

ASSAULT OCCASIONING ACTUAL BODILY HARM

Offences Against the Person Act 1861

47. - Whosoever shall be convicted ... of any assault occasioning actual bodily harm shall be liable to imprisonment ...

Maximum Sentence:

Offences Against the Person Act 1861, s.47

Indictment: 5 years imprisonment or an unlimited fine or both (for offences committed before 28 September 2004)
7 years imprisonment or an unlimited fine or both (for offences committed on or after 28 September 2004)

Magistrates' Court (NI) Order 1981, Art.46(4)

Summary: 12 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Assault resulting in relatively minor injury but amounting to actual bodily harm	3 months Custody* + Compensation Order	Community Order to 6 months Custody** + Compensation Order
Assault resulting in relatively serious injury OR Assault involving the use of a weapon	4 months Custody* + Compensation Order	Community Order to 9 months Custody** + Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	6 months Custody* + Compensation Order	Community Order to 12 months Custody + Compensation Order

* Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it shall use a starting point higher than that prescribed.

** Where a court finds the offence was 'committed in the context of domestic violence' or where 'the victim was engaged in providing a service to the public' it may impose a sentence outside the prescribed sentencing range.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Head-butting, biting, attempted strangulation or spitting 2. Offence was premeditated 3. Offence motivated by, or demonstrating, hostility to victim on account of his membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*** 4. Abuse of position of trust 5. Offender was member of a group committing the offence 6. Victim is particularly vulnerable 7. Additional degradation of the victim 8. Offence committed in the presence of a child 9. Offence committed in victim's home or workplace 10. Offender prevented victim from seeking or obtaining help 11. Victim forced to leave home 12. Offence took place in an isolated area 13. Assault committed in the context of 'road rage' 	<ol style="list-style-type: none"> 1. Provocation

Relevant Cases:

NI Cases:

1. R v McCullough (19 December 1997)(Unreported)
2. R v D [2002] NICA 10
3. R v PH [2011] NICA 64
4. R v Balmer and Wilson [2015] NICA 40

English Cases:

1. R v Graham [1993] Crim LR 628
2. R v Barnes (1993) 14 Cr App R(S) 547
3. R v Audit (1994) Cr App R(S) 36
4. R v Marples [1998] 1 Cr App R (S) 335
5. R v Sharpe [2000] 1 Cr App R(S) 1

Notes:

1. ***Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated (Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. 'Reasonable punishment' of the child is not a defence to an offence under s.47 (Law Reform (Miscellaneous Provisions) (NI) Order 2006, Article 2).
3. Indictable offence triable summarily with consent of the accused (Art.45 of, and Sch.2 to, the Magistrate's Court (NI) Order 1981).
4. The maximum summary sentence in E&W is only 6 months imprisonment compared to 12 months in NI.
5. Can be an offence of 'violence' for the purposes of a 'Regulated Match Banning Order' – Section 44 of the Justice Act (NI) 2011

6. A 'specified offence' for the purposes of a 'Violent Offender Prevention Order' where the offence is committed against a vulnerable adult (within the meaning of Article 2(2) of the Safeguarding Vulnerable Groups (NI) Order 2007), a person under the age of 18, or a person living in the same household as the offender. – Section 55 of the Justice Act (NI) 2015