CAYMAN ISLANDS SENTENCING GUIDELINES VIOLENT OFFENCES

(4(d)(i) and (ii))

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June 2021

GUIDELINE

PENAL CODE (2019 Revision) – sections 180-183, 194, 203, 204, 215, 216

Manslaughter

180. (1) A person who, by an unlawful act or omission, causes the death of another person commits the offence of manslaughter.
(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

Murder

181. A person who, of malice aforethought express or implied, causes the death of another person by an unlawful act or omission commits the offence of murder.

Punishment of murder

182. Any person convicted of murder shall be sentenced to imprisonment for life.

Punishment of manslaughter

183. A person who commits the offence of manslaughter is liable to imprisonment for life.

Attempts to murder
194. A person who —
(a) attempts unlawfully to cause the death of another; or
(b) with intent unlawfully to cause the death of another does any act or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life;
commits an offence and is liable to imprisonment for life.

Wounding or causing grievous bodily harm (with intent)

203. A person who, unlawfully and maliciously, by any means, wounds or causes grievous bodily harm to a person with intent to do grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer of any person, commits an offence and is liable on conviction to imprisonment for life.

Wounding or causing grievous bodily harm

204. A person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence and is liable on conviction to imprisonment for seven years.

Common assault
215. A person who unlawfully assaults another commits an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this or any other law, is liable to imprisonment for one year.

Assault causing actual bodily harm
216. A person who commits an assault occasioning actual bodily harm commits an offence and is liable to imprisonment for five years.

POLICE LAW (2017 REVISION) – section 123

123. A person who –

(a) assaults any person with intent to commit an offence or to resist or prevent the lawful apprehension or detention of himself or another for any offence;

(b) assaults, obstructs or resists a police officer acting in the execution of his duty or a person acting in aid of that police officer;
(c) assaults or obstructs any person engaged in the lawful execution of process or in making a lawful distress with intent to rescue any property lawfully taken under such process or distress;
(d) assaults any person on account of any act done by that person in the execution of a duty imposed on him by law;
(e) aids or incites any person to assault, obstruct or resist a police officer acting in the execution of his duty;
(f) when called upon to do so, refuses to assist a police officer in the execution of his duty; or
(g) wilfully misleads or attempts to mislead a police officer by giving false information with intent to defeat or delay the ends of justice,
commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both.

Introduction

This guideline applies to murder, attempted murder, manslaughter and to the five non-fatal offences of violence against a person that commonly come before the courts. 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 in relation to the minimum period within the life sentence for murder.

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 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). 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. 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.
3. 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.

'Serious in the context of the offence'

4. This phrase is used in the guidelines that relate to a number of non-fatal offences. Even within the level of harm necessary for each offence, there will be gradations. When determining whether the harm caused was serious in the context of these offences, the court will assess whether the harm caused was what would be normal for this type of offence or has gone beyond the level that would be regarded as normal. Since the sentence levels will be higher (for some offences, very much higher) as a result, the type of harm or violence that will justify placing an offence in the higher category will be harm that is significantly above the level of harm which is the norm for these offences.[1]

'Greater degree of provocation than normally expected'

5. In many offences, it is possible that the issue of provocation will arise. The law generally expects a person to be able to resist provocation but accepts that there will be circumstances where the level of provocation justifies a reduction in sentence. In assessing the degree of provocation where the guideline provides for *a greater degree of provocation than normally expected* to be a mitigating actor, account should be taken of the following factors:

[1] For a recent review of the authorities in England & Wales, see *R. v. Xue (Fa)* [2020] EWCA Crim 587 and *R. v. Woodhouse (Jonathan Alexander)* IND77/19, Grand Court, 6 May 2020 (unreported) at paras. 33-45

a. if the provocation (which does not have to be a wrongful act) involves gross and extreme conduct on the part of the victim, it is a more significant mitigating factor than conduct which, although significant, is not as extreme;
b. whether the victim presented a threat not only to the offender, but also to children in his or her care;
c. the offender's previous experiences of abuse and/or domestic violence either by the victim or by other people;
d. any mental condition which may affect the offender's perception of what amounts to provocation;
e. the nature of the provocative conduct, the period of time over which it took place and its cumulative effect;
f. discovery or knowledge of the fact of infidelity on the part of a partner does not necessarily amount to high provocation - the gravity of such provocation depends entirely on all the surrounding circumstances.

Murder

Penal Code (2019 Revision), section 181
Mandatory penalty: Life imprisonment

Introduction

1. The penalty of life imprisonment is mandatory when an offender is convicted of murder. A court is required to fix a minimum period which the offender will serve before being considered for conditional release on licence.
2. The Conditional Release Act (2019 Revision) provides for a minimum period of 30 years in most cases subject to any extenuating or aggravating circumstances which are "exceptional in nature". Where those circumstances are found to exist, the court may increase or decrease the minimum period.
3. In the circumstances set out in section 14(1A) of the Law, the minimum period is 'whole life' subject to any extenuating circumstances which are "exceptional in nature". Where those circumstances are found to exist, the court may fix the minimum period.
4. Those factors which may be aggravating or extenuating are set out in schedule 12 to the Conditional Release of Prisoners Regulation, 2016. This categorisation is not exclusive since it provides also for consideration of "any other circumstances that may be considered relevant".
5. In common with the approach in all offences, the schedule also provides that the presence of 'relevant and recent' previous convictions will aggravate the seriousness of the offence as will the fact that the offender was on bail when the offence was committed.

Exceptional in nature

6. In determining whether the circumstances of a case, taken as a whole, were "exceptional in nature" so as to justify a minimum term for an offence of murder other than 30 years or whole life, the court will undertake a two-stage analysis. The first step will be to decide whether there were circumstances that were exceptional in nature. The second step will be to decide whether, in light of any exceptional circumstances that had been found to exist, a minimum term of 30 years would be arbitrary and disproportionate. In considering the second step, the court will keep in mind the intent behind the legislation which was the protection of the public.
7. In considering the first step, in order to be "exceptional" the circumstances had to be unusual or uncommon, although they do not need to be unprecedented or very rare. The assessment should be holistic, taking into account all of the circumstances. The test is not related to the frequency with which the circumstances occur but to their seriousness. The question for the court is whether the circumstances of the murder in question were so serious as to mark out the nature of the case as exceptional and to justify imposing a longer period of imprisonment.
8. Where the offence was committed using a weapon such as a firearm, the use of an unlicensed illegal firearm makes the offence more serious than, for example, a spontaneous knife crime or drunken strangulation, since it generally involves planning, premeditation and longer period of intent.
9. Any deliberate and calculating acquisition, storage and use of a firearm will take it well beyond what would be considered to be regular, normal or routine. In most cases it is likely to be an aggravating feature where the firearm was brought to the scene with the intention of it being used.
10. If the weapon was illegal, the process through which it was acquired by the offender may contribute to the assessment of whether there had been a significant degree of planning or premeditation, one of the factors listed in schedule 12, or it may be a separate aggravating factor under 'any other circumstances'.

11. Where the murder took place in a public place where others were present and put at risk, this is likely to aggravate the seriousness of the offence and to meet the test of being exceptional in nature.
12. Where the murder took place as part of a dispute over business or territory (including in the context of gang activity), this is likely to aggravate the seriousness of the offence and to meet the test of being exceptional in nature.
13. Where the offence took place using an illegally acquired lethal weapon in circumstances where considerable planning was involved in securing the weapon, this is likely to increase the minimum period by up to 5 years. Where the weapon was then used in circumstances demonstrating exceptional planning or premeditation or use in a place where others were put at risk, a further increase of up to 3 years is likely.
14. Where the offender is under 21, especially if the offender has no previous convictions that are treated as relevant, this may constitute an exceptional factor justifying a reduction in the minimum period (depending upon the level of maturity of the offender). If so, the reduction is likely to be between 2-4 years depending on the other circumstances.

ATTEMPTED MURDER

Penal Code (2019 Revision), section 194

Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Attempted murder is always a very serious offence since it requires an intention to unlawfully cause the death of another person. Even though the victim has not been killed, the offence often results in extremely serious and life changing consequences for the victim.

The categories for sentencing are based on the level of culpability. Within each category, three different levels are provided depending on the degree of physical or psychological harm that results.

This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder attempted would have been an act of mercy.

CULPABILITY

Category 1 – most serious offences

These are likely to be characterised by:

- Substantial degree of premeditation or planning
- Use of lethal weapon brought to the scene for the purpose of causing fatal injury
- Use of threats or duress against another person to enable offence to be committed
- Targeting of vulnerable victim especially where there is sexual motivation
- Offence motivated by gang rivalry, political or racial motivation or similar

Category 2 – other planned attempts to kill

These are likely to be characterised by:

- Significant degree of premeditation or planning
- Use of weapon or weapon equivalent (for example: shod foot, head butting, use of acid, use of animal, use of vehicle)

Category 3 – other spontaneous attempts to kill

These are likely to be characterised by:

- Lack of premeditation or planning
- A *greater degree of provocation than normally expected*[2]
- Excessive self defence

[2] For the approach, see the note on pages 4/5 above in this guideline

Attempted Murder

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 *The most serious offences including those which (if the charge had been murder) would come within s. 14(1A) of the Conditional Release Act*		
• Serious and long term physical or psychological harm	30 years custody	27-35 years custody
• Some physical or psychological harm	20 years custody	17-25 years custody
• Little or no physical or psychological harm	15 years custody	12-20 years custody
Category 2 *Other planned attempts to kill*		
• Serious and long term physical or psychological harm	20 years custody	17-25 years custody
• Some physical or psychological harm	15 years custody	12-20 years custody
• Little or no physical or psychological harm	10 years custody	7-15 years custody
Category 3 *Other spontaneous attempts to kill*		
• Serious and long term physical or psychological harm	15 years custody	12-20 years custody
• Some physical or psychological harm	12 years custody	9–17 years custody
• Little or no physical or psychological harm	9 years custody	6-14 years custody

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- History of violence or abuse towards victim by offender
- Involvement of other(s) through coercion, intimidation or exploitation
- Location of offence (especially in public area or where children present)
- Timing of offence (especially if at night time following unlawful entry to premises)
- Victim particularly vulnerable because of age or disability
- Victim providing a public service or performing a public duty
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Firearm used which was unlicensed or otherwise illegally possessed
- Abuse of position of trust
- 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 (for factors that apply generally, see paras. 1-3 above)

- Age and/or lack of maturity and/or mental disability where it affects the responsibility of the offender
- Extent of provocation (including response to prolonged stress)
- Offender acted to any extent in self-defence or in fear of violence

Manslaughter by reason of provocation

Penal Code (2019 Revision), section 180
Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Manslaughter is always an offence with a very high level of harm since it requires the offender to unlawfully cause the death of another person.

CULPABILITY

Higher Culpability • Planning of criminal activity (including the carrying of a weapon) before the provocation took place • Offence committed in context of other serious criminal activity • Use of firearm (whether or not taken to the scene) • Low degree of provocation • Concealment, destruction, defilement or dismemberment of body (where not separately charged)
Medium Culpability Cases falling between higher and lower because: • Factors in both higher and lower are present but balance themselves out **and/or** • Offender's culpability falls between the higher and lower levels
Lower Culpability • *Very high degree of provocation*[3]

[3] For the approach, see the note on pages 4/5 above in this guideline

Manslaughter by reason of provocation

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 - Higher Culpability	**24 years custody**	**20-30 years custody**
Category 2 - Medium Culpability	**16 years custody**	**12-20 years custody**
Category 3 - Lower Culpability	**8 years custody**	**5-12 years custody**

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- History of violence or abuse towards victim by offender
- Involvement of other(s) through coercion, intimidation or exploitation
- Location of offence (especially in public area or where children present)
- Timing of offence (especially if at night time following unlawful entry to premises)
- Victim particularly vulnerable because of age or disability
- Victim providing a public service or performing a public duty
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Use of a weapon
- Failure to comply with current court orders including licence or post sentence supervision
- Actions after the event (including, but not limited to, attempts to cover up/conceal evidence or put blame on others)

Additional mitigating factors (for factors that apply generally, see paras. 1-3 above)

- Intention to cause serious bodily harm rather than kill
- History of significant violence or abuse towards the offender by the victim
- Violence initiated by the victim
- Age and/or lack of maturity and/or mental disability where it affects the responsibility of the offender

Manslaughter by reason of diminished responsibility

Penal Code (2019 Revision), section 180
Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Manslaughter is always an offence with a very high level of harm since it requires the offender to unlawfully cause the death of another person.

LEVEL OF RESPONSIBILITY

A conviction for manslaughter by reason of diminished responsibility is likely to mean that the offender is suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts.

The court should determine what level of responsibility the offender **retained**: Higher, Medium; or Lower. The court should consider the extent to which the offender's responsibility was diminished by the mental disorder at the time of the offence with reference to the medical evidence and all the relevant information available to the court.

The degree to which the offender's actions or omissions contributed to the seriousness of the mental disorder at the time of the offence may be a relevant consideration. For example: where an offender exacerbates the mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to seek or follow medical advice, this may increase responsibility. In considering the extent to which the offender's behaviour was voluntary, the extent to which a mental disorder has an impact on the offender's ability to exercise self-control or to engage with medical services will be relevant.

The degree to which the mental disorder was undiagnosed and/or untreated may be a relevant consideration. For example, where an offender has sought help but not received appropriate treatment this may reduce responsibility.

CULPABILITY

Higher Level of Responsibility

- Planning of criminal activity (including the carrying of a weapon)
- Offence committed in context of other serious criminal activity
- Use of firearm (whether or not taken to the scene)
- Low degree of mental disorder
- Concealment, destruction, defilement or dismemberment of body (where not separately charged)

Medium Level of Responsibility

Cases falling between higher and lower because:

- Factors in both higher and lower are present but balance themselves out **and/or**
- Offender's culpability falls between the higher and lower levels

Lower Level of Responsibility

- Very high degree of diminished responsibility

Manslaughter by reason of diminished responsibility

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 - Higher Level of Responsibility	24 years custody	15-30 years custody
Category 2 - Medium Level of Responsibility	16 years custody	10-25 years custody
Category 3 - Lower Level of Responsibility	8 years custody	3-12 years custody

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- History of violence or abuse towards victim by offender
- Involvement of other(s) through coercion, intimidation or exploitation
- Location of offence (especially in public area or where children present)
- Timing of offence (especially if at night time following unlawful entry to premises)
- Victim particularly vulnerable because of age or disability
- Victim providing a public service or performing a public duty
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Use of a weapon
- Actions after the event (including, but not limited to, attempts to cover up/conceal evidence or put blame on others)

Additional mitigating factors (for factors that apply generally, see paras. 1-3 above)

- Intention to cause serious bodily harm rather than kill
- History of significant violence or abuse towards the offender by the victim
- Violence initiated by the victim
- Offender acted to any extent in self-defence or in fear of violence
- Offender made genuine and sustained attempts to seek help for mental disorder

Manslaughter by reason of unlawful act

Penal Code (2019 Revision), section 180
Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Manslaughter is always an offence with a very high level of harm since it requires the offender to unlawfully cause the death of another person.

CULPABILITY

Very High Culpability may be indicated by:

- the extreme character of one or more high culpability factors **and /or**
- a combination of high culpability factors

High Culpability

- Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of GBH
- Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender
- Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

Medium Culpability

Cases falling between high and lower including but not limited to

- where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability
- where death was caused in the course of committing or escaping from a less serious offence but in which the offender played more than a minor role

Lower Culpability

Death was caused in the course of an unlawful act

- which was in defence of self or other(s) (where not amounting to a defence) OR
- where there was no intention by the offender to cause any harm and no obvious risk of anything more than minor harm OR in which the offender played a minor role

The offender's responsibility was substantially reduced by mental disorder, learning disability or lack of maturity

Manslaughter by reason of unlawful act

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 – Very High Culpability	18 years custody	11-24 years custody
Category 2 - High Culpability	12 years custody	8-16 years custody
Category 3 - Medium Culpability	6 years custody	3-9 years custody
Category 4 - Lower Culpability	3 years custody	2-4 years custody

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- History of violence or abuse towards victim by offender
- Involvement of other(s) through coercion, intimidation or exploitation
- Location of offence (especially in public area or where children present)
- Timing of offence (especially if at night time following unlawful entry to premises)
- Victim particularly vulnerable because of age or disability
- Victim providing a public service or performing a public duty
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Use of a weapon
- Death occurred in the context of an offence that was planned or premeditated
- Actions after the event (including, but not limited to, attempts to cover up/conceal evidence or put blame on others)

Additional mitigating factors (for factors that apply generally, see paras. 1-3 above)

- Attempts to assist victim
- Unlawful act committed unintentionally
- History of significant violence or abuse towards the offender by the victim

Manslaughter by reason of gross negligence

Penal Code (2019 Revision), section 180
Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Manslaughter is always an offence with a very high level of harm since it requires the offender to unlawfully cause the death of another person.

CULPABILITY

Very High Culpability may be indicated by:

- the extreme character of one or more high culpability factors **and /or**
- a combination of high culpability factors

High Culpability

- The offender continued or repeated the negligent conduct in the face of the obvious suffering caused to the deceased by that conduct
- The negligent conduct was in the context of other serious criminality
- The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct
- The negligent conduct was motivated by financial gain (or avoidance of cost)
- The offender was in a leading role if acting with others in the offending
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

Medium Culpability

Cases falling between high and lower because:

- Factors in both high and lower are present but balance themselves out **and/or**
- Offender's culpability falls between the high and lower levels

Lower Culpability

- The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care
- The offender was in a lesser or subordinate role if acting with others in the offending
- The offender's responsibility was substantially reduced by mental disorder, learning disability or lack of maturity

Manslaughter by reason of gross negligence

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 – Very High Culpability	12 years custody	10-18 years custody
Category 2 - High Culpability	8 years custody	6-12 years custody
Category 3 - Medium Culpability	4 years custody	3-7 years custody
Category 4 - Lower Culpability	3 years custody	2-4 years custody

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- History of negligent behaviour towards victim by offender
- Involvement of other(s) through coercion, intimidation or exploitation
- Offender ignored previous warnings
- Victim particularly vulnerable because of age or disability
- Victim providing a public service or performing a public duty
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Use of a weapon
- Actions after the event (including, but not limited to, attempts to cover up/conceal evidence or put blame on others)

Additional mitigating factors (for factors that apply generally, see paras. 1-3 above)

- No history of negligent behaviour towards the victim by the offender
- Violence initiated by the victim

Wounding or causing GBH with intent

Penal Code (2019 Revision), section 203
Maximum penalty: Life imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Greater harm • Injury (which includes disease transmission and/or psychological harm) which is *serious in the context of the offence*[4] (must normally be present)
Lesser harm • Injury which is less *serious in the context of the offence*[5]

CULPABILITY

Higher culpability • Significant degree of planning • Use of weapon or weapon equivalent (for example, shod foot, head butting, use of acid, use of animal) • Intention to commit more serious harm than actually resulted from the offence • Victim particularly vulnerable due to age, personal characteristics or circumstances • Prolonged or repeated assault • Leading role in group or gang • Hostility to the victim based on race, religion, sexual orientation, gender identity or disability • Revenge attack
Lower culpability • Subordinate role in group or gang • A *greater degree of provocation than normally expected* [6] • Lack of premeditation • Excessive force in self defence

[4] For the meaning of this phrase, see the note on page 4 above in this guideline
[5] For the meaning of this phrase, see the note on page 4 above in this guideline
[6] For the approach, see the note on pages 4/5 above in this guideline

Wounding or causing GBH with intent

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 Greater harm (serious injury must normally be present) and higher culpability	**12 years custody**	**9–16 years custody**
Category 2 Greater harm (serious injury must normally be present) and lower culpability; **or** lesser harm and higher culpability	**6 years custody**	**5–9 years custody**
Category 3 Lesser harm and lower culpability	**4 years custody**	**3–5 years custody**

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- Location of offence
- Timing of offence
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Victim providing a public service or performing a public duty
- Presence of others including relatives, especially children or partner of the victim
- Victim compelled to leave their home (including victims of domestic violence)
- 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
- Abuse of power and or position of trust
- Previous violence or threats to same victim

Additional mitigating factors (for factors that apply generally, see paras. 1-3 above)

- Remorse
- Single blow
- Isolated incident

Wounding or causing GBH

Penal Code (2019 Revision), section 204
Maximum penalty: 7 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Greater harm

- Injury (which includes disease transmission and/or psychological harm) which is *serious in the context of the offence*[7] (must normally be present)

Lesser harm

- Injury which is less *serious in the context of the offence*[8]

CULPABILITY

Higher culpability

- Significant degree of planning
- Use of weapon or weapon equivalent (for example, shod foot, head butting, use of acid, use of animal)
- Intention to commit more serious harm than actually resulted from the offence
- Deliberate targeting of vulnerable victim
- Victim particularly vulnerable due to age, personal characteristics or circumstances
- Prolonged or repeated assault
- Leading role in group or gang
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability
- Revenge attack

Lower culpability

- Subordinate role in group or gang
- A *greater degree of provocation than normally expected* [9]
- Lack of premeditation
- Excessive force in self defence

[7] For the meaning of this phrase, see the note on page 4 above in this guideline
[8] For the meaning of this phrase, see the note on page 4 above in this guideline
[9] For the approach, see the note on pages 4/5 above in this guideline

Wounding or causing GBH

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 Greater harm (serious injury must normally be present) and higher culpability	**5 years custody**	**3-6 years custody**
Category 2 Greater harm (serious injury must normally be present) and lower culpability; **or** lesser harm and higher culpability	**3 years custody**	**2-4 years custody**
Category 3 Lesser harm and lower culpability	**12 months custody**	**Community Order – 2 years custody**

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- Location of offence
- Timing of offence
- Additional mental or physical suffering inflicted on victim above that necessary for commission of offence
- Victim providing a public service or performing a public duty
- Presence of others including relatives, especially children or partner of the victim
- Victim compelled to leave their home (including victims of domestic violence)
- 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 (for factors that apply generally, see paras. 1-3 above)

- Use of weapon was reckless rather than intentional
- Remorse
- Single blow
- Isolated incident

Assault occasioning actual bodily harm

Penal Code (2019 Revision), section 216
Maximum penalty: 5 years imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Higher harm • Injury (which includes disease transmission and/or psychological harm) which is *serious in the context of the offence*[10] (must normally be present)
Lower harm • Injury which is less *serious in the context of the offence*[11]

CULPABILITY

Higher culpability • Significant degree of planning • Use of weapon or weapon equivalent (for example, shod foot, head butting, use of acid, use of animal) • Intention to commit more serious harm than actually resulted from the offence • Deliberate targeting of vulnerable victim • Victim particularly vulnerable due to age, personal characteristics or circumstances • Prolonged or repeated assault • Leading role in group or gang • Hostility to the victim based on race, religion, sexual orientation, gender identity or disability • Revenge attack
Lower culpability • Subordinate role in group or gang • A *greater degree of provocation than normally expected* [12] • Lack of premeditation • Excessive force in self defence

[10] For the meaning of this phrase, see the note on page 4 above in this guideline
[11] For the meaning of this phrase, see the note on page 4 above in this guideline
[12] For the approach, see the note on pages 4/5 above in this guideline

Assault occasioning actual bodily harm

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 Greater harm (serious injury must normally be present) and higher culpability	**3 years custody**	**2-4 years custody**
Category 2 Greater harm (serious injury must normally be present) and lower culpability; **or** lesser harm and higher culpability	**12 months custody**	**6-18 months custody**
Category 3 Lesser harm and lower culpability	**Community order**	**Fine -12 months custody**

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- Location of offence
- Timing of offence
- Victim providing a public service or performing a public duty
- Presence of others including relatives, especially children or partner of the victim
- Victim compelled to leave their home (including victims of domestic violence)
- 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
- Abuse of power and/or position of trust
- Previous violence or threats to same victim

Additional mitigating factors (for factors that apply generally, see paras. 1-3 above)

- Remorse
- Single blow
- Isolated incident

Common Assault

Penal Code (2019 Revision), section 215
Maximum penalty: 1 year's imprisonment

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Higher harm

- Injury or apprehension of injury which is *serious in the context of the offence*[13] (must normally be present)

Lower harm

- Injury or apprehension of injury which is less *serious in the context of the offence*[14]

CULPABILITY

Higher culpability

- Significant degree of planning
- Use of weapon or weapon equivalent (for example, shod foot, head butting, use of acid, use of animal)
- Intention to commit more serious harm than actually resulted from the offence
- Deliberate targeting of vulnerable victim
- Victim particularly vulnerable due to age, personal characteristics or circumstances
- Prolonged or repeated assault
- Leading role in group or gang
- Hostility to the victim based on race, religion, sexual orientation, gender identity or disability
- Revenge attack

Lower culpability

- Subordinate role in group or gang
- A *greater degree of provocation than normally expected* [15]
- Lack of premeditation
- Excessive force in self defence

[13] For the meaning of this phrase, see the note on page 4 above in this guideline
[14] For the meaning of this phrase, see the note on page 4 above in this guideline
[15] For the approach, see the note on pages 4/5 above in this guideline

Common Assault

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 Greater harm (injury or apprehension of injury which is *serious in the context of the offence*[16] must normally be present) and higher culpability	**6 months custody**	**Community order - 1 years custody**
Category 2 Greater harm (injury or apprehension of injury which is *serious in the context of the offence*[17] must normally be present) and lower culpability; **or** lesser harm and higher culpability	**3 months custody**	**Fine- 6 months custody**
Category 3 Lesser harm and lower culpability	**Fine**	**Discharge – Fine**

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- Location of offence
- Timing of offence
- Victim providing a public service or performing a public duty
- Presence of others including relatives, especially children or partner of the victim
- Victim compelled to leave their home (including victims of domestic violence)
- 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 (for factors that apply generally, see paras. 1-3 above)

- Remorse
- Single blow
- Isolated incident

[16] For the meaning of this phrase, see the note on page 4 above in this guideline
[17] For the meaning of this phrase, see the note on page 4 above in this guideline

Assault of a Police Officer

Police Law (2017 Revision), section 123
Maximum penalty: 2 years imprisonment /CI$5,000

STEP ONE – DETERMINING THE OFFENCE CATEGORY

HARM

Greater harm • Injury or apprehension of injury which is *serious in the context of the offence*[18] (must normally be present) • Assault results in victim being temporarily unable to perform public duties.
Lesser harm • Injury or apprehension of injury which is less *serious in the context of the offence*[19]

CULPABILITY

Higher culpability • Significant degree of planning • Use of weapon or weapon equivalent (for example, shod foot, head butting, use of acid, use of animal) • Intention to commit more serious harm than actually resulted from the offence • Prolonged or repeated assault • Leading role in group or gang • Hostility to the victim based on race, religion, sexual orientation, gender identity or disability • Revenge attack
Lower culpability • Subordinate role in group or gang • Lack of premeditation

[18] For the meaning of this phrase, see the note on page 4 above in this guideline
[19] For the meaning of this phrase, see the note on page 4 above in this guideline

Assault of a Police Officer

STEP TWO – Starting point and category range

Nature of offence	Starting point	Category range
Category 1 Greater harm (injury or apprehension of injury which is *serious in the context of the offence*[20] must normally be present) and higher culpability	**12 months custody**	**6 months - 2 years custody**
Category 2 Greater harm (injury or apprehension of injury which is *serious in the context of the offence*[21] must normally be present) and lower culpability; **or** lesser harm and higher culpability	**6 months custody**	**Community order - 1 years custody**
Category 3 Lesser harm and lower culpability	**Community order**	**Fine – Community order**

Additional aggravating factors (for factors that apply generally, see paras. 1-3 above)

- 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 (for factors that apply generally, see paras. 1-3 above)

- Remorse
- Single blow
- Isolated incident

Hon Anthony Smellie
Chief Justice

16 June 2021

[20] For the meaning of this phrase, see the note on page 4 above in this guideline
[21] For the meaning of this phrase, see the note on page 4 above in this guideline