

Banks on Sentence

Sentencing Alert No 205

7 Nov 2018

Alert material

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Common assault

Assaults on Emergency Workers (Offences) Act 2018 s 1(2)(b) creates a new offence.

Common assaults on emergency workers which include constables, prison officers, prisoner escorts, NHS workers and firemen in the exercise of their functions

(In force 13 November 2018)

Mode of trial Triable either way

Maximum sentence On indictment 12 months Summary 6 months and/or an unlimited fine.

For the meaning of an emergency worker, see **Victims** below.

Note: There is no requirement for the emergency worker to be working in an emergency, see the text of the statute and the Explanatory Note. Ed.

Corruption etc.

Police officers misusing the police computer

R v Mungur 2018 EWCA Crim 1062 D, a serving police officer, pleaded to conspiracy to commit misconduct and three associated offences (receiving lesser and concurrent sentences). Over six years, he accessed the police computer 21,803 times to obtain details of road accidents which he sold to solicitors' firms whom he contacted. The firms then contacted those involved in accidents. He received about £363,000 in payments from the solicitors, when his peak salary was £28,000. D was not a road traffic officer and the motive was just greed. D registered his company with the MoJ and when his licence was revoked, D just set up another company. The Judge found the offending was sophisticated with very significant planning. Held. The offending strikes at public confidence in the police and [requires] severe punishment. We start at 6 years not 7½ making with plea, **4 years** not 5.

Death by Driving: General principles

Disqualification for how long? 5+ years

Att-Gen's Ref 2018 Re Collins 2018 EWCA Crim 113 LCJ D pleaded to causing death by dangerous driving and causing death whilst uninsured. Many years ago, he had a provisional licence but he had never had a driving licence. One evening, a fellow worker allowed D to drive his van home. The weather conditions were poor. During the journey, D received a call on his mobile from his partner, which made him agitated. The mobile was not hands-free. Shortly before a zebra crossing where the visibility and lighting were poor, D tried to adjust a [door] mirror. At the crossing, D swerved, mounted the pavement and hit V, a pedestrian, aged 66. His speed was 18-21 mph on impact. D did not brake and V was caught under the van and dragged along the road. D had not seen another car, travelling in the opposite direction, stop at the crossing. He did not stop for 35 metres. V was found in front of a rear tyre. Bystanders came to help V and D drove off. D contacted his partner and a recording of the call indicated he did not know that V was under the van when he didn't stop. He later handed himself into the police. D was aged 35. In 2002 and 2003, D was convicted of drink/drive. For the second offence he received 12 weeks' custody. Some time before the tragedy he had had an accident with a firm's van. D was a devoted father and one of his children has a serious medical condition requiring repeated surgery. The Judge found D had panicked after the initial impact. Held. The causes of the tragedy were D's failure to look where he was going and his failure to see V walk onto the crossing. 4 years 2 months' custody was not unduly lenient. **5 years' disqualification**, not 2.

Sex Offences: Children, with

Physical contact over clothing Child aged under 10 Defendant aged 25+

R v Ferry 2018 EWCA Crim 1849 D pleaded (25% credit) to causing a child aged under 13 to engage in sexual activity and seven counts of sexual assault on a child aged under 13. He was in a relationship with P, who was V's mother. When V was aged 6-14, D touched her over her clothing. The first incident was when D seized V's hand and placed it on his penis, which was under his clothing. V remembered the seizing hurt her. On numerous other occasions, D touched V's breast and bottom over her clothing. D was then sectioned because of his mental ill-health and he told P that he touched children, including V, and that he was a paedophile. A few weeks later, P contacted the police. Reports set out D's 'various vulnerabilities and ill-health problems'. Held. The incidents were over a sustained period of time and numerous, but at the lower end of the scale. D had brought the matter to light, which was significant mitigation. There was remorse. The first incident was an isolated incident. That deserves 24 not 30 months. That is consecutive to the last two counts making 3 years not 4½ in all.

Victims

Emergency workers

Assaults on Emergency Workers (Offences) Act 2018 s 2 creates a new aggravating factor for emergency workers who are victims of the following offences:

Offences against the Person Act 1861

- (i) section 16 (threats to kill);
- (ii) section 18 (wounding with intent to cause grievous bodily harm);
- (iii) section 20 (malicious wounding);
- (iv) section 23 (administering poison etc);
- (v) section 28 (causing bodily injury by gunpowder etc);
- (vi) section 29 (using explosive substances etc with intent to cause grievous bodily harm);
- (vii) section 47 (assault occasioning actual bodily harm);

(b) an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);

- (c) manslaughter;
- (d) kidnapping;
- (e) an ancillary offence in relation to any of the preceding offences.

The court must state in open court that the offence is so aggravated.

Assaults on Emergency Workers (Offences) Act 2018 s 3 defines 'Emergency worker' as

- (a) a constable;
- (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
- (c) a National Crime Agency officer;
- (d) a prison officer;
- (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of corresponding kind to those carried out by a prison officer;
- (f) a prisoner custody officer, so far as relating to the exercise of escort functions;
- (g) a custody officer, so far as relating to the exercise of escort functions;
- (h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;
- (i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);
- (j) a person employed for the purposes of providing, or engaged to provide:
 - (i) NHS health services, or
 - (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.

(In force 13 November 2018)

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