

A Sentencing Guideline for causing death by dangerous driving within the ECSC

Within the ECSC, in the nine member states and territories causing death by dangerous driving, sometimes said to be reckless driving¹, attracts different maximum sentences.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines² and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders³ whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

¹ This guideline does not apply where the driving, which caused a death, was merely careless or under the influence of alcohol or drugs; instead the driving must be dangerous or reckless, as falling far below the standard expected of an ordinary prudent motorist, so creating an obvious risk to the ordinary motorist of causing death, serious injury or serious damage.

² As at [date of publication]

³ For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines no. 4 of 2019**.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of causing death by dangerous driving requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on consequence.

The consequence of dangerous driving is always the death of the victim.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

The 'danger' created by the driving is of serious injury or death and/or of serious damage to property.

HIGH SERIOUSNESS – level A

Driving that involved a deliberate decision to ignore, or a flagrant disregard for, the rules of the road so as to cause a high risk of danger, which can be evidenced by:

- A prolonged, persistent and deliberate course of very bad driving
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

MEDIUM SERIOUSNESS – level B

Driving that created a substantial risk of danger, which can be evidenced by:

- Greatly excessive speed, racing or competitive driving against another driver
- Gross avoidable distraction such as reading or composing text messages over a period of time
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level C

LESSER SERIOUSNESS – level C

Driving that created a significant risk of danger, which can be evidenced by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded
- A brief but obvious danger arising from a seriously dangerous manoeuvre
- Driving whilst avoidably distracted
- Failing to have proper regard to vulnerable road users

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below⁴.

Maximum sentence is 'x'.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

When sentencing for ammunition alone, the starting point will usually be at the bottom of the range.

	High Seriousness - level A	Medium Seriousness - level B	Lesser Seriousness - level C
Consequence – death of the victim	SP 75% x Range 60-90% x	SP 55% x Range 40-70% x	SP 35% x Range non-custodial - 50% x

⁴ Where there is a mandatory minimum sentence, this may in appropriate cases be the starting point if it is greater than the starting point assessed under these guidelines.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- More than one person killed as a result of the offence
- Serious injury to one or more victims, in addition to the death(s)
- Disregard of warnings
- Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle
- The offender's irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape
- Driving off in an attempt to avoid detection or apprehension
- Being intoxicated through voluntary consumption of drink or drugs
- Using a handheld mobile phone at the time of the offence

MITIGATING FACTORS of the offence

- Alcohol or drugs consumed unwittingly (including unwitting effect of lawful medication)
- Offender was seriously injured in the collision
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting
- The offender's lack of driving experience contributed to the commission of the offence
- The driving was in response to a proven and genuine emergency falling short of a defence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for driving offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁵.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁵ 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** CCJ 6.