



Comhairle na mBreithiúna
The Judicial Council

**SENTENCING GUIDELINE ON THE APPLICATION OF
SECTION 40 OF THE DOMESTIC VIOLENCE ACT 2018**

**Adopted by the Judicial Council
on the 25th of March 2026**

GUIDELINE ON THE APPLICATION OF SECTION 40 OF THE DOMESTIC VIOLENCE ACT 2018

Focus of the Guideline

1. This Guideline focusses primarily on the application of s.40 of the Domestic Violence Act 2018. The section applies to a number of offences that range in gravity from rape and other serious sexual offences and serious assaults to matters that are triable summarily only such as simple assault.¹
2. The section is engaged if **the victim and the offender are, or were in the past, married, or in a civil partnership, or otherwise in an intimate relationship**. The statute does not stipulate any minimum duration for the relationship, or require that there should be a child or children as a result of the relationship.

¹ See Appendix for full list

3. In such cases the existence of the relationship is to be treated by a sentencing court as an aggravating factor and the sentence is to be greater than it would otherwise be.
4. While the Guideline relates specifically to the offences listed in the section, many of the considerations identified here will be relevant to judges in dealing with certain offences that are not expressly listed. The offence of coercive control (s.39 of the Domestic Violence Act 2018) is specifically excluded from the requirements of s.40 because the existence of a relevant relationship is a core element of the offence, but the Guideline may assist in identifying the aggravating and mitigating features of such a case.
5. Significantly, s. 40 of the Domestic Violence Act 2018 also includes *any* other offence, not expressly listed, which involves violence or a threat of violence to a person. This might, obviously, include many cases under s.33 of the Act involving a breach of a safety order, a barring order, an interim barring order, an emergency barring order or a protection order, if the offender and victim are in a “relevant relationship”.
6. The existence of a relevant relationship may also be a feature of some cases of criminal damage, theft and burglary. While these offences are not specifically covered by s.40, a sentencing judge dealing with such a case

should consider whether or not the relationship was a significant factor in the commission of the offence.

7. In very many of the cases where there is, or has been, a relevant relationship there will, apart from the charge or charges before the court, have been a pattern of abusive behaviour within the relationship. In *People (Director of Public Prosecutions) v. F.E.* [2019] IESC 85 the Supreme Court held that evidence of violence in the home, breach of trust, domination and a background of abuse were to be regarded by the courts as aggravating circumstances in such cases.
8. Where an offence is committed in the context of a relevant relationship it is, therefore, necessary to look at the offence in its context, rather than viewing it in isolation.
9. This is not to say that an offender can be given an increased sentence for one crime by taking into account another crime with which they were not charged, or in respect of which they were acquitted. The point is that the court may act on proven, relevant, factual circumstances involving a pattern of behaviour.

General sentencing principle

10. In all sentencing decisions other than those involving a mandatory penalty the sentencing judge must impose a sentence that is proportionate to the gravity of the offence and to the personal circumstances of the offender.

Interpretation of s.40 of the Domestic Violence Act 2018

11. Section 40 of the Domestic Violence Act 2018 requires a court sentencing an offender for an offence covered by the section to take into account as an aggravating factor the existence of a relevant relationship, as defined in the section. The court must impose a greater sentence than it would if there was no such relationship.

12. The section should not be interpreted as meaning that the sentencing judge should first choose a sentence and then add to it for the purpose of complying with the section's requirements. Instead, in sentencing for an offence to which s.40 applies, the fact of a relevant relationship should be taken into account in assessing the **gravity** of the offence. This is because of a) the **additional harm** caused to the victim by an offence of this nature if it is committed by someone with whom they are, or were, in a

very close relationship and b) the possibility that the **culpability** of the offender is greater. The section requires the judge to acknowledge and take account of these factors in imposing sentence. This should be done expressly, by reference to s.40.

13. In most of the relevant offences it is very likely that the relationship, whether current or past, will have been a central feature of the offending conduct. The **additional psychological harm** stems from the fact that the offender is someone to whom the victim felt close enough to be in an intimate relationship involving assumptions of love, trust and care, leading to greater vulnerability.

14. The trauma caused by an offence in that context is generally deeper, and lasts for longer, than would be the case where there is no such relationship. An offence by a stranger may have devastating consequences but it is more likely to have been a one-off, possibly random, event. Such a perpetrator will not, typically, be in a position to isolate the victim from the assistance and support of the family and community, or to affect their capacity to parent, or to threaten them with financial hardship or homelessness.

15. It is also the case that victims are less likely to disclose an offence where there is a relevant relationship. The existence of the relationship may

have created a barrier to disclosure, whether to Gardaí, medical advisers or others, meaning that there may have been a hidden pattern of abusive conduct and harm over a significant period of time. The barrier may have been due in part to fear of retaliation and of financial consequences, perhaps including homelessness, as well as to the fact that abusive actions affect the victim's self-esteem and any confidence that they will be believed. If there are children, and it is intended that the offender will continue to have a relationship with them, the victim will also have to cope with the fact that there will be ongoing contact with the person who harmed them.

16. The **additional culpability** arises if the offender deliberately took advantage of the victim's trust, or of any physical, psychological, emotional or financial vulnerability of the victim, including vulnerability arising from social isolation. Vulnerability may also arise from other factors, including immigration status. The existence of a relevant relationship enables the offender to learn how to exploit a victim's relative lack of power. This is a particularly significant factor if the vulnerability of the victim was created by the offender, by, for example, ensuring their social isolation or lack of finance.

17. There are some potential features that will act as aggravating features in any crime. For example, the use or threat of the use of violence is always an aggravating factor for the purposes of sentencing if it is not already either part of the substantive offence or the subject of a separate charge. (If it is an intrinsic ingredient of the substantive offence, or is charged as a separate offence, it **cannot** also be an aggravating factor.) Boasting about the infliction of violence is also an aggravating matter in any assault charge. In any given case to which this Guideline applies the court will be sentencing a person for a substantive offence and such matters are to be taken into account as aggravating factors for the offence in question. They should **not** be counted separately for the purpose of applying s.40.

18. That said, there are some particular aggravating features that are frequently seen where the substantive offences covered by this Guideline are committed in the context of a relevant relationship. They are referred to here for the purpose of drawing attention to that factor, and not as being relevant only to consideration of the effect of s.40.

19. Many of the offences concerned are likely to be committed in the victim's dwelling, meaning that the right of the victim to feel safe and secure in the home is violated. This can create lasting fears and anxieties. It also makes it less likely that there will be witnesses to the offence, and

therefore the victim may be more easily manipulated into thinking that no-one will believe their account.

20. The presence of children should be seen as an aggravating factor. While s.40 is not directly applicable to offences against children, they should not be seen simply as witnesses and their presence is not a neutral factor. Children who are exposed to scenes of physical or verbal abuse of a parent may, themselves, be left with long-term psychological damage and are to be regarded, therefore, as having been harmed by the offence. This may also arise if occasions of access to children are used for the commission of offences.

21. Any action taken by the offender to prevent disclosure of the offence by the victim (including the provision of false narratives to family and others or to the authorities) should be seen as aggravating, as should a pattern of behaviour including, where applicable, previous non-compliance with court orders intended for the protection of the victim (whether made in civil or criminal proceedings).

22. In considering the aggravating factors as part of the assessment of the headline sentence, care must be taken to avoid “double counting”. A person cannot be punished twice for the same action, and, similarly, an aggravating feature cannot be taken into consideration more than once.

The effect of section 40

23. The effect of the section is that, because it is assessed as part of the assessment of gravity, the **headline sentence** will be greater than it would be in the case of the same offence if committed against an unrelated person. Therefore, if a sentence of imprisonment is to be imposed the deduction for mitigatory factors (if any) will commence from a higher figure.

24. It must be emphasised that it remains possible, depending on the facts and circumstances of the case, that a non-custodial disposal will be the appropriate outcome, particularly if the offence was not part of a pattern of intimidation and control.

Mitigation

25. It is a fundamental principle of sentencing that the judge is sentencing the person who committed the offence. Mitigating factors relating to that person **must**, therefore, be taken into account. Since mitigation is so closely connected with the personal circumstances of the offender, not all potential mitigatory features are set out in this Guideline. The following

specific matters are of particular significance in respect of the offences covered by the Guideline.

Good character

26. For the purposes of sentencing in cases covered by this Guideline the question of “good character” requires more careful consideration than might be necessary in the context of other offences. “Good character”, in the sense that it is usually used by sentencing judges, does not necessarily refer to public reputation but means at least an absence of any criminal convictions other than for very minor matters. This is always a mitigatory factor to *some* extent, especially if there are positive aspects such as employment or pro-social actions. Given the nature of the offences under consideration, however, character will at best be a minor mitigatory factor.

27. The key questions about good character evidence are the same as the key questions about any evidence. Firstly, is it **relevant**? Secondly, what **weight** does it have? If the evidence discloses a pattern of abusive behaviour and offending over a period of time, the lack of convictions will be of very little relevance and any character evidence provided to the court will be of little weight. In such cases the offender’s reputation was

undeserved and it would be simply incorrect to assert, for example, that the offence was “out of character”.

28. It may also be that an offender’s standing in the community was deliberately used to shield them from discovery and to undermine the credibility of the victim if they disclosed their experiences to others. Where this has occurred, and the offending was thereby facilitated, it should be seen as an aggravating factor.

29. Self-induced intoxication, whether brought about by alcohol or drugs, is not a mitigating factor in the commission of any crime. A genuine effort to deal with addiction is, however, a matter that can be taken into account.

Post-offence mitigatory actions by the offender

30. There are a number of actions that can be taken by the offender to reduce the trauma inflicted on the victim. These include:

- An early apology and admission of wrongdoing.
- Immediately moving out of the home, if the parties are living together.
- Abstaining from unwanted contact.
- Complying with any protective court orders.
- Complying promptly with maintenance orders.

- Pleading guilty – this reduces the burden on the victim and avoids their re-victimisation in court.
- Avoiding the manipulation of children to undermine the victim.

31. One potentially relevant mitigatory action that an offender can undertake is participation in a **relevant structured programme** that focusses on addressing the underlying causes of abusive behaviour, promoting accountability, and encouraging long-term change. Taking responsibility for harm done, and committing to behavioural change, are highly significant matters. In this context, if a sentencing judge thinks that such a programme would be of benefit, they may take the fact of an offer of voluntary enrolment into account as a mitigatory factor, in so far as it may show that the offender has some level of insight into the harm done and has the commitment to change (See, however, the section below on *“Effective and ineffective court disposals”*.)

Effective and ineffective court disposals

32. This is an area where deterrence is a very significant factor in the protection of victims. It is essential that an offender does not imagine that the judge is making empty threats, which may lead to retaliatory threats

to the victim – it must be clear that conduct has real and immediate consequences.

33. The court should therefore respond swiftly and robustly to the breach of a term of an order, by way of, for example, altering terms of bail or the conditions attached to a sentence. Where possible, allegations of more than one breach should be dealt with by the same court so that the pattern, if there is one, becomes clear.

34. **Non-custodial sentences** should, in principle, always include a supervisory element. In this context, the Probation Service can provide supervision that involves monitoring the perpetrator's behaviour, including an ongoing assessment of risk through the application of the Spousal Assault Risk Assessment protocol and any other risk assessment and management procedures as appropriate. The Service, and other agencies, may also be able to provide **support for victims**. While resources in some areas may be stretched at some times, the Service has systems for prioritising cases and judges should not hesitate to invoke their assistance. Monitoring will be an important element of the protection of victims.

35. **Fines** are **not** recommended in this context. There is a real risk that either they will be ignored, or victims will be put under pressure to pay them, or the offender will retaliate by not paying maintenance.

36. **Restorative Justice** interventions are **not** recommended, at least in the period prior to finalisation of sentence. They are prone to manipulation by perpetrators in intimate partner abuse cases and can expose victims to further harm and victimisation.

37. Where **participation in a relevant structured programme** is proposed, the judge should **not** be satisfied with a self-referral by the offender (although the offer may if genuine be considered a mitigatory factor). The judge should, firstly, ensure that the programme is one that is appropriate for the type of offence in question. It is important to note that **anger management** courses are **not** recommended in cases of domestic abuse. In this particular context, loss of control is not generally as significant a feature as the ability to channel and deploy anger as a means of controlling the victim.

38. Participation in a programme should be a **term of the order** made by the court, as should the monitoring of participation and the reporting back to the court.

39. The court should not, however, order an offender to participate in any particular programme **in custody**, as a condition of a part-suspended sentence or otherwise. There are reasons of both practicality and principle for this. A place on a programme will not always be available, or the person may be considered unsuitable for various reasons. Such circumstances will not be within the control of the offender. More broadly, judges should not seek to control the management of a sentence, which is a matter for the executive. Once sentence has been imposed the judge is *functus officio*. If, for example, the person were to refuse to engage with a programme in prison the matter could not be brought back before the court.

The views of the victim

40. The sentencing judge must take into account any evidence as to the *effect* of the offence on the victim, in order to make an informed assessment of the gravity of the offence. Where a Victim Impact Statement is furnished, it is permissible to include in it the effects of a pattern of abusive behaviour if that pattern has been established to the court's satisfaction – as explained above, the sentencing judge is entitled to take that relevant background into account.

41. However, great care needs to be taken if the victim expresses *views* as to the appropriate sentence, whether seeking leniency or severity.
42. Judges should be aware that cases with a background of domestic abuse have a disproportionately high rate of victim withdrawal from the process up to and including the sentencing stage. It can be difficult to draw a line between doing justice in a case and inflicting further trauma on a victim. Judges must also be aware that a belief on the part of an offender that a victim can influence sentence can increase the personal risk to the victim.
43. The victim may be put under pressure, from family, or others, or from financial need, to say that the offender should not be sentenced to custody. They may feel a misplaced sense of guilt for having put the offender at risk of custody, or for breaking up the offender's family relationships (especially with children). Conversely, they may wish for a very lengthy custodial sentence in order to feel safer. In some cases, it will be apparent that the victim genuinely wishes to continue the relationship despite the prosecution and conviction.
44. It has to be made clear by the courts that such views cannot be determinative in any case. The task being carried out is a judicial function and involves the application of established principles of sentencing. In that context, the views of the victim will be of most relevance if they are

in a position to provide insight into the background and conduct of the offender, or to explain any efforts made by them to show remorse and/or to change their behaviour, or to explain the manner in which it is proposed to continue the relationship where that is the case. ²

Consideration may also have to be given to any intention to continue contact between the offender and any children.

Compensation³

45. A **voluntary offer of compensation** from the offender to the victim is to be considered a factor in mitigation if the court is satisfied that it is a genuine expression of remorse and acceptance of responsibility for the harm done. The weight to be attached to it will vary according to the court's view of the genuineness of the offer, its relationship to the gravity of the harm inflicted and to the circumstances of the offender, as well as any other relevant circumstances in the case.

46. The offer of compensation, although a mitigatory factor, does not necessarily mean that a custodial sentence will not be imposed even in cases where it is accepted – the court should never countenance the

² For further explanation see *People (DPP) v. Duffy* [2023] IESC 1

³ For more on this topic see *People (DPP) v Duffy* [2023] IESC 1

possibility that money can purchase leniency. Accordingly, the court should never put any **pressure** on the victim to accept an offer, and should try to ensure that the offender does not do so. Nor should the court put pressure on an accused to increase an offer. An increased offer will not necessarily mean that there is an increased level of remorse.

47. Victims of violent crime should have been told by the Gardaí to whom they reported the crime that the court has the power to make a **compensation order**, under s.6 of the Criminal Justice Act 1993, in respect of personal injury or loss suffered by the victim as a result of the offence.⁴

48. A sentencing judge should ensure that this information has been provided but making an order under s.6 may not always be appropriate. The most suitable cases for the use of this mechanism will be either minor cases where the judge is, in any event, considering a non-custodial option and the damage done is relatively easy to quantify, or more serious cases where it is clear that the victim would be entitled to damages in civil

⁴ Section 7(1)(j) of the Criminal Justice (Victims of Crime) Act 2017. Under s.7(1)(i), victims are also entitled to be informed about the availability of the Scheme of Compensation for Injuries Criminally Inflicted.

proceedings, that the offender has means and that the order can be made without unduly prolonging the sentence process.

49. An order made under s.6 should **not** be taken into account as a mitigatory factor in sentencing, since the offender would be liable in damages to the victim in any event if civil proceedings were to be issued.

Exceptional circumstances

50. The section permits a sentencing judge to disregard a relevant relationship as an aggravating factor in *exceptional* circumstances.

51. It is inherent in the concept of “exceptionality” that the circumstances that may be considered exceptional cannot be enumerated in advance. It can be said, however, that it is difficult to see an exception arising in any case where the existence of the relationship was a *relevant* feature of the offending conduct. One possible scenario might be that in a particular case the relationship was only a peripheral or coincidental feature if, for example, it had been over for a long time and was not the reason why the victim was targeted by the offender. Another might arise where the offender has used excessive force in defending themselves against attack

by the other party to the relationship – it would be illogical to see the relationship as an aggravating factor in such circumstances.

52. As with any other decision of significance in a case, the judge should, where relevant, state that the proviso applies and give their reasons.

APPENDIX

Offences covered by s.40 of the Domestic Violence Act 2018

Note- the relevant legislation covering each offence should be checked for the exact definition.

Non-fatal Offences Against the Person Act 1997

- Section 2 – assault.
- Section 3 (as amended by s.20 of the Criminal Justice (Miscellaneous Provisions Act 2023) – assault causing harm.
- Section 3A (inserted by s.21 of the Criminal Justice (Miscellaneous Provisions) Act 2023 – intentional or reckless strangulation or suffocation, or causing a person to believe that they are likely immediately to be subjected to strangulation or suffocation.
- Section 4 – intentionally or recklessly causing serious harm.

Guideline judgments: *People (DPP) v. Fitzgibbon* [2014] 2 I.L.R.M. 116, [2014] IECCA 12, *People (DPP) v. O’Sullivan* [2019] IECA 250

- Section 4A (inserted by s.22 of the Criminal Justice (Miscellaneous Provisions) Act 2023) – intentionally or recklessly causing serious harm by suffocation or strangling.
- Section 5 – threatening to kill or cause serious harm, intending the person threatened to believe that the threat would be carried out.
- Section 6 – (i) injuring or threatening to injure a person with a syringe, intending the person to believe (or where it is likely that they will believe) that they may become infected with a disease as a result; (ii) spraying, pouring or putting, or threatening to, blood or a fluid resembling blood on a person intending the person to believe (or where it is likely that they will believe) that they may become infected with a disease as a result and (iii) intentional injury with a contaminated syringe or intentionally spraying, pouring or putting contaminated blood onto a person.
- Section 7 – possession of a syringe, or blood in a container, with intent to cause or threaten to cause injury.

- Section 8 – (i) placing or abandoning a syringe in such a manner that it is likely to and does injure another, or is likely to injure, cause a threat or frighten another; (ii) intentionally placing a contaminated syringe in any place in such a manner that it injures another.

- Section 9 – coercion. The offender will have, with a view to compelling another person to either abstain from doing something they are entitled to do, or to do something they do not wish to do,
 - (a) used violence to or intimidated the person or a member of their family, or
 - (b) injured or damage the property of the other, or
 - (c) persistently followed the person from place to place, or
 - (d) watched and beset the place where the person lives, works or happens to be, or
 - (e) followed the person, with one or more other persons, in a disorderly manner in or through any public place.

- Section 10 (as substituted by s.23 of the Criminal Justice (Miscellaneous Provisions) Act 2023) – harassment and stalking.

For *harassment*, the offender will have by their actions, without lawful authority or reasonable excuse, intentionally or recklessly seriously interfered with the peace and privacy of another person, or caused them alarm, distress or harm, where their actions were such that a reasonable person would have realised that the actions would cause those consequences.

For *stalking*, the offender will have by their actions, without lawful authority or reasonable excuse, caused a person to fear that violence would be used against them or against another person connected to them, or caused them serious alarm or distress that has had a substantial adverse effect on their usual day-to-day activities, where the actions were such that a reasonable person would have realised that they would cause those consequences.

For both harassment and stalking, the “actions” contemplated by the section include (a) following, watching, monitoring, tracking, spying, (b) pestering, (c) impersonating a person, (d) communicating with or about a person, (e) pretending to act or communicate on behalf of a person, (f) disclosing to others private information about a person, (g) interfering with the property (including pets) of a person, (h) loitering in the vicinity of a person, (i) causing a person’s electronic

communication or information system to function in a particular way without the consent of a person, and (j) breaching a court order restraining them from communications and approaches to the person.

Breach of such a court order is a separate offence. It is an aggravating factor if the offender has previously been convicted of an offence against the person in question or some other person connected to them, in which case the sentence must be greater than it would otherwise have been, unless there are exceptional circumstances that justify not doing so.

Guideline judgment: *People (DPP) v. Molloy [2021] IESC 44*

- Section 11 – demanding payment of a debt (a) with a frequency that is calculated to cause alarm, distress or humiliation; (b) by falsely representing that the person can be criminally prosecuted; (c) by falsely pretending to have some official authority or (d) using a document falsely represented as being official.
- Section 12 – poisoning. The offence is committed by a person who knowingly or recklessly administers to another person, or causes them to take a substance that they know to be capable of interfering

substantially with bodily functions (knowing that the other person does not consent).

- Section 13 – endangerment. The offence is intentionally or recklessly engaging in conduct which creates a substantial risk of death or serious harm to another.
- Section 14 – endangerment of traffic. This is the placing or throwing of any dangerous obstruction upon a railway, road, waterway or public place, or interfering with any machinery or equipment for the control or regulation of traffic, or throwing something at a vehicle, train or boat, knowing or being reckless as to the fact that personal injury or damage to property might result.
- Section 15 – false imprisonment. This offence (often, but not quite accurately, referred to as kidnapping) is committed by unlawfully taking or detaining, or causing to be taken or detained, or otherwise restricting the liberty of, another person without their consent.
- **Section 40 of the Domestic Violence Act also includes *any* other offence, not in the above list, which involves violence or a threat of violence to a person. This important provision might, obviously,**

include many cases under s.33 of the Act involving a breach of a safety order, a barring order, an interim barring order, an emergency barring order or a protection order, if the offender and victim are in a “relevant relationship”.

Sexual offences

- Rape –A man commits rape if he penetrates, or continues intercourse with, a woman who does not consent and he knows at the time she does not consent or is reckless as to whether she is consenting.

Guideline judgment: *People (Director of Public Prosecutions) v. F.E.*

[2019] IESC 85

- “Rape under section 4” is the name given to the offence created by s. 4 of the Criminal Law (Rape) Amendment Act of 1990. It is gender-neutral and is committed by penetration of the anus or mouth by the penis, or penetration of the vagina by an object.
- Sexual assault – an intentional assault in circumstances of indecency.

- Aggravated sexual assault – a sexual assault that involves serious violence or the threat of serious violence, or that is such as to cause injury, humiliation, or degradation.

Intimate images

- Section 2 of the Harassment, Harmful Communications and Related Offences Act 2020 Act of 2020 – distributing, publishing or threatening to distribute or publish an intimate image of a person, without their consent and with intent to cause harm or being reckless as to whether harm is caused. To cause harm is to intentionally or recklessly seriously interfere with the other person's peace and privacy, or to cause alarm or distress, where the acts are such that a reasonable person would realise that such would be the result.
- Section 3 of the Act of 2020 – recording, distributing or publishing an intimate image of a person without consent and thereby seriously interfering with the person's peace and privacy or causing alarm, distress or harm. This offence does not require proof of intent or recklessness as to the consequences.

Finally, s.40 includes an offence that consists of attempting or conspiring to commit, or aiding or abetting, counselling or procuring or inciting the commission of, any of the above offences.