

QUEENSLAND SENTENCING GUIDE

December 2019



Queensland Sentencing
Advisory Council
Inform. Engage. Advise.

Queensland Sentencing Guide

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Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is established by section 198 of the *Penalties and Sentences Act 1992* (Qld). Its functions are detailed in section 199 of the *Penalties and Sentences Act 1992* (Qld).

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About the Queensland Sentencing Guide

The *Queensland Sentencing Guide* explains how Queensland courts sentence adults found guilty of an offence. This guide does not explore the approach applied by the courts to sentencing child offenders, which is subject to different legislation, namely the *Youth Justice Act 1992* (Qld).

Sentencing is the process of determining and applying the appropriate penalty for a person who has committed an offence. It is a complex exercise that involves a court taking into account a range of factors including:

- the maximum penalty for the offence;
- the nature and circumstances of the offence and its seriousness, including any harm caused to a victim;
- the extent to which the offender is to blame for the offence;
- the character, age, intellectual capacity and any mitigating factors in relation to the offender; and
- sentences imposed for similar cases committed in similar circumstances.

The focus of this guide is on Queensland courts. While some of what is described applies generally in other Australian states and territories, there are significant differences in the detail.

Acknowledgements

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Glossary

Absolute discharge	Release without a conviction being recorded and without any further penalty.
Accused	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Also referred to as the defendant .
Acquittal	A finding by a court that a person is not guilty of a criminal charge.
Agreed facts	Facts agreed to by the defence and the prosecution regarding the charges that are brought before the court. Usually presented after a plea of guilty.
Aggravating factors	Facts or details about the offence, the victim, and/or the offender that tend to increase the offender's culpability and the sentence received.
Alleged	What the prosecution says happened. If the matter proceeds to trial, the court (i.e. the magistrate, the judge, or the jury) will determine if it is proved beyond a reasonable doubt.
Antecedents	Background details about an offender, such as age, marital status, employment history, and criminal history (this usually includes details of past convictions and penalties).
Appeal	Review of all or part of a court's decision by a higher court.
Appellant	The party appealing a Magistrates Court's decision. This can be the defendant or the prosecution.
Applicant	The party appealing a higher court's sentence decision to the Court of Appeal or, in the case of a decision made by the Court of Appeal, to the High Court. This can be the defendant or the prosecution. Queensland is the only Australian jurisdiction in which an appeal against the leniency of a sentence is initiated by the Attorney-General and not the Director of Public Prosecutions.
Bail	The release of a defendant into the community until a court decides the charge/s against the person. Bail orders always include a condition that the defendant must attend court hearings. Additional conditions such as a requirement to live at a certain address or report to police may be added to a person's bail undertaking.
Banning order	An order banning an offender entering a certain licensed place (e.g. nightclub or bar) or entering a particular area near a licensed premises during certain hours, or attending a particular public event at which alcohol will be sold.
Beyond reasonable doubt	This is the standard of proof that the prosecution must meet before a person accused of a crime can be found guilty.
Breach	Failure to comply with the conditions of an order.
Case law	Law made by courts, including sentencing decisions and decisions about how to interpret legislation. This is also known as common law .
Childrens Court	A court that hears offences committed by children and young people. The Childrens Court is a special court of the Magistrates Courts.
Childrens Court of Queensland	A special court at the District Court level that deals with children who commit serious criminal offences. It is presided over by a Childrens Court judge who is also a judge of the District Court.

Common law	Law made by courts, including sentencing decisions and decisions about how to interpret legislation. This is also known as case law .
Commonwealth offence	An offence committed against Commonwealth legislation, for which a Queensland court imposes a sentence. This includes offences such as Centrelink fraud, telecommunication offences, offences that occur at an airport or on an aircraft, terrorism, people smuggling, drug importation, and internet or child pornography material offences.
Committal hearing	A preliminary examination by a Magistrates Court of the prosecution's evidence against a defendant to determine whether there is enough evidence for the matter to go to trial in the District or Supreme Court.
Community Justice Group	Community Justice Groups (CJGs) are run by members of the local Aboriginal and Torres Strait Islander community. They provide submissions to courts on bail and sentencing. CJGs provide a community-based response to local issues, working cooperatively with magistrates, police, corrective services personnel, and staff from other government agencies.
Community service order	An order to do unpaid community service for between 40 and 240 hours, usually within 12 months, and to comply with reporting and other conditions.
Compensation order	An order to pay for property taken or damaged, or compensate for loss or damage to property or for any personal injury suffered by a person.
Concurrent sentences	Individual sentences for each offence that are ordered to be served at the same time. This means the shortest sentence is subsumed into the longest sentence (also called the 'head sentence'). For example, two distinct prison sentences, one for five years and one for two years, served wholly concurrently would be a total of five years' imprisonment.
Control order	An order imposing conditions to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.
Conviction	A determination of guilt made by a court.
Court of Appeal	A division of the Supreme Court, the Court of Appeal hears appeals against conviction, sentence, or both.
Court ordered parole	A parole order where the parole release date is fixed by the court for sentences of 3 years or less where the offence is not a sexual offence or a serious violent offence (meaning the offender is automatically released on that date subject to supervision by the Parole Board Queensland and Queensland Corrective Services).
Criminal offences	These comprise crimes, misdemeanours and simple offences (also known as ' summary offences ').
Crown	The prosecution may be referred to as the Crown. In practice, the prosecution in the higher courts is conducted by the Office of the Director of Public Prosecutions.
Culpability	Culpability refers to blameworthiness – i.e. how morally responsible the person is for the offence and for the harm he or she caused.

Cumulative sentences	Individual sentences for each offence that are ordered to be served one after the other. For example, a person sentenced to 5 years' and to 2 years' imprisonment for separate offences, ordered to be served cumulatively, would have to serve a total prison sentence of 7 years' imprisonment.
Custodial sentencing order	A sentencing order that involves a term of imprisonment being imposed.
Defendant	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Can be used interchangeably with accused .
De Simoni principle	The principle that a person should only be sentenced for an offence he or she has been found guilty of (named after the High Court case that established the principle).
District Court	The District Court is the second tier of the Queensland court system after the Magistrates Courts. It deals with serious criminal offences such as rape, child sexual offending, armed robbery and many serious drug offences. The District Court can also hear an appeal against a sentence imposed by a Magistrates Court.
Drug and Alcohol Court	This court provides an intensive and targeted response to adults with a severe substance use disorder. The Drug and Alcohol Court which sits in the Brisbane Magistrates Court commenced operation in January 2018.
Fine	A penalty requiring that an offender pay an amount of money within a specified time.
Good behaviour bond	A court order to appear before the court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to three years). The offender and anyone acting as a 'surety' is required to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. This is also known as a recognisance .
Graffiti removal order	An order of up to 40 hours to remove graffiti, usually within 12 months.
Grounds of appeal	The reasons why the magistrate, judge or jury is said to have made a wrong decision. These reasons are argued in the appeal court.
Head sentence – imprisonment	The total period of imprisonment imposed. A person will usually be released, or become eligible for release, before the entire head sentence is served.
High Court of Australia	The highest court in the Australian judicial system. The High Court only deals with legal matters of wider public importance and is not a sentencing court.
Higher courts	In Queensland, the higher courts comprise the District Court and the Supreme Court.
Imprisonment	Detention in prison.
Indefinite sentence	A sentence that can be ordered instead of a sentence for a fixed term of imprisonment when a court is satisfied an offender is considered a serious danger to the community. This means there is no fixed date when the sentence will end. The court must periodically review an indefinite sentence.

Indictable offences	Crimes and misdemeanours that must be dealt with in the Supreme Court or District Court on indictment (a written charge bringing a person to trial in a higher court). Generally, crimes are more serious than misdemeanours. Some indictable offences can (or must) be dealt with summarily (by a Magistrates Court) in certain circumstances.
Intensive correction order	A sentence of imprisonment of 1 year or less ordered to be served in the community and including intensive supervision, community service, and treatment programs.
Judge	The person who hears the case and decides the sentence in the District Court, the Childrens Court of Queensland, and the Supreme Court.
Jury	A group of 12 people selected at random from the general community. A jury decides whether the accused person is guilty or not guilty of the alleged offence.
Justice	A person appointed as a judge by the Governor-General in Council to the High Court of Australia; and a person appointed by the Governor-General in Council to the Supreme Court.
Legislation	Also called statute law , legislation is comprised of written laws either made or authorised by Parliament. There are two main categories of legislation: Acts, which are laws made by Parliament, and subordinate legislation, which are laws made by an entity under authority delegated by Parliament.
Magistrate	The person who hears the case and decides the sentence in a Magistrates Court or the Childrens Court.
Magistrates Courts	The first tier of the Queensland courts system. Most criminal cases are heard in these courts in some form.
Mandatory sentence	A sentence that is a fixed minimum penalty prescribed by Parliament for committing a criminal offence, allowing no discretion for the court to impose a lesser sentence.
Maximum penalty	The highest penalty that can be given to a person convicted of a particular offence.
Mental Health Court	The Mental Health Court decides whether a defendant may have a defence to a charge because of mental illness at the time of the alleged offence. The court also determines whether a defendant is not fit for trial because of mental illness. It is a division of the Supreme Court.
Mitigating factor	A fact or detail about the offender and the offence that tends to reduce the severity of the sentence.
Murri Court	Murri Court links Aboriginal and Torres Strait Islander defendants to cultural and support services to help them make changes in their lives and stop offending.
Non-contact order	An order prohibiting contact with the victim or another person, or going to a particular place, or within a particular distance of that place, for a set period.
Non-custodial order	A sentencing order that does not involve the person being sentenced to imprisonment.

Non-parole period	The time a person serves in prison before being released on parole or becoming eligible to apply for release on parole.
Offender	A person who has been found guilty of an offence, or who has pleaded guilty to an offence.
Offender levy	An administrative fee to help pay for law enforcement and administration costs.
Office of the Director of Public Prosecutions	The Office of the Director of Public Prosecutions represents the State of Queensland in criminal cases; also referred to as the prosecution or the Crown .
Parity (principle of parity)	Consistency between sentencing decisions involving co-offenders, which supports the principle of equality before the law.
Parole	The conditional release of a person from prison. When released on parole, the person serves the unexpired portion of the prison sentence in the community under supervision.
Parole Board Queensland	An independent body that decides applications for parole orders under the <i>Corrective Services Act 2006</i> (Qld), other than parole release dates ordered by courts (court ordered parole). The Parole Board Queensland can also amend, suspend or cancel a parole order of a prisoner released on parole.
Parole eligibility date	The earliest date on which a prisoner may be released on parole. The decision to release a prisoner on parole is made by the Parole Board Queensland.
Parole release date	The date on which a prisoner must be released on parole, unless in custody for another reason. A court can only set a parole release date if certain criteria are met. A parole release date cannot be set in certain circumstances, including if the sentence is greater than 3 years or if the person is being sentenced for a serious violent offence or a sexual offence.
Parolee	A prisoner who has been released on parole.
Plea	The response by the accused to a criminal charge – ‘guilty’ or ‘not guilty’.
Precedent	A decision that sets down a legal principle to be followed in similar cases in the future.
Pre-sentence custody	Time spent on remand for the offence. If a period of imprisonment is imposed, the sentencing court must take time spent in custody for an offence, and for no other reason, as time served, unless it otherwise orders.
Pre-sentence report	A document prepared for a court, normally at the court’s request, which provides information about an offender and other matters to assist the court in sentencing.
Prisoner	An offender in prison serving a custodial sentence. People held on remand who have not yet been found guilty or sentenced are also referred to as ‘prisoners’.
Probation	An order of between 6 months and 3 years served in the community with monitoring and supervision.
Proportionality (principle of proportionality)	The principle that a sentence must be appropriate or proportionate to the seriousness of the crime.

Prosecution	A legal proceeding by the State of Queensland against an accused person for a criminal offence. Prosecutions are brought by the Crown (through the Office of the Director of Public Prosecutions or the Police Prosecution Corps).
Recognisance	A requirement to appear before a court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to 3 years), which requires the person and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. This is also known as a good behaviour bond .
Remand	To place an accused person in custody awaiting further court hearings dealing with the charges against them. A person who has been denied bail, or not sought it, will be placed on remand. This is also known as pre-sentence custody .
Regulatory offences	Less serious forms of offence that provide police with an alternative to charging a person with a criminal offence.
Respondent	The party responding to a court application – for example, a domestic violence order application or an appeal of a court's decision.
Restitution	An order to restore property taken or damaged in the commission of an offence to its proper owner.
Sentence	The penalty that the court imposes on a person who has been found guilty of an offence.
Sentencing factors	The factors that the court must take into account when sentencing.
Sentencing principles	Principles developed under the common law and/or enshrined in statute law, that serve as guideposts to help judges and magistrates reach a decision on the sentence to impose. They include parity, proportionality, totality, and the De Simoni principle.
Sentencing purposes	The legislated purposes for which a sentence may be imposed. In Queensland there are five sentencing purposes for the sentencing of adults: punishment, deterrence, rehabilitation, denunciation, and community protection.
Sentencing remarks	The reasons given by the judge or magistrate for the sentence imposed.
Serious violent offence	A person convicted of a serious violent offence is unable to apply for parole (see parole eligibility date) until serving 80 per cent of the sentence or 15 years in prison, whichever is less. Only the Supreme or District Courts can make this declaration.
Simple offences	Generally, simple offences are minor offences that must be prosecuted within 12 months of the matter arising and are usually heard in a Magistrates Court by a magistrate. Also known as summary offences .
Specialist Domestic and Family Violence Court	This specialist court generally deals exclusively with all civil and criminal domestic and family violence matters in locations where it operates.
Statute law	Laws (legislation) made by Parliament, such as the <i>Penalties and Sentences Act 1992</i> (Qld).

Summary offences	Generally, summary offences are minor offences that must be prosecuted within 12 months of the matter arising and are usually heard in a Magistrates Court by a magistrate. Also known as simple offences .
Supreme Court	The Supreme Court is the highest court in Queensland. It comprises the trial division and the Court of Appeal.
Suspended sentence	A sentence of imprisonment of 5 years or less suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the court may order that the offender serve the period suspended in prison (unless unjust to do so), plus any other penalty for the new offence.
Totality (principle of totality)	The principle that when an offender is convicted of more than one offence, the total sentence should reflect the overall criminality of the offending.
Victim	A person who has suffered harm directly because of a criminal offence, or a family member or dependant of a person who has died or suffered harm because of a criminal offence.
Victim impact statement	A written statement made by a victim that states the harm the offence has caused the victim. It may include attachments such as medical reports, photographs, and drawings.

Responsibility for sentencing

In Queensland, responsibility for sentencing is shared between Parliament, the courts, and government.

Parliament makes, modifies, or repeals laws and sets the framework for the penalties to be imposed by the courts, including what acts constitute an offence, the maximum penalty that can be imposed for an offence (and, in some cases, the minimum penalty or mandatory penalty a court must impose), and what types of sentencing orders courts can make.

Courts interpret and apply the laws made by Parliament and are responsible for deciding the sentence to impose in individual cases on a person found guilty of an offence.

Executive Government is the arm of government responsible for administering laws enacted by Parliament. The role of government agencies and authorities in sentencing is to administer or give effect to sentences imposed. For example, Queensland Corrective Services (QCS) manages offenders both in prison and under supervision by corrective services officers, while the Parole Board Queensland makes decisions about prisoners' release on parole (other than court ordered parole), and can amend, suspend, or cancel a parole order of a prisoner released on parole.

How sentencing laws are made

There are two sources of sentencing law in Queensland:

Statute law — legislation made by Parliament. Legislation defines what behaviour constitutes an offence, establishes the penalties that apply, lists the available sentences, and sets out the rules and considerations courts must apply when sentencing.

Case law — decisions made by courts when sentencing and decisions about how legislation should be interpreted or applied. Case law is also known as 'common law'.

Parliament of Queensland

Learn how laws are made: www.qld.gov.au/about/how-government-works/legislation/how-laws-made



The Queensland Parliament makes laws for the peace, welfare and good government of Queensland.¹ This means only Parliament can make and change laws, subject to the limits set out in the Commonwealth Constitution. In practice, the three levels of government — federal, state, local — all help make laws, by laws and regulations in Queensland.

The Queensland Parliament consists of the Governor (as the Queen's representative) and the Legislative Assembly (the elected Members of Parliament who form the Lower House). Unlike other states, there is no Upper House or Senate in Queensland.

Ministers (Members of Parliament appointed to Cabinet) are responsible for developing and administering laws relating to their area of responsibility (known as their 'portfolio').

The Parliament makes legislation by enacting an Act, which is a document of provisions containing statements and rules.² A draft Act is called a Bill. Bills are introduced into Parliament for discussion, debate, and possible amendment. If the Legislative Assembly votes and passes a Bill, it also must be given royal assent. On assent by the Governor, the Bill becomes an Act.

With no house of review (Upper House), a Bill becomes law in Queensland without having to pass through a second chamber. However, following the introduction of a Bill into Queensland Parliament, it will generally be referred to a portfolio Parliamentary Committee for detailed review prior to debate by Parliament.

Common Queensland offences and their maximum penalties are found in the following Queensland legislation:

- *Criminal Code (Qld)*
- *Drugs Misuse Act 1986 (Qld)*

- *Domestic and Family Violence Protection Act 2012* (Qld)
- *Summary Offences Act 2005* (Qld)
- *Transport Operations (Road Use Management) Act 1995* (Qld).

These and other Acts define what activities and behaviour are against the law. They generally set a maximum penalty that courts may impose on a person convicted of an offence, and in some cases may also set out a minimum or mandatory penalty that courts must apply when sentencing.

The main legislation that guides sentencing in Queensland is:

- *Penalties and Sentences Act 1992* (Qld) – for adult offenders
- *Youth Justice Act 1992* (Qld) – for child offenders.

These Acts set out the types of sentencing orders available to the court (for example, fines, probation, community service orders, imprisonment) and the purposes, principles, and factors that judges and magistrates must consider when determining a sentence. Section 3(d) of the *Penalties and Sentences Act 1992* (Qld) states that one of the purposes of the Act is to promote ‘consistency of approach in the sentencing of offenders’.

Parliament of Australia

Commonwealth offences are defined by national legislation, which sets out the what acts constitute the offence, the maximum penalty, and the available sentencing options. The Parliament of Australia (also known as the Commonwealth Parliament or Federal Parliament) makes national legislation, including for criminal matters.

Courts

Case law is made by the courts. It includes past decisions by judges on matters including sentencing, and on how to interpret or apply legislation. Past decisions, particularly of the Queensland Court of Appeal and High Court of Australia, help judges and magistrates determine an appropriate sentence.

This is particularly important when deciding

what sentence should be given for an offence. Consistency, that is that like offenders should receive similar punishment for like offences, is an important principle of sentencing as it promotes public confidence in sentencing courts. The court may consider other sentences that have been given for that offence in other cases. In Queensland, the prosecutor and defence lawyer will typically present the judge or magistrate with relevant examples of previous cases and sentences imposed during the sentencing hearing to take into account in sentencing.

Sometimes cases will set out legal principles that courts must apply when sentencing in similar cases, or when considering particular sentencing issues. For example, the Queensland Court of Appeal has accepted that generally a mental disorder short of insanity may lessen the moral culpability of a person and so reduce the relevance of general or personal deterrence when sentencing.³

Case law can be overruled by later cases from courts of the same or higher authority, or by the enactment of legislation by Parliament.

Courts and jurisdiction





Find your local courthouse:
www.courts.qld.gov.au

In Queensland, judges or magistrates are responsible for determining the sentence to be imposed on people who have pleaded guilty or been found guilty of an offence.

Queensland has three tiers of courts which sentence adults:

1. Magistrates Courts.
2. District Court.
3. Supreme Court.

These courts hear both criminal and civil cases, however this guide is focused on criminal matters only.

The Court of Appeal, which is a division of the Supreme Court, hears appeals against sentencing decisions of the Supreme and District Courts. Appeals against sentences imposed in Magistrates Courts are heard by the District Court.

The type of court a person is sentenced by depends on the type of offence the person is charged with and the seriousness of the charge (and in some cases, whether the person elects to have a trial or plead guilty). Generally, the more serious the offence is, the higher the court that will hear it. For example, murder and manslaughter cases can only be heard in the Supreme Court.

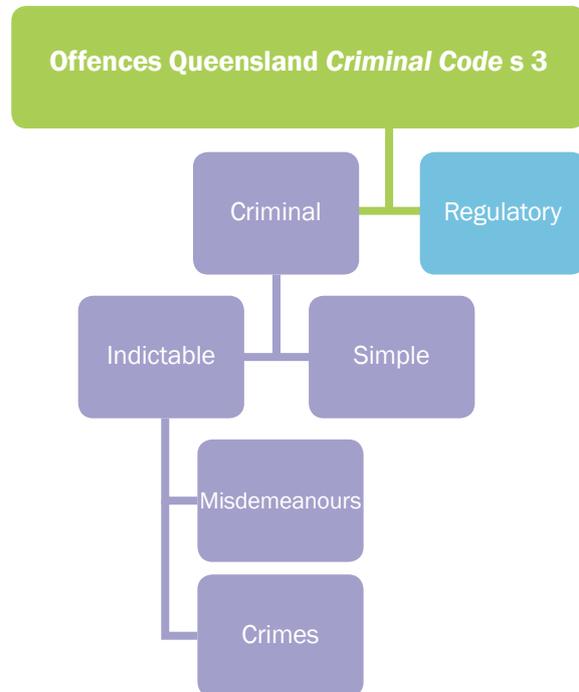
In Queensland, there are two types of offences – regulatory offences and criminal offences:⁴

- **Regulatory offences** are offences included in the *Regulatory Offences Act 1985* (Qld) and are less serious forms of offences (for example, unauthorised dealing with shop goods, known as shoplifting, leaving a hotel or other venue without paying, and damage to property where the value of the damage or loss caused is less than \$250). These offences provide police with an alternative to charging a person with a criminal offence. The maximum penalty that can be imposed is a fine, probation, or a community service order (imprisonment is not an option). They are generally only dealt

with by Magistrates Courts.

- **Criminal offences** comprise simple offences (also known as ‘summary offences’), misdemeanours, and crimes.
 - **Simple offences** are generally minor offences that must be prosecuted within 12 months of the matter arising⁵ and are usually heard in a Magistrates Court by a magistrate. Examples of simple offences include many driving offences, public nuisance offences, trespassing, and minor drug offences.⁶ In some circumstances, a judge of a higher court may hear a simple offence.
 - **Misdemeanours and crimes** are indictable offences. An indictable offence may be dealt with in the Supreme or District Court on indictment (a written charge bringing a person to trial in a higher court). Generally, crimes are more serious than misdemeanours. Some indictable offences can be dealt with summarily, which means they can be dealt with by a Magistrates Court, rather than by a higher court.

Categories of offences in Queensland



Source: Adapted from Heather Douglas, Malcolm Barrett and Emma Higgins, *Criminal Process in Queensland* (2nd ed 2017) 114.

Magistrates Courts

Magistrates Courts are the first level of the Queensland court system and deal with the vast majority of sentencing events in the court system.⁷ Most criminal cases are first heard in these courts before proceeding on indictment (formal charge). Magistrates Courts can hear cases in around 130 locations throughout Queensland.

A person charged with a criminal offence must be brought before a Magistrates Court after being charged. All matters in a Magistrates Court are heard and decided by a magistrate.⁸ A magistrate can make a decision about whether a person is to be released on bail or remanded in custody; and, for an offence proceeding summarily, it can make a finding of guilt and impose a penalty on sentence. Unlike trials in the Supreme and District Courts, trials in Magistrates Courts are heard by a magistrate without a jury.

The Magistrates Courts deal with regulatory offences, simple offences, and some indictable offences that can proceed summarily, such as some forms of burglary, unlawful use of a motor vehicle, fraud, and assault occasioning bodily harm. As a general guide, indictable offences that can be heard summarily are those that carry a maximum penalty of not more than 3 years, but other prescribed offences with a higher maximum penalty can also be heard in a Magistrates Court if the prosecution elects to proceed this way, or if the defendant does not elect to have a jury trial.⁹

The maximum sentence that can be imposed by a Magistrates Court is 3 years' imprisonment (although a sentence of up to 4 years' imprisonment can be imposed by a Magistrates Court sitting as the Drug and Alcohol Court). However, a Magistrates Court must not deal with an indictable offence if satisfied that because of the nature or seriousness of the offence, or any other relevant consideration, that the defendant, if convicted, may not be adequately punished on summary conviction.

In the case of more serious indictable offences such as rape, armed robbery, and murder, a Magistrates Court determines if there is enough evidence to refer the case for trial in

the District or Supreme Courts. This is called a committal hearing.

District Court

The District Court is the second-highest court in the Queensland court system, and deals with serious criminal offences such as rape and most other sexual offences, armed robbery, and grievous bodily harm offences. The District Court also hears appeals against sentences imposed by Magistrates Courts.

The District Court sits in 32 locations across Queensland, with some judges travelling throughout the State to regional and remote locations.¹⁰ In the District Court, matters are presided over by a judge, and criminal trials are usually heard with a jury, although in very rare circumstances, a judge can hear a trial without a jury. When a jury trial is held, 12 people selected at random will determine whether the defendant is guilty or not guilty based on the facts of the case presented at trial. The judge does not decide on guilt but ensures the trial is conducted fairly and makes all other decisions, including the sentence imposed if the defendant is convicted. If a criminal trial without jury is held, the judge decides whether a defendant is guilty.

Supreme Court

The Supreme Court is the third and highest court in Queensland, comprising the trial division and the Court of Appeal.¹¹ The Supreme Court trial division sits in 11 regional courthouses and, as with the District Court, judges also travel throughout the State to hear matters in regional and remote areas.

Matters in the trial division are presided over by a judge and the process for criminal trial (with or without a jury) is the same as for the District Court. The difference between the Supreme and District Courts is the type of offence that can be heard and decided. The Supreme Court deals with the most serious criminal cases including murder, manslaughter, and serious drug offences.

The Court of Appeal hears and decides appeals against sentences imposed in the District Court and the Childrens Court of Queensland.

The Court of Appeal is discussed in ‘Sentence Appeals’ below.

Other Queensland courts

Queensland has a number of courts that have been established to hear specific types of cases. Some of these courts deal with people charged with criminal offences.

Childrens Court

In Queensland, cases where a child (a person 17 years old or younger) is alleged to have committed a criminal offence can be dealt with by:

- Magistrates Courts sitting as a special court known as the Childrens Court;
- the Childrens Court of Queensland (CCQ), a special court at the District Court level, which deals with all children charged with serious criminal offences and is presided over by a Childrens Court judge, who is also a judge of the District Court; and
- the Supreme Court, dealing with offences categorised as ‘Supreme Court offences’ under the *Youth Justice Act 1992* (Qld).¹²

All Childrens Court proceedings in Magistrates Courts are heard in a closed court – this means only people directly involved in the case may be present and no information identifying a child defendant can be published. The Childrens Court can hear matters involving youth justice, child protection, and adoption.

The CCQ hears indictable criminal matters (serious crimes) involving children and parentage orders and discharge of parentage orders (these are matters involving surrogacy). Matters in the CCQ are usually heard in an open court; however, the judge may order the court be closed (that is, only people directly involved in the case may be present). Unless the court orders otherwise, no information identifying an accused child may be published. The CCQ also hears sentence reviews (similar to an appeal) from sentences imposed in the Childrens Court.

The Supreme Court hears cases involving children charged with the most serious criminal offences, such as murder and the most serious forms of drug trafficking.¹³ The rules regarding

open court, identification, and publication are like those in the CCQ.

The Specialist High Risk Youth Court (HRYC) commenced in February 2017 in the Magistrates (Childrens) Court in Townsville. The HRYC provides regular judicial monitoring by a dedicated magistrate to hold a young person to account while bringing together appropriate supports to address the underlying causes of the young person’s offending behaviour.

From 12 February 2018, if a child offender turns 18 after court proceedings have commenced, the matter will proceed under the Youth Justice jurisdiction.¹⁴

Murri Court

Murri Court is a specialist court within the Magistrates Courts that aims to encourage participation from the Aboriginal and Torres Strait Islander community, deliver a culturally appropriate court process, link defendants to support services, and assist magistrates to understand a defendant’s personal and cultural circumstances.¹⁵

Aboriginal and Torres Strait Islander defendants are linked to cultural and support services that aim to assist them to make changes in their lives and prevent reoffending. Elders and Respected Persons from the community are present in the courtroom. Their role is to guide and encourage defendants to access appropriate services, which may include counselling, education and training, attending a men’s or women’s group, support for alcohol and drug misuse, or receiving assistance to find accommodation. Although Murri Court is less formal than a mainstream court, defendants are still held accountable for their actions. Defendants are expected to work hard to address the underlying causes of their offending behaviour.

Murri Courts are located in the Magistrates and Childrens Courts in Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Ipswich, Mackay, Maroochydore, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville, and Wynnum. In some locations, Australian South Sea Islander defendants are able to participate in Murri Court.

Specialist Domestic and Family Violence Court

Specialist Domestic and Family Violence (DFV) Courts are being established in a number of locations across Queensland, with the first court established in Southport on the Gold Coast. These courts generally deal exclusively with all civil and criminal DFV matters. Specialist DFV court approaches are also to be established in Beenleigh, Townsville, Mount Isa, and Palm Island by 2020.¹⁶

The establishment of DFV Courts and specialist court responses in Queensland is in response to the recommendations of the Queensland Special Taskforce on Domestic and Family Violence's report, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland*.

Specialist DFV Courts offer:

- a dedicated magistrate with expertise in DFV issues;
- a court coordinator to oversee court operations, including stakeholder engagement;
- specialist registries with court staff to offer support and information;
- dedicated prosecutors;
- duty lawyers to provide legal advice and representation for both parties;
- court support workers for the aggrieved (or in criminal matters, the victim);
- support/liaison workers for respondents (or in criminal matters, defendants);
- QCS representatives who provide expert advice to the magistrate about suitability assessments for community-based supervision;
- access to DFV perpetrator programs for respondents; and
- specialist DFV registry training.

Drug and Alcohol Court

The Drug and Alcohol Court in Brisbane, which commenced operation on 29 January 2018, provides an intensive and targeted response to

adults with a severe substance use disorder.¹⁷ The Court aims to improve community safety by rehabilitating offenders through supervision, treatment, and program intervention during their sentence, which addresses drug and alcohol dependency, so that offenders can reintegrate into the community as productive members of society.

If a defendant pleads guilty to an eligible offence and other suitability criteria are met, the Court may sentence the offender to up to 4 years' imprisonment that is wholly suspended while the offender undergoes a treatment program for 2 years (known as a Drug and Alcohol Treatment Order).¹⁸ The Court must be satisfied that the person's 'severe substance use disorder contributed to the commission of the eligible offence'¹⁹ and the person must agree to the order being made.²⁰ While on the Treatment Order, the person is supported and managed by a team of specialists led by the Drug and Alcohol Court magistrate, including court staff, health clinicians, QCS staff, police prosecutors, Legal Aid Queensland lawyers, and Aboriginal and Torres Strait Islander court liaison officers. If the person does not comply with the conditions of the order, the Court can impose different types of consequences, including ordering the person to serve short periods in prison. Repeated non-compliance can lead to the order being revoked and the person being re-sentenced, or ordered to serve the whole or part of the original sentence of imprisonment that was suspended.

Mental Health Court

Defendants charged with an indictable offence who have a mental health condition or an intellectual disability may be referred to the Mental Health Court. The Court is constituted by a Supreme Court judge and is advised by two assisting psychiatrists who examine material and provide expert advice to the Court about clinical evidence and issues relating to the person's treatment and detention needs.²¹

The Mental Health Court decides whether the person:

- was of unsound mind at the time of the offence;
- is currently fit for trial; or

- if charged with murder, will instead stand charged with manslaughter by reason of diminished responsibility.²²

The Court fully investigates the relationship between a person's mental illness and alleged offences. It will consider a wide range of material, including police reports, expert reports, advice from the assisting psychiatrists, and submissions from the Office of the Director of Public Prosecutions, the Director of Mental Health, and the defendant's legal representatives. The Court also has the power to order the defendant to submit to an examination by a court-nominated psychiatrist or health practitioner.

The Mental Health Court also hears appeals from the Mental Health Review Tribunal and inquiries into the lawfulness of a patient's detention in authorised mental health facilities. To do this the Court has special inquiry and investigation powers.

If a person has been charged with a simple offence that is to proceed summarily in a Magistrates Court, a magistrate may dismiss the charge if satisfied that, on the balance of probabilities, the person was of unsound mind at the time of the offence or is now unfit for trial.²³

For more information, including what hearings are open to the public, visit the Mental Health Court's website: <https://www.courts.qld.gov.au/courts/mental-health-court/hearings-in-the-court/what-happens-in-a-hearing>

National courts

There are national courts that hear non-criminal matters, such as family matters, commercial and financial matters, employment matters, and human rights matters. These courts are the:

- Family Court of Australia;²⁴
- Federal Court of Australia;²⁵ and
- Federal Circuit Court of Australia.²⁶

Given the areas of law these courts consider, they hold limited relevance to sentencing for criminal offences, which is the focus of this guide.

High Court of Australia

The High Court of Australia is the highest court in the Australian judicial system. Decisions of the High Court are binding on all other courts throughout Australia.

The functions of the High Court are to:

- interpret and apply the law of Australia;
- decide cases of special federal significance, such as challenges to the constitutional validity of laws; and
- hear and decide applications for special leave and appeals, from federal, state, and territory courts.²⁷

The High Court can hear the whole range of Australian law, such as constitutional, contract, company, criminal and criminal procedure, insurance, tax, property, and family law. The High Court can also hear and decide an appeal against sentence from the Queensland Court of Appeal. This process is discussed in the section 'Sentence Appeals'.

The High Court is based in Canberra and has offices in Sydney and Melbourne.

Sentencing process in Queensland

When sentences are imposed

A sentence is imposed once a person has been found guilty of an offence.

An accused person can be found guilty of an offence if he or she pleads guilty to the offence charged or is found guilty following a trial. If the matter proceeds to trial, before a guilty verdict is returned, the magistrate, judge, or jury must be satisfied beyond reasonable doubt that the person is guilty of the offence as charged.

The State (represented by the prosecution) and the offender (represented by their defence lawyer or self-represented) plays a part in the sentencing process. The victim (also referred to as the complainant because they bring the complaint to the State against the offender) also has the opportunity to participate in the sentencing process but does not have to.

Role of the prosecutor

During the sentencing hearing the prosecutor provides the judge or magistrate with:

- all the facts and circumstances of the offence/s, in particular any aggravating factors;
- the offender's criminal history, highlighting relevant prior offending;
- submissions about the impact of the offending on the victim/s, such as a victim impact statement;
- submissions about relevant case law and legislation, including associated sentencing principles; and
- submissions as to the appropriate penalty.

Role of the defence

During the sentencing hearing, the defence provides the judge or magistrate with:

- information about the offender's personal circumstances, such as character references;

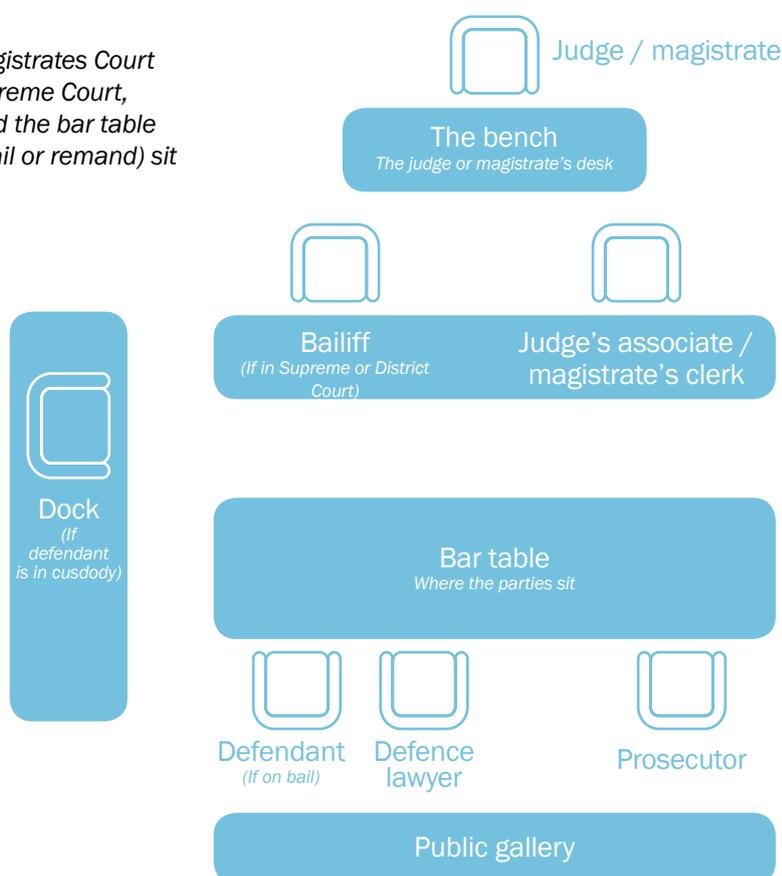
- background or any contextual information about the offence/s, in particular any mitigating factors;
- submissions about the steps an offender has taken towards rehabilitation;
- submissions about relevant case law and legislation, including associated sentencing principles; and
- submissions as to the appropriate penalty.

Role of the judge or magistrate

The judge or magistrate decides the appropriate sentence. Determining an appropriate sentence is a complex process in which a sentencing judge or magistrate must balance a range of factors in accordance with the law. Judges and magistrates take into account the submissions made by the prosecution and the defence, as well as legislation and case law as they apply to the individual circumstances of a case. The judge or magistrate will hand down the decision and provide reasons for the sentence. These reasons are recorded and referred to as 'sentencing remarks'.

The courtroom

This diagram depicts a typical Magistrates Court courtroom. In the District and Supreme Court, docks are generally located behind the bar table and all defendants (whether on bail or remand) sit in the dock.



The types of penalties a court can impose when sentencing an offender as an adult are set out in the *Penalties and Sentences Act 1992* (Qld). The penalty types are discussed below.

If a judge or magistrate makes an order involving conditions as part of the sentence — for example, an order of probation — the judge or magistrate must ensure the offender understands the conditions imposed and consents to the order being made. However, consent is not relevant to orders of imprisonment (including where the term of imprisonment is suspended).

Role of the victim

Queensland legislation protects the interests of victims during sentencing. When determining an appropriate sentence, the court must consider any physical, mental or emotional harm done to a victim because of the offence. The court must also consider the effect of the offence on any child under 16 years who may have been directly exposed to or witnessed the offence. One of the ways the victim can bring this harm to the attention of the court is through a victim impact statement. A victim impact statement is an opportunity for a victim to participate in the criminal justice process by communicating to the court the impact of the crime including any physical, social, financial, or psychological effects the crime has had.

Find out how to make a victim impact statement:
www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/court-support-for-victims-of-crime



A victim impact statement is a written statement made by a victim — or the victim's family — which states the harm experienced from the offence. It may include attachments such as medical reports, photographs, and drawings. This statement helps to inform the sentencing judge or magistrate about the impact of a crime on the victim; however, providing one is not mandatory and is always the choice of the victim. If a victim or victim's family chooses not to provide an impact statement, this does not mean the court will assume the offence caused little or no harm to the victim or the family.

The victim impact statement should focus on the impacts of the crime, not the crime itself. It must be accurate and relevant only to the crime the person has been found guilty of. It might include details of:

- the difference in the victim's life before and after the crime;
- physical or emotional injuries and how these affect the victim;

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DECIDE THE SENTENCE.

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- financial loss and how this affects the victim; and
- if the case is about the death of a loved one, details about the loved one's life.

The victim can provide their victim impact statement to either the arresting police officer or the Victim Liaison Officer from the Office of the Director of Public Prosecutions. A victim may also be offered the opportunity to read their victim impact statement aloud in court. If a victim is provided the opportunity to do so, the court may make special arrangements to assist the victim (for example, obscuring the victim's view of the offender).

A victim has certain rights in criminal justice proceedings, outlined in the *Victims of Crime Assistance Act 2009* (Qld).



Find out about victim rights:
www.qld.gov.au/victimsrights

Victim Assist Queensland provides assistance to victims of violent crime, including all forms of domestic and family violence in Queensland, to help people recover from the effects of the crime and get their lives back on track.



Victim Assist Queensland:
www.qld.gov.au/victims

Deciding what sentence to impose

In sentencing, judges and magistrates must take into account legislation and case law as they apply to the individual circumstances of the case.

Sentencing purposes

The only purposes under Queensland law for which a sentence may be imposed are:

- **punishment** – to punish the offender to an extent or in a way that is just in all the circumstances;

- **rehabilitation** – to establish conditions to help the offender to be rehabilitated;
- **deterrence** – to deter the offender (known as **personal** or **specific deterrence**) or other members of the community (known as **general deterrence**) from committing the same or a similar offence;
- **denunciation** – to make clear that the community disapproves of the offending behaviour;
- **community protection** – to protect the Queensland community from the offender; or
- a combination of these purposes.

No one purpose is the main or dominant purpose for sentencing in all cases. In each case the judge or magistrate will consider the features of the offending and the offender, and decide which purpose or combination of purposes will apply.

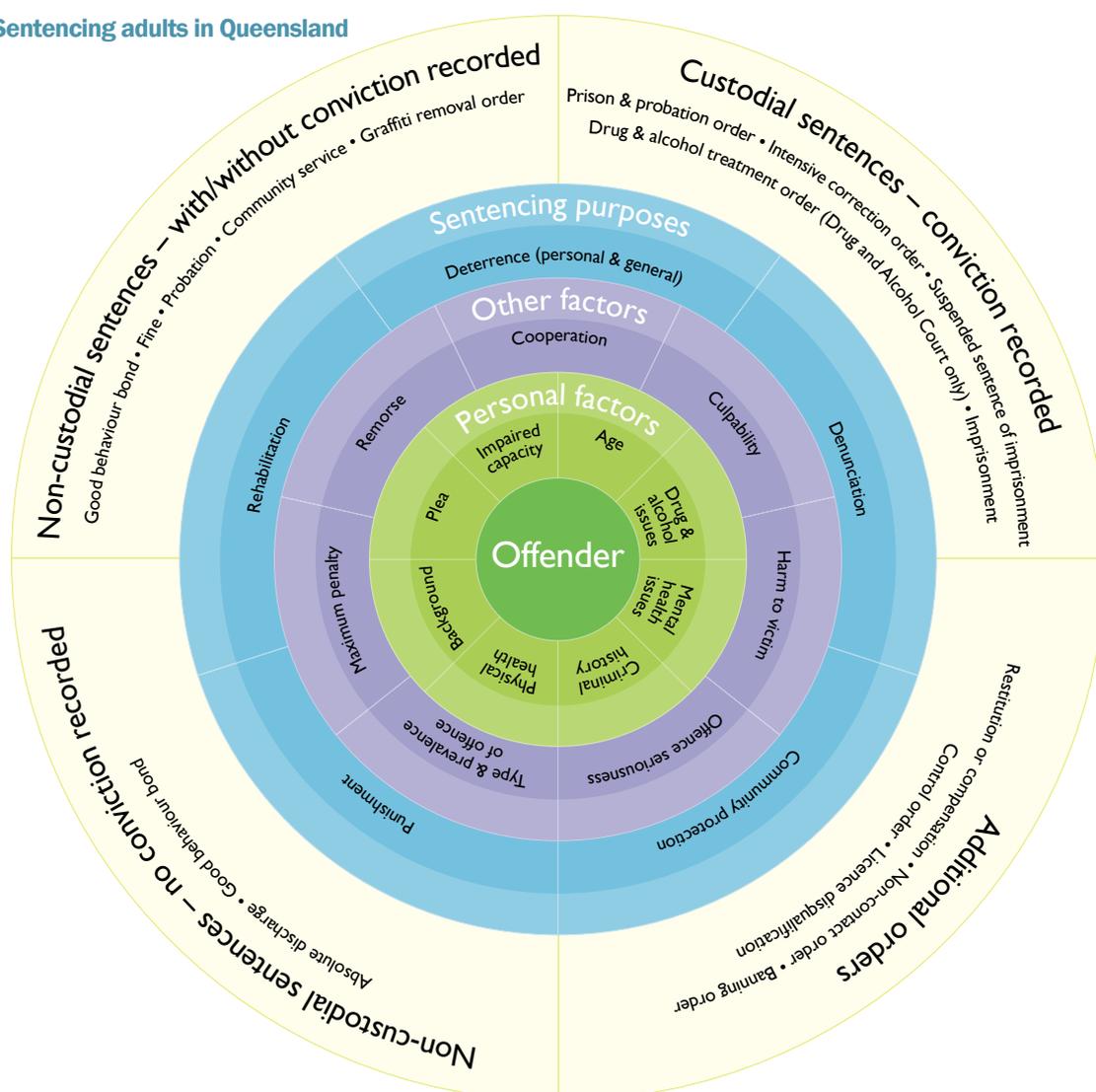
Sentencing factors

By law, courts must take into account a number of principles and factors when sentencing an adult for an offence including:

- imprisonment should only be imposed as a last resort and a sentence that allows the offender to stay in the community is preferable (exceptions include where the offence involved violence or was a sexual offence committed in relation to a child under 16 years);
- the maximum and any minimum penalty for the offence (see below, **Maximum penalty** and **Mandatory penalties**);
- the nature and seriousness of the offence, including any physical, mental or emotional harm to a victim and effect on a child who may have been exposed to, or a witness to, the offence;
- how much the offender is to blame for the offence (see below, **Culpability**);
- whether – and how early – the offender pleaded guilty or indicated his or her intention to plead guilty
- any damage, loss, or injury caused;

- the offender’s character (including the number, seriousness, date, relevance, and nature of any previous convictions and any significant contributions made to the community by the offender);
- the offender’s age and intellectual capacity;
- any medical or psychiatric or psychological or other evidence that may reduce and/or aggravate the offender’s moral culpability for the offence;
- any aggravating or mitigating factors (see below, **Mitigating and aggravating factors**);
- how common/prevalent the offence is;
- how much help the offender gave to law enforcement agencies in investigating the offence or other offences (see below, **Cooperation with law enforcement**);
- time already spent by the offender in custody while awaiting sentence (pre-sentence custody);
- sentences imposed on or served by the offender for an offence committed about the same time, or sentences already imposed on the offender that have not been served;
- if the offender is already on a community-based order, whether the offender has complied with the order;
- the successful completion of a program or course imposed as a condition of bail;
- if the offender is an Aboriginal or a Torres Strait Islander, any submissions by a representative of a Community Justice Group in the offender’s community; and
- any other relevant circumstance.

Sentencing adults in Queensland



Some factors by law cannot be taken into account to reduce the sentence, such as if the offender was voluntarily intoxicated by alcohol or drugs when committing the offence.

Sentencing principles in case law

In addition to the statutory purposes of sentencing, courts must also consider certain sentencing principles that have been developed under the common law. These principles provide guidance to help judges and magistrates reach a decision on the sentence to impose.

Proportionality

To arrive at a sentence that is just, the sentence must be proportionate to the circumstances of the offence and gravity of the offending behaviour (also incorporated within the sentencing purpose of just punishment as discussed above). The court will consider a number of factors including the aggravating and mitigating factors, the applicable maximum penalty, sentences for similar offences, degree of harm caused, and the person's culpability (see below, **Culpability**), when determining a sentence that is just in all the circumstances.

Parity

The parity principle applies to co-offenders in the context that they should receive a similar penalty if the offence and circumstances are similar. However, differences in age and personal and criminal history, as well as culpability, may justify a different sentence. Parity is an aspect of 'equal justice' (that is, courts should treat the same or similar offending alike, and different offending differently).²⁸

Totality

Where there is more than one sentence, the total sentence should reflect the overall criminality of offending. This may apply when there are a number of offences committed over a short timeframe, or where a person is already serving a sentence and the offences were committed before or after that sentence being imposed. The sentencing court may order a sentence to be imposed concurrently or reduce a cumulative sentence to avoid

imposing a 'crushing' sentence (a sentence so severe that it crushes any hope that the person will lead a useful life after release from custody).

The De Simoni principle

A person should only be sentenced for an offence that he or she has been found guilty of and not punished for other criminal conduct. This means a judge or magistrate cannot take into account circumstances that have not been charged but would have warranted a conviction for a different or more serious offence.²⁹ A judge or magistrate may only consider as contextual the person's actions or omissions preceding or following an offence that may have been criminal but were not charged when sentencing (reasons for not charging may include difficulty framing charges or lack of forensic evidence).

Culpability

Culpability means how responsible the offender is for the offence and for the harm he or she caused. A court will consider the circumstances to determine how much the offender is to blame for an offence. Generally, the higher an offender's culpability, the more serious the offence will be assessed to be and the more severe the sentence.

To determine an offender's culpability, judges and magistrates consider the offender's intention, awareness, and motivation for committing the offence. The court will consider the following factors to determine whether the offence was:

- committed by a person in complete control of his or her own actions (namely, was the offender mentally disordered or intellectually disabled or acting under the influence of alcohol or drugs?);
- committed with the person's knowledge of its consequences (or likely consequences), or only in careless (negligent) disregard of the consequences;
- planned or opportunistic; and
- committed with the possession of a weapon.

While differences in culpability are relevant

to sentencing, they are also reflected in the offences people may be convicted of. Taking murder and manslaughter as an example:

- if a person is found to have killed someone by stabbing the victim with the intention to kill or to cause serious harm (grievous bodily harm), this is murder; but
- if the person was suffering from a major mental disorder at the time of the offence (short of insanity), they may instead be convicted of manslaughter on the basis of diminished responsibility.

Mitigating and aggravating factors

Mitigating factors are details about the offender and the offence that tend to reduce the severity of the sentence. **Aggravating factors** are details about the offence, the victim, and/or the offender that tend to increase the person's culpability and the sentence received.

The court will take these factors into account when determining an appropriate sentence.

The following are examples of factors that can **mitigate** a sentence:

- the person suffers from a cognitive impairment or mental illness;
- the person has no or little history of previous offending and is otherwise of good character;
- the person is young;
- the person has demonstrated remorse and/or evidence of rehabilitation;
- the person's personal circumstances such as coming from a disadvantaged background; and
- the person pleads guilty at an early stage thus showing remorse and/or assisting the efficient conduct of the criminal justice system by not wasting resources on a trial.

The following are examples of factors that can **aggravate** a sentence:

- abuse of a position of trust (for example, where a parent commits an offence against his or her child);
- planning the crime (called premeditation);

- the offence involved the use of a weapon or violence, or was committed with others;
- the degree of violence and harm caused; and
- the offence was committed while the person was on bail or subject to a court order.

Cooperation with law enforcement

When sentencing a person, the court must take into account the level of assistance given to law enforcement agencies in the investigation of the offence or other offences.³⁰

Under the *Penalties and Sentences Act 1992* (Qld), there are certain procedural requirements that apply if a sentence is to be reduced because the offender has agreed to cooperate with law enforcement agencies in the investigation of an offence or a confiscation proceeding, or where significant cooperation of this nature has already been provided. These requirements are aimed at protecting the safety of offenders who have cooperated, or undertaken to cooperate, with law enforcement authorities and to encourage this cooperation.

Where cooperation is promised or given under section 13A or 13B of the *Penalties and Sentences Act 1992* (Qld), parts of the sentence hearing must be heard in 'closed court'. This includes submissions made about the assistance the person has given, and comments made by the judge or magistrate about the reduction of the sentence and what sentence would have been imposed had the person not given, or not promised to give, this assistance. Only specific people are allowed to remain in court after it is closed – that is, relevant court staff, the lawyers, and the person being sentenced. Records relating to the reduced sentence and assistance are also 'sealed', meaning they can only be accessed with the court's approval. The actual penalty imposed – taking into account the assistance given – is stated in open court.

Maximum penalty

A maximum penalty is the highest penalty that can be given to a person found guilty of a particular offence. Except where a mandatory

penalty applies (such as for murder), a judge or magistrate decides the sentence up to the maximum penalty based on the circumstances of each case.

Maximum penalties are most commonly set out in the legislation defining the offence and are generally for the worst or most serious examples of an offence. In Queensland, the highest maximum penalty available is a life sentence.

Maximum penalties are set by Parliament through legislation and reflect Parliament's views about the seriousness of an offence compared with other offences. For example, in Queensland the maximum penalty for common assault is 3 years' imprisonment, while for grievous bodily harm it is 14 years' imprisonment.

Maximum penalties serve a number of purposes, including:

- setting a clear, legally defined upper limit on the court's sentencing power;
- setting out the maximum consequence a person will face if the person commits a particular offence;
- indicating the views of Parliament and, by extension, the community and providing guidance to the judiciary about the seriousness of an offence compared to other criminal offences; and
- establishing an upper limit of punishment proportionate to the offence — reserving the maximum penalty for the worst example of the offence by the worst offender.

Life sentence

A number of serious offences under Queensland legislation carry a life sentence as the maximum penalty, including the *Criminal Code* (Qld) offences of murder, attempted murder, manslaughter, rape, armed robbery, and arson.

For adults convicted of murder and repeat serious child sex offences, the judge must sentence the person to life imprisonment or an indefinite sentence. For adults convicted of other offences with a maximum penalty of

life imprisonment, the judge decides the most appropriate penalty based on the individual circumstances of the case.

Judges must consider these factors when deciding to impose a life sentence:

- whether the offence falls within the worst category of that kind of offence;
- whether the nature of the offence or the person's history suggests he or she is likely to commit similar offences in future and whether the consequences to others may be particularly harmful;
- whether the punishment fits the crime and is proportionate to the offending; and
- the purposes of sentencing, including deterrence, community protection, punishment, denunciation, and rehabilitation.

Where a person is sentenced to life imprisonment, the minimum time an offender must spend in prison is set by legislation. The *Corrective Services Act 2006* (Qld) establishes these mandatory minimum non-parole periods:

- 30 years — murder of more than one person or by a person with a previous murder conviction;
- 25 years — murder of a police officer;
- 20 years — murder other than listed above, or repeat serious child sex offence; or
- 15 years — any other life sentence imposed for another offence, for example rape.³¹

A judge can increase the non-parole period by setting a later parole eligibility date. A prisoner is not eligible to be released on parole until the prisoner has served the mandatory non-parole period or longer period set by the court. Release on parole is not guaranteed — it is a decision for the Parole Board Queensland.

Parolees have to comply with parole conditions until the end of their prison sentence. A person who has received a life sentence will remain on parole for the rest of his or her life. This means the offender can be returned to prison at any time if parole is suspended or cancelled by the Parole Board Queensland.

Indefinite sentence

A court can impose an indefinite sentence, instead of a sentence for a fixed term, when it considers the offender is a serious danger to the community. This means the offender has no fixed date when the sentence will end.

The court must consider:

- whether the nature of the offence is exceptional;
- an offender's antecedents, including age and previous offending;
- any relevant medical, psychiatric, prison, or other reports about the person;
- any risk of serious harm to members of the community if the offender is not given an indefinite sentence; and
- the need to protect the community from that risk.³²

When giving an indefinite sentence, judges must specify the nominal sentence they would have given if they had not imposed an indefinite sentence. The court must carry out periodic reviews once the offender has served the relevant non-parole period they would have otherwise been required to serve, which varies depending on the type of offence. If the offender is still considered to be a serious danger to the community, the indefinite sentence continues. If not, the court must impose a finite sentence, which cannot be less than the nominal sentence.

Mandatory penalties

A mandatory sentence is a fixed penalty prescribed by Parliament for committing a criminal offence.³³ The most common form of mandatory sentencing is one in which the legislature sets a minimum threshold but leaves the court to impose a harsher sanction where it considers it appropriate. There are different forms of mandatory penalties in Queensland under current legislation, which include:

- mandatory penalties that prescribe both the sentence type and sentence length (for example, the mandatory sentence of life imprisonment for murder (see above, **Life sentence**) and mandatory licence

disqualification periods for certain offences under the *Transport Operations (Road Use Management) Act 1995* (Qld);³⁴

- mandatory penalties that prescribe the sentence or penalty type only, but in some cases include a discretion to impose a different sentence if there are exceptional circumstances (for example, the requirement that a person who commits a sexual offence in relation to a child be sentenced to serve an actual term of imprisonment);³⁵ and
- mandatory minimum non-parole periods, which apply to the term of imprisonment imposed (for example, a person convicted of a **serious violent offence** (SVO) must serve the lesser of 80 per cent of the sentence imposed or 15 years' imprisonment before being eligible to apply for release on parole).³⁶

The SVO scheme applies to prescribed offences, which are:

- violent offences (such as manslaughter, grievous bodily harm, torture, robbery, dangerous operation of a vehicle, serious assaults, and assault occasioning bodily harm);
- offences of a sexual nature (such as rape, maintaining a sexual relationship with a child, incest, and indecent treatment of children under 16); or
- drug offences (such as trafficking, supplying or producing a dangerous drug).

If the Supreme Court or District Court sentences an offender to 10 years or more for a prescribed offence, the offender is automatically convicted of a serious violent offence and must serve 80 per cent of the sentence (or 15 years, whichever is less) in prison before being able to apply for parole).³⁷

Judges have discretion to make an SVO declaration where the offence is a prescribed offence and the sentence is imprisonment of 5 years or more but less than 10 years, or for a sentence of any length if the offender is convicted on indictment of an offence that involved the use or attempted use of serious violence against another person or that resulted in serious harm to another person.³⁸

Cumulative and concurrent sentences

Where a person is convicted of more than one offence, sentences can be directed to be served:

- **concurrently** – sentences are served at the same time, so that the shortest sentence is subsumed into the longest sentence (also called the **head sentence**). There is a presumption in favour of sentences being served concurrently in Queensland, with this to occur unless the court orders otherwise.³⁹
- **cumulatively or consecutively** – each sentence for each conviction is served one after the other. There are circumstances in which a sentence of imprisonment imposed must be ordered to be served cumulatively, such as where the offender has been convicted of a serious violent offence committed while in prison or while on parole.⁴⁰
- **partially concurrently and partially cumulatively** – some sentences are served concurrently, while others will be served after the term of the head sentence has ended or commence at a time set by the judge or magistrate (so they overlap).

Remand

When an accused person is not granted bail after being charged, the person will be held in custody on remand. If the person is later sentenced to imprisonment, any time that he or she has already spent in custody in relation to that offence and for no other reason (known as pre-sentence custody) must be taken to be imprisonment already served under the sentence, unless the sentencing court otherwise orders.⁴¹ This is often the reason why some offenders are released from custody on, or shortly after, the day they are sentenced for serious offences as their sentence is effectively backdated to the first day they went into custody.

Recording a conviction

When sentencing a person, the court must decide whether to record a conviction, which gives the person a criminal record for the offence. This is a separate decision from

deciding what sentence to give.

In making this decision, the court must look at all the circumstances of the case, including the person's character and age, the nature of the offence, and whether recording a conviction will have any impact on the person's economic or social wellbeing, or chances of finding employment.⁴²

In some cases, a conviction must be recorded, such as if imprisonment is imposed, or if the court is resentencing an offender after revoking a community service order or probation order that the offender has breached.

Offender levy

All adult offenders sentenced in the Supreme, District or Magistrates Courts must pay an offender levy, which is an administrative fee that contributes to law enforcement and administration costs and is paid to the court registry. The levy is imposed for each sentencing event whether or not a conviction is recorded.

The levy is not an order of the court and is not part of the sentence imposed by a judge or magistrate. This means the judge or magistrate cannot take the offender levy into account when imposing a sentence and an offender cannot appeal the levy or convert it into community service.

The offender levy amounts are set out in section 10 of the *Penalties and Sentences Regulation 2015* (Qld).

The levy amount is different between the courts; it is higher for the District and Supreme Courts than Magistrates Courts.

Failure to pay the levy by the due date may result in the State Penalties Enforcement Registry (SPER) taking enforcement action.

Find out what the current offender levy is:
www.courts.qld.gov.au/about/offender-levy



Penalty types

The types of penalties a court can impose when sentencing an adult are set out in the *Penalties and Sentences Act 1992 (Qld)*.

There are two broad types of sentencing orders for adults:

- non-custodial orders, which do not involve the person being sentenced to imprisonment (such as a fine, good behaviour bond, community service, or probation); and
- custodial sentencing orders, which involve the person being sentenced to a period of imprisonment.

There are a number of different sentencing orders that a court can impose on adults sentenced under the *Penalties and Sentences Act 1992 (Qld)*.

Non-custodial sentencing orders

Absolute discharge

An absolute discharge is release without a conviction being recorded and without any further penalty.

Good behaviour bond/recognisance

A good behaviour bond is a requirement to appear before a court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to 3 years). It requires the person and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. Other conditions that may be ordered include attending a drug assessment and education session.

Fine

A fine is an order to pay an amount of money. The maximum fine depends on the type of offence and the court hearing the matter. A fine can be ordered in addition to, or instead of, any other sentence with or without a conviction being recorded.

Probation order

A probation order is an order between 6 months and 3 years, with or without a conviction being recorded, that is served in the

community with monitoring and supervision by an authorised corrective services officer. The person must agree to the order being made and to comply with the requirements under the order. When making a probation order the court must set mandatory requirements⁴³ and can also make additional requirements.⁴⁴

Mandatory requirements include:

- not committing another offence during the period of the order;
- participating in programs or counselling;
- reporting to and receiving visits from a corrective services officer as directed;
- telling a corrective services officer about any changes of address or employment within two business days; and
- not leaving Queensland without permission.

Additional conditions include submitting to medical, psychiatric or psychological treatment, or any conditions considered necessary to stop the offender committing another offence or to help the offender behave in a way that is acceptable to the community.

Community service order

A community service order is an order to do unpaid community service for between 40 and 240 hours, usually within 12 months, and to comply with reporting and other conditions, with or without a conviction being recorded.⁴⁵ In addition to the requirement to perform community service, other mandatory requirements include:

- not committing another offence during the period of the order;
- reporting to and receiving visits from a corrective services officer as directed;
- telling a corrective services officer about any change of address or employment within two business days; and
- not leaving Queensland without permission.

The offender must agree to the order being made.

Graffiti removal order

A graffiti removal order is an order for a person to complete unpaid work removing graffiti of up to 40 hours, usually within 12 months, with or without a conviction being recorded.⁴⁶ The same types of requirements that apply to community service orders also apply to people subject to a graffiti removal order.

The making of this order is mandatory where the person is convicted of causing wilful damage to property that is in a public place or visible from a public place by graffitiing it, or is in possession of an instrument that has been, is being, or is reasonably suspected of being about to be, used for graffiti (for example, a spray can), unless the court is satisfied that the person is not able to comply with the order because of a physical, intellectual, or psychiatric disability.

Custodial sentencing orders

In Queensland there are a number of ways a person can be sentenced to imprisonment. These are:

- a combined prison and probation order;
- an intensive correction order;
- a suspended sentence of imprisonment; or
- a term of imprisonment with court ordered or board ordered parole.

Combined prison and probation order

A sentence of imprisonment of 1 year or less, immediately followed by a period of probation in the community for a minimum of 9 months and up to 3 years.

Intensive correction order

A sentence of imprisonment of 1 year or less ordered to be served in the community under supervision with a conviction recorded.⁴⁷ The offender must comply with a number of conditions, including reporting twice weekly to an authorised corrective services officer, taking part in counselling and other programs as directed, and performing community service. The offender must agree to the order being made and to comply with the requirements under the order.

If the offender does not comply with the

conditions of the order, a court may revoke the order and order the person to serve the remaining period of the sentence in prison.

Suspended sentence of imprisonment

A sentence of imprisonment of 5 years or less suspended in full (called a wholly suspended sentence) or in part (called a partially suspended sentence) for a period (called the operational period) of 5 years or less.⁴⁸ When a court makes a suspended sentence a conviction must be recorded.

If the offender commits further offences punishable by imprisonment during the operational period of the suspended sentence, the court must order the offender to serve the whole of the period of imprisonment suspended in prison (unless unjust to do so), plus any other penalty imposed for the new offence.

Imprisonment

When imprisonment is imposed as the penalty, the total period of imprisonment is called the 'head sentence'. Legislation gives courts power to order that offenders be released, or be considered for release, prior to the end of their head sentence. This requires balancing the different purposes of sentencing (punishment, deterrence, rehabilitation, denunciation, and community protection). It can provide for mitigation of punishment to allow rehabilitation through conditional freedom, where appropriate. The prisoner must first serve the minimum time the court determines justice requires, having regard to all the circumstances of the offence.

Whether the court fixes a definite release date prior to the expiration of the head sentence depends on the length of sentence imposed and offence type:

- **Imprisonment with a parole release date:** If the court imposes a sentence of 3 years or less, it must set a parole release date (known as court ordered parole).⁴⁹ There are some circumstance in which this does not apply (for example, if the prisoner has been convicted of a sexual offence, or has had an existing court ordered parole order cancelled during their period of imprisonment). Unless there is

an additional reason why the prisoner is in custody, or the Parole Board Queensland decides the prisoner should not be released, the prisoner will be released on their parole release date to serve the unexpired portion of the prison sentence in the community, under supervision.

- **Imprisonment with a parole eligibility date:** If the court imposes a sentence of more than 3 years (or where court ordered parole does not apply) a court may set a parole eligibility date.⁵⁰ This is the earliest date on which a prisoner may be granted release on parole, but the decision to release or not is made by the Parole Board Queensland closer to the parole eligibility date. If the court does not make such an order, then the legislation states that, generally, a prisoner is eligible for parole after having served half of their head sentence.⁵¹ An exception is where a person is convicted of a **serious violent offence**⁵² (see discussion in **Mandatory penalties** above). If the Parole Board Queensland decides to release a prisoner in either scenario, the prisoner will serve the unexpired portion of the prison sentence in the community under supervision.

Additional orders

Restitution or compensation order

This is an order to pay for property taken or damaged, or compensate for loss or damage to property, or for any personal injury suffered by a person.⁵³ The order can be made in addition to any other sentence given.

Driver licence disqualification

This order disqualifies a person from holding or obtaining a Queensland driver licence absolutely or for a specified period. Some traffic-related offences carry a mandatory minimum disqualification period that the court must impose.⁵⁴

Non-contact order

A non-contact order prohibits an offender from contacting the victim or another person, or going to a particular place, or within a particular distance of that place,

for a set period.⁵⁵ This order can be made for a serious (indictable) offence committed against a person, whether or not a conviction is recorded. A non-contact order is separate from a protection order under the *Domestic and Family Violence Protection Act 2012* (Qld) and can be made in addition to any other order made.

Banning order

A banning order bans the offender from entering or remaining in a certain licensed place or type of licensed place, or entering a particular area near a licensed premises during certain hours, or attending a particular public event at which alcohol will be sold.⁵⁶

A banning order can be made if the offence involved the use, threatened use, or attempted use of unlawful violence to a person or property or an offence of drug trafficking or supply of a dangerous drug, and was committed in licensed premises or in a public place near licensed premises. A court must be satisfied that the offender would pose an unacceptable risk to the good order, safety, and welfare of a licensed premises if the order were not made. The court may make this order whether or not a conviction is recorded and in addition to any other order made.

Control order

A control order is an order of up to 5 years, whether or not a conviction is recorded, where a court imposes conditions on an offender with the intention of protecting the public by preventing, restricting, or disrupting the offender's involvement in serious criminal activity and enabling the order to be enforced.⁵⁷ Conditions may include, for example, requiring the offender to report to police and inform police of a change of address, and prohibiting the offender from associating with a stated person or class of person or from entering or being near a stated place. Control orders can only be made if the court is satisfied that an offender is a member or participant of a criminal organisation.

Parole



Parole Board Queensland:
www.qld.gov.au/law/sentencing-prisons-and-probation/sentencing-probation-and-parole/parole-board

Parole is the supervised release of a prisoner to serve all or the remainder of their term of imprisonment in the community, subject to conditions and supervision⁵⁸ (for example, offenders sentenced to a life sentence will remain on parole for life, see **Life sentence**).

The purpose of parole is to improve public safety by reintegrating that person into the community and minimising the likelihood of reoffending. A person on parole must comply with conditions and is liable to be returned to prison at any time during the remainder of the sentence, in accordance with the Parole Board Queensland's statutory powers (which have a primary focus on community safety).

There are three types of parole in Queensland:

Court ordered parole — This is available where a court sentences an offender to a term of imprisonment of 3 years or less (excluding sexual offences and serious violent offences) and involves the court setting a parole release date at sentencing.

Board ordered parole — This involves a court setting the date the person becomes eligible to apply for parole. The Parole Board Queensland then decides whether the person should be released.

Exceptional circumstances parole — This enables the Parole Board Queensland to release a prisoner, prior to their parole eligibility date or parole release date, in exceptional circumstances, for example if the prisoner is terminally ill.

While on parole, parolees are supervised and provided with rehabilitation opportunities in the community by QCS until the end of their sentence.

Conditions of parole include:

- not committing a new offence;
- receiving visits from a corrective services

officer and following the officer's directions;

- telling QCS within 48 hours if the person's address or employment changes;
- not leaving Queensland without permission;
- attending courses, programs, meetings, or counselling;
- being tested for drug and alcohol use; and
- not otherwise breaching parole.⁵⁹

If the parolee fails to comply with the conditions of the parole order, poses a serious risk of harm to someone else, poses an unacceptable risk of committing an offence, or is preparing to leave Queensland without approval, the Parole Board Queensland can amend, suspend, or cancel the parole order.

Sentence appeals

Appealing a court decision:
<https://www.qld.gov.au/law/sentencing-prisons-and-probation/appealing-a-court-decision>



Magistrates Court sentence

The offender or prosecution can appeal against a Magistrates Court sentence to a District Court judge.⁶⁰ The Attorney-General can also appeal against a Magistrates Court sentence. The person appealing the decision is known as the **appellant**. A Notice of Appeal must be filed within one month of the sentence being imposed, unless the appeal court allows an extension of time.

Following an appeal to a District Court judge, that decision may be further appealed to the Court of Appeal.

Higher court sentence

Where the offender was sentenced in the District Court or Supreme Court, the offender or the Attorney-General can appeal against the sentence to the Court of Appeal.⁶¹

The Attorney-General has a right to appeal, while offenders must seek the Court of Appeal's leave to appeal against sentence.

A Notice of Appeal must be filed within one month of the sentence being imposed, unless the appeal court allows an extension of time. The person appealing the decision is known as the **applicant**.

Usually, three judges sit on the Court of Appeal. Each judge will make his or her own decision and a majority is needed for an appeal to be successful. Judges can make joint judgments (written decisions) and sometimes all judges will produce a joint judgment.

Test on appeal

The appellant/applicant must set out the grounds of appeal (why they think the sentencing court made the wrong decision). Depending on the party appealing, the appeal court may be asked to decide whether the sentence imposed was either manifestly excessive (if the appeal is by the offender) or manifestly inadequate (if the appeal is by the prosecution or Attorney-General).

An appeal court will not simply decide to change a sentence because it would have imposed a different one if it had been the sentencing court. A sentence may be deemed excessive or inadequate if the appeal court considers that the sentencing court made a legal error, thereby making the sentence unjust – such as failing to take a mitigating factor personal to the offender into account, a mistake on the facts, acting on the wrong principle, or the sentence is unreasonable or plainly unjust.⁶²

High Court of Australia

The final appeal option allows a party to make an application for special leave to appeal the Court of Appeal decision to the High Court of Australia, Australia's highest court.

Special leave involves a two-stage process where two justices of the High Court consider:

- a) whether the appeal involves a question of law that:
 - i. has public importance; or
 - ii. there is a difference of opinion in the Court of Appeal on the state of the law; and

- b) whether the interests of justice require the High Court to consider the matter.⁶³

If special leave is granted, the parties must prepare and file further documents and appear at an appeal hearing. The High Court (usually comprising seven justices) will then consider whether to dismiss or allow the appeal.

Pardon

An offender may petition the Governor to exercise the Governor's power to pardon a sentence.⁶⁴ This only occurs in exceptional circumstances.

Commonwealth offences

This guide has focused on sentencing for offences committed under Queensland legislation, such as the *Criminal Code* (Qld). Queensland courts also hear cases and sentence people for **Commonwealth offences**, such as Centrelink fraud, telecommunications offences, offences that occur at an airport or on an aircraft, terrorism, people smuggling, drug importation, and internet or child pornography material offences. Relevant Acts that guide sentencing for Commonwealth offences include the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth).

Although a Queensland court can sentence an offender for a Commonwealth offence, the sentencing factors and penalty types are different because the Commonwealth legislation applies. For example, a Commonwealth offender can be sentenced to an intensive correction order or to community service, but cannot be sentenced to probation, a suspended sentence, or imprisonment with parole. A Queensland court sentencing an offender for a Commonwealth offence may:

1. Dismiss the charge (no conviction recorded);
2. Impose a bond without a conviction recorded – a person must give security with or without sureties that he or she will be on good behaviour for up to 3 years. This is similar to Queensland's **good behaviour bond/recognisance**; however, a court may also include other conditions such as supervision by a probation officer not exceeding 2 years;

3. Impose conditional release with a conviction recorded (similar to a bond without a conviction; however, a conviction **must** be recorded and the good behaviour period can be up to 5 years);
4. Impose a fine, a community service order, or an intensive correction order — for all of these, a court **must** record a conviction;
5. Sentence the person to imprisonment:
 - a) For imprisonment of 3 years or less:
 - i. a court can impose a release on a ‘recognizance release order’ (similar to a suspended sentence) with immediate release or release after part of the sentence is served. Upon release, the person must give security with or without sureties that he or she will be of good behaviour for up to 3 years. It may also be subject to conditions such as supervision by a corrective services officer for no more than 2 years; or
 - ii. a court can instead order that the person serve the full period in custody (for sentences of 6 months or less, the court is not required to make a recognizance release order; for sentences of over 6 months up to and including 3 years, a court may decline to make a recognizance release order on the basis that such an order is not appropriate in the circumstances).
 - b) For imprisonment over 3 years: a court can fix a non-parole period, which is the minimum time to be served before the Commonwealth Attorney-General decides whether to make or refuse to make a parole order.⁶⁵

A court can also decline to fix a non-parole period, which means the person must serve the full term in custody, if such an order is not appropriate.

The sentencing factors a Queensland court must take into account for Commonwealth offence are slightly different from the sentencing factors for a state offence.

The sentencing factors include:

- the nature and circumstances of the offence;
- other offences (if any) that are required or permitted to be taken into account;
- the course of conduct (where the offence is part of a series of criminal acts);
- the offender’s circumstances;
- the victim’s circumstances, a victim impact statement from them if they suffered harm, and any injury, loss, or damage caused by the offence;
- any remorse shown by the offender, if the offender has entered a plea of guilty and/or cooperated with law enforcement agencies;
- personal and general deterrence;
- the offender’s prospects of rehabilitation; and
- any effect that a sentence may have on the offender’s family or dependants.⁶⁶

Further information

Queensland Sentencing Advisory Council

Visit the Council's website to find out about sentencing in Queensland, sentencing reviews the Council is conducting at the Attorney-General's request, the Sentencing Matters podcast, teaching resources, Sentencing Spotlights on certain offences, and details of sentencing events.

www.sentencingcouncil.qld.gov.au

Queensland Courts

Visit the Queensland Courts website for the daily court lists, courthouse contacts, and information about going to court.

www.courts.qld.gov.au/

Legal Aid Queensland

Visit Legal Aid Queensland's website to help you understand your legal rights and options, what to do if you have been charged with an offence, and how to get legal help.

www.legalaid.qld.gov.au

Supreme Court Library Queensland

Visit the Supreme Court Library's website for decisions from Queensland Courts and Tribunals, judicial papers and profiles, and legal events.

www.sclqld.org.au

Endnotes

- ¹ *Constitution Act 1867* (Qld) s 2; Queensland, Department of the Premier and Cabinet, *The Queensland Legislation Handbook: Governing Queensland* (5th ed, 2014) 1.3–1.4.1.
- ² *Ibid* 1.4.3–1.5.2.
- ³ *R v Dunn* [1994] QCA 147, 7-8 and see *R v Ganeshalingham* [2018] QCA 34, 7 citing *R v Goodger* [2009] QCA 377 and *R v Neumann; Ex parte Attorney-General* [2007] 1 Qd R 53.
- ⁴ *Criminal Code Act 1899* (Qld) Sch 1 ('*Criminal Code*') s 3. See also Heather Douglas, Malcolm Barrett and Emma Higgins, *Criminal Process in Queensland* (2nd ed, 2017) 112–120.
- ⁵ *Justices Act 1886* (Qld) s 52; while 12 months is the general rule, exceptions to this timeframe apply for many specific offences.
- ⁶ Queensland Courts, www.courts.qld.gov.au/courts/magistrates-court/what-happens-at-magistrates-court
- ⁷ See www.courts.qld.gov.au/courts/magistrates-court/about-the-magistrates-court
- ⁸ An exception to this is that in some circumstances a Justice of the Peace (JP) can hear matters. For example, the Remote Justices of the Peace (Magistrates Court) Program allows Justices of the Peace to constitute a Magistrates Court in the absence of a magistrate in discrete Queensland communities. Under the program, remote JPs can hear and determine charges for simple or regulatory offences, or indictable offences that can be dealt with summarily, where a defendant enters a guilty plea. To learn more about the program visit the Queensland Courts website at www.courts.qld.gov.au
- ⁹ *Criminal Code* (Qld) ss 552A - 552BB.
- ¹⁰ See www.courts.qld.gov.au/courts/district-court/about-the-district-court
- ¹¹ See www.courts.qld.gov.au/courts/supreme-court/about-the-supreme-court
- ¹² See www.courts.qld.gov.au/courts/childrens-court
- ¹³ *Youth Justice Act 1992* (Qld) Schedule 4 defines a supreme court offence as 'an offence for which the District Court does not have jurisdiction to try an adult because of the *District Court of Queensland Act 1967*, section 61'.
- ¹⁴ Prior to 12 February 2018, a 17-year-old who committed an offence was regarded by the criminal justice system an adult under Queensland legislation.
- ¹⁵ See www.courts.qld.gov.au/courts/murri-court
- ¹⁶ See www.courts.qld.gov.au/courts/domestic-and-family-violence-court
- ¹⁷ See www.courts.qld.gov.au/courts/drug-court
- ¹⁸ *Penalties and Sentences Act 1992* (Qld) s 151N.
- ¹⁹ *Ibid* s 151E(1)(b)(iv)
- ²⁰ *Ibid* s 151J.
- ²¹ *Mental Health Act 2016* (Qld) ch 16 pt 1 div 5.
- ²² *Ibid* ss 116-118.
- ²³ *Ibid* s 172.
- ²⁴ See www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home
- ²⁵ See www.fedcourt.gov.au/about/jurisdiction
- ²⁶ See www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/about-fcc
- ²⁷ See www.hcourt.gov.au/about/role-of-the-high-court
- ²⁸ *Lowe v The Queen* (1984) 154 CLR 606, 609 (Gibbs CJ), 610–11 (Mason J); *Hili v The Queen* (2010) 242 CLR 520, 535 [49] (French CJ and Gummow, Hayne, Crennan, Kiefel, Bell JJ); and *Green v The Queen* (2011) 244 CLR 462, 472–3 [28] (French CJ, Crennan and Kiefel JJ).
- ²⁹ *R v De Simoni* (1981) 147 CLR 383, 289 (Gibbs CJ, Mason and Murphy JJ agreeing).
- ³⁰ *Penalties and Sentences Act 1992* (Qld) s 9(2)(i).
- ³¹ *Corrective Services Act 2006* (Qld) s 181.
- ³² *Penalties and Sentences Act 1992* (Qld) pt 10.
- ³³ Australian Law Reform Commission, *Same Crime, Same Time: Sentencing Federal Offenders, Report 103* (2006) 538-9.
- ³⁴ See for example, s 78(3)(b) - (e), (k).
- ³⁵ *Penalties and Sentences Act 1992* (Qld) s 9(4).
- ³⁶ *Ibid* pt 9A.
- ³⁷ *Ibid* s 161A; *Corrective Services Act 2006* (Qld) s 182.
- ³⁸ *Penalties and Sentences Act 1992* (Qld) ss 161B(3) - (4).
- ³⁹ *Ibid* s 155.
- ⁴⁰ *Ibid* ss 156 and 156(A).
- ⁴¹ *Ibid* s 159A.
- ⁴² *Ibid* s 12(2).
- ⁴³ *Ibid* s 93.

- ⁴⁴ Ibid s 94.
- ⁴⁵ Ibid ss 100 - 103.
- ⁴⁶ Ibid pt 5A.
- ⁴⁷ Ibid pt 6.
- ⁴⁸ Ibid pt 8.
- ⁴⁹ Ibid s 160B.
- ⁵⁰ Ibid s 160C.
- ⁵¹ *Corrective Services Act 2006* (Qld) s 184.
- ⁵² *Penalties and Sentences Act 1992* (Qld) pt 9A.
- ⁵³ Ibid pt 3 div 4.
- ⁵⁴ See *Transport Operations (Road Use Management) Act 1995* (Qld) ss 78, 86; *Police Powers and Responsibilities Act 2000* (Qld) s 754(3).
- ⁵⁵ *Penalties and Sentences Act 1992* (Qld) pt 3A.
- ⁵⁶ Ibid pt 3B.
- ⁵⁷ Ibid pt 9D div 3 subdiv 1.
- ⁵⁸ See www.qld.gov.au/law/sentencing-prisons-and-probation/sentencing-probation-and-parole/applying-for-parole
- ⁵⁹ *Corrective Services Act 2006* (Qld) s 200.
- ⁶⁰ *Justices Act 1886* (Qld) s 222.
- ⁶¹ *Criminal Code* (Qld) s 668D for an offender, s 669A for the Attorney-General.
- ⁶² *House v The King* (1936) 55 CLR 499 (Dixon, Evatt and McTiernan JJ).
- ⁶³ *Judiciary Act 1903* (Cth) s 35A.
- ⁶⁴ *Criminal Code* (Qld) s 672A.
- ⁶⁵ See *Crimes Act 1914* (Cth) ss 4B, 4D, 19B, 19AC, 19AD, 20, 20AB. See also the summary table contained in Commonwealth Director of Public Prosecutions, *Sentencing of Federal Offenders in Australia: A Guide for Practitioners* (2018) 73–6.
- ⁶⁶ *Crimes Act 1914* (Cth) s 16A(2).

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