



*Manitoba
Department of Justice
Prosecutions*

Guideline No: 4:SEN:1

*Subject: Sentencing
Date: July 2020*

POLICY STATEMENT:

Appropriate sentences play a significant role in protecting society, contributing to respect for the rule of law, and the maintenance of a just, peaceful and safe society by imposing just sanctions.

Parliament has pronounced the significance of appropriate sentences in the *Criminal Code of Canada* and set out the purpose and principles in s. 718:

FUNDAMENTAL PRINCIPLES

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- To denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct
- To deter the offender and other persons from committing offences
- To separate offenders from society, where necessary
- To assist in rehabilitating offenders
- To provide reparations for harm done to victims or to the community and
- To promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community

Other sentencing principles are set out at section 718.2:

- A sentence should be similar to that imposed on similar offenders for similar offences committed in similar circumstances
- Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh
- An offender should not be deprived of liberty, if a less restrictive way of dealing with the case is appropriate in the circumstances
- All available punishments other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders

In comparison, sentencing purposes and principles for youth focus on rehabilitating youth and reintegrating them into society.

Crown Attorneys are required to balance the principles and purposes of sentencing when advocating/presenting a sentence recommendation. This will involve presenting the facts, highlighting the applicable aggravating and mitigating factors and the relevant sentencing principles and articulating why the recommended sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender.

USE OF ORDERS

Crown Attorneys should make effective use of orders, designations and conditions available in law to assist in the protection and safety of the victim and other members of society.

INDIGENOUS OFFENDERS

The Criminal Code as well as the Supreme Court of Canada recognizes special deliberations are required when sentencing an Indigenous accused to address overrepresentation in the criminal justice system. It is necessary to consider the systemic and background factors affecting Indigenous Peoples in Canadian society such as the history and impact of colonialism, including displacement and residential schools.

EXPERT ASSESSMENTS/REPORTS

Crown Attorneys should consider requesting reports and assessments where appropriate as well as consider whether expert or viva voce evidence is required to allow the sentencing Judge to perform their function and to ensure a proper and complete record.

VICTIMS

Crown Attorneys must be aware of the rights of victims to be a part of the sentencing process. The CVBR provisions in the Criminal Code and Manitoba *Victims Bill of Rights* set out the obligations on prosecutors and must form part of the consideration as a case reaches its conclusion. Of particular note is the right of a victim to file a Victim Impact Statement, including, the right to present it at the sentencing hearing.

RESTORATIVE JUSTICE

The concept of Restorative Justice is applicable throughout the Criminal Justice System, including at the point of case resolution. Crown Attorneys should consider the use of Restorative Justice options as an aspect of sentencing where appropriate, such as post plea mediation or a sentencing circle.

RATIONALE:

Crown Attorneys play an important role in public safety by ensuring the principles and purposes of sentencing are achieved by making the most effective use of all provisions in the *Criminal Code of Canada*.