

Protocol between
Community Correctional Services,
Corrections Victoria
and
Child Protection,
Department of Human Services

2013

Foreword

On Monday, 16 January 2012, the existing range of community based sentencing options were replaced with the new Community Correction Order (CCO) as part of the Victorian Government's ongoing commitment to progressive community sentencing reform towards full abolition of suspended sentences. The new CCO has provided the courts with a range of program conditions and powers to tailor the sentence to the individual circumstances of each offender and the severity of offending, including conditions that restrict movement and association.

Corrections Victoria and Child Protection, Department of Human Services have jointly developed this protocol recognising the need to ensure seamless communication, coordination and processes for the exchange of information between staff of the respective departments.

The protocol provides guidance to staff regarding responsibilities and obligations to ensure the effective exchange of information regarding offenders being assessed at court for, or subject to, Community Correction Orders. It establishes procedures for handling areas of confusion or conflict and sets up channels for communication and liaison to deal with questions on process and procedures or unforeseen problems.

While the protocol aids effective communication lines between the departments, it does not replace the requirements for open and collaborative relationships at the operational level where applicable. Corrections Victoria and Child Protection are committed to providing the highest level of service. This will ensure a professional, sensitive and well-targeted response to any requests or sharing of information.

Child Protection and Corrections Victoria will continue to develop increased understanding and linkages that will contribute to the development and refinement of quality service enhancements.

Endorsement

In accordance with the principles underlying this protocol, we the undersigned, on behalf of our respective units, agree to this protocol to act as guidelines for our staff to ensure the cooperative framework necessary for the collection and disclosure exchange of personal information regarding offenders being assessed at court in relation to, or offenders subject to Community Correction Orders.

Jan Shuard
Commissioner
Corrections Victoria

Arthur Rogers
Deputy Secretary
Service Design and Implementation Group &
Director of Housing
Department of Human Services

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Definitions

CCS	Community Correctional Services
CCO	Community Correction Order
CP	Child Protection
CV	Corrections Victoria
DHS	Department of Human Services

1. Purpose of the Protocol

The purpose of the protocol between Corrections Victoria (CV) and Child Protection (CP) is to identify the processes for requesting and exchanging information regarding:

- assessments of offenders being considered for a Community Correction Order (CCO) with an attached Residence Restriction, Curfew and/or Alcohol Exclusion condition; and
- children who may reside or have overnight access in the household of the offender.

2. Community Correction Order (CCO)

The CCO provides the courts with a range of optional program conditions to tailor community-based sentencing to the individual risks and needs of each case, and the gravity of the offence/s, including new conditions that restrict offender movement and association, in order to reduce the likelihood of further offending or protect those affected by the crime.

At least one optional condition must be attached to the CCO by the court, and may include the following specific conditions, as the subject of this protocol:

2.1 Residence Restriction/Exclusion:

- The offender must reside at a place specified on the order;
- If a residence restriction condition is attached to a CCO, the order must be varied if an offender relocates;
- The condition must be consistent with Intervention Order requirements in place.

2.2 Curfew

Courts may use the curfew condition to require that an offender stay at home for up to 12 hours a day, (or for specified days in the week) to stop them going out at night or other times and engaging in further criminal behaviour.

- The curfew restriction must not be less than two hours or greater than 12 hours per day;
- The offender is to be at the specified address during the specified hours;
- This condition must not exceed six months; and,
- Must be consistent with Intervention Order requirements in place;
- Outside of the curfew, offenders are able to maintain employment or education, and attend appointments with their Case Manager, without requiring specific permission from a corrections officer.

2.3 Alcohol Exclusion

Under the alcohol exclusion condition, courts have the power to ban offenders from entering or consuming alcohol in licensed premises defined in the legislation.

- Offenders must not enter the bar area or consume liquor anywhere on the licensed premises, or will be in contravention of their order;
- The court may specify a licensed premise to which restrictions do NOT apply;
- The court may specify hours each day that the condition applies or that it will apply at all times.

The Courts will determine offenders' eligibility for a CCO as prescribed by the *Sentencing Act 1991* and *Corrections Act 1986*. Under Division 1A, sections 8 and 37 of the *Sentencing Act 1991*, if a court finds a person guilty of an offence and is considering making a CCO, it is required to order a pre-sentence assessment from CCS, and have regard for any recommendations, information or matters identified in the Pre-Sentence Report.¹

CCS is tasked with undertaking assessments of offenders for suitability for a CCO, including recommendations relating to specific program conditions that may be attached. CCS is also responsible for the case management of offender, applying the Corrections Victoria Offender Management Framework, and for addressing non-compliance with the Order, which may result in the offender returning to Court for breach proceedings.

3. Statutory Responsibilities

The statutory responsibilities of CV in relation to assessing and administering a range of community based sentencing dispositions are outlined in the *Sentencing Act 1991*, *Sentencing Regulations 2002* and *Corrections Act 1986*.

Child Protection has statutory responsibility pursuant to the provisions of the *Children, Youth and Families Act 2005* (CYFA), in relation to CP for all children and young people in Victoria under the age of 17 years (or under 18 years where a Protection Order is in force).

The Charter of Human Rights and Responsibilities Act 2006 (*the Charter*) is relevant to the operation of the Community Correction Order. In particular, Section 17 of *the Charter* is relevant where the rights of families and children are relevant to the offender being assessed as suitable to be subject to a Community Correction Order, in particular where attached program conditions include Residence Restriction, Curfew and/or Alcohol Exclusion.

4. Purpose of the exchange of information

The provision of relevant information by CP to CCS is to facilitate assistance for assessment officers in their decision making regarding offender suitability for a Community Correction Order where the court is considering imposing a Residence Restriction, Curfew and/or Alcohol Exclusion condition.

¹ The court is not required to order a pre-sentence report if it is considering making a Community Correction Order with an unpaid community work condition of up to a maximum of 300 hours as the sole condition attached to the order.

4.1 Information sharing

Pursuant to the provisions of the Corrections and Sentencing Acts, CCS is empowered to assess and make recommendations about an offender's suitability for a CCO. A significant aspect of the assessment in relation to Residence Restriction, Curfew and/or Alcohol Exclusion conditions involves ensuring the safety of intended co-residents of the offender/prisoner. To assist with this aspect of the assessment, DHS will be invited to make comment on cases where an offender is being considered for a CCO where these optional program conditions are being proposed.

For the purposes of this arrangement, a child is a person who has not reached the age of 17 years, or a child in respect of whom a Protection Order under the *Children, Youth and Families Act 2005* remains in force and who has not reached the age of 18 years.

CCS Court Assessment Officers/Case Managers may make written requests for information to the Child Protection Unit of DHS. Information will be requested about the offender, as the subject of the pre-sentence assessment, and/or children who are expected to reside or have overnight access in the household of the offender.

Each request will be accompanied by:

- Unambiguous identifying information about each person in respect of whom information is sought;
- For each child, written evidence of the informed consent of a parent, to disclosure of child protection records; such consent to include specific consent to disclose the content of Protection Reports, Disposition Reports and Additional Reports provided to the Children's Court;

All requests from CCS must be emailed to CPBackgroundChecks@dhs.vic.gov.au. The Operations and Practice Team, Child Protection Unit is responsible for responding to requests for information in relation to this protocol. At 14 March 2013, the Manager, Operations and Practice contact details are: phone 9096 7001; and fax 9096 1290.

DHS will provide written information in response to any such requests within three clear weeks of receiving the written request for information from CCS. Such information may include both factual and evaluative material, some of which may be subject to legal restrictions on its further dissemination, for instance by being tendered in evidence to a court. CCS undertakes not to directly quote information provided to it by CP and to advise CP if any of the information provided is likely to be tendered in evidence or become the subject of cross-examination in Court proceedings. The purpose of this advice is to enable CP to obtain legal advice as to any restrictions of which the Court should be made aware.

The purpose of CCS requesting and DHS providing the information is to enable CCS to make a decision about the risk to any person if a Residence Restriction, Curfew and/or Alcohol Restriction condition were to be attached to a CCO in a particular case. The information provided will only be used for this purpose, except as otherwise required by law.

CCS undertakes to hold the information securely at all times and to return it to DHS or to destroy or de-identify it when they have no further use for it. This will usually be once proceedings before the Court have conclusively resulted in a sentence other than a CCO being made, or at the conclusion/termination of a CCO.

CCS retains the responsibility for making recommendations about the suitability of any proposed CCO.

DHS and CCS staff will abide by the agreed information sharing arrangements and legislative requirements in place in relation to registered sex offenders and/or those offenders subject to an order under the *Serious Sex Offenders (Detention and Supervision) Act* or the *Serious Sex Offenders Monitoring Act*.

5. Report to DHS by CCS

If at any time, after receiving a request to assess the suitability of a person for CCO with one of the specified conditions, CCS staff form the belief that a child is in need of protection within the meaning of section 162 of the *Children, Youth and Families Act 2005* (CYFA), they will make a report to the divisional child protection office responsible for the area where the child resides.

Pursuant to the CYFA a child is in need of protection if any of the following grounds exist:

- (a) the child has been abandoned by his or her parents and after reasonable inquiries—
 - (i) the parents cannot be found; and
 - (ii) no other suitable person can be found who is willing and able to care for the child;
- (b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

To report concerns during working hours, please call the local divisional offices. Refer <http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection/child-protection-contacts> .

If a need to make a report arises urgently outside normal business hours, the report will be made to the After Hours Child Protection Emergency Service by telephoning 131278.

The division will advise CCS, as the reporter, the outcome of the report.

6. Roles and Responsibilities

The administration and monitoring of offenders for compliance with their CCOs is the responsibility of CCS. CCS will address community or government enquiries, concerns or issues relating to or arising from the behaviour of offenders under the supervision of CCS. Refer www.justice.vic.gov.au/home/sentencing/community+corrections/ for CCS contact details.

The Department of Human Services contact for this protocol is Manager Operations and Practice, Child Protection Unit, phone 9096 7001, fax 9096 1290.

The Corrections Victoria main contact for this protocol is the Senior Project Officer, Operations Division, phone 8684 6676.

These officers will meet at the request of either party to consider questions or issues of mutual concern². All inter-service correspondence should be via email or telephone.

Each party will take steps to ensure that relevant agency officers are aware of this protocol, through the dissemination of relevant information as required.

6.1 Dispute Resolution

If there is a dispute between the Parties concerning this protocol, the parties agree that they will take all necessary steps to resolve the dispute quickly and expeditiously by mutual agreement.

Despite the existence of a dispute, each party will (unless requested not to do so, in writing by the other Party) continue to perform its obligations under this Protocol.

² Contact details in this protocol may be updated from time to time, where required.

Appendix 1 Instrument

Children, Youth and Families Act 2005

Authorisation under section 206(2)(f)

I, Arthur Rogers, being an officer who is delegated under section 17(1) of the *Children, Youth and Families Act 2005* to exercise the Secretary to the Department of Human Services' powers and functions under section 206(2)(f) of the *Children, Youth and Families Act 2005*, authorise:

Community Correctional Services staff for purposes of determining recommended conditions relating to an individual's Community Correction Order

to have access to information arising from the investigation under section 206(2)(f) of the *Children, Youth and Families Act 2005* and to the record of the investigation made under section 206(1) of the *Children, Youth and Families Act 2005*.

Signed

Arthur Rogers
Deputy Secretary
Service Design and Implementation Group &
Director of Housing
Department of Human Services

Dated