

SENTENCING DRIVING OFFENCES: THE ROLE OF DETERRENCE AND THE UTILITY OF GUIDANCE

PRESENTATION TO THE JUDICIARY OF
CYPRUS, MARCH, 2021



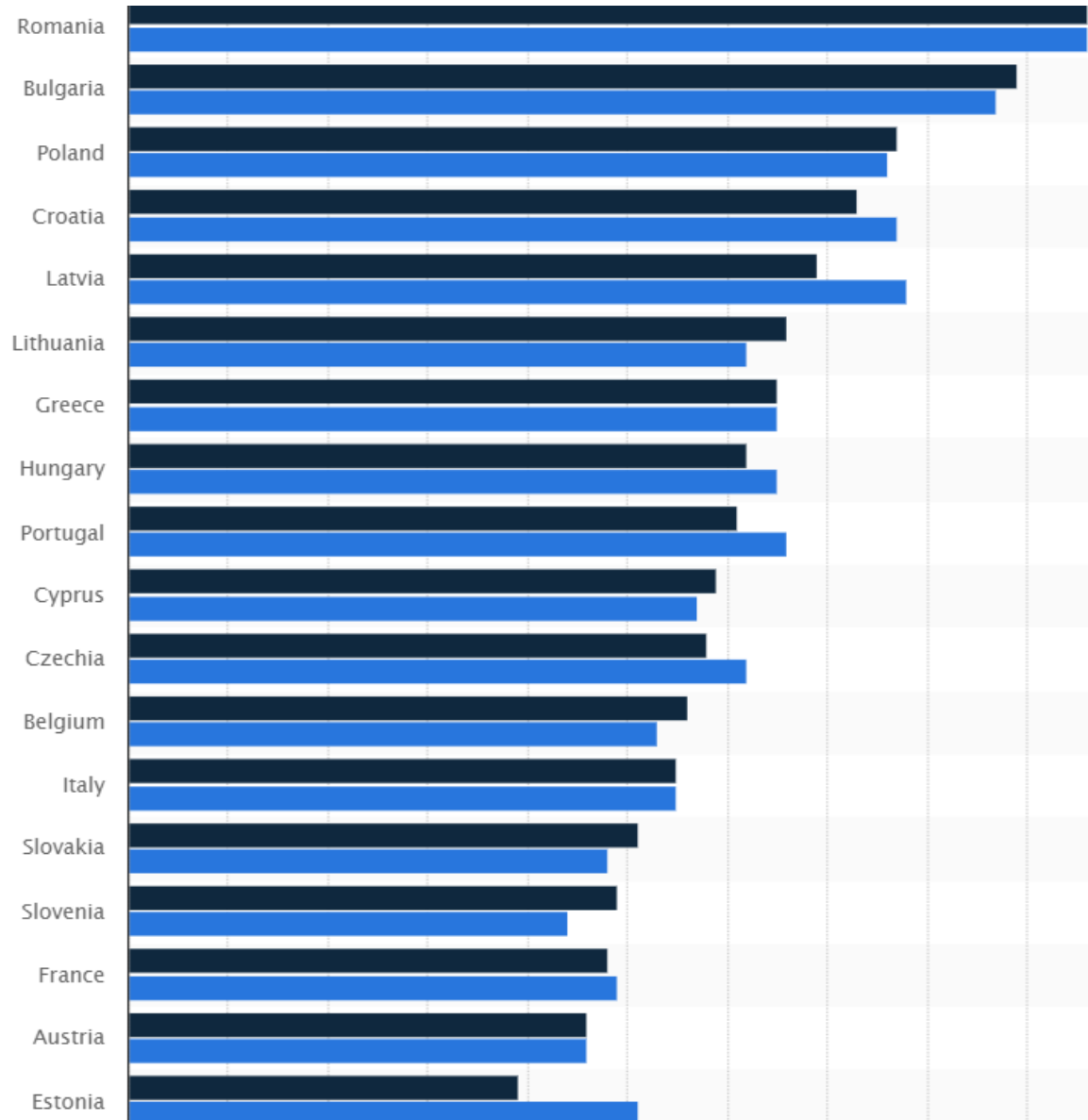
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Overview

- I provide some **limited** international comparisons of driving statistics;
- **Deterring fatal driving offences: What works?**
- **Key culpable driving offences in England;**
- **Sentencing guidelines and current trends for these offences;**
- **Conclusions**

FIRST, SOME CONTEXT ON DRIVING OFFENCES IN CYPRUS

Road deaths per million population: Cyprus high, but by no means the highest



Low levels of public awareness of legal BAC levels in Cyprus

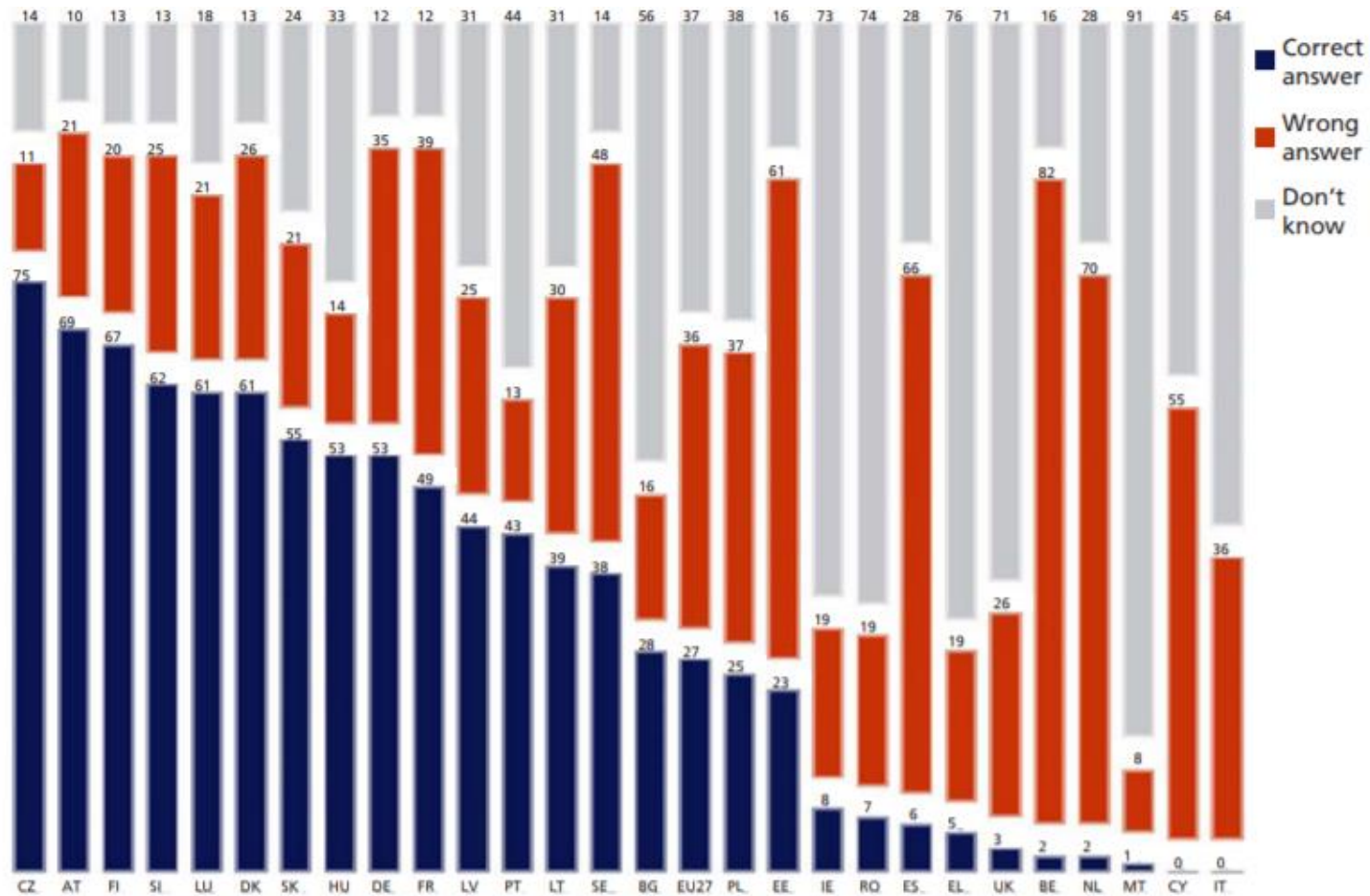


Fig. 6: Knowledge of BAC in EU countries (Question: What is the national legal alcohol level allowed for drivers?)
Source: Gallup, EC

Public concern over seriousness of speeding

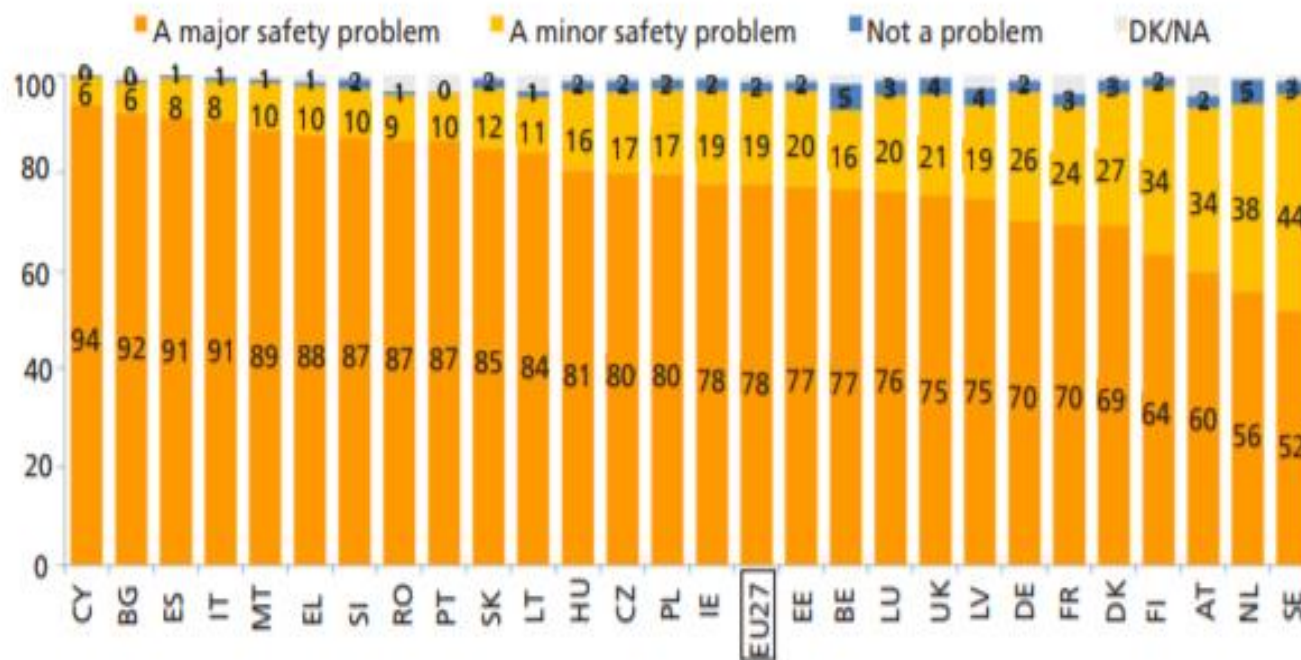


Fig.10: Perception of the seriousness of speeding (Question: do you feel the following constitutes a major safety problem, a minor safety problem, or is not a problem in your country?) Source: Road Safety Eurobarometer

High rate of Drink Driving in Cyprus

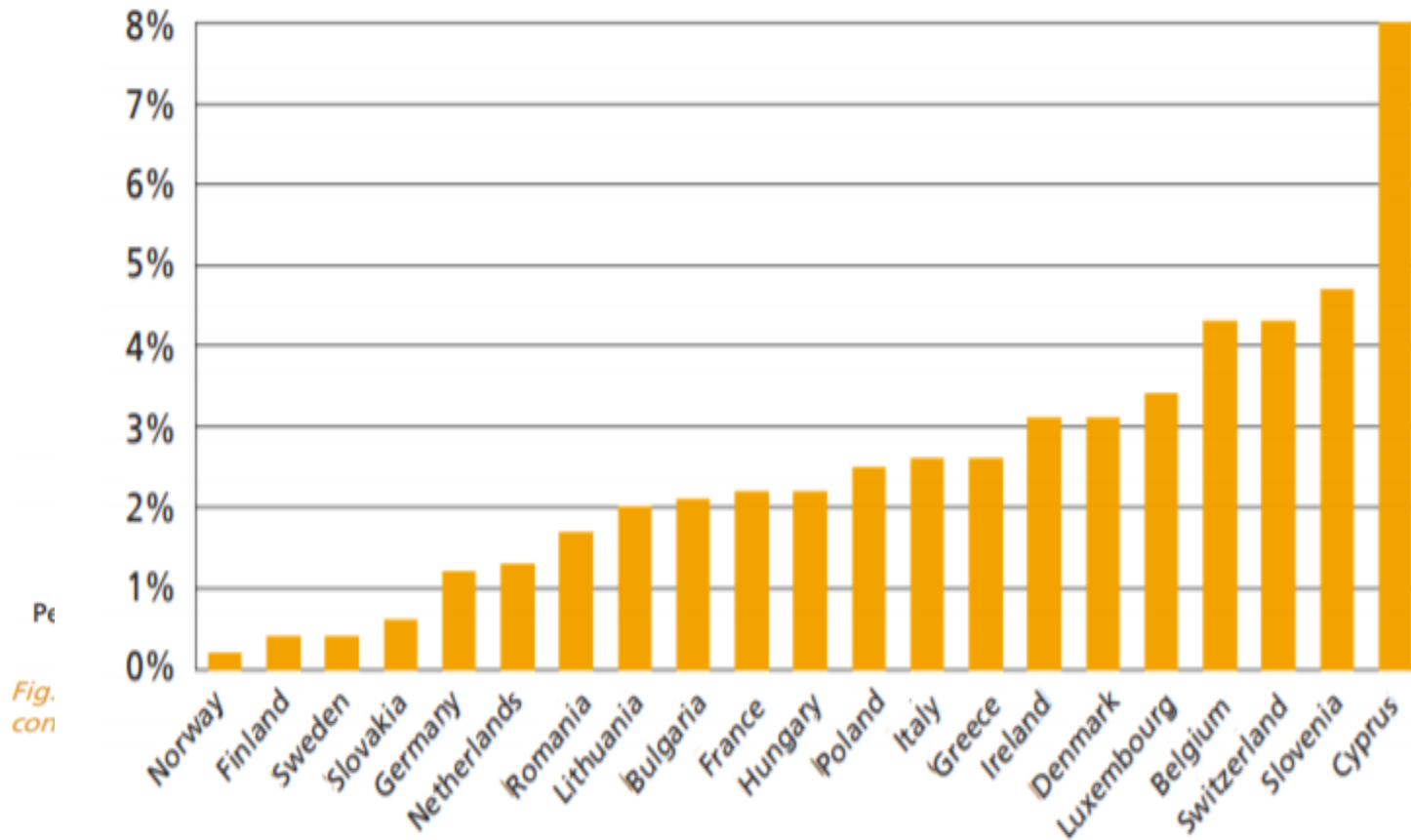


Fig. 5: Prevalence of drink-driving in road traffic as registered during the TISPOL operation in June 2009

Low use of seatbelts

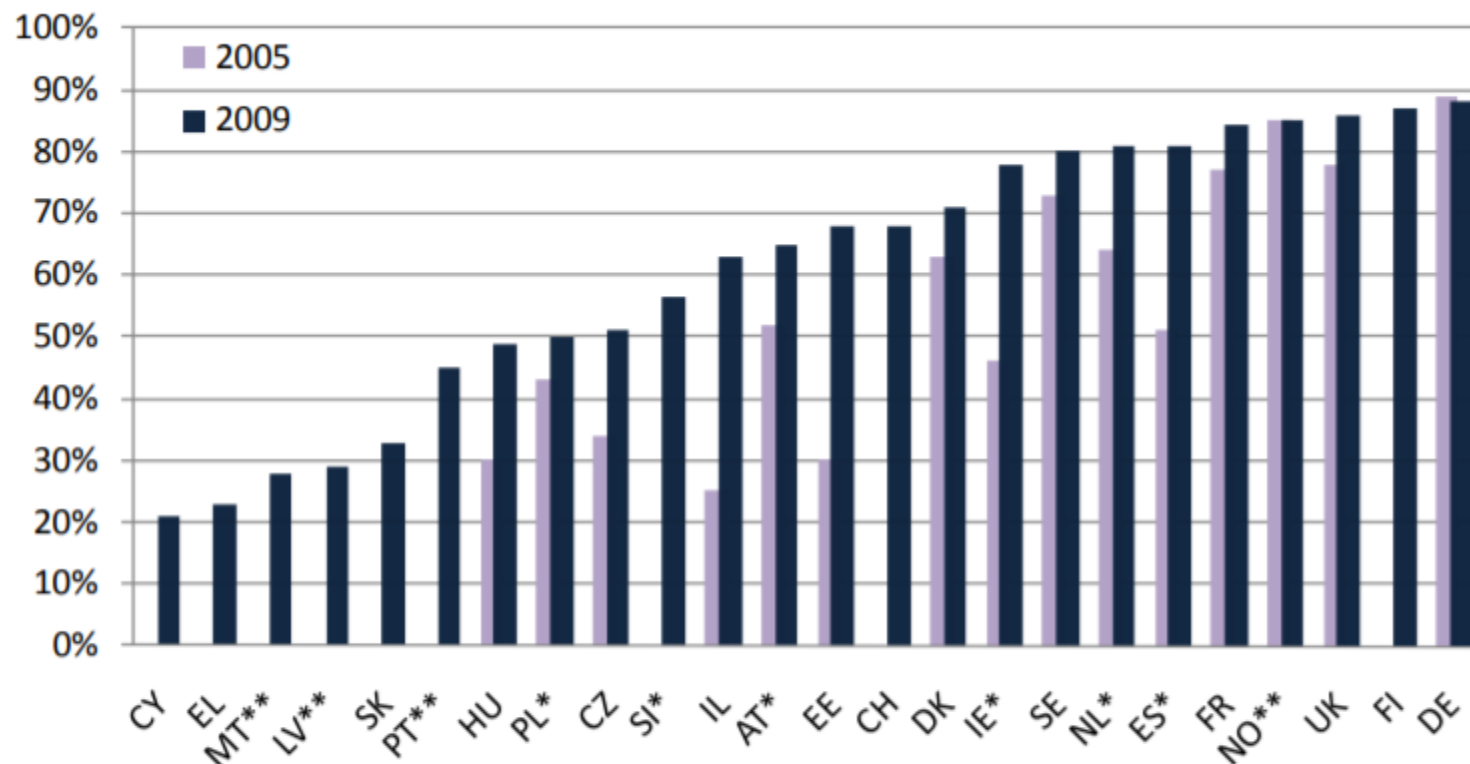


Fig. 12: Seat belt wearing rates in rear seats of light vehicles in 2009, with 2005 for comparison. Source: PIN Panellists or SafetyNet.

* 2008. **SafetyNet.

Conclusions

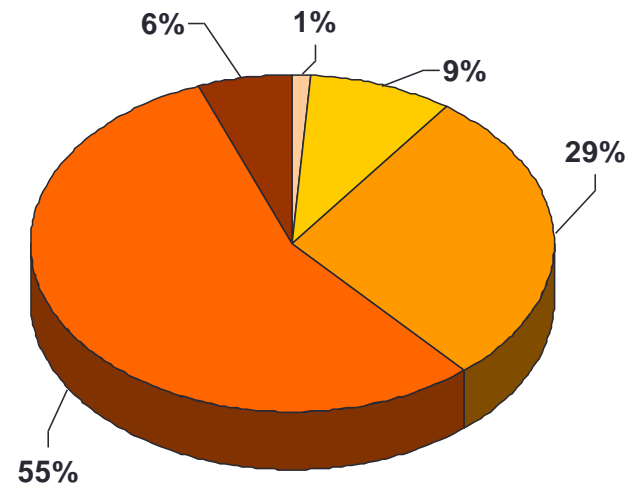
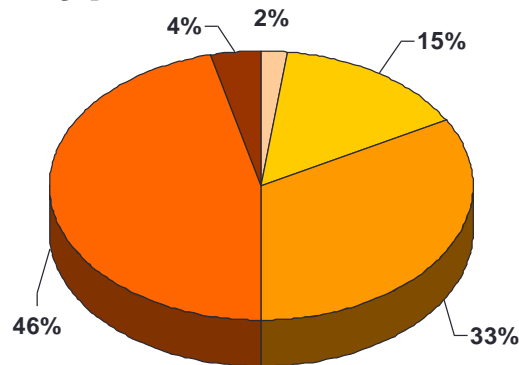
- Preventing road accidents and deaths requires a multidimensional response;
- Many factors affect the rate and severity of traffic injuries and deaths, including road conditions; public attitudes to speeding and drinking and driving; public knowledge of the relevant law, and expectations of apprehension and punishment;
- Courts still have an important role to play, and we explore that role later in this presentation.

PUBLIC CONCERN, UK

Public Views: Q: 'Are sentences ... too tough, about right or too lenient for' ...

Death by driving offences

All types of crime



Too tough About right A little too lenient Much too lenient Don't know

Public concern in UK has triggered legislative reform (2021)

- Police, Crime, Sentencing and Courts Bill
- Creates a new offence of causing serious injury by careless driving;
- Increases the maximum penalty for causing death by dangerous driving from 14 years to life imprisonment;
- Increases the maximum penalty for causing death by careless when under the influence of drink or drugs from 14 years to life imprisonment.

Deterrence: what do we know from decades of research?

- 3 dimensions: **Certainty; celerity; severity**: penalties must be certain, swiftly imposed and sufficiently severe;
- **Certainty** the most important component -- hence popularity of mandatory sentences of imprisonment in many common law countries;
- Perceived or subjective awareness of arrest more important than objective likelihood of punishment;
- Problem of the near-empty courtroom: when courts sentence offenders, public seldom aware;
- Severity can be achieved in different ways – by longer terms of custody; by long suspension of driving privileges

Conditions necessary to achieve (or at least promote) deterrence

- Sentences of sufficient severity: terms of custody and/ or extended licence suspensions;
- Sentences must be certain, either through mandatory sentences or clear guidelines/ guideline judgments;
- Plea-based sentence reductions should be modest – or defendants will assume a guilty plea can avoid custody;
- Regular public awareness campaigns – public education is key;
- Regular or random spot checks on roads to keep **threat** of detection, prosecution and punishment in public mind.

Who is responsible for more serious cases? Profile of offender

- Young males;
- Intoxication more common than mere dangerous driving;
- Previous history of traffic violations – a small group of offenders responsible for high % of offences;
- Offender likely to be uninsured;

Targeting the young potential offenders: detering the newer drivers

- Importance of making young adults aware of the dangers – legal and physical – of drunk, careless or dangerous driving – public education important;
- Deterrence can be achieved through education:
 - Courts in several jurisdictions sometimes impose a community order with a requirement that the offender make public presentations about driving offences.

Principal death-driving offences in England. **Causing death by:**

Careless driving when under the influence of drink or drugs;

- **Driving while unlicensed, disqualified or uninsured;**
- **Careless driving when under the influence of drink or drugs;**
- **Focus here on causing death by:**
 - **careless or inconsiderate driving;**
 - **dangerous driving**

LET'S LOOK AT SOME
GUIDELINES IN ENGLAND

Courts must follow guidelines:

Statutory Duty of a Court: *Coroners and Justice Act 2009*

- “Every court must follow any sentencing guidelines which are relevant to the offender's case....unless the court is satisfied that it would be contrary to the interests of justice to do so.

...

but nothing in this section imposes on the court a separate duty to impose a sentence which is within the *category range*”. (*emphasis added*)

CAUSING DEATH BY CARELESS OR INCONSIDERATE DRIVING

Maximum penalty: 5 years imprisonment

Minimum driving disqualification: 2 years

Step 1 of Guidelines methodology

1. Identify the appropriate starting point

Identify the level or description that most nearly matches the particular facts of the offence for which sentence is being imposed.

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Medium level community order	Low level community order – high level community order
Other cases of careless or inconsiderate driving	36 weeks' custody	High level community order – 2 years' custody
Careless or inconsiderate driving falling not far short of dangerous driving	15 months' custody	36 weeks – 3 years' custody

2. Consider relevant aggravating factors, both general and those specific to the type of the offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

Additional aggravating factors

- 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
- Previous convictions for motoring offences, particularly offences that involve bad driving
- More than one person was killed as a result of the offence
- Serious injury to one or more persons in addition to the death(s)
- Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision

3. Consider mitigating factors and person mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

Additional mitigating factors

- Offender was seriously injured in the collision
- The victim was a close friend or relative
- Actions of the victim or a third party contributed to the commission of the offence
- The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting
- The driving was in response to a proven and genuine emergency falling short of a defence

Proceed through remaining steps of guideline process

- Reduce sentence to reflect assistance to the police/prosecution or guilty plea;
- Consider totality principle if multiple counts;
- Consider any ancillary orders;
- Give reasons and take off any time spent in pre-trial detention.

CAUSING DEATH BY DANGEROUS DRIVING

Maximum penalty: 14 years imprisonment

Minimum driving disqualification: 2 years

2. Identify the appropriate starting point

Identify the level or description that most nearly matches the particular facts of the offence for which sentence is being imposed.

Starting points based on first time offender pleading not guilty

Nature of offence	Starting point	Range
Level 1 The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	8 years' custody	7 – 14 years' custody
Level 2 Driving that created a substantial risk of danger	5 years' custody	4 – 7 years' custody
Level 3 Driving that created a significant risk of danger <i>(Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving)</i>	3 years' custody	2 – 5 years' custody

3. Consider relevant aggravating factors, both general and those specific to the type of the offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

Additional aggravating factors

- Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving
- 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

4. Consider mitigating factors and person mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

Additional mitigating factors

- Alcohol or drugs consumed unwittingly
- 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

Proceed through remaining steps of guideline process

- Reduce sentence to reflect assistance to the police/prosecution or guilty plea;
- Consider totality principle if multiple counts;
- Consider any ancillary orders;
- Give reasons and take off any time spent in pre-trial detention.

CAUSING DEATH BY CARELESS DRIVING WHEN UNDER THE INFLUENCE OF DRINK OR DRUGS OR HAVING FAILED EITHER TO PROVIDE A SPECIMEN FOR ANALYSIS OR TO PERMIT ANALYSIS OF A BLOOD SAMPLE

Maximum penalty: 14 years custody; Minimum driving disqualification: 2 years

Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	Careless/ inconsiderate driving arising from momentary inattention with no aggravating factors	Other cases of careless/ inconsiderate driving	Careless/ inconsiderate driving falling not far short of dangerousness
71µ or above of alcohol/ high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment	Starting point 6 years' custody	Starting point 7 years' custody	Starting point 8 years' custody
	Sentencing range 5 – 10 years' custody	Sentencing range 6 – 12 years' custody	Sentencing range 7 – 14 years' custody
51–70 µg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen	Starting point 4 years' custody	Starting point 5 years' custody	Starting point 6 years' custody
	Sentencing range 3 – 7 years' custody	Sentencing range 4 – 8 years' custody	Sentencing range 5 – 9 years' custody
35–50 µg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	Starting point 18 months' custody	Starting point 3 years' custody	Starting point 4 years' custody
	Sentencing range 26 weeks' – 4 years' custody	Sentencing range 2 – 5 years' custody	Sentencing range 3 – 6 years' custody

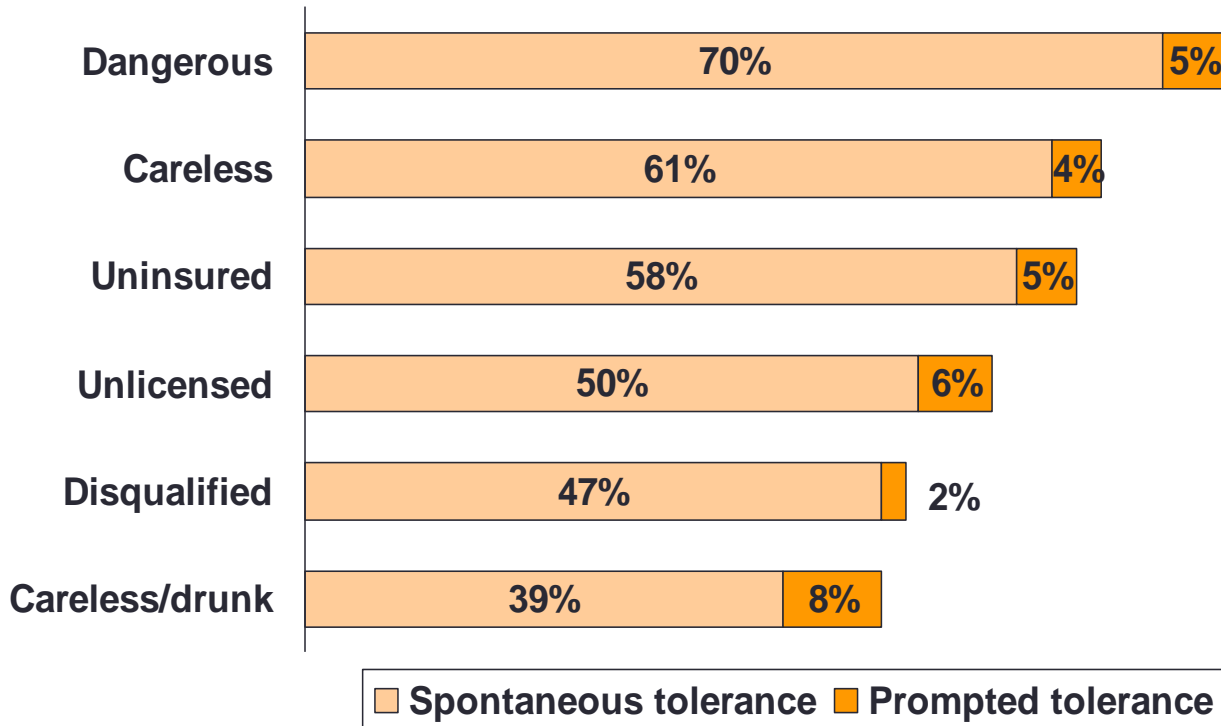
Sentencing Trends in England: Death By Dangerous Driving and Death by Careless Driving

- Almost all offenders sentenced for ‘Death by dangerous driving’ and ‘death by careless driving’ received immediate custody.
- Average Sentence lengths:
- **Death by Dangerous Driving**: 76 months, up from 63 months in 2019
- **Death by Careless Driving**: 13 months, up from 12 months in 2019.

How do these trends sit with the public?

- Research by Sentencing Advisory Panel asked people to sentence specific offenders convicted of culpable driving offences.
- Q: what % of the 'public' sentences fall within the guideline range?
- Results show for most (not all) offences, most people sentence within or near judicial practice.

Tolerance



Base: All who saw each vignette

A recent case from CACD: R. v Gard

- **Death by dangerous driving:** appellant driving a van at 60 mph, child in front seat, texting at time of crash. Victim a cyclist. Late guilty plea; ‘truly exceptional criminal driving record’;
- Judge placed case at level 2 and then raised to level 1 to reflect prior driving offences. 10 years imprisonment, reduced by 1 year for late plea. Disqualified from driving for 10 years post release.
- Appeal dismissed.

Some key points from Gard

- Note the flexibility of the guideline – court was not required to remain within the intermediate level sentence range;
- Note the significant uplift in severity – a whole category – to reflect the offender’s significant record of previous convictions;
- Note how the appeal judgment incorporates the sentencing guideline and makes the decision of the court clearer to all parties.

Benefits of Clear Guidance for trial courts

- Predictability: sentences are more certain;
- Consistency: sentences are fairer;
- In this way, guidance can encourage courts to contribute to the deterrent effectiveness of the law;

Who should issue guidance? Benefits of Guidelines over guidance from apex court

- Guidelines, derived from judiciary (no Council needed), can be rapidly devised and updated (like practice memorandum from LCJ in England and Wales);
- Appellate courts must await an appeal to issue guidance;
- Unlike the Court of Appeal, a Sentencing Council or Judicial Body can draw upon research, external expertise to assist in devising guidance;

Conclusions

- Preventing driving offences causing injury and death requires a coordinated approach— there are clear limits on the ability of the sentencing process to prevent these crimes through deterrent sentences;
- That said, **sentencing has an important role to play**;
 - Sentences should be severe and certain (to deter) and this requires clear guidance and uniform application by courts of first instance;
 - Guidance can come from apex or appellate court; a judicial committee; practice directions from the Chief Justice, or a sentencing guidelines authority (as in England and Wales);
 - Sentences should be well-publicised: some jurisdictions operate media offices located in the judiciary.

Any queries?

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