Sentencing Act 2020

2020 CHAPTER 17

THIRD GROUP OF PARTSDisposals

PART 10

CUSTODIAL SENTENCES

CHAPTER 3

ADULTS AGED UNDER 21

Detention in a young offender institution

262 Detention in a young offender institution for offender at least 18 but under 21

(1) A sentence of detention in a young offender institution is available to a court dealing with an offender for an offence where—

(a) the offender is aged at least 18 but under 21 when convicted,

(b) the offence is punishable by that court with imprisonment in the case of a person aged 21 or over, and

(c) the court is not required to pass a sentence of—

(i) detention during Her Majesty's pleasure (see section 259), or

(ii) custody for life (see sections 272 and 275).

(2) Where—

(a) a sentence of detention in a young offender institution is available, and

(b) the court is not required to impose such a sentence,

the power of the court to impose such a sentence is subject (in particular) to section 230 (threshold for imposing discretionary custodial sentence).

(3) For circumstances in which a court is required to impose a sentence of detention in a young offender institution, see the provisions mentioned in section 399(c) (mandatory minimum sentences).

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263 Term of detention in a young offender institution

(1) The maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for the offence in the case of a person aged 21 or over.

(2) The minimum term of a sentence of detention in a young offender institution is 21 days.

(3) Section 231 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a sentence of detention in a young offender institution.

(4) For further provision about the term of a sentence of detention in a young offender institution, see—

(a) section 265 (special sentence for certain offenders of particular concern);

(b) section 268 (extended sentence).

Suspended sentence of detention in a young offender institution

264 Suspended sentence order for offender under 21: availability

(1) This section applies where, in dealing with an offender for an offence, the court imposes a sentence of detention in a young offender institution.

(2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of detention in a young offender institution is not more than 2 years.

(3) But a suspended sentence order is not available in relation to that sentence if—

(a) the sentence of detention in a young offender institution is one of two or more sentences imposed on the same occasion which are to be served consecutively, and

(b) the terms of those sentences are in aggregate more than 2 years.

(4) For provision about suspended sentences see Chapter 5 .

Special custodial sentence for certain offenders of particular concern

265 Required special sentence for certain offenders of particular concern

(1) This section applies where a court imposes a sentence of detention in a young offender institution for an offence where—

(a) the offence is listed in Schedule 13,

(b) the offender—

(i) was aged 18 or over when the offence was committed, and

(ii) is aged under 21 when convicted of the offence, and

(c) the court does not impose either of the following for the offence (or for an offence associated with it)—

(i) an extended sentence under section 266, or

(ii) a sentence of custody for life under section 272.

(2) The term of the sentence must be equal to the aggregate of—
  (a) the appropriate custodial term, and
  (b) a further period of 1 year for which the offender is to be subject to a licence,

and must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

(3) For the purposes of subsection (2), the "appropriate custodial term" is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Extended sentence of detention in a young offender institution

266 Extended sentence of detention in a young offender institution for certain violent, sexual or terrorism offences

An extended sentence of detention in a young offender institution is a sentence of detention in a young offender institution the term of which is equal to the aggregate of—
  (a) the appropriate custodial term (see section 268), and
  (b) a further period (the "extension period") for which the offender is to be subject to a licence.

267 Extended sentence of detention in a young offender institution: availability

(1) An extended sentence of detention in a young offender institution is available in respect of an offence where—
  (a) the offence is a specified offence (see section 306(1)),
  (b) the offender is aged at least 18 but under 21 when convicted of the offence,
  (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
  (d) the court is not required by section 273 or 274 to impose a sentence of custody for life, and
  (e) the earlier offence condition or the 4 year term condition is met.

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

(3) The earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Schedule 14.

(4) The 4 year term condition is that, if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term (see section 268) would be at least 4 years.

268 Term of extended sentence of detention in a young offender institution

(1) This section applies where a court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of detention in a young offender institution under section 266.

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(2) The appropriate custodial term is the term of detention in a young offender institution that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.

(3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

(4) The extension period must—

(a) be at least 1 year, and

(b) not exceed—

(i) 5 years in the case of a specified violent offence, or

(ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of "specified violent offence", "specified sexual offence" and "specified terrorism offence".

(5) The term of the extended sentence must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

Detention in a young offender institution: consecutive sentences etc

269 Detention in a young offender institution: consecutive sentences

(1) Where—

(a) an offender is convicted of more than one offence for which a sentence of detention in a young offender institution is available, or

(b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which a sentence of detention in a young offender institution is available,

the court has the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

(2) Where an offender who—

(a) is serving a sentence of detention in a young offender institution, and

(b) is aged 21 or over,

is convicted of one or more further offences for which the offender is liable to imprisonment, the court has the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

This is subject to section 225 (restriction on consecutive sentences for released prisoners).

270 Sentence of detention in a young offender institution where offender subject to detention and training order

(1) This section applies where the court imposes a sentence of detention in a young offender institution in the case of an offender who is subject to a relevant detention and training order.

(2) If the offender has not at any time been released for supervision under the detention and training order, the court may order that the sentence of detention in a young offender institution is to take effect at the time when the offender would otherwise be released under the relevant detention and training order (see section 248(5)).

(3) Otherwise, the sentence of detention in a young offender institution takes effect at the beginning of the day on which it is passed.

(4) In this section "relevant detention and training order" means—

(a) a detention and training order under section 233,

(b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or

(c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

Detention in a young offender institution: further provision

271 Detention in a young offender institution: place of detention

(1) An offender sentenced to detention in a young offender institution is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.

This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).

(2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution is to be detained in a prison instead of a young offender institution.

Custody for life

272 Offences other than murder

(1) This section applies where a person aged at least 18 but under 21 is convicted of an offence for which the sentence is not fixed by law.

(2) The court must sentence the offender to custody for life if—

(a) the offence is punishable in the case of a person aged 21 or over with imprisonment for life, and the court considers that a sentence for life would be appropriate, or

(b) the court is required by section 273 or 274 to impose a sentence of custody for life.

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(3) Sections 230 (threshold for imposing discretionary custodial sentence) and 231 (length of discretionary custodial sentences: general provision), in particular, apply for the purposes of subsection (2)(a).

273 Custody for life for second listed offence

(1) Subsection (3) applies where—

(a) a court is dealing with an offender for an offence ("the index offence") that is listed in Part 1 of Schedule 15,

(b) the index offence was committed on or after the relevant date,

(c) the offender is aged 18 or over but under 21 when convicted of the index offence, and

(d) the sentence condition and the previous offence condition are met.

(2) In subsection (1)(b), "relevant date", in relation to an offence, means the date specified for that offence in Part 1 of Schedule 15.

(3) The court must impose a sentence of custody for life under section 272 unless the court is of the opinion that there are particular circumstances which—

(a) relate to—

(i) the index offence,

(ii) the previous offence referred to in subsection (5), or

(iii) the offender, and

(b) would make it unjust to do so in all the circumstances.

(4) The sentence condition is that, but for this section, the court would impose a sentence of detention in a young offender institution for 10 years or more, disregarding any extension period that it would impose under section 266.

Sections 230(2) and 231(2) apply for this purpose.

(5) The previous offence condition is that—

(a) when the index offence was committed, the offender had been convicted of an offence ("the previous offence") listed in Schedule 15, and

(b) a relevant life sentence or a relevant sentence of detention for a determinate period was imposed on the offender for the previous offence.

(6) For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include any offence for which the date specified in that Part is after the date on which the index offence was committed.

(7) A life sentence is relevant for the purposes of subsection (5)(b) if—

(a) the offender was not eligible for release during the first 5 years of the sentence, or

(b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.

(8) An extended sentence imposed under the Criminal Justice Act 2003 or this Code (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (5)(b) if the appropriate custodial term imposed was 10 years or more.

(9) Any other extended sentence is relevant for the purposes of subsection (5)(b) if the custodial term imposed was 10 years or more.

(10) Any other sentence of detention for a determinate period is relevant for the purposes of subsection (5)(b) if it was for a period of 10 years or more.

(11) An extended sentence or other sentence of detention is also relevant if it would have been relevant under subsection (9) or (10) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.

(12) For the purposes of subsections (5) to (11)—

"extended sentence" means—

(a) a sentence imposed under section 254 or 266 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006), or

(b) a sentence imposed under section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003 (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006),

or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

"life sentence" means—

(a) a sentence of detention for life under—

(i) section 250,

(ii) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, or

(iii) section 209 of the Armed Forces Act 2006,

(b) a sentence of detention during Her Majesty's pleasure under—

(i) section 259,

(ii) section 90 of the Powers of Criminal Courts (Sentencing) Act 2000, or

(iii) section 218 of the Armed Forces Act 2006, or

(c) a sentence of custody for life under—

(i) section 272 or 275 (including one passed as a result of section 210A, 217, 218A or 219 of the Armed Forces Act 2006), or

(ii) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (including one passed as a result of paragraph 6 or 7 of Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059)),

or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

"relevant pre-sentence period", in relation to the previous offence referred to in subsection (5), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

"sentence of detention" includes any sentence of a period in custody (however expressed).

(13) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

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(14) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (1)(b), (5)(a) and (6) to have been committed on the last of those days.

274 Required sentence of custody for life for offence carrying life sentence

(1) This section applies where a court is dealing with an offender for an offence where—

(a) the offender is aged 18 or over but under 21 when convicted of the offence,

(b) the offence is a Schedule 19 offence (see section 307), and

(c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

(3) If the court considers that the seriousness of—

(a) the offence, or

(b) the offence and one or more offences associated with it,

is such as to justify the imposition of a sentence of custody for life, the court must impose a sentence of custody for life under section 272.

(4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

275 Duty to impose custody for life for offence of murder

(1) Where a person aged under 21 is convicted of—

(a) murder, or

(b) any other offence the sentence for which is fixed by law as life imprisonment,

the court must sentence the offender to custody for life.

(2) Subsection (1) does not apply where the offender is liable to be detained under section 259 (detention at Her Majesty's pleasure for offender under 18).

276 Custody for life: place of detention

(1) An offender sentenced to custody for life is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.

This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).

(2) The Secretary of State may from time to time direct that an offender sentenced to custody for life is to be detained in a prison instead of a young offender institution.