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NSW Sentencing Council
GPO Box 31
Sydney NSW 2001

Via: sentencingcouncil@justice.nsw.gov.au

Preliminary Submission to Review of Sentencing of Repeat Traffic Offenders

The Amy Gillett Foundation (AGF) welcomes the opportunity to provide a response to this Review into the sentencing of recidivist traffic offenders.

The AGF is a national organisation with a mission to reduce the incidence of serious injury and death of bike riders in Australia. We draw on evidence and international best practice, and collaborate with governments, business and the community to create a safe environment for bike riders, while maintaining an efficient road network for all road users.

The AGF strongly supports an approach to sentencing that directly or indirectly improves road safety. Direct improvements to road safety may be from removing unsafe drivers from the roads or addressing their unsafe behaviours. Indirectly, a sentencing system can provide general deterrence that increases people's attention to their task as road users. Sentencing for offences resulting in trauma to vulnerable road users' needs to ensure that the lives of cyclists and pedestrians are not diminished or needlessly endangered.

We welcome engagement on issues related to bicycle rider safety and encourage the Sentencing Council to contact us if additional information is required. Please do not hesitate to contact me if you have any questions or require any additional information.

Yours sincerely,



Phoebe Dunn
Chief Executive Officer, Amy Gillett Foundation
On behalf of the Joint Contributors

Joint contributors

This submission incorporates the views and concerns from the following organisations and individuals.

Amy Gillett Foundation

Bicycle New South Wales

Cycling New South Wales

Dr Marilyn Johnson, Amy Gillett Foundation and Monash University

Phoebe Dunn, Amy Gillett Foundation

Dr Rod Katz, Amy Gillett Foundation (Board)

Ray Rice, Bicycle New South Wales

Graham Rock Seers, Cycling New South Wales

Potential impacts of sentencing approaches on road safety

The Amy Gillett Foundation applauds the work of the Council in focusing on the road safety outcomes of different sentencing approaches.

In Australia, the Safe System is the conceptual framework that informs a system-wide approach to road safety. Safe People is one of the four key components of the Safe System approach, along with safe roads and roadsides, safe speed and safe vehicles. Recidivist traffic offenders have to be addressed in a Safe System.

The terms of reference specifically invite submissions on:

- Current sentencing statistics and the characteristics of offenders
- Principles the courts should apply
- Intervention programs
- Best practice on deterrence of recidivism and encouragement of safe practices

Current statistics

The Amy Gillett Foundation does not have privileged access to data on existing sentencing or offenders. However, there are a number of reports of over-involvement in fatal and serious injury crashes by recidivist offendersⁱ. These reports tend to focus on recidivist drink drivers or speeding drivers.

It has long been argued (at least since a study of taxi drivers in 1949) that people drive as they live. High involvement in crashes tends to be associated with over-involvement with criminal courts, social services etc..ⁱⁱ A New Zealand studyⁱⁱⁱ looks at the psychological factors that predispose people to recidivism.

Recent analysis of National Coronial Information System (Johnson, undated) of fatalities in Australian road crashes from 2013 to 2016 has identified a significant number of involved drivers were noted as having been involved in previous illegal or deviant behaviours (e.g. driving unlicensed or disqualified). A number of these are known to have been responsible for cyclist fatalities.

Principles

The Amy Gillett Foundation does not profess to have deep expertise in sentencing theory or practice. However, we do have views on certain principles that should be taken into account.

There are likely to be a number of submissions to this Review that concern themselves with the disadvantaged circumstances of recidivist offenders. Recommendations will possibly be made that sentencing should take into account the reported adverse effects on the offender of prolonged engagement with the judicial system.

These concerns are no doubt well founded. In our own inquiries, we have received expressions of concern about how to improve road safety without disadvantaging vulnerable populations – particularly remote indigenous communities.

Given these concerns, we recommend that lateral approaches to sentencing options be considered. These need to take the circumstances of the recidivist offender into account. This does not mean leniency. It does mean encouraging a range of intervention programs that achieve behaviour change through established effective mechanisms suitable for the particular offender.

Classical deterrence theory from Hobbes states that for justice to be effective it should be swift, certain and fair. Sentencing needs to adhere to these principles. If consequences for criminal actions fail these tests, then recidivism may be the result.

Delays inherent in the judicial process make it difficult to achieve a swift, certain and fair response. The strategy for this Review may thus need to be towards making a wide range of alternative interventions available for police alongside traditional judicial approaches.

These alternative interventions may be considered as training or therapy. They need to be based on effective behaviour change principles from conditioning through to cognitive behavioural therapy (CBT). Resources need to be devoted to rigorously developing and evaluating these interventions.

Intervention programs

In principle, intervention programs may range in intensity from short online to long-term and high engagement. Different tactics need to be available for different types of offenders and offences based on the risk of reoffending and the severity of the offence based on propensity to harm.

Increasingly, we could be looking to technology to reduce recidivism. For instance, installation of alcolocks to prevent drink driving could become a much more common form of intervention for offenders who own vehicles. Drug detection in ignition systems is an area that requires further development.

Use of roadside speed detection devices (speed camera systems including point-to-point speed cameras) and, increasingly, in-vehicle speed limiters, can help deter speeding offences generally and recidivism indirectly.

Distracted driving offences are likely to be a new area of recidivist offending given the acknowledged addictive nature of mobile devices. Use of smartphone locking devices needs further exploration to address recidivist distracted drivers.

We would welcome the development of intervention programs that promote cycling as a mode of transport and also rehabilitate offenders using experiential learning. This approach would equip participants with both an alternative transportation option, particularly in lieu of lost driving privileges, and as well with an embodied experience of the risks faced by cyclists. This type of intervention would need to be designed with a rehabilitation and safety focus but could meet the twin objectives of removing a flawed driver from the control of a very dangerous high mass vehicle and helping the offender understand the vulnerability of road users. It would be important to emphasise any on-bike components as not a punishment, but rather an opportunity to develop new skills and understanding and empathy for vulnerable road users.

Best Practice

In late 2017, Beau Kilmer of the Rand Institute visited Australia and spoke of the purportedly highly effective 24/7 Sobriety program being run in South Dakota^{iv}. This program is characterized as providing a swift, certain and fair intervention. Alcohol offenders are required to stay completely sober and undergo twice-daily breath tests. Failure of a test results in immediate imprisonment.

The evidence for the effectiveness of this sort of program on public health and crime is persuasive however evidence on road safety is mixed. This is not surprising given the inherent difficulties in attributing changes in road casualties to a particular policy.

Conclusion

The Amy Gillett Foundation supports a justice system that effectively reduces the trauma on our roads and especially protects vulnerable road users such as cyclists.

Sentencing has a role to play within Safe System principles. It is the ultimate step available in ensuring Safe People.

Sentencing needs to be calibrated so that reoffending does not occur. Sentences should be designed so that interventions either change the person's behaviour through training or therapy or limit their ability to re-offend by modifying their access to motor vehicles.

The use of technology to address an individual's propensity to offend, or re-offend, should be expanded to ensure the efficiency and effectiveness of the judicial system.

Interventions involving training offenders on bicycle proficiency is recommended. This has the potential to promote personal development, provide alternative mobility while disqualified from driving and create awareness of the dangers posed by breaches of traffic laws.

ⁱ An examination of the licensing status of drivers involved in fatal road crashes in Western Australia. Plunkett 2008 <http://acrs.org.au/files/arsrpe/RS080059.pdf>

ⁱⁱ <https://www.urbantrafficsafetyconference.com/wp-content/uploads/2017/09/Barry-Watson-Role-of-the-Road-User-in-a-Safe-System.pdf>

ⁱⁱⁱ http://www.corrections.govt.nz/_data/assets/pdf_file/0005/665636/drivingoffender.pdf

^{iv} Efficacy of Frequent Monitoring With Swift, Certain, and Modest Sanctions for Violations: Insights From South Dakota's 24/7 Sobriety Project

[Beau Kilmer](#) PhD, [Nancy Nicosia](#) PhD, [Paul Heaton](#) PhD, and [Greg Midgette](#) MPP
https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2012.300989?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Aacrossref.org&rfr_dat=cr_pub%3Dpubmed