

## KIDNAPPING

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

### Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines<sup>1</sup> 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<sup>2</sup> 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.

<sup>1</sup> As at [date of publication]

<sup>2</sup> 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.

## **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 determine the offence category based on consequence.

CONSEQUENCE may be demonstrated by the harm caused to the victim.

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
- Serious long term impact of injury

### **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:

### **HIGH SERIOUSNESS– level A**

- Planning and premeditation
- Leading role in a group or gang
- Prolonged detention
- Abduction for financial gain
- 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, or group identity

### **LESSER SERIOUSNESS – level B**

- 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'<sup>3</sup>.

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

	<b>High Seriousness – level A</b>	<b>Lesser Seriousness – level B</b>
<b>Consequence – category 1</b>	<b>SP 75% x Range 60-90% x</b>	<b>SP 50% x Range 35-65% x</b>
<b>Consequence – category 2</b>	<b>SP 50% x Range 35-65% x</b>	<b>SP 25% x Range 10-40% x</b>
<b>Consequence – category 3</b>	<b>SP 35% x Range 20-50% x</b>	<b>SP 10% x Range non-cusdoial-25% x</b>

<sup>3</sup> 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).

## 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

### **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.
- 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<sup>4</sup>.

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<sup>4</sup> 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.