

## **Assault on Police Officer in Execution of His Duty (Serious Assault): s 340(1)(b)**

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The prosecution must prove that:

1. The defendant assaulted the complainant.

A person who strikes or otherwise applies force of any kind to the person of another without the other person's consent is said to have assaulted that person;<sup>1</sup>

2. That the complainant was a police officer;
3. That the complainant was then acting in the due execution of his duty;<sup>2</sup>

It is not a defence that the defendant did not know the person assaulted was a police officer.<sup>3</sup>

4. Refer to any circumstances of aggravation.<sup>4</sup>

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<sup>1</sup> Attempts or threats to apply force: Any person who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another is said to assault that person under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect that person's purpose – s 245(1).

<sup>2</sup> In *R v Reynhoudt* (1962) 107 CLR 381 the High Court (by a majority) approved the following statement: "The charge was not assaulting them knowing them to be in execution of their duty, but assaulting them being in the execution of their duty", 395, 397. In *R v K sub nom Director of Public Prosecutions* (No 1 of 1993); *R v K* (1993) 118 ALR 596 it was held:

“(i) A police officer acts in the execution of his duty from the moment he embarks upon a lawful task connected with his functions as a police officer, and continues to act in the execution of that duty for as long as he is engaged in pursuing the task and until it is completed, provided that he does not in the course of the task do anything outside the ambit of his duty so as to case to be acting therein”

If a police officer is exceeding his duty, resistance to him is not an assault. When a police officer illegally arrests a person, he is not engaged in the discharge of his duties. It is sufficient for the police officer to touch the person to be arrested and at the same time tell him that he is under arrest and where possible state 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 though the defendant is stronger than the police officer arresting him and succeeds in making off. *Dellit v Small* [1978] Qd R 303. 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 that the police officer was acting in the execution his duty if satisfied beyond a reasonable doubt that the arrest was lawful. If the police officer uses excessive force he is not acting in the execution of his duty.

<sup>3</sup> In some cases a defence of honest and reasonable mistake in relation to whether the officer was acting in the execution of his duty may be open. Eg if the defendant acted under an honest and reasonable but mistaken belief that the person assaulted was in the act of committing a felony or breach of the peace: *R v Mark* [1961] Crim Law Review 173 at 398.

<sup>4</sup> s 340(a) *Criminal Code*. The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

**It is a circumstance of aggravation if the offender assaults a police officer in any of the following circumstances:**

- (a) the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces;**
- (b) the offender causes bodily harm to the police officer;**
- (c) the offender 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 person was adversely affected by an intoxicating substance.<sup>5</sup>**

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<sup>5</sup> s 108B *Penalties and Sentences Act 1992*. See s 365C Criminal Code for circumstances in which a person is taken to be adversely affected by an intoxicating substance.