

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 2020–21.

Summary of offences 2005–06 to 2020–21



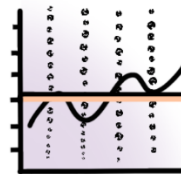
1,825

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



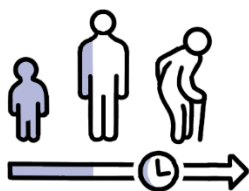
98.7%

of offenders sentenced received a custodial penalty



6.6 years

was the average imprisonment length



14–17 years

was the most common offender age group



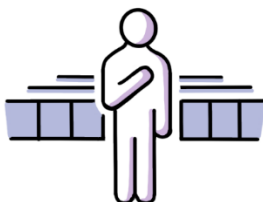
30.4%

of offences were domestic violence offences*



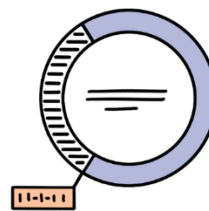
28.3%

of offenders pleaded not guilty



98.8%

of offenders were men



69%

of co-sentenced offences were sexual offences

* data on domestic violence offences includes cases sentenced between 2016–17 and 2020–21.

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](#).

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 in the absence of consent freely and voluntarily given.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 the penetrative acts able to be prosecuted as rape.³ The current definition provides that a person commits rape if:

- They have carnal knowledge with or of another person without the other person's consent, 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 without the other person's consent, or
- The person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

What is consent?

Consent is defined under s 348 of the Criminal Code. Consent must be freely and voluntarily given by a person with the cognitive capacity to consent. Consent is not freely and voluntarily given if 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. A child under the age of 12 years is, by operation of law, incapable of giving consent.

The definition of consent was amended on 7 April 2021 following recommendations made by the Queensland Law Reform Commission. The amendments clarified, amongst other things, that silence alone does not amount to consent and that consent initially given can be withdrawn by words or conduct.

Reforms proposed by Women's Safety and Justice Taskforce

The Women's Safety and Justice Taskforce in its second report, 'Hear her Voice' published in July 2022, has recommended additional reforms to the definition of consent and to the 'mistake of fact' defence as it applies to consent under s 348A of the Criminal Code. Mistake of fact is a defence to rape if the defendant can show they were under the honest and reasonable, but mistaken belief, that the victim consented to the act or acts charged as rape. A defendant's self-induced intoxication cannot be taken into account when determining if a defendant's belief as to consent was reasonable.

The Taskforce recommended that ss 348 and 348A be amended to provide: ⁴

- consent be freely and voluntarily 'agreed' rather than 'given';
- an expanded list of non-exhaustive circumstances in s 348(2) in which consent is not freely and voluntarily agreed to reflect those circumstances set out in the equivalent NSW provision (s 61HJ of the *Crimes Act 1900* (NSW));
- if the person who alleges sexual violence has suffered resulting grievous bodily harm, those injuries be taken as evidence of a lack of consent, unless the accused person can prove otherwise;
- no regard is to be had to the voluntary intoxication of the accused person as to a mistaken belief about consent to sexual activity; and
- the accused person's belief about consent to sexual activity is not reasonable if they did not, within a reasonable time before or at the time, say or do anything to find out whether the other person consented to the sexual activity.

Reporting rape

Rape, like other forms of sexual offending, is an often underreported crime.⁵ 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. The trauma victims and survivors have experienced can contribute to non-disclosure of their abuse or significant delays in reporting.^{6,7} Victims and survivors may also decide not to report the offence to avoid having to go through a potentially re-traumatising court process. Generally low conviction rates may further disincentivise victims and survivors to report the offence.

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,⁸ as compared to an increase in the incidence of rape in the community. These factors should be considered when interpreting the findings in this *Sentencing Spotlight*.

The maximum penalty for rape

The maximum penalty for rape is life imprisonment.

The data analysis shows that penalties for rape vary significantly. Factors taken into account when sentencing for the offence of rape 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 child⁹ being sentenced for rape is ordinarily 10 years detention.¹⁰ However, a sentencing judge may impose a period up to and including life 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.¹¹

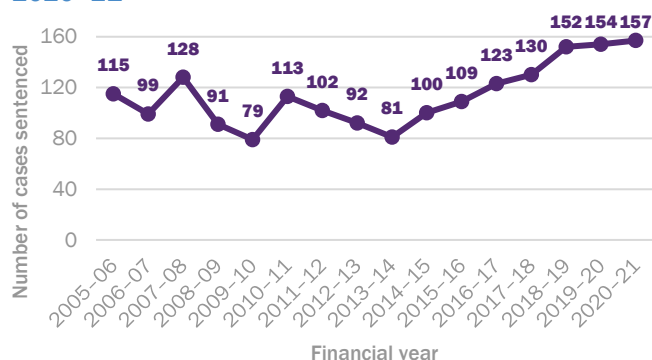
Number of cases

A total of 2,222 unique individuals were sentenced for 2,281 cases involving rape between 2005–06 to 2020–21. For 1,825 of those cases (80.0%), rape was the most serious offence (MSO). For the remaining 456 cases where rape was not the MSO, the MSO was another serious sexual offence such as maintaining an unlawful sexual relationship with a child (63.2%), indecent treatment of children (12.1%).¹² or attempted rape (2.9%); or a serious violent offence such as murder (3.1%) or torture (2.6%).

This *Sentencing Spotlight* focuses primarily on sentenced cases in which rape was the MSO. Figure 1 shows the number of rape cases sentenced (MSO) during the 16-

year data period. The chart shows a continual increase in the number of cases sentenced since 2013–14. The most recent financial year (2020–21) recorded a 93.8% increase from eight years prior (2013–14), although this increase plateaued during the COVID-19 pandemic. This may be explained by court proceedings being delayed due to COVID-19 lockdowns. The overall increase in rape offences is consistent with increases in reported sexual offences over the same period.¹³ As discussed earlier in this paper, increased reporting of these offences may contribute to the data trends.

Figure 1: Number of rape (MSO) cases, 2005–06 to 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

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.¹⁴

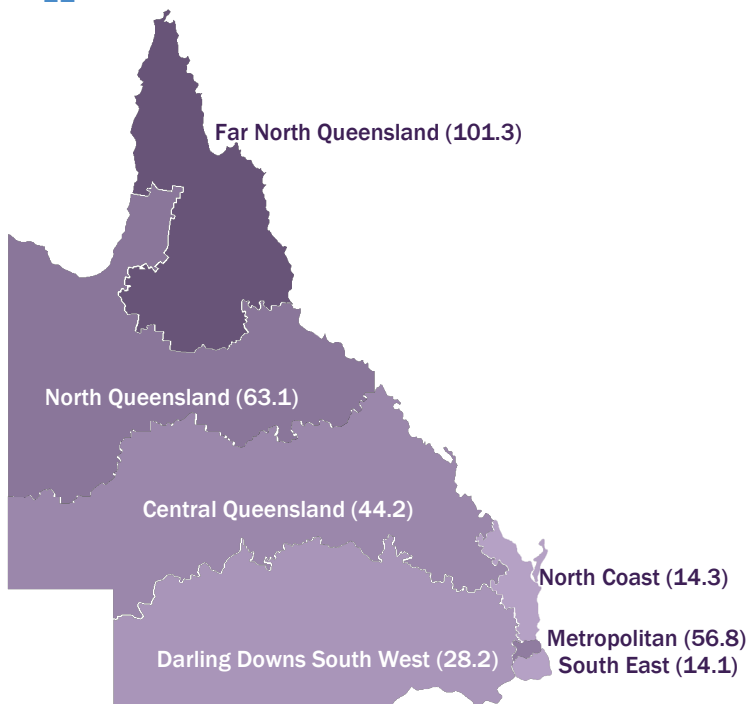
There were 145 historical offences sentenced (MSO, 7.9%). Most of these historical offences were committed by non-Indigenous men (84.1%). Only one of these historical offences was committed by a woman and 11.0% ($n = 16$) by Aboriginal or Torres Strait Islander men.

The conduct captured and penalties applied to rape offences changed over time. As discussed above, in 2000, Queensland enacted legislative amendments which 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. Of the 1,825 sentenced rape (MSO) cases, only 5.8% ($n = 105$) involved offences committed prior to the 2000 amendments to the Criminal Code. However, pre-2000 offences comprise most of the historical cases included in this data analysis (72.4%).

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 (101.3) was nearly twice that of the Metropolitan region (56.8).¹⁵ Figure 2 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.¹⁶

Figure 2: Rape (MSO) cases by region in Queensland by rate of the population per 100,000 2005–06 to 2020–21



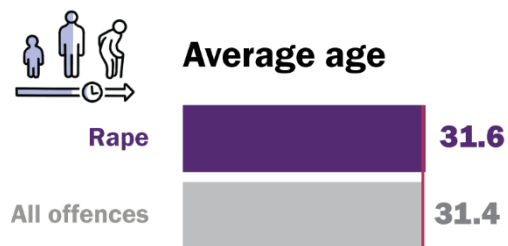
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

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 2020–21.

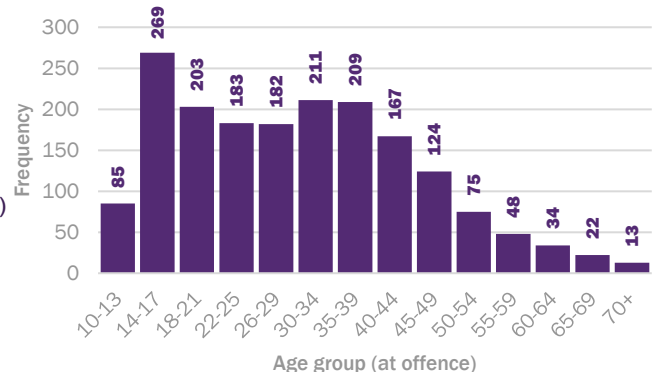
Age

At the time of the offence, the average age of all people sentenced for rape (MSO) was 31.6 years (with a median of 29.8 years), with ages ranging between 10¹⁷ and 77 years.



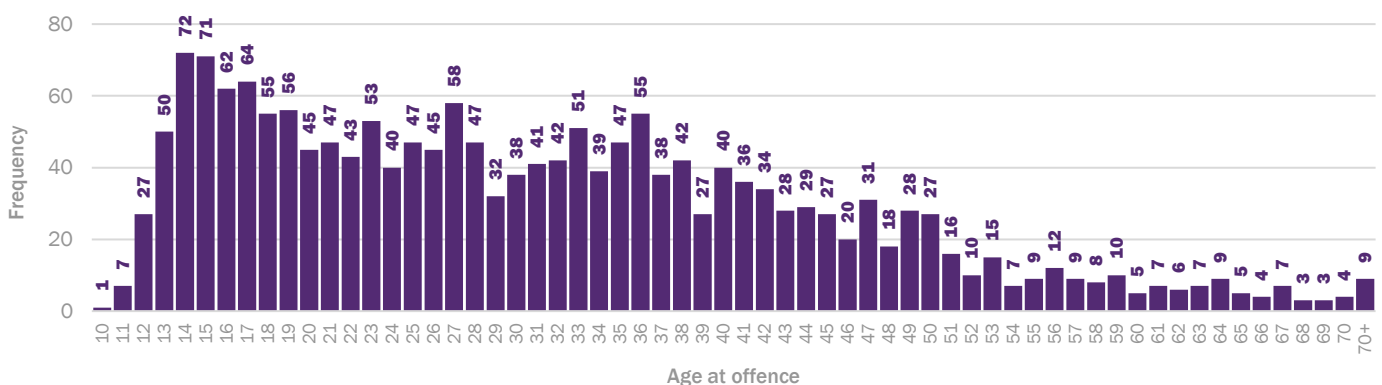
Most sentenced rape (MSO) cases involved young, predominantly male children in their teenage years and adults in their early twenties. This is reflected in the most common age group for rape (MSO) being 14 to 17 years (see Figure 3). From the age of 18 onwards, the distribution remains high with some fluctuations. After the age of 40, the number of people sentenced for rape (MSO) consistently decreases (see Figure 4).

Figure 3: Number of people sentenced for rape (MSO) by age group, 2005–06 to 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Figure 4: Number of people sentenced for rape (MSO) by age, 2005–06 to 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Sentenced children

A different sentencing regime applies to children. An offender aged 10–17 years at the time of committing an offence is dealt with under the *Youth Justice Act 1992* (Qld). Prior to February 2018, 17-year-olds were dealt with as adults rather than as children.

A total of 239 children were sentenced for rape (MSO) in Queensland courts over the 16-year data period.¹⁸ The average age at time of sentencing for children was 14.7 years (median = 14.9 years). There was no significant difference in age of children for rape (MSO) by Aboriginal or Torres Strait Islander status.¹⁹

Gender

Over the 16-year data period, the overwhelming majority of people sentenced for rape (MSO) in Queensland were men (98.8%, $n = 1804$). Only 21 women were sentenced for rape over the data period.



Aboriginal and Torres Strait Islander people

In Queensland, Aboriginal and Torres Strait Islander peoples are over-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 3.8% of the Queensland population (aged 10 and over),²⁰ they accounted for 25.9% ($n=473$) of people sentenced for rape (MSO) over the 16-year data period.

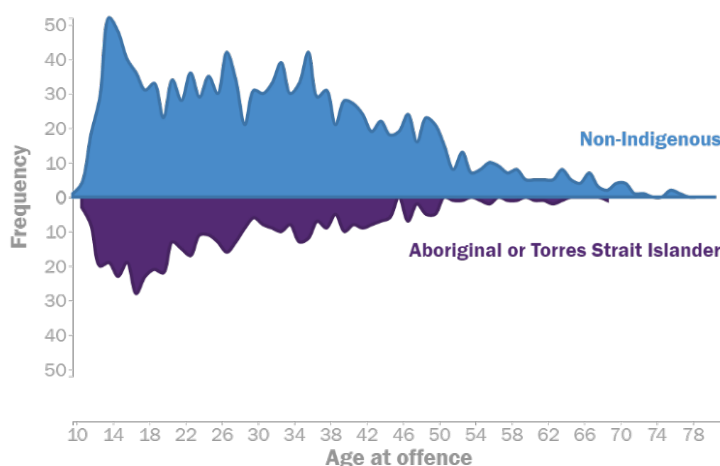
The Council recognises that Aboriginal and Torres Strait Islander peoples are not only over-represented among those sentenced for rape, but are also over-represented as the victims and survivors of sexual offences. In 2020–21, Aboriginal and Torres Strait Islander people accounted for 10.4% of reported victims of sexual offences in Queensland.²¹

Aboriginal and Torres Strait Islander offenders



Aboriginal and Torres Strait Islander offenders were significantly younger (27.4 years, median = 24.5) than non-Indigenous offenders (33.1 years, median = 31.8) (see Figure 5).²² This may be a reflection of the younger age structure of Aboriginal and Torres Strait Islander people within the Queensland population generally (median = 23.0) compared to non-Indigenous people (median = 37.8).

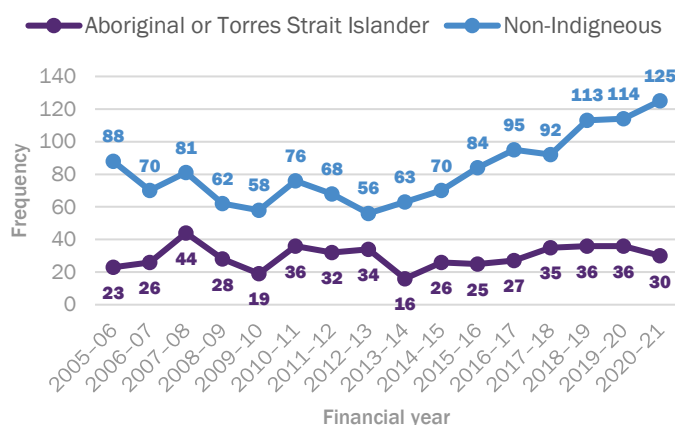
Figure 5: Number of cases sentenced for rape (MSO) by Aboriginal and Torres Strait Islander status and age, 2005–06 to 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Although the number of rape (MSO) cases increased over time, cases involving Aboriginal and Torres Strait Islander offenders remained stable over the same period.²³

Figure 6: Rape (MSO) by Aboriginal and Torres Strait Islander status and year of sentence, 2005–06 to 2020–21



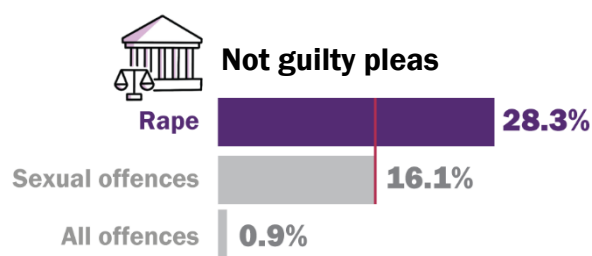
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

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.²⁴ 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.²⁵ Over the 16-year data period, only two rape (MSO) cases were sentenced in the Magistrates Courts under these circumstances. Most rape (MSO) cases were sentenced in the District Court ($n = 1568$, 98.87%), with a small number sentenced in the Supreme Court ($n = 16$).²⁶

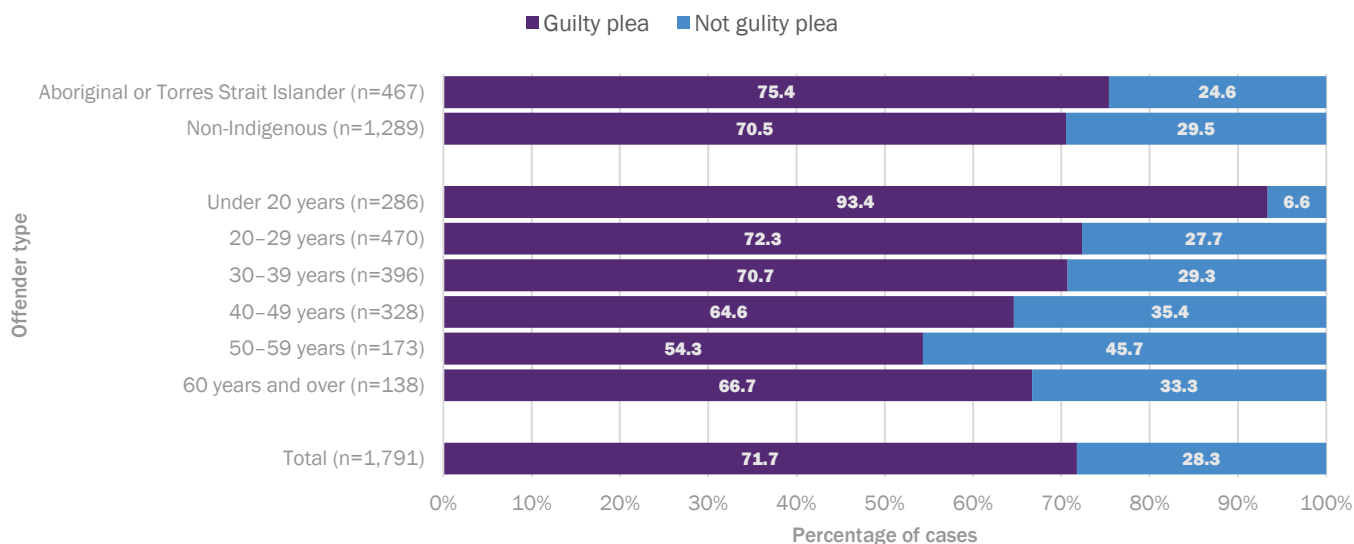
Type of plea

More than one-quarter of rape (MSO) cases involved a plea of not guilty (28.3%), which is a much higher proportion than for all criminal offences collectively (0.9%). Even accounting for the higher proportion of not guilty pleas for sexual offences generally (16.1%), the proportion of not guilty pleas for rape was much higher than for most other offences.



Older defendants had higher proportions of not guilty pleas compared to younger defendants. Further, Aboriginal and Torres Strait Islander people were more likely to plead guilty (75.4%) than non-Indigenous people (70.5%).²⁷ The odds ratio indicates that Aboriginal and Torres Strait Islander people were 1.28 times more likely to plead guilty for rape than non-Indigenous people.²⁸ Figure 7 provides more information on plea rates by socio-demographics.

Figure 7: Plea type of cases sentenced for rape (MSO) by Aboriginal and Torres Strait Islander status and age at sentence, 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Note: 34 cases were excluded as the type of plea was unknown. Offenders with unknown characteristics were excluded from each subcategory.

Table 1: Number of sentenced offences per court event by Aboriginal and Torres Strait Islander status and presence of aggravating circumstances, 2005–06 to 2020–21

| Demographic | N | Single offence (%) | 2 to 4 offences (%) | 5 to 10 offences (%) | 11+ offences (%) | Number of offences | | | |
|--------------------------------------|--------------|--------------------|---------------------|----------------------|------------------|--------------------|------------|----------|-----------|
| | | | | | | Avg | Median | Min | Max |
| Aboriginal or Torres Strait Islander | 473 | 26.0 | 41.0 | 22.0 | 11.0 | 4.6 | 3.0 | 1 | 49 |
| Non-Indigenous | 1,315 | 20.8 | 37.2 | 26.3 | 15.7 | 6.2 | 4.0 | 1 | 98 |
| Total | 1,825 | 22.0 | 38.0 | 25.5 | 14.5 | 5.8 | 4.0 | 1 | 98 |

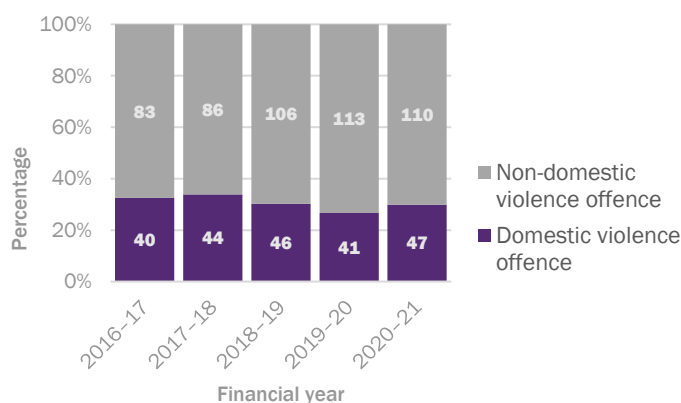
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

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 2020–21.

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.²⁹ 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 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).³⁰

Figure 8: Number of rape offences sentenced as domestic violence offences (MSO), 2016–17 to 2020–21



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2021.

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 assault, including rape, is an intimate partner.³¹ and up to one-third of child sexual abuse is

intrafamilial.³² Of the 716 rape (MSO) offences identified from 2016–17 to 2020–21, 30.4% ($n = 218$) were classified as domestic violence offences.

The proportion of rape cases sentenced as a domestic violence offence (MSO) has remained consistent over the past five years (see Figure 8).

Co-sentenced offences

Most people sentenced for rape (MSO) were also sentenced for other offences at the same court event. Of the 1,825 sentenced rape cases (MSO), 22.0% involved only the rape offence sentenced at their court event; 16.1% had one additional offence, and 61.9% had more than one offence sentenced.

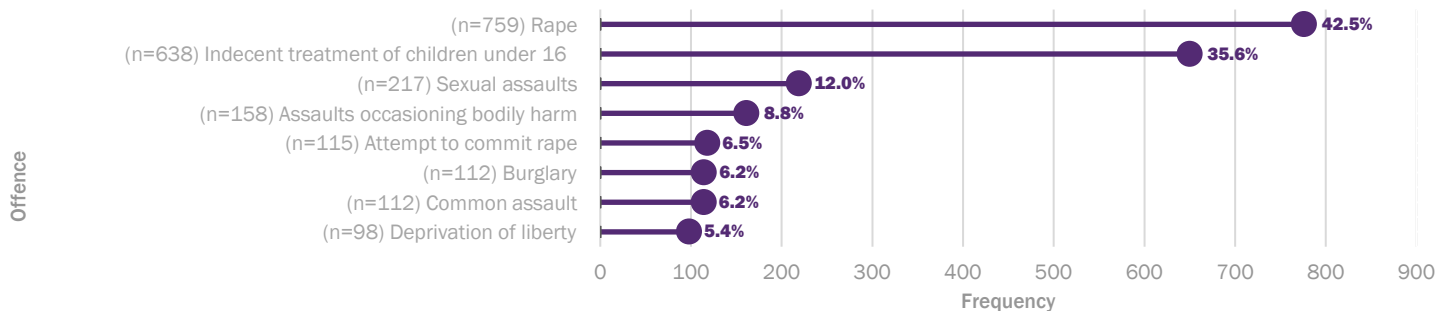
The number of sentenced offences per court event ranged from 1 to 98, with an average of 5.9 sentenced offences per event (median = 4.0). Of the 1,423 people sentenced for rape who were sentenced for additional offences, the majority were sentenced for between 2 and 4 additional offences (38.0%).

On average, Aboriginal and Torres Strait Islander people sentenced for rape had a significantly lower number of co-sentenced offences (average = 4.59) than non-Indigenous people (average = 6.21).³³

Most offences sentenced at the same court event as rape (MSO) were sexual offences (69.0%). In fact, 4 of the top 5 most common co-sentenced offences were sexual offences (see Figure 9). Rape was most commonly co-sentenced with other rape offences, meaning that 42.5% of cases involved multiple counts of rape.

For Aboriginal and Torres Strait Islander peoples sentenced for rape (MSO), sexual offences accounted for just over half of the co-sentenced offences (53.4%). In comparison, three quarters of co-sentenced offences for non-Indigenous people were sexual offences (72.7%). The most commonly co-sentenced offences were rape and indecent treatment of children, and this remained consistent across gender and Indigenous status.

Figure 9: Eight most common offences co-sentenced with rape (MSO), 2005–06 to 2020–21



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2022

Recidivism

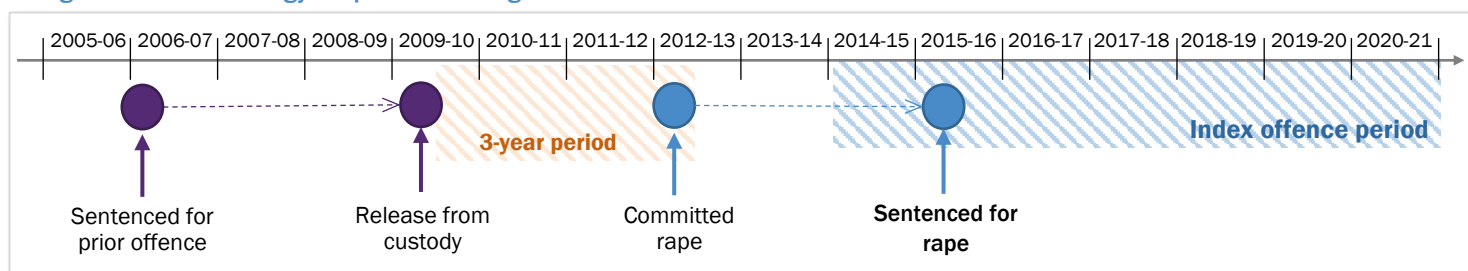
Of the 2,222 people sentenced for rape offences from 2005–06 to 2020–21 (not necessarily as their MSO), 2.4% were repeat offenders ($n = 53$). This means that they were sentenced for rape on at least two separate occasions over the 16-year period.

For the purpose of this *Sentencing Spotlight*, recidivism was operationalised as any criminal offence committed within three years of the date of sentence for a non-custodial penalty or within three years of an offender's expected release from custody for a custodial penalty.

Due to the length of average imprisonment terms for rape offences, separate samples were used to determine the degree of prior offending and reoffending. For prior offences, a sample of people sentenced for rape between 2014–15 to 2020–21 (MSO) was examined for priors within 3 years of committing the index rape offence (see Figure 10). For reoffending, a separate sample of people sentenced between 2005–06 to 2011–12 was examined to identify any subsequent offences during the 3 years following the sentence for the rape offence (see Figure 12).

Prior offending

Figure 10: Methodology for prior offending



The '3-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 3 years of being released from custody for a prior offence.

Number of prior offences

There were 1,079 cases sentenced for rape between 2014–15 to 2020–21. In over one-third of these cases, the offender had prior offences (41.7%, $n = 450$).

The number of prior sentenced cases ranged from 0 to 25. Of the 450 cases with prior sentenced offences, almost two-thirds had more than one offence recorded (64.2%, $n = 289$). In most cases where prior offences were recorded, there were between one and four prior offences (77.6%; $n = 349$), with almost one-quarter of cases having five or more prior offences (22.4%; $n =$

101). On average, Aboriginal or Torres Strait Islander people sentenced for rape had more prior offences (3.0) sentenced than non-Indigenous people (1.0).³⁴

Most common prior offences

Most of the prior offences were not sexual offences (98.7%; $n = 2,177$). In fact, none of the most common eight prior offences were sexual offences (see Figure 11). The most common prior sentenced offence was unlicensed driving (6.5%; $n = 143$).

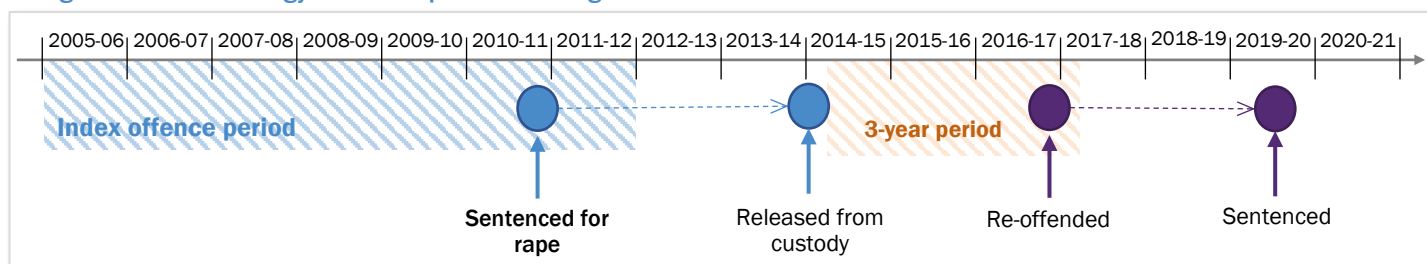
Figure 11: Most common 8 prior offences (MSO) for offenders sentenced for rape, 2014–15 to 2020–21

| Offence | Sentenced cases | Unique offenders |
|---|-----------------|------------------|
| Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i> | 225 | 143 (6.5%) |
| Possession of drug utensils <i>Drugs Misuse Act 1986 (Qld) s 10A</i> | 151 | 111 (5.0%) |
| Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i> | 125 | 111 (5.0%) |
| Contravene direction or requirement of police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 791</i> | 134 | 106 (4.8%) |
| Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 33</i> | 137 | 105 (4.8%) |
| Public nuisance <i>Summary Offences Act 2005 (Qld) s 6</i> | 150 | 92 (4.2%) |
| Contravention of domestic violence order <i>Domestic and Family Violence Act 2012 (Qld) s 177</i> | 156 | 90 (4.1%) |
| Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i> | 151 | 87 (3.9%) |

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Subsequent offending

Figure 12: Methodology for subsequent offending



The '3-year period' refers to the time during which an offence must be committed for it to be included in the recidivism analysis. The offender must have committed a new offence within 3 years of being released from custody for a prior offence.

There were 752 cases sentenced for rape between 2005–06 and 2010–11. Less than one-third of cases involved offenders who reoffended in the three years following release from custody for their sentenced rape offence (MSO) (29.4%; $n = 221$).

The number of subsequent offences ranged from 0 to 41 offences—see Table 2. Of those offenders with subsequent offending, approximately half had only one subsequent offence (50.7%; $n = 112$), with the other half having more than one subsequent offence (49.3%; $n = 109$). On average, Aboriginal or Torres Strait Islander

people had more subsequent offences (1.4) compared to non-Indigenous people (0.5)—see Table 2.³⁵

Most of the subsequent offences were not sexual offences (97.7%; $n = 776$) as shown in Figure 13. The most common subsequent offence was failing to comply with reporting obligations (14.5%; $n = 91$). When rape is committed against a child (under 18 years), the *Child Protection (Offender Reporting) Act 2004* (CPOR) requires those who have committed sexual or other serious offences against children to report personal details to police for a prescribed period.

Figure 13: Top eight subsequent offences (MSO) for offenders sentenced for rape, 2005–06 to 2011–12

| Offence | Sentenced cases | Unique offenders |
|---|-----------------|------------------|
| Failure to comply with reporting obligations <i>Child Protection (Offender Reporting) Act 2004 (CPOR)</i> | 91 | 84 (14.5%) |
| Public nuisance <i>Summary Offences Act 2005 (Qld) s 6</i> | 57 | 36 (6.2%) |
| Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i> | 36 | 31 (5.4%) |
| Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i> | 33 | 30 (5.2%) |
| Assault or obstruct police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 790</i> | 42 | 26 (4.5%) |
| Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i> | 35 | 22 (3.8%) |
| Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 33</i> | 24 | 22 (3.8%) |
| Contravention of domestic violence order <i>Domestic and Family Violence Act 2012 (Qld) s 177</i> | 22 | 18 (3.6%) |

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Table 2: Number of sentenced offences per court event by Aboriginal and Torres Strait Islander status

| Demographic | N | 0 recidivist offences (%) | 1 to 4 recidivist offences (%) | 5+ recidivist offences (%) | Number of recidivist court events | | | |
|--------------------------------------|--------------|---------------------------|--------------------------------|----------------------------|-----------------------------------|------------|----------|-----------|
| | | | | | Avg | Median | Min | Max |
| Prior offending | 1,079 | 58.3 | 32.3 | 9.4 | 1.4 | 0.0 | 0 | 25 |
| Aboriginal or Torres Strait Islander | 207 | 27.1 | 49.3 | 23.7 | 3.0 | 2.0 | 0 | 25 |
| Non-Indigenous | 855 | 65.3 | 28.8 | 6.0 | 1.0 | 0.0 | 0 | 14 |
| Subsequent offending | 752 | 70.6 | 26.1 | 3.3 | 0.7 | 0.0 | 0 | 41 |
| Aboriginal or Torres Strait Islander | 189 | 56.6 | 36.0 | 7.4 | 1.4 | 0.0 | 0 | 41 |
| Non-Indigenous | 543 | 74.6 | 23.4 | 2.0 | 0.5 | 0.0 | 0 | 11 |

Note: Totals may not add to 100% due to rounding.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Penalties and sentencing

In Queensland, the maximum penalty for rape is life imprisonment. While courts have discretion to set the appropriate sentence in most cases, there are mandatory sentencing provisions that apply in certain circumstances to adults.³⁶

An offender convicted of a 'repeat serious child sex offence' (where both offences were committed when the offender was an adult) is subject to a mandatory life sentence or indefinite sentence (with a nominal sentence and finite sentence of life imprisonment). Rape is a serious child sex offence.³⁷

Section 9(4)(c) of the PSA states that when sentencing an adult offender for any offence of a sexual nature committed in relation to a child under 16 years (or a child exploitation material offence), the judge must order that the offender serve an actual term of imprisonment, unless there are exceptional circumstances.³⁸

If a sentence of imprisonment of 10 years or more is imposed on an adult offender, a court must declare the offender convicted of a serious violent offence (SVO).³⁹ This is discretionary for sentences of 5 years or more, and less than 10 years.⁴⁰ Where a declaration is made, the offender must serve a minimum of 80% of their sentence in custody, or 15 years, whichever is less.⁴¹

Penalty type

From 2005–06 to 2020–21, the majority of people sentenced for rape (MSO) received a custodial sentence ($n = 1,683$; 92.2%). There were differences in the use of custodial sentences between adults and children. Of the 1,586 adults sentenced for rape (MSO), almost all received a custodial sentence ($n = 1,565$, 98.7%), compared to under half of the children sentenced for rape (MSO) who received a custodial sentence ($n = 118$; 49.4%). The remaining children were sentenced to a non-custodial penalty ($n = 121$, 50.6%), primarily probation orders. The following sections will discuss the penalties for adults and children separately.

Sentences for adults

Table 3 shows the types of penalties given to adults who were sentenced for rape (MSO) by demographic characteristics. As almost all adults received a custodial penalty, the focus of this section is on the types of custodial penalties imposed. There are four types of custodial penalties discussed in this section: imprisonment, partially suspended sentences, wholly suspended sentences and intensive correction orders.⁴² For more detail on types of sentencing orders, see the *Queensland Sentencing Guide*.⁴³

Imprisonment was the most common penalty imposed on adults sentenced for rape (MSO) (74.7%). This was followed by partially suspended sentences (20.5%, $n = 325$), wholly suspended sentences (3.4%, $n = 55$) and a very small number of intensive correction orders (0.2%, $n = 3$).

Aboriginal and Torres Strait Islander people were significantly more likely to receive a term of imprisonment than non-Indigenous people sentenced for rape (MSO).⁴⁴ Aboriginal and Torres Strait Islander people were sentenced to imprisonment in 84.3% of cases, compared to 72.5% of cases involving non-Indigenous people. Non-Indigenous people more commonly received a penalty of a partially suspended sentence (23.4%) compared to Aboriginal and Torres Strait Islander people (12.6%). The ratio in sentencing for a wholly suspended sentence was similar between Aboriginal and Torres Strait Islander people (2.8%) and non-Indigenous people (3.8%). The only adults to receive an intensive correction order were non-Indigenous men.

Non-custodial penalties accounted for very few (1.3%) penalties imposed on adults for rape (MSO) ($n = 21$). Almost all of the non-custodial penalties 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.⁴⁵

Most of these non-custodial penalties for adults consisted of probation ($n = 13$; 61.9%). Three adults received a penalty of community service and three were convicted, but not further punished. Only one adult received a monetary fine or recognisance.

Table 3: Penalties for rape (MSO) sentenced as an adult by Aboriginal and Torres Strait Islander status 2005–06 to 2020–21

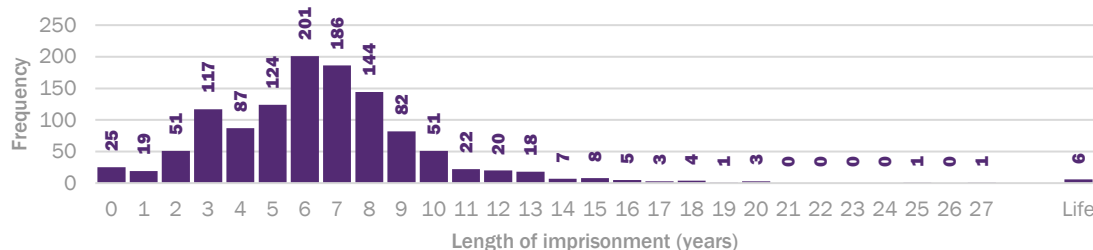
| Penalty Type | Total % | Aboriginal or Torres Strait Islander % | Non-Indigenous % |
|---|--------------|--|---------------------|
| Custodial penalties | 98.7 | 98.7 | 98.6 |
| Imprisonment ($n = 1,182$) | 74.7 | 83.2 | 71.5 |
| Partially suspended ($n = 325$) | 20.5 | 12.6 | 23.4 |
| Wholly suspended ($n = 55$) | 3.4 | 2.8 | 3.8 |
| Intensive correction order ($n = 3$) | 0.2 | 0.0 | 0.2 |
| Non-custodial penalties | 1.3 | 1.3 | 1.4 |
| Community service ($n = 3$) | 0.2 | 0.3 | 0.2 |
| Probation ($n = 13$) | 0.8 | 0.5 | 0.9 |
| Monetary ($n = 1$) | 0.1 | 0.3 | 0.0 |
| Recognisance ($n = 1$) | 0.1 | 0.0 | 0.1 |
| Convicted, not further punished ($n = 3$) | 0.2 | 0.3 | 0.2 |
| Total ($n = 1,586$) | 100.0 | 24.4 | 73.5 |

Note: This table excludes people sentenced as a child.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Length of sentence for adults

Figure 14: Terms of imprisonment for adults sentenced for rape (MSO), 2005–06 to 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Figure 14 shows the distribution of imprisonment sentence lengths for adults sentenced for rape (MSO).

The average sentence was 6.6 years (median=6.5 years). The longest sentence of imprisonment was life imprisonment, and the shortest term of imprisonment was 3 months. In comparison with other sexual offences carrying a maximum term of life imprisonment,⁴⁶ the only offence with a longer average term of imprisonment was maintaining an unlawful sexual relationship with a child (7.4 years). There were no significant differences in imprisonment length based on Aboriginal and Torres Strait Islander status.⁴⁷

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. 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.⁴⁸ The average partially suspended sentence was 3.3 years (median = 3 years). The longest partially suspended sentence was 5 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.⁴⁹

Of those who received a partially suspended sentence, the average time to be served in custody before release was 52.5 days.

Wholly suspended sentences had an average length of 2.19 years (median = 2.0 years). The longest wholly suspended sentences were 5 years, and the shortest sentences were 6 months in duration. There were no significant differences in sentence length for a wholly suspended

sentence for rape (MSO) based on Aboriginal and Torres Strait Islander status.⁵⁰

Table 4 has the breakdown of sentence length by penalty type across different demographics.

Table 4: Sentence lengths for rape (MSO) by gender, Aboriginal and Torres Strait Islander status 2005–06 to 2020–21

| | N | Avg | Median | Min | Max |
|--------------------------------------|--------------|-------------|-----------|-----------|-------------|
| Imprisonment (months) | | | | | |
| Aboriginal or Torres Strait Islander | 323 | 80.7 | 78 | 9.3 | 240 |
| Non-Indigenous | 832 | 77.9 | 78 | 3 | 300 |
| Total | 1,182 | 79.1 | 78 | 3 | Life |
| Partially suspended (months) | | | | | |
| Aboriginal or Torres Strait Islander | 10 | 48 | 48 | 30 | 60 |
| Non-Indigenous | 133 | 45.7 | 48 | 24 | 60 |
| Total | 150 | 45.7 | 48 | 18 | 60 |
| Wholly suspended (months) | | | | | |
| Aboriginal or Torres Strait Islander | 3* | - | - | - | - |
| Non-Indigenous | 14 | 31.7 | 33 | 12 | 60 |
| Total | 17 | 32.3 | 36 | 12 | 60 |
| Probation (months) | | | | | |
| Aboriginal or Torres Strait Islander | 2* | - | - | - | - |
| Non-Indigenous | 11 | 31.6 | 36 | 24 | 36 |
| Total | 13 | 30.5 | 36 | 24 | 36 |

* Data withheld due to small sample sizes.

Notes:

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

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Sentences for children

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.

A child aged 10–13 can only be held criminally responsible if the prosecution shows the child had the capacity at the time to know they should not do the act or omission.⁵¹

Different sentencing principles also apply to the sentencing of children, which are outlined in the *Charter of youth justice principles*. For more information about the sentencing of children, see the Council's *Guide to the Sentencing of Children in Queensland*.⁵²

Under the YJA, 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.

Of the 118 children sentenced to a custodial penalty, the majority received a detention order ($n = 81$; 68.6%), with slightly less than one third receiving a conditional release order ($n = 37$; 31.4%).

Of the custodial sentences imposed, Aboriginal and Torres Strait Islander children received a detention order significantly more often (90.0%) than non-Indigenous children (53.7%).⁵³ The odds ratio indicates that Aboriginal and Torres Strait Islander children sentenced for rape (MSO) were 7.75 times more likely to receive a detention order than non-Indigenous children sentenced for rape (MSO). However, this analysis does not take into account the seriousness of the offence or any mitigating or aggravating factors.

Non-custodial penalties were more common for children sentenced for rape (MSO) ($n = 121$; 50.6%) compared to adults. Probation was the most common non-custodial penalty imposed on children for rape (MSO) ($n = 104$; 86.0%), followed by community service ($n = 15$; 12.4%).⁵⁴

Table 5: Penalties for rape (MSO) sentenced as a child (under 18 years) by Aboriginal and Torres Strait Islander status 2005–06 to 2020–21

| Penalty Type | Total | Aboriginal or Torres Strait Islander | Non-Indigenous |
|--|-------------|--------------------------------------|----------------|
| | % | % | % |
| Custodial Penalties | 49.4 | 58.8 | 45.0 |
| Detention ($n = 81$) | 33.9 | 52.9 | 24.2 |
| Conditional release order ($n = 37$) | 15.5 | 5.9 | 20.8 |
| Non-custodial Penalties | 50.6 | 41.2 | 55.0 |
| Community service ($n = 15$) | 6.3 | 1.2 | 8.7 |
| Probation ($n = 104$) | 43.5 | 38.8 | 45.6 |
| Court ordered conference ($n = 2$) | 0.8 | 1.2 | 0.7 |
| Total ($n = 239$) | 100 | 35.6 | 62.3 |

Note: This table excludes people sentenced as an adult.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Length of sentence for children

The maximum penalty for a child being sentenced for rape is ordinarily 10 years detention.⁵⁵ However, a sentencing judge may impose a period up to and including life 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.⁵⁶

Figure 15 shows the distribution of sentence lengths for detention orders for children sentenced for rape (MSO).

The average detention order was 2.6 years (median = 2.3 years). The longest detention order for rape (MSO) was 8 years, and the shortest was 4 months. Three-quarters of children received a detention order of under four years (75.3%, n = 61). No significant differences were identified for average sentence length based on Aboriginal and Torres Strait Islander status.⁵⁷

The average length of a conditional release order for children sentenced for rape (MSO) was 5.0 months (median = 3 months). The longest length for a conditional release order was 2 years, and the shortest was 2 months.⁵⁸

Table 6 shows the sentence length for penalties imposed on children sentenced for rape (MSO) by demographics.

Figure 15: Terms of detention orders for children sentenced for rape (MSO), 2005–06 to 2020–21



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Table 6: Sentence lengths for rape (MSO) sentenced as a child (under 18 years) by Aboriginal and Torres Strait Islander status 2005–06 to 2020–21

| | N | Avg | Median | Min | Max |
|---|------------|--------------|--------------|-----------|------------|
| Detention (months) | | | | | |
| Aboriginal or Torres Strait Islander | 45 | 32.1 | 30 | 6 | 96 |
| Non-Indigenous | 36 | 30.0 | 24 | 4 | 72 |
| Total | 81 | 31.2 | 27.14 | 4 | 96 |
| Conditional release order (months) | | | | | |
| Aboriginal or Torres Strait Islander | 5 | 3.8 | 3 | 3 | 6 |
| Non-Indigenous | 31 | 5.3 | 3 | 2 | 24 |
| Total | 37 | 5.0 | 3 | 2 | 24 |
| Community service (hours) | | | | | |
| Aboriginal or Torres Strait Islander | 1* | - | - | - | - |
| Non-Indigenous | 13 | 115.4 | 100 | 40 | 200 |
| Total | 15 | 118.7 | 100 | 40 | 200 |
| Probation (months) | | | | | |
| Aboriginal or Torres Strait Islander | 33 | 27.8 | 36 | 12 | 36 |
| Non-Indigenous | 68 | 26.1 | 24 | 12 | 36 |
| Total | 104 | 26.7 | 24 | 6 | 36 |

* Data withheld due to small sample sizes.

Notes:

1. Data for court ordered conferences has not been displayed due to a small number of cases sentences (n=2).
2. People with unknown characteristics were excluded from each subcategory.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Endnotes

¹ Criminal Code (Qld) s 349.

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'.

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 Women's Safety and Justice Taskforce (2022), *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System: Report 2*, vol 1. Recommendation 43 addressed proposed considerations for changes to sexual offences: https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0008/723842/Hear-her-voice-Report-2-Volume-1.pdf.

⁵ Dunleavy, K., & Slowik, A. K. (2012). Emergence of delayed posttraumatic stress disorder symptoms related to sexual trauma: Patient-centered and trauma-cognizant management by physical therapists. *Physical Therapy*, 92(2), 339–351. <https://doi.org/10.2522/ptj.20100344>.

⁶ Cashmore, J., & Shackel, R. (2013). *The long-term effects of child sexual abuse* (No. 11). Australian Institute of Family Studies. <https://aifs.gov.au/cfca/publications/long-term-effects-child-sexual-abuse/>.

⁷ Other factors contributing to non-disclosure include the often-familial nature of the relationship between offenders and victims, fear and/or intimidation, feelings of guilt and shame and lack of trust in the judicial system.

⁸ Bureau of Statistics. (2021, August 24). *Sexual Violence—Victimisation*. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

⁹ 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.

¹⁰ YJA s 176(3)(a).

¹¹ Ibid s 176(3)(b).

¹² In general terms, indecent treatment of a child is a less serious offence compared to rape. A sample of cases were reviewed to determine why a charge of indecent treatment was sometimes more serious than a charge of rape.

In many of these cases, the rape charge received a partially suspended sentence (with time served in custody), whereas the indecent treatment charge received an unsuspended sentence of imprisonment. The counting rules used to calculate the MSO treats sentences of unsuspended imprisonment as more serious compared to suspended imprisonment, even where the offender is required to serve a longer period of time in prison under a partially suspended sentence.

¹³ Based on official crime statistics available from <https://www.data.qld.gov.au/dataset/offence-numbers-monthly-from-july-1997/resource/609541e9-4ed2-4ea4-8cae-c9f94d428a27> and Queensland Sexual Assault Network (QSCAN). *Sexual Violence in Queensland – Key Facts*. Queensland Government - Department of Child Safety, Youth and Women. <https://qsan.org.au/key-facts/>.

¹⁴ 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.

¹⁵ There were 712 rape (MSO) cases recorded in the Metropolitan area compared to 293 in Far North Queensland.

¹⁶ 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.

¹⁷ 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).

¹⁸ Sentencing laws are different for children and the *Youth Justice Act 1992* (Qld) (YJA) applies rather than the *Penalties and Sentences Act 1992* (Qld) which applies to the sentencing of adults. See n 51 for more information.

¹⁹ Independent groups t-test: $t(232) = 1.20$, $p = 0.23$, two-tailed (equal variance assumed) ($r = 0.08$).

²⁰ As at 30 June 2015. See Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015, available at <<http://www.qgso.qld.gov.au/subjects/demography/atssi-people/tables/pop-est-indigenous-status/index.php>> accessed 4 August 2017.

²¹ Queensland Government Statistician's Office, *Crime report, Queensland 2020–21* (Report, 2022) 68.

²² Independent groups t-test: $t(1006.8) = 8.49$, $p < 0.001$, two-tailed (equal variance not assumed) ($r = 0.26$).

²³ This increase was not significant in a linear regression model $F(1, 14) = 0.42$, $p = 0.34$ ($r^2 = 0.04$).

²⁴ Criminal Code (Qld) s 552B(1)(a).

²⁵ Ibid s 552D.

²⁶ 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.

²⁷ Chi square test: $\chi^2(1, N = 1756) = 3.99$, $p = 0.05$.

²⁸ The odds ratio is a statistical calculation to identify the size of the association between the predictor and outcome variable. The greater the odds ratio, the greater the degree of association between the predictor and outcome variable. Conversely, the closer the odds ratio is to 1, the smaller the association. The odds ratio for whether Aboriginal or Torres Strait Islander people pleaded guilty compared to non-Indigenous people is 1.28.

²⁹ Explanatory Notes, *Criminal Law (Domestic Violence) Amendment Bill 2015* (Qld) 2. The amending Act was the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld).

³⁰ See *Domestic and Family Violence Protection Act 2012* (Qld) ss 8 and 13.

³¹ 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>.

³² 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>.

³³ Independent groups t-test: $t(1319) = 5.05$, $p < 0.001$, two-tailed (equal variance not assumed) ($r = 0.14$).

³⁴ Independent groups t-test: $t(230.61) = 7.39$, $p < 0.001$, two-tailed (equal variance not assumed) ($r = 0.44$).

³⁵ Independent groups t-test: $t(168.4) = 3.25$, $p < 0.001$, two-tailed (equal variance not assumed) ($r = 0.24$).

³⁶ 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) 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.

³⁷ *Penalties and Sentences Act 1992* (Qld) s 161E.

³⁸ *Ibid* s 9(4)(c).

³⁹ *Ibid* s 161A(a), s 161B(1).

⁴⁰ *Ibid* s 161B(3). The court also has a discretion to declare an offender to be convicted of a serious violent offence if: the offender is convicted on indictment of an offence that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or that resulted in serious harm to another person; and was sentenced to a term of imprisonment: s 161B(4).

⁴¹ *Corrective Services Act 2006* (Qld) s 182.

⁴² 'Imprisonment' refers to a non-suspended prison sentence, with either a parole release or eligibility date. Suspended sentences are periods of imprisonment of five 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).

⁴³ 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.

⁴⁴ Chi square test: $X^2(2, N = 1531) = 22.37$, $p < 0.001$ (Cramer's $V = 0.12$). Please note that the odds ratio was not calculated for this test due to its appropriateness in 2x2 analysis only.

⁴⁵ YJA s 144.

⁴⁶ Other sexual offences with a maximum penalty of life imprisonment include Maintaining a sexual relationship with a child, incest and carnal knowledge with children under 16.

⁴⁷ Independent groups t-test: $t(1148) = 0.97$, $p = 0.33$, two-tailed (equal variance assumed) ($r = 0.03$).

⁴⁸ *Penalties and Sentences Act 1992* (Qld) s 144.

⁴⁹ Independent groups t-test: $t(319) = 0.43$, $p = 0.67$, two-tailed (equal variance assumed) ($r = 0.02$).

⁵⁰ Independent groups t-test: $t(53) = 0.65$, $p = 0.52$, two-tailed (equal variance assumed) ($r = 0.09$).

⁵¹ Criminal Code (Qld) s 29. Sentencing laws are different for children, who are sentenced under the *Youth Justice Act 1992* (Qld) (YJA). In contrast, the *Penalties and Sentences Act 1992* (Qld) applies to the sentencing of adults. For more information, see <https://www.sentencingcouncil.qld.gov.au/aboutsentencing/sentencing-child-offenders>. The equivalent of imprisonment for a child is detention. The YJA sets different maximum detention periods for children depending on the level of the sentencing court and seriousness of the offence. The maximum sentence available to higher courts is generally lower than that applicable to adults. Relevant ages for children and criminal responsibility have changed. Until 12 February 2018, children aged between 10 and 16 were sentenced as children. From 12 February 2018, 17-year-olds are also treated as children.

⁵² The Queensland Sentencing Advisory Council's *Guide to the sentencing of children in Queensland* is available at: https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0018/700434/guide-to-the-sentencing-of-children-in-qld.pdf.

⁵³ Chi square test: $X^2(1, N = 117) = 17.7$, $p < 0.001$.

⁵⁴ Statistical tests could not be conducted for whether gender or Aboriginal and Torres Strait Islander status differentiated for children for non-custodial penalties for rape (MSO) due to insufficient numbers in the respective categories.

⁵⁵ YJA s 176(3)(a).

⁵⁶ *Ibid* s 176(3)(b).

⁵⁷ Independent groups t-test: $t(79) = 0.47$, $p = 0.64$, two-tailed (equal variance assumed) ($r = 0.05$).

⁵⁸ 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.



Sentencing Spotlight on rape

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