



**SENTENCING GUIDELINES
SEXUAL OFFENCES (4(c)(i))
(including breach of sexual harm prevention order)**

	Pages
Introduction and General Principles	2-5
Sentencing of young people for sexual offences	4
Rape	6-7
Taking a woman away against her will	8-9
Taking girl under 16 from lawful care	10-11
Indecent Assault	12-13
Assault by penetration	14-15
Defilement of girl under 16	16-17
Gross Indecency – child under 16	18-19
Sexual Assault of a mentally impaired person	20-21
Procuring person to become a prostitute	22-23
Detention in a brothel etc.	22-23
Administering drugs with intent	24-25
Living on earnings of prostitution	26-27
Persistently soliciting	26-27
Keeping house or room for purposes of prostitution	26-27
Breach of sexual harm prevention order	28-29

GUIDELINE

Introduction

1. This guideline applies to a wide variety of offences which are contained in section 127 – 147 of the Penal Code (2019 Revision). The circumstances in which offences are committed will vary greatly which will require flexibility in the approach to sentencing. The presence of aggravating or mitigating factors particular to the offence or the offender is likely to be especially significant.
2. The decision on sentence will take into account the degree of harm to the victim and the level of culpability of the offender. Where appropriate (see paragraphs 7 and 8 below), the decision will also take into account the level of risk posed to the public by the offender.

Harm

3. All sexual offences where the activity is non-consensual, coercive or exploitative result in harm. This includes situations where a victim ostensibly gives consent but their capacity to give informed consent is affected by their youth or by mental disorder. Extreme youth or old age of the victim will be an aggravating factor.
4. The effects of sexual offending may be physical and/or psychological. The physical effects – injury, pregnancy or sexually transmitted infections – may be very serious. The psychological effects may be equally serious or may be even more serious but may be much less obvious (even unascertainable) at the time of sentencing. They may include any or all of the following (this list is not intended to be comprehensive and items are not listed in any form of priority):
 - *Violation of the victim's sexual autonomy*
 - *Fear*
 - *Humiliation*
 - *Degradation*
 - *Shame*
 - *Embarrassment*
 - *Inability to trust*
 - *Inability to form personal or intimate relationships in adulthood*
 - *Self-harm or suicide*

Culpability

5. Culpability is generally highest when the offender intends to cause harm. Sexual offences though may be different in some respects because the intention of the offender may be to obtain sexual gratification, financial gain or some other effect rather than to harm the victim. However, where the activity is in any way non-consensual, coercive or exploitative, the offence will be inherently harmful and so the offender's culpability will be high. Planning an offence will further increase culpability compared with offending which is opportunistic or impulsive. Where an offence involves preparation for an activity that does not actually occur (for example, supplying drugs to procure abortion), it will be the level of culpability that will be the primary factor in deciding the seriousness of the offence alongside the degree of harm that could have been caused.

6. In relation to offences against a child, the greater the age gap between the offender and the victim, the higher the sentence is likely to be. However, the youth and/or immaturity of the offender will also need to be taken into account.

Risk of future harm

7. In relation to sexual offences, the risk of future harm from further offences is more likely to be significant than in relation to some other offences. In assessing that risk and determining how that should be reflected in the sentence imposed, the Judge should consider the nature of the offence, the offender's history of offending, the attitude of the offender to the offence and the personal circumstances of the offender.
8. Based on that assessment, the Judge must take into account the need to protect the public against the risk. This may justify the imposition of a sentence in a higher category than would otherwise be considered on the basis of the harm caused by the offence and the culpability of the offender.

General

9. These guidelines are for a court sentencing an adult offender. The guidelines broadly reflect the approach taken by local case law. For example, the approach taken by the Cayman Islands Court of Appeal with respect to offences of rape in cases such as *Dilbert v. R*; *Samuels v. R.* [2010] 1 CILR 10. The Court noted therein that the starting point for the offence of rape had been deliberately set higher in the Cayman Islands than in England and Wales by the Statement on Tariffs and Guidelines (issued by the Learned Chief Justice in 2002) because of the alarming prevalence of rape in the Cayman Islands. With respect to offences of defilement, the guidelines reflect the approach taken by the Appellate Court in cases such as *R. v. McLean*; *R. v. Douglas*, CICA (Crim) No. 10/2014 and No 19/2014; judgment dated 21st November 2014. The Court stated therein that, in this jurisdiction, defilement of a girl between the ages of 12 and 16 years is regarded as a serious offence with a starting point of at least 5 years.
10. Where the offender was under the age of 17 at the time the offence was committed, the court will need to sentence in accordance with the powers under the Youth Justice Law (see paragraph 14 below). Where the offender has crossed the age threshold between committing the offence and coming up for sentence, the court must use as the starting point the sentence it would have passed at the date of the offence: *Wright v. R.* CICA [2012] 2 CILR Note 15.
11. Except where otherwise indicated, the offence guidelines are based on sentencing of a first time (adult) offender who has been convicted after pleading not guilty. Where the term 'community order' is used, it includes any sentence that does not involve a custodial sentence, a fine or a discharge.

12. Where an offender has been convicted before of offences relevant to the current offence, this will increase culpability and so increase the seriousness of the offence. In relation to some offences, it will also increase the maximum sentence for the offence. Separate guidelines provide for the approach to reducing sentence following a plea of guilty; in relation to sexual offences, this is particularly important where it reduces the anxiety of the victim both by shortening the time between the reporting of the offence and conviction and by avoiding the need for the victim to give evidence to the court.
13. The court will have the power to order the offender to pay compensation to the victim. Compensation may be of particular significance in circumstances such as where the victim had to incur expenses for medical, psychiatric or psychological treatment or as the result of loss of income related to the offence. Compensation should benefit the victim, not inflict further harm. Any financial recompense from an offender may cause the victim additional humiliation, degradation or distress. The victim's views are best obtained through sensitive discussion with the victim before the court hearing when it can be explained that the offender's ability to pay will ultimately determine whether (and how much) compensation is ordered. The views of the victim regarding compensation should be made known to the court and respected and, if appropriate, acknowledged at the time of sentencing. A victim may not want compensation from the offender, but this should not be assumed.
14. Where a person aged seventeen or above is dealt with for any offence of a sexual or indecent nature, the court may make a sexual harm prevention order on the application of the DPP. This may be additional to any other sentence imposed or may be the only order made. The effect of the order will be to prohibit the person from doing anything described in the order which may include a prohibition on travel both within and outside the Islands. The purpose of the order is to protect the public from sexual harm from that person. It may be applied to the public in general, to specified persons, to children or vulnerable persons in general or to a particular child or vulnerable person. It must be for a fixed period and that period must be at least five years.

Sentencing of young people for sexual offences

15. These guidelines apply only to adult offenders. Where a court is sentencing a youth, in taking account of these guidelines and adjusting them to reflect the youth of the offender, it will consider the welfare of the young person, the age of the child or young person (chronological, developmental and emotional), the seriousness of the offence, the likelihood of further offences being committed and the extent of harm likely to result from those further offences.
16. In general, a child or young person is likely to be dealt with less severely than an adult offender. In part, this is because children and young people are unlikely to have the same experience and capacity as an adult to understand the effect of their actions on other people or to appreciate the pain and distress caused and because a child or young person may be less able to resist temptation, especially where peer pressure is exerted. Children and young people are inherently more vulnerable than adults due to their age and the court will need to

consider any mental health problems and/or learning disabilities they may have, as well as their emotional and developmental age. Any external factors that may have affected the child or young person's behaviour should be taken into account.

17. In assessing **culpability**, relevant factors include the extent to which the offence was planned, the role of the child or young person (if the offence was committed as part of a group), the level of force that was used in the commission of the offence and the awareness that the child or young person had of their actions and its possible consequences.
18. In assessing **harm** the court should consider the level of physical and psychological harm caused to the victim including consideration of any harm that was intended to be caused or could foreseeably have been caused in committing the offence.

RAPE

Penal Code (2019 Revision)(section 127) Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Offences may be of such severity that sentences of 20 years and above may be appropriate, for example any involving a campaign of rape or repeated offences.

Category 1

- The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1

Category 2

- Severe psychological or physical harm
- Pregnancy or STI as a consequence of the offence
- Additional degradation/humiliation
- Abduction
- Prolonged detention/sustained incident
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced/uninvited entry into victim's home
- Victim is particularly vulnerable due to age or personal circumstances

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against the victim
- Offence committed in the course of burglary
- Sexual image of victim, recorded, retained, solicited or shared
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

RAPE

Penal Code (2019 Revision)(section 127) Maximum penalty: Life imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 25 years custody Sentencing range 20-30 years custody	Starting point 20 years custody Sentencing range 15-24 years custody
Category 2	Starting point 20 years custody Sentencing range 15-24 years custody	Starting point 15 years custody Sentencing range 10-19 years custody
Category 3	Starting point 13 years custody Sentencing range 11-16 years custody	Starting point 11 years custody Sentencing range 8-14 years custody

Additional aggravating factors

- Specific targeting of a particularly vulnerable victim
- Ejaculation (where not taken into account at step 1)
- Blackmail or other threats made (where not taken into account at step 1)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

TAKING AWAY A WOMAN AGAINST HER WILL

Penal Code (2019 Revision)(section 130)

Maximum penalty: 10 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1

Category 2

- Severe psychological or physical harm
- Pregnancy or STI as a consequence of the offence
- Additional degradation/humiliation
- Prolonged detention/sustained incident
- Violence or threats of violence
- Forced/uninvited entry into victim's home

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against the victim
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

TAKING AWAY A WOMAN AGAINST HER WILL

Penal Code (2019 Revision)(section 130)

Maximum penalty: 10 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 9 years custody Sentencing range 7-10 years custody	Starting point 6 years custody Sentencing range 5-8 years custody
Category 2	Starting point 7 years custody Sentencing range 5-8 years custody	Starting point 4 years custody Sentencing range 3-6 years custody
Category 3	Starting point 5 years custody Sentencing range 3-6 years custody	Starting point 2 years custody Sentencing range 1-4 years custody

Additional aggravating factors

- Blackmail or other threats made (where not taken into account at step 1)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

TAKING GIRL UNDER 16 FROM LAWFUL CARE

Penal Code (2019 Revision)(section 131)

Maximum penalty: 4 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors **may** elevate to category 1

Category 2

- Severe psychological or physical harm
- Pregnancy or STI as a consequence of the offence
- Additional degradation/humiliation
- Prolonged detention/sustained incident
- Violence or threats of violence
- Forced/uninvited entry into victim's home

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability

- See aggravating factors

TAKING GIRL UNDER 16 FROM LAWFUL CARE

Penal Code (2019 Revision)(section 131)

Maximum penalty: 4 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	
Category 1	Starting point 3 years custody Sentencing range 2-4 years custody
Category 2	Starting point 2 years custody Sentencing range 1-3 years custody
Category 3	Starting point 1 years custody Sentencing range Community order – 2 years custody

Aggravating factors

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against the victim
- Commercial exploitation/motivation
- Blackmail or other threats made (where not taken into account at step 1)
- Location of offence
- Timing of offence
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

INDECENT ASSAULT

Penal Code (2019 Revision)(section 132 (female) and section 145(1) (male))

Maximum penalty: 10 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Severe psychological or physical harm
- Abduction
- Violence or threats of violence
- Forced/uninvited entry into victim's home

Category 2

- Some psychological or physical harm
- Touching of naked genitalia or naked breasts
- Additional degradation/humiliation
- Prolonged detention/sustained incident
- Victim is particularly vulnerable due to personal circumstances

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against the victim
- Offence committed in the course of burglary
- Recording of the offence
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

INDECENT ASSAULT

Penal Code (2019 Revision)(section 132 (female) and section 145(1) (male))

Maximum penalty: 10 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 8 years custody Sentencing range 7-10 years custody	Starting point 6 years custody Sentencing range 5-9 years custody
Category 2	Starting point 6 years custody Sentencing range 5-9 years custody	Starting point 4 years custody Sentencing range 3-7 years custody
Category 3	Starting point 2 years custody Sentencing range 1-5 years custody	Starting point 1 year custody Sentencing range Community Order - 2 years custody

Additional aggravating factors

- Specific targeting of a particularly vulnerable victim
- Blackmail or other threats made (where not taken into account at step 1)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)
- Demonstration of steps taken to address the offending behaviour.

ASSAULT BY PENETRATION

Penal Code (2019 Revision)(section 132A)

Maximum penalty: 10 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1

Category 2

- Severe psychological or physical harm
- Penetration using large or dangerous object(s)
- Additional degradation/humiliation
- Abduction
- Prolonged detention/sustained incident
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced/uninvited entry into victim's home
- Victim is particularly vulnerable due to age or personal circumstances

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against the victim
- Offence committed in the course of burglary
- Recording of the offence
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

ASSAULT BY PENETRATION

Penal Code (2019 Revision)(section 132A)

Maximum penalty: 10 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 9 years custody Sentencing range 8–10 years custody	Starting point 7 years custody Sentencing range 6-8 years custody
Category 2	Starting point 7 years custody Sentencing range 5-8 years custody	Starting point 5 years custody Sentencing range 3–6 years custody
Category 3	Starting point 3 years custody Sentencing range 1-5 years custody	Starting point 18 months custody Sentencing range Community Order-3 years custody

Additional aggravating factors

- Specific targeting of a particularly vulnerable victim
- Blackmail or other threats made (where not taken into account at step 1)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

DEFILEMENT OF GIRL UNDER 16 ETC.

Penal Code (2019 Revision)(section 134)

Maximum penalty: 20 years imprisonment (girl under 12)
12 years imprisonment (girl 12-16)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Severe psychological or physical harm
- Pregnancy or STI as a consequence of the offence
- Additional degradation/humiliation
- Child is particularly vulnerable due to extreme youth and/or personal circumstances

Category 2

- Factor(s) in category 1 not present

CULPABILITY

Culpability A

- Intimidatory behaviour used towards victim
- Significant degree of planning
- Offender acts together with others to commit the offence
- Grooming behaviour used against victim
- Abuse of trust
- Previous violence against the victim
- Sexual image of victim recorded, retained, solicited or shared
- Deliberate isolation of victim
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

NOTES:

1. This guideline is for adult offenders. For the approach where a court is sentencing a youth, see paras. 14-17 on page 4 above.
2. This offence potentially covers a very wide spectrum of conduct. In assessing seriousness, the court will consider in particular the age gap between the offender and the girl (the greater the gap the more serious the offence is likely to be) and whether there was an abuse of any position of trust.
3. Occasionally, an offence may contain a combination of aggravating factors which justifies a sentence substantially above those set out in category 1.

DEFILEMENT OF GIRL UNDER 16 ETC.

Penal Code (2019 Revision)(section 134)

Maximum penalty: 20 years imprisonment (girl under 12)

12 years imprisonment (girl 12-16)

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A (under 12)	A (12-16)	B (under 12)	B (12-16)
Category 1	<p>Starting point 10 years custody</p> <p>Sentencing range 8-13 years custody</p>	<p>Starting point 8 years custody</p> <p>Sentencing range 6-9 years custody</p>	<p>Starting point 8 years custody</p> <p>Sentencing range 6-9 years custody</p>	<p>Starting point 6 years custody</p> <p>Sentencing range 4-7 years custody</p>
Category 2	<p>Starting point 8 years custody</p> <p>Sentencing range 6-9 years custody</p>	<p>Starting point 5 years custody</p> <p>Sentencing range 3-7 years custody</p>	<p>Starting point 5 years custody</p> <p>Sentencing range 3-7 years custody</p>	<p>Starting point 3 years custody</p> <p>Sentencing range Community order - 5 years custody</p>

Additional aggravating factors

- Specific targeting of a particularly vulnerable victim
- Location of offence
- Timing of offence
- Offender lied about age
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

GROSS INDECENCY – CHILD UNDER 16

Penal Code (2019 Revision)(section 134A)

Maximum penalty: 12 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1

Category 2

- Severe psychological or physical harm
- Pregnancy or STI as a consequence of the offence
- Additional degradation/humiliation
- Abduction
- Prolonged detention/sustained incident
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced/uninvited entry into victim's home
- Victim is particularly vulnerable due to age or personal circumstances

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against the victim
- Offence committed in the course of burglary
- Recording of the offence
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

GROSS INDECENCY – CHILD UNDER 16

Penal Code (2019 Revision)(section 134A)

Maximum penalty: 12 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 10 years custody Sentencing range 8-12 years custody	Starting point 8 years custody Sentencing range 6-9 years custody
Category 2	Starting point 8 years custody Sentencing range 6-9 years custody	Starting point 6 years custody Sentencing range 4-7 years custody
Category 3	Starting point 5 years custody Sentencing range 3-7 years custody	Starting point 3 years custody Sentencing range 1-5 years custody

Additional aggravating factors

- Specific targeting of a particularly vulnerable victim
- Ejaculation (where not taken into account at step 1)
- Blackmail or other threats made (where not taken into account at step 1)
- Pregnancy or STI as a consequence of the offence
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home, school etc. (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Victim encouraged to recruit others

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

SEXUAL ASSAULT OF A MENTALLY IMPAIRED PERSON

Penal Code (2019 Revision)(section 135)

Maximum penalty: 12 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1

Category 2

- Severe psychological or physical harm
- Pregnancy or STI as a consequence of the offence
- Additional degradation/humiliation
- Abduction
- Prolonged detention/sustained incident
- Violence or threats of violence
- Forced/uninvited entry into victim's home

Category 3

- Factor(s) in categories 1 and 2 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Grooming behaviour used against victim
- Abuse of trust
- Previous violence against the victim
- Offence committed in the course of burglary
- Sexual images of victim recorded, retained, solicited or shared
- Commercial exploitation/motivation
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability

Culpability B

- Factor(s) in category A not present

SEXUAL ASSAULT OF A MENTALLY IMPAIRED PERSON

Penal Code (2019 Revision)(section 135)

Maximum penalty: 12 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	<p>Starting point 10 years custody</p> <p>Sentencing range 8-12 years custody</p>	<p>Starting point 8 years custody</p> <p>Sentencing range 6-9 years custody</p>
Category 2	<p>Starting point 8 years custody</p> <p>Sentencing range 6-9 years custody</p>	<p>Starting point 6 years custody</p> <p>Sentencing range 4-7 years custody</p>
Category 3	<p>Starting point 5 years custody</p> <p>Sentencing range 3-7 years custody</p>	<p>Starting point 3 years custody</p> <p>Sentencing range 1-5 years custody</p>

Additional aggravating factors

- Ejaculation (where not taken into account at step 1)
- Blackmail or other threats made (where not taken into account at step 1)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home or institution (including victims of domestic violence)
- Failure to comply with current court orders including licence or post sentence supervision
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct (*This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.*)

**PROCURING PERSON TO BECOME A PROSTITUTE
DETENTION IN A BROTHEL ETC.**

Penal Code (2019 Revision)(section 136 and section 138)

Maximum penalty: 4 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Abduction/Detention
- Violence or threats of violence
- Sustained and symptomatic psychological abuse
- Individual forced or coerced to participate in unsafe/degrading sexual activity
- Individual forced or coerced into seeing many 'customers'
- Individual forced or coerced or deceived into prostitution

Category 2

- Factor(s) in category 1 not present

CULPABILITY

Culpability A

- Causing, inciting or controlling prostitution on significant commercial basis
- Expectation of significant financial or other gain
- Abuse of trust
- Exploitation of those known to be trafficked
- Significant involvement in limiting the freedom of prostitute(s)
- Grooming of individual(s) to enter prostitution including through cultivation of dependency on drugs or alcohol
- Close involvement with prostitute(s), for example control of finances, choice of clients, working conditions (where offender's involvement is not as a result of coercion)

Culpability B

- Factor(s) in category A not present

**PROCURING PERSON TO BECOME A PROSTITUTE
DETENTION IN A BROTHEL ETC.**

Penal Code (2019 Revision)(section 136 and section 138)

Maximum penalty: 4 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 3 years custody Sentencing range 2-4 years custody	Starting Point 18 months Sentencing range 6-30 months custody
Category 2	Starting point 2 years custody Sentencing range 1-3 years custody	Starting point 6 months custody Sentencing range Community Order-18 months custody

Additional aggravating factors

- Significant degree of planning
- Harm threatened against family/friends of prostitute
- Passport/identity document removed
- Threats made to expose prostitute to the authorities (for example, immigration or police), family or friends or others
- Prostitute forced or coerced into pornography
- Withholding medical treatment, earnings, food etc.
- Abuse of trust
- Failure to comply with current court orders including licence or post sentence supervision
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Performs limited functions under direction
- Close involvement but engaged by coercion/intimidation/exploitation
- Demonstration of steps taken to address offending behaviour
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct *(This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.)*

ADMINISTERING DRUGS WITH INTENT

Penal Code (2019 Revision)(section 137)

Maximum penalty: 4 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Severe psychological or physical harm
- Prolonged detention/sustained incident
- Additional degradation/humiliation

Category 2

- Factor(s) in category 1 not present

CULPABILITY

Culpability A

- Significant degree of planning
- Intended sexual offence carries a maximum of life imprisonment
- Specific targeting of vulnerable victim
- Offender acts together with others to commit the offence
- Abuse of trust
- Recording of offence
- Commercial exploitation/motivation
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Culpability B

- Factor(s) in category A not present

ADMINISTERING DRUGS WITH INTENT

Penal Code (2019 Revision)(section 137)

Maximum penalty: 4 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	Starting point 3 years custody Sentencing range 2-4 years custody	Starting Point 18 months Sentencing range 6-30 months custody
Category 2	Starting point 2 years custody Sentencing range 1-3 years custody	Starting point 6 months custody Sentencing range Community Order-18 months custody

Additional aggravating factors

- Location of offence
- Timing of offence
- Failure to comply with current court orders including licence or post sentence supervision
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
-

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Demonstration of steps taken to address offending behaviour
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct *(This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.)*

**LIVING ON EARNINGS OF PROSTITUTION/PERSISTENTLY SOLICITING
KEEPING HOUSE OR ROOM FOR PURPOSES OF PROSTITUTION (BROTHEL)**

Penal Code (2019 Revision)(section 139 and section 140)

Maximum penalty: 4 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Abduction/Detention
- Violence or threats of violence
- Sustained and symptomatic psychological abuse
- Individual forced or coerced to participate in unsafe/degrading sexual activity
- Individual forced or coerced into seeing many 'customers'
- Individual forced or coerced or deceived into prostitution

Category 2

- Factor(s) in category 1 not present

CULPABILITY

Culpability A

- Causing or controlling prostitution/keeping brothel on significant commercial basis
- Expectation of significant financial or other gain
- Abuse of trust
- Exploitation of those known to be trafficked
- Significant involvement in limiting the freedom of prostitute(s)'those working in the brothel
- Grooming of individual(s) to enter prostitution or work in a brothel including through cultivation of dependency on drugs or alcohol
- Close involvement with prostitute(s), for example control of finances, choice of clients, working conditions (where offender's involvement is not as a result of coercion)

Culpability B

- Factor(s) in category A not present

**LIVING ON EARNINGS OF PROSTITUTION/PERSISTENTLY SOLICITING
KEEPING HOUSE OR ROOM FOR PURPOSES OF PROSTITUTION (BROTHEL)**

Penal Code (2019 Revision)(section 139 and section 140)

Maximum penalty: 4 years imprisonment

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B
Category 1	<p>Starting point 3 years custody</p> <p>Sentencing range 2-4 years custody</p>	<p>Starting Point 18 months</p> <p>Sentencing range 6-30 months custody</p>
Category 2	<p>Starting point 2 years custody</p> <p>Sentencing range 1-3 years custody</p>	<p>Starting point 6 months custody</p> <p>Sentencing range Community Order-18 months custody</p>

Additional aggravating factors

- Harm threatened against family/friends of prostitute or those working in brothel
- Passport/identity document removed
- Threats made to expose prostitute or those working in a brothel to the authorities (for example, immigration or police), family or friends or others
- Prostitute/those working in brothel forced or coerced into pornography
- Prostitute/those working in brothel passed around by offender or moved to other brothels
- Withholding medical treatment, earnings, food etc.
- Abuse of trust
- Timescale over which operation has been run
- Failure to comply with current court orders including licence or post sentence supervision
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence

Additional mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Performs limited functions under direction
- Close involvement but engaged by coercion/intimidation/exploitation
- Demonstration of steps taken to address offending behaviour
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning difficulty where linked to the commission of the offence
- Previous good character and/or exemplary conduct *(This is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and may constitute an aggravating factor.)*

BREACH OF SEXUAL HARM PREVENTION ORDER

Penal Code (2019 Revision)(section 45C) Maximum penalty: 4 years imprisonment/CI\$3000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Breach causes or risks very serious harm or distress

Category 2

- Cases falling between categories 1 and 3

Category 3

- Breach causes or risks little or no harm or distress

CULPABILITY

Culpability A

- Very serious or persistent breach

Culpability B

- Deliberate breach falling between A and B

Culpability C

- Minor breach
- Breach just short of reasonable excuse

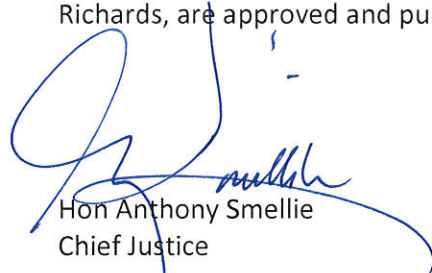
BREACH OF SEXUAL HARM PREVENTION ORDER

Penal Code (2019 Revision)(section 45C) Maximum penalty: 4 years imprisonment/CI\$3000

STEP TWO – STARTING POINT AND CATEGORY RANGE

Nature of offence	A	B	C
Category 1	Starting point 3 years custody Sentencing range 2–4 years custody	Starting point 2 years custody Sentencing range 9 months-3 years custody	Starting point 1 years custody Sentencing range Community Order-2 years custody
Category 2	Starting point 2 years custody Sentencing range 9 months-3 years custody	Starting point 1 years custody Sentencing range Community Order-2 years custody	Starting point Community Order Sentencing range 5-10 years custody
Category 3	Starting point 1 years custody Sentencing range Community Order-2 years custody	Starting point 6 months custody Sentencing range Community Order-1 years custody	Starting point Community Order Sentencing range Fine-6 months custody

These Guidelines prepared by the Criminal Justice Reform Committee chaired by Justice Cheryl Richards, are approved and published for reference by the Courts.



Hon Anthony Smellie
Chief Justice

8 April 2020