Queensland Sentencing Advisory Council

The serious violent offences scheme

Information sheet

What is the serious violent offences scheme?

The serious violent offences (SVO) scheme requires a person declared convicted of certain listed offences to serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being eligible to apply for parole.[1] A court may still set a longer non-parole period, but not a shorter one. The SVO scheme is a form of mandatory sentencing, but the making of a declaration is not mandatory if the sentence is less than 10 years.

This is different to the ordinary rules that apply to the setting of a parole release or parole eligibility date that give courts more discretion to decide the date an offender must be released on parole (if the person is eligible for court ordered parole) or is able to apply for release on parole (see below – 'What difference does it make?').

For offenders with a parole eligibility date, release on parole is not automatic. The decision whether to release the offender from custody to parole is made by the independent Parole Board Queensland.

The SVO scheme is part of the *Penalties and Sentences Act 1992* (Qld) (PSA). It came into force on 1 July 1997, through two additions to the PSA: Part 9A (the scheme itself) and schedule 1 (the list of offences it can apply to).

Why was the SVO scheme introduced?

When the scheme was introduced, the then Attorney-General explained that the approach was based upon 'a reasonable community expectation that the sentence imposed will reflect the true facts and serious nature of the violence and harm in any given case and that condign punishment is awarded to those who are genuinely meritorious of it'.[2]

Once the scheme applies to an offender, the 80 per cent rule engages - whether the offender has pleaded guilty or not, and regardless of any mitigating features of the case.

What difference does it make?

The '80 per cent rule' in the SVO scheme is a marked departure from standard parole laws. They generally give sentencing courts a choice (or 'discretion') to set when parole release or eligibility dates fall in a particular sentence.

The 80% rule

Two examples show the difference that the SVO scheme can make in determining (1) the minimum time an offender has to stay in custody, and therefore (2) how long they are supervised while transitioning into the community on parole.

First, the standard parole laws allow courts to use a discretionary, general practise of choosing to recognise an offender's guilty plea. A court is required under the PSA to take a guilty plea into account, and is permitted to reduce the sentence it otherwise would have imposed had the person not pleaded guilty. One way to recognise an offender's guilty plea is to set the parole release or eligibility date after serving one-third of the total term of imprisonment. (However, this is not a hard and fast rule and depends on the individual case).

[1] *Corrective Services Act 2006* (Qld) s 182.
[2] Queensland, *Parliamentary Debates*, Legislative Assembly, 19 March 1997, 597 (Denver Beanland, Attorney-General and Minister for Justice).

Second, when courts can decide not to (and do not) set a parole release or eligibility date at all, that prisoner is generally eligible for parole after having served half (50 per cent) of their head sentence.[3] This often happens when an offender pleads not guilty and is found guilty at trial.

Applying these examples, if the SVO scheme did not apply to an offender sentenced to 10 years' imprisonment, they might hope to have a parole eligibility date set at about 3 years, 4 months if they pleaded guilty, or at 5 years if they pleaded not guilty and were convicted following a trial. But if an offender is convicted under the SVO scheme, it always requires at least 8 of the 10 years to be served in custody first.

When does it apply?

The SVO scheme can apply to certain listed offences if they are sentenced in the District or Supreme Courts. The offences include:

- violent offences (such as manslaughter, grievous bodily harm, torture, robbery, serious assault and assault occasioning bodily harm)
- sexual offences (such as rape, maintaining a sexual relationship with a child, incest and indecent treatment of children under 16)
- drug offences (trafficking and aggravated supply of dangerous drugs, aggravated production of schedule 1 dangerous drugs), and
- offences of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1.

Being convicted of a listed offence does not mean the sentence is one under the SVO scheme. There are two ways the SVO scheme can then apply:

1. **Automatically**: An offender sentenced to 10 years or more for a listed offence is automatically convicted of a serious violent offence. The legislation makes this mandatory. Judges are required to declare the conviction to be a conviction of a serious violent offence as part of the sentence. Even if a judge does not, the legislation still deems the offender to have been convicted of a serious violent offence.
2. **By judicial discretion**: Judges can choose to make an SVO declaration when the sentence of imprisonment is either:
    - 5 years or more but less than 10 years for a listed offence, or
    - of any length and for any offence (it does not have to be listed in schedule 1) - provided that it:
        - involved the use, counselling or procuring the use of serious violence against another person (or conspiring or attempting to use it), or
        - resulted in serious harm to another person.

The PSA does not provide guidance on what factors should be considered by a judge when exercising the discretion to make an SVO declaration. The exception to this is in the case of an offence involving the use or attempted use of violence against a child under 12 (or that caused the death of a child under 12). Section 161B(5) provides the sentencing court must treat the age of the child as an aggravating factor.

The application of the scheme can be more complicated if an offender has multiple sentences or is sentenced for new relevant offences when serving an existing sentence.

The Queensland Court of Appeal has developed case law regarding the practical application of the SVO scheme.

[3] *Corrective Services Act 2006* (Qld) s 184(2).

What changes have been made since the SVO scheme was introduced?

There has been little legislative change to the scheme since its introduction in 1997.

The provisions about child victims under 12 came into effect on 26 November 2010. Schedule 1 has been updated over time, to add or remove offences or reflect amendments to the Acts housing the offences themselves.

Relationship with the *Dangerous Prisoners (Sexual Offenders) Act 2003* scheme

A prisoner may be detained or supervised beyond the expiry of their sentence under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (DPSOA).

The objects of the DPSOA are:

(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community,

(b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.[4]

The DPSOA allows the Attorney-General to apply for a continuing detention order or a supervision order if the prisoner has been convicted of a 'serious sexual offence'. To make an order, the court must find there is an unacceptable risk of the prisoner committing a serious sexual offence if an order is not made.[5] In making this decision, the most important consideration a court must take into account is the need to ensure adequate protection of the community.[6]

If an order is made, it means the person is detained or subject to supervision after their sentence has expired.

Although some of the same types of offences that can result in a court making an SVO declaration can support an application for a DPSOA order, the DPSOA scheme operates independently of the SVO scheme.

An SVO declaration must be made at the time the person is sentenced and the sentencing court must not have regard to the existence, or possible future existence, of any DPSOA order.[7] In contrast, an application for a DPSOA order can only be brought by the Attorney-General in the last 6 months of the person's period of imprisonment,[8] and the order comes into effect once the sentence has expired. A supervision order must be for a minimum period of the later of either 5 years after the order is made or the end of the prisoner's period of imprisonment, but further orders can be made.[9]

A continuing detention order operates until it is rescinded.[10] Continuing detention orders must be reviewed by a court within 2 years after they first come into effect, and then annually.[11]

[4] *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 3.
[5] Ibid s 13.
[6] Ibid s 13(6)(a).
[7] *Penalties and Sentences Act 1992* (Qld) s 9(9).
[8] *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 5(2)(c).
[9] Ibid ss 13A, 19B.
[10] Ibid s 14
[11] Ibid s 27.