

Sentencing of serious violent offences and sexual offences in Queensland

June 2011

SENTENCING
ADVISORY
COUNCIL



Acknowledgements

This research paper has been prepared for the Sentencing Advisory Council by the Sentencing Advisory Council Secretariat.

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The following people helped with obtaining and/or understanding the administrative data included in this paper: Ross Newman (Queensland Corrective Services, Department of Community Safety), Dimitris Petinakis (Queensland Corrective Services, Department of Community Safety), Brenton Michael (Queensland Corrective Services, Department of Community Safety), Terese Meyer (Department of Justice and Attorney-General), Chelsea Willmer (Office of Economic and Statistical Research), Carli Ladewig (Department of Justice and Attorney-General) and Claire Slater (Department of Justice and Attorney-General).

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ISBN: [978-0-9871456-1-1]

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Glossary of terms

Aboriginal and Torres Strait Islander	A person identifying with Aboriginal or Torres Strait Islander groups. The first inhabitants of Australia and the Torres Strait Islands.
Aboriginal and Torres Strait Islander Justice Strategy 2011–2014	A new Queensland Government strategy currently being developed to replace the Queensland Aboriginal and Torres Strait Islander Justice Agreement. The strategy aims to reduce Aboriginal and Torres Strait Islander offending and re-offending in Queensland.
Absolute release	The offender is released without a conviction being recorded and without any further penalty.
Aggravating factor	A factor that may increase a sentence for a convicted offence – for example, the use of violence or targeting a vulnerable victim.
Average	A statistical measure that provides the central tendency or middle value of a data set.
Case	A dispute resolved by the court. The government is responsible for prosecuting offenders charged with criminal offences.
Case variability	Cases relating to particular types of offences can vary according to a number of factors, such as the harm associated with the offence, the context of the offence and the number of victims. These factors are considered by the judges when determining sentences.
Closing the Gap	An Australian Government strategy that aims to reduce Aboriginal and Torres Strait Islander disadvantage in relation to life expectancy, child mortality, access to early childhood education, educational achievement and employment outcomes. Many Queensland Government strategies align with the national strategy, including the new Aboriginal and Torres Strait Islander Justice Strategy.
Common law	Also known as case law. It is developed through decisions of the courts rather than through legislation.
Community supervision	Offenders serve a sentence under supervision in the community – for example, parole, probation, intensive corrections order.
Community service order	Requires an offender to perform unpaid community services for a set number of hours. Offenders are also required to comply with reporting and other conditions.
Compensation order	A compensation order requires an offender to make payment for any personal injury suffered by the complainant. This order can be made in addition to any other sentence.
Concurrent sentence	If an offender is convicted of more than one offence and sentenced to multiple terms of imprisonment, the individual imprisonment terms run simultaneously with one another. The period of imprisonment that the offender must serve is the highest sentence of imprisonment imposed by the court for the case.

Cross-tabulated	Two variables are intersected to show how they interrelate – for example, the likelihood of pleading guilty and the age of the offender.
Culpability	The degree of individual fault for an offence.
Cumulative sentence	The period of imprisonment equals the sum of all or some sentences provided by the court for the case.
Data reliability	The level of completeness and accuracy of data relative to the purpose and context of the data.
Distribution of data	The location of all the data values. The distribution of data will determine which statistical measures are used to analyse data.
Fine	A monetary penalty imposed with or without recording a conviction.
Forensic evidence	Scientific technology is used to obtain evidence to identify a person at a crime scene – for example, fingerprints, traces of DNA.
Full-time imprisonment	An order of imprisonment that must be served in custody until parole is granted. It excludes partially and wholly suspended sentences.
Good behaviour bond	A penalty that allows an offender to remain in the community. The offender may or may not be required to pay a surety. Other conditions may apply.
Guilty	The offender is found to be responsible for committing an offence.
Head sentence	The total sentence for a case.
Higher courts	The District Courts and the Supreme Courts.
Incarceration rate	The rate at which offenders are imprisoned for convicted offences. Rates are usually population-based calculations. For example, the Aboriginal and Torres Strait Islander incarceration rate is the number of Aboriginals and Torres Strait Islanders imprisoned divided by the total number of Aboriginals and Torres Strait Islanders.
Indefinite sentence	This is a penalty that the court may impose on its initiative or after an application by the prosecution. It requires an offender to be held indefinitely in prison. An indefinite sentence continues until the court orders it discharged.
Intensive corrections order	This is a penalty of imprisonment where the offender serves the sentence in the community under strict conditions. An intensive corrections order can only be imposed if an offender is sentenced to a prison sentence of 12 months or less.
Interquartile range (IQR)	A measure of dispersion among values. It represents the middle 50 per cent range of values (that is, between the 25 th and 75 th percentiles). For the analyses included in this paper, the IQR measures the variability of values near the average sentence length mid-point. A smaller IQR represents less variability in sentencing outcomes. In this paper, IQRs are only calculated for offences resulting in full-time imprisonment.

Life sentence	Offenders provided with a life sentence are subject to supervision (either in custody or in the community) for the entirety of their life. Offenders convicted of murder must be provided with a life sentence and 15 years of this sentence must be served in custody.
Mandatory sentence	The level of discretion that a judge can use when determining a sentence for a convicted offender is limited by law. For example, murder has a mandatory life sentence in Queensland. This means that all offenders convicted of murder must be sentenced to life imprisonment.
Maximum penalty	This is the maximum punishment that can be imposed on an offender for an offence. Each criminal offence has a maximum penalty and parliament decides what this should be.
Maximum sentence	Out of the range of sentences imposed on different offenders for the same offence, the maximum sentence shows the highest sentence that was imposed for that offence.
Mean	A statistical measure of average. It is the sum of the values divided by the number of values.
Median	A statistical measure of average. The median is the middle value in a range of values. It is the appropriate way to measure average when the distribution of values is skewed (values are not symmetrical around the mean) or contains outliers (values that are distant from other values).
Median absolute deviation (MAD)	A statistical measure of dispersion among values. A small number means values are grouped closely and a large number means values have a broader spread. It is calculated by measuring deviation from the midpoint value, then consecutively sorting these values to determine a new midpoint value. For example, 1, 2, 4, 4, 6 has a midpoint value of 4. The absolute deviations about 4 are 3, 2, 0, 0, 2. The median absolute deviation is 2 because the sorted absolute deviations are 0, 0, 2, 2, 3. For the analyses included in this paper, a smaller MAD represents less variability in sentencing outcomes, and MADs are only calculated on offences resulting in full-time imprisonment.
Minimum sentence	Out of the range of sentences imposed on different offenders for the same offence, the minimum sentence shows the lowest sentence that was imposed for that offence.
Mitigating factor	A factor that may reduce a sentence for a convicted offence – for example, pleading guilty or cooperating with police.
Most serious offence	For the analyses included in this paper, the most serious offence is the offence with the highest penalty and/or the highest penalty length.
Non-parole period	The period during which an offender is serving their sentence in prison, prior to any eligibility date for release on parole.
Offence	Illegal act as defined by law.

Offence simpliciter	The basic offence without any circumstance of aggravation. A circumstance of aggravation is a further element of the offence that increases the seriousness of the offence and the penalty.
Overrepresentation	Representation is greater than proportionate numbers for that group.
Parole	The period of time when a person serving a term of imprisonment is released from prison to serve out the remainder of their sentence in the community under strict supervision.
Parole application	Offenders must submit an application to the Queensland parole boards to be considered for release to parole.
Parole boards	The parole boards are independent statutory bodies responsible for determining if prisoners are released to parole. There are three parole boards in Queensland – the Queensland Parole Board, the Southern Queensland Regional Parole Board, and the Central and Northern Queensland Regional Parole Board.
Parole eligibility date	The parole eligibility date is the date at which an offender is eligible to apply for parole. The parole eligibility date is set by the courts or by legislation.
Parole release date	A parole release date is a date set by the courts upon which the offender is to be released from prison. Offenders are released to community supervision at this date (either from custody or from court). These offenders do not have to apply for parole.
Partially suspended sentence	The partial suspension of a term of imprisonment. The court can impose a partially suspended sentence if an offender is sentenced to imprisonment for five years or less. The offender may be released with or without conditions, but is not subject to community supervision.
Penalty	The sentence or sanction imposed by a court for convicted offences.
Plea	An offender's response to a criminal charge.
Probation	Probation is a penalty that allows the offender to remain in the community under strict requirements set by the court and Queensland Corrective Services.
Proportion	The share of the total.
Prosecute	To effect legal proceedings against (a person or organisation).
Queensland Criminal Code	The principal source of criminal law in Queensland.
Remand	The imprisonment of persons charged with offences before trial or sentencing.
Restitution order	A restitution order requires an offender to make payment for or replace property that was taken or damaged as a result of the offenders conduct. This order can be made in addition to any other sentence.

Schedule 1 – Sexual Offences	A list of offences subject to legislation set out in the <i>Penalties and Sentences Act 1992</i> (Qld).
Schedule 1 – Serious Violent Offences	A list of offences subject to legislation set out in the <i>Corrective Services Act 2006</i> (Qld).
Sentence calculation	A process undertaken by Queensland Corrective Services to determine the length of time an offender must be under supervision – either in custody or in the community.
Sentence length range	The difference between the minimum and the maximum sentence.
Sentence severity	The harshness of the sentence. Penalty type and penalty length both contribute to sentence severity. For example, a prison sentence is considered to be more severe than a good behaviour bond and a five-year prison order is more severe than a two-year prison order.
Sentencing consistency	The uniformity of sentence decisions across different judges.
Serious Violent Offence (SVO)	An offence for which a person is convicted under Part 9A of the <i>Penalties and Sentences Act 1992</i> (Qld) which may require an offender to serve either 15 years or 80 per cent of their imprisonment sentence (whichever is the lesser). The offences subject to SVO legislation are listed in Schedule 1 – Serious Violent Offences of the Act.
Serious violent offences	Selected offences from Schedule 1 – Serious Violent Offences of the <i>Penalties and Sentences Act 1992</i> (Qld).
Sexual offences	Selected offences from Schedule 1 – Sexual Offences of the <i>Corrective Services Act 2006</i> (Qld).
Standard non-parole periods	A legislated period intended to provide guidance to sentencing courts on the minimum length of a non-parole period to be set for a given offence.
Statistical measures	A range of mathematical procedures used to present and interpret data.
Surety	A sum of money paid to the court in accordance with certain conditions. If those conditions are breached, the money may be given to the court. For example, a surety may be made with a good behaviour bond or in relation to bail.
Wholly suspended sentence	The complete suspension of a term of imprisonment. The court can impose a wholly suspended sentence if an offender is sentenced to imprisonment for five years or less. The offender may be released by the court with or without conditions.
Terms of reference	Describe the purpose and scope of a project.

Abbreviations

ATSI	Aboriginal and Torres Strait Islander
DJAG	Department of Justice and Attorney-General
IQR	interquartile range
MAD	median absolute deviation
NSW	New South Wales
n	number
OESR	Office of Economic and Statistical Research
QCS	Queensland Corrective Services
R v ...	The Queen against...
SVO	Serious Violent Offence
SNPPs	standard non-parole periods
The Council	Sentencing Advisory Council

Summary

- The Sentencing Advisory Council has been tasked with providing advice on the implementation of minimum standard non-parole periods (SNPPs) in Queensland. The sentencing scheme is to apply to serious violent offences and sexual offences.
- Having information on current sentencing practices and periods of imprisonment is fundamental to determining which offences should be included in a SNPP sentencing scheme and where relevant the non-parole periods that should be set. This information is also important for guiding discussion on the possible effects of implementing such a scheme.
- Data on current sentencing practices and periods of imprisonment were obtained from administrative information maintained by the Department of Justice and Attorney-General and Queensland Corrective Services. These data are subject to limitations and should be interpreted with caution. Murder is excluded from the analyses given that it is subject to a mandatory life sentence.
- The majority of offenders with a serious violent offence or sexual offence as their most serious offence are sentenced to a term of imprisonment (either full-time imprisonment or partially suspended sentence). In terms of imprisonment, offenders with a sexual offence as their most serious offence are more likely to receive a partially suspended sentence than are offenders with a serious violent offence as their most serious offence.
- Most measures of offence severity rank ‘attempted murder’, ‘unlawful sodomy’, ‘rape’ and ‘manslaughter’ as the most severe offences. The offence categories of ‘maintaining a sexual relationship with a child’ and ‘acts intended to cause grievous bodily harm’ also rank highly when maximum penalties and sentencing practices are used to determine offence severity.
- A high proportion of offenders who come before the higher courts plead guilty. However offenders with a most serious offence involving a sexual offence are less likely to plead guilty than offenders with a most serious offence involving a serious violent offence. The relatively high plea rate suggests that a SNPP scheme is not likely to greatly increase the likelihood of offenders pleading guilty in Queensland. Any change to plea rates caused by the scheme is likely to be greater for sexual offences than serious violent offences (if included in the scheme).
- Measures in variation in sentence length do not suggest that there is a systemic problem with sentencing consistency in Queensland District and Supreme Courts.
- Longer head sentences are generally associated with longer non-parole periods and the average non-parole period (expressed as a proportion of the head sentence) varies across different offence categories.
- Offenders with a most serious offence relating to a sexual offence tend to be characterised by higher non-parole periods set by the higher courts when compared with offenders with a most serious offence relating to a serious violent offence. Offenders with a most serious offence relating to a sexual offence are also less likely to be released to parole at their parole eligibility date. These results may indicate that the higher courts and the parole boards view more serious sex offenders as requiring rehabilitation interventions and as posing a greater risk to the community than offenders with a most serious offence relating to serious violent offences or less serious sexual offenders.

- Selecting offences that are characterised by relatively high non-parole periods to include in the minimum SNPP scheme has two advantages. It will (a) ensure the scheme reflects the practices of the higher courts and parole boards and (b) reduce the impact of the scheme on prisoner numbers.
- A SNPP scheme that results in increased sentence severity has the potential to disproportionately affect Aboriginal and Torres Strait Islanders because of their overrepresentation in the criminal justice system.
- Aboriginal and Torres Strait Islander offenders tend to be given head sentences by the higher courts that are equal to or slightly shorter than those received by non-Aboriginal and Torres Strait Islander offenders, but they spend more of their sentence under custodial supervision than do non-Aboriginal and Torres Strait Islander offenders. This is explained in part by the fact that Aboriginal and Torres Strait Islander offenders are less likely to be released at their parole eligibility date than are non-Aboriginal and Torres Strait Islander offenders. A range of factors (requiring a whole-of-government response) are likely to contribute to this phenomenon.
- Aboriginal and Torres Strait Islander offenders are more likely than non-Aboriginal and Torres Strait Islander offenders to be sentenced to a period of full-time imprisonment with a most serious offence involving a serious violent offence. This means that the inclusion of such offences in a minimum SNPP scheme will disproportionately affect Aboriginal and Torres Strait Islander offenders.
- Specifying minimum SNPPs may also disproportionately affect Aboriginal and Torres Strait Islander offenders given that the higher courts currently determine that they receive non-parole periods that (on average) are equal to or slightly shorter than those received by non-Aboriginal and Torres Strait Islander offenders.

Background

The Sentencing Advisory Council has been tasked with providing advice on the implementation of minimum standard non-parole periods (SNPPs) in Queensland.

This research paper provides baseline sentencing information to help the Council to achieve this task. By doing so, the paper acts as a companion document to the *Minimum Standard Non-Parole Periods Consultation Paper* released by the Council.

This introductory section provides background information related to the data presented in the research paper. It outlines the Terms of Reference provided by the Queensland Government and discusses why data are necessary for responding to the Terms of Reference. It also provides information on factors underpinning sentencing and parole release decisions to assist with the interpretation of data. The structure of the paper is then described.

Terms of Reference

The advice sought by the Queensland Government has been set out in Terms of Reference. The former Attorney-General and Minister for Industrial Relations indicated that the Council is to examine and report on:

- offences to which a minimum standard non-parole period should apply, and
- the appropriate length of the minimum standard non-parole period for each of the offences identified in the Terms of Reference.

A SNPP is a legislated non-parole period intended to provide guidance to courts on the minimum length of time that an offender should spend in prison for a given offence.

The Council has been directed to have regard to a number of specific matters in providing its advice. These matters are:

- the approach to SNPPs in New South Wales
- the Queensland Government's intention that the new scheme will apply to serious violent offences and sexual offences and, at a minimum, to the offences of murder, manslaughter, rape, and child sex offending
- whether the offence of manslaughter sufficiently lends itself to a SNPP, given the range of circumstances in which it is committed, and how this might be accommodated
- the appropriate length of SNPPs for rape, given the range of conduct which is covered by this offence
- with respect to carnal knowledge, how the situation of a young offender engaged in a consensual, but unlawful, sexual relationship with an underage partner might be dealt with
- the appropriateness of singling out specific criminal conduct (e.g. 'glassing') as the subject of SNPPs, or whether SNPPs should apply to specific offences that would ordinarily capture that conduct (for example, wounding, assault occasioning bodily harm while armed, or grievous bodily harm)
- how the scheme is to operate in light of Part 9A of the *Penalties and Sentences Act 1992* (Qld) relating to serious violent offences, and
- what the grounds for departure from SNPPs should be, to either increase or decrease those periods.

Why refer to data?

An understanding of current sentencing practices is fundamental to implementing a new sentencing scheme and evaluating the possible impact of the scheme.

This research paper provides information on current sentencing outcomes relating to serious violent offences and sexual offences in Queensland. This includes data on:

- penalty outcomes
- average sentence lengths
- variability in sentence length
- non-parole periods, and
- actual time served.

Differences between Aboriginal and Torres Strait Islander offenders and non-Aboriginal and Torres Strait Islander offenders are also explored.

This information will guide the determination of which offences should be included in a SNPP scheme and the appropriate length of the minimum standard non-parole period for these offences. It will also enable the discussion of the possible impact of implementing a SNPP sentencing scheme.

Determining sentence outcomes

The *Penalties and Sentences Act 1992* (Qld) provides that the overarching objectives of sentencing are the appropriate punishment and the rehabilitation of an offender, as well as the protection of the Queensland community. The Act also sets out sentencing guidelines which outline the principles and factors that should be taken into account when making a sentencing decision.

The principles and factors that a court must consider when making a sentencing decision can be categorised according to:

- the offence
- the impact of the offence
- the conduct of the offender in relation to the offence
- the offender's background and circumstances, and
- the community interest.

Courts have a range of community and custodial-based orders that can be applied to convicted individuals. All orders must be served in their entirety – either under community supervision or in custody.

Community-based orders are:

- absolute release
- good behaviour bond
- restitution or compensation order
- non-contact or banning order
- fines
- community service orders
- probation, and
- intensive correction order.

Custodial-based orders are:

- suspended sentence
- partially suspended sentence
- full-time imprisonment, and
- indefinite sentence.

A criminal conviction can have a lasting effect on an individual. For example, it can limit an individual's ability to secure employment and undertake international travel. Individuals convicted of sex offences may not be granted a Blue Card by the Commission for Children and Young People and Child Guardian, which is necessary for working with children in Queensland.

Determining release to parole

Since 2006, parole is the only form of community supervision available to offenders who have received a full-time imprisonment penalty. The court has the ability to set the *parole release* date for certain offenders who are sentenced to imprisonment for three years or less. This determines the minimum amount of time an offender must spend in custody before being released to parole. The courts are not able to do this if an offender is convicted of a sexual offence or a serious violent offence. The court may also set a *parole eligibility* date for other offenders. Where a parole eligibility date is not set by the court, legislation provides that offenders with a sentence greater than three years imprisonment must serve 50 per cent of their sentence in custody. Offenders with a serious violent offence declared by the court must serve 80 per cent or 15 years (whichever is less) of their sentence in custody.

Certain mitigating and aggravating factors taken into account when determining the head sentence can also influence the date that is set for parole eligibility. It is not uncommon for an offender to be eligible for parole after serving one-third of their sentence if pleading guilty. The particular discount that applies for a guilty plea is discussed in the matter of *R v Blanch*, where it was recognised that:

It is the common practice of sentencing Courts in Queensland to recognise the value of an early plea of guilty and other circumstances in mitigation by ordering that the offender be eligible for parole after serving one-third of the term of imprisonment imposed as the head sentence.¹

Offenders provided with a parole eligibility date (rather than a parole release date) need to apply to a parole board to be released to parole. A number of factors will determine when and if parole is granted to offenders (see the text box below). Some offenders may choose not to apply for parole. This means that not all offenders will necessarily be released from custody at their parole eligibility date.

Parole is an important component of managing offenders. It provides an incentive for participation in rehabilitative programs, encourages good behaviour in custody, allows for the graduated, supervised release of offenders into the community (which reduces the risk of re-offending) and reduces offender management costs.

¹ *R v Blanch* [2008] QCA 253, Keane JA at [24].

Factors considered by parole boards when determining release to parole:

- Ministerial Guidelines
- *Corrective Services Act 2006* (Qld)
- *Corrective Services Regulation 2006* (Qld)
- a parole board assessment report prepared by Corrective Services staff which provides a summary of:
 - any previous parole applications made by the offender
 - the circumstances surrounding offences
 - assessment outcomes
 - progress in completing recommended interventions
 - prison conduct
 - health problems
 - reintegration considerations
- submissions from the offender
- submissions from victims
- psychiatric and psychological reports
- home assessment reports

Structure of this paper

The body of this research paper has five main sections under these headings:

- Methods
- Sentence outcomes
- Non-parole periods and time served
- Aboriginal and Torres Strait Islander offenders
- Summary and implications.

The paper commences by providing information on the complexity of the criminal justice system and the methods used to obtain and analyse the data that are presented.

This is followed by a section that outlines information on sentencing outcomes and average head sentences provided to offenders by the higher courts in Queensland. Information on where the higher courts currently set non-parole periods and the actual amount of time offenders serve in custody before being released to parole is then provided.

An exploration of the differences between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander offenders is then presented to provide a preliminary understanding of how a SNPP scheme may affect Aboriginal and Torres Strait Islander people.

The paper concludes with a summary of key findings in relation to implementing a SNPP sentencing scheme.

Methods

This section outlines some of the issues related to interpreting the data presented in this paper. It describes the complexity of the criminal justice system and how it affects research. Case summaries for two types of offences are provided to demonstrate case variability. The objectives of the research paper are then outlined, followed by information on the sources, analyses and limitations of data.

Undertaking criminal justice research

The information presented in this research paper is a simplified representation of a very complex system.

Offenders found guilty in court are often sentenced for multiple offences during the same court appearance and the different penalties and different sentence lengths may be provided for each of these offences. These sentences may be served concurrently (at the same time) or cumulatively (one after the other). The head sentence is the total sentence for the case.

Offences prosecuted under particular sections of the Queensland Criminal Code can also vary considerably in terms of seriousness, and sentencing decisions will often reflect various mitigating and aggravating factors. These factors include the nature of the offence, offender culpability, impact on the victim, the level of violence used to commit the offence, offender remorse and the level of cooperation provided to police and the courts by the offender.

All of these factors contribute to case variability and case variability is difficult to capture using existing data sources. This topic is explored further below.

Offenders can also be typified by multiple interactions with the criminal justice system while serving their sentence. For example, an offender might spend time in prison before being sentenced (remand), then serve a period of imprisonment, and then be returned to custody for committing a crime while serving their parole order. The same offender could appear before the court and be sentenced multiple times while already serving time in custody.

All of this complexity makes it extraordinarily difficult to isolate information associated with each sentenced offence relating to a particular court appearance and period of imprisonment. This complexity is why criminologists tend to present and analyse offence information in terms of the most serious offence heard during a court proceeding. This means offences not defined as most serious are not included in any offence data analyses.

The information discussed in this paper is sourced from criminal justice administrative systems. These systems are constructed and maintained for administrative and offender management reasons, rather than for research purposes. This can limit the type of criminal justice information available for analyses. The quality of criminal justice information will also depend on how well information is structured, entered and extracted from relevant administrative systems.

All this shows how important it is to use caution when interpreting information presented in this research paper. Information in this paper is not a complete representation of sentencing in Queensland; it is provided to guide discussion on the implementation of SNPPs in Queensland.

Case variability

The following cases show how matters before the court can vary within offence categories, and highlight how case seriousness, and mitigating and aggravating factors, play an important role in determining the head sentence.

In the text boxes below, two cases are described for each of the offences ‘rape’ and ‘grievous bodily harm’.

Rape case 1

***R v JFL* (Unreported, District Court of Queensland, Searles J, 30 November 2007)**

The defendant was charged with the digital rape of an acquaintance after a night of drinking. The offence took place in a taxi when the complainant was asleep.

The court held that the offender breached the trust between them by committing the offence while the complainant was defenceless.

The offence was seen as out of character for the offender, and at the lower end of seriousness for the offence of rape. The defendant was sentenced to two years imprisonment with parole eligibility after eight months.

Rape case 2

***R v Jackson* [1988] QCCA 11**

The defendant appealed against a sentence for life imprisonment after a conviction for seven counts of rape, three counts of sodomy or attempted sodomy, nine counts of indecent assault and one count of assault occasioning bodily harm against seven female victims over a nine-month period on the Gold Coast.

The appeal was overturned; the court did not see that there were any mitigating circumstances to reduce the sentence imposed. The original sentence was seen as the correct one in that the sentencing judge had regard to the total criminality of the offences committed, and to the deliberation and planning by the offender over the period of the offences, including what the court described as the ‘callous disregard for the dignity and welfare of a number of decent young women’.

Grievous bodily harm case 1

***R v Lopez* (Unreported, District Court of Queensland, O'Brien J, 5 October 2007)**

The defendant pleaded guilty to an offence of unlawfully doing grievous bodily harm constituted by a life-threatening injury that was inflicted with a knife on her estranged husband.

The defendant was 53 years old with no history of violence or any criminal record. The court accepted the behaviour was completely out of character, and that it stemmed in part from a longstanding illness and also from the emotionally abusive conduct of her husband. These were seen to be 'significant extenuating circumstances' of 'such a magnitude' that a non-custodial order was seen as appropriate.

A probation order of three years was imposed, which included an order for ongoing psychiatric counselling; no conviction was recorded.

Grievous bodily harm case 2

***R v Lewis; ex parte A-G (Qld)* [2003] QCA 133**

The defendant had an extensive criminal history (including for grievous bodily harm) and attacked the complainant in a public park with a sword after he had been repeatedly asked to stop swinging the sword around and threatening others with it. The complainant suffered life-threatening injuries. The offender fled the scene of the attack and attempted to evade police.

The defendant was initially sentenced to three-and-a-half years of imprisonment, with a recommendation for consideration of post-prison community-based release after 15 months. After an appeal from the Attorney-General, the sentence increased to seven years imprisonment and a serious violent offence declaration was made.

The cases described above show how different sentences can be imposed for the same offence type. These differences reflect factors such as offence seriousness, offender culpability, the relationship between the offender and victim and offender offence history.

The analyses

This research paper has two main objectives:

- provide baseline sentencing information to help the Council respond to the SNPP reference, and
- provide sentencing information to the community.

These objectives are consistent with the Council's statutory obligations set out in the *Penalties and Sentences Act*.

Data sources

The data presented in this paper have been developed from administrative information kept by the Department of Justice and Attorney-General (DJAG)(courts data) and Queensland Corrective Services, Department of Community Safety (QCS) (corrections data).

The courts data were derived from data maintained by the Office of Economic and Statistical Research (OESR) on behalf of the DJAG. Some time lag may occur between when a sentence is provided by the courts and when the sentence is administratively recorded. This is why the OESR regularly updates the courts data base. The OESR does not record the outcomes of appealed sentences or cases that are re-trialled.

Corrections data were obtained through a special data request to QCS.

Courts data

Courts data are used to provide a profile of sentencing practices relating to serious violent offences and sexual offences. These data consists of matters resulting in a sentence heard by the District and Supreme Courts from 2005–06 to 2009–10.² These courts are referred to as the 'higher courts' throughout this paper.

Courts information is presented in relation to the most serious offence for the case. The most serious offence within a case was ascertained using predetermined data flags developed by the OESR. If an individual had more than one case heard by the higher courts during a particular year, this individual was counted for each case heard during the year.

The courts data do not distinguish between sentences that are served concurrently or cumulatively. The analyses presented in this report assume that most sentences are served concurrently. This decision may result in slightly higher average sentence length information than those actually provided by the higher courts (because the sentence length information for some cases may in fact be the sum of multiple offences rather than the sentence provided for the most serious offence).

Offences included in analyses were selected from Schedule 1 – Serious Violent Offences of the *Penalties and Sentences Act 1992* and Schedule 1 – Sexual Offences of the *Corrective Services Act 2006*. It is acknowledged that cases involving these types of offences can be heard in the Magistrates Court; however, they are much more likely to be heard in the higher courts. Murder is excluded from analyses presented in this paper because it is subject to mandatory life imprisonment.

Two drug offence categories are included in the analyses as legislation specifies that certain drug offences are subject to Schedule 1 – Serious Violent Offences depending on the type and amount of

² Diagnostic analyses showed that average sentence lengths by financial year remained relatively stable over the reporting period.

drug seized. However, the courts data do not include type and amount of drug information in a consistent manner. This means that information presented in relation to the most serious offence categories of 'produce drugs' and 'drug trafficking' includes all relevant cases regardless of the type and amount of drugs seized.

A number of offenders (7%) refused to provide information on Aboriginal and Torres Strait Islander status to the courts. These refusals are excluded from analyses when examining sentencing patterns for Aboriginal and Torres Strait Islander people.

Corrections data

Corrections data are used to profile non-parole periods and actual time served for serious violent offences and sexual offences. These data relate to sentenced offenders discharged from full-time imprisonment from January 2000 through to December 2010.

Time in custody is calculated from when an offender first enters custody (as either a sentenced or an un-sentenced offender) to when they first exit custody as a sentenced offender (either to freedom or to community supervision). This means that the analysis assumes that time on remand contributes to time served for sentenced offences. Offenders on remand (that is, un-sentenced offenders) released to bail are not included in the analyses, nor is time served in custody because of breaches of parole.

As with the courts data, the analyses of corrections data relate to the most serious penalty for the most serious offence sentenced by the courts. The most serious offence was determined by identifying the offence with the longest sentence.

Offence information maintained by QCS is not recorded against definitions set out in legislation. This means that corrections offence information does not directly correspond to courts data offence information. Corrections data offence categories were matched to legislated offence categories to enable comparisons between the corrections and courts data sets. See the appendix, Table 3, for a summary of how QCS offence categories were aligned with courts data offence categories. QCS also does not hold information on offenders that only receive a wholly suspended sentence or fine.

Importantly, a parole eligibility date was not available for about 30 per cent of offenders in the corrections data. Information on these offenders has been excluded from analyses. It is possible that excluding such a high proportion of offenders from analyses may create a systematic bias and affect the reliability of data. However, the results of average head sentence length calculations remain more or less constant when offenders without parole eligibility information are excluded from analysis compared with when all offenders are included in the analysis.

Missing information on parole eligibility date in the corrections data set is likely to reflect the fact that not all included offenders will have been eligible for parole, as some of them were sentenced before 2006³. Furthermore, the Council has been advised that sentence calculation information may be kept in hard-copy format only and therefore may not be entered into the electronic administrative system.

Corrections discharge data will contain offenders who were sentenced before the introduction of Serious Violent Offence (SVO) legislation. These offenders may serve less time in custody (before being released to parole) than offenders subject to the legislation. This means that information on average time in custody may be biased and show less average time in custody than that actually served by offenders subject to SVO legislation.

³Before 2006, other forms of early release from custody (such as remission and home detention) were available along with parole.

Courts and corrections data

The analyses presented in this paper do not take account of case variability and it is not known if sentences are being served concurrently or cumulatively. This means that sentence length information relating to some cases may reflect the sum of multiple offences rather than the sentence provided for the most serious offence.

Offence categories containing fewer than 20 offenders were excluded from analyses to ensure robust statistical measures. This decision resulted in the exclusion of all 'child exploitation offences' with the exception of 'possessing child exploitation material'. Offence categories cross-tabulated with other variables (such as Aboriginal and Torres Strait Islander or plea status) were excluded if the total number of offenders was fewer than 10.

The average head sentence lengths information calculated from courts data align reasonably well with the average head sentence information determined using corrections data. This gives some confidence in the validity of both data sets. See the appendix, Table 4, for a comparison of average sentence length information by data source and offence category.

Some individuals will be provided with an indefinite sentence. Information on the proportion of offenders provided with an indefinite sentence is not available in the courts data used for this paper and, according to the corrections data, only a small number of offenders were released to community supervision after being imprisoned for an indefinite sentence. All offenders with an indefinite sentence in the corrections data were excluded from analyses as they did not have a parole eligibility date.

Finally, the profiles outlined in this paper are often expressed as averages. This means that results reflect what is most common. There will always be cases that fall outside of the presented information. The median was used to determine averages due to the distribution of data. The majority of calculations presented in the paper are based on periods of full-time imprisonment only as it was not possible to determine how much of partially suspended sentences was served in custody.

It is important to observe caution when interpreting all results presented in this research paper.

Limitations

The paper's limitations are summarised below:

- This paper focuses on serious violent offences and sexual offences.
- The paper does not present information on the offence of murder because it is subject to a mandatory penalty.
- Not all serious violent offences and sexual offences are included in the paper. Offences included in the paper were selected based on their relevancy to the SNPP Terms of Reference and in relation to the Schedule 1 – Serious Violent Offences of the *Penalties and Sentences Act 1992* and Schedule 1 – Sexual Offences of the *Corrective Services Act 2006*. Some offences are excluded from analyses because small numbers that would result in unreliable findings.
- Information is provided on the most serious offence with the most serious penalty for a case.
- Information presented in this paper is offender based; however, if an offender appears more than once during the reporting periods included, the offender will be counted at each appearance (courts data) or prison discharge (corrections data).
- The information in this paper reflects information derived from government administrative data systems. The accuracy of this information will reflect how information is structured, entered, maintained and extracted from these systems.
- Information is summarised as averages and does not take account of case variability.
- Information is provided according to the most serious offence convicted for the case. Information on less serious offences associated with the most serious offence is excluded from analysis. This means that sentencing information will not reflect court decisions regarding all offences heard by the court. It also explains why the number of offenders sentenced for less serious offences may appear to be low.
- Offenders without a parole eligibility date in the corrections data were excluded from the analyses shown in this paper.
- Information on average time in custody may be slightly biased (towards shorter periods of imprisonment) because corrections data include offenders not subject to SVO legislation.
- The paper presents information on District and Supreme Court decisions because these courts are much more likely than Magistrates Courts to consider cases relating to serious violent offences and sexual offences. This means that information on sentencing practices resented in this paper only relates to the higher courts.
- Some offence categories were omitted from some analyses because of some low offender numbers within the offence categories.
- The courts data presented in the paper do not reflect sentence appeal decisions or the outcomes of re-trials.

Sentence outcomes

This section provides baseline information on sentencing outcomes. Data are presented in relation to penalty outcomes, average head sentence lengths, plea rates and sentence length variability by most serious offence categories. Information defining the different offences included in the analyses is provided in the appendix (Table 5).

Penalty outcomes

Figures 1 and 2 show the proportion of offenders sentenced to a period of imprisonment after being convicted of serious violent offences or sexual offences. A period of imprisonment in this analysis includes full-time imprisonment and partially suspended sentences. Offenders given a partially suspended sentence are not supervised in the community after they have been released from custody and they do not have to apply to the parole boards for release.

This information gives some indication of how the higher courts perceive the seriousness of particular types of offences and demonstrates how community-based orders may be used as a sentencing option for serious violent offences and sexual offences.

The majority of offenders with a most serious offence of ‘manslaughter’ (99%), ‘acts intended to cause grievous bodily harm and other malicious acts’ (98%), ‘maintaining a sexual relationship with a child’ (98%), ‘attempted murder’ (96%) and ‘rape’ (97%) receive a term of imprisonment. Offences slightly less likely to result in time in custody include ‘torture’ (91%), ‘attempted rape’ (89%), ‘grievous bodily harm’ (81%) and ‘incest’ (81%).

A high proportion of the offenders with a most serious offence of ‘robbery’ (79%), ‘unlawful sodomy’ (78%), ‘attempted robbery’ (74%) and ‘wounding’ (72%) are also sentenced to imprisonment.

Less than half of offenders with a most serious offence of ‘assault occasioning bodily harm’ (47%), ‘threatening violence’ (30%), ‘sexual assault’ (49%), ‘carnal knowledge with or of children under 16’ (41%) and ‘possessing child exploitation material’ (32%) receive time in custody.

A smaller proportion of offenders with a most serious offence of ‘carnal knowledge with or of children under 16’ (41%) and ‘indecent treatment of children under 16’ (59%) receive a period of imprisonment than do offenders convicted of ‘maintaining a sexual relationship with a child’ (98%). These differences are partially explained by the different types of sexual crimes prosecuted under these offences.

The proportion of offenders provided with partially suspended sentences varies across the different offence categories. However, it is evident that a greater proportion of offenders with a most serious offence involving a sex offence are provided with a partially suspended sentence than offenders with a most serious offence involving a serious violent offence.

Sexual offences (as most serious offence) for which a quarter or more of offenders were given a partially suspended sentence are: ‘indecent treatment of children under 16’ (34%); ‘unlawful sodomy’ (30%); ‘carnal knowledge with or of children under 16’ (29%); ‘incest’ (28%) and ‘maintaining a sexual relationship with a child’ (25%). Serious violent offences with more than 25 per cent of offenders receiving a partially suspended sentence include ‘torture’ (31%) and ‘grievous bodily harm’ (28%).

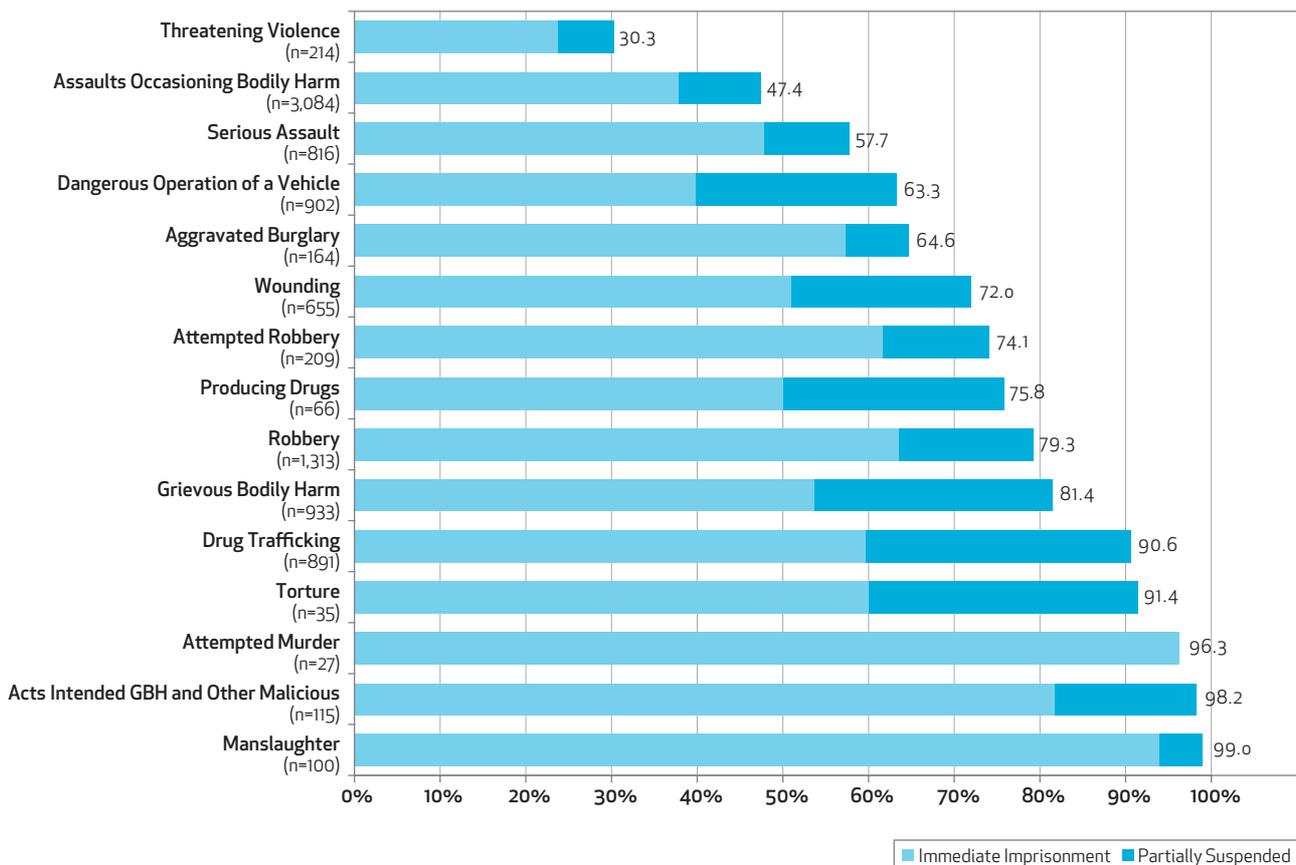
The proportion of sexual offenders sentenced to an immediate term of full-time imprisonment is likely to increase with amendments to the *Penalties and Sentences Act* that became effective in December 2010.

Legislation now provides that offenders convicted of a sexual offence involving a child aged less than 16 years must serve an actual term of imprisonment unless there are exceptional circumstances.

It is also worth noting that offences that appear to be less likely to result in a term of imprisonment – as defined for analyses – are still likely to receive an imprisonment order as defined by law. For example, although 59 per cent of offenders with a most serious offence of ‘indecent treatment of children under 16’ received an immediate imprisonment or partially suspended sentence, 85 per cent of the offenders in this category received full-time imprisonment, a partially suspended sentence, a wholly suspended sentence or an intensive corrections order.

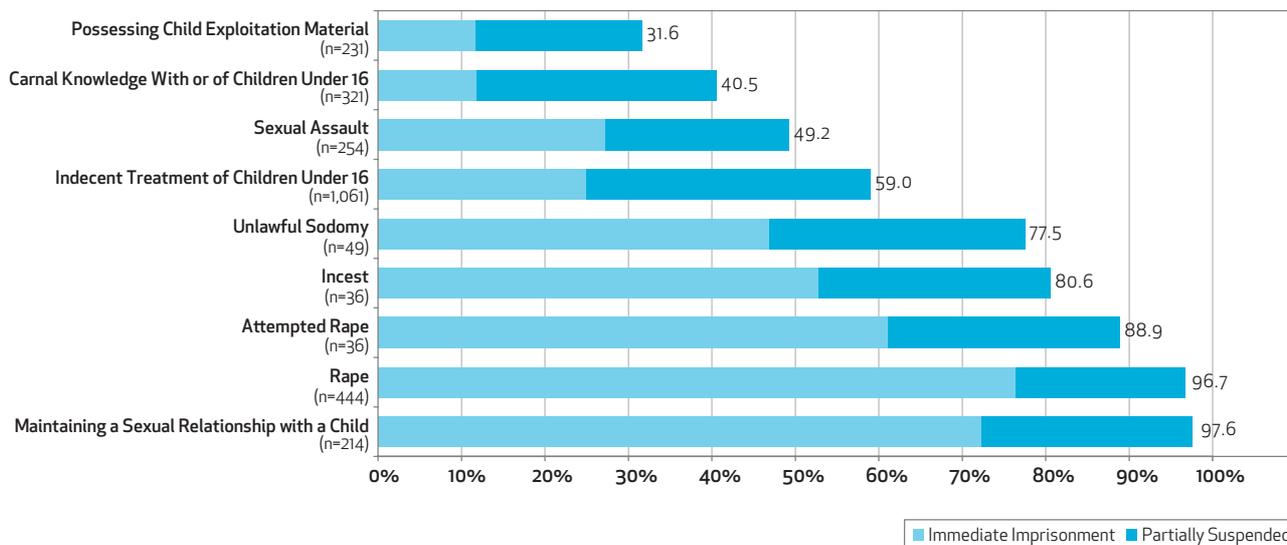
When interpreting these results it is important to remember that only the most serious offence heard by the higher courts is included in the analyses. This explains why some offence categories only involve a small number of offenders. For example, only 36 offenders had a most serious offence of ‘incest’ between 2005–06 and 2009–10. These offenders may also be sentenced for ‘maintaining a sexual relationship with a child’ during the same case heard by the higher courts. Such offenders will be counted in the ‘maintaining a sexual relationship with a child’ offence category, rather than in the ‘incest’ offence category. Other offences with low offender counts include ‘attempted murder’ (n=27), ‘torture’ (n=35), ‘attempt to commit rape’ (n=36) and ‘unlawful sodomy’ (n=49).

Figure 1: Proportion of offenders convicted of serious violent offences (as most serious offence) sentenced to a period of imprisonment (full-time and partially suspended), higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

Figure 2: Proportion of offenders convicted of sexual offences (as most serious offence) sentenced to a period of imprisonment (full-time and partially suspended), higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

Average sentence lengths and range

Table 1 provides maximum penalty and sentence length information for offenders sentenced to full-time imprisonment for serious violent offences or sexual offences.

Many of the offences included in the analyses are subject to a maximum penalty of life. These offences are ‘attempted murder’, ‘manslaughter’, ‘rape’, ‘maintaining a sexual relationship with a child’, ‘acts intended to cause grievous bodily harm and other malicious acts’, ‘unlawful sodomy’, ‘incest’, ‘robbery’, ‘attempted robbery’, ‘aggravated burglary’, ‘carnal knowledge with or of children under 16’ and ‘sexual assault’. Offenders provided with a life sentence are subject to supervision (either in custody or in the community) for the entirety of their life.

It is worth noting however, that many offence categories included in the analyses have subcategories that are associated with different maximum penalties. For example, the maximum penalty for unlawful sodomy of a person aged 12 to 18 years is 14 years, while a life sentence is possible for a person who commits unlawful sodomy against a child aged less than 12 years. See the appendix (Table 5) for more information on maximum penalties by offence subcategory.

Offences with high average sentence lengths represent the types of offences considered most serious by the courts.

Offenders with a most serious offence of ‘attempted murder’ had an average sentence of 11.5 years. Offenders with an average sentence length of 5 to 10 years had a most serious offence of ‘attempted rape’ (5 years), ‘incest’ (5 years), ‘torture’ (5 years), ‘maintaining a sexual relationship with a child’ (6 years), ‘unlawful sodomy’ (6 years), ‘acts intended to cause grievous bodily harm and other malicious acts’ (6 years), ‘rape’ (6.5 years) and ‘manslaughter’ (8 years).

The average sentence length for offenders with a most serious offence of ‘robbery’ is 3 years, compared with 2.9 years for ‘grievous bodily harm’ and 2.3 years for ‘attempted robbery’. Offenders with an average sentence length of 2 years and under include those with a most serious offence of ‘wounding’ (2 years), ‘assault occasioning bodily harm’ (1.3 years), ‘indecent treatment of children under 16’ (1.3

years), 'carnal knowledge with or of children under 16' (1 year), 'possessing child exploitation material' (1 year), 'sexual assault' (1 year), 'threatening violence' (1 year) and 'serious assault' (0.6 year).

The sentence length range is the difference between the minimum and maximum sentence. Table 1 shows that offences with high average sentences tend to be characterised by broad sentencing ranges.

The sentencing range for offenders with an average sentence length of six or more years is 12 or more years. The highest sentencing range occurs for 'rape' (24.3 years), followed by 'unlawful sodomy' (19.9 years), 'attempted murder', (17 years) and 'acts intended to cause grievous bodily harm and other malicious acts' (14.5 years).

Sentencing ranges are also indicative of case variability and demonstrate that the level of seriousness within an offence category can vary to a great extent (see 'Case variability' in the preceding section of this paper).

Table 1: Sentence length outcomes for offenders imprisoned full-time for serious violent offences or sexual offences (as most serious offence), higher courts 2005–06 to 2009–10

Type of offence	Maximum penalty (years) ¹	Minimum (years)	Maximum (years)	Sentence length range (years)	Median (years)
Attempted murder (n=26)	Life	1.0	18.0	17.0	11.5
Manslaughter (n=94)	Life	1.5	14.0 ²	12.5	8.0
Rape (n=337)	Life	0.7	25.0	24.3	6.5
Maintaining a sexual relationship with a child (n=155)	Life	0.3	13.0	12.7	6.0
Acts intended to cause GBH and other malicious acts (n=93)	Life	0.5	15.0	14.5	6.0
Unlawful sodomy (n=23)	Life	0.1	20.0	19.9	6.0
Incest (n=19)	Life	3.0	9.0	6.0	5.0
Robbery (n=835)	Life	0.1	11.0	10.9	3.0
Attempted robbery (n=129)	Life	0.2	9.0	8.8	2.3
Aggravated burglary (n=94)	Life	0.1	7.3	7.2	2.0
Carnal knowledge with or of children under 16 (n=38)	Life	0.1	4.0	3.9	1.0
Sexual assault (n=68)	Life	0.04	7.0	6.96	1.0
Drug trafficking (n=532)	25	0.5	17.0	16.5	4.0
Producing drugs (n=33)	25	0.7	8.0	7.3	2.5
Indecent treatment of children under 16 (n=265)	20	0.1	10.0	9.9	1.3
Torture (n=21)	14	2.0	10.0	8.0	5.0
Attempted rape (n=22)	14	0.8	9.0	8.2	5.0
Grievous bodily harm (n=501)	14	0.3	13.0	12.7	2.9
Dangerous operation of a vehicle (n=360)	14	0.2	9.0	8.8	2.0
Assault occasioning bodily harm (n=1,165)	10	0.02	6.3	6.28	1.3
Wounding (n=335)	7	0.2	6.0	5.8	2.0
Serious assault (n=390)	7	0.01	6.0	5.99	0.6
Possessing child exploitation material (n=27)	5	0.03	4.0	3.97	1.0
Threatening violence (n=50)	5	0.04	3.0	2.96	1.0

Source: Queensland Courts database maintained by OESR

1. A number of offence categories have subcategories that are associated with different maximum penalties. See the consultation paper (Table 5) for more information on maximum penalties by offence subcategory.
2. The Council is aware that an offender received 17.5 years for manslaughter during the reporting period. This case is not included in the table as it was originally heard as a murder case. The offence of murder is excluded from analyses and the limitations of data means that appeal and re-trial information is not included in the analyses presented in this paper. Other cases will not be included in the table for reasons similar to those outlined here.

Proportion of offenders pleading guilty

Standard non-parole periods were introduced in New South Wales (NSW) in 2003. The impact of the scheme on sentencing patterns was evaluated by the Judicial Commission of NSW.⁴ This evaluation shows that the percentage of offenders pleading guilty grew from 78 per cent in the period before the implementation of the scheme to 86 per cent in the post-period.

Information on the proportion of offenders pleading guilty is provided to guide how a SNPP scheme may affect Queensland offenders.

The proportion of offenders convicted of a serious violent offence or a sexual offence by the Queensland higher courts pleading guilty is 92 per cent. This finding is consistent with information provided by the Australian Bureau of Statistics, which reports that about 90 per cent of cases heard in the Queensland District and Supreme Courts between 2005–06 and 2008–09 involved a guilty plea.⁵

Figures 3 and 4 show that the share of offenders convicted of serious violent and sexual offences pleading guilty varies by most serious offence type. A relationship is evident between the likelihood of pleading guilty and the maximum penalty of the offence. Offenders sentenced to imprisonment for offences with a relatively high maximum penalty tend to be least likely to plea guilty.

The most serious offence categories least likely to involve a guilty plea are ‘attempted murder’ (69%), ‘rape’ (72%), ‘maintaining a sexual relationship with a child’ (77%), ‘attempted rape’ (78%), ‘manslaughter’ (79%), ‘acts intended to cause grievous bodily harm and other malicious acts’ (81%), ‘incest’ (83%), ‘torture’ (86%), ‘indecent treatment of children under 16’ (88%) and ‘unlawful sodomy’ (90%).

The offence categories most likely to involve a guilty plea are ‘sexual assault’ (91%), ‘carnal knowledge with or of children under 16’ (94%), ‘grievous bodily harm’ (94%), ‘dangerous driving of a vehicle’ (94%), ‘assault occasioning bodily harm’ (95%), ‘aggravated burglary’ (96%), ‘serious assault’ (96%), ‘possessing child exploitation material’ (97%), ‘threatening violence’ (97%), ‘wounding’ (97%), ‘drug trafficking’ (97%), ‘attempted robbery’ (98%), ‘robbery’ (98%) and ‘producing drugs’ (100%).

Overall, offenders sentenced for serious violent offences (95%) are more likely to plead guilty than are offenders sentenced for sexual offences (86%). This may be because the question of consent is unlikely to be a salient factor in the prosecution of serious violent offences.

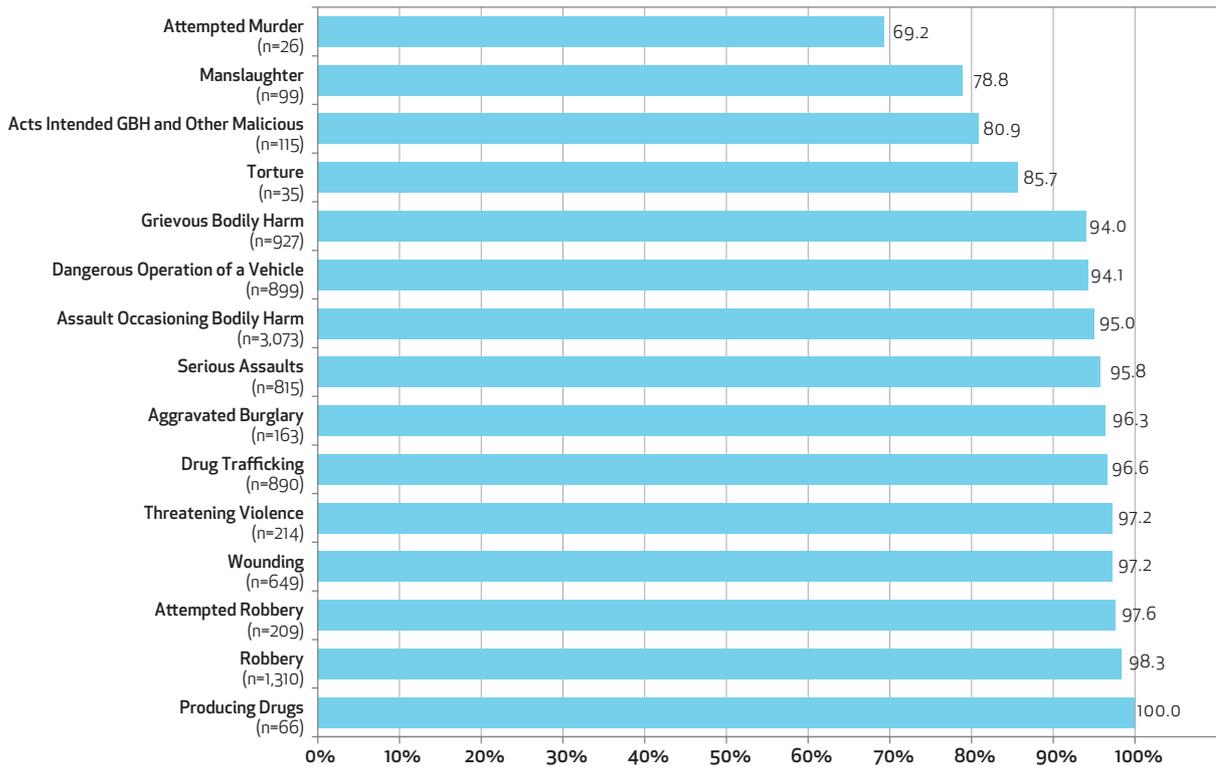
Further analysis shows that Aboriginal and Torres Strait Islander offenders are generally no more likely to plead guilty than are non-Aboriginal and Torres Strait Islander offenders. The guilty plea rate for Aboriginal and Torres Strait Islander offenders convicted of serious violent and sexual offences is 95 per cent compared with 93 per cent for non-Aboriginal and Torres Strait Islander offenders.

This pattern is sustained when guilty plea rates are examined by Aboriginal and Torres Strait Islander status and type of most serious offence. Ninety-seven per cent of Aboriginal and Torres Strait Islander offenders plead guilty to serious violent offences, compared with 95 per cent of non-Aboriginal and Torres Strait Islander offenders; 86 per cent of both groups plead guilty to sexual offences.

⁴ Judicial Commission of NSW, *The Impact of the Standard Non-Parole Period Sentencing Scheme on Sentencing Patterns in NSW*, Monograph 33 (2010).

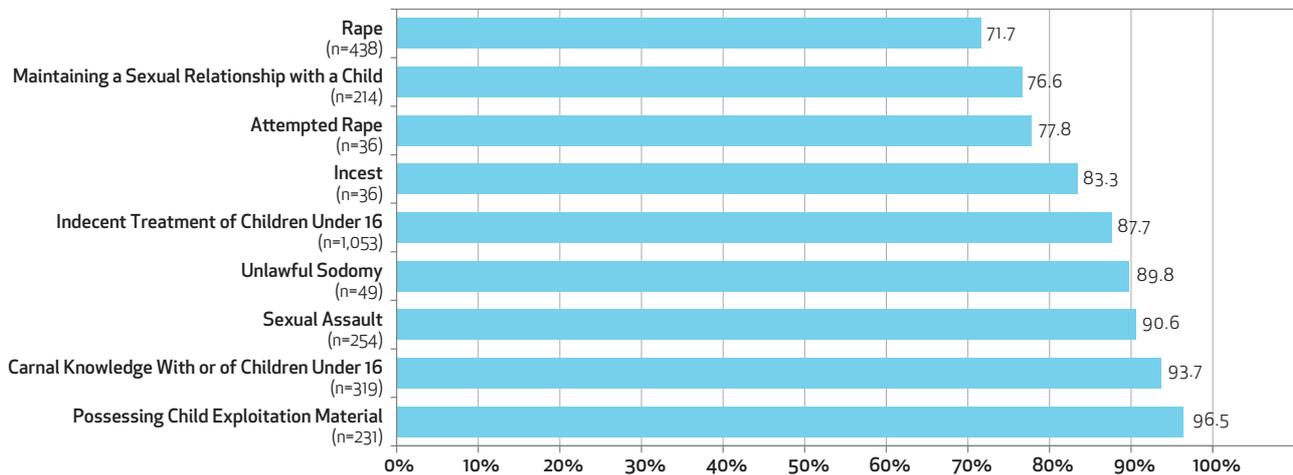
⁵ Australian Bureau of Statistics, *Criminal Courts Australia*, 4513.0 (2007) (2008) (2009) (2010).

Figure 3: Proportion of offenders convicted of serious violent offences (as most serious offence) pleading guilty, higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

Figure 4: Proportion of offenders convicted of sexual offences (as most serious offence) pleading guilty, higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

Average sentence length by plea status

Figure 5 provides information on the average head sentence length of offenders sentenced to full-time imprisonment with a most serious offence relating to a serious violent offence or sexual offence.

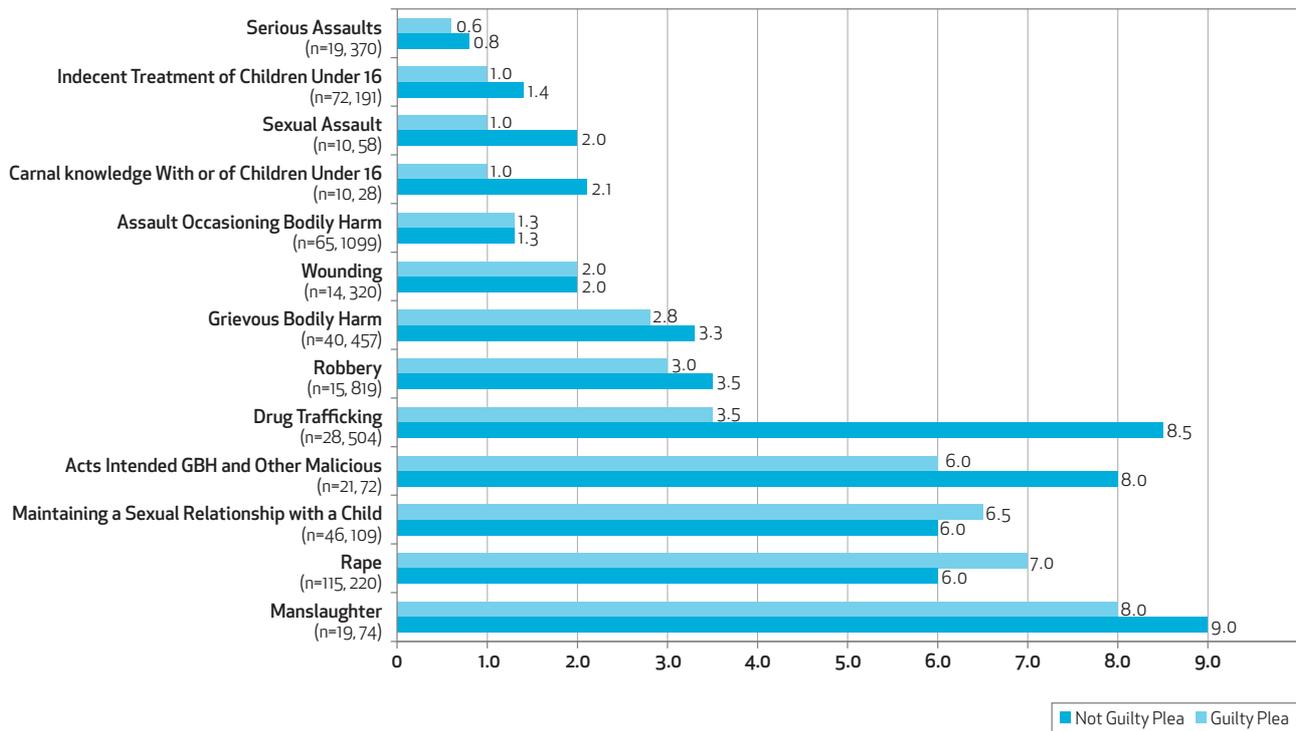
These data are provided to show whether or not guilty pleas can mitigate sentence length and to guide views on how a SNPP scheme may affect sentencing practices.

Offenders pleading guilty to serious violent offences or sexual offences are generally likely to receive a shorter sentence than offenders pleading not guilty. This is particularly true for offenders with a most serious offence of 'sexual assault' (1 year versus 2 years), 'carnal knowledge with or of children under 16' (1 year versus 2.1 years) and 'drug trafficking' (3.5 years versus 8.5 years) where the average sentence for those pleading not guilty is at least twice as high as sentences provided for those pleading guilty.

Plea status appears to be less of a mitigating factor for offences relating to less serious violent offences. The average sentences provided to offenders with a most serious offence of 'serious assault' (0.6 year versus 0.8 year), 'assault occasioning bodily harm' (1.3 years and 1.3 years) and 'wounding' (2 years and 2 years) are similar on average.

Contrary to the general sentencing patterns, offenders with a most serious offence of 'rape' and 'maintaining a sexual relationship with a child' pleading guilty are actually provided with longer sentences on average than those offenders pleading not guilty. It is possible that the higher average sentence provided to offenders pleading guilty relates to the use of forensic evidence at trial. More serious cases may rely more heavily on forensic evidence and offenders may be more likely to plead guilty when compelling forensic evidence is submitted at trial. It is also worth noting that offenders with a most serious offence of 'rape' and 'maintaining a sexual relationship with a child' are least likely to plead guilty among offenders with a most serious offence relating to a sexual offence (see Figure 4).

Figure 5: Average sentence length (in years) for offenders imprisoned full-time for serious violent offences or sexual offences (as most serious offence) by plea status, higher courts 2005–06 to 2009–10



Source: Queensland Courts data maintained by OESR

Note: Offences may be excluded from analyses because of insufficient sample size (that is, fewer than 10) to calculate reliable average sentence lengths.

Variability in sentence lengths

Information on sentence variability is provided, given that the Queensland Government has suggested that SNPPs will assist with consistency in sentencing.

Two measures were used to examine sentence length variation within most serious offence categories – the median absolute deviation (MAD) and the interquartile range (IQR). See the glossary of terms for definitions of these measures.

Some degree of variation in sentence lengths within an offence category is to be expected as a result of case variability. A higher degree of sentence variation in sentences for offences with high maximum penalties is also to be expected.

The MAD and IQR measures are included in the analyses since the Queensland government signalled that one of the intentions of implementing a SNPP scheme is to promote greater consistency in sentencing.

A small MAD or IQR value demonstrates low variation in sentence lengths. It is important to note that these measures are not a complete measure of sentencing consistency as they do not take account of case variability.

Overall, the results do not show high levels of sentence length variability within most serious offence categories. This is an indication that there is a good degree of sentence length consistency for offenders sentenced by the higher courts to an immediate term of imprisonment for serious violent offences or sexual offences.

Median absolute deviation

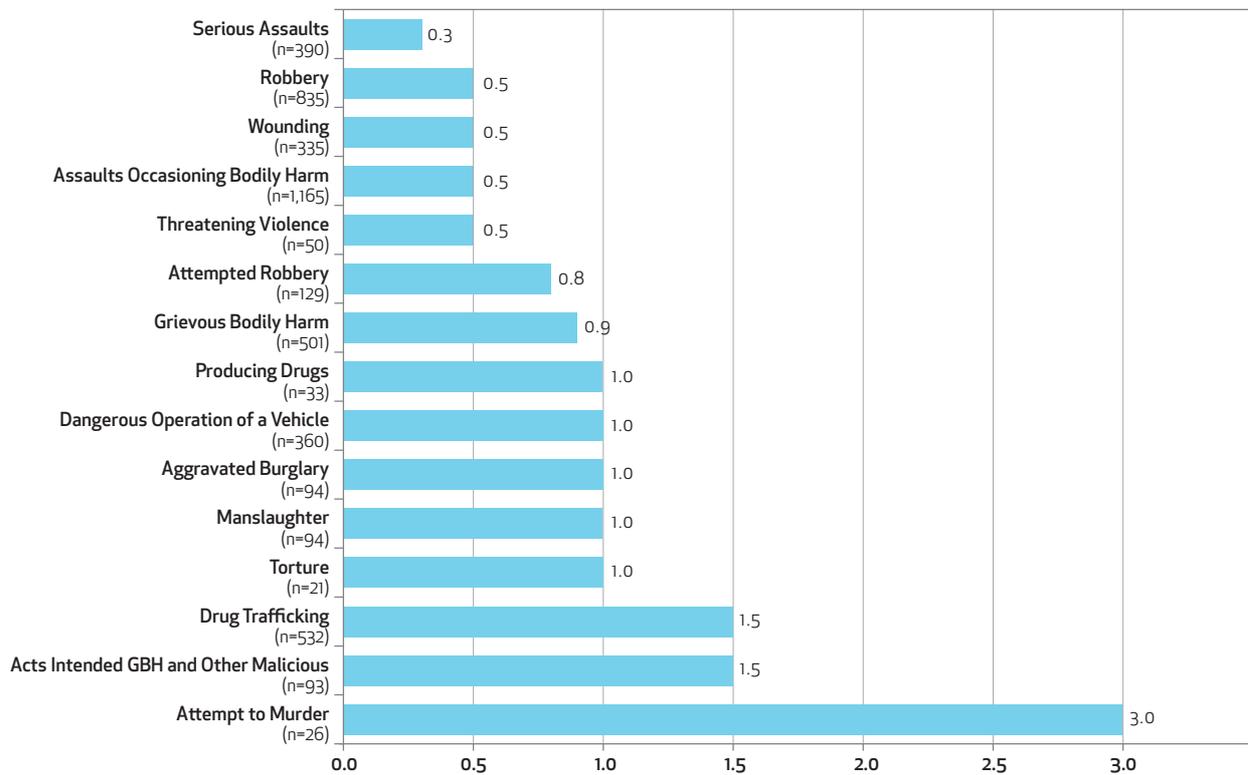
The MAD value for the majority of most serious offence categories is 1 year or less (see Figures 6 and 7).

Offence categories with a MAD greater than 1 year tend to be offences associated with high maximum penalties. These include ‘attempted murder’ (3 years), ‘rape’ (2 years), ‘unlawful sodomy’ (2 years), ‘maintaining a sexual relationship with a child’ (1.5 years), ‘acts intended to cause grievous bodily harm and other malicious acts’ (1.5 years) and ‘drug trafficking’ (1.5 years).

Offence categories with a MAD of one year are ‘producing drugs’, ‘dangerous operation of a vehicle’, ‘aggravated burglary’, ‘manslaughter’, ‘torture’, ‘incest’ and ‘attempt to commit rape’.

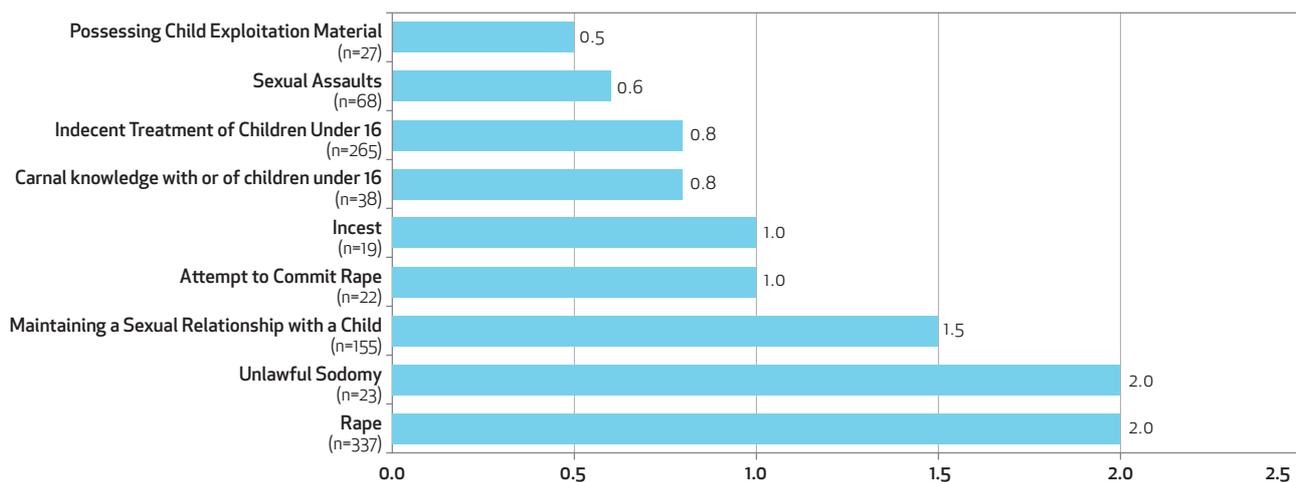
Offence categories with a MAD less than one year are ‘grievous bodily harm’ (0.9 year), ‘carnal knowledge with or of children under 16’ (0.8 year), ‘indecent treatment of children under 16’ (0.8 year), ‘sexual assaults’ (0.6 year), ‘possessing child exploitation material’ (0.5 year), ‘threatening violence’ (0.5 year), ‘assaults occasioning bodily harm’ (0.5 year), ‘wounding’ (0.5 year), ‘robbery’ (0.5 year) and ‘sexual assault’ (0.3 year).

Figure 6: Sentence length median absolute deviation (in years) for offenders imprisoned full-time for serious violent offences (as most serious offence), higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

Figure 7: Sentence length median absolute deviation (in years) for offenders imprisoned full-time for sexual offences (as most serious offence), higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

Note: One person was sentenced to life for the offence of rape. This person is excluded from MAD calculations.

Interquartile range

Figures 8 and 9 show the IQR for offenders provided with a full-time imprisonment penalty for serious violent offences or sexual offences.

The majority of offenders sent to prison for serious violent and sexual offences have a sentence IQR of around 2 years or less. The largest IQR occurs for 'attempted murder' (6.3 years) and the lowest occurs for 'serious assault' (0.5 year). The IQR for 'manslaughter' is only somewhat higher relative to other offences. This is an unexpected finding given the high maximum penalty and case variability associated with this offence.

A number of offence categories have an IQR of 3 years or higher. These offences are 'attempted murder' (6.3 years), 'unlawful sodomy' (6 years), 'rape' (4 years), 'maintaining a sexual relationship with a child' (3 years), 'acts intended to cause grievous bodily harm and other malicious acts' (3 years), 'drug trafficking' (3 years) and 'torture' (3 years).

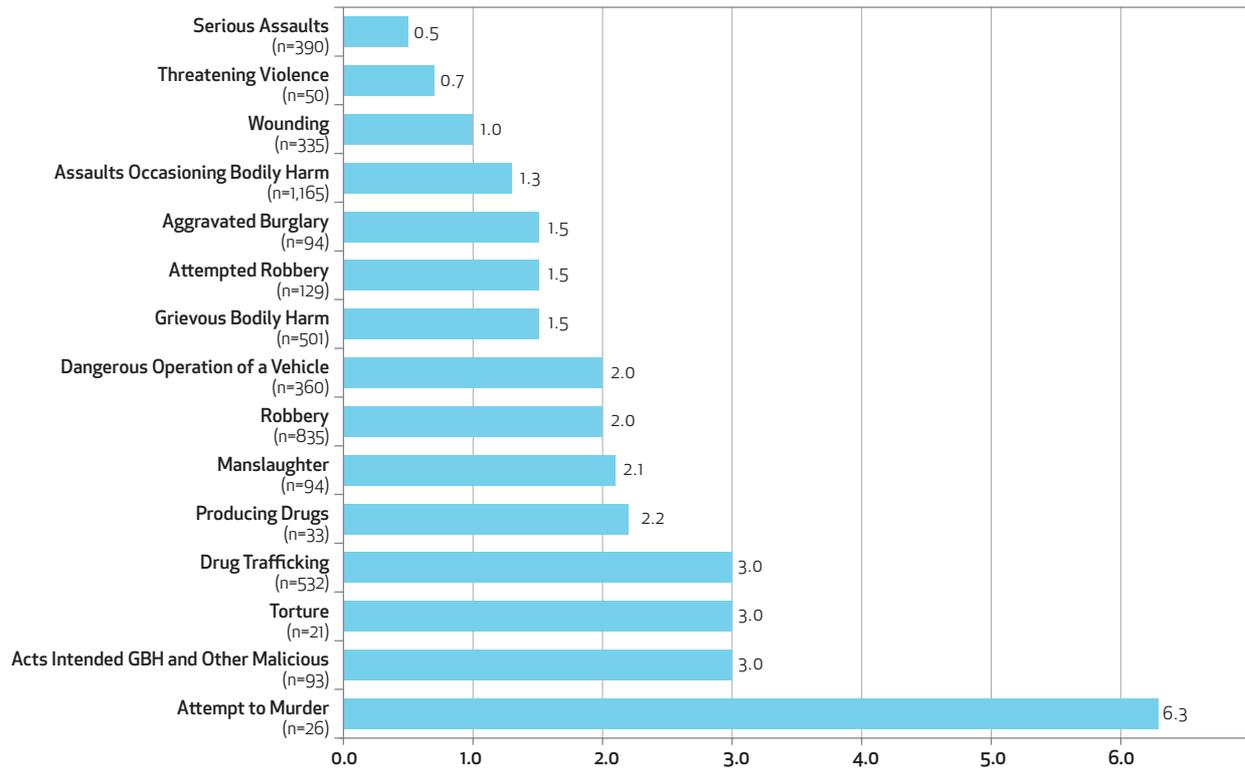
The IQR for 'incest' is 2.5 years, 'attempt to commit rape' is 2.5 years, 'carnal knowledge with or of children under 16' is 2.4 years, 'producing drugs' is 2.2 years and 'manslaughter' is 2.1 years.

Offences with an IQR of between 1 and 2 years are 'robbery' (2 years), 'sexual assault' (1.9 years), 'indecent treatment of children under 16' (1.5 years), 'aggravated burglary' (1.5 years), 'attempted robbery' (1.5 years), 'grievous bodily harm' (1.5 years), 'assault occasioning bodily harm' (1.3 years), 'possessing child exploitation material' (1.2 years), and 'wounding' (1 year). The IQR for 'threatening violence' is 0.7 years and for 'serious assault' it is 0.5 year.

Further research is needed to determine whether the relatively higher MAD and IQR values identified in the analyses reflect greater case variability or whether they result from greater sentencing inconsistency.

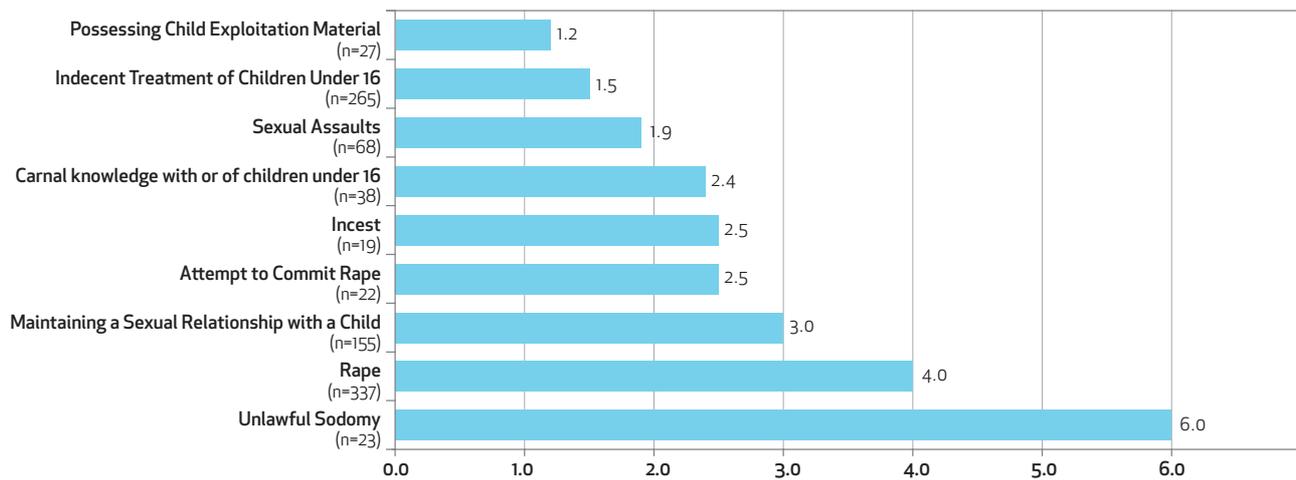
The box plots depicted in Figure 10 give a pictorial summary of many of the measures discussed above. They show the average sentence length in relation to the IQR and minimum and maximum sentences for serious violent offences and sexual offences. This representation is a useful way to compare sentencing patterns across different offence categories.

Figure 8: Sentence length interquartile range (in years) for offenders imprisoned full-time for serious violent offences (as most serious offence), higher courts 2005–06 to 2009–10



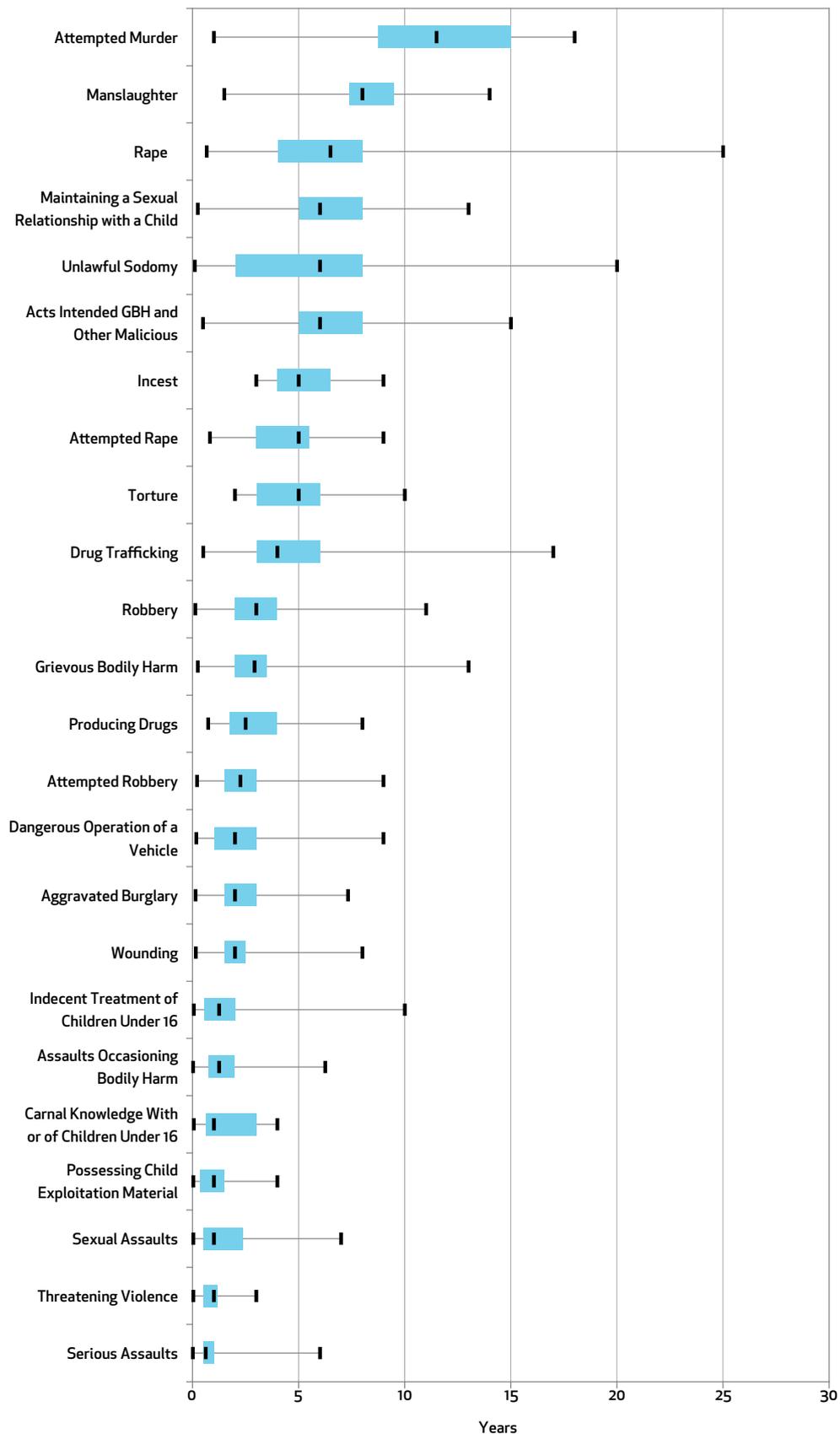
Source: Queensland Courts database maintained by OESR
 Note: Persons subject to life sentences are excluded from calculations.

Figure 9: Sentence length interquartile range (in years) for offenders imprisoned full-time for sexual offences (as most serious offence), higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR
 Note: Persons subject to life sentences are excluded from calculations.

Figure 10: Interquartile range and average, minimum and maximum sentence lengths (in years) for offenders sentenced to full-time imprisonment for serious violent offences and sexual offences (as most serious offence), higher courts 2005–06 to 2009–10



Source: Queensland Courts data maintained by OESR

Non-parole periods and time served

This section explores the relationship between head sentence lengths, non-parole periods and actual time served for offenders with a most serious offence that involves a serious violent offence or a sexual offence.

This information provides further guidance on the types of offences considered most serious by the higher courts and will be useful for determining where minimum SNPP periods for different offences should be set.

As mentioned earlier, all data presented in this section are subject to a range of limitations and should be interpreted with caution. In particular, it is noted that information presented in this section may underestimate non-parole periods and time served for serious violent offences as it includes information on offenders who would not have been subject to SVO legislation.

It is also important to interpret parole eligibility in relation to the head sentence. For example, parole eligibility set at 40 per cent of the head sentence of a long sentence will result in more time in custody than a parole eligibility date set at 40 per cent of a short sentence. Furthermore, the way in which corrections data have been extracted and analysed means that the non-parole periods presented in this section are likely to include time on remand.

Setting parole eligibility dates

Figures 11 and 12 show the average non-parole period and the average head sentence for offenders with a most serious offence involving a serious violent offence or sexual offence and sentenced to full-time imprisonment. The non-parole period as a proportion of the head sentence is also shown. This percentage value indicates where the higher courts typically set parole eligibility dates.

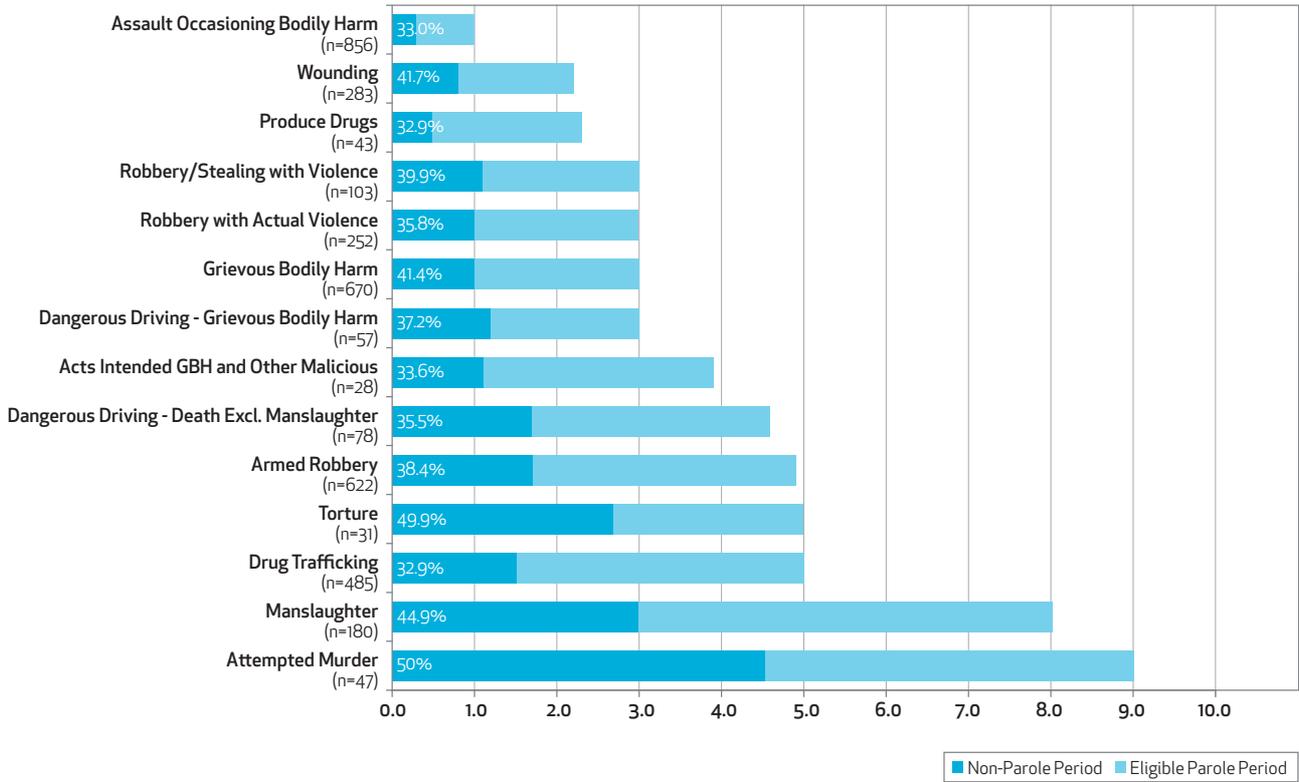
The non-parole period generally relates to the head sentence – with non-parole lengths increasing as head sentence lengths increase.

The longest non-parole periods include those set for ‘attempted murder’ (4.6 years), ‘manslaughter’ (3 years), ‘rape’ (3 years) and ‘unlawful sodomy’ (3 years). The shortest average non-parole periods are for ‘assault occasioning bodily harm’ (0.3 year), ‘produce drugs’ (0.5 year) and ‘wounding’ (0.8 year).

No offenders convicted of sexual offences have an average non-parole period of less than 1 year. Furthermore, offenders convicted of sexual offences tend to be characterised by higher non-parole periods when compared with offenders convicted of serious violent offences.

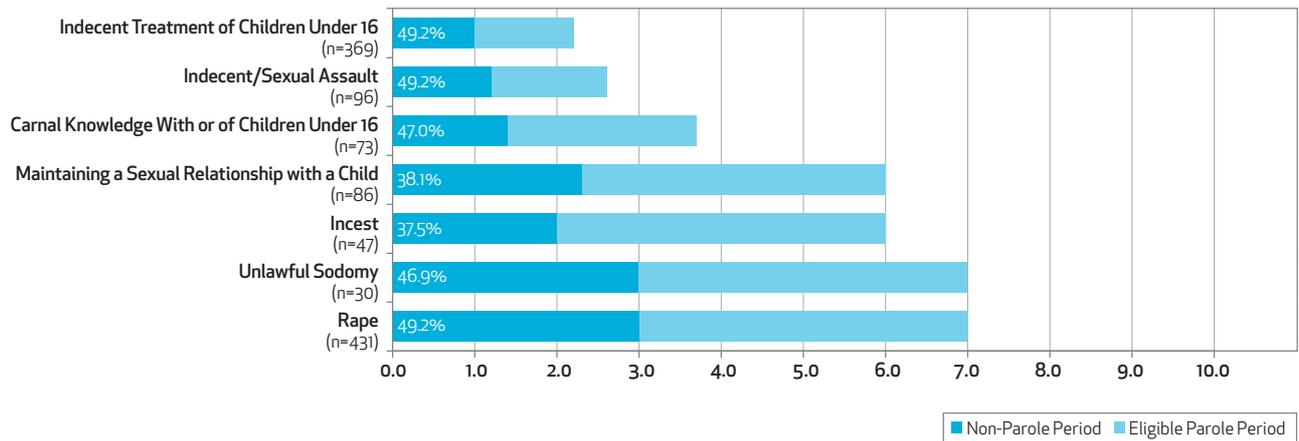
Although the average non-parole period expressed as a proportion of the average head sentence varies across the different offence categories, on average, offenders serve at least one-third of their sentence in custody before being eligible for parole. This finding is consistent with common law perceptions of parole eligibility which indicate that it is not unusual for Queensland offenders to be eligible for parole after serving one-third of their sentence if pleading guilty.

Figure 11: Average non-parole period and average sentence length (in years) for sentenced offenders discharged from custody with a serious violent offence (as most serious offence), 2000–10



Source: QCS unit record data

Figure 12: Average non-parole period and average sentence length (in years) for sentenced offenders discharged from custody with a sexual offence (as most serious offence), 2000–10



Source: QCS unit record data

Note: Offences may be excluded from analyses because of insufficient sample size (that is, fewer than 10) to calculate reliable average sentence lengths.

Time in custody before being released to parole

The development of standard minimum non-parole periods needs to take account of differences between where non-parole periods are currently set and the actual time served in custody before being released to parole.

Figures 13 and 14 show the average time spent in custody for offenders with a most serious offence involving a serious violent offence or sexual offence before being released to parole. When compared with the non-parole periods shown in Figures 11 and 12, these data show that some offenders on average are not necessarily released from custody at their parole eligibility date. This result will partially reflect decisions made by the parole boards who consider a range of factors before determining when or if an offender is released to parole. These factors are outlined in the text box 'Factors considered by parole boards when determining release to parole' on page 19.

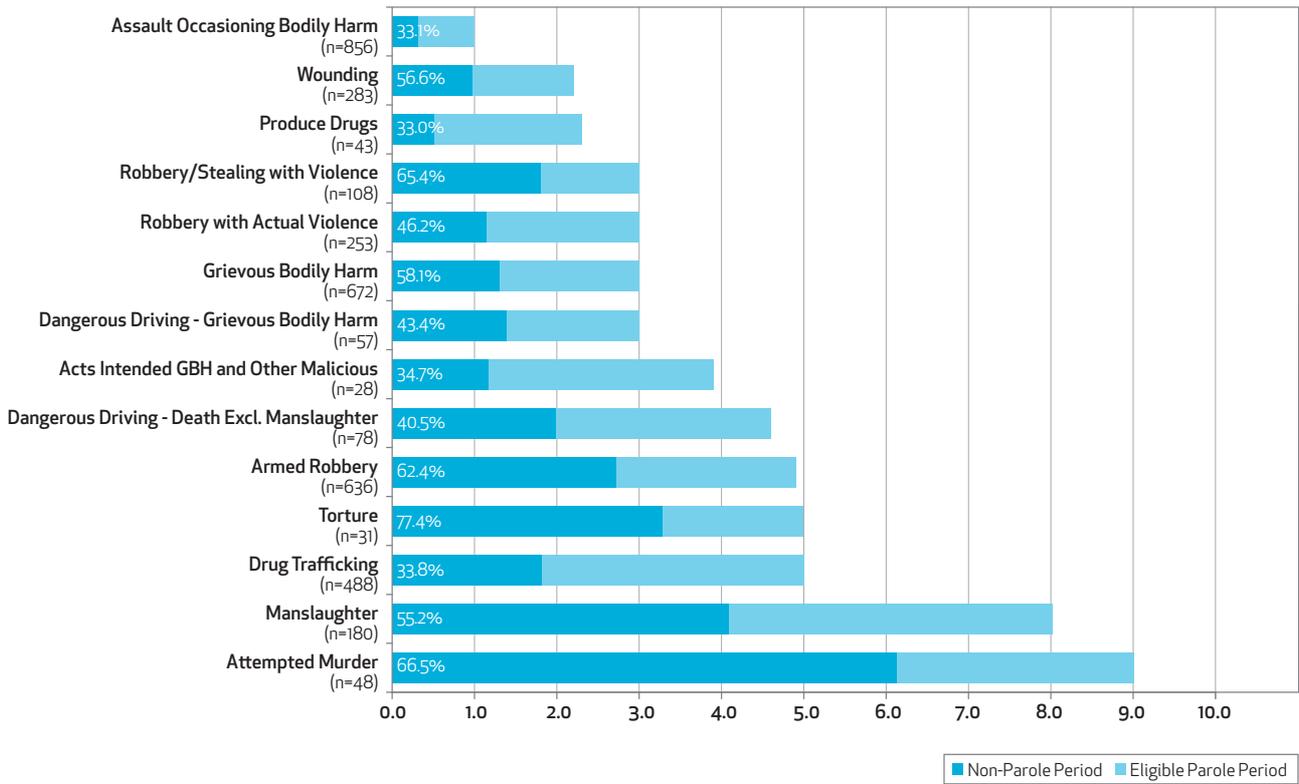
Time in custody as a proportion of the head sentence varies across the different offence categories, with offenders with a sexual offence as their most serious offence spending a greater share of their sentence in custody, than is the case for offenders with a serious violent offence as their most serious offence.

On average, all offenders with a most serious offence relating to a sexual offence spend more than 60 per cent of their head sentence in custody, while some offenders with a most serious offence involving a serious violent offence spend about one-third of their head sentence in custody. This includes those with a most serious offence of 'assault occasioning bodily harm' (33%), 'produce drugs' (33%) and 'trafficking drugs' (34%).

Offences with the highest average time served in custody are 'attempted murder' (6.1 years), 'unlawful sodomy' (5.3 years), 'rape' (4.3 years) and 'manslaughter' (4.1 years). Offences with the lowest average time served in custody comprise 'assault occasioning bodily harm' (0.3 years), 'produce drugs' (0.5 year), 'wounding' (1.0 year) and 'robbery with actual violence' (1.1 years).

The relationship between non-parole periods and amount of sentence served in custody is explored further in the next section.

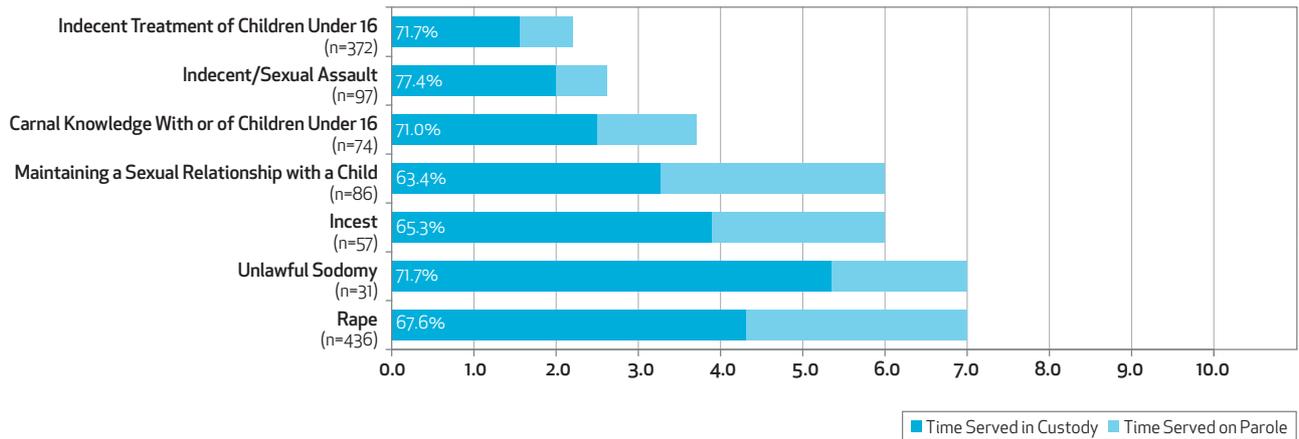
Figure 13: Average time served in custody and average sentence length (in years) for sentenced offenders discharged from custody with a serious violent offence (as most serious offence), 2000–10



Source: QCS unit record data

Note: Offences may be excluded from analyses because of insufficient sample size (that is, fewer than 10) to calculate reliable average sentence lengths. Average time served in custody information may be biased by the inclusion of offenders not subject to SVO legislation in the corrections data.

Figure 14: Average time served in custody and average sentence length (in years) for sentenced offenders discharged from custody with a serious sexual offence (as most serious offence), 2000–10



Source: QCS unit record data

Note: Offences may be excluded from analyses due to insufficient sample size (that is, less than 10) to calculate reliable average sentence lengths. Average time served in custody information may be biased due to the inclusion of offenders not subject to SVO legislation in the corrections data.

Time in custody compared with non-parole period

Figures 15 and 16 show the amount of time that sentenced offenders serve in custody as a proportion of their non-parole period. This is calculated by dividing the average non-parole period by the average time served in custody. This means that offenders released from custody near their parole eligibility date will serve 100 per cent of their non-parole period. Offenders released after their parole eligibility date will serve more than 100 per cent of their non-parole period. These data summarise the relationship between non-parole periods and sentences served in custody by most serious offence category.

These findings reflect a complex interplay between factors such as parole board decision-making, offender behaviour in custody, offender risk of re-offending and the availability of community-based reintegration and rehabilitation support. Using these measures as an indicator of parole board performance and/or workload would be an incorrect use of the information presented here. As well, these results are based on averages, which means that there will be cases that fall above and below the average values presented here.

The results show that offenders with a most serious offence involving a serious violent offence tend to be more likely to be released to parole closer to their parole eligibility date than offenders with a sexual offence as their most serious offence.

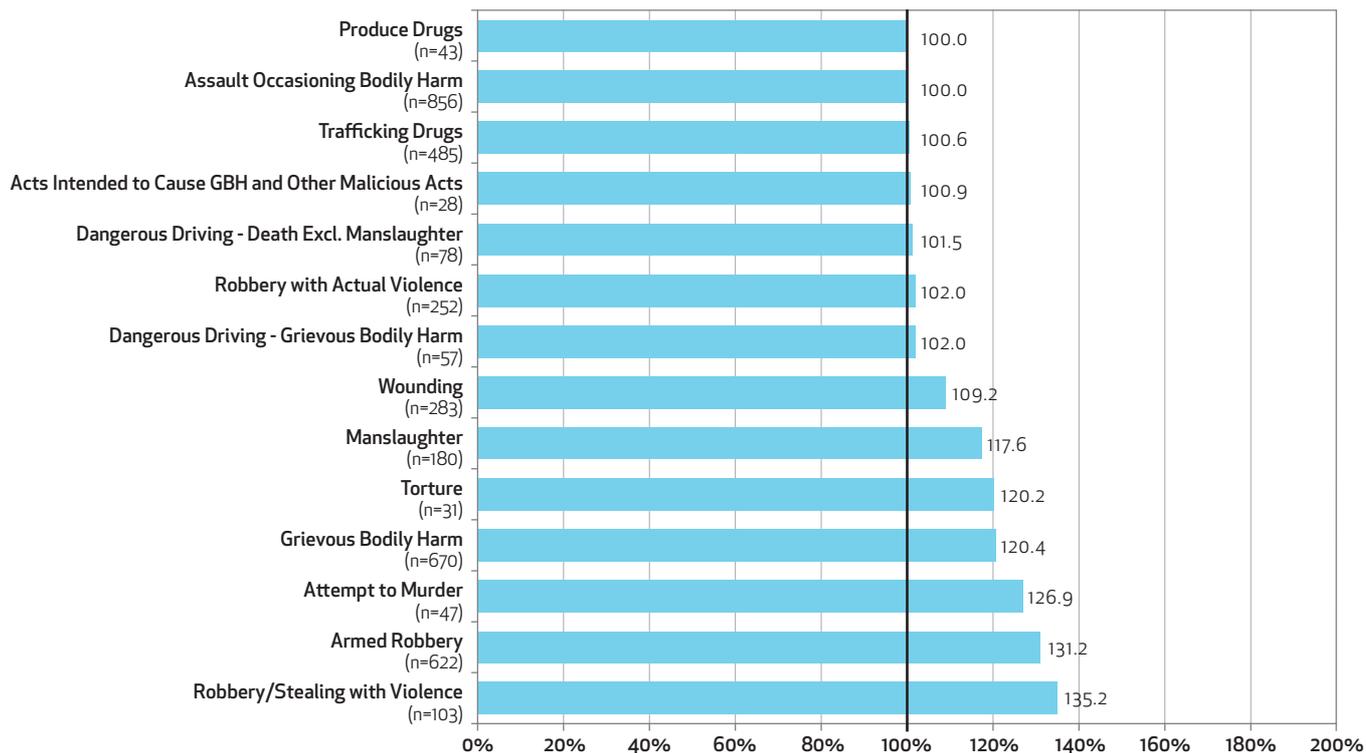
Offenders are typically released to parole on or near their parole eligibility date if their most serious offence is 'produce drugs', 'assault occasioning bodily harm', 'drug trafficking', 'acts intended to cause grievous bodily harm and other malicious acts' and 'dangerous driving (death excluding manslaughter)'.

Two of the above offence categories ('produce drugs' and 'assault occasioning bodily harm') have an average sentence that is less than three years. These offenders will therefore typically be subject to court-ordered parole if they were sentenced after August 2006, and will have a court-ordered release date rather than a parole eligibility date.

Other offenders with a serious violent offence as their most serious offence serve an additional 20 to 35 per cent of their non-parole period in custody before being released to parole. Offenders with a sexual offence as their most serious offence spend an additional 40 to 80 per cent of their non-parole period in custody before being released to parole. Apart from factors contributing to parole board decision-making, the relatively higher term served in custody for offenders with sexual offences as their most serious offence is likely to reflect their legislated exclusion from court-ordered parole. It is important to note that not all offenders with a most serious offence involving a sexual offence are sentenced to full-time imprisonment. Also, this category of offenders is less likely than offenders with a most serious offence involving serious violent offences to be sentenced to full-time imprisonment.

The results discussed here suggest that the implementation of a SNPP sentencing scheme may need to be structured in a way that accounts for current variation in average non-parole periods and average time served before being released to parole. These matters are examined further in the SNPP consultation paper.

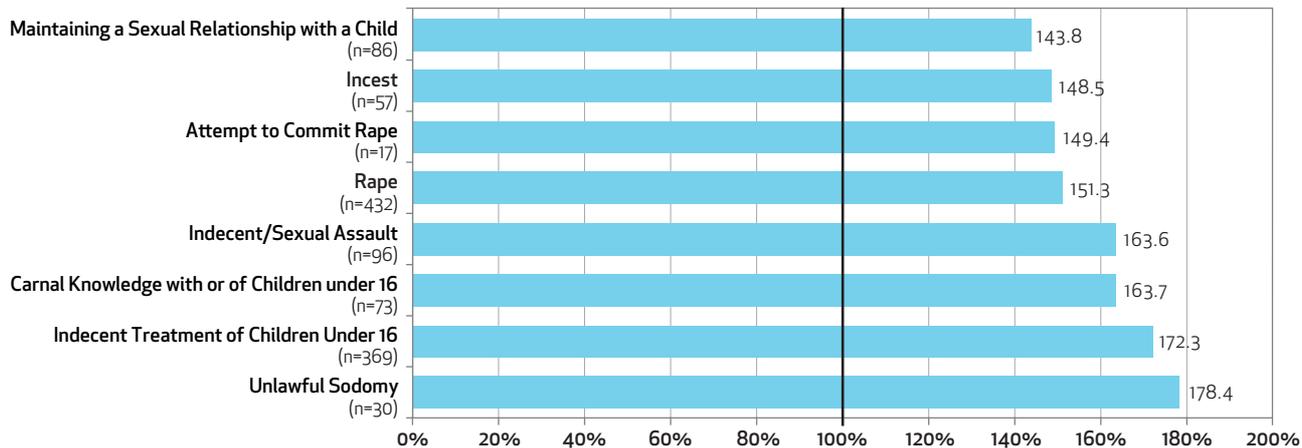
Figure 15: Average sentence served in custody as a proportion of average non-parole period (in years) for sentenced offenders discharged from custody with a serious violent offence (as most serious offence), 2000–10



Source: QCS unit record data

Note: Average time served in custody information may be biased by the inclusion of offenders not subject to SVO legislation in the correction data.

Figure 16: Average sentence served in custody as a proportion of average non-parole period (in years) for sentenced offenders discharged from custody with a sexual offence (as most serious offence), 2000–10



Source: QCS unit record data

Note: Average time served in custody information may be biased by the inclusion of offenders not subject to SVO legislation in the corrections data.

Aboriginal and Torres Strait Islander offenders

This section compares sentencing patterns relating to Aboriginal and Torres Strait Islander offenders with those for non-Aboriginal and Torres Strait Islander offenders. This information is provided to assist in determining whether or not the introduction of a SNPP sentencing scheme will disproportionately affect Aboriginal and Torres Strait Islander people.⁶ It is important to note that some offence categories used for these analyses have small numbers, so caution should be used when interpreting results.

These analyses are particularly important given the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The imprisonment rate for adult Aboriginals and Torres Strait Islanders in Queensland (per 100,000) was 1,762.2 in 2010 compared with 162.4 for non-Aboriginal and Torres Strait Islander people.⁷ This means that Queensland Aboriginal and Torres Strait Islanders are 11 times more likely to be incarcerated than are non-Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander offenders represented 30 per cent of the Queensland prison population in 2010,⁸ while accounting for approximately 3.6 per cent of the Queensland population.⁹

Aboriginal and Torres Strait Islander Offending

The most serious offence profile of Aboriginal and Torres Strait Islander offenders varies from that for non-Aboriginal and Torres Strait Islander offenders.

Table 2 shows the most serious offence for offenders sentenced to full-time imprisonment by the higher courts by Aboriginal and Torres Strait Islander status. Although Aboriginal and Torres Strait Islander offenders represent a smaller proportion of total offenders sentenced to full-time imprisonment, Aboriginal and Torres Strait Islander offenders (71%) are much more likely than non-Aboriginal and Torres Strait Islander offenders (53%) to have a most serious offence that is a serious violent offence or a sexual offence.

This result is largely driven by the high proportion of Aboriginal and Torres Strait Islander offenders sentenced to full-time custody for serious violent offences. A greater proportion of Aboriginal and Torres Strait Islander offenders than non-Aboriginal and Torres Strait Islander offenders sentenced to full-time imprisonment have a most serious offence involving ‘assault occasionally bodily harm’ (20% versus 10%), ‘wounding’ (9% versus 2%), ‘grievous bodily harm’ (8% versus 4%), ‘serious assault’ (8% versus 3%) and ‘threatening violence’ (0.7% versus 0.4%).

Aboriginal and Torres Strait Islander offenders and non-Aboriginal and Torres Strait Islander offenders tend to be equally likely to be sentenced to full-time imprisonment for offences relating to sexual offences. Sexual offences are the most serious offence for 11 per cent of Aboriginal and Torres Strait Islander offenders sentenced to imprisonment compared with 9 per cent of non-Aboriginal and Torres Strait Islander offenders.

There is little variation between the different sexual offence categories. Aboriginal and Torres Strait Islander offenders are somewhat more likely than non-Aboriginal and Torres Strait Islander offenders to have a most serious offence involving ‘rape’ (5% versus 3%) and ‘carnal knowledge with or of

⁶ Most serious offence categories with fewer than 10 Aboriginal and Torres Strait Islander offenders are excluded from analysis.

⁷ Australian Bureau of Statistics, *Corrective Services, Australia*, 4512.0, December (2010).

⁸ Ibid.

⁹ Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Australians, Australia*, 4713.0 (2006)

children under 16' (0.8% versus 0.3%). They are less likely than non-Aboriginal and Torres Strait Islander offenders to have a most serious offence relating to 'maintaining a sexual relationship with a child' (0.5% versus 1.8%).

No Aboriginal and Torres Strait Islander offenders have a most serious offence relating to 'producing drugs' and very few have a most serious offence relating to 'trafficking drugs'. Trafficking drugs was the most serious offence for 0.7 per cent of Aboriginal and Torres Strait Islander offenders compared with 6.7 per cent of non-Aboriginal and Torres Strait Islander offenders.

Table 2: Most serious offence profile of offenders sentenced to full-time imprisonment by Aboriginal and Torres Strait Islander status, higher courts 2005–06 to 2009–10

Most serious offence	% within ATSI	% within non-ATSI
Attempt to murder	0.2	0.3
Manslaughter	1.0	1.0
Robbery	7.1	8.6
Attempted robbery	1.6	1.2
Aggravated burglary	0.7	1.0
Grievous bodily harm	8.1	4.3
Acts intended to cause GBH and other malicious acts	0.7	1.0
Torture	0.3	0.2
Wounding	8.5	2.1
Assault occasioning bodily harm	20.2	9.7
Serious assault	7.5	2.9
Threatening violence	0.7	0.4
Drug trafficking	0.7	6.7
Producing drugs	0.0	0.4
Dangerous operation of a vehicle	2.4	3.9
Maintaining a sexual relationship with a child	0.5	1.8
Incest	0.2	0.2
Unlawful sodomy	0.1	0.2
Indecent treatment of children under 16	2.4	2.6
Carnal knowledge with or of children under 16	0.8	0.3
Possessing child exploitation material	0.0	0.3
Rape	5.1	3.0
Attempted rape	0.5	0.2
Sexual assault	1.4	0.6
Other	29.5	47.1

Source: Queensland Courts database maintained by OESR

Aboriginal and Torres Strait Islander sentencing outcomes

Figures 17 and 18 show the proportion of offenders sentenced to a period of imprisonment after being convicted of serious violent offences or sexual offences by Aboriginal and Torres Strait Islander status.

Information in these figures reveals that convicted Aboriginal and Torres Strait Islander offenders tend to be equally or more likely to receive an imprisonment penalty than non-Aboriginal and Torres Strait Islander offenders.

Aboriginal and Torres Strait Islander offenders are equally or slightly more likely than non-Aboriginal and Torres Strait Islander offenders to serve a prison sentence when their most serious offence is ‘manslaughter’ (100% and 100%), ‘attempted robbery’ (77% versus 74%), ‘acts intended to cause grievous bodily harm and other malicious acts’ (100% versus 98%), ‘wounding’ (74% versus 72%) and ‘carnal knowledge with or of children under 16’ (42% versus 39%).

The likelihood of Aboriginal and Torres Strait Islander offenders being imprisoned compared with non-Aboriginal and Torres Strait Islander offenders is higher for ‘robbery’ (86% versus 78%), ‘grievous bodily harm’ (88% versus 79%), ‘aggravated burglary’ (78% versus 65%), ‘sexual assault’ (77% versus 40%), ‘indecent treatment of children under 16’ (74% versus 57%), ‘serious assault’ (68% versus 51%), ‘assault occasioning bodily harm’ (60% versus 42%) and ‘threatening violence’ (42% versus 27%).

When compared with non-Aboriginal and Torres Strait Islander offenders, Aboriginal and Torres Strait Islander offenders are more or less equally likely to be imprisoned for ‘rape’ (96% versus 97%) and less likely to be imprisoned for ‘maintaining a sexual relationship with a child’ (92% versus 98%) and ‘attempted rape’ (83% versus 91%).

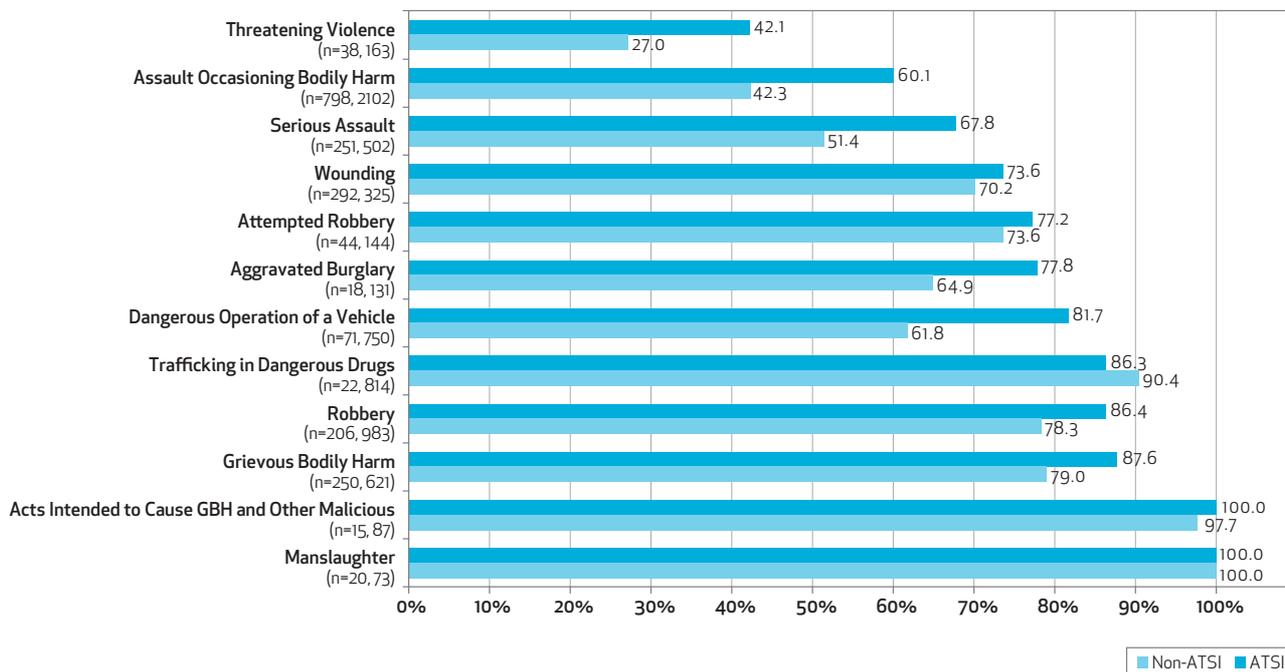
The higher incarceration rate found for Aboriginal and Torres Strait Islander offenders for particular offences is consistent with other research.¹⁰ Higher incarceration rates reflect the greater likelihood that Aboriginal and Torres Strait Islander people will participate in crime and the greater likelihood that Aboriginal and Torres Strait Islander offenders will be repeat offenders.

Although it is acknowledged that differences exist between Aboriginal and Torres Strait Islander persons and communities, research has demonstrated that Aboriginals and Torres Strait Islanders are more likely than non-Aboriginal and Torres Strait Islander people to be exposed to the risk factors associated with involvement in crime. These factors include child abuse, poor education, alcohol misuse and poor parenting. Aboriginal and Torres Strait Islanders are also subject to further unique risk factors that arise from their post-colonial history. These factors include forced family removals, group powerlessness, intergenerational grief and institutionalised racism.¹¹

¹⁰ ___Senate Committee on Regional and Remote Indigenous Communities, *Indigenous Australians, Incarceration and the Criminal Justice System* (2010)

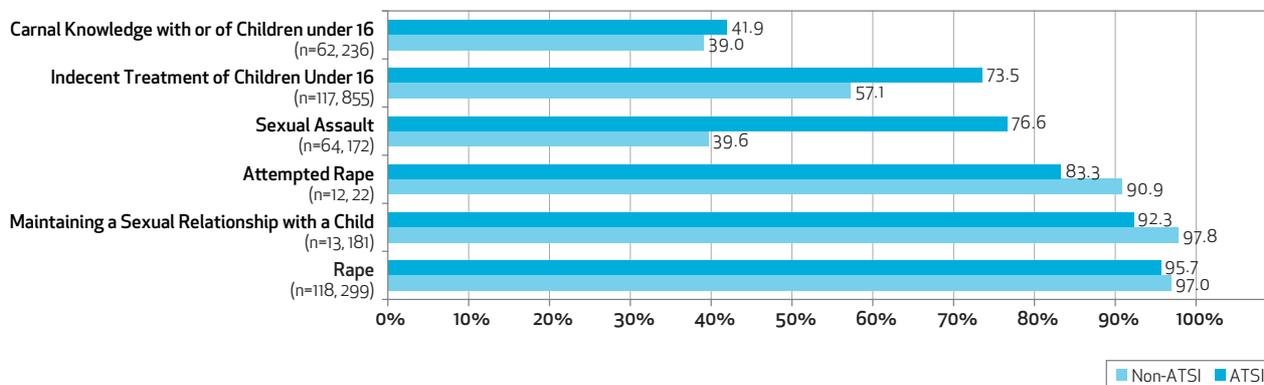
¹¹ ___Ross Homel, Robyn Lincoln and Bruce Herd, ‘Risk and Resilience: Crime and Violence Prevention in Aboriginal Communities’, (1999) *The Australian and New Zealand Journal of Criminology*, 32 (2) 182–196 (1999).

Figure 17: Proportion of offenders convicted of serious violent offences (as most serious offence) sentenced to a period of imprisonment (full-time and partially suspended) by Aboriginal and Torres Strait Islander status, higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR
 Note: Some offences were excluded from analyses because of insufficient sample size within Aboriginal and Torres Strait Islander status.

Figure 18: Proportion of offenders convicted of sexual offences (as most serious offence) sentenced to a period of imprisonment (full-time and partially suspended) by Aboriginal and Torres Strait Islander status, higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR
 Note: Some offences were excluded from analyses because of insufficient sample size within Aboriginal and Torres Strait Islander status.

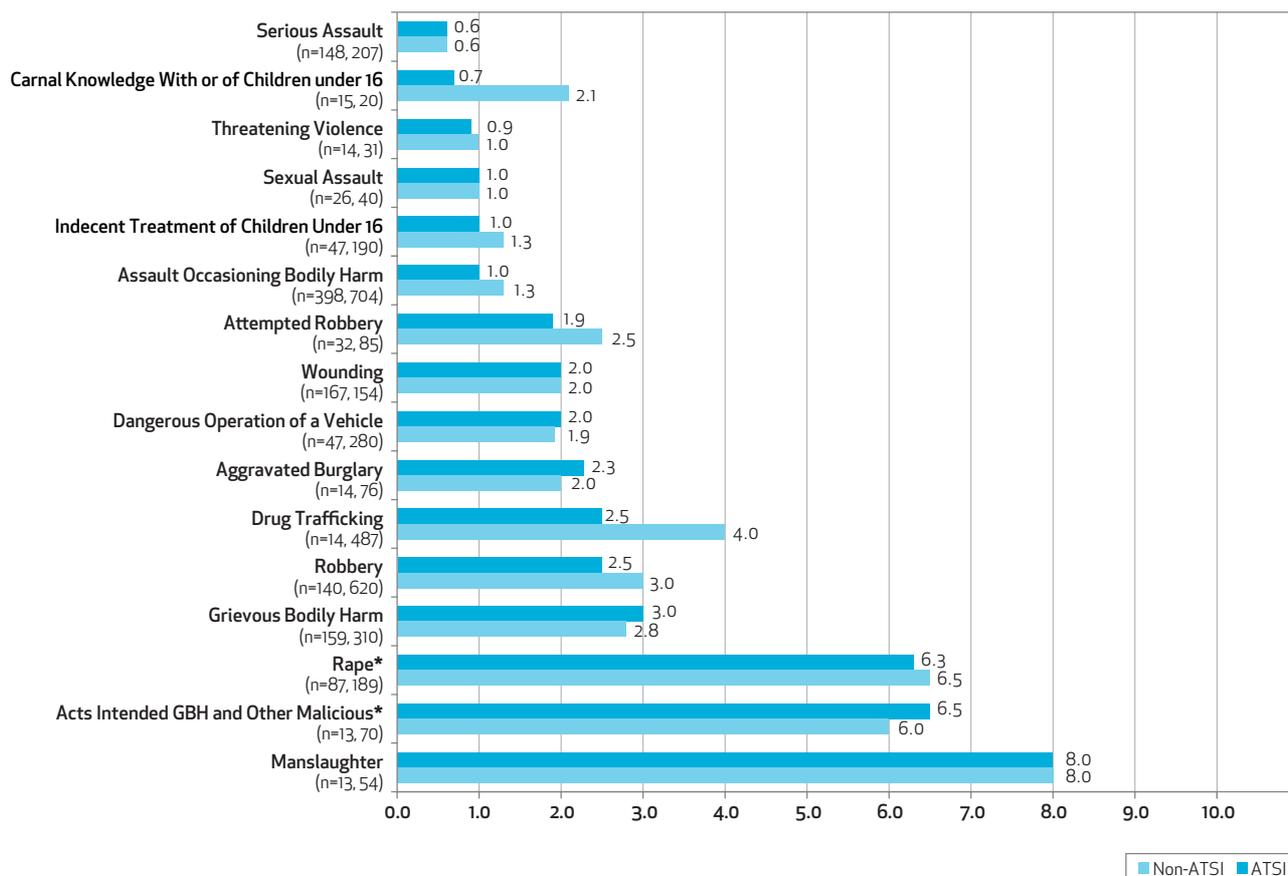
Average sentence length by Aboriginal and Torres Strait Islander status

Figure 19 shows that the average sentence length for Aboriginal and Torres Strait Islander offenders sentenced for serious violent offences or sexual offences tends to be equal to or less than the average sentences provided to non-Aboriginal and Torres Strait Islander offenders.

Offences where the average most serious offence sentence length is shorter for Aboriginal and Torres Strait Islander offenders compared with non-Aboriginal and Torres Strait Islander offenders include ‘carnal knowledge with or of children under 16’ (0.7 year versus 2.1 years), ‘indecent treatment of children under 16’ (1 year versus 1.3 years), ‘assault occasioning bodily harm’ (1 year versus 1.3 years), ‘attempted robbery’ (1.9 years versus 2.5 years), ‘robbery’ (2.5 years versus 3 years) and ‘drug trafficking’ (2.5 years versus 4 years).

The only offence category with a higher average sentence for Aboriginal and Torres Strait Islander offenders compared with non-Aboriginal and Torres Strait Islander offenders is ‘acts intended to cause grievous bodily harm and other malicious acts’ (6.5 years versus 6 years). Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander offenders were more or less equally likely to be imprisoned for this offence (see Figure 17), although only a small number of Aboriginal and Torres Strait Islander offenders (n=15) were sent to prison for this offence.

Figure 19: Average sentence (in years) for offenders convicted of serious violent offences or sexual offences (as most serious offence) by Aboriginal and Torres Strait Islander status, higher courts 2005–06 to 2009–10



Source: Queensland Courts database maintained by OESR

*__Calculated figures do not include persons sentenced to life imprisonment for this offence.

Note: Some offences were excluded from analyses because of insufficient sample size within Aboriginal and Torres Strait Islander status.

Average non-parole period by Aboriginal and Torres Strait Islander status

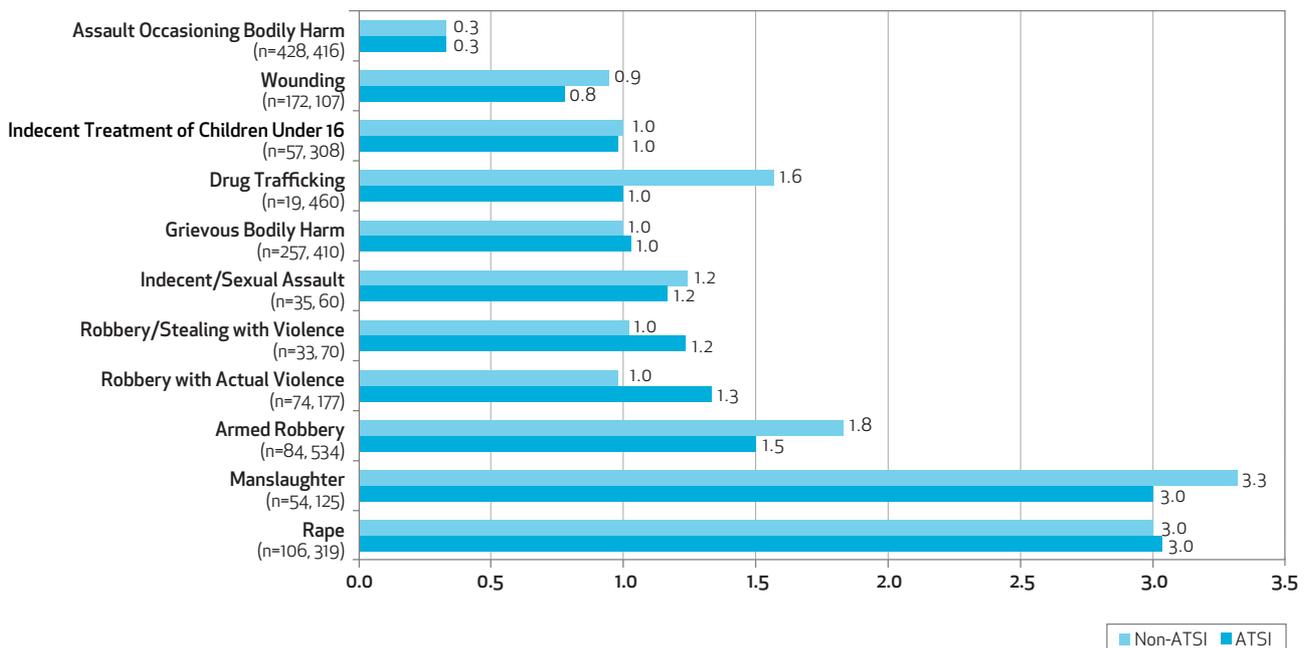
Figure 20 shows the average non-parole periods provided to offenders with a most serious offence involving a serious violent offence or a sexual offence by Aboriginal and Torres Strait Islander status. These data show that the non-parole periods set by the higher courts for Aboriginal and Torres Strait Islander offenders tend on average to be equal to or slightly shorter on average than those provided to non-Aboriginal and Torres Strait Islander offenders.

Aboriginal and Torres Strait Islander offenders are characterised by slightly shorter non-parole periods than non-Aboriginal and Torres Strait Islander offenders for offences involving ‘drug trafficking’ (1 year versus 1.6 years), ‘armed robbery’ (1.5 years versus 1.8 years) and ‘manslaughter’ (3 years versus 3.3 years). It is noted that very few Aboriginal and Torres Strait Islander offenders (n=19) have a most serious offence involving ‘drug trafficking’.

The average non-parole periods set for Aboriginal and Torres Strait Islander offenders are slightly longer than those set for non-Aboriginal and Torres Strait Islander offenders for just two of the most serious offence categories included in the analyses. These are ‘robbery/stealing with violence’ (1.2 years versus 1 year) and ‘robbery with actual violence’ (1.3 years versus 1 year).

All other offence categories have similar non-parole periods regardless of Aboriginal and Torres Strait Islander status.

Figure 20: Average non-parole period (in years) for offenders discharged from custody with a serious violent offence or sexual offence (as most serious offence) by Aboriginal and Torres Strait Islander status, 2000–10



Source: QCS unit record data

Note: Some offences were excluded from analyses because of insufficient sample size within Aboriginal and Torres Strait Islander status. Average time served in custody information may be biased by the inclusion of offenders not subject to SVO legislation in the corrections data.

Length of imprisonment before release to parole by Aboriginal and Torres Strait Islander Offenders status

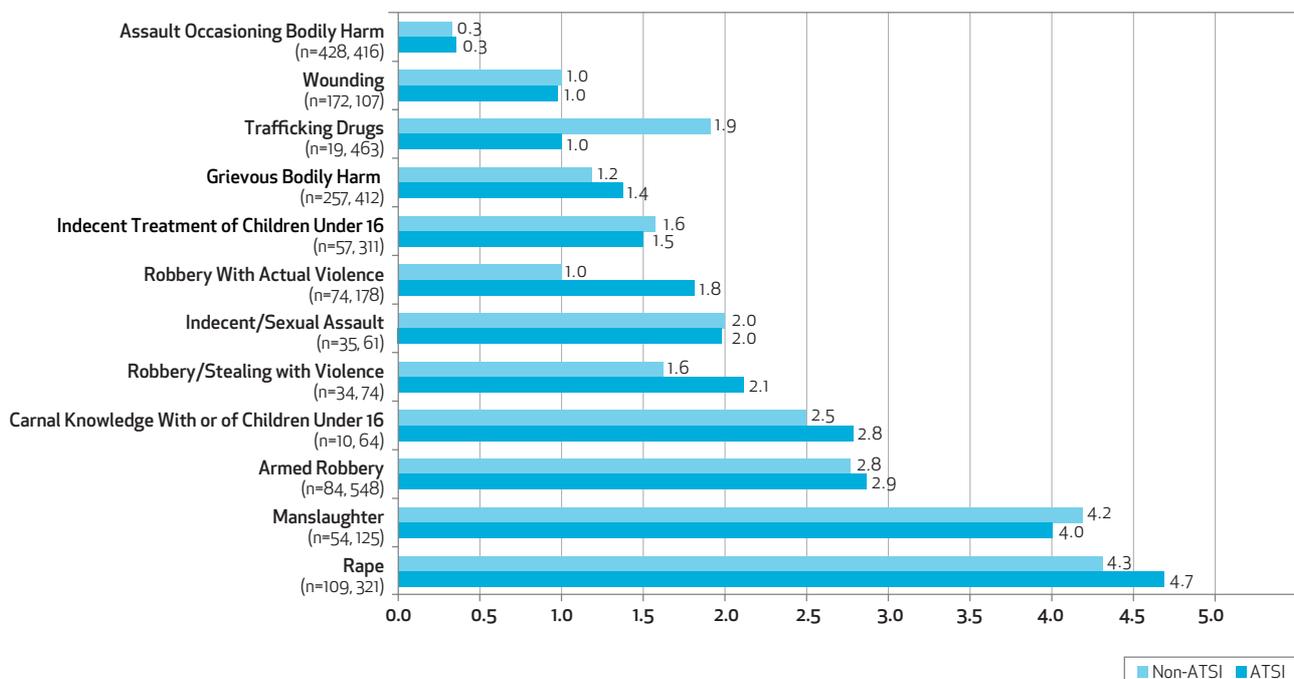
Information presented above shows that Aboriginal and Torres Strait Islander offenders are typically provided with sentences and non-parole periods that are generally equal to or slightly less in length than those for non-Aboriginal and Torres Strait Islander offenders.

These patterns are slightly less evident when average time served in custody before being released to parole is examined by Aboriginal and Torres Strait Islander status. Figure 21 shows that on average, sentenced Aboriginal and Torres Strait Islander offenders tend to spend similar amounts of time in custody than non-Aboriginal and Torres Strait Islander offenders before being released to parole for offences included in the analyses.

There are a few variations to this pattern. The average time served for ‘robbery with actual violence’ (1.8 years versus 1 year) and ‘robbery/stealing with violence’ (2.1 years versus 1.6 years) is greater for Aboriginal and Torres Strait Islander offenders than for non-Aboriginal and Torres Strait Islander offenders. The average time served for ‘trafficking drugs’ is less for Aboriginal and Torres Strait Islander offenders than for non-Aboriginal and Torres Strait Islander offenders (1 year versus 1.9 years).

The general likelihood of Aboriginal and Torres Strait Islander offenders to serve similar periods of time in custody before being released to parole as non-Aboriginal and Torres Strait Islander offenders while receiving equal or slightly shorter head sentences and non-parole periods on average from the higher courts. This suggests that Aboriginal and Torres Strait Islander offenders are slightly less likely to be released at or close to their parole eligibility date. This topic is explored further in the following subsection.

Figure 21: Average time served in custody (in years) for sentenced offenders discharged from custody with serious violent offences or sexual offences (as most serious offence) by Aboriginal and Torres Strait Islander status, 2000–10



Source: QCS unit record data.

Note: Some offences were excluded from analyses because of insufficient sample size within Aboriginal and Torres Strait Islander status. Average time served in custody information may be biased by the inclusion of offenders not subject to SVO legislation in the corrections data

Time in custody compared with non-parole period by Aboriginal and Torres Strait Islander status

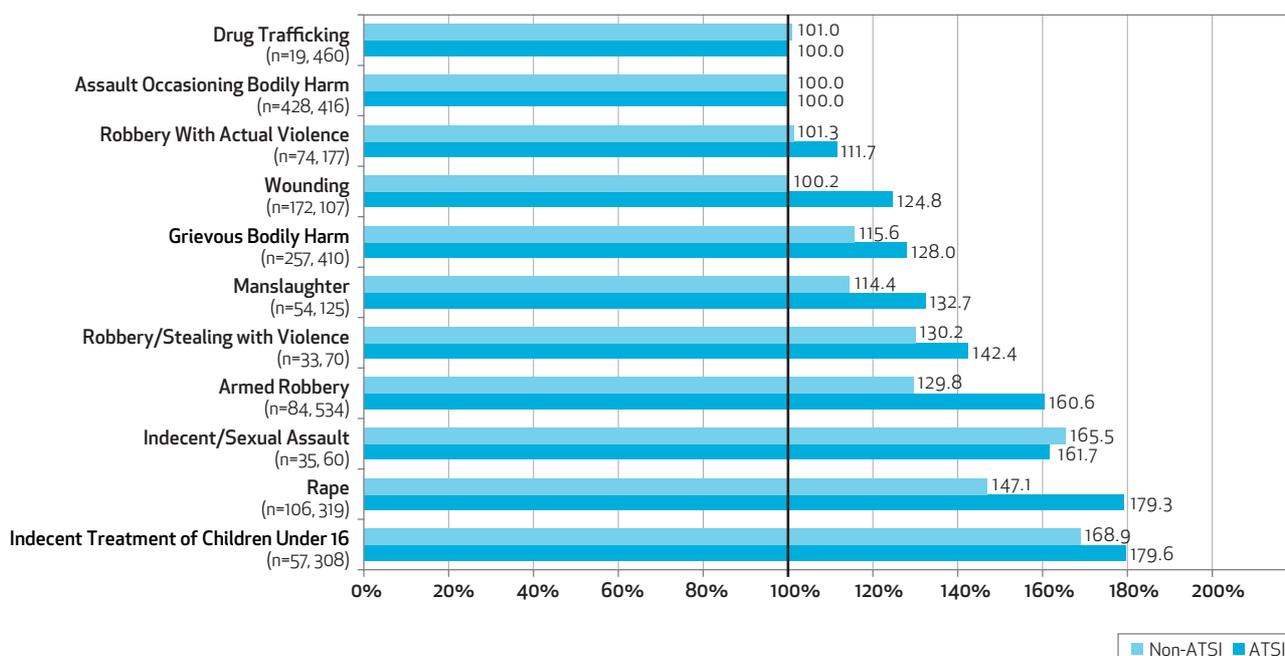
Figure 22 shows the amount of time that offenders serve in custody as a proportion of their non-parole period by Aboriginal and Torres Strait Islander offender status.

These data indicate that Aboriginal and Torres Strait Islander offenders tend to spend more time in custody after their parole eligibility date than do non-Aboriginal and Torres Strait Islander offenders. These results suggest that with Aboriginal and Torres Strait Islander offenders there may be factors that can delay the submission of parole applications (such as literacy problems) and/or delay the release from custody by a parole board (such as access to employment and suitable post-release accommodation and support).

When compared with non-Aboriginal and Torres Strait Islander offenders, Aboriginal and Torres Strait Islander offenders spend equal time in custody in relation to their parole eligibility date when their most serious offence involves ‘trafficking drugs’ and ‘assault occasioning bodily harm’ and slightly less time for ‘indecent/sexual assault’. For all other offence categories, Aboriginal and Torres Strait Islanders offenders spend more time in custody in relation to their parole eligibility date than do non-Aboriginal and Torres Strait Islander offenders.

Further analysis also shows that Aboriginal and Torres Strait Islander offenders are more likely than non-Aboriginal and Torres Strait Islander offenders to spend their entire sentence under custodial supervision. This may indicate that Aboriginal and Torres Strait Islander offenders are more likely than non-Aboriginal and Torres Strait Islander offenders to not submit a parole application and choose to serve their entire sentence in prison. This will affect the average time in custody information reported in this section.

Figure 22: Average sentence served in custody as a proportion of average non-parole periods (in years) for sentenced offenders discharged from custody with serious violent offences or sexual offences (as most serious offence), 2000–10



Source: QCS unit record data

Note: Some offences were excluded from analyses because of insufficient sample size within Aboriginal and Torres Strait Islander status. Average time served in custody information may be biased by the inclusion of offenders not subject to SVO legislation in the corrections data.

The affects of a SNPP scheme on Aboriginal and Torres Strait Islander people

The effects of a SNPP sentencing scheme on Aboriginal and Torres Strait Islander people will depend on how the scheme is defined and implemented in Queensland.

The Judicial Commission of NSW found that the introduction of a SNPP scheme in NSW resulted in increased incarceration rates, guilty plea rates and sentence severity for offences subject to the scheme.¹² These outcomes are used to structure our discussion of the possible impact of a SNPP scheme on Queensland Aboriginal and Torres Strait Islander people. Further information on the impact of the scheme in NSW is provided in the consultation paper.

The overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system means that any scheme that results in offenders serving more time in custody will disproportionately affect Aboriginal and Torres Strait Islander people.

The slightly different offending and sentencing patterns of Aboriginal and Torres Strait Islander offenders compared with non-Aboriginal and Torres Strait Islander offenders also means that Aboriginal and Torres Strait Islander offenders may be disproportionately affected by a SNPP scheme when compared with non-Aboriginal and Torres Strait Islander offenders.

The possibility of increases in incarceration rates and sentence severity for Aboriginal and Torres Strait Islander offenders will relate to their likelihood of being convicted of offences included in the Queensland SNPP scheme.

This section has shown that, compared with non-Aboriginal and Torres Strait Islander offenders, Aboriginal and Torres Strait Islander offenders are much more likely to be sentenced to full-time imprisonment for offences involving serious violent offences. This means that a SNPP scheme will disproportionately affect Aboriginal and Torres Strait Islander offenders if it includes serious violent offences.

The equal likelihood of Aboriginal and Torres Strait Islander offenders and non-Aboriginal and Torres Strait Islander offenders pleading guilty means that the SNPP scheme is unlikely to have a disproportionate effect on Aboriginal and Torres Strait Islander offenders in terms of increasing guilty plea rates.

The section has also shown that the higher courts tend to provide Aboriginal and Torres Strait Islander offenders with equal or slightly shorter head sentences and non-parole periods than those provided to non-Aboriginal and Torres Strait Islander offenders. This means that the implementation of a standardised minimum non-parole period may result in greater increases in non-parole periods for Aboriginal and Torres Strait Islander offenders than those that may occur for non-Aboriginal and Torres Strait Islander offenders.

For example, the average non-parole period for 'armed robbery' is 1.5 years for Aboriginal and Torres Strait Islander offenders and 1.8 years for non-Aboriginal and Torres Strait Islander offenders. Setting a minimum standard non-parole period of 2 years for the offence will result in a greater inflation of non-parole periods for Aboriginal and Torres Strait Islander offenders (0.5 year) than for non-Aboriginal and Torres Strait Islander offenders (0.2 year).

¹² Judicial Commission of NSW, *The impact of the standard non-parole period sentencing scheme on sentencing patterns in NSW*, Monograph 33 (2010).

These findings also suggest that initiatives that improve the likelihood of Aboriginal and Torres Strait Islander offenders applying for parole or being released at their parole eligibility date will reduce their overrepresentation in custody. These initiatives may involve strengthening or building on current government strategies aimed at ‘closing the gap’ between Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people such as the new Queensland Aboriginal and Torres Strait Islander Justice Strategy.

Summary and implications

The SNPP Terms of Reference set out by the Queensland Government imply that the Council is required to develop a systematic way to identify serious violent offences and sexual offences to include in a minimum SNPP sentencing scheme. The Council is also required to provide advice on the appropriate length of SNPPs for identified offences.

The selection of offences and defining non-parole periods will depend on the intended objectives of the sentencing scheme. Information on current sentencing practices and periods of imprisonment can also inform decisions about the selection of offences and setting of non-parole periods.

This section summarises key findings and highlights how the information presented in this paper might assist in the determination of which offences should be included in a SNPP scheme and where non-parole periods should be set. Some of the possible effects of introducing a minimum SNPP scheme in Queensland are also discussed.

Selecting offences to include in a SNPP scheme

Identifying the serious violent offences and sexual offences deemed most serious by legislation, higher court sentencing practices and actual time served in custody may provide a starting point for establishing which offences could be included in a SNPP sentencing scheme. Indeed, the practices of the higher courts and parole boards may be most relevant to defining a SNPP scheme given the absence of Queensland community views on relative offence seriousness.

Offences with a maximum penalty of life imprisonment are:

- attempted murder
- manslaughter
- rape
- maintaining a sexual relationship with a child
- acts intended to cause grievous bodily harm and other malicious acts
- unlawful sodomy
- incest
- robbery
- attempted robbery
- aggravated burglary, and
- carnal knowledge with or of children under 16 and sexual assault.

The types of offences most likely to receive either full-time imprisonment or a partially suspended sentence are:

- manslaughter (99%)
- acts intended to cause grievous bodily harm and other malicious acts (98%)
- attempted murder (96%)
- maintaining a sexual relationship with a child (98%), and
- rape (97%).

The most serious offence categories with the highest average sentence lengths relating to full-time imprisonment are:

- attempted murder (11.5 years)
- manslaughter (8 years)
- acts intended to cause grievous bodily harm and other malicious acts (6 years)
- rape (6.5 years)
- unlawful sodomy (6 years), and
- maintaining a sexual relationship with a child (6 years).

Current practices with regard to setting non-parole periods and actual release to parole also provide an indication of sentence severity.

The most serious offences categories with the longest non-parole periods are:

- attempted murder (4.6 years)
- manslaughter (3 years)
- rape (3 years), and
- unlawful sodomy (3 years).

The most serious offence categories with the highest average time served in custody are:

- attempted murder (6.1 years)
- unlawful sodomy (5.3 years)
- rape (4.3 years), and
- manslaughter (4.1 years).

Most measures of offence severity rank 'attempted murder', 'unlawful sodomy', 'rape' and 'manslaughter' as the most severe offences. The offence categories of 'maintaining a sexual relationship with a child' and 'acts intended to cause grievous bodily harm' also rank highly when maximum penalties and sentencing practices are used to ascertain offence severity.

Setting non-parole periods

Baseline information on non-parole periods is essential for determining the appropriate length of SNPPs for offences included in the scheme. How non-parole periods are set will determine whether or not the scheme results in increased or decreased sentence severity. Setting non-parole periods for offences included in a SNPP scheme in a way that reduces non-parole periods as they are currently set by the courts will result in decreases in the amount of time offenders serve in custody. Conversely, defining non-parole periods so that they result in longer non-parole periods will increase sentence severity.

The results presented in this paper show that average non-parole periods vary across different offence categories and are generally linked to average head sentences. This suggests that minimum SNPPs need to be stratified in relation to the different offences included in the scheme in order to be consistent with current sentencing practices.

Identifying offences that are characterised by higher proportions of the sentence being served in custody beyond parole eligibility dates is a possible way to identify offences to include in a SNPP scheme.

The likelihood of spending a higher proportion of their sentence in custody after their parole release date is greater for offenders with a most serious offence relating to a sexual offence than it is for offenders with a most serious offence relating to a serious violent offence. It is worth noting at this point that offenders with a most serious offence relating to a sexual offence are less likely to receive a sentence involving full-time imprisonment than offenders with a most serious offence relating to a serious violent offence. These findings may indicate that the higher courts and parole boards view more serious sexual offenders as requiring suitable rehabilitation interventions as posing a greater risk to the community than do serious violent offenders or less serious sexual offenders.

Selecting offences that are currently characterised by offenders spending on average a much greater term than their non-parole period in custody may minimise the impact of the scheme on prisoner numbers. The application of this logic is likely to result in the inclusion of sexual offences rather than serious violent offences in the scheme.

The offence categories with the highest average time served in custody beyond average parole eligibility are:

- rape
- indecent/sexual assault
- carnal knowledge with or of children under 16
- indecent treatment of children under 16, and
- unlawful sodomy.

Plea rates

The NSW experience has shown that a SNPP scheme may increase guilty plea rates for offences subject to the scheme.

Information in this paper has demonstrated that in Queensland there is already a high guilty plea rate (92%) among offenders convicted of serious violent offences and sexual offences. It is therefore not anticipated that the introduction of a SNPP scheme in Queensland will result in a major increase in guilty plea rates (regardless of Aboriginal and Torres Strait Islander status).

Having said this, the overall difference between the likelihood of guilty pleas for offenders with a most serious offence involving a serious violent offence (95%) and that for offenders with a most serious offence involving a sexual offence (86%) means that a SNPP scheme is more likely to increase plea rates for offenders convicted of sexual offences rather than for those convicted of serious violent offences.

Consistency in sentencing

A degree of sentence length variation within offence categories is expected, given case variability. Measures of sentence length variability indicate good sentence consistency for offenders convicted of serious violent offences and sexual offences in Queensland. There is no compelling evidence to indicate a systemic problem with sentencing consistency in the Queensland higher courts.

This suggests that sentence length variation within offence categories may not be an ideal way to select offences to include in the scheme. It is also noted that further research is needed to obtain better measures of sentencing consistency than those used for this paper.

Aboriginal and Torres Strait Islander offenders

The impact of a SNPP scheme on Aboriginal and Torres Strait Islander offenders will depend on how the scheme is defined and implemented.

A SNPP scheme that includes serious violent offences such as ‘wounding’ and ‘assault occasioning bodily harm’ is likely to disproportionately affect Aboriginal and Torres Strait Islander offenders because of their offending profile. Setting standard minimum parole periods may also result in greater increases in non-parole periods for Aboriginal and Torres Strait Islander offenders than for non-Aboriginal and Torres Strait Islander offenders given that the higher courts tend to provide Aboriginal and Torres Strait Islander offenders with non-parole periods that are equal to or slightly shorter than those for non-Aboriginal and Torres Strait Islander offenders.

The scheme will also disproportionately affect Aboriginal and Torres Strait Islander people by virtue of their overrepresentation in the criminal justice system.

Appendix

Table 3: Most serious offence category coding and alignment between courts and corrections data

OFFENCE CATEGORIES		
Courts data (as coded by Sentencing Advisory Council)	Corrections data	Corrections data (as coded by Sentencing Advisory Council)
Attempted murder	Attempts – murder	Attempted murder
Manslaughter	Manslaughter	Manslaughter
	Manslaughter (driving)	Manslaughter
Dangerous operation of a vehicle	nde	nde
	Driving causing death	Dangerous driving (death – excl. manslaughter)
	Dangerous driving (death excl. manslaughter)	Dangerous driving (death – excl. manslaughter)
	Dangerous driving (grievous bodily harm)	Dangerous driving (grievous bodily harm)
	Dangerous driving (actual bodily harm)	Excl
Grievous bodily harm	Assault (permanent injury)	Grievous bodily harm
	Assault (grievous bodily harm)	Grievous bodily harm
	Assault occasioning grievous bodily harm	Grievous bodily harm
Torture	Torture	Torture
Assault occasioning bodily harm	Occasioning or actual bodily harm	Assault occasioning bodily harm
	Assault occasioning actual bodily harm	Assault occasioning bodily harm
	Bodily harm (assault)	Assault occasioning bodily harm
Acts intended to cause grievous bodily harm and other malicious acts	Malicious acts with intent	Acts intended to cause grievous bodily harm and other malicious acts
Serious assault	nde	nde
Wounding	Assault (malicious wounding)	Wounding
	Unlawful wounding	Wounding
Threatening violence	nde	nde
Rape	Rape	Rape
Attempted rape	Attempted rape	Attempted rape
	Assault (intent to rape)	Attempted rape
Sexual assault	Assault (indecent)	Indecent/sexual assault
	Indecent assault	Indecent/sexual assault
	Sexual assault (unspecified)	Indecent/sexual assault
Carnal knowledge with or of children under 16	Carnal knowledge (unlawful)	Carnal knowledge with or of children under 16

OFFENCE CATEGORIES		
Courts data (as coded by Sentencing Advisory Council)	Corrections data	Corrections data (as coded by Sentencing Advisory Council)
	Permit unlawful carnal knowledge (defilement, etc)	Carnal knowledge with or of children under 16
Incest	Incest	Incest
Maintaining a sexual relationship with a child	Maintaining a sexual relationship with a child	Maintaining a sexual relationship with a child
Indecent treatment of children under 16	Indecent treatment or dealings with child under 16	Indecent treatment of children under 16
	Indecent dealings (other)	Indecent treatment of children under 16
Unlawful sodomy	Sodomy	Unlawful sodomy
Robbery	nde	nde
Attempted robbery	nde	nde
	Robbery with actual violence	Robbery with actual violence
	Armed robbery	Armed robbery
	Robbery (other)	Robbery/stealing with violence
	Stealing – With violence	Robbery/stealing with violence
	Robbery unspecified	Robbery/stealing with violence
Aggravated burglary	nde	nde
Possessing child exploitation material	excl	excl
Drug trafficking	Trafficking drugs	Trafficking drugs
	Traffic drugs (unspecified)	Trafficking drugs
Producing drugs	Cultivating drugs	Produce drugs
	Manufacture drugs	Produce drugs
	Manufacture drugs (unspecified)	Produce drugs

Source: Queensland Courts database maintained by OESR and QCS unit record data

Notes:

1. nde (no direct equivalent) and excl (excluded because of small numbers).
2. Courts data most serious offence categories were derived directly from the statute and section used to charge the defendant.
3. Corrections data most serious offence categories (as existed in the original data extract provided to the Council) were matched to courts data most serious offence categories.

Table 4: Average sentence length (most serious offence in years) by data source (courts data compared with corrections data)

Type of offence	Courts data	Corrections data
Acts intended to cause GBH and other malicious acts	6.0	3.9
Aggravated burglary	2.0	–
Armed robbery	–	4.9
Assault occasioning bodily harm	1.3	1.0
Attempted murder	11.5	9.0
Attempted rape	5.0	4.0
Attempted robbery	2.3	–
Carnal knowledge with or of children under 16	1.0	3.7
Dangerous driving (death excl. manslaughter)	–	4.6
Dangerous driving (grievous bodily harm)	–	3.0
Dangerous operation of a vehicle	2.0	–
Drug trafficking	4.0	5.0
Grievous bodily harm	2.9	3.0
Incest	5.0	6.0
Indecent treatment of children under 16	1.3	2.2
Maintaining a sexual relationship with a child	6.0	6.0
Manslaughter	8.0	8.0
Possessing child exploitation material	1.0	–
Producing drugs (n=33)	2.5	2.3
Rape	6.5	7.0
Robbery	3.0	–
Robbery with actual violence	–	3.0
Robbery/stealing with violence	–	3.0
Serious assault	0.6	–
Sexual assault	1.0	2.6
Threatening violence	1.0	–
Torture	5.0	5.0
Unlawful sodomy	6.0	7.0
Wounding	2.0	2.2

Source: Queensland Courts database maintained by OESR and QCS unit record data

Table 5: Selected ‘serious violent offences’¹³ and ‘sexual offences’¹⁴ as defined in the Penalties and Sentences Act 1992 (Qld) and related maximum penalties

Section	Offence description	Subcategory	Maximum penalty	Serious violent offence	Sexual offence
<i>Criminal Code Act 1899 (Qld)</i>					
75	Threatening violence If a person with intent to intimidate or annoy any person, by words or by conduct, threatens to enter or damage a dwelling or other premises or with intent to alarm any person, discharges loaded firearms or does any act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to any property, the person commits an offence of threatening violence.	- Offence simpliciter. - If the offence was committed at night (between 9pm to 6am).	2 years 5 years	✓	N/A
208	Unlawful sodomy Sodomy is an unlawful act for any person < 18. The offence involves a range of conduct (that may in some cases be consensual) associated with anal intercourse: (a) if a person sodomises a person < 18 years (b) if a person permits person < 18 to sodomise him or her (c) if a person sodomises a person with an impairment (d) if a person permits a person with an impairment to sodomise him or her. If the conduct is non-consensual, a charge of rape would be preferred.	- Sodomy of a person 12 < 18 years. - Sodomy of a child < 12. - Sodomy of a child or a person with an intellectual impairment who is to the knowledge of the offender: - his or her lineal descendant or - under his or her guardianship or care.	14 years Life Life	✓	✓
210	Indecent treatment of children under 16 This offence involves a range of conduct that may be committed against a male or female child: (a) unlawfully and indecently dealing with a child < 16 (b) unlawfully procuring a child < 16 to commit an indecent act (c) unlawfully permitting himself or herself to be indecent dealt with by a child < 16 (d) wilfully and unlawfully exposing a child < 16 to an indecent act (e) without legitimate reason wilfully exposing a child < 16 to any indecent object or indecent film, videotape, audiotape, picture, photograph, printed or written matter (f) without legitimate reason taking any indecent photograph or record by means of any device, any indecent visual image of a child < 16 years What ‘indecent’ is, is judged in light of time, place, and circumstance and consideration is given to conduct that offends against current acceptable standards of decency. Sentencing factors include: - touching of the genitals on the outside or inside of clothing - if the offender is in a position of trust - the nature of the conduct – genitals versus other body parts (hand or mouth) or objects used.	- Offence simpliciter. - If the child is < 12 years or is the offender’s lineal descendant or the offender is the guardian of the child or, for the time being, has the child under his or her care.	14 years 20 years	✓	✓
215	Carnal knowledge with or of children under 16 Involves carnal knowledge or attempting to have carnal knowledge with a girl < 16 years. Carnal knowledge is complete upon penetration to any extent of the vagina. This offence does not include an act of sodomy.	- If the child is < 12 years - If the child is > 12 year - If the offender is the guardian of the child and has the child under their care	Life 14 years Life	✓	✓
222	Incest A person commits incest if they have carnal knowledge with or of their offspring or other lineal descendant or	N/A	Life (offence attempt – 10 yrs)	✓	✓

¹³ __As defined for the purposes of Part 9A *Penalties and Sentences Act 1992* (Qld) in Schedule 1.

¹⁴ __As defined in s 160 *Penalties and Sentences Act 1992*. Schedule 1 - *Penalties and Sentences Act 1992* also includes equivalent offences since repealed by the *Criminal Law Amendment Act 1997* (Qld) (*Criminal Code Act 1899* s 208 - unlawful anal intercourse; s 221 – conspiracy to defile; s 222 – incest by a man; s 223 – incest by adult female; s 318 – preventing escape from wreck) and the *Corrective Services Act 2006* (Qld) (*Corrective Services Act 2000* (Qld) s 92(2) – unlawful assembly, riot and mutiny; and s 94(a) – other offences).

Section	Offence description	Subcategory	Maximum penalty	Serious violent offence	Sexual offence
	sibling, parent, grandparent, uncle, aunt, nephew or niece and they know that the other person bears that relationship to him or her or some relationship of that type to him or her. The consent to participate in the conduct is irrelevant.				
228D	Possessing child exploitation material A person who knowingly possesses child exploitation material.	N/A	5 years	X	✓
229B	Maintaining sexual relationship with a child The offence involves maintaining a sexual relationship with a child under the prescribed age over a period of time. A sexual relationship is defined to be more than one sexual act (sodomy, indecent treatment, carnal knowledge, incest, rape, attempted rape or sexual assault) over a period of time. The prescribed age, for a child means: - if relationship involved an act or acts of sodomy < 18 years - in any other case <16 years. The Director DPP or AG must provide consent to prosecute a person for this offence.	Factors relevant to sentencing include: - age of the child when the relationship began. - the length of the relationship period - if penile rape occurred - if carnal knowledge occurred - if the victim bore a child to the offender - if there was a parental or protective relationship between the offender and the victim - any physical violence by the offender - any blackmail or other manipulation of the victim.	Life	✓	✓
303, 310	Manslaughter Where a person unlawfully kills another person in such circumstances which do not constitute murder.	N/A	Life	✓	N/A
306	Attempt to murder Any person who attempts unlawfully to kill another; or with intent unlawfully to kill another does any act, or omits to do any act which it is the person's duty to do, such act or omission being of such a nature as to be likely to endanger human life commits an offence.	N/A	Life	✓	N/A
317	Acts intended to cause grievous bodily harm and other malicious acts If a person: (a) unlawfully wounded, did grievous bodily harm or transmitted a serious disease to any person; or (b) unlawfully struck or attempted to strike another with a projectile or anything else capable of achieving the required intention; or (c) unlawfully caused an explosive substance to explode; or (d) sent or delivered any explosive substance or dangerous or noxious thing to any person; or (e) caused any explosive substance or dangerous or noxious thing to be taken or received by any person; or (f) put any corrosive fluid or destructive or explosive substance in any place; or (g) unlawfully cast or throw any corrosive fluid or destructive or explosive substance at or upon any person, or otherwise applied any such fluid or substance to the person of any person; (2) with intent to: (a) maim, disfigure or disable any person; or (b) do some grievous bodily harm or transmit a serious disease to any person; or (c) resist or prevent the lawful arrest or detention of any person; or (d) resist or prevent a public officer from acting in accordance with lawful authority. Examples include: throwing sulphuric acid with intent to, and which did, disfigure, shooting of a victim during the course of an armed robbery, intentionally transmitting the HIV virus.	N/A	Life	✓	N/A

Section	Offence description	Subcategory	Maximum penalty	Serious violent offence	Sexual offence
320	<p>Grievous bodily harm A person commits the offence of grievous bodily harm if the consequences of their conduct on the complainant cause:</p> <p>(a) loss of a distinct part or an organ of the body (b) serious disfigurement (c) any bodily injury of such a matter that, if left untreated, would endanger or be likely to endanger life, or cause or likely to cause permanent injury to health (irrespective whether or not treatment is or could have been available).</p> <p>Grievous bodily harm does not contain assault as an element of the offence.</p>	N/A	14 years	✓	N/A
320A	<p>Torture Involves the intentional infliction of sever pain and suffering on a person by an act or series of acts done on one or more than one occasion. The pain or suffering includes any physical, mental, psychological or emotional pain or suffering whether temporary or permanent.</p>	N/A	14 years	✓	N/A
323	<p>Wounding An offence of wounding involves conduct that causes the complainants true skin to be broken. Examples of unlawful wounding may include a person cut with a broken bottle or stabbed with a knife.</p> <p>An assault is not an element of offence of wounding but it may be part of the incident.</p>	N/A	7 years	✓	N/A
328A	<p>Dangerous operation of a vehicle Where the offender is adversely affected by an intoxicating substance, excessively speeding or taking part in an unlawful race or unlawful speed trial, or has been previously convicted either upon indictment or summarily of an offence against this section (s 328A(2)).</p>	<ul style="list-style-type: none"> - Offence simpliciter - An offence causing death or GBH - An offence causing death or GBH where adversely affected by an intoxicating substance, excessively speeding, or taking part in an unlawful race or unlawful speed trial; or offender leaves the scene of the incident other than to obtain medical or other help. 	5 years 10 years 14 years	✓	N/A
339	<p>Assault occasioning bodily harm Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of a crime.</p> <p>Bodily harm means any bodily injury which interferes with health or comfort.</p> <p>Being armed means being armed with a dangerous or offensive weapon. For example a pistol or a revolver, is a dangerous weapon. An offensive weapon includes for example bludgeons, clubs and anything not in common use for any other purpose than a weapon.</p> <p>Assault is defined as:</p> <p>(a) the striking, touching, moving of, or application of force of any kind to the person of another; (b) either directly or indirectly; (c) without the other person's consent or with consent, if the consent is obtained by fraud; or (d) by any bodily act or gesture; (e) attempting or threatening to apply force of any kind to the person of another; (f) without the other person's consent; (g) in circumstances where the person making the attempt or threat has, actually or apparently, a present ability to effect that purpose.</p>	<ul style="list-style-type: none"> - Offence simpliciter - If the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company with 1 or more other person or persons. 	7 years 10 years	✓	N/A
340	<p>Serious assault Any person who:</p> <p>(a) assaults another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or herself or of any other person; or (b) assaults, resists, or wilfully obstructs, a police</p>	N/A	7 years	✓	N/A

Section	Offence description	Subcategory	Maximum penalty	Serious violent offence	Sexual offence
	<p>officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting; or</p> <p>(c) unlawfully assaults any person while the person is performing a duty imposed on the person by law; or</p> <p>(d) assaults any person because the person has performed a duty imposed on the person by law; or</p> <p>(e) assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons; or</p> <p>(f) unlawfully assaults any person who is 60 years or more; or</p> <p>(g) unlawfully assaults any person who relies on a guide, hearing or assistance dog, wheelchair or other remedial device.</p>				
349	<p>Rape Involves the following sexual conduct without a person's consent:</p> <p>(a) sexual or anal intercourse with a person or</p> <p>(b) penetrating a female's vulva or vagina or a person's anus to any extent with a thing or a part of the person's body that is not a penis or</p> <p>(c) penetrating the mouth of the other person to any extent with the person's penis.</p> <p>If the victim is a child < 12 years an offence of rape would be preferred rather than indecent treatment or carnal knowledge, as a child < 12 years is incapable of giving consent.</p>	N/A	Life	✓	✓
350	<p>Attempted rape Any person who attempts to commit rape.</p>	N/A	14 years	✓	✓
352	<p>Sexual assaults A person who:</p> <p>(a) unlawfully and indecently assaults another person or</p> <p>(b) procures another person, without the person's consent:</p> <p>(i) to commit an act of gross indecency or</p> <p>(ii) to witness an act of gross indecency by the person or any other person.</p>	<p>- Offence simpliciter</p> <p>- If the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person</p> <p>- If: (a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or (b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or (c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.</p>	<p>10 years</p> <p>14 years</p> <p>Life</p>	✓	✓
409 & 411	<p>Robbery Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen.</p>	<p>- Offence simpliciter</p> <p>- If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person.</p>	<p>14 years</p> <p>Life</p>	✓	N/A

Section	Offence description	Subcategory	Maximum penalty	Serious violent offence	Sexual offence
412	<p>Attempted Robbery Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen.</p>	<ul style="list-style-type: none"> - Offence simpliciter - If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons - If the offender is armed with any dangerous or offensive weapon, instrument or noxious substance, and at or immediately before or immediately after the time of the assault the offender wounds, or uses other personal violence to, any person by the weapon, instrument or noxious substance 	<p>7 years 14 years</p> <p>Life</p>	✓	N/A
419	<p>Burglary (s 419(1) if s 419(3)(b)(i) or (ii) applies) Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits an offence.</p> <p>A person who breaks any part, whether external or internal, of a dwelling or any premises, or opens, by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar, flap, or other thing, intended to close or cover an opening in a dwelling or any premises, or an opening giving passage from one part of a dwelling or any premises to another, is said to break the dwelling or premises. A person is said to enter a dwelling or premises as soon as any part of the person's body or any part of any instrument used by the person is within the dwelling or premises. A person who obtains entrance into a dwelling or premises by means of any threat or artifice used for that purpose, or by collusion with any person in the dwelling or premises, or who enters any chimney or other aperture of the dwelling or premises permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the dwelling or premises.</p>	<p>If the offender:</p> <ul style="list-style-type: none"> - uses or threatens to use actual violence (s 419(3)(b)(i)); or - is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance (s 4169(3)(b)(ii)). 	Life	✓	N/A
5	<p>Trafficking in dangerous drugs This offence involves a person who carries on the business of unlawfully trafficking in a dangerous drug.</p> <p>The penalty is dependent on the type of drug involved.</p>	<ul style="list-style-type: none"> - Schedule 1 <i>Drugs Misuse Regulation 1987</i> - Schedule 2 <i>Drugs Misuse Regulation 1987</i> 	<p>25 years 20 years</p>	✓	N/A
8	<p>Producing dangerous drugs (if the circumstances mentioned in paragraphs (a) or (b) apply which refer to the type of drug involved).</p> <p>This section creates the offence of unlawfully producing dangerous drugs. The penalty is dependent on the type and amount of the drug.</p>	<ul style="list-style-type: none"> - Schedule 1 <i>Drugs Misuse Regulation 1987</i> of or exceeding the quantity specified in schedule 4. - Schedule 1 <i>Drugs Misuse Regulation 1987</i> of or exceeding the quantity specified in schedule 3 but less than the quantity specified in Schedule 4 and: <ul style="list-style-type: none"> - person is drug dependent - otherwise. 	<p>25 years</p> <p>25 years</p> <p>20 years 25 years</p>	✓	N/A