



# SENTENCING & PUNISHMENT

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Public Defender



# What is a public defender?

Barristers appointed by the Attorney General to represent clients who are charged with serious (indictable) offences.

To be eligible to have a Public Defender you must be entitled to Legal Aid or the Aboriginal Legal Service.

There are 29 Public Defenders across NSW. Approximately 100 Crown prosecutors.

We are paid by the Government and our salaries are identical to the Crown prosecutors.

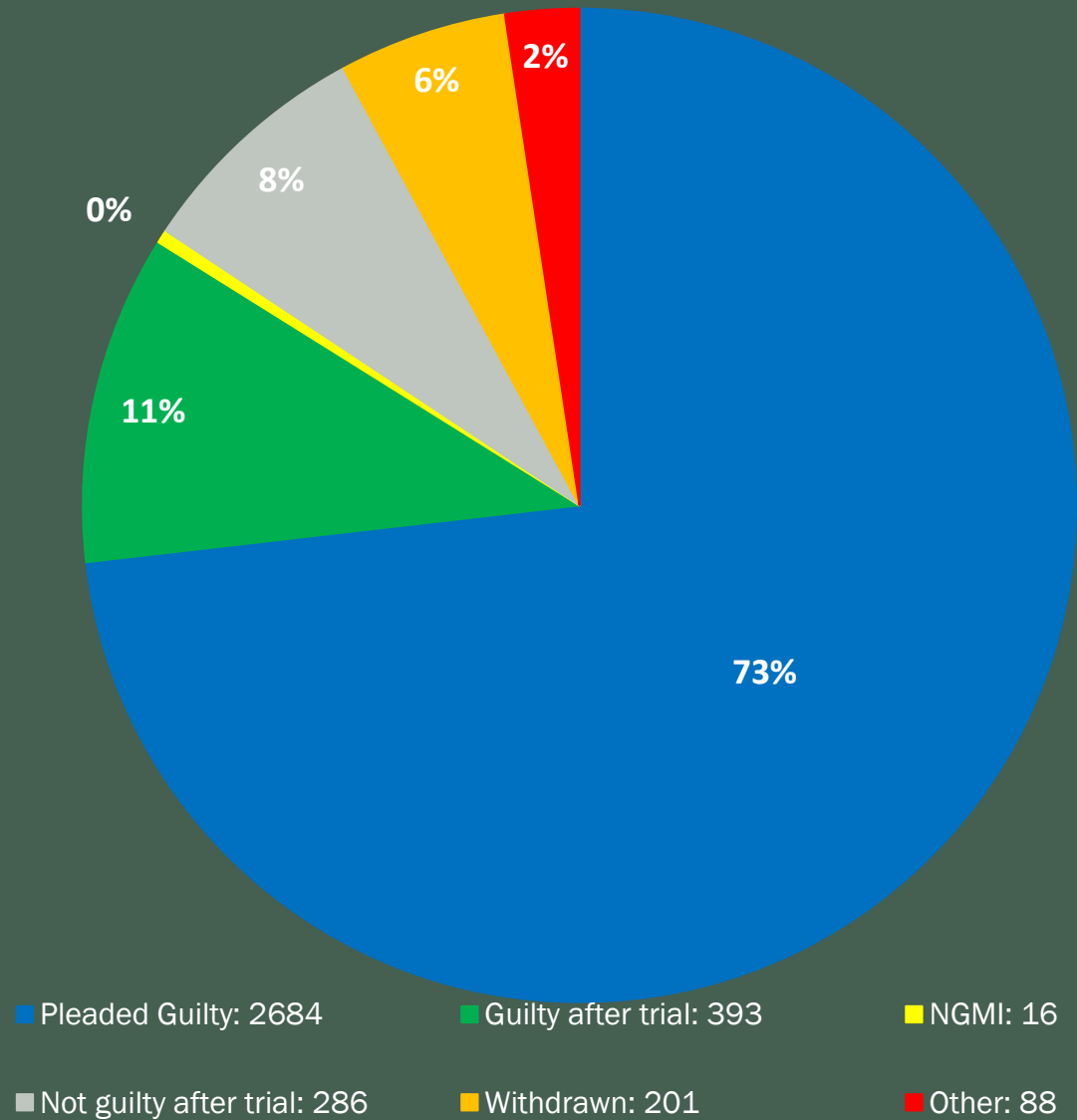
Any matters we do not accept will be handled by barristers at what is known as 'the private bar'.

# Steps in the criminal justice process

- Charging – Court Attendance Notice
- Appearance in the Local Court (regardless of it being a NSW or Commonwealth offence)
- Matters which are less serious can be finalised here.
- If they are more serious, the matters will be referred to a higher court – either the District Court or Supreme Court – depending on the charge. This process is called arraignment.
- Accused are incentivised to plead guilty with sentences being reduced for those people who do plead guilty. In the Local Court – 25% off their sentence – 10% or 5% in higher Court's depending on when the plea is entered. You can plead guilty at any time, but the sooner the better.
- Trial before jury or judge alone (more people during covid but not always possible)
- Sentencing occurs if the person is found guilty.

# Overview of sentencing

- The Bureau of Crime Statistics and Research (BOCSAR) reports that in NSW between 1 July 2020 until 30 June 2021 there were 140,644 individuals whose matters were finalised.
- About 30,000 were traffic and vehicle matters.
- The vast majority of cases resolve with either a plea of guilty being entered or a conviction after trial, specifically:
- **89.4% of people charged with an offence were either found guilty after trial / hearing or pleaded guilty to at least 1 charge.**
  - *Local Court: 90%*
  - *District Court: 84.4%*
  - *Children's Court: 79.9%*
  - *Supreme: 75.3%*



## District Court finalisations

- Total number of defendant's whose matters were finalised in the District Court between 1 July 2020 to 30 June 2021 was 3,668 (about 400 lower than pre Covid).
- There were 695 defended hearings (i.e, 19% went to trial.)
- Of that 695 that went to trial there were 393 convictions (56% conviction rate).

# More statistics

- 92.5% of criminal matters are finalised in the Local Court.
- The median time from arrest to finalisation for defendants finalised by trial in the District Court in 2020/21 increased by 19 days to 742 days.
- The median time from arrest to finalisation for defendants finalised by sentence fell by 25 days to 456 days.
- District Court finalisations fell by 12% (down 518) between 2019/20 and 2020/21, from 4,186 to 3,668. This was in addition to the drop of 14% (down 691) seen between 2018/19 and 2019/20.

<https://www.bocsar.nsw.gov.au/>

Every criminal offence carries its own maximum penalty, for instance, 2 years custody for an assault.

Depending on the type of offence, one of these two Acts will play a role in determining the sentence:

- ***Crimes Act 1914 (Cth) – Part 1B***
- ***Crimes (Sentencing Procedure) Act 1999 (NSW)***

# What is the purpose of sentencing?

Section 3 of the NSW *Crimes (Sentencing Procedure) Act* lists the following:

- (a) to ensure that the offender is adequately punished for the offence,
- (b) to prevent crime by deterring the offender and other persons from committing similar offences,
- (c) to protect the community from the offender,
- (d) to promote the rehabilitation of the offender,**
- (e) to make the offender accountable for his or her actions,
- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.



# What percentage of convicted offenders who receive a penalty other than prison re-offend over the next 12 months?

	2017	2018	2019
Adults	20.5%	20.9%	21.0%
Juveniles	47.7%	44.4%	46.0%

# What percentage of sentenced prisoners released from custody re-offend within the next 12 months?

	2017	2018	2019
Adults	40.5%	42.0%	42.4%
Juveniles	65.3%	65.1%	63.9%

# Sexual assaults (this is a broad term)

- Australian Institute of Health & Welfare study from August 2020 revealed that:
- Since 2010 reporting of sexual assault has increased 30%. The thinking is that this may reflect an increased willingness of victims to come forward.
- Other numbers:
  - *97% of offenders in sexual assaults are male.*
  - *Females are 7 times more likely to be the victim of an assault.*
  - *77% of offenders in sexual assaults were known to the victim.*
  - *The demographic most responsible for sexual assaults is aged 15 to 19.*



# Sentencing considerations

- Objective seriousness of the offence

VS

- Subjective considerations of the offender

# Mitigating circumstances and Aggravating circumstances

- “Mitigating” essentially means factors that may lessen the severity of the sentence, for example, pleading guilty, assisting authorities, health problems including mental health issues.
- “Aggravating” circumstances are matters that make the crime worse. For instance, in murder, it is worse if the offence is premeditated or gang related.

# “instinctive synthesis”

- Victim Impact Statements are permitted to be read.
- After taking all of those matters into account the sentencing judge makes a determination of the sentence based on the “instinctive synthesis” – that is, weigh up all the factors and make an assessment of the minimum amount of time the person must spend in custody (“the non-parole period”) and the maximum amount of time they could spend in custody (“the head sentence.”)

# Punishment can take many forms

- Full imprisonment (in 2020 / 21 this only represented 10.3% of punishments).
- Intensive corrections orders: like parole as supervision is required and must involve some form of treatment and can include home detention (21.3% of punishments).
- Community corrections order (like community service orders but with supervision - (23% of punishments).
- Fines (36% of punishments)
- Conditional release order (convicted but no punishment recorded)
- Conviction with no other penalty.
- Caution (Children's Court)

**Note that periodic detention, suspended sentences and bonds do not exist anymore**

# Appealing a sentence

- If you want to appeal a sentence from the Local Court, it goes to the District Court. An offender has an automatic right of appeal and will be re-sentenced.
- If you want to appeal a sentence from the District Court or Supreme Court, you appeal to the Court of Criminal Appeal. An offender must show that there has been an error.
- Appeals to the Court of Criminal Appeal for re-sentence succeed about 40% of the time.
- Make sure you speak to your client after sentence and advise them of their appeal rights. Explain that an appeal can also be brought by the Crown.