

## Factors which influence the sentencing of domestic violence offenders

Clare Ringland and Jacqueline Fitzgerald

**Aim:** To show the pattern of sentencing for a range of domestic violence offences in the NSW Local and District Criminal Courts, and identify the characteristics which influence whether offenders guilty of domestic violence-related assault receive a sentence of imprisonment.

**Method:** Data were sourced from the NSW Bureau of Crime Statistics and Research's recorded criminal incident database and Reoffending Database. Domestic violence-related offences finalised in NSW Local and District Courts between January 2008 and June 2009 were identified by reference to the original police report and the use of domestic violence-specific law part codes. A multivariable model was developed to identify the factors influential in the sentencing of domestic assault offenders.

**Results:** Offenders found guilty of a domestic violence-related assault are more likely to receive a prison sentence if: the assault caused significant harm, the offender has a concurrent offence at the court appearance, a prior prison episode, a prior conviction for a violent offence, has breached an AVO in the previous two years, is male or Indigenous.

**Conclusion:** Domestic violence appears before the courts in many forms, from the most serious assaults to property damage and offensive language. The penalties received for these offences are equally diverse. The factors which influence whether a domestic violence-related assault offender will be sentenced to prison generally reflect the severity of the offence and the criminal history of the offender.

### INTRODUCTION

In 2005, approximately 1.4 per cent of adult women in Australia had experienced a physical assault perpetrated by either their current or former partner<sup>1</sup> in the previous 12 months. Of the women who had experienced a physical assault, 37 per cent reported the incident to police (ABS 2006). In 2009, the New South Wales Police Force recorded 26,000 incidents of domestic violence-related assault. In the same year the NSW Police Force commenced court proceedings against nearly 16,000 people for domestic violence-related assault incidents.

While the occurrence, prevalence and characteristics of domestic violence are major areas of inquiry, less attention has been directed to what happens to these offenders when they reach the courts. One reason for this is that, up until recently, charges laid in NSW in response to an assault in a domestic context have been indistinguishable from those arising out of assault incidents not involving domestic violence. By matching court records back to their original police incident and by using some new domestic violence-specific law part codes<sup>2</sup> it has been possible to identify court proceedings that have arisen from incidents which are domestic violence-related.

#### Aim

Two questions are addressed in this brief:

1. What sentences do people convicted of domestic violence offences receive?

2. What factors influence whether people guilty of domestic violence-related assault receive a prison sentence?

In answering the first question we have considered offences of assault as well as other common offences arising from domestic violence incidents, including breaching apprehended violence orders (AVOs), property damage, stalking and intimidation, trespass, offensive behaviour and offensive language. In answering the second question we have considered the influence of a range of personal and criminal justice factors in sentencing.

### METHOD

#### Data sources and study sample

This study draws upon data contained in databases built and maintained by the NSW Bureau of Crime Statistics and Research. These databases include criminal incidents recorded by the NSW Police Force, court appearances finalised in the NSW criminal courts and the NSW Bureau of Crime Statistics and Research Reoffending Database (ROD).

Historically, court data has not indicated whether offences are domestic violence-related. As a result, it has been difficult to track the outcomes of charges arising out of domestic violence incidents. This problem has been addressed recently in NSW legislation with the commencement in March 2008 of over one

**Table 1. Principal penalty received for domestic violence-related offences most commonly appearing in NSW Local and District Courts**

Penalty	Common assault		Breach AVO		Assault occasioning actual bodily harm		Destroy or damage property		Stalk/ intimidate with intent to cause fear of physical/ mental harm		Use carriage service to menace/ harass/ offend		Recklessly wound any other person		Armed with intent to commit indictable offence		Recklessly cause grievous bodily harm		Behave in offensive manner		Use offensive language		Affray		Enter inclosed land without lawful excuse	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Imprisonment	530	7.2	802	16.9	611	17.6	82	3.6	156	11.9	4	3.1	47	37.9	27	40.9	32	60.4	1	2.1			9	20.5		
Home detention			1	0.0																						
Periodic detention	35	0.5	39	0.8	46	1.3	5	0.2	8	0.6			3	2.4			3	5.7								
Suspended sentence with supervision	294	4.0	348	7.3	264	7.6	66	2.9	96	7.3	2	1.6	21	16.9	9	13.6	7	13.2					2	4.5		
Suspended sentence without supervision	168	2.3	188	4.0	144	4.2	42	1.8	45	3.4	4	3.1	7	5.6	2	3.0	1	1.9					2	4.5	1	2.3
Community service order	226	3.1	191	4.0	190	5.5	65	2.8	53	4.1	3	2.4	11	8.9	2	3.0	3	5.7					6	13.6		
Bond with supervision	1,134	15.4	621	13.1	588	17.0	312	13.6	226	17.3	10	7.9	13	10.5	11	16.7	2	3.8	5	10.4	1	2.1	3	6.8		
Bond without supervision	2,177	29.6	1,016	21.4	1,011	29.1	487	21.2	440	33.7	37	29.1	19	15.3	13	19.7	5	9.4	4	8.3			10	22.7		
Fine	1,006	13.7	808	17.1	233	6.7	656	28.5	131	10.0	25	19.7	1	0.8					29	60.4	40	83.3	5	11.4	30	69.8
Nominal sentence	50	0.7	184	3.9	12	0.3	35	1.5	8	0.6									2	4.2	3	6.3			3	7.0
Bond without conviction	1,401	19.1	331	7.0	317	9.1	381	16.6	119	9.1	32	25.2	2	1.6	2	3.0			3	6.3	1	2.1	7	15.9	7	16.3
No conviction recorded	324	4.4	208	4.4	52	1.5	166	7.2	24	1.8	10	7.9							4	8.3	3	6.3			3	7.0
No action taken	6	0.1			1	0.0	2	0.1	1	0.1																
<b>Total</b>	<b>7,351</b>	<b>100.0</b>	<b>4,737</b>	<b>100.0</b>	<b>3,469</b>	<b>100.0</b>	<b>2,299</b>	<b>100.0</b>	<b>1,307</b>	<b>100.0</b>	<b>127</b>	<b>100.0</b>	<b>124</b>	<b>100.0</b>	<b>66</b>	<b>100.0</b>	<b>53</b>	<b>100.0</b>	<b>48</b>	<b>100.0</b>	<b>48</b>	<b>100.0</b>	<b>44</b>	<b>100.0</b>	<b>44</b>	<b>100.0</b>

Note: The Appendix contains more information about these offences (Table A1), and the penalties received (Table A2)

**Table 2. Description of sentences of imprisonment received for domestic violence-related offences, January 2008 to June 2009**

Offence type	n	Duration (months)			
		mean	median	minimum	maximum
Common assault (N=7,351)	530	4.64	4	0.17	18.00
Breach AVO/order (N=4,737)	802	4.71	4	0.03	24.00
Assault occasioning actual bodily harm (N=3,469)	611	7.35	6	0.03	36.00
Destroy or damage property (N=2,299)	82	4.24	3	0.23	18.00
Stalk or intimidate with intent to cause fear of physical or mental harm (N=1,307)	156	5.36	5	0.23	15.00
Recklessly wound any other person (N=124)	47	10.38	10	2.00	24.00
Armed with intent to commit an indictable offence (N=66)	27	7.48	6	3.00	18.00
Recklessly cause grievous bodily harm (N=53)	32	12.57	12	3.00	30.00

Note. Descriptive statistics for all penalty types are in Table A2 of the Appendix.

hundred specific domestic violence versions of many personal crimes. For instance prosecuting agencies can now identify an offence as *Common Assault – Domestic Violence* separately from the standard *Common Assault* (both s61 *Crimes Act 1900*). Unfortunately, the new law only affects crimes occurring since March 2008. Even then, not all domestic violence-related court appearances are being coded as such. We have therefore employed an additional method to ensure that we have a reasonably complete record of domestic violence offences in the courts.

NSW Police flag whether criminal incidents that they record on their COPS (Computerised Operational Policing System) database are domestic violence-related. To determine which court appearances arose from domestic violence incidents, for this study, we linked court records back to their originating police incident record. In most cases it was possible to do this using the police charge number, which is a number assigned by police when they commence legal proceedings in a matter. In some cases court appearances do not have a charge number, such as when charges are laid by the Director of Public Prosecutions, rather than police. Where the charge number was not available, offences were matched by the offender's Criminal Names Index (CNI), offence date and law part or Australian Standard Offence Classification (ASOC)<sup>3</sup> code. This matching process would have ensured that most domestic violence court appearances were captured, however some are bound to have been missed. As a consequence, the data shown should not be taken to represent the total number of domestic violence court appearances.

The report focuses on adult offenders who were found guilty of a principal offence that was domestic violence-related in a Local or District Court in NSW between January 2008 and June 2009.

## Analysis

Firstly, we considered the penalties handed down by courts for the most common domestic violence-related offences. Descriptive statistics on the duration of the minimum term or non-parole period of prison sentences are also shown.

We then selected domestic violence offenders whose principal offence was assault and used a binary logistic regression model

to examine the effect of demographic characteristics, offence seriousness, concurrent offences, prior criminal history, and other legal considerations on the likelihood of imprisonment. Unadjusted effects were examined before developing a multivariable model. The demographic characteristics considered were age, sex and Indigenous status. The small proportion of those with unknown Indigenous status were considered 'Non-Indigenous' for the purpose of the analyses.<sup>4</sup> Three levels of offence seriousness were used: common assault (the least serious), assault occasioning actual bodily harm (moderate seriousness), and recklessly cause grievous bodily harm or recklessly wound any other person (the most serious). Concurrent offences were examined by the inclusion of a variable that categorised the number of concurrent offences, and a second variable indicating whether there was a concurrent breach of an apprehended violence order (defined by ASOC code). The contribution of an offender's prior criminal history was investigated by examining the effect of prior convictions, particularly those for violent offences, prior breaches of domestic violence orders, prior prison sentences, suspended sentences and periodic detention. Other legal considerations that were also examined included: the plea (guilty, not guilty, no plea entered), whether the offender had legal representation (while not specifically recorded in District Court data, it was assumed that all offenders in the District Court would have legal representation), and whether or not the offence was recorded in the court as a domestic violence-specific offence.<sup>5</sup>

Some offenders had multiple finalised court appearances between January 2008 and June 2009. For these offenders we included the most recent appearance in the analyses.

## RESULTS

### Penalties by offence type

The penalties handed down between January 2008 and June 2009 for the most common domestic violence offences are shown in Table 1.<sup>6</sup> The law part codes included in the offence categories are listed in Table A1 of the Appendix, along with their descriptions. It can be seen that there are five offences with considerably

**Table 3. Offenders, offence characteristics and imprisonment for domestic violence-related assault, January 2008 to June 2009**

	N	Imprisonment	
		n	%
All	10,997	1,220	11.09
Sex			
Female	1,705	59	3.46
Male	9,292	1,161	12.49
Age group (years)			
18 – 21	1,038	101	9.73
22 – 29	2,787	397	14.24
30 – 39	3,674	464	12.63
40+	3,498	258	7.38
Indigenous status			
Non-Indigenous	8,922	636	7.13
Indigenous	2,075	584	28.14
Severity of assault			
Common assault	7,351	530	7.21
Assault occasioning actual bodily harm	3,469	611	17.61
Recklessly cause grievous bodily harm and Recklessly wound any other person	177	79	44.63
Plea			
Guilty	9,109	1,013	11.13
Not guilty or other	1,342	195	14.53
No plea entered/other	546	12	2.20
Legal representation			
Yes	8,338	1,185	14.21
No	2,659	35	1.32
Domestic violence-specific law part code <sup>a</sup>			
No	7,261	825	11.40
Yes	3,736	395	10.60
Number of concurrent offences			
0	6,915	283	4.09
1	2,399	321	13.38
2+	1,683	616	36.60
Concurrent breach of an AVO			
No	9,853	794	8.06
Yes	1,144	426	37.24
Prior offence, 10 years <sup>b</sup>			
No	4,200	46	1.10
Yes	6,797	1,174	17.27
Prior violent offence, 10 years			
No	7,076	173	2.44
Yes	3,921	1,047	26.70
Prior breach of an AVO, 2 years			
No	10,321	901	8.73
Yes	676	319	47.19
Prior prison sentence			
No	9,193	398	4.33
Yes	1,804	822	45.57
Prior suspended sentence			
No	9,642	672	6.97
Yes	1,355	548	40.44
Prior periodic detention			
No	10,493	1,067	10.17
Yes	504	153	30.36

<sup>a</sup> The offences which did not have a specific domestic violence law part code were identified as domestic violence-related in their original police report.

<sup>b</sup> For simplicity, prior offences are shown here as a dichotomous variable, however the number of prior offences was examined as a continuous variable coded from 0 to 14, then 15+.

greater volume than the rest. The most prevalent is common assault, followed by breach AVO, assault occasioning actual bodily harm, property damage and stalking/intimidation. The table also includes convictions for use of carriage service to menace/harass/offend, recklessly wound any other person, armed with intent to commit an indictable offence, recklessly cause grievous bodily harm, offensive behaviour, offensive language, affray, and enter inclosed land without lawful excuse (trespass).

Table 1 also shows imprisonment rates were high for the aggravated assault offences of recklessly cause grievous bodily harm (60% imprisoned), armed with intent to commit an indictable offence (41% imprisoned) and recklessly wound any other person (38% imprisoned). Table 2 shows descriptive statistics of the duration of prison sentences handed down for selected domestic violence offences (other penalties are detailed in Table A2 in the Appendix). The median duration of custodial sentences ranged from 3 months (for the offence of destroy or damage property) through to 12 months (for the offence of recklessly cause grievous bodily harm).

### *Factors associated with imprisonment for assault*

This section looks at the factors that are associated with receiving a prison sentence for a domestic violence-related assault. We limited assaults to: common assault, assault occasioning actual bodily harm, recklessly wound any other person, and recklessly cause grievous bodily harm. Included in this analysis is a range of factors which may be influential and for which we have data, including: sex, age, Indigenous status, the severity of the assault, concurrent offences, plea, legal representation, prior convictions, and prior penalties.

### **Bivariate comparisons**

Overall, 11 per cent of those found guilty of domestic violence-related assault were given a sentence of imprisonment. Table 3 shows how the proportion of offenders who received a prison sentence varied according to a range of factors. All of the factors reported in Table 3 were significantly related to imprisonment, with the exception of the variable indicating whether the offence was recorded using a domestic violence-specific law part code ( $p = .212$ ).

### *Demographic characteristics*

Males were more likely than females to be sentenced to prison (12% vs 3%); those in the age groups 22 to 29 years and 30 to 39 years were more likely than those 18 to 21 years of age to receive a prison sentence (14% and 13% respectively vs 10%), while those aged 40 years and over were less likely (7%). Indigenous offenders were more likely than non-Indigenous offenders to be sentenced to prison (28% vs 7%).

### *Offence seriousness*

As would be expected, the likelihood of imprisonment increases with the seriousness of the assault. For those found guilty of common assault the proportion sentenced to imprisonment was 7 per cent, while for assault occasioning actual bodily harm the proportion was 18 per cent, and for the combined category of recklessly wound any other person or recklessly

**Table 4. Multivariable analysis: Offender, offence characteristics and imprisonment for domestic violence-related assaults, January 2008 to June 2009**

	<b>Odds Ratio</b>	<b>95% Confidence Interval</b>	<b>p</b>
Male vs Female	2.85	[2.03, 4.00]	< .001
Indigenous vs Non-Indigenous	1.46	[1.23, 1.75]	< .001
Assault occasioning actual bodily harm vs Common assault	2.81	[2.37, 3.33]	< .001
Recklessly cause grievous bodily harm or Recklessly wound any other person vs Common assault	23.31	[14.83, 36.61]	< .001
One concurrent offence vs No concurrent offence	2.26	[1.82, 2.80]	< .001
Two or more concurrent offences vs No concurrent offence	6.12	[4.91, 7.64]	< .001
Concurrent breach of AVO vs No concurrent breach of AVO	1.75	[1.42, 2.16]	< .001
Not guilty plea vs Guilty plea	1.31	[1.04, 1.64]	.022
No plea entered/other vs Guilty plea	0.49	[0.25, 0.95]	.035
No legal representation vs Legal representation	0.23	[0.16, 0.34]	< .001
Domestic violence-specific law part code vs General offence code	1.33	[1.11, 1.58]	.002
Number of offences in prior 10 years	1.07	[1.05, 1.10]	< .001
Violent offence in prior 10 years vs No violent offence in prior 10 years	2.57	[2.06, 3.19]	< .001
Breach of AVO in prior 2 years vs No breach of AVO in prior 2 years	2.30	[1.84, 2.88]	< .001
Prior suspended sentence vs No prior suspended sentence	1.57	[1.29, 1.92]	< .001
Prior prison sentence vs No prior prison sentence	4.39	[3.57, 5.40]	< .001

Note. Area under ROC curve = 0.941; Deviance = 2525.63 (df = 3512) p = 1.000

cause grievous bodily harm 45 per cent of offenders were sentenced to imprisonment.

#### **Plea**

Those who pleaded not guilty were more likely than those who pleaded guilty to be given a prison sentence (15% vs 11%). Only two per cent of those who did not enter a plea were given a prison sentence.

#### **Legal representation**

Those with legal representation were more likely than those without legal representation to be given a prison sentence (14% vs 11%). This is likely due to legal aid being more readily available to people facing a prison sentence and people in the District court always having legal representation.

#### **Concurrent offences**

Those found guilty of one or more concurrent offences were more likely to receive a prison sentence than those who had no concurrent offences (13% for those with one and 37% for those with two or more vs 4% for those with none). Furthermore, 37 per cent of those who had a concurrent offence of breaching an AVO were sentenced to imprisonment, compared with 8 per cent of those who did not.

#### **Prior criminal history**

As would be expected, the likelihood of imprisonment was greater for those who had been found guilty of an offence within the ten years prior compared with those who hadn't (17% vs 1%). Furthermore, around one-quarter of those who had been convicted of a violent offence in the ten years prior to the index court appearance were sentenced to imprisonment, compared with two per cent of those who hadn't been convicted of a violent offence. Of those who had breached an AVO in the two years prior, 47 per cent were sentenced to

imprisonment, compared with 9 per cent of those who hadn't breached an AVO.

In terms of prior penalties, 46 per cent of those with a prior prison sentence were given a prison sentence, compared with 4 per cent of those without a prior prison sentence. Similarly, 40 per cent of those with a prior suspended sentence were given a prison sentence, in comparison to 7 per cent of those without a prior suspended sentence, and 30 per cent of those with prior periodic detention were given a prison sentence, in comparison to 10 per cent of those without.

#### **Multivariable model**

The bivariate comparisons in Table 3 do not allow us to determine whether an effect is truly attributable to the variable and not to another correlated variable. Presented in Table 4 are the results of the multivariable logistic regression model, showing the independent effects of the explanatory variables on the likelihood of imprisonment. The column labelled 'odds ratio' indicates the odds of a person with the particular characteristic receiving a sentence of imprisonment, after controlling for all the other factors in the table. For example, after controlling for other factors, the odds of a male receiving a sentence of imprisonment for a domestic violence-related assault are 2.85 times higher than the odds for a female convicted of a domestic violence-related assault.<sup>7</sup>

The severity of the assault was a strong predictor of the likelihood of imprisonment. The odds of imprisonment for an offence of recklessly cause grievous bodily harm or recklessly wound any other person were 23.31 times the odds of imprisonment for an offence of common assault. The odds of imprisonment for an offence of assault occasioning actual bodily harm were 2.81 times the odds of imprisonment for common assault.



Concurrent offences also increased the odds of imprisonment. Specifically, the odds of those with one concurrent offence receiving a sentence of imprisonment were 2.26 times the odds of those with no concurrent offences receiving a prison sentence, while the odds of those with two or more concurrent offences receiving a prison sentence were 6.12 times the odds of those with no concurrent offences. Furthermore, the odds of those with a concurrent breach of an AVO receiving a sentence of imprisonment were 1.75 times higher than the odds of those without such a concurrent offence.

A plea of guilty tended to reduce the likelihood of imprisonment. The odds of receiving a prison sentence among those who pleaded not guilty were 1.31 times the odds of those who pleaded guilty. Those with no plea entered were less likely to receive a sentence of imprisonment. Those without legal representation were much less likely to receive a prison sentence (odds ratio = 0.23). It is likely, however, that legal representation acts as a proxy for offence seriousness since people facing the prospect of a prison sentence are more likely to receive legal aid and it is very rare for defendants to appear in the Higher Courts without legal representation. After controlling for all other factors, those whose offences were recorded with domestic violence-specific law part codes were more likely to receive a prison sentence than those whose offences were recorded as general offence codes (odds ratio = 1.33).

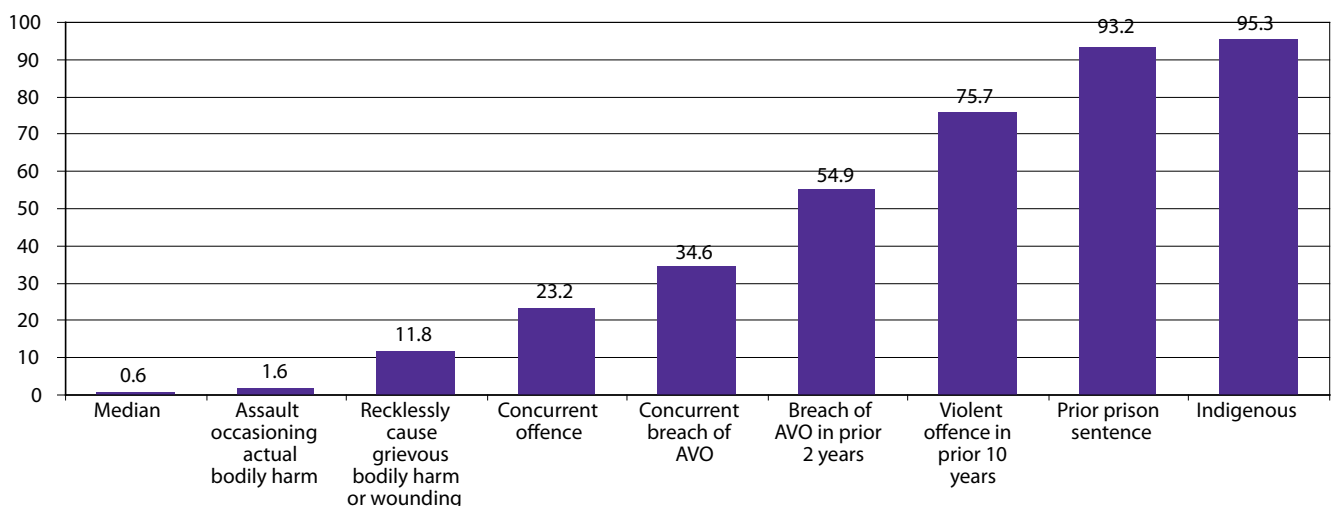
In terms of demographic characteristics, after controlling for other factors, the odds of a male receiving a sentence of imprisonment for domestic violence-related assault were 2.85 times greater than the odds of a female receiving a sentence of imprisonment, while the odds of an Indigenous person receiving a sentence of imprisonment were 1.46 times the odds of a non-Indigenous person. After controlling for other factors, age group was no longer associated with the likelihood of imprisonment.

Numerous variables relating to prior criminal history were independently associated with the likelihood of imprisonment. As would be expected, the likelihood of a prison sentence increased with each offence in the previous ten years. Furthermore, the odds of those convicted of at least one violent offence in the previous ten years were 2.57 times higher than those with no violent offences in the previous ten years. Having breached an AVO in the two years prior increased the odds of imprisonment by 2.30. In terms of prior penalties, the odds of those with a prior suspended sentence receiving a sentence of imprisonment were 1.57 times the odds of those with no prior suspended sentence, while the odds of those with a prior prison sentence receiving a sentence of imprisonment were 4.39 times the odds of those with no prior prison sentence receiving a sentence of imprisonment. Previous periodic detention was not independently associated with the likelihood of imprisonment.

Odds ratios are not directly interpretable as risks. To calculate the effect of a case/person characteristic on the risk of imprisonment we must make some assumption about the other characteristics an offender has. Figure 1 shows the cumulative effect of multiple characteristics on the risk of imprisonment. The first column in the figure shows the probability of imprisonment for the typical (median) case: a Non-Indigenous male, found guilty of common assault, with no concurrent offences, who pleads guilty, and has legal representation, who has a conviction for at least one offence in the previous 10 years, no violent offences in the previous 10 years, no prior breaches of AVOs, and no prior suspended sentence or prison sentence. The second bar shows the likelihood of imprisonment if the person is otherwise the same as the median case but the conviction is for an assault occasioning actual bodily harm; the third bar shows the likelihood of imprisonment if the person's conviction is for recklessly wounding another person or for recklessly causing grievous bodily harm; the fourth bar

**Figure 1. Probability of imprisonment for domestic violence-related assault as a function of various characteristics**

Probability of imprisonment (%)



Note. Median/base case = Non-Indigenous male, guilty of common assault, no concurrent offences, guilty plea, legal representation, prior conviction for one offence in the previous 10 years, no violent offences in the previous 10 years, no prior AVO breaches and no prior suspended sentences or prison.

looks at the additional risk of imprisonment associated with a concurrent conviction, and so on.

The likelihood of imprisonment for the median case was 0.6 per cent. A conviction for assault occasioning actual bodily harm rather than common assault increases the likelihood of imprisonment from 0.6 per cent to 1.6 per cent, while a conviction for recklessly wounding another person or for recklessly causing grievous bodily harm increases the likelihood of imprisonment by a factor of more than seven, to 11.8 per cent. The addition of one concurrent offence increases the likelihood to 23.2 per cent. If the concurrent offence was a concurrent breach of an AVO their likelihood of imprisonment increases to 34.6 per cent. A conviction for a breach of an AVO in the two years prior increases the likelihood of imprisonment to 54.9 per cent. If, in addition to all this, the offender has a conviction for a violent offence in the previous ten years, the likelihood of imprisonment increases to 75.7 per cent. If the offender has also been previously been imprisoned, the likelihood of imprisonment increases to 93.2 per cent. Finally, if in addition to all the previously mentioned characteristics, the offender is Indigenous, the likelihood of imprisonment increases to 95.3 per cent.

## DISCUSSION

The penalties imposed on people convicted of domestic violence offences cover the full spectrum of sanctions available to NSW courts and, unsurprisingly, penalties vary considerably depending on the relevant offence. The most prevalent domestic violence-related offence in the courts is common assault and this offence is most likely to receive a bond with supervision (30% of offenders). The same is true of three other high volume domestic violence offences: breaching an AVO, assault occasioning actual bodily harm and stalking/intimidation (21%, 29% and 34% respectively of offenders in these groups received a bond without supervision). Among the more serious (but low volume) violent offences of recklessly wounding, recklessly cause grievous bodily harm and being armed with intent, the most common penalty is imprisonment (38%, 60% and 41% respectively). In contrast, among the less serious domestic violence-related offences of property damage, offensive behaviour, offensive language and trespass, the most common penalty is a fine (29%, 60%, 83% and 70% respectively).

The general practice of more serious offences receiving more serious penalties is consistent with both expectations and the general principles of sentencing. In addition to the type of offence, however, we identified a number of other characteristics influential in predicting a custodial sentence for those who commit a domestic violence-related assault. Apart from the severity of the assault, which is the most important determinant in predicting a custodial penalty, a prior episode in prison, the presence of a concurrent offence and a violent offence in the previous ten years were factors that increased the likelihood of a domestic violence-related assault offender receiving a prison sentence.

In general, the variables found to significantly influence the likelihood of a prison sentence relate either to the severity of the current offence or the extent of the offender's criminal history. Two exceptions to this were Indigenous status and gender, which were found to significantly influence imprisonment but have no obvious connection to severity. The result for Indigenous people and males may mean that courts respond more harshly to offending by these groups. It is also possible, however, that there are other characteristics, common to these groups, which we have not controlled for.

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## NOTES

1. Includes females who were physically assaulted in the previous 12 months and where the most recent incident involved either a current partner, previous partner, boyfriend, girlfriend or date.
2. A law part code is a unique code used to describe a specific offence. Law part codes offer a very fine description of criminal acts and relate to a particular section or even subsection of legislation. They are assigned by the Judicial Commission of NSW.
3. The Australian Standard Offence Classification (ASOC) was developed by the Australian Bureau of Statistics.
4. On completion of the analysis we checked that including people of unknown Indigenous status with non-Indigenous people did not have a bearing on the final results. It did not.
5. Domestic violence-specific offences are those in which the law part code used specifies that the offence is domestic violence-related.
6. Table 1 is limited to offences which accord with what is commonly understood to constitute domestic violence (actual or threatened violence against a current partner, ex-partner, family or household member). Consequently, the following offences are not shown in Table 1 despite being reasonably commonly associated with a domestic violence incident: weapons offences, assaults against police, resisting police, breach of justice orders other than AVOs, break and enter, and larceny. In 2008 the law pertaining to aggravated assaults was revised and amended. Table 1 does not include any of these repealed assault offences as they are becoming much less frequent in the courts.
7. Note that the odds ratios are not quite the same as risks. The effect of various offender/offence characteristics on the risk of a prison sentence is shown later in the brief.

## REFERENCES

Australian Bureau of Statistics. (2006). *Personal Safety Survey Australia 2005*, Cat No. 4906.0. Canberra: ABS.

# APPENDIX

Table A1. Description and law part codes by offence category

Offence	Act and section	Law part code	Short description	Long description	Valid from	Valid to
Common assault	<i>Crimes Act 1900</i> (NSW) s 61	244	Common assault-T2	Whosoever assaults any person, although not occasioning actual bodily harm.	31/10/1900	
		64782	Common assault (DV)-T2	Whosoever assaults any person, although not occasioning actual bodily harm [domestic violence-related].	10/03/2008	
Breach AVO	<i>Crimes Act 1900</i> (NSW) s 562(1)	1207	Contravene apprehended domestic violence order	A person who knowingly contravenes a prohibition or restriction specified in an apprehended domestic violence order made against the person.	21/02/1988	11/03/2007
		62079	Contravene prohibition/restriction in order (domestic)	A person who knowingly contravenes a prohibition or restriction specified in an apprehended domestic violence order made against the person is guilty of an offence.	12/03/2007	9/03/2008
		62080	Contravene prohibition/restriction in order (personal)	A person who knowingly contravenes a prohibition or restriction specified in an apprehended personal violence order made against the person is guilty of an offence.	12/03/2007	9/03/2008
		64716	Contravene prohibition/restriction in AVO	A person who knowingly contravenes a prohibition or restriction specified in an apprehended violence order made against the person is guilty of an offence.	10/03/2008	
		65020	Contravene prohibition/restriction in AVO (Domestic)	A person who knowingly contravenes a prohibition or restriction specified in an apprehended violence order made against the person is guilty of an offence.	10/03/2008	
		65021	Contravene prohibition/restriction in AVO (Personal)	A person who knowingly contravenes a prohibition or restriction specified in an apprehended violence order made against the person is guilty of an offence.	10/03/2008	
		243	Assault occasioning actual bodily harm-T2	Whosoever assaults any person, and thereby occasions actual bodily harm.	31/10/1900	
Assault occasioning actual bodily harm	<i>Crimes Act 1900</i> (NSW) s 59(1)	64780	Assault occasioning actual bodily harm (DV)-T2	Whosoever assaults any person, and thereby occasions actual bodily harm [domestic violence-related].	10/03/2008	
		817	Destroy or damage property >\$15000-T1	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage exceeds \$15000.	13/01/1988	
Destroy or damage property	<i>Crimes Act 1900</i> (NSW) s 195(1)(a)	818	Destroy or damage property > \$ 5000 & <=\$15000-T1	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage exceeds \$5000 and does not exceed \$15000.	13/01/1988	
		819	Destroy or damage property > \$ 2000 & <=\$ 5000-T2	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage exceeds \$2000 and does not exceed \$5000.	13/01/1988	
Destroy or damage property	<i>Crimes Act 1900</i> (NSW) s 195(1)(a)	820	Destroy or damage property <=\$2000-T2	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage does not exceed \$2000.	13/01/1988	
		821	Destroy or damage property	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another.	13/01/1988	
Destroy or damage property	<i>Crimes Act 1900</i> (NSW) s 195(1)(a)	64879	Destroy or damage property >\$15000 (DV)-T1	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage exceeds \$15000 [domestic violence-related].	10/03/2008	
		64880	Destroy or damage property > \$ 5000 & <=\$15000 (DV)-T1	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage exceeds \$5000 and does not exceed \$15000 [domestic violence-related].	10/03/2008	
Destroy or damage property	<i>Crimes Act 1900</i> (NSW) s 195(1)(a)	64881	Destroy or damage property > \$ 2000 & <=\$ 5000 (DV)-T2	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage exceeds \$2000 and does not exceed \$5000 [domestic violence-related].	10/03/2008	

(table continues)



**Table A1. Description and law part codes by offence category (continued)**

<b>Offence</b>	<b>Act and section</b>	<b>Law part code</b>	<b>Short description</b>	<b>Long description</b>	<b>Valid from</b>	<b>Valid to</b>
Destroy or damage property (continued)	<i>Crimes Act 1900</i> (NSW) s 195(1)(a)	64882	Destroy or damage property <=\$2000 (DV)-T2	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another, value of property damage does not exceed \$2000 [domestic violence-related].	10/03/2008	
		64883	Destroy or damage property (DV)	A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another [domestic violence-related].	10/03/2008	
Stalk/intimidate with intent to cause fear of physical/mental harm	<i>Crimes Act 1900</i> (NSW) s 562AB(1)	35487	Stalk/intimidate w/i to cause fear physical/mental harm-T2	A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm.	26/04/2000	11/03/2007
	<i>Crimes Act 1900</i> (NSW) s 545AB(1)	61554	Stalk/intimidate intend fear of physical/mental harm-T2	A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is liable to imprisonment for 5 years, or to a fine of 50 penalty units, or both.	12/03/2007	9/03/2008
	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) s 13(1)	64715	Stalk/intimidate intend fear of physical/mental harm-T2	A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence.	10/03/2008	
		70753	Stalk/intimidate intend fear physical etc harm (domestic)-T2	A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence. [Domestic violence offence].	10/03/2008	
		70755	Stalk/intimidate intend fear physical etc harm (personal)-T2	A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence. [Personal violence offence]	10/03/2008	
Use carriage service to menace/harass/offend	<i>Criminal Code Act 1995</i> (Cmwrth) s 474.17(1)	55733	Use carriage service to menace/harass/offend	A person is guilty of an offence if the person uses a carriage service in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, menacing, harassing or offensive.	1/03/2005	
Recklessly wound any other person	<i>Crimes Act 1900</i> (NSW) s 35(4)	64748	Recklessly wound any other person (DV)-T1	A person who recklessly wounds any person is guilty of an offence [domestic violence-related].	10/03/2008	
		62883	Recklessly wound any other person -T1	A person who recklessly wounds any person is guilty of an offence.	27/09/2007	
Armed with intent to commit indictable offence	<i>Crimes Act 1900</i> (NSW) s 114(1)(a)	607	Armed w/i commit indictable offence-T1	Any person who is armed with any weapon, or instrument, with intent to commit an indictable offence.	2/08/1974	
Recklessly cause grievous bodily harm	<i>Crimes Act 1900</i> (NSW) s 35(2)	62881	Recklessly cause grievous bodily harm-T1	A person who recklessly causes grievous bodily harm to any person is guilty of an offence.	27/09/2007	
		64746	Recklessly cause grievous bodily harm (DV)-T1	A person who recklessly causes grievous bodily harm to any person is guilty of an offence [domestic violence-related].	10/03/2008	
Behave in offensive manner	<i>Summary Offences Act 1988</i> (NSW) s 4(1)	1243	Behave in offensive manner in/near public place/school	A person must not conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or a school.	23/01/1994	
Use offensive language	<i>Summary Offences Act 1988</i> (NSW) s 4A(1)	1246	Use of offensive language in/near public place/school	A person must not use offensive language in or near, or within hearing from, a public place or a school.	23/01/1994	
Affray	<i>Crimes Act 1900</i> (NSW) s 93C(1)	433	Affray-T1	A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety is guilty of affray.	19/02/1989	
Enter inclosed land without lawful excuse	<i>Inclosed Lands Protection Act 1901</i> (NSW) s 4(1)(b)	26634	Enter inclosed land not presc premises w/o lawful excuse	Person who, without lawful excuse (proof of which lies on the person), enters into inclosed lands (that are not prescribed premises) without the consent of the owner, occupier or person apparently in charge of those lands.	2/01/1998	

Note. The contents of this table were sourced from the Judicial Commission of NSW - [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)

**Table A2. Descriptive statistics of penalties received for domestic violence-related offences**

Offence type	Penalty	Frequency		Duration <sup>a</sup> / amount			
		n	%	mean	median	min	max
Common assault	Imprisonment	530	7.2	4.64	4	0.17	18.00
	Periodic detention	35	0.5	6.42	6	2.00	12.00
	Suspended sentence with supervision	294	4.0	8.93	9	3.00	24.00
	Suspended sentence without supervision	168	2.3	7.48	7	2.00	18.00
	Community service order (hours)	226	3.1	115.35	100	25.00	350.00
	Bond with supervision	1,134	15.4	16.50	12	6.00	48.00
	Bond without supervision	2,177	29.6	13.91	12	2.00	48.00
	Fine (dollars)	1,006	13.7	496.38	500	50.00	2000.00
	Nominal sentence	50	0.7				
	Bond without conviction	1,401	19.1	12.62	12	3.00	36.00
	No conviction recorded	324	4.4				
No action taken	6	0.1					
	<b>Total</b>	<b>7,351</b>	<b>100.0</b>				
Breach AVO/order	Imprisonment	802	16.9	4.71	4	0.03	24.00
	Home detention	1	0.0	-	-	-	-
	Periodic detention	39	0.8	6.03	6	2.00	12.00
	Suspended sentence with supervision	348	7.3	9.19	9	2.00	20.00
	Suspended sentence without supervision	188	4.0	7.41	7	1.00	18.00
	Community service order (hours)	191	4.0	106.06	100	15.00	500.00
	Bond with supervision	621	13.1	16.41	12	3.00	60.00
	Bond without supervision	1,016	21.4	13.80	12	2.00	60.00
	Fine (dollars)	808	17.1	411.72	350	50.00	3000.00
	Nominal sentence	184	3.9	0.00	0	0.00	0.00
	Bond without conviction	331	7.0	11.63	12	3.00	36.00
No conviction recorded	208	4.4					
	<b>Total</b>	<b>4,737</b>	<b>100.0</b>				
Assault occasioning actual bodily harm	Imprisonment	611	17.6	7.35	6	0.03	36.00
	Periodic detention	46	1.3	7.43	6	3.00	16.00
	Suspended sentence with supervision	264	7.6	10.94	12	2.00	24.00
	Suspended sentence without supervision	144	4.2	9.53	9	2.00	24.00
	Community service order (hours)	190	5.5	159.93	150	30.00	400.00
	Bond with supervision	588	17.0	18.83	18	6.00	60.00
	Bond without supervision	1,011	29.1	15.52	12	4.00	36.00
	Fine (dollars)	233	6.7	695.71	600	100.00	2000.00
	Nominal sentence	12	0.3				
	Bond without conviction	317	9.1	14.23	12	6.00	36.00
	No conviction recorded	52	1.5				
No action taken	1	0.0					
	<b>Total</b>	<b>3,469</b>	<b>100.0</b>				
Destroy or damage property	Imprisonment	82	3.6	4.24	3	0.23	18.00
	Periodic detention	5	0.2	4.40	4	2.00	6.00
	Suspended sentence with supervision	66	2.9	8.42	8	3.00	18.00
	Suspended sentence without supervision	42	1.8	6.76	6	2.00	12.00
	Community service order (hours)	65	2.8	105.22	100	25.00	200.00
	Bond with supervision	312	13.6	15.89	12	6.00	36.00
	Bond without supervision	487	21.2	12.88	12	2.00	36.00
	Fine (dollars)	656	28.5	395.30	400	50.00	2000.00

(table continues)

**Table A2. Descriptive statistics of penalties received for domestic violence-related offences (continued)**

Offence type	Penalty	Frequency		Duration <sup>a</sup> / amount			
		n	%	mean	median	min	max
Destroy or damage property (continued)	Nominal sentence	35	1.5				
	Bond without conviction	381	16.6	11.11	12	3.00	24.00
	No conviction recorded	166	7.2				
	No action taken	2	0.1				
	Total	2,299	100.0				
Stalk/intimidate with intent to cause fear of physical/mental harm	Imprisonment	156	11.9	5.36	5	0.23	15.00
	Periodic detention	8	0.6	8.38	9	4.00	12.00
	Suspended sentence with supervision	96	7.3	9.07	9	3.00	18.00
	Suspended sentence without supervision	45	3.4	8.29	8	3.00	18.00
	Community service order (hours)	53	4.1	118.11	100	30.00	300.00
	Bond with supervision	226	17.3	17.16	15	6.00	36.00
	Bond without supervision	440	33.7	14.60	12	6.00	48.00
	Fine (dollars)	131	10.0	485.11	500	100.00	2000.00
	Nominal sentence	8	0.6				
	Bond without conviction	119	9.1	12.96	12	3.00	24.00
	No conviction recorded	24	1.8				
	No action taken	1	0.1				
Total	1,307	100.0					
Use carriage service to menace/harass/offend	Imprisonment	4	3.1	-	-	-	-
	Suspended sentence with supervision	2	1.6	-	-	-	-
	Suspended sentence without supervision	4	3.1	-	-	-	-
	Community service order (hours)	3	2.4	-	-	-	-
	Bond with supervision	10	7.9	18.00	18	12.00	24.00
	Bond without supervision	37	29.1	16.19	12	6.00	24.00
	Fine (dollars)	25	19.7	489.60	450	100.00	1000.00
	Bond without conviction	32	25.2	14.25	12	6.00	24.00
	No conviction recorded	10	7.9				
Total	127	100.0					
Recklessly wound any other person	Imprisonment	47	37.9	10.38	10	2.00	24.00
	Periodic detention	3	2.4	-	-	-	-
	Suspended sentence with supervision	21	16.9	13.76	12	7.00	24.00
	Suspended sentence without supervision	7	5.6	10.71	12	6.00	18.00
	Community service order (hours)	11	8.9	179.55	120	80.00	500.00
	Bond with supervision	13	10.5	23.08	24	12.00	36.00
	Bond without supervision	19	15.3	22.74	18	9.00	60.00
	Fine (dollars)	1	0.8	-	-	-	-
	Bond without conviction	2	1.6	-	-	-	-
Total	124	100.0					
Armed with intent to commit an indictable offence	Imprisonment	27	40.9	7.48	6	3.00	18.00
	Suspended sentence with supervision	9	13.6	11.67	12	6.00	15.00
	Suspended sentence without supervision	2	3.0	-	-	-	-
	Community service order (hours)	2	3.0	-	-	-	-
	Bond with supervision	11	16.7	21.27	24	12.00	36.00
	Bond without supervision	13	19.7	19.62	18	9.00	36.00
	Bond without conviction	2	3.0	-	-	-	-
Total	66	100.0					

(table continues)

**Table A2. Descriptive statistics of penalties received for domestic violence-related offences (continued)**

Offence type	Penalty	Frequency		Duration <sup>a</sup> / amount			
		n	%	mean	median	min	max
Recklessly cause grievous bodily harm	Imprisonment	32	60.4	12.57	12	3.00	30.00
	Periodic detention	3	5.7	-	-	-	-
	Suspended sentence with supervision	7	13.2	14.29	12	6.00	24.00
	Suspended sentence without supervision	1	1.9	-	-	-	-
	Community service order (hours)	3	5.7	-	-	-	-
	Bond with supervision	2	3.8	-	-	-	-
	Bond without supervision	5	9.4	15.60	12	12.00	24.00
	<b>Total</b>	<b>53</b>	<b>100.0</b>				
Behave in offensive manner	Imprisonment	1		-	-	-	-
	Bond with supervision	5	10.4	21.60	24	12.00	24.00
	Bond without supervision	4	8.3	-	-	-	-
	Fine (dollars)	29	60.4	269.14	250	75.00	600.00
	Nominal sentence	2	4.2				
	Bond without conviction	3	6.3	-	-	-	-
	No conviction recorded	4	8.3				
	<b>Total</b>	<b>48</b>	<b>100.0</b>				
Use offensive language	Bond with supervision	1	2.1	-	-	-	-
	Fine (dollars)	40	83.3	251.80	250	50.00	527.00
	Nominal sentence	3	6.3				
	Bond without conviction	1	2.1	-	-	-	-
	No conviction recorded	3	6.3				
	<b>Total</b>	<b>48</b>	<b>100.0</b>				
Affray	Imprisonment	9	20.5	7.78	6	2.00	18.00
	Suspended sentence with supervision	2	4.5	-	-	-	-
	Suspended sentence without supervision	2	4.5	-	-	-	-
	Community service order (hours)	6	13.6	190.83	175	75.00	300.00
	Bond with supervision	3	6.8	-	-	-	-
	Bond without supervision	10	22.7	18.00	21	6.00	24.00
	Fine (dollars)	5	11.4	690.00	600	500.00	1000.00
	Bond without conviction	7	15.9	15.43	18	6.00	24.00
	<b>Total</b>	<b>44</b>	<b>100.0</b>				
Enter inclosed land without lawful excuse	Suspended sentence without supervision	1	2.3	-	-	-	-
	Fine (dollars)	30	69.8	263.33	225	100.00	500.00
	Nominal sentence	3	7.0				
	Bond without conviction	7	16.3	7.29	6	3.00	12.00
	No conviction recorded	3	7.0				
	<b>Total</b>	<b>43</b>	<b>100.0</b>				

Note. Where the frequency of offenders was less than five, summary statistics on the duration/ value of the penalty are not presented.

<sup>a</sup> Unless otherwise specified, the duration is in months.