

## Reprisals—judges and other persons connected with judicial proceedings

s.326 (NSW) Crimes Act

Commenced 25.11.1990

- (1) Without reasonable excuse, threatens to do or cause, or does or causes, any injury or detriment to any person on account of anything lawfully done by a person—
- (a) as a witness or juror in any judicial proceeding, or
  - (b) as a judicial officer, or
  - (c) as a public justice official in or in connection with any judicial proceeding, or
  - (d) as an Australian legal practitioner acting—
    - (i) for a defendant in a criminal matter, or
    - (ii) in connection with criminal proceedings,
- (2) Threatens to do or cause, or who does or causes, any injury or detriment to another person because the person believes the other person will or may be or may have been called as a witness, or will or may serve or may have served as a juror, in any judicial proceeding

**Maximum Penalty:** 10 years

	Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
1.	Jacques (28) <a href="#">[2002] NSWCCA 444</a>	s.326(1)(b) – judicial officer	VG	2y NPP 1y	AA 12m PD	Assaults and malicious damage	While filling out form at court office made comment about magistrate in different town who had committed him to trial for malicious wounding – “If I go to gaol for this, then when I get out I’m going to kill him” – no indication of intent to carry out threat No remorse On appeal: manifestly excessive in circumstances of offence

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
2.	<b>Gaudry</b> (37)  <b>MacDonald</b> (38)  <a href="#">[2010] NSWCCA 70</a>	s.326(2) - witness  s.326(2) - witness	VG  VG	12m Suspended  14m Suspended	Crown AA 2y NPP 1y 6m  2y 4m NPP 1y 9m	Extensive record but no similar offences – breached bond  Extensive record	Made threat to male victim attending court to give evidence against M for offence of possessing implement to enter conveyance – threatened reprisal against victim by people known to offenders who had reputation for violence – threats made in crowded area in presence of uniformed police officers – unplanned and unpremeditated – no clear intention to carry out threat – victim’s fear meant trial delayed – G lesser offender G – female – difficult personal life with drug addiction and familial dysfunction M – personal life marked by abuse, violence, neglect and substance abuse On appeal: error in finding offence towards bottom of range – sentences manifestly inadequate
3.	<b>Linney</b> (46)  <a href="#">[2013] NSWCCA 251</a>	s.326(1)(b) – judicial officer	PG (25%)	3y 9m NPP 2y 5m	AD	No significant record	Threats made against judge who ruled against offender in civil case – three emails sent to Judge’s associate and police over several weeks – references made to Family Court judge shot dead in 1980 and knowledge of home address of Judge – threats also made to counsel for opposing party – conveyed threat to life and caused substantial emotional harm – above mid-range Isolated in custody from family living interstate – prior good character – mental health issues – no finding of remorse On appeal: no error in assessment of gravity of offence although constituted by threats only – no other error
4.	<b>Malicki</b>  <a href="#">[2015] NSWCCA 162</a>	s.326(2) - witness  Sched: Possess 6.7g cannabis	VG	20m ICO	AD	Record – breached bond	Assaulted male victim in shopping centre – struck victim at least once – victim also assaulted by co-offender - victim to give evidence in murder trial against brother of co-offender – offender not sentenced on basis of joint criminal enterprise - lower end of range Female - mental condition at time of offending – evidence of progress in rehabilitation

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	Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
5.	Farrell (35) <a href="#">[2020] NSWCCA 195</a>	s.326(2) - witness  s.326(2) - witness  Sched: Contravene AVO	PG (10%)	<u>Aggregate:</u> 3y NPP 1y 6m	AA <u>Indicative:</u> 2y 6m  2y 4m  <u>Aggregate:</u> 3y NPP 1y 6m (backdated)	Lengthy record including offences of similar nature	Arranged for details of two "informer" witnesses to be published on public Instagram page – both witnesses gave induced statements against offender's brother in relation to shooting offence – caused actual detriment - premeditated, deliberate, continuing and involved recruiting others - committed after brother pleaded guilty and while offender in custody bail refused for similar offences - approaching mid-range No remorse – prospects of rehabilitation poor – difficult childhood On appeal: error as backdate and evidence from character witness

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