# Should Defendants be Handcuffed in Court?

The Public Service Association prison officer Branch President Steve McMahon believes that the Downing Centre escape should never have been possible, and wants to ensure it will never happen again. He wants all defendants who are in the 'dock' to be handcuffed, with the exception of pregnant women and those with medical conditions. The dock is where those in custody normally sit while in court, and also where defendants sit during jury trials and sentencing proceedings in the higher courts.

**The story so far…**

Last week, we reported on the extraordinary escape of Ali Chahine from the Downing Centre District Court. Unfortunately for Mr Chahine, he was re-arrested on Monday 4 October – less than a week after his bolt for freedom.

He was found hiding at a unit in Alexandria, and has since been charged with escaping lawful custody, as well as two counts of assault occasioning actual bodily harm.

Mr Chahine's bare footed bolt has sparked the call for all defendants to be handcuffed in the dock.

**The bureaucratic response**

At first, NSW Corrections Minister David Elliot tried to blame the judge for the escape, saying that he should have ordered Chahine to be handcuffed.

But a person in Mr Elliot's position should be aware such decisions are normally made by Corrective Services after assessing the risk – not by the judge, who normally knows nothing in advance about the defendant or even the nature of

the case.

Mr McMahon's response was to appeal to the NSW Corrective Services Commissioner Peter Severin to implement an across the board policy for all defendants to be handcuffed in court while they are in the dock.

Mr McMahon told ABC news that the Public Service Association had been "asking for a very long time that there be a blanket decision… [and that the issue] be taken out of the judges and magistrates hands and allow us to handcuff prisoners while they're on the dock."

**Criticism**

There have been a number of studies showing that the way a defendant is presented in court can affect a jury's determination of guilt. Specifically, there are concerns that requring defendants to wear handcuffs could unfairly lead the jury to believe that they are dangerous, thereby increasing the likelihood of a conviction. It could also be argued that requiring defendants to wear handcuffs for several hours a day during trials that could last for weeks or even months is unnecessary and cruel, not to mention limiting their ability to write notes.

Forcing defendants to wear handcuffs would also go against centuries of legal tradition. As far back as the 1700s, the great legal mind Judge William Blackstone famously wrote that:

*"it is laid down in our antient books, that, though under an indictment of the highest nature…* [a defendant must be] *brought to the bar without irons, or any form of shackles or bonds; unless there be evident danger of an escape."*

This was quoted in an influential United States case which embedded the principle into US law.

And the fact remains that escapes from courthouses are

extremely rare. In addition to all these points, who is to say that handcuffs will prevent an eager escapee from making a dash for freedom, given that stocky Mr Chahine was able to escape from level 3 of a secure courthouse in bare feet.

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# The Downing Centre Escape: A Lawyer's Eyewitness Account

On Wednesday afternoon, 30 September, a man left his shoes behind in his dash for freedom.

Mr Ali Chahine, 33, was facing the court for breaching his bail. He was originally charged with drug supply and receiving stolen goods. The bail application was being heard in courtroom 3.1, which is a Sydney District Courtroom located on level 3 of the Downing Centre court complex.

In the same courtroom, one of our lawyers, Avinash Singh from Sydney Criminal Lawyers®, was present for another case and witnessed the action.

Avinash noticed that the client looked agitated, and the decision to refuse him bail didn't go down too well.

Evidently Mr Chahine decided that, rather than be taken back into custody, he would roll the dice and attempt to leg it out of the courtroom.

While courtroom 3.1 is often very busy, it was fairly empty by Wednesday afternoon. Apart from his mother, lawyer, the DPP solicitor, Avinash and our client, only the Judge and court officers were present when Mr Chahine made a run for it.

Mr Chahine jumped over the wall of the dock and headed towards

the door – he was in such a hurry that he left his blue thongs behind. At first, the DPP solicitor jumped back, before realising that she was not his target when he headed towards the exit.

Avinash says “He made it to the door before the Corrective Service Officers got to him – a large man and a small woman.

They had a firm grip on him but he must have escaped outside the courtroom.”

He remembers hearing “a scuffle outside” – it was later reported that two officers were badly injured during the encounter.

According to newspapers, Mr Chahine assaulted the pair before managing to flee the courthouse through a fire exit.

He is reported to have gotten onto a bus on Castlereagh Street, headed towards Newtown. Mr Chahine was last seen on Wednesday afternoon, disembarking from a bus at Central Station. The hunt continues.

Detective Inspector Stewart Leggatt believes that Chahine probably caught a train, and is currently in the Bankstown/Greenacre area.

Meanwhile, back in the courtroom, Avinash noted that the Presiding Judge did not say anything, but left the bench, probably intending to come back on when Mr Chahine was caught.

In the meantime, Mr Chahine’s Legal Aid lawyer was at a loss of what to do. Avinash recalls that she asked “Do I have to stay here?”, before leaving the courtroom a short time later.

When it became clear Mr Chahine was not returning, the Judge returned to the bench to deal with his final matter for the day, Avinash’s. His Honour said that this was the first time he had witnessed a defendant escape from the courtroom.

After the drama subsided, Avinash went on to successfully appeal his client's case.

**The Blame Game**

The NSW Corrective Services Minister, David Elliott, originally tried to pin the blame for Chahine's escape on the Judge, pointing out that the defendant was not wearing handcuffs, and was not in the dock.

But the fact is that defendants in court are rarely handcuffed, and Mr Chahine was, in fact, in the dock before he leapt out.

Moreover, the decision about whether to handcuff a defendant is for Corrective Services to make, not the Judge.

**Penalties for Escaping**

Interestingly, Mr Chahine was not the only man who chose last Wednesday to make his escape.  On the same day, James Wiles, aged 25, escaped from Goulburn prison. He is also still on the run.

Escaping from lawful custody – whether it be a prison, police station, courthouse or elsewhere – is an offence under section 310D of the NSW Crimes Act 1900, which comes with a maximum penalty of ten years imprisonment.

So, if the escapees are eventually caught – as most are – they may ultimately regret their decision.

# Man Who Sold Fatal Ecstasy Learns His Fate

Over ten thousand drug cases are heard in Local Courts around NSW every year, including the Downing Centre court in Sydney – which is the busiest courthouse in the state. In 2014 alone 13,639 people were found guilty of drug possession in NSW, which makes it the third-most common criminal offence, ranking behind drink driving/DUI and common assault, according to the Bureau of Crime Statistics and Research.

Last year, the tragic death of teenager Georgina Bartter showed that taking pills that are produced by strangers – often with deadly "fillers" – is not only against the law, but can be fatal.

Ms Bartter died in hospital from a cardiac arrest after consuming one and a half of pills sold as ecstacy at a music festival.

Recently, the man who sold these fatal pills faced the music in the Downing Centre District Court.

19-year-old university student Matthew Forti didn't sell the drugs directly to Bartter, but to her friend, Rebecca Hannibal, who was sentenced in the Downing Centre courthouse year in June. Hannibal received a criminal record and a good behaviour bond for 12 months.

However, Forti would not be so lucky when it came to avoiding prison time. Before the Judge handed down her sentence, the court heard that even after Ms Bartter's death, Forti had continued to sell drugs.

Texts to Ms Hannibal suggested that he felt bad after the tragedy, but this was not enough to prevent him from continuing to sell drugs to friends and acquaintances on

several occasions.

Mr Forti said that his involvement with drugs began when his parents' marriage broke down in 2014, and the Judge accepted that Forti was "essentially a positive young man who went astray for a while."

Her Honour noted that Forti was not legally responsible for Bartter's death – which was the same comment made by Chief Magistrate Henson when he sentenced Hannibal in the local court back in June.

Mr Forti's criminal lawyer argued that his client had excellent prospects of rehabilitation, which is something that judges take into account during the sentencing process. The lawyer argued for a good behaviour bond, community service or an "intensive correction order" instead of full time imprisonment.

But District Court Judge Deborah Sweeney came to the conclusion that prison was the only appropriate penalty for Mr Forti, saying that "despite his positive character and demonstration of remorse he is to serve some time in custody."

But like other defendants who enter an early plea of guilty, Forti received a 25% discount on his sentence. He was given a maximum of 22 months imprisonment, and will have to serve 12 months behind bars before being eligible for parole.

The maximum penalty that Forti could have received for each of the supply charges was 15 years imprisonment and/or a $220,000 fine.

Forti is reported to have appeared "stunned" by the sentence, while his mother and girlfriend cried. He was allowed to hug them before being taken away by corrective service officers.

**I've been charged with a drug offence: what should I do?**

With 7 levels of courtrooms, the Downing Centre courthouse in

Sydney hears all kinds of drug cases each year.

If you are facing drug charges, you are certainly not alone. The first step is to contact law firms that have a proven track record of achieving outstanding outcomes in drug cases. Many firms offer a first free conference if you have an upcoming court date, so you can find out your options, the best way forward and the likely result before deciding whether to hand them your hard-earned money.

Take the time to have a look through the recent cases and client testimonials on their websites, and it is a good idea to see several law firms before deciding which one is right for you.

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# Should Low-Range Drink Drivers be Sent to Court?

As most of us are aware, fully licensed drivers in NSW must have a Blood Alcohol Content (BAC) below 0.05 to legally drive.

This is the same across Australia, as well as in many other countries – but this wasn't always the case. Decades ago, the limit was 0.08, and this is still the legal limit in some countries including England, Wales and several US states.

In NSW, driving with a reading of 0.08 constitutes the offence of 'mid range drink driving'.

On the other hand, some countries take drink driving so seriously that they have imposed a zero limit – including the

Czech Republic, Hungary, Indonesia and Japan.

**The Effect of Alcohol on Driving Ability**

Drinkwise Australia says that having a BAC of 0.05 means you are twice as likely to crash than if you have no alcohol in your system.

The level of alcohol causes drivers to have a slower reaction time, shorter concentration span and impaired sensitivity to red lights. It also reduces the ability to judge distances.

The organisation states that by the time your BAC reaches 0.08, you are five times more likely to have a crash than with a zero BAC.

But despite the general trend towards lowering the legal BAC for driving, not all agree that a lower maximum BAC is a good thing.

**Drink Driving to Cure Depression!**

In 2013, one Irish council backed a motion to allow drink driving in their rural community in order to combat depression and suicide.

The council proposed to allowed special permits to allow driving after 'two or three drinks', because this would allow people in isolated communities to get out more and ward off depression and suicidal thoughts.

Interestingly, three of the councillors in favour of the change are also believed to own pubs.

Perhaps unsurprisingly, the idea didn't spread to the rest of country, with one Labor party councillor refusing to be associated with the suggestion, and Ireland's Road Safety Authority labelling the idea "off the wall."

**Dealing with Low-Range Drink Driving Out of Court**

Going to court can be a stressful experience for anyone. But in NSW, drink driving, even a low-range charge, means you must go to court and will have a criminal record if you are convicted by the Magistrate. The only way around a criminal conviction is for you (or your lawyer) to successfully argue for a 'section 10 dismissal or conditional release order'; which means that you are guilty but no conviction is recorded against your name.

But should low-range drink driving be dealt with in court, or should police have the option of dealing with it by way of a fine, just like for speeding, or running a red light?

In Western Australia, police have the discretion to give you an infringement notice instead of sending you to court. For a first offence between 0.05 and 0.06, WA police can give you a $400 fine and you will end up losing 3 demerit points, but you will not automatically get a criminal record and lose your licence.

If your BAC is between 0.06 and 0.07, you can be given a $400 fine and lose four points. The same fine applies for between 0.07 and 0.08, but you will lose 5 demerit points.

But police can still choose to send you to court for low-range drink driving in that state, where a criminal conviction, a fine of up to $500 and licence disqualification can be imposed.

With thousands of low range drink driving cases clogging up NSW courts every year, some believe that only lawyers really benefit from drivers having to face court rather than receiving an infringement notice from police.

What are your thoughts?

# I’m a Defendant: Will I Have to Testify in Court?

A question that defendants often ask their lawyer is: will I have to testify in court?

The simple answer is no, you never have to go on the witness stand if you have been charged with a criminal offence and are going to court.

The exception to this rule is where you are going to certain tribunals – such as at the Crime Commission or Independent Commission Against Corruption – where you may be under an obligation to answer questions.

But if you are a defendant in court, you have a right to silence and cannot be forced to testify on the witness stand.

**Right to Silence in Court**

Witnesses who are subpoenaed to attend court are under an obligation to answer questions. However, the right to silence means that defendants cannot be forced onto the witness stand.

But this ‘right to silence’ has been undermined to an extent by section 20 of the NSW Evidence Act, which says that a judge “may comment on a failure of the defendant to give evidence” as long as that “comment” does not suggest that the defendant is guilty.

So while you do not have to testify, the question of whether you should take the witness stand is an entirely different matter – and one which should be carefully considered by your lawyer.

**The Pros of Testifying**

The prosecution's case will always go first. For that reason, the final decision about whether the defendant should testify is often left until after the prosecution case has finished. If, after all of the prosecution witnesses have given evidence, the prosecution case is weak, then it may be against a defendant's interests to risk taking the witness stand and being exposed to questioning by the prosecution (called 'cross-examination').

On the other hand, if the prosecution case is relatively strong and the defendant's evidence will rebut that case, then it may be in the defendant's interests to take the stand.

A defendant who is credible and convincing can be the turning point in a case. It could be the thing that makes a favourable impression upon the jury and convinces them to acquit.

While the prosecution must prove the accused's guilt beyond reasonable doubt, a defendant who comes across as honest and sincere can help establish the necessary doubt to get them over the line. And testifying is often the only way to introduce evidence of an alternative explanation of the events when there is no other way to get that material before the jury.

**The Cons of Testifying**

While putting the defendant on the stand could win a trial, it also comes with considerable risks – even for an innocent person.

A defendant who comes across as implausible due to nerves, anxiety, presentation or personality type, can have a disastrous effect on their case.

Some might think that an innocent person has nothing to worry about, but the courtroom is a daunting place that can cause

extreme anxiety – imagine facing a courtroom full of people – including lawyers, the judge, jury, court staff, complainant, families and the public – and having to accurately answer questions when you are facing the prospect of many years in prison..

Anxiety can cause all sorts of problems –from hesitating before answering questions, to giving inconsistent answers, to making mistake or failing to recall times and dates – all of which can undermine a person's credibility.

For that reason, the question of whether a defendant will take the witness stand is one of the most important call that a defendant (in consultation with their lawyer) can make.

**Case study:**

I was recently instructing in a case where our client and a co-accused both pleaded guilty and were both put on the stand during sentencing. Our client gave evidence of his remorse and regret for his actions, as well as the positive steps that he had taken since committing the offence in order to turn his life around.

While our client came across as genuine, remorseful and credible (and got a significant penalty reduction), the co-accused gave exactly the opposite impression.

The look on the judge's face during the questioning said it all – he was clearly not impressed. I did not get to see the sentence that the judge ultimately imposed on him, but my guess is that the co-accused's testimony only harmed, not helped, him.

Under pressure, it is very difficult to predict how a person will act, and despite all of the preparation in the lead up to court, a lawyer will never know for certain how their client will perform on the witness stand in a busy courtroom. Because of this, many lawyers will often advise their client not to

give evidence, unless there is a compelling reason for them to do so.

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# Father Bashes Child Sex Offender in Downing Centre Court

Courthouses are places where you might expect people to be on their best behaviour. At the same time, the courtroom can be a tense and stressful place for all involved, including their families.

While court is not the best place to let your anger take over, not everyone succeeds in keeping their cool when emotions run high.

**Father Attacks Child's Abuser**

Just last week, the Downing Centre District Court was at the centre of unanticipated drama when a defendant was attacked while sitting in the dock.

The 64-year-old defendant, who cannot be named, was convicted of sexually assaulting a five-year-old girl. He faced four charges of "aggravated sexual assault of a child under 10" and was convicted of two of them, before being sentenced to imprisonment

Section 66A of the Crimes Act 1900 (NSW) sets down a maximum penalty of life imprisonment for the sexual assault of a child under the age of 10 years. Although the defendant did not receive a life sentence, he will not be eligible for release from prison until 2023.

The Presiding Judge had just finished handing down his sentence, when the little girl's father leapt over a banister and a bench before arriving at the dock area and punching the defendant several times in the face. He had to be dragged away by five people.

The defendant cowered in the dock, repeating the words: "I am innocent." To add to the drama, the defendant's wife called the girl's mother a "liar and a bitch". The mother returned fire, lunging at the wife and allegedly punching her in the face.

The Judge is reported to have sat there emotionless, not uttering a word. He is said to have waited for the defendant to be escorted away, before leaving the courtroom himself.

It remains to be seen whether the parents will face charges as a result of their actions.

**Fights at Courthouses**

This couple are by no means the only ones to attract attention for physical fights inside the Downing Centre.

In fact, level four of the courthouse was the scene of another dramatic fight last year between police and a family of three men who, ironically, were themselves on trial for brawling with police.

A riot squad was called in to break up the fight, which one witness described as a "football match."

And earlier this year in Melbourne, a fight between two families caused an entire floor of Melbourne's busiest courthouse to close. The families knew each other well, having a history of altercations. Court officers subdued the fighting men using capsicum spray, which unfortunately also affected innocent bystanders, including several young children.

One of the brawling men is a kick-boxer who calls himself "the

punisher”.  Four men were later arrested and questioned over the fight.

**What Does the Law Say About Fighting in Court?**

You probably won’t be surprised that brawling in court is against the law. Possible charges include “common assault” (where no injuries, or only trivial ones, are caused) “assault occasioning actual bodily harm” (where injuries are caused), “affray” (which involves the use or threat of unlawful violence) and “contempt of court”.

Contempt of court can involve any act which has the tendency to interfere with, or undermine, the authority, performance or dignity of those who participate in court proceedings.

Contempt of court can potentially include refusing to leave court when directed to do so, refusing to answer questions on the witness stand, showing serious disrespect to the court, and a wide range of other conduct. Engaging in physical violence during court proceedings could certainly form the basis of contempt charges.

So there you have it – real courtroom dramas and the potential consequences.

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# Help, I Was Involved in a Car Crash!

Driving accidents can range from a scratch in a busy car park to a tragic accident causing death. But if you’ve been involved in an accident somewhere in between, you might be

wondering what to do.

Do you need to wait until police arrive? Can you be charged with an offence and be required to attend court? This blog takes you through what to do if you've been involved in a car crash.

**Do I need to wait for police to arrive?**

Whether or not you are free to leave after exchanging details with the other driver depends on the seriousness of the collision.

Police only need to attend the scene if:

1. Someone is killed or injured;

2. The other driver drove off and didn't give you their details; or

3. If it appears that one of the drivers was under the influence of drugs or alcohol at the time of the accident

However, there is an obligation to report crashes which result in one or more vehicles needing to be towed from the scene, although this can be done over the phone at a later time. Minor accidents do not need to be reported at all.

If police do get involved, they may choose to take further action. This may mean dealing with the matter by way of an infringement notice, or giving you a Court Attendance Notice, which means that you will have to go to court. You may also face arrest, depending on the seriousness of the offence.

**Negligent Driving**

'Negligent driving not occasioning death or GBH' is one of the most common charges that drivers involved in a collision will face.
A person is negligent if they "drove a motor vehicle in a

manner involving a departure from the standard of care for other users of the road to be expected of the ordinary prudent driver in the circumstances"; *DPP (NSW) v Yeo and Anor [2008] NSWSC 953.*

Whether or not you have to go to court for negligent driving largely depends on how serious the crash was.

If no one was injured, it will most likely by dealt with by a simple fine of $425, even if a vehicle was towed from the scene. This may be issued on the spot, or it may come later in the mail. If you pay the fine, you will lose 3 demerit points and that will be the end of the matter.

However, it is possible for police to send you to court for negligent driving instead. In that case, the maximum penalty will be a $1,100 fine, which will come with a criminal record. There is no 'automatic' period of disqualification from driving, although the magistrate has power to disqualify you for 12 months.

If a person suffered grievous bodily harm as a result of the accident, the maximum penalty will be nine months imprisonment and/or a fine $2,200 and/or.  If it is a second or more major traffic offence within five years, the maximum penalty will jump to 12 months imprisonment and/or a fine of $3,300.

These are the absolute maximum penalties that the court may impose. In reality, many people found guilty of 'negligent driving resulting in grievous bodily harm' will receive a fine and a lengthy period of disqualification. The automatic period of disqualification is 3 years, although this may be lowered down to 12 months at the discretion of the magistrate.

More serious still is the charge of negligent driving causing death. Under section 117 of the Road Transport Act 2013 (NSW), the maximum penalty is 18 months imprisonment and/ or a fine of $3,300. If it is a second or more major traffic offence, the maximum penalty rises to 2 years imprisonment and/or a

fine of $5,500.

**Dangerous driving**

You may face a dangerous driving charge if police believe that you were:

1. Under the influence of drugs or alcohol;

2. Driving at a speed dangerous to another person; or

3. Driving in a matter dangerous to another person or persons

Dangerous driving is more serious than negligent driving, and can result in more severe penalties in court. There are several different dangerous driving offences, including:

1. Dangerous driving occasioning death (max penalty = 10 years imprisonment);

2. Aggravated dangerous driving occasioning death (max penalty = 14 years imprisonment);

3. Dangerous driving occasioning grievous bodily harm (max penalty = 7 years imprisonment); and

4. Aggravated dangerous driving occasioning grievous bodily harm (max penalty = 11 years imprisonment).

The penalties for dangerous driving can be harsh, but again these are the maximum penalties only. The particular penalty you might receive will depend on the facts specific to your case.

If you have been involved in a car crash and are facing charges or are unsure if you will need to go to court, the best course of action is to speak to an experienced traffic lawyer who will be able to advise you about the best way forward.

A good lawyer may be able to have your charges ‘dropped’ where

the evidence against you is weak, or get the charges thrown out of court if police go ahead with the charges anyway.

If the evidence against you is very strong, a specialist lawyer will be able to ensure that you are in the best position for your 'sentencing hearing' in court, and seek to persuade the court to give you the most lenient penalty possible.

In some cases, they may even be able to convince the court to give you a 'section 10 dismissal or conditional release order' – which means that no criminal conviction is recorded against your name even though you are guilty.

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# Taxi Driver in Downing Centre Court over Hit-and-Run

What would you do if you were involved in a car crash?

We all know that you should stop to make sure that no one is hurt, and exchange details with the other driver. But chances are that if you're involved in a major crash, you will be feeling shaken, shocked and perhaps not thinking straight.

Some people even do the unforgivable by panicking and driving off – and one Sydney taxi-driver is facing the Downing Centre Local Court after he hit an elderly lady and then left the scene.

**Taxi Driver Charged After Hit and Run**

It is alleged that Dr Mark Farhad, a taxi driver and lecturer

at the University of Western Sydney, was driving through Crows Nest in Sydney at about 11am on Tuesday, 18 August 2015, when he hit an elderly woman who was trying to cross the road. He allegedly then made the fateful decision to leave the scene. Tragically, the woman died as a result of her injuries.

The taxi company easily narrowed down possible drivers as Dr Farhad was just one of 15 taxi drivers in the area at the time of the collision. They contacted Dr Farhad later that afternoon, who they say reported feeling "confused and traumatised".

Dr Farhad was arrested at the taxi depot later that evening. He was granted bail in Central Local Court and is due to face a Magistrate in the Local Court at the Downing Centre in mid-October.

In order to secure his release from custody, he had to pay a $10,000 security and surrender his passport.

Dr Farhad has been charged with dangerous driving causing death, negligent driving causing death as well as failing to stop and assist after vehicle impact causing death.

In the meantime, he must report daily to his local police station and is not allowed to drive paying customers in his taxi, although he is allowed to drive himself and his family around.

**What Does the Law Say About Hit and Runs?**

Section 52AB of the Crimes Act 1900 (NSW) makes it an offence to leave the scene of a serious accident.

A person is guilty if they were:

1. Driving a vehicle that was involved in a crash involving the death of another person;

2. They did this knowing (or when they ought to have known)

that their vehicle was involved in an impact causing death or grievous bodily harm to another person; and

3. They failed to stop and give necessary assistance.

It is an offence if the crash caused grievous bodily harm rather than death, but the maximum penalty is lower.

**What are the Penaties?**

The maximum penalty for failing to stop and give assistance if the crash involved the death of another is 10 years imprisonment. If the victim suffered grievous bodily harm instead of death, the maximum penalty is seven years imprisonment.

Although the maximum penalty is prison, courts can impose a number of sentences and less than half of all people who are guilty under section 52AB of the Act go to prison.

Courts can impose a wide range of alternative penalties, including a suspended prison sentence, community service order, good behaviour bond or fine.

Leaving the scene of a traffic accident is never a good idea, and can lead to serious consequences. If you need legal advice about a traffic case, an experienced lawyer will be able to inform you about the most appropriate path and the likely outcome.

# RMS Takes UberX to Court: But Who Wins?

Uber has been controversial ever since its launch in Australia: with many passengers loving the service and its overall cheaper fares, but taxi drivers resenting a source of competition that is not subject to the same rules and regulations as them.

The NSW government and RMS have consistently said that the ride-sharing service is against the law – and vigilante Russell Howarth famously took it upon himself to conduct citizen's arrests of UberX drivers.

Howarth regularly took Uber drivers to bewildered police and demanded that they issue infringement notices, but police refused.

To the relief of both Uber drivers and police, Uber won an injunction to stop Howarth from taking the law into his own hands.

But that was not the end of the fight for Uber. The controversy over the company's legality came before Downing Centre Local Court, where many hoped that the issue would be put to rest once and for all.

The RMS prosecuted Uber under the Passenger Transport Act, but the Magistrate found that the RMS did not have the authority to prosecute under that Act, forcing the RMS to withdraw the 24 charges laid against UberX drivers.

But that may not be the end of the matter, with Transport for NSW announcing that "random roadside tests" will be conducted to crack down on UberX drivers.

**What does the Passenger Transport Act say?**

Section 3 of the Passenger Transport Act defines a "public passenger service" to include the "carriage of passengers for a fare or other consideration" either by a motor vehicle or vessel.

Section 7 of the Act makes it an offence for a person to carry a public passenger service without being accredited. The maximum penalty is a fine of $110,000.

The RMS has previously warned Uber drivers that they could face prosecution for operating a public passenger service without accreditation; with an RMS spokesperson saying that although Uber may not be breaking the law, the individual drivers are committing an offence because they do not have the required accreditation.

Ubers's position is that the company has acted within the law at all times; and the current state of the law appears to support that view.

**Is it time to legislate for UberX?**

There are over 4000 Uber drivers in Sydney alone, with an ever-growing passenger base.

As the company doesn't look like it's going away anytime soon, the best option might be to legislate to clarify the situation for everyone.

In June, NSW Opposition Leader Luke Foley announced that he would introduce a private member's bill into parliament to regulate Uber and rectify the uncertainty. As of yet, no such Bill has been introduced to Parliament.

Opposition Transport Spokesman Ryan Park has said that:

"The Baird government's policy on ride-sharing is a shambles: its current case against Uber drivers has fallen apart, and yet it's still left the door open to prosecution… The government needs to regulate the industry to make it safe and

fair, or risk staying stuck in the slow lane and getting left behind by the hundreds of thousands of Sydneysiders already using the service."

NSW Transport Minister Andrew Constance recently announced a review of taxis and ride-sharing services, but made it clear that he does not endorse the UberX ride-sharing model.

It remains to be seen whether laws will be passed to clarify the situation, and how those laws will affect the public's access to transportation.

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# Police Get Their Way: Allowed to Take Guns into Courtrooms

We published an article some time ago about whether police officers should be allowed to take guns into court; a debate which has gone on since September 2014.

This debate has now been resolved in favour of the powerful NSW Police Association.

**What is the current law?**

Section 8 of the Court Security Act 2005 makes it an offence to carry restricted items into courthouses, including firearms.

The NSW Chief Magistrate Graeme Henson directed that this rules applies to police as well as others, although police officers could request special permission to have guns with them in specific cases.

But as of next Monday 10 August, police will be allowed to

bring their guns with them into the courtroom.

This comes after months of discussion between the NSW Sheriff, NSW Police Commissioner, Chief Justice of the Supreme Court, Chief Judge of the District Court and Chief Magistrate of the Local Court.

Accordingly, Police Minister Tony Grant issued a protocol on August 4 bringing the changes into effect.

Mr Grant stated that: "this is a commonsense approach at a time our nation faces a high terror alert and when we've seen police overseas become terror targets themselves."

The protocol will be assessed after six months, or as needed, to determine its effectiveness.

**The Sheriff**

The Office of the Sheriff of New South Wales is responsible for the security of NSW courts, as well as administering the jury service system, swearing in witnesses and looking after exhibits.

If you've been to court, you may have seen Sheriffs both at the entrance of the courthouse and inside the courtrooms.

Sheriff uniforms look similar to those of other law enforcement officers. Perhaps their most important responsibility is to keep courts safe and secure.

Currently, those wishing to enter courthouses will normally need to go through a security scanning procedure.

The process requires the public, and even lawyers, to empty everything from their pockets and place their belongings in a tray to be scanned.

They are then required to walk through a metal-detector machine, and may additionally be scanned with a hand-

held detector after going through that machine. They may further be given a ‘pat down’. The process is similar to going through security checks at the airport.

If anyone is found to be carrying weapons or other prohibited items, those items will be seized by the Sheriffs and police may then be called.

There are several hundred specifically trained Sheriffs who ensure the safety of those inside NSW courts, and they have been highly successful at maintaining court security for many years – including during times of ‘high alert’.

**Do police need to have guns inside courtrooms?**

With security procedures already in place and working well, many wonder whether police need to have guns inside courtrooms – or whether it is just another power grab by the police force.

Lawyers were overwhelmingly against the change; concerned that the presence of guns in the hands of police will move power within the courtroom away from the judiciary and Sheriffs (where it should rest) and further towards police officers – who have already enjoyed a raft of laws bolstering their powers in recent times.

And after all, which criminal defence lawyer would feel entirely comfortable putting unscrupulous police officers – whose conduct is already in question – through intense and lengthy cross-examination when they have a gun attached to their hip within easy access?

But as has repeatedy occurred in recent times, police and their powerful association have won the battle without any real justification.

So bravo to our decision-makers for allowing these minimally trained individuals to have guns – in addition to their

batons, tasers, capsicum spray and handcuffs – with them while being questioned on the witness stand (often about their own illegal conduct), in an environment where those around them have been security checked, where the magistrate or judge is supposed to carry the authority, and where Sheriffs have admirably maintained security for many years.

Bravo.