



GOVERNMENT OF BERMUDA

Department of Public Prosecutions

This Guidance is entitled “General Guidance for a Formal Police Caution”.

The Director of Public Prosecutions issues to the Commissioner of Police the following General Guidance for a Formal Police Caution pursuant to the Police and Criminal Evidence Act 2006 section 36A.

1. INTRODUCTION

- a. This Guidance is issued pursuant to section 36A of the Police and Criminal Evidence Act 2006 (“PACE”) to assist members of the Bermuda Police Service when exercising their discretion and carrying out their duties pursuant to PACE Sections 35(7) and 38(2) and replaces any earlier “General Guidance for a Formal Police Caution”.
- b. This Guidance is also issued pursuant to PACE section 37 to make members of the Bermuda Police service aware of what information is to be provided to the Director of Public Prosecutions (“**the Director**”) to enable a charging or other decision to be made.
- c. The Director may delegate any and/or all of his responsibilities, as set out in this Guidance, to any Crown Counsel employed within the Department of Public Prosecutions.

2. KEY PROVISIONS AND PRINCIPLES OF THE GUIDANCE

- a. The police may charge a person, without consulting the Director, with any summary offence, other than those specified in Appendix A to this Guidance.
- b. The Director will determine whether a person will be charged in an indictable only offence, an either way offence, or summary offences specified in Appendix A to this Guidance.

3. RESPONSIBILITY FOR DETERMINING CHARGES

- a. The Police may make the decision to charge any offence under the Road Traffic Act 1947 or any other offence involving a motor vehicle, trailer, or pedal cycle on a road or other public place, except where the circumstances have resulted in the death or bodily

harm of any person. In such cases, the matter should be referred to the Director for a charging decision.

- b. Where the police make the decision to charge, that decision and the charge(s) laid are subject to review by the Director.
- c. Where the decision to charge one or more persons includes a combination of offences, some of which may be laid by the police alone and some of which must be referred to the Director for approval, all charges shall be referred to the Director.
- d. Where the decision potentially includes a large number of charges, those selected should reflect the seriousness and extent of the offending conduct, provide the Court with adequate sentencing options, and permit the case to be presented in as clear and simple a manner as possible.
- e. In any case where a charging decision is to be made, the person making the decision should consider whether there is sufficient evidence for a realistic prospect of conviction and whether it is in the public interest to proceed with charges.

4. INFORMATION TO BE PROVIDED TO THE DIRECTOR OF PUBLIC PROSECUTIONS FOR CHARGING DECISIONS

- a. In making charging decisions the Director will examine and assess the evidence presented to him before reaching a decision. If the Director is unable to make a decision to charge based on that evidence, the person will be released on bail, if it is appropriate to do so, to permit the required further information/evidence to be provided as soon as practicable.
- b. The evidence presented to the Director for a charging decision shall be in an evidential file containing, at minimum, the key evidence upon which the prosecution will rely together with any material which may undermine the prosecution case or assist the defense pursuant to the Disclosure and Criminal Reform Act 2015 and the Criminal Jurisdiction and Procedure Act 2015.
- c. The file should also contain any other information that may have a bearing on the sufficiency of the evidence as a whole and the public interest in pursuing a prosecution.

5. ROLES AND RESPONSIBILITIES OF POLICE AND DIRECTOR

- a. Where it appears likely that a charge will have to be determined by the Director, the investigating officer should consult a Crown Counsel as soon as possible after a person is taken into custody.
- b. In any case that requires a charging decision by the Director, but the required information is not immediately available to forward to the Director, persons suitable for bail will be released on bail to allow for consultations with the Director and a charging decision will be made in accordance with this guidance.
- c. Where the matter requires the Director's approval to proceed, and the Officer believes there is a reasonable prospect of conviction based on the evidence, but does not wish to proceed, the case must be referred to the Director to make a final determination.
- d. In the case of a detained person, where it appears to the investigating officer that there is no reasonable likelihood of conviction based on the evidence available, it is not necessary to refer the case to the Director before releasing the person, whether on bail or otherwise.

6. CAUTIONS

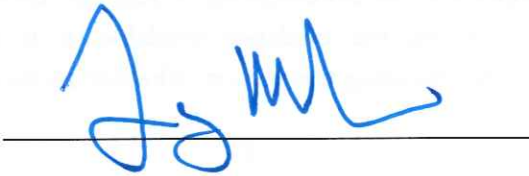
- a. Where the police consider that there is sufficient evidence to charge a person for an offence which may be cautioned under this **General Guidance for a Formal Police Caution** and the police determine it is in the public interest to caution rather than charge, a police officer of the rank of Inspector or above may issue that caution without referring the matter to the Director. The Inspector shall take into account the examples of Mitigating Factors that support the issuance of a caution and the examples of Aggravating Factors that weigh against the issuance of a caution for the offences specified in "Appendix B - Offences and Factors to be taken into Consideration for Cautions."
- b. Whether or not the police choose to issue a caution under this **General Guidance for a Formal Police Caution** in any case, notwithstanding that all of the mitigating criteria set out as examples of the types of factors that might be considered by them may be satisfied, is a matter that remains solely within the discretion of the Police.

7. POST-REFERRAL RESPONSIBILITIES

- a. In any case where there is sufficient evidence to proceed and the matter has been referred to the Director for a charging decision, and the decision of the Director is to:
- i. Charge; or
 - ii. Recommend to the Commissioner of Police to issue a caution; or
 - iii. Obtain additional evidence; or
 - iv. Take no action

the police will not proceed in any other way without first referring the matter back to the Director.

Signed this 12th day of December 2018.



Larry Mussenden
Director of Public Prosecutions

APPENDIX A

Summary Only Offences that Require Charge Approval by Director

Criminal Code Offences

Section 99	Unlawful Assembly
Section 105	Going Armed in Public so as to cause terror
Section 113	False Claims by Public Officers
Section 114	Administering Extrajudicial Oaths
Section 125B	Insulting a Witness
Section 131	Delay in taking a Prisoner
Section 146	Refusal by Public Officers
Section 196	Supplying Drugs/Instruments to Procure Miscarriage
Section 204	Deserting a Child under 14 years
Section 322	Intimidation
Section 329C	Unlawful Publicity
Section 329G(6)	Failure to Notify

Summary Offences Act

Section 5	Offensive Weapon in an Aircraft
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All Offences under the Following Acts Require Charge Approval by the Director:

Dogs Act 1978
Domestic Violence (Prosecution Orders) Act 1997
Stalking Act 1997
Revenue Act 1898
Obscene Publications Act 1973

APPENDIX B

Offences and Factors to be taken into Consideration for Cautions

Persons may be cautioned in relation to the offences below by the Police after weighing the aggravating and mitigating factors, considering the previous convictions of the suspect, the remorse shown by the offender, whether the person has received a caution on any earlier occasion and any other factors that may be relevant to the exercise of their discretion. Each case will turn upon its own facts and at the end of the day the decision maker must exercise his discretion after taking into account all relevant facts.

The purpose of a caution is to provide a convenient administrative disposal of a criminal case deemed to be of lesser severity. Typically this may be appropriate where the suspect has no prior convictions or cautions for the same or similar offences and where the suspect admits to the offence immediately or at a very early stage. Set out under the columns headed “Examples of Aggravating Factors” and “Examples of Mitigation Factors” are non-exhaustive lists of the types of factors Police may wish to consider when exercising this discretion.

When the Police determine it would be appropriate to deal with a case by cautioning the individual, but the offence is not listed below, the case shall be referred to the Director of Public Prosecutions for consideration and, if appropriate, a recommendation to the Commissioner of Police will be made to provide a formal caution to the individual.

OFFENCE	Examples of Aggravating Factors	Examples of Mitigating Factors
Common Assault (Section 314 of the Criminal Code)	<ul style="list-style-type: none">• Significant injury• Unprovoked, deliberate aggression• Vulnerable Victim (i.e. senior, child, functionally impaired)• Weapon used• Kicking, biting, spitting• Premeditated attack• Domestic Violence• Group action• Gang related• Motivated by hatred based on race, ethnicity, sexual orientation, etc.	<ul style="list-style-type: none">• Trivial nature of act (i.e. a single blow or slap)• Acted impulsively• Minor or no injury• Genuine expression or show of remorse

OFFENCE	Examples of Aggravating Factors	Examples of Mitigating Factors
Criminal Damage (Section 448 (2) of the Criminal Code)	<ul style="list-style-type: none"> • Deliberate or malicious damage • Group action • Gang related • Done in the presence of witness to intimidate • Committed at night • Motivated by hatred based on race, ethnicity, sexual orientation, etc. 	<ul style="list-style-type: none"> • Impulsive action • Reckless conduct
Killing and Injuring an Animal (Section 441 of the Criminal Code)	<ul style="list-style-type: none"> • Deliberate, malicious act • Serious injury caused • Significant suffering caused 	<ul style="list-style-type: none"> • Only transitory harm done • Insignificant suffering • Harm not deliberately caused
Offences under Section 2(n), Summary Offences Act-Resisting, obstruction or assaulting an officer	<ul style="list-style-type: none"> • Offence causes significant inconvenience to emergency services • Potential for incident to escalate into more serious situation 	<ul style="list-style-type: none"> • Incident is minor • Offender is remorseful • Incident was not planned but rather spontaneous
Misuse of Telephone Facilities (Section 6, Summary Offences Act 1926)	<ul style="list-style-type: none"> • Persistent misuse • Significant inconvenience to police • Disrupts ability of police to maintain law and order • Recipient put in fear • Sexual or sadistic in nature • Motivated by hatred based on race, ethnicity, sexual orientation, etc. 	<ul style="list-style-type: none"> • Obvious to recipient that the call is a hoax
Disorderly Conduct in a Public Street (Section 9, Summary Offences Act 1926)	<ul style="list-style-type: none"> • Serious incident causing alarm to general public • Potential for incident to escalate • Group action • Gang Related • Children or other vulnerable persons are present and fearful • Injuries resulted 	<ul style="list-style-type: none"> • Minor isolated incident

OFFENCE	Examples of Aggravating Factors	Examples of Mitigating Factors
Drinking in Public Street or on a verandah (Section 10, Summary Offences Act 1926)	<ul style="list-style-type: none"> Accompanied by anti-social behavior Occurs in an area where the offence is prevalent 	<ul style="list-style-type: none"> Isolated incident with no other adverse or disruptive conduct
Offences against Public Morality (Section 11, Summary Offences Act 1926)	<ul style="list-style-type: none"> Offence is sexual in nature Potential to escalate Alarm caused to innocent members of public (such as might occur in busy shopping area) Behavior is directed towards a police officer or person whose job brings them into contact with public Offensive words are racist, sexist, meant to incite hatred, etc. 	<ul style="list-style-type: none"> Isolated incident with no other adverse or disruptive conduct
Using Threatening Words or Gestures (Section 12, Summary Offences Act 1926)	<ul style="list-style-type: none"> The threats are directed toward a police officer The threats are directed toward a person who works with the public The threats are made in the context of a domestic relationship The threats are made to a minor The threats make reference to firearms or the infliction of serious injury The victim suffers serious anxiety or fear 	<ul style="list-style-type: none"> The threats are of a minor nature The threats were in the heat of the moment, during an argument between two parties
Take Vehicle without Authority (Section 342, Criminal Code)	<ul style="list-style-type: none"> Significant related damage caused Vehicle/motorcycle subsequently driven badly Vehicle/motorcycle used in other offences Premeditated Evidence of alcohol or other drug use Group/gang offence 	<ul style="list-style-type: none"> Taken from a family member The taking constitutes only a technical offence No or very little related damage Returned vehicle/motorcycle within the same day

OFFENCE	Examples of Aggravating Factors	Examples of Mitigating Factors
	<ul style="list-style-type: none"> • Fled from police on vehicle/motorcycle • Taken for an extended period of time 	
Affray (Section 108, Criminal Code)	<ul style="list-style-type: none"> • Planned/premeditated • Group/ gang activity • Offence occurs at night • Offence occurs in a busy public place, restraint, bar or similar venue • Offence occurs at a concert, play, festival, Cup Match, or other large public gathering • People are fearful as a result of offence • Substantial related damage • Children present during the offence • Weapons used or threatened to be used • Serious injuries caused as a result of the offence 	<ul style="list-style-type: none"> • Minor, isolated incident • No risk of escalation
Doing Indecent Acts in Public (Section 197, Criminal Code)	<ul style="list-style-type: none"> • Act is seriously offensive • Members of the public, in particular children, are knowingly exposed to the act • Act continues for extended period of time • Act continues despite protests from others 	<ul style="list-style-type: none"> • Act was not intended to be seen

