

## SENTENCING FACTORS

Courts must take into account a number of principles, circumstances, factors and legal requirements when sentencing an offender.

### Learning outcomes

Students will:

- use legal terminology
- describe and identify relevant aggravating and mitigating circumstances
- justify, using legal reasons, whether taking into account different factors leads to more just and equitable outcomes.

### Focus question

- What circumstances or factors affect a sentence in Queensland?

### Key concepts

- aggravating factors
- culpability
- offence seriousness
- mitigating factors.

### Curriculum links

This learning resource has been developed for students studying Legal Studies 2019 (General Senior Syllabus) in Year 11 and 12, specifically the core area of criminal law. It ties in with Unit 1: Beyond reasonable doubt, Topic 4: Punishment and sentencing.

This resources has been designed to be used with [Judge for Yourself](#), an interactive program that allows students virtually experience the sentencing process.

### Getting started

1. Discuss the terms aggravating and mitigating in relation to sentencing.
2. List examples of circumstances or factors that may impact a sentence.

### Further resources

The following websites may further enhance the learning outcomes associated with this resource:

- [Queensland Sentencing Advisory Council](#)
- [Queensland Law Handbook](#)
- [Legal Aid Queensland](#)
- [Queensland Government—Your rights, crime and the law](#)
- [Supreme Court of Queensland's Equal Treatment Benchbook](#)

# LEARNING RESOURCE

The *Penalties and Sentencing Act 1992* (Qld), section 9 outlines a number of principles and factors a court must take into account when sentencing an offender.

Other sections of this Act and other legislation sets out additional sentencing factors that a court must take into account (for example, section 13 of this Act requires court to take into account an offender's guilty plea).

In addition to factors set out in legislation, there are a number of fundamental legal principles that must be applied under the common law (also called 'case law'). These include the principles of proportionality, totality and parity.

Aggravating factors are facts or details about the offence, the victim and/or the offender that tend to increase the seriousness of the offence and the sentence to be imposed. Mitigating factors are a fact or detail about the offender and their offence that tend to reduce the severity of their sentence.

## Examples of aggravating factors can include:

- the offence involved a weapon
- the offender had a lack of remorse
- the offender has relevant criminal history
- the victim was vulnerable due to age or disability.

## Examples of mitigating factors can include:

- an early guilty plea
- no criminal history
- significant physical or mental health issues or low intellectual capacity
- rehabilitation efforts after the offence.

## Your turn

In reference to a particular case study in Judge for Yourself, list the aggravating and mitigating factors raised.

Aggravating factors	Mitigating factors

## Extension task

The basis for the rule of law, a foundation of our legal system, is that we are all equal before the law. However, an offender's individual circumstances may affect how responsible he or she is for an offence. Justify, using legal reasoning, whether recognising an offender and offence's unique characteristics lead to more just or unjust outcomes.