

Sentence Matters

1. This Practice Note revises and consolidates District Court Criminal Practice Notes 1 and 15.

Commencement

2. This Practice Note commences on 31 August 2020.

Application

3. This Practice Note applies to all proceedings committed to the District Court for sentence on or after the commencement date.

Definitions

4. In this Practice Note:

"court" means the District Court of New South Wales

"Crown Sentence Bundle" includes the Crown Coversheet, statement of facts, and evidentiary material in the Crown case

"offender" includes an Australian legal practitioner representing an offender

"service" of documents required under this Practice Note may be effected by service on the legal representatives for an offender or by service personally on an offender who is not legally represented.

Listing for entering a plea

5. When committing an offender to the court at Sydney for sentence, the magistrate will direct the person to appear for arraignment on the last sitting day of the week (usually a Friday) four weeks after the date of the committal.

6. A similar procedure is to apply to all other District Court venues but the arraignment day will vary from venue to venue. Practitioners should ascertain the relevant day which is nominated by the list judge or resident judge.
7. The magistrate may order a sentencing assessment report where appropriate. Practitioners should address this issue in the Local Court where possible as this allows the report to be prepared at an earlier date.

Entering a plea

8. The offender must be present on the day fixed for the arraignment either in person or by way of audio visual link.
9. Upon presentment of the indictment or charge certificate, the offender will be arraigned by the court and shall enter his or her plea.
10. If there is a traversal of plea at any stage of the proceedings, the provisions of Practice Note 18 are to apply.

Listing for sentence

11. Upon a guilty plea being entered to some or all of the charges on the indictment and a signed statement of agreed facts being tendered, the matter will be listed for sentence hearing. The matter will not be listed for sentence hearing without a signed statement of agreed facts.
12. If the facts are not agreed, the matter will be listed for further mention in three weeks and, unless the court otherwise orders, the standard directions that are to apply are:
 - (a) The prosecution is to serve on the offender, within one week, a statement of proposed facts;
 - (b) The offender is to serve on the prosecution, within one week of receiving the statement of proposed facts, a response noting areas of dispute and a list of any witnesses required for cross examination; and
 - (c) The prosecution is to serve on the offender, within one week of receiving the response, a final version of proposed facts and witness availability.

At the subsequent mention the matter will be listed for sentence hearing. The disputed facts will be determined in the single hearing, unless the court otherwise orders.

13. When the matter is listed for sentence hearing, the prosecutor and the legal representatives for the offender are to provide the court with:
- (a) an accurate estimate of the length of the sentencing hearing as well as the dates suitable for the parties to appear;
 - (b) any requirement for a sentencing assessment report;
 - (c) the address of the nearest corrective services office to the offender; and
 - (d) any requirement for interpreters, including the language and number.
14. The prosecution and the offender are to file their notice of appearance including the name, email and telephone contact of the practitioner appearing at the sentence hearing by emailing ag-sdc-crime@justice.nsw.gov.au for Sydney matters or to the registry of the District Court venue that matter is being heard at, no later than five days prior to the arraignment date.

Standard directions


15. Unless the court otherwise orders, the standard directions that are to apply at the arraignment are:
- (a) The prosecution is to file and serve the Crown Sentence Bundle no later than two weeks prior to the sentence date.
 - (b) The offender is to file and serve any documentary material, including expert reports, to be relied upon on at sentence no later than seven days prior to the sentence date.
 - (c) The prosecution and the offender are to file and serve any further documents they rely on and an outline of submissions no later than three days prior to the sentence date.

Sentence

16. By the date fixed for the sentence hearing, the matter must be ready to proceed. If there is an unavoidable problem or change to the conduct or the length of the sentence hearing, the parties are to notify at the earliest possible stage the list judge or resident judge at venues other than Sydney, and for Sydney sentences the Criminal Listing Director.

Non-compliance with the court's directions

17. If it appears to the court that a party has not complied with this Practice Note or with any other direction made by the court, the court may contact the offending party directly or list the matter for mention, either on the court's own initiative or at the request of either party.
18. Without limiting the court's power otherwise to deal with a failure to comply with a direction, the court may order the offending party to file an affidavit, or give evidence in court, explaining the failure to comply.



The Honourable Justice D M Price AO
Chief Judge of the District Court
10 August 2020