

Sentencing Council meeting:
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Lead Council member:
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SC(23)MAY04 – Motoring offences
TBC
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1 ISSUE

1.1 Amending the proposed dangerous driving guideline given its potential effect on sentencing practice.

2 RECOMMENDATIONS

2.1 That Council amends the proposed guideline by:

- removing “circumstances of offence created a high risk of serious harm to others” from category 1 harm; and
- adjusting sentence levels downwards in all categories of the sentence table except A1.

3 CONSIDERATION

3.1 As discussed at the meeting on 31 March, our assessment is that the proposed dangerous driving guideline (**Annex A**) could increase sentencing severity for this offending which, due to its frequency (4,400 offenders sentenced in 2021), could have a significant impact on prison places. Given there was no objective to increase severity for this offence (compared to, for example, offences where the statutory maximum has increased), Council considered options for adjusting the guideline, with a view to assessing whether amendments could mitigate or eliminate any unintended impacts.

3.2 We have now undertaken an internal resentencing exercise based on the amendments discussed in March. This involved a total of 40 transcripts, made up of 21 which we had analysed previously and 19 new transcripts which we were analysing for the first time. We resentenced using a new draft of the guideline which reflected two changes (to a) the harm table and b) the sentence levels) and can disaggregate the estimated difference in impact of each change individually (although the disaggregated impacts are based on an analysis of the 21 “old” transcript cases which had previously been resentenced using the earlier draft).

3.3 Simple dangerous driving is somewhat of an outlier in this suite of motoring offences, in that there is not necessarily an obvious “hook”, like death or injury, for detection and enforcement. The standard of driving in cases which *are* detected is therefore likely to be particularly egregious, and often part of a police pursuit for an unrelated purpose. This may be why so many cases are committed to the Crown Court (80% in 2021), and why the custody rate is so high (41%, with a further 38% suspended in 2021).

Amending the harm table

3.4 The guideline on which we consulted included a category 1 harm factor “circumstances of offence created a high risk of serious harm to others”. This arguably double-counts culpability as there is usually something inherent in high culpability dangerous driving which creates a high risk of serious harm - resulting in too many offences being placed by default in the top, A1 box.

3.5 In dangerous driving cases there is often – almost by definition – no actual injury or damage but it does happen, even if at a relatively low level. Of the 40 cases used in the latest resentencing exercise, 15 involved cases of actual damage or harm, most often damage to a wall or another vehicle.

3.6 Making this change to the harm table alone, without touching sentence levels, would bring a significant number of cases down from category A1 to A2 i.e. a starting point of 1 year rather than 18 months. This would result in an impact of around 130 additional prison places, compared to the 350 we estimate would be needed without making any changes to the consultation draft.

Amending sentence levels

3.7 The sentence levels consulted on were:

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 – 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

3.8 We discussed various options for adjusting sentence levels downwards in March. Council was keen to retain the proposed sentence levels for the most serious category, and did not want the lowest range to extend to a fine. With the further parameters of no custodial sentences of under 6 months forming starting points or range boundaries, and a maximum penalty of two years, there are fairly limited options but, in consultation with Rebecca, we used the following levels in resentencing:

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 year – 2 years	Starting Point: 36 weeks Category range: High level community order – 1 year 6 months	Starting Point: High level community order Category range: Medium level community order – 36 weeks
Harm 2	Starting Point: 36 weeks Category range: High level community order – 1 year 6 months	Starting Point: High level community order Category range: Medium level community order – 36 weeks	Starting Point: Medium level community order Category range: Low level community order – high level community order

3.9 Making this change by itself, but not altering the harm table as set out above, would result in an estimated impact of 320 prison places, only a modest change to the estimated impact of the consultation-stage version. This is because many cases would stay as category A1, where sentence levels have not changed.

3.10 However, by combining the two changes i.e. seeing more cases classified as A2 *and* having the sentence levels for those cases reduced reduces the projected impact significantly. Under this revision of the guideline, the prison place impact is estimated to be fewer than five places. We would expect average custodial sentence lengths to decrease a little (the transcript ACSLs went from 11 to 10 months), but that is offset by the fact that we expect to see more people receive immediate custody as opposed to community orders.

Question 1: does Council agree to make both the change to the harm table and the change to sentence levels set out above?

4 IMPACT AND RISKS

4.1 Impacts in relation to dangerous driving are discussed above. The final resource assessment is at **Annex B**. This draft assumes Council agrees with the recommendation

above in relation to dangerous driving, and is still subject to change following consideration by MoJ analysts.

4.2 For other offences in this suite of guidelines, we estimate that the new causing death by dangerous driving guideline could result in a requirement for up to around 300 additional prison places, 100 of which are the result of last year's change to 2/3rds release for sentences over seven years. The guideline for causing death by careless driving when under the influence of drink or drugs is estimated to result in around 10 additional prison places, some of which (less than half) can be attributed to the change in release policy.

4.3 The new guideline for causing death by careless driving is predicted to increase average custodial sentences by a month, resulting in a potential requirement of up to 20 additional prison places. And the new guideline for causing serious injury by dangerous driving may result in a requirement for up to around 130 additional prison places, mainly due to an increase in the average final custodial sentence length of 6 months (from 2 years 2 months to 2 years 8 months).

4.4 Other guidelines involve offences with very low volumes and any impact is likely to be negligible, or where the impact is unquantifiable (such as with causing serious injury by careless driving, which is a new offence).

4.5 If Council agrees with the approach set out above for dangerous driving, this would mean the full suite of motoring guidelines has an estimated quantified impact of 470 prison places (100 of which are due to the new release provisions for custodial sentences over seven years).

4.6 In relation to dangerous driving, we will want to explain why we have amended sentence levels downwards from the levels consulted on. Some may also question why the starting point option of 12 weeks custody available in the 2008 guideline for middle box cases ("Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area; OR single incident where little or no damage or risk of personal injury but offender was disqualified driver") might now be met with a starting point of a high level community order if classed as a B2 offence.

4.7 In response, we can say that the guideline was estimated to have an unintended impact on sentencing practice and explain that the new and old guidelines are not directly comparable, given the new one is for use across both magistrates courts and Crown Court and the culpability table has been fundamentally reworked.

4.8 If Council is content with the changes proposed above and the current estimated impacts, we will circulate the consultation response document in the coming weeks, with the

aim of publishing the guidelines in mid-June and an in-force date of 1 July (roughly a year after the revised maximum penalties for causing death by dangerous driving came into effect). If Council would like us to undertake further work on impacts, we would need to push this timetable back to publish later in the summer for a 1 October commencement date.

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Dangerous driving

Road Traffic Act 1988 (section 2)

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

Obligatory disqualification: minimum 1 year with compulsory extended re-test

(Minimum 2 years disqualification if the offender 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)

STEP ONE**Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below. Where there are characteristics present that fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A	<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 • Obviously highly dangerous manoeuvre • Prolonged use of mobile phone or other electronic device • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions
B	<ul style="list-style-type: none"> • Use of mobile phone or other electronic device (where not culpability A) • 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 (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs (where not culpability A) • Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication • Driving when deprived of adequate sleep or rest
C	<ul style="list-style-type: none"> • Standard of driving was just over threshold for dangerous driving

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

STEP TWO

Starting point and category range

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1 year 6 months</p> <p>Category range: 1 year – 2 years</p>	<p>Starting Point: 1-year 36 weeks</p> <p>Category range: 26-weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26-weeks High level community order</p> <p>Category range: High Medium level community order – 4-year 36 weeks</p>
Harm 2	<p>Starting Point: 1-year 36 weeks</p> <p>Category range: 26-weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26-weeks High level community order</p> <p>Category range: High Medium level community order – 4-year 36 weeks</p>	<p>Starting Point: High Medium level community order</p> <p>Category range: Low level community order – 26-weeks high level community order</p>

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- 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 whilst on bail

Other aggravating factors:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc
- Driving for commercial purposes
- Driving a LGV, HGV or PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good driving record
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- 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

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Magistrates' Court

Ancillary orders – Crown Court Compendium

STEP SEVEN

Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Disqualification guidance

1 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).

2 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;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

3 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.

4 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 an immediate custodial sentence or a detention and training order for this offence, it must extend the disqualification period by **one half** of the custodial term imposed.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. No extension period should be imposed where a sentence is suspended.

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.

5 Interaction with custodial period – different offence

The Court may be imposing an immediate custodial sentence on the offender for another offence, which is not the one for which they are being disqualified or the offender may already be serving a custodial sentence for another offence. In either of these circumstances, under section 35B of the Road Traffic Offenders Act 1988 the Court 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

Annex A

effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
NO – no increase is needed to the discretionary period.

Final Resource Assessment

Motoring offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services ([s127 Coroners and Justice Act 2009](#)).

Rationale and objectives for new guideline

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before magistrates' courts. This included the offence of dangerous driving under section 2 of the Road Traffic Act 1988. The MCSG only apply to sentences passed at magistrates' courts, and so there are no existing guidelines for this offence for use in the Crown Court. The Council is now publishing a new sentencing guideline for this offence, for use in all courts.

In August 2008, the SGC's Causing death by driving guideline came into force. This included guidelines for the offences of causing death by dangerous driving, causing death by careless or inconsiderate driving, causing death by careless driving when under the influence of drink or drugs, and causing death by driving whilst unlicensed, disqualified or uninsured. Then, in April 2015, the statutory maximum sentence for causing death by driving whilst disqualified increased from 2 years to 10 years' custody. In addition, under the Police, Crime, Sentencing and Courts (PCSC) Act 2022, the statutory maximum sentence for the offences causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs has increased from 14 years' custody to life imprisonment. The Sentencing Council has produced revised guidelines for all of these offences where a death has been caused.

No guidelines currently exist for the offences of causing serious injury by dangerous driving, causing serious injury by driving whilst disqualified, or causing injury by wanton or furious driving. In addition, there are no guidelines for the offences of driving or attempting to drive with a specified drug above the specified limit, and being in charge of a motor vehicle with a specified drug above the specified limit, although the Council previously produced general guidance for these offences. The Council is publishing new sentencing guidelines for all of these offences, for use in all courts in England and Wales.

Furthermore, a new offence of causing serious injury by careless or inconsiderate driving, which has a statutory maximum sentence of 2 years' custody, has been created under the PCSC Act 2022. The Council has therefore produced a new guideline for this offence.

The Council's aim in developing these guidelines is to provide sentencers with a clear approach to sentencing these offences which will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are not included in this assessment. The guideline applies to adults only and so an assessment of the impact on youth justice services has not been required.

This resource assessment covers the following offences:

- Causing death by dangerous driving, Road Traffic Act 1988 (section 1);
- Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2B);
- Causing death by careless driving when under the influence of drink or drugs, Road Traffic Act 1988 (section 3A);
- Causing death by driving whilst unlicensed or uninsured, Road Traffic Act 1988 (section 3ZB);
- Causing death by driving whilst disqualified, Road Traffic Act 1988 (section 3ZC);
- Causing serious injury by dangerous driving, Road Traffic Act 1988 (section 1A);
- Causing serious injury by driving whilst disqualified, Road Traffic Act 1988 (section 3ZD);
- Dangerous driving, Road Traffic Act 1988 (section 2);
- Causing injury by wanton or furious driving, Offences against the Person Act 1861 (section 35);
- Driving or attempting to drive with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A); and
- Being in charge of a motor vehicle with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A).

Although the Council has also produced a new guideline for the offence of causing serious injury by careless or inconsiderate driving, no sentencing data are currently available for this offence as it was only created as part of the PCSC Act 2022. It has therefore not been included within this resource assessment. However, resource estimates calculated by the Ministry of Justice for this offence can be found in their [Driving Offences Impact Assessment](#), which was published alongside the PCSC Bill.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the guidelines will encourage consistency of sentencing, especially where no guideline currently exists, and where there has been an increase to the statutory maximum sentence, and also to ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the changes in legislation.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for motoring offences, as well as sentencing data from the Court Proceedings Database. For more information on this data source please see the Further information section at the end of this document. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Discussions with sentencers held during the consultation stage to explore whether the motoring guidelines will work as anticipated have provided further understanding of the likely impact of these guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the new guideline have been published on the [Sentencing Council: Statistical bulletins webpage](#). For more information on data sources and quality, methodology and general conventions used in this resource assessment, please refer to the Further information section at the end of this document.

Causing death by dangerous driving

In 2021, around 150 offenders were sentenced for causing death by dangerous driving and all of these were sentenced at the Crown Court. The majority of offenders (94 per cent) were sentenced to immediate custody, a further 5 per cent were given a suspended sentence order, and 1 per cent were given a community order.

For those receiving immediate custody in 2021, the average (mean) custodial sentence length (ACSL) was 5 years 2 months, whilst the statutory maximum sentence for causing death by dangerous driving was 14 years' custody (under the PCSC Act 2022 the statutory maximum increased to life imprisonment).

Causing death by careless or inconsiderate driving

In 2021, around 210 offenders were sentenced for causing death by careless or inconsiderate driving. Most offenders were either given a suspended sentence order (41 per cent) or a community order (31 per cent). A further 25 per cent were sentenced to immediate custody, 2 per cent received a fine and 1 per cent were recorded as 'otherwise dealt with'.

The statutory maximum sentence for causing death by careless or inconsiderate driving is 5 years' custody and in 2021 the ACSL for this offence was 1 year 2 months.

Causing death by careless driving when under the influence of drink or drugs

In 2021, around 10 offenders were sentenced for causing death by careless driving when under the influence of drink or drugs, and all offenders were sentenced to immediate custody.

In 2021 the ACSL for this offence was 4 years 11 months, when the statutory maximum sentence was 14 years' custody (under the PCSC Act 2022 the statutory maximum increased to life imprisonment).

Causing death by driving whilst unlicensed or uninsured

Causing death by driving whilst unlicensed or uninsured is an extremely low volume offence. In 2021, fewer than five offenders were sentenced for this offence, and all offenders sentenced were either given a suspended sentence order or sentenced to immediate custody.

The statutory maximum sentence for causing death by driving whilst unlicensed or uninsured is 2 years' custody and over the period 2017 to 2021 the ACSL for this offence was 13 months.

Causing death by driving whilst disqualified

Causing death by driving whilst disqualified is also an extremely low volume offence, with a statutory maximum sentence of 10 years' custody. Prior to 13 April 2015, this offence was combined with the offence of causing death by driving whilst unlicensed or uninsured. Since 2015, fewer than five offenders have been sentenced for causing death by driving whilst disqualified, and all offenders were sentenced to immediate custody.

Causing serious injury by dangerous driving

In 2021, around 410 offenders were sentenced for causing serious injury by dangerous driving. Two thirds of offenders (66 per cent) were sentenced to immediate custody, and a further 26 per cent were given a suspended sentence order. Six per cent received a fine, 2 per cent received a community order and less than 1 per cent were recorded as 'otherwise dealt with'.

The statutory maximum sentence for causing serious injury by dangerous driving is 5 years' custody and in 2021 the ACSL for this offence was 2 years 4 months.

Causing serious injury by driving whilst disqualified

Causing serious injury by driving whilst disqualified is a very low volume offence, with fewer than ten offenders sentenced in 2021. The majority of offenders (78 per cent) were sentenced to immediate custody, and 22 per cent received a suspended sentence order (this equates to two offenders).

The statutory maximum sentence for causing serious injury by driving whilst disqualified is 4 years' custody and over the period 2017 to 2021 the ACSL for this offence was 1 year 8 months.

Dangerous driving

In 2021, around 4,400 offenders were sentenced for dangerous driving, with the majority (80 per cent) being sentenced in the Crown Court. In 2021 most offenders were either sentenced to immediate custody (41 per cent) or were given a suspended sentence order (38 per cent). A further 15 per cent received a community order, 4 per cent received a fine, 2 per cent were recorded as 'otherwise dealt with', and less than 1 per cent received a discharge.

The statutory maximum sentence for dangerous driving is 2 years' custody and in 2021 the ACSL for this offence was 10 months.

Causing injury by wanton or furious driving

Causing injury by wanton or furious driving is a low volume offence, with around 10 offenders sentenced in 2021. One third of offenders sentenced in 2021 (33 per cent) were sentenced to immediate custody, a further 33 per cent were given a suspended sentence order, and the remaining 33 per cent received a community order.

The statutory maximum sentence for this offence is 2 years' custody and over the period 2017 to 2021 the ACSL was 1 year 2 months.

Driving or attempting to drive with a specified drug above the specified limit

Driving or attempting to drive with a specified drug above the specified limit is the highest volume offence covered by the new guidelines, with around 20,200 offenders sentenced in 2021. The majority of offenders sentenced in 2021 (85 per cent) received a fine. A further 9 per cent received a community order, 2 per cent received a suspended sentence order, 1 per cent were sentenced to immediate custody, 1 per cent received a discharge, and 1 per cent were recorded as 'otherwise dealt with'.

The statutory maximum sentence for this offence is an unlimited fine and/or 6 months' custody and in 2021 the ACSL for this offence was 2 months.

Being in charge of a motor vehicle with a specified drug above the specified limit

In 2021, around 500 offenders were sentenced for being in charge of a motor vehicle with a specified drug above the specified limit, and the majority of offenders (91 per cent) received a fine. A further 4 per cent received a community order, 3 per cent were recorded as 'otherwise dealt with', 1 per cent were sentenced to immediate custody, 1 per cent received a suspended sentence order, and 1 per cent received a discharge.

The statutory maximum sentence for this offence is a level 4 fine and/or 3 months' custody and over the period 2017 to 2021 the ACSL for this offence was 1 month.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the new guideline is measured in terms of the changes in sentencing practice that are expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are therefore not included in the estimates.

In developing sentence levels for the new guidelines, data on current sentence levels have been considered, although this covers the period before the increase in statutory maximum sentence under the PCSC Act 2022, for sections 1 and 3A of the Road Traffic Act 1988. Existing guidance and case studies, as well as transcripts of judges' sentencing remarks have also been reviewed.

While data exist on the number of offenders and the sentences imposed, due to a lack of data available regarding the seriousness of current cases, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guideline, using relevant transcripts. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the new guidelines and to mitigate against the risk of them having an unintended impact, discussions with sentencers were undertaken during the consultation stage. In addition, further analysis of sentencing transcripts was undertaken which has provided more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available on the [Sentencing Council website](#).

Overall impacts

The expected impact of each guideline is provided in detail below.

Overall, the guidelines are anticipated to increase sentences for several offences, where sentence levels in the relevant guidelines have been driven either by the new guidelines reflecting the changes to legislation introduced under the PCSC Act 2022, for sections 1 and 3A of the Road Traffic Act 1988, or by the knock-on effect this has had on the guidelines for other related motoring offences. It is estimated that the definitive guidelines, in reflecting the increase in statutory maximum penalties, may result in a requirement for up to around 470 prison places, comprised of around 300 additional prison places for causing death by dangerous driving, around 10 additional prison places for causing death by careless driving when under the influence of drink or drugs, around 130 additional prison places for causing serious injury by dangerous driving, around 20 additional prison places for causing death by careless or inconsiderate driving, and fewer than 5 additional prison places for dangerous driving.

For the other offences covered by the definitive guidelines, it is difficult to estimate the impact of the guidelines, either due to low volumes or due to a lack of data available on how current cases would be categorised under the new guideline. However, it is anticipated that for these offences the new guidelines will improve consistency of sentencing for these offences, but not lead to any notable changes in sentencing severity.

Causing death by dangerous driving/Causing death by careless driving when under the influence of drink or drugs

The current SGC guideline for causing death by dangerous driving contains three levels of seriousness reflecting the 'nature of [the] offence'. The new guideline has three levels of culpability and one level of harm, as all cases of causing death by dangerous driving will inevitably be of the utmost seriousness.

The SGC guideline for causing death by careless driving when under the influence of drink or drugs contains nine offence categories, based on three levels describing the nature of the offence, and three categories describing factors relevant to the presence of alcohol or drugs. The new guideline follows a similar format, with three levels of culpability and three categories containing factors in relation to the presence of alcohol or drugs.

Under the PCSC Act 2022, the statutory maximum sentence for these offences has increased from 14 years' custody to life imprisonment. The sentence levels in the definitive guidelines have therefore been increased, in order to reflect the new statutory maximum sentences set by Parliament, and ensure sentencing levels in these guidelines are proportionate to other offences. In addition, under the PCSC Act 2022, the release provisions for these offences have been changed; for determinate sentences of less than seven years, offenders will be released halfway through their

sentence, whereas for determinate sentences of seven years or more, offenders will be released after having served two thirds of their sentence. Previously, all offenders who received a determinate sentence for these offences would have been released halfway through their sentence (irrespective of the sentence length).

Following the guideline consultation, some changes have been made to the factors in each culpability category in the causing death by dangerous driving guideline, in addition to several changes to aggravating and mitigating factors. The same changes to aggravating and mitigating factors have been made in the guideline for causing death by careless driving when under the influence of drink or drugs, in addition to some minor wording changes in the sentencing table.

Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to understand the possible effects of the guidelines on sentencing practice (a total of 20 transcripts were analysed from 2019 for causing death by dangerous driving, along with 10 transcripts from the period 2019 to 2020 for causing death by careless driving when under the influence of drink or drugs). Both of these offences are indictable only and, as such, all offenders are sentenced at the Crown Court. We can therefore assume the findings from this analysis are likely to be representative of all offending.

For causing death by dangerous driving, the analysis indicated there may be a shift in how offenders are categorised under the new guideline, from level 3 seriousness in the existing guideline (which has a starting point of 3 years' custody) to level B culpability in the new guideline (which has a starting point of 6 years' custody), and from level 2 seriousness (starting point of 5 years' custody) to level A culpability (starting point of 12 years' custody). This is most likely due to the fact that two factors currently within level 3 seriousness have moved into culpability B in the new guideline, and similarly two factors have moved from level 2 seriousness to culpability A.

The analysis also indicated that the definitive guidelines for both offences are likely to result in an uplift in sentences, due to an increase in sentence lengths for these offences, combined with the changes to culpability categorisation. Research undertaken with judges during the consultation period for the offence of causing death by dangerous driving corroborated this finding, with higher sentences imposed using the draft guideline when compared to the existing guideline.

For causing death by dangerous driving, the transcript analysis found that the average final custodial sentence length increased on average by 2 years 7 months under the new guideline (from 5 years 8 months to 8 years 3 months). It also indicated that the very small number of SSOs imposed each year would become immediate custodial sentences under the new guideline, as these are now expected to be sentences of over 2 years. It is estimated therefore that the definitive guideline may result in a requirement for up to around 300 additional prison places per year. However, this impact is, in part, due to the change to release provisions introduced by the PCSC Act 2022 for this offence (meaning that offenders sentenced to a determinate custodial sentence of 7 years or more will now be released after serving two thirds of their sentence). Based on the transcript analysis undertaken, it is estimated that 100 of the 300 projected additional prison places are the result of the change to release provisions for this offence.

For causing death by careless driving when under the influence of drink or drugs, the transcript analysis found that the average custodial sentence length increased by 1 year 1 month (from 4 years 4 months to 5 years 5 months), and it is estimated that the guideline may result in a requirement for up to around 10 additional prison places per year. It is also estimated that some of the additional prison places would be due to the change to release provisions for this offence (however this would amount to fewer than 5 of the 10 additional prison places).

For both of these offences, these increases in sentence levels are driven by the recent legislative changes, which have been reflected in the guidelines.

Causing death by careless or inconsiderate driving

The existing SGC guideline for causing death by careless or inconsiderate driving contains three categories of seriousness reflecting the 'nature of activity'. The new guideline contains three levels of culpability and one level of harm.

Starting points and sentence ranges in the new guideline have been increased slightly, in order to remain in step with the increased sentence levels in the guidelines for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs.

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 20 transcripts were analysed from 2019). The analysis suggested that under the new guideline, some offenders currently receiving a community order may receive a short custodial sentence instead. This is due to the fact that the starting point for the culpability C category in the new guideline is 26 weeks' custody (compared to a medium level community order in the existing guideline) and, in addition, the sentence range for the culpability C category is now solely custodial (compared to a range of high level community order to 2 years' custody for the medium category in the existing guideline).

The transcript analysis also indicated that overall, the new guideline is likely to result in an uplift in sentences for this offence, with an increase in the average final custodial sentence length of 1 month (from 1 year 4 months to 1 year 6 months) – this finding is corroborated by the research undertaken with judges and magistrates during the consultation period, which found that final sentences were higher using the draft guideline. It is therefore estimated that the definitive guideline may result in a requirement for up to around 20 additional prison places.

Causing death by driving whilst unlicensed or uninsured/Causing death by driving whilst disqualified

The existing SGC guideline for causing death by driving whilst unlicensed, disqualified or uninsured contains three categories of seriousness reflecting the 'nature of activity' and has an offence range of a community order to 2 years' custody (the statutory maximum sentence for causing death by driving whilst unlicensed or uninsured). As the statutory maximum sentence for causing death by driving whilst disqualified is now 10 years' custody, a separate new guideline has been produced for this offence, in addition to a new guideline covering the unlicensed/uninsured offences.

The new guidelines for these offences contain three levels of culpability and one level of harm. The sentencing table in the new guideline for causing death by driving whilst unlicensed or uninsured is the same as that in the existing guideline. As the sentence starting points and ranges have not changed, along with the fact that these offences are very low volume, it is anticipated that any impact of the definitive guideline will be negligible.

In the new guideline for causing death by driving whilst disqualified, the sentencing table ranges from a high level community order to 7 years' custody. The increased starting points and ranges in this guideline reflect the higher statutory maximum for this offence. However, given the extremely low number of offenders sentenced for this offence each year, it is expected that any impact of the definitive guideline on prison and probation resources will be negligible.

Causing serious injury by dangerous driving

There is no current guideline for causing serious injury by dangerous driving. The new guideline has two levels of harm and three levels of culpability. The sentencing ranges have been set with a view to increasing current sentence levels slightly, to reflect the increased sentence levels for causing death by dangerous driving. The sentencing table in the new guideline ranges from 26 weeks to 5 years' custody, the statutory maximum for this offence.

Following the guideline consultation, some changes have been made to factors in each of the culpability categories, in addition to several changes to aggravating and mitigating factors.

Given that the sentence range for this offence is solely custodial, it is expected that any offenders currently receiving a fine or community order would receive a custodial sentence under the new guideline; however, this only affects a small proportion of offenders (8 per cent). In addition, three of the six categories in the sentencing table for this offence have a starting point which is eligible for suspension (sentencers are able to suspend sentences of between 14 days and two years).

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 18 transcripts were analysed from 2019). The analysis indicated that overall, the new guideline is likely to result in an uplift in sentences for this offence. This is mainly due to an increase in the average final custodial sentence length of 6 months (from 2 years 2 months to 2 years 8 months) but also due to a shift in sentencing outcomes, with some suspended sentence orders and a small number of community orders now becoming immediate custodial sentences. It is therefore estimated that the definitive guideline may result in a requirement for up to around 130 additional prison places.

Causing serious injury by driving whilst disqualified

There is no current guideline for causing serious injury by driving whilst disqualified. The new guideline for this offence contains three levels of culpability and two levels of harm, with a sentencing table ranging from a community order to 4 years' custody (the statutory maximum for this offence). The intention of this new guideline is to promote consistency in sentencing for this offence, where there is no guidance

currently. Following the consultation on the draft guideline, some minor changes have been made to the culpability A factors and the list of mitigating factors.

Transcript analysis was undertaken of the small number of Crown Court judges' sentencing remarks available for this offence which, although limited by sample size, did not offer any indication that the guideline would result in an increase to sentence levels (a total of six transcripts were analysed from the period 2017 to 2019). Given that this offence is mostly sentenced at the Crown Court, it is likely that the transcripts analysed are fairly representative of this type of offending. In addition, this offence is very low volume. Therefore, it is anticipated that any resource impact of the guideline is likely to be negligible.

Dangerous driving

The existing MCSG guideline for dangerous driving contains three categories of seriousness reflecting the 'nature of activity'. The new guideline differs considerably from the MCSG guideline as it adopts the Sentencing Council's standard stepped approach and applies to the Crown Court in addition to magistrates' courts. It is based on two levels of harm and three levels of culpability, with a sentencing table ranging from a low level community order to two years' custody, the statutory maximum for this offence.

Around 4 per cent of offenders currently receive a fine or discharge for dangerous driving. Fines and discharges are not included in the sentencing range for either the existing or the new guideline. It is not possible to estimate whether sentencing practice would change in these cases, due to a lack of evidence on how these cases may be sentenced under the new guideline.

Research undertaken with sentencers during the consultation period found that, for the scenarios sentenced by magistrates, final sentences were higher using the draft guideline. In addition, some judges and magistrates felt the final sentences reached using the draft guideline were too high.

Following consultation, the same changes to culpability factors and aggravating and mitigating factors have been made to this guideline as in the other guidelines featuring dangerous driving (causing death by dangerous driving and causing serious injury by dangerous driving). In addition, a change has been made to the harm factors, and, with the exception of A1, reductions have been made to starting points and sentence ranges within the sentencing table.

Most offenders sentenced for dangerous driving are sentenced at the Crown Court (80 per cent in 2021) and analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 40 transcripts were analysed from 2019 and 2021). However, given that the number of transcripts analysed represents a very small proportion (1 per cent) of the total number of offenders sentenced, these findings should be viewed as indicative only. In addition, it is important to note that this analysis is based on Crown Court cases only. Although 20 per cent of offenders are sentenced in magistrates' courts, no suitable data sources were available to enable a similar detailed analysis of current sentencing practice to be carried out for magistrates' court cases (sentencing remarks are not available from magistrates' courts).

The analysis suggested that some offenders currently receiving a community order would be sentenced to immediate custody using the new guideline; this would increase prison places. However, the analysis also found that the new guideline is likely to result in a decrease to the average final custodial sentence length of 1 month (from 11 months to 10 months). This is driven by the fact that some original sentences of immediate custody are expected to be shorter using the new guideline, in addition to even shorter custodial sentence lengths on average for those community orders which have become immediate custody. Overall, it is estimated that the net effect of these two changes will largely balance out and result in a requirement for fewer than five prison places.

Causing injury by wanton or furious driving

There is no current guideline for causing injury by wanton or furious driving. The new guideline for this offence contains three levels of culpability and three levels of harm, with a sentencing table ranging from a fine to 2 years' custody (the statutory maximum for this offence). Following the consultation on the draft guideline, several changes have been made to the factors in both culpability A and B categories, along with some changes to aggravating and mitigating factors. In addition, changes have been made to the starting points and sentence ranges for six of the nine boxes in the sentencing table (B1, B2, B3, C1, C2 and C3).

The transcript analysis undertaken of Crown Court judges' sentencing remarks for this offence did not offer any indication that the guideline would result in an increase to sentence levels (a total of 9 transcripts were analysed from the period 2019 to 2020). As this offence is indictable only (and consequently can only be sentenced in the Crown Court), it is expected that the transcripts analysed are representative of all offending. Furthermore, as this is a low volume offence, it is anticipated that any resource impact of the guideline is likely to be negligible.

Driving or attempting to drive with a specified drug above the specified limit/ Being in charge of a motor vehicle with a specified drug above the specified limit

The existing MCSG guidance for these offences contains an exhaustive list of factors that increase seriousness. The new guidelines adopt the Sentencing Council's standard stepped approach and are based on two levels of harm and two levels of culpability. The sentencing ranges have been set to be in line with current sentencing practice and consistent with other relevant guidelines, with a sentencing table ranging from a fine to the respective statutory maxima for these offences (26 weeks' custody for driving or attempting to drive with a specified drug above the specified limit, and 12 weeks' custody for being in charge of a motor vehicle with a specified drug above the specified limit).

As both of these offences are summary only, it has not been possible to undertake an analysis of sentencing remarks for these offences (transcripts of sentencing remarks are only available from the Crown Court). Given the lack of data available on how current cases would be categorised under the new guidelines, it is difficult to estimate what the resource impact of the definitive guidelines might be.

However, research undertaken with magistrates during the consultation period for the offence of driving or attempting to drive with a specified drug above the specified limit

found that, on the whole, magistrates felt the sentencing table for this offence reflected current practice.

Driving or attempting to drive with a specified drug above the specified limit is a high-volume offence (with around 20,200 offenders sentenced in 2021). However just 1 per cent of offenders were sentenced to immediate custody in 2021 (around 210 offenders). Being in charge of a motor vehicle with a specified drug above the specified limit is a much lower volume offence, with 500 offenders sentenced in 2021, and of those fewer than five were sentenced to immediate custody.

Given the low statutory maximum sentences for these offences (which are both within the range of suspension), it is anticipated that any impact of these guidelines on prison and probation resources is likely to be minimal.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines come into effect.

This risk is mitigated by information that was gathered by the Council as part of the consultation phase. This included inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios to explore whether the guidelines could have any unintended effects. However, given there were limitations on the number of scenarios which could be explored, the risk cannot be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, and these views have been considered for this final resource assessment. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for some of these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates which should be interpreted as indicative of the direction and approximate magnitude of any change only.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. Sentencing ranges have been decided on by considering sentence ranges in the existing guidelines, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant motoring cases have been studied where possible to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Additionally,

research with sentencers which was carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

Consultees have also had the opportunity to provide their opinion of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

In addition, for the offence of dangerous driving, data currently being collected from magistrates' courts and the Crown Court will be available in due course for monitoring purposes.

Further information

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

The average custodial sentence lengths (ACSLs) presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

'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.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19)

pandemic, and the ongoing courts' recovery since. 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.

Methodology

Where a resource impact has been calculated, volumes of sentences have been adjusted in line with 2021 volumes. For the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs, it has been assumed that those serving a determinate custodial sentence of less than seven years would be released half-way through their sentence and those serving a determinate sentence of seven years or more would be released after serving two thirds of their sentence. This two-thirds release point will take effect for these offences under the PCSC Act 2022. For the other offences where a resource impact has been quantified, it has been assumed that offenders would be released half-way through their sentence.

Data are not available to estimate how many suspended sentence orders would continue to be suspended under the definitive guidelines, however, the estimated resource impacts provided are based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the definitive guideline, provided the sentence length was within the range for suspension.

It has also been assumed that offenders who received a community order under existing practice and who are estimated to receive a custodial sentence of 2 years or less under the new guideline would have their sentence suspended at the same rate at which eligible custodial sentences are currently suspended.

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, due to rounding. Prison impact estimates have been rounded to the nearest 10 prison places.

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