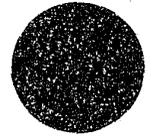


150190



# BASIC COURSE INSTRUCTOR UNIT GUIDE

39

## CRIMES AGAINST THE JUSTICE SYSTEM

June 1, 1994

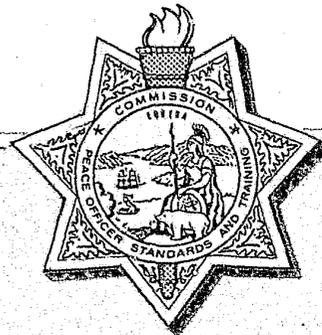
150190

U.S. Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by  
California Commission on  
Peace Officer Standards &  
Training  
to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.



THE COMMISSION  
ON PEACE OFFICER STANDARDS AND TRAINING  
STATE OF CALIFORNIA

1282

UNIT GUIDE 39

**TABLE OF CONTENTS**

**LEARNING DOMAIN 39  
Crimes Against the Justice System**

**Specifications for Learning Domain 39**

	Page
<b>Curricula for Learning Domain 39</b>	
I. Bribery .....	3
II. Perjury .....	5
III. Violation of a Court Order .....	7
IV. Unlawful Assembly .....	9
V. Incitement to Riot, Rout and Riot .....	11
VI. Disobedience to a Dispersal Order .....	13
VII. Lynching .....	15
VIII. False Information to a Police Officer .....	17
IX. Filing a False Police Report .....	19
X. Resisting Public Officers .....	21
XI. Intimidation of Witness and Victim .....	27
XII. Refusal to Assist an Officer (Posse Comitatus) .....	29
XIII. Impersonation of an Officer .....	31

**Performance Objectives**

**Supporting Material and References**

---

## SPECIFICATIONS FOR LEARNING DOMAIN #39: CRIMES AGAINST THE JUSTICE SYSTEM

June 1, 1994

---

### I. INSTRUCTIONAL GOAL

The goal of instruction on **Crimes Against the Justice System** is to provide students with the ability to recognize when a crime against the justice system has occurred, to identify the crimes by their common crime names, and to classify them as either misdemeanors or felonies.

### II. REQUIRED TOPICS

The following topics shall be covered:

- A. Bribery
- B. Perjury
- C. Impersonation of an officer
- D. Obstruction of an officer's official duties
- E. Filing a false police report
- F. Refusal to assist an officer
- G. Unlawful assembly
- H. Disobedience to a dispersal order
- I. Rout, riot, and incitement to riot
- J. Rescue, escape and lynching
- K. Providing false information to a peace officer
- L. Intimidation of a victim/witness

M. Violation of a court order

III. REQUIRED TESTS

The POST-constructed knowledge test for Domain #39

IV. REQUIRED LEARNING ACTIVITIES

None

V. HOURLY REQUIREMENTS

Students shall be provided with a minimum of **4 hours** of instruction on crimes against the justice system.

VI. ORIGINATION DATE

July 1, 1993

VII. REVISION DATES

June 1, 1994

# CURRICULUM

## I. BRIBERY

### A. Bribes: Giving or offering the executive officers (Penal Code Section 67)

Every person who gives or offers any bribe to any executive officer in this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

### B. Bribes: Asking or receiving (Penal Code Section 68)

Every executive or ministerial officer, employee, or appointee of the State of California, county, or city therein, or political subdivision thereof, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison and, in addition thereto, forfeits his office and is forever disqualified from holding any office in this state.

### C. Elements of bribery

1. Asking, giving, accepting, or offering anything of value or advantage, or the promise of same
2. to or by the class of person named in each specific bribe statute
3. with specific intent to corruptly influence, with respect to any act, decision, vote, opinion, or other official function or duty of such person.

### D. Discussion

1. Bribery involves approximately 15 separate statutes, each of which defines the giving, offering, or receiving of a bribe by a certain classification of individuals. Accordingly, it is necessary to generalize the bribery elements found in all statutes.
2. Peace officers are executive officers for the purposes of these sections. (People v. Buice 230 CA 2nd 324 (1964))
3. Completion of the offense
  - a. The offense of offering a bribe is complete once it is evident that the officer is being bribed - final determination rests with the court.
  - b. The offense of giving a bribe is complete when the bribe is delivered to the person being bribed.

- c. The offense of receiving a bribe is complete once the accused asks, receives, or agrees to receive any bribe in consideration of an unlawful act or influence.
- d. It is not necessary that any particular language be used by either party, so long as the bribe and unlawful intent can be established.

## II. PERJURY

### A. Definition of perjury (Penal Code Section 118)

Every person who, having taken an oath to testify, declare, depose, or certify truly before any competent tribunal, officer, or person in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which the person knows to be false and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which such testimony, declarations, depositions, or certification is permitted by law under penalty of perjury and willfully states as true any material matter which he knows to be false, is guilty of perjury.

### B. Elements of perjury

1. Every person who, having taken an oath to testify, declare, depose, or certify truly before any competent tribunal, officer, or person,
2. in any of the cases in which such an oath may by law be administered,
3. willfully and contrary to such oath, states as true any material matter which the person knows to be false,
4. and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which such testimony, declarations, depositions, or certification is permitted by law under penalty of perjury,
5. and willfully states as true any material matter which he knows to be false, is guilty of perjury.

### C. Definition of material

1. In perjury cases, testimony is material when it can be said that it could have influenced the court regarding the issues of the case.
2. Does not depend on whether or not the testimony had **in fact** any effect or influence - can be perjury even if the **trier of fact** knew the testimony was too ridiculous to be true
3. In a trial for perjury, the materiality issue is a **question of law** for the court and not a **question of fact** for the jury.

### D. Discussion

1. The crime of perjury involves the making of a false statement, oral or written, either under oath or penalty of perjury, with respect to a fact which is "material" to some sort of legal proceeding or to an issue or point of inquiry.

### E. Crime classification: felony

F. Other related offenses

1. Subornation of perjury (Penal Code Section 127)
2. Compounding a crime (Penal Code Section 153)

### III. VIOLATION OF A COURT ORDER

#### A. Obligation to enforce a court order (Penal Code Section 166(a)(4))

1. Penal Code Section 166 describes a number of acts which constitute the overall crime of contempt of court.
2. Among the acts which constitute contempt of court are: "Willful disobedience of any process or order legally issued by any court" (Penal Code Section 166(a)(4))
3. This subsection is of particular importance to peace officers because it creates criminal liability for failing to enforce a court order.

#### B. Elements of Penal Code Section 166(a)(4)

1. Willful disobedience
2. of any process or order
3. legally issued
4. by any court

#### C. Discussion

For this subsection to apply, the court order must have been properly served on the suspect, or the suspect must have been present when the order was generated.

#### D. Crime classification: misdemeanor

#### E. Related sections

1. Penal Code Section 166(C)(4) makes it a felony to fail to comply with a court order if:
  - a. Previously convicted of Penal Code Section 166(a)(4) within seven years; and
  - b. An act of violence or "a credible threat" of violence was involved
2. Domestic Violence Protective Order (Family Code Sections 6240 and 6256)



#### IV. UNLAWFUL ASSEMBLY

##### A. Unlawful assembly (Penal Code Section 407)

Whenever two or more persons assemble to do an unlawful act, or to do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

##### B. Elements of a unlawful assembly

1. Two or more persons
2. assemble
3. to do
  - a. an unlawful act, or
  - b. an lawful act in a violent, boisterous, or tumultuous manner.

##### C. Definitions

1. A **violent, boisterous, or tumultuous manner** means where such acts are themselves violent or tend to incite others to violence
2. An **unlawful assembly to do a lawful act** means assemblies which are themselves violent, or which give rise to a clear and present danger of immediate violence

##### D. Crime classification: misdemeanor (Penal Code Section 408)

##### E. Discussion

1. Common intent may be proved by circumstantial evidence.
2. No requirement that an overt act be done.
3. To substantiate an unlawful assembly where there is an unlawful act, the unlawful act need not be violent (e.g., protesters at nuclear power plant who are blocking a gate or who are trespassing on plant property)
4. Even if the purpose of the assembly is lawful, the crowd can be dispersed. (See Penal Code Section 726)

##### F. Related offenses

1. Remaining present at a riot, rout, or unlawful assembly after a warning to disperse (Penal Code Section 409)
2. Assembly for the purpose of disturbing the peace or committing an unlawful act (Penal Code Section 416)



V. INCITEMENT TO RIOT, ROUT AND RIOT

A. Incitement to Riot (Penal Code Section 404.6)

1. Incitement to Riot Defined: Every person who, with intent to cause a riot, does an act or engages in conduct which urges others to commit acts of force, violence, or the burning or destroying of property at a time and place and under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of a misdemeanor.
2. Elements of Incitement to Riot
  - a. Every person who
  - b. with intent to cause a riot
  - c. does an act or engages in conduct which urges a riot, or
  - d. which urges others to commit acts of force, violence, or the burning or destroying of property
  - e. at a time, place, and under circumstances presenting a clear and immediate danger of a riot occurring.
3. Crime classification: misdemeanor

B. Rout (Penal Code Section 406)

1. Rout Defined

Whenever two or more persons, assembled and acting together, make any attempt to or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout
2. Elements of a rout
  - a. Two or more persons
  - b. Assembled and acting together
  - c. Make any attempt or advance toward commission of an act
  - d. which would be a riot if committed.

NOTE: Simply stated - a rout is an attempted riot.
3. Crime Classification: Misdemeanor

C. Riot (Penal Code Section 404)

1. Riot defined

Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by the immediate power of execution, by two or more persons acting together, and without the authority of law.

2. Elements of a riot:

- a. two or more persons
- b. acting together
- c. with a common intent
- d. having used force or violence or threatened to use such force or violence
- e. with immediate power to execute such threat, and
- f. the acts disturb the public peace.

3. Definitions:

- a. "Disturbing the public peace" may occur in any place of confinement (Penal Code Section 404(b)).
- b. **Place of confinement** means any state prison, county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp (Penal code Section 404(b)).

4. Crime classification: misdemeanor

5. Discussion:

- a. The group must be acting together with a common intent. They must at least threaten to use the force or violence which is at their immediate command. Their threats or use of force or violence must disturb the public peace.
- b. Disturbing the public peace is accomplished when the actions of the group excite terror, alarm, and consternation in the neighborhood. The standard being: Did acts cause anxiety in the mind of a rational person?
- c. The difference between riot and unlawful assembly is that riot, force, or violence takes place or is threatened. In unlawful assembly, there need be no force or violence or threat.

VI. DISOBEDIENCE TO A DISPERSAL ORDER

- A. Remaining present at place of riot after warning to disperse - (Penal Code Section 409)

Every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same is guilty of a misdemeanor.

- B. Elements:

1. Every person who
2. remains present
3. at the place of any riot, rout, or unlawful assembly
4. after being lawfully warned to disperse

- C. Crime classification: misdemeanor

- D. Discussion:

1. A conviction under this section is dependent upon the provisions of Penal Code Section 726 having been carried out.
2. Requirements of a lawful dispersal order (Penal Code Section 726)
  - a. The dispersal order can be given only by:
    - (1) Sheriff of the County (or deputies)
    - (2) Officials governing towns or cities
    - (3) Judges or Constables
  - b. Must go among or as near as possible to the persons assembled and command them in the name of the people of the state to immediately disperse.

NOTE: See Penal Code Section 410; magistrate neglecting or refusing to disperse rioters (misdemeanor).

- c. Required contents of the dispersal order:

"I am (officer's name and rank), a police officer for the City of (name of city). I hereby declare this to be an unlawful assembly and, in the name of the people of the State of California, command all those assembled at (give specific location) to immediately disperse. If you do not do so, you will be arrested. Section 409 of the Penal Code prohibits remaining present at an unlawful assembly."

- d. Must be in the form of a general command
  - (1) Dispersal order must be heard.
  - (2) Should place officer at rear of crowd in order to testify the order was heard.

E. Arrests for failure to disperse (Penal Code Section 416)

- 1. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.
- 2. Penal Code Section 416 is a misdemeanor.
- 3. Related sections
  - a. Refusing to join posse or aid officers in arrest (Penal Code Section 150).
  - b. Remaining present at the place of riot (Penal Code Section 409)
  - c. Authority to arrest (Penal Code Section 727)

F. Other laws related to scene management

- 1. Authority to close disaster area by a peace officer (Penal Code Section 409.5)
  - a. Whenever menace to public health or safety exists by accident or other natural disaster, the area may be closed by law enforcement officers.
  - b. Areas surrounding any emergency field command post may be closed to the public.
  - c. Any person who willfully and knowingly enters the closed area is guilty of a misdemeanor.
  - d. Nothing in this section shall preclude authorized representatives of any news service from entering closed area.
- 2. When law enforcement and emergency medical technicians are at the scene of an accident, management of the scene is vested in the appropriate law enforcement agency. (Penal Code Section 409.3)

**VII. LYNCHING (PO 3.23.4)**

**A. Lynching (Penal Code Section 405a)**

The taking by means of a riot of any person from the lawful custody of any peace officer is a lynching.

**B. Elements of Lynching**

1. Taking
2. by means of a riot
3. anyone
4. from lawful custody of a peace officer

**C. Crime classification: felony (Penal Code Section 405b)**

**D. Discussion**

1. The prisoner must be under arrest.
2. The courts have held that taking of a handcuffed prisoner from the back seat of a radio car while the officer is not present does not constitute the crime of lynching, however, it may be a rescue (Penal Code Section 4550).
3. The offense of lynching is often committed during riot or insurrection. However, as the statute indicates, whenever two or more persons act together (requisites of both a riot and a violation of this section) and take a legally arrested person, or other person in the lawful custody of an officer, they are in violation of this section.

**E. Related sections:**

1. Escape (Penal Code Section 836.6)
2. Rescue (Penal Code Section 4550)



## VIII. FALSE INFORMATION TO A POLICE OFFICER

### A. False Representation of Identity to a Peace Officer (Penal Code Section 148.9)

1. Defined: Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer listed in Section 830.1 or 830.2, upon a lawful detention or arrest of the person, either to evade the process of the court, or to evade proper identification of the person by the investigating officer
2. Elements:
  - a. Any person who
  - b. falsely represents or identifies themselves
  - c. to a peace officer
  - d. upon detention or arrest
  - e. with intent to:
    - (1) evade court process, or
    - (2) evade proper identification
3. This is a specific intent crime.
4. Crime classification: misdemeanor

### B. False impersonation of another in a private or official capacity (Penal Code Section 529)

1. Defined  

Every person who falsely personates another in either his private or official capacity, and in such assumed character...does any act whereby, if done by the person falsely impersonated, he might, in any event, become liable to any suit or prosecution.
2. Elements:
  - a. Every person who
  - b. falsely personates another
  - c. in either his private or official capacity
  - d. and in such capacity does an act
  - e. which makes the person being impersonated liable for prosecution

3. Crime classification: felony

4. Discussion:

1. The person represented must actually exist.

EXAMPLE: The suspect uses his brother's name when arrested. A warrant is subsequently issued for the brother.

2. Penal Code Section 529 also covers misrepresentation where the person represented incurs civil consequences (e.g. loss of money)

C. False information to a peace officer (Vehicle Code Section 31)

1. Defined: No person shall give, either orally or in writing, information to a peace officer, while in the performance of his duties under the provisions of this code (California Vehicle Code), when such person knows the information is false.

2. Elements:

1. No person

2. shall knowingly give

3. false information (either written or oral)

4. to a peace officer who is engaged in enforcing the Vehicle Code

3. Crime classification: misdemeanor

4. Other related section

1. False statements to Department of Motor Vehicles or Department of the California Highway Patrol (Vehicle Code Section 20)

**IX. FILING A FALSE POLICE REPORT**

**A. False reporting of criminal offense (Penal Code Section 148.5)**

1. Defined: Every person who reports to any peace officer, as specified, or any employee authorized to accept reports, district attorney or deputy district attorney that a felony or misdemeanor has been committed, knowing such report to be false.
2. Elements:
  - a. Every person who
  - b. reports to
    - (1) any specified peace officer
    - (2) any employee authorized to accept reports
    - (3) any prosecutor
  - c. that a misdemeanor or felony has been committed
  - d. knowing such report is false
3. Crime classification: misdemeanor
4. Discussion:
  1. When the report is made to "an employee authorized to accept reports", the employee must be
    - (1) engaged in the performance of their duties, and
    - (2) the person providing the false information would have known that the person was engaged in the performance of their duties.

**EXAMPLE:** A subject falsely reports a theft to a uniformed records clerk at the front counter of the police station

2. The false report does not need to be an emergency, but it must relate to reporting a crime. The report of a "cold" crime, however, is sufficient for this section to be violated.

**B. False report of emergency (Penal Code Section 148.3(a))**

1. Defined: Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, knowing that such report is false.

2. Elements:
  - a. Any individual who
  - b. reports to any governmental department or agency (as specified)
  - c. that an "emergency" exists
  - d. knowing that such report is false
3. Crime classification:
  - a. Misdemeanor
  - b. Felony if great bodily injury or death is sustained by any person as a result of the false report (Penal Code Section 148.3(b))
4. "**Emergency**" means any condition which results in, or could result in, the response of a public official in an authorized emergency vehicle, which jeopardizes, or could jeopardize public safety, and result in, or could result in, the evacuation of any area, building, structure, vehicle, or any other place which any individual may enter (Penal Code Section 148.3(c)).
5. Discussion:
  - a. The false report does not need to relate to crime, but it must relate to an emergency.
  - b. For example, the false report of an injury traffic accident or the false report that someone is having a heart attack would be sufficient.

X. RESISTING PUBLIC OFFICERS

A. Resisting public officers in the discharge of their duties (Penal Code Section 148(a))

1. Defined

Every person who willfully resist, delays, or obstructs any public officer, peace officer, or an emergency medical technician, in the discharge or attempt to discharge any duty of their office.

2. Elements:

- a. Every person who willfully
- b. resists, delays, or obstructs
- c. any public officer, peace officer, or emergency medical technician
- d. in the discharge of their duties

3. Crime classification: misdemeanor

4. Discussion:

- a. No physical contact with the officer is needed for the crime to be complete.
- b. Verbal interference is possible when accompanied with willful resistance, delay, or obstruction.
- c. This section is commonly referred to as "resisting arrest", however there can be a violation when an officer is performing duties other than making an arrest (e.g., interfering with traffic direction or preventing a rescue)

B. Removing or taking weapon other than a firearm from an officer (Penal Code Section 148(b))

1. Defined

Every person who, during the commission of any offense described in Penal Code Section 148(a) removes or takes any weapon, **other than a firearm**, from the person of, or immediate presence of, public officer or peace officer

2. Elements:

- a. Every person who
- b. during the commission of
- c. any offense described in Penal Code Section 148(a)

- d. removes or takes
- e. any weapon **other than a firearm**
- f. from the person or immediate presence of
- g. a public officer or peace officer

3. Crime classification: felony (wobbler)

C. Removing or taking a firearm from an officer (Penal Code Section 148(c))

1. Defined

Any person who during the commission of any offense described in Penal Code Section 148(a) removes or takes a firearm from the person of or immediate presence of a public officer or peace officer

2. Elements

- a. Every person who
- b. during the commission of
- c. any offense described in Penal Code Section 148(a)
- d. removes or takes
- e. **a firearm**
- f. from the person or immediate presence of
- g. a public officer or peace officer

3. Crime classification: felony

D. Attempting to remove or take an officer's firearm (Penal Code Section 148(d))

1. Defined:

Every person who, during the commission of any offense described in subdivision (a), attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer

2. Elements

- a. Every person who
- b. during the commission of
- c. any offense described in Penal Code Section 148(a)

- d. **attempt to remove or take**
  - e. **a firearm**
  - f. **from the person or immediate presence of**
  - g. **a public officer or peace officer**
3. **Crime classification: felony (wobbler)**
4. **Discussion:**
- a. **In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:**
    - (1) **The officer's holster strap was unfastened by the defendant.**
    - (2) **The firearm was partially removed from the officer's holster by the defendant.**
    - (3) **The firearm safety was released by the defendant.**
    - (4) **An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.**
    - (5) **An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.**
    - (6) **The defendant's fingerprint was found on the firearm or holster.**
    - (7) **Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.**
    - (8) **In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.**
2. **A person may not be convicted of a violation of Penal Code Section 148(a) in addition to a conviction of Penal Code Sections 148(b), 148(c), or 148(d) when the resistance, delay, or obstruction was committed against the same public officer, peace officer, or Emergency Medical Technician.**
3. **Multiple convictions under this section may take place when more than one public officer, peace officer, or Emergency Medical Technician are victims.**

E. Resisting executive officers (Penal Code Section 69)

1. Defined:

Every person who attempts by means of any threat or violence to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists by the use of force or violence, such officer in the performance of his duty is guilty of a felony.

2. Elements:

- a. Every person who
- b. attempts
- c. by means of threat or violence
- d. to deter or prevent
- e. an executive officer
- f. from the performance of their duties

3. Crime classification:

- a. Misdemeanor, if by **threat** of force or violence deters or prevents
- b. Felony, if by **actual use** of force or violence resists an executive officer in the performance of their duties

F. Threatening school official - Penal Code 71

1. Defined: Every person who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out

2. Elements:

- a. Every person who
- b. with intent to cause
- c. attempts to cause or causes
- d. any officer or employee of any educational institution
- e. to do or refrain from doing any act in the performance of their duties

- f. by a threat to inflict an unlawful injury
- g. directly communicated to such person, and
- h. it reasonably appears that the threat could be carried out

3. Crime Classification: Felony



## XI. INTIMIDATION OF WITNESS AND VICTIMS

### A. Witness Intimidation (Penal Code Section 136.1)

1. Makes it a crime for any person to knowingly and maliciously **attempt** to prevent or dissuade or **actually** prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law
2. Makes it a crime for any person to attempt to prevent or dissuade another person who has been the victim of a crime or who is a witness to a crime from making any report of such victimization to any peace officer, probation officer, correctional officer, prosecuting agency or judge

### B. Elements

1. Any person who
2. knowingly and maliciously
3. **attempts** to prevent or dissuade (Penal Code Section 136.1(a)(2), or **actually** prevents or dissuades (Penal Code Section 136.1(a)(1)
4. any victim or witness from attending or giving testimony at a court proceeding, or  
  
any victim or witness from making a crime report to any peace officer, probation officer, correctional officer, prosecuting agency or judge

### C. Definitions:

1. **Malice** (as applied to this section) is intent to vex, annoy, harms, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice (Penal Code Section 136(1)).
2. **Witness** is defined as any person having knowledge of the existence or nonexistence of facts relating to any crime, or whose declaration under oath is received, or has been received, as evidence for any purpose, or who has reported any crime, or who has been served with a subpoena. (Penal Code Section 136(2)).
3. **Victim** is defined as any person against whom there is reason to believe that any crime has been perpetrated or attempted to be perpetrated (Penal Code Section 136(3)).

### D. Crime classification:

1. Misdemeanor
2. Felony if

- a. accomplished by force or fear
- b. in furtherance of a conspiracy
- c. previously convicted of this section, or
- d. done for monetary or other gain

E. Discussion:

1. Every person attempting the commission of any act described in these sections is guilty of the offense attempted without regard to success or failure of such attempt.
2. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

**XII. REFUSAL TO ASSIST AN OFFICER (POSSE COMITATUS)**

**A. Refusing to join posse or aid officer in arrest (Penal Code Section 150)**

Makes it a crime for any able bodied person above 18 years of age to neglect or refuse to join or aid and assist in taking, retaking, or arresting any person, or in preventing any breach of the peace, or commission of any criminal offense, after being lawfully required to do so by any peace officer identified by a badge or identification card issued by their agency.

**B. Elements:**

1. Every able bodied person
2. above 18 years of age
3. who neglects or refuse to join, or aid and assist in the
  - a. taking, or
  - b. retaking, or
  - c. arresting of any person, or
  - d. preventing any breach of the peace, or
4. commission of any criminal offense
5. after being lawfully required to do so
6. by a peace officer

**C. Crime classification: misdemeanor, punishable by a fine only**

**D. Discussion:**

1. Members of the armed forces when on duty (Sections 391 and 560, Military and Veteran's Code) are specifically exempt from the application of Penal Code Section 150.



**XIII. IMPERSONATION OF AN OFFICER**

- A. Impersonating a deputy or clerk of a state department (Penal Code Section 146a(a))
1. Any person who falsely represents himself to be a deputy or clerk in any state department, and who, under such assumed identity
    - a. arrests and detains;
    - b. otherwise intimidates any person, or;
    - c. threatens to arrest or detain, or;
    - d. searches any person, building, or other property of any person, or;
    - e. obtains money, property, or other thing of value.
  2. Elements:
    - a. Any person who
    - b. represents himself to be a deputy or clerk in any state department, and
    - c. arrests and detains, or;
    - d. otherwise intimidates any person, or;
    - e. threatens to arrest or detain, or;
    - f. searches any person, building, or other property of any person, or;
    - g. obtains money, property, or other thing of value.
  3. Crime classification: misdemeanor
- B. Impersonation of a public officer (Penal Code Section 146a(b))
1. Any person who falsely represents himself to be a public officer, investigator, or inspector in any state department, and who, under such assumed identity:
    - a. Arrests and detains, or;
    - b. Otherwise intimidates any person, or;
    - c. Threatens to arrest or detain, or;
    - d. Searches any person, building, or other property of any person, or;
    - e. Obtains money, property, or other thing of value.

2. Elements:
  - a. Any person who
  - b. represents himself to be a public officer, investigator, or inspector in any state department, and
  - c. arrests and detains, or;
  - d. otherwise intimidates any person, or;
  - e. threatens to arrest or detain, or;
  - f. searches any person, building, or other property of any person, or;
  - g. obtains money, property, or other thing of value.
3. Crime classification : felony (wobbler)
4. Discussion:

Penal Code Section 146a(b) is the section to use for persons impersonating peace officers

C. Fraudulent impersonation of peace officer - Penal Code Section 538d

1. Defined

Makes it a crime for any person, other than one who by law is given the authority of a peace officer, who willfully wears, exhibits, or uses the authorized badge, insignia, emblem, device, label, certificate, card, or writing of a peace officer, with the intent of fraudulently impersonating or inducing the belief he is a peace officer.
2. Elements:
  - a. Any person other than a peace officer who
  - b. willfully wears, exhibits or uses the authorized badge, insignia, emblem, device, or any label, certificate, card, or writing of a peace officer
  - c. with the intent of
    - (1) fraudulently impersonating a peace officer, or
    - (2) inducing the belief that he/she is a peace officer
3. Crime classification: misdemeanor

4. Discussion:

- a. This section also applies to the use of badges, insignias, devices, emblems, certificate, cards, and writings which resemble the authorized items.
- b. The resemblance must be such as would deceive any ordinary reasonable person into believing that it is authorized for the use of a peace officer.

D. Other related sections:

- 1. Impersonation of a California Highway Patrol Officer (Vehicle Code Section 27) - Misdemeanor



**LEARNING DOMAIN #39  
CRIMES AGAINST THE JUSTICE SYSTEM**

**KNOWLEDGE TEST:**

- 3.8.1 Given a word picture depicting the possible offering or accepting of a bribe, 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 67 and 68)
- 3.8.2 Given a word picture depicting a possible perjury, 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 118 and 126)
- 3.8.4 Given a word picture depicting the possible impersonation of an officer, 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 146a and 538d)
- 3.8.5 Given a word picture depicting a possible threat to or obstruction of an officer in the fulfillment of official duties, 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 69, 71, 136.1, and 148(a) through 148(d)) (7-1-90)
- 3.8.6 Given a word picture depicting the possible filing of a false police report, 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 148.3 and 148.5)
- 3.8.7 Given a word picture depicting the possible refusal to join "posse comitatus," 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 150)
- 3.23.1 Given a word picture depicting a possible unlawful assembly, 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 407) (1-1-84)
- 3.23.2 Given a word picture depicting possible disobedience to a dispersal order, 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 409 and 416) (7-1-92)
- 3.23.3 Given a word picture depicting possible participation in a rout, riot or incitement to riot, 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 404, 404.6 and 406) (6-1-93)
- 3.23.4 Given a word picture depicting a possible rescue, escape or lynching, 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 405a, 405b, 836.6(b) and 4550). (6-1-93)
- 3.23.8 Given a word picture depicting a possible intimidation of a victim or witness, 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 136.1, 139 and 140)  
(7-1-94)

- 3.8.8 Given a word picture depicting the possible providing of false information to a peace officer, 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 148.9 and 529 and Vehicle Code Section 31)
- 3.8.9 Given a word picture depicting a possible violation of a court order, the student will identify if the crime is complete, and if the crime is complete, will identify it by its common name and crime classification. (Penal Code Sections 166(a)(4) and 166(C)(4))

**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

None included

ADDITIONAL REFERENCES

POST Video Catalog, 1993, 1601 Alhambra Blvd., Sacramento, CA, 95816, (916) 227-4856