



Online submission—Sentencing for child homicide offences

| Details | |
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Question 1: Sentencing purposes

What are the most important sentencing purposes that should be taken into account by a court when sentencing an offender for an offence arising from the death of a child, and why?

The purpose of sentencing offenders for offences arising from the death of a child must be to get justice for the deceased child and their family. We must make a bold statement that the murder of a child is a truly heinous act and will not be tolerated by our society.

Question 2: Sentencing factors

<http://www.sentencingcouncil.qld.gov.au/research/sentencing-for-child-homicide/submission-form/q2-statutory-sentencing-factors>

2.1 Referring to the list linked above, what are the most important factors that you consider should be taken into account when sentencing an offender for an offence arising from the death of a child, and why?

(1) Need to protect from risk of physical harm to any members of the community

Should be a high priority in determining sentence

(2) Personal circumstances of any victim

As we are dealing with child victims, each case will involve an innocent, vulnerable person who deserved to be protected

(3) Circumstances of the offence, including death or injury to a member of the public; any loss or damage resulting from the offence

This should also be considered carefully, was there more than one death? Were others harmed? If yes, the sentence given should reflect that

(4) Nature or extent of the violence used, or intended to be used

This should also be given careful consideration. If the perpetrator used acts that caused torture, prolonged pain, or were exceptionally violent they should be sentenced accordingly. Pre-meditation should also be taken into account though any death of a child should be treated very seriously.

(5) Any disregard for the interests of public safety

Although this is a factor to consider it pales considerably in relation to the death of the child or children concerned

(6) Past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed

Causing the death of one child is one too many, the court should avoid being too lenient simply because of it being a first offence, repeat offenders however should receive longer sentences and great care must be taken around any considerations of parole

(7) The offender's age, character and personal background/antecedents (including health issues, such as intellectual capacity, family, social, employment and vocational circumstances, and their current way of life and its interaction with the lives and welfare of others)

Apart from extreme, evidenced cases of mental health problems (not simply being depressed for example) – none of the factors described should be used in any way to excuse or mitigate the death of a child.

(8) Any remorse or lack of remorse of the offender

Low consideration – remorse does not bring the child back, however, an offender who clearly has no remorse at all would have to be considered a high risk of repeating their offences at a later date

(9) Any medical, psychiatric, prison or other relevant report in relation to the offender

Again, only the most extreme evidenced mental health issues should be considered. The other factors listed here do not justify or mitigate the killing of a child

The safety of the community should be a high priority – if the offender is likely to re-offend they must be kept away from society

Sentences of this nature must also act as a deterrent to others considering such horrendous crimes. Lenient sentences for child killers do not benefit society at all.

List Two –

(10) The maximum penalty and any minimum penalty for the offence (e.g. mandatory life sentence and minimum non-parole periods for murder, and maximum life sentence for manslaughter)

Where a child has lost their life due to the actions of another person, the sentence and non-parole period should always be at the higher end of the scale between minimum and maximum sentencing. Life sentences should mean the life of the offender rather than 20-25 years and there should be no parole offered in those cases.

(11) The nature of the offence and how serious the offence was

The nature of the offence in terms of the fact that a child is dead is the high end of heinous. If any other children were physically or psychologically harmed in the carrying out of that offence then the seriousness is compounded

(12) Extent to which the offender is to blame for the offence (the offender's culpability)

This is an important factor to consider as it also gives an indication of the likelihood that the offender will re-offend

(13) Any damage, injury or loss caused by the offender

This is a moot point – a child is dead, that is the greatest loss imaginable

(14) The offender's character, age and intellectual capacity

None of these factors should be considered in terms of sentencing as none of them justifies or mitigates the killing of a child

(15) Presence of any aggravating or mitigating factors concerning the offender

No aggravating or mitigating factors should be considered – children are not capable of doing anything that would in any way justify someone killing them

(16) Prevalence of the offence

This again is a moot point – the single case is serious enough on its own to warrant a lengthy sentence

(17) How much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences

Low priority – while co-operation with law enforcement certainly helps to reduce the emotional and financial strain following the event it does not excuse the offence in any way

(18) Time spent in custody by the offender for the offence before being sentenced

Time served should be taken into account, with the prescribed custodial period to be seen as starting at the time the offender was taken into custody

(19) Other sentences imposed on the offender which have an impact on the sentence being imposed (and vice versa)

Other sentences should not be taken into account, they are sentences for separate offences and should be treated accordingly

(20) Submissions made by a representative of the community justice group in the offender's community, if the offender is an Aboriginal or Torres Strait Islander

While cultural considerations and protocols should be followed, no cultural differences or community standing etc can justify the killing of a child

2.2 Are there any other sentencing factors not expressly listed in legislation, or referred to only in a general way, that you think are important in sentencing for these offences? If so, describe the factor/s and explain why they are important.

We at FACAA believe that there must be a level of deterrence with any sentence that deals with the murder of a child. Not only for other potential criminals but also for the same criminal. If they are released for their crimes after serving just a short time behind bars, surely there is nothing to stop them or even deter them from murdering another child. If a child killer can take the life of one child and get a light sentence for their crime, then what incentive do they have to not re-offend? Also what incentive do those considering the crime have to not commit this horrendous act?

Deterrence not only applies to other potential criminals but also to those who have already been convicted of the crime and both need a harsh sentence to act as an incentive to deter them from committing the same crime.

No child killer should ever get a lenient sentence.

Question 3: Sentencing factors (aggravating and mitigating)

<http://www.sentencingcouncil.qld.gov.au/research/sentencing-for-child-homicide/submission-form/q3-examples-of-aggravating-and-mitigating-factors>

Referring to the examples of aggravating and mitigating factors linked above, which factors in your view are the most important aggravating and mitigating factors to be taken into account by sentencing judges where a person is being sentenced for a criminal offence arising from the death of a child, and why?

- The victim's status as a vulnerable and innocent child should be a major consideration in sentencing
- Anyone who comes before the court for the death of a child who has recorded previous offences should be dealt with very harshly
- Use of a weapon or extreme violence should also be taken very seriously and also add on an aggravated charge to the sentencing as well as an additional charge of use of a deadly weapon with the sentence for the weapons charge being added onto the current charges to be served consecutively not congruently with the other charges.
- Any adult harming a child has abused a position of trust, this is more so in cases where the child has been killed by a family member or other trusted person and that factor should be treated very seriously and the abuse of trust should see an additional aggravated charge added onto the sentencing.
- This is also a factor that should be taken very seriously – this person knew that they had already wronged and that they faced serious consequences for further offending yet chose to kill a child anyway
- Again, any offence resulting in the death of a child is very serious, but that is then compounded by any evidence of prolonged mental or physical suffering prior to the death and this also shows a level of callous disregard for life and feelings and so must be treated as a possible red flag for future offending proclivity
- A lack of remorse is another possible indicator for future offending and so should be considered carefully when determining the sentence to be handed down. If an offender has a lack of remorse then they are far more likely to re-offend and therefore are a high risk to the safety of other children and no child's life is worth risking.
- This factor also should be treated very seriously as it is another that indicates the true nature of the offender and points to their likelihood of reoffending which is quite high.
- Any death of a child resulting from an act of domestic violence is a case of severe abuse of a position of trust and so should be treated accordingly with an aggravated factor being added to their sentence. Mitigating Factors-
- While an early guilty plea aids in reducing the emotional and financial burdens on survivors, it should not be allowed to reduce the sentence too greatly. Last minute guilty pleas should not receive any leniency in sentencing. The leniency should be decided on a sliding scale similar to the one suggested by the Royal Commission into institutional responses of child abuse. If the accused pleads guilty at the initial time of the charges being laid then they are eligible for a twenty percent reduction in their sentence. If they wait longer than fourteen days to plead guilty the reduction in sentence available to them should be no more than ten percent. If they take longer than thirty days to plead guilty then the maximum sentence reduction available to them should be no more than five percent to act as a deterrent to anyone considering waiting until the eleventh hour to plead not guilty.
- This should be a low consideration, a child has died regardless of the offender's lack of a previous criminal history. One child's life is one too many to take and anyone who has done so should not have their previous good character taken into account because people who kill children are not even slightly of good character.
- No physical health or intellectual capacity can be deemed to mitigate the killing of a child and only extreme, evidenced mental health issues should be given any consideration at all. There can be no acceptable excuses for the murder of a child.
- People of good character do not harm or kill children
- Some consideration should be given to a minor child offender, all other age factors should be irrelevant

- Low to medium consideration should be given to this
- This should be of medium consideration, it does aid in speeding the process but it does not excuse the offence
- Some consideration but not much, should be given to this, and weighed up in light of individual circumstances of the case
- Some consideration should also be given here – if the offender did not mean to cause the death of the child and tried to remedy the damage done by seeking immediate professional assistance, for example they called emergency services without delay and tried to administer first aid.

Question 4: Sentencing process

What do you consider are the advantages and disadvantages of maintaining flexibility in the sentencing process when sentencing an offender for an offence arising from the death of a child?

The advantages of maintaining flexibility in sentencing are that the cases can be considered on a case by case basis, with consideration given to those factors already discussed. This then would theoretically allow for a more ethical and just form of justice. The disadvantages however include the fact that there is then often a lack of consistency as each sentencing magistrate weighs up the sentence in light of their own personal values, experiences and beliefs. This can lead to those who have lost a child feeling cheated by the system when the offender in their case receives a lesser sentence than another offender. One perfect example of this is the infamous Hemi Goodwin-Burke case where innocent little Hemi's murderer was given a pathetic sentence due to the judge having way too much discretionary power in sentencing. In regards to child homicide cases there simply must be standard mandatory minimum sentences handed down to those convicted of murdering children and those minimum sentence must be harsh in order to reflect the abhorrent nature of the crime itself.

Question 5: Reflecting particular vulnerabilities of children in sentencing

5.1 How does a child victim's age and particular vulnerabilities impact on the seriousness of a homicide offence?

Children are the most innocent and vulnerable members of our society. Babies and infants especially rely totally on the adults around them to protect and nurture them, as is the case also with children of any age who have disabilities. Violating that trust and taking the life of a person unable to protect or defend themselves is the most serious crime that anyone can commit as it shows true callousness and lack of human regard for the sanctity of life. To take the life or even to harm one that is so entirely unable to defend themselves as is such with infants is a truly despicable and abhorrent crime. The vulnerable nature of the victim must add to the severity of the crime and therefore the sentence. For example the younger and more vulnerable the victim and the greater the level of trust placed in the perpetrator, the more severe the crime and therefore the sentence.

5.2 How can the particular vulnerabilities of child victims best be taken into account in sentencing for an offence arising from the death of a child?

The death of a child should be treated at the high end of the scale of murder or manslaughter as the victim was helpless to save themselves. Sentencing should reflect that vulnerability and also the level of betrayal of trust in the crime itself. For example the younger and more vulnerable the victim and the greater the level of trust placed in the perpetrator, the more severe the crime and therefore the sentence.

Question 6: Reforms

6.1 Are any legislative or other changes needed in sentencing for child homicide offences? If so, what changes are needed and why? What would these changes add to the sentencing process?

There should be greater consistency between magistrates so that all families are left feeling validated and that justice has been served. We believe the only way to do this is with the use of mandatory minimum sentences for child homicide cases. Otherwise we will constantly see cases similar to the case of Hemi Goodwin-Burke and we will constantly see families left reeling by not only the tragedy that has befallen them but also the legal system that has failed them. The severity of the crime of child homicide can not be understated. It is one of the most abhorrent crimes that can be committed in our society and the sentencing must reflect this in its severity.

6.2 Should any other reforms be considered to improve the sentencing process for child homicide offences? For example, should restorative justice approaches have any place in the sentencing process and if so, at what stage should they be considered? What might be some of the advantages and disadvantages of such approaches?

Restorative justice could offer some families a greater degree of closure and acceptance. If this is to be considered that should come after sentencing though and be offered to families whilst the offender is in custody. Depending on the outcomes of this, it may then be considered in terms of parole applications but should not affect the main sentence initially handed down.

Question 7: Community awareness

7.1 What issues contribute to or detract from the community's understanding of sentencing for child homicide offences?

When a child is killed the community understandably feels outrage. This outrage is often compounded by lenient sentences being handed down, for example again the case of Hemi Goodwin-Burke. Families and the community at large are all too often left outraged by both the abhorrent crime itself, and then the lenient sentence handed down to the child murderer. Often people are not aware of why certain facts surrounding the case cannot be made public. Greater awareness of how the system works and why would be beneficial and may also then assist future families who find themselves in the position of having to go through the legal process following the death of a child. Plus making the public aware of why an appeal was or was not launched into a lenient sentence would also be very beneficial. Currently all the public and the family of the victim get told is if there will be an appeal or if there will not be an appeal, they are never told why or why not which would be very helpful to increasing the public's understanding of the system.

Public trust in the legal system and the knowledge that if there is a crime perpetrated against them or their families is sacred to our entire society. If the public loses faith in the justice system then their faith in the entire system as a whole is shaken.

When a child is murdered the severity of the sentence must represent how truly abhorrent and despicable the crime is, otherwise the public will lose faith with the system as

7.2 How can communication with community members and victims of crime about sentencing for child homicide offences be enhanced?

Social media is a great tool for raising awareness and inviting community comment and feedback. Other ways to raise awareness would be printed fact sheets in community and legal centres as well as use of traditional media sources. Also where ever possible sit down meetings between members of the public defenders and the victim's families would greatly help explain the process. Currently there is a much greater need for transparency when it comes to the decision making processes that apply in prosecuting a crime of the magnitude of the homicide of a child.