

Understanding the sentencing process

OUR POSITION:

Sentencing represents the final stage of the criminal justice process and is the point at which the court determines the legal consequences for an offender following a finding of guilt. It is a complex judicial task that requires judges to balance multiple and sometimes competing considerations. Bravehearts advocates for systems to:

- Strengthen Victim Impact Consideration
- Enhance Transparency and Communication
- Ensure Proportionality and Consistency
- Prioritise Public Protection
- Support Survivor Participation
- Consider Tailored Sentencing Options
- Review Plea and Mitigation Practices
- Develop Specialist Judicial Training
- Incorporate Community and Expert Input
- Strengthen Post-Sentencing Support

NB: This paper broadly discusses the sentencing process, the final section outlines Bravehearts' position on how these processes should be applied in sentencing for child sexual abuse and exploitation.

Background

Sentencing represents the final stage of the criminal justice process and is the point at which the court determines the legal consequences for an offender following a finding of guilt. It is a complex judicial task that requires judges to balance multiple and sometimes competing considerations, including the seriousness of the offence, the circumstances of the offender, the harm caused to victims, and the broader interests of the community. Sentencing is guided by legislation, case law, and established sentencing principles, yet it also relies heavily on judicial discretion and reasoning to ensure that outcomes are proportionate and just in each case (Hester, 2023). This discretionary nature means that sentencing operates at the intersection of legal rules, normative theories of punishment, and practical decision-making within courts (Plesničar, 2024). Understanding the sentencing process is therefore essential for examining how punishment is determined in practice and how broader aims of the criminal justice system, such as deterrence, rehabilitation, retribution, and community protection, are translated into specific sentencing outcomes.

The Purposes of Sentencing (The “Why”)

Sentencing serves several recognised purposes within criminal justice systems, reflecting broader theories about why societies punish offending behaviour. These purposes are often embedded in sentencing legislation and judicial reasoning and guide courts in determining an appropriate and proportionate sanction. While presented as distinct rationales, they frequently operate together in practice, with judges balancing multiple objectives when imposing a sentence. Together, these purposes illustrate the complex and sometimes competing considerations that shape sentencing decisions in modern criminal justice systems.

Deterrence

Deterrence is a central justification for punishment and is typically understood in two forms: general deterrence and specific deterrence (Nagin, 2018; Paternoster, 2012). General deterrence aims to discourage others in the community from committing similar offences by demonstrating the consequences of criminal behaviour, whereas specific deterrence focuses on discouraging the individual offender from reoffending by reinforcing the costs of criminal conduct (Nagin & Telep, 2020). Although deterrence has long been influential in sentencing policy, its effectiveness remains widely debated (Braga, Weisburd & Turchan, 2019; Tonry, 2020). A substantial body of research suggests that the certainty of punishment is generally more influential in shaping behaviour than the severity of sanctions, raising questions about the extent to which harsher sentences meaningfully deter crime (Petrich et.al., 2021; van Rooij, Kuiper & Piquero, 2025).

Retribution (Just Deserts)

Retribution, often described through the principle of “just deserts,” reflects the idea that offenders deserve punishment proportionate to their moral culpability and the seriousness of the offence (Ryberg, 2021; Zisman & Rehren, 2024). Under a retributive framework, punishment is justified because it restores moral balance by holding individuals accountable for their actions, yet critics caution that without principled limits it risks resembling vengeance (Ryberg, 2021). Contemporary approaches therefore emphasise principled proportionality, ensuring that punishment reflects the gravity of the offence without exceeding what is morally justified.

Incapacitation

Incapacitation focuses on protecting the community by limiting an offender’s ability to commit further offences. This preventive rationale justifies imprisonment or restrictive orders on the basis that removing an offender from the community, even temporarily, reduces the risk of harm to others. Incapacitation is particularly influential in cases involving serious or repeat offending where courts perceive a heightened risk to public safety (Al Weswasi, 2024; Martínez-Garay, 2023).

Rehabilitation

Rehabilitation emphasises addressing the underlying causes of offending behaviour and supporting offenders to reintegrate into society. From this perspective, sentencing can provide opportunities for treatment, education, behavioural programs, and other interventions designed to reduce the likelihood of reoffending (Beaudry et.al., 2021). Rehabilitation reflects a forward-looking rationale that prioritises long-term crime reduction and social reintegration. While widely supported in principle, the effectiveness of rehabilitative approaches often depends on the availability of appropriate programs and the willingness and capacity of offenders to engage with them (McCausland et.al., 2025).

Denunciation

Finally, denunciation refers to the symbolic function of sentencing in expressing society’s condemnation of criminal conduct. Through denunciatory sentencing, courts communicate that particular behaviours are unacceptable and reaffirm the community’s moral and legal standards (du Bois-Pedain, 2025; Oancea, 2025). This purpose overlaps with general deterrence but focuses more

directly on the expressive role of the law in affirming social norms and recognising the harm caused to victims and the community.

Sentencing Principles

The principles of sentencing provide a framework to ensure that penalties are fair, consistent, and tailored to the offence. Key principles (such as proportionality, parsimony, totality, parity, and individualism) guide courts in imposing sentences that reflect the seriousness of the crime, avoid excessive punishment, maintain consistency across similar cases, and account for the unique circumstances of each offender (Sentencing Advisory Council, 2026). Together, these principles aim to balance justice for the victim and community with fairness to the individual.

Proportionality

Proportionality is a foundational limiting principle in sentencing, ensuring that the punishment imposed corresponds to the seriousness of the offence. It requires courts to calibrate sentences so that they reflect both the nature and gravity of the criminal conduct, preventing unduly lenient or harsh outcomes. At the heart of proportionality is the relationship between harm and culpability (Brown Coverdale, 2025): sentences should increase with the severity of harm caused and the moral blameworthiness of the offender, maintaining fairness and public confidence in the justice system.

Parsimony

Parsimony directs courts to impose the least severe sentence necessary to achieve the purposes of sentencing (Sentencing Advisory Council, 2026). This principle prevents excessively punitive measures and encourages restraint, ensuring that penalties are sufficient but not disproportionate. By applying parsimony, courts balance the need for accountability with fairness, avoiding unnecessary hardship while still upholding justice.

Totality

The principle of totality ensures that when an offender faces multiple charges, the combined sentence is just and proportionate to the overall criminality (Sentencing Advisory Council, 2026). Courts consider the cumulative effect of multiple sentences to avoid excessively harsh outcomes, balancing the need for accountability across offences with fairness in the total penalty imposed. Totality safeguards against sentences that, while individually justified, become unduly severe when aggregated.

Parity

Parity promotes consistency in sentencing by ensuring that similar offenders committing similar offences receive comparable penalties (Sentencing Advisory Council, 2026). This principle supports equality before the law, aiming to discourage overly lenient, arbitrary or divergent sentences, and reinforces public confidence in the judicial system. While individual circumstances may lead to variations, parity acts as a benchmark for fairness across cases.

Individualisation

Individualism recognises that each offender is unique, and sentencing should account for personal circumstances, background, and potential for rehabilitation. Courts should tailor sentences to the specific offender while still respecting and upholding the severity of the offence, balancing general deterrence with the offender's prospects for reform (Henham, 2022; Hester, 2025).

Consistency and Guideline Judgments

A defining feature of sentencing is the role of judicial discretion and reasoning. Although legislation often sets maximum and minimum penalties, judges retain significant discretion to determine the precise sentence within those limits. This discretion allows courts to consider a wide range of factors, including the seriousness of the offence and its impact, aggravating and mitigating circumstances, the offender's criminal history, and their prospects of rehabilitation (Hester, 2025). Judicial reasoning is therefore central to sentencing decisions, as judges must weigh these factors and articulate reasons that justify the penalty imposed. Discretion is considered essential because rigid or uniform sentencing would fail to account for the unique circumstances of individual cases and offenders. Judges must balance multiple and sometimes competing objectives while responding to the particular facts of each case (Henham, 2022; Ryberg, 2025).

Factors Considered in Sentencing (The “How”)

When determining a sentence, courts consider a range of factors that guide how the punishment should be imposed. These include circumstances that increase or reduce the seriousness of the offence, characteristics of the offender, and the impact on the victim. Together, these factors help ensure that sentences are fair, proportionate, and tailored to both the offence and the individual.

Aggravating Factors

Aggravating factors are circumstances that increase the seriousness of an offence or the offender's culpability. Examples include prior convictions, use of violence or weapons, targeting vulnerable victims, or committing the offence in a particularly callous or premeditated manner (Queensland Sentencing Advisory Council, 2023). The presence of such factors generally leads to a harsher sentence, reflecting society's condemnation of more egregious conduct.

Mitigating Factors

Mitigating factors, by contrast, are circumstances that reduce the offender's moral blameworthiness or the perceived need for punishment (Queensland Sentencing Advisory Council, 2023). These may include lack of prior criminal history, genuine remorse, minor involvement in the offence, or evidence of provocation. Courts weigh these factors to ensure the sentence is tempered and proportionate, avoiding unnecessary harshness.

Offender Characteristics

Individual offender characteristics play a significant role in tailoring the sentence. Age, mental health, socio-economic background, family responsibilities, and prospects for rehabilitation may influence both the type and length of a penalty. Considering these factors aligns with the principle of

individualism, promoting sentences that are just and constructive rather than purely punitive (Farmer, Guala & Miller, 2025).

Victim Impact

The impact of the offence on the victim is a critical consideration. Courts take into account physical, emotional, and financial harm, as well as broader consequences for the victim's family or community (Queensland Sentencing Advisory Council, 2023). Victim impact statements help ensure the sentence reflects the real-world consequences of the offence, reinforcing both accountability and societal protection.

Plea and Cooperation

An offender's plea and level of cooperation with authorities can also affect sentencing (Queensland Sentencing Advisory Council, 2023). Early guilty pleas and meaningful cooperation with investigations or prosecutions may lead to a reduced sentence, recognising the benefits of saving court resources, avoiding protracted trials, and showing remorse. This encourages constructive engagement with the justice process while still balancing accountability.

Tensions and Contemporary Debates

Sentencing for child sexual abuse and exploitation presents unique challenges and tensions within the criminal justice system. Courts must balance the need for proportionality and public protection with principles of fairness and individualised sentencing. These offences often evoke strong community outrage, which can create pressure for harsher penalties, but judges must still ensure sentences are legally justified and consistent with established principles (Arnold, 2025; Farmer, Guala & Miller, 2025). This tension between societal expectations and judicial discretion is a recurring feature of sentencing debates in this area.

A key debate concerns the appropriate balance between punishment, deterrence, and rehabilitation. Questions remain about the effectiveness of purely punitive approaches in preventing recidivism and whether rehabilitation programs (particularly for younger or first-time offenders) can reduce long-term risk (Mears & Stafford, 2026). Courts must navigate these competing aims, weighing the protection of the public against the potential for meaningful reform.

Another contemporary concern is the consistency and transparency of sentencing. Research and high-profile cases have highlighted variability in sentences for similar offences, particularly where mitigating factors, plea decisions, or offender characteristics differ. This raises issues of parity and public confidence, with calls for clearer sentencing guidelines and greater judicial accountability (Uhl & Mamak, 2026). Additionally, advances in understanding the psychological impact of abuse on victims have influenced how courts assess harm and victim impact (Dufour, Ternes & Stinson, 2023), further impacting on sentencing decisions.

Finally, debates also focus on mandatory minimums and legislative responses. Some jurisdictions have introduced rigid sentencing frameworks for child sexual offences to reflect community condemnation and reduce perceived leniency. Critics argue that such measures can undermine judicial discretion, fail to consider individual circumstances, and contribute to overcrowding in the

criminal justice system (Frisch-Scott, Kimchi & Bucklen, 2023). The challenge remains to craft sentences that are just, proportionate, and informed by both evidence and evolving societal values (Henham, 2022).

Bravehearts Position

Sentencing for child sexual abuse and exploitation must balance consistency, fairness, and public protection, while also recognising the harm suffered by victims. Although current frameworks provide guidance, challenges remain in ensuring sentences are proportionate, predictable, and responsive to both offender circumstances and community expectations. Integrating victim and survivor perspectives is therefore essential to promote accountability, acknowledge the impact of the offence, and maintain confidence in the justice system. Bravehearts advocates for systems to:

- **Strengthen Victim Impact Consideration:** Ensure courts consistently integrate detailed victim impact statements, including physical, emotional, and psychological harm, into sentencing decisions.
- **Enhance Transparency and Communication:** Provide victims with clear information about the sentencing process, potential outcomes, and reasoning behind judicial decisions.
- **Ensure Proportionality and Consistency:** Develop clearer guidelines to promote consistency in sentences for similar offences, addressing perceived disparities that may undermine public confidence.
- **Prioritise Public Protection:** Ensure sentences reflect the need to protect the community from high-risk offenders, particularly in cases of repeat or severe offending.
- **Support Survivor Participation:** Facilitate opportunities for survivors to engage meaningfully in the justice process, including access to counselling and advocacy support during proceedings.
- **Consider Tailored Sentencing Options:** Encourage the use of programs that combine accountability with rehabilitation, where appropriate, while prioritising victim safety and confidence in outcomes.
- **Review Plea and Mitigation Practices:** Ensure that reductions for guilty pleas or mitigating circumstances do not inadvertently minimise the gravity of the offence or the victim's experience.
- **Develop Specialist Judicial Training:** Equip judges and sentencing authorities with education on the dynamics and long-term impact of child sexual abuse, trauma-informed approaches, and survivor needs.
- **Incorporate Community and Expert Input:** Engage psychologists, social workers, and child protection experts to inform sentencing about offender risk and victim vulnerability.
- **Strengthen Post-Sentencing Support:** Provide ongoing support for victims after sentencing, including updates on offender status and access to restorative justice or therapeutic programs if desired.

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