
SENTENCING EXERCISE – DRINK DRIVING

Principles of Sentencing

The Sentencing Act WA (1995) states that the punishment must fit the crime. In other words, when deciding what penalty to give an offender, the punishment must match the seriousness of the offence. There are a number of goals in sentencing:

- To punish for the offence;
- To help the offender stop their bad behaviour;
- To show others what will happen if they do the same;
- To condemn the offence;
- To protect the community; and
- To provide an opportunity to repair the damage.

Read the following case scenarios and complete the activity below.

CASE SCENARIO ONE

- Name: Adam Waldrough
- Age: 22
- Offence: Driving while having a blood alcohol content of 0.08g.
- Particulars of the Offence

Adam works as an electrician for a local company. On Friday nights, the workers at the company enjoy a happy hour. Usually, Adam catches the train to work on Fridays but on 12 July, the train service was cancelled and Adam had to drive his car. After a few drinks with his colleagues at the end of the day, Adam decided to drive home. Adam was stopped by police and was required to do a breath test. His blood alcohol reading was 0.08. Adam has no prior convictions and pleaded guilty at the first opportunity.

CASE SCENARIO TWO

- Name: Peter Tonkin
- Age: 41
- Offence: Driving while having a blood alcohol content of 0.08g.
- Particulars of the Offence

Peter works as a school teacher at the local High School. He enjoys partying with his mates on the weekend and was always the life of the party. On Saturday, 29 August, Peter decided to stay the night after a particular lively party and slept on the floor in his mates lounge room. At 7am, he woke up and decided to drive home. On the way home he was stopped by police for a random breath test. His blood alcohol reading was 0.08. Peter has two prior convictions for drink driving.

CASE SCENARIO THREE

- Name: Sally Thyme
- Age: 32
- Offence: Driving while having a blood alcohol content of 0.08g.
- Particulars of the Offence

Sally works as a fly-in fly-out geologist in the mining industry. She went to a wedding reception one night. The designated driver amongst her friends had had too much to drink at the reception. Needing to get home quickly because she had an early flight for work the next day, Sally drove home with a friend. She was stopped by police in her driveway just as she was getting out of the car. She was required to do a random breath test and her blood alcohol reading was 0.08. Sally has no prior convictions and, because of the nature of her work, was at risk of losing her job if she were to have a criminal conviction. Sally pleaded not guilty to the charge but was found guilty after a trial. She claimed, during the trial, that her driving home was out of necessity.

ACTIVITY

Using the sentencing options below, decide on what you think would be an appropriate sentence for Adam, Peter and Sally. You also need to decide whether you think there should be a spent conviction in each case.

- Sentencing options
 - Fine; and
 - Disqualification of Licence

For drink driving offences, there are minimum and maximum penalties depending on the amount of alcohol consumed and whether the person has been convicted of drink driving in the past.

- Minimum and Maximum Penalties according to the WA Road Traffic Act 1974.

Blood alcohol content (0.08g/100ml)	First offence	Second offence	Subsequent offence
Minimum Fine:	\$500	\$600	\$600
Maximum Fine:	\$1500	\$1500	\$1500
Minimum Disqualification of licence:	6 months	8 months	10 months

How to Decide on an Appropriate Sentence

When sentencing, the magistrate must think about how serious is the offence and what factors may affect the responsibility of the offender. The seriousness of the offence is measured by the maximum penalty given for the offence. The factors that affect the responsibility of the offender are called 'aggravating' and 'mitigating' factors. Aggravating (negative) factors make the offender more responsible for what they have done. Mitigating (contributing) factors reduce the responsibility of the offender. Mitigating factors do not excuse or justify the offending but may reduce the severity of the charge.

- What are some Mitigating Factors?
 - According to section 9AA of the Sentencing Act WA (1995), a plea of guilty at the earliest opportunity can mean the magistrate can give up to a 25% discount on the sentence. This is because the person is accepting responsibility for their actions.
 - The person has made efforts to avoid committing the offence. For example: appointing a designated driver or sleeping over if drinking too much.
 - The age of the offender – a younger offender is seen to have less responsibility than a more mature offender who has more life experience. (Approximate age range for mitigation – 18 to 30).
 - Unplanned, spur of the moment offending.
 - The misfortune of the person leading up to the offending.
 - Co-operating with police.
 - Risk of loss of employment.
 - Offending based on need rather than greed.
 - Previous good character of the offender.

- What are some Aggravating Factors?
 - The person has previous convictions of the same type of offence.
 - The person refuses to accept responsibility for what they have done.
 - The person shows no remorse.
 - Offending motivated by greed.
 - Offences which abuse positions of trust.

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- Premeditated, planned offending.

 - What is a Spent Conviction?
When sentencing, a magistrate may choose to grant a spent conviction. This means that the conviction does not appear on the offender's criminal records (Records that are used to obtain a Police Clearance for employment.) A magistrate cannot grant a spent conviction unless the offender is unlikely to commit such an offence again and the magistrate considers the following
 - That the offence is not serious; or
 - The previous good character of the offender and that the offender should be relieved of the serious effects the conviction might have on the offender.

However, spent convictions are rarely granted for traffic matters as they are not generally regarded as 'criminal' convictions and don't usually impact on employment opportunities. A magistrate is unlikely to accept a 0.08 blood alcohol content offence as not serious. Thus, in order to get a spent conviction, the magistrate, first of all, would have to be satisfied that the offender would be unlikely to commit the offence again. Once that is achieved, it would have to be shown that the person is of good character and that the consequences of a conviction would have a serious effect on the offender.

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Factors for consideration	Adam	Peter	Sally
<p>Seriousness of the offence</p> <p><i>Discuss what you think makes this offence so serious and identify the maximum penalty.</i></p>	<p>Maximum Penalty is \$1500 fine and a minimum 6 month disqualification of licence</p>	<p>Maximum Penalty is \$1500 fine and a minimum 10 month disqualification of licence</p>	<p>Maximum Penalty is \$1500 fine and a minimum 6 month disqualification of licence</p>
<p>Mitigating factors</p> <p><i>Identify what factors reduce the offender's responsibility.</i></p>	<ul style="list-style-type: none"> • Adam is 22 years old • No prior convictions • Pleaded guilty at first opportunity • Good character • Usually caught train indicating a responsible attitude on prior occasions 	<ul style="list-style-type: none"> • Pleaded guilty at first opportunity • Good character • Made an effort not to commit the offence by staying the night 	<ul style="list-style-type: none"> • No prior convictions • Good character • Made an effort not to commit the offence by appointing a designated driver • Risk of loss of employment • Misfortune of the designated driver letting her down • The need to be ready for her flight the next day • Spur of the moment decision
<p>Aggravating factors</p> <p><i>Identify what factors increase the offender's responsibility</i></p>		<ul style="list-style-type: none"> • Two prior convictions 	<ul style="list-style-type: none"> • Refuses to accept responsibility indicated by a not guilty plea
<p>Final Sentence</p> <p><i>Based on your analysis of all the factors above, what do you think would be an appropriate sentence for each offender and why?</i></p>	<p>Adam's offending is at the lower end of the scale and would most likely get a minimum sentence: \$500 fine and a 6 months disqualification of licence.</p>	<p>Due to his prior convictions and drinking behaviour, Peter's offending is between the middle to higher end of the scale. Because of his plea of guilty and the fact that he did make the effort to</p>	<p>Sally's offending would be at the lower end of the scale, but due to her not guilty plea, she would not be entitled to a 25% discount on her sentence. She may receive a \$600 fine</p>

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		<p>stay the night. He could receive a \$1000 fine and a 10 month disqualification of licence. Peter could still get the minimum \$600 fine as his alcohol reading is the minimum within the range. He also has other mitigating factors. The length of time since his last convictions could also affect the magistrate's decision.</p>	<p>and a 6 month disqualification of licence. She <i>may</i> also receive a spent conviction as she has no prior convictions and because of the impact on her employment that a conviction would have.</p>
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Some further information about Drink Driving Offences

Drink Driving Offences minimum and maximum penalties according to the Road Traffic Act 1974 (WA)

s63. Driving under the influence of alcohol etc.

(1) A person who drives or attempts to drive a motor vehicle while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle commits an offence, and the offender may be arrested without warrant.

Blood alcohol content over 0.15g/100ml)		
First offence	<p>With previous conviction under s64</p> <p>Minimum fine that would apply if the offence were against s64 instead of s63 and not more than \$2500, and</p> <p>Disqualification of licence for a period of not less than the minimum period of disqualification that would apply if the offence were against s64 instead of s63.</p>	<p>With no previous conviction</p> <ul style="list-style-type: none"> • Minimum fine of \$900 • Maximum fine \$2500 • And Disqualification of licence not less than 10 months
Second offence	<ul style="list-style-type: none"> • Minimum fine \$2100 to a maximum fine of \$3500 or 9 months imprisonment; and • Disqualification of licence not less than 30 months. 	
Third or Subsequent offence	<ul style="list-style-type: none"> • Minimum fine of \$2100 to a maximum fine of \$5000 or 18 months imprisonment; and • Permanent disqualification of licence. 	
<p>In any proceeding for an offence against this section a person who had at the time of the alleged offence a blood alcohol content of or above 0.15g of alcohol per 100ml of blood shall be deemed to have been under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle at the time of the alleged offence. s63 (5)</p>		

s64. Driving with blood alcohol content of or above 0.08

- (1) A person who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.08g of alcohol per 100ml of blood commits an offence, and the offender may be arrested without warrant.

Blood alcohol content (g/100ml)		First offence	Second offence	Subsequent offence
≥ 0.08 but < 0.09	Min: Max: Disq :	\$500 \$1500 6 months	\$600 \$1500 8 months	\$600 \$1500 10 months
≥ 0.09 but < 0.11	Min: Max: Disq :	\$550 \$1500 7 months	\$900 \$1500 10 months	\$900 \$1500 13 months
≥ 0.11 but < 0.13	Min: Max: Disq :	\$650 \$1500 8 months	\$1200 \$2000 14 months	\$1200 \$2000 17 months
≥ 0.13	Min: Max: Disq :	\$750 \$1500 9 months	\$1600 \$2500 18 months	\$1600 \$3000 30 months

s64AA. Driving with blood alcohol content of or above 0.05

- (1) A person who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.05g of alcohol per 100ml of blood commits an offence.
- (2) If a court convicts a person of a first offence against this section the person is liable to a fine of not more than 10 PU (\$500).

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Blood alcohol content (g/100ml)		Second offence	Subsequent offence
≥ 0.05 but < 0.07	Min: Max: Disq :	\$500 \$1000 6 months	\$500 \$1000 8 months
≥ 0.07	Min: Max: Disq :	\$600 \$1000 8 months	\$600 \$1000 10 months