

## 102. Administering a Stupefying or Overpowering Drug or Thing with Intent: s 316

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### 102.1 Legislation

[Last reviewed: December 2024]

*Criminal Code*

[Section 316](#) – Stupefying in order to commit indictable offence

### 102.2 Commentary

[Last reviewed: December 2024]

The defendant must have:

- (1) administered or attempted to administer;
- (2) a stupefying or overpowering drug or thing to another;
- (3) with the intent to commit or facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence.

*Administer or attempt to administer*

The word ‘administer’ includes conduct which, not being the application of direct physical force to the complainant, nevertheless brings the noxious thing into contact with the complainant’s body. This could include, for example, the spraying of gas into the face of a complainant: see *R v Gillard* (1988) 87 Cr App R 189. In *R v Murphy* [1996] QCA 256 the majority of the court held that for the purpose of ‘administering’, it is insufficient if no more is done than to give, supply or provide a stupefying drug to a person who, knowing its effects, voluntarily inhales it.

*Stupefying or overpowering drug or thing*

Whether a drug or thing is stupefying or overpowering is a question of fact and will often depend on expert opinion evidence based on given facts. A thing which stupefies by intoxicating is a stupefying thing. In *R v Arnold; Ex parte A-G* [2002] QCA 357 at [39], it was stated that ‘[t]he ordinary meaning of the word “stupefying” in this context is that something has the effect of dulling the senses or faculties or blunting the faculties of perception or understanding’.

Whether a drug or thing is stupefying or overpowering may depend not only on the type of drug or thing in question, but the quantity at which it was administered. In *R v Steedman* (unreported, Court of Appeal, Qld, No 233 of 1995, 10 April 1996), Fryberg J observed:

It may be relevant to take into account the quantity of the drug which was administered as well as any susceptibilities or immunities of the person to whom it was administered which may promote or retard its effect.

...

If the Crown seeks to demonstrate that the drug in question was stupefying by reference to its effects on human beings generally, some evidence of the quantity of the drug needed to have a stupefying effect on a person with relevant characteristics of the person to whom the drug was administered may be necessary.

### *Intention*

See the direction on intention at **Direction 59 – Intention**.

## **102.3 Suggested Direction**

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**The prosecution must prove beyond reasonable doubt that:**

- 1. The defendant administered, that is, gave, supplied or provided the stupefying or overpowering drug or thing to the complainant;**
- 2. The defendant knew it was a stupefying or overpowering drug or thing;**
- 3. The defendant intended the complainant to take it;**
- 4. The defendant did so with intent:**
  - (a) to commit or to facilitate the commission of an indictable offence; or**
  - (b) to facilitate the flight of an offender after the commission or attempted commission of an indictable offence.**

**The offence alleged is an indictable offence.**