

Sentencing young people

Draft sentencing guideline

Effective from [date]

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Applicability

1. This guideline applies to the sentencing of any young person on or after [date].
2. For the purposes of this guideline, a young person is someone who is under the age of 25.

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Introduction

3. This guideline emphasises various factors which should be taken into account when sentencing a young person. It takes account of research into how young people develop physically and psychologically, and into the differences between young people and older people¹. In particular, young people are generally less able to exercise good judgement while making decisions, and they have greater potential to be rehabilitated.
4. It also takes account of distinct aspects of existing Scottish law about the sentencing of young people and the treatment of young people generally, and the United Nations Convention on the Rights of the Child (UNCRC).

Principles and purposes of sentencing a young person

5. When sentencing a young person, the judge must also have regard to the Council's guidelines '[Principles and purposes of sentencing](#)', and 'The sentencing process'. This guideline should therefore be read alongside those and any other applicable guidelines.

Principles of sentencing

6. The sentence imposed must be fair and proportionate, in line with the core principle of sentencing as set out in the Council's guideline 'Principles and purposes of sentencing'. The exercise of sentencing a young person is different from that of sentencing an older person, in particular because of the lack of maturity and greater capacity for change of a young person.
7. The following factors should be taken into account:

¹ An "older person", for the purposes of this guideline, is someone who is not a young person as defined in this guideline.

- **The maturity of the young person.** Research has demonstrated that young people are not fully developed and may not have attained full maturity. They are generally more vulnerable to negative influences, such as peer pressure and exploitative relationships. They may therefore be less likely to make appropriate decisions and could find it more difficult to think about what may happen as the result of their actions, including any impact on victims and others. They may take more risks. It is important for the judge to take this into account when deciding how much a young person should be held responsible for their actions. Judges should not rely solely on age when determining the maturity of a young person.
 - **The capacity for change of the young person.** The character of a young person is not as fixed as the character of an older person. A young person who has committed a crime may have greater potential to change and to move away from offending.
 - **The best interests of the young person.** These should be considered in every case, and must be a primary consideration when the young person is under the age of 18, in accordance with the provisions of UNCRC. This requires the judge to take into account, for example, the young person's living environment; any adverse childhood experiences; and any physical and mental health issues.
8. The judge should always ensure that the sentence imposed takes account of the particular and individual circumstances of the young person.
9. The judge should take into account that some sentences could have more of an adverse effect on a young person than on an older person because of the young person's age, maturity, and/or personal circumstances.

Purposes of sentencing

10. Rehabilitation is a primary consideration when sentencing a young person. Young people should be provided with the opportunity to change, and to move away from past offending

behaviour. The judge should therefore seek to reduce, through rehabilitation, the risk of reoffending, and to identify the features which are likely to make the sentence particularly effective.

Assessment of seriousness

11. The judge should assess the seriousness of the offence in the way set out for all sentencing decisions in the Council's guideline 'The sentencing process': by evaluating the level of culpability and harm.
12. In assessing the culpability of a young person, the judge should have regard to the character and maturity of the young person at the time when the offence was committed. As the maturity of a young person will generally be lower than that of an older person, it follows that the culpability of a young person will also generally be lower than that of an older person being sentenced for a similar offence.

Identifying the most appropriate sentence

Information and advice

13. The judge should ensure that s/he has sufficient information to identify and impose the most appropriate sentence. This may include, for example, information and reports about:
 - addiction or accommodation issues,
 - the physical and mental health of the young person,
 - whether the young person is or has been in care, and
 - whether any proposed sentence is likely to be effectively implemented, and what steps can be taken to increase the likelihood of effective implementation.

14. This should include, where it is competent to do so, referring a case to a children's hearing to obtain its advice as to the treatment of the young person.

Features of an appropriate sentence

15. An appropriate sentence should:

- increase the likelihood of aiding the reintegration of the young person into society,
- reduce the likelihood of the young person being stigmatised unnecessarily, and/or failing to comply with the sentence,
- benefit society by reducing the possibility of further offending,
- give the young person the opportunity to understand the consequences of their offending behaviour,
- address the underlying causes of that behaviour, and
- assist in developing or maintaining positive connections between the young person and society.

16. The judge should clearly explain the sentence to the young person to increase the likelihood of the sentence being effective. In appropriate cases, the judge should consider fixing review hearings to monitor the young person's progress in complying with the sentence.

Sentencing range

17. The full range of sentencing options remains open to judges. However, the nature and duration of a sentence imposed on a young person should be different from that which might be imposed on an older person being sentenced for a similar offence.

18. A custodial sentence should only be imposed on a young person when the judge is satisfied that no other sentence is appropriate. If a custodial sentence is imposed on a young person, it should be shorter than that which would have been imposed on an older person for a similar offence.

19. The judge should consider remitting a case to a children's hearing for disposal where it is competent to do so.

DRAFT

Scottish Sentencing Council
Parliament House
Parliament Square
Edinburgh
EH1 1RQ

sentencingcouncil@scotcourts.gov.uk
www.scottishsentencingcouncil.org.uk

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