

139960

BASIC COURSE UNIT GUIDE

10

SEX CRIMES

This unit guide covers the following performance objectives contained in *Performance Objectives for the POST Basic Course*:

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|---------|--------|
| 3.28.1 | 3.29.1 |
| 3.28.3 | 3.29.2 |
| 3.28.4 | 3.29.3 |
| 3.28.9 | 3.29.4 |
| 3.28.12 | |

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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.

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UNIT GUIDE 10

TABLE OF CONTENTS

Knowledge Domain 10

	Page
Performance Objectives	
3.28.1 Indecent Exposure	1
3.28.3 Oral Copulation	3
3.28.4 Sodomy	5
3.28.9 Incest	7
3.28.12 Registered Sex Offender	9
3.29.1 Rape	11
3.29.2 Spousal Rape	13
3.29.3 Penetration with Foreign Object	15
3.29.4 Sexual Battery	17
Supporting Materials & References	

PERFORMANCE OBJECTIVE 3.28.1

Given a word picture depicting possible indecent exposure, 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 314.1 and 314.2)

CURRICULUM

A. Indecent Exposure PC 314

1. Definition of indecent exposure

a. Every person who willfully and lewdly, either

- (1) exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or**
- (2) Procures, counsels, or assists any person so to expose himself or take any part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.**

2. Corpus delicti--elements of crime

- a. Exposure of person or private parts**
- b. Any place**
- c. Where other persons are present to be annoyed; or**
- d. Public view**
- e. Procures, counsels, assists**
- f. Exposure of person or takes part in model artists exhibition or other exhibition of person**
- g. Act offensive to decency or designed to incite vicious or lewd thoughts or acts.**

3. Indecent exposure is an offense which is punishable as a misdemeanor, except with prior conviction of PC 288, Crimes Against Children, or a prior conviction of PC 314, or enters without

consent an inhabited dwelling house, trailer coach, or inhabited portion of any building is guilty of a felony.

NOTE: Education Code, Section 13207, requires a mandatory revocation of a teaching credential for cases involving convictions under PC 647(a) and (d), PC 272, and this section.

- a. Both willfulness and lewdness are requisites of this offense, although no movement or manipulation of the body or parts thereof are necessary to the establishment of a prima facie case.
4. Must register as a sex offender under PC 290 after a conviction of PC 314. (Read PC 290 for students.)
5. Intent is a vital element of the crime.

PERFORMANCE OBJECTIVE 3.28.3

Given a word picture depicting possible oral copulation, 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 288a)

CURRICULUM

A. Oral Copulation P.C. 288a

1. Oral copulation when committed by consenting adults in privacy, is not a crime. Participants must, however, be 18 years of age or older.
2. Elements of PC 288a
 - a. Act of copulating the mouth
 - b. Of one person with the sex organ - or -
 - c. Anus of another person.
3. Intent
 - a. General Intent
 - b. No purpose or motive is necessary
 - c. The mere doing of the act is sufficient to fulfill the elements.
4. Discussion
 - a. Definition of oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.
 - (1) Any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison.
 - (2) Any person over the age of 21 who participates in an act of oral copulation with another person who is under 16 years of age shall be guilty of a felony.

NOTE: Just the touching of the mouth to the sexual organ or anus of another completes the offense. There need be no penetration. People vs. Bennett 119 Cal App 2nd 224.
 - b. Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or when the act is accomplished against

years younger than he or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person is guilty of a felony.

- c. Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of oral copulation when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person is guilty of a felony.
- d. Any person who, while voluntarily acting in concert with another, either personally or by aiding and abetting such other person, commits an act of oral copulation when the act is accomplished against the victim's
- e. Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504, or in any local detention facility as defined in Section 6031.4 is guilty of a felony.
- f. Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act is guilty of a felony.
- g. Any person who commits an act of oral copulation, and the victim is at the time incapable, because of mental disorder or physical disability, whether temporary or permanent, of giving legal consent, and this is known or reasonably should be known to the person committing the act is guilty of a felony.
- h. Same as (g) except both victim and suspect are confined to state hospital or facility.
- i. Definition of threatening to retaliate, means the threat to kidnap, falsely imprison, or inflict extreme pain, serious bodily injury, or death.

PERFORMANCE OBJECTIVE 3.28.4

Given a word picture depicting possible sodomy, 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 286)

CURRICULUM

A. Sodomy PC 286

1. Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Penetration however slight, is where contact is sufficient to complete the crime.

Cite 220 Cal App 4 698 People v. McElrath

2. Elements of PC 286

- a. Sexual contact,
- b. Penis of one person,
- c. Anus of another person.

3. Intent

- a. General Intent
- b. No purpose or motive is necessary
- c. The mere doing of the act is sufficient to fulfill the elements.

4. Penalty for Sodomy PC 286

- a. (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age is guilty of felony.
- b. (2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.
- c. Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or accomplished against the victim's will, by threatening to

retaliate in the future against the victim or any other person is guilty of a felony.

- d. Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force, fear of immediate and unlawful bodily injury on the victim or another person, or accomplished against the victim's will, by threatening to retaliate in the future against the victim, or any other person is guilty of a felony.
- e. Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4505, or in any local detention facility as defined in Section 6031.4 is guilty of a felony.
- f. Any person who commits an act of sodomy when the victim is at the time unconscious of the nature of the act and this is known to the person committing the act is guilty of a felony.
- g. Any person who commits an act of sodomy, and the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act is guilty of a felony.
- h. Same as (g) above - except both are confined to state hospital or facility.
- i. Retaliate - Means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

PERFORMANCE OBJECTIVE 3.28.9

Given a word picture depicting possible Incest, 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 285)

CURRICULUM

A. Incest - PC 285

1. Persons being within the degrees of consanguinity
2. Who Intermarry or have sexual intercourse
3. Commit Incest and are punishable by Imprisonment in state prison
 - a. California Civil Code Section 4400 specifies these relationships as consanguineous:
 - (1) Natural father-daughter
 - (2) Natural mother-son
 - (3) Uncle-niece
 - (4) Aunt-nephew
 - (5) Any degree of grandparent-grandchild
 - (6) Whole blood brother-sister
 - (7) Half-blood brother-sister
 - b. The only sexual act which constitutes Incest is sexual intercourse. For instance, oral copulation would not complete the act.

NOTE: Would not apply to first cousins, or foster, adopted, or step-parents and children

PERFORMANCE OBJECTIVE 3.28.12

Given an offender's criminal record and place of residence, the student will identify if the offender is required to register as a sex offender, and where the offender is required to register, identify the public official with whom the offender must register. (Penal Code Section 290(a)) (7-1-92)

CURRICULUM

PERFORMANCE OBJECTIVE 3.29.1

Given a word picture depicting a possible rape, 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 261) (7-1-90)

CURRICULUM

A. Rape, As Defined by Section 261:

Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

1. Where a person is incapable, because of mental disease, defect, or disorder or because of physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.
 - a. Here, neither force nor non-resistance is material.
2. Where it is accomplished against a person's will by means of force or fear of immediate and unlawful bodily injury on the person or another.
 - a. A person need not resist when they are prevented from resisting by threats of immediate and great bodily injury, which are accompanied by an apparent power of execution. A threat within this subsection need not be expressed in words or the exhibition of a weapon, but may be expressed by acts and conduct, i.e., an implied threat.
3. Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused.
4. Where a person is at the time unconscious of the nature of the act, and this is known to the accused.
 - a. It is a violation of this subsection when a person has an act of sexual intercourse with the victim who is in a state of unconsciousness, and without the victim's approval. It is also rape when a defendant accomplishes the act by causing the victim to believe the victim is undergoing a legitimate medical treatment and the victim is unaware of the true nature of the act.
5. Where the person submits under the belief that the person committing the act is the victim's spouse and this belief is induced by an artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

- a. It would be rape if a person enters into a sham marriage ceremony, knowing it to be a sham, causing the victim to engage in sexual intercourse under the belief that the ceremony was valid. It would also be a violation of this subsection if an intruder had sexual intercourse with a victim while impersonating his/her spouse.
6. Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person and there is a reasonable possibility that the perpetrator will execute the threat. Retaliate here means to kidnap; falsely imprison; inflict extreme pain; serious bodily injury; or death.
7. Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.
8. A key element in the crime of rape is penetration. Any sexual penetration, however slight, is sufficient to complete the crime (P.C. 263). If penetration was not completed, the crime is "assault with intent to commit rape," P.C. 220.

PERFORMANCE OBJECTIVE 3.29.2

Given a word picture depicting a possible spousal rape, 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 262)

CURRICULUM

- A. Rape of Spouse, as defined in Section 262:
 - 1. Sexual Intercourse;
 - 2. Against the will of the spouse;
 - 3. By means of force, or fear of unlawful bodily injury on the spouse or another person.
 - a. Section 262(b) forbids prosecution of this offense unless it is reported to a peace officer or the District Attorney within 90 days of occurrence.

PERFORMANCE OBJECTIVE 3.29.3

Given a word picture depicting a possible penetration of genital or anal openings by foreign object, 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 289)

CURRICULUM

A. PC 289 - Penetration of Genitals or Anus with Foreign Object

1. Any person who causes; another person, or causes a victim to penetrate the defined on other person
 - a. Penetration
 - b. However slight
 - c. Genital or anal opening
 - d. With any foreign object
 - (1) Defined to include all instruments, substances, devices or parts of the body except a sexual organ.
 - e. By use of:
 - (1) Force
 - (2) Violence
 - (3) Duress, and
 - (4) Against the will of the victim
 - (5) Fear of injury to self or third person
2. P.C. 289 (c) - Penetration of foreign object: Where both defendant and victim are confined to a mental facility and victim is incapable of giving legal consent or causing the act to be committed - the crime is punished as a felony.

PERFORMANCE OBJECTIVE 3.29.4

Given a word picture depicting a possible sexual battery, 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 243.4) (7-1-85)

CURRICULUM

- A. 243.4 Sexual battery - Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is a felony.
1. Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is a felony.
 2. Any person who for sexual arousal causes another, against that person's will, while that person is unlawfully restrained or institutionalized for medical treatment or masturbate or touch an intimate part of any other person is guilty of a felony.
 3. As used in this section, "intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. Sexual battery does not include the crime of rape as defined in Sections 261 and 289. As used in the sections, "touches" means physical contact with the skin of the victim, directly or through the clothing of the perpetrator.
 - a. As used in this section, "seriously disabled" means a person with severe physical or sensory disabilities.
 - b. As used in this section, "medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication:
 - c. As used in this section "institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

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**

Sex Crimes

SEX CRIMES

PC 286, which prohibits oral sodomy, was not violative of the non-establishment clause of the First Amendment to the Federal Constitution (U.S.C.A. Const. Amend. 1) or the non-establishment clause of the State Constitution (Const. Art 1, Section 4) because the crimes historically were under the exclusive jurisdiction of the ecclesiastical courts and were regarded as sins in the system of morals of the Judaeo-Christian religions. *People v. Baldwin* (1974) 112 Cal. Rptr. 290, 37 C.A. 3d 385.

PC 288, prohibiting oral copulation, not involving suspect classification, was to be tested by traditional equal protection "rationally" standard rather than by "strict scrutiny" standard. *People v. Parker* (1973) 109 Cal. Rptr. 354, 33 C.A. 3d 842.

PC 288, prohibiting oral copulating, did not deny equal protection or due process where alleged violation of statute occurred with respect to filming of movie. *Id.*

PC 288, proscribing the act of copulation the mouth of one person with the sex organ of another, is not unconstitutional when applied to consenting adults. *People v. Drolet* (1973) 105 Cal. Rptr. 824, 30 C.A. 3d 207.

Mere fact of one's having homosexual proclivities does not per se deprive him of legal entitlements and constitutional immunities; it is only the act or acts committed in the manifestations of an individual's homosexual orientation and proclivities that are forbidden under the law. *Lipp v. Proconler* (D.C. 1975) 395 F. Supp. 871.

An act of oral copulation committed during stage performance was not a method of expression and a form of speech protected by First Amendment (U.S.C.A. Const. Amend. 1). *People v. Drolet* (1973) 105 Cal. Rptr. 824, 309 C.A. 3d 207.

Where defendants were both male, were not husband and wife nor partners in any sort of stable union and the act for which defendants were prosecuted was not performed in private, defendants did not have standing to assert the unconstitutionality of the oral sodomy statute on ground it violated a right of privacy and a right of marital privacy. *People v. Baldwin* (1974) 112 Cal. Rptr. 290, 37 C.A. 3d 385.

ADDITIONAL REFERENCES

A definitive listing of Penal Code laws with pertinent court citations.

California Digest, West Publishing Company, St. Paul, Minnesota

California Penal Code, Legal Book Corporation, Los Angeles, California

California Reporter, West Publishing Company, St. Paul, Minnesota

California Welfare and Institutions Code, West Publishing Company, St. Paul, Minnesota

POST Video Catalog, (916) 739-4289

Supreme Court Reporter, West Publishing Co., St. Paul, Minnesota