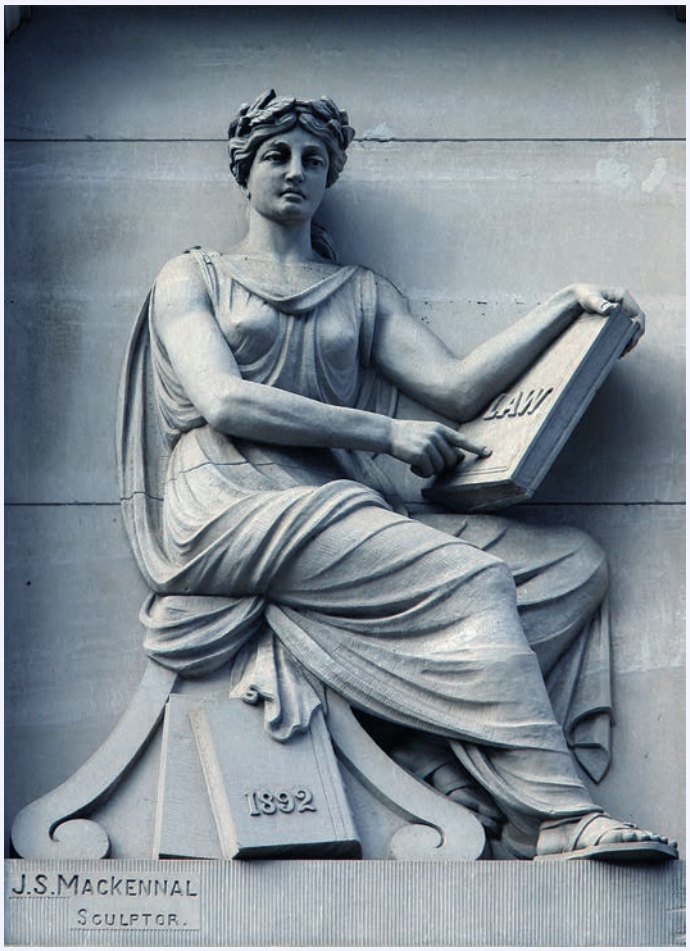
A Quick Guide to Sentencing



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About the Quick Guide

A *Quick Guide to Sentencing* outlines how Victorian courts (judges and magistrates) decide which sentence to impose on offenders – people who have been found guilty of an offence.

When sentencing offenders, a court decides what consequences offenders will face for what they have done.

The focus of this guide is on Victorian courts. While some of what is described applies generally in other Australian states and territories, there are significant differences in the detail.

Who is responsible for sentencing?

In Victoria, responsibility for sentencing is shared between parliament, the courts, and government departments and agencies. This shared responsibility means that no one group has complete control over sentencing outcomes.

Parliament makes laws about sentencing.

Courts interpret these laws and decide the actual sentences to be imposed on each offender. Sentencing decisions made by the courts also form part of the law.

Government departments and agencies, such as Corrections Victoria and the Department of Human Services, administer sentences that have been imposed – for example, by managing offenders in prison or by supervising offenders on community correction orders.

Where is sentencing law made?

There are two sources of sentencing law in Victoria:

- **Statute law** – laws in legislation made by parliament that define crimes, list the available sentences, and set out rules and considerations courts must apply when sentencing.
- **Case law** – decisions made by courts when sentencing, and decisions about how statutes should be interpreted or applied. This is also known as **common law**.

Statute law and case law together create a framework that judges and magistrates must follow when sentencing offenders.

Parliament of Victoria

The Victorian Parliament makes laws about offences and sentencing specific to Victoria. The parliament sets these laws out in legislation (Acts of Parliament). A draft Act is called a Bill. Bills are introduced into parliament for discussion, debate, and possible amendment (change). Both the Legislative Assembly (lower house) and the Legislative Council (upper house) must vote on and pass a Bill before it can become an Act and part of statute law.

The most common Victorian offences and their maximum penalties are found in the following Victorian Acts:

- the *Crimes Act 1958* (Vic)
- the *Summary Offences Act 1966* (Vic)
- the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)
- the *Road Safety Act 1986* (Vic).

These Acts define what behaviour is against the law. They also define the highest sentence (known as a **maximum penalty**) that courts can impose on a person found guilty of an offence.

Victorian sentencing rules and considerations are set out in:

- the *Sentencing Act 1991* (Vic)
- the *Children, Youth and Families Act 2005* (Vic).

These Acts set out the levels and types of sentencing orders (penalties) available to the courts, and describe the purposes, principles, and factors that courts must consider when deciding on a sentence.

The *Sentencing Act 1991* (Vic) sets some limits on the flexibility courts have when choosing a sentence for particular offences, for example, by setting:

- mandatory minimum penalties for manslaughter and serious injury offences in circumstances of **gross violence**
- baseline sentences that courts must achieve over time in sentencing serious offences named by parliament as **baseline offences**.

Parliament changes laws by introducing Bills that, when passed:

- amend (change) existing Acts
- replace existing Acts.

Parliament has passed over 120 Acts that have amended the *Sentencing Act 1991* (Vic) since it was introduced in 1991.

An example of a new Act is the *Mental Health Act 2014* (Vic). This Act completely replaces the *Mental Health Act 1986* (Vic) and introduces new laws governing the treatment of people with a mental illness.

Parliament of Australia

Victorian courts hear cases and pass sentence for some offences where national laws define the offence and determine sentencing, such as for terrorism and drug importation.

These offences are set out in Commonwealth legislation, which are Acts passed by the Parliament of Australia (also known as the Commonwealth Parliament or federal parliament). Such Acts include the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth). These Acts define Commonwealth offences and set out the applicable maximum penalties.

There are differences between sentencing law for Commonwealth offences and Victorian offences.

What if I think sentencing law needs to change?

Parliament has changed laws about crimes and sentencing many times. These changes are often in response to community concerns expressed by individuals, organisations, and the media. Victoria has laws to protect the rights of citizens to participate in public debate and to lawfully campaign to change the law. Citizens also influence sentencing law by voting for the candidates and parties that reflect their views.

Courts

Case law is law made by the courts. Case law includes past sentencing decisions relevant to a current or future case, and decisions on how to interpret or apply legislation.

When sentencing an offender for an offence, judges and magistrates must consider what sentences for that offence have been given in other cases.

If a sentence is appealed, a higher court may review the sentence. The court will consider whether the original judge or magistrate applied the law correctly. The court may also consider how statute law should be interpreted. These cases then become law that courts must apply when sentencing in similar cases or when applying particular sentencing laws.

For example, in a case called *R v Verdins* from 2007, the Victorian Court of Appeal reviewed a case originally sentenced in the County Court of Victoria and decided that mental impairment is relevant as a mitigating factor in sentencing in at least five ways. In the decision, the Court of Appeal outlined in detail the principles (now known as the 'Verdins principles') that all Victorian courts should apply when considering mental impairment in sentencing.

Where does sentencing happen?

In Victorian courts, prosecutors and defence lawyers can make submissions to the court about what they think a sentence should be, but the judge or magistrate makes the decision.

Magistrates' Court, County Court, and Supreme Court

Three levels of Victorian courts sentence adults:

- Magistrates' Court
- County Court
- Supreme Court.

The type of offence a person is charged with and the seriousness of the offence determine the court in which the case is heard and then sentenced. Cases are heard through a trial, a summary hearing, or a plea to determine whether a person is guilty or not guilty.

Victorian law classifies most offences as:

- **Indictable** (more serious) **offences**, such as murder, rape, sexual offences involving children, intentionally causing serious injury, and armed robbery. Indictable offences must be determined and sentenced in a higher court (either the County Court or the Supreme Court).
- **Summary** (less serious) **offences**, such as theft, minor assaults, and minor driving offences. Summary offences are determined and sentenced in the Magistrates' Court.
- **Indictable offences triable summarily**, such as recklessly causing serious injury and burglary, robbery, or theft of property worth less than $100,000. These are indictable offences that may be determined and sentenced in the Magistrates' Court, rather than in a higher court. A magistrate decides which court should hear an indictable offence that is triable summarily by considering factors such as the seriousness of the offence and the adequacy of sentences available to the court. If an indictable offence is heard in the Magistrates' Court, defendants must consent because they will be giving up the option of a trial by jury.

The Magistrates' Court is responsible for the vast majority of sentencing in Victoria (around 90% of all people sentenced). From July 2004 to June 2013, on average 78,500 people were sentenced each year in the Magistrates' Court.

The Children's Court

The Children's Court is a specialist court for offenders who are children aged 10 to 17 years at the time of an alleged offence, and under 19 years when court proceedings begin.

The Children's Court can deal with both summary and indictable offences, except for seven fatal offences (including murder, manslaughter, and culpable driving causing death) that must be dealt with in the higher courts.

There are special sentencing options for children and young offenders who are sentenced in the Children's Court or higher courts (see '**Sentencing young people'**).

Specialist courts

Victoria has specialist courts for some groups of offenders who have special sentencing needs. These courts have developed a specialised approach to sentencing these types of offenders. To qualify for specialist courts, offenders must meet certain criteria.

Koori Courts

In 1991, the Royal Commission into Aboriginal Deaths in Custody found that Indigenous people in Victoria (Kooris) were over-represented in the criminal justice system. As part of its response, and in an effort to reduce Indigenous imprisonment rates, the Victorian Government created a pilot Koori Court as a specialist court of the Magistrates' Court.

Koori courts aim to increase Koori engagement with, participation in, and ownership of the law. These courts also aim to improve the effectiveness of sentencing Indigenous offenders.

Sentencing hearings in Koori courts have less formal settings and processes than in other courts. Elders and respected persons from the Koori community participate, not to make sentencing decisions but to talk with the offender about the offence and the effect it has had on the offender's family and the community. This provides a more culturally relevant and inclusive sentencing process for Indigenous people charged with certain offences. A Koori Court Officer, employed by the court, assists these courts.

The pilot Magistrates' Koori Court was evaluated as a success. Sentences imposed were more or less the same as in other courts, but Koori offenders much more frequently completed orders (such as community orders) when these were imposed in the Koori Court than when the same types of orders were imposed by other courts. The evaluation also reported improvements in reoffending rates for Kooris sentenced in the Koori Court.

There are now three Koori Courts in Victoria:

- **Magistrates' Koori Court** – operates as a division of the Magistrates' Court in Bairnsdale, Broadmeadows, Latrobe Valley, Mildura, Shepparton, Swan Hill, and Warrnambool.
- **Children's Koori Court** – a specialist court for Indigenous children who are charged with offences. It operates at the Children's Court in Melbourne and the Mildura Magistrates' Court.
- **County Koori Court** – a specialist court for adult Indigenous offenders charged with more serious offences. It operates in the County Court in Melbourne, Morwell, and Bairnsdale.

Koori courts do not hear cases involving some types of offences, such as family violence or sexual offences.

Drug Court

The Drug Court is a specialist court operating within the Dandenong Magistrates' Court. To be sentenced in the Drug Court, offenders must plead guilty to the offence charged and have a drug or alcohol dependency that contributed to the commission of the offence.

The Drug Court uses a special sentencing order called a drug treatment order (DTO) aimed at rehabilitation – breaking the cycle of addiction and offending and supporting offenders to reintegrate into the community. The DTO is a prison sentence that is suspended while the offender participates in intensive rehabilitation programs under supervision in the community. This assists the offender to maintain employment and preserve the family and other relationships that imprisonment might damage or destroy.

Offenders who breach the terms of their DTO return to the Drug Court and may have more restrictive conditions imposed, or they may be resentenced with another type of sentence such as imprisonment.

The Drug Court does not hear cases involving sexual offences or violence leading to actual bodily harm.

Neighbourhood Justice Centre

The Neighbourhood Justice Centre (NJC) is a court located in the inner Melbourne suburb of Collingwood alongside a range of treatment and support services, such as mental health services, counselling, employment support, housing support, and legal advice. The NJC is also involved in a range of community education and outreach initiatives that aim to reduce crime and other harmful behaviour and increase community confidence in the justice system (especially with young people and newly arrived communities).

The magistrate at the NJC can hear criminal cases and sentence offenders when the court is sitting as a Magistrates' Court or a Children's Court. The court uses a problem-solving approach that helps people to address the problems that have contributed to their offending and links people with services as part of the sentencing process.

Specialist court lists and services

A court list is a way of grouping and managing certain types of cases and providing specialist services to meet the needs of certain types of victims, witnesses, and people charged with offences.

Personal circumstances such as homelessness and mental illness often contribute to certain types of offending. Specialist services help to address these circumstances. Court lists also allow better access to specialist services for people involved in certain types of offences, such as sexual offences.

Lists are not specialist courts. Lists operate in courts alongside the general criminal process. Some services accessed in the Magistrates' Court may be continued for people whose cases move to a higher court.

Specialist court lists and services include:

- **Sexual Offences List** – a specialist list for cases involving a charge of a sexual offence. The list recognises the difficult nature of such cases, especially for victims. The Sexual Offences List operates in the County Court in Melbourne and the Magistrates' Court in Melbourne, Latrobe Valley, Ballarat, Bendigo, Geelong, Mildura, and Shepparton.
- **Assessment and Referral Court (ARC) List** – a specialist court list designed to meet the needs of people who have a mental illness and/or a cognitive impairment (such as an intellectual disability) and have been charged with an offence. The list provides treatment, support, and case management for a period before the hearing of the charge and sentencing. The ARC List operates in the Melbourne Magistrates' Court and works in conjunction with the Court Integrated Services Program.

- **Court Integrated Services Program (CISP)** – a specialist program for defendants who have health and social needs that may have contributed to their offending. CISP provides services, support, and treatment to offenders before they are sentenced and aims to reduce the chances that they will reoffend. The CISP operates at the Magistrates' Court in Melbourne, Latrobe Valley, and Sunshine.
- **Mental Health Court Liaison Service (MHCLS)** – a court-based assessment and advice service for people with a mental illness who are charged with offences. The MHCLS aims to reduce reoffending by diverting people from the criminal justice system and providing access to appropriate mental health treatment. It also conducts mental health and psychiatric assessments and provides relevant information to the court. It operates in the Magistrates' Court in Melbourne, Broadmeadows, Dandenong, Frankston, Heidelberg, Ringwood, Sunshine, Geelong, Shepparton, Bendigo, Ballarat, and the Latrobe Valley.

Government departments and agencies

Government agencies such as Corrections Victoria, the Sheriff's Office, and the Department of Human Services administer sentences imposed by the courts. These departments and agencies are independent of the courts and police.

For example, when a court imposes a fine and the offender does not pay the fine, sheriff's officers are responsible for locating the offender and enforcing payment. Sheriff's officers have the power to confiscate and sell an offender's property to the value of the outstanding fine. They also have the power to arrest an offender, which can lead to a sentence of imprisonment.

When the court imposes a community correction order, Corrections Victoria administers the sentence. Offenders are usually under the supervision of a community corrections officer who monitors their compliance with the conditions set by the court in the community correction order (there are conditions such as regular reporting, drug and alcohol testing, or participation in treatment and rehabilitation programs).

Parole boards

The Adult Parole Board, the Youth Parole Board, and the Youth Residential Board decide whether an offender serving a custodial sentence (in prison or youth detention) can be released on parole (under certain conditions) and supervised in the community.

When is a sentence imposed?

Unlike some automatic infringement penalties (such as parking fines), a sentence can only be imposed after an offender has been found guilty of an offence (a crime).

The process leading to a sentence

Investigation

The process leading to a sentence begins with the police or other investigating agencies (for example, the Environment Protection Authority). Normally, an offence is reported to (or detected by) the police. The police then gather evidence. The evidence collected is influential in determining which offence (if any) the police charge the offender with.

Police gather evidence by conducting an investigation and interviewing victims and witnesses. Once police identify a suspect, they may attempt to locate and then question this person.

Arrest and the charge

When police have enough evidence, they arrest the alleged offender (take the person into custody) and charge the alleged offender with an offence. In doing this, the police are enforcing laws made by parliament. Legislation like the *Crimes Act 1958* (Vic) and the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) lists the different types of offences the police can use to charge people.

The type of offence (or offences) people are charged with determines which court deals with the offence (the Magistrates' Court or a higher court) and also influences what kind of sentence people might get if they are found guilty of the offence.

Police sometimes consult the Office of Public Prosecutions when deciding whether to charge a person with a serious offence and selecting the type of offence(s) to be charged.

A person charged with an offence can choose whether to admit to the charge (plead guilty) or not admit to the charge (plead not guilty).

Sometimes the prosecution may accept a plea of guilty to a less serious charge (for example, recklessly causing serious injury) if there is not enough evidence to prove a more serious charge (for example, intentionally causing serious injury).

Prosecution

Police prosecutors normally prosecute less serious offences. The Office of Public Prosecutions normally prosecutes more serious offences on behalf of the Director of Public Prosecutions.

Bail and remand

A person arrested and charged with an offence may be held in custody by police (held on remand) or released into the community (released on bail) until the matter gets to court. A person charged with an offence (a **defendant**) can apply for bail either to the police or to a court at a hearing.

If granted bail, a defendant must comply with bail conditions, such as reporting regularly to police and appearing in court for all hearings. A defendant on bail who breaches bail conditions may be taken into custody and can face additional charges of breaching bail.

Mention hearing

Normally, adults charged with an offence have their first court hearing in the Magistrates' Court. At this hearing (known as a mention), charges are formally filed with the court, and defendants who are still in custody may apply for bail.

Also at this hearing, the parties discuss the status of the case with the magistrate. The defence may indicate whether the defendant intends to plead guilty or not guilty, and the parties may discuss whether the matter involves serious or minor criminal behaviour. The magistrate then decides whether the offence is to be heard in the Magistrates' Court or in a higher court.

Children charged with an offence usually have their first court hearing in the Children's Court. They may then be transferred to a higher court, which will deal with the matter if appropriate or necessary.

Guilty plea

Defendants can choose to plead guilty or not guilty to a charge at any time after they have been charged.

When a defendant pleads guilty, the case goes straight to sentencing, either by a magistrate in the Magistrates' Court or by a judge in a higher court (County Court or Supreme Court).

When a defendant pleads not guilty, a magistrate in a summary hearing or a jury in a trial determines criminal responsibility for the charge (whether the defendant is guilty or not guilty).

Summary hearing

Cases involving summary offences (and some indictable offences triable summarily) are heard in the Magistrates' Court. In a summary hearing, the magistrate hears the case, makes a determination (decision) about whether the defendant is guilty or not guilty, and imposes sentence. If the magistrate decides the person is not guilty, the person is released. A finding of not guilty is called an **acquittal**.

Committal hearing

Cases involving indictable (more serious) offences must generally be heard in a higher court, and go through a process known as **committal**. In this process, a magistrate reviews the evidence and decides whether it is strong enough for the person to be tried.

Trial

If the magistrate decides the evidence is strong enough, the defendant is **committed for trial** in a higher court. This means that the case is moved to a higher court, either the County Court or the Supreme Court for trial of the offences charged. In the higher courts, the defendant is usually called an **accused**.

A trial is a hearing to determine whether a person who has been charged with an indictable offence is guilty or not guilty. A judge oversees the trial, while a jury listens to the evidence and decides whether the accused is guilty or not guilty. Having made this decision, the jury's job is finished. If the jury finds the accused guilty, the judge decides the sentence. If the jury finds the accused not guilty, there is an acquittal and the accused is free to go.

Witnesses may be required to come to trials or hearings to give evidence.

With or without conviction

After a person has pleaded guilty or has been found guilty in a summary hearing or a trial, it is then the responsibility of the magistrate or the judge to decide which sentence must be imposed and whether a conviction should be recorded.

Courts must record a conviction when imposing some types of sentence, such as:

- imprisonment
- a drug treatment order
- detention in a youth justice centre or youth residential centre.

The court may choose not to record a conviction when imposing other types of sentence, such as:

- a community correction order
- a fine
- an adjourned undertaking
- dismissal.

A conviction forms part of an offender's criminal record. An offender with relevant prior recorded convictions is normally sentenced more severely. Having a conviction recorded may also prevent an offender from travelling overseas.

When deciding whether or not to record a conviction, the judge or the magistrate considers factors like the nature of the offence, the character and history of the offender, and the impact a conviction would have on the offender's well-being and employment prospects.

Even if no conviction is recorded, and even after an offender has completed a sentence, a finding of guilt forms part of an offender's criminal record and can have negative effects on an offender's future prospects. A conviction or a previous finding of guilt can be:

- looked at by the police when investigating other crimes and relied on in any future criminal case against the offender
- included in police record checks, limiting an offender's eligibility for:
  - certain jobs (for example, as a teacher) or volunteer roles
  - insurance policies
  - various types of licence (for example, as a taxi driver).

Deferral of sentencing

In the Magistrates' Court and the County Court, sentencing may be deferred (postponed) for up to 12 months to allow a longer period for offenders to demonstrate they can be rehabilitated by participating in programs that address the underlying causes of offending. For a sentence to be deferred, the offender must agree to the deferral.

Pre-sentence report

When a court finds a person guilty of an offence, before passing sentence the court may order a pre-sentence report about the offender and adjourn (postpone) the court hearing to enable the report to be prepared.

A court must order a pre-sentence report if it is considering making a:

- community correction order
- youth justice centre order
- youth residential centre order.

Pre-sentence reports provide vital information to judges and magistrates, ensuring that they have as broad a picture of the offender as possible. A pre-sentence report may contain information about the offender's:

- age
- social history and background
- medical and psychiatric history
- alcohol, drug, and any other substance use history
- educational background
- employment history
- prior offences
- degree of compliance with any sentence currently in force
- financial circumstances and ability to pay a bond
- special needs
- need for other services to address the risk of recidivism
- need for any courses, programs, treatment, therapy, or other assistance
- capacity to perform unpaid community work for any proposed unpaid community work condition.

The pre-sentence report may also include information about:

- the relevance and appropriateness of any condition proposed under a community correction order
- the recommended duration of any intensive compliance period fixed under a community correction order
- the suitability, availability, and appropriateness of any proposed condition for electronic monitoring
- the appropriateness of confirming an existing order that applies to the offender
- any other information that the report's author believes is relevant and appropriate.

A pre-sentence report may also include a **Victim Impact Statement** – a statement prepared by any victim of the offence.

Sentencing hearing

At the sentencing hearing, the Crown (a police or public prosecutor) represents the state, and the defence lawyer represents the offender. The Crown and the defence give information to the judge or the magistrate about:

- the facts of the case
- the circumstances of the offender (for example, the prosecution could point out the offender's criminal history, and the defence could point out that the offender has shown remorse)
- relevant sentencing principles
- the type of sentence the offender deserves (for example, imprisonment or a community correction order)
- examples of sentences in similar cases.

The judge or the magistrate can ask questions to seek information and clarify issues.

A Victim Impact Statement may be read out at a sentencing hearing, either by the victim or by the prosecution on the victim's behalf.

The information given in a sentencing hearing helps the judge or the magistrate to decide which sentence to impose.

Sentencing remarks

At the end of the sentencing hearing, the judge or the magistrate summarises the case, imposes a sentence, and (especially for cases in the higher courts) outlines the reasons for giving that sentence. The judge or the magistrate makes his or her **sentencing remarks** in open court for anyone in the court (including media) to hear.

In the Magistrates' Court, sentencing remarks are recorded as audio, but these recordings are not available to the public. The only way to hear magistrates' sentencing remarks is to be in the courtroom when the remarks are made.

Can I observe a sentencing hearing?

Sentencing occurs at a court hearing before a judge or a magistrate. Most hearings are open to the public. Anyone can sit in court and listen to what is said. However, sometimes hearings involving young or vulnerable people are closed to the public. A judge or a magistrate may also ask a person to leave the court if the person is disruptive or if requested by the prosecution or defence.

In the higher courts, judges normally write down their sentencing remarks. County Court sentencing remarks are sometimes (but not always) made available through the County Court's website as text or audio recordings. Supreme Court sentencing remarks are usually published as judgments on the Supreme Court's website (after a short delay for editing and formatting) and the **Australasian Legal Information Institute (AustLII) website**.

For some high profile cases in the higher courts, Victorian courts will live stream sentencing remarks through the court's website, so that media and interested members of the community can hear the judge's sentencing remarks as the judge delivers them in court.

After the sentencing hearing

An offender who is sentenced to imprisonment is taken straight into custody after the sentencing hearing.

For other sentences, the offender is released into the community according to the terms of the sentence. When a community correction order is imposed, a date is set for the offender to report to the nearest community corrections office to make arrangements for the supervision and/or other conditions imposed by the court.

When the court imposes a fine, the offender is informed of the deadline for paying the fine. Offenders may be allowed to negotiate a schedule for paying fines in instalments.

The role of victims in sentencing

When sentencing an offender, courts must consider the impact of the crime on any victims. The *Sentencing Act 1991* (Vic) states that the courts must consider:

- the impact of the offence on any victim of the offence
- the personal circumstances of any victim of the offence
- any injury, loss, or damage resulting directly from the offence.

One way a court can determine the impact of the crime on any victim is through a Victim Impact Statement.

When a court finds a person guilty of an offence, any victim of the crime is entitled to make a Victim Impact Statement to the court. The statement may assist the court in deciding the sentence. The right to make a Victim Impact Statement is outlined in the *Victims' Charter Act 2006* (Vic), which includes the right to:

- prepare a Victim Impact Statement, which may be considered by the court in sentencing the offender, and have access to the assistance required to prepare a Victim Impact Statement
- request the court to order the offender to pay compensation to the victim
- apply to be included on a Victims Register if the person is a victim of a violent crime for which the offender has been imprisoned.

Once on the Victims Register, a person may be provided with information about the offender, such as the length of the sentence and the likely date of release. If the Adult Parole Board is considering the release of an offender who is in prison for a violent offence, a person on the Victims Register may make a submission to the Board about the effect of the offender's potential release on the victim. The Board must also give notice to a person on the Victims Register prior to the offender being released on parole.

What sentences can be imposed?

The different kinds of sentences available in Victoria sit in a hierarchy ranging from high-end (more severe) sentences like imprisonment to low-end (less severe) sentences like fines. Different sentencing options are available for adults and young people (people aged under 21 years).

Sentencing adults

Adults are sentenced under the *Sentencing Act 1991* (Vic). Here are the main types of sentences available for adults.

Imprisonment

Imprisonment – detention in a prison – is the most severe sentence in Victoria. Victorian law treats imprisonment as the sentence of 'last resort', meaning imprisonment should only be imposed if no other type of sentence is appropriate.

Imprisonment is about 10 times more common as a sentencing outcome in Victoria's higher courts (County and Supreme Courts) than it is in the Magistrates' Court. Imprisonment was ordered in about half (48%) of cases sentenced in Victoria's higher courts in the ten-year period ending June 2013, compared with 4.7% of cases sentenced in the Magistrates' Court in the nine-year period ending June 2013.

When imposing a sentence of imprisonment, a judge or a magistrate will usually impose a **non-parole period**. There are rules about when a judge or a magistrate must impose a non-parole period, depending on the length of the sentence of imprisonment. The non-parole period is the minimum period that a judge or a magistrate thinks the offender must spend in custody for the crime, before being considered for release on **parole**. Release on parole is not automatic. Offenders can only be released on parole if they have completed the non-parole period in prison and a parole board has considered their case and granted parole (see **'Parole'**).

Court secure treatment order

Under a court secure treatment order, an offender with a serious mental illness is compulsorily detained and treated at a secure mental health facility instead of being detained in a prison. This order is imposed on offenders whose mental illness requires treatment to prevent serious deterioration in their health, or to prevent serious harm that their illness may pose to the offenders themselves or to others.

This type of order can only be made where the court would otherwise have imposed a sentence of imprisonment, and the order cannot be for a period longer than the term of imprisonment that would otherwise have been imposed. The court must be satisfied that there is no less restrictive sentence available (for example, a community correction order) that would ensure the offender receives the required treatment.

A non-parole period must be set for a court secure treatment order as if the order were a term of imprisonment.

Drug treatment order

A drug treatment order (DTO) falls below imprisonment in the sentencing hierarchy. Technically a custodial sentence, a DTO is a prison sentence that is suspended (held back) so offenders can have treatment for their addiction in the community.

Only the Drug Court, a specialised part of the Magistrates' Court (see **'Drug Court'**), can make DTOs. People are eligible for a DTO if they are dependent on alcohol or other drugs and that dependency contributed to their offending. DTOs are not available for offenders convicted of sexual or violent offences leading to actual bodily harm.

A DTO has two parts:

- **the custodial part** consisting of a sentence of imprisonment imposed for up to two years. This is not served by the offender unless it is activated by the Drug Court.
- **the treatment and supervision part** consisting of core conditions imposed for up to two years. This part includes conditions such as participation in treatment programs, reporting to and receiving visits from court or corrections staff, and attending the Drug Court.

A range of consequences and rewards encourage offenders to complete their DTO successfully. Offenders who breach the conditions of their DTO (for example, by resuming drug use, reoffending, or failing to attend treatment) may have longer or additional conditions imposed, or they may be imprisoned. Offenders who successfully comply with the conditions and demonstrate progress towards the treatment objectives of their DTO may be rewarded (for example, through reduced supervision or early completion of the DTO).

Community correction order

A community correction order (CCO) is a very flexible order that sits in the middle of the sentencing hierarchy. CCOs are less severe than imprisonment or DTOs, but more severe than fines. CCOs replaced previous community orders including community-based orders, home detention, combined custody and treatment orders, and intensive correction orders, all of which were abolished in January 2012.

As the name suggests, a CCO is served in the community, although it may be imposed in addition to a fine or a prison term of up to two years.

A CCO can last for up to two years if imposed in the Magistrates' Court or for as long as the maximum term of imprisonment for the offence if imposed in a higher court. For example, if a person is found guilty of aggravated burglary, the court could impose a CCO lasting up to 25 years, because the maximum possible prison term for aggravated burglary is 25 years.

All offenders sentenced to a CCO must abide by standard (core) terms, including:

- not committing another offence punishable by imprisonment
- notifying Corrections Victoria of any change of address or employment
- not leaving Victoria without permission
- reporting to a community corrections centre
- complying with written directions from, reporting to, and receiving visits from the Secretary of the Department of Justice & Regulation (as delegated through Corrections Victoria).

Each CCO must also have at least one additional condition chosen by the judge or the magistrate according to the circumstances of the offender, the nature of the offence, the principle of proportionality, and the purposes that the judge or the magistrate is trying to achieve in the sentence (for example, rehabilitation or deterrence).

Additional conditions attached to a CCO for all or part of its duration can require the offender to:

- undertake medical treatment or other rehabilitation
- stay away from, or refrain from consuming alcohol in, licensed premises (such as a hotel, a club, or a restaurant)
- complete unpaid community work up to a total of 600 hours
- be supervised, monitored, and managed by a corrections worker

- not contact or associate with particular people (for example, co-offenders) or a particular type of person (for example, club members)
- live (or not live) at a specified address
- stay away from nominated places or areas
- abide by a curfew, remaining at a specified place for between two and 12 hours each day
- be monitored by the court to review and ensure compliance with the order
- pay a bond – a sum of money that may be given up wholly or partly if the offender fails to comply with any condition of the CCO
- be monitored electronically (if the CCO is imposed in a higher court).

The offender or the Crown can ask the court to make changes to a CCO over time. The court can vary a CCO for a range of reasons, for example, if the offender no longer consents to the order or cannot comply with its conditions because of a change of circumstances. Offenders who breach a condition of their CCO may be returned to court for variation of the CCO and its conditions, or resentencing for their original offence. Breaching the conditions of a CCO is a separate offence with a maximum penalty of three months' imprisonment.

Fine

Fines are at the lower end of the sentencing hierarchy and are the most common sentence imposed by Victorian courts. When people are fined, they must pay a financial penalty (money) to the State of Victoria. Fine amounts are described in **penalty units**. For the year ending 30 June 2015, one penalty unit is $147.61. The amount of a penalty unit increases each year in line with inflation.

Fines imposed by the courts (for example, for offences such as theft or vandalism) differ from infringement penalties issued by bodies like local governments or Victoria Police (for example, for parking infringements or minor driving offences). Judges and magistrates have some discretion to decide the amount of a court-imposed fine, but infringement penalties are set automatically. Fines are also collected and enforced differently than infringements.

In deciding the amount of the fine, the court considers the financial circumstances of the offender (that is, how much the offender can afford to pay) and the maximum fine amount available to the court for the offence spelled out as penalty units in legislation. The court can combine fines with other sentences like imprisonment and CCOs.

Offenders can apply to have a court-imposed fine converted to an order to perform unpaid community work.

When offenders fail to pay court-imposed fines, they may be arrested. The court can then order them to perform unpaid community work or serve a prison sentence.

How common are fines?

Fines are the most common sentence in Victorian courts, with 56% of charges sentenced in Victoria receiving a fine in the twelve-month period ending June 2013. The Magistrates' Court has imposed most of these fines, because it deals with less serious offending than the County Court and the Supreme Court, and fines are at the lower end of the sentencing hierarchy.

Adjourned undertaking

An adjourned undertaking involves postponing the court proceedings and releasing an offender on an undertaking (agreement) that the offender behaves in a particular way. This is known as the **adjournment period**, and it may last for up to five years.

During the adjournment period, the offender must be of good behaviour (not reoffend) and meet any special conditions set by the court. For example, a person may have to complete a drug and alcohol treatment program or donate to a charity.

At the end of the adjournment period, the offender returns to court and the court decides whether to discharge the offender – release the person without any further sentence. In making this decision, the court looks at whether the person has been of good behaviour and has met special conditions.

The court can order an adjourned undertaking with or without a conviction being recorded.

Other orders

At the very lowest end of the sentencing hierarchy are orders for dismissal or discharge.

Discharge means that a conviction is recorded on the court records, but no other sentence is ordered. The offender is released without any conditions.

Dismissal means that a person is found guilty, but a conviction is not recorded and no other sentence is ordered.

Changing options

Suspended sentence

One of the biggest recent changes to Victorian sentencing law has been the abolition of suspended sentences.

A suspended sentence was a sentence of imprisonment where a conviction was recorded, but because of the special circumstances of the offender, the prison term was suspended (held back) wholly or in part for a specified period. Where the prison term was partially suspended, the offender spent some time in prison and some time in the community.

Offenders who were given a suspended sentence did not go to jail and were released into the community with no supervision or court-imposed conditions, provided they were of good behaviour (that is, they did not reoffend). However, the threat of jail hung over offenders released into the community on a suspended sentence. If they did reoffend, they could be imprisoned for the total duration of their sentence.

Suspended sentences were phased out gradually in Victoria between November 2006 and September 2014, starting with serious or significant offences sentenced in the higher courts, and then extending to all offences, including offences sentenced in the Magistrates' Court. Suspended sentences are not available:

- in the higher courts for any offence committed on or after 1 September 2013
- in the Magistrates' Court for any offence committed on or after 1 September 2014.

Depending on the date the offence was committed, courts may still impose a suspended sentence for some offence types.

Home detention

Home detention orders were abolished in January 2012. These orders allowed people to serve a prison term of up to one year in their home subject to certain conditions and restrictions (for example, limits to their communication and visitors).

Sentencing young people

The justice system distinguishes between children and young offenders.

- A **child** is a person who is aged 10 years or over but under 18 years at the time of an offence and aged under 19 years when court proceedings begin. A child is usually sentenced in the Children's Court under the *Children, Youth and Families Act 2005* (Vic).
- A **young offender** is a person aged under 21 years at the time of sentencing. A young offender is generally sentenced in an adult court under the *Sentencing Act 1991* (Vic).

An offender who was aged under 18 years at the time of the offence but is aged 19 years or more at the time of the hearing may be sentenced in the Children's Court under the *Children, Youth and Families Act 2005* (Vic), unless there are particular factors that justify the offender being sentenced in an adult court (such as the seriousness of the offence).

Children and young offenders are together referred to here as **young people**.

Because young people are still developing, the law says that they should not generally be punished as harshly as adults.

How young is too young to commit a crime?

Ten years is the age of criminal responsibility in Victoria. A child under 10 years of age is legally considered unable to commit an offence. A child aged between 10 and 14 years is presumed to be unable to commit an offence, unless the prosecution can prove that the child is capable of forming a criminal intention. The age of criminal responsibility varies from country to country – for example, it is six years old in America and 15 years old in Sweden.

The sentencing options for young people in the *Children, Youth and Families Act 2005* (Vic) are different from those available for adults in the *Sentencing Act 1991* (Vic). This difference recognises that young people are generally less mature than adults, and less able to make moral judgments. Young people are generally less aware than adults of the consequences of their actions.

Young people have unique treatment and rehabilitation needs. Young people in custody are especially vulnerable to physical, sexual, and emotional abuse.

The *Children, Youth and Families Act 2005* (Vic) puts rehabilitation of the child as the core (but not only) purpose that the Children's Court should consider when sentencing children aged 10 to 17 years.

Here are the main types of sentences available for young people in Victoria.

Detention orders

Children cannot be sent to prison. However, they can be kept in detention and lose their freedom. Detention is the most severe sentence that can be imposed on a child. Detention is a sentence of 'last resort' – it can only be used if no other sentence is appropriate.

Two types of detention orders are available for young people in Victoria: youth justice centre orders and youth residential centre orders. The type of detention order imposed depends on a person's age.

Youth justice centre order

A youth justice centre order is the most severe sanction that may be imposed on an offender aged 15 to 20 years at the time of sentencing in the Children's Court under the *Children, Youth and Families Act 2005* (Vic). This order involves a period of detention in a youth justice centre. For offenders in this age group, the maximum length of detention is two years for a single offence or three years for more than one offence.

Under the *Sentencing Act 1991* (Vic), offenders aged 15 to 20 years at the time of sentencing may be sentenced in an adult court (either the Magistrates' Court or a higher court) to a youth justice centre order as an alternative to prison. For these offenders, the maximum length of detention is two years if sentenced in the Magistrates' Court or three years if sentenced in a higher court.

While detained under a youth justice centre order, young people participate in education and programs that address the offending behaviour. Temporary leave may be granted during the sentence, allowing a young person to leave the youth justice centre to engage in employment, attend training, or visit family and friends.

Youth residential centre order

A youth residential centre order is the most severe sanction for offenders aged under 15 years at the time of sentencing under the *Children, Youth and Families Act 2005* (Vic). For offenders in this age group, the maximum length of detention is one year for a single offence or two years for more than one offence.

A youth residential centre order is also available for offenders aged under 15 at the time of sentencing in an adult court under the *Sentencing Act 1991* (Vic). This order can be made instead of imprisonment. For young offenders, the maximum length of detention is two years if sentenced in the Magistrates' Court or three years if sentenced in a higher court.

While detained in a youth residential centre, young people attend education classes and participate in programs to address the offending behaviour.

Parole for young people?

Non-parole periods cannot be set for youth justice centre orders or youth residential centre orders, but the Youth Parole Board or the Youth Residential Board may consider releasing a child or a young offender on parole.

Youth attendance order

A youth attendance order is the most intensive kind of community supervision for children sentenced under the *Children, Youth and Families Act 2005* (Vic). This order is available for offenders aged 15 to 20 years at the time of sentencing and is an alternative to detention.

Under a youth attendance order, a child must attend a youth justice unit and comply with intensive reporting and attendance requirements. The court can also attach special conditions, such as education, counselling, or treatment.

The child must not reoffend during the order and may also be directed to engage in community service.

A youth attendance order may last for up to one year but may not extend beyond the child's 21st birthday.

A child who breaches a youth attendance order may have to go into detention.

Youth supervision order

A youth supervision order is less intensive than a youth attendance order and can be imposed on a child of any age sentenced under the *Children, Youth and Families Act 2005* (Vic).

Under a youth supervision order, a child must report to a youth justice unit, obey the instructions of a youth justice worker, and not reoffend during the order. Additional conditions can be imposed as part of the order if the court gives reasons for doing so.

Youth supervision orders generally are required to be of less than one year's duration, but in some cases the order can last for up to 18 months. The order cannot extend beyond the 21st birthday of the young person.

Probation order

Probation is the least intensive kind of community supervision for children who are sentenced under the *Children, Youth and Families Act 2005* (Vic). Children on probation orders must report to youth justice workers, but not as frequently as children on youth supervision orders. A child on probation may also have to do things like counselling or treatment programs. Probation orders must not last for more than one year and cannot extend beyond a young person's 21st birthday.

Fine

A fine is a less severe sentence than detention or an order involving supervision in the community. When ordering a fine, the Children's Court looks at how much the child can afford to pay and the maximum fine amount for the child's age. Fine amounts are described in **penalty units**. For the year ending 30 June 2015, one penalty unit is $147.61. The amount of a penalty unit is increased each year in line with inflation.

For children aged under 15 years, the maximum fine is one penalty unit for one offence and two penalty units for more than one offence.

For children aged 15 or over, the maximum fine is five penalty units for one offence and 10 penalty units for more than one offence.

Good behaviour bond

A good behaviour bond means that the court postpones sentencing for a certain period during which time the child must be of good behaviour and meet any special conditions (like seeing a counsellor). The child must also pay some money to the court. A good behaviour bond may last for up to one year or up to 18 months if the child is 15 years or over.

If the child does everything required under a good behaviour bond, the court dismisses the charge, returns the money to the child, and does not record a conviction on the court records. This means that the case ends.

If the child does not do everything required under the good behaviour bond, the court may keep the money and impose a new order.

Undertakings

An undertaking is an agreement by a child to do, or not do, some particular thing. Undertakings may last for up to one year. There are two types of undertakings:

- **accountable undertakings** – a child may have to come back to court if the child breaches the undertaking (that is, if the child does not do everything agreed to)
- **non-accountable undertakings** – a child does not have to come back to court if the child breaches the undertaking.

What is judicial discretion?

Discretion means choice. It is a key feature of sentencing in Victoria. For most offences heard in Victorian courts, sentencing decisions are not automatic. This ensures that magistrates and judges can impose a sentence that they consider to be appropriate in each case. Magistrates and judges must choose the type and amount of sentence to impose and whether to impose any additional orders (such as suspending a driver license). For community correction orders, magistrates and judges also choose which conditions apply (such as unpaid community work, curfew, or alcohol bans).

At the conclusion of both accountable and non-accountable undertakings, the court dismisses the charge that the child has been found guilty of.

Dismissal

The least severe sentencing option for children and young offenders sentenced under the *Children, Youth and Families Act 2005* (Vic) is dismissal. Dismissal means that a child is found guilty but the charge is dismissed and no other sentence is ordered.

Why do different offenders get different sentences for the same type of offence?

Sentencing law requires judges and magistrates to consider the circumstances of each offender and the offence when deciding on a sentence. Sentences vary because no two offenders or offences are the same. There is no mathematical formula for deciding a sentence. The weight (importance) a judge or magistrate places on different sentencing purposes, principles, and factors can vary for each case according to its different circumstances.

How do courts choose a sentence?

The popular phrase 'do the crime – do the time' is misleading because there is no single correct or automatic court-imposed sentence for any type of offence in Victoria.

When choosing a sentence for an offender, judges and magistrates must consider factors about the offender and the details of the offence, but it is not a mathematical exercise. Instead, judges and magistrates look at all the features of the case and the offender and decide which sentence is appropriate. The sentences given by other judges and magistrates in similar cases involving the same offence may help in deciding which sentence is appropriate, but ultimately each sentence is based on the facts of the particular case and the particular offender.

The process of reaching a sentence is known as **instinctive synthesis** or **intuitive synthesis**.

The five purposes of sentencing

Sentencing purposes for adults

In Victoria, a sentence can only be imposed on an adult for one or more of the following purposes. These are known as the **five purposes of sentencing**.

1. **Just punishment** – to punish the offender to a level, and in a way, that is just in all the circumstances.
2. **Deterrence** – to deter the offender (known as **specific deterrence**) or other people (known as **general deterrence**) from committing the same or similar offences.
3. **Rehabilitation** – to create conditions that will help to rehabilitate the offender.
4. **Denunciation** – to denounce, condemn, or censure the offender's behaviour (that is, make it clear to the community that the behaviour is bad).
5. **Community protection** – to protect the community from the offender.

None of these is a main or dominant purpose of sentencing for all cases. For each case, the judge or magistrate looks at the features of the offending and the offender and decides which purpose or combination of purposes should apply.

The five purposes listed above are only the purposes of sentencing in Victoria. Each state and territory in Australia has different sentencing purposes, although there are common themes among them. Sentencing purposes are also different in other countries.

Sentencing purposes for children

The *Children, Youth and Families Act 2005* (Vic) reflects different purposes for sentencing children in the Children's Court than the *Sentencing Act 1991* (Vic) does for other courts sentencing adults.

Rehabilitation is generally the core purpose of sentencing children, reflected in four of the sentencing factors set out in the *Children, Youth and Families Act 2005* (Vic) (see **'Sentencing factors for children'**). The purposes of community protection and specific deterrence are reflected in the sentencing factors for children. However, general deterrence is not considered a legitimate purpose for the Children's Court to consider when sentencing children under the *Children, Youth and Families Act 2005* (Vic), unlike for adults under the *Sentencing Act 1991* (Vic).

Why do people reoffend?

Research shows that the main factors associated with an increased chance of reoffending are:

- **unemployment** – offenders who are unemployed or without stable employment are more likely to reoffend
- **education and schooling** – offenders with lower educational attainment are more likely to reoffend
- **residential location** – offenders living in low socioeconomic areas (including government housing), offenders who are homeless, or offenders with high residential mobility (that is, who frequently change residence) are more likely to reoffend
- **family attachment** – offenders with limited family support or poor family attachment are more likely to reoffend
- **mental health** – offenders with mental health issues and limited medical and social support are more likely to reoffend
- **drug use** – offenders who use drugs are more likely to reoffend.

Sentencing factors

Sentencing factors for adults

In choosing a sentence, judges and magistrates are required to consider the following factors:

- the maximum penalty for the offence – this will be a maximum imprisonment term and/or a maximum fine amount
- the baseline sentence for the offence (if it is a baseline offence)

- the current sentencing practices for the offence type (the sentences that other judges or magistrates have given)
- the nature and seriousness of the offence
- the offender's blameworthiness and the degree to which the offender should be held accountable for the offence (for example, a mental impairment might make a person less blameworthy for an offence but not reduce the person's legal responsibility)
- whether the offence was motivated by hatred or prejudice (for example, racism)
- the impact of the offence on any victim, including any injury, loss, or damage caused by the offence
- the personal circumstances of any victim
- whether the offender pleaded guilty or indicated an intention to plead guilty, and at which stage in the proceedings this occurred (for example, immediately after being arrested compared with just prior to the trial)
- the offender's previous character (including prior criminal history, general reputation, and any contributions the offender has made to the community)
- any aggravating or mitigating factors (see **'Mitigating and aggravating factors'**).

Sentencing factors for children

The *Children, Youth and Families Act 2005* (Vic) requires the court to take into account, as far as practicable, the following factors when sentencing a child:

- the need to strengthen and preserve the relationship between the child and the child's family
- the desirability of allowing the child to live at home
- the desirability of allowing the education, training, or employment of the child to continue without interruption or disturbance
- the need to minimise the stigma to the child from a finding of guilt
- the suitability of the sentence to the child
- if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law
- if appropriate, the need for community protection, or to protect any person from future offending by the child.

What is culpability?

Culpability is the extent to which people are held accountable for the offences they have committed. Culpability means how much blame people have for what happened and the harm offences cause. More culpable offenders tend to get more severe sentences.

In assessing an offender's culpability, judges and magistrates consider the offender's intention, awareness, and motivation in committing the offence. For example, the judge or the magistrate considers factors such as whether an offence is:

- committed by someone in complete control of his or her own actions
- committed with the offender's knowledge of its consequences (or likely consequences) or only in negligent disregard of them
- provoked or unprovoked
- planned or opportunistic (spontaneous)
- carried out while the offender is in possession of an offensive weapon
- incited, encouraged, or paid for by another person
- motivated by hatred for the victim based on the victim's gender, race, or other personal characteristic.

Culpability is also relevant for police. Before deciding the type of offence to be charged, the police may consider whether there is evidence that the offence is committed:

- **Intentionally** – with the intention to cause a particular outcome, not just the intention to do the act that caused the outcome.
- **Recklessly** – with foresight of the consequences (or likely consequences) but with indifference to whether or not the consequences come about.
- **Negligently** – with a great falling short of the standard of care that a reasonable person would exercise in the circumstances; this involves such a high risk of serious bodily injury occurring that an act or omission warrants punishment under criminal law
- **Dangerously** – in a manner dangerous to the public having regard to all the circumstances.

An example of how culpability affects offence selection is the difference between the offences of murder and manslaughter:

- If there is evidence that a defendant killed someone by stabbing with the intention to kill the person, this would support a charge of **murder**.
- If there is evidence that a defendant killed someone by stabbing while not caring that this would likely kill the person (but the defendant does not actually intend for the person to die), this would support a charge of **manslaughter**.

Mitigating and aggravating factors

Mitigating factors are details about offenders and their offence that may reduce the severity of their sentence. Aggravating factors are the reverse – details about the offence and offenders that may increase their culpability and the sentence they receive. In sentencing, mitigating and aggravating factors can act a bit like a tug of war: mitigating factors tend to pull towards a lighter sentence, and aggravating factors tend to pull towards a heavier sentence.

The following factors can mitigate a sentence:

- the age of the offender (for example, some sentences, like imprisonment, may not be appropriate for young or elderly offenders)
- the background of the offender (for example, where a person has been raised in a community surrounded by alcohol abuse and violence)
- the previous good character of the offender
- where imprisonment would be particularly hard on the offender (for example, a person may have a medical condition that would be hard to manage in prison).

The following factors can aggravate a sentence:

- pre-planning the crime (premeditation)
- committing the crime as part of a group against an outnumbered victim
- use of a weapon, including a pretend weapon
- a breach of trust by the offender towards the victim (for example, where a teacher commits a crime against a student).

Principles of sentencing

Judges and magistrates must abide by certain principles when sentencing. These principles serve as guideposts that help judges and magistrates reach a decision.

Parsimony

To be parsimonious is to do no more than is necessary to achieve an intended purpose. The principle of parsimony means the sentence imposed must be no more severe than is necessary to meet the purposes of sentencing.

When choosing what type of sentence to impose, judges and magistrates must start at the bottom of the sentencing hierarchy and work their way up towards the most severe sentence, rather than starting with the most severe sentence type (imprisonment) and working down.

For example, a court cannot order imprisonment if the sentencing purposes (for that offender and for that offence) can be met by a community correction order.

Proportionality

The severity of the sentence must fit the seriousness of the crime. There will be no excessive punishment without justification.

For example, a very long community correction order cannot be imposed for a relatively minor offence even if the magistrate believes the offender needs a long period of rehabilitation.

Parity

Parity requires that co-offenders who are jointly involved in the same criminal behaviour usually receive similar sentences.

While the principle of parity requires sentences for co-offenders to be generally consistent, it does not require the sentences to be the same. Co-offenders found guilty of the same offence can receive different sentences because the courts take account of each co-offender's different circumstances and level of culpability.

For example, co-offenders found guilty of drug trafficking might be given similar sentences if they have the same level of blameworthiness and similar personal factors relevant to sentence.

Totality

The totality principle requires that, when an offender faces more than one sentence, the total sentence must be just and appropriate to the offender's overall criminal behaviour.

For example, the principle of totality applies when an offender is being sentenced:

- to multiple individual sentences of imprisonment for three armed robberies committed on the same day
- to imprisonment for an offence when the offender is already in prison for previous offending.

Crushing sentences

A separate principle related to totality is the requirement for courts to avoid imposing a **crushing sentence**. Courts must avoid imposing a sentence that is so severe that it crushes any reasonable expectation the offender has of a useful life after release from custody. However, in some circumstances such a sentence may still be imposed if it is just and appropriate.

Cumulation and concurrency

When sentencing an offender to multiple sentences, a court applies the principle of totality and avoids a crushing sentence by making an order for concurrency or cumulation of the sentences.

If the court decides an offender will receive the right amount of punishment by serving several sentences at the same time, these are known as **concurrent** sentences.

Concurrency example: Matt has been given a ten-month prison sentence for one crime and a five-month prison sentence for another crime. The judge decides that Matt must serve these sentences concurrently (at the same time), so Matt goes to prison for 10 months.

In some cases, the court may decide that the offender will receive the right amount of punishment by serving several sentences one after the other. These are known as **cumulative** sentences.

Cumulation example: Emily has been given a 12-month prison sentence for one crime and a 24-month prison sentence for another crime. The judge decides that Emily must serve these sentences cumulatively (one after the other), so Emily goes to prison for 36 months.

The courts also have the option of **partial cumulation**.

Partial cumulation example: Nick has been given a ten-month prison sentence for one crime and a seven-month prison sentence for another crime. The judge decides that two months of the second sentence should be served cumulatively and five months served concurrently, so Nick goes to prison for 12 months.

Maximum penalties

A maximum penalty is the penalty set by parliament as the most severe possible sentence that a court can impose for a particular type of offence. Maximum penalties are sometimes referred to as **statutory maximums** because they are set out in legislation such as the *Crimes Act 1958* (Vic).

The maximum penalty does not mean courts must impose that penalty on offenders convicted of the offence. It means that courts may not impose a penalty greater than the maximum set for the offence.

For example, the maximum penalty for rape is 25 years' imprisonment. This means that the court cannot impose a more severe sentence than 25 years in prison on an offender convicted of rape. By comparison, the maximum penalty for indecent assault is 10 years' imprisonment, meaning that the court cannot impose a more severe sentence than 10 years in prison on an offender convicted of indecent assault.

Are maximum penalties ever imposed?

A number of offenders do receive the maximum penalty. For example, in the five-year period to 30 June 2012, 14 offenders convicted of murder in Victoria received the maximum penalty of life imprisonment.

Maximum penalties have four important purposes in the sentencing system:

- Maximum penalties clearly set out the most severe consequences for an offender convicted of a particular offence.
- Maximum penalties set a clear limit on the power courts have to impose a sentence that tries to achieve one or more of the five purposes of sentencing (see **'The five purposes of sentencing'**).
- Maximum penalties express parliament's views (on behalf of the community) about the relative seriousness of each type of offence. The maximum penalty for murder is life imprisonment. This is because society considers taking someone else's life to be the worst possible harm and doing so intentionally to be the worst degree of culpability. The maximum penalty for dangerous driving is two years' imprisonment or a fine of 240 penalty units or both, reflecting society's view that dangerous driving is less serious than murder.
- Maximum penalties allow scope for the highest possible punishment to be imposed for the worst example of an offence (for example, one that is especially cruel, carefully planned, carried out in front of innocent witnesses, or motivated by prejudice and hatred) committed by the worst example of an offender (for example, a repeat offender with no remorse who poses an ongoing threat to the community).

Does life imprisonment really mean life?

Life imprisonment is the maximum penalty available for only four offences in Victoria: murder, trafficking in a large commercial quantity of drugs, cultivating a large commercial quantity of narcotic plants, and treason. A term of life imprisonment means offenders are under sentence for the rest of their life. A non-parole period is usually set for sentences of life imprisonment, meaning offenders may apply for parole when the non-parole period has been served. If parole is granted, offenders are released from prison to spend the rest of their life in the community under conditions (for example, reporting) set by the parole board. Like anyone else on parole, if they breach these conditions, they may be returned to prison. Offenders who are sentenced to life in prison without parole stay in prison until they die.

Some people argue that maximum penalties have a fifth purpose: deterring would-be offenders from committing a certain type of offence. However, research shows that for most offence types and most offenders, increasing the severity of punishment does not result in more offenders being deterred from offending (although imprisoning people does limit their offending for the period that they are in prison).

Although significant, the maximum penalty is only one of the many factors that a judge or a magistrate must consider when sentencing.

Maximum penalties for many offences have changed over time as parliament amends legislation. For example, when the offence of culpable driving causing death was added to the *Crimes Act 1958* (Vic) in 1966, parliament set the maximum penalty as five years' imprisonment (or a fine of not more than $1,000 or both). Since then, the maximum imprisonment sentence has increased a number of times: to seven years in 1967, to 10 years in 1991, to 15 years in 1992, and to its current maximum penalty of 20 years in 1997.

Two offenders being sentenced for the same type of offence on the same day may face different possible maximum penalties depending on what the maximum penalty was on the date they committed the offences.

Minimum penalties

Mandatory minimum sentences (also known as statutory minimum sentences) are penalties set by parliament in legislation as the minimum type and/or length of sentence courts must impose for particular types of offences.

Minimum penalties are different from automatic set penalties, such as licence suspension for some driving offences.

Mandatory minimum prison terms and non-parole periods

A mandatory imprisonment term means that the court must order a particular length of imprisonment on someone convicted of certain types of offence. Only a few offences attract a mandatory term of imprisonment in Victoria.

The **gross violence** serious injury offences are an example. These are the offences of intentionally causing serious injury in circumstances of gross violence and recklessly causing serious injury in circumstances of gross violence. Unless there are special circumstances, the court must sentence an adult who has been convicted of a gross violence offence to imprisonment with a minimum non-parole period of four years.

Other exceptions include some forms of manslaughter. Unless a special reason exists, a person who commits manslaughter by a **single punch or strike** must be sentenced to imprisonment with a minimum non-parole period of 10 years. Likewise, unless a special reason exists, a person who commits manslaughter in circumstances of **gross violence** must be sentenced to imprisonment with a minimum non-parole period of 10 years.

Parliament has specified minimum non-parole periods for seven baseline offences (see **'Baseline sentences'**).

How are sentences decided for offences that happened a long time ago?

Sometimes, an offender is sentenced for an offence that happened many years ago. This is common, for example, in cases involving sexual offences against children. The sentencing options and maximum penalty available to a court normally depend on the date the offence was committed. For example, if the offence was committed 20 years ago, the maximum penalty a court could today impose is what the maximum penalty was 20 years ago.

Baseline sentences

In 2014, parliament changed the law and named seven serious offences as baseline offences (as well as a separate baseline sentence for murder of an emergency worker while the worker is on duty). Judges are required to sentence baseline offences in such a way that, over time, the **median** for sentences imposed on each baseline offence will increase to equal the specified baseline sentence.

Baseline sentences are not mandatory minimum sentences. Judges still have discretion to sentence offenders more or less severely than the baseline sentence. However, parliament has made clear that its intention is to increase the length of sentences that Victorian courts impose for the seven baseline offences, as set out in Table 1.

A baseline sentence of 30 years has also been set for the murder of an emergency worker (such as a police officer, fire fighter, or an emergency medical officer) while the worker is on duty.

Table 1: Baseline sentencing laws – current medians versus baseline sentences

Offence	Medians prior to baseline sentencing (for offences sentenced in the five-year period to June 2014)	Baseline sentences (for offences committed on or after 2 November 2014)
Murder	20 years	25 years
Trafficking in a large commercial quantity of a drug of dependence	6 years and 6 months	14 years
Incest with a child, step-child, or lineal descendant (under 18)	5 years	10 years
Incest with the child, step-child, or lineal descendant (under 18) of a de facto spouse	4 years	10 years
Persistent sexual abuse of a child under 16	6 years	10 years
Sexual penetration of a child under 12	3 years and 6 months	10 years
Culpable driving causing death	5 years and 11 months	9 years

The baseline sentence does not refer to the overall sentence an offender may face when sentenced for multiple offences. Nor does it refer to the non-parole period. The baseline sentence is the median sentence that courts must achieve over time in sentencing individual charges of a baseline offence.

Sentencing baseline offences is complex. When sentencing a charge of a baseline offence, judges must compare the characteristics of the charge (including details about the offender and the offence) with characteristics of other cases containing a similar charge that received the median sentence prior to the introduction of baseline sentencing.

If the baseline charge being sentenced:

- is close to the same seriousness as charges that received the median sentence, the judge will impose a sentence close to the baseline sentence
- has characteristics that make it more serious than charges that received the median, the judge will impose a sentence that is more severe than the baseline sentence
- is less serious than charges that received the median, the judge will impose a sentence that is less severe than the baseline sentence.

In their sentencing remarks for cases containing baseline offences, judges must explain why they imposed a sentence on the baseline charge that was equal to, greater than, or less than the specified baseline sentence.

Baseline minimum non-parole periods

There are mandatory minimum non-parole periods for cases involving baseline offences. These apply to any case where a sentence of imprisonment is imposed for a baseline offence. The court must fix a non-parole period of:

- 30 years if the sentence is life imprisonment
- 70% of the sentence if it is imprisonment for 20 years or more
- 60% of the sentence if it is imprisonment for less than 20 years.

The new laws apply to the sentencing of offenders for any of the seven baseline offences (as well as the murder of an emergency worker while the worker is on duty) committed on or after 2 November 2014.

Orders in addition to sentence

Under Part 4 of the *Sentencing Act 1991* (Vic) and some other Acts shown here, courts may make orders in addition to the sentence imposed on the offender, including the following.

A **restitution order** may require:

- a person in possession or control of stolen property to return the property
- an offender to return the stolen property or the proceeds of the sale of stolen property if the offender has disposed of the property
- payment of a sum of money up to the value of the stolen property.

A **compensation order for pain and suffering** requires an offender to pay an amount for:

- pain and suffering experienced by a victim as a direct result of the offence
- some or all of a victim's counselling, medical, or other costs where these arise directly because of the offence, but not including costs arising from property loss or damage.

A **compensation order for property loss or damage** requires an offender to pay compensation for the loss or destruction of, or damage to, property as a result of the offence.

An **order for recovery of assistance** requires the offender to reimburse the state (the government) an amount equivalent to any award of assistance made to a victim of the offence under the *Victims of Crime Assistance Act 1996* (Vic).

Driving-related orders include orders available under the *Road Safety Act 1986* (Vic), such as:

- cancellation or suspension of a driver licence
- disqualification from obtaining a licence for a period of time
- installation of an alcohol interlock device
- temporary or permanent seizure or forfeiture of a motor vehicle.

Confiscation and forfeiture orders are made under the *Confiscation Act 1997* (Vic). A court can order the confiscation of the proceeds of crime or the forfeiture of any property belonging to the offender that is connected to the offending.

For particular offences, confiscation or forfeiture occurs automatically once an offender is convicted of an offence. For example, property used to commit an offence, such as a gun, may be forfeited, or property such as a house purchased with money gained from drug trafficking may be confiscated by the state.

The offender or other people (such as family members of the offender) may keep money or property subject to a confiscation or forfeiture order if they can demonstrate that the money or the property was lawfully acquired and not connected to the offending.

Sex offender registration allows an offender found guilty of certain types of sexual offences to be included on a register of sex offenders. Registered sex offenders must comply with various reporting requirements under the *Sex Offenders Registration Act 2004* (Vic).

Adults found guilty of a sexual offence against a child are automatically registered as soon as they are sentenced.

What is a good sentence?

The *Sentencing Act 1991* (Vic) outlines five purposes of sentencing: just punishment, deterrence, rehabilitation, denunciation, and community protection. Judges and magistrates must try to achieve at least one of these purposes when sentencing. So, a **good sentence** is one that achieves one or more of these purposes, is consistent with fundamental sentencing principles, and varies according to who is being sentenced and for which offence.

A good sentence for a young, first-time offender who has intentionally injured someone might be a community correction order with conditions aimed at the young person's rehabilitation (for example, participation in an anger management course). For an adult offender with a long and violent history who has been convicted of the same kind of offence, a good sentence might be imprisonment, in order to protect the community.

Judges and magistrates have discretion to decide whether to order sex offender registration for:

- adult offenders found guilty of a sexual offence against another adult
- children who commit any sexual offence.

Parole

Parole is the supervised and conditional release of prisoners from prison after the completion of their non-parole period but before the end of their prison sentence. The aim of parole is to supervise and support prisoners as they return to the community and reduce the chance that they will reoffend.

While living in the community, offenders on parole must abide by conditions set by the parole board (such as participating in treatment programs, being supervised, and not reoffending). Offenders on parole are still serving their sentence, and if they do not abide by the conditions of their parole, they may be returned to prison.

Non-parole period

When judges or magistrates impose a sentence of imprisonment, they must generally set a **non-parole period**. This is the minimum time that offenders must serve in prison before they are eligible to be considered for release on parole.

There are rules about when a judge or a magistrate must set a non-parole period, depending on the length of the prison sentence:

- For sentences of more than two years, there is a general requirement for a non-parole period to be set, unless the judge thinks it would not be appropriate because of the kind of offences that were committed or the offender's criminal history.
- For sentences of between one and two years, the judge or the magistrate can choose whether to set a non-parole period.
- For sentences of less than one year, the judge or the magistrate cannot set a non-parole period. The offender must serve the entire sentence in prison.

Parole boards

Release on parole is not automatic. When offenders have served the non-parole period, they are eligible to be considered by the parole board for release on parole. Parole boards are made up of people like judges, magistrates, and community members.

In Victoria, the Adult Parole Board is responsible for the parole of adult offenders. The Youth Parole Board and the Youth Residential Board make parole decisions about young people.

In considering whether to grant parole, the Adult Parole Board considers many factors, including:

- the offender's successful completion of programs in prison
- the behaviour of the offender in prison
- the offender's parole history and criminal record.

A community corrections officer interviews the offender and assesses the offender's risk to the community. The Adult Parole Board considers this report, and any submission made by a victim of the offence, in making its decision. The community's safety and protection must always be the main concern for the Board in granting, denying, or cancelling parole.

If the parole board decides that a person is too risky to release into the community, parole is denied and the offender stays in prison until the end of the sentence or until the parole board reconsiders the case.

Parole conditions

If the parole board grants parole, the offender is released into the community under the supervision of Community Correctional Services. Once on parole, the offender must follow the conditions set by the parole board and the instructions of community corrections staff. There are 10 standard compulsory conditions for all offenders on parole. These conditions include:

- not reoffending
- reporting to parole officers
- being supervised by parole officers
- following instructions about where to live.

Special parole conditions may also be imposed. For example, such conditions might require offenders on parole to:

- be assessed and have treatment for medical or psychiatric problems
- complete personal development programs
- follow curfews or other limits to their movements
- have their whereabouts electronically monitored
- stay free of alcohol and drugs and submit to random drug and alcohol testing.

Breach of parole

If offenders breach the conditions of their parole, the parole board may decide to cancel their parole and return them to prison.

There are stricter rules around parole cancellation for offenders who breach the conditions of their parole by further offending. For example, if an offender is on parole on a sentence for a sexual or serious violent offence and the same offender is convicted of a sexual or violent offence committed while on parole in the community, parole is automatically cancelled and the offender is returned to prison.

Can a sentence be changed?

The sentence imposed by a court can sometimes be changed through a process known as an appeal. An appeal is a request made to a higher court to review the original court's decision.

In Victoria, the defence (on behalf of the person sentenced) may appeal against a conviction and against a sentence. The Director of Public Prosecutions may appeal against a sentence.

For appeals against sentence, if either the prosecution or the defence believes a court has made an error in sentencing, they can lodge an appeal, asking for a higher court to:

- review the decision made by the sentencing court
- consider whether the sentencing court has made an error
- consider whether the sentence should be changed if an error has been made.

An appeal against sentence is not a retrial. Evidence is not re-examined and the guilty finding is not reconsidered. The *Criminal Procedure Act 2009* (Vic) governs the process of appeals against sentences in Victoria.

Appeals from the Magistrates' Court

People sentenced in the Magistrates' Court may appeal against their sentence to the County Court.

The Director of Public Prosecutions may appeal against a Magistrates' Court sentence to the County Court if satisfied that it is in the public interest. These appeals are conducted as a full rehearing of the sentencing hearing.

In some circumstances in the Magistrates' Court, the prosecution or the defence can appeal to a single judge of the Supreme Court on a question of law.

Appeals from the County and Supreme Courts

People sentenced in the County Court or in the Trial Division of the Supreme Court can apply to the Court of Appeal for leave (permission) to appeal a sentence. A single judge of the Court of Appeal will normally hear this application. The judge may refuse the application if he or she finds there is no reasonable prospect of the Court of Appeal imposing a less severe sentence than the original sentence.

The Director of Public Prosecutions does not need leave to appeal against a sentence imposed by the County Court or the Supreme Court. The Director of Public Prosecutions can appeal against such a sentence if the Director considers that an error has been made in the original sentence and that a different sentence should have been imposed. The Director of Public Prosecutions must also be satisfied that bringing the appeal is in the public interest.

The Court of Appeal

The Court of Appeal, normally comprising two or three Judges of Appeal, conducts hearings of sentence appeals. In some cases, five judges may hear the appeal.

The Court of Appeal reviews the sentence and determines whether the judge who originally sentenced the offender has made an error. In determining whether a sentencing error has been made, the Court of Appeal considers such matters as:

- the maximum sentence available to the original sentencing judge
- how the original sentencing judge exercised his or her judicial discretion
- other sentences in similar cases
- the seriousness of the offence
- the personal circumstances of the offender.

The Court of Appeal may identify a specific error in the original sentence, for example, the sentencing judge's failure to have regard to a sentencing factor required by the law. Alternatively, the Court of Appeal may assume an error has been made on the basis that the result is plainly unreasonable or unjust.

If the Court of Appeal decides that an error has been made and that the offender should receive a different sentence, it will allow the appeal. The court can then set aside the original sentence and either impose a new sentence or send the matter back to the original sentencing court for the offender to be resentenced.

If the Court of Appeal imposes a new sentence, it must apply the same sentencing law that the original sentencing judge was required to consider, including sentencing principles, purposes, and factors. Because appeals heard by the Court of Appeal sometimes consider these aspects of sentencing law in great detail, the court's decisions (and sentencing remarks) make important contributions to sentencing law (case law or court-made law) and affect future, relevant sentencing decisions by other Victorian courts.

People granted leave to appeal against their sentence of imprisonment can apply to be released on bail. However, bail pending appeal is only granted in exceptional circumstances.

Where can I go for more information on sentencing?

You can get more information on sentencing by going to the **Sentencing Advisory Council's website**.

You can attend sentencing hearings in most Victorian courts to see how sentencing works in practice. However, some hearings involving vulnerable offenders or victims may be closed to the public.

Glossary

Accused, accused person — A person charged with an offence. The defendant in criminal proceedings in a higher court.

Acquittal — A finding that an accused person is not guilty of a criminal charge.

Affidavit — A written statement, sworn or affirmed, that may be used as a substitute for oral evidence in court.

Aggravating factor — A fact or circumstance about the offender or the offence that may lead to a more severe sentence.

Appeal — A request made to a higher court to review another court's decision.

Bail — The release of a person from legal custody into the community on condition that he or she reappears later for a court hearing to answer the charges.

Baseline offence — Seven serious offences are named **baseline offences** and have a specified baseline sentence. In addition, there is a separate baseline sentence for the murder of an emergency worker while on duty. Courts must sentence baseline offences so that the median sentence over time equals the baseline sentence.

Baseline sentence — The sentence that parliament intends as the median sentence for a particular baseline offence.

The median sentence is the midpoint or middle sentence when all sentences imposed for a type of offence over a given period are ranked from lowest to highest – so that half of all sentences imposed are lower than the median and half are higher. See **'Median'**.

Case law — Law made by courts, including sentencing decisions and decisions on how to interpret legislation. This is also known as **common law**.

Child — A person who is aged 10 years or over but under 18 years at the time of the offence and aged under 19 years when court proceedings begin. A child is usually sentenced in the Children's Court under the *Children, Youth and Families Act 2005* (Vic).

Community-based order — A flexible, non-custodial sentence that includes community service, supervision, and personal development. This order was replaced from early 2012 with the community correction order (CCO).

Community correction order (CCO) A flexible, non-custodial sentence that sits between imprisonment and fines on the sentencing hierarchy. Served in the community under conditions that may include unpaid community work, alcohol and drug bans, participation in treatment and rehabilitation programs, and/or restrictions on where the offender can go or live, or with whom they can associate.

Compensation Under the *Sentencing Act 1991* (Vic), payment of money to a victim of crime to compensate for the pain, suffering, or property loss or damage caused directly because of the offence.

Concurrent sentences Multiple individual sentences, imposed for more than one offence in a case, that are to be served at the same time, rather than one after the other. For example, two prison sentences each of five years served wholly concurrently would mean a total of five years in prison.

Conviction An order made by a court after finding that an accused person is guilty of the crime charged.

Crown In Victorian sentencing, the Crown refers to either the police prosecutor (in the lower courts) or the public prosecutor (in the higher courts) who represents the State of Victoria in criminal matters.

Culpability Blameworthiness, the extent to which a person is held accountable for an offence.

Cumulative sentences Multiple individual sentences, imposed for more than one offence in a case, that are to be served one after the other, rather than at the same time. For example, two prison sentences each of five years served wholly cumulatively would mean a total of 10 years in prison.

Custodial sentence A sentence that involves the court imposing a term of imprisonment (for adults) or a period of detention (for children and young offenders).

Defence The defendant or accused in a trial and his or her legal advisors collectively.

Defendant A person who has been charged with an offence but who has not (yet) been found guilty or not guilty.

Diversion program A program designed to prevent first-time or low-risk offenders who have pleaded guilty from entering the criminal justice system. Diversion programs include conditions such as attending counselling, treatment, or defensive driving training.

Director of Public Prosecutions The Director of Public Prosecutions makes decisions about whether to prosecute, and prosecutes, serious offences in the higher courts on behalf of the State of Victoria. The Director of Public Prosecutions is independent of government.

Electronic monitoring Offenders wear electronic tags that monitor their movements and send an alarm to a monitoring unit if offenders break any restrictions on movement that have been imposed by the courts.

Fine A sum of money payable by an offender to the State of Victoria on the order of a court as a sentence.

Gross violence Circumstances that increase the seriousness of an offence of manslaughter or causing serious injury, and that result in mandatory minimum sentences under the *Sentencing Act 1991* (Vic). Circumstances of gross violence include where the offender planned the offence in advance, committed the offence with a group of two or more other people, planned in advance to use a weapon, or continued to attack the victim after the victim was incapacitated.

Head sentence See **'Total effective sentence'**.

Higher courts In Victoria, the County Court and the Supreme Court.

Human rights The basic rights and freedoms to which all human beings are entitled, in the exercise of which a government may not interfere. Includes rights to life and liberty, freedom of thought and expression, and equality before the law.

Indictable offences Serious crimes, such as murder and rape, usually tried before a judge and jury in the higher courts.

Infringement An offence attracting an infringement notice with a fixed financial penalty (for example, a parking fine).

Jury A group of people (usually 12) without legal experience, chosen at random from the general community. A jury is given the responsibility of determining questions of fact on the basis of evidence presented in criminal trials for indictable offences in the higher courts and returning a verdict of guilty or not guilty.

Mandatory sentence A sentence set by parliament in legislation, allowing no discretion for the court to impose a different sentence.

Maximum penalty The most severe sentence set in legislation that a court can impose for a particular type of offence.

Median The median is the middle value in a set or distribution of numbers. For example, 4 is the median number in the following set of numbers:

1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7

The median represents a statistical midpoint, where half of the numbers (1, 2, 2, 3, 3) are below the median, and half of the values (5, 5, 6, 6, 7) are above the median. See **'Baseline sentence'**.

Mitigating factor	A fact or circumstance about the offender or the offence that may lead to a less severe sentence.
Non-parole period (NPP)	The period of imprisonment set by the court that must be served by the offender in prison before he or she is eligible for release on parole.
Offender	A person who has been found guilty of an offence or who has pleaded guilty to an offence (admitted the facts of an offence).
Office of Public Prosecutions	An independent statutory authority that commences, prepares, and conducts criminal prosecutions on behalf of the Director of Public Prosecutions.
Parole	Supervised and conditional release of an offender from prison before the end of his or her prison sentence. While on parole, the offender is still serving the sentence, and is subject to conditions designed to help him or her rehabilitate, reintegrate into the community, and reduce the risk of reoffending.
Parsimony (principle of parsimony)	To be parsimonious is to do no more than is necessary to achieve an intended purpose. The principle of parsimony means the sentence imposed must be no more severe than is necessary to meet the purposes of sentencing.
Penalty unit	Fine amounts are based on penalty units rather than specific dollar amounts. Penalty units are adjusted annually to keep pace with inflation.
Plea	The response by the accused to a criminal charge – 'guilty' or 'not guilty'.
Precedent	A decision that sets down a legal principle to be followed in similar cases in the future.
Prosecution	A legal proceeding against a defendant for a criminal offence. Prosecutions are brought by the Crown (through the Director of Public Prosecutions or police prosecutors), not the victim.
Recidivism	Returning to or repeating criminal behaviour.
Remand	To place an accused person in custody pending further court hearings relating to the charges that have been laid against that accused person.
Remorse	Regret for past actions.
Restitution	An order under the *Sentencing Act 1991* (Vic) requiring an offender or any other person in possession or control of stolen property to return the property, an offender to return the proceeds of the sale of stolen property, or payment of a sum of money up to the value of the stolen property.
Sanction	Penalty or sentence.

Sentence	The penalty imposed by the court on a person guilty of an offence.
Sentencing hierarchy	All possible sentences available to courts arranged in order from the most severe to the least severe.
Statute law	Law made by parliament set out in legislation called Acts of Parliament.
Summary offences	Offences that are less serious than indictable offences, (for example, minor traffic offences and offensive behaviour). Generally, summary offences are heard in the Magistrates' Court.
Suspended sentence	A sentencing order that has been abolished in Victoria. A suspended sentence was a sentence of imprisonment that was wholly or partially held back for a period by the court. If the offender reoffended during this period, he or she could be imprisoned for the total duration of the sentence. Suspended sentences are no longer available in the higher courts for offences committed on or after 1 September 2013 and in the Magistrates' Court for offences committed on or after 1 September 2014.
Total effective sentence (TES)	In a case with a single charge, the TES is the sentence imposed for that charge before the non-parole period is imposed. In a case with multiple charges, the TES is the total of the sentences imposed for all charges, taking into account whether the sentences are to be served cumulatively or concurrently, before the non-parole period is imposed. Also known as the **head sentence**.
Victim	A person who has been injured directly because of a criminal offence, or a family member of a person who has died because of a criminal offence. **Injury** includes physical injuries, grief, distress, or trauma, and loss or damage to property.
Victim Impact Statement	A statement by a victim, presented to the court at the time of sentencing, explaining how the crime has affected him or her.
Young person/ young offender	Under the *Sentencing Act 1991* (Vic), a person who is under the age of 21 years at the time of being sentenced.

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