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Author/s:

Sharman, L;Douglas, H;Fitzgerald, R

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NON-FATAL STRANGULATION OFFENCE CONVICTIONS AND OUTCOMES: INSIGHTS FROM QUEENSLAND WIDE INTER- LINKED COURTS DATA, 2016/2017-2019/2020

LEAH SHARMAN, UNIVERSITY OF QUEENSLAND

HEATHER DOUGLAS, UNIVERSITY OF MELBOURNE

ROBIN FITZGERALD, UNIVERSITY OF QUEENSLAND



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We pay our respects to the Traditional Owners of the land on which we live and work. We pay our respects to their Ancestors and their descendants, who continue cultural and spiritual connections to Country.

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Ethics

Ethics for this project was approved by the University of Queensland Human Ethics committee: 202000058

Contact

Professor Heather Douglas: douglash@unimelb.edu.au

INTRODUCTION

On 5 May 2016, Queensland introduced a standalone non-fatal strangulation offence. Section 315A *Criminal Code 1899* (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; or
- the choking, suffocation or strangulation is associated domestic violence under the *Domestic and Family Violence Protection Act 2012*.

This report builds on an earlier examination of the offence undertaken by the Queensland Sentencing Advisory Council (QSAC Report) (Queensland Sentencing Advisory Council, 2019) and considers whether there have been significant changes in the distribution of defendant characteristics, charges and associated offences, and or sentencing outcomes over the first five years of its operation. The analysis draws on data supplied by DJAG from the Queensland Wide Inter-linked Courts (QWIC) operational database recording information related to appearances and finalisations in Queensland courts. While the QSAC Report examined data from 2016/2017 to 2017/2018, the sample analysed in this report includes sentencing outcomes for all offences under s 315A finalised in Queensland courts between 2016/17 and 2019/20.

The analysis follows individuals who were charged with an offence of non-fatal strangulation and for whom a case was finalised with or without a conviction or sentence. That is, the analysis includes finalised matters containing NFS charges which were both prosecuted and discontinued. Since not all individuals were convicted, we refer to them as defendants rather than offenders in this report. Analyses in this report are also limited to those for whom NFS was *charged as the most serious offence* (MSO), irrespective of whether the individual was convicted of or sentenced for NFS.

We provide separate analyses for unique counts of defendants, charges and finalisations.

We excluded defendants with NFS charges occurring prior to the introduction of the legislation. Three defendants were removed because their offences occurred before the legislation was introduced. Another three defendants had individual NFS charges removed because these offences were also charged prior to the introduction of the legislation. However, these defendants remained in the data for the purposes of analysis as they had other NFS charges that occurred after the legislation was enacted.

This report is not directly comparable to the QSAC Report findings as we have derived the MSO differently than the QSAC Report analysis.¹

More specifically, for the purposes of deriving the MSO, we determined the offence hierarchy based on the National Offence Index (Australian Bureau of Statistics, 2018). However, to account for the fact that the legislated penalty for NFS is higher in Queensland than assault and that NFS convictions almost always resulted in penalties of imprisonment, we adjusted the classification of NFS offence seriousness score from 30 to 25 (where a lower score is more serious). This adjustment served to re-rank the Queensland NFS offence at the same level of seriousness as Assault Occasioning Bodily Harm (AOBH).

Nonetheless, this report shows some consistency between our findings and the QSAC results, notably that:

¹ For information on how MSO is determined by QSAC Report (Queensland Sentencing Advisory Council, 2019), see associated technical paper (Queensland Sentencing Advisory Council, 2021a).

- most defendants are male (96% and 98%, in this report and the QSAC report respectively),
- Aboriginal and Torres Strait Islander people account for a disproportionate percentage of those sentenced for NFS (21% in both reports),
- when sentenced for NFS, most defendants were imprisoned (96% and 76%, in this report and the QSAC report, respectively) – the higher rate of imprisonment in our study reflects our longer run of data (four years rather than two) since there were increases in the annual rate of imprisonment over time, and
- most defendants plead guilty to NFS when it is the MSO among charges in the matter (99% in both reports).

Importantly, key findings in this report show:

1. Since the NFS offence was introduced, immediate (unsuspended) imprisonment has risen sharply between 2016/2017 to 2019/2020 compared to sentences that were partially suspended.
2. The median length of imprisonment sentences for NFS increased by approximately 182 days in the one-year period from 2018/2019 (731 days) to 2019/2020 (913 days). Over the study period there was a significant increase in the range of imprisonment sentence lengths in the 2019/2020 year.
3. Overall, Aboriginal and Torres Strait Islander young people accounted for 42% (n = 10) of all people aged under 18 years who were charged with NFS. Nearly all (90%, n=9) of these Aboriginal and Torres Strait Islander young people were convicted and sentenced for NFS charges.
4. Overall, Aboriginal and Torres Strait Islander people accounted for nearly one-half (47%) of all young people aged under 18 years sentenced for NFS.
5. Aboriginal and Torres Strait Islander people who pleaded guilty had their matters finalised on average 40 days earlier in the prosecution process than non-Indigenous defendants. This suggests that Indigenous defendants are pleading guilty earlier in the process than non-Indigenous defendants.

LIMITATIONS AND FUTURE DIRECTIONS

1. The case of *R v HBZ* [2020] QCA 73 was delivered on 17 April 2020, and significantly clarified the interpretation of NFS while also highlighting the seriousness of the offence. Given the likely impact of this case on future prosecution of the NFS offence, the findings presented here provide an incomplete picture. Future research must include data on NFS offences finalised before and after *R v HBZ*.
2. The offence of NFS should be listed alongside ‘assault occasioning bodily harm’ in Australian offence seriousness hierarchies. In all jurisdictions where NFS has been introduced the offence attracts a maximum penalty of at least five years, which is similar to assault occasioning bodily harm.

DEFINITIONS

Charge: we use the word charge when referring to a formal accusation that may or may not have resulted in a conviction/guilty finding.

Defendant: Some results in this report pertain to unique individuals. Since the report concerns both discontinued and prosecuted matters, and not all prosecuted matters end in convictions, for greater accuracy we refer to all individuals as 'defendants' rather than 'offenders'.

NFS: Non-fatal strangulation

Discontinued: Where a charge or charges were withdrawn or discontinued and therefore did not result in a finding of guilty or not guilty. This includes matters in which outcomes with respect to charge(s) result in nolle prosequi, no true bill, discharge, dismissal, no evidence to offer, struck out, withdrawn, discontinued (on mental health grounds), or dealt with in the alternative (e.g., mediation or restorative justice process).

Finalised: Matters that have been completed – either where all charges have been discontinued or have resulted in a finding of guilty or not guilty (i.e., no charges are awaiting court).

M: Mean / statistical average

Matter: A prosecution or a proceeding in a court which can include multiple charges.

MSO: 'Most serious offence' - determined with reference to the National Offence Index (Australian Bureau of Statistics, 2018) with adjustment made for the Queensland context. Specifically, NSF is not specifically ranked in the National Offence Index. In the data NFS was ranked at the same level of seriousness as Assault Occasioning Actual Bodily Harm.

Offence: we use the word offence when the charge has resulted in a conviction/guilty finding.

SD: Standard deviation

THE NUMBER OF FINALISED MATTERS

There were 1,909 finalised matters including NFS charges between April 2016 and June 2020. In 95% (n= 1,810) of these matters, NFS was the most serious offence charged. In the first year after the introduction of the new law, NFS was the MSO in all (100%) matters (see Table 1). This figure dropped slightly but remained relatively constant (95%) for the remaining years in the study. For the small proportion (5%) of matters across all years in which NFS was not the MSO, aggravated sexual assault constituted the most common MSO (4%, n=66) followed by non-aggravated sexual assault (1%, n=22).

Over the five-year period, among the 1,810 finalised matters in which NFS was the MSO, about one-half (51%, n = 929) resulted in a sentence for at least one NFS charge. A further 49 (3%) NFS offences that continued to court, were found not guilty. In the remaining (46%, n = 832) matters the NFS charge (or charges) was discontinued. However, in 172 of these matters, other offences were prosecuted which resulted in a sentence.

The total volume of NFS matters increased over the four years (Figure 1). Matters that resulted in conviction and sentence for NFS compared to matters in which all NFS charges were discontinued or found not guilty were generally proportionately consistent across the period, with the exception the first year (2016/17) with a higher rate of discontinuations (62%) compared to all other years, see Figure 1, $\chi^2(3, n=1,810) = 11.78, p = 0.008$ (Figure 1).

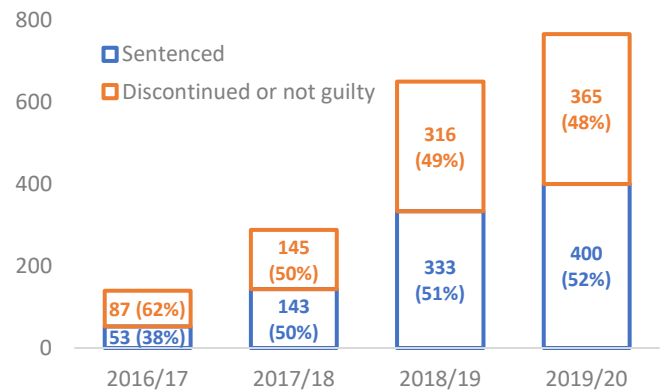


FIGURE 1. NUMBER OF NFS MATTERS SENTENCED OR DISCONTINUED, 2016/17 – 2019/20

TABLE 1. MATTERS WITH NON-FATAL STRANGULATION AS THE MOST SERIOUS OFFENCE

	2016/17	2017/18	2018/19	2019/20	Total
% NFS MSO (n)	100% (140)	95% (283)	95% (639)	94% (748)	95% (1810)
% Sentenced (n)	38% (53)	51% (143)	52% (333)	53% (400)	51% (929)
Average no. NFS sentenced (SD)	1.25 (0.76)	1.15 (0.42)	1.25 (0.64)	1.25 (0.55)	1.23 (0.58)

CHARGES

Overall, a total of 1,229 individual charges of NFS resulted in a sentence for 929 matters, with most sentenced for only one NFS charge within the matter. The average number of NFS charges did not change over the years, see Table 1.

ASSOCIATED OFFENCES

On average, three non-NFS charges were successfully prosecuted per matter (SD = 2.49). An average of 2.58

(SD 2.25) non-NFS charges were sentenced alongside NFS charges. The total number of charges resulting in a sentence across all matters ranged from one to 24.

Matters where NFS charges were sentenced had a higher average number of associated offences ($M = 2.79, SD = 1.80$) that were sentenced compared to those matters where NFS charges were discontinued or there was a not guilty verdict ($M = 2.05, SD = 2.37$), $F(1,1014) = 11.83, p < .001$). There were no statistically significant differences observed between the years.

Types of associated offences were most often assault occasioning bodily harm (34%, n=886), and common assault (28%, n=736), followed by domestic and family violence protection order contraventions (DVO contravention) (17%), see Figure 2 for total number of sentenced associated offences. Overall, the number of charges sentenced (including NFS) within finalised matters was significantly higher among males than females ($p < .001$) and among Indigenous people than non-Indigenous people ($p < .05$), see Table 2.

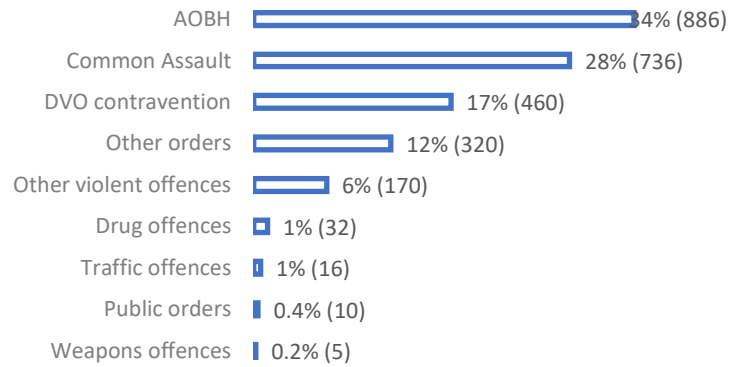


FIGURE 2. OFFENCE TYPE: TOTAL NUMBER OF SENTENCED ASSOCIATED OFFENCES WHEN NON-FATAL STRANGULATION WAS THE MOST-SERIOUS OFFENCE

TABLE 2. DEFENDANT CHARACTERISTICS OF AVERAGE NUMBER OF SENTENCES RECEIVED

	2016/17		2017/18		2018/19		2019/20		Total		t-test	p
	N	Mean (SD)	N	Mean (SD)	N	Mean (SD)	N	Mean (SD)	N	Mean (SD)		
Female	<3	NA	3	1.67 (0.58)	5	1.40 (0.89)	12	2.00 (1.13)	21	1.76 (1.00)	5.73	<.001
Male	92	2.64 (2.08)	205	2.77 (2.53)	424	2.95 (2.16)	497	3.38 (2.80)	1218	3.07 (2.51)		
Indigenous	27	2.59 (2.31)	56	2.93 (3.42)	103	3.02 (1.84)	133	3.89 (3.34)	319	3.33 (2.90)	2.38	.02
Non-Indigenous	64	2.67 (2.01)	151	2.68 (2.10)	321	2.87 (2.19)	369	3.17 (2.54)	905	2.95 (2.32)		
Total non-NFS sentenced	84	2.12 (1.82)	168	2.42 (2.42)	348	2.43 (1.81)	422	2.86 (2.54)	1022	2.58 (2.25)		
Total sentenced	93	2.62 (2.07)	208	2.75 (2.51)	430	2.93 (2.16)	509	3.35 (2.78)	1240	3.05 (2.49)		

IMMEDIATE AND SUSPENDED IMPRISONMENT

The most common penalty for sentenced NFS charges was imprisonment (96%, n=1,175). However, a portion of these sentences were ordered as partially (n=131) or wholly (n=83) suspended sentences (see Figure 3). Proportionately, immediate (unsuspended) imprisonment has risen sharply over the period compared to sentences that were partially or wholly suspended – in the most recent year, 2019/20, this represented most (83%) of custodial sentences.

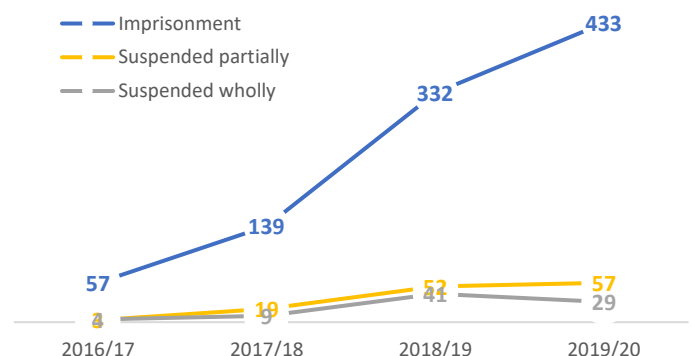


FIGURE 3. CUSTODIAL PENALTIES FOR NON-FATAL STRANGULATION ACROSS TIME

SENTENCE LENGTH

In matters in which NFS was the MSO and resulted in a sentence, the average sentence length for NFS, irrespective of penalty type, was 855 days ($SD = 3.91$), with the minimum 58 days and maximum 2,375 days (~ 6.5 years).

Figure 5 illustrates that the range of imprisonment sentence lengths for NFS charges has increased over

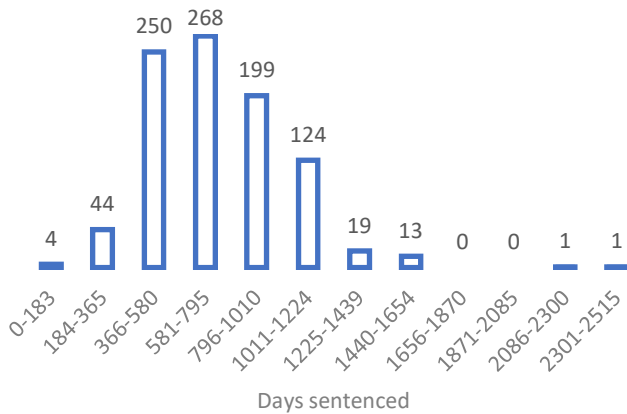


FIGURE 4. FREQUENCY OF IMPRISONMENT LENGTHS

time from a range of 10 months to 3 years in 2016/17 to 2 months to 6.5 years in 2019/20.

Across the four years, the median imprisonment sentence length for NFS was approximately 730 days (~ 2 years). However, in 2019/20 the median imprisonment sentence length for NFS was higher than the study median at 913 days (~ 2.5 years) with a larger range of sentence lengths, see Figures 4 and 5.²

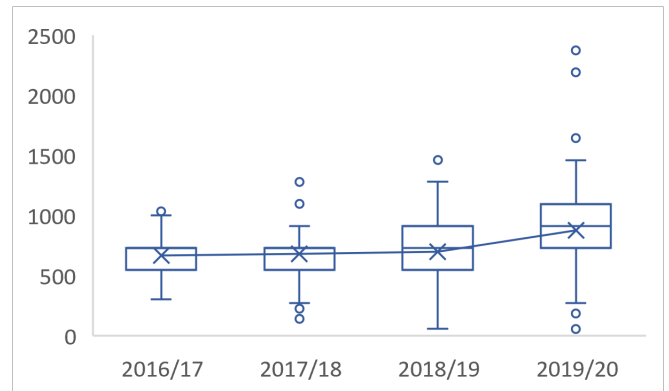


FIGURE 5. BOX AND WHISKER PLOT OF SENTENCE LENGTHS ACROSS EACH YEAR

Note: X denotes mean. Vertical lines and dots indicate spread of sentence lengths.

DEFENDANT CHARACTERISTICS

SEX

Over the five years, males represented a larger proportion (98%, $n=1,768$) than females (2%, $n=41$) of those charged with NFS (MSO). One person did not identify their sex.

Females charged with NFS had significantly different rates of discontinuation of NFS charges (63%) compared to males (45%), $\chi^2 (2, N=1,810) = 6.74, p = 0.04$.

AGE

The average age at the time of the offence of defendants charged with NFS over the period was 33

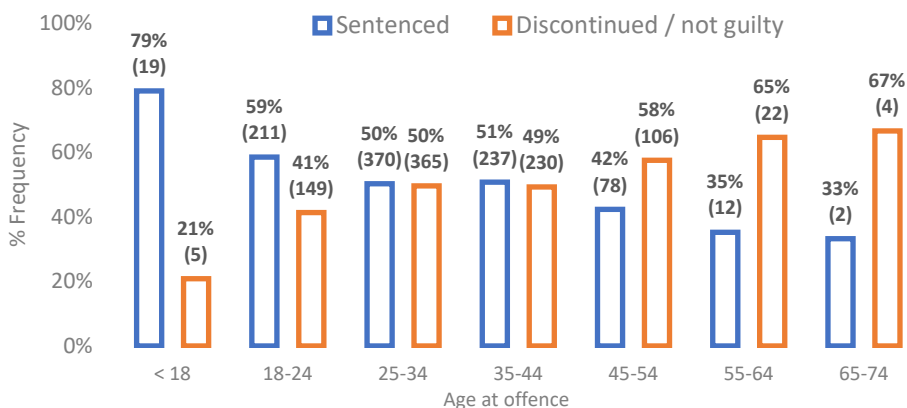
years ($SD = 9.42$) and ranged from 14 to 73 years. There was a significant difference in the age at the time of the offence depending on whether a charge was discontinued – specifically, compared to those who were older, $t (1808) = 4.95, p < .001$.

Notably, a higher proportion of those under 25 were likely to end up with a sentence, rather than have NFS discontinued or be found guilty. Defendants aged under 18 years at the time of offence were proportionately more likely (79%, $n=19$) to have a charge of NFS sentenced rather than be discontinued (or found not guilty) than any other age group, see Figure 6. Alternately, those aged 45–54 who were more likely to have charges discontinued or be found not guilty, $\chi^2 (6, n=1,810) = 25.60, p < .001$.

² Across all 4 years = Med: 731 Mean: 771 days; 2016/17 = Med: 730, mean: 667 days; 2017/18 = Med: 730, mean: 682

days; 2018/19 = Med: 731, mean: 700 days; 2019/20 = Med: 913, mean: 875 days

FIGURE 6. AGE AT OFFENCE



ABORIGINAL AND/OR TORRES STRAIT ISLANDER PEOPLE

Over the period, Indigenous persons accounted for 23% (n = 410) of those charged for an NFS offence and 28% of those who received a sentence (n=252). This is a significant overrepresentation based on their 4% share of the Queensland population (Queensland Government, 2016). This was particularly the case for Aboriginal and Torres Strait Islander females who accounted for 46% (n=6) of women sentenced for strangulation, whereas Aboriginal and Torres Strait Islander men accounted for 27% (n=246) of sentenced men.

There was a significant difference between the age of Indigenous (M = 29.78, SD = 9.13) and non-Indigenous (M = 32.85, SD = 8.82) people charged with NFS offences, $F(1,1775) = 6.19, p = .01$, but no difference between those who were sentenced, $F(1,915) = 21.75, p < .001$. On average, Aboriginal and Torres Strait Islander people were three years younger at the time of offending than those who were non-Indigenous.

Of young people aged under 18 years charged with NFS, 42% were Aboriginal and/or Torres Strait Islander (n=10) compared to non-Indigenous young people

under 18 years who were 58% of those charged (n=14). 90% (n=9) of Indigenous young people aged under 18 years were convicted and sentenced for an NFS offence with only one having charges of NFS discontinued. Comparatively, 71% (n=10) of non-Indigenous young people aged under 18 years charged with an NFS were sentenced. Overall, Aboriginal and Torres Strait Islander people accounted for nearly one-half (47%) of those sentenced with NFS under 18 years of age (see Figure 7).

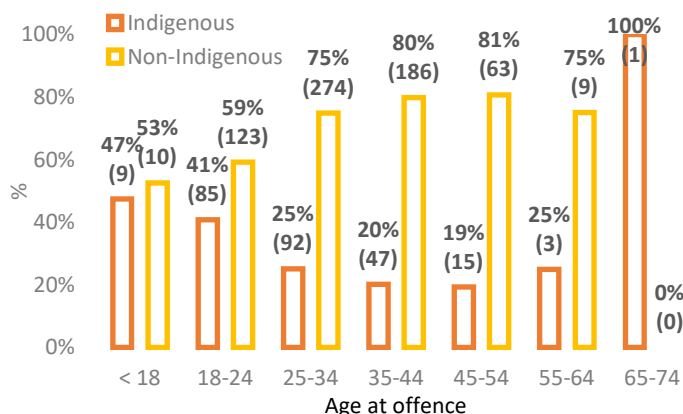


FIGURE 7. PROPORTION OF INDIGENOUS PERSONS SENTENCED WITH NFS DEPENDING ON AGE

TABLE 3. SEX AND INDIGENOUS STATUS FOR PEOPLE CHARGED OR SENTENCED WITH NFS

Sex	Indigenous	Charged	% Charged (% within sex)	Sentenced	% Sentenced (% within sex)
F	Total	41	2.3%	15	1.5%
	No	29	1.6% (70.7%)	9	.9% (60%)
	Yes	12	0.7% (29.3%)	6	.6% (40%)
M	Total	1738	96%	960	98.5%
	No	1340	74% (77.1%)	702	72% (73.1%)
	Yes	398	22% (22.9%)	258	26.5% (26.9%)
U	No	1	-	0	-

MATTER CHARACTERISTICS

BAIL AND REMAND

Over the period, 46.5% (n = 432) of defendants sentenced with an NFS MSO received bail at some stage. The remaining 53.5% (n = 497) were remanded in custody. There were no differences in the age of defendants who received bail ($M = 31.90$ $SD = 10.08$) compared to those who did not ($M = 32.18$ $SD = 8.07$; $t(823.17) = 0.48, p = .63$).

Statistical differences for bail were found for:

Indigenous status: Sentenced Indigenous people received bail less often than sentenced non-Indigenous people ($\chi^2(1, n=916) = 7.88, p = 0.005$). However, this was largely driven by bail decisions in 2019/20, see Table 4.

Sex: Sentenced females received bail more often than sentenced males ($\chi^2(1, n=929) = 7.70, p = 0.006$).

Prior Domestic violence: For those who were sentenced, fewer people received bail when they had a prior criminal history of DV related offending ($\chi^2(1, n=417) = 13.77, p < .001$).

TABLE 4.
PROPORTION OF SENTENCED STRANGULATION DEFENDANTS GIVEN BAIL (N)

	Indigenous Status		Sex		Prior DV offence	
	Indigenous	Non-Indigenous	Female	Male	Yes	No
Total Bail %(N)	39% (98)	49% (327)	85% (11)	46% (421)	22% (39)	39% (94)
2016/17	24% (4)	36% (13)	0	32% (17)	0	17% (1)
2017/18	50% (18)	44% (47)	100% (1)	45% (64)	20% (2)	32% (9)
2018/19	49% (42)	55% (134)	80% (4)	53% (175)	29% (52)	42% (35)
2019/20	30% (34)	48% (133)	86% (6)	42% (165)	19% (22)	40% (49)

TYPE OF PLEA

Nearly all (99%) of defendants charged with NFS pleaded guilty to it, with the remainder (1%) continuing to trial. This was the case irrespective of the defendant's sex or Indigenous status and this finding was consistent across the years examined in the study (Table 5).

Differences were observed between Indigenous status and guilty pleas on the number of days to finalisation

of their matter, $t(902) = 3.35, p < .001$. Aboriginal and Torres Strait Islander people who pleaded guilty were more likely to have their matter finalised earlier ($M = 323.26$ days, $SD = 142.29$) than non-Indigenous defendants ($M = 362.75, SD = 164.71$). Thus, these data suggest that Aboriginal and Torres Strait Islander people are pleading guilty on average 40 days earlier in the prosecution process than non-Indigenous defendants.

TABLE 5.
PROPORTION OF GUILTY PLEAS

	Guilty Pleas	Sex (N = 421)		Indigenous Status	
		Male	Female	Indigenous	Non-Indigenous
Total (N=916)	916	99% (903)	100% (13)	99.6% (251)	98% (652)
2016/17 (N=53)	53	100% (53)	0	100% (17)	100% (36)
2017/18 (N=143)	142	99% (141)	100% (1)	97% (35)	100% (106)
2018/19 (N=333)	331	99% (326)	100% (5)	100% (85)	99% (240)
2019/20 (N=400)	390	98% (383)	100% (7)	100% (114)	96% (270)

PRIOR OFFENDING / ORDERS

For sentenced NFS MSO cases over the five years, 74% (n=686) had some form of reported previous offending. Excluding those with no prior offence history recorded, each consecutive year there was an increase in the proportion of those with previous offences for different defendant characteristics (e.g., male, Indigenous person, guilty plea, Table 6). For example, for those with information recorded (yes or no), prior DV offending for males increased from 14% in 2016/17 to 49% in 2019/20.³ The only exception to

this was for prior domestic and family violence protection orders, which remained consistently high irrespective of the defendant characteristics. The age of those with prior offences were similar across the years and across offence types, excluding 2016/17 where defendants with priors were on average two years younger compared to other years and ranging from 1.5 to 6 years younger depending on the offence type.

TABLE 6. TYPE AND CHARACTERISTICS OF REPORTED PRIOR OFFENDING FROM 2016/17 – 2019/20

Note: % calculation excludes people with absent fields and only includes 'yes' or 'no' entries in the totals.

Prior NFS offence					
	2016/17	2017/18	2018/19	2019/20	Total (n=12)
Male	0	0	1 (1%)	11 (5%)	12
Indigenous	0	0	0	4 (5%)	4
Guilty plea	0	0	1 (1%)	11 (5%)	12
Prior dv offence					
	2016/17	2017/18	2018/19	2019/20	Total (n=177)
Male	1 (14%)	9 (24%)	52 (38%)	114 (49%)	176
Indigenous	1 (20%)	2 (18%)	20 (47%)	46 (55%)	69
Guilty plea	1 (14%)	10 (26%)	52 (39%)	113 (49%)	176
Prior DVO breach					
	2016/17	2017/18	2018/19	2019/20	Total (n=159)
Male	1 (14%)	8 (22%)	48 (35%)	101 (44%)	158
Indigenous	1 (20%)	1 (9%)	19 (44%)	40 (48%)	61
Guilty plea	1 (14%)	9 (24%)	48 (36%)	100 (43%)	158
Prior other offending					
	2016/17	2017/18	2018/19	2019/20	Total (n=377)
Male	6 (86%)	30 (81%)	119 (88%)	217 (94%)	372
Indigenous	4 (80%)	10 (91%)	37 (86%)	75 (89%)	126
Guilty plea	6 (86%)	31 (82%)	118 (87%)	218 (94%)	373
Prior protection order					
	2016/17	2017/18	2018/19	2019/20	Total(n=612)
Male	40 (76%)	94 (66%)	208 (63%)	262 (67%)	604
Indigenous	15 (88%)	28 (78%)	60 (71%)	92 (81%)	195
Guilty plea	40 (78%)	94 (66%)	209 (63%)	263 (67%)	606

³ The low proportion of offenders that are flagged as having a "prior DV offence" in the earlier years is likely because 'flagged DV offences' only commenced in

December 2015. Offences committed in a DV context were not identifiable prior to that date.

TIME TO FINALISATION

Unsurprisingly, the average number of days from the date of NFS offence(s) to matter finalisation was significantly ($p < .001$) shorter for matters that were discontinued than those that continued to court (Table 6). This was also the case for prosecuted NFS cases where, on average, matters ending in a trial were completed in 542 days, in contrast to 353 days for those proceeding with a guilty plea – a mean difference of 189 days ($p < .001$).

There were no statistical differences in the average time to sentencing and finalisation between male and female defendants. However, among those who were sentenced (and where NFS was the MSO), Aboriginal and Torres Strait Islander people had significantly shorter average time to finalisation than non-Indigenous people (315 and 249 days, respectively, $p < .001$).

TABLE 6. AVERAGE TIME TO FINALISE MATTERS: DATE OF OFFENCE TO FINALISATION DATE, ALL YEARS

	Mean days	SD	Min	Max	t	p
Continued to court	364.80	166.61	5	1292	5.85	<.001
Discontinued	312.62	206.40	3	1286		
Trial	542.56	174.04	212	1292	8.86	<.001
Guilty plea	353.09	159.65	5	1249		
Male	341.98	187.45	3	1292	1.56	0.12, ns
Female	295.79	195.89	21	768		
Indigenous (sent)	314.93	167.52	3	1112	3.44	<.001
Non-Indigenous (sent)	348.52	192.88	3	1292		

Note: ns = not significant

DISCUSSION:

IMMEDIATE VERSUS SUSPENDED IMPRISONMENT

We found that over the four-year period since the NFS offence was introduced, immediate (unsuspended) imprisonment has risen sharply as a proportion of custodial sentence types for the offence – i.e., relative to sentences that were partially or wholly suspended.

This may be explained by a growing judicial awareness of the offence and the developing jurisprudence that has emphasised the seriousness of the offence.

Over the period 2016/2017 to 2019/2020 there were several Court of Appeal judgments that highlighted the intention of legislature and relatedly emphasised the seriousness of the offence of NFS. For example, in *R v MCW* [2018] QCA 241 the appellant appealed against sentence for NFS on the basis that the sentence was manifestly excessive. In refusing the application Justice Mullins (at [39]) quoted from the Explanatory Notes for the Criminal Law (Domestic Violence) Amendment Bill (No 2) 2015 pursuant to which s 315A was enacted.

The new strangulation offence and the significant penalty attached, reflect that this behaviour is not only inherently dangerous, but is a predictive indicator of escalation in domestic violence offending, including homicide. The Taskforce noted the importance of identifying this conduct to assist in assessing risk to victims and increasing protections for them.

Justice Mullins went on to state that it was not useful to consider sentences for assault occasioning bodily harm as a comparator, despite the fact that both NFS and assault occasioning bodily harm attract the same maximum penalty of seven years imprisonment (*R v MCW* [2018] QCA 241, [39]).

In *R v HBZ* [2020] QCA 73, Mullins J at [72] again highlighted the seriousness of the offence of NFS:

The deterrent aspect of sentencing for this offence is not just directed at the offender being sentenced, but more generally, in an attempt to eliminate the dangerous conduct of one domestic partner choking, suffocating, or strangling the other that can easily result in fatal or lasting consequences.

Clear statements from the Court of Appeal highlighting the seriousness and future risk associated with the offence of NFS and distinguishing it as a more serious type of offence than Assault Occasioning Bodily Harm may be one factor that has led to the application of proportionally higher sentences of immediate imprisonment. Reinforcing the importance of the decision of *R v HBZ* [2020] QCA 73 in Queensland law, a special leave application to the High Court was refused on the 11 November 2020 (*HBZ v The Queen* [2020] HCATrans 187).

LENGTH OF SENTENCES OF IMPRISONMENT INCREASED IN 2019-2020

We found that in 2019/2020 the median sentence length for NFS increased to 913 days (~ 2.5 years) up from the median of 730 days (~ 2 years) imprisonment across the four-year period and there was a wider range of sentence lengths in the 2019/2020 year. In 2019/20 the median sentence length for NFS increased by approximately 182 days from 731 days in 2018/2019 to 913 days (~ 2.5 years) imprisonment in 2019/2020 and there was a larger range of sentence lengths.

This may in part be due to the Court of Appeal's judgment in *R v HBZ* [2020] QCA 73 mentioned previously. This decision clearly referred to the high risk associated with NFS. This may have contributed to higher sentence lengths following the decision; however, we note that *R v HBZ* was published near the end of the financial year (17 April 2020). We suggest that the ongoing implications of *R v HBZ* should be investigated.

Recently, the Queensland Sentencing Advisory Council (2021b:13) reported that custodial penalties were more commonly imposed for offences of assault and assault occasioning bodily harm that involved DV than for the same

offences where DV is not present. Further, sentences involving DV related offences were typically longer than for the same offences where there was no DV. Given that NFS, by statutory definition, involves DV, it is perhaps not surprising that the offence has attracted higher and longer custodial sentences in the most recent year of the data (2019/2020).

Another potentially important issue is the impact of the global coronavirus pandemic which may have influenced sentencing. It is unclear how criminal justice responses have been affected during the pandemic. Queensland avoided a long period of lockdown so effects may have been less pronounced there. However, research has suggested that the onset of the pandemic coincided with an increase in the severity of domestic and family violence (Boxall, Morgan and Brown, 2020: 16), which may result in higher sentences. Further, as a result of the pandemic more court hearings in Queensland were carried out by audio-visual link and by telephone conferencing and there were more judge-alone trials, this may have had impacts on sentencing (District Court of Queensland, 2020: 2).

ABORIGINAL AND TORRES STRAIT ISLANDER YOUNG PEOPLE

Our analysis identified that 42% (n = 10) of people aged under 18 years charged with NFS were Aboriginal and/or Torres Strait Islander people. Nearly all (90%, n = 9) Aboriginal and/or Torres Strait Islander young people aged under 18 years were convicted and sentenced for an NFS offence with only one defendant having charges of NFS discontinued. Overall, Aboriginal and Torres Strait Islander people accounted for nearly half (47%, n = 9) of all young people aged under 18 years sentenced with NFS.

Our analysis is consistent with other studies that have highlighted the disproportionate application of criminal law to Aboriginal and Torres Strait Islander people, especially young Aboriginal and Torres Strait Islander people. For example, in 2017/2018, Aboriginal and Torres Strait Islander young people represented nearly half (47%) of all young people in detention (Australian Institute of Health and Welfare, 2020). Aboriginal and Torres Strait Islander young people are 16 times as likely to be under youth justice supervision and 12 times as likely to be in prison (age-standardised rate) as non-Indigenous Australians (Australian Institute of Health and Welfare, 2020: 50). In a recent paper Douglas and Fitzgerald (2018) considered the range of factors including colonisation and discrimination that contribute to the heightened use of criminal legal responses to Aboriginal and Torres Strait Islander people.

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE AND TIMING OF PLEAS OF GUILTY

Aboriginal and Torres Strait Islander people who pleaded guilty had their matters finalised on average 40 days earlier in the prosecution process than non-Indigenous defendants. This suggests that Indigenous defendants are pleading guilty earlier in the process than non-Indigenous defendants.

There is limited research about why Aboriginal and Torres Strait Islander people may plead guilty to NFS earlier in the criminal process than others, or conversely why non-Indigenous people plead guilty later in the process. Possible reasons for earlier pleas by Aboriginal and/or Torres Strait Islander people may be related to a lack of, or lower levels of, legal representation (Australian Law Reform Commission, 2017: ch.3), communication issues (Queensland Law Society, 2020: 3) or a greater sense of hopelessness that a finding of guilt is inevitable based on past experience. Notably, in circumstances where legal representation is absent or limited, defendants may not be aware of available defences (Australian Law Reform Commission, 2017: 320).

LIMITATIONS AND FUTURE DIRECTIONS

The ability to observe changes over the first four years of the law helps to identify emerging trends in the prosecution and sentencing of NFS.

Further analysis should be undertaken to explore whether there are differences in approach depending on the region where the offence is prosecuted and sentenced.

The question of recidivism should also be explored, including how commonly perpetrators of NFS reoffend and are charged and sentenced for NFS.

At this stage we make two key recommendations:

1. Further analysis of all available QWIC data relating to NFS matters proceeding through Queensland courts after the final year of this study (2019/20), in order to confirm prosecution and sentencing trends.

Given the likely impact of the case of *R v HBZ* [2020] QCA 73 delivered on 17 April 2020, in clarifying the interpretation of the offence of NFS and highlighting the seriousness of NFS, it would be useful to analyse data on NFS offences finalised in the 2020-2021 year to identify whether this trend towards higher numbers of successful prosecutions and higher sentences is stable and is linked to the decision.

2. Classification of NFS offences in the Queensland Courts administrative data be reviewed

In the data that was provided, NFS was rated at the same level as common assault (both at 30) according to the National Offence Index. In all jurisdictions where NFS has been introduced it attracts a maximum penalty of at least 5 years which is significantly higher than common assault and generally approximate to Assault Occasioning Actual Bodily Harm (at level 25). It is recommended that the classification of NFS offences in the Queensland Courts administrative data be reviewed

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[R v MCW \[2018\] QCA 241](#)

LEGISLATION:

[Criminal Code 1899](#)

[Criminal Law \(Domestic Violence\) Amendment Bill \(No 2\) 2015](#)