

140. Grievous Bodily Harm: s 320

140.1 Legislation

[Last reviewed: November 2024]

Criminal Code

[Section 320](#) – Grievous bodily harm

[Section 1](#) – Definition of ‘grievous bodily harm’

140.2 Commentary

[Last reviewed: November 2024]

The defendant must have:

- (1) Unlawfully;
- (2) Done grievous bodily harm to another person.

A definition of ‘grievous bodily harm’ is set out in s 1 of the *Criminal Code* and includes:

- (a) the loss of a distinct part or an organ of the body;
- (b) serious disfigurement; or
- (c) 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.

These injuries constitute grievous bodily harm whether or not treatment is or could have been available. In the case of *R v Lovell; Ex parte Attorney-General (Qld)* [\[2015\] QCA 136](#), the Court of Appeal held that a disfigurement which is remedied by medical treatment is capable of amounting to a serious disfigurement.

Causation

The defendant must have *done* (i.e. caused) grievous bodily harm to another. Causation is a question of fact. The defendant’s act or omission need not be the sole cause of the injury, though it must be a significant or substantial cause of the injury (*Swan v The Queen* [\(2020\) 269 CLR 663](#); *Royall v The Queen* [\(1991\) 172 CLR 378](#)).

Meaning of ‘unlawfully’

All that the word ‘unlawfully’ in this section requires the prosecution to prove is that the doing of the grievous bodily harm was contrary to law and not excused (see *R v Knutsen* [\[1963\] Qd R 157](#), 162-163 (Philp J); see also *Houghton v The Queen* [\[2004\] WASCA 20](#); [\(2004\) 144 A Crim R 343](#), 352, 366).

Note that provocation does not apply as a defence to s 320 (*Kaporonovski v The Queen* [\(1973\) 133 CLR 209](#)).

Meaning of 'likely'

The third limb of the definition of 'grievous bodily harm' refers to an injury that would 'endanger or be likely to endanger life' or 'cause or be likely to cause permanent injury to health'. 'Likely' is a word that is used in everyday life and its meaning may depend on its context. In this context it means a substantial chance. That is a real and not remote chance; more than a mere possibility (*Boughey v The Queen* [\(1986\) 161 CLR 10](#), 21; *R v Crossman* [\[2011\] 2 Qd R 435](#)). 'Likely' and 'probable' when used in the *Criminal Code* are not interchangeable.

Aggravation

It is a circumstance of aggravation if the defendant was a participant in a criminal organisation and had, or ought reasonably to have had, knowledge of the kind identified in s 161Q of the *Penalties and Sentences Act 1992* (Qld).

It is also a circumstance of aggravation if the offender committed the offence in a public place while the offender was adversely affected by an intoxicating substance.

140.3 Suggested Direction

[Last reviewed: November 2024]

The prosecution must prove beyond a reasonable doubt that:

- 1. First, the defendant did the act [or omission] relied on as constituting the offence.**

The act [or omission] relied on is [describe the act or omission].

- 2. Secondly, that act [or omission] caused [or was a substantial cause of] grievous bodily harm to [the complainant].**

(Depending on the case, further direction on causation may be necessary here).

The injury relied on as constituting grievous bodily harm is [describe the injury].

'Grievous bodily harm' is defined in the Criminal Code as (refer to parts of the definition as relevant):

- a. the loss of a distinct part or an organ of the body; or**
- b. serious disfigurement; or**

- c. 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.

Any injury that fits this definition is grievous bodily harm, whether or not treatment is or could have been available. This means that you must have regard to the nature of the injury itself, and must disregard whether or not medical treatment is or could have been available.

(If limb (c) of the definition is applicable, then the following paragraph can be added): **The word ‘likely’ in the definition of ‘grievous bodily harm’ means a substantial chance. That is, there must have been a real and not remote chance of the bodily injury endangering life or causing permanent injury or health. It must have been more than a mere possibility.**

3. **Thirdly, that the act [or omission] relied on to constitute the offence was unlawful.**

‘Unlawful’ means not authorised, justified or excused by law.

(As relevant, include either of the below):

If you find the prosecution has proved the first two elements, the defendant does not contend that the act [or omission] was lawful. That is, was authorised, justified or excused by law.

(Or)

The evidence of [witness] is capable of raising the defence of [insert defence] for your consideration. [Direct on relevant defence or excuse].

(If the prosecution pleads the circumstance of aggravation under s 108B of the *Penalties and Sentences Act 1992*, insert before the third element):

The [place where the act relied on to constitute the offence occurred] is a public place and the defendant was adversely affected by an intoxicating substance.

‘Public place’ means—

1. a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
2. a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

An ‘intoxicating substance’ would include alcohol or the drug [drug name].

(The text below may be inserted if the prosecution pleads a serious organised crime circumstance of aggravation under s 161Q of the *Penalties and Sentences Act 1992*):

At the time the offence was committed [or at any time during the course of the commission of the offence], the defendant was a participant in a criminal organisation and knew, or ought reasonably to have known, the offence was being committed—

- 1. at the direction of a criminal organisation or a participant in a criminal organisation; or**
- 2. in association with 1 or more persons who were, at the time the offence was committed, or at any time during the course of the commission of the offence, participants in a criminal organisation; or**
- 3. for the benefit of a criminal organisation.**

An offence is committed for the benefit of a criminal organisation if the organisation obtains a benefit, directly or indirectly, from the commission of the offence.