



## Common assault

**Date: Monday March 28, 2022**

Within Queensland's *Criminal Code* there are different types of assault offences. Common assault is the least serious of them, however, it can still result in a term of imprisonment upon conviction. The penalty will depend on the circumstances and facts of the case and whether any defences are available to legally excuse or justify your conduct.

## Assault definition

Under section 335 of the *Criminal Code*, common assault is defined as, “*any person who unlawfully assaults another.*”

The Code then defines “assault” as:

- striking, touching, moving or otherwise applying force of any kind to another person;
- directly or indirectly;
- without the other person's consent.

The application of force can be anything that causes the other person injury or discomfort. This can even include heat, light, electrical force, gas, odour or any other substance or thing that when applied, causes the injury or discomfort.

## What does the prosecution have to prove?

For a person to be found guilty of common assault, the prosecution must prove that:

1. the alleged offender applied some degree of force to the victim;
2. the force was applied without the victim's consent; and

3. the assault was not justified or excused by law.

## Possible defences to common assault

### Provocation

Sections 268 and 269 of the *Criminal Code* provide a defence of provocation. This is defined as any wrongful act or insult, that to a reasonable person, would eliminate their self-control and induce an assault.

The defence of provocation will apply if:

- The person was deprived of self-control;
- The act in retaliation was immediate;
- The force is not disproportionate to the act or insult; and
- The force was not intended and not likely to cause death or grievous bodily harm.

### Self-defence

Section 271 of the *Criminal Code* states that a person is permitted to use appropriate force against another if they are defending themselves against an unprovoked attack. Like provocation, the force must be proportionate to the perceived threat and must not be intended to cause grievous bodily harm or death.

Pursuant to section 272 of the *Criminal Code*, self-defence can also be applied against a provoked attack. A person is permitted to use reasonable force to protect themselves against the provoked attack, if they have a reasonable belief that they may suffer grievous bodily harm or death. However, this defence will not be available to someone who, in their initial assault (giving rise to the provocation), had the intention to cause grievous bodily harm or death.

If one of these defences is raised, the onus is on the prosecution to disprove (or 'negative') the defence.

## Caselaw example: *Williams v Qld Police Force* [2012] QDC 308

Mr Williams was involved in a minor traffic accident where the complainant hit the back of his car. Both vehicles pulled over to the side of the road and the drivers got out. Mr Williams went to the back of his car, by which time the complainant was walking briskly towards him, throwing his hands in the air and saying, "what the f\*\*\* are you doing?"

Mr Williams gave evidence that the complainant got within two feet of him and out of fear of being assaulted, Mr Williams punched the complainant in the face. He was charged with common assault.

At trial, Mr Williams defended the charge by raising self-defence and provocation. He was, however, unsuccessful, and was convicted and sentenced for common assault.

On appeal, the court considered the application of self-defence in Mr Williams' matter and specifically:

1. Did Mr Williams honestly and reasonably but mistakenly believe that the complainant was about to unlawfully assault him?
2. Had Mr Williams himself provoked the assault?
3. Was the force used by Mr Williams reasonably necessary to make an effectual defence against the perceived assault by the complainant?
4. Was the force used not intended or likely to cause death or grievous bodily harm?

The court found that given the:

- emotionally charged environment immediately following a car accident;
- the complainant's demeanour of walking towards Mr Williams with his hands in the air; and
- the complainant's comment to him,

the prosecution had not negated the defence of self-defence and so Mr Williams could not be found guilty of the common assault. His appeal was therefore successful.

## Penalties for assault

Upon conviction, common assault carries a maximum penalty of three years imprisonment, however, the offence typically attracts a lesser sentence.

Depending on the circumstances, the offence often attracts penalties such as:

- fines;
- good behaviour bonds;
- community service orders; or

In circumstances where a person has committed the assault in a public place and while intoxicated, there is a mandatory minimum sentence of a community service order. This requires the offender (sometimes in addition to any other penalty imposed) to perform unpaid community service for the number of hours specified by the Magistrate. The hours can range from 40 to 240 hours and usually, must be performed within 12 months.

# Summary

Common assault, although generally considered at the lower end of the scale in terms of seriousness, can nonetheless result in a custodial sentence and/or a recorded conviction. Whether any defences are available, and the severity of any penalty imposed upon conviction for the offence, will depend on the circumstances of each matter.

Therefore, if you are charged with common assault, it is important to get expert legal advice as soon as possible.

Gilshenan &Luton have significant experience in criminal defence for common assault offences.

## Contacting a Gilshenan &Luton criminal lawyer

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