

# Sentencing guidelines

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Sentencing guidelines will soon be introduced. Expected to be shaped by other developments in sentencing policy and practice, their successful implementation will depend on better data. This shift towards sentencing guidelines is a significant departure for the Irish criminal justice system.

The Houses of the Oireachtas legislated for the introduction of sentencing guidelines through the establishment of the Sentencing Guidelines and Information Committee (SGIC). The SGIC is expected to publish guidelines on domestic violence incidents by the end of 2024, with guidelines in relation to fatal driving offences to follow. This raises questions as to the impact of guidelines on current practice.

## What are sentencing guidelines?

Sentencing guidelines are documents that contain guidance, beyond that which exists in law, for judges to follow when sentencing a person who is found guilty or who pleads guilty at court.

## The sentencing process: current practice

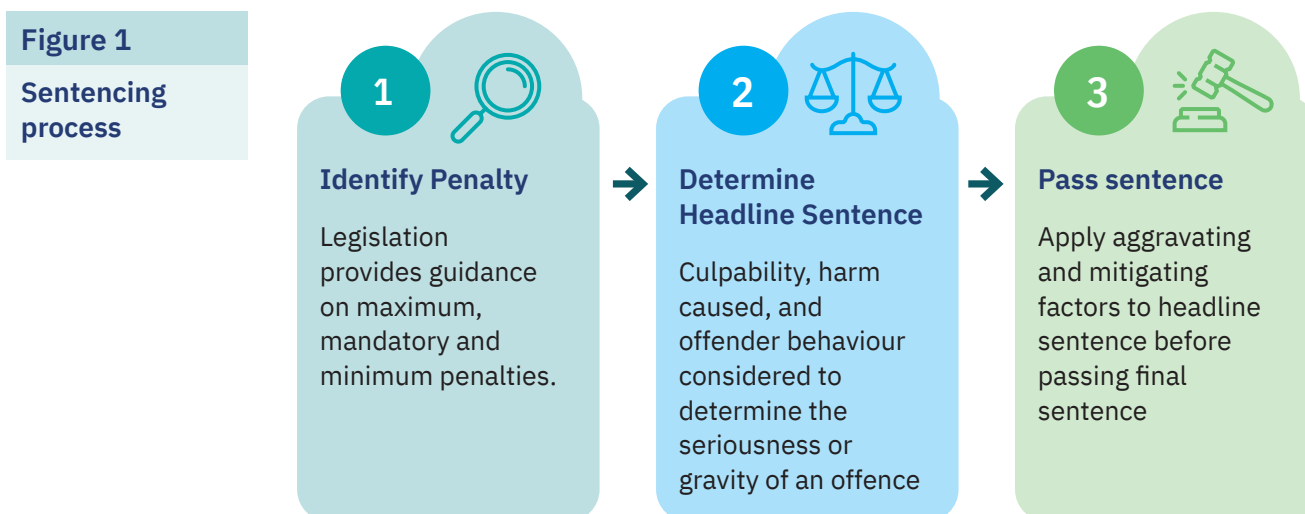
Sentencing in Ireland is underpinned by the separation of powers, enshrined in the Constitution, Bunreacht na hÉireann.

- ▶ **Legislature (Oireachtas):** responsible for defining criminal offences in statute and setting a maximum sentence for each offence and has also prescribed minimum sentences for certain offences.
- ▶ **Judiciary (Judges):** Offences are prosecuted in the courts and judges are responsible for sentencing.
- ▶ **Executive (Government):** responsible for implementing the sentence.

Traditionally in common law jurisdictions, such as Ireland, sentencing processes are unstructured. This means that judges enjoy a wide measure of discretion when handing down sentences. However, judges are also guided by two key principles of sentencing practice, namely:

- ▶ **consistency** of approach to sentencing, meaning that like cases are treated alike; and
- ▶ the criminal sanction should be **proportionate** to the offence and offender.

The current approach to sentencing by judges is shown in Figure 1.



## Role of guideline judgments

According to the SGIC, guideline judgments typically divide the available custodial sentencing options into three indicative bands:

1. Low range of seriousness
2. Mid-range of seriousness
3. High range of seriousness

These bands are designed to assist with the second stage in the sentencing process, that is, the selection of a headline sentence. The judge then goes on to consider all relevant mitigating factors before determining a final sentence.

Forthcoming sentencing guidelines may follow a similar format.

### What are guideline judgments?

Judges – when sitting in higher appeal courts – can make decisions in cases that give guidance to other judges about the appropriate sentence to use in similar types of cases. These decisions are known as guideline judgments.

## Sentencing guidelines: development, implementation and monitoring

In addition to sentences that are imposed by the courts, the SGIC is required by statute to take some of the following factors into consideration when developing guidelines:

- ▶ the need to promote consistency in sentencing imposed by the courts;
- ▶ the impact of judicial sentencing decisions on victims of the offences concerned;
- ▶ the need to promote public confidence in the criminal justice system;
- ▶ the financial costs involved in the execution of different types of sentences, and the relative effectiveness of them in the prevention of re-offending.

In 2022, the SGIC published a report which found the limited sentencing data in Ireland may hinder the development of useful guidelines. The Sentencing Council for England and Wales also found that analysis on consistency in sentencing is hampered by a lack of data.

The SGIC 2022 report recommended that a sentencing database be established, for example, a revival of the Irish Sentencing Information System, which would combine administrative data from various criminal justice agencies. The report further recommended that such data should be recorded by appropriately qualified personnel and a research unit be established to support SGIC.

A question as to the legal standing of sentencing guidelines, which may impact on their implementation, arose during parliamentary debates in July 2024. This was in the context of the constitutionality of personal injury guidelines, which had also been developed by a committee of the Judicial Council.

## Legislative sentencing guidance and potential impact on sentencing guidelines

Ireland, in line with the common law tradition, has taken a minimalist approach to legislative sentencing guidance. The interaction between legislative sentencing guidance and sentencing guidelines is discussed briefly below.

### Maximum sentences

Maximum sentences for certain offences have been increased in recent years. Sentencing expert, Thomas O'Malley SC, has stated that the rationale for increased maximum sentences is not always clear. Research suggests that increased sentences do not deter crime. The impact of these increases on sentencing of other offences is unclear. For example, in 2023, the maximum sentence for assault causing harm was increased from five to ten years. However, the Court of Criminal Appeal has provided guidance relating to the offence of assault causing serious harm, the highest range of seriousness should attract seven to 12.5 years.

O'Malley SC has stated that higher maximum sentences will likely result in higher guideline sentences and has cautioned that sentencing guidelines tend to focus on imprisonment. This may be of concern given recent rises in the prison population. In October 2024, the then Minister for Justice, Helen McEntee TD published the report of the Prison Overcrowding Response Group which recommended progressing legislation to emphasise the principle of prison as a sanction of last resort and to encourage greater use of community sanctions.

Thomas O'Malley SC has also called for a review of maximum sentences set out in legislation, which was also recommended by the Council of Europe in its 1992 Recommendation on Consistency in Sentencing.

## Mandatory and minimum sentences

The Oireachtas has legislated for mandatory life sentences for adults convicted of murder. Following a High Court case, legislation was brought forward in September 2024 to disapply the mandatory life sentence for murder for juvenile offenders.

The Oireachtas has also legislated for minimum sentences, for example with respect to firearms and drug offences, which have been challenged in the courts. Both Oireachtas members and legal experts have called for the repeal of presumptive minimum sentences, with some suggesting they are unnecessary when sentencing guidelines are in effect. The then Minister for Justice, Helen McEntee TD stated that a review of legislation providing for the imposition of mandatory minimum sentences concluded in 2024 but a report has not yet been made publicly available.

Recent Government legislative proposals (General Scheme of the Life Sentences Bill) also seeks to:

- ▶ require judges to recommend a minimum custodial term when imposing a life sentence; and
- ▶ widen the remit of the SGIC in this regard.

## Conclusion

While the introduction of sentencing guidelines represents a significant shift in practice, other policy and legislative proposals will have an impact on their development and implementation. The measure of their success will also depend on the availability of robust sentencing data.



Suggested further reading from the Parliamentary Research Service:  
'Sentencing Policy and Practice' (October, 2008)