

GUIDE ON

Sexual Assault Laws

IN CALIFORNIA



Law Offices of
Kerry L. Armstrong APLC
Criminal Defense

California Sexual Assault Laws

California Penal Code §243.4 defines sexual battery as touching the intimate part of another person against that person's will and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.

Sexual battery, also called sexual assault, is a criminal offense. Sexual battery is a misdemeanor offense unless an aggravating factor elevates the crime to a felony.

California sexual assault laws define several aggravated forms of sexual battery that elevate sexual battery to a felony offense. However, the prosecutor generally can choose whether to file a misdemeanor or a felony charge.

While reading through California's sexual assault laws, keep in mind that a criminal defense lawyer helps protect people from charges like these. Although these laws act as a framework, results entirely depend on the specifics of a person's situation.

Misdemeanor Sexual Assault: The Basic Crime of Sexual Battery

Basic sexual battery is defined as touching the intimate part of another person against that person's will and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.

This is a misdemeanor sexual battery under the California sexual assault laws.

"TOUCHING" ANOTHER PERSON

"Touching" means that the accused made physical contact with the victim. The physical contact might be skin-to-skin contact or through clothing.

Touching for a misdemeanor sexual battery does not require that the accused touch the victim's bare skin. Touching could include physical contact over the victim's clothing.

For felony sexual battery, the accused does need to touch the victim's bare skin. The accused might touch the victim directly or through the accused's clothing.

Additionally, for misdemeanor sexual battery, the victim is the person touched. Misdemeanor sexual assault does not apply when the victim is forced to touch someone. An aggravated form of sexual battery discussed below could apply to these situations.



TOUCHING THE "INTIMATE PART" OF ANOTHER PERSON

The "intimate part" of another includes any person's anus, groin, sexual organ, or buttocks. The intimate part of a female also includes breasts.

Against the Person's Will

Sexual battery occurs when the accused touches another person against their will. This means that the accused touched the victim without consent.

A victim generally does not give consent if the accused represented themselves untruthfully. A victim also does not legally consent if the accused unfairly pressured the victim or misled the victim to think the touching was not sexual. In addition, an unconscious or heavily intoxicated person cannot give legal consent.

TOUCHING ANOTHER FOR A SPECIFIC SEXUAL PURPOSE

Touching is for a specific sexual purpose when the accused intended to cause sexual arousal, gratification, or abuse.

Sexual arousal and gratification relate to a person's sexual pleasure. Sexual abuse means causing another to suffer pain, injury, or humiliation. Intimidation is also a form of abuse.

Aggravated Forms of Sexual Battery

California sexual assault laws define several aggravated forms of sexual battery. These aggravating factors could elevate the charge from a misdemeanor to a felony offense.

California sexual assault laws define the following aggravating factors:

THE ACCUSED "UNLAWFULLY RESTRAINED" THE VICTIM

Sexual assault is aggravated when the victim is "unlawfully restrained." Restraining another means to control that person's liberty (i.e., freedom of movement).

If meant to deprive a person of their freedom, the perpetrator's words, actions, or authority can also be considered "unlawful restraint."

Keep in mind that the restraint is unlawful if the restriction is against the person's will. However, restraint is legal if a lawful authority (like the police) does it for a lawful purpose (like an arrest).



THE VICTIM WAS "INSTITUTIONALIZED FOR MEDICAL TREATMENT"

Sexually touching a person that is institutionalized for medical treatment can be illegal under California's sexual assault laws.

Institutionalized means that the person is in a medical treatment facility, hospital, or nursing home.

This aggravating factor applies to seriously disabled or medically incapacitated victims.

A person with a severe physical or sensory disability is "seriously disabled."

"Medically incapacitated" means that the victim is incapacitated by prescribed medications. These medications could include sedatives or anesthesia.

THE ACCUSED FALSELY REPRESENTED THAT THE TOUCHING SERVED A "PROFESSIONAL PURPOSE"

Sexual assault can become a felony offense when the accused misled the victim to think that the touching served a professional purpose. A professional purpose includes medical and therapeutic treatments.

For example, a doctor who tells a patient that touching the patient's intimate parts is for medical treatment when it is really for a sexual purpose, falsely represents that the touching serves a professional purpose.

THE ACCUSED CAUSED THE VICTIM TO "MASTURBATE OR TOUCH" ANOTHER PERSON

Another aggravated form of sexual assault occurs when the accused causes the victim "to touch or masturbate an intimate part" of the accused or another person.

This form of aggravated sexual assault applies only if:

- The accused unlawfully restrained the victim, or
- The victim was institutionalized and seriously disabled or medically incapacitated.

The accused can cause touching or masturbation through outright force or in more subtle ways. If this force or other manipulation is present, the assault could be charged as a felony.

Charges Related to Sexual Assault



AIDING AND ABETTING: ACCOMPLICE LIABILITY

Accomplices of sexual assault can be charged just as severely as the perpetrator. A person is an accomplice if the person knows the perpetrator is committing sexual assault and they aid, encourage, or facilitate the perpetrator in committing the crime.

RAPE: CALIFORNIA PENAL CODE §261

Rape is non-consensual intercourse with another person accomplished through threats, force, or fraud. Sexual assault does not require actual penetration or sexual intercourse as is required by the rape statute.

BATTERY: CALIFORNIA PENAL CODE §242 PC

Criminal battery is "any willful and unlawful use of force or violence upon the person of another." Battery applies to more types of conduct than sexual assault. For example, contact with another person may be a battery regardless of whether the touching was sexual or not.

Also, under battery law, the contact does not need to be with a person's intimate parts.

Defending Against a Sexual Assault Charge

Several defenses might be available for those accused of sexual assault.

Because sexual assault allegations carry criminal penalties as well as personal and professional consequences, the accused should develop a strong defense strategy to protect their legal rights and reputation.

A knowledgeable and experienced defense lawyer might use a variety of defenses against a sexual assault charge.

Possible defenses include:

CONSENT OF THE VICTIM

Consent is a defense if the victim consented to the accused's touch. Consent could also be a defense if the accused mistakenly believed the victim gave consent to being touched. The accused might have a defense if the accused honestly and reasonably believed the victim gave consent.

Note that an on-going sexual relationship between the accused and the victim is not a defense to sexual assault. The accused can still be convicted if they have a prior sexual relationship with the other person.



Consent is an absolute defense under California's sexual assault laws as long as the accuser is 18 or older.

INSUFFICIENT EVIDENCE TO PROVE SEXUAL BATTERY

In a sexual assault case, like any criminal proceeding, the prosecution must prove the crime beyond a reasonable doubt. Sexual assault crimes often produce little physical evidence. As a result, the prosecution may have trouble providing enough evidence to prove the charge.

FALSE ALLEGATIONS BY THE VICTIM

In some cases, the accused could use the defense that the victim's allegations are false.

Allegations can be false for many reasons, including:

- The victim mistakenly identified the accused as the perpetrator of a sexual assault.
- The victim made allegations due to mental illness.
- The victim's fabricated the allegations out of spite or other bad intentions.

Unfortunately, false accusations of sexual assault are not uncommon in California. If you face a false sexual assault accusation, [contact a criminal defense lawyer](#) immediately. A lawyer can discuss the options available for proving your innocence.

Penalties for a Conviction Under California's Sexual Assault Laws

Sexual assault is a criminal offense, charged as either a misdemeanor or a felony.

As discussed earlier, California's sexual assault laws often give prosecutors the choice to file either a misdemeanor or felony charge. A prosecutor will consider the facts of the case, the accused's criminal history, and whether there are aggravating factors.

Besides criminal penalties, victims might bring civil lawsuits for money damages as well.

PENALTIES FOR MISDEMEANOR SEXUAL ASSAULT

The penalties for a misdemeanor sexual assault conviction include the following.

Jail

Someone found guilty of misdemeanor sexual assault could be in county jail for six months or up to one year.

Fines

If convicted, the guilty party may have to pay a fine of up to \$3,000.



Probation

The guilty party can also be placed on informal probation for up to five years. Informal probation may require things like community service, educational programs, or rehabilitation programs.

Registration

The guilty party could also be registered as a tier one sex offender for a minimum of ten years.

PENALTIES FOR FELONY SEXUAL ASSAULT

If convicted of felony sexual assault, the following penalties could apply.

Prison

If convicted, the guilty party could be in California state prison for up to four years. The guilty party could be in prison for an additional three to five years if the victim sustained significant bodily injury.

Fines

If convicted, the guilty party could owe up to \$10,000 in fines.

Registration

Additionally, the guilty party may have to be registered as a tier three sex offender for the rest of their life.

Speak to a San Diego Defense Lawyer

If you are facing sexual assault allegations, you need a criminal defense lawyer on your side to defend your rights and your reputation. The criminal defense lawyers at The Law Offices of Kerry L. Armstrong, APLC., understand the personal and professional repercussions of a sexual assault accusation. Our lawyers can work with you to craft a strong defense tailored to the needs of your case.

Contact our office [online](#) or call 619-867-0625 to learn more about the defense strategies that could be available to you.





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