



## What you need to know about simple misdemeanor assault and battery in California

If you or a family member faces charges for simple misdemeanor assault or battery in California, it can be a stressful experience. You might be caught by surprise if charges are brought after a minor incident in which no one was even hurt.

If so, you are probably wondering what lies ahead and whether you face the possibility of jail. An experienced criminal defense attorney can help you understand the charges, protect your rights and identify your best defense. Call us for a confidential consultation in Los Angeles about your simple misdemeanor assault or battery case.

In this article, we will provide answers to questions including:

- How are assault and battery defined?

- What is the difference between them?
- What are potential legal defenses?
- What penalties does the law specify?
- What should you do next?

## Legal Definitions of Simple Assault in California

Assault in California is defined in Penal Code 240<sup>i</sup> as **attempted** use of force or violence against another person. That means an intentional act aimed at injuring someone or that makes the person fear they are about to be attacked. Physical contact is not involved in the crime of assault. The assailant must have the “present ability” to inflict injury, meaning he or she is capable of following through at the moment. <sup>ii</sup>

**Examples:** Some examples of assault would include swinging your fist at someone without hitting the person, holding a gun (loaded or unloaded) to someone without pulling the trigger or throwing an object at a person that makes him or her afraid of injury but does not make contact.

An assault is NOT considered to have taken place if you threaten to harm someone in the future or if you shout, “I’m going to shoot you” but no gun is visible or apparent.<sup>iii</sup>

## Legal Definition of Simple Battery in California

Battery, on the other hand, is the **actual** use of force, meaning physical contact has taken place even if the contact is indirect. <sup>iv</sup> It entails intentional and unlawful violence or force against another person’s body or clothes<sup>v</sup>.

You can be found guilty of battery even if you did not inflict injury or pain on the other person <sup>vi</sup> and it need not leave a mark.<sup>vii</sup> The law says “the least touching” may be enough.

Your actions must have been done in an offensive, rude or hostile way.<sup>viii</sup> You must also have behaved willfully, meaning you intended to commit the act even if you did not seek to break the law or injure someone.<sup>ix</sup>

Examples: A straightforward example of battery would be punching someone. Bumping people as you walked through a crowd would ordinarily not be battery if the contact was not intentional, but it could be considered a crime if you intentionally pushed people out of the way.

## The Differences Between Assault and Battery

Under California’s penal code, simple assault and battery – even though the terms are often used interchangeably – are two distinct crimes.

Assault is often explained as an attempted battery. <sup>x</sup>

Every battery is inherently an assault because it is impossible to commit a battery without first attempting to do so.<sup>xi</sup> With a battery, the attempted act is consummated.

## Misdemeanor

A person who commits simple assault or battery in California is usually found guilty of a misdemeanor,<sup>xii</sup> an offense that is less serious than a felony. Misdemeanor battery does not involve serious bodily injury. Cases in which there is serious injury are considered aggravated battery and covered by different legal guidelines.<sup>xiii</sup>

In certain cases, the prosecutor can choose to charge the case as a felony. These would include crimes against police officers, healthcare providers, jurors and certain public workers.<sup>xiv</sup> Crimes committed at schools, hospitals and other locations may also be treated more severely.<sup>xv</sup>

## Penalties

If you are convicted of misdemeanor simple assault in California, you could be punished with up to \$1,000 in fines, six months in county jail under or both.<sup>xvi</sup>

Cases in which misdemeanor simple assault is against so-called public safety providers can involve penalties of up to a year in jail, a fine of up to \$2,000 and probation of a year. These include police officers, fire fighters, paramedics and security officers.<sup>xvii</sup>

The basic penalty for simple battery is up to six months in county jail, fine up to \$2,000 and probation up to six months.<sup>xviii</sup>

The penalties are more severe for simple battery against certain victims such as intimate partners and family members (domestic violence battery)<sup>xix</sup>, disabled or elderly people<sup>xx</sup>, school employees, highway workers and public transit passengers among others. These include up to one year in county jail, fine up to \$2,000 and probation up to one year.

If the battery is against a law enforcement officer, the possible penalty is 16 months to three years in county jail or state prison, a fine of up to \$10,000 and probation up to three years.<sup>xxi</sup>

## Pre-Trial Strategies

If you face assault or battery charges in Los Angeles, an attorney can examine your case and assess if the charges were wrongful or if there are grounds for the case to be dismissed before trial. If not, an attorney can seek a plea bargain with the prosecutor on your behalf or build your defense and represent you at trial. In a plea bargain, a prosecutor may agree to let you plead guilty to a lesser crime or accept a lighter sentence in exchange for a guilty plea.

## Defenses

There are several defenses available under the law. These include acting in self-defense or defending another person. For this to apply, you must have reasonably believed there was

imminent danger, that immediate use of force was necessary to defend against that danger and you used no more force than necessary. <sup>xxii</sup>

Or you can make a case you did not act willfully, and factors such as intoxication or mental illness can sometimes be used to build a defense that you did not have intent.

Reasonably disciplining your own child can also be defense.

## What's At Stake

A conviction would go on your permanent criminal record. This could hurt you in a job search, when applying for housing and in sentencing if you are later convicted of another crime.

The criminal defense specialists at ABC Law Firm have extensive experience with the Los Angeles criminal court system and the relevant laws. We can assess your case and advise you how best to proceed and protect your rights. Consult us today by calling xxx-xxx-xxxx

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<sup>i</sup> Witkin, Chapter IV, I. A. 1. A, ch 1

<sup>ii</sup> Witkin, Chapter IV I. A. 2. b

<sup>iii</sup> Witkin, Chapter IV, I.A.2. a. 2. Ch 7

<sup>iv</sup> Witkin, Ch IV, A. 1. A. ch. 1

<sup>v</sup> Witkin, Ch IV, B. 5. Ch. 26

<sup>vi</sup> Witkin Ch IV, I. A. 3. A. 1. Ch 13

<sup>vii</sup> Witkin, Ch. IV I.A.. 3. A. 1. Ch 13

<sup>viii</sup> Judicial Council of California Criminal Jury Instructions 960, Penal Code 242, via Justia, Shouselaw.com, Avvo.com

<sup>ix</sup> Witkin Ch IV, I A. 3. B. ch 15,

<sup>x</sup> Witkin, Ch. IV, I. A. 1.b. Ch 2.

<sup>xi</sup> Witkin, Ch. IV, I.A. 1. B. Ch 2

<sup>xii</sup> Witkin Chapter IV, I. A. 1. C. Ch. 3

<sup>xiii</sup> Witkin Chapter IV, I. C. 1. Ch. 27

<sup>xiv</sup> Witkin, Chapter IV, I. B. 3. B. Ch. 20

<sup>xv</sup> Witkin, Chapter IV, I.A. 1. E. Ch 5

<sup>xvi</sup> Witkin, Chapter IV, I. B. 1. Ch 16

<sup>xvii</sup> Witkin, Chapter IV, I.B.3.B. Ch 20

<sup>xviii</sup> Witkin, Chapter IV, I. B. 1. Ch 16

<sup>xix</sup> Witkin Chapter IV, I. B. 3. A. Ch. 19

<sup>xx</sup> Witkin Chapter IV, I. B. 3. E. Ch. 23

<sup>xxi</sup> Witkin, Chapter IV, I. C. 7. B. 2. Aa. Ch. 70

<sup>xxii</sup> California Criminal Law 3470 Right to Self Defense via Justia, courts.ca.gov