

Penalties for assaults on public officers

Final Report: Appendices

August 2020

Appendix 1: Terms of Reference

QUEENSLAND SENTENCING ADVISORY COUNCIL

PENALTIES FOR ASSAULTS ON POLICE AND OTHER FRONTLINE EMERGENCY SERVICE WORKERS, CORRECTIVE SERVICES OFFICERS AND OTHER PUBLIC OFFICERS

I, Yvette D'Ath, Attorney-General and Minister for Justice, having regard to:

- the Queensland Government and community expectation that police officers and other frontline emergency service workers, corrective services officers and other public officers who face inherent dangers in carrying out their duties, should not be the subject of assault during the execution of their duties;
- the significance of police officers and other frontline emergency service workers, corrective services officers and other public officers needing to have confidence that the criminal justice system properly reflects the inherent dangers they face in the execution of their duty and the negative impacts that an assault in the course of their duties has on those workers, their colleagues and their families;
- the importance of the penalties provided for under legislation and the sentences imposed for assault of frontline public officers being adequate to meet the relevant purposes of sentencing under section 9(1) of the *Penalties and Sentences Act 1992* (Qld), including punishment, deterrence and community protection, while also taking into account the individual facts and circumstances of the case, the seriousness of the offence concerned and offender culpability;

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(1) of the *Penalties and Sentences Act 1992* (PSA), a review of the sentencing options and penalties for assault of police officers and other frontline emergency service workers, corrective services officers and other public officers in the execution of their duty.

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- consider and analyse the penalties and sentencing trends for offences involving assaults against police officers, corrective services officers and all other public officers that fall within the scope of section 340 of the *Criminal Code* in the execution of their duties, including the impact of the 2012 and 2014 amendments introducing higher maximum penalties, and determine if this is in accordance with stakeholder expectations;
- determine whether it is appropriate for section 340 of the *Criminal Code* to continue to apply to police officers and other frontline emergency service workers, corrective services officers and other public officers ('public officers') or whether such offending should be targeted in a separate provision or provisions, possibly with higher penalties, or through the introduction of a circumstance of aggravation;
- determine whether the definition of 'public officer' in section 340 of the *Criminal Code* should be expanded to recognise other occupations, including public transport drivers (e.g. bus drivers and train drivers);
- review section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) and section 124(b) of the *Corrective Services Act 2006* (Qld) and similar provisions in other legislation to assess the suitability of providing for separate offences in different Acts targeting the same offending, including the impact of the lesser offences on sentencing for offences under section 340 of the Code, and whether the penalties imposed on offenders convicted of these offences reflect stakeholder expectations;
- examine relevant offence, penalty and sentencing provisions in other Australian and relevant international jurisdictions to address this type of offending and any evidence of the impact of any reforms;
- identify ways to enhance community knowledge and understanding of the penalties for this type of offending;
- have regard to any relevant statistics, research, reports or publications regarding causes, frequency and seriousness of offending against police officers and other frontline emergency service workers, corrective services officers and other types of public officers;
- consult with stakeholders, including but not limited to the Queensland Police Service, Queensland Ambulance Service, Queensland Corrective Services, Queensland Health, Queensland Fire and Emergency Service, the judiciary, legal profession, employee unions or any other relevant government department and agencies;
- advise on options for reform to the current offence, penalty and sentencing framework to ensure it provides an appropriate response to this form of offending; and
- advise on any matters relevant to this reference.

The Queensland Sentencing Advisory Council is to provide a report on its examination to the Attorney-General and Minister for Justice by 30 June 2020.*

Dated the 2nd day of December 2019

YVETTE D'ATH

Attorney-General and Minister for Justice

Leader of the House

* Reporting date extended to 31 August 2020. Notified by the Attorney-General and Minister for Justice, Yvette D'Ath, on 29 April 2020.

Appendix 2: Stakeholder consultation and submissions

Agencies consulted – Stage 4 (May–July 2020)

| Date | Agency |
|--------------|---|
| 28 May 2020 | Aboriginal and Torres Strait Islander Advisory Panel, Queensland Sentencing Advisory Council |
| 29 May 2020 | Department of Child Safety, Youth and Women |
| 1 June 2020 | Queensland Occupational Violence Strategy Unit, Queensland Health |
| 2 June 2020 | Queensland Nurses and Midwives' Union |
| 2 June 2020 | Australian Medical Association of Queensland |
| 3 June 2020 | Queensland Teachers' Union of Employees |
| 10 June 2020 | Transport Workers' Union (Queensland) |
| 11 June 2020 | Royal Australian College of General Practitioners |
| 12 June 2020 | Together Union |
| 16 June 2020 | Office of the Director of Public Prosecutions |
| 16 June 2020 | Legal Aid Queensland |
| 17 June 2020 | Queensland Council of Unions |
| 17 June 2020 | Bar Association of Queensland |
| 19 June 2020 | Name withheld |
| 22 June 2020 | Stakeholder roundtable: Representatives from Aboriginal and Torres Strait Islander Legal Service, Caxton Legal Centre, Department of Aboriginal and Torres Strait Islander Partnerships, Department of Communities, Disability Services and Seniors, Intergovernmental Relations Dispute Resolution Department of Justice and Attorney-General, Office of the Public Guardian, Office of the Public Advocate, Prisoners' Legal Service, Queensland Advocacy Incorporated, Queensland Council of Social Service, Queensland Human Rights Commission, Queensland Mental Health Commission, Sisters Inside, Victim Assist Queensland Department of Justice and Attorney-General |
| 23 June 2020 | Australasian Railway Association |
| 25 June 2020 | Aboriginal and Torres Strait Islander Advisory Panel, Queensland Sentencing Advisory Council |
| 8 July 2020 | The Queensland Police Service |
| 13 July 2020 | Queensland Rail |

Preliminary submissions (to February 2020)

| No. | Person/Organisation |
|-----|---|
| 1. | Security Providers Association of Australia Limited |
| 2. | Queensland Health |
| 3. | Queensland Human Rights Commission |
| 4. | Australian Lawyers Alliance |
| 5. | Joint Submission — Australasian Railway Association, Bus Industry Confederation, Rail, Tram and Bus Union, TrackSAFE Foundation |
| 6. | GoldlinQ Pty Ltd — Gold Coast Light Rail |
| 7. | Office of the Public Guardian |
| 8. | Department of Communities, Disability Services and Seniors |
| 9. | Queensland Fire and Emergency Services |
| 10. | Confidential |
| 11. | Confidential |
| 12. | State Member for Morayfield, Mark Ryan, on behalf of a constituent |
| 13. | Queensland Teachers' Union |
| 14. | Together Queensland, Industrial Union of Employees |
| 15. | Name withheld |
| 16. | Mark Griffin |
| 17. | Confidential |
| 18. | Queensland Nurses and Midwives' Union |
| 19. | Office of the Information Commissioner Queensland |
| 20. | Confidential |
| 21. | Sisters Inside |
| 22. | Legal Aid Queensland |
| 23. | Queensland Police Union of Employees |
| 24. | Transport Workers' Union (Queensland Branch) |
| 25. | Confidential |
| 26. | Prisoners' Legal Service |
| 27. | Department of Justice and Attorney-General |
| 28. | Confidential |
| 29. | Bar Association of Queensland |
| 30. | Office of Industrial Relations, Department of Education |
| 31. | Queensland Corrective Services |
| 32. | Department of Youth Justice |
| 33. | Department of Housing and Public Works |
| 34. | Queensland Law Society |
| 35. | Queensland Advocacy Incorporated |

Issues Paper submissions (May 2020)

| No. | Person/Organisation |
|-----|---|
| 1. | Public Advocate |
| 2. | Queensland Catholic Education Commission |
| 3. | Department of Transport and Main Roads – confidential submission (some information referenced in this report with permission) |
| 4. | Department of Education |
| 5. | Department of Child Safety, Youth and Women |
| 6. | Confidential |
| 7. | Department of Agriculture and Fisheries |
| 8. | Australian Lawyers Alliance |
| 9. | Queensland Occupational Violence Strategy Unit, Queensland Health |
| 9a. | Appendix 1 – confidential (some information referenced in this report with permission) |
| 10. | Confidential |
| 11. | United Workers Union |
| 12. | Transport Workers' Union |
| 13. | Independent Education Union (Queensland and Northern Territory Branch) |
| 14. | Queensland Nurses and Midwives' Union |
| 15. | Australasian Railway Association |
| 16. | Queensland Council of Unions |
| 17. | Sisters Inside |
| 18. | Queensland Human Rights Commission |
| 19. | Australian College for Emergency Medicine |
| 20. | Queensland Teachers' Union |
| 21. | Queensland Corrective Service |
| 22. | Aboriginal and Torres Strait Islander Legal Service (Queensland) |
| 23. | Queensland Advocacy Incorporated |
| 24. | Office of the Public Guardian |
| 25. | The Queensland Police Service |
| 26. | Department of Environment and Science |
| 27. | Bar Association of Queensland |
| 28. | Department of Housing and Public Works |
| 29. | Legal Aid Queensland |
| 30. | Queensland Law Society |
| 31. | Confidential |
| 32. | Queensland Fire and Emergency Services |

Appendix 3: Methodologies

WorkCover data methodology

Data provided by WorkCover included all accepted claims where the policy was listed as a government policy and the injury occurred on or after 1 July 2010 in relation to an assault on a public officer. Claims were included where the injury mechanism was either 'exposure to workplace or occupational violence' or 'being assaulted by a person or persons'. WorkCover conducted text mining to identify possible further assault/occupational violence claims, using the following keywords:

'abuse', 'aggression', 'altercation', 'assault', 'attack', 'bite', 'choke', 'defending', 'escalation', 'fight' (for Education Queensland this was adjusted to 'break up fight'), 'grab', 'head-butt', 'hit', 'kick', 'kneed', 'lash', 'punch', 'push', 'restrain', 'scratch', 'slap', 'spit', 'stab', 'strangle', 'struck', 'takedown', 'throw', 'violent'

Further exclusions were made based on the context of the incident and other key words used.

The Council conducted a manual review of the data received from WorkCover and excluded claims where the incident did not meet the requirements of an assault of a public officer. All remaining cases were included in the analysis.

Unless specified otherwise, the monetary amount analysed includes the sum of any statutory payment (income replacement, compensation to cover permanent impairment, and hospital/medical expenses) and does not include any common law payments (awarded by the courts as damages, can include economic loss, pain and suffering, legal costs, and medical/hospital costs).

Recidivism methodology

There are considerable challenges in measuring recidivism. For the purposes of the present exercise, the Council operationalised recidivism as any sentencing event that was followed by another sentencing event within two years of an offender's expected release from custody.

An offender's expected release from custody was calculated using information known at the time of sentencing and is not reflective of the actual date that the offender was released from custody. For community-based sentencing orders and wholly suspended sentences (where no time is spent in custody post-sentence) the expected release from custody was the day that the penalty was given. For partially suspended sentences, the expected release date is the date of sentence, plus any days of actual imprisonment to be served, less any days of declared pre-sentence custody. For sentences of imprisonment, the expected release date is either the parole release date or the date an offender becomes eligible for parole. If no parole date is specified at sentencing, parole eligibility is estimated at 50 per cent of the sentence (less any pre-sentence custody), or 80 per cent for cases where a serious violent offence declaration is made.

Offenders sentenced from 2010–11 to 2013–14 form the basis of this analysis. Cases sentenced within this period that involved any of the following types of offences were analysed for recidivism:

- assaults under the *Criminal Code*, including s 335 common assault, s 339 assaults occasioning bodily harm, s 320 grievous bodily harm, s 323 wounding, and s 320A torture;
- assaulting, resisting or obstructing a public officer, including assault or obstruction of a police officer under s 790 of the PPRA, and assaulting or obstructing a staff member in a corrective services facility under s 124(b) of the CSA;
- all forms of serious assault under s 340 of the *Criminal Code*.

The following offence categories were not analysed due to a small number of cases sentenced: resisting a public officer under section 199 of the *Criminal Code* (n=2), serious assault involving conspiracy in trade under s 340(1)(f) (n=1), and serious assault (not further defined) (n=3).

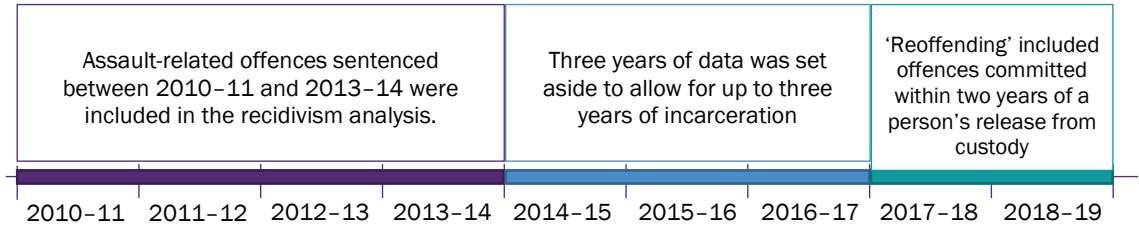
If the recidivism involved a traffic offence that was dealt with in court, it was not included in this analysis. However, recidivism of any other type of offence was analysed.

For offenders sentenced to up to 3 years' imprisonment, three years of data were set aside to account for the period of incarceration. A two-year window of data following the expected release from custody was analysed for occurrences of reoffending. Offences that were committed while a person was incarcerated (such as the assault of a prison officer) were also included in the analysis. Hence, offenders who were sentenced to a period of actual imprisonment will have a longer period of time in which they were eligible for inclusion in this analysis. That is, if a person is sentenced to a term of actual imprisonment, this analysis would identify any reoffending that occurred

while the person was in custody, and any reoffending that occurred within two years of their expected release from custody.

Almost all cases involving an act intended to cause injury received less than three years of actual incarceration (see, for example, Figure 8-1 and Figure 8-2). Of the 58,544 assault-related cases sentenced from 2010–11 to 2013–14 that were analysed for recidivism, 99.8 per cent did not receive more than three years of actual time in custody.

Figure A3-1: Recidivism methodology



Analysis of victim occupation methodology

The Council was provided with additional data on the occupation of victims from Queensland Court Services, which was extracted from the administrative system used by courts — Queensland-Wide Interlinked Courts (QWIC). Victim occupation data are recorded as a free-text field in QWIC.

Victim occupation is not a mandatory field within QWIC and data were not available for all cases. For cases that were missing victim occupation data and were sentenced in the higher courts, sentencing remarks were accessed from the Queensland Sentencing Information Service (QIS) to determine the victim's occupation.

If the victim occupation was not available from QWIC or QIS, or it did not provide enough information to accurately classify the victim's occupation, the Council requested information from the QPS on the occupation and/or employer of the victim as recorded in court briefs (QP9s). This process involved an officer manually reviewing case files and extracting relevant information on the occupation of the victim in each case.

Occupations were coded into broad categories by the Council's Research and Statistics team. Table A3-1 below provides a brief description of the roles included in each category. One category that warrants further explanation is 'security guard', which includes a variety of roles within a security setting. Nearly half (46.1%) of the security guards were employed at a Queensland Health facility or hospital. A further 8.7 per cent were employed in other Queensland Government facilities, such as courts. Over one-in-five (21.9%) were security at a licensed premise such as a pub or club. Security guards at train stations or on trains comprised nearly 5 per cent (4.6%). The employer of the remaining security guards was not known (5.5%).

Table A3-1: Definition of victim occupations

| Victim type | Occupation inclusions |
|---|--|
| Carer | Carer, guardian, or community care officer, employed by a community service, support centre, care facility or Queensland Health. |
| Child safety officer | Child safety officer or case worker, employed by Department of Child Safety or Department of Communities. |
| Compliance officer | State government, council and local government employees who enforce compliance with local laws and regulations. Includes: parking inspectors, parks and wildlife rangers, RSPCA officers, animal compliance officers, transport inspector, city safety officers. |
| Corrective services officer | Prison officer, prison guard, employed by Queensland Corrective Services. |
| Detention centre worker | Detention youth worker or youth worker, employed by the Department of Youth Justice, a youth detention centre or Department of Justice and Attorney-General and/or where the offence occurred in a youth detention facility. |
| Education worker | Teacher, principal, teacher aide. |
| Firefighter/fire investigator | Firefighter, officers who investigate the cause of fires, employed by Queensland Fire and Emergency Service. |
| Medical/hospital worker (excluding security) | Officers who work in hospital or medical field, such as: doctors, nurses, orderlies, pharmacist. Does not include security staff at hospital (see security guard). |
| Other government role (state or federal) | Officers employed by Queensland Government or Australian Federal Government where the role did not fit with other occupation types or there was not enough information to code them elsewhere. |
| Paramedic | Paramedic, ambulance officer, or similar employed, by Queensland Ambulance Service. |
| Police officer | Police officer, employed by Queensland Police Service. |
| Security guard | Security guard or security officer. These are primarily employed by Queensland Health (i.e. security at hospitals) or other government agencies. It also includes security/bouncers at licensed venues and those employed at train stations or on trains. Some private security guards are also included such as those employed at private shopping centres. |
| Staff at licensed premises (excluding security) | Staff employed at, or owners of, a licensed premises such as pub, club, bar or hotel. Does not include security guards or bouncers (see security guard). |
| Transport officer (excluding security) | Transit officer, ticket inspector, customer service officer, senior network officer, rail officer, bus driver or TransLink officer. Employed by Queensland Rail, TransLink, or Brisbane City Council. |
| Unknown | Not enough information was available from any source (or combination) to determine the occupation of the victim. |
| Watch-house officer | Role stated as watch-house officer, may be employed by Queensland Police Service, often as a civilian officer. |
| Youth worker | Youth workers employed by a community service or agency. Not employed by the Department of Youth Justice, a youth detention centre or Department of Justice and Attorney-General and where the offence did not occur in a youth detention facility. |

Appendix 4: Data tables

Table A4-1: Number of serious assault cases sentenced by financial year and type of serious assault

| Section | Offence | Financial year (of sentence) | | | | | | | | | |
|-----------|--------------------------------|------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
| 340 | Serious assault, nfd* | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| 340(1)(a) | Intent to commit/resist arrest | 52 | 35 | 49 | 21 | 18 | 27 | 28 | 17 | 21 | 26 |
| 340(1)(b) | Police officer | 538 | 483 | 572 | 579 | 666 | 719 | 766 | 735 | 740 | 740 |
| 340(1)(c) | Performing duty at law | 17 | 18 | 21 | 37 | 30 | 18 | 22 | 28 | 26 | 19 |
| 340(1)(d) | Performed duty at law | 4 | 6 | 6 | 21 | 14 | 11 | 9 | 6 | 2 | 6 |
| 340(1)(f) | Conspiracy in trade | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 |
| 340(1)(g) | 60 years and over | 66 | 96 | 127 | 117 | 127 | 191 | 178 | 234 | 255 | 311 |
| 340(1)(h) | Person with a disability | 3 | 3 | 5 | 3 | 5 | 4 | 2 | 8 | 3 | 4 |
| 340(2) | Corrective services officer | 12 | 22 | 33 | 33 | 13 | 20 | 19 | 43 | 50 | 47 |
| 340(2AA) | Public officer | 46 | 62 | 60 | 99 | 114 | 121 | 165 | 196 | 230 | 244 |

Data include higher and lower courts, adult and juvenile cases sentenced between 2009–10 and 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Note: (*) nfd = not further defined – these cases could not be classified into specific subsections.

Table A4-2: Number of cases in which serious assault was the most serious offence (MSO) by financial year and type of serious assault

| Section | Offence | Financial year (of sentence) | | | | | | | | | |
|-----------|--------------------------------|------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
| 340 | Serious assault, nfd* | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 340(1)(a) | Intent to commit/resist arrest | 34 | 19 | 33 | 13 | 10 | 9 | 20 | 8 | 11 | 12 |
| 340(1)(b) | Police officer | 434 | 378 | 472 | 463 | 545 | 604 | 600 | 575 | 560 | 560 |
| 340(1)(c) | Performing duty at law | 14 | 16 | 15 | 23 | 21 | 13 | 15 | 17 | 14 | 12 |
| 340(1)(d) | Performed duty at law | 4 | 6 | 4 | 13 | 8 | 8 | 7 | 3 | 2 | 5 |
| 340(1)(f) | Conspiracy in trade | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 340(1)(g) | 60 years and over | 49 | 77 | 106 | 86 | 100 | 156 | 153 | 177 | 189 | 236 |
| 340(1)(h) | Person with a disability | 2 | 2 | 4 | 3 | 4 | 4 | 1 | 7 | 2 | 3 |
| 340(2) | Corrective services officer | 10 | 16 | 27 | 27 | 9 | 14 | 14 | 31 | 33 | 32 |
| 340(2AA) | Public officer | 29 | 37 | 30 | 60 | 68 | 68 | 103 | 121 | 127 | 132 |

Data include higher and lower courts, adult and juvenile cases (MSO) sentenced between 2009–10 and 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes: *nfd = not further defined – these cases could not be classified into specific subsections.

Table A4-3: Frequency of accepted WorkCover claims for assaults of public officers, by agency and occupation over time, 2014–15 to 2018–19

| Reported Occupation | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|---|--------------|--------------|--------------|--------------|--------------|
| Queensland Police Service | | | | | |
| Police Officer | 427 | 493 | 506 | 444 | 570 |
| Other/Unknown | 6 | 5 | 8 | 7 | 13 |
| Department of Justice and Attorney-General | | | | | |
| Youth Worker | 39 | 35 | 73 | 19 | |
| Prison Officer | 46 | 76 | 100 | 34 | |
| Other/Unknown | 8 | 2 | 11 | 3 | 2 |
| Queensland Corrective Services | | | | | |
| Prison Officer | | | | 52 | 94 |
| Other/Unknown | | | | 5 | 13 |
| Department of Child Safety, Youth and Women | | | | | |
| Youth Worker | | | | 38 | 80 |
| Prison Officer | | | | 1 | 18 |
| Other/Unknown | | | | 9 | 25 |
| Department of Communities Child Safety & Disability Services | | | | | |
| Aged/Disabled/Residential Care Officer | 22 | 27 | 28 | 10 | |
| Other/Unknown | 22 | 29 | 23 | 12 | |
| Department of Communities Disability Services and Seniors | | | | | |
| Aged/Disabled/Residential Care Officer | | | | 17 | 23 |
| Other/Unknown | | | | 3 | 14 |
| Department of Health | | | | | |
| Health Professionals | 15 | 44 | 29 | 19 | 26 |
| Medical Practitioners | 3 | 7 | 2 | 5 | 2 |
| Nursing Assistant | 35 | 54 | 45 | 51 | 49 |
| Nursing Professionals | 129 | 126 | 144 | 157 | 155 |
| Other/Unknown | 48 | 56 | 48 | 51 | 52 |
| Department of Education | | | | | |
| Teacher | 203 | 188 | 221 | 263 | 314 |
| Teacher Aide | 94 | 106 | 107 | 151 | 193 |
| Other/Unknown | 32 | 40 | 32 | 67 | 74 |
| Department of Transport and Main Roads | | | | | |
| Other/Unknown | 2 | 10 | 9 | 12 | 12 |
| Queensland Fire and Emergency Services | | | | | |
| Firefighter | | | 1 | 1 | |
| Queensland Ambulance Service | | | | | |
| Ambulance Operative | 24 | 38 | 24 | 21 | 34 |
| Other | | | | | |
| Other/Unknown | 2 | 3 | 6 | 1 | 9 |
| Guards and Security Officers | | | | | |
| Queensland Police Service | 1 | | 2 | 2 | 4 |
| Department of Justice and Attorney-General | 3 | 2 | 14 | 7 | |
| Queensland Corrective Services | | | | 6 | 9 |
| Department of Child Safety, Youth and Women | | | | | 3 |
| Department of Health | 10 | 25 | 32 | 34 | 28 |
| Department of Transport and Main Roads | | 1 | 2 | 2 | 1 |
| Other | 3 | 7 | | | |
| Total | 1,174 | 1,374 | 1,467 | 1,504 | 1,817 |

Source: WorkCover — unreported data, 2014–15 to 2018–19.

Notes: (1) Guards and Security Officers are displayed separately, as they appeared across many different agencies.

(*) Over the data period, some agencies were amalgamated, merged, or otherwise affected by Machinery-Of-Government changes, this is reflected by the missing values reported above.

Table A4-4: WorkCover amount due to assault-related claims, by occupation group, 2014–15 to 2018–19

| Victim occupation | Average (\$) | Median (\$) | Proportion that received statutory payment (%) |
|--|--------------|-------------|--|
| Police Officer (n=2,440) | 6,264 | 464 | 93.4% |
| Teacher (n=1,189) | 9,908 | 485 | 96.0% |
| Other/Unknown (n=786) | 10,436 | 877 | 95.9% |
| Nursing Professional (n=711) | 16,560 | 1,640 | 93.5% |
| Teacher's Aide (n=651) | 5,063 | 346 | 95.1% |
| Prison Officer (n=421) | 15,823 | 1,518 | 95.2% |
| Youth Worker (n=284) | 15,145 | 1,064 | 93.0% |
| Nursing Assistant (n=234) | 17,183 | 1,481 | 92.3% |
| Guards and Security Officers (n=198) | 12,560 | 1,166 | 95.5% |
| Ambulance Operative (n=141) | 5,628 | 560 | 97.9% |
| Health Professionals (n=133) | 11,018 | 1,543 | 94.7% |
| Aged/Disabled/Residential Care Officer (n=127) | 14,268 | 1,698 | 96.9% |
| Medical Practitioners (n=19) | 7,111 | 909 | 94.7% |
| Firefighter (n=2*) | - | - | - |
| Total | 9,817 | 638 | 94.5% |

Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.

Notes: (1) Monetary amounts include statutory payments and do not include common law payments.

(*) Small sample size

Table A4-5: Recidivism — number of occurrences of reoffending, by type of offence

| Type of offence | No reoffending | Reoffended once | Reoffended 2-4 times | Reoffended 5+ times |
|--|----------------|-----------------|----------------------|---------------------|
| Torture (n=29) | 75.9% | 13.8% | 3.4% | 6.9% |
| Serious assault — Person with a disability (n=16) | 56.3% | 6.3% | 18.8% | 18.8% |
| Grievous bodily harm (n=899) | 55.7% | 20.5% | 19.5% | 4.3% |
| Wounding (n=575) | 48.7% | 23.1% | 23.8% | 4.3% |
| Assault occasioning bodily harm (n=9,631) | 47.1% | 19.3% | 25.3% | 8.3% |
| Serious assault — 60 years and over (n=467) | 44.8% | 22.1% | 23.3% | 9.9% |
| Common assault (n=11,359) | 44.5% | 18.0% | 25.9% | 11.6% |
| Assault or obstruct police officer (n=34,448) | 41.3% | 18.3% | 28.0% | 12.4% |
| Assault occasioning bodily harm (aggravated) (n=4,082) | 40.9% | 20.0% | 28.3% | 10.8% |
| Serious assault — Intent to commit/resist arrest (n=123) | 35.8% | 21.1% | 27.6% | 15.4% |
| Serious assault — Police officer (n=2,300) | 33.1% | 20.2% | 33.7% | 13.0% |
| Serious assault — Public officer (n=335) | 29.0% | 20.9% | 31.3% | 18.8% |
| Serious assault — Corrective services officer (n=101) | 27.7% | 21.8% | 38.6% | 11.9% |
| Serious assault — Performing duty at law (n=106) | 24.5% | 9.4% | 41.5% | 24.5% |
| Assault or obstruct corrective services staff (n=40) | 22.5% | 27.5% | 40.0% | 10.0% |
| Serious assault — Performed duty at law (n=47) | 19.1% | 12.8% | 40.4% | 27.7% |
| Total | 42.6% | 18.7% | 27.3% | 11.4% |

Data include adult and juvenile cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the offender's expected release from custody.

Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Table A4-6: Offender demographics by victim occupation

| Victim occupation | TOTAL | Aboriginal and Torres Strait Islander | | Non-Indigenous | |
|---|---------------|---------------------------------------|-------------|----------------|-------------|
| | | Female (%) | Male (%) | Female (%) | Male (%) |
| Police officer | 8,886 | 11.2 | 28.6 | 15.7 | 44 |
| Paramedic | 612 | 15.5 | 19 | 24.4 | 40.4 |
| Detention centre worker | 442 | 4.1 | 83.3 | 12.2 | 0.2 |
| Corrective services officer | 420 | 8.3 | 26.4 | 9 | 56 |
| Medical/hospital worker (excluding security) | 377 | 13.8 | 21.5 | 26 | 38.5 |
| Security guard | 219 | 7.3 | 16.9 | 24.2 | 50.7 |
| Watch-house officer | 130 | 15.4 | 20 | 18.5 | 46.2 |
| Transport officer (excluding security) | 62 | 16.1 | 14.5 | 4.8 | 64.5 |
| Child safety officer | 46 | 19.6 | 8.7 | 43.5 | 28.3 |
| Compliance officer | 31 | 0 | 19.4 | 9.7 | 71 |
| Education worker | 28 | 7.1 | 39.3 | 10.7 | 39.3 |
| Carer | 16 | 12.5 | 18.8 | 62.5 | 6.3 |
| Unknown | 16 | 6.3 | 50 | 12.5 | 31.3 |
| Staff at licensed premises (excluding security) | 14* | 7.1 | 21.4 | 21.4 | 50 |
| Firefighter/fire investigator | 10* | 0 | 20 | 20 | 60 |
| Other government role (state or federal) | 8* | 0 | 37.5 | 25 | 37.5 |
| Youth worker | 7* | 0 | 28.6 | 14.3 | 57.1 |
| TOTAL | 11,324 | 11.1 | 29.4 | 16 | 43.1 |

Data include lower and higher courts, adult and juvenile offenders, s 340(1)(b), s340(1)(c) and s340(1)(d), (2), and (2AA), cases sentenced from 2009–10 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019, QGIS and the QPS.

Notes:

(1) Cases where gender and/or Aboriginal and Torres Strait Islander status was unknown have been included in the calculations but not presented, therefore the percentages may not total 100%;

(2) Count is by charge (i.e. victim) therefore the victim may not be unique and if an offender had multiple victims the demographic of the offender will be counted more than once;

(3) Victims entered as 'prison officer' or 'correctional officer' or under section s 340(2) where the offender was sentenced as a child have been coded as 'detention centre worker'.

(*) Small sample size

Table A4-7: Summary of custodial penalties for 'acts intended to cause injury' offences carrying a 7-year maximum penalty (MSO)

| Year maximum penalty (n=61) | | Length of custodial penalties (years) | | | |
|--|---|---------------------------------------|--------|---------------|---------|
| Offence | Proportion of cases that received a custodial penalty (%) | Average | Median | Minimum | Maximum |
| Higher courts | | | | | |
| s 340 Serious assault (non-aggravated)* (n=61) | 82.0 | 0.9 | 0.8 | (10 days) 0.0 | 3.5 |
| s 339(1) Assault occasioning bodily harm (n=701) | 80.0 | 1.5 | 1.5 | 0.2 | 5.0 |
| s 323 Wounding (n=398) | 97.0 | 2.1 | 2.0 | 0.2 | 5.0 |
| Lower courts | | | | | |
| s 340 Serious assault (non-aggravated)* (n=1,253) | 54.5 | 0.6 | 0.5 | (rise) 0.0 | 3.0 |
| s 339(1) Assault occasioning bodily harm (n=8,144) | 50.3 | 0.8 | 0.8 | (5 days) 0.0 | 3.0 |

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Note: (*) Includes offences under ss 340(1)(b), 340(1)(c), 340(1)(d), 340(2), 340(2AA).

Table A4-8: Summary of custodial penalties for 'acts intended to cause injury' offences carrying a 14-year maximum penalty (MSO)

| Maximum penalty (MSP) | | Length of custodial penalties (years) | | | |
|--|---|---------------------------------------|--------|---------|---------|
| Offence | Proportion of cases that received a custodial penalty (%) | Average | Median | Minimum | Maximum |
| Higher courts | | | | | |
| s 340 Serious assault (aggravated)* (n=227) | 93.0 | 1.1 | 1.0 | 0.1 | 5.0 |
| s 320 Grievous bodily harm (n=572) | 99.1 | 3.0 | 3.0 | 0.2 | 8.0 |
| s 320A Torture (n=62) | 100.0 | 5.4 | 5.2 | 1.2 | 10.0 |
| Lower courts | | | | | |
| s 340 Serious assault (aggravated)* n=1,280) | 74.8 | 0.7 | 0.5 | 0.1 | 3.0 |

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Note: (*) Includes offences under ss 340(1)(b)(i/ii/iii) and 340(2AA)(a/b)(i/ii/iii).

Table A4-9: Summary of custodial penalties for common assault and non-aggravated serious assault (MSO)

| | | Length of custodial penalties (years) | | | |
|---|---|---------------------------------------|--------|---------------|---------|
| Offence | Proportion of cases that received a custodial penalty (%) | Average | Median | Minimum | Maximum |
| Higher courts | | | | | |
| s 340 Serious assault (non-aggravated)* (n=61) | 82.0 | 0.9 | 0.8 | (10 days) 0.0 | 3.5 |
| s 335 Common assault (n=228) | 41.7 | 0.7 | 0.5 | (rise) 0.0 | 2.5 |
| Lower courts | | | | | |
| s 340 Serious assault (non-aggravated)* (n=1,253) | 54.5 | 0.6 | 0.5 | (rise) 0.0 | 3.0 |
| s 335 Common assault (n=9,103) | 21.5 | 0.5 | 0.5 | (rise) 0.0 | 2.5 |

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Note: (*) Includes offences under ss 340(1)(b), 340(1)(c), 340(1)(d), s 340(2), 340(2AA).

Table A4-10: Offences identified as a weapons offence and sentenced with a common assault offence as the MSO

| Act | Section number | Offence description | Frequency |
|----------------------------|----------------|---|-----------|
| <i>Criminal Code (Qld)</i> | 69(1) | Going armed so as to cause fear | 200 |
| <i>Criminal Code (Qld)</i> | 69(1) & 47(9) | Going armed so as to cause fear – domestic violence offence | 7 |
| <i>Weapons Act 1990</i> | 50 | Unlawful possession of weapons | 17 |
| <i>Weapons Act 1990</i> | 50(1)(c)(i) | Unlawful possession of weapons category d/h/r weapon | 15 |
| <i>Weapons Act 1990</i> | 50 & (c)(ii) | Unlawful possession of weapons category c/e weapon | 1 |
| <i>Weapons Act 1990</i> | 50 & (c)(iii) | Unlawful possession of weapons category a, b or m | 61 |
| <i>Weapons Act 1990</i> | 50(c)(i) | Unlawfully possess category d, h or r weapon | 9 |
| <i>Weapons Act 1990</i> | 50a | Possess unregistered firearm | 3 |
| <i>Weapons Act 1990</i> | 51(1) | Possession of a knife in a public place | 320 |
| <i>Weapons Act 1990</i> | 56(2) | A person must not, without reasonable excuse, discharge a weapon on or across private land without the express consent of the owner | 1 |
| <i>Weapons Act 1990</i> | 56(3) | Carry weapon private land | 1 |
| <i>Weapons Act 1990</i> | 57(2) | A person must not, without reasonable excuse, carry a weapon exposed to view in a public place | 4 |
| <i>Weapons Act 1990</i> | 57(3) | A person must not, without reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged | 1 |
| <i>Weapons Act 1990</i> | 57(4) | Discharge weapon public place | 2 |
| <i>Weapons Act 1990</i> | 58(2) | Dangerous conduct with weapon | 29 |
| <i>Weapons Act 1990</i> | 59(2) | Possession of a weapon whilst under the influence of liquor or a drug | 5 |
| <i>Weapons Act 1990</i> | 61(b) | Possess shortened firearms | 9 |
| <i>Weapons Act 1990</i> | 67(1) | Possessing and acquiring restricted items | 32 |
| <i>Weapons Act 1990</i> | 67(1) & 47(9) | Possessing/acquiring restricted items – domestic violence offence | 1 |

Data include MSO, adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Table A4-11: Proportion of sentenced offences with section 108B PSA intoxication circumstance of aggravation applied

| Offence | Sentenced offences (N) | Sentenced offences with 108B | | N with community service | Proportion 108B that received CSO | Average CSO length |
|---|------------------------|------------------------------|------|--------------------------|-----------------------------------|--------------------|
| | N | n | % | n | % | hours |
| Higher courts | | | | | | |
| s 320 Grievous bodily harm | 588 | 27 | 4.6 | 24 | 88.9 | 71.3 |
| s 323 Wounding | 472 | 11 | 2.3 | 8 | 72.7 | 75.0 |
| s 335 Common assault | 2,024 | 31 | 1.5 | 24 | 77.4 | 67.1 |
| s 339(1) AOBH (non-aggravated) | 1,675 | 33 | 2.0 | 28 | 84.8 | 77.1 |
| s 339(1)(3) AOBH (aggravated) | 1,285 | 25 | 2.0 | 21 | 84.0 | 76.7 |
| s 340(1)(b) Serious assault police officer (non-aggravated) | 219 | 4 | 1.8 | 2 | 50.0 | 70.0 |
| s 340(1)(b)(i/ii/iii) Serious assault police officer (aggravated) | 349 | 25 | 7.2 | 22 | 88.0 | 64.8 |
| s 340(2AA) Serious assault public officer (non-aggravated) | 49 | 5 | 10.2 | 5 | 100.0 | 46.0 |
| s 340(2AA)(i/ii/iii) Serious assault public officer (aggravated) | 57 | 3 | 5.3 | 1 | 33.3 | 40.0 |
| s 790 Assault or obstruct police officer | 1,151 | 84 | 7.3 | 44 | 52.4 | 55.7 |
| Lower courts | | | | | | |
| s 320 Grievous bodily harm | 0 | - | - | - | - | - |
| s 323 Wounding | 3* | 0 | - | - | - | - |
| s 335 Common assault | 12,219 | 794 | 6.5 | 585 | 73.7 | 63.9 |
| s 339(1) AOBH (non-aggravated) | 8,979 | 540 | 6.0 | 406 | 75.2 | 76.5 |
| s 339(1)(3) AOBH (aggravated) | 2,294 | 85 | 3.7 | 55 | 64.7 | 78.3 |
| s 340(1)(b) Serious assault police officer (non-aggravated) | 1,500 | 149 | 9.9 | 95 | 63.8 | 64.4 |
| s 340(1)(b)(i/ii/iii) Serious assault police officer (aggravated) | 1,462 | 113 | 7.7 | 75 | 66.4 | 68.4 |
| s 340(2AA) Serious assault public officer (non-aggravated) | 434 | 39 | 9.0 | 22 | 56.4 | 70.0 |
| s 340(2AA)(i/ii/iii) Serious assault public officer (aggravated) | 256 | 27 | 10.6 | 16 | 59.3 | 56.9 |
| s 790 Assault or obstruct police officer | 38,524 | 4,613 | 12.0 | 3,287 | 71.3 | 57.6 |

Data include adult offenders, offences on or after 1 December 2014, sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes: (1) All numbered references are to sections of the Criminal Code, with the exception of '790' which refers to the offence of assault or obstruct police under s 790 of the PPRA.

(*) Small sample size

Table A4-12: Most serious penalty for offences with 108B circumstance of aggravation (intoxication)

| Offence | Custodial penalty | | | | Non-custodial penalty | | | | |
|--|-------------------|----------------------------|---------------------|------------------|-----------------------|-------------------|------------------------------|----------|---------------------------------|
| | Imprisonment | Intensive correction order | Partially suspended | Wholly suspended | Probation | Community service | Good behaviour, recognisance | Monetary | Convicted, not further punished |
| | % | % | % | % | % | % | % | % | % |
| s 320 Grievous bodily harm (n=27*) | 59.3 | 0 | 14.8 | 25.9 | 0 | 0 | 0 | 0 | 0 |
| s 323 Wounding (n=11*) | 81.8 | 0 | 9.1 | 9.1 | 0 | 0 | 0 | 0 | 0 |
| s 335 Common assault (n=825) | 20.5 | 0.7 | 1.1 | 6.9 | 4.7 | 56.4 | 0.7 | 8.1 | 0.9 |
| s 339(1) Assault occasioning bodily harm (non-aggravated) (n=573) | 31.1 | 0.9 | 2.6 | 14.8 | 3.5 | 41.9 | 0.4 | 4.9 | 0 |
| s 339(3) Assault occasioning bodily harm (aggravated) (n=110) | 47.3 | 0.9 | 5.5 | 21.8 | 6.4 | 17.3 | 0 | 0.9 | 0 |
| s 340(1)(b) Serious assault of police officer (non-aggravated) (n=153) | 34.6 | 1.3 | 0.7 | 15 | 6.5 | 34 | 0.7 | 5.9 | 1.3 |
| s 340(1)(b)(i/ii/iii) Serious assault of police officer (aggravated) (n=138) | 54.4 | 0 | 4.4 | 13.8 | 3.6 | 21.7 | 0 | 1.5 | 0.7 |
| s 340(2AA) Serious assault of public officer (non-aggravated) (n=44) | 43.2 | 0 | 2.3 | 4.6 | 13.6 | 34.1 | 0 | 2.3 | 0 |
| s 340(2AA)(i/ii/iii) Serious assault of public officer (aggravated) (n=30) | 76.7 | 0 | 3.3 | 3.3 | 0 | 13.3 | 0 | 3.3 | 0 |
| s 790 Assault or obstruct police officer (n=4,697) | 8.6 | 0.1 | 0.3 | 3.2 | 4 | 65.3 | 1.6 | 14.5 | 2.3 |

Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014–15 to 2018–2019.

Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Notes: (1) All numbered references are to sections of the Criminal Code, with the exception of '790' which refers to the offence of assault or obstruct police under s 790 of the PPRA.

(*) Small sample size

Table A4-13: Sentence length for all relevant offences, adult offenders

| | | Magistrates Courts | | | | | | Higher courts | | | | |
|----------------|--|-----------------------|------|--------|------------|-----|----|---------------|--------|-------------|-----|--|
| | | Imprisonment (months) | | | | | | | | | | |
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max | |
| 340(1)(b) | Police officer (non-aggravated) | 278 | 8.0 | 6 | (rise) 0 | 36 | 20 | 12.8 | 9 | (12 days) 0 | 42 | |
| 340(1)(b)(i) | Police officer (bodily fluid) | 303 | 8.7 | 9 | 1 | 30 | 70 | 12.3 | 12 | 4 | 36 | |
| 340(1)(b)(ii) | Police officer (bodily harm) | 148 | 10.1 | 10 | 2 | 36 | 41 | 17.5 | 12 | 6 | 60 | |
| 340(1)(b)(iii) | Police officer (armed) | 103 | 10.3 | 9 | 1 | 30 | 17 | 29.6 | 30 | 5 | 60 | |
| 340(1)(c)/(d) | Performing/performed duty at law | 19 | 7.4 | 6 | 2 | 24 | 2* | - | - | - | - | |
| 340(2) | Corrective services officer | 77 | 8.8 | 7 | 1 | 36 | 13 | 12.8 | 8 | (10 days) 0 | 36 | |
| 340(2AA) | Public officer (non-aggravated) | 65 | 6.4 | 6 | (4 days) 0 | 18 | 5* | - | - | - | - | |
| 340(2AA)(i) | Public officer (bodily fluid) | 59 | 8.1 | 6 | 1 | 24 | 16 | 9.0 | 9 | 1 | 15 | |
| 340(2AA)(ii) | Public officer (bodily harm) | 25 | 8.6 | 9 | 3 | 18 | 4* | - | - | - | - | |
| 340(2AA)(iii) | Public officer (armed) | 8* | - | - | - | - | 0 | - | - | - | - | |
| 124(b) | Assault/obstruct corrective services staff | 32 | 2.9 | 3 | (7 days) 0 | 6 | 0 | - | - | - | - | |
| 790(1)(a) | Assault police officer | 162 | 3.7 | 3 | (2 days) 0 | 12 | 0 | - | - | - | - | |
| 790(1)(b) | Obstruct police officer | 166 | 2.6 | 2 | (rise) 0 | 12 | 0 | - | - | - | - | |
| 655A | Assault/obstruct watch-house officer | 0 | - | - | - | - | 0 | - | - | - | - | |
| 199 | Resisting public officers | 1* | - | - | - | - | 0 | - | - | - | - | |

| Suspended sentence (months) | | | | | | | | | | | |
|-----------------------------|--|-----|-----|--------|-------------|-----|----|-----|--------|-----|-----|
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 150 | 4.7 | 4 | (7 days) 0 | 18 | 6* | - | - | - | - |
| 340(1)(b)(i) | Police officer (bodily fluid) | 159 | 5.1 | 4 | 1 | 12 | 35 | 8.7 | 9 | 4 | 15 |
| 340(1)(b)(ii) | Police officer (bodily harm) | 69 | 5.5 | 4 | 1 | 15 | 9* | - | - | - | - |
| 340(1)(b)(iii) | Police officer (armed) | 36 | 5.1 | 4 | 2 | 18 | 4* | - | - | - | - |
| 340(1)(c)/(d) | Performing/performed duty at law | 14 | 4.6 | 4 | 2 | 12 | 0 | - | - | - | - |
| 340(2) | Corrective services officer | 7* | - | - | - | - | 1* | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 54 | 4.1 | 3 | 1 | 12 | 3* | - | - | - | - |
| 340(2AA)(i) | Public officer (bodily fluid) | 18 | 6.6 | 6 | 3 | 15 | 7* | - | - | - | - |
| 340(2AA)(ii) | Public officer (bodily harm) | 10 | 5.6 | 6 | 2 | 8 | 2* | - | - | - | - |
| 340(2AA)(iii) | Public officer (armed) | 4* | - | - | - | - | 1* | - | - | - | - |
| 124(b) | Assault/obstruct corrective services staff | 10 | 2.0 | 2 | (14 days) 0 | 3 | 0 | - | - | - | - |
| 790(1)(a) | Assault police officer | 153 | 2.6 | 2 | (7 days) 0 | 12 | 0 | - | - | - | - |
| 790(1)(b) | Obstruct police officer | 153 | 2.2 | 2 | (7 days) 0 | 18 | 0 | - | - | - | - |
| 655A | Assault/obstruct watch-house officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 199 | Resisting public officers | 0 | - | - | - | - | 0 | - | - | - | - |

| Intensive correction order (months) | | | | | | | | | | | |
|-------------------------------------|--|----|-----|--------|-----|-----|----|-----|--------|-----|-----|
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 18 | 7.8 | 6 | 3 | 12 | 0 | - | - | - | - |
| 340(1)(b)(i) | Police officer (bodily fluid) | 10 | 7.5 | 9 | 3 | 12 | 3* | - | - | - | - |
| 340(1)(b)(ii) | Police officer (bodily harm) | 3* | - | - | - | - | 2* | - | - | - | - |
| 340(1)(b)(iii) | Police officer (armed) | 2* | - | - | - | - | 0 | - | - | - | - |
| 340(1)(c)/(d) | Performing/performed duty at law | 1* | - | - | - | - | 0 | - | - | - | - |
| 340(2) | Corrective services officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 0 | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(i) | Public officer (bodily fluid) | 1* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(ii) | Public officer (bodily harm) | 0 | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(iii) | Public officer (armed) | 0 | - | - | - | - | 0 | - | - | - | - |
| 124(b) | Assault/obstruct corrective services staff | 0 | - | - | - | - | 0 | - | - | - | - |
| 790(1)(a) | Assault police officer | 5* | - | - | - | - | 0 | - | - | - | - |
| 790(1)(b) | Obstruct police officer | 1* | - | - | - | - | 0 | - | - | - | - |
| 655A | Assault/obstruct watch-house officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 199 | Resisting public officers | 0 | - | - | - | - | 0 | - | - | - | - |

| Community service (hours) | | | | | | | | | | | |
|---------------------------|----------------------------------|-----|-------|--------|-----|-----|----|-----|--------|-----|-----|
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 104 | 85.0 | 75 | 40 | 240 | 2* | - | - | - | - |
| 340(1)(b)(i) | Police officer (bodily fluid) | 30 | 107.2 | 100 | 40 | 240 | 1* | - | - | - | - |
| 340(1)(b)(ii) | Police officer (bodily harm) | 36 | 104.0 | 100 | 40 | 240 | 2* | - | - | - | - |
| 340(1)(b)(iii) | Police officer (armed) | 11 | 110.9 | 100 | 50 | 200 | 0 | - | - | - | - |
| 340(1)(c)/(d) | Performing/performed duty at law | 5* | - | - | - | - | 1* | - | - | - | - |
| 340(2) | Corrective services officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 26 | 88.3 | 80 | 40 | 200 | 1* | - | - | - | - |
| 340(2AA)(i) | Public officer (bodily fluid) | 4* | - | - | - | - | 1* | - | - | - | - |
| 340(2AA)(ii) | Public officer (bodily harm) | 4* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(iii) | Public officer (armed) | 0 | - | - | - | - | 0 | - | - | - | - |

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| | | Magistrates Courts | | | | | Higher courts | | | | |
|----------------|--|--------------------|------|--------|-----|-----|---------------|-----|--------|-----|-----|
| | | Probation (months) | | | | | | | | | |
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max |
| 124(b) | Assault/obstruct corrective services staff | 0 | - | - | - | - | 0 | - | - | - | - |
| 790(1)(a) | Assault police officer | 376 | 61.7 | 50 | 40 | 240 | 0 | - | - | - | - |
| 790(1)(b) | Obstruct police officer | 1,111 | 45.5 | 40 | 40 | 150 | 4* | - | - | - | - |
| 655A | Assault/obstruct watch-house officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 199 | Resisting public officers | 0 | - | - | - | - | 0 | - | - | - | - |
| 340(1)(b) | Police officer (non-aggravated) | 160 | 14.1 | 12 | 6 | 36 | 5* | - | - | - | - |
| 340(1)(b)(i) | Police officer (bodily fluid) | 56 | 15.5 | 13 | 6 | 30 | 1* | - | - | - | - |
| 340(1)(b)(ii) | Police officer (bodily harm) | 43 | 15.5 | 15 | 6 | 30 | 4* | - | - | - | - |
| 340(1)(b)(iii) | Police officer (armed) | 45 | 16.0 | 15 | 6 | 36 | 2* | - | - | - | - |
| 340(1)(c)/(d) | Performing/performed duty at law | 13 | 14.8 | 12 | 9 | 24 | 0 | - | - | - | - |
| 340(2) | Corrective services officer | 1* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 33 | 14.5 | 12 | 6 | 36 | 1* | - | - | - | - |
| 340(2AA)(i) | Public officer (bodily fluid) | 11 | 17.1 | 18 | 6 | 30 | 1* | - | - | - | - |
| 340(2AA)(ii) | Public officer (bodily harm) | 14 | 15.2 | 12 | 9 | 24 | 2* | - | - | - | - |
| 340(2AA)(iii) | Public officer (armed) | 3* | - | - | - | - | 0 | - | - | - | - |
| 124(b) | Assault/obstruct corrective services staff | 0 | - | - | - | - | 0 | - | - | - | - |
| 790(1)(a) | Assault police officer | 255 | 11.7 | 12 | 6 | 36 | 0 | - | - | - | - |
| 790(1)(b) | Obstruct police officer | 144 | 10.5 | 9 | 6 | 36 | 0 | - | - | - | - |
| 655A | Assault/obstruct watch-house officer | 2* | - | - | - | - | 0 | - | - | - | - |
| 199 | Resisting public officers | 0 | - | - | - | - | 0 | - | - | - | - |

| | | Monetary (dollars) | | | | | | | | | |
|----------------|--|--------------------|---------|--------|-----|-------|---|-----|--------|-----|-----|
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 144 | 1,012.6 | 775 | 200 | 6,000 | 0 | - | - | - | - |
| 340(1)(b)(i) | Police officer (bodily fluid) | 17 | 1,579.4 | 800 | 350 | 6,800 | 0 | - | - | - | - |
| 340(1)(b)(ii) | Police officer (bodily harm) | 23 | 1,082.6 | 1,000 | 350 | 3,000 | 0 | - | - | - | - |
| 340(1)(b)(iii) | Police officer (armed) | 11 | 731.8 | 700 | 400 | 1,000 | 0 | - | - | - | - |
| 340(1)(c)/(d) | Performing/performed duty at law | 11 | 795.5 | 500 | 400 | 2,000 | 0 | - | - | - | - |
| 340(2) | Corrective services officer | 3* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 40 | 767.5 | 525 | 100 | 3,000 | 0 | - | - | - | - |
| 340(2AA)(i) | Public officer (bodily fluid) | 5* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(ii) | Public officer (bodily harm) | 2* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(iii) | Public officer (armed) | 1* | - | - | - | - | 0 | - | - | - | - |
| 124(b) | Assault/obstruct corrective services staff | 4* | - | - | - | - | 0 | - | - | - | - |
| 790(1)(a) | Assault police officer | 1,086 | 620.8 | 500 | 60 | 6,500 | 0 | - | - | - | - |
| 790(1)(b) | Obstruct police officer | 4,726 | 414.5 | 350 | 50 | 6,500 | 0 | - | - | - | - |
| 655A | Assault/obstruct watch-house officer | 3* | - | - | - | - | 0 | - | - | - | - |
| 199 | Resisting public officers | 3* | - | - | - | - | 0 | - | - | - | - |

| | | Good behaviour, recognisance (months) | | | | | | | | | |
|----------------|--|---------------------------------------|-----|--------|-----|-----|----|-----|--------|-----|-----|
| Section | Description | N | Avg | Median | Min | Max | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 12 | 9.8 | 9 | 4 | 24 | 1* | - | - | - | - |
| 340(1)(b)(i) | Police officer (bodily fluid) | 0 | - | - | - | - | 1* | - | - | - | - |
| 340(1)(b)(ii) | Police officer (bodily harm) | 1* | - | - | - | - | 0 | - | - | 0 | 0 |
| 340(1)(b)(iii) | Police officer (armed) | 1* | - | - | - | - | 0 | - | - | - | - |
| 340(1)(c)/(d) | Performing/performed duty at law | 3* | - | - | - | - | 0 | - | - | - | - |
| 340(2) | Corrective services officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 9* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(i) | Public officer (bodily fluid) | 1* | - | - | - | - | 1* | - | - | - | - |
| 340(2AA)(ii) | Public officer (bodily harm) | 1* | - | - | - | - | 0 | - | - | - | - |
| 340(2AA)(iii) | Public officer (armed) | 0 | - | - | - | - | 0 | - | - | - | - |
| 124(b) | Assault/obstruct corrective services staff | 0 | - | - | - | - | 0 | - | - | - | - |
| 790(1)(a) | Assault police officer | 167 | 7.8 | 6 | 1 | 24 | 0 | - | - | - | - |
| 790(1)(b) | Obstruct police officer | 659 | 6.5 | 6 | 1 | 18 | 0 | - | - | - | - |
| 655A | Assault/obstruct watch-house officer | 0 | - | - | - | - | 0 | - | - | - | - |
| 199 | Resisting public officers | 2* | - | - | - | - | 0 | - | - | - | - |

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Notes: (1) Sentence lengths have not been calculated for cells with a sample size of less than 10. Some categories have been combined to increase sample sizes: wholly suspended and partially suspended sentences were combined into the category of 'suspended sentences'; serious assault of a person performing a duty at law and serious assault of a person who performed a duty at law were also combined.

(2) A small proportion of s 790 PPRA cases were excluded as they couldn't be classified as an assault or an obstruction (n=281).

(*) Small sample sizes

Table A4-14: Sentence length for all relevant offences, young people

| | | Young people — all courts | | | | |
|---------------------|----------------------------------|---------------------------------------|------|--------|-----|-----|
| | | Detention (months) | | | | |
| Section | Description | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 9^ | 5.6 | 4 | 1 | 10 |
| 340(1)(b)(i/ii/iii) | Police officer (aggravated) | 15 | 5.3 | 4 | 1 | 14 |
| 340(1)(c)/(d) | Performing/performed duty at law | 6^ | 4.3 | 4 | 3 | 6 |
| 340(2AA) | Public officer (non-aggravated) | 2* | - | - | - | - |
| 340(2AA)(i/ii/iii) | Public officer (aggravated) | 12 | 9.1 | 6 | 2 | 42 |
| 790(1)(a) | Assault police officer | 7^ | 4.2 | 3 | 2 | 9 |
| 790(1)(b) | Obstruct police officer | 0 | - | - | - | - |
| | | Conditional release order (months) | | | | |
| Section | Description | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 11 | 2.7 | 3 | 1 | 3 |
| 340(1)(b)(i/ii/iii) | Police officer (aggravated) | 16 | 2.9 | 3 | 2 | 3 |
| 340(1)(c)/(d) | Performing/performed duty at law | 1* | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 1* | - | - | - | - |
| 340(2AA)(i/ii/iii) | Public officer (aggravated) | 9^ | 2.9 | 3 | 2 | 3 |
| 790(1)(a) | Assault police officer | 11 | 2.6 | 3 | 1 | 3 |
| 790(1)(b) | Obstruct police officer | 2* | - | - | - | - |
| | | Community service (hours) | | | | |
| Section | Description | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 19 | 51.1 | 50 | 20 | 100 |
| 340(1)(b)(i) | Police officer (bodily fluid) | 20 | 57.5 | 50 | 20 | 150 |
| 340(1)(b)(ii) | Police officer (bodily harm) | 6^ | 81.7 | 80 | 40 | 150 |
| 340(1)(b)(iii) | Police officer (armed) | 8^ | 58.1 | 60 | 20 | 130 |
| 340(1)(c)/(d) | Performing/performed duty at law | 2* | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 1* | - | - | - | - |
| 340(2AA)(i/ii/iii) | Public officer (aggravated) | 9^ | 75.6 | 60 | 30 | 200 |
| 790(1)(a) | Assault police officer | 22 | 46.6 | 45 | 20 | 120 |
| 790(1)(b) | Obstruct police officer | 19 | 28.2 | 20 | 20 | 80 |
| | | Probation (months) | | | | |
| Section | Description | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 42 | 8.3 | 6 | 5 | 24 |
| 340(1)(b)(i) | Police officer (bodily fluid) | 65 | 8.5 | 9 | 3 | 24 |
| 340(1)(b)(ii) | Police officer (bodily harm) | 21 | 9.6 | 9 | 3 | 24 |
| 340(1)(b)(iii) | Police officer (armed) | 9^ | 9.7 | 12 | 6 | 12 |
| 340(1)(c)/(d) | Performing/performed duty at law | 3* | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 2* | - | - | - | - |
| 340(2AA)(i/ii/iii) | Public officer (aggravated) | 15 | 8.8 | 8 | 3 | 24 |
| 790(1)(a) | Assault police officer | 40 | 7.2 | 6 | 3 | 12 |
| 790(1)(b) | Obstruct police officer | 12 | 6.7 | 6 | 2 | 12 |
| | | Good behaviour, recognisance (months) | | | | |
| Section | Description | N | Avg | Median | Min | Max |
| 340(1)(b) | Police officer (non-aggravated) | 13 | 5.7 | 6 | 3 | 12 |
| 340(1)(b)(i) | Police officer (bodily fluid) | 11 | 9.4 | 10 | 3 | 12 |
| 340(1)(b)(ii) | Police officer (bodily harm) | 8^ | 7.9 | 7 | 4 | 12 |
| 340(1)(b)(iii) | Police officer (armed) | 5^ | 6.6 | 6 | 6 | 9 |
| 340(1)(c)/(d) | Performing/performed duty at law | 0 | - | - | - | - |
| 340(2AA) | Public officer (non-aggravated) | 0 | - | - | - | - |
| 340(2AA)(i/ii/iii) | Public officer (aggravated) | 3* | - | - | - | - |
| 790(1)(a) | Assault police officer | 38 | 5.5 | 6 | 2 | 12 |
| 790(1)(b) | Obstruct police officer | 53 | 5.4 | 6 | 2 | 12 |

Data include lower and higher courts, young offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Notes: (1) Sentence lengths have not been calculated for cells with a sample size of less than 5. Some categories have been combined to increase sample sizes: aggravating circumstances were reported separately when there were a sufficient number of cases and otherwise reported in aggregate; serious assault of a person performing a duty at law and serious assault of a person who performed a duty at law were combined.

(2) Some penalty types were not reported due to small sample sizes, these included boot camp orders (n=2), intensive supervision orders (n=1) and monetary penalties (n=5).

(3) The serious assault of a corrective services officer was not reported due to small sample sizes (n=3).

(4) A small proportion of s 790 PPRa cases were excluded as they couldn't be classified as an assault or an obstruction (n=22).

(*) Small sample sizes (less than 5), not enough data to present; ^ small sample sizes (less than 10), exercise caution when interpreting results.

Appendix 5: Cross-jurisdictional analysis — Australian and select international jurisdictions

Table A5-1: Examples of specific offences involving assaults on police — Australia, Canada, England and Wales and New Zealand

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|---------------------------|--|--|--|--|
| AUSTRALIA | | | | |
| Commonwealth | <i>Criminal Code</i> (Cth) s 147.1 | Engaging in conduct causing harm to a Commonwealth public official etc. with the intention of causing harm without that person's consent. | | If the official is a judicial officer or Commonwealth law enforcement officer: 13 years Otherwise: 10 years |
| New South Wales | <i>Crimes Act 1900</i> (NSW) s 58 | Assault, resist, or wilfully obstruct any officer (includes a constable or other peace officer) while in the execution of his or her duty. | | 5 years |
| | <i>Crimes Act 1900</i> (NSW) ss 60(1) and (1A) | (1) Assault, throw a missile at, stalk, harass or intimidate a police officer while in the execution of the officer's duty, although no actual bodily harm caused. (1A) As for (1) but occurs 'during a public disorder'. | | (1) 5 years (1A) 7 years |
| | <i>Crimes Act 1900</i> (NSW) ss 60(2) and (2A) | (2) Assault a police officer while in the execution of the officer's duty, and by the assault occasion actual bodily harm. (2A) As for (2) but occurs 'during a public disorder'. | No – but in the circumstances listed in s 60(2), a SNPP of 3 years applies. | (2) 7 years (2A) 9 years |
| Northern Territory | <i>Criminal Code</i> (NT) s 189A | Unlawfully assault a police officer (or emergency worker) in the execution of the officer's duty. If: (i) the commission of the offence involved the actual or threatened use of an offensive weapon (defined in s 1 of the <i>Criminal Code</i>); and (ii) the victim suffered physical harm as a result of the offence, it is a Level 5 offence for the purposes of the <i>Sentencing Act 1995</i> (NT). If the victim suffers physical harm as a result of the offence, and the offence is not a Level 5 offence, it is a Level 4 offence. | If Level 5 offence, and first time convicted of a 'violent offence', 3 months' actual imprisonment If Level 5 offence, and offender has previously been convicted of a 'violent offence': 12 months' actual imprisonment If Level 4 offence: (irrespective of previous): 3 months' actual imprisonment (<i>Sentencing Act 1995</i> (NT) ss 78CA, 78D, 78DA and 78DB) Exceptional circumstances exemption (ss 78DI, DG) – must still impose a term of actual | 7 years if victim suffers harm 5 years if victim does not suffer harm |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|-----------------|---|---|--|---|
| | | | imprisonment. Suspension or home detention can be ordered for some but not all of the order. | |
| | <i>Police Administration Act 1978 (NT) s 158</i> | Resist a member in the execution of his duty or aid or incite any other person to resist a member in the course of his duty. | | 8 penalty units, or 6 months imprisonment |
| Queensland | <i>Criminal Code (Qld) s 340(1)(b)</i> | Assault, resist, or wilfully obstruct, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting. Aggravating factors: (i) the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces; (ii) the offender causes bodily harm to the police officer; (iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument. | N/A, but court must make a community service order if offence committed in a public place while offender adversely affected by an intoxicating substance, unless court is satisfied the offender is incapable of complying because of any physical, intellectual or psychiatric disability. | 7 years, or 14 years where aggravating factors |
| | <i>Police Powers and Responsibilities Act 2000 (Qld), s 790(1)(a)</i> | Assault a police officer in the performance of the officer's duties. Aggravating circumstances: Assault or obstruction happens within licensed premises, or in the vicinity of licensed premises: 60 penalty units or 12 months' imprisonment. | N/A, but court must make a community service order if offence committed in a public place while offender adversely affected by an intoxicating substance, unless court is satisfied the offender is incapable of complying because of any physical, intellectual or psychiatric disability. | 40 penalty units or 6 months imprisonment 60 penalty units, or 12 months' imprisonment (aggravating circumstances) |
| South Australia | <i>Criminal Law Consolidation Act 1935 (SA) s 20AA</i> | Various conduct captured: (1) cause harm to a prescribed emergency worker (includes a police officer) acting in the course of official duties, intending to cause harm (s 20AA(1)) (2) cause harm to a prescribed emergency worker (includes police officer) acting in the course of official duties, and is reckless in doing so (s 20AA(2)) (3) assault a prescribed emergency worker (includes a police officer) acting in the course of official duties (s 20AA(3)) | An offence under s 20AA(1), (2) or (4) is a 'designated offence' under s 96 of the <i>Sentencing Act 2017</i> (SA) which limits the availability of suspended sentences in particular circumstances — including where the person is being sentenced as an adult for a designated offence and in the 5 years prior to the offence date, and a court has suspended a sentence of imprisonment or | (1) Cause harm with intent to cause harm: 15 years (2) Cause harm recklessly: 10 years (3) Assault: 5 years (4) Hinder or resist police officer causing harm: 10 years |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|--------------------------|--|--|--|--|
| | | (4) hinder or resist a police officer acting in the course of official duties, causing harm (s 20AA(4)). | period of detention for another designated offence, unless there are exceptional circumstances. | |
| Tasmania | <i>Criminal Code</i> (Tas) s 114 | (1) assault, resists or wilfully obstruct any police officer in the due execution of his duty, or any other person lawfully assisting; (2) assault, resist, or wilfully obstruct any person lawfully arresting or about to arrest any person. | | 21 years^ |
| Victoria | <i>Crimes Act 1958</i> (Vic) s 31(1)(b) | Assault or threaten to assault, resist or intentionally obstruct an emergency worker (includes police officer) on duty or custodial officers on duty, knowing or being reckless as to whether the person is such a worker or officer. | | 5 years |
| | <i>Summary Offences Act 1966</i> (Vic) s 51(2) | Assault, resist, obstruct, hinder or delay an emergency worker (includes police officer) on duty, a custodial officer on duty or a youth justice custodial worker on duty. | | 60 penalty units or 6 months' imprisonment |
| Western Australia | <i>Criminal Code</i> (WA) s 318(1)(d)–(e) | Assault a public officer (includes police officer) who is performing a function of his office or employment or on account of his being such an officer or his performance of such a function (s 318(1)(d)). Assaults any person who is performing a function of a public nature conferred on him by law or on account of his performance of such a function) (s 318(1)(e)). Aggravated form: at or immediately before or immediately after the commission of the offence — (i) the offender is armed with any dangerous or offensive weapon or instrument; or (ii) the offender is in company with another person or persons. Aggravated as to the maximum penalty (but does not enliven mandatory sentence): s 318(1A): (temporary, for 12 months only from 4 April 2020) if: (i) at the commission of the offence the offender knows that he/she has COVID-19; or (ii) at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act | Yes – if adult commits offence in 'prescribed circumstances, including where offence committed against a police officer and officer suffers bodily harm; 6 months, or 9 months if aggravating circumstances which cannot be suspended. For offences committed by a 16 or 17-year-old offender (at time of offence), 3 months' imprisonment or youth detention. | 7 years 10 years (aggravated) |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|-------------------------------|---|---|-----------------|--|
| | | that creates a belief, suspicion or fear that the offender has COVID-19. | | |
| OVERSEAS JURISDICTIONS | | | | |
| Canada | <i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270 | Assault a public officer or peace officer (including a police officer) engaged in the exercise of his or her duty. | | 5 years |
| | <i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270.01 | As above and, in committing such assault the offender: (a) carried, used or threatened to use a weapon or imitation weapon; or (b) caused bodily harm to the officer. | | 10 years |
| England and Wales | <i>Assaults on Emergency Workers (Offences) Act</i> 2018 (UK) s 1 | Common assault or battery against an emergency worker (includes a constable) acting in the exercise of their functions. | | Fine, 12-months' imprisonment, or both |
| | <i>Police Act</i> 1996 (UK) s 89 | Assault constable acting in the execution of his or her duty. | | Level 5 fine, 6 months' imprisonment or both |
| New Zealand | <i>Summary Offences Act</i> 1981 (NZ) s 10 | Assault a constable (or prison officer or traffic officer) acting in the exercise of his or her duty. | | \$4,000 fine or 6 months' imprisonment |

Note:

^ All crimes in Tasmania (subject to the provisions of the *Sentencing Act 1997* (Tas) or any other statute) carry a maximum penalty of 21 years: *Criminal Code* (Tas) s 389.

Table A5-2: Examples of specific offences involving assaults of public officers — Australia, Canada, England and Wales and New Zealand

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|-------------------------------------|--|--|--|--|
| AUSTRALIA | | | | |
| Australian Capital Territory | <i>Crimes Act 1900</i> (ACT) s 26A (Assault of a frontline community service provider) | A person commits an offence it – (a) The person assaults another person; and (b) The other person is a frontline community service provider; and (c) The person knows, or is reckless about whether, the other person is a frontline community service provider; and (d) The assault is committed – (i) When the frontline community service provider is exercising a function given to the person as a frontline community service provider; or (ii) As a consequence of, or in retaliation for, action taken by the person in exercising a function as a frontline community service provider; or (iii) Because the person is a frontline community service provider. | 2 years | |
| Commonwealth | <i>Criminal Code</i> (Cth) s 147.1 | Engaging in conduct causing harm to a Commonwealth public official etc. with the intention of causing harm without that person's consent. | | 10 years, or 13 years if official is judicial officer or law enforcement officer |
| New South Wales | <i>Crimes Act 1900</i> (NSW) s 58 (Assault with intent to commit a serious indictable offences against certain officers) | Assault, resist, or wilfully obstruct any officer, being a constable, or other peace officer, custom-house officer, prison officer, sheriff's officer, or bailiff while in the execution of his or her duty. | 5 years | |
| | <i>Crimes Act 1900</i> (NSW) s 60A (Assault and other actions against law enforcement officers, (other than police officers) | (1) Assault, throw missiles at, stalk, harass or intimidate a law enforcement officer (other than a police officer – includes correctional officers, probation and parole officers, juvenile justice officers, Crown prosecutors and DPP staff) although no bodily harm caused. | (1) 5 years (2) 7 years (3) 12 years | |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|---------------------------|--|--|---|---|
| | | <p>(2) Assault law enforcement officer (other than a police officer) while in the execution of the officer's duty and occasion actual bodily harm.</p> <p>(3) Wound or cause grievous bodily harm to law enforcement officer (other than police officer) as for (2) where offender reckless as to causing actual bodily harm to that officer or another.</p> | | |
| | <i>Crimes Act 1900</i> (NSW) s 60E (Assaults etc. at schools) | <p>Assault, stalk, harass or intimidate any staff (including volunteer: s 60D) of a school (or student) while the member of staff (or student) is attending a school, although no actual bodily harm is occasioned.</p> <p>Assault occasioning actual bodily harm.</p> <p>Wound or cause grievous bodily harm.</p> | <p>(1) 5 years</p> <p>(2) 7 years</p> <p>(3) 12 years</p> | |
| | <i>Health Services Act 1997</i> (NSW) s 67J (Obstruction of and violence against ambulance officers) | <p>By an act of violence against an ambulance officer, intentionally obstruct or hinder officer when providing or attempting to provide ambulance services to another person/s (s 67J(2)).</p> <p>Intentionally obstruct or hinder (without act of violence) (s 67J(1)).</p> | <p>67J(2): 5 years</p> <p>67J(1): 50 penalty units or 2 years imprisonment (or both)</p> | |
| | <i>Public Health Act 2010</i> (NSW) s 116 (Offence to obstruct or assault persons exercising their functions) | <p>Assault an authorised officer exercising, or attempting to exercise, a function under the Act or regulations (s 116(2)).</p> <p>Intimidates or wilfully obstructs or hinders another person exercising, or attempting to exercise, a function under this Act or the regulations (s 116(1)).</p> | | 100 penalty units or 6 months imprisonment |
| Northern Territory | <i>Criminal Code</i> (NT) s 155A (Assault, obstruction etc. of persons providing rescue, medical treatment or aid) | Unlawfully assault, obstruct or hinder a person who is providing rescue, resuscitation, medical treatment, first aid or succour of any kind to a third person (not specific to 'public officers'). | Minimum of 3 months or 12 months actual custody (depending if person previously convicted of a 'violent offence' if: (a) an offensive weapon is used or threatened to be used; and (b) the victim has suffered harm as a result of the assault. | 5 years, or 7 years if the person endangers the life or causes harm to the third person |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|--------------|--|--|---|---|
| | <i>Criminal Code</i> (NT) s 189A (Assaults on emergency workers) | <p>Unlawfully assault an emergency worker (includes member of the Fire and Rescue Service or Emergency Service, an ambulance officer or paramedic, a medical practitioner or health practitioner) in the execution of their duty.</p> <p>If:</p> <ul style="list-style-type: none"> (i) the commission of the offence involved the actual or threatened use of an offensive weapon (defined in s 1 of the <i>Criminal Code</i> (NT)); and (ii) the victim suffered physical harm as a result of the offence, it is a Level 5 offence for the purposes of the <i>Sentencing Act 1995</i> (NT) (see s 78CA(1) of that Act) <p>If the victim suffers physical harm as a result of the offence, and the offence is not a Level 5 offence for the purposes of the <i>Sentencing Act 1995</i> (NT), it is a Level 4 offence (see s 78CA(2) of that Act).</p> | <p>If Level 5 offence, and first time convicted of a 'violent offence', 3 months' actual imprisonment (<i>Sentencing Act 1995</i> (NT) s 78D)</p> <p>If Level 5 offence, and offender has previously been convicted of a 'violent offence': 12 months' actual imprisonment (s 78DA)</p> <p>If Level 4 offence (whether or not offender previously convicted of a violent offence): 3 months' actual imprisonment.</p> | <p>If victim does not suffer harm: 5 years</p> <p>If victim suffers harm: 7 years</p> |
| Queensland | <i>Criminal Code</i> (Qld) s 340 (Serious assault) | Unlawful assault of a person performing a duty imposed on the person by law (s 340(1)(c)) or because the person has performed a duty imposed on the person by law (s 340(1)(d)). | | 7 years |
| | <i>Criminal Code</i> (Qld) s 340(2) | Unlawful assault of a working corrective services officer (present at a corrective services facility in his or her capacity as a corrective services officer). | | 7 years |
| | <i>Criminal Code</i> (Qld) s 340(2AA) | <p>Unlawful assault, or resist or obstruct public officer while performing a function of the officer's office, or because the officer has performed a function of the officer's office.</p> <p>'Public officer' is defined to include:</p> <ul style="list-style-type: none"> (a) a member, officer or employee of a service established for a public purpose under an Act (such as the Qld Ambulance Service); (b) a health service employee; (c) an authorised officer under the <i>Child Protection Act 1999</i>; and (d) a transit officer. | N/A, but court must make a community service order if offence committed in a public place while offender adversely affected by an intoxicating substance, unless court is satisfied the offender is incapable of complying because of any physical, intellectual or psychiatric disability. | <p>7 years, or 14 years if:</p> <ul style="list-style-type: none"> (i) the offender bites or spits on the public officer or throws at, or in any way applies to, the officer a bodily fluid or faeces; (ii) the offender causes bodily harm to the public officer; (iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument. |
| | <i>Corrective Services Act 2006</i> (Qld) s 124 (Other offences) | Assault or obstruct staff member performing function or exercising a power or is in a corrective services facility (s 124(b)). | | 2 years |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|------------------------|--|---|---|---|
| | <i>Fire and Emergency Services Act 1990</i> (Qld) s 150C (Obstruction of persons performing functions) | Obstruct (including assault) an authorised person in the performance of a function under the act. | | 100 penalty units, or 6 months' imprisonment |
| | <i>Police Powers and Responsibilities Act 2000</i> (Qld) s 655A(1)(a) (Offence to assault or obstruct watch-house officer) | Assault a watch-house officer in the performance of the officer's duties. | | 40 penalty units or 6 months' imprisonment |
| South Australia | <i>Criminal Law Consolidation Act 1935</i> (SA) s 20AA (Causing harm to, or assaulting, certain emergency workers etc.) | <p>Various conduct captured:</p> <ul style="list-style-type: none"> (1) cause harm to a prescribed emergency worker acting in the course of official duties, intending to cause harm (s 20AA(1)) (2) cause harm to a prescribed emergency worker (includes police officer) acting in the course of official duties, and is reckless in doing so (s 20AA(2)) (3) assault a prescribed emergency worker (includes a police officer) acting in the course of official duties (s 20AA(3)). <p>'Prescribed emergency worker' includes wide range of officers, including prison officers, community corrections officers, youth justice officers, a person performing duties in a hospital (including medical staff and security officers), paramedics/ambulance officers, and members of a fire service or emergency service.</p> | An offence under s 20AA(1) or (2) is a 'designated offence' under s 96 of the <i>Sentencing Act 2017</i> (SA) which limits the availability of suspended sentences in particular circumstances – including where the person is being sentenced as an adult for a designated offence and in the 5 years prior to the offence date, and a court has suspended a sentence of imprisonment or period of detention for another designated offence, unless there are exceptional circumstances. | <ul style="list-style-type: none"> (1) Cause harm with intent to cause harm: 15 years (2) Cause harm recklessly: 10 years (3) Assault: 5 years |
| Victoria | <i>Crimes Act 1958</i> (Vic) s 31(1)(b) (Assaults) | <p>Assault or threaten to assault, resist or intentionally obstruct an emergency worker on duty, youth justice custodial justice worker on duty, or custodial officers on duty, knowing or being reckless as to whether the person is such a worker or officer.</p> <p>'Emergency worker' includes ambulance officers, hospital emergency staff, fire and emergency services officers, volunteer firefighters.</p> | | 5 years |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|--------------------------|--|---|--|---|
| | <i>Summary Offences Act 1966</i> (Vic) ss 51(2)–(3) (Assaulting, etc. emergency workers, custodial officers, youth justice custodial workers or local authority staff on duty) | Assault, resist, obstruct, hinder or delay an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker; or a member of staff of a local authority in the execution of the member's duty under the Act. | | 60 penalty units or 6 months' imprisonment |
| | <i>Summary Offences Act 1966</i> (Vic) ss 51A 51A(1)–(3) (Assaulting registered health practitioners) | Assault of a registered health practitioner in a hospital or on hospital premises, or who is providing or supporting the provision of, care or treatment to a person other than in a hospital and knowing or being reckless as to whether the practitioner is a health practitioner. | | 60 penalty units or 6 months' imprisonment |
| Western Australia | <i>Criminal Code</i> (WA) s 318(1) (Serious assault) | <p>Assault of:</p> <ul style="list-style-type: none"> a public officer who is performing a function of his office or employment or on account of his being such an officer or his performance of such a function (s 318(1)(d)) any person performing a function of a public nature conferred by law or on account of his performance of such a function (s 318(1)(e)) person acting in aid of a public officer or other person referred to in para (d) or (e) (s 318(1)(f); the driver or person operating or in charge of – <ul style="list-style-type: none"> (i) a vehicle travelling on a railway; or (ii) a ferry; or (iii) a passenger transport vehicle (s 318(1)(g)) an ambulance officer, or member of a FES Unit, SES Unit or VMRS Group, or member of officer of a private or volunteer fire brigade (s 318(1)(h)) person working in a hospital or who is providing a health service to the public (s 318(1)(i)) a contractor providing court security services or custodial services (s 318(1)(j)) | <p>Yes – if adult commits offence in 'prescribed circumstances, where offence committed against range of workers providing public functions including a police officer, prison officer, youth custodial officer, or transport security officer, ambulance officer, fire or emergency services officer, person working in a hospital or providing a health service to the public, contracted court security or custodial services officer or prison officer; and the officer suffers bodily harm: 6 months, or 9 months if aggravating circumstances which cannot be suspended.</p> <p>For a 16 or 17-year-old offender, 3 months' imprisonment or youth detention.</p> | <p>7 years</p> <p>10 years (aggravated)</p> |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|-------------------------------|---|--|--|-----------------|
| | | <ul style="list-style-type: none"> a contract worker performing functions under the <i>Prisons Act 1981</i> (s 318(1)(k)). <p>Aggravated form: at or immediately before or immediately after the commission of the offence –</p> <ul style="list-style-type: none"> (i) the offender is armed with any dangerous or offensive weapon or instrument; or (ii) the offender is in company with another person or persons. <p>Aggravated as to the maximum penalty (but does not enliven mandatory sentence): s 318(1A): (temporary, for 12 months only from 4 April 2020) if:</p> <ul style="list-style-type: none"> (i) at the commission of the offence the offender knows that he/she has COVID-19; or (ii) at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act that creates a belief, suspicion or fear that the offender has COVID-19. | | |
| OVERSEAS JURISDICTIONS | | | | |
| Canada | <i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270 (Assault a peace officer) | Assault a public officer or peace officer engaged in the exercise of his or her duty. Definitions of 'public officer' and 'peace officer' are broad and include, in the case of 'public officers', customs officers, member of the Canadian Forces, an officer of the Royal Mounted Police. 'Peace officers' include (in addition to police) justices of the peace, prison officers, fisheries officers, and registered aircraft pilots while the aircraft is in flight. | | 5 years |
| | <i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270.01 (Assaulting peace officer with weapon or causing bodily harm) | As above and, in committing such assault the offender: (a) carried, used or threatened to use a weapon or imitation weapon; or (b) caused bodily harm to the officer. | | 10 years |
| England and Wales | <i>Assaults on Emergency Workers</i> | Common assault or battery against an emergency worker acting in the exercise of their functions. | Fine, 12 months' imprisonment, or both | |

| Jurisdiction | Provision | Nature of act/s constituting offence | Minimum penalty | Maximum penalty |
|--------------------|---|---|-----------------|--------------------------|
| | (Offences) Act 2018 (UK) s 1 (Common assault and battery) | 'Emergency worker' includes police, prison officers, person providing fire or fire and rescue services, person employed or engaged to provide search and/or rescue services, person employed or engaged to provide NHS health services and support services that involve face-to-face interaction with members of the public or people receiving such services. | | |
| New Zealand | Summary Offences Act 1981 (NZ) s 10 (Assault on police, prison or traffic officer) | Assault a constable, prison officer or traffic officer acting in the exercise of his or her duty. | | \$4,000 fine or 6 months |

Notes:

(1) 'Physical harm' is defined to include: 'unconsciousness, pain, disfigurement, infection with a disease and any physical contact that a person might reasonably object to in the circumstances, whether or not the person was aware of it at the time: s 1A.

(2) 'Harm to a person's mental health' includes 'significant psychological harm but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger': s 1A(3).

^ 'Harm' is defined in s 1A of the *Criminal Code* (NT) to mean: 'physical harm to a person's mental health, whether temporary or permanent': s 1A.

Table A5-3: Examples of circumstances of aggravation that apply to assault and other offences against the person when committed against specific classes of workers – Australia

| Jurisdiction | Provision | Aggravated form of offence | Minimum penalty | Maximum penalty |
|---------------------------|--|--|--|---|
| Northern Territory | <i>Criminal Code</i> (NT) s 174C (Recklessly endangering life) | Offence committed against a public officer who was, at the time of the offence, acting in the course of his or her duty as a police officer, correctional services officer or other law enforcement officer (s 174G). | | 14 years (cf 10 years if non-aggravated) |
| | <i>Criminal Code</i> (NT) s 174D (Recklessly endangering serious harm) | As above. | | 10 years (cf 7 years if non-aggravated) |
| South Australia | <i>Criminal Law Consolidation Act 1935</i> (SA) s 5AA (Aggravated offences) | <p>Aggravated offence if committed against:</p> <ul style="list-style-type: none"> a police officer, prison officer, employee in a (youth justice) training centre or other law enforcement officer knowing victim to be acting in course of duty, or because of actions done or believed to have been taken (s 5AA(1)(c)); a community corrections officer or community youth justice officer knowing the victim to be acting in the course of their official duties (s 5AA(1)(ca)); in case of offence against the person, the victim was engaged in a prescribed occupation or employment (includes emergency work, performing duties in a hospital or in the course of retrieval medicine, passenger transport work, court security officer, animal welfare inspector) whether paid or volunteer, knowing the victim to be acting in the course of the victim's official duties (s 5AA(1)(ka)). | | <p>Higher penalty applies to offences including:</p> <p>Unlawful threat to kill or endanger life: 12 years (s 19(1))</p> <p>Unlawful threat to harm: 8 years (s 19(2))</p> <p>Assault: 5 years (s 20(3)(d))</p> <p>Assault causing harm: 7 years (s 20(4)(d))</p> <p>Causing harm intentionally: 13 years (s 24(1))</p> <p>Causing harm recklessly: 8 years (s 24(2))</p> |
| Victoria | <i>Sentencing Act 1991</i> (Vic) s 10AA (Custodial sentence for certain offences against emergency workers etc.) | <p>Offence committed against an emergency worker on duty, a custodial officer on duty, or a youth justice custodial officer on duty.</p> <p>'Emergency worker' includes police officer, ambulance officer, staff providing emergency treatment to patients in a hospital, a member of a fire or emergency service, a volunteer fire-fighter, emergency response workers.</p> | <p>Minimum NPP (some exceptions where 'special reason' exists) for following <i>Crimes Act 1958</i> offences:</p> <p>s 15A (Causing serious injury intentionally in circumstances of gross violence): 5 years</p> <p>s 15B (Causing serious injury recklessly in circumstances of gross violence): 5 years</p> <p>s 16 (Causing serious injury intentionally): 3 years [or 3 years' detention for young offender 18 years or over, but under 21 if criteria met]</p> <p>s 17 (Causing serious injury recklessly): 2 years [or 2 years' detention for young offender 18 years or over, but under 21 if criteria met]</p> <p>Minimum sentence (unless 'special reason' exists) for following <i>Crimes Act 1958</i> offence:</p> <p>s 18 (Causing injury intentionally or recklessly): 6 months [or 6 months' detention for young offender 18 years or over, but under 21 if other criteria met]</p> | Same maximum penalties as for non-aggravated offences |

| Jurisdiction | Provision | Aggravated form of offence | Minimum penalty | Maximum penalty |
|--------------------------|---|--|--|--|
| | <i>Crimes Act 1958</i> (Vic) s 320A (Maximum term of imprisonment for common assault in certain circumstance) | <p>Common assault if:</p> <p>(1)</p> <ul style="list-style-type: none"> (a) at the time of the assault, the offender has an offensive weapon readily available; and (b) the victim is a police officer on duty or a protective services officer on duty; and (c) the offender knows or is reckless as to whether the victim is a police officer or a protective services officer; and (d) the offender either allows the victim to see the weapon (or its shape) or tells or suggests to the victim they have a weapon readily available; and (e) the offender knows conduct would be likely to cause apprehension or fear or should have known this. <p>(2) As above, but the weapon involved is a firearm or imitation firearm.</p> | | <p>(1) Offensive weapon: 10 years</p> <p>(2) Firearm: 15 years</p> |
| Western Australia | <i>Criminal Code</i> (WA) s 297 (Grievous bodily harm) | <p>Aggravated offence if committed against:</p> <ul style="list-style-type: none"> • a public officer performing a function of his office or employment, or offence is committed because of this; or • a person operating or in charge of a vehicle on a railway (e.g. train), ferry, passenger transport vehicle; or • an ambulance officer a member of a FES Unit, SES Unit or VMRS Group or a member or officer of a private fire brigade or volunteer fire brigade; or • a person working in a hospital or is in the course of providing a health service to the public; or • a contracted court security officer or custodial services officer, or a contracted private prison worker. | <p>Adult offender against certain victim types: 12 months' actual imprisonment (s 297(5)(b))</p> <p>Young offender against certain victim types: 3 months' imprisonment or 3 months' detention (s 297(6)(b))</p> | <p>GBH: 14 years (s 297(4))</p> <p>(10 years where not aggravated due to job type and no other aggravating circumstance)</p> |

Table A5-4: Examples of aggravating factors for sentencing purposes for assaults and other non-fatal offences against specific categories of workers — Australia, Canada, England and Wales and New Zealand

| Jurisdiction | Provision | Aggravating factor/s | Specific offence or general application? |
|--------------------------|--|--|--|
| New South Wales | <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) s 21A(2) (Aggravating factors) | <p>(a) the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work;</p> <p>(l) the victim was vulnerable — examples include vulnerability due to the victim's occupation (such as a person working at a hospital (other than a health worker), taxi driver, bus driver or other public transport worker, bank teller or service station attendant).</p> <p>[Note: s 21A(5) states: 'The fact any ... aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence.']</p> | General application |
| Canada | <i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 269.01 (Aggravating circumstance — assault against a public transit operator) | Offence committed against a public transit officer (an individual who operates a vehicle (including bus, licensed taxi, train, tram and ferry) used in the provision of passenger transport services to the public, including individual who drives a school bus) engaged in the performance of his or her duty. | <p>Specific offences:</p> <p>s 264.1(1)(a) (Uttering threats – to cause death or bodily harm to any person)</p> <p>s 266 (Assault)</p> <p>s 267 (Assault with a weapon or causing bodily harm)</p> <p>s 268 (Aggravated assault)</p> <p>s 269 (Unlawfully causing bodily harm)</p> |
| England and Wales | <i>Assaults on Emergency Workers (Offences) Act 2018</i> (UK) s 2 (Aggravating factor) | <p>Offence committed against an emergency worker acting in the exercise of functions as such a worker.</p> <p>Definition of 'emergency worker' includes:</p> <ul style="list-style-type: none"> • a (police) constable; • a prison officer; • another person employed or engaged to carry out functions in a prison; • a prisoner custody officer or custody officer in the exercise of escort functions; • a person employed or engaged to provide, fire services or fire and rescue services; • a person employed or engaged to provide, search and/or rescue services; • a person employed or engaged to provide— <ul style="list-style-type: none"> (i) NHS health services; or (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public. <p>Requirement to state in open court the offence is so aggravated (s 2(2)(b)).</p> | <p>Specific offences:</p> <p><i>Offences against the Person Act 1861</i> (UK):</p> <p>s 16 (Threats to kill);</p> <p>s 18 (Wounding with intent to cause GBH);</p> <p>s 20 (Malicious wounding);</p> <p>s 23 (Administering poison etc.);</p> <p>s 28 (Causing bodily harm by gunpowder etc.);</p> <p>s 29 (Using explosive substances etc. with intent to cause GBH);</p> <p>s 47 (Assault occasioning actual bodily harm).</p> <p>s 3 of the <i>Sexual Offences Act 2003</i> (Sexual assault)</p> <p>Manslaughter</p> <p>Kidnapping</p> <p>An ancillary offence in relation to the above</p> |

| Jurisdiction | Provision | Aggravating factor/s | Specific offence or general application? |
|--------------|--|---|--|
| New Zealand | <i>Sentencing Act 2002</i> (NZ) s 9 (Aggravating and mitigating factors) | <p>Victim was:</p> <ul style="list-style-type: none"> • a constable, or a prison officer, acting in the course of his or her duty (s 9(1)(fa)); • an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency (s 9(1)(fb)); • particularly vulnerable because of his or her age or health or because of any other factor known to the offender (s 9(1)(g)). <p>Statement of aggravating factors does not imply that 'a factor referred to ... must be given greater weight than any other factor that the court might take into account' (s 9(4)(b)).</p> <p>Prosecution must prove beyond reasonable doubt the existence of any disputed aggravated fact (s 24(2)(c)).</p> | General application |

Appendix 6: An analysis of section 9(10A) PSA

Domestic violence aggravating sentencing factor: common assaults and assaults occasioning bodily harm (simpliciter and aggravated)

The Council data analysis regarding section 9(10A)

The Council examined data for common assaults and assaults occasioning bodily harm (simpliciter and aggravated) dealt with as the most serious offence (MSO) in the Magistrates and higher courts. This involved a comparison of sentencing outcomes for forms of these offences that did, and did not, involve the section 9(10A) aggravating factor ('with DFV').¹ The data include offences sentenced from 5 May 2016, when the section commenced, to 30 June 2019. This analysis necessarily does not assess whether sentencing courts were already sentencing assaults that involved DFV to higher sentences prior to the introduction of section 9(10A).

As is common with sentencing where the Magistrates Courts are an option for disposition, the numbers of assaults dealt with in those courts far exceeded those in the higher courts.

Common assault and section 9(10A)

Table A6-1 shows the proportion of common assaults that received a custodial penalty with and without DFV. It also shows some information on the length of custodial penalties for these offences.

For common assaults, custodial penalties were more common for assaults occurring in a DFV context than without, irrespective of sentencing court.

In the higher courts, nearly half (49.0%) of common assault offences (MSO) with DFV received a custodial penalty, compared with just over one-third (36.2%) for the same offences without DFV. However, on average, non-DFV offences received a slightly longer sentence at 0.7 years, compared with 0.6 years for those with DFV.

In the Magistrates Courts, over one-third (35.7%) of DFV common assault (MSO) received a custodial sentence with an average sentence length of 0.6 years. Less than two in five (18.2%) common assaults (MSO) received a custodial penalty, with an average sentence length of 0.4 years.

Table A6-1: Summary of custodial penalties for common assault offences (MSO)

| Offence | Custodial order length (years) | | | | |
|--|--------------------------------|---------|--------|--------------|---------|
| | % custodial | Average | Median | Minimum | Maximum |
| Higher courts | | | | | |
| s 335 Common assault (n=130) | 36.2% | 0.7 | 0.5 | 0.1 | 2.5 |
| s 335 Common assault – DFV offence (n=98) | 49.0% | 0.6 | 0.5 | (rise) 0.0 | 2 |
| Magistrates courts | | | | | |
| s 335 Common assault (n=5,161) | 18.2% | 0.4 | 0.3 | (rise) 0.0 | 2.3 |
| s 335 Common assault – DFV offence (n=1,578) | 35.7% | 0.6 | 0.5 | (5 days) 0.0 | 2.5 |

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor). Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

¹ It remains possible that some 'non-DFV' offences were in fact sentences for offences that involved domestic and family violence but were not sentenced as such.

Table A6-2 breaks down each of the specific sentencing orders that were made for common assault offences with and without DFV. It shows that, across all courts, imprisonment and partially suspended sentences were much more common for DFV common assaults. There was less of a difference in the use of wholly suspended sentences between the two types of offences.

For common assault offences (MSO) that did not involve DFV, monetary penalties were the most common penalty in all courts. Monetary penalties were more prevalent in the Magistrates Courts for this offence, making up 40.4 per cent of all penalties (23.1% in higher courts).

Where the DFV aggravating factor was applied, imprisonment was the most common penalty in the higher courts at 31.6 per cent, followed by probation (23.5%). In the Magistrates Courts, probation was the most common penalty type (26.2%), closely followed by imprisonment (24.3%) and monetary orders (23.9%).

Table A6-2: Summary of penalty types for common assault offences (MSO)

| Penalty type | s 335 Common assault | | | |
|---------------------------------|----------------------|--------------------|---------------------|-----------------------|
| | Higher courts | | Magistrates courts | |
| | No DFV (n=130) | With DFV (n=98) | No DFV (n=5,161) | With DFV (n=1,578) |
| Imprisonment | 18.5% | 31.6% | 10.2% | 24.3% |
| Partially suspended | 1.5% | 5.1% | 0.6% | 1.0% |
| Wholly suspended | 14.6% | 11.2% | 7.0% | 9.7% |
| Intensive correction order | 1.5% | 1.0% | 0.5% | 0.7% |
| Community service | 8.5% | 6.1% | 10.4% | 4.7% |
| Probation | 15.4% | 23.5% | 15.5% | 26.2% |
| Monetary | 23.1% | 10.2% | 40.4% | 23.9% |
| Good behaviour, recognisance | 16.2% | 10.2% | 13.6% | 9.0% |
| Convicted, not further punished | 0.8% | 1.0% | 1.8% | 0.5% |
| TOTAL | 100.0% | 100.0% | 100.0% | 100.0% |

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

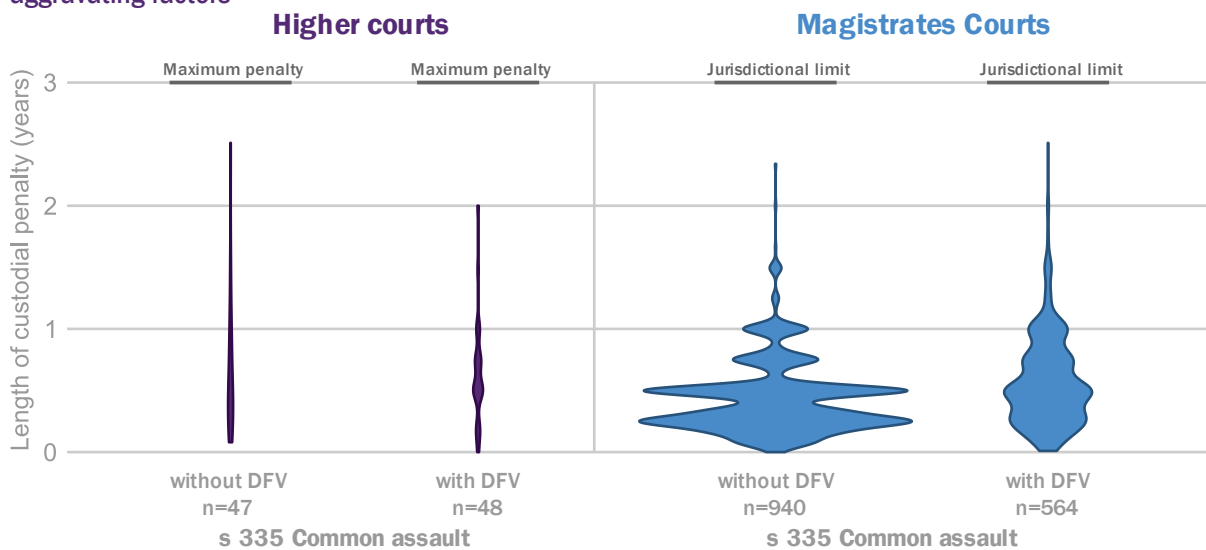
Figure A6-1 shows the distribution of custodial penalties for common assault offence with, and without, DFV. The fatter the portion of the chart, the greater the number of offences sentenced.

In both the Magistrates and higher courts, the 3-year maximum penalty was not reached. In the higher courts the longest sentence was 2.5 years for common assault without DFV. In the Magistrates Courts the longest sentence was 2.5 years for common assault with DFV.

In the Magistrates Courts, for offences without DFV there are clear spikes at each three-month interval below one year, with the highest number of cases receiving either 3 months or 6 months. For offences with DFV, clustering is less clear with the majority of penalties occurring at all sentence lengths up to and just over one year; the largest amount of offences received the median sentence of 6 months.

Higher court penalty lengths were more evenly spread, with the majority of cases receiving less than one year for offences without DFV. For cases with DFV, the majority of cases received less than one year, with a larger amount clustering around the 6–9-month mark.

Figure A6-1: Distribution of custodial penalties for common assault offences (MSO), with without DVF aggravating factors



Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor). Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Figure A6-2 provides an alternative representation of the distribution of custodial sentences in the higher courts (i.e. the data displayed in the purple ‘violins’ in the previous figure above).

For common assault (MSO) with no DFV sentenced in the higher courts, 85.1 per cent of custodial sentence lengths were less than 40 per cent of the 3-year maximum penalty (approximately 1.2 years or 14 months). Where DFV was involved in a common assault (MSO) sentenced in the higher courts, 91.7 per cent of custodial penalties were less than 40 per cent of the 3-year maximum penalty.

Common assault without DFV was the only offence to have sentence lengths at or over 80 per cent of the available maximum penalty, and this only accounted for 4.3 per cent of these offences.

Figure A6-2: Higher court custodial penalty length as a proportion of the maximum penalty for common assault offences (MSO) with and without DFV

| Maximum penalty: 3 years | | |
|---|-------------------------------------|---------------------------------------|
| Quintile 5 (80% or more of maximum penalty, over 28.8 months) | 4.3% | 0.0% |
| Quintile 4 (60% up to 80% of maximum penalty, 21.6 to 28.8 months) | 2.1% | 4.2% |
| Quintile 3 (40% up to 60% of maximum penalty, 14.4 to 21.6 months) | 8.5% | 4.2% |
| Quintile 2 (20% up to 40% of maximum penalty, 7.2 to 14.4 months) | 23.4% | 37.5% |
| Quintile 1 (less than 20% of maximum penalty, less than 7.2 months) | 61.7% | 54.2% |
| | s 335 common assault, no DFV (n=47) | s 355 common assault, with DFV (n=48) |

Data include adult offenders, MSO, higher courts only, custodial penalties, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

AOBH and section 9(10A)

Under section 339 of the *Criminal Code*, non-aggravated assaults occasioning bodily harm (AOBH) have a 7-year maximum penalty. This increases to 10 years for aggravated AOBH, where the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company. However, Magistrates Courts cannot impose a sentence of more than 3 years’ imprisonment for any offence.

In the higher courts, a custodial penalty was the most common penalty for all forms of AOBH (MSO) – see Table A6-3. Offences with DFV received a higher proportion of custodial penalties compared with offences without DFV; however, the impact of the DFV aggravating factor was less pronounced than in Magistrates Courts sentences.

In the Magistrates Courts, the offence of aggravated AOBH with DFV was both the most likely to receive a custodial sentence (80.7%) and had the longest average sentence (1.1 years). In those courts, the percentage of custodial penalties imposed for both aggravated and simpliciter forms of AOBH markedly increased when the DFV aggravating factor was present.

Table A6-3: Summary of custodial penalties for assault occasioning bodily harm offences (MSO)

| Offence | Custodial order length (years) | | | | |
|--|--------------------------------|---------|--------|-------------|---------|
| | % custodial | Average | Median | Minimum | Maximum |
| Higher Courts | | | | | |
| s 339(1) AOBH (non-aggravated) (n=293) | 72.4% | 1.3 | 1.2 | 0.1 | 5 |
| s 339(1) AOBH (non-aggravated) DFV offence (n=384) | 86.7% | 1.6 | 1.5 | 0.3 | 4 |
| s 339(3) AOBH (aggravated) (n=406) | 80.1% | 1.6 | 1.5 | (6 days) 0 | 5 |
| s 339(3) AOBH (aggravated) DFV offence (n=138) | 84.1% | 1.8 | 1.8 | 0.4 | 4 |
| Magistrates Courts | | | | | |
| s 339(1) AOBH (non-aggravated) (n=4,061) | 42.5% | 0.8 | 0.8 | (5 days) 0 | 3 |
| s 339(1) AOBH (non-aggravated) DFV offence (n=1,994) | 68.3% | 1 | 1 | (14 days) 0 | 3 |
| s 339(3) AOBH (aggravated) (n=1,138) | 60.9% | 0.9 | 0.8 | (14 days) 0 | 3 |
| s 339(3) AOBH (aggravated) DFV offence (n=419) | 80.7% | 1.1 | 1 | 0.1 | 3 |

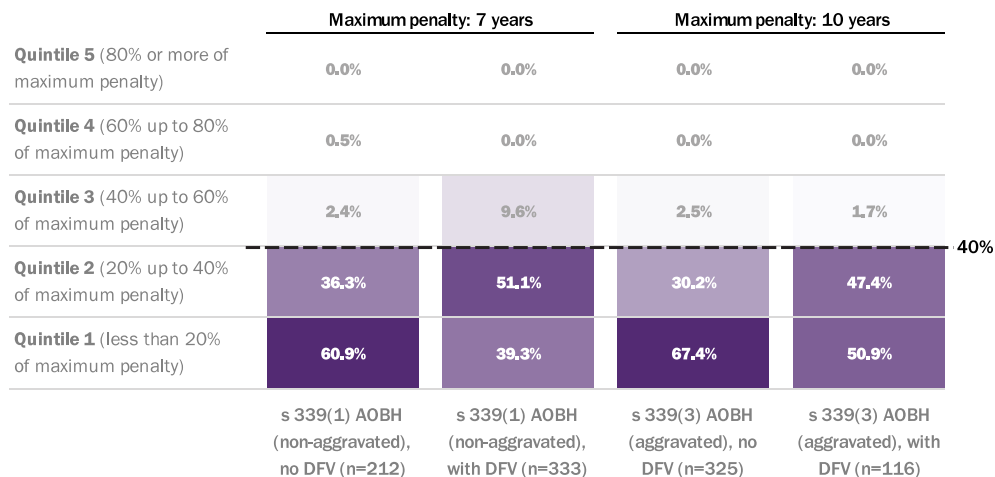
Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

In the higher courts, sentences for AOBH were predominately below 40 per cent of the available maximum penalty, regardless of circumstances of aggravation or DFV factors. For non-aggravated AOBH without DFV, 97.2% of custodial sentences were below 40 per cent of the 7-year maximum penalty (less than 2.8 years or approximately 34 months), while for non-aggravated AOBH with DFV 90.4 per cent of cases were below this 40 per cent threshold. For aggravated AOBH, nearly all sentences were below 40 per cent of the 10-year maximum penalty (4 years or less), at 97.5 per cent of offences without DFV and 98.3 per cent of offences with DFV.

There were almost no cases with sentence lengths at or above 60 per cent of the maximum penalty.

Figure A6-3: Higher court custodial penalty length as a proportion of the maximum penalty for assault occasioning bodily harm offences (MSO) with and without DFV



Data include adult offenders, MSO, higher courts only, custodial penalties, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

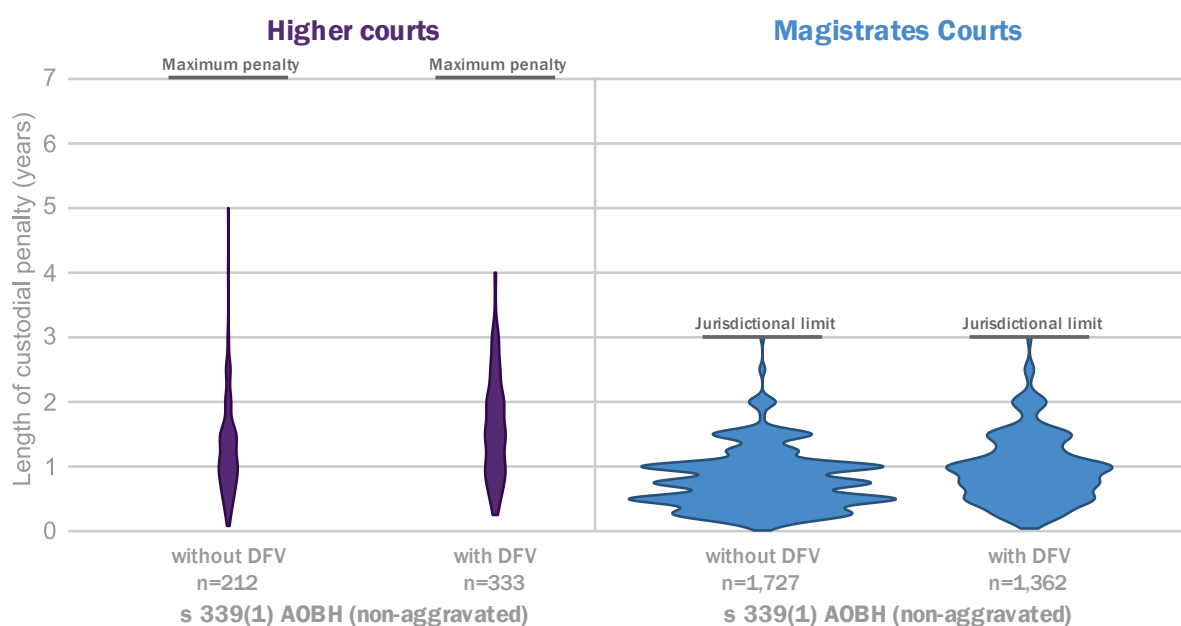
Non-aggravated AOBH

Figure A6-4 illustrates the length of custodial sentences for non-aggravated AOBH with and without DFV in the higher and lower courts.

In the higher courts, non-aggravated AOBH cases with DFV generally received longer sentences, with a relatively high proportion of cases receiving custodial sentences longer than 2 years. On the other hand, non-aggravated AOBH offences without DV tended to be shorter, with the majority of sentences below 2 years. No cases reached the maximum penalty of 7 years. The longest custodial penalty in the higher courts was 5 years.

In the Magistrates Courts, the maximum penalty for non-aggravated AOBH reached the 3-year jurisdictional limit – both for offences with and without DFV as an aggravating factor. Generally, cases with DFV had longer sentences, with a relatively high proportion getting sentences longer than 12 months. For offences without DFV, there were clear spikes in sentence lengths at each 3-month interval – particularly at the 6-month and 12-month mark.

Figure A6-4: Distribution of custodial penalties for non-aggravated assault occasioning bodily harm offences (MSO) with and without DFV



Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Table A6-4 provides a breakdown of all the types of penalties that are ordered for non-aggravated AOBH with and without DFV.

Imprisonment was the most common penalty regardless of whether DFV was a factor in both the higher courts and the Magistrates courts. However, for offences in the lower courts where DFV was not a factor, monetary orders very closely followed imprisonment (25.7% of cases received imprisonment, compared with 25.3% of cases with a monetary penalty).

Custodial penalties were more common for AOBH simpliciter offences with DFV, compared with offences without DFV, irrespective of the sentencing court. Imprisonment and partially suspended sentences were much more common for AOBH simpliciter offences with DFV; whereas community-based orders and monetary penalties were more common for offences without DFV.

Table A6-4: Summary of penalty types for non-aggravated assault occasioning bodily harm offences (MSO)

| Penalty type | s 339(1) AOBH | | | |
|---------------------------------|-------------------|---------------------|---------------------|-----------------------|
| | Higher courts | | Magistrates courts | |
| | No DFV (n=293) | With DFV (n=384) | No DFV (n=4,061) | With DFV (n=1,994) |
| Imprisonment | 47.8% | 62.5% | 25.7% | 51.3% |
| Partially suspended | 3.4% | 8.1% | 1.4% | 2.6% |
| Wholly suspended | 18.8% | 14.8% | 14.6% | 13.5% |
| Intensive correction order | 2.4% | 1.3% | 0.8% | 0.9% |
| Community service | 7.5% | 1.8% | 9.8% | 2.7% |
| Probation | 12.3% | 6.5% | 18.9% | 18.7% |
| Monetary | 5.8% | 3.9% | 25.3% | 7.8% |
| Good behaviour, recognisance | 1.7% | 0.8% | 3.3% | 2.3% |
| Convicted, not further punished | 0.3% | 0.3% | 0.3% | 0.2% |
| TOTAL | 100.0% | 100.0% | 100.0% | 100.0% |

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Aggravated AOBH

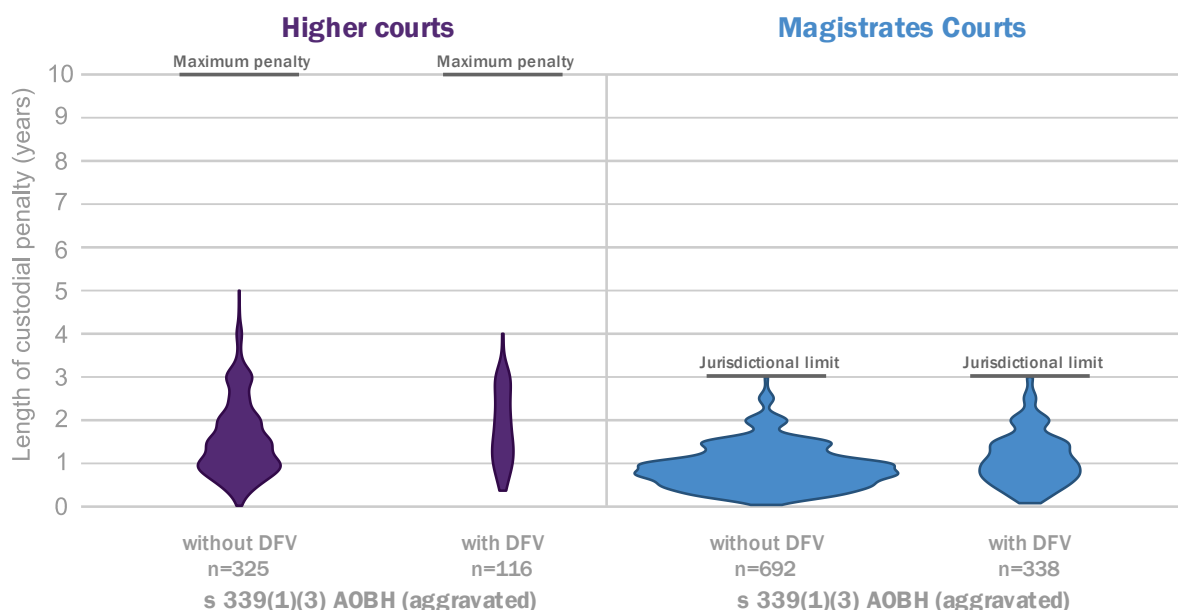
Figure A6-5 shows the distribution of custodial sentence lengths for aggravated AOBH offences sentenced in the higher and lower courts with and without DFV.

The longest custodial sentence for aggravated AOBH was 5 years – half of the 10-year maximum penalty. This was the same as the longest sentence for non-aggravated AOBH – see above.

In the higher courts, aggravated AOBH offences without DFV tended to receive shorter sentences compared with cases that did have DFV. Sentences for cases without DFV were generally less than 2 years in length, whereas offences with DFV commonly received sentences between 1 and 3 years.

In the Magistrates Courts, aggravated AOBH offences both with and without DFV reached the 3-year jurisdictional limit. For offences without DFV, sentences were generally shorter, clustering around one year; however, where DFV was involved, sentences were spread more evenly up to the 2-year mark.

Figure A6-5: Distribution of custodial penalties for aggravated assault occasioning bodily harm offences (MSO) with and without DFV



Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor). Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Table A6-5 provides a breakdown of the most common penalties imposed for aggravated AOBH with and without DFV factors in the higher courts and the Magistrates Courts. For all aggravated AOBH offences, the most common penalty was imprisonment. This was highest for offences involving DFV. While imprisonment was the most common penalty for AOBH without DFV in the Magistrates Courts, it made up a lower proportion of penalties overall compared to other categories, accounting for only two in five penalties (38.9%). Monetary orders were considerably higher than for the other categories, comprising 12.2 per cent of penalties in the Magistrates Courts for cases without DFV.

As for common assaults and AOBH simpliciter, during the data period, custodial penalties were more common for aggravated AOBH with DFV than without, irrespective of sentencing court, except that in the higher courts partially suspended sentences were more common for offences without DFV. Imprisonment was much more common for aggravated AOBH with DFV than without.

Table A6-5: Summary of penalty types for aggravated assault occasioning bodily harm offences (MSO)

| Penalty type | s 339(3) AOBH | | | |
|---------------------------------|-------------------|---------------------|---------------------|---------------------|
| | Higher courts | | Magistrates courts | |
| | No DFV (n=406) | With DFV (n=138) | No DFV (n=1,138) | With DFV (n=419) |
| Imprisonment | 53.5% | 65.9% | 38.9% | 61.1% |
| Partially suspended | 7.9% | 5.8% | 2.0% | 3.6% |
| Wholly suspended | 17.5% | 12.3% | 18.5% | 14.8% |
| Intensive correction order | 1.2% | 0.0% | 1.4% | 1.2% |
| Community service | 5.2% | 1.5% | 7.4% | 2.9% |
| Probation | 10.8% | 13.8% | 17.2% | 13.6% |
| Monetary | 2.0% | 0.7% | 12.2% | 2.2% |
| Good behaviour, recognisance | 1.7% | 0.0% | 2.1% | 0.7% |
| Convicted, not further punished | 0.3% | 0.0% | 0.2% | 0.0% |
| TOTAL | 100.0% | 100.0% | 100.0% | 100.0% |

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Appendix 7: A review of evidence of the effectiveness of the WA mandatory sentencing reforms

WA Government characterisation of effectiveness (2010–2016)

The former WA government repeatedly cited statistics to announce that the mandatory sentencing laws introduced in 2009 had resulted in a significant drop in assaults against police and public officers.

- A 2010 press release indicated that ‘reported assaults against police officers had decreased by 28 per cent since the Liberal–National Government introduced the legislation. They asserted that this decrease in assaults was directly attributable to the mandatory sentencing that came into force in 2009’.²
- A 2014 press release, accompanying the statutory report discussed below, stated:³
 - A 33 per cent reduction in ‘the number of assaults against police officers’ (from 1,346 to 892) since the introduction of the mandatory sentencing laws in 2009.
 - A 27 per cent reduction ‘in the number of charges of’ assaulting a public officer prescribed under the legislation and causing bodily harm (numbers not stated).
 - A 30 per cent reduction ‘in the number of charges’ of obstructing a public officer, ‘which may indicate that members of the public are more cautious in their dealings with police and other public officers’ (numbers not stated).
- A 2016 press release (which post-dates the evaluations discussed below) stated a 34 per cent reduction in ‘incidents’ of police assaults in 2015 compared with 2009 (800 incidents, down from 1,227). It also stated a 26 per cent reduction in assaults against public officers (1,185 incidents, down from 1,613). Incidents of obstructing public officers had also reduced by 35 per cent (1,758, down from 2,718).⁴

Instead, statistics regarding various forms of assault rates were generally rising from 2013 to 2019 (discussed below). These were attributed in part, on an apparently anecdotal presumption, to a change in community attitudes (this time in the negative).

WA analysis — Tasmanian Sentencing Advisory Council (2013)

A 2013 TSAC report examined the evidence regarding the WA position at that time, and noted that, in respect of the 2010 media release, ‘whether this decrease was, in fact, the result of mandatory minimum legislation has not been substantiated’.⁵ TSAC obtained records from the Business Intelligence Office, WA Police:

- Annualised number of reported assaults on police officers from June 2006 to December 2010 showed a trend in offences that appears to indicate a substantial decline in the number of assaults since the introduction of mandatory sentencing in September 2009.
- Additional records from the same office indicate the monthly number of reported assaults on police officers from July 2005 to January 2011 ... indicate that the decline in reported assaults began prior to the introduction of mandatory sentencing in September of 2009.⁶

TSAC recounted a WA Police explanation that this pre-amendment decline may be due to community behaviour being influenced by ‘the introduction of the mandatory sentencing bill and the public protest in March 2009 in support of the legislation and subsequent debate in Parliament’.⁷

TSAC noted two other factors that could explain the decline in assaults on police officers. The first was ‘a substantial decline in public place assaults that matches the pattern of assaults on police officers for the same period’ with the financial years 2009–2010 to 2010–2011 ‘showing the largest decline relative to previous years’.⁸

² Sentencing Advisory Council (Tasmania), *Assaults on Emergency Service Workers* (Final Report No. 2, March 2013) 29, citing Rob Johnson and Christian Porter, ‘Assaults against Police Plummet under Mandatory Sentencing Laws’ (Media Release, 22 September 2010) and noting an apparent further release: Rob Johnson and Christian Porter, ‘Reported Assaults against Police Continue to Decline’ (Media Release, 23 June 2011). Government media releases are also discussed in Western Australian Police Union of Workers, *Mandatory Sentencing Report* (April 2013) 22–3.

³ Liza Harvey and Michael Mischin, Government of Western Australia, ‘Assaults on WA Police officers cut by 33 per cent’ (Media Release, 26 June 2014).

⁴ Liza Harvey and Michael Mischin, Government of Western Australia, ‘Tough laws see drop in assaults against police’ (Media Release, 19 August 2016).

⁵ Sentencing Advisory Council (Tasmania), (n 2) 29. The analysis therein was noted in Western Australian Police Union of Workers, *Mandatory Sentencing Report* (April 2013) (n 2) 39–40.

⁶ Sentencing Advisory Council (Tasmania) (n 2) 29.

⁷ Ibid.

⁸ Ibid.

The second was an April 2008 Commissioner's instruction, just prior to the implementation of the mandatory sentencing legislation, 'that members of the police service were not to be "rostered, directed or encouraged" to patrol alone'.⁹ A WA Police publication separately described that policy change as 'a significant part of Union history regarding protection of our Members and was achieved after 24 years of constant lobbying'.¹⁰ TSAC noted that it was 'a factor that could have contributed to this recent decline, apart from the introduction of the mandatory minimum penalty legislation in September 2009'.¹¹

Single-officer patrols — literature review (2012)

A 2012 Australian Institute of Criminology literature review found that there was 'no Australian research available that has evaluated single person patrol strategies to determine the effects — either positive or negative — were the same after its widespread implementation'.¹² Most research was from the 1980s in the United States and 1990s in Australia.¹³ The little research available 'found no statistical difference in safety between the single and two person patrols' and 'officers were assaulted at the same rate regardless of their assignment to single or two person patrols'.

However, 'the likelihood of sustaining injury during an assault [the threshold for the WA mandatory sentencing regime] was statistically more likely for those patrolling alone compared with those patrolling in pairs [and] this might indicate that although the rates of assault may appear similar, the severity of injury could be greater for those officers working alone'.¹⁴ Use-of-force incidents had been found to have occurred for more two-person patrols than single-person patrols.¹⁵

WA Police Union report (April 2013)

A WA Police Union report questioned the WA Government's statements that the assaults on police officers causing bodily harm would see the offender inevitably incarcerated, finding an apparent 'disconnect between what was promised by politicians and what is the reality of the legislation'.¹⁶

The Union expressed concern about data and evaluation. Data that it obtained 'from WA Police ... and other agencies not only demonstrated fluctuations in the numbers of assaults since the introduction of the legislation but also highlighted some inherent concerns about the inter-agency recording of the specific data'.¹⁷ A 'different picture' to the reduction acknowledged in Ministerial media statements and media reports was painted by 'reviewing the statistics since the amendments to the *Criminal Code* were enshrined':¹⁸

There is undoubtedly a drop in the number of assaults in 2011 when compared with 2010, and also when compared with the year before the legislation was enacted. However, if one refers solely to the 2010–2012 percentage change, the number of assaults on public officers has increased since the inception of the mandatory sentencing legislation [number of incidents of assaults on public officers up 5.4 per cent; number of offences up 8.6 per cent].¹⁹

When analysing the data obtained from the DPP, [WA Police] and the Minister's Office, the number of imprisonments resulting from the Assault Public Officer (Prescribed Circumstances) charge has increased from the legislation's enactment. However, this increase in imprisonments ... has moved in tandem with the increase in assaults on public officers in general ... most notably in the year 2012.²⁰

⁹ Ibid.

¹⁰ Dave Lampard, '10 years of OSH', *WA Police News* (October 2013) 24
<[http://www.rotary7610.org/documents/POLICE%20NEWS%20OCT2013-%20\(A\)%20Members.pdf](http://www.rotary7610.org/documents/POLICE%20NEWS%20OCT2013-%20(A)%20Members.pdf)>.

¹¹ Sentencing Advisory Council (Tasmania) (n 2) 29. For a more detailed discussion of this change in police policy, see Jessica Anderson and Kym Dossetor, 'First-Response Police Officers Working in Single Person Patrols: A Literature Review' (AIC Reports, Technical and Background Paper No 49, 2012) 27–9.

¹² Anderson and Dossetor (n 11) 45 and see x.

¹³ Ibid 41 and see further vii, 3, 47.

¹⁴ Ibid viii and see further 16, 17.

¹⁵ Ibid ix.

¹⁶ Western Australian Police Union of Workers, *Mandatory Sentencing Report* (April 2013) 3.

¹⁷ Ibid 3.

¹⁸ Ibid 41.

¹⁹ Ibid 20–1, Tables 5 and 6 — WA Police data obtained by the Union. The WA DPP would later note 'that there has however been an overall 33% reduction in the number of assaults on public officers (not limited to police officers) over a four year period (from 1392 per annum to 892) and submitted that on this basis it was incorrect to state that the initial decrease had been "reversed"': Western Australian Government, *Statutory Review: Operation and Effectiveness of the 2009 Amendments to sections 297 and 318 Criminal Code* (26 June 2014) 9.

²⁰ Western Australian Police Union of Workers (n 16) 41.

The Union noted the matters raised in the TSAC review and queried: 'is the data the Government includes in its media statements about declines in assaults from the inception of the legislation skewed?'²¹

It had concerns about a lack of publicity (as at 2013) driving the deterrent effect of the new scheme:

Could the increase in the number of assaults on public officers mean that the wider community's interest in protecting the safety and wellbeing of public officers, and more specifically Police Officers, has waned? Since the year beyond the introduction of the legislation and the Government's 'Assault a Police Officer, go straight to jail' catch-cry, there have been no advertising or continued awareness campaigns run by the Government ... Given mandatory sentencing is considered to be a deterrent for both offenders and would-be offenders, and it is acknowledged that debate in 2009 had the community baying for reform, has the deterrent effect worn off because this topical issue has been left to fall by the wayside?²²

The Union urged the DPP, WA Police and the Minister's Office to produce regular, public reports regarding trends, patterns, fluctuations in assaults, specific data about categories of public officers assaulted and how charges progress:²³

Consistency in the data reporting is pivotal. Given the differences in the data the Union obtained from the various agencies, it appears there is no consistency in how assaults and the Assault Public Officer (Prescribed Circumstances) charges are recorded. In order to accurately indicate how the legislation is being applied and its efficacy, it is vital that all the data is recorded appropriately, consistently, in a timely fashion and perhaps within a centralised database.²⁴

While the Union unreservedly supported the 2009 amendments,²⁵ it raised strong concerns about too narrow a filter being applied to internal police guidelines (Laying of Charges — Assault Public Officer (Prescribed Circumstances)). The concern was with how the gatekeeping prosecutors applied the guidelines (with charges being downgraded or discontinued),²⁶ not the guidelines themselves.²⁷ Separate from DPP guidelines, they were developed in response to the mandatory sentencing regime with the purpose of ameliorating 'the harsh effects of the operation of this law on assaults at the lower end of the scale of assaults'.²⁸ Requirements included approval prior to charging (often, it would appear, by a DPP representative).

The guidelines required satisfaction not only of statutory bodily harm, but bodily harm that is 'fairly and medically assessed as reaching a level of significance which would exclude any reasonable description of the injury as being insignificant or trivial or minor or transient'.²⁹

The report also discussed concerns raised by some in Parliament that the intention of the legislation might be frustrated by (the executive) prosecutorial application of guidelines regarding whether to charge a mandatory sentence offence or an alternative charge that retained 'full discretion'.³⁰

WA Government department statutory review (26 June 2014)

The 2009 amending legislation required a review 'of the operation and effectiveness of the amendments' as soon as practicable after the third anniversary of commencement (September 2012).³¹ The report was tabled in Parliament on 26 June 2014.³² It relied on lower court data,³³ and did not mention the change in patrol policy.

The review examined only charges involving bodily harm. No charges involving GBH with the relevant 'prescribed circumstances' had been lodged since the amendment: 'This may reflect the fact that assaults on public officers which result in grievous bodily harm are rarer than the less serious assaults encompassed by section 318 [bodily harm]'.³⁴ The 2013 and 2014 amendments were not required to be reviewed.

The review resolved apparent confusion about whether the DPP or police determined whether a charge with the mandatory sentence was prosecuted [it would appear, in the Magistrates Court]. Due to a 30 June 2013 change,

²¹ Ibid 42.

²² Ibid.

²³ Ibid 48.

²⁴ Ibid 49.

²⁵ Ibid 53.

²⁶ Ibid 42–3.

²⁷ Ibid 44.

²⁸ Ibid 10. See also Western Australian Government (n 19) 4.

²⁹ Western Australian Police Union of Workers (n 16) 10–11 and 14–15.

³⁰ Ibid 12–14.

³¹ *Criminal Code Act Compilation Act 1913* (WA), sch ('Criminal Code')s 740A.

³² Western Australian Government (n 19).

³³ Ibid 4: 'For the most part these matters are heard before magistrates rather than in the higher courts'.

³⁴ Ibid 1.

'decisions regarding summary prosecutions under the mandatory sentencing provisions of section 318 are made within WA Police'.³⁵ This discretion was being exercised by a three-person panel from the Prosecuting Services Division (Assistant Divisional Officer, Prosecuting Regional Coordinator and Senior Solicitor). Police prosecutors had no authority to 'downgrade' charges by remove prescribed circumstances without the Panel's consent.³⁶

About half of the surviving charges leading to conviction in the Magistrates Court were downgraded so that the mandatory sentencing scheme did not apply (45 of 84).

The numbers of charges in lower courts, for the three-year period since commencement, were as follows.³⁷

- 106 section 318 charges with a specified mandatory component were lodged in lower courts (89 in the Magistrates Court, 17 in the Children's Court).
- 20 of those 106 charges were later dismissed or withdrawn and three were yet to be finalised.
- Of the remaining 86 charges that were finalised and resulted in a conviction:
 - 39 had the mandatory component of the legislation enforced, with a mandatory period of imprisonment or detention.
 - 45 charges finalised were 'downgraded' to remove the 'prescribed circumstances' component of the charge [and so mandatory sentences did not apply].
 - 'Two outcomes [were] still under investigation'.

The review compared information about charges lodged for both the bodily harm and GBH sections for the periods three years before and three years after commencement of the amendments. Lower-court case management system information showed that during the first three years following the 2009 amendments, there was a:

- 27 per cent decrease in section 318 charges, and
- even though the number of total charges lodged decreased, charges for offences related to section 297 remained constant.³⁸

The review report noted that:

These figures suggest that either the rate, the reporting or the prosecution of these assaults has decreased. It is notable that charges for obstructing a public officer have also decreased [by 30 per cent]; this may suggest that members of the public are exercising more caution in their interactions with public officers. One must however be cautious about attributing these statistics to the impact of the 2009 amendments. In particular, it should be noted that crime rates overall decreased during this period, even as the Western Australian population increased — all charges for criminal offences (including traffic offences) decreased by 14% over the same period.³⁹

The 2014 and 2016 press releases did not mention this need for caution and the general reduction. The 2014 release stated that the 'legislation [was] shown to be working as intended' and 'the laws had prompted a cultural shift in the way WA police officers were treated in the community'.⁴⁰ The 2016 release stated: 'the continuing reduction in assaults indicates [the legislation] has been successful ... the mandatory sentencing legislation has proven to be an effective deterrent against violence'.⁴¹

Stakeholder feedback to the 2014 statutory review regarding the effectiveness of the new scheme was more muted and did not draw conclusions as the media releases did. The WA Police Commissioner advised: 'To determine if the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer-term study and evaluation will be required'. He advised information provided by the WA Police Prosecuting Services Division indicated that in real terms there had been an overall 33% reduction in the number of assaults on police from 1346 to 892 over a four-year period, although it was unclear whether this reduction could be attributed to the amendments as it was not known what other factors may have contributed.⁴²

The WA DPP noted:

a slight increase in the total number of assaults (892) in the third year following the passage of the mandatory sentencing amendments when compared to the second year (850). He noted that there has however been an

³⁵ Ibid 2.

³⁶ Ibid 2–3.

³⁷ Ibid 3.

³⁸ Ibid 3.

³⁹ Ibid 4.

⁴⁰ Harvey and Mischin (n 3); Government of Western Australia (n 19).

⁴¹ Harvey and Mischin (n 4); Government of Western Australia, 'Tough Laws See Drop in Assaults Against Police' (Media Release, 19 August 2016).

⁴² WA Government (n 19) 5.

overall 33% reduction in the number of assaults on public officers (not limited to police officers) over a four-year period (from 1392 per annum to 892).⁴³

The DPP 'noted that the existence of the PSD [WA Police Prosecuting Service Division] Guidelines reflects the fact that 'where judicial discretion is removed it does not remove discretion so much as redistribute it to other parts of the criminal process'.⁴⁴

So did the Chief Judge of the District Court (the operation of the amendments 'has a tendency to transfer sentencing discretion from courts to police and prosecution authorities')⁴⁵ and the Mental Health Law Centre ('by the choosing of a particular offence provision, individual officers ... decide, in effect, whether or not the accused will go to jail if found guilty').⁴⁶ The Chief Judge explained:

Where an offence has been committed for which a mandatory sentence of imprisonment is required ... but the facts of the offence or the personal circumstances of the offender may make it unjust for a term of imprisonment to be imposed, there is a prospect that the prosecution will not be for the offence committed but for a lesser offence ... it is highly undesirable for police or prosecuting authorities to need to consider charging a person with an offence which is less serious than the offence which has been committed by reason of mandatory sentencing provisions. Unlike sentencing decisions, prosecution decisions are not public decisions and the reasons for the decisions are not always disclosed. Further, the decisions are not subject to review upon appeal.

... It would be far preferable for prosecutions to be for offences that have been committed and for judicial officers to have an unfettered sentencing discretion. Judicial officers would express all the factors they have taken into account in imposing a sentence and their decisions would be subject to appeal in the ordinary way.⁴⁷

The WA Chief Magistrate advised that people charged under section 318 with a mandatory-penalty offence:

- pleaded not guilty at much higher rates than the general rate of not guilty pleas in the Magistrates Court;
- the 'consequence of a mandatory term of imprisonment would appear to have clearly influenced the decision to plead not guilty to the matters';
- a high rate of not guilty pleas 'would indicate an increase in the workload of the Magistrates Court';
- it 'would also appear likely that there were greater delays and more appearances ... whilst matters were negotiated resulting in either the withdrawal or downgrading of charges'; and
- 'the overall impact of the higher rate of not guilty pleas in respect of these charges was not significant in the context of the volume of work in the Magistrates Court'. Given 'the relatively small number of charges under section 318 in prescribed circumstances'.⁴⁸

The St John Ambulance Service 'did not provide any figures but advised that the service "continued to see assaults on ambulance officers and believed the legislation is not acting as a suitable deterrent" and rates of assaults on ambulance officers seemed to have remained the same since the amendments'. The point was also made that: 'Alcohol affected or drug-affected people and psychiatric patients who are moved to assault an officer are unlikely to be inclined to think about the existence of legislation'.⁴⁹

The WA Department of Corrective Services advised in 2013 'there had been no assaults on prison officers resulting in a conviction under section 297 or 318 ... it was not considered appropriate to prosecute under these provisions for the assaults that had occurred (including a serious assault on a prison officer in 2012)'.⁵⁰

The WA Department of Transport 'advised that since 2009 there had been three prosecutions for assaults on Transit Officers under section 318, all relating to an incident on 20 November 2011' resulting in imprisonment and considerable media attention. It presumed 'that the profile of the incident and the significant penalties imposed have acted as a deterrent' and noted no further instances of serious assaults on transit officers occurred since that time.⁵¹

The statutory review concluded:

One problem identified in stakeholder consultation was what is seen as a lack of transparency in the process of determining whether to charge an alleged offender with assault in prescribed circumstances ... Unlike judges' sentencing decisions, prosecuting decisions are not made public, and it seems the process adopted has

⁴³ Ibid 9.

⁴⁴ Ibid 6.

⁴⁵ Ibid 7.

⁴⁶ Ibid 8.

⁴⁷ Ibid 7.

⁴⁸ Ibid 8.

⁴⁹ Ibid 7.

⁵⁰ Ibid 6.

⁵¹ Ibid.

engendered confusion and resentment among some of the public officers sought to be protected as well as concern on the part of advocates for the mentally impaired.

It is difficult to express any conclusion on the practical operation of these amendments from an investigative or prosecutorial viewpoint given the recent change in the process for determining when a person is to be charged with the summary offence in section 318 in 'prescribed circumstances'. The alleged problems set out in, for instance, the Police Union report, may no longer be relevant but it is too early to assess whether this will be the case.

... The statistics gathered by the Department would tend to support the proposition that assaults on public officers have decreased as a result of the 2009 amendments, yet they do not prove that this is the case.⁵²

It recommended 'that a further review of the operation and effectiveness of the amendments made by the *Criminal Code Amendment Act 2009* be conducted in five years' time' [June 2019].⁵³ This was also announced by the government in Parliament⁵⁴ and in a press release.⁵⁵ The Council is not aware of any further review taking place.

Accepting a second recommendation, the Government undertook to 'investigate the feasibility of a narrowly focused exemption in respect of people with mental illness, cognitive impairment or relevant disabilities, which would permit a judicial decision-maker to consider any mental impairment an accused may have when imposing a sentence'.⁵⁶ The Council is uncertain what progress has been made on the implementation of this recommendation.

Office of the Inspector of Custodial Services report – assaults on Staff in Western Australian prisons (20 July 2014)

A 2014 report covered a five-year period but concluded that 'as the Department does not maintain a register of when a prisoner is given a mandatory sentence, it is impossible to determine the effect of the new [2009 mandatory sentencing] law on people in custody'.⁵⁷ It also noted that:

Given the broad definition afforded to 'bodily harm', the mandatory penalties for 'serious assaults' under the criminal law are of potentially broad scope. However, the Department's policy documents use very different and much narrower definitions. Whilst Parliament considers that assaults occasioning bodily harm to prison officers deserve a minimum of six months' imprisonment, very few of these would meet Departmental definitions of a 'serious assault'.⁵⁸

The report came 'at a time when assaults on staff have been widely reported in the media', with a spike of assaults on prison staff in September 2013.⁵⁹

The rate of assault was 0.46 assaults per 100 prisoners, the highest monthly rate since November 2004. However, very little detail surrounding these assaults was furnished in media reports. For example, little distinction was made between assaults requiring hospitalisation and assaults where the victim received no physical or psychological injuries.⁶⁰

The report also noted that 'generalised counts and records do not reflect the particular circumstances in which assaults occur or the type of behaviour involved', illustrating this point by the following example:

The figures also need to be placed in the context of what is being recorded, a point well-illustrated by data from September 2013. That month, there was a distinct spike in assaults, with 24 recorded cases, three times more than the average. However, almost a third of these assaults were committed by the same woman, in three incidents, over two days ... Two mornings in a row, she threw her breakfast at a staff member, each incident constituting an assault. The third incident occurred later on the second day. She was under escort after a visit to a mental health nurse and lashed out at staff, punching, scratching and kicking them. Five staff members sustained scratches and bruises and because there were five victims, five assaults were recorded. This illustrates how quickly the assault rate can rise based on the behaviour of certain individuals or the presence of multiple staff in a single incident.⁶¹

⁵² Ibid 11.

⁵³ Ibid.

⁵⁴ Western Australia, *Parliamentary Debates*, Legislative Council, 26 June 2014, 4645 (Michael Mischin, Attorney-General).

⁵⁵ Harvey and Mischin (n 3) and Government of Western Australia (n 19).

⁵⁶ Western Australian Government ((n 19) 11 and Harvey and Mischin (n 3).

⁵⁷ Neil Morgan, Office of the Inspector of Custodial Services, Government of Western Australia, *Assaults on Staff in Western Australian Prisons* (July 2014) 35 [8.5].

⁵⁸ Ibid 4 [3.16].

⁵⁹ Ibid 2 [3.9].

⁶⁰ Ibid 2 [3.9].

⁶¹ Ibid i.

Further developments in WA

There have been a number of Questions on Notice in the WA Parliament in recent years regarding assaults on police. All relate to high-level figures provided by the WA Police Force. None of them are at a level of specificity that would allow analysis of the application of the mandatory sentencing provisions. While the numbers vary (as they relate to different questions or incidents versus charges, and often carry a caveat that they were subject to revision), two points to note are that:

- assault rates appear to be rising; and
- blame has been attributed to negative changes in community attitudes and methamphetamine.

A March 2018 media story⁶² reported an almost 9 per cent increase in people charged with assaulting a public officer in 2017 (1,094 in 2017, 1,004 in 2016) (note, however, that this does not specifically identify bodily harm offences triggering the mandatory sentencing provisions).

The WA Police Minister was quoted as ‘suspecting’ that ‘a proportion of the increase could be connected with the meth problem’. The Shadow police minister (the Opposition was in government when the mandatory sentencing provisions were introduced) was quoted as saying that ‘in 2009 there were more than 1,300 assaults against police officers, so mandatory sentencing continues to have an impact, despite the significant increase in our population and the scourge of meth’.

The article stated that a count of 962 offences of assaulting a police officer in 2017 was ‘the highest in almost 10 years’ and ‘assaults on police officers have been increasing each year for the past four years, rising from 800 cases in 2014’.

The article reproduced a statement made to other media by the outgoing police commissioner the previous year: ‘[Mandatory sentencing is] a very easy thing to implement, it’s expensive in the long run, but it doesn’t really solve the problems, and I would like to have seen more money spent on the other end of the spectrum than on the mandatory sentencing end’.

On 13 June 2019, the Minister for Police provided three separate sets of figures. All showed increases. Firstly, the number of unique police officers assaulted in each calendar year from 2013 to 2019 to date (in response to the question ‘How many police officers were seriously assaulted?’):⁶³

| 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|------|------|------|------|------|------|------------------|
| 652 | 669 | 684 | 781 | 759 | 761 | 257 (to 8 April) |

Second, the number of people charged with ‘Assault of Public Officer’ under section 318(1)(d) of the *Criminal Code* (this includes occupations other than police):⁶⁴

| 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|------|------|------|------|------|------|------------------|
| 816 | 792 | 848 | 926 | 969 | 994 | 293 (to 8 April) |

Third, the number of charges under section 318(1)(d) in each of the following years (again, this includes occupations other than police):⁶⁵

| 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|-------|-------|-------|-------|-------|-------|------------------|
| 1,040 | 1,074 | 1,098 | 1,273 | 1,421 | 1,392 | 392 (to 8 April) |

⁶² Dylan Caporn ‘Three Public Officers Assaulted Each Day on Average Due to WA’s Meth Crisis’, *The West Australian* (Web Page, 19 March 2018) < <https://thewest.com.au/news/wa/three-public-officer-assaulted-each-day-on-average-due-to-was-meth-crisis-ng-b88775293z>>. This is likely derived from Police Force figures provided in Parliament (save for the twelfth month of the second year). One question was: How many people have been charged with assaulting a police officer, with the officer suffering bodily injury, that attracts a mandatory minimum sentence? The response was ‘data on sentencing and court outcomes should be sought from the Department of Justice as the agency responsible’: Western Australia, *Parliamentary Debates*, Legislative Council, 13 March 2018, 565–6 (Stephen Dawson, Minister for the Environment and Disability Services).

⁶³ Western Australia, *Parliamentary Debates*, Legislative Assembly, 13 June 2019, 4259–60 (Michelle Roberts, Minister for Police; Road Safety). The Western Australian Police Force provided this information.

⁶⁴ Ibid 4260–1 (Michelle Roberts, Minister for Police). The Western Australian Police Force provided this information. ‘Persons charged per year is a count of unique persons charged under s. 318(1)(d) ... As such a person charged multiple times within a year would be counted once. A person charged in different years would be counted against each relevant year. Charges per year is a count of unique charges under “Assault Public Officer” as defined in s. 318(1)(d) ... where an associated brief has been created from 01 January 2013 to 08 April 2019 inclusive’.

⁶⁵ Ibid.

On 20 August 2019, it was stated that ‘as of 25 July 2019, there were 975 reports of assaults on police officers during the financial year 2018–19’.⁶⁶

On 15 October 2019, the following statistics were provided.⁶⁷ The number of charges under section 318(1)(d) was:

| 2012–13 | 2013–14 | 2014–15 | 2015–16 | 2016–17 | 2017–18 | 2018–19 |
|---------|---------|---------|---------|---------|---------|---------|
| 1,137 | 1,059 | 1,025 | 1,178 | 1,426 | 1,360 | 1,409 |

Most recently, on 17 March 2020, the following was provided in response to the question ‘How many police officers were assaulted?’. These statistics cover all assault offences against police officers (including both ‘serious’ and ‘common’ assaults):⁶⁸

| 2017 | 2018 | 2019 | 2020 |
|------|------|------|-----------------|
| 759 | 764 | 787 | 122 (to 16 Feb) |

On 3 September 2019, statistics regarding ‘the number of assault incidents reported’ on paramedics in WA, as of 22 August 2019, from St John Ambulance, was:⁶⁹

| 2015–16 | 2016–17 | 2017–18 | 2018–19 |
|---------|---------|---------|--------------------|
| 98 | 140 | 142 | 115 (to 22 August) |

On 22 August 2019, the Minister for Regional Development stated that:

The government accepts that there has been a change of behaviour in the community. General standards and the level of respect for authority in the community has been driven in part, but not exclusively, by a massive meth problem. It provides real challenges for the community, police officers, and ... firefighters. We also acknowledge that it provides challenges, of course, for people in the medical profession.⁷⁰

The Deputy Leader of the Opposition (in government when the mandatory sentencing provisions were introduced) noted an increase in assaults on police to 975 in 2018–19, up from 911 in 2017–18:

Most of those assaults were due either to people being liquored up, or to the meth crisis—people who are in a highly agitated state and not fully responsible for their actions, and engage in assaulting police officers. However, it is also indicative of the mindset of our society. That needs to be corrected. Instead of looking at how we can change the laws to ensure that people who assault police officers, or other public officers, and cause them bodily harm are punished and put away for longer, in order to act as a deterrent, we have resorted to police wearing body armour. Our police officers could drive around in armoured cars. That is hardly protecting police officers. That is isolating them from society. That is doing nothing to address the societal issue.⁷¹

On 29 October 2019, a possible decline in methamphetamine use was canvassed: ‘Meth consumption in metropolitan Perth has decreased 25 per cent since October 2016 ... That is what the wastewater testing shows. Meth consumption in regional Western Australia has decreased 25 per cent since the peak in August 2016’.⁷²

⁶⁶ Western Australia, *Parliamentary Debates*, Legislative Council, 20 August 2019, 5744–5 (Stephen Dawson, minister representing the Minister for Police). The Western Australia Police Force provided this information.

⁶⁷ Western Australia, *Parliamentary Debates*, Legislative Council, 15 October 2019, 7617–8 (Stephen Dawson, minister representing the Minister for Police).

⁶⁸ Western Australia, *Parliamentary Debates*, Legislative Assembly, 17 March 2020, 1494 (Michelle Roberts). The Western Australia Police Force provided this information.

⁶⁹ Western Australia, *Parliamentary Debates*, Legislative Council, 3 September 2019, 6180 (Alanna Clohesy, parliamentary secretary representing the Minister for Health).

⁷⁰ Western Australia, *Parliamentary Debates*, Legislative Council, 22 August 2019, 5859 (Alannah MacTiernan, Minister for Regional Development).

⁷¹ Ibid 5861 (Michael Mischin, Deputy Leader of the Opposition).

⁷² Western Australia, *Parliamentary Debates*, Legislative Assembly, 29 October 2019, 8459 (Mark McGowan, Premier). See also 8458.



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