

Grievous Bodily Harm

s 297 Criminal Code.

Prior to 1 January 2014

Transitional Sentencing Provisions: This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
EFP	eligible for parole
CBO	community based order
TES	total effective sentence
Sex pen	sexual penetration
VRO	violence restraining order

No	Case	Antecedents	Summary/Facts	Sentence	Appeal
31.	<p><i>Ellis v The State of Western Australia</i></p> <p>[2013] WASCA 220</p> <p>Delivered 25/09/20113</p>	<p>22 yrs at time offending. 24 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Criminal history including criminal damage and assault.</p> <p>Dysfunctional upbringing.</p> <p>Entrenched history of alcohol and drug abuse; inability to control his emotions and impulsivity.</p> <p>Consistent work history.</p> <p>In relationship for 18 mths; due to become a father.</p> <p>Poor response to parole and community based orders.</p>	<p>GBH x 1.</p> <p>The victim was in a taxi with the appellant's partner and friend, having met the two women that night. The taxi arrived at the appellant's house and the women entered the house. The victim waited in the taxi. Screaming by someone in the house was heard. The appellant's partner left the house, followed by the appellant, who was in an aggressive and agitated state. He had assaulted the two women.</p> <p>The appellant approached the taxi and was rude and abusive to the taxi driver and victim. The appellant attempted to punch the taxi driver. The victim alighted from the taxi and made a comment to the appellant which caused him to respond by punching the victim and knocking him to the ground. He then inflicted several punches to the victim's head. He also kicked him and pushed his head into the bitumen. The appellant also attempted to drag the victim from the road.</p> <p>Appellant assumed victim had a knife initially, but judge unable to make a factual finding as to whom had the knife.</p>	<p>5 yrs imp.</p> <p>EFP.</p> <p>Offending driven, in part, by alcohol and, in part, by anger stemming from his irritation and annoyance with his partner's behaviour earlier in the evening.</p> <p>No remorse.</p>	<p>Dismissed.</p> <p>At [29] ... the appellant was required to be sentenced in accordance with the principles under the YOA.</p> <p>At [35] The youth of the appellant and his prospects of rehabilitation were appropriately reflected in the length of the terms imposed.</p>

			The victim suffered a brain injury and was placed in an induced coma. He also suffered abrasions, a laceration above his eye, a swollen ear and a front tooth was shattered. He sustained post-traumatic amnesia, lost his sense of smell and his sense of taste has been impaired.		
30.	<p><i>Field v The State of Western Australia</i></p> <p>[2013] WASCA 209</p> <p>Delivered 06/09/2013</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Lengthy criminal record; include Qld for AOBH; violent offending in WA.</p> <p>Endured a dysfunctional and unstable childhood.</p> <p>Good employment record.</p> <p>Regular user of cannabis; prone to bouts of binge drinking.</p> <p>Married; 3 young children; another child died of cot death 4 yrs earlier.</p> <p>Days before the incident; separated temporarily from his wife; time of offence was upset and intoxicated; since stopped drinking alcohol.</p>	<p>GBH x 1.</p> <p>The appellant and his four associates were drinking heavily. They went to a liquor store to purchase more alcohol. The appellant remained outside the store while the others went inside. Due to their intoxication they were refused service. The group angrily left the store. About 5 minutes later, the appellant entered the store and attempted to purchase alcohol, but he too was refused service The appellant slapped a bottle of liquor off the counter, verbally abused the staff and left.</p> <p>A short time later, he re-entered the premises. He yelled at the staff and demanded to see the manager. The manager approached the appellant. The appellant walked up to him and, with great force, punched him once with a clenched fist to the jaw. The impact detached the manager's jaw from his skull. The appellant left the store and got into a vehicle which then drove away.</p> <p>Victim hospitalised for 3 days and required</p>	<p>14 mths imp.</p> <p>EFP.</p> <p>Remorseful.</p> <p>Sentencing judge accepted was at lower end of the range of offences of GBH.</p> <p>Assault completely unprovoked.</p> <p>Low – moderate likelihood of reoffending.</p>	<p>Dismissed on papers.</p> <p>At [24] ... It was truly a senseless act of unnecessary violence. Shop managers who have to sometimes deal with customers' complaints need to be protected from physical confrontation and assault.</p>

			surgery but no permanent damage.		
29.	<p><i>JBD v The State of Western Australia</i></p> <p>[2013] WASCA 180</p> <p>Delivered 14/08/2013</p> <p>Juvenile</p>	<p>17 yrs at time offending. 18 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Criminal record; mostly limited to traffic offences.</p> <p>Parents separated when 1 year old; no further contact with biological father; good relationship with step-father at time of sentencing.</p> <p>Positive family support; lives at home with his parents.</p> <p>Left school at Year 10; reasonable work history.</p> <p>Intoxicated at time of offending; knew that he had violent episodes when drinking.</p> <p>After being charged sought counselling for alcohol issues.</p> <p>Co-offender convicted after trial and sentenced to 3 yrs imp.</p>	<p>Ct 1: GBH. Ct 2: AOBH.</p> <p>At around 2am on a Sunday; a maxi taxi carrying the appellant, a co-offender and a number of their friends stopped in Barrack Lane, Mandurah. The appellant had been behaving aggressively in the taxi, threatening to kill the driver and banging on the window.</p> <p>At around the same time Mr Roe, Ms Shaw and their son Levi, were trying to make their way home after a night out. They had been unsuccessful in obtaining a taxi. When they saw the appellant's taxi pull up Mr Roe approached and offered to pay the fare of the people in the taxi if he and his family could then use it to get home. One of the girls who was in the taxi was rude to Mr Roe and verbally abused him. The appellant also joined in the abuse. This cause Mr Roe to back off, telling the occupants, "It's cool, it's okay, no worries".</p> <p>At about the same time the appellant and co-offender got out of the taxi and walked towards Levi shouting abuse at him. Levi tried to calm the situation but the co-offender removed his shirt and then hit Levi, knocking him to the ground. The appellant immediately joined in with blows. Levi was momentari-</p>	<p>Ct 1: 12 mths imp. Ct 2: 8 mths imp (cum).</p> <p>TES 20 mths imp. EFP.</p> <p>Sentencing judge found co-offender was the more aggressive of the two and found that it was probable that it was the co-offender who had fractured Mr Roe's knee. However, he considered that an injury of the kind suffered was a foreseeable result of the common purpose which both offenders had in carrying out the attacks.</p> <p>Attacks were entirely unprovoked, random and senseless.</p> <p>Degree of remorse and co-operative with police although limited to telling the police that he could remember little</p>	Dismissed on papers.

			<p>ly knocked unconscious (AOBH). His mother, who was close by, was terrified and began screaming.</p> <p>Mr Roe heard the yelling, saw his son being attacked and tried to help by pulling off one of the offenders. This caused both the appellant and the co-offender to turn on Mr Roe.</p> <p>The appellant and co-offender both punched Mr Roe and then kicked him after he fell to the ground. The appellant was then dragged back into the taxi by his girlfriend. The co-offender continued to attack Mr Roe, kicking him to the stomach, chest and back area before stomping on him. During this attack Mr Roe was on his knees, holding his hands up and pleading for the co-offender to stop (GBH).</p> <p>Levi Roe suffered a swollen and bruised left eye, abrasions to his lip and elbows.</p> <p>Mr Roe received a fractured tibia of the left knee. He also received multiple bruises and abrasions.</p>	<p>about what had occurred.</p> <p>Reasonable prospects of rehabilitation.</p>	
28.	<p><i>Cotterill v The State of Western Australia</i></p> <p>[2013] WASCA 52</p>	<p>23 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>No prior criminal record.</p>	<p>Ct 1: Ass with intent to rob.</p> <p>Ct 2: GBH</p> <p>Ct 3: GBH</p> <p>The appellant and two co-offender's Simpson and Hall, agreed and planned to steal cash</p>	<p>Ct 1: 8 yrs imp.</p> <p>Ct 2: 5 yrs imp.</p> <p>Ct 3: 3 yrs 6 mths imp.</p> <p>Cts 2-3 cum.</p> <p>Ct 1 conc.</p>	<p>Allowed.</p> <p>Resentenced.</p> <p>Ct 1: 7 yrs 6 mths imp.</p> <p>Ct 2: 4 yrs 6 mths imp.</p>

<p>Delivered 26/02/2013</p>	<p>Long history of significant alcohol and drug abuse and had continuously used anabolic steroids since 20 yrs.</p> <p>Mental illness.</p> <p>Following the commission of these offences the appellant formed the intention to commit suicide soon after realising he was a suspect.</p>	<p>and property from a hardware store in Broome. Hall, an employee of the store, provided the appellant and Simpson with information regarding the security of the premises and the potential amount of cash that might be present after a long weekend. The appellant was aware that his offending would in all likelihood require him to confront somebody at the store.</p> <p>The appellant and his co-offender drove to the hardware store. The victim (Ct 2) Ms Lee, was the sole employee at the store at the time. She was attending to Ms Chin, a customer and victim (Ct 3). The appellant had in his possession a large maglite torch. The appellant told his co-offenders on the way to the store that he could use the torch to threaten any person if they were disturbed whilst in the store.</p> <p>The appellant and Simpson, who were wearing hats and sunglasses to conceal their identities, went to the store which was opened by Ms Lee. Both of them gave her a false name. Ms Lee had turned to walk inside the door when the appellant hit her across the head with the maglite torch causing her to fall to the ground. The appellant then ran inside the store to where Ms Chin was standing. The appellant hit Ms Chin across her head with the torch 3 times, causing her to fall to the</p>	<p>TES 8 yrs 6 mths imp.</p> <p>Made full admissions to police.</p> <p>Sentencing judge accepted that at the time of the offending he was suffering a depressive illness but did not accept that he was suffering from a psychosis or auditory hallucinations at the time.</p> <p>Sentencing judge found that the appellant's voluntary drug abuse contributed to his subsequent mental health problems.</p>	<p>Ct 3: 3 yrs imp.</p> <p>Served conc.</p> <p>TES 7 yrs 6 mths.</p> <p>EFP.</p> <p>At [23] The sentence for count 3 was at the upper end of the sound discretionary range but not manifestly excessive.</p> <p>At [27] What emerges from this analysis is that very significant care had to be taken to avoid any double (or more) punishment in sentencing for these offences.</p> <p>Held none of the individual sentences reflected the factual overlap. Appeal allowed as individual sentences reflected on impermissible level of double punishment.</p>
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			<p>ground and momentarily lose consciousness. Ms Chin suffered severe blood loss from the lacerations caused by the assault. The appellant then returned to Ms Lee, who was attempting to sit up, and struck her several more times across her head with the torch.</p> <p>The appellant and two co-offenders returned to the vehicle and drove from the store. They left without stealing any property. They then destroyed evidence to avoid detection.</p> <p>Ms Lee suffered, amongst other things, an extensive displaced depressed skull fracture, multiple scalp lacerations, significant facial fractures and a fractured right forearm. She spent 7 days in ICU and underwent extensive surgical intervention. Thereafter, further surgery was required to restore a portion of her skull. At the time of sentencing Ms Lee still had some motor impairment and had yet to be advised whether it would be permanent.</p> <p>Ms Chin received 3 lengthy lacerations to the top of her head, two of which penetrated to the bone.</p>		
27.	<p><i>The State of Western Australia v Taylor</i></p> <p>[2012] WASCA</p>	<p>43 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Prior criminal record – numerous assaults; being armed; damage.</p>	<p>1 x GBH.</p> <p>Victim aged 21 yrs old and slightly built. Victim and respondent unknown to each other prior to offending.</p>	<p>18 mths imp.</p> <p>TES 18 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES increased to 3 yrs 6 mths imp.</p> <p>At [43] Sentencing judge was in</p>

<p>233</p> <p>Delivered 16/11/2012</p>	<p>Five children from prior relationship which was marred by domestic violence inflicted by the respondent.</p> <p>Respondent's father violently abused his mother and had issues with alcohol.</p> <p>Stable employment.</p> <p>Involved in indigenous culture and recognised as a 'senior lawman' in that culture.</p>	<p>The victim lives opposite the respondent's mother in Geraldton. Two days before the offending there was an incident between the victim and the respondent's mother. The respondent was angered by this incident and decided to drive from Perth to Geraldton to find out what had happened.</p> <p>On arriving in Geraldton, the respondent found that the victim was not home and told one of her neighbours that he was the "world's worst". The respondent waited, with family members and two female co-offenders, for the victim to return home.</p> <p>When the victim returned home – in a car with her mother and her two young children aged 2 and 6 yrs – the respondent asked which one was the victim and co-offender 1 identified her. As the victim got out of the car, the respondent grabbed her, pushed her against the car, throttled her and punched her several times in the head. The victim's mother pleaded with him to stop but he did not. The respondent eventually stopped his attack so that the two co-offenders could attack the victim instead.</p> <p>The victim was able, at some point, to grab a broom handle and waved it in an attempt to stop any further violence against her. The respondent shouted to get a wheel brace and went to the car and returned with an Aboriginal punishment stick. The respondent struck the victim with the stick as she lay on</p>	<p>Elevated risk of re-offending in similar way; some remorse.</p>	<p>error when he found that the respondent had been "trained to bash women" as a child and that reduced his culpability.</p> <p>Responsibility for violence against women cannot be excused by an offender's upbringing and an offender must be made to understand that "the violent abuse against women is intolerable".</p> <p>At [45] Sentencing judge was in error in finding that there were "strong reasons" for returning the respondent to the community as soon as possible to allow him to resume his role model status. The Court of Appeal held that <i>"It scarcely needs to be said that a man of mature years who is 'very easily vulnerable to senseless acts of violence, particularly against women (ts 63) does not, at least in those respects, model behaviour that is to be encouraged among boys or young adult males."</i></p>
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			<p>the ground causing deep gashes and a fracture to her tibia. The respondent then left the scene threatening the victim with future violence as he went.</p> <p>The fractured tibia required surgery and the insertion of pins as well as numerous trips for rehabilitation to Perth. Offending also caused significant distress to the victim's children who witnessed the attack.</p>		
26.	<p><i>Djiagween v The State of Western Australia</i></p> <p>[2012] WASCA 141</p> <p>Delivered 25/06/2012</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record – assault; burglary; threats; disorderly conduct; traffic offences.</p> <p>3 children with co-offender (aged between 1 and 5 yrs).</p> <p>Dysfunctional childhood.</p> <p>Limited education; poor literacy skills.</p> <p>Involved in a serious car crash in 2001 which left him with permanent leg and pelvis injuries – poor employment history.</p>	<p>1 x GBH.</p> <p>Appellant and co-offender (de facto partner) went to victim's home with intention of confronting a man living there in respect of an alleged sexual assault on the co-offender. Co-offender was armed with an Aboriginal fighting stick (approx 1m long and 5cm thick).</p> <p>On arriving at the victim's home, the appellant and co-offender were told the person they wanted to talk to was not there. The appellant became suspicious of the victim and said to the victim he believed that he was involved in the assault. The appellant then punched the victim several times in the face with a clenched fist. The co-offender then hit the victim several times across the head and body with the fighting stick. The appellant then grabbed the victim around the throat and choked him. The co-offender</p>	<p>15 mths imp.</p> <p>TES 15 mths imp.</p> <p>EFP.</p>	<p>Dismissed – leave refused on papers.</p> <p>At [21] Offending behaviour was the result of a decision made by the appellant to take the law into his own hands – such offending requires both general and personal deterrence.</p>

			<p>continued to hit the victim with the fighting stick. The co-offender then went to the kitchen and returned with a knife. The appellant told her not to use the knife and the two of them then left.</p> <p>Victim received a broken jaw (two fractures requiring surgical insertion of titanium plates and screws) and superficial bruising to the body and head. The extent of his injuries meant he had to be flown from Broome to Perth for medical treatment.</p> <p>The co-offender contacted police and the appellant and the co-offender assisted locating the fighting stick and clothing worn during the attack. Both made full admissions in separate police interviews.</p> <p>Co-offender received a sentence of 15 mths imp suspended for 12 mths.</p>		
25.	<p><i>THG v The State of Western Australia</i></p> <p>[2012] WASCA 139</p> <p>Delivered 13/07/2012</p>	<p>33 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Significant prior criminal record – agg assaults; assault; dep lib; steal motor vehicle; threats to kill; numerous breach VRO and bail.</p> <p>Offending breached VRO.</p>	<p>1 x Agg GBH. 1 x Agg sex pen without consent.</p> <p>Appellant and victim in de facto relationship of 14 yrs and had six children together. A VRO in place at time of offending with much of the appellant’s previous violent offending being directed at the victim (32 reported domestic violence incidents since 2001).</p>	<p>2 yrs 6 mths imp. 10 yrs imp.</p> <p>TES 12 yrs 6 mths imp.</p> <p>EFP.</p> <p>No remorse; denied offending; high risk re-offending; no insight.</p>	<p>Dismissed.</p> <p>At [32] Sentence for GBH was specifically reduced from 4 yrs for reasons of totality.</p> <p>At [30] The finding that the sexual assault was in the worst case category means that the sentencing range established</p>

		<p>History substance abuse problems - under the influence of drugs and alcohol at the time of offending.</p> <p>Raised by relatives after witnessing his father kill his mother.</p> <p>History semi-skilled employment.</p>	<p>Victim was at her sister's house when the appellant has seen her leaving the property in a car with several children inside. Appellant entered the car through the passenger window and forced the victim to drive to the post office. When the appellant left the car, the victim drove off and the appellant then chased the car.</p> <p>Victim later returned and picked the appellant up. Victim then dropped the children off at her sister's house and drove the appellant to a friend's home. On arrival, the appellant took the keys from the car. On finding his friend was not at home, the appellant returned to the car and told the victim to drive out of town to Lake Douglas – the victim complied out of fear. Appellant made the victim stop the car at the turn-off for Lake Douglas and took over driving the car. The appellant began to threaten and abuse the victim while driving at speed and erratically. The victim, fearing for her safety and unbeknownst to the appellant, rang the police. Victim attempted to escape from the appellant by jumping from the moving car – fracturing and dislocating her ankle on landing.</p> <p>The appellant stopped the car and helped the victim back into the passenger seat. Despite being asked by the victim to take her to hospital, the appellant refused to do so. The appellant drove a further 15 km into the bush</p>	<p>under the transitional provisions is not applicable.</p>
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			<p>and, after saying words to the effect of “This is what you get for not wanting me”, began to punch the victim in the face. The victim lost consciousness.</p> <p>On regaining consciousness, victim again rang the police without the appellant’s knowledge and tried to walk away. Due to her injuries, the victim fell over and the appellant began yelling at her again and dragged her back to the car. Victim then lost consciousness again and awoke in the back of the car to find that she had suffered severe injuries to her genitals – caused by the appellant repeatedly penetrating the victim’s vagina with the handle of the car jack. The appellant drove the victim to the hospital the next morning.</p> <p>Injuries described as horrendous – compound fracture and dislocation of the right foot; recto-vaginal tearing from the anus to the vagina making the area one hole (4th degree tear – most severe level associated with child birth) and a cut from the vagina to the cervix; multiple soft tissue injuries to the face and limbs.</p> <p>Victim recanted her depositions following phone conversations with the appellant and was declared a hostile witness at trial.</p>		
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<p>24.</p>	<p><i>Holden v The State of Western Australia</i></p> <p>[2011] WASCA 238</p> <p>Delivered 15/09/2011</p>	<p>21 yrs at time offending.</p> <p>Convicted after fast-track PG.</p> <p>Prior criminal record – AOBH; assault; discharging firearm to cause fear; being armed to cause fear; reckless driving; disorderly behaviour.</p>	<p>1 x GBH.</p> <p>Appellant and victim unknown to each other.</p> <p>Appellant celebrating his 21st birthday and was in a nightclub with a group of his friends. For no discernible reason, appellant stepped forward and deliberately swung his arm at the victim while holding a glass in his hand. Glass struck victim in the head and caused serious injuries. Appellant extremely intoxicated and had used methylamphetamine at time offending – later had no recollection of the offending.</p> <p>Victim received lacerations to his left cheek, neck, eyelid and to temporal artery and jugular veins in his neck. Required over 80 stitches and sustained nerve damage on the left side of his face and ligament damage to the left side of his face which causes his eyelid to droop.</p> <p>Random, senseless and unprovoked act of violence on an innocent and unsuspecting person. Appellant used considerable force and the attack was made to particularly vulnerable part of the body (the head).</p>	<p>4 yrs 3 mths imp.</p> <p>TES 4 yrs 3 mths imp.</p> <p>EFP.</p> <p>Remorseful; genuine insight into offending.</p>	<p>Allowed.</p> <p>TES reduced to 3 yrs imp.</p> <p>EFP.</p> <p>At [12] Review sentences for ‘glassing’ injuries undertaken in <i>Powell v Tickner</i> illustrates that 4 yrs 3 mths imp significantly higher than other sentences imposed.</p> <p>At [13] Also appropriate to consider sentences in cases of GBH, whether ‘glassing’ offences or not. In relation to GBH sentences, original sentence manifestly excessive.</p>
<p>23.</p>	<p><i>Hobby v The State of Western Australia</i></p>	<p>25 yrs at time offending.</p> <p>Convicted after fast-track PG.</p>	<p>1 x GBH.</p> <p>Appellant believed victim had stolen money</p>	<p>2 yrs 6 mths imp.</p> <p>TES 2 yrs 6 mths imp.</p>	<p>Allowed.</p> <p>TES 20 mths imp substituted.</p>

	<p>[2011] WASCA 197</p> <p>Delivered 22/09/2011</p>	<p>Prior criminal record – violent behaviour; unlawful damage; breach protective bail; sex pen child 13-16 yrs; stealing.</p> <p>Working as a ‘standover man’ collecting debts owed to others.</p>	<p>from an acquaintance. Appellant and two co-offenders formed a plan that they would assault the victim with the intent of recovering the money.</p> <p>Appellant hip and shouldered the victim causing him to fall to the ground. The co-offenders then went through the victim’s bag and one of the co-offenders ran off. The victim chased that co-offender and was punched in the back of the head by the co-offender. Victim was knocked unconscious and fell to the ground – suffered bleeding on brain, broken jaw, broken teeth and lacerations. Appellant remained at the scene and gave victim first aid until ambulance and police arrived.</p> <p>On arrival of police, appellant repeatedly expressed remorse and made full admissions at the scene.</p> <p>Victim taken to hospital and placed in induced coma. Surgery was required to reduce the pressure on his brain and he remained in hospital for approx 5 weeks. At sentencing, victim made almost full recovery – some residual speech difficulties, headaches and lifestyle restrictions. Victim stated life improved – as result assault he was forced to stop drinking alcohol and taking drugs.</p>	<p>EFP.</p>	<p>EFP.</p> <p>At [16] State conceded length of term excessive in all the circumstances.</p> <p>At [20] Affirmed the three factors identified in <i>Trompler v The State of Western Australia</i> [2008] WASCA 265 as significant in determination of criminality of offence involving GBH. That is the nature of the harm inflicted, nature of the act that causes the harm and background and circumstances of the offence.</p>
22.	<i>Ward v State of</i>	46 yrs at sentencing.	1 x GBH.	3 yrs imp.	Dismissed.

	<p><i>Western Australia [No 2]</i></p> <p>[2010] WASCA 208</p> <p>Delivered 27/10/2010</p>	<p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>Excellent work and professional history, good family man and community member.</p>	<p>Offence considered serious, but not in the category of worst of its kind.</p> <p>Victim attended party at appellant's house. Appellant challenged victim to arm wrestle, then attacked victim without warning. Appellant punched victim in the face then bit off one quarter of victim's thumb. After spitting out that portion, appellant bit victim's left thumb, broke the skin before he was restrained.</p> <p>Victim's pain at highest possible level, still has physiological and emotional repercussions.</p>	<p>EFP.</p> <p>Lifetime restraining order from contact with victim.</p> <p>No remorse.</p>	<p>Sentence within appropriate range.</p>
21.	<p><i>Steel v State of Western Australia</i></p> <p>[2010] WASCA 118</p> <p>Delivered 30/06/2010</p>	<p>25 yrs at time offending.</p> <p>Convicted after trial.</p> <p>No prior criminal record in WA - offences committed as a child in UK.</p> <p>Stable family relationship, good work history, good character references.</p> <p>Never used illicit drugs; no significant history of alcohol abuse.</p>	<p>1 x GBH.</p> <p>Offence considered serious.</p> <p>Appellant and complainant camping on the beach in separate groups. Both were intoxicated. Complainant and his friend visited the appellant's camp on multiple occasions. Appellant's partner took offence at some of the actions of the complainant. Later, the appellant walked towards the complainant's camp carrying a Maglight torch and a spotlight torch. Confrontation occurred between the appellant and complainant, appellant swore and yelled at</p>	<p>2 yrs 4 mths imp.</p> <p>TES 2 yrs 4mths imp.</p> <p>EFP.</p>	<p>Dismissed.</p> <p>Sentence within appropriate range.</p>

			complainant, then struck him on the head with the spotlight torch. Complainant fell to the ground, then went to his vehicle and procured a .22 Hornet rifle. Complainant threatened to shoot appellant in the kneecaps if he did not stop. Appellant jumped on complainant, who dropped the rifle, both men fell to the ground. Appellant struck complainant's face and head at least three times with the Maglight torch.		
20.	<i>Mercanti v State of Western Australia</i> [2009] WASCA 109 Delivered 25/06/2009	41 yrs at time offending. Convicted after trial. Offending breach bail for previous assault charge. Prior criminal record - previous assault convictions.	1 x GBH. Offence considered toward lower end of scale of seriousness. Appellant and victim in nightclub. Victim heavily intoxicated. Appellant not affected by alcohol. Appellant punched victim right side of jaw – without warning or provocation of any kind. Victim's jaw broken, several teeth fell out and he fell to the floor unconscious.	2 yrs 4 mths imp. TES 2 yrs 4 mths imp. No remorse.	Dismissed. Sentence within range. Offence too serious to suspend. NB: The original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.
19.	<i>Lawrie v State of Western Australia</i> [2009] WASCA 45 Delivered 27/02/2009	26 yrs at time offending. Convicted after PG. Limited prior criminal record- no convictions involving violence. Close and protective relationship with sister.	Ct 1: GBH . Ct 2: Unlawful wounding. Ct 3: Armed with offensive instrument. s 32 offence: common assault. Appellant and sister arranged to meet at bar to share taxi home. Appellant intoxicated and when arrived at bar told by security his sister was outside and he was refused entry to bar.	Ct 1: 2yrs imp. Ct 2: 12mths imp. Ct 3: 8mths imp. \$500 fine. TES 32 mths imp. EFP.	Dismissed. Aggregate sentence not disproportionate to conduct. NB: The original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in

			<p>Found sister and she said security guard pushed her and knocked her to pavement. Appellant went to find security guard – asked to leave premises. Punched security guard in face when tried to take a bottle from him (common assault).</p> <p>Appellant and sister returned to the bar with a knife. Appellant tried to stab the security guard. Another security guard kicked appellant off balance, appellant slashed his left wrist (count 1). A patron tried to restrain appellant, appellant stabbed him in the thigh (count 2).</p>		force.
<i>Transitional Provisions Repealed (14/01/2009)</i>					
18.	<p><i>State of Western Australia v Redman</i></p> <p>[2009] WASCA 1</p> <p>Delivered 09/01/2009</p>	<p>27 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>A seaman in the Navy; excellent service record; conviction ended naval career.</p> <p>Good family relationship; good character references.</p>	<p>1 x GBH.</p> <p>1 x Act or omission causing bodily harm.</p> <p>GBH offence towards the low end of the scale of seriousness.</p> <p>Respondent and friend and victims 1 & 2 went to a cafe for food after nightclub shut. Two groups not known to each other. All four intoxicated.</p> <p>Respondent and victim 1 got into an argument, respondent walked away and was followed by victim 1. Respondent said he did not want a confrontation. Victim 1 continued</p>	<p>2 yrs imp.</p> <p>2 yrs imp.</p> <p>TES 3 yrs.</p> <p>EFP.</p> <p>Co-operated with police; volunteered information against his interest.</p> <p>Genuine remorse, but had not fully</p>	<p>Dismissed.</p> <p>Dismissed by majority (McClure and Wheeler JJA, Martin CJ dissenting) – circumstances of offences and mitigating factors justified sentence toward lower end of scale.</p>

			<p>to argue. Respondent pushed victim 1 and victim 1 slumped against a door. Respondent then punched victim 1 three or four times in the face, causing fractures to mandible and nose (bodily harm).</p> <p>Victim 2 got up and walked towards respondent. Respondent pushed victim 2 in the chest, then punched him. Victim 2 fell backwards and struck his head on brick paving (GBH). Victim 2 placed in induced coma for 2 days and later died as result of an embolism caused by deep vein thrombosis resulting from immobilisation in hospital bed.</p>	acknowledged the extent of wrongdoing.	
17.	<p><i>Trompler v State of Western Australia</i></p> <p>[2008] WASCA 265</p> <p>Delivered 18/12/2008</p>	<p>46 years at time offending.</p> <p>Convicted after PG.</p> <p>No prior criminal record.</p> <p>No reputation for aggression or violence; good character references.</p>	<p>1 x GBH.</p> <p>Serious offence.</p> <p>Appellant and friend approached by appellant's former work colleague and complainant. Work colleague confronted appellant about an issue, appellant said they should discuss it another time. Appellant and friend walked away, work colleague and complainant followed, complainant exchanged words with appellant and punched him twice in the chest. Appellant said 'that's enough' and took out a Swiss army knife, opened the blade, held it facing the complainant. Complainant punched or pushed appellant, appellant slashed him</p>	<p>2 yrs imp.</p> <p>TES 2 yrs imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES reduced to 16 mths imp.</p> <p>EFP.</p> <p>At [9]-[11] Identified three factors as significant in determination of criminality of offence involving GBH - the nature of the harm inflicted, nature of the act that causes the harm and background and circumstances of the offence.</p>

			across the stomach.		
16.	<i>The State of Western Australia v Camilleri</i> [2008] WASCA 217 Delivered 23/10/2008	24yrs at time offending. Convicted after fast track PG – acknowledged not acting in self defence even though claimed fearful of victim 2 as holding bottle. No relevant prior record - traffic offences, possess prohibited drug. Referees described him as having ‘good character’. On day of offence he has worked a long day in the construction industry then long hours at the tavern.	1 GBH. 2 x AOBH. Respondent employed as a floor manager at a tavern -employed approx 2 weeks and had not received training in dealing with intoxicated persons. Respondent on door at closing time and allowed some young women in at to use the bathroom. Victim 1 also wanted to enter tavern to use bathroom but respondent did not allow him to. Victim 1 insulted the respondent and turned to walk away. Respondent pushed him in the back causing victim 1 to fall down some steps to the ground. Victim 1 injured his knees and had pain, bruising and swelling to his right knee in particular (AOBH). The respondent then walked quickly up to victim 1 and punched him in the face causing him to fall to the ground unconscious - recovered consciousness soon after (AOBH). Victim 2 (victim 1’s brother) approached respondent with a bottle in his hand. Respondent punched victim 2 in head. Victim 2 fell on concrete, hit head, and began to convulse (GBH).	8mth imp. 4 mths imp each count. TES 8mths imp. Remorse/ acceptance of responsibility.	Dismissed. Lenient but not so as to manifest error. At [18]-[23] Discussion of comparative cases for GBH.
15.	<i>Luke v State of Western</i>	31 yrs at time offending.	1 x GBH. 1 x AOBH.	4 yrs 8 mths imp. 16 mths imp.	Dismissed.

	<p>Australia</p> <p>[2008] WASCA 176</p> <p>Delivered 25/08/2008</p>	<p>Convicted after trial of GBH. Convicted after PG to AOBH.</p> <p>Prior criminal record -2 x common assault; drug related offences; breaking and entering with intent.</p> <p>Alcoholic at time offending; since completed alcohol rehabilitation course with Salvation Army.</p> <p>Favourable references; steady employment; caring father of 6 yr old child.</p>	<p>GBH offence was considered serious.</p> <p>Rumour that appellant's girlfriend having sexual relations with victim. Victim entered appellant's friend's flat. Friend accused victim of having sexual relations with appellant's girlfriend. Appellant punched and kicked victim, friend joined in. Victim escaped to balcony, and jumped over the edge, then hung on to rail to prevent 6m fall. Either appellant or friend struck victim's hand, causing him to fall. Victim was severely injured, and unable to escape. Appellant and friend went to ground, kicked victim, then left.</p>	<p>TES 4 yrs 8 mths imp.</p>	<p>Offence serious, mitigating factors (guilty plea for assault, attempt to rehabilitate) not enough.</p>
14.	<p>State of Western Australia v Garlett</p> <p>[2007] WASCA 274</p> <p>Delivered 13/12/2007</p>	<p>46 yrs at time offending.</p> <p>Convicted after PG.</p> <p>No relevant record prior criminal record.</p>	<p>1 x GBH. 1 x Manslaughter.</p> <p>Sentencing judge placed offences at high end of scale of seriousness.</p> <p>Respondent deliberately drove on wrong side of road and mounted a curb, approx 50-60km per hour, to knock over the complainant, breaking his leg. Respondent then did a u-turn and deliberately struck deceased from behind. At the time of the offences, the complainant, deceased and another youth were armed (complainant with samurai sword and deceased with baseball bat) and</p>	<p>2 yrs 8 mths. 6 yrs imp.</p> <p>TES 6 yrs.</p> <p>Genuine remorse and accepted responsibility for actions.</p>	<p>Dismissed.</p> <p>NB: double jeopardy applied to State appeals.</p>

			threatening a group of children – part of an ongoing feud between two families. Offences committed with motivation of protecting group of children.		
13.	<i>Clements v State of Western Australia</i> [2006] WASCA 69 Delivered 02/05/2006	22 yrs at time offending. Convicted after early PG. No prior criminal record. Good character; good family relationship; employed; had “a very promising future ahead”.	1 x GBH. Both sentencing judge and appeal court considered offence serious. Appellant and two friends at a concert. All intoxicated. Developed animosity towards bouncer. Eventually, bouncer tried to remove one of them by grabbing his upper arm. Man pulled out of his grip and three men started hitting bouncer. Appellant threw a broken glass at bouncer’s face, resulting in bouncer having to have his eye removed.	2 yrs imp. TES 2 yrs imp. EFP. Remorse; admitted offence to police and cooperated. No prospects of re-offending.	Dismissed. Judge gave appropriate weight to all relevant considerations.
12.	<i>Bruno v State of Western Australia</i> [2005] WASCA 149 Delivered 04/08/2005	Convicted after PG at first opportunity. Prior criminal record - previous imprisonment for aggravated assault. Had previously committed AOBH on same victim with a broken broomstick; pleaded guilty to wounding after hitting same victim on the head with a piece of wood.	1 x GBH. Sentencing judge said this was one of the worst cases of GBH she had dealt with. Appellant and victim in de facto relationship. Both sitting by a campfire drinking alcohol in early hours of morning. Appellant became angry at victim because she wanted to go to sleep. Punched her in the face, repeatedly kicked her in the face and ribs. Hit her repeatedly on the back of the head with a piece of wood. Grabbed her hair and pulled	6 yrs imp. TES 6 yrs imp. EFP. Remorse.	Allowed. TES reduced to 5yrs 4 mths imp. EFP. 10% deduction for early plea so low as to manifest error; discount of 20% applied.

		History of alcohol abuse.	her to the campfire, held her head in the flames. Then threw her onto a bed and took coals from the fire, scraping her under her legs and buttocks. Victim suffered burns to 15% of her body, and fractures to her left foot and arm.		
10.	Hayes v R [2003] WASCA 230 Delivered 25/09/2003	50 yrs at time offending. Convicted after PG. Prior criminal record - 3 convictions of common assault and 1AOBH all committed against same victim.	1 x GBH. Sentencing judge considered offence serious. On appeal, described it as “ <i>serious in the extreme.</i> ” Appellant separated from his wife (victim). Went to her house, denied entry but forced his way in. Took victim by the hair, threw her into a wall. Pushed her into a bookcase, slapped her face. They went into a bedroom and argued before the appellant pushed her onto the bed, then grabbed her hair and dragged her to the floor. She stood up, he grabbed her neck with both hands and squeezed. Appeared to be heavily intoxicated. Evidence that appellant stomped on the victim’s stomach while she was lying on the floor, which resulted in life-threatening abdominal trauma.	5 yrs imp. TES 5 yrs imp. EFP. PSR and psychological report both attributed behaviour to over-consumption of alcohol and volatile relationship with wife. Expressed remorse and an understanding that he had to stop excessive alcohol consumption and continue counselling. Had undertaken a program in prison called “Building Better Relationships”, appeared to have made	Dismissed. Sentence was well-justified.

				some progress.	
9.	<i>Dadswell v R</i> [2003] WASCA 212 Delivered 09/09/2003	Convicted after late PG - only after evidence conclusively linked applicant to crime.	1 x GBH. Sentencing judge found the offence to be “close to the top of the range”. Woman found unconscious with severe injuries to the face and head. Appellant found in the vicinity, in aggressive state, and was observed to have been drinking. Appellant claimed to have no memory of the event. Forensic evidence and photographs linked applicant to various injuries of victim.	7 yrs imp. TES 7 yrs imp. EFP.	Appeal dismissed. NB: The original sentence, upheld by the Court of Appeal, was imposed whilst the transitional provisions were in force.
<i>Transitional Provisions Enacted (31/08/2003)</i>					
8.	<i>Etrelezis v R</i> [2001] WASCA 327 Delivered 26/10/2001	20 yrs at time offending. 22 yrs at time sentencing. Convicted after trial. No relevant prior criminal record. Anger and aggression out of character. Good character references, family relationships and employment history.	1 x GBH. Appellant and victim at a hotel. Squeezing through the crowd, victim accidentally bumped appellant, causing him to spill his drink on a girl. Argument ensued. Victim head-butted appellant (found to be an insignificant head-butt). Appellant punched victim in the eye with the hand holding his glass. Glass shattered and victim received laceration un upper eyelid that required stitches and surgery.	3 yrs imp. EFP. Judge found no sign of remorse.	Allowed. TES 3 yrs imp susp 1 yr. Insignificant weight given to mitigating factors. Finding that head-butt was insignificant was against the evidence. Considered that appellant had expressed remorse through his counsel and a letter his father wrote to the Judge.
7.	<i>R v Hodges</i>	23 yrs at time sentencing.	1 x GBH.	2 yr CBO. 120 hrs community	Allowed.

	[1999] WASCA 278 Delivered 08/12/1999	Convicted after PG at earliest opportunity. Good character. No relevant criminal record.	Respondent had been heavily drinking at a sports club. Victim offered to drive him home. Respondent in back seat with victim's girlfriend, began to make sexual advances towards her. She resisted, he began to verbally abuse her. Victim stopped the car and told respondent to get out. Victim got out, argument ensued. Respondent said he wished to fight. Victim and girlfriend urged respondent to leave. Respondent punched victim forcefully in the face. Victim flew backwards and hit his head on the ground, knocked unconscious. Respondent then began to assault and abuse the girlfriend (had been sentenced on those charges) – dragged her by the hair and punched her in the jaw.	service. Has since shown remorse, has stopped drinking to excess.	TES 2 yrs imp imposed.
6.	<i>Rogers v R</i> [1999] WASCA 239 Delivered 05/11/1999	Convicted after trial. Attention deficit and hyperactivity syndrome – on prescribed medication. No relevant criminal history.	1 x GBH. Appellant and victim in a restaurant. Victim had a sneezing fit, appellant was annoyed and made provocative comments. Fight ensued. Both evicted through separate doors. Continued to fight outside, appellant took out swiss army knife and slashed victim's face.	3 yrs imp. TES 3 yrs imp. EFP. No remorse.	Dismissed.
<i>Maximum penalty increased from 7 yrs to 10 yrs – effective 3/08/1998</i>					
5.	<i>Bockfuss v R</i>	67 yrs at time sentencing	1 x GBH.	5 yrs imp.	Dismissed.

	<p>Unreported; CCA Sct of WA; Library No 950063; 22 February 1995;</p> <p>Delivered 22/02/95</p>	<p>Convicted after late PG – one week prior to trial.</p> <p>No prior criminal record.</p> <p>Good character.</p> <p>Suffered from heart problems, but not serious.</p>	<p>Offence considered on appeal to be within the top end of the criminality range.</p> <p>Appellant in a deteriorating relationship with a woman. After she told him she did not want him to come round for dinner, he drove over to her house, and saw the truck of another man parked outside. Appellant asked woman if he could come in and she said no. Asked the man to come outside and talk to him and was ignored. Eventually went in through the side gate and found the woman and the man talking in the back garden. Appellant approached them and stabbed the man twice in the left shoulder with a fishing knife he kept in his car. Struggle ensued, appellant stabbed the man four more times. One of the woman's sons pulled the appellant off the victim, who collapsed. Victim suffered collapsed lung, emergency surgery saved his life. Victim is left-handed, and has limited use of and constant pain in his left arm.</p>	<p>TES 5 yrs imp.</p> <p>EFP.</p> <p>Remorse.</p>	
4.	<p><i>Ellis v R</i></p> <p>Unreported; CCA Sct of WA; Library No 930602; 5 November 1993</p> <p>Delivered 05/11/1993</p>	<p>29 yrs at time sentencing.</p> <p>Prior criminal record - aggravated assault; breaking and entering; stealing; alcohol and drug related offences.</p> <p>Medical issues - epilepsy related to cerebral syphilis; suffered from</p>	<p>1 x GBH.</p> <p>Sentencing Judge categorised offence as “at the higher end of the scale” – view upheld on appeal.</p> <p>Victim was a doorman, who, in refusing the appellant entry to a bar, pushed or punched her. No evidence that appellant was drunk or</p>	<p>4 yrs 3 mths imp.</p> <p>TES 4 yrs 5 mths (spent 2 mths in custody pre-trial)</p> <p>EFP.</p>	Dismissed.

		<p>seizures; headaches; earaches; insomnia; poor concentration; forgetfulness; stress; moods.</p> <p>History of heavy alcohol use - diagnosed alcoholic aged 16.</p> <p>History of serious physical abuse from two de facto husbands.</p>	<p>affected by drugs. Appellant returned after half an hour with her brother. Brother wielding a tyre lever around his head, attracted attention, people milled around. Appellant produced a fully loaded repeating pistol and fired seven times in the direction of the complainant. A bullet entered victim's leg. No one else was hit, but some bullets barely missed bystanders. Appellant and brother drove away in a car. Appellant gave herself up to police 33hrs later. Bullet severed victim's artery, still walks with a limp.</p>		
3.	<p>Jones v R</p> <p>Unreported; CCA SCT of WA; Library No 920406; 31 July 1992;</p> <p>Delivered 31/07/1992</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Extensive prior criminal record - including alcohol and drug related offences and convictions for disorderly conduct and assault; previous imprisonment for GBH.</p> <p>Aboriginal background; angry demeanour towards white society.</p> <p>Previously breached parole order and was in custody for that breach at sentencing.</p>	<p>1 x GBH.</p> <p>Found on appeal to be middle range offending.</p> <p>Victim and family in their unit, heard a crash. Windows of their unit started breaking, people tried to gain entry to the unit. Victim went outside to see what was happening and was knocked to the ground, unconscious. Group of three men, including the appellant, hit victim with sticks and kicked him in the head and ribs. Victim's face badly injured.</p>	<p>5 yrs imp.</p> <p>TES 5 yrs imp.</p> <p>Not EFP.</p> <p>PSR - appellant twice previously been released on parole but his reporting had not been satisfactory; no remorse.</p>	<p>Allowed.</p> <p>TES reduced to 4 yrs imp.</p> <p>EFP.</p> <p>In 18 mths between sentencing and appeal judgement, appellant completed a course in anger management and a course for aboriginal race relations; had begun studying at university. Wrote a letter to the court accepting responsibility for actions, and saying that he had matured significantly.</p>
2.	<p>Munmeri v R</p>	<p>19 yrs at time sentencing.</p>	<p>1 x GBH.</p>	<p>4 yrs 4 mths imp.</p>	<p>Dismissed.</p>

	<p>Unreported; CCA SCt of WA; Library No 8746; 1 March 1991; BC9101233</p> <p>Delivered 01/03/1991.</p>	<p>Convicted after PG.</p> <p>Extensive prior criminal record - 4 x aggravated assault; 3 x assaulting a public officer; 4 x common assault; 26 x breaking and entering, one of which was burglary; 12 x unauthorised use or unlawfully driving a motor vehicle; resisting arrest; escaping custody; possessing an offensive weapon; causing damage; stealing; disorderly conduct; various driving offences. (total of 124 convictions).</p>	<p>Sentencing Judge considered offending in upper range.</p> <p>Man was with his wife (victim's daughter) when assaulted by two men and their dogs. Victim ran to man's aid. Appellant ran towards victim and punched him in the face. Victim was lifted off his feet and fell, striking his head on the pavement. Complainant was unconscious, applicant kicked him in the ribs then in the head. Complainant was 40yrs old; applicant was a big and powerful man; there was no basis for thinking that complainant posed a threat to applicant or his companions. Complainant suffered massive head injuries and brain trauma - would have died without medical treatment.</p>	<p>TES 5 yrs imp(spent 8 mths in custody pre-trial).</p> <p>Had been placed on parole for 6mths and had breached by reoffending.</p>	
1.	<p>R v Whiteman</p> <p>Unreported; CCA SCt of WA; Library No 8297; 11 June 1990; BC9001287</p> <p>Delivered 11/06/1990</p>	<p>31 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal record.</p> <p>No history of violent behaviour; good character; good work record.</p>	<p>1 x GBH.</p> <p>Respondent and victim met in a hotel - played pool, placed bets on pool games and other contests. Respondent and friends had returned to hall where they were stayed. Victim later came to the hall and demanded money he believed was owing to him. One of respondent's friends fought victim but the victim was stronger. Respondent ran outside with a knife and stabbed victim, who was unarmed, three times in the abdomen. Respondent carried the knife for work</p>	<p>15 mths imp.</p> <p>TES 15 mths imp.</p> <p>EFP.</p>	<p>Allowed.</p> <p>TES increased to 3 yrs imp.</p> <p>Element of deterrence considered important – “courts must make it clear that intentional stabbing with a knife will result in severe penalties.”</p> <p>EFP.</p>

			purposes. Respondent was fairly intoxicated at the time.		
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