

REVIEW

The laws of violence

John Bache

Abstract

Working in an accident and emergency (A&E) department inevitably involves dealing with the consequences of violence, and a knowledge of the laws of violence is a useful adjunct to the clinical practice of A&E medicine. The police and the Crown Prosecution Service decide whether or not to charge a suspect, and which charge is appropriate. All criminal offences are initially considered in the magistrates' court but the more serious offences may be committed to crown court. Specific offences include common assault, actual bodily harm, grievous bodily harm, and grievous bodily harm with intent. If the defendant is found guilty, an appropriate sentence is imposed.

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Members of the legal profession are often bemused by the jargon and detailed terminologies used by members of the medical profession. The reverse is also true. Those working in accident and emergency (A&E) departments deal with the results of criminal violence, sometimes in their own departments, with depressing frequency. The purpose of this paper is to explain some of the basic concepts of the criminal law in England, Wales and Northern Ireland, particularly concentrating on aspects that are likely to involve staff in A&E departments. Scottish law differs in a number of details.

The criminal process

When a crime is committed and a suspect is apprehended, the police have a number of choices. They can take no further action and release the defendant because of insufficient evidence. They can release the defendant on police bail while they make further enquiries. They can report the matter to the Crown Prosecution Service (CPS), who can decide what further action is appropriate. A police officer of the rank of inspector or above can caution the offender, if the offence is admitted. The police can charge the defendant with the intention of bringing him before a court, and can grant conditional or unconditional bail. The appropriate charge depends upon the nature of the injuries, the circumstances of the assault and the degree of intent.

Which of these choices is followed by the police depends upon a number of factors, such as the nature and seriousness of the offence; the nature of any injuries; the level of tolerance; the circumstances of an assault; the degree of intent; the strength of the evidence; and the prospects of a successful conviction. The victim of a crime often wishes the police and CPS to take the matter to court, but the police and CPS may feel that it is not in the public interest to charge the suspect.

The CPS is composed of qualified lawyers or, recently, designated case workers. In the magistrates' court, the CPS presents the case for the Crown. In the crown court, the case is presented by a barrister instructed by the CPS, or by a CPS higher court advocate.

In making a decision on whether or not to prosecute, the CPS firstly has to consider whether the case will pass the evidential test, and then whether it will pass the public interest test. If the case does not pass the evidential test, it may not proceed, regardless of how important or serious it may be. For the evidential test, there must be enough admissible evidence to provide a realistic prospect of conviction: this means that a court, properly directed in accordance with the law, is more likely than not to convict on that evidence.

So far as the public interest test is concerned, there is no rule of law that demands the automatic prosecution of an offender, even if the evidential test is met, and a prosecution only takes place if the public interest requires it. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. The CPS is the ultimate decision maker. Some common public interest factors that make a prosecution more likely include the following: a conviction is likely to result in a significant sentence; a weapon was used or violence was threatened during the commission of the offence; the offence was committed against a person serving the public, such as a police officer, a prison officer, or a nurse; the defendant was in a position of authority or trust; there is evidence that the offence was premeditated; the victim of the offence was vulnerable. Some common public interest factors that make a prosecution less likely include the following: the court is likely to impose a very small or nominal penalty; the offence was committed as a result of a genuine mistake or misunderstanding; the loss or harm can reasonably be described as minor; the

Leighton Hospital,
Crewe, Cheshire
CW1 4QJ

Correspondence to:
Mr Bache, Consultant in
Accident and Emergency
Medicine
(john_bache@hotmail.com)

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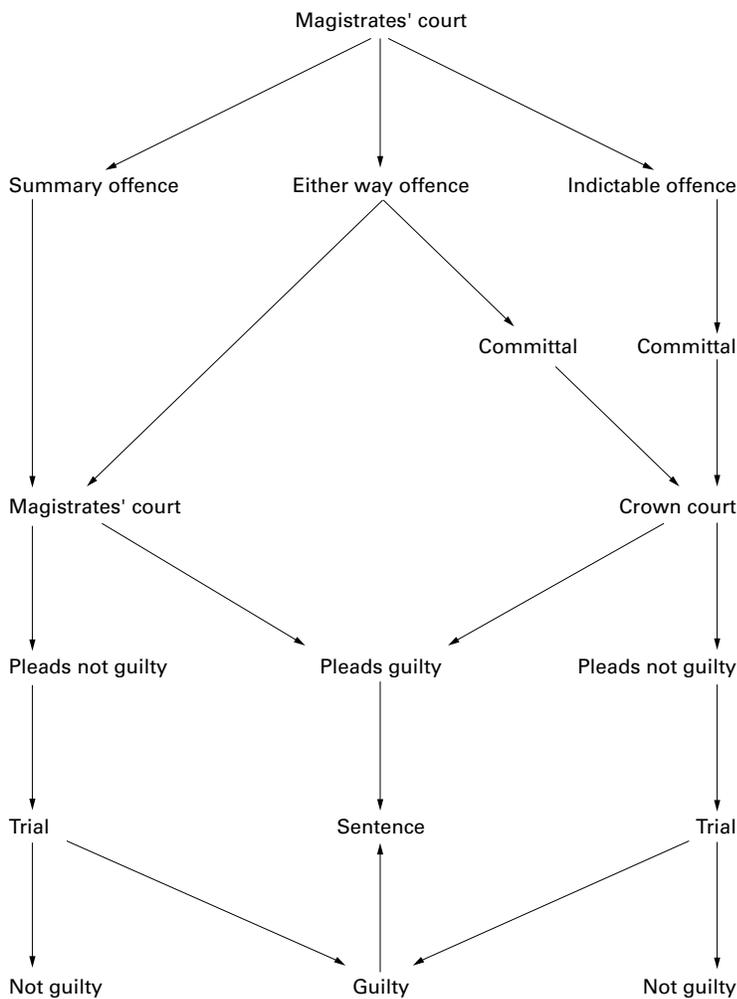


Figure 1 Progress of a case through the criminal justice system.

defendant has put right the loss or harm that was caused.

The burden of proof required in a criminal court is “beyond all reasonable doubt”, in contradistinction to “on the balance of probabilities”, which is the burden of proof required in a civil court.

[If the police and CPS decide not to proceed, a private prosecution is possible: the aggrieved party pursues the matter himself. Private prosecutions can be extremely expensive and are very rarely used.]

All criminal offences that are taken to court are initially dealt with by the magistrates (justices of the peace). These are usually lay men and women who have some judicial training but depend upon the clerk of the court, who is legally qualified, for advice on points of law. There are also a number of stipendiary magistrates, who are professional lawyers.

Criminal offences are divisible into three groups: summary only (the relatively minor offences, which are triable only in the magistrates’ court); indictable only (the most serious offences, which are triable only by a judge and jury in the crown court); and either way offences (those of intermediate seriousness, which can be tried either in the magistrates’ court or in the crown court) (fig 1).

If the case is to be heard in the magistrates’ court, the defendant is asked whether they plead guilty or not guilty. If there is a plea of guilty, the magistrates will sentence the defendant, possibly after adjourning the case while a pre-sentence report (PSR) is prepared. If there is a plea of not guilty, the matter is adjourned for trial in the magistrates’ court, before three lay magistrates, or a stipendiary magistrate sitting alone. If the defendant is found guilty, the magistrates will proceed to sentence the defendant, again possibly adjourning the case for a PSR.

Very serious offences, such as murder and attempted murder, are indictable only. The magistrates will decide whether there is a case to answer and, if there is, they will then commit the defendant to the crown court.

Defendants charged with indictable offences and either way offences that are to be dealt with in the crown court are asked in the crown court whether they plead guilty or not guilty. If they plead guilty, the judge will proceed to sentence. If they plead not guilty, a trial is held before a judge and jury. If the jury find the defendant guilty, the judge will pass sentence. Whether or not the judge requires a PSR before passing sentence depends upon the seriousness of the charge and the likely sentence.

When the trial is in the magistrates’ court, the magistrates will not be aware of any of the defendant’s previous convictions unless and until the defendant is found guilty, when the magistrates will be provided with a record of previous convictions before proceeding to sentence. In the crown court, the judge will be aware of previous convictions but the jury will not normally be aware of previous convictions, unless the judge gives leave for cross examination on previous convictions. In the case of the magistrates’ court, the magistrates may find it necessary to refer the case to the judge in the crown court for sentence, if they consider their powers of sentence are insufficient, once they become aware of the previous convictions of the defendant.

Victims of a crime and, indeed, other witnesses may be understandably apprehensive of giving evidence in court. Staff of the victim support scheme are trained in counselling and will assist victims, including accompanying them to court and explaining court procedure to them if necessary. The witness liaison service is operated by the police but run by civilians: if witnesses are required in a trial, the witness liaison service will contact them, explain what is required, check availability, arrange suitable dates, expense claim forms, etc; they liaise between the police and the CPS.

Specific offences

As mentioned above, criminal offences are divisible into three groups: summary only offences, either way offences, and indictable only offences. Certain offences may be particularly relevant to those working in A&E departments.

Summary only offences include assaulting a police officer in the execution of his duty; common assault (section 39); disorderly conduct,

likely to cause harassment, alarm or distress; drunkenness; obstructing or resisting a police officer in the execution of his duty; possession of an article with a blade or point in a public place; threatening behaviour.

Either way offences include actual bodily harm (section 47); affray; criminal damage; grievous bodily harm (section 20); possession of an offensive weapon; threatening to destroy or damage property; violent disorder.

Indictable only offences include attempted murder; manslaughter; murder; rape; wounding with intent to do grievous bodily harm, or grievous bodily harm with intent to do grievous bodily harm (section 18).

The offences of violence that are most likely to involve those working in A&E departments are common assault (section 39); actual bodily harm (section 47); grievous bodily harm/malicious wounding (section 20); and wounding or causing grievous bodily harm with intent (section 18). These are described below. Assault need not necessarily involve actual physical contact: it can simply be a threat.

CRIMINAL JUSTICE ACT 1988, SECTION 39:

COMMON ASSAULT

An offence of common assault is committed when a person either assaults or inflicts a battery upon another person. An assault is committed when a person intentionally or recklessly causes another person to anticipate with fear the immediate infliction of unlawful force; an assault is an unlawful personal attack, even if only with menacing words. A battery is committed when a person intentionally or recklessly inflicts unlawful force upon another person; a battery is the infliction of blows, or of any menacing touch to the clothes or person. Common assault is triable only by magistrates. The maximum penalty is a fine of £5000 or six months imprisonment. The magistrates can award compensation up to £5000. Because it is a summary only offence, the defendant cannot go to crown court and then plead guilty and be given a conditional discharge. Therefore, a charge of common assault avoids the time and expense of preparing a committal file. A threatening gesture is sufficient to warrant a charge of common assault.

OFFENCES AGAINST THE PERSON ACT 1861, SECTION 47: ASSAULT OCCASIONING ACTUAL BODILY HARM

This is triable either way. The maximum penalty in the magistrates' court is a fine of £5000 or six months imprisonment. The maximum penalty in the crown court is five years imprisonment and an unlimited fine. The magistrates can award compensation up to £5000; the judge can award unlimited compensation.

The only factor that distinguishes a charge of common assault from a charge of assault occasioning actual bodily harm is the degree of injury that results. When battery results in injury, a choice of charges is available. The CPS recognises that there will be factors that may properly lead to a decision not to prefer or continue with the gravest possible charge.

Thus, although any injury can be classified as actual bodily harm, a charge of common assault is appropriate if the injuries amount to no more than grazes, scratches, abrasions, minor bruising, swellings, reddening of the skin, superficial lacerations, or a "black eye".

The following injuries are examples of those that should normally be prosecuted under section 47: loss or breaking of a tooth or teeth; temporary loss of sensory functions, which may include loss of consciousness; extensive or multiple bruising; displaced fracture of the nasal bones; minor fractures; minor but not merely superficial lacerations of a type probably requiring medical treatment, such as sutures; psychiatric injury (supported by appropriate expert evidence) that is more than fear, distress or panic.

It is always necessary to consider the injuries first and the degree of injury will usually determine whether the appropriate charge is section 39 or section 47. There will be borderline cases, such as when the victim has sustained an undisplaced nasal fracture. When the injuries amount to no more than those described above as being appropriate for a charge of common assault, a decision to charge the defendant with actual bodily harm may be justified in exceptional circumstances, or when the maximum available sentence in the magistrates' court would be inadequate.

In deciding which charge is appropriate, the degree of injury is important (common assault is less than actual bodily harm) and so are the attendant circumstances of the assault.

OFFENCES AGAINST THE PERSON ACT 1861, SECTION 20: UNLAWFULLY AND MALICIOUSLY INFLECTING GRIEVOUS BODILY HARM; UNLAWFULLY AND MALICIOUSLY WOUNDING

This is again triable either way. Again, the maximum penalty in the magistrates' court is a fine of £5000 or six months imprisonment, and the maximum penalty in the crown court is five years imprisonment and an unlimited fine. Again, the magistrates can award compensation up to £5000; the judge can award unlimited compensation. There is no intent in a section 20 charge: it is reckless. Grievous bodily harm means "really serious bodily harm", and it is undesirable to attempt any further definition of it. The injuries caused do not have to be permanent or dangerous but they have to be more severe than actual bodily harm. Wounding is defined as "a break in the continuity of the whole skin".

OFFENCES AGAINST THE PERSON ACT 1861, SECTION 18: WOUNDING OR CAUSING GRIEVOUS BODILY HARM WITH INTENT

This is indictable only. The maximum penalty is life imprisonment and the judge can award unlimited compensation. The injuries are the same as for a section 20 charge but the difference is that there is intent. A weapon may be used (but not necessarily). The prosecution must prove the defendant either intended doing really serious harm, or intended resisting lawful apprehension. The difference between a section 20 charge and a section 18 charge is

that there is intent with section 18: there is “malice aforethought”. For example, if a defendant hits his victim with a stick during the course of an argument, he is likely to be charged with a section 20. If he has an argument, goes away, finds a stick, and returns to hit his victim with it, there is obvious intent and a section 18 charge is likely. However, in some cases the defendant will be charged with a section 18 because of the severity of the attack, even if there was no premeditation.

Whether to charge the defendant with common assault, actual bodily harm or grievous bodily harm depends largely upon the nature of the injuries. The CPS is often encouraged to use common assault rather than actual bodily harm, to avoid the necessity of preparing a committal file. The charge can always be reduced to a lesser charge at a later date. The maximum penalty is identical for common assault, actual bodily harm and grievous bodily harm in the magistrates’ court and for actual bodily harm and grievous bodily harm in the crown court.

Sentencing

Sentences available to judges and magistrates include absolute discharge; conditional discharge; fine; attendance centre order; probation order; supervision order; community service order; combination order (probation plus community service); custody. These sentences can be combined with compensation orders, orders of forfeiture, and costs.

Each offence carries a maximum sentence, which may vary according to whether it is dealt with in the magistrates’ court or the crown court. Obviously the judge has far greater sentencing powers than the magistrates. Recently, in some cases in which a defendant has previous convictions for serious violence, the judge is obliged to sentence the defendant to life imprisonment.

In determining a suitable sentence, the judge or the magistrates will consider aggravating factors, such as racial motivation; deliberate kicking or biting; extensive injuries; group action; the offender was in a position of authority; the offence was premeditated; the victim was particularly vulnerable; the victim

was serving the public; a weapon was used or brandished; the offence was committed in a busy public place or some other relevant location; there was gross disregard for police authority; the victim was specifically targeted; people were put in fear; offensive language or behaviour was used; the offence was committed on bail; the offender had previous convictions and failures to respond to previous sentences.

There may also be mitigating factors, such as the offence was committed on impulse; there were only minor injuries; there was a single blow; the incident was trivial; the incident was of short duration; there was provocation; the offender was induced by others; the offender did not initiate the situation, acted out of genuine fear, and stopped as soon as the police arrived; the offender was acting alone; there was no evidence of premeditation; there was no significant disturbance. Mitigation may also result from the offender’s age; health; cooperation with the police; voluntary compensation; and remorse. The offender’s income will also be taken into account.

Compensation

Magistrates have powers to award compensation for personal injury, loss or damage up to a total of £5000 for each offence. Judges have unlimited powers of compensation. Compensation can be used as a sentence in its own right.

The criminal injuries compensation scheme is intended to compensate victims of violent crime and particularly those who are seriously injured. Courts are encouraged to order offenders to compensate the victim whether or not the injury comes within the scope of the criminal injuries compensation scheme, to bring home to offenders the personal consequences of their actions.

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