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CAYMAN ISLANDS

These Sentencing Guidelines for Public Order Offences were drafted and presented by the Criminal Justice Reform Committee under the leadership of Justice Cheryll Richards.

They were presented to and accepted by the Chief Justice for publication.

They comprise 35 pages and are hereby approved and issued for publication by gazettal and for posting on the judicial website: www.judicial.ky.



Hon. Sir Anthony Smellie
Chief Justice

17 October 2022



CAYMAN ISLANDS SENTENCING GUIDELINES PUBLIC ORDER OFFENCES

(4(a))

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GUIDELINE

PENAL CODE (2022 Revision) – sections 68-70, 79-81, 86, 88-88C, 155

Definitions of unlawful assembly and riot

68. (1) When three or more persons assemble with intent to commit an offence or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembly was lawful if, being assembled, they conduct themselves with a common purpose in such manner as aforesaid.

(3) When an unlawful assembly has begun to execute the purpose for which it is assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Punishment for unlawful assembly

69. A person who takes part in an unlawful assembly commits an offence and is liable to imprisonment for three years.

Punishment for riot

70. A person who takes part in a riot commits an offence and is liable to imprisonment for four years.

Restriction on importation, etc. and possession of prohibited weapons

79. A person who imports, manufactures, sells or hires or offers for sale or hire, or has in his possession any prohibited weapon commits an offence and is liable to a fine of ten thousand dollars and to imprisonment for ten years.

Restriction on carrying offensive weapons

80. A person who wears or carries any offensive weapon, not being a prohibited weapon, outside his own house and premises commits an offence and is liable to a fine of five thousand dollars and to imprisonment for four years:

Provided that, if the offensive weapon is a firearm, no person shall be deemed to have committed an offence against this section if such person is in possession of a firearm licence and a permit in writing, signed by the Commissioner, giving such person permission to carry such firearm outside his house or premises:

Provided further that if the offensive weapon is a knife, no person shall be deemed to have committed an offence against this section if he shall prove that he was wearing or carrying such knife outside his own house and premises for some lawful purpose for which such knife was necessary.

Restriction on carrying restricted weapons by night

81. (1) Subject to subsection (2), a person who without any lawful excuse (the proof of which excuse shall be on such person) has or carries any restricted weapon, not being a prohibited weapon, by night —

(a) in a cinema, theatre or other place of public assembly;

(b) in a club, restaurant, recreation hall or bar;

(c) in a place of public entertainment of any kind or a place of general resort, admission to which is obtained by payment or to which the public have access;

(d) in or upon the car park, parking lot or precincts of a place referred to in paragraph (a), (b) or (c); or
 (e) in or on a vehicle that is in or upon the car park, parking lot or precincts of a place referred to in paragraph (a), (b) or (c),

commits an offence and is liable to a fine of five thousand dollars and to imprisonment for four years.

(2) If the restricted weapon is a machete or knife, no person shall be deemed to have committed an offence against this section if he shall prove that he had or was carrying such machete or knife for some lawful purpose for which such machete or knife was necessary.

Affray

86. (1) A person who uses or threatens unlawful violence towards another person and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety commits affray and is liable to imprisonment for four years.

(2) Where two or more persons use or threaten unlawful violence, it is the conduct of them taken together that shall be considered for the purposes of subsection (1).

(3) For the purposes of this section —

(a) a threat shall not be made by the use of words alone; and

(b) a person of reasonable firmness need not actually be, or be likely to be, present at the scene.

(4) An affray may be committed in a public place or a private place.

(5) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an affray.

Causing fear, or provocation of violence

88. (1) A person who —

(a) uses towards another person threatening, abusive or insulting words or behaviour; or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked commits an offence and is liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.

(2) An offence under this section may be committed in public place or a private place.

(3) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Intentional harassment, alarm or distress

88A. (1) A person who, with intent to cause a person harassment, alarm or distress —

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress commits an offence and is liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.

(2) An offence under this section may be committed in a public place or a private place.

(3) It is a defence for the accused to prove that his conduct was reasonable.

(4) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Harassment, alarm or distress

88B. (1) A person who —

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
 (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress commits an offence and is liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.

(2) An offence under this section may be committed in a public place or a private place, but a person commits an offence under this section only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

(3) It is a defence for the accused to prove —

(a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress; or

(b) that his conduct was reasonable.

(4) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Threat to kill

88C. (1) A person who without lawful excuse makes to another person a threat, intending that person would fear it would be carried out, to —

(a) kill; or

(b) cause serious harm to,

that person or a third person commits an offence and is liable to imprisonment for ten years.

(2) A threat may be committed in a public place or a private place.

(3) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Stalking

155. (1) A person stalks another person if the first-mentioned person intentionally engages in a course of conduct specified under subsection (2), which —

(a) is directed towards the second-mentioned person;

(b) occurs on two or more occasions within a period of twelve months;

(c) causes the second-mentioned person to fear for the second-mentioned person's safety or the safety of someone known to the second mentioned person;

(d) would cause a reasonable person to fear for the second mentioned person's safety or the safety of someone known to the second-mentioned person; and

(e) the first-mentioned person knows or ought to know would cause the second mentioned person to fear for the second mentioned person's safety or the safety of someone known to the second-mentioned person.

(2) For the purposes of subsection (1), a course of conduct in relation to a person includes —

(a) watching, besetting or loitering near that person;

(b) approaching or entering a place where that person resides, works or visits;

(c) preventing or hindering access to or from that person's place of residence, business, employment, learning or any other location which that person visits;

(d) following or accosting that person;

(e) entering or interfering with that person's property;

(f) engaging in verbal, written, electronic or any other form of communication with that person;

- (g) giving offensive, abusive or threatening material to that person or leaving it where it will be found by, given to, or brought to the attention of that person;
 - (h) sending, delivering or showing to that person letters, images, telegrams, packages, facsimiles or electronic messages;
 - (i) acting covertly in a way that could reasonably be expected to arouse apprehension or fear in that person; or
 - (j) intimidating, harassing or molesting that person.
- (3) A person who stalks another person commits an offence and is liable —
- (a) on conviction on indictment, to a fine or to imprisonment for a term of four years or both; or
 - (b) on summary conviction, to a fine of five thousand dollars or to imprisonment for a term of one year or both.
- (4) A course of conduct under subsection (2) may be the same course of conduct, or different courses of conduct pursued on each occasion in a public or a private place.
- (5) A police officer may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.
- (6) A police officer may, without a warrant, enter any premises for the purpose of giving assistance to anyone present on the premises —
- (a) if the police officer has reasonable cause to suspect that a person is committing an offence under subsection (3); or
 - (b) if the police officer has reasonable cause to suspect that a protection order made under the *Stalking (Civil Jurisdiction) Act, 2018 (Act 26 of 2018)* is being contravened.
- (7) It is a defence for a person charged with an offence under this section to show that —
- (a) the person's conduct was pursued for the purpose of preventing or detecting a crime;
 - (b) the person's conduct was pursued under an enactment or a rule of law;
 - (c) the person's conduct was pursued in order to comply with a condition or requirement imposed by another person acting under an enactment;
 - (d) the person's conduct was reasonable for the protection of that person or another person or for the protection of the first-mentioned person's property or the property of another; or
 - (e) the person had no reason to believe that there was any person within hearing or sight who was likely to be put in fear as a result of the first-mentioned person's conduct.

THE STALKING (CIVIL JURISDICTION) ACT, 2018 – section 9

Protection order, conditions and offence

- 9.** (1) A protection order shall, for the purpose of protecting the complainant or any other person mentioned in the order from conduct which amounts to stalking, prohibit the respondent from —
- (a) engaging in or attempting to engage in a course of conduct which constitutes stalking;
 - (b) enlisting the help of another person to engage in a course of conduct which constitutes stalking;
 - (c) approaching or otherwise making contact with the complainant;
 - (d) committing any other act as specified in the protection order.
- (2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety of the complainant or a person known to the complainant.
- (3) The court may order a police officer to-
- (a) seize any weapon in the possession or under the control of the respondent;
 - (b) accompany the complainant or a person known to the complainant to a specified place to assist with arrangements regarding the collection of personal property identified in the application for the protection order; or
 - (c) investigate the complaint of stalking with a view to instituting a criminal prosecution against the respondent.

- (4) The court may, in making a protection order, direct the respondent to submit to –
- (a) psychological treatment;
 - (b) an alcohol and drug treatment programme;
 - (b) (*sic*) anger management instruction;
 - (c) counselling; or
 - (d) the compulsory attendance or residence at a specified facility for a specified purpose.
- (5) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, the court may order that the prohibition remain in force for a determined period in order to afford the person concerned the opportunity to seek appropriate relief in terms of that other law.
- (6) A person who acts in contravention of a protection order commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.
- (7) In the case of a continuing breach of a protection order, a person may be ordered by the court to pay a further sum of one hundred dollars for each day that such breach continues after the date of its proof.

INFORMATION AND COMMUNICATIONS TECHNOLOGY ACT (2019 REVISION) - section 90

Use of an ICT service to defraud, abuse, annoy, threaten or harass

90. (1) A person who knowingly uses an ICT network or ICT service to defraud, abuse, annoy, threaten or harass any other person commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year, or, on conviction on indictment, to a fine of twenty thousand dollars and to imprisonment for two years.

(2) In addition to imposing any penalty under subsection (1), the Court may, by order, restrain the person from using ICT services or ICT networks as it sees fit.

INTRODUCTION

This guideline applies to the public order offences that most commonly come before the courts. As well as offences contained within the Penal Code, it also includes the consequential offences of breaching a protection order issued under the civil law in relation to stalking and the use of ICT equipment for the purpose, inter alia, of abuse, annoyance, threats or harassment.

The guidelines broadly reflect the approach taken by local case law from both the Cayman Islands' Court of Appeal and the Grand Court, together with the practice of the Summary Court and the legislative provisions.

GENERAL AGGRAVATING AND MITIGATING FACTORS

1. In relation to each offence, determinants of seriousness are described relating both to the harm caused (or likely to be caused) by the offending behaviour and to the culpability of the offender. Additional offence specific aggravating and mitigating factors are also described.
2. The Court will also take into account general factors that apply to all offences. These are set out in the **General Principles** part of the Sentencing Guidelines (2015). This includes the approach to offences that have taken place in a domestic context which is often the situation in which these public order offences occur.
3. For aggravating factors, in addition to the existence of recent and relevant previous convictions, these will include where the offender was already on bail in relation to other offences or subject to a relevant court order or post-release licence.
4. For mitigating factors, where it is not an element in determining the level of culpability this will include the age and/or lack of maturity of the offender where it affects the responsibility of the offender for the offending behaviour and any mental disorder or learning difficulty of the offender where linked to the commission of the offence. Where the offender is the sole or primary carer for dependants, that may be relevant in accordance with usual sentencing principles.
5. Where an offender had previous good character and/or exemplary conduct, that may also be relevant. This element is different from having no previous convictions. The more serious the offence, the less the weight which is normally attributed to this factor. Where the previous good character/exemplary conduct has been used to facilitate the offence (for example, by enabling the offending to be concealed from detection), this may constitute an aggravating factor.

Unlawful Assembly

Penal Code (2022 Revision), sections 68-69

Maximum penalty: 3 years imprisonment (see also section 73 where failing to disperse after a proclamation has a maximum sentence of life imprisonment)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

Multiple or extreme examples of the following:

- Incident results in very serious fear and/or distress
- Incident causes serious disruption or severe detrimental impact to community
- Incident causes loss of livelihood or substantial costs to businesses
- Incident causes substantial costs to be incurred to public purse

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Offender carrying a weapon or other device likely to cause injury or damage if used
- Offender was an instigator or carried out a leading role
- Offender's actions escalated level of fear and/or distress

B: Lower Culpability

- Any incident of unlawful assembly not including category A factors

Unlawful Assembly

STEP TWO – Starting point and category range

Nature of offence	A	B
Category 1	Starting point 18 months custody Sentencing range 1 year – 30 months custody	Starting point 9 months custody Sentencing range 3 – 18 months custody
Category 2	Starting point 9 months custody Sentencing range 3 – 18 months custody	Starting point Community Order Sentencing range Fine – 6 months custody

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity
- Active and persistent participant
- Incitement of others
- Actively recruited other participants
- Offender masked or disguised to evade detection
- Incident occurred in busy public area
- Took steps to prevent emergency services from carrying out their duties
- Offender used weapon
- Offender threw missiles/objects
- Use of significant physical violence
- Injury to service animal
- Vulnerable persons or children present during incident
- Commission of offence whilst under the influence of alcohol or drugs
- Ignored warnings or exclusion notices
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Low level involvement
- Remorse

Riot

Penal Code (2022 Revision), sections 68 and 70

Maximum penalty: 4 years imprisonment (see also section 73 where failing to disperse after a proclamation has a maximum sentence of life imprisonment)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

Multiple or extreme examples of the following:

- Incident results in serious physical injury or very serious fear and/or distress
- Incident causes serious disruption or severe detrimental impact to community
- Incident causes loss of livelihood or substantial costs to businesses
- Incident causes substantial costs to be incurred to public purse
- Incident involves attacks on police or public servants
- Incident results in extensive damage to property

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Offender used or intended to use petrol bomb or incendiary device
- Offender used or intended to use firearm or other highly dangerous weapon*
- Offender was an instigator or carried out a leading role
- Offender's actions escalated level of violence and/or disorder

B: Lower Culpability

- Any incident of riot not including category A factors

* The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the definition of an offensive weapon (s.78 of the Penal Code (2022 Revision)), which is 'any article made or adapted for use for causing injury to the person, or is intended by the person having it with him for such use by him'.

Riot

STEP TWO – Starting point and category range

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

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity
- Active and persistent participant
- Incitement of others
- Actively recruited other participants
- Offender masked or disguised to evade detection
- Incident occurred in busy public area
- Victim providing a public service or performing a public duty
- Took steps to prevent emergency services from carrying out their duties
- Offender used weapon
- Offender threw missiles/objects
- Use of significant physical violence
- Injury to service animal
- Possession of weapon or article intended to injure
- Vulnerable persons or children present during incident
- Commission of offence whilst under the influence of alcohol or drugs
- Ignored warnings or exclusion notices
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Low level involvement
- Remorse

Restriction on importation, manufacture, sale or hire of prohibited weapons

Penal Code (2022 Revision), section 79

Maximum penalty: 10 years imprisonment/\$10,000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Offence committed in circumstances where there is a risk of serious disorder
- Weapon capable of causing serious injury to multiple victims

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Importation, manufacture or supply of multiple weapons
- Manufacture on a commercial scale

B: Lower Culpability

- All other cases

Restriction on importation, manufacture, sale or hire of prohibited weapons

STEP TWO – Starting point and category range

	A	B
Category 1	Starting point 7 years custody Sentencing range 5-9 years custody	Starting point 4 years custody Sentencing range 2-6 years custody
Category 2	Starting point 4 years custody Sentencing range 2-6 years custody	Starting point 2 years custody Sentencing range 6 months- 3 years custody

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Attempts to conceal identity
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police

Restriction on possession of prohibited weapons

Penal Code (2022 Revision), section 79

Maximum penalty: 10 years imprisonment/\$10,000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Offence committed at a school or other place where vulnerable people are likely to be present
- Offence committed in prison
- Offence committed in circumstances where there is a risk of serious disorder
- Caused serious alarm/distress

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Possession of a highly dangerous weapon*
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity
- Possession of weapon (other than a highly dangerous weapon) – intention to use to threaten or cause fear

B: Lower Culpability

- Possession of weapon (other than a highly dangerous weapon) – not used to threaten or cause fear
- Possession of weapon falls just short of reasonable excuse

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the definition of an offensive weapon (s.78 of the Penal Code (2022 Revision)), which is 'any article made or adapted for use for causing injury to the person, or is intended by the person having it with him for such use by him'.*

Restriction on possession of prohibited weapons

STEP TWO – Starting point and category range

	A	B
Category 1	Starting point 30 months custody Sentencing range 18-42 months custody	Starting point 15 months custody Sentencing range 9-24 months custody
Category 2	Starting point 15 months custody Sentencing range 9-24 months custody	Starting point 6 months custody Sentencing range Community Order - 15 months custody

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Offence was committed as part of a group or gang
- Attempts to conceal identity
- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders, including licence or post sentence supervision
- Failure to respond to warnings about behaviour

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police

Wearing or Carrying an Offensive Weapon

Penal Code (2022 Revision), section 80

Maximum penalty: 4 years imprisonment/\$5,000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Offence committed at a school or other place where vulnerable people are likely to be present
- Offence committed in prison
- Offence committed in circumstances where there is a risk of serious disorder
- Caused serious alarm/distress

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Wearing or carrying a highly dangerous weapon*
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity
- Wearing or carrying a weapon (other than a highly dangerous weapon) – intention to use to threaten or cause fear

B: Lower Culpability

- Wearing or carrying a weapon (other than a highly dangerous weapon) – not used to threaten or cause fear
- Wearing or carrying of weapon falls just short of reasonable excuse

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the definition of an offensive weapon (s.78 of the Penal Code (2022 Revision)), which is 'any article made or adapted for use for causing injury to the person, or is intended by the person having it with him for such use by him'.*

Wearing or Carrying an Offensive Weapon

STEP TWO – Starting point and category range

	A	B
Category 1	Starting point 2 years custody Sentencing range 1-3 years custody	Starting point 1 years custody Sentencing range 6-24 months custody
Category 2	Starting point 6 months custody Sentencing range 3-12 months custody	Starting point Community Order Sentencing range Fine - 9 months custody

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Offence was committed as part of a group or gang
- Attempts to conceal identity
- Victim providing a public service or performing a public duty
- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders, including licence or post sentence supervision
- Failure to respond to warnings about behaviour

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police

Carrying Restricted Weapon by Night

Penal Code (2022 Revision), section 81

Maximum penalty: 4 years imprisonment/\$5,000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Offence committed in circumstances where there is a risk of serious disorder
- Offence committed in place where vulnerable people are likely to be present
- Caused serious alarm/distress

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Weapon used to threaten or cause fear
- Commission of offence whilst under the influence of alcohol or drugs
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity

B: Lower Culpability

- Weapon not used to threaten or cause fear

Carrying Restricted Weapon by Night

STEP TWO – Starting point and category range

	A	B
Category 1	Starting point 30 months custody Sentencing range 18-42 months custody	Starting point 15 months custody Sentencing range 9-24 months custody
Category 2	Starting point 15 months custody Sentencing range 9-24 months custody	Starting point 3 months custody Sentencing range Community Order - 9 months custody

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Offence was committed as part of a group or gang
- Attempts to conceal identity
- Victim providing a public service or performing a public duty
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders, including licence or post sentence supervision
- Failure to respond to warnings about behaviour

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police
- Possession of weapon falls just short of reasonable excuse

Affray

Penal Code (2022 Revision), section 86

Maximum penalty: 4 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Serious physical injury to others
- Serious fear/distress caused

Category 2

- Harm falling between categories 1 and 3

Category 3

- Little or no physical injuries to others
- Little or no fear/distress caused

CULPABILITY

A: Higher Culpability

- Use of a weapon to inflict violence
- Targeting of individual(s) by a group
- Use of serious or sustained violence
- Intention to cause fear of very serious violence

B: Medium Culpability

- Threat of violence by any weapon (whether or not produced)
- Threat or use of violence falling between levels in categories A and C

C: Lower Culpability

- Threat or use of minimal violence
- The offender acted in self-defence or in fear of violence (where not amounting to a defence)

Affray

STEP TWO – Starting point and category range

	A	B	C
Category 1	Starting point 2 years 6 months custody Sentencing range 18 months – 3 years custody	Starting point 9 months custody Sentencing range Community Order – 18 months custody	Starting point 3 months custody Sentencing range Community Order-9 months custody
Category 2	Starting point 1 years custody Sentencing range 3 months-2 years custody	Starting point 3 months custody Sentencing range Community Order-9 months custody	Starting point Community Order Sentencing range Fine – Community Order
Category 3	Starting point 9 months custody Sentencing range Community Order-18 months custody	Starting point Community Order Sentencing range Fine – Community Order	Starting point Fine Sentencing range Discharge – Fine

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity
- Incident occurred in busy public area
- Leading role where offending is part of group activity
- Offender threw missiles/objects
- Incident occurred in victim's home
- Vulnerable persons or children present during incident
- Prolonged incident
- Significant impact on public resources
- Threats or violence directed towards public servants or emergency workers in the course of their duty
- Commission of offence whilst under the influence of alcohol or drugs
- Large number of persons affected
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Incident short lived
- Evidence of steps initially taken to defuse incident
- Significant degree of provocation
- Low level involvement
- Minor/peripheral role in group activity
- No members of public present other than those participating in violence

Causing fear or provocation of violence

Penal Code (2022 Revision), section 88

Maximum penalty: 3 years imprisonment (day time); 4 years imprisonment (night time)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1:

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

- Limited distress or harm caused to the victim

CULPABILITY

A: Higher Culpability

- Conduct intended to maximise fear or distress
- High degree of planning and/or sophisticated offence
- Persistent action over a prolonged period
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity

B: Lower Culpability

- Conduct unlikely to cause significant fear or distress
- Little or no planning
- Offence was limited in scope and duration
- Offender's responsibility substantially reduced by mental disorder or learning disability

Causing fear or provocation of violence

STEP TWO – Starting point and category range

	A	B
Category 1	<p>Starting point Day: 18 months custody Night: 24 months custody</p> <p>Sentencing range Day: 1-2 years custody Night: 18-30 months custody</p>	<p>Starting point Day: 9 months custody Night: 12 months custody</p> <p>Sentencing range Day: Community Order-18 months custody Night: Community Order -24 months custody</p>
Category 2	<p>Starting point Day: 9 months custody Night: 12 months custody</p> <p>Sentencing range Day: Community Order-18 months custody Night: Community Order -24 months custody</p>	<p>Starting point Day: Fine Night: Community Order</p> <p>Sentencing range Day or Night: Discharge–Community Order</p>

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Using a position of trust to facilitate the offence
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Grossly violent or offensive material sent
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit an offence
- Victim providing a public service or performing a public duty
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Determination and/or demonstration of steps having been taken to address offending behaviour

Causing harassment, alarm or distress - intentional

Penal Code (2022 Revision), section 88A

Maximum penalty: 3 years imprisonment (day time); 4 years imprisonment (night time)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1:

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

- Limited distress or harm caused to the victim

CULPABILITY

A: Higher Culpability

- Conduct intended to maximise fear or distress
- High degree of planning and/or sophisticated offence
- Persistent action over a prolonged period
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity

B: Lower Culpability

- Conduct unlikely to cause significant fear or distress
- Little or no planning
- Offence was limited in scope and duration
- Offender's responsibility substantially reduced by mental disorder or learning disability

Causing harassment, alarm or distress - intentional

STEP TWO – Starting point and category range

	A	B
Category 1	<p>Starting point Day: 18 months custody Night: 24 months custody</p> <p>Sentencing range Day: 12-27 months custody Night: 18-32 months custody</p>	<p>Starting point Day: 9 months custody Night: 12 months custody</p> <p>Sentencing range Day: Community Order-21 months custody Night: Community Order-27 months custody</p>
Category 2	<p>Starting point Day: 9 months custody Night: 12 months custody</p> <p>Sentencing range Day: Community Order-21 months custody Night: Community Order -27 months custody</p>	<p>Starting point Day: Fine Night: Community Order</p> <p>Sentencing range Day or Night: Discharge–Community Order</p>

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Using a position of trust to facilitate the offence
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Grossly violent or offensive material sent
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit the offence
- Victim providing a public service or performing a public duty
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Determination and/or demonstration of steps having been taken to address offending behaviour

Causing harassment, alarm or distress

Penal Code (2022 Revision), section 88B

Maximum penalty: 3 years imprisonment (day time); 4 years imprisonment (night time)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1:

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

- Limited distress or harm caused to the victim

CULPABILITY

A: Higher Culpability

- Conduct intended to maximise fear or distress
- High degree of planning and/or sophisticated offence
- Persistent action over a prolonged period
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity

B: Lower Culpability

- Conduct unlikely to cause significant fear or distress
- Little or no planning
- Offence was limited in scope and duration
- Offender's responsibility substantially reduced by mental disorder or learning disability

Causing harassment, alarm or distress

STEP TWO – Starting point and category range

	A	B
Category 1	<p>Starting point Day: 12 months custody Night: 18 months custody</p> <p>Sentencing range Day: 6-18 months custody Night: 9-24 months custody</p>	<p>Starting point Day: 6 months custody Night: 9 months custody</p> <p>Sentencing range Day: 3-9 months custody Night: 6-18 months custody</p>
Category 2	<p>Starting point Day: 6 months custody Night: 9 months custody</p> <p>Sentencing range Day: 3-9 months custody Night: 6-18 months custody</p>	<p>Starting point Day: Discharge Night: Fine</p> <p>Sentencing range Day or Night: Discharge- Community Order</p>

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Using a position of trust to facilitate the offence
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Grossly violent or offensive material sent
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit the offence
- Victim providing a public service or performing a public duty
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Determination and/or demonstration of steps having been taken to address offending behaviour

Threat to kill or cause serious harm

Penal Code (2022 Revision), section 88C

Maximum penalty: 10 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Offence has a considerable practical impact on the victim

Category 2

Harm that falls between categories 1 and 3, and in particular:

- Some distress caused to the victim
- Some psychological harm caused to the victim
- Offence has some practical impact on the victim

Category 3

- Little or no distress or harm caused to the victim

CULPABILITY

A: Higher Culpability

- Significant planning and/or sophisticated offence
- Visible weapon
- Threat(s) made in the presence of children
- History of and/or campaign of violence towards the victim
- Threat(s) with significant violence

B: Medium Culpability

Cases that fall between categories A and C because:

- Factors are present in A and C which balance each other out and/or
- The offender's culpability falls between the factors described in A and C

C: Lower Culpability

- Offender's responsibility reduced by mental disorder or learning disability falling short of a partial defence
- Offence was limited in scope and duration

Threat to kill or cause serious harm

STEP TWO – Starting point and category range

	A	B	C
Category 1	Starting point 5 years custody Sentencing range 3-8 years custody	Starting point 3 years custody Sentencing range 1-4 years custody	Starting point 2 years custody Sentencing range 6-30 months custody
Category 2	Starting point 3 years custody Sentencing range 1-4 years custody	Starting point 2 years custody Sentencing range 6-30 months custody	Starting point 1 years custody Sentencing range Community Order-1 years custody
Category 3	Starting point 2 years custody Sentencing range 6-30 months custody	Starting point 9 months custody Sentencing range Community Order-1 years custody	Starting point Fine Sentencing range Discharge – Community Order

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker
- Victim providing a public service or performing a public duty
- Impact of offence on others, particularly children
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Failure to comply with current court orders, including licence or post sentence supervision

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Determination and/or demonstration of steps having been taken to address offending behaviour
- Extent of provocation (including response to prolonged stress)

Stalking

Penal Code (2022 Revision), section 155

Maximum penalty: 4 years imprisonment/Fine (indictment)
1 years imprisonment/\$5,000 (summary)

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

Harm that falls between categories 1 and 3, and in particular:

- Some distress caused to the victim
- Some psychological harm caused to the victim
- Victim caused to make some changes to lifestyle to avoid contact

Category 3

- Limited distress or harm caused to the victim

CULPABILITY

A: Higher Culpability

- Conduct intended to maximise fear or distress
- High degree of planning and/or sophisticated offence
- Persistent action over a prolonged period
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity

B: Medium Culpability

Cases that fall between categories A and C, and in particular:

- Conduct intended to cause some fear or distress
- Some planning
- Scope and duration of offence that falls between categories A and C

C: Lower Culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Conduct unlikely to cause significant fear or distress
- Little or no planning
- Offence was limited in scope and duration

Stalking

STEP TWO – Starting point and category range

	A	B	C
Category 1	Starting point 30 months custody Sentencing range 18-42 months custody	Starting point 18 months custody Sentencing range 9-24 months custody	Starting point 6 months custody Sentencing range Community Order–9 months custody
Category 2	Starting point 18 months custody Sentencing range 9-24 months custody	Starting point 6 months custody Sentencing range Community Order–9 months custody	Starting point 3 months custody Sentencing range Community Order-6 months custody
Category 3	Starting point 6 months custody Sentencing range Community Order–9 months custody	Starting point 1 month custody Sentencing range Fine-3 months custody	Starting point Community Order Sentencing range Discharge–Community Order

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Using a position of trust to facilitate the offence
- Victim is particularly vulnerable
- Grossly violent or offensive material sent
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit an offence
- Offence committed against those working in the public sector or providing a service to the public or emergency workers
- Failure to comply with current court orders, including licence or post sentence supervision
- Failure to respond to warnings about behaviour

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police
- Determination and/or demonstration of steps having been taken to address offending behaviour

Breach of protection order (stalking)

Stalking (Civil Jurisdiction) Act, 2018, section 9

Maximum penalty: 1 years imprisonment/\$5,000 (continuing breach \$100 per day)

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

A: Higher Culpability

- Very serious or persistent breach

B: Medium Culpability

- Deliberate breach falling between A and C

C: Lower Culpability

- Minor breach
- Breach just short of reasonable excuse

Breach of protection order (stalking)

STEP TWO – Starting point and category range

	A	B	C
Category 1	Starting point 9 months custody Sentencing range 12-30 months custody	Starting point 6 months custody Sentencing range 6-18 months custody	Starting point 3 months custody Sentencing range Community Order - 6 months custody
Category 2	Starting point 3 months custody Sentencing range 3-12 months custody	Starting point Community Order Sentencing range Community Order - 6 months custody	Starting point Community Order Sentencing range Fine-Community Order
Category 3	Starting point Community Order Sentencing range Fine-Community Order	Starting point Fine Sentencing range Discharge-Community Order	Starting point Discharge Sentencing range Discharge-Fine

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Using a position of trust to facilitate the offence
- Victim is particularly vulnerable
- Grossly violent or offensive material sent
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to breach the order
- Failure to respond to warnings about behaviour

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police
- Determination and/or demonstration of steps having been taken to address behaviour

Use of ICT network/service to [defraud], abuse, annoy or harass

Information and Communications Technology Act (2019 Revision) - section 90

Maximum penalty: Indictment: 2 years imprisonment/\$20,000

Summary: 1 years imprisonment/\$10,000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Category 1

- Substantial distress or fear to victim(s) or moderate impact on several victims
- Major disruption

Category 2

- All other cases

CULPABILITY

A: Higher Culpability

- Targeting of a vulnerable victim
- Targeting offending (in terms of timing or location) to maximise effect
- Use of threats (including blackmail)
- Threat to disclose intimate material or sexually explicit images
- Campaign demonstrated by multiple calls and/or wide distribution
- False calls to emergency services
- Hostility to the victim based on religion, race, disability, sexual orientation or transgender identity

B: Medium Culpability

- Multiple or persistent calls to victim(s) falling short of a campaign

C: Lower Culpability

- Offence limited in scope or duration
- Offender's responsibility substantially reduced by mental disorder or learning disability

Use of ICT network/service

STEP TWO – Starting point and category range

	A	B	C
Category 1	<p>GRAND COURT</p> <p>Starting point 12 months custody</p> <p>Sentencing range 6-18 months custody</p> <p>SUMMARY COURT</p> <p>Starting point 9 months custody</p> <p>Sentencing range 6-12 months custody</p>	<p>Starting point 6 months custody</p> <p>Sentencing range Community Order–9 months custody</p>	<p>Starting point Community Order</p> <p>Sentencing range Fine-3 months custody</p>
Category 2	<p>Starting point 3 months custody</p> <p>Sentencing range Community Order–6 months custody</p>	<p>Starting point 1 month custody</p> <p>Sentencing range Community Order-3 months custody</p>	<p>Starting point Fine</p> <p>Sentencing range Discharge–Community Order</p>

Additional aggravating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Failure to comply with current court orders, including restraining order, licence or post sentence supervision
- Offence committed whilst subject to sex offender notification requirements
- Offence linked to domestic abuse
- Abuse of trust
- Targeting emergency services (where not taken into account at step one)

Additional mitigating factors (for factors that apply generally, see paras. 1-5 on p.7 above)

- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Limited awareness or understanding of the offence
- Serious medical condition requiring urgent, intensive or long-term treatment
- Co-operation with the police