



Justice
Victims Services

Sentencing

INFORMATION PACKAGE

This information package is jointly produced by
Victims Services and Criminal Law Review, NSW Department of Justice
and NSW Sentencing Council.

Reinforcing the NSW Government's commitment to victims of crime
with the *Victims Rights and Support Act 2013*.

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and

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INTRODUCTION

This booklet aims to help victims of crime understand the sentencing process. It explains the purposes of sentencing, the basic elements of sentencing procedure and the terminology used by a sentencing court and is largely based on sentencing legislation in New South Wales. Victims of crime and other interested parties are encouraged to contact Victims Services or the prosecuting authority to discuss the information or to ask any questions.

WHEN IS AN OFFENDER SENTENCED?

An offender is sentenced after he or she:

- has pleaded guilty to an offence; or
- has been found guilty of the offence after a summary hearing in the Local Court; or
- has been found guilty of the offence following a trial by judge alone or trial by jury in the District or Supreme Court.

THE SENTENCING HEARING

Sentencing often takes place on a separate day from the trial or summary hearing and is conducted before the judicial officer (the judge or magistrate). A victim, like all members of the community, has the right to be present at the sentencing hearing. At the sentencing hearing, the defence has the opportunity to put forward evidence and arguments about what the sentence should be. The prosecution assists the court by presenting the facts, providing the court with assistance about applicable law, sentencing options, comparable cases and statistics.

Oral and written arguments can be made by both the defence and the prosecution, and evidence in support can be called by both sides. The prosecution may challenge evidence put forward by the defence at the sentencing hearing, and may challenge or cross-examine defence witnesses. The prosecution provides information concerning any prior criminal convictions of the offender.

Evidence presented by the defence may include:

- evidence of the offender's previous good character, usually in the form of statements from family members, friends, employers or other associates; or
- documents such as psychiatric or psychological reports.

The court often obtains a pre-sentence report which will detail the offender's background and any appropriate or available sentencing and treatment options. In the case of a juvenile offender, a background report must be provided by Juvenile Justice, detailing this information.

An offender can only be sentenced for the charge of which he or she has been found guilty. The court can only take into account factors that are relevant to that charge.

Sometimes an offender will ask that other outstanding offences, for which he or she has been charged but not convicted, be taken into account when being sentenced for the main offence before the court. If the prosecution agrees, these additional offences are recorded on a document called a Form 1. This means that the offender admits his or her guilt in relation to those additional offences, without being formally convicted of and separately sentenced for them. The prosecutor must file a certificate confirming that consultation with any relevant victim(s) and/or the police officer in charge of the additional offences has taken place or, if consultation has not taken place, the reasons why it has not occurred.

The sentencing judge may then take those additional offences into account when setting the appropriate sentence for the main offence before the court. This will normally result in a harsher sentence being imposed than would otherwise have been the case, although the final sentence cannot be higher than the maximum period set out in the legislation for the main offence for which the offender is being formally sentenced.

PURPOSES OF SENTENCING

Under New South Wales law a court can sentence an offender for the following purposes:

- to ensure the offender is adequately punished for the offence;
- to prevent crime by preventing (detering) the offender and other persons from committing similar offences;
- to protect the community from the offender;
- to promote the rehabilitation of the offender;
- to make the offender responsible (accountable) for his or her actions;
- to condemn the conduct of the offender; and
- to recognise the harm done to the victim of the crime and the community.

RELEVANT FACTORS DETERMINING A SENTENCE

In determining the sentence, the court must take into account a number of factors, such as:

- the facts of the offence;
- the circumstances of the offence;
- subjective factors about the offender; and
- relevant sentencing law.

The court may also consider the general pattern of sentencing by criminal courts for the offence in question.

Maximum penalty

The maximum penalty that a judicial officer can impose for each criminal offence is set out in legislation.

The maximum penalty for individual offences differs according to their seriousness. When maximum penalties are set by Parliament, it is intended that such penalties will be imposed only when the case falls within the "worst" category of cases for which the penalty is prescribed. Examples of maximum penalties are life imprisonment for murder and two years imprisonment for common assault.

Mandatory sentencing

There are two offences in NSW to which mandatory sentencing applies, murdering a police officer and assault causing death when intoxicated. If an adult who does not have a significant cognitive impairment is convicted of either of these offences, the court must impose a life sentence in the case of police murder, or a minimum sentence of eight years imprisonment in the case of assault causing death while intoxicated.

Aggravating and mitigating factors

In determining the appropriate sentence for an offence, the court must first assess the seriousness of the offence by reference to the conduct of the offender.

The court must also take into account any aggravating factors and mitigating factors.

An aggravating factor can increase the potential sentence, whereas a mitigating factor can reduce it.

Not every aggravating and mitigating factor present in a particular case will automatically lead to an increase or reduction of a sentence. The relative importance of each factor will vary depending on the circumstances of the case. In the case of young offenders, for example, promoting a young offender's rehabilitation may be considered more important than the principles of general deterrence (that is, the deterrent effect of a sentence on others in the community who might contemplate committing such a crime) and public condemnation. This principle will be considered less important, however, if the crime committed by the youth is very serious or if the young offender is approaching adulthood.

Both aggravating and mitigating factors are set down in legislation and in case law, and may change over time.

Aggravating factors may include:

- a) The victim:
 - was a public official exercising public or community functions, for example, a police officer, emergency services worker, health worker, or teacher, and the offence arose from their work; or
 - was vulnerable (for example, because of age or disability), or because of the victim's occupation (such as a taxi driver, bus driver or other public transport worker, bank teller or service station attendant).
- b) The offence involved:
 - the actual or threatened use of violence;
 - the actual use or threatened use of a weapon;
 - needless (gratuitous) cruelty; or
 - multiple victims or a series of criminal acts.
- c) The offence was:
 - committed with others (in company);
 - committed without regard for public safety;
 - committed in the home of the victim or any other person;
 - committed in the presence of a child under 18 years of age;
 - committed while the offender was on conditional liberty in relation to an offence (for example, if the offender was on bail or on parole);
 - motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability);
 - part of a planned or organised criminal activity;
 - involved a grave risk of death to another person or persons; or
 - an offence in which the injury, emotional harm, loss or damage caused was substantial.
- d) If the offender:
 - has a record of previous convictions; or
 - abused a position of trust or authority in relation to the victim (such as a school teacher and the victim is a pupil of the offender, or a health professional and the victim is a patient of the health professional, and similar positions where the offender has responsibility/authority over the victim).

Mitigating factors may include:

- a) The offence was not part of a planned or organised criminal activity.
- b) The offender:
 - was provoked by the victim;
 - was acting under duress;
 - does not have any record (or significant record) of previous convictions;
 - was a person of good character;
 - is unlikely to re-offend;
 - has good prospects of rehabilitation;
 - has shown remorse (for example, by providing evidence that he or she has accepted responsibility for his or her actions, has made compensation (reparation) for any injury, loss or damage or both);
 - was not fully aware of the consequences of his or her actions because of his or her age or any disability
 - provided assistance to law enforcement authorities; or
 - pleaded guilty.
- c) The injury, emotional harm, loss or damage caused by the offence was not substantial.

The following factors cannot be taken into account as mitigating factors:

- Lack of previous convictions and good character if one of these assisted the offender to commit a child sexual offence.
- The fact that they will be placed on a Sex Offenders Register or prevented from applying for, attempting to obtain or remaining in child-related employment.
- The impact on the offender of the confiscation of assets or proceeds of crime.
- Self-induced intoxication at the time of the offence.

Cumulative and concurrent sentences

If an offender is to be sentenced for more than one offence, then he or she may be given a separate sentence for each offence. In such a case, the court can order that the sentences be served concurrently or cumulatively, or a combination of both.

Concurrent sentences commence at the same time as each other and run at the same time. This means that if an offender is given a two-year sentence for one offence and a five-year sentence for a related offence, and those sentences are directed to be served concurrently, the total period of imprisonment will be five years. Cumulative sentences run consecutively, that is, one after another. A sentence may be partly concurrent and partly cumulative upon an earlier sentence.

One of the circumstances that may prompt a court to decide that sentences should be served concurrently, or at least partly concurrently is if the offences have features in common, or if they happened at around the same time and are connected (for example, if all the offences arose in a single course of criminal conduct).

Proportionality

A fundamental principle in sentencing is that the court must impose a sentence that is proportional to the offence committed. That is, the sentence should not be more or less than what is appropriate, considering the seriousness of the crime.

Totality

Even where a court sentences an offender for a number of offences that do not have features in common, the judge may make some of the individual sentences partly or wholly concurrent so that the total sentence is appropriate and the overall result is proportional to the total offending. The sentence to be served must reflect the offender's total criminality but must not be so lengthy that the sentence becomes disproportionate to the punishment required.

Victim impact statements

A victim impact statement is a written statement that describes the impact of a crime upon a victim or a victim's family member. It is given to the court after a person has been convicted and before the person is sentenced.

Legislation allows a victim impact statement to be received and considered in certain cases in the Supreme Court, the District Court, the Local Court, and the Children's Court. In the Supreme Court and District Court, a victim impact statement may be received by the court in relation to an offence that involves:

- actual or threatened violence (including some sexual offences); or
- the death of, or any actual physical bodily harm, to any person.

A statement can be made:

- by a victim (or their representative, such as a family member or counsellor) who has suffered personal harm as a direct result of an offence (the primary victim); or
- a family member of a primary victim (or their representative) who has died as a direct result of the offence.

A victim impact statement can be read by the victim or their representative in open court or handed up in written form. The maker of the statement can be cross-examined or questioned in relation to the statement.

For more information on victim impact statements, see the *Victim Impact Statements Information Package*, jointly produced by the NSW Office of the Director of Public Prosecutions, NSW Police Force and Victims Services.

SENTENCING OPTIONS

A court can sentence an offender to any of the following types of sentences:

Rising of the court

The court orders the defendant to “remain in court until the next adjournment” (that is, until the next break in the sittings of the court that day). This is a symbolic way of saying that an offender is convicted but no formal sentence is imposed. This order is reserved for the least serious of offences and is rare.

Non-conviction orders

Non-conviction orders (often referred to as a “section 10” and before 1999 known as a “section 556A” order) may be conditional or unconditional.

In determining whether or not to make a non-conviction order the court must take into account:

- the offender’s character, previous criminal history, age, health and mental condition;
- the trivial nature of the offence;
- the extenuating (mitigating) circumstances in which the offence was committed;
- any other matter that the court thinks proper to consider.

Unconditional discharge

The court finds the offender guilty but dismisses the charge without recording a conviction.

Conditional discharge

The court can discharge the offender, without recording a conviction, on a condition that he or she enter into a good behaviour bond for a period of up to two years or enter into an agreement to participate in and comply with an intervention program designed to promote the offender’s treatment or rehabilitation.

If an offender breaches the condition to be of good behaviour he or she can be convicted and sentenced for the original offence, as well as being dealt with for any further offending.

Conviction order without any additional penalty

In some instances the court may find the offender guilty and record a conviction but order that no sentence be imposed.

Good Behaviour Bond (section 9 bond)

The court can also record a conviction and instead of imposing a sentence of imprisonment make an order directing the offender to enter into a good behaviour bond.

A good behaviour bond always contains the condition that the person under the bond must be of good behaviour during the term (that is, the duration) of the bond. An offender under a bond must appear before the court if called on to do so at any time during the term of the bond for any alleged breach of it. An offender who has breached a good behaviour bond may be re-sentenced by the court for the original offence. A good behaviour bond cannot exceed five years.

Supervised bonds

When a court decides to attach a condition of supervision to a bond, the offender is subject to the supervision and control of the Community Offender Services for a specific period of time. If an offender breaches the terms of the order they can be re-sentenced by the court for the original offence.

Non-association and place-restriction orders

For an offence that has a penalty of six months imprisonment or more, a court may, in addition to any other sentence, make a non-association order, a place-restriction order or both in respect of the offender if it is satisfied that it is reasonably necessary to do so to ensure that the offender does not commit any further offences.

A non-association order can prohibit the offender from mixing with or associating with a specified person for a specified term.

A place restriction order can prohibit the offender from frequenting or visiting a specified place or district for a specified term. The order can be for a period of up to 12 months.

Fines

A fine is a monetary penalty and is the most frequently used sentencing option in Australia. The amount of the fine is expressed in penalty units and one penalty unit is currently \$110. The maximum penalty units available for an offence are set out in the legislation that creates the offence.

Compensation

The court can also direct that compensation be paid by the offender to the victim for any loss suffered by them as a result of the offence.

Community Service Orders

Instead of imposing a sentence of imprisonment on an offender, a court can impose a Community Service Order of up to 500 hours, depending on the class of offence (for some offences the maximum number of hours may be less).

When a Community Service Order is imposed, the offender is required to perform supervised work for the community, for which he or she is assessed to be suitable. The Community Offender Services are responsible for supervising the offender.

Imprisonment

A sentence of imprisonment is the most serious sentence that can be imposed and must only be imposed when no other sentence would be appropriate. It is seen as a sentence of ‘last resort’. It can take the form of full-time imprisonment served at a correctional centre, Intensive Corrections Order or home detention. A term of imprisonment usually involves (unless the term is of 6 months or less) a ‘non-parole period’ which is the minimum term that the offender will spend in custody and an ‘additional term’ which is the maximum period of time which may be served on parole.

Intensive Correction Orders

If a court has decided to sentence an offender to a term of imprisonment of up to two years, the court may direct that the sentence be served by way of an Intensive Correction Order in the community. Offenders who are deemed suitable for an Intensive Correction Order are required to comply with a range of stringent conditions such as reporting, submitting to surveillance or monitoring, submitting to random drug or alcohol testing, community work and participation in rehabilitative programs which address the particular offending, as directed.

An Intensive Correction Order can be revoked if breached and the offender can serve the balance of the term by way of home detention (if suitable) or full time imprisonment.

Home detention

Where a total sentence (that is, the non-parole period and additional term) of 18 months or less is imposed, the court may direct that the sentence be served by way of home detention.

Sentences for certain offences involving violence, such as murder, attempted murder, manslaughter, sexual assault, armed robbery, firearms offences, assault occasioning actual bodily harm, stalking or certain serious drug offences cannot be served this way.

A sentence of home detention cannot be imposed if the offender:

- has a record for any of the above offences; or
- has been convicted of a domestic violence offence in the past five years; or
- has had an Apprehended Violence Order made against them in the past five years, where the victim of that order lives at the proposed home detention address.

Home detention is regarded as a less harsh sentence than full-time imprisonment. Conditions can be imposed which permit the offender to leave home for certain approved periods, for example, for the purpose of employment or receiving medical treatment. Compliance with the order is supervised by way of electronic monitoring and random visits by a Community Offender Services Officer.

Suspended sentence (section 12 bonds)

Sentences of imprisonment for two years or less may be suspended on the condition that an offender enters into a good behaviour bond. This means that the offender does not serve the term of imprisonment provided they enter into the bond and are of good behaviour for the term, that is, commit no further offences and follow any conditions of the bond. If the conditions of the bond are breached, the court will revoke the bond unless it is satisfied the breach was trivial in nature or there are good reasons for excusing the breach. The offender will then be required to serve the sentence that was suspended.

Deferred sentence

The court can postpone passing sentence on an offender for a period of up to 12 months from the date of conviction to allow the offender:

- to be assessed for rehabilitation; or
- to demonstrate that rehabilitation has taken place; or
- for any other purpose.

At the end of the period the court will sentence the offender after considering any additional information or developments that have occurred.

Forum Sentencing

A court can refer an eligible offender to the Forum Sentencing Program Administrator for a suitability assessment. If the offender is found to be suitable, he or she may participate in a Forum as part of their sentence.

A Forum is a facilitated meeting between the victim, the victim's support people, the offender, the offender's support people, the police and other people affected by the crime, to discuss the offence and its impact on the victim and others. The Forum also organises the preparation of an intervention plan for the offender to repair the harm to the victim, address the offending behaviour and reintegrate the offender into the community. The plan may include:

- a verbal or written apology to the victim;
- payment of compensation to the victim;
- participation in treatment or educational program(s); and
- counselling.

The plan is sent to the court for consideration and, once approved, may be undertaken by the offender either before sentencing, or as part of his or her sentence.

Forum Sentencing is currently available to adult offenders in some Local Courts and is expanding to all Local Courts in NSW.

Proceeds of crime

Money or property that offenders have obtained through criminal activities or that were used in the commission of crime can be recovered from offenders in many cases under laws dealing with the proceeds of crime. This confiscation action may occur in addition to other consequences such as a fine or imprisonment and does not affect the imposition of a penalty.

UNDERSTANDING THE SENTENCE

When sentencing an offender to imprisonment, a court will first set a non-parole period and then state the balance of the term of the sentence (the parole period).

Non-parole periods

A non-parole period is the minimum period of time that an offender will stay in prison before being eligible to be released on parole. Parole is the release of an offender from prison to serve the balance of their sentence in the community. The purpose of parole is to supervise and support the reintegration of offenders before the end of their total sentence. While on parole, the offender is still serving their sentence.

The parole period must not exceed one-third of the non-parole period for the sentence unless there are "special circumstances" for being more. Factors such as the age, state of health, prospects of rehabilitation or the personal circumstances of the offender may constitute a finding of "special circumstances" so as to allow for a longer period of time on parole.

The earliest possible release date is the date that the non-parole period expires.

Where the total sentence is three years or less, the court must make an order directing the offender's release at the end of the non-parole period.

Where the sentence imposed is more than three years, the offender becomes eligible to apply for parole at the end of the non-parole period. In this situation, parole is not an automatic right and the NSW State Parole Authority will determine whether the offender will be released from custody. If the prisoner's application for parole is declined, he or she may re-apply but in some cases the prisoner is never granted parole, so that he or she remains in prison until the end of the parole period.

A court may refuse to set a non-parole period for a sentence in particular circumstances, (such as the nature of the offence, or the criminal history of the offender) and must give reasons for any such decision.

Where the court is sentencing the offender for two or more offences, an aggregate sentence may be imposed. This means that a single non-parole period and total sentence is set instead of one for each offence.

Where an offender fails to comply with his or her conditions of parole the NSW State Parole Authority may revoke the parole.

Standard non-parole periods

Certain serious offences have standard non-parole periods set in legislation.

When imposing a sentence for these offences, the sentencing judge is to take into account the standard non-parole period and must make a record of its reasons for setting a non-parole period which is shorter or longer than the standard non-parole period.

APPEALS

An offender (known as the appellant or applicant) may appeal against the conviction, the severity of the sentence, or both.

Victims of crime are an important part of the prosecution's case but are not a legal party in criminal proceedings and therefore have no right to appeal a conviction or sentence of an offender. This is because all crimes are regarded as crimes against the Crown, or the state. Accordingly, such appeals are proceedings between the Crown (DPP) and the offender or vice versa.

Appeals against convictions

An appeal against conviction means that the appellant is arguing that he or she should not have been convicted.

Sentence appeals

The Crown (DPP) can appeal against a sentence on the grounds that it is significantly lower than a reasonable sentence for such an offence. An offender may appeal as of right to the District Court against a sentence imposed in the Local Court. An offender can appeal directly to the Supreme Court against such a sentence only on a question of law. An offender sentenced in the District or Supreme Court may seek leave (permission) to appeal to the Court of Criminal Appeal to have the sentence reduced.

A sentence appeal to the District Court from the Local Court is a rehearing of the case. This means that the court hearing the sentencing appeal will reconsider all of the evidence presented in the initial sentencing hearing. The court will usually undertake this task by reading all documents tendered at the Local Court hearing. The defence might also call witnesses to provide further evidence as to why they argue that the sentence is too harsh. The defence and prosecution will then make (usually oral) submissions.

An appeal to the Court of Criminal Appeal from a sentence imposed in the District Court or the Supreme Court will only be successful if the sentencing judge is found to have committed a legal error, including imposing a sentence that was manifestly lenient or excessive.

In very special circumstances, an appellant might be able to seek leave (permission) to appeal to the High Court against the severity of a sentence. This is the highest court in Australia and such appeals are rare.

An appellant may have bail continued or granted while waiting for their appeal even if they were given a prison sentence.

NSW STATE PAROLE AUTHORITY

The NSW State Parole Authority (the Authority):

- decides which inmates, whose sentence includes a non-parole period, will be released to parole;
- sets the conditions of release;
- determines if and how a parole order should be revoked; and
- determines if and how a home detention or intensive correction order should be revoked, substituted or reinstated.

The Authority considers the release to parole of inmates who have sentences of more than three years with a non-parole period. A non-parole period is a minimum term of imprisonment during which an offender is not eligible to be released from prison to parole.

A court which sentences an offender to a term of imprisonment of three years or less may also set a non-parole period. The non-parole period for these shorter sentences entitles the offender to be 'automatically' released from custody without the case having to come before the Authority. The release of offenders subject to 'automatic court based parole orders' is, however, also dependent on appropriate post release plans and arrangements being made by Community Offender Services.

When deciding whether to release an offender on parole, the Authority considers the interests of the community, the rights of the victim, the intentions of the sentencing court and the needs of the offender. The Authority considers a broad range of material when deciding whether or not to release an inmate to parole and must have determined that it has sufficient reason to believe the offender, if released from custody, would be able to adapt to normal lawful community life.

The principal purpose of granting parole is to serve the public interest by closely supervising the offender during his or her period of reintegration into the community. In all cases, strict conditions of parole are imposed and the Authority may also set additional conditions specifically tailored to address the underlying factors of an inmate's offending behaviour.

If a parolee fails to comply with the conditions of a parole order, it is the Authority's role to consider the revocation of parole orders, including those issued by courts. The Authority may also consider the revocation of a court based parole order, before release, if the inmate demonstrates in some way that he or she is unable to adapt to normal lawful community life. The Authority will also consider revocation before release if the Authority decides that satisfactory accommodation arrangements or post-release plans have not been made or are not able to be made.

An offender can also request that the Authority revoke the parole order before release.

Assistance to victims

The Authority welcomes letters from all victims. If an offender is a "serious offender" managed by the Serious Offenders Review Council any registered victim of crime (that is, on the Victims Register) is able to make a submission to the Authority before it makes its final decision on whether or not to release the offender on parole.

Victims of serious offenders are encouraged to register with the Victims Register (administered by Corrective Services NSW) and to seek their assistance and advice in preparing a submission.

Access to documents

A victim of a "serious offender" also has a right under legislation to access edited copies of specific reports received and considered by the Authority. Arrangements to access documents are dealt with by the Coordinator of the Victims Register.

Attendance at Authority hearings

The Authority considers at a private meeting whether or not an offender should be released on parole based on written material provided. If parole is granted, a parole order is issued and the offender is released on the due date. In the case of serious offenders, the matter is referred to a public hearing to provide the opportunity for registered victims and the State to make submissions before a final decision is made.

If parole is refused, the offender is able to apply for a public hearing to review the decision.

Any victim of crime can attend an Authority review hearing of their matter. The offender appears at this hearing by way of a video conferencing link to the correctional centre where they are housed. Victims need to be aware that the offender can see a section of the public gallery via the video conferencing link. Victims who do not want to be seen by the offender are therefore encouraged to speak to the Sheriff's Officer or to the Authority staff to be directed to the section of the public gallery that is not subject to a video link camera.

High risk offenders

The *Crimes (High Risk Offenders) Act 2006* provides for the continued detention and extended supervision of high risk sex or high risk violent offenders. These are offenders who pose an unacceptable risk of reoffending without supervision or detention. The Act provides for a judge of the Supreme Court, informed by the reports of clinical experts who have conducted individual examinations of the offender, to make a continuing detention order or extended supervision order in relation to the offender. The maximum duration of either order is five years.

NSW SENTENCING COUNCIL

The NSW Sentencing Council (the Council) monitors and reports annually to the Attorney General on sentencing trends and practices, including the operation of standard non-parole periods, and prepares research papers or reports on particular subjects in connection with sentencing. The Council also has an educative function and seeks to promote public awareness and understanding about sentencing issues.

The Council consists of 16 members appointed by the Attorney General:

- a retired judicial officer;
- a retired magistrate;
- one with expertise or experience in law enforcement;
- four with expertise or experience in criminal law or sentencing;
- one with expertise or experience in Aboriginal justice matters;
- one with expertise in corrections;
- one with expertise in juvenile justice;
- one representing the Department of Justice;
- four representing the general community. Two out of these four persons must have expertise or experience in matters associated with victims of crime; and
- one with academic or research expertise relevant to the Council's functions.

DICTIONARY: WORDS USED IN COURT

A

Accused

The person charged with committing the crime. The accused can also be called the defendant.

Acquit/Acquittal

When the Magistrate or Judge and jury find the person not guilty of the crime.

Adjournment

When the case is put off until another day. It can also mean a break for morning tea or lunch.

Admissible

Used to describe evidence that is allowed to be given in court.

Appeal

To take a case to a higher court in order to challenge a decision.

Apprehended Violence Orders (AVOs)

AVOs are court orders aimed to restrict the behaviour of a person. They can include orders that a person not assault, stalk, harass, threaten, intimidate or damage the property of another person, or that they cannot approach or contact a person.

B

Bail

An agreement to turn up to court. The accused may be given bail by the police or the court. A person on bail is allowed to go free until their case is next at court, but they may have some conditions placed upon them that they must abide by.

Barrister

A lawyer who specialises in presenting matters at court. Usually wears a wig and gown in court.

Beyond reasonable doubt

The test (or standard of proof) used by a jury, Judge or Magistrate to decide if the accused is guilty or not guilty of a criminal charge. It must be proved beyond reasonable doubt that a person has committed an offence before they can be convicted.

Brief of evidence

The evidence in written form, including the charge(s), witness statements and photographs that the prosecution intends to use to prove the case.

C

Charge

The allegation that a person has committed a specific crime.

Charter of Victims Rights

Victims of crime in NSW have a Charter of Victims Rights to protect and promote their rights. The Charter of Victims Rights obliges government agencies to ensure that a victim is at all times treated with courtesy and compassion, and that their rights and dignity are respected.

Children's Court

This is a special court (generally closed), which is used in most instances for hearings where the accused is under 18 years and for children's care matters.

Closed Circuit Television (CCTV)

This is a provision available to vulnerable witnesses and complainants in sexual assault matters so they can give evidence to the court from a remote location. In special situations CCTV is used for adult witnesses at the discretion of the court.

Closed court

When no one other than a witness support person can sit in the public gallery. The public are excluded and the press may be excluded.

Committal hearing

A hearing of some of the evidence at the Local Court by a Magistrate who then decides if there is enough evidence for the case to go to trial.

Complainant

Used to describe victims of sexual assault in court.

Conviction

When a person accused of committing a criminal offence is found guilty of that offence and it is recorded on their criminal history.

Court

The building where the case is heard. Also used to describe in general terms the judicial officer hearing the case, such as a Judge or Magistrate.

Cross-examination

When the lawyer for the accused (defence) asks questions of the prosecution witnesses about the evidence they have given and other matters. This term also refers to the questions that the prosecutor asks of defence witnesses.

Crown Prosecutor

A barrister who presents the prosecution case in court. Also known as Crown.

D

Defence

The accused person's case and the lawyers who represent them.

Deliberations

When the jury leave court and go to a special room to make their decision.

E

Evidence

This is information provided to the court. Your statement forms the basis of the information or evidence that you will give in court, that is, what you saw, heard or experienced.

Evidence-in-chief/examination-in-chief

When the prosecutor asks the witness questions so that they can tell the court what happened. This applies to defence also.

Exhibits

All the other evidence (apart from statements from witnesses) needed to help present the case, such as documents, photographs, clothing or other items relevant to the case.

F

Forensic patient

A forensic patient is a person who has been found unfit to be tried for an offence and ordered to be detained in a correctional centre, mental health facility or other place, or been found not guilty by reason of mental illness and ordered to be detained in a correctional centre, mental health facility or other place or released into the community subject to conditions.

I

Indictable offence

An offence that may be dealt with in a higher court by a judge and jury (or Judge alone). The less serious indictable offences can be heard in a Local Court.

Indictment

The formal charge for more serious cases. Used in the District and Supreme Courts.

Instructing solicitor

A solicitor who helps with the preparation of the case and helps the barrister in court.

J

Judge

The Judge is in charge of the District and Supreme Courts and makes sure that it is run fairly for both sides. The Judge is addressed as 'your honour'. The Judge decides the sentence of a convicted offender.

Jury

Twelve people who listen to all the evidence to decide if the accused person is guilty or not.

L

Legal argument

An argument about the law which has to be decided by the Judge. The witness and jury usually leave when this happens.

M

Magistrate

The person in charge of the Children's or Local Court who decides whether someone is guilty, not guilty or needs to be sent to the District Court for a trial. They are addressed as 'your honour'.

Majority verdict

In some circumstances if the jury cannot agree unanimously on a verdict because one person disagrees, then the verdict agreed upon by eleven of the jurors can be accepted.

Mention

A brief hearing to sort out what will happen with the case, such as setting a date for a hearing or deciding bail. It is not a full hearing of the case.

N

No bill/no further proceedings

The ODPP may decide that a case will not go to court and this is known as no bill, or decision of no further proceedings. Generally it means that the ODPP has decided that the evidence against the accused is not enough for the accused to be found guilty beyond a reasonable doubt in a hearing or trial.

Non-publication order

An order made by the court that certain details of the case not be published or broadcast. If you are under 16 years of age or a victim of sexual assault, your name and other details cannot be published or broadcast in the media unless you want them to be.

O

Oath/Affirmation

A promise to tell the truth in court by swearing on a religious book that is important to the person making the promise.

Objections

When the defence or prosecution believe a question is not fair or appropriate, they can object and the Judge or Magistrate must decide based on the rules of the court whether or not the witness has to answer it.

Offender

A person who has been convicted of a crime or an offence.

Office of the Director of Public Prosecutions (ODPP)

The ODPP is an independent body established by the State government to prosecute serious criminal offences. The ODPP provides a solicitor and/or Crown Prosecutor to prepare and present the case at court.

Open court

When the court is open to the general public to enter and observe the proceedings.

P

Paper committal

A paper committal is when the Magistrate reads the brief and decides whether or not there is enough evidence to send the case to trial.

Plea

When the accused tells the court whether they are guilty or not guilty of the charge.

Pre-Sentence Report

A report to assist the court in deciding what sentence to give a person who is convicted of an offence.

Prosecutor/Prosecution

In the Local Court or Children's Court, the prosecutor is a specially trained police officer. The prosecutor does not wear a police uniform. In the District and Supreme Court, the prosecutor is a solicitor or barrister from the ODPP. The prosecutor represents the government in a criminal case and the interests of the community and the state at court.

R

Remand

The act of keeping an accused person in custody whilst awaiting trial.

S

Subpoena

A court order to make a witness come to court to give evidence and/or bring documents to court.

Summary Hearing

A charge which is always dealt with in the Local or Children's Court. These are less serious than indictable offences.

Summing up

A Judge's review of the evidence and explanation of the law to the jury.

Support person

A person that a witness may choose to have sitting near them in the courtroom.

T

Trial

A hearing in the District or Supreme Court before a Judge and jury where the evidence is heard and a decision is made.

V

Verdict

The decision of a jury in a criminal trial.

Victim impact statement

A statement read or presented after conviction and before the sentencing of an offender, which informs the court about the harm suffered by the victim as a result of the offence.

W

Witness

A person who has to come to court and answer questions in front of a Magistrate or Judge and jury.

Witness Assistance Services

A service within the ODPP that can assist victims and vulnerable witnesses through the criminal prosecution process.

1 **Courtesy, compassion and respect**
A victim will be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity.

2 **Information about services and remedies**
A victim will be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

3 **Access to services**
A victim will have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

4 **Information about investigation of the crime**
A victim will, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim will be informed accordingly.

5 **Information about prosecution of the accused**
(1) A victim will be informed in a timely manner of the following:
(a) the charges laid against the accused or the reasons for not laying charges,
(b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,
(c) the date and place of hearing of any charge laid against the accused,
(d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.
(2) A victim will be consulted before a decision referred to in paragraph (1) (b) is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless:
(a) the victim has indicated that he or she does not wish to be so consulted, or
(b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.

6 **Information about trial process and role as witness**
A victim who is a witness in the trial for the crime will be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

7 **Protection from contact with accused**
A victim will be protected from unnecessary contact with the accused and the defence witnesses during the course of court proceedings.

8 **Protection of identity of victim**
A victim's residential address and telephone number will not be disclosed unless a court otherwise directs.

9 **Attendance at preliminary hearings**
A victim will be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

10 **Returning of property of victim held by State**
If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim will be minimised and the property returned promptly.

11 **Protection from accused**
A victim's need or perceived need for protection will be put before a bail authority by the prosecutor in any bail application by the accused.

12 **Information about special bail conditions**
A victim will be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

13 **Information about outcome of bail application**
A victim will be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious assault.

14 **Victim impact statement**
A relevant victim will have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

15 **Information about impending release, escape or eligibility for absence from custody**
A victim will, on request, be kept informed of the offender's impending release, or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

16 **Submissions on parole and eligibility for absence from custody of serious offenders**
A victim will, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

17 **Financial assistance for victims of personal violence**
A victim of a crime involving sexual or other serious personal violence is entitled to make a claim under the Victims Support Scheme.

18 **Information about complaint procedure where Charter is breached**
A victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making such a complaint.

FURTHER INFORMATION

NSW Sentencing Council

Phone..... (02) 8061 9270

Website.... www.sentencingcouncil.justice.nsw.gov.au

NSW State Parole Authority

The court for public review hearings is located at Court 7, Level 4, Sydney West Trial Courts, 6 George Street, Parramatta.

Phone..... (02) 8688 3635

Website..... www.paroleauthority.nsw.gov.au

Witness Assistance Service, Office of the Director of Public Prosecutions

Phone..... (02) 9285 8606

Website..... www.odpp.nsw.gov.au

LawAccess

Phone..... 1300 888 529

Website..... www.lawaccess.nsw.gov.au

Judicial Commission of New South Wales

Phone..... (02) 9299 4421

Website..... www.judcom.nsw.gov.au

NSW Courts

Local Courts

Website..... www.localcourt.justice.nsw.gov.au

District Court

Website..... www.districtcourt.justice.nsw.gov.au

Supreme Court

Website..... www.supremecourt.justice.nsw.gov.au

Victims Services

Victims Access Line

Phone..... 1800 633 063 (8am to 6pm, Mon to Fri)

Email..... vs@agd.nsw.gov.au

Website..... www.victimsservices.justice.nsw.gov.au

Victims Registers

Corrective Services NSW Victims Register

Corrective Services NSW has responsibility for people who have been accused or convicted of an offence and are in custody.

Phone..... (02) 8346 1374

Website..... www.correctiveservices.nsw.gov.au

Mental Health Review Tribunal Forensic Patients Victims Register

The Forensic Division of the Mental Health Review Tribunal has responsibility for maintaining a register for victims of forensic patients.

Phone..... (02) 9816 5955

Website..... www.mhrt.nsw.gov.au

Juvenile Justice Victims Register

Juvenile Justice has responsibility for juveniles who have been accused or convicted of an offence and are in custody.

Phone..... (02) 9219 9400

Website..... www.djj.nsw.gov.au

Additional Victims Support Services

Enough is Enough Anti-Violence Movement Inc.

Support for victims of crime, cooperative justice education programs, support for victims of road trauma.

Phone..... (02) 9542 4029

Website..... www.enoughisenough.org.au

Homicide Victims Support Group (Aust) Inc.

Provides 24 hour information or support when someone has been murdered and support groups for family members.

Phone..... (02) 8833 8400

Website..... www.hvsgnsw.org.au

Victims of Crime Assistance League Inc NSW (VOCAL)

Support for victims of crime, including domestic violence and homicide, court preparation support and community education.

Phone..... (02) 4926 2711

Website..... www.vocal.org.au