

144220

BASIC COURSE INSTRUCTOR UNIT GUIDE

8

GENERAL CRIMINAL STATUTES

July 1993

144220

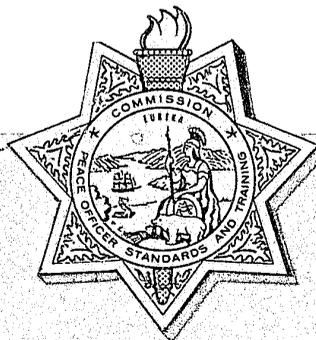
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

This unit of instruction is designed as a *guideline* for performance objective-based law enforcement basic training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives which are required as minimum content of the Basic Course.

UNIT GUIDE 8

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General Criminal Statutes**

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ATTEMPT TO COMMIT CRIMES

Given a word picture depicting a possible attempt to commit a crime, the student will identify if the crime of attempt is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 664).

Performance Objective 3.7.1

CURRICULUM

A. Attempt defined - Penal Code Section 664

An attempt to commit a crime is a crime itself. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is guilty of an attempt to commit the crime.

1. Elements which form "attempt" are:
 - a. Specific intent
 - b. Direct, ineffectual, overt act toward the commission of the crime
 - c. Apparent ability to commit a crime or at least the thought that ability is present
 - d. The attempted crime must have been legally possible of commission.
2. In addition to requiring specific intent, there must exist a direct, ineffectual overt act. Mere preparation is not a sufficient overt act. The act must come dangerously close to completion of the crime; i.e., "a substantial step forward."
3. The fact that the conditions rendered the actual completion of the crime impossible, does not prevent the accused from being guilty of an attempt. For example, where a pickpocket reaches into the victim's pocket but finds the pocket empty.
4. There can be no crime of attempt if there is a legal impossibility of completion, such as attempted murder on a corpse.
5. Once the overt act towards the commission of the crime has been performed, that crime is complete. Abandonment is a defense only and does not relieve criminal liability. Abandonment may be used as a defense when it is free and voluntary and abandoned before the act is put into final execution, and when there is no outside cause prompting such abandonment.

6. Classification is relative to the type of crime attempted.

CONSPIRACIES TO COMMIT CRIMES

Given a word picture depicting possible conspiracies to commit crimes, the student will identify if the crime of conspiracy is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 182)

Performance Objective 3.7.2

CURRICULUM

A. Conspiracy - Penal Code Section 182 - Felony

1. Conspiracy may be defined as: two or more persons agree to commit any crime, and one of them does an overt act in furtherance of the conspiracy.
2. The basic elements of the crime of conspiracy are:
 - a. Two or more persons
 - b. Agree to commit any crime
 - c. An overt act in furtherance of the conspiracy
3. The two or more persons may be husband and wife. The persons must be legally able to testify (not lunatics, etc.). In addition, if any undercover officer is involved, there must be at least two other persons who are defendants.

It is not necessary that the accused know one or all the parties to the conspiracy. Each accused must know and enter into the unlawful agreement with at least one other member of the conspiracy. All parties to the conspiracy are equally responsible for the actions of all other parties taken in furtherance of the conspiracy.

This is known as vicarious liability. It includes those crimes committed in preparation for, during, commission of, and during escape and arrest, whether planned or not. It does not include independent crimes, not in furtherance of the conspiracy by individual members of the conspiracy. In addition, crimes committed prior to the accused entry into a conspiracy cannot be charged against the accused; however, they may be used as evidence at trial.

4. Related factors
 - a. The conspired crime does not have to be completed - or even attempted - to sustain a conspiracy conviction.
 - (1) The conspiracy to commit the crime constitutes the offense.

- (2) The agreement and overt act are the minimum requirements.
 - b. The conviction of any member of the conspiracy is in no way dependent upon conviction - or even prosecution - of any other member.
 - c. Individual conspirators can be convicted under the conspiracy statute of the specific crime statute(s) violated, but normally not both. (Penal Code Section 654)
5. Penal Code Section 184 requires that an overt act be taken beyond the agreement and/or planning stage, by one or more of the conspirators. The overt act must be more than mere planning, but need not amount to an attempt to commit the crime or even be unlawful in nature. The overt act, must however, be in furtherance of the conspiracy and must take place within California.
 6. Conspiracy is a specific intent crime, requiring the accused to have specific intent to do an unlawful act or do a lawful act by unlawful means (People vs. Jones, 228 CA 2d 74). It must be proved that the accused entered into a criminal agreement with specific intent to commit a crime or perform an act prohibited by the conspiracy statute (People vs. Smith, 63 Cal. 2d 779). Normally, the overt act is used - along with other factors - to establish the intent to commit a specific crime (i.e., procuring a gun to commit robbery or murder, procuring burglary tools to commit a burglary, etc.)
 7. In order to avoid criminal liability, a conspirator:
 - a. Must withdraw from all aspects of the conspiracy.
 - b. Must remain away from the scene at time of crime.
 - c. Must make abandonment known to all confederates known to the person prior to crime.
 - d. Although not technically required, the person should also tell authorities about the conspiracy - otherwise, it is extremely difficult to prove abandonment.

SOLICITATION TO COMMIT CRIMES

Given a word picture depicting possible solicitations to commit crimes, the student will identify if the crime of solicitation is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 653(f)).

Performance Objective 3.7.3

CURRICULUM

A. Solicitation to commit certain crimes

1. Penal Code Section 653(f) defines solicitation as follows:

- a. Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument, or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial proceeding, or inquiry authorized by law, is punishable as felony.
- b. Every person who solicits another to commit or join the commission of murder is punishable by imprisonment in the state prison.
- c. Every person who solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or
- d. Every person who solicits another to buy, sell, or transport a controlled substance is guilty of a misdemeanor. Subsequent conviction is a felony.
- e. An offense charged in violation of subdivision (a), (b), or (c) must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) may be proved by the testimony of one witness and corroborating circumstances.

2. Analysis of elements

- a. The solicitation completes the crime - no overt act toward the crime is necessary.
- b. Requires specific intent.

- c. Additionally, the crime is complete whether the person solicited responds favorably or not, or whether or not person solicited previously contemplated the crime himself.
3. Conviction requires two witnesses or one witness and other corroborating evidence. The witnesses may include the person(s) who were solicited. The corroboration is required at the trial only - the solicited person's testimony can be sufficient for everything short of conviction.

DISTURBING THE PEACE

Given a word picture depicting a possible disturbance of the peace, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 415)

Performance Objective 3.22.1

CURRICULUM

A. Penal Code Section 415--Disturbing the Peace (Misdemeanor)

1. Corpus Delicti--Elements of the crime (Penal Code Section 415)

- a. Any person who unlawfully fights in a public place, or challenges another person in a public place to fight;
- b. Any person who maliciously and willfully disturbs another person by loud and unreasonable noise;
- c. Any person who uses offensive words in a public place which are inherently likely to produce an immediate violent reaction.

NOTE: This section may not be used as a general justification for the issuing of a dispersal order.

2. In determining what constitutes a loud and unreasonable noise, the first step should be to decide if it is a communication. Communications are words, shouting, or cheering that are intended to get ideas across. They are protected by the First Amendment, freedom of speech. On the other hand, a loud noise such as a motorcycle revving at 3 a.m. is not communication. Neither is shouting, etc., which is done for purposes of disruption. A family fight at 3 a.m. would also fit in this category. Although it technically involves communication, it is not the important type protected by the First Amendment. If the noise is not a communication and, based on the time, place and manner in which it is made, it is the kind of noise that would disturb a reasonable person, an arrest is justified if someone was disturbed by it.

If the noise is a communication, it can still be unreasonable based on time, place or manner in which the ideas are expressed. To justify an arrest in this situation, the person or persons disturbed by the communication must be so angry that violence is about to occur. An example would be a campus disorder where a group of militant students surround the bookstore and yell, "Fire the chancellor" for three hours. If other students were to finally say, "Clear out or we will blow your heads off," arrests would be justified if a reasonable person would experience similar violent anger under the circumstances. The

communication will not be unreasonable just because of the type of ideas expressed.

3. Subsection 3: "Any person who uses offensive words in a public place which are inherently likely to produce a violent reaction." The utterance must be "likely to produce an immediate violent reaction" based on the circumstances then present. This reaction applies to anyone. It now is necessary for reports to illustrate the existent circumstances in which the utterance was made. Any violent reaction which did not occur as a result of the utterance should be illustrated.
 - a. This statute has lost much of its effectiveness against a defense that the defendant was exercising a right of free speech. The high tolerance of the courts to the right to voice one's opinion reduces this statute to a device available to control disruptive conduct in public, bearing no relationship to the exercise of First Amendment Rights.

DISORDERLY CONDUCT

Given a word picture depicting possible disorderly conduct, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 647(a) through (i), inclusive)

Performance Objective 3.22.2

CURRICULUM

A. Disorderly conduct (Misdemeanor) - Penal Code Section 647

1. General information

- a. The offenses involved in the Disorderly Conduct statutes require a specific act.
- b. Black's Law Dictionary defines disorderly conduct as "Generally, any behavior that is contrary to law, and more particularly, such as tends to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality."
- c. Before proceeding further, it becomes necessary to discuss the term public place.

NOTE: Other conduct which had been specifically prohibited must be found to be implied in the new statute, or some other specific Penal Code Sections must be used.

- (1) Public place--Any park, street, building open to the public, movie theaters, department stores, or public offices.
- (2) Public view--A court decision (People vs. Olson, 96 Cal Rptr. 152-CA.A 2d, July 1971) included "accessibility" into the definition of public place. If a violation occurs in an area that is accessible to the public view, then it qualifies as a public place also.

- (a) The case involves a person who was arrested in the front yard of a location, on the porch, for Penal Code Section 647(f). During the booking procedure, heroin was discovered. The court held that the arrest was good because where the person was arrested was "accessible" to the public.

Any area that is accessible to the general public, i.e., newsman, gas person, mail carrier, salesman, etc., is a public place. This would not hold true

however, if a yard is fenced, blocked off, or entry is restricted in some way.

d. All disorderly conduct violations are misdemeanors.

2. Disorderly conduct Penal Code Section 647 (Misdemeanor)

"Every person who commits any of the following acts shall be guilty of disorderly conduct, a misdemeanor:"

a. Subsection (a): Lewd or Dissolute Conduct

"Who solicits anyone to engage in (or) who engages in lewd (or) dissolute conduct in any public place (or) in any place open to the public (or) exposed to public view."

- (1) Used for male prostitution solicitations
- (2) Lewd--obscene, lustful or indecent
- (3) Lust--intense sexual desire
- (4) Indecent--immodest or obscene
- (5) Dissolute--loose moral conduct
- (6) Intent must be proven to establish the crime
- (7) Conviction no longer requires registration as sex offender under Penal Code Section 290

In re Reed 33 CA3 914 (1983) made Penal Code Section 290 registration unconstitutional for Penal Code Section 647a

- (8) Similar section, Penal Code Section 314 (indecent exposure). This section discussed further on in the lesson.
- (9) Can apply to private property that is open to public view.

b. Subsection (b): Soliciting or agreeing to engage in or engaging in any act of prostitution (misdemeanor). A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, besides the agreement, be done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As

used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(1) Solicit means to:

- (a) strongly urge
- (b) to entice or lure especially into evil
- (c) attempt to seduce
- (d) to accost (any person) for immoral purpose

(2) Related offenses (felonies)

- (a) Penal Code Section 266: Seduction for purposes of prostitution (female under 18) enticing.
- (b) 266a: Taking a person for prostitution without consent or by false representation.
- (c) 266h: Pimping - Felony
- (d) 266i: Pandering - Felony (obtaining another person to be prostitute - felony).

c. Subsection (c): Begging (misdemeanor)

"Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms."

(1) Accost:

- (a) To approach and speak to first
- (2) Begging as a business does not have to be established.
- (3) The asking, soliciting, or begging constitutes the crime.
- (4) The victim does not have to give to complete the act.
- (5) Does not apply to registered or approved organizations.
- (6) Officer can be person solicited.

NOTE: There is a constitutional conflict regarding the enforcement of 647(d). In *Soto* 171 Cal App 3rd 1158 (1985) the court ruled it was unconstitutionally vague, however in *Caswell* 181 Cal App 3rd 102 (1986) the court upheld the statute.

d. Subsection (e): Refusal to identify (misdemeanor)

NOTE: Lawson vs. Kolender (1983). Declared unconstitutional by United States Supreme Court.

The court, even though it found Penal Code Section 647(e) unconstitutional, did not say officers who had probable cause could not stop a person for investigation purposes, but that stop should be substantiated by independent probable cause.

By analogy, U.S. Supreme Court has declared a similar statute in Texas invalid.

(1) Related sections that are enforceable:

- (a) Vehicle Code Section 12951(a) - Driving without driver's license; (40302(a), Authority to be taken forthwith)
- (b) Vehicle Code Section 31 - Giving false I.D.
- (c) Penal Code Section 148.9 - False representation to police officer.

e. Subsection (f): Drunk (misdemeanor)

"Who is found in any public place under the influence of intoxicating liquor, or any drug, or the influence of toluene or any substance defined as a poison in Schedule D of Section 4160 of the Business and Professions Code, or under the influence of any combination of any intoxicating liquor, drug or toluene or any such poison in such a condition that he is unable to exercise care for his own safety or the safety of others or, by reason of his being under the influence of any substance defined as a poison in Schedule D of Section 4160 of the Business and Professions Code, or under the influence of any combination of any intoxicating liquor, drug, toluene or any such poison interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way."

(1) Private property

(a) Usually cannot arrest, unless public view applies.

(2) Field sobriety test not required.

(3) If suspect is unconscious, transport to hospital, then to station and, if necessary, book.

f. Subsection (ff): civil protective custody for inebriates. (misdemeanor)

"When a person has violated subdivision (f) of this section, a peace officer, if he is reasonably able to do so, shall place the person, or cause him to be placed, in civil protection custody.

Such a person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind of degree of force which would be lawful were he effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to such placement."

This subdivision shall not apply to the following persons:

- (1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.
- (2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.
- (3) Any person who a peace officer, in good faith, believes will attempt escape or will be unreasonably difficult for medical personnel to control.
- (4) The police are not required to take arrested persons to detoxification centers if their jurisdiction doesn't have them available. In addition, counties are not required to establish detoxification centers per People vs. Superior Court, County of Monterey (Colon) - 105 Cal, Rptr. 695 - C.A. 1st, Jan. 1973.

g. Subsection (g): prowling (misdemeanor)

"Who loiters, prowls or wanders upon the private property of another, at anytime, without visible or lawful business with the owner or occupant thereof."

- (1) Loiter means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.
- (2) For the purposes of committing a crime.
- (3) Must be on private property.

(a) Owner does not have to be home.

h. Subsection (h): "Peeping Tom" (Misdemeanor)

"Who, while loitering, prowling, or wandering upon the private property of another, at anytime, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful business with the owner or occupant thereof."

(1) Must meet the corpus for 647(g) in addition to violating these elements.

(2) Be alert for related violations such as Penal Code Section 459, 602.5, 211, 488, etc.

i. Subsection (i): Illegal lodging (Misdemeanor)

"Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control thereof."

PUBLIC NUISANCE

Given a word picture depicting a possible public nuisance, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification.
(Penal Code Sections 370 and 372)

Performance Objective 3.22.3

CURRICULUM

DISTURBING A PUBLIC MEETING

Given a word picture depicting the possible disturbing of a public meeting, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 403)

Performance Objective 3.22.4

CURRICULUM

- A. Disturbance of assembly or meeting other than religious or political
Penal Code Section 403 (Misdemeanor)
 - 1. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in Section 302 of the Penal Code and Section 29440 of the Election Code, is guilty of a misdemeanor.
 - a. Related sections.
 - (1) Penal Code Section 302, Disturbing Religious Meetings--
Every person who willfully disturbs or disquiets any assemblage of people who meet for religious worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.
 - (2) Election Code - 29440 - Disturbing political meetings.
(Misdemeanor)
 - 2. In essence, the Penal Code has used two sections of the code to describe similar violations. The only difference in the two sections is in the types of meetings disturbed.
 - 3. Not every interruption of a speaker is a disturbance. The meeting itself must be thrown into such disorder that the business under discussion cannot effectively continue. Thus, the character and nature of the meeting are relevant in determining whether the disturbance is violative of this section. For example, an extemporaneous "soapbox" speaker should expect to be interrupted from time to time. Free speech cannot be used as an excuse to justify converting an orderly meeting into bedlam, but some assemblies can be expected to be somewhat disorderly, e.g., political conventions, etc.

OBSTRUCTION OF SIDEWALK OR STREET

Given a word picture depicting the possible obstruction of a sidewalk or street, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 647c)

Performance Objective 3.22.5

CURRICULUM

- A. Obstruction of thoroughfares and public places, Penal Code Section 647c (Misdemeanor)

"Every person who willfully and maliciously obstructs the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public is guilty of a misdemeanor. Nothing in this section affects the power of a county or a city to regulate conduct upon a street, sidewalk, or other public places or on or in a place open to the public."

NOTE: Jennings vs. San Francisco Superior Court 104 CA3d 50 (1980)
Local blocking sidewalk ordinance unconstitutional.

GAMING VIOLATIONS

Given a word picture depicting a possible gaming violation, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 330)

Performance Objective 3.30.1

CURRICULUM

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Conspiracy

Disturbing the Peace

CONSPIRACY:

A. Penal Code Section 182 says:

1. If two or more persons conspire
 - a. To commit any crime.
 - b. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
 - c. Falsely to move or maintain any suit, action or proceeding.
 - d. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform such promises.
 - e. To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.
 - f. To commit any crime against the person of the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

Objective of the Conspiracy Statute:

1. The conspiracy statute is extremely broad in scope; so broad, in fact, that the statute could be held unconstitutional if it is misused.
2. The primary objective of this statute is to provide a tool for prosecuting organized crime, especially those members so removed from the actual commission of the crime as to make prosecution under other statutes impossible.
3. A conspiracy to commit a crime outside of California is not punishable under California law, even when the overt acts were committed in California, unless the overt acts amount to one or more specific crimes and are prosecuted under the specific crime statutes.
4. A conspiracy entered into outside of California to commit a crime in California can be prosecuted under California law provided the overt act takes place in California. (Penal Code Section 27.3)

Prosecution:

1. It is very difficult to prove the agreement.
 - a. Although the agreement can legally be inferred from the circumstances of the crime or overt act, it frequently is not.
 - b. Frequently, the prosecution must provide evidence of the agreement in addition to the above inference.

DISTURBING THE PEACE

Cohen v. California, supra, is an illustration. The defendant walked through Los Angeles County Courthouse, in presence of women and children, with "F... the Draft" plainly visible on his jacket. The court held the conduct to be constitutionally protected. Likewise, in Lewis v. City of New Orleans, supra, a woman in a public place, while her husband was getting a ticket, said, "You god damn m.f. police." The court held the ordinance prohibiting cursing or obscene language towards police officers performing their duties was invalid because it was overbroad.

In re: John V., 167 Cal APP 3rd 761 (1985), Words screamed by the defendant, "F..... Bitch", at his neighbor as she drove by were found to be sufficient to violate this statute. (Penal Code Section 415.3)

Callahan 168 Cal APP 3rd 631 (1985) "F..... asshole", directed at peace officer was held insufficient to violate this section.

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