Minor Criminal Matters

Below is an outline of some basic insight as to the law on minor criminal charges in NSW. The information is useful for all students to expand knowledge on these areas of law, and to those seeking some guidance if faced with minor criminal charges.

If you need to talk to someone, please get in touch with the Student Legal Service on (02) 9685 4788 or email a completed SLS request for help form to studentlegalservices@westernsydney.edu.au.

Free, confidential and professional counselling is available for all students through the student Counselling Service on counselling@westernsydney.edu.au or 1300 668 370 (option 4 then option 1), Monday to Friday 9am – 4.30pm.

The below fact sheet on minor criminal matter has been produced in collaboration between WSU Justice Clinic law students and criminal lawyers Sydney branch of Criminal Defence Lawyers Australia.

What is a Minor Criminal Offence?

What are minor criminal offences or charges in NSW? Minor criminal matters are often also referred to as 'summary offences'.

Broadly, there are two types of main offences, namely, 'indictable offences' and 'summary offences'. Indictable offences are a more serious type of criminal offences that are generally dealt with in a higher court, namely, a District Court or Supreme Court.

Many indictable offences can and do get dealt with in the Local Court. The Local Court is a lower court than the District or Supreme Court. The Local Court is where almost all cases start off in.

Many indictable offences allow the accused person or the prosecution the option to have the matter dealt with in the District Court rather than the Local Court. This will ultimately depend on the particular indictable offence/charge.

Summary offences are less serious types of offences, which are not classified as indictable offences. These types of offences/charges are generally only heard and dealt with 'summarily' in the Local Court. The maximum penalty that a summary offence carries is normally no more than two years imprisonment. The Local Court is not permitted to hand down a sentence penalty of more than 2-years imprisonment for any one offence.

Examples of summary offences include, drink driving, and offensive conduct. We will explore this further below.

Examples of indictable offences which are not summary offences, that can also be considered minor criminal matters include common assault, and stalk or intimidate with intent, which are also explored further below.

Drug Possession Charges

Possessing a prohibited drug in NSW is a crime punishable with a maximum penalty of up to 2-years imprisonment or fine of $2,200, or both (including a criminal conviction) pursuant to section 10 of the Drug Misuse and Trafficking Act 1985 (NSW). This applies if the matter is dealt with in court, which occurs if police issue you with a court attendance notice.

A NSW police officer has discretion to not issue a person in possession of a prohibited drug with a court attendance notice, instead an officer can issue an on-the-spot fine in NSW, also known as a penalty notice. Payment of this fine will not result in a criminal conviction, nor a requirement to appear in court.

If a person who is issued with a penalty notice fine does not want to pay the fine or wishes to dispute it, he/she can court elect the penalty notice, in which event there will be a requirement to appear in court to plead either 'guilty' or 'not guilty'. This will then expose the person who has court elected to the more serious maximum penalties that a court can impose, unless the court is convinced to dismiss the charge on the basis of finding the accused person 'not guilty' or sentencing the accused person with a section 10 non-conviction penalty even after pleading guilty to it.

Instead of giving a drug possession charge, a police officer can issue a $400 penalty notice fine if you're caught in possession of a prohibited drug, weighing not more than the 'small quantity' of the drug. If it's MDMA in capsule form, if it weighs 0.25g or less, or if it's MDMA in any other form, it weights under 0.75g. This is reflected in schedule 4 of the Criminal Procedure Regulation 2017 (NSW).

If a person is found in possession of cannabis, a police officer has the discretion to issue a cannabis caution, instead of issuing a court attendance notice, if the cannabis is in possession of a person weighing no more than 15g; was for personal use; the person admits to having possession of it; and the person in possession of it isn't involved in another criminal offence at the same time, has no prior record of drug offences, violence or sexual offences, and has never been given a cannabis caution for possessing prohibited drugs on more than two previous occasions.

If the amount of the prohibited drug weighs the traffickable quantity for that substance, the law assumes or deems that you had it in possession for purposes of supplying it. This can then result in a more serious drug charge of supplying prohibited drugs, which carries heavier penalties.

Contravention of an Apprehended Violence Order

It is a crime to breach an apprehended personal violence order or apprehended domestic violence order condition, knowingly, pursuant to section 14 of the Crimes (Domestic and Personal Violence) Act 2007 (NSW).

Breaching an AVO carries a criminal conviction, and up to 2-years imprisonment or $5,500 fine, or both in NSW.

A breach of an apprehended domestic violence order is a domestic violence offence.

A domestic violence offence involves a domestic relationship between the accused person and the alleged victim. A domestic relationship is an existing or former relationship of marriage, de facto, intimate personal relationship, housemate, or family/relative.

Section 4A of the Crimes (Sentencing Procedure) Act 1999 (NSW) requires a court, in respect to domestic violence offences, to sentence offenders with a penalty of either full-time jail or a supervised non-custodial penalty. This can include a non-conviction conditional release order with supervision.

Obscene Exposure

Anyone who wilfully and obscenely exposes him/herself either in view or within view from a public place or school will face up to six months imprisonment or $1,100 fine, or both, pursuant to section 5 of the Summary Offences Act 1988 (NSW).

Obscene exposure includes conduct, that is in the circumstances, considered offensive to the susceptibilities of current community standards by violating the contemporary standards of decency at the time. i.e. public nudity.

A public place is anyplace that is either open to or used by the public.

Offensive Conduct

It is also a crime to conduct yourself in an offensive manner either in or within view from a public place or school in NSW. This carries a maximum penalty of up to 3-months imprisonment or $660 fine, or both pursuant to section 4 of the Summary Offences Act 1988 (NSW).

Conduct is considered ‘offensive’ if it would wound the feelings, arouse anger, resentment, disgust or outrage in the mind of a reasonable person. A ‘reasonable person’ according to law, is one who is not thin-skinned.

Whether or not a hypothetical reasonable person would be offended or not depends on the existing community standards, location and circumstances.

Offensive Language

In NSW, it is an offence to use an offensive language in a public place or near a school, carrying a maximum penalty of $660 fine, unless there is a reasonable excuse for it, pursuant to section 4A of the Summary Offences Act 1988 (NSW).

Instead of imposing a fine, a court may instead impose a community correction order involving community service work of up to 100 hours.

Whether the words used is considered 'offensive' according to law, depends on whether it would wound the feelings of, arounds anger, resentment or disgust in the mind of a hypothetical reasonable person in view or hearing or near a public place or school.

An offensive language will usually be language considered hurtful, blameworthy or improper, and which offends a person against the standards of good manners or good taste.

Common Assault

It is a criminal offence carrying up to 2-years imprisonment or $5,500 fine, or both, if you intentionally do something without consent, to another person, causing that person to fear immediate and unlawful violence (not involving physical force) or causing that person unlawful physical force. This is reflected in section 61 of the Crimes Act 1900 (NSW).

In addition, you will be guilty of committing this type of assault if you:

- Realised the possibility of causing this type of fear of immediate and unlawful violence or physical force to the other person; or
- Intended to cause this to the other person.

Assault Occasioning Actual Bodily Harm

The offence of assault occasioning actual bodily harm is a more serious assault offence than common assault, under the law.

An assault is conduct that causes unlawful force or that causes an apprehension of immediate and unlawful violence against another person without consent.

Actual bodily harm is injury that does not have to be permanent, but one that is more than merely transient or trifling. Examples include bruising and scratches. Actual bodily harm may also include psychiatric harm, but does not extend to emotional harm.

Anyone who assaults another person, causing that person actual bodily harm, without consent will be guilty of a crime carrying up to five years imprisonment or $5,500 fine, or both in the District Court. If dealt with in the Local Court, which it usually is, the maximum penalty that can be imposed is two years imprisonment and/or $5,500 fine, pursuant to section 59 of the Crimes Act 1900 (NSW).

This crime can be committed in circumstances where you realised the possibility of causing the other person unlawful force or apprehension of immediate and unlawful violence, which is generally considered less serious (known as reckless assault), or in circumstances you intended to cause the other person actual bodily harm, which is considered a more serious type of this assault (known as intentional assault).

Stalking or Intimidating with Intend to Cause Fear of Physical or Mental Harm

It is a crime to stalk or intimidate a person if you do so either with the intention to cause physical or mental harm, or if you do so while being aware that your actions are likely to cause this to that person.

Anyone guilty of this will face a maximum penalty of up to 5-years imprisonment or, $5,500 fine, or both, under section 13 of the Crimes (Domestic and Personal Violence) Act.

To be guilty of this, there is no requirement that the victim be actually left in fear.

According to law, 'stalking' is behaviour involving the watching or following a person, or frequenting the vicinity, or approaching a person's work or home or any place he/she frequents for leisure or social activity.

'intimidation' under the law, include words or actions that amount to harassment, molestation, approaching a person via phone call, text, email or other technological form that causes feat of safety, or behaviour that causes a reasonable apprehension of injury or violence to a person, or damage to his/her property.

Generally, many instances of threats will not amount to intimidation, rather considered bluster.