
SENTENCING IN WESTERN AUSTRALIA – ADVANCED RESOURCE STUDENT RESOURCE

Part A: Principles of Sentencing

The Sentencing Act WA (1995) states that “A sentence imposed on an offender must be commensurate with the seriousness of the offence.”¹ In other words, the punishment must be proportional to the offending act.

There are a number of principles in sentencing:

- To punish for the offence;
- Rehabilitation: To try and persuade the offender to stop their bad behaviour;
- Personal and General Deterrents: To show the offender and others what will happen if they do the same;
- Denunciation: To condemn the offence;
- To protect the community; and
- Restorative Justice: To provide an opportunity to repair the damage.

“The seriousness of an offence must be determined by taking into account —

- a) the statutory penalty for the offence; and
- b) the circumstances of the commission of the offence, including the vulnerability of any victim of the offence; and
- c) any aggravating factors; and
- d) any mitigating factors.”²

‘Aggravating’ and ‘mitigating’ factors are factors that affect the culpability of the offender. Aggravating factors make the offence more serious. Mitigating factors reduce the culpability of the offender.

Task 1

Click on the following link to learn more about [aggravating and mitigating](#) factors.

Why do you think a judge needs to consider these factors?

¹ Sentencing Act 1995 (WA) s6(1).

² Ibid. s6(2).

to sentence within twelve weeks.⁷ Fifteen weeks was the average time in the District Court in 2011.⁸

The judge may order a [Pre-Sentence Report](#) (PSR) to be prepared. The PSR provides information about the offender that is relevant to sentencing. A PSR usually takes four weeks to prepare.

Task 2

Click on the link for a pre-sentence report. What sort of questions might an offender be asked for a pre-sentence report?

In addition to the PSR, the judge may order that more information be collected about the offender including

- A Psychological Report
- A Psychiatric Report
- A Medical Report.

Psychiatric reports usually take six weeks to prepare.

Task 3

What do you think would be the benefit of having a psychological, psychiatric or medical report on an offender when sentencing?

⁷ Supreme Court of Western Australia. Annual Review 2011
<http://www.supremecourt.wa.gov.au/_files/Annual_Review_2011.pdf>. 16.

⁸ District Court of Western Australia. 2011 Annual Review.
<http://www.districtcourt.wa.gov.au/_files/DC%20Annual%20Review%202011.pdf>. 10.

Role of the victim in sentencing: Using the following links, describe in your own words what role the victim/s has/have in sentencing.

[Victim Impact Statement](#)

[Mediation](#)

Pre Sentence Order (PSO)

A PSO is an order made by the court before sentencing that would allow an offender to complete a programme to address their behaviour, for example, a drug rehabilitation programme. Sentencing can be adjourned for up to two years in order for the offender to complete the PSO. This gives the offender the chance to fix their behaviour to help them not re-offend. If they are successful, the judge may decide not to sentence them to prison.

Sentencing Submissions

Prior to sentencing, both the State Prosecutor and Defence Counsel may provide a written submission to the judge. Both the State and Defence Counsel are given the opportunity to speak to the judge at the time of sentencing to emphasise the important factors in their submissions. Click on the link below and read the information under the headings of 'The role of the prosecutor' and 'The role of the defence lawyer' then complete Task 4.

[Counsel submissions](#)

Task 4:

Using the following scenario, imagine you are either a State Counsel or a Defence Counsel and prepare a written submission for the judge. Ensure your submission reflects the characteristics of a State or Defence submission.

George is a 24 year old university student. He has a drug addiction but in the last four months has been seeking counselling to overcome his addiction. When he was 9 years old, his parents divorced and he has been living with his alcoholic father ever since. Twelve months ago, George broke into his neighbour's house and stole some money so he could buy more drugs. He chose to break into the house at a time during the day, when he knew no-one would be home. Another neighbour across the road saw George enter the house.

The day after the offence, George was questioned by police and later charged with burglary. He denied the offence to the police but pleaded guilty in court. George's neighbour no longer feels comfortable living next door and sold his home quickly for much less than what it was worth.

The maximum penalty for the offence is determined by the particular burglary offence committed and in this case is 18 years imprisonment:

*"(1) A person who enters or is in the place of another person, without that other person's consent, with intent to commit an offence in that place is guilty of a crime and is liable —
(b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years."⁹*

⁹ Criminal Code Act Compilation (1913) s401(1)(b).
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Part C: The Sentencing Process

The offender is required to be present during sentencing either in person or by video link. The judge is required to explain the sentencing to the offender in words s/he can understand.

A court sentencing an offender must, if the offender is personally present in court or appearing before the court by video link under section 14A, explain to the offender, in language likely to be understood —

(a) the effect of; and

(b) the obligations of the offender and the consequences of not complying with them that result from, the sentence and any order in addition to the sentence.¹⁰

If sentencing the offender to imprisonment for 12 months or less, the judge is also required to explain to the offender why no other type of sentence was appropriate. The judge's sentencing remarks are very detailed and explain all aspects of the sentence.

(Did you know that the [Supreme Court website](#) publishes sentencing remarks?)

Extra resources available online:

[District Court Sentencing Guide WA](#)

['Judges Sentencing Remarks Available Online' Statement](#)

[Comparative Sentencing Tables](#) The Office of the Department of Public Prosecutions WA.

Part D: Sentencing Options

The following two pages provide a template for a 'mix-n-match' activity that students can do. They are to match the correct title to each definition.

¹⁰ Ibid. above n 1, s34(1).

CARD TEMPLATE A

SPENT CONVICTION	SUSPENDED IMPRISONMENT
RELEASE WITHOUT SENTENCE	CONDITIONAL SUSPENDED IMPRISONMENT
CONDITIONAL RELEASE ORDER	IMPRISONMENT
FINE	LIFE IMPRISONMENT
COMMUNITY BASED ORDER	INDEFINITE IMPRISONMENT
INTENSIVE SUPERVISION ORDER	ELIGIBILITY FOR PAROLE

CARD TEMPLATE B

<p>This conviction does not show up on a person's Police Clearance Certificate.</p>	<p>An imprisonment sentence where the offender does not have to serve time in prison if s/he does not re-offend within the time specified by the judge.</p>
<p>A court sentencing an offender may impose no sentence because the circumstances of the offence are trivial or technical; and it would be unjust to do so.</p>	<p>Suspension of imprisonment on the condition of at least one of the following: a programme requirement; a supervision requirement; and/or a curfew requirement.</p>
<p>A court may release an offender on the condition s/he does not re-offend and complies with the conditions imposed by the court. <i>This used to be called a Good Behaviour Bond.</i></p>	<p>A sentence of imprisonment for a fixed term that is not less than six months.</p>
<p>An offender may be fined as a penalty. The court will take into consideration how much the offender can afford to pay.</p>	<p>A sentence of imprisonment for life with a minimum period of at least 10 years for murder or at least 7 years for an offence that is not murder.</p>
<p>The court may impose an order where the offender is to complete at least one of a supervision, programme or community service requirement. <i>This used to be called Community Service.</i></p>	<p>A sentence of imprisonment where the offender may not be released because they are considered a threat to the community.</p>
<p>A court order that includes supervision and at least one of the following conditions: a programme requirement; a community service requirement; and/or a curfew requirement.</p>	<p>If the court makes an offender eligible, s/he may be released before the full term of imprisonment has been served provided s/he complies with specific conditions.</p>