

Chapter 5 Sentencing outcomes for assaults on public officers

In providing its advice to the Attorney-General, the Council has been asked to report on current penalties and sentencing trends for assaults against police officers, corrective services officers and all other public officers that fall within the scope of section 340 of the *Criminal Code*, and other specific legislative provisions such as section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) ('PPRA') and section 124(b) of the *Corrective Services Act 2006* (Qld) ('CSA') to determine whether they are in line with stakeholder expectations and appropriately respond to this form of offending.

This chapter investigates the sentencing outcomes for cases involving the assault of a public officer, including police officers, corrective services officers, and other public officers charged under either section 340 of the *Criminal Code* and relevant summary offence provisions. Consideration of the appropriateness of these outcomes is explored in Chapter 9.

Assaults on public officers may be charged under general offence provisions contained in the *Criminal Code* rather than under section 340 (such as common assault, assault occasioning bodily harm (AOBH), wounding or grievous bodily harm (GBH)). However, based on data obtained from Court Services Queensland for the purposes of analysing sentencing outcomes, it is not possible to identify whether the victim of these offences was a public officer. For this reason, sentencing outcomes for assaults on public officers charged under these general offence provisions cannot be analysed. However, some data is presented on sentencing outcomes for these offences of general application for comparative purposes.

5.1 Sentencing outcomes for serious assaults and other 'acts intended to cause serious injury'

In this section, we examine sentencing outcomes for serious assault (both non-aggravated and aggravated forms) in comparison to penalties imposed for other 'acts intended to cause injury' offences carrying the same maximum penalties, and/or capturing the same type of conduct. The analysis is limited to assaults and other offences falling within the broad offence category of 'acts intended to cause injury' given the focus of this reference is on assaults and that similar forms of criminal conduct are involved in the commission of these offences.

A comparison between sentencing outcomes for offences sharing the same maximum penalties is used to illustrate how current sentencing practices vary between these offence categories.

Non-aggravated forms of serious assault are compared with common assault to explore how maximum penalties can influence sentencing practices, as these two offences involve similar types of conduct.

The Council intends to undertake further analysis of this kind based on sub-categories of aggravated forms of serious assault during the next stage of the review. For example, sentencing outcomes for aggravated serious assault causing bodily harm will be compared to sentencing outcomes for the offence of AOBH.

5.1.1 Relevance of maximum penalties to sentencing

Maximum penalties are an important sentencing consideration as they provide an indication of Parliament's views about the objective seriousness of an offence and the seriousness of assaults on public officers relative to other offences. As discussed in the previous chapter, legislation

requires courts in sentencing to have regard to ‘the maximum and any minimum penalty prescribed for the offence’.²⁷⁴

Unless the penalty to be imposed is prescribed (as it is for murder), a court has discretion to impose a sentence less than the maximum penalty that it considers is appropriate, taking into account other sentencing factors and the individual circumstances of the case. As a majority of the High Court observed in *Markarian v The Queen*:

careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.²⁷⁵

Although the maximum penalty may be highly relevant, there are circumstances in which it may be found to ‘have little relevance in a given case, either because it was fixed at a very high level in the last century ... or because it has more recently been set at a high catch-all level’.²⁷⁶

Variations in sentencing trends for offences carrying the same name, and/or the same maximum penalty are also to be expected due to differences in offence seriousness based on the nature of the criminal conduct involved, the circumstances of the particular offender (for example, their criminal history), the harm caused, and the interests they infringe.²⁷⁷

The below analysis of sentencing trends should be approached with the above qualifications in mind.

5.1.2 Sentencing outcomes for non-aggravated serious assault and other ‘acts intended to cause injury’ carrying a 7-year maximum penalty

As discussed in Chapter 3, non-aggravated serious assault carries a maximum penalty of 7 years. Other offences falling within the category of ‘acts intended to cause injury’ also have a 7-year maximum penalty: AOBH where there are no circumstances of aggravation, and wounding.

The overwhelming majority of non-aggravated serious assaults (where this was the most serious offence (MSO))²⁷⁸ over the data period (95.4%; n=1,253) were sentenced in the Magistrates Courts, as were most AOBH offences (92.1%; n=8,144). Wounding must be dealt with on indictment and therefore all sentences imposed for this offence were imposed by the higher courts.

For offences sentenced in the Magistrates Courts, just over half of non-aggravated assaults (MSO) (54.5%) resulted in a custodial sentence being imposed, as did 50.3 per cent of AOBH offences (MSO). See Table A4-2 in Appendix 4. In the higher courts, 82.0 per cent of non-aggravated serious assault offences (MSO) resulted in a custodial sentence, compared to 80.0 per cent of AOBH offences (MSO) and 97.0 per cent of offences of wounding (MSO).

²⁷⁴ *Penalties and Sentences Act 1992* (Qld) s 9(2)(b).

²⁷⁵ (2005) 228 CLR 357, 372 [31] (Gleeson CJ, Gummow, Hayne and Callinan JJ).

²⁷⁶ *Ibid* 372 [30] (Gleeson CJ, Gummow, Hayne and Callinan JJ) citing Stockdale and Devlin, *Sentencing* (1987) [1.16]–[1.18].

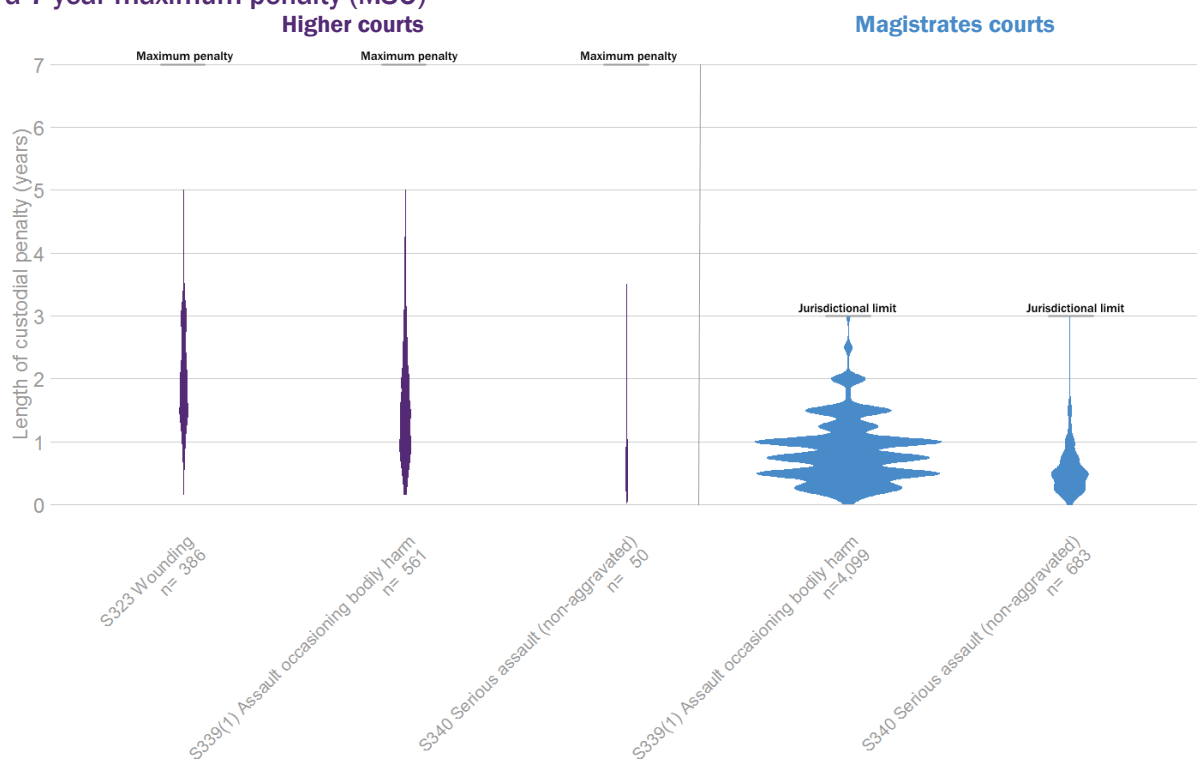
²⁷⁷ See Richard Fox, ‘Ranking Offence Seriousness in Reviewing Statutory Maximum Penalties’ (1990) 23 *Australian and New Zealand Journal of Criminology* 165, 166 making this point as it applies to variations in offence seriousness within offences bearing the same name, and the general discussion of offence seriousness in Chapter 7 of this paper.

²⁷⁸ 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.

As Figure 5-1 below indicates, the distribution of custodial sentence lengths varies considerably across these different offences. For offences sentenced in the higher courts, no sentences reached the 7-year maximum penalty. The highest penalty for a non-aggravated serious assault – 3.5 years – was 1.5 years lower than that for both wounding and AOBH at 5.0 years. In the Magistrates Courts, the maximum sentence imposed for both AOBH and nonaggravated serious assault reached the 3-year jurisdictional limit.

Sentences for non-aggravated serious assault in the Magistrates Courts clustered around 6 months (with an average sentence of 0.6 years, or just over 7 months) while sentences for AOBH were more evenly spread from 6 months up to 2 years (with an average of 0.8 years, or around 9.5 months). In the higher courts, the average custodial sentence was shortest for non-aggravated serious assault at 0.9 years, followed by AOBH at 1.5 years. The average sentence for wounding was the longest at 2.1 years. Further summary statistics are set out in Table A4-2 in Appendix 4.

Figure 5-1: Distribution of custodial penalties for ‘acts intended to cause injury’ offences carrying a 7-year maximum penalty (MSO)



Data includes: adult offenders only, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19. Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

5.1.3 Sentencing outcomes for aggravated serious assault and other ‘acts intended to cause injury’ offences carrying a 14-year maximum penalty

Aggravated serious assault carries a maximum penalty of 14 years, as do the offences of GBH and torture.

These three offences are quite distinct:

- aggravated serious assault involves a person assaulting, resisting or wilfully obstructing a police officer or public officer executing their duties or performing a function of their office and is so aggravated by one of a number of circumstances specified, including where bodily harm is caused to the victim (whether this outcome is intended or not);
- GBH involves a person unlawfully doing grievous bodily harm (that is, harm involving the loss of a distinct part of an organ of the body, serious disfigurement or any bodily injury that if left untreated would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health);
- torture is the intentional infliction of severe pain or suffering on a person by an act or series of acts done on one or more occasions.

Both GBH and torture must be dealt with on indictment in the higher courts. All offences of torture (n=62) and almost all GBH offences (99.1%; n=567/572) sentenced over the data period received a custodial penalty.

Aggravated serious assaults must be dealt with in the Magistrates Courts on prosecution election. The majority of aggravated serious assaults (84.9%; n=1,280/1,507) were sentenced in the Magistrates Courts with three-quarters (74.8%) resulting in a custodial sentence being imposed. Those cases dealt with in the higher courts, although smaller in number, were more likely to result in a custodial sentence (93.0%) most likely reflecting the more serious nature of the matters dealt with on indictment.

Figure 5-2 shows the distribution of the length of custodial sentences applied for these offences.

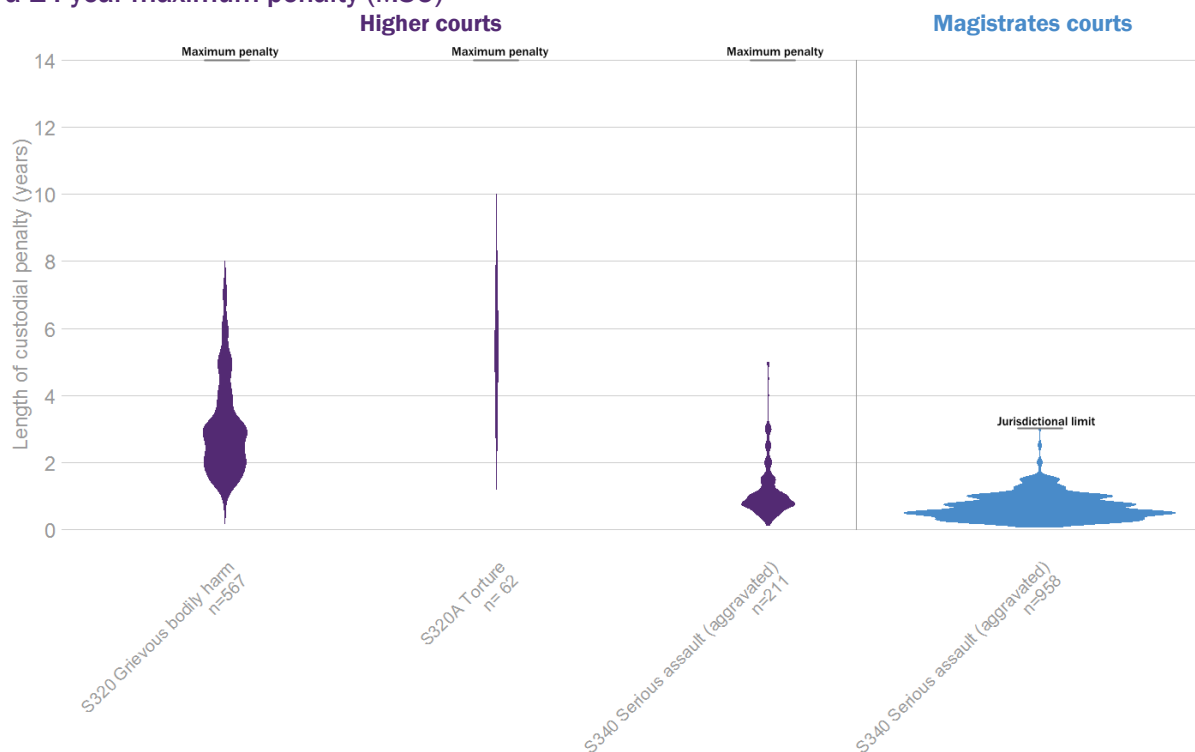
In the higher courts, the longest custodial sentence for aggravated serious assault was 5.0 years, considerably below the maximum penalty of 14 years, although 1.5 years higher than the maximum sentence imposed for non-aggravated forms of this offence. Sentences tended to cluster around 1 year, with the average sentence length being 1.1 years, with few cases longer than 2 years.

In comparison, the longest sentence for torture was 10.0 years, with a fairly even spread of cases falling between 1 and 10 years, and a slight increase in numbers around the 5-year mark. The average sentence for torture was 5.4 years. The longest sentence for GBH was 8.0 years, with the majority of sentences falling between 1 and 3 years, and an average sentence length of 3.0 years.

In the Magistrates Courts, while the longest sentence for aggravated serious assault reached the Courts' jurisdictional limit of 3 years, the majority of sentences were less than 2 years, and the most common sentence was 6 months. The average sentence length was 0.7 years – or about 8.5 months.

Further summary statistics are available in Table A4-3 in Appendix 4.

Figure 5-2: Distribution of custodial penalties for 'acts intended to cause injury' offences carrying a 14-year maximum penalty (MSO)



Data includes: adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19. Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

5.1.4 Sentencing outcomes for non-aggravated serious assault and common assault

Common assault under section 335 of the *Criminal Code* carries a maximum penalty of 3 years. As for the offence of non-aggravated serious assault, to which a 7-year maximum penalty applies, this offence does not involve bodily harm being caused to a victim as an element of the offence.

The higher maximum penalty for serious assault under section 340 of the *Criminal Code* is reflected in the penalties imposed. Non-aggravated serious assault offences (MSO) are more likely to receive a custodial penalty than common assault, with over half (54.4%) of non-aggravated

serious assault offences (MSO) sentenced in the Magistrates Courts resulting in a custodial penalty, compared to just over one in five (21.5%) of common assault offences. For the small number of remaining offences dealt with in the higher courts, over four in five (82.0%) non-aggravated serious assault offences (MSO) resulted in a custodial penalty being imposed, compared to just two in five (41.7%) common assault offences (MSO). See Table A4-3 in Appendix 4 for further detail.

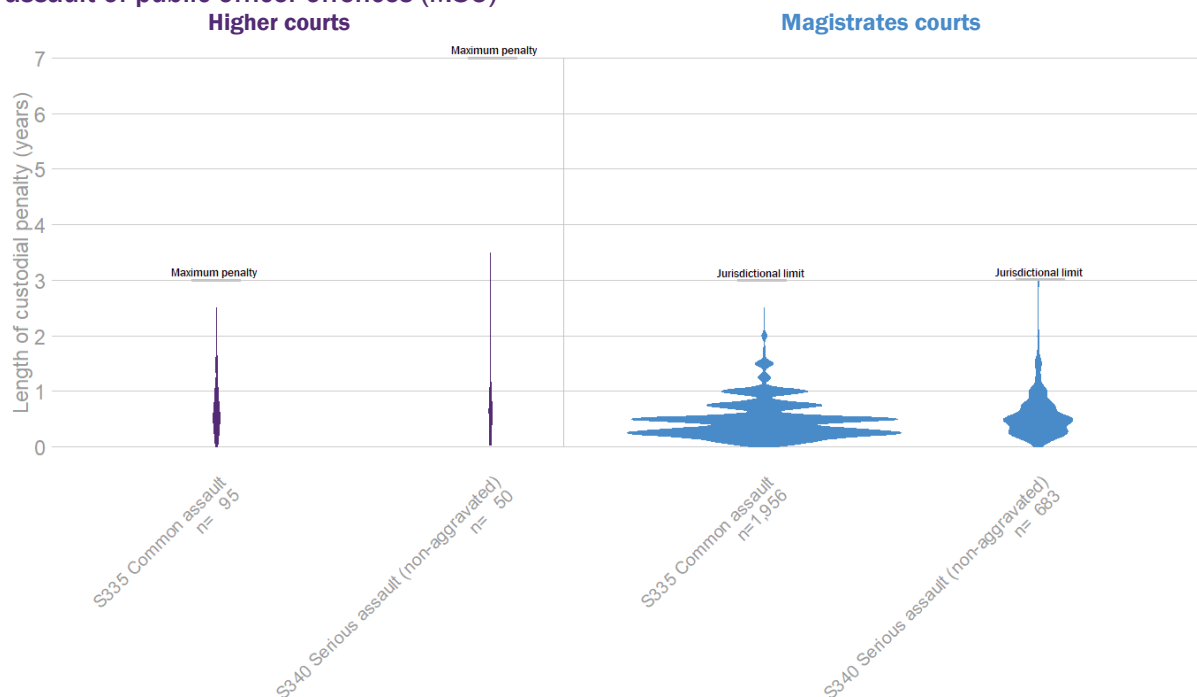
For offences resulting in a custodial sentence, Figure 5-3 below shows that the distribution of custodial sentences for non-aggravated serious assault and common assault are more similar to each other than for other ‘acts intended to cause harm’ offences analysed above.

The longest sentence imposed for common assault across both court levels was 2.5 years – just 6 months short of the maximum penalty of 3 years. The distribution of sentences, however, was quite different. For common assaults in the higher courts, the sentence lengths were distributed relatively evenly; whereas in the Magistrates Courts, which imposed 95.1 per cent of all custodial penalties for this offence, sentences were concentrated at less than 1 year.

The longest sentence imposed for non-aggravated serious assault was 3 years in the Magistrates Courts, and 3.5 years in the higher courts – both of which exceeded the highest sentence imposed for common assault. This is to be expected given the current 3-year maximum penalty that applies to common assault, and the higher maximum penalty of 7 years for serious assault.

Non-aggravated serious assault offences were not only much more likely to result in a custodial sentence, but also to attract a longer sentence. For serious assault offences sentenced in the higher courts, the average sentence length was 0.6 years, compared to the average sentence length for common assault cases which was 0.5 years. Further summary statistics are available in Table A4-3 in Appendix 4.

Figure 5-3: Distribution of custodial penalties for common assault (MSO) and non-aggravated assault of public officer offences (MSO)



Data includes: adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19. Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

5.2 Sentencing outcomes for section 340 Criminal Code

The remaining sections of this chapter explore sentencing outcomes in more detail for offences involving the assault on a public officer charged under section 340 of the *Criminal Code*, as well as for offences under the PPRA and CSA.

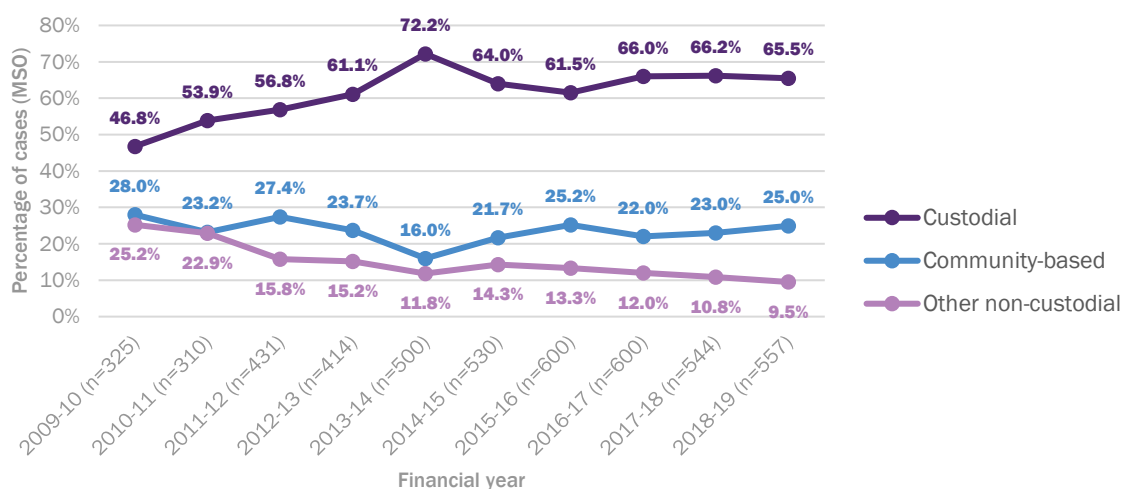
For adult offenders, the majority of cases involving the serious assault of a public officer (MSO) resulted in a custodial penalty (62.5% in the Magistrates Courts, 88.5% in the higher courts). In comparison, a custodial penalty was issued in 23.9 per cent of cases involving young offenders.

A different sentencing regime applies to young offenders sentenced in Queensland under the *Youth Justice Act 1992* (Qld) to that which applies to adults under PSA (see Chapter 4 for more information). For this reason, the penalties imposed on adult offenders and young offenders are discussed separately.

5.2.1 Adult offenders sentenced in the Magistrates Courts

As Figure 5-4 below demonstrates, 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. 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.²⁷⁹

Figure 5-4: Type of penalties issued for serious assault of a public officer over time (MSO), Magistrates Courts



Data includes: Magistrates Courts, adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2009–10 to 2018–19

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

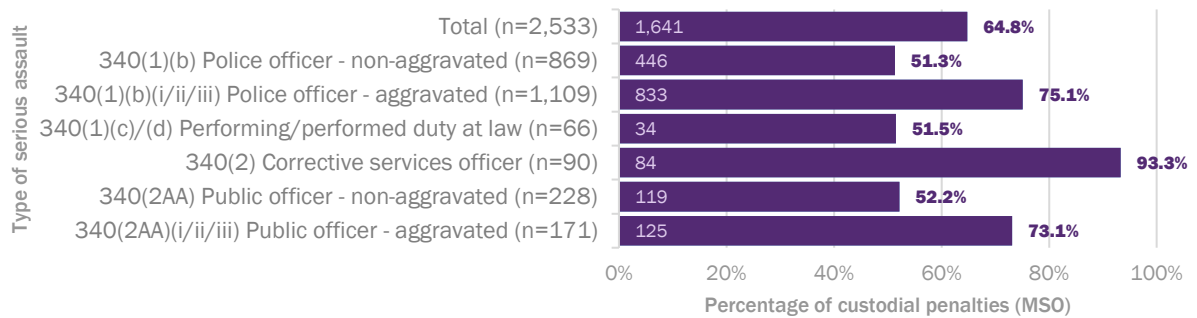
Note: ‘Custodial’ includes imprisonment, partially suspended sentences, wholly suspended sentences, and intensive correction orders. ‘Community-based’ includes community service and probation. ‘Other non-custodial’ includes monetary orders (including fines, restitution, and compensation), good behaviour bonds, and convicted not further punished.

Note: 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.

²⁷⁹ Queensland Sentencing Advisory Council, *Community-Based Sentencing Orders, Imprisonment and Parole Options – Final Report* (2019) 17.

In the Magistrates Courts, across all years examined, 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 assaults of a working corrective services officer resulted in a custodial penalty (93.3%, n=84), which can be explained by the fact that offenders of serious assault against corrective services officers 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).

Figure 5-5: Proportion of serious assaults of public officers that resulted in a custodial penalty (MSO), Magistrates Courts, adult offenders



Data includes: Magistrates Courts, 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.

Figure 5-6 provides a breakdown of the penalties ordered for different types of serious assault.

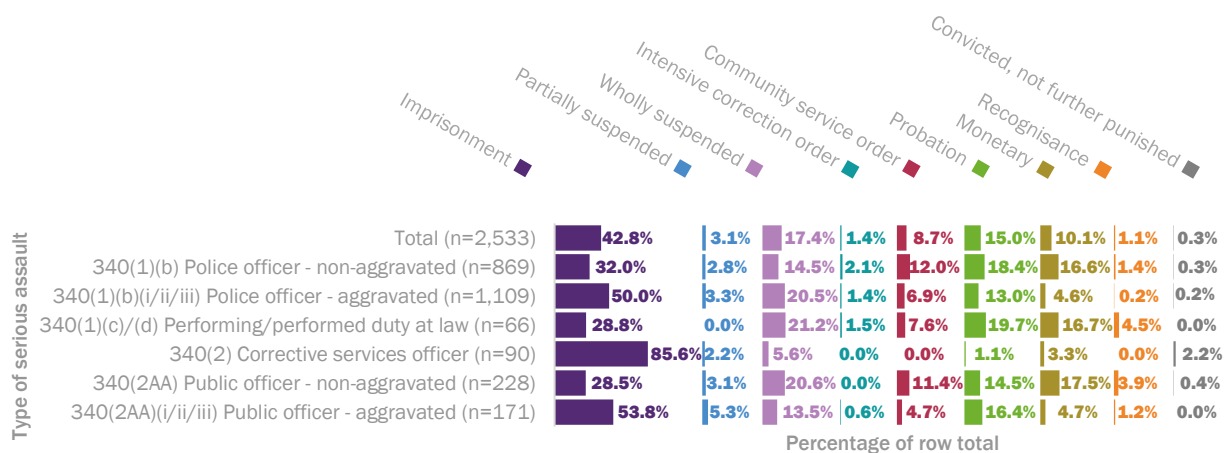
Imprisonment was the most common penalty type ordered for serious assault of a public officer, with 42.8 per cent of cases resulting in imprisonment (n=1,085). A suspended sentence of imprisonment was ordered in 521 cases (20.6%); in 79 of these cases, the suspended sentence involved a period of time actually served in custody. The Council has previously identified administrative data issues 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 was ordered in 23.7 per cent of cases in the Magistrates Courts (n=599). A probation order was made in 379 cases (15.0%), and a community service order in 220 cases (8.7%).

As discussed in Chapter 4, 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 below 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 therefore is likely to be an undercount. The Council will be examining the use of mandatory community sentencing orders in more detail in its final report.

In 10.1 per cent of cases, a monetary order was issued (n=257). A monetary order can include a fine, a compensation order, or a restitution order. A good behaviour bond (also known as a recognisance) was issued in 1.1 per cent of cases (n=28). In 0.3 per cent of cases, the offender was convicted, but not further punished (n=8).

Figure 5-6: Type of penalties issued for serious assault (MSO) by assault type, Magistrates Courts, adult offenders



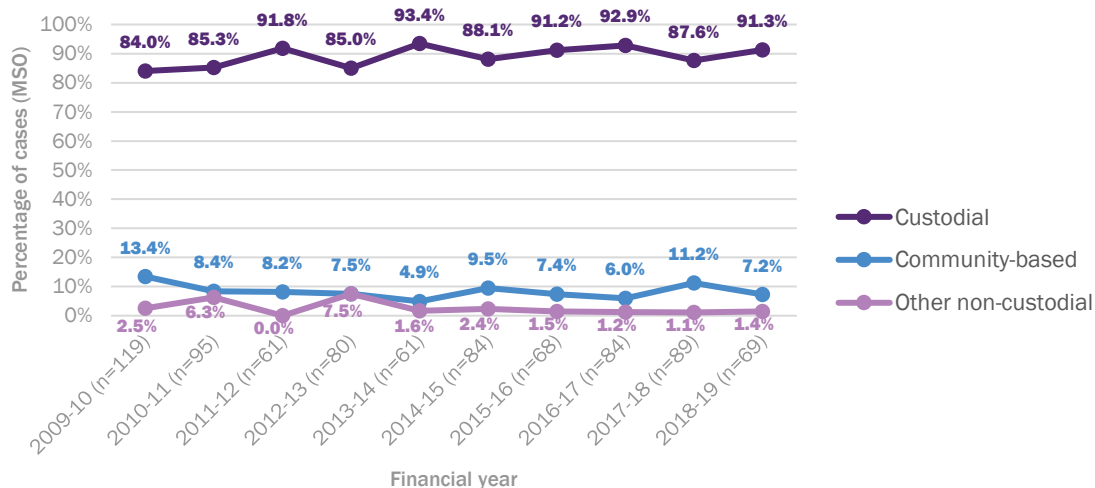
Data includes: Magistrates Courts, adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19

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

5.2.2 Adult offenders sentenced in the higher courts

Custodial sentences have 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. However, note that over the same time period, there was a general increase in the use of custodial penalties for all offences in Queensland.²⁸⁰

Figure 5-7: Type of penalties issued for serious assault of a public officer (MSO) over time, higher courts



Data includes: higher courts, adult offenders, cases sentenced from 2009–10 to 2018–19

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

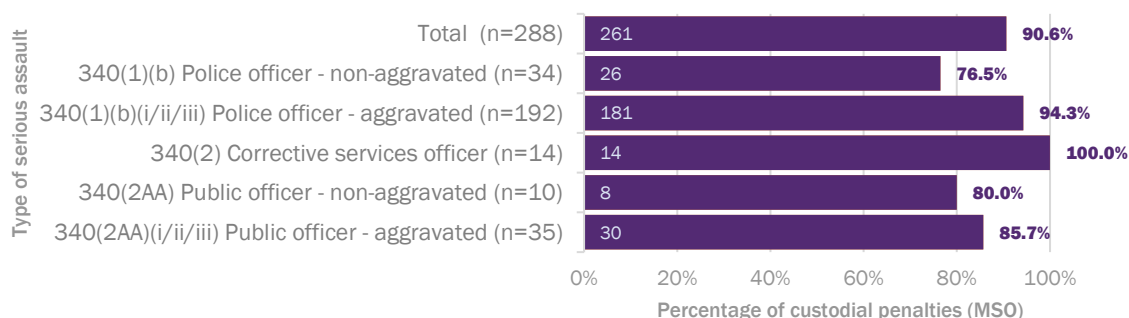
Note: ‘Custodial’ includes imprisonment, partially suspended sentences, wholly suspended sentences, and intensive correction orders. ‘Community-based’ includes community service and probation. ‘Other non-custodial’ includes monetary orders (including fines, restitution, and compensation), good behaviour bonds, and convicted not further punished.

Note: 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.

²⁸⁰ Queensland Sentencing Advisory Council (n 279).

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 5-8: Percentages of serious assaults of public officers that resulted in a custodial penalty (MSO) by assault type, higher courts, adult offenders



Data includes: higher courts, adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19

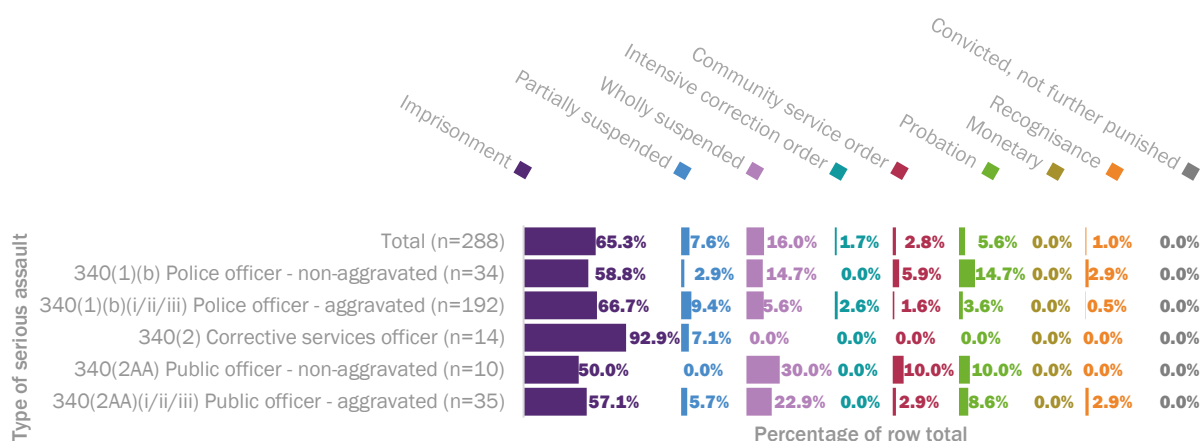
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Note: Assault of persons performed/performing a duty at law under s 340(1)(c)/(d) were not reported due to small numbers (n=3).

Imprisonment was the most common penalty for serious assault in the higher courts, with 65.3 per cent of cases resulting in an unsuspended term of imprisonment (n=188). A suspended sentence was imposed in 68 cases (23.6%); in 22 of these cases, the suspended sentence involved a period of time actually served in custody. As discussed above, the numbers of suspended sentences involving time spent in custody may be an undercount due to data recording issues.

A community-based sentence was ordered in 8.3 per cent of cases in the higher courts (n=24). A probation order was imposed in 16 cases (5.6%), and a community service order was imposed in 8 cases (2.8%).

Figure 5-9: Type of penalties issued for serious assault (MSO) by assault type, higher courts, adult offenders



Data includes: higher courts, 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: Assault of persons performed/performing a duty at law under s 340(1)(c)/(d) were not reported due to small numbers (n=3).

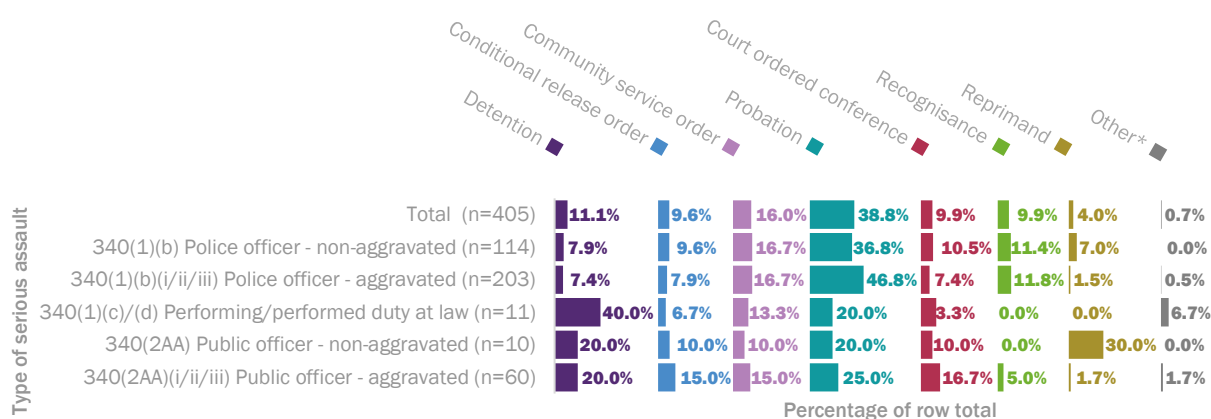
5.2.3 Young offenders

Due to the small number of young offenders sentenced in the higher courts (n=21, 5.2%), the data from the lower courts and higher courts are reported together in this section.

Overall, a custodial order was made in 21.2 per cent of cases where serious assault of a public officer was the MSO for a young offender (n=86). A detention order was imposed in 11.1 per cent of cases (n=45), and an additional 9.6 per cent of offenders were sentenced to detention but were immediately released into a structured program with strict conditions (a conditional release order, n=39).

Community-based sentences were the most common penalty imposed on young offenders. A probation order was imposed in over a third of cases (38.8%, n=157), and a community service order was imposed in 16.0 per cent of cases (n=65).

Figure 5-10: Type of penalties issued for serious assault (MSO), by assault type, young offenders



Data includes: lower and higher courts, juvenile 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: Assault of a corrective services officer under s 340(2) was not reported due to small numbers (n=3).

* Other includes boot camp orders, intensive supervision orders, and convicted, not further punished.

5.3 Assault of police officers

From 29 August 2012 to 30 June 2019, there were 4,959 cases sentenced for the serious assault of a police officer under section 340(1)(b) of the *Criminal Code*. In 3,612 of these cases, the serious assault of a police officer was the most serious offence sentenced.

A much larger number of cases (55,822) involved an offender being sentenced for assault or obstruction of a police officer under section 790 of the PPRA. In 15,440 of those cases, the assault or obstruction of a police officer was the most serious offence sentenced, indicating that this offence is often charged alongside more serious offences.

In contrast to serious assaults under the *Criminal Code*, the offence of assaulting or obstructing a police officer under section 790 of the PPRA is a less serious offence that can only be dealt with by a Magistrates Court, unless transmitted to a higher court to be dealt with alongside more serious charges. 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.

Table 5-1: Number of sentenced assaults or obstructions of police officers by assault type

Section number	Offence description	Charges	Offenders	Cases	MSO
Higher courts					
340(1)(b)	Police officer (aggravated)	380	288	290	74
340(1)(b)(i)	Police officer - bodily fluid	313	249	251	175
340(1)(b)(ii)	Police officer - bodily harm	180	146	146	98
340(1)(b)(iii)	Police officer - armed	125	82	82	40
790*	Assault or obstruct police officer	1,883	1,290	1,318	7
Lower courts					
340(1)(b)	Police officer (aggravated)	2,437	1,907	1,974	1,385
340(1)(b)(i)	Police officer - bodily fluid	1,390	1,144	1,190	987
340(1)(b)(ii)	Police officer - bodily harm	647	583	597	509
340(1)(b)(iii)	Police officer - armed	636	412	429	344
790*	Assault or obstruct police officer	67,977	42,182	54,504	15,433

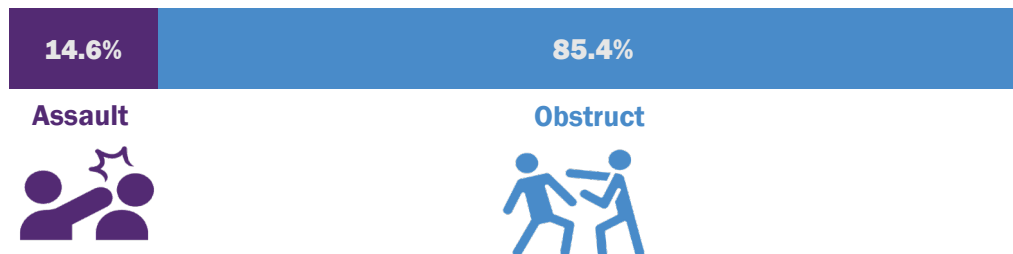
Data includes: adult and juvenile offenders, offences occurring on or 29 August 2012, sentenced from 2012-13 to 2018-19.

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

* Includes police officers who were obstructed but may not have been assaulted.

On 20 September 2018, section 790 of the PPRA was amended to separate the offence into two subsections: one dealing with the assault of police officers, and the other dealing with obstruction of police officers. Prior to this amendment, ‘assaults’ and ‘obstructions’ could not be distinguished; hence this information is not available. From 20 September 2018 to 30 June 2019, the majority of cases sentenced under section 790 involved the obstruction of a police officer (85.4%, n=3,703), the remaining 14.6 per cent of cases involved the assault of a police officer (n=633).

Figure 5-11: Proportion of assaults and obstructions under section 790(1) PPRA



Data includes: adult and juvenile offenders, lower and higher courts, cases where the offence was committed on or after 20 September 2018, and the case was sentenced in the 2018-19 financial year.

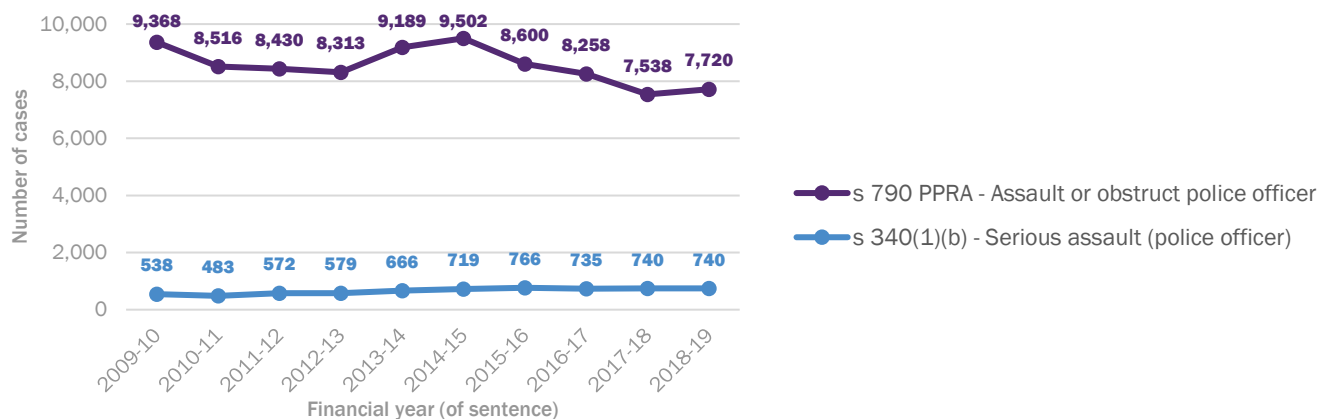
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Note: A small number of cases were excluded where it was unknown whether the offence was an assault or obstruct (n=36, 0.01%).

The number of cases involving the serious assault of a police officer increased from 538 cases in 2009–10 to 740 cases in 2018–19, an increase of 37.5 per cent – see Figure 5-12.

The number of assaults or obstructions of police officers sentenced under section 790 of the PPRA has decreased over the past 10 years. In 2009–10, there were 9,368 cases; this number dropped to 7,720 cases in 2018–19. This decrease is even more notable considering the number of police officers in Queensland increased by 13.2 per cent over the same period (2009–10 to 2018–19).²⁸¹ Potential reasons for this decrease will be explored by the Council during consultation.

Figure 5-12: Number of assaults or obstructions of police officers, by assault type, over time



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

5.3.1 Impact of introduction of statutory circumstances of aggravation

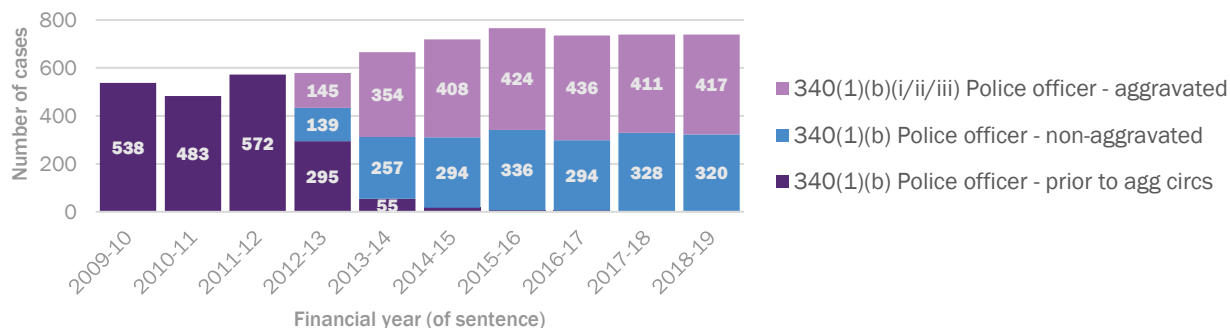
From 29 August 2012, it became a statutory circumstance of aggravation to assault a police officer by biting, spitting on, throwing at or applying bodily fluid or faeces to, or causing bodily harm to a police officer or, at the time of the assault, being or pretending to be armed, carrying a higher maximum penalty of 14 years’ imprisonment. 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.²⁸²

²⁸¹ Queensland Public Service Commission, Workforce Statistics – unpublished data, 2009–10 to 2018–19.

²⁸² 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 4.

From 2013–14 to 2018–19, over half of all cases involving the serious assault of a police officer involved at least one circumstance of aggravation (56.1%, n=2,450) – see Figure 5-13.

Figure 5-13: Number of serious assaults of police officers, by aggravating circumstances, over time



Data includes: lower and higher courts, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19

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

Note: Each case is counted once only; if a case contains multiple serious assaults of a police officer, where some assaults include aggravating circumstances and others do not, the entire case will be counted as one that contains aggravating circumstances.

Table 5-2 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 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 year. Almost all cases sentenced on the basis of there being a circumstance of aggravation resulted in a custodial sentence (95.5%), and the average penalty length was longer at 1.2 years.

Table 5-2: Custodial sentences for serious assaults against police officers (MSO) before and after the introduction of aggravating circumstances, adult offenders

Type of serious assault of a police officer – s 340(1)(b)	2009–10 to 2011–12		2013–14 to 2015-16	
	% 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 includes: adult offenders

Data excludes: 55 cases where the offence occurred prior to 29 August 2012 but was sentenced 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 pre- and post- 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 to the victim, whether 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 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.

An issue the Council hopes to explore in its final report is whether there have been other impacts of these reforms, such as on plea rates.

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 5-3. The sample size for juveniles sentenced in the higher courts was too small to analyse.

Table 5-3: Custodial sentences for serious assaults against police officers (MSO) before and after the introduction of aggravating circumstances, juvenile offenders

Type of serious assault of a police officer – s 340(1)(b)	2009-10 to 2011-12		2013-14 to 2015-16	
	% 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 includes: juvenile offenders

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

* Small sample sizes

5.3.2 Sentencing outcomes for assaults against police officers

Table 5-4 shows the proportion of custodial penalties ordered for different types of assault offences committed on police officers.

Offenders sentenced under section 790 of the PPRa for the assault or obstruction of a police officer were unlikely to receive a custodial penalty, with only 6.6 per cent of cases (in the Magistrates Courts) resulting in a custodial outcome (MSO). Nearly two-thirds of offenders received a monetary penalty (65.2%), paying on average \$443.50. Of section 790 offences constituted by an act of assault (rather than obstruction, n=414), 12.3 per cent of cases (in the Magistrates Court) received a custodial outcome (MSO). Over half of offenders (52.9%) received a monetary penalty, with an average payment amount of \$651.10.

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% custodial). For non-aggravated serious assaults of police officers, four in five cases resulted in a custodial penalty (79.1%), with the average sentence being 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 penalty length of 0.7 years.

Table 5-4: 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	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	Assault or obstruct police officer	14,746	6.6%	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 includes: 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.

* Caution: small sample sizes.

Table 5-5 below ranks the penalty outcomes for the different types of aggravated and non-aggravated serious assault of a police officer, and the penalty outcomes for the assault or obstruction of a police officer under section 790 of the PPRA. Each offence is ranked based on the seriousness of sentencing outcomes, with 1 indicating the offence typically receives more serious sentences (shaded in a dark blue in the table below), and 5 indicating the offence typically receives less serious sentences (shaded in a lighter blue).

Unsurprisingly, sentences for the assault or obstruction of a police officer under the PPRA received the least serious sentencing outcomes, compared to the offence of serious assault. Also unsurprisingly, the non-aggravated serious assault of a police officer resulted in less serious sentencing outcomes compared to aggravated serious assaults.

When comparing the different types of aggravating circumstances, serious assaults of a police officer that involved bodily fluid were the most likely to receive a custodial penalty across all court levels. However, the length of the custodial sentence was lower for bodily fluids compared to other statutory aggravating circumstances.

Of all the aggravating circumstances, being armed was the least likely to result in a custodial penalty. However, when a custodial penalty was issued, offenders who were armed received the longest sentences.

Table 5-5: Ranking of seriousness of sentencing outcomes for assault of a police officer by assault type, adult offenders

Section number	Offence description	Custodial penalties	Average custodial length	Median custodial length
Higher Courts				
340(1)(b)	Police officer – non-aggravated	4	3	4
340(1)(b)(i)	Police officer – bodily fluid	1	4	3
340(1)(b)(ii)	Police officer – bodily harm	2	2	2
340(1)(b)(iii)	Police officer – armed	3	1	1
790	Assault or obstruct police officer	5	5	5
Magistrates Courts				
340(1)(b)	Police officer – non-aggravated	4	4	2
340(1)(b)(i)	Police officer – bodily fluid	1	3	2
340(1)(b)(ii)	Police officer – bodily harm	2	1	1
340(1)(b)(iii)	Police officer – armed	3	2	2
790	Assault or obstruct police officer	5	5	3

Data includes: 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.

5.3.3 Demographics of offenders of serious assault of police officers

Figure 5-14 shows the demographics of offenders who were sentenced for the assault of a police officer. A high proportion of female offenders committed a serious assault that involved biting, spitting or bodily fluids (42.3%), much higher than the proportion of female offenders who committed the serious assault of a police officer while armed (13.8%).

The proportion of Aboriginal and Torres Strait islander offenders who were sentenced for the serious assault of a police officer with circumstances of aggravation was relatively high. Nearly half (47.4%) of offenders who were armed were Aboriginal or Torres Strait Islanders. Cases involving bodily fluids or bodily harm also had a high proportion of Aboriginal or Torres Strait Islander offenders (40.1% and 37.7% respectively).

Offenders who were armed while committing the serious assault of a police officer were older (33.1 years on average), compared to other types of assaults of a police officer.

Figure 5-14: Demographics of offenders sentenced for the assault of a police officer

	Female	Aboriginal and Torres Strait Islander	Average Age
s 340(1)(b) Serious assault of a police officer			
non-aggravated	25.9%	33.4%	30.1
(i) bodily fluid	42.3%	40.1%	30.2
(ii) bodily harm	26.9%	37.7%	29.5
(iii) armed	13.8%	47.4%	33.1
s 790 Assault or obstruct police officer	28.4%	23.9%	30.7

Data includes: lower and higher courts, adult and juvenile 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.

5.4 Assault of corrective services officers

This section analyses the number of offenders who were sentenced for the assault of a corrective services officer, either under section 340 of the *Criminal Code* for a serious assault, or under section 124(b) of the CSA for the less serious offence of assaulting or obstructing a corrective services officer.

As shown in Table 5-6, the serious assault of a corrective services officer under section 340(2) is more commonly sentenced than the less serious offence of assaulting or obstructing under section 124(b) CSA.

Table 5-6: Number of sentenced assaults or obstructions of corrective services staff

Section Number	Offence Description	Charges	Offenders	Cases	MSO
Higher courts					
124(b)	Assault or obstruct corrective services staff	22	19	19	1
340(2)	Corrective services officer	161	79	88	35
Lower courts					
124(b)	Assault or obstruct corrective services staff	143	120	128	80
340(2)	Corrective services officer	261	178	204	178

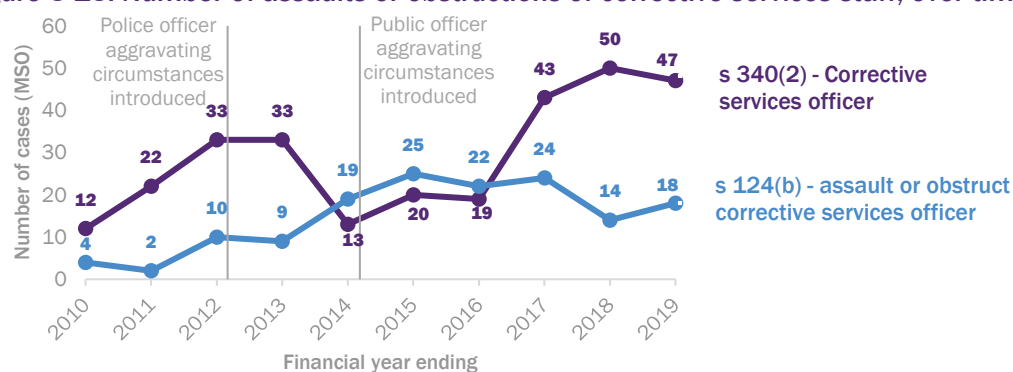
Data includes: adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19

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

Figure 5-15 shows that the number of assaults against corrective services officers has generally increased over time. Serious assaults increased from 12 cases in 2009–10 to 47 cases in 2018–19, and assaults or obstructions increased from 4 cases to 18 cases over the same time period. To put these increases in context, the number of adult prisoners in Queensland increased by 56.2 per cent over the same period, from 5,616 at 30 June 2010 to 8,771 at 30 June 2019.²⁸³

From 2013–14 to 2015–16, there was an unexplained drop in the number of serious assaults sentenced under section 340(2). It is unclear whether this drop was the result of an actual reduction in assaults of corrective services officers, or whether a change in charging practices means that these cases were prosecuted under a different offence.

Figure 5-15: Number of assaults or obstructions of corrective services staff, over time



Data includes: higher and lower court, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19

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

²⁸³ Australian Bureau of Statistics, *Prisoners in Australia, 2019* (Catalogue No 4517.0, 5 December 2019) Table 15.

5.4.1 Sentencing outcomes for assaults against corrective services

Table 5-7 shows the sentencing outcomes for offenders who assaulted a corrective services officer. 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. Relevant offences include wounding, AOBH, serious assault, GBH, torture and acts intended to cause GBH and other malicious acts.²⁸⁴

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%), and in this case the average sentence length was lower 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 5-7: 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 or obstruct corrective services staff	1*	-	-	-
340(2)	Corrective services officer	35	100.0%	0.9	0.8
Magistrates Courts					
124(b)	Assault or obstruct corrective services staff	80	83.8%	0.2	0.3
340(2)	Corrective services officer	167	94.0%	0.7	0.5

Data includes: adult offenders, cases sentenced from 2009–10 to 2018–19

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

* Small sample sizes

²⁸⁴ *Penalties and Sentences Act 1992* (Qld) s 156A and Schedule 1.

5.4.2 Demographics of offenders of serious assault of a corrective services officer

Female offenders accounted for 16.0 per cent of the serious assaults of a corrective services officer. This is lower than the percentage of female offenders who were sentenced for the assault of a police officer (25.9%, compare Figure 5-14 above). This may be impacted by the composition of the Queensland prison population, as female offenders comprised only 9.7 per cent of the Queensland prison population at 30 June 2019.²⁸⁵

Over a third of serious assaults of corrective services officers were committed by Aboriginal or Torres Strait Islander offenders (39.9%), which needs to be interpreted in the context of the continuing over-representation of Aboriginal and Torres Strait Islander people in prison in Queensland. At 30 June 2019, 32.8 per cent of the adult prisoner population in Queensland was Aboriginal and Torres Strait Islander.²⁸⁶

Figure 5-16: Demographics of offenders sentenced for the assault of a corrective services officer

	Female	Aboriginal and Torres Strait Islander	Average Age
s 340(2) Serious assault of a corrective services officer	16.0%	39.9%	28.6
124(b) Assault or obstruct corrective services staff	21.0%	39.5%	27.8

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

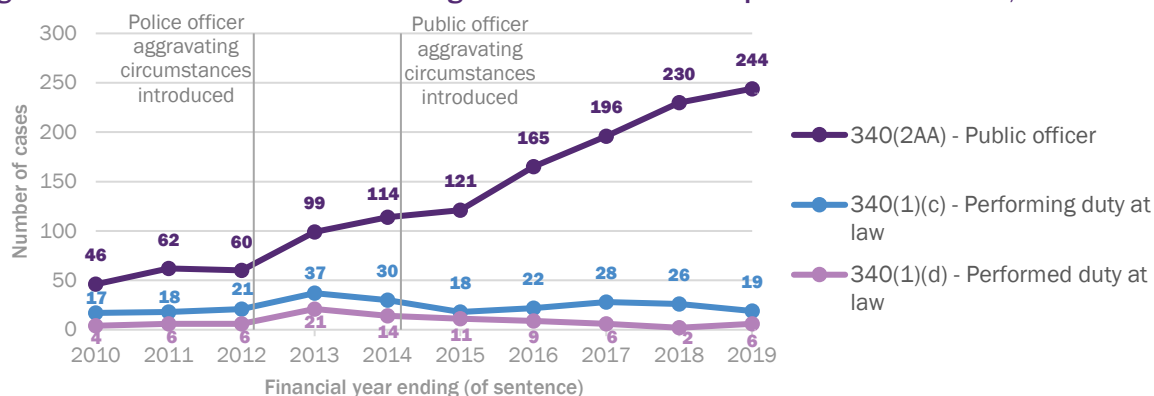
²⁸⁵ Australian Bureau of Statistics (n 283).

²⁸⁶ Ibid.

5.5 Assault of public officers

From 2009–10 to 2018–19, the number of sentenced cases involving serious assault of a public officer has more than quadrupled, from 46 cases in 2009–10 to 244 cases in 2018–19, an increase of 430.4 per cent – with the increase being particularly apparent after the introduction of an aggravated form of offence in September 2014. Over the same period the number of employees in the public sector only increased by 18.8 per cent.²⁸⁷ The number of assaults involving a person who had performed or was performing a duty at law remained stable, with both offences peaking in 2012–13.

Figure 5-17: Number of cases involving a serious assault of a public officer offence, over time



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

²⁸⁷ Queensland Public Service Commission, Workforce Statistics – unpublished data, 2014–15 to 2018–19.

Table 5-8 shows the number of cases involving the assault of a public officer. In the higher courts, serious assault involving bodily fluid or faeces being thrown at or applied to a public officer was the most common offence as the MSO; whereas in the lower courts, non-aggravated serious assault was the most common MSO.

The less serious offence of resisting a public officer under section 199 of the *Criminal Code* was only sentenced as the MSO in 6 cases. Serious assault of a person who performed, or is performing, a duty at law had 84 sentenced cases. Serious assault of a public officer under section 340(2AA) had 49 cases sentenced in the higher courts, and 465 cases in the lower courts.

Table 5-8 : Number of sentenced assaults of public officers

Section Number	Offence Description	Charges	Offenders	Cases	MSO
Higher courts					
199	Resisting public officers	4	2	2	0
340(1)(c) & (1)(d)	Performing/performed duty at law	26	14	15	3
340(2AA)	Public officer (non-aggravated)	83	52	52	10
340(2AA)(i)	Public officer – bodily fluid	69	48	48	29
340(2AA)(ii)	Public officer – bodily harm	21	19	19	9
340(2AA)(iii)	Public officer – armed	11	4	4	1
Lower courts					
199	Resisting public officers	24	20	20	6
340(1)(c) & (1)(d)	Performing/performed duty at law	137	110	111	81
340(2AA)	Public officer (non-aggravated)	618	473	489	238
340(2AA)(i)	Public officer – bodily fluid	248	188	198	135
340(2AA)(ii)	Public officer – bodily harm	106	96	96	69
340(2AA)(iii)	Public officer – armed	56	34	35	23

Data includes: adult and juvenile 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.

5.5.1 Occupation of victims of assault against public officers

Methodology and limitations

The Council was provided with additional data on the occupation of victims from Court Services Queensland, which was extracted from the administrative system used by courts – Queensland-Wide Interlinked Courts (QWIC).

Victim occupation data is recorded as a free-text field in QWIC, which was coded by the Council's Research and Statistics team into broad occupational categories. Where the free-text field did not provide enough information to determine an appropriate category, such as 'manager' or 'officer', the occupation was coded as 'other'. There were 163 cases (7.5%) in this category.

Victim occupation is not a mandatory field within QWIC and data was not available for all cases. For cases that were missing victim occupation data and were sentenced in the higher courts, sentencing remarks were accessed from the Queensland Sentencing Information Service (QGIS) to determine the victim's occupation. Cases for which victim occupation data was unobtainable were coded as 'Unknown'; there were 481 cases (22.2%) in this category.

Due to the high proportion of offences where victim occupation data was coded as either 'other' or 'unknown', it is important to note that this analysis should be treated with caution. It is possible that, if the missing victim occupation data were to be classified, different findings might result.

Findings

Paramedics are the most common victims of serious assault of a public officer under section 340(2AA); the second most common victim occupation is a medical worker – see Table 5-9. The serious assault of a person who performed, or is performing a duty at law, under section 340(1)(c)/(d) has somewhat different victims, with security guards, youth workers and police officers among the most frequent occupations.

The occupation of victims who were assaulted by young offenders was markedly different to the victims who were assaulted by adults. Unsurprisingly, young offenders most commonly assaulted youth workers and youth detention workers. Education workers were also assaulted at a higher frequency by young offenders compared to adult offenders. Adult offenders most commonly assaulted paramedics, medical staff and security guards.

Table 5-9: Victim occupations, by type of serious assault and whether the offender was an adult

Victim type	TOTAL	340(2AA) Public officer	340(1)(c)/(d) Duty at law	Adult offenders	Young offenders
Victim occupation	N	%	%	%	%
Paramedic	476	95.0	5.0	90.1	9.9
Medical worker	301	94.4	5.6	91.0	9.0
Security guard	181	66.9	33.1	88.4	11.6
Youth worker	159	75.5	24.5	5.0	95.0
Youth detention worker	115	94.8	5.2	4.3	95.7
Police officer	86	55.8	44.2	89.5	10.5
Watch-house officer	74	73.0	27.0	90.5	9.5
Transport officer	36	83.3	16.7	69.4	30.6
Child safety officer	26	96.2	3.8	76.9	23.1
Education worker	25	68.0	32.0	20.0	80.0
Correctional officer	22	59.1	40.9	63.6	36.4
Compliance officer	15	60.0	40.0	100.0	0.0
Fire fighter/ investigation	4	100.0	0.0	100.0	0.0
Other	163	64.4	39.3	43.6	56.4
Unknown	481	77.3	22.7	75.7	24.3
TOTAL	2,166	81.2	18.8	71.1	28.9

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

Note: count is by charge (i.e. victim) therefore the victim is not necessarily unique; victims entered as ‘prison officer’ or ‘correctional officer’ where the offender was sentenced as a child have been coded as ‘youth detention worker’.

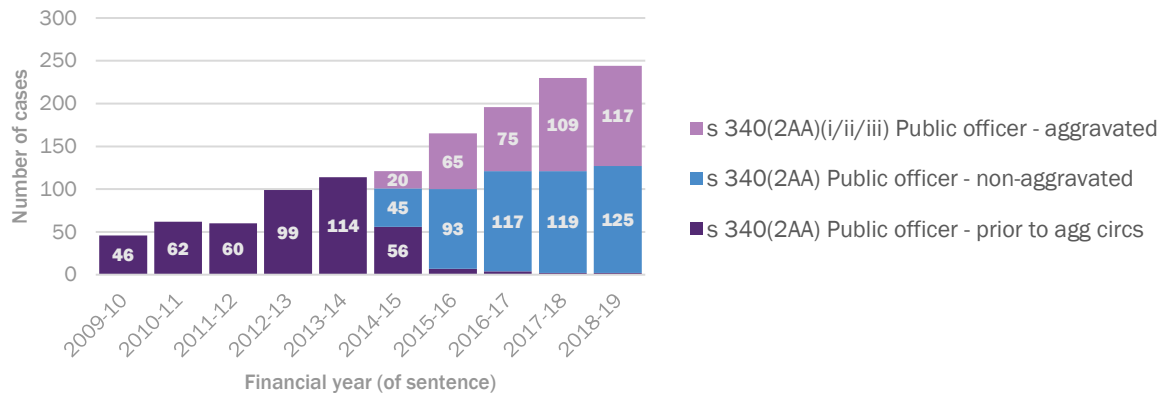
5.5.2 Impact of the introduction of aggravating circumstances

From 5 September 2014, it became an aggravating circumstance to assault a public officer by biting, spitting, throwing or applying bodily fluid or faeces to, causing bodily harm to a public officer, or at the time of the assault, being or pretending to be armed, carrying a higher maximum penalty of 14 years for adult offenders. 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.²⁸⁸

²⁸⁸ 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 4.

Figure 5-18 shows the effect of the introduction of aggravating circumstances, with an increase in the number of serious assaults of public officer offences being sentenced in the years following the introduction.

Figure 5-18: Number of serious assaults of public officers by aggravating circumstances, over time



Data includes: lower and higher courts, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19

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

Note: Each case is counted once only; if a case contains multiple serious assaults of a public officer, where some assaults include aggravating circumstances and others do not, the entire case will be counted as one that contains aggravating circumstances. If a case involves offences in occurring both prior to and after the introduction of aggravating circumstances, the entire case will be counted in the applicable post-introduction category.

There are differences in the occupation of victims based on the type of aggravating circumstance – see Table 5-10.

Over half of serious assaults involving a youth detention officer involved bodily fluid (55.2%). Similarly, 43.8 per cent of serious assaults of a security guard involved bodily fluids. While the sample size is small (n=17), over three-quarters of serious assaults involving transport officers involved bodily fluid (82.4%), and only 5.9 per cent of serious assaults of transport officers did not involve any aggravating circumstances.

Being armed was most common where the victim was a police officer, with nearly 1 in 10 (9.7%) assaults of a police officer involving a weapon (where the case was sentenced as a public officer under section 340(2AA)). Medical workers were the most likely to receive bodily harm, at a rate of nearly 1 in 5 (17.5%).

Table 5-10: Aggravating circumstances by victim occupation

	TOTAL	Bodily fluid	Bodily harm	Armed	No aggravating circumstances
Victim occupation	N	%	%	%	%
Paramedic	294	18.4	9.9	3.4	69.1
Medical worker	200	27.5	17.5	2.5	54.5
Youth worker	99	26.3	3.0	4.0	66.7
Security guard	73	43.8	16.4	8.2	32.9
Youth detention worker	58	55.2	1.7	4.0	32.9
Watch-house officer	34	29.4	5.9	0.0	64.7
Police officer	31	9.7	12.9	9.7	67.7
Correctional officer	26*	30.8	11.5	0.0	61.5
Transport officer	17*	82.4	5.9	5.9	5.9
Other	105	25.7	10.5	10.5	55.2
Unknown	273	20.5	15.0	8.8	59.0
TOTAL	1,210	26.2	11.7	5.9	57.8

Data includes: lower and higher courts, adult and juvenile 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: count is by charge (i.e. victim) therefore the victim is not necessarily unique; victims entered as 'prison officer' or 'correctional officer' where the offender was sentenced as a child have been coded as 'youth detention worker'; small categories have been combined into 'other' due to sample size.

* Small sample size

Table 5-11 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 issued 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 to 0.6 years where aggravated).

For the same reasons discussed above in section 5.3.1, 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 5-11: Custodial sentences for assault against public officers (MSO) before and after the introduction of aggravating circumstances, adult offenders

Type of serious assault of a public officer – section 340(2AA)	2011-12 to 2013		2015-16 to 2017-18	
	% 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 includes: adult offenders

Data excludes: 8 cases where the offence occurred prior to 5 September 2014 but was sentenced 2015-16 or later (6 in the Magistrates Courts and 2 in the higher courts)

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

* Small sample sizes

5.5.3 Sentencing outcomes for assaults against public officers

Table 5-12 shows the sentencing outcomes for different offences involving the assault of a public officer.

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 most 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 5-12: 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 includes: 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.

* Small sample size

5.5.4 Demographics of offenders of serious assault of public officers

The majority of offenders sentenced for the assault of a public officer were male. This was highest for those sentenced for performing or having performed a duty at law where over two-thirds of offenders were male (70.2%). Female offender numbers were highest for the non-aggravated serious assault of a public officer at 35.1 per cent.

Over one-third (33.9%) of those sentenced for the non-aggravated serious assault of a public officer were Aboriginal or Torres Strait Islander offenders. This was higher in cases where aggravating circumstances were involved, with 62.5 per cent of cases where the offender was armed, and 43.6 per cent where bodily harm was caused.

Figure 5-19: Demographics of offenders sentenced for the assault of a public officer

	Female	Aboriginal and Torres Strait Islander	Average Age
s 340(2AA) Serious assault of a public officer			
non-aggravated	35.1%	33.9%	33.3
(i) bodily fluid	32.9%	40.2%	26.3
(ii) bodily harm	34.6%	43.6%	29.5
(iii) armed	29.2%	62.5%	31.8
s 340(1)(c)/(d) Performing/performed duty at law	29.8%	33.3%	27.6

Data includes: MSO, adult and juvenile offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19

Data excludes: cases where demographic data is unknown. Due to a small number of sentenced cases (n=6), s 199 resisting a public officer was excluded.

* Small sample size

5.6 Limitations and data quality issues

In conducting its review, the Council has identified a number of issues in working with administrative data in the criminal justice sector. A summary of some of the issues which have affected the research and analysis during this review are discussed below.

Data on circumstances of offending

No agency in the criminal justice sector collects quantitative data on the circumstances of a person's offending in a way that can be analysed. For example, in conducting analysis of serious assault of a public officer, there was no data available on the type or extent of injury that may have been caused, the type of weapon that may have been used, or the type of bodily fluid that was used (e.g. blood, saliva, faeces, etc.).

Where a public officer is the victim of a serious assault charged under section 340(2AA), there is little data available on the victim's occupation. As discussed in section 5.5.1 above, the occupation of 29.7 per cent of public officers was either unknown or unable to be classified. To reduce the number of cases with missing data for its final report, the Council has requested information from the QPS on victim occupation as recorded in court briefs (QP9s). This process will involve an officer manually reviewing case files and extracting relevant information on the occupation of the victim in each case.

There is also limited data recorded on whether a victim has been assaulted during the course of their work, which means it is not clear how many public officers are victims of offences other than serious assault, such as common assault, AOBH, GBH, or wounding. To provide some insight into this matter, the Council has requested offender-level data from the Department of Youth Justice and QCS for all assaults of staff members that have occurred within corrective or detention facilities. Similar data has also been requested from the QPS on assaults of on-duty police officers. Data provided by these agencies will be matched to Queensland courts data to assist the Council to better understand the range of offences charged involving public officer victims and associated sentencing outcomes.

Data sharing

The Council encountered difficulties in assessing identifiable data from agencies outside the criminal justice sector due to the absence of clear data-sharing protocols. As these agencies were unable to provide details of their staff members who were the victims of assaults in the workplace, it was not possible to match data on workplace assaults to courts data to determine the sentencing outcomes for these offences.

Within the criminal justice sector, each agency maintains separate administrative data systems. Although many agencies are using a shared person identifier to recognise unique offenders, these fields were sometimes missing or had not been updated to reflect changes made by other agencies. As such, data held by different criminal justice agencies is not linked, and a considerable amount of work has to be undertaken by researchers to create a cohesive dataset to get the full picture of the wider criminal justice sector.

5.7 Summary

The length of custodial penalties for cases involving a serious assault is substantially lower compared to other assault-related offences with a similar maximum penalty. The sentencing outcomes for serious assault cases more closely resemble the sentencing outcomes for common assault, which has a maximum penalty of 3 years.

Over the past 10 years, the proportion of custodial penalties for serious assault has increased in both the lower and higher courts. However, over the same period there has been a general increase in the use of custodial penalties across all offence categories in Queensland.²⁸⁹

There have been 6,538 cases sentenced for the serious assault of a police officer, and 85,434 cases sentenced for the assault or obstruction of a police officer over the past 10 years. The majority of cases sentenced under section 790 involved the obstruction rather than the assault of a police officer. There were more custodial penalties issued for serious assaults that involved biting, spitting, or bodily fluids compared to cases with other aggravating circumstances. Cases where the offender was armed received the longest sentences.

There were 292 cases sentenced for the serious assault of a corrective services officer, and 147 cases sentenced for the assault or obstruction of a corrective services officer over the past 10 years. As expected, the majority of offenders were sentenced to a custodial penalty. The average custodial sentence length was slightly lower compared to sentences for the serious assault of a police officer. There was a higher proportion of Aboriginal and Torres Strait Islander offenders, and a higher proportion of male offenders, compared to those committing serious assault of a police officer – this is reflective of the composition of the prison population.

There were 1,337 cases sentenced for the serious assault of a public officer under section 340(2AA) over the past 10 years, and 321 cases involving the serious assault of a person

²⁸⁹ Queensland Sentencing Advisory Council (n 279).

who performed, or is performing, a duty at law. These public officers consisted of people from a range of different occupations, the most common being paramedics, medical workers, security guards, youth workers and youth detention workers. However, due to the large number of cases where the occupation of the victim was missing, this finding has limited reliability.

Following the introduction of aggravating circumstances, there was an increase in custodial penalties for cases that involved aggravating factors; however, there are several intervening factors that have not been taken into account.