What is the definition of assault with a weapon?

Assault with a weapon has the same definition as assault except the accused must have also *carried, used, or threatened to use a weapon or imitation weapon*.

This definition means that if someone assaults another person with their fists, they can still be guilty of "assault with a weapon" just because they carried one at the same time.

As we've seen with the wide definition of assault, an accused can be guilty of assault without actually applying force to the victim. It's enough if the accused caused the victim to think the accused would apply force to them and had the means to do so.

The same is true for assault with a weapon. For example, if somebody waves a knife in another person's face but never touches that person, that's still an assault with a weapon. Why are "assault with a weapon" and "assault causing bodily harm" in the same category? *Assault with a weapon* and *assault causing bodily harm* are under the same section of the *Criminal Code*. These are upgraded versions of simple assault.

As of December 2019, this same section of the *Criminal Code* also includes assault by choking, strangling, or suffocation. This was parliament's way to tell the justice system to treat these assaults more seriously than simple assaults.

What counts as a "weapon"?

Legally, anything *used, designed, or intended to injure, threaten, or intimidate someone* is a weapon.

In other words, *anything* can be a weapon. However, someone must use the "thing" to injure, threaten, or intimidate somebody for it to count as a "weapon". Otherwise, the thing is only a weapon if someone designed or intended it to be used for that purpose.

Therefore, things like extendable batons, tasers, brass knuckles, etc. are always weapons because they're designed for that purpose. But objects like rocks, chairs, or glass bottles only become "weapons" if somebody uses them to assault someone else with.

What is the definition of assault causing bodily harm?

The definition of assault causing bodily harm is the same as assault, but the accused must have caused the victim bodily harm. "Bodily harm" means the victim had lasting injuries that interfered with their health or comfort.

In practice, bodily harm doesn't include minor injuries like light bruising, scratches, and lumps. By contrast, heavy bruising, cuts requiring stitches, and fractures usually count as "bodily

harm".

Bodily harm can also include psychological harm (e.g. concussion symptoms, PTSD). There's no clear dividing line between a simple assault, an assault causing bodily harm, and an aggravated assault.

What are some defences to assault with a weapon or causing bodily harm?

Defences to assault with a weapon or causing bodily harm are the same as defences to simple assault.

One exception is the defence of consent (e.g. a consensual fight). Legally, someone can't consent to having bodily harm inflicted on them. However, the defence of consent can still succeed if the person who caused the bodily harm didn't reasonably foresee that they risked doing so. That's because someone must *intentionally* commit an offence to be guilty of it.

It's more difficult to establish defences that can justify an assault (e.g. self-defence) if the accused did it with a weapon or caused the alleged victim bodily harm. That's because the accused's defensive use of force must be *reasonable in the circumstances* to justify the assault.

Judges appreciate that it's difficult for someone to measure their defensive use of force in the heat of the moment. However, if someone's defensive use of force caused bodily harm, a judge might view it as disproportionate. If someone used a weapon to defend themselves, it's more difficult to persuade a judge their defensive act was truly defensive.

You can find some of the firm's case results for assault with a weapon or causing bodily harm **HERE**.