

# Dangerous driving occasioning GBH

Prior to 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
BAC	blood alcohol content
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
RTA	<i>Road Traffic Act 1974 (WA)</i>
DUI	driving under the influence

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
12.	<p><i>Timbrell v The State of Western Australia [No 2]</i></p> <p>[2013] WASCA 269</p> <p>Delivered 28/11/2013</p>	<p>21 yrs at time of offending. 22 yrs at time of sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record; no prior traffic convictions; no unpaid fines.</p> <p>Attended private Catholic School; house captain; completed Bachelor of Commerce degree; represented the State in underage football.</p> <p>Employed with a finance company.</p> <p>No difficulties with alcohol or illicit drugs.</p> <p>Strong and stable family.</p> <p>Due to the collision now suffering from an adjustment disorder; experiencing symptoms of increased depression and stress, social avoidance, increased irritability, feelings of guilt, reduced self-confidence, increased emotionality &amp; greater level of dependence on his parents.</p>	<p>Ct 1: DDOGBH RTA s59(1)(b) Ct 2: DDOD RTA s59(1)(b)</p> <p>The appellant was driving his motor vehicle on Leach Highway in Shelley. He drove into the intersection of Leach Highway and Vahland Avenue in contravention of a red traffic control light.</p> <p>The bullbar of his vehicle struck another motor vehicle in the intersection. The other vehicle had been travelling on Vahland Avenue. Mr Liddiard was the driver and his sister, Ms Liddiard, was a passenger. Mr Liddiard lawfully entered the intersection on a green traffic control light in order to execute a right turn. The force of the impact propelled his vehicle into a light pole. The appellant's vehicle rolled.</p> <p>Mr Liddiard died at the scene from spinal and head injuries suffered as a result of the collision. Ms Liddiard received rib fractures, a punctured and collapsed lung, multiple lower limb lacerations, a hip wound, facial cuts, a chipped tooth and whiplash injuries. The collapsed lung was a life-endangering injury. Ms Liddiard spent a week in hospital after the collision.</p>	<p>Ct 1: 8 mths imp. Ct 2: 12 mths imp (conc).</p> <p>TES 12 mths imp.</p> <p>Extreme and genuine remorse and contrition.</p> <p>Character references spoke well of him.</p> <p>Judge not satisfied that appellant deliberately drove through the red light.</p> <p>Sentencing judge noted that appellant had a 'momentary and appalling lapse of either judgment or attention...'</p> <p>VIS described as 'absolutely heartbreaking'.</p>	<p>Allowed by majority.</p> <p>Mazza J dissenting.</p> <p>Terms of conc and order stand. TES of 12 mths imp susp for 9 mths.</p> <p>At [56] ... By comparison with other cases, the appellant's culpability was towards the low end of the scale of seriousness. There was no suggestion he was under the influence of illicit drugs. There was no evidence he had been exceeding the speed limit. It was not alleged the appellant had deliberately ignored the red traffic control signal ... the cause of his inattention is unknown.</p> <p>At [111] Patterns of sentencing with respect to the recently increased penalties are yet to emerge ...</p>

			<p>The appellant received a head injury. He was treated in hospital but the injury was relatively minor.</p> <p>The appellant undertook a preliminary breath test at the scene. His blood alcohol level was zero. The speed limit where the incident occurred was 70 km/hr. There was no evidence to suggest the appellant had been speeding. Also, there was no evidence to suggest he had braked before the collision. The road was dry, the weather conditions were clear and the intersection was well lit.</p> <p>Ideal driving conditions.</p> <p>As a result of the head injury the appellant had no memory of the incident and could not say why he drove into the intersection.</p>	Very low risk of re-offending.	
11.	<p><i>Lutumba v The State of Western Australia</i></p> <p>[2013] WASCA 172</p> <p>Delivered 01/08/2013</p>	<p>29 yrs at time of offence &amp; sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record in WA.</p> <p>Born in Congo; Arrived in WA in 2009 as a refugee.</p> <p>Early life traumatic; his environment disrupted by ongoing fighting,</p>	<p><u>Indictment</u></p> <p>Ct 1: DDOD RTA s59(1)(b)</p> <p>Ct 2: DDOGBH RTA s59(1)(b)</p> <p>Ct 3: DDOGBH RTA s59(1)(b)</p> <p>Ct 4: DDOGBH RTA s59(1)(b)</p> <p><u>s32 Notice</u></p> <p>DDOBH</p> <p>DDOBH</p> <p>Unauthorised driving (learner)</p> <p>Drive vehicle contrary to compliance</p>	<p><u>Indictment</u></p> <p>Ct 1: 5 yrs imp.</p> <p>Ct 2: 3 ½ yrs imp.</p> <p>Ct 3: 3 ½ yrs imp.</p> <p>Ct 4: 3 ½ yrs imp.</p> <p><u>s32 Notice</u></p> <p>4 mths imp.</p> <p>4 mths imp.</p> <p>\$250 fine</p> <p>\$600 fine</p>	<p>Allowed.</p> <p>Sentencing judge's decision in relation to Ct 1 on the indictment, and orders in relation to accumulation and concurrency of the individual sentences of imp, set aside.</p> <p>Re-sentenced to 3 yrs 6 mths imp (Ct 1) and TES 4 yrs 6 mths</p>

		<p>widespread disease and famine; saw his father and brother both killed.</p> <p>Full time employment since been in WA; financially supported his mother.</p> <p>Former partner, who was pregnant with their unborn son, remained in Congo when he relocated to WA. In early 2012, his son died from malnutrition.</p> <p>Very limited English skills.</p>	<p>notice</p> <p>Disorderly behaviour in public</p> <p>All of the offences, except for the offence of disorderly behaviour in public, arose out of single course of conduct while the appellant drove a motor vehicle on 1 January 2012.</p> <p>At about 8:45pm the appellant drove his sedan on Dunreath Drive towards Perth Airport. Dunreath Drive is a single carriageway with one lane provided for each direction of travel. The appellant was transporting four passengers, being three adults and a 6 yr old child.</p> <p>Immediately prior to the incident, the appellant was seen by other road users to be travelling dangerously close to the rear of a Mercedes truck. This limited his view of oncoming traffic.</p> <p>About 1.9km from the airport, at the approach to a right-hand curve in Dunreath Drive, the appellant crossed double white dividing lines onto the incorrect side of the carriageway. He performed this manoeuvre in an attempt to overtake the truck, which had reduced its speed in accordance with a 'reduce speed' sign. The appellant's vehicle collided head on with</p>	<p>\$300 fine</p> <p>Ordered to serve 12 mths of term imposed on Ct 3 on indictment before commenced to serve term imposed for Ct 1 on indictment.</p> <p>All other terms conc.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>MDL disq 6 yrs.</p> <p>Appears to have been contrite and remorseful for his offending and its impact on the victims.</p>	<p>imp.</p> <p>At [39] ... the appellant's criminal conduct was not in the upper range of seriousness for offences of dangerous driving occasioning death, where the offence is not committed in circumstances of aggravation.</p> <p>At [41] ... bearing in mind the increase in the maximum penalty, with effect from 1 August 2008, it is apparent from my scrutiny of earlier sentencing decisions that the term of 5 years' imprisonment is outside the range available on a proper exercise of sentencing discretion.</p> <p>At [51] It was appropriate, in the circumstances, for the seriousness of the appellant's offending, and the consequences for multiple victims, to be recognised by some accumulation of the individual sentences of imprisonment. However, when the total effective sentence of 6 years' imprisonment is evaluated in the</p>
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			<p>an oncoming vehicle which contained a driver and a passenger.</p> <p>As a result of the collision, the rear driver's side passenger in the appellant's vehicle, a woman, suffered multiple severe injuries. She died shortly after in hospital (Ct 1). The deceased woman's partner, who was seated in the middle rear seat, was seriously injured (Ct 2). The two occupants of the oncoming vehicle sustained extensive injuries amounting to GBH (Cts 3 and 4). The deceased's 6 yr old son, who was seated in the rear of the vehicle, and the front seat passenger, received injuries amounting to bodily harm (Cts 1 and 2 on s32 notice). The appellant broke his ankle.</p> <p>When the offences occurred, the appellant was driving contrary to the conditions of his learner's permit in that he was not properly supervised and he failed to display 'L' plates. He should not have been driving in the circumstances. The appellant's vehicle was, to his knowledge, subject to a compliance notice and was therefore unfit for use on the road.</p>		<p>context of the maximum penalties for the offences for which individual sentences of imprisonment were imposed .....the only conclusion reasonably open is that the sentencing outcome infringed the first limb of the totality principle. ...</p>
10.	<p><i>Shee v Jennings</i></p> <p>[2013] WASC 162</p>	<p>30 yrs at offending. 31 yrs at sentencing. Convicted after early PG.</p>	<p><b>s 284(2) Criminal Code Culpable driving (other than of motor vehicle) causing GBH.</b></p>	<p>18 mths imp. EFP.</p>	<p>Appeal allowed. Re-sentenced to 12 mths imp susp 12 mths.</p>

<p>Delivered 06/05/2013</p>	<p>No criminal record at time of offence.</p> <p>Prior good character.</p> <p>Not an Australian citizen or permanent resident.</p> <p>Appellant had earlier been convicted and sentenced in the District Court on a charge of conspiring with another to commit an offence (Commonwealth) to 3 yrs imp. He was ordered to be released on a GBB after 12 mths. This Commonwealth offence was committed after the offence of causing GBH.</p> <p>Entitled to be sentenced as a first offender.</p>	<p>The appellant was the owner of a 4.25m dinghy. He held a recreational skipper's ticket.</p> <p>The appellant took his boat to the Belmont water ski area in the company of the victim and two others. The ski area was marked by yellow buoys. A speed limit of 15 km per hour applied outside the ski area.</p> <p>The appellant's boat appeared to be on a collision course with another ski boat. The appellant was observed by witnesses to be looking back towards the victim on the kneeboard. The other ski boat was moving slowly towards the beach, side on to the appellant's boat. The appellant turned his boat sharply to the left, away from the other boat. The sharp movement of the appellant's boat caused the kneeboard on which the victim was riding to be whipped around and into the other ski boat.</p> <p>The victim was knocked unconscious as a result of striking the boat at speed and with force. She sustained fractures to both of her arms and her elbow and a laceration to her chin. Her injuries required surgery and she was subjected to a lengthy period of rehabilitation.</p>	<p>Sentencing Magistrate ordered should not be released or deported until the sentence imposed had been satisfied.</p> <p>Remorseful.</p> <p>Accepted that he did not see the other boat through inattention. Also stated that he had given a safety instruction to the victim prior to when she commenced knee boarding, but accepted that the instruction could have been more extensive.</p> <p>Taken responsibility for the accident. He filed an accident report and had visited the victim in hospital on several occasions.</p>	<p>At [28] No range of sentences has yet been established for the offence. However, there is an analogy to cases involving grievous bodily harm caused by the driving of a motor vehicle. The sentencing pattern for dangerous driving causing grievous bodily harm ..... was not referred to by the prosecutor or the appellant's counsel and was not considered by the learned magistrate.</p>
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				<p>No alcohol or drugs involved.</p> <p>Magistrate placed considerable weight on the VIS which detailed and complained of injuries and complications following surgery that were not referred to in the facts alleged by the prosecution.</p>	
9.	<p><i>Libri v The State of Western Australia</i></p> <p>[2013] WASCA 113</p> <p>Delivered 03/05/2013</p>	<p>18 yrs 4 mths at offending.</p> <p>Convicted after Trial.</p> <p>Conviction for DDOGBH was conviction for alternative offence. Appellant had been charged with GBH.</p> <p>Criminal history consisting of a number of driving offences. Licence disqualified at time of offence.</p> <p>Comfortable upbringing.</p> <p>Not under the influence of drugs or alcohol at time of offending;</p>	<p>Ct 1: DDOGBH. Ct 2: Fail to stop after accident. Ct 3: Fail to report accident.</p> <p>The appellant and 3 friends had been at a tavern. The appellant agreed to drive the friends to a birthday party in order for one of the friends to confront one of those attending the party. The appellant did not have a current driver's licence, having been disqualified from holding a driver's licence for traffic offences.</p> <p>Shortly before they arrived, party guests had spilled out of the house where the party was being held onto the front lawn</p>	<p>Ct 1: 3 yrs 3 mths imp and MDL disq 3 yrs (cum). Ct 2: 1 mth imp (conc) and MDL disq 12 mths (cum). Ct 3: 9 mths imp (cum) and MDL disq 9 mths (conc).</p> <p>TES 4 yrs imp.</p> <p>MDL susp 4 yrs.</p> <p>Sentencing judge described the</p>	<p>Appeal allowed – set aside the orders for concurrency and accumulation.</p> <p>Individual sentences imposed be served concurrently with each other.</p> <p>Re-sentenced to TES 3 yrs 3 mths imp.</p> <p>At [27] The offending in this case is very serious.</p> <p>At [31] The sentences imposed for the offence of DDOGBH in</p>

		<p>Sentencing judge found that the accident was a consequence of the appellant's speed and his limited ability to take evasive action.</p>	<p>and the adjacent road verge.</p> <p>As the appellant approached the house he saw people outside the house and on both sides of the road. The appellant parked on the verge and he and his passengers got out of the car. Two of the friends engaged in a verbal altercation and subsequently became involved in some pushing and shoving. A number of party guests came to watch. The fight was broken up by a party guest and the appellant and his three passengers got back into the car. The appellant drove off and the party guests walked back towards the party.</p> <p>Due to his unfamiliarity with the area, the appellant ended up back on the road where the party was being held, driving towards the party. The area was well lit and as he approached the house where the party was being held the appellant could clearly see people on either side of the road and on the verge. The appellant made no attempt to slow down and continued at a speed of between 50-55 km/hr. As he rounded the bend in the road where the house was situated, the right hand corner of the car struck the victim. The victim hit the windscreen and the right wing mirror before falling to the ground. As the car hit the victim, the appellant saw a flash of</p>	<p>appellant's driving as demonstrating 'callous and reckless disregard for fellow road users'.</p> <p>Some belated remorse.</p> <p>Report said low risk of re-offending but balanced against his 'lamentable' traffic record.</p>	<p>other cases are of limited assistance because:</p> <p>(i) There is a wide variety in the circumstances of the offences and the appellant; and</p> <p>(ii) The maximum penalty was increased from 4 years to 7 years from 01.08.2008.</p> <p>At [31] In <i>Abeyakoon v Brown</i> the increased penalty was applicable but the circumstances of that case were entirely different to the present case and it provides no assistance.</p> <p>At [48] A sentence of 4 years imprisonment is disproportionate to the overall criminality involved in all of the offending, having regard, in particular, to the personal circumstances mentioned.</p>
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			<p>white and the windscreen cracked.</p> <p>Sentencing judge accepted that the appellant did not see the victim before the impact because he was focusing on another pedestrian.</p> <p>The appellant drove away from the accident without stopping. He told the passengers not to say anything to anyone. He drove back to one of the passenger's house where he parked the car. He and one of the passengers then walked back to the tavern where they had been drinking earlier in the evening and began drinking again. The appellant did not leave the tavern until he was ejected. Upon arriving home, the appellant told his father that he had hit someone with a car. The appellant did not report the accident to police until the next morning.</p> <p>The victim; a 17 yr old male; was taken to RPH where a CT scan revealed bleeds in the brain consistent with very significant acceleration-deceleration injury to the brain. Without medical intervention, the victim would have died. He is now seriously and probably permanently, disabled.</p>		
8.	<i>Voysey v Whatt</i>	20 yrs at time of offending and sentencing.	1 x Agg DDOGBH RTA s 59(1)(b).	12 mths imp.	Offender's appeal allowed.

<p>[2011] WASC 305</p> <p>Delivered 11/11/2011</p>	<p>Convicted after early PG.</p> <p>No significant prior criminal record.</p> <p>Made full admissions. Good education, established employment, and the prospect of a career as an aviation pilot.</p>	<p>Offence date 11/06/11 – max penalty 14 yrs imp.</p> <p>Serious instance of offending.</p> <p>Appellant finished his shift at a pizza store in the early hours of the morning. During the shift he had discussed with colleagues racing their cars along Albany Highway. Appellant left work with the victim (16 yr old work colleague) in the front passenger seat and engaged in a pre-arranged race with another work colleague, partly after being encouraged to do so by the victim. Appellant accelerated to approx 120 -130 km/hr in 60 km/hr zone and as he approached a bend and lost control of his car. Car slid into the curb, across a grass verge, collided with a garden bed, metal bollard, a light pole, an advertising sign, and a stationary vehicle. The stationary vehicle was pushed into a second vehicle, which then hit a third, which then struck a fourth.</p> <p>The victim received a fracture to the base of the skull and bleeding in the brain. The appellant received only minor injuries.</p> <p>Neither the victim nor his family wanted the appellant punished by imprisonment and had forgiven the appellant.</p>	<p>TES 12 mths imp.</p>	<p>TES 12 mths imp susp 18 mths.</p> <p>At [62]–[63] The hope of achieving a balance between general deterrence and the risks to community from dangerous driving must be balanced against the demands of the instant case - an early PG, full admissions, deep sense of remorse, a hard lesson, young, good prospects, no significant prior record, no suggestion that a term of imprisonment inappropriate.</p>
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7.	<p><b><i>Abeyakoon v Brown</i></b></p> <p><b>[2011] WASCA 63</b></p> <p>Delivered 23/3/2011</p>	<p>24 yrs at the time of sentencing.</p> <p>Convicted after early PG.</p> <p>No significant prior criminal record.</p> <p>Living with parents; stable employment; strong family support.</p> <p>Business degree; good employment record; highly regarded by current employer.</p> <p>Paying off damage to the motor vehicles (approx \$50,000).</p>	<p>Ct 1: DDOGBH RTA s 59 (1)(b).  Ct 2: Fail to stop RTA s 54 (3).  Ct 3: DDOBH RTA s 59A (1)(b).  Ct 4: Driving with BAC of or over 0.05% RTA s 64AA(1).</p> <p>Offence date 9/11/08 – max penalty 7 yrs imp.</p> <p>Appellant had been asleep for some hours after consuming 6 full strength beers earlier in the day. While driving home, the appellant entered an intersection against a red light (having not noticed it) and collided with three vehicles before coming to a stop. Appellant travelling at approx 60 km/hr.  Appellant’s car slid into the front of a vehicle – neither the passenger nor driver were injured. The appellant’s car then hit a second vehicle – the driver suffered serious injuries resulting in permanent disability (ct 1) and the passenger received fracture injuries (ct 3). Appellant’s car then hit a third vehicle - again, no one was injured. The appellant’s vehicle then came to a stop. The appellant was dazed and, after being approached by someone in an “aggressive and abrupt manner”, left his vehicle (ct 2).</p>	<p>Ct 1: 18 mths imp.  Ct 2: 12 mths imp.  Ct 3: 6 mths imp.  Ct 4: \$100 fine.</p> <p>TES 18 mths imp.  EFP.</p> <p>Remorse.</p>	<p>Offender’s appeal allowed.</p> <p><u>Sentences on appeal:</u>  Ct 1: 12 mths imp.  Ct 2: 9 mths imp.  Ct 3: 6 mths imp.  Ct 4: \$100 fine.</p> <p>TES 12 mths imp susp 12 mths.</p> <p>Only sentence for DDOGBH challenged.</p> <p>At [25] Categorisation of dangerous driving offences occasioning GBH by two levels of seriousness is unhelpful and may give rise to error.</p> <p>At [29] – [30] Magistrate in error to conclude that there was no distinction between DDOD and DDOGBH as far as the penalty is concerned.</p>

			<p>Appellant rang his family and told them about the accident. His family informed the police and the appellant returned to the scene where he gave a breath sample (ct 4).</p> <p>No finding that alcohol caused the accident.</p>		
6.	<p><i>Devine v State of Western Australia</i></p> <p>[2010] WASCA 94</p> <p>Delivered 18/05/2010</p>	<p>21 yrs at time of offending.</p> <p>Convicted after trial.</p> <p>No relevant prior criminal record.</p> <p>Good support from close family throughout life; continuous work history following completion of brick laying apprenticeship.</p> <p>Appellant broke collarbone trying to free passengers from car following crash.</p>	<p>1 x DDOD RTA s 59(1)(b) .</p> <p>1 x DDOGBH RTA s 59(1)(b).</p> <p>Offence date 13/05/08 – max penalty 20 yrs and 14 yrs respectively.</p> <p>Categorised as towards higher end of scale of seriousness – “premeditated, clear-headed deliberate decision to drive at ridiculous speeds on a dark country road where the speed limit was 110km per hr. He had three passengers in his car and did not respond to his girlfriend’s demands to slow down. The appellant understood that death was a likely consequence of his predilection for driving at dangerous speeds.”</p> <p>Travelling at night on dark country road with 3 passengers. Appellant stated wanted to see how fast car would go and sped off. Reached 210-220km per hr when passenger asked him to slow down.</p>	<p>5 yrs 6 mths imp.</p> <p>1 yr 6 mths imp.</p> <p>TES 7 yrs imp.</p> <p>Evidence of remorse (PSR; apology to families); suffered nightmares, anxiety attacks, depression &amp; attempted suicide.</p> <p>Testimony given that on previous occasions reached speeds in excess of 190km/hr with three passengers.</p> <p>Testimony given that appellant had stated he would die in a car accident</p>	<p>Allowed – individual sentences not disturbed; ordered that 6 mths of count 2 be served before count 1 begins, then sentences run concurrently.</p> <p>TES reduced to 6 yrs imp – reflects criminality.</p>

			<p>Appellant did not slow down and shortly after lost control of the car, crashing into power pole killing one passenger and seriously injuring another.</p> <p>Trial judge found travelling in excess of 171km per hr at time of crash ie upwards of 61km per hr over the speed limit.</p>	“going flat out”.	
5.	<p><i>Taylor v State of Western Australia</i></p> <p>[2009] WASCA 226</p> <p>Delivered 17/12/2009</p>	<p>18 yrs at time offence.</p> <p>Convicted after trial.</p> <p>One prior conviction (driving offence involving alcohol when child).</p> <p>Good antecedents.</p>	<p>1 x DDOD RTA s 59(1)(b).</p> <p>1 x DDOGBH RTA s 59(1)(b)..</p> <p>Offence date 23/07/07 – max penalty 4 yrs each count.</p> <p>Cannot be categorised as being most serious kind of offence or towards upper end of range.</p> <p>Driving a vehicle belonging to a friend – tyres bald but this was not known by appellant. At, or near, a set of lights a commodore has pulled up alongside the car and revved its engine – accepted by sentencing judge as invitation to race. Speed limit in area was 80km/ hr, the area was dark and the road was wet from light rain. The appellant accepted the invitation and the race lasted approx 90 seconds with the appellant reaching 120 km/hr before slowing to 90 km/hr. Cars have touched at some point and both drivers lost control</p>	<p>2 yrs 2 mths imp.</p> <p>1 yr 2 mths imp.</p> <p>TES 2 yrs 2 mths imp.</p> <p>Deeply ashamed and remorseful.</p> <p>NB: Original sentence also imposed after Transitional Provisions were repealed.</p>	<p>Allowed.</p> <p>TES reduced to 1 yr 8 mths imp.</p> <p>NB: State relied in part on dual characterisation of DD offences in <i>Koltasz</i> and followed in <i>Kay</i> – heavily criticised by Wheeler JA (leading judgement) as being of limited use as the distinction does not adequately mark out wide and disparate range of circumstances and quality of driving seen in this offence category. Such a categorisation can lead to errors.</p>

			<p>and left the road. When appellant's car stopped one of the passengers, who was not wearing a seatbelt at the time, was not in the car – she had been thrown from the vehicle and died at the scene. The driver of the other car sustained life threatening injuries.</p> <p>The driver of other car had BAC of 0.13% at time crash and was 30 yrs old. He was convicted after a fast track plea of guilty and the sentencing judge considered his injuries to be extra-curial punishment. He was sentenced to 12 mths with EFP.</p>		
<b><i>Transitional Provisions Repealed (14/01/2009)</i></b>					
<b>4.</b>	<p><b><i>Shelley v Traynor</i></b></p> <p><b>[2008] WASC 277</b></p> <p>Delivered 13/08/2008</p>	<p>23 yrs at the time of offence. 24 yrs at time of sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record.</p> <p>Unable to offer any explanation for the offences.</p>	<p>Ct 1: DDOGBH RTA s 59(1)(b) Ct 2: DDOGBH RTA s 59(1)(b) Ct 3: DUI RTA s 64(1)</p> <p>Offence date 21/03/08 – max penalty 4 yrs imp.</p> <p>Offence at the high level of seriousness</p> <p>At 6.30am the appellant was driving his vehicle at excessive speed toward a set of traffic lights on the freeway overpass with red lights against him. At the same time a Pulsar was travelling south along an off-</p>	<p>10 mths imp. 10 mths imp. \$1000 fine.</p> <p>TES 10 mths imp and \$1000 fine.</p> <p>Extremely remorseful.</p>	<p>Offender's appeal dismissed.</p> <p>At [40] Immediate imprisonment not only open but correct having regard to seriousness of the offending.</p>

			<p>ramp and had negotiated a right-hand turn across the intersection. The appellant entered the intersection at an excessive speed, against the red light, and collided with the rear of the Pulsar, shunting it forward. The driver and passenger were rendered unconscious and trapped in the vehicle. The driver suffered serious injuries, fractures of her cervical spine and pelvis. The passenger received a fracture of the cervical spine, a ligament injury, cuts and abrasions. The appellant was also seriously injured, receiving a fractured jaw which had pins and a plate inserted. Both vehicles were extensively damaged.</p> <p>Shortly before the crash, the appellant was observed driving at speeds of between 140-150 km/hr in a 70 km/hr zone.</p> <p>Appellant's BAC was 0.183.</p>		
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*Amendments to RTA s 59 – reversal of onus of proof (01/01/2005)*

3.	<p><i>Kay v State of Western Australia</i></p> <p>[2004] WASCA 222</p>	<p>Age not known but youth not mitigating factor.</p> <p>Convicted after trial DDOD and DDOGBH.</p> <p>Convicted after PG DDOBH.</p>	<p>2 x DDOD RTA s 59(1)(b).</p> <p>1 x DDOGBH RTA s 59(1)(b).</p> <p>1 x DDOBH.</p> <p>Offence date 10/07/01 – max penalty 4 yrs death and GBH and bodily harm 6 mths</p>	<p>4 yrs imp each ct.</p> <p>3 yrs imp.</p> <p>1yr imp.</p> <p>TES 8 yrs imp.</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u></p> <p>2 yrs 4 mths imp each DDOD.</p> <p>1 yr 4 mths imp DDOGBH.</p> <p>8 mths imp DDOBH.</p>
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	<p>Delivered 30/09/2004</p>	<p>Prior criminal record - convictions for careless driving, dangerous driving causing bodily harm and numerous speeding convictions. This was the third time the appellant had struck a vehicle from the rear whilst driving road trains.</p> <p>Good work history and strong family support.</p>	<p>(1<sup>st</sup> offence) or 18 mths (2<sup>nd</sup> or subsequent offence).</p> <p>Appellant drove road train (freight weighing 28 tons) into the rear of a car stopped at a railway crossing. The railway crossing lights had been activated and a train was approaching and the train's horn had been sounded numerous times as it approached the crossing. The collision propelled the car under the train as it passed the crossing. The road train has then struck the train and the force of this collision has detached the engine of the train and caused it to overturn. Two of the cars passengers were killed and another suffered bodily harm. A passenger in the road train has suffered grievous bodily harm.</p> <p>Immediately prior to collision, appellant driving at an excessive speed for the vehicle in which he was driving through a country town. Collision attributed in sentencing entirely to appellant – driving in an arrogant and dangerous manner. No excuses could be found for dangerous driving – no evidence of driving for long hours or problems of personal nature which affected concentration.</p>		<p>TES reduced to 6 yrs imp.</p> <p>NB: Division of dangerous driving into two categories (momentary inattention/ misjudgement and selfish disregard other road users) adopted by Miller J (following <i>Koltasz</i>) in leading judgement criticised in <i>Taylor v State of Western Australia</i> [2009] WASCA 226 by Wheeler JA in leading judgement as being of limited assistance.</p>
<p><i>Transitional Provisions Enacted (31/08/2003)</i></p>					

<p>2.</p>	<p><i>Norris v "AT" (a child)</i></p> <p><b>[2003] WASCA 54</b></p> <p>Delivered 26/03/2003</p>	<p>17 yrs at time offending. 18 yrs at time sentencing.</p> <p>Convicted after late PG – first day of trial.</p> <p>Extensive and serious prior criminal record – 59 prior convictions including 13 offences for reckless driving and 13 offences for driving with no license.</p> <p>History of breaching CBOs.</p> <p>History drug use – began using cannabis at 13 yrs and amphetamines at 15 yrs.</p> <p>Bordering average/low level intelligence.</p> <p>One of 8 siblings, 2 of whom are intellectually handicapped.</p>	<p>1 x Agg DDOGBH. 2 x Driving while disqualified.</p> <p>1 x Fail to stop when called to. 1 x Fail to stop at an accident. 1 x Fail to render assistance. 1 x Failing to report an accident. 1 x Steal motor vehicle and drive recklessly. 2 x Steal motor vehicle. 1 x Stealing. 1 x Agg burg.</p> <p>Offence date 20/02/02 – max penalty 14 yrs imp.</p> <p>Very serious instance of DDOGBH.</p> <p>Respondent was driving a stolen car and became involved in a short police pursuit. Respondent drove at speeds of up to 100 km/hr in a 60km/hr zone as well as driving on the wrong side of the road before going through a red light and colliding with another car. The driver of that car received serious head injuries. Respondent then ran from the scene.</p>	<p>15 mths imp. 4 mths imp; 2 mths imp. \$400 fine. \$300 fine. \$1300 fine. \$200 fine. 12 mths imp. 9 mths imp each ct. 2 mths imp. 12 mths imp.</p> <p>TES 2 yrs 3 mths imp and \$2200 fine. Equivalent to 18 mths imp after implementation of transitional provisions.</p> <p>No genuine remorse – bragged about offending.</p>	<p>State appeal allowed.</p> <p>TES increased to 3 yrs 6 mths imp – sentence for DDOGBH increased to 21 mths imp.</p> <p>At [31]-[38] Discussion of comparable cases and inherent seriousness of offence.</p> <p>At [51] Seriousness of DDOGBH is to be measured in terms of the manner of driving and the degree of harm caused to the victim.</p> <p>At [51] Loss of life and personal injury caused by dangerous driving one of the most serious social problems.</p> <p>At [51] Deterrent sentence called for to mark seriousness of offending for DDOGBH.</p> <p>At [54] Relevant factors in sentencing DDOGBH or DDOD include extent and nature of injuries suffered, number of people put at risk, degree of speed, degree of intoxication or</p>
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					<p>substance use, erratic driving, competitive driving or showing off, length of journey and exposure of others to risk, ignoring warnings and escaping police pursuit.</p> <p>NB: Double jeopardy applied to State appeals.</p> <p>NB: Division of dangerous driving into categories found in this decision has since been criticised by the Court of Appeal.</p>
1.	<p><i>Koltasz v The Queen</i></p> <p>[2003] WASCA 38</p> <p>Delivered 12/03/2003</p>	<p>Youth mitigating factor – age not specified but appellant described as “very young man”.</p> <p>Good antecedents.</p> <p>3 days prior to offending appellant’s driver’s license had been disqualified.</p>	<p>Count 1: DDOD. Count 2: DDOD. Count 3: DDOGBH.</p> <p>Offence date 8/04/2000 – max penalty 4 yrs death and GBH.</p> <p>Appellant’s culpability at higher end of scale.</p> <p>Appellant had been drinking more or less continuously since 4.30pm the afternoon before the incident. At 4.45am the appellant failed to negotiate a sweeping right hand bend on a country road. The vehicle left the road and collided with a</p>	<p>2 yrs 6 mths imp. 2 yrs 6 mths imp. 12 mths imp.</p> <p>TES 2 yrs 6 mths imp. Equivalent to 20 mths imp after implementation of transitional provisions.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [40] Victims voluntarily assuming risk of driving with appellant knowing he was sleep deprived and affected by alcohol does not lessen moral culpability of appellant. Nor does fact victims were not wearing seatbelt.</p> <p>At [50] There is a need for a strong deterrent message to be sent to young people that, whilst affected by alcohol and fatigue, DD causing death or GBH, a</p>

			<p>power pole, killing two passengers who were in the rear of the vehicle and seriously injuring the front seat passenger.</p> <p>Appellant was sleep deprived for 21 hours prior to offending and had a BAC reading of 0.1 % at time of collision.</p>		<p>deterrent sentence of imprisonment is inevitable.</p> <p>NB: Division of dangerous driving into categories found in this decision has since been criticised by the Court of Appeal.</p>
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