

Community Summary

The '80 percent rule' – A review of the serious violent offences scheme



About the Council

The Queensland Sentencing Advisory Council gives the Queensland Government advice about sentencing in Queensland. We also give the community information about sentencing.

The Council can have up to 12 professional people who have lots of experience working in the criminal justice system.

In this document, we will tell you about the work we have done to review what is called the **serious violent offences** scheme that applies to certain crimes in Queensland.

Before we explain more about the serious violent offences scheme, it's helpful to understand more about what sentencing is, how a judge works out a sentence, and what parole is for.

About sentencing

What is a sentence?

The court gives a sentence to a person who is found guilty of committing an offence. The most serious types of offences are called crimes.

A sentence isn't just about going to prison. For example, a person found guilty could receive a fine, a community service order or probation.

How does a judge work out what sentence to give to a person?

When a judge decides what sentence to give to a person, they consider some, or all, of the 5 reasons, or purposes, of sentencing.

The judge will consider how the sentence will:

- ✓ punish the person
- ✓ discourage that person and other people from committing the same type of offence
- ✓ send a strong message to the person and community that what the person did won't be tolerated
- ✓ help a person change their behaviour so they don't commit a crime again
- ✓ keep the community safe



The judge will also look at other factors when sentencing a person.

They will consider what the law says. They will look at how serious the crime was, and how much harm it caused to the victim. They consider a person's age, whether the person pleaded guilty, or how much the person is to blame. This means that two people could get different sentences for committing the same type of offence.

The job of the judge is to consider everything carefully and decide on a sentence that is fair.

This is called judges' discretion and it is an important part of how our legal system works.

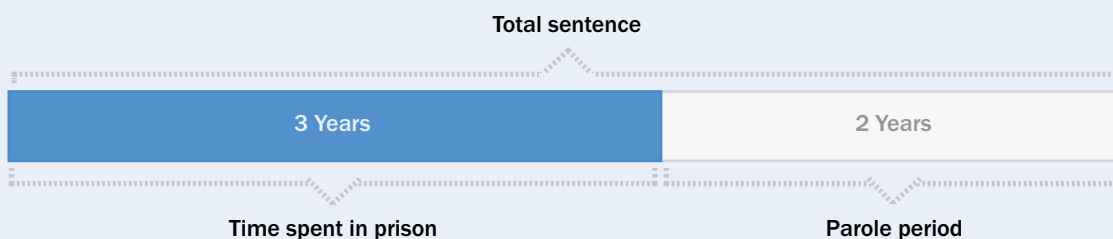
How parole works

Parole

If a person is found guilty and goes to prison, they could also spend time on parole.

Time spent on parole counts as part of a person's sentence. For example, if a person is given a 5 year sentence, they may spend 3 years in prison and then 2 years on parole.

When a person is on parole, they are supervised in the community and must follow certain rules. If the person breaks those rules, there's a chance they may have to go back to prison.



Parole helps a person get used to living back in the community under supervision before their sentence ends. Research shows a person who spends time on parole is less likely to commit another crime than if they are released from prison at the end of their sentence without parole.

This means that, in the long run, parole makes the community safer. This is because it makes people less likely to commit another crime when they are back in their community and are not being supervised.

When a person is given a prison sentence of less than 3 years, the court usually tells them the date when they will be released on parole.

When a person is given a prison sentence of more than 3 years, or for any sexual offence, the court will give them a date when they will be able to apply for parole. The Parole Board Queensland then decides if that person can be released on parole or must stay in prison.

About our review of the serious violent offences scheme

The Queensland Government asked us to review a part of sentencing laws called the serious violent offences scheme.

What is a serious violent offence?

All crimes are serious. However, some crimes cause more harm to victims and the community than others.

These crimes include specific violent, sexually violent and serious drug crimes. In Queensland, if a person is given a sentence of 10 years or more for committing one of these crimes, a judge must record that crime as a serious violent offence.

When a crime is recorded as a serious violent offence, it is called a **'serious violent offence declaration'**.

Because the person's crime must be declared as a serious violent offence, it is called a **mandatory declaration**.

A judge can also decide that a person has committed a serious violent offence if they are given a sentence of less than 10 years. This is known as a **discretionary declaration**.

What difference does a declaration make?

If a declaration is made, a person must spend either 80% of their sentence or 15 years (whichever is less) in prison before they can be released on parole. This is fixed by law.

This is very different to the rules that usually apply to parole. Usually, a court can decide how much time a person must spend in prison before they can be released on parole. This can be any point in the sentence, but usually ranges from a third of a person's sentence up to 50%.

If no parole eligibility date is set, the law says the person must serve half of their sentence before being released on parole.

By fixing the amount of time spent in prison to 80%, the purposes of the serious violent offence scheme are to punish the person, send a message to the person and the community that this type of offending won't be tolerated and to keep the community safe.



What we did

- ✓ We spoke to many people, including victims and survivors, professionals who work with the law and victim support organisations.
- ✓ We asked them to tell us what they thought about how the scheme is being used. They told us what is working well, and what they think could be better.
- ✓ We also did lots of research and looked at data about how many people have been sentenced for a serious violent offence in Queensland.

What isn't working

We found that while the purposes of the serious violent offences scheme are important, many people told us that it isn't working well. There are problems with how it affects the decisions a judge can make, and how it is applied to different crimes.

Some victims and survivors are unhappy that a person can commit a crime that causes serious harm but does not get a serious violent offence declaration. This could be the case if the sentence is under 10 years and the judge does not decide to make a declaration.

Victims and survivors feel that this sends a message that the crime committed against them is not 'serious', or 'violent' enough, despite the trauma they have suffered.

Another problem we heard about is that the judge must declare the crime as a serious violent offence if the person is sentenced to 10 years or more. This means a judge cannot consider all the factors they would normally think about to decide on a fair sentence in the way they usually would.

For example, a judge may feel that a person needs more time on parole because they believe that a long time in prison will not help that person change their behaviour and may put the community at greater risk that the person will reoffend.

There are also some things a judge must consider by law, such as whether the person has cooperated with the police or pleaded guilty.

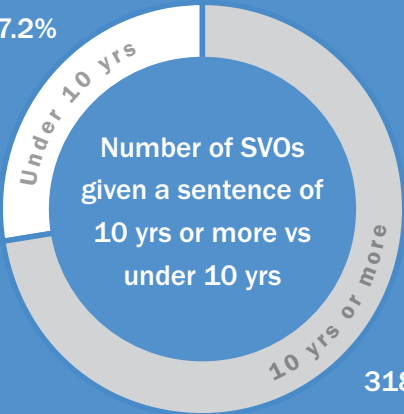
The stats

In 9 years

437

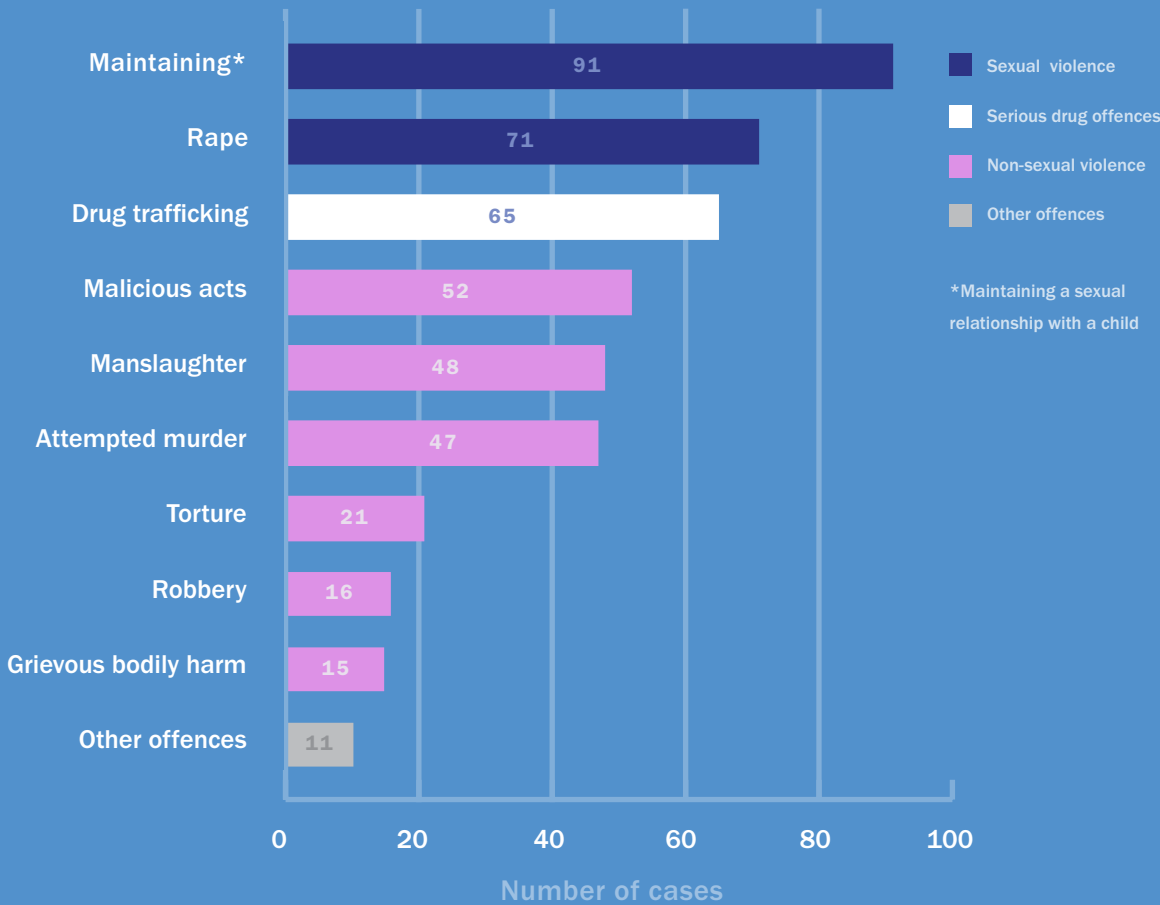
cases resulted in a serious violent offence (SVO) declaration in Queensland

119 | 27.2%



318 | 72.8%

Number of cases with an SVO declaration, by offence



Our recommendations to the Queensland Government

The Council recommends that Queensland should keep a sentencing scheme for very serious offences.

This is because it supports what our research and people have told us—that, while all crimes are serious, some crimes cause more serious harm to victims and communities than others. It is important that sentencing laws recognise this.

However, changes need to be made to the current scheme to improve it.

We made 26 recommendations to the government about how the scheme should be changed. We talk about some of these recommendations in more detail below.

Call it a serious offences scheme

Some of the crimes we think should be included in the scheme are not always violent but are still very serious and cause a lot of harm. This includes serious drug offences such as drug trafficking and child exploitation material offences.

We recommend that the government change the name of the scheme to remove the word ‘violent’ and call it a **serious offences scheme**.

Change the rules of when the judge can declare a crime to be a serious offence

As we explained earlier, some serious crimes are given sentences of less than 10 years.

This means that a judge does not have to declare these crimes as serious offences.

However, these crimes cause serious harm to victims and communities.

We recommend that judges should always declare these crimes to be serious offences when a person is sentenced to **over 5 years unless it is NOT in the interests of justice to do so**. What this practically means is that there must be good reasons to not make the declaration.

This is called a **presumptive declaration**.

This helps to fix the problem victims and survivors told us about that it is upsetting when a serious crime is not recorded as a serious offence because a person was sentenced to less than 10 years and the judge did not make a declaration.

This is also how declarations will be made for sentences of 10 years or more.

Our recommendations to the Queensland Government

What would be good reasons not to declare a crime as a serious offence?

The judge should be able to decide that sometimes, it would be best not to declare a crime as a serious offence.

The person's lawyer may give the court information showing why a declaration should not be made.

For example, reasons not to make a declaration could include that the person is a low risk to the community or the person has cooperated with the investigation.

This allows the judge to consider the evidence and use discretion, which is very important when deciding on a fair sentence.

Declare serious drug crimes that are sentenced to 10 years or more as serious offences

Our research found that serious drug crimes are different to sexual and other violent crimes and that different rules should apply. This is because the type of harm these crimes cause and the risks to the community are different.

For example, when people committed serious drug crimes and were given sentences of less than 10 years, judges rarely made a discretionary declaration for these crimes.

Our research also found that people who commit serious drug crimes are less of a risk to the community compared to people who commit violent crimes.

However, when a person is given a sentence of 10 years or more for a serious drug crime, this crime causes serious harm to the community even if it wasn't violent. These drug crimes usually involve trafficking in large quantities of dangerous drugs.

This is why we recommend that serious drug crimes with sentences of 10 years or more should still be declared as serious offences.



Our recommendations to the Queensland Government

Allow the judge to decide how long the person needs to spend in prison (between 50–80%)

We recommend that a judge should be allowed to choose how much time a person should spend in prison if they commit a serious offence, from half to 80% of the person's overall sentence.

Currently, if a person is sentenced to more than 3 years and their crime is not declared as a serious violent offence, the court can decide how long the person must spend in prison before they can be released on parole.

The Council found that courts often decide that the person can be released on parole after spending half their sentence in prison, or even one-third if they have pleaded guilty.

Victims of crime told the Council that when this happens, it does not recognise how serious the crime was and how much harm they or their family member suffered.

Our proposed change means that the court has more discretion to decide how much time in prison will best punish the person, and how much time spent on parole will help keep the community safe in the long run.

Update the types of crimes that can be recorded as serious offences

Views about what is—and what isn't—a serious crime can change over time.

We recommend that the government should update the types of crimes that can be declared as serious offences. For example, some additional crimes should be included like crimes related to child pornography, choking, suffocation or strangulation in a domestic setting, and female genital mutilation.

Where can I find out more information?

You can find more information about the work we have done on this project on the [Queensland Sentencing Advisory Council website](#).



