

A Sentencing Guideline for Robbery Offences within the ECSC

Within the ECSC, on the nine member states and territories 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.

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 offenders¹ 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.

¹ For persons below 18, see the **Practice Direction on Sentencing Guidelines**, no. of 2019.

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.

Constructing the Sentence

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 three stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence.

CONSEQUENCE may be demonstrated by 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 injury
- Production of a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- 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 'x'².

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

	High Seriousness – level A	Medium Seriousness – level B	Lesser Seriousness – level C
Consequence – category 1	SP 75% x Range 60-90% x	SP 60% x Range 45-75% x	SP 45% x Range 30-60% x
Consequence – category 2	SP 40% x Range 30-50% x	SP 30% x Range 20-40% x	SP 20% x Range 10-30% x
Consequence – category 3	SP 15% x Range non-custodial - 25% x	SP 10% Range non-custodial – 20%	SP 5% Range non-custodial – 15%

² Where the maximum sentence is life imprisonment, 'x' is 30 years.

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 (eg wearing a mask)

MITIGATING FACTORS of the offence

- Mental disorder or learning disability 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.

AGGRAVATING FACTORS of offender

- Previous convictions for robbery offences
- Recent or relevant convictions for other offences
- Offence committed whilst on bail
- Dangerousness

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Where appropriate, primary carer for dependent family members
- Age and/or lack of maturity
- 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 reduce if the plea is later, down to one-tenth for a plea on the day of trial.

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 precision¹.

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.