

Sexual Assault

Sexual Offences Act 2003 (section 3)

This guideline applies only to offenders aged 17 and under

Triable either way
Maximum: 7 years' custody

Offence range: Discharge – 3 years' detention

This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender’s culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> Severe psychological or physical harm Abduction Violence or threats of violence Forced/uninvited entry into victim’s home 	<ul style="list-style-type: none"> Significant degree of planning Offender acts together with others to commit the offence Use of alcohol/drugs on victim to facilitate the offence Grooming behaviour used against victim* Abuse of trust Previous violence against victim Offence committed in course of burglary Sexual images of victim recorded, solicited or shared* Deliberate isolation of victim* Commercial exploitation and/or motivation Offence racially or religiously aggravated 	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> Touching of naked genitalia or naked breasts Prolonged detention/ sustained incident Additional degradation/ humiliation Substantial age gap between the parties Victim is particularly vulnerable due to personal circumstances* <p>*for sexual assault of a child under 13 please refer to the guideline on page xxxx</p>		

* These factors are not in the adult version of the guideline, but do appear in the adult Sexual Assault of a child under 13, guideline. The factors appear relevant and I think should be added to this guideline.

Category 3	Factor(s) in categories 1 and 2 not present		<ul style="list-style-type: none"> • Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) • Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	
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STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a YRO with a sex offender treatment programme requirement under section 1(1)(d) of the Criminal Justice and Immigration Act 2008 can be a proper alternative to a short length custodial sentence.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

Comment [VH1]: Awaiting info from YJB as to whether this is applicable – not sure if sex offender treatment programmes are widely available.

	A	B
Category 1	Starting point 3 years detention Category range 24 months' DTO – 5 years detention	Starting point 18 months' DTO Category range 12 months' DTO – 3 years detention
Category 2	Starting point 12 months' DTO Category range 6 months'– 3 years detention	Starting point 6 months' DTO Category range YRO – 1 year detention
Category 3	Starting point 4 months DTO Category range YRO – 6 months' DTO	Starting point YRO Category range Discharge - 4 months' DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. **The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person.** The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Specific targeting of a particularly vulnerable victim
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse

- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

STEP THREE

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

STEP FOUR

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP SIX

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP EIGHT

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP NINE

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.