

YOU BE THE JUDGE

SENTENCING LAW IN TASMANIA



GENERAL SENTENCING PRINCIPLES



SENTENCING LAW & PURPOSES

GENERAL SENTENCING PRINCIPLES

SENTENCING LAW - SOURCES

- *Sentencing Act 1997* (TAS)
- *Youth Justice Act 1997* (TAS)
- *Crimes Act 1914* (Cwth)
- Common law (case law; previous judgments of Courts)
- Acts creating particular offences and crimes (eg. drink-driving penalties)

PURPOSES OF SENTENCING

- punishment and retribution
- rehabilitation of offenders
- deterrence of offenders and other persons from committing offences (individual deterrence; and general deterrence)
- denunciation of the conduct of offenders
- incapacitation

The purposes of the *Sentencing Act 1997* are set out in section 3 of the Act as follows:

- (a) ...
- (b) promote the protection of the community as a primary consideration in sentencing offenders; and
- (c) promote consistency in the sentencing of offenders; and
- (d) establish fair procedures for –
 - (i) imposing sentences on offenders generally; and
 - (ii) imposing sentences on offenders in special cases; and
 - (iii) dealing with offenders who breach the conditions of sentences; and
- (e) help prevent crime and promote respect for the law by allowing courts to –
 - (i) impose sentences aimed at deterring offenders and other persons from committing offences; and
 - (ii) impose sentences aimed at the rehabilitation of offenders; and
 - (iii) impose sentences that denounce the conduct of offenders; and
- (f) promote public understanding of sentencing practices and procedures; and...
- (h) recognise the interests of victims of offences.

SENTENCING PRINCIPLES

GENERAL SENTENCING PRINCIPLES

- discretion by Magistrate/Judge within a range of possible sentences
- mandatory minimum penalties
- aggravating and mitigating factors
- conviction or non-conviction
- proportionality of sentence to offence committed
- totality of sentences on multiple charges for single defendant
- comparable (“parity of”) sentences for co-offenders
- changing (“commuting”) sentences eg. fines changed to Community Service Orders [\$100 = 7hours] or imprisonment

FACTORS CONSIDERED IN SENTENCING

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CIRCUMSTANCES OF THE OFFENCE

- Seriousness of the offence
- Prevalence of the type of offence
- Impact on victim – taking into account age/circumstances of victim
- Premeditation
- Degree of participation – leader, minor role?
- Aggravating or mitigating factors
 - eg - Any damage or injury caused
 - Use of weapons
 - Breach of trust

CIRCUMSTANCES OF THE OFFENDER

- Prior Convictions, including response to previous orders
- Plea of guilty
- Remorse, demonstrated for example by:
 - Reparation for any injury, loss or damage made prior to sentencing
- Co-operation with the Police
- Character
- Background, including cultural background
- Age
- Means
- Physical condition/ mental capacity
- Prospects for rehabilitation
- Deterrent effect that any sentence may have on the person
- Alcohol/drugs but only to show out of normal character
- Parity with like offenders
- Special hardship

RANGE OF SENTENCING ORDERS

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- Imprisonment
- Suspended term of imprisonment (partially or wholly)
- Community Service Order
- Probation Order
- Fine, Compensation Order, or Restitution Order
- Adjournment with Undertakings (with or without a conviction)
- Record a conviction and discharge the offender
- Dismiss the charge without conviction

The range of sentencing orders set out by the *Sentencing Act 1997* are found in section 7 of the Act as follows:

7. A court that finds a person guilty of an offence may, in accordance with this Act and subject to any enactment relating specifically to the offence –

- (a)** record a conviction and order that the offender serve a term of imprisonment; or
- (b)** record a conviction and order that the offender serve a term of imprisonment that is wholly or partly suspended; or
- (c)** record a conviction and, if the offender has attained the age of 18 years and the offence is punishable by imprisonment, make a community service order in respect of the offender; or
- (d)** with or without recording a conviction, make a probation order in respect of the offender if the offender has attained the age of 18 years; or
- (e)** record a conviction and order the offender to pay a fine; or
- (f)** with or without recording a conviction, adjourn the proceedings for a period not exceeding 60 months and, on the offender giving an undertaking with conditions attached, order the release of the offender; or
- (g)** record a conviction and order the discharge of the offender; or
- (h)** without recording a conviction, order the dismissal of the charge for the offence; or
- (i)** impose any other sentence or make any order, or any combination of orders, that the court is authorised to impose or make by this Act or any other enactment.

THANKS

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