



Victims Services NSW Department of Communities and Justice

Sentencing

information package





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

Produced by Victims Services and Justice Strategy and Policy, Department of Communities and Justice.

This information package may be accessed from our website at: www.victimsservices.justice.nsw.gov.au

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Introduction

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

When is an offender sentenced?

An offender is sentenced after he or she:

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

The sentencing hearing

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

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

Evidence presented by the defence may include:

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

- evidence of any negotiations between defence and prosecution lawyers.

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

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

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

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

Purposes of sentencing

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

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

Relevant factors determining a sentence

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

- the facts of the offence;
 - the circumstances of the offence;
 - subjective factors about the offender; and
 - relevant sentencing law.
- any sentence discounts that may apply for an early guilty plea.

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

Maximum penalty

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

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

Mandatory sentencing

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

Aggravating and mitigating factors

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

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

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

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

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

Aggravating factors may include:

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

victim is a patient of the health professional, and similar positions where the offender has responsibility/authority over the victim).

Mitigating factors may include:

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

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

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

Cumulative and concurrent sentences

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

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

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

Proportionality

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

Totality

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

Sentencing options

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

Rising of the court

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

Non-conviction orders

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

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

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

Unconditional discharge

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

Conditional discharge

The court can discharge the offender, without recording a conviction, on a condition that he or she enter into an agreement to participate in and comply with an intervention program designed to promote the offender's treatment or rehabilitation.

Conviction order without any additional penalty

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

Conviction release order

A conditional release order is a community based sentence for very low level offending, and can be made with or without a conviction being recorded. The standard conditions of a conditional release order are that the offender must not commit any offence and must appear before court when called upon to do so. The court can impose optional additional conditions like supervision, drug and alcohol abstinence, participation in programs to tackle the offender's risks of reoffending, and non-association and place restrictions. However, more onerous conditions like curfews, community service work, home detention and electronic monitoring are not permitted.

Fines

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

Community Correction Order

A community correction order can be imposed for offences that are not serious enough to warrant a prison sentence. The standard conditions of a community correction order are that the offender must not commit any offence and must appear before court when called upon to do so. The court can tailor the sentence to tackle the causes of offending and hold the offender accountable by imposing a range of optional additional conditions, such as supervision, up to 500 hours of community service work, participation in rehabilitation or treatment programs, a curfew of up to 12 hours per 24 hour period, drug and alcohol abstinence, and non-association and place restriction conditions. More serious conditions, such as home detention and electronic monitoring are not available on a community correction order.

Imprisonment

A sentence of imprisonment is the most serious sentence that can be imposed and must only be imposed when no other sentence would be appropriate. It is seen as a sentence of 'last resort'. It can take the form of full-time imprisonment served at a correctional centre, Intensive Corrections Order or home detention. A term of imprisonment usually involves (unless the term is of 6 months or less) a

'non-parole period' which is the minimum term that the offender will spend in custody and an 'additional term' which is the maximum period of time which may be served on parole.

Intensive Correction Orders

If a court has decided to sentence an offender to a term of imprisonment of up to two years, or multiple offences of up to three years, the court may direct that the sentence be served by way of an Intensive Correction Order in the community. Community safety is the paramount consideration for the court when deciding whether to impose an Intensive Correction Order.

Offenders are required not to commit an offence for the duration of the order, submit to supervision, and comply with any additional conditions imposed by the court. The additional conditions that a court may impose include home detention, up to 750 hours of community service work, electronic monitoring, a curfew, participation in rehabilitative programs, drug and alcohol abstinence, and non-association and place restriction conditions.

Parole orders are not made for sentences of imprisonment served by way of Intensive Correction Order. The offender must serve the whole of the term subject to the conditions of the Intensive Correction Order. Community Corrections may suspend the enforcement of the supervision condition where the offender's progress and circumstances indicate that continued supervision is no longer necessary or appropriate. Community Corrections will carry out a thorough risk assessment before deciding whether to suspend enforcement of the supervision condition.

An Intensive Correction Order cannot be imposed if the offender is convicted and sentenced for certain offences, including:

- Murder
- Sexual assaults and sexual offences against children
- Terrorism offences
- Offences involving the discharge of a firearm.

A court must not impose an Intensive Correction Order for a domestic violence offence unless satisfied that the victim of the domestic violence offence, and any person with whom the offender is likely to reside, will be adequately protected.

A court must not impose a home detention condition on an Intensive Correction Order if it reasonably believes that the offender will reside with the victim of the domestic violence offence.

If an offender breaches the Intensive Correction Order, the offender's Community Corrections officer and the State Parole Authority may impose a range of sanctions against the offender for lower level breaches, such as warnings, curfews, electronic monitoring and up to 30 days of home detention. More serious breaches may be dealt with by revoking the order and requiring the offender to serve the balance of the term by way of full time imprisonment.

Deferred sentence

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

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

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

Proceeds of crime

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

Understanding the sentence

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

Non-parole periods

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

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

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

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

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

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

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

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

Standard non-parole periods

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

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

Appeals

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

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

Appeals against convictions

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

Sentence appeals

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

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

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

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

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

NSW State Parole Authority

The NSW State Parole Authority (the SPA):

- determines the release to parole of offenders sentenced to a term of more than three years with a non-parole period
- may set additional conditions of release on parole for these offenders
- determines if a parole order should be revoked
- determines if a home detention or intensive correction order should be revoked, substituted or reinstated.

A non-parole period is set by the court as a minimum term of imprisonment during which an offender is not eligible to be released from prison to parole.

Under the Reintegration Home Detention Scheme, the SPA have the option to transition a small number of eligible and suitable offenders to electronically monitored home detention, in the last six months of their non-parole period. For more information see the Reintegration Home Detention Scheme section on page 11.

Offenders sentenced to a term of imprisonment of three years or less may also have a non-parole period but are 'automatically' released from custody at the expiry of the non-parole period, without the case having to come before the SPA. This is called a 'statutory-based parole order'. Supervision is mandatory of all offenders on statutory parole.

When deciding to make a parole order, the SPA must be satisfied that it is in the interest of community safety. The following principle matters are considered before making the decision to release an offender on parole:

- the risk to the safety of members of the community of releasing the offender on parole
- whether the release of the offender on parole is likely to address the risk of the offender re-offending
- the risk to community safety of releasing the offender at the end of the sentence without a period of supervised parole or at a later date with a shorter period of supervised parole.

In weighing up the benefits and risks, the SPA considers a range of factors, including the nature and circumstances of the relevant offence and the likely effect on the victim or the victim's family, of the offender being released on parole.

The principal purpose of granting parole is to protect the safety of the community by closely supervising the offender during his or her period of reintegration into the community. In all cases, strict conditions of parole are imposed, including mandatory supervision. Supervised parole has been shown to reduce reoffending. For cases considered by the SPA, additional conditions specifically tailored to address the factors of an offender's offending behaviour can be applied. In the case of statutory parole orders, Community Corrections can apply to the SPA to have additional conditions imposed.

If a parolee fails to comply with the conditions of a parole order, it is the SPA's role to consider revoking parole and returning the offender to custody. The SPA may also consider the revocation of a parole order, before release, if the offender poses a serious identifiable risk to the safety of the community or themselves. An offender can also request that the SPA revoke a parole order before release.

The SPA may revoke parole after an offender's release if their behaviour raises serious and immediate concerns for the safety of the community – even if there has been no breach of their parole conditions.

Reintegration Home Detention Scheme

The Reintegration Home Detention Scheme was introduced in mid-2018 and gives the SPA the option to transition a small number of eligible and suitable offenders to electronically monitored home detention, in the last six months of their non-parole period. This provides a structured step-down between prison and parole for these offenders.

The strict conditions of home detention require an offender to: remain at home, be electronically monitored, submit to alcohol and drugs testing, and participate in rehabilitation programs, employment or community service if directed.

Corrective Services NSW refer offenders to the SPA for consideration in the scheme and the SPA apply the community safety test when assessing an offender's suitability.

The scheme is not available to serious offenders including those serving life sentences, high risk sex or violent offenders, terrorism offenders, child sexual offenders or domestic violence offenders.

Assistance to victims

The SPA welcomes letters from all victims. All registered victims are able to make a submission to the SPA before it makes its final decision on whether or not to release the offender on parole.

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

Access to documents

A victim of a "serious offender" (see definition on page 16) also has a right under legislation to access modified copies of specific reports received and considered by the SPA. Arrangements to access documents are dealt with by the Coordinator of the Victims Register.

Attendance at SPA hearings

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

If parole is refused, the SPA determines whether a public hearing is granted to an offender automatically, or upon application for the offender. If a review hearing is scheduled, any victim of crime can attend a SPA review hearing of their matter. The offender appears at this hearing by way of a video conferencing link to the correctional centre where they are housed. Victims need to be aware that the offender can see a section of the public gallery via the video conferencing link. Victims who do not want to be seen by the offender are therefore encouraged to speak to the SPA staff to be directed to the section of the public gallery that is not visible to a video link camera.

High risk offenders

The *Crimes (High Risk Offenders) Act 2006* allows the Supreme Court to make Continuing Detention Orders (CDOs) and Extended Supervision Orders (ESOs) against high risk sex or high risk violent offenders. These are offenders who pose an unacceptable risk of reoffending unless they are supervised or detained.

The *Terrorism (High Risk Offenders) Act 2017* also allows the Supreme Court to make CDOs and ESOs for NSW offenders serving a term of imprisonment for an indictable offence with a risk of committing a serious terrorism offence.

A CDO allows an offender to be detained in a correctional centre after his or her sentence has ended. An ESO requires an offender to submit to supervision by Community Corrections and to comply with reporting and monitoring conditions, even though his or her sentence has ended.

The Supreme Court judge who makes an order must consider the reports of clinical experts who have individually examined the offender and must also consider any relevant victim statements. An order may last up to three years for offenders with a risk of committing a serious terrorism offence or five years for offenders with a risk of committing a sex or violent offence.

Victims may provide a statement to the Supreme Court in writing or orally when a relevant offender is being considered for a CDO or ESO. In cases where the victim is deceased, victims' families have the right to make a statement.

The courts inform all offenders who may be subject to a CDO or ESO when they are sentenced to encourage participation in rehabilitation programs to reduce the risk of reoffending.

Dictionary: Words used in court

A

Accused

The person charged with committing the crime.

The accused can also be called the defendant.

Acquit/Acquittal

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

Adjournment

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

Admissible

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

Appeal

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

Apprehended Violence Orders (AVOs)

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

B

Bail

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

Barrister

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

Beyond reasonable doubt

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

Brief of evidence

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

C

Charge

The allegation that a person has committed a specific crime.

Charter of Victims Rights

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

Children's Court

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

Closed Circuit Television (CCTV)

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

Closed court

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

Committal hearing (only for committal matters commenced before 30 April 2018)

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

Committal proceeding (only for committal matters commenced after 30 April 2018)

A committal proceeding takes place in the Local Court. The purpose is for the prosecution to decide which criminal charges against the accused are proceeding and for the accused to decide whether to plead guilty or not guilty to those offences. At the end of the committal proceeding, the matter will be sent to the District or Supreme Court for trial if the accused pleads not guilty or to decide on the sentence if the accused pleads guilty.

Complainant

Used to describe victims of sexual assault in court.

Conviction

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

Court

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

Cross-examination

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

Crown Prosecutor

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

D

Defence

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

Deliberations

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

E

Evidence

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

Evidence-in-chief/examination-in-chief

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

Exhibits

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

F

Forensic patient

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

H

High risk offender

For the purpose of the *Crimes (High Risk Offenders) Act 2006*, a high-risk offender is an offender who has been sentenced to imprisonment for a serious sex or violence offence, as defined by legislation.

I

Indictable offence

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

Indictment

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

Instructing solicitor

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

J

Judge

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

Jury

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

L

Legal argument

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

M

Magistrate

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

Majority verdict

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

Mention

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

N

No bill/no further proceedings

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

Non-publication order

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

O

Oath/Affirmation

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

Objections

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

Offender

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

Office of the Director of Public Prosecutions (ODPP)

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

Open court

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

P

Paper committal (only for committal proceedings commenced before 30 April 2018)

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

Plea

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

Pre-Sentence Report

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

Prosecutor/Prosecution

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

R

Remand

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

S

Serious offender

An inmate serving a sentence of life imprisonment, or who has been convicted of murder, or who has been sentenced to a total term of at least 12 years before becoming eligible to be released on parole.

Subpoena

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

Summary Hearing

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

Summing up

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

Support person

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

T

Trial

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

V

Verdict

The decision of a jury in a criminal trial.

Victim impact statement

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

W

Witness

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

Witness Assistance Services

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

Further information

Victims Services Victims Access Line

Phone 1800 633 063 (9am to 5pm, Mon to Fri)
Email vs@justice.nsw.gov.au
Website www.victimsservices.justice.nsw.gov.au

NSW Sentencing Council

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

NSW State Parole Authority

The court for public review hearings is located at Sydney West Trials Courts, Court 1A, Level 1, 6 George Street, Parramatta

Phone (02) 8688 3635
Website www.paroleauthority.nsw.gov.au

Witness Assistance Service, Office of the Director of Public Prosecutions

Phone 1800 814 534
Website www.odpp.nsw.gov.au

LawAccess

Phone 1300 888 529
Website www.lawaccess.nsw.gov.au

Judicial Commission of New South Wales

Phone (02) 9299 4421
Website www.judcom.nsw.gov.au

NSW Courts

Local Courts

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

District Court

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

Supreme Court

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

Additional Victims Support Services

Enough is Enough Anti-Violence Movement Inc.

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

Phone (02) 9542 4029
Website www.enoughisenough.org.au

Homicide Victims Support Group (Aust) Inc.

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

Phone (02) 8833 8400
Website www.hvsgnsw.org.au

Victims of Crime Assistance League Inc NSW (VOCAL)

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

Phone (02) 4926 2711
Website www.vocal.org.au

Victims and Witnessess of Crime Court Support

Informs and support victims and witnesses of crime within the unfamiliar environment of the court.

Phone (02) 9287 7671
Website www.vwccs.org.au

Women's Domestic Violence Court Assistance Service (WDVCAS)

State-wide body that operate across NSW supporting women and their children who are experiencing domestic violence.

Phone 1800 938 227
Website www.wdvcasnsw.org.au/

Charter of Victims Rights (Victims Rights and Support Act 2013)

If you are a victim of crime, you have the following rights under the Charter of Victims Rights.

1 Courtesy, compassion and respect

You will be treated with courtesy, compassion, cultural sensitivity and respect for your rights and dignity.

2 Information about services and remedies

You will be told as soon as possible about the different services that can help you, including counselling and legal services.

3 Access to services

If you need medical, counselling, and legal help you will be able to get it if it is available.

4 Information about investigation of the crime

If you ask, you will be told about how the police investigation is going. But in some cases there may be some things the police can't tell you.

5 Information about prosecution of accused

Prosecution is about taking the accused to court for the crime. This is done by the police or, in serious cases, the Director of Public Prosecutions.

- As a victim, you will be told:
 - what the charges are or why the accused has not been charged;
 - any decision of the prosecution to change or drop charges;
 - the date and place of the court hearing;
 - the final court result, including any appeal or gaol sentence given.
- If the prosecution is thinking about changing or dropping the charges they will have a talk to you about this if the crime:
 - was a serious sex crime, or
 - caused you physical harm, psychological or psychiatric harm.

But the prosecution don't have to talk to you if:

- you don't want to talk about it, or
- they can't find you.

6 Information about trial process and role as witness

If you have to give evidence as a witness in a trial you will be told about how the trial works and what you have to do.

7 Protection from contact with accused

While your case is in court you will be protected from contact with the accused and the defence witnesses.

8 Protection of identity of victim

You can keep your address and phone numbers private unless the court says otherwise.

9 Attendance at preliminary hearings

You do not have to go to any committal hearing (like a mini trial) or other court business before the trial unless the court says you must.

10 Return of property held by State

If the police or prosecution took any of your goods as evidence you have the right to get it back as soon as possible.

11 Protection from accused

If you need protection tell the police or prosecution when the accused applies for bail.

12 Information about special bail conditions

You will be told about any special bail conditions the accused is given, which are meant to protect you or your family, like a condition which says the accused must not contact you.

13 Information about outcome of bail application

If you were the victim of sexual assault or other serious assault you will be told if the accused gets bail or not.

14 Victim impact statement

In some cases you may be able to tell the court about how the crime has affected you and you will be given help and support to do this. This is called giving a 'victim impact statement.'

15 Information about impending release, escape or eligibility for absence from custody

If the offender is in gaol you can be told if the offender is going to be released from gaol soon, has escaped gaol or is on day release.

16 Submissions on parole and eligibility for absence from custody of serious offenders

You can have a say if the offender applies for parole.

17 Financial assistance for victims of personal violence

If you have been injured as a result of serious personal violence, you may be eligible for financial assistance under the Victims Support Scheme.

18 Information about complaint procedure where Charter is breached

You can make a complaint if you think your rights under the Charter have not been met. You can ask for information about how to do this.

