

# When Can Courts take into Account my Previous Convictions?

Statistics tend to show that it is a small group of people commit a majority of crimes.

But does this mean that courts can take into account past crimes when deciding whether you are guilty or not?

In the vast majority of cases, the answer is: No it doesn't.

Courts cannot look at your previous convictions, or even charges laid against you, when they are deciding whether or not you are guilty.

The exception to the rule is 'tendency and coincidence evidence'.

This is where the prosecution alleges that the facts in your previous cases were so similar to the present case that there is a very high chance that you also committed the present offence.

However, it can be very difficult for the prosecution to establish tendency or prosecution – and this means that your criminal record will not be relevant to determining your guilt or innocence.

On the other hand, courts can look at your track record when it comes to sentencing – which is after you have pleaded guilty or were found guilty.

Courts will do this to determine the appropriate penalty in your case.

In making that decision, courts will consider whether you were

a person of good character or otherwise.

If you have a criminal record, courts will look at the nature of those convictions and their relevance to the present offence.

### **The use of previous convictions or charges during the trial or hearing:**

According to the [Evidence Act](#), any judgement or conviction that has been made in relation to a defendant, whether in Australia or overseas, cannot be used as evidence in a proceeding – subject to the tendency and coincidence exception.

Being able to consider a person's previous criminal record would be highly unfair because it may unfairly prejudice the decision maker into reaching the conclusion that they are guilty.

The argument is that because a person has committed a crime in the past, it should not act as proof that they committed whatever crime they are now accused of.

In jury trials, the use of past convictions could cause members of the jury to lose sight of the fact that they are trying to work out whether or not someone is actually guilty of the specific crime he or she is currently charged with, rather than if they are the sort of person who might commit the crime.

Some members of a jury, when confronted by a list of serious or abhorrent crimes might think that, regardless of whether or not the person facing trial is actually guilty of the crime they are accused of, they 'deserve' to be convicted anyway.

This would be highly unfair.

Since there is a significant risk associated with allowing any 'unfairly prejudicial' material into the courtroom, instances

where it will be allowed are low.

## **Tendency and coincidence**

The 'tendency and coincidence' exception was touched upon earlier.

That rule says that previous convictions may be used to prove a 'tendency' to commit an offence or that the previous offence/s are so similar that it would be a great coincidence for anyone else to have committed it.

However, to establish tendency or coincidence, the prosecution would need to prove that the evidence is so relevant and important that it overshadows the unfair prejudice that would be created by its use.

They would need to establish that there has been a pattern of similar behaviour, or a strikingly means of committing an offence (also known as a 'modus operandi') such as a signature mark left at crime scenes.

An example of a modus operandi was the 'Son of Sam' murders in the U.S. where the offender left those words in blood at each murder scene.

The test for establishing tendency and coincidence is understandably a high one, and the [Australian Law Reform Commission](#) has said that the circumstances in which evidence of past convictions being allowed into evidence should be rare.

## **The use of previous convictions during sentencing:**

As stated, when it comes to [determining your sentence](#), past convictions are a different matter.

Section 21A of the [Crimes \(Sentencing Procedure\) Act](#) requires a magistrate or judge to take your previous convictions into account before imposing a penalty upon you.

Having no criminal convictions, or no significant criminal convictions is a positive, and should be considered as a mitigating factor by the judge.

However, if it is not a first offence, particularly if the offence is similar to a previous offence committed, the law will not be so lenient.

Legislation will sometime mandate a stronger punishment for a second or subsequent offence.

For example, when it comes to drink driving, the disqualification period and maximum fine doubles if you were convicted of another major traffic offence within the previous five years.

Unfortunately, unrepresented defendants may not know the rules that the police and prosecution are supposed to follow in court.

This means that without an experienced criminal lawyer, you might be vulnerable.

Speak with an experienced criminal lawyer today to make sure that no unfair evidence is allowed into the courtroom during your proceedings.