PART C — The current sentencing framework and sentencing practices

Chapter 6 Current legislative framework and sentencing practices

6.1 Introduction

In this chapter we explore the current legislative framework and principles that guide sentencing in Queensland, with a particular focus on those that apply to the sentencing of offences involving assaults on public officers.

The Council's recommendations for reform to strengthen the application of these principles in cases involving assaults of public officer victims and others who are vulnerable to assault due to their occupation are set out in Chapter 10 of this report.

6.2 *Penalties and Sentences Act 1992* (Qld) — purposes, guidelines and factors

The *Penalties and Sentences Act 1992* (Qld) (PSA) is the key piece of legislation that guides sentencing for offences in Queensland. The Act has its own purposes as a piece of legislation, and also lists sentencing guidelines and factors that courts must consider.

6.2.1 The purposes of the PSA

Relevant to this review, the purposes of the PSA are —

(a) collecting into a single Act general powers of courts to sentence offenders; and

(b) providing for a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders, and, in appropriate circumstances, ensuring that protection of the Queensland community is a paramount consideration; and …

(d) promoting consistency of approach in the sentencing of offenders; and …

(f) providing sentencing principles that are to be applied by courts; and …

(h) promoting public understanding of sentencing practices and procedures.

Consistency in sentencing in this context refers to the application of a consistent *approach* (i.e. using the same purposes and principles) for sentencing similar offenders for similar offences, rather than applying the same sentence.[1]

6.2.2 Sentencing guidelines

Section 9(1) of the PSA sets out sentencing guidelines, limited to the following five (including combinations of them):

(a) to punish the offender to an extent or in a way that is just in all the circumstances; or

(b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or

(c) to deter the offender or other persons from committing the same or a similar offence; or

(d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or

(e) to protect the Queensland community from the offender.

The PSA does not suggest that one purpose should be more, or less, important than any other purpose; in practice, their relative weight must be assessed taking into account the individual circumstances involved. The purposes overlap and none of them can be considered in isolation; they are guideposts to the appropriate sentence, sometimes pointing in different directions.[2]

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1 Sarah Krasnostein and Arie Freiberg, 'Pursuing Consistency in an Individualistic Sentencing Framework: If You Don't Know Where You're Going, How Do You Know When You've Got There?' (2013) 76(1) *Law and Contemporary Problems* 265, 270–71.

2 *Veen v The Queen (No. 2)* (1988) 164 CLR 465, 476 (Mason CJ, Brennan, Dawson and Toohey JJ).

The concept of 'just punishment' reflects the principle of proportionality — a fundamental principle of sentencing in Australia. Sentencing courts must ensure the sentence imposed: 'should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its *objective* circumstances'.[3]

While a sentence must not be 'extended beyond what is appropriate to the crime merely to protect society', the propensity of an offender to commit future acts of violence, and the need to protect the community is a legitimate sentencing consideration.[4]

The principle of proportionality is of direct relevance to sentencing courts in setting the duration and intensity of conditions ordered under a community-based sentencing disposition. Courts cannot impose a longer order or attach more onerous conditions (even those directed at the offender's treatment or rehabilitation), 'if the resulting order would be disproportionate to the gravity of the offending'.[5]

Deterrence has a forward-looking, crime prevention focus and aims, as a consequence of the penalty imposed, to discourage the offender and other potential offenders from committing the same or a similar offence.[6]

Denunciation in a sentencing context is concerned with communicating 'society's condemnation of the particular offender's conduct'.[7] The sentence imposed represents 'a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law'.[8]

As discussed later in this chapter, there is a long line of authority that deterrence and denunciation are primary sentencing considerations in sentencing for assaults on public officers (although this can be 'significantly reduced' in appropriate, unusual circumstances).[9] The need for a salutary penalty in such cases has also been identified.[10]

6.2.3 Sentencing factors

Sections 9(2)–(11) of the PSA set out general and specific sentencing factors to which a court must have regard in sentencing (as they apply to the facts of each case).

Imprisonment must generally only be imposed as a last resort and a sentence allowing an offender to stay in the community is preferable (section 9(2)(a) of the PSA). However, these two principles do not apply to offences involving the use of (or counselling or procuring the use of, or attempting or conspiring to use) violence against another person, or that resulted in physical harm to another person (section 9(2A) of the PSA).[11] This exception in section 9(2A) and the corresponding list of factors in section 9(3) are discussed in detail in Chapter 10, section 10.2.4.

There is also a list of general factors in section 9(2), which apply to all cases, including offences of violence:

- the maximum penalty and any minimum penalty for the offence;
- the nature of the offence and how serious the offence was, including:
  - any physical, mental or emotional harm done to a victim, including harm mentioned in a victim impact statement; and
  - the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to the offence;
- the extent to which the offender is to blame for the offence (culpability);
- any damage, injury or loss caused by the offender;
- the offender's character, age and intellectual capacity;

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3 *Hoare v The Queen* (1989) 167 CLR 348, 354 (Mason CJ, Deane, Dawson, Toohey and McHugh JJ) (emphasis in original).

4 *Veen v The Queen (No. 2)* (1988) 164 CLR 465, 473, 475 (Mason CJ, Brennan, Dawson and Toohey JJ).

5 *Boulton v The Queen* (2014) 46 VR 308, 328 [75] (Maxwell P, Nettle, Neave, Redlich and Osborn JJA). The Court commented that this position was not displaced by the offender's need to consent to the making of the order: 'the willingness of the offender to consent to treatment proposed as part of a CCO does not relieve the court of the obligation to ensure that the order remains within the bounds of proportionality': 328 [76].

6 Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (Law Book Co, 3rd ed, 2014) 250–51.

7 *Ryan v The Queen* (2001) 206 CLR 267, 302 [118] (Kirby J).

8 Ibid citing *R v M (CA)* [1996] 1 SCR 500, 558 (Lamer CJ).

9 *R v Ganeshalingham* [2018] QCA 34, 5, 6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v Whiting* [2009] QCA 338, 3 [15] (Keane JA, Holmes JA and McMeekin J agreeing).

10 See, for example: *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221–2 [38] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing); *R v Reuben* [2001] QCA 322, 5 (Davies JA, Williams JA and Byrne J agreeing).

11 *Penalties and Sentences Act 1992* (Qld) ss 9(2)(a) and 9(2A).

- the presence of any aggravating or mitigating factor concerning the offender;
- the prevalence of the offence;
- how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences;
- time spent in custody by the offender for the offence before being sentenced;
- other sentences imposed on the offender that have an impact on the sentence being imposed (and vice versa);
- submissions made by a representative of the community justice group in the offender's community, if the offender is an Aboriginal or Torres Strait Islander; and
- any other relevant circumstance.

The application of these principles by courts in sentencing for serious assault are discussed in section 6.5 of this chapter.

6.2.4 Aggravating and mitigating circumstances

Aggravating circumstances are those factors that would increase a sentence. Mitigating circumstances are those that would reduce a sentence. Both can impact on the sentence imposed, depending on their relevance and the weight placed on them by the court.

The Court of Appeal has noted that the expression 'aggravating factors' is useful because:

> it signifies the tendency of such factors to promote a more severe punishment. However, sometimes such factors really reflect the relevance, in the sentencing process, of the interests of the community and the interests of those who have been directly affected by the offence.[12]

Previous convictions must be treated as an aggravating factor if the court considers they can reasonably be treated as such. This is determined by considering the nature of the previous conviction, its relevance to the current offence, and the time that has elapsed since the conviction.[13]

The fact an offence is a domestic violence offence must be treated as an aggravating factor, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case.[14] This ensures that sentences reflect a specific type of aggravating criminal behaviour in every case in which such behaviour appears, irrespective of what offence is charged. This method is very different from the way that aggravating circumstances, with discrete higher maximum penalties, are grafted into the specific subsections of the actual offence provisions regarding serious assault and assaults occasioning bodily harm. These different approaches are discussed in more detail in Chapter 10, section 10.2.7.

6.2.5 Guilty plea as a mitigating factor

A Queensland sentencing court must take the offender's guilty plea into account and may reduce the sentence it would have otherwise imposed had the offender not pleaded guilty (taking into account the timing of the plea).[15] The courts have indicated the more serious the offence, the less significance a plea of guilty will carry in terms of the ultimate sentence imposed. However, even where the offence is quite serious, some reduction in the sentence is warranted in the event of a guilty plea.[16]

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12 *R v Patrick (a pseudonym)* [2020] QCA 51, 7 [28] (Sofronoff P, Fraser JA and Boddice J agreeing).

13 *Penalties and Sentences Act 1992 (Qld)* s 9(10).

14 Ibid s 9(10A). For 'Domestic violence offence', see *Criminal Code* (Qld) s 1.

15 *Penalties and Sentences Act 1992* (Qld) s 13.

16 See, for example, *R v Bates* [2002] QCA 174, 11–12 [58] and [60] (Williams JA) where the Court of Appeal allowed an appeal by an offender who received a life sentence on this basis substituting a determinate sentence of 18 years' imprisonment finding that the failure of the sentencing judge to take the guilty plea into account in mitigation represented an error in the exercise of the sentencing discretion; and *R v Duong* [2002] QCA 151 where the Court of Appeal accepted the offenders must receive some benefit for their guilty pleas notwithstanding its lateness: 9 [38]; and that it involved 'an horrendous crime calling for severe punishment': 10 [45]. In that instance, sentences of 12 years' imprisonment on two offenders, and 9 years' imprisonment on the others with a serious violent offence declaration were not disturbed on appeal.

There are three reasons why a guilty plea is generally accepted as justifying a lower sentence than would otherwise be imposed.

First, the plea can be a manifestation of remorse or contrition. The Court of Appeal has cautioned that 'on sentencing, an offender's remorse should not be left to inference. If it exists, it should be proved with clarity'.[17] An example of this is the attention paid to formal expressions of apology by offenders to public officers assaulted, as identified elsewhere in this chapter.

Secondly, the plea has a utilitarian value to the criminal justice system. It saves public time and money.

Thirdly, in particular cases — especially sexual assault cases, crimes involving children and, often, elderly victims — there is particular value in avoiding the need to call witnesses, especially victims, to give evidence.[18]

In the absence of remorse by the offender for their actions, the focus moves to the willingness of the offender to facilitate the course of justice.[19]

As to the utilitarian value of a plea, courts have recognised that the public interest is served by an accused person who accepts guilt and pleads guilty to an offence charged,[20] even if there is a high likelihood of conviction had the case proceeded to trial.[21] This is because, unless there is some incentive for a defendant to plead guilty, there is always a risk they will proceed to trial if they consider there is nothing to be lost by doing so.[22]

The degree of leniency may vary according to the degree of inevitability of conviction as it may appear to the sentencing judge, but it is always a factor to which a greater or lesser degree of weight must be given.[23]

The person's motive for pleading guilty is not a basis for not taking the plea into account.[24]

The extent to which a guilty plea may reduce the sentence that would otherwise have been imposed depends in part on how early or late the plea was entered,[25] although the circumstances of the case need to be considered. For example, if a person only pleads guilty to an offence after other charges to which he or she was not prepared to plead guilty are withdrawn, it cannot automatically be assumed the person has not pleaded guilty at the earliest opportunity.[26]

6.3 Sentencing principles in case law — totality and the *De Simoni* principle

Sentencing principles established by case law are applied alongside the legislative factors and are equally important. They are referred to as the 'common law' and courts have a duty to follow them. The principles are often discussed in judgments issued by the Queensland Court of Appeal.

6.3.1 Proportionality

A sentence must always be proportionate to the objective seriousness of the offending.[27] Proportionality, in the form adopted by Australian courts, sets the outer limits (both upper and lower) of punishment.[28]

> It is only within the outer limit of what represents proportionate punishment for the actual crime that the interplay of other relevant favourable and unfavourable factors … will point to what is the appropriate sentence in all the circumstances of the particular case.[29]

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17 *R v Randall* [2019] QCA 25, 5 [27] (Sofronoff P and Morrison JA and Burns J).

18 *R v Thomson* (2000) 49 NSWLR 383, 386 [3]. This principle has been cited with approval by the Queensland Court of Appeal. See, for example, *R v Bates* [2002] QCA 174, 14 [76] (Atkinson J).

19 *Cameron v The Queen* (2002) 209 CLR 339, 343 [11], [13]–[14] (Gaudron, Gummow and Callinan JJ); and *McQuire & Porter* (2000) 110 A Crim R 348, 358 (de Jersey CJ), 362 and 366 (Byrne J).

20 *R v Harman* [1989] 1 Qd R 414; *Cameron v The Queen* (2002) 209 CLR 339, 360–61 [66]–[68] (Kirby J).

21 *R v Bulger* [1990] 2 Qd R 559, 564 (Byrne J).

22 Ibid.

23 *R v Ellis* (1986) 6 NSWLR 603, 604 (Street CJ).

24 *R v Morton* [1986] VR 863, 867 cited in *R v Bates* [2002] QCA 174 (17 May 2002) 16 [83] (Atkinson J).

25 *R v Bates* [2002] QCA 174, 15 [79] (Atkinson J).

26 *Atholwood v The Queen* (1999) 109 A Crim R 465, 468 (Ipp J) cited in *R v Bates* [2002] QCA 174, 15 [80].

27 *Markarian v The Queen* (2005) 228 CLR 357, 385 [69] (McHugh J); *Veen v The Queen (No 2)* (1988) 164 CLR 465, 473–474 (Mason CJ, Brennan, Dawson, Toohey JJ). *Penalties and Sentences Act 1992* (Qld) s 9(11) expressly applies this principle to previous convictions.

28 Freiberg (n 6) 237.

29 *Veen v The Queen (No 2)* (1988) 164 CLR 465, 491 (Deane J).

In determining whether a sentence is proportionate, courts consider factors such as the maximum penalty for the offence and the circumstances of the offence, including the degree of harm caused and the offender's culpability.[30]

6.3.2 Parity

The parity principle guards against unjustifiable disparity between sentences for offenders guilty of the same criminal conduct or common criminal enterprise. Ideally, people who are parties to the same offence should receive the same sentence but matters that create differences must be taken into account. These include each offender's 'age, background, previous criminal history and general character … and the part which he or she played in the commission of the offence'.[31]

6.3.3 Totality

When a sentencing court is dealing with multiple offences at once (for instance, a number of assaults on different police or paramedics in one incident) or is sentencing for an offence and the person is already serving another sentence, it must look at the totality of all criminal behaviour. It must impose a sentence that 'adequately and fairly represents the totality of criminality involved in all of the offences to which that total period is attributable'.[32] It can achieve this by making the sentences concurrent, so they run together, instead of making the sentences cumulative (i.e. to be served one after the other).[33]

> The totality principle applies whether the penalty takes the form of a fine or a term of imprisonment or, indeed, whatever might be the form of punishment. It will apply whether the resulting accumulation of punishments is relatively light, such as a series of fines or several cumulative short terms of imprisonment, or whether it is severe. The principle is very much concerned with the concept of proportionality that pervades so many facets of the system of law. In some of its applications it reflects the prohibition against double punishment which is a risk when several offences committed at the same time contain elements that are all proved by the same fact.[34]

This principle is specifically reflected in two of the sentencing factors in section 9 of the PSA. A sentencing court must have regard to:

> (k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and
>
> (l) sentences already imposed on the offender that have not been served.

6.3.4 'Crushing' sentences

There are circumstances where cumulative terms of imprisonment are justified, but their total combined effect can be described as 'crushing'. Examples include:

> when an offender is sentenced to a long term of imprisonment but then commits a further serious offence while imprisoned, or while at liberty after escaping, or, sometimes, while on bail awaiting trial for a set of offences for which he is later found guilty. If sentences in such cases were not made cumulative then the offender would effectively get a discount by a misapplication of the totality principle.[35]
>
> Also, sometimes the need to vindicate the rights of different victims while giving effect to the totality principle results in making sentences cumulative in whole or in part.[36]

In such cases, harshness in the overall sentence (if it in fact arises in the particular case) is alleviated by the notion that a sentence should never be a 'crushing sentence'.[37] Such a sentence has been described as one so harsh as to 'provoke a feeling of helplessness in the [offender] if and when he is released or as connoting the destruction of

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30 Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report* (2017) 280.

31 *Lowe v The Queen* (1984) 154 CLR 606, 609 (Gibbs CJ), affirmed in *Postiglione v The Queen* (1997) 189 CLR 295, 303 (Dawson and Gaudron JJ), 325 (Gummow J).

32 *R v Beattie; Ex parte A-G (Qld)* (2014) 244 A Crim R 177, 181 [19] (McMurdo J) cited in *R v DBQ* [2018] QCA 210, 7–8 [27] (Philipiddes JA, Boddice and Bond JJ agreeing).

33 *Mill v The Queen* (1988) 166 CLR 59, 63 (Wilson, Deane, Dawson, Toohey, Gaudron JJ). See also *R v Hill* [2017] QCA 177, 7–8 [34]–[36] (Applegarth J, Sofronoff P and Atkinson J agreeing) and *Nguyen v The Queen* (2016) 256 CLR 656, 677 [64] (Gageler, Nettle and Gordon JJ).

34 *R v Symss* [2020] QCA 17, 6 [22] (Sofronoff P, Morrison and McMurdo JJA agreeing).

35 Ibid 7 [25] (Sofronoff P, Morrison and McMurdo JJA agreeing) citing *R v Makary* [2019] 2 Qd R 528.

36 Ibid citing *Richards v The Queen* [2006] NSWCCA 262.

37 Ibid 8 [32] (Sofronoff P, Morrison and McMurdo JJA agreeing).

any reasonable expectation of useful life after release'.[38] While some mandatory sentences (life imprisonment for murder, for example) must be imposed regardless of their crushing impact, where there is still discretion, a court can reduce a sentence on the basis that it is crushing:

> Such mercy is not a reflection upon the applicant's subjective characteristics or his deserts. It reflects the attitude of our community[39] that, in general, and in the absence of particular circumstances, even a justly severe punishment [and factors that aggravate the severity of the offence, particularly denunciation][40] ought not remove the last vestige of a prisoner's hope for some kind of chance of life at the end of the punishment.[41]

6.3.5 The *De Simoni* principle

A sentencing judge can generally consider all of an offender's conduct, including conduct that would make the offence more, or less, serious — but cannot take into account circumstances of aggravation that would have warranted a conviction for a more serious offence.[42]

The acts, omissions and matters constituting the offence (and accompanying circumstances) for sentencing purposes are determined by applying common sense and fairness. Something that might technically constitute a separate offence is not necessarily excluded from consideration for that reason.[43] However, such things cannot be taken into account if they would establish:

- a separate offence that consisted of, or included, conduct that did not form part of the offence for which the person was convicted;
- a more serious offence; or
- a circumstance of aggravation.[44]

In such a case, the act, omission, matter, or circumstance cannot be considered for any purpose either to increase the penalty or deny leniency. A person convicted of an isolated offence is entitled to be punished for that isolated offence. In restating these principles, the Queensland Court of Appeal has recognised it would be wrong to punish the person on the basis that their isolated offence formed part of a pattern of conduct for which the person has not been charged or convicted.[45]

6.4 The general approach to sentencing in Queensland

Sentencing is not a mechanical or mathematical exercise:[46]

> Sentences of imprisonment are necessarily calculated by reference to the number of months or years for which an offender must be imprisoned. However, strict adherence to the mathematics of sentencing can lead to injustice.[47]

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38 *R v Beck* [2005] VSCA 11, [19] (Nettle JA), cited in *R v Symss* [2020] QCA 17, 7 [27] (Sofronoff P, Morrison and McMurdo JJA agreeing).

39 'Shared values of the community which do not countenance either cruelty in punishment or a total abandonment of hope, even for the worst kind of offender': *R v Symss* [2020] QCA 17, 8 [33] (Sofronoff P, Morrison and McMurdo JJA agreeing).

40 *R v Symss* [2020] QCA 17, 8 [32] (Sofronoff P, Morrison and McMurdo JJA agreeing).

41 Ibid 10 [40] (Sofronoff P, Morrison and McMurdo JJA agreeing).

42 *The Queen v De Simoni* (1981) 147 CLR 383, 389 (Gibbs CJ). See also *Nguyen v The Queen* (2016) 256 CLR 656, 667 [29] (Bell and Keane JJ), 676 [60] (Gageler, Nettle and Gordon JJ) and *R v D* [1996] 1 Qd R 363, 403. A circumstance of aggravation means 'any circumstance by reason whereof an offender is liable to a greater punishment than that to which the offender would be liable if the offence were committed without the existence of that circumstance': *Criminal Code* (Qld) s 1.

43 *R v D* [1996] 1 Qd R 363, 403.

44 Ibid. Note *R v Cooney* [2019] QCA 166, 6–7 [27]–[35] (Henry J, Gotterson JA and Bradley J agreeing), where a defence *De Simoni* argument in a serious assault case failed — the manner in which the offender's blood ended up on a police officer's cut hand was inadvertent physical proximity rather than a direct application as required by the section ('applies'). This meant that the court could consider emotional harm caused to the officer as a result of the blood, because the Crown had not foregone the opportunity to charge a circumstance of aggravation.

45 Ibid 403–4.

46 *Markarian v The Queen* (2005) 228 CLR 357, 372–5 [30]–[39] (Gleeson CJ, Gummow, Hayne and Callinan JJ) as cited in *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 443 [45] (Kiefel CJ, Bell and Keane JJ). See also *Barbaro v The Queen* (2014) 253 CLR 58, 72 [34] (French CJ, Hayne, Kiefel and Bell JJ).

47 *R v Symss* [2020] QCA 17, 6 [22] (Sofronoff P, Morrison and McMurdo JJA agreeing).

Queensland courts sentence by applying an 'instinctive synthesis' approach:

> The task of the sentencer is to take account of *all* of the relevant factors and to arrive at a single result which takes due account of them all. That is what is meant by saying that the task is to arrive at an 'instinctive synthesis'. This expression is used, not as might be supposed, to cloak the task of the sentencer in some mystery, but to make plain that the sentencer is called on to reach a single sentence which … balances many different and conflicting features.[48]

The High Court, in considering the proper approach to sentencing, has recognised 'there is no single correct sentence' and sentencing judges are to be allowed as much flexibility in sentencing as is in keeping with consistency of approach and applicable legislation.[49]

Unless legislation fixes a mandatory penalty (as it does for some assaults of public officers in certain circumstances, see below at section 6.6.4) 'the discretionary nature of the judgment required means that there is no single sentence that is just in all the circumstances'.[50] Sentencing courts have a wide discretion yet must take into account all (and only) relevant considerations including legislation and case law.[51]

The discretion can 'miscarry' when the sentence is clearly unjust[52] — either being 'manifestly excessive' or 'manifestly inadequate'.[53] Such sentences, which an appeal court can set aside, fall 'outside the range of sentences which could have been imposed if proper principles had been applied'.[54]

Consistency in sentencing requires like cases to be treated alike and different cases, differently.[55] Queensland's Court of Appeal has stated '[c]ommunity confidence in the sentencing process depends … on a wide variety of judges imposing sentences which are consistent, and which are formulated by reference to relevant discretionary factors and by having regard to the relevant legislation, comparable sentences, and the guidance of appellate court decisions'.[56]

The administration of criminal justice works as a system, not as a multiplicity of unconnected single instances. It should be systematically fair and involve, among other things, reasonable consistency.[57]

However, if cases show a range of sentences for similar offending that is 'demonstrably contrary to principle', they do not have to be followed in future.[58]

'Consistency' does not require exact replication. The ultimate sentencing discretion lies somewhere between a non-punishment (like an unconditional discharge) and the maximum penalty set in the legislation.[59]

The so-called range is 'merely a summary of the effect of a series of previous decisions'; it reflects Parliament's recognition that 'the range of circumstances surrounding each offence will also be great'.[60] The history of a range of sentences for similar offending does not guarantee the range, including its upper and lower limits, is correct.[61] Previous sentences have been described as a guide only.[62]

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48 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 434 [5] (Kiefel CJ, Bell and Keane JJ) citing *Wong v The Queen* (2001) 207 CLR 584, 611 [75] (Gaudron, Gummow and Hayne JJ) (emphasis in original).

49 *Markarian v The Queen* (2005) 228 CLR 357, 371 [27] (Gleeson CJ, Gummow, Hayne and Callinan JJ).

50 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 434 [7] (Kiefel CJ, Bell and Keane JJ).

51 *Markarian v The Queen* (2005) 228 CLR 357, 371 [27] (Gleeson CJ, Gummow, Hayne and Callinan JJ) and *Barbaro v The Queen* (2014) 253 CLR 58, 70 [25] (French CJ, Hayne, Kiefel and Bell JJ).

52 *House v The King* (1936) 55 CLR 499, 504–5 (Dixon, Evatt and McTiernann JJ).

53 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 434 [7] (Kiefel CJ, Bell and Keane JJ).

54 *Barbaro v The Queen* (2014) 253 CLR 58, 70 [26] (French CJ, Hayne, Kiefel and Bell JJ) (emphasis in original).

55 *R v Pham* (2015) 256 CLR 550, 559 [28] (French CJ, Keane and Nettle JJ), citing *Wong v The Queen* (2001) 207 CLR 584, 591 [6] (Gleeson CJ), 608 [65] (Gaudron, Gummow and Hayne JJ) and *Hili v The Queen* (2010) 242 CLR 520, 535 [49] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

56 *R v Jones* [2011] QCA 147, 8 [27] (Daubney J, Muir and White JJA agreeing).

57 *Wong v The Queen* (2001) 207 CLR 584, 591 [6] (Gleeson CJ).

58 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 445 [50] (Kiefel CJ, Bell and Keane JJ).

59 *R v Streatfield* (1991) 53 A Crim R 320, 325 (Thomas J, Cooper J agreeing).

60 *R v Ryan; Ex parte A-G (Qld)* [1989] 1 Qd R 188, 192 (Dowsett J).

61 *Hili v The Queen* (2010) 242 CLR 520, 537 [54] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ) citing *Director of Public Prosecutions (Cth) v De La Rosa* (2010) 79 NSWLR 1, 70–1 [304] (Simpson J, Matthews J agreeing).

62 *R v Hoerler* (2004) 147 A Crim R 520, 532 [49] (Spigelman CJ), citing *R v Whyte* (2002) 55 NSWLR 252, 278–82 [168]–[189] and *Wong v The Queen* (2001) 207 CLR 584, 591 [6] (Gleeson CJ).

It is 'consistency in the application of relevant legal principles' that is sought, 'not numerical equivalence'.[63] Of more use are cases where the Court of Appeal has 'laid down some relevant principle, delineated the yardsticks for particular offending, or re-sentenced'.[64] In the case of a serious assault upon an 81-year-old woman in her home, the Court of Appeal stated:

> It is impossible not to feel anger towards the [offender] for his treatment of the complainant for our society rightly expects its elderly citizens to be nurtured and treated with respect. Every fair-minded person would inevitably feel sympathy for the elderly complainant who was entitled to enjoy the security of her own home. The emotions naturally aroused in the commission of such offences cannot, however, deflect Judges from sentencing upon established principles.[65]

In another case involving the serious injury of a police officer, the Court noted:

> It is true that a sentence serves to satisfy the legitimate emotional needs of the community, but it can only do so justly when the judge engages in the dispassionate application of legal rules and principles in order to serve those needs. It is therefore necessary to be rigorous in the application of the provisions of the Act that sentencing judges are bound to apply.[66]

Recording sentences for comparison is only useful if the 'unifying principles' revealed by those sentences are explained. The reasons the sentences were fixed as they were must be clear[67] and it is important to properly characterise the offending conduct.[68]

The avoidance of 'unjustifiable discrepancy in sentencing' has been recognised by the High Court as 'a matter of abiding importance to the administration of justice and to the community', so that public confidence in the administration of justice is not eroded.[69]

The emphasis on the particular circumstances of each case must not be lost.

In assessing serious assault sentence appeals, the Court of Appeal has commented that it can be 'more instructive … to look at the precise circumstances of [the] case' than the authorities cited by the parties.[70] The various different subsections and types of conduct covered by section 340 make this especially important. In the 2008 Queensland Court of Appeal decision of *R v Spann*, the Court rejected an argument that there was:

> ordinarily a hierarchy of seriousness as to the three examples of offences dealt with in s 340](1)(b) [assault, resist, obstruct] … each of the offences [then attracted] a maximum penalty of seven years imprisonment and the severity of any particular offending will depend on its facts … the cases cited by both counsel are of limited assistance, given the very differing factual matrix they concern … The offending conduct cannot simply be reduced to an act divorced from the surrounding circumstances.[71]

6.5 The application of general sentencing principles and approaches to sentencing for serious assault

6.5.1 General principles

Serious assault under section 340 of the *Criminal Code* captures a very wide range of conduct. As the broad nature of the relevant offence definitions show, not every assault involves a high level of violence resulting in extreme injuries (or even an injury of any kind), and therefore judicial discretion to sentence on the facts is important. The Court of Appeal recently commented that:

> Serious assault on police is an offence which can occur in circumstances of widely variable levels of criminality, ranging, for example, from physical acts of minor resistance to arrest through to deliberately dangerous, degrading

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63 *Barbaro v The Queen* (2014) 253 CLR 58, 74 [40] (French CJ, Hayne, Kiefel and Bell JJ), citing *Hili v The Queen* (2010) 242 CLR 520, 535 [48]–[49] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

64 *R v Bush (No. 2)* [2018] QCA 46, 12 [76]–[77] (Sofronoff P, Morrison JA and Douglas J).

65 *R v M* [2001] QCA 11, 4 (McMurdo P, Williams JA and Mackenzie J agreeing).

66 *R v Patrick (a pseudonym)* [2020] QCA 51, 9 [42] (Sofronoff P, Fraser JA and Boddice J agreeing).

67 *Wong v The Queen* (2001) 207 CLR 584, 606 [59] as reproduced in *Hili v The Queen* (2010) 242 CLR 520, 537 [55] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

68 *R v Bush (No. 2)* [2018] QCA 46, 12 [77] (Sofronoff P, Morrison JA and Douglas J).

69 *Lowe v The Queen* (1984) 154 CLR 606, 611 (Mason J).

70 *R v Reuben* [2001] QCA 322, 5 (Davies JA, Williams JA and Byrne J agreeing).

71 *R v Spann* [2008] QCA 279, 9 [31]-[32] (Philippides J, Muir and Fraser JJA agreeing.

> or prolonged attacks. For these reasons the range of appropriate sentences for serious assault of police is inevitably very broad.[72]

The Court noted that 'the absence of infliction of actual physical harm is but one feature relevant to an assessment of the inherent seriousness of this category of offending'.[73]

The Council has examined Court of Appeal judgments regarding section 340 sentencing. Examples of issues relevant to assessment of offence seriousness include:

- the extent of the injuries — both physical and psychological (including the anxiety arising from waiting for test results[74] regarding transmittable diseases)[75]
- any impacts on the officer's interaction with family and their professional life[76]
- an application of bodily fluids accompanied by an offender's statement that they carried a disease (an intentional statement to instil fear)[77]
- no expression of regret/apology — alternatively, a positive act in addition to a plea of guilty such as a letter of apology[78]
- prolonged/protracted offence episode or persistent behaviour[79]
- use of a weapon (including driving a motor vehicle in a dangerous manner).[80]

It is important to note that the weight given to each issue, if and when it arises, will differ according to the particular circumstances of each individual case. None of these issues is unique to serious assaults.

As noted above, courts must consider all relevant mitigating and aggravating circumstances, whether recorded in an offence provision or not.[81] This is a restatement of the pre-existing common law and reflects long-standing sentencing practice prior to the PSA coming into effect.

A recent example is *R v Patrick (a pseudonym),*[82] in which the Attorney-General successfully appealed against a sentence on the basis that it was manifestly inadequate. The head sentence was increased significantly, from

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72 *R v Cooney* [2019] QCA 166, 9 [46] (Henry J, Gotterson JA and Bradley J agreeing).

73 Ibid 9 [49] (Henry J, Gotterson JA and Bradley J agreeing).

74 In terms of the objective statistical risk of disease transmission weighed against the subjective concern in a complainant's mind, see *R v Kalinin* [1998] QCA 261, 5 (Derrington J) discussed in the context of disease test orders in Chapter 9, section 9.2.3.

75 *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221 [36]–[37] (McMurdo P (Fraser and Gotterson JJA agreeing); *R v Cooney* [2019] QCA 166, 9 [42] (Henry J, Gotterson JA and Bradley J agreeing); *R v Craigie* [2014] QCA 1, 8 [22] (McMeekin J); *R v Ganeshalingham* [2018] QCA 34, 6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v MCL* [2017] QCA 114, 4 [8] (Fraser JA, McMurdo JA and Mullins J agreeing) (the Court was willing to infer, absent a victim impact statement, an officer 'went through a period of significant distress' awaiting medical results); *R v Mitchell* [2010] QCA 20, 5 [16] (Muir JA, McMurdo P and Fraser JA agreeing), *R v Murray* (2014) 245 A Crim R 37, 42 [15] (Fraser JA, Gotterson and Morrison JJA agreeing).

76 *R v Barry* [2007] QCA 48, 5 [15] (Jerrard JA, de Jersey CJ and Holmes JA agreeing); *R v Benson* [2014] QCA 188, 7 [31] (Morrison JA, Fraser JA and Philippides J agreeing).

77 *R v Barber* [1997] QCA 282, 5 (Williams JA, Davies and McPherson JJA agreeing); *R v Barry* [2007] QCA 48, 5 [15] (Jerrard JA, de Jersey CJ and Holmes JA agreeing); *R v Benson* [1994] QCA 394 3–4 (McPherson JA, Pincus JA and Mackenzie J agreeing); *R v Benson* [2014] QCA 188, 7 [31] (Morrison JA, Fraser JA and Philippides J agreeing); *R v Kalinin* [1998] QCA 261, 4 (Derrington J, de Jersey CJ agreeing): 'The use … of his infection as a weapon to cause added fear and distress to the victims of his assaults in this way is a seriously aggravating feature of his conduct. Knowing of his capacity to infect others by these means, he behaved with reckless malice and if he had in fact infected anyone in this transaction, he would have been imprisoned for a long time indeed'.

78 *McDermott v Jones* [1992] QCA 260, 3 (Lee J, Fitzgerald P and Davies JA agreeing); *R v Barry* [2007] QCA 48, 5 [15] (Jerrard JA, de Jersey CJ and Holmes JA agreeing); *R v Hamilton* [2006] QCA 122, 3 [10] (Fryberg J, Jerrard JA and Douglas J agreeing); *R v King* (2008) 179 A Crim R 600, 602 [11] (de Jersey CJ, Keane and Holmes JJA agreeing) (also communicating the fact the offender had no disease); *R v Laskus* [1996] QCA 120, 4 (Macrossan CJ, Shepherdson J agreeing); *R v McLean* (2011) 212 A Crim R 199, 209 [31] (White JA, Fraser JA and Philippides J agreeing).

79 *R v Marshall* [2001] QCA 372, 6 (Davies JA, Williams JA and Wilson J agreeing); *R v Taylor* [2004] QCA 447, 5 (Mackenzie J, McMurdo P and Williams JA agreeing); *R v Mulholland* [2001] QCA 480, 8 (Mackenzie J).

80 *R v Marshall* [1993] 2 Qd R 307; *R v Marshall* [2001] QCA 372, 4 (Davies JA, Williams JA and Wilson J agreeing); *R v McCoy* [2015] QCA 48, 5 [11] (Margaret McMurdo P, Holmes JA and Jackson J agreeing); *R v Mulholland* [2001] QCA 480, 8 (de Jersey CJ, Mackenzie and Chesterman JJ agreeing); *R v Packwood* [2006] QCA 369, 9 (Atkinson J, Holmes JA and Jones J agreeing).

81 *Penalties and Sentences Act 1992* (Qld) s 9(2)(g).

82 [2020] QCA 51.

3 years to 5 — on the basis of two key aggravating factors that the court applied weight to in the exercise of its own discretion.

A child (aged 15 and 16 when he offended) pleaded guilty to (among others) malicious acts (s 317) against a police officer causing GBH with intent to resist or prevent lawful arrest. This offence carries a maximum penalty of life imprisonment for adults (which, subject to certain other statutory criteria, remains open to courts sentencing children for this offence, although in this case 10 years was the relevant applicable maximum).[83]

The key to the appeal succeeding related to the police officer's role and physical harm caused:

> The two prominent facts that aggravate the gravity of the offending in this case are, first, that grievous bodily harm was done to a police officer in order to evade arrest and, second, that the grievous bodily harm that was actually inflicted upon [the officer] was permanent and was so severe. The other objective facts are in this case also matters in aggravation of sentence. The car that Patrick drove into [the officer] was a stolen car and he was then on bail for burglary and robbery. After injuring his victim, Patrick left him on the roadway and fled, later falsely denying responsibility. However, the first two facts to which I have referred are the crucial ones.
>
> I would accept the Attorney-General's submission that the seriousness of the facts that the victim was a police officer and that the offence was committed to stop him doing his duty were not given due recognition so that the discretion miscarried.[84]

The Court of Appeal has made repeated statements about general sentencing principles regarding violence against police and public officers.[85]

In 1992, before the PSA was even enacted[86] and long before the 1997, 2012 and 2014 penalty amendments to section 340 of the *Criminal Code*, the Court denounced spitting on police as 'especially an aggravating feature' on which it took 'an extremely serious view'. There was a 'need, always, for an appropriate deterrent to uphold the authority of the legal processes and the execution of police duties'.[87] This was a view held by the Court of Appeal 'and its predecessor'.[88]

The Court reaffirmed this in 1997, noting that maintaining social order depends on adequately protecting those charged with enforcing it to the greatest extent possible:

> It is not fair to them that they should be exposed to assaults of this kind, nor is it in the best interest of the community, either the particular community in question or the broader community, that they should be so exposed … It is also … important that the sentence not appear to be merely a nominal one.[89]

There follows a long line of approval for, and repeat of, such sentiments, noting the need for:

- deterrence and denunciation as primary sentencing considerations (although the need for this can be 'significantly reduced' in appropriate, unusual circumstances);[90]
- need for a salutary penalty (which depends on the specific facts and is not inevitably imprisonment, including where the maximum penalty is 14 years' imprisonment under s 340);[91]

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83 See *Youth Justice Act 1992* (Qld) s 176(3), noted by Sofronoff P in *R v Patrick (a pseudonym)* [2020] QCA 51, 9 [35]–[37] and see the discussion regarding sentencing child offenders below at 6.7).

84 Ibid 8–9 [33]–[34].

85 The Court of Appeal decides serious assault cases as and when such cases are presented to it; it is not a function of courts to proactively issue statements or comment.

86 *Penalties and Sentences Act 1992* (Qld) s 9 commenced 27 November 1992 (SL 377 of 1992).

87 *R v Miekle* [1992] QCA 250, 4 (Macrossan CJ, McPherson and Davies JJA agreeing).

88 *R v Benson* [1994] QCA 394, 4 (McPherson JA, Pincus JA and Mackenzie J agreeing). The Court of Appeal was created as a separate division of the Supreme Court of Queensland in 1991 by the *Supreme Court of Queensland Act 1991* (Qld). 'Until then, Queensland's appellate courts were the Full Court of the Supreme Court in civil matters and the Court of Criminal Appeal in criminal matters, with Supreme Court judges sitting on both courts in rotation': Justice Margaret McMurdo AC, 'The Queensland Court of Appeal: The first 25 years' (Lecture, Australian Academy of Law 2016 Queensland Lecture) 1.

89 *R v Williams* [1997] QCA 476, 6–7 (Dowsett J, McPherson JA and Thomas J agreeing) cited in *R v Kazakoff* [1998] QCA 459, 6 (Ambrose J, McPherson JA and Byrne J agreeing), which also cited *R v Howard* (1968) 2 NSWR 429.

90 *R v Ganeshalingham* [2018] QCA 34, 5, 6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v Whiting* [2009] QCA 338, 3 [15] (Keane JA, Holmes JA and McMeekin J agreeing).

91 See, for example: *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221 [35] and 222 [40] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v Ganeshalingham* [2018] QCA 34, 5–6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing) and 603 [16] (Holmes JA); *R v MCL* [2017] QCA 114, 6 [16] Fraser JA, McMurdo JA and Mullins J agreeing); *R v Reuben* [2001] QCA 322, 5 (Davies JA, Williams JA and Byrne J agreeing).

- protection of police officers and their authority; and
- community support for them.[92]

The Court of Appeal has also made similar comments in relation to railway guards,[93] court clerks,[94] corrections officers (highlighting the importance of maintaining discipline in correctional centres)[95] and local council officers.[96] It has also made similar comments in respect of persons not protected by section 340, but who are covered (as ordinary members of the community are) by the other general offence provisions of the *Criminal Code*. Examples of taxi drivers, service station attendants and convenience or takeaway store staff are discussed in Chapter 10.

While imprisonment is not inevitable (in the absence of legislation compelling it), the Court of Appeal has noted it is very much open (and as discussed above, is a common sentencing outcome). In one case involving spitting blood and phlegm into a police officer's face and mouth, the Court stated:

> One begins with the proposition that those who treat a police officer in this way should ordinarily expect to be imprisoned, meaning actual imprisonment. Police officers carry out duties which are usually onerous and often dangerous. It is abhorrent that a police officer responsibly going about his or her business be subject to the indignity and risk of being spat upon. The risk in contemporary society relates obviously to communicable disease. Related to the indignity is the display of contempt for civil authority which will often be involved in these incidents. An appropriate level of deterrence will in such cases usually be secured only through actual imprisonment of the offender.[97]
>
> … Even allowing for the serious and disgusting nature of the offence, the effrontery of its being committed against a police officer and the consequent need for serious deterrence, the question arises whether in selecting [a particular period of time as a head sentence in that case], the judge started from too high a level of penalty. Reference to some previous decisions suggests that he did.[98]
>
> … In cases like this, it is often the fact of imprisonment rather than the particular duration of the term imposed which secures the necessary deterrence. In light of the cases to which I have referred I consider the penalty imposed on the applicant was manifestly excessive and should be reduced. The early pleas of guilty, the early written apology with the assurance of no communicable disease, the applicant's previously unblemished character, and his state of depression at the time,[99] combine to warrant significant mitigation in this particular case.[100]

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92 *R v Wotton & Bourne; Ex parte Attorney-General (Qld)* [1999] QCA 382, 4–5 (Chesterman J), citing *R v Howard* (1968) 2 NSWR 429, 430 and *R v Williams* [1997] QCA 385; *R v Marshall* [2001] QCA 372, 5 (Davies JA, Williams JA and Wilson J agreeing); *R v Reuben* [2001] QCA 322, 7 (Davies JA, Williams JA and Byrne J agreeing); *R v Bidmade* [2003] QCA 422, 3 [9] (Muir J); *R v Braithwaite* [2004] QCA 82, 5 [19] (Jerrard JA, McMurdo P and Philippides J agreeing), *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing) (cited in *Braithwaite* and *Devlyn*); *R v Conway* [2005] QCA 194, 17 [54] (McMurdo P, Atkinson and Mullins JJ agreeing) (cited in *Mathieson*); *R v Mathieson* [2005] QCA 313, 3 [9] (McPherson JA, Jerrard JA agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing); *R v Devlyn* [2014] QCA 96, 8 [32] (Ann Lyons J, Holmes and Morrison JJA agreeing).

93 *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing): 'But the role of a guard on the railways is not all that different [to a police officer]. Part of a guard's responsibility is to ensure the safety of the travelling public and it is their duty to confront anyone who is perceived to be a threat to the safety of the travelling public. Attacks on such officials, particularly cowardly attacks by groups of drunken youths, must be severely punished. In a number of recent cases this court has indicated that stern penalties should be imposed for serious violent offences committed upon innocent people in public places. That principle applies with equal force to attacks on people such as the complainants in these cases.'

94 *R v McKinnon* [2006] QCA 16, 4–5 (McMurdo P, McPherson JA and Muir J agreeing).

95 *R v Hope* [1993] QCA 299, 4–5 (Fitzgerald P, Davies JA and Moynihan SJA).

96 *R v Ketchup* [2003] QCA 327, 1 [3] (Williams JA, Davies JA agreeing).

97 *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing). Note Holmes JA also stated that imprisonment is not inevitable (603 [16]). See also *R v Reuben* [2001] QCA 322, 5–7 (Davies JA, Williams JA and Byrne J agreeing) and *R v Williams* [1997] QCA 476, 6 (Dowsett J, McPherson JA and Thomas J agreeing). *King* and *Reuben* were more recently referred to with approval in *R v MCL* [2017] QCA 114, 6 [16] (Fraser JA, McMurdo JA and Mullins J agreeing): 'Consistently with that very severe maximum penalty [14 years' imprisonment], although each case involves an exercise of the sentencing discretion in light of all of the relevant evidence in the case and there is no rule that offenders who assault police officers acting in the course of their duties in a way that attracts that penalty must be sentenced to imprisonment, in the ordinary course offenders who spit upon police officers or break the skin by premeditated biting can expect to be sentenced to a term of imprisonment involving a period of actual custody'.

98 *R v King* (2008) 179 A Crim R 600, 602 [7] (de Jersey CJ, Keane and Holmes JJA agreeing).

99 The offender was 'suffering from what the psychiatrist … terms a "pathological bereavement disorder" following a family tragedy': Ibid 601 [4]. See the discussion of mental illness in this chapter.

100 Ibid 602 [11] (de Jersey CJ, Keane and Holmes JJA agreeing). Noted with approval in *R v Murray* (2014) 245 A Crim R 37, 45 [24] (Fraser JA, Gotterson and Morrison JJA agreeing).

In 2019, the Court of Appeal discussed how legislative amendment made by Parliament can give effect to community expectations regarding sentencing:

> Public clamour about a particular case has to be ignored by a sentencing judge because it is not a reliable indicator of legitimate public expectations of the system of justice or of anything else relevant to sentencing. But community attitudes, standards and expectations are things that a sentencing judge must somehow take into account because, in general, sentences are supposed to reflect a community's values. That is one reason why "denunciation" is a factor in sentencing.
>
> … One source from which judges might discern *legitimate* community expectations is from the content of statutes that change the law governing offences and their penalties.[101]

6.5.2 Relevance of changes to maximum penalties

The Court of Appeal has consistently noted changes in maximum penalties for serious assault as amended by Parliament over time, and commented on how this impacts on sentencing:

- The maximum penalty is one of the many factors a sentencing judge is obliged to take into account and balance with all other relevant factors.[102]
- The 14-year maximum for some section 340 offences is 'very severe'.[103]
- The 'legislature … clearly intended that courts should impose significantly heavier penalties' for serious assaults against police in those aggravated circumstances.[104]
- Increases in maximum penalty can be expected to produce a general increase in severity of sentences, rendering earlier cases of limited utility as comparable sentencing decisions. There should not necessarily be proportionate increases in sentences.[105] Nor does it mean all offences committed after the increase should attract a higher penalty than they previously would have.[106]
- Doubling of the maximum penalty will not necessarily result in a doubling of sentences at all levels.[107] It 'underscore[s] the seriousness' of such assaults.[108]

The sentencing trends for serious assault following the 2012 and 2014 amendments, which introduced statutory circumstances of aggravation carrying a higher 14-year maximum penalty, are discussed in the next chapter of this report.

6.5.3 The impact of offender mental illness and intoxication on sentencing

As highlighted in Chapter 4 of this report, it is not uncommon for assaults on public officers to be committed by offenders with entrenched and serious mental disorders. The literature review undertaken by the Griffith Criminology Institute reported that assaults of public officers across a number of sectors are more likely with offenders who have

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101 *R v O'Sullivan; Ex parte Attorney-General (Qld)* [2019] QCA 300, 28 [101 and 29 [104] (Sofronoff P, Gotterson JA and Lyons SJA) (emphasis in original).

102 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing) and *R v MCL* [2017] QCA 114, 6 [16] (Fraser JA, McMurdo JA and Mullins J agreeing), both judgments citing the High Court's judgment in *Markarian v The Queen* (2005) 228 CLR 357, [31].

103 *R v MCL* [2017] QCA 114, 6 [16] (Fraser JA, McMurdo JA and Mullins J agreeing).

104 *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221 [35] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v Benson* [2014] QCA 188, 9 [36] (Morrison JA, Fraser JA and Philippides J agreeing).

105 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing), citing *R v Benson* [2014] QCA 188, [36] (Morrison JA) and *R v CBI* [2013] QCA 186, 7 [19] (Fraser JA, Gotterson JA and Mullins J agreeing) (which was a case about increases in maximums for sexual offences). *Murray* was a case post the 14-year maximum introduction. See also at 45 [23], where the Court wrote: 'the applicant's sentence is so far out of kilter with the sentences in those cases, even when the fullest possible allowance is made for the increase in the maximum penalty, as to indicate that the sentencing judge must have erred … That indication is confirmed by reference to the circumstances of this particular offence and the applicant's personal circumstances. Both the head sentence of 15 months' imprisonment and the period before release on parole of five months in custody for this 19-year-old mother of a one-year old baby are manifestly excessive'. See also *R v Brown* [2013] QCA 185, 6 [18] (Holmes JA, Fraser JA and North J agreeing); *R v Holden* [2006] QCA 416, 5 (Holmes JA, McMurdo P, and Fryberg J agreeing); and *R v Kalinin* [1998] QCA 261, 9 (Derrington J).

106 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing), citing *R v Samad* [2012] QCA 63, [30] (Wilson AJA).

107 Ibid citing *R v SAH* [2004] QCA 329, [12]–[13].

108 *R v Roberts* [2017] QCA 256, 9 [30] (Fraser JA, Philippides JA and Douglas J agreeing).

poor mental health.[109] As part of its sentencing remarks analysis, the Council found that in over a third of cases of serious assaults, the sentencing judge directly referred to the fact the offender had a mental illness. The presence of mental disorders was even more common in the case of non-Indigenous women, with 58.2 per cent of cases referring to their presence.

Officers may be required to engage with such people to address their risk to the wider public, or to prevent such people from harming themselves (or both).[110] The Court of Appeal has commented:

> It is, of course, distressing to find someone who, possibly through no reason of their own, becomes involved in offences of this kind. Mental impairment or psychiatric problems have always been circumstances that are taken into account in the course of sentencing. However, they are not ordinarily such as to excuse a person entirely from the penal consequences of what they have done.[111]

> It is well established that an offender's mental disorder, short of insanity, may lessen moral culpability and so lessen the claims of general or personal deterrence upon sentencing.[112]

In an appropriate case, this can even eliminate such claims.[113] In one example, the Court of Appeal noted that:

> in cases under s 340(2AA) it can be a mitigating factor of great force, depending on the particular offender's idiosyncratic circumstances, that an assault was prompted by an extreme state of distress or by a real psychological disturbance … In this case, [the offender's] history of torture, imprisonment, exposure to danger, flight, dislocation, isolation from family, friends and his native land, mental illness and his suicide attempt constitute very weighty matters for consideration. In addition, the motivation for the assault he committed is lacking in the moral blameworthiness that exists in the usual cases …[114]

Assaults on public officers also commonly involve an offender who is under the influence of alcohol and/or other drugs. The literature review commissioned by the Council found that assaults on public officers commonly involved offenders who had substance misuse problems, at least in the healthcare sector. The Council's sentencing remarks analysis found that half of women, and one-third of Aboriginal and Torres Strait Islander men in the cases examined were under the influence of alcohol or other drugs at the time of the offence. This was less common in the case of non-Indigenous men.

Where voluntary intoxication has substantially contributed to the offending, this cannot be taken into account by way of mitigation of the sentence.[115] In this case, weight can be placed 'upon the factors that the sentence imposed should both deter the applicant and deter others from committing the same kind of offence'.[116]

6.5.4 The impact of childhood trauma and disadvantage: *Bugmy v The Queen*

Bugmy v The Queen,[117] an important High Court case originating from NSW (involving offences analogous to Queensland provisions), explains how someone's disadvantage and trauma in life is always relevant to sentence. It also serves as an example of how the same physical actions can be charged as different offences, due to the variation in the level of harm caused.

The offender in that case was a 29-year-old Aboriginal man who had an extremely traumatic and disadvantaged upbringing in a remote community. He was a remand prisoner charged with three counts of assault police, two of resisting an officer in the execution of his duty, escape from police custody, intimidate police and causing malicious damage by fire, for which he was later sentenced separately.[118] A report from a forensic psychiatrist noted that he had 'very negative attitudes towards authority figures, particularly police and I suspect also prison officers. There may be some family "cultural issues" which are also relevant to his negative views'.[119]

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109 It should be noted that the views contained in the literature review are those of the authors and not necessarily those of the Council.

110 For instance, in *R v MCL* [2017] QCA 114, 6 [16], police officers were assaulted when trying to stop an intoxicated and mentally ill person from climbing out of an elevated window at a drug rehabilitation centre.

111 *R v Benson* [1994] QCA 394, 5 (McPherson JA, Pincus JA and Mackenzie J agreeing).

112 *R v Ganeshalingham* [2018] QCA 34, 7 (Sofronoff P, Philippides JA and Boddice J agreeing), referring to *Goodger* [2009] QCA 377, [21] (Keane J) and *Neumann* [2007] 1 Qd R 53.

113 *R v MCL* [2017] QCA 114, 6 [15] (Fraser JA, McMurdo JA and Mullins J agreeing), referring to *R v Bowley* [2016] QCA 254, [34] as summarising the relevant law).

114 *R v Ganeshalingham* [2018] QCA 34, 7–8 (Sofronoff P, Philippides JA and Boddice J agreeing).

115 *Penalties and Sentences Act 1992* (Qld) s 9(9A).

116 *R v MCL* [2017] QCA 114, 6 [15] (Fraser JA, McMurdo JA and Mullins J agreeing).

117 (2013) 249 CLR 571.

118 As explained in *R v Bugmy* [2012] NSWCCA 223, 4–5 [5], 7 [15].

119 Ibid 9 [23].

While on remand, he became upset that visitors might not arrive at the correctional centre before the close of visiting hours. This led to an incident where he threw balls from a pool table at two correctional officers, missing them, giving rise to two charges of assaulting a correctional officer acting in the execution of duty (maximum penalty 5 years' imprisonment).[120]

He had made two verbal threats to physically harm a third officer. When that officer appeared, he made another threat and then threw two pool balls, which struck the officer's back, and a third ball, which struck his eye. Despite a series of surgeries, the officer was left blind in that eye, suffered great physical pain and profound psychological effects including loss of enjoyment of life and career prospects.[121] This gave rise to a much more serious charge of causing grievous bodily harm with intent (maximum penalty 25 years' imprisonment).[122]

The High Court stated that:

> The experience of growing up in an environment surrounded by alcohol abuse and violence may leave its mark on a person throughout life. Among other things, a background of that kind may compromise the person's capacity to mature and to learn from experience. It is a feature of the person's make-up and remains relevant to the determination of the appropriate sentence, notwithstanding that the person has a long history of offending.[123]
>
> Because the effects of profound childhood deprivation do not diminish with the passage of time and repeated offending, it is right to speak of giving "full weight" to an offender's deprived background in every sentencing decision … Giving weight to the conflicting purposes of punishment is what makes the exercise of the discretion so difficult. An offender's childhood exposure to extreme violence and alcohol abuse may explain the offender's recourse to violence when frustrated such that the offender's moral culpability for the inability to control that impulse may be substantially reduced. However, the inability to control the violent response to frustration may increase the importance of protecting the community from the offender.[124]

The High Court noted that 'consideration of the objective seriousness of the offence must take account of the fact that this was an offence committed by a prisoner against an officer in a prison'.[125] One of the issues to be balanced was whether Mr Bugmy's 'background of profound childhood deprivation allowed the weight that would ordinarily be given to personal and general deterrence to be moderated in favour of other purposes of punishment, including rehabilitation'.[126]

The High Court dealt with specific legal issues on appeal, but remitted sentencing to the NSW Court of Criminal Appeal. This involved the application of NSW sentencing laws and principles. That court found that the sentence imposed was manifestly inadequate.[127] Bathurst CJ wrote that:

> It was a serious assault done with intent to cause grievous bodily harm to a law enforcement officer going about his duties. The assault was unprovoked and had tragic consequences for the victim. Further, although it could not be described as premeditated, it was a culmination of a course of conduct which indicated a clear intention to inflict serious harm.[128]
>
> … It is of course necessary to take the respondent's subjective circumstances into account. Further, weight must be given to the respondent's deprived background, taking into account, while his inability to control his violent approach to frustration reduces his moral culpability, it also emphasises the need to take into account the protection of the community and the need for personal deterrence … In this regard the respondent's lengthy criminal record for violent offences is particularly relevant.[129]

Rothman J also noted that 'this offence is an extremely serious one and the injury inflicted debilitating. Ordinarily, that conclusion would be sufficient to interfere with the sentence imposed'.[130]

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120 *Crimes Act 1900* (NSW) s 60A(1). See *Bugmy v The Queen* (2013) 249 CLR 571, 582 [1], 583 [9], 585 [14].

121 *Bugmy v The Queen* (2013) 249 CLR 571, 583–4 [9]–[11], 585 [14].

122 *Crimes Act 1900* (NSW) s 33(1)(b). A similar charge in Queensland's *Criminal Code* (Qld) s 317, carries a maximum of life imprisonment.

123 *Bugmy v The Queen* (2013) 249 CLR 571, 594–5 [43] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ) (citations omitted).

124 Ibid 595 [44] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ)

125 Ibid 595 [46] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

126 Ibid 596 [46] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

127 *R v Bugmy (No 2)* [2014] 247 A Crim R 556, 559 [11]–[14], 560 [17] (Bathurst CJ, RA Hulme J agreeing), 570 [99] (Rothman J, RA Hulme J agreeing).

128 Ibid 559 [14] (Bathurst CJ, RA Hulme J agreeing).

129 Ibid 559–60 [16] (Bathurst CJ, RA Hulme J agreeing) (citations omitted).

130 Ibid 570 [99] (Rothman J, RA Hulme J agreeing).

Yet the NSW Court of Criminal Appeal did not increase the sentence because of its 'residual discretion decline to resentence' on Crown appeals (the prosecution had appealed against Mr Bugmy's sentence).[131] Reasons for doing so in this case were the significant delay in court proceedings, which was not Mr Bugmy's fault,[132] his approaching parole eligibility date by the time of the Court's decision,[133] and significant alterations in the Crown's submissions in various court proceedings.[134]

Rothman J made the following comments regarding dispossession:

> The fact, if it be the fact, that dispossession is a disadvantage suffered uniquely by persons of Aboriginal descent in Australia cannot, without more, be a matter relevant to sentencing. Sentencing synthesises the issues of objective seriousness and the issues of relevance in the subjective circumstances of the offender.
>
> There can be no doubt that Aborigines were dispossessed (see *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1). But others may have been dispossessed from other lands and now live in Australia.
>
> Relevant to sentencing is the effect of any issues or disadvantage on the offender, not its uniqueness. Nothing is before the Court that, in my view, would allow it, in these proceedings, to accept that dispossession, of itself, has had an effect on Mr Bugmy's offending. It is just as illogical to take account of a unique disadvantage solely on that basis as it is to refuse to take account of a relevant disadvantage simply because it is unique.
>
> There may be material which would, in other circumstances, allow for the proposition that other disadvantages have been suffered, which are relevant to Mr Bugmy's moral culpability and his inability to control violent impulses: see *R v Lewis* [2014] NSWSC 1127 at [39]–[43]. However, no such issues of mitigation have been the subject of evidence or detailed submissions before the Court.
>
> Ultimately, the issue in the proceedings rests upon the assessment of this Court as to the range of sentences available to the sentencing judge and whether the sentence imposed is outside that range.[135]

Mr Bugmy was also later ordered to be subject to a high-risk violent offender extended supervision order under the *Crimes (High Risk Offenders) Act 2006* (NSW), which was extended to operate for approximately two years and two months after his sentence had expired. This would involve 'supervision and support in the community that will be provided by the Department under the management plan which will incorporate these conditions, in cooperation with other community-based services, will operate to ameliorate the assessed risk of Mr Bugmy committing an offence of serious violence'.[136]

Expert evidence disclosed the 'contextual, pathological and chronic triggers to the violent criminal conduct of offenders generally and those triggers which are personal to Mr Bugmy given his mental health (including the neurological deficits from which he suffers as a result of an acquired brain injury), his history of poly-substance abuse and the long history of his involvement with the criminal justice system'.[137] Reference was made to his extensive criminal record from the age of 12 (he was then aged 34), being sentenced to imprisonment on 23 separate occasions:

> Many of the offences of violence were committed against police, frequently in the course of affecting his arrest or the arrest of a family member, or against other authority figures … The longest period he has spent in the community as an adult is just under 2 years when he was 20 to 21 … the total period he has spent in the community as an adult is 3 years and 4 months.[138]

He had a history of drug and alcohol dependence and hospitalisation for head injuries, and his childhood was further marred by 'significant and persistent' domestic violence.[139]

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131 Ibid 559 [11], 560 [22] (Bathurst CJ, RA Hulme J agreeing), 565 [65] (Rothman J, RA Hulme J agreeing).

132 Ibid 560 [19] (Bathurst CJ, RA Hulme J agreeing), 570 [101] (Rothman J, RA Hulme J agreeing).

133 Ibid 560 [20] (Bathurst CJ, RA Hulme J agreeing).

134 Ibid 570 [102], [104] (Rothman J, RA Hulme J agreeing).

135 Ibid 564 [94]–[98] (Rothman J, RA Hulme J agreeing). For similar analysis by the Queensland Court of Appeal, see *R v McLean* (2011) 212 A Crim R 199, 205–6 [20]–[22] (White JA, Fraser JA and Philippides J agreeing).

136 *State of New South Wales v Bugmy* [2017] NSWSC 855 [1], [101]–[102] (Fullerton J). See also *State of New South Wales v Bugmy (Preliminary)* [2017] NSWSC 333.

137 *State of New South Wales v Bugmy* [2017] NSWSC 855 [36] (Fullerton J).

138 Ibid [3]–[4].

139 Ibid [9], [45]–[46]. This history was also noted in the High Court judgment: *Bugmy v The Queen* (2013) 249 CLR 571, 584 [12]–[13].

6.6 The orders courts can make when sentencing for assaults on public officers

Except where mandatory sentencing applies, there are a wide range of sentencing options open to courts when sentencing offenders for assaults against public officers. Penalties available to Queensland courts sentencing for Queensland offences are:

- non-custodial options such as fines, good behaviour bonds and community-based orders such as community service and probation;
- various forms of custodial penalties.

The Council's analysis of sentencing outcomes shows that, particularly in the case of aggravated serious assaults, a custodial sentence is the most common penalty type imposed by courts, with imprisonment being the most commonly used form of custodial penalty.

While the use of custodial sentences for assault offences under the *Corrective Services Act 2006* (Qld) (CSA) is also very common, non-custodial sentences are more likely to be imposed in the case of offences charged under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA).

Different forms of custodial and non-custodial penalties are discussed below.

6.6.1 Custodial penalties

Custodial penalties can involve a combined prison and probation order, a term of imprisonment with parole, or a suspended sentence of imprisonment (either wholly or partially).

Imprisonment with parole

As discussed above, imprisonment is the most common custodial penalty imposed on offenders sentenced for serious assaults on public officers, as well as assaults under the CSA.

The total sentence imposed is called a 'head sentence'.

Most offenders will be released on parole, become eligible to apply for parole, or be released on a suspended sentence before the entire period of their head sentence is served.

Parole is the supervised release of a prisoner to serve all or the remainder of their term of imprisonment in the community, subject to conditions and supervision. Consequences for non-compliance include return to prison.[140] A prisoner released on parole is still serving their sentence.[141]

The sole purpose of parole is:

> to reintegrate a prisoner into the community before the end of a prison sentence *to decrease the chance that the prisoner will ever reoffend*. Its only rationale is to keep the community safe from crime. If it were safer, in terms of likely reoffending, for prisoners to serve the whole sentence in prison, then there would be no parole.[142]

The ministerial guidelines that set out the criteria for the Parole Board to use when considering applications provide that the overriding consideration for the board's decision-making process is community safety.[143]

If a court decides to sentence an offender to imprisonment with parole, one of two methods will be used.[144]

1. If the head sentence is 3 years or less (and not a sexual or serious violent offence or the offender is otherwise ineligible, such as if a court ordered parole order has been cancelled during their period of imprisonment) the court *must* set a parole release date.[145] The offender will be released to parole on that date and remain under supervision until the head sentence expires. The court may fix any day of the offender's sentence as their parole release date, including the day of sentence or the last day of the

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140 See <https://www.qld.gov.au/law/sentencing-prisons-and-probation/sentencing-probation-and-parole/applying-for-parole>.

141 *Corrective Services Act 2006* (Qld) s 214.

142 Queensland Parole System Review, *Queensland Parole System Review Final Report* (2016) 1 [3] (emphasis in original).

143 Mark Ryan MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services, *Ministerial Guidelines to Parole Board Queensland*, 3 July 2017, 2 [1.2]–[1.3].

144 The relevant provisions regarding parole are in the *Penalties and Sentences Act 1992* (Qld) Part 9, Division 3.

145 *Penalties and Sentences Act 1992* (Qld) s 160B.

sentence.[146] This means offenders may be subject to immediate release on parole on the day of sentence, have to serve part of their sentence prior to release, or have to serve their full sentence in prison.

2. The other form of release on parole is a parole eligibility date, which the sentencing court sets. The offender will then be eligible for parole from that date but must apply to the Parole Board Queensland for release on parole. The actual date of their release is at the discretion of the Parole Board and can vary greatly depending on the circumstances of the case and of the offender. In some cases, offenders serve their full head sentence.

If a person fails to comply with the conditions of their parole order, they can have their parole order amended, suspended or cancelled.[147]

Judicial discretion in setting sentences of imprisonment with parole requires flexibility. The Court of Appeal recently observed:

> Because of the many different kinds of offences, the infinite kinds of circumstances surrounding the commission of offences and the limitless kinds of offenders, both the discretion as to length of imprisonment and as to the fixing of a parole date cannot possibly be circumscribed by judge-made rules so as to preclude consideration of whatever relevant factors might arise in a particular case. It may be common to impose a head sentence by having regard mostly to the circumstances surrounding the commission of the offence and to fix the actual period of custody by reference to an offender's personal circumstances. But there is no rule of law that requires that to be done in every case. In the absence of a statute that prescribes the way in which an offender should be punished, sentencing judges have always regarded all of the elements of a sentence to be flexible. They will continue to do so in order to arrive at a just sentence in all the circumstances.[148]

There is a general proposition that, where a sentence of imprisonment does not involve immediate release, a suspension or parole release or eligibility date will often be set at the one-third mark of the head sentence for an offender who enters an early guilty plea accompanied by genuine remorse.[149] For sentences involving parole eligibility, if a court makes no express order, the eligibility date is generally the day after reaching 50 per cent of the period of imprisonment.[150] This is commonly applied to offenders who have been convicted after a trial.

However, in circumstances in which the court determines it appropriate for the offender to be declared convicted of a serious violent offence (SVO), an offender must serve 80 per cent of their sentence before being eligible for parole even if they have entered a guilty plea.[151]

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146 Ibid s 160G.

147 *Corrective Services Act 2006* (Qld) s 205.

148 *R v Randall* [2019] QCA 25, 8 [38] (Sofronoff P and Morrison JA and Burns J). See also *R v Fischer* [2020] QCA 66, 4–5 (Sofronoff P, Boddice and Williams JJA agreeing).

149 Absent a mandatory sentence, it is common for an offender who enters an early guilty plea, accompanied by genuine remorse, to have a parole eligibility date or release date, or suspension of their sentence, set after serving one-third of the head sentence in custody: See *R v Crouch* [2016] QCA 81, 8 [29] (McMurdo P, Gotterson JA and Burns J agreeing); *R v Tran; Ex parte A-G (Qld)* [2018] QCA 22, 6–7 [42]–[44] (Boddice J, Philippides and McMurdo JA agreeing); *R v Rooney* [2016] QCA 48, 6 [16]–[17] (Fraser JA, Gotterson JA and McMeekin J agreeing) and *R v McDougall* [2007] 2 Qd R 87, 97 [20] (Jerrard, Keane and Holmes JJA). More recent judgments stress that 'as a matter of principle, the just and appropriate sentence including the proportion which the period to be served in prison bears to the whole term, is to be fixed with reference to all of the circumstances of the particular case, rather than by the application of some rule of thumb in a way that would unduly confine a sentencing judge's discretion': *R v Dinh* [2019] QCA 231, 5 (Fraser JA, McMurdo JA and Henry J agreeing). Further, 'the discretion to fix a parole eligibility date is unfettered and the significance of a guilty plea for the exercise of that discretion will vary from case to case. Consequently, there can be no mathematical approach to fixing such a date': *R v Randall* [2019] QCA 25, 9 [43] (Sofronoff P and Morrison JA and Burns J).

150 *Corrective Services Act 2006* (Qld) s 184(2).

151 *Penalties and Sentences Act 1992* (Qld) Part 9A. For an explanation of the serious violent offence provisions, see Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (December 2019) 25 <https://www.sentencingcouncil.qld.gov.au/education-and-resources/queensland-sentencing-guide>. In the case of offenders declared convicted of a serious violent offence, the person's parole eligibility date is automatically set at the day after the person has served 80 per cent of their sentence for the offence, or 15 years (whichever is less): *Corrective Services Act 2006* (Qld) s 182. The Council has previously raised concern that head sentences under this mandatory SVO sentencing regime are being necessarily reduced to take into account a plea of guilty and other matters in mitigation. See Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole* (Final Report, July 2019) 89–90 [5.7.3] and Queensland Sentencing Advisory Council, *Sentencing for Criminal Offences Arising from the Death of a Child* (Final Report, October 2018) xxxiv, xxxix (Advice 3) and 158 [9.4.4]. The Court of Appeal has spoken of 'the distorting effect' of the scheme, in *R v Sprott; Ex parte Attorney-General (Qld)* [2019] QCA 116, 9 [41] (Sofronoff P, Gotterson JA and Henry J agreeing).

Variable complexities encountered in different cases, which can include the mandated application of non-parole periods[152] (e.g. for serious violent offences) and guilty pleas that are not early, can mean that sentencing courts exercise their discretion to craft just sentences in a different way. The Court of Appeal recently confirmed that a head sentence can be reduced to give credit for a plea of guilty; but, in some cases, this can then result in parole eligibility that is too early (even at the halfway point) and therefore inadequate:

> The mitigating effect of a guilty plea can be manifested in many ways. One way is to reduce the head sentence. Another way is to reduce the non-parole period. The corollary of the latter proposition is that … the mitigating effect of a plea might require a reduction in the head sentence and a postponement of the parole eligibility date.[153]

Suspended sentences

A suspended sentence is a term of imprisonment that is suspended, in whole or in part, for a set period called the 'operational period'. To avoid the possibility of being ordered to serve the suspended term of imprisonment, an offender subject to this form of order must not commit another offence punishable by imprisonment during the operational period.

In the case of serious assaults committed on public officers, about one in five cases result in either a wholly or partially suspended sentence being ordered (17.6% of cases dealt with in the higher courts, and 20.5% of those dealt with in the Magistrates Courts).

Queensland courts can order a sentence of imprisonment to be suspended only for head sentences of 5 years or less[154] and will generally prefer parole over suspension when supervision is required. For instance, in a section 340 case where a young offender spat into a police officer's face, mouth and eyes, the Court of Appeal stated:

> It seems that [the sentencing judge] thought that there was "hope" for the [offender] because of his youth and relatively minor criminal record. He did not, however, explain how that rehabilitation might take place (apart from two months in prison) when there was no information about guidance which might put him on the right path. His Honour, puzzlingly, ordered the sentence to be suspended rather than fixing a parole release date … Section 144(2) of the *Penalties and Sentences Act* provides that a court may order the whole or part of a term of imprisonment to be suspended but "only if the court is satisfied that it is appropriate to do so in the circumstances". There is no indication as to why his Honour could have been satisfied that it was appropriate here. An operational period of two years without any guidance at all put the applicant at risk of being returned to custody. In suspending the sentence without explanation the sentencing judge fell into error. The sentencing discretion must, then, be exercised by this court [which ordered imprisonment with a parole release date after 2 months].[155]

Intensive correction orders

Another form of custodial penalty is an intensive correction order — a period of up to 12 months' imprisonment, served in the community under supervision with a conviction recorded. The offender must comply with conditions, including reporting twice weekly to an authorised corrective services officer, taking part in counselling and other programs as directed, and performing community service. The offender must agree to the order being made and to comply with its requirements. In the event of non-compliance, a court may revoke it and order the person to serve the remaining period of the sentence in prison.[156] These orders are rarely used and represent a very small proportion of sentences for serious assaults on public officers.

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152 See *R v Randall* [2019] QCA 25, 5 [29]–[30] (Sofronoff P and Morrison JA and Burns J).

153 Ibid 9 [44]–[45] (Sofronoff P and Morrison JA and Burns J). That case involved the manslaughter of a baby and a late plea of guilty, where a head sentence of 10 years or more would mean the automatic application of the '80 per cent rule' as part of a mandatory serious violent offence declaration. The court postponed the statutorily mandated halfway parole eligibility date by six months — the sentence was 9 years' imprisonment with parole eligibility after 5 years. See also *R v MCW* [2019] 2 Qd R 344, 351–2 [30]–[31] (Mullins J): An offender pled guilty at an early stage. The sentencing judge declined to fix a date on which he would be eligible to apply for parole. He therefore was not eligible to apply for parole unless he had served half of the effective sentence of imprisonment. His application for leave to appeal against his sentence was refused.

154 *Penalties and Sentences Act 1992* (Qld) s 144. The limit is three years for Magistrates Courts — see *Criminal Code* (Qld) s 552H.

155 *R v McLean* (2011) 212 A Crim R 199, 209 [30] (White JA, Fraser JA and Philippides J agreeing). And see *R v Farr* [2018] QCA 41, 8 (Philippides JA, Gotterson JA and Douglas J agreeing) where a suspended sentence was 'clearly undesirable' because of the offender's longstanding drug addiction. See also *R v Clark* [2016] QCA 173, 3–4 [5]–[6] (McMurdo P) and *R v Wano; Ex parte A-G (Qld)* [2018] QCA 117, 8 [44]–[45] (Henry J, Fraser JA and North J agreeing).

156 *Penalties and Sentences Act 1992* (Qld) Part 6.

6.6.2 Non-custodial orders

Non-custodial orders are orders that do not involve a term of imprisonment being imposed. Non-custodial options in Queensland include fines, good behaviour bonds and community-based orders such as community service and probation.

Good behaviour bond/recognisance

A good behaviour bond is a requirement to appear before a court if called on to do so and to 'be of good behaviour' (not to break the law) for a set period (up to 3 years). It requires the offender and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions that may be ordered, which may include attending a drug assessment and education session.

Fine

A fine is an order to pay an amount of money. The maximum fine depends on the type of offence and the court hearing the matter. A fine can be ordered in addition to, or instead of, any other sentence with or without a conviction being recorded.

Probation order

A probation order is an order between 6 months and 3 years, with or without a conviction being recorded, that is served in the community with monitoring and supervision by an authorised corrective services officer. The person must agree to the order being made and to comply with the requirements under the order. When making a probation order the court must set mandatory requirements[157] and can also make additional requirements.[158] Mandatory requirements include:

- not committing another offence during the period of the order;
- participating in programs or counselling;
- reporting to and receiving visits from a corrective services officer as directed;
- telling a corrective services officer about any changes of address or employment within two business days; and
- not leaving Queensland without permission.

Additional conditions include submitting to medical, psychiatric or psychological treatment, or any conditions considered necessary to stop the offender committing another offence or to help the offender behave in a way that is acceptable to the community.

Community service order

A community service order is an order to do unpaid community service for between 40 and 240 hours, usually within 12 months, and to comply with reporting and other conditions, with or without a conviction being recorded.[159] In addition to the requirement to perform community service, other mandatory requirements include the points above for probation, except for participating in programs or counselling.

The offender must agree to the order being made (unless it is a mandatory order, which applies to forms of assault against public officers committed in a public place while the offender was adversely affected by an intoxicating substance).[160]

6.6.3 Compensation and restitution

Compensation and restitution orders fall under the definition of 'penalty' in the PSA (which itself falls under the definition of 'sentence').[161] Either order can be made in addition to any other sentence to which the offender is liable.[162]

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157 Ibid s 93.

158 Ibid s 94.

159 Ibid ss 100–103.

160 Ibid s 108B.

161 Ibid s 4.

162 Ibid s 35(2).

6.6.4 Mandatory sentencing

Mandatory sentencing generally involves Parliament prescribing 'a minimum or fixed penalty for an offence'.[163] It can 'take various forms, the chief characteristic being that it either removes or severely restricts the exercise of judicial discretion in sentencing'.[164] In Queensland, this includes mandating non-parole and driving disqualification periods, prescribing minimum penalties, directing that community service must be served as well as any punishment, and mandating the circumstances where a court can set only a period release or eligibility date. Mandatory sentencing as it applies to serious assault is discussed in more detail in Chapter 10, section 10.3.2. In respect of serious assault specifically, it applies to:

- Mandatory community service orders if the offence is committed in a public place while adversely affected by an intoxicating substance.[165]
- Mandatory cumulative, full-time imprisonment where the offence is committed as part of the offender's involvement in a criminal organisation.[166]
- Mandatory cumulative imprisonment where an offender committed the offence (or counselled, procured, attempted or conspired to commit it) while he or she was a prisoner serving a term of imprisonment, or was released on parole.[167] Any sentence of imprisonment imposed for the offence must be served cumulatively (one after the other) with any other term of imprisonment the person is liable to serve.

6.6.5 Other orders that can be made

There are three forms of orders that can be made in addition to sentence to restrict an offender's ability to be around certain people, places or modes of transport. They are non-contact orders, banning orders, and exclusion orders. Some sentencing orders could contain conditions that have a similar effect.

A sentencing court may also decide to make a **non-contact order** under Part 3A of the PSA, when it 'convicts an offender of a personal offence [an indictable offence committed against the person of someone],[168] whether on indictment or summarily'.[169] The order may be made in addition to any other order the court may make[170] but cannot be made if a protection order 'may be made' under the *Domestic and Family Violence Protection Act 2012* (Qld).[171]

A non-contact order contains one or both requirements that the offender, for up to two years from the date of the order or release from any imprisonment:

(a) does not contact the victim against whom the offence was committed, or someone who was with the victim when the offence was committed, for a stated time;

(b) does not go to a stated place, or within a stated distance of a stated place, for a stated time.[172]

The court may make the order if satisfied that, unless the order is made, there is an unacceptable risk of various matters relating to the offender causing injury, harassment, property damage or detriment to the victim or their associate.[173]

It is an offence to fail to comply with the conditions of a restraining or non-contact order.[174]

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163 Law Council of Australia, *Mandatory Sentencing: Factsheet* (No. 1405, undated).

164 Australian Law Reform Commission, *Same Crime: Same Time: Sentencing of Federal Offenders* (Report No. 103, 2006) 538–9 [21.54] (citations omitted).

165 See *Penalties and Sentences Act 1992* (Qld) Part 5, Division 2, Subdivision 2 (ss 108A-D) and *Criminal Code* (Qld) chapter 35A (ss 365A-C).

166 See *Penalties and Sentences Act 1992* (Qld) Part 9D (ss 161N-S) and Schedule 1C.

167 Ibid s 156A and Schedule 1.

168 Ibid s 43B(4).

169 Ibid s 43B(1).

170 Ibid s 43B(2).

171 Ibid s 43B(3), referring to *Domestic and Family Violence Protection Act 2012* (Qld) s 42 'When court on its own initiative can make or vary order against offender'.

172 Ibid s 43C.

173 Ibid s 43C(3).

174 Ibid s 43F. The maximum penalty is 40 penalty units or one year's imprisonment.

A sentencing court may also decide to make a **banning order** under Part 3B of the PSA. A banning order prohibits an offender from doing or attempting to do any of the following for a stated period:

(a) entering or remaining in stated licensed premises (or a stated class of licensed premises);

(b) entering or remaining in, during stated hours, a stated area that is designated by its distance from, or location in relation to, those licensed premises;

(c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.[175]

The court can make the order if the offender has been convicted of certain offences including those involving the use, threatened use, or attempted use of unlawful violence to a person or property, committed in licensed premises or in a public place near licensed premises, if the offender would pose an unacceptable risk if the order was not made, to:

(i) the good order of licensed premises and areas in the vicinity of licensed premises; or

(ii) the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises.[176]

Banning orders can be made in addition to any other court order.[177] They do not stop the person entering or remaining at their residence, place of work, place of formal education, a mode of transport they require (or entering a place reasonably necessary to use it), or 'any other place that the court considers necessary in order to prevent undue hardship to the offender or a member of the offender's family'.[178]

It is an offence to contravene a banning order without reasonable excuse.[179]

A court or authorised police officer can make an order similar to a banning order as a special condition of a person's bail undertaking.[180] Furthermore, a police officer can issue a police banning notice and this is not dependent on a charge being laid.[181]

A sentencing court can make an **exclusion order** under Part 4B of the *Transport Operations (Passenger Transport) Act 1994* (Qld). This is an order of not more than two years' duration prohibiting a person from using the public transport network or restricting the general route services or public transport infrastructure they can use, or the times or periods when they can use the network, or the purpose for which they can use the network.[182] Unlike the two orders above, it can be made in respect of both adults and children.[183]

Two types of offences are relevant: 'relevant offences'[184] and 'transport indictable offences'.[185] These both constitute 'exclusion order offences'.[186]

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175 Ibid s 43I.

176 Ibid s 43J(1).

177 Ibid s 43J(2).

178 Ibid s 43J(5).

179 Ibid s 43O. The maximum penalty is 40 penalty units or one year's imprisonment.

180 *Bail Act 1980* (Qld) s 11(3). A court or authorised police officer must consider the imposition of a special condition if (a) the alleged offence involved the use, threatened use or attempted use of unlawful violence to another person or property; and (b) having regard to the evidence available to the court or the police officer, the court or the police officer is satisfied that the alleged offence was committed in licensed premises or in a public place in the vicinity of licensed premises: s 11(4).

181 See *Police Powers and Responsibilities Act 2000* (Qld) Part 5A.

182 *Transport Operations (Passenger Transport) Act 1994* (Qld) s 129Z.

183 Ibid s 129ZA(1)(b). This purports to apply to children despite the *Youth Justice Act 1992* (Qld) being a Code as regards sentencing children, although it does require the application of the sentencing principles and purposes from the *Penalties and Sentences Act 1992* (Qld) or, if the person is a child, the *Youth Justice Act 1992* (Qld): s 129ZB(1)(a).

184 Various summary transport offences regarding, for instance, interfering with public transport infrastructure, service, vehicle or equipment and transport offences regarding creating a disturbance or nuisance, trespassing on a railway or busway and prescribed fare evasion offences. See *Transport Operations (Passenger Transport) Act 1994* (Qld) sch 3 and s 143AHA(4).

185 An indictable offence, including an indictable offence dealt with summarily, committed on or in public transport infrastructure: Ibid s 129Y.

186 Ibid s 129ZA(1)(a).

The exclusion order can be made 'in addition to any sentence a court may make', but the criteria differ depending on whether the court is sentencing for a relevant offence[187] or transport indictable offence.[188] The difference is that in relation to a relevant offence, there is an additional requirement that:

> (a) the person has been convicted of an exclusion order offence—
>
> (i) at least 1 other time during the last 12 months; or
>
> (ii) at least 2 other times during the last 18 months.[189]

The criteria for each offence is then the same: unless the order is made, the person would pose an unacceptable risk to:

> (i) the good order or management of the public transport network; or
>
> (ii) the safety and welfare of persons using the public transport network.

Hardship considerations must be considered,[190] but it is an offence to contravene an exclusion order without a reasonable excuse.[191]

6.7 Differences in sentencing children

The sentencing of children for assaults on public officers is governed by a different sentencing framework to the PSA.

A child under 10 years is not criminally responsible for any act or omission. A child under 14 years can only be criminally responsible if the prosecution shows the child had the capacity to know they should not do the act or make the omission at the time of doing it.[192]

The *Youth Justice Act 1992* (Qld) (YJA) governs the sentencing of children aged 17 years or younger. The PSA only applies to children to the extent that the YJA allows it to.[193] The YJA creates some different types of sentencing orders for children and has different foundational sentencing principles.[194] This is discussed further in Chapter 10 and Recommendation 10–3.

Children may be sentenced to detention but not imprisonment. A court cannot make a detention order unless it has considered a pre-sentence report,[195] has considered all other available sentences and the desirability of not holding a child in detention and is satisfied no other sentence is appropriate in the circumstances.[196]

In general terms, children sentenced to detention must spend a greater proportion of the head sentence physically in detention when compared to an adult offender serving a period of imprisonment prior to release on parole.

Unless a court makes a specific order, a child sentenced to serve a period of detention must be released from detention after serving 70 per cent of the period. A court may order a child be released from detention after serving 50 per cent or more, and less than 70 per cent if it considers there are special circumstances — for example, to ensure parity of sentence with that imposed on a person involved in the same or related offence. As with the adult regime, there are exceptions (in the case of juveniles, the exceptions relate to terrorism offences).[197]

At the end of the period of applicable physical detention, the Chief Executive of the Department of Youth Justice must make a supervised release order releasing the child from detention.[198] This maintains supervision of the child for the remainder of the head sentence and is similar to parole for adults.

The department can impose and amend conditions. The order must require that the child not break the law, must satisfactorily attend programs as directed, comply with every reasonable direction of the chief executive and report

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187 Ibid s 129ZA(2).
188 Ibid s 129ZA(3).
189 Ibid s 129ZA(2)(a).
190 Ibid s 129ZB.
191 Ibid s 129ZG. The maximum penalty is 40 penalty units or 6 months' imprisonment.
192 *Criminal Code* (Qld) s 29.
193 *Penalties and Sentences Act 1992* (Qld) s 6.
194 *Youth Justice Act 1992* (Qld) s 150.
195 Ibid s 207.
196 Ibid s 208.
197 Ibid s 227.
198 Ibid s 228.

and receive visits as directed, not leave, or stay out of, Queensland without prior approval and that the child or a parent notify of any change of address, employment or school. An order cannot require, or be subject to a condition, that the child must wear a tracking device.[199]

The YJA sets different maximum detention periods from those set in the *Criminal Code*, depending on the level of the sentencing court and seriousness of the offence.

The general sentencing powers are found in section 175 of the YJA. When a child is found guilty of an offence before a court, it may order:[200]

- a reprimand;
- good behaviour order for not longer than one year;
- a fine;
- probation (a magistrate can impose not longer than one year; a judge cannot impose longer than 2 years);
- performance of the obligations of a restorative justice agreement if one was made through a pre-sentence referral;
- participation in a restorative justice process as directed by the chief executive;
- unpaid community service (if the child is aged at least 13 at the time of sentence). Maximum hours are 100 for children aged 13 or 14 at sentence, and 200 hours for children 15 years or older;
- an intensive supervision order of not more than 6 months (if the child has not attained the age of 13 years at the time of sentence);
- detention — with or without conditional release. A magistrate can impose not more than one year. A judge can impose up to the shorter of half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve; or 5 years.

If an offence is a 'relevant offence' and if the Childrens Court of Queensland (the District Court exercising powers under the YJA, as opposed to a Magistrates Court doing the same) is sentencing the child, then that judge has wider penalty powers. This is because section 176 of the YJA (Sentence orders — life and other significant offences) applies.

A 'relevant offence' means a life offence,[201] or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more (with the exception of some property and drug offences not relevant here).[202] In other words, both aggravated forms of serious assaults (regarding spitting etc. against police and public officers), GBH, malicious acts and torture are relevant offences due to the maximum penalty that applies to these offences.

While the judge could use one of the section 175 sentencing options, he or she could instead:

- impose probation for up to 3 years; or
- make a detention order for not more than 7 years. (Because it is a life offence, this is different for malicious acts — the judge could impose detention of not more than 10 years; or a period up to and including the maximum of life, if the offence involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence, having regard to all the circumstances).

Mandatory minimum penalties applying to adults do not apply to children. Where a mandatory fixed penalty is set for adults, this is treated as the maximum penalty for children.[203]

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199 Ibid.

200 Some orders can only be imposed against a child if the offence in question is one that would make an adult liable to imprisonment (as the maximum penalty applicable). These are probation, community service and an intensive supervision order — ibid s 175(2). All forms of assault carry a maximum of imprisonment for an adult.

201 An offence for which a person sentenced as an adult would be liable to life imprisonment: ibid sch 4.

202 Ibid s 176(10).

203 Ibid s 155.

As this discussion of the YJA demonstrates, 'the purposes to be achieved when sentencing a [child] of 15 or 16 are not the same as the purposes to be achieved when sentencing a grown [adult] for the same offence'.[204] In the case of a boy sentenced to (in the end, increased) detention for malicious acts, involving colliding a stolen car with a police officer, the Court of Appeal contrasted sentencing adults with children:

> In dealing with the objective circumstances of the offending, it is crucial in this case to bear in mind that it was no part of the prosecution case that Patrick intended to drive the car into [the officer] or that he intended to injure him [the child intended to resist or prevent lawful arrest]. In almost all cases involving adult offenders, when the consequences have been as grave as they are in this case, a lack of intention to cause harm is often of only minor significance for sentencing purposes. When sentencing adult offenders, the plainly foreseeable consequences of offending are often treated as equivalent to intended consequences whether the offender foresaw them or not. However, when dealing with child offenders that simple equivalence is not available. Immaturity in thinking that hampers a child's judgment, as well as a child's lack of experience, means that children often commit offences without being conscious of the potential consequences. For this reason, the moral blameworthiness of a child for the consequences of offending cannot always be the same as that of an adult. The *Youth Justice Act 1992* (Qld) embodies this as a fundamental premise and requires judges to sentence accordingly. Principles 8(b) and 16, which require a sentencing judge to deal with a child in a way that gives an 'opportunity to develop in responsible, beneficial and socially acceptable ways' and in a way that "allows the child to be reintegrated into the community', command a sentencing judge to do what can be done to increase the prospects of diverting the child from the potentially damaging effects of punishment towards education, the learning of self-discipline, the nurturing of an appreciation and an acceptance of social standards and, in due course, successful reintegration with the community.
>
> In this respect, if the aims of the Act are to be understood, it is critical to appreciate that although those aims are to some degree informed by the community's natural tenderness towards children, that is a minor aspect and, for present purposes, it can be put to one side. The real reason for these legislative requirements lies in the Australian community's belief that, until a child has matured into an autonomous adult, whatever a child's current circumstances might be, and whatever offence a child has committed, every child holds within itself the potential for an honourable and productive life. The alternative view, that the child's character is irredeemable, or that painful punishment of children will 'reform' them, is not to be adopted unless and until it is conclusively shown to be justified in an individual case. The Act builds upon this assumption by regulating the punishment of children so as to increase the prospect that the child will not reoffend, not by fear of the pain of punishment, but because successful reintegration of the child into the community has removed the risk of re-offending.[205]

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204 *R v Patrick (a pseudonym)* [2020] QCA 51, 10 [43] (Sofronoff P, Fraser JA and Boddice J agreeing).

205 Ibid 10 [45]–[47].

Chapter 7 How are assaults on public officers dealt with by the courts?

7.1 Introduction

The Terms of Reference ask the Council to consider and analyse the penalties and sentencing trends for offences involving assaults on public officers under section 340 of the *Criminal Code* (Qld) — including the impact of the 2012 and 2014 amendments introducing higher maximum penalties. The Council has also been asked to review other offences involving assaults on public officers in other legislation to assess the suitability of providing for separate offences in different Acts targeting the same offending — including their impact on sentencing outcomes for assaults on public officers.

This chapter presents the Council's findings regarding sentencing outcomes for serious assault under section 340 of the Code and summary offences of assault and obstruct that can be charged under the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and *Corrective Services Act 2006* (Qld) (CSA).

7.2 Custodial penalties for assaults of public officers

Section summary

- The use of custodial penalties for assaults on public officers charged under section 340 of the *Criminal Code*, section 790 of the PPRA and section 124(b) of the CSA has increased over the past 10 years.
- Almost all serious assaults of a public officer sentenced in the higher courts over this 10-year period resulted in a custodial penalty being imposed (90.6% of cases, MSO). In the Magistrates Courts, almost two-thirds of cases resulted in a custodial sentence (64.8%).
- The lesser summary offence of assaulting a police officer under section 790 of the PPRA resulted in a custodial penalty in 13.4 per cent of cases; much higher than the 3.4 per cent of cases with custodial outcomes for obstructing a police officer (MSO).
- The summary offence of assaulting or obstructing a corrective services officer under section 124(b) of the CSA almost always resulted in a custodial penalty (84.0% of cases, MSO).
- The average sentence for non-aggravated serious assault in the higher courts was 1.0 years where the victim was a police officer and 0.9 years in circumstances where the victim was a corrective services officer.
- Sentences were shorter in the Magistrates Courts for non-aggravated serious assault, averaging 0.6 years where the victim was a police officer, 0.7 years for assaults on corrective services officers, and 0.4 years for assaults on other public officers.

This section of the chapter explores sentencing outcomes in more detail for offences involving assaults on public officers charged under section 340 of the *Criminal Code*, as well as for offences under the PPRA and CSA.

A different sentencing regime applies to young offenders sentenced in Queensland under the *Youth Justice Act 1992* (Qld) from that which applies to adults sentenced under the PSA (see Chapter 6 for more information). For this reason, the penalties imposed on adult offenders and young offenders are discussed separately.

Throughout this section, the phrase '**relevant serious assaults**' means assaults on police officers under section 340(1)(b), corrective services officers under section 340(2), people performing or who performed a duty at law under sections 340(1)(c)–(1)(d), and other public officers under section 340(2AA). The phrase '**relevant summary offences**' means assaults and obstructions of corrective services staff under section 124(b) of the CSA, resisting a public officer under section 199 of the *Criminal Code* (Qld), and assaulting or obstructing a police officer under section 790 of the PPRA.

7.2.1 Overview of custodial penalties

Relevant serious assaults

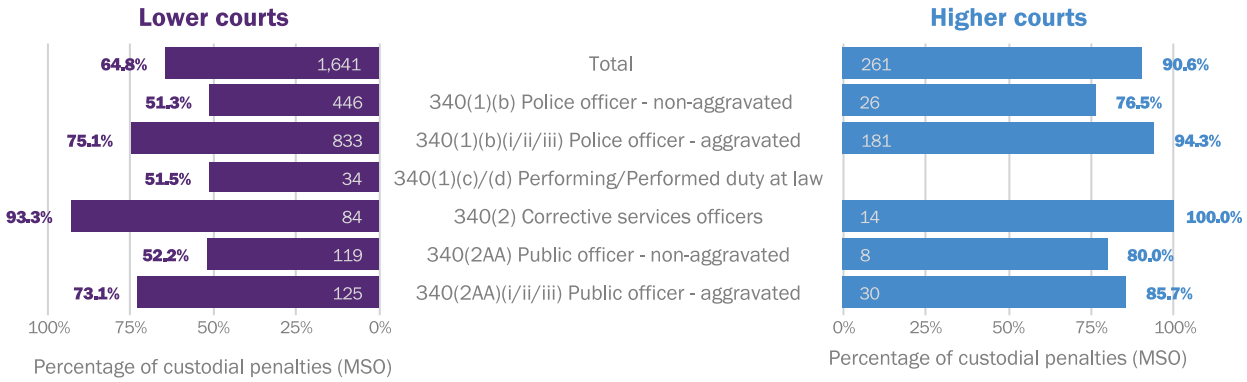
Figure 7-1 shows the percentage of cases in which a custodial penalty was ordered for a relevant serious assault offence (MSO). The data period for this analysis only includes offences committed on or after 5 September 2014, when aggravating circumstances were introduced for serious assault of a public officer.

In the Magistrates Court, a custodial penalty was issued in 64.8 per cent of cases where serious assault of a public officer was the MSO (n=1,641). Almost all serious assaults of a working corrective services officer charged under

section 340(2) resulted in a custodial penalty (93.3%, n=84), which can be explained by the fact that prisoners who commit a serious assault against a corrective services officer are already serving prison sentences. The proportion of custodial penalties was also high for serious assaults of police officers and public officers with circumstances of aggravation. For offences against police officers, 75.1 per cent of serious assaults with circumstances of aggravation resulted in a custodial penalty (n=833); while in the case of public officers, 73.1 per cent of aggravated serious assaults resulted in a custodial penalty (n=125).

In the higher courts, a custodial penalty was issued in 90.6 per cent of cases where serious assault was the MSO (n=261). As expected, all serious assaults of working corrective services officers resulted in a custodial penalty (100%, n=14). For police officers, 94.3 per cent of serious assaults with circumstances of aggravation resulted in a custodial penalty (n=181); for public officers, 85.7 per cent of aggravated serious assaults resulted in a custodial penalty (n=30).

Figure 7-1: Proportion of relevant serious assaults resulting in a custodial penalty (MSO), adult offenders



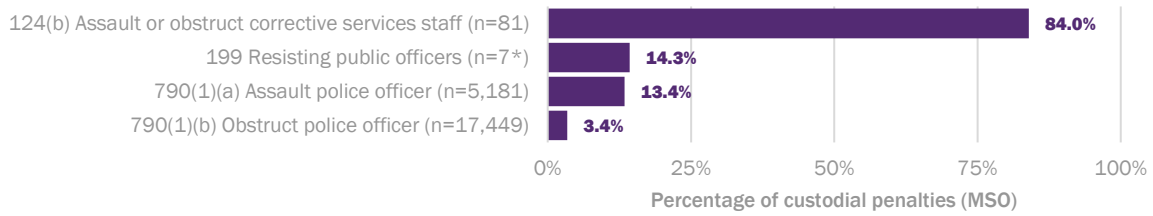
Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: In the higher courts, serious assaults on persons performing/performed a duty at law under s 340(1)(c)/(d) were not reported due to small numbers (n=3).

Relevant summary offences

Figure 7-2 shows the proportion of summary offences (involving the assault of a public officer) that resulted in a custodial penalty. The vast majority of these offences (MSO) were sentenced in the Magistrates Courts (99.9%).

The summary offence of assaulting or obstructing a corrective services officer (s 124(b)) was the most likely to result in a custodial penalty, with 84.0 per cent of cases (MSO) resulting in a custodial sentence. For offences under the PPRA, assaults of a police officer were much more likely to result in a custodial penalty than obstructions of a police officer (13.4% and 3.4%, respectively).

Figure 7-2: Proportion of summary offences resulting in a custodial penalty (MSO), adult offenders



Data include higher and lower courts, adult offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: A small proportion of cases sentenced under s 790 were not included as it was unclear whether they involved an assault or an obstruction (n=761).
(*) Small sample size

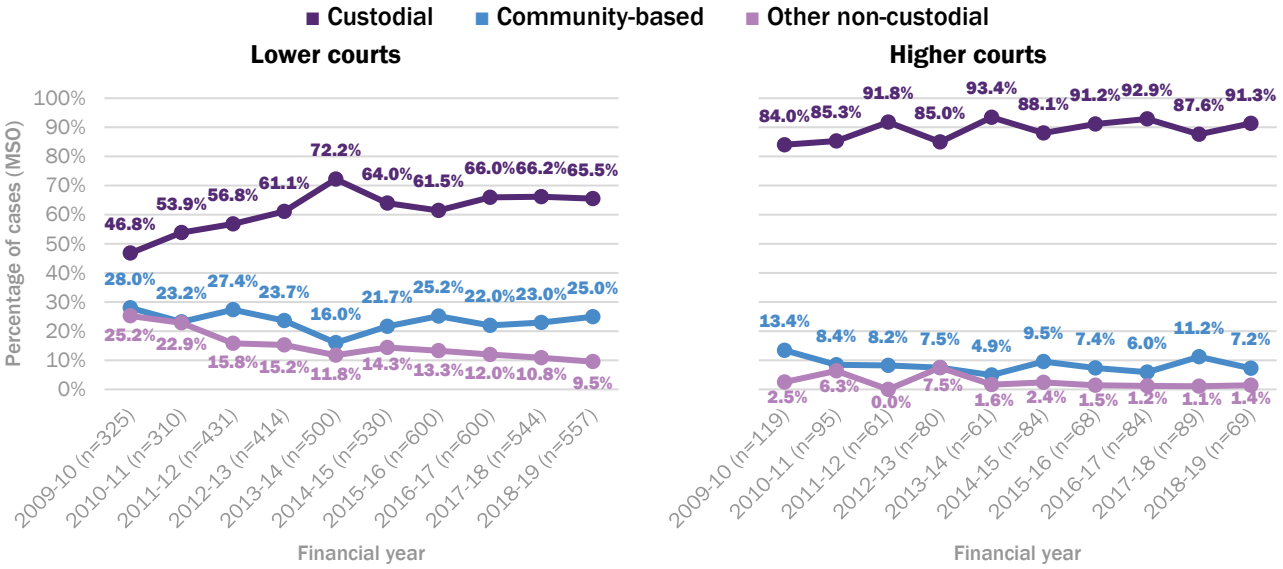
7.2.2 Sentencing trends over time

Relevant serious assaults

Figure 7-3 below shows high-level sentencing trends for relevant serious assaults in the higher and lower courts.

Custodial sentences have become more commonly imposed by Magistrates Courts for section 340 offences, representing under half (46.8%) of penalties in 2009–10, rising to 65.5 per cent in 2018–19. Custodial sentences have also become more common in the higher courts, having increased from 84.0 per cent in 2009–10 to 91.3 per cent in 2018–19. This may partly reflect broader sentencing trends as there was a general increase in the use of custodial penalties across all offence categories in Queensland over this same period.[1]

Figure 7-3: Type of penalties issued for relevant serious assaults over time (MSO)



Data include adult offenders, MSOs sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) 'Custodial' includes imprisonment, partially suspended sentences, wholly suspended sentences, and intensive correction orders. 'Community-based' includes community service and probation. 'Other non-custodial' includes monetary orders (including fines, restitution, and compensation), good behaviour bonds, and convicted not further punished.
(2) Includes serious assaults that involved a public officer, including s 340(1)(b) police officers, s 340(1)(c) person performing a duty imposed by law, s 340(1)(d) person who performed a duty imposed by law, s 340(2) corrective services officers, s 340(2AA) public officers.

[1] Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole Options* (Final Report, July 2019) 17.

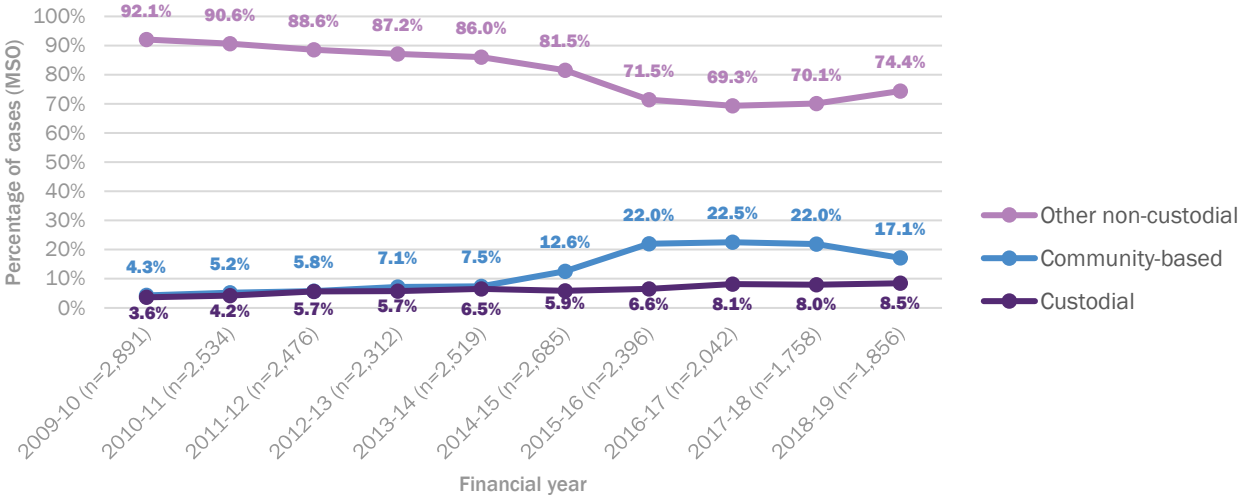
Relevant summary offences

Figure 7-4 shows high-level sentencing trends for relevant summary offences for assault of a public officer in the Magistrates Courts.

For these offences, the most common penalty was consistently a non-custodial penalty (excluding community-based orders such as probation and community service) — this category includes monetary orders and good behaviour orders. However, the proportion of community-based orders has increased over the 10-year data period, from 4.3 per cent of penalties in 2009–10 to 17.1 per cent of penalties in 2018–19. This increase has corresponded with a decrease in 'other non-custodial' orders, including monetary penalties and good behaviour bonds.

Custodial penalties have consistently been the least commonly issued in the Magistrates Courts for relevant summary offences. The use of these penalties has increased slightly, from 3.5 per cent of penalties in 2009–10 to 8.5 per cent in 2018–19.

Figure 7-4: Type of penalties issued for relevant summary offences over time (MSO)



Data include Magistrates Courts, adult offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) 'Custodial' includes imprisonment, partially suspended sentences, wholly suspended sentences, and intensive correction orders. 'Community-based' includes community service and probation. 'Other non-custodial' includes monetary orders (including fines, restitution, and compensation), good behaviour bonds, and convicted not further punished.
(2) Includes summary offences involving the assault of a public officer: ss 790, 199, and 124(b).

7.2.3 Length of custodial penalties for assaults of public officers

This section provides an overview of the custodial sentencing outcomes for offences that involve the assault of a public officer. Due to the legislative amendments to the offence of serious assault over the past 10 years, the analysis in this section is divided into three categories: assaults of police officers, assaults of corrective services officers, and assaults of other public officers. The date ranges are different for each category.

Data on police officers only include offences occurring on or after 29 August 2012, as this was the date that the aggravated serious assault of a police officer was introduced. Similarly, data on serious assault of a public officer has been analysed from the date that aggravating circumstances were introduced for the serious assault of a public officer — 5 September 2014. For corrective services officers, the analysis is based on the full 10-year data period from 2009–10 to 2018–19.

Police officers

Table 7-1 shows the proportion of custodial penalties ordered for different types of assault offences committed on police officers. It includes offences committed on or after 29 August 2012.

In the higher courts, almost all cases involving the aggravated serious assault of a police officer resulted in a custodial penalty (94.9%), with assaults involving bodily fluids receiving the highest proportion of custodial penalties (97.0% of cases). For non-aggravated serious assaults of police officers, four in five cases resulted in a custodial penalty (79.1%), with an average sentence of 12 months.

In the Magistrates Courts, half of all non-aggravated serious assaults of a police officer resulted in a custodial penalty (52.6%), with an average custodial length of 0.6 years. For cases involving aggravating circumstances, three-quarters of cases resulted in a custodial penalty (75.9%), with a higher average sentence length of 0.7 years.

Offenders sentenced under section 790(1)(b) of the PPRA for the obstruction of a police officer were unlikely to receive a custodial penalty, with only 4.0 per cent of cases (in the Magistrates Courts) resulting in a custodial outcome (MSO). For cases involving the assault of a police officer under section 790(1)(a) of the PPRA, a custodial outcome was more likely, with 14.4 per cent of cases resulting in a custodial sentence.

Table 7-1: Sentencing outcomes for assault of a police officer by assault type (MSO), adult offenders

Section number	Offence description	N (MSO)	Proportion of sentences that are custodial	Average length of custodial penalties (years)	Median length of custodial penalties (years)
Higher courts					
790(1)	Assault or obstruct police officer	7*	-	-	-
340(1)(b)	Police officer — non-aggravated	67	79.1%	1.0	0.8
340(1)(b)(i/ii/iii)	**Police officer — aggravated**	**293**	**94.9%**	**1.2**	**1.0**
340(1)(b)(i)	Police officer — bodily fluid	168	97.0%	0.9	0.8
340(1)(b)(ii)	Police officer — bodily harm	88	92.0%	1.3	1.0
340(1)(b)(iii)	Police officer — armed	37	91.9%	2.1	2.0
Magistrates Courts					
790(1)(a)	Assault police officer	3,369	14.4%	0.3	0.3
790(1)(b)	Obstruct police officer	10,950	4.0%	0.2	0.2
340(1)(b)	Police officer — non-aggravated	1,219	52.6%	0.6	0.5
340(1)(b)(i/ii/iii)	**Police officer – aggravated**	**1,564**	**75.9%**	**0.7**	**0.5**
340(1)(b)(i)	Police officer — bodily fluid	822	82.4%	0.6	0.5
340(1)(b)(ii)	Police officer — bodily harm	443	69.1%	0.7	0.7
340(1)(b)(iii)	Police officer — armed	299	68.2%	0.7	0.5

Data include adult offenders, offences occurring on or after 29 August 2012, cases sentenced from 2012–13 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) A small proportion of cases sentenced under s 790 were not included as it was unclear whether they involved an assault or an obstruction (n=427).
(*) Small sample sizes

Corrective services officers

Table 7-2 shows the proportion of custodial penalties ordered for offenders who assaulted a corrective services officer. Section 7.4 of this chapter explores the number of these custodial penalties that were to be served cumulatively on top of an existing custodial sentence.

In the higher courts, all offenders (n=35; 100.0%) sentenced for the serious assault of a corrective services officer under section 340(2) of the *Criminal Code* (MSO) received a custodial penalty, with an average length of 0.9 years. In the Magistrates Courts, almost all offenders sentenced for serious assault received a custodial penalty (n=167; 94.0%), with an average sentence length less than the higher courts at 0.7 years.

Almost all cases involving the assault or obstruction of a corrective services officer under section 124(b) were sentenced in the Magistrates Courts. Of these, 83.8 per cent received a custodial penalty with an average length of 0.2 years.

Table 7-2: Sentencing outcomes for assault of a corrective services officer by assault type (MSO), adult offenders

Section number	Offence description	N (MSO)	Proportion of sentences that are custodial	Average length of custodial penalties (years)	Median length of custodial penalties (years)
Higher courts					
124(b)	Assault/obstruct corrective services staff	1*	-	-	-
340(2)	Corrective services officer	35	100.0%	0.9	0.8
Magistrates Courts					
124(b)	Assault/obstruct corrective services staff	80	83.8%	0.2	0.3
340(2)	Corrective services officer	167	94.0%	0.7	0.5

Data include adult offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Public officers

Table 7-3 shows the sentencing outcomes for different offences involving the assault of a public officer, for offences committed on or after 5 September 2014.

In the higher courts, due to the small number of cases sentenced, there are few offences that can be analysed. Custodial penalties were issued for the majority of offenders who were sentenced for aggravated serious assault of a public officer (85.7%), with an average sentence length of 0.7 years.

In the Magistrates Courts, 73.1 per cent of offenders sentenced for the aggravated serious assault of a public officer received a custodial penalty, with an average length of 0.6 years. Non-aggravated serious assault and the serious assault of a person who performed, or was performing, a duty at law had similar percentages of custodial orders (52.2% and 51.5%, respectively), with an average length of 0.7 years.

Table 7-3: Custodial sentencing outcomes for assaults against public officers (MSO), adult offenders

Section number	Offence description	N	Proportion of sentences that are custodial	Average length of custodial penalties (years)	Median length of custodial penalties (years)
Higher courts					
199	Resisting public officers	0			
340(1)(c)/(d)	Performing/performed duty at law	3*	-	-	-
340(2AA)	Public officer — non-aggravated	10*	-	-	-
340(2AA)(i/ii/iii)	**Public officer — aggravated**	**35**	**85.7%**	**0.7**	**0.8**
340(2AA)(i)	Public officer — bodily fluid	26	88.5%	0.7	0.8
340(2AA)(ii)	Public officer — bodily harm	8*	-	-	-
340(2AA)(iii)	Public officer — armed	1*	-	-	-
Magistrates Courts					
199	Resisting public officers	6*	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	66	51.5%	0.5	0.5
340(2AA)	Public officer — non-aggravated	228	52.2%	0.4	0.4
340(2AA)(i/ii/iii)	**Public officer — aggravated**	**171**	**73.1%**	**0.6**	**0.5**
340(2AA)(i)	Public officer — bodily fluid	99	78.8%	0.6	0.5
340(2AA)(ii)	Public officer — bodily harm	56	62.5%	0.6	0.5
340(2AA)(iii)	Public officer — armed	16*	-	-	-

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.
Note: (*) Small sample size

7.3 Detailed sentencing outcomes for assaults of public officers

Section summary

- For adult offenders in both the higher and lower courts, imprisonment was the most common penalty type for serious assault offences analysed (MSO).
- Suspended sentences were ordered in 7.1 to 31.5 per cent of cases (MSO), depending on the type of offence.
- A monetary penalty was most common for the lesser summary offence of assaulting (48.7% of cases) or obstructing (65.2% of cases) police officers, with an average penalty amount of $620.80 for assaults, and $414.50 for obstructions.
- For young offenders, community-based orders (including probation and community service) were the most common type of penalty imposed for serious assaults, with an average length of 8 to 9 months for probation and 50 to 80 hours for community service.
- For the summary offence of obstructing a police officer, over half of young people were reprimanded.

Figure 7-5 and Figure 7-6 (over the page) provide a breakdown of the penalties for adult and young offenders, respectively. The cells shaded darker indicate a higher proportion of cases received this sentencing outcome. Data have been presented for offences that specifically deal with the assault of a public officer, including serious assaults, and the corresponding summary offences, where applicable. For adult offenders, some sentences of imprisonment have been displayed separately and labelled as 'immediate release'; these include sentences of imprisonment with immediate release on court ordered parole, or where the entirety of the sentence was fully served as declared pre-sentence custody, or where the defendant was sentenced to the rising of the court.

As discussed in Chapter 6, a community service order is mandatory for offences occurring in certain prescribed circumstances, which must be ordered in addition to any other sentence imposed. However, the figures presented in this section relate only to the MSO sentenced. The MSO is the offence at a court event receiving the most serious penalty, as ranked by the classification scheme used by the Australian Bureau of Statistics. For this reason, if a community service order was ordered alongside a custodial sentence, the community service order will not appear as a relevant sentencing outcome. The number of community sentencing orders reported in this section is therefore likely to be an undercount. The use of mandatory community sentencing orders is discussed in Chapter 10.

Across both the higher courts and the lower courts, imprisonment was the most common type of penalty ordered for adult offenders who committed one of the serious assault offences analysed. The proportion was highest for the serious assault of a corrective services officer, where 92.9 per cent of cases in the higher courts, and 85.6 per cent of cases in the lower courts resulted in an unsuspended term of imprisonment. Section 7.4 of this chapter explores the number of these custodial penalties that resulted in a cumulative penalty.

A suspended sentence of imprisonment was ordered in 7.1 per cent to 31.5 per cent of cases, depending on the type of offence. The serious assault of a corrective services officer was the least likely to result in a suspended sentence (7.8% in the Magistrates Courts, 7.1% in the higher courts). The serious assault of a public officer or a police officer with circumstances of aggravation was the most common offence to result in a suspended sentence — in many cases these were partially suspended sentences, with time served in prison. The Council has previously flagged shortcomings in the administrative data, which mean that some sentences recorded as being 'wholly suspended' may instead be partially suspended — often where time served on remand is declared as time served and the sentence is suspended from the date of sentence. For this reason, the numbers of sentences involving actual time being served in custody may in fact be higher.

A community-based sentence (either a probation order or community service order) was most commonly ordered in the lower courts for the summary offence of assaulting a police officer (28.3%), or for non-aggravated serious assault of a police officer (30.4%) or a public officer (25.9%).

A monetary penalty was most commonly imposed in the lower courts for the summary offences of obstructing a police officer (65.2%) or assaulting a police officer (48.7%).

Young people

Due to the small number of young offenders sentenced in the higher courts (n=21, 2.4%), the data from the lower courts and higher courts are reported together in this section.

A detention order was used more frequently for serious assaults of public officers (30.0% non-aggravated, 38.5% bodily fluid, 28.6% bodily harm) than for serious assaults of police officers (17.5% non-aggravated, 12.7% bodily fluid, 21.8% bodily harm, 16.7% armed). As was discussed in section 3.2.1 of Chapter 3, the majority of public officers assaulted by young people are detention centre workers, which explains the higher proportion of custodial penalties.

Community-based orders were the most common penalty for young people who committed a serious assault. Probation was the most frequently used penalty for the serious assault of both police officers and public officers.

The summary offence of obstructing a police officer most frequently resulted in a reprimand (56.6%); whereas the offence of assaulting a police officer was considerably lower (27.5%) and had a higher proportion of custodial and community-based sentences.

Figure 7-5: Type of penalties issued for relevant offences by assault type (MSO), adult offenders

Adults

Section	Offence	N	Imprisonment	Imprisonment (Immediate release)	Partially suspended	Wholly suspended	Intensive correction order	Community service	Probation	Good behaviour, recognisance	Monetary	Convicted, not further punished
			Custodial penalties					Non-custodial penalties				
Magistrates Courts												
340(1)(b)	Serious assault - Police officer (non-aggravated)	869	12.5%	19.4%	2.8%	14.5%	2.1%	12.0%	18.4%	16.6%	1.4%	0.3%
340(1)(b)(i)	Serious assault - Police officer (bodily fluid)	575	26.3%	26.4%	4.2%	23.5%	1.7%	5.2%	9.7%	3.0%	0.0%	0.0%
340(1)(b)(ii)	Serious assault - Police officer (bodily harm)	325	23.1%	22.5%	2.8%	18.5%	0.9%	11.1%	13.2%	7.1%	0.3%	0.6%
340(1)(b)(iii)	Serious assault - Police officer (armed)	209	20.6%	28.7%	1.9%	15.3%	1.0%	5.3%	21.5%	5.3%	0.5%	0.0%
340(2)	Serious assault - Corrective services officer	90	66.7%	18.9%	2.2%	5.6%	0.0%	0.0%	1.1%	3.3%	0.0%	2.2%
340(2AA)	Serious assault - Public officer (non-aggravated)	228	10.1%	18.4%	3.1%	20.6%	0.0%	11.4%	14.5%	17.5%	3.9%	0.4%
340(2AA)(i)	Serious assault - Public officer (bodily fluid)	99	26.3%	33.3%	6.1%	12.1%	1.0%	4.0%	11.1%	5.1%	1.0%	0.0%
340(2AA)(ii)	Serious assault - Public officer (bodily harm)	56	21.4%	23.2%	1.8%	16.1%	0.0%	7.1%	25.0%	3.6%	1.8%	0.0%
340(2AA)(iii)	Serious assault - Public officer (armed)	16	31.3%	18.8%	12.5%	12.5%	0.0%	0.0%	18.8%	6.3%	0.0%	0.0%
124(b)	Assault or obstruct corrective services staff	50	34.0%	30.0%	2.0%	18.0%	0.0%	0.0%	0.0%	8.0%	0.0%	8.0%
790(1)(a)	Assault police officer	2,232	2.5%	4.7%	0.4%	6.4%	0.2%	16.8%	11.4%	48.7%	7.5%	1.3%
790(1)(b)	Obstruct police officer	7,251	0.9%	1.4%	0.1%	2.0%	0.0%	15.3%	2.0%	65.2%	9.1%	4.0%
655A	Assault or obstruct watch-house officer	6*	-	-	-	-	-	-	-	-	-	-
199	Resisting public officers	6*	-	-	-	-	-	-	-	-	-	-
Higher courts												
340(1)(b)	Serious assault - Police officer (non-aggravated)	34	20.6%	38.2%	2.9%	14.7%	0.0%	5.9%	14.7%	0.0%	2.9%	0.0%
340(1)(b)(i)	Serious assault - Police officer (bodily fluid)	111	18.0%	45.0%	11.7%	19.8%	2.7%	0.9%	0.9%	0.0%	0.9%	0.0%
340(1)(b)(ii)	Serious assault - Police officer (bodily harm)	58	25.9%	44.8%	5.2%	10.3%	3.4%	3.4%	6.9%	0.0%	0.0%	0.0%
340(1)(b)(iii)	Serious assault - Police officer (armed)	23	34.8%	39.1%	8.7%	8.7%	0.0%	0.0%	8.7%	0.0%	0.0%	0.0%
340(2)	Serious assault - Corrective services officer	14	64.3%	28.6%	7.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
340(2AA)	Serious assault - Public officer (non-aggravated)	10	30.0%	20.0%	0.0%	30.0%	0.0%	10.0%	10.0%	0.0%	0.0%	0.0%
340(2AA)(i)	Serious assault - Public officer (bodily fluid)	26	11.5%	50.0%	7.7%	19.2%	0.0%	3.8%	3.8%	0.0%	3.8%	0.0%
340(2AA)(ii)	Serious assault - Public officer (bodily harm)	8*	-	-	-	-	-	-	-	-	-	-
340(2AA)(iii)	Serious assault - Public officer (armed)	1*	-	-	-	-	-	-	-	-	-	-
124(b)	Assault or obstruct corrective services staff	0	-	-	-	-	-	-	-	-	-	-
790(1)(a)	Assault police officer	0	-	-	-	-	-	-	-	-	-	-
790(1)(b)	Obstruct police officer	5*	-	-	-	-	-	-	-	-	-	-
655A	Assault or obstruct watch-house officer	0	-	-	-	-	-	-	-	-	-	-
199	Resisting public officers	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) 'Imprisonment (Immediate release)' includes where the defendant was immediately released on parole, or where the entirety of the sentence was served by way of declared pre-sentence custody, or those sentenced to the rising of the court.
(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

Figure 7-6: Type of penalties issued for relevant offences by assault type (MSO), young people

Young people

Section	Offence	N	Custodial penalties			Non-custodial penalties						
			Detention	Conditional release order	Boot camp order	Intensive supervision order	Community service	Probation	Monetary	Good behaviour, recognisance	Court ordered conference	Reprimand
340(1)(b)	Police officer	114	7.9%	9.6%	0.0%	0.0%	16.7%	36.8%	0.0%	11.4%	10.5%	7.0%
340(1)(b)(i)	Police officer - bodily fluid	118	3.4%	8.5%	0.8%	0.0%	16.9%	55.1%	0.0%	9.3%	5.1%	0.8%
340(1)(b)(ii)	Police officer - bodily harm	55	10.9%	10.9%	0.0%	0.0%	10.9%	38.2%	0.0%	14.5%	14.5%	0.0%
340(1)(b)(iii)	Police officer - armed	30	16.7%	0.0%	0.0%	0.0%	26.7%	30.0%	0.0%	16.7%	3.3%	6.7%
340(2)	Corrective services officer	3*	-	-	-	-	-	-	-	-	-	-
340(2AA)	Public officer	10	20.0%	10.0%	0.0%	0.0%	10.0%	20.0%	0.0%	0.0%	10.0%	30.0%
340(2AA)(i)	Public officer - bodily fluid	39	20.5%	17.9%	0.0%	2.6%	12.8%	25.6%	0.0%	5.1%	12.8%	2.6%
340(2AA)(ii)	Public officer - bodily harm	14	14.3%	14.3%	0.0%	0.0%	14.3%	28.6%	0.0%	7.1%	21.4%	0.0%
340(2AA)(iii)	Public officer - armed	7*	-	-	-	-	-	-	-	-	-	-
124(b)	Assault or obstruct corrective services staff	0	-	-	-	-	-	-	-	-	-	-
790(1)(a)	Assault police officer	211	3.3%	5.2%	0.0%	0.0%	10.4%	19.0%	0.5%	18.0%	16.1%	27.5%
790(1)(b)	Obstruct police officer	251	0.0%	0.8%	0.4%	0.0%	7.6%	4.8%	1.6%	21.1%	7.2%	56.6%
655A	Assault or obstruct watch-house officer	0	-	-	-	-	-	-	-	-	-	-
199	Resisting public officers	0	-	-	-	-	-	-	-	-	-	-

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) Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.
(2) 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

7.3.1 Sentence length and fine amount for relevant offences

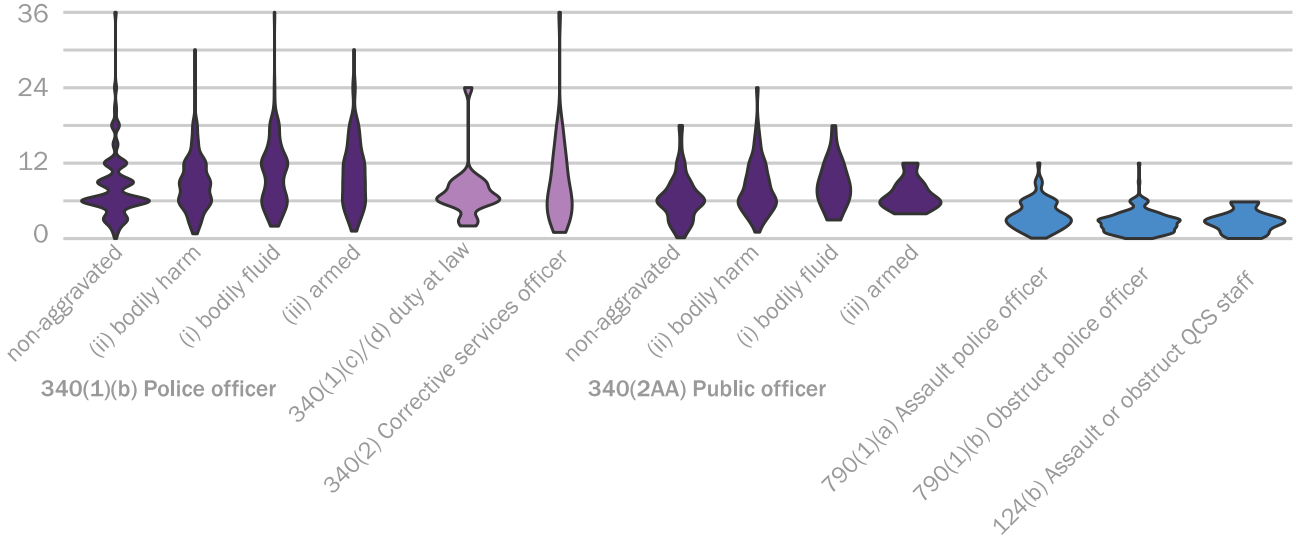
Table A4-13 in Appendix 4 details the sentence lengths and, where relevant, fine amounts for adults who were sentenced for serious assault of a public officer and relevant summary offences.

In the higher courts, the average imprisonment sentence varied considerably. The longest average imprisonment sentence was 29.6 months for the armed serious assault of a police officer, with a maximum sentence of 5 years for this offence. Serious assault of a police officer, which caused bodily harm, was also relatively high, with an average of 17.5 months' imprisonment. Other forms of serious assault sentenced in the higher courts averaged about 12 months' imprisonment.

Due to the higher volume of cases sentenced, it was possible to visualise the distribution of imprisonment sentences in the Magistrates Courts — see Figure 7-7 below. The dark purple shapes, which represent the serious assault of a police officer or a public officer, illustrate that cases with circumstances of aggravation generally receive longer penalties. The serious assault of a police officer with bodily harm or while armed received, on average, the longest imprisonment sentences (10.1 months and 10.3 months, respectively), whereas the non-aggravated assault of a police officer received 8.0 months' imprisonment, on average. Similarly, the serious assault of a public officer with bodily harm or bodily fluid received, on average, 8.6 months' and 8.1 months' imprisonment, respectively — somewhat higher than the 6.4 months' average imprisonment sentenced for the non-aggravated serious assault.

The serious assault of a corrective services officer received an average of 8.8 months' imprisonment, which was relatively high compared with serious assaults of public officers and police officers. The summary offences of assaulting or obstructing a police officer or a corrective services officer all received sentences of less than one year, averaging 3.7 months, 2.6 months, and 2.9 months, respectively — see Table A4-13 in Appendix 4.

Figure 7-7: Distribution of imprisonment lengths for relevant offences in the Magistrates Courts



Data include adult offenders, MSO, Magistrates Courts, 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.

As discussed above, community service orders were not used very frequently compared to other types of penalties. The summary offence of assaulting a police officer resulted in, on average, 61.7 hours of community service, which was slightly higher than the offence of obstructing a police officer, which itself resulted in 45.5 hours of community service on average — slightly higher than the legislative minimum penalty of 40 hours. Where community service was ordered for a serious assault, the penalties were higher on average. Non-aggravated serious assault resulted in an average of 85.0 hours for police officers, and 88.3 hours for public officers. Aggravated serious assaults had longer penalties again, with an average length of over 100 hours for all types of aggravated serious assault.

Monetary penalties were most commonly used for the summary offences of assaulting or obstructing a police officer. Under section 790, the maximum penalty is a fine of $5,338 (40 penalty units) or 6 months' imprisonment — this is increased to a fine of $8,007 (60 penalty units) or 12 months' imprisonment if the offence is committed within, or in the vicinity of, licensed premises. The average offender was required to pay $620.80 for assaulting and $414.50 for obstructing a police officer. Monetary penalties were not common for serious assault; however, the small proportion of cases that did receive a fine resulted in average amounts of $730 to $1,500, depending on the category of serious assault — with a maximum penalty of $6,800.

Table A4-14 in Appendix 4 contains a breakdown of the sentence lengths and fine amounts for young offenders. It should be read in conjunction with Figure 7-6 earlier in this chapter, which showed the proportion of each type of penalty sentenced.

When the number of young people sentenced for assaulting a public officer is broken down by offence and penalty type, the number of cases is relatively small. Many of the categories in Table 7-5 have been flagged as having a small number of cases, and caution is advised when interpreting the results.

On average, when a young person was sentenced to detention for a serious assault, they received approximately 5 months' detention, with some variation based on the type of serious assault. The aggravated serious assault of a public officer under section 340(2AA) received longer penalties, averaging 9.1 months of detention. For young people who were sentenced to detention but were immediately released into a structured program with strict conditions (a conditional release order), the sentence length was, on average, a little less than three years for aggravated serious assaults.

The length of community service orders varied considerably depending on the type of offence charged. The obstruction of a police officer resulted in the shortest community service orders, with an average of 28.2 hours. The summary offence of assaulting a police officer resulted in longer orders at 46.6 hours on average. The non-aggravated serious assault of a police officer had similar penalty lengths, at 51.1 hours on average. The aggravated serious assault of a police officer or a public officer ranged from an average of 57.5 hours (serious assault of a police officer with bodily fluid) to 81.7 hours (serious assault of a police officer with bodily harm) — however, the sample sizes in some of these categories were small.

Probation was one of the most commonly used orders for young people who assaulted a public officer. Serious assaults of police officers ranged from an average of 8.3 months for non-aggravated offences up to an average of

9.7 months for armed serious assaults. The summary offences of assaulting or obstructing a police officer had shorter probation sentences, with an average of 7.2 months for assaulting a police officer and 6.7 months for obstructing a police officer.

7.4 Cumulative penalties for assaults of corrective services officers

Section summary

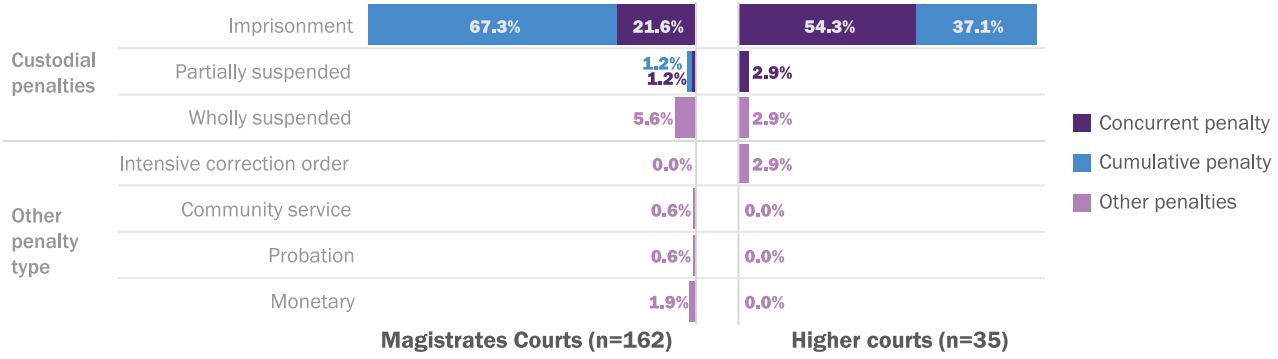
- In the Magistrates Courts, over two-thirds of sentences for serious assault of a corrective services officer sentenced under section 340(2) of the *Criminal Code* were ordered to be served cumulatively (one after the other) (68.5% of cases). In the higher courts, this figure was lower at 37.1 per cent of cases.
- For the summary offence of assaulting or obstructing a corrective services officer under section 124(b) of the CSA, 47.2 per cent of sentences were cumulative terms of imprisonment.

If a prisoner is serving a term of imprisonment, or has been released on parole, then in some situations any additional sentence of imprisonment must be served cumulatively (one after the other) with any other term of imprisonment that person is liable to serve. This applies to offenders convicted of a listed offence (or of counselling, procuring, attempting or conspiring to commit it), including wounding, AOBH, serious assault, GBH, torture, and acts intended to cause GBH and other malicious acts.[2]

While a cumulative penalty is mandatory for serious assault offences committed while a person is serving a term of imprisonment (including where released on parole),[3] this can only be applied if the offender is serving, or liable to serve, a term of imprisonment for a different offence. Figure 7-8 shows that, in the higher courts, over one-third of cases sentenced for serious assault of a corrective services officer (MSO) received a cumulative prison sentence. A further 60 per cent received a concurrent prison sentence, either time to be served or suspended, and 2.9 per cent received an intensive correction order.

In the Magistrates Courts, over two-thirds of cases sentenced for serious assault of a corrective services officer (MSO) received a cumulative prison sentence, a much higher proportion than in the higher courts, where 37.1 per cent of penalties were cumulative. This may be because cases progress faster in the lower courts, increasing the likelihood of the offender still serving an earlier imposed prison sentence at the time of being sentenced for the offence. A further 28.4 per cent received a (concurrent) custodial penalty, primarily a prison sentence to be served, and 3.1 per cent received a non-custodial penalty.

Figure 7-8: Cumulative penalties for s 340(2) serious assault or obstruct corrective services officer (MSO)



Data include adult offenders, MSO, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

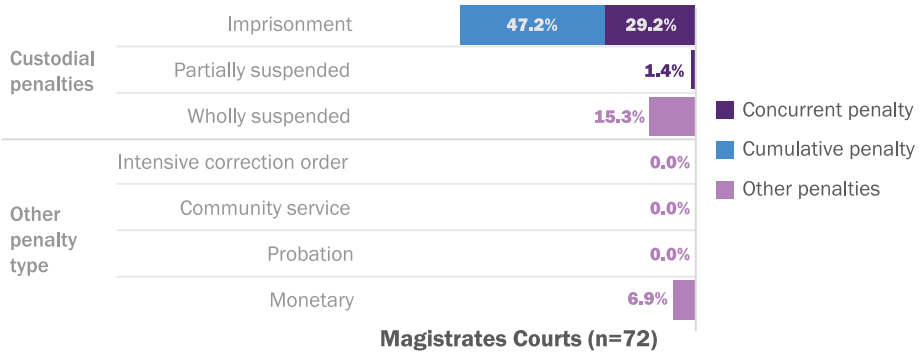
2 *Penalties and Sentences Act 1992* (Qld) s 156A and Schedule 1.

3 Ibid s 156A.

As shown in Figure 7-9, in the Magistrates Courts nearly half (47.2%) of cases sentenced for assaulting or obstructing a corrective services staff member (MSO; s 124(b)) received a cumulative prison sentence. A further 45.9 per cent received a concurrent prison sentence, primarily an imprisonment sentence with time served (29.2%). A small proportion (6.9%) received a monetary penalty.

Only one case that was sentenced in the higher courts for assaulting or obstructing a corrective services staff member (MSO) received a cumulative prison sentence (has not been presented in Figure 7-9).

Figure 7-9: Cumulative penalties for s 124(b) assault or obstruct corrective services staff (MSO), Magistrates Court



Data include adult offenders, MSO, Magistrates Courts, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

7.5 Impact of introduction of statutory circumstances of aggravation on sentencing

Section summary

- It is difficult to tell whether penalties for the same type of offending increased following the introduction of aggravating factors that carry a higher 14-year maximum penalty, due to a lack of data recorded on the circumstances of offending for offences prior to the legislative amendments.
- The introduction of the aggravating factors does appear, however, to have had an effect, with offences with aggravating circumstances receiving increased sentences compared to orders made prior to these legislative amendments. Non-aggravated offences, on the other hand, attracted lower penalties following the amendments.
- There was no change in sentencing outcomes for young offenders following the legislative amendments.

From 29 August 2012 (for police officers) it became a statutory circumstance of aggravation to assault a police officer by biting, spitting on, throwing at, or applying bodily fluid or faeces to, or causing bodily harm to a police officer or, at the time of the assault, being or pretending to be armed – with the maximum penalty for a serious assault committed in these circumstances being 14 years' imprisonment. The same circumstances of aggravation and associated maximum penalty were introduced for public officers from 5 September 2014. For juvenile offenders the maximum penalty for the aggravated form of the offence is instead 7 years' detention. The maximum penalty is 3.5 years' detention for a non-aggravated serious assault committed by a child (but only if the child is before a higher court). In the lower courts, a jurisdictional limit of one year's detention applies, for any offence.[4]

For a discussion on the number of cases sentenced under these provisions, refer to section 4.6 of Chapter 4.

Table 7-4 compares the penalties issued for the serious assault of a police officer (MSO) prior to the introduction of these statutory circumstances of aggravation, to the penalties issued following the introduction of these changes.

In the Magistrates Courts, prior to the introduction of this new aggravated form of serious assault, just over half of adult offenders (52.3%) received a custodial penalty for serious assault of a police officer, with an average sentence length of 0.5 years. When statutory aggravating circumstances were introduced, penalties for cases without

4 See *Youth Justice Act 1992* (Qld) s 176 regarding the 7-year maximum penalty. This can only be imposed by a judge, not a magistrate. See s 175 regarding the 3.5-year maximum regarding serious assault simpliciter offences (if the sentence is imposed by a judge) and 1-year maximum penalty available to magistrates generally. The differences in sentencing juvenile offenders are discussed in Chapter 6.

aggravating circumstances remained relatively unchanged. Cases with aggravating circumstances, however, were more likely to receive a custodial penalty with over three-quarters resulting in a custodial sentence (77.9%) — representing an almost 50 per cent increase in the use of custodial penalties (48.9%) — and to attract slightly longer sentences at 0.7 months, on average.

In the higher courts, prior to the introduction of the statutory aggravating circumstances, 85.7 per cent of offenders received a custodial sentence with an average penalty length of 0.8 years. Following the introduction of the aggravating circumstances, cases that did not have aggravating circumstances resulted in slightly lower penalties, with 80.0 per cent of these cases resulting in a custodial penalty, with an average length of 1.0 years. Almost all cases sentenced that had a circumstance of aggravation resulted in a custodial sentence (95.5%), and the average penalty length was longer at 1.2 years.

Table 7-4: Custodial sentences for serious assaults against police officers (MSO) before and after the introduction of aggravating circumstances, adult offenders

	2009–10 to 2011–12		2013–14 to 2015–16	
Type of serious assault of a police officer — s 340(1)(b)	**% custodial**	**Avg length (years)**	**% custodial**	**Avg length (years)**
Higher courts				
Prior to aggravating circumstances (n=252)	85.7	0.8		
Non-aggravated (n=30)			80.0	1.0
Aggravated (n=132)			95.5	1.2
Magistrates Courts				
Prior to aggravating circumstances (n=905)	52.3	0.5		
Non-aggravated (n=580)			55.6	0.5
Aggravated (n=738)			77.9	0.7

Data include adult offenders, MSO.
Data exclude 55 cases where the offence occurred prior to 29 August 2012 but was sentenced in 2013–14 or later (32 cases in the Magistrates Courts and 23 cases in the higher courts).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

While the figures above suggest that the introduction of aggravating circumstances has led to an increase in the use of custodial penalties and longer terms of imprisonment being imposed, it is not possible to identify with any certainty the extent to which sentences increased for those offences with aggravating features by comparing sentencing outcomes before and after the commencement of these changes. This is because, prior to these changes coming into effect, the acts of biting, spitting on, or throwing or applying a bodily fluid or faeces, whether or not the victim suffered bodily harm, and the presence of a dangerous or offensive weapon or instrument were not separately identified under the offence provision, and therefore not recorded for statistical reporting purposes. The sentencing outcomes for cases with these aggravating features is therefore unknown.

Further, it is possible that the creation of these new statutory circumstances of aggravation carrying a higher maximum penalty may have resulted in some cases that would previously have been charged as an AOBH, for example, instead resulting in charges being brought under section 340(1)(b) — thereby affecting the overall seriousness of offences sentenced. The preferring of charges of serious assault would seem to be supported by the increasing number of cases sentenced following the introduction of the new aggravated form of serious assault — 1,157 in the three years 2009–10 to 2011–12, compared with 1,480 in the three years from 2013–14, representing a 28 per cent increase — see also Figure 4–10 in Chapter 4 for trends on the increased use of section 340(1)(b) following the introduction of aggravating circumstances.

For juvenile offenders, the introduction of statutory circumstances of aggravation had no effect on sentencing outcomes in the lower courts, with minimal change in the proportion of offenders receiving a custodial sentence and no change in the average sentence length — see Table 7-5. The sample size for juveniles sentenced in the higher courts was too small to analyse.

Table 7-5: Custodial sentences for serious assaults against police officers (MSO) before and after the introduction of aggravating circumstances, juvenile offenders

	2009–10 to 2011–12		2013–14 to 2015–16	
Type of serious assault of a police officer – s 340(1)(b)	**% custodial**	**Avg length (years)**	**% custodial**	**Avg length (years)**
Higher courts				
Prior to aggravating circumstances (n=9*)	-	-		
Non-aggravated (n=2*)			-	-
Aggravated (n=10*)			-	-
Lower courts				
Prior to aggravating circumstances (n=118)	20.3	0.4		
Non-aggravated (n=72)			20.8	0.4
Aggravated (n=128)			19.5	0.4

Data include juvenile offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Table 7-6 compares the penalties issued for the serious assault of a public officer (MSO) prior to the introduction of aggravating circumstances, to the penalties issued following the introduction of aggravating circumstances.

In the Magistrates Courts, prior to the introduction of aggravating circumstances, a custodial sentence was given to over half (58.5%) of adults sentenced for the serious assault of a public officer under section 340(2AA). Following the introduction of aggravating circumstances, cases that did not have any aggravating circumstances had a lower rate of custodial penalties (49.4%), and cases that had aggravating circumstances had a higher rate (75.2%). There was little difference in the average length of custodial sentences before and after the introduction of aggravating circumstances; however, cases with aggravating circumstances had slightly longer custodial sentences on average (0.5 years where non-aggravated, compared with 0.6 years where aggravated).

For the same reasons discussed above, it is difficult to identify what the true impacts of these changes have been, although it seems clear that courts are more likely to impose custodial penalties for serious assault with aggravating circumstances, and to impose slightly longer sentences.

In the higher courts, there were not enough sentenced cases under section 340(2AA) to perform reliable analysis. Similarly, there were not enough cases involving young offenders to perform reliable analysis.

Table 7-6: Custodial sentences for assault against public officers (MSO) before and after the introduction of aggravating circumstances, adult offenders

	2011–12 to 2013–14		2015–16 to 2017–18	
Type of serious assault of a public officer — s 340(2AA)	**% custodial**	**Avg length (years)**	**% custodial**	**Avg length (years)**
Higher courts				
Prior to aggravating circumstances (n=14*)	-	-		
Non-aggravated (n=7*)			-	-
Aggravated (n=27*)			-	-
Magistrates Courts				
Prior to aggravating circumstances (n=130)	58.5	0.5		
Non-aggravated (n=154)			49.4	0.5
Aggravated (n=113)			75.2	0.6

Data include adult offenders, MSO.
Data exclude 8 cases where the offence occurred prior to 5 September 2014 but was sentenced in 2015 -16 or later (6 in the Magistrates Courts and 2 in the higher courts).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

7.6 Sentencing outcomes by demographic groups

Section summary

- There was variation in the proportion of custodial penalties based on gender and Indigenous status.
- Aboriginal and Torres Strait Islander men were the most likely to receive a custodial penalty, with non-Indigenous women the least likely.
- Offences in the Magistrates Courts had more variation between demographic groups compared to the higher courts, perhaps suggesting a wider variation in the type of offending by demographic groups in these courts.

Adult offenders

The following figures in this section illustrate the differences in sentencing outcomes for various demographic groups. Each shape represents a different demographic group and shows the proportion of cases that resulted in a custodial penalty. Shapes with a white centre indicate a small sample size (less than 30 cases), and caution is advised when interpreting these results.

This analysis does not control for confounding variables, such as the presence of mitigating factors (e.g. whether the defendant showed remorse, suffered from a cognitive impairment, or had no prior relevant history of offending) or aggravating factors (e.g. the degree of violence and harm caused, or whether the offence was committed while on bail). These factors have a key impact on sentencing outcomes.

Figure 7-10 shows the proportion of cases that received custodial penalties for relevant serious assaults by gender and Aboriginal and Torres Strait Islander status (adults, MSO).

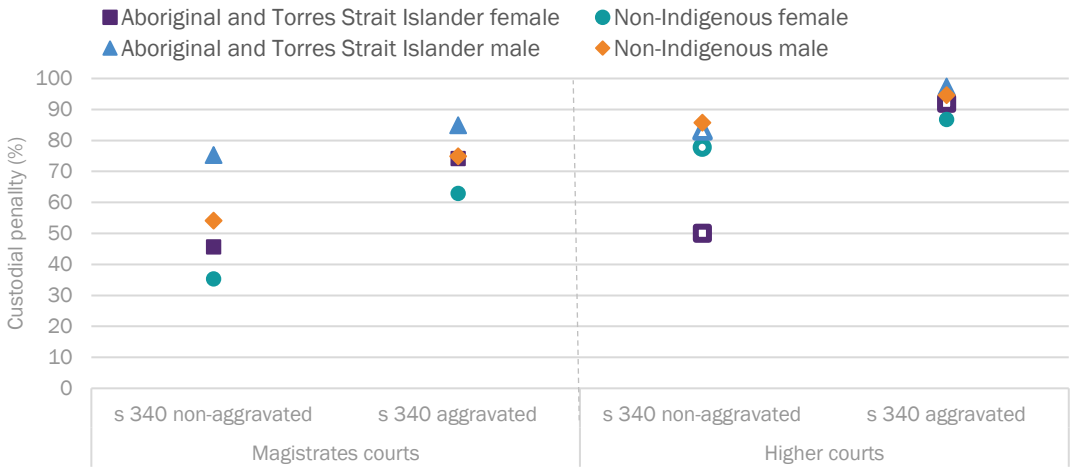
In the Magistrates Courts, Aboriginal and Torres Strait Islander men are consistently the most likely to receive a custodial sentence — this gap is especially wide for non-aggravated serious assaults. Non-Indigenous women are consistently the least likely to receive a custodial penalty. Men were more likely to receive a custodial penalty compared to women. There was a lot more variation between demographic groups in the Magistrates Courts compared to the higher courts, potentially reflecting a wider variation in the type of offending by demographic groups in the Magistrates Courts.

In both the Magistrates Courts and the higher courts, there was more variation for the non-aggravated section 340 offences in terms of who received custodial penalties.

There was less variation between demographic groups in the higher courts, with all demographic groups clustering around the same place. For aggravated serious assaults, all groups were clustered around 90 per cent of cases resulting in a custodial penalty; whereas for non-aggravated serious assaults, around 80 per cent of cases received custodial penalties. Aboriginal and Torres Strait Islander women were the one outlier — receiving a custodial penalty in only 50 per cent of serious assault cases in the higher courts — although the low numbers of cases may have contributed to this finding.

The likelihood of receiving a custodial penalty increases across the figure (from left to right) for both non-Indigenous women and non-Indigenous men; whereas it remains reasonably similar for Indigenous men regardless of the offence type or court level.

Figure 7-10: Proportion of serious assaults that resulted in a custodial penalty (MSO), by Aboriginal and Torres Strait Islander status with gender, adult offenders



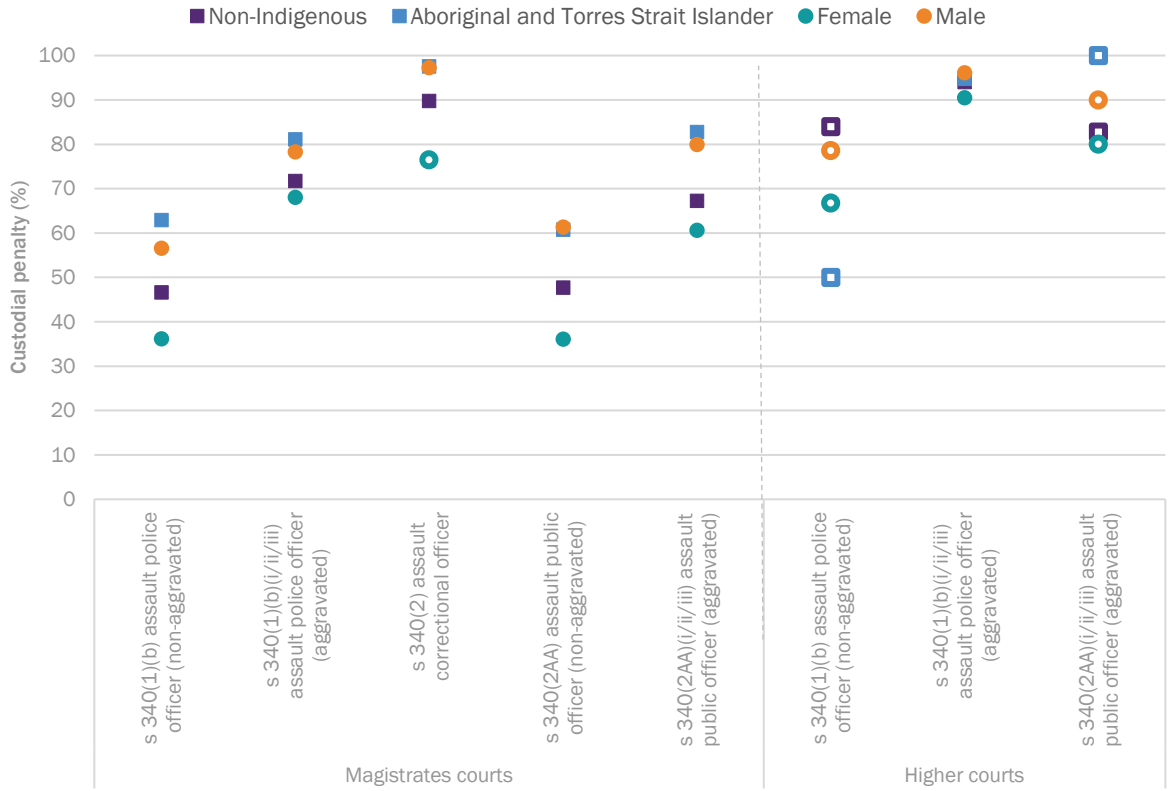
Data include adult offenders, MSO, offences on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Notes:
(1) 's 340 aggravated' includes s 340(1)(b) (penalty, paras (a)(i) to (a)(iii)) and s 340(2AA) (penalty, paras (a)(i) to (a)(iii)).
(2) 's 340 non-aggravated' includes ss 340(1)(b), 340(2AA), 340(2), 340(1)(c) and 340(1)(d).
(3) A white centre on an icon indicates that the sample size for this subgroup is less than 30 and caution should be used when interpreting this result.

Figure 7-11 breaks the data down further into specific types of serious assault. Due to the small number of cases sentenced, it was not possible to break down categories by both gender and Aboriginal and Torres Strait Islander status, as displayed in the previous figure.

In the Magistrates Courts, a consistent pattern emerges. Female offenders were consistently the least likely to receive a custodial penalty, followed by non-Indigenous offenders. Aboriginal and Torres Strait Islander offenders were the most likely to receive a custodial penalty across all offence types. The proportion of custodial sentences for men was similarly high. The highest proportion of custodial penalties was for the assault of a correctional services officer. Unsurprisingly, non-aggravated serious assaults were the least likely to result in a custodial penalty across all demographic groups.

Small sample sizes were present in the higher courts, allowing limited interpretation of the data. However, aggravated serious assaults against police had little variation among demographic groups.

Figure 7-11: Proportion of serious assaults resulting in a custodial penalty (MSO), by gender and Aboriginal and Torres Strait Islander status and offence type, adult offenders



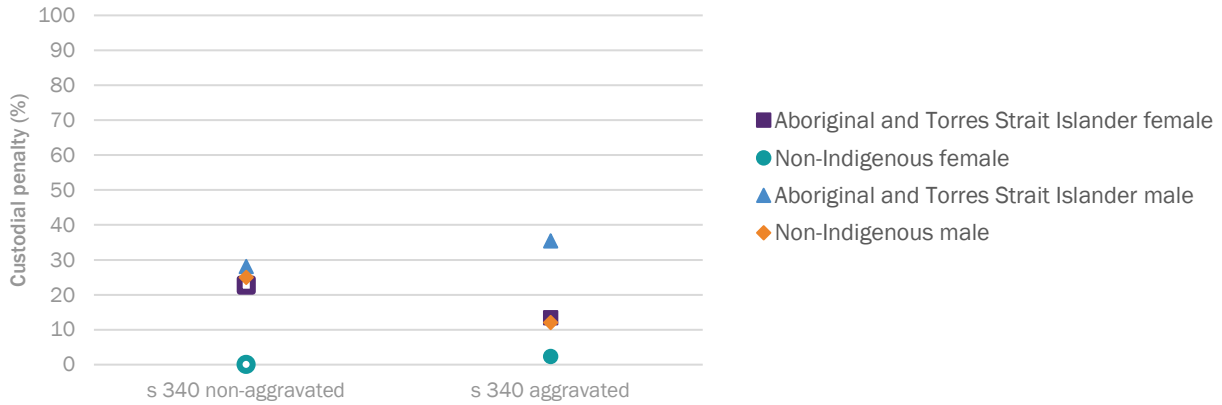
Data include adult offenders, MSO, offences on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Notes: (1) Assault of correctional officer and assault of public officer (non-aggravated) sentenced in the higher courts have not been presented due to small sample sizes.
(2) A white centre on an icon indicates that the sample size for this subgroup is less than 30 and caution should be used when interpreting this result.

Young offenders

Due to sample size limitations in the higher courts, higher and lower courts have been presented together for juvenile offenders — see Figure 7-12. The likelihood of receiving a custodial penalty was much lower for juvenile offenders than adult offenders.

Aboriginal and Torres Strait Islander men were the most likely to receive a custodial penalty for both non-aggravated and aggravated serious assaults, with non-Indigenous women the least likely.

Figure 7-12: Proportion of serious assaults that resulted in a custodial penalty (MSO), by Aboriginal and Torres Strait Islander status with gender, juvenile offenders



Data include juvenile offenders, MSO, offences on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Notes:
(1) 's 340 aggravated' includes s 340(1)(b) (penalty, paras (a)(i) to (a)(iii)) and s 340(2AA) (penalty, paras (a)(i) to (a)(iii)).
(2) 's 340 non-aggravated' includes s 340(1)(b), s 340(2AA), s 340(2), s340(1)(c) and s 340(1)(d).
(3) A white centre on an icon indicates that the sample size for this subgroup is less than 30 and caution should be used when interpreting this result.
(4) Higher courts and lower courts have been combined due to small sample sizes in the higher courts (non-aggravated offences n=5; aggravated offences n=19).

7.7 What offences are charged and sentenced for assaults of police, corrective services officers and youth detention officers?

Section summary

- For general offence provisions under the *Criminal Code*, such as common assault or AOBH, a custodial penalty was much more likely if the victim was a public officer. However, where a custodial penalty was imposed, these penalties were generally shorter.
- Incidents involving the assault of a working corrective services officer or youth detention staff member increased considerably from 2011–12 to 2018–19. Assaults of on-duty police officers that resulted in a charge declined over the same period.
- The offence most commonly charged for assaulting a corrective services officer was serious assault of a QCS officer under section 340(2) of the *Criminal Code* (56.4% of sentenced charges), followed by the lesser summary offence of assault or obstruct working QCS staff member under section 124(b) of the CSA (20.5%).
- For assaults of staff in youth detention facilities, the most common sentenced charge was the serious assault of a public officer under section 340(2AA) of the Code (33.2%) followed by the serious assault of a person performing/performed a duty at law under sections 340(1)(c) and (1)(d) (22.1%). Common assault and AOBH were also commonly charged (14.4% and 12.2%, respectively).
- Incidents involving the assault of an on-duty police officer most commonly involved a charge of assaulting or obstructing a police officer under section 790 of the PPRA (69.4%), followed by the serious assault of a police officer under section 340(1)(b) of the Code (21.9%).

For offences such as serious assault under section 340 of the *Criminal Code*, assault or obstruction of a police officer under section 790 of the PPRA, or assault or obstruction of a corrective services officer under section 124(b) of the CSA, it can be known with certainty that the victim of the assault was a public officer. For other general criminal offences that can be charged as the result of an assault, limited information is collected by courts about the victims of assaults. If an offender is charged with an offence such as common assault, AOBH, GBH or wounding, it is not clear which cases, if any, involve victims who are working public officers.

To provide some insight into this matter, the Council requested and obtained offender-level data from the Department of Youth Justice (YJ) and QCS for all assaults of staff members that occurred within corrective services or detention facilities. Similar data were also requested and obtained from the QPS on assaults of on-duty police officers that resulted in a charge. The Council matched the data provided by these agencies to data on sentenced court cases to better understand the range of offences that are charged for offenders who assault a public officer.

Data allowing for the matching of victims across datasets could not be provided by other government agencies due to the lack of information-sharing provisions allowing for the release of this information to the Council. For this reason, the Council's analysis of the sentencing outcomes for assaults on officers employed by these other agencies is limited to sentences imposed for offences charged under section 340.

7.7.1 Methodology

Each agency provided data on **incidents** that involved the assault of a staff member working in a corrective or detention facility, or the assault of an on-duty police officer. These incident data were matched to data on **charges** that were finalised in Queensland courts. Each incident may be linked to more than one charge, especially where the offender has committed multiple assaults during the incident, or where an incident involves more than one offender. Similarly, each charge may be linked to more than one incident, especially where an offender was involved in more than one incident on the same day.

An incident was considered to be 'matched' if at least one charge was identified in the courts data for at least one offender who was involved in the incident. If an incident involved multiple people, the incident was considered 'matched' even if only one offender was charged.

Incidents were linked to charges by matching the date that the incident occurred (agency data) to the date that the charged offence was committed (courts data), and by matching the details of an offender from the incident to the details of the accused person in the sentenced courts data using deterministic and probabilistic methods.[5] When matching dates, up to two days of discrepancy was allowed between the datasets to account for administrative errors. When matching offenders, the unique identifier assigned by the QPS was used as an 'exact' deterministic match — this identifier was present in data from all agencies. Where a deterministic match could not be achieved, probabilistic-matching techniques were used. For QCS and YJ data, probabilistic-matching techniques were used to match offender names. For the QPS data, the names of offenders were not provided; instead the offender's demographic details were used to create probabilistic matches, with a manual review of other variables such as the location of the offence to verify the reliability of matches.

5 In the context of data matching, **deterministic methods** include creating relationships between entities by joining on some form of identifiable information, such as a unique identifier that has been previously verified as a true and accurate characteristic of the entity. This type of matching is generally very accurate and very fast to perform. **Probabilistic methods** are those that involve the use of statistical modelling to determine if entities with similar characteristics are, in fact, the same. For this project, probabilistic methods were generally used when a deterministic match was not able to be made, often due to missing or incomplete information recorded in the datasets provided.

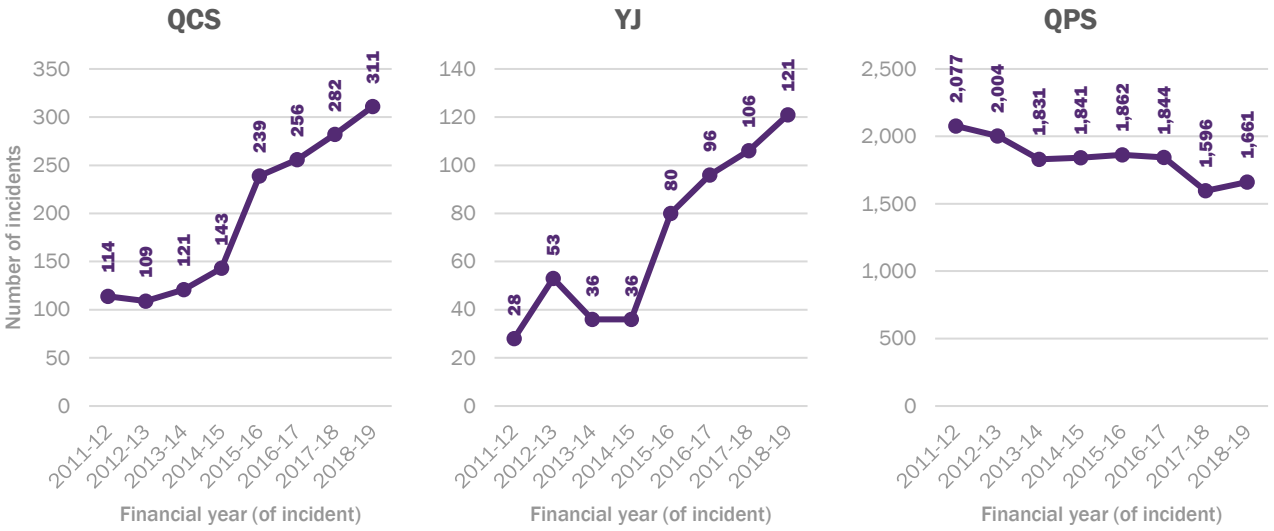
7.7.2 Incidents

The number of reported incidents involving the assault of a staff member in corrective services and youth detention facilities has increased from 2011–12 to 2018–19. In adult correctional facilities, the number of incidents increased from 114 to 311 incidents. Youth detention facilities saw an even more drastic increase, from 28 to 121 incidents.

The number of incidents involving the assault of an on-duty police officer (resulting in a criminal charge) has decreased, from 2,077 incidents in 2011–12 to 1,661 incidents in 2018–19.

It is important to note the numbers displayed in the figures below are not comparable between agencies. For example, there are many more QCS correctional facilities in Queensland compared to YJ youth detention centres, and there is a much larger number of the QPS officers employed across the state compared to the other agencies. There may also be differences in the way agencies classify an 'assault' in internal data management systems. Due to differences in counting rules, these data are not comparable with other jurisdictions.

Figure 7-13: Number of incidents of specific categories of working public officers, 2011–12 to 2018–19



Source: Incident data provided by individual agencies — unpublished data, 2010–11 to 2018-19.
Notes: (1) QCS and YJ data include incidents where criminal proceedings were not initiated. The QPS data include reported offences of assault that resulted in a charge.
(2) QCS incidents do not include assaults where the perpetrator was unknown (e.g. if something was thrown at an officer and the perpetrator was not identified).

7.7.3 Matches

Analysis of matched incidents revealed that the majority of incidents took, on average, 5 to 10 months to result in a finalised sentencing outcome. Incidents involving QCS took longer to be finalised at 10.1 months (on average), while incidents involving the QPS and YJ officers were finalised more quickly at 4.9 months and 5.8 months (on average), respectively.

The majority of cases across all agencies were finalised within two years of the date that the incident occurred — see Table 7-7. Accordingly, incidents that occurred after 30 June 2017 were excluded from this analysis, as not enough time has passed for the majority of these cases to have been finalised.

Table 7-7: Summary statistics on time taken for incidents to be finalised

		Proportion of incidents finalised in ...		
Agency	**Average months to sentence**	**Less than 6 months**	**Less than 1 year**	**Less than 2 years**
QCS incidents	10.1	36.8%	71.7%	94.4%
QPS incidents	4.9	73.3%	89.9%	98.1%
YJ incidents	5.8	64.9%	87.3%	98.8%

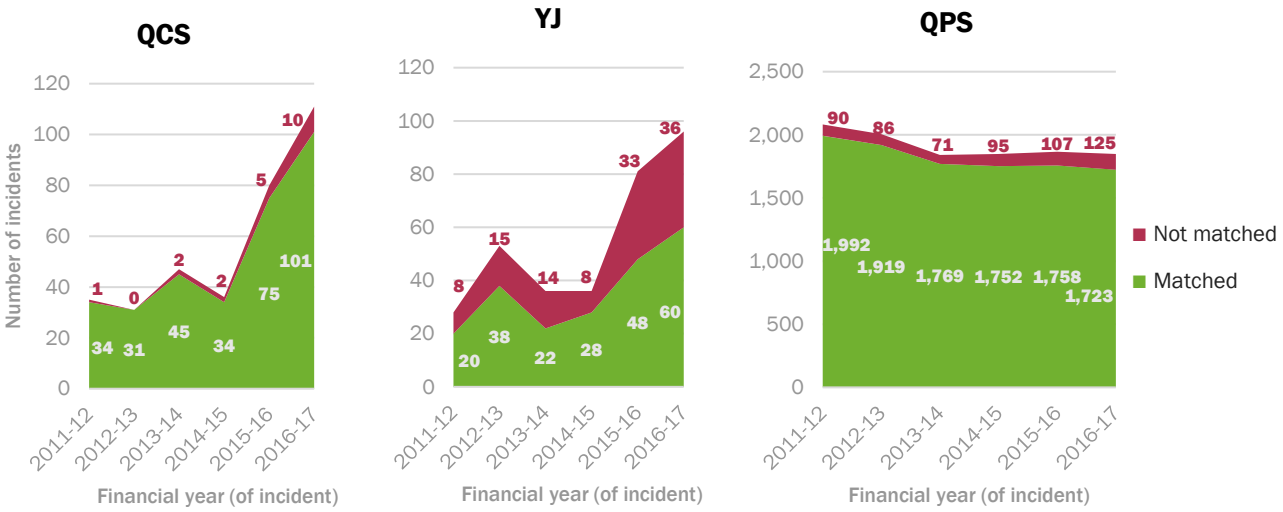
Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

The majority of incidents recorded by each agency were successfully matched to a sentencing event in the courts database (QCS=94.1%, YJ=65.5%, QPS=95.0%).

Data received from YJ included all incidents that involved the assault of a staff member, even where the incident did not result in a criminal charge. Incidents that were not prosecuted would, of course, not result in a sentence and so would not result in a match, which is why the proportion of unmatched cases is higher for this group. This proportion of unmatched cases was expected and does not imply that there were problems with the matching techniques.

QCS incidents that did not lead to the initiation of criminal proceedings have been excluded from the following analysis. The small number of cases that did not match in the QCS dataset was the result of two factors: either not enough information was recorded about the perpetrator in the administrative system (e.g. where the perpetrator was a visitor rather than a prisoner), or the case was ongoing and had not yet resulted in a final sentenced outcome.

Figure 7-14: Summary of agency incidents matched to court cases



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.
Note: QCS data exclude incidents that did not lead to the initiation of criminal proceedings.

7.7.4 Limitations

The methodology described above matches incidents (as recorded by agencies) to charges that were sentenced in court. Incidents were matched to charges by linking the offender and the date of the offence across datasets. If an offender were to assault a public officer but also on the same day commit other unrelated offences, these unrelated offences may be incorrectly linked to the charge involving the assault of a public officer. Similarly, an incident that involves the assault of a public officer may also involve the assault of other victims — in these situations, it is not possible to distinguish between the assault that involved the public officer, and the assaults of other victims that were committed by the same perpetrator on the same day.

The QPS incident data include reported offences that were classified as an assault on a prima facie basis at the time the offence was reported. In some instances, an offence that was charged as an assault by a police prosecutor might not have initially been classified as an assault — these offences are not included in this analysis. For example, a reported offence might initially be classified as 'resist arrest, incite, hinder, obstruct police' and would not have been included in the data extract received from the QPS, but the offence might subsequently be charged as assault of a police officer under section 790(1)(a) of the PPRA.

Through initial analysis and consultation with the QPS, it was identified that a small number of offences that were reported as an assault were missing. A small number of these offences were affected by administrative data-entry errors. Additionally, in some circumstances the victim's status as a police officer was recorded as 'inactive' — these cases were not included in the extract. Advice from the QPS was that the number of affected cases was minimal and unlikely to have a significant impact on the overall number of offences.

7.7.5 Sentenced offences

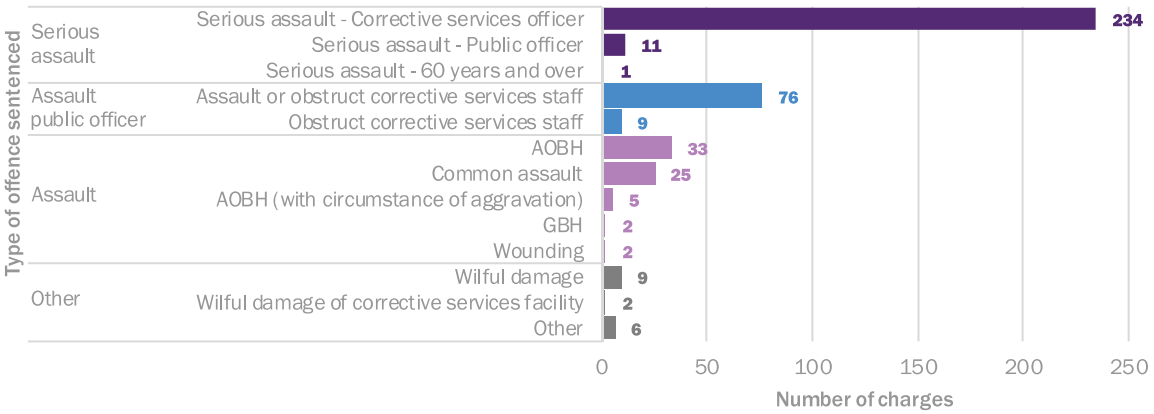
Queensland Corrective Services

Over half of incidents that involved the assault of a working staff member in a corrective services facility resulted in a sentenced charge of serious assault (n=246, 59.3%) — see Figure 7-15. The serious assault of a corrective services officer under section 340(2) of the *Criminal Code* was the most common charge (n=234, 56.4%), although there were a small number of cases involving the serious assault of a public officer under section 340(2AA) (n=11, 2.7%), and one case involving the serious assault of a person aged 60 years and over (n=1, 0.2%).

There were 85 charges sentenced for offences that specifically dealt with the assault of a public officer (20.5%). There were 76 charges sentenced under section 124(b) of the *Corrective Services Act 2006* for assaulting or obstructing a working staff member in a corrective services facility (18.3%), and 9 charges sentenced under section 127(1) of the *Corrective Services Act 2006* for obstructing a corrective services staff member (2.2%).

There were also 67 charges sentenced for assault-related offences that were not specific to public officers (16.1%). Non-aggravated AOBH was the most common charge falling into this category, representing 33 sentenced charges (8.0%). There were 25 charges of common assault sentenced (6.0%). A small number of charges sentenced were for aggravated AOBH (n=6, 1.2%), GBH (n=2, 0.5%) and wounding (n=2, 0.5%), collectively accounting for 2.2 per cent of sentenced charges.

Figure 7-15: Sentenced offences for assaults of working corrective services officers, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by Queensland Corrective Services — unpublished data, 2011–12 to 2016–17.

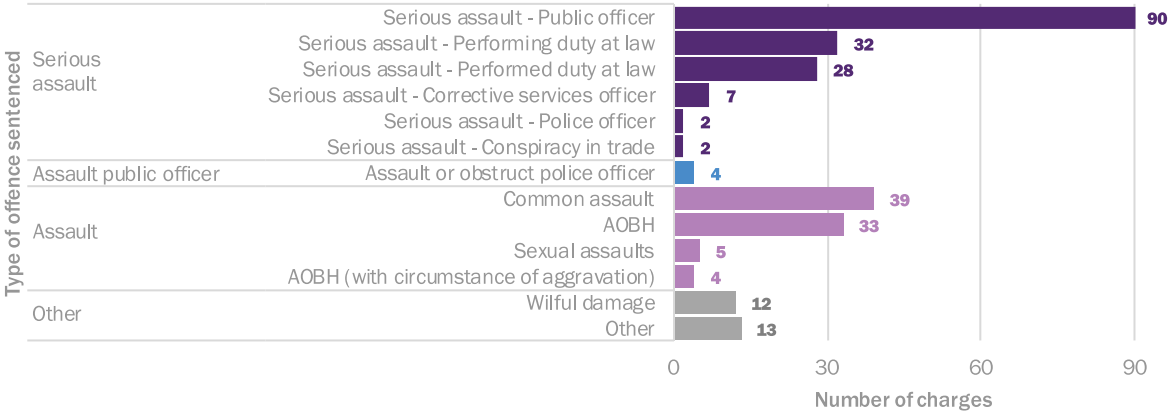
Department of Youth Justice

Over half of sentenced charges resulting from an assault of a staff member in a youth detention facility were for the offence of serious assault (n=161, 59.4%). The most common type of serious assault sentenced was for assault, resist or wilfully obstruct a public officer under section 340(2AA) of the *Criminal Code* (n=90, 33.2%), followed by the serious assault of a person who was performing a duty at law under section 340(1)(c) with 32 sentenced charges (11.8%), or because that person had performed a duty at law under section 340(1)(d) with 28 sentenced charges (10.3%). A small number of charges involved the serious assault of a corrective services officer under section 340(2) (n=7) or of a police officer under section 340(1)(b) (n=2).

Very few incidents resulted in summary offences being charged and sentenced involving assault or obstruction of a public officer. This could be expected given that no separate summary offence of assault or obstruct a youth justice staff member exists under the *Youth Justice Act 1992*. There were only four cases categorised as offences of this nature, all of which involved cases sentenced under section 790 of the PPRA for the assault or obstruction of a police officer.

Almost one-third of incidents resulted in a sentenced charge for a general assault-related offence (n=81, 29.9%). Common assault (n=39, 14.4%) and non-aggravated AOBH (n=33, 12.2%) were the most common offences sentenced.

Figure 7-16: Sentenced offences for assaults of staff of youth detention facilities, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Department of Youth Justice — unpublished data, 2011–12 to 2016–17.

The Queensland Police Service

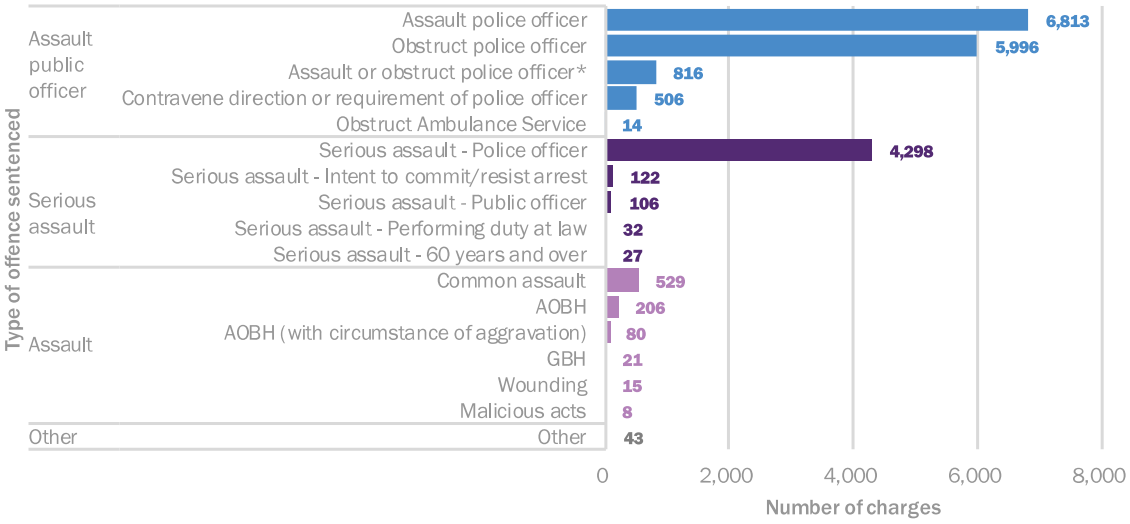
Almost three-quarters of sentenced charges resulting from an incident involving the assault of an on-duty police officer were sentenced for summary offences dealing specifically with the assault of a public officer (72.1%, n=14,154), most of which were sentenced for the assault or obstruction of a police officer under section 790 of the PPRA (n=13,625). The assault of a police officer (s 790(1)(a)) was the most common offence (34.7%, n=6,813), followed by the obstruction of a police officer (s 790(1)(b)) (30.5%, n=5,996).

A small proportion of cases were sentenced for contravening the direction or requirement of a police officer under section 791(1) of the PPRA (n=506, 2.6%). There were 14 charges sentenced for obstructing a member of the Ambulance Service under section 46(1) of the *Ambulance Service Act 1991* (Qld) — these assaults were included in the analysis as they occurred on the same day (and possibly during the same incident) as the assault of a police officer (see the limitations section above for further details).

A charge of serious assault was sentenced for almost a quarter of offences (23.4%, n=4,585). Unsurprisingly, the serious assault of a police officer under section 340(1)(b) was the preferred charge with 4,298 sentenced offences (21.9%). Other types of serious assault were used infrequently.

There were 529 incidents that resulted in a charge of common assault (2.7%), and 286 cases that resulted in a charge of AOBH (1.5%). Due to the limitations outlined above, it is not clear whether the victim of these offences was a police officer, another victim involved in the incident, or the victim of another offence that was committed on the same day by the same perpetrator.

Figure 7-17: Sentenced offences for assaults of on-duty police officers, 2011–12 to 2016–17

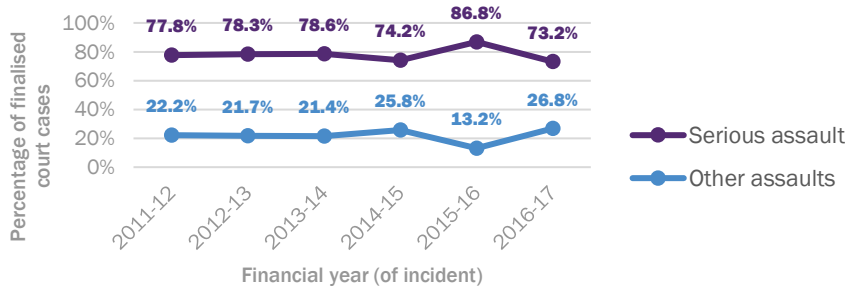


Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.
Note: (*) Includes cases sentenced under s 790(1) of the PPRA where it was unclear whether the charge was an assault (s 790(1)(a)) or obstruction (s 790(1)(b)).

7.7.6 Sentenced offences over time

Over time, the proportion of cases in which serious assault has been charged for incidents involving the assault of a corrective services officer has remained relatively stable. From 2011–12 to 2016–17 approximately three-quarters of incidents that resulted in criminal charges being laid resulted in a sentence for serious assault. In 2015–16 this number was higher than usual with 86.8 per cent of incidents resulting in a finalised serious assault charge. In the case of prisoners, the option to treat less serious assaults as a breach of discipline under the CSA and to make use of administrative sanctions may impact on these trends. This is discussed in more detail in Chapter 9.

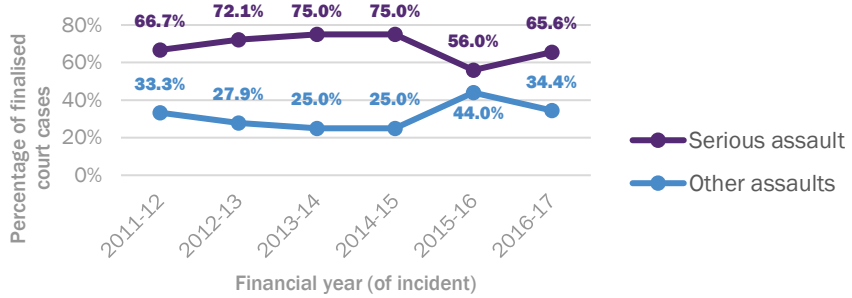
Figure 7-18: Proportion of serious assault charges resulting from assaults in corrective services facilities, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.

The proportion of serious assaults charged in youth detention facilities was similar to the numbers coming out of adult corrective facilities, with approximately three-quarters of cases resulting in a serious assault charge in most years. There was some fluctuation in recent years, with an increasing number of common assault charges being finalised in 2015–16.

Figure 7-19: Proportion of serious assault charges resulting from assaults in youth detention facilities, 2011–12 to 2016–17

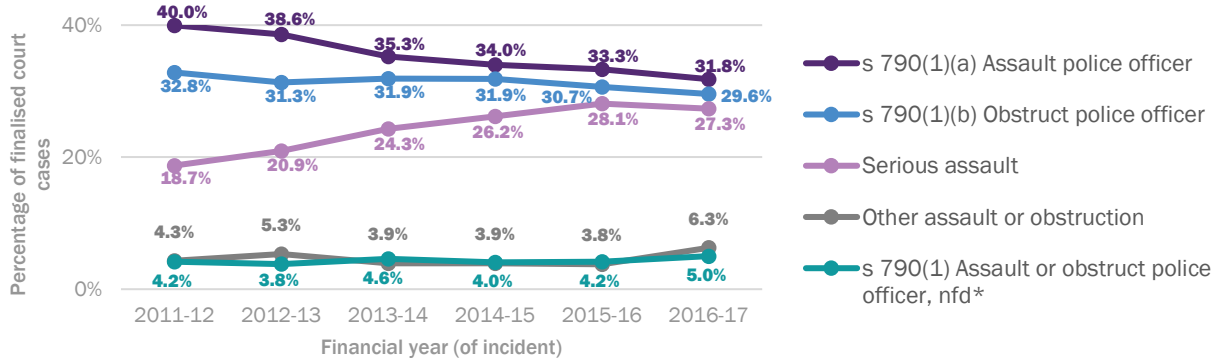


Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.

The proportion of serious assaults of an on-duty police officer increased in the years leading up to 2015–16 but decreased slightly in 2016–17. This is consistent with the Council's analysis of court data, which found that the number of serious assaults of police officers sentenced in court has been decreasing since 2015–16 — see Figure 2-4 in Chapter 2.

The proportion of both assaults and obstructions of a police officer under section 790 of the PPRA decreased from 2011–12 to 2015–16 but remained stable in 2016–17.

Figure 7-20: Proportion of charges resulting from assaults of on-duty police officers, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.
Notes: (1) 'Other assault or obstruction' includes assault charges such as common assault, AOBH and similar offences.
(2) *nfd* — not further defined. Includes charges of s 790 that could not be classified as either an assault or obstruction.

7.7.7 Sentencing outcomes

By linking incident data from agencies to court data on sentencing outcomes, it is possible to compare the types of sentences issued for offences such as common assault and AOBH for different types of victims.

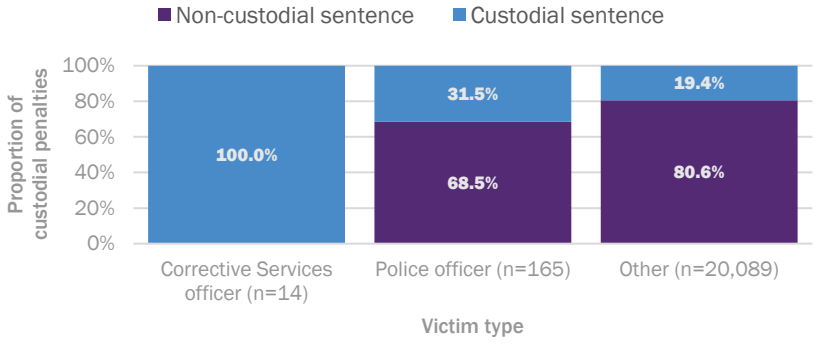
For a comparison of sentencing outcomes for the different types of serious assault, see section 7.3 above.

The findings of this analysis show that cases involving a common assault or AOBH of a public officer generally attracted a higher proportion of custodial penalties compared with cases in which the victim was not a public officer. However, the length of these custodial sentences was generally shorter in cases involving a public officer victim.

Common assault

While only a small number of adult offenders who assaulted a corrective services officer were charged with common assault (MSO), all of these offenders received a custodial penalty (n=14). In cases where a police officer was the victim of a common assault, 31.5 per cent of cases resulted in a custodial penalty — this is higher than the 19.4 per cent of cases that resulted in a custodial penalty with time served where the victim was not an on-duty police officer.

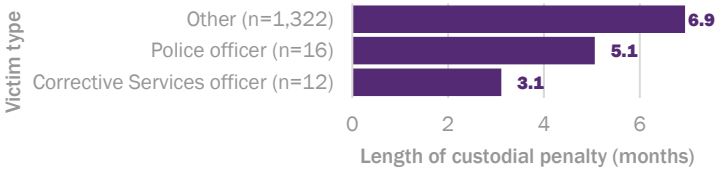
Figure 7-21: Custodial penalties for common assault (MSO) by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

While common assaults against corrective services officers and police officers were more likely to result in a custodial penalty, Figure 7-22 shows that the length of custodial penalties with time served in a custodial facility post-sentence was shorter for common assaults against police officers and corrective services officers. On average, a common assault of a corrective services officer resulted in 3.1 months in custody (with actual time served); the common assault of a police officer resulted in a 5.1-month custodial sentence; and common assaults against other types of victims had longer sentences at 6.9 months on average.

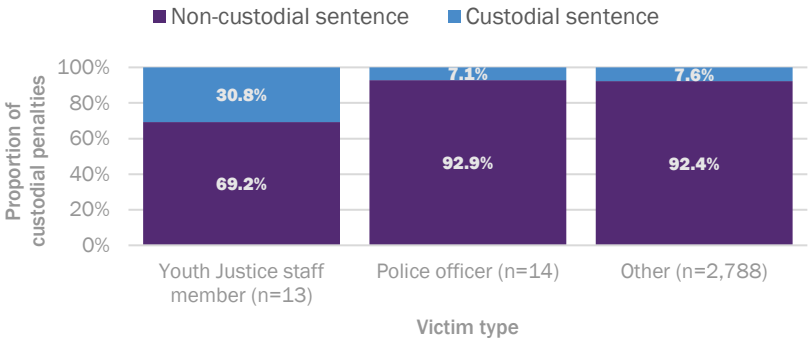
Figure 7-22: Length of custodial penalties (with actual time served) for common assault (MSO), by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

For young people who were sentenced for common assault (MSO), in cases where the incident occurred in a youth detention facility, 30.8 per cent of cases resulted in a custodial penalty. This is considerably higher than the 7.1 per cent of common assaults involving on-duty police officers that resulted in a custodial penalty, and the 7.6 per cent of common assaults involving other types of victims who received a custodial penalty.

Figure 7-23: Custodial penalties for common assault (MSO) by type of victim, young people, 2011–12 to 2016–17



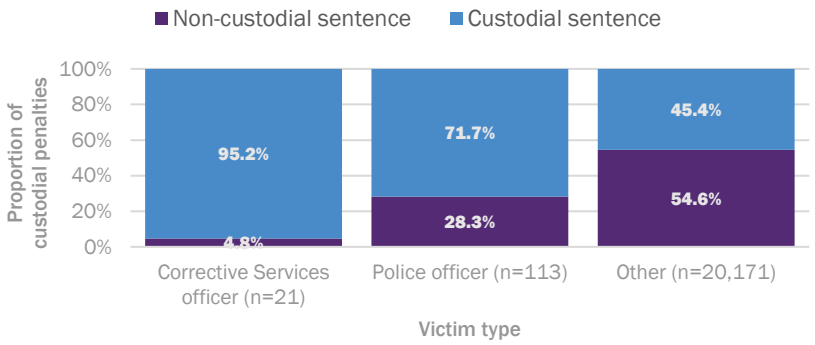
Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

Due to the small number of young people sentenced for common assault of a youth justice staff member or a police officer, there was not enough data to analyse the length of these sentences.

Assaults occasioning bodily harm (non-aggravated)

There were 21 cases involving adult offenders assaulting a corrective services officer that resulted in a sentenced charge for non-aggravated AOBH (MSO); almost all of these cases resulted in a custodial sentence (95.2%). For incidents where a police officer was the victim of an AOBH, 71.7 per cent of cases resulted in a custodial penalty. For cases involving other types of victims, the proportion of custodial penalties was lower at 45.4 per cent.

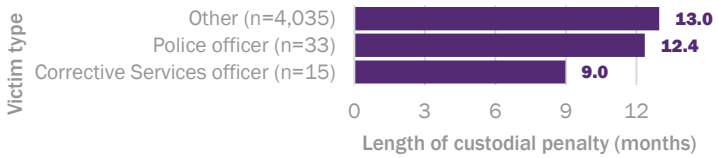
Figure 7-24: Custodial penalties for AOBH (MSO) by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

Figure 7-25 shows the length of custodial penalties (with actual time served) issued for AOBH. In cases where the victim was a corrective services officer, the length of the penalty was relatively short, with sentences averaging 9.0 months. Cases involving a police officer as the victim received longer custodial sentences with an average length of 12.4 months. This was very similar to the average of 13.0 months for other AOBH cases where the victim was not a police officer or a corrective services officer.

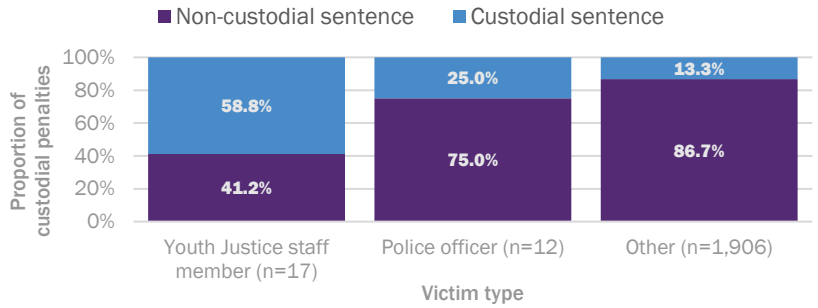
Figure 7-25: Length of custodial penalties (with actual time served) for assaults occasioning bodily harm (MSO), by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

For young people, there were 17 cases that resulted in a sentenced charge for non-aggravated AOBH (MSO) of a staff member working in a youth detention facility. More than half of these cases resulted in a custodial penalty (58.8%). One-quarter of young people who were charged for AOBH of an on-duty police officer were sentenced to a custodial penalty (25.0%). For cases sentenced for AOBH of a person who was not a police officer or a staff member in a youth detention facility, only 13.3 per cent of cases resulted in a custodial penalty.

Figure 7-26: Custodial penalties for AOBH (MSO) by type of victim, young people, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

Due to the small number of young people sentenced for common assault of a youth justice staff member or a police officer, there was not enough data to analyse the length of these sentences.

7.8 Type of plea

Section summary

- For offences involving the assault of a public officer, 97.4 per cent of defendants pleaded guilty. Only 2.6 per cent entered a plea of not guilty.
- The serious assault of a corrective services officer was the most likely to result in a not guilty plea (5.6% of cases).
- The summary offence of assaulting or obstructing a police officer was heard ex parte (in the defendant's absence) in 11.8 per cent of cases.
- Following the introduction of aggravating circumstances for serious assault under section 340 of the *Criminal Code*, the proportion of guilty pleas increased for serious assaults on police officers, decreased for serious assaults of public officers, and remained relatively unchanged for young offenders.

The Council refers to plea rates as a factor relevant to its assessment of the impacts of the 2012 and 2014 reforms that introduced new aggravated forms of serious assault carrying a higher 14-year maximum penalty, and also to the potential impacts of the existence of less serious summary charges, which can be charged for the same type of criminal conduct, captured within the offence of serious assault.

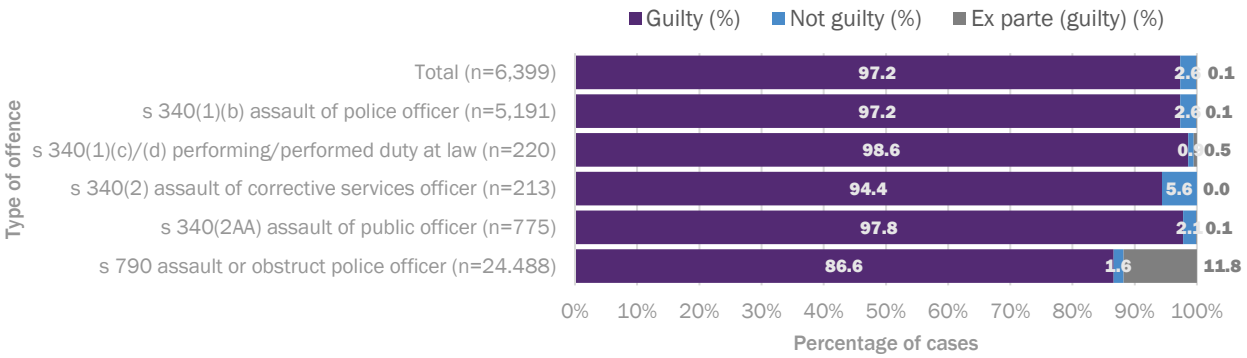
An accused person can be found guilty of an offence if he or she pleads guilty to the offence charged or is found guilty following a trial. This section of the paper explores the proportion of people sentenced who pleaded guilty, compared to those who pleaded not guilty and were subsequently found guilty at trial. Magistrates Courts can sentence people who do not come to court in their absence ('ex parte') — although the court can instead issue a warrant or adjourn the case. A person cannot be sentenced to imprisonment in their absence without an adjournment, specific procedural steps about notice to the person being taken, and a second failure to appear.[6] A defendant can also plead guilty and be sentenced in their absence in Magistrates Courts by providing written notice in some circumstances, but not to indictable offences (e.g. *Criminal Code* offences).[7] The cases referred to below as 'ex parte (guilty)' include these situations in which a defendant was absent from court.

6 See *Justices Act 1886* (Qld) ss 5 ('simple offence') 142 and 142A.

7 Ibid s 146A.

Figure 7-27 shows the proportion of defendants who pleaded guilty for a relevant serious assault offence in the 10-year data period. The vast majority of defendants pleaded guilty (97.2%). Slightly more defendants pleaded guilty to serious assault in the Magistrates Courts (97.3 per cent) compared to the higher courts (96.6%). Offenders sentenced for the serious assault of a corrective services officer had the highest proportion of not guilty pleas at 5.6 per cent of cases. Section 790 assault or obstruct a police officer had the highest proportion of ex parte pleas at 11.8 per cent of cases.

Figure 7-27: Final plea type for serious assault of public officer offences (MSO)



Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where the plea type was unknown have been included in the calculations but not presented.

Table 7-8 shows the proportion of guilty pleas by offence and demographic group. Overall, there were few differences by gender or Aboriginal and Torres Strait Islander status. Aboriginal and Torres Strait Islander offenders were slightly more likely to plead guilty than their non-Indigenous counterparts. Female offenders were also slightly more likely to plead guilty than males.

Non-Indigenous offenders, both male and female, were more likely to plead guilty to a section 790 assault or obstruct police officer offence than their Aboriginal and Torres Strait Islander counterparts. Aboriginal and Torres Strait Islander male offenders were slightly more likely to plead guilty for assault of a corrective services officer than other demographic groups at 98.6 per cent.

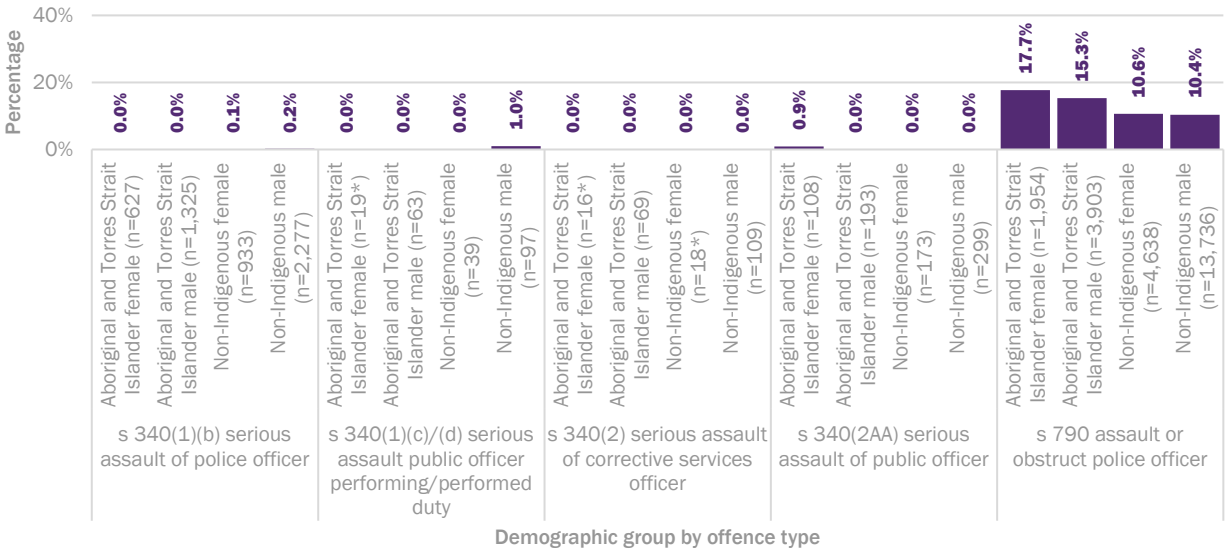
Table 7-8: Final plea type for serious assault of public officer offences (MSO) by demographic group

	Aboriginal and Torres Strait Islander				Non-Indigenous			
Demographic group	**Female**		**Male**		**Female**		**Male**	
Offence	**N**	**% pleaded guilty**	**N**	**% pleaded guilty**	**N**	**% pleaded guilty**	**N**	**% pleaded guilty**
340(1)(b) serious assault police officer	627	98.1	1,325	97.0	933	97.8	2,277	96.9
340(1)(c)/(d) serious assault performing/performed duty at law	19*	100.0	63	100.0	39	97.4	97	97.9
340(2) serious assault corrective services officer	16*	93.8	69	98.6	18*	94.4	109	92.7
340(2AA) serious assault public officer	108	98.2	193	98.5	173	98.3	299	97.0
790 assault or obstruct police officer	1,954	81.6	3,903	83.8	4,368	87.7	13,736	87.6
Total	**770**	**98.1**	**1,650**	**97.3**	**1,163**	**97.8**	**2,782**	**96.8**

Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Offenders sentenced for a section 790 assault or obstruct police officer offence (MSO) were much more likely to enter an ex parte plea compared with other offences analysed. Female offenders and Aboriginal and Torres Strait Islander offenders were more likely to enter an ex parte plea to this offence than their counterparts, with Aboriginal and Torres Strait Islander females having the highest rate of ex parte pleas for assaulting or obstructing a police officer, at 17.7 per cent. Non-Indigenous males had the lowest proportion of ex parte pleas for this offence, at 10.4 per cent.

Figure 7-28: Proportion of ex parte final pleas for assault of public officer offences (MSO) by demographic group and offence type

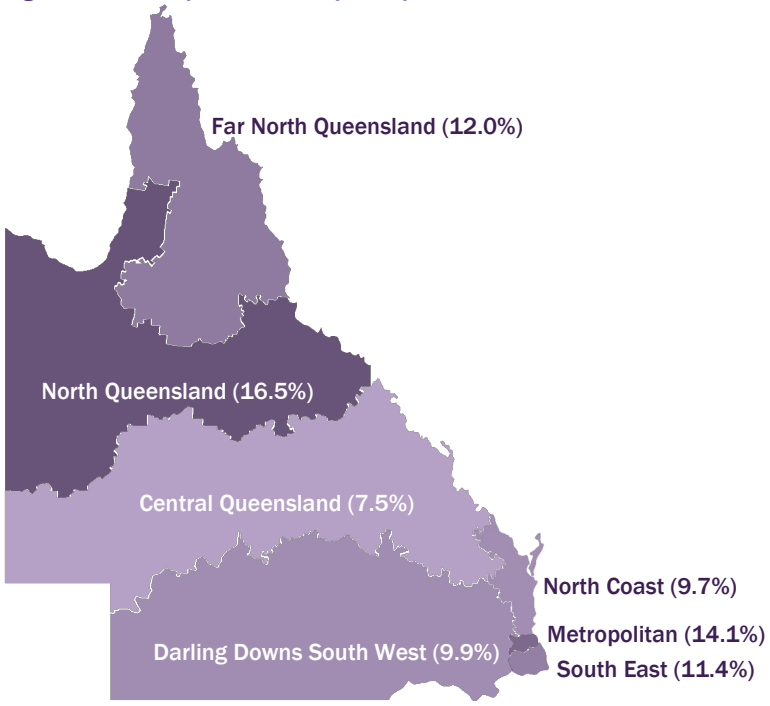


Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Figure 7-28 (above) provides a breakdown of the regions throughout Queensland with the highest proportion of ex parte pleas for section 790 offences. It was speculated that the location of the court could be one potential reason for the high proportion of ex parte pleas for section 790 offences, with more ex parte pleas in locations that were less urban, where there are greater barriers to access to court and legal representation. However, Figure 7-29 disproves this theory, showing that the more remote regions did not necessarily have a higher proportion of ex parte pleas for section 790 offences.

The North Queensland region, which includes places ranging from Townsville to Mount Isa, had the highest proportion of ex parte pleas for section 790 offences at 16.5 per cent of cases. The region with the lowest proportion of ex parte pleas was Central Queensland at 7.5 per cent, which includes locations ranging from Mackay and Gladstone to Longreach. The Metropolitan region, which includes the Greater Brisbane area, had one of the highest proportions of ex parte pleas at 14.1 per cent of cases.

Figure 7-29: Proportion of ex parte pleas for s 790 assault or obstruct police officer (MSO) by region



Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

7.8.1 Effect of the introduction of aggravating circumstances on type of plea

Assaults on police by adult offenders

In the higher courts, prior to the introduction of aggravating circumstances for serious assault of a police officer under section 340(1)(b), the vast majority of adult defendants pleaded guilty to serious assault (96.0%). This increased slightly following the introduction of aggravating circumstances, to 97.7 per cent for aggravated offences and to 100 per cent for non-aggravated offences. There were not enough sentenced cases under section 790 in the higher courts to perform similar analysis.

Similar results were seen in the Magistrates Courts, with the proportion of guilty pleas increasing slightly following the introduction of aggravating circumstances for assault of a police officer; rising from 95.9 per cent prior to the introduction of aggravating factors to 97.2 per cent for non-aggravated offences and 97.6 per cent aggravated offences.

Over the same period, section 790 offences sentenced in the Magistrates Courts also saw a slight increase in guilty pleas from 84.8 per cent to 86.3 per cent, as well as a decrease in ex parte pleas (13.4% to 12.2%).

Table 7-9: Final plea type for assaults of police officers (MSO), before and after the introduction of aggravating circumstances, adult offenders

		2009–10 to 2011–12			2013–14 to 2015–16		
Type of offence		**Guilty**	**Not guilty**	**Ex parte (guilty)**	**Guilty**	**Not guilty**	**Ex parte (guilty)**
Higher courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=252)	96.0%	4.0%	0.0%			
	Non-aggravated (n=30)				100.0%	0.0%	0.0%
	Aggravated (n=132)				97.7%	2.3%	0.0%
s 790 assault/ obstruct police	Prior to aggravating circumstances (n=7*)	-	-	-			
	Post aggravating circumstances (n=1*)				-	-	-
Magistrates courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=905)	95.9%	3.9%	0.0%			
	Non-aggravated (n=580)				97.2%	2.4%	0.3%
	Aggravated (n=738)				97.6%	2.2%	0.0%
s 790 assault/ obstruct police	Prior to aggravating circumstances (n=7,890)	84.8%	1.8%	13.4%			
	Post aggravating circumstances (n=7,512)				86.3%	1.5%	12.2%

Data include adult offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:(1) Cases where the plea type was unknown have been included in the calculations but not presented.
(2) Aggravating circumstances were introduced on 29 August 2012.
(*) Small sample sizes

Assaults on police by young offenders

In the higher courts there were not enough sentenced cases under either section 340(1)(b) or section 790 to reliably analyse the final plea type for young offenders. In the Magistrates Courts, almost all juvenile defendants pleaded guilty to serious assault of a police officer, both before and after the introduction of aggravating circumstances. Before the introduction of aggravating circumstances, 98.3 per cent pleaded guilty; this decreased slightly for non-aggravated offences (97.2%) and increased slightly for aggravated offences (99.2%). A slight increase in guilty pleas was also seen for section 790 offences after the introduction of aggravating circumstances.

Table 7-10: Final plea type for assaults of police officers (MSO), before and after the introduction of aggravating circumstances, juvenile offenders

		2009–10 to 2011–12			2013–14 to 2015–16		
Type of offence		Guilty	Not guilty	Ex parte (guilty)	Guilty	Not guilty	Ex parte (guilty)
Higher courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=9*)	-	-	-			
	Non-aggravated (n=2*)				-	-	-
	Aggravated (n=10*)				-	-	-
s 790 Assault/ obstruct police	Prior to aggravating circumstances (n=1*)	-	-	-			
	Post aggravating circumstances (n=0)				-	-	-
Magistrates courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=118)	98.3%	0.9%	0.0%			
	Non-aggravated (n=72)				97.2%	2.8%	0.0%
	Aggravated (n=128)				99.2%	0.8%	0.0%
s 790 Assault/ obstruct police	Prior to aggravating circumstances (n=368)	98.9%	0.8%	0.3%			
	Post aggravating circumstances (n=295)				99.7%	0.3%	0.0%

Data include juvenile offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Cases where the plea type was unknown have been included in the calculations but not presented.
(2) Aggravating circumstances were introduced on 29 August 2012.
(*) Small sample sizes

Assaults on public officers by adult offenders

There were not enough cases sentenced under section 340(2AA) in the higher courts to reliably analyse pleas. In the Magistrates Courts, 98.5 per cent of defendants pleaded guilty to serious assault of a public officer before the introduction of aggravating circumstances. After introduction, the proportion of guilty pleas decreased slightly for both aggravated and non-aggravated offences.

There were not enough sentenced cases under section 340(2AA) involving young offenders to perform reliable analysis for this group.

Table 7-11: Final plea type for assaults of public officers (MSO), before and after the introduction of aggravating circumstances, adult offenders

		2011–12 to 2013–14		2015–16 to 2017–18	
Type of offence		Guilty	Not guilty	Guilty	Not guilty
Higher courts					
s 340(2AA) public officer	Prior to aggravating circumstances (n=14*)	-	-		
	Non-aggravated (n=7*)			-	-
	Aggravated (n=27*)			-	-
Magistrates courts					
s 340(2AA) public officer	Prior to aggravating circumstances (n=130)	98.5%	1.5%		
	Non-aggravated (n=154)			97.4%	2.6%
	Aggravated (n=113)			98.2%	1.8%

Data include adult offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Aggravating circumstances were introduced on 5 September 2014.
(*) Small sample sizes