

Sentencing young people

Sentencing guideline

Effective from 26 January 2022

Applicability

1. This guideline applies to the sentencing of any young person on or after 26 January 2022.
2. For the purposes of this guideline, a young person is someone who is under the age of 25 at the date of their plea of guilty or when a finding of guilt is made against them.

Introduction

3. The exercise of sentencing a young person is different from that of sentencing an older person¹, in particular because a young person will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, than an older person.
4. This guideline sets out various factors which should be taken into account when sentencing a young person. It is based upon [research](#) into how young people develop physically and psychologically, and into the differences between young people and older people.
5. It also takes account of distinct aspects of existing Scottish law about the sentencing of young people, the treatment of young people generally, and the United Nations Convention on the Rights of the Child (UNCRC).

Sentencing a young person

6. The Council's guidelines '[Principles and purposes of sentencing](#)' and '[The sentencing process](#)' also apply to the sentencing of a young person. This means that:
 - the sentence imposed must be fair and proportionate; and
 - the court should assess the seriousness of the offence by evaluating the level of culpability (or blame) and harm. Guidance on assessing culpability when sentencing a young person is set out at paragraphs 10-12 below. The court's consideration of the level of harm, which includes the impact on any victim or victims, is not affected by the provisions of this guideline.
7. The court must also have regard to any other applicable sentencing guideline when sentencing a young person.

¹ An "older person", for the purposes of this guideline, is someone who is aged 25 or over at the date of their plea of guilty or when a finding of guilt is made against them.

8. The best interests of the young person 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 the UNCRC.
9. In sentencing a young person, particular regard should be had to:
 - the maturity of the young person; and
 - rehabilitation.

Maturity

10. In assessing culpability, the court should have regard to the intellectual and emotional maturity of the young person at the time the offence was committed. Research shows that young people are not fully developed and may not have attained full maturity. As a result they:
 - are generally less able to exercise good judgement when making decisions;
 - are more vulnerable to negative influences such as peer pressure and exploitative relationships;
 - may be less able to think about what could happen as a result of their actions, including the impact on any victim and others affected by those actions; and
 - may take more risks.
11. The culpability of a young person will therefore generally be lower than that of an older person who is to be sentenced for the same, or a similar, offence.
12. The court should not rely solely on age when determining the maturity of a young person.

Rehabilitation

13. The purposes of a sentence may include, in no order of priority: protection of the public; punishment; rehabilitation of offenders; giving the offender the opportunity to make amends; and expressing disapproval of offending behaviour.

14. Rehabilitation is a primary consideration when sentencing a young person. When selecting a sentence the court should, where appropriate, seek to rehabilitate the young person and to reduce the risk of reoffending. The character of a young person is not as fixed as the character of an older person, and a young person who has committed a crime may have greater potential to change.

Identifying the most appropriate sentence

Information and advice

15. The court should ensure that it has sufficient information to assess the maturity of the young person and to identify and impose the most appropriate sentence. This may include, for example, information and reports about:

- addiction;
- physical and mental health;
- speech, language, and communication needs;
- trauma;
- adverse childhood experiences;
- the living environment, including whether the young person is or has been in care;
- whether any proposed sentence is likely to be effectively implemented; and
- what steps can be taken to increase the likelihood of effective implementation.

This list is not intended to be exhaustive and is not in any order of priority.

16. Where a court is required by law to refer a case to a children's hearing to obtain its advice as to the treatment of the young person, it must do so. Where the court is entitled, but not required by law, to refer a case to a children's hearing, it must consider whether to do so.

Selecting an appropriate sentence

17. The court, in selecting the sentence, should:

- ensure that the sentence imposed takes account of the particular and individual circumstances of the young person; and
- have regard to the fact 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.

18. The court should consider whether an appropriate sentence:

- can be structured in such a way as to enable the young person to comply with it;
- will reduce the likelihood of further offending;
- will give the young person the opportunity to understand the consequences of their offending behaviour;
- will address the underlying causes of that behaviour;
- will reduce the likelihood of the young person being stigmatised; and
- will assist in developing or maintaining positive relationships.

This list is not intended to be exhaustive and is not in any order of priority.

19. Where the court considers it appropriate to do so in order to support compliance with the sentence, it should:

- clearly explain the sentence to the young person;
- fix review hearings to monitor the young person's progress.

20. The full range of sentencing options remains open to the court. 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 the same, or a similar, offence.

21. A custodial sentence should only be imposed on a young person when the court 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 the same, or a similar, offence.
22. The court should consider remitting a case to a children's hearing for disposal where it is competent to do so.

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