

ANTIGUA AND BARBUDA



**PRACTICE DIRECTION ON SENTENCING FOR THE OFFENCE OF MURDER FOR
THE EASTERN CARIBBEAN SUPREME COURT ISSUED ON 8TH NOVEMBER 2021**

STATUTORY INSTRUMENT

2021, No. 110

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ANTIGUA AND BARBUDA**PRACTICE DIRECTION ON SENTENCING FOR THE OFFENCE OF MURDER FOR THE EASTERN CARIBBEAN SUPREME COURT ISSUED ON 8TH NOVEMBER 2021****STATUTORY INSTRUMENT****2021, No. 110**

This Practice Direction is made pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 8(1).

The previous Practice Directions for the offence of Murder which came into effect on the 1st day of September, 2020, reissued on the 12th day April, 2021, are revoked and replaced by this Practice Direction.

Introduction

This practice direction¹ directs that in order to promote consistency in sentencing, sentencing to a custodial term for the offence of murder shall hereafter follow the approach below to be applied in the territories falling under the jurisdiction of the Eastern Caribbean Supreme Court.

Title

This practice direction may be cited as the “Practice Direction on Sentencing for the Offence of Murder for the Eastern Caribbean Supreme Court Issued on 8th November 2021”.

Interpretation

In this Schedule—

“Adult” means a person aged 18 or over.

“An act of terrorism” for the purpose of this guidance means a death arising from:

¹ *This practice direction, consisting largely of edits, and excising reference to offenders under 18, replaces the earlier versions published on 1st September, 2020 and Re-Issued on 12th April, 2021.*

- (i) an act of a person on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing by force or violence the lawful government of a state; or
- (ii) an act intended to raise in the public a fear of future and further indiscriminate violence against bystanders in a public place.

“Criminal gang” means a group of three or more persons who share a criminal purpose.

“Determinate sentence” means a sentence fixed as to the amount of time to be spent imprisoned.

“Whole life sentence” means a sentence of imprisonment for the duration of the offender’s natural life.

Sentence of an adult for murder

A conviction of an adult for the offence of murder may result in one of the following sentences:

- (a) Sentence of death;
- (b) A whole life sentence;
- (c) A determinate sentence; or
- (d) Detention at the court’s pleasure where an offender has been found to be insane or suffering relevant mental illness.

3. Sentence of death

Sentence of death, where lawful for murder, may only be considered in cases:

- (a) Where the offender was an adult when he committed the offence;
- (b) Where there has been a conviction after trial;
- (c) Which are ‘the rarest of the rare’;
- (d) Which are ‘the worst of the worst’;
- (e) Where there is no reasonable prospect of reform of the offender;
- (f) Where the offender has been appropriately evaluated by a psychiatrist;

- (g) Where the character of the offender and any other relevant circumstances are taken into account so far as possible as mitigation in his favour;
- (h) Which are compared with other murder cases and not with ordinary civilized behavior; and
- (i) Where the object of punishment cannot be achieved by any means other than sentence of death.

4. Whole life sentence

If:

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
- (b) the offender was an adult when he committed the offence;

the appropriate starting point is a whole life sentence.

5 Cases where the seriousness of the offence could be considered exceptionally high include:

- (a) the murder of two or more persons;
- (b) the murder is associated with a series of serious criminal acts;
- (c) a substantial degree of premeditation or planning;
- (d) the abduction of the victim;
- (e) a murder involving sexual or sadistic conduct;
- (f) a murder involving prolonged suffering or torture;
- (g) the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a political activist, or the offence arose because of the victim's occupation or voluntary work;
- (h) a murder relating to membership of a criminal gang;
- (i) a murder which is an act of terrorism;

- (j) a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (e.g., people of a particular religion, race, or ethnic origin, language, or sexual orientation or age or having a particular disability);
- (k) a murder involving the actual or threatened use of explosives or chemical or biological agent;
- (l) a deliberate killing for payment or gain (e.g., a contract killing, or for inheritance, or insurance payout);
- (m) where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- (n) a murder by an offender previously convicted of murder; or
- (o) a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

6. Determinate sentence

(1) In cases not falling in paragraph 3 or 4; or

(2) Where a case falls within paragraph 4,

- a. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and
- b. the offender was an adult when he committed the offence;

the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years.

7 Cases that could fall within paragraph 6 include:

- a. where the offender has pleaded guilty and would otherwise face a whole life term²;
- b. a murder involving the use of a firearm;
- c. a murder arising unplanned in the course of a felony (e.g. in a robbery or burglary);
- d. a murder intended to obstruct or interfere with the course of justice;

² *In such a circumstance, there would usually be no further discount on account of the guilty plea.*

- a.* a significant degree of planning or premeditation;
 - b.* the victim was vulnerable because young or elderly or had a disability or because geographically isolated;
 - c.* mental or physical suffering inflicted on the victim before death;
 - d.* abuse of a position of trust or authority over the victim;
 - e.* where the offence involved a great risk of death to another person or persons;
 - f.* where the offence was an organized criminal activity;
 - g.* where the offence occurred at the home of the victim or any other person;
 - h.* where the offence was committed to conceal another offence;
 - i.* the use of duress or threats against another person to facilitate the commission of the offence;
 - j.* where the victim was providing a public service or performing a public duty;
 - k.* where the offence is committed in the presence of children;
 - l.* where the offence is committed at or near a religious or educational institution;
 - m.* where the offence is committed in view of the public;
 - n.* where the offence is unprovoked; or
 - o.* concealment, disposal, desecration, destruction or dismemberment of the body.

- 13 Mitigating factors pertaining to the offence that may be relevant include:
 - a.* an intention to cause serious bodily harm rather than to kill;
 - b.* where the offender was acting under duress;
 - c.* where the offender offered assistance to the authorities;
 - d.* where the offender was provoked;
 - e.* where the victim was the aggressor; or
 - f.* a belief by the offender that the murder was an act of mercy.

- 14 Aggravating factors pertaining to the offender that may be relevant include:
 - a.* Previous convictions for violence offences;

- b.* Relevant convictions for other offences; or
- c.* Offence committed whilst on bail.
- 15 Mitigating factors pertaining to the offender that may be relevant include:
- a.* Good character;
- b.* Genuine remorse;
- c.* Physical or mental disability or ill-health;
- d.* Youth and/or lack of maturity where it explains offending; or
- e.* Good prospects for rehabilitation.

Credit for plea

- 16 Where the offender has pleaded guilty at the first practicable opportunity, he may receive a discount of up to one-third of any determinate sentence (excepting where appropriate per para 7*a*).

Time on remand

- 17 Credit must be given for time spent on remand, to be calculated with precision³.

Parole

- 18 Where appropriate, the court should declare the minimum term to be served before consideration for parole.

Effective Date

- 19 This Practice Direction will come into effect on the 8th day of November, 2021.

Made this 5th day of November 2021.

Sgd.
Dame Janice M. Pereira, DBE
Chief Justice

³ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 C CJ 6**.