



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,² 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.