

144222

BASIC COURSE INSTRUCTOR UNIT GUIDE

39

CRIMES AGAINST THE JUSTICE SYSTEM

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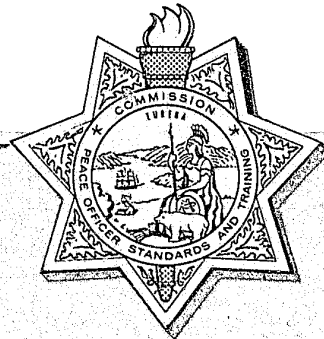
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

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

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

UNIT GUIDE 39

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Crimes Against the Justice System

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Supporting Material and References

BRIBERY

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)

Performance Objective 3.8.1

CURRICULUM

A. Bribery

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.
2. Accordingly, it is necessary to generalize the bribery elements found in all statutes.
 - a. Common bribery elements
 - (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.
 - b. Bribery of an executive officer, which includes peace officers.
 - (1) Penal Code Section 67 defines bribery of a peace officer as follows:
 - (a) 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,
 - (b) is punishable by imprisonment in the state prison and is disqualified from holding any office in this state.

People v. Buice 230 CA 2nd 324 (1964)
 - (2) Penal Code Section 68 defines receiving of a bribe by a peace officer as follows:
 - (a) 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,

- (b) 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,
- (c) 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.

3. Offenses completed

- 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.

PERJURY

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)

Performance Objective 3.8.2

CURRICULUM

A. Perjury

1. Definition of perjury Penal Code Section 118
 - a. Every person who, having taken an oath to testify, declare, depose, or certify truly before any competent tribunal, officer, or person,
 - b. in any of the cases in which such an oath may by law be administered,
 - c. willfully and contrary to such oath, states as true any material matter which the person knows to be false,
 - d. 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,
 - e. and willfully states as true any material matter which he knows to be false, is guilty of perjury.
2. Definition of material in perjury cases
 - a. In perjury cases, testimony is material when it can be said that it could probably have influenced the tribunal upon the issues of the case.
 - b. 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.
 - c. 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.
3. Punishment: Perjury is punishable by imprisonment in the state prison (Penal Code Section 126)

B. Subornation of perjury

1. Defined

- a. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury (127 P.C.).
- b. Subornation of perjury is punishable in the same manner as if personally guilty of the perjury so procured (127 Penal Code Section).

2. Elements of 127 Penal Code Section

- a. To obtain a conviction, it is necessary that person procured actually perjured themselves,
- b. that the perjury resulted from the accused's procurement of it, and
- c. that the procurer knew that the testimony procured and given was untrue.

- (1) It is not subornation of perjury to procure testimony of something the procurer actually believes to be true.

C. Compounding a crime - Penal Code Section 153

- 1. Penal Code Section 153 covers the offense of compounding crimes. There are four elements to this offense:
 - a. any person having knowledge of a crime
 - b. receives something of value, or agrees to receive it
 - c. in return for (1) concealing that crime, or
 - (2) refraining from prosecution, or
 - (3) withholding evidence
 - d. except in the cases provided for by law.

IMPERSONATION OF AN OFFICER

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)

Performance Objective 3.8.4

CURRICULUM

- A. Impersonation of officer (Penal Code Section 146a)
 1. Any person who falsely represents himself to be a public officer or investigator, inspector, deputy, or clerk 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. Is guilty of a misdemeanor
- B. Fraudulent personation of peace officer - Penal Code Section 538d
 1. Any person other than one who by law is given the authority of a peace officer who:
 - a. willfully wears, exhibits, or uses the authorized badge, insignia, emblem, device, label, certificate, card, or writing of a peace officer,
 - b. with the intent of fraudulently impersonating or inducing the belief he is a peace officer,
 - c. or any person who willfully wears, exhibits, or uses, or who willfully makes, sells, loans, gives, or transfers to another any
 - d. badge, insignia, emblem, device, or any label, certificate, card, or writing,
 - e. which so resembles the authorized badge, insignia, emblem, device, or any label, certificate, card, or writing,
 - f. as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer,

g. is guilty of a misdemeanor.

OBSTRUCTION OF AN OFFICER'S DUTIES

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))

Performance Objective 3.8.5

CURRICULUM

- A. Resisting public officers in the discharge of their duties (Penal Code Section 148(a)) - Misdemeanor.
1. 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. No physical contact with the officer is needed for the crime to be complete. Verbal interference is possible when accompanied with willful resistance, delay, or obstruction. May develop into a riotous situation (Penal Code Sections 404 and 404.6) when accompanied with urgings to riot.
 3. This is a misdemeanor.

(NOTE: Commonly referred to as "resisting arrest" however, there can be a violation when an officer is performing other than an arrest function)
- B. Removing or taking weapon (Penal Code Section 148(b))
1. Every person who, during the commission of any offense described in subdivision (a) removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, public officer or peace officer is punishable by imprisonment in the county jail not to exceed one year, or in the state prison.
- C. Resisting public officers in the discharge of their duties (Penal Code Section 148(c)) - Felony
1. Any person who during the commission of any offense described in 148(a) removes or takes a firearm from the person of or immediate presence of a public officer or peace officer is guilty of a felony.
 2. Any person who removes any weapon, other than a firearm, from the person of or immediate presence of a peace officer is guilty of a felony.
 3. Specific intent to take an officer's weapon can be demonstrated by any of the following direct, but ineffective acts:

- a. Defendant unfastened the officer's holster strap.
- b. Firearm was partially removed from the holster.
- c. The firearm safety was released by the defendant.
- d. An independent witness corroborates a statement by the defendant that he or she intended to take the weapon, and the defendant actually touched the weapon.
- e. An independent witness corroborates that the defendant had his or her hand on the firearm and tried to take it from the officer who was holding it.
- f. The defendant's fingerprint was found on the firearm or holster.
- g. Scientific physical evidence shows that the defendant did in fact touch the firearm.
- h. In the course of a struggle, the firearm fell and the defendant tried to pick it up.

D. Removing or taking firearm - punishment (Penal Code Section 148(d))

- 1. 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 is guilty of a public offense, punishable by imprisonment in a county jail not to exceed one year or in the state prison.

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:

- a. The officer's holster strap was unfastened by the defendant.
- b. The firearm was partially removed from the officer's holster by the defendant.
- c. The firearm safety was released by the defendant.
- d. An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.
- e. 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.
- f. The defendant's fingerprint was found on the firearm or holster.

- g. Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.
- h. In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

E. Resisting executive officers - Penal Code Section 69

In re. M.L.B. 110 CA3 501 (1980)

- 1. 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,
- 2. or who knowingly resists by the use of force or violence, such officer in the performance of his duty is guilty of a felony.
- 3. Explain difference between felonious and misdemeanor resisting.

F. Threatening school official - Penal Code 71

- 1. "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, is guilty of a public offense."

G. Witness intimidation - Penal Code Section 136.1

- 1. Intimidation of witnesses and victims, offenses, penalties; enhancement; aggravation.
 - a. Except as provided in subdivision (c), any person who does any of the following is guilty of a misdemeanor:
 - (1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.
 - (2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.
 - b. Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a misdemeanor:
 - (1) Making any report of such victimization to any peace officer or state or local law enforcement officer or

probation or parole or correctional officer or prosecuting agency or to any judge.

- (2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.
 - (3) Arresting or causing or seeking the arrest of any person in connection with such victimization.
- c. Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:
- (1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.
 - (2) Where the act is in furtherance of a conspiracy.
 - (3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.
 - (4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.
- d. Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of such attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.
- e. Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.
- f. The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170. (Added by Stats. 1980, c.686, § 2.1. Amended by Stats. 1982, c. 1098, § 1,; Stats. 1990, c. 350 (S.b.2084), § 10.)

FILING A FALSE POLICE REPORT

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)

Performance Objective 3.8.6

CURRICULUM

- A. False reporting of criminal offense (Penal Code Section 148.5)
 1. Every person who reports to any peace officer, listed in 830.1, 830.2, 830.3, 830.4, 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. The only element is knowingly reporting to a law enforcement officer false information.
 3. This is a misdemeanor.
 4. False report of emergency - Penal Code Section 148.3a - Misdemeanor.
 5. False report of emergency resulting in injury to any person - Penal Code Section 148.3b - Felony

2

REFUSAL TO JOIN POSSE COMITATUS

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)

Performance Objective 3.8.7

CURRICULUM

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

1. Every able bodied person above 18 years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or
2. By neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or
3. By neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of a criminal offense, being thereto lawfully required by:
 - a. any uniformed peace officer or
 - b. officer displaying an official badge or identification or
 - c. by any judge.
4. Is guilty of a misdemeanor, punishable by a fine only.

People exempt from Penal Code Section 150 - members of the armed forces when on duty (Sections 391 and 560, Military and Veteran's Code).

B. False representation of identity to police officer - Penal Code Section 148.9 (a misdemeanor)

1. 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 the proper identification of the person by the investigating officer is guilty of a misdemeanor.
2. Vehicle Code Section 31, related section
3. Penal Code Section 529.3, Related section - False personation (felony)

UNLAWFUL ASSEMBLY

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)

Performance Objective 3.23.1

CURRICULUM

- A. Unlawful assembly - (Penal Code Section 407) - Misdemeanor
1. Definition: 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.
 - a. Punishment is set forth in Penal Code Section 408: Every person who participates in any riot or unlawful assembly is guilty of a misdemeanor.
 2. Discussion I
 - a. Two or more persons assemble together to do an unlawful act.
 - (1) Those assembled must intend to commit an unlawful act.
 - (2) Or assembled to engage in an unlawful purpose.
 - b. Common intent may be proved by circumstantial evidence.
 3. Discussion II
 - a. Two or more persons assemble together do a lawful act in a violent, boisterous, or tumultuous manner.
 4. No requirement that an overt act be done.
 - a. Even if purpose of assembly is lawful, the crowd can be dispersed. (See Penal Code Section 726)
 - b. Considerations: Hour of meeting, acts done by a group and a group's demeanor.

DISOBEDIENCE TO A DISPERSAL ORDER

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)

Performance Objective 3.23.2

CURRICULUM

- A. Remaining present at place of riot after warning to disperse - (Penal Code Section 409) - Misdemeanor
 1. 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.
 - a. A conviction under this section is dependent upon the provisions of Penal Code Section 726 having been carried out.
 2. Magistrates and officers to command rioters to disperse Penal Code Section 726
 - a. 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.
 - (1) See Penal Code Section 410; magistrate neglecting or refusing to disperse rioters (misdemeanor).
 - b. 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."
 - c. 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.
 3. To Arrest Rioters If they do not disperse (Penal Code Section 727) - Misdemeanor

- a. 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.
 - (1) See refusing to join posse or aid officers in arrest (Penal Code Section 150).
- 4. 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.
- 5. 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)

INCITEMENT TO OR PARTICIPATION IN A RIOT

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)

Performance Objective 3.23.3

CURRICULUM

A. Rout (Penal Code Section 406) - Misdemeanor

1. Two or more persons
2. Assembled and acting together
3. Make any attempt or advance toward commission of an act
4. Act would be a riot if committed.

NOTE: Simply stated - a rout is an attempted riot.

B. Riot (Penal Code Section 404) - Misdemeanor

1. Two or more persons acting together:
 - a. With a common intent
 - b. Having used force or violence or threatened to use such force or violence.
 - c. With immediate power to execute such threat, and
 - d. The acts of defendants must disturb the public peace.
 - e. As used in this section, disturbing the public peace may also occur in any place of confinement.

Note: 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. 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?

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.

C. Urging riot, or burning or destroying property (Penal Code Section 404.6) Misdemeanor

1. 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, is guilty of a misdemeanor.

a. Must show a clear and immediate danger that a riot will ensue.

LYNCHING

Given a word picture depicting a possible 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 and 405b)

Performance Objective 3.23.4

CURRICULUM

A. Lynching (Penal Code Section 405a) - Felony

1. The taking by means of a riot of any person from the lawful custody of any peace officer is a lynching.
 - a. Punishable as a felony (Penal Code Section 405b)
 - b. Prisoner must be arrested before he can be "lynched" (must be in "lawful" custody).
 - c. The courts have held that the 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, may be rescue (Penal Code Section 4550).
 - d. 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.
2. Related sections:
 - a. Escape: Penal Code Section ~~4530 through 4536~~ 836.6
 - b. Rescue: Penal Code Section 4550

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