

+ **CRIMES AGAINST THE PERSON**

Assault (M.G.L. c. 265, s. 13A)

There are two ways to commit an assault:

- (1) an attempted but unaccomplished battery, without regard to whether the victim was put in fear, or
- (2) putting a person in fear of a battery.

Elements: I. An Attempted Battery

- (1) The suspect intended to commit a battery, which involves touching the victim in a harmful or unconsented manner; and
- (2) Took some overt action to accomplish his intent; and
- (3) Came reasonably close to doing so.

Note: Victim does not have to be aware of the attempt

II. A Threatened Battery

- (1) Intent to put the victim in fear of an imminent battery
- (2) by an act which the victim reasonably perceived an imminent threatening battery.

Assault and Battery (A&B) (M.G.L. c. 265, s. 13A)

There are two ways to commit an A&B:

- (1) intentionally or through reckless conduct.
thus, an A&B is “the intentional and unjustified use of force upon the person of another, however slight, or
- (2) The intentional doing of a wanton or reckless act causing personal injury to another.”

Elements: I. Intentional A&B

- (1) The suspect intentionally touched another person, however slight;

(2) Without having any right or excuse to do so; and

(3) Either

a. Caused physical harm; or

b. Did so without the consent of the person touched.

II. Wanton/Reckless Conduct A&B

(1) The suspect engaged in wanton or reckless conduct;

(2) Which caused bodily injury to another.

Aggravated Assault and Battery

(M.G.L c. 265, s. 13A)

Elements of Assault and Battery and

(1) Caused serious bodily injury or

(2) Committed against a person who was pregnant at the time of such assault and the defendant knew or had reason to know she was pregnant or

(3) Committed the act upon the complainant who had an outstanding temporary or permanent restraining order against the individual at the time of the assault

Note: For the purposes of this section, “serious bodily injury” shall mean bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.

Assault & Battery By Means of a Dangerous Weapon (M.G.L. c. 265, s. 15B)

Elements:(1)The suspect committed an assault by:

- a. Attempting a battery; or
- b. Threatening to commit a battery with the intent to cause fear;

(2)By using a dangerous weapon.

NOTE: There are two types of dangerous weapons:

- (1) those items which are, by their nature, capable of causing serious injury or death (*“per se”* or *“inherently dangerous weapons”*); and
- (2) those items which are used in such a way that they reasonably appear capable of causing serious injury or death to another person (not necessarily the defendant's intent).

** Examples can include a pencil aimed at one's eye, a cigarette used to burn someone, a baseball bat, a pair of scissors, and even a shod foot.

Affray (M.G.L. c. 275, s. 14)

- (1) Fighting by or between two or more persons,
- (2) in some public place,
- (3) so as to cause alarm to the public.

Notes:

- 1-The crime of affray may be charged against any member of a group involved in fight.
- 2-The crime of **Disorderly Conduct** is similar but includes mere actions, not specifically fighting.

Threat to commit a crime (M.G.L. c. 275s2-4)

- Elements:**(1) The suspect communicated to the victim his intent to injure the victim's person or property, now or in the future; and
- (2) The threatened injury, if carried out, would constitute a crime; and
- (3)The suspect made the threat under circumstances which "could reasonably have caused the victim to fear that the suspect had both the intention and the ability to carry out the threat."

Stalking (M.G.L. c. 265, s. 43)

Elements:

- (1)The suspect willfully and maliciously ;
- (2)In a knowing pattern of conduct or series of acts (3 or more incidents);
- (3)Which were directed at a specific person; and
- (4)Constituted harassment (would seriously harm or annoy that person and would cause a reasonable person to suffer substantial emotional distress); and
- (5)Involved a threat with the intent to cause imminent fear of death or bodily injury.

Notes: 1. There is an enhanced penalty if a valid restraining order is in effect

2. The three acts may occur on the same day

3. Without a threat, the charge would be **Criminal Harassment**.