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Criminal Code (Serious Assaults on Police and Particular Other Persons) Amendment Bill 2010 (Qld)

Bill:	Criminal Code (Serious Assaults on Police and Particular Other Persons) Amendment Bill 2010 (Qld)
Date of introduction:	24 February 2010
Portfolio:	Private Member's Bill (Mr Lawrence Springborg MP)
Hansard Reference Second Reading Speech:	Queensland Parliamentary Debates, 24 February 2010, pp 456-457

Kelli Longworth
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INTRODUCTION

On 24 February 2010, the Deputy Leader of the Opposition, Mr Lawrence Springborg MP, introduced a Private Member's Bill, the [Criminal Code \(Serious Assaults on Police and Particular Other Persons\) Amendment Bill 2010](#) (the "2010 Bill"), into the Queensland Parliament.

The 2010 Bill amends the [Criminal Code](#) to provide that persons who seriously assault police, ambulance officers or fire brigade members will be subject to a mandatory minimum sentence of three months in jail (see the table on p 4 below for further details of the categories of persons covered).

The aim of these amendments is to provide a stronger deterrent to reduce the growing number of incidents involving persons spitting on, biting, and throwing bodily fluids or faeces at police, ambulance officers or fire brigade members.

CURRENT LAW

Currently, [s 340](#) of the Criminal Code deals with serious assaults. The specific provisions that relate to serious assaults on police officers and other persons carrying out their duties are:

- [s 340\(1\)\(b\)](#): if a person assaults, resists, or wilfully obstructs a police officer while the officer is acting in the execution of his or her duty, or assaults, resists, or wilfully obstructs any person aiding such a police officer, the person is guilty of a crime and is liable to imprisonment for 7 years.
- [s 340\(1\)\(c\)](#): if a person unlawfully assaults any person while the person is performing a duty imposed on the person by law, the person is guilty of a crime and is liable to imprisonment for 7 years.
- [s 340\(1\)\(d\)](#): if a person assaults any person because the person has performed a duty imposed on the person by law, the person is guilty of a crime and is liable to imprisonment for 7 years.
- [s 340\(2\)](#): a prisoner who unlawfully assaults a working corrective services officer is guilty of a crime and is liable to imprisonment for 7 years.
- [s 340\(2AA\)](#): if a person unlawfully assaults, resists, or wilfully obstructs a public officer while the officer is performing a function of the officer's office, or assaults such an officer because that officer has performed a function of the officer's office, the person is guilty of a crime and is liable to imprisonment for 7 years. (For example, where an officer authorised under the [Child Protection Act 1999 \(Qld\)](#) is assaulted while investigating an allegation of harm to a child under that Act.)

To see the definitions, for the purposes of s 340, of the terms "public officer", "corrective services officer" and "working corrective services officer", go, in the first instance, to [s 340\(3\)](#).

Note: [Section 340\(2A\)](#) was inserted into the Code in 2006 to provide that, for the purposes of [s 340\(1\)\(b\)](#), the circumstances in which a person assaults a police officer include, but are not limited to, biting, spitting on, or throwing a bodily fluid or faeces at a police officer. The background to the 2006 amendments was discussed in an earlier Parliamentary Library publication.

PROPOSED AMENDMENTS

Under the 2010 Bill, if a person:

- is convicted of an offence against [s 340\(1\)\(b\)](#) (assault of a police officer) or [s 340\(2AA\)](#) (assault of a public officer); and
- the offence involves circumstances in which the person:
 - (a) does bodily harm to a **prescribed person**; or
 - (b) bites, spits on or throws a bodily fluid or faeces at a **prescribed person**;then,
- the court sentencing the person:
 - (a) must sentence the person to a term of imprisonment of at least 3 months; and
 - (b) if the sentence is 3 months, the court may not order any suspension of that sentence; and

- (c) if the sentence is more than 3 months, the court may not order that the whole or part of the first 3 months of the term of imprisonment be suspended: **proposed new ss 340(2B) and (2C)**.

However, if the person is convicted as a child under the [Juvenile Justice Act 1992 \(Qld\)](#), then these provisions do not apply if the court is satisfied that exceptional circumstances exist: **proposed new s 340(2D)**.

The above provisions apply despite any other Act or law: **proposed new s 340(2E)**.

The following new definitions are also proposed to be inserted in s 340(3) under the 2010 Bill:

- **prescribed person** means:
 - (a) a police officer;
 - (b) a public officer who is a member, officer or employee of the Queensland Ambulance Service or the Queensland Fire and Rescue Service; or
 - (c) a member of a **rural fire brigade**.
- **rural fire brigade** means a rural fire brigade registered under s 79 of the [Fire and Rescue Service Act 1990 \(Qld\)](#).

BACKGROUND TO THE 2010 BILL

When introducing the 2010 Bill on 24 February 2010, Mr Springborg said in his [Second Reading Speech](#) that the 2010 Bill:

seeks to establish a minimum sentence range for offenders found guilty of seriously assaulting police, ambulance and fire officers where the assault involves biting, spitting or throwing bodily fluid or faeces at an officer in the course of their duties: ([Hansard, 24 February 2010, p 457](#)).

Mr Springborg explained that assaults involving biting, spitting or throwing bodily fluid or faeces go beyond a person resisting arrest and involve a “decision to act out the assault and can have serious physical and emotional effects on the victim”: ([Hansard, 24 February 2010, p 457](#)).

Following each incident, Mr Springborg noted, not only the assaulted police officer or emergency services worker but also his or her family must endure an agonising wait for the results of tests to establish whether the assault exposed the officer to a communicable disease: ([Hansard, 24 February 2010, p 457](#)).

In a response tabled on 5 November 2009 to a Question on Notice ([No. 1396](#)) asked by the Shadow Minister for Police and Corrective Services, Mr [Vaughan Johnson](#) MP, on 6 October 2009, the Minister for Police, Corrective Services and Emergency Services, the Hon [Neil Roberts](#) MP, provided tables to the Queensland Parliament setting out a breakdown of the number of reported assaults on police officers for the periods of 2006/07, 2007/08 and 2008/09 on a region by region basis and in accordance with the type of assault involved. These figures evidence a rise in serious assaults, which includes spitting, biting or throwing bodily fluids:

Period	Number of Serious Assaults reported
2006/2007	607
2007/2008	643
2008/2009	658

The most dangerous regions for policing were identified in the tables as being, in descending order, the Gold Coast, Cairns, Brisbane Central, Mount Isa and Townsville.

Note: Not all of the serious assaults listed in the above table involve spitting, biting or throwing bodily fluids or faeces at police officers. This point was highlighted by Mr Terry O’Gorman of Robertson O’Gorman Solicitors in his [submission](#) on the 2010 Bill made to the Scrutiny of Legislation Committee on 2 March 2010. He noted that the number of offenders, referred to in the [Explanatory Notes](#) to the 2010 Bill, who were convicted of serious assaults against police officers in 2007 “obviously included assaults which did not involve spitting or the otherwise use of bodily fluids”: (p 3).

COMPARISON WITH DEFEATED 2007 BILL

In 2007, similar legislation, the [Criminal Code \(Assaults Against Police and Others\) Amendment Bill 2007 \(Qld\)](#) (the “2007 Bill”), was introduced into the Queensland Parliament by the then Shadow Minister for Police and

Corrective Services, Mr [Rob Messenger](#) MP. This Private Member's Bill was defeated on 27 February 2008. The relevant parliamentary debate on the 2007 Bill can be accessed via this [link](#).

During the [Estimates Committee](#) hearings relating to Police and Corrective Services held on 11 July 2007 in relation to the 2007 Bill, the then Minister for Police, the Hon [Judy Spence](#) MP, was questioned by the Opposition about imposing mandatory prison terms on people who seriously assault police officers. Ms Spence said that she did not support the mandatory penalties that the Opposition had called for. Ms Spence noted research indicating that:

mandatory sentencing does not work where crimes are committed in the heat of the moment, such as opportunistic assaults upon police. ... [I]n those situations, people are not thinking about penalties or commonsense ...: (see [Estimates Committee B – Police and Corrective Services](#), 11 July 2007, p 76).

The *Australian* reported on 5 January 2008 that the then Acting Premier, the Hon [Paul Lucas](#) MP, was of the view that “mandatory sentences are not the answer because assaults [are] rarely premeditated”.

The key differences between the 2010 Bill currently before the Queensland Parliament and the defeated 2007 Bill are set out in the table on p 4. In summary:

- there is a reduction in the scope of the operation of the 2010 Bill, in comparison with the 2007 Bill, in terms of the types of assault caught by the 2010 Bill (*i.e.*, there is a greater degree of specificity); and
- the categories of assault victims who fall within the ambit of each Bill are similar, although two categories included in the 2007 Bill have been omitted in the 2010 Bill (*i.e.*, a ‘working corrective services officer’ and a ‘person acting in aid of a police officer’).

	2010 Bill	2007 Bill
Type of offence	<ul style="list-style-type: none"> The mandatory 3 month minimum sentence provisions only apply to a person convicted of an offence relating to an assault that involves: <ul style="list-style-type: none"> bodily harm or biting; spitting; throwing a bodily fluid or faeces, at a prescribed person. 	<ul style="list-style-type: none"> The mandatory 3 month sentence provisions applied to: <ul style="list-style-type: none"> a person convicted of an offence for assaulting, resisting or wilfully obstructing 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 a prisoner* who unlawfully assaults a working ambulance officer, corrective services officer or fire service officer. <p>* One of the reasons why the Government did not support the 2007 Bill concerned the retention of the word "prisoner" in the proposed legislation. This drafting meant that the provisions only applied to a "prisoner" in the context of not only correctives services officers but also ambulance officers and fire service officers (see Hansard, 27 February 2008, p 482). This point had also been noted by the Queensland Legislative Assembly's Scrutiny of Legislation Committee, in Alert Digest No. 11 of 2007, where it questioned whether this part of the 2007 Bill was drafted in an ambiguous manner.</p>
Type of victim	<ul style="list-style-type: none"> The assault must involve a "prescribed person", being: <ul style="list-style-type: none"> a police officer; a public officer who is a member, officer or employee of the Queensland Ambulance Service; or a public officer who is a member, officer or employee of the Queensland Fire and Rescue Service; or a member of a rural fire brigade. 	<ul style="list-style-type: none"> The assault must involve: <ul style="list-style-type: none"> a police officer performing his or her duty or any person aiding a police officer acting in the course of duty; a working ambulance officer; a working corrective services officer; or a working fire service officer. <p>As noted above, the way that the 2007 Bill was drafted meant that the latter three categories above were only relevant when a "prisoner" (rather than a "person") was perpetrating the assault. This outcome was most likely a drafting oversight and not the true intention of the 2007 Bill.</p>
Application	<ul style="list-style-type: none"> Provisions applicable despite any other Act or law 	No such provision was included in the 2007 Bill
Assaults by juveniles	<ul style="list-style-type: none"> Does not apply to a child under the Juvenile Justice Act 1992 (Qld) if the court is satisfied that exceptional circumstances exist 	No such provision was included in the 2007 Bill

EXPANDING THE SCOPE OF VICTIMS?

Other victims listed in s 340: The 2010 Bill does not apply to the following victims who are referred to in [s 340](#) of the Criminal Code:

- a public officer, other than an ambulance officer, a fire and rescue officer, (e.g., an authorised officer under the [Child Protection Act 1999 \(Qld\)](#) is not covered by the 2010 Bill);
- a person performing a duty imposed on the person by law, other than a **prescribed person**;
- an elderly person (i.e., 60 years or more);
- a person who relies on a guide dog, wheelchair or other remedial device; or
- a working corrective services officer.

Elderly persons: Prior to the introduction of the 2010 Bill and in response to an increase in attacks on Queensland's elderly, the Queensland Police Union called for a mandatory 3 month sentence for persons convicted of assaulting people who were older than 65 years.

Taxi drivers: The CEO of the Taxi Council Queensland, Mr Blair Davies, has pointed out that "other states have taken steps to include taxi and bus drivers in legislation which included tougher penalties". Jason Dutton from the Liquor, Hospitality and Miscellaneous Union which represents ambulance officers, is reported as "wholeheartedly support[ing] taxi drivers being classified in the same category as public servants".

All victims: The *Cairns Post* editorial on 18 March 2009 suggested that mandatory sentencing for serious assaults should apply to all victims rather than just to police officers:

A person walking down the street minding their own business deserves as much protection as, if not more than, an officer who volunteers to take on such risks as part and parcel of their job.

COMMUNITY REACTION

The Queensland Police Union has been calling for mandatory sentencing for people who assault police officers for some time.

However, certain members of the community have been vocal in their opposition to mandatory sentencing provisions.

The Queensland Council for Civil Liberties spokesman, Mr Michael Cope, has spoken out against mandatory jail time for assaulting police on the basis that it was "unjust":

If the police are saying that the penalties are inadequate then they should be making representation to the Attorney-General to appeal. ... All that mandatory sentencing does is take away an important decision from the judge and it's going to result in injustices in individual cases ...

In response to the recent introduction of mandatory minimum sentencing laws for assaults on police and other public officers in Western Australia (see discussion below), the Chief Justice of the Queensland Supreme Court, his Honour Mr Justice Paul De Jersey described mandatory sentencing as a "dreadful thing" while presenting a paper at the October 2009 annual general meeting of the Australian Lawyers Alliance (the "ALA"), the nation's peak legal body.

More recently, in February, 2010, in the context of the 2010 Bill, the ALA [warned](#) that "human rights abuses will increase in Queensland if proposed, strict mandatory sentencing laws ... are passed."

Relevantly on 2 March 2010, the [submission](#) made by Robertson O'Gorman Solicitors to the Scrutiny of Legislation Committee in connection with the 2010 Bill concludes:

This legislation is utterly misconceived, particularly having regard to the fact that those who propose the legislation have not demonstrated any instances where there has been a perceived lenient sentence for an offence of spitting where that perceived leniency has not been corrected or remedied on appeal.

The Bill represents yet another example of "penal populism" or "populist punitiveness" by politicians using law and order for their own perceived electoral advancement where, when the rhetoric is stripped bare, the proposers of the legislation cannot produce any examples of the current law working inadequately.

SCRUTINY OF LEGISLATION COMMITTEE REPORT

The Queensland Legislative Assembly's Scrutiny of Legislation Committee (the "Committee") in its [Legislation Alert No. 3 of 2010](#) tabled on 9 March 2010 noted that the 2010 Bill may "interfere with judicial discretion" as it sets "a mandatory minimum term of imprisonment [which limits] a sentencing court's discretion to suspend all or part of a sentence for certain serious assaults": (p 1).

The Committee also [noted](#) that “research indicates mandatory sentencing may have a disproportionate effect on the rights and liberties of some individuals”: (p 3). The Committee [explained](#) that the types of individuals for whom mandatory sentencing may have such an effect included first-time offenders, minor offenders, Indigenous people, women and persons suffering mental disabilities, personality disorders and other disabilities: (p 3).

LEGISLATION IN OTHER JURISDICTIONS

NEW SOUTH WALES

In New South Wales, the [Crimes Act 1900 \(NSW\), Div 8A](#) makes assaulting, throwing missiles at, stalking, harassing or intimidating a police officer while the officer is executing his or her duty an offence liable to 5 years imprisonment (7 years imprisonment if the officer suffers actual bodily harm). Higher sentences of up to 9 years apply if the conduct occurs during a public disorder. Malicious wounding or inflicting grievous bodily harm on a police officer makes an offender liable to 12 years imprisonment (14 years if during a public disorder): s 60.

Pursuant to s 60(4), an action is taken to be carried out in relation to a police officer while in the execution of his or her duty even though the police officer is not on duty at the time if it is carried out in retaliation for, or as a consequence of, actions taken by the police officer in execution of his or her duty, or because the officer is a police officer.

A person is liable to imprisonment for 5 years for assaulting, throwing missiles at, stalking, harassing or intimidating a law enforcement officer (other than a police officer) in the execution of his or her duty (7 years if actual bodily harm is caused) and is liable to 12 years imprisonment for malicious wounding or inflicting grievous bodily harm on a law enforcement officer while in the execution of the officer's duty: s 60A.

Pursuant to s 60A(4), an action is taken to be carried out in relation to a law enforcement officer while in the execution of his or her duty even though the officer is not on duty at the time if it is carried out in retaliation for, or as a consequence of, actions taken by the officer in execution of duty, or because the officer is a law enforcement officer.

A “law enforcement officer” is defined in s 60AA to include not just police officers but also Commissioners, Assistant Commissioners and officers of the Independent Commission Against Corruption, the Police Integrity Commission or the NSW Crime Commission, correctional service personnel, Crown Prosecutors and others. Penalties also apply for attacks on persons in a domestic relationship with police and other law enforcement officers: s 60B.

A Private Member's Bill was introduced by the NSW Leader of the Opposition in the Legislative Council, the Hon [Michael Gallacher](#) MLC, in May 2007. The [Crimes Amendment \(Murder of Police Officers\) Bill 2007](#) sought to amend the *Crimes Act 1900* (NSW) to provide that compulsory life sentences (i.e., for the term of one's natural life) be imposed by courts on persons convicted of murdering a police officer while the police officer was executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer. The Opposition Leader noted that police officers are obliged to assist members of the community who are in need or to confront offenders whether they are on or off duty. This bill also covered police officers who may not be on duty but are killed as a consequence of, or in retaliation for, actions undertaken by any police officer in the execution of duty. This bill was [negatived](#) on the 27 February 2008.

AUSTRALIAN CAPITAL TERRITORY

In the Australian Capital Territory, s 27(4) of the [Crimes Act 1900 \(ACT\)](#), provides that an act endangering life done “intending to prevent or hinder a police officer from lawfully investigating an act or matter” is punishable by imprisonment for 15 years. Section 32 provides that preventing or hindering a police officer from lawfully investigating an act or matter with a threat to kill or inflict grievous bodily harm on a person, or with a threat to endanger the health, safety or physical wellbeing of a person, is punishable by imprisonment for 20 years and 10 years, respectively.

On 21 November 2007, the [Sentencing Legislation Amendment Bill 2007 \(ACT\)](#), a Private Member's Bill, was introduced into the Legislative Assembly by the then Leader of the Opposition, Mr Bill Stefaniak MLA, seeking to amend s 27(4) by raising the sentence to 25 years imprisonment. This bill lapsed on polling day for the 2008 ACT general election.

SOUTH AUSTRALIA

In South Australia, s 5AA(1)(c) of the [Criminal Law Consolidation Act 1935 \(SA\)](#) makes it an aggravated offence to commit an assault on a police officer, prison officer or other law enforcement officer who is acting in the course of his or her official duty or in retribution for something done by the officer in the course of his or her official duty. Under s 20, this offence incurs a maximum penalty of 3 years imprisonment and 4 years if the assault causes harm (5 years if a weapon is involved). Under s 6 of the [Summary Offences Act 1953 \(SA\)](#)

assaulting a police officer in the execution of the officer's duty incurs a maximum penalty of \$10,000 or imprisonment for 2 years (\$2,500 fine or imprisonment for 6 months if a person hinders or resists a police officer).

On 3 June 2009, a Private Member's Bill entitled the [Statutes Amendment \(Assaults on Police\) Bill 2009](#) was introduced by the Hon [Robert Brokenshire](#) MLC to amend the [Criminal Law Consolidation Act 1935 \(SA\)](#) and the [Criminal Law \(Sentencing\) Act 1988 \(SA\)](#). The bill provides for a range of mandatory sentences for assaults against police officers (e.g., a mandatory sentence of 6 months for assaulting, and 2 years for intentionally causing serious harm to, a police officer where the aggravating circumstances provided for in s 5AA(1)(c) (see above) exist). These provisions are stated to apply whether the offender is a youth or an adult and cannot be reduced, mitigated or suspended. This bill is currently still before the Legislative Council. Click [here](#) to follow the progress of this bill.

TASMANIA

Under s 34B of the [Police Offences Act 1935 \(Tas\)](#), it is an offence to assault, resist, or wilfully obstruct a police officer in the execution of the officer's duty or assault, resist, or wilfully obstruct a person assisting the officer. Threatening, intimidating, or using abusive language to any such police officer or a person assisting the officer is also an offence. The offender is liable on summary conviction to a penalty not exceeding [\\$5000](#) or to imprisonment for a term not exceeding 2 years. The same conduct directed to a public officer in the execution of his or duty or lawfully performing a duty imposed by an Act, or in the exercise of a public duty or authority is an offence and the offender is liable, on summary conviction, to a penalty not exceeding [\\$2500](#) or to imprisonment for a term not exceeding 12 months. A 'public officer' includes any person acting in good faith in the execution of a duty imposed by an Act or a public duty or authority. See also, [Criminal Code Act 1924 \(Tas\), s 114](#).

On 3 March 2010, the Opposition Leader, the Hon Will Hodgman MP, announced, as part of its "[Tough on Crime](#)" election policy, that if the Liberal party were to be elected at the 20 March 2010 election, it would introduce legislation within six months that would introduce mandatory jail terms of six months for serious assaults by a person over the age of 17 on emergency services personnel being, police, ambulance officers, firefighters, hospital workers, prison officers and child protection workers. This announcement followed pressure from the Police Association of Tasmania which argued that "assaults on its members have reached an unacceptable level while the convicted offenders are getting off with a slap on the wrist".

It was announced on 8 April 2010 that the Tasmanian Liberal party was unsuccessful in forming government after the 20 March 2010 Tasmanian state election. It remains to be seen whether the mandatory sentencing of persons assaulting emergency services personnel will continue to form part of the Tasmanian Liberal Party's policies.

NORTHERN TERRITORY

Under s189A of the [Criminal Code Act \(NT\)](#), it is an offence to unlawfully assault a police officer in the execution of the officer's duty with an offender liable to imprisonment for 5 years or, upon being found guilty summarily, to imprisonment for 2 years. If the police officer suffers harm, the offender is liable to imprisonment for 7 years, or, upon being found guilty summarily, to imprisonment for 3 years. If the police officer suffers serious harm, the offender can go to prison for 16 years. Under s 190, assaults on the Administrator of the NT, judges or magistrates while they are discharging their official functions, or because of anything done or omitted to be done by them in the exercise of their official functions, are crimes and an offender is liable to imprisonment for 14 years. Section 155A, which was inserted in 2004, provides that assaulting, hindering or obstructing a person providing rescue, medical treatment etc. to a third person or a person acting to prevent damage to property is a crime and the offender is liable to imprisonment for 5 years (7 years if harm is caused or life is threatened). In his [Second Reading Speech](#) to insert the new s 155A in 2004, the Attorney-General stated that it would protect ambulance officers and fire fighters and anyone else who attempts to provide help to fellow citizens.

In [August 2006](#), at the urging of the NT Police Association, the then Leader of the Opposition introduced a Private Member's Bill, the [Criminal Code Amendment \(Assaults On Police Officers\) Bill 2006](#), to replace s 189A with a provision to impose a mandatory minimum 6 months prison sentence for persons who assault police officers in the course of duty. If an injury is incurred but it is one that is not permanent in nature, the person must be sentenced to a minimum of 2 years in prison. If the police officer suffers grievous harm, the offender must be imprisoned for at least 5 years. The Bill was [negatived](#) on 29 November 2006.

VICTORIA

Section 31 of the [Crimes Act \(1958\) \(Vic\)](#) provides that assaulting or threatening to assault, resisting or intentionally obstructing a member of the police force in the due execution of the member's duty, or a person aiding the member of the police force, attracts a penalty of a maximum of 5 years imprisonment.

Section 52 of the [Summary Offences Act 1996 \(Vic\)](#) provides that assaulting, resisting, obstructing, hindering or delaying a member of the police force in the execution of his or her duty, or a person assisting in the execution of the police officer's duty under the Act is an offence and attracts a penalty of a fine or imprisonment for up to 6 months (see [Sentencing Act 1991 \(Vic\)](#), s 111 regarding the effect of penalty provisions). Under s 51, a person must not assault, resist, obstruct, hinder or delay an operational staff member within the meaning of the [Ambulance Services Act 1986 \(Vic\)](#) in the course of the operational staff member providing care or treatment or attempting to provide care or treatment to a patient. The penalty is up to [6 months](#) imprisonment ((see [Sentencing Act 1991 \(Vic\)](#), s 111 regarding the effect of penalty provisions and also see [Media Release](#), 11 May 2004).

Since the violent bashing of a senior police officer in October 2009, there have been calls from the public and the Victorian Police Association to introduce mandatory minimum sentences of one month for anyone who assaults a police officer. Recently, however, the Attorney-General for Victoria, the Hon [Rob Hulls](#) MP was reported in the *Age* on 4 February 2010 as stating that mandatory sentencing is the "recourse of lazy politics" and is not an effective deterrent against re-offending.

WESTERN AUSTRALIA

Western Australia was recently the first jurisdiction in Australia to introduce minimum mandatory sentencing for certain assault offences.

On 22 September 2009, the substantive provisions of the [Criminal Code Amendment Act 2009 \(WA\)](#) came into effect. This legislation amended s 297 (grievous bodily harm) and s 318 (serious assaults) of the [Criminal Code 1913 \(WA\)](#) to provide for:

- a mandatory minimum 12 months sentence for a person aged 18 or over who unlawfully does grievous bodily harm to certain specified persons, including a police officer, a prison officer, a security officer, an ambulance officer and certain contract workers providing services under the *Court Security and Custodial Services Act 1999 (WA)* and the *Prisons Act 1981 (WA)* (see s 297(7));
- a mandatory minimum six months sentence for a person aged 18 or over who assaults certain specified persons, including a police officer, a prison officer, a security officer, an ambulance officer, and certain contract workers providing services under the *Court Security and Custodial Services Act 1999 (WA)* and the *Prisons Act 1981 (WA)* and that person suffers bodily harm (see s 318(4)(b) and (5));
- a mandatory minimum nine months sentence for a person aged 18 or over who commits an aggravated assault (*i.e.*, where the person is armed or in the company of others) against certain specified persons, including a police officer, a prison officer, a security officer, an ambulance officer and certain contract workers providing services under the *Court Security and Custodial Services Act 1999 (WA)* and the *Prisons Act 1981 (WA)* and that person suffers bodily harm (see s 318(4)(a) and (5)); and
- if the person, convicted of an offence under either s 297 (grievous bodily harm) and s 318 (serious assaults) against a specified person, is a juvenile aged between 16 and 18, then that person will be subject to a mandatory minimum sentence of three months of imprisonment or detention. The court may not suspend the term of imprisonment and must record a conviction against the juvenile offender: (see s 297(5) and s 318(2)).

After its introduction into the Western Australian parliament, the following key amendments were made to the original bill before it was passed:

- the mandatory sentencing provisions were changed to apply only to juveniles who have reached 16 but who are not yet 18 years of age, rather than to all juveniles (*i.e.*, any child under the age of 18); and
- the inclusion of a special review provision which requires the Minister to carry out a review of the operation and effectiveness of the amendments made by the *Criminal Code Amendment Act 2008 (WA)* within three years (see s 740A).

To view the progress of these changes: see [Parliament of Western Australia \(Hansard\)](#) - Legislative Council: Committee of the whole, 19 August 2009 (pp 6144-6146); 20 August 2009 (pp 6246-6258 & p 6267); 8 September 2009 (pp 6369-6370; 6379-6395; 6395-6404); amendments adopted, 9 September 2009 (p 6567); and the bill, as amended, at its Third Reading, 10 September 2009 (pp 6723-6728 (LC), p 6749 & pp 6281-6827 (LA)).

For full details of the progress of the legislation, the Criminal Code Amendment Bill 2008 (WA), through the Parliament of Western Australia and to view related material e.g. Second Reading Speeches, follow this [link](#).

The new changes to the Criminal Code were [welcomed](#) by the Western Australian Police Union which had “strenuously and persistently campaigned for this protection for officers”.

However, not all responses to this new legislation have been positive.

The ALA has [labelled](#) the new law in Western Australia as “backward and reprehensible” and called for an immediate review of the legislation. The ALA president, Mr Mark Blumer explained that the ALA believed that “the retention of judicial discretion in the sentencing of offenders was a cardinal principle of any democratic society”.

The president of the Criminal Lawyers’ Association, Mr Richard Utting [said](#) “the problem with mandatory sentences is it deprives the judge or magistrate of the ability to impose a proper sentence”.

The Law Society of Western Australian president, Mr Dudley Stow also stated that sentences of this nature “do not reduce the incidents of crime” and will make for “an even more congested courts system in the future”.

On 9 April 2010, the *Australian* reported criticisms of Western Australia’s new mandatory sentencing laws made by the recently retired chief judge of Western Australia’s District Court, Ms Antoinette Kennedy. She stated that these laws give police too much power and force “judges and magistrates to jail people convicted of assaults against public officers for a minimum of six months.”

LINKS TO FURTHER READING

2010 BILL AND ACCOMPANYING DOCUMENTS

- [Criminal Code \(Serious Assaults on Police and Particular Other Persons\) Amendment Bill 2010](#)
- [Second Reading Speech](#)
- [Explanatory Notes](#)

ACT AMENDED

- [Criminal Code](#), s 340

MINISTERIAL MEDIA STATEMENTS

- [LNP commitment to flawed policy continues](#), 26 October 2009

OPPOSITION MEDIA RELEASES

- [Mandatory jail time for assaults on police](#), Mr Lawrence Springborg MP (Deputy Leader of the LNP and Shadow Attorney-General), 24 February 2010
- [Police assaults at dangerous levels in Mt Isa](#), Mr Vaughan Johnson MP (Shadow Minister for Police and Corrective Services), 9 November 2009
- [Police assaults at dangerous levels in Cairns](#), Mr Vaughan Johnson MP (Shadow Minister for Police and Corrective Services), 9 November 2009

RELATED QUEENSLAND PARLIAMENTARY LIBRARY PUBLICATION

- Criminal Code (Assaults Against Police and Others) Amendment Bill 2007 (Qld), e-Research Brief 2007/34
- Police Powers and Responsibilities and Other Acts Amendment Bill 2006 (Qld) – Attacks on Police, e-Research Brief 2006/18

QUEENSLAND PARLIAMENTARY DEBATES, COMMITTEES & PAPERS

- [Legislation Alert \(Issue No. 3 of 2010\)](#) tabled on 9 March 2010 by the Scrutiny of Legislation Committee (examines the 2010 Bill on pp 1-5)
- [Submission on the Criminal Code \(Serious Assault on Police and Particular Other Persons\) Amendment Bill 2010 to the Scrutiny of Legislation Committee](#) dated 2 March 2010 by Robertson O'Gorman Solicitors
- [Question on Notice \(No. 1396\)](#) by the Shadow Minister for Police and Corrective Services, Mr Vaughan Johnson MP to the Minister for Police, Corrective Services and Emergency Services, the Hon Mr Roberts MP (asked on 6 October 2009), response tabled on 5 November 2009.

QUEENSLAND POLICE UNION

- Queensland Police Union Journal: [September 2009](#) (pp 23-29)

NEWSPAPER ARTICLES

- Labor has the power: Libs cry foul on Tassie ruling, *Courier Mail*, 9 April 2010
- I kept faith, says Bartlett, *Mercury*, 9 April 2010
- Judge Antoinette Kennedy sees danger in WA laws, *Australian*, 9 April 2010
- Mandatory sentences demand for cop assault, *Sunday Mail*, 28 March 2010
- Mandatory sentences won't stop street crime: Roberts, *Brisbanetimes.com.au*, 18 March 2010
- Libs' police assault policy under attack, *ABC News Online*, 3 March 2010
- State Parliament: Call for instant jail terms to quell frontline staff assaults, *Courier Mail*, 26 February 2010
- Mandatory jail terms 'lazy', *Age*, 4 February 2010

- Call to get tough on attacks, *Courier Mail*, 30 January 2010
- Anger at attack on paramedic, *Courier Mail*, 28 January 2010
- Officers bitten, punched in the face, *Townsville Bulletin*, 4 January 2010
- Serious assaults on police officers on the rise in Queensland, *Courier Mail*, 9 November 2009
- Wife of Sen-Constable Danni Sangston calls for mandatory jail sentence for cop bashers, *Herald Sun*, 31 October 2009
- Assaults on police to stir law debate, *Courier Mail*, 26 October 2009
- In the line of fire: five police officers injured, *Brisbanetimes.com.au*, 26 October 2009
- Legal body condemns mandatory sentencing, *Sydney Morning Herald*, 25 October 2009
- First test for tough laws on violence, *Australian*, 13 October 2009
- Police bashing law will clog the courts: law expert, *WAtoday.com.au*, 22 September 2009
- Mandatory sentencing urged after paramedic attack, *ABC News Online*, 21 September 2009
- Opposition Leader John-Paul Langbroek (glassing and violence), *Life Weekly Gold Coast*, 9 September 2009
- Mandatory sentencing changes made in WA, *Age*, August 20, 2009
- Treat taxi drivers like cops, ambos, *Gold Coast Bulletin*, 30 July 2009
- Dangers on duty: officers sick of being used as "punching bags", *Cairns Post*, 27 July 2009
- Valley police used as "punching bags", *Brisbanetimes.com.au*, 5 June 2009
- Election 09: Editorial: Our Say: Jetstar flights and Mandatory sentencing, *Cairns Post*, 18 March 2009
- Election 09: Mandatory jail vow for police bashing, *Courier Mail*, 18 March 2009
- Mandatory sentencing debate begins in WA Parliament, *ABC News Online*, 17 March 2009
- The bloodied face of Cape policing, *Cairns Post*, 18 October 2008
- Mandatory jail time for assaulting police "unjust", *ABC News Online*, 16 June 2008
- Union demands mandatory jail time for assaulting police, *ABC News Online*, 16 June 2008
- Mandatory jail urged after police injured, *Australian*, 5 January 2008
- Letter: Serious Risk (by Rob Messenger), *The Caboolture News*, 11 July 2007