

Assaults with Intent

s 317A 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are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.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
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
CBO	community based order
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
<i>Transitional Provisions Repealed (14/01/2009)</i>					
7.	<p><i>Richardson v Pickett</i></p> <p>[2008] WASC 203</p> <p>Delivered 23/09/2008</p>	<p>18 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Prior criminal record – juvenile convictions for carry article with intent to cause fear; poss controlled weapon; unlawful wounding.</p> <p>Lives in Melbourne – in WA visiting girlfriend.</p>	<p>1 x Assault with intent to do GBH s 317A(b) <i>Criminal Code.</i></p> <p>1 x Being armed in a way that may cause fear.</p> <p>Assault occurred in the context of a family feud – respondent had been attacked at a train station three days earlier in the course of the same feud.</p> <p>Respondent and two co-offenders pursued the victim and his friend to a service station. The respondent was armed with a machete, a juvenile co-offender was armed with two bricks and the other co-offender was armed with a machete and bricks. Victim hid behind shelving in the store and the juvenile co-offender forced the doors open with the tomahawks.</p> <p>Respondent and two co-offenders entered the shop and attacked the victim. Respondent struck victim twice in the head area with a machete as he tried to run away. Juvenile co-offender struck victim several times to the head and body using the tomahawks.</p> <p>Victim received eight wounds to the rear of his head, exposing his skull; lost sensation in his left ear; suffered broken bones in his left hand; laceration to his right hand and arm; and suffered a fractured skull.</p>	<p>16 mths imp.</p> <p>6 mths imp.</p> <p>TES 22 mths imp susp 2 yrs.</p>	<p>State appeal allowed.</p> <p>TES 22 mths immediate imp.</p> <p>At [28] Gravity of offending was such that youth and other personal factors were not sufficient to allow for suspension of term.</p> <p>At [28] The fact that the offending took place in the context of a family feud aggravated, not mitigated, the offence.</p>

6.	<p><i>Davis v The State of Western Australia</i></p> <p>[2007] WASCA 147</p> <p>Delivered 13/07/2007</p>	<p>37 yrs at time sentencing.</p> <p>Prior criminal record – incl armed robberies at 20 yrs which resulted in probation.</p> <p>Alcohol & illicit drug problem since teenager – including heroin addiction.</p> <p>Under influence Interferon at time offending (treat Hep C) but not substantial causative factor in offending.</p>	<p>2 x Assault intent to prevent arrest s 317A(c) <i>Criminal Code</i>.</p> <p>8 x Armed robbery.</p> <p>1 x Attempted armed robbery.</p> <p>1 x Fraud.</p> <p>s 32 offences - 8 x fraud and 1 x stealing.</p> <p>Offending occurred over period 2 ½ mths – escalating throughout that period and only stopping on arrest.</p> <p>Robbed succession of liquor stores, post offices, banks and petrol stations whilst actually armed or claiming to be armed with firearm. Approx \$10,000 in total taken (approx \$600 recovered).</p> <p>Assaults with intent to prevent arrest involved threats with a forearm to discourage the person trying to apprehend him on two separate occasions.</p>	<p>18 mths imp each ct.</p> <p>Sentence range 3-4 yrs imp each ct.</p> <p>3 yrs imp.</p> <p>12 mths imp.</p> <p>6 mths imp each s 32 offence.</p> <p>TES 10 yrs imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>At [40] ‘...<i>deterrent sentences of substantial length were called for. In my view, a total sentence of 10 years’ imprisonment (...15 years’ imprisonment before the transitional provisions) could not be said to be manifestly excessive.</i>’</p>
5.	<p><i>Parfitt v The State of Western Australia</i></p> <p>[2006] WASCA 11</p> <p>Delivered 12/01/2007</p> <p>Co-offender of</p>	<p>17 yrs at time of offending.</p> <p>18 yrs at time of sentencing.</p> <p>Convicted of assault with intent to do GBH after trial.</p> <p>Convicted of agg robbery after PG on first day of trial.</p> <p>Prior criminal record – beginning at 15 yrs old - agg robbery; burg; unlawful wounding.</p>	<p>1 x Assault with intent to do GBH s 317A(b) <i>Criminal Code</i>.</p> <p>1 x Agg robbery.</p> <p>Victim was a 31-year-old tourist from the UK. Victim at Perth train station. The appellant and three others (two of them co-offenders) assaulted the victim for no reason. Appellant captured on CCTV removing items from the victim’s clothing. As victim lay unconscious on the ground following upon the initial</p>	<p>33 mths imp.</p> <p>12 mth ISO.</p> <p>TES 33 mths.</p> <p>EFP.</p> <p>Remorse.</p>	<p>Dismissed.</p> <p>At [40] Court noted that although neither party raised the issue, an ISO could not have been imposed in circumstances where a term of immediate imp was also ordered.</p>

	<i>"I" (a child) v The State of Western Australia [2006] WASCA 9</i>	Unstable family background and upbringing; mother died when appellant 15 yrs old; has support of father and wider family.	assault, juvenile co-offender ran and jumped in the air with both feet raised, landing on the victim's head before taking the victim's mobile phone and fled the scene. Victim spent two days in hospital and sustained bruising and lacerations to his ear and bruising to his mandible.		
4.	<i>"I" (a child) v The State of Western Australia [2006] WASCA 9</i> Delivered 20/01/2006 Co-offender of <i>Parfitt v The State of Western Australia [2006] WASCA 11</i>	17 yrs at time offending. No significant prior criminal record. Convicted after PG – TOI for purposes sentencing regarding appellant's allegations that victim racially vilified and assaulted him first (rejected in sentencing) Affected by alcohol, cannabis and amphetamines at the time of the offence.	1 x Assault with intent to do GBH s 317A(b) <i>Criminal Code</i> . 1 x Stealing. At [35] Offending in worst category of its kind. Victim was a 31-year-old tourist from the UK. Victim at Perth train station. The appellant and three others (two of them co-offenders) assaulted the victim for no reason. As victim lay unconscious on the ground following upon the initial assault, appellant ran and jumped in the air with both feet raised, landing on the victim's head. Appellant then took victim's mobile phone and fled the scene. Adult co-offender sentenced 2 yrs 4 mths imp post transitional – transitional provisions do not apply to juvenile offenders.	3 yrs detention. 2 yrs 6 mths detention. TES 3 yrs detention. Eligible for supervised release after 14 mths detention. Little genuine remorse.	Dismissed. At [75] Unusual for a juvenile to be sentenced more severely than an adult co-offender, but adult co-offender did not attempt to mislead the Court regarding the circumstances of the offending and had full benefit of PG. Appellant's conduct objectively more serious than that of adult co-offender.
3.	<i>Anderson v The State of Western Australia [2005] WASCA</i>	28 yrs at time offending. Convicted after PG. Extensive prior criminal record –	2 x Assault intent to prevent arrest s 317A(c) <i>Criminal Code</i> . 1 x Steal motor vehicle and drive recklessly. s 32 matters:	1 yr imp each ct. 2 yrs imp.	Dismissed – leave refused on papers.

	<p>228</p> <p>Delivered 28/10/2005</p>	<p>habitually offending since 12 yrs old; significant convictions for steal motor vehicle and drive recklessly.</p> <p>Offending breached parole – released 48 hrs earlier; failed to complete parole on six prior occasions.</p>	<p>4 x Driving offences. 1 x Attempt steal motor vehicle.</p> <p>Appellant observed by police to be driving a car he had stolen earlier. Police activated their emergency lights and sirens and appellant drove on wrong side of road in an attempt to evade them. Police set up a road block to stop the appellant. On reaching the road block, the appellant stopped and then accelerated heavily into the rear end of a police car. Appellant then reversed into the front of a second police vehicle then accelerated forward again, striking the first vehicle he hit for a second time. Appellant again reversed and struck the second car. Officers were inside the car at this time. Appellant then accelerated a third time, again striking the first police vehicle. Appellant eventually subdued with the use of pepper spray.</p>	<p>Fines – 6 mths imp. 6 mths imp.</p> <p>TES 3 yrs imp.</p> <p>Not EFP.</p>	
2.	<p><i>Moyle v The State of Western Australia</i></p> <p>[2004] WASCA 166</p> <p>Delivered 9/08/2004</p>	<p>Convicted after early PG.</p> <p>Prior criminal record - juvenile conviction for armed robbery in company; assault.</p> <p>Offending breached ISO imposed for attempted agg robbery and assault (tried to steal BMX form 15 yr old with co-offender but was stopped by by-standers).</p> <p>Troubled childhood – physical and verbal abuse; behavioural problems; left school yr 10; some employment</p>	<p>1 x Assault intent to prevent arrest s 317A(c) <i>Criminal Code</i>.</p> <p>1 x Agg armed robbery. 1 x Att agg armed robbery. 1x Breach ISO (imposed for attempted agg robbery). 1 x Breach ISO (imposed for assault)</p> <p>Offending period 7 mths.</p> <p>Shortly after the attempted agg armed robbery, police attempted to arrest appellant short time later. Appellant broke broom and threatened them with handle. Appellant forced to ground at gun point and struggled violently when</p>	<p>8 mths imp.</p> <p>2 yrs 8 mths imp. 4 yrs imp. 12 mths imp.</p> <p>4 mths imp.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Considerable remorse.</p>	<p>Dismissed.</p> <p>TES severe given youth, but does not manifest error.</p>

		history; anger management issues and impulsivity. History alcohol, cannabis and amphetamine abuse.	finally apprehended.		
<i>Transitional Provisions Enacted (31/08/2003)</i>					
1.	<i>Collins v The Queen</i> [2002] WASCA 142 Delivered 29/05/2002	26 yrs at time offending. Convicted after early PG. Prior minor assaults; disturbances; resisting arrest. De facto relationship (8 yrs); two young children; suffered severe physical and emotional abuse as a child; suffering relationship, business and financial difficulties	1 x Assault intent to prevent arrest s 317A(c) <i>Criminal Code</i> . 1 x Agg burg. 3 x Sex pen. 2 x Sex pen. 1 x AOBH. 1 x Agg burg. 1 x Robbery. 1 x Agg burg. Appellant entered random house, disconnected telephone, threatened victim with bottle. Appellant then committed 5 sex offences. In process, appellant assaulted brother who came home and tried to prevent the rape. Appellant left house then returned demanding keys to car, crashed car and entered and ransacked neighbouring house. Appellant assaulted police when being apprehended. Appellant had patchy recollection of offending and could not believe he had behaved so violently or that he sexually violated victim in the way described - severely intoxicated by alcohol at time offending.	1 yr imp. 3 yrs imp. 6 yrs imp each ct 8 yrs imp each ct. 2 yrs imp. 3 yrs imp. 4 yrs imp. 1 yr imp. TES 11 yrs imp. Equivalent to 7 yrs 4 mths imp after implementation of transitional provisions. Genuine remorse.	Dismissed. Sentences appropriate length, if anything rather lenient. Aggregate term well within range of properly proportionate response by the court to the total criminality involved.

