

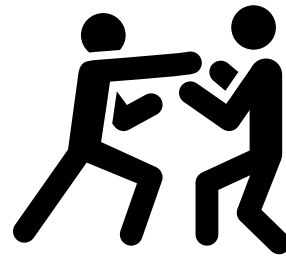
Penalties for assaults of public officers

What is assault?

The definition of 'assault' is very wide and is found in section 245 of the Criminal Code (Qld). There are two ways that the definition of assault can be met.

The first way is where the offender strikes, touches, moves or otherwise applies force of any kind to another person. This can be direct or indirect. It must be done without the victim's consent, or with their consent if it was obtained by fraud.

The second way is where the offender uses a bodily act or a gesture to attempt or threaten to apply force of any kind to the victim without the victim's consent, in circumstances where the offender has (actually or apparently) a present ability to effect his or her purpose. Words alone are not enough.



The term 'applies force' is also defined in section 245. It includes applying heat, light, electrical force, gas, odour, or any other substance or thing, if it is applied in such a degree as to cause injury or personal discomfort.

Section 246 of the Criminal Code says that an assault is unlawful and is an offence unless it is 'authorised or justified or excused by law'. Examples of this include where the other person consents, where the behaviour is done by accident (section 23) or where the person is acting in self-defence (sections 271, 272).

Offences that can be charged (excluding serious assault)

There are a number of criminal charges which can cover assaults of public officers. Prosecutors use their discretion and judgment to decide which charge to use.

There is a general offence called common assault (section 335), which provides that any person who unlawfully assaults another person faces a maximum penalty of three years' imprisonment.

Often the difference between this offence and that of serious assault is not the physical actions of the offender, but rather that the victim of a serious assault is working in a specific type of job and the victim of a common assault is not.

A more serious offence, assault occasioning bodily harm ('AOBH', section 339) is committed when a person unlawfully assaults someone else and causes them bodily harm. Bodily harm means any bodily injury which interferes with health or comfort. The maximum penalty is seven years' imprisonment, or 10 years where the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with someone else.

Another offence is wounding (section 323), which carries a maximum penalty of seven years' imprisonment. It does not rely on the legal definition of assault, even though the physical action causing the wounding will often be an assault. Case law says that wounding means the true skin is broken and penetrated (not merely the cuticle or outer skin). It does not matter how the wound was inflicted (for instance, a weapon does not have to be used).



A more serious offence still is grievous bodily harm ('GBH', section 320). It has a maximum penalty of 14 years' imprisonment. It does not rely on the legal definition of assault, even though the physical action causing the GBH will often be an assault.

The term 'grievous bodily harm' means the loss of a distinct part or an organ of the body, serious disfigurement, or any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available.

A related offence, more serious again, is acts intended to cause grievous bodily harm and other malicious acts ('malicious acts', section 317). It carries a maximum penalty of life imprisonment. Like GBH, it does not rely on the legal definition of assault.

The prosecution must prove one of a list of four specific intentions accompanying one of seven physical actions. The intentions are: to maim/disfigure/disable; do GBH or transmit a serious disease; resist or prevent arrest or detention; or resist or prevent a public officer from acting in accordance with lawful authority. The physical actions include: wounding; doing GBH or transmitting a serious disease; and striking with a projectile (or anything else capable of achieving the intention).

Separate from the offences under the Criminal Code, there are other specific offences in Queensland legislation relating to assaults and similar behaviour directed at police and public officers.

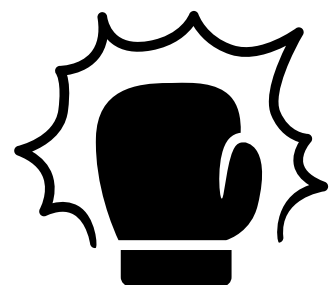
For example, the *Police Powers and Responsibilities Act 2000* (Qld), section 790 creates the offence of assaulting or obstructing a police officer in the performance of the officer's duties ('the PPRA offence'). It has a maximum penalty of a \$5,338 fine or six months' imprisonment. This is increased to a fine of \$8,007 or 12 months' imprisonment if the offence is committed within, or in the vicinity of, licensed premises. The definition of assault in the Criminal Code applies to this section, while 'obstruct' includes hinder, resist and attempt to obstruct.

The *Corrective Services Act 2006* (Qld), section 124 creates an offence of a prisoner assaulting or obstructing a staff member who is performing a function or exercising a power under that Act or is in a corrective services facility. It has a maximum penalty of two years' imprisonment.

There is a further offence of obstructing (which includes to hinder, resist and attempt to obstruct) a staff member performing a function or exercising a power under that Act (section 127) with a maximum penalty of a fine of \$5,338 or one year's imprisonment.

Serious assault

The offence of serious assault in section 340 of the Criminal Code makes certain kinds of assaults against certain people a more serious offence than common assault and in some cases, AOBH. It relies on the same definition of 'assault', but, unlike the other Code offences discussed above, it applies higher maximum penalties based on specific scenarios and victim characteristics.



An assault can be charged as a serious assault if the victim:

- was performing a duty imposed on them by law (or the assault is committed because the victim had already performed that duty);
- was 60 years old or more; or
- relied on a guide, hearing or assistance dog, wheelchair or other remedial device.

Serious assault also covers assaults committed:

- with intent to commit a crime or resist or prevent lawful arrest or detention of any person; and
- in pursuance of any unlawful conspiracy respecting any manufacture, trade, business or occupation (or respecting anyone concerned or employed in those areas, or the wages of any such persons).

These forms of serious assault carry a maximum penalty of seven years' imprisonment.

Police officers are specifically recognised. The seven-year maximum applies where a person assaults, resists or wilfully obstructs a police officer while acting in the execution of duty (or any person acting in aid of a police officer so acting). The maximum penalty doubles to 14 years where the victim is a police officer and when committing the offence, the offender:

- bites or spits on a police officer;
- throws at or applies a bodily fluid or faeces to a police officer;
- causes bodily harm to the police officer; or
- is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

There is a similar provision, with the same 7/14 year maximum penalty difference, regarding unlawfully assaulting, resisting or wilfully obstructing a public officer performing a function of their office, or assaulting a public officer because they have performed that function.

Finally, a specific subsection states that a person who unlawfully assaults a working corrective services officer is liable to a maximum penalty of seven years' imprisonment.

Mandatory sentencing provisions

Mandatory sentencing provisions apply to serious assault if either of two circumstances of aggravation are charged.

The first is a mandatory community service order for a prescribed offence if committed with a circumstance of aggravation (committed in a public place while adversely affected by an intoxicating substance). A 'prescribed offence' includes the PPRA offence, common assault, wounding, AOBH, GBH and some forms of serious assault. This 'does not apply if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with a community service order'. If the person is also imprisoned, the community service order is suspended until the person is released, and extended by the period of time detained.

The second is due to an offender committing the offence as part of their involvement in a criminal organisation (referred to as a 'serious organised crime circumstance of aggravation'). The sentence must include a mandatory seven years' imprisonment (which must be served wholly in custody) in addition to, and cumulatively (one after the other) upon, a sentence for a prescribed offence (which includes GBH, malicious acts, AOBH if the applicable maximum penalty is 10 years' imprisonment, and serious assault if the applicable maximum penalty is 14 years' imprisonment).

Another form of mandatory sentencing applies where an offender is convicted of a listed offence (or of counselling, procuring, attempting or conspiring to commit it) while the offender was a prisoner serving a term of imprisonment, or was released on parole. Any sentence of imprisonment imposed for the offence must be served cumulatively (one after the other) with any other term of imprisonment that person is liable to serve. Included in the list of relevant offences are wounding, AOBH, serious assault, GBH and malicious acts.

