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Sentencing Domestic & Family Violence Offences: A Review of Research Evidence

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Griffith University acknowledges the people who are the traditional custodians of the land and pays respect to Elders, past and present, and extend that respect to other Aboriginal and Torres Strait Islander peoples.

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Executive summary

This review examined the empirical evidence on the sentencing of domestic and family violence offences, particularly the effectiveness of sentence orders and other court-based interventions. In total, we identified 79 key studies, published just over a two-decade period (2000 to 2023). Overall, the evidence-base is limited in two ways:

- *methodologically*, due to less robust research designs, small sample sizes, small number of studies and limited analytic techniques. More impact evaluations of court interventions are needed. Of those that we found, most rely on official data, victim/survivor interviews or surveys, and interviews with practitioners.
- *conceptually*, as the research is overwhelmingly based on female victim/survivors with male perpetrators. Although this is not surprising given the gendered nature of domestic and family violence, any conclusions may not be generalisable beyond this relationship dyad.

Key findings

Keeping in mind these limitations, the review does highlight some promising directions for research, policy and practice. Here, we highlight seven themes.

Measuring the effectiveness of sentencing orders (or sanctions)

We generally think about the effectiveness of sanctions in terms of the sentencing purpose. In Queensland, the *Penalties and Sentences Act 1992* sets out five purposes for the imposition of a sentencing order on a convicted defendant: punishment, rehabilitation, deterrence, denunciation, and community protection (s.9(1)). These purposes are similar to those in other common law jurisdictions. Unfortunately, we cannot easily disentangle different sentencing purposes. The effectiveness of a sentencing order is typically measured in terms of changes in re-offending behaviour. Whether this is labelled a deterrent, or a rehabilitative, effect depends on the sanction type, not the judges' reasoning for the imposition of the sanction. Research typically associates custodial sanctions to deterrence or incapacitation, or community-based sanctions (if they involve treatment or other programs) potentially with rehabilitation.

No robust consistent evidence to support a deterrent effect

Custodial sentences do not appear to reduce domestic and family violence re-offending. Overall, there was no consistent finding that the experience of an imprisonment sentence had a deterrent effect (i.e. reduced domestic and family violence-related re-offending). Further, non-custodial sentences (such as suspended sentences, probation and fines) are also not associated, on average, with reduced domestic and family violence-related re-offending.

Perhaps there is a rehabilitative effect

There is a lack of evidence on the impact of court treatment-oriented sanctions, at least partially due to these types of orders being made in combination with other orders. Of the one study found, community-based sanctions (such as probation)—when combined with treatment options—may reduce domestic and family violence re-offending. However, trials of the judicial monitoring of mandated perpetrator intervention programs in the United States did not show evidence of an impact on domestic and family violence-related re-offending, although their impact is difficult to disentangle from likely increased detection of offending due to monitoring.

Research—albeit based on small samples—suggests that victim/survivors prefer more rehabilitative-style sanctions.

No strong evidence of punishment and denunciation

Arguably, more severe sentences indicate a stronger denunciation of perpetrators' behaviours. For example, from victims' perspective, fines (a common sentence for breaches of domestic violence protection orders) are seen as trivialising the impact of the violation. However, to date, there is little evidence that domestic and family violence offences have been sentenced more severely than violent offences committed in other contexts, except in the cases of Aboriginal and Torres Strait Islander defendants convicted of domestic and family violence offenses.

If harsher sentences are a proxy for punishment-oriented purposes, research suggests that the public perceives the sentencing of domestic and family violence cases as too lenient. However, when provided with information about a case and defendant, public perceptions become, on average, less punitive. This aligns with research on public perceptions of sentencing more generally.

However, although from a single Australian study, for victim/survivors, denunciation (and relatedly accountability) may lie in the decision to convict, rather than in the sentence itself.

Alternative approaches appear promising, but their impact on recidivism is less clear

For over two decades, restorative justice has been proposed as an alternative approach to domestic and family violence cases, but it remains highly controversial due to concerns over victim safety and perpetrator accountability. Not surprisingly, there has been very few robust evaluations of restorative justice approaches for domestic and family violence cases, making it difficult to determine their effectiveness. However, there is some evidence that it can be a positive experience for victim/survivors. Further, in New Zealand, research shows that victim/survivors agree that restorative justice can be appropriate in domestic and family violence cases.

In contrast, specialist domestic and family violence courts continue to be a popular alternative to mainstream criminal courts. Evaluations of specialist domestic and family violence courts show that these courts provide enhanced support to victim/survivors and perpetrators, improving victim/survivors' satisfaction and confidence with court processes, compared to mainstream criminal courts. However, their impact on recidivism is less clear. In part, this is due to considerable variation in the models and features of individual courts, as well as the lack of long-term evaluations of these courts.

Insufficient evidence on the impact of more culturally appropriate court processes for those from Aboriginal and Torres Strait Islander communities

Indigenous sentencing courts provide a more culturally relevant process for First Nations' defendants, including those from Aboriginal and Torres Strait Islander communities. Although there is very little research on responding to domestic and family violence offences within Indigenous sentencing courts, an Australian standard recidivism analysis did not find reductions in re-offending. However, there is qualitative evidence Indigenous sentencing courts may promote pathways of desistance.

Implications for the sentencing of domestic and family violence cases

From this assessment of the empirical evidence, eight suggestions for future policy and practice were identified:

1. Community-based sanctions (combined with treatment conditions) should be preferred over custodial sanctions, as these sentences have a greater opportunity to reduce domestic and family violence re-offending, although a role for incarceration remains.
2. The use of fines should be reduced, as this type of order minimises harm and exacerbates financial barriers.
3. More flexible sentencing options are needed, especially pre-sentence options to support earlier intervention with perpetrators.

4. Broader support services and treatment programs (including culturally appropriate options) are needed. Sentencing does not sit in a vacuum but needs to be considered as part of an integrated, coordinated approach.
5. Judicial monitoring of targeted community-based orders should be considered, noting that there will be resourcing implications.
6. A carefully designed restorative justice approach should be considered. There is some support that victim/survivors perceive restorative justice as an appropriate option.
7. The measure of success for court interventions should be reframed in terms of desistance, taking into account that perpetrators' pathways to more prosocial behaviours are inconsistent, and thus not well-measured by a binary contact/re-contact measure.
8. More robust research and evaluations of courts and sentencing for domestic and family violence offenders is required to build a stronger evidence base to inform future policy and practice.

Finally, to strengthen our capacity to reduce re-offending by domestic and family violence perpetrators, courts and sentencing should be part of a coordinated and integrated response, including service providers, other legal stakeholders, community services and others involved in supporting both victims and perpetrators.

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Notes on terminology

Domestic and family violence refers to behaviour that occurs in an intimate, family or carer relationship that is physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive or controlling. Although we use the term domestic and family violence, we note that the studies in this review may focus on narrower definitions of this behaviour. We will use those terms in specific descriptions of the study.

Domestic violence protection order is used to describe any form of protection order issued by a court that restricts the behaviour of a person who is being violent in a domestic and family context. Different terms may be used, including domestic violence orders (Queensland and Northern Territory), domestic and family violence protection orders (New South Wales), family violence intervention orders (Victoria), intervention orders (South Australia), family violence orders (Tasmania), family violence restraining orders (Western Australia), and family violence orders (Australian Capital Territory).

List of abbreviations

QSAC	Queensland Sentencing Advisory Council

1. Introduction

In response to recommendation 73 of the Women's Safety and Justice Taskforce (2021a), the Attorney-General, Minster for Women and Minster for the Prevention of Domestic and Family Violence issued Terms of Reference to the Queensland Sentencing Advisory Council (QSAC) that included advice on the operation and efficacy of the aggravating factor in section 9(10A) *Penalties and Sentences Act 1992* and impact of the increase in maximum penalty for the contravention of a domestic violence order. In this context, QSAC commissioned a background literature review to inform their consideration of the operation of these legislative changes to sentencing.

The purpose of this review is to examine existing research related to the sentencing of offences occurring in a domestic and family violence context, focusing on:

- sentencing practices, including the types and duration of orders made/penalties imposed, the types of conditions ordered, and treatment and program interventions in relation to these offences when committed by adults.
- evidence-based approaches to the sentencing of adults convicted of these offences that aim to achieve a purpose or a combination of purposes of sentencing (e.g. in Queensland, deterrence, denunciation, just punishment, community protection and rehabilitation).
- any changes in sentencing and court practices over time, having particular regard to legislative amendments during this time, including in Queensland the introduction of section 9(10A) *Penalties and Sentences Act 1992* (Queensland) making domestic violence an aggravating factor for the purposes of sentencing, and the increase in the maximum penalties that apply to contravention of a domestic violence order under section 177 *Domestic and Family Violence Protection Act 2012*.
- offence, penalty and sentencing frameworks (including alternative criminal justice system responses) in other Australian and relevant international jurisdictions that respond to this type of offending when committed by adults.[1]
- community and victim perceptions of the appropriateness of sentencing practices for these offences, including factors which influence victims' satisfaction with the sentencing process and what impact, if any, changes in sentencing, court practices or legislative amendments have had on victims' satisfaction.

[1] This does not include a cross-jurisdictional review of relevant legislation and caselaw.

This report presents the findings of this review, based on empirical research published in English between 2000 and 2023.

1.1 Background

Over the last 15 years, there has been considerable engagement in domestic and family violence reform, both at the federal and state levels. These reforms have included the widening of legal definitions of domestic violence to include physical, sexual, emotional, psychological, economic and coercive behaviours, as well as the broadening the relationships covered to same-sex intimate, family[2] and carer relationships (see e.g. ss.12 and 13 *Domestic and Family Violence Prevention Act 2012 (Queensland)*). The reform agenda has also been shaped by an increasing push for improved legal frameworks and better criminal justice responses to domestic and family violence, as highlighted by a number of commissions or taskforces (such as the Australian Law Reform Commission, 2010; Special Taskforce on Domestic and Family Violence, 2015; Victorian Royal Commission on Family Violence, 2016b).

There are several reasons for the increasing emphasis on criminal justice responses to domestic and family violence, including signalling the seriousness of domestic and family violence and holding perpetrators to account for their behaviour. By treating domestic and family violence as serious matters to be dealt with via criminal justice responses, this clearly moves these behaviours from the private sphere to the public sphere, communicating societal condemnation (Ursel, Tutty & leMaistre, 2008). Similarly, criminal justice actions generally represent what justice agencies are doing to hold perpetrators responsible for their behaviour, with increased arrests, increased prosecutions, more severe sentences and swift responses to non-compliance of orders are seen to provide vindication and punishment (Bond et al., 2017).[3]

Based on the most recent data,[4] there were 83,849 defendants charged in Australian criminal courts with at least one domestic and family violence offence, with most (93%) having their cases heard in a Magistrates Court (Australian Bureau of Statistics, 2023). Just under a quarter of these (23%) were charged in a Queensland court. Where cases were adjudicated, 94 per cent were found or plead guilty. Figure 1.1 shows the most serious offence charged, and the most serious sentence order received for adjudicated defendants with at least one domestic and family violence offence in Australia. Compared to Australia as a whole, Queensland

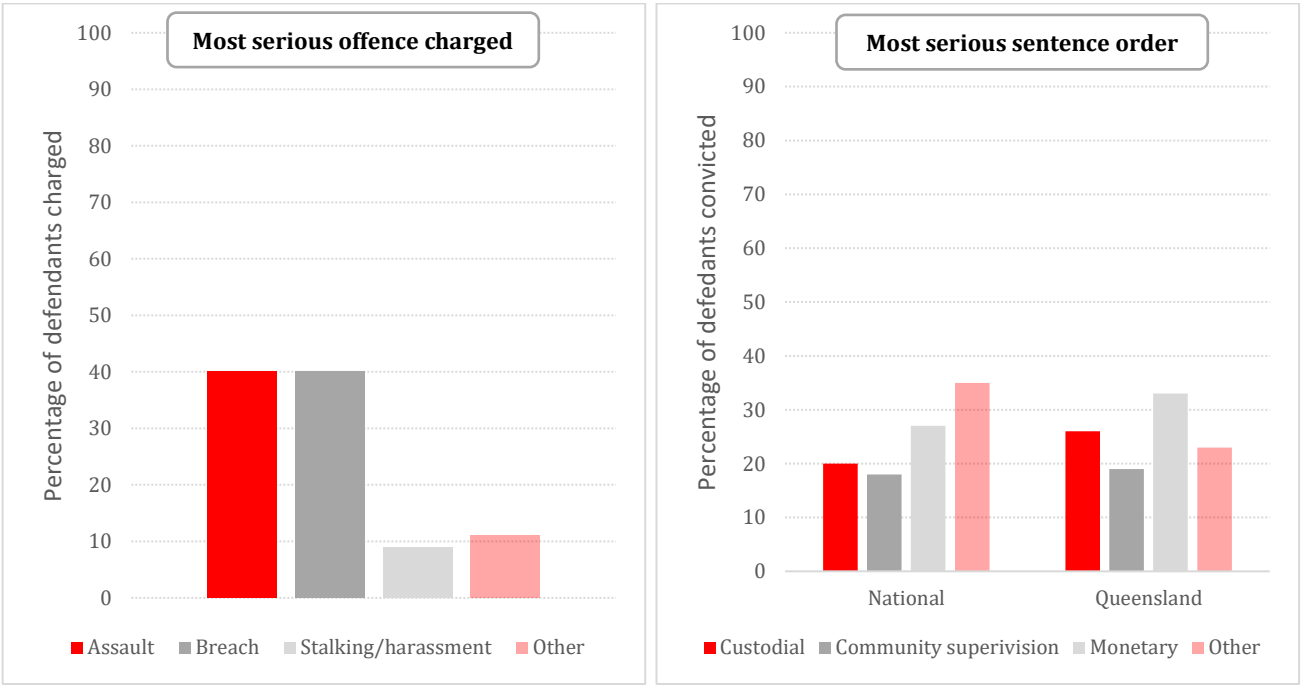
[2] For those identifying as Aboriginal and/or Torres Strait Islander, kinship relationships are also recognised in Australian jurisdictions. By and large, Australian jurisdiction have a broader legal conception of domestic and family violence than in many international jurisdictions.

[3] We note that there is an alternative conceptualisation of offender accountability, which focuses on the offender's response, not the justice intervention (Bond et al., 2017). In other words, accountability consists of offenders acknowledging wrongfulness, admitting culpability and evidencing the intention to change (Gilligan & Lee, 2005; Holder, 2016). This orientation aligns with what research suggests victims perceive as offender accountability (Bond et al., 2017).

[4] This is based on the experimental domestic and family violence statistics being collected by the Australian Bureau of Statistics. For information on their collection and limitation, see Australian Bureau of Statistics (2023). Full data by state is not publicly available.

had a significantly higher proportion of breaches of domestic violence orders as the most serious offence charged (75% vs 40%). Of those sentenced, the most common sentence order was monetary (27% nationally; 33% Queensland), followed by custodial (20% nationally; 26% Queensland). Queensland had higher use of both monetary and custodial orders than nationally.

Figure 1.1. Type of charges and sentence outcomes, defendants charged with domestic and family violence offences, Australia (2021-2022)



Data source: Australian Bureau of Statistics, Criminal Courts, Australia (2023).

NOTE: 'Stalking and harassment' also includes other threatening behaviour. 'Community supervision' includes work orders.

1.2 Evolving court responses to domestic and family violence

Court responses to domestic and family violence can be split into four stages. In the first stage, domestic and family violence was largely ignored. Although various physical and sexual forms of domestic violence involve criminal offences, such as assault, these behaviours were generally not reported, not investigated and not prosecuted. The second stage is seen in the introduction of civil domestic violence protection orders during the 1980s. Like in other common law jurisdictions, the difficulties of using criminal law as a response to domestic and family violence (narrowly conceived at the time) was a key driver for the creation of a civil response, which became the primary justice response to domestic and family violence in Australia (Douglas, 2015). By the turn of the century, two key issues were gaining momentum: an increasing concern with the enforcement of domestic violence protection orders; and the recognition that the dominance of a civil

response had effectively decriminalised domestic and family violence (Douglas & Godden, 2003).[5] Thus, in the late 1990s (the third stage), we started to see a push to re-engage with the use of criminal justice responses, with coordinated responses involving social and criminal justice agencies emerging to better support victims through the police, prosecution and court processes. Specialised domestic and family violence courts, or dedicated court lists, started to emerge at this point, such that by 2010 there were specialised courts operating in New South Wales, Victoria, Queensland, South Australia, Western Australia and the Australian Capital Territory (Australian Law Reform Commission, 2010). Finally, in the fourth stage, as specialised courts developed across Australian jurisdictions, further legislative reform commenced. These reforms expanded definitions of domestic and family violence, created domestic violence as an aggravating factor or sentencing enhancement, as well as most recently in some jurisdictions, the introduction of legislation criminalising coercive control.

1.3 Scope of the review

The review's objectives—which are set out above—can be clustered into three issues:

1. an assessment of the effectiveness of sentencing practices for adults and to the extent this is relevant, young people[6] convicted of domestic and family violence offences (including breaches of domestic violence or similar orders) in Australian and relevant international jurisdictions.

Sentencing practices include the types and duration of orders, types of conditions and other interventions, the impact of remand on sentencing, as well as evidence (if any) of the impact of legislative change on those practices and their alignment to the purposes of sentencing. In assessing effectiveness, we will consider both the extent to which sentencing outcomes may achieve sentencing objectives (e.g. deterrence, community safety), but also the extent to which sentencing practices have changed over time.

2. the identification of evidence-based approaches and alternatives for the sentencing of adults and to the extent relevant young people, convicted of domestic and family violence offences in Australian and relevant international jurisdictions.

This will include a consideration of the frameworks to court responses that have been adopted by Australian and other relevant jurisdictions, as well as pre-sentencing alternatives for domestic and family violence offences. Where feasible, alternatives from non-common law jurisdictions will be explored.

[5] However, we note that the use of criminal law in responding to domestic and family violence comes with serious concerns about the impact of criminal justice involvement on victims in terms of trauma and further state control (Douglas, 2008).

[6] By young people, we are referring to individuals who are processed by the youth justice system.

3. an examination of community and victim perceptions of the appropriateness of sentencing practices (including alternative justice approaches and legislative amendments) for these offences.

The examination of community and victim perceptions will include victim satisfaction with sentencing outcomes.

Throughout the review, the different issues facing women and Aboriginal and/or Torres Strait Islander defendants at sentencing will be considered as needed. As children and youth fall under different sentencing legislation, this review focuses on the sentencing of adult defendants.

1.4 Method of review

Our approach is a hybrid of a rapid research appraisal and a narrative (desktop) literature review to provide a robust assessment of the evidence around the sentencing of domestic and family violence offences. Typically, rapid research appraisal reviews use the methods of a systematic review but limit the databases or scope of the search to produce a rapid assessment within time constraints. For example, rapid research appraisals often do not include unpublished research and only include study designs of a particular quality. However, in the case of the current review, given the issues to be considered, a "strict" rapid research appraisal may not provide the needed outcomes. Thus, we combined elements of a rapid research appraisal (particularly in terms of the systematisation of search strategies, and tabulation of studies), with a narrative review that allows for the identification of other fields and provides a synthesis of the current state of knowledge, gaps in our understanding, and implications for practice.

The review will proceed in three key phases of work:

1. *the development of the search strategy*. We searched both the scholarly literature, as well as the websites of relevant government agencies and similar organisations. Separate sets of searches were conducted for each research question. Given that empirical research was likely to be limited,[7] we focused on empirical studies, regardless of research design. Existing literature reviews were only included if the reviews used a systematic search strategy. The criteria and key search terms, which were developed in consultation with QSAC, are listed in Appendix A.

[7] In their review of criminal justice responses, Mazerolle et al. (2018) found 36 court-focused studies, which included interventions broader than sentencing, such as legal advocacy, prosecution, and witness-related research.

2. *the compilation of the relevant literature*. In this phase, the abstracts of studies found in Phase 1 were reviewed for relevance. If considered relevant, the study was downloaded for further screening.[8] Where the full-text was not available, the study was excluded from the review. References of relevant studies were also briefly scanned to identify if any further studies should be included.
3. *research organisation and synthesis*. The third phase involved the categorisation of the selected research publications according to themes, and the commencement of a critical synthesis of the materials. This thematic organisation allowed for more effective synthesising of the research, thus highlighting what is known and still unknown from the evidence-base of available studies. As part of this thematic synthesis, we critically considered the contribution and quality of these studies, in terms of their methodological quality, their relevance to the project focus and local context (Queensland), as well as the frameworks supported by their evidence. (Key studies are listed in Appendix B.)

1.5 Structure of the review

The results of the literature review are provided in Chapters 2 and 3. Chapter 2 examines the empirical evidence on the impact of sentencing domestic and family violence offenders and the effectiveness of alternatives to traditional sentencing regimes; Chapter 3 assesses the research on community and victim perceptions of sentencing. Finally, Chapter 4 provides an overall summary of what we empirically know about the sentencing of domestic and family violence offences.

[8] If there was any uncertainty about a study's relevance to the review, the study was downloaded.

2. Effectiveness of sentencing

The introduction of domestic violence as an aggravating factor, or sentencing enhancement, illustrates the importance that is being placed on criminal courts as part of governmental responses to domestic and family violence. Just over seven years ago, in 2016, the occurrence of an offence in the context of domestic and family violence was introduced as an aggravating factor in Queensland sentencing legislation (s. 9(10A) *Penalties and Sentences Act 1992*). This legislative amendment was in response to recommendation 118 of the report of the Special Taskforce on Domestic and Family Violence (2015). Despite this, empirical research on the impact of sentencing orders on perpetrators convicted of domestic and family violence offences, including breaches of domestic violence protection orders, has received limited attention. A significant proportion of available empirical research on sentencing domestic violence offences relates to the impact of specialist domestic violence courts.

In this chapter, we review what is empirically known about the impact of sentencing orders on those convicted as well as the outcomes of sentencing alternatives for domestic violence offences. As we are interested in sentencing outcomes, research on court or sentencing processes (such as victim advocacy services, prosecutorial interventions, witness/testimony and perceptions of procedural justice) is not explored. Before considering the effectiveness of sentencing, we look at whether domestic violence offences are sentenced differently to violent offences committed in other contexts.

2.1 Purposes of sentencing and measuring effectiveness

In Queensland, the *Penalties and Sentences Act 1992* sets out five purposes for the imposition of a sentencing order on a convicted defendant: punishment, rehabilitation, deterrence, denunciation, and community protection (s.9(1)).[9] Domestic violence as an aggravating factor—unless there are exceptional circumstances that make it unreasonable (s.9(10A))—was introduced with the intent of enhancing community protection, denunciation and deterrence (Hidderley, Jeffs & Banning, 2021).

Measuring the effectiveness of sentences in achieving these sentencing aims is difficult, for a number of reasons, including:

- judges may have applied a combination of these aims in determining the most appropriate sentence (see s.9(1)).

[9] Most jurisdictions have similar sentencing purposes.

- the aims of punishment and denunciation are related to the notion of just deserts, which is achieved by the imposition of the sentence itself (Gelb, Stobbs, & Hogg, 2019).
- incapacitation (e.g. time in custody) provides short-term community protection, although estimating how much of an impact is difficult as it involves predicting levels of future offending during the incarceration period (Ritchi, 2012). There is little evidence that incapacitation (in general) provides longer-term deterrence or rehabilitation (e.g. Day, Ross & McLachlan, 2021.)
- deterrence and rehabilitation treat the imposition of a sentence as the way to achieve particular outcome (reduce further offending) (Gelb, Stobbs & Hogg, 2019).
- the aim of community protection is achieved through incapacitation via custodial sentences (in the short-term) and reducing re-offending, be it through deterrence or rehabilitation (in the longer term).

Thus, we cannot completely disentangle the impact of different sentencing purposes from the type of sentence. Typically, research on the effect of sanction associates particular purposes to specific sanction types. For example, custodial sanctions are linked to deterrence; length of sentence of a custodial sentence to incapacitation; and community-based sanctions (if they involve treatment or other programs) potentially with rehabilitation. The impact of sentencing (deterrence, incapacitation, rehabilitation and community protection) is measured by the same outcome: re-offending.

Measuring individual re-offending (or recidivism) is challenging, as there is no standard or accepted definition. For example, across studies, the type of "re-contact" with the justice system (e.g. further arrest, charge, conviction) and the timeframes (within 6-months, 12-months, 2 years) can vary, leading to different conclusions.

2.2 Do sanctions reduce re-offending by domestic and family violence perpetrators?

We located 14 studies (and 7 evaluations of judicial monitoring of mandated perpetrator interventions) that empirically examined the impact of sanctions on re-offending by domestic and family violence offenders. Although conclusions are complicated by different measures of recidivism, different sampling strategies, and different analytic techniques, these studies do not suggest that, on average, sanctions reduce further offending by perpetrators convicted of domestic and family violence, regardless of sentence type.

2.2.1 Deterrence and sentencing of domestic and family violence offences in mainstream criminal courts

Conceptually, there are two types of deterrence: general (an individual being deterred by the punishment or threat of punishment of others) and specific (an individual being deterred by the experience of punishment). Typically, general deterrence is measured by aggregate changes in crime rates (such as changes in crime rates after the introduction of a legislative change in punishment), while specific deterrence is measured by changes in individual re-offending. Here, we focus on specific deterrence (i.e. individual re-offending).

Sentencing substantive domestic and family violence offences

Overall, the evidence indicates that there is no consistent deterrent effect for perpetrators sentenced for domestic and family violence offences. In other words, no sanction was more effective in reducing domestic violence-related re-offending, although most research focused on the effect of custodial sanctions. In the most recent study found, Trevena and Poynton (2016) found that, in New South Wales, short prison sentences (up to 12 months) were not more effective in deterring domestic violence-related offending after three years than suspended sentences. Similarly, in the United States, after adjusting for a range of characteristics, Sloan et al. (2013) found that a custodial sentence did not reduce further re-arrest for domestic violence-related offending within two years of conviction; George (2012) found that any sentence with a term of imprisonment was associated with a higher likelihood of domestic violence re-offending. Ventura and David (2005) found that length of prison time (alone or combined with probation) did not have a statistically significant effect on recidivism at one year. In contrast, Wooldredge (2007) found that short imprisonment sentences (less than 12 months), but not for terms of imprisonment over 12 months, were significantly associated with lower likelihood of being recharged for intimate partner assault within two years of finalisation[10] for offenders convicted of felony assaults on their female intimate partners. Similarly, Klein and colleagues (2014) showed that more severe sentences were related to significantly lower number of new domestic violence offences, after adjusting for gender, age at first offence and number of prior offences.

Although the studies tended to focus on custodial sanctions, community-based sanctions may also not be effective in reducing re-offending for domestic and family violence offenders. Indeed, Ventura and Davis (2005) found that suspended sentences and fines increased the likelihood of re-offending within 12 months, although where community-based sentences are combined with treatment options, there may be a reduction in the likelihood of another domestic violence offence (George, 2012).

Most studies rely on official records, measuring re-offending as re-arrest or re-charge, with follow-up periods ranging from 6 months (Finn, 2004) to nine years (Klein & Tobin, 2008). However, there were a number of studies that use victim self-reports drawn from interviews. Regardless of the measure of recidivism, there was

[10] Including end of sentence (if any).

no robust evidence of a deterrent effect. Indeed, the study with the longest follow-up period (almost a decade) found that the proportion who had been re-arrested for any offence within 12 months (43%) after arraignment almost doubled (75%) over the next 8 years (Klein & Tobin, 2008). Thus, the period of follow-up is crucial in assessing the deterrent effect of a sanction.

Sentencing breaches of protection orders

There are very few studies that examine the effect of reported breaches of domestic violence protection orders on domestic violence-related re-offending. (The effectiveness of domestic violence protection orders themselves is outside the scope of this review.) Within our twenty-year time period, we found three empirical studies. Perhaps not surprisingly, the evidence is mixed. Frantzen and colleagues (2011) found no effect on re-arrest.[11] Klein and colleagues (2005) reported that a higher proportion of those who violated their domestic violence protection order had been re-arrested, compared to those who did not have a protection order. Over 50 per cent of those with a custodial or suspended sentence re-offended within two years (Sentencing Advisory Council (Tasmania), 2015). (These last two studies only used descriptive analyses, so the differences could be due to other factors).

Relatedly, in an analysis of recidivism for domestic violence offenders who had *violated* a *probation* order, imprisonment did not impact the likelihood of further offending, but did result in shorter time to re-offending, compared to those without a custodial sentence (Romain Dagenhardt, Heideman & Freiburger, 2023).

2.2.2 Incapacitation and the sentencing of domestic and family violence offences in mainstream criminal courts

Assessing the incapacitation effect of a sanction is difficult, as it requires estimating the likely offending that might have occurred if the offender had been out in the community during the period of their incarceration. We could not locate a study that conducted such an analysis specifically for domestic and family violence offenders.

2.2.3 Rehabilitation and the sentencing of domestic and family violence offences in mainstream criminal courts

Judicial officers may make the completion of a perpetrator intervention program a condition of a sentencing order. Australian judges recognise the value of completion of a program as a condition of another order (Fitz-gibbon et al., 2020), although research shows that non-compliance is quite high (Jewell & Wormith, 2010). Judicial monitoring of compliance has been trialled as a mechanism for increasing completion rates of

[11] There was an earlier study (Davis et al., 1998) that also found that arrests for protection order violation had no effect on domestic violence-related re-arrests with the following six months.

mandated perpetrator intervention programs. There are two forms of judicial monitoring: surveillance (occasional check-in) and supervision (regular repeated interactions with the application of incentives and sanctions to encourage behavioural change) (Rempel, Labriola & Davis, 2008, p.203). Here, we are concerned with supervision.

Four studies (across 2 sites) examining the effectiveness of judicial monitoring of perpetrator programs were identified. All were from the United States. Although there is no single approach to judicial monitoring, these studies show (Labriola et al., 2012; Labriola, Davis & Rempel, 2005;[12] Labriola, Rempel & Davis, 2008; Rempel, Labriola & Davis, 2008):

- no impact on reducing perpetrators' domestic violence-related re-offending (re-arrest, victim reports), although this may reflect increased ability to detect recidivism and violation due to the increased monitoring.
- no significant differences in domestic violence-related re-offending (re-arrest, victim reports) by type of judicial monitoring (monthly vs graduated).
- mixed results on increased attendance. However, a related study on the effects of levels of supervision on attendance at court mandated treatment suggests that increased supervision may increase domestic violence perpetrators' likelihood of successfully completing the program (Barber & Wright, 2010).[13]

Three further studies were found, but judicial monitoring was embedded in a broader integrated response (Harrell et al., 2017; Harrel, Schaffer & DeStefano, 2016; Visher et al., 2008). Although the results show that perpetrators were more likely to report to their programs (at least in the first two months), the impact on perpetrator recidivism cannot be disentangled from the other parts of the integrated response. However, this might suggest that judicial monitoring may be more effective when embedded in a broader response.

More broadly, we found one study that examined the effect of treatment options in sentences on recidivism for domestic violence perpetrators. George (2012) found that for domestic violence offenders sentenced in Washington State (United States) courts, sentences of probation, victim-oriented treatment or probation and treatment reduced the likelihood of further domestic violence offending over a five-year follow-up, compared to those with fines or warnings (proscriptions). However, Ventura and Davis (2005) did not find a rehabilitative effect for probation.

[12] Despite not finding a reduction in the likelihood of domestic violence-related re-arrests, victims who had partners in a perpetrator intervention program reported greater satisfaction with the sentence, than those who did not (Labriola, Rempel & Davis, 2005).
[13] This study did not examine the impact of court mandated treatment orders on recidivism.

2.2.4 Punishment, denunciation and the sentencing of domestic and family violence offences in mainstream criminal courts

Studies comparing the sentencing outcomes of domestic and family violence cases to non-domestic and family violence-related cases provide an insight into achieving of the sentencing aims of punishment and denunciation. The imposition of harsher penalties implies a stronger condemnation of the behaviour. We identified eight studies that provided comparative sentencing analyses, all of which focused on the likelihood of the imposition of a sentence of imprisonment. Although there are other studies that examine the factors the predict sentencing outcomes in samples of domestic and family violence cases, these do not allow us to assess whether domestic and family violence offences are treated as more serious offending at sentencing.

The evidence is equivocal. First, international studies provide mixed evidence about the differences in the imprisonment outcome but suggest leniency towards domestic and family violence offences for length of imprisonment. Domestic and family violence offenders receive on average shorter sentences than other violent offenders (Dawson, 2004; Gannon & Brzozowski, 2004; Du Mont, et al., 2006). An interesting study which uses self-report data from the 1994-1996 National Survey of Violence against Women (and Men) survey (United States) found sexual assaults committed by partners were "slightly" less likely to receive a prison term, than sexual assaults by other family or those known to the victim (Felson & Pare, 2007).

Second, although more recent, Australian studies provide evidence of more lenient, harsher or no difference (Bond & Jeffries, 2014; Donnelly & Poynton, 2015; Hidderley, Jeffs & Banning, 2021; Zaki et al., 2022). Using New South Wales administrative lower court data, Bond and Jeffries (2014) found that when sentenced under statistically similar circumstances, domestic and family violence offenders were less likely to receive a prison sentence (although the difference was small). Donnelly and Poynton (2015) argued that comparisons should be made within subsets of offences that have the same minimum and maximum penalties. In their study, which relies on similar data and also adjusting for legal and demographic factors, their analyses found no significant difference between domestic and family violence *serious assault* cases and other *serious assault* cases. In bivariate analysis of Queensland administrative court data after the introduction of s.9(10A), Hidderely, Jeffs and Banning (2021) that in cases of common assault and assault occasioning bodily harm that occurred in a domestic violence context was more likely to receive a custodial penalty (and on average a longer term) compared to those in a non-domestic violence context in the Magistrates Courts. A similar result was found in the higher courts, but only for non-aggravated assault occasioning bodily harm.[14]

[14] Australian bivariate analyses show differences in the sentencing outcomes for domestic and family violence offences, compared to violence committed in other contexts. For example, Zaki et al. (2022) showed that domestic violence-related offences received more severe penalties than non-domestic violence offences in the NSW Local Courts. Donnelly and Poynton (2015) also found that custodial sentences were more likely in domestic violence serious assault cases, compared to non-domestic violence serious assault cases. However, once the analyses adjusted for other factors that impact sentencing outcomes, this result reduces or disappears (see Donnelly & Poynton, 2015).

Finally, while the empirical evidence is sparse, Aboriginal and/or Torres Strait Islander status shapes sentencing of domestic and family violence offences, even after statistically adjusting for other legal and demographic factors. Jeffries and Bond (2015) suggest that there may be a leniency effect in the imposition of a prison sentence for non-Indigenous domestic and family violence cases. While Donnelly and Poynton (2015) found that Aboriginal domestic violence serious assault cases had a higher likelihood of a prison sentence compared to others.

In contrast to research on the sentencing of substantive domestic and family violence offences, research on the sentencing of breaches of domestic violence protection orders largely relies on bivariate descriptive analyses of samples of breaches only (Douglas & Fitzgerald, 2018; Sentencing Advisory Council (Victoria), 2009; Sentencing Advisory Council (Tasmania), 2015). These Australian studies indicate that the most common penalty is a fine (Douglas, 2007; Sentencing Advisory Council (Victoria), 2009; Sentencing Advisory Council (Tasmania), 2015), while Aboriginal and/or Torres Strait Islander defendants convicted of a breach are more likely to receive a prison sentence (Douglas & Fitzgerald, 2018).

Thus, domestic and family violence offences may be treated more seriously at sentencing for some types of offences and for some groups of defendants.

2.3 What about sentencing alternatives?

The alternative frameworks for dealing with domestic and family violence offences that have emerged over the past 20 years are dominated by the specialist (or "problem-oriented") court and the restorative justice approaches. Although specialist domestic and family violence courts use the same sentencing orders as mainstream criminal courts, we have chosen to categorise these courts as sentencing alternatives due to the different ways in which these courts operate to mainstream courts. These are also responses to ongoing concerns that traditional criminal and civil courts cannot adequately respond to victim/survivors of domestic and family violence (see e.g. Hoffart & Clarke, 2004; Jane Doe Legal Network, n.d.; Ministry of Justice, 2014; Special Taskforce on Domestic and Family Violence, 2015; Stubbs & Wangmann, 2015; Ursel, 2012).

2.3.1 Specialist domestic violence courts

As part of the broader problem-solving court movement, specialist domestic violence courts are underpinned by notions of therapeutic justice. However, there is considerable diversity in what has been called a 'specialist domestic violence court' (Bond, et al., 2017), becoming synonymous with a range of services and support for victim/survivors of domestic and family violence within court processes (Stewart, 2005). Over time, two

elements have emerged as defining a specialist domestic violence court approach (Bond, et al, 2017; Labriola, et al., 2009):

- domestic and family violence cases are listed separately, or assigned to a dedicated group of judicial officers
- associated dedicated specialists are involved in the processing of cases.

Although there is no single model, most courts can be classified as (Bond, et al., 2017; Jane Doe Legal Network, 2012; Ministry of Justice, 2014):

- *early intervention* with low-risk, first-time offenders. Generally, under this model, first-time offenders where there has been little harm to the victim plead guilty and receive referral into immediate treatment.
- *targeted* at high-risk or repeat perpetrators. This model focuses on targeting high risk or repeat perpetrators primarily through criminal justice processes, such as vigorous prosecution strategies.
- *interventionist* focusing on perpetrator treatment rather than conviction and punishment. Usually, this model uses some form of judicial monitoring of the perpetrators' treatment program, with some courts discontinuing perpetrators' cases[15] upon completion of treatment.
- *integrated* which combine both civil and criminal jurisdictions with a particular emphasis on wrap-around services for victim/survivors. In this model, the focus is on the coordination between different justice agencies, and in some jurisdictions, support and other services for victims and offenders. In Australia, this approach often involves civil and criminal matters being heard by the specialist court.

We note that three of these models (early intervention for low-risk perpetrators, interventionist and integrated) involve accessing therapeutic interventions for perpetrators, either through referrals, monitoring of attendance at behavioural change programs, or discontinuing cases upon completion of treatment.

Given the growth in specialist domestic violence courts across Australia, Canada, the United States and the United Kingdom, there remains relatively few long-term impact evaluations, with most coming from a few jurisdictions in the United States. Five years earlier, in their review of criminal justice responses to domestic and family violence, Mazerolle and colleagues (2018) came to a similar conclusion. Further, as specialist domestic violence courts vary considerably in their implementation—such as types of offences (indictable, misdemeanour, felony), type of jurisdiction (criminal only, combined jurisdictions), type of offending (low risk, high risk), types of services and support, level of judicial monitoring of orders—we have yet to disentangle the features that are most effective in achieving an impact on particular outcomes.

[15] Typically, low risk perpetrators.

With our focus on sentencing outcomes and purposes, we focus here on the impact of specialist domestic violence courts on perpetrator recidivism (which speaks to goals of deterrence, rehabilitation, and community and victim safety), as well as victim/survivors' perceptions of safety. There is some promising evidence that specialist domestic violence courts may have a positive impact on these outcomes.

Impact on perpetrator recidivism

Perpetrator domestic violence-related recidivism is a key "indicator" that a specialist approach is "more effective" than mainstream criminal court processes (Tutty & Koshan, 2013, p.749). After removing studies for which we could not find the full-text, we identified 20 studies, and 3 reviews/meta-analyses, that examined the impact of specialist domestic violence courts (compared to mainstream criminal court) on perpetrator recidivism. Typical measures of recidivism used in these studies are re-arrest and/or re-charging for domestic violence-related offending, although Galestani, Owens and Raissian (2022) also included a victim-focused measure (i.e. victim re-contact police within 3 years of the original arrest). Overall, the impact on domestic violence-related recidivism is mixed. Compared to defendants sentenced for domestic violence offending in the mainstream criminal courts:

- some studies found reduced re-offending (Cording, Wheatley & Kaiwai, 2021; Gover et al., 2003, 2004; Quann, 2010; Williams, 2010; see also Crocker & Crocker, 2017 who used calls to police for domestic violence, comparing those in the court with those who opted out).[16]
- others reported no or higher levels of re-offending (Newmark et al., 2001; Department of the Attorney General (Western Australia), 2014; see also Katz & Rempel, 2011, who used re-arrest on criminal contempt charges resulting from violating a no-contact order).[17]
- mixed results across different measures were also reported (Cissner et al., 2013; Eckberg & Podkopacz, 2004; Gill & Ruff, 2010).

At this stage, it is not possible to determine whether these are real differences (due to court locations and features), or the result of methodological limitations, including the type of recidivism measure and length of follow-up (Cissner & Hauser, 2021). However, there are four studies that start to address these limitations. After adjusting for perpetrator demographics, prior domestic violence history, weapon use and victim injury, Pinchevsky (2017) found that there was no statistically significant effect of a fine or prison sentence on time to re-arrest for a further domestic violence-related offences within three years post-disposition.[18] Cissner, Labriola and Rempel (2013, 2015) analysed matched samples of defendants processed in 24 domestic violence

[16] Murphy-Geiss, Roberts & Miles (2015) found that an approach that tailored court orders to each defendant increased compliance and reduced the likelihood of recidivism than the standard specialist court processes. Analytic tools were used to develop more tailored court orders.
[17] In some courts, higher levels of recidivism might be due to increased monitoring post-sentence.
[18] "Not being convicted" had a statistically significant negative effect on time to re-arrest in one specialist court only, suggestive of reduced future domestic violence-related offending for those not convicted. However, as recidivism was measured by arrest, a non-conviction may result in victims perceiving that the justice system has failed, and thus not reporting further incidents (Pinchevsky, 2017).

courts,[19] and in mainstream criminal courts in the same jurisdictions prior to the introduction of the specialist courts in New York State. The analysis found that, for convicted offenders, those sentenced in the specialist court had significantly lower (3%) re-arrest domestic violence-related charges. Similarly, in their meta-analysis of 20 studies that examined the effect of a domestic violence courts on recidivism, Gutierrez, Blais and Bourgon (2016) found that on average, these courts had a positive impact, reducing the odds of domestic-violence re-offending by 19 per cent, compared to domestic violence perpetrators sentenced in mainstream criminal courts. However, the analysis also showed that the more robust the research design, the smaller the estimated effect on recidivism.

Impact on victim safety

Compared to recidivism studies, less is known about whether specialist domestic violence courts increase victim/survivors' perceptions of their safety, although research indicates that:

- victim/survivors generally have positive assessments of specialist domestic violence courts than mainstream criminal courts (Bond et al., 2017; Eckberg & Podkopacz, 2004, Gover, 2007; Hotaling & Buzawa, 2003; Department of Attorney General (Western Australia), 2014; cf. Davis et al., 2001), including feeling well-supported and safer at court (e.g. Cook et al., 2004; artd Consultants, 2021).
- victim/survivors are more likely to be connected to services in specialist domestic violence courts likely compared to mainstream criminal courts, at least in the United States (Bond et al., 2017; Newmark et al., 2001).

There has been little exploration of what safety means to victim/survivors of domestic and family violence (Johnson & Frase, 2011; Putt, Holder & O'Leary, 2017). Most research—and reforms--assume that safety means the cessation of violence.

Judicial awareness of domestic and family violence

Although not directly related to the impact of sentencing orders, judicial awareness of the dynamics of domestic and family violence is a critical feature of specialist domestic and family violence courts. Victim accounts highlight the negative impact of a poor interaction with a magistrate or judge can have on a victim seeking future assistance (Centre for Innovative Justice, 2015). Research on specialist domestic courts also suggests that judicial understanding of domestic and family violence supports more appropriate orders in domestic violence cases (Labriola et al., 2009). Consequently, a number of Australian jurisdictions are increasing judicial education around domestic and family violence (beyond just specialist courts).

Outside of specialist domestic violence court evaluations, specific evaluations of judicial education on domestic and family violence were not easily located. Our scan (not part of the review itself) found one

[19] Integrated specialist domestic violence court were excluded from the sample.

published evaluation of a judicial education program in the United States. Over a five-year period (2006-2010), 480 judges participated in the four-day *enhancing judicial skills in domestic violence cases* workshop. Although only one-third of the judges participated in the six-month follow-up survey,[20] there was a clear increase in post-training perceptions of confidence in dealing with domestic violence cases (Jaffe et al., 2018).

2.3.2 Restorative justice approaches

There is no single definition of a restorative justice approach (Gang, et al., 2021; Stubbs, 2004). The term is generally applied to approaches that focus on repairing the harms caused by the offending, through a process that allows offenders, victims and others impacted to "resolve how to deal with the aftermath of the offence and its implications" (Marshall, 1996, p.37). Typically, restorative justice has been operationalised as a face-to-face meeting[21] between the victim, the offender and (at times) other relevant parties and a trained facilitator (Mazerolle et al., 2018), which results in an agreement on the actions that the offender will take to 'repair the harm', and work towards preventing the behaviour from re-occurring. There have been three types of restorative justice models used in the context of domestic and family violence: mediation,[22] conferencing and restorative circles (Gaarder, 2015).

The use of this approach for domestic and family violence cases remains highly debated (Edwards & Sharpe, 2004; Gang et al., 2021; Ptacek & Frederick, 2009; Stubbs, 2004), making the need for the development of an evidence-based vitally important. However, the existing body of evidence is sparse, characterised by small qualitative studies focused on the victim and offender experiences. We found eight studies[23] (and one narrative review) on restorative justice initiatives for domestic and family violences cases, of which three examined the effectiveness of the initiative. Further, in most of these studies, the restorative justice practices adopted were not specifically developed for domestic and family violence cases (Ptacek & Frederick, 2009, pp.7-8). There are notable exceptions in Canada (Pennell & Burford, 2000)[24] and New Zealand (Everest, 2015) Together, these studies suggest that:

- most victim/survivors report positive experiences with these initiatives, including feeling safe during the conference/mediation (Dissel & Ngubini, 2003; Gaarder, 2015; Kingi, 2014; Kingi, Paulin & Porima, 2008), although the samples sizes are small. Similarly, findings from 2017 New Zealand's Crime and

[20] Jaffe et al. (2018) report that this sub-sample remains representative of the full sample.
[21] Others have argued that it is the dialogue between victim and offender that is at the heart of a restorative justice approach, and such dialogues may not require physical meetings (Gaarder, 2015).
[22] We recognise that mediation is not necessarily considered a restorative justice practice (Presser & Gaarder, 2000), forms of mediation in domestic and family violence cases are generally treated as a restorative justice practice in Europe.
[23] We have not included evaluations of restorative justice approaches for sexual violence, as these capture a broader range of relationships than intimate, family or carer. We also note that there was a study examining a restorative justice approach in a perpetrator treatment program (Loeffler et al., 2010). This study was not included, as it was not clear whether it served as a court-mandated treatment program.
[24] A model has also been developed in North Carolina (United States), called 'safety conferencing' (Pennell & Francis, 2005). However, no evaluation was located.

Victims Survey show that, compared to non-family violence victims participating in conferences, were significantly more satisfied with the conference, as well as reporting that the conference had helped to improve their relationships with family or friends (Everest, 2017).

- victims may feel a sense of vindication of their experiences (Gaarder, 2015; or 'empowered': Pelikan, 2002, 2010).
- no significance difference in domestic violence-related recidivism between restorative circles and conventional perpetrator intervention programs, which might have been impacted by the high attrition rate (Mills et al., 2013). In contrast, there was a reduction in child maltreatment reported for families that participated in a conferencing process, compared to the comparison group (which reported a rise in child maltreatment) (Pennell & Bugford, 2000).

Small sample sizes, a lack of control groups and different types of practices make it difficult to draw strong conclusions about the effectiveness of restorative justice approaches to domestic and family violence. Of these studies, Pennell and Burford (2000) and Mills et al. (2013) provide the strongest evidence with the more rigorous use of control groups (Ptacek, 2017). Consequently, there is insufficient evidence on the effectiveness of this alternative, although research in New Zealand suggests that with victims/survivors and perpetrators of intimate partner violence are open to its use (Kingi, 2014; Hayden, 2014).[25] However, in a randomised control trial, participation in perpetrator intervention program combined with a type of restorative justice intervention significantly reduced the likelihood of a new arrest over a two-year follow-up period (Mills et al., 2019).

Importantly, the development of existing restorative justice models may not have meaningfully engaged with Aboriginal and/or Torres Strait Islander, and other First Nations, communities. There has been a tendency to equate restorative justice with Indigenous justice practices, without adequate consideration of the "capacity for restorative justice to respond to the consequences of colonisation", including intergenerational trauma and diversity across communities (Stubbs, 2004, p.12; Cameron, 2006). Thus, we are discussing "western" restorative justice (Stubbs, 2007, p.170). Research suggests that for Aboriginal and/or Torres Strait Islanders and other First Nations peoples, restorative justice may have a broader conception—emphasising community-wide healing—than implemented in conventional restorative justice models (see e.g. Nancarrow, 2006). Concerningly, research from Canada provides a cautionary note about the appropriateness of restorative justice models, finding that, for First Nations women, there was a sense of a lack of perpetrator accountability (Stewart, Huntley, & Blaney, 2001).

[25] Note again these are small samples (n=38 and 14, respectively).

2.3.2 Indigenous sentencing courts and domestic violence

In Australia, Indigenous sentencing courts are specialist courts usually at the magistrates' (local) court level. The processes within these courts focus on dialogue between the offender, victim (if they agree to participate) prosecutor, defence, magistrate and Elder or Respected Person (Marchetti, 2010). Through these processes, the courts aim to be more culturally inclusive and appropriate. As Indigenous sentencing courts are culturally-focused, these courts cannot be classified as either restorative or therapeutic, although they share are some similarities with specialist domestic violence courts and restorative justice practices (Marchetti & Daly, 2017).[26]

Research on Indigenous sentencing courts indicates that they provide more culturally appropriate processes and enhanced participation (Fitzgerald, 2008; Morgan & Louis, 2010), but reductions in re-offending have not been found (Fitzgerald, 2008; Morgan & Louis, 2010; Aquilina et al., 2009; cf. Yeong & Moore, 2020; Daly & Proietti-Scifoni, 2009[27]). However, what do we know about their impact on the sentencing of domestic and family violence offences? Not surprisingly, there have been few (n=4) empirical studies:

- from the perspective of legal professionals and Elders involved in Indigenous sentencing courts, these courts provide an opportunity for victims to participate and share their experiences, which in turn allows magistrates to tailor their penalties (Marchetti, 2010).
- the impact on recidivism is mixed. A statistical recidivism analysis of an Indigenous family violence court finding no significant difference in re-offending within one year (Western Australia Department of Attorney-General, 2014). In contrast, Marchetti and Daly (2017), in a study of desistance for 30 offenders convicted of a domestic and family violence offence in Australian Indigenous sentencing courts, adopt a desistance framework. This approach focuses on the *process* of "change toward prosocial behaviour as … complex and gradual" (p.5), recognising that the process of change is not "all or nothing". In their sample of 30 perpetrators who participated in an Indigenous sentencing hearing, just over half (17 of 20) were classified as desisters or partial desisters. The interviews suggested that it was the "cultural influence" provided by the Indigenous courts that supported the possibility of change for these perpetrators (p.17).

More research is needed on the impact these courts have on victim/survivors and perpetrators of intimate partner violence (Marchetti, 2010).

2.3.5 Note on other initiatives

[26] Although the New South Wales Circle Court was inspired by Canadian circle sentencing, this court aims to increase participation of offenders and Aboriginal communities in sentencing processes, rather than to repair harm (Marchetti & Daly, 2015).

[27][27] Arguing that the cessation of offending is a process, Daly and Proietti (2009) conceptualised desistance (i.e. reduced offending) in terms of a continuum, rather than as a binary variable (have/have not re-offended within a specific period).

Over the past 20 years, outside of specialist domestic violence courts, there have been a range of integrated, or multi-agency, initiatives trialled to enhance governmental responses to domestic and family violence. As the court as not pivotal in these initiatives, we have not included them in our search. However, we briefly note that:

- second responder programs, where teams of police officers and/or victim support workers make contact with victims after an initial police contact for a domestic and family violence incident, have been found to improve victims' confidence or satisfaction with police, but appear not to reduce domestic violence-related re-victimisation (Davis et al., 2008; Davis, Weisburd & Hamilton, 2010; Koppensteiner, Matheson & Plugor, 2017).
- lethality assessment programs, which put police officers in touch with victim support workers where they have identified a victim/survivor at high-risk of serious injury death, provide support to police to better understand the context and to develop a safety plan. Evaluations suggest reduced physical victimisation (Messing et al., 2015; Koppa, 2022).
- colocation of domestic violence support work within a police station.[28] Overall, small-scale evaluations are revealing two key findings: first, victim/survivors' experience of reporting domestic and family violence victimisation, including breaches of domestic violence protection orders, is improved; and second, police officers have access to specialised assistance (Dragiewicz, Ackerman & Cale, 2022; Mundy & Seuffert, 2021; Rodgers, et al., 2022). Although promising, further robust evaluations are required.
- participation in perpetrator intervention program while under supervision or in custody. The effectiveness of domestic violence perpetrator programs in reducing violence is largely debated by researchers (Westmarland, Kelly & Chalder-Mills, 2010; Bell & Coates, 2022). Reviews of the impact of behaviour change interventions for domestic and family violence perpetrators generally concluding that there is "currently insufficient evidence" about the effectiveness of these types of programs (Bell & Coates, 2022, p.2), even when court-mandated (Feder & Wilson, 2005)[29]. This may in part be due to a failure to sequence interventions, as research suggest that other forms of interventions, such as drug

[28] Since 2000, women's police stations have been adopted widely in low and middle income countries in South America, Africa as well as India. There is no one model of women's police stations; in addition to policing services, it may include support services, legal advice and prevention programs, focusing on victim/survivors domestic and family violence or gendered violence more broadly (Perova & Reynolds, 2017). Stations are predominately staffed by female police officers (Natarajan & Babu, 2020). There is an emerging body of research assessing the impact of these stations, most examining access to justice and victim empowerment (Natarajan & Babu, 2020). A small number of descriptive studies explore the impact of women's police stations on reducing violence against women, providing some suggestion that these stations may be related to a reduction in reported violence (Natarajan & Babu, 2020), including an association with reduced female homicide rate (often used as a proxy measure for severe intimate partner violence) (Perova & Reynolds, 2017: Brazil). Although we recognise that there are real differences in the forms of gendered violence in low and middle income countries compared to high income western countries, multi-disciplinary trained teams situated at police stations, providing diversionary and support options for victim/survivors is a strategy that might enhance the police of domestic and family violence (Carrington et al., 2022). The co-location of domestic violence support workers in police stations is a step in this direction.

[29] Note these programs do not involve judicial monitoring.

and alcohol treatment, may be necessary before any perpetrator programs can be considered (Centre for Innovative Justice, 2015).[30]

Indeed, as perpetrator programs *alone* have limited impact on repeat offending, researchers have argued that perpetrator intervention programs should be implemented as part of a more integrated response—a response in which courts and probation play a strong supervisory and monitoring role (Chung et al., 2020; Bowen et al., 2014; Centre for Innovative Justice, 2015, p.40).

2.4 What does this tell us?

Contact with the courts (at sentencing or earlier stages) continues to be identified as a valuable opportunity to intervene for both perpetrators and victims, with different initiatives around perpetrator behavioural changes and victim support being trialled (see, e.g., Centre for Innovative Justice, 2018). Despite our willingness to innovate, the difficulty is that evaluations are often not planned as part of the implementation of initiatives, and the features of initiatives vary considerably, making it challenging to develop a robust evidence base of what is effective.

In reflecting on what the currently available evidence tells us about the sentencing of domestic and family violence offences, there are three particular patterns to note:

- although the evidence base is sparse, domestic and family violence cases appear to be sentenced differently to violent offences committed in other contexts, at least for some defendants.
- there is no robust evidence that sentence type has reduces further domestic and family violence-related offending. This is consistent with the findings for deterrence and sentencing generally, where at least for imprisonment, studies find no effect (Raaijmakers et al., 2017), a weak deterrent effect (Crank & Brezina, 2013) or a mild criminogenic effect (Cullen, et al., 2011). We need to better understand the individual and situational factors that shape individuals' responses to the threat and experience of criminal sanctions (Piquero, et al. 2011).
- alternative approaches to mainstream sentencing, such as specialist domestic violence courts and restorative justice approaches, appear to enhance victim/survivors' levels of satisfaction or confidence with the process, but the evidence around recidivism is mixed. Although these approaches are promising, especially specialist domestic violence courts, there is more research needed to unpack what matters and how it matters.

[30] See Roth (2015) for a more general discussion of the importance of sequencing interventions to promote more effective desistance.

It is not surprising that evidence on the effectiveness of sentencing for domestic and family violence offences is limited. First, there have been difficulties with data. For example, until last 10 to 15 years, Australian administrative court data was not recorded in ways that made reliable identification of domestic and family violence offences feasible. Second, interventions are frequently implemented without pre-planning for impact evaluations, and evaluations are often not publicly available. As a result, robust evaluations were in the minority of the research identified in our searches. Third, research has not yet fully caught up with the changing definitions of domestic and family violence, especially on criminal sentencing. Thus, most of the research identified over the past 20 years focuses on female victim/survivors and male aggressors. Although this captures most domestic and family violence, our understanding of sentencing and court interventions are limited to that context. Finally, with a few exceptions, we need further research to better understand how culture and other vulnerabilities shape the impact of sentencing on domestic and family violence perpetrators.

3. Perceptions of sentencing

Understanding community perceptions of sentencing is important as perceptions of sentencing are related to confidence and, in turn, trust in courts (Gelb, 2009). A common finding of a considerable body of research using community surveys is that on average, the community perceives offenders are treated too leniently at sentencing (Gelb, 2006). However, we also know that more accurate information about the offence context and sentencing options results in less punitive perceptions of the appropriate sentence (e.g. Roberts, Crutcher, & Verbrugge, 2007).

However, we know much less about community, including victim/survivor, perceptions of the appropriateness of sentences *for* domestic and family violence offences. Most research has focused on community attitudes to domestic and family violence and its seriousness. Similarly, the reluctance of victim/survivors of domestic and family violence (at least those identifying as female with male aggressors) to use the criminal justice system has been a research focus since the 1970s (Meyer, 2011), informing justice responses over the years (Douglas, 2008; Meyer, 2011). Victim/survivor experiences in seeking legal protection, including their experiences in court processes, has also generated increasing research, both in Australia and internationally (e.g. Douglas, 2008; 2017; Epstein & Goodman, 2019; Gillis, et al. 2006; Hunter, 2006; Meyer, 2011; Ragusa, 2012; Ptacek, 1999; Women's Safety and Justice Taskforce, 2021b). Victims/survivors' perceptions of the sentencing process, and the appropriateness of sentences has been much less explored, particularly outside evaluations of specialist domestic violence courts.

Here, we examine the empirical evidence about community (including victim/survivor) perceptions of the appropriateness of sentencing in the cases of domestic and family violence offences.

3.1 Community perceptions of the sentencing of domestic and family violence offences

Despite the body of work on public perceptions of crime and sentencing generally, research focused on the perceptions of sentencing of specific offences, such as domestic and family violence offences, is sparser. (We found seven available studies that examined community perceptions of the sentencing of domestic and family violence offences.) These studies involve community-based samples, using some form of vignettes administered via questionnaires. (a common methodological approach in research on public perceptions of sentencing more generally; cf. Fradella & Ryan, 2010, which used mock court documents and video of

sentencing arguments.) Although few, the pattern of findings is consistent with the empirical evidence on public perceptions of sentencing more generally. Based on surveys of community-based samples, research shows that the public feel that punishments imposed on perpetrators convicted of domestic and family violence are too lenient, i.e. in terms of their severity[31] (Phillips & Vandenbroek, 2014). However, when asked to decide on a specific punishment, there is a preference for less severe punishments (Pavlou & Knowles, 2001; Taylor & Mouzos, 2006). For example, a factorial survey using a community-based sample found that most respondents viewed community-based counselling as the most appropriate sentence for violence involving minor physical injuries (Budd, Burbrink & Miller, 2017). Interestingly, at least where the victim/survivor is a mother, knowledge about the prevalence and impact of domestic and family violence may lead to the public perceiving appropriateness of sentences in terms of the protection of children. Fradell, Fischer and Ryan (2010) conducted a study in which undergraduate students were asked to be judges in a sentencing hearing. Those who had received information about intimate partner violence and its consequences on women and children were more likely (than those without that information) to "fashion sentences they believed would help protect the mother and child from reoccurring harm" (p.45).[32]

However, a recent study, using a non-random sample of Australian undergraduate students, suggests that domestic violence offending may still be viewed differently than non-domestic violence offending. In this study, participants were randomly assigned a scenario of an assault involving intimate partners or strangers (Horstman, Bond & Eriksson, 2021). All elements were identical, except for the relationship between the victim and offender. After adjusting for socio-demographic characteristics, past victimisation, criminal justice attitudes and domestic violence awareness, participants with the domestic violence scenario were less likely to select a sentence of imprisonment, compared to those with the non-domestic violence scenario (Horstman, Bond & Eriksson, 2021). Noting the limitations of the sample (university students, non-random selection), these results suggest that the community view domestic and family violence offences as less serious than those committed by strangers (Horstman, Bond & Eriksson, 2021).

[31] Arguably, this could be seen as evidence of a punishment-orientation to sentencing.

[32] In this study, participants were provided with court document, including a short presentencing report, and viewed a video of a sentencing hearing of an intimate partner violent offender. Participants were then asked to determine the appropriate sentence. They were provided with information on the sentencing options. Interestingly, this study also found gender differences in the types of justifications used by the participants, with female participants more likely to justify their sentences in terms of rehabilitation, seriousness of the intimate partner violence, and the welfare of children. In contrast, male participants more frequently exhibited a paternalistic view of the importance of having the father at home.

3.2 Victim/survivors' perceptions of the sentencing of domestic and family violence offences

There is a well-documented body of research on victim/survivors' help-seeking behaviours, as well as their experiences within the criminal justice system, especially police and the enforcement of domestic violence protection orders (Meyer, 2011). In particular, Australian research has shown a strong preference by victim/survivors for informal help-seeking, rather than formal help-seeking (police, courts) due to negative experiences (e.g. Mears, 2003, especially among Aboriginal and/or Torres Strait Islander women, see Al-Yaman et al, 2006). We also have a growing body of evaluation evidence on victim/survivors' assessment of domestic and family violence courts and other alternatives (which was discussed in the previous chapter). However, research on victim/survivors' perceptions of the appropriateness of a sentencing, and satisfaction with the sentencing process in mainstream criminal courts is sparse. Further, this evidence predominately comes from North America.

Primarily based on qualitative interviews or focus groups, these studies suggest that many victim/survivors often perceived the sentences imposed in their cases as too lenient, resulting in feelings of further victimisation (Gillis, et al., 2006) and a sense of a lack of accountability for the offender (Douglas & Stark, 2010; Gezinski & Gonzalez-Ponz, 2022; Gillis, et al., 2006; Minaker, 2001). For example, Douglas and Stark (2010) report victims' frustration (and sense of trivialisation of their harm) with the use of fines for breaches of domestic violence protection orders. In a small-scale study from Northern Ireland, there was considerable diversity in victim/survivors' assessments of the appropriateness of custodial sentences and probation orders (UK Department of Justice, 2016). However, not all victims in these studies felt that court responses were inappropriate in their cases. In contrast, where victim assessments of sentencing processes were collected, evaluations of domestic and family violence specialist courts/initiatives suggest that victims feel that court responses were appropriate (Gover, Brank & MacDonald, 2007), or at least, hold offenders to account (Bond et al. 2017; cf. Michaels, 2014). Even in the context of specialist courts, the use of fines may still be an issue, leading to victim dissatisfaction (Vallely, et al., 2005).

Further, a number of studies also highlighted victim/survivors' 'desire for alternatives' that address the causes of the behaviours within the interviews with victim/survivors (Bell, et al. 2011), which may include "sanctions which are specifically targeted to confront the abusive behaviour" (Douglas and Stark, 2010, p.89). In other words, incarceration was not necessarily seen as the most appropriate sentence (Douglas & Stark, 2010). From a victim/survivor perspective, "a good outcome" is typically varied, but "unlikely to include a punitive sentence" (Holder, 2008, p.276).[33]

[33] At least in one specialist family violence jurisdiction.

However, we note that of the Australian studies reviewed here, these were conducted prior to increased national focus on domestic and family violence that has occurred over the past 10 years, and generally rely on small samples.

3.3 Judicial perceptions of the sentencing of domestic and family violence offences

We found one published study that centred on judicial perceptions of the appropriateness of current sentencing options for domestic and family violence offences, although judicial perspectives are often incorporated as part of legal stakeholder views within evaluations of domestic and family violence initiatives. This study involved 67 British magistrates were asked to consider six vignettes of violent incidents involving assault occasioning actual bodily harm and suggest an appropriate sentence (Gilchrist & Blissett, 2002). The vignettes varied by at home/public, domestic violence/stranger, presence of alcohol, presence of children in the home, and the need for medical treatment. Their responses suggest that a preference for a probation sentence (with or without a perpetrator program) for domestic violence-related incidents; fine or compensation was the most commonly recommended sentence option for violent incidents involving strangers. A custodial sentence was more likely recommended in vignettes involving strangers, rather than domestic violence, but this was not statistically significant.

Relatedly, evaluations of specialist courts have found that stakeholders (including judicial officers) note the limited range of sentencing options available when sentencing domestic and family violence perpetrators. For example, in a review of specialist domestic violence courts in the United Kingdom, judges reported being frustrated at having "too few tools in the bag" to prevent future violence (Bowen et al., 2014, p.17). There is also some evidence that, combined with limited access to information about perpetrator interventions, judicial officers are also frustrated with the limited available treatment options, particularly for perpetrators from diverse communities (see e.g. a recent study by Fitz-gibbon et al., 2020, using interviews with 36 Australian judges and magistrates about perpetrator interventions).

Australian law reform commission inquiries have also noted the inappropriateness of using fines as a sentence for domestic and family violence offending, recognising that fines may "exacerbate the risk of further violence if the offender is already aggrieved about financial matters" (Law Reform Commission of Western Australia, 2014, p.141; see also Sentencing Advisory Council (Victoria), 2022). There are also ongoing concerns about the appropriateness of fines more generally in the sentencing of Aboriginal and Torres Strait Islander peoples, as these types of orders have a disproportionately harsh impact (see, e.g., Schwartz, 2014).

3.4 What does this tell us?

In reflecting on these patterns, there is an important caution: the research is based on female victim/survivors with male perpetrators. Although not surprising given gendered nature of domestic and family violence, there may be views and perspectives excluded from these studies. So what does this suggest about the community and victim/survivor perceptions of the appropriateness of court responses, in the cases of female victims and male aggressors?

Although there is limited research available on community perceptions of the sentencing of domestic and family violence offences, the findings align with what we know about public perceptions of criminal sentencing more generally. In other words, courts are perceived to be too lenient in sentencing domestic and family violence in the abstract, but when provided with information about a case and defendant, public perceptions become less punitive. However, personal offences committed by intimate partners may still be seen as less culpable than those committed by strangers.

In contrast, robust findings are more difficult around victim assessments of the appropriateness of the sentence, in light of small sample sizes. The strongest theme from interviews with victim/survivors indicate a general perception of leniency in cases of custodial sentences (too short) and fines, at least in mainstream criminal courts. However, there were some victim/survivors that indicated that the response was appropriate in their cases. This should also be considered against research that shows victim/survivors are often more concerned about stopping the violence, rather than punishment. Thus, this suggests that understanding victim/survivor perceptions of court responses requires a more nuanced consideration of their context and circumstances. The concept of *victim justice interests* may be useful in understanding the variation in victim/survivor perceptions.

Victim justice interests has particularly emerged in research on sexual violence, framing the ways in which victims conceptualise justice, and thus assess the appropriateness of court responses. Daly (2017) has suggested that victim justice interests have five elements: participation, voice, validation, vindication, and offender accountability. In understanding victim/survivor assessments and satisfaction with the sentence outcome in their cases, it may be that it is a combination of these elements that influence their perceptions.

4. Future directions

In this review, we examined the empirical evidence on the effectiveness of the sentencing of domestic and family violence offences, the impact of alternative court interventions, and the perceptions of the community and victim/survivors about the appropriate sentences for domestic and family violence offences. We identified 69 key studies, published in English over a two-decade period (2020 to 2023), that focused on sentencing and domestic violence offending. In this chapter, we briefly set out the limitations of the current evidence base, summarise the key findings and their implications for the sentencing of domestic violence offending, and consider the further research that is needed to build a stronger evidence base.

4.1 Limitations

Although we employed a structured search strategy, the review has a number of limitations, which can be centre around the implementation of the search, methodology of the reviewed studies, and conceptual gaps:

- *review implementation*. Studies may have been missed in the execution of the search. We also used a narrative approach to synthesise the studies due to the nature of the evidence and types of research designs. However, care must be taken in drawing conclusions about overall effectiveness.
- *methodological*. The evidence-base is limited due to less robust research designs, small sample sizes, small number of studies and limited analytic techniques of the studies included in the review.
- *conceptual.* The studies included in the review are overwhelmingly based on female victim/survivors with male perpetrators. Although this is not surprising given gendered nature of domestic and family violence, any conclusions may not be generalisable beyond this relationship dyad.

4.2 Sentencing and reducing the risk of re-offending

Sentencing involves the complex assessment of case, offender and victim circumstances in which judicial officers make a "value judgement" about the most appropriate sentence (Zaki et al., 2022, p.11). The *Penalties and Sentences Act 1992* sets out five purposes of the sentencing task: punishment, rehabilitation, deterrence, denunciation, and community protection (s.9(1)). However, their underlying impact is generally measured in terms of reducing future re-offending. (Arguably, punishment and denunciation are achieved through the nature of the sentence itself, with higher severity in the sentence potentially equating to stronger punishment and denunciation.) The key difference between these sentencing aims lies in the mechanisms through which

reduced offending is achieved. For example, rehabilitation focuses on treatment of the convicted defendant as the process by which further offending will be reduced; while deterrence centres on the experience, or threat, of punishment (the sentence) as changing offenders' likelihood of further offending.

Despite the limitations of our reviewed studies, what does the evidence tells us about reducing the risk of re-offending through sentencing for domestic and family violence offenders?

4.2.1 Prison vs community-based sanctions

Most studies examined the impact of *prison* sentence on recidivism for perpetrators convicted of domestic and family violence. Overall, there was no clear finding that the experience of a period of imprisonment reduced domestic and family violence-related offending. This aligns with the broader research on the relationship between imprisonment and re-offending, with some studies finding that it has a criminogenic effect (e.g., Bales & Piquero, 2012; Bushnell, 2018; Cid, 2009; Petrich et al., 2021; Wang & Poynton, 2017). This body of research generally also suggests that community sentences are more effective in reducing re-offending than prison sentences, but this has not yet been established for domestic and family violence-related offending. Of the few studies that included other sentence types—typically, suspended custodial sentences, probation and fines—there was no robust evidence that these reduced further domestic and family violence-related offending.

Compared to prison sentences, community-based sentences can provide more opportunity for treatment (rehabilitation) and avoid the negative unintended consequences of imprisonment, such as losing employment or housing (Sapouna et al., 2015). Additionally, rehabilitation and reintegration interventions can be delivered more effectively in the community by maintaining family and social relationships, jobs, and accommodation. Thus, although more research is needed, the lack of current evidence that community-based sanctions are more effective than custodial sanctions may reflect inconsistent access to treatment[34] and other supports for domestic and family violence perpetrators.

Finally, we know very little about the effectiveness of sentencing of breaches of domestic violence protection orders. Arguably, the impact of sanctions would be similar as for substantive domestic and family violence offending. With the most common penalty imposed on perpetrators convicted of a breach of a domestic violence order in Australia is a fine, current sentencing practices would appear to trivialise their situation, from a victim/survivor's perspective.

[34] The effectiveness and role of perpetrator interventions are discussed later.

4.2.2 Alternatives to custodial sanctions

Research has shown that victim/survivors often express a desire for alternatives to incarceration that *address the root of the problem*, while at the same time, perceiving that sentencing of perpetrators often lacks accountability[35] (e.g. Bell et al., 2011; Douglas & Stark, 2010). This suggests that supervised community-based orders may be a valuable sentencing option.

Although to date the research suggests that community-based orders may not reduce domestic and family violence offending, we have noted that this might be related to treatment options and other supports that are available, as has been shown in research on offender supervision programs generally. Offender supervision programs in the United States which emphasise control over support have not been effective in reducing re-offending, while offender supervision programs which combine support with sanctions have been shown to be more successful, such as the Integrated Offender Management schemes in the United Kingdom (see Sapouna et al., 2015). Broader research on offender supervision also suggests that the nature of the supervision may also influence the effectiveness of supervised orders. In other words, there is evidence to suggest that supervision can reduce general re-offending, but the skills of staff supervising offenders and their ability to build a respectful participatory and flexible relationship can trigger the motivation for an individual to change and help to promote desistance (Ministry of Justice, 2010, 2013; Sapouna et al., 2015).

4.2.3 Alternatives to conventional sanctions

There are few "true" alternatives to conventional sanctions, with most alternatives being adaptions of current processes and sanctions. Restorative justice is the closest to an alternative approach to conventional sanctioning. For more than 20 years, the appropriateness of restorative justice for cases of domestic and family violence has been contested. The appeal of a restorative justice approach is its capacity to give a stronger voice to victim/survivors, centering around their concerns and interests, than traditional justice processes. Indeed, there is some limited evidence, particularly from New Zealand, that that victim/survivors and perpetrators agree that restorative justice is an appropriate response to domestic and family violence (Kingi et al., 2008; Kingi, 2014). However, given the nature of victim-perpetrator relationships, there are real concerns around perpetrator accountability, minimising the harms suffered, and the capacity of victim/survivors to assert their interests (Ptacek & Frederick, 2019; Stubbs, 2007).

Further, the goal of restorative justice is reparation, which research suggests is not the key goal for victim/survivors (Stubbs, 2007). For example, in a small longitudinal study of 21 adult female victim/survivors

[35] A lack of accountability is often viewed through a lens of the severity of the sentence, although it is also related to the way in which judicial officers interact with the victim/survivor (i.e. 'hearing their voice').

in Australia, Holder and Daly (2018) found that, although victims' goals shifted in response to the movement of their cases through the justice process, perpetrator accountability was almost unanimously the motivation for engaging in justice processes. Accountability (via denunciation) was seen in the courts' guilty finding, with a preference for treatment-based sanctions (pp.21-22).

Due to these concerns, only some jurisdictions have trialled restorative justice approaches, with few robust evaluations. There is little evidence that these approaches have reduced further domestic and family violence-related behaviour. In part, the problem may lie in the nature of the restorative justice practices implemented, and not just in methodological limitations of the evaluation designs. In most cases, practices have not been adapted or designed specifically for domestic and family violence cases (cf. some Canadian jurisdictions and New Zealand).

Domestic and family violence courts also offer an alternative to traditional adversarial processes, albeit usually with conventional sentencing penalties. Early studies of domestic and family violence courts indicated that they may be no impact on re-offending, but more recent evaluations indicate that these courts can modestly reduce the seriousness and frequency of re-offending by perpetrators (Centre for Justice Innovation, 2019). Although specialist domestic and family violence courts are a promising strategy, there is considerable variation in their elements. Thus, more evaluative research is needed to disentangle what matters and how it matters.

4.2.4 Diverse communities and sentencing domestic and family violence offences

Although there is increasing research around diverse communities and domestic and family violence, we know little about differential impacts of sanctions based on cultural, linguistic and other diversity. Much of the emerging research focuses on the initial contact with police and service providers, particularly the barriers to seeking formal and informal help (see, e.g., Lu et al., 2020). Australian evaluations of specialist domestic and family violence courts have noted some of the challenges in participating in court processes, albeit with small sample sizes (e.g. Bond et al., 2016). However, research on differential impacts of sanctions by cultural diversity on recidivism is sparse. Based on research from the United States, the evidence is mixed, with a few finding minority defendants more likely to re-offend (Gross et al., 2000), while others have found no significant association between minority status and recidivism (Collins et al., 2021 in a domestic violence court).

For those from Aboriginal and Torres Strait Islander communities, Indigenous sentencing courts have been found to provide a culturally appropriate process, including for domestic and family violence cases (Marchetti, 2010). Standard recidivism analyses generally do not find a significant impact on re-offending generally (e.g. Morgan & Louis, 2010) or for domestic and family violence perpetrators specifically (Department of Attorney-

General (Western Australia), 2014, only study found for domestic and family violence). However, in an alternative analysis using the concept of desistance as a process, Marchetti and Daly (2017) found just over half of their sample were on the path to desisting from further re-offending. This particular study provides an important lesson in thinking about the effectiveness of sentencing: desistance is a process which takes time. (The implications of this will be discussed later.)

4.2.5 Sentencing as part of an integrated response

Increasingly, our responses to domestic and family violence are recognising that there is no single intervention. Instead, courts and sentencing should be viewed as part of a larger integrated response, where the court's legal authority can be used to leverage co-operation and compliance with broader interventions. Similarly, Chung and others (2020) have recognised that to strengthen perpetrator interventions, coordinated, integrated, multi-agency responses, including active engagement with alcohol and other drug services and mental health services, are needed. Courts are a critical part of an integrated responses (Centre for Innovative Justice, 2015, p.40; Chung et al., 2020; Bowen et al., 2014). For example, evidence from the United States suggests that perpetrator treatment programs attached to a swift, certain, criminal justice response for non-compliance are effective in encouraging future compliance (especially if heard by the same judge) (Centre for Innovative Justice, 2015).

4.2.6 Limited sentencing options for domestic and family violence offenders

Stakeholders (including judicial officers) have reported that sentencing options are limited for domestic and family violence offenders (e.g. Bowen et al., 2014). In a similar vein, the Sentencing Advisory Council (Victoria) (2017b) found that a broad range of stakeholders wanted the courts to have an increased role in managing domestic and family violence offenders. Examples of different types of proposed sentencing options for domestic and family violence offences include:

- judicial monitoring of perpetrator intervention programs (Bowen et al., 2014; Centre for Innovative Justice, 2015), particularly for those at high risk of re-offending (Sentencing Advisory Council (Victoria), 2017).[36]
- expanding the availability of pre-sentence orders, partially suspended imprisonment orders, and increasing flexibility for conditional suspended imprisonment orders (Law Reform Commission of

[36] The Council did not support mandatory sentences (including mandatory short prison sentences for non-compliance), particularly due to their disproportionate impact on perpetrators from vulnerable communities.

Western Australia, 2014, pp.141-142). Condition or partial suspended imprisonment orders could be combined with court-mandated treatment and judicial monitoring.

- more flexible community-based sentencing orders that allow for opportunities for offenders to be supervised and to engage in rehabilitative programs. For example, these options were introduced in New South Wales, following the Law Reform Commission's (New South Wales) (2013) comprehensive report into sentencing. These sentencing reforms resulted in a substantial increase in the number of supervised orders imposed for adult offenders and a small decrease in short-term prison sentences (Donnelly, 2020).

4.3 Implications for the sentencing of domestic and family violence

Together, this body of research (even with its limitations) suggests some important implications for the sentencing of domestic and family violence perpetrators, including:

- *Community-based sentences over custodial sentences for reducing further offending*.

Community-based sentences may be more effective in reducing domestic violence. While imprisonment may provide *temporary* community safety, it does not deter future offending nor promote perpetrator accountability or victim/survivor healing. Victim/survivors of domestic and family violence also express a desire for alternative to incarceration that address the root causes of the problem while holding the perpetrator accountable. (There remains a role for sentences of imprisonment for high-risk offender, as it can provide obvious benefits in protecting victims from persistent, repeated violence.)

- *Reduce the use of fines.*

From the perspective of both victims and stakeholders, fines are viewed as inappropriate for domestic and family violence offending. Despite this, fines remain a common sentence for breaches of domestic violence protection orders (e.g. Sentencing Advisory Council (Victoria), 2022).

- *More flexible sentencing options, including pre-sentencing orders*.

The need for more flexible sentencing options has been well recognised, especially options that allow earlier intervention with perpetrators (Centre for Innovative Justice, 2015). Suggestions have included expanding the availability of pre-sentence orders and creating more flexible community-based order options. The greater use of suspended (partial or full) sentencing options, combined with requirements to attend needed rehabilitation programs, could also provide a valuable mechanism to leverage engagement in interventions.

- *Broader support services and treatment options are needed*.

Sentencing needs to be seen as part of a broader network of integrated and coordinated responses to domestic and family violence offending. For example, without available and accessible perpetrator interventions as well as other treatment programs (such as drugs and alcohol) that are culturally appropriate, then flexible sentencing options that support perpetrator engagement in rehabilitative programs will not be effective. This is particularly an issue in regional and remote locations, where treatment options are often limited or unavailable.

- *Trial judicial monitoring of targeted community-based sentences*

Judicial supervision of sentences has been linked to offender accountability and rehabilitation, at least In drug courts (Cissner et al., 2013; KPMG, 2014). Although there is little evidence on its effectiveness in the case of domestic and family violence offenders, stakeholders have identified it as particularly promising. Consequently, a trial of judicial monitoring would be worthwhile. (The judicial monitoring of community correction orders for family violence offenders was recommended by the Sentencing Advisory Council (Victoria), 2017). In implementing a trial, key considerations include: the type of community-based sentence or group of perpetrators to be targeted; the principles for its use; the resourcing of its management; and the evaluation requirements.

- *Consider carefully designed restorative justice approaches*.

There is "theoretical promise" in restorative justice approaches to domestic and family violence cases, but the risks are "real" (Edwards & Sharpe, 2004, p.22). Consequently, a restorative justice approach needs to be designed in consultation with victim/survivors and stakeholders from support services (Ptacek, 2017), and may result in a hybrid model, mixing elements of restorative justice and existing justice practices (Stubbs, 2007). For example, New Zealand's use of conferences in family violence cases is underpinned by the development of restorative justice standards, which highlight the process is oriented around victim choice and control (Ministry of Justice (New Zealand), 2019).

- *Reframe our measure of effectiveness in terms of desistance*.

The conventional measure of effectiveness is binary: a perpetrator either succeeds (no recontact with the justice system) or fails (re-contact). However, this does not recognise that desistance is a process, in which

perpetrators may make some progress (such as less severe re-offending) or inconsistent progress towards prosocial behaviour. Instead, we should reframe measures of effectiveness (or success) in terms of: increased time to re-offending; reduction in frequency of re-offending; and reduction in severity of re-offending. Qualitative analyses of pathways to desistance would also provide valuable insights into the processes by which perpetrators change their offending trajectories.

- *Further well-designed research and evaluations for a robust evidence-base to inform policy and practice*.

To build a robust evidence-base around court responses to domestic and family violence, we need (albeit not limited to):

- more quality evaluations of interventions, using robust designs. We need to understand how interventions work, for whom and in what contexts.
- analyses that provide a better understanding of the sentencing of breaches of domestic and family violence.
- further research on the sanctions that promote deterrence from future domestic and family violence offending. This research should incorporate both recidivism analyses, but also analyses of processes of desistance to provide a more nuanced understanding of the impact of different sanctions and interventions.
- explorations of court responses for broader range of relationships as well as vulnerable communities.

Finally, to strengthen our capacity to reduce re-offending by domestic and family violence perpetrators, we need to move towards courts and sentencing being part of a broader coordinated and multi-agency response, where the court's legal authority is used to leverage co-operation and compliance with broader interventions.

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Legislation cited

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Penalties and Sentences Act 1992 (Queensland)

Appendix A: Search criteria and terms

Table A.1. Inclusion criteria

Inclusion criteria	
Date	Published and available grey literature from 2000 to 2023.
Language	English only
Types of studies	Primarily quantitative and qualitative empirical studies. Theoretical (commentary) studies may be included (based on professional judgement of relevance).
Study design	All designs
Context	Sentencing decisions, nature of orders, sentencing alternatives, specialist courts, sentencing frameworks, diversionary programs and interventions, legislative change. Related to adults and, to the extent this is relevant, children/young people convicted of domestic and family violence offences, including breaches of domestic and family violence (or equivalent) orders. Including experiences of women/girls and First Nations peoples (cultural appropriateness).
Jurisdiction	Queensland, other Australian states and territories, New Zealand, United Kingdom, Ireland, Canada and the United States. Other international jurisdictions will be included, especially around pre-sentencing or sentencing alternatives, such as Argentina, Columbia, Sweden and the Netherlands. (The impact of different legal systems will be considered within the analysis.)
Field of expertise	A broad range of fields will be considered, including legal, criminological, sociological, psychological, and public policy.
Databases	Google Scholar, ProQuest Criminal Justice, Criminal Justice Abstracts, AustLII, PsychINFO, CINCH, Heinonline, Social Science Research Network, Dissertations and Theses, and the National Criminal Justice Reference Service.
Other	Websites of national agencies with research or oversight functions, relevant government departments and organisations, such as ANROWS, Australian Institute of Criminology, UK Home Office, the National Institute of Justice (U.S.) and other sentencing bodies and councils. Scans will be conducted of the reference lists of relevant identified government and similar reports.

Table A.2. Key search terms used

Sentencing terms	Domestic and family violence terms
sentenc*, suspend*, community, intensive, probation, parole, licence, supervision, *prison*, jail, gaol specialist court, domestic violence court, family violence court sentenc* legislation, sentence* law deter*, rehab*, incapacitat* punish* community safety, community protection, denunc* diversion*, intervention, pre-sentenc* alternative, presentence* alternative, sentence*, restor* perceptions sentenc*, attitudes sentenc*, satisfaction sentence*, appropriate*, lenienc*, punitiv* court	domestic violen* family violen* intimate partner violen* domestic abuse, spousal abuse coercive control batterer breach, contravene, domestic violence order, apprehended domestic violence order, protection order, restraining order

Appendix B: Summary of studies

Table B.1. Key studies on sentencing outcomes for domestic and family violence offences (n=32)

Author & year	Focus	Location	Sample	Timeframe data collection	Design
Bell, Cattaneo, Goodman & Dutton (2013)	Sentencing – recidivism	Mid-Atlantic, United States	104 female victim/survivors where partner convicted	not reported	Mixed method Case files Interviews
Bond & Jeffries (2014)	Comparing outcomes	New South Wales, Australia	64,201 cases (adult) convicted of violent offence as principal offence	Jan 2009- June 2012	Quantitative Administrative data
Dawson (2004)	Comparing outcomes	Toronto, Canada	1,003 finalised homicide cases	1974-1996	Quantitative Administrative data
Donnelly & Poynton (2015)	Comparing outcomes	New South Wales, Australia	27,805 assault cases	2009-2014	Quantitative Administrative data
Douglas (2007)	Sentencing breaches	Queensland, Australia	646 case files	July-Dec 2005	Quantitative Administrative data
Douglas & Fitzgerald (2018)	Sentencing breaches	Queensland, Australia	6,888 unique defendants charged with a breach	2013-2014	Quantitative Administrative data
Du Mont, Parnis & Forte (2006)	Comparing outcomes	Ontario, Canada	186 female sexual assault cases	1993-2001	Quantitative Administrative data Sentencing remarks
Felson & Pare (2007)	Comparing outcomes	United States	337 victims physical/sexual assault convicted from national random sample	1994-1996	Quantitative Survey
Frantzen, San Miguel, & Kwak (2011)	Sentencing – recidivism	Bexar County, Texas, United States	452 breach cases	2006-2007	Quantitative Administrative data
Gannon & Brzozowski (2004)	Comparing outcomes	Newfoundland & Labrador, Ontario, Saskatchewan, Alberta Canada	46,747 convicted violent cases	1997/98-2001/02	Quantitative Administrative data
George (2012)	Sentencing – recidivism	Washington state, United States	27,218 defendants sentenced, domestic violence offence	2004-2006	Quantitative Administrative data
Gross, Cramer, Forte, Gordon, Kundel & Moriarty (2000)	Sentencing – recidivism	Virginia, United States	177 offenders (male) convicted/sentenced domestic violence offence	Mar-Nov 1997	Quantitative Administrative data

Author & year	Focus	Location	Sample	Timeframe data collection	Design
Harrell, Newmark, Visher & Castro (2007) Visher, Harrell, Newmark & Yahner (2008)	Judicial monitoring - recidivism	Massachusetts, Michigan, United States	1,034 victim/survivors, domestic violence cases; 454 perpetrators, domestic violence cases	2003-2004	Quantitative Administrative data Interviews
Harrell, Schaffer, DeStefano & Castro (2006)	Judicial monitoring— recidivism	Milwaukee, United States	622 offenders (adult) guilty intimate partner violence	Oct 1997-Dec 1999; Jan 2001-May 2002	Quantitative Administrative data
Hidderley, Jeffs & Banning (2021)	Comparing outcomes	Queensland, Australia	15,800 cases (adult) sentenced most serious offence assault or assault occasioning bodily harm	May 2016-June2019	Quantitative Administrative data
Jeffries & Bond (2015)	Comparing outcomes	New South Wales, Australia	58.664 cases (adult) convicted violent offence as principal offence	Jan 2009-June 2012	Quantitative Administrative data
Klein, Centerbar, Keller & Klein (2014)	Sentencing – recidivism	Rhode Island, United Sates	473 probationers, domestic violence offence	2002	Quantitative Administrative data
Labriola, Cissner, Davis & Rempel (2012)	Judicial monitoring - recidivism	New York State, United States	147 convicted and sentenced offenders randomly assigned to monitoring/treatment (n=77) or treatment only (n=70)	Oct 2006-Dec 2009	Randomised control trial Administrative data Interviews
Labriola, Davis & Rempel (2005) Labriola, Rempel & Davis (2008)	Judicial monitoring - recidivism	New York State, United States	420 offenders who could receive a condition discharge randomly assigned to treatment/mthly monitoring (n=102), treatment/graduated monitoring (n=100), mthly monitoring only (n=109), graduated monitoring only (n=109)	July 2002-Feb 2004	Randomised control trial Administrative data Interviews
Maxwell & Garner (2012)	Sentencing – recidivism	Published in English	31 studies	1984-2008	Review
Mazerolle, Eggins, Sydes, Hine, McEwan, Norrie & Somerville (2018)	Sentencing – recidivism	Published in English	36 studies + 3 reviews	1997-2017	Review
Quann (2006)	Sentencing – recidivism	Ontario, Canada	1,000 offenders (adult) convicted of domestic violence	2001	Quantitative Administrative data
Rempel, Labriola & Davis (2008)	Judicial monitoring - recidivism	New York State, United States	matched samples 387 domestic violence offenders sentenced to judicial monitoring, 219 offenders no monitoring	Jul 2002-Feb 2004	Quantitative Administrative data

Author & year	Focus	Location	Sample	Timeframe data collection	Design
Romain Dagenhardt, Heidman & Freiburger (2023)	Sentencing – recidivism	Midwest, United States	347 probation review hearings	Apr-Sept 2016	Mixed methods Administrative data Case files Observations
Sentencing Advisory Council (Victoria) (2009)	Sentencing breaches	Victoria, Australia	4,273 defendants sentenced for breach (as principal offence)	2004/05-2006/07	Quantitative Administrative data
Sentencing Advisory Council (Tasmania) (2015)	Sentencing breaches Sentencing – recidivism	Tasmania, Australia	2,310 breaches, adult defendants	2005/05-2013/14	Quantitative Administrative data
Sloan, Platt, Eldred & Blevins (2013)	Sentencing – recidivism	North Carolina, United States	7,648 persons convicted	2004-2010	Administrative data
Trevena & Poynton (2016)	Sentencing – recidivism	New South Wales, Australia	1,612 matched pairs (short prison sentence ≤ 12 mths vs suspended sentence ≤ 2yrs)	Jan 2009-Dec 2013	Quantitative Administrative data
Ventura & Davis (2005)	Sentencing – recidivism	United States	519 cases charged domestic violence that were convicted and dismissed (randomly selected)	Apr 2000-Mar 20001	Administrative data
Wooldredge (2007) Woolredge & Thistlethwaite (2005)	Sentencing – recidivism	Ohio, United States	353 male (adult) defendants, felony assault involving intimate partner	mid-1990s	Quantitative Administrative data
Zaki, Baylock & Poletti (2022)	Comparing outcomes	New South Wales, Australia	83,053 offences convicted	Sept 2019-Spet 2020	Quantitative Administrative data

NOTE: Garner & Maxwell (2009) is a broader review that includes studies that are broader than sentencing orders, such as prosecution and conviction. Maxwell & Garner (2012) further reviewed studies focusing on the effect of criminal sanctions. Studies predicting recidivism of domestic and family violence offenders that do not include sentencing orders are not included.

Table B.2. Key studies on sentencing alternatives for domestic and family violence offences (n=32)

Author & year	Type of intervention	Location	Sample	Timeframe data collection	Design
Cissner & Hauser (2021)	Specialist domestic violence court - recidivism	Published in English United States	11 studies	2000-2017	Review
Cissner, Labriola & Rempel (2013) Cissner, Labriola & Rempel (2015)	Specialist domestic violence court - recidivism	New York State, United States	Random sample 17,726 cases from a matched sample of 24 domestic violence courts and non-specialist courts (same 24 jurisdictions)	Specialist court: first two full calendar years Comparison: last two full calendar years before specialist court opened	Quantitative Administrative data
Collins, Bouffard & Wilkes (2021)	Specialist domestic violence court - recidivism	Texas, United States	708 cases (adult), misdemeanour family violence assault, expedited court	2010-2014	Quantitative Administrative data
Cording, Wheatly & Kaiwai (2021)	Specialist domestic violence court - recidivism	New Zealand	8 Family Violence Courts Matched sample of family violence and non-family violence offenders (>20,000)	Jan 2011-Dec 2019	Mixed methods Administrative data Interviews Court observations
Crocker & Crocker (2017)	Specialist domestic violence court - recidivism	Nova Scotia, Canada	1,254 charges involving 305 (male) accused	June 2012-Dec 2013	Mixed methods Administrative data Case information Interviews Survey
Department of the Attorney-General (Western Australia) (2014)	Specialist domestic violence court - recidivism	Western Australia	10,344 offenders (adult) in metropolitan court	not reported	Mixed methods Administrative data Interviews Survey
Dissel & Ngubini (2003)	Restorative justice - conferencing	South Africa	21 (female) domestic violence victims	not reported	Qualitative Interviews
Eckberg & Podkopacz (2002)	Specialist domestic violence court - recidivism	Minneapolis, United States	2,718 defendants with cases heard in domestic violence court or domestic violence offence in mainstream court	Jan 2001-Sept 2001	Quantitative Administrative data

Author & year	Type of intervention	Location	Sample	Timeframe data collection	Design
Everest (2017)	Restorative justice - conferencing	New Zealand	288 victims who had attended a conference, family violence (n=102); non-family violence (n=186)	2016	Quantitative Survey
Gaarder (2015)	Restorative justice – restorative circles	Minnesota, United States	29 victims, support persons, advocates, circle keeper, volunteers and probation officers	2008-2009	Qualitative Interview Participant observation
Gill & Ruff (2010)	Specialist domestic violence court - recidivism	New Brunswick, Canada	516 cases	Apr 2007-Oct 2008	Mixed methods Observations Administrative data
Golestani, Owens & Raissian (2022)	Specialist domestic violence court - recidivism	Tennessee, United States	7,919 cases	2000-2006	Quantitative Administrative data
Gover, MacDonald & Alpert (2003) Gover, MacDonald, Alpert & Geary (2003)	Specialist domestic violence court - recidivism	Lexington, United States	189 defendants arrested for domestic violence before domestic violence court; 197 defendants arrested after implementation	1997-1999 (comparison) 1999-2001 (intervention)	Quantitative Administrative data
Gutierrez, Blais & Bourgon (2016)	Specialist domestic violence court - recidivism	Published in English United States	20 studies	Up to July 2015	Review Meta-analysis
Katz & Rempel (2011)	Specialist domestic violence court - recidivism	New York State, United States	matched samples of 318 cases from domestic violence and comparison courts in 9 counties	2006-2008	Quantitative Administrative data
Kingi (2014) Kingi, Paulin & Porima (2008)	Restorative justice-conferencing	New Zealand	19 victim/survivors, 19 perpetrators (both male and female)	Jan 2005-June 2006	Qualitative Interviews
Mazerolle, Eggins, Sydes, Hine, McEwan, Norrie & Somerville (2018)	Specialist domestic violence court Restorative justice	Published in English	36 studies + 3 reviews	1997-2017	Review
Mills, Barocas & Ariel (2013)	Restorative justice – restorative circles	Arizona, United States	152 domestic violence cases randomly assigned to treatment or restorative circles	Sept 2005-Mar 2007	Randomised control trial Administrative data
Mills, Barocas, Butters & Ariel (2019)	Restorative justice – restorative circles	Utah, United States	222 domestic violence offenders randomly assigned to treatment only or treatment/restorative circles	Late 2000s	Randomised control trial Administrative data

Author & year	Type of intervention	Location	Sample	Timeframe data collection	Design
Moore (2009)	Specialist domestic violence court - recidivism	Published in English United States	9 studies, domestic violence courts	not reported	Review
Newmark, Rempel, Diffily & Kane (2001)	Specialist domestic violence court - recidivism	New York State, United States	93 felony domestic violence cases (pre); 109 domestic violence court cases; 27 domestic violence court cases, breach only	1995/96; 1997	Mixed methods Administrative data Interviews
Pelikan (2002)	Restorative justice - mediation	Austria	76 mediation participants (victims/perpetrators)	Jan 1998-July 1998	Mixed methods Administrative data Interviews Case files Observations
Pelikan (2010)	Restorative justice - mediation	Austria	162 mediation participants (survey) 21 mediation participants (interviews)	2006	Mixed methods Survey Observations Interviews
Pennell & Buford (2000)	Restorative justice - conferencing	Canada	63 families, intervention (n=32), comparison (n=31)	not reported	Mixed methods Interviews Case files
Pinchevsky (2017)	Specialist domestic violence court - recidivism	Southeastern United States	1,784 defendants across two domestic violence courts	2004-2006	Quantitative Administrative/case data
Ptacek (2017)	Restorative justice	Published in English	7 studies, intimate partner violence	not reported	Review
Quann (2006)	Specialist domestic violence court - recidivism	Ontario, Canada	1,000 offenders (adult) convicted from domestic violence courts (n=500) and convention court (n=500)	2001	Quantitative Administrative data
Tutty & Koshan (2013)	Specialist domestic violence court - recidivism	Calgary, Canada	6,407 domestic violence (adult) cases: pre (n=1,663); specialised list (n=3,319); specialised court (n=1,425)	2000-2008	Quantitative Administrative data, case files
Williams (2010)	Specialist domestic violence court - recidivism	Utah, United States	100 defendants (adult) Compared to recidivism rates in literature	Jun 2008-Dec 2009	Mixed methods Administrative data Surveys Interviews

NOTE: Rempel, Labriola & Davis (2008) used data from Labriola, Davis & Rempel (2005). Studies/evaluations that only examine case processing or outcomes within specialist domestic and family violence courts are not included in this table.

Table B.3. Key studies on community (including victim/survivor) perceptions of sentencing of domestic and family violence offences (n=13)

Author & year	Population	Location	Sample	Timeframe data collection	Design
Bell, Perez, Goodman & Dutton (2011)	Victim/survivors	Mid-Atlantic, United States	38 female (adult) victim/survivors in a shelter involved in civil or criminal court	not reported	Qualitative Interviews
Budd, Burbrink & Miller (2017)	Community	United States	300 married/cohabiting adults	not reported	Quantitative Factorial survey
Carlson & Worden (2002)	Community	New York, United States	1,200 adult residents from 6 communities	not reported	Quantitative Survey
Department of Justice (United Kingdom) (2016)	Victim/survivors	Northern Ireland, United Kingdom	16 (female) victims/survivors	2015	Qualitative Interviews
Douglas & Stark (2010)	Victim/survivors	Queensland, Australia	20 female victim/survivors, involved in criminal prosecution of a domestic violence matter	2009	Qualitative Interviews
Fradella & Fischer (2010)	Community	Northeastern, United States	99 college students	not reported	Quantitative Questionnaire/form
Gezinski & Gonzalez-Pons (2022)	Victim/survivors, service providers	Utah, United States	43 victim/survivors	Mar 2016-Feb 2017	Qualitative Interviews/focus groups
Gilchrist & Blissett (2002)	Magistrate	Birmingham, United Kingdom	67 magistrates	not reported	Quantitative Vignette survey
Gillis, Diamon, Jebely, Orekhovsky, Ostovich, MacIsaac, Sagrati & Mandell (2006)	Victim/survivors	Ontario, Canada	20 (female) victim/survivors	not reported	Qualitative Focus groups
Horstman, Bond & Eriksson (2021)	Community	Australia	284 undergraduate students	not reported	Quantitative Vignette survey
Minaker (2001)	Victim/survivors	Canada	15 (female) victim/survivors	not reported	Qualitative Interviews
Pavlou & Knowles (2001)	Community	Australia	134 adults	not reported	Quantitative Vignette survey
Taylor & Mouzos (2006)	Community	Victoria, Australia	2,000 (adult) members of general community	2006	Quantitative Survey

NOTE: Studies and evaluations that include victim experiences around sentencing processes within specialist domestic and family violence courts are not included in this table.