

References for court

This information will help you if you are going to court for a criminal charge and you think the court should know more about you when it sentences you (gives you a penalty).

It will help you get appropriate references from people who know you, to give to the court.

What is a reference?

A reference for court is a written document, usually a letter, that helps the court know more about you. A reference may be about your character, your work or about a particular aspect of your life, such as medical treatment you are receiving, or a disability you live with.

References are helpful when you are being sentenced for a criminal offence. They can make a big difference to the sentence (penalty) the court gives you and can be important if you are applying for a Spent Conviction Order.

Who should provide a reference?

A reference may be provided by anyone. However, it is better if it comes from someone who is respected in the community and has known you for some time, or who knows something particular about you.

A reference might be from:

- a long-time family friend or neighbour
- a former teacher
- a past or present employer
- a person of special standing in the community
- your family doctor
- a leader from your religious group
- an official of a sporting or social club you are involved in

- a person treating you, caring for you or helping you manage your health and wellbeing.

References from family and friends may not be as useful as references from people who are more independent from you. However, sometimes family and friends know important information about you and they are the best people to give this information to the court. For example, a family member may be able to tell the court about the particular difficulties that you, and perhaps others in the family, are facing. They may be able to point to something that gives hope about your future and the potential for you to stay out of trouble.

What should be in a reference?

A reference should:

- be addressed to the Presiding Magistrate (or Presiding Judge if you are in the District or Supreme Court)
- be typed or neatly handwritten
- be kept to one page if possible
- be written recently and be dated and signed
- say who is writing the reference and how they know you
- say that the writer is aware of the reason you are in court
- be written specifically for your court appearance (a reference written for another purpose, such as a job application, is not as useful).

It is a serious criminal offence for a referee to mislead the court or for you to encourage them to mislead the court.

The reference should not:

- comment on legal issues, such as a possible defence
- give an opinion about whether you committed or intended to commit the offence
- make excuses for what you did
- blame others for what happened
- suggest the specific penalty you should be given.

Character references

A character reference helps to show that people in your daily life think highly of you. It can help show that you are usually a person of good character and that what you have done is out of character.

As with any reference, a character reference can help the court decide what sort of penalty to give you when you are being sentenced for an offence.

Character references can also be useful when you are trying to get a specific result. An example could be when you want to ask for a Spent Conviction Order (see below).

In addition to the general requirements for a reference, a character reference should say why the writer thinks you are a person of good character and why they believe that your behaviour in committing the offence was out of character for you.

If you have pleaded not guilty

If you have pleaded not guilty and are having a trial, a **written character reference cannot be used** to convince the court that you are innocent or that your evidence should be believed. Evidence of good character during trial must be given by a witness in person. You should get legal advice before you decide to call character witnesses at a trial as there may be a negative impact on your case.

What if I want a Spent Conviction Order?

A Spent Conviction Order is a court order at the time of sentence that your conviction for the offence is 'spent'. This means that generally, you do not have to tell anyone about the conviction.

Spent Conviction Orders can be hard to get. They will usually only be granted for certain types of offences, and usually where you have no record of previous offending. There must be good reasons for making a Spent Conviction Order. You should get legal advice to find out whether you have a chance of getting a Spent Conviction Order.

A character reference in support of a Spent Conviction Order should follow all of the points set out above for references generally and for character references in particular, and should also address:

- whether the writer considers that you are unlikely to commit such an offence again
- any particular negative impact (detriment) you will suffer if a Spent Conviction Order is not made.

There is more information about Spent Conviction Orders under Find Legal Answers on the **Legal Aid WA website** www.legalaid.wa.gov.au.

Do I need a reference from my employer?

It can be useful to bring a signed and dated letter from your employer saying you have a job. If your employer can also write a character reference, this can all be included in one letter.

If possible, as for all references, the letter should refer to the charges you are facing. This will make it more useful in court. However, it is still worth getting even if it does not refer to the charges, just to show that you have a job.

Do I need a reference if I have a medical issue or disability?

If you have a medical issue, including a disability, or had a medical issue at the time of the offence, a letter from your doctor or other health care

provider may help the court decide on the most appropriate sentence (penalty) for you.

In addition to the general requirements for a reference, the letter should:

- state how long the doctor has known you and/or been treating you
- specify what your medical condition is
- list any medication you have been prescribed
- address any other matters that your doctor thinks are relevant for the court.

Mental illness

If you have a mental illness you should get legal advice about your charge **before** you enter any plea. You may have a defence as a result of your mental illness.

If you plead guilty or are found guilty of a charge, it is **very important** that the court knows about your mental illness before you are sentenced. If you are currently seeing a psychiatrist or psychologist, try to bring a letter to court confirming this. If you cannot get a letter, make sure that you tell the magistrate before you are sentenced that you have a mental illness and whether you are seeing a psychiatrist or psychologist, or receiving other help for your illness.

If you can't get a letter from your psychiatrist or psychologist, some other person (such as a family member, a close friend or a counsellor) may be able to write to the court. They should tell the court about the nature and history of your mental illness.

Intellectual disability

If you have an intellectual disability, you should get legal advice about your charge **before** you enter a plea. You may have a defence as a result of your disability.

It is **very important** that the court knows about your intellectual disability before you are sentenced. If possible, you should bring a letter to court about your disability. Your doctor, counsellor, a family member or any other responsible person may write the letter. They should know about your disability and background.

Do I need a reference from my counsellor?

If you are already on a formal court program which requires you to engage in counselling, a report about your progress with counselling will usually be given to the court before you are sentenced.

If you are engaging in counselling outside a court program, the court will not know about it unless you tell them. If the counselling is relevant to the offence, it will be helpful for the court to know about it. For example, if you are charged with assault and you are doing anger management counselling, or you are charged with possession of drugs and you are doing drug counselling.

To confirm you are doing counselling, you should bring a letter to court from your counsellor which meets the general requirements for a reference and:

- states why you are receiving counselling and how long you have been attending
- states how you are responding to counselling and whether, in their view, you should continue with counselling
- lists any future appointments which you may have with the counsellor.

How do I provide my references to the court?

You should bring the original signed references with you when you attend court for sentencing.

If you are represented by a lawyer, they will hand the references to the court during sentencing or arrange for them to be provided to the court in advance.

If you are not represented by a lawyer, you can hand them to the court yourself during your sentencing.

The original references are usually kept by the court. It is therefore important to take a copy of them for yourself before they are provided to the court.

How can Legal Aid WA help?

If you are appearing in the Magistrates Court, a Legal Aid WA duty lawyer can advise you about getting references for court and about applying for a Spent Conviction Order, if appropriate.

Where can I get more information?

There is information on the **Legal Aid WA website** www.legalaid.wa.gov.au under Find Legal Answers – Crime, covering the following topics:

- Appearing in court on a criminal charge
- Duty Lawyer Service
- Criminal records
- What is a spent conviction
- Spent Conviction Orders in sentencing.

The **Legal Aid WA Infoline 1300 650 579** is available for information and referrals.

LEGAL AID WA OFFICES



Infoline: 1300 650 579



Translating & Interpreting Service:
131 450



Website/InfoChat:
www.legalaid.wa.gov.au



National Relay Service: 133 677
(for hearing and speech impaired)

Perth Office

32 St Georges Terrace, Perth, WA
6000
1300 650 579
(08) 9261 6222

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

West Kimberley Office

Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

Great Southern Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Goldfields Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

East Kimberley Office

98 Konkerberry Drive,
Kununurra, WA 6743
(08) 9166 5800

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
Bunbury, WA 6230
(08) 9721 2277

Pilbara Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
(08) 9164 7529

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