

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 31 OF 2019

EASTERN CARIBBEAN SUPREME COURT
(SENTENCING GUIDELINES) RULES 2019

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THE EASTERN CARIBBEAN SUPREME COURT (SENTENCING GUIDELINES) RULES 2019 MADE BY THE CHIEF JUSTICE AND TWO OTHER JUDGES OF THE SUPREME COURT UNDER SECTION 309 OF CRIMINAL PROCEDURE CODE (CAP. 4.01) AND SECTION 17 OF THE SUPREME COURT ORDER (CAP. 2.01).

1. Citation and commencement

- (1) These Rules may be cited as the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.
- (2) These Rules come into force on 1 October, 2019.

2. Interpretation

In these Rules —

“**Court**” means the Magistrates’ Court, the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court;

“**Court’s website**” means the website of the Eastern Caribbean Supreme Court;

“**Grid**” means the grid in a sentencing guideline at stage 3 of step 1;

“**Judge**” includes any judicial officer of the Court;

“**Sentencing Advisory Committee**” means the committee appointed under rule 7.

3. Application of Rules

These Rules apply to all criminal proceedings conducted in the court for which sentencing guidelines have been issued.

4. Sentencing Guidelines

- (1) The Chief Justice and two other judges of the Eastern Caribbean Supreme Court shall issue a sentencing guideline to outline the

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approach to be taken when a sentence is being determined for an offence.

- (2) A sentencing guideline issued for an offence must be —
 - (a) published in the Gazette;
 - (b) displayed and made available at each court office; and
 - (c) posted on the court's website.
- (3) In sentencing for an offence for which a guideline has been issued, the court must apply the relevant sentencing guideline and sentence, unless to do so would not be in the interests of justice.
- (4) If under sub rule (3) the judge does not apply the sentencing guideline, clear reasons for not doing so must be given when passing sentence.

5. Purpose of Sentencing Guidelines

A sentencing guideline made under these Rules —

- (a) is not intended to achieve uniformity in sentences;
- (b) does not restrict judicial discretion;
- (c) will achieve a uniform approach to sentencing practice;
- (d) is intended to ensure greater consistency in sentences passed;
- (e) is intended to promote greater transparency; and
- (f) is intended to promote greater public confidence in the administration of criminal justice.

6. Application of Sentencing Guidelines by the Court

- (1) A sentencing guideline issued in relation to an offence must be applied in all criminal matters in the court.
- (2) The Court of Appeal, when considering an appeal from the lower court in relation to sentence, must apply any relevant sentencing guideline which is in force.
- (3) A sentencing guideline shall supersede guideline cases in respect of a particular offence.
- (4) Prosecuting and defence counsel are under a duty to —

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- (a) be aware of any relevant guidelines;
 - (b) refer the court to these guidelines; and
 - (c) assist in their application.
- (5) If required to by the court, prosecuting counsel should be in a position to make submissions on -
 - (a) where on the grid the offending falls; and
 - (b) which aggravating or mitigating factors apply to the offence and the offender.
- (6) Prosecuting counsel must not recommend a particular sentence to the court but may make an application for an ancillary order, and submissions as to whether the criteria for such an order is met.

7. Practice Directions and Practice Guides

- (1) The Chief Justice may issue practice directions and practice guides under these rules to supplement the rules and for the purpose of assisting parties in relation to the practice and procedure to be followed.
- (2) A practice direction and practice guide must be applied in conjunction with the rules.
- (3) A practice direction and practice guide must be —
 - (a) published in the Gazette;
 - (b) displayed and made available at each court office; and
 - (c) posted on the court’s website.
- (4) The court must comply with a practice direction or practice guide unless there is good reason for not doing so.
- (5) If the provisions of a practice direction or a practice guide conflict with these rules, these rules prevail.

8. Application of Practice Directions

- (1) In determining sentence the court must have regard to any relevant principles stated in a practice direction issued under these rules.
- (2) The court must —
 - (a) ensure that all sentences are clearly expressed;
 - (b) state the reasons for its arrival at the final sentence imposed; and

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- (c) be consistent with the relevant practice direction issued on sentencing principles.
- (3) In constructing a sentence the court must —
 - (a) follow the steps identified in the relevant practice direction issued; and
 - (b) identify these steps to the offender in public before the sentence is passed.
- (4) In determining whether a suspended sentence is appropriate the court must have regard to the principles as identified in the relevant practice direction issued in relation to the power of the court to suspend a sentence.
- (5) When sentencing a person below the age of 18, the court must have regard to the principles as identified in the relevant practice direction issued.

9. Sentencing Advisory Committee

- (1) The Sentencing Advisory Committee will be responsible for the drafting of sentencing guidelines and will take into consideration —
 - (a) the victims of crime, and
 - (b) the impact on the community;when determining an appropriate sentencing guideline for an offence.
- (2) The Sentencing Advisory Committee shall comprise of a minimum of seven persons appointed by the Chief Justice of whom —
 - (a) a minimum of four must be judicial officers of the Eastern Caribbean Supreme Court; and
 - (b) a minimum of two must be non-judicial members;with the Chief Justice as the *ex officio* President.
- (3) A sentencing guideline prepared by the Sentencing Advisory Committee will be published in draft to allow for public consultation, prior to being issued.

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- (4) The Sentencing Advisory Committee may revise or amend a sentencing guideline and give reasons for doing so.

Made this 11th day of September, 2019.

(Sgd.) Dame Janice M. Pereira
CHIEF JUSTICE

(Sgd.) Mario Michel
JUSTICE OF APPEAL

(Sgd.) Vivian Georgis Taylor-Alexander
HIGH COURT JUDGE

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(Sgd.) Marjorie Smith
CLERK OF CABINET