

SUBMISSION TO SENTENCING ADVISORY COUNCIL

MAXIMUM PENALTIES FOR SEXUAL PENETRATION WITH A CHILD UNDER 16

Introduction

This is a complex topic for lay people to address. In view of this the comments in this submission have been limited to general remarks about difficulties that arise in practice and anomalies that seem to be present in the current legislation.

The increased penalties were intended to raise the whole sentencing pattern but may put them at odds with other sentencing regimes. This has not been considered in this submission.

Indecent assault is a difficult issue in as much as some of the behaviour covered in this category is grooming behaviour. However, clearly there are difficulties with setting penalties for crimes that may be committed in the future rather than what is actually being dealt with. Nevertheless indecent assault in and of itself can be a serious crime necessitating a higher penalty than the current one.

Questions

- 1. Do the current maximum penalties for the offence of taking part in an act of sexual penetration with a child under the age of 16 appropriately reflect the range of offending in each form of the offence?**

Sexual penetration or indecent act with a child under care, supervision or authority is a more heinous crime than with a child not under care, supervision or authority (CSA) due to the breach of trust and the long term damage that can occur from these situations. The penalties do not reflect this. There is no category of indecent act with a child aged under 16 and under CSA of offender. There is a CSA category for all other offences including indecent act with a child 16-17 and under CSA of offender.

The penalties for offences where there is CSA should be increased to reflect the unacceptability to society of people in positions of trust and power abusing their positions. Although all sexual assault and indecent acts are unacceptable, people in positions of authority and responsibility, whether familial or organisationally based, generally have regular, unsupervised contact in caring relationships with children and young people which makes their crime a breach of trust as well as distressing in and of itself.

In addition there is a large gap between the penalty for sexual penetration with a child aged under 10 and sexual penetration with a child aged 10-16 and under CSA of offender given the above argument.

Statutory Maximum Penalty (years)		Rationale
Sexual penetration with a child aged under 13	25 years	Increase the age range to 13 years to reflect developmental criteria.
Sexual penetration with a child aged 13 - 16 and under CSA of offender	20 years	Increased penalty to reflect serious nature of breach of trust when child under CSA
Sexual penetration with a child aged 13 - 16	15 years	Increase penalty to reflect seriousness of offence
Indecent act with a child aged under 16 and under CSA of offender	15 years	New offence to reinforce CSA provisions
Sexual penetration with a child aged 16 - 17 and under CSA of offender	15 years	Increased penalty to reflect seriousness of breach of trust with CSA
Indecent act with a child aged 16 - 17 and under CSA of offender	10	Increased penalty to reflect seriousness of breach of trust with CSA
Indecent assault	15	
Rape	25	
Incest	25	

2. What are the advantages and disadvantages of having age as a statutory aggravating factor for this offence?

The age brackets under 10 and 10 - 16 appear to be somewhat arbitrary. There needs to be some recognition of development age. The generally accepted division between younger and older children is 13 years. It is suggested that the Category under 10 should be altered to under 13 years to fit in with child development categories. It also fits with societal views about children's capacity to undertake various tasks and make decisions.

There appears to be no basis for the two year difference as a defence for sexual penetration with a child aged between 10 and 16. If it were increased to three years it would give more leeway for the older adolescents involved with late teen sexual partners in a consensual relationship who occasionally come to the attention of the authorities.

Another option would be not to provide any age guidelines and leave it up to the judiciary. The difficulty with this in the current climate is that they can on occasions be out of touch with the general societal view perhaps leading to a more conservative approach.

3. What are the advantages and disadvantages of having care, supervision or authority as a statutory aggravating factor for the offence where the victim is between 10 and under 16?

It is important to take a societal stance that people in situations of authority and responsibility towards young people should not become engaged with them sexually. Whilst accepting there is no evidence that maximum penalties, or penalties at all for that matter, act as a deterrent it would be remiss not to state the expectations of a society in legislation.

**4. If you think there should be some change to the current offence structure, should there be
 (a) graduated penalties for different statutory aggravating factors?
 (b) one penalty to encompass all the relevant offending?**

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