About the Queensland Sentencing Guide

The *Queensland Sentencing Guide* explains how Queensland courts sentence adult offenders.

This guide does not explore how courts sentence children and young people.

Children are sentenced under different legislation, namely the *Youth Justice Act 1992* (Qld). The Council intends to release a separate guide on the sentencing of children and young people in 2021.

The focus of this guide is on sentencing undertaken by Queensland courts.

While some of what is described applies generally in other Australian states and territories, there are significant differences in the detail.
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What is sentencing?

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
- sentences imposed for similar cases committed in similar circumstances.

Responsibility for sentencing

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

Parliament makes written laws (legislation) that guide sentencing, including laws about what types of sentencing orders courts can make and the principles that courts must apply in deciding the sentence.

Parliament also makes laws about what conduct constitutes an offence and the maximum penalty courts can impose (and, in some cases, the minimum penalty or mandatory penalty that applies).

Courts interpret these laws and decide the sentence to impose on a person found guilty of an offence in an individual case.

Sentencing decisions made by the courts form part of the law (also known as case law, or common law).

Government departments and agencies (or Executive Government) administer or give effect to sentences that have been imposed.

For example, Queensland Corrective Services (QCS) manages adult offenders both in prison and in the community. Decisions about parole after the person has been sentenced are made by the Parole Board Queensland.

The sources of sentencing law

There are 2 sources of sentencing law in Queensland:

Statute law — legislation made by Parliament. Statute law defines what behaviour constitutes an offence, establishes penalties, 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

The Queensland Parliament makes laws for the peace, welfare and good government of Queensland. Only Parliament can make and change laws, subject to the limits set out in the Commonwealth Constitution.

In practice, the 3 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 Australian 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.

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 set the highest sentence (known as the **maximum penalty**) that courts may impose on a person convicted of an offence.

In some cases, these Acts 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 penalties available to the court (for example, fines, probation, community service orders and imprisonment) and the purposes, principles, and factors that courts must consider when deciding an appropriate sentence.

Parliament of Australia

The Parliament of Australia (also known as the Commonwealth Parliament or Federal Parliament) makes national legislation, including for criminal matters.

Queensland courts can hear cases and impose sentences for some Commonwealth (federal) offences, such as terrorism offences and drug importation.

There are differences between the sentencing law for Commonwealth offences and for Queensland offences.

For Commonwealth offences, national laws define the nature of the offence, the maximum penalty and the available sentencing options. Such Acts include the **Crimes Act 1914** (Cth) and the **Criminal Code Act 1995** (Cth).

See **Commonwealth offences** for more information.
Courts

Case law (or common law) is made by the courts. It includes past decisions on sentencing, and on how to interpret or apply legislation.

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 a mental disorder short of insanity may lessen the moral culpability of a person and so reduce the relevance of the sentencing principles of general and personal deterrence when sentencing. All Queensland courts are guided by this when considering what sentence may be appropriate for a person with a mental illness or impairment.

Case law can be overruled by later decisions of courts of the same or higher authority, or by Parliament passing legislation.

Knowing what sentences have been imposed in cases involving the same or a similar offence, committed in circumstances that may be similar or different to the current offence, also helps judges and magistrates determine an appropriate sentence.

While no 2 cases are alike, consistency, that is, the principle that like offenders should receive similar punishment for like offences, is fundamentally important to sentencing as it promotes public confidence in sentencing courts. However, because each case is unique, the law promotes consistency of approach rather than requiring the same sentence to be imposed in every case.

When sentencing an offender for an offence, the court may consider other sentences that have been given for that offence in other cases and must also consider the purposes, principles and factors set out in legislation and in case law.

The prosecutor and defence lawyer will typically present the judge or magistrate with relevant examples of sentences given in other similar cases and may suggest to the court what they think the appropriate sentence or sentencing range is. However, the judge or magistrate makes the decision.

Courts and jurisdiction

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 3 tiers of courts for the sentencing of adults:

- Magistrates Courts
- District Court
- Supreme Court.

These courts hear both criminal and civil cases; however, this guide is focused on criminal matters only.
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 has pleaded 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 2 types of offences — regulatory offences and criminal offences.

**Regulatory offences** 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 in Magistrates Courts.

**Criminal offences** comprise summary offences (also known as simple offences), misdemeanours, and crimes.

- **Summary offences** are generally minor offences that must be prosecuted within 12 months of the matter arising and are usually heard in a Magistrates Court.
  
  Examples include driving offences, public nuisance offences, trespassing, and minor drug offences.

  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.

  Generally, crimes are more serious than misdemeanours. Some indictable offences can or must be dealt with summarily, which means they are dealt with by a Magistrates Court, rather than by a higher court.

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**Categories of offences in Queensland**

![Diagram showing categories of offences in Queensland]

**Magistrates Courts**

Magistrates Courts are the first level of the Queensland court system and deal with the vast majority of sentencing events (approximately 95 per cent of cases). Most criminal cases are first heard in these courts in some form. Magistrates Courts can hear cases in about 130 locations across 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.

A magistrate can make decisions about whether:

- a person is to be released on bail or remanded in custody;
- for an offence that must be dealt with in the Magistrates Court or that is proceeding summarily — whether the person is guilty, and the penalty.
Unlike trials in the Supreme and District Courts, trials in Magistrates Courts are heard by a magistrate without a jury. In most cases, defendants charged with an offence plead guilty meaning there is no need for a trial.

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.

Some indictable offences must be dealt with summarily.

As a general guide, indictable offences that must 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 decides to proceed this way, or if the defendant decides not to have a jury trial.\(^\text{10}\)

The maximum sentence that can be imposed in the 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 magistrate must not deal with an indictable offence if satisfied that if convicted, the defendant may not be adequately punished on summary conviction because of the nature or seriousness of the offence, or any other relevant consideration.

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 Queensland court 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 from Magistrates Courts.

The District Court sits in 32 locations across Queensland, with some judges travelling to regional and remote locations.\(^\text{11}\)

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.

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**What is a jury trial?**

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 if the defendant is convicted.

If a criminal trial is held without a jury, the judge decides whether the 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.\(^\text{12}\)

The Supreme Court trial division sits in 11 regional courthouses and, as with the District Court, judges travel to hear matters in regional and remote areas.

Matters in the trial division are presided over by a judge and the process for a 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 the most 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** on page 30.
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.

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

- the Childrens Court, a special court at the Magistrates Court level
- the Childrens Court of Queensland (CCQ), a special court at the District Court level
- the Supreme Court, dealing with offences categorised as ‘Supreme Court offences’ under the Youth Justice Act 1992 (Qld).

Childrens Court (Magistrates Court)

The Childrens Court deals with summary offences and less serious offences.

All Childrens Court proceedings are heard in a closed court. This means only people directly involved in the case can be present and no information identifying a child defendant can be published.

In addition to hearing criminal cases, the Childrens Court can hear child protection applications and adoption matters.

A Specialist High Risk Youth Court (HRYC) commenced in Townsville in February 2017. 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.

Childrens Court of Queensland (District Court)

The Childrens Court of Queensland (CCQ) deals with all children charged with serious criminal offences.

Matters in the CCQ are usually heard in an open court; however, the judge may order the court be closed. 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. The rules regarding open court, identification, and publication are like those in the CCQ.

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.

Cultural and support services aim to assist Aboriginal and Torres Strait Islander defendants 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, including 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.

Murri Courts are located in the Magistrates and Childrens Courts in 15 locations. In some locations, Australian South Sea Islander defendants are able to participate in Murri Court.

Visit the Queensland Sentencing Advisory Council’s website to learn more about the Murri Court as part of the Council’s Doing Justice Differently video series.

www.sentencingcouncil.qld.gov.au
Specialist Domestic and Family Violence Court

Specialist Domestic and Family Violence (DFV) Courts generally deal exclusively with all civil and criminal DFV matters. Specialist DFV courts currently operate at Southport,Beenleigh, Townsville, Mount Isa and Palm Island.15

Specialist DFV Courts offer:
• a dedicated magistrate with expertise in DFV issues
• a court coordinator to oversee court operations, including stakeholder engagement
• a specialist registry 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
• specialist DFV registry training.

In addition to the establishment of DFV Courts, Queensland Courts have implemented statewide specialist court responses for the way DFV proceedings are dealt with.

Drug and Alcohol Court

The Queensland Drug and Alcohol Court is a specialist court operating in Brisbane. It provides an intensive and targeted response to adults with a severe substance use disorder.16

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.

The Drug and Alcohol Court uses a special sentencing order called a drug and alcohol treatment order.17 The treatment order is a prison sentence that is suspended while the offender participates in intensive rehabilitation programs under supervision in the community.

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 an Aboriginal and Torres Strait Islander court liaison officer.

Offenders who breach the conditions of their drug treatment order return to the Drug and Alcohol Court.

The Court can impose different types of consequences, including ordering the person to serve short periods in prison. Repeated breaches can lead to the order being revoked and the person being re-sentenced or ordered to serve the whole or part of the suspended sentence of imprisonment.

Mental Health Court

The Mental Health Court is a specialist court which decides the state of mind of people charged with criminal offences.

A criminal case can be referred to the Mental Health Court if it’s believed that the defendant is or was mentally ill or has an intellectual disability. 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.18
The Court is constituted by a Supreme Court judge and is advised by 2 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.19

The Court investigates the connection between a person’s mental illness and the alleged offences.

It considers a wide range of material, including reports by police and experts, advice from the assisting psychiatrists, and submissions from the Office of the Director of Public Prosecutions, the Director of Mental Health, and the person’s legal representatives.

The Court 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.

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 Australia20
• Federal Court of Australia21
• Federal Circuit Court of Australia.22

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 Australian courts.

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
• hear and decide applications for special leave and appeals, from federal, state, and territory courts.23

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 on page 30.

The High Court is based in Canberra. Registry services for the Court in Brisbane are provided by staff of the Federal Court of Australia.
Sentencing process in Queensland

A sentence can only be imposed when a person has been found guilty of an offence.

An accused person can be found guilty of an offence in 2 ways:
- they plead guilty to the offence charged, or
- is found guilty following a trial.

To be found guilty at trial, the magistrate, judge (for judge-alone trials), or jury must be satisfied beyond reasonable doubt that the person is guilty of the offence as charged.

Sentencing hearing

When a person has been found guilty of an offence, the court holds a sentencing hearing. At the sentencing hearing the State (represented by the prosecutor) and the offender (represented by their defence lawyer or themselves) each present important information to help the judge or magistrate determine the appropriate sentence.

The victim can participate through the making of a victim impact statement and may also attend the sentencing hearing, but does not have to.

In Queensland the sentencing hearing is usually held immediately after the person has pleaded guilty or been found guilty, but it can also take place at a later date.

Sentencing hearings for the sentencing of adult offenders are usually held in open court which means that anyone can attend (including the media), unless the judge or magistrate orders the court to be closed.

There are some circumstances where the court must be closed. These include cases where a person has agreed to provide assistance to law enforcement authorities if oral submissions are to be made, or evidence is to be brought before the court to support a reduction in the person’s sentence (see Cooperation with law enforcement on page 18).

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
- submissions on the appropriate sentence or range of sentences.

Role of the defence

During the sentencing hearing, the defence provides the judge or magistrate with:
- information about the offender’s personal circumstances and any 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
- submissions on the appropriate sentence or range of sentences.

An offender’s role in the sentencing hearing is to listen to the court’s decision and to agree or disagree to any orders that require consent (such as probation).

If the offender does not agree to an order that requires them to consent to it, the judge or magistrate will generally either:
- briefly adjourn the matter (‘stand it down’) to allow the defence lawyer time to talk with their client
- make another sentencing order.
Role of the judge or magistrate

The information given in a sentencing hearing helps the judge or magistrate to decide on an appropriate sentence.

During the sentencing hearing the judge or magistrate can ask questions to seek information and clarify issues.

How judges and magistrates determine a sentence is a complex process and is discussed in detail on page 15 in Deciding what sentence to impose.

The magistrate’s or judge’s reasons for their sentencing decision are called sentencing remarks.

In Queensland, these reasons are often delivered ex tempore — which means the magistrate or judge delivers them verbally at the end of the sentencing hearing, rather than preparing written reasons delivered at a later date.

Some sentencing remarks transcripts are published by the Supreme Court Library Queensland and are available on their website.

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.
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 crime 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 the crime has had including any physical, social, financial, or psychological effects.

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
- financial loss and how this affects the victim
- 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 how to make a victim impact statement:

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.

Learn more at:
Victim Assist Queensland
www.qld.gov.au/victims
Deciding what sentence to impose

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.

This process of reaching a sentence in an individual case by balancing all of the relevant factors is known as instinctive synthesis.

Sentencing purposes

The only purposes under Queensland law for which an adult offender can be sentenced are:

- **punishment** — to punish the offender to an extent or in a way that is just in all the circumstances
- **rehabilitation** — to create conditions that help the offender to be rehabilitated
- **deterrence** — to deter the offender (known as personal or specific deterrence) or other people (known as general deterrence) from committing the same or a similar offence
- **denunciation** — to denounce or condemn the offender’s behaviour (that is, make it clear that the community strongly disapproves of what the offender did)
- **community protection** — to protect the Queensland community from the offender
- 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.

In addition to these purposes, there are sentencing principles and factors that apply to the sentencing of adults.

Sentencing factors

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

- the maximum and any minimum penalty for the offence (see Maximum penalty and Mandatory penalties pages 19 and 20)
- 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 Culpability page 17)
- whether — and how early — the offender pleaded guilty or indicated they would plead guilty (see Guilty plea page 18)
- 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 aggravating or mitigating factors relating to the offender (see Mitigating and aggravating factors page 17)
- how common/prevalent the offence is
- how much help the offender gave to law enforcement agencies, such as police, in investigating the offence or other offences (see Cooperation with law enforcement page 18)
- time already spent in custody by the offender while waiting to be sentenced (see Remand page 22)
- sentences imposed on or served by the offender in another state or territory for an offence committed at, or about the same time, as the offence the person is being sentenced for in Queensland, or sentences already imposed on the offender that have not been served
• if the offender is already on a community-based sentencing order, whether they have followed the conditions of the order and have done what they agreed to do
• 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 person, any submissions by a representative of a Community Justice Group in the offender’s community
• any other relevant circumstance.

By law, some factors 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 purposes, principles and factors set out in legislation, 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 means that the sentence must be proportionate to the circumstances of the offence and seriousness of the offending (also incorporated within the sentencing purpose of just punishment as discussed above).

Sentencing adults in Queensland
Parity means that co-offenders who are jointly involved in the same criminal conduct or activity should receive a similar penalty if the offence and circumstances are similar. However, differences in age, personal and criminal history, and culpability, may justify a different sentence.

Parity is an aspect of ‘equal justice’ (that is, courts should treat same or similar offending alike and different offending, differently). Totality means that when there is more than one sentence, the total sentence should reflect the overall criminality of the offending.

Totality 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 was 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.

A judge or magistrate may only consider the person’s actions or omissions before or after an offence that may have been criminal but were not charged as contextual when sentencing (reasons for not charging may include difficulty framing charges or lack of forensic evidence).

Culpability

Culpability is the extent to which an offender is responsible (blameworthy) for an offence and for the harm he or she caused. Generally, the more culpable a person is, 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 factors such as whether the offence was:

- committed by a person in complete control of his or her own actions (or for example, 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
- provoked or unprovoked
- planned in advance or committed on the spur of the moment
- committed while in possession of a weapon.

While differences in culpability are relevant to sentencing, they are also reflected in the offences that people may be charged with or convicted of. Using murder and manslaughter as an example:

- if a person has killed the victim with the intention to kill or to cause serious harm (grievous bodily harm), this is murder
- if the person was suffering from a major mental disorder (short of insanity) when they killed the victim, 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 previous good character of the person
• the person is young and immature
• the person has demonstrated remorse (they feel guilty about and sorry for what they have done) and/or evidence of rehabilitation
• the background of the person (for example, the person may have had an abusive, neglectful and traumatic childhood)
• whether the offender pleaded guilty or had an intention to plead guilty, and the stage in the proceedings that this occurred (see Guilty plea below on this page).

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 their child)
• the vulnerability of the victim (for example, a young child or a person with a disability)
• planning the crime (called premeditation)
• using a weapon, including a pretend weapon
• committing the offence as part of a group (in company)
• the degree of any violence and harm caused
• the offence was committed while on bail or while the person was subject to a court order.

Guilty plea

In Queensland, the court must take a person’s guilty plea into account and may reduce the sentence it would have given, had the person not pleaded guilty.27

The reduction given will vary depending on the timing of the plea in proceedings. For example, if a person pleads guilty or indicates they intend to plead guilty immediately after being arrested, it will likely result in a greater reduction than if this happens just before the trial.

Generally, the more serious the offence and/or the more likely a person was to be convicted, the less significance a guilty plea will have on the sentence. However, sometimes a case is so serious it calls for the maximum penalty, despite the offender pleading guilty.28

There are 3 important reasons why a guilty plea is accepted as justifying a lower sentence:
1. it may demonstrate the person is genuinely sorry about what they have done
2. its practical value by helping the criminal justice system operate more efficiently (for example, saving the community costs by not going to trial)
3. it means victims are spared having to give evidence at trial.

This is particularly relevant to victims of sexual assaults, crimes involving children and elderly victims.29

In Queensland there is no mathematical formula for determining the discount given for a guilty plea. While there is a general practice of recognising a guilty plea by setting the parole release or eligibility date after serving one-third of the term of imprisonment, this is not a hard and fast rule.30 Sometimes a court will recognise the guilty plea by reducing the head sentence instead.

A court cannot increase a sentence because the person pleaded not guilty. It is a fundamental principle of the Australian criminal justice system that a person charged with a criminal offence is entitled to plead not guilty and defend themselves and to have the case proved against them.31

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.32

There are procedural requirements that apply if a sentence is to be reduced because the offender has agreed to cooperate with law enforcement agencies, such as police, in an investigation or where significant cooperation has already been provided.

These requirements aim to protect the safety of offenders who have cooperated, or agreed to cooperate, with law enforcement authorities and to encourage this cooperation.
Where cooperation is promised or given, parts of the sentencing hearing must be heard in closed court. This includes submissions about the person’s cooperation, comments by the judge or magistrate about the reduction of the sentence and what sentence would have been imposed had the person not cooperated.

Only specific people can remain in court after it is closed — 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 most severe penalty that can be given to a person found guilty of an 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. This means a court cannot impose a penalty higher than the maximum penalty set for an offence.

Maximum penalties are set by Parliament in legislation and reflect Parliament’s views (and by extension, the community’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 the more serious offence of grievous bodily harm it is 14 years’ imprisonment.

Maximum penalties are only given for the worst or most serious examples of an offence.

In Queensland, the highest maximum penalty available is a life sentence.

Maximum penalties serve a number of important purposes in sentencing. They:

- indicate the views of Parliament (and the community) and provide guidance to the judiciary about the seriousness of an offence compared to other criminal offences
- establish 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 life sentence is the most severe penalty that can be ordered by a court.

Several serious offences under Queensland legislation carry a life sentence as the maximum penalty, including murder, attempted murder, manslaughter, rape, armed robbery and arson.

Some of those offences have a mandatory penalty of life imprisonment (see **Mandatory penalties** on page 20). This means the judge must give this sentence for the offence.

For example, the judge must sentence adults convicted of murder and repeat serious child sex offences to life imprisonment unless an indefinite sentence is imposed instead (see **Indefinite sentence** on page 26).

For adults convicted of other offences with a maximum penalty of life imprisonment, the judge decides the most appropriate sentence based on the individual circumstances of the case. Those circumstances include:

- 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 they are likely to commit similar offences in future and whether the consequences to other people if they reoffend may be particularly harmful
- whether the punishment fits the crime and is proportionate to the offending
- the purposes of sentencing — deterrence, community protection, punishment, denunciation, and rehabilitation.

When a person is sentenced to life imprisonment, the minimum time they must spend in prison is set by legislation. This is called the mandatory minimum non-parole period and it cannot be reduced by the court.
• 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
• 15 years — any other life sentence imposed for another offence, for example rape.

Although a judge cannot reduce the non-parole period, they can increase it by setting a later parole eligibility date.

A prisoner is not eligible to be released on parole until they have served the mandatory non-parole period or longer period set by the court.

Being eligible does not mean release on parole is guaranteed — it is a decision for the Parole Board Queensland (see Parole on page 29).

A person who has received a life sentence will remain on parole for the rest of their life.

This means the offender must comply with parole conditions for the rest of their life, and can be returned to prison at any time if parole is suspended or cancelled by the Parole Board Queensland.

The Appendix on page 32 explores some examples of Queensland offences and the maximum penalties that apply under the:
• Criminal Code (Qld)
• Drugs Misuse Act 1986 (Qld)
• Transport Operations (Road Use Management) Act 1995 (Qld).

Mandatory penalties

A mandatory penalty is a fixed penalty set by Parliament for committing a criminal offence, giving the court no discretion to impose a different or lower sentence.\(^\text{35}\)

The most common type of mandatory penalty is one which sets a minimum sentence but allows the court to impose a harsher penalty where it considers this appropriate.

In Queensland there are several different forms of mandatory penalties, such as where:

• both the penalty type and sentence length are mandatory (for example, mandatory life imprisonment for murder (see Life sentence on page 19) and mandatory licence disqualification periods for certain offences under the Transport Operations (Road Use Management) Act 1995 (Qld))\(^\text{36}\)
• the penalty type is mandatory, but not the amount. For example, if a person is convicted of wounding with a circumstance of aggravation — that it was committed in a public place while intoxicated — then a community service order is mandatory (in addition to any other penalty).

However, the court can still decide how many hours, or the amount, of community work the person must perform.

In this case, the mandatory requirement does not apply if the court is satisfied that, because of any physical, intellectual or psychiatric disability, the offender is not capable of complying with the order.\(^\text{37}\)

• the non-parole period for a term of imprisonment is mandatory (for example, a person convicted of a serious violent offence (SVO) or of unlawful striking causing death and sentenced to imprisonment, must serve 80 per cent of the sentence imposed or 15 years, whichever is less) before being able to apply for parole\(^\text{38}\)

• it is mandatory for a court to order prison sentences in certain circumstances to be served cumulatively (see Cumulative and concurrent sentences on page 21).\(^\text{39}\)
Serious violent offence (SVO) scheme

The SVO scheme applies to certain offences listed in the Penalties and Sentences Act 1992 (Qld) (called ‘prescribed offences’), which are:

- violent offences (such as manslaughter, grievous bodily harm, torture, robbery, dangerous operation of a vehicle, serious assault, 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)
- drug offences (such as trafficking, supplying or producing a dangerous drug).

There are 2 ways the SVO scheme can be applied. One is mandatory and the other is discretionary.

An offender sentenced to 10 years or more for a prescribed offence 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.

However, judges also have the discretion to make an SVO declaration when the sentence of imprisonment is either:

- 5 years or more but less than 10 years for a prescribed offence, or
- of any length, and the offender was 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.

Presumptive penalties

In contrast to mandatory penalties, there are also sentencing principles in Queensland that impact the type of penalty to be imposed that are presumptive rather than mandatory.

They presume the court will sentence the person to a particular type of penalty, but still allow for the exercise of judicial discretion.

For example, in sentencing an offender for any Queensland offence of a sexual nature committed in relation to a child under 16 years or a child exploitation material offence, there is a principle that requires the offender to be ordered to serve an actual term of imprisonment, unless there are exceptional circumstances.

This means that the sentencing judge or magistrate can order a different penalty if there are special reasons (called exceptional circumstances). An example of exceptional circumstances might be that the offender had no criminal history, entered an early plea of guilty, was elderly with health issues and displayed genuine remorse, combined with extremely low level offending.

Cumulative and concurrent sentences

When a court sentences a person to imprisonment for more than one offence, there is a presumption in Queensland that the prison sentences will be served concurrently (at the same time), unless a mandatory penalty applies or the court orders otherwise.

A court also has the power to order that the sentences be served cumulatively (one after each other).

In deciding what order to make, the court must consider the principle of totality to ensure the sentence is not a crushing one (see Sentencing principles on page 16).

When sentences are to be served concurrently, and one is longer, the shorter sentence (or sentences) is incorporated into the longest one (also called the head sentence).

EXAMPLE:

Brittany has been given a 2-year prison sentence for wounding and a 6-month prison sentence for common assault.

The judge decides that she will serve these sentences concurrently (at the same time), so Brittany is sentenced to prison for 2 years.

In some cases the court has no discretion and must order the sentences to be served cumulatively.
For example, where the offender has been convicted of certain offences listed in Schedule 1 of the *Penalties and Sentences Act 1992* (Qld) and the offender committed the offence while:

- in prison serving a term of imprisonment
- on parole or other post-prison community-based release
- on a leave of absence from prison
- unlawfully at large after escaping from lawful custody under a sentence of imprisonment.45 (See Mandatory penalties on page 20).

Remand

When a person is charged with an offence, if they are denied bail (or do not apply for it) they will be held in prison while waiting for their trial or sentence. They are then ‘remanded in custody’.

Depending on the charge and complexity of the matter, sometimes a person can be remanded in custody for many months or even years.

If the person is sentenced to imprisonment, the time they have spent in custody will often be taken into account as time already served (also known as pre-sentence custody).46

This is a common 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.

**EXAMPLE:**

Tyrell has been given a 2-year prison sentence for grievous bodily harm (GBH), which he committed while on parole for a previous sentence of 12 months’ imprisonment for robbery.

Tyrell had 3 months left on his sentence when he committed the offence of GBH. As GBH is a listed Schedule 1 offence, the judge must order it be served cumulatively to the prior sentence, which means Tyrell must serve 2 years on top of the remaining 3 months left on his sentence at the time of committing the new offence.

Recording a conviction

When sentencing a person, the court must decide whether to record a conviction. This is a separate decision from deciding what sentence to give.

A court must record a conviction when imposing certain types of sentences or situations, such as:

- imprisonment (including a suspended sentence of imprisonment)
- intensive correction order
- resentencing an offender after revoking a breached community service or probation order.

The court may record a conviction when imposing other types of sentences, such as:

- certain types of recognisance (good behaviour bond)
- a fine
- a probation order
- a community service order
- a graffiti removal order.

The court cannot record a conviction for some orders:

- absolute discharge
- other types of conditional discharge (release on a recognisance/good behaviour bond).

When deciding whether to record a conviction, the court must look at all the circumstances of the case, including:

- the person’s character and age
- the nature of the offence
- whether recording a conviction will have any impact on the person’s
  - economic or social wellbeing or
  - chances of finding employment.47

A conviction forms part of a person’s criminal record.

Generally, a court must treat each relevant prior recorded conviction as an aggravating factor when sentencing.48
A criminal record can have negative effects on a person’s future prospects, even after they have completed their sentence. A conviction can be:

- considered by police when investigating other crimes
- relied on in any future case against the offender
- included in police record checks, limiting an offender’s eligibility for
  - international travel
  - certain jobs (for example, as a teacher) or volunteer roles
  - insurance policies
  - various types of licence (for example, a taxi driver licence).

**Penalty types**

Penalties available in Queensland range from less severe penalties (like good behaviour bonds) to imprisonment.

Different sentencing options are available for adults and children (persons aged 10-17 at the time of the offence). The information in this guide only relates to the sentencing of adults.

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 2 broad types of sentencing orders:

- non-custodial orders, that do not involve imprisonment and are served in the community
- custodial orders that involve a sentence of imprisonment.

**Non-custodial sentencing orders**

**Absolute discharge**

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

**Recognisance (good behaviour bond)**

A recognisance (also called ‘good behaviour bond’) is a formal promise entered into before a court to perform an act.

For example, an offender may promise to be of good behaviour for a set period of time, appear before the court if called on to do so, or to pay an amount of money.

There are different types of good behaviour bonds. They are:

- **section 19 bonds:**
  A person is released by the court on the condition they agree to ‘be of good behaviour’ (to not break the law) for a set period (up to 3 years) and appear before the court for conviction and sentence if called on to do so during the period. Other conditions may be ordered, including attending a drug assessment and education session. No conviction is recorded.

- **bonds for property-related offences:**
  Under this order, a court can adjourn the sentencing of the offender following conviction for a period of up to 6 months and release the offender if they enter into a bond. This is on the condition they appear before the court to be sentenced at the time and place ordered by the court, or if called on before this time. The court can also set conditions that the offender return or restore stolen property or pay compensation for any damage they have caused. No conviction is recorded.

- **bond on summary conviction:**
  The offender is released on the condition that they keep the peace and be of good behaviour for a period of up to one year.

- **bond following conviction on indictment (by the District Court or Supreme Court):**
  This is the same as a bond on summary conviction but in this case, the order can be made in addition to, or instead of, any other sentence. The period of the order is decided by the court and is not limited to one year. The offender may be imprisoned until they enter into the bond.
• **general bond:** The person must agree to appear before the court to be sentenced at a future sitting of the court or if called on within the period set by the court, and must keep the peace and be of good behaviour. The court may also impose any additional conditions it considers appropriate.

These orders can be made ‘with or without sureties’. A **surety** is a person who agrees to guarantee the offender’s compliance with the order. The offender and anyone acting as a ‘surety’ has to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order.

**Fine**

A fine is an order to pay an amount of money within a certain period. The maximum fine depends on the type of offence and the court hearing the matter.

Maximum fines imposed for an offence are usually described as a number of penalty units.

The amount of a penalty unit is adjusted each financial year in line with inflation. For the financial year 1 July 2020 to 30 June 2021, one penalty unit is $133.45.

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 requires an offender not to break the law for a period of time and to meet other conditions set out in the order.

The order can be for a period of between 6 months and 3 years, and is served in the community with monitoring and supervision by a corrective services officer.

Probation can only be ordered if the person agrees to it and to comply with the requirements under the order.

When making a probation order the court must set mandatory conditions and can make additional conditions.

Mandatory conditions that the person must agree to are:

- to not break the law during the period of the order
- to participate in programs or counselling;
- to report to and receive visits from a corrective services officer as directed
- to tell a corrective services officer about any changes of address or employment within 2 business days
- to not leave, or stay out of Queensland without permission
- to comply with every reasonable direction of a corrective services officer.

The probation order may also include other conditions specific to the offender, such as drug testing, counselling or paying restitution.

The court can make a probation order with or without a conviction being recorded.

**Community service order**

A community service order requires a person to do unpaid community service for between 40 and 240 hours.

The community service must be completed within 12 months, or another period allowed by the court.

During the period of the order, the person must comply with reporting and other conditions including:

- to not break the law
- to regularly report to and receive visits from a corrective services officer as directed
- to perform community service in a satisfactory way as directed
- to tell a corrective services officer about any change of address or employment within 2 business days
- to not leave, or to stay out of Queensland without permission
- to comply with every reasonable direction of a corrective services officer.

The offender must agree to the order being made, however there are some offences for which community service is mandatory.

The court can make a community service order with or without a conviction being recorded.
Graffiti removal order
A graffiti removal order requires a person to complete unpaid work removing graffiti for up to 40 hours, usually within 12 months. The same types of conditions that apply to community service orders also apply to people who are subject to a graffiti removal order. This order is mandatory where the person is convicted of a graffiti offence, unless the court is satisfied that the person is not able to comply with the order because of a physical, intellectual or psychiatric disability. The court can make a graffiti removal order with or without a conviction being recorded.

Driver licence disqualification
A driver licence disqualification can be made for an offence connected in any way to the operation of a motor vehicle by the offender. A person may be disqualified from holding or obtaining a Queensland driver licence or from doing so for a specified period, and the court must be sure that a disqualification is in the interests of justice.

Custodial sentencing orders
These are orders that involve a period of imprisonment being imposed. Imprisonment is the most severe sentence in Queensland.

Rising of the court
A technical and temporary form of imprisonment, in which the person is required to remain in the courtroom until the court is adjourned.

Combined prison and probation order
A sentence of imprisonment of one year or less, immediately followed by a period of probation in the community for a minimum of 9 months and up to 3 years. The same type of conditions that apply to probation (see page 24) also apply here, although the requirements do not start until the offender is released from prison.

Intensive correction order
An intensive correction order is a sentence of imprisonment of one year or less ordered to be served in the community under supervision. The offender must comply with conditions including reporting twice a week 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 conditions of the order.

Suspended sentence of imprisonment
A suspended sentence is a term 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 up to 5 years. If the offender commits a further offence or offences punishable by imprisonment during the operational period of the suspended sentence, the court may extend the operational period, or order the offender to serve the whole or part of the suspended imprisonment. The court must order the offender to serve the whole of the suspended imprisonment unless it believes it would be unjust to do so.
Imprisonment

A sentence of imprisonment is an order that must be served in a correctional centre (a prison).

Different rules apply to the release of an offender on parole depending on the length of their sentence, the type of offence they are being sentenced for, and whether they have had a parole order cancelled.

Imprisonment with court-ordered parole:
If the sentence of imprisonment is for 3 years or less, and is not for a sexual or serious violent offence, the court must set the date on which the person will be released from prison on parole. This is called court ordered parole.

There are some exceptions to this requirement, including if the offender has had a court ordered parole order cancelled during their period of imprisonment, or if the person has at any time been convicted of a terrorism offence.

The date of release set by the court can be any day of the sentence — including the day the person is sentenced, meaning that the person is released directly to parole.

Unless there is an additional reason why the prisoner is in custody, or the Parole Board Queensland decides the person should not be released, the person will be released on their parole release date to serve the rest of their prison sentence in the community under supervision (see Parole on page 29).

Imprisonment with a parole eligibility date:
In cases where the court cannot set a parole release date (for example, because the person is being sentenced to imprisonment for more than 3 years, or for a sexual or serious violent offence), different rules apply.

The court may (or, in some cases, must) set a date on which the person being sentenced is eligible to apply for parole.

This is the earliest date on which a prisoner may be granted release on parole but release is not automatic.

The decision to release a prisoner on parole is made by the Parole Board Queensland after an application is made by the prisoner.

Sometimes the court can decide not to set an eligibility date. In these cases legislation states that, generally, a prisoner is eligible for parole after having served half of their head sentence.

In the case of offenders declared convicted of a serious violent offence (see discussion in Mandatory penalties on page 20), the person’s parole eligibility date is automatically set at the day after the person has served 80 per cent of their sentence for the offence, or 15 years, whichever is less.

If the Parole Board Queensland decides to release a prisoner in either scenario, the prisoner will serve the rest of the prison sentence in the community under supervision.

Indefinite sentence

An indefinite sentence is a special form of custodial order that has no fixed date for when the sentence will end.

The offender cannot apply for parole while the indefinite sentence is in place.

A court can only impose an indefinite sentence, instead of a sentence for a fixed term, for a ‘qualifying offence’ prescribed in legislation.

Qualifying offences are serious Criminal Code offences mostly relating to sexual offences, homicide offences and violent offences.

The court must also conclude that the offender is a serious danger to the community.

In deciding if the offender is a serious danger to the community, the court must consider:

• whether the nature of the offence is exceptional
• an offender’s background, age and character (including previous offending)
• any relevant medical, psychiatric, prison or other reports about the person
• the risk of serious harm to members of the community if the offender is not given an indefinite sentence
• the need to protect members of the community from that risk.
A judge imposing an indefinite sentence must specify the sentence they would have given had they not imposed an indefinite sentence (referred to as the ‘nominal 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 and sentence.

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.

**Combining sentencing orders**

The *Penalties and Sentences Act 1992* (Qld) allows for a number of sentencing orders to be combined. However, options for combining sentencing orders are more limited when a court is sentencing an offender for a single offence.

The most flexible sentencing option is a fine, which a court can order in addition to any other sentence imposed.\(^77\)

Other combined sentencing orders include a combined imprisonment and probation order (as noted on page 25, provided the term of imprisonment is not more than 12 months and is not suspended in whole or in part), and probation with a community service order.

Certain combinations are not allowed under legislation when sentencing an offender for a single offence:

- an intensive correction order (ICO) with a probation order of any length \(^78\)
- an order of suspended imprisonment with probation, a community service order or an ICO
- imprisonment of longer than 12 months with probation, \(^79\)

The courts have more flexibility when sentencing an offender for 2 or more offences.

When sentencing a person for multiple offences, the courts can combine orders which are compatible or at the very least, are not inconsistent with each other.

For example, a court can order a wholly suspended sentence at the same time as probation for other offences.

**Other orders and the offender levy**

There are other orders a court can make in addition to sentence. Generally, a court can make these orders whether or not it records a conviction.\(^80\)

**Additional orders**

**Restitution or compensation order**

This is an order to pay for property taken or damaged, or to compensate for loss or damage to property, or for any personal injury suffered by a person.\(^81\) 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 or from doing so for a specified period.

Some traffic-related offences carry a mandatory minimum disqualification period that the court must impose.\(^82\)

This order is different from the driver licence disqualification order as a sentencing order (see *Non-custodial orders* on page 23).

**Non-contact order**

A non-contact order is an order that stops an offender from:

- contacting the victim or another person who was with the victim when the offence was committed, and/or
- going to a particular place, or within a particular distance of that place.\(^83\)

This order can only be made for a serious (indictable) offence committed against a person. The court may make the order if satisfied that unless the order is made, there is an unacceptable risk that the offender will injure, threaten or harass the victim or other person who was with the victim, or damage their property.

This order can be made 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 a non-contact order cannot be made if an order may be made under that Act.

**Banning order**

A banning order is an order that stops a person from entering or remaining in or at:

- licensed premises
- an area that is close to licensed premises (for example, a stated distance from licensed premises, a street near a licensed premises or a safe night precinct)
- an event at which alcohol will be sold.

A court may make a banning order if the offence involved violence or threats of violence to a person or property, or an offence of drug trafficking or supply of a dangerous drug.

The court must be satisfied the offence was committed in licensed premises or in a public place near licensed premises.

It must also consider that unless the order is made, the offender would pose an unacceptable risk to the good order of licensed premises and areas near these, or to the safety and welfare of people at or near licensed premises.

**Control order**

A control order is an order of up to 5 years 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.

Control orders can only be made if the court is satisfied that an offender is a member or participant of a criminal organisation.

Conditions may include 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.

**Passport order**

A passport order can be made when a person is convicted of an offence and the court records a conviction.

When making this order, the court may order that the offender:

- must remain in Australia or Queensland, or
- must not apply for, or obtain an Australian passport, or
- must give up their passport.

The order is in force for the duration of the sentence. Breaching this order is an offence punishable by up to 2 years’ imprisonment.

**Offender levy**

Find out what the current offender levy is at [www.courts.qld.gov.au/about/offender-levy](http://www.courts.qld.gov.au/about/offender-levy) or see page 29 of this Guide.

All adult offenders sentenced in the Supreme, District or Magistrates Courts must pay an offender levy. It is an administrative fee paid to the court registry that contributes to law enforcement and administration costs.

The levy is imposed for each sentencing event, whether or not a conviction is recorded — it does not matter how many charges are dealt with at the sentence.

It applies to any offence except breach of bail or failing to appear in court as required by a bail undertaking.

Legislation states that the levy is not a sentence or punishment. It says a court must ignore the offender levy when deciding the sentence to impose.

The levy applies automatically through legislation, so it must be paid even if the sentencing court makes no mention of it.

Because it is not an order of the court, the offender cannot appeal the levy or apply to 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 and is higher for the District and Supreme Courts than the Magistrates Courts.

As of 1 February 2021, the amounts were:
- Supreme Court or District Court — $384; or
- Magistrates Courts — $128.10.

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

### Parole

Parole is the supervised, conditional release of a prisoner into the community to serve all or the remainder of their sentence of imprisonment\(^7\) (for example, offenders sentenced to a life sentence will remain on parole for life — see Life sentence on page 19).

Parole aims to improve public safety by reintegrating the person into the community and minimising the likelihood of reoffending.

A person on parole must comply with conditions and can be returned to prison at any time during the remainder of their sentence, in accordance with the Parole Board Queensland's statutory powers (which have a primary focus on community safety).

#### Types of parole

There are 3 types of parole in Queensland:

**Court ordered parole** — where a court sentences an offender to a term of imprisonment of 3 years or less (excluding sexual offences and serious violent offences) the court must set a parole release date at sentencing. The offender must be released on that date.\(^8\)

**Board ordered parole** — where a court chooses to set the date the person becomes eligible to apply for parole. The Parole Board Queensland decides whether the person should be released when the person makes an application.

**Exceptional circumstances parole** — the Parole Board Queensland may release a prisoner, on the prisoner's application, at any time including prior to their parole eligibility date or parole release date, in exceptional circumstances, for example if the prisoner is terminally ill.

Find more information about the rules that apply to court ordered parole and Board ordered parole on page 26.

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

#### Parole conditions

When a prisoner is released on parole, they are released into the community under the supervision of QCS.

The parolee must follow the conditions set by the Parole Board and the instructions of corrective services officers.

Standard 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 if required
- not otherwise breaching parole by not complying with other conditions included in the parole order.\(^9\)

#### Breach of parole

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.
A sentence imposed by a court can sometimes be changed through a process known as an appeal.

An appeal is a review of a person’s conviction and/or the sentence a court has imposed on the grounds an error has been made.

**Magistrates Court sentence**

The offender or prosecution can appeal against a Magistrates Court sentence to a District Court judge.

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, the 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.

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.

Offenders must first seek the Court of Appeal’s permission (‘leave’) to appeal against their sentence, so they are called the **applicant**.

The test for getting leave to appeal is that a ground of appeal (or a reason for the appeal) has a reasonable prospect of succeeding because of an arguable error.

A Notice of Appeal must be filed with the court within one month of the sentence being imposed, unless the appeal court allows an extension of time.

Usually, 3 judges sit on the Court of Appeal. Individual judges can make their own decisions and reasons for the decision, agree with those of another judge, or they can write a judgment together (called a joint judgment).

A judge who disagrees with the majority is said to ‘dissent’.

**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 which party is 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.

An appeal court may allow an appeal and re-sentence the offender if it appears that a legal error has affected the sentencing judge’s discretion (such as failing to take a mitigating factor into account or acting on wrong legal principle) or if the sentencing judge has mistaken material facts.

An appeal court may also find that a sentence is either manifestly excessive or inadequate because the sentence is unreasonable or plainly unjust.

The appeal court can:

- dismiss the appeal (which means the sentence being appealed stands), or
- allow the appeal, and may impose a different sentence.

An offender may also seek to appeal a conviction. This is almost always after a trial in circumstances where the offender did not plead guilty; however, in exceptional circumstances an offender may be able to appeal a conviction even if they entered a guilty plea.
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 2-stage process where 2 justices of the High Court consider:

- whether the appeal involves a question of law that:
  - has public importance, or
  - there is a difference of opinion in the Court of Appeal on the state of the law, and
- whether the interests of justice require the High Court to consider the matter.93

If special leave is granted, the parties must prepare and file further documents and appear at an appeal hearing.

The High Court (usually comprising 7 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.94

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 court ordered parole.

A Queensland court sentencing an offender for a Commonwealth offence may: 95

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 of good behaviour for up to 3 years. This is similar to a Queensland 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:

   - For imprisonment of 3 years or less:
     - 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 they will be of good behaviour for up to 3 years. It may also be subject to conditions such as supervision by a probation officer for no more than 2 years
or, 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).

• 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.
  - 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 a 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
• any effect that a sentence may have on the offender’s family or dependants.96
Appendix
Examples of maximum penalties

Explore some examples of Queensland offences and the maximum penalties that apply under the:

- Criminal Code (Qld)
- Drugs Misuse Act 1986

<table>
<thead>
<tr>
<th>Maximum penalty in years</th>
<th>Offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Affray • breaching a restraining order to do with a stalking charge</td>
</tr>
<tr>
<td>2</td>
<td>Going armed to cause fear • threatening violence (simpliciter; without a circumstance of aggravation) • indecent acts • negligent acts causing harm</td>
</tr>
<tr>
<td>3</td>
<td>Riot (simpliciter) • false declarations • observations or recordings in breach of privacy • distributing intimate image or prohibited visual recordings, or threatening to do so • dangerous operation of a vehicle (simpliciter) • common assault • deprivation of liberty • leaving a child under 12 unattended • possession of things used in connection with unlawful entry (simpliciter) • forgery and uttering (simpliciter)</td>
</tr>
<tr>
<td>5</td>
<td>Unlawful drink spiking and simpliciter versions of grooming children under 16 • stalking • stealing • fraud and wilful damage</td>
</tr>
<tr>
<td>7</td>
<td>Official corruption (simpliciter) • attempting to pervert justice • procuring engagement in prostitution (simpliciter) • carrying on business of providing unlawful prostitution (simpliciter) • serious animal cruelty • choking, suffocation or strangulation in a domestic setting • wounding • assaults occasioning bodily harm (simpliciter) • serious assaults (simpliciter) • kidnapping • abduction of child under 16 • cruelty to children under 16 • unlawful use or possession of motor vehicles, aircraft or vessels (simpliciter) • receiving tainted property (simpliciter)</td>
</tr>
<tr>
<td>10</td>
<td>Using internet etc. to procure children under 16 (simpliciter) • taking child for immoral purposes (simpliciter) • assaults occasioning bodily harm (circumstances of aggravation) • sexual assaults (simpliciter)• entering or being in premises with intent to commit an indictable offence • unlawful entry of vehicle for committing indictable offence (simpliciter)</td>
</tr>
<tr>
<td>12</td>
<td>Some forms of aggravated unlawful use or possession of motor vehicles, aircraft or vessels</td>
</tr>
<tr>
<td>14</td>
<td>Perjury (simpliciter) • indecent treatment of children under 16 but aged 12 or older • carnal knowledge with/of or of child under 16 but aged 12 or older • procuring sexual acts by coercion etc • distributing / possessing child exploitation material (simpliciter) • administering child exploitation material website (simpliciter) • permitting young person etc to be at place used for prostitution • female genital mutilation • grievous bodily harm • torture • dangerous operation of a vehicle (most serious aggravating circumstances) • serious assaults (aggravated) • the most serious forms of aggravated stealing • various forms of aggravated fraud • robbery (simpliciter) • extortion (simpliciter) • burglary (simpliciter) • entering or being in premises and committing indictable offences • receiving tainted property (aggravating circumstances)</td>
</tr>
</tbody>
</table>

Table continues on next page
<table>
<thead>
<tr>
<th>20</th>
<th>Indecent treatment of children under 12, or of child under 16 who is lineal descendant or under offender’s care or has an impairment of the mind • involving child in making child exploitation material (simpliciter) • the highest form of aggravated fraud</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Involving child in making/making child exploitation material using hidden network or an anonymising service • sabotage (wilfully and unlawfully destroying/damaging a public facility with intent to cause major disruption to government functions or to the use of services by the public or major economic loss)</td>
</tr>
<tr>
<td>Life</td>
<td>Carnal knowledge with/of child under 12, or of a child under 16 where offender is guardian but not lineal descendent or child has impairment of the mind • incest • murder (mandatory life) • attempted murder • accessory after the fact to murder • manslaughter • aiding suicide • unlawful striking causing death • disabling or stupefying in order to commit indictable offence • acts intended to cause grievous bodily harm and other malicious acts • robbery with aggravation (armed, or in company, or wounds or uses any other personal violence to any person) • aggravated burglary in dwelling • entering or being in premises by break and committing indictable offence • arson • rape • maintaining a sexual relationship with a child under 16 • most serious forms of aggravated sexual assaults and wilful damage • aggravated extortion</td>
</tr>
</tbody>
</table>

### Drugs Misuse Act 1986 offences
- examples of maximum penalties (years of imprisonment) that apply

<table>
<thead>
<tr>
<th>Maximum penalty in years</th>
<th>Offences (for drug types, schedule 1 is more serious than schedule 2. For drug amounts, schedule 4 is more serious than schedule 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Unlawfully possessing anything (other than a syringe or needle, for instance, a bong) for using a dangerous drug</td>
</tr>
<tr>
<td></td>
<td>Offences to do with hypodermic syringes or needles – unauthorised supply for drug use, possessing without reasonable care (whether for drug use or not) and possessing one used for drugs without disposing of it legally</td>
</tr>
<tr>
<td></td>
<td>Possessing suspected property (other than a dangerous drug, hypodermic syringe or needle) for/used in/proceeds of a defined drug offence</td>
</tr>
<tr>
<td>15</td>
<td>Supplying schedule 2 drug (simpliciter)</td>
</tr>
<tr>
<td></td>
<td>Producing schedule 2 drug, any other case</td>
</tr>
<tr>
<td></td>
<td>Possessing schedule 1 or 2 drug, any other case</td>
</tr>
<tr>
<td></td>
<td>Possessing, supplying or producing relevant substances or things without a reasonable excuse (various listed substances, and things like pill presses and reaction vessels)</td>
</tr>
<tr>
<td></td>
<td>Possessing things for use in, or used in, connection with committing a defined drug crime</td>
</tr>
<tr>
<td></td>
<td>Occupier of a place permitting its use for a defined drug crime</td>
</tr>
</tbody>
</table>

Table continues on next page
| 20 | Supplying schedule 1 drug (simpliciter)  
Supplying schedule 2 drug to minor (aged 16 or 17) or to intellectually impaired person, or person in an educational institution or correctional facility, or who does not know he or she is being supplied  
Receiving or possessing property obtained from trafficking or supplying  
Producing schedule 1 drug of/exceeding schedule 3 amount but under schedule 4 amount and offender was a drug dependent person  
Producing schedule 1 drug, any other case  
Producing schedule 2 drug of/exceeding schedule 3 amount  
Publishing or possessing instructions for producing schedule 2 drug  
Possessing schedule 1 drug of/exceeding schedule 3 but under schedule 4 quantity and offender was a drug dependent person  
Possessing schedule 2 drug of/exceeding schedule 3 amount  
Trafficking in relevant substances or things |
| 25 | Trafficking  
Supplying schedule 1 drug to minor (aged 16 or 17) or to intellectually impaired person, or person in an educational institution or correctional facility, or who does not know he or she is being supplied  
Supplying schedule 2 drug to a minor (under 16)  
Producing schedule 1 drug of/exceeding schedule 4 amount  
Producing schedule 1 drug of/exceeding schedule 3 amount but under schedule 4 amount and offender was not a drug dependent person  
Publishing or possessing instructions for producing schedule 1 dangerous drug  
Possessing schedule 1 drug of/exceeding schedule 4 quantity  
Possessing schedule 1 drug of/exceeding schedule 3 but under schedule 4 quantity and offender was not a drug dependent person  
Possession of a prohibited combination of prescribed items (e.g. certain chemicals) |
| Life | Supplying schedule 1 drug to a minor (under 16) |

**Transport Operations (Road Use Management) Act 1995 offences**  
– examples of maximum penalties (fine or years of imprisonment) that apply

There are often higher maximum penalties for offenders who have been convicted of other traffic offences within the preceding 5 years.

The general alcohol limit is 0.050g or more of alcohol in 210L of breath. The middle limit is 0.100g or more and the high limit is 0.150g or more.

<table>
<thead>
<tr>
<th>Maximum penalty</th>
<th>Offences</th>
</tr>
</thead>
</table>
| 14 penalty units ($1,868) or 3 months | Drive (or attempt to put in motion/be in charge of) a motor vehicle or vessel while over the general, but not over the middle, alcohol limit  
Drive (or attempt to put in motion/be in charge of) a motor vehicle or vessel while a relevant drug is present in blood or saliva |

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<table>
<thead>
<tr>
<th>Penalty</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 penalty units ($2,669) or 6 months</td>
<td>Drive (or attempt to put in motion/be in charge of) a motor vehicle or vessel while over middle, but not over high, alcohol limit</td>
</tr>
</tbody>
</table>
| 40 penalty units ($5,338) or 6 months | Failing to provide specimen (of breath, saliva or in some circumstances, blood) as required  
Driving without due care and attention or reasonable consideration for other persons using the road or place  
Racing and speed trials on roads (organising, promoting or taking part in) |
| 28 penalty units ($3,736) or 9 months | Drive (or attempt to put in motion/be in charge of) a motor vehicle or vessel while under the influence of liquor (over the high alcohol limit) or a drug |
| 40 penalty units ($5,338) or 12 months | Unlicensed driving |
| 80 penalty units ($10,676) or 12 months | Driving without due care and attention or reasonable consideration for other persons using the road or place, causing death of or grievous bodily harm to another person |
| 160 penalty units ($21,352) or 2 years | As above (due care causing death etc) but offender was also an unlicensed driver (penalty doubled) |
| 60 penalty units ($8,007) or 18 months | Driving while disqualified by any court order from holding or obtaining a driver licence |
| If a person dies/suffers grievous bodily harm - 120 penalty units ($16,014) or 3 years (otherwise - 20 penalty units or 1 year) | Driver of a vehicle/tram/animal on a road, or motor vehicle other than on a road, involved in an incident resulting in injury/death, does not:  
- immediately stop;  
- remain at/near the scene; and  
- if person injured give what assistance they can and do what they can to obtain medical/other aid; or  
- if a person is dead or appears to be, show proper respect for the body and do what they can to move it to an appropriate place |
### Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absolute discharge</td>
<td>Release without a conviction being recorded and without any further penalty.</td>
</tr>
<tr>
<td>Accused</td>
<td>A person who has been charged with an offence but who has not yet been found guilty or not guilty. Also referred to as a defendant.</td>
</tr>
<tr>
<td>Acquittal</td>
<td>A finding that a person is not guilty of a criminal charge.</td>
</tr>
<tr>
<td>Adjournment (court</td>
<td>To suspend court proceedings to start again at a future date or in a different place, or indefinitely.</td>
</tr>
<tr>
<td>proceedings)</td>
<td></td>
</tr>
<tr>
<td>Agreed facts</td>
<td>Facts agreed to by the defence and the prosecution regarding the charges before the court. Usually presented after a plea of guilty.</td>
</tr>
<tr>
<td>Aggravating factor</td>
<td>A fact or detail about the offence, the victim, or the offender that may increase the sentence received.</td>
</tr>
<tr>
<td>Alleged/Allege</td>
<td>To accuse someone of having done something illegal. The prosecution does this and must prove its case beyond a reasonable doubt if the defendant does not plead guilty.</td>
</tr>
<tr>
<td>Antecedents</td>
<td>Background details about an offender, like their age, relationship status, employment history, and criminal history (this usually includes details of past convictions and penalties).</td>
</tr>
<tr>
<td>Appeal</td>
<td>When a party to a court case challenges a decision, and a higher court reviews it. Parties are people or entities involved in court proceedings. For example, for appeals against sentence, the person sentenced and the prosecution.</td>
</tr>
<tr>
<td>Appellant</td>
<td>The party appealing a court’s decision. This can be the defendant or the prosecution. The other party in the appeal is called the respondent. However, the term ‘applicant’ is used instead of ‘appellant’, in 3 specific types of appeal (see below).</td>
</tr>
<tr>
<td>Applicant</td>
<td>A person who wants to appeal to the Court of Appeal against their sentence, or against their conviction if it involves a question of fact. This term is also used to describe anyone who wants to appeal to the High Court. The person wishing to appeal is called an applicant because in these cases, they do not have an immediate legal right to appeal. The appeal cannot be heard unless the court first allows it (‘grants leave’ to appeal).</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Bail</td>
<td>A promise (undertaking) to come back to court for trial or sentencing. Bail may have extra conditions, like reporting to the police, living at a certain place, or a surety (money put up by someone else to guarantee the person will come back to court). It is an offence for an adult to breach bail.</td>
</tr>
<tr>
<td>Banning order</td>
<td>An order, made in addition to sentence, banning an offender entering a certain licensed premises (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.</td>
</tr>
<tr>
<td>Balance of probabilities</td>
<td>This is the standard of proof, or level of proof, courts must apply in deciding what facts they should sentence someone on after the person has been convicted of an offence. This is applied when either the prosecution or defence do not agree with an allegation of fact. The court must be satisfied that it is more probable than not that the allegation is true. This is also the standard of proof for civil cases.</td>
</tr>
<tr>
<td>Beyond reasonable doubt</td>
<td>This is the standard of proof that the prosecution must meet before a person accused of a crime can be found guilty.</td>
</tr>
<tr>
<td>Breach</td>
<td>To break a court order (also called a contravention).</td>
</tr>
<tr>
<td>Case</td>
<td>The prosecution of one or more charges against a person in court.</td>
</tr>
<tr>
<td>Case law</td>
<td>Law developed through decisions made by courts in previous cases. This includes decisions about sentencing and how to interpret legislation. This is also known as common law.</td>
</tr>
<tr>
<td>Charge</td>
<td>A formal allegation made on arrest, or in court, that a person has committed an offence.</td>
</tr>
<tr>
<td>Childrens Court</td>
<td>Special courts at the Magistrates Courts level dealing with criminal offences committed by children.</td>
</tr>
<tr>
<td>Childrens Court of Queensland</td>
<td>A special court at the District Court level dealing with more serious criminal offences committed by children, and appeals from the Childrens Court.</td>
</tr>
<tr>
<td>Circumstance of aggravation</td>
<td>A fact that is part of an offence, making the offender liable to a greater punishment than the penalty that applies to the basic (simpliciter) version of that offence. An example is being armed with a weapon when committing robbery. A circumstance of aggravation must be specifically made part of the charge if it is to apply.</td>
</tr>
<tr>
<td>Common law</td>
<td>Law developed through decisions made by courts in previous cases. This includes decisions about sentencing and how to interpret legislation. This is also known as case law.</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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</tr>
<tr>
<td><strong>Commonwealth offence</strong></td>
<td>An offence committed against Commonwealth legislation, such as Centrelink fraud, telecommunications offences, offences at an airport or on an aircraft, terrorism, people smuggling, drug importation, and some internet and child pornography material offences.</td>
</tr>
<tr>
<td><strong>Committal hearing</strong></td>
<td>A process in a Magistrates Court to send (commit) <em>indictable offences</em> to either the District Court or Supreme Court.</td>
</tr>
<tr>
<td><strong>Committed for trial or sentence</strong></td>
<td>To be sent (committed) to a higher court for trial or sentence. If the accused person enters a plea of guilty, they are committed for sentence. Otherwise, they are committed for trial.</td>
</tr>
<tr>
<td><strong>Community Justice Group</strong></td>
<td>Community Justice Groups (CJGs) are run by members of the local Aboriginal and Torres Strait Islander community. They provide <em>submissions</em> to courts on bail and sentencing. CJGs provide a community-based response to local issues, working with defendants and cooperatively with magistrates, police, corrective services personnel, and staff from government agencies.</td>
</tr>
<tr>
<td><strong>Community service order</strong></td>
<td>An order to do unpaid community service for between 40 and 240 hours, usually within 12 months of conviction, and to comply with reporting and other conditions.</td>
</tr>
<tr>
<td><strong>Compensation order</strong></td>
<td>An order, made in addition to any other sentence, to pay for property taken, destroyed, damaged or interfered with, or for any personal injury caused by an offence.</td>
</tr>
<tr>
<td><strong>Complainant</strong></td>
<td>The person who makes the complaint to the State against the defendant. The complainant is the person who has suffered harm directly because of a criminal offence. If the defendant pleads or is found guilty, these terms can change to <em>victim</em> and <em>offender</em>.</td>
</tr>
<tr>
<td><strong>Concurrent sentences</strong></td>
<td>Individual sentences of imprisonment for different offences, ordered to be served at the same time. This means any shorter sentence is included in the longest (or ‘head’) sentence. For example, a sentence of 5 years and a sentence of 2 years served concurrently means that an offender must serve a total of 5 years’ imprisonment (the <em>head sentence</em>).</td>
</tr>
<tr>
<td><strong>Contravention</strong></td>
<td>When a court order is not followed (also called a <em>breach</em>).</td>
</tr>
<tr>
<td><strong>Control order</strong></td>
<td>An order, made in addition to a sentence, and in circumstances relating to serious organised crime or criminal organisations. A control order imposes conditions to protect the public by preventing, restricting or disrupting the offender’s involvement in serious criminal activity.</td>
</tr>
<tr>
<td><strong>Conviction</strong></td>
<td>A finding that a person is guilty of an offence, including because the person pleads guilty.</td>
</tr>
<tr>
<td><strong>Count</strong></td>
<td>A distinct charge on an indictment.</td>
</tr>
<tr>
<td><strong>Court of Appeal</strong></td>
<td>A division of the Supreme Court. The final court for all appeals in Queensland. It hears appeals from the District Court and trial division of the Supreme Court. Only the High Court is superior.</td>
</tr>
<tr>
<td><strong>Court order (criminal proceedings)</strong></td>
<td>A direction by a court. This might include telling a person to do something (like come to court again) or not to do something, and what sentence the court has imposed.</td>
</tr>
<tr>
<td><strong>Court ordered parole</strong></td>
<td>A parole order where the parole release date is fixed by the court. This means the offender is automatically released on that date. The court must fix a date if the offender is sentenced to 3 years’ imprisonment or less – but not if the sentence is for a sexual or serious violent offence, or an existing parole order was legally cancelled by the new sentence.</td>
</tr>
<tr>
<td><strong>Crimes</strong></td>
<td>The most serious type of indictable offences.</td>
</tr>
<tr>
<td><strong>Criminal offences</strong></td>
<td>These are split up into 3 types: crimes, misdemeanours and simple offences. The first 2 types are also classed as indictable offences.</td>
</tr>
<tr>
<td><strong>Criminal history</strong></td>
<td>A document showing any convictions recorded by a court against a person for proven offences. It includes the penalty imposed.</td>
</tr>
<tr>
<td><strong>Crown</strong></td>
<td>The prosecution may be referred to as the Crown, represented by the Office of the Director of Public Prosecutions (either the Queensland or Commonwealth offices).</td>
</tr>
<tr>
<td><strong>Culpability</strong></td>
<td>Blameworthiness — i.e. how morally responsible the person is for the offence and for the harm he or she caused. For example, someone who plans to commit an offence in advance will generally be treated as more culpable than someone who commits it on the spur of the moment.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>-----------------------------</td>
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</tr>
<tr>
<td>Cumulative sentences</td>
<td>Individual sentences, given for each offence, that are ordered to be served one after the other, rather than at the same time (concurrent sentences). For example, a sentence of 5 years and a sentence of 2 years served cumulatively would make a head sentence of 7 years’ imprisonment.</td>
</tr>
<tr>
<td>Custodial sentencing order</td>
<td>An order that involves a term of imprisonment being imposed on the offender.</td>
</tr>
<tr>
<td>Custody</td>
<td>Detention of an adult in a prison or watch-house. This may be while they are serving a sentence of imprisonment, or because they have been denied bail and are on remand (also known as pre-sentence custody if the person is convicted of the offence or offences charged), waiting to have the charge finalised.</td>
</tr>
<tr>
<td>Defence</td>
<td>‘The defence’ describes the defendant, and his or her legal advisors. A defence, in law, is a legal reason why a person is not guilty of an offence (e.g. self-defence). Partial defences also exist that can result in a person being found guilty of a less serious offence (e.g. manslaughter rather than murder).</td>
</tr>
<tr>
<td>Defendant</td>
<td>The person who has been charged with an offence but who has not yet been found guilty or not guilty. The term can be used interchangeably with accused.</td>
</tr>
<tr>
<td>Denunciation</td>
<td>Communication of society’s strong disapproval of an offender’s criminal conduct. One of the 5 purposes of sentencing in Queensland.</td>
</tr>
<tr>
<td>De Simoni principle</td>
<td>The principle that a person should only be sentenced for an offence for which they have been found guilty (named after the High Court case that established the principle).</td>
</tr>
<tr>
<td>Deterrence</td>
<td>One of the 5 purposes of sentencing in Queensland. Discouraging the offender and other members of the community from committing a crime by the threat of a punishment or by someone experiencing a punishment. Where the aim is to discourage the offender from committing further offences, this is known as personal or specific deterrence. When aimed at the general community, it is called general deterrence.</td>
</tr>
<tr>
<td>Discretion</td>
<td>Discretion means choice. For most offences heard in Queensland courts, sentencing outcomes are not automatic. This allows courts to choose the sentence that is most appropriate in each case, by weighing up all the different things the court must or may consider.</td>
</tr>
<tr>
<td><strong>District Court</strong></td>
<td>The second level of the Queensland court system above the Magistrates Courts and below the Supreme Court. 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 in the Magistrates Courts.</td>
</tr>
<tr>
<td><strong>Driver licence disqualification</strong></td>
<td>An order, made as part of, or in addition to, any sentence that disqualifies a person from holding or obtaining a Queensland driver licence or from doing so for a specified period.</td>
</tr>
<tr>
<td><strong>Drug and Alcohol Court</strong></td>
<td>A special type of Magistrates Court that provides an intensive and targeted response to adult offenders with a severe substance use disorder directly associated with their offending. It connects offenders, families and friends to support, treatment and services.</td>
</tr>
<tr>
<td><strong>Drug and alcohol treatment order</strong></td>
<td>A special sentencing order of the Drug and Alcohol Court. The treatment order is a prison sentence that is suspended while the offender participates in intensive rehabilitation programs under supervision in the community.</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td>Proof of an alleged fact. This can include what a witness says happened, documents (including recordings, text messages, drawings and photographs), things (e.g. a knife) and facts that a court accepts as evidence of facts in the case.</td>
</tr>
<tr>
<td><strong>Ex tempore sentencing remarks</strong></td>
<td>Sentencing remarks delivered orally at the end of the sentence hearing. This is the most common sentencing approach used by Queensland courts.</td>
</tr>
<tr>
<td><strong>Fine</strong></td>
<td>A penalty requiring an offender to pay an amount of money within a certain period of time.</td>
</tr>
<tr>
<td><strong>Good behaviour bond</strong></td>
<td>A non-custodial order in the form of a document that the offender signs, promising not to break the law for a set period. It can also set an amount of money that must be paid if they break this promise. Also known as a recognisance.</td>
</tr>
<tr>
<td><strong>Graffiti removal order</strong></td>
<td>An order of up to 40 hours of community service to remove graffiti, usually within 12 months of conviction.</td>
</tr>
<tr>
<td><strong>Grounds of appeal</strong></td>
<td>The reason/s why the party appealing a decision says the decision made by a magistrate, judge or jury was wrong.</td>
</tr>
<tr>
<td><strong>Head sentence — imprisonment</strong></td>
<td>The total period of imprisonment imposed taking into account, if more than one prison sentence is imposed, whether they are ordered to be served concurrently or cumulatively.</td>
</tr>
<tr>
<td>High Court of Australia</td>
<td>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.</td>
</tr>
<tr>
<td>-----------------------</td>
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</tr>
<tr>
<td>Higher courts</td>
<td>In Queensland, these are the District and Supreme Courts.</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>Serving a sentence in prison or, if a special type of court order is made (intensive correction order), by way of intensive correction in the community. A sentence of imprisonment is also served in the community if the court orders it to be suspended for a period of time.</td>
</tr>
<tr>
<td>Indefinite sentence</td>
<td>A sentence of imprisonment with no fixed end date. It can only be ordered for some offences, and only when a court is satisfied an offender is considered a serious danger to the community. It must be reviewed periodically.</td>
</tr>
<tr>
<td>Indictment</td>
<td>A written document with the charge/s (each one being called a count) bringing a person to trial in a higher court.</td>
</tr>
<tr>
<td>Indictable offences</td>
<td>The most serious types of criminal offences. They are generally sentenced by the Supreme or District Courts. However, almost all indictable offences with a maximum penalty of 3 years’ imprisonment or less, must be sentenced summarily in Magistrates Courts. Procedural laws also state that some with a higher maximum can, or must, be sentenced summarily.</td>
</tr>
<tr>
<td>Instinctive synthesis</td>
<td>The way Australian courts sentence, unless mandatory sentencing applies. The judge or magistrate considers all of the relevant factors to decide what sentence to give in an individual case. These can often conflict with each other. Then, a single sentence is imposed that balances these factors.</td>
</tr>
<tr>
<td>Intensive correction order</td>
<td>A sentence of imprisonment of one year or less ordered to be served in the community and including intensive supervision, community service, and treatment programs.</td>
</tr>
<tr>
<td>Judge</td>
<td>A judge is the person in charge of cases heard in the higher courts. In the Supreme Court, judges are called justices. They hear the case, instructs any jury (if there is a trial) and decide the sentence.</td>
</tr>
<tr>
<td>Jury</td>
<td>A group of (usually) 12 people selected at random from the general community for a trial if an accused person pleads not guilty to an alleged offence. The jury decides whether the accused person is guilty or not guilty of the alleged offence but does not sentence the person. A judge decides the sentence.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>Justice</td>
<td>Justices are the people in charge of cases heard in the Supreme Court, the Court of Appeal and High Court. They are judges who are formally called justices.</td>
</tr>
</tbody>
</table>
| Leave to appeal | Permission needed from the Court of Appeal for an offender to appeal against a sentence (or a conviction if it involves a factual issue).  
The test for getting leave to appeal is that a **ground of appeal** (the reason for making the appeal) has a reasonable prospect of succeeding because of an arguable error.  
An appeal to the High Court requires ‘special leave’ (permission) to appeal no matter who brings the appeal. |
| Legislation | Also called **statute law**. Legislation is comprised of written laws either made or authorised by Parliament. |
| Magistrate | The person in a Magistrates Court who hears the case and makes decisions about whether someone is guilty or not, and what penalty (sentence) they get. |
| Magistrates Courts | The first level of the Queensland courts system.  
Most criminal cases are heard in these courts in some form and they impose sentences for the majority of offences (about 95 per cent). |
| Mandatory sentence | A minimum or fixed penalty or penalty type set by Parliament in **legislation**.  
The court has no **discretion** (no choice) to give a lesser or different type of sentence. |
| Maximum penalty | The highest penalty that can be given to a person convicted of a particular offence. |
| Mental Health Court | A division of the Supreme Court that decides whether a defendant may have a defence to a criminal charge because of mental illness at the time of the alleged offence.  
The court also determines whether a defendant is or is not fit for trial because of mental illness. |
<p>| Misdemeanours | Less serious forms of criminal offences that are <strong>indictable offences</strong>. |
| Mitigating factor | A fact or detail about the offender or the offence that may reduce the severity of the sentence. |
| Murri Court | A special Magistrates Court that connects Aboriginal and Torres Strait Islander defendants to cultural and support services. This can help them make changes in their lives and deal with the reasons for their offending. |
| Non-contact order | An order, in addition to another sentence, banning contact with the victim or another person, or going to or near a particular place, for a set period. |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-custodial order</td>
<td>A sentencing order that is not served in custody and is not a sentence of imprisonment.</td>
</tr>
<tr>
<td>Non-parole period</td>
<td>The period of time set by a court that a person must serve in prison before being released on parole or becoming eligible to apply for release on parole.</td>
</tr>
<tr>
<td>Offence</td>
<td>An act or omission that makes the person doing it liable to punishment. There are 2 kinds of offences — criminal offences and regulatory offences.</td>
</tr>
<tr>
<td>Offender</td>
<td>A person who has been found guilty of an offence, or who has pleaded guilty to an offence.</td>
</tr>
<tr>
<td>Offender levy</td>
<td>An administrative fee imposed by Parliament to help pay for law enforcement and administration costs. The levy is paid to the court registry or the State Penalties Enforcement Registry (SPER). The amount varies depending on whether the person is sentenced in the District or Supreme Courts, or by a Magistrates Court. One levy is payable for each sentencing event.</td>
</tr>
<tr>
<td>Office of the Director of Public Prosecutions</td>
<td>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. There is a different Commonwealth version that prosecutes Commonwealth crimes.</td>
</tr>
<tr>
<td>Parity (principle of parity)</td>
<td>Consistency of punishment for co-offenders in a case. This supports the principle of equality before the law.</td>
</tr>
<tr>
<td>Parole</td>
<td>Supervised conditional release of a person from prison before the end of their prison sentence. An offender released on parole is still serving their sentence. They have to follow the conditions of the parole order. These conditions are designed to help with their rehabilitation and reintegration into the community, and to reduce the chances the person will reoffend.</td>
</tr>
<tr>
<td>Parole Board Queensland</td>
<td>An independent statutory authority that decides applications for parole orders under the Corrective Services Act 2006 (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.</td>
</tr>
<tr>
<td>Parole eligibility date</td>
<td>The earliest date on which a prisoner may be released on parole as decided by the Parole Board Queensland.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Parole release date</td>
<td>The date set by the court on which a prisoner must be released on parole (unless in custody for another reason). A parole release date can only be set if certain criteria are met, such as the term of imprisonment is 3 years or less and not for a serious violent offence or a sexual offence.</td>
</tr>
<tr>
<td>Parolee</td>
<td>A prisoner who has been released on parole.</td>
</tr>
<tr>
<td>Penalty unit</td>
<td>Maximum fines are expressed as set numbers of penalty units. Each penalty unit is worth a set number of dollars and cents. This can be adjusted annually to keep pace with inflation. It allows all Queensland fines to change at the same time, in step with each other.</td>
</tr>
<tr>
<td>Plea</td>
<td>The response by the accused to a criminal charge — 'guilty' or 'not guilty'.</td>
</tr>
<tr>
<td>Precedent</td>
<td>A court decision that creates a legal principle to be followed in similar cases in the future.</td>
</tr>
<tr>
<td>Prescribed offences</td>
<td>Offences listed in legislation that require or are eligible for particular action by a court.</td>
</tr>
<tr>
<td>Pre-sentence custody</td>
<td>The time spent by an accused person in custody before their charges are dealt with. This happens if the person is not given bail. Also referred to as remand. If a period of imprisonment is later imposed, time spent in pre-sentence custody must generally be counted as part of the sentence, unless the court makes a different order.</td>
</tr>
<tr>
<td>Pre-sentence report</td>
<td>A report prepared for a court with information about an offender and other matters, such as their suitability for certain types of orders, to help the court sentence the person. These reports are usually written by corrective services officers and are in addition to other types of reports that may be given to the court, such as expert reports prepared by psychologists and psychiatrists.</td>
</tr>
<tr>
<td>Prisoner</td>
<td>An offender in prison serving a custodial sentence or a person held on remand who is waiting for trial or sentence.</td>
</tr>
<tr>
<td>Probation</td>
<td>An order between 6 months and 3 years served in the community with monitoring and supervision.</td>
</tr>
<tr>
<td>Proportionality (principle of proportionality)</td>
<td>The principle that a sentence must be appropriate or proportionate to the seriousness of the crime.</td>
</tr>
</tbody>
</table>
| **Prosecutor/Prosecution** | The police officer or lawyer who presents the case against an accused person for the State of Queensland or Commonwealth.  
Also referred to as the **Crown**. |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| **Recognisance**           | A non-custodial order in the form of a document that the offender signs, promising not to break the law for a set period. It can also set an amount of money that must be paid if they break the promise.  
Also known as a **good behaviour bond**. |
| **Rehabilitation**         | The process by which a person addresses their offending behaviour to live a productive and law-abiding life in the future. This involves working on the causes of their offending, such as getting help with an addiction to alcohol or other drugs, dealing with behavioural or health issues, improving family relationships, and healing from past trauma. Rehabilitation is one of the 5 sentencing purposes in Queensland. |
| **Remand**                 | The time spent by an accused person in custody before their charges are dealt with. This happens if the person is not given bail.  
See **pre-sentence custody**. |
| **Regulatory offences**    | Less serious forms of offences that police can charge a person with instead of charging them with a criminal offence. For example, unauthorised dealing with shop goods (known as shoplifting) can be charged instead of stealing. |
| **Respondent**             | The person responding to a court application — for example, a domestic violence protection order application or an appeal of a court’s decision. |
| **Restitution**            | An order to restore property to its owner that has been taken or damaged when an offence is committed. |
| **Rising of the court**    | A very low-level sentence, not mentioned in legislation and technically classed as a form of imprisonment, that requires an offender to remain in the court room until the judge or magistrate adjourns the case (the ‘rising of the court’). |
| **Sentence**               | The penalty the court gives a person who has been found guilty of an offence. |
| **Sentencing factors**     | The factors the court must take into account when sentencing. |
| **Sentencing principles**  | Principles developed under the common law and in legislation, that help judges and magistrates to reach a decision on the sentence to impose.  
They include **parity, proportionality, totality**, and the **De Simoni principle**. |
<table>
<thead>
<tr>
<th><strong>Sentencing purposes</strong></th>
<th>The legislated purposes for which a sentence may be imposed. In Queensland there are <strong>5 sentencing purposes</strong> for the sentencing of adults: punishment, deterrence, rehabilitation, denunciation, and community protection (or a combination of these).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sentencing remarks</strong></td>
<td>The reasons given by the judge or magistrate for the sentence imposed. These are generally delivered orally by the judge or magistrate, but can be transcribed (reproduced in writing). The sentencing judge may also prepare written remarks.</td>
</tr>
<tr>
<td><strong>Serious violent offence</strong></td>
<td>A declaration (statement) made by the Supreme or District Court for certain offences (called <strong>prescribed offences</strong>) that requires the offender to serve 80 per cent of the sentence (or 15 years, whichever is less) in prison before being eligible to apply for parole.</td>
</tr>
<tr>
<td><strong>Simpliciter</strong></td>
<td>Refers to the basic version of an offence, with no circumstance of aggravation.</td>
</tr>
<tr>
<td><strong>Specialist Domestic and Family Violence Court</strong></td>
<td>A specialist Magistrates Court dealing with domestic and family violence matters.</td>
</tr>
<tr>
<td><strong>Standard of proof</strong></td>
<td>The level of certainty and degree of evidence needed to establish proof of an alleged fact.</td>
</tr>
<tr>
<td><strong>Statute law</strong></td>
<td>Laws (legislation) made by Parliament, such as the <strong>Penalties and Sentences Act 1992</strong> (Qld).</td>
</tr>
<tr>
<td><strong>Submissions</strong></td>
<td>Verbal comments made, and written documents provided, to the court by the prosecutor and the defence to support their case.</td>
</tr>
<tr>
<td><strong>Summary trial</strong></td>
<td>A trial in a Magistrates Court for <strong>summary offences</strong> and some <strong>indictable offences</strong>. There is no jury. The magistrate decides whether a person is guilty or not guilty and imposes any sentence.</td>
</tr>
<tr>
<td><strong>Summary offences</strong></td>
<td>Minor offences that generally must be prosecuted within 12 months of the offence taking place. They are heard in Magistrates Courts. Also known as <strong>simple offences</strong>.</td>
</tr>
<tr>
<td><strong>Supreme Court</strong></td>
<td>The Supreme Court is the highest court in Queensland. It consists of the trial division and the Court of Appeal. The Supreme Court hears the most serious criminal cases, including murder, manslaughter and serious drug offences.</td>
</tr>
<tr>
<td><strong>Surety</strong></td>
<td>A person acts as a surety for an accused person if they agree to a bail condition that they will give up an amount of money if the accused person fails to appear in accordance with their bail undertaking. A person can also act as a surety for an offender sentenced to a <strong>good behaviour bond</strong> or recognisance, by agreeing to pay a sum of money if the offender breaches that order.</td>
</tr>
</tbody>
</table>
| **Suspended sentence** | 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 set period (called an ‘operational period’) of up to 5 years.

If the offender commits another offence punishable by imprisonment during the operational period of the order, they must serve the whole period of imprisonment that was suspended, unless the court considers this would be unjust.

For example a sentence of 12 months’ imprisonment suspended in full for 2 years means that the person must not commit another offence during the 2 year period. If they do, they risk having to serve 12 months in prison. |
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Totality (principle of totality)</strong></td>
<td>The principle that when an offender is convicted of more than one offence, the total sentence should reflect the overall criminality of the offending.</td>
</tr>
<tr>
<td><strong>Undertaking</strong></td>
<td>A promise to the court to do or not do certain things. This will be in the form of a court order that the person signs. A common example is a bail undertaking.</td>
</tr>
<tr>
<td><strong>Victim</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Victim impact statement</strong></td>
<td>A written statement made by a victim that states the harm the offence has caused them. It may include attachments such as medical reports, photographs, and drawings. A victim of crime may be invited to read the statement aloud in court</td>
</tr>
</tbody>
</table>
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, sentencing trends, education resources, Sentencing Spotlights on certain offences, details of sentencing events, and much more.

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


2. Ibid 1.4.3–1.5.2.

3. Penalties and Sentences Act 1992 (Qld) s 3(d).


5. Regulatory Offences Act 1985 (Qld) ss 5, 6 and 7.

6. Justices Act 1886 (Qld) s 52; while 12 months is the general rule, exceptions to this timeframe apply for many specific offences.


9. 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 a JP to constitute a Magistrates Court in the absence of a magistrate in discrete Queensland communities.

10. 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.


12. Criminal Code (Qld) ss 552A–552BB.

13. Youth Justice Act 1992 (Qld) sch 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’.


17. Penalties and Sentences Act 1992 (Qld) ss 151N.

18. Mental Health Act 2016 (Qld) ss 116–118.

19. Ibid ch 16 pt 1 div 5.


24. Penalties and Sentences Act 1992 (Qld) ss 13A and 13B.


32 Penalties and Sentences Act 1992 (Qld) s 9(2)(i).

33 Ibid, ss 13A and 13B.

34 Corrective Services Act 2006 (Qld) s 181.

35 Ibid, pt 5A.

36 Ibid ss 108A-108D.

37 Ibid pt 5B.

38 Ibid s 92.

39 Ibid ss 9(2)(a), 9(2A) and 9(4)(b).

40 Ibid ss 111, 143, 152.

41 Ibid pt 6.

42 Ibid pt 8.

43 Ibid ss 160B.

44 Ibid s 160G.

45 This includes if the offender has had a court ordered parole order cancelled during their period of imprisonment:

46 Corrective Services Act 2006 (Qld) ss 100–103.

47 Ibid s 90.

48 Ibid ss 100–103.

49 Ibid s 100.

50 Ibid pt 5A.

51 Ibid s 141.

52 Ibid s 187(1).

53 Ibid s 187(2).