

155763

BASIC COURSE INSTRUCTOR UNIT GUIDE

7

CRIMES AGAINST PERSONS

April 1995

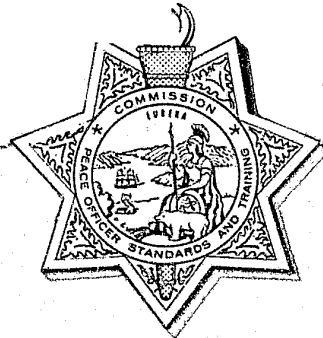
155763

U.S. Department of Justice
National Institute of Justice

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

Permission to reproduce this copyrighted material has been granted by
California Comm. on Peace Officer
Standards and Training

to the National Criminal Justice Reference Service (NCJRS).
Further reproduction outside of the NCJRS system requires permission of the copyright owner.



THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

The curricula contained in this document is designed as a *guideline* for the delivery of performance-based law enforcement training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators in cooperation with the California Commission on Peace Officer Standards and Training.

UNIT GUIDE 7

TABLE OF CONTENTS

Learning Domain 7 Crimes Against Persons

| Curriculum | Page |
|---|------|
| I. Assault | 1 |
| II. Battery | 3 |
| III. Assault with a Deadly Weapon | 5 |
| IV. Mayhem | 7 |
| V. Inflicting Corporal Injury Upon a Spouse, etc. | 9 |
| VI. Stalking | 11 |
| VII. Robbery | 13 |
| VIII. Carjacking | 15 |
| IX. Extortion | 17 |
| X. False imprisonment | 19 |
| XI. Kidnapping | 21 |
| XII. Child Abduction, Child Detention and Violation of Custody Degrees .. | 23 |
| XIII. Elder and Dependent Adult Abuse | 25 |
| XIV. Excusable and Justifiable Homicide | 27 |
| XV. Manslaughter | 31 |
| XVI. Murder | 35 |
| XVII. Aiding, Advising or Encouraging a Suicide | 39 |
| XVIII. Title 18, Section 241 of the U. S. Code | 41 |
| XIX. Title 18, Section 242 of the U. S. Code | 43 |

Supporting Materials and References

CURRICULUM

I. ASSAULT

A. Assault

1. Assault defined (Penal Code Section 240)

An assault is "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."

2. Elements of assault

- a. An unlawful attempt, coupled with
- b. The present ability,
- c. To commit a violent injury.

3. Crime classification: Misdemeanor

4. Intent: Assault is a specific intent crime

5. Discussion

- a. The initial crime in the evolutionary scale of violent crimes is in the form of an attempted attack on the person of another.
- b. The attempt must be unlawful. Examples of lawful assaults include:
 - (1) Prize fighting and other sporting events
 - (2) Effecting an arrest
 - (3) Self-defense
- c. Assuming, though, that the attempt is unlawful, two facts are always present in an assault:
 - (1) There is an intent to commit harm against a person, and
 - (2) a direct act is done to commit harm.
- d. The second element of an assault is dependent upon the present ability of the perpetrator to carry out the intended injury.
- e. The third element of an assault is to commit a violent injury.
 - (1) Violent injury as used in this context does not require violence or actual injury.

- (2) An effort to touch could satisfy this requirement (e.g., spitting, throwing water, etc.)

B. Assault on a Peace Officer and other specified individuals (Penal Code 241(b))

1. An assault on a peace officer is an assault which is perpetrated upon the person of a peace officer engaged in the performance of their duties where the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of their duties.

NOTE: Section 241(b) also includes firefighters, emergency medical technicians, mobile intensive care paramedics, lifeguards, process servers, traffic officers, animal control officers, physicians and nurses. The section is intended to provide enhanced penalties for assaults perpetrated upon these persons.

2. Elements of assault on a peace officer (or other specified individuals)
 - a. An unlawful attempt, coupled with
 - b. The present ability,
 - c. To commit a violent injury.
 - d. Upon the person of the specified individual
 - e. And the person committing the assault knows or reasonably should know the victim is one of the types of individuals identified in the section engaged in the performance of their duties.
3. Crime classification: Misdemeanor
4. Intent: Assault is a specific intent crime
5. Terminology
 - a. As used in this section, peace officer means any person defined in Penal Code Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.
 - b. The section also provides specific definitions for emergency medical technicians, mobile intensive care paramedics and other persons.

II. BATTERY

A. Battery defined (Penal Code Section 242)

A battery is any willful and unlawful use of force or violence upon the person of another.

B. Elements of battery

1. Willful and unlawful
2. Use of force or violence
3. On the person of another

C. Discussion

1. "Willful and unlawful" implies a purpose or willingness to commit the act.
2. "Use of force or violence"
 - (a) 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.
 - (b) Every battery contains the lesser crime of assault.
 - (c) Battery does not require an injury.
3. Battery requires contact. Without contact there is no battery.

D. Crime classification

1. Simple battery: Misdemeanor
2. Battery involving "serious bodily injury" is a felony (Penal Code Section 243(f)(5)).
3. Battery on a peace officer without injury is a misdemeanor.
4. Battery on a peace officer involving an injury which requires professional medical treatment is a felony.
 - a. A battery "upon a peace officer" can only occur if the officer is "engaged in the lawful performance of his or her duties" (This offense cannot occur in the course of an illegal arrest or an arrest involving the use of excessive force.)
 - b. The person committing the offense must know or reasonably should know that the victim is a peace officer.

E. Battery is a general intent crime.

III. ASSAULT WITH A DEADLY WEAPON

A. Assault with a deadly weapon defined (Penal Code Section 245)

An assault with a deadly weapon is 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. Elements of Assault with a Deadly Weapon

1. Unlawful attempt to commit a violent injury
2. Upon person of another
3. By use of a deadly weapon or force likely to produce great bodily injury

C. Crime classification: Felony

D. Examples of assault with a deadly weapon can include:

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

E. Assault with a Deadly Weapon is a general intent crime.

F. Terminology

- a. A "deadly weapon" can be any object capable of causing death or great bodily injury from the manner in which it is used.
- b. "Peace Officer", as used in this section refers to any person designated as a peace officer in Penal code Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

NOTE: 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.

G. Discussion

1. Any physical force is sufficient if it is capable of producing great bodily injury.
2. It is not necessary that an actual injury result from the assault.
3. If an injury does result it is an additional chargeable crime.

H. Related statutes

1. 245 (a) (2) - ADW with firearm

2. 245 (c) - ADW on peace officer
3. 245 (d) - ADW on peace officer with a firearm
4. 244 - Assault with caustic chemicals
5. 245 (e) - Authority to confiscate and destroy the deadly weapon as a nuisance

IV. MAYHEM

A. Mayhem defined (Penal Code Section 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. Elements of mayhem

1. Unlawfully and maliciously
2. deprives a human being
3. of a member of their body, or
4. disables, disfigures, or renders a member of their body useless, or
5. cuts or disables the tongue, or
6. puts out an eye, or
7. slits the nose, ear or lip.

C. Crime classification: Felony

D. Mayhem is a general intent crime.

E. Aggravated mayhem (Penal Code Section 205)

1. Aggravated mayhem involves the following additional elements:
 - a. Under circumstances manifesting extreme indifference to the physical or psychological well-being of another
 - b. Intentionally causes permanent disability, disfigurement or other described injury.
2. Aggravated mayhem is a felony carrying a substantially enhanced penalty.
3. Aggravated mayhem is a specific intent crime.

V. **INFLECTING CORPORAL INJURY UPON A SPOUSE, ETC.**

A. Spousal or cohabitant beating defined (Penal Code Section 273.5):

Any person who willfully inflicts upon his or her spouse, or any person 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.

B. Elements of corporal injury to a spouse, etc.

1. Willful infliction
2. Upon a described person
3. Corporal injury
4. Which results is a traumatic condition

C. Crime classification: Felony

D. Corporal injury to a spouse (et. al.) is a general intent crime

E. Examples of corporal injury to a spouse (et. al.) can include:

1. A person shoves their spouse to the floor and kicks them several times inflicting injury.
2. A person strikes their live in boyfriend or girlfriend in the face with a closed fist inflicting injury
3. A father of a child strikes the child's mother with an object causing injury.

F. Terminology

1. "Cohabitant" means living together for a substantial period of time resulting in some permanency of relationship.
2. "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.

G. Discussion

1. One of the following relationships between the suspect and victim must exist to fulfill the requirements of this section:
 - a. Present spouses
 - b. Cohabitants
 - c. Parents of the same child

H. Related statutes

1. Government Code Section 6254 - Victims of Penal Code Section 273.5 can have their names and addresses declared confidential.

-NOTE: Additional information regarding domestic violence and victim assistance obligations is addressed in Basic Course Instructor Unit Guide #25 (Domestic Violence)

VI. STALKING

A. Stalking defined (Penal Code Section 646.9):

Any person who willfully, maliciously and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for their safety or that of their immediate family.

B. Elements of stalking

1. Willfully, maliciously and repeatedly
2. Follows or harasses another person, and
3. Makes a credible threat
4. With the intent to place that person in reasonable fear for their safety or the safety of their immediate family.

C. Crime classification: Felony

D. Stalking is a specific intent crime.

E. Terminology

1. "Harass" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.
2. "Credible threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for their safety or the safety of their immediate family.
3. "Immediate family" means any spouse, parent, child, or other persons related by blood, or current cohabitants or prior cohabitants who regularly resided in the household within the past six months.

F. Discussion

1. This section does not apply to conduct that occurs during labor picketing.
2. This section includes threats made by persons in custody.

G. Related Sections

1. Penal Code Section 601 - Trespass; credible threat to cause serious bodily injury
2. Penal Code Section 646.9(k)(1) - Victim notification requirement upon the release of the perpetrator by custodial personnel.

VII. ROBBERY

A. Robbery defined (Penal Code Section 211):

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.

B. Elements of robbery

1. A person had possession of personal property of some value, however slight
2. Such property was taken from such person or from his or her immediate presence
3. Such property was taken against the will of such person
4. The taking was accomplished either by force, violence, fear or intimidation, and
5. Such property was taken with the specific intent permanently to deprive such person of the property

C. Crime classification: Felony

D. Robbery is a specific intent crime

E. Terminology

1. Force

- a. Any force is sufficient to establish a robbery.
- b. Physical resistance on the part of the victim is not necessary to establish a robbery.

2. Fear (Penal Code Section 212)

- a. The fear of an unlawful injury to the person or property of the person robbed, or to any of his or her relatives or family members, or
- b. the fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.
- c. 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.

3. Immediate presence

- a. Immediate presence must mean at least an area within which the victim could reasonably be expected to exercise some physical control over their property.

b. The following are examples of what courts hold to be immediate presence:

- (1) Example--robbery: A victim 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.
- (2) Example--robbery: A night watchman is held in one room while property under his control is removed from an adjoining warehouse.
- (3) 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.

F. Degrees of robbery

1. Robbery in the first degree (Penal Code Section 212.5) involves robbery of:
 - a. The operator of a public transportation vehicle
 - b. A person in an inhabited dwelling, house, or vessel
 - c. Any person using an automated teller machine (ATM) or any person who used an ATM and is still in the immediate vicinity.
2. All other robberies are second degree robberies.
3. First degree robberies carry enhanced penalties.

VIII. CARJACKING

A. Carjacking defined (Penal Code Section 215):

The felonious taking of a motor vehicle in the possession of another from his or her person or immediate presence or from the person or immediate presence of a passenger, temporarily depriving the person of the vehicle by means of force or fear.

B. Elements of carjacking

1. Taking
2. motor vehicle
3. from the person or immediate presence
4. of a motorist or passenger
5. by force or fear

C. Crime classification: Felony

D. Carjacking is a specific intent crime.

E. Discussion

1. Kidnapping during a carjacking or attempted carjacking is punishable by life imprisonment.
2. Murder during carjacking may be punishable by death.
3. Prison sentences are enhanced for carjacking involving the use of weapons and for second or subsequent carjacking convictions

IX. EXTORTION

A. Extortion defined (Penal Code Section 518):

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. Elements of extortion

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. Crime classification: Felony

D. Extortion is a specific intent crime

E. Discussion

1. Extortion is often referred to as "blackmail".
2. Threats which may constitute extortion (Penal Code Section 519)
 - a. 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.
 - b. The force or fear in extortion leaves the victim a choice and does not compel the victim to allow the taking of their property against their will which would constitute a robbery.
3. Differences between extortion and robbery
 - a. In extortion, property obtained can be real or personal property while in robbery the property obtained is personal.

- b. In extortion, property need not be taken from a person or that person's immediate presence.
 - c. Force is an alternative in extortion, but there must be force or fear for robbery.
 - d. Extortion is committed with consent of the victim while in robbery it is done without the victim's consent.
4. 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.
- a. If some other cause is the primary and controlling cause for the consent, there is no extortion.
 - b. The consent may not be entirely voluntary; it is the lessor of the two evils.

F. Related statutes

- 1. Penal Code Section 521 - Extortion under color of official right (misdemeanor)
- 2. Penal Code Section 523 - Threatening letters
- 3. Penal Code Section 524 - Attempted extortion

X. FALSE IMPRISONMENT

A. False imprisonment defined (Penal code Section 236):

False imprisonment is the unlawful violation of the personal liberty of another.

B. Elements of false imprisonment

1. Unlawful violation
2. of the personal liberty
3. of another

C. Crime classification

1. False imprisonment - misdemeanor
2. False imprisonment - felony if accomplished by:
 - a. Violence
 - b. Menace
 - c. Fraud, or
 - d. Deceit

D. False imprisonment is a general intent crime.

E. Discussion

1. A person intentionally and unlawfully, violated the liberty of another person by restraining, confining or detaining that person, compelling him or her to stay or go somewhere without his or her consent; and
2. Such act was done by violence or menace
3. False imprisonment does not require that there be confinement in a jail, prison or other building.

F. Related section

1. Penal Code Section 490.5 - Pertaining to the authority for a merchant to detain a person suspected of shoplifting, theft or burglary or a theater owner to detain a person suspected of operating an unauthorized video recording device within the premises of a motion picture theater.

XI. KIDNAPPING

A. Kidnapping defined (Penal Code Section 207(a)):

1. "Every person who forcibly, or by other means of instilling fear, steals or takes, holds, detains or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same state, is guilty of kidnapping."
2. Kidnapping may be more simply defined as the unlawful, forcible taking of a person against their will from one place to another.

B. Elements of kidnaping

1. Unlawful
2. Taking of a person
3. Against their will
4. By force or fear
5. From one place to another

C. Crime classification: Felony

D. Kidnapping is a general intent crime

E. Discussion

1. Amount of force
 - a. The force used to effect the movement does not need to be physical force or even expressed threats coupled with ability to carry out the threats.
 - b. 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.
2. To arrest for forcible kidnap, a two-pronged test must be met:
 - a. Was the movement under compulsion
 - b. Was the movement substantial as opposed to slight or trivial movement
 - (1) Substantial movement does not refer to a specific distance.
 - (2) It refers to whether or not the victim was exposed to additional danger because of the movement.

F. Related sections:

1. Penal Code Section 209 - (Kidnapping for Ransom)
2. Penal Code Section 210.5 - (Taking of Hostages)
3. Penal Code Sections 277, 278 and 278.5 (Child Abduction) (discussed in the following section of this Instructor Unit Guide).

XII. CHILD ABDUCTION, CHILD DETENTION AND VIOLATION OF CUSTODY DECREES

A. Child abduction

1. Child abduction defined (Penal Code Section 277):

In the absence of a court order determining the rights of custody or visitation to a minor child, every person having a right of custody of the child who maliciously takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody right to that child.

2. Elements of child abduction

- a. In the absence of a court order determining the right of custody
- b. Every person having a right of custody who
- c. Maliciously detains, conceals or entices away that child
- d. Without good cause
- e. With the intent to deprive the custody right of another person

3. Crime classification: Felony

4. Child abduction is a specific intent crime

5. Discussion

- a. The crime of child abduction is a crime against the parent or guardian who has the right of custody of the child.
- b. The consent of the child to go with the parent who is concealing or detaining is not a defense.
- c. This section defines "good cause" as a good faith belief that the taking, detaining, concealing, or enticing away of the child is necessary to protect the child from immediate bodily injury or emotional harm.
- d. Domestic violence situations would constitute a basis for good cause.

B. Unlawful detention

1. Unlawful detention/concealment of a child defined (Penal Code Section 278):

Every person, not having a right of custody, who maliciously takes, detains, conceals, or entices away, any minor child with intent to detain or conceal that child from a person, guardian, or public agency having the lawful charge of the child shall be a felony.

2. Elements of unlawful detention/concealment of a child

- a. Every person
 - b. Not having the right of custody, who
 - c. Maliciously takes, entices or conceals away
 - d. Any minor child
 - e. With the intent to detain or conceal
 - f. From a person having lawful custody
3. Crime classification: Felony
 4. Unlawful detention/concealment of a child is a specific intent crime
- C. Violation of a custody decree
1. Violation of a custody decree defined (Penal Code Section 278.5):

Every person who has a right to physical custody of or visitation with a child pursuant to an order, judgment or decree of any court which grants another person, guardian or public agency right to physical custody of or visitation with the child, and who within or without the state detains, conceals, takes or entices away that child with the intent to deprive the other person of such right to custody or visitation
 2. Elements of violation of a custody decree
 - a. Every person who has the shared right of custody or visitation
 - b. Pursuant to a court order
 - c. Who detains, conceals, takes or entices away
 - d. With intent to deprive
 - e. The other person of custody
 3. Crime classification: Felony
 4. Violation of a custody decree is a specific intent crime.

XIII. ELDER AND DEPENDENT ADULT ABUSE

A. Elder and Dependent Adult Abuse (Penal Code Sections 368(a), 368(b) and 368(c)):

1. Elder and dependent adult abuse refers to the infliction of physical pain or mental suffering upon an elder or dependent adult or to theft or embezzlement by a caretaker.
2. Any person who, **under circumstances or conditions likely to produce great bodily harm or death**, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered is guilty of a felony (Penal Code Section 368(a)).
3. Any persons who, **under circumstances or conditions other than those likely to produce great bodily injury**, engages in the behaviors listed above is guilty of a misdemeanor (Penal Code Section 368(b)).
4. Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement with respect to the property of that elder or dependent adult is guilty of a felony or misdemeanor depending upon the value of the property (Penal Code Section 368(c)).

B. Elements

1. Any person who
2. Willfully causes or permits with knowledge
3. An elder or dependent adult to suffer unjustifiable physical or mental pain, or
4. To be placed in a condition or situation likely to produce great bodily harm or death, or
5. Who violates any provision of law proscribing theft or embezzlement to the property of that elder or dependent.

C. Crime Classifications

1. Violation of Penal Code Section 368(a) is a felony.
2. Violation of Penal Code Section 368(b) is a misdemeanor.
3. Violation of Penal Code Section 368(c) is dependent upon the value of the property: if the property exceeds \$400 it is a felony.

D. Intent

1. Penal Code Sections 368(a) and 368(b) are general intent crimes.
2. Penal Code Section 368(c) is a specific intent crime.

E. Terminology

1. "Elder" means any person who is 65 years of age or older. (Penal Code Section 368(d))
2. "Dependent adult" means any person who is between the ages of 18 and 64 who has physical or mental limitations which restricts his or her ability to carry out normal activities.
3. "Caretaker" means any person who has the care, custody or control of or who stands in a position of trust with, an elder or a dependent adult.

NOTE: This includes any patient who is between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility

F. The following crimes are frequently perpetrated against elders and dependent adults:

1. Burglary
2. Confidence games and deceptive practices
3. Theft of income checks such as social security, welfare, etc.
4. Vandalism - damage to home/car
5. Robbery
6. Pocket picking or purse snatching
7. Domestic violence

XIV. EXCUSABLE AND JUSTIFIABLE HOMICIDE

- A. Homicide defined: Homicide is the killing of a human being or fetus by another human being.
 - 1. Homicide may be lawful
 - a. Excusable
 - b. Justifiable
 - 2. Homicide may be unlawful
 - a. Murder
 - b. Manslaughter
- B. Excusable homicide
 - 1. Excusable homicide defined (Penal Code Section 195):
Homicide is excusable 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.
 - 2. Elements of excusable homicide
 - a. Killing
 - b. By accident or misfortune
 - c. Or during lawful conduct
 - d. Without intent to kill
 - 3. Discussion regarding excusable homicide
 - a. In an excusable homicide there cannot be any intent to kill, for example:
 - (1) You strike a person who hits you for no reason and he dies from brain damage
 - (2) You shove a drunk who has been mauling your wife and he falls, striking his head.
 - b. If any intent to kill appears, the act would then immediately be elevated to at least voluntary manslaughter.
- C. Justifiable homicide by public officers
 - 1. Justifiable homicide by public officers defined (Penal Code Section 196):

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

2. Elements of justifiable homicide by public officers

- a. Killing
- b. By public officers (or those acting under their authority)
- c. In obedience to any judgement of a competent court, or
- d. When necessarily committed in overcoming actual resistance, or
- e. In the discharge of any other legal duty, or
- f. When necessarily committed in retaking escaped felons or to arrest persons charged with a felony who are fleeing from justice or who resist such arrest.

NOTE: The use of deadly force against a fleeing felon must pertain to a forcible and atrocious crime where there is a substantial risk of death or serious bodily harm.

D. Justifiable Homicide by other than public officers

1. Justifiable homicide by other than public officers defined (Penal Code Section 197):

Homicide is justifiable when committed by any person when resisting murder and felonies; defending home, property or persons; apprehending a felon or preserving peace.

2. Elements of justifiable homicide by other than public officers

- a. Killing
- b. By any person
- c. When resisting any attempt to murder any person or
- d. Resisting an attempt to inflict great bodily injury upon any person or
- e. In defense of habitation, property or person against anyone intending to commit a violent felony or
- f. When committed during the lawful apprehension of a felon or
- g. When lawfully suppressing any riot or in lawfully keeping or preserving the peace

3. Discussion regarding justifiable homicide by other than public officers

- a. The defense of habitation
 - (1) The defense of habitation alone is not sufficient.
 - (2) It must be shown that there was an intention to commit a felony or other violence.
- b. Fear
 - (1) Fear is judged by the standards of the reasonable and prudent person.
 - (2) Threats alone do not justify homicide.
- c. Mutual combat: Anyone who kills while engaged in mutual combat must really and in good faith have endeavored to decline any further struggle before the homicide was committed.

4. Examples of justifiable homicides by other than public officers

- a. Killing a neighbor attempting to murder his wife
- b. Killing a burglar who has just entered your bedroom and is attacking you with apparent deadly force
- c. Killing of an armed robber by the store owner during a robbery
- d. Killing a man attempting to kidnap your child
- e. Killing a man attempting to rape your wife
- f. A man steals your wife's purse on the street. You chase him and tackle him. He strikes his head and dies.

E. Related section

- 1. (Penal Code Section 198.5) - Home protection; use of deadly force

XV. MANSLAUGHTER

- A. Manslaughter is defined as the unlawful killing of a human being without malice (Penal Code Section 192). It is classified as:
 - 1. Voluntary
 - 2. Involuntary
 - 3. Vehicular
- B. Voluntary Manslaughter
 - 1. Voluntary manslaughter defined (Penal Code Section 192(a)):
The unlawful killing without malice upon sudden quarrel or heat of passion
 - 2. Elements of voluntary manslaughter
 - a. Killing
 - b. Sudden quarrel or
 - c. Heat of passion
 - 3. Crime classification: Felony
 - 4. Voluntary manslaughter is a general intent crime
 - 5. Definitions
 - 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.
 - (1) 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).
 - (2) "Hot blood" must exist at the time of the act.
 - (3) Cooling-off period - the period of time between the provocation and the act of killing.
 - c. "Human being" in this section does not include a fetus.
 - d. "Malice" means ill will or evil design.
 - 6. Discussion relating to voluntary manslaughter
 - a. There is no malice of any type present in a manslaughter.

- b. It is not manslaughter if the defendant lies in wait.

C. Involuntary Manslaughter

1. Involuntary manslaughter defined (Penal Code Section 192(b):
Unlawful killing 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, or without due caution and circumspection.
2. Elements of involuntary manslaughter
 - a. Killing
 - b. **Unlawful** act not amounting to a felony (a misdemeanor) or
 - c. In a dangerous **lawful** act without due caution (gross negligence)
3. Crime classification: Felony
4. Involuntary manslaughter is a general intent crime
5. Discussion on involuntary manslaughter
 - a. The death 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 proximate cause.
 - b. The death must occur within three years and one day after the cause of death (Penal Code Section 194).

D. Vehicular Manslaughter

1. Vehicular manslaughter defined (Penal Code Section 192(c)):
The unlawful killing of a human being, without malice, while driving a vehicle.
2. Elements of vehicular manslaughter
 - a. The unintentional and unlawful killing of a human being
 - b. While driving a vehicle either in the commission of:
 - (1) an unlawful act not amounting to a felony (i.e., while committing a misdemeanor or infraction) or
 - (2) a lawful act which might produce death, committed in an unlawful manner
3. Crime classification: Misdemeanor or felony depending upon the circumstances of the event

4. Vehicular manslaughter is a general intent crime
 5. Terminology relating to vehicular manslaughter
 - a. "With gross negligence" means a showing of willful and wanton disregard for the life and safety of others (felony)
 - b. "Without gross negligence" means negligently operating a vehicle in an unlawful manner (committing a misdemeanor)
- E. Gross Vehicular Manslaughter while intoxicated
1. Gross vehicular manslaughter while intoxicated defined (Penal Code Section 191.5): The unlawful killing of a human being, without malice, while driving under the influence
 2. Elements of gross vehicular manslaughter while intoxicated
 - a. The unintentional and unlawful killing of a human being
 - b. While driving a vehicle or a vessel either in the commission of:
 - (1) an unlawful act not amounting to a felony (i.e., while committing a misdemeanor or infraction) or
 - (2) a lawful act which might produce death, committed in an unlawful manner
 - c. While intoxicated
 3. Crime classification: Felony
 4. Gross vehicular manslaughter while intoxicated is a general intent crime.

XVI. MURDER

A. Murder defined (Penal Code Section 187):

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

B. Elements of murder

1. Unlawful killing
2. of a human being or fetus
3. with malice aforethought

C. Crime classification: Felony

D. Murder is a specific intent crime

E. Terminology

1. "Fetus" - Courts have held, in most cases, that for murder of a fetus to apply, the fetus must be viable (i.e., must be able to sustain life outside the womb).
2. "Criminal homicide" is the unlawful killing of one human being or fetus by another human being.
3. "Malice aforethought"
 - a. Malice aforethought is 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.
 - b. 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. (Express malice - Penal Code Section 188)
 - (2) An act which is intended to produce serious bodily harm. (Express 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. (Implied malice)
 - (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. (Implied malice)

(a) Malice may be inferred from the commission of one or more of the felonies described in Penal Code Section 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 (Penal Code Section 189)

1. First degree - all murder committed by means of

- a. Destructive device or explosive
- b. Knowing use of 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
 - (1) burglary
 - (2) arson
 - (3) rape
 - (4) robbery
 - (5) mayhem
 - (6) carjacking
 - (7) kidnapping
 - (8) train wrecking
 - (9) sodomy
 - (10) lewd acts with child
 - (11) forced oral copulation

(12) rape with a foreign object, or

(13) drive by shooting.

NOTE: This is known as the Felony Murder Rule (first degree) and relates to the imposition of enhanced penalties.

2. All other murders are second degree.

EXAMPLE: The sudden killing without adequate provocation and no evidence of premeditation would constitute a second degree murder.

G. The death must occur within three years and one day after the cause of death.
(Penal Code Section 194)

XVII. AIDING, ADVISING OR ENCOURAGING A SUICIDE

A. Aiding, advising or encouraging suicide defined (Penal Code Section 401):

Every person who deliberately aids, or advises, or encourages another to commit suicide

B. Elements of aiding, advising or encouraging a suicide

1. A person
2. deliberately
3. aids, advises or encourages
4. another person to commit suicide.

C. Crime classification: Felony

D. Aiding, advising or encouraging a suicide is a specific intent crime

E. Terminology

1. "Aids" means providing 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.
2. "Advises or encourages" means to spur on; to give verbal help or assistance.

XVIII. TITLE 18, SECTION 241 OF THE U.S. CODE

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 inhabitant 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.

XIX. TITLE 18, SECTION 242 OF THE U.S. CODE

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.

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

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. Mosley, 238 US 383, 59 LEd 1355, 35 SCR 904.

BATTERY STATUTES

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

ASSAULT STATUTES

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

ASSAULT WITH DEADLY WEAPON STATUTES

- 245.1 Penal Code Section Definition of firefighter and EMT
- 245.2 Penal Code Section ADW upon transportation personnel
- 245.3 Penal Code Section ADW upon custodial officer (Felony)
- 245.5 Penal Code Section ADW upon school employees

DEGREE OF ROBBERY

212.5a Penal Code Section Robbery of streetcar/trolley car operator (Felony - First Degree)

212.5a Penal Code Section Robbery in inhabited dwelling house/trailer coach (Felony - First Degree)

212.5b Penal Code Section All kinds of robbery other than those listed in subdivision (a) are of the second degree.

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

Black, Henry Campbell, Black's Law dictionary. Minnesota: West Publishing Company.

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

California Penal Code

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

Deering's California Penal Code, California: Bancroft-Whitney Co., Publishers.

Compilation of the penal statutes of the State of California, both substantive and adjective in nature.

Dramer, Dan, Criminal Law for California Peace Officers. Aviary Pub. Co., San Diego, California.

POST Video Catalog. Training Program Services

The Los Angeles Daily Journal. Los Angeles, California: Daily Journal Company, Publishers, a daily legal newspaper.

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

United States Constitution.

Weekly Law Digest. California: J. Mason Wiegall, Publishers, weekly publications.

West's Annotated California Penal Codes, Minnesota: West Publishing Co.

An additional source of appellate court decisions that have impacted on the penal statutes of this state.