

Assault & Harassment

Facilitator Guide

Session Overview

Introduction & Definitions Review	20m
GROUP EXERCISE – Assault Worksheet	60m
Break	10m
Discussion – Assault Worksheet & Study Session	50m
<ul style="list-style-type: none"> • Assault 1-4 • Assault of a Child 1-3 • Malicious Harassment • Harassment • Criminal Mistreatment • Abandonment 	
Break	10m
Discussion – Crim Mistreatment & Abandonment	15m
Discussion – Tel. Harass. / Harass. / Coercion	15m
Break	10m
Discussion – Q & A	40m
<ul style="list-style-type: none"> • Drive-by Shooting & Reckless Endangerment • Interfering with Reporting of DV • Promoting a Suicide • Unlawful Discharge of a Laser • Reference/Review Stalking (covered in DV Session) 	
End of Session / Break	10m

Total Session Time: 4 hours

Main Topics of Session:

- Levels of Harm
- Assault
- Assault of a Child
- Drive-by Shooting & Reckless Endangerment
- Promoting a Suicide Attempt
- Coercion
- Malicious Harassment
- Interfering with Reporting of DV
- Unlawful Discharge of Laser
- Abuse & Neglect Definitions
- Criminal Mistreatment
- Abandonment
- Harassment
- Stalking
- Telephone Harassment

Facilitators Needed: 1(CL)

Location: Classroom

Materials Needed:

- FG Supp - INSTRUCTOR GUIDE - Criminal Law Student Resource Guide
- FG Supp - ANSWER KEY - Assault and Similar Offenses Worksheet
- HANDOUT[p] - Assault and Similar Offenses Worksheet

Students Should Already Have:

- Pocket Press Books
[THUMB DRIVE]
- HANDOUT - Harassment or Assault Exercise
- Criminal Law Student Resource Guide



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NOTE TO FACILITATOR

As you work through the activities described on the Session overview page, use the following notes in conjunction with the [FG Supp - INSTRUCTOR GUIDE - Criminal Law Student Resource Guide](#) (located with materials from M02/S03).

Have the students follow along in their Criminal Law Student Resource Guides, making notes as you discuss. There is no PowerPoint for this Session.



Assault & Harm Definitions

“Assault” (Definition comes from various laws, case law, and common law)

- Usually, an Assault must be *intentional* (except in a few special circumstances)
- There are multiple ways to have an “assault,” but they always involve an act done without legal authority.
- Some states consider “assault” (the intentional bad act) different from “battery” (the physical injury). Washington law does not differentiate. We lump them both together and call it all Assault.
- Recognize that a suspect can commit an assault even if no injury occurs to the victim.
 - EXAMPLE: Suspect swings a baseball bat at the victim but misses. (Assault 2)
 - EXAMPLE: Suspect holds a knife to the throat of victim but never cuts. (Assault 2)
 - EXAMPLE: Suspect pushes the victim back, but causes no pain or injury. (Assault 4)
 - EXAMPLE: Suspect spits or splashes a drink onto the victim. (Assault 4)
- Even pretending to strike (but never really planning on doing it for real) is considered an assault if it causes that *imminent and reasonable fear* in the victim. We can think of that as the victim’s flinch or “brace for impact.” If the victim thinks it’s actually happening, the crime of assault has been triggered!
- For most other crimes, if a suspect is trying to commit the crime, but has not fully completed all the elements, we can call it “Attempted such-and-such.” For Assault, however, an attempt is normally a fully-completed Assault. Think about it. If the suspect is acting in a way to cause harm or imminent and reasonable fear, they are already assaulting the victim – even if the act is not fully finished yet! That’s why it’s rare to see Attempted Assault. If the suspect was trying to do it, he already probably did satisfy the elements of the crime.

Bodily Harm Definitions

- Review from Criminal Law Fundamentals Session



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Assault 1-4

Assault 4th Degree (RCW 9A.36.041)

- Lowest level. Sometimes called “Simple Assault.”
- Unwanted touching is included in this degree.

Assault 3rd Degree (RCW 9A.36.031)

- Just like Assault 4th Degree, except the victim is one of the listed people
- Notice that teachers are not included. Interesting...
- Assault 3 also has two unique sections (1d and 1f). For either of those sections to apply, you must only show **Criminal Negligence** as the mental state. These two types of Assault 3 are only considered when nothing else seems to work. They are the prosecutor’s last option when a victim has been harmed, but the suspect’s mental state is not strong enough (or can’t be proved). Remember that Criminal Negligence is much easier to prove than Intent.
- **Amended in 2013** to include **any** person “located in a courtroom, jury room, judge’s chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge’s chamber.” Applies when the area specified is being used for judicial purposes during court proceedings AND if signage is posted in compliance with RCW 2.28.200 notifying the public of enhanced penalties.

Just like the crime of Murder has its Reckless and Negligent counterparts (Manslaughter 1 & 2), Assault also has a Reckless/Negligent counterpart (this secret weapon hidden within Assault 3!)

Custodial Assault (RCW 9A.36.100)

- This is just like Assault 3 but for corrections staff

Assault 2nd Degree (RCW 9A.36.021)

- Lots of triggers that cause an assault to rise up to an Assault 2. You have to remember them all.



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Assault 1st Degree (RCW 9A.36.011)

- This crime is not as easy to prove as it seems.
- The mental state is not just Intent – it is **INTENT TO INFLICT GREAT BODILY HARM**. This means we have to prove the suspect meant to cause severe life-threatening damage to the victim.
- Both Assault 1 and 2 involve deadly weapons. The difference is in the mental state.
- Shooting at a person or infecting them with HIV automatically qualify as Assault 1
- What's the difference between Assault 1 and Attempted Murder? Well, that all depends on what the suspect was intending. If the suspect was trying to kill the victim: Attempted Murder. If the suspect was only trying to severely hurt the victim (or we can't quite prove wishes to kill): use Assault 1. This decision will most likely be made by the prosecutor or in close consultation with the prosecutor before the charging papers are filed.



Assault of Child 1-3

- There is no crime called “Child Abuse.” The crimes we have are:
 - Assault of a Child 1-3
 - Criminal Mistreatment 1-4
 - Abandonment 1-3

Assault of Child 3rd Degree (RCW 9A.36.140)

- Before you do anything else, make sure the ages are within range to use this crime: Suspect over 18, victim under 13 (12 or younger).
- Assault of a Child 3 refers back to Assault 3rd Degree for the two specific sections (1d and 1f) involving Criminal Negligence and Bodily Harm.

Assault of a Child 2nd Degree (RCW 9A.36.130)

- Same age ranges: Suspect over 18, victim under 13 (12 or younger).
- Use this degree when the ages are in range, and it would have been an Assault 2nd Degree anyway.
- Or, use this degree when you have a pattern of abuse that leads to the specified harm

Assault of a Child 1st Degree (RCW 9A.36.120)

- Same age ranges: Suspect over 18, victim under 13 (12 or younger).
- Use this degree when the ages are in range, and it would have been an Assault 1st Degree anyway.
- Or, use this degree when you have a pattern of abuse that leads to the specified harm



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Drive-By Shooting & Reckless Endangerment

Drive-By Shooting (RCW 9A.36.045)

- Reckless Endangerment used to be two degrees, and this was the old 1st degree. They just separated it out and renamed it.
- Use this crime when you have a suspect that shoots randomly towards people and things to scare. If you can prove the suspect was trying to injure someone, go with Assault 1 or 2 or Attempted Murder.
- The vehicle has to be more than mere transportation. To qualify, the vehicle must be a part of the crime.

Reckless Endangerment (RCW 9A.36.050)

- Not all dangerous behavior will trigger this crime. It must be very dangerous behavior. The wording is "*creates a substantial risk of death or serious physical injury.*" This law gets overused. The threshold is actually pretty high.
 - EXAMPLES - throwing rocks off an overpass with cars passing by underneath or shooting a gun in a wooded area near a neighborhood.



Promoting a Suicide Attempt

Promoting a Suicide Attempt (RCW 9A.36.060)

- To commit this crime, the suspect must do more than encourage. The suspect must "cause or aid." In other words, the suspect must be a part of the suicide in some way.



Coercion

Coercion (RCW 9A.36.070)

- In Washington, it's illegal to threaten another person to control their behavior.
- See RCW 9A.04.110 for what is considered a "threat."
- If the Coercion is for money/profit, then you should use the crime of Extortion instead.



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Malicious Harassment

Malicious Harassment (RCW 9A.36.080)

- Two part crime:
 - Must do one of those illegal things + ***Do it because of your prejudice***
- Notice this crime lists behaviors that are already illegal. Now it's even MORE illegal to do it when you are doing it for this reason.
- This crime is charged as well as the underlying regular crime (Assault, Mal Misc., Harassment, etc.). The suspect gets double-slammed. This is an add-on charge.
- Why create another crime if the original act was already illegal? Because when you assault a victim, you harm that one victim. But when you assault a victim because he's black, you not only harm him, but you victimize a whole group of people. This crime accounts for the victimization of the larger group. It ads felony punishment when the crime was committed because the suspect was a bigot.
- Rude, insensitive, or stupid literature does not automatically trigger this crime. Nor does free speech. This is still America. Free speech is protected. People can have racist and bigoted views. Those behaviors are not criminal unless they are specific enough to cause reasonable fear that another criminal act may be carried out. In other words, the underlying crime must be fully satisfied in order to use this add-on charge.
 - EXAMPLE: Flyer with white supremacist propaganda – NOT Malicious Harassment
 - EXAMPLE: Anti-gay march or protest – NOT Malicious Harassment
 - EXAMPLE: Letter addressed to Muslim family specifically telling them to move out of the neighborhood or bad things will happen to them – IS crime of Harassment and also Malicious Harassment
 - EXAMPLE: Waiting outside a gay bar and attacking a homosexual while screaming insults like "Queer" or "Fag" – Is Assault and Malicious Harassment



Interfering with Reporting of Domestic Violence

Interfering with Reporting of Domestic Violence (RCW 9A.36.150)

- This is an add-on charge.
- There must already be a DV crime committed first.
 - EXAMPLE: Man punches wife in the face, and as she goes for the phone, he rips the cord out of the wall.



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Unlawful Discharge of a Laser

Unlawful Discharge of a Laser (RCW 9A.49.020-040)

- Don't bother memorizing which situation is which degree. Just recognize it when you see it. You can look it up.
- You do need to know that the first offense of this crime by a juvenile (under age 18) is treated as an infraction only.



Criminal Mistreatment Definitions

Basic Necessities of Life (RCW 9A.42.010)

- Memorize this

Bodily Harm Definitions (RCW 9A.42.010)

- Here they are again... they must be important!

Dependent Person (RCW 9A.42.010)

- Not just children

Abandon (RCW 9A.42.010)

- The definition does not specify for how long the abandonment must be. So how long is long enough?
 - What about leaving your baby lying on the floor while you take a restroom break?
 - What about leaving your toddler in the crib while you go down the driveway to check your mail?
 - What about going to the store while your 5 year-old child is watching TV alone?
 - What about leaving your elderly parent for 2 days while you are out of town?
- To trigger as abandonment, the dependant person must have been left alone and needed one of the Basic Necessities of Life *and could not get it*. Each case is unique and common sense must be used. Were the actions of the suspect reasonable? Would other have done that?

Christian Science Treatment (RCW 9A.42.005)

- Law says if the parent/guardian, *in good faith*, provides "Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care", then they are NOT considered to have deprived the child or dependent person of medically necessary health care or abandoned them.
- *This is not in the Student Resource Guide – encourage the students to look it up and read it.*



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Criminal Mistreatment

Criminal Mistreatment 1-4 (RCW 9A.42.020-037)

- To be charged with Crim Mistreatment, the suspect must be the one in charge of the dependant person.
- The degree is based upon the suspect's mental state and how much harm was risked/caused.



Abandonment

Abandonment 1-3 (RCW 9A.42.060-080)

- To be charged with abandonment, the suspect must be the one in charge of the dependant person.
- The degree is based upon the suspect's mental state and how much harm was risked/caused.
- Difference between Crim Mistreatment and Abandonment:
 - Criminal Mistreatment = I'm here and withholding the Basic Necessities of Life from you
 - Abandonment = I'm gone and you needed the Basic Necessities of Life



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Harassment

Harassment (RCW 9A.46.020)

- Most people don't realize that it is illegal in Washington to threaten another person.
- It's already illegal to do any of the bad stuff listed in this RCW, now it's also illegal to *threaten to do it*.
- Two-part crime:
 - Suspect makes a threat to do a bad thing + victim is placed in reasonable fear
- If the victim didn't believe it, or was not frightened by it, then the crime has not been triggered.



Stalking

Stalking (RCW 9A.46.110)

- Pattern of following and/or harassment is needed to satisfy this crime – “repeatedly” means on two or more separate occasions.
- Strict Liability: Prima Facie (automatic) trigger for this crime when suspect is told to stop following but continues.
- When you have a suspect committing multiple low-level crimes against the same victim, consider the whole pattern and this crime might apply. This crime gets treated as significantly more serious in the courts.
- Gross Misdemeanor – amended in 2013 to increase the classification to a Class B Felony if certain situations apply (i.e. certain past convictions, in violation of a protection order, armed with a deadly weapon, special victims).



Telephone Harassment

Telephone Harassment (RCW 9.61.230)

- Just like regular Harassment, except via phone
- Also includes annoying phone behaviors (prank calls, calling at obnoxious hours, being disgusting to shock the victim, etc.)



BREAK/END OF SESSION

