





VISION

To be the best in the Caribbean in three years and among the best globally in six years

MISSION

To provide sound, timely judgments and efficient court services

CORE VALUES

Fairness, Accountability, Independence, Integrity, Impartiality, Respect, Commitment, Courtesy, Accessibility, Responsiveness & Empathy



SENTENCING GUIDELINES FOR PARISH COURT JUDGES

Chief Justice of Jamaica, Hon. Mr. Justice Bryan Sykes, OJ, CD

PREAMBLE

The criminal law not only defines what a crime is but also seeks to protect persons from criminal activity. The criminal trial is the means by which a civilized society determines whether any particular conduct violates the criminal law. If the violation is established, then it becomes the task of the judge to determine the appropriate punishment, having regard to the many factors that are relevant to sentencing. Understandably, members of the public take and ought to take an interest in how this important societal function is carried out by judges. It is therefore necessary for judges to indicate how and why a particular sentence was passed.

The necessity to give reasons contributes to the rule of law. Giving reasons makes it easier to determine whether the judge has engaged in the appropriate thought processes and taken into consideration the necessary factors. It assures the defendant that he or she is not being treated as an abstraction and conveys to the victim that his or her tribulations are recognized and punished.

Having said this, it appears to me that there is a current imbalance in the approach to sentencing. It appears too preoccupied with rights of the defendant and insufficiently concerned about the impact of the crime on the victim. Let it be remembered that no one is compelled to commit a crime: the commission of a crime is always a choice regardless of the defendant's circumstances.

These guidelines are just that – guidelines. They assist in the structure of one's thoughts and actions at the sentencing phase of a criminal trial. The punishment should be appropriate for the crime, the defendant, and circumstances. There is nothing wrong with departing from the guidelines where the judge sees fit. Departures should be clearly explained.

We must keep in mind that our constitutional democracy rests upon the underlying idea of a social contract. Citizens bond together to form a country and permit others to exercise power on their behalf in prescribed circumstances. The judicial branch of government exercises judicial power on behalf of the people. It therefore behoves us to carry out the difficult task of adjudication in such manner that instills confidence and the belief that judges will do what is right. Failure to do so undermines confidence in legal processes. Failure to punish crime adequately may lead persons to resort to extra judicial means of redress.

These sentencing guidelines for the Parish Courts are geared towards streamlining the sentencing process across those courts, creating a greater sense of uniformity in the possible sentences to be meted out to offenders who have been found guilty before the court. The Judiciary of Jamaica is pleased to have taken this very bold and important step towards demystifying the process judges go through when an accused person is to be sentenced, the sentences which the law permits them to apply. This will give attorneys, their clients and indeed the public, a clear indication as to what the possible sentence could be, based on the nature of the offence.

Judges of the Parish Court are encouraged to utilize these guidelines in the process of determining what sentence to apply for particular offences but must always keep in mind that they are no more than guidelines.

It is my hope that these guidelines will assist us on our continued drive to become the best in the Caribbean in three (3) years and among the best globally in six (6) years.

The Judicature (Parish Court) Act

Section 268 of the Judicature (Parish Court) Act list almost all the offences Parish Court Judges will be called upon to preside over on a daily basis. Section 268 states that :-

268.-(1) It shall be lawful for the Courts to hear and determine the offences hereinafter mentioned, that is to say-

- a) the offence specified in sections 22, 26,28,32, 34, 36, 37 and 38 of the Offences against the Person Act, as also common assaults, aggravated assaults and assaults occasioning actual bodily harm;
- b) the offences specified in the following sections of the Larceny Act, sections 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 18 paragraph (1), 19, 20, 21, 22, 24 subsection (1) paragraph (iii), 29, 35, 36, 37, 40, 41, 42 and 46 where the stealing or obtaining of the property the subject of the charge is within the jurisdiction of such Courts;
- c) the offences specified in sections 14, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31,42 and 47 of the Malicious Injuries of Property Act;
- d) the offences specified in the following sections of the Forgery Act, section 4 subsection (2) paragraph (a), sections 6, 7, 13 and 14 and the offence, contrary to section 9 of uttering any document the forgoing of which is an offence under section 4 (2) (a) 6 or 7 and an offence contrary to section 10 where the forgery of the document to which the charge relates is triable in the Court;
- e) the offences specified in sections 10, 14, 16 and 17 of the Coinage Offences Act;
- f) the offences of forcible entry and detainer of land, whether at common law or by statute, and all common law offences (not being felonies) unspecified in this section, whether the punishment of such common law offences has or has not been provided for by any statute or law;
- g) the offences specified in sections 6, 7, 8 and 9 of the Perjury Act;
- h) any offence under section 10 (2) or 13 of the Sexual Offences Act;
- i) any offence hereinbefore mentioned, after any previous conviction of a crime, as defined in the Criminal Justice (Administration) Act.
- (2) The offender, on conviction, shall be liable to the same punishment as for such offences he is now or hereafter may be liable to:

Provided, that no Court shall award a sentence of more than three years' imprisonment, with or without hard labour, and a fine of one million dollars, where the conviction is for any offence referred to in this section other than an offence specified in section 13 of the Larceny Act, in relation to which a Court may award a sentence not exceeding four years imprisonment or an offence specified in section 37 of the Larceny Act, or in section 4 (2) (a) of the Forgery Act or an offence of uttering any document under section 9 of the Forgery Act, the forgery of which is an offence under the said section 4 (2) (a), in relation to which Court may award a sentence not exceeding five years imprisonment, and where a Magistrate is only empowered, in respect of any such offence to impose a sentence of imprisonment, he may impose a fine not exceeding one million dollars in lieu of imprisonment, if in the circumstances of any case he thinks fit so to do.

Offences against the Person's Act

Section 22 - Unlawful Wounding

Maximum

3 years

18 months

first offence

Trial

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range 12-18 months for serious wounds – first offence
18-30 months for serious wounds for subsequent offences
12 months
\$80,000 - \$300,000 for minor wounds – first offence

\$300,000 - \$1,000,000 for minor wounds

7-14 months for serious wounds – first offence14-24 months for serious wounds/subsequent offences

Section 26 – Administration of Poison

Maximum

3 years

2 years

Trial

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

18-28 months

1 year 9-18 months

Section 28 – Abandoning or Exposing a Child

Maximum

3 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

,

2 years 12-24 months for first offence 24-30 months for subsequent offences

12 months 9-12 months for first offence 1-2 years for subsequent offences

Section 36 – Assault

Maximum

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

2 years

9 months \$100,000 - \$500,000 for minor injuries 6-12 months for major injuries

6 months \$80,000 - \$300,000 for minor injuries 4-9 months for major injuries

Larceny Act

Section 5 – Simple Larceny

Maximum

Trial

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

3 years

20 months \$200,000 - \$850,000 for small items/articles 1 - 2 years for large appliances and/or large quantity of items – first offence

2 - 3 years for subsequent offences

12 months \$80,000 - \$300,000 for small items/articles – first offence 9 - 12 months for large appliances and or large quantity of items – first offence 12 - 24 months for subsequent offences

Section 13 – Praedial Larceny

Maximum

4 years

Trial Usual starting point

Usual range

Guilty Plea Usual starting point Usual range 2 years \$200,000 - \$500,000 for small amount of produce – first offence 18 - 24 months for large quantities 24 - 42 months for subsequent offences

1 year 80,000 - \$200,000 for small amount of produce – first offence 9 - 12 months for large items 18 - 30 months for subsequent offences

Section 15 – Abstracting Electricity

Maximum

3 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

18 months \$200,000 - \$400,000 for small items 9-18 months for large items or large sums of money – first offence 18 months - 3 years for subsequent offences

12 months 9 - 12 months for first offence 1 - 2 years for subsequent offences

05

Larceny Act cont'd

Section 19 – Larceny from the Person

Maximum

3 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

18 months
\$200,000 - \$400,000 for small items
9 - 18 months for large items or large sums of money – first offence
18 months - 3 years for subsequent offences

1 year \$60,000 - \$250,000 for small items 6 - 12 months for large item or large sums of money – first offence 12 - 18 months for subsequent offences

Section 6 – Larceny of Cattle

Maximum

Trial

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

3 years

2 years12 - 24 months for first offence2 - 3 years for subsequent offences.

18 months 9 - 18 months for first offence 18 - 24 months

Section 24 (10 (iii)) Conversion

Maximum

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

3 years

24 months12 - 24 months for first offence2 - 3 years for subsequent offences

18 months12 - 18 months for first offence18 - 24 months for subsequence offences

Larceny Act cont'd

Section 29 – Falsification of Accounts

Maximum

3 years

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range

24 months 18 - 24 months for first offence 2 - 3 years for subsequent offences

18 months 9 - 18 for first offence 18 - 24 months for subsequence offences

Section 29 – False Pretences

Maximum

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range

3 years

24 months 18 - 24 months for first offence 2 - 3 years for subsequent offences

18 months 9 - 18 for first offence 18 - 24 months for subsequence offences

Section 36 – Obtaining Credit by Fraud

Maximum

2 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

Section 37 – Robbery

Maximum

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range

12 months \$250,000 - \$750,000 for first offence 9 months - 18 months for subsequent offences

9 months \$80,000 - \$400,000 for first offence 9 - 12 months for subsequent offences

4 years

24 months 18 - 24 months for first offence 2 - 3 years for subsequent offences

18 months 12 - 18 for first offence 18 - 24 months for subsequence offences



Larceny Act cont'd

Section 40 – House Breaking

Maximum

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range

Section 46 – Receiving

Maximum

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range 3 years

24 months18 - 24 months for first offence2 - 3 years for subsequent offences

18 months12 - 18 months first offence24 months for subsequent offences

3 years

24 months18 - 24 months for first offence2 - 3 years for subsequent offences/large items

18 months

- 12 18 months for first offence
- 18 24 months for subsequent offences

Malicious Injuries of Property

Section 20 – Destroying & Damaging Trees in Garden

Maximum

3 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

18 months \$150,000 - \$400,000 for first offence 12 - 24 months for subsequent offences

9 months \$60,000 - \$300,000 for first offence 6 - 18 months for subsequent offences

Section 24 – Injury to Cultivating Plants

Maximum

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

6 months

\$300,000 \$200,000 - \$500,000

\$100,000 \$80,000 - \$200,000

Malicious Injuries of Property cont'd

Section 42 – Injury to Property

Maximum

Trial

Usual starting point Usual range

Guilty Plea Usual starting point Usual range 3 years

24 months18 - 24 years for first offence2 - 3 years for subsequent offences

12 months9 - 12 for first offence12 - 24 months for subsequent offences

Forgery Act

Section 42 (a) – Forgery with Intent to Defraud

Maximum

5 years

36 months

2 - 3 years for first offence

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range

18 months 12 - 18 for first offence 2 - 3 years for subsequent offences

3 years - 4 years for subsequent offences

Section 6 – Forging of Passport or Document to Procure Passport

Maximum

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range

Section 9 – Uttering

Maximum

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

2 years

15 months 12 - 15 months for first offence 18 - 24 months for subsequent offences

12 months6 - 12 months first offence12 - 16 months for subsequent offences

5 years

36 months24 - 36 months for first offence3 - 4 years for subsequent offences

18 months12 - 18 months for first offence2 - 3 years for subsequent offences

Forgery Act cont'd

Section 13 – Possession of Die or Special Paper Use for Bank Notes

2 years

12 months

9 months

9 - 12 months for first offence

1 year - 18 months for subsequent offences

Maximum

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

Conspiracy to defraud

Maximum

2 years

18 months

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range 18 - 24 months for subsequent offences9 months9 - 12 months for first offence

12 - 16 months for first offence

12 - 18 months for subsequent offences

Two useful cases to consider when addressing cases under the Forgery Act are, R v Probyn Aiken 1990 (27) JLR 353 and R v James Smith (1990) JLR 469.

Corruption (Prevention Act)

Section 14 - Act of Corruption - Solicits or Accepts Article, Money or Benefit

Maximum

2 years

18 months

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range 9 months 9 - 12 months for first offence 12 - 18 months for subsequent offences.

18 - 24 months for subsequent offences.

12 - 16 months for first offence

Section 15 (a) – Fails to Furnish Statutory Declaration

Maximum

Usual starting point Usual range \$250,000 or 2 years

\$100,000 \$80,000 - \$150,000 for first offence \$150,000 - \$250,000 for subsequent offences.

6 - 9 months for first offence 9 - 12 months for subsequent offences

Corruption (Prevention Act) cont'd

Section 15 (b) – Knowingly Makes any False Statement in Statutory Declaration

Maximum

Usual starting point Usual range

\$250,000 or 2 years

\$120,000 \$80,000 - \$150,000 for first offence \$150,000 - \$250,000

Section 15 (c) – Fails to Give Information to Commission

Maximum

\$250,000 or 2 years

Usual starting point Usual range

\$120,000 \$100,000 - \$200,000

Section 15 (d) – Failure to Attend Enquiry Conducted by Commission

Maximum

Usual starting point Usual range \$250,000 or 2 years

\$120,000 \$100,000 - \$200,000

Section 14 (5) – Illicit Enrichment

Maximum

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

1st Offence - \$1,000,000 or 2 years 2nd Offence - \$3,000,000 or 3 years

\$400,000 \$250,000 - \$850,000 for first offence \$1,000,000 - \$2,000,000 for subsequent offences

12 months9 - 12 months for first offence12 - 24 months for subsequent offences

The Dangerous Drugs Act

(Judges have the option to fine and confine for these offences. The maximum fine being \$500,000.00).

Section 7 (a) – Exporting Ganja/Importing/Taking Steps proprietary

Maximum

3 years

Trial

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

24 months18 months - 2 years for first offence2 - 3 years for subsequent offences

15 months12 - 15 months for first offence18 - 24 months for subsequent offences

The Dangerous Drugs Act cont'd

Section 7 (b) – Cultivating Ganja

Maximum

3 years

Trial Usual starting point 18 months Usual range

Guilty Plea

Usual starting point Usual range

12 - 18 months for first offence 24 - 36 months for subsequent offences

12 months 12 - 18 months for first offence

18 - 24 months for subsequent offences

Section 7 (b) – Dealing in Ganja

Maximum

3 years

Trial

Usual starting point Usual range

24 months 12 - 24 months for first offence 2 - 3 years for subsequent offence

Guilty Plea

Usual starting point Usual range

12 months 9 - 12 months for first offence 12 - 24 months for subsequent offences

Section 7 (b) – Transporting Ganja

Maximum

3 years

Trial Usual starting point Usual range

24 months 9 - 12 months for first offence 12 - 24 months for subsequent offences

(There is the option of a fine of \$100-\$200 per ounce up to a maximum of \$500,000.)

Guilty Plea

Usual starting point Usual range

12 months 12 - 18 for first offence 2 - 3 years for subsequent offences

Section 7 (c) – Possession of Ganja

Maximum

3 years

Usual starting point

\$100 per ounce

Be guided by the Court of Appeal Decision of Patrice Henry v R 2011 JMCA Crim 66, and R v Johnathan Outar and Rupert Senior 35 JLR 473, which opined that dealing and taking step preparatory to export are two alternatives and where convictions on both are based on the same ganja, the convictions were irreconcilable and could not stand.

The Dangerous Drugs Act cont'd

Section 07 (d) – Smoking Ganja

Maximum
Usual starting point
Usual range

\$5,000 Maximum \$5,000 or 12 months or both for first offence \$10,000 or 2 years or both for subsequent offences

COCAINE (These sections also apply to Morphine)

Section 8 – **Importing Cocaine** (Judges have the option of imposing a maximum fine of \$500,000 regardless of the amount).

Maximum

5 years

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range 3 years 2 - 3 years for first offence 3 - 4 years for subsequent offences

18 months12 - 18 months for first offence18 - 30 months for subsequent offences

Section 8 (a) - Cultivating Cocaine Without a Licence

Maximum

5 years

Trial Usual starting point Usual range

Guilty Plea Usual starting point Usual range 3 years 2 - 3 years for first offence 3 - 4 years for subsequent offences

18 months 12 - 18 months for first offence 18 - 30 months for subsequent offences

Section 8 (a) - Selling Cocaine Without a Licence

Maximum

5 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range 3 years2 - 3 years for first offence3 - 4 years for subsequent offences

18 months12 - 18 months for first offence18 - 30 months for subsequent offences

The Dangerous Drugs Act cont'd

Section 8 (a) - Transporting Cocaine Without a Licence

Maximum

5 years

Trial Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

3 years 2 - 3 years for first offence 3 - 4 years for subsequent offences

18 months12 - 18 months for first offence18 - 30 months for subsequent offences

Section 8 (b) - Possession of Cocaine

Maximum

5 years

3 years

Trial

Usual starting point Usual range

Guilty Plea

Usual starting point Usual range

18 months 12 - 18 months for first offence 18 - 30 months for subsequent offences

3 - 4 years for subsequent offences

2 - 3 years for first offence

A useful case to consider is Bernal and Moore v R (1997) 51 WIR 241.

Other Sentences

In handing down sentences, Judges must be aware of the additional options available to them for minor offences, which include:-

- a. Probation Orders
- b. Community Service Orders
- c. Options under The Restorative Justice Act
- d. Suspended sentences
- e. Fines
- f. Admonish and Discharge

SENTENCING TEMPLATE FOR PARISH COURTS

The Starting Point

The starting point is usually based on the sentencing guidelines. You may depart from it but say why you are doing so.

Aggravating Circumstances

List the aggravating circumstances. The circumstances may include:-

- 1. There is a prevalence of this type of crime in the Parish/Country.
- 2. The invasion of the home of the victim, for example, was an item stolen from the home or work place of the victim.
- 3. Was there evidence of violence? Did the Defendant use a weapon in committing the offence, for example, knife or ice pick?
- 4. Was the offence committed in a crowded area that caused panic?
- 5. Impact on the victim. The Judge should take into consideration among other things:
 - a. The age of the victim.
 - b. Relationship of the victim with the defendant.
 - c. Was the act premeditated?
 - d. Vulnerable witnesses to include persons with physical and mental disability and persons of a particular gender.

You can then increase the sentence to be given, due to these aggravating circumstances. For instance, due to the aggravating circumstances, you may increase the sentence up to one year.

Mitigating Circumstances

The mitigating circumstances are to be listed. Some examples of mitigating circumstances may be:-

- 1. Good social enquiry report. The sentence is to be reduced due to this for example, between one to three months.
- 2. Good antecedent report. No previous conviction or no relevant previous conviction. The sentence would then be reduced due to this, for example, by one to three months.
- 3. If he is remorseful, you may reduce the sentence due to this, for example, by another one to two months.

Time in Custody

There must be complete credit given for the time spent in custody that is relevant to this case. This is in keeping with the decision in **Meisha Clement v R [2016]** JMCA Crim 26. You have to consider whether he/she was given bail and was then remanded for another case. He would not then receive credit for the entire time spent in custody, if he is in custody because of another case.

The Judge would then be able to calculate the sentence to be awarded. For instance, if this was a case of Simple Larceny then the sentence could be:-

- 18 months for the starting point.
- 1 year added for the aggravating circumstances.
- 2 months reduction for good social enquiry report.
- 2 months reduction for good antecedent report.
- 2 months reduction for remorse.
- 6 months reduction for the time spent in custody. Total would be **18 months.**

Guilty Pleas

For instance, if this was a case of Simple Larceny then the sentence could be:-

- 18 months for the starting point.
- 1 year added for the aggravating circumstances.
- Discount of 50% for guilty plea.
- 2 months reduction for good social enquiry report.
- · 2 months reduction for good antecedent report.
- 2 months reduction for remorse.
- 6 months reduction for the time spent in custody. Total would be **4 months.**

With any plea of guilt, a Judge must be guided by Section 45(D) of the Criminal Justice (Administration) (Amendment) Act of 2015.

ST. ELIZABETH PARISH COURT

Main Court 58 High Street Black River, St. Elizabeth Switchboard: +1 876-965-2259 Straight-line: +1 876-965-2259 Fax Number: +1 876-634-4178 Email: stelizabeth.rmc@rmc.gov.jm

ST. MARY PARISH COURT

Main Court Main Street Port Maria, St. Mary Switchboard: +1 876-994-2238 Straight-line: +1 876-994-2532 Fax Number: +1 876-994-2532 Email: stmary.rmc@rmc.gov.jm

WESTMORELAND PARISH COURT

Main Court 96 Great George Street, Savanna-La-Mar, Westmoreland Switchboard: +1 876-955-2544 Straight-line: +1 876-955-9252 Fax Number: +1 876-955-9252 Email: westmoreland@rmc.gov.jm

TRELAWNY PARISH COURT

Main Court Duncan's, Trelawny, P.O. #3 Switchboard: +1 876-954-2191 / +1 876-954-2136 Fax Number: +1 876-954-2190 Email: trelawny.rmc@rmc.gov.jm

ST. ANN PARISH COURT

Main Court 47 Main Street, St. Ann's Bay, St. Ann Switchboard: +1 876-972-2303 / +1 876-972-9602 Straight-line: +1 876-972-1116 Fax Number: +1 876-972-9603 Email: stann@rmc.gov.jm

ST. JAMES PARISH COURT

Main Court Meagre Bay Road, P.O BOX 321, Montego Bay, St. James. Switchboard: +1 876-952-3323/ +1 876-613-8100 Fax Number: +1 876-952-3325 Email: stjames@rmc.gov.jm

PORTLAND PARISH COURT

Main Court Bryan's Bay, P.O. Box 88, Port Antonio, Portland Straight-line: +1 876-993-4740 Fax Number: +1 876-993-3081 Email: portland@rmc.gov.jm

MANCHESTER PARISH COURT

Main Court James Warehouse Plaza, Hargreaves Avenue Mandeville, Manchester

Straight-line: +1 876-962-2191 Email: manchester@rmc.gov.jm



of Jamaica





CONTACT US 8th Floor, 25 Dominica Drive Kingston, Jamaica

Telephone: +1 876-613-8800 Telephone: +1 876-754-8337 Telephone: +1 876-908-0138 Toll Free Line: +1 888-429-5269 Email: customerservice@cad.gov.jm Website: www.cad.gov.jm

Administrative Opening Hours Monday -Thursday: 8:30 a.m.– 5:00 p.m. Friday: 8:30 a.m.– 4:00 p.m