



Assault occasioning bodily harm explained

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Assault occasioning bodily harm (“AOBH”) is a very common [offence of violence](#) and falls within the broad category of assault offences. It is a more serious offence than [common assault](#) but less serious than [grievous bodily harm](#).

The standard maximum penalty for AOBH is 7 years’ imprisonment.

If you’ve been charged with, or being investigated in relation to AOBH (or any other offence of violence), it is crucial that you seek legal advice and assistance early.

[Get help from a criminal lawyer: 07 3361 0222 \(available 24/7\)](#)

What are the elements of assault occasioning bodily harm?

To establish an offence of AOBH, the prosecution must satisfy a court that the defendant:

1. unlawfully;
2. assaulted another person; and
3. thereby did that other person bodily harm.

Meaning of “unlawfully” in a charge of AOBH

Section 246 of the Queensland Criminal Code stipulates an assault is unlawful and constitutes an offence unless it is “authorised, justified, or excused by law”. This expression and some other available defences to a charge of AOBH are explored further below.

Definition of “assault”

An assault is defined in the Code as occurring when a person:

“strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person’s consent, or with the other person’s consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind without the other person’s consent, under such circumstances that the person making the threat has actually or apparently a present ability to effect the person’s purpose...”

What does “bodily harm” mean when charged with AOBH?

“Bodily harm” is defined under the Code as any bodily injury which interferes with health or comfort. Injuries that often amount to AOBH include bruising, scratches, and minor cuts and lacerations.

Potential defences to assault occasioning bodily harm

It is an element of an AOBH charge that the assault was not authorised, justified or excused by law. Examples of assaults that would be so regarded include:

- accidentally bumping someone on a crowded bus;
- a police officer using lawful force to arrest someone; or
- a doctor performing legitimate surgery.

There are other defences available in defending an AOBH charge, including consent (such as where a consensual fight takes place), self-defence (of oneself or another), and provocation.

You can read more about defences in our earlier article, [“Defences to criminal charges”](#).

Which court deals with assault occasioning bodily harm?

Charges for assault occasioning bodily harm can be dealt with in the Magistrates Court or the District Court. A defendant has the right to choose whether they wish to have the charge proceed on indictment to the District Court or proceed summarily in the Magistrates Court.

In the Magistrates Court, the defendant may decide to [plead guilty and be sentenced](#) or may choose to plead not guilty and proceed to trial before a Magistrate. Where a defendant elects to proceed on indictment to the District Court, any trial would be held before a judge and jury.

There are significant differences in the time, cost, procedures, and potential outcomes between the different courts, and expert legal advice should be sought in respect of this decision.

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Penalties for assault occasioning bodily harm

Because the facts of AOBH cases vary so widely, the sentencing range is extremely broad. Sentences for AOBH can range from a relatively modest monetary fine through to a period of actual imprisonment.

Usually, when a court sentences an offender, imprisonment will only be imposed as a “last resort”, and a sentence that allows the offender to stay in the community is regarded as preferable. This does not apply to AOBH however, as it is an offence involving the use or attempted use of violence, which is a recognised exemption to the sentencing principle of prison as a last resort.

Factors a court considers when imposing a sentence for AOBH include:

- whether the defendant entered a plea of guilty or unsuccessfully defended the charge;
- the defendant’s antecedents (personal history), character and age, and their health (including [mental health](#));
- the defendant’s prospects of rehabilitation;
- whether the defendant acted alone or in company;
- the defendant’s prior criminal history (if any), particularly any prior convictions for offences of violence;
- the extent of the injuries suffered by the complainant;
- whether the offence was a [domestic violence offence](#);
- whether the conduct involved alcohol-fuelled violence;
- the risk of physical harm to the community if actual imprisonment were not imposed.

Given the various factors listed above, the outcome of an AOBH sentence can vary significantly depending on the particular facts of a given case. Terms of imprisonment are not uncommon for serious instances of AOBH. This may not mean the offender spends actual time in custody as such terms can often be ‘wholly suspended’, meaning the defendant isn’t required to go to jail.

Another important consideration in sentencing for AOBH is whether a [criminal conviction is recorded](#). Where the court orders that imprisonment be imposed (whether suspended or not), then the recording of a criminal conviction is automatic and cannot be avoided.

For other types of penalties (such as fines, community service, etc), the court has a discretion whether or not to impose a recorded conviction.

Restorative justice as an alternative means of resolution

A [restorative justice conference](#), often referred to as 'justice mediation', may be a viable option to resolve a charge of AOBH. In such a process, the complainant and defendant meet in a controlled setting with a trained mediator and discuss the incident.

Commonly, the defendant offers an apology and some form of recompense to the complainant. If such a mediation is successfully concluded, the outcome is that the charge does not proceed through court, as the matter is regarded as having been formally resolved between the parties involved. This is an option that we regularly explore on behalf of our clients facing these sorts of charges.

Get help from a criminal lawyer

AOBH is a serious offence, often resulting in imprisonment and a recorded conviction. When a person is charged with AOBH, they should immediately seek legal advice. Our lawyers at Gilshenan &Luton have extensive experience in the management and defence of all assault charges, including for AOBH.

Contacting Gilshenan &Luton Criminal Defence Lawyers

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.