

## Guidance on the use of the new youth sentencing form – version 7

This form is for use with youth offences charged after 30<sup>th</sup> November 2009 and falling under the scope of the new youth sentencing options.

The “RECOMMENDING ‘BENCH” is the one filling in the form at the hearing where guilt is established (by plea or trial)

The “SENTENCING BENCH” is the one that makes any orders based on the pre-sentence report resulting from the form.

For Tier 1 disposals, the sentencing bench and the recommending bench will be the same one. A form should still be prepared for tier 1 disposals.

Completing the form:

Section	Comments	Filled in by
Hearing Date	This is the date of the hearing at which you complete the form i.e. when guilt is established	Recommending bench
Sentencing Date	This is the date of the hearing for which the pre-sentence report is being prepared. For tier 1 disposals, this will be the same as the hearing date.	Recommending bench
Defendant's name		Recommending bench
Age		Recommending bench
Early Guilty Plea <sup>1</sup>	Tick if a guilty plea is entered at first hearing or first opportunity to make a plea later in the process	Recommending bench
Guilty plea at later hearing <sup>1</sup>	Tick if the defendant changes his/her plea at any hearing between the first hearing and the date set for a trial	Recommending bench
Day of Trial <sup>1</sup>	Tick if the defendant changes his/her plea only on the day of the trial	Recommending bench
Convicted <sup>1</sup>	Tick if the defendant is found guilty after a trial	Recommending bench
Level of seriousness	The starting point before aggravating or mitigation features are taken into account	Recommending bench
Culpability		Recommending bench
Aggravating features of the offence	Any factors which would tend to make the offence worse than the starting point “level of seriousness” For example: <ul style="list-style-type: none"> <li>• Group action</li> <li>• Weapon carried or used</li> <li>• Vulnerable victim</li> </ul> Only complete this section if there is anything relevant to say	Recommending bench
Mitigating features of the offence	Any factors which would tend to make the offence less serious than the starting point “level of	Recommending bench

	<p>seriousness” For example:</p> <ul style="list-style-type: none"> <li>• Goods recovered</li> <li>• Only one blow struck</li> <li>• Minor damage</li> </ul> <p>Only complete this section if there is anything relevant to say</p>	
Aggravating features about the offender	<p>Anything about the offender that would tend to make the offence worse than the starting point “level of seriousness”. For example:</p> <ul style="list-style-type: none"> <li>• Previous history of similar offences</li> <li>• Offence committed on partner</li> <li>• Was the leader of a group committing the offence</li> <li>• No remorse</li> </ul>	Recommending bench
Mitigating features about the offender	<p>Anything about the offender that would tend to make the offence less serious than the starting point “level of seriousness” or might explain why the offence was committed. For example:</p> <ul style="list-style-type: none"> <li>• Drug or alcohol problem</li> <li>• Mental or physical illness</li> <li>• Homelessness</li> <li>• Coercion by older person</li> <li>• Immediate apology or genuine remorse</li> </ul>	Recommending bench
Harm or impact on victim	<p>Space to comment on either aspect. “Harm” could refer to physical injuries to the victim of an assault or it could just as equally refer to the harm to society. Examples include:</p> <ul style="list-style-type: none"> <li>• Bruising and broken nose</li> <li>• Economic harm to retailers in area</li> <li>• Risk to other road users</li> <li>• Local children no longer able to use playground</li> </ul> <p>“Impact on victim” once again cover a range of topics. For example:</p> <ul style="list-style-type: none"> <li>• Elderly victim wary about leaving the house</li> <li>• Gone out of business due to thefts</li> <li>• Can no longer play football due to injuries sustained</li> <li>• Can no longer play football due to loss of kit</li> </ul>	Recommending bench
Additional comments	Space to expand on any of the above or make any comments not covered by any of the sections of the form	Recommending bench or Sentencing bench
Level of Pre-sentence Report	Not relevant if sentence given by Recommending bench but the two options set the level for the PSR. These are the two phrases that should be used as a pronouncement	Recommending bench

	when indicating the level of the PSR in court. The implications of each are further discussed later on.	
“Recommending Bench” Column	<p>This is where the recommending bench indicates the options it thinks should be addressed or included in the PSR. Just tick in the box next to the options you want.</p> <p>This column is split into three sections:</p> <ul style="list-style-type: none"> <li>• First tier</li> <li>• Youth rehabilitation order</li> <li>• Custody threshold</li> </ul> <p>You cannot spread your options across those sections because you would be mixing your sentencing levels.</p> <p>This column will generally not be used for Tier 1 sentences since the recommending and sentencing bench would be the same and the defendant would be punished at the first hearing where guilt is established by plea or conviction.</p> <p>If you tick the “serious enough ....” Option at the top of the page your ticks must be in the Youth Rehabilitation Order section of this column.</p> <p>If you tick the “so serious....” Option at the top of the page then your ticks must be in the custody threshold section of this column.</p> <p>The last section of this column – “ancillary orders” can be ticked for any of the above although it generally would not be needed if the defendant was sentenced at first hearing where guilt was established by plea or conviction.</p>	Recommending bench
With guilty plea or without guilty plea columns	<p>If a guilty plea is entered, the left hand column shows the sentence allowing for credit given depending on when that plea was entered. The right hand column then indicates the sentence that would have been imposed “If you had not pleaded guilty”</p> <p>If the defendant is convicted, the right hand column is the sentence given and the left hand column becomes the sentence “if you had pleaded guilty then the sentence would have been”</p>	Sentencing bench
Sentencing bench options	A single tick where it applies (YRO options) or write in the amount or length as appropriate	Sentencing bench
Welfare concerns	A simple tick in the box alongside as	Recommending bench

	<p>many of the options as you want.</p> <p>This section indicates the concerns that you may have after the engagement process and indicates to the YOS the things you want them to address in the PSR</p>	
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Notes:

1. The indication of when guilt is established will guide the sentencing bench on the amount of credit to be given for that plea when sentencing

## The custody threshold

Crossing the custody threshold indicates that the recommending bench thinks the offence so serious that custody is appropriate **unless** the YOS can come up with a more appropriate alternative i.e an ISS programme or Fostering (when this becomes available).

The phrase that should be used in court, therefore, is “***This offence is so serious that it has passed the custody threshold and we are going ask for a pre-sentence report to be prepared on that basis***”

The “all options” expression is no longer valid especially if it is only used as some kind of threat or warning to the defendant because, once either expression is used, the Youth Offending Service will commit resources to an additional assessment of the defendant and the preparation of an ISS programme **as well as** addressing the custody option.

Similarly when faced with the Referral Order dilemma of a serious offence that might warrant custody as an alternative. This cannot be dealt with without a PSR and the recommending bench would have to indicate on the form that the offence had crossed the custody threshold, allowing the YOS the opportunity to prepare an alternative ISS programme.