

# 06

## **SENTENCING**

- (A) Types of Sentences
- (B) Community Courts and Community Based Sentences
- (C) The Sentencing Procedure
- (D) Newton Hearing

## CHAPTER 6

# SENTENCING

This section deals with 3 aspects of sentencing. First, we will explain the various sentences prescribed by the law. Second, we will look at the steps involved in sentencing. This procedure is followed regardless of whether the accused is sentenced as a result of pleading guilty or being convicted at trial. Finally, we will look at the Newton Hearing which is specifically convened for the purpose of resolving a dispute of fact which would be relevant for sentencing.

### **(A) Types of Sentences**

#### ***(1) What is a sentence?***

A "sentence" is the punishment that you will have to bear after you have been convicted.

#### ***(2) How do I know my potential sentence under the charge?***

Your charge sheet will state the maximum sentence that the offence carries. This is found at the bottom portion of the charge sheet. In certain instances, the offence may carry a minimum sentence. If that is the case, your charge sheet will also state the minimum sentence.

If you have a lawyer, your lawyer would be able to advise you on the 'usual tariff' – which is the range of sentences usually imposed by the Courts for the offence which you are alleged to have committed.

#### ***(3) What are the types of sentences in law?***

The law prescribes various sentences that can be imposed as punishment. These include:

- (a) Fines
- (b) Imprisonment
- (c) Caning
- (d) Preventive Detention
- (e) Corrective Training

- (f) Probation
- (g) Reformative Training
- (h) Community Based Sentences

Here is an elaboration on each of these sentences.

**(a) Fine**

A fine is a monetary penalty imposed on you by the Court. If you do not pay the fine imposed, you may have to serve an imprisonment term. This “in-default” sentence will be pronounced by the Court and cannot be backdated, or ordered to run concurrently with any other term of imprisonment. You should therefore take the necessary steps to pay the fine immediately. If at any point in time while serving the default imprisonment term, you are able to make payment of the fine (or someone is able to do so on your behalf), you should inform the relevant officers at the Prisons immediately, so that you may be released upon payment of the remaining fine (calculated on a pro-rated basis depending on the period of imprisonment served up to the point of payment).

You may apply for your fine to be paid by instalments. However, whether your proposed instalment payment plan will be granted is at the Judge’s discretion. For more information, please refer to our website at [www.judiciary.gov.sg](http://www.judiciary.gov.sg).

***You may apply for any fine to be paid via instalments.  
However, it is up to the Judge to grant your request.***

**(b) Imprisonment**

An imprisonment term means that you will be sent to prison for a period which will be decided by the Court.

**(c) Caning**

Caning can or must be imposed by the Court for certain offences. The Court will decide on the number of strokes of the cane to be imposed if you are ordered to be caned.

Caning can only be imposed on male offenders below 50 years old. Where such an offender is sentenced at the same sitting for more than one offence punishable by

caning, the maximum total number of strokes that the Court may impose for all these offences is 24. If you are female or male aged 50 or above, caning cannot be imposed on you. However, even though the Court cannot impose caning on you, the Court can instead impose a longer term of imprisonment on you, of up to 12 months.

#### (d) Preventive Detention

Preventive detention is a separate regime from imprisonment involving incarceration of an offender for a minimum of 7 years and up to a maximum of 20 years. It will only be imposed when the Court is satisfied that you should be detained in prison for a substantial period of time to protect the public. A District Court or the High Court can impose preventive detention on an offender who is at least 30 years old and who has had at least 3 prior convictions since he has reached the age of 16 years, which satisfy the criteria stated in s 304(2) of the Criminal Procedure Code (Cap 68). Before sentencing any offender to preventive detention, the Court must call for and consider a report prepared by the Prisons on the offender's physical and mental condition and his suitability to serve preventive detention.

#### (e) Corrective Training

Corrective training is a form of punishment that has many similarities with a sentence of imprisonment. If sentenced to corrective training, you will receive training of a corrective character for a substantial period of time, followed by a period of supervision if released before the expiration of your sentence. A term of corrective training, if imposed, shall be for a minimum period of 5 years, and up to a maximum period of 14 years. Where the criteria stated in s 304(1) of the Criminal Procedure Code (Cap 68) are met, the Court shall impose corrective training if satisfied that it is required or will achieve the offender's reformation and prevention of crime, unless there are special reasons not to do so. A District Court or the High Court cannot impose corrective training on you if you are below 18 years of age. Before sentencing any offender to corrective training, the Court must call for and consider a report prepared by the Prisons on the offender's physical and mental condition and his suitability to serve corrective training.

### (f) Probation

An offender may be placed on probation instead of receiving a fine or imprisonment. The offender will be supervised by a probation officer for a period between 6 months and 3 years.

If you are placed on probation, you are generally free to carry out your daily activities. However, you must not reoffend and must also adhere to the conditions attached to your probation, for example, by keeping to time restrictions, performing community service and attending counselling or any requisite programmes necessary for your rehabilitation. If you fail to do so, your probation order may be revoked and a fine or imprisonment term may be imposed instead. If you are below 21 years old, reformatory training may be imposed as punishment for breaching the probation order. Upon successful completion of a probation order with attached conditions, the offence committed by you will not be treated as a prior criminal conviction.

In deciding whether to make a probation order, the Court will consider the nature and severity of the offence, the character of the offender, and a report prepared by the probation officer. Probation is more commonly ordered in respect of offenders below 21 years of age but adult offenders above 21 years of age may also be ordered to be placed on probation in appropriate cases.

***If you fail to comply with the conditions of your probation, the probation may be revoked and a fine or imprisonment term imposed***

### (g) Reformatory Training

Offenders above the age of 16 years but below 21 years may be sentenced to reformatory training. Compared to probation, reformatory training is a more severe punishment which requires the offender to be detained in a structured environment. However, there will still be emphasis on rehabilitation as the offender will be required to attend programmes or counselling to deal with his offending behaviour. The Court has a discretion to impose a minimum detention period of 6 or 12 months. Such discretion is likely to be exercised bearing in mind the offender's particular need for rehabilitation and the need to prevent the offender from offending again.

Before imposing any sentence of reformatory training, the Court must call for and consider a report prepared by the Prisons, which will highlight the offender's physical and mental condition, suitability for the sentence and the nature of rehabilitation recommended. If the Court calls for a reformatory training suitability report before passing sentence, a copy will be provided to you. Do take note that the minimum detention period of 6 or 12 months ordered by the Court may be extended in accordance with the law, subject to a maximum duration of 54 months. You may wish to refer to s 305 of the Criminal Procedure Code (Cap 68) and the Criminal Procedure Code (Reformatory Training) Regulations 2018 for more information.

#### (h) Community Based Sentences

Community Based Sentences will be dealt with in the next segment.

### **(B) Community Courts and Community Based Sentences**

#### (a) What are Community Based Sentences?

Community Based Sentences (CBS) were introduced in 2010 to give greater flexibility in sentencing. The Courts are given more graduated sentencing options for minor offences. In appropriate cases, the Court will consider CBS instead of sentences such as imprisonment or a fine. Section 337 of the Criminal Procedure Code (Cap 68) sets out the circumstances under which an offender is eligible for CBS. CBS eligibility usually depends on an offender's prior record as well as the nature of the offence committed.

***If the CBS is successfully completed, the offender is deemed to have no record of that conviction.***

#### (b) What are the CBS orders that can be made?

CBS includes:

- (i) Mandatory Treatment Order (MTO)
- (ii) Day Reporting Order (DRO)
- (iii) Community Work Order (CWO)
- (iv) Community Service Order (CSO)
- (v) Short Detention Order (SDO)

#### (i) MANDATORY TREATMENT ORDER

A Mandatory Treatment Order (MTO) requires an offender suffering from certain treatable psychiatric conditions to undergo psychiatric treatment for a period of no longer than 36 months. Before deciding to make an MTO, the Court will call for a report to be submitted by an appointed psychiatrist of the Institute of Mental Health (IMH). Apart from s 337(1), you may also wish to refer to s 337(2) of the Criminal Procedure Code (Cap 68) and the Criminal Procedure Code (Prescribed Offences for Mandatory Treatment Orders) Regulations 2018 to assess whether you may be considered for an MTO.

If the Court informs you that an MTO suitability report will be called for, you will have the option of appointing your own psychiatrist to make a report. The report made by your own psychiatrist may be submitted to the Court-appointed psychiatrist who will take it into consideration. However, the report made by the Court-appointed psychiatrist will be considered final and conclusive in its findings and a copy will also be extended to you. An MTO cannot be made unless the appointed psychiatrist is of the opinion that you are suffering from a psychiatric condition which is susceptible to treatment, you are suitable for treatment, and the psychiatric condition is one of the contributing factors for the commission of the offence.

Before making an MTO, the Court will also explain to you the purpose and effect of the order, in particular, your obligations under the order. The consequences of failing to comply with any of the obligations or conditions imposed will also be explained to you by the Court. For more information, you may refer to s 339 of the Criminal Procedure Code (Cap 68).

#### (ii) DAY REPORTING ORDER

A Day Reporting Order (DRO) is administered by the Singapore Prisons Service and requires the offender to report to a day reporting centre for monitoring, counselling and to undergo rehabilitation programmes. The Judge will consider the nature of the offence and your character in deciding whether to make a day reporting order.

The Judge will call for a report from a day reporting officer on the possibility of counselling and rehabilitating you. The length of the order can range from 3 months to 12 months, and may carry conditions imposed by a Court, as the Court sees fit. The Judge will also explain the purpose and effect of the DRO and the consequences of breaching the DRO. For more information, refer to s 341 of the Criminal Procedure Code (Cap 68).

#### (iii) COMMUNITY WORK ORDER

If a Community Work Order (CWO) is issued, the offender will have to perform community work associated with the offence committed. This work will be unpaid under the supervision of a community work officer. However, such an order is not available as the offences to be linked with CWO have not been prescribed by Parliament as yet.

#### (iv) COMMUNITY SERVICE ORDER

A Community Service Order (CSO) can be imposed on offenders for their reformation and for them to make amends to the community by performing unpaid community service under the supervision of an authorised officer.

In deciding whether to make this order against you, the Court will determine if it will allow for your reformation. The Court must be satisfied that based on your mental and physical condition, you are suited to perform community service. A report will be called by the Court before making a CSO. The Judge will state the number of hours of community service that needs to be performed in the order. The Judge will also explain the purpose and effect of the CSO and the consequences of breaching the CSO. For more information, refer to s 346 of the Criminal Procedure Code (Cap 68).

#### (v) SHORT DETENTION ORDER

If a Short Detention Order (SDO) is made, the offender can be detained in prison for a period not exceeding 14 days. Based on the circumstances of the case, the nature of the offence and the character of the offender, the Court can impose an SDO, which will allow the offender to experience the 'short, sharp, shock' of prison life. For more information, refer to s 348 of the Criminal Procedure Code (Cap 68).

***It is important that you adhere to the conditions of your CBS. Otherwise, it may be revoked by the Court which will then impose the normal sentence for the offences(s).***

(c) Why was my case sent to the Community Court?

Cases that are suitable for CBS are generally sent to the Community Court for management. The Community Court adopts a problem-solving approach that combines criminal justice and community resources for a comprehensive response. In addition to the principles of deterrence and retribution, the Community Court is committed to the dual principles of rehabilitation and prevention.

Cases which fit into any of the following criteria may be referred to the Community Court:

- (i) Cases involving offenders aged 16 to 18 years
- (ii) Cases involving offenders below 21 years old who have been accused of theft, violence, sex, gambling or drug related offences
- (iii) Selected cases involving offenders with mental disorders
- (iv) Attempted suicide cases
- (v) Family violence cases
- (vi) Abuse and cruelty to animal cases
- (vii) Cases which impact race relations
- (viii) Selected cases involving accused persons who are 65 years old and above
- (ix) Selected cases involving accused persons with chronic addiction problems
- (x) Shop theft cases

If your case falls within the scenarios set out in s 337(1) of the Criminal Procedure Code (Cap 68), CBS may not apply to you. If you are unsure whether your case qualifies for CBS, you may check with the Judge.



## Overview of the Sentencing Process

Once you have been convicted, either because you had pleaded guilty or you were found guilty at the end of a trial, you will be sentenced. At this stage, a Judge will decide what punishment you will be given. The sentencing procedure is set out below for your easy understanding. Steps 1 to 3 are only applicable if you have elected to plead guilty (PG) without a trial. If you are sentenced after a trial, you may skip to Step 4.

### Step 1: Taking the Plea (Only for PG cases)

Your Charge(s) will be read to you by the Court interpreter. You will then be asked to indicate whether you wish to plead guilty or to claim trial. If your intention is to plead guilty, you may inform the Court.

### Step 2: Statement of Facts (Only for PG cases)

After you have indicated your intention to plead guilty, the statement of facts will be read out to you. The statement of facts contains the relevant facts of your offence. Listen carefully to the facts. After the facts have been read to you, you will be asked to indicate whether you admit to the facts. If you disagree with any of the facts, you must inform the Court and let the Prosecutor know which part of the statement of facts you wish to dispute. If that happens, the Court may stand down the case to allow the Prosecutor and you to resolve the disagreement.

The Court will only proceed to convict you if you admit to the statement of facts. If any of the facts which are material in supporting the elements of the offence cannot be agreed upon, the Court will not accept your plea of guilt and the matter will have to proceed for trial.

***If you disagree with any part of the statement of facts, you should inform the Court. If any material fact cannot be agreed upon, the case will have to proceed for trial.***

### Step 3: Conviction (Only for PG cases)

If you agree to the statement of facts, the Judge will proceed to convict you if satisfied on the basis of the admitted facts, that all the elements of the offence have been proven beyond a reasonable doubt.

**Step 4: Charges to be taken-into-consideration (TIC charges)**

After you have been convicted, the Prosecution will inform the Court whether there are other charges which they wish the Court to take into consideration for the purpose of sentencing. These are referred to as the 'TIC charges'. For example, Sally faces 5 counts of theft charges. When Sally indicated that she wanted to plead guilty to the charges, the Prosecution decided to proceed only on 2 charges, and have the rest of the charges taken into consideration for the purpose of sentencing. This means that Sally will only be convicted and sentenced on 2 charges, instead of all 5 charges. However, when submitting on the appropriate sentence to be imposed, the Prosecution will ask the Court to consider the fact that Sally has 3 other charges which are being taken into consideration for the purpose of sentencing.

If there are TIC charges, these charges will be explained to you by the interpreter. After the TIC charges have been explained to you, the interpreter will ask you to indicate whether you admit to these charges and consent to have these charges taken into consideration for the purpose of sentencing. If you refuse to do so, the Judge will not be able to take these charges into consideration. This also means that the Prosecution may decide to proceed to trial against you in respect of these remaining charges.

Generally speaking, if you do not dispute the offences alleged in these charges, it is favourable for you to consent to the TIC charges, instead of running the risk of having the Prosecution proceed on these charges separately against you. While a TIC charge may increase the overall punishment which you will receive, it is still likely to be lower than if the Prosecution had proceeded on all the charges against you.

**Step 5: Antecedents**

The prosecution will next inform the Court of your previous criminal record (antecedent records or antecedents). Your antecedent records will be shown and explained to you. You will be asked to confirm if it is correct. If you agree, you will move on to the next step of the hearing. If you do not agree, the Prosecution will have to prove the contents of the criminal record through a Newton Hearing. For more details on Newton Hearing, refer to Section D below.

## Step 6: The Prosecution's Submissions on Sentence

The prosecution will give proposals on the sentence to be imposed by the Court. They may refer to precedent cases i.e. sentences imposed in similar cases decided by the State Courts or the High Court. This is referred to as a submission. You should listen carefully. If you do not agree that those cases should be applied to your case, you should take down notes and inform the Court when it is your turn to submit your plea in mitigation. Do not interrupt the proceedings.

## Step 7: Plea in Mitigation

After the Prosecution has made their submission, you will be asked to present your mitigation plea to the Judge. The purpose of the mitigation plea is for you to convey relevant mitigating facts to the Judge so that leniency may be exercised in the sentence. If you disagree with the Prosecution on their proposed sentences or sentencing precedents, this is also your opportunity to inform the Court.

***If you disagree with the Prosecution's submission on sentence, such as the benchmark cases they rely on, you should raise this as part of your mitigation.***

The table below contains factors which are commonly found in pleas for mitigation. The mitigating factors below are not exhaustive. A lawyer would be in the best position to advise you on the mitigating factors that are relevant to your case

Look through the table carefully and consider which factors apply to your situation. You should prepare your mitigation plea before the hearing. The plea may be made to the Judge orally or in writing. However, it is preferable to prepare and submit your mitigation plea to the Judge before the hearing. This will allow the Judge to have sufficient time to consider your mitigation plea.

Mitigating Factors	Explanation
Age	<ul style="list-style-type: none"> <li>▶ Are you below 21 years old? Generally, young offenders are shown compassion by the Courts as they are still in their formative years and capable of being rehabilitated</li> </ul>
Future plans	<ul style="list-style-type: none"> <li>▶ Intention to stay away from crime in future</li> <li>▶ What do you plan to do after serving your sentence to ensure that you stay crime-free?</li> </ul>
Psychiatric conditions	<ul style="list-style-type: none"> <li>▶ Do you have any medical documents to show that you are suffering from any mental conditions which contributed to the commission of the crime?</li> </ul>
Antecedents	<ul style="list-style-type: none"> <li>▶ Do you have a clean criminal record?</li> <li>▶ Is this your first offence?</li> </ul>
Degree of cooperation	<ul style="list-style-type: none"> <li>▶ Did you plead guilty early because you are sorry for what you have done?</li> <li>▶ Did you cooperate with the police? *E.g. helping them in their investigations in relation to the co-accused.</li> <li>▶ Did you surrender yourself to the police?</li> </ul>
Restitution	<ul style="list-style-type: none"> <li>▶ Did you try to reduce the harm you had caused to the victim?</li> <li>▶ Did you compensate the victim?</li> </ul>
The Crime	<ul style="list-style-type: none"> <li>▶ Did you benefit from the crime?</li> <li>▶ Was the harm caused serious?</li> <li>▶ What was the extent of your role in the crime?</li> <li>▶ Why did you commit the crime?</li> <li>▶ Were you pressured into committing the offence? What was the pressure and where did it come from?</li> <li>▶ Were you receiving instructions from someone else?</li> <li>▶ Did you plan the offence beforehand?</li> </ul>
Provocation	<ul style="list-style-type: none"> <li>▶ Were you provoked into committing the offence? If so, how?</li> </ul>

Please note that if you are submitting your written mitigation plea to the Judge, you should also make a copy for the Prosecution. Both copies should be submitted at the same time.

If you are mitigating following a plea of guilt, do note that if you decide to raise in mitigation any allegations that if true, will mean that any element of the charge(s) has not been established against you, the Court will take the view that you have qualified your plea of guilt. This is because a conviction can only be recorded if the Court is satisfied that every single element of the charge has been proven against you. The consequence of qualifying your plea is that the Court will give directions for the matter to proceed for trial. You will then be expected to return to Court for directions for trial, and the Prosecution will then have to prepare to put forward all the necessary evidence for a trial. As highlighted above, the Court will consider an early plea of guilt in your favour in sentencing, if satisfied that the early plea of guilt is indicative of remorse.

### **Step 8: The Prosecution's Reply**

After you have submitted your mitigation plea, the Prosecution will have a chance to reply to your plea-in-mitigation.

### **Step 9: Pronouncement of Sentence**

After the Judge has heard from you and the Prosecution, he will consider the appropriate sentence to be imposed. Examples of the considerations which may weigh on the Judge's decision are as follows:

- ▶ The nature of the offence and the seriousness of the offence.
- ▶ Circumstances in which you committed the offence.
- ▶ The degree of planning.
- ▶ The extent and nature of harm caused.
- ▶ Your criminal history.
- ▶ Personal mitigation circumstances.

Once the Judge is ready, he will pronounce the sentence. This may take place immediately after the mitigation plea is heard, or during an adjourned hearing.

If you are not satisfied with the sentence, you may file an appeal within 14 calendar days from the pronouncement of the sentence. More information on Appeals may be found in Chapter 7.

*If you are not satisfied with the Judge's decision, you may refer to Chapter 7 on filing an Appeal against conviction or sentence or both.*

### **Step 10: Deferment/Postponement of Sentence**

If a sentence of imprisonment is imposed on you, you will have to serve your sentence immediately. However, in certain exceptional situations, you may request the Court to postpone the commencement of your sentence.

If you wish to postpone the commencement of your sentence, you should inform the Court immediately upon the pronouncement of your sentence. Your request should be accompanied by valid reasons. If you are on bail, your bailor should also be present and consent to your request. The prosecution will be asked to respond to your request. They may either object or consent to your application to postpone the commencement of your sentence. Do note that even if the Prosecution consents to the application, they are likely to apply for bail to be imposed or for the existing bail to be increased.

If your application to defer sentence is approved, the Judge is likely to impose certain conditions which you must comply with. In particular, you must surrender to the Court at the end of the deferred period.

Please note that if the Judge grants your application with bail imposed or increased, your deferment will not be granted if you are unable to raise bail. In such a case, your sentence will commence immediately.

**(D) Newton Hearing**

A “Newton Hearing may be convened at any stage of the sentencing process when there is a dispute as to facts which may materially affect the sentence to be imposed on a person following his conviction. This is commonly known as a “Newton Hearing”. Examples of such a dispute would include conflicting medical reports on whether the accused was suffering from a mental illness during the commission of the offence(s) which would lower his/her culpability (i.e. blameworthiness), the truth of a fact or statement relied upon by the accused in his mitigation plea or where the accused disputes the record of his/her antecedents. In such situations, a Newton Hearing may be fixed by the Court.

A Newton Hearing is conducted like a trial. Both the accused and the Prosecution will be given a chance to call their respective witnesses before they make their submissions. The procedure for examining witnesses in a Newton Hearing is similar to that found at the trial stage, consisting of 3 stages: (i) Examination-in-Chief; (ii) Cross-examination; and (iii) Re-examination. You may refer to Chapter 5 (Trials) for more information on the examination of witnesses.

At the end of the Newton Hearing, the Judge will pronounce his decision on the disputed issue of fact. Once the decision has been made, the Judge will proceed with the rest of the sentencing process.