

# Sentencing

**Sentencing normally happens within four weeks of the end of the trial.**

**An accused who is found guilty of murder will normally be kept in custody until the sentence is passed. This is a decision for the Judge.**

**The actual time that the prisoner spends in prison will normally be less than the length of their sentence. Different things can affect this, like how well the prisoner has behaved while in prison.**

## **Sentencing Process**

- Before sentence is passed, the Defence Counsel for the accused will advise the Judge about any factors which they think might reduce the sentence. This is called a 'plea in mitigation'
- It is the Judge alone who decides what the sentence should be – the prosecutor is not involved in sentencing

## **Pleading Guilty**

- If an accused pleads guilty to an offence, the Judge is required by law to consider passing a lesser sentence than might otherwise have been the case (you may hear this referred to as a sentence discount)
- The Judge decides how much, if any, of the sentence will be discounted
- The discount should not normally be more than a third of the maximum sentence available

# Mentally Disordered Offenders

Mentally disordered offenders are people, who, as a result of mental illness, have been found by the court to

- Have diminished responsibility (cannot be fully held legally responsible of their actions)
- Or have been found not guilty on account of insanity
- In both situations, the court can order a person to be detained (held) in hospital for treatment

For restricted patients (people the court consider a serious risk to the public) this detention will be 'without limit of time'

- If a prisoner is moved from prison to a secure psychiatric hospital during their sentence, the original sentence is still valid and doesn't change
- Restricted patients cannot be given leave of absence (suspension of detention) or be transferred without Government (Scottish Ministers') approval

## **Appeals by a Convicted Person**

Following a criminal case, a convicted person may appeal against their conviction or sentence.

They can also apply for bail and may be released while waiting for the appeal (this is called 'interim liberation').

- An accused found guilty at trial can appeal against the conviction or sentence or both
- The court may refuse the appeal or may allow the appeal in full or part
- If the appeal is allowed in full, the court may order a retrial or may acquit (free from charges) the accused
- If the accused pleaded guilty they can appeal against the sentence
- All appeals are heard by Judges in the Appeal Court which is based in Edinburgh. The court is able to impose a higher or lower sentence, or may confirm the original sentence

### **VIA will inform you if there is an appeal and how it progresses**

In particular, VIA will contact you

- if the offender is granted bail before the date of the appeal
- to tell you the outcome of the appeal

## **Appeals by the Prosecution**

- The Crown has a limited right of appeal against sentence, but only where a sentence is 'unduly lenient' (meaning that it falls outside the range of sentences which the judge, applying their mind to all the relevant factors, could reasonably consider appropriate)
- Because of this, such appeals are rare. If an appeal is lodged, you will be kept informed of progress
- The prosecution cannot appeal against a 'not guilty' or a 'not proven' verdict

## **Bringing a Private Prosecution**

- In certain circumstances an individual may seek to prosecute another person for a criminal offence. This is called a private prosecution
- To bring a private prosecution the Lord Advocate's consent is required
- This process is very costly and not covered by legal aid. It is therefore very rare

## Civil Action

- If you are dissatisfied with an acquittal verdict you can raise a civil action against the acquitted person
- A civil action is based on a different level of proof – ‘on the balance of probabilities’ (a decision in a criminal case is based on ‘beyond reasonable doubt’)
- Raising a civil action can be a very long and expensive process
- There is no guarantee that legal aid will be granted
- Before proceeding with a civil action, advice from a solicitor is necessary

