

Assaults and injuries to the person

Table of Contents

Table of Contents	2
Policy statement and principles	4
What	4
Why	4
How	4
Overview	5
Introduction	5
Purpose	5
Health and safety duties	5
Maximising safety and minimising risk	5
Health and safety should be an everyday conversation	5
Definitions	6
Offences	10
Criminal Procedure Act 2011	10
Offence and legislation table	10
Coding offences against the person	12
Ingredients of offences	13
Acid throwing (section 199 - Crimes Act 1961)	13
Aggravated assault (section 192(1) - Crimes Act 1961)	13
Aggravated wounding (section 191(1) - Crimes Act 1961)	13
Aggravated injury (section 191(2) - Crimes Act 1961)	13
Assault by male on female (section 194(b) - Crimes Act 1961)	14
Assault on a child (section 194(a) - Crimes Act 1961)	14
Assault on person in family relationship (section 194A - Crimes Act 1961)	14
Aggravated assault on Police / person executing a process (section 192(2) - Crimes Act 1961)	14
Section 48 defence	15
Assault on police, traffic or prison officer (section 10 - Summary Offences Act 1981)	15
Assault with a weapon (section 202C - Crimes Act 1961)	15
Assault with intent to commit sexual violation (section 129(2) - Crimes Act 1961)	16
Assault with intent to injure (section 193 - Crimes Act 1961)	16
Assault with intent to rob (section 236(1) - Crimes Act 1961)	16
Common assault (section 196 - Crimes Act 1961)	16
Common assault (section 9 - Summary Offences Act 1981)	16
Ill-treatment or neglect of child or vulnerable adult (section 195 - Crimes Act 1961)	16
Intention and mens rea	17
‘Actual care or charge’	17
‘Staff member’	17
Likelihood of harm	17
Intentionally engaging in conduct	17
Breach of legal duty	17
Act or omission constituting a ‘major departure’	17
Failure to protect child or vulnerable adult (Section 195A - Crimes Act 1961)	18
Members ‘of the same household as the victim’	18
Having ‘frequent contact’	18
Knowledge of the risk of harm	18
Failure to take reasonable steps to protect the victim	18
Disabling (section 197 - Crimes Act 1961)	18
Discharging firearm or doing dangerous act with intent - intent to cause grievous bodily harm (section 198(1) - Crimes Act 1961)	19
Discharging firearm or doing dangerous act with intent - intent to injure (section 198(2) - Crimes Act 1961)	19
Injuring by unlawful act (section 190 - Crimes Act 1961)	19
Injuring with intent to cause grievous bodily harm (section 189(1) - Crimes Act 1961)	19
Injuring with intent to injure (section 189(2) - Crimes Act 1961)	19
Using a firearm against a law enforcement officer (section 198A(1) - Crimes Act 1961)	20
Using a firearm to resist arrest (section 198A(2) - Crimes Act 1961)	20
With intent to resist	20
Commission of a crime with firearm (section 198B - Crimes Act 1961)	20

Poisoning with intent to cause grievous bodily harm (section 200(1) - Crimes Act 1961)	20
Poisoning with intent to cause inconvenience or annoyance (section 200(2) - Crimes Act 1961)	21
Infecting with disease (section 201 - Crimes Act 1961)	21
Wilfully	21
Setting trap or device with intent to injure (section 202(1) - Crimes Act 1961)	21
Permitting set trap likely to injure to remain (section 202(2) - Crimes Act 1961)	21
Impeding rescue (section 204(1) - Crimes Act 1961)	22
Strangulation or suffocation (section 189A - Crimes Act 1961)	22
Case law	22
Wounding with intent to cause grievous bodily harm (section 188(1) - Crimes Act 1961)	22
Wounding with intent to injure (section 188(2) - Crimes Act 1961)	23
Arrest	24
Power of arrest	24
Defences and use of force	25
The defence of consent	25
Implied consent	25
Consent to harm	25
Justification	26
The defence of lawful use of force	26
Assault related procedures	27
Initial action	27
The victim's condition	27
Statements	27
Evidence	27
Further enquiries	27
Interviewing the suspect	28
Charging	28

Policy statement and principles

What

There are a multitude of offences under the Crimes Act 1961 and the Summary Offences Act 1981 relating to assault and injuries to the person.

The most appropriate charge can be variable and is dependent on the nature and seriousness of the assault in relation to the intentions of the offender and the degree of harm suffered by the victim.

Why

In the interest of public safety, victim focus and offender apprehension, Police have a responsibility to investigate, reduce and resolve crime(s).

How

Police will ensure that:

- they continue to work pro-actively with prevention first and victim focused strategies
- all relevant employees are suitably trained and aware of their responsibilities when exercising any enforcement powers to address offending, its causes and harm reduction
- for staff safety, any discretionary action taken is in accordance with the [Health and Safety at Work Act 2015](#), Police safety policies and that the [TENR-Operational threat assessment](#) tool is utilised
- if any offences are identified, actions such as enforcement, detention and/or prosecution as deemed appropriate will be taken.

Overview

Introduction

The law provides for two main types of assault charges:

- those filed under the [Summary Offences Act 1981](#), which are the more minor ones, **and**
- those filed under the [Crimes Act 1961](#), which relate to more serious assaults. Even the less serious offences under the Crimes Act are dealt with more harshly than those punishable under the Summary Offences Act.

Purpose

This chapter explains the various types of assault, from minor through to very serious, and considers the defences of consent and self-defence. It also provides guidelines for investigating assaults.

Health and safety duties

Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk at work is the responsibility of all Police employees and persons engaged by Police to provide a service including contractors and their employees, trainees, interns and volunteers. It is delivered through meeting the obligations under the [Health and Safety at Work Act 2015](#) and Police safety policies.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

The expectation of the Commissioner and the Act is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given in order to comply with the [Health and Safety at Work Act 2015](#) or regulations under that Act. They will co-operate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to them and take immediate action to stop any perceived or potential breach of the act or if impractical, immediately report the matter to a supervisor.

Health and safety should be an everyday conversation

Relevant Police instructions include:

- [Hazard management](#)
- [Health, safety, and wellbeing](#)
- this chapter in relation to the safe investigation of assaults.

Definitions

This table provides some definitions of terms relevant to this chapter.

Term	Definition
Act or gesture	Usually, physical movement is necessary for a threat to constitute an assault. In most cases, the movement is accompanied by words, and the combination of the two proves the suspect's intent. However, physical contact is not necessary for a threat to constitute an assault.
Any person	'Any person' is not confined to the intended victim. A suspect who intends to harm one person but in fact, harms another, may still be guilty of assault. Mistaken identity is not a defence - <i>R v Monger</i> [1973] Crim LR 301 and R v Chandler (unreported, High Court Napier, 10 February 1993, AP 4/93) refer.
Applying force	'Applying force' means hitting, with or without an object; or kicking, punching, holding or touching. The force used may be minimal.
Assault	Under section 2 of the Crimes Act 1961 and section 2 of the Summary Offences Act 1981, 'assault' means: <ul style="list-style-type: none">- the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or- threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he or she has, present ability to effect his or her purpose; and- 'to assault' has a corresponding meaning. Note: An attempt is the full offence. There is no offence of attempted assault.
Constable	Under section 4 of the Policing Act 2008, 'constable' means a Police employee who: <ul style="list-style-type: none">- holds the office of constable (whether appointed as a constable under the Police Act 1958 or the Policing Act 2008); and- includes a constable who holds any level of position within the New Zealand Police.
Conditional threat	A conditional threat, i.e. a threat conditional on some subsequent action, does constitute an offence of assault, provided the other requirements of the definition are met. For example, Police called to a domestic dispute were met at the door by Greaves, who was brandishing a carving knife. He warned the constables that if they came any closer, he would stab them (refer Police v Greaves [1964] NZLR 295).
Directly or indirectly	Assault occurs if the suspect intends that force be applied to another and does something that causes this to occur. Indirect assault is where force is not applied directly to the victim and includes an intentional action which misses the intended target but strikes an unintended person. Indirect means giving effect to the defendant's intention through some instrumentality remote from his or her person - Narayan v Police (HC Christchurch, CRI-2009-409-000058, 10 June 2009) refers. For example, a man who knocked down his wife and caused injury to the baby she was holding, was convicted of assaulting the baby - R v McMasters [1920] GLR 351 refers.
Disfigures	Disfigurement consists of external injury that mars or alters a person's appearance. The injury or damage need not be permanent - R v Rapana and Murray (1988) 3 CRNZ 256 refers.

Assaults and injuries to the person
Proactively released by New Zealand Police

<p>Doctrine of transferred malice</p>	<p>If the defendant has a <i>mens rea</i> of a particular crime, carries out the <i>actus reus</i> of the same crime, he is guilty even though the result may be unintended, i.e. if the victim differs from the one intended. For example the accused assaulted another man with his belt but in addition to striking the intended victim, the belt struck a woman standing nearby. Although there was no intention to hit the woman, the doctrine of transferred malice applied and accused was also convicted of assaulting the woman. Refer <i>R v Latimer</i> (1986) 17 QBD 359 and Narayan v Police (HC Christchurch, CRI-2009-409-000058, 10 June 2009).</p> <p>If the defendant has the <i>mens rea</i> for a different offence from that which he commits, the intent cannot be transferred. For example, throwing a stone at a person, but the stone missed victim and broke a window. His intention was to assault a person, and this <i>mens rea</i> cannot be used to prove the offence of intentionally damaging the window. <i>R v Pembrilton</i> (1874) LR 2 CCR 119.</p>
<p>Firearm</p>	<p>Under section 2 of the Arms Act 1983, 'firearm':</p> <ul style="list-style-type: none"> - means anything from which any shot, bullet, missile, or other projectile can be discharged by force of explosive; and - includes: <ul style="list-style-type: none"> - anything that has been adapted so that it can be used to discharge a shot, bullet, missile, or other projectile by force of explosive; and - anything which is not for the time being capable of discharging any shot, bullet, missile, or other projectile but which, by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be a firearm within the meaning of paragraph (a) of this definition or subparagraph (i) of this paragraph; and - anything (being a firearm within the meaning of paragraph (a) of this definition or subparagraph (i) of this paragraph) which is for the time being dismantled or partially dismantled; and - any specially dangerous airgun.
<p>Grievous bodily harm</p>	<p>'Grievous bodily harm' means harm that is really serious or really seriously hurts; for example, if an offender stabs a victim and the knife penetrates a vital organ. On the other hand, if the knife misses vital organs so that only tissue is cut, this would be more in keeping with an injury - R v Waters [1979] 1 NZLR 375 refers.</p> <p>Proof of permanent injury is not required - <i>R v James</i> (1980) 70 Cr App R 21 refers.</p> <p>Grievous bodily harm includes some diseases, provided their effects are sufficiently serious, which included infecting victim through sexual intercourse with HIV. R v Mwai [1995] 3 NZLR 149; (1995) 13 CRNZ 273 (CA).</p> <p>Grievous bodily harm is not limited to bodily injury but can include injury to the mind. However, 'really serious psychiatric injury' must be identified as such by appropriate specialist evidence. R v Chan-Fook [1994] 2 All ER 552.</p>
<p>Household</p>	<p>'Household' will bear its ordinary meaning of a domestic unit in which one or more people live, whether a family, or flatmates, or fellow lodgers. Whether the suspect is a member of the same household as the victim is a matter of fact and, as a word in common usage, the Court will generally need no specific direction on its meaning.</p>
<p>Injures</p>	<p>Under section 2 of the Crimes Act 1961, 'to injure' means to cause actual bodily harm.</p> <p>Actual bodily harm:</p> <ul style="list-style-type: none"> - does not require proof of physical injury and may include producing an hysterical or nervous condition (<i>R v Miller</i> [1954] 2 All ER 529) - includes any hurt or injury calculated to interfere with the health or comfort of the victim. It need not be permanent but must be more than merely transient and trifling (<i>R v Donovan</i> [1934] 4 KB 498, 509). For example, it is unlikely that a bruised arm would be considered to be actual bodily harm - is not necessarily limited to physical injuries. It may relate to an impaired state of mind; for example, where a victim can no longer go about their normal life as a result of the fear and shock caused by the assault. This must be a psychiatric injury, identifiable as a clinical condition. Other states of mind or emotions, such as fear or distress will not meet the test of actual bodily harm.

Assaults and injuries to the person
Proactively released by New Zealand Police

Intent	<p>In the sections relating to assault, ‘intent’ is clearly set out. For example, in section 188, it must be established that the suspect meant to cause grievous bodily harm, or meant to injure some person. It is not sufficient that the suspect merely thought it possible that injury might result. For example, if a gun is fired when there seems to be no one around, there is a remote possibility that someone may be hurt. However, if a gun is fired into a crowd, it is likely that the suspect is intending to hurt someone. It is not necessary that the person injured is the intended victim.</p> <p>Intent may be proved by:</p> <ul style="list-style-type: none"> - circumstantial evidence. This may include the suspect’s actions and/or words before, during or after the event; or - the circumstances and nature of the offence. For example, if the suspect had a baseball bat in a situation where it would not be normal to have one, it would suggest that the bat had been brought along as a weapon; or - the suspect’s explanation or, if there is no explanation, what can be inferred about what the suspect intended as the natural consequences of their action. <p>Intent can be inferred from the surrounding circumstances - <i>R v Collister</i> (1955) 39 Cr App R 100.</p>
Maims	<p>‘To maim’ means to cause serious bodily injury; for example, the loss of the use of an essential part such as an arm or an eye. Mere disfigurement is not enough. There must be permanent weakness or loss.</p>
Manslaughter	<p>Under section 171, except as provided in section 178 of the Crimes Act, culpable homicide not amounting to murder is manslaughter.</p>
Obstructs	<p>To intentionally ‘obstruct’, the act must be done “deliberately and intentionally” - <i>Hammerley v Scandrett</i> [1962] NZLR 455 and <i>Dash v Police</i> [1970] NZLR 273 refer.</p>
Reckless	<p>A person is ‘reckless’ if they have “a conscious appreciation of the danger or risk of damage if they continue with the course of conduct but proceeds] nevertheless” - <i>Campbell v Police</i> (unreported, High Court Dunedin, 18 November 1983, M143/83).</p> <p>“A person is reckless if:</p> <ul style="list-style-type: none"> - knowing that there is a risk that an event may result from their conduct or that a circumstance may exist, they take that risk; and - it is unreasonable for them to take it having regard to the degree and nature of the risk which they know to be present.” <p><i>R v Stephenson</i> [1979] QB 695 (CA).</p> <p>A person is reckless if they foresee that a course of action could well have dangerous consequences, but intends to continue in that course regardless of the risk - <i>R v Harney</i> [1987] 2 NZLR 576 (CA).</p> <p>In addition to a conscious appreciation of the risk on the part of the accused (a subjective enquiry), the risk must also be one which it is unreasonable to take - refer <i>R v Tipple</i> 22/12/05, CA217/05.</p> <p>Note that the specific requirement for an ‘intentional’ application of force means that recklessness is not sufficient to prove assault under section 2 Crimes Act 1961: (<i>R v Young</i> 9/7/92, CA86/92).</p>
Rendered any person incapable of resistance	<p>Whether a threat is capable of being ‘violent means’ (below) and ‘rendering the person incapable of resistance’ is a question of fact and depends upon the assessment by the jury of all the circumstances surrounding the making of the threat - <i>R v Crossan</i> [1943] NZLR 454.</p>
Stupefied	<p>To ‘stupefy’ means to cause an effect on the mind or nervous system of a person which really seriously interferes with that person’s mental or physical ability to act in any way which might hinder an intended crime. Whether such interference is really serious is a matter of fact and degree for a Court to determine. <i>R v Sturm</i> [2005] 3 NZLR 252 refers.</p>

Violent means	<p>See offences such as aggravated wounding (s191(1)). 'Violent means' should be given its ordinary meaning. It is a question of fact for the jury - R v Crossan [1943] 1 NZLR 375 refers.</p> <p>It is not limited to physical violence, but includes threats of violence such as the threat to shoot. Whether a threat is capable of being 'violent means', depends upon the assessment by the jury of all the surrounding circumstances.</p>
Wounds	<p>A person is 'wounded' if:</p> <ul style="list-style-type: none">- the skin has been broken, or- there is an internal injury caused by, for example, a kick. <p>The wound does not have to be dangerous, although more than a minimal flow of blood is required. A bleeding nose or a graze may not be sufficient to prove wounding. [Note: R v Waters says: Whether the bleeding of a nose caused by violence can amount to a wound for the purposes of section 188(1) may be a question of fact for determination in each case.]</p> <p>External wounds might include a stab wound from a knife or scalp lacerations from a broken beer bottle. An internal organ that has been split as a result of kicks to the abdomen would be an internal wound.</p> <p>A wound is a break in the skin. It is usually evidenced by bleeding, although the bleeding may be internal - R v Waters [1979] 1 NZLR 375 refers.</p> <p>Proof of permanent injury is not required - R v James (1980) 70 Cr App R 215 refers.</p>

Offences

Criminal Procedure Act 2011

A guide to categories of offences can be found in section [6](#) of the Criminal Procedure Act 2011.

Widely understood definitions for 'offence' and 'crime' were repealed by the Criminal Procedure Act 2011. The following informal definition is intended to provide assistance and has been drafted with assistance from legal experts.

'Offence' and 'crime' may be used interchangeably, and there is often no material difference between them. They may be described as any act or omission that is punishable under any enactment, and are demarcated into four categories as defined in section [6](#) of the Criminal Procedure Act 2011.

Offence and legislation table

This table details offences relevant to this chapter.

Offence and legislation	Jurisdiction
Assault with intent to commit sexual violation Section 129 (2) - Crimes Act 1961	Category 3 offence.
Wounding with intent to cause grievous bodily harm Section 188 (1) - Crimes Act 1961	Category 3 offence.
Wounding with intent to injure Section 188 (2) - Crimes Act 1961	Category 3 offence.
Injuring with intent to cause grievous bodily harm Section 189 (1) - Crimes Act 1961	Category 3 offence.
Injuring with intent to injure Section 189 (2) - Crimes Act 1961	Category 3 offence.
Strangulation or suffocation Section 189A	Category 3 offence.
Injuring by unlawful act Section 190 - Crimes Act 1961	Category 3 offence.
Aggravated wounding Section 191 (1) - Crimes Act 1961	Category 3 offence.
Aggravated injury Section 191 (2) - Crimes Act 1961	Category 3 offence.
Aggravated assault Section 192 (1) - Crimes Act 1961	Category 3 offence.
Aggravated assault on police constable Section 192 (2) - Crimes Act 1961	Category 3 offence.

Assaults and injuries to the person
Proactively released by New Zealand Police

Assault with intent to injure Section 193 - Crimes Act 1961	Category 3 offence.
Assault on child Section 194(a) - Crimes Act 1961	Category 3 offence.
Assault by male on female Section 194(b) - Crimes Act 1961	Category 3 offence.
Assault on person in family relationship Section 194A	Category 3 offence.
Ill-treatment or neglect of child or vulnerable adult Section 195 - Crimes Act 1961	Category 3 offence.
Failure to protect child or vulnerable adult Section 195A - Crimes Act 1961	Category 3 offence.
Common assault Section 196 - Crimes Act 1961	Category 2 offence.
Disabling Section 197 - Crimes Act 1961	Category 3 offence.
Discharging firearm or doing dangerous act with intent to cause grievous bodily harm Section 198(1) - Crimes Act 1961	Category 3 offence.
Discharging firearm or doing dangerous act with intent to injure Section 198(2) - Crimes Act 1961	Category 3 offence.
Using firearm against law enforcement officer Section 198A(1) - Crimes Act 1961	Category 3 offence.
Using firearm to resist arrest Section 198A(2) - Crimes Act 1961	Category 3 offence.
Commission of crime with firearm Section 198B - Crimes Act 1961	Category 3 offence.
Acid throwing Section 199 - Crimes Act 1961	Category 3 offence.
Poisoning with intent to cause grievous bodily harm Section 200(1) - Crimes Act 1961	Category 3 offence.

Poisoning with intent to cause inconvenience or annoyance Section 200(2) - Crimes Act 1961	Category 3 offence.
Infecting with disease Section 201 - Crimes Act 1961	Category 3 offence.
Setting trap or device with intent to injure Section 202(1) - Crimes Act 1961	Category 3 offence.
Permitting set trap likely to injure to remain Section 202(2) - Crimes Act 1961	Category 3 offence.
Assault with a weapon Section 202C - Crimes Act 1961	Category 3 offence.
Impeding rescue Section 204(1) - Crimes Act 1961	Category 3 offence.
Assault with intent to rob Section 236(1) - Crimes Act 1961	Category 3 offence.
Common assault Section 9 - Summary Offences Act 1981	Category 2 offence.
Assault on Police, prison or traffic officer Section 10 - Summary Offences Act 1981	Category 2 offence.

Note: The brief discussion of each offence provision below is designed to give the reader a general understanding of the elements of those offences that must be proved by the prosecution. When making actual charging decisions consult the online resources '[Westlaw](#)' or '[LexisNexis](#)'.

Coding offences against the person

When selecting a code always ensure the code reflects the appropriate Act, section and

- sub-section relating to the offence that occurred. For offences against the person:
- record an offence for each victim
- record the most serious offence against the person even when it is part of an offence against property (e.g. robbery)
- record every person offended against as a victim.

See '[Offences Against the Person Coding Guide](#)' in the National Recording Standard for further information relating to:

- coding definitions
- weapons and injuries
- when to record
- examples.

Ingredients of offences

Acid throwing (section 199 - Crimes Act 1961)

Ingredients:

- with intent to injure or disfigure anyone,
- threw at, or applied to any person,
- any corrosive or injurious substance.

Aggravated assault (section 192(1) - Crimes Act 1961)

Ingredients:

- with intent to:
 - commit or facilitate the commission of any imprisonable offence, or
 - avoid detection of self/another in commission of any imprisonable offence, or
 - avoid arrest or facilitate flight of self/another upon commission or attempted commission of any imprisonable offence
- assaulted any other person.

You must prove the intent of the offender:

- in relation to the commission or attempted commission of an imprisonable offence, and
- to assault.

Section [192\(1\)\(c\)](#) requires proof of the commission or attempted commission of a crime by the person committing the assault or by the person whose arrest or flight he intends to avoid or facilitate. [R v Wati and others](#) [(1984) 1 CRNZ 380] refers.

Aggravated wounding (section 191(1) - Crimes Act 1961)

Ingredients:

- with intent to:
 - commit or facilitate the commission of any imprisonable offence, or
 - avoid detection of self/another in commission of any imprisonable offence, or
 - avoid arrest or facilitate flight of self/another upon commission or attempted commission of any imprisonable offence
- wounds, maims, disfigures or causes grievous bodily harm to any person, or
- stupefies a person, or
- renders a person unconscious, or
- by any violent means renders any person incapable of resistance.

“Before an accused can be found guilty of an offence under section [191](#) or section [192](#), it must be shown the offender either meant to cause the specified harm, or foresaw that the actions undertaken by them were likely to expose others to the risk of suffering it”. [R v Tihi](#) [1989] 2 NZLR 29; (1989) 4 CRNZ 289 (CA) refers.

Note: Where a victim is seriously injured there is no need to prove that they were rendered incapable as a consequence. However, where the threat or injury has not been physically debilitating, you must prove the effect of the 'violent means' that it rendered the victim incapable of resistance. For instance, the victim may be held at gunpoint or tied up or so fearful of their safety that they are rendered incapable of resistance.

Note: The offences aggravated wounding or aggravated injury are essentially the same. The difference is in the degree of violence used in committing the offence.

Aggravated injury (section 191(2) - Crimes Act 1961)

Ingredients:

- with intent to:
 - commit or facilitate the commission of any imprisonable offence, or

- avoid detection of self/another in commission of any imprisonable offence, or
- avoid arrest or facilitate flight of self/another in commission
- injured any person.

Note: You must show the offender intended to injure as well as commit the offence.

“Before an accused can be found guilty of an offence under this section or section [192](#), it must be shown the offender either meant to cause the specified harm, or foresaw that the actions undertaken by him were likely to expose others to the risk of suffering it”. [R v Tihī](#) [1989] 2 NZLR 29; (1989) 4 CRNZ 289 (CA) refers.

For example, an attack on a prison officer with an iron bar in the course of an attempted escape was the employment of ‘violent means’, the purpose of which was to render the prison officer incapable of resistance.

Assault by male on female (section 194(b) - Crimes Act 1961)

Ingredients:

- male
- assaulted
- a female.

The charge should not automatically be used in all situations where a male has assaulted a female. The section should be used when the assault is more than trifling, and should be regarded as one possible charge among many in the scale of available charges.

See also: ‘[Family violence policy and procedures](#)’ of the Police Manual.

Assault on a child (section 194(a) - Crimes Act 1961)

Ingredients:

- assaulted
- a child under the age of 14 years.

See also:

‘[Child protection](#)’ related chapters of the Police Manual.

Assault on person in family relationship (section 194A - Crimes Act 1961)

Ingredients:

- Assaults another person; and
- is, or has been, in a family relationship with that other person.

Note: Family relationship has the same meaning as in section [12](#) of the Family Violence Act 2018.

(s [194A](#))

Aggravated assault on Police / person executing a process (section 192(2) - Crimes Act 1961)

Ingredients:

- assaulted:
 - any constable, or
 - person acting in aid of any constable, or
 - any person in the lawful execution of any process
- with **intent to obstruct** the person so assaulted in the execution of their duty.

You must also prove that:

- at the time of the assault the suspect ‘assumed’ that the victim was a constable or assistant or person seeking to serve a process (e.g. court bailiff)

- the assault was committed with the **intent to obstruct** the person assaulted **in the execution of their duty**.

[R v Simpson](#) [1978] 2 NZLR 221 (CA) refers.

The suspect must reasonably believe that the victim is a police officer etc. This may be inferred from the circumstances or conversation. *Ostler v Elliot* [1980] Crim LR 584 refers.

Note: Section [192\(2\)](#) differs from section [10](#) of the Summary Offences Act in these three respects:

- [192\(2\)](#) covers a wider range of people carrying out legal duties, such as people acting in aid of a constable, and people lawfully executing processes, such as bailiffs.
- The offender must have an intent to obstruct the person assaulted rather than as in Section [10](#) of the Summary Offences Act 1981 where it is necessary only that the constable is acting “in the execution of his duty”. The offence under subs [192\(2\)](#) may be committed if the offender believes the person assaulted to be in the execution of his or her duty and intends to obstruct that person therein, even if it should be found that, for technical or other reasons, that person was not in fact executing their duty.
- The Crimes Act penalty of 3 years imprisonment is greater than section [10](#) of the Summary Offences Act 1981 (e.g. 3 months/\$4000).

What constitutes ‘execution of duty’ is not rigidly defined. There is no complete list of duties a Police member may undertake. Moreover, although many Police duties and powers are set out in statute, some are not, such as the general duty at common law to protect life or property.

Section 48 defence

In [R v Christiansen](#) (2001) 19 CRNZ 256 (CA), the Court held that it was a defence to a charge under section [192\(2\)](#) if the accused, when interfering with an arrest by a constable, held an honest belief that the constable was using excessive force in effecting the arrest; the use of excessive force takes a constable outside the scope of their duty.

Assault on police, traffic or prison officer (section 10 - Summary Offences Act 1981)

Ingredients:

- assaulted any:
 - Police constable, or
 - Traffic Officer, or
 - Correctional Officer
- who was acting in the execution of their duty.

Note: For this offence, two kinds of intent are involved:

- the intent to **assault**, and
- the intent to obstruct **in the execution of duty**.

If there is doubt that the suspect knew or would reasonably have assumed that the victim was an officer acting in the execution of duty, it may be preferable to file a charge of common assault rather than lose the charge. For example, if a plain clothes officer is assaulted while breaking up a fight, the suspect may not realise at first who they are assaulting.

The degree of the assault is also a factor. This section is appropriate where the assault is trifling, and is on Police. However, if serious injury results, or it is difficult to prove that the defendant’s actions were intended to obstruct the victim in the execution of his duty, it may be more appropriate to lay another assault charge, such as under section [9](#) of the Summary Offences Act or section [196](#) of the Crimes Act.

Assault with a weapon (section 202C - Crimes Act 1961)

Ingredients:

- in assaulting any person,
- used any thing as a weapon;

or

- while assaulting any person,
- had any thing with them
- in circumstances that prima facie showed an intention to use it as a weapon.

Note: The phrase used is any thing. ‘Any thing’ could include a baseball bat, which can be deliberately used to swing at people, with the intent to assault.

Assault with intent to commit sexual violation (section 129(2) - Crimes Act 1961)

Ingredients:

- with intent to commit sexual violation
- assaulted any person.

Note: Sexual violation is the act of a person who:

- rapes another person; or
- has unlawful [sexual connection](#) with another person.

(s [128](#), Crimes Act 1961)

Assault with intent to injure (section 193 - Crimes Act 1961)

Ingredients:

- with intent to cause actual bodily harm
- assaulted any person.

It is not necessary that the intended harm (injury) occurred, nor is it necessary that the person assaulted is the person the defendant was actually intending to injure.

Consent will be a defence to a charge under this section unless the assault takes place in the course of a consensual fight or there are other “good policy reasons to forbid it”: [R v Lee](#) [2006] 3 NZLR 42; (2006) 22 CRNZ 568 (CA) refers.

Assault with intent to rob (section 236(1) - Crimes Act 1961)

See the [‘Robbery’](#) chapter.

Common assault (section 196 - Crimes Act 1961)

Ingredients

- assaulted any person.

Note: The ingredients of common assault are the same in both the Summary Offences Act and the Crimes Act. The difference lies in the nature of the assault. For example, common assaults best dealt with under the Summary Offences Act range from things like a simple push or a threat to assault someone, through to something like a punch that causes only minor injury or minor abrasions or bruising. The range of Crimes Act common assaults, on the other hand, may start at a punch that causes a major swelling or bruising, or that knocks a tooth out. A number of punches that cause more than a trifling, but not serious, injury would also constitute a Crimes Act common assault.

The decision on which charge to prefer must be based on the degree of assault, the severity of the injuries caused and the circumstances surrounding it.

Common assault (section 9 - Summary Offences Act 1981)

Ingredients:

- assaulted any person.

Ill-treatment or neglect of child or vulnerable adult (section 195 - Crimes Act 1961)

Ingredients:

- suspect:
 - has **actual care or charge** of the victim, or
 - is a **staff member** of any hospital, institution, or residence where the victim resides
- **intentionally**:
 - engaged in conduct that, or
 - omits to discharge, or perform any legal duty, the omission of which,
- is likely to cause suffering, injury, adverse effects to health, or any mental disorder or disability to a child or vulnerable adult (the victim) if the conduct engaged in, or the omission to perform the **legal duty**, is a **major departure** from the standard of care to be expected of a reasonable person.

Note: A child for the purpose of the section is a person under the age of 18 years. Where the victim is aged 18 or more it will also need to be shown that they were unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw from the care or charge of another person.

Intention and mens rea

The Court of Appeal in [Bentley v R](#) [2018] NZCA 371 determined intention under section [195](#) of the Crimes Act 1961 as being relevant to the conduct creating harm, not the harm itself. The mens rea of a charge for ill-treatment or neglect of a child under section [195](#) of the Crimes Act is focused solely on the conduct. The Crown need not prove that the defendant appreciated the risk of harm, only that the defendant intended to engage in the conduct that resulted in harm.

‘Actual care or charge’

‘Actual care or charge’ are not defined in legislation, but case law indicates:

- the meaning of the words is a question of law
- whether the accused had ‘actual care or charge’ is a question of fact.

Facts of each case will consider legal, temporary or permanent relationships and the right to the actual care of a child or vulnerable person.

‘Staff member’

The liability extends to all ‘staff members’ working in any hospital, institution or residence in which the child or vulnerable adult ‘resides’, irrespective of whether they can be seen as in charge of or involved in the care of the victim.

Likelihood of harm

Actual suffering, injury, adverse effects to health or mental disorder or disability need not be proved, only its likelihood. This requires a real or substantial risk of one or more of the proscribed harms, rather than any assessment or balancing of the probabilities: [R v Hende](#) [1996] 1 NZLR 153 (CA).

Intentionally engaging in conduct

Intentionally engaging in conduct means ill-treatment must have been inflicted deliberately with a conscious appreciation that it was likely to cause unnecessary suffering. Put another way, the conduct or failure to act must be more than merely accidental.

Breach of legal duty

Section [195](#) does not in itself impose positive obligations on either those having actual care or charge of a child or vulnerable person or the staff of relevant institutions. The primary legal duties relevant to charges under this section are those in ss [151-152](#), requiring children and vulnerable adults to be provided with ‘necessaries’ and to be protected from injury. However the use of the term ‘legal’ duties means that, liability is not limited to breaches of statutory duty and will extend to relevant common law duties when they differ from those enshrined in statute: [R v Mwai](#) [1995] 3 NZLR 149, (1995) 13 CRNZ 273 (CA), at 156, 281; [R v Lunt](#) [2004] 1 NZLR 498.

Act or omission constituting a ‘major departure’

The fact that a suspect was simply ignorant, unthinking, careless or lax in acting, or failing to act when he or she should have will not be

sufficient. The behaviour creating the risk of harm must go further and be a 'major departure' from what is acceptable in those having care or charge of others or who are employed in relevant institutions.

Failure to protect child or vulnerable adult (Section 195A - Crimes Act 1961)

This charge is best reserved for situations involving a pattern of physical ill-treatment and neglect over a period of time.

Ingredients:

- suspect is:
 - a member of [the same household as the victim](#); or
 - a person who is a [staff member](#) of any hospital, institution, or residence where the victim resides
- had [frequent contact](#) with the child or vulnerable adult (the victim)
- [knew the victim was at risk](#) of death, grievous bodily harm, or sexual assault as the result of:
 - an unlawful act by another person; or
 - an omission by another person to discharge or perform a legal duty if, in the circumstances, that omission is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies
- [fails to take reasonable steps to protect](#) the victim from that risk.

Note: A person may not be charged with this offence if they were under the age of 18 at the time of the act or omission.

Members 'of the same household as the victim'

A person is to be regarded as a member of a particular household, even if they do not live in that household, if that person is so closely connected with the household that it is reasonable, in the circumstances, to regard them as a member of the household. ([s 195A\(4\)\(a\)](#)).

Where the victim lives in different households at different times, the same household refers to the household in which the victim was living at the time of the act or omission giving rise to the risk of death, grievous bodily harm, or sexual assault ([s 195A\(4\)\(b\)](#)).

In determining whether a person is so closely connected with a particular household as to be regarded as a member of that household, consider the frequency and duration of visits to the household, whether the person has a familial relationship with the victim and any other matters that may be relevant in the circumstances ([s 195A\(5\)](#)).

See, the '[Definitions](#)' section for the meaning of 'household'.

Having 'frequent contact'

The requirement of frequent contact is a 'free standing' one, without which the prosecution cannot succeed. Whether the contact between the suspect and the victim can be regarded as sufficiently 'frequent' is a matter of fact for the jury, and the phrase will generally need no further explanation: *R v Khan* [2009] EWCA Crim 2, [2009] 1 WLR 2036.

Knowledge of the risk of harm

Section [195A](#) requires that the defendant "know" that there is a likelihood that some unlawful act or serious breach of duty by another person will expose the victim to the risk of death or serious harm. 'Knowledge, both as to the likely occurrence of the relevant act or omission and as to the resulting risk to the victim, requires either certainty or at least an assumption or belief with 'no substantial doubt': *R v Simpson* [1978] 2 NZLR 221 (CA) at 225; *R v Crooks* [1981] 2 NZLR 53 (CA); *Kerr v R* [2012] NZCA 121. Merely being suspicious or reckless as to the existence of the risk will not constitute "knowledge".

However, where the defendant is aware that the victim is very likely to be at risk but deliberately fails to follow the matter up, either for fear of confirming their suspicions or because they do not want to get involved and wish to be able to deny knowledge if the worst happens, such 'wilful blindness' may itself supply the necessary *mens rea*.

Failure to take reasonable steps to protect the victim

The requirement is simply to take "reasonable steps". Provided that the jury is satisfied that the defendant failed to respond to the situation in the way that a reasonable person should have, the section will be satisfied. There is no need for the failure to act properly to be 'gross' or a 'major' departure from the expected standards.

Disabling (section 197 - Crimes Act 1961)

Ingredients:

- wilfully and without lawful justification or excuse,
- stupefied or rendered unconscious any other person.

Discharging firearm or doing dangerous act with intent - intent to cause grievous bodily harm (section 198(1) - Crimes Act 1961)

Ingredients:

- with intent to do grievous bodily harm:
 - discharged any firearm, airgun, or other similar weapon at any person, or
 - sent or delivered to any person, or put in any place, any explosive or injurious substance or device, or
 - set fire to any property.

Section [198](#)(1)(a) requires intention to shoot at the person and the discharge of the weapon. Recklessness, rather than intention to shoot a person is not enough.

Discharging firearm or doing dangerous act with intent - intent to injure (section 198(2) - Crimes Act 1961)

Ingredients:

- with intent to injure, or
- with reckless disregard for the safety of others:
 - discharged any firearm, airgun, or other similar weapon at any person, or
 - sent or delivered to any person, or put in any place, any explosive or injurious substance or device, or
 - set fire to any property.

Section [198](#)(2) does not require that an explosion be caused. However, it is arguable that prosecution must go further and prove that the explosive in question did, in the circumstances, have the capacity to explode.

Injuring by unlawful act (section 190 - Crimes Act 1961)

Ingredients:

- their act or omission
- resulted in injury to any person
- in circumstances that if death occurred it would have been manslaughter.

An unlawful act must inevitably be recognised by all sober and reasonable persons as such. As well, as a result of the unlawful act other persons must be subject to some risk of harm albeit not serious. *R v Church* [1966] 1 QB 59; [1965] 2 WLR 1220; [1965] 2 All ER 72 (CA) refers.

Injuring with intent to cause grievous bodily harm (section 189(1) - Crimes Act 1961)

Ingredients:

- with intent to cause grievous bodily harm to anyone
- injured any person.

Injuring with intent to injure (section 189(2) - Crimes Act 1961)

Ingredients:

- with intent to injure anyone, or
- with reckless disregard for the safety of others:
 - injured any person.

The difference between sections [188](#) and [189](#) is that the final result of the assault in the section [189](#) offence is only injury.

Consequently, the penalties are less severe under section [189](#) than section [188](#).

Using a firearm against a law enforcement officer (section 198A(1) - Crimes Act 1961)

Ingredients:

- used any firearm
- in any manner
- against a constable, traffic officer or Prison officer acting in the execution of their duty
- knowing, or being reckless as to whether, that person is a constable, traffic officer or prison officer.

Note: Using in any manner means the firearm is physically used, and includes when used as a club. Presenting the firearm at the officer, let alone discharging the weapon, is not needed. The accused must handle or manipulate the firearm in some way to convey the implied threat of its use.

Using any firearm in any manner whatsoever includes removing a sawn-off shotgun from a bag when confronted by a police officer [R v Swain](#) (1992) 8 CRNZ 657] refers.

Using a firearm to resist arrest (section 198A(2) - Crimes Act 1961)

Ingredients:

- used any firearm
- in any manner
- with intent to resist lawful arrest or detention of themselves or any other person.

With intent to resist

The prosecution must prove that the accused knew someone was attempting to arrest or detain them. [Fisher v R](#) (1988) 3 CRNZ 250 refers.

See the '[Arms](#)' chapter of the Police Manual.

Commission of a crime with firearm (section 198B - Crimes Act 1961)

Ingredients:

- in committing any imprisonable offence, used any firearm, or while committing any imprisonable offence has any firearm with them
- in circumstances that prima facie show an intent to use it in connection with the imprisonable offence.

The courts have indicated that "having with him a firearm" requires "a very close physical link and a degree of immediate control over the weapon by the man alleged to have the firearm with him": [R v Kelt](#) [1977] 1 WLR 1365; [1977] 3 All ER 1099 refers.

Mere possession is insufficient; there must be accompanying circumstances showing *prima facie* intention to use the firearm. *Prima facie* has its ordinary meaning, that is, on the face of it, as at first appearance or first sight. '*Prima facie* circumstances' are those which are sufficient to show or establish an intent in the absence of evidence to the contrary": [Tuli v Police](#) (1987) 2 CRNZ 638 refers.

Poisoning with intent to cause grievous bodily harm (section 200(1) - Crimes Act 1961)

Ingredients:

- with intent to cause grievous bodily harm to anyone:
 - administered to, or
 - caused to be taken by
- any person:
 - poison, or
 - noxious substance.

Administration means to give or apply and this need not be by mouth. Administration can occur by other means, such as by inhalation.

A substance is noxious if, in light of factors relating to its administration it is capable of effecting consequence set out in the section, i.e. grievous bodily harm. Alcohol may be a poison or noxious substance for the purpose of this section.

Poisoning with intent to cause inconvenience or annoyance (section 200(2) - Crimes Act 1961)

Ingredients:

- with intent to cause:
 - inconvenience, or
 - annoyance
- to any one, or for any unlawful purpose:
 - administers to, or
 - causes to be taken by
- any person:
 - poison, or
 - noxious substance.

Intent is not to cause grievous bodily harm, but instead to cause annoyance. An example could include injecting diuretic (acting to increase the flow of urine) medication into a watermelon to be consumed at a party as a 'joke'. People eating the melon experience diuresis (frequent and excessive urination) that could disturb their electrolyte balance and be harmful.

Infecting with disease (section 201 - Crimes Act 1961)

Ingredients:

- wilfully and without lawful justification or excuse
- caused or produced
- in any other person
- any disease or sickness.

Wilfully

It is not enough that the causative act was deliberate. "Wilfully" means that the defendant intended to cause or produce the disease, and recklessness is not sufficient: [R v Mwai](#) [1995] 3 NZLR 149 (1995) 13 CRNZ 273 (CA), at 152.

Setting trap or device with intent to injure (section 202(1) - Crimes Act 1961)

Ingredients:

- with intent to injure, or with reckless disregard for the safety of others:
 - set, or
 - placed, or
 - caused to be set or placed
- any trap or device
- that is likely to injure any person.

Note: There is nothing in section [202\(1\)](#) to limit the "trap or device" to mantraps, it is sufficient that the trap or device should be "likely to injure any person". For example, setting a possum trap in a cannabis growing area to protect discovery and interference of the plot.

Permitting set trap likely to injure to remain (section 202(2) - Crimes Act 1961)

Ingredients:

- in occupation or possession of any place where
- any trap or device has been:
 - set, or
 - placed; and
- knowingly and wilfully

- permitted the trap or device to remain there
- in such a condition that any person is likely to be injured.

Impeding rescue (section 204(1) - Crimes Act 1961)

Ingredients:

- without lawful justification or excuse
 - prevented, or
 - impeded, or
 - attempted to prevent or impede
- any person attempting to save:
 - their own life, or
 - the life of any other person.

Note: No one is guilty of impeding rescue in the course of saving their own life or the life of another person ([s 204\(2\)](#)). The section imposes no duty to assist any effort to save life.

Strangulation or suffocation (section 189A - Crimes Act 1961)

Ingredients:

- Intentionally or recklessly
 - impedes another person's normal breathing, blood circulation, or both, by doing (manually, or using any aid) all or any of the following:
 - blocking that other person's nose, mouth, or both:
 - applying pressure on, or to, that other person's throat, neck, or both.

([s 189A](#))

Case law

The [Ackland v New Zealand Police](#) [2019] NZHC 312 and the [Shramka v R](#) [2022] NZCA 299 cases provide guidelines for the sentencing of defendants convicted of strangulation or suffocation offences under section [189A](#) of the Crimes Act 1961.

Relevant aggravating factors for strangulation include:

- premeditation
- history of strangulation or prior violence in the context of a domestic or intimate relationship
- vulnerability of the victim
- enduring harm to the victim
- threats, particularly threats to kill
- harm to associated persons
- aggravated violence
- loss of consciousness
- home invasion/breach of protection order

The judgments provided appropriate bands (lower end cases, mid-range or moderate cases and highest end cases) to assist the courts with determining sentencing outcomes. The sentencing decision on appeal of two years, nine months' imprisonment was not manifestly excessive.

Note: For investigations into offences against section [189A](#), Police employees should gather evidence (when available) of the aggravating factors noted above.

Wounding with intent to cause grievous bodily harm (section 188(1) - Crimes Act 1961)

Ingredients:

- with intent to cause grievous bodily harm to anyone:

- wounded, or
- maimed, or
- disfigured, or
- caused grievous bodily harm to
- any person.

The use of the word “causes” means the offender’s actions were responsible for the harm.

It is not material that there is no great harm caused to the victim. It is sufficient that there was an intent to do grievous bodily harm and that harm resulted. *R v Hunt* (1825) 1 Mood CC 93; 168 ER 1198 refers.

Wounding with intent to injure (section 188(2) - Crimes Act 1961)

Ingredients:

- with intent to injure anyone, or
- with reckless disregard for the safety of others:
 - wounded, or
 - maimed, or
 - disfigured, or
 - caused grievous bodily harm to
- any person.

Section [188\(2\)](#) outlines two types of culpability, drawing a distinction between someone who:

- acts intending to cause harm (**intent**), and
- may not necessarily intend harm but is aware of such risk and acts anyway (**reckless disregard**).

Examples of ‘reckless disregard’ could include:

- Allowing a child to ride on a tractor that is not designed to carry passengers.
- A person extinguishing the lights in the stairway to the street and throwing an iron bar across the exit door at the end of a theatre performance. In the almost total darkness panic ensues and two members of the audience are seriously injured.

Note: The difference between subsections [188\(1\)](#) and [188\(2\)](#) relates to the suspect’s intent when doing the act that caused the injury. This difference is reflected in the penalties.

Consider self defence under section [48](#) (self-defence and defence of another) of the Crimes Act 1961. For example, the appellant, charged under section [188\(2\)](#), (wounding with intent) claimed they acted in self-defence in striking the complainant in the face with a spanner because they were worried about their own personal safety. “In this case it is difficult to see how the reasonable possibility of self-defence could have been made out. There had been no actual threat given to the appellant. There was no imminence of danger. The response of the appellant was totally out of proportion to the predicament he was facing.” *Morrison v R* (1989) 5 CRNZ 180 refers.

Arrest

Power of arrest

For any of the above offences, you can arrest without warrant if you have good cause to suspect that the offence has been committed and arrest is authorised under section [315](#) of the Crimes Act 1961 or section [39\(1\)](#) of the Summary Offences Act 1981.

Section [315](#) of the Crimes Act authorises arrest, without warrant, of any person suspected of committing a breach of the peace, suspected of committing an offence punishable by imprisonment, or found to be disturbing the public peace or committing an act punishable by imprisonment.

Section [39\(1\)](#) of the Summary Offences Act authorises a constable to arrest, without warrant, any person suspected (on good cause) of committing an offence against specified sections of that Act, including sections [9](#) and [10](#).

Defences and use of force

The defence of consent

As a general rule a person can consent to the application of force that causes harm short of serious bodily harm or death. The common law defence to assault (consent) is preserved by s [20\(1\)](#) of the Crimes Act. A genuine belief in consent is a defence. If there is evidence from which consent can reasonably be inferred, the prosecution must prove consent was not given.

This is a complex area of law and legal advice will be required if consent is raised as a defence to a charge of assault.

Implied consent

People commit technical assaults every day when they touch, shake hands, kiss, or hug. The person doing the touching assumes the other person will consent. The acquiescence of the person being touched - say by holding out his own hand to be shaken or turning her cheek to be kissed is implied consent.

Another example of implied consent occurs in contact sport. A blow struck in sport that is not likely, or intended, to cause bodily harm is not assault because the person struck has impliedly consented to accept the reasonable risks associated with the sport.

There is a difference between technical assaults that occur in a game and assaults that take place against the backdrop of the game. In [R v Tevaga](#) [1991] 1 NZLR 296, the accused delivered a blow that was likely to, and did, cause serious injury. The matter was prosecuted, with the Court finding that these sorts of assaults cannot be tolerated by the community or the courts.

Consent to harm

[R v Lee](#) (2006) 22 CRNZ 568 involved a death occurring during an 'exorcism'. The 'exorcists' were charged with manslaughter. While no one may consent to their own death Lee's case is less clear because it involved consent to the assault that occurred as part of the 'exorcism'. Death was an unintended outcome of an assault that was otherwise lawful.

The general rule is that consent is a complete answer where there was neither intentional harm nor recklessness on the part of the person applying force and what occurred came within the scope of consent. Whether or not consent as a defence should be excluded in a particular case is determined by the Judge as a preliminary matter, with full reasons to be given.

Otherwise consent is a question that must be left for the jury to determine. It is very important that the jury assess exactly what was consented to. Consent is only a defence if the acts in issue come within the scope of the activity consented to. [R v Lee](#).

It is uncertain to what extent a person may consent to danger of death or bodily harm. If say a person tries to shoot a cigarette held in someone's mouth and injures that person, the shooter could be charged with injuring by unlawful act and it will be no defence to that charge that the person consented to the attempt being made. If the person holding the cigarette dies in the attempt, the shooter could be charged with manslaughter ([R v McLeod](#) (1915) 34 NZLR 568 (CA) refers).

In [R v S](#) [2016] NZHC 1185, the High Court held that the common law of New Zealand does not permit consent to be used as a defence to the intentional infliction of serious harm to a domestic partner where the purpose of the infliction of serious harm is to punish the consenting partner and where the consenting partner is particularly vulnerable by age, financial reliance, psychological problems and gender.

The principle is that consent will provide a defence to harm short of serious harm or death, whether inflicted intentionally or recklessly "unless there are good policy reasons to forbid it".

Justification

The defence of lawful use of force

The use of force is authorised in law when it is reasonable in the circumstances and is used for these specified purposes.

Specified purpose	Provision
The execution of legal process, lawful arrest, preventing escape or suicide and suppressing riots.	Sections 39 , 40 , 41 , 42 , 43 , 44 , 45 , 46 and 47 Crimes Act 1961
Self defence and the defence of others	Section 48 Crimes Act 1961
The defence of property.	Sections 52 , 53 , 55 and 56 Crimes Act 1961
Parental control	Section 59 Crimes Act 1961
Discipline on ships and aircraft.	Section 60 Crimes Act 1961
Surgical operations.	Section 61 and 61A Crimes Act 1961
Identifying particulars of person in custody.	Section 32 Policing Act 2008
Power of detention incidental to powers to search places and vehicles.	Section 118 (4) Search and Surveillance Act 2012
The exercise of a search power to search a person	Section 125 (1)(e) Search and Surveillance Act 2012
To the extent required to effect entry into or onto the place, vehicle or other thing, if following a request to enter, the person present: - refuses entry, or - does not allow entry within a reasonable time.	Section 131 (3)(b) Search and Surveillance Act 2012

Assault related procedures

Initial action

Because many serious assaults take place in public places, where evidence is quickly lost or destroyed, your initial action is crucial. Remember to:

- Guard.
- Control.
- Freeze.
- Preserve.

For detailed procedures, see the '[Part 1 Initial response to homicide or serious crime](#)' in the 'Homicide and serious crime investigations' chapter of the Police Manual.

The victim's condition

If the assault is serious, forensic evidence should be collected by following these steps.

Step	Action
1	Arrange for a full medical examination by a registered medical practitioner, using a Medical Examination Kit (MEK).
2	Obtain a full, written, doctor's report on the victim's injuries and condition.
3	Assign a constable to stay with the victim to provide SITREPS on the victim's condition and obtain a subsequent interview. If the victim's condition is life threatening, consider obtaining a 'dying statement'.
4	Obtain photographs of the victim's injuries. Ideally, these should be taken by a Police photographer, but if the photographer is unavailable then you may use your mobility device to take digital images. See the 'Digital imaging guidelines (Taking, downloading and securing images)' section in the Photography (Forensic imaging) chapter. The section outlines the digital imaging process to: <ul style="list-style-type: none">- ensure any images they take will be accepted by courts as reliable evidence- minimise the risk of legal challenges around whether the image could have been compromised.

Statements

In all circumstances, obtain a written statement from the victim. See the relevant parts of the [Interviewing](#) chapter for guidance on investigative interviewing.

Evidence

See:

- the '[Crime scene examination](#)' chapter for guidance on gathering evidence
- the '[Crime scenes and forensics](#)' chapters for further information on collecting evidence.

Further enquiries

Follow these steps.

Step	Action
1	Interview all witnesses and obtain full, written statements. Those who are too intoxicated to be interviewed immediately after the assault must be followed up as soon as they are sober.
2	Also interview and obtain statements from medical staff such as ambulance officers.
3	Consider: <ul style="list-style-type: none">- if the offender is unknown, interviewing (where appropriate):<ul style="list-style-type: none">- neighbours- transport operators- vendors- shift workers- hospital staff- using the media to publicise the offence and obtain information from the public- preparing a computer sketch of the suspect- the possibility that the incident may have been monitored by security cameras.
4	As you receive information, eliminate suspects.

Interviewing the suspect

Follow these steps.

Step	Action
1	Interview the suspect and obtain a statement.
2	Note and photograph any injuries (remember that bruising may take some time to show).
3	Consider arranging for a full medical examination by a doctor in order to establish any injuries and identifying features, and to obtain forensic samples.
4	If possible, obtain a voluntary DNA sample.

Charging

Follow these steps.

Step	Action
1	Decide whether to charge. Remember that assault-related charges under the Summary Offences Act 1981 have a 12 month time limit for filing, per section 25(3)(b) of the Criminal Procedure Act 2011.
2	If the assault was on a Police or Prison officer, and there is doubt whether the officer was acting in the strict execution of duty, consider filing a charge of common assault rather than charging under section 10 of the Summary Offences Act 1981.
3	<p>If a person has already been convicted or acquitted on a charge, you cannot charge him/her with an offence arising from the same incident that is substantially the same as the charge already filed. Police sometimes wish to file a further charge that has an element that may increase the punishment to which the person may be subject. For example a conviction or acquittal for common assault is a bar to a prosecution for aggravated assault arising from the same acts. See sections 46 and 47 of the Criminal Procedure Act 2011.</p> <p>The principle does not apply insofar as a prior conviction is concerned if the offence later charged had not been committed when the first charge was filed or if the more serious offence could not reasonably have been charged at the earlier time. For example, a person convicted of assault may be charged with murder if the assault victim dies within a year and a day from injuries sustained in the assault.</p> <p>Where a serious assault is being investigated and the person might die of his/her injuries, it may be appropriate to charge with an offence relating to the assault if the test for prosecution is met for that offence. Should the victim's condition deteriorate, so that the assault charge no longer represents the seriousness of the offending, it might be appropriate to request that the court not enter the conviction (assuming the accused pleads or is found guilty) until the situation becomes clearer.</p> <p>If evidence that supports the more serious charge (such as manslaughter) was not available when the accused was charged with assault (because the victim is still alive), the accused's plea to that charge of assault will not prevent the more serious charge being filed. However, if the victim had died when the assault charge was filed, so that the more serious charge of manslaughter was available at the time of charging, then it is open for the accused to plead previous conviction.</p> <p>In practice, it is preferable to file a very serious assault charge, or one of attempted murder, without prejudice to filing a homicide charge if the victim should later die.</p> <p>If the victim has died, but the available evidence did not support a charge of homicide being filed against the assailant it is necessary to document those evidential gaps. Those same evidential gaps may justify the filing of a less serious charge, such as assault. Clearly documenting reasons for and against filing charges from the outset will help guide decision making throughout the investigation period.</p> <p>A person may not be tried for an offence for which he/she has been already acquitted or convicted; sections 46 and 47 of the Criminal Procedure Act 2011 refer here as well (see also section 26(2) of the New Zealand Bill of Rights Act 1990. This is the rule of double jeopardy. There are these two exceptions to the general principle of double jeopardy:</p> <ul style="list-style-type: none"> - A tainted acquittal; a person acquitted of an imprisonable offence may later be found guilty of perjury or intimidating a witness to the original proceedings. In such a case the person may be convicted of an administration of justice offence, as well as re-tried on the original offence. - Compelling new evidence, not available at time of the original trial, and that indicates with a high degree of probability that the person is guilty, has come to light. <p>Refer sections 151 - 156 of the Criminal Procedure Act.</p>
4	<p>In cases of serious assault where the victim may die, you can:</p> <ul style="list-style-type: none"> - charge the suspect with an assault appropriate to the circumstances - seek a remand without plea - in cases where a plea is entered, inform the court of the circumstances and seek a remand without conviction - prefer a more appropriate charge, and withdraw the original charge at a later date if the victim's condition or the circumstances dictate.

Printed on : 05/09/2023

Printed from : <https://tenone.police.govt.nz/pi/police-manual/investigations-and-intelligence/investigating-offences/assaults-and-injuries-person>