Queensland Sentencing Round-up

Queensland Sentencing Advisory Council

2024: Fourth Quarter

Note to readers:

The Sentencing Round-Up summarises select sentencing publications and developments in Queensland between 1 April and 30 June 2024 as identified by the Council. It is not intended to be exhaustive. 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.

FOCUS ON: Sentencing of children and young people

Relevant Bills

Making Queensland Safer Bill 2024

Introduced on 28 November 2024, the Bill was passed on 12 December 2024.

'The overarching objective of the Bill is to give effect to the Government's election commitment to implement legislative reforms as part of the *Making Queenslander Safer Plan* (the Plan), including "adult crime, adult time".'(Making Queensland Safer Bill 2024 (Qld), Exp Notes 1).

More detail is below (see 'Legislative amendments – *Making Queensland Safer Act 2024*').

Legislative amendments

Making Queensland Safer Act 2024 (Qld)

The Act, passed on 12 December 2024, makes several amendments to the *Youth Justice Act 2006* ('YJA') to give effect to the Government's commitment to implement 'a range of measures to deter young people from committing serious crimes in the community, and reducing the number of victims that are caused harm by these young offenders' (Exp Notes, 1).

The Act also amends the *Childrens Court Act 1992* (Qld) ('Childrens Court Act') to: 'ensure the victim, relatives of a victim and accredited media can be present during criminal proceedings' (Exp Notes 1).

Adult crime, adult time

The following offences in the *Criminal Code* (Qld) are subject to the operation of the new laws removing current restrictions on minimum, mandatory and maximum sentences:

- murder (sections 302, 305)
- manslaughter (sections 303, 310)
- unlawful striking causing death (section 314A)
- acts intended to cause grievous bodily harm and other malicious acts (section 317)
- grievous bodily harm (section 320)
- wounding (section 323)
- dangerous operation of a vehicle (section 328A)
- serious assault (section 340)
- unlawful use or possession of motor vehicles, aircraft or vessels (section 408A)
- robbery (section 409, 411)
- burglary (section 419)
- entering or being in premises and committing indictable offences (section 421), and
- unlawful entry of vehicle for committing indictable offence (section 427).

The Act lifts the maximum period of probation and detention that can be imposed under sections 175 and 176 of the YJA to align these with the periods that can be imposed on adult offenders.

Children will also be subject to the equivalent minimum periods of detention that align with applicable minimum periods of imprisonment that apply to adult offenders and to requirements that a term of imprisonment (in this case, detention) must be the penalty, or part of the penalty, for the offence.

The new minimum, mandatory or maximum penalties that apply are:

- murder – mandatory life detention with a minimum non-parole period of 20 years for murder (or 25 years for murder of a police officer or 30 years for murder of more than one person or by a person with a previous murder conviction)
- life sentences (other than for murder) will carry a minimum parole eligibility date of 15 years;
- unlawful striking causing death – unless a conditional release order is made, the child must serve the lesser of 80 per cent of the sentence of 15 years in custody, whichever is less [Note: the usual non-parole period in Queensland for children Is 70%, or 50–70% if there are 'special circumstances' - see YJA, section 227]
- dangerous operation of a vehicle with a circumstance of aggravation relating to previous conviction under section 328A(3) of the *Criminal Code* (Qld) – detention must form whole or part of the punishment
- grievous bodily harm, serious assault (in certain circumstances) or wounding committed in a public place while adversely affected by an intoxicating substance – mandatory community service order (maximum period under the YJA still applies).

A conditional release order under section 220 of the YJA applies for any child sentenced for the above offences, even where a mandatory sentence applies, except for murder.

All sentencing options available for children under section 175 of the YJA will still be available, except a restorative justice order under sections 175(1)(da) or (1)(db) as these forms of order are not available when sentencing adults (Exp Notes 4).

The changes only apply to offences committed after commencement (13 December 2024).

Jurisdiction of courts

For one of the 'adult crime, adult time' offences under section 175A of the YJA, a court (whether constituted by a magistrate or by a judge), may order the child be placed on probation for a period not longer than 3 years, or if the court is not constituted by a judge, a period of detention of not more than 3 years. If the court is constituted by a judge, the maximum period of detention that can be ordered is the maximum term of imprisonment that an adult convicted of the offence could be ordered

Removal of detention as a last resort and primary regard to victims in sentencing

The Act amends the YJA to remove the principles of detention as a last resort and that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community (Exp Notes 5).

Courts are also now required under section 150(2) of the YJA to have primary regard in sentencing a young person on the impact of the offending on the victim – which is recognised as the second principle included in the Charter of youth justice principles (to which a court must have regard in sentencing).

These changes only apply to offences committed after commencement (13 December 2024).

Admissibility of child criminal histories

The Act also expands the definition of a criminal history of a child (new section 6 of the YJA) to include cautions, restorative justice agreements and contraventions of a supervised release order.

The Bill amends section 148 and inserts new section 148AA (renumbered section 148A) into the YJA 'to provide that a person's child criminal history, inclusive of police cautions, restorative justice agreements and contraventions of a supervised release order, is admissible when the court is sentencing an adult for an offence' (Bill Exp Notes, 6). The admissibility of a child criminal history is limited to a period of five years.

Who may be present at Childrens Court proceedings

The Act amends the Childrens Court Act to include a relative of the victim among the class of persons able to be present during criminal proceedings (amendment to s 20(1)(c) and to amend the definition of 'relative' in section 20(9) of the Act to include relatives of victims generally (Exp Notes, 7). It also removes the ability of a court to make an exclusion order under section 20(2) (Exp Notes, 7).

The stated purposes of the amendments are 'to further open up the Childrens Court, including by ensuring victims, victims' representatives, victims' relatives, the representatives of relatives of a deceased victim, and persons holding media accreditation cannot be the subject of an exclusion order'. However, offences that prohibit the publication of identifying information relating to the child and other information will continue to apply (Exp Notes, 7).

They apply to any proceedings on foot or started post-commencement (Exp Notes, 7)

Childrens Court matters which do not proceed by way of indictment (in the higher courts) will continue to be closed to the public.

Other reforms

Other amendments create a new legal framework for the transfer of detainees to adult custody, and to change the current 'opt-in' approach to the victims' register to an 'opt out' model to dispense with the need for an application to be made. Some classes of persons will still need to apply.

Parliamentary inquiries and reports

Justice, Integrity and Community Safety Committee, *Making Queensland Safer Bill 2024* (Report No. 1, 58th Parliament, 6 December 2024)

Following its inquiry into the Making Queensland Safer Bill 2024, the Committee made one recommendation, found at page 16 of the report, that the Bill be passed.

R v Ferns [2024] QCA 262

Keywords: child abuse material offences, commonwealth offences, mandatory minimum sentences.

An application for leave to appeal against sentence dismissed in respect of 6 Commonwealth offences involving child abuse material. Ferns pleaded guilty to all offences and was sentenced to 15 years imprisonment with a non-parole period of 8 years' imprisonment (head sentence).

In 2020, the maximum penalty for one of the offences increased from 25 years imprisonment to 30 years imprisonment (*Criminal Code* (Cth) s 474.24A). The mandatory minimum term was 7 years imprisonment unless there was cooperation with enforcement agencies (of which there was none in this case). The sentencing judge noted that 'as a consequence of these amendments, sentences imposed in earlier cases are useful only in identifying unifying principles, as the obvious legislative intention is to lead to a general increase in sentences for those offences.' [24]

The Court of Appeal noted the guidance from the High Court of Australia when considering mandatory minimum sentences (see *Hurt v The King* [2024] HCA 8, [32]–[35]; [88]–[89]) and the relevant considerations when assessing the objective seriousness of child abuse material offences (See *Director of Public Prosecutions v CCQ* [2021] QCA 4 [8]–[9]). He appealed on the basis the sentences were manifestly excessive because the objective seriousness of the offences was at 'the lower end of the scale of seriousness for offences of its kind.' The Court disagreed and considered 'it is the quality of the material rather than its quantity, that is often more determinative of the gravity of the offending conduct.' [34].

R v RBO [2024] QCA 214

Keywords: delay, domestic violence offences, evidence of past domestic violent behaviour, uncharged acts.

Application for leave to appeal against sentence granted for 2 assaults occasioning bodily harm and 2 common assaults. RBO was convicted of those offences following a trial but he was acquitted rape and 2 other assaults. He was sentenced to a head sentence of 16 months imprisonment, suspended after 8 months for an operational period of 18 months. On appeal this was reduced to 12 months imprisonment suspended after 6 months for an operational period of 12 months.

RBO and the victim were married for about 8 years and are now divorced. They had 3 children. There was evidence at trial of RBO's domestically abusing and controlling behavior during the marriage, including financial control by removing her access to ATM cards. The offences RBO was convicted of occurred after she had withdrawn $160 from a bank account without his knowledge. RBO yelled at her, physically assaulted her causing bruising and he pushed her onto the broken glass causing a painful minor laceration to her foot. One child witnessed some of the incident and it woke the other 2 who were crying.

The Court of Appeal noted evidence of past domestic violence 'could not increase the sentence' (*R v D* [1996] 1 Qd R 363, 403–4). The court should also be cautious of evidence of ongoing harm and mental consequences on the victim: 'The impact of uncharged other alleged domestic violence … of which the applicant was acquitted is not relevant.' [104].

The Court noted that while the degree of violence and injuries were 'towards the lower end' of seriousness, because it was domestic violence this increased the seriousness (as recognized by the aggravating factor in PSA s 9(10A)). Court decisions before the aggravating factor was introduced are not 'irrelevant' [111].

The Court concluded the sentence was manifestly excessive as it only involved 'a single episode of first offender domestic violence' [118]. He had also been on bail for 4 years and the reasons why this was particularly relevant to sentencing included that RBO 'exhibited his capacity to rehabilitate by continuing in paid employment, not being convicted of any offences and complying with his bail conditions in the meantime.' [127].

R v Ponsonby [2024] QCA 229

Keywords: drug offences; likelihood of release on parole as a sentencing consideration.

Application for leave to appeal granted with the sentence of 7 years imprisonment (with parole eligibility 3.5 years, being 50%) increased to 8.5 years' imprisonment with parole eligibility after 2 years 10 months (one-third of the sentence).

Ponsonby pleaded guilty to a number of offences, the most serious being possessing 373.3g of pure methylamphetamine. He had a lengthy criminal history with drug and property offences and had previously been sentenced to imprisonment. The prosecutor and defence raised Ponsonby's poor prospects of obtaining parole because of his criminal history and part compliance with court orders. The sentencing judge agreed to reduce the head sentence instead of the non-parole period to reflect the plea of guilty because he 'can't be thought to be a particularly good parole prospect' [23].

A High Court of Australia decision was handed down after this sentence and appeal hearing but before the appeal judgment was delivered. The High Court stated 'the function of a judge in sentencing does not include a consideration of the prospects of release on parole' (*R v Hatahet* (2024) 98 ALJR 863 [27]). Because of this decision, the Court of Appeal considered the sentencing judge was in error, and resentenced Ponsonby.

Mullins P noted '[t]here can be flexibility for sentencing' as long as the judge does not take irrelevant considerations into account [3].

Supreme Court of Queensland sentencing remarks

R v LZY & Porter [2024] QSC 237

Keywords: co-offenders (juvenile and adult), murder, manslaughter, De Simoni, 'particularly heinous' offence.

LZY and Porter were co-offenders for the armed robbery and killing of an Uber driver. LZY, aged 17 years at the time of the offence, pleaded guilty to murder, while Porter, aged 18 at the time of the offence, pleaded guilty to manslaughter. Both offenders pleaded guilty to armed robbery, unlawful use of a motor vehicle and willfully and unlawfully setting fire to a motor vehicle. LZY was sentenced under the *Youth Justice Act 1992* (Qld), while Porter was sentenced under the *Penalties and Sentences Act 1992* (Qld).

LZY and Porter were drinking and while heavily intoxicated decided to steal a car. They called an Uber which was driven by the victim.

The sentencing judge applied the De Simoni principle to ensure neither offender was sentenced for deprivation of liberty which was not charged.

The judge referred to *R v Williams (a pseudonym)* that 'all the circumstances' must be taken into account when considering whether the offence was 'particularly heinous', including subjective factors such as rehabilitative prospects. His Honour concluded it was particularly heinous, thereby increasing the maximum penalty for that offence from 10 years to life imprisonment.

Childrens Court of Queensland sentencing remarks and sentence reviews

R v GB [2024] QChC 18

A juvenile offender was to be sentenced for offences committed on two occasions in the same month, including dangerous operation of a vehicle causing 3 deaths and grievous bodily harm to another victim, while excessively speeding and unlawfully using that motor vehicle.

The prosecution sought to rely on a criminal history which included the child's appearance on a date a year prior. On the earlier occasion in the Magistrates Court, he was sentenced as a person who had no criminal history and received a restorative justice court diversion referral. An agreement was reached as a result of this referral.

In deciding the approach to be taken as to whether this forms part of 'the child's previous offending history' which a court must have regard to in sentencing, the Childrens Court of Queensland considers the meaning of several sections of the *Youth Justice Act 1992* (Qld) ('YJA').

The Court concludes in this case that the circumstances relating to the child's appearance before the Childrens Court Magistrate on the earlier occasion is not to be regarded as part of his criminal history, within the meaning of s 154 of the YJA and accordingly his previous offending history, within the meaning of s 150(1)(e) of the YJA.

R v Griffith [2024] QDC 207

Keywords: Life imprisonment, parole eligibility date, multiple sexual offences against young children over extended 20-year period by childcare worker.

The defendant pleaded guilty to 307 child sexual offences, including 15 counts of repeated sexual conduct with a child, 28 counts of rape and 190 counts of indecent treatment of a child under 16 under 12 under care, as well as child exploitation material offences. The Crown submitted for a sentence of life imprisonment with a non-parole period of not less than 30 years. It submitted the defendant's conduct fell 'within the worst category of cases for which the maximum penalty for the counts of repeated sexual conduct of a child is prescribed'. [102] 'No moderation of the sentence for his cooperation in the plea of guilty' was argued to be warranted, with punishment, denunciation and community protection argued to 'overwhelm the issue of rehabilitation. [102] The sentencing judge agreed [149]. A life sentence was imposed someone 3 of the counts of rape (involving penile-vaginal penetration) and all counts of repeated sexual conduct with a child. The judge determined the minimum non-parole period required by operation of law of 15 years should be extended. The non-parole period was set at 27 years taking into account the defendant's cooperation with the investigation and plea to an ex officio indictment.

Alexander v Commissioner of Police [2024] QDC 62

Keywords: 222 appeal; breach of suspended prison sentence; concurrent or cumulative sentence; victim of domestic violence; domestic violence as a mitigating factor.

The applicant pleaded guilty to 34 offences involving fraud (falsely claiming refunds using found store receipts), property offences and drug offences. She was sentenced to 6 months imprisonment. The offending breached a probation order and a 3-month suspended imprisonment order which was activated and ordered to be served cumulatively (resulting in a total sentenced of 9 months imprisonment). The sentencing Magistrate considered '[s]he had exhausted all leniency… People had been "ripped off" or "defrauded" and punishment and protection loomed far above rehabilitation.' [11].

On appeal, the Court considered the applicant's circumstances demonstrated rehabilitation was still an important consideration. The applicant was homeless and the motivation for the offending was to support her son. She had been the victim of significant domestic violence, which was a mitigating factor (s 9(10B) PSA).

The court held it was open to activate the suspended imprisonment and for it to be served cumulative and served last instead of first (amendments to the PSA meant *R v Gander* [2005] QCA 45; 2 Qd R 317 [24] was not applicable law). However, due to mitigating factors (plea of guilty, steps towards rehabilitation, experiencing domestic violence) the suspended imprisonment was ordered to be concurrent (served at the same time) (resulting in a total sentenced of 6 months imprisonment instead of 9 months imprisonment), and she was immediately released on parole.

Jones v The Commissioner of Police [2024] QDC 82

Keywords: 222 appeal, relevance of youthfulness and criminal history to sentence, unlawful use of a motor vehicle in the night and driving without a licence.

The appellant, a 20-year-old man, was convicted on his own pleas of guilty of one charge of unlawfully using a motor vehicle in the night and one charge of driving without a licence following disqualification. He was sentenced to 15 months' imprisonment for the first charge and 3 months' imprisonment (to be served concurrently, meaning at the same time) for the second, and disqualified from holding or obtaining a driver's licence for 2 years. Parole release was fixed after serving 5 months.

The applicant had a 'lengthy and relevant criminal history [convictions for 67 offences].' [16] The prosecutor had submitted for a sentence of in the range of 2 years, with release after serving one-third. The Magistrate in sentencing him said 'at 20 [he] is quite correctly classified …as a recidivist offender [and] … beyond the point of taking youth into consideration or the prospects of rehabilitation'. [20]

The Court found this was an error. 'Longstanding principles recognise that age, particularly youthful age, is considered as a mitigating factor on sentence, primarily because of the greater opportunity to effect principles of rehabilitation'. [31] The sentencing Magistrate: 'erroneously allowed the … relevant past offending to guide or affect him such that he failed to consider a material consideration of youth and prospects of rehabilitation, which resulted in an excessive sentence outside the permissible range'. [40]

A sentence of 12 months' imprisonment was substituted for the most serious charge with parole release at approximately one third (immediate release taking into account time pre-sentence custody time served).

Hancock v Commissioner of Police [2024] QDC 217

Keywords: 222 appeal, suspended sentence of imprisonment, setting of operational period and proportionality, contravention of a supervision order under Dangerous Prisoners (Sexual Offenders) Act 2003.

The appellant, a 39-year-old man with autism and an intellectual impairment, was convicted by his pleas of guilty to 2 offences of contravention of a supervision order made under the *Dangerous Prisoner (Sexual Offenders) Act 2003* (Qld). The contravention involved him failing to comply with the reasonable directions of a Corrective Services Officer and to respond truthfully as to his whereabouts and movements. This was in the context of him telling his carer he was going to get a drink, but then going to a public urinal where he deliberately viewed the genitals of young male children.

The appellant was sentenced to 12 months' imprisonment to be served concurrently (at the same time) suspended after he had served 3 months' imprisonment with an operational period (during which time he would have to not commit any further offences or be at risk of serving the unsuspended portion) for 3 years.

In allowing the appeal and setting a shorter 2-year operational period, the Court referred to proportionality as involving 'proportionality between the gravity of the crime committed and the sentence imposed', rather than 'some inferred proportionality between the constituent components' of a suspended sentence of imprisonment. [51] In the circumstances, the Court found the 'sentences imposed were rendered excessive by the length of the operational period' taking the rehabilitative steps taken by the appellant into account. [58]

Victorian Sentencing Advisory Council, *Sentencing in Victoria 2013-2014 to 2022-23* (December 2024)

This statistical report provides updated data on Victorian sentencing practices over the past decade, from 2013 – 2023. The report aims to provide the broader community an insight into Victorian sentencing practices in the Supreme Court, Country Court, Magistrates' Court and Children's Court. The data included explores number and gender of people sentenced annually, offence type, sentence type, and sentence length.

Sentencing Council for England and Wales, *The Effectiveness of Sentencing Options on Reoffending* (sentencingcouncil.org.uk) (September 2024)

In this report, the Sentencing Council for England and Wales provide a literature review on sentencing effectiveness, specifically regarding reoffending. The findings emphasise the significance of considering the unique circumstances of each case. Effective sentencing depends on consideration of these factors (e.g., health issues and addiction). The report presents robust evidence against the effectiveness of short custodial sentences (under 12 months) in preventing re-offending. Community and suspended sentences were highlighted as a more effective option for decreasing re-offending. The Council calls for further research into the use of these alternative options.

Lorana Bartels, '2023 Sentencing Review (2024) 47 *Criminal Law Journal* 406 (November 2024)

This review focuses on the sentencing issues associated with disability. It considers the Australian legislation and case law governing relevant health issues that may constitute disability as a sentencing factor. It also summarises relevant sections of bench and bar books and discusses specialist court programs designed to respond to the needs of people with disabilities. It also highlights relevant findings and recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, as well as other recent research. The review considers the need for legislative, case law and practice reforms and advocates for an intersectional approach which is co-designed with people lived experience of both disability and the criminal justice system.

Edward McGinness, 'Objective Seriousness and Moral Culpability in Sentencing: The Role of Causation' 47 *Criminal Law Journal* 330 (November 2024)

This article explores decisions of the New South Wales Court of Criminal Appeal to consider the relationship between objective seriousness and moral culpability in the context of sentencing. It considers how factors such as mental illness or childhood deprivation may impact on these assessments, including with respect to 'causation'. The author suggests causation should be viewed as a matter of degree, where the extent of the impact on culpability and objective offence seriousness is based on the proximity of the subjective factors to the offending, rather than the continued use of threshold tests of 'sufficient' proximity.

Lucinda Lester, 'Evaluating the Validity of Continuing Detention Orders after Fardon, Benbrika, Garlett and NZYQ' 47 *Criminal Law Journal* 302 (November 2024)

This article considers legislation across Australia enabling the continued detention of offenders assessed as posing an ongoing risk to community safety at the conclusion of their sentence, noting that 3 High Court decisions have upheld the constitutionality of these regimes. It suggests these decisions should be reopened and overruled on the basis that Ch III courts must not exercise non-judicial power and that state courts must retain their institutional integrity as entities within the integrated judicial system prescribed by Ch III with reference to the recent decision of *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*.

Sentencing Council of England and Wales, *Research Review of the Overarching Principles: Domestic Abuse Sentencing Guideline* (December 2024)

Using a mixed methods approach (survey data, interviews, and court sentencing data), this review explored how sentencers apply and view the domestic abuse sentencing guidelines in England and Wales. The survey data revealed that 44 per cent of sentencers report 'always' referring to the guidelines, while 40 per cent report referring to these 'sometimes', and 13 'rarely' when sentencing offences in the context of domestic abuse. A very high proportion (95%) of sentencers were 'satisfied' of 'very satisfied' with the guidelines ease of use. Sentencers who rarely referred to the guidelines reasoned they were 'common sense', 'obvious', or less prioritised than offence-specific guidelines.

The review also explored how the introduction of the domestic abuse guidelines impacted sentencing outcomes. The degree of impact differed by offence type – for harassment cases, a significant increase in sentencing was observed, for breach of protective order cases, a slight increase was observed, and for criminal damage, little increase was observed.

The Sentencing Council has also published a response to the review.

New Zealand Law Commission, *Public Safety and Serious Offenders Review*

Commencing July 2022, Te Aka Matua o te Ture, The New Zealand Law Commission is reviewing the laws for preventative detention and post-sentence orders. These laws aim to protect the New Zealand public from re-offending risks by allowing the extension of detention or supervision (beyond their fixed-term prison sentence) of serious offenders (convicted of violent or sexual crimes, and present risks of further offending). The current review aims to examine these laws and consider whether they reflect current understandings of re-offending risks and provide appropriate protection, address perspectives of the Māori peoples, align with international human rights law, and their relationship with extended supervision orders and public protection orders.

Parliament of Victoria, *Youth Justice Bill Brief* (July 2024)

On the 18th of June 2024, the Youth Justice Bill was introduced to the Legislative Assembly in Victoria. The Bill proposes to replace the existing youth justice legislative framework with a standalone Youth Justice Act. Major proposed amendments include raising the minimum age of criminal responsibility to 12 years, codifying the *doli incapax* legal principle (common law presumption that children aged 10-14 years lack the necessary knowledge to possess criminal intention), promoting diversionary and restorative justice, and introducing a trial of electronic monitoring. This Bill Brief summarizes the context of the Bill's introduction, outlines of the Bill's major themes and provisions, outlines stakeholder responses to the Bill, and provides a comparison of youth justice frameworks from Australian jurisdictions.

NSW Sentencing Council, Firearms, *Knives and Other Weapons Offices: Report* (September 2024)

The NSW Sentencing Council was asked to review the sentencing of firearms, knives and other weapons offences. This report presents the Council's recommendations for reform and was informed by preliminary submissions, preliminary consultations a consultation paper and an issues paper released in September and October 2023 and submissions received in response.

Julian v Roberts et al, *Who's in Prison and What's the Purpose of Imprisonment? A Survey of Public Knowledge and Attitudes* (Sentencing Academy Research Report, November 2024)

This report published by the UK Sentencing Academy, examines public knowledge of, and attitudes to, imprisonments based on a survey of 1,871 adults living in England and Wales. Key findings are:

- Most people acknowledge that they know little about prisons in England and Wales, with almost three-quarters of respondents stating that they knew either 'not very much' or 'nothing at all';

- More than nine in ten respondents significantly over-estimated the proportion of women within the prison population;
- Respondents over-estimated the proportion of the prison population serving a sentence for a violent offence;
- Most respondents incorrectly considered that prisoners released after having served longer sentences had a higher re-offending rate.
- The most important purpose of imprisonment nominated by respondents was protecting the public by removing offenders from society, with rehabilitation the next most commonly-chosen purpose;
- Close to three-quarters of respondents considered prisons to be either 'not at all' or 'not very' effective at rehabilitating offenders and preventing re-offending. While the perception of prisons as being effective at punishing offenders was less negative, over half of respondents thought prisons were 'not at all' or 'not very' effective in performing this function.
- Consistent with many previous surveys, a significant proportion of respondents considered prison conditions to be 'too easy', with close to half of respondents holding this view.

NSW Sentencing Council, *Good Character at Sentencing*. (December 2024)

The NSW Sentencing Council is currently reviewing the *Crimes (Sentencing Procedure) Act 1999* and common law concerning the use of good character to mitigate sentences. The review will explore the interaction between good character and other mitigating factors, the utility of good character evidence, and whether the use of good character evidence is appropriate, equitable, and fit for purpose in sentence proceedings. Additionally, the Council will review victim-survivors' experiences in sentencing proceedings which involve good character evidence. The Council are inviting submissions related to the issues raised in their Consultation Paper: Good Character at Sentencing. Submissions close 14 February 2025.

Kirsten Rønning Rinde et al, 'She Asked for It? Descriptions of Victims' Behaviors Are Associated With Sentencing in Norwegian Rape Trials' *Scandinavian Journal of Psychology* (December 2024)

This article explores the relationship between sentencing outcomes and descriptions of victims in Norwegian rape trials. Using the Illinois Rape Myth Acceptance Scale; "She Asked For It" (scale items include type of clothing, voluntarily following a future-abuser into a private space, previous sexual behaviour, kissing, and saying no unclearly), rape trials from 2013-2023 were examined to explore this relationship. The results revealed that cases including victim blaming descriptions of victims' behaviour resulted in shorter sentences (average sentence length = 25.3 months) than those where victim blaming descriptions were not observed (average sentence length = 41.7 months). This relationship remained significant when controlling for medical evidence, defendant age, and use of violence. The author suggests that including measures to reduce the influence of rape myths on judicial decisions could lead to fairer sentencing outcomes.

Lars Højsgaard Andersen, 'Thirty years of prison alternatives in Denmark: Policy efficiency and inequality before the law' *Nordic Journal of Criminology* Vol 26(1) (December 2024)

This article explores the implications of increased use of non-custodial sentences in Denmark over the last three decades, focusing on community service and home confinement under electronic monitoring. The paper finds the risk of serving the equivalent of up to a year imprisonment is below 50% due to these alternatives. Notably, access to non-custodial sentences was not equitable across income, education, and ethnic backgrounds. The report finds that non-custodial sentences had no noticeable impact on risk of re-offending. The author highlights the necessity of balancing the principle of equality before the law and efficiency when introducing sentencing alternatives.

Judicial Commission of New South Wales, *Therapeutic Jurisprudence: A Practical Guide to Developing Therapeutic Intervention Skills for Judicial Officers in Specialist Courts* (September 2024)

The Judicial Commission of New South Wales released a guide on Therapeutic Jurisprudence for Specialist Courts Judicial Officers. This guide provides practical tools and strategies for incorporating therapeutic techniques into the court room to improve outcomes for offenders. The guide explores theoretical frameworks for improving offender behavior such as cognitive behavioral therapy and systemic family therapy. Practical strategies include adapted communication, emotional regulation, motivational interviewing, and emphasizing culturally appropriate approaches. The guide aims to enhance the therapeutic potential of the legal process, thereby promoting rehabilitation and reducing recidivism.

Shai Farber, 'AI in terrorism sentencing: evaluating predictive accuracy and ethical implications' *Criminal Justice Studies* (October 2024)

This article explores the potential of Artificial Intelligence (AI) to predict accurate sentencing outcomes in terrorism cases. The article compares human judicial judgements (from Israeli civilian and military courts) with AI model predictions. They find the AI predictions aligned closely with the human judgments, however, the AI struggled to comprehend case-specific nuances. AI struggled to comprehend the complex political, social, and cultural factors that underline terrorism cases. AI was also challenged by rare combinations of factors or circumstances. The article highlights the potential of AI as a tool for assisting judicial officers in sentencing, by promoting efficiency and consistency, but stresses the pervasive ethical concerns and challenges, thus calling for further research.

Rachel McPherson, 'Reforming the Landscape for Women who Kill their Abusers in Scotland' *International Journal for Crime, Justice and Social Democracy* (December 2024)

Using Scotland as a case study, the author presents key areas for potential reform within the existing criminal justice framework for women who kill their abusive partners. Two areas for reform are focused upon, specialized domestic abuse courts, and the use of expert evidence in coercive control cases. The author stresses the importance of clear labelling of cases of women killing their abusers as domestic abuse cases. Thus, these cases should be considered within domestic abuse policies. The paper concludes by explaining other potential avenues for reform, including jury directions, character evidence, sentencing, and criminal defenses. Regarding sentencing, the author explains that despite an increased social and legal awareness of domestic abuse, Scottish sentencing data demonstrates that sentences for women who kill their abusers has increased in severity. Amongst Scottish women who had killed their abusive partners, none had been placed on probation or admonished since 2006, and the average custodial sentence has increased from 4.6 years (1990-2006) to 5.6 years (2007-2018). The author calls for the Scottish Sentencing Council to consider the unique circumstances of these types of domestic killings in sentencing guidelines.

Washington State Institute for Public Policy, *Inventory of Evidence-based, Research-based and Promising Programs for Adult Corrections: Final Report* (December 2024)

This report is an update of the Washington State inventory which summarises information about the effectiveness of programs for adults involved in the criminal justice system. For each program where research is available, WSIPP conducts meta-analysis and benefit-cost analysis and then classifies the program as evidence-based, research-based, or promising.

Kathryn Hollingsworth et al, *Children's Knowledge and Opinion of Sentencing*, *Sentencing Academy* (October 2024)

This report explores findings from a 2023 survey of 1,038 children (ages 10-17) living in England and Wales, concerning their knowledge, views, and opinions on sentencing. The report aimed to seek understanding on the extent of criminal justice knowledge held by children who are the age of criminal responsibility. Key findings include:

- Most children reported having spoken to someone about what happens in a criminal court prior to the survey. 57% reported they had discussed this with family and 39% reported asking their teacher. The most reported sources of knowledge about criminal court proceedings were television and film.
- Despite reaching the age of criminal responsibility, 61% of respondents thought the age of criminal responsibility was older than the correct age (10 years old).
- The respondents were less likely than adults to perceive the sentencing of adults as 'too lenient'.
- 81% of respondents identified that judges would sentence an adult more severely than a child for an identical offence. 50% of respondents agreed judges should do this, and 38% thought the offenders should be sentenced equally.
- The respondents generally under-estimated the severity of sentencing for children. When provided with a juvenile sentencing scenario where custodial sentence was the most likely sentencing outcome, 57% of respondents thought the sentence would be non-custodial.

Oglive et al. 'Examining the characteristics of children who experience contact with the youth justice system in Queensland: implications for the minimum age of criminal responsibility' *Current Issues in Criminal Justice* Vol 36(4) (August 2024)

This article follows a cohort of Queensland children born in 1990, to examine the characteristics of children who first encountered the youth justice system between 10-16 years old. The author finds that First Nations children were significantly over-represented among children who had early contact with the youth justice system between 10-13 years old. Although early contact was largely for less serious offending, early contact was associated with more persistent and serious offending outcomes as an adult. The author concludes by suggesting raising the minimum age of criminal responsibility would likely reduce the overrepresentation of First Nations peoples in the criminal justice system.

Steven Carr, 'Through a youth justice practitioner's lens: would a sentencing alternative to a criminal conviction be a small change with a big impact on children's desistance?' in *Alexandra Wigzell et al, Desistance and Children; Critical Reflections from Theory, Research and Practice* (May 2024)

In this chapter, Carr reflects on their experience as a youth justice practitioner and considers the value of sentencing alternatives for youth desistence. Carr argues the adversarial model of youth justice system is detrimental to desistence and rehabilitation. Drawing on his own experience, Carr argues the current structure leaves youth feeling disempowered, stigmatized, and labeled as criminals, which may hinder their ability to move away from anti-social behaviour. Considering this, Carr endorses a "Child First" framework, which prioritizes youth desistance and rehabilitation. The "Child First" approach utilizes remittals to specialist agencies without resulting in a criminal conviction. He emphasizes the importance of the child-practitioner relationship in ensuring positive change and criminal desistance.

Melissa Labriola et al, *Community-based Alternatives to Youth Incarceration* (RAND Corporation, September 2024)

This paper reports on the outcomes of a workshop hosted by RAND, on behalf of the National Institute of Justice, in June 2023 which brought together juvenile justice system administrators, researchers, judges, and policy experts to identify and prioritise the needs that, if addressed, would have the greatest impact on closing detention centres and improving alternatives to youth incarceration in the US. Workshop participants identified and prioritised 30 needs and ranked 11 as high priority. Themes arising were:

- The juvenile justice system disproportionately affects Black communities and families. Disparities exist at most points in the process, leading to a need for analysis of the major decision points to better understand how such disparities are produced. Part of this analysis requires examining risk tools and their use.
- With youth incarceration declining in the US, family engagement by the juvenile justice system will be critical for ensuring positive outcomes. There is a lack of research on family engagement and intervention, particularly for those youth with the highest levels of needs.

Elizabeth Peatfield, Youth and Justice- Only a Boy in *The Reality of Justice in England's Lower Courts* (November 2024)

This chapter explores the issue of minimum age of criminal responsibility in the England and Wales context. The chapter reviews the English youth justice system, whose punitive approach contradicts developmental science and youth welfare. To explore this issue, the author uses a case study to highlight the failings of the punitive youth justice system, and the significance of early rehabilitation and treatment. The author argues that children and adolescents, who are still developing emotionally and cognitively, cannot sensibly be tried with the same standards of accountability as adults. Instead, a "Child First" framework is proposed, where youth offender welfare and rehabilitation is prioritized over punitive punishment. Thus, addressing the root-causes of youth offending and reducing unnecessary criminalization.

Lisa Ewenson, 'Lived experiences of youth justice detention in Australia: reframing the institution in a decarcerated state' *Australian Journal of Human Rights* Vol 30(1) (October 2024)

This article explores the lived experiences of youth detention in New South Wales and the Northern Territory. By exploring narratives of youth detention, the author argues for shifting away from highly scrutinized environments towards an alternative provisional-rights based approach. The participants described youth detention as providing safety, learning opportunities, peer connections, and cultural support which was missing from their lives outside of detention. The author argues that youth detention offers a unique opportunity to rehabilitate children who are the most vulnerable, thereby promoting criminal desistance.

Suzanne Rock et al, 'From 'raise the age' to 'raise the awareness': how knowledge affects public opinion of the minimum age of criminal responsibility in Western Australia' *The International Journal of Human Rights* (October 2024)

Utilizing semi-structured interview data, this article explores the people of Western Australia's knowledge and perspectives on the minimum age of criminal responsibility (10 years old). The findings revealed that participants had low-levels of knowledge about the minimum age of criminal responsibility, and when provided with knowledge of the minimum age, some participants were surprised. When provided knowledge about age-dependent social-milestones and developmental maturity levels, the participants generally agreed that the minimum age of criminal responsibility was inconsistent with this information. Participants expressed support for rehabilitative sentencing options for youth, unless the crime was of serious nature. Participants suggested that the minimum age should be assessed and applied on a case-by-case basis to ensure offenders were held accountable. Overall, the participants were in favour of increasing the minimum age of criminal responsibility from 10 years to 12-18 years of age and reaffirmed the need to spread community knowledge about the issue.

Syamsuddin Muchtar et al, 'Juvenile Criminal Responsibility in Justice Systems: A Comparative Study of Judicial Interpretations in Indonesia and Australia' *Jambe Law Journal* Vol 7(2) (November 2024)

This article compares the youth justice systems of Indonesia and Australia to explore how legal systems balance cultural obligations during judicial judgements. The findings revealed that Indonesian judges incorporate theoretical, sociological and legal considerations during sentencing. Thereby ensuring that that the sentence aligns with societal and local cultural values. This results in an Indonesian youth justice system which prioritizes restorative justice and rehabilitation over punitive punishment. The author finds that Australia does incorporate cultural values in addition to legal procedures, but not as extensively as Indonesia. By comparing these jurisdictions, the author provides insights into how youth justice systems can adapt to local cultural values while upholding justice principles.

Kelci Alderton-Armstrong, 'The Judicial Approach to the Youth Discount in Aotearoa New Zealand' *New Zealand Law Review* Vol 2024(1) (May 2024)

This article presents a systematic review of the judicial approach to youth as a mitigating factor in sentencing decisions in Aotearoa, New Zealand. To achieve this, 66 sentencing decisions involving young adults convicted of grievous bodily harm or burglary were analyzed. The analysis revealed that the current judicial treatment of youth is inconsistent. The author argues this inconsistency stems from some judges misinterpreting the youth discount due to an artificial narrowing of the Court of Appeal's findings in Churchward v R [2011] NZCA 531. To address this inconsistency, the author recommends introducing sentencing guidelines for judicial use of the youth discount.

Alicia Boatswain-Kyte et al., 'A critical examination of youth service trajectories: Black children's transition from child welfare to youth justice' *Children and Youth Services Review* Vol 157 (February 2024)

This article uses longitudinal administrative data to explore racial differences in the transition from youth welfare to youth justice systems in Quebec, Canada. The article finds that Black maltreated youth are 81% more likely than White youth to transition to the youth justice system. These findings persist despite provincial legislation promoting care over punishment for anti-social youth; Black youth in Quebec experience crossover disparity at similar rates as Black youth in the United States. The author finds that care over punishment legislative efforts is more readily available to White youth than Black youth. For example, amongst youth who were involved in child welfare and youth justice systems, 15.5% of Black youth were sentenced to detention, compared to 7.8% of White youth. Following their first youth justice offence, a higher proportion of Black youth compared to White youth had reoffended (58.2% versus 41.6%). The author argues that the inability to name antiblackness within both the child welfare and youth justice systems allows for its continued perpetuation.