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# *Contextual culpability: How drinking and social context impact upon sentencing of violence*

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Research Report

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## Contextual culpability: How drinking and social context impact upon sentencing of violence

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The role intoxication plays in offending behaviour is the subject of complex and contentious debates concerning blame and culpability in the eyes of the law (see Ashworth, 2015; Dingwall, 2006; Sinclair-House, 2018). Sentencing guidelines identify intoxication as an aggravating factor (Sentencing Council, 2011), However, there is little clarity on how this ought to be applied and in which settings, as such sentencers are left to determine the 'appropriate mix' of sentencing considerations. However, this potentially introduces unwarranted disparities and bias in sentencing outcomes.

The controversial effect of intoxication on sentencing has received renewed attention with a series of new empirical studies. These studies have relied on data from the Crown Court Sentencing Survey, which conflates alcohol and drug intoxication and misses pertinent contextual features of the offence. Yet, without further scrutiny of how intoxication shapes sentence outcomes, we miss the divergent ways in which intoxication is considered in arriving at sentence outcomes and run the risk of erroneously assuming intoxication impacts upon outcomes homogeneously.

Our study explored how alcohol intoxication, and its social context, impact upon the length of prison sentence for violent offences. To do so, we employed an innovative approach using both supervised and unsupervised coding processes to access contextual information in a repository of online sentencing remarks. These coded records were then examined using multilevel proportional hazards Cox models, through which the effect of selected contextual factors on the duration of custodial sentences was estimated.

Our findings provide new insights into how punishment is shaped by not only the presence of alcohol intoxication in offending, but also in which contexts. Specifically, our findings highlight significant punitive effects of reference to concomitant drug use, the defendant drinking together with the victim, and if the offence occurred in a private setting. Drugs being cited increased the likelihood of longer sentence by 44%. Whether the defendant and victim had been drinking together was also associated with a 32% increase in the likelihood of a longer sentence. Offences having occurred in public were not found significant; however, offences having occurred in private were, increasing probability of a longer sentence by 32%. Intoxication is thus framed as problematic differently in different contexts - impacting upon perceptions of culpability and blame and shaping the severity of punishment accordingly.

These findings help clarify complex considerations taken into account by sentencers but also expose potential challenges to ensuring consistency in sentencing practice if judges are interpreting contextual factors in different ways. Expanded explanations provided by the Sentencing Council (2019) clarify that intoxication (from both legal and illegal substances) that have been voluntarily consumed increases "the seriousness of the offence provided that the intoxication has contributed to the offending", as offenders "must accept the consequences of the behaviour that results, even if it is out of character". However, it is not known the extent to which the interpretations identified in

this study accord with the Sentencing Council’s vision for how the sentencing factor of intoxication *ought* to be applied. This research provides the first empirical analysis upon which the Sentencing Council could rely in order to provide further guidance.

## Read the full paper

View or download the full paper at:

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## References

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