

Driving causing injury or death

Offences and maximum penalties

Aggravated careless use of vehicle causing injury or death	Land Transport Act 1998, s 39	3 years imprisonment or \$10,000 fine
Driving under the influence (alcohol or drugs) causing injury or death	Land Transport Act 1998, s 62	3 years imprisonment or \$10,000 fine
Reckless driving causing injury or death	Land Transport Act 1998, s 36(1)(a)	5 years imprisonment or \$20,000 fine (Land Transport Act 1998, s 36(2))
Dangerous driving causing injury or death	Land Transport Act 1998, s 36(1)(b)	5 years imprisonment or \$20,000 fine (Land Transport Act 1998, s 36(2))
Unauthorised street or drag racing, or related activities, causing injury or death	Land Transport Act 1998, s 36A(2)	5 years imprisonment or \$20,000 fine (Land Transport Act 1998, ss 36A(3), 36(2))
Drink driving causing injury or death	Land Transport Act 1998, s 61	5 years imprisonment or \$20,000 fine
Manslaughter by driving	Crimes Act 1961, s 171	Life imprisonment (Crimes Act 1961, s 177)

Related orders

See the supplementary material on [Sentencing powers](#) for a summary of mandatory and discretionary orders relating to driving offences.

Preventive detention

Manslaughter ([Crimes Act 1961, s 171](#)) is a qualifying offence for preventive detention ([Sentencing Act 2002, s 87](#)). A sentence of preventive detention is a departure from this guideline.

Exclusion from the guideline

Manslaughter other than by driving (Crimes Act 1961, ss [167](#), [168](#), [171](#)): See, where appropriate, the offence-based guidelines on [Assault](#) and [Child neglect](#).

Imprisonment threshold

Whether the imprisonment threshold is crossed depends on an assessment of the presence and intensity of band choice and band placement factors. No additional policy guidance can be given.

Summary of key factors

Band choice factors

1. Driving culpability, as indicated by:
 - (a) Dangerousness and recklessness
 - (b) Driving under the influence of alcohol or drugs
 - (c) Speed
 - (d) Driving while physically or mentally impaired
 - (e) Knowingly driving an unsafe vehicle
 - (f) Driving while forbidden to drive
 - (g) Driving while avoidably distracted
2. Criminal history (imprisonable traffic offending)

Band placement factors

Factors 1–2 above, and:

3. Physical injury
4. Number of victims
5. Victim impact (other than physical injury)
6. Risk to other road users
7. Victim's involvement in offending
8. Contributory negligence
9. Impact on offender

Band choice factors: The presence or absence of these factors, and their relative intensity, determines the sentencing band (see the [Sentencing methodology](#), sentencing bands table and key factors narrative).

Band placement factors: The presence or absence of these factors, and their relative intensity, influences the starting point and final sentence within the appropriate band (see the [Sentencing methodology](#) and key factors narrative).

All aggravating and mitigating factors influence band placement, whether or not they are listed in this guideline (see the generic guidelines on [Aggravating factors](#) and [Mitigating factors](#)).

Sentencing bands

1

Low driving culpability

AND

An offender whose criminal history includes no relevant convictions for imprisonable traffic offences

Sentence levels before recognition of plea:

- *If resulting in minor or moderate injury* – from **a fine** up to **community detention and/or intensive supervision**
- *If resulting in serious injury* – from **community workand/or supervision** up to **home detention**
- *If resulting in fatal injury* – from **community detention and/or intensive supervision** up to **12 months imprisonment**

AND disqualification from the statutory minimum period up to 6 months longer than the statutory minimum period

Sentencing bands

<p style="font-size: 2em; font-weight: bold; color: #0070C0;">2</p>	<p>EITHER:</p> <p>(a) Low-level driving culpability AND an offender whose criminal history excludes him or her from band 1</p> <p>OR</p> <p>(b) Moderate driving culpability</p>	<p>Sentence levels before recognition of plea:</p> <ul style="list-style-type: none"> ■ <i>If resulting in minor or moderate injury</i> – from community workland/or supervision up to home detention ■ <i>If resulting in serious injury</i> – from home detention up to 18months imprisonment ■ <i>If resulting in fatal injury</i> – from home detention up to 2 years imprisonment <p>AND disqualification from the statutory minimum period up to 12 months longer than the statutory minimum period</p>
<p style="font-size: 2em; font-weight: bold; color: #0070C0;">3</p>	<p>High driving culpability</p>	<p>Sentence levels before recognition of plea:</p> <ul style="list-style-type: none"> ■ <i>If resulting in minor or moderate injury</i> – from community detention and/or intensive supervision up to 18months imprisonment ■ <i>If resulting in serious injury</i> – from 18months imprisonment up to 2½years imprisonment ■ <i>If resulting in fatal injury</i> – from 2 years imprisonment up to 3½years imprisonment <p>AND disqualification from the statutory minimum period up to 2 years longer than the statutory minimum period</p>
<p style="font-size: 2em; font-weight: bold; color: #0070C0;">4</p>	<p>Very high driving culpability</p>	<p>Sentence levels before recognition of plea:</p> <ul style="list-style-type: none"> ■ <i>If resulting in minor or moderate injury</i> – from home detention up to 2½years imprisonment ■ <i>If resulting in serious injury</i> – from 2½years imprisonment up to 4years imprisonment ■ <i>If resulting in fatal injury</i> – from 3½years imprisonment up to 7years imprisonment <p>AND disqualification from the statutory minimum period up to 5 years longer than the statutory minimum period</p>

■ CONSIDER THIS IDEAS:

Band choice requires an overall assessment of driving culpability with regard to the indicators of driving culpability listed and described in the narrative to factor 1. The table showing “typical combinations” of the indicators for each level of driving culpability is only a guide, because the relative intensity of the indicators is also important. A particular level of driving culpability may be found even if the driving culpability indicators are present in different numbers or at different intensities than are described in the narrative to factor 1.

Key factors

1. Driving culpability

There are four degrees of driving culpability: low, moderate, high and very high. The level of culpability is to be assessed by reference to all the aggravating factors that are defined and described at (a)–(g) below. The table below indicates how the combination of factors in a particular case may be used to assess culpability. The examples in the table are illustrative only, and do not replace the need for an overall assessment of culpability with reference to factors (a)–(g).

Typical combinations of culpability indicators

Low culpability

One or two aggravating factors present, of low seriousness or of short duration

For example:

- Attempting a single poorly-judged overtaking manoeuvre
- Looking momentarily away from the road to read a text message while driving at speed
- Driving with breath or blood alcohol just in excess of the adult limit

Moderate culpability

One or two aggravating factors present, of moderate seriousness or of more than short duration, OR more than two aggravating factors present, all of low seriousness

For example:

- Driving with breath or blood alcohol at one-and-a-half times the adult limit, but with no other aggravating factors present
- Driving at excess speed while scrutinising a map
- Driving erratically or at speed in a poorly maintained or badly loaded vehicle, if the condition of the vehicle contributed to the accident underlying the offending

High culpability

Several aggravating factors present, of moderate to high seriousness

For example:

- Driving with breath or blood alcohol between one-and-a-half and two times the adult limit, while disqualified from driving
- Engaging in racing or competitive driving at high speed and over a considerable distance, with the occasional overtaking
- Driving dangerously (including on the wrong side of the road and overtaking) for half-an-hour to escape police pursuit

Very high culpability

Driving that created a high risk of a serious collision – for example, if there was one serious aggravating factor of very high intensity OR a prolonged, persistent, and deliberate course of very bad driving

For example:

- Driving while grossly impaired by alcohol or drugs, or with grossly excessive speed or aggression
- Prolonged racing or competitive driving on a highway, involving high speed and excess breath or blood alcohol
- Driving dangerously over several kilometres and through areas of high pedestrian traffic to escape police pursuit (including evading roadblocks)

(a) Dangerousness and recklessness

Seriousness increases with the objective dangerousness or recklessness of the offender's driving. Aggravating factors in this category include:

- (i) Driving aggressively;
- (ii) Driving to escape police pursuit;
- (iii) Racing, competitive driving, or exhibitionism on a public road;
- (iv) Driving on the wrong part of the road;
- (v) Ignoring the warnings of passengers to stop or slow down; and
- (vi) Inappropriate overtaking, or cutting in after overtaking.

(b) Driving under the influence of alcohol or drugs

Seriousness increases as an offender's level of alcohol or drug-related intoxication increases, because this corresponds with decreasing response times and deteriorating driving performance and behaviour.

An offender's breath or blood alcohol level at the time of a motor accident may not be able to be accurately determined until some time after the event, if at all. (Failing to provide a specimen is an aggravating factor.) However, if a measure of breath or blood alcohol is available, seriousness may be assumed to increase with the extent to which the breath or blood alcohol exceeded the legal limits of 400 micrograms per litre of breath or 80 milligrams per 100 millilitres of blood.

If the intoxication was due to drugs rather than alcohol, or if a breath or blood alcohol reading is not available, an objective assessment of the degree of intoxication is required.

If impairment was due to legally purchased or prescribed drugs, seriousness only increases if the offender knew or ought to have known that the

driving impairment was a likely side effect (see also factor 1(d)(ii)).

If impairment was due to alcohol or drugs consumed unwittingly, seriousness only increases if the offender decided to drive or continued to drive knowing that his or her driving ability was impaired.

(c) Speed

Seriousness increases with the extent to which an offender was exceeding the legal or advisory speed limit, and also with the extent to which his or her speed was inappropriate for the prevailing road or weather conditions.

Driving at a grossly excessive speed is a very serious aggravating factor.

(d) Driving while physically or mentally impaired

The extent to which the driver's physical and mental condition impaired driving, and therefore aggravates the offending, varies. However, examples of aggravating factors in this category include:

- (i) Driving while deprived of adequate sleep or rest;
- (ii) Driving after taking prescription medicines that impaired driving ability (see also factor 1(b));
- (iii) Driving after failing to take prescription medicines, if that failure impaired driving ability; and
- (iv) Driving while injured to a degree that impeded proper control of the vehicle, for example driving with an arm in plaster.

(e) Knowingly driving an unsafe vehicle

Seriousness increases if the offender was driving an unsafe vehicle, and the condition of the vehicle caused or increased the seriousness of the accident that constituted the offending. Examples of aggravating factors in this category include:

- (i) Driving a car with defects such as bald tyres or defective brakes;
- (ii) Driving a car to which illegal modifications had been made; and
- (iii) Driving a dangerously loaded vehicle.

(f) Driving while forbidden to drive

Seriousness increases if the offender was not entitled to be driving at the time of the offending. Examples of aggravating factors in this category include:

- (i) Driving while disqualified, forbidden to drive, or on a revoked or suspended licence; and
- (ii) Driving without a licence or in breach of licence terms or conditions.

(g) Driving while avoidably distracted

The significance of avoidable distractions varies greatly according to their nature, duration, and how they relate to other elements of driving culpability. Examples of aggravating factors in this category include:

- (i) Using a mobile phone or other electronic device;
- (ii) Adjusting a sound system, for example by changing a CD or tuning the radio;
- (iii) Consulting a map or reading;
- (iv) Shaving or applying make-up;
- (v) Interacting with passengers;
- (vi) Eating or drinking; and
- (vii) Picking up items from the floor of the car.

2. Criminal history (imprisonable traffic offending)

An offender's criminal history for imprisonable traffic offences is a band choice factor for band 1 and band 2. Offenders with low driving culpability must be sentenced in band 1 if they have no relevant convictions for imprisonable traffic offences, and in band 2 in other cases.

To distinguish between band 1 and band 2, a relevant conviction is generally one within 10 years of the current offending. However, for previous convictions close to the boundary of the 10-year period, the seriousness of the prior offending is also relevant. For example, a conviction nine years prior to the current offending is not relevant if it relates to an incident of disqualified driving that had no further consequences. Conversely, a conviction that is 11 years prior to the current offending is relevant, and excludes an offender from sentencing in band 1, if it relates to an incident of drunk or reckless driving causing injury.

Any convictions for imprisonable traffic offending that are not relevant to band choice affect band placement.

3. Physical injury

Within each sentencing band, the primary band placement factor is the seriousness of injury to the victim or victims. An assessment of this factor indicates the sentence range to which other band placement factors apply and influences placement within that range.

Indicators of physical injury are provided in the table on the following page. These indicators are not intended to be definitive or exhaustive.

Indicators of physical injury

Minor injury

Injuries that would have warranted no or minor medical intervention (such as bruises, grazes, welts, or cuts that required no more than minor suturing)

Moderate injury

Injuries that would have warranted more than minor medical intervention, or that could have required hospitalisation for a very short period (for example, an overnight stay)

Serious injury

Injuries that:

- Would have warranted extensive medical intervention, including hospitalisation or lengthy periods of treatment; and/or
- Resulted in significant or long-term disability, or were life-threatening

There are no particular injuries that can always be categorised as minor, moderate, or serious. The injury in each case must be assessed against the level of medical intervention that the injury would have objectively warranted, not the level of medical intervention that was actually received.

4 Number of victims

If there is more than one victim of the offending and the assessed level of injury caused to each victim is different, the most serious injury determines the initial sentence range. The injury caused to other victims warrants a higher placement within that range according to the level of injury caused.

5 Victim impact (other than physical injury)

Any impact on the victim other than physical injury increases seriousness and affects band placement.

Non-physical impacts include psychological or emotional harm, and may extend to consequences of the physical injury beyond the injury itself. These consequences may include, for example, the victim being unable to work in his or her chosen career due to the injuries received, or the victim becoming dependent on caregivers.

The impact on those associated with the victim must also be considered (particularly in cases of fatal injury), as well as the impact on those who were present when an accident took place.

6 Risk to other road users

Seriousness increases with the risk that the offender's driving posed to other road users. An

assessment of this factor may take account of the road and weather conditions, the level of traffic, and whether the driving occurred in places frequented by pedestrians, such as near pedestrian crossings, rest homes, hospitals, or schools.

7 Victim's involvement in offending

Seriousness decreases if victims were parties to the offending. Examples of parties to this kind of offending are those who encouraged or incited the offender's culpable driving, either as passengers in the offender's car or people in another car that was racing or driving dangerously in tandem with the offender's car. However, seriousness increases if the offender ignored the warnings of passengers, whether or not those passengers had previously been encouraging the offender.

8 Contributory negligence

If someone other than the offender contributed to the cause of the accident, this may be a mitigating factor even though the offender's driving was culpable.

9 Impact on offender

If an accident had a serious impact on the offender as well as on victims, a merciful approach to sentencing may be justified. For example, the fact that an offender's driving caused the death of a close friend or family member may permit a more merciful approach if it caused the offender substantial grief and trauma that is likely to have an ongoing effect on his or her life. Likewise, the fact that an offender seriously injured him or herself as a result of the offence may permit a more merciful approach if the injuries mean that the otherwise appropriate sentence would have a disproportionately severe impact on the offender or the offender's family. If the offender's injuries are disabling and extreme, such that the sentence under the guideline would have an exceptional impact on the offender, this may justify a downwards departure from this guideline (see ground (g) of the generic guideline on [Departure from the guidelines](#)).

Departure from the guideline

For grounds of departure upwards or downwards from any band (including prescribed periods of disqualification), see the generic guideline on [Departure from the guidelines](#).

A departure downwards from band 1 may be justified for offenders who have themselves suffered injuries that are disabling and extreme, such that the sentence under the guideline would have an exceptional impact on the offender (see ground (g) of the generic guideline on [Departure from the guidelines](#)).