

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

Legislation

340 Serious assaults

(1) Any person who—

...

(b) assaults, resists, or wilfully obstructs, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting; or

...

is guilty of a crime.

Maximum penalty—

(a) for subsection (1)(b), if the offender assaults a police officer in any of the following circumstances—

(i) 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;

(ii) the offender causes bodily harm to the police officer;

(iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument—14 years imprisonment; or

(b) otherwise—7 years imprisonment.

(1C) The [Penalties and Sentences Act 1992](#), [sections 108B](#) and [161Q](#) also state a circumstance of aggravation for an offence against subsection (1)(b).

(1D) An indictment charging an offence against subsection (1)(b) with the circumstance of aggravation stated in the [Penalties and Sentences Act 1992](#), [section 161Q](#) may not be presented without the consent of a Crown Law Officer.

Commentary

For notes on the meaning of assault see **Benchbook No 106 – Assault**.

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

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 cease to be acting therein.”

If a police officer is exceeding his or her duty, resistance to him or her is not an assault. When a police officer illegally arrests a person, the police officer is not engaged in the discharge of his or her duties.

It is sufficient for the police officer to touch the person to be arrested and at the same time tell the person that he or she 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 or her 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 or her duty if satisfied beyond a reasonable doubt that the arrest was lawful. If the police officer uses excessive force, the police officer is not acting in the execution of his or her duty.

In some cases, a defence of honest and reasonable mistake in relation to whether the officer was acting in the execution of his or her duty may be open. E.g., 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.

Aggravation

There is a circumstance of aggravation if the accused:

1. Bit or spit on the police officer or threw at, or in any way applied a bodily fluid or faeces to, the police officer; or
2. Caused bodily harm to the police officer; or
3. Was, or pretended to be, armed with a dangerous or offensive weapon or instrument.

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 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: 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.

Suggested Direction

The prosecution must prove beyond reasonable doubt 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;

- 2. That the complainant was a police officer;**
- 3. That the complainant was then acting in the due execution of his or her duty;**

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

- 4. Refer to any circumstances of aggravation.**

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

[Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.]