

SENTENCING
SPOTLIGHT ON

sexual assault



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Advisory Council
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Sentencing Spotlight on...

Sexual assault

This *Sentencing Spotlight* examines sentencing outcomes for sexual assault offences under s 352 of the *Criminal Code* (Qld) finalised in Queensland courts between 2005–06 and 2022–23.

Summary of offences 2005–06 and 2022–23

Adults



64.6%

sentenced received a
custodial penalty



1.3 years

was the average
imprisonment length

Children



20.2%

sentenced received a
custodial penalty



6.8 months

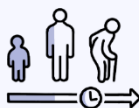
was the average
detention length

All ages



6.0%

of offenders pleaded
not guilty



36.0 years

was the average age
of offenders



7.0%

of offences were domestic
violence offences*



2,072

cases in which sexual
assault was the most
serious offence (MSO)



98.6%

of offenders were male



4.8%

of cases had a
circumstance of aggravation

All offences sentenced in Queensland

0.1%

of cases sentenced in Queensland involved a charge of sexual assault

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).

* data on domestic violence offences includes cases sentenced between 2016–17 and 2022–23.

Warning to readers

This report contains subject matter that may be distressing to readers. Material describing the offence of sexual assault are included in this report. If you need to talk to someone, support is available:

DV Connect: 1800 811 811

Lifeline Australia: 13 11 14

Mensline: 1800 600 636

Queensland Sexual Assault Helpline: 1800 010 120

Victim Assist Queensland: 1300 546 587 (business hours) or email: VictimAssist@justice.qld.gov.au

Women's Legal Service Queensland: 1800 957 957

Sexual assault

The offence of sexual assault is defined in s 352 of the *Criminal Code* (Qld). Sexual assault involves a person indecently assaulting another person without that person's consent or procuring another person to commit or witness an act of gross indecency without that person's consent.¹

The maximum penalty for sexual assault is different depending on whether the offence involves circumstances of aggravation. The following sections discuss this in more detail.

Sexual assault (non-aggravated)

Non-aggravated sexual assault accounts for almost all the offences reported in this *Sentencing Spotlight* (95.2%, n=1,972)—see Figure 1.

There are three different ways that a person can commit a sexual assault, these are:²

- indecently assaulting another person (such as kissing or inappropriately touching a person);
- procuring (recruiting or enticing) another person to commit an act of gross indecency (such as making a person kiss or inappropriately touch another person); or
- making a person see an indecent act (such as if the person masturbates in front of another person).

It carries a maximum penalty of 10 years' imprisonment.

The maximum penalty for a child is 5 years detention.³

Sexual assault (aggravated)

The maximum penalty increases to 14 years' imprisonment if the act involves non-penetrative oral sex.⁴

The maximum penalty for a child is 7 years detention.⁵

Sexual assault (aggravated life)

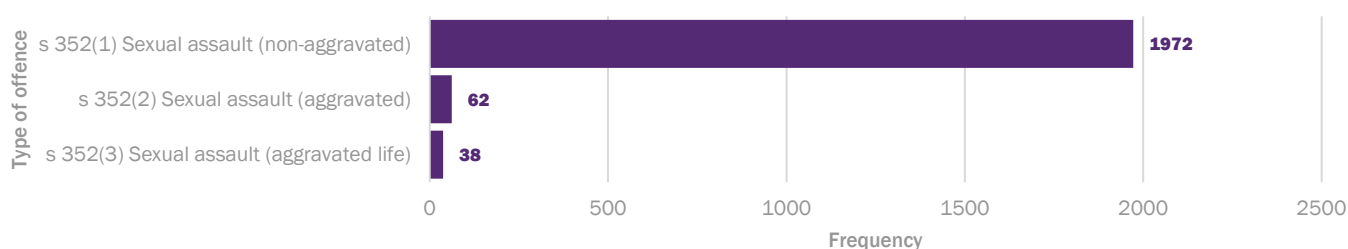
The maximum penalty increases to life imprisonment if any of the following circumstances form part of the offence. These are:

- being (or pretending to be) armed with a dangerous or offensive weapon;
- being in company with someone else; or
- the victim performs a penetrative sexual act using a thing or body part (other than a penis).

The maximum penalty for a child is ordinarily 10 years detention.⁶ However, a sentencing judge may impose a period up to and including life if the child's offending involves violence against a person and the court considers the offence to be a particularly heinous offence having regard to all the circumstances.⁷

In Queensland, if a person commits this type of offence against a child under 16, the person will more likely be charged with an offence of 'indecent treatment of children under 16' under s 210 of the *Criminal Code* (Qld).

Figure 1: Number of sexual assault cases (MSO) by circumstance of aggravation, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: a single case may involve multiple different circumstances of aggravation. To avoid double-counting, the chart above reports each case according to the most serious circumstance of aggravation recorded for that matter.

What is consent?

'Consent' means to agree to the behaviour. It must 'be freely and voluntarily given' by a person 'with the cognitive capacity' to do so.⁸ 'Cognitive capacity' means the person knows or understands what they are doing and are agreeing to do it.

Consent is not given if it was obtained by force, threat or intimidation, fear of bodily harm, by exercise of authority, through false or misleading representation or through a mistaken belief that the accused person was the other person's sexual partner.⁹

A person is not taken to have given consent only because they did not communicate that they do not consent.¹⁰

A person can change their mind and withdraw their consent at any point during an act.¹¹

While the Women's Safety and Justice Taskforce recommended changes to the definition of consent and to the 'mistake of fact' defence to establish an affirmative model of consent in Queensland, these changes are yet to be enacted.¹²

The data presented in this paper reflects offences resulting in convictions based on current definitions given the proposed reforms are yet to be enacted.

Underreporting of sexual assault

Sexual assault, like other forms of sexual offending, is a highly underreported crime.¹³ This means that the number of sentenced cases reported on in this publication does not reflect the prevalence of this type of offending in the community.

There are many barriers to victim survivors reporting sexual offences. These include:

- fear they will not be believed;¹⁴
- shock, confusion, guilt, or shame about the offence;¹⁵
- unsupportive community attitudes about women, racism, and rape myth acceptance;¹⁶
- difficulty identifying sexual violence;¹⁷ and
- lack of trust in the justice system or authorities¹⁸ and concerns about the justice system process.¹⁹

This means that fluctuations in official crime and courts' data may not necessarily reflect changes in the incidence of this type of offending. According to official crime statistics in Australia, rates of sexual violence, including sexual assault, have been increasing over the past decade. It is unclear to what extent this is due to increases in the number of these offences being reported,²⁰ as compared to an increase in the incidence of sexual violence in the community. These factors should be considered when interpreting the findings in this *Sentencing Spotlight*.

Number of cases

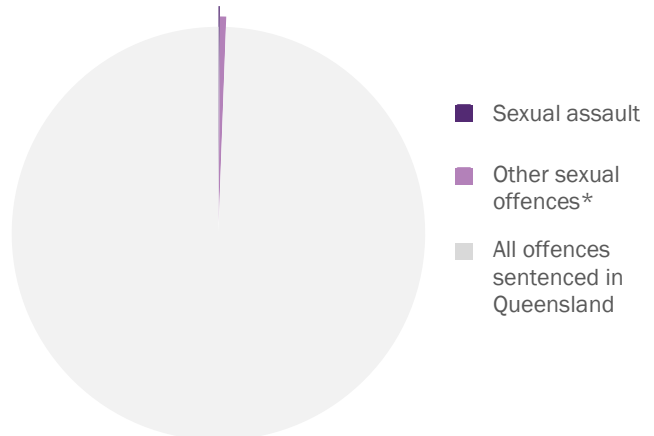
A total of 2,634 unique individuals were sentenced for 2,752 cases involving sexual assault between 2005–06 and 2022–23.

For 2,072 (75.3%) of those cases, sexual assault was the most serious offence (MSO). For the remaining 680 cases where sexual assault was not the MSO, the MSO was most commonly the offence of rape (37.6%), followed by indecent treatment of a child under 16 (11.2%), burglary (8.3%), maintaining an unlawful sexual relationship with a child²¹ (7.0%) and assaults occasioning bodily harm (6.3%).

This *Sentencing Spotlight* focuses primarily on the 2,072 sentenced cases where sexual assault was the MSO.

Over the 18-year data period, there were 2,698,613 cases sentenced in Queensland's criminal courts. Cases involving a sexual offence accounted for 0.6% of cases sentenced (n=15,779). The offence of sexual assault was sentenced in 2,752 cases, representing 17.4% of sexual offences, but only 0.1% of all matters dealt with from 2005–06 to 2022–23.

Figure 2: Number of sexual assault cases sentenced in Queensland, 2005–06 to 2022–23



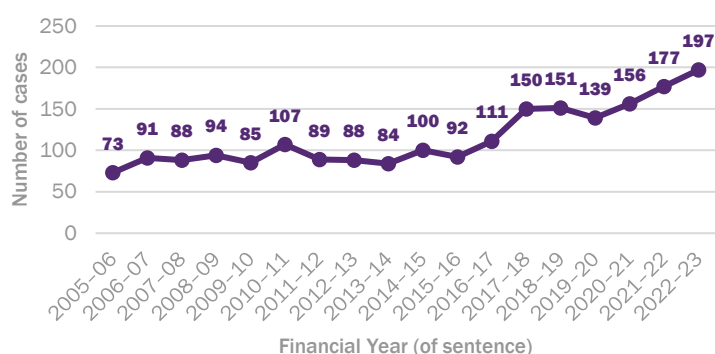
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

* includes all sexual offences under the ANZSOC classification of '03 Sexual assault and related offences'.

Figure 3 shows the number of sexual assault cases sentenced (MSO) during the 18-year data period. The chart shows that the number of sexual assault cases remained relatively unchanged for the decade from 2006–07 to 2015–16.

However, there has been a continual increase in the number of cases sentenced since 2015–16. The most recent financial year (2022–23) recorded a 134.5% increase from 10 years prior (2013–14). The overall increase in sexual assault offences is consistent with increases in reported sexual offences over the same period.²² As discussed earlier in this paper, increased reporting of these offences may contribute to the data trends.

Figure 3: Number of sexual assault cases (MSO), 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Historical offences

A small proportion of sexual assault cases involved offences that were committed a long time before they were brought before the courts. For the purposes of this report, any offence that occurred more than 10 years prior to sentence has been considered to be a 'historical offence' – although no such concept exists at law. Different definitions of what constitutes a 'historical offence' are adopted for different purposes.

There were only 14 historical offences (MSO) sentenced for sexual assault between 2005–06 and 2022–23.

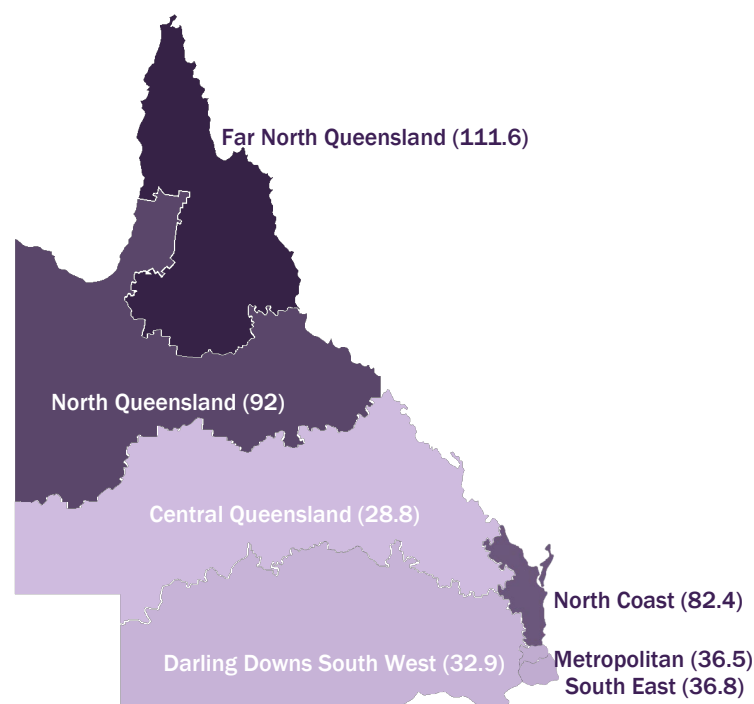
There were amendments made to the *Criminal Code* in 2000 which made changes to the offence of sexual assault and relocated it from s 337 to s 352 where it is today.²³ There were 59 cases sentenced during the data period involving an offence of sexual assault charged under the former s 337. These cases have been excluded from the analysis in this *Sentencing Spotlight*.

Regions

The northern regional areas of Queensland had the highest proportional rate of sentenced sexual assault (MSO) cases. The rate of sexual assault offences in Far North Queensland (111.6) was almost 3 times as high as the rate of the Metropolitan region (36.5). Figure 4 shows

the distribution of sexual assault offences by region in Queensland by rate per 100,000 population based on the location of the court in which they are sentenced.

Figure 4: Sexual assault (MSO) cases by region by rate of the population per 100,000 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Demographic characteristics

This section compares the age, gender and Aboriginal and Torres Strait Islander status of people sentenced for sexual assault (MSO) from 2005–06 to 2022–23.

Gender

Over the 18-year data period, the overwhelming majority of people sentenced for sexual assault (MSO) in Queensland were male (98.5%, n=2,042). Only 30 females were sentenced for sexual assault over the data period.

This is considerably higher compared to all offences sentenced in Queensland, where 75.7% of people who are sentenced are male.

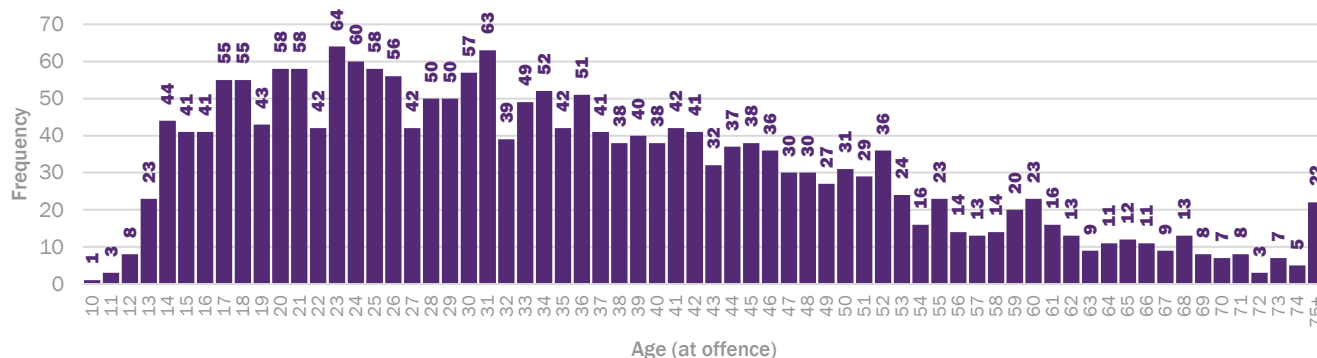


Male offenders



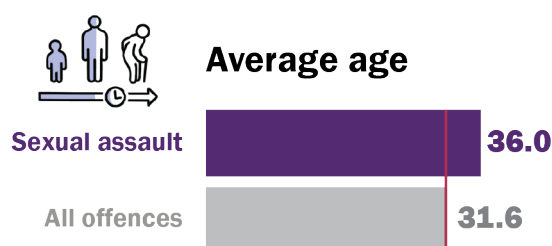
Age

Figure 5: Number of people sentenced for sexual assault (MSO) by age, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

On average, people sentenced for sexual assault (MSO) were older at the time of committing the offence (36.0 years) than the average age of all people sentenced in Queensland (31.6 years). The youngest person sentenced for sexual assault was 10 years old,²⁴ and the oldest was 92 years old, with a median age of 33.5 years. Figure 5 shows age at the time of offence.



Aboriginal and Torres Strait Islander people

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

Although people who identify as Aboriginal and Torres Strait Islander represent approximately 4.6% of Queensland's population (aged 10 years and over),²⁵ they accounted for 23.9% of people sentenced for sexual assault (MSO) during the 18-year data period, with 76.1% of cases committed by a non-Indigenous person. Overall, there were 496 people sentenced for sexual assault who identified as being Aboriginal and Torres Strait Islander.

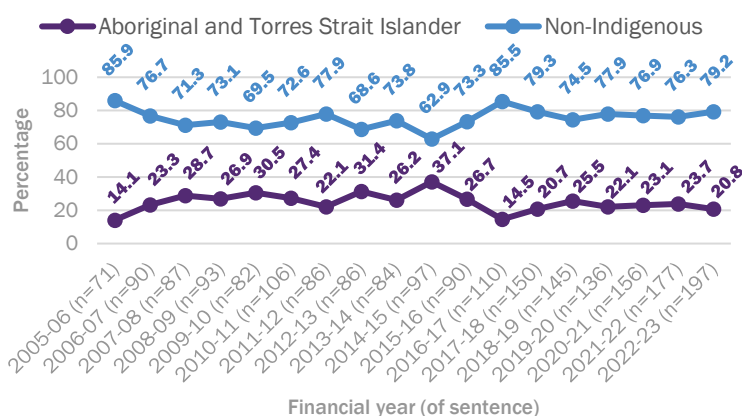
The Council recognises that Aboriginal and Torres Strait Islander peoples are not only disproportionately represented among those sentenced for sexual assault, but are also over-represented as the victims and survivors of sexual offences. In 2021–22, Aboriginal and Torres Strait Islander people accounted for 11.3% of reported victims of sexual offences in Queensland.²⁶

Aboriginal and Torres Strait Islander people



The proportion of Aboriginal and Torres Strait Islander people who are sentenced for sexual assault has remained relatively unchanged over the past 5 years.

Figure 6: Proportion of people sentenced for sexual assault (MSO) by Aboriginal and Torres Strait Islander status and year of sentence, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

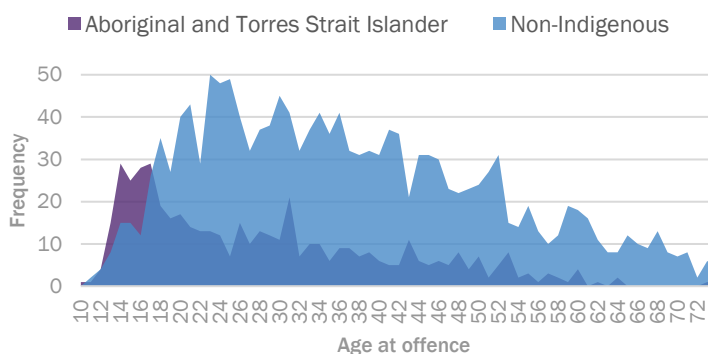
Note: 29 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown.

Aboriginal and Torres Strait Islander people sentenced for sexual assault (MSO) were significantly younger (29.1 years) than their non-Indigenous counterparts (38.1 years).²⁷ For those who identified as Aboriginal and Torres Strait Islander, offending peaked between the ages of 14 to 16; whereas for non-Indigenous people it peaked between the ages of 22 and 24, with many aged over 60 years.

While the analysis found that Aboriginal and Torres Strait Islander offenders were younger than non-Indigenous

offenders, it is important to note that the average age of the Aboriginal and Torres Strait Islander population is younger in comparison to the non-Indigenous population. For more details, see the Australian Bureau of Statistics publication titled *Estimates of Aboriginal and Torres Strait Islander Australians*.

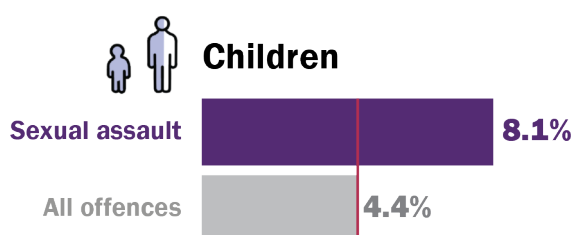
Figure 7: Proportion of people sentenced for sexual assault (MSO) by Aboriginal and Torres Strait Islander status and age, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.
Note: 29 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown.

Sentenced children

Across all offences sentenced in Queensland, 4.4% were committed by a child. In comparison, the offence of sexual assault (MSO) had a higher proportion of sentenced children, with 8.1% of these offences committed by children (n=168). Prior to February 2018, 17-year-olds were dealt with as adults rather than as children.



Only 2 children were sentenced for sexual assault with a circumstance of aggravation (MSO, 1.2%).

The average age at time of sentencing for children was 15.8 years (median=15.9 years).

Almost all the children sentenced for sexual assault (MSO) during the 18-year data period were boys (99.4%) with only 1 girl sentenced.

Children were significantly more likely to identify as Aboriginal and Torres Strait Islander compared to adults.²⁸ Aboriginal and Torres Strait Islander children made up 63.1% (n=106) of children sentenced for sexual assault compared to 20.5% of adults (n=390). Children were 6.7 times more likely to identify as Aboriginal and Torres Strait Islander compared to adults.²⁹

Circumstances of aggravation

Over the 18-year data period, 4.8% of cases involved a charge of sexual assault with circumstances of aggravation (MSO, n=100).

There were no statistically significant differences in the presence of aggravating circumstances based on gender³⁰ or Aboriginal and Torres Strait Islander status.³¹

On average, charges of sexual assault with circumstances of aggravation (MSO) were committed by slightly younger people (average=32.6 years) compared to cases without aggravating circumstances (average=36.1 years).³²

Domestic violence offences

This section examines the volume of cases of sexual assault (MSO) sentenced as domestic violence offences over the period from 2016–17 to 2022–23.

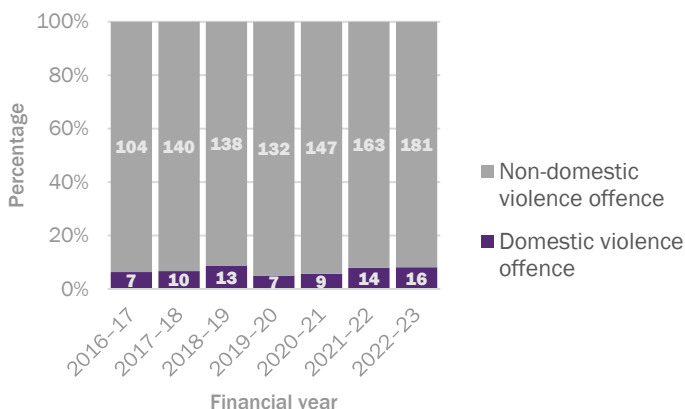
From 1 December 2015, Queensland legislation was amended to enable a conviction for an offence committed in a domestic violence context to be recorded or entered in that person’s criminal history as a domestic violence offence.³³ A person’s behaviour is considered ‘domestic violence’ if they have a relevant relationship (intimate personal, family, or informal care) with the victim. That relationship must be abusive (physically, sexually, emotionally, or psychologically), or involve behaviour, or a pattern of behaviour,³⁴ that is threatening, coercive, or in any other way controls or dominates the second person in a way that causes that person to fear for their safety or wellbeing (or someone else’s).³⁵

Of the 1,081 sexual assault (MSO) cases sentenced from 2016–17 to 2022–23, 7.0% (n=76) were charged as domestic violence offences. The proportion of cases sentenced as a domestic violence offence (MSO) remained consistent over the past 7 years (see Figure 8).

Offences with aggravating circumstances were significantly more likely to be domestic violence offences (MSO).³⁶ In cases with aggravating circumstances, 24.4% were charged as a domestic violence offence (n=11/45); whereas cases without aggravating circumstances were only charged as domestic violence offences in 6.3% of cases (n=65/1,036). Matters with aggravating circumstances were 4.8 times more likely to be a domestic violence offence.³⁷

There were no statistically significant differences in domestic violence offences based on age,³⁸ gender³⁹ or Aboriginal and Torres Strait Islander status.⁴⁰

Figure 8: Number of sexual assault offences sentenced as a domestic violence offence (MSO), 2016–17 to 2022–23



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted September 2023.

Sentencing court

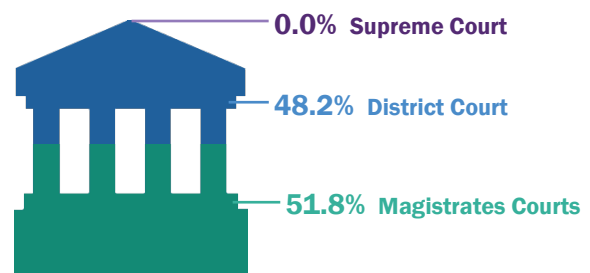
The nature of the sexual assault offence determines which court will hear a sentence in relation to it.

For a sexual assault (non-aggravated), the defendant can elect for the matter to be dealt with in the Magistrates Court if the victim is 14 years of age or older and the defendant pleads guilty.⁴¹ However, this is subject to a Magistrate’s overriding discretion to not deal with the matter if they think the person may not be adequately punished⁴² if dealt with in the Magistrates Court, which generally can only impose a sentence of up to 3 years.⁴³

Sexual assault (aggravated and aggravated life) involving adult defendants will ordinarily be dealt with in the District Court, regardless of the victim’s age or whether the defendant pleads guilty.⁴⁴ A charge may be sent to the Supreme Court if the defendant has a more serious charge in the Supreme Court, so that all charges can be dealt with together.

Cases involving child defendants are dealt with by special courts established to deal with charges involving children at the Magistrates Court and District Court level.⁴⁵

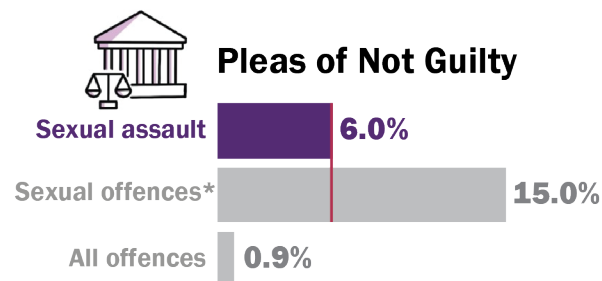
For cases involving adult defendants, there was a fairly even split between sexual assault cases (MSO) sentenced in the District Court (n=998, 48.2%) and the Magistrates Courts (n=1,074, 51.8%).



Of the 168 children sentenced for sexual assault (MSO), 58 (34.5%) were sentenced in the Children’s Court of Queensland (District Court level, and 110 (65.5%) were sentenced in the Children’s Court (Magistrates Courts level).

Type of plea

Sexual offences generally have a higher proportion of not guilty pleas compared to other offences (15.0% and 0.9%, respectively). The offence of sexual assault falls in between, with 6.0% of defendants entering a plea of not guilty.



* includes all assaultive sexual offences under the ANZSOC classification of '031 Sexual Assault'.

This analysis does not explore the reasons a person may plead guilty. A person may plead guilty for variety of reasons including, 'to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty'.⁴⁶

There were no statistically significant differences in type of plea based on gender.⁴⁷

Aboriginal and Torres Strait Islander people were significantly more likely to plead guilty (97.4%) than non-

Indigenous people (93.0%).⁴⁸ Non-indigenous defendants were 2.8 times more likely to enter a not guilty plea.

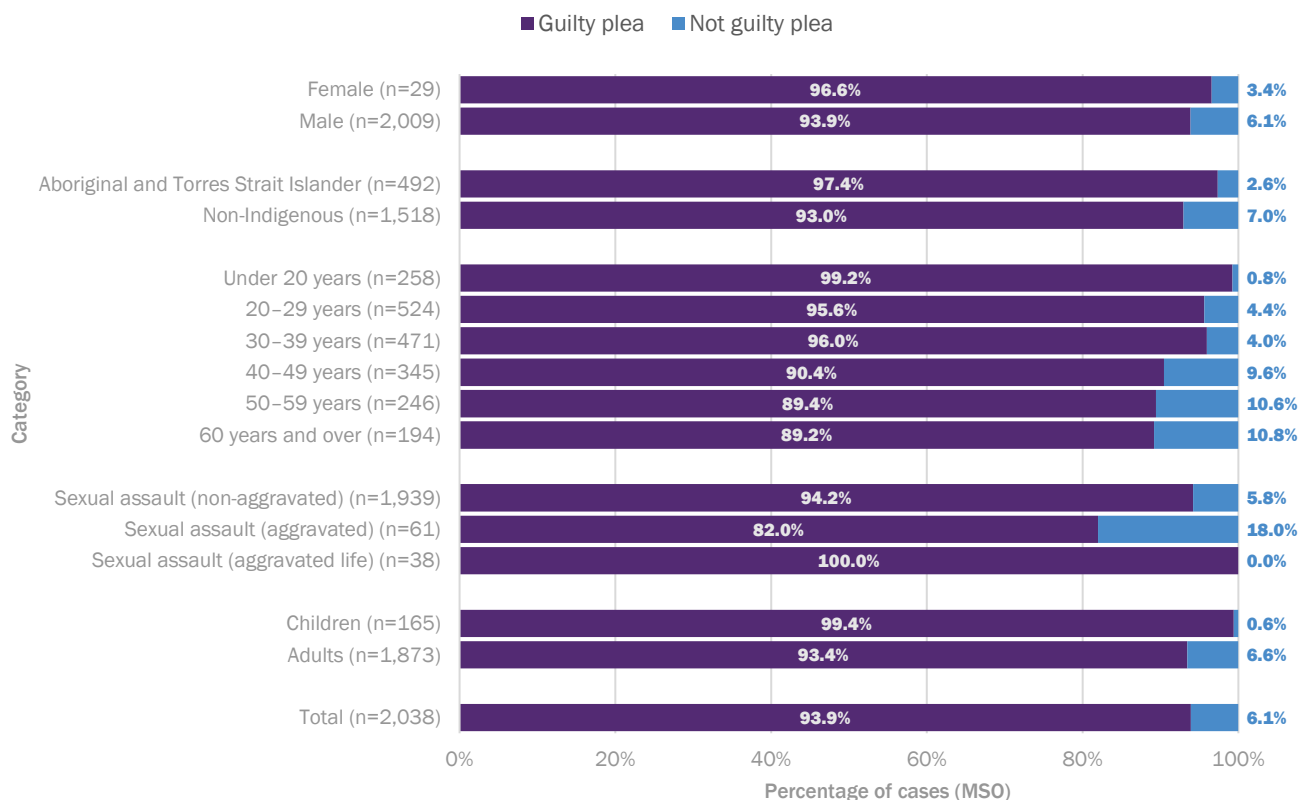
Research has found that Aboriginal and Torres Strait Islander people who had spent time in custody expressed concerns that 'they were not adequately supported in court to defend the charges and were advised to plead guilty as a means of expediency',⁴⁹ The research found that the technical language used within the justice system is difficult to understand, leading to several offenders 'pleading guilty without fully understanding the nature of the charges'.⁵⁰ Similar findings as to the reasons Indigenous people plead guilty have been reported in Canada.⁵¹

Older defendants had significantly higher proportions of not guilty pleas compared to younger defendants.⁵²

Cases involving sexual assault with circumstances of aggravation (MSO) were significantly more likely to have a plea of not guilty compared to cases without aggravating circumstances.⁵³ Offences with aggravating circumstances were 2.0 times more likely to have a not guilty plea.⁵⁴

Figure 9 contains a breakdown for the different types of aggravating circumstances (as discussed earlier, 'aggravated' sexual assault has a maximum penalty of 14 years, whereas 'aggravated life' has a maximum penalty of life imprisonment). For charges that were subject to a maximum penalty of life imprisonment, every defendant pleaded guilty.

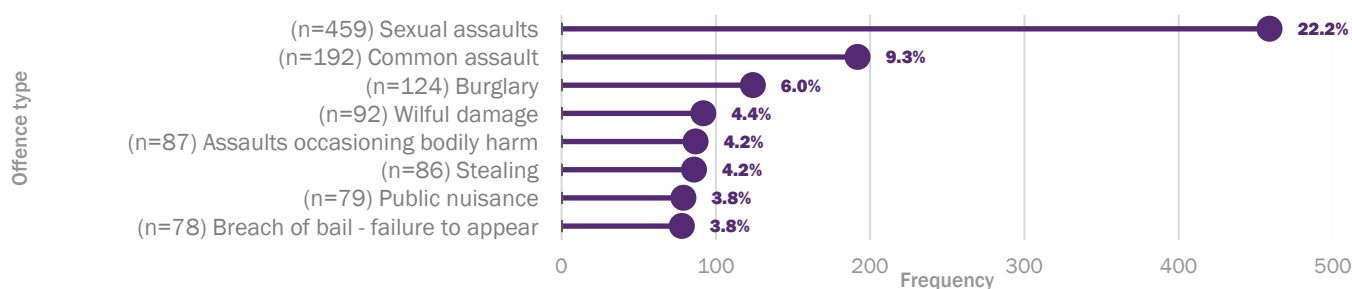
Figure 9: Plea type of people sentenced for sexual assault (MSO) by demographics, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

34 cases were excluded as the type of plea was unknown. 29 cases were excluded from various breakdowns as a demographic attribute was unknown.

Figure 10: Most common 8 offences co-sentenced with sexual assault (MSO), 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Co-sentenced offences

A court will sometimes deal with more than one offence during sentencing. This does not necessarily mean that the offences were committed as part of the same incident or even that the offences were committed on the same day. Analysis of offences that are sentenced together can provide context about the type of offending that is commonly associated with sexual assault.

As discussed previously, there were 680 cases involving a charge of sexual assault where sexual assault was not the MSO. That is, where one of those charges received a penalty that was more serious than the penalty given for the sexual assault charge.

In these cases, the MSO was most commonly a charge of rape (37.6%), indecent treatment of a child under 16 (11.2%), burglary (8.3%), maintaining an unlawful sexual relationship with a child⁵⁵ (7.0%) or assault occasioning bodily harm (6.3%).

The remainder of this section discusses the 2,072 cases in which sexual assault was the MSO.

There were 1,030 cases (MSO) with co-sentenced offences. Of these, 48.7% involved a co-sentenced sexual offence (n=502).

Of these 2,072 sentenced cases (MSO), 50.3% did not have any co-sentenced offences (n=1,042); 20.8% had one co-sentenced offence (n=430), and 29.0% had more than one (n=600).

Figure 10 shows the top eight most common co-sentenced offences. In over one-fifth of cases (22.2%), there was more than one sentenced charge of sexual assault (n=459). The offence of common assault was the offence most commonly sentenced alongside sexual assault (9.3% of cases, n=192), followed by burglary (6.0% of cases, n=124).

The number of sentenced offences per person per court event ranged from 1 to 102, with an average of 2.9 sentenced offences per event (median=1.0).

On average, Aboriginal and Torres Strait Islander people had a significantly higher number of offences sentenced than non-Indigenous people.⁵⁶

For each demographic group, the most common co-sentenced offence was another charge of sexual assault which was not the MSO. In other words, it was common across demographic groups for a defendant to be sentenced for multiple charges of sexual assault at the same court hearing.

A burglary charge was co-sentenced in 14.5% of cases involving an Aboriginal and Torres Strait Islander person (n=72/496). This was considerably higher than the 3.3% of cases with a co-sentenced burglary charge for non-Indigenous defendants (n=51/1,547).

Aboriginal and Torres Strait Islander children were much more likely to have a co-sentenced burglary charge (31.1%, n=33/106) compared to Aboriginal and Torres Strait Islander adults (10.0%, n=39/390).

Table 1: Number of sentenced offences per court event, by gender and Aboriginal and Torres Strait Islander status, 2005–06 to 2022–23

Category	N	Single offence (%)	2 to 4 offences (%)	5 to 10 offences (%)	11+ offences (%)	Number of offences			
						Avg	Median	Min	Max
Female	30	20.0	50.0	20.0	10.0	5.0	3.0	1	28
Male	2,042	50.7	35.0	10.1	4.1	2.9	1.0	1	102
Aboriginal or Torres Strait Islander	496	35.1	40.9	13.9	10.1	4.3	2.0	1	84
Non-Indigenous	1,547	54.9	33.4	9.3	2.4	2.5	1.0	1	102
Aggravating circumstances	100	40.0	36.0	19.0	5.0	3.3	2.0	1	18
No aggravating circumstances	1,972	50.8	35.2	9.8	4.2	2.9	1.0	1	102
Total	2,072	50.3	35.2	10.3	4.2	2.9	1.0	1	102

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: 29 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown.

Recidivism

Of the 2,634 unique people sentenced for sexual assault from 2005–06 to 2022–23 (not necessarily as their MSO), 4.0% were repeat offenders (n=106). This means that they were sentenced for sexual assault on at least two separate occasions over the 18-year period.

Almost all repeat offenders only reoffended once during the period (91.5%, n=97). The offender with the highest number of repeat appearances had a total of 5 cases sentenced involving sexual assault over the 18-year data period.

4.0% repeat offenders

People sentenced for sexual assault 2015–16 and 2017–18 were examined in more detail to determine whether they had committed any other offences before or after being sentenced for sexual assault. Recidivism was operationalised as any criminal offence committed within two years of the date of sentence for a non-custodial penalty or within two years of a person's expected release from custody for a custodial penalty – see Figure 12.

There were 467 unique people sentenced for sexual assault in the index period (2015–16 to 2017–18), regardless of whether sexual assault was their MSO. Of these, approximately one-third had previously offended (n=170, 36.4%), and approximately one-third committed a new offence after being sentenced for sexual assault (n=145, 31.0%) – see Figure 11.

Over half of people sentenced for sexual assault in the index period had no prior and no subsequent offence recorded (n=242, 51.8%). Almost 1 in 5 (n=90, 19.3%) had both prior offences, and subsequent offences. There were 55 people (11.8%) who did not have a prior offence

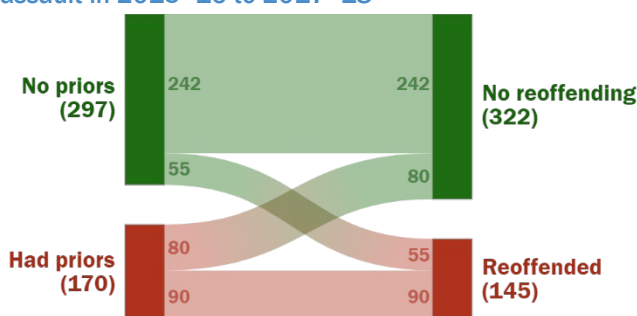
but did end up reoffending. Inversely, there were 80 people (17.1%) who did have a prior offence but did not reoffend.

Table 2 shows that Aboriginal and Torres Strait Islander people were significantly more likely to have a greater number of both prior⁵⁷ and subsequent⁵⁸ sentenced cases compared to non-Indigenous people. On average, Aboriginal and Torres Strait Islander people had 2.5 prior court events (non-Indigenous=0.5) and 2.0 subsequent court events (non-Indigenous=0.5).

Of the 467 unique people sentenced within the index period, 63.6% recorded no court events in the two years prior to the sentencing of their sexual assault offence. The number of prior sentences ranged from 0 to 11. The average number of prior court events was 1.0.

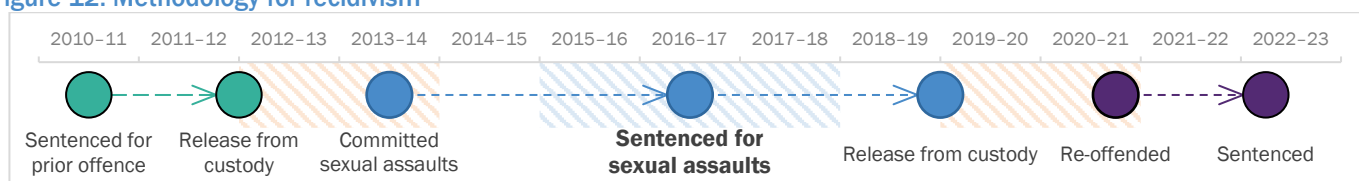
Similarly, 69.0% did not have any subsequent offending in the two years following their sexual assault sentence. The number of subsequent sentences ranged from 0 to 20. Of those who had subsequent offending 26.1% had between 1 and 4 subsequent sentenced offences and 4.9% had more than five subsequent sentenced events.

Figure 11: Recidivism of people sentenced for sexual assault in 2015–16 to 2017–18



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Figure 12: Methodology for recidivism



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

Table 2: Prior and subsequent sentences for sexual assault in 2015–16 and 2017–18









Category	Recidivist offenders (n)	No recidivist offences (%)	1 to 4 recidivist offences (%)	5+ recidivist offences (%)	Number of recidivist offences			
					Average	Median	Min	Max
Prior offending (N=467)*	170	63.6	31.0	5.4	1.0	0.0	0	11
Female (n=9)	7	22.2	55.6	22.2	2.3	2.0	0	6
Male (n=458)	163	64.4	30.6	5.0	0.9	0.0	0	11
Aboriginal or Torres Strait Islander (n=102)	82	19.6	63.7	16.7	2.5	2.0	0	10
Non-Indigenous (n=362)	88	75.7	22.1	2.2	0.5	0.0	0	11
Subsequent offending (N=467)*	145	69.0	26.1	4.9	0.9	0.0	0	20
Female (n=9)	5	44.4	44.4	11.1	1.4	1.0	0	5
Male (n=458)	140	69.4	25.8	4.8	0.8	0.0	0	20
Aboriginal or Torres Strait Islander (n=102)	67	34.3	52.0	13.7	2.0	1.0	0	10
Non-Indigenous (n=362)	78	78.5	19.1	2.5	0.5	0.0	0	20

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: 29 cases (MSO) were excluded as the person's Aboriginal and Torres Strait Islander status was unknown

* these n-sizes refer to the total number of people in the index period (2015–16 to 2017–18).

Figure 13: Most common 8 prior offences for people sentenced for sexual assault, 2015–16 to 2017–18

Offence	Sentenced cases	Unique people
 Public nuisance <i>Summary Offences Act 2005 (Qld) s 6</i>	61	47 (10.1%)
 Wilful damage <i>Criminal Code (Qld) s 469</i>	48	38 (8.1%)
 Unlicensed driving <i>Transport Operations (RUM) Act 1995 (Qld) s 78</i>	43	35 (7.5%)
 Stealing <i>Criminal Code (Qld) s 398</i>	55	32 (6.9%)
 Contravene direction or requirement of police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 791</i>	36	31 (6.6%)
 Assault or obstruct police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 790</i>	39	31 (6.6%)
 Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 9</i>	32	29 (6.2%)
 Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i>	39	29 (6.2%)

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Prior offending

Of the 467 people in the index period, there were 170 people with prior sentences (36.4% of people). Figure 13 shows the top 8 most common offences committed by people prior to committing a sexual assault offence in 2015–16 to 2017–18.

Only 6.5% of those with prior offending, had offended with a prior sexual offence (n=11/170). In fact, none of the most common prior offences were sexual offences (see Figure 13). There were 9 people with a prior sentenced charge of sexual assault (5.3%).

The most common prior offence was public nuisance, with 10.1% of people in the index period having this as a prior sentenced charge (n=47 people, across 61 different cases).

Subsequent offending

There were 145 people of those offending in the index period, who committed a subsequent offence after being sentenced for sexual assault (31.0% of people).

Only 13 people (9.0%) went on to commit another sexual offence. As with prior offending, none of the most common offences were sexual offences (see Figure 14). There were 8 people who were subsequently sentenced for sexual assault (5.5%).

The most common subsequent offence was wilful damage (n=38 people, across 57 different cases).

Figure 14: Most common 8 subsequent offences for people sentenced for sexual assault, 2015–16 to 2017–18

Offence	Sentenced cases	Unique people
 Wilful damage <i>Criminal Code (Qld) s 469</i>	57	38 (8.1%)
 Public nuisance <i>Summary Offences Act 2005 (Qld) s 6</i>	50	33 (7.1%)
 Stealing <i>Criminal Code (Qld) s 398</i>	52	31 (6.6%)
 Trespass <i>Summary Offences Act 2005 (Qld) s 11</i>	33	27 (5.8%)
 Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i>	37	27 (5.8%)
 Contravention of domestic violence order <i>Domestic and Family Violence Protection Act 2012 (Qld) s 177</i>	34	24 (5.1%)
 Common assault <i>Criminal Code (Qld) s 335</i>	26	24 (5.1%)
 Failure to comply with reporting obligations <i>Child Protection (Offender Reporting) Act 2004 (Qld) s 50</i>	28	22 (4.7%)

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Penalties and sentences

In Queensland, the maximum penalty for non-aggravated sexual assault is 10 years imprisonment – however, as discussed previously, this can increase to 14 years imprisonment or even life imprisonment when circumstances of aggravation apply.

From 2005–06 to 2022–23, almost two-thirds (61.0%) of cases sentenced involving sexual assault (MSO) received a custodial penalty (n=1,264). The remaining 808 received a non-custodial penalty.

There were differences in the use of custodial sentences between adults and children.⁵⁹ Of the 1,904 cases involving adults sentenced for sexual assault (MSO), over two-thirds received a custodial sentence (n=1,230, 64.6%), compared to only 20.2% of the cases involving children which resulted in a custodial sentence (n=34). The following sections will discuss penalties for adults and children separately.

Sentences for adults

Special provisions that apply when sentencing adults

While courts have discretion to set the appropriate sentence in most cases, there are mandatory sentencing provisions that apply in certain circumstances to adults.⁶⁰

Aggravated forms of sexual assault that carry a maximum penalty of life imprisonment are 'serious child sex offences'.⁶¹ If a person is convicted of a second 'serious child sex offence' (where both the initial offence and subsequent offence were committed when the person was an adult), this is known as a 'repeat serious child sex offence'. The court in this case must impose a sentence of life imprisonment or an indefinite sentence.⁶²

Section 9(4)(c) of the PSA states that when sentencing an adult for an offence of a sexual nature committed in relation to a child under 16 years, the judge must order an actual term of imprisonment, unless there are exceptional circumstances.⁶³

If a sentence of imprisonment of 10 years or more is imposed on an adult, a court must declare them convicted of a serious violent offence (SVO).⁶⁴ This is discretionary for sentences of 5 years or more, and less than 10 years.⁶⁵ Where a declaration is made, the person must serve a minimum of 80% of their sentence in custody, or 15 years, whichever is less.⁶⁶ During the 18-year data period there were 7 cases involving sexual assault that resulted in a declaration being made that the person was convicted of a serious violent offence – however, sexual assault was not the MSO in any of these cases.

Sentencing outcomes for adults

Table 3 shows the types of penalties given to adults sentenced for sexual assault (MSO). From 2005–06 to 2022–23, a total of 64.6% (n=1,230) of adults sentenced for sexual assault (MSO) received a custodial penalty. This is much higher than the 11.4% of adults who were sentenced to a custodial penalty across all offences in Queensland.

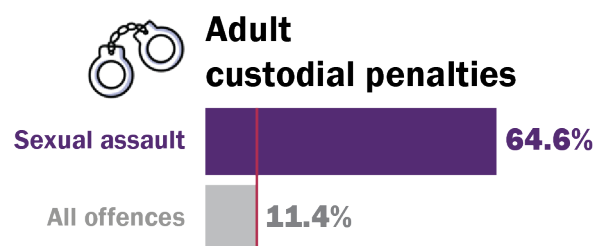


Table 3: Penalties for sexual assault (MSO) sentenced as an adult by gender, Aboriginal and Torres Strait Islander status, and maximum penalty (with or without aggravating circumstances), 2005–06 to 2022–23

Penalty type	Total %	Men %	Women %	Aboriginal and Torres Strait Islander %	Non-Indigenous %	Maximum penalty		
						10 years (non-aggravated)	14 years (aggravated)	Life
						%	%	%
Custodial penalties	64.6	65.0	41.4	81.8	60.2	63.1	95.1	96.3
Imprisonment (n=337)	17.7	17.8	13.8	41.0	11.9	17.5	11.5	44.4
Partially suspended (n=257)	13.5	13.7	3.4	19.0	12.1	11.9	49.2	40.7
Wholly suspended (n=580)	30.5	30.6	24.1	19.7	33.0	30.9	26.2	7.4
Intensive correction order (n=53)	2.8	2.8	0.0	1.8	3.1	2.6	8.2	3.7
Rising of the court (n=3) †	0.2	-	-	-	-	0.2	0.0	0.0
Non-custodial penalties	35.4	35.0	58.6	18.2	39.8	36.9	4.9	3.7
Community service (n=97)	5.1	5.1	3.4	4.4	5.1	5.3	0.0	0.0
Probation (n=265)	13.9	13.5	37.9	7.4	15.8	14.4	4.9	0.0
Monetary (n=248)	13.0	13.0	13.8	4.4	15.1	13.7	0.0	0.0
Recognisance (n=56)	2.9	3.0	0.0	1.5	3.4	3.0	0.0	3.7
Convicted, nfp* (n=8)	0.4	0.4	3.4	0.5	0.4	0.4	0.0	0.0
Total	100% n=1,904	100% n=1,875	100% n=29	100% n=390	100% n=1,487	100% n=1,816	100% n=61	100% n=27

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: excludes children. People with unknown characteristics are excluded from each subgroup.

* not further punished. † Data withheld from cells where the sub-total contains less than 5 sentenced cases.

A wholly suspended sentence was the most common penalty imposed (n=580, 30.5%); however, in cases where circumstances of aggravation were present, a penalty with time in prison was preferred, with partially suspended sentences and sentences of imprisonment making up 60.7% of sentences for matters with a maximum penalty of 14 years, and making up 85.1% of sentences where the maximum penalty was life imprisonment.

Non-custodial penalties accounted for 35.4% of penalties. The most common non-custodial order imposed on adults for sexual assault (MSO) was probation (13.9%) followed by a monetary penalty (13.0%) and community service (5.1%).

Non-Indigenous people were 3.0 times more likely to receive a non-custodial order (39.8%) compared to Aboriginal and Torres Strait Islander people (18.2%),⁶⁷ with non-Indigenous people 2.3 times as likely to receive a probation order (15.8%, compared to 7.4% for Aboriginal and Torres Strait Islander people),⁶⁸ and 3.9 times more likely to receive a monetary penalty (15.1%, compared to 4.4% for Aboriginal and Torres Strait Islander people).⁶⁹

Length of sentence for adults

The average sentence of imprisonment was 1.3 years (median=10 months). The longest sentences were for 7.0 years, however only 2 adults received a sentence of this length.

There was no significant difference in imprisonment length based on Aboriginal and Torres Strait Islander status.⁷⁰ Men had an average sentence of imprisonment of 1.3 years. On average, cases with aggravating circumstances had significantly longer terms of imprisonment (2.8 years, compared to 1.2 years for cases without aggravating circumstances).⁷¹

The average partially suspended sentence was 1.4 years (median=1.0 years). The longest partially suspended sentence was 5.0 years (the maximum term that can be suspended).⁷² The shortest partially suspended sentences had a length of 3 months. There was no significant difference in the length of partially suspended sentences based on Aboriginal and Torres Strait Islander status.⁷³

Wholly suspended sentences had an average length of 8.2 months (median=6.0 months). The longest wholly suspended sentences had a length of 2.5 years, and the shortest sentences were 28 days in duration. Aboriginal and Torres Strait Islander adults had shorter wholly suspended sentences at 7.6 months, compared to non-Indigenous adults (8.3 months).

Table 4: Sentence lengths for sexual assault (MSO) by gender and Aboriginal and Torres Strait Islander status 2005–06 to 2022–23

	N	Avg	Median	Min	Max
Imprisonment (years)					
Female†	4	-	-	-	-
Male	333	1.3	0.9	0.0 (15 days)	7.0
Aboriginal or Torres Strait Islander	160	1.2	0.8	0.0 (15 days)	5.0
Non-Indigenous	177	1.3	1.0	0.0 (17 days)	7.0
Aggravating circumstances	19	2.8	3.0	0.1	6.0
No aggravating circumstances	318	1.2	0.8	0.0 (15 days)	7.0
Total	337	1.3	0.8	0.0 (15 days)	7.0
Partially suspended (years)					
Female†	1	-	-	-	-
Male	256	1.4	1.0	0.3	5.0
Aboriginal or Torres Strait Islander	74	1.3	1.1	0.3	3.5
Non-Indigenous	180	1.4	1.3	0.3	5.0
Aggravating circumstances	41	1.8	1.5	0.8	4.5
No aggravating circumstances	216	1.3	1.0	0.3	5.0
Total	257	1.4	1.0	0.3	5.0
Wholly suspended (years)					
Female	7	0.7	0.5	0.1	2.0
Male	573	0.7	0.5	0.1	2.5
Aboriginal or Torres Strait Islander	77	0.6	0.5	0.1	2.0
Non-Indigenous	490	0.7	0.6	0.1	2.5
Aggravating circumstances	18	1.3	1.2	0.7	2.0
No aggravating circumstances	562	0.7	0.5	0.1	2.5
Total	580	0.7	0.5	0.1	2.5
Intensive correction order (years)					
Female	0	-	-	-	-
Male	53	0.8	0.8	0.3	1.0
Aboriginal or Torres Strait Islander	7	0.8	1.0	0.5	1.0
Non-Indigenous	46	0.8	0.8	0.3	1.0
Aggravating circumstances	6	0.8	0.8	0.5	1.0
No aggravating circumstances	47	0.8	0.8	0.3	1.0
Total	53	0.8	0.8	0.3	1.0
Community service (hours)					
Female†	1	-	-	-	-
Male	96	125	120	40	240
Aboriginal or Torres Strait Islander	17	112	100	40	200
Non-Indigenous	76	127	120	40	240
Aggravating circumstances	0	-	-	-	-
No aggravating circumstances	97	126	120	40	240
Total	97	126	120	40	240
Probation (years)					
Female	11	1.5	1.5	1.0	3.0
Male	254	1.4	1.5	0.5	3.0
Aboriginal or Torres Strait Islander	29	1.4	1.3	0.5	3.0
Non-Indigenous	235	1.4	1.5	0.5	3.0
Aggravating circumstances†	3	-	-	-	-
No aggravating circumstances	262	1.4	1.5	0.5	3.0
Total	265	1.4	1.5	0.5	3.0
Monetary (dollars)					
Female†	4	-	-	-	-
Male	244	\$1,219	\$1,000	\$200	\$10,000
Aboriginal or Torres Strait Islander	17	\$1,068	\$1,000	\$300	\$2,500
Non-Indigenous	225	\$1,213	\$1,000	\$200	\$10,000
Aggravating circumstances	0	-	-	-	-
No aggravating circumstances	248	\$1,215	\$1,000	\$200	\$10,000
Total	248	\$1,222	\$1,000	\$200	\$10,000
Recognisance (years)					
Female	0	-	-	-	-
Male	56	1.0	1.0	0.2	3.0
Aboriginal or Torres Strait Islander	6	0.7	0.6	0.5	1.0
Non-Indigenous	50	1.1	1.0	0.2	3.0
Aggravating circumstances†	1	-	-	-	-
No aggravating circumstances	55	1.0	1.0	0.2	3.0
Total	56	1.1	1.0	0.2	3.0

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: excludes children. People with unknown characteristics are excluded from each subgroup.

† Data withheld from cells where the sub-total contains less than 5 sentenced cases.

Trends in use of custodial penalties and custodial sentence length for adults

Over the 18-year data period, the percentage of cases that resulted in a custodial penalty remained relatively stable. In 2022–23, the proportion of custodial penalties dropped to 77.9%, the lowest level they had been at since 2017–18 (5 years prior) – see Figure 15.

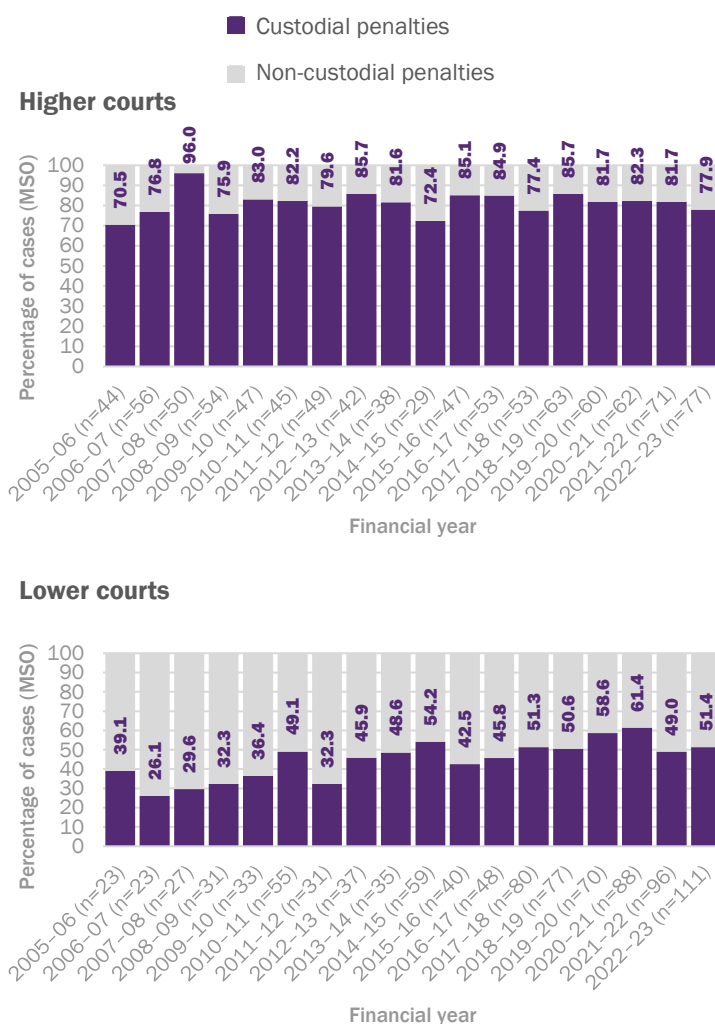
In the lower courts, the use of custodial penalties increased over the 18-year data period – from as low as 26.1% in 2006–07 to as high as 61.4% in 2020–21. In 2022–23, the rate of custodial penalties in the lower courts was at 51.4% – 10 percentage points lower than two years prior.

Figure 16 shows the average length of sentences (in years) for penalties of imprisonment and suspended sentences.

In the higher courts, there has been no change in the median sentence length, with a median length of 1.0 year in 2022–23, which has been stable over the 18-year data period. The average sentence length (which is affected by extreme values) was higher in 2007–08 and 2008–09, with an average length of 1.4 and 1.5 years (respectively), compared to an average of 1.2 years in 2022–23. The median sentence length fell to 0.8 years in 2019–20, potentially as a result of changes to sentencing practices due to the practical implications of lockdowns during the COVID-19 pandemic, which resulted in delays in court proceedings.

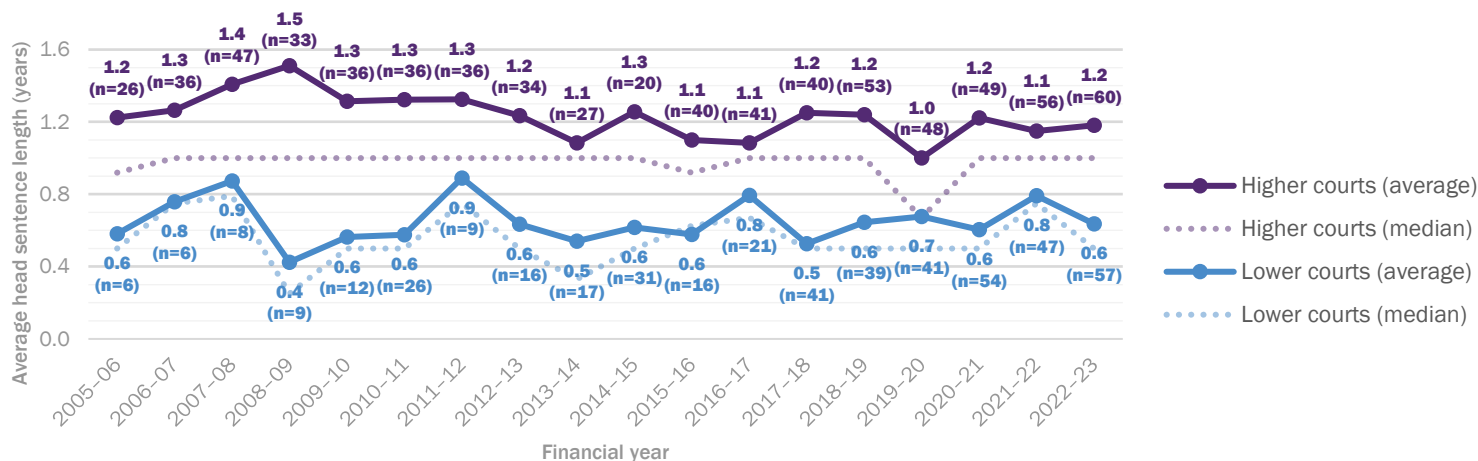
In the lower courts, there has been little change in the average or median sentence length over the 18-year data period. While there is some variation year-to-year (especially in the earlier years examined), much of this is due to variation from having a small sample size – less than 10 imprisonment cases were sentenced per year prior to 2009–10.

Figure 15: Custodial penalties for sexual assault (MSO) sentenced as an adult by year, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.
Note: custodial penalties include imprisonment (including rising of the court), suspended sentences, and intensive correction orders.

Figure 16: Length of imprisonment and suspended sentences for sexual assault (MSO) sentenced as an adult by year, 2005–06 to 2022–23



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Sentences for children

Special provisions that apply when sentencing children

Different sentencing principles apply to the sentencing of children. A child aged 10–17 years at the time of committing an offence is dealt with under the *Youth Justice Act 1992* (Qld). Prior to changes coming into effect in February 2018, 17-year-olds were dealt with under Queensland law as adults rather than as children. A child aged 10–13 can only be held criminally responsible if the prosecution shows the child had the capacity at the time to know they should not do the act or omission. For more information about the sentencing of children, see the Council's *Guide to the Sentencing of Children in Queensland*.

Sentencing outcomes for children

Of the 168 children sentenced for sexual assault (MSO), 34 (20.2%) received a custodial penalty. Detention was

imposed in 13.1% of cases (n=22), and an additional 7.1% were sentenced to detention, but were immediately released into a structured program with strict conditions (a conditional release order, n=12) – see Table 5.

Aboriginal and Torres Strait Islander children were 5.5 times more likely to receive a custodial penalty than non-Indigenous children.⁷⁴ Aboriginal and Torres Strait Islander children were sentenced to detention in 19.8% of cases compared to 1.7% for non-Indigenous children (n=21 and 1, respectively).

The majority (79.8%) of children were sentenced to a non-custodial order. The most common of these was probation, with just over half (n=87, 51.8%) of children sentenced for sexual assault (MSO) receiving this penalty. The next most common non-custodial penalty was community service (n=18, 10.7%), followed by court diversion orders (n=13, 7.7%).

Table 5: Penalties for sexual assault (MSO) sentenced as a child by gender, Aboriginal and Torres Strait Islander status, and presence of aggravating circumstances, 2005–06 to 2022–23

Penalty type	Total %	Aboriginal and Torres Strait Islander %	Non-Indigenous %	Aggravating circumstances %	No aggravating circumstances %
Custodial penalties	20.2	28.3	6.7	16.7	20.5
Detention (n=22)	13.1	19.8	1.7	16.7	12.8
Conditional release order (n=12)	7.1	8.5	5.0	0.0	7.7
Non-custodial penalties	79.8	71.7	93.3	83.3	79.5
Intensive supervision order (n=0) †	0.0	-	-	-	-
Community service (n=18)	10.7	11.3	10.0	8.3	10.9
Probation (n=87)	51.8	49.1	55.0	75.0	50.0
Restorative justice order (n=1) †	0.6	-	-	-	-
Court diversion referral (n=13)	7.7	4.7	13.3	0.0	8.3
Monetary (n=2) †	1.2	-	-	-	-
Recognisance (n=7)	4.2	1.9	8.3	0.0	4.5
Reprimand (n=6)	3.6	2.8	5.0	0.0	3.8
Convicted, nfp* (n=0)†	0.0	-	-	-	-
Total	100% n=168	100% n=106	100% n=60	100% n=12	100% n=156

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: excludes adults. People with unknown characteristics are excluded from each subgroup. Due to the small number of cases sentenced with aggravating circumstances (n=12), it was not possible to conduct further analysis by the specific type of aggravating circumstance. Breakdowns by gender were not possible as only 1 girl was sentenced.

* not further punished.

† Data withheld from cells where the sub-total contains less than 5 sentenced cases.

Length of sentence for children

The maximum penalty for children convicted of non-aggravated sexual assault is 5 years detention – increasing to 7 years detention or 10 years detention when circumstances of aggravation apply.

As there were only 12 cases sentenced with aggravating circumstances, there were not enough cases to analyse differences in sentence length by the presence of aggravating circumstances. Similarly, as there was only 1 girl sentenced, it was not possible to provide breakdowns by gender.

The average detention order was 6.8 months (median=6.0 months). The longest was 2.3 years, and the shortest was 7 days.

As discussed above, probation was the most common penalty for children sentenced for sexual assault (MSO). On average, these orders were 1.1 years in length (median=1.0 years), ranging from 2 months to 3 years.

Table 6 shows the sentence length for penalties imposed on children sentenced for sexual assault (MSO).

Table 6: Sentence lengths for sexual assault (MSO) sentenced as a child by Aboriginal and Torres Strait Islander status 2005–06 to 2022–23

	N	Avg	Median	Min	Max
Detention (years)					
Aboriginal or Torres Strait Islander	21	0.6	0.5	0.0	2.3
Non-Indigenous†	1	-	-	-	-
Total	22	0.6	0.5	0.0	2.3
Conditional release order (years)					
Aboriginal or Torres Strait Islander	9	0.2	0.3	0.1	0.3
Non-Indigenous†	3	-	-	-	-
Total	12	0.3	0.3	0.1	0.5
Community service (hours)					
Aboriginal or Torres Strait Islander	12	80	50	20	240
Non-Indigenous	6	57	45	30	100
Total	18	72	50	20	240
Probation (years)					
Aboriginal or Torres Strait Islander	52	1.1	1.0	0.2	3.0
Non-Indigenous	33	1.1	1.0	0.3	3.0
Total	87	1.1	1.0	0.2	3.0
Monetary (dollars)					
Aboriginal or Torres Strait Islander†	1	-	-	-	-
Non-Indigenous†	1	-	-	-	-
Total	2	\$625	\$625	\$500	\$750
Recognisance (years)					
Aboriginal or Torres Strait Islander†	2	-	-	-	-
Non-Indigenous	5	0.8	0.8	0.5	1.0
Total	7	0.7	0.5	0.5	1.0

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Note: excludes adults. People with unknown characteristics are excluded from each subgroup. Breakdowns by gender were not possible as only 1 girl was sentenced.

† Data withheld from cells where the sub-total contains less than 5 sentenced cases.

Endnotes

¹ Section 352 of the *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code* (Qld)'). The act of unlawfully and indecently assaulting another person does not expressly state that consent is an element. However, assault is defined for this purpose in s 245 as being 'without the other's consent'. See also s 347.

² *Criminal Code* (Qld) s 352(1).

³ *Youth Justice Act 1992* (Qld) ('YJA') s 175(g).

⁴ *Criminal Code* (Qld) s 352(2).

⁵ YJA (n 3) s 176(2).

⁶ Ibid s 176(3)(a).

⁷ Ibid s 176(3)(b).

⁸ *Criminal Code* (Qld) s 348(1).

⁹ Ibid s 348(2).

¹⁰ Ibid s 348(3).

¹¹ Ibid s 348(3). The definition of consent under s 348 was amended on 7 April 2021 following recommendations made by the Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020). See *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (Qld) s 8.

¹² See Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (Qld) introduced into Parliament on 11 October 2023.

¹³ Queensland Government, *Sexual violence statistics* (Webpage, 22 September 2023) citing Australian Bureau of Statistics Person Safety Survey 2021-22. <<https://www.justice.qld.gov.au/about-us/services/women-violence-prevention/violence-prevention/sexual-violence-prevention/sexual-violence-statistics>>. See also, Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System: Report Two* (2022), vol 1, 42-3 citing Australian Bureau of Statistics, 'Personal Safety, Australia: Statistics for family, domestic, sexual violence, physical assault, partner emotional abuse, child abuse, sexual harassment, stalking and safety 2016' (Catalogue No 4906.0, 18 November 2017). See also Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System: Report Two* (2022) vol 1, 93-4 citing Rachel Loney-Howes, Georgina Heydon & Tully O'Neill, 'Connecting survivors to therapeutic support and criminal justice through informal reporting options: an analysis of sexual violence reports made to a digital reporting tool in Australia' (2022) 34(1) *Current Issues in Criminal Justice* 21.

¹⁴ Australian Institute of Family Studies and Victorian Police, *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners* (2017), 3.

¹⁵ Victorian Law Reform Commission, *Improving Justice System Response to Sexual Offences Final Report* (Report) 26.

¹⁶ Women's Safety and Justice Taskforce, *Hear Her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (2021), vol 1, 101-3.

¹⁷ Ibid.

¹⁸ Victorian Law Reform Commission, *Improving Justice System Response to Sexual Offences Final Report* (2021) 27.

¹⁹ Australian Institute of Family Studies and Victorian Police, *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners* (2017), 3.

²⁰ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence-Victimisation*. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

²¹ This offence has been renamed 'repeated sexual conduct with a child': see *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) s 16, which commenced on 1 August 2023.

²² Based on official crime statistics available from <https://www.data.qld.gov.au/dataset/offence-numbersmonthly-from-july-1997/resource/609541e9-4ed2-4ea4-8cae-c9f94d428a27>

²³ The new s 352 was inserted by the *Criminal Law Amendment Act 2000* (Qld) s 26.

²⁴ A child aged 10-13 can only be found to be criminally responsible if the prosecution shows the child had the capacity to know at the time that they should not do the act or omission: s 29 *Criminal Code* (Qld).

²⁵ As at 30 June 2021. See Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians*, Table 7.3, available at <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021>> accessed 26 October 2023.

²⁶ Queensland Government Statistician's Office, *Crime Report, Queensland 2021-22* (2023) 68.

²⁷ Independent groups t-test: $t(953.3) = -12.74$, $p < .001$, $r = 0.38$ (equal variances not assumed).

²⁸ Pearson's chi-square test: $\chi^2(1) = 153.947$, $p < .0001$.

²⁹ Based on an odds ratio of 6.7.

³⁰ Pearson's chi-square test: $\chi^2(1) = .148$, $p = .7007$.

³¹ Pearson's chi-square test: $\chi^2(1) = .004$, $p = .9470$.

³² Independent groups t-test: $t(2070) = 2.24$, $p = .025$, $r = 0.05$ (equal variances assumed).

³³ Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 2. The amending Act was the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld).

³⁴ The definition of 'domestic violence' was amended to include 'a pattern of behaviour', commencing 1 August 2023: see *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) s 31.

³⁵ See *Domestic and Family Violence Protection Act 2012* (Qld) ss 8, 13.

³⁶ Pearson's chi-square test: $\chi^2(1) = 21.784, p < .0001$.

³⁷ Based on an odds ratio of 4.8.

³⁸ Pearson's chi-square test: $\chi^2(5) = 6.936, p = .2255$.

³⁹ Pearson's chi-square test: $\chi^2(1) = .003, p = .9557$.

⁴⁰ Pearson's chi-square test: $\chi^2(1) = .607, p = .4361$.

⁴¹ *Criminal Code* (Qld) s 552B(1)(a). Although, note that offending that constitutes a sexual assault but is committed against a child under 16 is likely to be charged as an 'indecent treatment of children under 16' under s 210 of the *Criminal Code* (Qld).

⁴² *Ibid* s 552D.

⁴³ *Ibid* s 552H.

⁴⁴ *Ibid* s 552B(1)(a).

⁴⁵ Magistrates Courts and the District Court have equivalent courts created by legislation which can exercise the specific sentencing powers for children under the *Youth Justice Act 1992* (Qld).

⁴⁶ *Meissner v the Queen* (1995) 184 CLR 132, 141 (Brennan, Toohey and McHugh JJ), 157 (Dawson J). Also cited in *R v BDC* [2018] QCA 132 [6](b) (Philippides JA, Sofronoff P and Henry J agreeing).

⁴⁷ Pearson's chi-square test: $\chi^2(1) = .358, p = .5498$.

⁴⁸ Pearson's chi-square test: $\chi^2(1) = 12.852, p = .0003$, Odds ratio = 2.8.

⁴⁹ See Glen Dawes, Keeping on Country: Doomadgee and Mornington Island Recidivism Research Report (2016) 39. For a further discussion, see Queensland Sentencing Advisory Council, *Connecting the dots: the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland* (Sentencing Profile, March 2021), 8–9.

⁵⁰ *Ibid*.

⁵¹ Department of Justice Canada, Guilty Pleas among Indigenous People in Canada (2017) <<https://www.justice.gc.ca/eng/rp-pr/jr/gp-pc/index.html>>.

⁵² Pearson's chi-square test: $\chi^2(5) = 42.430, p < .0001$. Similarly, adults had significantly higher proportions of not guilty pleas compared to children: $\chi^2(1) = 9.430, p = .0021$.

⁵³ Pearson's chi-square test: $\chi^2(1) = 4.601, p = .0319$.

⁵⁴ The odds ratio is a statistical calculation to identify the size of the association between the predictor and outcome variable. The greater the odds ratio, the greater the degree of association between the predictor and outcome variable. Conversely, the closer the odds ratio is to 1, the smaller the association.

⁵⁵ This offence has been renamed 'repeated sexual conduct with a child': see *Domestic and Family Violence Protection*

(Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 16, which commenced on 1 August 2023.

⁵⁶ Independent groups t-test: $t(628.4) = 5.76, p < .001, r = 0.22$ (equal variances not assumed).

⁵⁷ Independent groups t-test: $t(120.3) = 8.40, p < .001, r = 0.61$ (equal variances not assumed).

⁵⁸ Independent groups t-test: $t(129.0) = 6.09, p < .001, r = 0.47$ (equal variances not assumed).

⁵⁹ Pearson's chi-square test: $\chi^2(1) = 127.716, p < .0001$.

⁶⁰ 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 sexual assault 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.

⁶¹ *Penalties and Sentences Act 1992* (Qld) s 161D.

⁶² *Ibid* s 161E.

⁶³ *Ibid* s 9(4)(c).

⁶⁴ *Ibid* ss 161A(a), 161B(1).

⁶⁵ *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).

⁶⁶ *Corrective Services Act 2006* (Qld) s 182.

⁶⁷ Pearson's chi-square test: $\chi^2(1) = 63.136, p < .0001$, odds ratio=3.0.

⁶⁸ Pearson's chi-square test: $\chi^2(1) = 17.899, p < .0001$, odds ratio=2.3.

⁶⁹ Pearson's chi-square test: $\chi^2(1) = 31.924, p < .0001$.

⁷⁰ Independent groups t-test: $t(328.8) = 1.55, p = .123, r = 0.09$ (equal variances not assumed).

⁷¹ Independent groups t-test: $t(335) = 6.29, p < .001, r = 0.33$ (equal variances assumed).

⁷² *Penalties and Sentences Act 1992* (Qld) s 144.

⁷³ Independent groups t-test: $t(183.1) = 1.22, p = .226, r = 0.09$ (equal variances not assumed).

⁷⁴ Pearson's chi-square test: $\chi^2(1) = 11.011, p = .0009$, Odds Ratio = 5.5.



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