

Metropolitan Police Academy



6.4 Assault Offenses

Introduction

Accurately classifying crimes and offenses defined by DC Code is an essential function of police officers in the field. Knowing the offenses and the subtle differences between them is very important. All police officers must be able to evaluate crime scenes, injuries, evidence, and various situations in order to determine what type of offense, if any, has occurred.

Officers will often encounter violent crimes and victims suffering from serious injuries. In addition to requesting medical care and performing numerous tasks involved in the preliminary investigation, officers must observe injuries, if any, and learn the nature of assaults to classify the offense committed. Understanding each required element that constitutes a particular crime and knowing what type of intent must be present to classify the particular crime, can affect the way in which each offense is investigated, closed, and ultimately prosecuted.

This lesson covers assault offenses from misdemeanor disorderly types of fighting to felonious assaults, as well as threat-related offenses and attempts to commit crimes.

6.4.1 Classify the elements of the common misdemeanor offenses involving assaults

Attempts to Commit Crimes - DC Code § 22-1803

An attempt to commit any crime defined by DC Code constitutes an offense in Washington, DC. To constitute crime of Attempt, the offender must:

- Have the intent to commit a particular crime.
- Have made an attempt at committing the criminal act. This attempt must be more than planning or preparing to commit a crime; it requires an overt act in furtherance of the offense which comes within close proximity to completing the criminal act.

Most attempt crimes are classified by adding “attempt” to the existing charge. For example, the charge of Theft I when involving an attempt becomes “Attempt Theft I.”

NOTE: This code statute applies to more than just misdemeanor assaults.

The exception to this is crimes defined by DC code which include attempts. For example, Simple Assault is defined as “*any attempt or effort, with force or violence, to do injury to the person of another.*” For Simple Assault cases, persons who commit an assault as well as those who attempt to commit an assault are both charged with Simple Assault because the attempt is included in the offense.

In terms of punishment,

- Attempts to commit misdemeanor offenses are punishable by imprisonment for a period of no more than 180 days, or a fine up to \$1,000, or both.
- Attempts to commit felony offenses or crimes of violence are punishable by imprisonment for a period of no more than five years, or a fine up to \$5,000, or both.

Affray - DC Code § 22-1301

Affray is fighting by mutual consent of two or more people in some public place to the disturbance of others. Facts must exist to indicate that the event was mutual. If either person involved is the aggressor

and attacks another who resorts to self-defense, an Affray did not occur. Rather, an assault of some sort occurred. All persons participating in the Affray should be charged with the offense.

Affray is a **misdemeanor** offense and is punishable by imprisonment for a term of **no more than 180 days**.

Affray is a Disturbance of the Public Peace offense. The act of mutual fighting is not in itself illegal. It must be done in such a manner (time, place, and circumstance) that it causes a disturbance to others, puts fear in others, or interrupts or generally disrupts what had been a peaceful public place.

For example, John and Jake take part in an Affray in a bus stop enclosure occupied by four other people. Neither attacked the other, and neither intends to hurt the other, but they do appear to be fighting. This behavior has caused the four (4) bystanders to feel uncomfortable and leave the bus stop. One reports that she was fear of being assaulted, another reports that he left simply to avoid being bothered by the actions taking place in the bus stop. In this case, a disturbance has been caused by the Affray. John and Jake can both be charged with the offense.

Simple Assault - DC Code § 22-404(a)(1)

This offense is defined as:

- An attempt or effort with force or violence to do injury to the person of another.
- and, at the time such attempt or effort was made, the accused had the apparent present ability to affect such injury;
- and, at the time of the commission of the assault, the accused intended to do the acts which constitute the assault.

Simple Assault is a **misdemeanor** offense which is punishable by imprisonment for a period of **no more than 180 days**.

As noted above, the physical assault and resultant intended injury does not have to occur for the crime to be committed. Simple Assault can be committed without actually touching, striking or causing bodily harm to another. Any attempt at the assault also constitutes the crime.

For example, John and Jake continue to be disorderly at the bus stop and instead of leaving, one of the bystanders interrupts them and states, "Excuse me, I'm trying to wait on my bus. Do you mind doing that somewhere else or just not doing it right here where I'm standing?" John responds, "I don't care about you or your bus. You need to mind your own business, tough guy," and pushes the bystander in the chest with both hands causing him to fall backwards into the bus stop enclosure. The bystander returns to his feet, leaves the bus stop, and calls 911. In this case, John would be charged with Simple Assault.

6.4.2 Classify the elements of felony offenses involving assaults

Assault in a Menacing Manner – DC Code § 22-404 (a) (2)

This offense is commonly referred to as **Felony Assault** and is described by DC Code as:

- A voluntary act on the part of the defendant to harm another person
- and the suspect unlawfully assaults and intentionally, knowingly, or recklessly causes significant bodily injury to another.

Assault in a Menacing Manner is a **felony** and is punishable by imprisonment for a period of **no more than three (3) years**.

Significant Bodily Injury is an element of this offense. The offenses in this lesson distinguish two levels of injury, significant and serious, with serious injuries being worse in nature than significant. Unlike simple assault, which does not require injury to or even contact with the victim, this offense must result in *an injury that requires hospitalization or immediate medical attention*. As such, this is a more serious offense than simple assault.

Furthermore, it is required that the injury to the body necessitates the victim being taken to a hospital or receiving medical treatment shortly after the injury was inflicted in order to preserve the health and well-being of the victim. Simply going to a hospital does not necessarily mean hospitalization was required. Similarly, initial refusal to seek or receive medical treatment does not necessarily mean that the victim did not suffer a significant bodily injury. *The focus must be on the nature of the injury and the practical need in the ordinary course of events for prompt medical attention.*

In all cases involving injuries, officers will request DC Fire and EMS to respond. Regardless of whether they treat or transport the victim to a hospital or whether the victim refuses treatment, *if medical treatment is recommended by DC Fire and EMS personnel, the requirements of this offense have been satisfied*. If the victim's injuries are such that a person would ordinarily seek medical care for them, this element of the crime has been met.

For example, Tony is walking his dog during rush hour. He crosses a street using the crosswalk and a car speeds by, horn honking, failing to yield, and nearly strikes him. Tony becomes upset and yells at the driver about having the right of way while crossing in the cross walk. The driver pulls over and asks, "Are you talking to me?" Tony advises that he is and tells the driver again that he has to yield to pedestrians. The driver tells Tony to shut up and to mind his own business. The driver then punches Tony in the face with a closed fist causing Tony to fall to the ground. The driver runs to his car and leaves the scene. Passing motorists stop to check on Tony and call 911 for police and medical services. Officers interview Tony and the witnesses. Tony has a large, swollen, and discolored area of skin below his left eye as well as an abrasion to his left elbow from falling to the ground. DC Fire and EMS are called and give Tony an ice pack, clean and dress the abrasion, and recommend that he travels with them to an emergency room for face and eye X-Rays. Tony does not want to go to the hospital, but thanks them for the ice pack and bandage. Although Tony does not go to the hospital, he is in a substantial amount of pain. He did require and receive treatment, and the injuries were such that it would be ordinarily reasonable to be hospitalized. Recall that DC Fire and EMS recommended hospitalization for his face injury. As such, this case does meet the required elements of an Assault in a Menacing Manner.

Aggravated Assault / Attempt Aggravated Assault – DC Code § 22-404.01

Aggravated Assault occurs in one of two ways:

- "By any means, a person knowingly or purposely causes serious bodily injury to another person."
- or "[u]nder circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury."

Aggravated Assault is a **felony** and is punishable by imprisonment for a period of **no more than ten (10) years**.

Serious bodily injury resulting from the criminal act is the primary factor in classifying this offense and is defined in **DC Code § 22-3001(7)** as bodily injury that involves substantial risk of death, unconsciousness, extreme physical pain, disfigurement, or the loss or impairment of a bodily member, organ, or mental faculty. These types of injuries are life threatening or disabling. The victims typically require urgent and continued medical treatment, oftentimes require surgery, carry visible and long lasting or permanent scars, and suffer other consequential damage such as permanent impairment of other faculties.

Serious Injuries must be documented in the reporting of this offense to support the classification of Aggravated Assault. Additionally, an MPD official and detective should be notified in all cases of Aggravated Assault.

For example, Jake decides to celebrate by firing his pistol six (6) times into the air. When the bullets come back down, one of them strikes Marcus who is five (5) blocks away, causing severe injuries. Although Jake did not aim the gun at Marcus and had no motive to shoot Marcus, he nonetheless committed Aggravated Assault since firing a pistol creates a grave risk of injury, firing that pistol in the air demonstrates extreme indifference to life, and the firing of the pistol ultimately resulted in Marcus' serious injuries.

For Example, Jake and three of his friends see Charlie walking home from work. They all dislike Charlie and gave him a hard time growing up. The four men surround Charlie and begin to tease and insult him. Finally, Jake punches Charlie in the face and knocks him to the ground. The four men then proceed to hit and kick Charlie repeatedly, breaking several of his ribs and his jaw while he is unconscious. In this case, the men willingly assaulted Charlie to the extent that they inflicted unconsciousness and broken bones. Due to the nature of the assault and injuries received, all four have committed Aggravated Assault.

Attempt Aggravated Assault occurs when:

- Under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person;
- and the action does not result in serious bodily injury to the other person.

Attempt Aggravated Assault includes the same circumstances as Aggravated Assault *but does not result in a serious bodily injury*.

Attempt Aggravated Assault is a **felony** as well and is punishable by imprisonment for a period of **no more than five (5) years**.

For example, John lives near interstate 395 in Washington DC and is constantly bothered by the noise of traffic on the highway. He finds two large cinder blocks and walks to an overpass in his neighborhood where traffic on the highway travels below at high speeds. John stands on the overpass and watches cars passing below. He drops a cinderblock from the overpass in an attempt to strike one of the vehicles below as it passes, but misses. He tries again, and the cinderblock lands in the road barely missing another vehicle. The driver slams on the brakes and swerves into another lane to avoid the debris, nearly causing a traffic crash. The driver pulls over and reports John to the police. In this case, John has created circumstances that manifest extreme indifference to human life and has knowingly created a grave risk of serious bodily injury to persons driving on the highway. His actions did not result in any injuries, but easily could have resulted in serious bodily injury. As such, he has committed Attempt Aggravated Assault.

Assault with a Dangerous Weapon – DC Code § 22-402

Assault with a Dangerous Weapon (ADW) is described as any unlawful assault in which a dangerous (not necessarily deadly) weapon is used in the commission of the crime. This offense is *not* classified by the resultant injuries and *does not* require injury as a result of the assault. Instead, it is any type of assault in which the offender uses a dangerous weapon, whether it is used to affect the assault or handled with reckless disregard for the safety of others. This crime includes pointing a weapon at the victim, shooting at and missing the victim, swinging a weapon in the direction of the victim, and actually striking the victim with the weapon.

Assault with a Dangerous Weapon is a **felony** and is punishable by imprisonment for a period of **no more than ten (10) years**.

Dangerous weapons are defined as:

- Any object or device that, because of the way it is used, is capable of causing serious bodily injury;
- or any instrument capable of producing death or serious bodily injury by its manner or use.

For example:

- Mark is in an argument with Keith. During the argument, Keith retrieves a knife and waves it around while telling Mark to, “Shut up!” Although Mark was not injured or touched by the knife, Keith has committed an Assault with a Dangerous Weapon.
- Later on, Keith and Mark have dinner together and continue their argument. This time, Keith stabs Mark in the leg, causing a small laceration. Again, Keith has committed an Assault with a Dangerous Weapon.
- A week later, Mark and Keith are in a bar. Mark confronts Keith about the knife incident, and they begin arguing again. This time Mark swings a glass beer bottle at Keith and breaks it over his head. Mark then holds the broken bottle up over his shoulder as if to stab Keith with it. Keith runs away. In this case, Mark has committed an Assault with a Dangerous Weapon. He did so because of the manner in which he used the bottle, which is not ordinarily considered a weapon.

Assault with Intent to Kill, Rob, or Poison, or to Commit First Degree Sexual Abuse, Second Degree Sexual Abuse or Child Sexual Abuse – DC Code § 22-401

Assault with Intent to Kill, Rob, or Poison is defined as any unlawful assault with the *specific intent* to kill, to rob, to poison, or to commit sexual abuse.

Assault with Intent to commit these offenses is a **felony** punishable by imprisonment for a period of **no less than two (2) years and no more than fifteen (15) years**.

Specific intent to commit any one of these offenses, as well as an unlawful assault, must be apparent. T poison, in this offense, is described as mingling poison with food, drink, or medicine with the intent to kill, or willfully poisoning any well, spring, or cistern of water. Sexual Abuse, in this offense, includes First Degree Sexual Abuse, Second Degree Sexual Abuse, and Child Sexual Abuse.

For example, Jerome has just left a Metro station and is walking home after work. He is carrying an iPod in his left hand while selecting music to listen to on his walk. He is approached from behind by a man in

a ski mask. The man states, "Give it up," and punches Jerome in the face. Jerome says, "Take it," throws the iPod into the street, and covers his face to protect himself. He is punched again at which time the suspect takes Jerome's wallet from his back pocket. The suspect observes that there is no money in it, drops the wallet, and runs away. Although the suspect in this case did not obtain any property from Jerome, it is clear that he had the specific intent to commit a robbery. Furthermore, he did commit an unlawful assault in the course of his actions. As such, he committed an Assault with Intent to Rob.

For example, Brenda and Jonathan have been married for fifteen (15) years. Brenda just discovered that Jonathan has been in an affair with another woman for the duration of their marriage and has a child with this other partner. Brenda retrieves a pistol and secretly follows Jonathan to meet his partner. She confronts them both, displays the pistol, and says, "You ruined my life. Now I'm going to kill you both." Brenda shoots Jonathan multiple times in the chest and head at close range before running out of ammunition and being subdued by Jonathan's partner. Jonathan receives emergency surgery for seven (7) gunshot wounds and nearly dies as a result of his injuries. He has permanent disabilities, but survives the assault. In this case, Brenda has committed an Assault with Intent to Kill. Her actions and statements demonstrate the specific intent to kill Jonathan in the course of her unlawful assault.

Mayhem – DC Code § 22-406

Mayhem is defined as:

- Any unlawful assault
- which results in the loss of a member of a person's body or renders the member useless or leaves the member's usefulness impaired
- And the suspect has the general intent to commit the assault.

Member in this statute refers to a limb or some part of a person's body such as a nose, ear, or finger. The member must be lost, detached, or injured in such a way that it is left useless or no longer functional.

Mayhem is a **felony** and is punishable by imprisonment for a period of **not more than ten (10) years**.

Mayhem, being a general intent crime, is an assault which has the described result with or without the specific intention of producing that result. The intent required is to *willingly commit* an unlawful assault. The unique element of this offense is the loss of a member of a person's body.

For example, Bernard and Rodney get into a fight. During the altercation, Bernard retrieves a knife from his pocket and starts slashing randomly at Rodney. One of Bernard's slashes makes contact with Rodney's left ear, cutting off a portion of the ear. As Bernard was wildly swinging the knife, he was committing an unlawful assault which resulted in the loss of Rodney's ear, a member of his body. As such, Bernard has committed Mayhem.

Malicious Disfiguring – DC Code § 22-406

This offense is defined as:

- An unlawful assault which renders the victim disfigured or less complete, perfect, or beautiful
- and the suspect has the specific intent to commit the offense.

Malicious Disfiguring is a **felony** offense punishable by imprisonment for a period of **not more than ten (10) years**.

Malicious Disfiguring is unique in two ways. First, disfiguring refers to an act which causes injury or impairment to a person's appearance. It is an attack on the physical beauty of another person. Secondly, it is a specific intent crime. Rather than just willfully committing the unlawful assault, the suspect must commit it with the intent to produce a certain result, which in this case is disfigurement. The offense involves any type of assault, with or without a weapon, in which the intent is to permanently maim or disfigure the victim. **Disfigurement** means that a part of a person's body is appreciably less attractive or that a part of a person's body is to some appreciable degree less useful or functional than before.

For example, Brenda and Jonathan have been married for fifteen (15) years. Brenda discovers that Jonathan has been having an affair for the duration of their marriage. Brenda retrieves hydrochloric acid. She confronts Jonathan and states, "You'll never cheat on me again. No one will ever sleep with you again!" and throws the acid in Jonathan's face, leaving him with permanent chemical burns about the face and loss of the use of one eye. Brenda, because of her specific intent to leave Jonathan disfigured and scarred along with the unlawful assault has committed Malicious Disfiguring.

6.4.3 Classify the elements of offenses involving threats

All threat offenses can be committed not just in person, but also over the phone during a conversation, or via text message, or in writing through a note or email, or in other type of electronic communication.

The words used do not have to be explicitly threatening. Rather, the threat itself can be reasonably inferred from examining the entire available facts.

The threat can be based on a future condition. For example, a suspect threatens to retaliate in a certain way if a person does or doesn't do something.

In order to support threats charges, there must be a reasonable belief by the person who hears or receives the threat that the suspect is capable of carrying out the threat.

Threats in a Menacing Manner – DC Code § 22.404(a)(1)

This offense is defined as:

- To put or attempt to put another in fear of imminent bodily injury by means of an overt act or gesture
- and it is apparent to the victim that the accused has the present ability to carry out such an act or assault
- And the suspect has the general intent to do the act which constitutes the assault.

Threats in a Menacing Manner is a **misdemeanor** offense punishable by imprisonment for a period **no more than 180 days**.

Threats in a Menacing Manner are not made verbally but, instead, by an overt act or gesture demonstrated by the accused with the intention of putting fear in the complainant. Verbal threats can accompany the overt acts and gestures.

For example, Michael has recently been fired from his job washing dishes at a local restaurant. As a result, Michael has been struggling to make ends meet. He returns to the restaurant and asks to have his job back, promising not to skip work or come in late again. The owner refuses to rehire Michael and advises him that the position has already been filled. Furthermore, he tells Michael to leave the restaurant and

that he is not welcome to come back. Michael leaves the restaurant and peers in through the front window. The owner sees Michael at which time Michael points at the owner with his finger, then makes a gesture with his hands and fingers as if to be pulling the trigger of a gun pointed at the owner. The owner feels threatened and reports the event to MPD. Although no direct verbal or written threat was made, Michael has committed Threats in a Menacing Manner by making such a gesture.

Threats to do Bodily Harm - § 22-407

These threats occur:

- when someone utters or speaks words to another person which are of such a nature as to place an ordinary person in fear of receiving bodily harm or injury
- and the suspect has the general intent to utter or say the words which constitute the threat.

Threats to do Bodily Harm is a **misdemeanor** offense punishable by imprisonment for a period of **no more than six (6) months**.

Unlike Threats in a Menacing Manner, these threats are made through words, not gestures. Threats to do Bodily Harm do not have to be made to the person being targeted. The offense occurs when the threats are received by the target or a third party and the nature of the threats convey fear of bodily harm such that an ordinary person would recognize the statement made or uttered as threatening in nature. These threats can be made verbally, in writing, or through electronic communications.

For example, Karen just started dating Jim. She has dinner with her girlfriends every Friday, something Jim has become upset and insecure about. She reports that they have argued about it in the past. This week, Jim sent her a text message while he was at work that states, "If you're not home when I get back, I'm going to come to that restaurant and slap the shit out of you." Karen becomes afraid and reports the threat to MPD. Jim has committed Threats to do Bodily Harm.

Threatening to Kidnap or Injure a Person or Damage His Property – DC Code § 22-1810

This offense is usually referred to as Felony Threats and is defined as:

- A threat made
- to kidnap any person or to injure the person of another or to physically damage the property of any person.

Threatening to Kidnap or Injure a Person or Damage His Property is a **felony** punishable by imprisonment for a period of **no more than twenty years**.

These threats are more serious in nature than those to do bodily harm and become an offense when said or written to the targeted person *or a third party*.

For Example, Andrew and Karen have lived together for two (2) years. One night, their argument becomes loud enough that a neighbor calls 911 requesting police assistance after Andrew was heard saying to Karen, "I'll kill you."

- If Karen advises the responding officers that, "he says stuff like that all the time. He's never laid a finger on me. He would never actually hurt me," no crime has occurred because Karen does not feel threatened and does not believe Andrew is capable of carrying out the threatened crime.

- If Karen advises the responding officers that, “He’s been arrested for hitting me before. I wouldn’t put it past him. I’ve never seen him so mad,” then she has a reasonable belief that Andrew is capable of carrying out the threatened crime and he could be charged with Felony Threats.
- If Karen admits to the argument and Andrew’s threatening statement, but does not feel threatened, the officer may interview the neighbor who called 911. If the neighbor says, “He’s a bad guy. I heard him say it, and he’s beat her before, bloodied her lip last month,” Andrew could be arrested for Felony Threats because the threats do not have to be made to the victim or for the victim to feel threatened. Rather, that someone heard the threat and that person reasonably feels that it was threatening in nature is sufficient to charge the offense.

6.4.4 Complete an event report and arrest/prosecution report for the offenses encountered in this instructional unit

Using video scenarios and the Cobalt reporting system, recruits will complete an event report and arrest/prosecution report for the following offenses:

1. Affray
2. Simple Assault
3. Assault in a Menacing Manner
4. Aggravated Assault
5. Assault with a Dangerous Weapon
6. Assault with Intent to Kill, Rob, or Poison
7. Mayhem
8. Malicious Disfiguring
9. Threats in a Menacing Manner
10. Threats to do Bodily Harm
11. Felony Threats

Summary

Recruit officers should now have a thorough understanding of misdemeanor and felony assault offenses, as well as attempts to commit those offenses, and offenses involving threats. Furthermore, recruits should understand how to distinguish between each of the offenses using criteria included in the elements of the crimes, and how to complete reports and arrests based upon these offenses.

Recruit officers should continue studying and practicing the classification of such crimes, as well as researching the offenses and case law related to them in the DC Code, General Orders, and other texts as assigned. Documenting and investigating serious offenses, violent crimes, and all other offenses is a fundamental part of policing. It must be thoroughly understood by recruit officers prior to being assigned to patrol districts.