

# SENTENCING EXPLAINED

## SENTENCING OF YOUTHS

Children between the ages of 10 and 17 (inclusive) fall within the ambit of the youth justice system. The relevant age for sentencing is the age at date of conviction.

Offenders aged 17 and under may be tried in the youth courts at a magistrates' court, in an adult magistrates' court, or in the Crown Court. Youth courts differ from magistrates' courts as they have certain reporting restrictions, they are not open court hearings, and they differ from the Crown Court in that advocates do not wear robes or wigs.

There is a general presumption that youths will be sentenced in the youth court unless they are sent to the Crown Court for trial.<sup>1</sup> Typically, this is when the offence is so serious that the youth courts do not have adequate powers to sentence the offence. The maximum sentence that can be imposed in the youth court is a sentence of two years' detention. Suspended sentence orders are not available to a court sentencing someone under the age of 18.

When sentencing a child or young person the court must have regard to preventing offending and the welfare of the child/young person. Rehabilitation remains at the forefront of sentencing those under 18.

In the year ending March 2022, 11,206 children were found guilty of offences in England and Wales.<sup>2</sup> Of the total sentences imposed, 7,056 were for indictable offences; 4,332 were sentenced for summary offences. During this period, 10,864 out of the 11,388 (95.4 %) sentences imposed on offenders under 18 were dealt with in the youth court. The vast majority (86%) of children found guilty were male. Of these, 90% were aged between 15 and 17. The most common indictable offence types for which offenders under 18 were sentenced were:

- Violence against the person (1,437)
- Possession of weapons (1,345)
- Drugs offences (1,137)

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<sup>1</sup> Section 24(1) of the Magistrates' Courts Act 1980.

<sup>2</sup> All data is from: Youth Justice Board (2023) *Youth Justice Statistics: 2021 to 2022*. Available at: <https://www.gov.uk/government/statistics/youth-justice-statistics-2021-to-2022>.

## CUSTODIAL SENTENCES

### Detention and Training Orders

Custodial sentences are most commonly imposed for youths in the form of Detention and Training Orders (DTOs). These sentences are not available for those under 12, and are only available for 12-15 year olds who are deemed to be repeat offenders ('persistent offenders'). They are relatively infrequently imposed, making up only 553 of the total of 11,388 sentences imposed in the year to March 2022.

DTOs may only exist for periods of 4, 6, 8, 10, 12, 18 or 24 months. Half of the DTO sentence length will be served in a custodial setting, with the second half served in the community.

### Grave crimes

Grave crimes are offences that carry a maximum sentence of at least 14 years' imprisonment and, additionally, certain sexual and firearms offences.<sup>3</sup> Where a child may be convicted of a grave crime and there is a real prospect of a custodial sentence longer than two years, a child will have their case heard in the Crown Court, which has greater sentencing powers. These sentences will be passed under section 250 of the Sentencing Act 2020.

### Dangerous offenders

Youths aged 12-17 years convicted of a 'specified' offence that merits a custodial sentence of at least four years, and who may pose risk to the public of committing further specified offences, may be deemed by the courts to be a dangerous offender. Dangerous offenders made subject to custodial sentences of detention are likely to receive an extended sentence of detention similar to the extended sentences available for adult offenders who are deemed to be dangerous. Dangerous offender provisions may apply to certain violent, sexual or terrorism offences. For the most serious offences, a sentence of detention for life may be imposed. Any child or young person convicted of murder will be sentenced to Detention at His Majesty's pleasure, which is the equivalent of the mandatory life sentence for murder for adults. A minimum term will be imposed by the court which must be served before the Parole Board can consider release from custody.<sup>4</sup>

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<sup>3</sup> These are set out in section 249 of the Sentencing Act 2020.

<sup>4</sup> See Schedule 21 to the Sentencing Act 2020.

## YOUTH REHABILITATION ORDERS

A youth rehabilitation order (YRO) is a community based sentence imposed with requirements relative to the offender's risk of harm and risk of reoffending. In order to impose a YRO a court must conclude that the offence is 'serious enough' for a community penalty. A YRO can last between six months and three years and there are a number of different requirements that a sentencing court can add to a YRO. When determining the nature and extent of the requirements the primary consideration for the court is the likelihood of re-offending and the risk of the offender causing serious harm.

In the year ending March 2022, the most common requirements included were:

- Supervision requirements (33% of requirements)
- Activity requirements (17%)
- Electronic monitored GPS (13%)
- Curfews (12%)
- Programmes (9%)

19% of YROs had one requirement attached; 26% had two; 22% had three; 20% had four; and 14% had five or more.

## REFERRAL ORDERS

A referral order must be imposed in a youth court for first time offenders who have pleaded guilty or been found guilty of an imprisonable offence, unless:

- The offence is so serious that only a custodial sentence can be justified; or
- A discharge can be justified.

Referral orders may also be made where a child or young person has previous convictions. Upon being made subject to a referral order, a youth must attend a youth offender panel whereby they agree to a contract with certain requirements which will be aimed at repairing any harm caused by the offending and/or reducing further offending. Referral orders may last between three months and one year.

The length of a referral order imposed is dependent upon the seriousness of the offence. The below table contains the suggested lengths of referral orders in the Sentencing Council's *Sentencing Children and Young People* guideline.<sup>5</sup>

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<sup>5</sup> Available at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf>.

Offence seriousness	Suggested length of referral order
Low	3-5 months
Medium	5-7 months
High	7-9 months
Very high	10-12 months

### FINES

Fines may be imposed on youths; however, any fine must be relevant to the ability to pay. For youths under 16, fines are to be paid by their parent or guardian and their ability to pay should be assessed by the court before determining the value of the fine and the time it should be paid.

Where a young person is found guilty in the youth court, the maximum fine which can be imposed on offenders aged 10-13 is £250,<sup>6</sup> and £1,000 for offenders aged 14-17 years.<sup>7</sup>

In the year to March 2022, there were 1,305 fines imposed on children in England and Wales; 109 for indictable offences and the majority (1,196) for summary only offences.

### ABSOLUTE/CONDITIONAL DISCHARGE

An absolute discharge is imposed where the offences are so minimal that the court decides no punishment is appropriate. In the year to March 2022, 143 absolute discharges were imposed on youth offenders; 140 of which were imposed in the youth courts.

Conditional discharges are imposed for offences when immediate punishment is not appropriate. A time limit of three years is the maximum period which a conditional discharge may exist.

Conditional discharge may not be imposed if, in the last 24 months, the youth has received:

- Two or more cautions; or
- A conditional caution, followed by a caution.

1,406 conditional discharges were imposed in the year to March 2022 on youth offenders; 1,399 of which were imposed in the youth courts.

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<sup>6</sup> Section 123(2)(a) of the Sentencing Act 2020.

<sup>7</sup> Section 123(2)(b) of the Sentencing Act 2020.