

14 Sentencing

14.1 Introduction

At the end of a trial, after you have heard and considered all the relevant evidence, you may sentence the offender to an appropriate sentence without delay if straightforward or adjourn the case to make inquiries and receive reports as required.

"Sentence" includes an order following conviction for which provision is made in Division [15.3](#) of the Crimes Act 2016 or in [Motor Traffic Act 2014](#): s 2 CPA. .

Remember that a person charged and found guilty of an offence has the right to be sentenced to a punishment that is appropriate to the circumstances of the offending.

Both the District and Supreme Court may pass any sentence (and combine any two or more of the sentences) and make any order, authorised by law under the Crimes Act 2016 or any other written law.

14.2 Jurisdiction

14.2.1 Jurisdiction for sentencing-District Court

ss [7](#), s [7A](#), and [8](#), [9](#) CPA

You must not exceed your sentencing jurisdiction.

The District Court may pass any sentence authorized by the [Crimes Act 2016](#) or in any other written law except for:

- a sentence of death
- a term of imprisonment exceeding five years in respect of any one offence
- a fine in an amount exceeding \$50,000 in respect of any one offence
- any written law which expressly provides that the District Court has no jurisdiction; or the Supreme Court has the original jurisdiction over the criminal cause or matter: s [7](#) CPA
- any person who has, on at least 2 previous occasions been convicted of any sexual offence (whether similar or not) shall be declared a habitual sexual offender and shall be sentenced to life imprisonment without eligibility for parole: s [7A](#) CPA.

You may pass any lawful sentence combining any two or more of the sentences which the District Court is authorised by law to pass, subject to the provisions of the Crimes Act 2016 and of any other written law: s [8\(1\)](#) CPA.

In determining the extent of the jurisdiction of the District Court under section 7 of this Act, any term of imprisonment which is, or may be imposed in default of payment of a fine, costs or compensation shall be deemed not to be a sentence of imprisonment passed in respect of the offence for which the fine was imposed: s [8\(2\)](#) CPA.

Where a person is convicted at one trial of two or more offences you must pass sentence separately in respect of each offence. If a sentence of imprisonment is passed for either of these offences, the sentences shall run consecutively in such order as the Court directs, unless that Court directs that they run concurrently: s [9\(1\)](#) and [\(2\)](#) CPA.

The maximum aggregate sentences of imprisonment and fine which you may impose on any one person at trial are:

- imprisonment for 10 years
- fines up to \$75,000 dollars in total: s [9\(3\)](#) CPA.

For deciding if there is a right of appeal, the aggregate of fines imposed on one person at one trial shall be deemed to be a single sentence: s [9\(4\)](#) CPA.

14.2.3 Lay magistrates

s [6](#) DCA

A lay magistrate is any magistrate other than the Resident Magistrate. Lay magistrates have jurisdiction to hear and determine bail applications for offences for which the maximum term of imprisonment is 12 months, in which case the court should be composed of three lay magistrates. Lay magistrates also have jurisdiction to hear and determine family matters for which jurisdiction is vested in the District Court.

14.3 Sentencing principles

s [278](#) CA

Consider which of these sentencing purposes are relevant when deciding on an appropriate sentence:

- **Punishment** - the accused is adequately punished
- **Deterrence** - to prevent crime by deterring the offender and other people from committing similar offences
- **Rehabilitation** - change the defendant's behaviour so they do not reoffend
- **Protection** - to protect the community
- **Accountability** - of the defendant for their actions and to punish the offender for their criminal behaviour
- **Denunciation** - of criminal conduct
- **Reparation** - recognize harm to the victim and community

14.4 Sentencing discretion

ss [282](#) and [282A](#) CA

If under this Act, an offender is liable to imprisonment for life or a stated term, you may still impose a sentence of imprisonment for a lesser term and likewise a lower amount for fines: s [282](#) CA.

Note: This section does not limit any sentencing discretion you have otherwise. The level of sentence in each case is a matter for you to decide but it must be just and correct in principle. This requires you to balance:

- the gravity of the offence, and
- the needs of the society, and
- an expedient and just disposal of the case.

In determining the final term of imprisonment, you must not discount any period served in remand pending or prior to a trial, for offences under Part 7 of the Crimes Act 2016 (Sexual offences): s [282A](#) CA.

It is important to ensure that sentences are consistent, otherwise this leads to individual injustice. A means of ensuring consistency is to seek continuity in the approach to sentencing.

On sentencing, either the accused or counsel may make submissions, but not both.

14.4.1 General sentencing considerations

s [279](#) CA

Although, there is no set or fixed formula in applying the principles, you may have to consider and assess the following factors when selecting the most appropriate penalty or sentence:

- the purpose of the legislation
- the nature and circumstances of the offence
- the personal circumstances of the offender including their character, antecedents, age, means, physical or mental condition
- the welfare of the community
- any other offences and if the offence forms part of a course of conduct
- any injury, loss or damage resulting from the offence
- the personal circumstances, effect of the offence of any victim (any victim impact statement available)
- the degree to which the person has shown remorse by making reparations for any injury, loss or damage resulting from the offence or in another way
- if the person pleaded guilty

- the degree to which the person cooperated in the investigation of the offence
- the deterrent effect of any sentence or order may have
- ensuring that the person is adequately punished for the offence
- the prospects of the person's rehabilitation
- the effect that any sentence may have on any of the person's family or dependants
- if the offence was committed by an adult in front of a child (other than another offender or a victim of the offence)—those circumstances.

14.5 Structured approach to sentencing

14.5.1 Starting point

Identify the range within which sentences have been imposed for that offence.

The court may also find the suitable range by referring to:

- guideline judgments from superior Courts
- sentences from other Magistrates' Courts for the same offence
- sentences for similar offences from overseas jurisdictions.

Then consider the starting sentence. This is the sentence you would impose based on the facts alone (not including the offender's personal circumstances). Where do the facts of this case fall, from the least serious to the most serious offence of this type?

Start with a brief summary of the facts setting out the good or bad features. Are there any aggravating personal circumstances? Likewise, are there any good personal circumstances that would justify decreasing the start sentence? Be specific on how these affect the starting sentence.

The statutory maximum sentence is usually specified in the Crimes Act 2016 or the relevant legislation.

14.5.2 Aggravating and mitigating factors

The Crimes Act 2016 may set out aggravating circumstances for specific offences. For example, see section 79, for assault offences:

- is, or pretends to be, armed with an offensive weapon,
- is in company with 1 or more people,
- intends to commit another offence,
- intends to avoid the lawful arrest or detention of any person.

Aggravating factors include:

- the use of violence,
- persistent offending,

- serious damage to property,
- age and vulnerability of victim,
- value of property stolen,
- premeditated acts,
- danger to the public, and
- prevalence.

Mitigating factors include:

- (early) guilty plea (but you cannot penalise an offender for exercising their right to plead not guilty),
- genuine remorse and steps taken to restore the damage or make reparation payments to the victim(s) for the harm done,
- reconciliation (having made peace with/friendly relationships with the victims),
- young offender,
- first offender,
- provocation, and
- no harm or minimal harm to person or property.

There are also factors that float between these two categories, depending on the circumstances. In these cases, you need to evaluate their weight to decide on an appropriate sentence.

Factors in between include:

- previous good character
- family ties and custom ties
- the defendant's responsible position
- the defendant played a minor role.

14.5.3 Scaling to the appropriate sentence

Scaling means increasing the sentence to reflect aggravating circumstances, and decreasing it to reflect mitigating circumstances. This involves your own moral judgement, and you may use your own knowledge and experience of affairs in deciding the issue.

Any discounts you give for certain factors are at your discretion but must be reasonable and justifiable. You may consider reasonable reductions for the following:

- time spent in custody (if allowed by law),
- punishment meted out by other tribunals,
- traditional or customary penalties, and
- guilty plea.

If the defendant has pleaded guilty they will be entitled to a deduction. The deduction is typically a maximum of 25% to 33% of the above sentence. The maximum is only given where the guilty plea is at the earliest reasonable opportunity. The later it is before trial, the lower the percentage, eg: if guilty pleas one to two days before trial then perhaps only 10% to 15%. State this percentage for a guilty plea.

14.5.4 Totality principle

This is the final analysis stage of sentencing. When impose a sentence, the court must review the aggregate to ensure that the overall effect is just.

The totality principle requires to look at the overall sentence and ask whether the total sentence reflects the totality of the offending. Some obvious considerations include:

- multiple counts,
- serving prisoner,
- concurrent /consecutive terms,
- avoiding excessive lengths, and
- suspending the sentence.

If conduct constitutes an offence under 2 or more Acts or 2 or more provisions under the same Act, the defendant may be prosecuted under any of those Acts or provisions but is not liable to be punished more than once for the same conduct: s [272 CA](#).

Having considered all the relevant mitigating and aggravating factors of the offending and the offender, and after determining the overall sentencing principles that you wish to apply. You will then have a final sentence. Ask yourself if this is a fair sentence overall for this offence and this offender?

It is good practice to give reasons for all decisions, and this is particularly important if the sentence you arrive at is substantially more or less than the normal sentence.

See [Jeremiah v Republic \[2018\] NRCA 1; Criminal Appeal Case 1 of 2018 \(7 December 2018\)](#).

14.6 Sentencing checklist

Sentencing is one of the most difficult areas of judicial discretion, so it is important to develop a systematic method of working. The following checklist provides a working guide and is not exhaustive:

14.6.1 Sentencing checklist

Ensure that you have the fullest information:

- full summary of facts;
- latest record of previous convictions;
- any special reports if applicable (welfare/medical/psychiatrist).

Do not sentence on important disputed facts:

- if the dispute is over material issues, arrange a hearing of facts for sentencing purposes;
- if the offender declines to have such a hearing, record this before proceeding further.

Analyse the information relating to the offence:

- the nature of the charge including the maximum penalty;
- the gravity of the particular facts of the case;
- aggravating factors;
- mitigating factors.

Consider the views of the victims and any public concerns as a reflection of the final decision taken:

- account for any specific provisions relevant to the offender (juvenile/elderly/handicapped).

Account for principles or guidelines issued by superior courts:

- guideline judgments;
- circular memoranda issued by the Chief Justice.

Determine which sentencing principle(s) apply/ies:

- deterrence/prevention/rehabilitation/punishment/restoration.

Account for any mitigating or aggravating factors in respect of the offender and the offending.

Consider the totality of sentence imposed.

Deliver the sentence, with reasons. Using the Sentencing Format below will ensure adequate justification for the sentence.

14.7 Sentencing format

It is suggested that you use the format following when delivering sentence:

- The charge.
- The facts of the particular offending:
- If there was a defended hearing, refer to the evidence.
- If there was a guilty plea, refer to the prosecution summary of facts.
- The defence submissions or comments on the facts of the offending.
- Comment on the offence, if relevant:
- The seriousness of the particular type of offending.
- Whether it is a prevalent offence.
- Its impact upon the victim.
- Note any statutory indications as to the type of penalty to be imposed.
- Identify the tariff and pick the starting point.
- The personal circumstances of the offender.
- Note any prior offending if relevant.
- How many offences?
- How serious?
- When committed?
- Of the same kind?
- Is there a current suspended sentence?
- The offender's response to sentences in the past.
- Defence submission and any evidence called by the defence.
- The contents of any reports submitted to the Court
- Your views summarising the mitigating and aggravating features.
- Scale, then consider the totality of the sentence.
- Pronounce sentence.

14.8 Types of sentence

s [277](#) CA

If you find a person guilty of an offence, you may, (subject to any particular provision for that offence and this Act) do any of the following:

- record a conviction and order that the offender serve a term of imprisonment
- with or without recording a conviction, order the offender to pay a fine
- record a conviction and order the discharge of the offender (and s 190(4) CPA)
- without recording a conviction, order the dismissal of the charge for the offence
- impose any other sentence or make any order that is authorised by this or any other law of Nauru.

Note: Nauru does not recognise any form of corporal punishment.

14.8.1 Discharge of accused

s [171](#) CPA

Where, at the close of the case for the prosecution or after receiving any evidence in defence, you consider that the evidence against the accused is not sufficient to put the accused on trial, you must order the accused to be discharged as to the charge(s) under inquiry: s 201 CPA.

Such discharge is not be a bar to any subsequent charge in respect of the same facts.

You may still investigate any other charge(s) that the accused may have been summoned or otherwise brought before you or which it may appear that the accused has committed.

14.8.2 Quashing of information

s [192](#) CPA

Where any information does not state, and cannot by any alteration under section 191, be made to state, any offence, it shall be quashed and the defendant shall be discharged.

See the chapter on [Defended Hearings](#) to find out more about amending an information.

14.8.3 Imprisonment

ss [274](#), [280](#) and [282](#) CA, s [9](#) CPA

A sentence of imprisonment may be imposed on a person only if you think that any of the following factors apply:

- the person has shown a tendency to violence towards other people

- the person is likely to commit a serious offence if allowed to go at large
- the person has previously been convicted of an offence punishable by imprisonment
- any other sentence would be inappropriate due to the gravity or circumstances of the offence
- the protection of the community requires this
- a sentence of imprisonment is necessary to give proper effect to sections [278](#) and [279](#) CA (above): s [280](#) CA.

You must impose a definite term of imprisonment that is not more than the maximum term given in the statute creating the offence and your maximum jurisdiction.

But you may impose a sentence of imprisonment that is less than the maximum penalty: s [282\(2\)](#) CA.

An offender liable to imprisonment maybe sentenced to pay a fine up to \$3000 in addition to or instead of imprisonment: s [274](#) CA.

Sentences of imprisonment for two or more offences should run consecutively, unless the court orders the sentences to be concurrent: s [9\(2\)](#) CPA. The maximum aggregate sentences of imprisonment and fine which may be imposed by the District Court on any one person at one trial are:

- (a) imprisonment for 10 years; and
- (b) fines totalling \$75,000.

Ideally, imprisonment should only be considered when no other sentence is appropriate.

14.8.4 Fines

ss [275](#), [281](#) CA

Subject to sections [278](#) (sentencing purposes) and [279](#) (general principles), if you decide to fine a person you must take into account (you may still fine even if you cannot find these matters out):

- the means of the person
- the extent to which payment of the fine will be a burden on the person: s [281](#) CA.

As a penalty, fines are sometimes regarded as a sufficient or convenient punishment for less serious offences. Also they can be regarded as an appropriate penalty for offences that are criminal more in form than in nature.

You have a discretion to fix a fine, but such fine cannot be more than the stipulated maximum. Of course, lesser fines than the maximum may be imposed: s [282\(3\)](#) CA.

If there is no stated maximum penalty for an offence, the fine you impose should not be excessive and must be within your sentencing jurisdiction.

You may order a term of imprisonment if an offender defaults on payment of a fine for a term not exceeding the lower of the following:

- 1 day for each 80 cents of the fine remaining unpaid; or
- 6 months: s [275](#) CA.

14.8.5 Compensation

s [121](#) and [123](#) CPA

You may order the whole or any part of any fine imposed or money in the possession of any person convicted of an offence to be put towards:

- compensation to any person injured by their offending in addition to or in substitution for any other punishment or to offset that compensation
- compensation to any person for any loss they sustained from the offending for the restitution or disposal of any property or items
- offsetting the costs or expenses properly incurred in the prosecution: s [121](#) CPA.

In deciding if you should impose a fine and how much, you may consider if an order for compensation is appropriate but also the means of the accused to pay: s [121\(2\)](#) CPA.

If a case is on appeal no compensation payment shall be made before the presentation period for the appeal has elapsed or, if an appeal is presented, before it is decided: s [121\(3\)](#) CPA.

You may promote reconciliation and facilitate an amicable settlement of all proceedings for common assault or any other offence where a fine or sentence of imprisonment of up to one year may be imposed, and order the proceedings to be stayed or ended: s [123](#) CPA.

14.8.6 Probation

ss [7-17](#) [Criminal Justice Act](#) (CJA)

Where a person is convicted of an offence punishable by imprisonment you may, instead of sentencing the accused to imprisonment, make a probation order:

- releasing the person on probation for a period between one and three years
- for a period, up to one year after their release from custody, if the penalty is imprisonment for less than one year: s [7\(1\)](#) CJA.

You may also sentence that person to pay a fine authorised by law: s [7\(2\)](#) CJA.

You may also make a probation order for up to one year (at the same time as a community service order), starting on either the start or finish that community service order: s [8](#) CJA.

The Registrar of the Court must notify the Secretary for Justice.

Every probationer should be under the supervision of a probation officer during their probation period: s [10](#) CJA.

Section 11 sets out the mandatory conditions of a probation order.

A probationer who breaches their probation is guilty of an offence and is liable to imprisonment for a term not exceeding three months or to a fine not exceeding \$100: s [15\(1\)](#) CJA.

You may in addition to or instead of sentencing the probationer:

- extend the probation period for a probation order under section 7 for up to 3 years after the starting date; or under section 8 for up to 1 year after their community service expires
- vary or add any conditions of their probation order
- if an application is made under section 16 - sentence the probationer accordingly: s [15\(2\)](#) CJA.

A probation officer may apply to you to sentence the defendant for the offence for which they were released on probation where they are:

- convicted of another offence committed during the period of probation; or
- charged with a breach of their probation order: s [16](#) CJA.

If the defendant is sentenced for an offence of imprisonment for:

- life or for a term of one year or more, their probation order expires: s [17\(1\)](#) CJA;
- less than one year, their probation continues while they are in custody, and on their release, they stay on probation for the remainder of that time, unless discharged sooner: s [17\(2\)](#) CJA.

14.8.7 Community service

ss [19-27](#) CJA

Section [19](#) CJA establishes or revokes community service groups.

You must not make a community service order in respect of any person until you have considered a probation officer's report on their character, personal history and any other relevant circumstances: s [24\(1\)](#) CJA.

A community service order is not invalid even if such a report was not made or considered by the court but the prosecutor or their legal counsel may at any time apply to have the sentence reviewed: s [24\(2\)](#) and [\(3\)](#) CJA.

You may make a community service order (and/or impose a fine or other monetary penalty but no other sentence) for a person aged 13 years of age or more who is found guilty of an offence punishable by imprisonment (whether or not convicted) for a period up to 12 months: s [22\(1\)-\(3\)](#) CJA.

You may also make a community service order (subject to section 16) in any case where an order for the imprisonment of any person for non-payment of a fine may be imposed (even if not punishable by imprisonment) and after considering a probation officer's report, for a period not exceeding 12 months: s [23\(1\)](#) CJA.

On doing so, the remainder of the offender's original sentence shall be deemed to be cancelled in respect of any part of the fine unpaid when the order was made: s [23\(3\)](#) CJA.

The offender may apply to vary, suspend, or cancel any such order made under section 23, within 7 days of the service of the order on them. Where a court receives such an application, the order shall be suspended until final determination of the application has been made by the Court: s [23\(5\)](#) and [\(6\)](#) CJA.

Section [26](#) sets out the mandatory conditions of work under a community service order.

The offender, the Chief Controller, or a probation officer (if a probation order applies concurrently) may apply to vary or cancel a community service order at any time. You may vary or cancel the community service order if there has been a change of circumstances since the order was made or, cancel the order if you think that continuing the order is no longer necessary in the interests of the community or the offender: s [27\(1\)-\(2\)](#) CJA.

14.8.8 Power to award costs

s [32](#) DCA

You have the discretion to award such costs in a cause or matter you think fit and just.

14.8.9 Appeals to the Supreme Court from the District Court

s [38](#) SCA

The Supreme Court Act 2018 provides for appeals from the District Court to the High Court in criminal cases against conviction or sentence or both: s [38](#) SCA.

See the chapter on [Appeals](#) to find out more about appeals in criminal cases.