

SENTENCING
SPOTLIGHT ON...

choking, suffocation
or strangulation in a
domestic setting

Sentencing Spotlight on... choking, suffocation or strangulation in a domestic setting

This *Sentencing Spotlight* examines sentencing outcomes for choking, suffocation or strangulation in a domestic setting offences under s 315A of the *Criminal Code* (Qld) finalised in Queensland courts between 2016-17 and 2017-18.

Summary of offences 2016-17 to 2017-18.



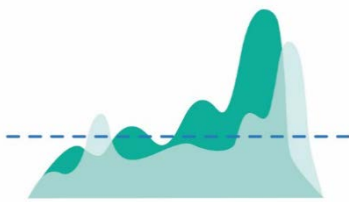
287
offenders
sentenced



482 charges
in total



98.3%
male offenders



Average age
31.8 years



21%
Aboriginal and
Torres Strait Islanders



99%
pleaded guilty
(if MSO)



76%
imprisoned



Average
sentence
1.9 years



49%
of cases breached a
domestic violence order

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

Choking, suffocation or strangulation in a domestic setting

Section 315A of the *Criminal Code* (Qld) provides that a person commits a crime if the person unlawfully chokes, suffocates or strangles another person, without the other person’s consent; and either

- the person is in a domestic relationship with the other person;¹ or
- the choking, suffocation or strangulation is associated domestic violence under the *Domestic and Family Violence Protection Act 2012*.²

In this *Sentencing Spotlight*, the offence of choking, suffocation or strangulation in a domestic setting will be referred to as ‘strangulation’.

The offence of strangulation was introduced on 5 May 2016 following a recommendation made by the Special Taskforce on Domestic and Family Violence in Queensland.³ In its report, the Taskforce found that strangulation was a key predictor of domestic homicide, and an appropriate penalty should be applied to account for this increased risk of subsequent escalation to the victim.⁴

Section 315A provides that a person who commits the offence of strangulation is liable to a maximum penalty of 7 years’ imprisonment.

Number of offenders

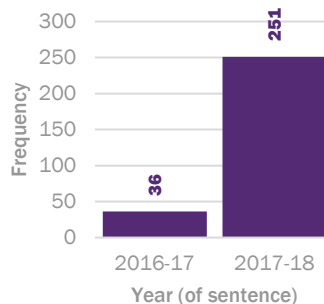
Overall, 404 cases were sentenced for the offence of strangulation between 2016-17 and 2017-18. These cases involved a total of 482 charges for the offence of strangulation. For 287 (71.0%) of those cases, strangulation was the most serious offence (MSO).⁵ In 94 of the remaining 117 cases where strangulation was not the MSO, the MSO was an assault occasioning bodily harm.

This *Sentencing Spotlight* focuses primarily on offenders sentenced for strangulation as their MSO. Figure 1 shows the number of finalised offenders sentenced for strangulation (MSO) since the offence was introduced in May 2016.

In the first year the offence was available, only 36 cases had been finalised at a sentencing event. In 2017-18, 251 strangulation (MSO) cases were finalised. A charge of strangulation for an adult offender must be dealt with on indictment (and cannot be dealt with summarily under

Chapter 58A of the *Criminal Code*). Indictable offences may take longer to proceed to sentence, as the accused has the right to have the matter heard before a Judge and jury in a higher court. This longer process may explain why few cases had proceeded to sentencing in the first year the offence was available.

Figure 1: Number of offenders sentenced for strangulation (MSO), 2016-17 to 2017-18.

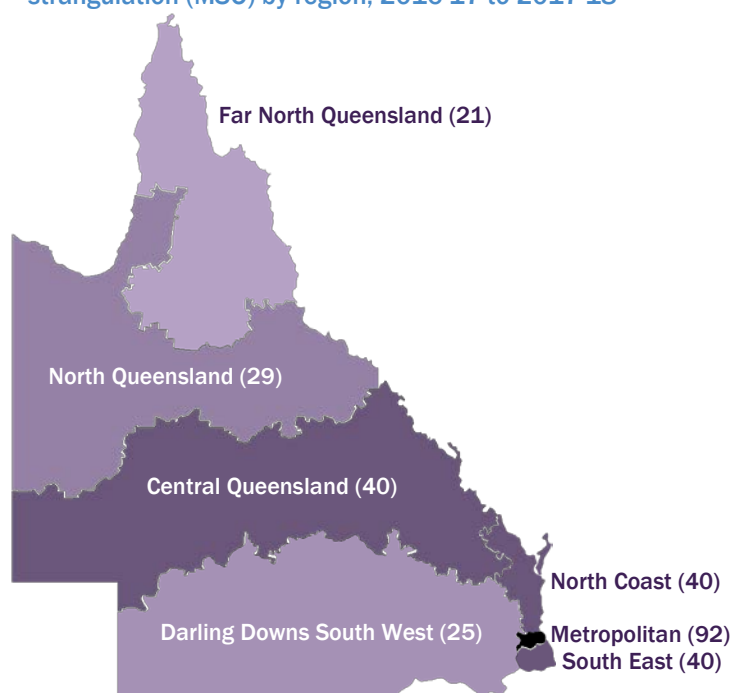


Source: Queensland Government Statistician’s Office, Queensland Treasury Courts Database, extracted November 2018.

Regions

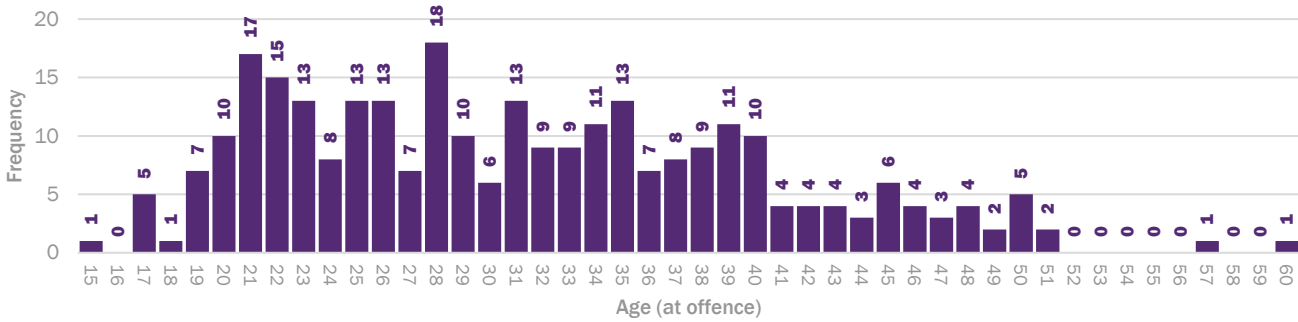
Figure 2 shows the regions within Queensland in which strangulation (MSO) cases were sentenced.⁶ The region with the most cases sentenced was the Metropolitan region with 92 cases. Far North Queensland had the least with 21 cases.

Figure 2: Number of offenders sentenced for strangulation (MSO) by region, 2016-17 to 2017-18



Source: Queensland Government Statistician’s Office, Queensland Treasury Courts Database, extracted November 2018.

Figure 3: Number of offenders sentenced for strangulation (MSO) by age at offence, 2016-17 to 2017-18



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2018.

Offender characteristics

This section compares the age, gender and Aboriginal and/or Torres Strait Islander status of all offenders sentenced for strangulation (MSO) over the period from 2016-17 to 2017-18.

Age

At the time of the offence, the average age of all offenders sentenced for strangulation (MSO) was 31.8 years (median=30.9 years) with ages ranging between 15 and 60 years. Figure 3 shows age at the time of offence.

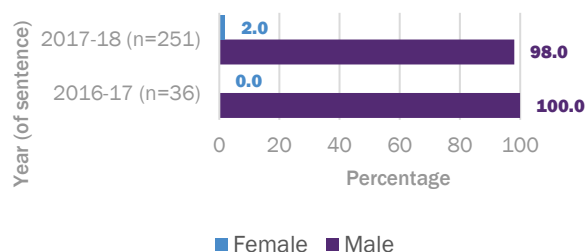
Young offenders

If, at the time of the offence, an offender was aged 10 to 17 years, they may be dealt with as a child under the *Youth Justice Act 1992*. Two offenders were sentenced as a child for strangulation (MSO). Both offenders were male, and one was Aboriginal and/or Torres Strait Islander.

Gender

Since the offence was introduced, the majority of offenders sentenced for strangulation (MSO) in Queensland were male (98.3%) (see Figure 4).

Figure 4: Proportion of offenders sentenced for strangulation (MSO) by gender and year of sentence, 2016-17 to 2017-18



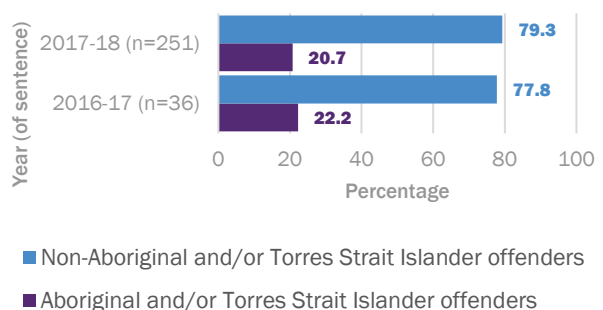
Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2018.

Aboriginal and/or Torres Strait Islander people

Although people who identify as Aboriginal and/or Torres Strait Islander represent approximately 3.8 per cent of Queensland’s population aged 10 years and over,⁷ they accounted for 20.9 per cent of all offenders sentenced for strangulation (MSO). For context, across all types of offences, 17.6 per cent of offenders identified as Aboriginal and/or Torres Strait Islander.⁸

Overall, 60 of the cases with strangulation as the MSO were committed by a person who identified as being Aboriginal and/or Torres Strait Islander.

Figure 5: Proportion of offenders sentenced for strangulation (MSO) by Aboriginal and/or Torres Strait Islander status and year of sentence, 2016-17 to 2017-18



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2018.

Aboriginal and/or Torres Strait Islander offenders were significantly younger (29.2 years, median=25.2 years) when compared to non Aboriginal and/or Torres Strait Islander offenders (32.5 years, median=31.8 years).

Victim Characteristics

Due to the limitations of the administrative data collected by Queensland Court Services, information about the victims of these offences is not able to be presented.

The Council is unable to reliably report the gender, Aboriginal and Torres Strait Islander status, or specific nature of the relationship between the victim and the offender.

Type of plea

Most offenders (99.0%) sentenced for strangulation (MSO) pleaded guilty, either initially or at a subsequent date. Only 1.0 per cent pleaded not guilty.

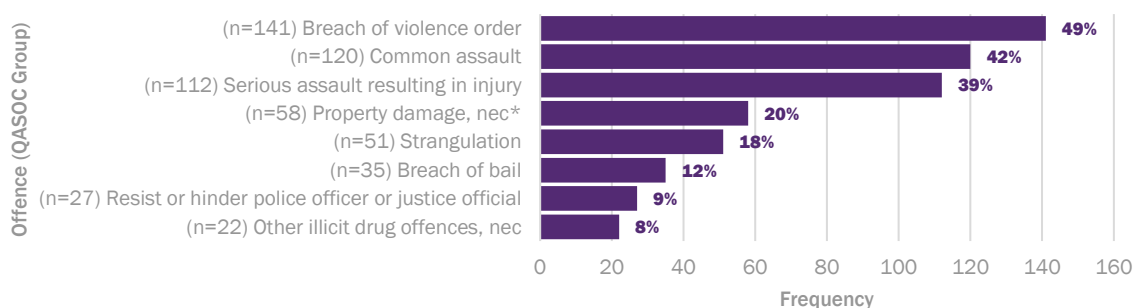
No differences in plea type were seen based on gender, age or Aboriginal and/or Torres Strait Islander status – see Table 1.

Table 1: Plea type of offenders sentenced for strangulation (MSO) by gender, Aboriginal and/or Torres Strait Islander status and age at sentence, 2016-17 to 2017-18.

Offender type	N	Guilty plea		Not guilty plea	
		n	%	n	%
Female	5	5	100.0	0	0.0
Male	282	279	98.9	3	1.1
Aboriginal and/or Torres Strait Islander	60	59	98.3	1	1.7
Non Aboriginal and/or Torres Strait Islander	227	225	99.1	2	0.9
Under 20 years	9	9	100.0	0	0.0
20-29 years	122	121	99.2	1	0.8
30-39 years	96	95	99.0	1	1.0
40-49 years	49	49	100.0	0	0.0
50-59 years	10	9	90.0	1	10.0
60 years and over	1	1	100.0	0	0.0
Total	287	284	99.0	3	1.0

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2018.

Figure 6: Top eight associated offences sentenced with a strangulation (MSO), 2016-17 to 2017-18



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2018.

Note: numbers refer to the number of cases that involved this type of offence.

*nec, refers to offences that are not elsewhere classified in the Australian Standard Offence Classification.

Associated offences

Some offenders sentenced for strangulation (MSO) were also sentenced for other offences at the same court event. Of the 287 sentencing events, 12.2 per cent only had the strangulation offence sentenced in their court event; 21.6 per cent had one additional offence, and 66.2 per cent had more than one.

The number of sentenced offences per offender per court event ranged from 1 to 23, with an average of 4.8 sentenced offences per event (median=4.0). Of the 190 strangulation (MSO) sentencing events that involved additional offences, the majority involved between one and five additional offences.

On average, Aboriginal and/or Torres Strait Islander offenders had a slightly higher number of offences sentenced (average=5.7 offences) than non Aboriginal and/or Torres Strait Islander offenders (average=4.6 offences), however this difference was not significant.

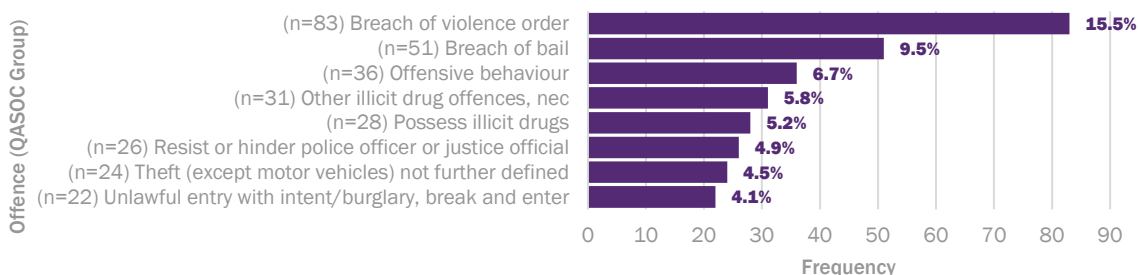
Figure 6 shows which offences were most commonly heard at the same sentencing event as strangulation (MSO). Almost half of all strangulation (MSO) cases (49.1%) were associated with the breach of a domestic violence order. In 51 cases (18% of cases), at least one other charge of strangulation was present. Many cases also involved another type of assault, such as common assault (120 cases, 42%) or serious assault resulting in injury (112 cases, 39%).

Table 2: Number of sentenced offences per court event, by gender and Aboriginal and/or Torres Strait Islander status, 2016-17 to 2017-18

Offender type	N	Single offence (%)	2 to 4 offences (%)	5 to 10 offences (%)	11+ offences (%)	Number of offences			
						Avg	Median	Min	Max
Female	5	40.0	20.0	40.0	0.0	3.2	2.0	1	7
Male	282	11.7	48.2	30.5	9.6	4.9	4.0	1	23
Aboriginal and/or Torres Strait Islander	60	8.3	43.3	35.0	13.3	5.7	4.0	1	15
Non Aboriginal and/or Torres Strait Islander	227	13.2	48.9	29.5	8.4	4.6	4.0	1	23
Total	287	12.2	47.7	30.7	9.4	4.8	4.0	1	23

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2018.

Figure 7: Top eight most common prior offences (MSO) of offenders sentenced for strangulation, July 2016 to December 2017



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2018.

Prior offending

All offenders that were sentenced for strangulation up to 31 December 2017 (including cases where strangulation was not the MSO) were examined in detail to determine whether the offenders had been sentenced for an offence of any kind in the prior five years.⁹ For offenders sentenced to up to three years of imprisonment, an extra three years of data was analysed to account for the time spent in custody. Offenders sentenced as a juvenile were excluded from this analysis.

Of the 144 cases examined, 36 (25.0%) recorded no court events in the five years prior to the strangulation sentencing event. The number of prior sentenced court events in the preceding five financial years range from 0 to 6. The average number of prior court events was 3.7 (median=6.0) – see Table 3.

There were 108 cases with prior sentencing events; these offenders were collectively involved in 536 prior sentenced events. The most common prior MSO was breach of a domestic violence order (83 prior cases, 15.5%) – see Figure 7. The second most common prior MSO was breach of bail (51 prior cases, 9.5%).

Figure 8: Prior offending methodology

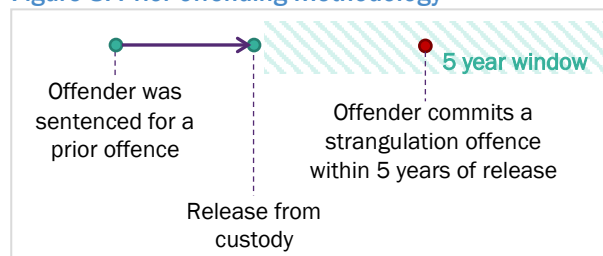


Table 3: Number of prior sentenced court events for offenders sentenced for strangulation, by gender and Aboriginal and/or Torres Strait Islander status, July 2016 to December 2017

Offender type	N	No prior offences (%)	1 to 4 prior offences (%)	5+ prior offences (%)	Number of prior court events			
					Avg	Median	Min	Max
Female	1	0.0	0.0	100.0	6.0	6.0	6	6
Male	143	25.2	41.3	33.6	3.7	3.0	0	16
Aboriginal and/or Torres Strait Islander	27	11.1	22.2	66.7	6.7	7.0	0	15
Non Aboriginal and/or Torres Strait Islander	117	28.2	45.3	26.5	3.0	2.0	0	16
Total	144	25.0	41.0	34.0	3.7	3.0	0	16

Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted November 2018.

Note: Totals may not add to 100% due to rounding.

Note

Due to the small number of offenders sentenced as a young person (n=2) and offenders receiving a non-custodial penalty (n=10) the remainder of this *Sentencing Spotlight* will only consider offenders sentenced as an adult who received a custodial penalty (n=277).

Sentencing outcomes

No mandatory imprisonment penalty exists for strangulation in Queensland. Courts retain wide discretion for deciding the types of penalties imposed for such offences, with aggravating and mitigating factors required to be taken into consideration.

Section 9(10A) of the *Penalties and Sentences Act 1992* provides that 'in determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.'

Section 315A of the *Criminal Code* provides a maximum penalty of 7 years' imprisonment.

For the two young offenders sentenced under the *Youth Justice Act 1992* for strangulation (MSO), both received a sentence of probation, one for 9 months, and the other for 12 months.

From 2016-17 to 2017-18, 97.2 per cent of sentenced offenders who had a strangulation offence (MSO) received a custodial penalty. Eight offenders received a non-custodial penalty.

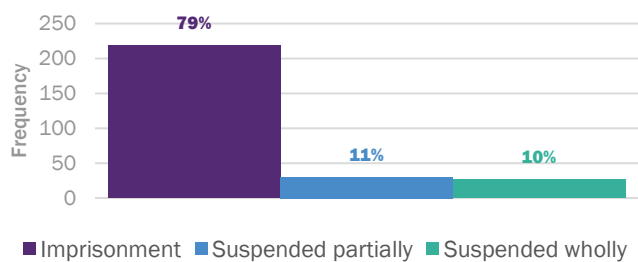
All eight offenders that received a non-custodial penalty received a sentence of probation, ranging from six months to two years.

Penalty type

There are three types of custodial penalties which will be discussed in this section: imprisonment, partially suspended sentences, and wholly suspended sentences.¹⁰ For more details on types of sentencing orders, see the Queensland Sentencing Guide.¹¹

A sentence of imprisonment was the most common penalty imposed (79.1%) for strangulation (MSO) – see Table 4. Partially suspended sentences were used in 30 cases (10.8%), and wholly suspended sentences were used in 27 cases (9.7%).

Figure 9: Custodial penalties for strangulation (MSO), 2016-17 to 2017-18



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2018.
Note: excludes non-custodial penalties and offenders sentenced as a juvenile.

Table 4: Custodial penalties for strangulation (MSO) by gender and Aboriginal and/or Torres Strait Islander status, 2016-17 to 2017-18

Offender type	N	Imprisonment (n, % of subgroup)	Partially suspended (n, % of subgroup)	Wholly suspended (n, % of subgroup)
Female	4	3 (75.0%)	0 (0.0%)	1 (25.0%)
Male	273	216 (79.1%)	30 (11.0%)	26 (9.5%)
Aboriginal and/or Torres Strait Islander	59	49 (83.1%)	2 (3.4%)	8 (13.6%)
Non Aboriginal and/or Torres Strait Islander	218	170 (78.0%)	28 (12.8%)	19 (8.7%)
Total	277	219 (79.1%)	30 (10.8%)	27 (9.7%)

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2018
Note: excludes non-custodial penalties and offenders sentenced as a juvenile.

Length of sentence

For offenders who were sentenced to imprisonment for strangulation (MSO), the average sentence was 1.9 years (median=1.7 years). The longest sentences of imprisonment had a length of four years, and the shortest sentence of imprisonment had a length of two months.

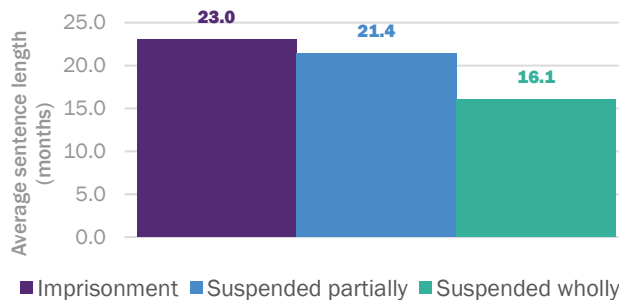
The average partially suspended sentence was 1.8 years (median=1.7 years) for offenders sentenced for strangulation (MSO). The longest partially suspended sentence was 3 years. The shortest partially suspended sentences had a length of 9 months, although the minimum sentence for Aboriginal and/or Torres Strait Islander offenders was higher at 18 months.

Of those who received a partially suspended sentence, the average time served before release was 6.7 months.

Wholly suspended sentences had an average length of 1.3 years (median=1.2 years). The longest wholly suspended sentences had a length of 2.5 years, and the shortest sentences were 0.8 years in duration.

There was no significant different in the average sentence length based on gender or Aboriginal and/or Torres Strait Islander status.

Figure 10: Custodial sentence lengths for strangulation (MSO), 2016-17 to 2017-18.



Source: Queensland Government Statistician's Office, Queensland Treasury Courts Database, extracted November 2018
Notes: Maximum period permissible for suspended sentences (wholly or partially) is five years. Excludes offenders sentenced as a juvenile

Table 5: Sentence lengths for strangulation (MSO), by gender and Aboriginal and/or Torres Strait Islander status, 2016-17 to 2017-18.

Offender type	Imprisonment (months)					Suspended partially (months)					Suspended wholly (months)				
	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
Female	3	21.3	20.0	14	30	0	-	-	-	-	1	10.0	10.0	10	10
Male	216	23.1	24.0	2	48	30	21.4	20.5	9	36	26	16.3	18.0	9	30
Aboriginal and/or Torres Strait Islander	49	24.1	24.0	12	42	2	24.0	24.0	18	30	8	19.9	21.0	9	30
Non Aboriginal and/or Torres Strait Islander	170	22.7	24.0	2	48	28	21.2	20.5	9	36	19	14.5	15.0	9	20
Total	219	23.0	24.0	2	48	30	21.4	20.5	9	36	27	16.1	18.0	9	30

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2018.

Notes: Maximum period permissible for suspended sentences (wholly or partially) is five years. Excludes offenders sentenced as a juvenile

* Caution: Small sample sizes.

Endnotes

¹ A 'domestic relationship' means a relevant relationship under s 13 of the *Domestic and Family Violence Protection Act 2012*, which includes an intimate personal relationship, a family relationship or an informal care relationship.

² 'Associated domestic violence' is defined under s 9 of the *Domestic and Family Violence Protection Act 2012* and includes domestic violence towards a child of an aggrieved, a child who usually lives with an aggrieved, a relative of an aggrieved, or an associate of an aggrieved.

³ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Final Report, February 2015).

⁴ *Ibid* at 302.

⁵ Refer to the technical paper available at <http://www.sentencingcouncil.qld.gov.au/research/sentencing-spotlight>

⁶ The largest courthouses by volume within each region are as follows:

Far North Queensland: Cairns

North Queensland: Townsville, Mount Isa

Central Queensland: Mackay, Rockhampton, Gladstone

Darling Downs South West: Toowoomba

North Coast: Bundaberg, Maroochydore, Caboolture, Redcliffe, Pine Rivers

Metropolitan: Brisbane, Ipswich

South East: Beenleigh, Southport

⁷ As at 30 June 2015. See Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015, available at <<http://www.qgso.qld.gov.au/subjects/demography/at-si->

[people/tables/pop-est-indigenous-status/index.php](http://www.qgso.qld.gov.au/subjects/demography/at-si-people/tables/pop-est-indigenous-status/index.php)> accessed 4 August 2017.

⁸ Offenders with an unknown Aboriginal and/or Torres Strait Islander status were excluded from this analysis.

⁹ To calculate recidivism, offenders were linked across multiple court events to identify occurrences of prior offending and reoffending. This offender linkage was undertaken by the Queensland Government Statistician's Office, and involved both deterministic and probabilistic matching techniques to account for anomalies in data systems in relation to common administrative data errors relating to issues, such as the use of nicknames and transposed details.

This linkage has been performed for court events that were finalised before 30 December 2017. As such, this *Sentencing Spotlight* does not include recidivism analysis for cases finalised beyond this date.

Recidivism in this *Sentencing Spotlight* includes all criminal offences and traffic offences sentenced in a court.

¹⁰ 'Imprisonment' refers to a non-suspended prison sentence, with either a parole release or eligibility date. Suspended sentences are periods of imprisonment of five years or less which are suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period of time (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence).

¹¹ The Queensland Sentencing Advisory Council's *Queensland Sentencing Guide* is available at: https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/queensland-sentencing-guide.pdf



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