

SENTENCING SPOTLIGHT ON

maintaining an unlawful sexual relationship with a child



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Sentencing Spotlight on...

Maintaining an unlawful sexual relationship with a child

This Sentencing Spotlight examines sentencing outcomes for offences of maintaining a sexual relationship with a child under s 229B of the *Criminal Code* (Qld) finalised in Queensland courts between 2005–06 to 2020–21.

Summary of offences 2005–06 to 2020–21



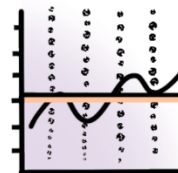
801

**cases in which maintaining
was the most serious offence
(MSO)**



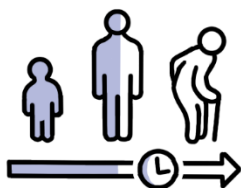
100%

**of offenders sentenced
received a custodial penalty**



7.4 years

average imprisonment length



38 years

average age



8.7%

**of offenders were Aboriginal
or Torres Strait Islander
people**



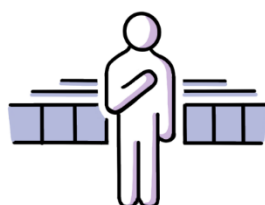
36.5%

**of offences were domestic
violence offences***



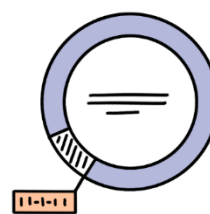
23.8%

**Almost one-quarter of
offenders pleaded not guilty**



98%

of offenders were men



> 80%

**Most associated offences
were sexual offences**

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

Source: Department of Justice and Attorney-General's Queensland Wide Inter-linked Courts (QWIC) database, as maintained by the Queensland Government Statistician's Office (QGSO).

Maintaining an unlawful sexual relationship with a child

Section 229B of the *Criminal Code* (Qld) provides that ‘any adult who maintains an unlawful sexual relationship with a child under the age of 16 years commits a crime’.

Throughout this *Sentencing Spotlight*, the offence of ‘maintaining a sexual relationship with a child’ is referred to as **maintaining**.

QSAC acknowledges that many victims and survivors have expressed strong objections to the naming of the offence of ‘maintaining a sexual relationship with a child’, noting in particular that this wording normalises the sexual abuse of children and wrongly suggests that the child was a willing participant in an equal relationship, causing further distress and psychological harm to victims and survivors who seek a criminal justice response.¹

In 1989, Queensland became the first Australian jurisdiction to introduce legislation addressing persistent child sexual abuse (CSA). This was in response to a recommendation from the Queensland Director of Prosecutions from the *Inquiry into Sexual Offences Involving Children and Related Matters*.² This recommendation came in recognition of challenges, including the substantial delays in reporting abuse and the difficulty children can face in recounting specific circumstances of sexual abuse. It is especially important considering that some offenders commit persistent CSA against multiple children and evade detection for significantly long periods.³

There have been a number of changes to the law regarding the offence of maintaining since its introduction. The law detailed here is that which applied over the data period from 2005 onwards.

The offence of maintaining is unique in that it requires evidence of more than one unlawful sexual act over a period of time. The prosecution is not required to prove each individual unlawful sexual act. The jury only needs to be satisfied that more than one unlawful sexual act occurred between the offender and victim. To prove the offence of maintaining, it does not matter whether the offending took place over a brief period or was sustained over several years.

Maintaining is considered one of the most serious offences of a sexual nature. The offence seriousness is reflected both in the maximum penalty of life imprisonment, and in the offence being the most common to be declared a ‘serious violent offence’.⁴

Maintaining offences can be prosecuted in conjunction with other CSA offences on a single indictment. However, the court cannot order that the sentence for the maintaining offence be served cumulatively with the sentence (or sentences) for the other CSA offences.

The penalty for maintaining

The maximum penalty for maintaining is life imprisonment.

When determining an appropriate sentence for maintaining, there are several considerations that make a particular offence more serious and may result in a higher penalty. These include:

- the vulnerability of the victim (under 12 years or of mental impairment);
- the nature of the offending, such as if the unlawful sexual acts included penetration or the degree of violence used;
- the duration of the unlawful sexual relationship with the child;
- the relationship between the offender and victim (intrafamilial or extrafamilial); and
- whether the offence was committed in the company of others.

There can be considerable diversity in the circumstances associated with maintaining offences. Examples of common features of offences based on sentence lengths are set out in Table 1.⁵

Table 1: Common features of maintaining offences based on sentence length

Sentence length	Common features
Offences which received sentences of imprisonment of up to 5 years ⁶	<ul style="list-style-type: none">• Associated offences include indecent treatment of a child• Involves uncharged acts• Involves non-penetrative sexual abuse
Offences which received sentences of imprisonment between 5 and 10 years ⁷	<ul style="list-style-type: none">• Associated offences include rape and indecent treatment of a child• Involves uncharged acts• Abuse usually occurs over a longer period• Involves penetrative sexual abuse
Offences which received sentences of imprisonment of over 10 years ⁸	<ul style="list-style-type: none">• Associated offences include rape and indecent treatment of a child• Involves uncharged acts• Abuse usually occurs over a period of years• Involves penetrative sexual abuse• Use of violence and or threats towards victim to avoid disclosure or in carrying out offending• Offending may occur against more than one victim

Note: The factors listed are non-exhaustive. Offences with these features might attract a lower or higher sentence than that listed depending on the individual circumstances of the case.

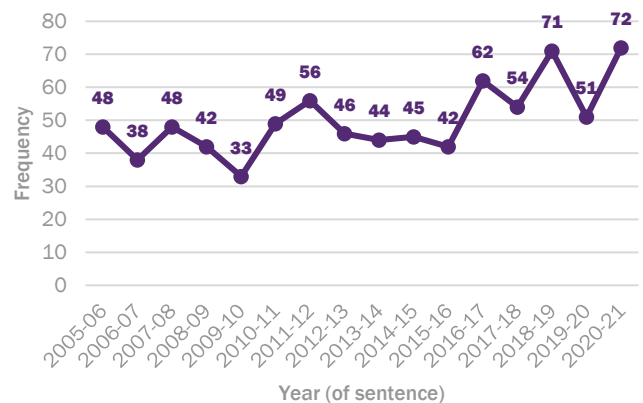
Number of cases and offenders

A total of 946 offenders were sentenced for 977 cases involving offences of maintaining between 2005–06 and 2020–21. For 801 (82.0%) of those cases, maintaining was the most serious offence (MSO) sentenced at the sentencing event.⁹ For the remaining 176 cases where maintaining was not the MSO, the MSO predominantly related to other types of sexual offences (93.2%). Rape (or attempted) (53.4%), indecent treatment of a child (18.8%)¹⁰ and carnal knowledge of children (14.8%) were the most common other sentenced MSOs.

This *Sentencing Spotlight* draws primarily on the 801 cases in which maintaining was the MSO.

Figure 1 shows the number of maintaining (MSO) cases during the 16-year data period, by financial year. The number of cases sentenced has fluctuated in the data period (see Figure 1), with an increasing trend since 2015–16.

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

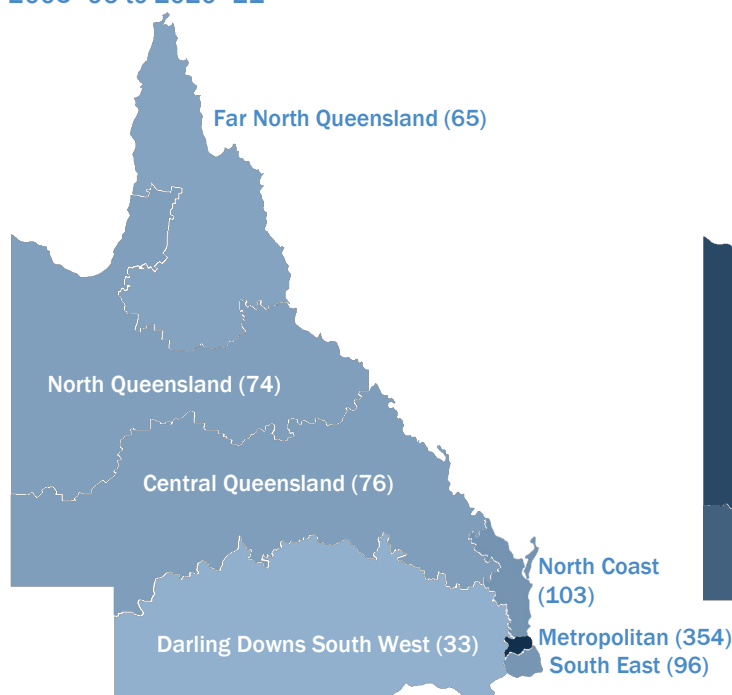


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Regions

The distribution of maintaining offences by region in Queensland is shown in Figure 2. The analysis is based on the court in which they were sentenced. Maintaining cases were most common in the south-east corner of Queensland, and particularly the Metropolitan region, which accounts for nearly half of all maintaining cases (44.2%).

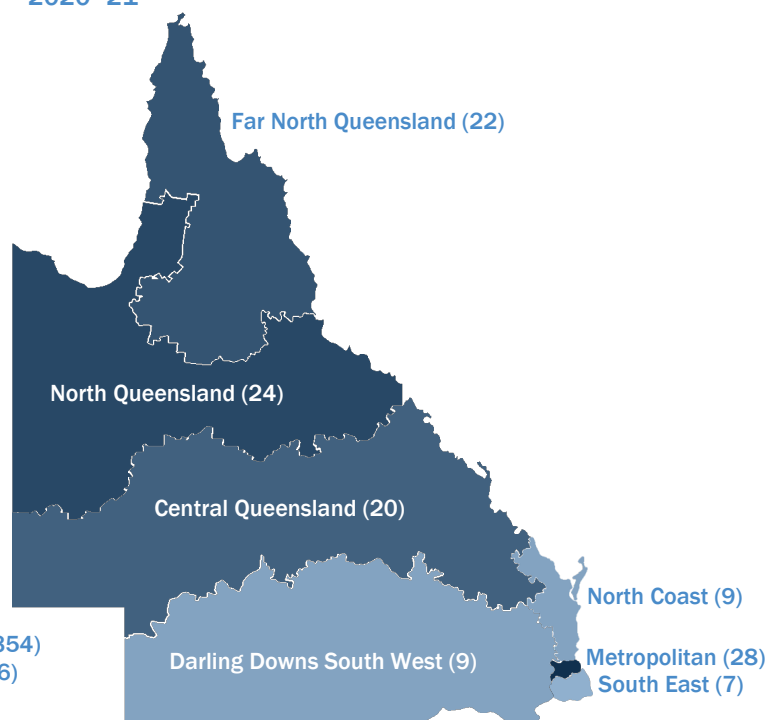
Figure 2: Number of maintaining cases (MSO) by region, 2005–06 to 2020–21



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

The Metropolitan region remains the highest even when accounting for population size (see Figure 3).¹¹ However, the rate per population in the northern regions of Queensland (North Queensland and Far North Queensland) is comparable to that in the Metropolitan South East region.

Figure 3: Rate of maintaining cases (MSO) per 100,000 persons aged 10 years or over by region, 2005–06 to 2020–21



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

Offender characteristics

This section compares the age, gender and Aboriginal and Torres Strait Islander status of all offenders sentenced for maintaining (MSO) over the period from 2005–06 to 2020–21.

Gender

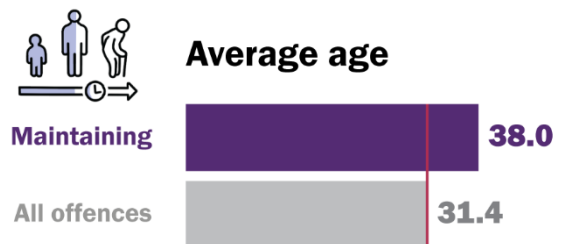
During the 16-year data period, the majority of offenders sentenced for maintaining (MSO) in Queensland were men (98.0%).¹² Violent offending and particularly sexual violence is mostly committed by men. Cases involving maintaining (MSO) show even higher proportions of male offending than most sexual offending, with only 16 of the 801 cases attributable to women.

The average age at time of the offence for women (29.7 years, median = 27.9) was significantly younger than men (38.2 years, median = 36.2).¹³



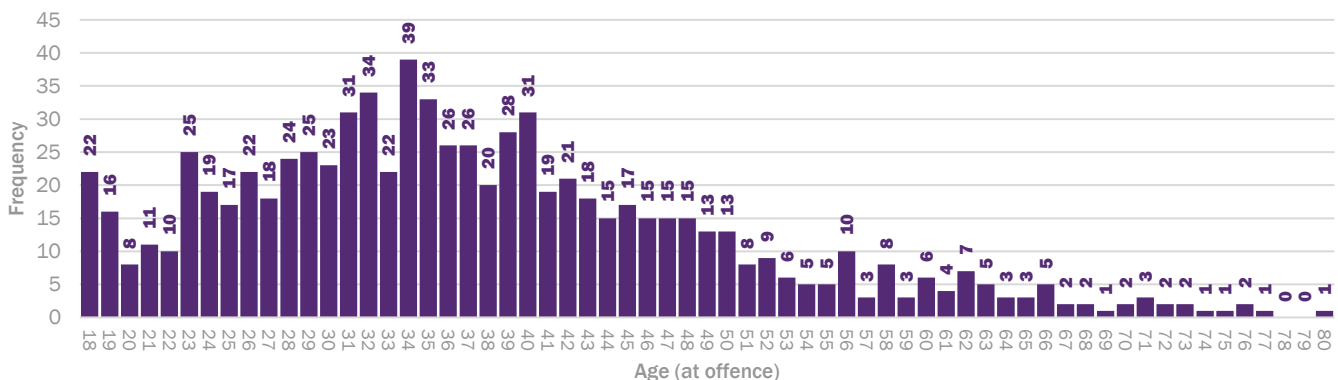
Age

People charged with CSA offences tend to be older than those charged with non-sexual offences.¹⁴ This often relates to situational factors related to CSA offending. Longer term intimate partner relationships may increase the likelihood of having biological children, and associated child related activities. Additionally, more advanced child related employment may increase authority and responsibility over children and subsequently correlate to unsupervised access. These situational factors can increase offending opportunities for CSA.¹⁵ This is particularly pertinent for maintaining offences as they involve persistent CSA, often over prolonged periods.



The average age of all offenders sentenced for maintaining (MSO) at the time of the offence was 38.0 years (median = 36.1 years). There was also a broad variance in age range of offenders between 18 and 80 years.

Figure 4: Number of cases sentenced for maintaining (MSO) by age at offence, 2005–06 to 2020–21



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

Aboriginal and Torres Strait Islander peoples

In Queensland, Aboriginal and Torres Strait Islander peoples are over-represented in a range of offence categories. This is a result of a multiple complex current and historical factors that continue to impact on the lives of Aboriginal and Torres Strait Islander peoples.

Although Aboriginal and Torres Strait Islander are over-represented for maintaining offences (MSO), it is less than for other criminal offences. Offenders who identify as Aboriginal or Torres Strait Islander accounted for 8.7% ($n = 70$) of all offenders sentenced for maintaining (MSO)

(compared to representing approximately 3.4% of adults in the Queensland population).¹⁶

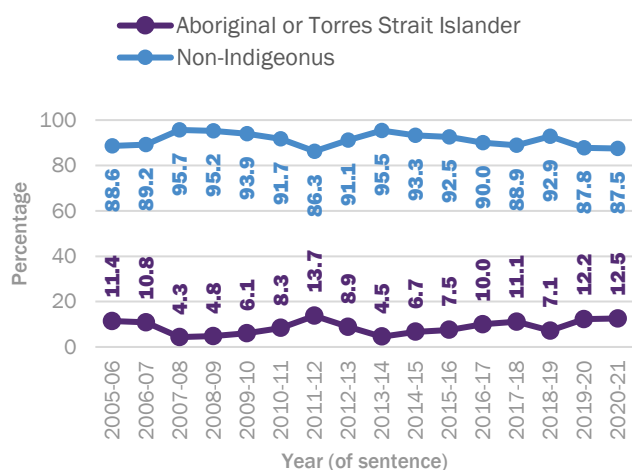
Aboriginal and Torres Strait Islander offenders



Aboriginal and Torres Strait Islander offenders were significantly younger (33.7 years, median = 31.3) than non-Indigenous offenders (38.2 years, median = 36.5).¹⁷

It is important to note that the Aboriginal and Torres Strait Islander population has a younger age structure (median = 23.0) than the non-Indigenous population (median = 37.8), with larger proportions of young people and smaller proportions of older people.¹⁸ Proportionally, the percentage of Aboriginal and Torres Strait Islander offenders sentenced remained relatively stable across the 16-year analysis period (see Figure 5). There have been proportional increases in the past two years, from 7.1% in 2018–19 to 12.5% in 2020–21.

Figure 5: Proportion of offenders sentenced for maintaining (MSO) by Aboriginal and Torres Strait Islander status and year of sentence, 2005–06 to 2020–21



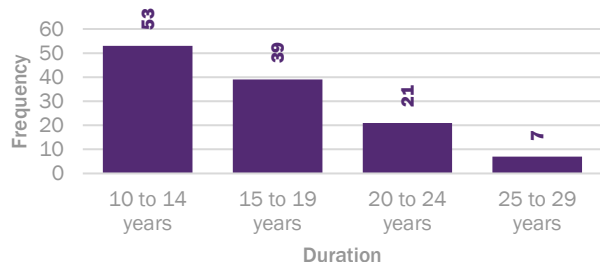
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Note: 21 cases were excluded as the Aboriginal and Torres Strait Islander status of the offender was unknown.

Historical offences

This section examines the proportion of historical maintaining (MSO) cases, defined as a sentencing date more than 10 years after the offence date. Of the 801 maintaining (MSO) cases, 120 (15.0%) were historical offences. The most common period between the offence and sentence for historical maintaining offences was between 10 and 14 years (see Figure 6).

Figure 6: Duration from offence to sentence for historical maintaining (MSO) cases, 2005–06 to 2020–21



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

All the historical maintaining (MSO) cases were committed by men and only seven by Aboriginal or Torres Strait Islander offenders (5.8%). The average duration of

the offending was significantly longer in historical offences (3.7 years) than non-historical maintaining (MSO) cases (2.9 years).¹⁹

Length of offending

The offence of maintaining involves an unlawful sexual relationship that includes more than one unlawful sexual act over a period of time.

The average offence duration was 3.0 years with a median of 2.4 years,²⁰ although there was a large variation of offence duration ranging from 0 to 13 years. The average offence duration for maintaining (MSO) was significantly higher than other sexual offences.²¹ Comparatively, most other sexual offences have an average offence duration of less than one year (0.6 years).²² The long offence duration reflects the nature of maintaining offences being persistent instances of CSA often committed over long periods (although not exclusively).²³

There were no significant differences for offence duration for maintaining (MSO) based on gender or Aboriginal and Torres Strait Islander status.

Domestic and family violence

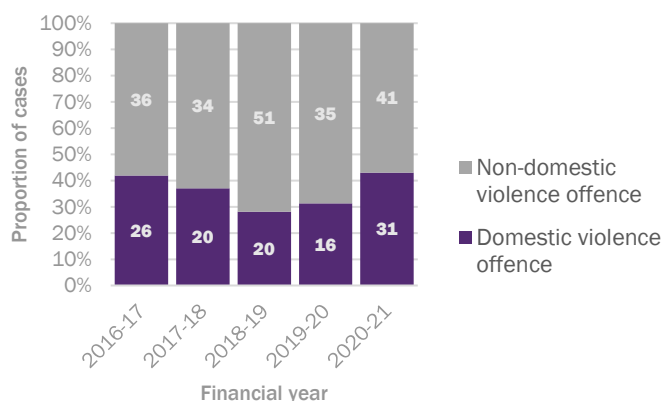
This section examines the volume of cases of maintaining (MSO) linked to domestic and family violence (DFV) over the period from 2016–17 to 2020–21.

From 1 December 2015, Queensland legislation was amended to enable a conviction for an offence committed in a domestic violence context to be recorded or entered in that person's criminal history as a domestic violence offence.²⁴ A person's behaviour is 'domestic violence' if they have a relevant relationship (intimate personal, family or informal care) with the victim. That relationship must be abusive (physically, sexually, emotionally or psychologically), threatening, coercive or the offender must control or dominate the second person in another way and cause them to fear for their safety or wellbeing (or someone else's).²⁵

Maintaining offences sentenced as domestic violence offences are indicative of the high rates of CSA committed in intrafamilial environments. It is estimated that up to a third of CSA relates to intrafamilial abuse.²⁶ This is reflected in sentenced maintaining offences where 36.5% of cases were domestic violence offences (MSOs). The financial year 2020–21 saw the highest proportion of maintaining cases sentenced as domestic violence offences (43.1%), followed by the first full financial year after the legislation was enacted (2016–17). From 2016–17 to 2020–21, the proportion of Aboriginal and Torres Strait Islander offenders sentenced for maintaining (MSO) as a domestic violence offence was

higher (56.3%) than the rate for non-Indigenous offenders (34.8%).

Figure 7: Proportion of maintaining cases that were domestic violence offences (MSO), 2016–17 to 2020–21



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

Sentencing court

The offence of maintaining is an indictable offence usually dealt with in the higher courts (District or Supreme). The defendant can elect for maintaining to be finalised in the Magistrates Court if the victim is 14 years of age or older, and the defendant pleads guilty.²⁷

However, this is subject to the Magistrates overriding discretion not to deal with the matter in the Magistrates

Court because the offender may not be adequately punished under the three-year maximum imprisonment at the Magistrates Court level.²⁸

There were two maintaining (MSO) cases sentenced in the Magistrates Courts. The vast majority of maintaining cases (MSO) were sentenced in the District Court ($n = 793$), with only a small number sentenced in the Supreme Court ($n = 6$).

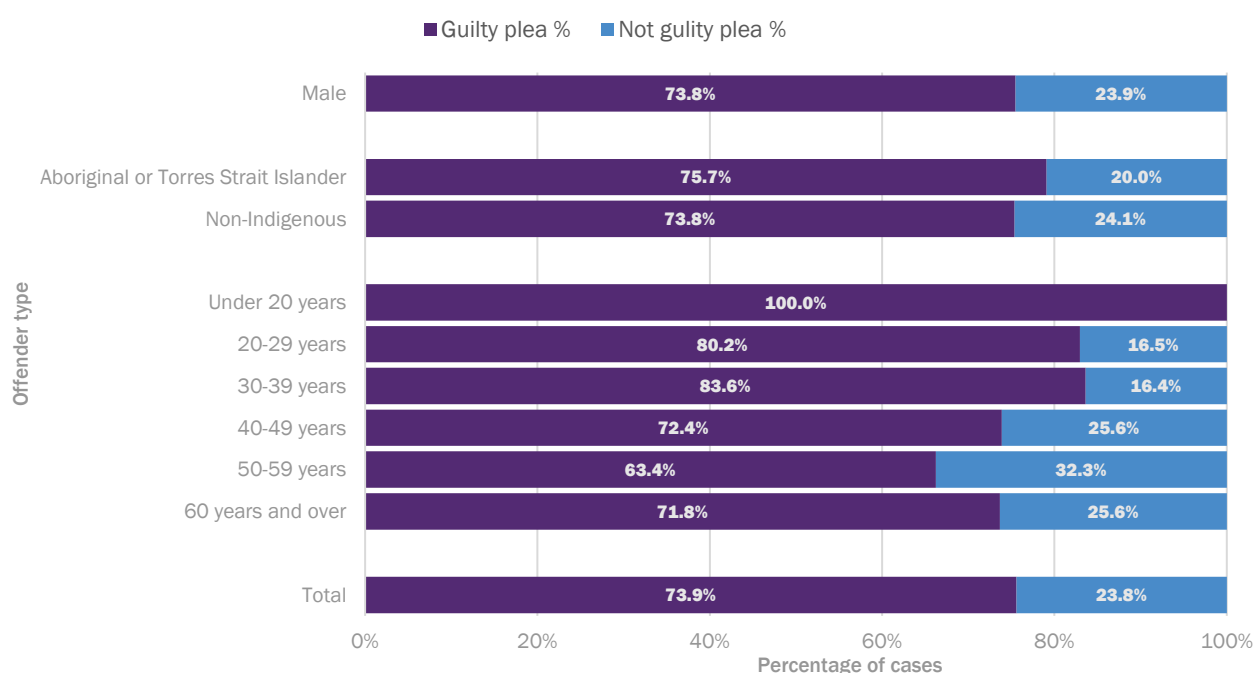
Type of plea

Almost one-quarter of offenders sentenced for maintaining entered a plea of not guilty, either initially or at a subsequent date (23.8%, MSO) (see Figure 8).

This is a larger proportion of not guilty pleas compared to other offences. For example, 16.1% of sexual offences involved a plea of not guilty. For non-sexual offences, such as burglary, only 0.4% of cases (MSO) recorded a plea of not guilty.²⁹

Due to the small number of female offenders, statistical tests were not able to be conducted to determine plea differences based on gender.³⁰ There were no significant differences in guilty pleas based on Aboriginal and Torres Strait Islander status.³¹ Offenders represented in older age groups were identified with higher proportions of not guilty pleas. For example, those aged 50-59 years were twice as likely to plead not guilty for maintaining (MSO) than those offenders aged 20 to 29 years.

Figure 8: Plea type of offenders sentenced for maintaining cases (MSO) by gender, Aboriginal and Torres Strait Islander status and age at sentence, 2005–06 to 2020–21

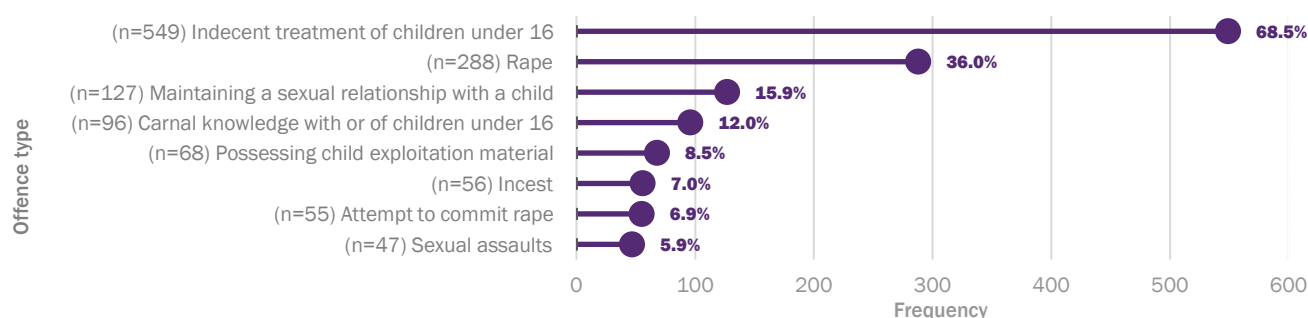


Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.

Note: Offenders with unknown characteristics were excluded from each subcategory.

Associated offences

Figure 8: Most common offences charged alongside maintaining (MSO), 2005–06 to 2020–21



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

Most of the associated offences sentenced with maintaining (MSO) were sexual offences (81.6%), including all of the top eight most common associated offences (see Figure 8). Indecent treatment of children was the most frequent associated offence, accounting for more than two thirds of all associated offences (68.5%). The associated offences did not significantly differ based on gender³² nor Aboriginal and Torres Strait Islander status.³³

Most offenders sentenced for maintaining (MSO) were also sentenced for other offences at the same court event. Of the 801 sentenced cases, 15.6% only had the maintaining offence sentenced in their court event; 6.9% had one additional offence, and 77.5% had multiple.

The number of sentenced offences per offender per court event ranged from 1 to 180, with an average of 9.9 sentenced offences per case (median = 7.0). The largest proportion of offenders were sentenced for between 5 and 10 offences in addition to maintaining (as the MSO) (37.5%).

Female offenders were more likely to be sentenced only for a maintaining offence compared to male offenders, but there were no significant differences for the average number of offences sentenced.³⁴ There were also no significant differences between Aboriginal and Torres Strait Islander offenders and non-Indigenous offenders in the number of offences sentenced.³⁵

Table 2: Number of sentenced offences per court event, by gender, and Aboriginal and Torres Strait Islander status, 2005–06 to 2020–21

Offender type	N	Single offence (%)	2 to 4 offences (%)	5 to 10 offences (%)	11+ offences (%)	Number of offences			
						Avg	Median	Min	Max
Female	16	25.0	12.5	37.5	25.0	11.0	6.5	1	80
Male	785	15.4	18.3	33.8	32.5	9.9	7.0	1	180
Aboriginal or Torres Strait Islander	70	8.6	20.0	44.3	27.1	9.2	7.0	1	32
Non-Indigenous	710	16.1	18.0	33.1	32.8	10.0	7.0	1	180
Total	801	15.6	18.2	33.8	32.3	9.9	7.0	1	180

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

Note: Offenders with unknown characteristics were excluded from each subcategory.

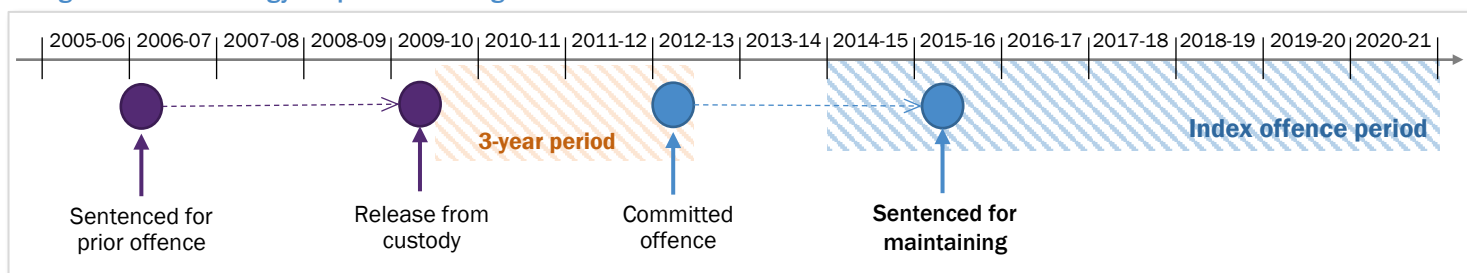
Recidivism

Of the 946 offenders who were sentenced for maintaining from 2005–06 to 2020–21 (regardless of whether the offence was their MSO), 3.2% were repeat offenders ($n = 30$). This means that, they had been sentenced for maintaining on at least two occasions over the 16-year period.

There are considerable methodological challenges in measuring recidivism. It should be noted that this only refers to ‘officially recorded’ recidivism over a prescribed period of time. It is recognised that there is a substantial ‘dark figure’ of sexual offending³⁶, which remains unreported and there can be significant delays in reporting.³⁷ For the purposes of this publication, recidivism was operationalised as any offence that was committed within three years of the date of sentencing for a non-custodial penalty or within three years of an

Prior offending

Figure 9: Methodology for prior offending



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

Of the 464 cases identified between 2014–15 to 2020–21, one in five had offences in the 3 years prior to the maintaining offence (21.1%, $n = 98$, see Table 3). This could include any type of offence sentenced in court.

The number of prior sentenced court events ranged from 0 to 17. Of the 98 cases with prior sentenced offences, more than half had multiple prior offences (51.0%, $n = 50$), and 89.8% had between 1 and 4 prior offences ($n = 88$).

None of the most common MSOs for prior sentenced events were sexual offences. The most common prior MSOs related to illicit drugs, with either possess illicit drugs or other illicit drug offences each appearing in about 30 prior cases ($n = 32$, $n = 30$, respectively, see Figure 10).

There were no significant differences in the number of prior offences based on gender³⁸ or Aboriginal and Torres Strait Islander status.³⁹

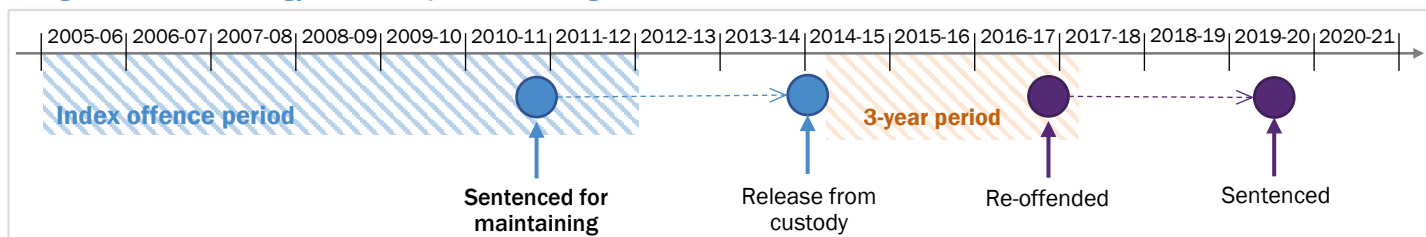
Figure 10: Top 8 prior offences (MSO) for offenders sentenced for maintaining, 2012–13 to 2014–15

Offence	Sentenced cases	Offender count
Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i>	59	33 (7.4%)
Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 33</i>	32	24 (5.4%)
Possession of drug utensils <i>Drugs Misuse Act 1986 (Qld) s 10A</i>	30	22 (4.9%)
Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i>	25	22 (4.9%)
Driving uninsured vehicle <i>Motor Accident Insurance Act 1994 (Qld) s 20</i>	18	14 (3.1%)
Driving unregistered vehicle <i>Transport Operations (RUM – Vehicle Registration) Regulation 2010 s 11</i>	18	14 (3.1%)
Wilful damage <i>Criminal Code (Qld) s 469</i>	19	12 (2.7%)
Common assault <i>Criminal Code (Qld) s 335</i>	9	9 (2.0%)

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

Subsequent offending

Figure 11: Methodology for subsequent offending



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

Of the 409 cases identified in the index period (2005–06 to 2011–12) for subsequent offending, one in five (20.3%, $n = 83$) reoffended in the three years since being released from custody for their maintaining offence (see Table 3).

The number of subsequent offences ranged from 0 to 11 offences. Of those with subsequent offences, 48.2% had more than one offence, and 95.2% ($n = 79$) had between one and four offences.

The most common subsequent offence was failing to comply with reporting obligations ($n = 57$, see Figure 12). This relates to maintaining being an offence captured under the *Child Protection (Offender Reporting) Act 2004* (CPOR). This legislation requires offenders who commit

sexual or other serious offences against children to report personal details to police for a prescribed period. A failure to adequately report relevant information within the allotted time is an indictable offence under the CPOR legislation. None of the top eight MSOs post index related to sexual offending, corresponding to the findings regarding prior offending discussed above. It should be noted that this does not reflect the true rate of offending due to victim non-disclosure or significant delays in reporting child sexual offences.

There were no significant differences identified for gender⁴⁰ nor Aboriginal and Torres Strait Islander status⁴¹ for subsequent offending.⁴²

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

Offence	Sentenced cases	Offender count
Failure to comply with reporting obligations <i>Child Protection (Offender Reporting) Act 2004 (CPOR)</i>	57	47 (11.7%)
Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i>	14	12 (3.0%)
Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i>	14	10 (2.5%)
Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 33</i>	10	8 (2.0%)
Public nuisance <i>Summary Offences Act 2005 (Qld) s 6</i>	7	6 (1.5%)
Contravention of single community-based order <i>Penalties and Sentences Act 1992 s 123</i>	4	4 (1.0%)
Driving uninsured vehicle <i>Motor Accident Insurance Act 1994 (Qld) s 20</i>	4	4 (1.0%)
Possession of drug utensils <i>Drugs Misuse Act 1986 (Qld) s 10A</i>	5	4 (1.0%)

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

Table 3: Prior and subsequent court events by gender, and Aboriginal and Torres Strait Islander status, 2005–06 to 2020–21

Offender type	N	No recidivist offences (%)	1 to 4 recidivist offences (%)	5+ recidivist offences (%)	Number of post court events			
					Avg	Median	Min	Max
Prior offending	464	78.9	19.0	2.2	0.5	0.0	0	17
Female	11	72.7	18.2	9.1	1.9	0.0	0	17
Male	453	79.0	19.0	2.0	0.5	0.0	0	11
Aboriginal or Torres Strait Islander	43	65.1	27.9	7.0	1.1	0.0	0	8
Non-Indigenous	413	80.1	18.2	1.7	0.5	0.0	0	17
Subsequent offending	409	79.7	19.3	1.0	0.4	0.0	0	11
Female	5	80.0	20.0	0.0	0.4	0.0	0	2
Male	404	79.7	19.3	1.0	0.4	0.0	0	11
Aboriginal or Torres Strait Islander	30	66.7	30.0	3.3	1.1	0.0	0	11
Non-Indigenous	363	79.9	19.3	0.8	0.3	0.0	0	5

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

Note: Offenders with unknown characteristics were excluded from each subcategory.

Penalties and sentencing

The maximum penalty for maintaining is life imprisonment. While courts have discretion to set the appropriate sentence in most cases, there are mandatory sentencing provisions that apply in certain circumstances to adults.⁴³

An offender convicted of a 'repeat serious child sex offence' (where both offences were committed when the offender was an adult) is subject to a mandatory life sentence or indefinite sentence (with a nominal sentence and finite sentence of life imprisonment). Maintaining is a serious child sex offence.⁴⁴

From 2005–06 to 2020–21, all sentenced offenders sentenced for maintaining (MSO) received a custodial penalty.

Section 9(4)(c) of the PSA states that when sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years (or a child exploitation material offence), the judge must order that the offender

serve an actual term of imprisonment, unless there are exceptional circumstances.⁴⁵

If a sentence of imprisonment of 10 years or more is imposed, a court must declare the offender convicted of a serious violent offence (SVO).⁴⁶ This is discretionary for sentences of 5 years or more, and less than 10 years.⁴⁷ Where a declaration is made, the offender must serve a minimum of 80% of their sentence in custody, or 15 years, whichever is less.⁴⁸

Penalty type

Three types of custodial penalties will be discussed in this section: imprisonment, partially suspended sentences, and wholly suspended sentences.⁴⁹ For more details on types of sentencing orders, see the Queensland Sentencing Guide.⁵⁰

Imprisonment was the most common penalty imposed (79.2%) for maintaining (MSO), – see Table 4

Table 4

Table 4: Custodial penalties for maintaining (MSO) by gender and Aboriginal and Torres Strait Islander status, 2005–06 to 2020–21

Penalty Type	Total %	Female %	Male %	Aboriginal or Torres Strait Islander %	Non-Indigenous %
Custodial Penalties					
Imprisonment (n=634)	79.2	75.0	79.2	81.4	79.3
Partially suspended (n=150)	18.7	18.8	18.7	14.3	18.7
Wholly suspended (n=17)	2.1	6.3	2.0	4.3	2.0
Total	100 n=801	100 n=16	100 n=785	100 n=70	100 n=710

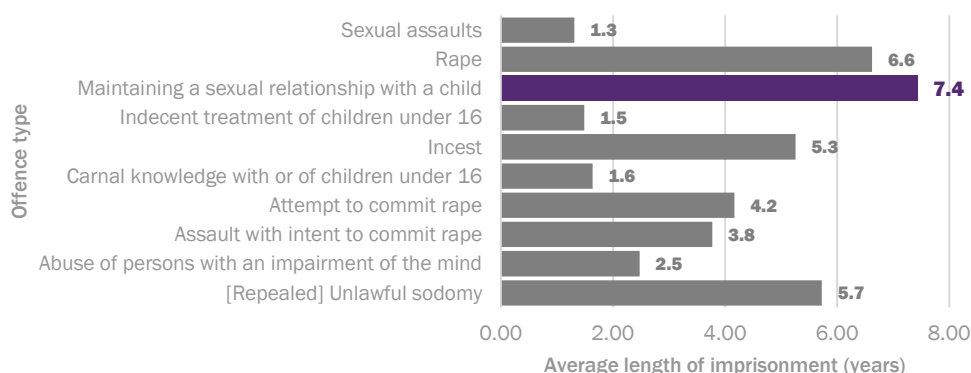
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2021.
Note: Offenders with unknown characteristics were excluded from each subcategory.

Length of sentence

The average imprisonment sentence length for maintaining was 7.4 years (median = 7.0 years). There were no significant differences in the term of imprisonment for historical and non-historical maintaining offences.⁵¹ This average term of imprisonment is significantly higher than other sexual

offences (4.1 years) (see Figure 11).⁵² Maintaining with a maximum penalty of life imprisonment also had a longer average imprisonment length compared to other sexual offences, for example rape (6.2 years), incest (5.3 years) and carnal knowledge (1.6 years).⁵³

Figure 13: Average term of imprisonment for sentenced sexual offences (MSO), 2005–06 to 2020–21



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

There is wide variability in the length of sentence for maintaining (MSO).

The longest sentence of imprisonment for maintaining (MSO) was 19.0 years (see Figure 12). One offender received a life sentence for maintaining, however the charge of maintaining in this case was not recorded as the MSO (the MSO was rape, which also received a life sentence).

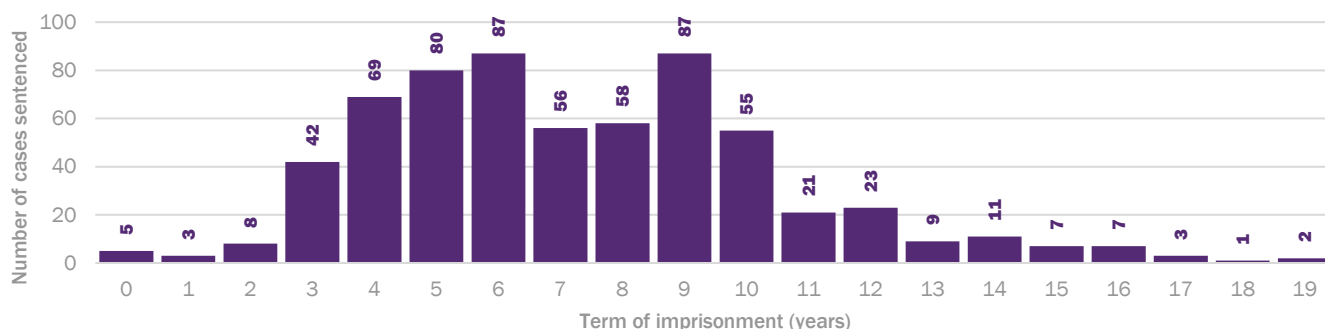
The difference between sentences of imprisonment for Aboriginal and Torres Strait Islander offenders and non-Indigenous offenders were not statistically significant.⁵⁴

The average term of imprisonment did not differ between males (7.4 years) and females (7.4 years),⁵⁵ although caution should be applied in interpreting these findings due to the small number of female offenders ($n = 12$).

The sentence lengths have two peaked periods of imprisonment. The most frequent sentence lengths are either six years, or nine years.

Over twenty percent (21.9%) of cases involving maintaining (MSO) result in sentences of 10 years or more, meaning the offence would also have been declared a serious violent offence (SVO).⁵⁶

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



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

The maximum term of imprisonment that can be suspended is 5 years.⁵⁷ The average partially suspended sentence was 3.8 years (median = 4.0 years, see Table 5). The longest partially suspended sentence was 5.0 years. The shortest partially suspended sentence had a length of 1.5 years.⁵⁸ Of those who received a partially

suspended sentence, the average time served before release was 1.2 years.

Wholly suspended sentences had an average length of 2.7 years (median = 3.0 years). The longest wholly suspended sentence had a length of 5.0 years, and the shortest sentence was 2.0 years.⁵⁹

Table 5: Sentence lengths for maintaining (MSO), by gender and Aboriginal and Torres Strait Islander status, 2005–06 to 2020–21

	N	Avg	Median	Min	Max
Imprisonment (months)					
Female	12	88.3	99.0	6.0	135.0
Male	622	89.2	84.0	1.1	228.0
Aboriginal or Torres Strait Islander	57	93.8	96.0	12.0	216.0
Non-Indigenous	563	88.6	84.0	1.1	228.0
All offenders	634	89.1	84.0	1.1	228.0
Partially suspended (months)					
Female	3*	-	-	-	-
Male	147	45.8	48.0	18.0	60.0
Aboriginal or Torres Strait Islander	10	48.0	48.0	30.0	60.0
Non-Indigenous	133	45.7	48.0	24.0	60.0
All offenders	150	45.7	48.0	18.0	60.0
Wholly suspended (months)					
Female	1*	-	-	-	-
Male	16	32.8	36.0	12.0	60.0
Aboriginal or Torres Strait Islander	3*	-	-	-	-
Non-Indigenous	14	31.7	33.0	12.0	60.0
All offenders	17	32.3	36.0	12.0	60.0

* Data withheld due to small sample sizes.

Notes: Maximum period permissible for suspended sentences (wholly or partially) is five years. Offenders with unknown characteristics were excluded from each subcategory.

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

Endnotes

¹ A recommendation (61) has been made by the Women's Safety and Justice Taskforce for the Attorney-General, Minister for Women and Minister for the Prevention of Domestic and Family Violence to review the name of this offence: Women's Safety and Justice Taskforce (2022) *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System: Report 2*.

In other Australian jurisdictions, legislative changes have recently been made to the name of this offence excluding the term 'relationship'. In Tasmania, the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020* (Tas) changed the name to 'persistent sexual abuse of a child'. In the ACT, the *Family Violence Legislation Amendment Bill 2022* (ACT) proposes to change the offence of engaging in a 'sexual relationship with child or young person under special care' to 'persistent sexual abuse of child or young person under special care'.

Jurisdictions such as South Australia and New South Wales have recently changed their legislation to adopt recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse. For example, South Australia has recently changed their offence name from 'persistent sexual abuse of a child' to 'unlawful sexual relationship with child'. While New South Wales retained the name of the offence 'persistent sexual abuse of a child', they have adopted the language 'maintains an unlawful sexual relationship' within the offence description.

² Sturgess, D.G. (1986). *Suggested legislative amendments to the criminal code arising from An inquiry into sexual offences involving children and related matters* as cited in Dallaston, E., & Mathews, B. (2021). 'Unlawful sexual relationships': A comparative analysis of criminal laws against persistent child sexual abuse in Queensland and South Australia. *Adelaide Law Review*, 42(1), 1-37. <https://doi.org/10.3316/INFORMIT.20210914053376>.

³ Nicol, S.J., & Ogilvie, J., & Harris, D.A., & Kebbell, M.R., & Christie, T.B. (In press). Evading detection: Characteristics of individuals with extrafamilial child sexual offences and long detection lags. *International Journal of Offender Therapy and Comparative Criminology*.

⁴ A person sentenced to imprisonment for a 'serious violent offence' is unable to apply for parole until they have served 80 per cent of the sentence, or 15 years in prison, whichever is less. The relevant legislation is Part 9A of the Penalties and Sentences Act 1992 (Qld). For more details as to how this works, see Queensland Sentencing Advisory Council, *The '80 per cent rule': The serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)* (Final Report, May 2022), available on the Council's website.

⁵ These sentence lengths were derived from a review of a selection of sentencing remarks involving cases including the offence of maintaining.

⁶ See for example *R v BCG* [2012] QCA 167; *R v Watson* [2017] QCA 82.

⁷ See for example *R v FAK* [2016] QCA 306; *R v Viles* [2016] QCA 276; *R v JU* [2012] QCA 230.

⁸ See for example: *R v MBY* [2014] QCA 17; *R v DBV* [2021] QCA 227; *R v SBX* [2013] QCA 45; *R v HBT* [2018] QCA 227; *R v DBF* (No 3) [2013] QCA 382; *R v Mizner* [2019] QCA 198.

⁹ For a definition of 'most serious offence' and other terms, refer to the technical paper available on the Council's website.

¹⁰ In general terms, indecent treatment of a child is a less serious offence compared to maintaining a sexual relationship with a child. A sample of cases were reviewed to determine why a charge of indecent treatment was sometimes more serious than a charge of maintaining.

In some instances, especially for cases involving multiple victims, the circumstances surrounding the indecent treatment charge was, in fact, more serious and resulted in a harsher penalty compared to the maintaining charge.

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

¹¹ Rates calculated using estimated resident population data of people aged 10 and over, by Local Government Area from Australian Bureau of Statistics, *Regional population by age and sex*, 2019.

¹² All of the offenders were identified as male or female.

¹³ Independent groups t-test: $t(16.39) = 4.04$, $p < 0.001$ (equal variances not assumed), ($r = 0.71$).

¹⁴ Hanson, R. K., Harris, A. J. R., Letourneau, E., Helmus, L. M., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1), 48-63. <https://doi.org/10.1037/law0000135>.

¹⁵ Wortley, R., & Smallbone, S. (2006). *Situational prevention of child sexual abuse*: Vol. 19. Criminal Justice Press.

¹⁶ As at 30 June 2015. See Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015, available at <<http://www.qgso.qld.gov.au/subjects/demography/at-si-people/tables/pop-est-indigenous-status/index.php>> accessed 4 August 2017.

¹⁷ Independent groups t-test: $t(85.69) = 3.17$, $p < 0.01$ (equal variances not assumed), ($r = 0.32$).

¹⁸ See Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians*.

¹⁹ Independent groups t-test: $t(798) = 3.66$, $p < .001$, two-tailed (equal variance assumed) ($r = 0.13$).

²⁰ Offence duration was calculated as the latest recorded offence date minus the earliest recorded offence date for the sentenced MSO. Note that not all offences have a latest offence date recorded which may impact on findings.

²¹ The Queensland Australian Standard Offence Classification (QASOC) includes eight categories of offences under sexual assault. Only assaultive sexual offences under this classification have been included in this analysis. See <https://www.qgso.qld.gov.au/about-statistics/statistical->

²² One way ANOVA: $F(13,7944) = 357.56$, $p < 0.001$ ($r = 0.61$).

²³ There are limitations in calculating offence duration to be considered. For example, there are offences in which the offence dates are unknown or omitted, which may skew the data.

²⁴ Explanatory Notes, *Criminal Law (Domestic Violence) Amendment Bill 2015* (Qld) 2. The amending Act was the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld).

²⁵ See *Domestic and Family Violence Protection Act 2012* (Qld) ss 8 and 13.

²⁶ Seto, M. C., Babchishin, K. M., Pullman, L. E., & McPhail, I. V. (2015). The puzzle of intrafamilial child sexual abuse: A meta-analysis comparing intrafamilial and extrafamilial offenders with child victims. *Clinical Psychology Review*, 39, 42–57. <https://doi.org/10.1016/j.cpr.2015.04.001>

²⁷ Criminal Code (Qld) s 552B(1)(a).

²⁸ Ibid s 552D.

²⁹ See prior *Sentencing Spotlight* series - <https://www.sentencingcouncil.qld.gov.au/research/reports/sentencing-spotlight>

³⁰ For gender, the chi square test was not valid due to 25% of cells having a count less than 5.

³¹ Chi square test: $X^2(1, N = 84) = 8.9$, $p < 0.01$.

³² Independent groups t-test: $t(799) = 0.37$, $p = 0.71$, two-tailed (equal variance assumed) ($r = 0.01$).

³³ Independent groups t-test: $t(778) = 0.48$, $p = 0.63$, two-tailed (equal variance assumed) ($r = 0.02$).

³⁴ Independent groups t-test: $t(15.23) = 0.23$, $p = 0.82$ (equal variances not assumed), ($r = 0.06$).

³⁵ Independent groups t-test: $t(106.25) = 0.69$, $p = 0.49$ (equal variances not assumed), ($r = 0.07$).

³⁶ DeLisi, M., Caropreso, D. E., Drury, A. J., Elbert, M. J., Evans, J. L., Heinrichs, T., & Tahja, K. M. (2016). The dark figure of sexual offending: New evidence from federal sex offenders. *Journal of Criminal Psychology*, 6(1), 3–15. <https://doi.org/10.1108/JCP-12-2015-0030>

³⁷ Alaggia, R., Collin-Vezina, D., Lateef, R. (2019). Facilitators and barriers to child sexual abuse (CSA) disclosures: A research update (2000-2016). *Trauma, Violence and Abuse*, 20(2), 260-283. <https://doi.org/10.1177/1524838017697312>

³⁸ Independent groups t-test: $t(10.03) = 0.92$, $p = 0.38$ (equal variances not assumed), ($r = 0.28$).

³⁹ Independent groups t-test: $t(44.85) = 1.91$, $p = 0.06$ (equal variances not assumed), ($r = 0.27$).

⁴⁰ Independent groups t-test: $t(400) = 0.04$, $p = 0.97$ (equal variance assumed), ($r = 0.00$).

⁴¹ Independent groups t-test: $t(28.58) = 1.87$, $p = 0.07$, two-tailed (equal variances not assumed) ($r = 0.33$).

⁴² This is likely due to a lack of statistical power due to small sample sizes for female and Aboriginal and Torres Strait Islander offenders.

⁴³ A separate serious organised crime circumstance of aggravation, which commenced on 9 December 2016, can apply in addition to other provisions discussed in this section. This involves a mandatory, cumulative term of imprisonment in addition to the penalty imposed for the maintaining offence (*Penalties and Sentences Act 1992* (Qld) Part 9D; inserted by the *Serious and Organised Crime Legislation Amendment Act 2016*, s 124). The application of these provisions is beyond the scope of this paper and there were no cases sentenced under this provision during the data period analysed.

⁴⁴ *Penalties and Sentences Act 1992* (Qld) s 161E.

⁴⁵ Ibid s 9(4)(c).

⁴⁶ Ibid ss 161A(a) and, 161B(1).

⁴⁷ Ibid s 161B(3). The court also has a discretion to declare an offender to be convicted of a serious violent offence if: the offender is convicted on indictment of an offence that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or that resulted in serious harm to another person; and was sentenced to a term of imprisonment: s 161B(4).

⁴⁸ *Corrective Services Act 2006* (Qld) s 182.

⁴⁹ 'Imprisonment' refers to a non-suspended sentence of imprisonment with either a parole release date or parole eligibility date. Suspended sentences are periods of imprisonment of five years or less which are suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period of time (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence).

⁵⁰ The Queensland Sentencing Advisory Council's *Queensland Sentencing Guide* is available at: https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0004/572161/queensland-sentencing-guide.pdf.

⁵¹ Independent groups t-test: $t(799) = 1.91$, $p = 0.06$, two-tailed (equal variance assumed) ($r = 0.07$).

⁵² One way ANOVA: $F(13,3212) = 258.92$, $p < 0.001$ ($r = 0.72$).

⁵³ One way ANOVA: $F(4,2011) = 91.41$, $p < 0.001$ ($r = 0.39$).

⁵⁴ Independent groups t-test: $t(63.98) = 0.83$, $p = 0.41$, two-tailed (equal variances not assumed) ($r = 0.10$).

⁵⁵ Independent groups t-test: $t(632) = 0.08$, $p = 0.93$, two-tailed (equal variances assumed) ($r = 0.00$).

⁵⁶ *Penalties and Sentences Act 1992* (Qld) s 161A(a).

⁵⁷ *Penalties and Sentences Act 1992* (Qld) s 144.

⁵⁸ There were too few offenders with a partially suspended sentence to be able to differentiate by demographic factors.

⁵⁹ As there were only three Aboriginal or Torres Strait Islander offenders and only one female offender recorded with a wholly suspended sentence, analysis on these demographic factors was not reported.



Sentencing Spotlight on maintaining a sexual relationship with a child

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