



Sentencing snapshot for Assault

Isabel Taussig

Aim: To describe the penalties imposed on convicted assault offenders

Summary: The most common penalty imposed on assault offenders is a bond but the likelihood of a prison sentence increases with both the seriousness of the assault and the number of prior convictions. Approximately 23 per cent of offenders convicted of a serious assault causing injury received a prison sentence, compared with 5.3 per cent of offenders convicted of a common assault. An assault offender with no prior convictions faces a 2.8 per cent chance of imprisonment. By contrast, an assault offender with four or more prior convictions faces a 42.9 per cent chance of imprisonment. Among those who received prison sentences, the average minimum term was 9 months and the average aggregate sentence was 15 months.

Keywords: assault, prison, penalty, sentence length

Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of the offence of assault between 2009 and 2010 in the NSW Criminal Courts. Assault is defined as the direct infliction (or reasonable apprehension of threat of infliction) of force, injury or violence upon a person (Australian Standard Offence Classification (ASOC); Australian Bureau of Statistics, 2008).

According to the Crimes Act 1900 and the Crimes (Domestic and Personal Violence) Act 2007, the maximum penalty for assault ranges from 2 to 25 years, depending on the circumstances of the assault. For an assault not causing actual bodily harm the maximum penalty is two years imprisonment, unless the victim is a police officer, in which case the maximum prison sentence increases to five years. Stalking offences also attract a maximum prison sentence of five years, as do assaults occasioning actual bodily harm, however this increases to seven years if the assault takes place in company. A person found guilty of intentionally causing grievous bodily harm faces a maximum sentence of 25 years imprisonment.

For the purpose of this brief we distinguish between four types of assault. The first type are serious assaults involving injury, such as wounding, torture, or causing grievous bodily

harm. The most frequent offence in this category is assault occasioning actual bodily harm (49.8%), followed by its domestic counterpart: assault occasioning actual bodily harm – domestic violence related (29.2%).

The second category is serious assaults not resulting in injury. This category can include assaults that are committed in company, involve the use of a weapon, are committed against vulnerable victims or police officers, or involve more than one victim. In the dataset examined here, 99.3 per cent of the assaults in this category were against police officers and other officials.

Thirdly is the category of common assaults, which are assaults not involving any of the above circumstances. An example of a common assault is a situation in which one person pushes another person. Nearly half (44.2%) of assaults in this category were domestic violence related.

The last assault category is stalking, which is defined as acts intended to cause physical or mental harm to a person, or to arouse apprehension or fear in a person, through a repeated course of unreasonable behaviour. Stalking accounted for 13.5 per cent of all assaults.

There is also a subset of other offences intended to cause injury, which account for 0.2 per cent of assaults, and are chiefly

comprised of offences involving throwing objects at vehicles or in other ways risking the safety of people. Because they make up such a relatively small number of assaults, these 73 offences are not analysed further in this brief.

Age, gender and prior record of offenders

Over the two-year period covered by this study 26,810 males and 6,186 females were convicted of assault. This means that during this time period approximately 4 out of 5 (81.3%) of assaults resulting in a conviction were committed by males.

Approximately 34 per cent of these offences were serious assaults causing injury, nine per cent were serious assaults not causing injury, and 44 per cent were common assaults. The remaining 14 per cent were stalking offences. Table 1 shows the distribution of adult offenders convicted of assaults by age and gender.

It can be seen that, although there is a wide age range among assault offenders, most offenders (30.7%) were aged between 25 and 34 years. The average age of offenders convicted of assault was 33 years. Those offenders who were convicted of common assault or stalking tended to be a little older (average age 34 years in both categories) than those convicted of serious assaults causing injury (average age 32 years) or serious assaults not resulting in injury (average age 31 years). Male offenders tended to be a little older than females (mean age 33.33 years vs. 32.32 years, Pearson Chi-Square $p < .001$)

Table 2 shows the number of prior convictions assault offenders had during the five years preceding their current offence, broken down by assault category. Nearly half (44.4%) of the offenders convicted of assault had no prior convictions in the preceding five years. Those convicted of common assault tended to have fewer prior convictions than those convicted of the other categories of assault. Over 50 per cent of common

Table 1. Age and gender of offenders convicted of assault

		Serious assault causing injury		Serious assault not causing injury		Common assault		Stalking		Total	
		n	%	n	%	n	%	n	%	n	%
Total		11,038	33.5	2,853	8.6	14,649	44.4	4,456	13.5	32,996	100.0
Sex	Male	9,153	82.9	2,025	71.0	11,701	79.9	3,931	88.2	26,810	81.3
	Female	1,885	17.1	828	29.0	2,948	20.1	525	11.8	6,186	18.7
Age group	18-24 years	3,457	31.3	1,004	35.2	3,676	25.1	993	22.3	9,130	27.7
	25-34 years	3,507	31.8	913	32.0	4,324	29.5	1,398	31.4	10,142	30.7
	35-44 years	2,613	23.7	612	21.5	3,827	26.1	1,333	29.9	8,385	25.4
	45-54 years	1,085	9.8	247	8.7	1,984	13.5	542	12.2	3,858	11.7
	55 years+	376	3.4	77	2.7	838	5.7	190	4.3	1,481	4.5

Table 2. Number of prior convictions in the preceding five years by assault category (NSW: 2009-2010)

		Serious assault causing injury		Serious assault not causing injury		Common assault		Stalking		Total	
		(n = 11,038)		(n = 2,853)		(n = 14,649)		(n = 4,456)		(n = 32,996)	
Prior convictions		n	%	n	%	n	%	n	%	n	%
0		4,457	40.4	985	34.5	7,594	51.8	1,601	35.9	14,637	44.4
1		2,224	20.1	596	20.9	2,849	19.4	946	21.2	6,615	20.0
2 to 3		2,483	22.5	675	23.7	2,589	17.7	1,086	24.3	6,830	20.7
4+		1,874	17.0	597	20.9	1,617	11.0	826	18.5	4,914	14.9

Table 3. The nature of assault offenders' prior convictions in the preceding five years

		Serious assault causing injury		Serious assault not causing injury		Common assault		Stalking		Total	
		(n = 11,038)		(n = 2,853)		(n = 14,649)		(n = 4,456)		(n = 32,996)	
Type of prior conviction		n	%	n	%	n	%	n	%	n	%
None		4,457	40.4	985	34.5	7,594	51.8	1,601	35.9	14,637	44.4
Non-assault prior		3,058	27.7	898	31.5	3,778	25.8	1,310	29.4	9,044	27.4
Assault prior but no prison		2,375	21.5	651	22.8	2,519	17.2	1,099	24.7	6,644	20.1
Imprisoned before for assault		1,148	10.4	319	11.2	758	5.2	446	10.0	2,671	8.1

assault offenders had no prior convictions in the preceding five years, whilst only 11 per cent had 4 or more priors. The remaining categories of assault had lower proportions of offenders with no prior convictions and higher proportions with 4 or more prior convictions.

Table 3 shows the nature of the prior convictions for convicted assault offenders. Over a quarter (27.4%) of convicted assault offenders had a prior conviction for an offence other than assault. A substantial proportion in each category of assault, however, have prior convictions for assault. Summing the last two entries in the final column indicates that, overall, 28.2 per cent of convicted assault offenders had prior convictions for assault. The proportions in each assault category that had prior convictions for assault are roughly comparable although the proportion previously imprisoned for assault is lower for those convicted of common assault than for the other categories. Overall, 8.1 per cent of convicted assault offenders had been imprisoned for assault in the preceding five years.

Sentence types

Table 4 shows the distribution of penalty types by the type of assault. A bond was the most common penalty imposed on offenders convicted of assault (41.7%). Among offenders convicted of serious assaults causing injury, approximately 1 in 5 (22.8%) received a prison sentence. In contrast, only 5.3 per cent of common assault offenders received a prison sentence. A higher proportion of offenders convicted of serious assault not causing injury (17.1%), or common assault (19.7%) received a fine compared to offenders convicted of serious assault causing injury (7.0%) or stalking (9.7%).

Table 5 shows the percentage of convicted assault offenders given a prison sentence, broken down by the type of assault and the number of prior convictions in the preceding five years.

As expected, the chance of imprisonment increased with each subsequent prior conviction, across all types of assault offences. The effect of prior record on the risk of a prison sentence is very strong. Offenders convicted of serious assault causing

Table 4. Principal penalty imposed on offenders convicted of assault

Penalty	Serious assault causing injury		Serious assault not causing injury		Common assault		Stalking		Total	
	(n = 11,038)		(n = 2,853)		(n = 14,649)		(n = 4,456)		(n = 32,996)	
	n	%	n	%	n	%	n	%	n	%
Imprisonment	2,522	22.8	412	14.4	773	5.3	596	13.4	4,303	13.0
Suspended sentence	1,426	12.9	275	9.6	620	4.2	407	9.1	2,728	8.3
Community service order	837	7.6	164	5.7	380	2.6	195	4.4	1,576	4.8
Bond	4,319	39.1	1,203	42.2	5,953	40.6	2,294	51.5	13,769	41.7
Fine	775	7.0	487	17.1	2,881	19.7	431	9.7	4,574	13.9
Bond without conviction/ no conviction recorded	881	8.0	277	9.7	3,859	26.3	486	10.9	5,503	16.7
Other	278	2.5	35	1.2	183	1.2	47	1.1	543	1.6

Table 5. Percentage of assault offenders imprisoned by offence type and number of prior convictions

No. priors	Serious assault causing injury (%)	Serious assault not causing injury (%)	Common assault (%)	Stalking (%)	Total (%)
0	6.9	2.0	0.6	2.1	2.8
1	15.8	6.2	2.6	6.2	7.9
2 to 3	31.9	17.2	7.4	16.0	18.6
4 +	57.3	40.0	28.8	40.0	42.9

Table 6. Percentage of assault offenders imprisoned by offence type and type of prior convictions in the last five years

Type of prior conviction	Serious assault causing injury (%)	Serious assault not causing injury (%)	Common assault (%)	Stalking (%)	Total (%)
None	6.9	2.0	0.6	2.1	2.8
Non-assault prior	20.2	10.6	4.2	9.5	11.0
Assault prior but no prison	30.4	15.8	9.1	17.2	18.7
Imprisoned before for assault	76.4	60.8	44.7	55.8	62.1

Table 7. Mean, median, minimum and maximum prison sentences by assault offender type

		n	mean	median	min	max
Aggregate sentence (months)	Serious assault causing injury	2,522	19.9	12.0	.03	1,231.1
	Serious assault not causing injury	412	8.6	8.0	0.27	144.0
	Common assault	773	6.5	6.0	.03	24.0
	Stalking	596	8.4	8.0	0.23	36.0
	Total	4,303	14.8	12.0	0.03	1,231.1
Minimum terms (months)	Serious assault causing injury	2,522	11.4	8.0	.03	114.0
	Serious assault not causing injury	412	5.5	5.0	0.27	96.0
	Common assault	773	4.5	4.0	.03	18.0
	Stalking	596	5.1	4.0	0.17	24.0
	Total	4,303	8.7	6.0	0.03	114.0

injury who have four or more prior convictions are about 8 times more likely to receive a prison sentence than offenders convicted of the same offence who have no prior convictions. Offenders convicted of serious assault not causing injury are 20 times more likely to go to prison if they have four or more prior convictions than if they have none. Offenders convicted of common assault are 48 times more likely to go to prison if they have four or more prior convictions than if they have none. Offenders convicted of stalking are 19 times more likely to go to prison if they have four or more prior convictions than if they have none.

Table 6 shows the percentage of convicted assault offenders given a prison sentence, broken down by assault type and whether they had (a) no prior convictions in the last five years; (b) prior convictions in the last five years but not for assault; (c) prior convictions for assault that did not result in imprisonment; or (d) prior convictions for assault that carried a penalty of imprisonment.

Table 6 confirms the general pattern seen in Table 5 but shows that the majority of offenders (62.1%) who have been imprisoned before for a similar offence receive another prison sentence. This is also the case within each category of assault except common assault, where prison sentences were imposed on slightly less than half (44.7%) of those who had been in prison before for a similar offence. The courts imprison more than three quarters of those who commit serious assault causing injury and who have been imprisoned before for a similar offence.

Sentence Length

Table 7 shows the average (mean), median, minimum and maximum prison sentences imposed on assault offenders, broken down by the type of assault. When a person is sentenced, they receive a minimum non-parole term they must serve in prison, together with an aggregate sentence which

states the maximum time they may serve in prison. The top panel of Table 7 shows the aggregate prison terms, whilst the lower panel shows the minimum non-parole term the offender must serve in custody.

As one would expect, assault offenders who were convicted of serious assault causing injury received much longer aggregate sentences and minimum terms on average than those convicted of less serious assault offences. The average aggregate term for an offender in the former category was 19.9 months, with a minimum term of 11.4 months. By contrast, the average aggregate sentence for common assault was 6.5 months, with a minimum term of 4.5 months.

Note that although the minimum terms recorded are very short (0.03 months), this is unlikely to reflect the actual minimum time spent in custody, as offenders are often incarcerated whilst awaiting trial and this time is taken into account when the sentence is set.

Conclusion

The average age of an adult offender convicted of assault in NSW during the years 2009 to 2010 was 33 years. Of these, 81.3 per cent were male, and 71.8 per cent had no prior convictions for assault in the last five years. The most common penalty imposed on assault offenders was a bond. As the number of prior convictions increased, the proportion of assault offenders given a prison sentence increased. For example, offenders convicted of serious assault causing injury who have four or more prior convictions are about 8 times more likely to receive a prison sentence than offenders convicted of the same offence who have no prior convictions. Among those that received prison sentences, the average minimum term was 8.7 months and the average aggregate sentence was 14.8 months. Of those who committed a serious assault causing injury, 22.8 percent received a prison sentence, with an average minimum term of 11 months and an average aggregate sentence of 20 months.