

QUEENSLAND SENTENCING GUIDE

June 2018



Queensland Sentencing
Advisory Council
Inform. Engage. Advise.

Queensland Sentencing Guide

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

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About the Queensland Sentencing Guide

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

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

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

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

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Glossary

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

Community Justice Group	Community Justice Groups (CJGs) are run by members of the local Aboriginal and Torres Strait Islander community. They provide submissions to courts on bail and sentencing. CJGs provide a community-based response to local issues, working cooperatively with magistrates, police, corrective services personnel and staff from other government agencies.
Community service order	An order to do unpaid community service for between 40 and 240 hours, usually within 12 months, and to comply with reporting and other conditions.
Compensation order	An order to pay for property taken or damaged, or compensate for loss or damage to property or for any personal injury suffered by a person.
Concurrent sentences	Individual sentences ordered for each charge in a case that are to be served at the same time. This means the shortest sentence is subsumed into the longest sentence (also called the 'head sentence'). For example, a prison sentence for five years and for two years served wholly concurrently would be a total of five years' imprisonment.
Control order	An order imposing conditions to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.
Conviction	A determination of guilt made by a court.
Court of Appeal	A division of the Supreme Court. The Court of Appeal hears appeals against conviction, sentence or both.
Court-ordered parole	A parole order where the parole release date is fixed by the court (meaning the offender is automatically released on that date).
Criminal offences	Criminal offences are comprised of crimes, misdemeanours and simple offences (also known as 'summary offences').
Crown	The prosecution may be referred to as the Crown.
Culpability	Blameworthiness; how responsible the person is for the offence and for the harm he or she caused.
Cumulative sentences	Individual sentence for each charge in a case that are to be served in whole or part one after the other. For example, a person sentenced to five years and to two years imprisonment ordered to be served wholly cumulatively would have to serve a total prison sentence of seven years.
Custodial sentencing order	A sentencing order that involves a term of imprisonment being imposed.
Defendant	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Can be used interchangeably with accused .
De Simoni (principle of De Simoni)	The principle that a person should only be sentenced for an offence of which he or she has been found guilty.
District Court	The second tier of the Queensland courts system after the Magistrates Court, dealing with serious criminal offences such as rape, armed robbery and many serious drug offences. This Court also hears appeals from sentences ordered in the Magistrates Court.

Drug and Alcohol Court	This court provides an intensive and targeted response to adults with a severe substance use disorder. The Drug and Alcohol Court in Brisbane commenced operation in January 2018.
Fine	A penalty requiring that an offender pay an amount of money.
Good behaviour bond	A court order to appear before the court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to three years). The offender and anyone acting as a 'surety' is required to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. Also known as recognisance .
Graffiti removal order	An order of up to 40 hours to remove graffiti, usually within 12 months.
Grounds for an appeal	The reasons why the appellant (the party appealing the court's decision) will argue that the magistrate, judge or jury made a wrong decision.
Head sentence — imprisonment	The total period of imprisonment imposed. A person will usually be released on parole or a suspended sentence before the entire head sentence is served.
High Court of Australia	The highest court in the Australian judicial system. The High Court only deals with legal matters of wider public importance and is not a sentencing court.
Higher courts	In Queensland, the District Court and the Supreme Court.
Imprisonment	Detention in prison.
Indefinite sentence	A sentence that can be ordered instead of a sentence for a fixed term of imprisonment when a court is satisfied an offender is a serious danger to the community. This means there is no fixed date when they can apply for release on parole. The Court must periodically review an indefinite sentence.
Indictable offences	Crimes and misdemeanours that must be dealt with in the Supreme Court or District Court on indictment (a written charge bringing a person to trial in a higher court). Generally crimes are more serious than misdemeanours. Some indictable offences can (or must) be dealt with summarily (by a Magistrates Court) in certain circumstances.
Intensive correction order	A sentence of imprisonment of one year or less ordered to be served in the community and including intensive supervision, community service and treatment programs.
Judge	The person who hears the case and decides the sentence in the District Court, the Childrens Court of Queensland and the Supreme Court.
Jury	A group of 12 people selected at random from the general community. A jury decides whether the accused person is guilty or not guilty of the alleged offence.
Magistrate	The person who hears the case and decides the sentence in the Magistrates Court or the Childrens Court.
Magistrates Court	The first tier of the Queensland courts system. Most criminal cases are heard in this court in some form.
Mandatory sentence	A sentence that is a fixed penalty prescribed by Parliament for committing a criminal offence, allowing no discretion for the court to impose a different sentence.

Maximum penalty	The highest penalty that can be given to a person convicted of a particular offence.
Mental Health Court	The Mental Health Court decides whether a defendant may have a defence to a charge because of mental illness at the time of the alleged offence. The court also determines whether a defendant is not fit for trial because of mental illness.
Mitigating factor	A fact or detail about the offender and their offence that tend to reduce the severity of their sentence.
Murri Court	Murri Court links Aboriginal and Torres Strait Islander defendants to cultural and support services to help them make changes in their lives and stop offending.
Non-contact order	An order prohibiting contact with the victim or another person, or going to a particular place, or within a particular distance of that place, for a set period.
Non-custodial order	A sentencing order that does not involve the person being sentenced to imprisonment.
Non-parole period	The time a person serves in prison before being released on parole or becoming eligible to apply for release on parole.
Offender	A person who has been found guilty of an offence, or who has pleaded guilty to an offence.
Offender levy	An administrative fee to help pay for law enforcement and administration costs.
Office of the Director of Public Prosecutions	The Office of the Director of Public Prosecutions (ODPP) represents the State of Queensland in criminal cases. Also referred to as the prosecution .
Parity (principle of parity)	Consistency between sentencing decisions involving co-offenders, which supports the principle of equality before the law.
Parole	The conditional release of a person from prison. When a person is released on parole, they serve the unexpired portion of their prison sentence in the community under supervision.
Parole Board Queensland	An independent body that decides applications for parole orders under the <i>Corrective Services Act 2006</i> (Qld), other than parole release dates ordered by courts (court-ordered parole). The Parole Board Queensland can also amend, suspend or cancel a parole order of a prisoner released on parole.
Parole eligibility date	The earliest date on which a prisoner may be released on parole. The decision to release a prisoner on parole is made by the Parole Board Queensland.
Parole release date	The date on which a prisoner must be released on parole. A court can only set a parole release date if certain criteria are met. A parole release date cannot be set in certain circumstances, including if the sentence is greater than three years or if the person is being sentenced for a serious violent offence or a sexual offence.
Parolee	A prisoner who has been released on parole.
Plea	The response by the accused to a criminal charge — ‘guilty’ or ‘not guilty’.

Precedent	A decision that sets down a legal principle to be followed in similar cases in the future.
Prisoner	An offender in prison serving a custodial sentence. People who have not yet been found guilty or sentenced held on remand are also referred to as 'prisoners'.
Probation	An order between six months and three years served in the community with monitoring and supervision.
Proportionality (principle of proportionality)	The principle that a sentence must be appropriate or proportionate to the seriousness of the crime.
Prosecution	A legal proceeding by the State of Queensland against an accused person for a criminal offence. Prosecutions are brought by the Crown (through the Office for the Director of Public Prosecutions or police prosecutors).
Recognisance	A requirement to appear before a court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to three years), which requires the person and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. This is also known as a good behaviour bond .
Remand	To place an accused person in custody awaiting further court hearings dealing with the charges against them. A person who has been denied bail, or not sought it, will be placed on remand. This is also known as pre-sentence custody.
Regulatory offences	Less serious forms of offences which provide police with an alternative to charging a person with a criminal offence.
Respondent	The party responding to an appeal of a court's decision.
Restitution	An order to restore property taken or damaged in the commission of an offence to its proper owner.
Sentence	The penalty that the court imposes on a person who has been found guilty of an offence.
Sentencing factors	The factors that the court must take into account when sentencing.
Sentencing principles	Principles developed under the common law, which serve as guideposts to help judges and magistrates reach a decision on the sentence to impose. They include parity, proportionality, totality, and the De Simoni principle.
Sentencing purposes	The legislated purposes for which a sentence may be imposed. In Queensland there are five sentencing purposes for the sentencing of adults: punishment, deterrence, rehabilitation, denunciation and community protection.
Sentencing remarks	The reasons given by the judge or magistrate for the sentence imposed.
Serious violent offence	If a court convicts a person of an offence declared to be a serious violent offence, it means the offender is unable to apply for parole until they have served 80 per cent of their sentence or 15 years in prison, whichever is less.
Simple offences	Generally minor offences that must be prosecuted within 12 months of the matter arising and are usually heard in the Magistrates Court by a magistrate. Also known as summary offences .

Specialist Domestic and Family Violence Court	This specialist court deals exclusively with all civil and criminal domestic and family violence matters in locations where the court operates.
Statute law	Laws made by Parliament, such as the <i>Penalties and Sentences Act 1992</i> (Qld).
Summary offences	Generally minor offences that must be prosecuted within 12 months of the matter arising and are usually heard in the Magistrates Court by a magistrate. Also known as simple offences .
Supreme Court	The highest state court in Queensland. It comprises the trial division and the Court of Appeal.
Suspended sentence	A sentence of imprisonment of five years or less suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period of time (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence.
Totality (principle of totality)	The principle that when an offender is convicted of more than one offence, the total sentence should reflect the overall criminality of offending.
Victim	A person who has suffered harm directly because of a criminal offence, or a family member or dependant of a person who has died or suffered harm because of a criminal offence.
Victim impact statement	A written statement made by a victim which states the harm they have experienced from the offence and may include attachments such as medical reports, photographs and drawings.

Responsibility for sentencing

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

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

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

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

How sentencing laws are made

There are two sources of sentencing law in Queensland:

- **Statute law** — legislation made by Parliament. Legislation defines what behaviour constitutes an offence, establishes penalties that apply, list the available sentences and set 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. This is also known as 'common law'.

Parliament of Queensland

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



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

Parliament consists of the Governor (as the Queen's representative) and the Legislative Assembly (the elected Members of Parliament). Each Minister (Member of Parliament appointed to Cabinet) is responsible for developing and administering laws relating to their area of responsibility (known as their 'portfolio').

The Queensland Parliament makes legislation or authorises the making of legislation by enacting an Act.² A draft Act is called a Bill. Bills are introduced into Parliament for discussion, debate and possible amendment. If the Legislative Assembly (Lower House) votes and passes a Bill, it also must be given royal assent. On assent by the Governor, the Bill becomes an Act. Queensland only has a Lower House. This means there is no house of review (Upper House), unlike other states and the Commonwealth Parliament, and a Bill becomes law without having to pass through a second chamber. Generally, following the introduction of a Bill into Queensland Parliament, it will 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 is against the law. They generally set a maximum penalty that courts may impose on a person convicted of an offence, and in some cases may also set out a minimum or mandatory penalty that courts must apply when sentencing.

The main legislation that guides sentencing in Queensland is:

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

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

Parliament of Australia

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

Queensland courts hear cases and sentence people for some Commonwealth offences, such as terrorism, drug importation and child pornography material offences.

Relevant Acts that guide sentencing for Commonwealth offences include the *Crimes Act 1914* (Cth) and the *Criminal Code* (Cth).

Courts

Case law is made by the courts. Case law includes past decisions on sentencing and on how to interpret or apply legislation. Past decisions help judges and magistrates determine an appropriate sentence.

This is particularly important when deciding what sentence should be given for an offence. The court may consider other sentences that have been given for that offence in other cases.

In Queensland, the prosecutor and defence counsel will typically present the judge or magistrate with relevant examples of previous cases and sentences imposed during the sentencing hearing to take into account in sentencing.

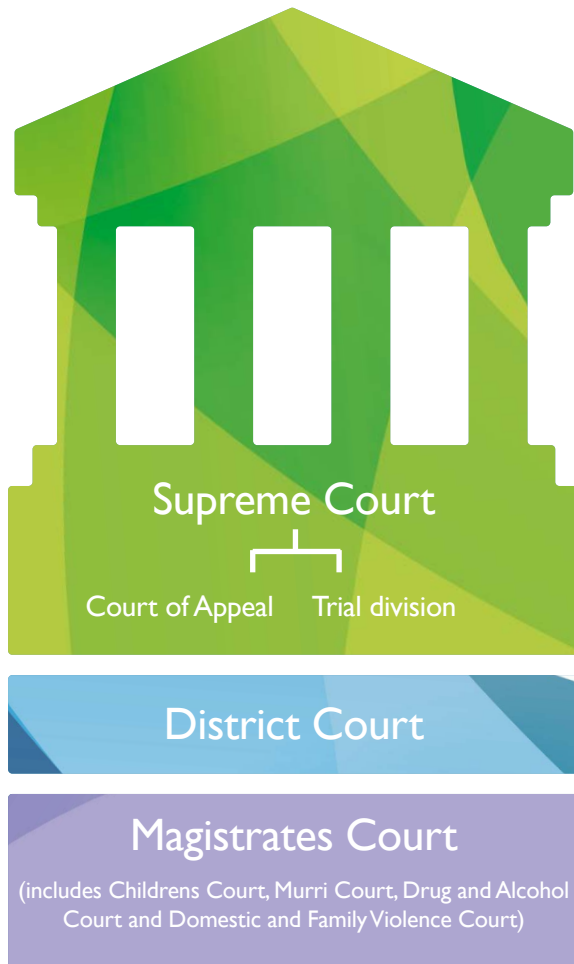
Sometimes cases will set out legal principles that courts must apply when sentencing in similar cases, or when considering particular sentencing issues. For example, in 2010, the Queensland Court of Appeal identified in *R v HBA* that generally a mental disorder short of insanity may lessen the moral culpability of a person and so reduce the relevance of general or personal deterrence when sentencing.³ In doing so, the Court of Appeal accepted a Victorian Court of Appeal decision that mental impairment is relevant (as a mitigating factor) in at least six ways (these are known as the 'Verdins principles' after the decision in which they were stated⁴). This decision provides guidance to Queensland courts in sentencing a person who has a mental impairment.

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

Courts and jurisdiction



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



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

Queensland has three tiers of courts which sentence adults:

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

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

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

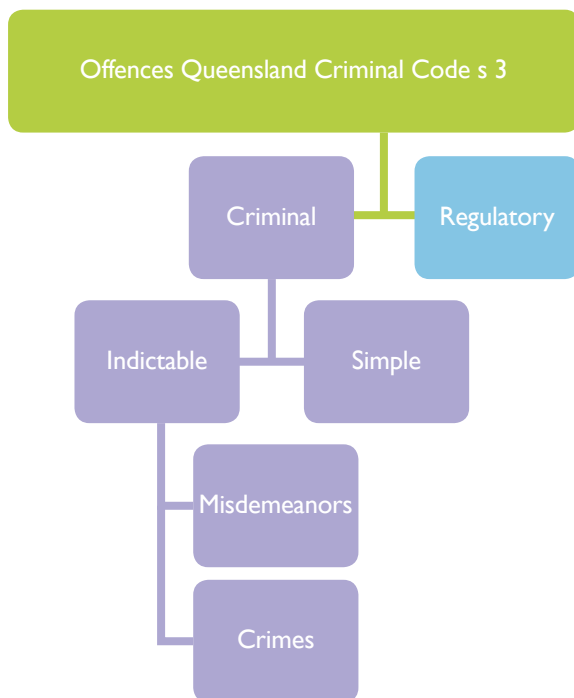
Which court a person is sentenced by depends on the type of offence they are charged with and the seriousness of the charge. Generally, the more serious the offence is, the higher the court that will hear it. For example, murder and manslaughter cases can only be heard in the Supreme Court.

In Queensland, there are two types of offences — regulatory offences and criminal offences:⁵

- **Regulatory offences** are offences included in the *Regulatory Offences Act 1985 (Qld)* and are less serious forms of offences (for example, unauthorised dealing with shop goods, leaving a hotel and 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. Regulatory offences can only be dealt with in the Magistrates Court.
- **Criminal offences** are comprised of crimes, misdemeanours and simple offences (also known as ‘summary offences’).
 - **Simple offences** are generally minor offences that must be prosecuted within 12 months of the matter arising⁶ and are usually heard in the Magistrates Court by a magistrate. Examples of simple offences include many driving offences, creating a public nuisance, trespassing and minor drug offences.⁷ In some circumstances, a judge of a higher court may hear a simple offence.

- **Crimes and misdemeanours** are indictable offences that may be dealt with in the Supreme Court or District Court on indictment (a written charge bringing a person to trial in a higher court). Generally crimes are more serious than misdemeanours. Some indictable offences are triable summarily which means they can be dealt with by the Magistrates Court, rather than by a higher court. The maximum sentence that can be imposed in the Magistrates Court is three years, although a sentence of up to four years' imprisonment can be imposed by the Magistrates Court sitting as the Drug and Alcohol Court. As a general guide, indictable offences that can be heard summarily are those that carry a maximum penalty of not more than three years, but other prescribed offences with a higher maximum penalty must also be heard in a Magistrates Court if the or if the defendant does not elect to be tried by jury.⁸ However, a Magistrates Court must not deal with the case if satisfied that because of the nature or seriousness of the offence, or any other relevant consideration, that the defendant, if convicted, may not be adequately punished on summary conviction.

Categories of offences in Queensland⁹



Magistrates Court

The Magistrates Court¹⁰ is the first level of the Queensland Courts system and hears about 95 per cent of court cases. Most criminal cases are first heard in this court in some form. Most civil actions are also heard here.

Magistrates Courts can hear cases in around 130 locations throughout Queensland and in some regional areas the Magistrates Court also conducts circuit courts.

All matters in a Magistrates Court are heard by the magistrate alone.¹¹ Unlike trials in the Supreme and District Courts, trials in the Magistrates Court are heard by a magistrate without a jury. This means the magistrate makes all decisions in criminal matters, including any penalty to be imposed. A person charged with a criminal offence must be brought before the Magistrates Court as soon as possible after being charged.

The Magistrates Court deals with simple offences and some indictable offences, such as burglary, unlawful use of a motor vehicle, fraud and assault occasioning bodily harm. In the case of indictable offences such as rape, armed robbery and murder, the Magistrates Court determines if there is enough evidence to refer the case for trial in the District or Supreme Court. This is called a committal hearing.

District Court

The District Court¹² is the second tier of the court system after the Magistrates Court, dealing with serious criminal offences such as rape and armed robbery. The Court also hears appeals from the Magistrates Court.

The Court sits in 32 locations across Queensland and matters are presided over by a judge. Judges also travel throughout the state to hear matters in regional and remote areas. This is called the circuit court.

The District Court can hear criminal trials usually with a jury, although in some circumstances a judge can hear a trial without a jury.

If a jury trial is held, 12 people selected at random will determine whether the accused person is guilty or not guilty based on the facts of the case. The judge makes all other decisions, including sentencing. If a criminal trial without jury is held, the judge decides whether the accused person is guilty.

Supreme Court

The Supreme Court¹³ is the highest court in Queensland. It comprises the trial division and the Court of Appeal. The Supreme Court sits in 11 regional courthouses and matters are presided over by a judge. As with the District Court, judges also travel through the state to hear matters in regional and remote areas.

The trial division hears the most serious criminal cases including murder, manslaughter and serious drug offences. The trial division also hears civil matters involving amounts over \$750,000. Similar to the District Court, the Supreme Court can hear criminal trials with or without a jury.

Other Queensland courts

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

Childrens Court

In Queensland, cases involving children are dealt with by the:¹⁴

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

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

The CCQ hears indictable criminal matters (serious crimes) involving children and parentage orders and discharge of parentage orders (these are matters involving surrogacy). CCQ matters are usually heard in an open court, however the judge may order the court be closed (that is, only people directly involved in the case may be present). Unless the court orders otherwise, no information identifying an accused child may be published.

The CCQ also hears appeals against child protection orders made by a magistrate. In these cases, the court makes a directive to protect a child from harm. These proceedings are held in a closed court.

The Supreme Court hears cases involving children charged with any of a small number of the most serious criminal offences, such as murder and the most serious forms of drug trafficking.¹⁵ The rules regarding open court, identification and publication are like those in the CCQ.

The Specialist High Risk Youth Court (HRYC) commenced on 2 February 2017 in the Magistrates (Childrens) Court in Townsville. The HRYC provides regular judicial monitoring by a dedicated magistrate to hold a young person to account while bringing together appropriate supports to address the underlying causes of the young person's offending behaviour.

Since 12 February 2018, if a child commits an offence before they turn 18 and court proceedings are commenced, the matter will first appear in the Childrens Court.¹⁶ If it involves charges for a serious offence then the matter will likely be referred to the CCQ for trial and/or sentence.

Murri Court

Murri Court¹⁷ links Aboriginal and Torres Strait Islander defendants to cultural and support services to help them make changes in their lives and stop offending. This includes counselling, education and training, attending a men's or women's group, support to stop drinking or taking drugs or to find somewhere to live. In some locations, Australian South Sea Islander defendants are able to participate in the Murri Court.

Elders and Respected Persons from the community are in the courtroom to guide and encourage defendants, and help magistrates understand more about a defendant's personal and cultural circumstances. Murri Court is less formal than mainstream court, but participants are still held accountable for their actions while addressing the underlying causes of their offending behaviour. Defendants are expected to work hard to make better choices.

Murri Courts are located in the Magistrates and Childrens Courts in Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Mackay, Maroochydore, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville and Wynnum.

Specialist Domestic and Family Violence Court

The Specialist Domestic and Family Violence (DFV) Court¹⁸ is located in Southport on the Gold Coast. It deals exclusively with all civil and criminal DFV matters. Specialist DFV court approaches are being established in Brisbane, Beenleigh, Townsville, Mount Isa and Palm Island by 2020.

The Specialist DFV Court at Southport became Queensland's first permanent specialist DFV court after a two-year pilot, commencing 1 September 2015. The specialist court was implemented in response to the recommendations of the Queensland Special Taskforce on Domestic and Family Violence's report, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland*.

Specialist DFV courts offer:

- a dedicated magistrate with expertise in DFV issues
- a Department of Justice and Attorney-General court coordinator to oversee court operations, including stakeholder engagement
- a specialist DFV court registry where specialist court staff offer support and information
- dedicated prosecutors
- duty lawyers to provide 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)
- Queensland Corrective Services' (QCS) representatives who provide expert advice to the magistrate in relation to breaches of DFV orders and who undertake suitability assessments for community-based supervision
- access to DFV perpetrator programs
- specialist DFV registry training.

Drug and Alcohol Court

The Drug and Alcohol Court in Brisbane commenced operation on 29 January 2018 and provides an intensive and targeted response to adults with a severe substance use disorder. The Court aims to improve community safety by rehabilitating offenders so they can reintegrate back into the community as productive members of society. Participants are required to be supervised and undertake treatment and program interventions that seek to address their drug and/or alcohol dependency issues and criminal offending as part of their sentence. The goal is to reduce future offending.

A Drug and Alcohol Treatment Order can only be made if certain conditions are met, including that the person's severe substance use disorder contributed to the commission of an eligible offence and the person agrees to the order being made. In making a Treatment Order, the Court may impose a sentence of imprisonment of up to four years which is suspended while the person is undergoing a treatment program. 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 and Legal Aid Queensland lawyers. If the person does not comply with the conditions of the order, the Court can impose different types of consequences, including ordering the person to serve short periods of time in prison. Repeated non-compliance can lead to the order being revoked and the person being re-sentenced, or ordered to serve the whole or part of the original sentence of imprisonment that was suspended.

Mental Health Court

The Mental Health Court¹⁹ decides a person's mental capacity to be criminally responsible for committing an offence or to enter a plea to an offence. Defendants with a mental health condition or an intellectual disability may be referred to the Mental Health Court to determine:⁴¹

- whether the person was of unsound mind at the time of the offence, or if they are currently fit for trial, or
- if they are charged with murder; whether or not they will instead stand charged with manslaughter by reason of diminished responsibility.

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

The Court is constituted by a judge of the Supreme Court of Queensland and is advised by two assisting psychiatrists drawn from a panel of psychiatrists. Additional assisting psychiatrists can advise the Court on meaning and significance of clinical evidence and issues relating to the treatment and detention needs of people under the *Mental Health Act 2016* (Qld).

National courts

There are several national courts which hear non-criminal matters, such as family matters, commercial and financial matters, employment issues and human rights matters. These courts include:

- 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; the focus of this guide.

High Court of Australia

The High Court²³ is the highest court in the Australian judicial system. It was established in 1901 under the Australian Constitution. The functions of the High Court are to:

- interpret and apply the law of Australia
- decide cases of special national significance, including challenges to the constitutional validity of laws
- hear appeals, by special leave, from Federal, State and Territory courts.

The High Court can deal with cases which come to it on appeal, or which begin in the Court itself. The Court can hear the whole range of Australian law, such as contract, company law, criminal law and procedure, insurance, tax law, property law, family law etc. Decisions of the High Court are binding on all other courts throughout Australia.

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

The High Court consists of seven Justices appointed by the Governor-General in Council.

Sentencing process in Queensland

When sentences are imposed

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

An accused person can be found guilty of an offence if they plead guilty to an offence of which they have been charged or are found guilty by a magistrate or a jury following a trial. In some circumstances, judges can hear a matter without a jury. The magistrate, judge or jury must be satisfied beyond reasonable doubt that the person is guilty of the offence of which they have been charged.

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

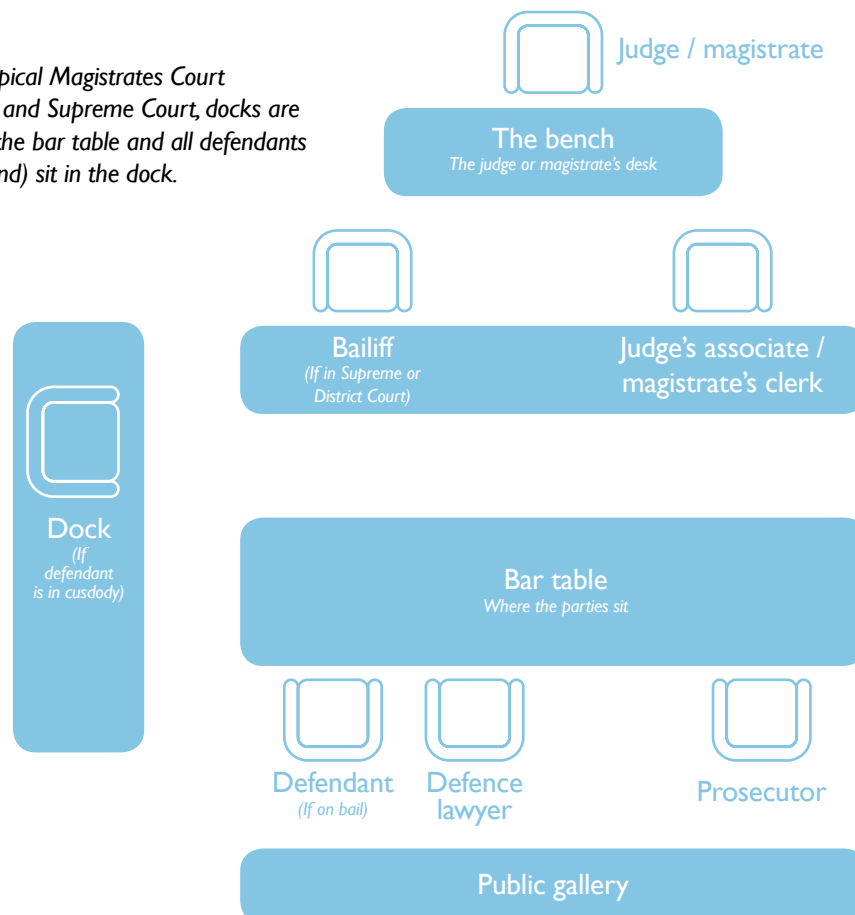
Role of the prosecutor

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

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

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 defence

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

- information about the offender's personal circumstances, such as character references
- background or any contextual information about the offence/s, in particular any mitigating factors
- submissions about the steps an offender has taken towards their rehabilitation
- submissions about relevant case law and legislation, including associated sentencing principles
- submissions as to the appropriate penalty (usually a sentencing range).

Role of the judge or magistrate

The judge or magistrate decides the appropriate sentence by taking into account submissions made by the prosecutor and the defence and having regard to the relevant law.

The judge or magistrate will hand down their decision and provide reasons for the sentence.

Determining an appropriate sentence is a complex process in which a sentencing judge or magistrate must balance a range of factors in accordance with the law. Judges and magistrates must take into account all submissions made by the prosecution and the defence, and legislation and case law as these apply to the individual circumstances of a case.

The types of penalties a court can impose when sentencing an offender as an adult are set out in the *Penalties and Sentences Act 1992* (Qld). Sentencing judges and magistrates must provide reasons for the sentence imposed. These reasons are recorded and referred to as sentencing remarks.

If a judge or magistrate makes an order involving conditions as part of the sentence, for example an order of probation, they must ensure the offender understands the conditions imposed and consents to the order being made.



HEAR THE COURT CASE.
DECIDE THE SENTENCE.

**JUDGE
FOR
YOURSELF**

CHARGE:
DANGEROUS
DRIVING
CAUSING DEATH

qld.gov.au/judgeforyourself

Role of the victim

Queensland legislation protects the interests of victims during sentencing.

When determining an appropriate sentence, the court must consider any physical, mental or emotional harm done to a victim because of the offence. The court must also consider the effect of the offence on any child under 16 years, who may have been directly exposed to or witnessed the offence. One of the ways the victim can bring this harm to the attention of the court is through a victim impact statement.



Find out how to make a victim impact statement:

www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/court-support-for-victims-of-crime

A victim impact statement is a written statement made by a victim — or their family — which states the harm they have experienced from the offence and may include attachments such as medical reports, photographs and drawings. This statement helps to inform the sentencing judge or magistrate about the impact of a crime on the victim, however providing one is not mandatory and is always the choice of the victim.

If a victim chooses not to provide a statement, this does not mean the court should or will assume the offence caused little or no harm to the victim. A victim impact statement is an opportunity for a victim to participate in the criminal justice process by communicating to the court the impact of the crime including any physical, social, financial or psychological effects the crime has had.

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

- the difference in the victim's life before and after the crime
- physical or emotional injuries and how these affect the victim
- financial loss and how this affects the victim
- if the case is about the death of a loved one, the person can speak about the loved one's life.

A victim may be offered the opportunity to read their victim impact statement aloud in court. If a victim is provided the opportunity to read their victim impact statement, the court may make special arrangements to assist the victim (e.g. obscuring the view of the offender). A 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 has certain rights in criminal justice proceedings, outlined in the *Victims of Crime Assistance Act 2009 (Qld)*.

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



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

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



Deciding what sentence to impose

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

Sentencing purposes

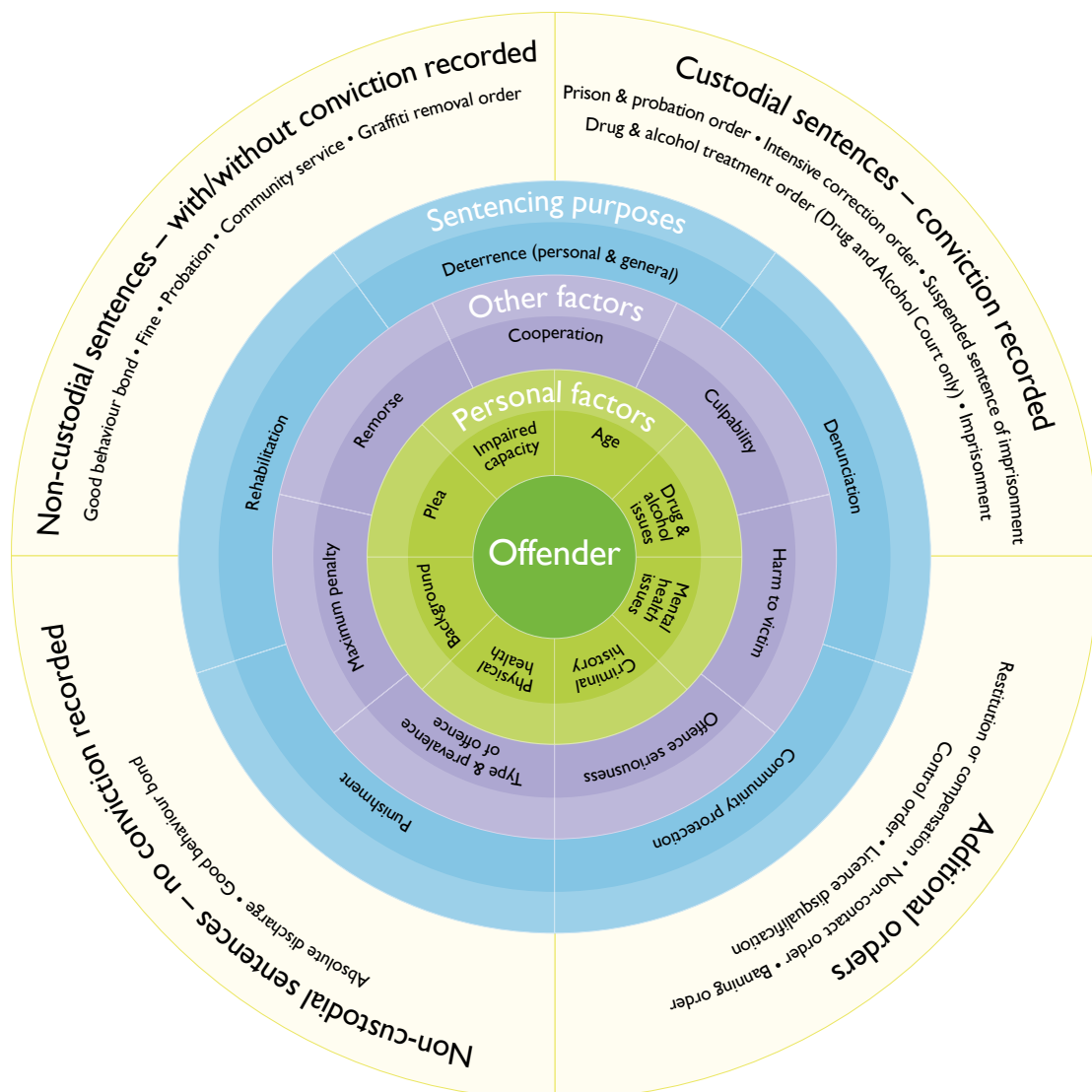
The only purposes under Queensland law for which a sentence may be imposed are:

- **punishment** — to punish the offender to an extent or in a way that is just in all the circumstances
- **rehabilitation** — to establish conditions to help the offender to be rehabilitated

- **deterrence** — to deter the offender (known as **personal or specific deterrence**) or other members of the community (known as **general deterrence**) from committing the same or a similar offence
- **denunciation** — to denounce (indicate disapproval of) the offending behaviour
- **community protection** — to protect the Queensland community from the offender, or
- a combination of these purposes.

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

Sentencing adults in Queensland



Sentencing factors

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

- imprisonment should only be imposed as a last resort — a sentence that allows the offender to stay in the community is preferable (exceptions include where the offence involved violence or was a sexual offence committed in relation to a child under 16 years)
- the maximum and any minimum penalty for the offence (see **Maximum penalty and Mandatory penalties**)
- the nature and seriousness of the offence, including any physical, mental or emotional harm to a victim and effect on any 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**)
- whether — and how early — the offender pleaded guilty or indicated his or her intention to plead guilty
- any damage, loss or injury caused
- the offender's character (including the number, seriousness, date, relevance and nature of any previous convictions and any significant contributions made to the community by the offender)
- the offender's age and intellectual capacity
- any aggravating or mitigating factors (see **Mitigating and aggravating factors**)
- how common/prevalent the offence is
- how much help the offender gave to law enforcement agencies in investigating the offence or other offences (see **Cooperation with law enforcement**)
- time already spent by the offender in custody while awaiting sentence
- if the offender is already on a community-based order, whether the offender has complied with the order
- the successful completion of a program or course imposed as a condition of bail

- if the offender is Aboriginal or Torres Strait Islander, any submissions by a representative of a Community Justice Group in the offender's community.

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

Sentencing principles

In addition to the statutory purposes of sentencing, courts must also consider certain sentencing principles, developed under the common law. These principles provide guidance to help judges and magistrates reach a decision on the sentence to impose. They vary in how they are expressed and applied between Australian jurisdictions.²⁴

Proportionality

A sentence must be appropriate or proportionate to the seriousness of the crime (also incorporated within the sentencing purpose of just punishment). The court will consider the maximum penalty and the whole of the circumstances of the offence, including the degree of harm caused and the person's culpability (see **Culpability**).

Parity

Courts should treat same or similar offending alike and different offending should be treated differently.²⁵ The parity principle supports consistency between sentencing decisions involving co-offenders and supports the principle of equality before the law.

Totality

A sentence should reflect the overall criminality of offending. This means when an offender is convicted of more than one offence, the total sentence must be just and appropriate to the offender's overall criminal behaviour. The courts should seek 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

This is the principle that a person should only be sentenced for an offence of which he or she has been found guilty. This means a judge or magistrate cannot take into account circumstances of aggravation that would have warranted a conviction for a more serious offence.²⁶

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

Culpability

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

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

- committed by a person in complete control of their own actions (namely, were they mentally disordered or intellectually disabled or acting under the influence of alcohol or drugs)
- committed with the person's knowledge of its consequences (or likely consequences), or only in careless (negligent) disregard of the consequences
- planned or opportunistic

- committed with the possession of a weapon.

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

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

Mitigating and aggravating factors

Mitigating factors are details about the offender and their offence that tend to reduce the severity of their sentence.

Aggravating factors are details about the offence, the victim and the offender that tend to increase the person's culpability and the sentence they receive.

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
- the person has no or a limited history of previous offending and is otherwise of good character
- the young age of the person
- the offender's personal circumstances, such as coming from a disadvantaged background.

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)
- pre-planning the crime (called pre-meditation)
- the offence involved use of a weapon
- the offence was committed while on bail or while the person was subject to a court order.

Cooperation with law enforcement

When sentencing a person the court must take into account the level of assistance given to law enforcement agencies in the investigation of the offence, or other offences.²⁷

Under the *Penalties and Sentences Act 1992 (Qld)*, there are certain procedural requirements that apply if a sentence is to be reduced because the offender has agreed to cooperate with law enforcement agencies in the investigation of an offence or a confiscation proceeding, or where significant cooperation of this nature has already been provided. These requirements are aimed at protecting the safety of offenders who have cooperated, or undertaken to cooperate, with law enforcement authorities and to encourage this cooperation. Where cooperation is promised or given under section 13A or 13B of the *Penalties and Sentences Act*, parts of the sentence hearing must be heard in ‘closed court’. This includes submissions made about the assistance the person has given, and comments made by the judge or magistrate about the reduction of the sentence and what would have been imposed had the person not promised to, or given this assistance. Only specific people are allowed to 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 approval by the court. The actual penalty imposed — taking into account the assistance given — is stated in open court.

Maximum penalty

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

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

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

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 individual case.

Maximum penalties serve a number of purposes, including:

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

Life sentence

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

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

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

Judges must consider a number of factors when deciding to impose a life sentence, such as:

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

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

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

A judge can increase the non-parole period by setting a later parole eligibility date.

A prisoner is not eligible to apply for parole until they have served the mandatory non-parole period or longer period set by the court. Release on parole is not guaranteed — it is a decision for the Parole Board Queensland.

Parolees have to comply with parole conditions until the end of their prison sentence.

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

Indefinite sentence

A court can impose an indefinite sentence, instead of a sentence for a fixed term, when an offender is considered a serious danger to the community. This means the offender has no fixed date when they can apply for release on parole. The court must consider all of the following:

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

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

Mandatory penalties

A mandatory sentence is a fixed penalty prescribed by Parliament for committing a criminal offence.²⁸ Parliaments can also set presumptive sentencing regimes in which 'both a sanction type and a minimum level of severity for a given offence which the court must impose unless there is a demonstrable reason'.²⁹ These schemes can differ in terms of their prescription, ranging from wholly voluntary guidelines to what are essentially mandatory sentencing regimes.

The most common form of mandatory sentencing is one in which the legislature sets a minimum threshold but leaves the court to impose a harsher sanction where it considers it appropriate. In Queensland there are both defined term and defined percentage standard non-parole period schemes that apply to different offences.³⁰

There are different forms of mandatory penalties in Queensland under current legislation:

- mandatory penalties that prescribe both the sentence type and sentence length (for example, the mandatory sentence of life imprisonment for murder — see **Life sentence** — and mandatory licence disqualification periods for certain offences under the *Transport Operations (Road Use Management) Act 1995 (Qld)*³¹)
- mandatory penalties that prescribe the sentence or penalty type only, but in some cases includes a discretion to impose a different sentence if there are exceptional circumstances (for example, the requirement that a person who commits a sexual offence in relation to a child be sentenced to serve an actual term of imprisonment³²)

- mandatory minimum non-parole periods which apply to a term of imprisonment imposed (for example, a serious violent offence (SVO) declaration for people convicted on indictment of prescribed offences, which means they must serve 80 per cent of the sentence imposed before being eligible to apply for release on parole).³³

In the case of the SVO scheme, if a person is convicted on indictment of one of the prescribed offences and sentenced to 10 years or more, they are automatically convicted of a serious violent offence and must serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being able to apply for parole.³⁴

Judges also have discretion to make a SVO declaration where it is a serious violent offence and the sentence is imprisonment of five to less than 10 years, or for a sentence of any length if the offender is convicted on indictment of an offence that involved the use or attempted use of serious violence against another person or that resulted in serious harm to another person.³⁵

Cumulative and concurrent sentences

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

- **concurrently** — sentences are served at the same time, so that the shortest sentence is subsumed into the longest sentence (also called the head sentence). There is a presumption in favour of sentences being served concurrently in Queensland with this to occur unless the court orders otherwise.³⁶
- **cumulatively or consecutively** — each sentence for each conviction is served one after the other. There are circumstances in which a sentence of imprisonment imposed must be ordered to be served cumulatively, such as where the offender has been convicted of a serious violent offence committed while in prison or while on parole.³⁷
- **partially concurrently and partially cumulatively** — some sentences are served concurrently, while others will be served after the term of the head sentence has ended or commence at a time set by the judge (so they overlap).

Remand

When an accused person is not granted bail after being charged, they will be held in custody on remand. If the person is later sentenced to imprisonment, any time that he or she spent in custody in relation to that offence and for no other reason, must be taken to be imprisonment already served under the sentence, unless the sentencing court otherwise orders.³⁸ This is often the reason why offenders are released from custody on, or shortly after, the day they are sentenced for serious offences; their sentence is backdated to the first day they went into custody.

Recording a conviction

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

In making this decision, the court must look at all the circumstances of the case, including the person's character and age, the nature of the offence and whether recording a conviction will have any impact on the person's economic or social wellbeing, or chances of finding employment.³⁹

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

Offender levy



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

All adult offenders sentenced in the Supreme, District or Magistrates Court must pay an offender levy. The offender levy is an administrative fee to help pay for law enforcement and administration costs. It is payable on each sentencing event whether or not a conviction is recorded.

The levy is not an order of the court and doesn't form part of any sentence imposed by a judge or magistrate. This means the judge or magistrate cannot take the offender levy into account when imposing a sentence.

The offender levy is set under section 10 of the *Penalties and Sentences Regulation 2015 (Qld)*. The levy amount is different between the courts; it is higher for the District and Supreme Courts than the Magistrates Court. The levy cannot be appealed or converted to community service.

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

Penalty types

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

There are two broad types of sentencing orders for adults:

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

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

Non-custodial sentencing orders

Absolute discharge

Release without a conviction being recorded and without any further penalty.

Good behaviour bond/recognition

A requirement to appear before a court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to three years), which requires the person and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. Other conditions that may be ordered include attending a drug assessment and education session. No conviction is recorded.

Fine

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

Probation order

An order between six months and three years with or without a conviction being recorded served in the community with monitoring and supervision by an authorised corrective services officer. The person must agree to the order being made and to comply with the requirements under the order. When making a probation order the court must set mandatory requirements⁴⁰ and can also make additional requirements.⁴¹

Mandatory requirements include:

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

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

Community service order

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

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

The offender must consent to the order being made.

Graffiti removal order

An order of up to 40 hours to remove graffiti, usually within 12 months, with or without a conviction being recorded. The same types of requirements that apply to probation orders and community service orders also apply to people subject to a graffiti removal order.

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

Custodial sentencing orders

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

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

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 nine months and up to three years.

Intensive correction order

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

If the offender does not comply with the conditions of the order, a court may revoke the order and order the person to serve the remaining period of the sentence in prison.

Suspended sentence of imprisonment

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

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

Imprisonment

A sentence to be served in prison. If a court sentences a person to three years or less in prison, and does not convict the person of a sexual or serious violent offence, it must set a parole release date at sentencing (called court-ordered parole). This can include releasing the person directly from court on parole. There are some circumstances in which this does not apply (for example, if the person has had their court ordered parole cancelled).

If the sentence is for more than three years imprisonment, or for a serious violent or sexual offence, then the court may fix a parole eligibility date. The Parole Board Queensland decides whether to grant the prisoner parole when they apply. If no eligibility date is set, QCS determines the date based on the relevant legislation (e.g. generally a prisoner is eligible for parole the day after reaching 50 per cent of the period of imprisonment).⁴²

Additional orders

Restitution or compensation order

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

Driver licence disqualification

An order disqualifying a person from holding or obtaining a Queensland driver licence absolutely or for a specified period of time. Some traffic-related offences carry a mandatory minimum disqualification period which the court must impose.

Non-contact order

An order prohibiting contact with the victim or another person, or going to a particular place, or within a particular distance of that place, for a set period. This can be made for a serious (indictable) offence committed against a person and whether or not a conviction is recorded. A non-contact order is separate to a protection order under the *Domestic and Family Violence Protection Act 2012* (Qld) and can be made in addition to any other order made.

Banning order

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

Certain criteria must be met, including that the offence involved the use, threatened use or attempted use of unlawful violence to a person or property or an offence of drug trafficking or supply of a dangerous drug, and was committed in licensed premises or in a public place near licensed premises. A court may make this order whether or not a conviction is recorded.

Control order

An order of up to five years, whether or not a conviction is recorded, imposing 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. Conditions may include, for example, the offender being required to report to police, tell police if they change address, prohibiting them from associating with a stated person or class of person or from entering or being near a stated place. Control orders only can be made if an offender is a member of a criminal organisation.

Parole

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



The supervised release of a prisoner to serve all or the remainder of their term of imprisonment in the community, subject to conditions and supervision (e.g. offenders sentenced to a life sentence will remain on parole for life, see **Life sentence**).⁴³

There are three types of parole in Queensland:

- **court-ordered parole** — this is available where a court sentences an offender to a term of imprisonment of three years or less (excluding sexual offences and serious violence offences) and involves the court setting a parole release date at sentencing
- **board-ordered parole** — this involves a court setting the date the person becomes eligible to apply for parole. The Parole Board Queensland then decides whether the person should be released
- **exceptional circumstances parole** — enables the Parole Board Queensland to release a prisoner, prior to their parole eligibility date or court release date, in exceptional circumstances, for example if the prisoner is terminally ill.

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

Conditions of parole include:

- not committing a new offence
- receiving visits from a corrective services officer and following their 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
- not otherwise breaching parole.

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

Sentence appeals

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



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 Attorney-General's appeal is to the District Court if the sentence was for a summary offence, or to the Court of Appeal if the sentence was for an indictable offence.

A District Court judge's appeal decision may be further appealed to the Court of Appeal.

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.

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

An appeal must be started within one month of the sentence being imposed, unless the appeal court allows an extension of time.

When considering a sentencing appeal, the Court of Appeal will focus on whether the sentencing court made any legal error in its judgment, thereby making the sentence unjust. The appellant (the party making the appeal) must set out the reasons why they think the judge made the wrong decision. These are called the grounds for an appeal.

The grounds of appeal will set out how the sentencing judge is said to be in error, such as failing to take a mitigating factor personal to the offender into account, which means the sentence has fallen 'outside the range of sentences which could have been imposed if proper principles had been applied'.⁴⁴

The complaint is typically that the sentence is manifestly excessive (for an appeal brought by an offender) or manifestly inadequate (for an appeal brought by the Attorney-General). This means that some substantial wrong has occurred in fixing the sentence.⁴⁵

Usually, three judges sit on the Court of Appeal. The Court of Appeal can:

- dismiss the appeal (which means the sentence being appealed stands), or
- allow the appeal, and then increase, decrease or vary the sentence.

To allow an appeal, the Court of Appeal cannot simply decide to change a sentence because it would have imposed a different one. Rather, the court must find an error, for instance that the sentencing judge acted on a wrong principle, was guided or affected by extraneous or irrelevant matters, made a mistake on the facts, or did not take into account some relevant consideration. It can be that the nature of the error is not discoverable, but the sentence is unreasonable or plainly unjust so that a substantial wrong has in fact occurred.⁴⁶

The final appeal option is to seek leave to appeal to the High Court, Australia's highest court. However, the High Court only deals with legal matters of wider public importance and is not a sentencing court.

An offender may also seek to appeal a conviction. This is almost always after a trial and the offender did not plead guilty, however in exceptional circumstances an offender may be able to appeal a conviction if they pleaded guilty.

Further information

Queensland Sentencing Advisory Council

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

www.sentencingcouncil.qld.gov.au

Queensland Courts

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

www.courts.qld.gov.au

Legal Aid Queensland

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

www.legalaid.qld.gov.au

Supreme Court Library Queensland

Visit the Supreme Court Library's website for decisions of Queensland courts and tribunals, judicial papers and profiles, and legal events.

www.sclqld.org.au

Endnotes

- ¹ *Constitution Act 1867* (Qld) s 2; Queensland, Department of the Premier and Cabinet, *The Queensland Legislation Handbook: Governing Queensland* (5th ed, 2014) 1.3–1.4.1.
- ² *Ibid* 1.4.3–1.5.2.
- ³ *R v HBA* [2010] QCA 306. The principle was confirmed as ‘well established’ by the Queensland Court of Appeal in *R v Ganeshalingham* [2018] QCA 34, 7 citing *Goodger* [2009] QCA 377 [21] and *Neumann* [2007] 1 Qd R 53.
- ⁴ *R v Verdins* (2007) 16 VR 269.
- ⁵ See Heather Douglas, Malcolm Barrett and Emma Higgins, *Criminal Process in Queensland* (2017) 112–120.
- ⁶ *Justices Act 1886* (Qld) s 52; while 12 months is the general rule, exceptions to this timeframe does apply for many specific offences.
- ⁷ Queensland Courts, www.courts.qld.gov.au/courts/magistrates-court/what-happens-at-magistrates-court
- ⁸ *Criminal Code* (Qld) ss 552A, 552B, 552BA, 552BB.
- ⁹ Adapted from Douglas, Barrett and Higgins, above n 5, 114.
- ¹⁰ See www.courts.qld.gov.au/courts/magistrates-court/about-the-magistrates-court
- ¹¹ An exception to this is that in some circumstances a Justice of the Peace (JP) can hear matters. For example, the Remote Justices of the Peace (Magistrates Court) Program allows Justices of the Peace to constitute a Magistrates Court in the absence of a magistrate in discrete Queensland communities. Under the program, remote JPs can hear and determine charges for simple or regulatory offences, or indictable offences that can be dealt with summarily, where a defendant enters a guilty plea. To learn more about the program visit the Queensland Courts website at www.courts.qld.gov.au
- ¹² See www.courts.qld.gov.au/courts/district-court/about-the-district-court
- ¹³ See www.courts.qld.gov.au/courts/supreme-court/about-the-supreme-court
- ¹⁴ See www.courts.qld.gov.au/courts/childrens-court
- ¹⁵ *Youth Justice Act 1992* (Qld) Schedule 4 defines a supreme court offence as ‘an offence for which the District Court does not have jurisdiction to try an adult because of the *District Court of Queensland Act 1967*, section 61’.
- ¹⁶ Prior to 12 February 2018, a 17-year-old who committed an offence was regarded by the criminal justice system an adult under Queensland legislation.
- ¹⁷ See www.courts.qld.gov.au/courts/murri-court
- ¹⁸ See www.courts.qld.gov.au/courts/domestic-and-family-violence-court
- ¹⁹ See www.courts.qld.gov.au/courts/mental-health-court/about-the-mental-health-court
- ²⁰ See www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home
- ²¹ See www.fedcourt.gov.au/about/jurisdiction
- ²² See www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/about-fcc
- ²³ See www.hcourt.gov.au
- ²⁴ Commonwealth, Royal Commission into Institutional Child Sexual Abuse, *Criminal Justice Report* (2017) Parts VII–X, 280.
- ²⁵ *Lowe v R* (1984) 154 CLR 606.
- ²⁶ *R v De Simoni* (1981) 147 CLR 383, 289 (Gibbs CJ, Mason and Murphy JJ agreeing).
- ²⁷ *Penalties and Sentences Act 1992* (Qld) s 9(2)(i).
- ²⁸ Australian Law Reform Commission, *Same Crime, Same Time: Sentencing Federal Offenders*, Report 103 (2006) 538–9.
- ²⁹ Adrian Hoel and Karen Gelb, *Sentencing Matters: Mandatory Sentencing* (Victorian Sentencing Advisory Council, 2008) 2.
- ³⁰ Victorian Sentencing Advisory Council, *Sentencing Guidance in Victoria: Final Report* (2016) 160.
- ³¹ See, for example, *Transport Operations (Road Use Management) Act 1995* (Qld) ss 78(3)(b)–(e) and 78(3)(k).
- ³² *Penalties and Sentences Act 1992* (Qld) s 9(4).
- ³³ *Penalties and Sentences Act 1992* (Qld) pt 9A.
- ³⁴ *Penalties and Sentences Act 1992* (Qld) s 161A; *Corrective Services Act 2006* (Qld) s 182.
- ³⁵ *Penalties and Sentences Act 1992* (Qld) ss 161B(3)–(4).
- ³⁶ See *Penalties and Sentences Act 1992* (Qld) s 155.
- ³⁷ *Penalties and Sentences Act 1992* (Qld) ss 156 and 156A.
- ³⁸ *Penalties and Sentences Act 1992* (Qld) s 159A.
- ³⁹ *Penalties and Sentences Act 1992* (Qld) s 12(2).
- ⁴⁰ *Penalties and Sentences Act 1992* (Qld) s 93.
- ⁴¹ *Penalties and Sentences Act 1992* (Qld) s 94.

- ⁴² *Corrective Services Act 2006* (Qld) s 184.
- ⁴³ See www.qld.gov.au/law/sentencing-prisons-and-probation/sentencing-probation-and-parole/applying-for-parole
- ⁴⁴ *Barbaro v The Queen; Zirilli v The Queen* (2014) 253 CLR 58, 70 [26]-[27] (French CJ, Hayne, Kiefel and Bell JJ).
- ⁴⁵ See *Barbaro v The Queen; Zirilli v The Queen* (2014) 253 CLR 58, 70 [27] (French CJ, Hayne, Kiefel and Bell JJ), citing *House v The King* (1936) 55 CLR 499, 505.
- ⁴⁶ *House v The King* (1936) 55 CLR 499 (Dixon, Evatt and McTiernan JJ).

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