



# A Quick Guide to Sentencing

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*A Quick Guide to Sentencing* is an introduction to sentencing in Victoria. Sentencing occurs after an **offender** has been found guilty of an offence (a crime). It involves courts deciding the consequences that offenders should face for what they have done.

This *Quick Guide* describes *who* makes sentencing law in Victoria, *where* sentencing happens in Victoria, *how* Victorian courts (judges and magistrates) decide sentences for **offenders**, and *what* sentencing orders are available in Victoria for adults and children.

## What is sentencing?

Sentencing is the process of deciding how to punish an offender for one or more crimes.

Sentencing can only occur **after** a person has been found guilty of an offence (a crime).

**Sentencing is the process of deciding how to punish an offender for one or more crimes.**

Many things must happen before a person can be sentenced. For instance, the offence will be reported (usually to police), the offence will be investigated, and the **alleged offender** will be arrested, charged or both. There may be various court hearings, such as a trial, to determine whether the alleged offender is guilty.

The alleged offender can choose whether to **plead guilty** (admit the charge or charges) or **not guilty** (not admit the charge or charges). A person is presumed innocent until they plead guilty or are found guilty by a magistrate, a judge or a jury.

Less serious crimes are usually prosecuted by **police prosecutors**, and more serious crimes are usually prosecuted by the **Director of Public Prosecutions**. They are both known as the **prosecution**.

In Victoria, an alleged offender is known as an **accused**. The accused person usually has a lawyer representing their interests in court. The accused person and their legal representatives are often called the **defence**.

An **offender** can only be **sentenced** after they have pleaded guilty or been found guilty.

### **How young is too young to commit a crime?**

The age of criminal responsibility in Victoria is 12 years. A child aged under 12 is legally considered unable to commit an offence. A child aged 12 to 13 is presumed to be unable to commit an offence, unless the prosecution can prove beyond reasonable doubt that the child knew what they were doing was seriously wrong, not just naughty. The age of criminal responsibility varies across Australia and around the world. For example, it is 10 years in Queensland and New South Wales and 14 years in the Australian Capital Territory.

# Who is responsible for sentencing?

In Victoria, responsibility for sentencing is shared between parliament, the courts and government departments and agencies. This shared responsibility means no one entity has complete control over sentencing:

- **parliament** makes laws about sentencing
- **courts** interpret these laws and decide the actual sentence to be imposed on each offender
- **government departments and agencies** administer sentences that have been imposed, for example, by managing offenders in prison.

## Who makes sentencing law?

There are two sources of sentencing law in Victoria:

- **legislation** is laws made by parliament. Legislation defines what behaviour is a crime, establishes the types of penalties that are available, and sets out the types of things that courts must consider when sentencing
- **case law** is made up of decisions made by courts when sentencing or when deciding how legislation should be interpreted. Case law is also known as **common law**.

Legislation and case law together create a framework that courts must follow when sentencing offenders.

## Victorian Parliament

The Victorian Parliament is made up of two *houses*: the *lower house* (the Legislative Assembly) and the *upper house* (the Legislative Council). Together, these two houses of parliament make laws about offences and sentencing that are specific to Victoria. They do this by passing legislation (Acts of Parliament).

Many Acts in Victoria contain **offences** and their **maximum penalties**. Some of the most common crimes in Victoria are found in the *Crimes Act 1958* (Vic) and the *Summary Offences Act 1966* (Vic).

Courts must apply Victorian sentencing legislation in deciding how to sentence Victorian crimes:

- the sentencing legislation for adults is the *Sentencing Act 1991* (Vic)
- the sentencing legislation for children is the *Children, Youth and Families Act 2005* (Vic), which will soon be replaced by the *Youth Justice Act 2024* (Vic).

These Acts describe the types of sentencing orders available to the courts (for example, a fine or imprisonment), and the principles, purposes and factors that courts must consider when deciding on a sentence. These Acts also change regularly. For instance, parliament has changed the *Sentencing Act* over 230 times since it was introduced in 1991.

Sometimes the *Sentencing Act* sets limits on how a court is allowed to sentence a particular crime. For example, the court must sentence an offender to a minimum of 3 years in prison for aggravated home invasion, unless the court has a special reason not to. This type of sentence is known as a **minimum penalty**.

### What is the difference between a maximum penalty and a minimum penalty?

The **maximum penalty** is the most serious penalty a court can impose for a particular crime. For example, the maximum penalty for aggravated home invasion is life imprisonment.

The **minimum penalty** is the least serious penalty a court can impose for a particular crime. For example, the minimum penalty for aggravated home invasion is 3 years' imprisonment.

## Parliament of Australia

Most crimes in Australia are set out in state and territory legislation. However, some crimes are created by the federal parliament, such as terrorism offences. These are known as federal crimes, and they are mostly found in the *Criminal Code Act 1995* (Cth).

If a federal crime is committed in Victoria, it is usually sentenced in Victoria. When this happens, Victorian courts apply federal sentencing laws, especially the *Crimes Act 1914* (Cth). This Act outlines different types of sentences and sentencing factors that courts must apply when sentencing a federal crime. That is, Victorian courts apply different laws depending on whether they are sentencing a Victorian crime or a federal crime.

## Courts

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

In a criminal case, the lawyers for the **prosecution** and the lawyers for the **defence** usually make submissions to help the court decide how to sentence an offender. Submissions usually include the types of sentences given in similar cases.

Some cases (case law) become law about specific points that courts must apply when sentencing.

*R v Verdins* (2007) is an example of a case that courts must apply when sentencing an offender. This case was originally sentenced in the County Court, but it was reviewed by the Court of Appeal. In its judgment, the Court of Appeal outlined the six ways that mental impairment can be relevant to sentencing. Courts must consider these six principles when sentencing an offender with a mental impairment.

# Where does sentencing happen?

Victoria has several different sentencing courts. Each court deals with different types of offences and offenders. Children usually have their matters heard in the Children's Court. However, children will have their matters heard in the adult courts for certain types of offences.

## Children's Court

The Children's Court is a specialist court for children aged 12 to 17 at the time of an alleged offence, and aged under 19 when court proceedings begin.

The Children's Court has **jurisdiction** to hear almost all criminal cases involving children, except for certain serious offences (such as murder or manslaughter).

### Which serious offences cannot be heard by the Children's Court?

The Children's Court cannot hear serious offences involving death, including murder, manslaughter and child homicide. In addition, the Children's Court cannot hear certain offences committed by a child aged 15 or over, such as intentionally causing serious injury in circumstances of gross violence, aggravated home invasion and aggravated carjacking.

## Adult courts

Three levels of courts sentence adults in Victoria:

- Magistrates' Court
- County Court
- Supreme Court.

The decision about which court sentences an offender is usually based on the types of offences the offender committed. Victorian law classifies most offences as:

- indictable offences
- summary offences
- indictable offences triable summarily.

**Summary offences** are less serious offences, such as theft, minor assaults and less serious driving offences. Summary offences are usually sentenced in the Magistrates' Court.

**Indictable offences** are the most serious offences, such as murder, rape, intentionally causing serious injury and armed robbery. Indictable offences are usually sentenced in the County Court or Supreme Court.

**Indictable offences triable summarily** are less serious indictable offences, such as recklessly causing serious injury and burglary. These are indictable offences, but they can also be sentenced in the Magistrates' Court.

A magistrate decides which court should sentence an indictable offence that is triable summarily. The magistrate considers factors such as the seriousness of the offence and the adequacy of sentences available to the court. If an indictable offence is going to be heard in the Magistrates' Court, the accused person must consent because they will be giving up the option of a trial by jury.

The Magistrates' Court sentences the vast majority of criminal cases in Victoria (around 95% of all people sentenced each year). In the 10 years to 30 June 2024, an average of about 88,000 people were sentenced in the Magistrates' Court each year.

## Specialist courts

Victoria has specialist courts for offenders who meet certain criteria. These courts have developed a specialised approach to sentencing these offenders. There are specialist courts within the Children's Court, the Magistrates' Court and the County Court.

### Koori Courts

The Koori Court is designed to reduce reoffending and over-representation of Aboriginal people in the criminal justice system in Victoria. Koori Courts support Aboriginal offenders to participate in and take ownership of the law. Koori Courts also make the process of sentencing Aboriginal offenders more culturally appropriate and inclusive.

Koori Courts have less formal sentencing hearings than other courts. Judges and magistrates still make the sentencing decisions. However, Elders and Respected Persons with significant ties to the local Koori community participate by talking with the offender about the offence and the effect the offence has had on family and the community. A Koori Court officer is also employed by the court to assist.

Research shows offenders sentenced in the Koori Court are more likely to complete their orders (such as community orders) than offenders sentenced in a mainstream court. Research also shows offenders sentenced in Koori Courts are less likely to reoffend.

There are three Koori Courts in Victoria:

- the **Magistrates' Koori Court** operates as a division of the Magistrates' Court in Melbourne, and in 16 suburban and regional court locations across Victoria
- the **Children's Koori Court** operates at the Children's Court in Melbourne, and in 11 suburban and regional court locations across Victoria
- the **County Koori Court** operates in the County Court in Melbourne, and in 7 suburban and regional court locations across Victoria.

Koori Courts do not hear cases involving some types of offences, such as family violence or sexual offences.

## Drug Court

The Drug Court is a specialist court currently operating in the Magistrates' Court in Ballarat, Dandenong, Melbourne and Shepparton, and in the County Court in Melbourne.

The Drug Court uses a special sentencing order called a **drug and alcohol treatment order**. This order is aimed at rehabilitation: breaking the cycle of addiction and offending, and supporting offenders to reintegrate into the community.

## Family Violence Court Division

The Family Violence Court Division operates in the Magistrates' Court in Melbourne, and in 12 other court locations across suburban and regional Victoria. It is designed to promote safety for people who have experienced family violence, and to increase accountability for people who have committed family violence.

The Family Violence Court Division hears cases involving family violence intervention orders, bail applications, and pleas in criminal cases. It also hears other matters related to family violence, such as matters involving family law parenting orders. It has specially trained magistrates and staff, and there are specialised support services at the court. In certain circumstances, a magistrate in the Family Violence Court Division can order a family violence offender to attend counselling.

## Neighbourhood Justice Centre

The Neighbourhood Justice Centre is a Magistrates' Court and Children's Court venue located in Collingwood, Melbourne. It hosts a range of treatment and support services, such as mental health services, counselling, employment support, housing support and legal advice. The Neighbourhood Justice Centre is also involved in community education and outreach initiatives designed to reduce crime and other harmful behaviour, and increase community confidence in the justice system.

A magistrate at the Neighbourhood Justice Centre can hear criminal cases (except for sexual offences) and sentence people. The court uses a problem-solving approach that helps people to address the issues that have contributed to their offending, and it links people with services as part of the sentencing process.

## Specialist court lists and services

A court list is a way of grouping and managing certain types of cases. Court lists provide specialist services to meet the needs of certain types of victims, witnesses and accused persons.

Specialist lists and services are not specialist courts. Specialist lists and services support people whose cases are heard in mainstream courts. Some specialist court lists and services include:

- the **Sexual Offences List**. This is a specialist list for cases involving an alleged sexual offence. This list recognises the difficult nature of such cases, especially for victims. The list operates in the County Court in Melbourne and in the Magistrates' Court in 7 suburban and regional court locations
- the **Assessment and Referral Court List**. This is a specialist list designed to meet the needs of people who have a mental illness or a cognitive impairment, such as an intellectual disability, and who have been charged with an offence (except for certain violent and sexual offences). The list provides treatment, support and case management before the case is sentenced. The list operates in the Magistrates' Court in Melbourne as well as in 10 suburban and regional court locations. The list also works in conjunction with the **Court Integrated Services Program**
- the **Court Integrated Services Program**. This program helps people access support services while they are on bail. The program may provide support services for drug and alcohol use, mental health or homelessness. The program is designed to reduce offending by people on bail. It operates in the Magistrates' Court in Melbourne and 18 suburban and regional court locations.

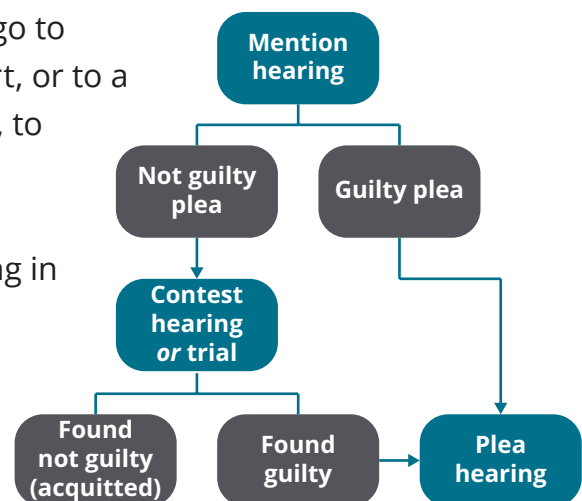
# The sentencing process

There are several stages to criminal proceedings after a person is charged with an offence and before the person is sentenced. A person can plead **guilty** or **not guilty**.

Normally, an adult has their first court hearing in the Magistrates' Court. This is known as a **mention hearing**. At this hearing, charges are formally filed with the court. The prosecution and the defence discuss the status of the case with the magistrate. They may discuss whether the accused person intends to plead guilty, and whether the case will stay in the Magistrates' Court or whether the case is too serious and should be transferred to the County Court or Supreme Court.

If a person pleads not guilty, the case will go to **trial** in the County Court or Supreme Court, or to a **contest hearing** in the Magistrates' Court, to determine guilt.

Children usually have their mention hearing in the Children's Court.



Stages between a mention hearing and plea hearing

## What is a sentence indication?

Sometimes an accused person might want more information about the likely sentence they will receive, to help them decide whether to plead guilty or not. The court can give a person a general idea of the sentence they could face if they plead guilty. This is known as a **sentence indication**.

## Plea hearing

If an accused person pleads guilty or is found guilty, the case proceeds to a **plea hearing**. However, the plea hearing can be delayed for up to 12 months if the court orders a **sentence deferral**.

At a plea hearing, the prosecution and the defence give the court information about:

- the facts of the case
- the offender's personal circumstances (such as their criminal history, whether they are currently employed, and their family situation)
- the effect of the offending on any victims
- relevant sentencing principles
- examples of sentences in similar cases (including sentencing statistics).

After an offender pleads guilty, or is found guilty, courts can order a **sentence deferral**. For this, courts defer (postpone) the plea hearing for up to 12 months to give the offender a chance to demonstrate that they can be rehabilitated, for example, by participating in programs that address the causes of their offending.

The judge or magistrate can also question the prosecution and the defence to seek further information and clarify issues. The information given in a plea hearing helps the judge or magistrate decide what sentence to impose.

## Pre-sentence reports

During the sentencing process, a court may order a pre-sentence report about the offender. When this happens, the court postpones the hearing to a later date to allow the report to be prepared.

A court must usually order a pre-sentence report if it is considering making a:

- community correction order
- youth justice centre order
- youth residential centre order.

Pre-sentence reports can provide vital information to judges and magistrates, so that they have an accurate understanding of the offender.

For adult offenders, a pre-sentence report may contain information about their:

- age
- social background
- medical history
- alcohol and drug use
- education
- employment
- prior offences
- compliance with other sentencing orders
- financial circumstances
- special needs
- need for programs or treatment to reduce the risk of reoffending
- ability to do unpaid community work
- any other relevant information.

Pre-sentence reports for children can also include additional information about:

- a child's history of trauma, abuse, neglect, loss or family violence
- their child protection history
- the child's living arrangements, including whether they are currently in out-of-home care.

## The role of victims in plea hearings

When sentencing an offender, the court must consider the impact of the crime on any victims. This can include the physical, psychological, financial and social effects of the crime on victims' lives. This information is usually provided to the court through a **victim impact statement**.

In Victoria, any victim of crime has the right to make a victim impact statement to the court during sentencing. During the plea hearing, the victim can read the victim impact statement aloud in court themselves, the prosecutor can read it aloud on the victim's behalf, or the court can receive a written copy without anyone reading it aloud in court.

Courts can also order the offender to pay compensation to a victim.

## The sentencing hearing

After the plea hearing, the court will decide how to sentence the offender. This is known as the **sentencing hearing**. The sentencing hearing can occur on the same day as the plea hearing, or on a later day.

At the sentencing hearing, the judge or magistrate summarises the case, imposes the sentence and explains the reasons why they decided to impose that sentence. The judge or magistrate makes their **sentencing remarks** in open court for anyone to hear, including media. This is unless a closed court order has been made.

In the Magistrates' Court, sentencing remarks are rarely published as written judgments. However, it can be possible to obtain an audio recording of the sentencing hearing.

In the County Court and Supreme Court, judges normally publish their sentencing remarks. Sentencing remarks for the County Court and Supreme Court are usually available on the courts' websites, or via legal information websites such as [AustLII](#).

For some high-profile cases, the Supreme Court or County Court live streams the sentencing hearing. This is so the media and interested members of the community can hear the sentencing remarks as the judge delivers them in court. Recordings of live streamed sentencing hearings are also available on demand.

## After the sentencing hearing

An offender who is sentenced to imprisonment is taken into custody immediately after the sentencing hearing. This is unless the offender served time on **remand** prior to sentencing, and the **sentence** is shorter than, or the same length as, their time on remand.

An offender who receives another type of sentencing order is released into the community according to the terms of their sentence. For certain community orders, adults must report within two working days to the nearest **community corrections centre** and children must report within two working days to a **youth justice service centre**. This is so offenders can be supervised and start complying with any conditions imposed by the court. For fines, the offender is given a deadline for payment. Offenders can request extra time to pay, or they can request to pay by instalments.

### Can I watch a plea hearing or sentencing hearing?

Most plea hearings and sentencing hearings are open to the public. Anyone can sit in court and listen to what is said. However, sometimes those hearings are closed to the public. This can happen for a range of reasons, for example, if the offender's identity is protected because they have cooperated with law enforcement. A judge or magistrate may also ask a person to leave the court if they are disruptive, or if requested by the prosecution or defence.

# How do courts choose a sentence?

When choosing a sentence, the court must consider a number of things, including the seriousness of the offence, the impact of the offence on any victims, and the personal circumstances of the offender.



Importantly, sentencing is not a mathematical or precise exercise. Instead, judges and magistrates must use an approach known as

**instinctive synthesis**. They must look at all the features of the case and the offender. They then decide the appropriate sentence.

## What is judicial discretion?

Discretion means choice. It is a key feature of sentencing in Victoria. It ensures that courts can impose the most appropriate sentence in each case. Because every offence and offender is unique, the same sentence won't be appropriate in each case. The court must choose the type of sentence (for example, a community correction order) and the length or amount of the sentence (for example, the length of a community correction order or the amount of a fine).

## Sentencing factors for adults

The *Sentencing Act* provides a list of things that courts must consider when choosing an appropriate sentence for an adult offender. These considerations are often called **sentencing factors**. Sentencing factors can be separated into four broad categories:

1. factors relating to the offence
2. factors relating to the victim
3. factors relating to the offender
4. other considerations.

### Factors relating to the offence

When choosing a sentence, a judge or magistrate considers the **nature and gravity of the offence**. This means they consider how serious the crime was and how much harm the crime caused.

The magistrate or judge also determines **the offender's culpability** for the offence. This means how much blame the offender has for the offence and any harm they caused.

A court may find that an offender has a high degree of culpability for an offence. Offenders with a high degree of culpability tend to get more severe sentences. For example, someone who spent weeks planning an armed robbery is usually more culpable (because of their planning) than someone who committed an armed robbery in the spur of the moment.

In assessing an offender's culpability, courts consider the offender's intention and motivation for committing the offence. For example, courts consider whether an offence was:

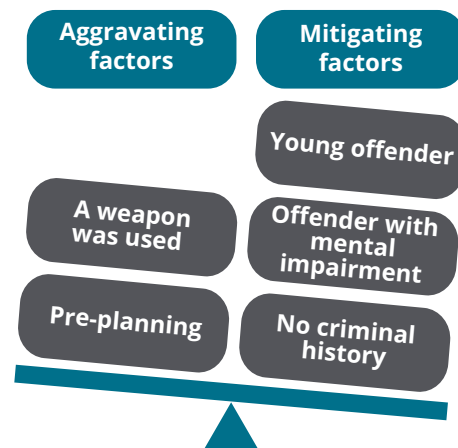
- committed by someone fully responsible for their actions or by someone less responsible for their actions (for example, someone with a mental impairment)
- committed by someone who knew the likely consequences of their actions
- provoked (or not) by someone or something
- planned or opportunistic (spontaneous)
- motivated by hatred, based on the victim's gender, race or other characteristic.

## Factors relating to the offender

Judges and magistrates consider the offender's personal circumstances, such as their age, background, health, and previous criminal history.

The court may also consider whether an offender is **remorseful** (sorry) for the offence and any harm they caused. Courts often consider a guilty plea as evidence of remorse because the offender has accepted responsibility for the crime and avoided the need for a trial.

In sentencing, mitigating and aggravating factors can be a bit like a tug of war: mitigating factors tend to pull towards a lighter sentence, and aggravating factors tend to pull towards a heavier sentence. Some factors can be either aggravating or mitigating, depending on the circumstances of the offence and the offender.



### What are aggravating and mitigating factors?

**Mitigating factors** are details about the offender and the offending that tend to reduce the severity of a sentence. For example:

- the offender is young
- the offender has experienced a traumatic childhood
- the offender would find prison more burdensome than others would (for example, if the offender has a medical condition that would be hard to manage in prison).

**Aggravating factors** are details about the offender and the offending that tend to increase the severity of a sentence. For example:

- the offender planned the crime (premeditation)
- the offender committed the crime as part of a group against an outnumbered victim
- the offender used a weapon
- the offender was in a position of trust with the victim (such as a teacher)
- the offender has a criminal history.

## Factors relating to the victim

Courts must consider the effect of the offending on any victims. This means judges and magistrates take into account any loss, injury or damage done to the victim, such as physical injury, psychological injury, grief, damage to property, or financial loss. The most common way a court learns about the impact of a crime is through a **victim impact statement**.

## Other considerations

Courts are also required to consider other factors such as **current sentencing practices**, the **maximum penalty** for the offence, and whether any **sentencing schemes** apply.

## Current sentencing practices

Current sentencing practices are sentences imposed in similar cases, especially in recent cases. For example, when sentencing someone for a burglary offence, the judge or magistrate may look at sentences imposed in other recent burglary cases. These cases can help the judge or magistrate to decide how serious the burglary offence is and to see the types of sentences that have been imposed in similar cases.

**Sentencing statistics** provide another way for courts to understand current sentencing practices for an offence. Courts usually look at a combination of sentencing remarks (judgments) in other cases and sentencing statistics for the offence. Sentencing remarks are rarely available in the Magistrates' Court, so sentencing statistics are an especially important source of current sentencing practices for the Magistrates' Court.

Current sentencing practices help to promote consistency in the way offenders are sentenced for an offence. This doesn't mean that every offender will receive the same sentence for the same offence. Instead, it means courts approach how they sentence an offender for a specific offence in the same way.

The Sentencing Advisory Council's SACStat database includes **sentencing statistics** for over 500 offences in the Magistrates' Court and almost 250 offences in the higher courts. These statistics are available to any member of the public at [www.sacstat.vic.gov.au](http://www.sacstat.vic.gov.au).

## Maximum penalties

Maximum penalties are set by parliament in legislation. A maximum penalty is the most severe sentence that a court can impose for an offence (for example, 20 years' imprisonment). Maximum penalties are sometimes referred to as **statutory maximums** because they are set out in legislation (statutes).

Maximum penalties have a number of important purposes:

- 1. The maximum penalty is the most severe consequence for an offender convicted of a particular offence.**
- 2. The maximum penalty expresses parliament's views (on behalf of the community) about the seriousness of each offence.** For example, the maximum penalty for murder is life imprisonment. This reflects the community's view on the seriousness of intentionally taking someone else's life. In contrast, the maximum penalties for other homicide offences are shorter. For example, the maximum penalty for manslaughter is 25 years' imprisonment, and the maximum penalty for dangerous driving causing death is 10 years' imprisonment.
- 3. The maximum penalty allows the most severe punishment to be imposed on the worst example of an offence.** The worst example of an offence might be especially cruel, carefully planned, motivated by hatred, significantly harmful or committed by a repeat offender with no remorse who poses an ongoing risk to the community.

### Are maximum penalties ever imposed?

It is rare, but some people do receive the maximum penalty. For example, eight offenders convicted of murder in Victoria received the maximum penalty of life imprisonment in the five years to 30 June 2024.

Maximum penalties change over time for many offences as parliament amends legislation. For example, parliament introduced the offence of culpable driving causing death in 1966, and set the maximum penalty at 5 years' imprisonment. The maximum penalty has increased since then: to 7 years in 1967, 10 years in 1991, 15 years in 1992, and 20 years in 1997. During sentencing, courts must apply the maximum penalty at the time of the offence because it is considered unfair to do otherwise.

### **How are sentences decided for offences that happened a long time ago?**

Sometimes, an offender is sentenced for an offence that happened many years ago. When this happens, the maximum penalty available to a court depends on the date that the offence was committed. For example, if the offence of culpable driving causing death was committed 30 years ago (in 1996), the maximum penalty that a court could impose today is 15 years' imprisonment.

### **Does life imprisonment *really* mean life?**

Life imprisonment is the maximum penalty for four crimes in Victoria: murder, trafficking in a large commercial quantity of drugs, cultivating a large commercial quantity of narcotic plants, and treason. Life imprisonment means the offender will be under sentence for the rest of their life.

A non-parole period is usually set in cases involving life imprisonment. This means the offender can apply for parole after serving the non-parole period. If parole is granted, the offender is released from prison to spend the rest of their life in the community under conditions set by the parole board (for example, reporting requirements). If the offender breaches the conditions of their parole, they may be returned to prison.

Offenders who are sentenced to life in prison without parole stay in prison until they die.

## Minimum penalties

Minimum penalties are set by parliament in legislation. A minimum penalty is the least severe sentence that a court must impose for an offence. Only some offences have a minimum penalty. Sometimes there are exceptions to the minimum penalty, for example, if the court finds that there are exceptional circumstances to impose a less serious sentence.

One type of minimum penalty is a requirement to impose a specific *type* of sentence. For example, if an offender commits a **category 1 offence** in Victoria, the court must almost always sentence the offender to imprisonment.

The other type of minimum penalty is a requirement to impose a sentence of a specified period. For example, if an offender intentionally or recklessly causes serious injury in circumstances of gross violence (such as a group assault), the court must sentence the offender to imprisonment, with a **minimum non-parole period** of at least four years.

## Standard sentences

Victoria has **standard sentences** for 14 serious crimes, such as murder, rape and various sexual offences against children. The standard sentence is intended to represent a mid-range example of the offence. By comparison, the maximum penalty represents the worst example of an offence by the worst type of offender.

For example, the maximum penalty for culpable driving causing death is 20 years' imprisonment (for the worst possible case), and the standard sentence is 8 years' imprisonment (for a mid-range case). Courts must take the standard sentence into account, along with the many other sentencing factors courts have to consider. Judges can impose a sentence that is higher or lower than the standard sentence, depending on the seriousness of the offending.

### Culpable driving causing death

Maximum penalty:  
20 years

Standard sentence:  
8 years

If a court imposes a sentence of 10 years

Minimum non-parole period:  
6 years (60%)

For a case with a standard sentence, legislation specifies the minimum non-parole periods that courts must set, unless it would not be in the interests of justice to do so. For example, the court must impose a non-parole period of at least 60% for sentences of less than 20 years' imprisonment.

## Other sentencing schemes

Other sentencing schemes apply to adults in Victoria, but these schemes are not detailed here. Details about these schemes can be found in the Sentencing Advisory Council's [Guide to Sentencing Schemes](#).

## Sentencing purposes for adults

In Victoria, courts must try and achieve one or more of the five purposes of sentencing set out in the *Sentencing Act*. These five purposes are the **only** purposes for sentencing an adult in Victoria. In most instances, no one purpose is the main or dominant purpose of sentencing.



## Sentencing purposes for children

Some of the sentencing laws that apply to adults also apply to children. However, legislation sets out specific sentencing laws for cases involving children. At the moment, that legislation is the *Children, Youth and Families Act*, which will soon be replaced by the *Youth Justice Act*.

The purposes of sentencing change in two main ways for children:

- first, **rehabilitation** is usually the primary purpose that courts must try and achieve when sentencing children. This purpose recognises that children are still developing, are generally less mature than adults, are less able to make moral judgments, and are generally less able to anticipate the consequences of their actions
- second, **general deterrence** is usually not a very relevant consideration. This is because children are more impulsive than adults, and the threat of punishment doesn't affect children the same way as it might affect adults.

Courts also consider specific sentencing factors when sentencing children, such as:

- the importance of maintaining the child's relationship with their family
- allowing the child to live at home if possible
- allowing the child to access education, training or employment
- minimising the stigma of being sentenced
- if applicable, deterring the child from committing further offences in detention.

## General principles of sentencing

There are several **sentencing principles** that judges and magistrates must follow, in addition to sentencing purposes and factors.

### Parsimony

The principle of **parsimony** means the sentence imposed must be no more severe than is necessary to achieve the purposes of sentencing. For example, a court cannot sentence someone to imprisonment if a community correction order would be sufficient punishment.

### Proportionality

The principle of **proportionality** means the severity of the sentence must fit the seriousness of the crime. For example, a very long prison sentence cannot be imposed for a relatively minor offence.

### Parity

The principle of **parity** means people who committed the same crime together (co-offenders) should usually receive similar sentences. For example, if two co-offenders commit a burglary together, the principle of parity means their sentences should be about the same. However, the personal circumstances of each offender will mean their sentences will differ a bit.

### Totality

The principle of **totality** means that when an offender is sentenced for more than one crime, the total sentence must be appropriate to the offender's overall criminal behaviour.

### How to achieve totality with concurrency and cumulation

One way the court might apply the principle of totality is with concurrency and cumulation. When sentencing an offender for multiple crimes, the court decides how much of each sentence will be served at the same time (concurrently) and how much will be served one after the other (cumulatively).

For example, imagine an offender has been given a 10-month prison sentence for burglary and a 5-month prison sentence for theft. The court could order the offender to serve those sentences concurrently, cumulatively, or a little of both.

If the court orders that the sentences are served **concurrently** (at the same time), the offender will spend 10 months in prison.



If the court orders that the sentences are served **cumulatively** (one after the other), the offender will spend 15 months in prison.



If the court orders that 2 months of the second sentence are served cumulatively but not the other 3 months (**partly cumulative**), the offender will spend a total of 12 months in prison.



### Why do different offenders get different sentences for the same type of offence?

Sentencing law requires judges and magistrates to consider the circumstances of each offender and their offence. Sentences can vary because no two offenders or offences are the same. The weight (importance) a judge or magistrate places on different sentencing principles, purposes and factors varies from case to case, according to the circumstances.

# What sentences can be imposed?

There are different kinds of sentences available in Victoria, ranging from less severe sentences (like fines) to more severe sentences (like imprisonment). The sentencing orders for adults are different from the sentencing orders for children.

Courts decide the type of sentence to impose. In addition, courts often need to consider whether to **record a conviction** (this is different to a finding of guilt), and whether to impose any **additional orders** (also known as ancillary orders), such as compensation orders.

## Sentencing orders for adults

The *Sentencing Act* sets out a hierarchy of sentencing orders for adults, including both custodial orders (requiring offenders to serve their sentence in custody) and non-custodial orders (requiring offenders to serve their sentence in the community). The hierarchy is ordered from the least severe sentencing order to the most severe sentencing order.

Some offenders may be eligible for a **diversion program**. This means they are not found legally guilty and they are not sentenced, but they do accept responsibility for their behaviour and agree to comply with certain conditions, including not committing further offences.

Imprisonment

Drug and alcohol treatment order

Community correction order

Fine

Adjourned undertaking

Discharge or dismissal

Most severe



Least severe

## Custodial orders for adults

The most common type of custodial order is imprisonment. However, there are some other custodial orders as well.

### Imprisonment

Imprisonment means detention in a prison (a prison sentence).

Imprisonment is the most severe sentence in Victoria. It is a sentence of **last resort**, meaning it can only be imposed if no other sentence is appropriate.

Imprisonment is far more common in the County Court and Supreme Court than it is in the Magistrates' Court. In the 10 years to 30 June 2024, imprisonment was imposed in 71% of cases sentenced in the County Court and Supreme Court, compared with just 9% of cases sentenced in the Magistrates' Court. This is because the County Court and Supreme Court sentence more serious (indictable) offences, and these offences are more likely to receive imprisonment.

### Non-parole period

Courts must generally set a **non-parole period** when imposing a sentence of imprisonment. The non-parole period is the minimum time that an offender must serve in prison before they can be considered for release on parole.

Sometimes courts are not allowed to impose a non-parole period. Sometimes they have to set one. And sometimes a non-parole period is optional:

- for prison sentences of two years or more, the court must set a non-parole period, unless it would not be appropriate because of the offender's crimes or criminal history
- for sentences of one to less than two years, the court can choose whether to set a non-parole period
- for sentences of less than one year, the court must not set a non-parole period. The offender must serve the entire sentence in prison.

Courts must impose a minimum non-parole period for some offences. For example, the minimum non-parole period for aggravated carjacking is 3 years.

## Parole for adults

Release on parole is not automatic. In Victoria, the **Adult Parole Board** is responsible for deciding whether to parole adult offenders. When offenders have served their non-parole period, they can apply to the Adult Parole Board for release on parole.

Parole is the conditional release of people from prison after they complete their **non-parole period**, but before the end of their prison sentence. The aim of parole is to supervise and support prisoners to return to the community, and to reduce the chance that they will reoffend. **Parolees** are still serving their sentence while in the community. If they do not abide by the conditions of their parole, they may be returned to prison.

**Parole is the conditional release of a person from prison before the end of their prison sentence.**

In deciding whether to grant parole, the Adult Parole Board considers many factors, including:

- the offender's successful completion of programs in prison
- the behaviour of the offender in prison
- the offender's parole history and **criminal record**.

The Adult Parole Board may decide that it is too risky to release an offender into the community and may deny parole. When parole is denied, the offender stays in prison until the end of their sentence or until they successfully reapply for parole.

## Drug and alcohol treatment order

A **drug and alcohol treatment order** falls below imprisonment in the sentencing hierarchy. Technically, it is a prison sentence, but the prison sentence is suspended (stopped for a time). During this time, the offender takes part in intensive rehabilitation programs under supervision in the community.

Drug and alcohol treatment orders are for offenders who plead guilty to the offence and have a drug or alcohol dependency that contributed to the offending. The offending must not involve a sexual offence or lead to bodily harm.

Only the **Drug Court** can make a drug and alcohol treatment order. Both the Magistrates' Court and County Court have a Drug Court.

A range of consequences and rewards encourage offenders to successfully complete their drug and alcohol treatment order. If the offender breaches any of the conditions of the order, they may have longer or additional conditions imposed, or their prison sentence can be **activated** (the offender can be ordered to serve some time in prison). An offender who successfully completes their order does not have to serve any time in prison.

### Court secure treatment order

Sometimes, people with serious mental illnesses may be found not guilty of a crime if they can prove that they did not understand what they were doing. Even if they are found guilty, however, people with serious mental illnesses may receive a **court secure treatment order**. If they do, they are detained and treated at a secure mental health facility instead of in a prison.

A court secure treatment order allows offenders with mental illness to receive treatment to stop them from harming themselves or others, or to keep their mental or physical health from getting worse. The court can only make a court secure treatment order where a prison sentence would have been imposed. The court must set a non-parole period for a court secure treatment order, the same way the court would for a prison sentence.

### When must a court impose a custodial sentence?

Courts *must* impose a custodial sentence for two types of offences:

- **Category 1 offences** are crimes such as murder, rape and trafficking in a large commercial quantity of drugs. When sentencing an adult for a category 1 offence, courts must impose a term of imprisonment. There are some exceptions, but they are very rare.
- **Category 2 offences** are crimes such as manslaughter, kidnapping and arson causing death. When sentencing an adult for a category 2 offence, courts must usually impose a term of imprisonment. However, courts can impose a sentence other than imprisonment if there are **special reasons** to do so, such as the offender assisting police, or the offender having a mental impairment.

## Non-custodial orders for adults

Non-custodial orders involve not sending the offender to prison. Several non-custodial orders are available for adults in Victoria. In order from most to least severe, these orders are:

- a community correction order
- a fine
- an adjourned undertaking
- discharge with conviction
- dismissal without conviction.

### Community correction order (CCO)

A community correction order (CCO) is served in the community. A CCO may be imposed on its own or in addition to a fine or imprisonment.

In the Magistrates' Court, a CCO can run for up to two years for a single charge, four years for two charges, and five years for three or more charges. In the higher courts, a CCO can last for up to five years in all cases.

When sentenced to a CCO, all offenders must abide by certain terms. These include not committing another offence punishable by imprisonment, not leaving Victoria without permission, reporting to a community corrections centre, and complying with any lawful directions given by staff at Corrections Victoria.

The court must also choose at least one additional condition. These can include ordering the offender to:

- undertake medical treatment or other forms of rehabilitation
- stay away from licensed premises (such as hotels, clubs or restaurants) or other places
- complete unpaid community work (up to a maximum of 600 hours)
- be supervised by a corrections worker
- not contact or associate with particular people
- live (or not live) at a specified address
- abide by a curfew and be at a specified place for 2 to 12 hours a day
- be monitored by the court
- be monitored electronically
- pay a bond. A bond is a sum of money that the offender may not get back if they breach any condition of the CCO.

Corrections Victoria manages offenders on a CCO. Corrections Victoria is a government agency independent of the courts and police. Offenders are under the supervision of a corrections officer, who monitors their compliance with the CCO.

If an offender breaches a condition of their CCO, they can be ordered back to court. The court can vary the CCO, or even cancel the CCO and resentence the offender for the original offending.

## Fine

Fines are the most common sentence imposed in Victoria. When people receive a court fine, they must pay a financial penalty (money) to the State of Victoria. Fine amounts are described in **penalty units**. In 2025–26, one penalty unit is \$203.51. For example, an offence with a maximum fine of 10 penalty units means a maximum fine of \$2,035.10. The amount of a penalty unit is adjusted each financial year in line with inflation.

In deciding the value of a fine, the court considers the financial circumstances of the offender (how much the offender can afford to pay) and the maximum fine for the offence. The court can combine a fine with another sentence, such as imprisonment or a CCO.

Fines Victoria is responsible for enforcing payment of fines and locating offenders who don't pay their fines. Fines Victoria is a government agency independent of the courts and police. If an offender defaults on (fails to pay) their fine, they may lose access to their car or property, or their car or property may be sold to pay the fine. The offender may be arrested and brought to court, which could lead to a prison sentence.

### How common are fines?

Fines are the most common sentence in Victoria. In 2023–24, a fine was the most serious **sentence** in 51% of cases sentenced in Victoria. The Magistrates' Court imposes most fines because it deals with less serious offences than the higher courts, and these offences are more likely to receive sentences at the lower end of the sentencing hierarchy, such as fines.

## Adjourned undertaking

An adjourned undertaking involves releasing an offender who agrees to comply with certain conditions for up to 5 years. During the adjournment period, the offender must be of good behaviour (not reoffend) and must meet any other special conditions set by the court. For example, an offender may have to complete a drug and alcohol treatment program or donate to a charity.

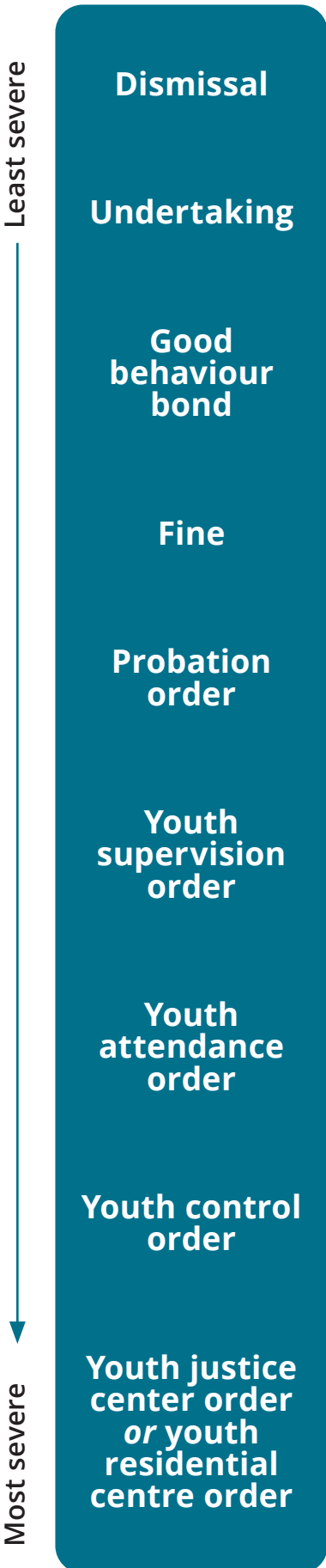
At the end of the adjournment period, the court will assess whether the offender has complied with the conditions of the adjourned undertaking. If the offender has complied, that is the end of the matter. If the offender hasn't complied, they may need to be resentenced.

## Discharge and dismissal

Discharges and dismissals are very similar sentences. A **discharge** means the court has recorded a conviction but has not imposed a further penalty. A **dismissal** means the court has found the offender guilty, but the court does not record a conviction or impose a further penalty. The only difference between a discharge and a dismissal is whether the court records a conviction.

### What is diversion?

Diversion is a program designed for offenders who commit less serious crimes (such as first-time offenders or low-risk offenders) who acknowledge responsibility for their offending. Diversion is not a sentencing order, because the person is not found legally guilty of their offending. It aims to divert (redirect) people away from the justice system and reduce their risk of reoffending. People who receive a diversion program may need to attend counselling or treatment, undertake safe driving courses, or abide by other conditions. Diversion is available for adults in the Magistrates' Court and children in the Children's Court.



## Sentencing orders for children

A crime is committed by a **child** if the person is aged 12 to 17 at the time of the offence, and aged under 19 when their case first comes to court. Children are usually sentenced in the Children’s Court. A child will be sentenced in an adult court, such as the Magistrates’ Court or County Court, if the child is aged over 17 at the time of the offence or aged 19 or over when their case starts.

The sentencing options for children are different from sentencing options for adults. The *Children, Youth and Families Act* has a **hierarchy** of sentencing orders for children, starting with the least severe order and ending with the most severe order. A more severe order can only be imposed if a less severe order is not appropriate.

### Non-custodial orders for children

#### Dismissal

**Dismissal** is the least severe sentencing order for children. Dismissal means a child is found guilty, but the charge is dismissed. A conviction is not recorded, and no other penalty is imposed.

#### Undertakings

An **undertaking** is where a child agrees to do, or not do, certain things for up to one year. There are two types of undertakings:

- an **accountable undertaking** means a child may have to return to court if they breach the undertaking
- a **non-accountable undertaking** means a child does not have to return to court if they breach the undertaking.

The court dismisses the charge at the end of the undertaking. A conviction is not recorded.

### **Good behaviour bond**

A **good behaviour bond** requires a child to be of good behaviour. The child must comply with any conditions that the court imposes (like counselling or treatment). A good behaviour bond can last for up to 12 months if the child is under 15, or up to 18 months in exceptional circumstances if the child is 15 or over.

If the child does everything required, the court dismisses the charge at the end of the good behaviour bond and does not record a conviction. This means the case ends. If the child does not do everything required, the court can vary the good behaviour bond or cancel it and impose a different sentence.

### **Fine**

A **fine** is an obligation to pay an amount of money to the State of Victoria. When imposing a fine on a child, the Children's Court has to consider how much the child can afford to pay. The Children's Court also considers the maximum fine amount for the child's age. A court can impose a fine with or without a conviction.

Fines for children are described in **penalty units**. In 2025–26, one penalty unit is \$203.51. The maximum fine for a child depends on the child's age and how many offences are sentenced.

For children aged under 15, the maximum fine for one offence is either one penalty unit or the maximum fine that an adult can get for that offence (whichever is lower). The maximum fine for more than one offence is two penalty units.

For children aged 15 or over, the maximum fine for one offence is either five penalty units or the maximum fine that an adult can get for that offence (whichever is lower). The maximum fine for more than one offence is 10 penalty units.

## Probation

**Probation** is a supervised community order. It involves programs and services that support the child's rehabilitation and development. A court can make a probation order with or without recording a conviction.

A probation order has core conditions that are always included. These conditions include not committing an offence that could result in imprisonment, not leaving Victoria without permission, and reporting any change in the child's address, school or employment. The court may also attach special conditions, such as counselling, treatment programs or a curfew.

Probation can generally last for up to 12 months. However, probation can last for up to 18 months if one of the offences could result in imprisonment of more than 10 years. Probation cannot extend past a person's 21st birthday.

## Youth supervision order

A **youth supervision order** is a community order that addresses the underlying causes of the child's behaviour, and puts in place long-term support systems to reduce the likelihood that the child will reoffend.

Under a youth supervision order, a child must report to a youth justice service centre, obey the lawful instructions of their youth justice worker, and not reoffend during the order. The court may impose additional conditions, such as mental health treatment or education and training.

Youth supervision orders can last for up to 12 months, or 18 months if the offence is punishable by imprisonment of more than 10 years. The order cannot extend past the person's 21st birthday.

## Youth attendance order

A **youth attendance order** is a more intensive kind of community order. It is available for children aged 15 to 20 at the time of sentencing.

Under a youth attendance order, the child must attend a youth justice unit and comply with intensive requirements for reporting and attendance.

The child must not reoffend during the order. The court can attach special conditions, such as community work, education, counselling or treatment.

A youth attendance order may last for up to 12 months, but it cannot extend past the person's 21st birthday.

### Youth control order

A youth control order is the most intensive kind of community order for children. This order has intensive requirements for supervision, support and **court monitoring**. The child must attend the Children's Court for a monitoring or reporting hearing at least once a month during the first half of the order. A youth control order has strict **mandatory** requirements, such as education, training or work. A youth control order may also include treatment, counselling, curfews, social media bans or restrictions on where the child can go.

The court can vary a youth control order by making it more or less restrictive, depending on whether the child has been complying with the order.

A youth control order can last for up to 12 months, but it cannot extend past the person's 21st birthday. If the child breaches the youth control order, they will be sentenced to detention unless there are exceptional circumstances.

## Custodial orders for children

Detention is the most severe sentence that can be imposed on a child. Detention is a sentence of **last resort**. This means detention can only be used where a less severe sentence is not suitable.

Two types of detention orders are available for children in Victoria: a youth justice centre order is for older children, and a youth residential centre order is for younger children.

**Young offenders** (aged under 21 at the time of sentencing) can also be sentenced to detention in a youth justice centre.

## Youth residential centre order

A **youth residential centre order** involves a period of detention in a youth residential centre. This order can only be imposed on children aged under 15 at the time of sentencing.

In the Children's Court, the maximum length of detention in a youth residential centre is one year for a single offence, or two years for more than one offence. In the Magistrates' Court, the maximum length of detention in a youth residential centre is two years. In the County Court or Supreme Court, the maximum length is four years.

While detained in a youth residential centre, children attend education classes and may attend programs that address their offending behaviour.

## Youth justice centre order

A **youth justice centre order** involves a period of detention in a youth justice centre. This order can only be imposed on a child aged 15 to 20 at the time of sentencing.

In the Children's Court, the maximum length of detention in a youth justice centre is three years for one offence, or four years for more than one offence. In the Magistrates' Court, the maximum length of detention is two years. In the County Court or Supreme Court, the maximum length of detention is four years.

While detained in a youth justice centre, children participate in education and programs that address their offending behaviour.

## Parole for children

In Victoria, the **Youth Parole Board** makes parole decisions about children. Unlike when they are sentencing adults, courts do not set non-parole periods for children. Instead, the Youth Parole Board can decide to release a child on parole at any stage of their detention. When a child enters detention, the Youth Parole Board prepares a parole plan. The parole plan sets out the services, supports and conditions that can help the child to re-enter the community. In deciding whether to grant parole, the Youth

Parole Board uses the parole plan to assist in their decision-making. They also consider a number of other factors including:

- the age and maturity of the child
- the circumstances of the child's offending
- any past offending by the child
- the views of any victims of the child's offending
- the child's medical history
- the child's participation in education or treatment
- the child's risk of reoffending.

If the Youth Parole Board grants parole, the child is released into the community under supervision. They must follow the conditions set by the parole board and the instructions of the parole officer.

Children can be released from detention before the end of their sentence if they are granted parole.

If a child breaches the conditions of their parole, the parole board may decide to issue the child with a warning. Or the parole board may cancel the child's parole and return them to a youth justice centre or youth residential centre.

## When can a child be sent to adult prison?

Courts might need to sentence a child to adult prison instead of youth detention for two types of offences:

- **category A serious youth offences** are crimes such as murder or manslaughter. When sentencing a child for a category A serious youth offence, adult courts must impose a sentence of adult imprisonment, unless there are exceptional circumstances
- **category B serious youth offences** are crimes such as rape, home invasion or carjacking. When sentencing a child for a category B serious youth offence, adult courts must impose a sentence of adult imprisonment if the child has previously been convicted of another category A or B serious youth offence. This is unless there are exceptional circumstances.

## Recording a conviction

A conviction is different to a finding of guilt. A conviction is a formal record that an offender has been found guilty of an offence. Courts *must* record a conviction when imposing some types of sentences. These include imprisonment and a drug and alcohol treatment order for adults, and detention in a youth justice centre or a youth residential centre for children. Courts *must not* record a conviction when imposing other types of sentences, such as a dismissal. Courts can choose whether to record a conviction for all other types of sentences, including a CCO, a fine or an adjourned undertaking.

When deciding whether to record a conviction, the court considers factors like the nature of the offence, the character and history of the offender, and the impact that a conviction would have on the offender's wellbeing or employment.

Even if no conviction is recorded, the fact that the offender was found guilty of an offence will still appear on their criminal record in various contexts.

### Did you know?

A conviction or finding of guilt can be:

- looked at by the police when investigating other crimes
- relied on in future criminal cases against the offender
- included in police record checks (criminal record checks).

A criminal record can limit an offender's eligibility for:

- international travel
- certain jobs (for example, as a teacher)
- insurance policies
- some licences (for example, a taxi driver licence).

## Orders in addition to sentence (ancillary orders)

Sometimes courts will make orders in addition to the sentence imposed on an offender. These additional orders are known as **ancillary orders**.

If a court orders a **restitution order**, the offender must return stolen property to its owner, or the offender must pay the owner money up to the value of the stolen property. A **compensation order** means an offender must pay compensation for any property that was lost, destroyed or damaged because of the offence, or pay compensation for any pain and suffering experienced by a victim, including any counselling or medical costs. A **forfeiture order** means the offender must give up anything they obtained from their offending, such as a house paid for with money made from trafficking drugs.

If alcohol was involved in the original offending, the court may impose an **alcohol exclusion order**. This order stops the offender from going to premises that sell alcohol.

The court may impose a **forensic sample order** requiring the offender to give police a DNA sample. Police can use this sample in their investigations.

For certain driving offences, the court may **suspend** the offender's driver licence or **disqualify** the offender from driving. The court may order the offender to install an **alcohol interlock device** that stops them from driving their car if they have alcohol in their system.

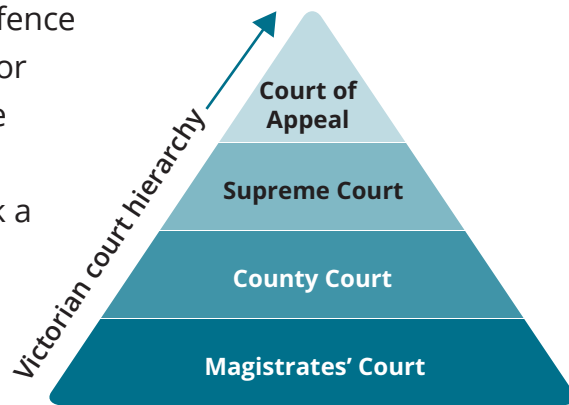
For certain sex offences, the court may impose a **sex offender registration order**. This order means the offender is included on a register of sex offenders and will need to comply with certain reporting requirements.

# Can a sentence be changed?

The sentence imposed by a court can sometimes be changed using a process known as an **appeal**. An appeal is a request that a higher court reviews the original court's decision.

Sometimes the prosecution or the defence believes that a court has made an error in sentencing. When this happens, the prosecution or defence can lodge an appeal against sentence. They can ask a **higher court** to:

- review the original sentencing decision
- consider whether the original court made an error
- if an error was made, consider whether the sentence should be changed.



The *Criminal Procedure Act 2009* (Vic) governs the process of sentence appeals in Victoria. The process differs depending on which court imposed the original sentence.

## Appeals from the Magistrates' Court

If an offender was sentenced in the Magistrates' Court, the offender or the Director of Public Prosecutions can appeal the sentence to the County Court. This is known as a **de novo appeal**. For a de novo appeal, the County Court will decide what it thinks is an appropriate sentence and impose that instead of the original sentence. Currently, the County Court does this without having to decide if the Magistrates' Court made an error.

New laws are set to change the way Magistrates' Court sentences are appealed to the County Court. Under the new laws, the County Court will only be able to change a sentence on appeal from the Magistrates' Court if there is an error in the original sentence. These new laws are expected to come into effect in 2028.

## Appeals from the County and Supreme Courts

Offenders sentenced in the County Court or the Supreme Court can apply to appeal their sentence to the **Court of Appeal**. The appeal judge may refuse the application if they don't believe there is a reasonable prospect that a less severe sentence will be imposed.

The Director of Public Prosecutions can also appeal against a sentence if they believe that an error was made in the original sentence, and that a different sentence should be imposed. The Director must also believe that bringing the appeal is in the public interest.

There are three types of sentence appeals:

- the prosecution argues that the sentence was **manifestly inadequate** (too low)
- the defence argues that the sentence was **manifestly excessive** (too high)
- the prosecution or the defence argues that the original court made an error in the sentence.

In the Court of Appeal, sentence appeals are normally heard by two or three judges. In some very important cases, five judges might hear the appeal.

If the Court of Appeal decides that the offender should receive a different sentence, it will set aside the original sentence. It will then either impose a new sentence or send the matter back to the original court for the offender to be resented.

The Court of Appeal sometimes considers aspects of sentencing law in great detail. As a result, its decisions are important contributions to sentencing law (**case law** or **common law**). These decisions affect future, relevant sentencing decisions by other Victorian courts.

# Publications about sentencing

The Sentencing Advisory Council publishes a wide range of information about sentencing, including particular sentencing orders (for example, imprisonment), specific offences (for example, theft) or about sentencing generally. The following list of links groups publications by topic. Further information is available on the Sentencing Advisory Council's website at [www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au).

## Sentencing and related orders

### Imprisonment

[Victoria's Prison Population 2004 to 2024](#)

[Combined Orders of Imprisonment with a Community Correction Order in Victoria](#)

[Aggregate Prison Sentences in Victoria](#)

[Time Served Prison Sentences in Victoria](#)

### Parole

[Parole and Sentencing: Research Report](#)

### Community correction orders

[Serious Offending by People Serving a Community Correction Order 2023–24](#)

[Contravention of Community Correction Orders](#)

[Community Correction Orders: Third Monitoring Report \(Post-Guideline Judgment\)](#)

[Community Correction Orders: Second Monitoring Report \(Pre-Guideline Judgment\)](#)

### Fines

[Assessing the Impact of Inflation and Penalty Unit Indexation on Fine Amounts in Victoria](#)

### Adjourned undertakings

[Reforming Adjourned Undertakings in Victoria: Final Report](#)

[Reforming Adjourned Undertakings in Victoria: Consultation Paper](#)

### Diversion

[The Criminal Justice Diversion Program in Victoria: Second Statistical Profile](#)

**Deferral**

[Reforming Sentence Deferrals in Victoria: Final Report](#)

[Reforming Sentence Deferrals in Victoria: Consultation Paper](#)

**Ancillary orders**

[Restitution and Compensation Orders: Report](#)

[Restitution and Compensation Orders: Issues and Options Paper](#)

**Sentencing for particular offences****Health and safety offences**

[Sentencing Occupational Health and Safety Offences in Victoria: Report and Recommendations](#)

[Sentencing Occupational Health and Safety Offences in Victoria: Consultation Paper](#)

[Sentencing Occupational Health and Safety Offences in Victoria: A Statistical Report](#)

**Family violence offending**

[Sentencing Breaches of Family Violence Intervention Orders and Safety Notices: Third Monitoring Report](#)

[Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders: Report](#)

[Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders: Discussion Paper](#)

[Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending](#)

[Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report](#)

**Sex offences**

[Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms](#)

[Sex Offences in Victoria: 2010–2019](#)

[Sentencing Image-Based Sexual Abuse Offences in Victoria](#)

[Sentencing of Offenders: Sexual Penetration with a Child under 12](#)

**Drug offences**

[Trends in Minor Drug Offences Sentenced in the Magistrates' Court of Victoria](#)

[Major Drug Offences: Current Sentencing Practices](#)

## **Other offences**

[Sentencing Stalking in Victoria](#)

[Firearms Offences: Current Sentencing Practices](#)

[Threat Offences in Victoria: Sentencing Outcomes and Reoffending](#)

[Animal Cruelty Offences in Victoria](#)

[Theft: Sentencing Outcomes in the Magistrates' Court of Victoria](#)

[Secondary Offences in Victoria](#)

[Major Driving Offences: Current Sentencing Practices](#)

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# Glossary

- Accused person:** someone who has been charged with an offence, but who has not yet been found guilty or not guilty.
- Adjourned undertaking:** an order for a person to comply with certain conditions for a set period while in the community.
- Adult Parole Board:** the body responsible for making decisions about parole for adults in prison.
- Aggravating factor:** a fact or circumstance about the offender or the offence that may lead to a more severe sentence.
- Alcohol exclusion order:** an order banning an offender from certain areas or premises that sell alcohol.
- Appeal:** a request to a higher court to review a lower court's decision.
- Bail:** the release of a person from legal custody into the community on condition that they reappear later for a court hearing to answer the charges.
- Breach:** a failure to comply with a court order.
- Case:** a collection of one or more charges against a person.
- Case law:** law made by courts, including sentencing decisions and decisions on how to interpret legislation. Case law is also known as **common law**.
- Category 1 offence:** a serious offence committed by a person aged 18 or over. Courts must almost always impose imprisonment for a category 1 offence.
- Category 2 offence:** a serious offence committed by a person aged 18 or over. Courts are usually required to impose imprisonment for a category 2 offence.
- Category A serious youth offence:** a serious youth offence that usually requires an adult court to impose imprisonment rather than youth detention.
- Category B serious youth offence:** a serious youth offence that may, in some circumstances, require an adult court to impose imprisonment rather than youth detention.
- Charge:** a single offence (crime).
- Child:** a person aged 12 to 17 at the time of an alleged offence and aged under 19 when court proceedings begin.
- Children's Court:** a court that hears offences committed by children.
- Closed court order:** an order under the *Open Courts Act 2013* (Vic) allowing a court to close a proceeding to the public.
- Common law:** See **case law**.

- Community correction order:** a flexible order served in the community under conditions that may include unpaid community work, treatment and rehabilitation or curfews.
- Community protection:** a purpose of sentencing to protect the community from the offender.
- Compensation order:** an order requiring the offender to pay money to a victim of crime for the pain, suffering, or property loss or damage caused by the offence.
- Concurrent sentences:** multiple individual sentences in a case that are to be served at the same time, rather than one after the other. For example, two prison sentences each of five years served wholly concurrently would mean a total of five years in prison.
- Confiscation:** an order to take or seize the proceeds of crime or property related to an offence.
- Contest hearing:** a hearing in the Magistrates' Court or Children's Court to determine whether the accused is guilty or not guilty.
- Conviction:** a formal court record that an offender was found guilty and convicted of an offence. Convictions appear on the offender's criminal record.
- Co-offender:** a person who commits a crime with one or more other people.
- County Court:** a major trial court in Victoria that sits above the Magistrates' Court and below the Supreme Court. The County Court hears most indictable offences except the most serious offences heard in the Supreme Court.
- Court of Appeal:** a division of the Supreme Court that hears appeals against conviction, sentence or both.
- Court secure treatment order:** an order detaining a person in a mental health facility. A court secure treatment order is made where the person would have been sentenced to imprisonment but for their mental illness.
- Culpability:** the extent to which a person can be blamed (is blameworthy) for an offence.
- Cumulative sentences:** multiple individual sentences in a case that are served one after the other, rather than at the same time. For example, two prison sentences each of five years served wholly cumulatively would mean a total of 10 years in prison.
- Current sentencing practices:** sentences that have been given in similar, recent cases.
- Custodial order:** an order that involves imprisonment for adults or detention for children.
- Defence:** an accused person and their legal representatives.
- Deferral:** a delay in sentencing for up to 12 months to allow an offender to demonstrate their rehabilitation.
- Deterrence:** an attempt to reduce crime by the threat of a criminal sentence.

**Director of Public Prosecutions:** the person responsible for deciding whether to prosecute serious offences in the higher courts on behalf of the State of Victoria.

**Discharge:** an order recording a conviction but also releasing an offender without any other sentence.

**Dismissal:** an order releasing an offender without recording a conviction or ordering any other sentence.

**Diversion program:** a program designed for people to prevent them from entering the criminal justice system. People have to accept responsibility for their behaviour but are not legally found guilty. Diversion includes conditions such as attending counselling, treatment or defensive driving training.

**Drug Court:** a specialised court that can impose drug and alcohol treatment orders.

**Drug and alcohol treatment order:** a prison sentence that is suspended so that offenders can receive treatment in the community for their addiction.

**Electronic monitoring:** the use of an electronic device to monitor an offender's location.

**Fine:** a sum of money payable by an offender to the State of Victoria on the order of a court.

**Forensic sample order:** an order for an offender to give a DNA sample.

**Forfeiture order:** an order to confiscate the proceeds of crime or forfeit property related to an offence.

**Good behaviour bond:** an order to postpone sentencing for up to one year for children aged under 15, and up to 18 months for children aged 15 or over.

**Guilty plea:** a formal admission by the accused person that they committed one or more offences.

**Higher courts:** in Victoria, the County Court and the Supreme Court.

**Imprisonment:** detention in a prison. Imprisonment is the most severe sentence in Victoria.

**Indictable offences:** serious crimes, such as murder and rape, that are usually heard in either the County Court or the Supreme Court.

**Indictable offence triable summarily:** a less serious indictable offence that can sometimes be heard in the Magistrates' Court.

**Instinctive synthesis:** a sentencing method where the judge or magistrate identifies all the relevant factors in the case, assesses their significance and makes a judgment about the appropriate sentence, given all the circumstances of the case.

**Judge:** the person who hears the case and decides the sentence in the County Court or the Supreme Court.

**Legislation:** laws made by parliament. Legislation is also called Acts or statutes.

- Magistrate:** the person who hears the case and decides the sentence in the Magistrates' Court or the Children's Court.
- Minimum sentence:** a minimum penalty set in legislation that the court must impose for an offence.
- Mandatory sentence:** a sentence set by parliament in legislation that a court must impose. The court has no discretion to impose a different sentence.
- Maximum penalty:** the most severe sentence set in legislation that a court can impose for a particular offence.
- Mention hearing:** the first court hearing for an accused person where charges are formally filed with the court.
- Mitigating factor:** a fact or circumstance about the offender or the offence that may lead to a less severe sentence.
- Non-custodial order:** a sentencing order that is not served in custody.
- Non-parole period:** a period of imprisonment set by the court that the offender must serve in prison before being eligible to apply for parole.
- Objective seriousness:** the seriousness of the offending, without considering the personal circumstances of the offender.
- Offender:** a person who has been found guilty of an offence, or who has pleaded guilty to an offence.
- Office of Public Prosecutions:** an independent body that prosecutes offenders for the Director of Public Prosecutions.
- Parity:** a sentencing principle that requires consistency of punishment for co-offenders.
- Parole:** conditional, supervised release of an offender from prison before the end of a prison sentence. While on parole, the offender is still serving their sentence.
- Parolee:** an offender who has been released from prison on parole.
- Parsimony:** the principle that a sentence must be no more severe than is necessary to meet the purpose or purposes of sentencing the offender.
- Penalty unit:** a set unit of money. In Victoria, fine amounts are based on penalty units rather than specific dollar amounts.
- Plea:** the response by the accused person of 'guilty' or 'not guilty' to a criminal charge.
- Plea hearing:** a hearing that is conducted after the accused person pleads guilty or is found guilty. The aim of the hearing is for the prosecution and defence to summarise the offending, the harm it caused, and the offender's personal circumstances, to assist the court in deciding an appropriate sentence.
- Precedent:** a decision that sets down a legal principle to be followed in similar cases in the future.

**Pre-sentence report:** a report about an offender and their circumstances, prepared by government agencies prior to sentencing. The court uses the pre-sentence report to evaluate whether a certain type of sentence could be appropriate for the offender.

**Probation:** an order for a child to be supervised in the community. Probation is the least intensive supervision order available for children.

**Proportionality:** a sentencing principle that prohibits a court from imposing a sentence that is more severe than is appropriate for the seriousness of the offence.

**Prosecution:** the lawyers that represent the State of Victoria in criminal proceedings.

**Purposes of sentencing:** the objectives that a sentencing court must try and achieve when deciding the most appropriate sentence. The five purposes of sentencing in Victoria are deterrence, just punishment, rehabilitation, denunciation and protection of the community.

**Rehabilitation:** the process of addressing an offender's behaviour to facilitate a pro-social outcome and prevent the offender from reoffending.

**Remand:** detaining an accused person in custody pending court hearings to deal with the charges against them.

**Remorse:** regret for past actions.

**Reoffending:** returning to or repeating criminal behaviour. Reoffending is also known as **recidivism**.

**Restitution order:** an order for the return of stolen property or the proceeds from the sale of stolen property, or payment of a sum of money up to the value of the stolen property.

**Sentence:** the penalty that the court imposes on a person who has been found guilty of an offence.

**Sentence indication:** an indication of the most severe sentence that will be imposed if the accused person pleads guilty.

**Sentencing factors:** the factors that the court must take into account when sentencing.

**Sentencing hierarchy:** all possible sentences available to courts, in order from the least severe to the most severe.

**Sentencing principles:** the principles that form the basis of sentencing decisions, such as parity, parsimony, proportionality and totality.

**Sentencing remarks:** the comments that a judge or magistrate makes at the end of a sentencing hearing. Sentencing remarks include a summary of the case, the sentence imposed, and the reasons for the sentence.

**Special reasons:** unusual circumstances that can allow a court to impose a sentence that is less severe than the minimum penalty.

**Standard sentence:** a guidepost that courts consider when sentencing 14 serious offences, including rape and murder. The standard sentence represents the middle of the range of seriousness when just considering the offending and no other factors (such as the offender's circumstances, prior offending history or plea).

**Statute law:** law made by parliament and set out in statutes (legislation) called Acts of Parliament.

**Summary offences:** less serious offences (such as traffic offences or minor assaults) that are generally heard in the Magistrates' Court.

**Supreme Court:** Victoria's highest court. The Supreme Court hears the most serious indictable offences, including treason, murder and attempted murder. The Supreme Court includes the **Court of Appeal**.

**Totality:** a principle that requires a court to ensure that the total sentence for multiple charges is 'just and appropriate' for the total offending behaviour.

**Trial:** a hearing in the higher courts to determine whether the accused person is guilty or not guilty.

**Undertaking:** unsupervised release of an offender for a set period with or without conditions. An undertaking can be with or without conviction.

**Verdins principles:** the considerations that apply when courts sentence an offender with a mental impairment.

**Victim:** a person who has experienced injury or loss directly because of a criminal offence, or a family member of a person who has died because of a criminal offence.

**Victim impact statement:** a statement by a victim explaining how the crime has affected them.

**Young offender:** a person aged under 21 at the time of sentencing.

**Youth attendance order:** an order for intensive supervision in the community for children aged 15 or over.

**Youth control order:** an order for children that has intensive requirements for supervision, support and court monitoring for up to 12 months.

**Youth justice centre order:** an order for children and young people aged 15 to 20 to be detained in a youth justice centre.

**Youth Parole Board:** the body responsible for making decisions about parole for children and young people detained in a youth justice centre or a youth residential centre.

**Youth residential centre order:** an order for a child aged under 15 to serve a period of detention in a youth residential centre.

**Youth supervision order:** an order for a child to be supervised in the community. The level of supervision is higher than for a probation order.

**Sentencing Advisory Council**

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