



# A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

## Homicide Offences Re-Issue 26<sup>th</sup> November 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019<sup>1</sup>.

The previous Sentencing Guideline for Homicide Offences which came into effect on 8<sup>th</sup> November, 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)

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<sup>1</sup> 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 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.

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<sup>2</sup> 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 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 8<sup>th</sup> November 2021, updating the previous Practice Directions for the offence of Murder which came into effect on the 1<sup>st</sup> day of September, 2020 and reissued on the 12<sup>th</sup> 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 NO. 3 OF 2021**

#### **SENTENCING FOR THE OFFENCE OF MURDER RE-ISSUE 26<sup>TH</sup> 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) for all the Member States and Territories, **except** the Territory of Anguilla, where 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) in respect of Anguilla.

The previous Practice Directions for the offence of Murder, and separately on Anguilla, which came into effect on the 1<sup>st</sup> day of September, 2020, and reissued on the 12<sup>th</sup> day of April, 2021 and the 8<sup>th</sup> day of November, 2021 are all revoked and replaced by this single Practice Direction.

## **Introduction**

This practice direction<sup>3</sup> 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.

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<sup>3</sup> This practice direction, consisting largely of edits, and excising reference to offenders under 18, replaces the earlier version published on 1<sup>st</sup> September 2020 and Re-Issued on 12<sup>th</sup> April, 2021, and further the 8<sup>th</sup> November 2021 so that this single practice direction shall apply to all Member States and Territories within the jurisdiction of the Eastern Caribbean Supreme Court.

### **Sentence of an adult for murder<sup>4</sup>**

- 2 A conviction of an adult for the offence of murder may result in one of the following sentences:
- a. Sentence of death, where lawful;
  - 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

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<sup>4</sup> This practice direction takes into account the death penalty was abolished for the Territories of Anguilla, the Virgin Islands and Montserrat by The Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991, S. I. No. 988 of 1991.

- 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 term<sup>5</sup>;
  - 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:

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<sup>5</sup> 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 precision<sup>6</sup>.

### **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 26<sup>th</sup> day of November, 2021.

Made this 22<sup>nd</sup> day of November, 2021.

**Sgd.**

**Dame Janice M. Pereira, DBE**

**Chief Justice**

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<sup>6</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.

## 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<sup>7</sup>
- 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

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<sup>7</sup> '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.<sup>8</sup> In rare and exceptional cases the grid permits, as below, contemplating a non-custodial sentence.

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

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<sup>8</sup> 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 precision<sup>9</sup>.

### **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.

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<sup>9</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.

## 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 maximum<sup>10</sup>. In rare and exceptional cases the grid permits, as below, contemplating a non-custodial sentence.

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

### 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.

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<sup>10</sup> In the nine island nations of the ECSC, the maximum sentence for manslaughter by reason of 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 precision<sup>11</sup>.

### **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.

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<sup>11</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.

## 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 driving<sup>12</sup>, 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.

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<sup>12</sup> 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 below<sup>13</sup>.

Maximum sentence is 'x'.

Percentages<sup>14</sup> are approximations and may not divide neatly, so that some adjustment is permissible.

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

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<sup>13</sup> 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.

<sup>14</sup> 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 precision<sup>15</sup>.

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<sup>15</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.

## **EFFECTIVE DATE**

This Sentencing Guideline will come into effect on the 26<sup>th</sup> day of November, 2021.

**Made this 22<sup>nd</sup> 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**