

## Guilty Pleas and Sentencing

### The Sentencing Advisory Council of Victoria – Guilty Pleas and Sentencing

A guilty plea is an influencing factor that judges, and magistrates must consider when sentencing an offender. Particularly, judges and magistrates must consider whether the offender pleaded guilty to the offence, whether they intended to do so and at what stage of the proceedings this was done. An offender will receive a less severe sentence if they plead guilty early in the proceeding stages.

As per section 6AAA of the *Sentencing Act 1991* (VIC) and section 362A of the *Children, Youth and Families Act 2005* (VIC), if an offender does plead guilty, a Victorian court is obligated to outline the sentence it would have been imposed if the offender did not plead guilty.

### Adult Offenders – Adult Jurisdiction

The court must focus on the overall sentence and any parole period it would have imposed if the offender did not plead guilty. If the offender is charged with more than one offence, the court does not need explain this for each offence. The [Sentencing Advisory Council of Victoria](#) explains that this applies for “all custodial sentences, fines of 10 penalty units or more and aggregate fines of 20 penalty units of more.”

### Children Offenders – Children’s Court

Similarly, for child offenders the court must explain the overall sentence and any parole period it would have handed down if the accused did not plead guilty. This applies for all “youth justice centre orders or youth residential centre orders, and for youth attendance orders” ([Sentencing Advisory Council of Victoria](#)). Unlike the adult jurisdiction, if a child offender is accused of multiple offences, the Children’s Court must outline for each offence the sentence that would have imposed if they did not plead guilty.

### What is a Sentencing Indication?

A sentencing indication represents the possible sentence the offender would have been presumably provided if they pleaded guilty to the offences.

### Amendments to Criminal Procedure Act 2009 (VIC) – Section 208(1)(b)

Previously in higher courts, an accused at any time during the proceedings could apply for a sentencing indication once they had filed an indictment (written charges). In the past, the accused had to have the prosecution’s consent to do so.

However, amendments were made to section 208(1)(b) of the *Civil Procedure Act 2009* (VIC) in 2022 to allow indications to be given without the prosecutor’s consent. Moreover, judges are no longer restricted to just signalling whether the accused will be incarcerated or not, judges can also indicate the sentence’s length.

## CRIMINAL PROCEDURE ACT 2009 - SECT 208

### Application for sentence indication

- (1) A sentence indication under section 207—  
(a) may be given only on the application of the accused; and

### S. 208(1)(b) amended by No. 1/2022 s. 112(1).

- (b) May be given only once during the proceeding, unless subsection (3A) applies.

### Note to s. 208(1) inserted by No. 1/2022 s. 112(2).

See section 9B of the [Victims' Charter Act 2006](#) for obligations of the DPP to a victim in relation to an application for a sentence indication.

### S. 208(2) repealed by No. 1/2022 s. 112(3).

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- (3) If an application under subsection (1)(a) is made in respect of a charge that is not on the indictment, the accused must specify the charge in the application.

### S. 208(3A) inserted by No. 1/2022 s. 112(4).

- (3A) A second or subsequent sentence indication may be given if there has been a change in circumstances since the previous sentence indication that is likely to materially affect the sentence indication previously given.  
(4) The court may refuse to give a sentence indication under section 207.

### S. 208(5) inserted by No. 49/2012 s. 5.

- (5) Without limiting subsection (4), the court may refuse to give a sentence indication under section 207 if the court considers there is insufficient information before it of the impact of the offence on any victim of the offence.

### Note

Under section 5(2)(daa) of the **Sentencing Act 1991**, in sentencing an offender a court must have regard to the impact of the offence on any victim of the offence.