

108. Assault on Police Officer in Execution of the Officer's Duty (Serious Assault): s 340(1)(b)

108.1 Legislation

[Last reviewed: October 2024]

Criminal Code

[Section 340](#) – Serious assaults

[Section 245](#) – Definition of assault

[Section 246](#) – Assaults unlawful

108.2 Commentary

[Last reviewed: October 2024]

The defendant must have:

- (1) assaulted, resisted or wilfully obstructed;
- (2) a police officer or any person acting in aid of a police officer;
- (3) while the police officer was acting in the execution of his or her duty.

For commentary on the meaning of assault, see **Direction 106 – Assault**.

Wilfully obstructed

A line of English cases have discussed what amounts to obstruction of a police officer. These cases are usefully summarised in the commentary to s 340 in *Carter's Criminal Law of Queensland*.

Obstruct is defined in s 790 of the *Police Powers and Responsibilities Act 2000* (Qld) as including 'hinder, resist and attempt to obstruct'.

Police officer acting in the execution of his or her duty

The complainant must have been acting in the due execution of his or her duties. In *R v K sub nom Director of Public Prosecutions* (No 1 of 1993); *R v K* [\(1993\) 118 ALR 596](#), the Federal Court of Australia held, at 601, that:

The effect of all those cases is that a police officer acts in the execution of his duty from the moment he [or she] embarks upon a lawful task connected with his [or her] functions as a police officer, and continues to act in the execution of that duty for as long as he [or she] is engaged in pursuing the task and until it is completed, provided that he [or she] does not in the course of the task do anything outside the ambit of his [or her] duty so as to cease to be acting therein.

It follows that if a police officer is exceeding his or her duty, resistance is not an assault.

In some cases, there may be a question over the lawfulness the complainant's actions. For example, when a police officer illegally arrests a person or uses excessive force, the police officer is not engaged in the discharge of his or her duties. It may be necessary in a case in which the validity of arrest is an issue to tell the jury that they can only be satisfied the police officer was acting in the execution his or her duty if satisfied beyond a reasonable doubt that the arrest was lawful.

Where the validity of an arrest is at issue, it is sufficient for the complainant to touch the defendant while telling the defendant that he or she is under arrest. Where possible, the complainant should have stated the act for which arrest is made. If the defendant is touched, there is an arrest even though the defendant is not grasped and even if they are able to escape custody: *Dellit v Small* [1978] Qd R 303.

The prosecution does not need to prove that the defendant knew the complainant was a police officer acting in the execution of his or her duties. In *R v Reynhoudt* [1962] HCA 23; (1962) 107 CLR 381, 395, 397, the High Court of Australia (by a majority) approved the following statement: '[t]he charge was not assaulting them knowing them to be in execution of their duty, but assaulting them being in the execution of their duty'.

In some cases, however, a defence of honest and reasonable mistake under s 24 of the *Criminal Code* may be open. For example, if the defendant acted under an honest and reasonable but mistaken belief that the person assaulted was not executing the duties of a police officer, but was instead in the act of committing a felony or breach of the peace: *R v Mark* [1961] Crim Law Review 173, 398.

Aggravation

There is a circumstance of aggravation if the defendant:

1. bit or spat on the complainant, or threw at, or in any way applied a bodily fluid or faeces to, the complainant; or
2. caused bodily harm to the complainant; or
3. was, or pretended to be, armed with a dangerous or offensive weapon or instrument.

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

It is, furthermore, a circumstance of aggravation for any offence in s 340(i)(b) if the offence is committed in a public place while the defendant was adversely affected by an intoxicating substance: *Penalties and Sentences Act 1992* (Qld) s 108B. See s 365C of the *Criminal Code* for circumstances in which a person is taken to be adversely affected by an intoxicating substance.

108.3 Suggested Direction

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The prosecution must prove beyond reasonable doubt that:

1. **The defendant assaulted the complainant** (the direction on assault in **Chapter 106 – Assault** may be referred to here, together with the definition of assault below, as relevant).

A person:

who strikes or otherwise applies force of any kind to another without that other person’s consent; or

who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person’s consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person’s purpose;

is said to have assaulted that other person.

2. **The complainant was a police officer.**
3. **The complainant was then acting in the due execution of [his/her] duty.**

It is not a defence that the defendant did not know the complainant assaulted was a police officer.

(If a circumstance of aggravation is charged, then add the following as relevant)

The prosecution must also prove beyond reasonable doubt the following circumstance/s of aggravation (refer to any circumstances of aggravation, modifying the text below as necessary):

It is a circumstance of aggravation if the defendant assaults the complainant in any of the following circumstances:

- (a) **the defendant bites or spits on the complainant or throws at, or in any way applies to, the complainant a bodily fluid or faeces;**
- (b) **the defendant causes bodily harm to the complainant;**
- (c) **the defendant is, or pretends to be, armed with a dangerous or offensive weapon or instrument.**

It is a circumstance of aggravation for any offence in s 340(i)(b) if the offence is committed in a public place while the defendant was adversely

affected by an intoxicating substance. (See s 365C Criminal Code for circumstances in which a person is taken to be adversely affected by an intoxicating substance).