

## Grievous Bodily Harm s 320

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### Legislation

#### ***Criminal Code s 320: Grievous bodily harm***

- (1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.
- (2) [subs (2) rep Act 62 of 2016 s 112, effective 9 December 2016.]
- (3) [subs (3) rep Act 62 of 2016 s 112, effective 9 December 2016.]
- (3A) The *Penalties and Sentences Act 1992*, sections 108B and 161Q state a circumstance of aggravation for an offence against this section. [subs (3A) insert Act 42 of 2014 s 15, effective 1 December 2014; am Act 62 of 2016 s 112, effective 9 December 2016.]
- (4) An indictment charging an offence against this section 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.

#### ***Criminal Code s 1: Grievous bodily harm***

grievous bodily harm means—

- (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;

whether or not treatment is or could have been available.

#### ***Penalties and Sentences Act 1992: ss 108B, 161Q***

##### *108B: When community service order must be made*

- (1) It is a circumstance of aggravation for a prescribed offence that the offender committed the offence in a public place while the offender was adversely affected by an intoxicating substance.
- (2) If a court convicts an offender of a prescribed offence with the circumstance of aggravation mentioned in subsection (1), the court must make a community service order for the offender whether or not the court also makes another order under this or another Act.
- (2A) However, subsection (2) does not apply if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with a community service order.
- (3) Subsection (2) is subject to sections 121(4), 125(8) and 126(6B).

*161Q: Meaning of serious organised crime circumstance of aggravation*

- (1) It is a circumstance of aggravation (a **serious organised crime circumstance of aggravation**) for a prescribed offence of which an offender is convicted that, at the time the offence was committed, or at any time during the course of the commission of the offence, the offender—
  - (a) was a participant in a criminal organisation; and
  - (b) knew, or ought reasonably to have known, the offence was being committed—
    - (i) at the direction of a criminal organisation or a participant in a criminal organisation; or
    - (ii) 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
    - (iii) for the benefit of a criminal organisation.
- (2) For subsection (1)(b), 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.
- (3) To remove any doubt, it is declared that a criminal organisation mentioned in subsection (1)(b) need not be the criminal organisation in which the offender was a participant.

*Additional references*

For “public place”, see s 108A of the PSA.

For “criminal organisation”, see s 161O(1)-(2) of the PSA.

For “engage” in serious criminal activity, see s 161O(3) of the PSA.

For “serious criminal activity”, see s 161N of the PSA.

For “participant”, see s 161P of the PSA.

For the exclusion of s 24 in relation to the circumstance that the defendant was adversely affected by an intoxicating substance, and related matters of proof, see ss 365A-365C of the Criminal Code.

## **Commentary**

If the act of the defendant, mediately or immediately, effects grievous bodily harm to another, the defendant does grievous bodily harm to that person: see [R v Knutsen](#),<sup>1</sup> per Philp J. In the same case, Stanley J considered the defendant to be liable for an injury which a reasonable person in the position of the defendant would have regarded as likely to result from the defendant’s act.<sup>2</sup>

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<sup>1</sup> [\[1963\] Qd R 157](#), 164.

<sup>2</sup> *Knutsen* 175-176.

Causation is a question of fact. The defendant's act or omission need not be the sole cause of the injury. The defendant's conduct must be a significant or substantial cause of the injury: [Royall v The Queen](#).<sup>3</sup>

All that the word "unlawfully" in this section requires the Crown to prove is that the doing of the grievous bodily harm was contrary to law and not excused.<sup>4</sup>

Provocation does not apply as a defence.<sup>5</sup>

A disfigurement which is remedied by medical treatment is capable of amounting to a serious disfigurement.<sup>6</sup>

"Likely" is a word that is used every day 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.<sup>7</sup>

It is a circumstance of aggravation if the defendant was a participant in a criminal organisation and had, or ought reasonably have had, knowledge of the kind identified in s 161Q of the PSA.

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

### Questions for consideration

In an appropriate case, the following questions might be posed for the consideration of the jury:

- (1) Did the defendant ... (specify the defendant's conduct alleged by the prosecution, as the basis for the charge)?
- (2) Did the defendant's conduct cause A to suffer (e.g., specify the injury to A alleged by the prosecution)?
- (3) If left untreated, was there a substantial chance that that injury would cause permanent injury to A's health?
- (4) Has the prosecution proven that the defendant's conduct did not occur by accident, or independently of the defendant's will? (Or where there is an issue about the unlawfulness of the defendant's conduct, formulate another question appropriate to the case.)

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<sup>3</sup> [\(1991\) 172 CLR 378](#).

<sup>4</sup> See *Knutsen* per Philp J at 162-163; and see *Houghton v. The Queen* [28 WAR 399](#); [\(2004\) 144 A Crim R 343](#), 352, 366.

<sup>5</sup> *Kapronovski v The Queen* [\(1973\) 133 CLR 209](#).

<sup>6</sup> *R v Lovell; Ex parte Attorney-General (Qld)* [\[2015\] QCA 136](#).

<sup>7</sup> *Bouhey 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.

## **Directions**

**In relation to counts [ ] charging grievous bodily harm, the prosecution must prove beyond a reasonable doubt -**

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

**The act [or omission] relied on is [ ].**

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

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

**“Grievous bodily harm” is relevantly defined as:**

- 1. the loss of a distinct part or an organ of the body; or**
- 2. serious disfigurement; or**
- 3. 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;**

**whether or not treatment is or could have been available.**

**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.**

**“Likely” is a word that is used every day 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.**

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

**“Unlawful” means not authorised, justified or excused by law.**

**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 [ ] is capable of raising the defence of [ ] for your consideration. [Direct on relevant defence or excuse].**

If the prosecution pleads the circumstance of aggravation under s 108B of the PSA, insert before the third element:

**Thirdly, 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 [ ].**

If the prosecution pleads the circumstance of aggravation under s 320(2) of the Criminal Code, insert before the third element:

**Thirdly, that at the time the defendant did the act relied on to constitute the offence, the defendant was a participant in a criminal organisation; and the complainant is a police officer acting in the execution of his duty.**

**A “criminal organisation” means:**

**A group of 3 or more persons, whether arranged formally or informally—**

- 1. who engage in, or have as their purpose (or 1 of their purposes) engaging in, serious criminal activity; and**
- 2. who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.**

**It does not matter whether—**

**First, the group of persons — has a name; or is capable of being recognised by the public as a group; or has an ongoing existence as a group beyond the serious criminal activity in which the group engages or has as a purpose; or has a legal personality.**

**OR**

**Secondly, the persons comprising the group — have different roles in relation to the serious criminal activity; or have different interests in, or obtain different benefits from, the serious criminal activity; or change from time to time.**

**“Engage”, in serious criminal activity, includes each of the following—**

- 1. organise, plan, facilitate, support, or otherwise conspire to engage in, serious criminal activity;**
- 2. obtain a material benefit, directly or indirectly, from serious criminal activity.**

**“Serious criminal activity” means conduct constituting an indictable offence for which the maximum penalty is at least 7 years imprisonment. The offence of [ ] is an indictable offence for which the maximum penalty is at least 7 years imprisonment.**

**A person is a “participant”, in a criminal organisation, if—**

- 1. the person has been accepted as a member of the organisation and has not ceased to be a member of the organisation (a person may be accepted as a member of a criminal organisation—informally; or through a process set by the organisation, including, for example, by paying a fee or levy); or**
- 2. the person is an honorary member of the organisation; or**
- 3. the person is a prospective member of the organisation; or**
- 4. the person is an office holder of the organisation; or**
- 5. the person identifies himself or herself in any way as belonging to the organisation; or**
- 6. the person’s conduct in relation to the organisation would reasonably lead someone else to consider the person to be a participant in the organisation.**

**A police officer is “acting in the execution of the officers duty” from the moment they embark upon a lawful task connected with their functions as a police officer, and continues to act in the execution of that duty for as long as they are engaged in pursuing the task and until it is completed, provided that they do not in the course of the task do anything outside the ambit of their duty so as to case to be acting therein: see *R v Reynhoudt* [\(1962\) 107 CLR 381](#).**

**If a police officer is exceeding their duty or a police officer illegally arrests a person, they are not engaged in the discharge of their duties.**

The above direction will need to be modified if the prosecution pleads a serious organised crime circumstance of aggravation under s 161Q of the PSA:

**Thirdly, 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.**