

2024: Third Quarter

Note to readers:

The Sentencing Round-Up summarises select sentencing publications and developments in Queensland between 1 July and 30 September 2024 as identified by the Council. It is not intended to be exhaustive. Bills introduced may be impacted by the dissolution of Parliament on 1 October 2024. Decisions and cases in this document are as at date of publication and may be subject to appeal. The Council welcomes feedback on additional resources that might be referenced in future issues.

Legislative amendments

Crime and Corruption (Reporting) Amendment Bill 2024 (Qld).....3

Relevant Bills

Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024 (Qld)3

Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024 (Qld)4

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024 (Qld)4

Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld) 5

Forensic Science Queensland Act 2024 (Qld)5

Health and Other Legislation Amendment Act 2024 (Qld)5

Respect at Work and Other Matters Amendment Act 2024 (Qld)5

Queensland Community Safety Act 2024 (Qld)6

Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Act 2024 (Qld)7

Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld)7

Parliamentary inquiries and reports

Community Safety and Legal Affairs Committee, Queensland Community Safety Bill 2024 (Report No. 15, 57th Parliament, July 2024).....8

Queensland Court of Appeal decisions

R v BEM [2024] QCA 1758

R v Turner [2024] QCA 172.....8

R v MDU [2024] QCA 1139

Supreme Court of Queensland sentencing remarks

R v WXZ [2024] QSC 216.....9

R v Thomas Prescott Hill [2024] QSC 196..... 10

Childrens Court of Queensland sentencing remarks and sentence reviews

<i>GEPI v The King</i> [2024] QChC 13	11
<i>QPS v Jack Campbell (a pseudonym)</i> [2024] QChCM 2.....	11

District Court of Queensland sentencing remarks or s 222 decisions

<i>Turner v Director of Public Prosecutions</i> [2024] QDC 122.....	12
---	----

Academic articles and reports of interest

Michelle Wieberneit et al, 'Silenced Survivors: A Systematic Review of the Barriers to Reporting, Investigating, Prosecuting, and Sentencing of Adult Female Rape and Sexual Assault' 25(3) <i>Trauma, Violence, & Abuse</i> (July 2024)	12
Eoin Guilfoyle & Jose Pina-Sánchez 'Racially Determined Case Characteristics: Exploring Disparities in the Use of Sentencing Factors in England and Wales', <i>The British Journal of Criminology</i> (July 2024)	13
Lucy McCullan, 'Individualised Justice in Sentencing First Nations Offenders' 4(1) <i>Judicial Quarterly Review</i> (July 2024).....	13
Kathryn Hollingsworth, 'Kinder Justice: Communicating Legitimacy to Children in Sentencing Courts', <i>Social and Legal Studies</i> (August 2024)	13
NSW Sentencing Council, Annual Report 2023- <i>Sentencing Trends and Practices</i> (September 2024)	13
Nancy Lombard and Erin Rennie, Exploring Views on Sentencing for Domestic Abuse in Scotland (Scottish Sentencing Council, August 2024)	13
Michael Proeve, 'The Influence of Remorse on Sentencing Outcomes', <i>Current Issues in Criminal Justice</i> (August 2024)	14
Sentencing Council of England and Wales, <i>Evaluation of the Impact and Implementation of the Sentencing Council's Bladed Articles and Offensive Weapons Guidelines</i> (August 2024).....	14
ACT Law Reform and Sentencing Advisory Council, <i>Report into Dangerous Driving: Sentencing and Recidivism</i> (September 2024).....	14

Relevant Bills

Crime and Corruption (Reporting) Amendment Bill 2024 (Qld)

Introduced on 10 September 2024, the Bill amends the *Crime and Corruption Act 2001* (Qld) to introduce new powers for the Crime and Corruption Commission (CCC) to prepare, table, and publish reports and make public statements relating to corruption matters (Exp Notes 1).

New offences are established under sections 214A and 214B relating to the copying, publishing or giving or a draft report or information about a proposed public statement unless the person has either given it to the other person for the purpose of seeking legal advice or commencing a legal proceeding against the commission in relation to the draft report or the person has a reasonable excuse (Exp Notes 23). The new offences will be subject to a maximum penalty of 85 penalty units or 1 year's imprisonment.

Legislative amendments

Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024 (Qld)

The Act, passed on 2 May 2024, establishes a decriminalised framework for the sex work industry based on the recommendations of the Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC Report)' (Exp Notes 1).

The Act establishes three new offences in Chapter 22 of the *Criminal Code* (Qld) which commenced operation on 2 August 2024 (2024 SL No 135):

- section 217A creates an offence of obtaining commercial sexual services from a person who is not an adult. The maximum penalty is 10 years imprisonment. If the child is under 16 years of age the maximum penalty is 14 years imprisonment, and if the child is under 12 years of age the maximum penalty is life imprisonment.
- section 217B creates an offence of allowing a person who is not an adult to take part in commercial sexual services with a maximum penalty of 14 years imprisonment.
- section 217C creates an offence for conduct relating to the provision of commercial sexual services by a person who is not an adult. The maximum penalty is 14 years imprisonment.

These offences are included in Schedule 1C of the *Penalties and Sentences Act 1992*, meaning they are subject to the operation of Part 9D of the Act which establishes a circumstance of aggravation for serious organised crime offences.

Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024 (Qld)

The provisions of the Act, which commenced on 1 September 2024 (2024 SL No 177), amend the *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code* (Qld)') to:

- allow a person to appeal their conviction again, with leave of the Court of Appeal. The person must have been convicted of an offence on indictment or of a summary offence under section 651 of the *Criminal Code* (Qld).
- expand the exception to double jeopardy (the ability of a person acquitted to be tried again) if there is fresh and compelling evidence to 10 prescribed offences, punishable by life imprisonment (in addition to murder):
 - engaging in penile intercourse with a child in certain circumstances (ss 215(3)–(4A))
 - abuse of persons with an impairment of the mind in certain circumstances (ss 216(3)(a) or (b))
 - incest (s 222(1))
 - repeated sexual conduct with a child (s 229B)
 - manslaughter (s 303)
 - attempted murder (s 306)
 - killing an unborn child (s 313)
 - unlawful striking causing death (s 314A)
 - rape (s 349)
 - sexual assaults in certain circumstances (s 352(3)).

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024 (Qld)

Passed on 10 September 2024, the Act implements the third major tranche of legislative reforms arising from the recommendations of the Women's Safety and Justice Taskforce.

Relevant to sentencing, amendments are made to:

- the *Corrective Services Act 2006* (Qld) to insert a new section 344AB into the Act to provide that an admission made by a prisoner as part of their participation in a program or service (established or facilitated under section 266 of that Act) is not admissible against the prisoner in any legal proceedings about the alleged offence for which the prisoner is detained on remand to remove perceived barriers to participation in programs and services for people who are remanded in custody. Evidence of an admission or derivative evidence of the admission will be inadmissible (unless the prisoner agrees to this) in a criminal proceeding (including a sentencing proceeding), or a civil or administrative proceeding that relates to the facts constituting the offence for which the prisoner was detained on remand at the time of the admission (Exp Notes, 4, 30–31) – commencing on 19 September 2024 (date of assent).
- the *Criminal Code* (Qld) to introduce a new offence under section 210A, "Sexual acts with a child aged 16 or 17 under one's care, supervision or authority" (position of authority offence) to Chapter 22 of the Criminal Code with a maximum penalty of 10 years or 14 years depending on the type of conduct, and a second limb to the existing course of conduct offence of "Repeated sexual conduct with a child" in section 229B with a maximum penalty of life imprisonment (Exp Notes, 4) – to commence on a day to be fixed by proclamation.
- the *Penalties and Sentences Act 1992* (Qld) sections 42C(2)(a) and (b) to extend the maximum duration of non-contact orders from 2 years to 5 years, and to increase the maximum penalty for breach of a non-contact order under section 43F(1) of the Act from 40 penalty units or 1 year's imprisonment to 120 penalty units or 3 years imprisonment – to commence on a day to be fixed by proclamation.

Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld)

The following sections of the Act, passed on 6 March 2024, commenced on 23 September 2024 (2024 SL No 146).amending the *Criminal Code* (Qld):

- Amending the examples of what might constitute a reasonable excuse for not reporting under section 229BC (Failure to report belief of child sexual offence committed in relation to child)
- Applying the updated definition of ‘consent’ to mean ‘free and voluntary agreement by a person with the cognitive capacity to make the agreement’ under the *Criminal Code* (Qld) to offences including distributing intimate images (s 223), Observations or recordings in breach of privacy (s 227A), Distributing prohibited visual recording (s 227B), Threats to distribute intimate image or prohibited visual recording (s 229A);
- A new definition of consent (‘free and voluntary agreement’) for the purposes of offences under chapter 32 of the *Criminal Code*, including rape, attempt to commit rape and sexual assault, by replacing the previous section 348 and inserting a new section 348AA. Section 348AA sets out circumstances in which there is no consent, including if the person does not say or do anything to communicate consent or is so affected by alcohol or another drug they are incapable of consenting to the act or withdrawing their consent, and acts of ‘stealththing’ (where the consent is on the basis a condom will be used which is not used, is tampered with, is removed, or is known to be ineffective) [all subsections commenced, excluding section 348AA(1)(m)].
- sections 14 to 17 replacing subsections 348A(2) and (3) (Mistake of fact in relation to consent) with new provisions regarding where a belief the person consented was ‘honest and reasonable’, including stating that a belief to consent is ‘not reasonable if the person did not immediately before or at the time of the act, say or do anything to ascertain whether the other person consented to the act’ (‘affirmative consent’) (new s 348A(3)).

Forensic Science Queensland Act 2024 (Qld)

Passed on 18 March 2024, uncommenced provisions of this Act commenced operation on 1 July 2024 (2024 SL No 63). The Act establishes ‘a statutory framework for forensic services to support the administration of criminal justice in Queensland, ensuring high quality, reliable, independent and impartial forensic services and related advice’ (Bill Exp Notes, 1). A statutory position of the Director of Forensic Science Queensland and supporting office, and the Forensic Science Queensland Advisory Council are established by the Act.

Health and Other Legislation Amendment Act 2024 (Qld)

The Act, passed in March 2024, in addition to other changes, extends the circumstances in which an expert report and transcripts from the Mental Health Court, can be used in criminal proceedings, including in the consideration of sentencing. Previously, their use was only allowed if they related to the same offence in the Mental Health Court. They can now be used for any offence (*Mental Health Act 2016* (Qld) ss 157(2), 157A(2)). The amendments came into effect on 1 July 2024 (2024 SL No. 80).

Respect at Work and Other Matters Amendment Act 2024 (Qld)

Passed on 10 September 2024, the Act amends several Acts, including:

- the *Penalties and Sentences Act 1992* (Qld) (PSA) ‘to implement an aggravating sentencing factor, as recommended by the Queensland Sentencing Advisory Council (QSAC) in its *Final Report on Penalties for Assaults on Public Officers*’; and
- the PSA and the *Youth Justice Act 1992* (Qld) (YJA) ‘to reflect current court practices with respect to the recording of reasons for imprisonment or detention orders’ (Bill Exp Notes 1).

The amendment to section 9 of the PSA requires ‘a sentencing court to treat as an aggravating factor the fact that an offence involving violence against, or that resulted in physical harm to, a person was committed against that person while that person was performing functions of the victim’s office or employment, or because of the performance of those functions or employment’ (Exp Notes 21).

Amendments to section 10 of the PSA and section 209 of the YJA are technical amendments to ensure the existing court practices regarding the recording of reasons (which are not always ‘in writing’ given the digitalisation of court recordings) are reflected in legislation.

These amendments commenced on the date of assent, 19 September 2024.

Queensland Community Safety Act 2024 (Qld)

Passed on 22 August 2024, the Act amends several Acts with the ‘to enhance community safety by implementing comprehensive measures to optimise and strengthen law enforcement capabilities and efficiencies, improve crime prevention strategies, and address key issues affecting public security and wellbeing’ (Exp Note, 1).

The Act includes several amendments impacting sentencing that commenced on 30 August 2024, including:

- increasing the maximum penalties for:
 - possessing a knife in a public place or school charged under s 51 of the *Weapons Act 1990* (Qld) from 40 penalty units or one year’s imprisonment to 50 penalty units or 18 months imprisonment for a first conviction of the offence, or 100 penalty units or 2 years imprisonment for a second or subsequent conviction;
 - dangerous operation of a vehicle causing death or grievous bodily harm under section 328A of the *Criminal Code* (Qld) from 10 years to 14 year imprisonment, and from 14 years to 20 years imprisonment for offences where aggravating circumstances apply under ss 328A(4)(b) and (c);
- introducing a new circumstance of aggravation for:
 - dangerous operation of a vehicle causing death or grievous bodily harm where the offender was evading police with a 20 year maximum penalty;
 - wilful damage, unlawful use or possession of motor vehicles, aircraft or vessels or unlawful entry of vehicles for committing an indictable offence where the property/vehicle is an emergency vehicle, with a maximum penalty of 14 years;
 - going armed so as to cause fear (*Criminal Code* (Qld) s 69) dangerous operation of a vehicle (*Criminal Code* (Qld) section 328A(1)), common assault (*Criminal Code* (Qld) s 335), assaults occasioning bodily harm (s 339), burglary (*Criminal Code* (Qld) s 419(1)), possession of a knife in a public place or school (*Weapons Act* (Qld) s 51) – all of which now carry higher maximum penalties (for example, 4 years for common assault and 9 years for assaults occasioning bodily harm) in circumstances where the person publishes material on a social media platform or an online social network to advertise the offender’s involvement in the offence or the act or omission constituting the offence;
- introducing a new offence under section 26B of the *Summary Offences Act 2005* (Qld) for publishing material on a social media platform or online social network depicting conduct that constitutes a prescribed offence (the definition which includes offences involving driving or operating a vehicle, using or threatening violence, property offences and weapon offences) where the purpose of publication was to glorify the conduct or increase someone’s reputation because of their involvement in committing the prescribed offence with a maximum penalty of 2 years imprisonment.

Changes were also made to the *Childrens Court Act 1992* (Qld) to ensure a victim, a relative of a deceased victim, a victim’s representative, an accredited media entity and a person who, in the court’s opinion, has a proper interest in the proceeding can be present during Childrens Court criminal proceedings where a matter is not heard on indictment. A court is enabled on its own initiative, or on application from a party to the proceeding, exclude representative of a victim, an accredited media entity or a person who, in the court’s opinion, has a proper interest in the proceeding from the courtroom if satisfied (a) the order is necessary to prevent prejudice to the proper administration of justice; or (b) the order is necessary for the safety of any person, including the child and in doing so, must consider a number of prescribed matters.

Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Act 2024 (Qld)

The Act, which commenced operation on 1 September 2024 (2024 SL No 183) amends the *Summary Offences Act 2005* (Qld) and *Police Powers and Responsibilities Act 2000* (Qld) in respect of the sale, possession and storage of knives, unlawful sale of controlled items or spray paint to minors and other dangerous items.

The new offences in the *Summary Offences Act 2005* (Qld) include:

- a person must not sell a controlled item to a minor (s 19G). Maximum penalty is 140 penalty units and increases if the offence is repeated (280 penalty units and 420 penalty units).
- a commercial seller has obligations to its employees including it must instruct an employee not to sell a controlled item to a minor and to sight acceptable evidence of age (s 19H). Maximum penalty is 40 penalty units.
- An employee must not sell a controlled item to a minor (s 19I). Maximum penalty is 20 penalty units and increased to 40 penalty units for a second or later offence.
- A person must not falsely represent themselves to be 18 years or older to be sold a controlled item (s 19N). Maximum penalty is 25 penalty units.

Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld)

The Act was passed on 20 April 2024, with several sections of the Act coming into effect on 29 July 2024 (2024 SL No 113) including the establishment of the permanent Victims' Commissioner and Office of the Victims' Commissioner, with limited functions under sections 9(c), (g) and (i) of that Act coming into effect relating to consultation and providing advice to the Minister.

On 2 September 2024, additional provisions came into effect (2024 SL No 152) including:

- the transfer of the charter of victims' rights ('charter') and associated provisions from the *Victims of Crime Assistance Act 2009* (Qld) into this new Act, and the inclusion as a purpose of the Act 'to declare a charter of rights for affected victims';
- the commencement of functions of the Victims' Commissioner relating to the identification and review of systemic issues relating to victims, conducting research, dealing with complaints about alleged contraventions of the charter, the publication of information, promotion of the victims' charter and rights of victims and advocating on behalf of victims, and monitoring the implementation of any recommendations made under the Act;

Parliamentary inquiries and reports

Community Safety and Legal Affairs Committee, Queensland Community Safety Bill 2024 (Report No. 15, 57th Parliament, July 2024)

Tabled on 2 August 2024, the report presents a summary of the Queensland Community Safety Bill 2024. The Committee received 250 submissions and held 2 public hearings. The key issues raised during the Committee's examination of the Bill were explored, together with a summary of stakeholder feedback. This included considering:

- the impact of YJA amendments to youth justice principle 18 on the levels of children currently in detention in Queensland, and
- the expansion of the current Jack's Law hand held scanning trial.

The Committee recommended the Bill be passed.

Queensland Court of Appeal decisions

R v BEM [2024] QCA 175

Keywords: instinctive synthesis; trafficking in dangerous drugs; victim of domestic violence as a mitigating factor (PSA ss 9(2)(gb), (10B))

Application for leave to appeal against sentence refused for a sentence of 5.5 years' imprisonment for trafficking in dangerous drugs (head sentence) and a 12-month suspended prison sentence activated to be served concurrently.

BEM appealed on the basis that there was a misapplication of domestic violence as a mitigating factor (PSA ss 9(2)(gb), (10B)). Before the sentencing judge was an affidavit from BEM about domestic and sexual violence she was exposed to and experienced both as a child and her ex-partner. A psychologist report was also tendered.

The Court of Appeal discussed the new mitigating factor, and that it does not alter the process of instinctive synthesis in sentencing [19]. It found there was no error by the sentencing judge as the effect of domestic violence was used in mitigation because the sentence was at the lower end of the range and the suspended prison sentence that was activated was made concurrent [21].

R v Turner [2024] QCA 172

Keywords: dangerous operation of a vehicle causing death, adversely affected and speaking; declaring pre-sentence custody; offending while on parole; serious violent offence.

Application for leave to appeal against sentence granted to vary the order that 522 days served in custody is not taken to be time served under the sentence.

Turner pleaded guilty and was sentenced to 10 years' imprisonment dangerous operation of a vehicle causing death, while adversely affected by an intoxicating substance and while excessively speeding. Due to the offence and sentence length, she was automatically convicted of a 'serious violent offence' (which means she must serve 80% before being eligible for release on parole).

She appealed on the basis the sentence was crushing and did not adequately take into account her plea of guilty or 17 months of undeclared period of imprisonment.

At the time of the offence she was on parole (the overall term was 7 years and 22 days which expired a few days before the sentencing hearing). It was mandatory that the sentence be cumulative on the previous sentence, so the time she had spent in custody serving her sentence could not be declared. The Court of Appeal noted she was given some benefit, but the totality principle does not require time spent under a previous sentence to be treated like pre-sentence custody. However, it required a declaration to be made that it was not imprisonment already served.

R v MDU [2024] QCA 113

Keywords: attempted murder, domestic violence offence, s 358 of the Criminal Code, contested facts, test on appeal: factual findings on a sentencing appeal, maximum penalty.

Application for leave to appeal dismissed for a sentence of 9 years' imprisonment for the attempted murder (domestic violence offence) of his ex-wife.

One issue in the appeal was a point of law (s 358 of the *Criminal Code*). The law says, if it is proved the person desisted when attempting to commit an offence, a lesser maximum penalty will apply (for manslaughter it is 14 years imprisonment instead of life imprisonment). The Court of Appeal discussed the case law, including cases which have interpreted that this does not apply if the person desisted after they believed their attempt was successful or if the person desisted of their own motion and will.

The central facts were that MDU intended to kill his wife by choking her. Her eyes bulged and she became unconscious. He thought she was dead, so he slapped her and after the second slap she regained consciousness and started breathing. He grabbed her again but changed his mind and stopped and drove away.

The Court of Appeal considered, even with the benefit for a reduced maximum penalty for desisting, the seriousness of the offence and that it was a domestic violence offence, the sentence was not manifestly excessive.

Supreme Court of Queensland sentencing remarks

R v WXZ [2024] QSC 216

Keywords: manslaughter, child cruelty, domestic violence offences, cognitive impairment, serious violent offences scheme.

WXZ pleaded guilty to manslaughter (committed on ZYV, a 4.5 year old child) and cruelty to a child under 16 years (committed on BZX, about 6 years old). Both were domestic violence offences as WXZ was the children's stepmother.

There was evidence the deceased child, ZYV, was extremely malnourished and had been seriously neglected. Following ZYV's death, BZX was assessed and found to be suffering malnutrition, skin disorders and headlice infestation.

When sentencing, Justice Davis consider earlier cases for child homicide are no longer useful following legislative amendments and the amendment to make domestic violence offence an aggravating factor (*R v O'Sullivan and Lee; Ex parte Attorney-General (Qld)* (2019) 280 A Crim R 534; s 9(10A) of the PSA).

Aggravating factors also included ZYV's extreme vulnerability due to her very young age and having Down Syndrome, that her neglect occurred over months and was 'shocking', and WXZ had 'ample to take action to help her and [she] did not' and that inaction was in part due to knowing it would impact custody of her other children. Similar considerations applied for BZX as well [70]–[71].

Mitigating factors included WXZ's history of experiencing sexual and domestic violence, her cognitive impairment, her plea of guilty, demonstrated remorse, and significant steps towards rehabilitation, that 'there was no actual violence perpetrated by [WXZ] on ZYV' and she was likely influenced by her husband, ZYV's primary caregiver [69].

While a sentence of more than 10 years was appropriate, because of the mandatory serious violent offence scheme which requires an 80% non-parole period, mitigating factors could only be reflected by reducing the head sentence. WXZ was sentenced to 9.5 years imprisonment with a non-parole period of 6 years. A lesser non-parole did not 'reflect the criminality of [WXZ's] behaviour and [gave] too much weight to mitigating circumstances which must be taken into account in reducing the head sentence' [74].

R v Thomas Prescott Hill [2024] QSC 196

Keywords: manslaughter, dangerous operation of a vehicle, assault occasioning bodily harm, impaired capacity, community protection, serious violent offence declaration.

Hill pleaded guilty to manslaughter, dangerous operation of a vehicle and 3 counts of assault occasioning bodily harm ('AOBH'), as well as summary offences. He sentenced to 10 years' imprisonment (head sentence) with a serious violent offence declaration (meaning he would have to serve 8 years before being eligible for release on parole), and he was disqualified from holding a licence for 2 years.

The dangerous operation of a vehicle offence and one AOBH offences were committed against a young woman, not known to Hill. While both driving on the Pacific Motorway, Hill veered into her lane, later hitting her car and then he followed her when she exited the motorway. Both got out of their cars and Hill slapped her face, kicked and punched her and then dragged her along the ground by her hair. Two men intervened and Hill left the scene.

Hill perceived his neighbours were bullying him. Police took him to be assessed at hospital but his mother was adamant his perception of his neighbors was based on reality so no paranoid diagnosis was made.

The manslaughter victim, Dr Dunne, would often run in the early mornings and would pass Hill's mother's house. One morning, as Dunne ran past the house, Hill verbally abused his mother and Dunne looked. Hill perceived Dunne to be staring at him and his mother thought Dunne had called Hill an 'idiot'. Hill pushed and kicked Dunne and Dunne ran away. Several months after that, at 4am, Hill was driving (whilst disqualified) following his mother in another car and he saw Dunne out running with a torch. Dunne slowed to a walk as the cars approached and looked at both cars as they drove past. His mother thought he had shone the torch in her car and called Dunne an 'idiot'. Hill did a U-turn, hit him and fled the scene. The victim sustained significant head injuries and subsequently died.

There were 3 reports about Hill's mental health. Hill was sentenced for manslaughter because of impaired capacity due to his untreated paranoid schizophrenia. Justice Copley declined to cumulate the separate AOBH and dangerous driving offences with the manslaughter offence because it was an ex officio sentence and all of the summary offences were committed when he was mentally ill. His Honour had primary regard to section 9(3) of the PSA and the protection of the community. When considering Hill's risk to the community, this 'must not lead the court to impose a more serious sentence than the offending otherwise warrants' (*Veen v The Queen [No 2]* (1998) 164 CLR 465).

GEPI v The King [2024] QChC 13

Keywords: sentence review, domestic violence offence averment under YJA.

Sentence review allowed for a sentence of 6 months' probation for affray, 2 counts of wilful damage, and a wilful damage - domestic violence offence. A reprimand was ordered for 5 breach of bail offences.

The child was 15 years old and had no criminal history and significant personal circumstances relevant to determining the appropriate sentence. It was held the Magistrate was given little assistance to determine the appropriate sentence.

For all offences except wilful damage – domestic violence offence, the child was referred to a restorative justice process.

In respect of the wilful damage – domestic violence offence, it was held to be an error to charge the child with a 'domestic violence offence' averment as this does not apply under the YJA [4]. This charge was dismissed.

OPS v Jack Campbell (a pseudonym) [2024] QChCM 2

Keywords: community protection, detention as a deterrent.

A 15-year-old Indigenous boy with a significant intellectual disability was sentenced to 70 days detention, released after 35 days (50%) for public nuisance, enter dwelling and commit and unlawful possession of a handgun.

The Magistrate noted Jack 'is in the care of the State of Queensland but he has spent two-thirds of this year imprisoned' and considered Jack's offending and imprisonment would not occur if he had appropriate care. [1]

The Magistrate noted Jack's difficult life and that he was in foster care at 2 days old. Since Jack was 10 years old he has no stability and 'rarely' has the level of care he needs or requires, which impacts his risk of reoffending. The longest time Jack spent in the community when he did not offend was when he had a specialist carer ratio of 2:1 for 3 months. On the day of sentence the Magistrate was informed that this type of placement was not available and there was no placement planned if Jack was released on the day of sentence.

The Magistrate expressed concern about whether 'the residential placement system as it currently exists in Queensland is a viable way to care appropriately for vulnerable children' and whether it reduces reoffending or gives a sense of security to a child. [18]–[19]

A report from his therapist/counsellor informed the Magistrate that Jack has a limited capacity to understand what is right or wrong or struggles to cope in the world. Imprisonment is not a deterrent for Jack because it gives 'predictability, structure and routine'. [13]

The Magistrate noted one purpose of sentencing is to protect the community from Jack's reoffending. The only community protection to be achieved by detention is temporary incarceration. Meaningful ways to reduce reoffending such as an appropriate placement, pro-social peers, absence of certain medication and '[a]ccess to therapists on an intensive and continuous basis' are not what can be imposed by way of sentence. [22]

Turner v Director of Public Prosecutions [2024] QDC 122

Keywords: s 222 appeal; exceptional circumstances (requiring sentence of actual imprisonment) for child sex offence; young offender close in age to victim.

Appeal allowed for a sentence of 15 months' imprisonment suspended after serving an operational period of 15 months (during which time the appellant must not commit another offence punishable by imprisonment or risk having to serve the time suspended) for 2 counts of penile intercourse with a child under 16 years and 2 counts of indecent treatment of a child under 16 years. At the time of the offences, the appellant was 19 years old, the victim was aged between 15 years and 9 months and 15 years and 11 months and they were in a boyfriend/girlfriend relationship. A head sentence of 12 months' imprisonment was substituted, suspended in full for an operational period of 12 months.

One issue on appeal was whether actual imprisonment make the sentence manifestly excessive. Under the PSA a person convicted of offences of a sexual nature committed in relation to a child under 16 years must be ordered to serve an actual term of imprisonment unless there are 'exceptional circumstances', and a court may consider the closeness in age between the offender and child in deciding this (PSA, ss 9(4)(c), (5)).

On appeal, the District Court Judge found the following matters should have been considered or identified by the sentencing Magistrate when considering 'exceptional circumstances': '(1) the victim was 'only 3 months and 1 month short of turning 16 years of age' at the time of the offending; (2) the 'nature of the offending' occurring in the context of a boyfriend/girlfriend relationship, that it involved no or minimal sexual exploitation, the age gap of only 3 years 4 months, that there were no threats made nor force or violence used, and intercourse ceased immediately on the victim saying it was painful; and (3) 'the potential adverse impact of a short period of actual imprisonment on the appellant's rehabilitation'. [34]

His Honour found these and other matters (including the appellant's early pleas of guilty, lack of prior criminal history, and strong evidence of remorse) considered together amounted to 'exceptional circumstances' despite the 'serious features of the offending conduct' [40]–[41] – also noting 'no two cases are alike' (referring to *R v BCX* [2015] QCA 188, [36] (Burns J)). [42]

Academic articles and reports of interest

Michelle Wieberneit et al, 'Silenced Survivors: A Systematic Review of the Barriers to Reporting, Investigating, Prosecuting, and Sentencing of Adult Female Rape and Sexual Assault'25(3) Trauma, Violence, & Abuse (July 2024)

This article explores barriers to successful prosecution of rape and sexual assault for women in Western countries. The authors conducted a systematic review of sexual violence literature and identified a total of 70 barriers to reporting, investigating, prosecuting and sentencing sexual violence. Some key themes highlighted within the review include lack of trust in the criminal justice system, internal reactions, rape myths and societal norms, and perpetrator characteristics. The authors conclude that these barriers call for an urgent need for reform in the criminal justice system. To decrease attrition rates and improve survivor satisfaction, survivor's needs should be prioritised, transparency of system processes should be improved, and reasons for attrition must be addressed.

Eoin Guilfoyle & Jose Pina-Sánchez 'Racially Determined Case Characteristics: Exploring Disparities in the Use of Sentencing Factors in England and Wales', *The British Journal of Criminology* (July 2024)

This article explores racial disparities in sentencing in England and Wales, including disparities in sentencing outcomes and how cases are constructed. The authors draw upon Sentencing Council's Crown Court Sentencing Survey and administrative data from the Ministry of Justice to explore sentencing disparities. The authors find that certain sentencing factors, such as those based on a subjective assessment of the offender (i.e., remorse, good character, and ability to rehabilitate) are partly racially determined, and disproportionately favor white defendants. Considering their findings, the authors recommend policy solutions, including amending sentencing guidelines and improving ethnic minority access to rehabilitation services to address racial disparity.

Lucy McCullan, 'Individualised Justice in Sentencing First Nations Offenders' 4(1) *Judicial Quarterly Review* (July 2024)

Considering the overrepresentation of First Nations people in Australian prisons, the Honourable Lucy McCallum, Chief Justice of the ACT argues for the introduction of an 'individualised justice' approach to sentencing First Nations offenders. She argues individualised justice can be achieved by upholding the statute, ensuring that imprisonment is considered a last resort penalty and recognising alternative rehabilitative sentencing options. She further emphasises the importance of developing a deep understanding of the process of instinctive synthesis, including becoming educated about the systemic trauma and disadvantage First Nations peoples experience in Australia.

Kathryn Hollingsworth, 'Kinder Justice: Communicating Legitimacy to Children in Sentencing Courts', *Social and Legal Studies* (August 2024)

Drawing on interviews with children who have justice experience, this study explores the importance of communication in establishing legitimacy in England and Wales youth sentencing courts. The author argues that how sentences are communicated to child defendants matters deeply and affects their perceptions of legitimacy. The author establishes the concept of 'Kinder Justice', which describes methods of delivering sentencing that increases children's perceptions of legitimacy. 'Kinder Justice' involves communicating care, recognising child defendants as their child status, and avoiding labeling the defendant as a 'proper criminal'. The author argues utilising 'Kinder Justice' changes children's perspectives of court processes, allowing them to feel seen and respected, thereby increasing legitimacy.

NSW Sentencing Council, *Annual Report 2023- Sentencing Trends and Practices* (September 2024)

This report by the NSW Sentencing Council presents 2023 sentencing trends, focusing on the use of penalties, discharging of sentencing orders, and breaches of sentencing orders. The report draws on recent sentencing related research before describing recent cases of interest. Additionally, the Council spotlights offenders who are excluded from intensive correction orders. The report finishes by providing an overview of the Council's work, including their Council members, current projects, and other Council business.

Nancy Lombard and Erin Rennie, *Exploring Views on Sentencing for Domestic Abuse in Scotland* (Scottish Sentencing Council, August 2024)

This report explores Scottish domestic abuse survivor/victim's perspectives on the sentencing of domestic abuse offenders. The findings highlighted the unique gendered nature of domestic abuse cases, which affects survivors/victims' experiences with the criminal justice system. Survivors/victims' expectations of sentencing did not necessarily align with those set out by the High Court and the sentencing guidelines. Additionally,

survivors/victims reported a continued lack of nuanced understanding of domestic abuse by criminal justice professionals. The survivors/victims reported re-traumatisation during their case, including feeling their experiences were minimised, downgraded, and invalidated. A lack of clear communication during legal processes, and consideration for safety planning was also highlighted by survivors/victims. Finally, the report emphasised that the survivors/victims did not believe the sentence received by the abuser matched the seriousness of their victimisation. When the sentence was proportionate to their lived experiences, survivors/victims reported feeling validated, allowing them to move forward.

Michael Proeve, 'The Influence of Remorse on Sentencing Outcomes', *Current Issues in Criminal Justice* (August 2024)

Using case data from South Australian higher courts, Proeve analyses the relationship between offender remorse and sentencing outcomes. They find that without considering other offender factors, offender remorse predicted length of imprisonment and non-parole period but did not predict suspension of imprisonment. However, when plea was considered, the relationship was found non-significant. Proeve suggests that remorse may contribute little to sentence length reduction after considering the effect of guilty plea.

Sentencing Council of England and Wales, *Evaluation of the Impact and Implementation of the Sentencing Council's Bladed Articles and Offensive Weapons Guidelines* (August 2024)

The Sentencing Council of England and Wales evaluate the implementation of Bladed articles and offensive weapons sentencing guidelines. In their evaluation, the Council utilises descriptive statistics from the Ministry of Justice's Court Proceedings Database, survey data collected from sentencers before and after guideline implementation, content analysis of relevant sentencing remarks, and an analysis of criminal appeals data. The evaluation revealed that overall, the guidelines are operating as intended to, without concern regarding unintended impacts. Regarding the Possession guideline, the evaluation finds that sentencing outcomes and average sentence length were not substantially impacted by the implementation of the guideline. For possession, the most common sentencing outcome was a custodial sentence. At the magistrates' courts level specifically, those who received non-custodial sentences observed lower culpability factors and high proportion of mitigation and guilty pleas. Regarding the Threats guideline, the evaluation finds that following the sharp increase after the offence implementation in 2013, sentencing volumes have plateaued. Very few offenders received non-custodial sentences. Sentence length initially increased following the implementation of the guideline, however this trend did not persist. The author notes that the timeline of guideline implementation was impacted by the COVID-19 pandemic, which may influence the extent of which these findings are applicable in the long-term.

ACT Law Reform and Sentencing Advisory Council, *Report into Dangerous Driving: Sentencing and Recidivism* (September 2024)

In this report, the ACT Law Reform and Sentencing Advisory Council review sentencing and recidivism data of dangerous driving offences, and present 35 recommendations to the ACT Government. The Council reviews a large scope of issues regarding dangerous driving, including quality of road safety data, road toll prevalence, culpable driving causing death sentencing, culpable driving causing grievous bodily harm sentences, public perceptions of leniency, and impacts on victims and community. Of the Council's recommendations, 22 concerned positive action, including amendments to legislation and implementation of new intervention programs for dangerous driving offenders. A further 8 support no action being taken such as the creation of a specific Vehicular Manslaughter offence. The remaining 5 recommendations were not unanimously supported by all Council members.