



How does criminal sentencing work in Queensland?

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When a person is charged with and convicted of a criminal offence in Queensland, that person will be formally sentenced by a court. There are many criminal sentencing options available to the court and in determining the appropriate sentence to impose, the court will take into account certain factors.

If you or someone you know is facing criminal proceedings, it is important to be aware of what may lie ahead if you are convicted; whether by your own plea of guilty or if you are found guilty after a trial.

When and where is a person sentenced?

A person's sentence hearing will be heard in the same court in which they were convicted; either the Supreme, District, Magistrates or Childrens Court.

The timing of a person's sentence largely depends upon whether the person pleads guilty or not guilty to the charge:

- If a person pleads guilty to a charge, the matter will be listed for a sentence hearing and the person will be sentenced on that date.
- If a person pleads not guilty to a charge and the charge proceeds to trial and the person is convicted (found guilty), the sentence hearing will occur once the trial has finished. Sometimes it is heard immediately after the trial finishes and other times it may be heard on a later date.

Importantly, once the sentence is passed (that is, the penalty imposed by the court), it takes immediate effect.

What is the sentencing procedure?

Generally, at a sentence hearing, the presiding judge or magistrate will first hear oral submissions made by the prosecutor, followed by oral submissions made by the defendant's lawyer or barrister.

The magistrate or judge will then 'deliver' his or her sentence, and articulate the reasons for imposing that sentence.

In making their oral submissions to the magistrate or judge, ordinarily, the prosecutor and defence lawyer/barrister will:

- provide the magistrate or judge with cases which support their position on the penalty which should be imposed;
- give the magistrate or judge material to consider such as character references, a statement from the victim about the impact of the offence on him/her, reports from medical practitioners etc; and
- address the magistrate or judge about the nature and circumstances of the offence, the defendant's background, and what penalty should be imposed and why.

What does the court take into account when sentencing a person?

When deciding what penalty to impose on a person, the court takes into account a range of factors, including:

- the nature and seriousness of the offence;
- the need to deter the defendant and/or the community from offending;
- the effect on the victim and any damage or injury caused by the defendant;
- the need to denounce the defendant's conduct;
- the extent to which the defendant is to blame for the offence;
- the defendant's personal circumstances and criminal history;
- the need to protect the community from the defendant;
- whether the defendant cooperated with police;
- the presence of any aggravating or mitigating features;
- the submissions made by the prosecutor and the defence lawyer/barrister and any material relied upon by the parties;
- sentencing laws and procedures; and
- sentences given in similar cases.

What penalties can the court impose?

The types of penalties the court can impose depends on the type of offence and differs for adult and juvenile offenders. In a nutshell though:

Penalties for adult offenders

Convict and not further punish; absolute discharge

Being found guilty of the offence but no conviction is recorded and no penalty is imposed.

Good behaviour bond

Entering into a promise to be of good behaviour for a set timeframe and a requirement that the defendant pay a sum of money if they commit a further offence or fail to comply with other orders attached to the bond (such as attending drug diversion).

Community service order

Performance of unpaid community service for between 40 and 240 hours, usually within 12 months of conviction. Sometimes this order can include other conditions.

Fine

Payment of a monetary fine.

Probation

Being allowed to remain in the community on conditions; including that the defendant report to a probation officer and not commit any other offences.

Parole

Being released into the community to serve the remainder of the original term of imprisonment. The defendant will be under supervision and on conditions (similar to probation). Parole can be court-ordered, board-ordered, or granted in exceptional circumstances (by the Parole Board).

Suspended term of imprisonment

Receiving a term of imprisonment which is suspended (either in part or in full) for a set period.

If this occurs, the defendant is not required to be in prison from the date of the suspension. However, if whilst on a suspended sentence, the defendant is convicted of another offence punishable by imprisonment, the defendant must serve the original suspended term of imprisonment **plus** the sentence for the new offence.

Imprisonment

Being required to serve actual time in prison.

Intensive correction order

Being sentenced to a term of imprisonment (one year or less) but serving that period in the community under intensive supervision, which can include reporting conditions and undergoing rehabilitation.

Penalties for Juvenile offenders

Child or juvenile defendants can also be sentenced to probation, community service, detention (imprisonment), good behaviour and fines but under the *Youth Justice Act 1992 (Qld)*, the following other options are also available:

- Diversions; such as being given a caution, being required to undertake drug diversion, a graffiti removal program or other education programs and being ordered to participate in restorative justice conferencing.
- Reprimand: being given a formal warning by the court.

Other orders the court can impose at sentencing

In addition to the above penalties, the court can also make other orders such as:

Restitution or compensation

Requiring the defendant to pay for property damaged or lost as a result of the offending or to compensate someone for injury.

Graffiti removal

Ordering the defendant to spend up to 40 hours removing graffiti (usually within 12 months). This is a mandatory order for some offences.

Non-contact or banning

Prohibiting the defendant from attending a certain place and/or having contact with another person.

Driver licence disqualification

Disqualifying the defendant from holding or obtaining a drivers licence (either absolutely or for a stipulated timeframe). Some traffic-related offences have a mandatory minimum disqualification period.

Recording of a conviction

What should I do to prepare for sentencing?

Being sentenced for a criminal offence can have far-reaching consequences on not only you but also your loved ones.

We recommend that if you haven't already, you contact our office to obtain advice and representation.

Having successfully appeared on sentence hearings for countless clients, we are well-equipped to assist you with this process to ensure optimal results.

Contacting Gilshenan &Luton criminal lawyer

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.