

## **CHAPTER 8**

### **LEGAL AND SOCIAL DIMENSIONS OF PERSONAL CRIME: ASSAULT, BATTERY, AND OTHER PERSONAL CRIME**

#### **CHAPTER OUTLINE**

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## LECTURE OUTLINE

### I. Introduction

This chapter deals with crimes committed against persons, except for homicide which was addressed in the previous chapter.

### II. Assault, Battery and Mayhem

These offenses often overlap and are often referred to in the law as those that merge into the next level of seriousness. Many jurisdictions use the terms assault and battery interchangeably, and the student should be made aware that the terminology chosen by a legislature may lead to some confusion.

#### A. Assault

An assault at common law was of two types: The first was the threat of committing a battery upon the person, with the present ability to carry out that threat. The second was the attempted battery when the offender attempt to cause an offensive touching of another that is neither consented to nor privileged.

Students should be cautioned that the elements of this offense will be statutorily defined by the legislature. For instance, the actual attempt to cause the offensive touching does not have to be for the purpose of causing physical injury.

The present ability element of the crime of assault requires that the defendant be physically capable of carrying out the attempted act and the method he or she intends or threatens to use will in fact inflict an injury or offensive touching if carried out.

In the context of an assault, the term *bodily injury* merely refers to an unlawful application of physical force on the person of the victim.

#### B. Placing Another in Fear

In the threatened battery, it is necessary for the offender to intentionally create the fear of imminent injury or offensive contact. Words alone without the presence of some overt act that demonstrates present ability is generally required.

#### C. Conditional Assaults

This assault may be committed where the threat of harm is conditioned upon the demands or the offender. Thus, a threat that unless the victim complies, or the next time they meet an offensive contact will occur, are sufficient conditional threats to place the victim in fear.

#### D. Aggravated Assaults

These are usually defined by statute to include the threat of serious bodily harm or the threat is made with a deadly weapon.

To prove an aggravated assault the prosecution must be able to show that an assault took place as part of another more serious offense, or that the aggravated element is specified by law.

Discuss with students how weapons used in aggravated assaults are said to be of two types—those that are inherently dangerous and those that are not dangerous per se, but can be used in a dangerous fashion.

#### E. Attempted Assaults

Many jurisdictions hold that an offender cannot attempt an attempt, thus there can be no attempted assault where the attempt is the attempt to commit a battery. However, when the assault constitutes the threatened battery, the preparation and steps toward completion of the offense may constitute an attempted assault.

#### F. Anti-Stalking Statutes

Many jurisdictions have passed statutes that make certain forms of conduct that do not rise to the level of an assault, but done repeatedly in a pattern of behavior, constitutes a crime of stalking. Discuss the vague nature of these offenses.

#### G. Battery

Battery is the intentional offensive touching or the causing of bodily injury to another. Any unlawful (contrast the law enforcement officer's authority to make a physical arrest) or unconsented to touching (contrast the examination by the physician) that is not privileged (e.g., parental discipline) constitutes a battery.

Review possible changes in *mens rea* which, if defined by statute, may still constitute an assault (e.g., recklessly causing physical injury to another). Also, discuss transferred intent where the intent to cause the injury or offensive touching is sufficient if the offender swings and strikes a bystander.

#### H. Aggravated Battery

In modern statutes, these include offenses where the offensive contact or intent to cause harm actually causes serious or great bodily harm, or the offender used a deadly weapon to commit the offense. Discuss factual situations that would be included here.

#### I. Mayhem

At common law, there were no aggravated forms of assault and battery. Mayhem was developed to include those acts that cause serious or permanent injury. Later, it was broadened to also include acts that were intended to disfigure or maim.

### III. Sex Offenses

The modern trend with sex offenses is to move away from the labeling of those that denote a male offender against a female victim, such as the crime of rape. Today's statutes adopt a more gender neutral term, such as sexual battery.

#### A. Rape

The common law crime of rape entailed the forcible sexual intercourse (carnal knowledge) with a woman. However, a man could not be charged with raping his wife, and even some modern statutes included the term "not the spouse of the offender" as an element of the offense. The Model Penal Code and some states recognize a partial spousal rape exception for spouses who are living together. For the exception not to apply, the couple must be legally separated. Also, the crime requires penetration, however slight, by the male penis with the female vagina. Compare statutory language in your jurisdiction for elements of the offense.

The force needed to commit the crime of rape does not need to be overtly physical or brutal. The force needed is that which is sufficient to overcome the will of the victim, and is relative to the respective age, size, strength, influence, and even relationship between the parties.

The element of force directly relates to the requirement that the act take place against the will of the victim. Thus, although the will of the victim may be overcome by force or the threat of force in varying degrees, this may necessarily lead to issues of proof for the prosecution.

Consent, unless the victim is incapable of giving consent, is usually a complete defense to the crime. That consent cannot be the product of force, threat of force, or anything that vitiates the product of a free will by the victim, such as a drug-induced state.

A victim is incapable of giving consent if unconscious, intoxicated, mentally incapacitated, or has not reached the age of majority or that age defined by the legislature as being capable of giving consent. A minor cannot give consent to sexual activity, and such an offense constitutes the crime of statutory rape. In many jurisdictions this is a strict liability offense.

#### B. Same Sex Rape

Modern statutes have moved away from gender specific statutes that now make a sexual assault criminal if perpetrated by male against female, female against male, male against male, and female against female.

#### C. Rape Shield Laws

The laws against sexual assault are designed to protect the victims of those assaults. In doing so, rape shield laws provide a statutory barrier to the admissibility of the victim's sexual history as being irrelevant. Discuss with students the impact of such evidence being excluded from trial in light of the evidentiary definition of relevant evidence.

#### D. Sexual Assault

The trend in many jurisdictions is to include all sexual offenses into one category with varying degrees. Sexual assault may then include forcible sexual intercourse, fellatio, cunnilingus, sexual penetration by an object, or sexual contact. Sexual contact is the offensive touching of another's erogenous zone, often defined by statute, that constitutes a crime of sexual assault and not simply battery.

### IV. Kidnapping and False Imprisonment

These offenses are often misunderstood based upon popular misconception that a kidnapping requires a ransom note, or that someone must be falsely imprisoned to constitute a criminal offense.

#### A. Kidnapping

The crime of kidnapping entails the removal of a person from the place where he/she is found, against the will of that person, by force or threat of force. The danger inherent in this offense is the asportation of the victim, the carrying away or removal of that person. The force needed is much the same as that required for a sexual assault; any force needed to overcome the will of the victim. Again, force depends upon the respective characteristics, both physical and mental, of the offender and victim.

Kidnapping for ransom, taking a hostage, and other aggravating factors may increase the degree of the offense. On the other hand, some jurisdictions actually reduce the degree of the offense if the offender releases the victim in a safe place unharmed.

The laws of some jurisdictions provide for more than one type of kidnapping and often vary on how the confinement must be accomplished for the law to apply.

#### B. False Imprisonment

This crime is similar to kidnapping except it does not require the carrying away of the victim. It is the unlawful restraint of the person's liberty, by force or threat of force.

### **STUDENT ACTIVITIES**

1. Find famous cases in history that involve a kidnapping (Lindbergh, Frank Sinatra Jr., Patty Hearst and others). Compare the facts of one or more of these cases to the element of kidnapping as defined by the Model Penal Code.
2. Discuss the crimes that entail sexual assault. What are the problems with proving the elements of an offense where that offense: a) involves a man accused of raping his wife? b) involves a female high school teacher accused of sexually assaulting a male high school student who is a minor? c) involves a known prostitute claiming that she was raped by a male customer she met at a bar?

### **CASE STUDIES**

1. Mary Kay Letourneau: The Romance that was a Crime. A 34 year old school teacher has an ongoing sexual relationship with a 13 year old student. As a result, Letourneau loses her family and her freedom.

2. Research and read the case about Debra LaFave, the middle school teacher from Central Florida who pled guilty in November 2005 to having sex with a 14 year old student and received house arrest and probation. Does a double standard exist in these cases between a female and male offender?

### **REFERENCES AND RESOURCES**

1. Stop Prisoner Rape is a growing national nonprofit organization that aims to address the issue of male and female prisoner rape, the difficulties in prosecuting such offenses, and helping the victims of such crimes.

[www.spr.org](http://www.spr.org)