

COMMON CRIMES: ASSAULT, BATTERY, AND BURGLARY

MATERIALS

- 1) Re-useable white board, markers, eraser (provided in the PICC).
 - This is probably going to be useful during this lesson, so if your room doesn't already have one, you're encouraged to bring one.
- 2) Deadly Weapon Poster (in PICC – there is a large copy (roughly 3ft wide) and a small copy (roughly 2ft wide). Please return your poster promptly, as there are only two and every teaching team will need be able to use one for their class.

TAKEAWAYS

- Students will understand the general definitions and elements of burglary, assault, driving under the influence, and petty theft.

WELCOME

(Time Check: 2 minutes)

Welcome the students back to StreetLaw, and remind them that they are not to discuss the details of their own situations during class, but instead of themselves discuss a “friend.”

Today, we're going turn our focus from the major crimes and punishments you hear the most about, and look at a few of the crimes people are most commonly arrested for.

INTRODUCTION (Time Check: 3 minutes)

Ask the students what they think the most common crime is in San Mateo county. Try to make it competitive—get ‘em guessing. Break down the guessing into categories by asking them if they think that adults and juveniles are the same—or do they have different most-common crimes?

After two minutes, tell them the answer (and try to have someone write this up somewhere so you can refer back to it):

- For adults, the most common felony was *drug possession*.
- For juveniles, the most common felony was *burglary*.
- When you add it all up, though, the most common felony overall is *assault*. 1,143 people were arrested for felony assault in 2006. 1,029 were adults, and 114 were juveniles. 155 juveniles were arrested for burglary that same year.
- For adults, the most common misdemeanor was driving under the influence—there were 3,488 adults arrested for D.U.I. in San Mateo county in 2006!
- For juveniles, petty theft was the most common misdemeanor. There were 382 juveniles arrested for petty theft in San Mateo in 2006.¹

¹ If the kids want the math behind this: This is because there were 1,029 adults arrested for assaults, and 114 juveniles arrested for assault, meaning there were 1,143 arrests for assault total. Even though there were more adults arrested for drug possession (1,120) there were practically no juveniles arrested for this offense—only 27. Meaning assault beat out drug possession as the most common offense. 155 juveniles were arrested for burglary, making this the most common offense for juveniles. Because only 475 adults were arrested for burglary, though, there were only 630 total burglaries, so burglary was only the third-most common offense overall.

ACTIVITY 1: Assault, Battery & The Deadly Weapon Game
(Time Check: 15 minutes)

Ask the students if anybody knows what makes a felony different from a misdemeanor. (Answer: a felony is any crime for which a person can be put in jail or state prison for at least one year).

Ask the students what an assault is. Possible answers will be things like hitting people, beating people up, fighting, pushing, or even using a weapon against somebody. Maybe just “trying to hurt someone”. Take your time and try to get the students to come up with the best definition they can.

Give them the definition: “*Assault* is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (Cal. Penal Code § 240)

Write on whiteboard:

Unlawful² **attempt**
+ present **ability**
to commit a **violent injury**
on **another person**

(Numbering the elements will help the students in the third exercise, where they will have to negate the elements of each offense.)

Ask the students to break down for you what that might mean. Try to get them to hit the key points—it’s just an *attempt* to injure someone.

Does “present ability” matter? Usually not. Almost always, people are found to have the ability to harm someone—even if they’re weaker, smaller, younger, whatever.

Having just said that, **ask the students** if anyone can define “battery”. Lead ‘em towards guessing that battery is actually injuring someone.

Give them the definition: “A *battery* is “any willful and unlawful use of force or violence upon the person of another.” (Cal Penal Code §242):

So an assault is an attempted battery, and a battery is a successful assault.

² Note that self defense is exempted by this element.

By way of explaining this further, you will now **act out an assault and battery**.

[Demonstrate with another teacher]

Say: So if I crumple up this paper ...

[crumple paper into a ball]

And throw it at Other Teacher's Name ...

[Throw ball at other teacher, try to hit them but miss]

That's an assault. And if I actually hit someone with a paper ball...

[Throw the ball again if you need to]

It's a battery.

Explain: A battery doesn't have to actually injure anybody—just touching somebody in a way they don't want me to can be considered battery.³

Remind the students that assault and battery was the most common *felony* in San Mateo County. Ask them if they think tossing a paper ball could be a felony. (The answer is probably not.)

When they insist it's not felonious, tell them they're right. Assault and battery can be misdemeanors. However, when the assault or battery is *aggravated*, it becomes a felony.

Write "aggravated" on the board.

AGGRAVATORS

Ask the students if anyone can tell you what "aggravated" means. Get them to guess, or inform them, that "aggravated" means made worse—like if you have a rash, and you scratch it, and it gets worse, the rash has been *aggravated* by your scratching.

What does this mean for assault and battery? What makes an assault or battery worse? Get them to guess again.

Some possible correct answers would be:

- Using a weapon
- Using a gun
- Seriously hurting somebody
- Assaulting a police officer

³ People v. Bradbury, 91 P. 497 (Cal. 1907)

- Committing the crimes on school property

Try to get the students to guess as many as you can. Point out that assault and battery can be sexual as well as violent—and if the assault and battery is sexual in nature, that is an aggravated offense, too.

Tell the students that these aggravators make the offense into a felony.

The most common aggravators are *great bodily injury* (i.e. hurting someone really bad) or *use of a deadly weapon*.

GREAT BODILY INJURY:

Ask the students: so, what's "great bodily injury"?

After you get some guesses, tell them that usually it means loss of consciousness, concussion, bone fracture, loss of function of an organ, disfigurement, and any wound requiring stitches.

Remind the students that since an assault is just an attempt, *attempting* to cause someone great bodily injury can be a felony—so you don't have to actually hurt someone, just attack them in a way that could potentially be serious.

This is really, really broad—pretty much any ordinary fistfight could potentially be charged as assault with intent to cause great bodily injury.

USE OF A DEADLY WEAPON:

Tell the students that to help them figure out exactly what a deadly weapon is, we're going to play a little game. It's called the Deadly Weapon Game. We're going to show them a picture, and we want them to try and find all the deadly weapons in it.

Note: There are about a hundred right answers in this game⁴. There are actually so many that it might be hard to get the class to stay orderly, so one way to let everyone get as many answers as they can is to take the poster around the class, letting each student look at it and point out three weapons *that haven't been found already*. If someone gets stuck, ask the class to help 'em out.

⁴ Such as, piano, piano wire, cigarette, rope, car, dog, fire, gasoline, bear trap, HIV-infected spit, board with nails in it, toaster (when combined with the bucket of water, which is a deadly weapon in its own right) couch, couch cushions, pillow on bed, blankets on bed, bed, book by bed, anvil over bed, cocaine, poison, knife, fork, shoes, fists, ring on fist, bow and arrow, mace, gun, tree branch, blood (if it was diseased, or if someone drowned someone else in it), and so on and so forth. If you can seriously injure someone with it, it counts.

REAL-LIFE EXAMPLE

When the game is finished, underscore the point that anything can be a deadly weapon by telling the students about the case *In Re Jose H*, 77 Cal.App.4th 1090 (2000). This is also a good reminder of the great bodily injury aggravator, discussed above.

Jose was a 17-year-old high school student in Salinas, CA.

When another boy, Travis, came up Jose at school and said he wanted to hook up with Jose's girlfriend, Jose punched the kid in the side of the head.

Jose was wearing a ring at the time, and the single punch put Travis in the hospital with a fractured jaw, which required surgery, and blurred his vision for a week.

Jose was charged with assault and battery, and the ring was considered a deadly weapon by the court.

He got *another* enhancement because of the great bodily injury he caused, and almost got another because the fight was on school grounds.

The worst part about all of this? For one punch, Jose got *two strikes*—attempted murder and aggravated assault.

Mention the Three Strikes Law. Because of the Three Strikes Law, this means if Jose ever got convicted of another felony—any felony—in the future, he would go to prison for 25 years to life under California's three strikes law.

Tell the students:

Aggravated assault and battery is a strike felony. Not only do they impact the sentence for any future offense, they can also (for juveniles) make a person's record non-sealable.

What might seem like a little physical altercation can actually be a serious felony in the eyes of the law—and you don't even have to hurt someone. In California, just trying to hurt someone can be a felony assault if the court finds that serious injury was possible, or a "deadly weapon" was used.

ACTIVITY II: Burglary
(Time Check: 15 minutes)

Segue: Neither assault nor battery is the most common felony for *juveniles* in San Mateo, though. For juveniles, the most common felony is *BURGLARY*

Ask the students to guess at the definition of burglary. They will probably guess things that involve theft in some way. It's a common misperception.

Reveal the truth: burglary is actually entering into entry into any building, room within a building, or locked vehicle with the intent to commit theft—or *any felony*.⁵

Write:

A burglary is **entry**
 Into any **structure or vehicle**
 With the **intent**
 To commit **theft/any felony**.

Tell the students: So usually when people think of burglary, they think of people breaking into houses to steal stuff, right? Well the real definition of burglary is a lot broader than that—which might explain how 630 people in San Mateo county were arrested for burglary in 2006.

Entry: entry means penetrating the outer boundary of the structure with any part of the body or any object under your control.

So let's say I'm walking down the street and I see a house with a really awesome-smelling pie cooling on the windowsill. I go up to the window, grab the pie, run around the corner and eat it. Is that a burglary? Answer: YES. My hands penetrated the structure when I reached through the window to pick up the pie. Even if I just reached through with a fork and took a bite of the pie, I'd still be using an "object under [my] control" and committing burglary.

Structure or vehicle: Basically, anything—building, car, boat, airplane, coal mine, shack, tent, teepee. You name it, if it's something you can go inside, it's a structure.

If it's inhabited—if there are people inside—that's first-degree burglary, which is a strike felony that can be punished with up to six years in state prison. If the structure is not inhabited, it's only second-degree burglary, which is not a strike felony—but it will still get up to three years in state prison!

⁵Cal Penal Code § 459, as well as Cal Jury Instructions on PC 459.

Intent—a person has to go inside *intending* to commit the felony.

Let's say Jane has agreed to house-sit for her friend Angela while Angela is out of town. Jane goes to the address she thinks is Angela's, and finds the house unlocked. Jane doesn't know it, but she's at the wrong house—she's actually in Angela's neighbor's house. She realizes her mistake, but before she leaves she sees a some jewelry lying on a table in the house which she just *has* to have. She takes the jewelry and leaves. Is that burglary?

Answer: NO. Although Jane unlawfully entered the house, she didn't do so intending to steal anything. She decided once she was already inside. So technically, this isn't a burglary. However, Jane will probably get convicted anyway. After all, how is she going to prove that it was just an honest mistake...that turned into a theft? It is really hard for defendants to prove that they didn't have the mental state the prosecutor says they had, since people rarely make their intentions clear.

Theft or Any Felony: Any time you take property that isn't yours, and mean to keep it indefinitely, that's theft. Pretty straightforward. But what about "any felony"? Let's look at some situations and see if we can figure this out.

Andrea and Frank are dating. It's really difficult to get any privacy, though, because Andrea is 14 and Frank is 13, and they can't hang out at either of their houses without their moms constantly checking on them. Andrea knows that her aunt is out of town, and knows that her aunt keeps a spare house key under a rock by her front door. Andrea tells this to Frank, and Frank says they should totally go over to her aunt's house and hook up. They do. Is that burglary? **HINT: SEXUAL CONTACT WITH ANY PERSON AGE 13 OR UNDER IS A FELONY IN CALIFORNIA.**

Answer: **YES.** Sexual acts with any person age 13 or under is felony child molestation for any person age 14 or older. So Andrea is committing a felony when she hooks up with Frank, and she went into her aunt's house, without her aunt's permission—unlawfully—intending to do it. So if they get caught, Andrea can be charged with burglary, no break-in or theft required.

ACTIVITY III: MOCK TRIAL **(Time Check: 15 minutes)**

Note: for the following, use two teachers as the characters in the following narrative.

Tell the students: So now we'd like you to see how these laws can apply to a situation. We're going to tell you a story. When we're done, *you* are going to use the information we gave you to put [Teacher A] on trial for assault, battery, and burglary. Half of you will be prosecutors, half of you will be defense lawyers. We'll go over the rules of the game in a minute, but first, here's what happened:

[Teacher A] and [Teacher B] are roommates. They share a house in Redwood City. [A] doesn't have a car, but [B] does. One day, [A] decides he/she wants to go get something to eat, so he/she goes into [B]'s room, and takes his/her car keys from the drawer where he/she knows [B] keeps them. [A] leaves the house, and gets in [B]'s car. [B] comes running out of the house after [A] and as [A] begins pulling out of the driveway, he/she runs over [B]'s foot with the car.

Divide the class into two groups, then tell them: Each group is trying to use the elements of these crimes we talked about (point to elements written up on board) to either prove that [A] is guilty, or prove that [A] is *not* guilty. Think about what you need to know to either make sure you have all your elements, or make sure the other side *can't* get theirs. You each get five minutes to come up with questions, and then each side will question [Teacher A] and [Teacher B]. After we've questioned our witnesses, each side will use the information they got to argue their case—first the prosecution will say why [A] is guilty, and then the defense will say why [A] is not. Whoever makes the more convincing case wins!

Note: you might have to go over the elements again. Teachers should divide up and help the groups make their case. [A] and [B] can answer questions however he/she likes, so long as the questions keep the case fairly ambiguous—[A] should insist that he/she did not see [B] there when he/she began to back the car out. Other relevant facts to be used in the answers are:

- [A] has borrowed [B]'s car before on several occasions, but only with [B]'s permission.
- [B] keeps the door to [B]'s room closed usually, but not locked.
- [B] was home when [A] borrowed the keys, watching TV in the living room.
- [A] told [B] he/she was going to go get food, but did not ask [B]'s permission to use the car.
- [B] is not sure whether he/she put his/her foot under the wheel as [A] backed out.
- After [B] was injured, [A] stopped the car and immediately apologized and asked [B] if he/she was all right.
- [A] insists it was an accident, [B] is not so sure—he/she thinks [A] saw [B] before the car began to move.