

SENTENCING SPOTLIGHT ON

rape



Queensland Sentencing
Advisory Council
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Sentencing Spotlight on...

Rape

This *Sentencing Spotlight* examines sentencing outcomes for rape offences under s 349 of the Criminal Code (Qld) finalised in Queensland courts between 2005–06 to 2022–23.

Summary of offences 2005–06 to 2022–23

Adults



98.7%

sentenced received a
custodial penalty



6.5 years

was the average
imprisonment length

Children



48.5%

sentenced received a
custodial penalty



2.6 years

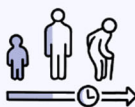
was the average
detention length

All ages



26.8%

of offenders pleaded
not guilty



31.8 years

was the average age
of offenders



32.7%

of offences were domestic
violence offences*



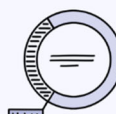
2,078

cases in which
rape was the most
serious offence (MSO)



98.9%

of offenders were male



69%

of cases had a co-sentenced
sexual offence

All offences sentenced in Queensland

0.1% of cases sentenced in Queensland involved a charge of rape

* data on domestic violence offences includes cases sentenced between 2016–17 and 2022–23.

Source: Department of Justice and Attorney-General's Queensland Wide Inter-linked Courts (QWIC) database, as maintained by the Queensland Government Statistician's Office (QGSO).

Warning to readers

This report contains subject matter that may be distressing to readers. Material describing the offence of rape are included in this report. If you need to talk to someone, support is available:

DV Connect: 1800 811 811

Lifeline Australia: 13 11 14

Mensline: 1800 600 636

Queensland Sexual Assault Helpline: 1800 010 120

Victim Assist Queensland: 1300 546 587 (business hours) or email: VictimAssist@justice.qld.gov.au

Women's Legal Service Queensland: 1800 957 957

If you have been involved in a previous police investigation and wish to discuss how the review of evidentiary samples and DNA testing might affect your case, contact the Queensland Police Service on 1300 993 191 or visit the QPS [website](#).

Note:

This is Version 2 of the *Sentencing Spotlight on Rape*. It updates the previous version published in September 2022 and has been revised and updated to present two additional years' worth of data. See the information box on page 4 for a description of changes in counting rules between versions.

Rape

Rape is a serious sexual offence defined in s 349 of the *Criminal Code* (Qld). Rape involves any form of penetration of the vulva, vagina, anus or mouth that occurs without consent.¹

Prior to 2000, the legal definition of rape was restricted to the carnal knowledge² of another person without that person's consent. However, amendments made in 2000 significantly broadened the scope of penetrative acts able to be prosecuted as rape.³ A person commits rape if, without consent:

- the person engages in penile intercourse with the other person, or
- The person penetrates the vulva, vagina or anus of another person with a thing or part of the body that is not a penis, or
- The person penetrates the mouth of the other person with the person's penis.

The maximum penalty for rape

The maximum penalty for rape is life imprisonment.⁴

There is a wide range in the length of penalties imposed for the offence of rape. Factors taken into account when sentencing for this offence include:

- the vulnerability of the victim (under 12 years or of mental impairment);
- the nature of the offending, such as the degree of threats and/or violence used;
- the relationship between the offender and victim (intrafamilial, extrafamilial or stranger); and
- whether the offence was committed in the company of others.

The maximum penalty for a child⁵ being sentenced for rape is ordinarily 10 years detention.⁶ However, a sentencing judge may impose a period up to and including a life sentence if the offence involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence having regard to all the circumstances.⁷

What is consent?

Consent means to agree to the behaviour. It must 'be freely and voluntarily given' by a person 'with the cognitive capacity' to do so.⁸ 'Cognitive capacity' means the person knows or understands what they are doing and are agreeing to do it. Under the law, a child under the age of 12 years is unable to give consent.

Consent is not given if it was obtained by force, threat or intimidation, fear of bodily harm, by exercise of authority, through false or misleading representation or through a mistaken belief that the accused person was the other person's sexual partner.⁹

A person is not taken to have given consent only because they did not communicate that they do not consent.¹⁰

A person can change their mind and withdraw their consent at any point during an act.¹¹

The Women's Safety and Justice Taskforce recommended changes to the definition of consent and to the 'mistake of fact' defence to establish an affirmative model of consent in Queensland.

The data presented in this paper reflects offences resulting in convictions based on current definitions given the proposed reforms are yet to be enacted.¹²

Underreporting of rape

Rape, like other forms of sexual offending, is a highly underreported crime.¹³ This means that the number of sentenced cases reported on in this publication does not reflect the prevalence of this type of offending in the community.

There are many barriers to victim survivors reporting sexual offences. These include:

- fear they will not be believed;¹⁴
- shock, confusion, guilt, or shame about the offence;¹⁵
- unsupportive community attitudes about women, racism, and rape myth acceptance;¹⁶
- difficulty identifying sexual violence;¹⁷ and
- lack of trust in the justice system or authorities¹⁸ and concerns about the justice system process.¹⁹

This means that fluctuations in official crime and courts' data may not necessarily reflect changes in the incidence of this type of offending. According to official crime statistics in Australia, rates of sexual violence, including rape, have been increasing over the past decade. It is unclear to what extent this is due to increases in the number of these offences being reported,²⁰ as compared to an increase in the incidence of sexual violence in the community. These factors should be considered when interpreting the findings in this *Sentencing Spotlight*.

Changes in counting rules from previous version:

There are differences in the way data has been analysed in this *Sentencing Spotlight* compared to the previous version.

1. Offences sentenced under s 347 (now repealed — see page 5 for further discussion) were included in the original version of this *Spotlight*. These offences were not included in this version. This is to maintain consistency with the counting rules used in the *Sentencing Spotlight on Sexual Assault*.
2. There are differences in the way the Most Serious Offence (MSO) is determined for statistical purposes.

Previously, a charge that received a penalty of imprisonment was determined to be more serious than other types of penalties. In this version, partially suspended sentences have been ranked at the same level as imprisonment.

This has led to an increase in the number of partially suspended sentences as the MSO compared to the original version of this *Spotlight*.

Number of cases

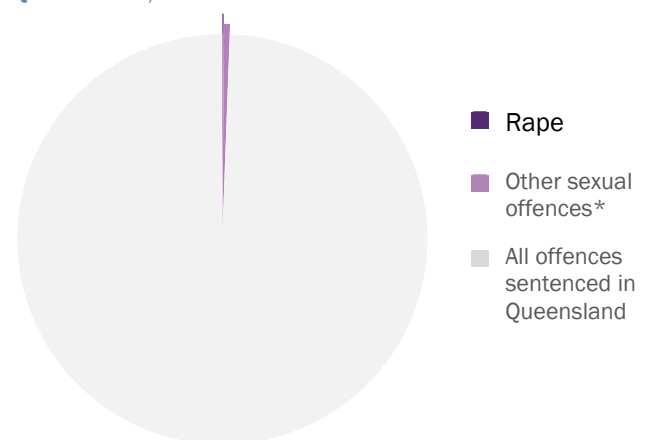
A total of 2,445 unique individuals were sentenced for 2,502 cases involving rape between 2005–06 to 2022–23.

For 2,078 of those cases (83.0%), rape was the most serious offence (MSO). For the remaining 424 cases where rape was not the MSO, the MSO was most commonly another serious sexual offence such as maintaining an unlawful sexual relationship with a child²¹ (81.4%), or attempted rape (2.6%); or a serious violent offence such as torture (3.3%) or murder (2.8%).²²

This *Sentencing Spotlight* focuses primarily on the 2,078 sentenced cases where rape was the MSO.

Over the 18-year data period, there were 2,698,613 cases sentenced in Queensland's criminal courts. Cases involving a sexual offence accounted for 0.6% of cases sentenced (n=15,779). The offence of rape was sentenced in 2,502 cases, representing 15.9% of sexual offences, but only 0.1% of matters dealt with from 2005–06 to 2022–23.

Figure 1: Number of rape cases sentenced in Queensland, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

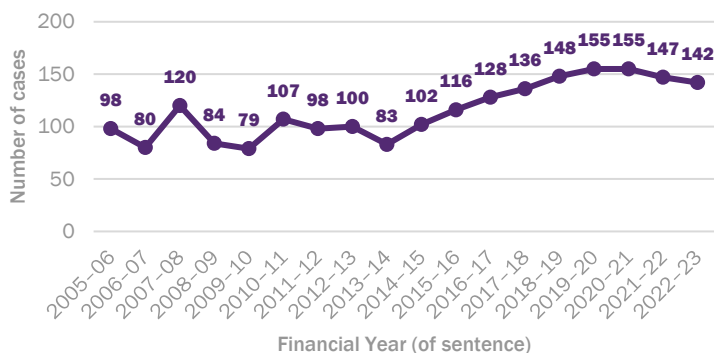
* includes all sexual offences under the ANZSOC classification of '03 Sexual assault and related offences'.

Figure 2 shows the number of rape cases sentenced (MSO) during the 18-year data period.

There was a steady increase in the number of cases sentenced between 2013–14 and 2019–20. This increase plateaued in 2020–21, and then dropped in 2021–22 and 2022–23.

This drop in recent years is in contrast to the offence of sexual assault (see the Council’s *Sentencing Spotlight on Sexual Assault*), which continued to increase through to 2022–23.

Figure 2: Number of rape (MSO) cases, 2005–06 to 2022–23



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted September 2023.

Historical offences

A small proportion of rape cases involved offences that were committed a long time before they were brought before the courts. For the purposes of this report, any offence that occurred more than 10 years prior to sentence has been considered to be a ‘historical offence’ – although no such concept exists at law. Different definitions of what constitutes a ‘historical offence’ are adopted for different purposes.²³

There were 118 historical offences sentenced for rape between 2005–06 and 2022–23 (MSO, 5.8%).

There were amendments made to the *Criminal Code* in 2000 which made changes to the offence of rape and relocated it from s 347 to s 349 where it is today.²⁴ These changes broadened the scope of the definition of rape to include some acts of sexual penetration that prior to this were included in the offence of sexual assault.

There were 116 cases sentenced during the data period involving an offence of rape charged under the former s 347. These cases have been excluded from the analysis in this *Sentencing Spotlight*.

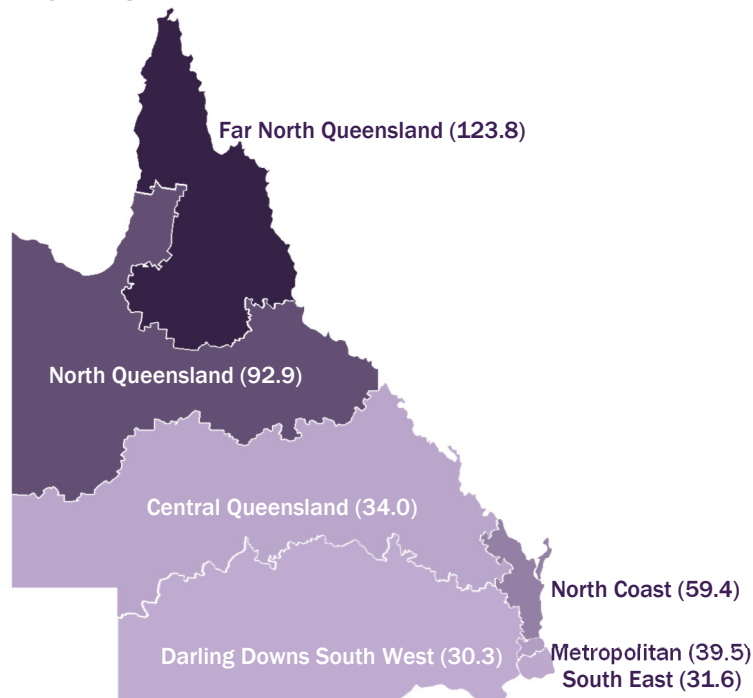
Regions

The northern regional areas of Queensland had the highest proportional rate of sentenced rape (MSO) cases. The rate of rape offences in Far North Queensland

(123.8) was around 3 times that of the Metropolitan region (39.5).²⁵

Figure 3 shows the distribution of rape offences by region in Queensland by rate per 100,000 population based on the location of court in which they were sentenced.²⁶

Figure 3: Rape (MSO) cases by region in Queensland by rate of the population per 100,000 2005–06 to 2022–23



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted September 2023.

Demographic characteristics

This section compares the age, gender and Aboriginal and Torres Strait Islander status of people sentenced for rape (MSO) over the period from 2005–06 to 2022–23.

Gender

Over the 18-year data period, the overwhelming majority of people sentenced for rape (MSO) in Queensland were male (98.9%, n=2,056). Only 22 women were sentenced for rape over the data period.

This is considerably higher compared to all offences sentenced in Queensland, where 75.7% of people who are sentenced are male.



Age

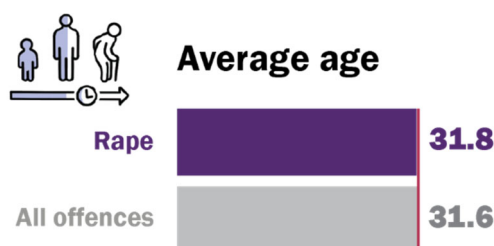
Figure 4: Number of people sentenced for rape (MSO) by age, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023

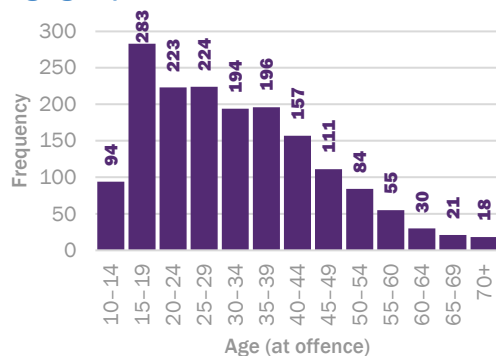
On average, people sentenced for rape were 31.8 years old at the time of the offence. There was no difference in average age compared to the age of those sentenced across all offence types (31.6 years).

The youngest person sentenced for rape committed this offence when aged 10 years old,²⁷ and the oldest was 80 years old, with a median age of 29.7 years. Figure 4 shows age at the time of offence.



Most sentenced rape (MSO) cases involved young, predominantly male children in their teenage years and adults in their early twenties. This is reflected in the most common age group for rape (MSO) being 15 to 19 years (see Figure 5). From the age of 19 onwards, the distribution remains high with some fluctuations. After the age of 40, the number of people sentenced for rape (MSO) decreases.

Figure 5: Number of people sentenced for rape (MSO) by age group, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Aboriginal and Torres Strait Islander people

In Queensland, Aboriginal and Torres Strait Islander peoples are disproportionately represented in a range of offence categories. This is a result of multiple, complex current and historical factors that continue to impact on the lives of Aboriginal and Torres Strait Islander peoples.

Although people who identify as Aboriginal and Torres Strait Islander represent approximately 4.6% of the Queensland population (aged 10 and over),²⁸ they accounted for 24.9% (n=517) of people sentenced for rape (MSO) over the 18-year data period. Most people sentenced for rape (n=1,535) were non-Indigenous (73.9% of people sentenced).²⁹

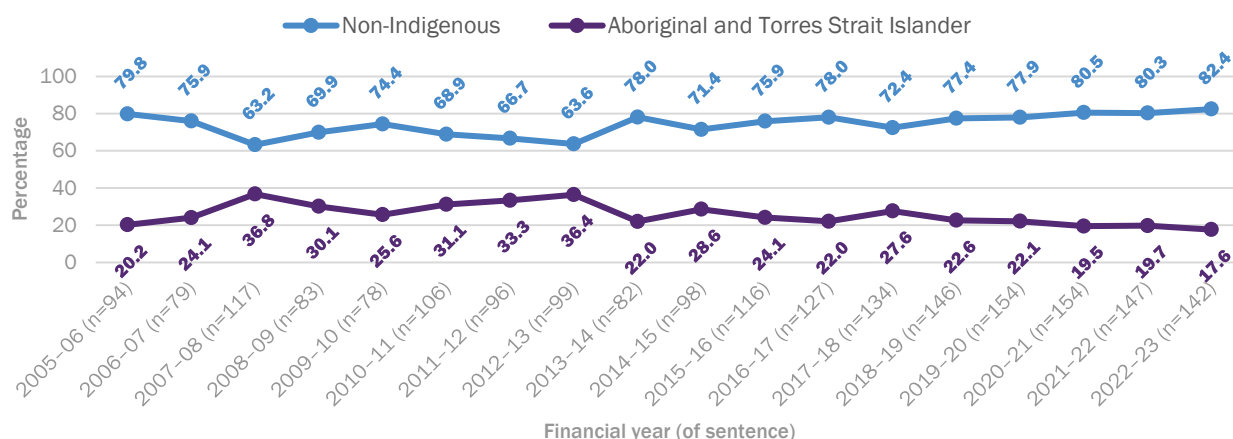
The Council recognises that Aboriginal and Torres Strait Islander peoples are not only disproportionately represented among those sentenced for rape, but are also disproportionately represented as the victims and survivors of sexual offences. In 2020–21, Aboriginal and Torres Strait Islander people accounted for 11.3% of reported victims of sexual offences in Queensland.³⁰

Aboriginal and Torres Strait Islander people



The proportion of Aboriginal and Torres Strait Islander people sentenced for rape (MSO) has been decreasing in recent years. In 2022–23, 17.6% of cases were committed by Aboriginal and Torres Strait Islander people — the lowest proportion in 18 years.

Figure 6: Proportion of people sentenced for rape (MSO) by Aboriginal and Torres Strait Islander status and year of sentence, 2005–06 to 2022–23



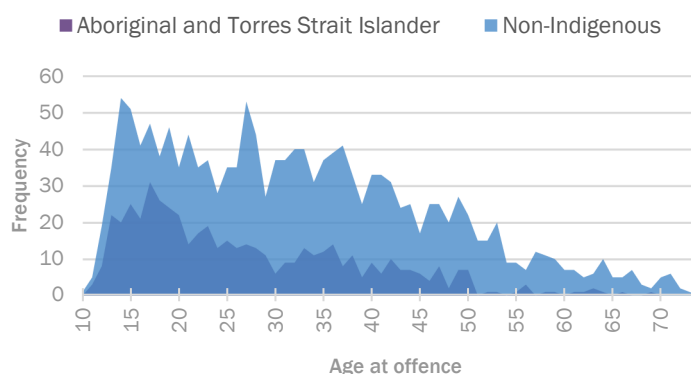
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: 26 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown.

Aboriginal and Torres Strait Islander people sentenced for rape were significantly younger (27.6 years, median=24.5) than non-Indigenous offenders (33.2 years, median=31.6) (see Figure 7).³¹ Non-Indigenous offending peaked at a younger age of 14 years compared to Aboriginal and Torres Strait Islander offending which peaked at 17 years. Overall, non-Indigenous people had a higher proportion of offending occurring at an older age.

While the analysis found that Aboriginal and Torres Strait Islander people sentenced for rape were younger than non-Indigenous offenders, it is important to note that the age of the Aboriginal and Torres Strait Islander population (median=23.0) is younger in comparison to the non-Indigenous population (median=37.8). For more details, see the Australian Bureau of Statistics publication titled *Estimates of Aboriginal and Torres Strait Islander Australians*.

Figure 7: Number of cases sentenced for rape (MSO) by Aboriginal and Torres Strait Islander status and age, 2005–06 to 2022–23

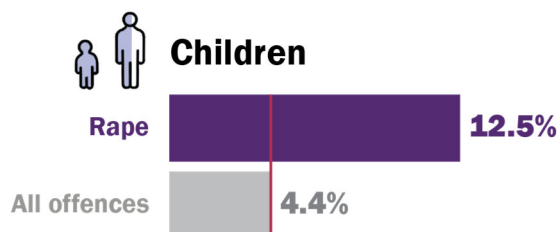


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: 26 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown.

Sentenced children

Across all offences sentenced in Queensland, 4.4% were committed by a child. In comparison, the offence of rape (MSO) had a higher proportion of sentenced children, with 12.5% of these offences committed by children (n=260). Prior to February 2018, 17-year-olds were dealt with as adults rather than as children.³²



The average age at time of committing the offence for children was 14.9 years (median=14.9 years).

Almost all the children sentenced for rape (MSO) during the 18-year data period were boys (98.5%) with only 4 girls sentenced.

Children were significantly more likely to identify as Aboriginal and Torres Strait Islander compared to adults.³³ Aboriginal and Torres Strait Islander children made up 35.8% (n=165) of children sentenced for rape compared to 23.7% of adults (n=425). Children sentenced for rape were 1.8 times more likely to identify as Aboriginal and Torres Strait Islander compared to adults sentenced for this offence.

Domestic violence offences

This section examines the volume of cases of rape (MSO) sentenced as domestic violence offences over the period from 2016–17 to 2022–23.

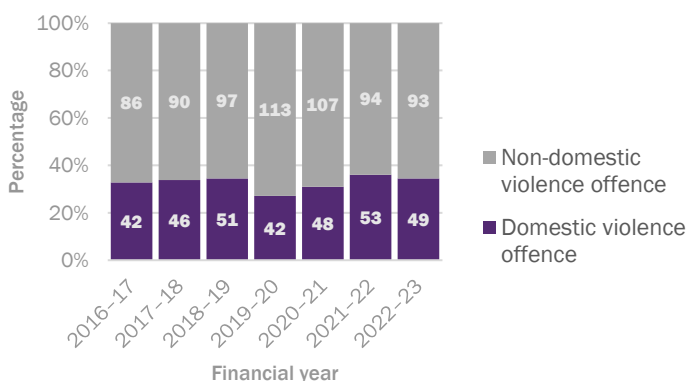
From 1 December 2015, Queensland legislation was amended to enable a conviction for an offence committed in a domestic violence context to be recorded or entered in that person's criminal history as a domestic violence offence.³⁴ A person's behaviour is considered 'domestic violence' if they have a relevant relationship (intimate personal, family, or informal care) with the victim. That relationship must be abusive (physically, sexually, emotionally, or psychologically), or involve behaviour, or a pattern of behaviour,³⁵ that is threatening, coercive, or in any other way controls or dominates the second person in a way that causes that person to fear for their safety or wellbeing (or someone else's).³⁶

Of the 1,011 rape (MSO) offences sentenced from 2016–17 to 2022–23, 32.7% (n=331) were charged as domestic violence offences. The proportion of rape cases sentenced as a domestic violence offence (MSO) has remained consistent over the past 7 years (see Figure 8).

Rape offences sentenced as domestic violence offences are indicative of the high rates of sexual abuse committed in domestic and intimate relationships. Research suggests that the most common perpetrator of sexual violence, including rape, is an intimate partner³⁷ and up to one-third of child sexual abuse is intrafamilial.³⁸

There were no statistically significant differences in domestic violence offences based on gender³⁹ or Aboriginal and Torres Strait Islander status.⁴⁰ There was a significant difference in domestic violence offences based on age group,⁴¹ with rape being much less likely to be a domestic violence offence in the youngest age group of people under 20 years old.

Figure 8: Number of rape offences sentenced as domestic violence offences (MSO), 2016–17 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Sentencing court

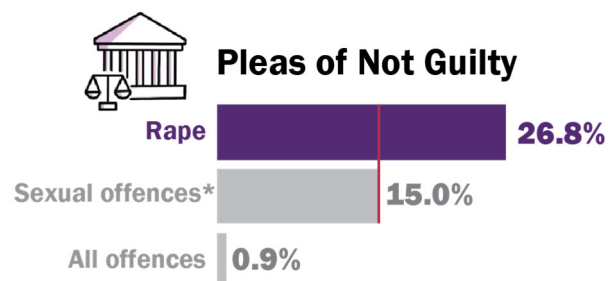
The offence of rape is an indictable offence usually dealt with in the higher courts (District or Supreme). The defendant can elect for the matter to be dealt with in the Magistrates Court if the victim is 14 years of age or older, and the defendant pleads guilty.⁴² However, this is subject to a Magistrate's overriding discretion not to deal with the matter in the Magistrates Court because the defendant may not be adequately punished under the three-year maximum imprisonment available in the Magistrates Court jurisdiction.⁴³

Over the 18-year data period, only one⁴⁴ rape (MSO) case was sentenced in the Magistrates Court. Most rape (MSO) cases were sentenced in the District Court (n=2,055, 98.9%), with a small number sentenced in the Supreme Court (n=22).⁴⁵

Cases involving child defendants are dealt with by special courts established to deal with charges involving children at the Magistrates Court and District Court level.⁴⁶ All children were sentenced at the District Court level.

Type of plea

Sexual offences generally have a higher proportion of not guilty pleas compared to other offences (15.0% and 0.9%, respectively). The offence of rape has an even higher proportion of not guilty pleas, with more than one-quarter of sentenced defendants entering a plea of not guilty (26.8%, n=557).



* includes all assaultive sexual offences under the ANZSOC classification of '031 Sexual Assault'.

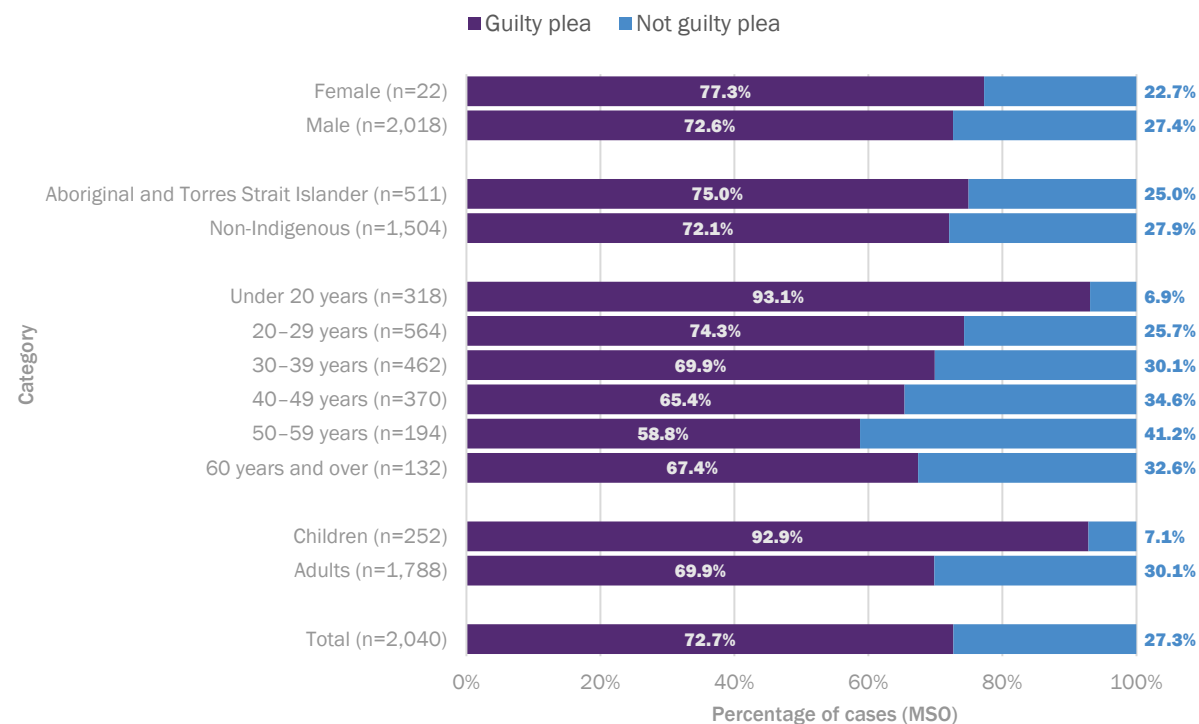
This analysis does not explore the reasons a person may plead guilty.⁴⁷

There were no statistically significant differences in type of plea based on gender,⁴⁸ or Aboriginal and Torres Strait Islander status.⁴⁹

Older defendants had significantly higher proportions of not guilty pleas compared to younger defendants.⁵⁰ This difference is more pronounced when comparing adults to children, with children 5.6 times more likely to plead guilty compared to adults.⁵¹

Figure 9 provides a breakdown of plea types by various groups.

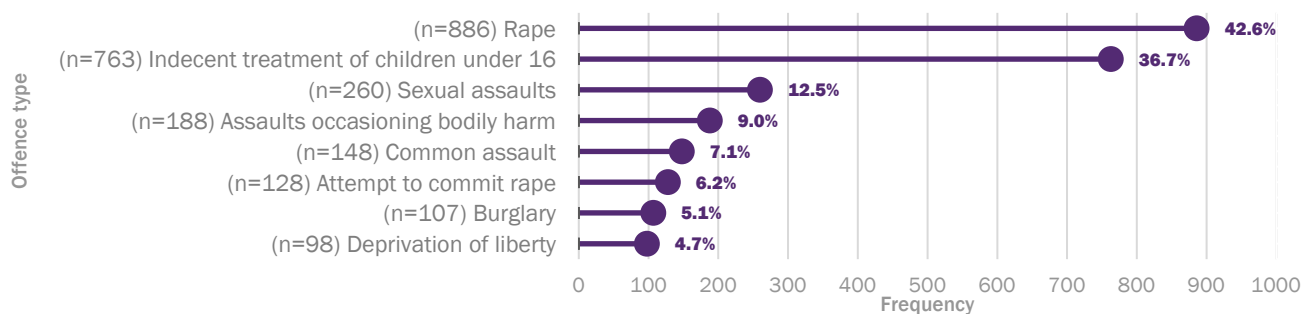
Figure 9: Plea type of cases sentenced for rape (MSO) by Aboriginal and Torres Strait Islander status and age at sentence, 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: 38 cases were excluded as the type of plea was unknown. 26 cases were excluded from some breakdowns as a demographic attribute was unknown.

Figure 10: Most common 8 offences co-sentenced with rape (MSO), 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Co-sentenced offences

A court will sometimes sentence a person for more than one offence at the same court event. This does not necessarily mean that the offences were committed as part of the same incident or even that the offences were committed on the same day. Analysis of offences that are sentenced together can provide context about the type of offending that is commonly associated with rape.

There were 424 cases involving a charge of rape where rape was not the MSO. That is, where one of those charges received a penalty that was more serious than the penalty given for the rape charge.

In these cases, the MSO was most commonly another serious sexual offence such as maintaining an unlawful sexual relationship with a child⁵² (81.4%), or attempted rape (2.6%); or a serious violent offence such as torture (3.3%) or murder (2.8%).

The remainder of this section discusses the 2,078 cases in which rape was the MSO.

Most people sentenced for rape (MSO) were also sentenced for other offences at the same court event. There were 1,640 rape cases (MSO) with co-sentenced offences (78.9% of cases). Of these, 87.3% involved a co-sentenced sexual offence (n=1,431).

In about 1 in 5 cases (21.1%) the person was sentenced for a single charge of rape (n=438). A further 330 cases involved 1 additional charge sentenced (15.9%), and 1,310 cases had 2 or more additional charges sentenced (n=63.0%).

Figure 10 shows the top 8 most common co-sentenced offences. Rape was most commonly co-sentenced alongside other rape charges, meaning that 42.6% of sentenced rape cases (MSO) involved multiple counts of rape. Indecent treatment of children under 16 was the second most common co-sentenced offence, being sentenced alongside rape in over one-third (36.7%) of cases.

For each demographic group, the most common co-sentenced offence was another charge of rape which was not the MSO. In other words, it was common across demographic groups for a defendant to be sentenced for multiple charges of rape at the same court hearing.

A charge of indecent treatment of children under 16 was co-sentenced in 48.5% of cases involving a non-Indigenous child (n=80/165). This was considerably higher compared to Aboriginal and Torres Strait Islander

children (29.3%, n=37/92), and higher when compared to adult offenders (21.2% for Indigenous adults, 40.4% of non-Indigenous adults).

An unlawful entry charge was co-sentenced in 10.9% of cases involving an Aboriginal and Torres Strait Islander children (n=10/92), but was not common for any other demographic group.

Assaults occasioning bodily harm was more commonly co-sentenced for adults (9.6%) compared to children (5.0%).

The number of sentenced offences per court event ranged from 1 to 98, with an average of 5.8 sentenced offences per event (median=4.0).

On average, Aboriginal and Torres Strait Islander people sentenced for rape had a significantly lower number of co-sentenced offences (average = 4.5) than non-Indigenous people (average = 6.2).⁵³

Table 1: Number of sentenced offences per court event by Aboriginal and Torres Strait Islander status and gender, 2005–06 to 2022–23

Offender type	N	Single offence (%)	2 to 4 offences (%)	5 to 10 offences (%)	11+ offences (%)	Number of offences			
						Avg	Median	Min	Max
Female	22	13.6	31.8	36.4	18.2	5.8	5.5	1	14
Male	2,056	21.2	38.6	26.6	13.7	5.8	4.0	1	98
Aboriginal or Torres Strait Islander	517	24.2	41.8	23.4	10.6	4.5	3.0	1	28
Non-Indigenous	1,535	20.1	37.6	27.6	14.7	6.2	4.0	1	98
Total	2,078	21.1	38.5	26.7	13.7	5.8	4.0	1	98

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Recidivism

Of the 2,445 unique people sentenced for rape from 2005–06 to 2022–23 (not necessarily as their MSO), 2.1% were repeat rape offenders (n=52). This means that these people were sentenced for rape on at least two separate occasions over the 18-year period.

Almost all repeat rape offenders had just one new sentenced event for rape during the period (92.3%, n=48). There were 3 people with three repeat rape sentences during the data period, and 1 person who was sentenced on four separate occasions for rape.

2.1% repeat rape offenders

A sample of people were examined in more detail to determine whether they had committed any other offences before or after being sentenced for rape. For prior offending, a sample of people sentenced for rape between 2020–21 and 2022–23⁵⁴ (n=546) was examined for prior offences (see Figure 11). For reoffending, a separate sample of people sentenced between 2014–15 and 2016–17⁵⁴ was examined to identify any subsequent offences (see Figure 13).

Many people sentenced for rape serve a long period of time in prison where the opportunity for recidivism is reduced. For this reason, separate samples were used to analyse prior offending and reoffending. This enabled us

to allow for a period of up to four years of incarceration in this recidivism analysis.

Recidivism was operationalised as any criminal offence committed within two years of an offender's expected release from custody (or, for sentences that did not involve custody, within two years of the date of the sentence hearing for the rape offence).

Prior offending

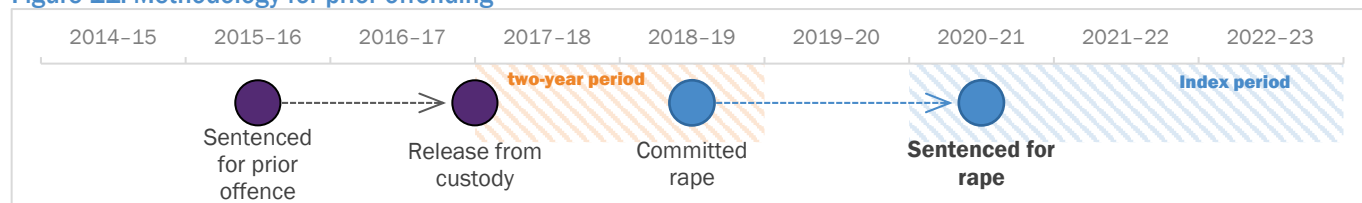
There were 546 unique people sentenced for rape between 2020–21 and 2022–23. Almost one-third of offenders had prior offences (31.0%, n=169).

Only 3.0% of those with prior offending had offended with a prior sexual offence (n=5/169). Of those sentenced in the index period, none had been previously sentenced for a charge of rape. In fact, none of the most common prior offences were sexual offences (see Figure 12). The most common prior sentenced offence was unlicensed driving (7.9%; n=43).

The number of prior sentenced cases ranged from 0 to 9. Of the 169 cases with prior sentenced offences, over half had more than one offence recorded (57.4%, n=97). In most cases where prior offences were recorded, there were between one and four prior offences (89.3%; n=151), with a minority of cases having five or more prior offences (10.7%; n=18).

On average, Aboriginal or Torres Strait Islander people sentenced for rape had more prior offences (1.3) sentenced than non-Indigenous people (0.6).⁵⁵

Figure 11: Methodology for prior offending



The 'two-year period' refers to the time during which an offence must be committed for it to be included in the recidivism analysis. The person must have committed a new offence within 2 years of being released from custody for a prior offence.

Figure 12: Most common 8 prior offences for people sentenced for rape, 2020–21 to 2022–23

Offence	Sentenced cases	Unique people
Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i>	54	43 (7.9%)
Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 9</i>	48	39 (7.1%)
Possession of drug utensils <i>Drugs Misuse Act 1986 (Qld) s 10</i>	46	36 (6.6%)
Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i>	38	33 (6.0%)
Contravention of a domestic violence order <i>Domestic and Family Violence Act 2012 (Qld) s 177</i>	50	33 (6.0%)
Stealing <i>Criminal Code (Qld) s 398</i>	40	31 (5.7%)
Contravene direction or requirement of police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 791</i>	36	30 (5.5%)
Wilful Damage <i>Criminal Code (Qld) s 469</i>	34	28 (5.1%)

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Subsequent offending

Figure 13: Methodology for subsequent offending



The '2-year period' refers to the time during which an offence must be committed for it to be included in the recidivism analysis. The person must have committed a new offence within 2 years of being released from custody for a prior offence.

There were 420 people sentenced for rape in the index period (2014–15 to 2016–17). Of these, 73.3% (n=308) did not go on to reoffend. In total, there were 112 offenders who committed subsequent offences (26.7%). Only 7 people (6.3%) went on to commit another sexual offence (n=7/112). Only 2 people were sentenced for a subsequent rape offence. None of the most common subsequent offences were sexual offences (see Figure 14).









The most common subsequent offence was failing to comply with reporting obligations under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (n=90). When rape is committed against

a child (under 18 years), this Act requires those who have committed sexual or other serious offences against children to report personal details to police for a prescribed period.

The number of subsequent sentenced cases ranged from 0 to 10—see Table 2. Of those offenders with subsequent offending, almost half had only one subsequent offence (46.4%; n=52), with the other half having more than one subsequent offence (53.6%; n=60).

On average, Aboriginal or Torres Strait Islander people had more subsequent offences (1.1) compared to non-Indigenous people (0.5)—see Table 2.⁵⁶

Figure 14: Most common 8 subsequent offences for people sentenced for rape, 2014–15 to 2016–17

Offence	Sentenced cases	Unique people
 Failure to comply with reporting obligations <i>Child Protection (Offender Reporting etc) Act 2004</i> (Qld) s 50	90	64 (15.2%)
 Commit offence during suspended sentence <i>Penalties and Sentences Act 1992</i> (Qld) s 146	19	19 (4.5%)
 Contravene requirement of community-based orders <i>Penalties and Sentences Act 1992</i> (Qld) 123	24	18 (4.3%)
 Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995</i> (Qld) s 78	18	14 (3.3%)
 Possessing dangerous drugs <i>Drugs Misuse Act 1986</i> (Qld) s 9	19	14 (3.3%)
 Breach of bail – failure to appear <i>Bail Act 1980</i> (Qld) s 33	18	13 (3.1%)
 Assault or obstruct police officer <i>Police Powers and Responsibilities Act 2000</i> (Qld) s 790	15	12 (2.9%)
 Possessing of drug utensils <i>Drugs Misuse Act 1986</i> (Qld) s 10	16	12 (2.9%)

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023..

Table 2: Prior and subsequent sentences for rape

Category	Recidivist offenders (n)	0 recidivist cases (%)	1 to 4 recidivist cases (%)	5+ recidivist cases (%)	Number of recidivist cases			
					Average	Median	Min	Max
Prior offending (n=546)	169	69.0	27.7	3.3	0.7	0.0	0	9
Female (n=8)	2	75.0	25.0	0.0	0.5	0.0	0	3
Male (n=538)	167	69.0	27.7	3.3	0.7	0.0	0	9
Aboriginal or Torres Strait Islander (n=107)	54	49.5	43.0	7.5	1.3	1.0	0	9
Non-Indigenous (n=436)	114	73.9	23.9	2.3	0.6	0.0	0	9
Subsequent offending (n=420)	112	73.3	23.8	2.9	0.6	0.0	0	10
Female (n=7)	5	28.6	71.4	0.0	0.7	1.0	0	1
Male (n=413)	107	74.1	23.0	2.9	0.6	0.0	0	10
Aboriginal or Torres Strait Islander (n=94)	42	55.3	38.3	6.4	1.1	0.0	0	8
Non-Indigenous (n=320)	70	78.1	20.0	1.9	0.5	0.0	0	10

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: 26 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown.

Penalties and sentencing

In Queensland, the maximum penalty for rape is life imprisonment.

From 2005–06 to 2022–23, the majority of people sentenced for rape (MSO) received a custodial sentence (n=1,920; 92.4%). There were differences in the use of custodial sentences for adults and children. Of the 1,818 adults sentenced for rape (MSO), almost all received a custodial sentence (n=1,794, 98.7%), compared to under half of the children sentenced for rape (MSO) (n=126; 48.5%). The remaining children were sentenced to a non-custodial penalty (n=134, 51.5%), primarily probation orders. The following sections will discuss the penalties for adults and children separately.

Sentences for adults

Special provisions that apply when sentencing adults

While courts have discretion to set the appropriate sentence in most cases, differences apply when sentencing a person for sexual offences, such as rape. In some cases, restrictions are placed on the type of sentence that can be imposed on the person convicted of a sexual offence or which restrict parole eligibility.⁵⁷

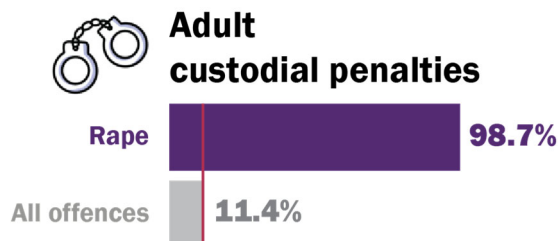
One example is a requirement that a person sentenced for an offence of a sexual nature committed in relation to a child under 16 years (including rape) serve an actual term of imprisonment, unless the court finds there are exceptional circumstances.⁵⁸

In the case of a person convicted of a repeat 'serious child sex offence' (the definition of which includes rape)⁵⁹ the court must impose a sentence of life imprisonment or an indefinite sentence.⁶⁰ This requirement only applies where both the initial offence and subsequent offence were committed when the person was an adult.

If a person is declared convicted of a serious violent offence (including if sentenced for rape),⁶⁴ the person must serve a minimum of 80% of their sentence in custody, or 15 years, whichever is less.⁶⁵ During the 18-year data period there were 194 cases where a charge of rape resulted in a declaration that the person was convicted of a serious violent offence—rape was the MSO in 155 of these cases.⁶⁶

Sentencing outcomes for adults

From 2005–06 to 2022–23, a total of 98.7% (n=1,794) of adults sentenced for rape (MSO) received a custodial penalty. This is much higher than the 11.4% of adults who were sentenced to a custodial penalty across all offences in Queensland.



There were very few non-custodial orders imposed on adults for rape (1.3%, n=24). Almost all of these were for cases where the defendant was a child at the time of committing the offence but was an adult at the time of sentencing and received an adult sentencing order. When imposing these orders, the court must have regard to the sentence that might have been imposed if the person had been sentenced as a child.⁶¹

Imprisonment was the most common penalty imposed on adults sentenced for rape (MSO) (68.2%, n=1,240).⁶² This was followed by partially suspended sentences (27%, n=491), and wholly suspended sentences (3.4%, n=62).

There was no difference in the likelihood of a custodial penalty for Aboriginal and Torres Strait Islander people compared to non-Indigenous people. However, Aboriginal and Torres Strait Islander people were more likely to receive a term of imprisonment than non-Indigenous people, and less likely to receive a partially suspended sentence.⁶³

Table 3: Penalties for rape (MSO) sentenced as an adult by Aboriginal and Torres Strait Islander status 2005–06 to 2022–23

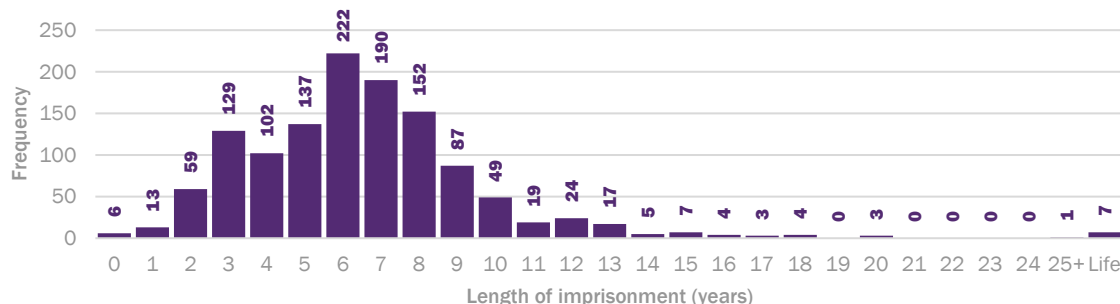
Penalty type	Total %	Men %	Women %	Aboriginal and Torres Strait Islander %	Non-Indigenous %
Custodial penalties (n=1,794)	98.7	98.7	100.0	98.8	98.6
Imprisonment (n=1,240)	68.2	68.2	66.7	79.5	64.3
Partially suspended (n=491)	27.0	27.1	22.2	16.2	30.7
Wholly suspended (n=62)	3.4	3.3	11.1	3.1	3.6
Intensive correction order (n=1) ⁶⁷	0.1	0.1	0.0	0.0	0.1
Rising of the court (n=0)	0.0	0.0	0.0	0.0	0.0
Non-custodial penalties (n=24)	1.3	1.3	0.0	1.2	1.4
Community service (n=3)	0.2	0.2	0.0	0.2	0.1
Probation (n=17)	0.9	0.9	0.0	0.7	1.0
Monetary (n=0)	0.0	0.0	0.0	0.0	0.0
Recognisance (n=2)	0.1	0.1	0.0	0.0	0.1
Convicted, nfp* (n=2)	0.1	0.1	0.0	0.2	0.1
Total	100% n=1,818	100% n=1,800	100% n=18	100% n=425	100% n=1,370

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: excludes children. People with unknown characteristics are excluded from each subgroup.

* not further punished.

Figure 15: Length of imprisonment for adults sentenced for rape (MSO), 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: the year labels represent 1-year bands. For example, '3' includes sentences of 3 years up to sentences of less than 4 years.

Length of sentence for adults

As almost all adults received a custodial penalty, the focus of this remainder of this section is on the types of custodial penalties imposed. There are three types of custodial penalties that will be discussed: imprisonment, partially suspended sentences, and wholly suspended sentences.⁶⁸ For more detail on types of sentencing orders, see the *Queensland Sentencing Guide*.⁶⁹

Figure 15 shows the distribution of imprisonment sentence lengths for adults sentenced for rape (MSO).

The average sentence of imprisonment was 6.5 years (median=6.5 years). The longest sentence of imprisonment was life imprisonment, and the shortest term of imprisonment was 3 months. There were no significant differences in imprisonment length based on Aboriginal and Torres Strait Islander status.⁷⁰

As discussed earlier in this paper, the definition of rape was significantly broadened in 2000 to capture other forms of non-consensual penetrative acts in addition to carnal knowledge (penile intercourse). With the exception of a small proportion of offences committed prior to these legislative changes (5.8%), the sentencing outcomes reported on in this paper, including average sentences, are for offences falling within the current definition of rape.

The maximum term of imprisonment that can be suspended is 5 years.⁷¹ The average partially suspended sentence was 3.4 years (median=3.0 years). The longest partially suspended sentence was 5.0 years. The shortest partially suspended sentences had a length of 1 year. There were no significant differences in sentence length for partially suspended sentences based on Aboriginal and Torres Strait Islander status.⁷²

Of those who received a partially suspended sentence, the average time to be served in custody before release was 386.3 days.

Wholly suspended sentences had an average length of 2.6 years (median=2.5 years). The

longest wholly suspended sentences were 5 years, and the shortest sentences were 6 months in duration. Table 4 has the breakdown of sentence length by penalty type across different demographics.

Table 4: Sentence lengths for rape (MSO) sentenced as an adult by gender and Aboriginal and Torres Strait Islander status 2005–06 to 2022–23

Offender type	N	Avg	Median	Min	Max
Imprisonment (years)					
Female	12	6.3	6.0	2.5	10.0
Male	1,228	6.5	6.5	0.3	Life
Aboriginal or Torres Strait Islander	338	6.6	6.5	0.8	20.0
Non-Indigenous	881	6.5	6.0	0.3	Life
Total	1,240	6.5	6.5	0.3	Life
Partially suspended (years)					
Female†	4	-	-	-	-
Male	487	3.4	3.0	1.0	5.0
Aboriginal or Torres Strait Islander	69	3.3	3.0	1.3	5.0
Non-Indigenous	420	3.4	3.0	1.0	5.0
Total	491	3.4	3.0	1.0	5.0
Wholly suspended (years)					
Female†	2	-	-	-	-
Male	60	2.5	2.3	0.5	5.0
Aboriginal or Torres Strait Islander	13	2.5	2.0	0.5	5.0
Non-Indigenous	49	2.6	2.5	0.8	5.0
Total	62	2.6	2.5	0.5	5.0
Probation (years)					
Female	0	-	-	-	-
Male	17	2.4	2.0	1.3	3.0
Aboriginal or Torres Strait Islander†	3	-	-	-	-
Non-Indigenous	14	2.5	3.0	1.3	3.0
Total	17	2.4	2.0	1.3	3.0

† Data withheld from cells where the sub-total contains less than 5 sentenced cases.

Notes:

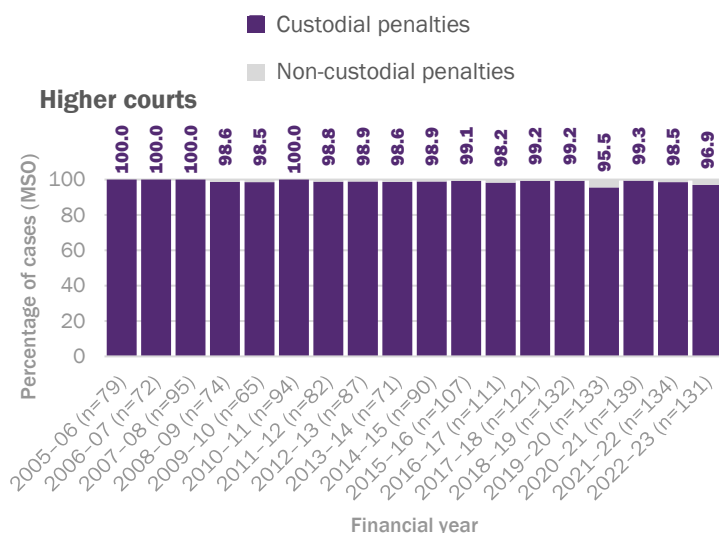
1. Children are not included in this table, see Table 6 instead.
2. Penalty types with a small number of sentenced cases have not been displayed, these include intensive correction orders (n=1), community service orders (n=3), and recognisance orders (n=2).
3. Maximum period permissible for suspended sentences (wholly or partially) is five years.
4. People with unknown characteristics were excluded from each subcategory.
5. Life sentences are not included in calculations for average and medians.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Trends in use of custodial penalties and custodial sentence length for adults

Over the 18-year data period, the percentage of cases that resulted in a custodial penalty remained relatively stable, with at least 95% of cases resulting in a custodial order for each year during the period – see Figure 16. The proportion of custodial penalties in the last 4 years has been slightly lower compared to earlier years, with 96.9% of cases in 2022–23 receiving a custodial penalty.

Figure 16: Custodial penalties for rape (MSO) sentenced as an adult by year, 2005–06 to 2022–23

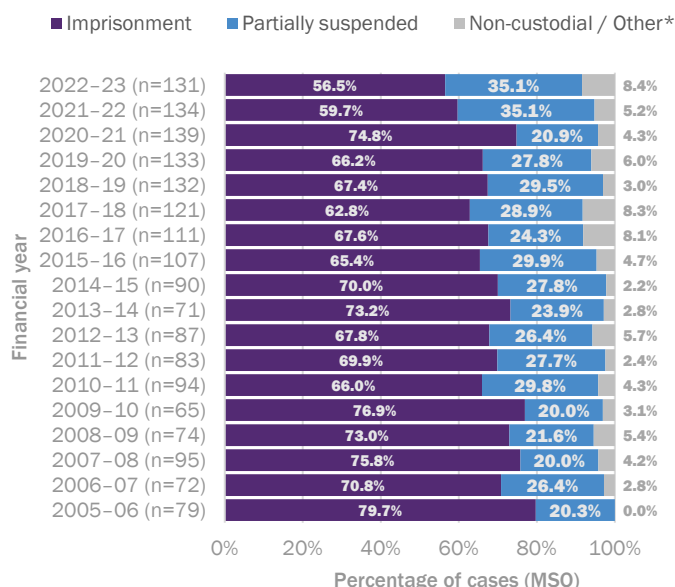


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.
Note: custodial penalties include imprisonment, suspended sentences, and intensive correction orders.

Figure 17 shows the proportion of imprisonment sentences compared to partially suspended sentences over the 18-year data period.

The proportion of partially suspended sentences increased, from 20.3% of all sentences in 2005–06, to 35.1% of sentences in 2022–23 (MSO).

Figure 17: Imprisonment and partially suspended sentences for rape (MSO) sentenced as an adult by year, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.
Note: 'non-custodial / Other' includes wholly suspended sentences and intensive correction orders, as well as all non-custodial orders.

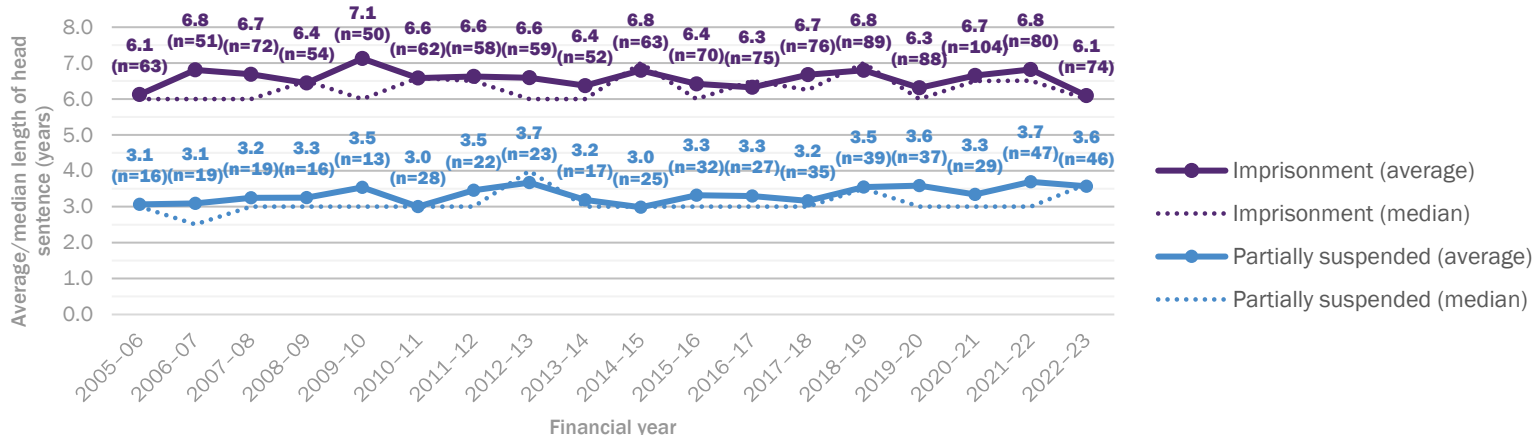
Figure 18 shows the average length of sentences (in years) for penalties of imprisonment and suspended sentences.

For orders of imprisonment, there has been no substantial change in sentence length over time, with the average sentence length ranging from 6.1 years to 7.1 years (median of 6.0 years to 7.0 years). In 2022–23, the length of imprisonment was the lowest it has been since 2005–06, with an average length of 6.1 years (median=6.0 years).

The length of partially suspended sentences was also consistent over the 18-year period, ranging from an average of 3.0 years to 3.7 years.

There were only a small number of wholly suspended sentences given in each financial year.

Figure 18: Length of imprisonment and suspended sentences for rape (MSO) sentenced as an adult by year, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Sentences for children

Special provisions that apply when sentencing children

Different sentencing principles apply to the sentencing of children. A child aged 10–17 years at the time of committing an offence is dealt with under the *Youth Justice Act 1992* (Qld). Prior to changes coming into effect in February 2018, 17-year-olds were dealt with under Queensland law as adults rather than as children.

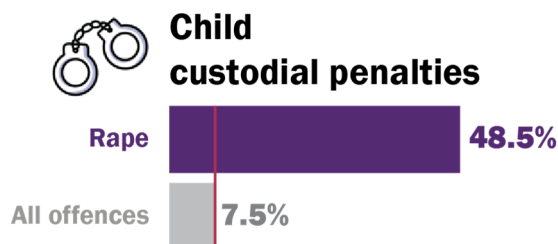
A child aged 10–13 can only be held criminally responsible if the prosecution shows the child had the capacity to know that what they did was seriously wrong when they did it.⁷³ For more information about the sentencing of children, see the Council's *Guide to the Sentencing of Children in Queensland*.

There are two types of custodial penalties available when sentencing children: conditional release orders and detention orders. Conditional release orders are an alternative to detention where the court suspends the detention order and releases the child to be supervised in the community and participate in a structured program. A detention order involves a child being detained in a youth detention centre for a prescribed period.

Sentencing outcomes for children

From 2005–06 to 2022–23, a total of 48.5% (n=126) of children sentenced for rape (MSO) received a custodial penalty. This is much higher than the 7.5% of children

who were sentenced to a custodial penalty across all offences in Queensland.



Of the 126 children sentenced to a custodial penalty, the majority received a detention order (n=89; 70.6%), with the remainder receiving a conditional release order (n=37; 29.4%).

Of the custodial sentences imposed, Aboriginal and Torres Strait Islander children were 7.9 times more likely to receive a detention order (90.9%) than non-Indigenous children (55.7%).⁷⁴ However, this analysis was unable to take into account the seriousness of the offence or any mitigating or aggravating factors.

Probation was the most common non-custodial penalty imposed on children for rape (MSO) (n=114; 85.1%), followed by community service (n=16; 11.9%). There was no significant difference in probation orders (compared to other types of penalties) for Aboriginal and Torres Strait Islander children compared to non-Indigenous children.⁷⁵

Table 5: Penalties for rape (MSO) sentenced as a child by Aboriginal and Torres Strait Islander status 2005–06 to 2022–23

Penalty type	Total %	Male %	Female %	Aboriginal and Torres Strait Islander %	Non-Indigenous %
Custodial penalties (n=126)	48.5	48.8	25.0	59.8	42.4
Detention (n=89)	34.2	34.4	25.0	54.3	23.6
Conditional release order (n=37)	14.2	14.5	0.0	5.4	18.8
Non-custodial penalties (n=134)	51.5	51.2	75.0	40.2	57.6
Community service (n=16)	6.2	6.3	0.0	1.1	8.5
Probation (n=114)	43.8	43.8	50.0	37.0	47.9
Court diversion referral (n=4)	1.5	1.2	25.0	2.2	1.2
Total	100% n=260	100% n=256	100% n=4	100% n=92	100% n=165

Note: This table excludes people sentenced as an adult.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Length of sentence for children

The maximum penalty for a child being sentenced for rape is ordinarily 10 years detention.⁷⁶ However, a sentencing judge may impose a period up to and including life if the offence involves violence and is particularly heinous.⁷⁷

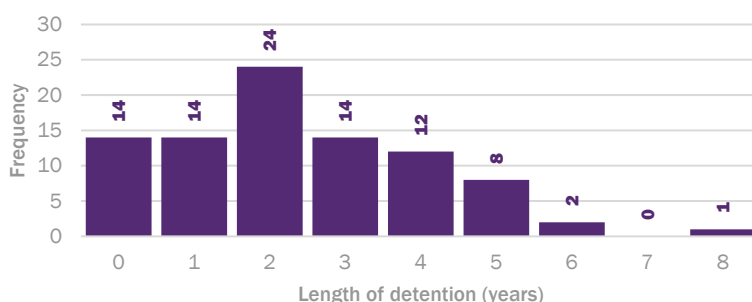
Figure 19 shows the distribution of sentence lengths for detention orders for children sentenced for rape (MSO).

The average detention order was 2.6 years (median=2.5 years). The longest detention order for rape (MSO) was 8 years, and the shortest was 4 months. More than half of the children sentenced to a detention order received less than three years (58.4%, n=52).

The average length of a conditional release order for children sentenced for rape (MSO) was 4.7 months (median=3 months). The longest length for a conditional release order was 2 years, and the shortest was 2 months.⁷⁸

Table 6 shows the sentence length for penalties imposed on children sentenced for rape (MSO) by demographics. There was no significant difference in the length of probation for Aboriginal and Torres Strait Islander children compared to non-Indigenous children.⁷⁹

Figure 19: Terms of detention orders for children sentenced for rape (MSO), 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: the year labels represent 1-year bands. For example, '3' includes sentences of 3 years up to sentences of less than 4 years.

Table 6: Sentence lengths for rape (MSO) sentenced as a child by Aboriginal and Torres Strait Islander status 2005–06 to 2022–23

Offender type	N	Avg	Median	Min	Max
Detention (years)					
Female†	1	-	-	-	-
Male	88	2.6	2.5	0.3	8.0
Aboriginal or Torres Strait Islander	50	2.7	2.5	0.5	8.0
Non-Indigenous	39	2.6	2.3	0.3	6.0
Total	89	2.6	2.5	0.3	8.0
Conditional release order (years)					
Female	0	-	-	-	-
Male	37	0.4	0.3	0.2	2.0
Aboriginal or Torres Strait Islander	5	0.3	0.3	0.3	0.3
Non-Indigenous	31	0.4	0.3	0.2	2.0
Total	37	0.4	0.3	0.2	2.0
Community service (hours)					
Female	0	-	-	-	-
Male	16	118	100	40	200
Aboriginal or Torres Strait Islander†	1	-	-	-	-
Non-Indigenous	14	114	100	40	200
Total	16	118	100	40	200
Probation (years)					
Female†	2	-	-	-	-
Male	112	2.2	2.0	0.5	3.0
Aboriginal or Torres Strait Islander	34	2.4	3.0	1.0	3.0
Non-Indigenous	79	2.2	2.0	1.0	3.0
Total	114	2.2	2.0	0.5	3.0

† Data withheld from cells where the sub-total contains less than 5 sentenced cases.

Notes:

- Adults are not included in this table, see Table 4 instead.
- People with unknown characteristics were excluded from each subcategory.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Endnotes

¹ *Criminal Code* (Qld) s 349. This does not include some acts of penetration which fall within the offence of a sexual assault (see ss 352(2), (3)(b)–(c)).

² Carnal knowledge is defined in s 6 of the *Criminal Code* (Qld) as a penetrative act, including anal intercourse. Under the common law, penetration by a penis is required for there to be ‘carnal knowledge’. The term carnal knowledge was replaced with ‘penile intercourse’ in 2023 and applies to all relevant sexual offences in the Criminal Code, including rape. The definition was not altered.

³ In 2000, amendments were made to s 349 of the Criminal Code broadening the types of sexual acts included under the definition of rape. These amendments included a definitional change from carnal knowledge without consent to include other penetrative acts.

⁴ *Criminal Code* (Qld) s 349(1).

⁵ A different sentencing regime applies to children sentenced in Queensland. An offender aged 10–17 years at the time of committing an offence is dealt with under the *Youth Justice Act 1992* (Qld) (‘YJA’). Prior to changes coming into effect in February 2018, 17-year-olds were dealt with under Queensland law as adults rather than as children.

⁶ YJA (n 5) s 176(3)(a).

⁷ Ibid s 176(3)(b).

⁸ *Criminal Code* (Qld) s 348(1).

⁹ Ibid s 348(2).

¹⁰ Ibid s 348(3).

¹¹ Ibid s 348(3). The definition of consent under s 348 was amended on 7 April 2021 following recommendations made by the Queensland Law Reform Commission, *Review of Consent Laws and the Excuse of Mistake of Fact* (Report No 78, June 2020). See *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (Qld) s 8.

¹² See Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (Qld) introduced into Parliament on 11 October 2023.

¹³ Queensland Government, *Sexual violence statistics* (Webpage, 22 September 2023) citing Australian Bureau of Statistics Person Safety Survey 2021–22.

<<https://www.justice.qld.gov.au/about-us/services/women-violence-prevention/violence-prevention/sexual-violence-prevention/sexual-violence-statistics>>. See also, Women’s Safety and Justice Taskforce, *Hear Her Voice: Women and Girls’ Experiences Across the Criminal Justice System: Report Two* (2022), vol 1, 42–3 citing Australian Bureau of Statistics, ‘Personal Safety, Australia: Statistics for family, domestic, sexual violence, physical assault, partner emotional abuse, child abuse, sexual harassment, stalking and safety 2016’ (Catalogue No 4906.0, 18 November 2017). See also Women’s Safety and Justice Taskforce, *Hear Her Voice: Women and Girls’ Experiences Across the Criminal Justice System: Report Two* (2022) vol 1, 93–4 citing Rachel Loney-Howes, Georgina Heydon & Tully O’Neill, ‘Connecting survivors to therapeutic support and criminal justice through informal reporting options: an analysis of sexual violence reports made to a digital reporting tool in Australia’ (2022) 34(1) *Current Issues in Criminal Justice* 21.

¹⁴ Australian Institute of Family Studies and Victorian Police, *Challenging Misconceptions About Sexual Offending:*

Creating an Evidence-based Resource for Police and Legal Practitioners (2017), 3.

¹⁵ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences Final Report* (Report, September 2021) 26.

¹⁶ Women’s Safety and Justice Taskforce, *Hear Her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (2021), vol 1, 101–3.

¹⁷ Ibid.

¹⁸ Victorian Law Reform Commission (n 15) 27.

¹⁹ Australian Institute of Family Studies and Victorian Police (n 14) 3.

²⁰ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence-Victimisation*. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

²¹ This offence has been renamed ‘repeated sexual conduct with a child’: see *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) s 16, which commenced on 1 August 2023.

²² Version 1 of this *Sentencing Spotlight* found that 12.1% of the non-MSO charges were of Indecent treatment of children under 16 – this is no longer the case due to the changes in counting rules which has resulted in indecent treatment only making up 1.4% of the non-MSO cases. In version 1, many indecent treatment offences were flagged as the MSO because these charges resulted in imprisonment, with a co-sentenced charge of rape receiving a partially suspended sentence. Most of these co-sentenced rape charges received a partially suspended sentences with a custody period that was greater than or equal to the imprisonment charge for the indecent assault offence. As a result, the rape charge has been recalculated as the MSO for these cases.

²³ See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report* (2017) 319 [7.3.2] and 337 which refers to offences being classified as ‘historical’ if reported more than 12 months after their commission. The Royal Commission also reported on whether the victim had reported an offence when the victim was 20 years or older given the report’s focus on child sexual abuse.

²⁴ The new s 352 was inserted by the *Criminal Law Amendment Act 2000* (Qld) s 24.

²⁵ There were 819 rape (MSO) cases recorded in the Metropolitan area compared to 316 in Far North Queensland.

²⁶ Cases are allocated to regions according to the location of the courthouse in which the case has been finalised. Regions are based on the Department of Education’s administrative boundaries with some modifications.

²⁷ A child aged 10–13 can only be found to be criminally responsible if the prosecution shows the child had the capacity to know at the time that they should not do the act or omission: s 29 *Criminal Code* (Qld).

²⁸ As at 30 June 2021. See Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander*

Australians, Table 7.3, available at <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021>> accessed 26 October 2023.

²⁹ 26 cases (MSO) were excluded from this calculation as the persons Aboriginal and Torres Strait Islander status was unknown.

³⁰ Queensland Government Statistician's Office, *Crime Report, Queensland 2021–22* (2023) 68.

³¹ Independent groups t-test: $t(1,066.0) = 8.85, p < .001, r = 0.26$ (equal variances not assumed).

³² Before 12 February 2018, a 'child' for the purposes of the YJA, was a person who had not turned 17 years. Until that date, young people who were 17 were treated as adults for the purposes of sentencing.

³³ Pearson's chi-square test: $\chi^2(1) = 17.524, p < .0001$, odds ratio = 1.8.

³⁴ Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 2. The amending Act was the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld).

³⁵ The definition of 'domestic violence' was amended to include 'a pattern of behaviour', commencing 1 August 2023: see *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) s 31.

³⁶ See *Domestic and Family Violence Protection Act 2012* (Qld) ss 8, 13.

³⁷ Department of Justice and Attorney-General (2021). Sexual violence statistics. Queensland Government. <https://www.justice.qld.gov.au/about-us/services/women-violence-prevention/violence-prevention/sexual-violence-prevention/sexual-violence-statistics>.

³⁸ Seto, M. C., Babchishin, K. M., Pullman, L. E., & McPhail, I. V. (2015). The puzzle of intrafamilial child sexual abuse: A meta-analysis comparing intrafamilial and extrafamilial offenders with child victims. *Clinical Psychology Review*, 39, 42–57. <https://doi.org/10.1016/j.cpr.2015.04.001>.

³⁹ Pearson's chi-square test: $X^2(1) = 0.151, p = 0.6976$.

⁴⁰ Pearson's chi-square test: $X^2(1) = 0.477, p = 0.490$.

⁴¹ Pearson's chi-square test: $X^2(5) = 44.260, p < 0.0001$.

⁴² Criminal Code (Qld) s 552B(1)(a).

⁴³ Ibid s 552D.

⁴⁴ The previous version of this *Sentencing Spotlight* reported two cases in the lower courts. One of these was an administrative error. That case was committed to the District Court where it was dealt with in the alternative and sentenced as sexual assault.

⁴⁵ These cases do not include children. In Queensland, criminal matters involving children (under 18 years) are dealt with by the Children's Court of Queensland. These cases are heard by either a judge or magistrate depending on the seriousness of the offence. All rape offences dealt with in the Children's Court were heard by a judge.

⁴⁶ Magistrates Courts and the District Court have equivalent courts created by legislation which can exercise the specific sentencing powers for children under the *Youth Justice Act 1992* (Qld).

⁴⁷ A person may plead guilty for variety of reasons including, 'to avoid worry, inconvenience or expense; to avoid publicity;

to protect [their] family or friends; or in the hope of obtaining a more lenient sentence than ... if convicted after a plea of not guilty': *Meissner v the Queen* (1995) 184 CLR 132, 141 (Brennan, Toohey and McHugh JJ), 157 (Dawson J). Also cited in *R v BDC* [2018] QCA 132 [6](b) (Philippides JA, Sofronoff P and Henry J agreeing).

⁴⁸ Pearson's chi-square test: $\chi^2(1) = .235, p = .6281$.

⁴⁹ Pearson's chi-square test: $\chi^2(1) = 1.594, p = .2068$.

⁵⁰ Pearson's chi-square test: $\chi^2(5) = 99.836, p < .0001$.

⁵¹ Pearson's chi-square test: $\chi^2(5) = 99.836, p < .0001$, odds ratio = 5.61.

⁵² This offence has been renamed 'repeated sexual conduct with a child': see *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) s 16, which commenced on 1 August 2023.

⁵³ Independent groups t-test: $t(1,599.2) = 5.82, p < 0.001$, two-tailed (equal variance not assumed) ($r = 0.14$).

⁵⁴ The previous version of this *Sentencing Spotlight* used a 7-year index period, whereas this version uses a 3-year index period. The shorter index period allows for an analysis of more recent cases. Data is not comparable between versions.

⁵⁵ Independent groups t-test: $t(132.1) = 3.69, p < .001, r = 0.31$ (equal variances not assumed).

⁵⁶ Independent groups t-test: $t(119.4) = 3.36, p = .001, r = 0.29$ (equal variances not assumed).

⁵⁷ A separate serious organised crime circumstance of aggravation, which commenced on 9 December 2016, can apply in addition to other provisions discussed in this section. This involves a mandatory, cumulative term of imprisonment in addition to the penalty imposed for the rape offence (*Penalties and Sentences Act 1992* (Qld) ('PSA') Part 9D; inserted by the *Serious and Organised Crime Legislation Amendment Act 2016*, s 124). The application of these provisions is beyond the scope of this paper and there were no cases sentenced under this provision during the data period analysed.

⁵⁸ PSA (n 57) s 9(4)(c).

⁵⁹ Ibid s 161D.

⁶⁰ Ibid s 161E.

⁶¹ YJA (n 5) s 144.

⁶² There was a considerable reduction in the number of imprisonment sentences compared to the previous version of this *Sentencing Spotlight*, and an increase in the number of partially suspended sentences. This is a result of changed counting rules (see page 4).

⁶³ Pearson's chi-square test: $\chi^2(1) = .109, p = .7415$.

⁶⁴ See PSA (n 57) ss 161A(a) and 161B.

⁶⁵ *Corrective Services Act 2006* (Qld) s 182.

⁶⁶ Data note: a charge was counted as declared convicted of a serious violent offence if a declaration was expressly made and recorded administratively (s 161A(b) PSA), or where a sentence of 10 or more years imprisonment was imposed (s 161A(a)(ii) PSA (n 57)).

⁶⁷ There were n=3 intensive correction orders reported in the previous version of this *Sentencing Spotlight*. One of these was a historical offence sentenced under s 347 which is excluded due to changed counting rules (see page 4), and

the other was an administrative error that has since been corrected.

⁶⁸ 'Imprisonment' refers to a non-suspended prison sentence, with either a parole release or eligibility date. Suspended sentences are periods of imprisonment of 5 years or less which are suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period of time (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence.

⁶⁹ The Queensland Sentencing Advisory Council's *Queensland Sentencing Guide* is available at: https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/queensland-sentencing-guide.pdf.

⁷⁰ Independent groups t-test: $t(1217) = 1.03$, $p = .304$, $r = 0.03$ (equal variances assumed).

⁷¹ PSA (n 57) s 144.

⁷² Independent groups t test: $t(487) = 0.80$, $p = 0.424$, two tailed (equal variance assumed) $r = 0.04$

⁷³ *Criminal Code* (Qld) s 29.

⁷⁴ Chi square test: $X^2(1, N = 125) = 18.60$, $p < 0.001$, odds ratio = 7.9.

⁷⁵ Pearson's chi-square test: $\chi^2(1) = 2.860$, $p = .0908$.

Statistical tests could not be conducted for whether gender differentiated for children for non-custodial penalties for rape (MSO) due to insufficient numbers.

⁷⁶ YJA (n 5) s 176(3)(a).

⁷⁷ Ibid s 176(3)(b).

⁷⁸ There were insufficient numbers of female or Aboriginal or Torres Strait Islander children sentenced to a conditional release order to test for significance of gender or Indigenous status.

⁷⁹ Independent groups t-test: $t(111) = 0.97$, $p = .335$, $r = 0.09$ (equal variances assumed).



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