

## ASSAULT

Criminal “assault” covers an incredibly large range of human behavior. Most people do not realize you can commit an assault just by making a threatening gesture or doing something that makes someone think they will be contacted. It also includes the slightest physical contact like a finger jab, spit or bump. Assault can be challenging for the prosecutor and often involves “fights” where it’s hard to determine the aggressor.

Unless the police or other people actually witness the act, it can be difficult to tell who is the “criminal” and who is telling the truth. Unfortunately, the police often respond by simply labeling one the “aggressor” and one “the victim.”

### Assault One

**RCW 9A.36.011** Assault One occurs when a person, “with intent to inflict great bodily harm” does one of the following:

- (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or
  - (b) Administers, exposes, or transmits to or causes to be taken by another, poison, the human immunodeficiency virus as defined in chapter 70.24 RCW, or any other destructive or noxious substance; or
  - (c) Assaults another and inflicts great bodily harm.
- (2) Assault in the first degree is a class A felony.

“Great Bodily Harm” creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ. RCW 9A.04.110(c)

### Assault Two

**RCW 9A.36.021** Assault Two occurs when a person, under circumstances not amounting to assault in the first degree:

- (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or
- (b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or
- (c) Assaults another with a deadly weapon; or
- (d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or
- (e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

Notice one can commit Assault Two in a great variety of ways

“Substantial Bodily Harm” means injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part. RCW 9A.04.110(b)

### **Assault Three**

**RCW 9A.36.031** Although is still a Class C felony, it is the only felony assault that makes the act a felony not by the injury but, for the most part, by any unlawful touching of a *special victim*. This list of victims has grown year after year.

When the victim is not a special category, Assault Three then requires a level of injury.

Assault Three includes any intentional unlawful touching of the following victims:

Any court officer with the intent to prevent the lawful process or mandate of any court with intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person,

A person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties

A school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract while performing official duties or

A firefighter or other employee of a fire department, fire marshal, fire prevention, or protection district performing official duties

A law enforcement officer or employee performing official duties

A peace officer with a projectile stun gun

A nurse, physician, or health care provider performing official duties.

A judicial officer, court-related employee, county clerk or employee performing official duties **or** as a result of their employment (this includes revenge on the judge etc)

Any person located in a courtroom, jury room, judge's chamber, waiting area or corridor adjacent to a courtroom, jury room, or judge's chamber during court proceedings IF signs were posted in compliance with this act.

All other victims require a level of injury or weapon

BUT, Assault 3 is one of the few crimes you can commit without intending to do so but by merely acting with "criminal negligence"

Criminal Negligence is being aware of a substantial risk that your actions could cause a "substantial risk" and your behavior is a "gross deviation" from a "reasonable person."

Either you:

Cause "Bodily Harm" to another with a weapon or something "likely to produce bodily harm; **or**

Cause Bodily Harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering

"Bodily Harm" means physical pain or injury, illness, or an impairment of physical condition

#### **Assault 4**

Assault Four is the misdemeanor of assaults. It's the catch all of assaults. You can see by the legal definition. A person is guilty of assault in the fourth degree if, "under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another." **RCW 9A.36.041.**

Notice they legally define assault by simply repeating the word

#### **So what is an "Assault?"**

Washington defines the true meaning of an assault by its common law not by its statute. The best summary is contained in the "Jury Instructions" it submits to courtrooms every day:

"An assault is an intentional touching or striking or cutting or shooting of another person, with unlawful force, that is harmful or offensive regardless of whether any

physical injury is done to the person. A touching is offensive if the touching would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

An act is not an assault, if it is done with the consent of the person alleged to be assaulted.

**No harm is required:** notice the words “harmful or offensive”

**It must still be unlawful:** police, parents, and others can “legally” grab you.

**Even when they miss:** see the phrase “failing to accomplish it.”

**Even if they never intended to touch you:** “did not actually intend to inflict”

### **Each of These Concepts Apply To Every Level of Assault**

If I point an unloaded gun at you and click, I could go off to prison for a very long time on assault one for making you think you would be shot. I could do the same if I shoot and miss, swing and miss, etc. I am also guilty of assault if I miss and hit someone else under the legal concept of “Transferred Intent.”

If you have been charged with Assault or have any legal questions, **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION**