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## Sentencing outcomes for those assessed for intensive correction order suitability

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**Aim:** To examine outcomes of assessments for intensive correction orders, including the penalties imposed on those deemed unsuitable.

**Method:** Assessment data for intensive correction orders were obtained from Corrective Services NSW and linked to finalised court appearances between 1 October 2010 and 30 September 2012. The proportion of assessment episodes associated with a finalised court appearance where an intensive correction order was imposed and the penalties imposed on offenders who did not receive an intensive correction order were examined.

**Results:** 2,580 assessment episodes were identified, with 93 per cent ( $n=2,389$ ) linked to a finalised court appearance. Of these assessment episodes linked to a court appearance, 55 per cent resulted in an intensive correction order. Of the assessment episodes linked to a finalised court appearance resulting in a sentence other than an intensive correction order, the most common penalties imposed were imprisonment (58%), a suspended sentence with supervision (16%) and a suspended sentence without supervision (8%).

**Conclusion:** In line with intensive correction orders being introduced as an alternative to full-time imprisonment, the vast majority of offenders assessed for an intensive correction order who do not receive one instead receive a penalty of imprisonment or an alternative form of imprisonment (i.e., home detention or a suspended sentence).

**Keywords:** assessment, imprisonment, intensive correction orders, offenders, sentencing

### Introduction

Intensive correction orders (ICOs) were introduced in New South Wales (NSW) in October 2010 as an alternative to imprisonment. If an offender is assessed to be suitable, sentences of imprisonment of not more than 2 years can be served by way of intensive correction in the community, under the supervision of Corrective Services NSW (CSNSW).

An offender may be referred for an ICO suitability assessment if the court is satisfied that no sentence other than imprisonment is appropriate and that the sentence is likely to be for a period of no more than 2 years. An offender's assessment report must take into account the following factors:

- the criminal history of the offender, and the likelihood that the offender will re-offend;
- any risks associated with managing the offender in the community;
- the likelihood that the offender will commit a domestic violence offence;

- the suitability of the offender's accommodation;
- any drug and/or alcohol dependency of the offender;
- any physical and/or mental health condition of the offender; and
- the availability of resources and interventions to address factors associated with the offender's offending.

A court may make an ICO *only if* the assessment report states that the offender is a suitable person to serve the sentence by way of intensive correction in the community. Further, the court may, for any reason it considers sufficient, decline to make an ICO even if an offender is assessed to be a suitable person for an ICO. If an offender is assessed as not being suitable, the court must then consider whether home detention, a suspended sentence or full-time imprisonment is appropriate. However, concerns have been raised that in some instances offenders assessed as unsuitable are receiving penalties which are lower in the sentencing hierarchy (NSW Sentencing Council, 2012).

## Aim

The aim of this brief is to summarise the sentencing outcomes for those assessed for ICO suitability. More specifically, we examine the:

- proportion of assessment episodes resulting in an offender receiving an ICO;
- sentences imposed on those who do not receive an ICO; and
- most common factors contributing to an offender being assessed as unsuitable for an ICO.

## Method

### Data

ICO suitability assessment data were provided by CSNSW. Included in these data were: offender identifiers, a range of date variables (corresponding to when the assessment was requested and completed and the assessment report due), the name of the court requesting the assessment, and the outcome of the assessment (in terms of whether the offender was suitable or unsuitable for intensive corrections).

Assessments sometimes identified factors that contributed to an offender being deemed unsuitable. These included:

- accommodation and other;
- alcohol and/or other drugs;
- disability;
- medical/physical and other;
- multiple factors;
- mental health;
- other;
- fail/refuse to comply – offender;
- fail/refuse to comply – co-resident;
- no worksite available.

Assessment data included multiple records per person where there was an adjournment, the offender was re-assessed, or there were multiple outcomes (e.g., more than one reason for being unsuitable). For the purpose of this study, where assessment records for the one person occurred within 60 days of each other, they were aggregated and the final outcome of the assessment episode was examined.<sup>1</sup>

In order to identify the sentencing outcomes of those assessed for an ICO, ICO assessment data were linked to finalised court appearances in the Re-Offending Database (ROD), maintained by the NSW Bureau of Crime Statistics and Research (BOCSAR). ROD contains information on all finalised court appearances in NSW since 1994. For this study, court appearances were restricted to those finalised between 1 October 2010 and 30 September 2012. A range of variables (e.g., offender identifiers,

date variables, and court name) were used to link finalised court appearances to assessment data. As no information on offence type, offence date, charge or case number was available in the assessment data provided by CSNSW, a set of rules was applied to identify the finalised court appearance most likely to correspond to an ICO assessment episode. Preference was given to court appearances finalised close to the discharge date of an assessment, to those where the court (at first or final court appearance) matched the court requesting the assessment, and to those with more serious penalties (i.e., imprisonment, home detention, ICOs, suspended sentences). Of interest to this study was the principal penalty resulting from this finalised court appearance. As we were interested in the original sentencing decision following ICO assessment, ICO assessment data relating to appeals or the State Parole Authority were excluded from this study.

Data on finalised court appearances were only available up until 30 September 2012. Some court appearances relating to assessment episodes may not have been finalised by this time. It is also possible that the matching rules applied may not result in the correct finalised appearance (i.e., the appearance related to the assessment) being identified. To check the validity of the linking of court finalisations to assessment episodes described previously, further analyses were undertaken which examined the most serious penalty received within 12 months of the ICO assessment. These analyses were restricted to those assessed up until 30 September 2011 (i.e., to ensure 12 months of court data post assessment were available).

### Sample

The sample consisted of those who had an ICO assessment episode between October 2010 and September 2012.

By applying the matching rules, 93 per cent (n=2,389) of the 2,580 assessment episodes with an assessment date of discharge between October 2010 and September 2012 were linked to a court appearance.

### Statistical analysis

Descriptive statistics are provided detailing the:

- proportion of assessment episodes that were linked to a finalised court appearance that resulted in an ICO;
- penalties imposed on those who did not receive an ICO; and
- reasons for classifying an offender as unsuitable for an ICO (e.g., accommodation, alcohol and other drugs, mental health).

## Results

Between 1 October 2010 and 30 September 2012, 2,580 ICO assessment episodes were identified. Of these, 51 per cent (n=1,304) were linked to a finalised court appearance that

resulted in an ICO, 42 per cent (n=1,085) were linked to a finalised court appearance that resulted in a penalty other than an ICO, and 7 per cent (n=191) could not be linked to a court appearance finalised between October 2010 and September 2012. Excluding those episodes that could not be linked to a finalised court appearance, 55 per cent of episodes were linked to a finalised court appearance that resulted in an ICO.

### Principal penalty at court appearance not linked to an ICO

Presented in Table 1 are the principal penalties associated with assessment episodes that were not linked to an ICO, excluding those where a court appearance was not identified. The most common sentences that were linked to assessment episodes not associated with an ICO were imprisonment, suspended sentences with supervision and suspended sentences without supervision. Approximately 86 per cent of episodes were linked to a finalised appearance that resulted in imprisonment or an alternative form of imprisonment (i.e., home detention or a suspended sentence).

### Most serious penalty within 12 months of assessment episode

An additional examination was undertaken to determine the most serious penalty received within 12 months of an assessment episode for those episodes conducted between October 2010 and September 2011. For this period, 1,054 assessment episodes were identified, of which 45 per cent (n=474) were linked to a finalised court appearance within 12 months that resulted in an ICO, 49 per cent (n=521) were linked to a finalised court appearance that resulted in a penalty other than an ICO, and 6 per cent (n=59) could not be linked to a finalised court appearance within 12 months of the assessment episode. Table 2 presents the most serious penalties received for those who did not receive an ICO, where a finalised court appearance within 12 months was identified.

Data shown in Table 2 are largely consistent with Table 1. For those who did not receive an ICO, the most common penalties within 12 months of an assessment episode were imprisonment, suspended sentences with supervision and suspended sentences without supervision; 86 per cent of those who did not receive an ICO received a penalty of imprisonment, or an alternative form of imprisonment, within 12 months of the assessment episode.

### Factors contributing to unsuitability

For 44 per cent of assessment episodes that were not associated with a penalty of an ICO, factors contributing to the assessment were not specified. Nevertheless, presented in Table 3 are the most commonly recorded factors that contributed to offenders being assessed as unsuitable for an ICO. For those assessment episodes that did not result in an ICO, alcohol and other drugs was the most frequently identified contributing factor (23%; 41% of those where a factors was specified).

**Table 1. Principal penalties associated with assessment episodes not linked to an intensive correction order, October 2010 to September 2012 (n=1,085)**

Penalty	n	per cent
Imprisonment	633	58.3
Home detention	41	3.8
Suspended sentence with supervision	170	15.7
Suspended sentence without supervision	90	8.3
Community service order	15	1.4
Bond with supervision	31	2.9
Bond without supervision	26	2.4
Fine	27	2.5
Other	52	4.8

**Table 2. Most serious penalties received within 12 months of assessment episodes not linked to an intensive correction order, October 2010 to September 2011 (n=521)**

Penalty	n	per cent
Imprisonment	296	56.8
Home detention	17	3.3
Suspended sentence with supervision	84	16.1
Suspended sentence without supervision	49	9.4
Community service order	8	1.5
Bond with supervision	13	2.5
Bond without supervision	17	3.3
Fine	16	3.0
Other	21	4.0

**Table 3. Suitability-related issues identified in assessment episodes that were linked to a penalty other than an intensive correction order (n=1,085)**

Factor	n	per cent
Unknown/no factor specified	481	44.3
Alcohol and other drugs	249	22.9
Other	158	14.6
Medical/physical and other	51	4.7
Mental health	50	4.6
Fail/refuse to comply – co-resident	47	4.3
Multiple factors	36	3.3
Accommodation and other	29	2.7

Note. More than one factor may have been recorded. As such, numbers in the table do not add to 1,085.

## Discussion

ICOs were introduced in NSW in October 2010 as an alternative to imprisonment. Before being placed on an ICO, offenders must be assessed as suitable to serve their sentence of imprisonment by way of intensive correction in the community. The purpose of this brief was to examine the outcomes of assessments for ICO suitability, with a focus on the penalties imposed on those who did not receive an ICO.

Of the 2,389 assessment episodes that could be linked to a finalised court appearance between October 2010 and September 2012, 55 per cent resulted in offenders receiving a penalty of an ICO. Of those who did not receive an ICO, 58 per cent received a sentence of imprisonment, 24 per cent received a suspended sentence and 4 per cent received a penalty of home detention. Thus, of the assessment episodes that were linked to a finalised court appearance that resulted in a penalty other than an ICO, 86 per cent resulted in either a sentence of imprisonment or an alternative form of imprisonment (i.e., home detention or a suspended sentence). Where a reason was provided for an offender being assessed as unsuitable, the most common reason identified was alcohol and other drugs.

The data presented suggest that up to 14 per cent of offenders who were assessed but did not receive an ICO may have received a penalty lower on the sentencing hierarchy. However, this finding may have been a consequence of the method used to link a finalised court appearance to an assessment episode. One limitation of this study is that we had limited information from the assessment episode (e.g., charge number, offence type) that could be used to link offenders to the court appearance for which they were referred for an ICO assessment. This means that there may be some error in the penalties identified from the ROD records. Having said this, the results of the second analysis, which relied on a different methodology for identifying penalties given to offenders assessed for ICO, confirmed the results of the linking study; suggesting that any error in the matching process is likely to be small. Further research using more accurate offence information would increase our confidence in the findings reported here.

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## Notes

- 1 By adopting this approach some records that did legitimately correspond to multiple episodes and finalised court appearances may have been combined, while other records more than 60 days apart that were indeed related to the same matter would have been treated as separate episodes. However, assessment episodes commonly consisted of only one record.

## References

NSW Sentencing Council. (2012). *Sentencing trends and practices: Annual report 2011*. Retrieved from [http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/\\_assets/sentencing/m44500113/sentencing%20trends%20and%20practices%202011%20final.pdf](http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/_assets/sentencing/m44500113/sentencing%20trends%20and%20practices%202011%20final.pdf)