



Queensland Sentencing  
Advisory Council

# **Analysis of sentencing and parole outcomes: the who, what and how long of serious violent offences**

**Background paper**

**A review of the serious violent offences scheme**

## The who, what and how long of serious violent offences

This background paper provides an overview of the Council's analysis of the application of the serious violent offences (SVO) scheme, characteristics of offenders, and sentencing and parole outcomes.

The paper is one in a series of background papers being released by the Queensland Sentencing Advisory Council as part of its current review of the SVO scheme. The Council's review has been initiated in response to Terms of Reference issued by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP, in April 2021.

The background papers have been prepared to provide those who may wish to contribute to the review with more detailed information on specific aspects of the Terms of Reference than that contained in the Council's Issues Paper released for public consultation.

Submissions to the review in response to the Council's Issues Paper are welcomed. Information about how to make a submission is available on the Council's website at: [www.sentencingcouncil.qld.gov.au](http://www.sentencingcouncil.qld.gov.au). Feedback on the background papers can be provided by email to [info@sentencingcouncil.qld.gov.au](mailto:info@sentencingcouncil.qld.gov.au).

### Background paper: Application of the serious violent offences scheme

#### Analysis of sentencing and parole outcomes: The who, what and how long of serious violent offences

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**WARNING TO READERS:** This paper contains subject matter that may be distressing to readers.

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- inform the community about sentencing through research and education;
- engage with Queenslanders to understand their views on sentencing; and
- advise the Attorney-General on matters relating to sentencing, at the Attorney-General's request.

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## Abbreviations

AOBH	Assaults occasioning bodily harm
DV offence	Domestic violence offence
GBH	grievous bodily harm
QCS	Queensland Corrective Services
QGSO	Queensland Government Statistician's Office
Malicious acts	Acts intended to cause grievous bodily harm and other malicious acts
MSO	most serious offence
PSA	<i>Penalties and Sentences Act 1992</i> (Qld)
SVO	serious violent offence under the serious violent offences scheme
SVO scheme	serious violent offence scheme under Part 9A of the <i>Penalties and Sentences Act 1992</i> (Qld)

# 1 Introduction

## 1.1 About this paper

This background paper considers the application of the serious violent offences (SVO) scheme including the types of offences that commonly attract an SVO declaration, mandatory and discretionary declarations made under the scheme, the socio-demographic characteristics of offenders, and sentencing and parole outcomes. It also considers parole eligibility for offences in Schedule 1 in circumstances where an SVO declaration has not been made. This background is based on administrative data collected by Court Services Queensland and Queensland Corrective Services (QCS).

The paper has been prepared in response to Terms of Reference issued by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP, asking the Council to:

- assess how the SVO scheme is being applied (including where the making of an SVO declaration is discretionary);
- assess how the SVO provisions are impacting on court sentencing practices; and
- identify any trends or anomalies that occur in the application of the SVO scheme that create inconsistency or constrain the sentencing process.

The SVO scheme was introduced in 1997. The scheme applies to offences listed in Schedule 1 of the *Penalties and Sentences Act 1992* (Qld) which includes a range of serious non-sexual violence, sexual violence, drug trafficking and other offences. Courts may make a discretionary SVO declaration for sentences of between 5 and less than 10 years for offences to which the scheme applies, and for sentences of any length for any offence (whether listed in Schedule 1 or not) that involved the use or attempted use of serious violence against a person or resulted in serious harm to a person if the offence has been dealt with on indictment and the offender has been sentenced to imprisonment. For sentences of 10 years or more, the SVO declaration is mandatory.<sup>1</sup>

The SVO scheme sets a mandatory non-parole period of 80 per cent (or 15 years, whichever is less). This means that offenders sentenced under the scheme are not eligible to apply for parole until they have served their mandatory non-parole period in prison. In cases in which the SVO scheme does not apply, the court can set a parole eligibility date. If the court does not set a date, the prisoner can be released on parole after serving half of their sentence (unless the sentence is a life sentence, or another mandatory sentencing scheme applies).<sup>2</sup>

## 1.2 Methodology and data sources

The [Technical Paper for Research Publications](#), available on the Council's website, provides more information about the counting rules, methodology and terminology used in this paper.

### 1.2.1 Courts Database

The Council used sentencing data from the Courts Database to obtain information about whether a person was sentenced for a declared SVO. The Courts Database, which is maintained by the Queensland Government Statistician's Office (QGSO), contains information collected from administrative information systems used by court staff.

Information about whether a person was sentenced for a declared SVO improved considerably from July 2011 onwards. Consequently, the majority of data reported in this paper covers the period from 2011–12 to 2019–20.

The courts data is presented in relation to the most serious offence (MSO) for which an offender was sentenced on a particular day. The determination of which sentence is the 'most serious' was ascertained using predetermined data flags developed by QGSO. Cases in which the MSO was a life sentence were excluded from this analysis – life sentences are covered by separate statutory provisions which are not compatible with the SVO scheme.

### 1.2.2 QCS Data

The Council obtained data from QCS about prisoners who served a sentence of imprisonment for a declared SVO at any time during the operation of the SVO scheme. This resulted in a unit record dataset of all prisoners who were sentenced for an SVO from July 1997 to June 2020.

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<sup>1</sup> Where it is an offence listed in Schedule 1 or of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in Schedule 1. For information about how this period of time is to be calculated, see *Penalties and Sentences Act 1992* (Qld) ss 161A(a) and 161C.

<sup>2</sup> For more information, see: Queensland Sentencing Advisory Council, *Minimum non-parole period schemes for serious violent offences in Australia and select international jurisdictions* (Background Paper 2, 2021).



Cases sentenced between 2011–12 and 2019–20 were matched with the courts' dataset and cross-validated for consistency between the datasets. This resulted in a dataset of 437 cases with an SVO declaration over the 9-year period. This dataset forms the basis for most of the data analysis contained in this paper (apart from Section 5, parole and actual time served in custody, which is based on QCS data).

The QCS dataset provided additional data about prisoners sentenced for an offence declared to be an SVO. This includes information about parole applications, the length of time a prisoner served in custody before being released on parole, and other information about parole.

Time served in custody before release on parole was calculated from when an offender's sentence was deemed to have started for declared SVOs, including any time served on remand, until the first exit from custody (after having served all of the sentence, or been released on parole). Prisoners who were subject to cumulative penalties were excluded from the parole analysis, as it was not possible to untangle the effects of the operation of the SVO scheme with other sentences.

Analysis of QCS data was limited to the 'most serious' sentence served by a prisoner. The determination of which sentence was the 'most serious' was calculated by the Council based on the charge which attracted the longest sentence of imprisonment.

### 1.2.3 Data and methodological limitations

While the Council made every effort to obtain as much information about the application of the scheme as possible, there are several data limitations impacting on the Council's analysis. These include:

- Offence classifications: Offence information maintained by QCS is not recorded against definitions set out in legislation. This means that QCS information does not directly correspond to courts data on offences. The offence categories assigned by QCS are broader than legislative definitions.
  - Some QCS offence categories, such as *deal or traffic in illicit drugs* are broader than the legislative offence of *trafficking in dangerous drugs* and may include prisoners sentenced for the offence of *supply a dangerous drug*.
  - Other offences, such as *acts intended to cause grievous bodily harm (GBH) and other malicious acts* (s 317) do not exist in the QCS classification and are instead recorded as *acts intended to cause grievous bodily harm*, making them indistinguishable from the offence of *grievous bodily harm* (s 320).
  - See Table 6 in Appendix 1 for a list of legislative offences and how these corresponded to QCS offence categories.
- Information on victims: Reliable information on victims of offences that were declared to be SVOs was not available in the datasets collected by Court Services Queensland.
- Information about drugs: The data sources did not include information about the type or amount of drugs seized.
- The SVO scheme was introduced in 1997. Criminal justice data collected prior to this date is incomplete and recorded under different counting rules and methodologies compared to data collected in recent years. As such, the Council was limited to descriptive analysis about sentencing outcomes that have been imposed under the SVO scheme. As a result, it was not possible for the Council to determine the impact of the SVO scheme on sentencing practices based on the quantitative data analysis conducted.
- Preliminary feedback received from stakeholders addressed the importance of understanding the impact of the scheme on vulnerable and marginalised communities, including people with mental health issues, and people with disability. Due to data limitations, this analysis was not possible.

## 2 Application of the serious violent offences scheme

### 2.1 What is the serious violent offences scheme?

The SVO scheme is set out in the *Penalties and Sentences Act 1992* (Qld) (PSA) and came into force on 1 July 1997. The scheme requires a person declared convicted of a serious violent offence to serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being eligible to apply for parole.<sup>3</sup> There has been little legislative change to the scheme since its introduction in 1997, although the list of offences covered by the scheme changed since the scheme's introduction. More information about the scheme's history can be found in [Background Paper 1 - History of the Serious Violent Offences Scheme](#).

<sup>3</sup> *Corrective Services Act 2006* (Qld) s 182.

### The who, what and how long of serious violent offences

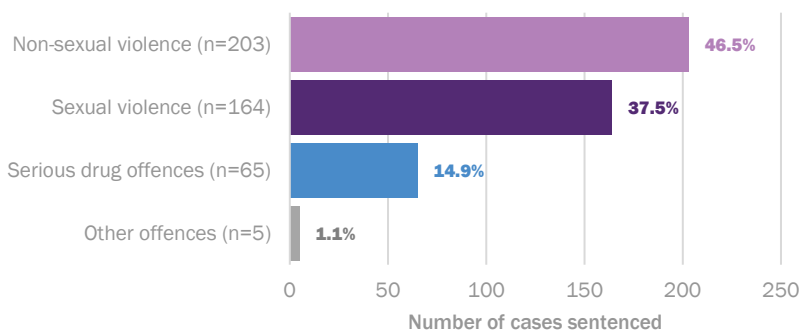
The SVO scheme can or must be applied in some circumstances to certain listed offences ('prescribed' offences under Schedule 1 – as well as an offence of counselling or procuring the commission of, or attempting or conspiring to commit, such offences)<sup>4</sup> sentenced in the District or Supreme Courts (higher courts). The offences include:

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

Table 5 in Appendix 1 provides an overview of offences included in Schedule 1 and the Council's classification of offences into categories of non-sexual violence, sexual violence, and serious drug offences. This paper refers to these categories for the purpose of simplifying the analysis presented.

Overall, there were 437 SVO cases in the data period from 2011–12 to 2019–20, the majority of which were non-sexual violent offences (46.5%), followed by sexual violent offences (37.5%), and serious drug offences (14.9%) (see Figure 1).

**Figure 1: Number of cases with an SVO declaration, by offence category (MSO)**



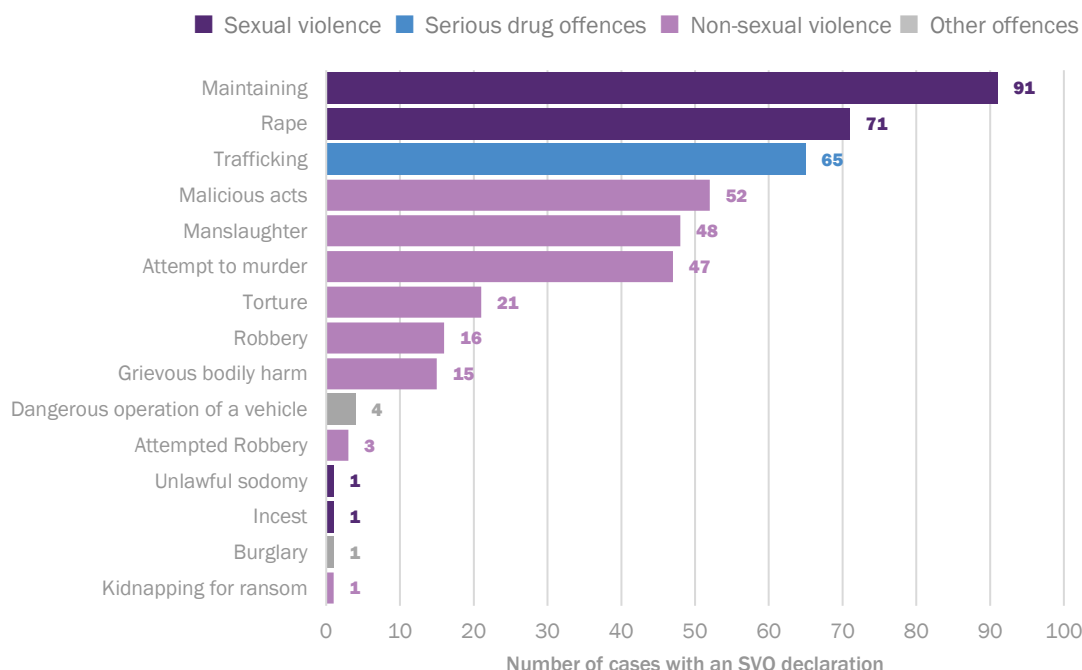
Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

The scheme was most commonly applied to the offence of maintaining a sexual relationship with a child, followed by rape, trafficking in dangerous drugs, malicious acts, manslaughter, and attempted murder (Figure 2). An SVO declaration was rarely made for offences other than those mentioned above. For the majority of the offences listed in Schedule 1, an SVO declaration was never made. A full list of offences included in the Schedule can be found in Appendix 1.

<sup>4</sup> In accordance with s 161B(4) of the *Penalties and Sentences Act 1992* (Qld), an offender convicted on indictment of an offence that either involved the use, counselling or procuring to use, or conspiring or attempting to use, serious violence against another person or resulted in serious harm to another person may be convicted of an SVO notwithstanding that the offence is not listed in Schedule 1 of the Act.

**Figure 2: Number of cases with an SVO declaration, by offence (MSO)**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

## 2.2 Mandatory and discretionary SVO declarations

An SVO declaration is made either automatically, if the sentence is 10 years or longer (a ‘mandatory SVO’), or by judicial discretion (a ‘discretionary SVO’).

- **Mandatory SVOs:** An offender sentenced to 10 years’ imprisonment or more for a Schedule 1 offence or offences (or of counselling or procuring the commission of, or attempting or conspiring to commit, such offence) is automatically convicted of an SVO.
- **Discretionary SVOs:** Judges can decide to make an SVO declaration when the sentenced term of imprisonment is either:
  - 5 years or more but less than 10 years for a Schedule 1 offence or offences (or of counselling or procuring the commission of, or attempting or conspiring to commit, such offence) (s 161B(3)), or
  - of any length and for any offence (it does not have to be listed in Schedule 1) (s 161B(4)), provided that it:
    - involved the use, counselling or procuring the use of serious violence against another person (or conspiring or attempting to use it); or
    - resulted in serious harm to another person.

Overall, mandatory SVO declarations were far more common than discretionary declarations, accounting for almost three-quarters of declarations made (72.8%). As shown in Table 1, of the 437 cases in which an SVO declaration was made, 112 were discretionary for Schedule 1 offences with terms of imprisonment of 5 years or more, but less than 10 years, and only 7 SVO declarations were discretionary for Schedule 1 offences of less than 5 years, or non-Schedule 1 offences.

Mandatory SVO declarations were commonly made for sexual violence offences, followed by non-sexual violence offences. Discretionary SVO declarations were most often made for non-sexual violent offences (see Table 1).

**Table 1: Number of cases with an SVO declaration, by offence category and type of SVO**

SVO Flag Type	N	%	Non-Sexual Violence	Sexual Violence	Drug offences	Other offences
Mandatory SVO	318	72.8%	110	146	60	2
Discretionary SVO – s 161B(3)	112	25.6%	89	16	5	2
Discretionary SVO – s 161B(4)*	7	1.6%	4	2	0	0

Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

\* One of the s 161B(4) cases was for a non-Schedule offence and is not displayed in the above table.

## The who, what and how long of serious violent offences

### 2.2.1 Common offences for mandatory and discretionary SVO declarations

Maintaining a sexual relationship with a child was the most common offence to attract a mandatory SVO declaration, clearly pointing to the very serious nature of this type of offending behaviour and the level of harm caused to the child victim. Other common offences attracting a mandatory declaration included trafficking in dangerous drugs, rape, attempted murder and manslaughter (see Table 2).

**Table 2: List of offences that were involved in a case with a mandatory SVO declaration**

Offence Section	Offence Description	SVO Category	Cases
229B	Maintaining a sexual relationship with a child	Sexual violence	86
5	Trafficking in dangerous drugs ( <i>Drugs Misuse Act 1986</i> (Qld))	Serious drug offences	60
349	Rape	Sexual violence	58
306	Attempt to murder	Non-sexual violence	46
303 and 310	Manslaughter	Non-sexual violence	40
317	Acts intended to cause grievous bodily harm and other malicious acts	Non-sexual violence	13
411	Robbery	Non-sexual violence	4
320A	Torture	Non-sexual violence	4
328A	Dangerous operation of a vehicle	Other offences	2
320	Grievous bodily harm	Non-sexual violence	1
412	Attempted Robbery	Non-sexual violence	1
222	Incest	Sexual violence	1
208	Unlawful sodomy	Sexual violence	1

Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Acts intended to cause and other malicious acts (referred to in this paper as ‘malicious acts’), torture, rape and GBH were the most common offences with discretionary SVO declarations. The vast majority of torture cases that attracted an SVO declaration were as a result of a discretionary declaration, with only 4 torture cases receiving a mandatory declaration.

**Table 3: List of offences that were involved in a case with a discretionary SVO declaration (between 5 and 10 years for a Schedule 1 offence)**

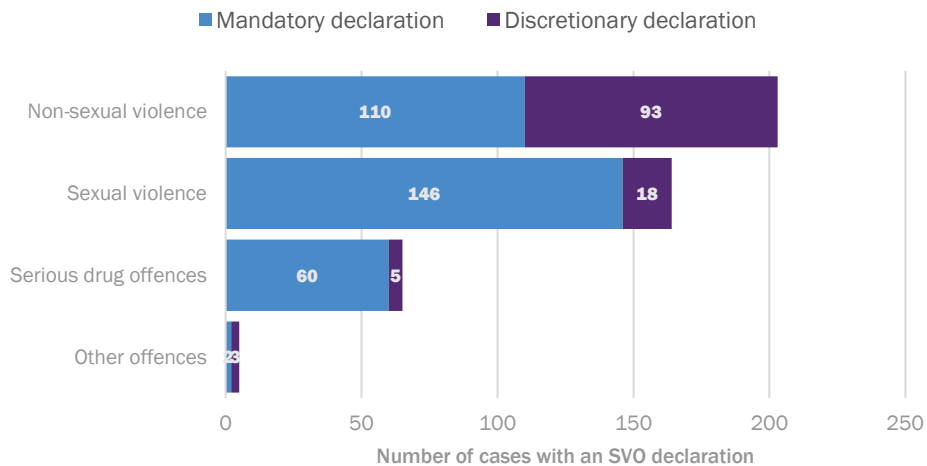
Offence Section	Offence Description	SVO Category	Cases
317	Acts intended to cause grievous bodily harm and other malicious acts	Non-sexual violence	37
320A	Torture	Non-sexual violence	16
349	Rape	Sexual violence	13
320	Grievous bodily harm	Non-sexual violence	13
411	Robbery	Non-sexual violence	11
303 and 310	Manslaughter	Non-sexual violence	8
5	Trafficking in dangerous drugs ( <i>Drugs Misuse Act 1986</i> (Qld))	Serious drug offences	5
229B	Maintaining a sexual relationship with a child	Sexual violence	3
412	Attempted Robbery	Non-sexual violence	2
328A	Dangerous operation of a vehicle	Other offences	2
306	Attempt to murder	Non-sexual violence	1
354A	Kidnapping for ransom	Non-sexual violence	1

Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

The offence profile for mandatory SVOs is distinctively different to that of discretionary SVOs (see Figure 3). While non-sexual violence cases that attracted an SVO were comprised of both mandatory and discretionary SVO declarations, cases of sexual violence predominately attracted mandatory SVO declarations. The lowest proportion of discretionary SVO declarations was made for serious drug offences, indicating that SVO declarations in drug trafficking cases are most commonly a result of an offender being sentenced to a term of imprisonment of 10 years or more.

**Figure 3: Number of cases with an SVO declaration by category of offence and type of declaration (MSO)**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.  
Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

## 2.3 Proportion of SVO cases for Schedule 1 offences

Overall, only a small proportion of sentenced Schedule 1 cases were declared as SVOs — less than 1 per cent of cases sentenced involving a Schedule 1 offence resulted in an SVO declaration being made (mandatory or discretionary). This indicates that the SVO scheme is only applied to the most serious of cases. The proportion of SVOs was highest for sexual violence offences with 3.7 per cent of cases sentenced as an SVO.

Figure 4 shows the proportion of cases declared to be an SVO by offence type. These percentages are based on all sentenced Schedule 1 cases, including cases that would not have been eligible to be declared as an SVO because the offence either was not dealt with on indictment (in the higher courts) or did not attract an immediate term of imprisonment. A more detailed breakdown of eligible cases for each offence category is provided in Figure 6.

**Figure 4: Percentage of cases declared to be an SVO, by offence type (MSO)**

**3.7% of Sexual violent offences (schedule 1)  
were declared SVOs**

**1.7% of Serious drug offences (schedule 1)  
were declared SVOs**

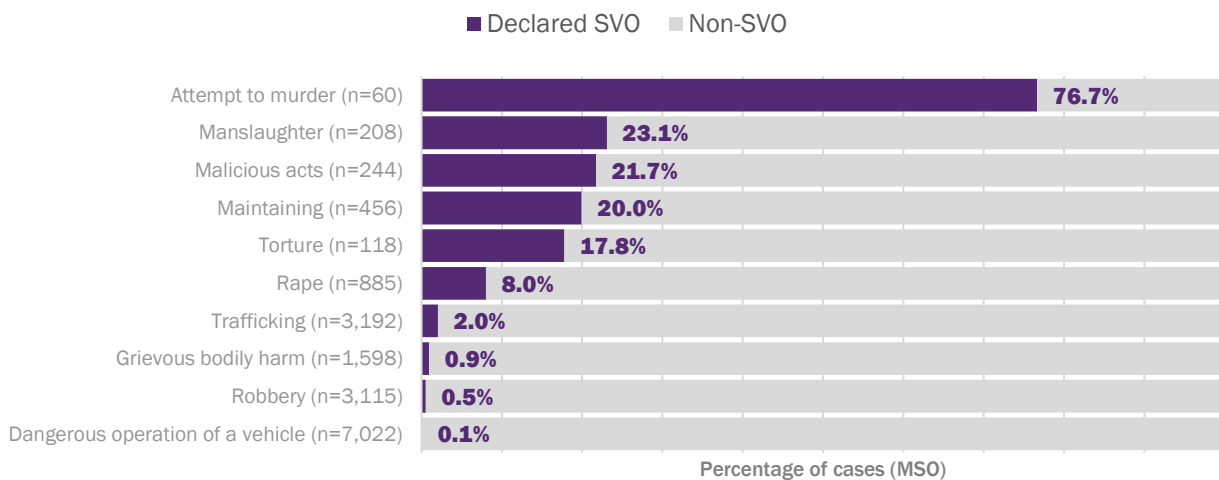
**0.5% of Non-sexual violence offences (schedule 1)  
were declared SVOs**

### The who, what and how long of serious violent offences

For certain offences, the proportion of SVO cases was much higher, demonstrating that the SVO scheme is predominately applied to a limited number of offences (see Figure 1 for more detail on offences that attracted an SVO in the data period).

Due to the very serious nature of this type of offending and the high likelihood of cases attracting a sentence of 10 years or more, attempted murder had the highest proportion of declared SVOs with 76.7 per cent. Other offences with a comparatively high proportion of SVO declarations were manslaughter (23.1%), malicious acts (21.7%), maintaining a sexual relationship with a child (20.0%), and torture (17.8%). The next highest was rape at 8.0 per cent. The proportion of declared SVOs was very low for trafficking in dangerous drugs, GBH, robbery and dangerous operation of a vehicle. Beyond these offences, the scheme was only applied to a very small number of cases or never applied to the offence at all during the data period (see Appendix 1).

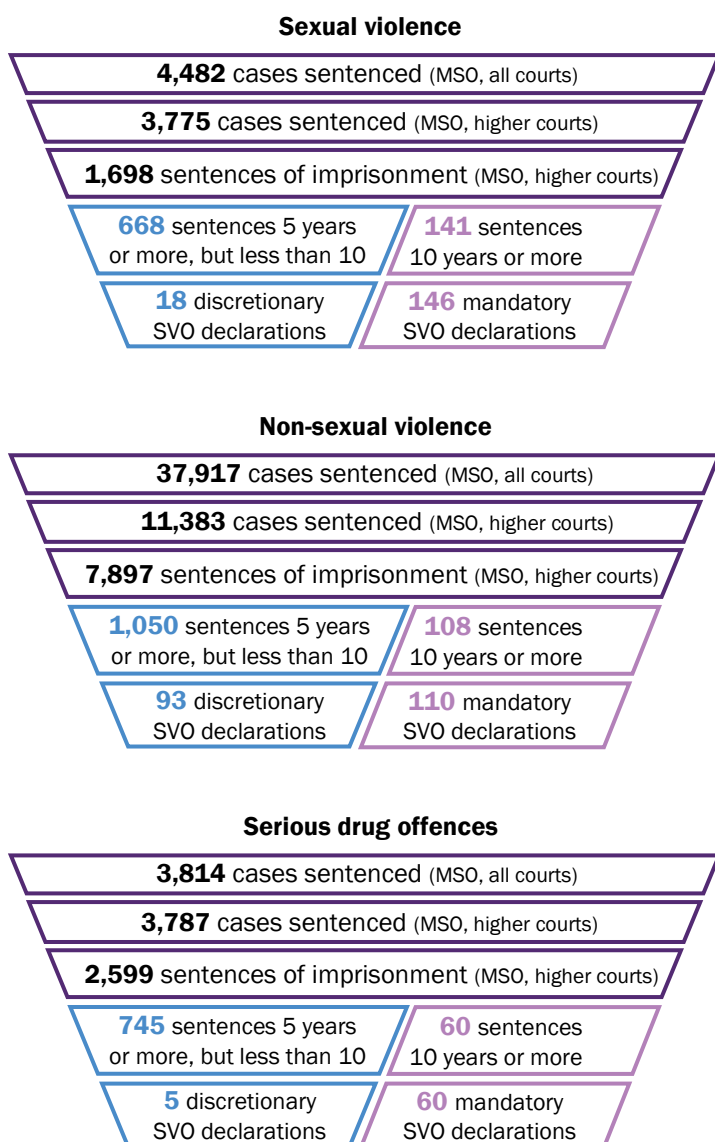
**Figure 5: Percentage of cases declared to be an SVO, by type of offence (MSO)**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

**Figure 6: Number of Schedule 1 offences sentenced, compared to the number of SVO declarations made (MSO)**



The diagrams on the left show the total number of cases sentenced for each category of offence (MSO), stepping down to cases sentenced in higher courts only, cases sentenced to a term of immediate imprisonment,<sup>5</sup> then cases eligible to attract an SVO declaration (i.e. sentenced to 5 years or more )<sup>6</sup> and finally cases in which an SVO declaration was made.

For sexual violence offences, there were 4,482 cases sentenced over the data period in which the Schedule 1 offence was the MSO. Of these cases, 84.2 per cent (n=3,775) were sentenced in the higher courts. Just under half – 45.0 per cent – of those cases resulted in a term of imprisonment being imposed (n=1,698). Of those, just under half (47.6%) received a term of imprisonment of 5 years or longer. Discretionary declarations were made in 18 cases, and mandatory declarations were made in 146 cases.

The number of non-sexual violence cases sentenced in the data period was much greater (n=37,917) compared to other offence categories. A smaller percentage of these cases were sentenced in the higher courts (30.0%, n=11,383). Out of those cases, over two-thirds resulted in a sentence of imprisonment (69.4%, n=7,897). However, only a small proportion of those cases resulted in a sentence of 5 years or longer (14.7%, n=1,158). A discretionary SVO declaration was made in 93 cases, and a mandatory declaration was made in 110 cases.

Serious drug offences had the smallest number of cases sentenced during the data period, with 3,814 sentenced cases in the lower and higher courts. Of those, almost all cases were sentenced in the higher courts (99.3%, n=3,787). Of those, two-thirds received a sentence of imprisonment (68.6%, n=2,599), and almost one-third received a sentence of 5 years imprisonment or more (31.0%, n=805). A mandatory SVO declaration was made in 60 cases. Very few cases received a discretionary declaration (n=5).

Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Note: There were 4 life sentences for a sexual violence offence, and 4 life sentences for a non-sexual violence offence. These have not been displayed in the diagrams above.

The number of mandatory declarations may be slightly higher than the number of cases sentenced for 10 years or more. This is due to cumulative sentences where the combined effect of multiple sentences results in a sentence of 10 years or more, yet the MSO offence remains less than 10 years.

<sup>5</sup> This data excludes sentences of imprisonment that are suspended in whole or in part, or ordered to be served by way of intensive correction in the community. See *Penalties and Sentences Act 1992* (Qld) ss 144 and 112.

<sup>66</sup> An SVO declaration can also be made for sentences of less than 5 years where certain criteria are met. See *Penalties and Sentences Act 1992* (Qld) s 161B(4) discussed in section 1 of this paper.



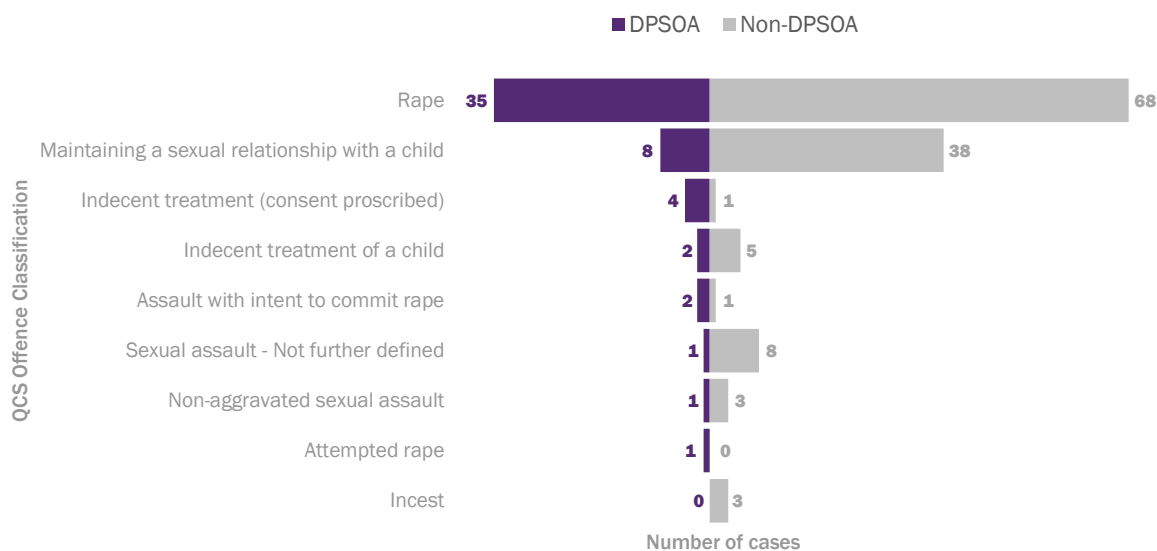
## 2.4 Relationship with the *Dangerous Prisoners (Sexual Offenders) Act 2003* scheme

A prisoner may be detained or supervised beyond the expiry of their sentence under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ('DPSOA'). The DPSOA allows the Attorney-General to apply for a continuing detention order, or a supervision order, if the prisoner has been convicted of a serious sexual offence. To make an order, the court must find there is an unacceptable risk of the prisoner committing a serious sexual offence if an order is not made.<sup>7</sup> If an order is made, the person is detained or subject to supervision after they have fully served their sentence.

The DPSOA scheme operates independently of the SVO scheme. An SVO declaration must be made at the time the person is sentenced and the sentencing court must not have regard to the existence, or possible future existence, of any DPSOA order.<sup>8</sup> An application for a DPSOA order can only be brought by the Attorney-General in the last 6 months of the prisoner's period of imprisonment,<sup>9</sup> and the order comes into effect once the sentence has expired.

The figure below shows the number of DPSOA orders made for prisoners within the data period who were sentenced to a declared SVO sexual violence offence and fully served their sentence. For offenders sentenced for rape, orders were made in 35 cases (33.9%). For offenders sentenced for maintaining a sexual relationship with a child, 8 offenders (17.3%) were the subject of a DPSOA order. Beyond these two types of offences, there were only a very small numbers of other SVO cases in which the offender received a DPSOA order.

Figure 7: Number of cases with an SVO declaration that also received a DPSOA order



Data includes cases sentenced with an SVO declaration, July 1997 to June 2020. Only includes cases where the prisoner had fully served their sentence.

Source: QCS – unpublished data.

For the offence of rape, DPSOA orders were made for prisoners sentenced for a range of sentence lengths, from sentences as short as 7 years to sentences longer than 20 years of imprisonment. The chart below shows the distribution of sentence length by whether the prisoner was subject to a successful DPSOA application.

The average imprisonment length for offenders who were subject to a DPSOA order was 10.6 years – slightly shorter than the average sentence of 11.1 years for non-DPSOA prisoners. This difference was not statistically significant.<sup>10</sup> As such, no correlation was identified between the length of sentence, and the making of a DPSOA order.

<sup>7</sup> Ibid s 13.

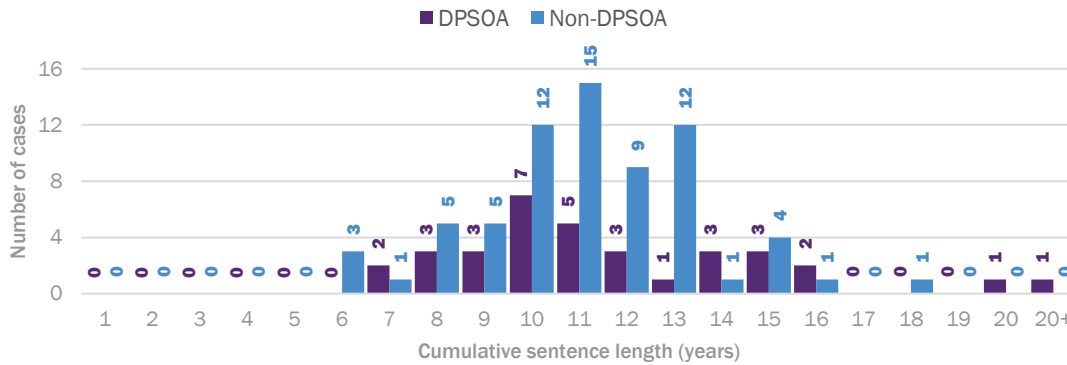
<sup>8</sup> *Penalties and Sentences Act 1992* (Qld) s 9(9).

<sup>9</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 5(2)(c).

<sup>10</sup> Independent groups t-test:  $t(20.937) = 1.00, p = 0.3311, r = 0.21$  (equal variances not assumed).



**Figure 8: Distribution of imprisonment length for the offence of rape, SVO declarations, by DPSOA status**



Source: QCS unreported data.

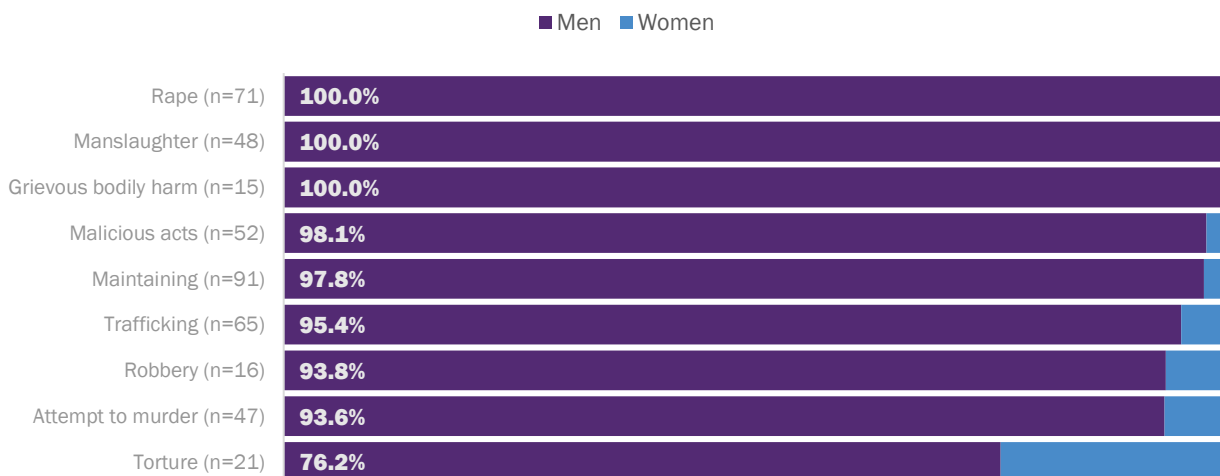
Data includes cases sentenced between 1997 and 2020, and only includes prisoners who had fully served their sentenced by 30 June 2020, SVO offenders only.

## 3 Characterising the scheme: offences and offenders

### 3.1 Gender of sentenced offenders

The figure below shows that offenders convicted of serious violent offences were predominately men – for some offences including rape, manslaughter and GBH, all cases sentenced to an SVO were committed by male offenders. The proportion of male offenders was very high across all offence categories commonly attracting an SVO. The highest proportion of cases committed by female offenders were cases involving torture (n= 5 female offenders).

**Figure 9 Proportion of men and women sentenced for a declared SVO, by type of offence, MSO**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

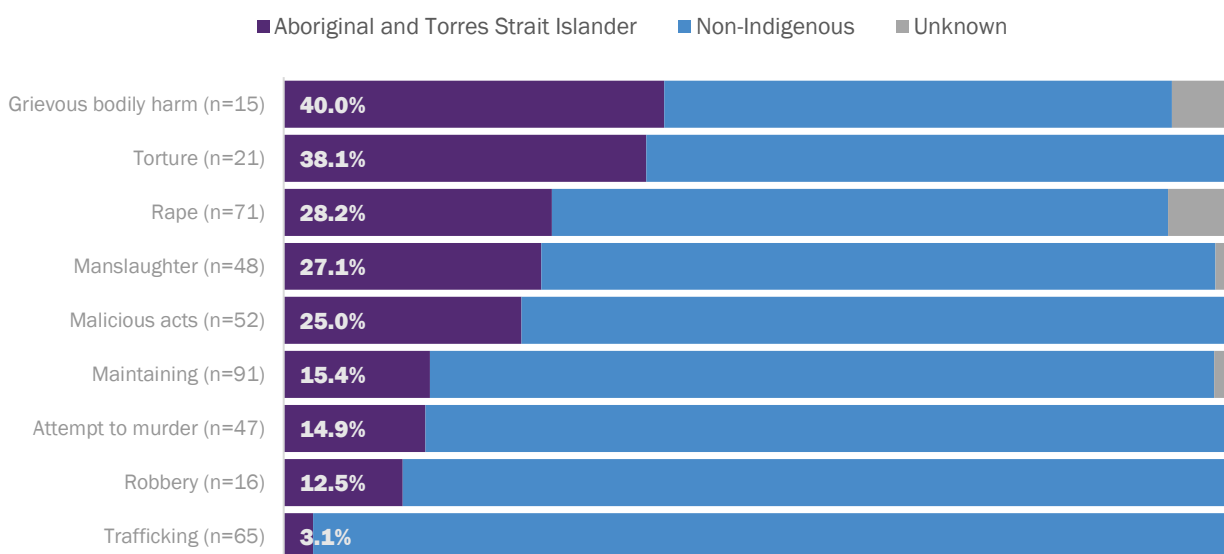
Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

## 3.2 Over-representation of Aboriginal and Torres Strait Islanders

Aboriginal and Torres Strait Islander offenders were over-represented across all offence categories commonly attracting an SVO apart from trafficking in dangerous drugs. During the data period, of the 437 SVO declarations made, 20.1 per cent were made for offences committed by Aboriginal and Torres Strait Islander offenders (n=88). The proportion of cases in which an Aboriginal or Torres Strait Islander offender was declared convicted of an SVO was higher for discretionary SVOs at 30.3 per cent compared to 16.4 per cent for mandatory SVOs.

The highest levels of over-representation were found for GBH, though it needs to be noted that there were only 15 cases in the data period that were sentenced as an SVO for this offence. Other declared offences with a high proportion of Aboriginal and Torres Strait Islander offenders include torture, rape, manslaughter and malicious acts, ranging between a proportion of 38.1 per cent to 25.0 per cent of Aboriginal and Torres Strait Islander offenders. The offence of maintaining a sexual relationship with a child was committed by an Aboriginal or Torres Strait Islander offender in 15.4 per cent of cases.

**Figure 10: Proportion of Aboriginal and Torres Strait Islander people sentenced for a declared SVO, by type of offence, MSO**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

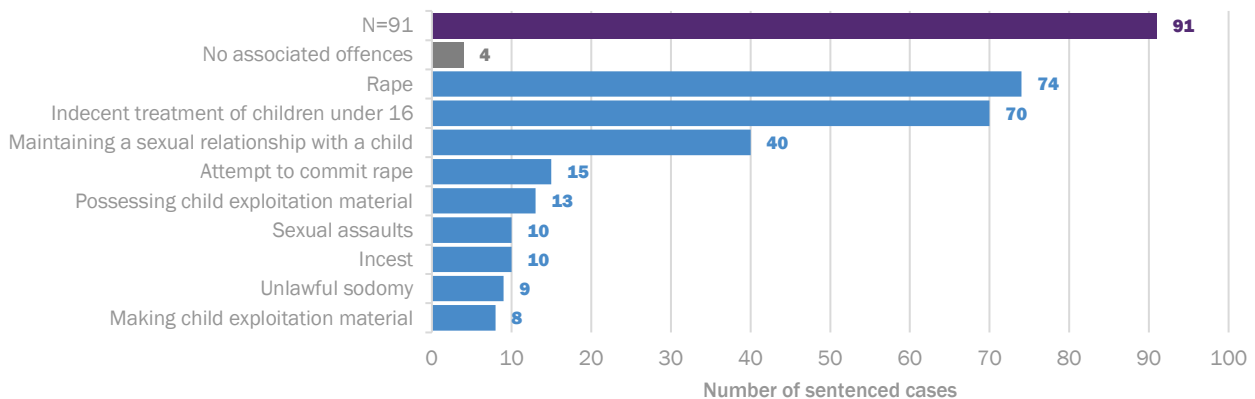
Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

### 3.3 Association of offences sentenced as SVOs and other offences

This section provides information on the overlap of offences where the offender was sentenced for multiple offences and where the MSO was a declared SVO, further characterising the serious types of offending subject to the SVO scheme.

SVO declarations for maintaining a sexual relationship with a child as an MSO were closely associated with rape (81.3% overlap), followed by indecent treatment of children under 16 (76.9% overlap). Other associated offences included multiple maintaining counts, attempted rape, possession and making of child exploitation material, sexual assault, incest and unlawful sodomy.

**Figure 11: Offences most commonly associated with maintaining a sexual relationship with a child (SVO, MSO)**

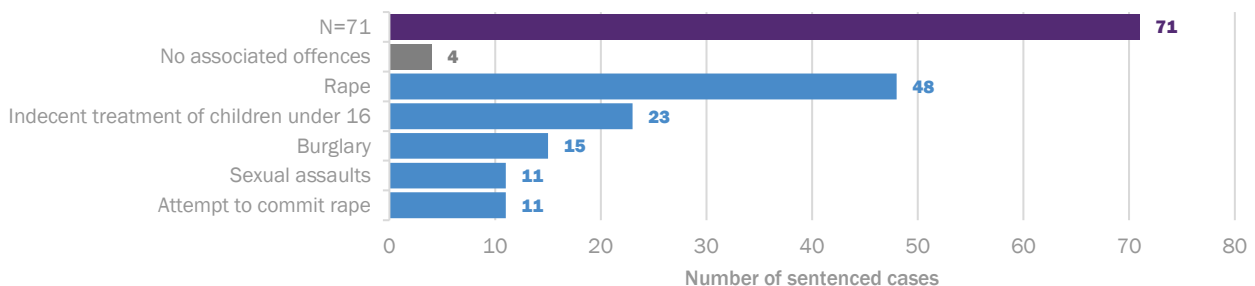


Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20. Only the top 9 most common associated offences have been displayed.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Figure 12 shows that cases where rape was the MSO were closely associated with multiple rape counts (67.6% overlap), followed by indecent treatment of children under 16 (32.4% overlap). The figure shows that 32.4 per cent of rape cases were associated with indecent treatment of a child under 16. This finding suggests that the victim in these cases may have been a child. Other associated offences included burglary, sexual assault and attempted rape.

**Figure 12: Offences most commonly associated with rape (SVO, MSO)**



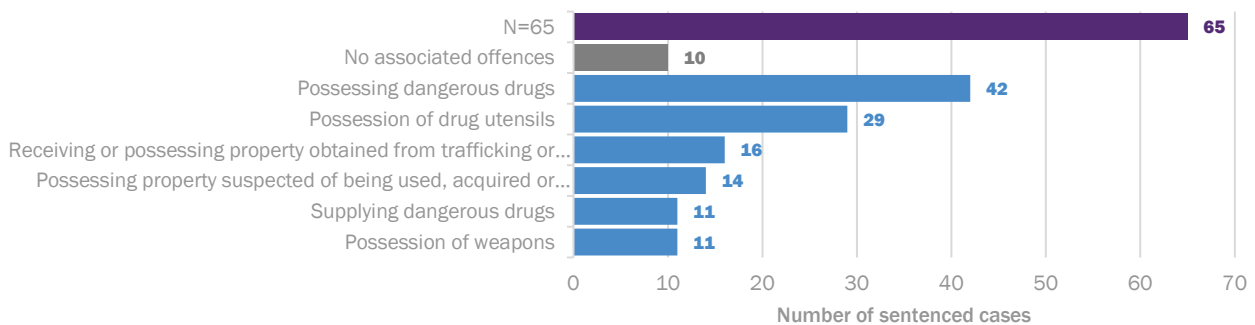
Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20. Only the top 5 most common associated offences have been displayed.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

### The who, what and how long of serious violent offences

Trafficking cases in which the MSO was declared an SVO were mainly associated with other drug-related offences, including possession of drugs, and possession of drug utensils. There was a 16.9 per cent overlap with possession of weapons.

**Figure 13: Offences most commonly associated with trafficking in dangerous drugs (SVO, MSO)**

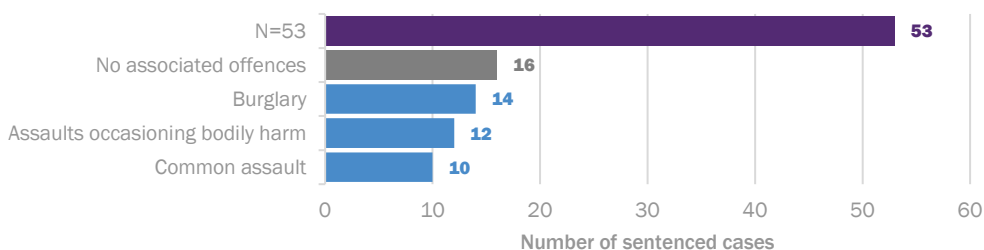


Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20. Only the top 6 most common associated offences have been displayed.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

SVO declarations for acts intended to cause harm and other malicious acts were associated with burglary (26.4% overlap), followed by assaults occasioning bodily harm (AOBH) and common assault.

**Figure 14: Offences most commonly associated with acts intended to cause grievous bodily harm and other malicious acts (SVO, MSO)**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

## 3.4 The SVO scheme and domestic and family violence

In 2015 and 2016, domestic and family violence amendments to the *Penalties and Sentences Act 1992* (Qld) came into effect. These amendments included:

- where a conviction is recorded<sup>11</sup> for an offence charged<sup>12</sup> as a domestic violence offence, it must be recorded as a domestic violence offence;<sup>13</sup>
- where an offender is convicted but a conviction is not recorded, it must nonetheless be entered into the offender's criminal history as a domestic violence offence;<sup>14</sup> and
- where there is a conviction for a domestic violence offence, the court must treat the fact that it was a domestic violence offence as an aggravating factor unless the court considers there are exceptional circumstances.<sup>15</sup>

This means that since 2015, where an offender was convicted of a domestic violence offence ('DV offence') it will be flagged as such in the Queensland courts database. The figure below provides an overview of the proportions of cases that were flagged as a DV offence for SVO and non-SVO cases between 2016–17 and 2019–20.

<sup>11</sup> *Penalties and Sentences Act 1992* (Qld) s 12 provides that the court may exercise its discretion to record or not to record a conviction, having regard to the nature of the offence, the offender's character and age, and the impact that recording a conviction will have on their economic or social wellbeing, or their chances of finding employment. Section 152 provides that they must record a conviction if a term of imprisonment is imposed.

<sup>12</sup> An offence may be charged as a DV offence on an indictment under section 564 of the Criminal Code.

<sup>13</sup> *Penalties and Sentences Act 1992* (Qld) s 12A.

<sup>14</sup> *Ibid* s 12A. Further, a court can also order that a previous conviction be recorded as a domestic violence offence when it is satisfied that it was one: s 12A(5).

<sup>15</sup> *Ibid* s 9(10A). This section requires courts to treat domestic and family violence as an aggravating factor at sentencing, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

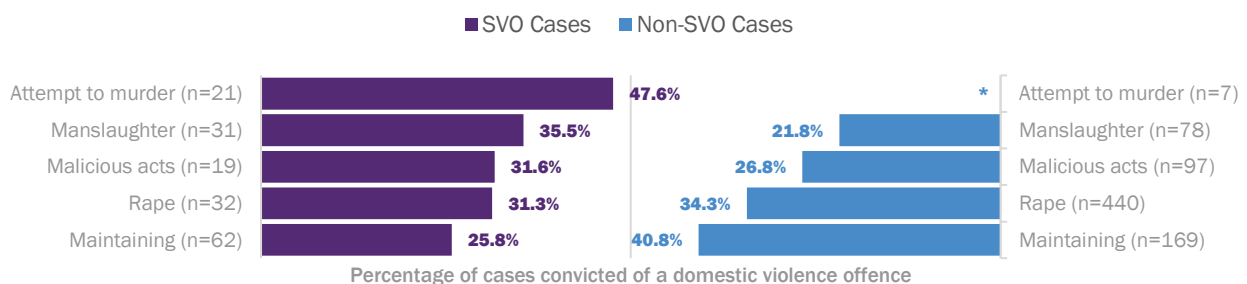
## The who, what and how long of serious violent offences

The proportion of offences convicted as a DV offence was higher for non-sexual violence offences that were declared to be an SVO compared to non-SVO cases. For the offence of manslaughter, cases were recorded as a DV offence in 35.5 per cent of SVO cases. In contrast, 21.8 per cent of non-SVO cases were convicted as a DV offence. For malicious acts, 31.6 per cent of SVO cases were convicted as a DV offence, compared to 26.8 per cent of non-SVO cases.

The pattern is different for sexual violence offences. For rape, the proportion of cases recorded as a DV offence is similar for both SVOs and non-SVOs. For the offence of maintaining a sexual relationship with a child, 40.8 per cent of cases not declared as an SVO were recorded as a DV offence. The proportion of DV offences among cases of maintaining a sexual relationship with a child declared to be an SVO was lower at 25.8 per cent.

The Council acknowledges that the data analysis presented will not have captured all offences that were committed in the context of domestic and family violence. This may be because the offending was not recorded as a conviction for a DV offence due to a number of reasons, including the matter may not have been charged or indicted as a DV offence nor raised orally at sentence by the prosecution.

**Figure 15: Percentage of cases that were convicted domestic violence offences, by SVO declaration (MSO)**



Data includes cases sentenced with an SVO declaration, MSO, 2016–17 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

\* data not displayed due to small sample size

## 3.5 Proportion of guilty pleas

The rate of guilty pleas varied considerably by type of offence, as well as depending on whether the offence was declared an SVO – see Figure 16. Overall, the rates of guilty pleas were high across all Schedule 1 offences. Other than for GBH, guilty plea proportions were consistently lower for declared SVO cases across all offences.

**Figure 16: Percentage of cases with a guilty plea, by type of SVO**



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Note: A small number of homicide cases involved a plea of 'not guilty' to the offence of murder, where the defendant was later found guilty of the lesser charge of manslaughter. The judgments involving SVO declarations were reviewed and have been re-coded as 'not guilty'. Given the volume of non-SVO cases, these remain coded as 'no plea' in the chart above.

The rates of guilty pleas were lower for non-sexual violence offences that attracted an SVO compared to those that did not attract a declaration.

### The who, what and how long of serious violent offences

The difference in plea rates between GBH cases sentenced as an SVO and those that were not was minor. Offenders pleaded guilty to torture in 93.8 per cent of non-SVO cases, compared to 85.7 per cent in cases that attracted an SVO. Malicious acts was pleaded guilty to in 90.6 per cent of non-SVO cases, compared to 84.6 per cent of cases sentenced as an SVO.

The difference was particularly stark for attempted murder, with offenders pleading guilty in 80.0 per cent (non-SVO) and 48.9 per cent (SVO) of cases respectively. For manslaughter, defendants pleaded guilty in 88.1 per cent of non-SVO cases, compared to only 62.5 per cent in cases attracting an SVO declaration.

Rates of guilty pleas were lower for offences of sexual violence, which may be due to evidentiary reasons.<sup>16</sup> Offenders pleaded guilty to the offence of maintaining a sexual relationship with a child in 75.3 per cent of non-SVO cases, compared to 69.2 per cent in cases that were declared to be an SVO. The difference in rates of guilty pleas was minor for rape, with 66.5 per cent (non-SVO) and 69.0 per cent (SVO) respectively.

The rates of guilty pleas for drug trafficking offences were very high. Almost all sentenced offenders for a non-declared offence of drug trafficking pleaded guilty (98.9%), compared to 90.8 percent for cases sentenced as an SVO.

## 3.6 Prior sentenced imprisonment

Analysis of offenders' prior history of being sentenced to imprisonment found that cases attracting a mandatory SVO declaration had a higher proportion of prior imprisonment compared to cases without an SVO declaration.

The analysis was conducted by identifying all cases with an SVO declaration sentenced between 2011–12 and 2018–19 (n=388). For each offender, the five years prior to this sentencing event were analysed to determine whether the person had been sentenced to imprisonment for a previous offence.

Offenders with long periods of prior imprisonment (i.e., for very serious prior offending) are undercounted due to having been in custody for all or most of the data period, which limits the amount of time that the person was able to offend in the community.

Figure 17 shows the percentage of offenders sentenced between 2011–12 and 2018–19 who had a prior sentenced offence that resulted in a term of imprisonment. For some sub-groups, only a small number of cases were sentenced in the data period, making it impossible to compare between groups.

The analysis resulted in mixed findings. Cases that attracted a mandatory SVO declaration had a higher proportion of prior imprisonment, whereas cases that did not have an SVO declaration had a lower proportion of prior imprisonment.

The offence of maintaining a sexual relationship with a child was the least likely to have a prior sentence of imprisonment, regardless of whether an SVO declaration was made.

**Figure 17: Percentage of offenders with a prior sentence of imprisonment, 2011–12 to 2018–19**

Offence	Mandatory SVO	Discretionary SVO	Non-SVO
Malicious acts	63.6%	36.1%	31.6%
Attempt to murder	35.0%	< 10	7.1%
Grievous bodily harm	< 10	63.6%	23.6%
Maintaining	2.6%	< 10	2.3%
Manslaughter	35.1%	< 10	24.1%
Rape	18.9%	< 10	12.3%
Robbery	< 10	50.0%	27.7%
Torture	< 10	25.0%	31.8%
Trafficking in dangerous drugs	13.7%	< 10	12.3%

Data includes cases sentenced, MSO, 2011–12 to 2018–19. Prior offences included where sentenced within 5 years of the data period. Data has been withheld from cells with fewer than 10 sentenced cases.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

<sup>16</sup> Australian Law Reform Commission (2010), Family Violence – A National Legal Response/ Available at: [www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/26-reporting-prosecution-and-pre-trial-processes-2/attrition-in-sexual-assault-cases-2/](http://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/26-reporting-prosecution-and-pre-trial-processes-2/attrition-in-sexual-assault-cases-2/).

## 4 Sentencing outcomes and appeals

Table 4 below summarises the length of imprisonment for the most common Schedule 1 offences to attract an SVO declaration. For information on how to interpret these boxplot diagrams, please refer to the [Technical Paper for Research Publications](#), available on the Council's website.

The boxplots in purple represent sentences that attracted a mandatory SVO declaration (10 years or more), boxplots in blue represent sentences for discretionary SVOs (5 years to less than 10 years), and the grey boxplots represent cases that were not subject to an SVO declaration. Boxplots and summary statistics have not been presented for categories with a small number of sentenced cases (5 or fewer). Schedule 1 offences have different maximum penalties, and the offences in Table 4 range from 5 years for the dangerous operation of a motor vehicle to life imprisonment for several offences, including manslaughter and rape.

Sexual violence offences attracted the longest sentences of imprisonment. Cases with a mandatory declaration were sentenced to an average of 12.1 years for the offence of rape,<sup>17</sup> and 11.9 years for the offence of maintaining a sexual relationship with a child.<sup>18</sup> These offences also covered the broadest range of sentences of imprisonment, with non-SVO cases attracting much shorter sentences (an average of 5.8 years for rape, and 6.1 years for maintaining).

Robbery<sup>19</sup> and GBH<sup>20</sup> received the shortest sentences of imprisonment. There were very few cases sentenced to 10 years or more that received a mandatory SVO declaration. The average sentence length for cases with a discretionary SVO was 7.3 years for robbery, and 6.8 years for GBH. For non-SVO cases, robbery cases received an average sentence of 3.2 years, with GBH cases receiving an average of 3.1 years.

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<sup>17</sup> Rape has a maximum penalty of life imprisonment.

<sup>18</sup> Maintaining a sexual relationship with a child has a maximum penalty of life imprisonment.

<sup>19</sup> Robbery *simpliciter* has a maximum penalty of 14 years and robbery with circumstances of aggravation (being armed, in company with one or more persons, wounds or uses personal violence) has a maximum penalty of life imprisonment. Both are in Schedule 1.

<sup>20</sup> Grievous bodily harm has a maximum penalty of 14 years.

## The who, what and how long of serious violent offences

**Table 4: Length of imprisonment for Schedule 1 offences, by type of SVO declaration**

Offence (MSO)	Declaration type	N	Median (years)	Average (years)	Imprisonment Length Distribution
<b>Malicious acts</b>	Mandatory	13	10.0	10.4	
	Discretionary	39	7.0	7.0	
	Non-SVO	170	6.0	6.1	
<b>Manslaughter</b>	Mandatory	40	11.0	11.3	
	Discretionary	8	9.0	8.8	
	Non-SVO	142	8.0	7.8	
<b>Attempt to murder</b>	Mandatory	46	12.8	13.1	
	Discretionary	1			
	Non-SVO	9	8.0	8.2	
<b>Torture</b>	Mandatory	4			
	Discretionary	17	7.5	7.4	
	Non-SVO	81	5.5	5.2	
<b>Grievous bodily harm</b>	Mandatory	2			
	Discretionary	13	7.0	6.8	
	Non-SVO	1,007	3.0	3.1	
<b>Robbery</b>	Mandatory	4			
	Discretionary	12	8.0	7.3	
	Non-SVO	2,487	3.0	3.2	
<b>Trafficking</b>	Mandatory	60	10.0	11.0	
	Discretionary	5			
	Non-SVO	2,236	3.0	4.1	
<b>Maintaining</b>	Mandatory	86	11.0	11.9	
	Discretionary	5			
	Non-SVO	277	6.0	6.1	
<b>Rape</b>	Mandatory	58	11.0	12.1	
	Discretionary	13	8.0	8.0	
	Non-SVO	561	6.0	5.8	
<b>Dangerous operation of a vehicle</b>	Mandatory	2			
	Discretionary	2			
	Non-SVO	2,665	1.0	1.5	

Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

## 4.1 Distribution of sentence length

This section provides an overview of distributions of sentence length for common SVOs. Figure 18 provides an overview of the sentence length distribution of different offences sentenced under the scheme, finding similar patterns between certain sexual offences (maintaining a sexual relationship with a child and rape), and distinctive patterns for other offences.

The sexual offences of rape and maintaining a sexual relationship with a child both show three distinct clusters of sentencing outcomes, with a lower range of sentencing outcomes (3–5 years for maintaining; 2–3 years for rape), a middle range (8 to 10 years for maintaining; 5 to 7 years for rape) and a high range (12+ years for maintaining; 13+ years for rape).

The non-sexual violence offences of malicious acts, manslaughter and attempted murder each show different patterns of sentence length distribution. For the offence of malicious acts, most cases are sentenced to between 5



#### The who, what and how long of serious violent offences

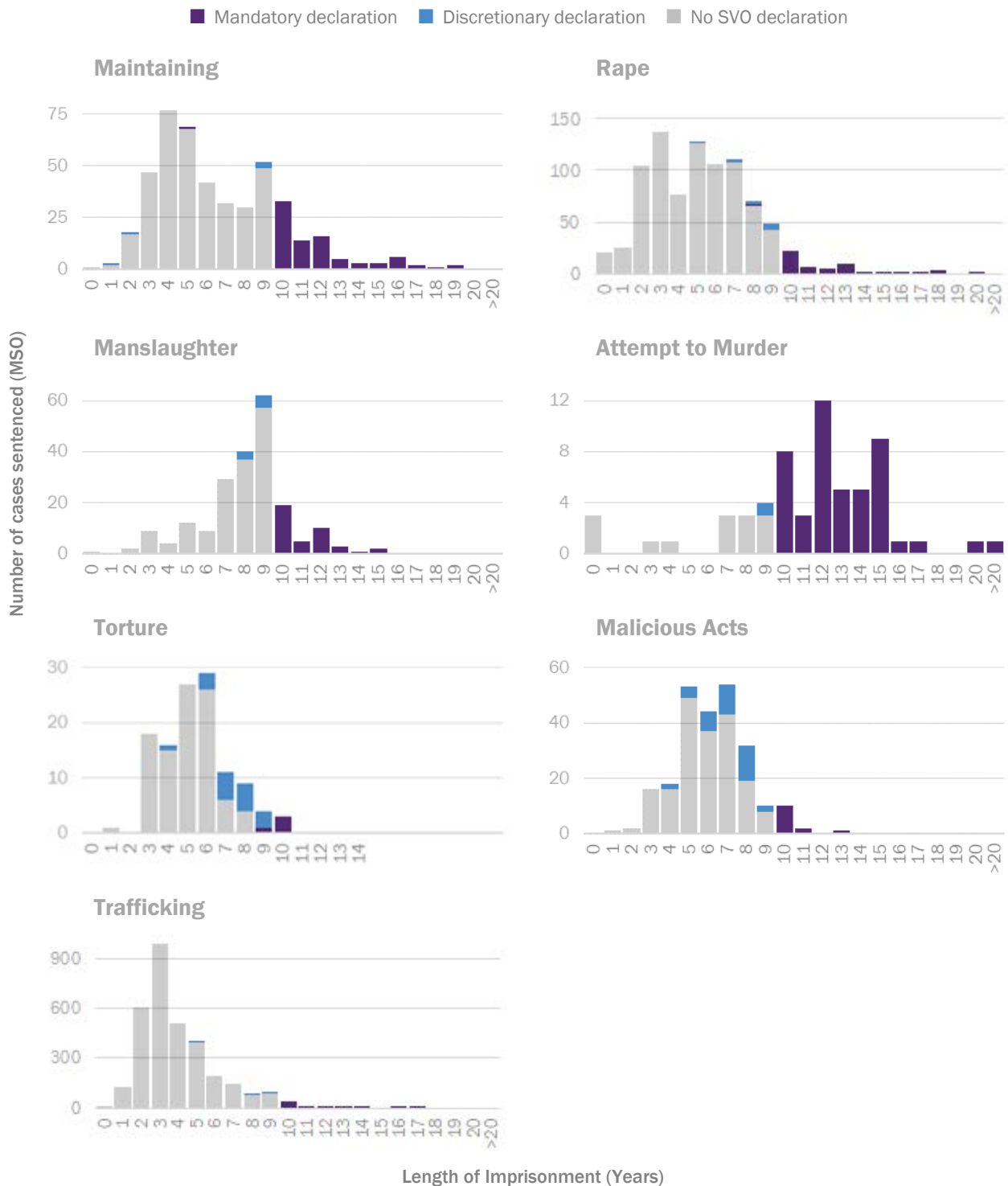
and 7 years, with only a small number of cases exceeding 8 years. The distribution for manslaughter shows a clear central tendency at 9 years and a relatively steep decline either side of the mode. Sentences for attempted murder are very high, most exceeding 10 years and attracting a mandatory declaration, which is indicative of the seriousness of this type of offence.

Torture had a relatively low central tendency at around 5–6 years. Interestingly, all sentences of 9 years attracted a discretionary SVO — there were no cases sentenced to 9 years (in the data period), in which the discretion was not exercised. This indicates that the cruelty and level of violence common in torture cases gives rise to a discretionary SVO declaration being made.

Trafficking appears to have an increased number of cases sentenced at the 9-year mark, relative to sentences of 8 and 10 years, which may indicate that sentences are gravitating to the 9-year-mark.

## The who, what and how long of serious violent offences

Figure 18: Distribution of imprisonment length for cases with an SVO declaration, MSO



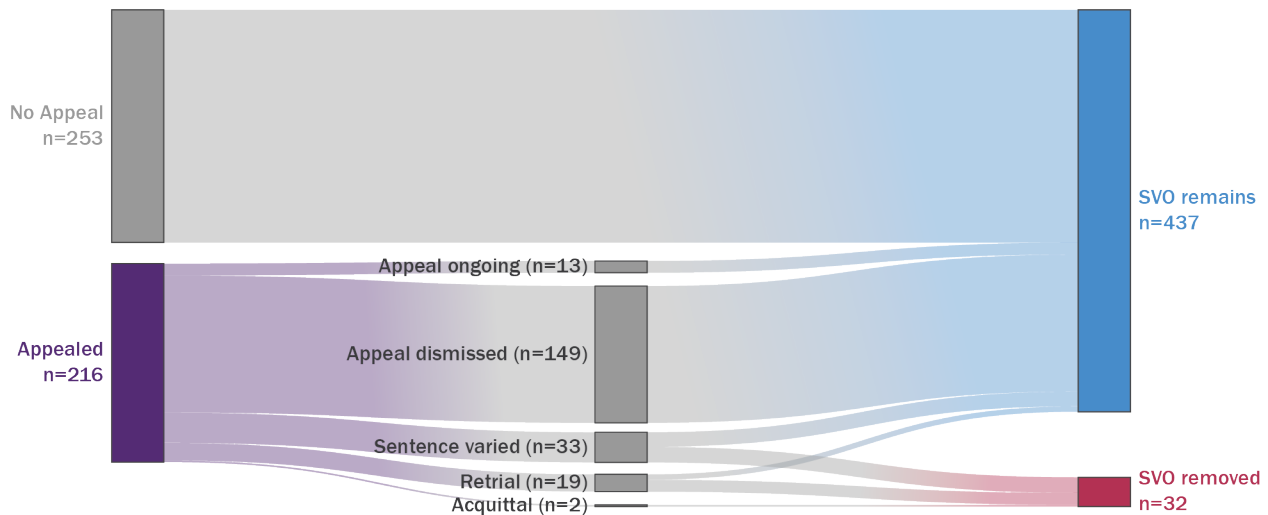
Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.  
Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

## 4.2 Appealed SVO cases

Defendants or the Crown on behalf of the Attorney-General can appeal the court's decision. The cases that the Court of Appeal hears involving SVOs were originally decided in the District or Supreme Court.

An appeal was lodged in almost half the cases in which the MSO was an SVO (n=216/469, 46.1%). In 6.8 per cent of cases (n=32), the SVO declaration was overturned on appeal (either because the sentence was varied on appeal, or because the conviction was overturned altogether, including via a retrial that did not result in a subsequent SVO conviction). Retrials that were still in progress as of 30 June 2020 were classified as 'SVO removed', as a new sentence had not yet been imposed. For retrials, the SVO is categorised as 'removed' until a new sentence is imposed that contains an SVO.

**Figure 19: Appeals of declared SVO cases**



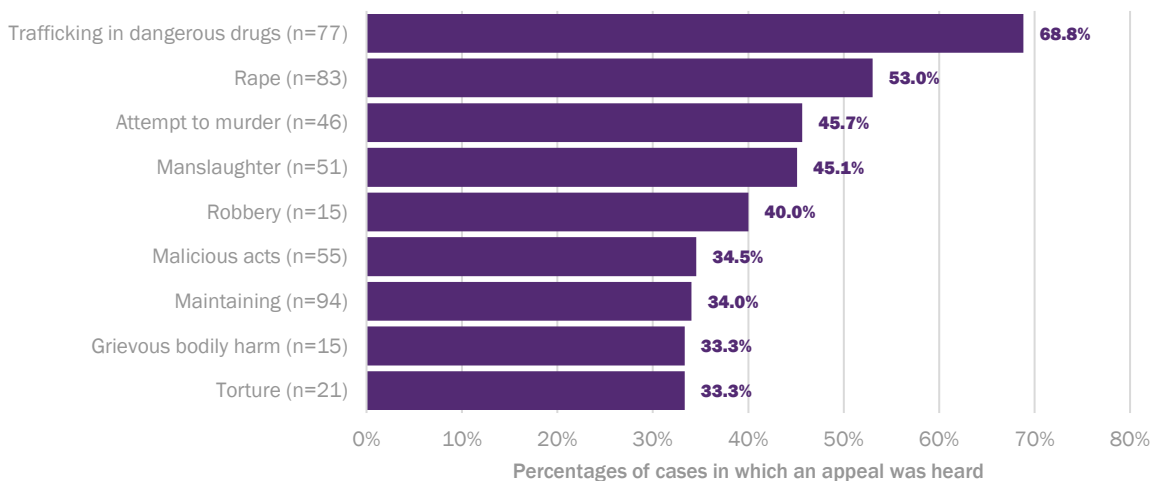
Data includes cases sentenced with an SVO declaration (either at first instance sentence, or on appeal), 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

The most common offences among SVO cases which were subject to an appeal included trafficking in dangerous drugs, rape, attempted murder, manslaughter and robbery. Figure 20 provides a breakdown of appealed cases by type of offence, only including offences sentenced as an MSO.

Trafficking in dangerous drugs was the most likely to be subject to an appeal, with over two-thirds of cases appealed (68.8%). Rape was the second most likely offence to be appealed with half of cases appealed (53.0%). Cases that involved malicious acts, maintaining, GBH and torture were the least likely to be appealed at one-third of sentenced cases.

**Figure 20: Appealed cases that involved an SVO declaration, by type of offence (MSO)**



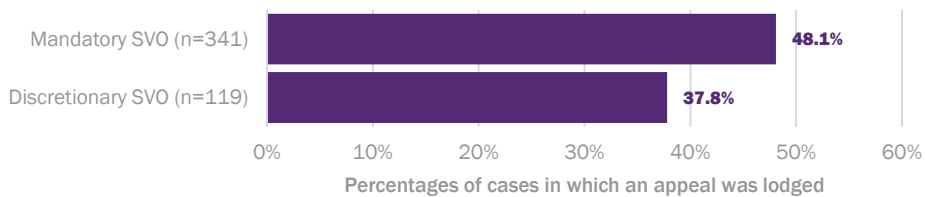
Data includes cases sentenced with an SVO declaration (either at first instance sentence, or on appeal), MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Cases involving a mandatory SVO declaration were more likely to be appealed than cases involving a discretionary SVO declaration. Figure 21 shows the proportion of cases that were subject to an appeal by whether the MSO received a mandatory or discretionary SVO. Out of all cases with a mandatory declaration, almost half of cases were appealed (48.1%), whereas for cases with a discretionary declaration, one-third of cases were appealed (37.8%).

## The who, what and how long of serious violent offences

**Figure 21: Appealed cases that involved an SVO declaration, by type of declaration**



Data includes cases sentenced with an SVO declaration (either at first instance sentence, or on appeal), MSO, 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Note: 9 cases were not displayed as the MSO did not have an SVO declaration at first instance sentence.

## 5 Parole and actual time served in custody

This section examines parole applications, outcomes and total time served in custody for offenders convicted of a declared SVO. Additional analysis on prisoners convicted of a Schedule 1 offence sentenced to between 5 and 10 years not declared as an SVO is also provided, although differences in counting rules mean that some findings in this section cannot be directly compared.

The data analysis presented in this section is based on data obtained from QCS. The analysis presented below is based on the offence classification used by QCS and therefore differs from the offences included in previous figures. Further information on the methodology and counting rules can be found in Appendix 2.

Under the SVO scheme, a prisoner is eligible to apply for parole after serving 80 per cent of their sentence (or 15 years, whichever is less). The '80 per cent rule' in the SVO scheme is a marked departure from standard parole laws, where the sentencing court has a choice (or 'discretion') to set when parole release or eligibility dates fall in a particular sentence.<sup>21</sup>

When the SVO scheme does not apply, a parole eligibility date will often be set at the one-third mark of the head sentence for an offender who enters an early guilty plea accompanied by genuine remorse.<sup>22</sup> Excluding cases for which a parole release date is set, a parole eligibility date may be fixed earlier than the one-third mark where there has been a timely or early guilty plea and demonstrated rehabilitation. If a court makes no express order, the eligibility date is generally the day after reaching 50 per cent of the period of imprisonment.<sup>23</sup> This is commonly applied to offenders who have been convicted after a trial.

The analysis presented in this section finds that parole outcomes and actual time served in custody vary depending on the type of offence. For instance, prisoners convicted of drug trafficking were released considerably earlier compared to offenders convicted of a sexual violence or non-sexual violence offence.

### 5.1 Parole application outcomes for cases declared to be an SVO

Information about the 1,036 prisoners who were sentenced for a declared SVO between July 1997 and June 2020 was analysed to determine how many were released on parole over this period.

Over one-quarter of prisoners had not yet reached their parole eligibility date as of 30 June 2020 (n=283, 27.3%). The remaining 72.5 per cent of prisoners had been eligible for parole. Of these, 135 prisoners did not make an application for parole (17.9%).

There were 619 prisoners who applied for parole. The majority of these were granted parole and were subsequently released into supervision in the community (n=390, 63.0%). Almost a quarter of prisoners who applied for parole had their application refused (n=145, 23.4%). The remaining applications (n=84, 13.6%) did not have a parole outcome recorded – this may be because the parole application was still pending review, the application may have

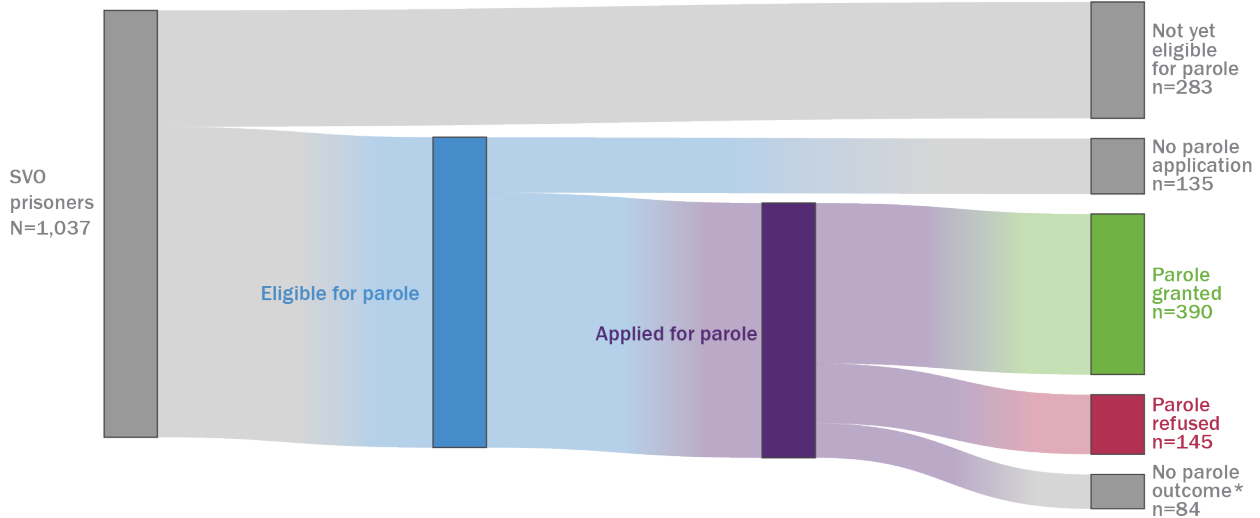
<sup>21</sup> There are other provisions in the *Corrective Services Act 2006* (Qld) which also depart from the standard parole laws in certain situations. For example, ss 181, 181A and 182A contain different provisions for prisoners serving life sentences in various situations, and s 183 applies to indeterminate detention of persons incapable of controlling sexual instincts.

<sup>22</sup> Where the sentence is not mandatory, it is common for an offender who enters an early guilty plea – accompanied by genuine remorse – to have a parole eligibility date or release date set, or suspension of their sentence after serving one-third of their head sentence in custody: See *R v Crouch* [2016] QCA 81, 9 [29] (McMurdo P, Gotterson JA and Burns J agreeing), *R v Tran; Ex parte A-G* (Qld) [2018] QCA 22, 6–7 [42]–[44] (Boddice J, Philippides and McMurdo JA agreeing), *R v Rooney* [2016] QCA 48, 6 [16]–[17] (Fraser JA, Gotterson JA and McMeekin J agreeing) and *R v McDougall* [2007] 2 Qd R 87, 97 [20] (Jerrard, Keane and Holmes JJA).

<sup>23</sup> *Corrective Services Act 2006* (Qld) s 184(2)

been withdrawn, cancelled, deferred, or otherwise had not received a final outcome. The figure below provides an overview of parole outcomes for prisoners convicted of an SVO.

**Figure 22: Parole application outcomes for prisoners sentenced for an offence declared to be an SVO**



Source: QCS unpublished data.

Data includes prisoners sentenced between July 1997 and June 2020, see Appendix 2 for further details.

Note: \* 'No parole outcome' refers to cases in which no final outcome was recorded in the QCS system. There are many reasons for this, including situations in which the parole application was incomplete and additional information was not provided by the prisoner, the prisoner decided to withdraw the application, the application may have been cancelled, the parole application may still be in progress pending review, or other similar reasons.

There were differences in the proportion of parole applications that were granted based on the type of offence committed.<sup>24</sup>

Offenders convicted of sexual violence offences were the least likely to be granted parole. A proportion of those offenders were made subject to DPSOA orders. A DPSOA is not a parole order but is a separate type of order that can be made at the end of a prisoner's sentence which requires additional set periods of incarceration and/or community supervision beyond the end of the prisoner's term of imprisonment. The proportion of DPSOA orders was much higher for rape (28.4%) compared to maintaining a sexual relationship with a child (11.7%). Both offences had similar rates of successful parole applications, with around one-third of prisoners granted parole (38.1% for rape, 35.1% for maintaining).

Offenders convicted of drug trafficking were most likely to be granted parole. Over three-quarters of prisoners sentenced for drug trafficking were granted parole (75.9%), with only 12.7 per cent of prisoners having their parole application refused.

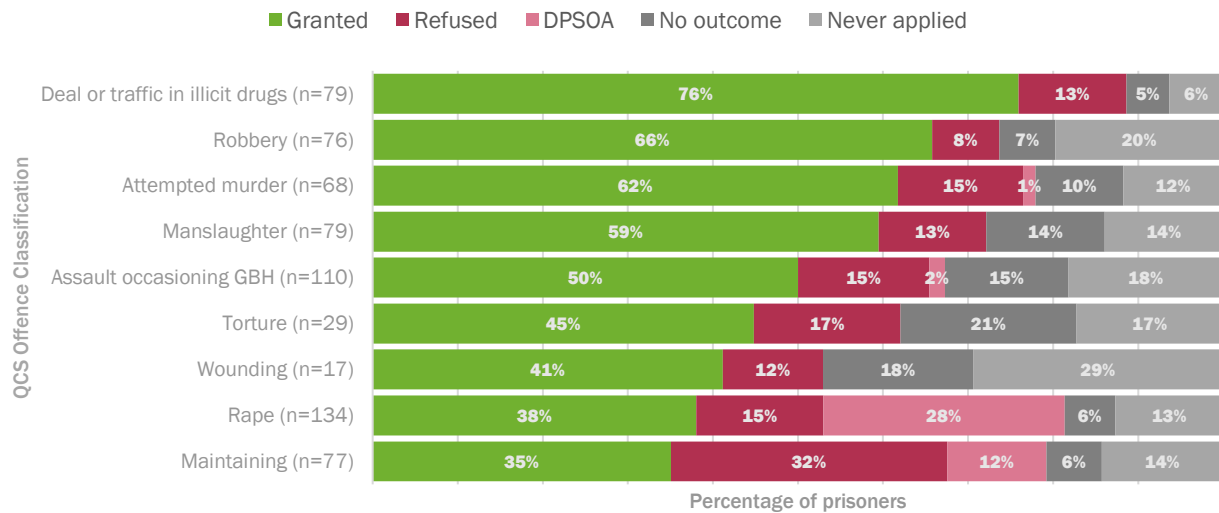
Parole outcomes for non-sexual violence offences ranged considerably, with between 41 and 66 per cent of prisoners granted parole. Offenders convicted of robbery and homicide offences were the most likely to be granted parole (65.8% for robbery, 61.8% for attempted murder, 59.5% for manslaughter). Prisoners convicted of torture and wounding were the least likely to be granted parole (44.8% for torture, 41.2% for wounding). The category of 'assaults occasioning grievous bodily harm' likely contains a combination of the offences of 'grievous bodily harm', as well as the more serious offence of 'acts intended to cause grievous bodily harm and other malicious acts.' Parole applications for prisoners convicted of offences in this offence category fell in the middle of the range at 50.0 per cent.

While the figure below shows a small number of DPSOA orders for attempted murder and assault occasioning GBH, these offences are not eligible for a DPSOA order. While these offences may be the MSO, the prisoner would have been sentenced for an additional sexual violence offence that is not displayed.

<sup>24</sup> Each prisoner could have zero, one, or multiple parole applications. For the purposes of this analysis, a prisoner's earliest parole application that resulted in actual release on parole was selected.

## The who, what and how long of serious violent offences

**Figure 23: Parole application outcomes for prisoners sentenced for an offence declared to be an SVO, by offence**



Source: QCS unpublished data.

Data includes prisoners sentenced between July 1997 and June 2020, see Appendix 2 for further details.

Note:

For more details on the QCS offence classification, including how it corresponds to legislative offences, please refer to Appendix 1.

'No outcome' refers to cases in which no final outcome was recorded in the QCS system. There are many reasons for this, including situations in which the parole application was incomplete and additional information was not provided by the prisoner, the prisoner decided to withdraw the application, the application may have been cancelled, the parole application may still be in progress pending review, or other similar reasons.

## 5.2 Time served in custody beyond parole eligibility date for cases declared to be an SVO

The time prisoners served in custody varied considerably based on the specific offence the prisoner was convicted of, with those imprisoned for drug trafficking serving the shortest median time and those convicted of sexual offences serving the longest median time post their parole eligibility date. Figure 24 shows the amount of time served in custody before release on parole, as well as the average number of days served beyond the parole eligibility date.

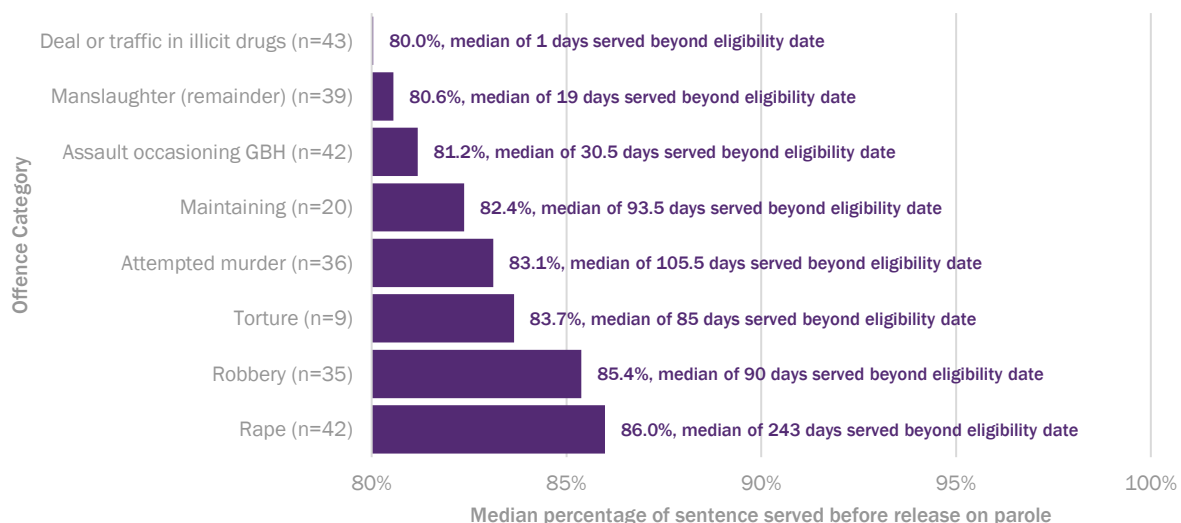
There are a range of reasons why someone may remain in prison beyond their parole eligibility date. These reasons are not explored in this background paper, but may include whether the prisoner made an application for parole at the earlier possible date, whether parole was granted under certain conditions that have not been met, whether the Queensland Parole Board is waiting for further information to be provided before making a decision, or other reasons.

Drug traffickers were the most likely to be released as soon as they became eligible for parole. The median release date for drug traffickers was one day beyond their eligibility date.

Prisoners sentenced for the offence of rape served the longest amount of time in custody beyond their parole eligibility date. Prisoners sentenced for rape served a median of 8.1 months in custody beyond their parole eligibility date.

Robbery was the second longest, with prisoners serving a median of 3 months beyond their parole eligibility date.

**Figure 24: Median percentage of sentence served in custody before release on parole, and median number of days served beyond parole eligibility date for cases declared to be an SVO**



Source: QCS unpublished data.

Data includes prisoners sentenced between July 1997 and June 2020, see Appendix 2 for further details.

For more details on the QCS offence classification, including how it corresponds to legislative offences, please refer to Appendix 1.

## 5.3 Parole eligibility and outcomes for Schedule 1 cases sentenced to between 5 and 10 years not declared to be an SVO

The analysis presented in this section includes cases of selected Schedule 1<sup>25</sup> offences sentenced to between 5 and 10 years that did not receive a discretionary SVO declaration.

In total, parole application data for 2,576 prisoners was included in the analysis. Approximately one in 10 prisoners had not yet reached their parole eligibility date as of 30 June 2020 (n=268, 10.4%) and a further 3 per cent (n=74) had not made a parole application despite being eligible to do so.

<sup>25</sup> Offences most relevant to the SVO scheme (determined by the number of cases declared to be an SVO in the offence category) were included in the analysis.

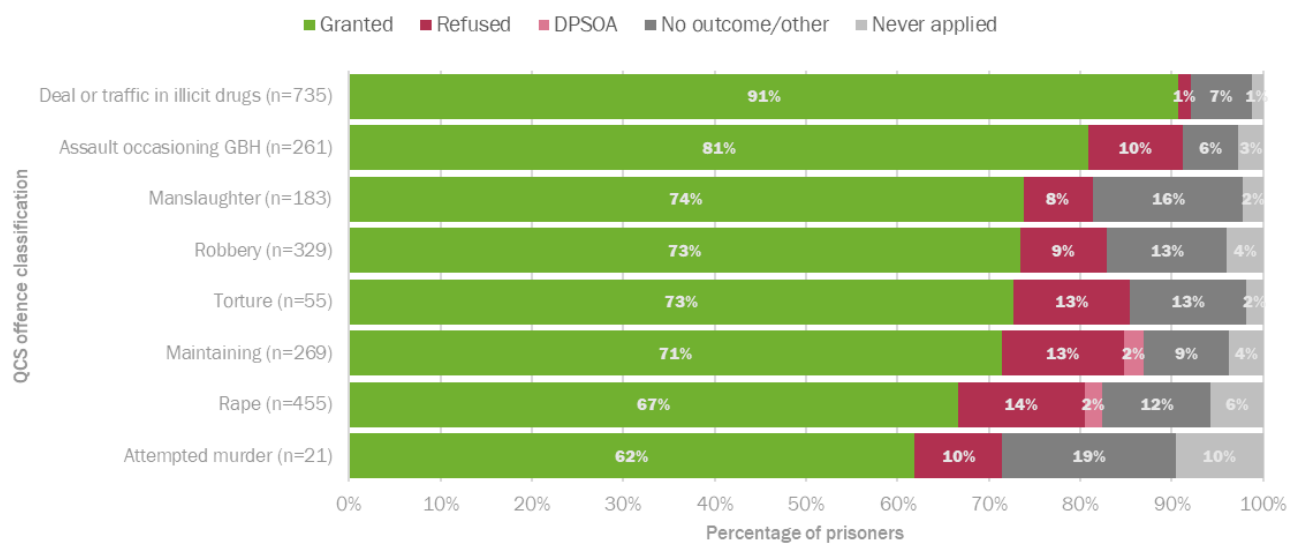
### The who, what and how long of serious violent offences

This means that 2,234 prisoners applied for parole within the data period. Over three-quarters of these prisoners were granted parole and were released to supervision in the community (n=1,804, 80.8%). Just under 10 per cent had their parole application refused (n=202, 9.0%). The remaining parole applications had various outcomes, including the application pending or being withdrawn, the death of the prisoner or release from QCS custody into the custody of the Commonwealth Department of Immigration.

The analysis found differences in the outcomes of parole applications based on the type of offence committed. Drug trafficking was the most likely offence to be granted parole. Nine in 10 prisoners were granted parole (90.8%) and only 1 per cent of prisoners had their application refused. Prisoners sentenced for rape were the most likely to have a parole application refused (14% of applications were refused), closely followed by maintaining a sexual relationship with a child (13.4%). In these offence categories, a small proportion of offenders were subject to a DPSOA order (2%).

Approved parole applications for non-sexual violence offences ranged from 62 per cent (attempted murder) to 81 per cent (assault occasioning GBH), while the proportion of refused applications for non-sexual violence offences was approximately 10 per cent.

**Figure 25: Parole application outcomes for prisoners sentenced to between 5 and 10 years imprisonment for non-SVO Schedule 1 offences, by offence**



Source: QCS unpublished data.

Data includes prisoners sentenced between July 1997 and March 2021, see Appendix 2 for further details.

Note:

For more details on the QCS offence classification, including how it corresponds to legislative offences, please refer to Appendix 1.

'No outcome/other' refers to cases in which either no final outcome was recorded in the QCS system or there was an alternate outcome. This may include where the parole application was incomplete and additional information was not provided by the prisoner, the prisoner decided to withdraw the application, the application was cancelled, the parole application was still in progress pending review, or other reasons. Alternate outcomes include the death of the offender and the offender being released into the custody of the Commonwealth Department of Immigration.

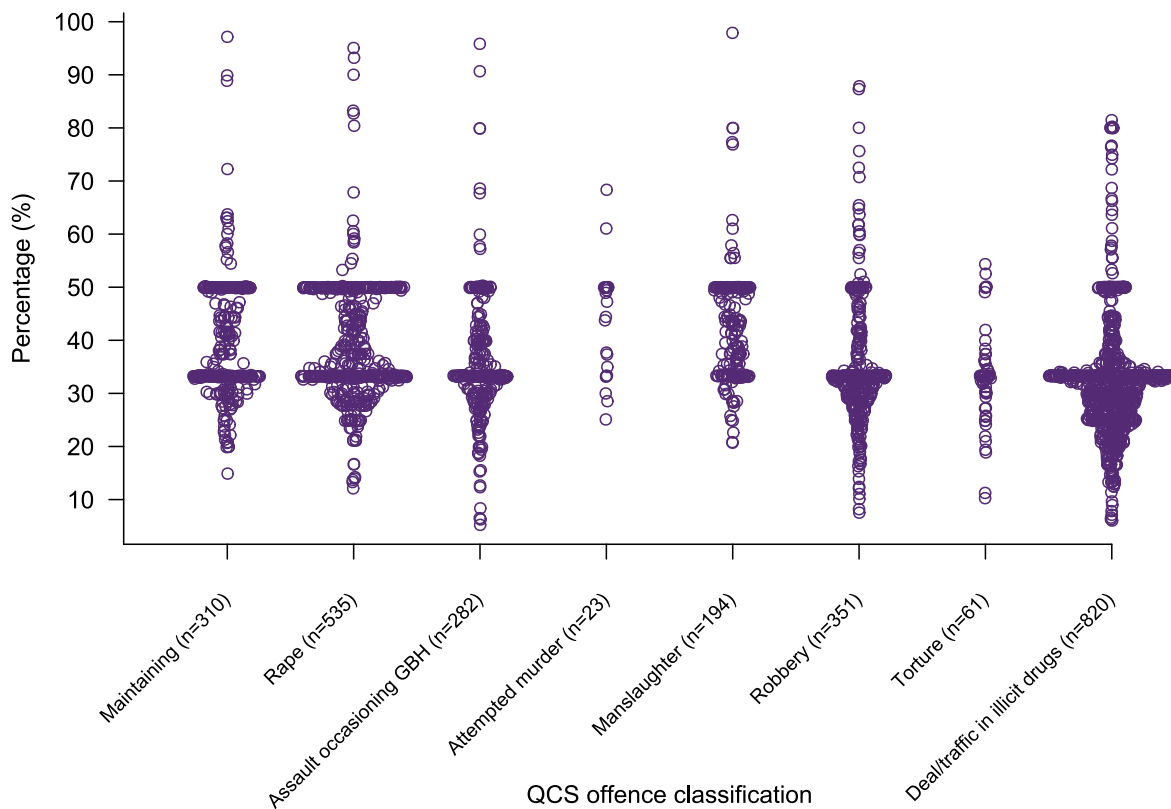
As the parole eligibility date is discretionary for offences sentenced to between 5 and 10 years imprisonment that are not declared to be an SVO, the proportion of the sentence served before an offender is able to apply for parole varies.

Analysis of where the parole eligibility date occurred as a proportion of the head sentence showed that while there is a wide spread of proportions of the head sentence, there is a clear propensity for parole eligibility dates to fall around one-third and half of the sentence length. There was only a comparatively small number of cases with a parole eligibility higher than 50 per cent. This is consistent across all offence categories examined.

Parole eligibility was most commonly set at 50 per cent for attempted murder, manslaughter and rape, likely impacted by the fact that rates of guilty pleas were comparatively low for these offences (see Figure 16). For all other offences, parole eligibility at one-third was the most common. For drug trafficking and robbery, the analysis found clusters of parole eligibility dates below one-third.



**Figure 26: Parole eligibility date as a proportion of the head sentence for non-SVO Schedule 1 offences sentenced to between 5 and 10 years imprisonment, by offence**



Source: QCS unpublished data.

Data includes prisoners sentenced between July 1997 and March 2021, see Appendix 2 for further details.

Note: For more details on the QCS offence classification, including how it corresponds to legislative offences, please refer to Appendix 1.

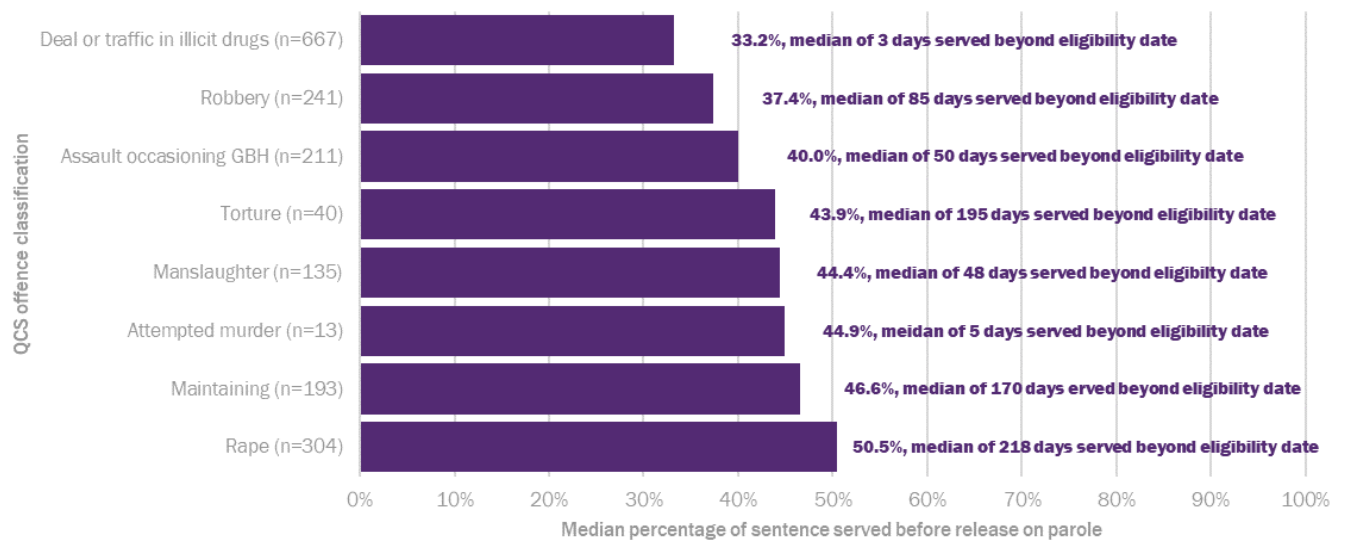
The length of time prisoners convicted of non-SVO Schedule 1 offences served in custody before release on parole varied considerably by offence. Offenders imprisoned for drug trafficking offences served the shortest median time before being released on parole (33.2% of the head sentence), while those sentenced for rape served the longest (median of 50.5% of the head sentence).

The figure below shows the median percentage of sentence served in custody before release on parole, as well as the median number of days served beyond the parole eligibility date. Drug traffickers were the most likely to be released as soon as they became eligible for parole, with a median release of 3 days beyond their parole eligibility date.

Prisoners sentenced for rape served the longest period in custody beyond their parole eligibility date with a median of 7 months, while prisoners sentenced for maintaining a sexual relationship with a child served a median of 5.6 months in custody beyond their parole eligibility date.

## The who, what and how long of serious violent offences

**Figure 27: Median percentage of sentence served in custody before release on parole, and average number of days served beyond parole eligibility date for non-SVO Schedule 1 offences sentenced to between 5 and 10 years imprisonment, by offence**



Source: QCS unpublished data.

Data includes prisoners sentenced between July 1997 and March 2021, see Appendix 2 for further details.

Note: For more details on the QCS offence classification, including how it corresponds to legislative offences, please refer to Appendix 1.

## 6 Conclusion

The SVO scheme applies to a very small proportion of the most serious non-sexual violence, sexual violence and serious drug offences committed in Queensland. The Council's data analysis found that the scheme was most commonly applied to serious non-sexual violence offences, followed by sexual violence and serious drug offences. The offence of attempt to murder had the highest proportion of SVOs per offence category, followed by manslaughter and malicious acts, clearly indicating the seriousness of these offences.

Mandatory SVO declarations (for sentences of 10 years and over) were far more common than discretionary declarations, accounting for almost three-quarters of all SVO declarations made over the 9-year data period. The offence of maintaining a sexual relationship with a child received the highest proportion of mandatory SVO declarations. For discretionary declarations, the most common offence resulting in the making of a declaration was acts intended to cause harm and other malicious acts. The lowest proportion of discretionary SVO declarations made was in matters of serious drug offences.

The Council's analysis of parole outcomes found that offenders sentenced under the SVO scheme often experienced longer periods of imprisonment past the 80 per cent non-parole period. Some SVO offenders convicted of sexual violence and non-sexual violence offences continue to serve extended periods of time in prison past their parole eligibility date. Offenders sentenced for a sexual violence offence had the lowest rates of granted parole applications, followed by offenders of non-sexual violence.

By comparison, the vast majority of offenders convicted of drug trafficking (both SVO and non-SVO offenders) successfully applied for parole and were released shortly after they became eligible. This demonstrates that the scheme is applied to a wide range of offences, potentially posing different levels of risk to the community.

Gaining a full understanding of how the scheme is applied is essential to determine whether the scheme is meeting its objectives. Due to the long operation of the scheme since 1997 and multiple legislative changes and other reforms, it was not feasible to determine the impact of the scheme on sentencing practices and outcomes based on quantitative data analysis.

To further examine the impact of the scheme, the Council is undertaking extensive caselaw analysis, consulting broadly with key stakeholders in the criminal justice system and conducting an extensive subject-matter expert interview project, the results of which will be provided as part of the final report.

The data analysis in this paper will help inform questions posed by the Council in its Issues Paper to be released later this year as part of its review of the SVO scheme.

# Appendix 1

## Table of offences included in the SVO scheme

All Schedule 1 offences were classified into categories of non-sexual violence, sexual violence, serious drug offences and other offences. The table below sets out which offences were classified into each category, and their sentencing status during the 9-year data period.

Offences in grey did not have any cases with an SVO declaration during 2011–12 to 2019–20 and were not included in most analyses. The 11 offences in italics were not sentenced during the 9-year data period and by default did not receive an SVO. The table also lists which offences have been repealed, but still included in the SVO scheme.

## The who, what and how long of serious violent offences

**Table 5: List of Schedule 1 offences by category and sentence status between 2011-12 and 2019-20**

Category	Offence
Serious drug offences	Trafficking in dangerous drugs
Serious drug offences	Aggravated supply of dangerous drugs
Serious drug offences	Producing dangerous drugs
Sexual violence	Rape
Sexual violence	Maintaining a sexual relationship with a child
Sexual violence	Indecent treatment of children under 16
Sexual violence	Sexual assaults
Sexual violence	Attempt to commit rape
Sexual violence	Incest
Sexual violence	Unlawful sodomy (repealed offence, included in sch 1)
Sexual violence	Assault with intent to commit rape
Sexual violence	Taking child for immoral purposes
Sexual violence	Abuse of persons with an impairment of the mind
Sexual violence	Attempted sodomy
Sexual violence	Carnal knowledge with or of children under 16
Sexual violence	Procuring young person etc. for carnal knowledge
Sexual violence	Procuring sexual acts by coercion etc.
Sexual violence	Owner etc. permitting abuse of children on premises
Sexual violence	Carnal knowledge of girls under 16
Sexual violence	Procuring engagement in prostitution
Sexual violence	Conspiracy to defile (repealed offence, included in sch 1)
Sexual violence	Incest by man (repealed offence, included in sch 1)
Sexual violence	Incest by female (repealed offence, included in sch 1)
Sexual violence	Unlawful anal intercourse (repealed offence, included in sch 1)
Non-sexual violence	Robbery
Non-sexual violence	Acts intended to cause grievous bodily harm and other malicious acts ('malicious acts')
Non-sexual violence	Attempt to murder ('attempted murder')
Non-sexual violence	Manslaughter
Non-sexual violence	Torture
Non-sexual violence	Assaults occasioning bodily harm ('AOBH')
Non-sexual violence	GBH
Non-sexual violence	Burglary (if section 419(3)(b)(i) or (ii) applies)
Non-sexual violence	Attempted Robbery
Non-sexual violence	Stupefying in order to commit indictable offence
Non-sexual violence	Kidnapping for ransom
Non-sexual violence	Wounding
Non-sexual violence	Kidnapping
Non-sexual violence	Carrying or sending dangerous goods in a vehicle
Non-sexual violence	Disabling in order to commit indictable offence
Non-sexual violence	Attempting to injure by explosive or noxious substances
Non-sexual violence	Killing unborn child
Non-sexual violence	Serious assaults
Non-sexual violence	Entering or being in premises and committing indictable offences
Non-sexual violence	Cruelty to children under 16
Non-sexual violence	Conspiring to murder
Non-sexual violence	Administering poison with intent to harm
Non-sexual violence	Taking control of an aircraft
Other offences	Dangerous operation of a vehicle
Other offences	Threatening violence
Other offences	Failure to supply necessities (inserted in May 2019)
Other offences	Riot
Other offences	Bomb hoaxes
Other offences	Escape by persons in lawful custody
Other offences	Misconduct with regard to corpses
Other offences	Endangering life of children by exposure
Other offences	Unlawful assembly, riot and mutiny
Other offences	Obstructing rescue or escape from unsafe premises
Other offences	Endangering the safety of a person in a vehicle within intent
Other offences	Other offences (under Corrective Services Act 2006)
Other offences	Preventing escape from wreck (repealed offence, included in sch 1)
Other offences	Unlawful assembly, riot and mutiny (repealed offence, included in sch 1)
Other offences	Other offences (repealed offence, included in sch 1)
Non-Schedule offences	Burglary
Non-Schedule offences	Deprivation of liberty

**Table 6: Concordance of legislative offences to QCS offence categories**

Legislative Offence	QCS Classification
Trafficking in dangerous drugs	Deal or traffic in illicit drugs - Not Further Defined Deal or traffic in illicit drugs commercial quantity
Torture	Torture
Robbery	Aggravated unarmed robbery Armed robbery
Rape	Rape Attempted rape Indecent treatment of a child Non-assaultive sexual offences against a child Administer harmful substances
Manslaughter	Manslaughter (remainder)
Maintaining a sexual relationship with a child	Maintaining a sexual relationship with a child
Unlawful sodomy	Maintaining a sexual relationship with a child
Kidnapping for ransom	Kidnapping
Grievous bodily harm	Assault occasioning grievous bodily harm
Dangerous operation of a vehicle	Driving causing death Driving causing grievous bodily harm
Burglary	Unlawful Entry with Intent/Burglary Break and Enter
Attempted Robbery	Armed robbery Non-aggravated robbery
Attempt to murder	Assault occasioning grievous bodily harm Attempted murder Wounding
Acts intended to cause grievous bodily harm and other malicious acts	Assault occasioning grievous bodily harm Wounding Assault with intent to commit indictable offence Other acts intended to cause injury, nec (remainder) Resist arrest, incite, hinder, obstruct police

## Appendix 2

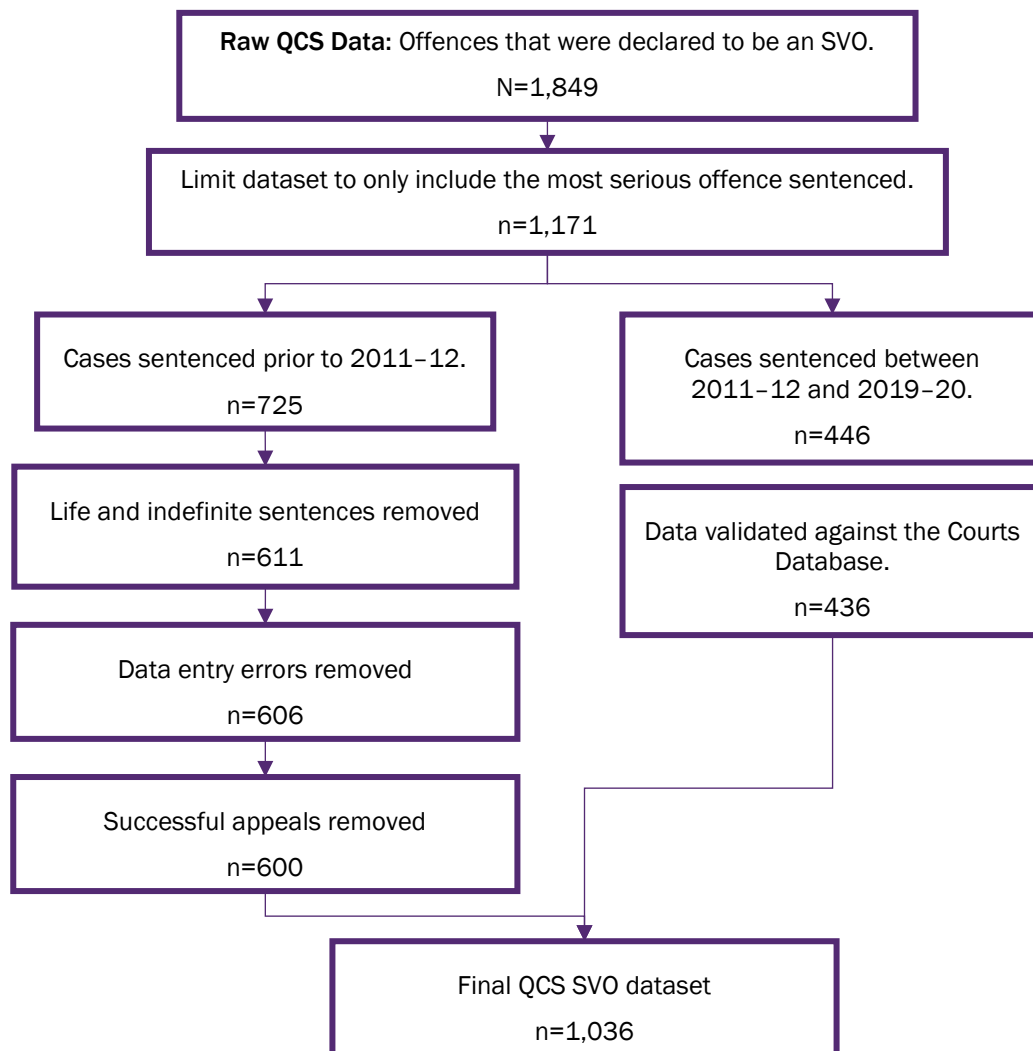
### Data cleaning received from Queensland Corrective Services

The dataset received from QCS included information on 1,849 offences that were a declared SVO. Only the most serious offence sentenced for a prisoner on a particular day was included in this analysis – the application of this counting rule changed the sample size to 1,171 cases.

For cases sentenced between 2011–12 and 2019–20 (446 of the cases), the QCS data was cross-validated against courts data. This resulted in the elimination of a further 10 cases, either because the case was successfully appealed, or because the offender was subject to a life sentence.

For cases sentenced earlier than 2011–12 (the remaining 725 cases), a series of counting rules were applied to validate the dataset. Cases that involved a prisoner serving a life sentence were excluded from the dataset (n=114), and a small number of cases of less than 5 years sentenced in the Magistrates Courts were excluded as they were determined to be out of scope (n=10).

The final sample size for prisoners subject to an SVO declaration from July 1997 to June 2020 was 1,036.

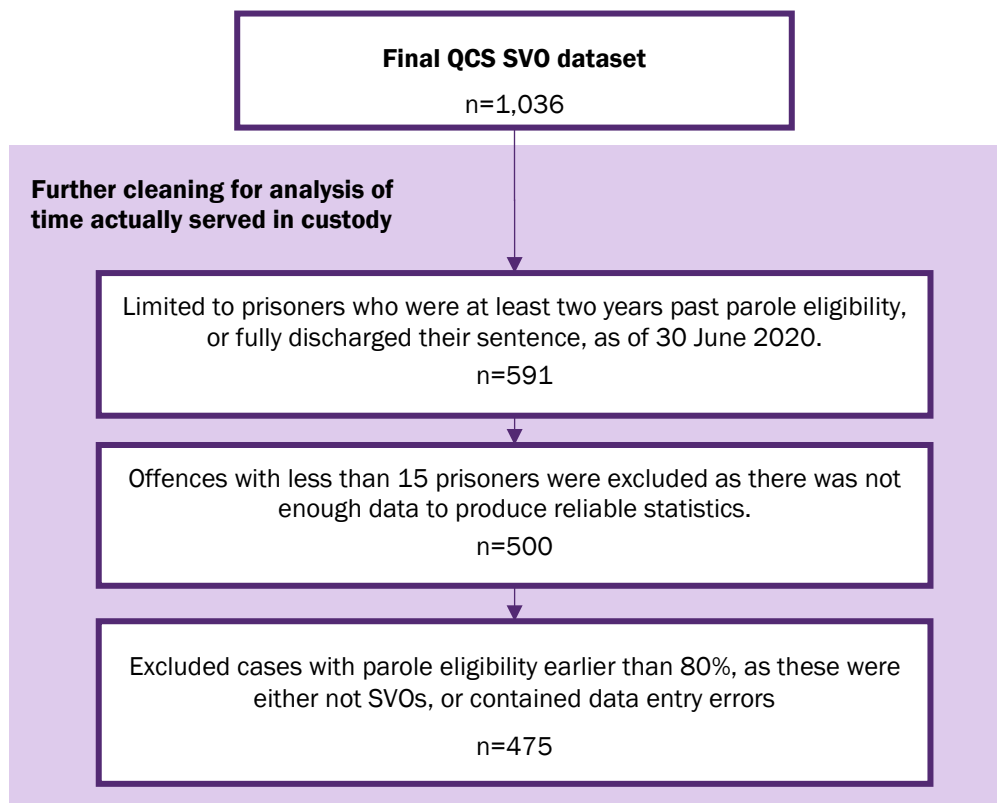


Further data cleaning was undertaken for analysis pertaining to the amount of time prisoners served in custody beyond their parole eligibility date before being released on parole.

Prisoners sentenced for offences declared to be serious violent offences generally serve long periods of time in custody before being released on parole. This means that the vast majority of prisoners sentenced in the past 8 years are still in prison and have not yet reached their parole eligibility date. For this analysis, the dataset was limited to only include prisoners who have fully completed their sentence (that is, have been released to freedom), and those who have been eligible for parole for at least two years. This final dataset contained 592 prisoners.

A small number of cases were excluded (n=20) as the parole eligibility date was set at less than 70 per cent (determined to be out of scope).

Offence categories with fewer than 15 prisoners were excluded from analyses to ensure robust statistical measures.



The figure above shows the difference in distribution of head sentences. The sample of 591 prisoners to be included in the analysis is biased towards offenders with shorter head sentences as these offenders are more likely to have fully discharged their sentence.

The majority of cases in this sample were sentenced between 1999 and 2008. Few prisoners sentenced from 2009 onwards have become eligible for parole, which is important to note as the offences sentenced in recent years differ from the types of offences sentenced earlier in the life of the scheme. The offence of maintaining a sexual relationship with a child is under-represented in this sample – due primarily to the fact that the majority of these offences were sentenced between 2017 and 2019, and these prisoners have not yet approached their parole eligibility date.

A second dataset was received from QCS which included information on any prisoner sentenced between 1 July 1997 and 31 March 2021 for rape, maintaining a sexual relationship with a child, manslaughter, attempted murder, robbery, torture, assault occasioning grievous bodily harm, or deal or traffic in illicit drugs that was not subject to an SVO. The data was cleaned for analysis purposes. Cases that met the following criteria were removed:

- suspended sentences (not eligible for SVO)
- sentences less than 5 years
- cases with successful appeals
- offenders released on probation (rather than parole)
- commonwealth offences (where release is determined by the Commonwealth Attorney-General)
- cases where an aggregate sentence determined the parole eligibility date rather than the specific sentenced offence
- life and indefinite sentences
- any cases with data anomalies.

If a QCS episode involved multiple offences, the offence with the longest sentence was selected to be indicative of the MSO.

