

JANUARY 2022

**SENTENCING GUIDELINES AND
INFORMATION COMMITTEE –
SENTENCING JUDGMENTS GUIDANCE
FOR THE GENERAL PUBLIC**

INFORMATION GUIDE RE SENTENCES

General

The Superior Courts have set out sentencing guidelines in respect of some offences, namely:-

Assault manslaughter

Rape

Defilement

Assault causing serious harm

Dangerous driving causing death and serious bodily harm

Possession of a firearm in suspicious circumstances

Possession of child pornography

Robbery

Burglary

Cannabis cultivation

Tax and welfare fraud

Assault Manslaughter

The level of responsibility or blame for the unlawful death of another can vary and is set out in four categories.

- (i) Offences in the lower range of seriousness involve a sentence of up to four years. The lowest sentences within this range are imposed in cases where the accused is at fault, but the aggravating factors found in the higher ranges are absent and culpability is not especially high. Cases of diminished responsibility or extreme provocation may come into this category. Fully suspended sentences have been imposed in exceptional cases.

- (ii) Offences in the mid range of seriousness tend to result in sentences in the range of 4 to 10 years. They include cases where the offence involves an unlawful act which would not normally be expected to result in death, and where the act was not premeditated but there is still a degree of culpability.
- (iii) Offences in the high range of seriousness attract a sentence in the range of 10 to 15 years. These cases tend to involve aggravating factors which may include a history of violence between the accused and the victim, indifference or callousness towards the victim, use of a potentially lethal weapon, and death resulting from an unlawful act carrying a high risk of serious injury of which the accused was aware or ought to have been aware. Previous convictions for assault or other relevant convictions may also be a factor.
- (iv) Offences involving the very highest level of seriousness, in which an unlawful killing is almost indistinguishable from murder in terms of culpability, attract a sentence in the range of 15 to 20 years. Relevant to the level of culpability are matters such as the circumstances in which the victim died, and the conduct of the accused. A life sentence is possible.

Two factors are substantially aggravating:

- the use of violence by men against women;
- the production of a knife in the course of an argument.

[Mahon \[2019\] IESC 24](#) sets out the relevant sentencing guidelines relating to assault manslaughter.

Rape

A rape which is carried out without violence or threats being used, attracts a sentence of 7 years before mitigating factors are taken into consideration.

A rape which is carried out by using a greater amount of violence or intimidation than is normally associated with a rape offence; or involves a greater level of degradation of the victim; or involves an abuse of trust, attracts a sentence of 10 to 15 years before mitigating factors are taken into consideration.

A term of imprisonment of life can apply if a rape is carried out with serious violence; or if the victim is subjected to greater humiliation than is normally associated with a rape offence; or if the victim is subjected to sexual perversion.

Aggravating features in a rape case include:

- abuse of trust by the person who committed the rape;
- abuse of a position of authority or a position of dominance in a family;
- planning the offence;
- the involvement of more than one offender;
- tricking a victim into a position of vulnerability;
- taking advantage of a difference in age.

[People \(DPP\) v. Tiernan \[1988\] I.R. 250](#) and [People \(DPP\) v. FE \[2019\] IESC 85](#) set out the sentencing guidelines for a rape offence.

Defilement

Offences in the low range of seriousness attract a headline sentence of 1-5 years. Defilement offences generally fall in the low range category unless aggravating circumstances exist.

Offences in the mid range of seriousness attract a sentence of 5-10 years.

Offences in the high range of seriousness attract a sentence of 10-15 years.

Very serious cases can attract a headline sentence of over 15 years, and may be up to life, but these will be rare.

If the parties are in the same age range, consent may be relied upon as a mitigating factor.

Seriously aggravating factors include:

- use of force or coercion (including blackmail-type behaviour);
- abuse of a dominant position;
- exploitation of power;
- multiple instances of offending over a prolonged period;
- causing significant harm, suffering, degradation or humiliation beyond that associated with an offence of this nature;
- exploitation of a known vulnerability;
- gross breach of trust;
- recording by film or photography, which is viewed as a very serious aggravating factor.

[DPP v. JMcD \[2021\] IECA 31](#) sets out the sentencing guidelines in relation to a defilement offence.

Assault causing serious harm

Offences in the low range of seriousness attract a headline sentence of 2 to 4 years, before mitigating factors are taken into account.

Offences in the mid range of seriousness attract a sentence of between 4 and 7 and a half years.

Offences in the high range of seriousness attract a sentence of seven and a half to twelve and a half years.

There may be exceptional cases which warrant a higher sentence, including in wholly exceptional cases, life imprisonment.

Principal factors taken into account are:

- the severity or level of viciousness of the assault;
- the level of injury sustained, although it was recognised that there is not always a direct link between the severity of the attack and the degree of injury caused;
- the level of culpability or blame attaching to the accused – an entirely unprovoked attack is treated more seriously than one arising from an incident which may not have been instigated by the accused. Provocation may be taken into account.

- the general circumstances of the assault will be considered, including whether or not it was carried out as part of wider criminality, and whether or not a weapon was used.

[People \(DPP\) v. Fitzgibbon \[2014\] IECCA 12](#) sets out the relevant sentencing guidelines relating to assault causing serious harm.

[Dangerous driving causing death and serious bodily harm](#)

Offences in the lower range of seriousness attract a headline sentence of up to 3 years 4 months (40 months), before mitigating factors are taken into account.

Offences in the mid range of seriousness attract a sentence of between 3 years 4 months and 6 years 8 months (80 months).

Offences in the high range of seriousness attract a sentence of between 6 years 8 months and 10 years (120 months).

- Where the aggravating factors of driving while significantly intoxicated and causing either death or serious life changing injuries are present, the headline sentence should be 6 or more years.
- Other aggravating factors include previous relevant convictions, leaving the scene, driving while disqualified, driving whilst uninsured and speeding.

[People \(DPP\) v. Flynn \[2020\] IECA 294](#) sets out the relevant sentencing guidelines relating to dangerous driving causing death and serious bodily harm.

Possession of a firearm in suspicious circumstances

According to legislation, there is a presumption that a minimum sentence of 5 years will be imposed, up to a maximum statutory figure of 14 years.

Offences in the low range of seriousness ought to attract a headline sentence of 5 to 7 years, before mitigating factors are taken into account.

Offences in the mid range of seriousness attract a sentence of 7 to 10 years.

Offences in the high range of seriousness attract a sentence of 10 to 14 years.

The principal factors that are normally required to be taken into account are:

- the nature and quantity of the firearm(s) concerned;
- the extent to which it had been produced or displayed in a way that would give rise to concern it would be used;
- the extent to which possession was linked with general or specific criminal conduct, together with any circumstances concerning the culpability of the accused.

[People \(DPP\) v. Ryan \[2014\] IECCA 11](#) sets out the relevant sentencing guidelines relating to possession of a firearm in suspicious circumstances.

Child Pornography

Images of child pornography attract different levels of seriousness which are:

1. Images depicting erotic posing with no sexual activity;
2. Sexual activity between children solo or masturbation as a child;
3. Non-penetrative sexual activity between adults and children;
4. Penetrative sexual activity between children and adults;
5. Sadism or bestiality.

Other relevant facts when considering the seriousness of the offence are:

- the number of images;
- the circumstances and the duration of the activity leading to possession of the images (including any interaction with, for example, alcohol abuse);
- whether the images had been paid for or shared with others including with children;
- whether there were any linked offences against children.

Deterrence is also particularly important in sentencing for offences of this nature.

[People \(DPP\) v. Loving \[2006\] 3 IR 355](#) sets out the sentencing guidelines relating to possession of Child Pornography. Also of relevance is [People \(DPP\) v. O'Byrne \[2013\] IECCA 93](#) and [People \(DPP\) v. McGinty \[2019\] IECA 27](#).

Robbery

Offences in the low range of seriousness attract a headline sentence of 0-5 years. Cases at the lower end of the scale will involve the threat of violence but where force is not used; where the property taken was not of great value; and there was no severe or lasting impact on the victim.

Offences in the mid range of seriousness attract a sentence of 6-10 years.

Offences in the high range of seriousness attract a sentence of 11-15 years. Offences in the high range of seriousness involve the actual or planned taking of a very significant amount of money or valuables. However, the value of the property stolen is not the only factor that places the robbery in the top range. The infliction of serious or life-threatening injuries; the targeting of an elderly or vulnerable victim; confrontation with Gardaí arriving at the scene; or being instrumental in the loss of life are factors that may bring the offence into the highest category of seriousness.

Aggravating factors which will bring the offence into the mid or high range of seriousness are:-

- use of a knife or other weapon, especially where any significant level of harm is caused and regardless of the value of any property taken;
- carefully planned robberies, often involving a number of participants willing to use serious violence, will also be at the high end of the middle range;
- carrying out a series of robberies over a short period of time, involving the cumulative infliction of a good deal of injury or damage;
- carrying out robberies in shops or other premises where a number of people are traumatised.

[People \(DPP\) v. O'Sullivan \[2020\] IECA 331](#) sets out the sentencing guidelines relating to robbery offences. [People \(DPP\) v. Byrne \[2018\] IECA 120](#) is also of relevance.

Burglary

Offences in the low range of seriousness attract a headline sentence of up to 4 years.

Offences in the mid range of seriousness attract a sentence of 4-9 years.

Offences in the high range of seriousness attract a sentence of 9-14 years.

Aggravating factors are:

- planning the burglary;
- targeting of residential dwellings of persons known to be vulnerable;
- confrontation with an occupant (particularly if the confrontation is aggressive and/or violence is used);
- entry into a premises without ascertaining whether or not it is occupied (since the likelihood of confrontation thereby increases);
- taking an item such as a carving knife to use as a weapon;
- ransacking a dwelling;
- any injury caused to the victim (whether physical or psychological);
- taking items of significant monetary value (judged from the perspective of the victim) or of sentimental value;
- relevant previous convictions;
- committing multiple burglary offences.

[People \(DPP\) v. Casey and Casey \[2018\] IECA 121](#) sets out the sentencing guidelines relating to burglary offences.

Cannabis cultivation

Offences in the low range of seriousness attract a headline sentence of 0-5 years.

Offences in the mid range of seriousness attract a sentence of 5-10 years.

Offences in the high range of seriousness attract a sentence of 10-15 years.

The scale and sophistication of a grow house operation; the value of any actual drugs or mature/harvestable plants seized; and the potential value of any immature plants are relevant factors in assessing the gravity of the offence.

Persons who fund and arrange the setting up of the grow house operation and the sale and distribution of the produce, and who get to keep and enjoy the profits earned have a high level of culpability.

Persons who provide logistical and supervisory support for the grow house operation and who usually receive a substantial fee for their efforts, although not sharing in the ultimate profits are in the mid-range of culpability.

Persons who are the operatives or the gardeners of the grow house and who receive very little remuneration, if any, are in the low range of culpability.

[People \(DPP\) v. Samuilis \[2018\] IECA 316](#) sets out the relevant sentencing guidelines relating to cultivation of cannabis plants.

Tax and Welfare Fraud

Offences in the low range of seriousness attract a headline sentence of 0-40 months.

Offences in the mid range of seriousness attract a sentence of 41-80 months.

Offences in the high range of seriousness attract a sentence of 81-120 months. Seriously aggravating factors are if the motive for the crime was clearly criminal or where the offence has been carefully planned.

[People DPP v. Maguire \[2018\] IECA 310](#) sets out the relevant sentencing guidelines relating to tax and welfare fraud.