Is There No Simple Battery Under Illinois Law?

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INTRODUCTION

Section 5/12-4(b)(8) of the Illinois Criminal Code enhances simple batteries to aggravated batteries in instances when a battery has been committed "on or about a public way, public property or public place of accommodation or amusement." The statute has been interpreted and applied by the courts in an ever more inclusive way. This has opened the door for the abuse of prosecutorial discretion in applying the statute and has led the courts away from effecting the legislative intent, as it can be ascertained, behind the statute.

This article explores the judicial expansion of section (b)(8) and argues for words of limitation in the statute that would help to realize the purpose of the statute. Part I of the article presents several case studies which illustrate the arbitrary nature of the application of section (b)(8). Part II leads the reader through a statutory analysis, a review of the legislative history, a summary of the constitutional battles waged against section (b)(8), and traces the evolution of the case law of statutory phrases within section (b)(8). Part III of the article revisits the case studies and outlines the implications of the overbreadth of the statute and the judicial expansion of the statutory phrases. The final portion of the article offers a solution to the problem and draws conclusions.

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I. CASE STUDIES

A. John and Julie go out for a drink at a local tavern. Jerry has been sitting at the bar for a while, and when Julie sits down on the stool next to him, he strikes up a conversation with her. A few drinks later the conversation becomes animated. John, feeling pangs of jealousy, tells Jerry to back off. A scuffle ensues and both John and Jerry get thrown out of the bar. John, still angry about the incident, goes to the police station and files a complaint against Jerry.

B. Tracey comes out of the Shop-N-Go convenience store and runs into her old rival, Nina. The two fifteen-year-olds go to the same school and have a history of petty altercations. Upon seeing Nina, Tracey makes an insulting comment. Both girls square off right there in the parking lot, and Tracey scratches Nina and damages her clothes. When Nina arrives home, her mother marches her straight to the police department to file a complaint against Tracey.

C. Alan and Mary just graduated from high school. They are sweethearts and spend the dog days of summer by the city pool. This is the local teenage hangout, and so it happens that one day Beth is also at the pool with her friends. Beth was Alan’s prom date and is still very much interested in him. When she sees Alan and Mary together, she approaches them and yells out “you slut” to Mary. Mary gets out of the pool and confronts Beth. Alan, also dripping from the pool, steps in and pushes Beth. Beth falls and bruises her ankle. She hobbles all the way to the police station to file a complaint against Alan.

Each of the foregoing scenarios are representative of actual cases handled by a public defender. Mercifully for Jerry, Tracey, and Alan, the prosecuting attorneys filing charges against them treated the cases as misdemeanor batteries. Under Illinois law, however, each of these defendants could also have been prosecuted as a felon on aggravated battery charges. The law does not adequately distinguish which factors in the above scenarios should or should not trigger an aggravation of the battery charge and thus the charging of “simple” battery or aggravated battery has become very much a function of prosecutorial discretion.
II. HISTORICAL BACKGROUND

The essential elements for the offense of battery in Illinois are codified in chapter 720 of the Illinois Compiled Statutes at section 5/12-3. Section (a) of the statute states that "a person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." Section (b) of this statute classifies battery as a Class A misdemeanor. Legislators have also determined that the existence of certain factors in an altercation involving a battery create a greater degree of culpability on the part of the offender, and thus the legislature has provided for the enhancement of battery to aggravated battery based on the existence of such aggravating factors. This enhancement statute classifies the offense of aggravated battery anywhere from a Class 3 felony to a Class X felony.

Aggravated battery has been divided into three categories. The first includes "the more serious batteries which are not inflicted with a specific intent to murder, rape, or rob and, therefore, [cannot] be prosecuted as attempted murder, rape, or robbery." The second category of aggravated batteries does not involve great bodily harm. Rather, it involves batteries committed under aggravated circumstances from which great harm might result, although great harm is not required in any particular case. Such batteries arising under aggravated circumstances are considered to constitute "a more serious threat to the community than a simple battery." Finally, the third category of aggravated battery covers the unusual type of battery which can precede a more serious offense such as rape, robbery, or murder.

This article concerns itself with the second category of aggravated batteries, namely those that occur under aggravated circumstances from which great harm might result. In particular, this article examines section

2. 720 ILL. COMP. STAT. 5/12-3(a) (2000).
3. 720 ILL. COMP. STAT. 5/12-3(b) (2000).
5. 720 ILL. COMP. STAT. 5/12-4(e) (2000).
7. 720 ILL. COMP. STAT. 5/12-4(a) rev. comm. cmts. (West 1993).
8. 720 ILL. COMP. STAT. 5/12-4(b) rev. comm. cmts. (West 1993).
9. Id.
10. 720 ILL. COMP. STAT. 5/12-4(c) (2000).
11. 720 ILL. COMP. STAT. 5/12-4(b) (2000).
(b)(8), which states that a person commits an aggravated battery if in committing a battery, the person "is, or the person battered is, on or about a public way, public property or public place of accommodation or amusement." This section of the statute has been interpreted and applied in an ever more inclusive manner causing an increase in the enhancement of batteries to aggravated batteries. Thus in practice, section (b)(8) has swallowed misdemeanor or "simple" battery, but for those occasions when prosecutors decide to pull "simple" battery out from within the belly of aggravated battery.

A. INTERPRETING LEGISLATIVE INTENT

The expansion of section (b)(8) raises the question of whether the legislature foresaw and intended such an all-inclusive enhancement statute or whether the inclusivity of section (b)(8) has been judicially construed beyond the intent of the statute. When interpreting a statute, courts are required to give effect to the legislative intent of the statute. The legislature, however, created very little history regarding the intent behind enacting section (b)(8), and, therefore, the courts have had to divine the legislative intent behind section (b)(8) from circumstantial inferences. A 1977 court, for example, speculated that "the statute might have been intended to remedy the deteriorating condition of public safety on the streets, thereby calming the widespread reticence of citizens who fear travel beyond their immediate neighborhoods . . . [or t]he statute might also have been intended to preserve public order in the tumultuous times through which we have been passing since the early 1960s."
A 1981 court stated more simply that the intent of the statute is to avoid harm to the public.¹⁵

More recently, a 1990 case found that the legislature intended not only "to protect the public, but also wanted the courts to have broad discretion in determining whether a person committed a battery 'on or about a public way' in order to facilitate reaching [the] goal [of protecting the public]."¹⁶ The court came to the conclusion that the legislature intended the courts to have broad discretion merely because the legislature chose to include the ambiguous word "about" in the statute. The court inferred that "the legislature purposely chose terms with this flexibility in order to insure the broad protection of the public health and safety."¹⁷ The court, however, also recognized its own limitations in evaluating legislative actions when it stated that the issue of "whether the course chosen by the General Assembly to achieve a desired result is either wise or the best means available is not a proper subject of judicial inquiry."¹⁸ By 1991, the divining came to an end and legislative intent became "clear."¹⁹

¹⁵. People v. Ward, 419 N.E.2d 1240, 1244 (Ill. App. Ct. 1981). Testimony at trial revealed that the defendant had battered the victim in her car while it was parked in a Holiday Inn parking lot. Id. at 1242. The court found that because the battery occurred in an area open to the public, it constituted a more serious threat to the community than a battery committed elsewhere. Id. at 1244.

¹⁶. People v. Lowe, 560 N.E.2d 438, 442 (Ill. App. Ct. 1990). In Lowe, a state park superintendent observed the defendant driving on a park road. Id. at 439. As it appeared that the defendant's load of hay exceeded the maximum weight limit for the park road, the park superintendent followed defendant down the road to his farm. Id. The park superintendent left his vehicle on the side of the park road, walked on to defendant's property, and confronted defendant about the weight limit. Id. The defendant then shoved the park superintendent towards his vehicle. The court found that the shoving occurred both on defendant's property and on the public road. Id.

¹⁷. Id. at 442.

¹⁸. Id. at 444 (quoting Garcia v. Tully, 377 N.E.2d 10, 14 (Ill. 1978)).

B. CONSTITUTIONAL CHALLENGES TO SECTION (B)(8)

The legislative history surrounding the adoption of section (b)(8) is sparse and highly inferential. Moreover, courts have recognized their own limitations in evaluating whether the language of section (b)(8) is the best way of achieving the presumed legislative end. Nevertheless, section (b)(8) has survived constitutional challenges several times. The first attempt to raise a constitutional challenge was made in People v. Lockwood.20

In Judge Moran's dissenting opinion in Lockwood,21 he argues that section (b)(8) "is so blatantly unconstitutional that we should raise its constitutionality on our own motion, even though the question was not raised in the trial court nor in this court."22 He goes on to state that in his opinion "the fortuitous circumstances of being located upon a public way at the instant a simple battery occurs does not warrant the transformation of the same act from simple battery . . . to aggravated battery."23 He maintains that "in order for a statute to meet the constitutional guarantees of due process and equal protection of the laws, a legislative classification must be based upon some difference which has a reasonable relation to the act in respect to which the classification is proposed."24 Judge Moran postulates that this is not the case with section (b)(8). Rather, he argues that the statute is overbroad because the statute is based on an arbitrary private versus public way distinction.25 Judge Moran points out that there is no inherent social evil in committing a battery upon public property

20. People v. Lockwood, 346 N.E.2d 404 (Ill. App. Ct. 1976). The defense raised no constitutional challenges on appeal, and the majority opinion in Lockwood did not recognize that any constitutional issues were presented by the case. Judge Moran raised the constitutional challenge in his dissenting opinion and stated that the case should be reversed because section (b)(8) is unconstitutionally overbroad. Id. at 408-09.
21. Id. at 407. The facts adduced at trial indicated that the defendant approached his girlfriend and her friend in their car. Id. at 405. Defendant demanded his car keys from his girlfriend who refused to give them to him because of his intoxicated state. Id. Defendant grabbed his girlfriend, pulled her from the car, and slapped her. The girlfriend's friend then drove to a nearby school parking lot. Id. The defendant and his girlfriend followed and the defendant got in a physical confrontation with the friend, who later reported her injuries to the police. Id.
22. Id. at 408.
23. Id.
25. Id. at 410.
where there is no further evidence to show that the public was or could have been endangered in some fashion.26

Judge Moran's dissent in *Lockwood* has gone largely unheeded, however, and only a year later the Fourth District Appellate Court thwarted a constitutional challenge to section (b)(8) in *People v. Cole*.27 The court in *Cole* found that the statute did not violate the Equal Protection and Due Process Clauses of both the state and Federal constitutions and reasoned that the government may recognize and act upon factual differences which exist between individuals, classes, and events so long as the individuals themselves remain equal in the eyes of the law.28 Moreover, the court stated that the police power of the state "may be broadly exercised by the legislature to preserve public health, morals, welfare and safety."29 Thus, the court in *Cole* clung to the illusion that the broadness and facial neutrality of section (b)(8) ensure its equal application without recognizing that it is precisely that neutral vagueness which serves to foster the opportunity for unequal application of the statute.

The issue of the statute's broadness or vagueness was again brought before the Fourth District Appellate Court in 1983. In *People v. Handley*,30 the appellant argued that section (b)(8) was unconstitutionally vague, in that the statute was insufficiently precise to give fair notice of what conduct is proscribed by it.31 The court, however, stated that "the mere fact that the legislature chose a general description of areas frequented by the public... rather than spelling out each example of a public way or public amusement does not make the statute void for vagueness."32 Additionally, the court rejected the appellant's argument regarding the arbitrariness of the statute. The appellant argued that if he had been several steps further to one side when he committed the battery, he would have been in someone's private residence and, therefore, could not have been charged with aggravated battery under section (b)(8). While the court rightly pointed out that the

26. *Id.* at 409.
28. *Id.*
29. *Id.*
30. 454 N.E.2d 350 (Ill. App. Ct. 1983). *Handley*, the defendant battered the victim outside of the victim's apartment. *Id.* at 351. The apartment was located inside Crazy Jerry's Adult Bookstore and the entrance to the apartment was adjacent to a projection room in which individual booths were located to view pornographic films. *Id.* The battery occurred several feet from the apartment entrance within the confines of the projection room. *Id.* Both the adult bookstore and the projection room were open to the public. *Id.* However, there is no evidence to suggest that any members of the public were actually there. *Id.*
31. *Id.* at 352.
32. *Id.*
appellant could then have been punished more severely for having committed the class X felony of home invasion, it failed to realize that the scenario exemplifies the eradication of "simple" battery by the aggravated battery statute. There is nowhere the appellant could have stood so as to have committed only misdemeanor battery.

The Fourth District was forced to revisit its Handley decision in 1990, when in People v. Lowe the constitutionality of the statute was again contested. In Lowe, the defendant was tried for aggravated battery on the ground that he shoved a park superintendent off the defendant's property. During deliberations, the jury directed a question to the trial court which stated, "what does 'about' mean in 'on or about public property'?" The trial judge instructed the jury that "about" means "in the immediate neighborhood of; near." Defense counsel objected to the instruction. On appeal, the defense argued that the instruction violated defendant's due process rights because the statute, together with the trial judge's loose jury instruction, was so vague that it could be interpreted to prohibit the justifiable use of force to remove a trespasser from one's own property merely because one's property happened to be near a "public way." Defense counsel suggested that a more appropriate definition of the word "about" would be "so close to the public way as to interfere with the public's travel."

The appellate court, however, disagreed with the definition advanced by the defense and found that the statute was not unconstitutionally vague. The court held that the statute met the due process requirements of both the United States and Illinois Constitutions, as neither constitution imposed the impossible burden of mathematical certainty on a statute. Thus, despite the statute not identifying an exact boundary line as to a "public way," the court found that the statute was not unconstitutionally vague because the intent behind the statute was also to protect those members of the public who were not with absolute certainty "on" a public way.

The defense in Lowe pointed out that such an interpretation of the statute created a distinction between a landowner who removes a trespasser onto other privately owned land and a landowner who removes a trespasser

33. Lowe, 560 N.E.2d at 441.
34. Id. at 439.
35. Id. at 440.
36. Id.
37. Id. at 440-41.
38. Id. at 441.
40. Id.
The defendant challenged that distinction as violating the Equal Protection Clause, but the court summarily dismissed the argument using the rationale from *Cole* that such a classification was reasonable, not arbitrary, given the intent of the legislature to protect the public.\footnote{Id.} Furthermore, the appellate court refused to examine more closely the issue of whether the statute had a fair and substantial relation to the objective of the legislature, deferring instead to the General Assembly.\footnote{Id. at 444.}

The most recent constitutional challenge to section (b)(8) was made in *People v. Buie*.\footnote{577 N.E.2d 941 (Ill. App. Ct. 1991).} In *Buie*, the defendant raised an Equal Protection argument contending that there was no rational basis for elevating simple battery to aggravated battery just because the battery occurred on a public way.\footnote{Buie, 577 N.E.2d at 943.} The Fifth District Appellate Court, however, had little patience for the argument and stated in a conclusory manner that section (b)(8) met constitutional scrutiny because the elevation of simple battery to aggravated battery related directly to the harm sought to be remedied.\footnote{Id.}

In determining the constitutionality of section (b)(8), courts have paid deference to the legislature and have avoided assessing whether the course chosen by the legislature to protect the public from batteries was the best means available to achieve that desired result. Courts, however, have exercised little restraint in creating definitions for the concepts of "on or about a public way" and "public place of accommodation or amusement." As a result, the concepts and the statutory subsection itself have ballooned into universals. It has become difficult to distinguish what, beyond the strictest confines of a personal residence, might not be considered "a public way." This in turn has opened the doors for the abuse of prosecutorial discretion.

\footnotesize{41. Id.  
42. Id.  
43. Id. at 444.  
44. 577 N.E.2d 941 (Ill. App. Ct. 1991). In *Buie*, the defendant and his friends attacked two teenagers while they were walking down a storefront sidewalk. *Id.* at 942. During the course of the beating, a knife was pulled and held to one of the boy’s throat. *Id.* The facts suggest that defendant would more appropriately have been charged with aggravated battery under section (b)(1) for use of a deadly weapon. 720 ILL. COMP. STAT. 5/12-4(b)(1) (2000). However, because section (b)(8) has become such a "catch-all," or universal for aggravated battery, the defendant was charged under that section instead. *Buie*, 577 N.E.2d at 942.  
45. *Buie*, 577 N.E.2d at 943.  
46. Id.}
C. JUDICALLY CREATED DEFINITIONS OF “ON OR ABOUT A PUBLIC WAY”

In People v. Clark, the Fifth District Appellate Court was called upon to construe the phrase “on or about a public way.” Having found no previous cases which had done so, the court looked to the statute’s legislative history for guidance. After such review, the court inferred that the intent behind the statute was to protect an innocent member of the public who might also be situated upon the public way and, thus, would be endangered by a battery committed in close proximity to his person. In Clark, the battery in question was committed on a dirt lane which was neither well-marked nor well-traveled, and was apparently on private property. The court found that a battery committed under such circumstances would not pose an increased threat to an innocent member of the public and should therefore be prosecuted only as misdemeanor battery. Thus, “on or about a public way” was in essence construed as “not on or about private property” and “not on or about property unfrequented by the public.”

Two years later in People v. Ward, the Second District Appellate Court broadened the definition of “on or about a public way” to apply to batteries that occurred in a public area, regardless of whether the property was privately or publicly owned. According to the Ward court, “what is significant is that the alleged offense occurred in an area accessible to the public.” The defendant in Ward battered a woman while she was sitting in a privately owned vehicle parked in a privately owned Holiday Inn parking lot. However, because the court found that the location was accessible to the public, it held that the defendant was properly charged

48. Id. at 1108. The defendant was convicted of aggravated battery after a bench trial. The only issue on appeal was whether the battery, which admittedly occurred, took place “on or about a public way.” Id. The appellate court reduced defendant’s conviction for aggravated battery and remanded the case for sentencing on the modified judgment of battery. Id. at 1110.
49. Id. at 1109.
50. Id. at 1108.
51. Id. at 1109.
53. Id. at 1244. While the court did not specifically differentiate the “public way” clause from the “public property” clause in Ward, the court’s conclusion that a “public way” need not be publicly owned is consistent with the rules of statutory construction. If a public way also had to be public property, the inclusion of “public way” in addition to “public property” in the statute would be rendered analytically superfluous.
54. Id.
55. Id. at 1242.
with aggravated battery. The court made this finding despite the fact that no evidence was presented at trial to show that any innocent member of the public had actually been in the vicinity or had been endangered because of the battery.

The Third District, in *People v. Kamp*, subsequently affirmed the stance of the Second District and reiterated that the property on which a battery occurred need not be shown to be publicly owned to be considered "a public way" for purposes of the statutory definition of aggravated battery. Moreover, the court substantiated the requirement that the location where the battery occurred merely needs to be accessible to the public to qualify as a "public way" under section (b)(8).

The defendant in *Kamp* was charged with felony-murder, the underlying felony being aggravated battery as set forth in section (b)(8). The defendant asserted that because the State presented no evidence at trial that the park where the murder allegedly occurred was publicly owned, the State failed to prove the element of "on or about a public way" required for the underlying aggravated battery. The court, however, found that the State did not need to present such proof. The State merely needed to show that the area in question was accessible to the public. The court found the State's evidence, which established that neighborhood children sometimes played in the park, was sufficient to show that the park was accessible to the public for purposes of meeting the "public way" requirement under section (b)(8).

The actual ownership of the park, whether public or private, had become irrelevant in construing the meaning of "on or about a public way." Rather, "on or about a public way" was in essence supplanted by "a

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56. *Id.* Two subsequent First District cases also found private parking lots to be publicly accessible locations and thus found that the parking lots met the criteria for "on or about a public way." In *People v. Williams*, the battery at issue occurred on a private parking lot within short distances from where restaurant patrons and apartment house residents were actually present. 515 N.E.2d 266, 267-68 (Ill. App. Ct. 1987). The private parking lot was considered to be a "public way" for purposes of section (b)(8). *Id.* at 271. In *People v. Pugh*, a private parking lot used by apartment residents was found to be a "public way." 516 N.E.2d 396, 399 (Ill. App. Ct. 1987). However, no evidence was adduced at trial that members of the public were in the vicinity of the parking lot when the battery occurred. *Id.* at 398.

57. 476 N.E.2d 766, 770 (Ill. App. Ct. 1985). The victim in *Kamp* drowned in a park drainage ditch. *Id.* at 769. The defendant appealed his conviction partly on the grounds that the State failed to prove that the victim's death was caused by criminal agency. *Id.* at 770.

58. *Id.*

59. *Id.*

60. *Id.* at 771.
location accessible to the public.” This was regardless of whether the public actually accessed the location or was endangered by the battery.

Once the courts established that a “public way” need not be construed as a place owned by a public entity, but merely as a place accessible to the public, section (b)(8) became the aggravated battery of choice. Section (b)(8) could easily be applied to most batteries if the prosecution sought an enhanced conviction. Section (b)(8) has since been applied to include not only the private parking lots and parks previously described, but also paths between privately owned university dormitory buildings and alley ways behind privately owned businesses.

D. JUDICIALLY CREATED DEFINITIONS OF “PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT”

Few cases have construed the meaning of “public place of accommodation or amusement” for purposes of section (b)(8). In 1980, the First District Appellate Court drew analogies from the earlier Clark decision and held that in construing the phrase “public place of accommodation or amusement” a narrow reading was required. In People v. Johnson, the battery occurred in the washroom of a privately owned tavern. The court held that “to extend the application of the statute

61. See People v. Pennington, 527 N.E.2d 76 (Ill. App. Ct. 1988). In Pennington, the defendant attacked a college student walking on a path between dormitory buildings. Id. at 77. The dormitories were privately owned, but the dormitory manager allowed non-residents who traveled between an apartment complex and the university campus to use the path and lawn. Id. at 78.

62. See People v. Sutton, 624 N.E.2d 1189 (Ill. App. Ct. 1993). In Sutton, the defendant was sentenced for attempted aggravated sexual assault and for aggravated battery. Id. The victim was a woman who suffered from spina bifida and the battery occurred in an alley way. Id. at 1193. The defendant was charged with aggravated battery under both section (b)(14) and section (b)(8). Id. at 1201. Section (b)(14) entails a battery committed on someone known to be physically handicapped. 720 ILL. COMP. STAT. 5/12-4(b)(14) (2000). The fact that the defendant could also be charged under section (b)(8), as it has emerged, illustrates how universal that section has become.

63. People v. Johnson, 409 N.E.2d 48, 50 (Ill. App. Ct. 1980). In Johnson, the defendant was convicted of a stabbing incident in a tavern restroom. Id. at 49. The court held that the defendant was not entitled to a jury instruction on the use of deadly force to prevent the commission of forcible felony on the basis that the victim, according to defendant’s testimony, had committed aggravated battery. Id. at 50. The court ruled that the victim had not committed aggravated battery, because the battery occurred in a tavern restroom which was not considered a “public place of accommodation or amusement” under section (b)(8). Id.

64. Id. at 50.
to the tavern restroom involved herein could conceivably broaden the implications of the statute to situations clearly not intended to be encompassed within it.\textsuperscript{65} In arriving at this determination, the court considered the fact that a tavern is private property open to the public only for a limited purpose.\textsuperscript{66} Thus, the court exempted from the purview of the phrase "public place of accommodation" places where the public had limited access.

The warning of the First District Appellate Court to avoid broadening the meaning of the statute beyond what the legislature intended went unheeded, however, and in 1986, the Third District found a privately-owned tavern to be a public place of accommodation.\textsuperscript{67} The court rejected all earlier cases, claiming that they were not controlling, and suggested, instead, that the phrase "place of public accommodation or amusement" seemed "to apply generically to places where the public is invited to come into and partake of whatever is being offered therein."\textsuperscript{68} The court further stated that while it doubted that a bar fight "should be characterized as felonious, nevertheless, the statute appears to go that way."\textsuperscript{69} However, despite its own apparent misgivings, the court refused to find that the phrase was ambiguous and, thus, deemed that it had no obligation to construe the phrase in favor of the defendant.\textsuperscript{70} As a result, according to the Murphy court, the phrase "public place of accommodation or amusement" had become any place in which members of the public were invitees and could partake of the offerings of the place.\textsuperscript{71}

\textsuperscript{65} Id.
\textsuperscript{66} Id.
\textsuperscript{67} People v. Murphy, 496 N.E.2d 12, 14 (Ill. App. Ct. 1986). In Murphy, the defendant and two other men were involved in a bar fight at a tavern called the Village Pump. Id. at 13. One of the men was injured. Id. The defendant claimed self-defense and that the battery, if any, was a simple battery. Id. The trial court rejected defendant's arguments and found him guilty as charged. Id.
\textsuperscript{68} Id. at 14.
\textsuperscript{69} Id.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
The evolving definition of "public place of accommodation" soon became more convoluted when, in People v. Lee, the Fourth District Appellate Court found that the parking lot of a convenience store constituted a public place of accommodation for purposes of the aggravated battery statute. A previous case already established that a parking lot qualified as a "public way" under section (b)(8), but now the court also injected parking lots into the realm of public places of accommodation. The court stated that it saw "no logical or reasonable basis for interpreting the language of this subsection so as to distinguish between the premises within the 'public place of accommodation' and the parking lot immediately outside its door." While the outcome may have been the same for the defendant in Lee regardless of whether he was prosecuted for committing a battery on a public way or in a public place of accommodation, the case illustrates the looseness with which the courts began to apply the statute, a looseness which has pulled the statute away from the evils the statute was intended to proscribe.

Making a valiant effort to clarify what constitutes a "public place of accommodation or amusement," the court in People v. Longston concluded that a jury instruction stating unequivocally that a tavern was a place of public amusement was an incorrect statement of the law. The Fourth District Appellate Court recognized that a tavern does not necessarily give the requisite access to the public to qualify as "a place of public amusement." A tavern could, for example, house a very private exclusive clubhouse with no access to the public. Rather, the court found that for a place to qualify as a public place of accommodation or amusement, the public nature of such an establishment must be conclusively proven.

73. Id. at 95. In Lee, the defendant attempted to steal two 12-packs of beer from a convenience store. The complaining witness, a store employee, followed the defendant into the parking lot of the store and grabbed the defendant. The defendant then hit the complaining witness with his fist. Id. at 92.
75. Lee, 512 N.E.2d at 95.
76. People v. Logston, 553 N.E.2d 88, 90 (Ill. App. Ct. 1990). In Logston, the defendant was involved in a fight while he was at a bar called the Winner's Lounge. Id. at 88. A witness testified that the Winner's Lounge was a "public bar-tavern." Id. On cross-examination, however, the witness admitted that minors were not allowed in the building without their parents. Id. Defendant argued that because the tavern excluded some members of the public, it was not a public place of amusement pursuant to section (b)(8). Id.
77. Id. at 90.
78. Id.
79. Id.
Reflecting the various judicial interpretations of the phrase, "public place of accommodation or amusement," in the context of section (b)(8) seems to have emerged as any place into which members of the public are invited, to partake of the offerings of the place, so long as the public nature of the place in question has been proven conclusively. Application of this definition in *Johnson*, however, would have included the tavern washroom expressly excluded as a public place of accommodation. After all, the public in the tavern is invited and probably encouraged to enter the restroom, and once there may partake of the restroom's offerings. This contradiction between what the *Johnson* court determined was intended by the phrase "public place of accommodation and amusement," and what has been constructed out of the phrase exemplifies the misguided nature of section (b)(8) as it is written. It is simply too vague to be applied consistently and to accomplish the inferred legislative goal of the statute.

III. IMPLICATIONS

In light of the previous discussion describing the ever expanding scope of section (b)(8), it is hard to conceive of a situs for a battery, which will not qualify as "on or about a public way," or "public place of accommodation and amusement." Any situs where people meet and interact - a street, a park, a parking lot, shop or supermarket - are all within the ambit of the expansive interpretation of section (b)(8). The only conceivable place where an unlawful physical contact between two people still remains a simple or misdemeanor battery is within the confines of a home or an apartment.\(^8\) Such conduct however, may expose one to either the charge of domestic battery or home invasion. Notwithstanding the difficulties in ascertaining the legislative intent behind section (b)(8), it is safe to assume that the legislature by enacting section (b)(8), did not intend to write the misdemeanor battery statute out of the statute books.

Whether someone is charged with misdemeanor battery or felony battery can have an enormous impact on the course of that person's life. Referring once again to the case studies, instead of college for Alan, for example, a charge of felony battery might mean time in jail and exposure to the less desirable "elements" in life. In the context of someone's life, it is important to recognize the ease with which prosecutors could have charged Jerry, Tracey, and Alan with the felony of aggravated battery if, perhaps, their names were Juan, Tanika, and Jamal. What check would there be on

\(^8\) The common areas of an apartment building would surely fall under the definition of a "public way."
prosecutors charging defendants with enhanced batteries on the basis of race or any other invidious form of discrimination?

Section (b)(8) provides no check on the abuse of prosecutorial discretion because, as the statute was written and has subsequently been interpreted by the judiciary, it has become extremely inclusive. Moreover, and of far greater importance, the statute cannot accomplish what the legislature presumably intended when drafting the statute, namely, to protect the public from the harm of batteries committed in the presence of the public.

RESOLUTION

The overbreadth problem of section (b)(8), as it was written and as it has been applied, is not intransigent, however. In fact, the problem itself suggests the solution. Judge Moran came upon the solution long ago when, in his prophetic Lockwood dissent, he argued for additional words of limitation in the statute to ensure that only those batteries which actually endanger, or might logically endanger, the public are enhanced to class 3 felonies as aggravated batteries.81 Similarly, defense counsel in Lowe hit on the solution when it argued for an interpretation of the word “about” in the statute as being “so close to the public way as to interfere with the public’s travel.”82

If the legislature really intended to exercise its broad discretion in the protection of the public health and safety,83 and drafted the statute to avoid harm to the public,84 then it only has to add a few words to the statute to accomplish that goal. Thus, a person could be charged with aggravated battery if, in committing a battery, the person or the person battered is on or about a public way, public property, or a public place of accommodation or amusement and such conduct endangers another person. These few words would require an additional element of proof that would make section (b)(8) clear and unambiguous.

Simple words of limitation enacted by the legislature can accomplish what years of judicial inquiry and interpretation have been unable to effectuate. Such words can rationally relate the statute to the harm sought to be prevented and can help to ensure that defendants do not fall victim to the abuse of prosecutorial discretion under section (b)(8).

83. Id. at 442.