

Sentencing. Recent Updates – Sentencing Guidelines Council

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Assault

On 20 February 2008 the Sentencing Guidelines Council published its definitive guidelines on “Assault and Other Offences Against the Person”

Why do we need guidelines?

This is what the Sentencing Advisory panel said =

“Assaults and other offences against the person are dealt with by the courts every day and there is a large amount of case law but there are no comprehensive guideline judgments. The Panel’s consultation covers offences that come before the courts in large numbers (such as common assault and actual bodily harm) and those that result in significant custodial sentences (such as attempted murder and wounding with intent to cause grievous bodily harm) and for which consistent sentencing guidelines are needed.”

Common Assault/ Racially Aggravated Common Assault

Maximum Penalty (section 39): 6 months imprisonment

Maximum Penalty (section 29): 2 years imprisonment

Common aggravating factors (1-7 = Higher culpability)

1. Use of a weapon to frighten or harm the victim
2. Offence was planned or sustained

3. Head-butting, kicking, biting or attempted strangulation
4. Offence motivated by, or demonstrating, hostility to the victim on account of his or her sexual orientation or disability
5. Offence motivated by hostility towards a minority group, or a member or members of it
6. Abuse of a position of trust
7. Offence part of a group action
8. Injury
9. Victim is particularly vulnerable or providing a service to the public
10. Additional degradation of the victim
11. Offence committed in the presence of a child
12. Forced entry to the victim's home
13. Offender prevented the victim from seeking or obtaining help
14. Previous violence or threats to same victim

Common Mitigating factors

1. Provocation
2. Single push, shove or blow

The custody threshold normally is passed where two or more aggravating factors indicating higher culpability are present.

The community sentence threshold normally is passed where one aggravating factor indicating higher culpability is present.

Assault where no injury caused can result in a fine.

ABH/ Racially or Religiously Aggravated ABH

If not assessed as dangerous

- Personal mitigation and a guilty plea could result in some cases in a non-custodial sentence for a first time offender.
- If an offence is pre-meditated and a weapon is used it will be sentenced in the highest range.
- Court must always consider a full list of aggravating and mitigating factors, not just those in the guidelines.

Assault occasioning actual bodily harm and Racially/religiously aggravated ABH

Maximum Penalty (section 47): 5 years imprisonment

Maximum Penalty (section 29): 7 years imprisonment

Pre-meditated assault EITHER resulting in injuries just falling short of GBH OR involving the use of a weapon

Starting point = 30 months custody

Range 2 – 4 years custody

Pre-meditated assault resulting in relatively serious injury

Starting point = 12 months custody

Range = 36 weeks – 2 years custody

Pre-meditated assault resulting in minor, non-permanent injury

Starting point = 24 weeks custody

Range = 12 – 36 weeks custody

Other assault resulting in minor, non-permanent injury

Starting point = Community Order (HIGH)

Range = Community Order (MEDIUM)– 26 weeks custody

R v Craig Darren Davis [2008] EWCA Crim 392

From Lawtel = D appealed against an extended sentence of five years comprising a custodial element of two-and-a-half years' imprisonment and an extended period of licence of two-and-a-half years imposed following a conviction for assault occasioning actual bodily harm. At the time of the offence, the victim (V) had been D's partner. The assault had included V being repeatedly squeezed around the throat and punched and on one occasion head-butted and bitten. D had 29 previous convictions and some of those offences involved violence. In particular, D had been sentenced to ten years' imprisonment for robbery involving the use of a firearm. In those circumstances, the judge had been required to consider the question of dangerousness, and he concluded that because of D's convictions the statutory assumption in the Criminal Justice Act 2003 s.229(3) was reasonably to be applied, so that an extended sentence was mandatory. D submitted that the custodial term imposed was too long.

Custodial element reduced from 2 ½ years to 21 months on a guilty plea.

This puts this case at the lower end of the worst category above – the guidelines being for convictions after trial.

For GBH and Wounding go to:

<http://www.sentencing-guidelines.gov.uk/docs/assault-against-the%20person.pdf>

Death by Careless or Dangerous Driving

Death by Dangerous driving

Maximum penalty: 14 years imprisonment

minimum disqualification of 2 years with compulsory extended
re-test

Starting point 8 years, range 7-14 years

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. Such offences are likely to be characterised by:

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

Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an

offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

Starting point 5 years, range 4-7

Level 2 – This is driving that created a substantial risk of danger and is likely to be characterised by:

- Greatly excessive speed, racing or competitive driving against another driver OR
- Gross avoidable distraction such as reading or composing text messages over a period of time OR
- 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 OR
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3

Starting point 3 years, range 2-5

Level 3 – This is driving that created a significant risk of danger and is likely to be characterised by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions
OR
- 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 OR
- A brief but obvious danger arising from a seriously dangerous manoeuvre OR

- Driving whilst avoidably distracted OR
- Failing to have proper regard to vulnerable road users

See case R.v. Richardson and others [2006] EWCA Crim 3186, which pre-dates the new guidance but deals with the increase in maximum sentence from 10 to 14 years. Sentences at all levels of seriousness except those cases where custody is not appropriate will increase.

Mr Justice Forbes

“The relevant starting points identified in Cooksley should be reassessed as follows:

i) No aggravating circumstances – twelve months to two years' imprisonment;

ii) Intermediate culpability - two to four and a half years' imprisonment;

iii) Higher culpability – four and a half to seven years' imprisonment;

iv) Most serious culpability – seven to fourteen years' imprisonment.”

The guidelines above reflect that increase. They also apply and are applied in Richardson to causing death by careless driving whilst unfit which has also increased from a 10 to 14 year maximum.

Causing death by careless or inconsiderate driving

Maximum penalty: 5 years imprisonment

minimum disqualification of 12 months, discretionary re-test

Careless or inconsiderate driving falling not far short of dangerous driving

Starting point = 15 months custody

Range = 36 weeks–3 years custody

Other cases of careless or inconsiderate driving

Starting point = 36 weeks custody

Range = Community order (HIGH)–2 years custody

Careless or inconsiderate driving arising from momentary inattention with no aggravating factors

Starting point = Community order (MEDIUM)

Range = Community order (LOW)–Community order (HIGH)

Additional aggravating factors

1. 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
2. Previous convictions for motoring offences, particularly offences that involve bad driving
3. More than one person was killed as a result of the offence
4. Serious injury to one or more persons in addition to the death(s)
5. Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision

Additional mitigating factors

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