

Assault Public Officer

s 318 Criminal Code

Prior to 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order
poss	possess
wiss	with intent to sell or supply
methyl	methylamphetamine
SIO	suspended imprisonment order
CBO	community based order
agg burg	aggravated burglary
VRO	violence restraining order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
19.	<p><i>Durward v Clark</i></p> <p>[2013] WASC 468</p> <p>Delivered 20/12/2013</p>	<p>25 yrs at time sentencing.</p> <p>Criminal record including fail to obey orders, trespass, breach of bail, disorderly behaviour, stealing.</p> <p>Suffers undifferentiated schizophrenia.</p>	<p>1 x Assault public officer. 1 x Breach of bail. 1 x Breach of bail undertaking. 1 x Fail to obey order given by officer. 1 x Trespass.</p> <p>The appellant was at the front of Perth Train Station. He was yelling obscene language and making threats in front of the public. Transit officers approached him and asked him to stop. He refused to and eventually placed under arrest. While he was being restrained, he hit a Transit Officer in his right forearm on a least two occasions causing pain and discomfort.</p>	<p>12 mth ISO.</p> <p>Had spent 205 days in custody prior to sentencing; in Graylands at time sentencing.</p>	<p>Allowed.</p> <p>ISO set aside.</p> <p>No penalty imposed.</p> <p>At [19] All assaults, even minor assaults, on public officers carrying out a function of their duties are serious, even if the actual injury is minor, as in this case.</p> <p>At [22] The appellant was almost certainly suffering from schizophrenia at the time of offending ...</p> <p>At [27] It is not the role of the court to fill inaction in a mental health regime especially when the result is to impose a punishment, which is, in the circumstances manifestly excessive....</p>
18.	<p><i>AD v Carlin</i></p> <p>[2013] WASC 458</p> <p>Delivered 10/12/2013</p>	<p>19 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No criminal record.</p> <p>Previous good character.</p>	<p>1 x Disorderly behaviour in public place. 1 x Assault police officer.</p> <p>The appellant was intoxicated and was a passenger in a vehicle that was stopped by police for a random breath test. The appellant became angry with police while they were speaking with the driver of the</p>	<p>\$500 fine. \$750 fine.</p> <p>Spent conviction order refused.</p>	<p>Allowed.</p> <p>Spent conviction order made.</p>

		Studying environmental science; part time employment.	<p>vehicle. Whilst police were attempting to take the driver to the Police Station for another matter, the appellant exited the vehicle and shouted obscenities at the officers.</p> <p>The appellant walked to the rear of the police car and attempted to sit in the rear seat. Police attempted to remove her from the car.</p> <p>The appellant shouted loudly and become increasingly aggressive towards police. The victim attempted to remove the appellant from the rear doorway of the vehicle to which she struck out at the victim with a semi-clenched fist to his chest and attempted to push him away.</p> <p>The appellant was removed from the doorway of the car and escorted away. Whilst attempting to restrain the driver; the appellant ran up behind police and continued to attempt to intervene and stop them restraining the driver of the vehicle. The appellant used both arms and hit and pushed into the back of the officers.</p>		
17.	<p><i>JSA v The State of Western Australia</i></p> <p>[2012] WASCA 25</p> <p>Delivered 03/02/2012</p> <p>On appeal from Children's Court</p>	<p>17 yrs 4 days at time of offending.</p> <p>17 yrs 2 mths at time of sentencing.</p> <p>Convicted after PG.</p> <p>Conceived in tragic circumstances.</p> <p>Eldest of 7 children. All have been in the care of</p>	<p>Ct 1: Agg burg s 401(2)(a) <i>Criminal Code</i></p> <p>Ct 2: Assault public officer s 318(1)(d) <i>Criminal Code</i></p> <p>Ct 3: Assault public officer s 318(1)(d) <i>Criminal Code</i></p> <p><u>Ct 1:</u></p> <p>The appellant was known to the victim. The appellant entered the victim's home, without permission, through a bathroom window. The victim was asleep on a chair in the lounge room. His mobile phone was on his chest. The appellant</p>	<p>Ct 1: 18 mths detention.</p> <p>Ct 2: 2 mths detention (cum).</p> <p>Ct 3: 2 mths detention (conc).</p> <p>TES 20 mths detention.</p> <p>Overlap between sentence and sentence being served.</p>	<p>Dismissed.</p> <p>At [104] There was no scope for greater leniency despite the appellant's youth and the other matters of mitigation. The justice system had previously made numerous significant and unsuccessful attempts to rehabilitate the appellant.</p>

		<p>DCP since 2004, as a result of their mother's neglect, alcohol misuse, incarceration and homelessness. During his early years, the appellant was raised principally by his extended family.</p> <p>Significant history of substance abuse since 12 yrs. Main substances being alcohol and cannabis, but also used inhalants.</p> <p>Very substantial prior criminal record.</p> <p>Considerable part of three years prior to these offences in detention.</p> <p>History of re-offending after release from custody.</p> <p>Displayed a pattern of absconding from Departmental and private placements in the community.</p> <p>Low literacy and numeracy skills. Significant gaps in his education as a result of his truancy from school,</p>	<p>approached the victim and removed the phone and the victim awoke.</p> <p>The appellant had a screwdriver. He took a key to the victim's home and then pointed the screwdriver at the victim and threatened to stab him. The appellant then went to the front door, unlocked it and ran from the premises.</p> <p>The victim called police. He then heard noises from outside his home. The victim went to the side of the premises and confronted the appellant and another male person, who were outside. The victim saw his keys hanging from the appellant's pocket. Also, the victim could hear his phone ringing in the appellant's pocket. He demanded the return of his keys and telephone. The appellant responded by demanding the return of his 'goon bag', which he had left at the back window of the victim's house.</p> <p>The victim went to the back window and retrieved a plastic wine bag that was near the open bathroom window. When the victim made a comment to the appellant about his having entered the victim's home, the appellant became aggressive. He grabbed the victim and held the screwdriver in his hand as if he was going to stab the victim in his stomach. The appellant then ran away again.</p> <p><u>Cts 2 & 3</u> Later that evening two police officers took the appellant to a country hospital for examination. At the hospital, the appellant began taunting the police officers about the recent death of a police officer in a traffic crash. The appellant spat at one of the</p>	<p>Judge stated the appellant was a 'prolific offender' who had a 'high probability of re-offending'.</p>	
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16.	<p><i>Roncevic v The State of Western Australia</i></p> <p>[2012] WASCA 43</p> <p>Delivered 17/02/2012</p>	<p>37 yrs at time offending.</p> <p>Convicted after late PG.</p> <p>Significant and serious prior criminal record.</p> <p>Offending breached parole.</p> <p>Drug addiction – offending due to self-induced drug psychosis.</p>	<p>1 x Poss methyl wiss 114.1g at 9%.</p> <p>1 x Poss methyl wiss 5.27g at 64%.</p> <p>1 x Unlawful wounding s 301 <i>Criminal Code</i>.</p> <p>2 x Assault police officer.</p> <p>10 x s 32 offences.</p> <p>Appellant driving a vehicle when stopped by police (victims 1 & 2) for a traffic matter. Victim 1 told appellant conducting a license check and appellant drove off at high speed. Victims 1 & 2 pursued appellant and appellant refused to stop, colliding with another car in his attempt to evade capture (further s 32 offences). Victims 1 & 2 found appellant’s car stationary a short time after and approached the vehicle. Appellant again tried to escape and pointed a stolen handgun at victim 1 as he was reaching for her handcuffs. Victim 2 reached for her taser and the appellant pointed the gun at her. Appellant ran off, stopped after a short</p>	<p>4 yrs 6 mths imp.</p> <p>18 mths imp.</p> <p>2 yrs 6 mths imp.</p> <p>2 yrs 4 mths imp each ct.</p> <p>Sentence range \$200 fine – 12 mths imp.</p> <p>Owed 2 yrs 10mths parole time at sentencing – ordered wholly concurrent with TES.</p> <p>TES 9 yrs 2 mths imp.</p> <p>EFP.</p> <p>No genuine remorse; late acceptance of</p>	<p>Dismissed – leave to appeal refused on papers.</p> <p>At [34] Offences of assault public officer very serious. Primary sentencing considerations are general deterrence so as to protect officers performing their duties.</p> <p>At [34] The fact that neither officer was physically injured absence of aggravating factor and does not provide any mitigation - “<i>In cases such as this, the psychological effect of what occurred can have profound consequences for the</i></p>

			<p>distance, turned, readied the gun for firing and pointed the handgun at each victim in turn. Victim 1 fired his police issue weapon. Appellant ran off and was later found hiding in a nearby yard. Police later found bag containing 5.27g methyl dropped by appellant. Appellant's car also searched and another handgun was found along with ammunition, \$39,990 cash, scales with traces of methyl, cutting agent and 2 mobile phones.</p> <p>Other offences occurred on occasions unrelated from the circumstances of the assault PO.</p>	responsibility.	<i>victim, potentially greater than any physical injury."</i>
15.	<p><i>The State of Western Australia v Fleming</i></p> <p>[2010] WASCA 162</p> <p>Delivered 5/08/2010</p>	<p>50 yrs at time offending. 51 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record - traffic offences; drug offences (heroin, amphetamine and cannabis).</p>	<p>1 x Assault police officer. 1 x Poss methyl wiss (100.6g at 4%).</p> <p>Respondent was seen walking towards a known 'drug house'. Police asked him to stop and respondent ran towards the house. Police attempted to detain the respondent and a violent struggle ensued. The respondent struck one of the officers in the head and kicked him in the stomach – officer received cuts and bruises.</p> <p>Respondent was subdued and found to have methyl in his possession as well as two bags containing a cutting agent.</p>	<p>12 mths imp. 2 yrs imp.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Serving term 14 mths imp at time of sentencing (reckless driving, failing to stop, no MDL, drug possession).</p>	<p>Allowed.</p> <p><u>Sentences on appeal:</u> Assault: 6 mths imp. Poss wiss: 3 yrs imp.</p> <p>TES increased to 3 yrs 6 mths imp.</p> <p>At [33] "...the authorities endorsed the principle that the safety of police officers lawfully carrying out their duties is a matter of prime importance and that the courts regard attacks on police as a serious breach of the law" quoting <i>Quinn v The State</i>'.</p> <p>At [35] Imposition by sentencing judge of wholly</p>

					<p>concurrent sentences did not adequately reflect seriousness of criminality overall.</p> <p>At [40] Reduction on sentence for assault public officer charge was for reasons of totality only – 3 yrs 6 mths imp appropriate reflection of overall criminality.</p> <p>At [26] Although purity low, given quantity 2 yrs imp for poss methyl wiss manifestly inadequate.</p>
14.	<p><i>Powell v The State of Western Australia</i></p> <p>[2010] WASC 54</p> <p>Delivered 17/06/2010</p>	<p>49 yrs at time offending.</p> <p>Prior criminal record – indecent assault; indecent dealing.</p>	<p>1 x Assault public officer (bus driver).</p> <p>Victim 31 yr old female bus driver.</p> <p>Appellant fell asleep on a bus and was awoken by victim who has informed him that he could not sleep on the bus. Appellant has become angry and verbally abusive and the victim asked him to leave the bus. Appellant refused to leave the bus and victim told appellant she was going to call security on her two-way radio. Appellant has then grabbed the victim's arm and punched her three times with a clenched fist to the left side of her face.</p> <p>Victim suffered bruising to her face and arm and a 5cm laceration over her left eyebrow which required stitches.</p>	<p>12 mths imp.</p> <p>TES 12 mths imp.</p>	<p>Allowed.</p> <p>TES reduced to 7 mths imp.</p> <p>Magistrate failed to take into account mental illness and did not treat appellant, an unrepresented accused, in accordance with established principles.</p> <p>At [68]-[81] Discussion comparative cases and relevant legislative changes.</p> <p>At [84] Reduction in</p>

					maximum penalty from 10 yrs to 7 yrs imp requires reduction of approx 30%.
<p>Mandatory sentencing introduced (22/09/2009)</p> <p><i>s 318(5) sets out prescribed circumstances where mandatory sentencing applies – certain categories of officer who suffer bodily harm</i></p> <p>Minimum penalty where offending falls within s 318(1)(l) set at 9 mths immediate imp Minimum penalty in all other instances set at 6 mths immediate imp</p>					
<p>Transitional provisions repealed (14/01/2009)</p>					
<p>Maximum penalty s 318, other than those falling within s 318(1)(l), reduced to 7 yrs imp (27/04/2008)</p>					
13.	<p><i>Maroney v The State of Western Australia</i></p> <p>[2006] WASCA 130</p> <p>Delivered 29/06/2006</p>	Convicted after PG.	<p>1 x Assault prison officer. 1 x Att armed robbery. 1 x Agg armed robbery. 1 x Robbery with violence. 1 x Steal motor vehicle and drive recklessly. 3 x Armed robbery. 1 x Unlawful detention. Various s 32 offences.</p> <p>Appellant was being held in Supreme Court holding cells after an appearance on charges above. On being escorted by prison officers to the vehicle, appellant became abusive to victim (one of prison officers escorting him). Appellant tried to break free and struggle followed during which a further 2 prison officers were required to assist. Once</p>	<p>10 mths imp. 2 yrs imp. 3 yrs imp. 6 yrs imp. 2 yrs imp. 3 yrs imp each ct. 2 yrs imp. Sentence range 3 mths – 18 mths imp.</p> <p>TES 16 yrs imp – included almost 4 yrs imp owed as result of parole breach.</p>	<p>Allowed.</p> <p>TES reduced to 13 yrs 6 mths imp.</p> <p>At [29] If sentences for assault public officer are made concurrent with sentences already imposed they provide no specific or general deterrence.</p> <p>At [31] Owing to lengthy period imp required to be served and need to impose concurrent sentence for</p>

			appellant was calm, victim has leaned in to release the handcuffs and appellant spat at victim, hitting him in the left eye. Appellant then kicked one of the other officers in the left side of his face.		assault public officer, sentence for that assault reduced to 6 mths imp.
12.	<i>Quinn v The State of Western Australia</i> [2006] WASCA 99 Delivered 7/06/2006	20 yrs at time offending. Convicted after trial. Extensive prior criminal record - starting at age 11; adult conviction primarily property and dishonesty offences. Minimal employment history – opportunities marred by time spent in custody or on parole/supervision. Strong family support; de facto partner pregnant at time sentencing. Entrenched history of illicit substance abuse	1 x Assault police officer. Very serious instance offending. Police approached the appellant who was asleep in his car. One of the officers spoke to the appellant while the other went to their vehicle to retrieve a mobile phone. The appellant started his vehicle and reversed at speed into an unmarked police vehicle. The appellant repeated this twice. An officer leaned into the drivers' side window and struck the appellant with a torch in an attempt to stop him, and tried to take the keys out of the ignition without success. The appellant reversed the vehicle for the third time while the officer was hanging out of the window. The officer pushed himself out of the car but was struck by the reversing vehicle in the right leg. The officers then discharged their firearms at the appellant's vehicle. Appellant suffered injuries to jaw and leg from bullets – consideration in sentencing properly given to injuries and residual symptoms (muscle spasms, nerve irritation and occasional debilitating pain).	3 yrs 4 mths imp. TES 3 yrs 4 mths imp. EFP. Tentative steps towards rehabilitation.	Allowed. TES reduced to 2 yrs 4 mths imp. EFP. At [19]-[21] Identification and brief discussion of sentences for assaults under s 318(1) considered on appeal since Jan 1995.
11.	<i>Crossley v Cole</i> [2006] WASC 43 Delivered 15/03/2006	Male aged 20. Convicted after plea. Offending breached SIO.	1 x Assault police officer. 1 x Breach police order. Appellant was taken to Joondalup Health Centre for assessment following difficulties in his relationship with his parents and inability to secure	6 mths 1 day imp. Fine. SIO of 6 mths 1 day imp activated.	Offender's appeal dismissed. At [33] Assaults on police officers are not to be tolerated - particularly

		Living with parents – no dependents.	<p>employment. Police served the appellant with a police order under the <i>Restraining Orders Act</i> - appellant was not to visit his parents' house for 24 hours.</p> <p>Same day given notice, appellant went to his parents' property and barricaded himself in his room. Police attended and arrested him. While the police were placing the appellant in the van, he spat at one of the female police officers - hitting her in the back, neck and head.</p> <p>The appellant has since moved out of his parents' home and found employment.</p>	TES 6 mths 1 day imp. Remorseful.	<p>when officers are dealing with restraining orders which can be very volatile situations. Police must be protected, as well as be seen to be protected.</p> <p>At [33] Affirming Magistrate's sentencing remarks it is noted that spitting offences are being treated more and more seriously by the courts because of the threat of blood-borne diseases and the emotional difficulties that stem from the uncertainty of contracting such a disease.</p>
10.	<p><i>Ashworth v State of Western Australia</i></p> <p>[2006] WASCA 36</p> <p>Delivered 10/03/2006</p>	<p>33 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Prior criminal record - no criminal history before 2003 when drug addiction began.</p> <p>Provided some assistance to police.</p> <p>Married; three children (10, 7 and 6 yrs old).</p>	<p>1 x Breach CBO - assault police officer.</p> <p>10 x Receiving.</p> <p>2 x Burglary.</p> <p>1 x Breach CSI – threats to injure.</p> <p>1 x Unlawful possession.</p> <p>1 x Breach bail.</p> <p>1 x Burglary.</p> <p>4 x Stealing.</p> <p>3 x Traffic offences.</p> <p>1 x Breach CBO – steal motor vehicle, no MDL.</p> <p><u>Circumstances of assault police officer:</u> Appellant was discovered in the backyard of victim 1. Appellant threatened victim 1 with a knife before</p>	<p>2 yrs imp.</p> <p>2 yrs imp each ct.</p> <p>2 yrs 8 mths imp each ct.</p> <p>8 mths imp.</p> <p>12 mths imp.</p> <p>4 mths imp.</p> <p>2 yrs imp.</p> <p>2 yrs imp each ct.</p> <p>Fines.</p> <p>2 yrs imp; \$200 fine.</p> <p>TES 6 yrs imp.</p> <p>EFP</p>	<p>Allowed.</p> <p>Individual sentence on assault public officer specifically appealed – reduced to 12 mths imp.</p> <p>TES reduced to 5 yrs imp.</p> <p>EFP.</p> <p>At [94] “...there is a need to protect police officers from such offences by demonstrating through the</p>

		Alcohol and amphetamine abuse.	running away. Appellant was tracked 150m down the street by a police dog and his handler (victim 2). The dog restrained the appellant by the leg and appellant attempted to kick and punch the dog. Victim 2 called the dog off, and the appellant ran towards his backpack. Victim 2 released the dog on the appellant to restrain him. Appellant was again aggressive towards the dog and when victim 2 intervened, a violent struggle ensued. Victim 2 used capsicum spray on the appellant but was not able to restrain him until other police officers arrived. Victim 2 suffered cuts and abrasions to his wrist and forearm as a result of the struggle with the appellant.	Undertaken courses in custody.	<i>sentencing process that such conduct will not be tolerated and will attract severe punishment.”</i> At [105] Pre-transitional sentence range of 12 mths – 2 yrs imp identifiable for deliberate assaults on police involving punching, kicking or biting without the infliction of a particularly serious injury. At [106] Most serious aspect of assault was the resisting of arrest – injuries sustained were minor, assault constituted of pushing and shoving rather than deliberate attack.
9.	<i>Worthington v The State of Western Australia</i> [2005] WASCA 72; (2005) 152 A Crim R 585 Delivered 19/04/2005	25 yrs at time offending. 26 yrs at time sentencing. Convicted after PG Substantial prior criminal record. Broken family: domestic violence; subject of physical abuse.	1 x Assault police officer. 2 x Disable with intent to facilitate flight. 1 x Unlawful detention. 12 x Agg burg. 1 x Unlawfully on premises. 2 x Poss methyl. 1 x Resist arrest. 1 x Poss cannabis. 1 x Criminal damage. 1 x Pervert course justice. 2 x False name. 1 x Resist arrest. 1 x Breach bail. 1 x No MDL.	12 mths imp. 3 yrs imp each ct. 2 yrs imp ct. 12 mths imp each ct. 1 mth imp. 3 mths imp each ct. 1 mth imp. 1 – 3 mths imp remainder of cts.	Allowed. TES reduced to 6 yrs 8 mths imp. Individual sentences not disturbed.

			<p>1 x Stealing. 1 x Poss house breaking implements.</p> <p><u>Circumstances of assault police officer:</u> Appellant's vehicle was stopped by police and found him to be in possession of a small quantity of methyl. The appellant started swinging his arms and elbowed one of the officers (victim 1) in the face (assault police officer). Scuffle ensued and the three fell to the ground. The appellant got one of the officer's capsicum spray and sprayed both officers in the face. The appellant then got victim 1's revolver out of its holster and held it to her head saying "You are coming with me". Appellant forced victim 1 into the car and the vehicle began to move off. Police officer fired his gun at the car and the victim escaped from the moving vehicle.</p> <p>The appellant then escaped and went on a crime spree involving some of the offences above.</p>	<p>TES: 7 yrs, 8 mths imp. High risk reoffending.</p>	
8.	<p><i>Powell v Fuller</i> [2005] WASC 91 Delivered 12/05/2005</p>	<p>41 yrs at time sentencing. Convicted after PG. Prior criminal record - 3 conviction of assault police officer. Good employment history; 2 adult children; 1 grandchild. \$4,632 in outstanding fines - being paid in fortnightly</p>	<p>1 x Assault police officer. 1 x Fail to leave licensed venue when requested. 1 x Resist arrest. Police attended licensed venue to remove another patron. The appellant stood in the doorway and obstructed the police. Licensee asked the appellant to leave - appellant refused. Police forcibly removed the appellant and the appellant attempted to get back inside the venue. A struggle ensued during which the appellant has gripped one of the police officers by the throat. The appellant was pulled back by another police officer (victim), releasing his grip on the victim's throat. The</p>	<p>8 mths imp. Fine: \$300. 3 mths imp. TES 8 mths imp and \$300 fine.</p>	<p>Offender's appeal dismissed. At [86] "...offences of assaulting a police officer are considered serious offences which generally require a significant deterrent penalty."</p>

		<p>instalments.</p> <p>Engaging in counselling.</p> <p>Alcohol significant contributing factor but appellant demonstrated ability to voluntarily abstain from alcohol between 1987-1995 – began drinking again on breakdown of marriage.</p> <p>Suffered hepatitis as child and had liver damage; lead poisoning.</p>	<p>appellant was arrested and placed in a police vehicle. He resisted arrest by kicking out violently but was eventually subdued. Victim suffered discomfort and muscle tenderness but no serious injuries.</p> <p>Appellant claimed to have no recollection of events due to intoxication.</p>		
7.	<p><i>Etheridge v R</i></p> <p>[2004] WASCA 152</p> <p>Delivered 23/07/2004</p>	<p>38 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Prior criminal history - burg; stealing; possess unlicensed firearm; various traffic matters. Record was a minor consideration as convictions were recorded decades earlier.</p> <p>Separated from wife; sleeping in his car following argument with wife and having nowhere else to stay; unemployed.</p>	<p>1 x Assault police officer. 1 x Threat to kill. 1 x Breach bail.</p> <p>Police responded to call regarding a male, the appellant, slumped in the front seat of a vehicle. The appellant said he was ‘tired’ and nothing was wrong. A police check found that the vehicle was unlicensed. Police asked the applicant to step out of the vehicle; he refused. Police threatened to smash a window to get him out and the appellant responded by saying if you do that “I’ll blow his fucking head off” – police did not see it at the time but there was a replica pistol under the car seat which the appellant reached for. The police then smashed the window and arrested the appellant. At the police station, the appellant was asked to remove his personal jewellery. Instead of doing as</p>	<p>18 mths imp. 18 mths imp. 6 mths imp.</p> <p>TES 24 mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [14] Deterrent sentence called for owing to prevalence of such assaults.</p> <p>At [28]-[30] Discussion of comparable assault police officer authorities.</p>

			he was asked, the appellant bit the officer's thigh and palm and twisted his finger.		
<i>Transitional Provisions Enacted (31/08/2003)</i>					
6.	Higgins v Worthington [2003] WASCA 19 Delivered 25/02/2003	Male aged 30. Convicted after PG. No prior criminal record. Married; child aged 2 yrs. Employed as FIFO mine worker (also ran own business on own time); mortgage. Not generally a heavy drinker.	1 x Assault police officer. 1 x Resist arrest. Appellant intervened in a 'difference of opinion' between a patron and a bouncer at licensed premises. Appellant refused to comply with police's request to leave the venue. The appellant then made a comment and 'ched' one of the officers. Appellant was arrested and resisted violently by grabbing one of the police officers by the jumper, near the throat. Four officers were needed to restrain the defendant. No recollection of events due to intoxication.	\$1000 fine. \$250. TES \$1250 fine. Convictions entered. The appeal was concerned with the magistrate's refusal for spent conviction orders. Deeply remorseful – called victim of own volition to apologise.	Offender's appeal dismissed. Appeal against refusal to grant spent conviction order. At [24]-[29] Employment in mining industry renders convictions for alcohol related violence relevant and not an appropriate instance in which to order a spent conviction.
5.	Templin v The Queen [2002] WASCA 318 Delivered 28/11/2002	22 yrs at time Convicted after PG. No prior criminal record. Separated from de facto partner; one child.	1 x Assault court security officer. 1 x Assault court security officer. 1 x Escape legal custody. 3 x Breach VRO. 1 x Agg burg. 1 x Robbery. Appellant appeared in court and was refused bail. Appellant, in a confused and emotional state, tried to walk out of the dock to attend his son's birthday party. Court officers restrained him and a scuffle ensued during which both officers were assaulted (one more seriously than the other).	6 mths imp. 12 mths imp. 3 mths imp. 18 mths imp. 18 mths imp. TES 4 yrs imp. Equivalent to approx 2 yrs 8 mths imp after implementation of transitional provisions.	Allowed. TES reduced to 2 yrs 6 mths imp. At [16] Notes that the assaults were serious. NB: Individual sentences not altered – error to make sentences for agg burg and robbery cumulative.

			Agg burg, robbery and breaches of VRO committed in context of the breakdown of the appellant's relationship with his partner and in relation to problems relating to the appellant's access to his son and concerns for his son's safety.		
4.	<i>Dodd v Hoogewerf & Ors</i> [2002] WASCA 15	22 yrs at time sentencing. Convicted after PG. Prior criminal record – minor significance; never served term imp. 13 month old child; 3 ½ months pregnant at time sentencing. Partner in prison at time offending; at time sentencing, partner on parole and supporting the appellant.	1 x Assault corrections officer. 1 x Breach CBO – assault police officer. 1 x Poss cannabis wiss. 1 x Breach bail. 2 x Breach CBO (threatening words, resist arrest). Offender attempted to smuggle cannabis to her boyfriend who was a prisoner at Casuarina. Drugs were detected by prison dog and prison staff attempted to search appellant. Appellant has become abusive, refused to allow the search and when one of the prison officers attempted to take her 2 month old child from her, the appellant punched the victim (49 year old female corrections officer) in the face, causing minor bruising. After being charged, appellant failed to answer bail for 12 mths. Unconnected to events above, appellant failed to do any of 100 hours community service she was ordered to do following the attendance of police at a traffic incident involving the appellant. Following the police arrival at the scene, the appellant threatened police and was subsequently arrested. Appellant, resisting arrest, kicked one of the officers in the thigh. Appellant continued to resist arrest by attempting to strike officers, abusing them and spitting at them.	3 mths imp. 3 mths imp. 6 mths imp. 3 mths imp. 1 mths imp each ct. TES 9 mths imp. Equivalent to approx 6 mths imp after implementation of transitional provisions. EFP after 7 mths.	Offender's appeal allowed. TES suspended for 12 mths. At [22] Requires exceptional circumstances for court to suspend term imp because child deprived of parental care. At [19]-[22] Exceptional circumstances present in this instance due to age of child and critical stage of development child at.

<p>3.</p>	<p><i>Dhu v Ward</i> [2000] WASCA 140 Delivered 24/05/2000</p>	<p>42 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record - AOBH, common assault, disorderly conduct: fighting; never served term imp.</p> <p>Good employment history.</p> <p>Married over 20 yrs; 6 children (one still living at home aged 14 yrs); supportive family</p> <p>Bad temper; anger control issues.</p>	<p>1 x Assault police officer. 1 x Use insulting words. 1 x Resist arrest.</p> <p>Police attended a property in response to a complaint. When they arrived, the appellant began yelling insults at the police (insulting words). The police told the appellant he was under arrest; the appellant came out to the front of the house and punched a male police officer in the face with a clenched fist, causing bruising and cuts to the inside of the cheek. The appellant was subdued after a violent struggle. The appellant then claimed he was calm and would go willingly, but when let up by the police he again became violent and had to be pinned down and was eventually subdued with the assistance of police backup.</p>	<p>6 mths imp. Fine: \$200 1 mth imp.</p> <p>TES 7 months imp. Equivalent to approx 4 ½ mths imp after implementation of transitional provisions.</p> <p>Moderate risk of re-offending.</p>	<p>Offender's appeal dismissed.</p> <p>At [9]-[13] discussion general sentencing principles applicable to conviction for assault police officer.</p>
<p>2.</p>	<p><i>Hill v Bodenham</i> [2000] WASCA 37 Delivered 17/01/2000</p>	<p>29 yrs at time sentencing.</p> <p>Convicted after plea.</p> <p>Prior criminal history - minor assaults and other offences where intoxication likely contributed.</p> <p>Supportive family and de facto partner; 6 children (aged 1 – 13 yrs).</p>	<p>1 x Assault police officer.</p> <p>Victim was sole police officer in small, rural community. Victim attended 'domestic' at appellant's house. On arrival, victim saw approx 15-20 people outside the house who were intoxicated and arguing. Appellant was placed under arrest and on the way to the police van broke free. In struggle, appellant struck victim on the head – victim suffered dizziness immediately after being struck. Victim unable to complete the arrest and left to get assistance. Victim returned with civilian aid and completed the arrest. A short while later, victim lost consciousness and was hospitalised for 2 days – suffered concussion, bruising, abrasions and</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp. Equivalent to approx 16 mths imp after implementation of transitional provisions.</p> <p>EFP.</p> <p>Remorse; minimised blame by placing responsibility on wife's family.</p>	<p>Offender's appeal dismissed.</p> <p>At [34] Assault serious given circumstances and injuries.</p> <p>At [34] Intention of offender not an element of offence therefore fact that assault not deliberately committed does not minimise appellant's fault.</p> <p>At [53]-[60] Discussion of</p>

			<p>blurred vision as result of appellant's blow.</p> <p>Victim surprised by blow as he had a good relationship with appellant prior to offending – aggravating factor as led to belief that situation not as dangerous or as volatile as it otherwise could have been.</p> <p>Appellant had been drinking throughout day prior to offending and had history of problems with de facto partner's family.</p>		some comparable cases.
1.	<p>Warrell v Kay</p> <p>(1995) 83 A Crim R 493;</p> <p>Supreme Court Library No 950560.</p> <p>Delivered 13/10/1995</p>	<p>44 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Minor prior criminal record - disorderly conduct.</p> <p>Poor health.</p> <p>Primary caregiver for 7 yr old grandchild with lung complaint requiring weekly treatment in hospital.</p>	<p>1 x Assault police officer.</p> <p>1 x Criminal damage.</p> <p>Police attended at appellant's property in response to a complaint. Appellant became aggressive toward a younger relative at the scene before becoming aggressive towards police. She picked up a piece of concrete and threw it at an officer, missing the officer but hitting the police van. Appellant then picked up a brick and held it in a threatening manner above her head. Another officer came between the appellant and the other officer, the appellant lunged and struck the officer in the shoulder with the brick. She raised the brick above her head and again attempted to strike the officer. The officer used his baton in self defence and the appellant was disarmed and restrained.</p>	<p>24 wks imp.</p> <p>Fine: \$100.</p> <p>TES 24 wks imp and \$100 fine.</p> <p>Equivalent to approx 16 wks imp after implementation of transitional provisions.</p>	<p>Offender's appeal allowed.</p> <p>TES reduced to 6 mths probation and 50 hrs community service.</p> <p>Welfare of child key factor.</p>
<p><i>Maximum penalty for s 318 increased from 5 yrs to 10 yrs imp (20/01/1995)</i></p>					