

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19-72837

JAIME GUZMAN-PENA
Petitioner,
v.

WILLIAM P. BARR
Respondent

On Petition for Review of an Order of the Board of Immigration Appeals

**BRIEF OF *AMICUS CURIAE* AMERICAN IMMIGRATION LAWYERS
ASSOCIATION IN SUPPORT OF PETITIONER**

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CORPORATE DISCLOSURE STATEMENT

Amicus Curiae American Immigration Lawyers Association state that they, their subsidiaries and any corporate interests involved in this matter do not have any monetary interest in the outcome of this case.

FRAP RULE 29 STATEMENT OF CONSENT

Pursuant to Rule 29(a), of the Federal Rules of Appellate Procedure and Circuit Rule 29-3, attorneys representing both of the parties consent to the filing of this amicus brief. Amici state that no counsel for the party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than Amicus and their counsel contributed money that was intended to fund the preparing or submitting of the brief.

INTEREST OF AMICUS CURIAE

The American Immigration Lawyers Association ("AILA") is a national non-profit association with more than 15,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; and to facilitate the administration of justice and elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. As part of its mission, AILA provides trainings,

information, and practice advisories to practitioners providing direct services to noncitizens, and, increasingly, to counsel representing noncitizens accused of criminal offenses in federal and state courts. Amicus curiae has an interest in ensuring that the immigration laws, including the generic definition of a CIMT offense, is applied fairly and uniformly.

ARGUMENT

The BIA has established that a “simple assault” involving “only offensive touching or threatened offensive touching of another with general intent that does not result in serious bodily harm *is not considered* to involve moral turpitude.” *Matter of Wu*, 27 I. & N. Dec. 8, 10, 11 (BIA 2017) (emphasis added). Rather, only assaults in which the elements involving something more, usually specific intent or “some aggravating factor” will be considered CIMTs. *Id.*

This rule is a sound one, reflecting how the 50 states have opted to criminalize assaults and batteries to reflect the gradations of harm involved in the actual assault. Because a CIMT is based on “contemporary moral standards and may be susceptible to change based on the prevailing views in society,” a 50-state survey based on contemporary laws (as opposed those in effect in 1996 when IIRIRA was enacted) is a relevant starting point to understand whether a generic definition reflects the acts of the majority of states. *Matter of Torres-Varela*, 23 I. & N. Dec. 78, 83 (BIA 2001). As attached to this amicus brief, a 50-state survey

shows that the majority of states—30 in number—define assault in a manner that would be a CIMT under Board precedent. *See* Addendum. The majority rule requires the crimes to have elements that involve the actual causation of bodily injury, usually defined to be serious. By contrast, the minority of states—numbering 20—opt for a much broader definition of assault to be what the BIA described as “simple assault.” These statutes capture much more conduct, usually involving slight or offensive touching and, at times, involving only the potential for injury or fear or no injury at all.

I. Unlike Oregon’s Assault Statute, Oregon’s Menacing Statute Does Not Have An Element of Injury

In this context then, Oregon’s menacing statute, ORS 163.190, has the elements that are outside of the definition of what the BIA deems to be morally turpitudinous assaults. When defining this crime, Oregon set forth the following elements:

- (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.
- (2) Menacing is a Class A misdemeanor.

ORS 163.190.

This menacing statute lacks an element of injury. By contrast, Oregon's assault in the first-degree statute, ORS 163.185, follows the majority rule of defining the crime with an element of causing "serious physical injury":

- (1) A person commits the crime of assault in the first degree if the person:
 - (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;
 - (b) Intentionally or knowingly causes serious physical injury to a child under six years of age;
 - ...
- (3) Assault in the first degree is a Class A felony. [. . .]

ORS 163.185.

The more serious first-degree assault offense that involves the result of serious physical injury is a felony. The less serious menacing offense, involving placing the victim in fear or apprehension, is punished as a misdemeanor. The Oregon Supreme Court has clarified that these offenses are substantially different such that menacing cannot be deemed a lesser included offense of assault. "[W]e find that the crime of assault in the second degree does not necessarily contain the element of placing another person in fear of imminent physical injury." *State v. Moroney*, 289 Or. 597, 601, 616 (1980). Of note, second-degree assault is defined as causing "serious physical injury":

- (1) A person commits the crime of assault in the second degree if he:
 - (a) Intentionally or knowingly causes serious physical injury to another; or
 - (b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

ORS 163.175.

A person convicted of Oregon’s first-degree assault or second-degree assault offense would commit a crime that the BIA precedent finds to be a CIMT. But a person who is convicted under Oregon’s menacing statute would not be convicted of an offense that is morally turpitudinous.

II. Applying the Constitutional Narrowing Doctrine, The Generic Assault CIMT Is Reasonably Limited to Offenses That Involve Elements of Injury, Which Menacing Is Not

As noted in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), a legal standard that is unknown to anyone but the agency is not constitutionally sound. In *Dimaya*, the standard defining a risk of violence was impermissible because it was not clear how that could be proven: by “statistical analysis of the state reporter? A survey? Expert evidence? Google? Gut instinct?” *Id.* at 1214 (internal quotation marks and citations omitted).

By contrast, the BIA has been able to define some generic CIMT offenses with sufficient particularity to avoid the vagueness problem. For instance, *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847, 849 (BIA 2016), clarified that a generic CIMT larceny offense has the elements that involve both permanent and temporary intent and will exclude de minimis takings. This set of elements allows federal

courts then to meaningfully analyze state larceny statutes to determine if they meet this definition. *See Martinez v. Sessions*, 892 F.3d 655, 662 (4th Cir. 2018) (holding that Maryland’s theft statute is not a CIMT because it criminalizes de minimis takings) (citations and internal modifications omitted).

Likewise, *Matter of Wu* provides clear guidance on whether an assault offense constitutes a CIMT by drawing a clear line of whether the crime involves an element of actual injury or not. *See Matter of Wu*, 27 I. & N. Dec. at 10, 11 (explain that assault offenses involving “only offensive touching or threatened offensive touching of another with general intent that does not result in serious bodily harm ***is not considered*** to involve moral turpitude” (emphasis added)).

Based on past precedent and legislative history, it is reasonable for this Court to limit the definition of a CIMT to an offense that has elements of fraud or serious injury. As noted by the majority in *Jordan v. De George*, “the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude.” 341 U.S. 223, 232 (1951). This Court too has consistently held that offenses that have an element of fraud are CIMTs. *See Vasquez-Valle v. Sessions*, 899 F.3d 834, 839 (9th Cir. 2018) (noting that fraud always is among “two categories of CIMTs”) (citations omitted); *Linares-Gonzalez v. Lynch*, 823 F.3d 508, 514 (9th Cir. 2016) (same) (citations omitted).

Limiting CIMT offenses to a second category of crimes with elements of actual injury also is reasonable because “[a] review of BIA and Ninth Circuit precedent reveals that non-fraudulent crimes of moral turpitude almost always involve an intent to harm someone, the actual infliction of harm upon someone, or an action that affects a protected class of victim.” *Nunez v. Holder*, 594 F.3d 1125, 1132 (9th Cir. 2010).

Whereas offenses that have elements of fraud and actual injury can be identified as CIMT offenses, Judge Fletcher’s observation holds true that for other offenses, “the definition of non-fraud CIMTs continues to be hopelessly and irredeemably vague.” *Islas-Veloz v. Whitaker*, 914 F.3d 1249, 1257–58 (9th Cir. 2019) (Fletcher, J., concurring). To avoid this problem, Amicus Curiae submits that this Court should uphold *Matter of Wu*’s line and clarify that only assault offenses that have an element of injury are those that fall within the generic definition of an assault CIMT offense.

Such a course of action is supported by history and contemporary practices. For the first 70 years of its existence, the term CIMT did not apply to a large number of noncitizens. Prior to Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 350, 110 Stat. 3009 (Sept. 30, 1996) (“IIRIRA”), noncitizens could stop deportation in criminal courts through Judicial Recommendations Against Deportation or obtain INA § 212(c) relief in

immigration court. *See Padilla v. Kentucky*, 559 U.S. 356, 361–64 (2010). As a result, between 1908 and 1980, 56,000 noncitizens—an average of only 777 per year—were deported for criminal convictions. *See Juliet Stumpf, The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 386 & n.98 (2006) (citations omitted). After IIRIRA, Congress codified numerous and specific criminal grounds, increasing the number of crime-based removals to 135,570 in 2016. *See* U.S. Dep’t of Justice, *Yearbook of Immigration Statistics FY 2016*, Table 41 (2017), <https://www.dhs.gov/immigration-statistics/yearbook/2016/table41>. Given that the term CIMT was never meant to result in mass removals, it is consistent with the term’s origins to limit the term to only offenses involving elements of fraud or violence.

CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully request that this Court uphold *Matter of Wu*’s definition of a what crimes are a generic CIMT assault offense and hold that ORS 163.185, which does not criminalize any injury to another, is overbroad to the generic crime of assault.

Dated: July 16, 2020

Respectfully submitted,

s/ Kari E. Hong
KARI E. HONG
Counsel for Amici Curiae
American Immigration Lawyers Association

CERTIFICATE OF COMPLIANCE

I certify that: Pursuant to Fed. R. App. P., Rule 32(a)(7)(B) and (C), Rule (a)(5) and (6), and Ninth Circuit Rules 32-1 and 32-4, the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains approximately 2,011 words, exclusive of the table of contents, table of authorities, corporate disclosure statement, certificates of counsel, signature block, and attached appendix, which is does not exceed the 7,000 word-limit for an amicus brief. The word count includes the FRAP RULE 29 Statement and footnotes.

CERTIFICATE OF SERVICE

I, Kari Hong, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 16, 2020

Respectfully submitted,

/s Kari Hong
KARI HONG

State	Code	Elements	Intent to Harm	Injury Required
<u>Alabama</u>	§ 13A-6-20. Assault in the first degree.	<p>(a) A person commits the crime of assault in the first degree if:</p> <p>(1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or</p> <p>(2) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of the body of another person, he or she causes such an injury to any person; or</p> <p>(3) Under circumstances manifesting extreme indifference to the value of human life, he or she recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or</p> <p>(4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree, or any other felony clearly dangerous to human life, or of immediate flight therefrom, he or she causes a serious physical injury to another person; or</p> <p>(5) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 32-5A-191 or 32-5A-191.3, he or she causes serious physical injury to the person of another with a vehicle or vessel.</p> <p>(b) Assault in the first degree is a Class B felony.</p> <p>Ala. Code § 13A-6-20</p>	<p>Yes.</p> <p>intent to cause serious physical injury</p>	<p>Yes.</p> <p>causes serious physical injury</p>
<u>Alaska</u>	§ 11.41.200. Assault in the first degree	<p>(a) A person commits the crime of assault in the first degree if</p> <p>(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;</p> <p>(2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person;</p> <p>(3) the person knowingly engages in conduct that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;</p> <p>(4) that person recklessly causes serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury; or</p> <p>(5) that person knowingly causes another to become unconscious by means of a dangerous instrument; in this paragraph, “dangerous instrument” has the meaning given in AS 11.81.900(b)(15)(B).</p> <p>(b) Assault in the first degree is a class A felony.</p>	<p>Yes.</p> <p>intent to cause serious physical injury to another</p>	<p>Yes.</p> <p>recklessly causes serious physical injury to another by means of a dangerous instrument</p>
<u>Arizona</u>	§ 13-1203. Assault	<p>A. A person commits assault by:</p> <p>1. Intentionally, knowingly or recklessly causing any physical injury to another person; or</p>	<p>Yes.</p>	<p>Yes.</p>

	t; classification	2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or 3. Knowingly touching another person with the intent to injure, insult or provoke such person. B. Assault committed intentionally or knowingly pursuant to subsection A, paragraph 1 is a class 1 misdemeanor. Assault committed recklessly pursuant to subsection A, paragraph 1 or assault pursuant to subsection A, paragraph 2 is a class 2 misdemeanor. Assault committed pursuant to subsection A, paragraph 3 is a class 3 misdemeanor.	Intentionally, knowingly or recklessly causing any physical injury to another person	causing any physical injury to another person;
Arkansas	<u>§ 5-13-205. Assault</u> = <u>First degree</u>	(a) A person commits assault in the first degree if he or she: (1) Recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person; or (2) Purposely impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. (b) Assault in the first degree is a Class A misdemeanor. (c) It is a defense to prosecution under subdivision (a)(2) of this section if the other person consented to the impeding or prevention of his or her respiration or circulation of blood.	No. Recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person	No. creates a substantial risk of death or serious physical injury to another person
California	<u>§ 240. "Assault" defined</u>	An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.	No General intent	No. unlawful attempt, coupled with a present ability, to commit a violent injury
Colorado	<u>§ 18-3-202. Assault</u>	(1) A person commits the crime of assault in the first degree if: (a) With intent to cause serious bodily injury to another person, he causes serious bodily injury to any person by means of a deadly weapon; or	Yes.	Yes.

	<p>in the first degree</p> <p>(b) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of his body, he causes such an injury to any person; or</p> <p>(c) Under circumstances manifesting extreme indifference to the value of human life, he knowingly engages in conduct which creates a grave risk of death to another person, and thereby causes serious bodily injury to any person; or</p> <p>(d) Repealed by Laws 1995, H.B.95-1070, § 6, eff. July 1, 1995.</p> <p>(e) With intent to cause serious bodily injury upon the person of a peace officer, firefighter, or emergency medical service provider, he or she threatens with a deadly weapon a peace officer, firefighter, or emergency medical service provider engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer, firefighter, or emergency medical service provider acting in the performance of his or her duties; or</p> <p>(e.5) With intent to cause serious bodily injury upon the person of a judge of a court of competent jurisdiction or an officer of said court, he threatens with a deadly weapon a judge of a court of competent jurisdiction or an officer of said court, and the offender knows or reasonably should know that the victim is a judge of a court of competent jurisdiction or an officer of said court; or</p> <p>(f) While lawfully confined or in custody as a result of being charged with or convicted of a crime or as a result of being charged as a delinquent child or adjudicated as a delinquent child and with intent to cause serious bodily injury to a person employed by or under contract with a detention facility, as defined in section 18-8-203(3), or to a person employed by the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series, he or she threatens with a deadly weapon such a person engaged in the performance of his or her duties and the offender knows or reasonably should know that the victim is such a person engaged in the performance of his or her duties while employed by or under contract with a detention facility or while employed by the division in the department of human services responsible for youth services. A sentence imposed pursuant to this paragraph (f) shall be served in the department of corrections and shall run consecutively with any sentences being served by the offender. A person who participates in a work release program, a furlough, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203(3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.</p> <p>(g) With the intent to cause serious bodily injury, he or she applies sufficient pressure to impede or restrict the breathing or circulation of the blood of another person by applying such pressure to the neck or by blocking the nose or mouth of the other person and thereby causes serious bodily injury.</p> <p>(2)(a) If assault in the first degree is committed under circumstances where the act causing the injury is performed upon a sudden heat of passion, caused by a serious and highly provoking</p>	<p>intent to cause serious bodily injury</p>	<p>he causes serious bodily injury to any person by means of a deadly weapon</p>
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		<p>act of the intended victim, affecting the person causing the injury sufficiently to excite an irresistible passion in a reasonable person, and without an interval between the provocation and the injury sufficient for the voice of reason and humanity to be heard, it is a class 5 felony.</p> <p>(b) If assault in the first degree is committed without the circumstances provided in paragraph (a) of this subsection (2), it is a class 3 felony.</p> <p>(c) If a defendant is convicted of assault in the first degree pursuant to subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.</p> <p>(d) Repealed by Laws 1995, H.B.95-1070, § 6, eff. July 1, 1995.</p> <p>(3) Repealed by Laws 2016, Ch. 304, § 3, eff. July 1, 2016.</p>		
<u>Connecticut</u>	<p>§ 53a-59. Assault in the first degree: Class B felony: Nonsuspendable sentences</p>	<p>(a) A person is guilty of assault in the first degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or (2) with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person; or (4) with intent to cause serious physical injury to another person and while aided by two or more other persons actually present, he causes such injury to such person or to a third person; or (5) with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of the discharge of a firearm.</p> <p>(b) Assault in the first degree is a class B felony provided (1) any person found guilty under subdivision (1) of subsection (a) shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court and (2) any person found guilty under subsection (a) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim of the offense is a person under ten years of age or if the victim of the offense is a witness, as defined in section 53a-146, and the actor knew the victim was a witness.</p>	<p>Yes.</p> <p>With intent to cause serious physical injury</p>	<p>Yes.</p> <p>he causes such injury</p>
<u>Delaware</u>	<p>§ 613. Assault in the first degree; class B felony</p>	<p>a) A person is guilty of assault in the first degree when:</p> <p>(1) The person intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or</p> <p>(2) The person intentionally disfigures another person seriously and permanently, or intentionally destroys, amputates or disables permanently a member or organ of another person's body; or</p> <p>(3) The person recklessly engages in conduct which creates a substantial risk of death to another person, and thereby causes serious physical injury to another person; or</p>	<p>Yes.</p> <p>The person intentionally causes serious physical injury</p>	<p>Yes.</p> <p>causes serious physical injury to another person by</p>

		<p>(4) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person intentionally or recklessly causes serious physical injury to another person; or</p> <p>(5) The person intentionally causes serious physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, public transit operator, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty; or</p> <p>(6) The person intentionally causes serious physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency care; or</p> <p>(7) The person intentionally causes serious physical injury to another person who is 62 years of age or older.</p> <p>(b) It is no defense, for an offense under paragraph (a)(7) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.</p> <p>(c) Assault in the first degree is a class B felony.</p>		means of a deadly weapon
<u>Florida</u>	784.011. Assault	<p>(1) An “assault” is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.</p> <p>(2) Whoever commits an assault shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.</p>	No. intentional, unlawful threat by word or act to do violence to the person of another	No. creates a well-founded fear in such other person that such violence is imminent.
<u>Georgia</u>	§ 16-5-20. Simple assault	<p>(a) A person commits the offense of simple assault when he or she either:</p> <p>(1) Attempts to commit a violent injury to the person of another; or</p> <p>(2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury.</p> <p>(b) Except as provided in subsections (c) through (h) of this Code section, a person who commits the offense of simple assault shall be guilty of a misdemeanor.</p> <p>(c) Any person who commits the offense of simple assault in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, “public transit vehicle” means a bus, van, or rail car used for the transportation of passengers within a system which receives a subsidy from tax revenues or is operated under a franchise contract with a county or municipality of this state.</p>	Yes. Attempts	No. Attempts or reasonable apprehension

		<p>(d) If the offense of simple assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis.</p> <p>(e) Any person who commits the offense of simple assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.</p> <p>(f) Any person who commits the offense of simple assault against an employee of a public school system of this state while such employee is engaged in official duties or on school property shall, upon conviction of such offense, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, “school property” shall include public school buses and stops for public school buses as designated by local school boards of education.</p> <p>(g) Any person who commits the offense of simple assault against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.</p> <p>(h) Nothing in this Code section shall be construed to permit the prosecution of:</p> <p>(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;</p> <p>(2) Any person for any medical treatment of the pregnant woman or her unborn child; or</p> <p>(3) Any woman with respect to her unborn child.</p> <p>For the purposes of this subsection, the term “unborn child” means a member of the species homo sapiens at any stage of development who is carried in the womb.</p>		
<u>Hawaii</u>	§ 707-710. Assault in the first degree	<p>(1) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes serious bodily injury to another person.</p> <p>(2) Assault in the first degree is a class B felony.</p>	<p>Yes.</p> <p>intentionally or knowingly causes serious bodily injury</p>	<p>Yes.</p> <p>causes serious bodily injury</p>
<u>Idaho</u>	§ 18-901. Assault defined	<p>An assault is:</p> <p>(a) An unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another; or</p>	<p>No.</p> <p>unlawful attempt,</p>	<p>No.</p>

		(b) An intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.	coupled with apparent ability, to commit a violent injury	Attempt or well-founded fear
<u>Illinois</u>	5/12-1. Assault	<p>§ 12-1. Assault.</p> <p>(a) A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.</p> <p>(b) Sentence. Assault is a Class C misdemeanor.</p> <p>(c) In addition to any other sentence that may be imposed, a court shall order any person convicted of assault to perform community service for not less than 30 and not more than 120 hours, if community service is available in the jurisdiction and is funded and approved by the county board of the county where the offense was committed. In addition, whenever any person is placed on supervision for an alleged offense under this Section, the supervision shall be conditioned upon the performance of the community service.</p> <p>This subsection does not apply when the court imposes a sentence of incarceration.</p>	No. knowingly engages in conduct	No. places another in reasonable apprehension of receiving a battery.
<u>Indiana</u>	<u>Indiana Code 35-45-2</u> & <u>Indiana Code 35-42-2-2</u>	<p>Assault is usually an attempt or threat to commit a violent act, like battery, but not in Indiana. However, this does not mean that attempts or threats are legal. In fact, these crimes can also be misdemeanors or felonies and carry serious penalties.</p> <ul style="list-style-type: none"> • Intimidation/ Threats (<u>Indiana Code 35-45-2</u>) – Communications with the intent to force another person to act against their will, places the person in fear, or causes a vehicle, building, or structure to be evacuated. • Criminal Recklessness (<u>Indiana Code 35-42-2-2</u>) – Recklessly, knowingly, or intentionally performing acts that create a substantial risk of bodily injury. This can be heightened to a felony if the act involves the use of a deadly weapon or results in injury. <p>Misdemeanor Battery</p> <p>Due to its wide-ranging definition, almost any confrontation from domestic situations to bar fights can result in a misdemeanor battery charge and serious penalties if convicted. Learn how a skilled criminal defense attorney can help.</p> <p>Under IC 35-42-2-1(c), Indiana defines battery as a person who knowingly or intentionally: Touches another person in a rude, insolent, or angry manner; or</p> <p>In a rude, insolent, or angry manner places any bodily fluid or waste on another person</p> <p>Battery is considered a Class B misdemeanor but is elevated to a Class A misdemeanor if it results in bodily injury to any other person or if it is committed against a member of a foster</p>	Yes. Recklessly, knowingly, or intentionally	Yes. substantial risk of bodily injury.

		family home by a person who is related to the member but is not a resident of the foster family home.		
<u>Iowa</u>	708.1. Assault defined	<p>1. An assault as defined in this section is a general intent crime.</p> <p>2. A person commits an assault when, without justification, the person does any of the following:</p> <p>a. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.</p> <p>b. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.</p> <p>c. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.</p> <p>3. An act described in subsection 2 shall not be an assault under the following circumstances:</p> <p>a. If the person doing any of the enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace.</p> <p>b. If the person doing any of the enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation, that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function regardless of the location, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.</p>	<p>No.</p> <p>Any act which is intended to cause pain or injury to, or which is intended to result in physical contact</p>	<p>No.</p> <p>Pain, injury, offensive contact</p>
<u>Kansas</u>	21-5412. Assault; aggravated assault; assault of a law enforcement officer; aggravated assault of a	(a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm;	No.	<p>No.</p> <p>in reasonable apprehension of immediate bodily harm</p>

	law enforcement officer			
<u>Kentucky</u>	508.010 Assault in the first degree	(1) A person is guilty of assault in the first degree when: (a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or (b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person. (2) Assault in the first degree is a Class B felony.	Yes. intentionally causes serious physical injury	Yes. causes serious physical injury
<u>Louisiana</u>	§ 36. Assault defined	Assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery.	No.	No. reasonable apprehension of receiving a battery.
<u>Maine</u>	§ 207. Assault	1. A person is guilty of assault if: A. The person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person. Violation of this paragraph is a Class D crime; or B. The person has attained at least 18 years of age and intentionally, knowingly or recklessly causes bodily injury to another person who is less than 6 years of age. Violation of this paragraph is a Class C crime. 2. Repealed. Laws 2001, c. 383, § 10, eff. Jan. 1, 2003. 3. Minimum fine. For a violation under subsection 1, the court shall impose a sentencing alternative that involves a fine of not less than \$300, which may not be suspended except as provided in subsection 4. 4. Finding by court necessary to impose other than minimum fine. In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 3 or impose a lesser fine other than the mandatory fine if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider: A. Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents; B. Reliable evidence of special needs of the individual or the individual's family and dependents;	Yes. intentionally, knowingly or recklessly	Yes. causes bodily injury

		<p>C. Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial resources from whatever source;</p> <p>D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and</p> <p>E. The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under chapter 69.</p>		
<u>Maryland</u>	§ 3-202. Assault in the first degree	<p>(a)(1) A person may not intentionally cause or attempt to cause serious physical injury to another.</p> <p>(2) A person may not commit an assault with a firearm, including:</p> <p>(i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-barreled rifle, as those terms are defined in § 4-201 of this article;</p> <p>(ii) an assault pistol, as defined in § 4-301 of this article;</p> <p>(iii) a machine gun, as defined in § 4-401 of this article; and</p> <p>(iv) a regulated firearm, as defined in § 5-101 of the Public Safety Article.</p> <p>Penalty</p> <p>(b) A person who violates this section is guilty of the felony of assault in the first degree and on conviction is subject to imprisonment not exceeding 25 years.</p>	Yes. intentionally	Yes. cause or attempt to cause serious physical injury
<u>Massachusetts</u>	Mass. Gen. Laws Ann. ch. 265, § 13A (West)	<p>(a) Whoever commits an assault or an assault and battery upon another shall be punished by imprisonment for not more than 2 ½ years in a house of correction or by a fine of not more than \$1,000.</p> <p>A summons may be issued instead of a warrant for the arrest of any person upon a complaint for a violation of any provision of this subsection if in the judgment of the court or justice receiving the complaint there is reason to believe that he will appear upon a summons.</p> <p>(b) Whoever commits an assault or an assault and battery:</p> <p>(i) upon another and by such assault and battery causes serious bodily injury;</p> <p>(ii) upon another who is pregnant at the time of such assault and battery, knowing or having reason to know that the person is pregnant; or</p> <p>(iii) upon another who he knows has an outstanding temporary or permanent vacate, restraining or no contact order or judgment issued pursuant to section 18, section 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, in effect against him at the time of such assault or assault and battery; shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 2 ½ years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.</p> <p>(c) For the purposes of this section, "serious bodily injury" shall mean bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.</p>	Yes. General intent	Yes. causes serious bodily injury;

<u>Michigan</u>	Mich. Comp. Laws Ann. § 750.81a	Sec. 81a. (1) Except as otherwise provided in this section, a person who assaults an individual without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.	Yes. General intent	Yes. Inflicts serious or aggravated injury
<u>Minnesota</u>	Minn. Stat. Ann. § 609.221	Subdivision 1. Great bodily harm. Whoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both. Subd. 2. Use of deadly force against peace officer, prosecuting attorney, judge, or correctional employee. (a) Whoever assaults a peace officer, prosecuting attorney, judge, or correctional employee by using or attempting to use deadly force against the officer, attorney, judge, or employee while the person is engaged in the performance of a duty imposed by law, policy, or rule may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both. (b) A person convicted of assaulting a peace officer, prosecuting attorney, judge, or correctional employee as described in paragraph (a) shall be committed to the commissioner of corrections for not less than ten years, nor more than 20 years. A defendant convicted and sentenced as required by this paragraph is not eligible for probation, parole, discharge, work release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135 . Notwithstanding section 609.135 , the court may not stay the imposition or execution of this sentence. (c) As used in this subdivision: (1) “correctional employee” means an employee of a public or private prison, jail, or workhouse; (2) “deadly force” has the meaning given in section 609.066, subdivision 1 ; (3) “peace officer” has the meaning given in section 626.84, subdivision 1 ; (4) “prosecuting attorney” means an attorney, with criminal prosecution or civil responsibilities, who is the attorney general, a political subdivision's elected or appointed county or city attorney, or a deputy, assistant, or special assistant of any of these; and (5) “judge” means a judge or justice of any court of this state that is established by the Minnesota Constitution.	Yes. General intent.	Yes. inflicts great bodily harm
<u>Mississippi</u>	§ 97-3-7. Simple and aggravated assault;	(1)(a) A person is guilty of simple assault if he or she (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; (ii) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) attempts by physical menace to put another in fear of imminent serious bodily harm; and, upon conviction, he or she shall be punished by a fine of not more than Five Hundred	Yes. attempts to cause or	Yes.

	simple and aggravated domestic violence	Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both. (b) However, a person convicted of simple assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both.	purposely, knowingly or recklessly	causes bodily injury to another
<u>Missouri</u>	565.050. Assault, first degree, penalty	1. A person commits the offense of assault in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to another person.	Yes. attempts to kill or knowingly causes	Yes. causes or attempts to cause serious physical injury
<u>Montana</u>	45-5-202. Aggravated assault	(1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another. (2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term not to exceed 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.	Yes. purposely or knowingly	Yes. causes serious bodily injury
<u>Nebraska</u>	28-308. Assault in the first degree; penalty	(1) A person commits the offense of assault in the first degree if he or she intentionally or knowingly causes serious bodily injury to another person. (2) Assault in the first degree shall be a Class II felony.	Yes.	Yes.
<u>Nevada</u>	(Nev. Rev. Stat. Ann. § 200.471.)	Assault in Nevada is an attempt to cause physical injury to another person – for instance, attempting to strike someone with a hand or object, and missing. Assault is also any intentional act or threat of action that reasonably causes a person to feel afraid of impending violence. Words alone do not constitute an assault. If, however, an offender also takes some sort of menacing action, such as stepping toward the victim or raising a fist, the offender has committed an assault.	Yes. Intentional act	No. Attempt and menacing action
<u>New Hampshire</u>	N.H. Rev. Stat. Ann. § 631:1	I. A person is guilty of a class A felony if he: (a) Purposely causes serious bodily injury to another; or	Yes. Purposely	Yes.

		<p>(b) Purposely or knowingly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or</p> <p>(c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth; or</p> <p>(d) Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.</p> <p>II. In this section:</p> <p>(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus; and</p> <p>(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.</p> <p>III. (a) Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "first degree assault-domestic violence."</p> <p>(b) In addition to any other penalty authorized by law, the court shall levy a fine of \$50 for each conviction recorded as "first degree assault-domestic violence" under this paragraph. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this paragraph and no fine imposed under this paragraph shall be subject to an additional penalty assessment. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173-B:15. The provisions of RSA 618:8 and RSA 618:9 shall not apply to a fine imposed under this paragraph.</p>		causes serious bodily injury
<u>New Jersey</u>	2C:12-1. Assault	<p>Assault. a. Simple assault. A person is guilty of assault if the person:</p> <p>(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or</p> <p>(2) Negligently causes bodily injury to another with a deadly weapon; or</p> <p>(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.</p> <p>Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.</p>	<p>Yes.</p> <p>Attempts to cause or purposely, knowingly or recklessly</p>	<p>Yes.</p> <p>causes bodily injury to another</p>
<u>New Mexico</u>	§ 30-3-2. Aggravated assault	<p>Aggravated assault consists of either:</p> <p>A. unlawfully assaulting or striking at another with a deadly weapon;</p> <p>B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or</p> <p>C. willfully and intentionally assaulting another with intent to commit any felony.</p> <p>Whoever commits aggravated assault is guilty of a fourth degree felony.</p>	<p>Yes.</p> <p>General intent</p>	<p>No.</p> <p>Using deadly weapon and threats while concealed</p>

<u>New York</u>	§ 120.10 Assault in the first degree	<p>A person is guilty of assault in the first degree when:</p> <ol style="list-style-type: none"> 1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or 2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or 3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or 4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he, or another participant if there be any, causes serious physical injury to a person other than one of the participants. <p>Assault in the first degree is a class B felony.</p>	Yes. intent to cause serious physical injury	Yes. causes such injury
<u>North Carolina</u>	N.C. Gen. Stat. Ann. § 14-32 and 14-33	<p>North Carolina recognizes three types of misdemeanor assault and battery crimes:</p> <ul style="list-style-type: none"> • assault and battery, which involves physically injuring someone else • assault, which is the attempt to commit an assault and battery, or a show of force indicating that an assault and battery is imminent, and • affray, a fight between two or more people in a public place, likely to frighten others. 	Yes. General intent	Yes. physically injuring
<u>North Dakota</u>	§ 12.1-17-01. Simple assault	<ol style="list-style-type: none"> 1. A person is guilty of an offense if that person: <ol style="list-style-type: none"> a. Willfully causes bodily injury to another human being; or b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury. 2. The offense is: <ol style="list-style-type: none"> a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties. b. A class B misdemeanor except as provided in subdivision a. 	Yes. Willfully	Yes. causes bodily injury

<u>Ohio</u>	2903.13 Assault	(A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn. (B) No person shall recklessly cause serious physical harm to another or to another's unborn.	Yes. knowingly	Yes. cause physical harm
<u>Oklahoma</u>	§ 641. Assault defined	An assault is any willful and unlawful attempt or offer with force or violence to do a corporal hurt to another.	Yes. willful	No. attempt to hurt
<u>Oregon</u>	163.185. Assault in the first degree	(1) A person commits the crime of assault in the first degree if the person: (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon; (b) Intentionally or knowingly causes serious physical injury to a child under six years of age; (c) Violates ORS 163.175 knowing that the victim is pregnant; or (d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and: (A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and (ii) The victim's death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle. (2) The previous convictions to which subsection (1)(d)(B) of this section apply are: (a) Manslaughter in the first degree under ORS 163.118; (b) Manslaughter in the second degree under ORS 163.125; (c) Criminally negligent homicide under ORS 163.145; (d) Assault in the first degree under this section; (e) Assault in the second degree under ORS 163.175; or (f) Assault in the third degree under ORS 163.165. (3) Assault in the first degree is a Class A felony. (4) It is an affirmative defense to a prosecution under subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.	Yes. Intentionally causes	Yes. Causes serious physical injury
<u>Pennsylvania</u>	§ 2701. Simple assault	(a) Offense defined. -- Except as provided under section 2702 (relating to aggravated assault), a person is guilty of assault if he: (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;	Yes.	Yes.

		<p>(2) negligently causes bodily injury to another with a deadly weapon;</p> <p>(3) attempts by physical menace to put another in fear of imminent serious bodily injury; or</p> <p>(4) conceals or attempts to conceal a hypodermic needle on his person and intentionally or knowingly penetrates a law enforcement officer or an officer or an employee of a correctional institution, county jail or prison, detention facility or mental hospital during the course of an arrest or any search of the person.</p> <p>(b) Grading.--Simple assault is a misdemeanor of the second degree unless committed:</p> <p>(1) in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree; or</p> <p>(2) against a child under 12 years of age by a person 18 years of age or older, in which case it is a misdemeanor of the first degree.</p>	attempts to cause or intentionally, knowingly or recklessly causes	causes bodily injury
<u>Rhode Island</u>	Rhode Island General Laws 11-5-3.	A simple assault is either an assault on another individual or a battery that does not result in serious bodily harm	Yes. General intent	No. battery that does not result in serious bodily harm
<u>South Carolina</u>	S.C. Code Ann. § 16-3-600	<p>(C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:</p> <p>(a) injures another person, and the act:</p> <p>(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or</p> <p>(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or</p> <p>(b) offers or attempts to injure another person with the present ability to do so, and the act:</p> <p>(i) is accomplished by means likely to produce death or great bodily injury; or</p> <p>(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.</p>	Yes. Unlawfully	No. injures
<u>South Dakota</u>	22-18-1. Simple assault--Misdemeanor--Felony	<p>A person is guilty of simple assault, a Class 1 misdemeanor, if the person:</p> <p>(1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;</p> <p>(2) Recklessly causes bodily injury to another;</p> <p>(3) Negligently causes bodily injury to another with a dangerous weapon;</p> <p>(4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or</p> <p>(5) Intentionally causes bodily injury to another which does not result in serious bodily injury.</p>	Yes. Attempts to cause bodily injury	No. has the actual ability to cause the injury;

	for multiple convictions			
<u>Tennessee</u>	<u>§ 39-13-101. Assault</u>	(a) A person commits assault who: (1) Intentionally, knowingly or recklessly causes bodily injury to another; (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.	Yes. Intentionally, knowingly or recklessly	Yes. causes bodily injury
<u>Texas</u>	§ 22.01. Assault	(a) A person commits an offense if the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.	Yes. intentionally, knowingly, or recklessly	Yes. causes bodily injury
<u>Utah</u>	§ 76-5-102. Assault --Penalties	(1) Assault is: (a) an attempt, with unlawful force or violence, to do bodily injury to another; or (b) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.	Yes. attempt	No. attempt
<u>Vermont</u>	§ 1023. Simple assault	(a) A person is guilty of simple assault if he or she: (1) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or (2) negligently causes bodily injury to another with a deadly weapon; or (3) attempts by physical menace to put another in fear of imminent serious bodily injury. (b) A person who is convicted of simple assault shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both, unless the offense is committed in a fight or scuffle entered into by mutual consent, in which case a person convicted of simple assault shall be imprisoned not more than 60 days or fined not more than \$500.00, or both.	Yes. attempts to cause or purposely, knowingly, or recklessly	Yes. causes bodily injury
<u>Virginia</u>	Va. Code Ann. Section 18.2-51.2 (assault/battery offenses)	A simple assault (the most basic assault charge in Virginia) occurs when a person tries to commit a battery or attempts to place someone in fear of immediate injury by menacing them. Unlike a battery, assault doesn't require any actual physical contact with another person.	No. General intent	No. Fear of injury

<u>Washington</u>	9A.36.011. Assault in the first degree	(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm: (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or (b) Administers, exposes, or transmits to or causes to be taken by another, poison, the human immunodeficiency virus as defined in chapter 70.24 RCW, or any other destructive or noxious substance; or (c) Assaults another and inflicts great bodily harm. (2) Assault in the first degree is a class A felony.	Yes. with intent to inflict great bodily harm:	No. Potential for injury sufficient
<u>West Virginia</u>	. Va. Code, § 61-2-9 Malicious or unlawful assault;	(b) <i>Assault.</i> -- Any person who unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately receiving a violent injury is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months or fined not more than \$100, or both fined and confined.	Yes. Specific intent	No. Attempts to commit a violent injury or reasonable apprehension
<u>Wisconsin</u>	Wis. Stat. Ann. § 322.128 Assault	(1) Any person who <u>attempts</u> or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault <u>and shall be punished as a court-martial may direct.</u> (2) <u>Any person who commits</u> an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm is guilty of aggravated assault <u>and shall be punished as a court-martial may direct.</u> (3) <u>Any person who commits</u> an assault and intentionally inflicts grievous bodily harm with or without a weapon is guilty of aggravated assault <u>and shall be punished as a court-martial may direct.</u>	Yes. Attempted	No. Threat of bodily harm
<u>Wyoming</u>	6-2-501. Simple assault; battery; penalties	(a) A person is guilty of simple assault if, having the present ability to do so, he unlawfully attempts to cause bodily injury to another. (b) A person is guilty of battery if he intentionally, knowingly or recklessly causes bodily injury to another person by use of physical force. (c) Simple assault is a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00).	Yes. General intent	No. Attempt to cause