42,000 people in full-time custody in March 2018
- imprisonment rate 222 per 100,000 (29% increase over 5 years)
- 3,679 defendants received an order of 'custody in the community' (CC) in 2016-17 - 0.7% of the 527,013 defendants sentenced; prison accounted for 8% of all sentences imposed (ABS 2017)
- CC includes home detention and 'other custody in the community nec', but CCOs account for nearly 90% of custody in the community

	Number of CC orders	% of total orders imposed
Higher courts	733	5%
Magistrates' Court	2449	0.5%
Children's Court	500	2%

DATA ON USE

	As a % of all CC	As a % of all sentences for offence
01 Homicide	0%	2%
02 Assaults	27%	2%
03 Sex offences	4%	3%
04 Dangerous/negligent acts	6%	1%
05 Abduction, harassment	1%	1%
06 Robbery	3%	5%
07 Burglary	7%	2%
08 Theft	6%	1%
09 Fraud, deception	6%	2%
10 Drug offences	14%	1%
11 Weapons offences	3%	1%
12 Property damage/environmental pollution	2%	1%
13 Public order offences	1%	0%
14 Traffic offences	15%	0%
15 Offences against justice	3%	0%
16 Miscellaneous offences	0%	0%

DATA ON USE

	Most common offence as % of all CC	Most common offence as % of all sentences for offence
Higher courts	Drug offences (52%) Assaults (12%)	Traffic offences (14%) Miscellaneous (9%)
Magistrates' Court	Assaults (29%) Traffic offences (22%)	Sex offences (3%) Robbery, burglary and fraud (all 2%)
Children's Court	Assaults (42%) Burglary (13%)	Robbery (9%) Abduction (5%)

DATA ON USE


	Number of CC orders imposed	CC as a % of all CC imposed	CC as a % of all sentences imposed
NSW	1658	45%	1%
Vic	621	17%	1%
Qld	250	7%	0%
SA	1006	27%	4%
WA	0	0%	0%
Tas	0	0%	0%
NT	112	3%	1%
ACT	34	1%	1%

DATA ON USE

	Mean length (months)	Median length (months)
Higher courts	22	21
Magistrates' Court	10	9
Children's Court	9	9


RESEARCH ON EFFECTIVENESS

Clare Ringland, *Intensive correction orders vs other penalties: offender profiles (BOCSAR, 2012)*

- written shortly after ICOs were introduced in NSW, concurrent with the abolition of periodic detention (PD)
 - considered the profile of offenders receiving ICOs and found that, when compared with offenders receiving periodic detention, a suspended sentence with supervision, a CSO or prison, those who received ICOs were most similar to those who received PD in the preceding year
 - ICOs seemed to have achieved their objective as a replacement for PD
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RESEARCH ON EFFECTIVENESS

Clare Ringland, *Sentencing outcomes for those assessed for intensive correction order suitability (BOCSAR, 2013)*

- preceded some of the changes that restricted the availability of ICOs for certain offences
 - examined the outcomes of assessments for ICOs, including the penalties imposed on those deemed unsuitable
 - 55% of assessments resulted in an ICO
 - of those that did not, the most common penalties imposed were prison (58%) or a suspended sentence (24%)
 - ICOs functioning as an alternative to full-time imprisonment
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RESEARCH ON EFFECTIVENESS

Clare Ringland and Don Weatherburn, *The impact of intensive correction orders on re-offending (BOCSAR, 2014)*

- sought to examine the risk of re-offending of those who received an ICO, relative to those who received PD and supervised suspended sentences
 - offenders on an ICO had 33% less risk of re-offending than one on PD
 - no significant difference in re-offending between those who received ICOs and supervised suspended sentences after taking into account their LSI-R risk assessment scores
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RESEARCH ON EFFECTIVENESS

Joanna Wang and Suzanne Poynton, *Intensive correction orders versus short prison sentence: A comparison of re-offending (BOCSAR, 2017)*

- compared reoffending rates between those who received an ICO and those who received a short prison sentence (< 2 years)
 - 11%-31% reduction in the odds of re-offending for an offender who received an ICO compared with prison sentence
 - ‘further strengthen the evidence base suggesting that supervision combined with rehabilitation programs can have a significant impact on reoffending rates’
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RESEARCH ON EFFECTIVENESS

Victorian Sentencing Advisory Council

<https://www.sentencingcouncil.vic.gov.au/projects/community-correction-order-monitoring>

- Community Correction Orders Monitoring Report
- Community Correction Orders: Second Monitoring Report (Pre-Guideline Judgment)
- Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)

RESEARCH ON EFFECTIVENESS

Report for ACT Government on intensive supervision orders

http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Bartels_JACS_ISO_report.pdf

The available evidence generally suggests fairly high rates of compliance with the orders. Some cost-benefit analyses suggest these options are more economical than prison, although there is also evidence of net-widening (ie, imposition of these orders on offenders who would not otherwise have been sentenced to prison). Caution must therefore be taken to ensure that intensive supervision orders which are intended to be used as a substitute for imprisonment are not imposed on offenders who would otherwise receive a more lenient disposition.

RESEARCH ON EFFECTIVENESS

Report for ACT Government on intensive supervision orders


There are mixed findings in terms of the impact of these options on reoffending patterns. What does emerge, however, is that approaches which are predominantly surveillance-focused are less likely to result in behavioural change than those that adopt a therapeutic philosophy, emphasise support for offenders, and seek to address their underlying risks and needs. 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. In this context, it is important to remember that offenders commonly have multiple needs, and multi-modal holistic interventions that address a range of risks and needs are more likely to be effective.

ARE CCOs AN APPROPRIATE ALTERNATIVE TO IMPRISONMENT?

- suitable alternative in appropriate circumstances
- offenders who receive ICOs are less likely than those on short prison sentences to reoffend
- prison is 9 x more expensive than community sentences
- however, the onerous expectations can be challenging for offenders, especially those experiencing
 - mental illness
 - cognitive impairment
 - substance abuse issues and/or
 - living in rural and remote areas

ARE CCOs AN APPROPRIATE ALTERNATIVE TO IMPRISONMENT?

Australian Law Reform Commission, *Pathway to Justice* (2017: Recs 7-1, 7-2):

- governments should work with Aboriginal and Torres Strait Islander organisations to improve access to community-based sentencing options for Aboriginal and Torres Strait Islander offenders by:
 - expanding the geographic reach of community-based sentencing options, particularly in regional and remote areas
 - providing community-based sentencing options that are culturally appropriate
 - making community-based sentencing options accessible to offenders with complex needs, to reduce reoffending
 - using the Victorian CCO regime as an example, governments should implement community-based sentencing options that allow for the greatest flexibility in sentencing structure and the imposition of conditions to reduce reoffending
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ARE CCOs AN APPROPRIATE ALTERNATIVE TO IMPRISONMENT?

Boulton [2014] VSCA 342

[104] For so long as imprisonment has appeared to be the only option available for offending of any real seriousness, sentencing courts have had no occasion to reflect either on the severity of imprisonment as a sanction or on its ineffectiveness as a means of rehabilitation. As to the first, imprisonment is uniquely punitive because of that feature which distinguishes it from all other forms of sanction, namely, the complete loss of liberty. But imprisonment has a number of other punitive features, apart from the loss of physical freedom.

[105] **There is the loss of personal autonomy and of privacy, and the associated loss of control over choice of activities and choice of associates.**

The prisoner is subject to strict discipline, restriction of movement, forced association with other prisoners and — for a substantial part of each day — **confinement in a small cell** (in many instances, a cell shared with a cellmate not of the prisoner's choosing). There is, moreover, exposure to the risks associated with the confinement of large numbers of people in a small space — **violence, bullying, intimidation....**




ARE CCOs AN APPROPRIATE ALTERNATIVE TO IMPRISONMENT?

Boulton [2014] VSCA 342 ctd.

[108] In addition, imprisonment is often **seriously detrimental for the prisoner, and hence for the community**. The regimented institutional setting induces habits of dependency, which lead over time to institutionalisation and to behaviours which render the prisoner unfit for life in the outside world. Worse still, **the forced cohabitation of convicted criminals operates as a catalyst for renewed criminal activity upon release. Self-evidently, such consequences are greatly to the community's disadvantage....**

[112] Given the adverse features of imprisonment to which we have referred, the conclusion that imprisonment is the only appropriate punishment amounts to a conclusion that the retributive and deterrent purposes of punishment must take precedence. Put another way, it is a conclusion that the offender's 'just deserts' for the offence in question require imprisonment, **even though the court is well aware that the time spent in prison is likely to be unproductive, or counter-productive, for the offender and hence for the community.**



ARE CCOs AN APPROPRIATE ALTERNATIVE TO IMPRISONMENT?

Boulton [2014] VSCA 342 ctd.

[113] **The availability of the CCO dramatically changes the sentencing landscape.** The sentencing court can now choose a sentencing disposition which enables all of the purposes of punishment to be served simultaneously, in a coherent and balanced way, in preference to an option (imprisonment) which is skewed towards retribution and deterrence.

[114] The CCO option offers the court something which no term of imprisonment can offer, namely, **the ability to impose a sentence which demands of the offender that he/she take personal responsibility for self-management and self-control** and (depending on the conditions) that he/she pursue treatment and rehabilitation, refrain from undesirable activities and associations and/or avoid undesirable persons and places. The CCO also enables the offender to maintain the continuity of personal and family relationships, and to benefit from the support they provide.

[115] In short, **the CCO offers the sentencing court the best opportunity to promote, simultaneously, the best interests of the community and the best interests of the offender and of those who are dependent on him/her.**