

SUPPLEMENT TO



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EASTERN SUPREME COURT SENTENCING GUIDELINE



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Ryan Johnson, Editor of the Official Gazette
ryan.johnson@ab.gov.ag / antiguagazette@gmail.com
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Mr. Ryan Johnson
Editor of the Official Gazette
Ministry of Justice & Legal Affairs
Parliament Drive
Queen Elizabeth Highway
P.O. Box 118
Antigua

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NOTICES

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

A Sentencing Guideline for Drugs offences within the ECSC

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

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines¹ 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 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

. ¹ As at 17 September 2019. ² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines no. 4 of 2019**.
Consider the seriousness

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

Step3

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

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 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.

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 1kg

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

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 organizing
- 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

| |
|--|
| <p>SIGNIFICANT ROLE</p> <ul style="list-style-type: none"> • 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 |
|--|

| |
|--|
| <p>LESSER ROLE</p> <ul style="list-style-type: none"> • Performs a limited function under direction • Involved by pressure, coercion, intimidation • Involvement through youth, naivety or exploitation • No influence on those above • 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.

Percentages 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 | SP 65% x Range 50-80% x | SP 50% x Range 35-65% x | SP 35% x Range 20-50% x |

| | | | |
|-------------------|----------------------------|------------------------------|-----------------------------------|
| Category 2 | SP 50% x Range 35-65% x | SP 35% x Range 20-50% x | SP 20% x Range 10-30% x |
| Category 3 | SP 35% x Range 20-50% x | SP 20% x Range 10-30% x | SP 10% x Non-custodial - 20% x |
| Category 4 | Non-custodial (high level) | Non-custodial (medium level) | 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).

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
- Remorse
- If an addict, offender is taking steps towards rehabilitation
- 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 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. 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.

A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court Offences of Dishonesty

This compendium sentencing guideline will deal with offences of dishonesty, beginning with theft and robbery, and sections will be added to in time, to deal with burglary and other offences.

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.

¹ 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 1²

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

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, eg 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.

| | 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 50% x Range 35-65% x |
| Consequence – category 2 | SP 50% x Range 35-65% x | SP 35% x Range 20-50% x | SP 20% x Range 10-30% x |

| | | | |
|--------------------------|---|--|---|
| Consequence – category 3 | SP 35% x Range 20-50% x | SP 20% x Range 10-30% x | SP 10% x Range non-custodial - 20% x |
| Consequence – category 4 | SP 10% x Range non-custodial - 20% | SP 5% x Range non-custodial - 15% | Non-custodial |

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.

| |
|--|
| <p>AGGRAVATING FACTORS of the offence</p> <ul style="list-style-type: none"> • 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 <p>Attempt to conceal identity</p> |
|--|

| |
|---|
| <p>MITIGATING FACTORS of the offence</p> <ul style="list-style-type: none"> • 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
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- 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 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.

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**.

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.

ROBBERY – section 2⁴

Within the ECSC, in 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 substantives 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.

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 ‘x’⁵.

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 30% x Range 15-45% x |
| Consequence – category 2 | SP 60% x Range 45-75% x | SP 40% x Range 25-55% x | SP 20% x Range 5-35% x |
| Consequence – category 3 | SP 45% x Range 30–60% | SP 20% x Range 5-35% x | SP 10% x Range non-custodial – 20% |

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
- 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)
- 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
- 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
- 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 usually reduce significantly the later the

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.

A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court

Sexual Offences

This compendium sentencing guideline will deal with sexual offences beginning with rape and unlawful sexual intercourse. In time, sections will be added to deal with indecent assault and other offences.

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.

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, 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 1²

Within the ECSC, in the nine member states and territories 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 assess the evidence in order to establish the category of the offence by reference to the harm caused by the offence.

Categories arising from harm caused are as follows:

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 and over

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

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:

Category 1 – Exceptional

- 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 of violence 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 to facilitate the offence
- Offence motivated by, or demonstrated hostility to the victim based on their sexual orientation or transgender 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.

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

| | <u>SERIOUSNESS Level A</u> | <u>SERIOUSNESS Level B</u> |
|--------------------------|--|--|
| <u>Category 1</u> | <p>Starting point 75% x Range 60% – 90%</p> | <p>Starting Point 65% x Range 50% - 80%</p> |
| <u>Category 2</u> | <p>Starting point 50% x Range 35% - 65%</p> | <p>Starting Point 40% x Range 25% - 55%</p> |
| <u>Category 3</u> | <p>Starting point 40% x Range 25% – 55%x</p> | <p>Starting Point 25% x Range 20% - 30%</p> |

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.

| |
|---|
| <p>AGGRAVATING FACTORS of the offence</p> <p>Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability</p> <p>Offence committed in the presence of others e.g. relatives, children or partner of the victim</p> <p>Ejaculation</p> <p>Use of drug or alcohol by the offender</p> |
|---|

| |
|--|
| <p>MITIGATING FACTORS of the offence</p> <p>Some initial consensual sexual activity</p> <p>No violence used beyond that inherent in the offence</p> |
|--|

| |
|--|
| <p><u>STEP 2</u></p> <p>Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.</p> <p>AGGRAVATING FACTORS of offender</p> |
|--|

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

Age and/or lack of maturity

Physical or mental disability or ill-health

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 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 a particular justifying any departure from the guideline.

UNLAWFUL SEXUAL INTERCOURSE – Section 2⁵

Within the ECSC, in the nine member states and territories 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 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 – section 2

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 Step1.

FIRST STAGE

The first stage is to assess the evidence in order to establish the category of the offence by reference to the harm caused by the offence.

Categories arising from harm caused are as follows:

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 category1

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

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
- 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 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'⁶.

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

| | <u>SERIOUSNESS Level A</u> | <u>SERIOUSNESS Level B</u> |
|--------------------------|---|---|
| <u>Category 1</u> | Starting point 65% x Range 50% – 80% | Starting point 45% x Range 30% - 60% |
| <u>Category 2</u> | Starting point 45% x Range 30% - 60% | Starting point 20% x Range 5% - 35% |
| <u>Category 3</u> | Starting point 20% x Range 5% – 35% | Starting point Likely non-custodial |

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.

| |
|--|
| <p>AGGRAVATING FACTORS of offence</p> <p>Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability</p> <p>Offence in the presence of others, especially children</p> <p>Ejaculation</p> |
|--|

| |
|--|
| <p>MITIGATING FACTORS of offence</p> <p>No violence</p> <p>Parties involved in a consensual relationship with little disparity in age</p> |
|--|

| |
|-----------------------------|
| <p><u>STEP 2</u></p> |
|-----------------------------|

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

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Age and/or lack of maturity
- Physical or mental disability or ill-health

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 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.

AGGRAVATED USI – section 2B**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 assess the evidence in order to establish the category of the offence, by reference to the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from harm caused are as follows:

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

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

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:

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

| |
|---|
| <p>Seriousness - Level B (Lesser)</p> <p>None of the above present</p> |
|---|

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’⁸.

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

| | <u>SERIOUSNESS Level A</u> | <u>SERIOUSNESS Level B</u> |
|--------------------------|---|---|
| <u>Category 1</u> | Starting point 65% x Range 50% – 80% | Starting point 40% x Range 25% - 55% |
| <u>Category 2</u> | | Starting point 20% |

| | | |
|---------------------------------|--|---|
| <p><u>Category 3</u></p> | <p>Starting point 40% x Range 25% - 55%</p> <p>Starting point 20% x 5% – 35%</p> | <p>x Range 5% - 35%</p> <p>Starting point 5% x</p> <p>Range non-custodial – 15%</p> |
|---------------------------------|--|---|

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.

| |
|--|
| <p>AGGRAVATING FACTORS of offence</p> <ul style="list-style-type: none"> Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability Offence in the presence of children Ejaculation |
|--|

| |
|---|
| <p>MITIGATING FACTORS of offence</p> <ul style="list-style-type: none"> No violence Parties involved in a consensual relationship with little disparity in age |
|---|

| |
|--|
| <p><u>STEP 2</u></p> <p>Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.</p> <p>AGGRAVATING FACTORS of offender</p> <ul style="list-style-type: none"> Previous convictions for sexual offences Relevant convictions for other offences Offence committed whilst on bail <p>MITIGATING FACTORS of offender</p> <ul style="list-style-type: none"> Good character Genuine remorse |
|--|

Evidence of genuine attempt to address offending behavior
Age and/or lack of maturity
Physical or mental disability or ill-health

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 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.