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GOVERNMENT NOTICES

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EASTERN CARIBBEAN SUPREME COURT (SENTENCING GUIDELINES) RULES 2019

PRACTICE DIRECTION 7E

NO. 2 OF 2021

SENTENCING FOR THE OFFENCE OF MURDER

RE-ISSUE

8TH NOVEMBER, 2021

This Practice Direction is made pursuant to rule 6 (1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 7(1).

The previous Practice Directions for the offence of Murder which came into effect on the 1st day of September, 2020, reissued on the 12th day April, 2021, are revoked and replaced by this Practice Direction.

This Practice Direction is applicable to the Territory of Anguilla only.

Introduction

This practice direction, directs that in order to promote consistency in sentencing, sentencing to a custodial term for the offence of murder shall hereafter follow the approach below to be applied in the territories falling under the jurisdiction of the Eastern Caribbean Supreme Court.

¹ This practice direction, consisting largely of edits, and excising reference to offenders under 18, replaces the earlier versions published on 1st September, 2020 and Re-Issued on 12th April, 2021.

Title

This practice direction may be cited as the "Practice Direction on Sentencing for the Offence of Murder for the Eastern Caribbean Supreme Court".

Interpretation

1. In this Schedule-

"Adult" means a person aged 18 or over.

"An act of terrorism" for the purpose of this guidance means a death arising from:

- (i) an act of a person on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing by force or violence the lawful government of a state; or

- (ii) an act intended to raise in the public a fear of future and further indiscriminate violence against bystanders in a public place.

"Criminal gang" means a group of three or more persons who share a criminal purpose.

"Determinate sentence" means a sentence fixed as to the amount of time to be spent imprisoned.

"Whole life sentence" means a sentence of imprisonment for the duration of the offender's natural life.

Sentence of an adult for murder

- 2. A conviction of an adult for the offence of murder may result in one of the following sentences:
 - a. Sentence of death;
 - b. A whole life sentence;
 - c. A determinate sentence; or
 - d. Detention at the court's pleasure where an offender has been found to be insane or suffering relevant mental illness.

Sentence of death

- 3. Sentence of death, where lawful for murder, may only be considered in cases:
 - a. Where the offender was an adult when he committed the offence;
 - b. Where there has been a conviction after trial;
 - c. Which are 'the rarest of the rare';
 - d. Which are 'the worst of the worst';
 - e. Where there is no reasonable prospect of reform of the offender;
 - f. Where the offender has been appropriately evaluated by a psychiatrist;
 - g. Where the character of the offender and any other relevant circumstances are taken into account so far as possible as mitigation in his favour;
 - h. Which are compared with other murder cases and not with ordinary civilized behavior; and
 - i. Where the object of punishment cannot be achieved by any means other than sentence of death.

Whole life sentence

- 4. If
 - a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
 - b. the offender was an adult when he committed the offence;the appropriate starting point is a whole life sentence.
- 5. Cases where the seriousness of the offence could be considered exceptionally high include:
 - a. the murder of two or more persons;
 - b. the murder is associated with a series of serious criminal acts;
 - c. a substantial degree of premeditation or planning;

- d. the abduction of the victim;
- e. a murder involving sexual or sadistic conduct;
- f. a murder involving prolonged suffering or torture;
- g. the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a political activist, or the offence arose because of the victim's occupation or voluntary work;
- h. a murder relating to membership of a criminal gang;
- i. a murder which is an act of terrorism;
- j. a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (e.g., people of a particular religion, race, or ethnic origin, language, or sexual orientation or age or having a particular disability);
- k. a murder involving the actual or threatened use of explosives or chemical or biological agent;
- l. a deliberate killing for payment or gain (e.g., a contract killing, or for inheritance, or insurance payout);
- m. where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- n. a murder by an offender previously convicted of murder; or
- o. a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

Determinate sentence

- 6. (1) In cases not falling in paragraph 3 or 4; or
- (2) Where a case falls within paragraph 4,
 - a. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and
 - b. the offender was an adult when he committed the offence;

the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years.
- 7. Cases that could fall within paragraph 6 include:
 - a. where the offender has pleaded guilty and would otherwise face a whole life term ;
 - b. a murder involving the use of a firearm;

² In such a circumstance, there would usually be no further discount on account of the guilty plea.

- c. a murder arising unplanned in the course of a felony (e.g. in a robbery or burglary);
 - d. a murder intended to obstruct or interfere with the course of justice;
 - e. a murder involving a lesser degree of sexual or sadistic conduct than referred to above; or
 - f. a murder in the context of a significant history of domestic violence.
- 8. If:
 - a. the offender was an adult at the time of the offence;
 - b. the case does not fall within paragraph 4 or 6; and

- c. the offence falls within paragraph 9 below;

the offence is normally to be regarded as sufficiently serious for the appropriate starting point to be a determinate sentence of 30 years, within a range of 20-40 years.

9. Cases that would normally fall within paragraph 8 are where the offender took a bladed weapon or blunt instrument to the scene intending to:

- a. commit any offence; or
- b. have it available to use as a weapon; and
- c. used that weapon in committing the murder.

10. If the offender was an adult when he committed the offence and the case does not fall within paragraph 4, 6 or 8, the appropriate starting point is a determinate sentence of 25 years, within a range of 15-35 years.

Aggravating and mitigating factors

11. Having chosen a starting point, the court should take into account any further aggravating or mitigating factors pertaining to the offence, and then as a second step to the offender, to the extent that it has not allowed for them in its choice of starting point. Care must be taken not to double-count.

12. Aggravating factors pertaining to the offence (separate from those mentioned in paragraphs 5, 7, and 9) that may be relevant include:

- a. a significant degree of planning or premeditation;
- b. the victim was vulnerable because young or elderly or had a disability or because geographically isolated;
- c. mental or physical suffering inflicted on the victim before death;
- d. abuse of a position of trust or authority over the victim;
- e. where the offence involved a great risk of death to another person or persons;
- f. where the offence was an organized criminal activity;
- g. where the offence occurred at the home of the victim or any other person;
- h. where the offence was committed to conceal another offence;
- i. the use of duress or threats against another person to facilitate the commission of the offence;
- j. where the victim was providing a public service or performing a public duty;
- k. where the offence is committed in the presence of children;
- l. where the offence is committed at or near a religious or educational institution;
- m. where the offence is committed in view of the public;
- n. where the offence is unprovoked; or
- o. concealment, disposal, desecration, destruction or dismemberment of the body.

13. Mitigating factors pertaining to the offence that may be relevant include:

- a. an intention to cause serious bodily harm rather than to kill;
- b. where the offender was acting under duress;
- c. where the offender offered assistance to the authorities;
- d. where the offender was provoked;
- e. where the victim was the aggressor; or
- f. a belief by the offender that the murder was an act of mercy.

14. Aggravating factors pertaining to the offender that may be relevant include:

- a. Previous convictions for violence offences;
- b. Relevant convictions for other offences; or
- c. Offence committed whilst on bail.

15. Mitigating factors pertaining to the offender that may be relevant include:

- a. Good character;
- b. Genuine remorse;
- c. Physical or mental disability or ill-health;
- d. Youth and/or lack of maturity where it explains offending; or
- e. Good prospects for rehabilitation.

Credit for plea

16. Where the offender has pleaded guilty at the first practicable opportunity, he may receive a discount of up to one-third of any determinate sentence (excepting where appropriate per para 7a).

Time on remand

17. Credit must be given for time spent on remand, to be calculated with precision .

Parole

18. Where appropriate, the court should declare the minimum term to be served before consideration for parole.

Effective Date

19. This Practice Direction will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

Sgd.

Dame Janice M. Pereira, DBE

Chief Justice

³ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 [7 A-D Anguilla]



**A Compendium Sentencing Guideline of
The Eastern Caribbean Supreme Court**

**Offences of Dishonesty
Re-Issue
8th November, 2021**

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.

The previous Sentencing Guidelines for Offences of Dishonesty which came into effect on 4th December, 2020, reissued on 12th April, 2021, are revoked and replaced by this Sentencing Guideline.

INTRODUCTION

This compendium sentencing guideline will deal with the following offences of dishonesty:

- Theft (page 4);
- Robbery (page 11);
- Burglary (page 19);
- Aggravated burglary (page 28);

¹ Made pursuant to Rule 4(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 3(1) for Anguilla.

- Corruption (page 37);
- Blackmail (page 45);
- Fraud (page 53); and
- Money laundering (page 61).

Sections concerning other types of dishonesty may be added in time.

APPLICABILITY OF GUIDELINE

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines, No.4 of 2019**.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

THEFT - Section 1

In the nine member states and territories of the ECSC there are sometimes different words used to describe the dishonest appropriation of property belonging to others, (e.g. the words larceny or stealing are often used), and there are sometimes different maximum sentences. For the purposes of this guideline, the word 'theft' will be used generically, to embrace a wide variety of offences of dishonesty, including receiving stolen goods and offences involving fraud or deception, and whether as conspiracy or as substantive offences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A theft case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an **assessment of the evidence**.

CONSEQUENCE may be demonstrated by the following, apart from value:

- Items stolen were of substantial value to the victim, regardless of monetary worth
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others (e.g. praedial larceny)
- Emotional distress
- Fear or loss of confidence caused by the crime
- Risk of or actual injury to persons or damage to property
- Impact of theft on a business
- Damage to heritage assets

Categories arising from consequence are as follows:**CONSEQUENCE - Category 1 - Highest**

Very high value goods (above \$250000 in the High Court, above \$10000 in the Magistrates Court), or
Severe harm to the victim or others.

CONSEQUENCE - Category 2 - High

High value goods (\$50000 to \$250000 in the High Court, \$5000 to \$10000 in the Magistrates Court), or
Substantial harm to the victim or others.

CONSEQUENCE - Category 3 - Medium

Medium value goods (\$10000 to \$50000 in the High Court, \$500 to \$5000 in the Magistrates Court), or
Significant harm to the victim or others.

CONSEQUENCE - Category 4 - Lesser

Low value goods (up to \$10000 in the High Court and up to \$500 in the Magistrates Court), or
Little or no harm to the victim or others.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.
Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Breach of a high degree of trust
- Sophisticated nature of offence/significant planning
- Theft involving intimidation or the use or threat of force
- Looting
- Targeting of tourists
- Deliberately targeting victim on basis of vulnerability
- Theft involving breaking and entering

SERIOUSNESS - Level B - Medium

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Breach of some degree of trust
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

This guideline applies to theft sentences both in the High Court and the Magistrates Court.
Disparity in sentence owing to lower sentencing powers in the Magistrates court may arise for similar offending. If so, adjustment in applying the guideline is appropriate.

THIRD STAGE

Having determined the consequence and the level of seriousness find the starting point by consulting the grid below.
Maximum sentence is 'x'.
Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness – Level A | Seriousness – Level B | Seriousness – Level C |
|-----------------------------|---|--|---|
| Consequence – Category 1 | Starting point 75% x Range 60%-90% x | Starting point 60% x Range 45%-75% x | Starting point 50% x Range 35%-65% x |
| Consequence – Category 2 | Starting point 50% x Range 35%-65% x | Starting point 35% x Range 20%-50% x | Starting point 20% x Range 10%-30% x |
| Consequence – Category 3 | Starting point 35% x Range 20%-50% x | Starting point 20% x Range 10%-30% x | Starting point 10% x Range non-custodial-20% x |
| Consequence – Category 4 | Starting point 10% x Range non-custodial–20% | Starting point 5% x Range non-custodial–15% | Starting point Likely non-custodial |

³ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Stealing goods as a business
- Steps taken to prevent the victim reporting
- Offender motivated by intention to cause harm or out of revenge
- Offence committed over sustained period of time
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Attempt to conceal identity

MITIGATING FACTORS of the offence

- Inappropriate degree of trust or responsibility if it helps to explain why the offence occurred
- Involved because of coercion, intimidation or exploitation
- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for theft offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim

- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

⁴ See the requirements for assessing time on remand in **Gomes v The State** 2015 UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen** 2011 CCJ 6.

ROBBERY - Section 2

In the nine member states and territories of the ECSC there are different approaches to robbery, particularly with or without firearms, and there are often different maximum sentences. For the purposes of this guideline, the word 'robbery' will be used generically to cover all types, and whether as conspiracy or a substantive offence.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A robbery case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from value of the items taken:

- Items stolen were of significant value to the victim, regardless of monetary worth
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others
- Emotional distress
- Offence involving home invasion
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons or damage to property

- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim

Serious detrimental effect on a business activity

CONSEQUENCE - Category 2 - Medium

Some physical and/or psychological harm caused to the victim

Some detrimental effect on a business activity

CONSEQUENCE - Category 3 - Lesser

No or minimal physical or psychological harm caused to the victim

No or minimal detrimental effect on a business activity

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Use of any weapon to inflict significant injury
- Production of a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- Substantial duration of offence
- Substantial risk of serious harm or injury to the public
- A leading role where offending is a group activity
- Breach of a high degree of trust
- Sophisticated nature of offence/significant planning

SERIOUSNESS - Level B - Medium

- Production of a weapon other than a firearm or imitation firearm to threaten violence
- Use of significant force or violence in the commission of the offence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is a group activity
- Some degree of planning involved
- Abuse of position of trust
- Targeting victim on basis of vulnerability due to personal circumstances
- Targeting tourists and visitors
- Other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
- Threat or use of minimal force
- No weapon nor threat of one

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x⁵'.

Percentages⁶ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness – Level A | Seriousness – Level B | Seriousness – Level C |
|-----------------------------|---|---|---|
| Consequence - Category 1 | Starting point 75% x Range 60%-90% x | Starting point 60% x Range 45%-75% x | Starting point 30% x Range 15%-45% x |
| Consequence - Category 2 | Starting point 60% x Range 45%-75% x | Starting point 40% x Range 25%-55% x | Starting point 20% x Range 5%-35% x |
| Consequence - Category 3 | Starting point 45% x Range 30%–60% | Starting point 20% x Range 5%-35% | Starting point 10% x Range Non-custodial–20% |

⁵ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
⁶ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Offence committed over sustained period of time
- Attempts to conceal/dispose of evidence
- Restraint, abduction or additional degradation of the victim
- Involving others through coercion, intimidation or exploitation
- Attempt to conceal identity (e.g. wearing a mask)
- Prevalence of the offence
- Offence motivated by greed or desire for luxury

MITIGATING FACTORS of the offence

- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for robbery offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

BURGLARY - Section 3

In the nine member states and territories of the ECSC there are different words used to describe entering premises with intent to commit an offence, (e.g. the words 'burglary' and 'housebreaking' are often used), and there are often different maximum sentences. For the purposes of this guideline, the word 'burglary' will be used generically to cover all non-aggravated types, and whether as conspiracy, attempt, or a substantive offence. Where charged, sentences for aggravated burglary will be a separate guideline.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A burglary case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. Where an attempt or conspiracy, the court should consider the intended consequences and seriousness.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from value of the items taken:

- Theft of items/damage to property of significant value to the victim, regardless of monetary worth
- Damage to property consequent on breaking in
- Soiling, ransacking or vandalism of property
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others
- Emotional distress
- Offence involving home invasion

- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim and/or serious damage to the premises
Serious detrimental effect on a business activity or home enjoyment
Value of goods taken above \$50000 in the High Court or above \$5000 in the Magistrates Court

CONSEQUENCE - Category 2 - Medium

Some physical and/or psychological harm caused to the victim and/or some damage to the premises
Some detrimental effect on a business activity or home enjoyment
Value of goods from \$5000 up to \$50000 in the High Court or from \$500 up to \$5000 in the Magistrates Court

CONSEQUENCE - Category 3 - Lesser

No or minimal physical or psychological harm caused to the victim and/or no or minimal damage caused to the premises
No or minimal detrimental effect on a business activity or home enjoyment
Premises unoccupied
Value of goods taken below \$5000 in the High Court and below \$500 in the Magistrates Court

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.
Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Use of any weapon to inflict injury
- Using a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- Substantial duration of offence where victim is present
- Substantial risk of serious harm or injury to the public
- A leading role where offending is a group activity
- Abuse of position of trust
- Sophisticated nature of offence/significant planning
- Restraint, abduction or additional degradation of the victim

SERIOUSNESS - Level B - Medium

- Using a weapon other than a firearm or imitation firearm to threaten violence
- Use of significant force or violence in the commission of the offence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is a group activity
- Some degree of planning involved
- Targeting victim on basis of vulnerability
- Targeting tourists and visitors
- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Offence committed as part of a riotous social gathering
- Ordering victim out of property to facilitate stealing
- Other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
- Threat or use of minimal force
- No weapon brandished nor threat of one
- Limited intrusion into property

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages⁸ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness – Level A | Seriousness – Level B | Seriousness – Level C |
|-----------------------------|---|---|---|
| Consequence - Category 1 | Starting point 75% x Range 60%-90% x | Starting point 60% x Range 45%-75% x | Starting point 30% x Range 15%-45% x |
| Consequence - Category 2 | Starting point 60% x Range 45%-75% x | Starting point 40% x Range 25%-55% x | Starting point 20% x Range 5%-35% x |
| Consequence - Category 3 | Starting point 45% x Range 30%-60% x | Starting point 20% x Range 5%-35% x | Starting point 15% x Range Non-custodial–30% x |

⁸ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Equipped for burglary (e.g. implements carried and/or use of vehicle)
- Steps taken to prevent the victim reporting
- Offence committed over sustained period of time with victim not present (e.g. squatting)
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation
- Attempt to conceal identity (e.g. wearing a mask)
- Offence committed whilst under the influence by alcohol or drug abuse
- Prevalence of the offence
- Community impact
- Offence motivated by greed or desire for luxury
- Offence committed at night (where not an element of the offence)
- Children present

MITIGATING FACTORS of the offence

- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for burglary offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.⁹

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.

⁹ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

AGGRAVATED BURGLARY – section 4

In the member states and territories of the ECSC the offence of aggravated burglary carries different maximum sentences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A burglary case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. Where an attempt or conspiracy, the court should consider the intended consequences and seriousness.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from value of the items taken:

- Theft of items/damage to property of significant value to the victim, regardless of monetary worth
- Damage to property consequent on breaking in
- Soiling, ransacking or vandalism of property
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others
- Emotional distress
- Offence involving home invasion
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim and/or serious damage to the premises

Serious detrimental effect on a business activity or home enjoyment

Value of goods taken over \$50000 in the High Court

CONSEQUENCE - Category 2 - Medium

Some physical and/or psychological harm caused to the victim and/or some damage to the premises

Some detrimental effect on a business activity or home enjoyment

Value of goods from \$5000 up to \$50000 in the High Court

CONSEQUENCE - Category 3 - Lesser

No or minimal physical or psychological harm caused to the victim and/or no or minimal damage caused to the premises

No or minimal detrimental effect on a business activity or home enjoyment

Value of goods taken less than \$5000 in the High Court

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Use of any weapon to inflict injury
- Use of a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- Substantial duration of offence where victim is present
- Substantial risk of serious harm or injury to the public
- A leading role where offending is a group activity
- Abuse of position of trust
- Sophisticated nature of offence/significant planning
- Restraint, abduction or additional degradation of the victim

SERIOUSNESS – Level B - Medium

- Use of a weapon other than a firearm or imitation firearm to threaten violence
- Use of significant force or violence in the commission of the offence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is a group activity
- Some degree of planning involved
- Targeting victim on basis of vulnerability
- Targeting tourists and visitors
- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Offence committed as part of a riotous social gathering
- Ordering victim out of property to facilitate stealing
- Other cases where characteristics for levels A or C are not present

SERIOUSNESS – Level C - Lesser

- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
- Threat or use of minimal force
- No weapon used nor threat of one
- Limited intrusion into property

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.¹⁰

Percentages¹¹ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness – Level A | Seriousness – Level B | Seriousness – Level C |
|-----------------------------|---|---|---|
| Consequence - Category 1 | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x | Starting point 30% x Range 15%-45% x |
| Consequence - Category 2 | Starting point 40% x Range 25%-55% x | Starting point 30% x Range 15%-45% x | Starting point 20% x Range 5%-35% x |
| Consequence - Category 3 | Starting point 30% x Range 15%-45% x | Starting point 20% x Range 5%-35% x | Starting point 10% x Range 5%–25% x |

¹⁰ Where the maximum sentence is life imprisonment, simply, for the purposes of the calculation, 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

¹¹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Equipped for burglary (e.g. implements carried and/or use of vehicle)
- Steps taken to prevent the victim reporting
- Offence committed over sustained period of time
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation
- Attempt to conceal identity (e.g. wearing a mask)
- Offence committed whilst under the influence by alcohol or drug abuse
- Prevalence of the offence
- Community impact
- Offence motivated by greed or desire for luxury
- Offence committed at night (where not an element of the offence)
- Children present

MITIGATING FACTORS of the offence

- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for burglary offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.¹²

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

¹² See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

CORRUPTION - section 5

In the member states and territories of the ECSC offences of corruption include bribery and any other offence where a person commits an act that is inconsistent with his/her entrusted responsibilities by unlawfully using his/her influence or office to receive or give a benefit or advantage. In the states and territories, for similar offences there are often different maximum sentences. For the purposes of this guideline, the word ‘corruption’ will be used generically to cover all types, and whether as conspiracy or a substantive offence.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A corruption case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. Where an attempt or conspiracy, the court should consider the intended consequences and seriousness.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm, or risk of harm, caused by the offence. Harm is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender.

‘Risk of harm’ involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious undermining of the proper function of the public economy and of local or national government, business or public services

Serious undermining of the country’s international standing

Serious detrimental effect on individuals and/or the community (e.g. by provision of substandard goods or services resulting from the corrupt behavior)

Serious environmental impact

Substantial actual or intended financial gain to offender or another or loss caused to others

CONSEQUENCE - Category 2 - Medium

Significant undermining of the proper function of local or national government, business or public services

Significant detrimental effect on individuals and/or the community

Significant environmental impact

Significant actual or intended financial gain to offender or another or loss caused to others

Risk of category 1 harm

CONSEQUENCE - Category 3 - Lesser

Limited detrimental impact on individuals, the community, the environment, government, business or public services

Risk of category 2 harm

CONSEQUENCE - Category 4 - Least

Risk of category 3 harm

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- A leading role where offending is part of a group activity
- Involvement of others through pressure or influence
- Abuse of position of significant power or trust or responsibility
- Intended corruption (directly or indirectly) of or by a senior official performing a public function
- Intended corruption (directly or indirectly) of or by a law enforcement officer
- Sophisticated nature of offence/significant planning
- Offending conducted over sustained period of time
- Motivated by expectation of substantial financial, commercial or political gain

SERIOUSNESS – Level B - Medium

- A significant role where offending is a group activity
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS – Level C - Limited

- Involved through coercion, intimidation or exploitation
- Minor role in group offending
- Not motivated by personal gain
- Peripheral role in organised activity
- Opportunistic ‘one-off’ offence, very little or no planning
- Limited awareness or understanding of extent of corrupt activity

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages¹³ are approximations and may not divide neatly, so that some adjustment is permissible

| | Seriousness – Level A | Seriousness – Level B | Seriousness – Level C |
|-----------------------------|---|--|---|
| Consequence - Category 1 | Starting point 75% x Range 60%-90% x | Starting point 60% x Range 45%-75% x | Starting point 30% x Range 15%-45% x |
| Consequence - Category 2 | Starting point 60% x Range 45%-75% x | Starting point 40% x Range 25%-55% x | Starting point 20% x Range 5%-35% x |
| Consequence - Category 3 | Starting point 45% x Range 30%–60% x | Starting point 20% x Range 10%-30% x | Starting point 10% x Range Non-custodial-25% |
| Consequence - Category 4 | Starting point 20% x Range 5%-35% x | Starting point 10% x Range Non-custodial–25% x | Starting point Likely non-custodial |

¹³ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting or obtaining assistance from and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Prevalence
- Community impact
- Offence committed across borders

- Coercion used
- Offence committed to facilitate other criminal activity
- Offence motivated by greed

MITIGATING FACTORS of the offence

- Lack of community impact

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for corruption offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.¹⁴

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

¹⁴ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

BLACKMAIL – section 6

In the nine member states and territories of the ECSC there are different words used to describe blackmail, (e.g. the words ‘extortion’ or ‘demanding with menaces’ are also used), and there are often different maximum sentences. For the purposes of this guideline, the word ‘blackmail’ will be used generically to cover all types, and whether as conspiracy or a substantive offence.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A blackmail case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from the quantity of money if sought:

- High level of inconvenience caused to the victim or others
- Scale of financial harm to victim or others
- Emotional distress
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons or damage to property
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim

Serious detrimental effect on a business activity

Amount sought is above \$50000

CONSEQUENCE - Category 2 - Medium

Significant physical and/or psychological harm caused to the victim

Significant detrimental effect on a business activity

Amount sought is above \$1000 up to \$50000

CONSEQUENCE - Category 3 - Lesser

Lesser physical or psychological harm caused to the victim

Lesser detrimental effect on a business activity

Amount sought is \$1000 or less

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Use of any weapon to inflict or threaten injury
- Substantial duration of offence
- Abuse of power and/or position of trust
- Use of public office as part of the offence
- Offence committed against those working in the public sector or providing a service to the public
- Sophisticated nature of offence
- Targeting tourists and visitors
- Planning and premeditation
- Leading role in a group or gang
- Violence or threats of violence
- Forced entry into victim's home

- Deliberate targeting of vulnerable person
- Victim is a child or young person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

SERIOUSNESS – Level B - Lesser

- None of the above applies
- Involved through coercion, intimidation or exploitation

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is ‘x’.

Percentages¹⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|---|
| Consequence - Category 1 | Starting point 75% x Range 60%-90% x | Starting point 50% x Range 35%-65% x |
| Consequence - Category 2 | Starting point 60% x Range 45%-75% x | Starting point 35% x Range 20%-50% x |
| Consequence - Category 3 | Starting point 45% x Range 30%–60% | Starting point 20% x Range 5%-35% |

¹⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation
- Prevalence of the offence
- Offence motivated by greed or desire for luxury

MITIGATING FACTORS of the offence

- No advantage gained or loss caused to the victim

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for blackmail offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.¹⁶

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

¹⁶ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

FRAUD -section 7

In the nine member states and territories of the ECSC offences of fraud are varied and include: (i) Abuse of position; (ii) False representations; (iii) Failing to disclose information; (iv) Conversion; (v) Deception; (vi) False Accounting; (vii) Forgery and related offences that involve the intentional use of deception illegally to deprive another person or entity of money, property, or legal rights. It also includes the possession of tools for perpetrating frauds. There are often different maxima. For the purposes of this guideline, the word ‘fraud’ will be used generically to cover all types, and whether as conspiracy or a substantive offence.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A fraud case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. Harm is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender. In assessing consequence regard should be had to the loss and damage, physical or psychological, caused or intended to be caused, or as risk of harm that might foreseeably have been caused, by the offence. Where an attempt or conspiracy, the court should consider the intended consequence and seriousness.

Risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Categories arising from consequence are as follows:

CONSEQUENCE- Category 1 – High

Serious undermining of the proper function of local or national government, business or public services

Serious detrimental effect on individuals and/or the community

Serious impact on shared sense of honesty

High level of inconvenience caused to the victims or others

Substantial intended financial gain to offender or another or loss caused to others

Actual Loss (above \$250000 in the High Court, above \$10000 in the Magistrates Court)

CONSEQUENCE - Category 2 - Medium

Significant undermining of the proper function of local or national government, business or public services

Significant detrimental effect on individuals and/or the community

Significant impact on shared sense of honesty

Significant intended financial gain to offender or another or loss caused to others

Risk of category 1 harm

Actual Loss (\$50000 to \$250000 in the High Court, \$5000 to \$10000 in the Magistrates Court)

CONSEQUENCE - Category 3 - Lesser

Limited detrimental impact on individuals, the community, government, business or public services.

Limited intended financial gain to offender or another or loss caused to others

Limited impact on shared sense of honesty

Risk of category 2 harm

Actual Loss (\$10000 up to \$50000 in the High Court, \$500 up to \$5000 in the Magistrates Court)

CONSEQUENCE – Category 4 - Least

No impact on individuals, the community, government, business or public services.

Risk of category 3 harm

Actual Loss (up to \$10000 in the High Court, and up to \$500 in the Magistrates Court)

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Culpability should **assess the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.** Levels of culpability may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Damage to the country’s standing in the international community
- Calculated to undermine the whole elaborate system of credit
- Offence involved multiple victims or a series of criminal acts
- A leading role where offending is part of a group activity
- Breach of a high degree of power or trust
- Sophisticated nature of offence/significant planning
- Offending conducted over sustained period of time
- Motivated by expectation of substantial financial, commercial or political gain

SERIOUSNESS – Level B - Medium

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Breach of some degree of trust
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS – Level C - Lesser

- Involved through coercion, intimidation, or exploitation
- Minor role in group offending
- Not motivated by personal gain
- Opportunistic ‘one-off’ offence, very little or no planning
- Limited awareness or understanding of extent of fraudulent activity

THIRD STAGE

Having determined the consequence and culpability find the starting point by consulting the grid below.

Maximum sentence is ‘x’.

Percentages¹⁷ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B | Seriousness - Level C |
|-----------------------------|---|---|---|
| Consequence - Category 1 | Starting point 75% x Range 60%-90% x | Starting point 60% x Range 45%-75% x | Starting point 50% x Range 35%-65% x |
| Consequence - Category 2 | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x | Starting point 20% x Range 10%-30% x |
| Consequence - Category 3 | Starting point 35% x Range 20%–50% x | Starting point 20% x Range 10%-30% x | Starting point 10% x Range non-custodial-25% x |
| Consequence - Category 4 | Starting point 20% x Range 5%-35% x | Starting point 10% x Range non-custodial–25% x | Starting point 10% x Range non-custodial–25% x |

¹⁷ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.¹⁸

AGGRAVATING FACTORS of the offence

- Attempts to conceal/dispose of evidence
- Targeting a vulnerable person
- Offence committed across borders
- Degree of sophistication and planning and deception
- Pressure exerted on another party
- Offence committed to facilitate other criminal activity
- Offence motivated by greed or desire for luxury
- Steps taken to prevent the victim reporting or obtaining assistance from and/or from assisting or supporting the prosecution
- Blame wrongly placed on others

MITIGATING FACTORS of the offence

- The loss or damage caused by the offence was minimal
- Voluntary restoration of property or its value.

¹⁸ In some types of fraud, aggravating factors which are inherent to an offence cannot be taken into account unless they exceed the usual case.

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for dishonesty offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Youth and/or lack of maturity where it explains offending
- Genuine remorse
- Assistance given to the authorities
- Good prospects of rehabilitation, whether by reason of age or otherwise

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.¹⁹

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

¹⁹ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

MONEY LAUNDERING - section 8

In the nine member states and territories of the ECSC there are different money laundering offences including receiving, possession, concealment, disguise, disposal, conversion, transfer or removal from the islands of the proceeds of crime or their acquisition and use or possession or the facilitation of arrangements for same. There are often different maximum sentences prescribed for these offences within member states and territories. For the purposes of this guideline, the expression ‘money laundering’ will be used to cover all of the foregoing ways of committing the offence, whether as conspiracy or a substantive offence.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A money laundering case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE A - VALUE OF THE MONEY LAUNDERED

Category 1 Above EC\$1million - starting point based on EC\$5million²⁰

Category 2 Above EC\$250000 up to EC\$1million - starting point based on EC\$500000

Category 3 EC\$50000 up to EC\$250000 - starting point based on EC\$150000

Category 4 Up to EC\$50000 starting point based on EC\$25000

CONSEQUENCE B - ASSOCIATION WITH UNDERLYING OFFENCE

Money laundering is an integral component of much serious underlying criminality. Where it is possible to identify the underlying offence, the relevant sentencing guidelines for that offence should be regarded. Thus, the assessment of harm is concluded by taking into account the level of harm associated with the underlying offence to determine whether it warrants upward or downward adjustment of the starting point within the range or, in appropriate cases, outside the range.

²⁰ The starting point is suggested for a sum, as shown, and adjusted up or down if the sum is more or less within the financial range shown.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- A leading role where offending is part of a group activity
- Significant nature of the offence/significant planning
- Abuse of position of trust
- Substantial links to, and influence on, others in a chain

- Involvement of others through pressure or influence.
- Expectation of substantial financial gain

SERIOUSNESS - Level B - Medium

- Other cases where level A and C characteristics are absent.
- A significant role where offending is a part of group activity.
- Operational or management function within a chain
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation

SEROUSNESS - Level C - Lesser

- Performed limited function
- Acted under direction
- Involved by pressure, coercion, intimidation
- Very little, if any, awareness or understanding of the scale of operation
- Not motivated by personal gain
- An isolated, opportunistic act
- Very little or no planning
- No influence on those above in a chain

THIRD STAGE

Having determined the degree of culpability and harm find the starting point by consulting the grid below -

Maximum sentence is ‘x’.

Percentages²¹ are approximations and may not divide neatly, so that some adjustment is permissible.

| CONSEQUENCE A (remembering to adjust for CONSEQUENCE B) | SERIOUSNESS - Level A | SERIOUSNESS - Level B | SERIOUSNESS - Level C |
|---|---|---|--|
| Category 1 | Starting point 65% x Range 50%-80% x | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x |
| Category 2 | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x | Starting point 35% x Range 20%-50% x |
| Category 3 | Starting point 30% x Range 20%-40% x | Starting point 25% x Range 15%-35% x | Starting point 20% x Range 10%-30% x |
| Category 4 | Starting point 15% x Range 10%-35% x | Starting point 10% Range 5%-30% x | Starting point 5% Range non-custodial-25% x |

²¹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Sophisticated nature of concealment and/or attempts to avoid detection
- Transactions/operations committed across borders
- Criminal activity conducted over sustained period of time
- Damage to third party such as loss of employment to legitimate employees
- Funding for terrorism
- Deliberately targeting a member state or territory to facilitate offence
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger
- Blame wrongly placed on others

MITIGATING FACTORS of offence

- Lack of sophistication as to nature of concealment
- Activity originally legitimate

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for a money laundering offence
- Recent or relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Youth and/or lack of maturity where it explains offending
- Genuine remorse
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.²²

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc., if applicable. In addition, consideration should be given to the confiscation of vehicles, boats and other property used or acquired in the commission of the offence

PASS THE SENTENCE

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

²² See the requirements for assessing time on remand in **Gomes v The State** 2015 UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen** 2011 CCJ 6.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

Sgd.

Dame Janice M. Pereira, DBE

Chief Justice

Sgd.

Mde. Gertel Thom

Justice of Appeal

Sgd.

Iain Morley, QC

High Court Judge

14th December, 2021.

No. 137

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 [7 A-D Anguilla]



A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

Drugs and Firearms Offences Re-Issue 8th November, 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹ and will deal with drugs offences (page 4), and firearms offences including and concerning ammunition (page 11).

The previous Sentencing Guidelines for drugs offences which came into effect on 1st September, 2020, and for firearms offences which came into effect on 1st September, 2020, both reissued on 12th April, 2021, are revoked and replaced by this compendium Sentencing Guideline.

¹ Made pursuant to Rule 4(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 3(1) for Anguilla.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guidelines must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines No. 4 of 2019**.

Step 4

Adjust the figure on assessing totality, if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guidelines.

DRUGS

In the nine member states and territories of the ECSC there are different drugs offences, and there are often different maximum sentences. For the purposes of this guideline, the expression ‘drugs offence’ will be used to cover all types of trafficking, cultivation, and possession with an intent to supply, import or export, whether as conspiracy or a substantive offence.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A drugs case requires an assessment of the quantity by weight of the drug involved (assuming 100% purity, with adjustment permitted for lower purity and/or higher strength, if known), and the role played by a defendant.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on quantity. This should include an assessment of the evidence.

Categories arising from quantity are as follows:

QUANTITY - Category 1

Cocaine - 20 kg or more

Cannabis - 400 kg or more

QUANTITY - Category 2

Cocaine - 5-20 kg

Cannabis – 50-400 kg

QUANTITY - Category 3

Cocaine – 100g–5 kg

Cannabis – 1-50 kg

QUANTITY - Category 4

Cocaine – up to 100 g

Cannabis – up to 1 kg

SECOND STAGE

The second stage is to determine the role played by the defendant with reference to the non-exhaustive lists of factors below. It is open to a court to find that a defendant falls between two roles.

LEADING ROLE

- Directing or organising
- Buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial gain
- Uses business as cover
- Abuses a position of trust

SIGNIFICANT ROLE

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward, especially if those involved are children
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation
- Selling drugs to school children or in prison

LESSER ROLE

- Performs a limited function under direction (e.g. being a mule)
- Involved by pressure, coercion, intimidation
- Involvement through youth, naivety or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If trafficking drugs solely for personal use (considering reasonableness of account in all the circumstances)

THIRD STAGE

Having determined the quantity and role, find the starting point by consulting the grid below – applicable for both cocaine and cannabis.

Maximum sentence is ‘x’³.

Percentages⁴ are approximations and may not divide neatly, so that some adjustment is permissible.

| QUANTITY | Leading Role - A | Significant Role - B | Lesser Role - C |
|------------|---------------------------------------|--|---|
| Category 1 | Starting point 65%x Range 50%-80%x | Starting point 50%x Range 35%-65%x | Starting point 35%x Range 20%-50%x |
| Category 2 | Starting point 50%x Range 35%-65%x | Starting point 35%x Range 20%-50%x | Starting point 20%x Range 10%-30%x |
| Category 3 | Starting point 35%x Range 20%-50%x | Starting point 20%x Range 10%-30%x | Starting point 10%x Non-custodial-20%x |
| Category 4 | Likely non-custodial (high level) | Likely non-custodial (medium level) | Likely non-custodial (low level) |

³ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
⁴Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Sophisticated nature of concealment
- Attempts to avoid detection
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger, for example drugs cut with harmful substances
- Presence of weapon

MITIGATING FACTORS of offence

- Lack of sophistication as to nature of concealment
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Dealing to support own habit

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for drug offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse
- If an addict, offender is taking steps towards rehabilitation
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality, if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁵.

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable. Drugs and paraphernalia should be forfeited and destroyed. In addition, consideration should be given to the confiscation of vehicles, boats and other property used in the commission of the offence. It may be appropriate to commence an investigation into the proceeds of crime and/or civil recovery of assets.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁵ See **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

FIREARMS

In the nine member states and territories of the ECSC there are different offences for the prohibited possession, carriage or use of firearms and ammunition, with different maximum sentences. For the purposes of this guideline, the expression ‘firearm offence’ will be used to cover all types of firearm and ammunition offences.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A firearm case requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated for example by the following:

- Causing injury or damage to property with a firearm
- Discharging a firearm to cause terror
- Threatening with a firearm to cause intimidation
- Showing a firearm to be assertive
- The number of firearms
- Dealing in firearms
- Quantities and types of ammunition

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Causing or attempting injury with a firearm
- Discharging a firearm to cause terror
- Renting or supplying or dealing or trafficking in five or more firearms
- The firearm is particularly dangerous (e.g. is an assault rifle or submachine gun)

CONSEQUENCE - Category 2 – High

- There is more than one concealed firearm
- Renting or supplying or dealing or trafficking in less than five firearms
- Causing extensive damage to property with a firearm
- Carrying a firearm openly
- Presence of a firearm during the commission of an offence

CONSEQUENCE - Category 3 – Lesser

- The firearm is at all times concealed
- Ammunition not in a firearm
- None of categories 1 and 2 applies

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Gang membership
- Group activity
- The firearm is associated with drugs supply
- The firearm contains more than two rounds
- The firearm has a round in the chamber
- More than 20 rounds of ammunition not in a firearm
- Any recovered ammunition which is prohibited and impermissible under any licence
- There is an intention to cause injury (which is not caused)
- The firearm is carried at or near a place of worship, educational institution, or substantial public gathering

SERIOUSNESS – Level B - Medium

- The firearm is an imitation and brandished
- The firearm though threatened remains concealed
- Recovered ammunition separately fits an associated recovered firearm
- More than 5 rounds of ammunition not in a firearm
- The firearm is carried in any other public place

SERIOUSNESS – Level C - Lesser

- The presence of a firearm not in a public place is unknown to others
- Ammunition is non-live (e.g. spent shell casing)
- None of the above levels A and B apply

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below⁶.

Maximum sentence is 'x'⁷.

Percentages⁸ are approximations and may not divide neatly, so that some adjustment is permissible.

When sentencing for ammunition alone, the starting point will usually be at the bottom of the range.

| | Seriousness - Level A | Seriousness - Level B | Seriousness - Level C |
|-----------------------------|---------------------------------------|---------------------------------------|---|
| Consequence - Category 1 | Starting point 75%x Range 60%-90%x | Starting point 65%x Range 50%-80%x | Starting point 50%x Range 35%-65%x |
| Consequence - Category 2 | Starting point 65%x Range 50%-80%x | Starting point 50%x Range 35%-65%x | Starting point 40%x Range 25%-55%x |
| Consequence - Category 3 | Starting point 50%x Range 35%-65%x | Starting point 40%x Range 25%-55%x | Starting point 30%x Non-custodial-45%x |

⁶ Where there is a mandatory minimum sentence, this may in appropriate cases be the starting point if it is greater than the starting point assessed under these guidelines.

⁷ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁸ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Firearm is modified to make it more dangerous
- Being in a position of authority
- Steps taken to prevent the victim reporting
- Possession motivated by revenge
- Possession committed over sustained period of time
- Attempts to conceal/dispose of evidence
- The firearm is unrecovered and still at large

MITIGATING FACTORS of the offence

- Voluntary surrender of firearm and/or ammunition
- Genuine belief firearm did not require a licence (e.g. is an antique)
- Genuine mistaken belief item is not a firearm
- Possession as a result of coercion, intimidation or exploitation
- Serious medical condition if it helps to explain why the offence occurred

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for firearms offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁹.

⁹ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

Sgd.
Dame Janice M. Pereira, DBE
Chief Justice

Sgd.
Mde. Gertel Thom
Justice of Appeal

Sgd.
Iain Morley, QC
High Court Judge

14th December, 2021.

No. 138



A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

Homicide Offences Re-Issue

8th November 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹.

The previous Sentencing Guideline for Homicide Offences which came into effect on 12th April, 2021 is revoked and replaced by this Sentencing Guideline.

This compendium sentencing guideline will deal with offences of homicide, being:

- Murder, as the text of Practice Direction 1 of 2021, as reissued (page 4);
- Manslaughter by reason of provocation (page 11);
- Manslaughter by reason of an unlawful act (page 18)
- Causing death by dangerous driving (page 25)

¹ Made pursuant to Rule 4(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 3(1) for Anguilla.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued as guidance a Practice Direction or guidelines and the court must apply the relevant guidance and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

²For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines, No.4 of 2019**.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the Practice Direction or guideline with grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

MURDER - section 1

There follows below the text of the Practice Direction (Re-Issue) on murder to take effect from 8th November, 2021, updating the previous Practice Directions for the offence of Murder which came into effect on the 1st day of September, 2020 and reissued on the 12th day of April, 2021. While the Practice Direction does not offer a grid, its structure generally mirrors the six steps approach of other guidelines. However, care must be taken to read the language of the Practice Direction and to follow it where it may deviate from the six steps approach, if arising.

**EASTERN CARIBBEAN SUPREME COURT
(SENTENCING GUIDELINES) RULES 2019**

**PRACTICE DIRECTION 7E³ AND 8E⁴
NO. 2 OF 2021**

**SENTENCING FOR THE OFFENCE OF MURDER
RE-ISSUE
8TH NOVEMBER 2021**

SENTENCING FOR THE OFFENCE OF MURDER

This Practice Direction is made pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 8(1) for all Member States and Territories excluding Anguilla.

This Practice Direction is made pursuant to rule 6(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 7(1) for the Territory of Anguilla.

³ For the Territory of Anguilla.

⁴ For all Member States and Territories excluding the Territory of Anguilla.

The previous Practice Direction for the offence of Murder which came into effect on the 1st day of September, 2020 is revoked and replaced by this Practice Direction.

This practice direction⁵ directs that in order to promote consistency in sentencing, sentencing to a custodial term for the offence of murder shall hereafter follow the approach below to be applied in the territories falling under the jurisdiction of the Eastern Caribbean Supreme Court.

Title

This practice direction may be cited as the “Practice Direction on Sentencing for the Offence of Murder for the Eastern Caribbean Supreme Court”.

Interpretation

1. In this Schedule—

“Adult” means a person aged 18 or over.

“An act of terrorism” for the purpose of this guidance means a death arising from:

- (i) an act of a person on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing by force or violence the lawful government of a state; or
- (ii) an act intended to raise in the public a fear of future and further indiscriminate violence against bystanders in a public place.

“Criminal gang” means a group of three or more persons who share a criminal purpose.

“Determinate sentence” means a sentence fixed as to the amount of time to be spent imprisoned.

“Whole life sentence” means a sentence of imprisonment for the duration of the offender’s natural life.

Sentence of an adult for murder

A conviction of an adult for the offence of murder may result in one of the following sentences:

⁵ This practice direction, consisting largely of edits, and excising reference to offenders under 18, replaces the earlier version published on 1st September 2020.

- a. Sentence of death;
- b. A whole life sentence;
- c. A determinate sentence; or
- d. Detention at the court’s pleasure where an offender has been found to be insane or suffering relevant mental illness.

Sentence of death

3. Sentence of death, where lawful for murder, may only be considered in cases:
 - a. Where the offender was an adult when he committed the offence;
 - b. Where there has been a conviction after trial;
 - c. Which are ‘the rarest of the rare’;
 - d. Which are ‘the worst of the worst’;
 - e. Where there is no reasonable prospect of reform of the offender;
 - f. Where the offender has been appropriately evaluated by a psychiatrist;
 - g. Where the character of the offender and any other relevant circumstances are taken into account so far as possible as mitigation in his favour;
 - h. Which are compared with other murder cases and not with ordinary civilized behavior; and
 - i. Where the object of punishment cannot be achieved by any means other than sentence of death.

Whole life sentence

4. If:
 - a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
 - b. the offender was an adult when he committed the offence;
 the appropriate starting point is a whole life sentence.
5. Cases where the seriousness of the offence could be considered exceptionally high include:
 - a. the murder of two or more persons;
 - b. the murder is associated with a series of serious criminal acts;
 - c. a substantial degree of premeditation or planning;
 - d. the abduction of the victim;
 - e. a murder involving sexual or sadistic conduct;

- f. a murder involving prolonged suffering or torture;
- g. the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a political activist, or the offence arose because of the victim's occupation or voluntary work;
- h. a murder relating to membership of a criminal gang;
- i. a murder which is an act of terrorism;
- j. a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (eg people of a particular religion, race, or ethnic origin, language, or sexual orientation or age or having a particular disability);
- k. a murder involving the actual or threatened use of explosives or chemical or biological agent;
- l. a deliberate killing for payment or gain (eg a contract killing, or for inheritance, or insurance payout);
- m. where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- n. a murder by an offender previously convicted of murder; or
- o. a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

Determinate sentence

6. (1) In cases not falling in paragraph 3 or 4; or
 (2) Where a case falls within paragraph 4,
 - a. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and
 - b. the offender was an adult when he committed the offence;
 the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years.
7. Cases that could fall within paragraph 6 include:
 - a. where the offender has pleaded guilty and would otherwise face a whole life term⁶;
 - b. a murder involving the use of a firearm;
 - c. a murder arising unplanned in the course of a felony (eg in a robbery or burglary);
 - d. a murder intended to obstruct or interfere with the course of justice;
 - e. a murder involving a lesser degree of sexual or sadistic conduct than referred to above; or
 - f. a murder in the context of a significant history of domestic violence.
8. If:
 - a. the offender was an adult at the time of the offence;
 - b. the case does not fall within paragraph 4 or 6; and
 - c. the offence falls within paragraph 9 below;
 the offence is normally to be regarded as sufficiently serious for the appropriate starting point to be a determinate sentence of 30 years, within a range of 20-40 years.
9. Cases that would normally fall within paragraph 8 are where the offender took a bladed weapon or blunt instrument to the scene intending to:
 - a. commit any offence; or
 - b. have it available to use as a weapon; and

c. used that weapon in committing the murder.

10. If the offender was an adult when he committed the offence and the case does not fall within paragraph 4, 6 or 8, the appropriate starting point is a determinate sentence of 25 years, within a range of 15-35 years.

⁶ In such a circumstance, there would usually be no further discount on account of the guilty plea.

Aggravating and mitigating factors

11. Having chosen a starting point, the court should take into account any further aggravating or mitigating factors pertaining to the offence, and then as a second step to the offender, to the extent that it has not allowed for them in its choice of starting point. Care must be taken not to double-count.
12. Aggravating factors pertaining to the offence (separate from those mentioned in paragraphs 5, 7, and 9) that may be relevant include:
- a. a significant degree of planning or premeditation;
 - b. the victim was vulnerable because young or elderly or had a disability or because geographically isolated;
 - c. mental or physical suffering inflicted on the victim before death;
 - d. abuse of a position of trust or authority over the victim;
 - e. where the offence involved a great risk of death to another person or persons;
 - f. where the offence was an organized criminal activity;
 - g. where the offence occurred at the home of the victim or any other person;
 - h. where the offence was committed to conceal another offence;
 - i. the use of duress or threats against another person to facilitate the commission of the offence;
 - j. where the victim was providing a public service or performing a public duty;
 - k. where the offence is committed in the presence of children;
 - l. where the offence is committed at or near a religious or educational institution;
 - m. where the offence is committed in view of the public;
 - n. where the offence is unprovoked; or
 - o. concealment, disposal, desecration, destruction or dismemberment of the body.
13. Mitigating factors pertaining to the offence that may be relevant include:
- a. an intention to cause serious bodily harm rather than to kill;
 - b. where the offender was acting under duress;
 - c. where the offender offered assistance to the authorities;
 - d. where the offender was provoked;
 - e. where the victim was the aggressor; or
 - f. a belief by the offender that the murder was an act of mercy.
14. Aggravating factors pertaining to the offender that may be relevant include:
- a. Previous convictions for violence offences;
 - b. Relevant convictions for other offences; or
 - c. Offence committed whilst on bail.
15. Mitigating factors pertaining to the offender that may be relevant include:
- a. Good character;
 - b. Genuine remorse;
 - c. Physical or mental disability or ill-health;

- d. Youth and/or lack of maturity where it explains offending; or
- e. Good prospects for rehabilitation.

Credit for plea

16. Where the offender has pleaded guilty at the first practicable opportunity, he may receive a discount of up to one-third of any determinate sentence (excepting where appropriate per para 7a).

Time on remand

17. Credit must be given for time spent on remand, to be calculated with precision .

Parole

18. Where appropriate, the court should declare the minimum term to be served before consideration for parole.

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

MANSLAUGHTER BY REASON OF PROVOCATION - section 2

Within the ECSC, in the nine member states and territories, the offence of manslaughter (by reason of provocation) is found in both common law and statute.

CONSTRUCTING THE SENTENCE

STEP 1

Consider the level of culpability by finding the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

A case of manslaughter by reason of provocation requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on consequence.

The consequence of manslaughter is always the death of the victim.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

A sentence for manslaughter by reason of provocation means it has been found or accepted there has been a loss of self-control by the defendant. The intensity, extent, and nature of loss of that control must be assessed in the context of the provocation that preceded it.

Culpability requires the court to determine the degree of provocation as shown by its nature and duration, and the extent and timing of the retaliation. The extent and timing of the retaliation can be:

- after a short period of provocation; or
- after provocative behavior built up over time (cumulative provocation).

Whether the provocation was suffered over a long or short period is important to the assessment of gravity and seriousness. The following factors should be considered:

- the impact of cumulative provocation; and
- consideration should not be limited to acts of provocation that occurred immediately before the victim was killed.

For example, in domestic violence cases, or extreme bullying or coercive control, cumulative provocation may eventually become intolerable, the latest incident seeming all the worse because of what went before.

The levels arising are as follows:

- Level A - a low degree of provocation, meaning higher culpability;
- Level B - a significant degree of provocation, meaning medium culpability, which can be low provocation cumulative over a long period;
- Level C - a high degree of provocation, meaning lower culpability, which can be significant provocation which is cumulative over a long period.

SERIOUSNESS - Level A - High - low degree of provocation

- Verbal abuse
- Conduct of the victim is not extreme
- Being armed with a weapon for use in advance
- Leading role in a joint/group attack

SERIOUSNESS - Level B - Medium - significant degree of provocation

- Adultery or gross infidelity
- Low provocation which is cumulative over a long period leading finally to loss of control
- Physical abuse of the offender by the victim falling short of extreme violence
- Psychological bullying of the offender by the victim
- Spontaneous use of a weapon that happens to be available
- Lesser role in a joint/group attack

SERIOUSNESS - Level C - Lower - high degree of provocation

- Significant provocation which is cumulative over a long period leading finally to loss of control
- Gross and extreme conduct on the part of the victim
- Victim presented a threat not only to the offender, but to anyone in his/her care
- Significant violence from the victim
- Short period between the provocation and the killing

⁸ ‘Adultery or gross infidelity’ here means loss of self-control where there is a committed relationship - usually evidenced by living together, over years, being married or common-law spouses, often with children - and there has been evidence, not mere suspicion, sexual intercourse has occurred with a third party.

THIRD STAGE

Having determined the level of responsibility, find the starting point by consulting the grid below, where the sentences are expressed in years, not as percentages of a maximum. In rare and exceptional cases the grid permits, as below, contemplating a non-custodial sentence.

| Consequence | Seriousness - Level A – High | Seriousness - Level B - Medium | Seriousness - Level C - Lower |
|---------------------|---|---|--|
| Death of the victim | Starting point 30 years Range 20-40 years | Starting point 20 years Range 10-30 years | Starting point 10 years Range non-custodial-15 years |

⁹ In the nine island nations of the ECSC, the maximum sentence for manslaughter by reason of provocation is life imprisonment, except in Antigua & Barbuda, where it is 35 years, though this figure still allows for the figures expressed in the grid, albeit with a shorter range at level A. Notwithstanding the starting points expressed in years, in appropriate though rare cases the maximum may apply.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- More than one person killed as a result of the offence
- Offence took place in the presence of a child or other vulnerable person
- Victim vulnerable due to age or disability
- Victim was providing a public service or performing a public duty at the time of the offence
- Persistence of the violence
- Others at risk of harm by the offending
- Voluntary use of drugs or alcohol, contributing to the loss of control
- Post-conduct behavior including the concealment or attempting to dispose of evidence and dismemberment of the body (but not limited to these)

MITIGATING FACTORS of the offence

- Intention to cause serious bodily harm rather than to kill
- Post-conduct behaviour: summoning medical assistance, remaining at the scene, co-operating with the authorities
- Offender acted to a degree under a mental health condition (where not amounting to the partial defence of diminished responsibility)

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Steps taken to address offending behaviour
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁰.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁰ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

MANSLAUGHTER BY REASON OF AN UNLAWFUL ACT - section 3

Within the ECSC, in the nine member states and territories, the offence of manslaughter (by reason of an unlawful act) is found in both common law and statute.

CONSTRUCTING THE SENTENCE

STEP 1

Consider the level of culpability by finding the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

A case of manslaughter by reason of an unlawful act requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on consequence.

The consequence of manslaughter is always the death of the victim.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

SERIOUSNESS - Level A - Very High

- The extreme character of one or more Level B factors, and /or
- A combination of Level B factors.

SERIOUSNESS - Level B - High

- Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of really serious bodily harm.
- Death was caused in the course of an unlawful act which carried a high risk of death or really serious harm which was or ought to have been obvious to the offender.
- Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role.
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged).
- Leading role in a joint/group attack

SERIOUSNESS - Level C - Medium

- Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower seriousness at level B and D.
- Death was caused in the course of committing or escaping from a less serious offence but in which the offender played more than a minor role.
- Death was caused in the course of an unlawful act which was in defence of self or others (where not amounting to a defence)
- Lesser role in a joint/group attack

SERIOUSNESS - Level D - Lower

- Death was caused in the course of an unlawful act
 - where there was no intention by the offender to cause any harm and no obvious risk of anything more than minor harm, or
 - in which the offender played a minor role

THIRD STAGE

Having determined the level of responsibility, find the starting point by consulting the grid below, where the sentences are expressed in years, not as percentages of a maximum¹¹ . In rare and exceptional cases the grid permits, as below, contemplating a non-custodial sentence.

| Consequence | Seriousness - Level A – Very High | Seriousness - Level B - High | Seriousness - Level C - Medium | Seriousness – Level D - Lower |
|---------------------|---|---|--|--|
| Death of the victim | Starting point 24 years Range 14-30 years | Starting point 18 years Range 10-24 years | Starting point 12 years Range 6-16 years | Starting point 6 years Range non-custodial-9 years |

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

¹¹ In the nine island nations of the ECSC, the maximum sentence for manslaughter by reason o f an unlawful act is life imprisonment, except on Antigua & Barbuda, where it is 35 years, though this figure still allows for the figures expressed in the grid. Notwithstanding the starting points expressed in years, in appropriate though rare cases the maxima may apply.

AGGRAVATING FACTORS of the offence

- More than one person killed as a result of the offence
- Offence motivated by or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Involvement of others through coercion, intimidation or exploitation
- Significant mental or physical suffering caused to the deceased
- Victim vulnerable due to age or disability
- History of violence or abuse towards the victim by the offender
- Persistence of violence
- Leading role in group
- Blame wrongly placed on other(s)
- Abuse of a position of trust
- Victim was providing a public service or performing a public duty at the time of the offence
- Offence involved use of a weapon
- Other(s) put at risk of harm by the offending
- Death occurred in the context of an offence which was planned or premeditated
- Death occurred furthering another offence
- Offence committed in the presence of children
- Actions after the event (including but not limited to attempts to cover up/conceal evidence)

MITIGATING FACTORS of the offence

- History of significant violence or abuse towards the offender by the victim
- Lack of premeditation as to committing the unlawful act

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Steps taken to address offending behaviour
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹².

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹² See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

CAUSING DEATH BY DANGEROUS DRIVING – section 4

In the nine member states and territories of the ECSC causing death by dangerous driving, sometimes said to be reckless driving¹³, attracts different maximum sentences.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A case of causing death by dangerous driving requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

¹³ This guideline does not apply where the driving, which caused a death, was merely careless or under the influence of alcohol or drugs; instead the driving must be dangerous or reckless, as falling far below the standard expected of an ordinary prudent motorist, so creating an obvious risk to the ordinary motorist of causing death, serious injury or serious damage.

FIRST STAGE

The first stage is to determine the offence category based on consequence.

The consequence of dangerous driving is always the death of the victim.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

The ‘danger’ created by the driving is of serious injury or death and/or of serious damage to property.

SERIOUSNESS – Level A - High

Driving that involved a deliberate decision to ignore, or a flagrant disregard for, the rules of the road so as to cause a high risk of danger, which can be evidenced by:

- A prolonged, persistent and deliberate course of very bad driving
- Racing or competitive driving against another driver
- Gross avoidable distraction such as reading or composing text messages over a period of time
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

SERIOUSNESS – Level B - Medium

Driving that created a substantial risk of danger, which can be evidenced by:

- Greatly excessive speed for a shorter duration
- Avoidable distraction such as reading or composing a text message
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, or as a result of a known medical condition, or by deliberately failing to take prescribed medication
- Ignoring warning not to drive under medication known to cause drowsiness
- Aggressive driving such as driving too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level C

SERIOUSNESS – Level C - Lesser

Driving that created a significant risk of danger, which can be evidenced by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded
- A brief but obvious danger arising from a seriously dangerous manoeuvre
- Driving whilst avoidably distracted
- Failing to have proper regard to vulnerable road users

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below¹⁴.

Maximum sentence is ‘x’.

Percentages¹⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B | Seriousness - Level C |
|--------------------------------------|--|--|--|
| Consequence – death of the victim | Starting point 75% x Range 60%-90% x | Starting point 55% x Range 40%-70% x | Starting point 35% x Range non-custodial-50% x |

¹⁴ Where there is a mandatory minimum sentence, this may in appropriate cases be the starting point if it is greater than the starting point assessed under these guidelines.

¹⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- More than one person killed as a result of the offence
- Knowingly putting more than one person at risk of death or serious injury
- Serious injury to one or more victims, in addition to the death(s)
- Disregard of warnings
- Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle; driving while a learner without supervision
- The offender’s irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape
- Driving off in an attempt to avoid detection or apprehension
- Being intoxicated through voluntary consumption of drink or drugs
- Using a handheld mobile phone at the time of the offence
- Driving a poorly maintained or dangerously loaded vehicle being used for commercial gain

MITIGATING FACTORS of the offence

- Alcohol or drugs consumed unwittingly (including unwitting effect of lawful medication)
- Offender was seriously injured in the collision
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting
- The offender’s lack of driving experience contributed to the commission of the offence
- The driving was in response to a proven and genuine emergency falling short of a defence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for driving offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Good driving record
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁶.

¹⁶ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

Sgd.
Dame Janice M. Pereira, DBE
Chief Justice

Sgd.
Mde. Gertel Thom
Justice of Appeal

Sgd.
Iain Morley, QC
High Court Judge

14th December, 2021.

No. 139

**EASTERN CARIBBEAN SUPREME COURT
(SENTENCING GUIDELINES) RULES 2019
PRACTICE DIRECTION 8E
NO. 2 OF 2021**

**SENTENCING FOR THE OFFENCE OF MURDER
Re-ISSUE
8th NOVEMBER, 2021**

This Practice Direction is made pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 8 (1).

The previous Practice Directions for the offence of Murder which came into effect on the 1st day of September, 2020, reissued on the 12th day of April, 2021, are revoked and replaced by this Practice Direction.

Introduction

This practice direction¹ directs that in order to promote consistency in sentencing, sentencing to a custodial term for the offence of murder shall hereafter follow the approach below to be applied in the territories falling under the jurisdiction of the Eastern Caribbean Supreme Court.

¹ This practice direction, consisting largely of edits, and excising reference to offenders under 18, replaces the earlier version published on 1st September 2020 and Re-Issued on 12th April, 2021.

Title

This practice direction may be cited as the “Practice Direction on Sentencing for the Offence of Murder for the Eastern Caribbean Supreme Court”.

Interpretation

1. In this Schedule—

“Adult” means a person aged 18 or over.

“An act of terrorism” for the purpose of this guidance means a death arising from:

- (i) an act of a person on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing by force or violence the lawful government of a state; or
- (ii) an act intended to raise in the public a fear of future and further indiscriminate violence against bystanders in a public place.

“Criminal gang” means a group of three or more persons who share a criminal purpose.

“Determinate sentence” means a sentence fixed as to the amount of time to be spent imprisoned.

“Whole life sentence” means a sentence of imprisonment for the duration of the offender’s natural life.

Sentence of an adult for murder

2. A conviction of an adult for the offence of murder may result in one of the following sentences:

- a. Sentence of death;
- b. A whole life sentence;
- c. A determinate sentence; or
- d. Detention at the court’s pleasure where an offender has been found to be insane or suffering relevant mental illness; or

Sentence of death

3. Sentence of death, where lawful for murder, may only be considered in cases:

- a. Where the offender was an adult when he committed the offence;
- b. Where there has been a conviction after trial;
- c. Which are ‘the rarest of the rare’;
- d. Which are ‘the worst of the worst’;
- e. Where there is no reasonable prospect of reform of the offender;
- f. Where the offender has been appropriately evaluated by a psychiatrist;
- g. Where the character of the offender and any other relevant circumstances are taken into account so far as possible as mitigation in his favour;
- h. Which are compared with other murder cases and not with ordinary civilized behavior; and
- i. Where the object of punishment cannot be achieved by any means other than sentence of death.

Whole life sentence

4. If:

- a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
- b. the offender was an adult when he committed the offence; the appropriate starting point is a whole life sentence.

5. Cases where the seriousness of the offence could be considered exceptionally high include:

- a. the murder of two or more persons;
- b. the murder is associated with a series of serious criminal acts;
- c. a substantial degree of premeditation or planning;
- d. the abduction of the victim;
- e. a murder involving sexual or sadistic conduct;
- f. a murder involving prolonged suffering or torture;
- g. the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a political activist, or the offence arose because of the victim’s occupation or voluntary work;
- h. a murder relating to membership of a criminal gang;
- i. a murder which is an act of terrorism;
- j. a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (e.g. people of a particular religion, race, or ethnic origin, language, or sexual orientation or age or having a particular disability);
- k. a murder involving the actual or threatened use of explosives or chemical or biological agent;
- l. a deliberate killing for payment or gain (e.g. a contract killing, or for inheritance, or insurance payout);
- m. where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- n. a murder by an offender previously convicted of murder; or
- o. a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

Determinate sentence

6. (1) In cases not falling in paragraph 3 or 4; or
 (2) Where a case falls within paragraph 4,
 - a. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and
 - b. the offender was an adult when he committed the offence;
 the appropriate starting point is a determinate sentence of 40 years, within a range of 30 - 50 years.
7. Cases that could fall within paragraph 6 include:
 - a. where the offender has pleaded guilty and would otherwise face a whole life term²;
 - b. a murder involving the use of a firearm;
 - c. a murder arising unplanned in the course of a felony (eg in a robbery or burglary);
 - d. a murder intended to obstruct or interfere with the course of justice;
 - e. a murder involving a lesser degree of sexual or sadistic conduct than referred to above; or
 - f. a murder in the context of a significant history of domestic violence.
8. If:
 - a. the offender was an adult at the time of the offence;
 - b. the case does not fall within paragraph 4 or 6; and
 - c. the offence falls within paragraph 9 below;
 the offence is normally to be regarded as sufficiently serious for the appropriate starting point to be a determinate sentence of 30 years, within a range of 20-40 years.
9. Cases that would normally fall within paragraph 8 are where the offender took a bladed weapon or blunt instrument to the scene intending to:

² In such a circumstance, there would usually be no further discount on account of the guilty plea.

- a. commit any offence; or
- b. have it available to use as a weapon; and
- c. used that weapon in committing the murder.

10. If the offender was an adult when he committed the offence and the case does not fall within paragraph 4, 6 or 8, the appropriate starting point is a determinate sentence of 25 years, within a range of 15-35 years.

Aggravating and mitigating factors

11. Having chosen a starting point, the court should take into account any further aggravating or mitigating factors pertaining to the offence, and then as a second step to the offender, to the extent that it has not allowed for them in its choice of starting point. Care must be taken not to double-count.
12. Aggravating factors pertaining to the offence (separate from those mentioned in paragraphs 5, 7, and 9) that may be relevant include:
 - a. a significant degree of planning or premeditation;
 - b. the victim was vulnerable because young or elderly or had a disability or because geographically isolated;
 - c. mental or physical suffering inflicted on the victim before death;
 - d. abuse of a position of trust or authority over the victim;
 - e. where the offence involved a great risk of death to another person or persons;
 - f. where the offence was an organized criminal activity;
 - g. where the offence occurred at the home of the victim or any other person;
 - h. where the offence was committed to conceal another offence;
 - i. the use of duress or threats against another person to facilitate the commission of the offence;

- j. where the victim was providing a public service or performing a public duty;
 - k. where the offence is committed in the presence of children;
 - l. where the offence is committed at or near a religious or educational institution;
 - m. where the offence is committed in view of the public;
 - n. where the offence is unprovoked; or
 - o. concealment, disposal, desecration, destruction or dismemberment of the body.
13. Mitigating factors pertaining to the offence that may be relevant include:
- a. an intention to cause serious bodily harm rather than to kill;
 - b. where the offender was acting under duress;
 - c. where the offender offered assistance to the authorities;
 - d. where the offender was provoked;
 - e. where the victim was the aggressor; or
 - f. a belief by the offender that the murder was an act of mercy.
14. Aggravating factors pertaining to the offender that may be relevant include:
- a. Previous convictions for violence offences;
 - b. Relevant convictions for other offences; or
 - c. Offence committed whilst on bail.
15. Mitigating factors pertaining to the offender that may be relevant include:
- a. Good character;
 - b. Genuine remorse;
 - c. Physical or mental disability or ill-health;
 - d. Youth and/or lack of maturity where it explains offending; or
 - e. Good prospects for rehabilitation.

Credit for plea

16. Where the offender has pleaded guilty at the first practicable opportunity, he may receive a discount of up to one-third of any determinate sentence (excepting where appropriate per para 7a).

Time on remand

17. Credit must be given for time spent on remand, to be calculated with precision³.

Parole

18. Where appropriate, the court should declare the minimum term to be served before consideration for parole.

Effective Date

19. This Practice Direction will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

Sgd.

Dame Janice M. Pereira, DBE

Chief Justice

³ See the requirements for assessing time on remand in **Gomes v The State** 2015 UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen** 2011 CCJ 6.

No. 140



A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

Sexual Offences Re-Issue

8th November 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹.

The previous Sentencing Guidelines for Sexual Offences which came into effect on 1st September 2020, reissued on 12th April 2021, are revoked and replaced by this Sentencing Guideline.

Introduction

This compendium sentencing guideline will deal with the following sexual offences:

- Rape (page 4);
- Unlawful sexual intercourse (page 11);
- Aggravated unlawful sexual intercourse (page 19);

¹ Made pursuant to Rule 4(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 3(1) for Anguilla.

- Indecency (page 26); and
- Incest (page 32).

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines, no. 4 of 2019**.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

RAPE - section 1

In the nine member states and territories of the ECSC there are different maximum sentences for the offence of rape.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A rape case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- Use of a firearm or weapon
- Use of extreme force
- The extreme impact caused by a combination of category 2 factors may elevate to category 1
- Victim is a child under 10 years of age
- Victim is 65 years or over

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm supported by evidence, (this can come from victim)
- Significant degradation/humiliation
- Significant use of force
- Victim is a child under 13 years of age
- Pregnancy as a consequence of offence
- STI as a consequence of offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to assess the seriousness of the offence by reference to a non-exhaustive list of factors to establish the culpability of the offender.

Levels of seriousness may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Disparity of age
- Prolonged detention/sustained incident
- History of violence against the victim
- Use or threats of violence to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence
- Offence motivated by hostility to race, religion, disability, or group identity
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity
- Commercial exploitation

SERIOUSNESS - Level B - Lower

- None of the above present

THIRD STAGE

Having determined the category and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'³.

Percentages⁴ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|---|
| Consequence – Category 1 | Starting point 75% x Range 60%–90% x | Starting point 65% x Range 50%-80% x |
| Consequence – Category 2 | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x |
| Consequence – Category 3 | Starting point 40% x Range 25%–55% x | Starting point 25% x Range 20%-30% x |

³ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
⁴ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence committed in the presence of others (e.g. relatives, children, or partner of the victim)
- Ejaculation
- Use of drug or alcohol by the offender

MITIGATING FACTORS of the offence

- Some initial consensual sexual activity
- No violence used beyond that inherent in the offence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health or vulnerable personality trait

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁵.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁵ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

UNLAWFUL SEXUAL INTERCOURSE - Section 2

In the nine member states and territories of the ECSC the offence of unlawful sexual intercourse (USI) can be described in different language and have different maximum sentences. These offences

span a wide range of criminality. At the lowest end of the sentencing range, non-custodial sentences or diversion from the criminal justice process may be appropriate. This may be particularly the case in consensual relationships between young people.

There are usually two categories of USI, each with different sentencing powers, which in this guideline will be divided between 'USI' and 'aggravated USI'. USI is where the girl is a young person under 16, being usually 14 or 15 (13 in some States/Territories), often attracting a maximum sentence of ten years. Aggravated USI is where the girl is a child under 13 (under 14 in some States/Territories), often attracting a maximum sentence of life imprisonment. A court will need to be sensitive to this difference, and in particular to how USI with a girl aged 13 can lead to very different sentences in the Member States and Territories depending on whether a person aged 13 is in the first or second category of USI.

USI WITH A PERSON UNDER 16 (being 15 or 14, or 13 in some States/Territories)

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of unlawful sexual intercourse requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- The extreme impact caused by a combination of category 2 factors may elevate to category 1

CONSEQUENCE - Category 2 - High

- Significant psychological or physical harm supported by evidence, (this can come from the victim)
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement

- Group or gang attack
- Significant disparity of age
- Prolonged detention/sustained incident
- Violence or threats of violence
- Steps taken to prevent reporting
- History of violence against the victim
- Steps taken to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence

SERIOUSNESS - Level B - Lesser

- None of the above present

THIRD STAGE

Having determined the category of harm and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages⁶ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|---|
| Consequence – Category 1 | Starting point 65% x Range 50%–80% x | Starting point 45% x Range 30%-60% x |
| Consequence – Category 2 | Starting point 40% x Range 25%–55% x | Starting point 20% x Range 5%-35% x |
| Consequence – Category 3 | Starting point 20% x Range 5%-35% x | Starting point Likely non-custodial |

⁶ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of offence

- No violence
- Parties involved in a consensual relationship with little disparity in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health or vulnerable personality trait

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁷.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

AGGRAVATED UNLAWFUL SEXUAL INTERCOURSE - section 3**USI WITH A PERSON UNDER 13 (or under 14 in some States/Territories)****STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A case of unlawful sexual intercourse requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- The extreme impact caused by a combination of category 2 factors may elevate to category 1
- Victim is a child under 10 years of age

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm supported by evidence, (this can come from the victim)
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Significant disparity of age
- Prolonged detention/sustained incident
- Violence or threats of violence
- History of violence against the victim
- Steps taken to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence

SERIOUSNESS - Level B - Lesser

- None of the above present

THIRD STAGE

Having determined the category of harm and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'¹⁸.

Percentages⁹ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|--|
| Consequence – Category 1 | Starting point 65% x Range 50%–80% x | Starting point 40% x Range 25%–55% x |
| Consequence – Category 2 | Starting point 40% x Range 25%–55% x | Starting point 20% x Range 5%–35% x |
| Consequence – Category 3 | Starting point 20% x Range 5%–35% x | Starting point 5% x Range non-custodial–15% x |

⁸ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of offence

- No violence
- Parties involved in a consensual relationship with little disparity in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health or vulnerable personality trait

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁰.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁰ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

INDECENCY – section 4

In the nine member states and territories of the ECSC offences of indecency have different maximum sentences. For the purposes of this guideline, the word ‘indecency’ will be used to cover all types of offences involving indecent assault, and gross or serious indecency falling short of sexual intercourse.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

An indecency case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme psychological and/or physical harm supported by evidence (this can come from the victim)
- Extreme degradation/humiliation
- Use of extreme force
- Victim is under 10 years of age
- Victim is 65 years and over

CONSEQUENCE - Category 2 - High

- Serious psychological and/or physical harm supported by evidence (this can come from the victim)
- Significant degradation/humiliation
- Use of significant force
- Victim is under 16 years of age
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- If indecent assault, contact with any genitals; if serious indecency, penetration of the mouth by the penis, of the vagina by anything, and any skin to skin contact of both genitals.
- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Substantial duration of offence
- Violence or threats of violence
- Use of weapon to frighten or injure
- Steps taken to prevent reporting
- Recording of incident, and/or distribution, including uploading it to the internet
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol designed to facilitate the offence
- Significant disparity of age
- Offence has been frequently repeated
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity

SERIOUSNESS - Level B - Medium

- Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)
- Other cases where characteristics for level A are not present

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages¹¹ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|---|
| Consequence - Category 1 | Starting point 65% x Range 50%-80% x | Starting point 50% x Range 35%-65% x |
| Consequence - Category 2 | Starting point 45% x Range 30%-60% x | Starting point 30% x Range 15%-45% x |
| Consequence - Category 3 | Starting point 20% x Range 5%-35% x | Starting point Likely non-custodial |

¹¹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Ejaculation
- Offence in the presence of others, especially children

MITIGATING FACTORS of the offence

- Offender and victim are teenagers similar in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health or vulnerable personality trait
- Genuine remorse
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹².

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹² See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

INCEST - section 5

In the nine member states and territories of the ECSC the offence of incest carries different maximum sentences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

An incest case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme psychological and/or physical harm supported by evidence (this can come from the victim)
- Extreme degradation/humiliation
- The victim is a child under 13 years
- The victim is particularly vulnerable
- Pregnancy results as a consequence of the offence

CONSEQUENCE - Category 2 - High

- Serious psychological and/or physical harm supported by evidence (this can come from the victim)
- Significant degradation/humiliation
- Victim is a child under 16 years of age
- STI results as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Significant degree of planning, including grooming or enticement
- Abuse of position of trust
- Specifically targeting a vulnerable child
- The offence has been frequently repeated
- Violence or threats of violence
- Use of a weapon to frighten or injure
- Steps taken to prevent reporting
- Significant disparity of age
- More than one family member involved in the commission of the offence
- Offence motivated by hostility to race, religion, disability, or group identity
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity
- Intimidation

SERIOUSNESS - Level B - Lesser

- Any other case

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'¹³.

Percentages¹⁴ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|--|
| Consequence - Category 1 | Starting point 65% x Range 50%-80% x | Starting point 45% x Range 30%-60% x |
| Consequence - Category 2 | Starting point 50% x Range 35%-65% x | Starting point 35% x Range 20%-50% x |
| Consequence - Category 3 | Starting point 35% x Range 20%-50% x | Starting point 15%x Range non-custodial–30% x |

¹³ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
¹⁴ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Act was repeated several times
- Use of threats including blackmail
- Use of alcohol/drugs to facilitate offence
- Significant degree of planning
- Recording of incident, and/or distribution, including uploading it to the internet
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of the offence

- Single incident or short-lived series
- Victim a similar age to the defendant
- Willing participation of the victim
- Parties previously unknown to each other
- Parties never lived together in the same household or family unit
- No violence or threat of violence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision ¹.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

**Sgd.
Dame Janice M. Pereira, DBE
Chief Justice**

**Sgd.
Mde. Gertel Thom
Justice of Appeal**

**Sgd.
Iain Morley, QC
High Court Judge**

14th December, 2021.

No. 141



A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

Violence Offences Re-Issue 8th November 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.¹

The previous Sentencing Guideline for Violence Offences which came into effect on 12th April, 2021 is revoked and replaced by this Sentencing Guideline.

INTRODUCTION

This compendium sentencing guideline will deal with the following offences of violence:

- Inflicting unlawful violence with intent to cause really serious harm (page 4);
- Unlawful violence without intent to cause really serious harm (page 11); and

¹ Made pursuant to Rule 4(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 3(1) for Anguilla.

- Kidnapping (page 18).

Sections concerning other types of violence may be added in time.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders, whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines No. 4 of 2019**.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

INFLECTING UNLAWFUL VIOLENCE WITH INTENT TO CAUSE REALLY SERIOUS HARM

In the nine member states and territories of the ECSC, there are different maxima and different articulations for the offence assault leading to 'wounding' or 'causing grievous bodily harm', (meaning really serious harm), 'with intent' to cause such harm. This guideline treats all such offences generically.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A case concerning inflicting violence with intent to cause really serious harm requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Severe psychological or physical harm (which can be evidence from the victim)
- Severe long-term physical or psychological impact of injury (which can be evidence from the victim)
- Significant degradation/humiliation

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm

CONSEQUENCE - Category 3 - Lesser

- Lesser harm with no long term impact

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Planning and premeditation
- Leading role in a group or gang attack
- Offence involves abduction
- Prolonged detention/sustained incident with repeated assault or multiple blows on the same victim

- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced entry into victim's home
- Intention to commit more serious harm than actually resulted from the offence
- Offence committed against those working in the public sector or providing a service to the public
- Use of weapon, or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
- Deliberate targeting of vulnerable person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

SERIOUSNESS - Level B - Lesser

- None of the above applies

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below.

Maximum sentence is 'x'³.

Percentages⁴ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|---|
| Consequence – Category 1 | Starting point 75% x Range 60%-90% x | Starting point 50% x Range 35%-65% x |
| Consequence – Category 2 | Starting point 60% x Range 45%-75% x | Starting point 35% x Range 20%-50% x |
| Consequence – Category 3 | Starting point 45% x Range 30%-60% x | Starting point 20% x Range 5%-35% x |

³ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
⁴ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent victim reporting or obtaining assistance
- Steps taken to prevent victim from assisting or supporting prosecution
- Offender motivated by revenge
- Attempts to conceal/dispose of evidence

- Blame wrongly placed on others
- Presence of others including relatives, especially children or partner of the victim
- Victim is a child or young person or particularly vulnerable, including through poverty
- Abuse of power and/or position of trust
- Commission of offence whilst under the influence of alcohol or drugs
- Domestic violence

MITIGATING FACTORS of the offence

- Serious medical condition if it helps to explain why the offence occurred
- Subordinate role in group or gang
- Lack of premeditation
- Excessive self-defence
- Significant provocation
- Isolated incident
- Seeking help by calling for medical assistance
- Offender subject to physical or mental abuse from victim

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Steps taken to address offending behaviour
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.⁵

⁵ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

UNLAWFUL VIOLENCE WITHOUT INTENT TO CAUSE REALLY SERIOUS HARM

In the nine member states and territories of the ECSC, there are different maxima and different articulations for the offence of assault with basic intent, involving recklessness, sometimes leading to 'wounding' or 'causing grievous bodily harm' (meaning really serious harm), or to 'actual bodily harm', (but where there is no intention to cause really serious harm). This guideline treats all such offences generically.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case concerning reckless unlawful violence without intent to cause really serious harm requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Severe psychological or physical harm (which can be evidence from the victim)
- Severe long-term physical or psychological impact of injury (which can be evidence from the victim)
- Significant degradation/humiliation

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm

CONSEQUENCE - Category 3 - Lesser

- Lesser harm with no long term impact

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS- Level A - High

- Violence arising in the course of another offence
- Leading role in a group or gang attack
- Offence involves abduction
- Prolonged detention/sustained incident with repeated assault on the same victim
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced entry into victim's home
- Offence committed against those working in the public sector or providing a service to the public
- Use of weapon, or weapon equivalent (for example, shod foot, head-butting, use of acid, use of animal)
- Deliberate targeting of vulnerable person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

SERIOUSNESS - Level B - Lesser

- None of the above applies

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages⁶ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|---|
| Consequence – Category 1 | Starting point 75% x Range 60%-90% x | Starting point 50% x Range 35%-65% x |
| Consequence – Category 2 | Starting point 60% x Range 45%-75% x | Starting point 35% x Range 20%-50% x |
| Consequence – Category 3 | Starting point 45% x Range 30%-60% x | Starting point 20% x Range 5%-35% x |

⁶ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Offender motivated by revenge
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Presence of others including relatives, especially children or partner of the victim
- Victim is a child or young person or particularly vulnerable, including through poverty
- Abuse of power and/or position of trust
- Commission of offence whilst under the influence of alcohol or drugs
- Domestic violence

MITIGATING FACTORS of the offence

- Subordinate role in group or gang
- Lack of premeditation
- Excessive self-defence
- Significant provocation
- Isolated incident

- Seeking help by calling for medical assistance
- Offender subject to physical or mental abuse from victim

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for violence offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health or vulnerable personality trait
- Steps taken to address offending behaviour
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.⁷

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

KIDNAPPING

In the nine member states and territories of the ECSC, there are different words used to describe kidnapping, (e.g. the words 'false imprisonment' or 'unlawful confinement' are also used), and there are often different maximum sentences. For the purposes of this guideline, the word 'kidnapping' will be used generically to cover all types.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A kidnapping case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Severe psychological or physical harm (which can be evidence from the victim)
- Significant degradation/humiliation
- Severe long-term impact of detention

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm

CONSEQUENCE - Category 3 - Lesser

- Lesser harm with no long-term impact

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Planning and premeditation
- Leading role in a group or gang
- Prolonged detention
- Abduction for financial gain
- Abduction for sexual offending
- Offence committed to facilitate other serious offending
- Violence or threats of violence
- Forced entry into victim's home
- Offence committed against those working in the public sector or providing a service to the public
- Use of weapon
- Deliberate targeting of vulnerable person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

LESSER SERIOUSNESS - Level B - Lesser

- None of the above applies
- Involved through coercion, intimidation or exploitation

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below.

Maximum sentence is 'x'⁸.

Percentages⁹ are approximations and may not divide neatly, so that some adjustment is permissible.

| | Seriousness - Level A | Seriousness - Level B |
|-----------------------------|---|--|
| Consequence – Category 1 | Starting point 75% x Range 60%-90% x | Starting point 50% x Range 35%-65% x |
| Consequence – Category 2 | Starting point 50% x Range 35%-65% x | Starting point 25% x Range 10%-40% x |
| Consequence – Category 3 | Starting point 35% x Range 20%-50% x | Starting point 10% x Range non-cusdoial-25% x |

⁸ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
⁹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Offender motivated by revenge
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Presence of others including relatives, especially children or partner of the victim
- Abuse of power and/or position of trust

- Victim is a child or young person or particularly vulnerable, including through poverty
- Commission of offence whilst under the influence of alcohol or drugs
- Domestic violence
- Third parties are threatened

MITIGATING FACTORS of the offence

- Subordinate role in group or gang
- Lack of premeditation
- Mental disorder or learning disability, or medical condition, if it helps to explain why the offence occurred

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for kidnapping offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour.
- Physical or mental disability or ill-health or vulnerable personality trait
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.¹⁰

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 8th day of November, 2021.

Made this 5th day of November, 2021.

**Sgd.
Dame Janice M. Pereira, DBE
Chief Justice**

**Sgd.
Mde. Gertel Thom
Justice of Appeal**

**Sgd.
Iain Morley, QC
High Court Judge**

¹⁰ See the requirements for assessing time on remand in **Gomes v The State** 2015 UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen** 2011 CCJ 6.

14th December, 2021.

BY COMMAND

KATTIAN BARNWELL-SCOTT
Secretary to Cabinet
Prime Minister's Office

Prime Minister's Office
St. Vincent and the Grenadines.

14th December, 2021.

**THE BUSINESS COMPANIES (AMENDMENT AND CONSOLIDATION) ACT,
CHAPTER 149 OF THE REVISED LAWS OF SAINT VINCENT AND THE
GRENADINES, 2009**

**HYPERICUM LIMITED (No. 21072 BC 2013)
(IN VOLUNTARY LIQUIDATION)**

Pursuant to Section 167 (4) of the Act, Notice is hereby given that the aforementioned Company has passed the relevant resolutions as required by the Act and:

1. Is now in voluntary liquidation prior to being wound up and dissolved;
2. Commenced its dissolution on the 12th October, 2021; AND
3. Has duly appointed Anja Lange of Claridenstrasse 25, 8002 Zurich, Switzerland as liquidator.

ANJA LANGE,
Liquidator.

**THE BUSINESS COMPANIES (AMENDMENT AND CONSOLIDATION) ACT,
CHAPTER 149 OF THE REVISED LAWS OF SAINT VINCENT AND THE
GRENADINES, 2009**

**SARAN FINANCE LIMITED (No. 18477 BC 2010)
(NOTICE OF COMPANY DISSOLUTION)**

Pursuant to Section 167 (8) of the Business Companies (Amendment and Consolidation) Act, Chapter 149 of the revised Laws of Saint Vincent and the Grenadines, 2009. Notice is hereby given that the aforementioned Company has been dissolved and struck off the register.

MS. CARMEN BUERGI REIMANN,
Liquidator.

NOTICE

The St. Vincent and the Grenadines Financial Services Authority hereby gives notice pursuant to the provision of Section 88 (1) of the Friendly Societies Act, 2021, that a Special Resolution was passed as required by the Act, for the winding up of operations of the **Star of Eden Lodge No. 1 Friendly Society** and the Friendly Society:

1. Has commenced its dissolution on the 23rd February, 2018;
2. Has complied with all provisions of the Friendly Societies Act, 2021 relating to dissolution;
AND

3. Will be legally dissolved after two (2) consecutive weekly publications of this notice in two (2) newspapers and the Gazette.

Registrar

Friendly Societies

Financial Services Authority.

Printed by the Government Printer at the Government Printing Office,
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2021

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