

182. Torture: s 320A

182.1 Legislation

[Last reviewed: December 2024]

Criminal Code

[Section 320A](#) – Torture

182.2 Commentary

[Last reviewed: December 2024]

The Defendant must have:

- (1) Intentionally;
- (2) Inflicted severe pain or suffering on another person;
- (3) By an act or a series of acts done on one or more than one occasion.

Section 320A(2) makes it clear that the severe pain or suffering may be physical, mental, psychological or emotional pain or suffering, and may be temporary or permanent.

In *R v Burns* [\[2000\] QCA 201](#), the Court stated at [3] that '[t]he essence of that offence under s 320A is the intentional infliction of "severe pain or suffering", which may be mental or emotional only, and either temporary or permanent'. No proof of bodily harm is required (*R v Spies* [\[2018\] QCA 36](#), [28]).

Intention

'Intention' has no specific legal definition and is to be given its ordinary, everyday, meaning. 'Intention' is the act of 'determining mentally upon some result'. It is a 'purpose or design'. See *Zaburoni v The Queen* (2016) 256 CLR 482; [\[2016\] HCA 12](#). See further **Chapter 59 – Intention**.

In *R v Ping* [\[2006\] 2 Qd R 69](#), Chesterman J held at [27] that:

The words of s 320A are plain and unambiguous; they offer no scope for misunderstanding. To make out a case of torture the prosecution must prove, beyond reasonable doubt of course, that an accused intended his acts to inflict severe pain and suffering on his victim. It is not enough that such suffering is the consequence of the acts, and that the acts were deliberate. The prosecution must prove an actual, subjective, intention on the part of the accused to bring about the suffering by his conduct. The acts in question must have as their object the infliction of severe suffering; that must be their intended consequence.

Jury unanimity

The jury must be unanimous as to the act or acts by which the Defendant intentionally inflicted severe pain or suffering. In *R v LM* [\[2004\] QCA 192](#), McMurdo P held at [94] that:

To convict the appellant, the jury must have been unanimously agreed beyond reasonable doubt that she did at least one of the particularised acts intending to inflict severe pain or suffering. ... To convict the appellant, there must have been unanimity as to the intentional infliction of severe pain or suffering on D on at least one particularised occasion.

A misdirection on this issue was discussed in *R v HAC* [\[2006\] QCA 291](#), where Jerrard JA stated at [47] that:

It is not sufficient if different jurors convict on the basis of different acts, that is, if the jurors are not unanimously satisfied as to one or more acts by which the defendant intentionally inflicted severe pain or suffering on the complainant'.

Aggravation

The offence is a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), meaning a serious organised crime circumstance of aggravation is applicable.

182.3 Suggested Direction

[Last reviewed: December 2024]

A person who tortures another person commits a crime. Torture means the intentional infliction of severe pain or suffering on a person by an act or a series of acts done on one or more than one occasion. The prosecution must prove the following elements beyond reasonable doubt that:

1. The Defendant inflicted severe pain or suffering on the Complainant.

To inflict pain or suffering is to cause it to be felt. The pain or suffering may be physical, mental, psychological or emotional and it may be temporary or permanent. Pain or suffering are subjective. One person may experience greater pain or suffering from the same pain-provoking factor than another person. The question of whether any pain or suffering was severe is a matter of fact for you to determine. The evidence of the complainant is not necessarily conclusive of the question.

2. The Defendant inflicted the severe pain or suffering on the Complainant intentionally.

That is, that the Defendant intended to inflict severe pain or suffering on the Complainant. It is not enough that such suffering is the consequence of the Defendant's act[s] and that the acts were deliberate. The prosecution must prove an actual, subjective, intention on the part of the Defendant to cause severe pain or suffering by [his/her] conduct. The acts in question must have the infliction of such pain and suffering as their design or object; that must be their intended consequence or purpose. The prosecution must prove that the Defendant consciously decided to [refer to the relevant act/s of the Defendant; e.g. beat, hit] the Complainant in order to cause severe pain or suffering.

The prosecution seeks to prove that intention by what the Defendant [said and did]. It asks you to have regard to that evidence as facts from which the requisite intention can be inferred [refer to the evidence].

- 3. The Defendant did so by an act or series of acts done on one or more than one occasion.**

To establish the offence of torture, the prosecution must prove that the Defendant intentionally inflicted severe pain or suffering on the victim by at least one act. A series of acts which by their cumulative effect result in the infliction of severe pain or suffering is sufficient, but to convict the Defendant of torture you must be unanimously satisfied that the Defendant did particular acts [or an act] described in the evidence, that those were done for the purpose of causing severe pain and suffering, and that they did result in that intentionally inflicted condition. You do not have to be satisfied that every incident or act alleged by the prosecution actually occurred, but you must be unanimous as to acts that did and by which severe pain and suffering was intentionally inflicted on the Complainant.