

How Courts Sentence Adult Offenders



This brochure is about *sentencing* in Tasmanian courts. This is the punishment someone receives for committing an offence, also known as *breaking the law*. It is for people who are going to the Magistrates Court for the first time, especially if they do not have a lawyer with them.

This brochure explains how sentencing works. That is, how the court decides what sentence someone gets for their offence, and what the court must think about when it decides a sentence.

Who is sentenced?

A person is only sentenced if they plead guilty or are found guilty of an offence or offences by the court.

If a person is charged with more than one offence and pleads not guilty to some or all of the charges, they are only sentenced for the charges where they are found guilty.

Who decides the sentence? When?

If a person pleads guilty, or is found guilty, the court decides their sentence.

In the Magistrates Court, the magistrate is in charge and they decide what the sentence will be. In the Supreme Court the judge is in charge. There are limits to the kinds of sentences courts can give. Courts also have to follow laws about sentencing and about the particular offence. They are also guided by decisions made by other courts.

In the **Magistrates Court**, hearings and sentencing often happens on the same day that the person is found guilty. The sentence is decided by the magistrate.

If the case is in the **Supreme Court**, and a person is found guilty, sentencing does not usually happen on the same day. There will be a separate hearing when the judge decides the sentence (punishment). This might be a few weeks later.

How do courts choose a sentence?

In Tasmania there is not just one sentence that courts give automatically. What sentence to give is decided, based on the facts of the particular case and the particular offender.

When choosing a sentence courts think carefully about:

- the details of the case.
- the person who did the offence.
- the sentences given by other judges and magistrates in similar cases involving the same offence
- the purposes of sentencing set out in legislation.

These are the things a court may consider:

1. Details of the case

No two offenders and no two offences are exactly the same. So, in choosing a sentence, a court will consider:

- **Aggravating factors** – things about the offender or what they did that make the offending more serious (for example if the offender has a history of similar offences, or if the offence was planned).
- **Mitigating factors** – things about the offender or what they did that make the offending less serious (for example if it is their first offence, if they plead guilty, or if they are doing well in rehabilitation and are unlikely to offend again).

Two offenders found guilty of the same kind of offence may get different sentences if each offender has different aggravating and mitigating circumstances.

2. The person who did the offence

When sentencing, courts must think about the offender's life history because this will help them to decide what is the best sentence to give. Here are some examples:

A person (offender) who has a mental illness might have less responsibility for the offence. This might mean:

- The person (offender) has trouble controlling their actions
- They don't understand the harm they caused
- Some types of sentence might not stop them from offending again
- The experience of prison will be unusually difficult for them.

A person might have had a very difficult childhood, which might explain why they committed the offence. It is important for the court to think about this.

An offender who uses drugs or alcohol is normally still responsible for their actions, but the court might consider rehabilitation as a purpose for sentencing them.

The court may get this information from the offender, their lawyers or by a report that is provided to the court. The lawyer for the police may not agree with the information that is provided and the magistrate will need to make a decision about how the information is used.

3. Sentences given in similar cases involving the same offence

Over the years, other judges and magistrates have listened to many similar cases. They have chosen what is the best sentence for those cases. They wrote down their decisions and the sentence.

What they have written helps other magistrates and judges to choose the sentence they will give. But it is important to remember that every sentence in every case is chosen carefully based on the facts of the particular case and the particular offender.

4. The purposes of sentencing

In Tasmania, adults are sentenced under the *Sentencing Act 1997*. The Act says that sentencing must:

- protect the community
- be consistent with sentences for similar cases
- be fair in the procedures used and
- recognise the interests of victims.

For the offender, the sentence must:

- punish the offender in a manner that the community considers fair in all the circumstances
- discourage the offender (and others) from doing it again
- help the offender to deal with personal problems (like drugs or alcohol) that contributed to the offending
- send a message to the community that what the offender did is wrong.

Victims

When sentencing, the court must think about what has happened to the victim, how they may have been hurt. The victim may make a Victim Impact Statement which tells the court how the crime has hurt them. They may do so themselves or someone else can do it for them. Even if the victim does not make such a Statement, the court must still think about any losses or injuries that the victim may have suffered.

What types of sentences are there?

In the Magistrates Court, the most common sentence is a fine. Most sentences do not send people to prison.

The main types of sentence for adult offenders are:

- **Adjourned undertaking** – The sentence is held-off for up to five years. During this time the offender must not reoffend. They must also obey any other special conditions set by the court. (for example: they might have to attend a behaviour-change program).
- **Fine** – The person (offender) has to pay a certain amount of money to the government.
- **Community correction order** – The offender is released into the community, but has to comply with extra conditions set by the court. The conditions may include:
 - unpaid community work
 - supervision
 - drug testing and treatment
 - restrictions on where the person (offender) can go
 - restrictions on where they can live
 - restrictions on who they can spend time with.
- **Home detention** – The offender must live in a particular place for the length of time that the court says. There are extra conditions that a person must follow as part of a home detention order.
- **Drug treatment order** – The offender receives a prison sentence but this is suspended (held back) so that they can receive treatment in the community. This is a special sentencing order for offenders with a history of illegal drug use, where this has contributed to their offending. It isn't available for all types of offences.
- **Suspended sentence** – The offender is sentenced to prison but the prison sentence is suspended (held back). The offender must not commit any other offences during this time, and there may be extra conditions that they must follow
- **Imprisonment** – The offender goes to prison.

Maximum and minimum sentences

The highest (maximum) possible sentence a court can impose for an offence is set in laws like the *Criminal Code* or the *Police Offences Act 1935*.

Very few offences have a set minimum penalty in Tasmania. Some traffic offences have fixed minimum penalties, which means that the court is not allowed to give a lower sentence than the minimum sentence.

Orders in addition to sentence

There are some other orders that a court may make in addition to sentence.

Commonly used orders are driving-related orders, such as losing your licence for drink driving offences or drug driving. Other orders may relate to the court taking property (called **forfeiture orders**). For example, the court may take drug equipment from an offender.

Consequences of a finding of guilt or a conviction

When the court gives a sentence, it sometimes has to choose whether a conviction is recorded. A conviction is an official record of guilt.

The court can choose whether to record a conviction for these orders:

- community corrections orders
- fines
- rehabilitation orders (for family violence offences)
- adjourned undertaking
- dismissal.

A conviction forms part of a person's criminal record. A finding of guilt also forms part of an offender's criminal record. A criminal record can have bad effects on an offender's future, even after an offender has completed a sentence or if no conviction is recorded. It may have long-lasting consequences. Especially for things like:

- overseas travel
- some types of jobs
- some licences – like taxi driver; or firearms.

Further Information

Victims of Crime Service. This service gives information to victims of crime, and refers people to support services. Call: 1300 300 238 (for more information see <https://www.justice.tas.gov.au/victims/about>).

Legal Aid. This service gives free advice to people about legal matters. Call: 1300 366 611. Legal Aid also has a number of fact sheets about the court process prepared especially for people who do not have a lawyer. These fact sheets include details about getting ready for your first time in court and how to present your best case (see <https://www.legalaid.tas.gov.au/fact-sheets/?courts>).

Magistrates Court. If you have been accused of an offence, there is information you can read on the Magistrates Court website: (see https://www.magistratescourt.tas.gov.au/going_to_court/accused_person).

Sentencing Advisory Council. This brochure is a short version of the Council's *A Guide to Sentencing in Tasmania*. The Guide is available at www.sentencingcouncil.tas.gov.au The Sentencing Advisory Council does not provide advice on individual cases.

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