

# Information Bulletin

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## CAUSE DEATH BY DANGEROUS DRIVING

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This Information Bulletin focuses on the offence of *cause death by dangerous driving*. It identifies the number of such offences recorded by South Australian Police from 1988 to 2000, and then considers the outcomes and penalties imposed in those cases finalised by the Magistrates and Higher Courts over the past five years.

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## 1. Introduction

This Information Bulletin focuses on the offence of *cause death by dangerous driving*. It identifies the number of such offences recorded by South Australian Police from 1988 to 2000, and then considers the outcomes and penalties imposed in those cases finalised by Magistrates and Higher Courts in this state over the past five years.

For comparative purposes, data from New South Wales are also included. New South Wales was selected because of a change in sentencing practices that was expected to flow from a guideline judgment issued in that state in late 1998. According to that judgment, a non custodial sentence for an offence involving *drive occasioning death* should be exceptional and that, wherever an aggravating factor involving the conduct of an offender was present, the custodial sentence should generally be three years or more in duration. This raised the question of whether this guideline judgment resulted in New South Wales courts imposing “tougher” penalties for *cause death due to dangerous driving* than did South Australian courts.

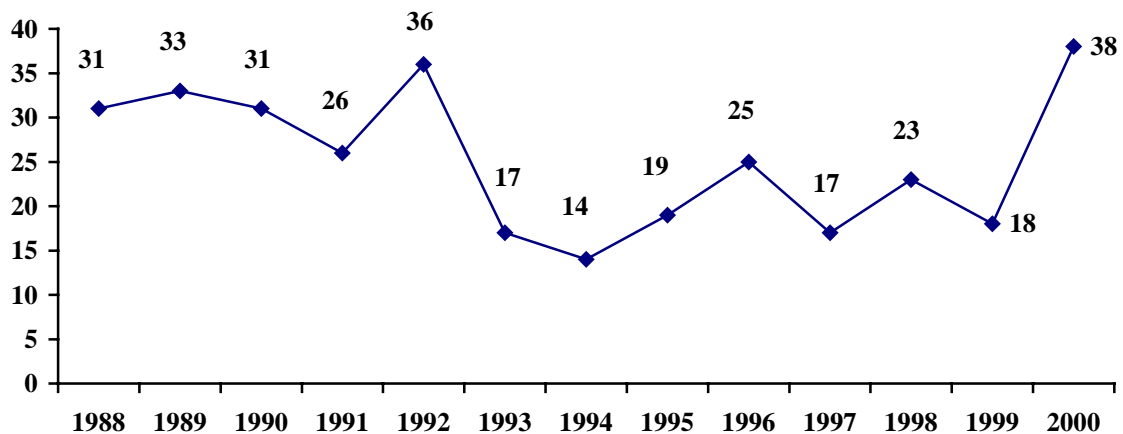
## 2. Total number of offences recorded by police

### 2.1 South Australia, 1988-2000

As indicated in Figure 1:

- The number of *cause death by dangerous driving* offences has remained extremely low during the 13 year period depicted.
- There was a general downward trend from 1988 to 1994 (except for the peak in 1992). Thereafter, numbers remained relatively stable (despite the inevitable annual fluctuations) until 1999. In 2000 a marked increase occurred. The figure recorded in 2000 was the highest recorded during the 13 years depicted. It equates to 2.56 deaths per 100,000 population.

**Figure 1: Longitudinal trends in the number of cause death by dangerous driving offences recorded by police, 1988 - 2000**



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### 3. Court Outcomes, 1996 – 2000

#### 3.1 Magistrates Court Outcomes, South Australia

Because *cause death by dangerous driving* is classified as a major indictable offence, penalties can only be imposed by the Higher Court. However, all such cases begin in the Magistrates Court with a committal hearing. Several outcomes are possible. Apart from the obvious one of committal to the higher court for trial or sentencing, the prosecution may, at this early stage, choose to withdraw the charge. The outcomes for all cases commenced in the Magistrates Court between 1996 – 2000 where *cause death by dangerous driving* was the major charge are listed in Table 1.

As shown, in 1996, 1998 and 1999, in the majority of these cases the defendant was committed to the Higher Court, with only a handful of cases being dismissed. However, in 1997, the reverse was true; the majority of cases (10 out of 19) were dismissed with the remaining nine being committed to the Higher Court.

**Table 1 Cases finalised in the Magistrates Court where death due to dangerous driving constituted the major or most serious charge, 1996 – 1999.**

Outcome	1996	1997	1998	1999	2000
<i>Magistrates Court</i>					
Committed for trial/sentence	14	9	8	5	10
Convicted with penalty	0	0	0	0	0
Major charge dismissed – not guilty of any other	3	10	2	2	2
Total	17	19	10	7	12

*Note: the 1998 figure for the Magistrates Court does not coincide with the figures published in Crime and Justice in South Australia: Adult Courts and Corrections. In that publication, one case which, according to the computerised data, had drive causing death as the major charge, was listed as having an outcome of 'convicted with penalty'. However, subsequent checking of the Certificate of Record revealed that the data had been incorrectly entered by CAA. The charge involved was not death due to dangerous driving but threaten harm (which was completely unrelated to a driving incident).*

#### 3.2 Higher Court Outcomes, South Australia

As shown in Table 2, in each of the years depicted, only a very small number of cases finalised in the Higher Courts involved *cause death by dangerous driving* as the major charge. The number of such cases finalised ranged from seven in 1999 to 17 in 1996.

Between 1996 and 1999, the majority of defendants who had *cause death by dangerous driving* as their most serious offence either admitted or were found guilty of that major charge. This applied to 11 of the 17 defendants in 1996, 8 of the 12 in 1997, 10 of the 15 in 1998 and 5 of the 7 in 1999. In contrast, in 2000 only 2 of the 9 were found guilty or admitted guilt to the major charge, while 4 out of 9 were found guilty of a lesser or other charge.

In the period 1997 to 1999, no case resulted in a nolle prosequi being entered for the major charge. However in 1996 and again in 2000 there was one case which resulted in a nolle prosequi.

**Table 2 Cases finalised in the Higher Court where death due to dangerous driving constituted the major charge 1996 to 2000**

<i>Higher Court</i>	1996	1997	1998	1999	2000
Guilty plea:					
<i>Guilty as charged</i>	6	5	7	2	1
<i>Guilty of other offence</i>	1	0	1	0	0
Trial					
<i>Guilty as charged</i>	5	3	3	3	1
<i>Guilty of lesser offence</i>	2	3	4	2	4
<i>Acquitted</i>	1	1	0	0	2
Nolle Prosequi:					
<i>Guilty of other offence</i>	1	0	0	0	0
<i>Accused discharged</i>	1	0	0	0	1
Total	17	12	15	7	9

### 3.3 Higher Court outcomes: comparison between South Australia and New South Wales, 1996-1999<sup>1</sup>

As was the case in South Australia, the number of cases finalised by the New South Wales Higher Courts involving *cause death by dangerous driving* was low in each of the years depicted. There were 96 such cases in 1996, 84 in 1997, 98 in 1998 and 89 in 1999.

Between 1996 and 1999, two thirds of cases finalised in South Australia over this four year period resulted in the defendant being found or pleading guilty to the major charge. Corresponding figures for New South Wales were slightly lower, with 52.1% being found guilty as charged in 1996, 61.9% in 1997, 56.1% in 1998 and 61.8% in 1999.

**Table 3 Cases finalised in the Higher Courts where cause death by dangerous driving was the major charge listed: outcome for the major charge in SA compared with NSW, 1996 to 2000**

	1996		1997		1998		1999	
	SA	NSW	SA	NSW	SA	NSW	SA	NSW
Persons charged	17	96	12	84	15	98	7	89
Persons found guilty as charged#	11	50	8	52	10	55	5	55
% found guilty as charged	64.7%*	52.1%	66.7%*	61.9%	66.7%*	56.1%	71.4%*	61.8%

#Note that persons not found guilty of the major charge of causing death by dangerous driving may have been found guilty of another offence – see Table 2 for SA figures.

Note: The source for the NSW data is: New South Wales Criminal Courts Statistics 1996, 1997, 1998, 1999, 2000 (NSW Bureau of Crime Statistics and Research)

\*Because of the very small numbers involved, percentages are questionable. However, they have been included for comparison. For NSW, figures relating to persons charged have been used rather than total charges laid. 'Persons charged' is more equivalent with the counting unit used in compiling the South Australian statistics.

## 4. Higher Court Penalties, 1996 – 2000

<sup>1</sup> Comparable data for the year 2000 is not currently available for NSW.

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#### 4.1 Higher Court Penalties, South Australia

Table 4 documents the most serious penalty imposed in those cases where the major charge convicted was *cause death by dangerous driving*. Two points need to be stressed:

- Only the most serious penalty imposed is included. Persons convicted of this offence may have also received other penalties (eg licence disqualification and/or fine). However, these secondary penalties would not be counted here; and
- Because only the Higher Court may impose penalties for this offence, no Magistrates Court data are relevant.

As shown, the number of cases receiving a penalty for *cause death by dangerous driving* decreased over the period of 1996 to 2000 with only two cases receiving a penalty in the most recent year. However over the five years depicted the most serious penalty for *cause death by dangerous driving* was either imprisonment or suspended imprisonment. In 1996, over half of these cases resulted in direct imprisonment (7 out of 11). However, in 1997, 1998, 1999 and 2000, the majority received a suspended sentence rather than direct imprisonment (6 out of 9 in 1997, 6 out of 10 in 1998, 3 out of 5 in 1999 and 2 out of 2 in 2000). Only one case (in 1997) resulted in a licence disqualification as the major penalty.

**Table 4 Cases finalised in the higher courts in South Australia where the charge receiving the highest penalty was death due to dangerous driving: Most serious penalty for death due to dangerous driving**

Penalty	1996	1997	1998	1999	2000
Imprisonment	7	2	4	2	0
Suspended imprisonment	4	6	6	3	2
Suspension of driver's licence	0	1	0	0	0
<b>Total</b>	<b>11</b>	<b>9</b>	<b>10</b>	<b>5</b>	<b>2</b>

#### 4.2 Higher Court Penalties: South Australia compared with New South Wales, 1996-1999<sup>2</sup>

Table 5 compares the most serious penalty imposed in South Australia and New South Wales. As noted above, all but one case finalised over the four year period in South Australia resulted in either direct or suspended imprisonment. In contrast, in New South Wales a wider range of penalties were imposed. While the majority of cases resulted in direct imprisonment, the proportion receiving this sentence varied from 51.9% in 1997 to 67.3% in 1999. Periodic detention and home detention accounted for between 26.8% in 1997 to 12.7% in 1999. The remainder (ie 30.0% in 1996, 19.2% in 1997, 14.5% in 1998 and 19.9% in 1999) received a non-custodial sentence, notably community service orders and recognizance.

The NSW results for 1999 are interesting, given the guideline judgement issued in late 1998 by the NSW Court of Criminal Appeal in the case of *R v Christopher Tom Jurisic (R v Jurisic Matter No 60131/98 [1998] NSWSC 423 (12 October 1998)*. According to this guideline judgement:

- (1) *A non-custodial sentence for an offence against s 52A (ie drive occasioning death) should be exceptional and almost invariably confined to cases involving momentary inattention or misjudgement.*
- (2) *With a plea of guilty, wherever there is present to a material degree any aggravating factor involving the conduct of the offender, a custodial sentence (minimum plus additional or fixed) of less than three years (in the case of dangerous driving causing death) and less than two years (in the case of dangerous driving causing grievous bodily harm) should be exceptional.*

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<sup>2</sup> Comparable data for the year 2000 is not currently available for NSW.

This guideline judgement identified seven aggravating factors relating to the conduct of the offender: namely

- Degree of speed
- Degree of intoxication or of substance abuse
- Erratic driving
- Competitive driving or showing off
- Length of the journey during which others were exposed to risk
- Ignoring of warnings
- Escaping police pursuit.

However, as indicated by Table 5, despite this guideline judgement, one third of cases finalised by the NSW higher court in 2000 did not result in imprisonment and (as shown in Table 6) of those that did, the average sentence was 27.0 months, which is below the minimum of 3 years (36 months) recommended by that judgement.

Overall, during the four years depicted, only one case (2.9%) out of 35 finalised in South Australia did not involve imprisonment (either direct or suspended). In contrast, in New South Wales over the same four years, there were 44 cases (20.8% out of 212) which received a penalty other than imprisonment, suspended imprisonment, home detention or periodic detention.

**Table 5 Cases finalised in the Higher Court where the major charge convicted (found guilty) was death due to dangerous driving: most serious penalty for cases where death due to dangerous driving was the most serious offence proved, 1996 to 1999.**

Penalty	1996		1997		1998		1999	
	SA	NSW	SA	NSW	SA	NSW	SA	NSW
Imprisonment	7	27 (54.0%)	2	27 (51.9%)	4	33 (60.0%)	2	37 (67.3%)
Suspended imprisonment	4	-	6	-	6	-	3	0
Periodic detention	-	8 (16.0%)	-	12 (23.0%)	-	10 (18.2%)	0	7 (12.7%)
Home detention	-	0	-	2 (3.8%)	-	4 (7.3%)	-	0
CSO	0	5 (10.0%)	0	9 (17.3%)	0	7 (12.7%)	0	8 (14.5%)
Recognizance	0	10 (20.0%)	0	1 (1.9%)	0	1 (1.8%)	0	2 (3.6%)
Licence disqualification	0	0	1	0	0	0	0	0
Fine	0	0	0	0	0	0	0	1 (1.8%)
<b>Total cases</b>	<b>11</b>	<b>50</b>	<b>9</b>	<b>52</b>	<b>10</b>	<b>55</b>	<b>5</b>	<b>55</b>

*Because of the very small numbers involved, percentages were not calculated for the South Australian data.*

*Note: The source for the NSW data is: New South Wales Criminal Courts Statistics 1996, 1997, 1998, 1999, 2000 (NSW Bureau of Crime Statistics and Research)*

*Note: For NSW, the averages for non prison sentences were as follows:*

- *Periodic detention: 21.4 months*
- *CSO: 375.0 hours*
- *Recognizance: 36.0 months*
- *Fine: \$1,000*

### 4.3 Length of imprisonment/suspended imprisonment, South Australia

In 2000 there were no cases which resulted in direct imprisonment. For the other four years depicted, because of the very small numbers which resulted in direct imprisonment (7 in 1996, 2 in 1997, 4 in 1998 and 2 in 1999), average prison sentences and non parole periods have fluctuated markedly from one year to another. For example, the average sentence has varied from 29.0 months in 1999 to 72.0 months in 1997. Similarly, the average non parole period fluctuated from 6.0 months to 48.0 months between the same two years. As a result of these marked variations, no patterns are discernible. Each case (and in particular, the sentencing remarks) would need to be investigated individually to understand the reasons for the sentences imposed.

Because the number of cases resulting in suspended imprisonment is also very low, the averages and maximums varied noticeably, with average terms ranging from 25.0 months (in 1997) to 44.0 months (in 1999.)

**Table 6 Length of imprisonment/suspended imprisonment imposed by the Higher Court in SA for cases where the major charge convicted was drive causing death, 1996 to 2000**

	1996	1997	1998	1999	2000
<b>Imprisonment</b>	N = 7	N=2	N=4	N=2	N=0
Av non parole period (months)	12.1	48.0	22.5	6.0	-
Av. Sentence (months)	32.9	72.0	44.8	29.0	-
<b>Duration</b>					
<i>1 to less than 2 yrs</i>	0	0	0	1	0
<i>2 – less than 3 yrs</i>	4	0	1	0	0
<i>3 – less than 4 yrs</i>	2	0	2	1	0
<i>4 – less than 5 yrs</i>	1	0	0	0	0
<i>5 – less than 10 yrs</i>	0	2	1	0	0
<b>Suspended Imprisonment</b>	N=4	N=6	N=6	N=3	N=2
Average (mnths)	33.0	25.0	27.2	44.0	25.5
Minimum (mnths)	24	12	16	36	24
Maximum (mnths)	48	48	39	48	27

### 4.4 Length of imprisonment: South Australia compared with New South Wales<sup>3</sup>

Comparison is difficult between the two states due to the small numbers involved in South Australia and the lack of comparable 'average sentence' data for NSW. The following comments must therefore be treated with caution.

Although data on average prison length was only available from NSW for 1998 and 1999, these figures (of 30.4 months and 27.0 months respectively) were lower than that of 44.8 months and 29.0 months recorded in South Australia for the same two years.

Although highly tenuous because of the small numbers involved, these data suggest that the length of prison terms imposed in South Australia is at least no less than, and may even be greater than, those imposed in NSW.

<sup>3</sup> Comparable data for the year 2000 is not currently available for NSW.

**Table 7 Number of cases resulting in imprisonment where drive causing death was the major charge convicted (found guilty): length of prison term – comparison between SA and NSW**

Length of prison term	1996		1997		1998		1999	
	SA	NSW	SA	NSW	SA	NSW	SA	NSW
Total	7	28	2	27	4	33	2	37
Average (months)	32.9	na	72.0	na	44.8	30.4	29.0	27.0

\* Because of the very small numbers involved, percentages should be treated with extreme caution.

Note: The source for the NSW data is: New South Wales Criminal Courts Statistics 1996, 1997, 1998, 1999, 2000 (NSW Bureau of Crime Statistics and Research)

## Summary

The key findings of this Information Bulletin are as follows:

- The number of *cause death by dangerous driving* offences recorded by police in South Australia over the past 13 years have remained extremely small and have fluctuated considerably from one year to another.
- With the exception of 1997, the majority of cases involving *cause death by dangerous driving* dealt with in the Magistrates Court resulted in committal to the higher court for trial or sentencing.
- Between 1996 and 1999, in the majority of cases finalized in the Higher Court where *cause death by dangerous driving* was the major charge, there was a finding of guilt to that charge. The exception was 2000 when, of the nine cases, only two were guilty as charged, while four resulted in a finding of guilt to a lesser offence.
- Of those 37 higher court cases finalized between 1996 and 2000 where there was finding of guilt to a charge of *cause death by dangerous driving*, all but one resulted in either imprisonment or suspended imprisonment.
- Over this period, average prison sentences varied from 29 months in 1999 to 72 months in 1997. There was also considerable variation in the average suspended imprisonment terms (from 25 months in 1997 to 44 months in 1999).
- While the small numbers recorded for South Australia make comparisons with New South Wales difficult, overall from 1996 to 1999, only one of the 35 finalised cases in South Australia did not involve any form of imprisonment (either direct or indirect). By comparison, in NSW, 20.8% of cases received a penalty other than imprisonment, suspended imprisonment, home detention or periodic detention. There is also some indication that the length of imprisonment in South Australia was no less than that imposed in New South Wales, even after the judgement issued in New South Wales in late 1998.