

139975

BASIC COURSE UNIT GUIDE

7

CRIMES AGAINST PERSONS

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

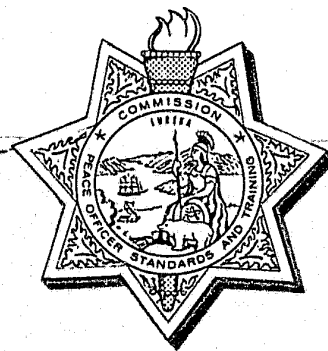
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

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.

139975

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UNIT GUIDE 7

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PERFORMANCE OBJECTIVE 3.10.1

Given a word picture depicting a possible extortion, 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 518 and 520)

CURRICULUM

A. Extortion--Definition: 518 P.C.

Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

B. Corpus Delicti--Elements of the Crime

1. Obtaining property from another
2. With the person's consent, or
3. Obtaining an official act of a public officer,
4. By inducement through wrongful use of force or fear, or under color of official right.

C. Punishment

1. P.C. 520 - felony
2. P.C. 521--under color of official right -misdemeanor

D. Threats Which May Constitute Extortion (519 P.C.)

Fear, sufficient to constitute extortion, may be induced by a threat either:

1. To do an unlawful injury to the victim or his property or of a third person.
2. To accuse the individual threatened, or any relative of his or member of his family of any crime, or
3. To expose, or to impute to him or them any deformity, disgrace, or crimes; or
4. To expose any secret affecting him or them.

E. Attempted Extortion - Punishment - Section 524 P.C. Felony/Misdemeanor

1. Threatening letter--any person with intent to extort money or property from another by means of a letter or writing or by means of a threat, as in Section 523, is punishable as if such money, etc., were actually obtained. The minute the letter is delivered or dropped in the mail with intent that it shall be forwarded, the offense is complete.

F. Differences Between Extortion and Robbery

1. In extortion, property can be real while in robbery the property is personal.
2. In extortion, property need not be taken from a person or that person's immediate presence.
3. Force is an alternative in extortion, but there must be force or fear for robbery.
4. Extortion is carried out by consent of victim while in robbery it is done without the victim's consent.

G. Discussion:

1. Extortion differs from robbery in that while it is the taking of property by means of force or fear, or under color of official right, the taking does not amount to larceny and is with the consent of the victim. To constitute extortion, the force or fear must be the operating or inducing cause which produces the consent or results in the property being obtained. If some other cause is the primary and controlling cause for the consent, there is no extortion. The consent may not be entirely voluntary; it is the lesser of the two evils.

The force or fear in extortion is not such as would leave the victim no choice or which would compel the victim to allow the taking of his property against his will--for that would be robbery.

PERFORMANCE OBJECTIVE 3.17.1

Given a word picture depicting a possible assault, 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 240, 241, 241.1, 241.2, 241.4, 241.6, 241.7 and 243.5)

CURRICULUM

A. Assault (P.C. 240)

1. The initial crime in the evolutionary scale of violent crimes is in the form of an attempted attack on the person of another.
2. Definition of assault (P.C. 240)

Penal Code Section 240 defines assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."
3. Corpus Delicti—Elements of the crime of P.C. 240
 - a. An unlawful attempt,
 - b. The present ability, and
 - c. To commit a violent injury.
4. The attempt must be unlawful. There are lawful assaults.
 - a. Prize fighting and other sporting events
 - b. Effecting an arrest
 - c. Self-defense
5. Assuming, though, that the attempt is unlawful, two facts are always present in an assault:
 - a. There is an intent to commit harm against a person, and
 - b. A direct act is done to commit harm.
6. The second element of an assault is dependent upon present ability of the perpetrator to carry out the intended injury.

PERFORMANCE OBJECTIVE 3.17.2

Given a word picture depicting a possible 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 Sections 242, 243 through 243.7)

CURRICULUM

A. Battery (P.C. 242)

1. Definition of Battery

Battery defined is "any willful and unlawful use of force or violence upon the person of another."

2. Corpus Delicti—Elements of the crime

a. Willful and unlawful and,

- (1) The intent implies a purpose or willingness to commit the act.
- (2) A general intent crime.

b. Any use of force or violence

- (1) The degree of force is not a consideration in the crime. As mentioned earlier, if someone spit at another person and this time it struck the person or the person's clothing, a "battery" has been committed.
- (2) Every battery contains a lesser crime of assault.

3. Penalties as defined in P.C. 243:

a. Simple battery: punishment - misdemeanor

b. Battery on a peace officer - misdemeanor

c. Battery on a peace officer - felony

- (1) An injury requiring medical treatment.

d. Battery "serious injury" - felony

PERFORMANCE OBJECTIVE 3.18.1

Given a word picture depicting a possible assault with a deadly weapon, 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 244, 244.5 and 245)

CURRICULUM

A. Definition of Assault With a Deadly Weapon

1. Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury.

B. Corpus Delicti--Elements of Assault With a Deadly Weapon

1. Unlawful attempt to commit a violent injury
2. Upon person of another
3. Present ability
4. Use of deadly weapon or force likely to produce great bodily injury.
 - a. This deadly weapon can be any object capable of causing death or great bodily injury from the manner in which it was used.
 - b. Any physical force is sufficient if it is capable of producing great bodily injury.

In the case of P.C. 240, simple assault, or a completed act where physical contact has actually been made, such as in P.C. 242, battery, the issue of concern was whether contact was or wasn't made. In this section, however, when a felony crime has been committed, the criminal act must be more serious and severe than in either P.C. 240 or 242.

C. Intent

1. General Intent crime.

D. Injury

1. It is not necessary that an actual injury result from the assault.

E. The section is written with very broad elements.

To illustrate, the following could be interpreted to be an assault committed under this section:

1. Throwing a hard object like a rock or full beer can at someone,
2. Kicking someone, beating them severely, or
3. Throwing someone against or off something.

A hammer in and of itself is not a deadly weapon. Neither is a chair; however, if these items were used to attempt or to cause a serious injury, then an assault with such a weapon or force would constitute a violation of this section.

- F. In the case of assault and battery on peace officer or other designated class, the prosecution must prove knowledge on the part of the defendant that the victim was a peace officer or member of other designated class performing an official duty.

1.245 (a) (1) - ADW (other than firearm)

2.245 (a) (2) - ADW with firearm

3.245 (b) - ADW on peace officer

4.245 (c) ADW on peace officer with a firearm

- G. In the case of assault and battery on a peace officer or other designated class, the prosecution must prove knowledge on the part of the defendant that the victim was a peace officer or member of other designated class performing an official duty.

PERFORMANCE OBJECTIVE 3.19.1

Given a word picture depicting a possible mayhem, 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 203 and 205)

CURRICULUM

A. Definition of Mayhem (P.C. 203)

Every person who unlawfully and maliciously deprives a human being of a member of his body or disables or disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye or slits the nose, ear, or lip, is guilty of mayhem.

B. Corpus Delicti--Elements of the Crime (P.C. 203)-Felony

1. Unlawful battery and maliciously
2. Inflicting or attempting to inflict violent injury
3. One or more described injuries as a result

C. Nature of Injuries

1. Biting off the nose, or portion thereof, a piece of the ear, or a portion of a lip.
2. To put out an eye merely means to render it useless for practical purposes.
3. Disabling the tongue by biting.
4. Biting through the lip was a "slit" within the meaning of this section.

D. Intent

1. Does not require specific intent to inflict the resulting injury.
 - a. An attempt to hit the head which results in knocking out an eye or tearing off an ear.

E. Aggravated Mayhem (P.C. 205)

1. Extreme indifference to the physical or psychological well-being of another.
2. Intentionally causes permanent disability or disfigurement.

PERFORMANCE OBJECTIVE 3.20.1

Given a word picture depicting the possible infliction of corporal injury upon spouse or person with whom one is cohabitating, 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 273.5)

CURRICULUM

A. Section 273.5 P.C. Spouse or Cohabitant Beating (Felony)

1. Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, or any person who willfully inflicts upon any person who is the mother or father of his or her child corporal injury resulting in a traumatic condition, is guilty of a felony.
2. Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.
3. Certain specific conditions must be met to fulfill the element requirements of this section.

NOTE: Government Code 6254 - Victims of 273.5 P.C. can have their names and addresses declared confidential.

- a. To be guilty of spouse beating, the perpetrator need not be the spouse of the victim. A boyfriend, girlfriend, fiancé, or common law husband or wife can be charged under this section.
 - b. "Traumatic Condition" means a condition of the body, such as a wound, external or internal injury whether of a minor or serious nature caused by physical force.
 - c. When applying this particular section to a spouse, there is no need to prove legal marriage.
4. Examples of spouse beating include:
- a. The defendant shoves spouse to the floor and kicks victim several times.
 - b. The defendant spouse strikes victim in the face with a closed fist.
 - c. The defendant strikes victim with a bull whip.

PERFORMANCE OBJECTIVE 3.20.2

Given a word picture depicting a possible assault with the intent to commit certain felonies, 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 220)

CURRICULUM

- A. Definition in Section 220 P.C.: every person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation or any violation of Section 264.1, 288, or 289.
- B. Most assaults, unlike "attempt" crimes, do not require specific intent as a necessary element of the corpus delicti. However, Section 220 P.C. specifies certain assaults which are felonious in nature that require the elements of specific intent.
- C. Corpus Delicti—Elements of Crime Section 220 P.C.
 1. An unlawful attempt to commit a violent injury upon the person of another.
 2. Coupled with present ability
 3. Specific intent
 4. To commit mayhem, rape, sodomy, oral copulation or any violation of Section 264.1, 288, or 289.
- D. Examples of unlawful acts:
 1. A male suspect wrestles female victim to the ground in a dark carport area with intent to rape her. As she struggles, he tears off a portion of her clothing. He sees approaching headlights and is frightened off prior to the sex act.
 2. A suspect attempts to cut off the ring finger of victim with sharp knife, but is subdued after making some initial cut marks.
 3. An assault with the intent to commit murder is treated as attempted murder.

PERFORMANCE OBJECTIVE 3.23.6

Given a word picture depicting a possible "hate crime," 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 422.6, 422.7, 11411, 11412, and 11413)

CURRICULUM

A. Definition of Hate Crime/Hate Violence Includes:

1. Criminal conduct which is motivated by hatred or prejudice and directed to any person based upon ethnic background, national origin, religious belief, sex, age, disability, or sexual orientation.
2. Penal Code Section 422.6 identifies the protected categories of race, color, religion, ancestry, national origin, or sexual orientation.

NOTE: Refer to Penal Code Section 422.6 for specific language.

3. Examples of hate crimes reported in California include:

- (a) An increase in the number of violent assaults against lesbian women and homosexual men;
- (b) Dozens of incidents of racist graffiti, verbal harassment and physical assaults directed against minority students on school, college, and university campuses throughout California

REFERENCE: *The Commission on Racial, Ethnic, Religious, and Minority Violence*, published by the California Attorney General's Office 1990.

B. Specific Hate Crime Laws

1. Injury or threat to person or damage to property because of specific beliefs or characteristics. (422.6 of the Penal Code) Elements include:
 - (a) No person shall by force or threat of force
 - (b) Willfully injure, intimidate, or interfere with, oppress, or threaten
 - (c) Any person in the free exercise or enjoyment of any right secured by the Constitution or laws of this state or by the Constitution or laws of the United States
 - (d) Because of the other person's race, color, religion, ancestry, national origin, or sexual orientation

NOTE: Sexual orientation means heterosexuality, homosexuality, or bisexuality (Bane Act)

- (e) No person shall knowingly deface, damage, or destroy the real or personal property
- (f) Of any person
- (g) For the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States

A violation of these sections is a misdemeanor.

There may be an inherent conflict between the right of free speech and utterances of people of ethnic, religious, or sexual orientation. Speech alone should not be sufficient to support a case of criminal action. There must be a threat and a reasonable fear that violence will be committed.

NOTE: Assembly Bill 63 (Bane Act) established civil remedies, including injunctive relief for such acts. The provisions of the Bane Act are located in the California Civil Code starting at section 51.7.

- 2. Crimes of intimidation of another because of specified beliefs or characteristics (422.7 of the Penal Code). Elements include:
 - (a) Any crime committed against the person or property of another
 - (b) For the purpose of intimidating or interfering with the other person's free exercise or enjoyment of any right secured by the state or federal Constitution
 - (c) Because of the other person's race, color, religion, ancestry, national origin, or sexual orientation
 - (d) Shall so indicate in the accusatory pleading
- 3. Religious terrorism includes:

NOTE: Terrorism involving the destruction of health facilities, abortion clinics, libraries, bookstores, etc., included in Penal Code Section 11413.

- (a) Desecration of religious symbols as defined in Penal Code Section 11411
- (b) Interference with religious worship as defined in Penal Code Section 11412
- (c) Explosive devices in or about a religious church, synagogue, temple, or other place of worship. (11413 of the Penal Code)

(d) Felony

4. Arson against church or synagogue.

These acts are covered under:

- (a) Penal Code Section 1170.8 which prohibits certain activity within or against the church and with aggravating circumstances
- (b) Penal Code Section 1170.75 provides for aggravated circumstances penalty enhancement.

PERFORMANCE OBJECTIVE 3.25.1

Given a word picture depicting a possible robbery, 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 211 and 212.5)

CURRICULUM

- A. Robbery is a crime which has the combined characteristics of being both against person and against property. There are many types of robberies. One of the elements of every robbery is that a theft must occur. Some property must be stolen and there must be a confrontation between the criminal and his victim.
1. Definition of robbery (211 P.C.)
 - a. Robbery is the felonious taking of personal property in the possession of another, from the person or immediate presence, and against the person's will, accomplished by means of force or fear.
 2. Fear defined (212 P.C.)
 - a. The fear of an unlawful injury to the person or property of the person robbed or of any relative of the individual or family member or,
 - b. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person being robbed.
 3. Robbery (212.5)
 - a. Robbery of the operator of a public transportation vehicle or from an inhabited dwelling, house, or vessel is classified as robbery in the 1st degree.

The following is a breakdown of the elements of a robbery describing each element and what is necessary in each to constitute a robbery:

- a. Felonious taking (Asportation)
 - (1) Possession of the property must be accomplished.
 - (a) Physical or Constructive
 - (2) The length of time that the suspect holds the property is not important as long as actual possession takes place.

- (a) Example--Robbery: A suspect forcibly removes victim's wallet from the victim's pocket and then the victim strikes the suspect and takes the wallet back--crime was completed when suspect seized the wallet.

b. Property taken

- (1) The property taken in a robbery must be personal property.
- (2) Property taken must have value. (fair market value)
- (3) The actual value of the property is of no concern as long as it has some value. (intrinsic value)
- (4) Property taken must be of another.
- (5) It is not necessary that the person from whom the property is taken be the sole and unconditional owner, but the property must be in that person's legal possession or immediate presence.

NOTE: People vs. Fain Cal 3rd 1983.

- (6) Where the actual owner of property takes it from another by force or fear and against the will of the holder, the crime of robbery is not committed.
- (7) When money is lost in an illegal gambling game, the money remains the property of the loser and it is not robbery for the person to take it back.
- (8) However, it is robbery if the intent can be shown that the person retaking the money intended to take more than he had lost.
- (9) The property taken can be in the legal possession of another person by virtue of the person being an employee, cashier, agent, or collector, such as in the case of a market cashier or messenger.

c. From the person or immediate presence.

- (1) In robbery, the taking of property must either be from the person or the immediate presence of another.
- (2) Immediate presence is an arbitrary distance and the circumstances of each robbery have to be known to determine whether the taking was from the person or the immediate presence.
- (3) The following are examples of what our courts hold to be immediate presence:

- (a) The term "from the person" is obvious.
- (b) Example--robbery: A man is forced from his car at gun point and tied to a tree several hundred feet from his car. Property is removed from his car.
- (c) Example--robbery: A night watchman is held in one room while property under his control is removed from an adjoining warehouse.
- (d) Example--not robbery: A girl, after accepting an offer of a ride from a defendant, was taken to an unfrequented road where he attempted to rape her and she jumped out of the car. The defendant drove away in his car containing her handbag.

NOTE: People vs. Superior Ct. (Rodriquez), 159-C.A.3rd 821 (1984).

- d. Must be against the will of the victim.
 - (1) Where "suspect" and "victim" (e.g. store clerk) have conspired together to accomplish the taking of the stores' property, it is theft and conspiracy - but not robbery.
- e. Force
 - (1) Any force is sufficient to establish a robbery.
 - (2) Physical resistance on the part of the victim is not necessary to establish a robbery.
- f. Fear
 - (1) It is necessary that a reasonable apprehension of danger be felt.
 - (a) A reasonable apprehension of danger means a reasonable person under the same set of circumstances, would be in fear of life, fear danger of injury, or fear that personal property may be injured or damaged.
- g. Intent
 - (1) Specific Intent to steal is an essential element of larceny, and larceny is an essential element of robbery.
 - (2) Specific Intent can be inferred from circumstances.

(3) It would not be robbery if the property taken belonged to the defendant or, if in good faith, the defendant believed that the property taken was his own.

(4) It is not the original intent with which the incident started, but the intent with which the taking was accomplished, that determines whether the crime is robbery.

(a) Example: If the defendant in the process of committing a petty theft, burglary, or grand theft used force or fear to accomplish the theft, it would then become a robbery.

h. Asportation

(1) An attempt to forcibly take property does not become a robbery until there has been asportation or taking of some property from the person or immediate possession of another.

(2) The asportation or taking may be accomplished when the victim, under the menace of force or fear, is compelled to turn over the property to a person other than the defendant.

(a) Example--A bank clerk is forced to give the money to another bank clerk on orders from the defendant.

i. A separate count of robbery can be charged for each victim.

NOTE: People vs. Powell 513 (1980) 101 Cal App 3rd.

NOTE: People vs. Childs 112 Cal App 3rd 374 (1980) (five different victims))

PERFORMANCE OBJECTIVE 3.26.1

Given a word picture depicting a possible kidnapping or false imprisonment, 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 207, 208, 209, 210.5, 236, 237, 277, 278, and 278.5)

CURRICULUM

A. False Imprisonment - Felony

1. P.C. 236 defined: False imprisonment is the unlawful violation of the personal liberty of another and is designated as a misdemeanor. P.C. 237 is a felony if committed by:
 - a. Violence
 - b. Menace
 - c. Fraud, or
 - d. Deceit

B. P.C. 207(a) Forcible Kidnap - Felony

1. Defined: Kidnapping is the unlawful, forcible taking of a person against their will from one place to another.

NOTE: AG Film Series Kidnapping Part I-II, 1978.

2. The movement is not unlawful if accomplished by a peace officer pursuant to a legal arrest. The "unlawful" requirement means simply that neither the law nor the victim has given consent to the movement.
3. The force used to effectuate the movement does not need to be physical force or even expressed threats coupled with ability to carry out the threats. As long as the suspect gives orders which the victim feels compelled to obey, and reasonably feels some kind of harm will occur, the force used is sufficient.
4. To arrest for forcible kidnap, a two-pronged test must be met:

NOTE: People vs. Caudillo - (1978 21c.3d 562 "Substantial movement")

- a. Was the movement by compulsion?
- b. Was the movement substantial, as opposed to slight or trivial movement?

PERFORMANCE OBJECTIVE 3.27.1

Given a word picture depicting the possible aiding or encouraging of a suicide, 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 401)

CURRICULUM

A. Aiding or Encouraging Suicide (P.C. 401)

1. Definition

Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony.

2. Corpus Delicti--Elements of the Crime (P.C. 401)

- a. Person deliberately--resulting from careful and thorough consideration. Intentionally,
- b. Aids--Provides with what is useful or necessary in achieving an end, such as providing a weapon to a person knowing that person will commit or attempt suicide.

or

- c. Advises--To spur on; to give verbal help or assistance.
- d. Another to commit suicide.
- e. Is guilty of a felony.

PERFORMANCE OBJECTIVE 3.27.2

Given a word picture depicting a possible murder, 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 187 and 189)

CURRICULUM

A. Homicide

1. Defined: Homicide is the killing of a human being or fetus by another human being.

B. Criminal Homicide

1. Defined: Criminal homicide is the unlawful killing of one human being or fetus, by another human being.
2. An unlawful homicide must be the result of an affirmative act, an omission to act, or criminal negligence. Although the act need not be the only cause of death, it must be the proximate cause. And, the death must occur within three years and one day after the cause of death. (P.C. 194)

C. Criminal Homicide may be Classified as Either Murder or Manslaughter.

1. Murder

- a. Murder First Degree
- b. Murder Second Degree

2. Manslaughter

- a. Voluntary
- b. Involuntary
- c. Vehicular

D. Murder Defined (P.C. 187)

1. Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

NOTE: The courts have held, in most cases, for murder of a fetus to apply, the fetus must be viable; i.e., must be able to sustain life outside the womb. People vs. Smith 59 Cal App 3rd 751 (1976). Abortion can be lawful (Sec 187(b)(3)).

E. Malice Aforethought

A predetermination to commit an act without legal justification or excuse; a purposeful action thought out in advance. It may be either express or implied malice.

Malice does not require that the suspect have an attitude of ill will toward the victim or that the suspect have a specific intent to kill the victim although these states of mind are often present. Basically, the term refers to an expressed or implied "man-endangering state of mind" which manifests itself in the commission of one of five different acts:

1. An act done with a specific intent to kill. (Expressed malice - P.C. 188)
2. An act which is intended to produce serious bodily harm. (Expressed malice)
3. An act accomplished during resistance of a lawful arrest done in such a manner as to demonstrate a conscious disregard to human life.
4. An act done in conscious disregard of the consequences where death or serious bodily injury is likely to occur, and which reveals an "abandoned and malignant heart" (such as randomly shooting into a crowd). (Implied malice)
5. An act accomplished during the perpetration of, attempted perpetration of, or escape from, an inherently dangerous felony (such as robbery, burglary, illegal abortion, or kidnapping).
 - (a) Malice may be inferred from the commission of one or more of the felonies described in P.C. 189 (Felony Murder Rule) and is sufficient to charge both suspect and/or his accomplice with the crime of murder. However proof of intent to kill must be established in court to convict.

F. Degrees of Murder - P.C. 189

1. First Degree - all murder committed by means of ...
 - a. Destructive device or explosive
 - b. Knowingly use armor/metal piercing ammo
 - c. Poison
 - d. Lying in wait
 - e. Torture

- f. Any other willful, deliberate and premeditated killing (premeditation is a period of reflection, weighing consequences for and against act of killing, the period of time may be short)
- g. Committed during the perpetration or attempt to perpetrate arson, rape, robbery, burglary, mayhem, 286 P.C., 288 P.C., 288(2) P.C., 289 P.C. (First degree felony murder).

2. All other murders are second degree

- a. Insufficient proof by prosecution of premeditation, insufficient proof by defense of provocation, or insufficient proof by defense of mental disease or defect or of voluntary intoxication to reduce charged crime of murder to some lesser form of unlawful homicide.

Example: Sudden killing without adequate provocation and no evidence of premeditation.

- b. Second degree felony murder - killing during commission or attempted commission of inherently dangerous felony not listed in 189 P.C.

PERFORMANCE OBJECTIVE 3.27.3

Given a word picture depicting a homicide, the student will identify if the homicide is excusable or justifiable. (Penal Code Sections 195, 196 and 197)

CURRICULUM

A. Non-Criminal Homicides

1. Excusable Homicide (P.C. 195)

NOTE: See: People v. Ceballos, Kortum v. Alkire (69 CA3d 325), Peterson vs. City of Long Beach (1979) (24 CA3d 238).

a. When committed by accident and misfortune, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

- (1) There cannot be any intent to kill, i.e., you strike a person who hits you for no reason and he dies from brain damage; you shove a drunk who has been mauling your wife and he falls, striking his head.

If any intent to kill appears, the act would then immediately be elevated to at least voluntary manslaughter.

2. Justifiable Homicide by Public Officer (P.C. 196)

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance either:

a. In obedience to any judgement of a competent court; or

- (1) This section protects our executioners at a state penitentiary.

b. When necessarily committed to overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or

- (1) Shooting a would-be assailant to save a person's life. This has to be a last-resort action.

c. When necessarily committed to retake felons who have been rescued or have escaped, or when necessarily committed to arrest persons charged with a felony, and who are fleeing from justice or resist such arrest.

- (1) The use of deadly force against a fleeing felon, must pertain to a forcible and atrocious crime.

NOTE: People v. Martin (1985) 168 CA3rd 11 11.
NOTE: Tenn. v. Garner (1985) 105.5 Ct 1694.

3. Justifiable Homicide (General) P.C. 197

Homicide is justifiable when committed by any person in any of the following cases:

- a. When resisting any attempt to murder any person or to commit a felony, or to do some great bodily injury upon any person; or
 - (1) Shooting a neighbor when he attempts to kill his wife.
 - (2) Killing a burglar who has just entered your bedroom and is attacking you with apparent deadly force.
 - (3) Self-defense
 - (4) Store owner who shoots a robber who is robbing him.
- b. When committed in defense of habitation, property, or persons, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein;
 - (1) Shooting an apparent maniac trying to break into your home.
 - (2) Shooting someone in a car attempting to run you off the road.
 - (3) Stabbing a rape suspect when he grabs you in a park.

Defense of habitation alone is not sufficient. It must be shown that there was an intention to commit a felony or other violence.

or

- c. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed;
 - (1) Killing a man attempting to kidnap your child.

- (2) Killing a man attempting to rape your wife in a parking lot.
- (3) The original aggressor in a fist fight withdraws. He is forced to kill the other party to stop great bodily injury.

Fear is judged by the standards of the reasonable and prudent person. Threats alone do not justify homicide.

or

- d. When necessarily committed to attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

- (1) A man steals your wife's purse on the street. You chase him and tackle him. He strikes his head and dies.

4. Self defense 198.5 P.C.

- a. Any person using force intended or likely to cause death or great bodily injury within his or her residence shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self, family or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using the force knew or had reason to believe that an unlawful and forcible entry occurred.

As used in this section, great bodily injury means significant or substantial injury.

PERFORMANCE OBJECTIVE 3.27.4

Given a word picture depicting possible manslaughter, 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 191.5, 192 and 192.5)

CURRICULUM

A. Voluntary Manslaughter (P.C. 192(a)) Felony.

1. Definition

The unlawful killing of a human being without malice upon a sudden quarrel or heat of passion.

2. Sudden quarrel or heat of passion

a. Sudden quarrel refers to mutual combat, such as a fistfight in a bar.

b. Heat of passion implies a blinding rage which clouds judgment and common sense, and prompts a man to act rashly, without deliberation. Keep in mind that it is not manslaughter if the defendant lies in wait.

c. There is no malice of any type present in a manslaughter.

3. Cooling-off period - the period of time between the provocation and the act of killing.

a. The issue is whether a reasonable man would have had time to "cool off" and regain his senses (amount of provocation may affect the length of the "cooling off" period).

b. "Hot blood" must exist at the time of the act.

B. Involuntary Manslaughter (P.C. 192(b)) - Felony

1. Definition: The unlawful killing of a human being, without malice (unintentional), in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, without due caution and circumspection.

NOTE: 192.b does not apply to acts committed in the driving of a vehicle.

Two types:

- a. "Misdemeanor" manslaughter - unintentional killing during the commission of an unlawful act, not amounting to a felony, namely, a misdemeanor.

Example: A strikes B with fist without cause; B falls to floor striking head and dies.

- b. Gross negligence - unintentional killing during the commission of a lawful act, in a criminally negligent manner.

Examples: A, while hunting in the woods, shoots at a movement killing his hunting partner whom he knew to be in that area; any reckless gun handling; professional knife thrower performing while intoxicated.

C. Vehicular Manslaughter - P.C. 192(c)

- 1. Definition: The unlawful killing of a human being, without malice (unintentional), in the driving of a vehicle.

- a. Vehicular manslaughter.

- (1) Gross negligence - A showing of willful and wanton disregard for the life and safety of others. (felony)

Example: Defendant speeding and runs stop sign; collision causes death of passenger in defendant's car.

- (2) Without gross negligence - negligently operating a vehicle in an unlawful manner. (misdemeanor)

Example: Defendant fails to look at "blind spot" when making lane change from fast to slow lane forcing motorcyclist off road.

- (3) Without gross negligence - negligently operating an auto while under the influence, in an unlawful manner. (felony)

Example: While driving under the influence, the defendant is driving 30 mph in a 25 mph zone, and is involved in a collision which causes death.

- b. Vehicular manslaughter involving drugs or alcohol. (191.5 PC)

- (1) With gross negligence - operation of an automobile while under the influence. (Felony)

Example: Defendant while under the influence fails to stop for stop sign, is involved in a collision which causes death.

- 2. Felony vs. misdemeanor

As previously indicated, the degree of negligence present is the determining factor in deciding whether or not an act was committed with or without gross negligence. Gross negligence will elevate the crime to felony status.

PERFORMANCE OBJECTIVE 3.37.3

Given a word picture depicting a possible conspiracy to deprive a person of a right provided by the United States Constitution, the student will identify if the crime is complete, and if it is complete, will identify it by its common name (i.e., "conspiracy against rights of citizens") and crime classification. (Title 18, Section 241 of the U.S. Code)

CURRICULUM

A. United States Code - Title 18, Chapter 13, (Civil Rights) Section 241

1. Conspiracy against rights of citizens. If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -

They shall be fined not more than \$5,000 or imprisoned not more than ten years or both.

2. Based on our Constitution, Congress has legislated certain statutes to insure equal rights. This resulted in prohibiting unequal treatment.
3. Law enforcement officers are subject to this law and Constitution and can be held liable for unequal application.
4. As used in this law, the term "citizens" includes all persons within the boundaries of the United States.

PERFORMANCE OBJECTIVE 3.37.4

Given a word picture depicting a possible deprivation of rights under color of law, the student will identify if the crime is complete, and if it is complete, will identify it by its common name (i.e., "deprivation of rights under color of law") and crime classification. (Title 18, Section 242 of the U.S. Code)

CURRICULUM

- A. United States Code - Title 18, Chapter 13 (Civil Rights) Section 242
 1. Deprivation of rights under color of law. Whoever under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (June 25, 1948, c. 645, 1, 62 Stat. 696) (unless death results - felony)
 2. Section 242 is another law established to protect persons from unequal application of the law.
 3. It is an important factor to realize that law enforcement officers represent the law, that they are a symbol of the law. As such, they have the responsibility to ensure that these rights are not violated.

PERFORMANCE OBJECTIVE 3.42.1

Given a word picture depicting a possible crime against an elder or a dependent adult, 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 368(a), 368(b), 368(c))

CURRICULUM

- A. Penal Code Sections 15630/15632 establish certain law enforcement reporting requirements involving crimes against the elderly.

NOTE:

Elderly person is defined as one 65 years of age or older.

1. Officers are required to know provisions of Welfare and Institution Code Section 15630 on reporting abuse to the elderly. The law requires all police officers to report all abuse of persons 65 years of age and older, and it also requires that all abuse of dependent adults 18 to 64 years be reported.
2. Penal Code Section 368 details specific crimes against elderly or dependent adults
 - a. Inflicting or causing person to suffer unjustifiable physical or mental pain
 - b. Conditions likely to produce great bodily harm or death, or
 - c. Caretaker violates any provision of law proscribing theft or embezzlement

NOTE:

Review P.C. 368 with students for specific crimes against elder or dependent adults.

- B. Elderly Population In California

1. Elderly population increasing due to:
 - a. Increasing life expectancy
 - b. Better health care
2. Estimated there will be 30 million people age 65 or older in U. S. by year 2,000.
 - a. Approximately 2 million will be over 85 years of age

3. Elderly may exhibit special concerns/problems leading to becoming victimized:

- a. Some physical deterioration
- b. Increased stress levels
- c. Sensory changes
- d. Memory loss

4. Will place increasing demands on law enforcement:

- a. Crime prevention
- b. Crime repression/Investigation

C. Victims of Crime

- 1. Elderly people are victimized by crimes against their person to a much lesser degree than the total population.
- 2. Fear of crime is greater among the elderly than among other age groups. They attempt to avoid risky situations more consistently.

D. Types off Crimes

- 1. The types of crime most often associated with the elderly include:
 - a. Burglary
 - b. Confidence games and deceptive practices
 - c. Theft of income checks, such as social security, welfare, etc.
 - d. Vandallism - damage to home/car
 - e. Robbery
 - f. Pocket picking or purse watching
 - g. Domestic violence/elderly abuse

E. Field Officer Responsibilities

- 1. Primary task of field officer is:
 - a. Prevention - patrolling to eliminate or reduce potential
 - b. Assisting elderly in preventing crimes by neighborhood watch and other crime prevention/community safety programs

c. Recognize that elderly can become highly emotional, confused, disoriented, angry, depressed, anxious, or fearful when victims/witnesses to crime.

2. Investigative steps include:

a. Use Intervention/calming techniques to calm victim/witness who is elderly

b. Calmly explain need to gather facts, evidence for report

c. Interview to obtain details

d. Complete appropriate crime report, lost report, other reports

e. Refer to support agencies:

(1) victim witness assistance programs

(2) Crime compensation programs

(3) Senior citizen centers/organizations

(4) Rape crisis centers (if victim of sexual abuse)

(5) Governmental agencies for new identification cards, medical cards, welfare documents.

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**

Extortion

Case Decisions on Extortion

Manslaughter Defined

Conspiracy

Battery Statutes

Assault Statutes

Assault with Deadly Weapon statutes

Degree of Robbery

Amendments 1, 4, 5, 6, 8, 14

Elder & Dependent Adult Abuse Reporting Requirements

EXTORTION

Extortion, (sometimes known as blackmail) is distinguished from robbery in that the crime of extortion does not amount to larceny and is with the consent of the victim; also, the crime is complete if the property is turned over to a third party at the defendant's request.

Case Decision on Extortion

Consent

To constitute consent on the part of the victim of extortion, it is not necessary that the turning over of his property shall have been entirely voluntary on his part, but the consent is in the nature of a choice on his part between turning over his property or of refusing to do so, and thereby incurring the possible consequences threatened by the extortionist. The force or fear in extortion is not such as would leave the victim no choice or which would compel him to allow the taking of his property against his will, for that would be robbery and not punishable as extortion.

("In a legal sense, money or property is obtained from a person with consent if he with apparent willingness turns it over to another with the understanding that he will be thereby saved from some personal calamity or injury, or if turning over his property is the lesser of two unpleasant alternatives, notwithstanding that he may mentally protest against the circumstances which compel the choice...") (People v. Peck, 43 Cal App 638) (CALJIC 14.74)

Examples of Threats:

1. Threaten another person with arrest in order to collect a debt.
2. Exposing secrets.
3. Where a threat used to extort property from another is of such a nature that it would ordinarily produce fear in the mind of the person threatened and the defendant intended it to have such effect, it is immaterial that the person to whom it is made is unaffected thereby.
4. Threats by labor union personnel to damage an employer's property and do him bodily injury are sufficient to be the basis for extortion.

CASE DECISIONS ON EXTORTION

Force or Fear

1. The force contemplated by the law of extortion differs from the force which is an element of robbery in that it is not such as compels the victim to turn over his property as the only alternative.
2. The kidnapping of hostages for the purpose of preventing police officers from stopping criminal acts of kidnapping, escape and assaults; for fear that hostages would be killed or injured; would constitute kidnapping for extortion and it is clear that kidnapping and holding of hostages may induce police officers by force or fear to forego their official duties to prevent law violations. (Magee vs. Superior Court 34C.A3d 201)

MANSLAUGHTER DEFINED

192--Manslaughter defined. Voluntary and involuntary manslaughter. Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

- a. Voluntary--upon a sudden quarrel or heat of passion.
- b. Involuntary--in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; provided that this subdivision shall not apply to acts committed in the drive of a vehicle.
- c. Vehicular
 - (1) Driving a vehicle, not involving drug or alcohol and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.
 - (2) Driving a vehicle in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.
 - (3) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.
 - (4) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

This section shall not be construed as making any homicide in the driving of a vehicle punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

"Gross negligence", as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice, consistent with the holding of the California Supreme Court in *People v. Watson* (1981) 30 Cal.3d 290.

CONSPIRACY

Prior Law

This section is based on Act Mar. 4, 1909, c. 321, Section 19, 35 Stat. 1092 (Section 51 of former Title 18).

Revision Note:

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligibility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecutions for violations of the act. Mandatory punishment provision was rephrased in the alternative because the court has this discretion by making use of its power to suspend sentence under Section 3651 of this title.

In General

The gist of the crime defined by the statute was an unlawful conspiracy based on the unlawful agreement of defendants. (1936) *Steedle v. U.S.*, (CCA 3), 85 F(2d) 867, 107 ALR 1361; (1937) *Walker v. U.S.*, 9 (CCA 8), 93 F(2d) 412, rev'g 19 FGSupp 975.

Conviction in federal court under the section, precluded a subsequent prosecution in state court for offense growing out of same transaction. (1933) *People v. Spitzer*, 148 Misc 97, 266 NYS 522.

Constitutionality

Congress was without constitutional power to enact laws to punish persons for conspiring to deprive persons of equal protection of state laws. (1883) *U.S. v. Harris*, 106 US 629, 27 LEd 290, 1 SCR 601

The section was constitutional. (1900) *Motes v. U.S.* 178 US 458, 44 LEd 1150, 20 SCR 993.

The inclusion of Fourteenth Amendment (Const. amend. 14) rights within the compass of this section does not render it unconstitutionally vague. (1966) *U.S. v. Guest*, 383 US 745, 16 LEd(2d) 239, 86 SCR 1170, rev'g (DC-Ga), 246 FSupp 475.

Nature of the Statute

The section was a purely criminal statutory provision and did not make damages to be recovered in an action for acts constituting the offense, penalties, as bearing on what statute of limitations applied to such action for damages. (1913) *O'Sullivan v. Felix*, 233 US 318, 58 LEd 980, 34 SCR 596, aff'g (CCA 5), 194 Fed 88.

This section does not provide a civil cause of action for damages. (1958) *Watson v. Devlin*, (DC-Mich), 167 FSupp 638. Aff'd 268 F(2d)211.

Neither general criminal conspiracy statute (Section 371 of this title) nor civil rights criminal conspiracy statute (this section) creates a civil cause of action. (1965) *Bryant v. Donnell*, (DC-Tenn), 239 FSupp 681.

Conspirators

The section applied to the acts of two or more election officers who conspired to injure and oppress qualified voters by omitting the votes cast from the count and return to the state election board. (1915)
U.S. v. Mesley, 238 US 383, 59 LEd 1355, 35 SCR 904.

BATTERY STATUTES

- 243.1 P.C. Battery against custodial officer (Felony)
- 243.2 P.C. Battery committed on school property (Misdemeanor)
- 243.3 P.C. Battery against operator or driver of public transportation (including school bus driver)
(Felony - Misdemeanor)
- 243.4 P.C. Sexual battery (Felony - Misdemeanor)
- 243.6 P.C. Assault and battery on process server (Misdemeanor) (Added in 1984)
- 217.1 P.C. Assaults on specified public officials (Felony)
- 244.5 P.C. Assault with a stun gun or taser (Felony)

ASSAULT STATUTES

- 241.1 P.C. Assault upon custodial officer (Felony - Misdemeanor)
- 241.2 P.C. Assault on teacher, school administrator, or school security officer (Misdemeanor)
- 241.3 P.C. Assault against transport personnel (Misdemeanor)
- 241.4 P.C. Assault on peace officer of school district (Felony - Misdemeanor)

ASSAULT WITH DEADLY WEAPON STATUTES

- 245.1 P.C. Definition of firefighter and EMT
- 245.2 P.C. ADW upon transportation personnel
- 245.3 P.C. ADW upon custodial officer (Felony)
- 245.5 P.C. ADW upon school employees

DEGREE OF ROBBERY

- 212.5a P.C. Robbery of streetcar/trolley car operator (Felony - First Degree)
- 212.5a P.C. Robbery in inhabited dwelling house/trailer coach (Felony - First Degree)
- 212.5b P.C. All kinds of robbery other than those listed in subdivision (a) are of the second degree.

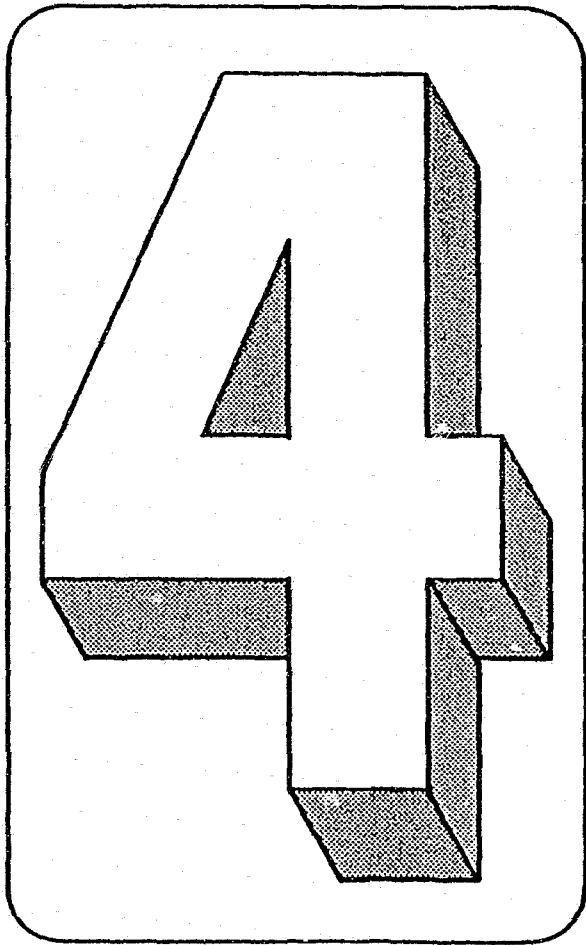
1ST. AMENDMENT

The Right to Freedom of Religion,

Speech, Press, Assembly, Petition

Congress shall make no Law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*Effective:
December 15, 1791*



≡≡≡ 3 STANDARDS ≡≡≡

- PROBABLE CAUSE
- UNREASONABLENESS
- PARTICULARITY

Probable cause is most important standard from legal point of view

5TH.

AMENDMENT

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for use without just compensation.



6TH. AMENDMENT

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of state and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

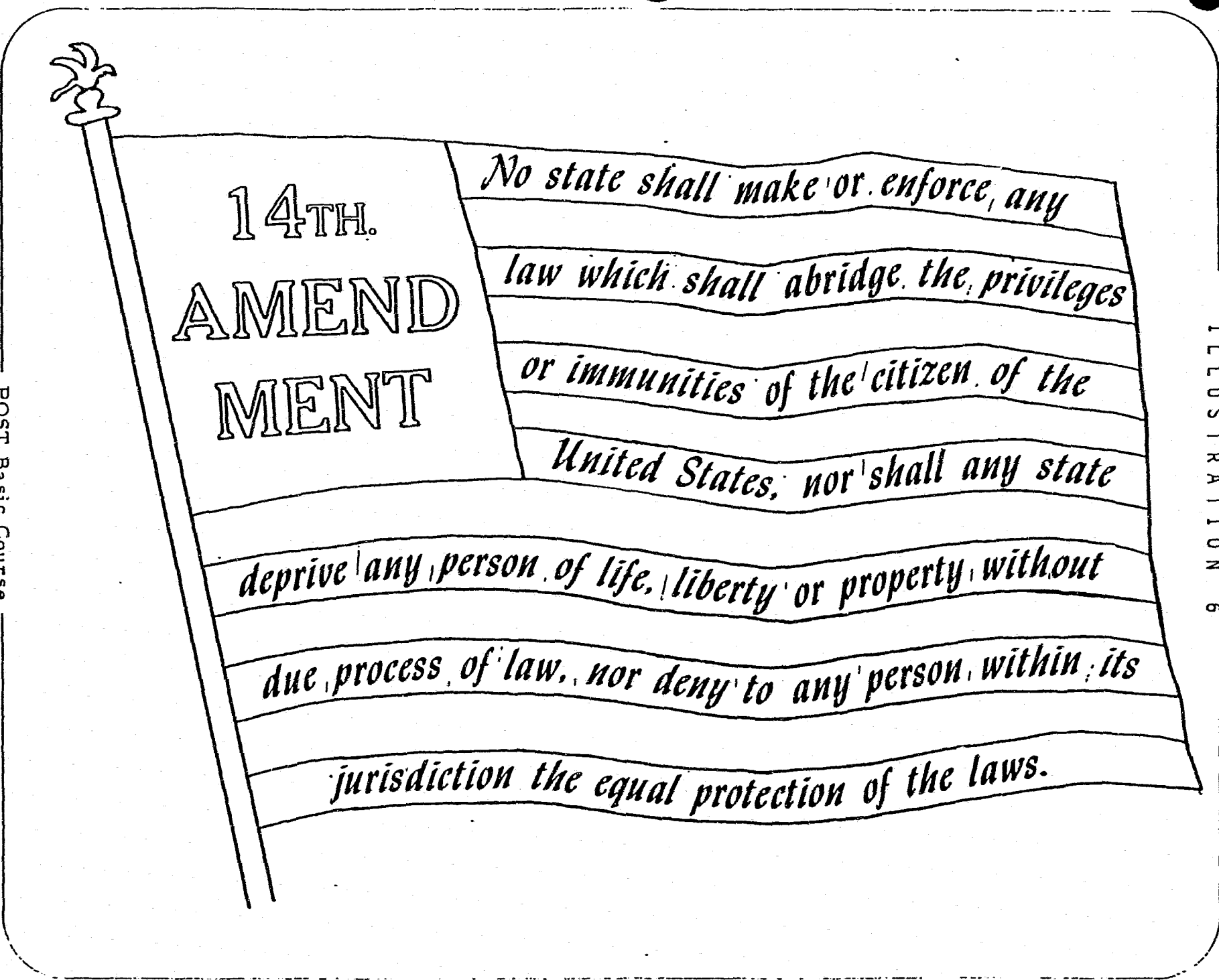


8TH. AMENDMENT

The Right to Protect Against Excessive Fines, Bail, Punishment

*Excessive bail shall not be required,
nor excessive fines imposed, nor cruel
and unusual punishment inflicted.*

*Effective:
December 15, 1791*



14TH.
AMEND
MENT

*No state shall make or enforce, any
law which shall abridge the privileges
or immunities of the citizen of the
United States; nor shall any state
deprive any person of life, liberty or property, without
due process of law, nor deny to any person within its
jurisdiction the equal protection of the laws.*

ELDER & DEPENDENT ADULT ABUSE REPORTING REQUIREMENTS

PURPOSE

Section 15630 of the Welfare & Institutions Code of California was amended effective January 1, 1986. Certain duties and obligations have been imposed upon employees of law enforcement agencies.

BACKGROUND

15630 W&I has, in the past, required health care professionals to report any incidents of "elder or dependent adult abuse" they encounter to an appropriate enforcement agency. The law makes it a misdemeanor to fail to report an incident, and provides legal safeguards to reporters of such incidents.

The State Legislature has expanded the group of persons required to report these incidents to include any employee of a law enforcement agency. The intent of this legislation is to provide aid to abused elder or dependent adults.

DEFINITIONS

Specific words and terms as used in this training bulletin and in the pertinent sections of the Welfare & Institutions Code, are defined as follows:

"DEPENDENT ADULT" means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

"ELDER" means any person 65 years of age or older.

"ABUSE" means physical abuse, sexual abuse, neglect, intimidation, cruel punishment, fiduciary abuse, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services which are necessary to avoid physical harm or mental suffering.

"PHYSICAL ABUSE" includes Sections 240, 242, 245 of the Penal Code, or any unreasonable physical constraint, or prolonged or continual deprivation of food or water.

"SEXUAL ABUSE" includes 243.4, 261, 264.1, 285, 286, 288a or 289 of the Penal Code.

"NEGLECT" means the negligent failure of any person having the care of custody of a dependent adult to exercise the degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to all of the following:

Failure to assist in personal hygiene, or in the provision of food or clothing.

Failure to provide medical care for physical and mental health needs. (No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.)

Failure to protect from health and safety hazards.

Failure to prevent malnutrition.

"ABANDONMENT" means the desertion or willful forsaking of a dependent adult, by anyone having care or custody of that person, under circumstances in which a reasonable person would continue to provide care and custody.

"FIDUCIARY ABUSE" means a situation in which any person who has the care or custody of, or who stands in a position of trust to, a dependent adult, takes, secretes, or appropriates their money or property, to any use of purpose not in the due and lawful execution of his or her trust.

"CARE CUSTODIAN" includes any employee or any other person responsible for providing goods or services necessary to avoid physical harm or mental suffering.

ADDITIONAL REFERENCES

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