

**EASTERN CARIBBEAN SUPREME COURT
(SENTENCING GUIDELINES) RULES 2019**

**PRACTICE DIRECTION 7D
NO. 4 OF 2019**

SENTENCING PRINCIPLES CONCERNING PERSONS BELOW 18

This Practice Direction is made pursuant to rule 6(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 7(5).

This Practice Direction is applicable to the Territory of Anguilla.

INTRODUCTION

This practice direction highlights the consideration the court must have when sentencing persons below the age of 18 and how these must be applied in determining sentence.

FACTORS TO BE CONSIDERED BY THE COURT

1. When sentencing children or young persons as at the date of the offence a court must have regard to:
 - the principal aim, to prevent offending by children and young persons;
 - the aim of rehabilitation; and
 - the welfare of the child or young person.
2. In cases involving an offender who was a child at the date of offence, the court should reduce the sentence to at most half of the appropriate term for an adult to reflect their youth and immaturity.

3. In cases involving young persons under 18 at the date of the offence, the court should reduce the sentence to at most two-thirds of the term appropriate for an adult offender to reflect their age and immaturity.
4. A custodial sentence should always be a measure of last resort for children and young persons and a custodial sentence may only be imposed when the offence is so serious that no other sanction is appropriate.
5. It is important to avoid “criminalising” children and young persons unnecessarily. The primary purpose of sentencing children or young persons is to encourage them to take responsibility for their own actions and promote re-integration into society rather than to punish.
6. Whilst the seriousness of the offence will be important, the approach to sentencing should focus more on the individual offender, rather than the offence. For a child or young person the court should focus on rehabilitation where possible. A court should also consider the effects the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour.
7. Any restriction on liberty must be commensurate with the seriousness of the offence. In considering the seriousness of any offence, the court must consider the child or young person’s culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused.
8. It is also important to bear in mind any factors that may diminish the culpability of a child or young person. The court should consider the extent to which any

child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young persons are also likely to be susceptible to peer pressure and other external influences, and changes taking place during adolescence can lead to experimentation resulting in criminal behaviour. When considering a child or young person's age, their emotional and developmental age is of at least equal importance to their chronological age (if not greater).

9. For these reasons, children and young persons are likely to benefit from being given an opportunity to address their behaviour and may be receptive to changing their conduct. They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the educational or employment prospects of the child or young person.
10. Offending by a child or young person is often a phase which passes fairly rapidly and so the sentence should not result in the alienation of the child or young person from society if that can be avoided.
11. The impact of punishment is likely to be felt more heavily by a child or young person in comparison to an adult as any sentence will seem longer due to their young age. In addition, incarceration may interfere with a child or young person's education and this should be considered by a court at sentencing.
12. In having regard to the welfare of the child or young person, a court should ensure that it is alert to:

- any mental health problems or learning difficulties/disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
- any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of children and young persons to self-harm, particularly within a custodial environment; and
- the effect on children and young persons of experiences of loss, neglect and abuse.

13. Factors regularly present in the background of children and young persons that come before the court include deprived homes, poor parental employment records, low educational attainment, early experience of offending by other family members, experience of abuse and/or neglect, negative influences from peer associates and the misuse of drugs and/or alcohol. The court should always seek to ensure that it has access to information about how best to identify and respond to these factors and, where necessary, that a proper assessment has taken place in order to enable the most appropriate sentence to be imposed.

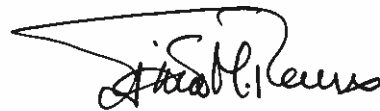
14. The court should consider the reasons why, on some occasions, a child or young person may conduct themselves inappropriately in court (e.g. due to nervousness, a lack of understanding of the system, a belief that they will be discriminated against, peer pressure to behave in a certain way because of others present, a lack of maturity, etc) and take this into account.

15. When considering a child or young person who may be particularly vulnerable, a sentencing judge should consider which available disposal is best able to support the child or young person and which disposals could potentially exacerbate any underlying issues. This is particularly important when considering custodial sentences as there are concerns about the effect on vulnerable children and young persons of being in closed conditions, with significant risks of self-harm, including suicide.
16. These principles do not undermine the fact that the sentence should reflect the seriousness of the offence. Further guidance on assessing the seriousness of an offence can be found in the specific offence guideline.

EFFECTIVE DATE

This Practice Direction will come into effect on the 1st day of October, 2019.

Made this 10th day of September, 2019.



Dame Janice M. Pereira, DBE

Chief Justice