

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

23 September 2022
SC(22)SEP06 – Aggravated vehicle taking
Rebecca Crane
Zeinab Shaikh
zeinab.shaikh@sentencingcouncil.gov.uk

1 ISSUE

1.1 Following discussions on the aggravated vehicle taking guidelines in May and July, the Council is invited to consider further revisions to step one factors for the offence of causing vehicle/property damage. The Council is also asked to consider how information on ancillary orders can be presented across all aggravated vehicle taking guidelines. Further discussions will be scheduled once the consultation on revisions to the motoring guidelines closes.

2 RECOMMENDATIONS

2.1 That the Council:

- Agrees revisions to the harm factors and sentencing table for aggravated vehicle taking causing vehicle/property damage;
- Approves the wording of guidance on disqualifications across the aggravated vehicle taking guidelines;
- Agrees to include a signpost in the guidelines reminding sentencers of their discretionary power to order extended driving tests.

3 CONSIDERATION

Background

3.1 There are currently two guidelines for aggravated vehicle taking offences and these have been in place since 2008. The first guideline covers [vehicle/property damage](#), while the other combines [injury and dangerous driving](#). With the exception of vehicle/property damage of under £5,000, which is a summary only offence, aggravated vehicle taking offences are triable either way. Following a larger piece of work to revise guidelines for motoring offences, the Council also agreed to update the guidelines for aggravated vehicle taking.

3.2 In May, the Council agreed to split aggravated vehicle taking offences into four separate guidelines:

- Causing vehicle or property damage
- Causing injury
- Causing death

- Involving dangerous driving

3.3 Given the overlap with the revised motoring guidelines that are currently out for consultation (due to close in late September), the Council agreed to await the outcome of that consultation before considering the timing of the consultation on aggravated vehicle taking. The Council also provisionally agreed to step one and two factors (at Annex A) across the four guidelines, with the aim of reconsidering these in the round at a later date.

Causing vehicle/property damage

3.4 There are two variations of the offence of causing vehicle/property damage. Lower value damage (of up to and including £5,000) is a summary only offence, with a statutory maximum of six months’ custody, while higher value damage (of over £5,000) is triable either way and has a statutory maximum of two years’ custody.

3.5 The Council previously agreed to combine both variations of this offence into a single guideline, for simplicity and in recognition of magistrates’ increased sentencing powers. It was agreed that lower value damage would be limited to harm category 3, while the high value variation would be split across the other harm categories.

3.6 While the Council has provisionally agreed to step one factors for this offence, a revision to the harm table is suggested for clarity. Currently, the proposed table reads as follows:

Harm	Factors
Category 1	<ul style="list-style-type: none"> • High value damage
Category 2	<ul style="list-style-type: none"> • Cases that fall between categories 1 or 3 because: <ul style="list-style-type: none"> ○ Factors are present in categories 1 and 3 which balance each other out, and/or, ○ The harm caused falls between the factors as described in categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Total damage caused no more than £5,000

3.7 While harm category 2 is intended to be a catch all, we recommend removing the first sub-bullet point (“Factors are present in categories 1 and 3 which balance each other out, and/or”) as the harm factors in categories 1 and 3, being based on the value of the damage caused, cannot cancel each other out. This would leave a single factor in category 2, which we suggest simplifying to “Value of damage falls between categories 1 and 3”.

Question 1: Do you agree to the suggested change to the category 2 factors in the harm table?

3.8 The provisional wording for harm category 1 (“high value damage”) was agreed by Council as it mirrors factors used in the criminal damage guidelines. However, there is a risk that this may result in some sentence inflation due to the broad wording used, particularly if sentencers interpret this widely. In 2020, 165 adults were sentenced for causing damage of over £5,000, with 27 per cent sentenced to immediate custody and an estimated pre-guilty plea average custodial sentence length (ACSL) of 13.1 months (mean).¹ By contrast, 42 per cent received a community order (full data from 2020 is included at Annex B). If the majority of offenders sentenced for this offence were to be placed in harm category 1 under the draft guideline, the proportion of offenders receiving custodial sentences may rise, with an increase to the average custodial sentence.

3.9 An alternative approach may be to provide examples of the kinds of damage that would fall under harm category 1, to make clear that this category is intended to cover extreme damage, such as crashing into a building and causing extensive structural damage or causing a heavy goods vehicle to be written off. This brings its own issues, however, and could warn sentencers away from using this top category of harm as the examples provided cannot be exhaustive. Similar issues arise if we try to provide an approximate figure for the value of the damage caused at the upper end of the harm table, and this is made more challenging as court transcripts often do not refer to the overall value of the damage caused. On balance, it is recommended that the proposed wording in high harm, of “high value damage”, is retained, and explicitly testing the impact of this as part of road testing exercises during consultation.

Question 2: Do you agree to retain the proposed wording in harm category 1 and to test the impact of this in road testing exercises?

3.10 In July, the Council provided a steer to lower starting points and ranges for cases of category 2 and 3 harm in the sentencing table for vehicle/property damage, citing that rising costs would mean more cases would be categorised as causing damage of over £5,000. We have therefore looked at the table again and have reduced sentence levels accordingly, lowering the bottom of the offence range to a band B fine:

<i>Rubric: Where the total damage caused is valued at no more than £5,000, the offence is summary only with a statutory maximum penalty of six months’ custody. This is reflected in the starting points and ranges for harm category 3 in the sentencing table below.</i>			
Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year’s custody	Starting point: 18 weeks’ custody	Starting point: High level community order
	Category range:	Category range:	

¹ The ACSL, post-guilty plea, was 9.5 months (mean).

	18 weeks' custody – 2 years' custody	High level community order – 1 year's custody	Category range: Medium level community order – 12 weeks' custody
Harm category 2	Starting point: 12 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Medium level community order – 12 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order
Harm category 3	Starting point: High level community order Category range: Medium level community order – 18 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order	Starting point: Low level community order Category range: Band B fine – Medium level community order

3.11 We have departed, at times, from the diagonal approach to setting starting points and category ranges. This can be justified as the table is aiming to cover two variations of the same offence and intended to cover a wide range of cases. Low culpability, for example, may include cases where a hire car is driven for a day longer than agreed, while high culpability may include cases of egregious driving or a police chase.

3.12 In line with the Council's previous steers, the starting points and ranges for harm category 3 are largely non-custodial (with the exception of box 3A, where the top of the range is 18 weeks' custody), to allow for gradation up to category 2. In 2020, 29 per cent of offenders charged with lower value damage received a custodial sentence (13 per cent received a suspended sentence and 16 per cent were sentenced to immediate custody). For those sentenced to immediate custody, the estimated pre-guilty plea ACSL was 4.0 months (mean).² There is a risk, therefore, that these changes may lead to a change in sentence outcome for this offence, with up to around a third of offenders receiving a community order where they would have previously received a custodial sentence. The rest of the table is not likely to have a significant impact on sentencing practice for cases involving damage of over £5,000.

3.13 In the July meeting, some Council members queried the potential impact of lower starting points for harm categories 2 and 3, given that data on sentencing outcomes is that after any guilty plea reductions have been applied. We have used the Crown Court Sentencing Survey (CCSS) to analyse the limited data available for aggravated vehicle

² The ACSL, post-guilty plea, was 3.0 months (mean).

taking offences³ and did not find any evidence to suggest that sentencers drop a threshold, from a custodial to community sentence, due to the presence of a guilty plea.⁴

Question 3: Are you content to approve changes to the sentencing table for vehicle/property damage, with the ensuing impact on sentencing practice for cases of lower value damage?

Disqualifications

3.14 We have generally sought to align the aggravated vehicle taking guidelines with the revised guidelines on motoring offences, particularly as these offences share many similarities in terms of harm and culpability.

3.15 The revised motoring guidelines provide guidance on how to calculate periods of disqualification from driving, tailored to each offence. This is set out in a drop-down box within the section on ancillary orders. The guidance includes a step-by-step guide to working out any interactions with custodial periods for different offences.

3.16 Given the overlap between these offences, we recommend mirroring the approach to disqualification guidance taken in the motoring guidelines, tailored to aggravated vehicle taking offences as necessary. As with the motoring guidelines, it seems most appropriate to include these as a dropdown at the ancillary orders step of the guidelines. Suggested wording for this guidance is included at Annex C.

Question 4: Do you agree to mirror the wording used in the motoring guidelines on guidance for calculating disqualifications?

Extended driving tests

3.17 While dangerous driving offences require sentencers to order disqualification from driving until an extended test is passed, aggravated vehicle taking offences do not require this. Sentencers do, however, have discretion to order an extended test, as set out in s.36 of the Road Traffic Offenders Act 1988. Operational colleagues have flagged that there may be a benefit in reminding sentencers of this discretionary power, particularly for aggravated vehicle taking causing dangerous driving, as there is a perception that this is not used as often or as consistently as it could be.

3.18 Research commissioned in 2017 by the Department for Transport (extract included at Annex D) found similar inconsistencies, reporting low levels of awareness among sentencers of their discretionary powers. There was also a perception, particularly among magistrates,

³ The data analysed covered the period January – December 2014, as this is the last full year of CCSS data available.

⁴ It should be noted that this finding is based on Crown Court data only, and so may not be indicative of sentencing in magistrates' courts.

that extended tests were rarely ordered in the courts. Despite this, the research found that just over a third of all discretionary driving tests ordered between 2011-2015 were related to aggravated vehicle taking offences.

3.19 Transcripts from the Crown Court for aggravated vehicle taking offences seem to show that sentencers are exercising this discretion at times, with 18 of the 50 cases involving an extended driving test. Of the different offences, cases of lower value vehicle/property damage were most likely to attract an extended retest, though it is difficult to draw firm conclusions as they are likely to be the more extreme cases of lower value damage by virtue of being sent to the Crown Court. We do not know how often magistrates are likely to use this discretionary power.

3.20 As such, there may be value in including a reminder to sentencers of their discretionary power at the ancillary orders step of the aggravated vehicle taking guidelines. If the Council is minded to take this approach, we would suggest wording based on the [explanatory materials for road traffic offences on the Sentencing Council's website](#):

For aggravated vehicle taking offences, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time).

3.21 This approach would add more information to the guidelines overall, and would be placed at a step of the guideline that perhaps does not draw as much attention as earlier steps. However, there may be a benefit in explicitly reiterating sentencers' discretionary powers in this regard, to prevent confusion or inconsistency.

Question 5: Do you agree to adding a reminder on sentencers' discretionary powers across the guidelines?

4 IMPACT AND RISKS

4.1 As discussed earlier in this paper, lowering starting points and category ranges for the offence of vehicle/property damage under £5,000 is likely to have an impact on sentencing practice, potentially lowering sentences for the 29 per cent of offenders that would have previously received a custodial sentence. There is also a risk that cases of vehicle/property damage of over £5,000 may attract a higher sentence than previously, based on the wording of the harm table for this offence. These are both points we can set out to examine as part of road testing exercises with judges and magistrates during the public consultation on the guidelines.

4.2 Once draft guidelines for aggravated vehicle taking have been finalised, a resource assessment will also be drafted and circulated to the Council for sign off.

Blank page

Annex A: Draft aggravated vehicle taking guidelines (as of September 2022)

Vehicle/property damage

(Including harm factors and sentencing table as taken to Council for agreement in the September meeting)

Harm	Factors
Category 1	<ul style="list-style-type: none"> High value damage
Category 2	<ul style="list-style-type: none"> Value of damage falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> Total damage caused no more than £5,000

Culpability	Factors
High	<ul style="list-style-type: none"> Vehicle or property deliberately destroyed Intention to cause serious damage Under influence of alcohol/drugs Significant planning Police pursuit Leading role in group offending
Medium	<ul style="list-style-type: none"> Cases that fall between categories A or C because: <ul style="list-style-type: none"> Factors are present in A and C which balance each other out, and/or, The offender's culpability falls between the factors as described in A and C
Lower	<ul style="list-style-type: none"> Vehicle not driven in unsafe manner Minor role in group offending Exceeding authorised use of e.g. employer's or relative's vehicle Retention of hire car for short period beyond return date

Rubric: Where the total damage caused is valued at no more than £5,000, this will be a summary-only offence with a statutory maximum penalty of six months' custody. This is reflected in the starting points and ranges for category 3 harm in the sentencing table below.

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year's custody Category range: 18 weeks' custody – 2 years' custody	Starting point: 18 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Medium level community order – 12 weeks' custody

Harm category 2	Starting point: 12 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Medium level community order – 12 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order
Harm category 3	Starting point: High level community order Category range: Medium level community order – 18 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order	Starting point: Low level community order Category range: Band B fine – Medium level community order

Statutory aggravating factors
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Offence committed on bail
Other aggravating factors
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken and/or damaged vehicle was an emergency vehicle • Taken and/or damaged vehicle belongs to a vulnerable person • Disregarding warnings of others • Damage caused in moving traffic accident • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • Blame wrongly placed on others • Failed to stop and/or assist, or seek assistance at the scene • Passengers, including children • Offence committed on licence or while subject to court order(s)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or damage • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • Serious medical condition requiring urgent, intensive or long-term treatment • Age and/or lack of maturity • Mental disorder or learning disability • Sole or primary carer for dependent relatives

Injury

Harm	Factors
Category 1	<ul style="list-style-type: none"> • Grave and/or life-threatening injury caused • Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment • Offence results in a permanent, irreversible injury or condition
Category 2	<ul style="list-style-type: none"> • Other cases of serious harm
Category 3	<ul style="list-style-type: none"> • All other cases

Culpability	Factors
High	<ul style="list-style-type: none"> • Risk of serious injury caused to persons • Under influence of alcohol/drugs • Significant planning • Police pursuit • Leading role in group offending
Medium	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ Factors are present in A and C which balance each other out, and/or, ◦ The offender's culpability falls between the factors as described in A and C
Lower	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	<p>Starting Point: 1 year 6 months' custody</p> <p>Category range: 1 - 2 years' custody</p>	<p>Starting Point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting Point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>
Harm category 2	<p>Starting Point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting Point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>	<p>Starting Point: High level community order</p> <p>Category range: Medium level community order – 26 weeks' custody</p>
Harm category 3	<p>Starting Point: 26 weeks' custody</p>	<p>Starting Point: High level community order</p>	<p>Starting Point: Medium level community order</p>

	Category range: High level community order – 1 year’s custody	Category range: Medium level community order – 26 weeks’ custody	Category range: Low level community order – High level community order
--	--	---	---

Statutory aggravating factors
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Offence committed on bail
Other aggravating factors
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Multiple victims involved (see step 6 on totality when sentencing more than one offence) • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • Blame wrongly placed on others • Failed to stop and/or assist, or seek assistance at the scene • Passengers, including children • Offence committed on licence or while subject to court order(s)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or injury • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • Victim was a close friend or relative • Serious medical condition requiring urgent, intensive or long-term treatment • Age and/or lack of maturity • Mental disorder or learning disability • Sole or primary carer for dependent relatives

Death

Harm
For all cases of aggravated vehicle taking causing death, the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

Culpability	Factors
High	<ul style="list-style-type: none"> • Risk of serious injury caused to persons • Under influence of alcohol/drugs • Significant planning • Police pursuit • Leading role in group offending
Medium	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ Factors are present in A and C which balance each other out, and/or, ◦ The offender's culpability falls between the factors as described in A and C
Lower	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Rubric: Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Culpability	Starting point	Range
High	10 years	7 – 12 years
Medium	5 years	3 – 8 years
Lower	3 years	2 – 4 years

Statutory aggravating factors
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Offence committed on bail
Other aggravating factors
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc

- Other driving offences committed at the same time (see step 6 on totality)
- Blame wrongly placed on others
- Failed to stop and/or assist, or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s)

Mitigating factors

- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- No previous convictions or no relevant/recent convictions
- Remorse
- Victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Dangerous driving

HARM	
Category 1	<ul style="list-style-type: none"> • Offence results in injury to others • Circumstances of offence created a high risk of serious harm to others • Damage caused to vehicles or property
Category 2	<ul style="list-style-type: none"> • All other cases

CULPABILITY	
High	<ul style="list-style-type: none"> • Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others. • Prolonged, persistent and deliberate course of dangerous driving • Consumption of substantial amounts of alcohol or drugs leading to gross impairment • Offence committed in course of police pursuit • Racing or competitive driving against another vehicle • Disregarding warnings of others • Lack of attention to driving for a substantial period of time • Speed greatly in excess of speed limit • Leading role in group offending
Medium	<ul style="list-style-type: none"> • Brief but obviously highly dangerous manoeuvre • Engaging in a brief but avoidable distraction • Driving knowing that the vehicle has a dangerous defect or is dangerously loaded • Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive • Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs • Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills • Driving when knowingly deprived of adequate sleep or rest • The offender's culpability falls between the factors as described in high and lower culpability
Lower	<ul style="list-style-type: none"> • Standard of driving was just over threshold for dangerous driving • Momentary lapse of concentration • Minor role in group offending

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year 6 months' custody Category range: 1 – 2 years' custody	Starting point: 1 year's custody Category range: 26 weeks' – 1 year 6 months' custody	Starting point: 26 weeks' custody Category range: High level community order – 1 year's custody
Harm category 2	Starting point: 1 year's custody Category range: 26 weeks' – 1 year 6 months' custody	Starting point: 26 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Low level community order – 26 weeks' custody

Statutory aggravating factors
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Offence committed on bail
Other aggravating factors
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • Blame wrongly placed on others • Failed to stop and/or assist, or seek assistance at the scene • Passengers, including children • Offence committed on licence or while subject to court order(s)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or injury • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • Victim was a close friend or relative • Serious medical condition requiring urgent, intensive or long-term treatment • Age and/or lack of maturity • Mental disorder or learning disability • Sole or primary carer for dependent relatives

Annex B: Aggravated vehicle taking causing vehicle/property damage data – 2020¹

Sentencing outcomes

Offence	Outcome	Volume	Proportion
Damage under £5,000	Absolute and conditional discharge	9	3%
	Fine	25	7%
	Community sentence	212	60%
	Suspended sentence	46	13%
	Immediate custody	57	16%
	Otherwise dealt with ²	7	2%
Damage over £5,000	Absolute and conditional discharge	1	1%
	Fine	5	3%
	Community sentence	69	42%
	Suspended sentence	40	24%
	Immediate custody	45	27%
	Otherwise dealt with ²	5	3%

Source: Court Proceedings Database, Ministry of Justice

Immediate custody sentence distribution

Offence	Sentence band³	Estimated pre-guilty plea proportion	Post-guilty plea proportion
Damage under £5,000	0-1 month	4%	4%
	1-2 months	11%	28%
	2-3 months	21%	25%
	3-4 months	11%	32%
	4-5 months	26%	7%
	5-6 months	19%	5%
	Greater than 6 months ⁴	9%	-
Damage over £5,000	0-6 months	13%	29%
	6-12 months	31%	53%
	12-18 months	44%	18%
	18-24 months	7%	0%
	Greater than 2 years ⁴	4%	-

Source: Court Proceedings Database, Ministry of Justice, adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the pre-guilty plea sentence length

¹ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

² The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

³ Sentence length intervals do not include the lower bound but do include the upper bound sentence length. For example, the category '0-6 months' includes sentence lengths less than or equal to 6 months, and '6 to 12 months' includes sentence lengths over 6 months, and up to and including 12 months.

⁴ While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

Average custodial sentence length (ACSL)

Offence		Pre-guilty plea estimated ACSL (months)	Post-guilty plea ACSL (months)
Damage under £5,000	Mean	4.0	3.0
	Median	4.1	2.8
Damage over £5,000	Mean	13.1	9.5
	Median	13.3	10.0

Source: Court Proceedings Database, Ministry of Justice, adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the pre-guilty plea sentence length

Annex C: Draft wording for guidance on disqualifications

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below), the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.

B Minimum disqualification period

The minimum disqualification period for this offence is **12 months**.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification (s.26 of the Road Traffic Offenders Act 1988 (RTOA));
- disqualification where vehicle used for the purpose of crime (s.164 of the Sentencing Code);
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle (ss. 12, 25 or 178 RTOA) or an attempt to commit such an offence).

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

The fact that the offender did not drive the vehicle in question at any particular time, or at all, must not be regarded as a special reason

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988. where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for an immediate standard determinate sentence (except where release is at the two thirds point – see below); no extension period should be imposed where a sentence is suspended.

- **two thirds** of the custodial term for an extended sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at [section 166 of the Sentencing Code](#) provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period - different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified. In this instance, under section 35B of the Road Traffic Offenders Act 1988 it should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence"

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

The interventions with the strongest evidence-base include ignition interlock devices, which test breath alcohol before driving have been found to be effective at deterring drink drive reoffending whilst installed. However, some studies such as the Cochrane review by Willis et al. (2009) suggest that the safety effects are limited and disappear once the devices are removed.

Other interventions, such as education-only, behavioural interventions and combined approaches (usually employing education, skills-based training and other behavioural elements) have also been evaluated, though the literature suffers from a number of methodological flaws, including a lack of control groups, non-randomised allocation to intervention groups, and other sampling caveats.

Moreover, meta-analytical studies which have evaluated only work that involves an experimental research designs (randomised allocation to groups, control group inclusion) have failed to find a significant effect of educational interventions on reoffending rates (Masten & Peck, 2004; Ker et al., 2005). In addition, education is mostly used for drink-driving and speeding offences rather than those where the EDT is used. Therefore the only sensible conclusion that can be drawn regarding the effectiveness of such interventions based on the current evidence is 'not proven'.

A view was expressed that Summary Court sentencers would welcome the opportunity to offer more educational courses as part of the sentence, reducing the latter's severity when completed, like drink drive rehabilitation courses. This reflects the conclusion of Beuret and Chorlton (2010) who explored perceptions of this legislative provision in certain circumstances and found sentencers in favour. Currently in law, EDTs are added on to a sentence (and may be seen as punitive as a result).

11.7 Review guidelines for use of mandatory and discretionary EDT

The guidelines for the use of the EDT and standard retest should be reviewed to ensure that there is consistency regarding the standard of driving and the retest required.

11.7.1 Current guidelines

There are currently five offences where the EDT is mandatory:

- Causing death by careless driving under the influence
- Dangerous driving
- Causing serious injury by dangerous driving
- Causing death by dangerous driving
- Motor manslaughter

There are several other offences involving death which do not have a mandatory EDT:

- Causing death by driving while disqualified
- Causing death by careless, or inconsiderate, driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers

EDTs may be used discretionally for any offences when an offender is disqualified, including 'aggravated vehicle taking'.

Aggravated vehicle taking is defined (McCormac & Wallis, 2013, p. 15.30) as occurring when it can be shown:

“After its taking and before its recovery the vehicle is driven, or injury or damage caused:

- That the vehicle was driven dangerously on a road or other public place
- That an accident occurred (owing to the driving of the vehicle) by which injury was caused to any person or damage was caused to any property

Or

- Damage was caused to the vehicle”.

The minimum disqualification for both 'aggravated vehicle taking' and 'dangerous driving' is 12 months and the sentencing guidelines based on the descriptions of the level of seriousness are similar for both offences.

11.7.2 Our findings

Our research showed that three offences accounted for two-thirds of discretionary EDTs being ordered:

- Aggravated vehicle taking
- Driving while disqualified by order of court
- Drink driving

Our consultation and analysis suggested that EDTs were more commonly used:

- For young drivers (high risk)
- For older drivers (whose initial test may be a long time ago, so standards may have lapsed)
- Multiple offences or existing previous offences
- After exceptionally long disqualifications, when drivers may require a retest to ensure their driving standard meets requirements

The data showed that there were a substantial number of drivers who were ordered to take an EDT who did not regain their licence (analysis for standard retests was not possible) and also offenders who committed subsequent offences without regaining their licence.

Our consultation also suggested that there was a low awareness of EDTs amongst members of the judiciary (although the low response rate should be borne in mind), and little guidance given to magistrates for distinguishing when an EDT or a standard retest should be ordered, when discretionary. There was concern from survey respondents as to whether the retest requirement would be observed and whether it would be seen as an obstacle, and therefore drivers would not regain their licence (either not driving or driving unlicensed), and whether this would be greater for EDTs than for standard tests due to the increased length (and cost) of the test.

11.7.3 Recommendations

There is a difference as to whether EDT is ordered based on the driving behaviours exhibited or on their outcome. 'Dangerous driving', 'causing serious injury by dangerous driving' and 'causing death by dangerous driving' all have a mandatory EDT, suggesting that the retest is ordered due to the behaviour (dangerous driving), rather than the outcome (whether no injury or causing serious injury or death). However, 'causing death by careless driving under the influence' has a mandatory EDT, whilst driving, attempting to drive or being in charge of a vehicle under the influence does not, suggesting that the retest is due to the outcome (causing death) rather than the behaviour (driving under the influence). Such a discrepancy in the priority afforded to the risk (behaviour) or the outcome (death and injury) should be reviewed.

It is recommended that a review be undertaken to establish whether a mandatory application of the EDT would be suitable for the 'causing death' offences which do not currently have a mandatory EDT requirement.

The guidance on ordering a standard retest or EDT discretionally could be reviewed, and further examples could be included of when each should be ordered. In particular, the guidelines for 'aggravated vehicle taking' should be reviewed and compared with those for 'dangerous driving' to ensure that cases where driving is dangerous are treated similarly.

Any review of guidelines should ensure that these elements are included as examples or indications of what levels would require an EDT.

Any changes that are made to sentencing guidelines would need to be communicated to judges, magistrates and clerks.

It was suggested by a Crown Court judge respondent that the Probation Service rarely mentioned the suitability of ancillary orders in their pre-sentence reports. It was suggested that it would be helpful to the court if they were mentioned, especially where discretionary use of standard retests or EDTs were possible.

11.8 Improve understanding of driving offenders, testing and collisions

Linking offence data from DVLA and driver testing data with Stats19 collision data, would be of considerable value.

For example, linking offences that involved death with fatalities in Stats19 could be used to enhance knowledge of driving offenders, for example to estimate:

- What percentage of fatalities in Stats19 resulted in a driving offence of 'causing death by...' or another offence?
- Analysis of the linked data set would enable analysis of circumstances of the accident and offence together, for example:
 - When did the driving offences occur (month, day, time)
 - What were the contributory factors to the collision

Since the collision data do not include driver numbers for those drivers or riders involved in collisions, the linking would be based on data available in offence data and in Stats19, for

Blank page