

# **Driver in incident occasioning bodily harm, failure to stop, render assistance and give information**

s 54 Road Traffic Act

**From 1 January 2014**

**Transitional Sentencing Provisions:** This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
occ	occasioning
BAC	blood alcohol content
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
att	attempted
EFP	eligible for parole
DDOGBH	dangerous driving occasioning grievous bodily harm
DDOD	dangerous driving occasioning death
DDOBH	dangerous driving occasioning bodily harm
agg	aggravated
circ	circumstances
TES	total effective sentence

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
8.	<p><i>Gilbert v The State of Western Australia</i></p> <p>[2020] WASCA 148</p> <p>Delivered 09/09/2020</p>	<p>22 yrs at time offending. 23 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Prior criminal history.</p> <p>Completed yr 12 high school.</p> <p>Reasonable employment history; volunteer work almost 13 yrs.</p> <p>Problematic alcohol use.</p> <p>Mental health issues; struggled with emotional distress and depression prior to offending.</p>	<p>Ct 1: DDOGBH. Ct 2: Fail to stop and render assistance to victim of incident occasioning GBH. Ct 3: Driver failing to report incident occasioning GBH.</p> <p>Gilbert was driving his vehicle in a southerly direction, wandering from side to side and on the wrong side of the road.</p> <p>At an intersection a motorist travelling east had to take evasive action to avoid Gilbert's vehicle. He then turned at the intersection and almost immediately drove up onto the footpath and verge.</p> <p>The victim, riding a motor cycle, approached Gilbert's vehicle from the rear. Without warning Gilbert began executing a u-turn into the path of the victim's motor cycle. The victim could not avoid a collision. His motor cycle struck Gilbert's vehicle and he was thrown onto the road. Gilbert continued to execute the u-turn, during which he drove over the victim's leg.</p> <p>Gilbert then drove off, making no attempt to stop after the collision or to report the incident to the police before he was taken into custody.</p>	<p>Ct 1: 3 yrs 6 mths imp (cum). Ct 2: 12 mths imp (cum). Ct 3: 6 mths imp (conc).</p> <p>TES 4 yrs 6 mths imp. EFP.</p> <p>Significant physical and psychological trauma suffered by the victim.</p> <p>Appellant remorseful; significant efforts made towards rehabilitation.</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [47] There is no doubt that the appellant's overall offending in the present case was serious. He drove his motor vehicle while he was highly intoxicated. ... After the incident ... the appellant continued driving from the scene ... [The victim] was vulnerable. A rider of a motor cycle is at risk of serious injury or death if struck by a motor vehicle. [The victim] suffered severe physical and emotional trauma. ...</p> <p>At [48] ... It was necessary, having regard to all relevant facts and circ of the offending and all relevant sentencing factors, to mark the</p>

			<p>Gilbert travelled about 450 m before colliding with a power pole.</p> <p>Analysis revealed Gilbert had a BAC of 0.226% at the time of the incident.</p> <p>The victim suffered multiple fractures and soft tissue damage to his leg. Surgery was unsuccessful and his leg was eventually amputated below the knee.</p>		<p>seriousness of the appellant's overall offending by accumulating the individual sentence for ct 1 and the individual sentence for ct 2.</p> <p>At [49] ... A custodial term of that length was necessary in order properly to reflect the serious character of the appellant's offending, viewed as a whole, ...</p>
7.	<p><b><i>The State of Western Australia v Krakouer</i></b></p> <p><b>[2020]</b> <b>WASCA 133</b></p> <p>Delivered 25/08/2020</p>	<p>35 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after early PG (25% discount).</p> <p>Moderate criminal history; prior conviction for failing to stop after property damage and for failing to stop after an accident; no history of violent offending; no prior sentences of imp.</p> <p>Indigenous; mother chronic abuser of alcohol; no relationship with father who spent considerable periods incarcerated during his childhood; raised by his grandparents; separated from his other siblings raised in a</p>	<p>Ct 1: GBH with intent. Ct 2: Fail to stop and render assistance to victim of incident occasioning BH.</p> <p>Krakouer believed the victim had sexually assaulted his mother. In the days prior to the incident Krakouer and his brother looked for the victim for 3 to 4 days straight, at one-point confronting and chasing the victim when he turned up at their mother's house.</p> <p>Krakouer was driving a motor vehicle towing a trailer. He was stationary in the vehicle when he happened to see the victim on a bicycle. Becoming angry he drove directly at the victim, hitting him. The victim struck the windscreen before falling to the</p>	<p>Ct 1: 16 mths imp (cum). Ct 2: 4 mths imp (cum).</p> <p>TES 20 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent's offending so serious that only immediate imp was appropriate.</p> <p>The sentencing judge found the respondent's decision to pursue the victim was made suddenly; his decision to use the car he was driving as a weapon was made on the spur of the moment; he did</p>	<p>Allowed.</p> <p>Appeal concerned length individual and total sentence.</p> <p>Resentenced:</p> <p>Ct 1: 2 yrs imp (cum). Ct 2: 1 yrs imp (cum).</p> <p>TES 3 yrs imp. EFP.</p> <p>At [52] ... the respondent had deliberately driven his car so as to collide with the victim. Having deliberately caused the incident that triggered</p>

		<p>different household.</p> <p>Completed yr 10.</p> <p>Overcome a deprived background; useful member of the community; employed productive position at time sentencing; some periods where work interrupted by loss of MDL.</p> <p>Stable relationship; four yr old child; six other children from four ex-partners; all other children reside with their mothers or family; makes financial provision for his children.</p> <p>Prior use of cannabis and methyl; stopped some yrs ago; no current substance abuse issues.</p>	<p>ground.</p> <p>Krakouer drove away without stopping to see if the victim was injured or needed assistance.</p> <p>Other people went to the victim's aid and he was taken to hospital.</p> <p>The victim suffered a spinal fracture and a significant laceration to his ankle.</p> <p>Krakouer made full admissions when interviewed the following day.</p>	<p>not harm the victim gratuitously in the sense of doing it for no reason or without provocation.</p> <p>The sentencing judge found the respondent's offending was aggravated by the use of a motor vehicle as a weapon to inflict injury; the victim who, on a bicycle, was very vulnerable; there was an element of vigilantism and it was an act of retribution he knew to be wrong; his decision to pursue the victim and to use his car to intentionally cause injury was deliberate and calculated; he knew the victim was likely to be injured and need medical assistance.</p> <p>Demonstrated remorse and insight into his offending.</p>	<p>his obligation to render assistance to the victim, the respondent's failure to do so was all the more serious.</p> <p>At [53] ... while the respondent did not know precisely what had happened to the victim, what he knew ... was comfortably sufficient to mean the risk that the victim suffered an injury requiring medical attention was so obvious that the respondent must be taken to have known of that risk. ...</p> <p>At [54] ... the respondent did not know the other persons who were there and was in no position to assume with confidence that another person would provide assistance to the victim.</p> <p>At [55] ... Many injuries distinctly less serious than those</p>
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				<p>suffered by the victim in this case would meet that threshold of the application of s 54 [<i>Road Traffic Act</i>].</p> <p>At [58] ... .. the sentence on ct 2 ... was unreasonable or plainly unjust, not merely lenient. ... the sentence was not commensurate with the seriousness of the respondent's offending. ...</p> <p>At [77] Some of the objective features of the respondent's offending the subject of ct 1 were very serious. He deliberately used a motor vehicle as a weapon against a vulnerable cyclist. It was an element of the offence that he intended to cause serious injury. His conduct created an obvious potential for serious injury or death. The consequences of his conduct were neither controllable nor</p>
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				<p>predictable by him. It was only good fortune that the victim did not suffer more serious injuries.</p> <p>At [78] The respondent's use of the car as a weapon was not pre-mediated, but made on the spur of the moment when he saw the victim. Moreover, his instinctive reaction to act as he did occurred in extraordinary circumstances .... Those extraordinary circumstances significantly reduced the extent to which the element of vigilantism, which in some cases is seriously aggravating, was an aggravating factor in this case. ...</p> <p>At [83] ... the seriousness of the respondent's offending was such that a term of immediate imp was the only appropriate sentencing option, ...</p>
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					account is to be taken of the challenges which the respondent has overcome and the fact that he acted impulsively in a way that was out of character when under considerable stress ... Those mitigating personal circumstances justify a sentence of immediate imp which is considerably lower than would ordinarily be commensurate with the seriousness of offending of the kind of which the respondent was convicted, ...
6.	<p><b><i>The State of Western Australia v Molloy</i></b></p> <p>[2020] WASCA 123</p> <p>Delivered 05/08/2020</p>	<p>34 yrs at time offending. 35 yrs at time sentencing.</p> <p>Convicted after PG (25% discount).</p> <p>Serious and extensive criminal history; multiple convictions for stealing a MV and reckless driving; most of adult life spent in custody; disq for life from holding or obtaining MDL.</p> <p>Dysfunctional early childhood; characterised by drug use and exposure to criminal and anti-social behaviour; death of father and step-</p>	<p>Ct 1: Steal MV. Cts 2-5: Agg DDOGBH. Cts 6-7: DDOBH Ct 8: Agg DDOD. Ct 9: Failing to report an incident occasioning BH. Ct 10: Fail to stop and render assistance to victim of incident occasioning BH.</p> <p>Molloy stole a motor vehicle and drove it on a highway with a 70 km/h speed limit. He was travelling at about 100 km/h and not paying sufficient attention when he crashed into the rear of a van stopped at a red traffic light.</p>	<p>Ct 1: 12 mths imp (conc). Ct 2: 2 yrs 6 mths imp (cum). Ct 3: 2 yrs 6 mths imp (conc). Ct 4: 2 yrs 6 mths imp (conc). Ct 5: 2 yrs imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 12 mths imp (conc). Ct 8: 4 yrs imp (cum). Ct 9: 18 mths imp (conc). Ct 10: 12 mths imp (cum).</p> <p>MDL disq 5 yrs.</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>Appeal concerned length of individual sentences cts 2-5 and 8 and totality principle.</p> <p>Resentenced (25% discount):</p> <p>Ct 1: 2 yrs imp (cum). Cts 2-4: 4 yrs 6 mths imp (conc). Ct 5: 4 yrs imp. Ct 6: 18 mths imp (cum). Cts 7 &amp; 9: 18 mths imp</p>

		<p>father to suicide.</p> <p>Struggled at school.</p> <p>Proficient motor vehicle mechanic.</p> <p>Number of serious relationships; marred by conflict, substance abuse and jealousy; single at time of sentencing.</p> <p>Heroin dependence; commenced intravenous heroin use from aged 13 yrs; other illicit drug use.</p> <p>Good physical health; no serious or medically treatable mental illness.</p>	<p>The van was carrying eight family members, including two young children aged 6 and 5 yrs.</p> <p>The impact caused the front of the van to become wedged under the trailer of a truck, which was stationary in front of the van.</p> <p>Molloy immediately fled the scene on foot. He then telephoned his mother, who collected him from a location near the crash scene.</p> <p>Molloy failed to report the accident to police or to assist any of the victims of the accident.</p> <p>The driver and all passengers suffered injury and were taken to hospital.</p> <p>Two of the passengers underwent surgical treatment</p> <p>The 5 yr old passenger sustained a severe head injury. He was declared brain dead and later died.</p>	<p>The sentencing judge found the respondent's offending was aggravated by the fact he was driving a stolen vehicle and he had been disqu for life from holding or obtaining a driver's licence.</p> <p>The sentence judge found the respondent drove at an excessive speed; failed to take any evasive action and showed a complete disregard for other road users.</p> <p>Victims suffered very substantial trauma as a result of the offending.</p> <p>Genuinely remorseful; accepted responsibility for his offending; suffered significant distress; depression and att suicide since offending.</p>	<p>(conc).</p> <p>Ct 8: 6 yrs 6 mths imp (cum).</p> <p>Ct 10: 3 yrs imp (conc).</p> <p>MDL disq 5 yrs.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p> <p>At [77] The respondent's offending in relation to ct 8 was very serious. ... [He] was driving a stolen vehicle .... He was driving while disq for life from holding or obtaining a driver's licence .... He was driving at a speed of 96 km an hr about 3 km before the collision. An eye witness estimated that [he] was travelling at about 100 km an hr immediately before the collision. ... He did not brake, swerve or attempt to steer around the victims' van which was stationary at a red traffic light. ... [He] demonstrated a complete disregard for other users of the road.</p> <p>At [81] In our opinion, the sentence ... for ct 8</p>
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				<p>was not commensurate with the seriousness of the offence. ... The sentence was not merely 'lenient' or 'at the lower end of the available range'. It was substantially less than the sentence that was open to his Honour on a proper exercise of his discretion.</p> <p>At [88] We are satisfied that the individual sentences of ... imp for cts 2, 3 and 4 and the individual sentence of ... imp for ct 5 were not commensurate with the seriousness of the offences. ... the length of each sentence was unreasonable or plainly unjust. ... Each sentence was not merely 'lenient' or 'at the lower end of the available range'. Each sentence was substantially less than the sentence that was open to his Honour on a proper exercise of his discretion.</p> <p>At [91] In our opinion, the TES ... did not bear a proper relationship to the overall criminality involved in all of the</p>
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					respondent's offences, viewed together, and having regard to all relevant facts and circumstance and all relevant sentencing factors. ... The objective facts and circumstances of the offending, viewed as a whole, were very serious. The TES was unreasonable or plainly unjust. It was not merely 'lenient' or 'at the lower end of the available range'. The TES was substantially less than the TES that was open to his Honour on a proper exercise of his discretion.
5.	<p><i>Paulose v The State of Western Australia</i></p> <p>[2019] WASCA 182</p> <p>Delivered 15/11/2019</p>	<p>48 yrs at time offending. 49 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>No prior criminal history.</p> <p>Born India; death of father when aged 17 yrs; financial hardship.</p> <p>Well educated; attained Bachelor degree.</p> <p>Strong marriage; two children; wife seriously ill at time offending; supportive family.</p> <p>Arrived Australia 2015; own</p>	<p>Ct 1: DDOGBH</p> <p>Cts 2 &amp; 3: Failing to stop and render assistance.</p> <p>Cts 4 &amp; 5: Failing to report an incident.</p> <p>Ct 6: Unlawful killing.</p> <p>Paulose drove his motor vehicle after consuming alcohol. He drove erratically and veered to the right of the road and mounted the traffic island between lanes.</p> <p>Paulose made no attempt to brake and his vehicle collided with two males, ages 16 yrs and 15 yrs, waiting to cross the road. He narrowly avoided a third male aged 12 yrs.</p> <p>Paulose drove from the scene without</p>	<p>Ct 1: 1 yr imp (cum). MDL disq 5 yrs.</p> <p>Cts 2 &amp; 3: 3 yrs 6 mths imp (conc).</p> <p>Cts 4 &amp; 5: 2 yrs imp (conc). MDL disq cts 2-5: 2 yrs (cum).</p> <p>Ct 6: 8 yrs imp (cum).</p> <p>TES 9 yrs imp.</p> <p>MDL disq 7 yrs.</p> <p>EFP after 7 yrs.</p> <p>The sentencing judge characterised the offending as serious; he engaged in a gross breach of traffic rules; he knew</p>	<p>Dismissed.</p> <p>Appeal concerned totality principle.</p> <p>At [57] ... the appellant's overall offending was very serious. ... The victims of the appellant's offending were highly vulnerable.</p> <p>At [60] It was appropriate for the sentencing judge to order some accumulation of the sentence for the ct of unlawful killing and the</p>

		<p>business; financial difficulties; ceased trading to care for his wife.</p> <p>History of charitable work through Church.</p> <p>Good physical health; some history of mental health issues; including depression; using alcohol to excess as a means to cope at time offending.</p>	<p>rendering assistance to either victims or reporting the incident to police. He later claimed this was because he feared being assaulted.</p> <p>Paulose was arrested several hrs later. Analysis revealed a blood alcohol level of 0.212g/per 100mL of blood at the time of the collision. During interview he admitted to consuming alcohol prior to driving.</p> <p>The two victims sustained life threatening injuries. One victim was placed on life support but later died. The other suffered fractures in his back and bleeding on the brain.</p>	<p>he was heavily intoxicated yet he made a decision to drive in circ where he was clearly incapacitated and he had no particular reason to drive beyond mere convenience.</p> <p>The sentencing judge found an agg factor was the appellant's driving was so erratic and unexpected that the victims had no opportunity to take evasive action.</p> <p>Remorseful; empathy for families of the victims; insight into impact of his offending; addressing his alcohol use; low risk of re-offending.</p>	<p>sentence his Honour would otherwise have imposed for the ct of DDOGBH while under the influence of alcohol ...</p> <p>At [61] ... The sentence was commensurate with the overall seriousness of the offending ...</p>
4.	<p><b><i>Vander Waide v The State of Western Australia</i></b></p> <p><b>[2019] WASCA 148</b></p> <p>Delivered 26/09/2019</p>	<p>35 yrs at time offending. 36 yrs at time sentencing.</p> <p>Convicted after trial (cts 1-5). Convicted late PG (ct 6) (10% discount).</p> <p>Long criminal history; appalling traffic record.</p> <p>Parents separated; raised by his mother.</p> <p>Supportive mother.</p> <p>Victimised and experienced trauma during childhood.</p> <p>History of substance abuse from an</p>	<p>Ct 1: Steal motor vehicle. Ct 2: Wilful and unlawful damage. Ct 3: Unlawfully did an act likely to endanger life, health or safety. Ct 4: Fail to render assistance to victim of incident occasioning BH. Ct 5: Fail to report a road traffic accident. Ct 6: Assault public officer with intent to resist arrest.</p> <p>Vander Waide hired a four-wheel drive vehicle. He had no intention of ever returning it. He treated the vehicle as his own, replacing the registration plates and pulling out the back seat so as to use it as a mobile home.</p> <p>Some weeks later Vander Waide, in the company of a female and her 16-yr-old</p>	<p>Ct 1: 9 mths imp (cum). Ct 2: 15 mths imp (cum). Ct 3: 7 yrs imp (cum). Ct 4: 18 mths imp (conc). MDL disqu 3 yrs (conc). Ct 5: 12 mths imp (conc). MDL disqu 2 yrs (conc). Ct 6: 3 mths imp (cum).</p> <p>TES 9 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the appellant 'a dangerous man'; he drove the vehicle 'angrily and violently' at a speed of slightly more than 70 km p/h into the victim, who</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence (ct 3); totality principle and miscarriage of justice (failure to take into account sexual assault in custody and additional evidence supporting mental impairment)</p> <p>At [57] ... while the additional evidence shows that, contrary to his Honour's findings, the appellant was, in fact, suffering from a mental illness, that mental illness</p>

		<p>early age; including alcohol, cannabis, prescription medications and methyl.</p>	<p>daughter, drove the vehicle to a hotel. At the hotel he became angry with his female companions. In an agitated and aggressive state he returned to the vehicle and drove off, accelerating very quickly down the road.</p> <p>The victim, Mr Baker, was one of a group of motorcycle enthusiasts who had been at the hotel. He and Vander Waide did not know each other.</p> <p>Soon after leaving the hotel Vander Waide encountered Mr Baker and his group. He approached them at speed from the rear. One member, Mr Joss, stopped on the side of the road to let him pass. He deliberately drove at Mr Joss's motorcycle, striking it and causing \$2,319.20 worth of damage. Mr Joss was forced to jump out of the way to avoid being hit.</p> <p>Vander Waide then accelerated, driving faster than the posted speed limit, to catch up with Mr Baker. Travelling at over 70 km p/h, and without braking, he drove into the back of Mr Baker's motorcycle. Mr Baker suffered multiple serious injuries, including fractures to his neck, which could have led to paralysis.</p> <p>Vander Waide drove away from the scene. He did not stop to render assistance or report the incident to police.</p> <p>Several days later police officers saw Vander Waide riding a bicycle. They</p>	<p>was extremely vulnerable riding a motorcycle; his actions were premeditated and deliberate and he used his vehicle 'as a weapon'.</p> <p>The sentencing judge found the appellant was not suffering from a mental impairment which caused his offending and the alleged sexual assaults in custody, 'cannot impact to any extent' upon the sentence he was obliged to impose.</p> <p>No demonstrated remorse; high risk of reoffending; poorly motivated towards drug abstinence.</p>	<p>is not materially mitigatory and does not materially change the seriousness of the appellant's offending or his high risk of further reoffending. ... The additional evidence, had it been before the sentencing judge, should not have led to a different sentence. ...</p> <p>At [74] The appellant's offending in respect of ct 3 was undeniably very serious, ... The appellant deliberately drove his substantial four-wheel drive vehicle at about 70 km per hr, so that he effectively rammed the vehicle into the motorcycle being ridden by Mr Baker. Given that Mr Baker was riding a motorcycle, he was vulnerable to personal injury in such a collision, as the appellant must have appreciated. The appellant's actions were premeditated and were completely unjustified. The appellant acted out of anger and used his vehicle as a weapon.</p>
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			<p>confronted him. An officer, who was wearing a vest which clearly identified her as a police officer, yelled at him to stop and pull over. He rode off. He was intercepted and, in a further attempt to escape arrest, struck the officer in the arm with a motorcycle helmet. She sustained minor injuries.</p>		<p>At [75] The risk to the victim's life, health and safety was obvious. Mr Baker was lucky to survive. The consequences of the appellant's offending ... are a serious aggravating factor. ....</p> <p>At [82] ... The other offences committed by the appellant were, in themselves, serious. The theft of the Toyota Prado (ct 1) was planned ... The appellant sought to disguise his actions by changing the registration plates. ...</p> <p>At [83] ... the seriousness of cts 2, 4, 5 and 6 must not be overlooked. The appellant deliberately damaged Mr Joss's motorcycle. In doing so, he endangered Mr Joss's safety. After colliding with Mr Baker's motorcycle, [he] callously drove off ....</p> <p>At [84] Given the overall seriousness of the offending, that it occurred over several days and that different victims were</p>
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					affected, some cumulacy of the individual sentences imposed ... was required.
3.	<p><b><i>Francis v The State of Western Australia</i></b></p> <p><b>[2019] WASCA 43</b></p> <p>Delivered 06/03/2019</p> <p>(Appeal by both Offender and State)</p>	<p>24 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Minor criminal history; cannabis use and traffic record.</p> <p>MDL disq 9 mths for offence of driving whilst suspended at time offending.</p> <p>Raised in a loving, supportive and hardworking family; happy upbringing; some hardships mainly in the form of bullying.</p> <p>Supportive ex-partner; shared custody of child; aged 4 yrs at time sentencing; devoted father.</p> <p>Good work history.</p> <p>No history of illicit substance use.</p>	<p>Ct 1: Manslaughter. Ct 2: Failing to stop and render assistance. Ct 3: Failing to report an incident.</p> <p>Francis was driving a motor vehicle, with two passengers, when he saw the deceased, aged 15 yrs, riding his trail bike on the same road.</p> <p>Francis mistakenly believed the bike to be one stolen from him several months earlier.</p> <p>With the intention of stopping the deceased and retrieving the bike Francis pursued the deceased at speed, exceeding the 50 km/h speed limit for the area while he did so. The deceased, fearful at being chased for no reason, sped up in an attempt to get away.</p> <p>Still being pursued by Francis, the deceased rode through a four-way intersection at speed against a 'give way' sign. The deceased's bike crashed with considerable force into another vehicle driving through the intersection. He was thrown from the bike and suffered critical injuries. He died the following day.</p> <p>Francis drove up to the intersection and, on seeing the bike did not belong to him, continued through the intersection and drove home. He failed to stop to render</p>	<p>Ct 1: 5 yrs 6 mths imp. Ct 2: 18 mths imp (cum). MDL disq 3 yrs. Ct 3: 18 mths imp (conc). MDL disq 3 yrs.</p> <p>MDL disq to be served conc.</p> <p>TES 7 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the manslaughter offence was aggravated by Francis travelling well in excess of the 50 km/h speed limit, at a speed of 75 km/h; in a built-up residential area with a risk to other road users; he gave chase in a car that he knew had electrical and mechanical faults; he put his passengers at risk; the offending involved vigilante behaviour and he was driving when he was not authorised to do so.</p> <p>The sentencing judge found Francis' culpability as being 'between the middle and higher end of the range of seriousness for offences of manslaughter, when that</p>	<p>Dismissed.</p> <p>State appeal challenged individual sentences and totality principle.</p> <p>Appellant challenged length of sentence (ct 1) and totality principle.</p> <p>At [58] – [72] Discussion on comparative cases.</p> <p>At [75] Mr Francis made the reckless decision to pursue a person who he thought was riding his stolen trail bike. That act of vigilantism was directed at an innocent 15-yr-old boy ... riding his own trail bike. [His] act of intimidation resulted in the tragic death of the deceased, with a devastating effect on his family. The offending was significantly aggravated by the fact that [he] was driving at excessive speed, in a built-up area, while his licence was suspended.</p>

			<p>assistance and did not report the incident to police.</p>	<p>offence is committed with a motor vehicle’.</p> <p>The sentencing judge found the offence of failure to stop was aggravated by Francis being responsible for the injuries caused to the deceased; he was aware both vehicles had been badly damaged and that two persons were potentially injured; the deceased critically; his actions made his two passengers complicit in his failure to stop and render assistance; he did not reconsider and return to the scene; instead he continued to conceal his involvement until the police came to his home.</p> <p>Remorseful; insight into the impact of his offending; cooperative with police.</p> <p>Devastating impact on deceased’s family.</p>	<p>At [76] ... the fact that Mr Francis was prepared to chase the deceased in a vehicle with known defects elevates the level of recklessness involved in his conduct.</p> <p>At [77] ... The sentencing judge accepted that Mr Francis did not intend to knock down the trail bike, and failed to appreciate the danger created by his driving and pursuit of the deceased. ... [he] did not drive in a manner which made a serious collision inevitable or almost inevitable. He did not strike or come into contact with the trail bike, and did not use his vehicle as a weapon intended to cause harm to persons or property. However ... [he] intended to place the deceased under pressure so that he would stop and [he] could retrieve what he thought was his trail bike. That intentional act of intimidation had the effect of placing the deceased in danger and causing him to travel</p>
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					<p>through the intersection without giving way, resulting in his tragic death. Furthermore, it must also be borne in mind, ... that [he] had two passengers in the car, who were put at risk by [him] engaging in the dangerous chase.</p> <p>At [78] The act of driving off after the accident was particularly callous.</p> <p>At [94] The present case involves a serious example of a failing to stop and assist offence.</p> <p>...</p>
2.	<p><b><i>Billing v The State of Western Australia</i></b></p> <p><b>[2017] WASCA 80</b></p> <p>Delivered 21/04/2017</p>	<p>37 yrs at time sentencing.</p> <p>Convicted after early PG (20% discount).</p> <p>Prior criminal history, including convictions of 3 x breaching VROI, 3 x criminal damage, 3 x threats to injure and several driving offences.</p> <p>Divorced; three children.</p> <p>Educated to yr 10; sandblaster by trade.</p>	<p><u>Indictment</u> Ct 1: Agg DDOD.</p> <p><u>Section 32 Notice</u> Ch 1: DDOBH. Ch 2: DDOBH. Ch 3: Driver failing to report incident occasioning death or GBH. Ch 4: Failed to render assistance to victim of incident occasioning BH, not GBH or death Ch 5: No MDL (fine suspension) Ch 6: Breach of VRO.</p> <p>The three victims were all passengers in Billing's car.</p> <p>Approx. 30 mins before the fatal crash,</p>	<p><u>Indictment</u> Ct 1: 10 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1: 6 mths imp (conc). Ch 2: 6 mths imp (conc). Ch 3: 12 mths imp (conc). Ch 4: 12 mths imp (conc). Ch 5: \$1500 fine. Ch 6: \$2000 fine.</p> <p>5 yrs 9 mths MDL disqualification.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p>	<p>Allowed in part.</p> <p>Appeal concerned finding of agg DDOD as worst case of its kind.</p> <p>Re-sentenced to:</p> <p><u>Indictment</u> Ct 1: 8 yrs imp.</p> <p><u>Section 32 Notice</u> Ch 1, 2 and 3: to be served cum upon each other and Ct 1. Ch 3: to remain conc with new sentence on Ct 1.</p>

			<p>Billing drove in a grossly dangerous fashion. He drove at speeds of up to 220km per hour and through four red lights. At one intersection he nearly collided with another car. He drove over one victim's foot at a service station. He did a burnout out at his former partner's house in breach of a VRO.</p> <p>Billing ignored pleas from two victims asking him to stop and let them out.</p> <p>Billing drove at 145km per hour in a residential street where the speed limit was 50km per hour. The street was a two-lane carriageway. Another car had to swerve to avoid colliding with Billing's car. Billing collided with a raised median island, causing him to lose control of the car. The car struck the vegetation on the median island and the rear passenger side struck a large pole. The impact caused fatal injuries to the left rear passenger. The front passenger suffered a deep cut to the scalp, grazing and bruising. The right rear passenger suffered a cut to his top lip and scratches to both arms.</p> <p>Billing got out of the car and urged the victims to leave with him. One victim said that another was critically injured, and Billing responded, "I don't give a fuck". Billing fled from the scene.</p> <p>Billing repeatedly denied being the driver and being involved. He failed to report the crash. He attempted to implicate one of the victims.</p>	<p>Sentencing judge erroneously found that the agg DDOD fell within the worst category.</p> <p>Sentencing judge found that the DDOBH offences were severe, but noted that the victims suffered relatively minor injuries.</p> <p>Sentencing judge found that Billing's dangerous driving was willful and did not involve an error of judgment or other momentary driving error. He found that while the outcome was not inevitable, the risk of a catastrophic outcome became grossly unacceptable by the time the collision occurred.</p> <p>Sentencing judge characterised Billing's behaviour in abandoning the victim shortly after the crash as callous and deliberate.</p> <p>Sentencing judge noted that Billing had been drinking alcohol before driving and that at the time of the crash this was in his system.</p>	<p>All other sentences to remain.</p> <p>TES 10 yrs imp (thus the TES was left unchanged).</p> <p>At [34] ... while the overall circumstances of the offence and the offender warranted a lengthy sentence of immediate imp, it did not warrant the maximum prescribed penalty.</p> <p>At [37] ... his Honour erred in his assessment of the gravity of the offence of DDOD. A different and lower sentence should have been imposed with respect to the indictable offence.</p> <p>At [39] Although the offence of agg DDOD was not in the worst category of cases, it was nevertheless a bad offence of its kind.</p> <p>At [44] The only significant matter in mitigation in the present case was the appellant's PG, which was entered at the first reasonable opportunity. Having</p>
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			<p>Billings had a BAC of 0.048%.</p> <p>Billings was not authorised to drive, having previously been disqualified from holding an MDL for 8 mths.</p>		<p>regard to the strength of the case against the appellant I would give a discount of 20%...</p> <p>At [49] ... the TES imposed by his Honour of 10 yrs' imp was appropriate...</p>
1.	<p><i>Petersen v The State of Western Australia</i></p> <p><b>[2016] WASCA 66</b></p> <p>Delivered 21/04/2016</p>	<p>27 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No previous sentences of imp. Past DUI for 0.08 and just prior to this offence received a summons for driving in excess of 0.05.</p>	<p>2 x Fail to ensure victim of road traffic incident received all assistance that was necessary and practicable.</p> <p>1 x Fail to report a road traffic accident.</p> <p>The appellant drove his car when it struck two pedestrians. He stopped and stayed at the scene for a short time but left when other people arrived. He did not assess the injuries to the two victims.</p> <p>After leaving the scene the appellant drank two stubbies of beer before returning some 2¼ hrs later. At the incident scene the appellant approached police and told them he was the driver of the vehicle involved in the incident.</p> <p>Both victims were pronounced dead at the scene.</p>	<p>2 x Fail to ensure assistance: 2 yrs 6 mths imp each ct.</p> <p>1 x Fail to report: 2 yrs imp.</p> <p>MDL disqualified 4 yrs.</p> <p>TES 4 yrs 6 mths imp.</p> <p>EFP</p> <p>The sentencing judge regarded the appellant's offending as serious and his consumption of alcohol following the incident as a significant aggravating factor.</p> <p>The appellant knew he would be losing his MDL as a result of an earlier drink driving offence and that he left the scene as he feared he was driving in excess of the legal blood alcohol limit.</p> <p>The appellant's criminal history demonstrated a persistent defiance and disregard for the law in relation to traffic matters.</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence and claimed breach of the totality principle and defence of emergency.</p> <p>At [191] The TES imposed is high. However ... the total sentence does not infringe the first limb of the totality principle having regard to ... the seriousness of the offences; ... why the appellant left the incident scene and his motive for subsequently drinking beer and the effect that ... conduct had on the ability of the police to investigate the incident; the seriousness of the injuries sustained by the victims; the need for personal and general deterrence.</p>

Office of the Director of Public Prosecutions