

Driving While Disqualified or Suspended: Cars, Crime and Creative Solutions

Saferoads 2008

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The Sentencing Advisory Council

- Broad sentencing-related functions
 - Advise Court of Appeal on guideline judgments
 - Provide statistical information (including information on current sentencing practices)
 - Conduct research and disseminate information
 - Gauge public opinion
 - Consult broadly
 - Advise the Attorney-General

Background

- The Sentencing Advisory Council released *Suspended Sentences Final Report Part 1 and 2* in 2004/2008
- These reports found:
 - Between 2001-7 **nearly 9000 suspended sentences imposed** for DWD/S
 - Nearly **20% of all** suspended sentences
 - The number of people sentenced for DWD/S tripled in that time: **in 2000-01, approximately 2,850** people were sentenced for the principal proven offence of DWD/S – **in 2006-07**, approximately 8,600 were sentenced.

Background

DWD/S is found under the *Road Safety Act 1986* (Vic) s 30

- First offence - 30 penalty units/imprisonment for 4 months
- Subsequent offence - 'imprisonment for **not less than 1 month** and not more than 2 years'

Background

- The offence of DWD/S has been in the statute book since 1949
- However there have been major changes in reasons for suspension or disqualification
- Council recommended abolition of mandatory minimum penalty for offence in *Suspended Sentences Final Report Part 2*

Background

- Reasons for recommendation:
 - Other, more serious offences, do not carry mandatory minimum sentences
 - May lead to disproportionate sentences
 - Increasing prevalence of offences suggests that penalties failing to meet their original objective of deterrence
 - Also recommended further research into offence, offenders and sanctions

Previous Council Report: Repeat drink drivers

- Maximum Penalties for Repeat Drink Drivers
 - Report (September 2005)
 - Legislation: *Road Legislation (Projects and Road Safety) Act 2006* (Vic)

Discussion Paper: Issues

- The elements of DWD/S, the history of the offence and the sanctions that are prescribed for it;
- the current maximum penalty, mandatory penalty and available sanctions for DWD/S;
- the elements of other similar Victorian offences and their maximum penalties and available sanctions in comparison to DWD/S;
- the approach to DWD/S in other Australian jurisdictions in terms of sentencing;
- possible new sanctions in Victoria for DWD/S;
- the human and economic costs of disqualified or suspended driving; and
- other mechanisms for dealing with DWD/S including the effect of current technology on detection rate for the offences and the use of indirect methods for enforcing licence disqualification/suspension.

Background

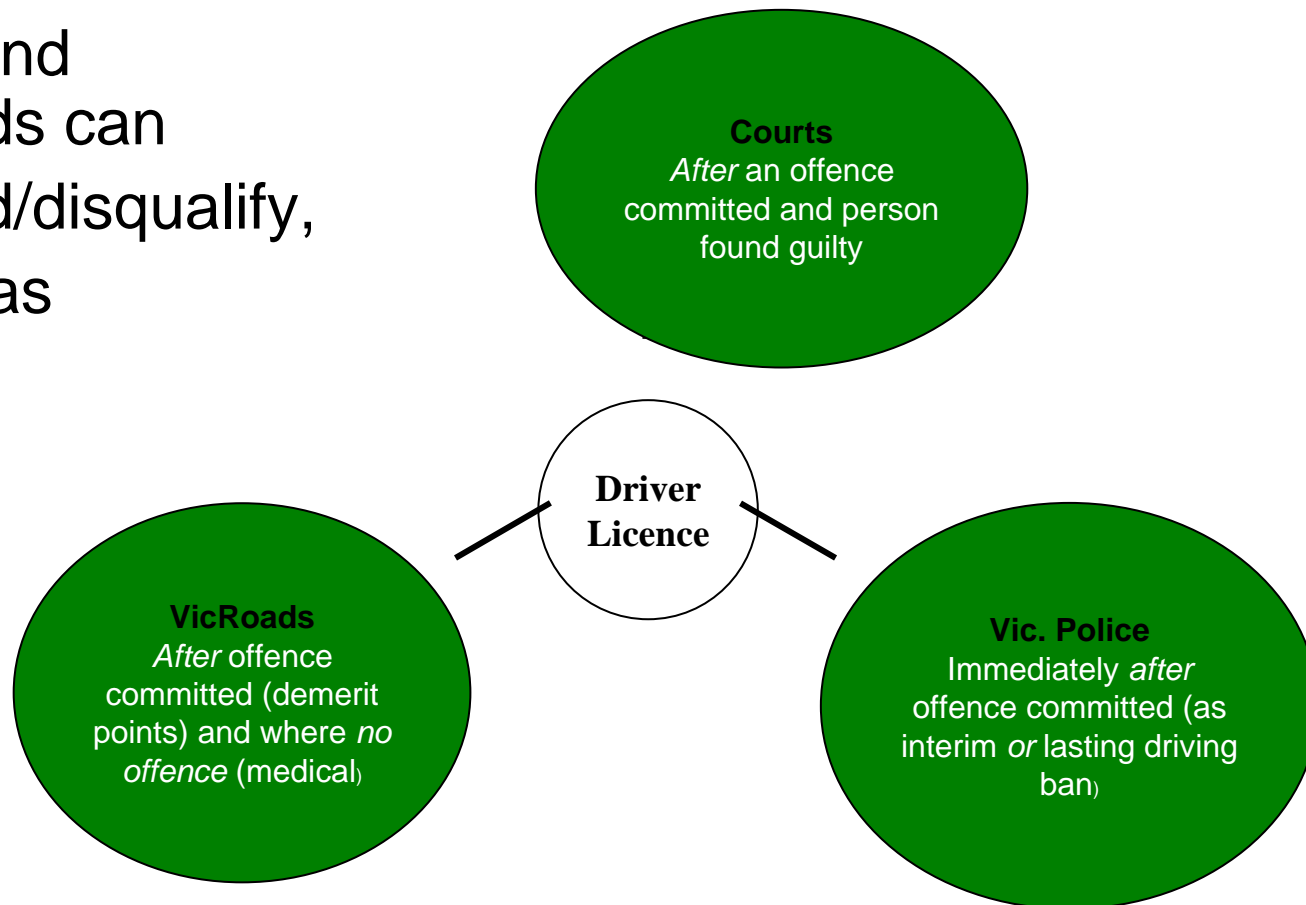
- Thus far, the Council has:
 - Met with peak government and private stakeholder groups (VicRoads, RACV etc)
 - Met with members of the legal profession and victims' groups
 - Held focus groups with people who have had their licences disqualified or suspended

Causes of disqualification/suspension

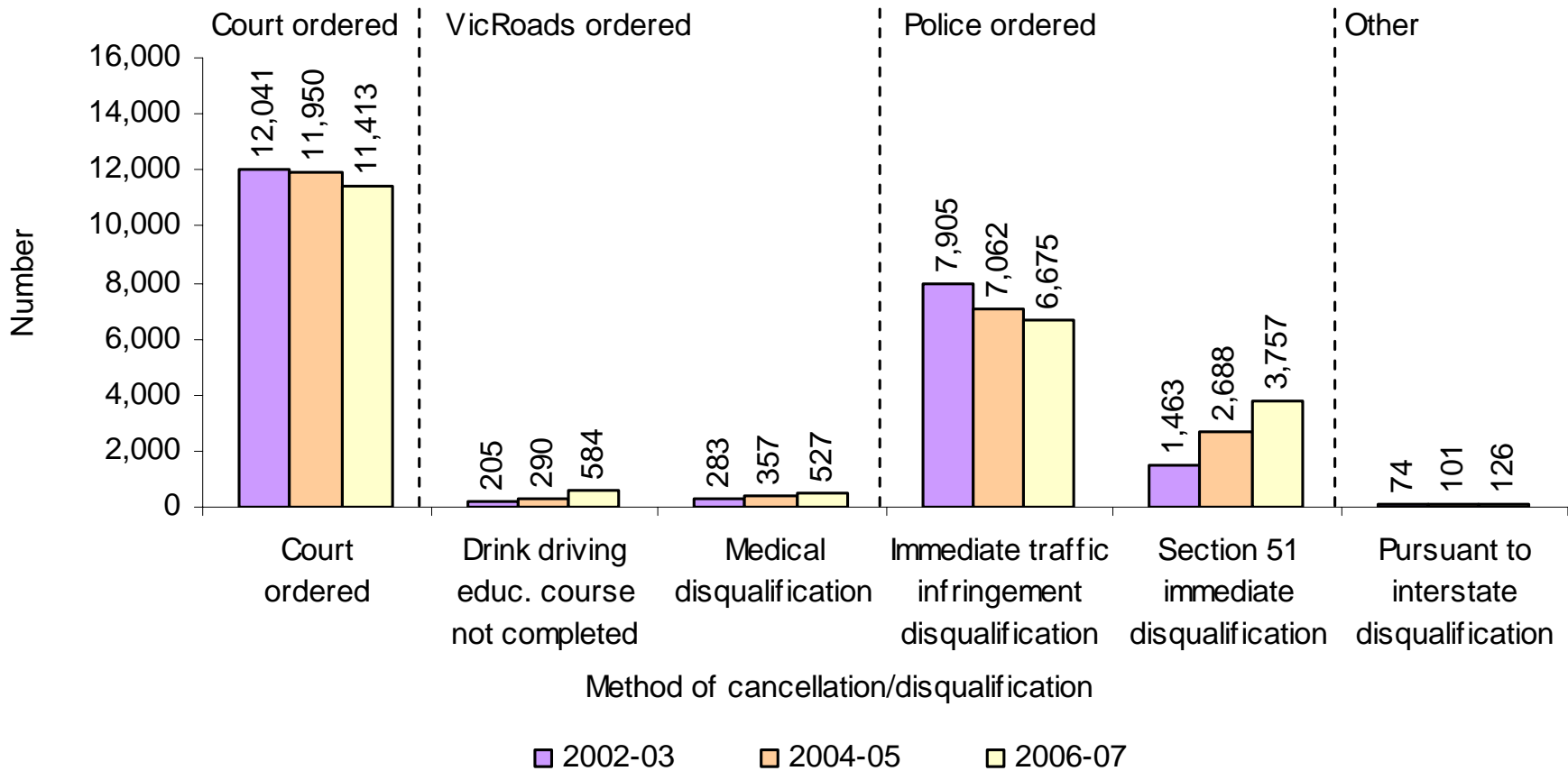
Though sanctions (and offence for breaching) them are old, the mechanisms for losing one's licence have changed

Causes of disqualification/suspension

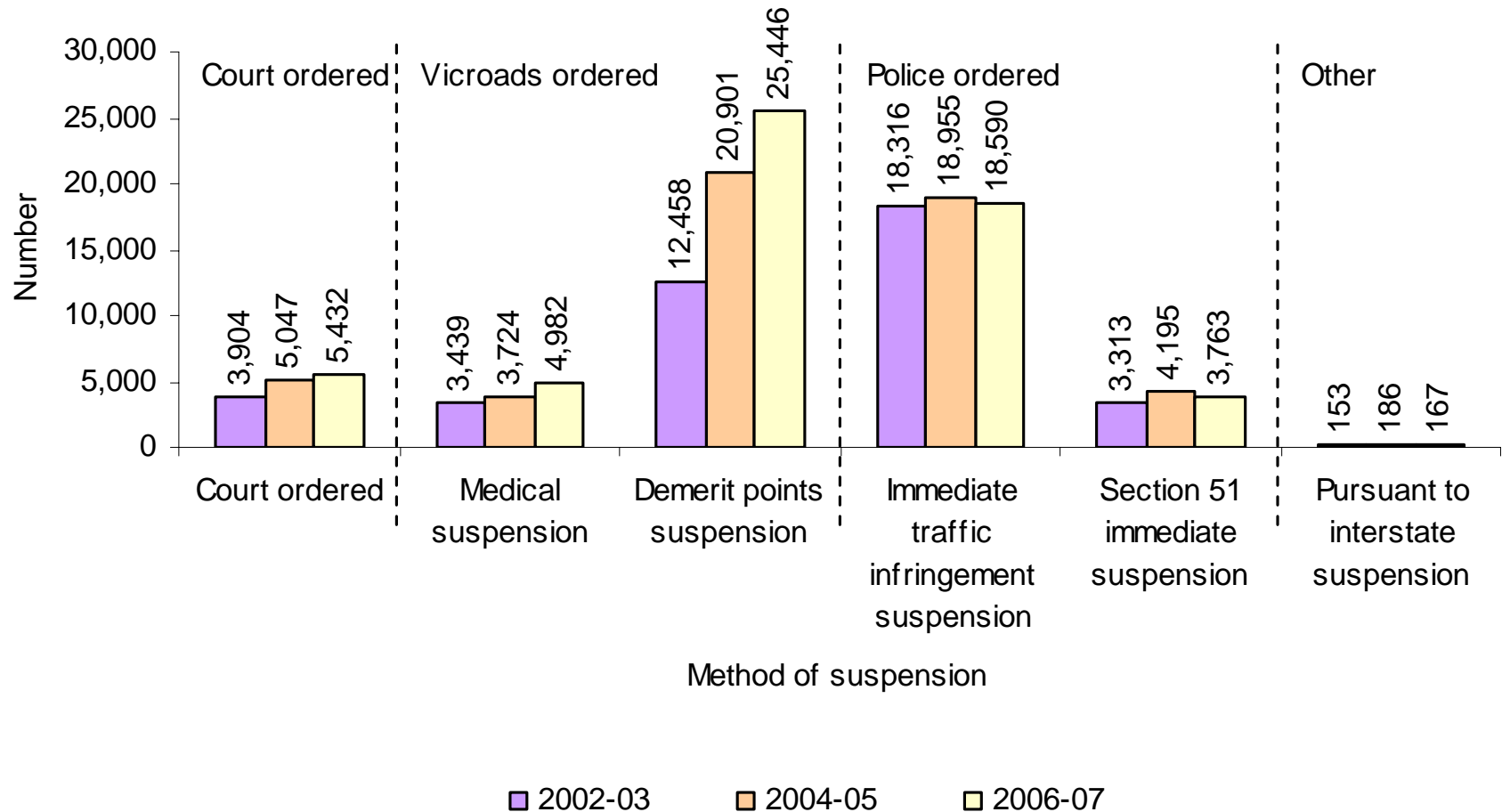
Police and VicRoads can suspend/disqualify, as well as Courts



Causes of disqualification

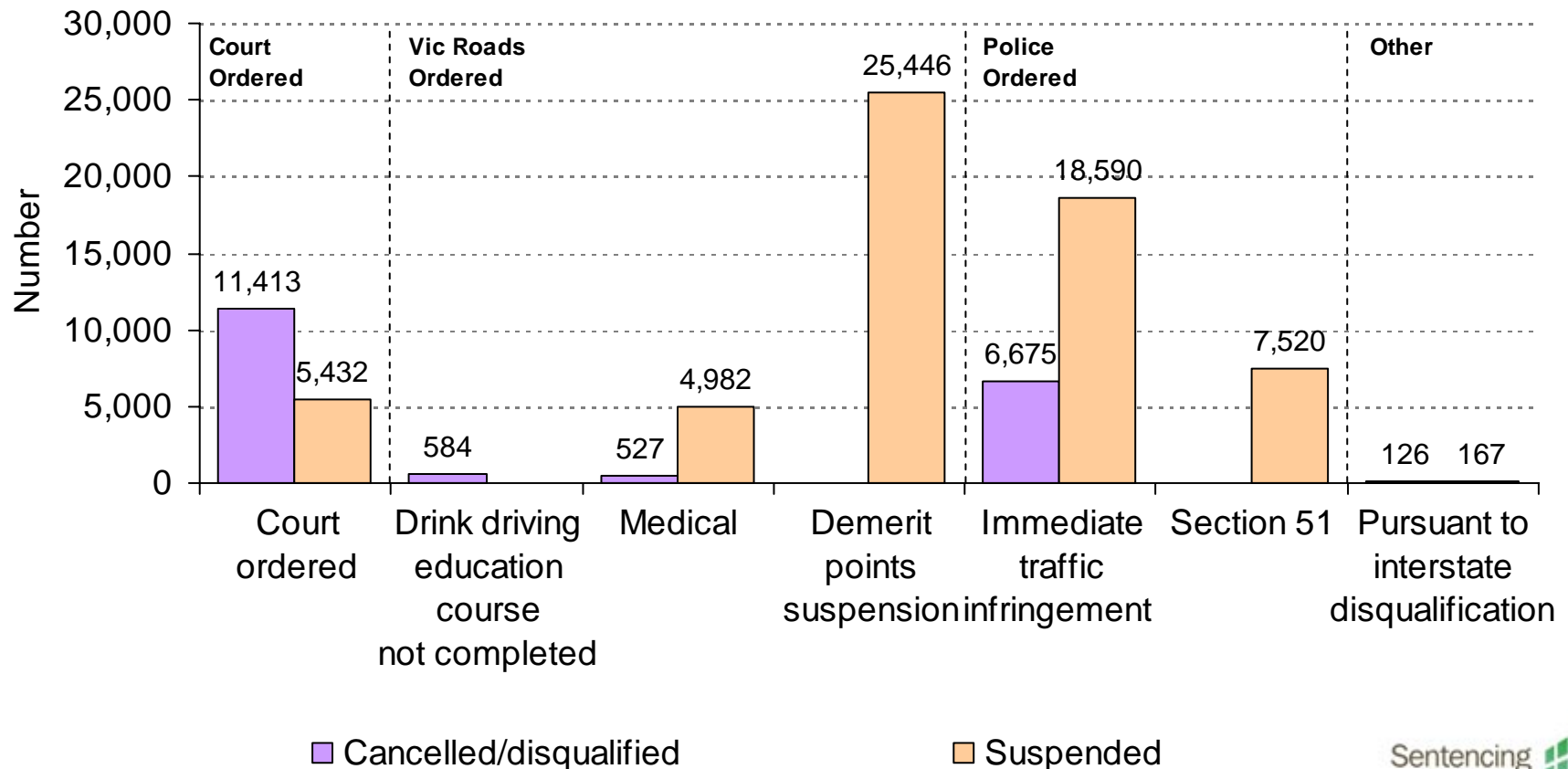


Causes of suspension



Causes – comparison (2006-07)

The number of new licence disqualifications or suspensions by method of disqualification or suspension, 2006-07



Penalties

- Currently in Victoria, the following are the primary penalties for DWD/S:
 - Imprisonment
 - Suspended sentence (wholly/partly)
 - Intensive correction order (classed as imprisonment but a lesser sanction)
 - Community based order
 - Fines
 - Other lesser orders

Penalties

- There are also some ancillary penalties for DWD/S:
 - Immobilisation, impoundment and forfeiture
 - Alcohol interlocks
 - Driver education courses
 - A further licence disqualification or suspension

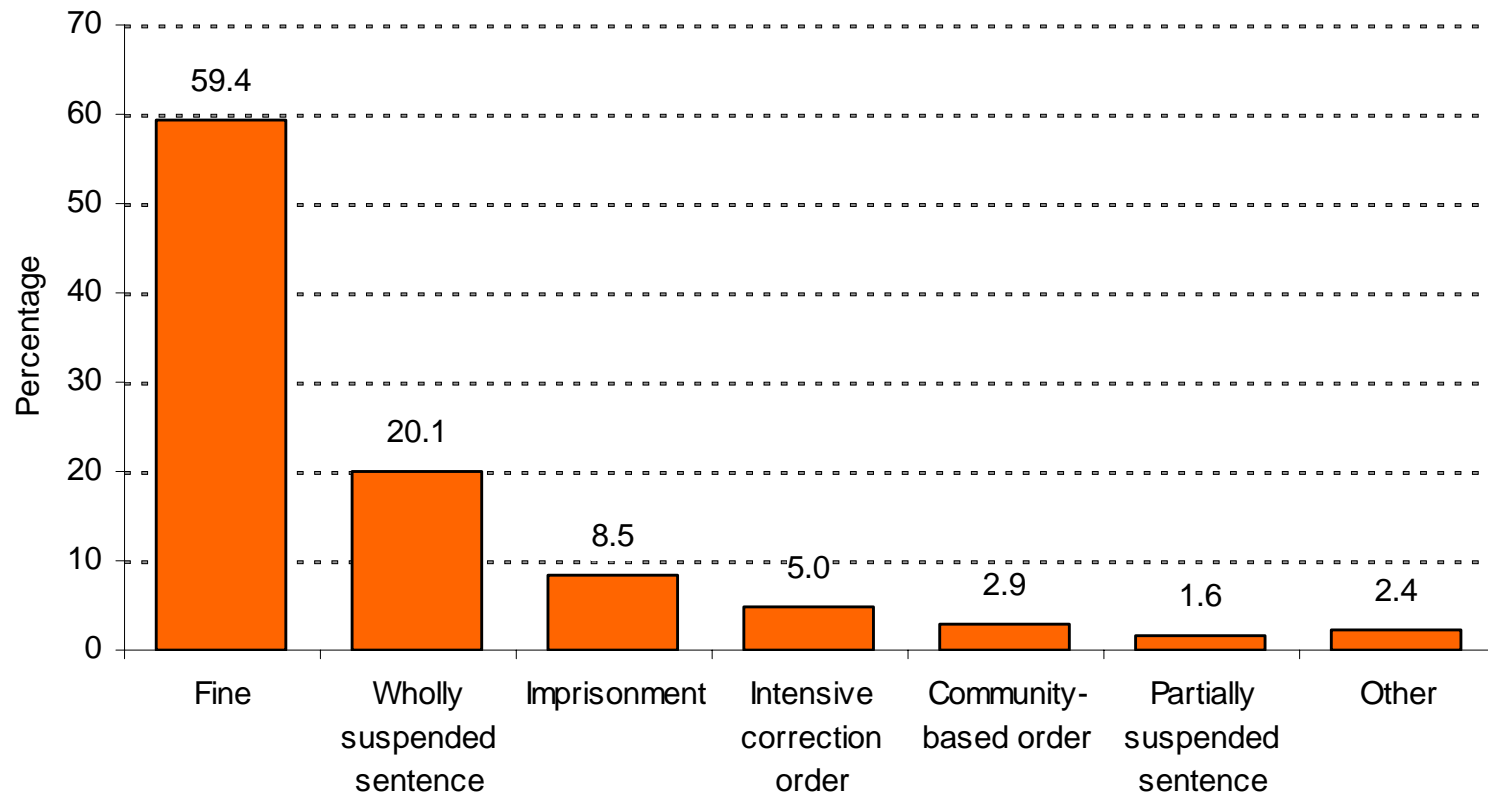
Penalties

- The disqualification/suspension periods for many offences are quite long

Level/ Concentration	Minimum Disqualification First Offence	Minimum Disqualification Repeat Offender
Less than 0.07	6 months	12 months
0.07 or more but less than 0.08	6 months	14 months
0.08 or more but less than 0.09	6 months	16 months
0.09 or more but less than 0.10	6 months	18 months
0.10 or more but less than 0.11	10 months	20 months
0.11 or more but less than 0.12	11 months	22 months
0.12 or more but less than 0.13	12 months	24 months
0.13 or more but less than 0.14	13 months	26 months
0.14 or more but less than 0.15	14 months	28 months
0.15 or more but less than 0.16	15 months	30 months
0.16 or more but less than 0.17	16 months	32 months
0.17 or more but less than 0.18	17 months	34 months
0.18 or more but less than 0.19	18 months	36 months
0.19 or more but less than 0.20	19 months	38 months
0.20 or more but less than 0.21	20 months	40 months
0.21 or more but less than 0.22	21 months	42 months
0.22 or more but less than 0.23	22 months	44 months
0.23 or more but less than 0.24	23 months	46 months
0.24 or more	24 months	48 months

Penalties

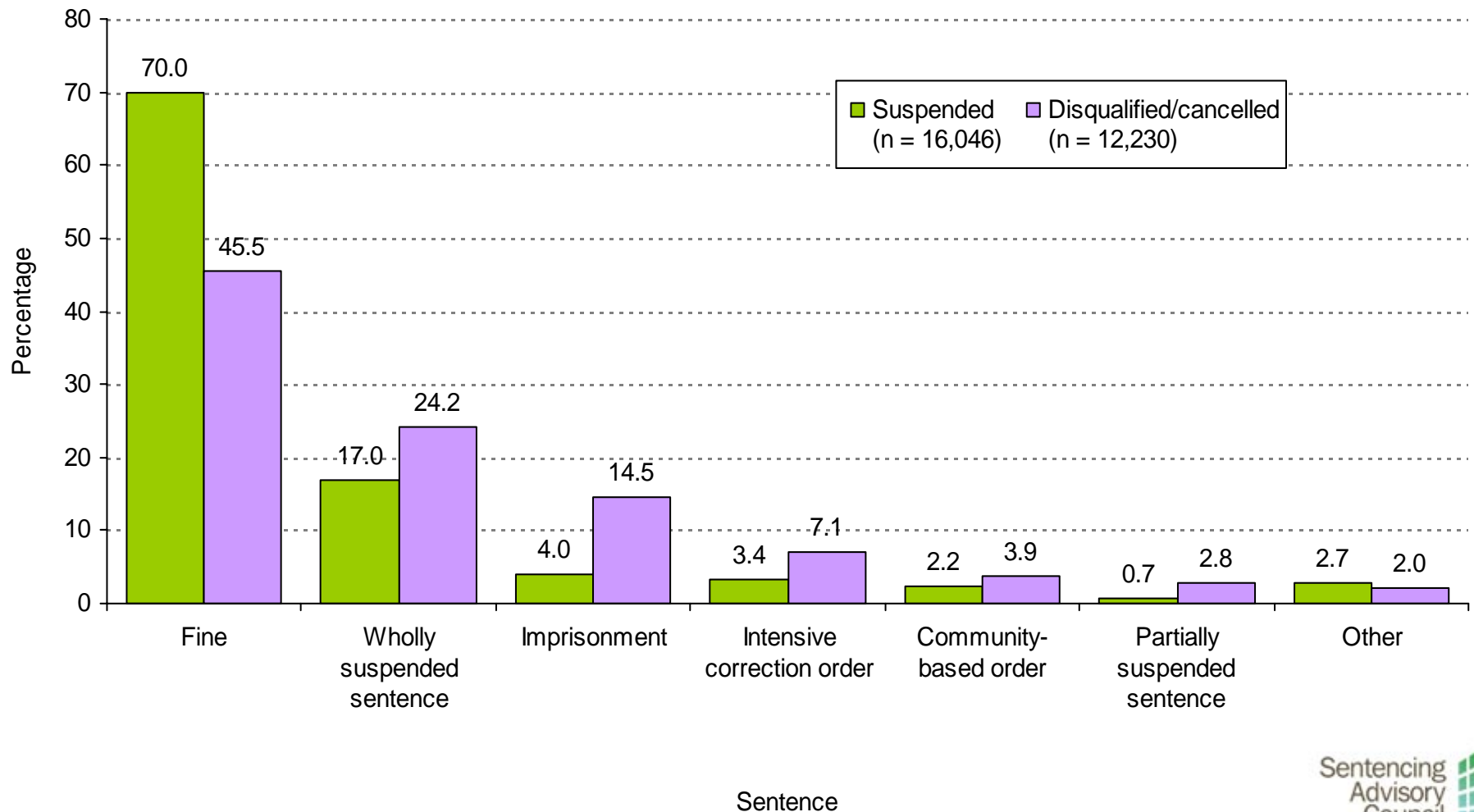
The percentage of people sentenced for driving while disqualified/suspended by sentence type, Magistrates' Court, 2004-05 to 2006-07



Penalties

- Nearly one in four (24.1 per cent) sentenced for driving while disqualified or suspended in this period received a suspended sentence
- This is 18.5 per cent of all suspended sentences imposed in the Magistrates' Court in Victoria

Penalties



Prison numbers (Licence offences)

	2002	2003	2004	2005	2006
Sentenced prisoners @ 30/6	52 1.8%	55	84	84	109 3.4%
Receptions	181 4.8%	214	287	267	333 8.8%

Crash risk

Australian and international studies say that DWD/S increases crash risk (risk varies by reference to causes of disqualification)

A 2003 UK study found the risk was 2.9-9 times greater

A 2000 US study said they were involved in 4 times more accidents and that 11.1 per cent of all accidents involved these drivers

A 1997 Victorian study found drivers with higher demerit points also have a higher crash risk

DWD/S drivers who are involved in crashes involving serious casualties are 3 times more likely to be drink driving at the time

Offender profiles

Of 40 disqualified/suspended drivers in MUARC Report, 5 said they would not drive

In similar 1990 WA study 35.8% said they would drive. In 2003 WA study about 50% said they would drive

A US study estimated that 25-75% of disqualified/suspended drivers will drive

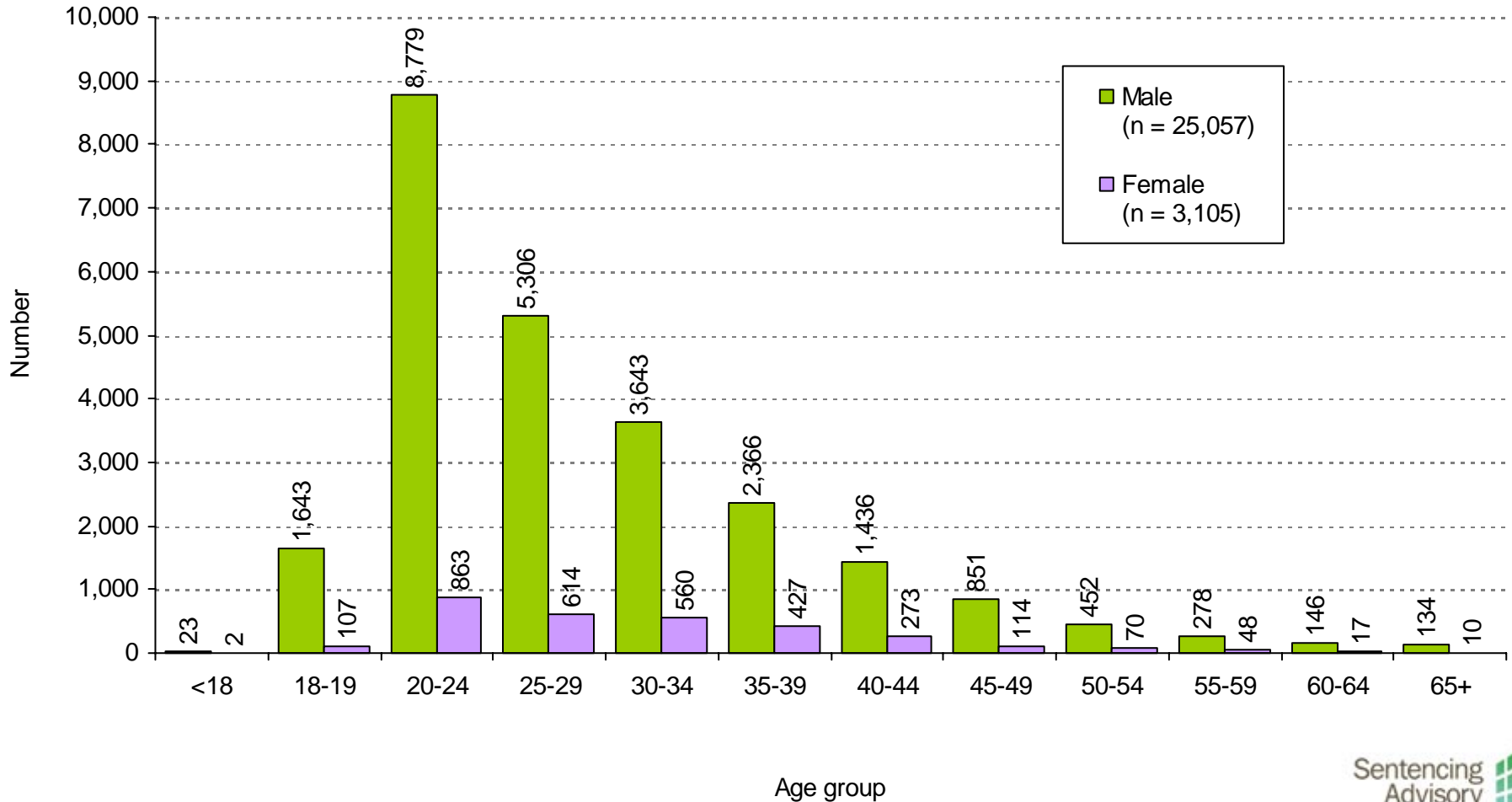
Offender profiles

MUARC 2008 report on self-reported attitudes of DWD/S drivers found that almost all participants said they drove

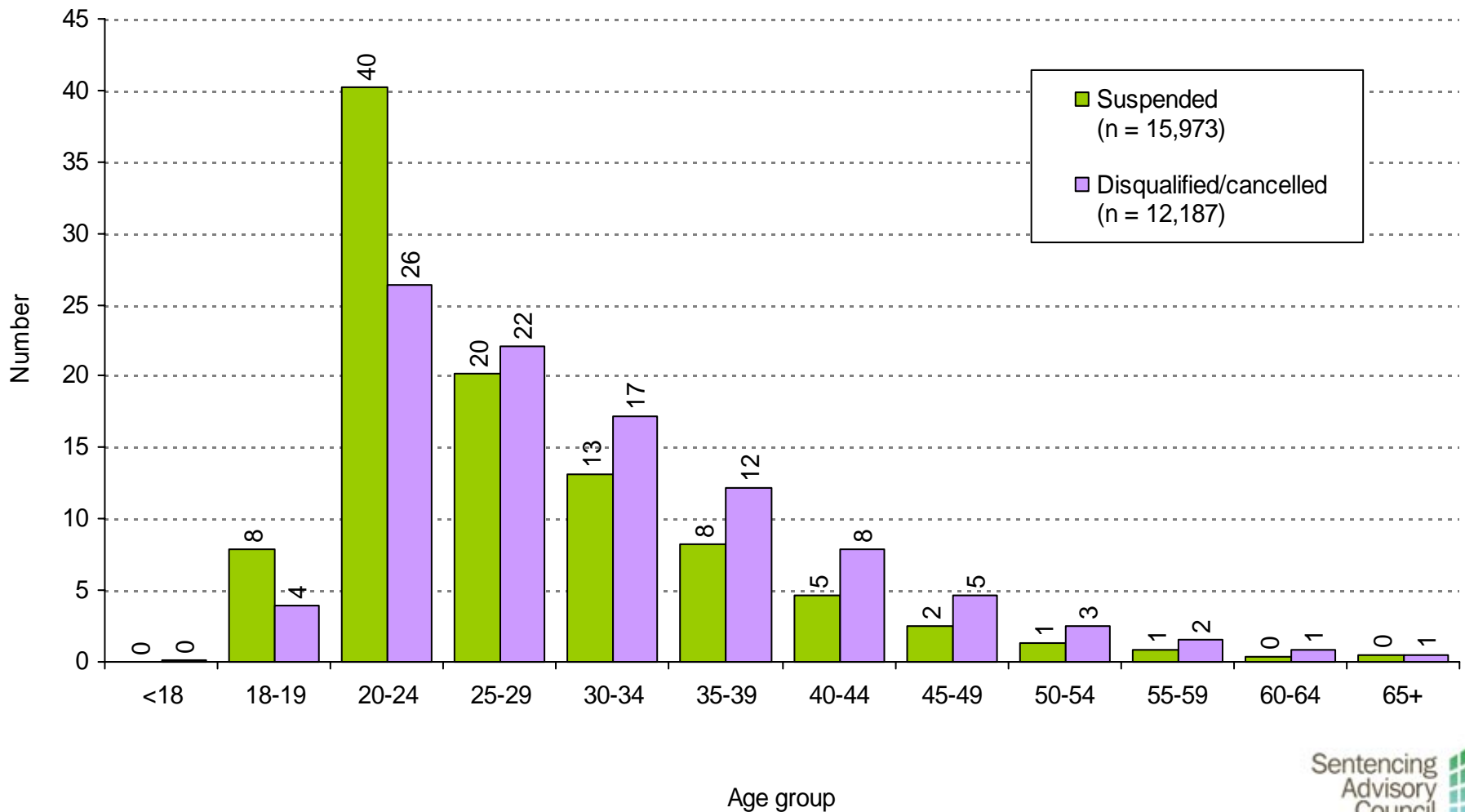
In Council's own focus groups **many** admitted to considering doing so and **all** said they thought other drivers did so

There is some evidence that the longer the licence ban, the more likely a person is to breach it, such people often learning punishment avoidance techniques (Clark and Bobevski 2008)

Offender profiles (age and gender)



Offender profiles (age and ban type)



Offender profiles (co-morbidity)

The number/percentage of most common offences sentenced with DWD/S, Magistrates' Court, 2004-05 to 2006-07.

	Offence	No.	%	Avg.
1	Driving while disqualified or suspended	28,276	100.0	1.27
2	Use an unregistered vehicle on a roadway	6,643	23.5	1.34
3	Drink drive (at/exceed limit within 3 hours or driving)	4,026	14.2	1.12
4	Exceed speed limit	3,166	11.2	1.09
5	Theft (<i>Crimes Act 1958 (Vic) s 74</i>)	1,982	7.0	3.40
6	Driver fail to provide/give false address when requested	1,795	6.3	1.15
7	Failure to answer bail (<i>Bail Act 1977 (Vic) s 30</i>)	1,706	6.0	1.63
8	Careless driving	1,548	5.5	1.05
9	Fraudulent alteration/use of documents/identifying marks	1,289	4.6	1.33
10	Failure to wear seatbelt	1,056	3.7	1.03

Dealing with DWD/S

Need to re-examine and perhaps alter the existing sanctions (including mandatory sentencing)

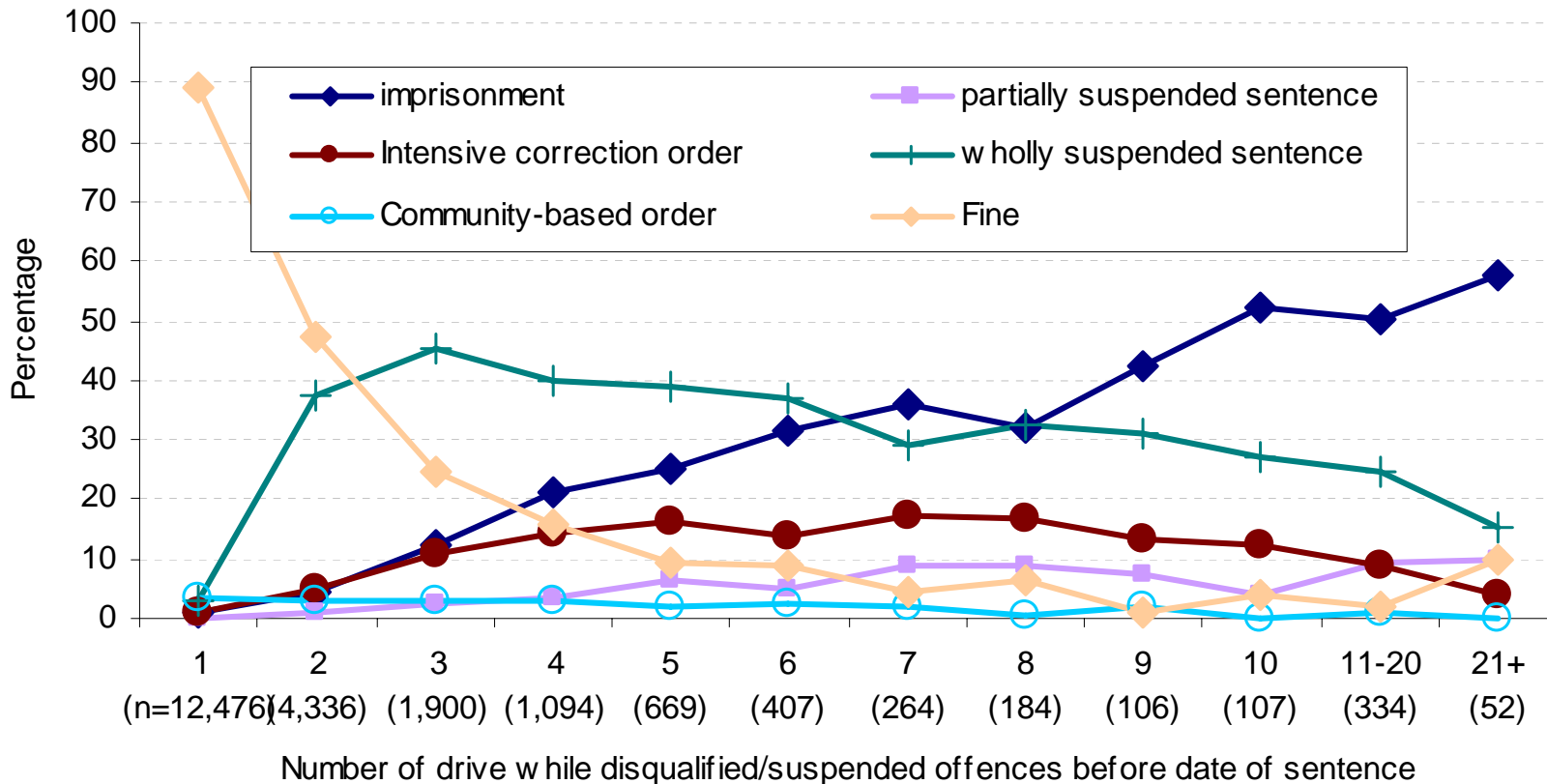
The Council now has the VicRoads driving records of roughly 22,000 drivers caught for DWD/S in a 3-year period

This will be cross-referenced with CourtLink sentencing data and will allow us to differentiate between classes of offenders, find patterns, and, hopefully, to target sanctions more effectively

Dealing with DWD/S

Some preliminary data analysis from data:

The number of findings of guilt for driving while disqualified or suspended and the sentences imposed for them



Responses: Restricted licences

- Restricted licences:
 - Used in four Australian jurisdictions but not in Victoria
 - Could also be used as part of carrot/stick approach by shortening ban periods (as in South Australia)
 - Could also be used alongside other mechanisms like interlocks which are not currently used as sanctions
 - Problems with enforcement are no more problematic than for normal disqualification/suspension
 - Could be problems with cost where interlocks are ordered though these could be off-set against ability to work

Responses: Rehabilitation

- Though there are some ongoing trials of rehabilitation courses, they are not widely available – and courts also cannot directly impose rehabilitation courses as part of any sanction.
- Clearly is not going to be appropriate for all drivers
- The Council's own consultation suggests that many stakeholders and much of public support it particularly where there is identifiable cause of/link to offending (such as alcohol addiction)
- Less support for programs targeting general poor driving behaviours like speeding
- Current research suggests that, particularly for drink/drug drivers, rehabilitation can work well as a sanction

Responses: Rehabilitation

- Rehabilitation programs are/could be linked to
 - Adjourment powers
 - Deferred sentence provisions (may be expanded to 12 months, from 3, and to all ages, not just those under 25)
 - Sentencing options (eg community-based order or intensive corrections order)
- Interlocks could be used to help give pathway back into system and reward participation in rehabilitation

Responses: increased deterrence

- Allow police to check for driver's licence at RBT stations
- Would require change to law and change in police practices
- Could be done on a pilot basis

Responses: increased deterrence

- Automatic number plate recognition (ANPR), on-board police car computers and new licence technology:
 - Much higher chances of being detected via ANPR or with chip licences (onboard police computers also have assisted here)
 - Can add to level of deterrence
 - Current indications are that there is very low perception of detection so, even if people know about mandatory, they know the chances of detection are low

Responses: Impoundment/forfeiture

- Hoon laws increasingly used in relation to a range of offences
- Can currently be used in relation to licence offences: usually for second and subsequent offences
- more widely used in Queensland
- Could be targeted at those with 5/10/15 + prior offences for this or similar offences.
 - NB 493 offenders with 10+ priors for DWD/S offences
 - 2,123 with 5+ priors
- Thus look at temporary incapacitative interventions for serious recidivists possible linked with other interventions eg rehabilitation/interlocks etc

Conclusion

There is no 'silver bullet'

Current sentencing/offending trends suggest a more nuanced approach should be taken – better understanding of DWD/S offenders may assist this

Need greater range of sanctions, more graduated and better targeted and, ultimately, more effective

Contact us

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