

BASIC COURSE UNIT GUIDE

10

CRIMES AGAINST PERSONS

This unit guide covers the following learning goals contained in the POST Basic Course performance objective document:

- 3.17.0 Assault/Battery Law
- 3.18.0 Assault with Deadly Weapon
- 3.20.0 Felonious Assault Law
- 3.19.0 Mayhem Law
- 3.25.0 Robbery Law
- 3.10.0 Extortion Law
- 3.26.0 Kidnapping Law
- 3.27.0 Homicide Law

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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

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

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

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Learning Goals and Performance Objectives

3.10.0 EXTORTION LAW

Learning Goal: The student will understand and have a working knowledge of the crime of extortion.

- 3.10.1 Given word-pictures or audio-visual presentations depicting a possible extortion, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 518 and 520)

3.17.0 ASSAULT/BATTERY LAW

Learning Goal: The student will understand and have a working knowledge of the crimes of assault and battery as defined in California law.

- 3.17.1 Given word-pictures or audio-visual presentations depicting possible assaults, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime 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)
- 3.17.2 Given word-pictures or audio-visual presentations depicting possible batteries, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 242, 243, through 243.7)

3.18.0 ASSAULT WITH DEADLY WEAPON LAW

Learning Goal: The student will understand and have a working knowledge of the crime of assault with a deadly weapon as defined in California law.

- 3.18.1 Given word-pictures or audio-visual presentations depicting a possible assault with a deadly weapon, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 244, 244.5 and 245)

Learning Goals and Performance Objectives

3.19.0 MAYHEM/LAW

Learning Goal: The student will understand and have a working knowledge of the crimes of mayhem, as defined in California law.

- 3.19.1 Given word-pictures or audio-visual presentations depicting a possible mayhem, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 203)

3.20.0 FELONIOUS ASSAULTS LAW

Learning Goal: The student will understand and have a working knowledge of the crime of felonious assault as defined in California law.

- 3.20.1 Given word-pictures or audio-visual presentations depicting the possible infliction of corporal injury upon spouse, child or person with whom one is cohabitating, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 273.5 and 273d)
- 3.20.2 Given word-pictures or audio-visual presentations depicting possible assaults with the intent to commit certain felonies, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 220, and 261.4)

3.25.0 ROBBERY LAW

Learning Goal: The student will understand and have a working knowledge of the crime of robbery as defined in California criminal law.

- 3.25.1 Given word-pictures or audio-visual presentations depicting possible robberies, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 211, and 212.5)

Learning Goals and Performance Objectives

3.26.0 KIDNAPPING/FALSE IMPRISONMENT LAW

Learning Goal: The student will understand and have a working knowledge of the crime of kidnapping and false imprisonment as defined in California criminal law.

- 3.26.1 Given word-pictures or audio-visual presentations depicting possible kidnappings or false imprisonment, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 207, 208, 209, 210.5, 236, 237, 277, 278, and 278.5)

3.27.0 HOMICIDE LAW

Learning Goal: The student will understand and have a working knowledge of crimes of homicide as defined in California law.

- 3.27.1 Given word-pictures or audio-visual presentations depicting the possible aiding or encouraging of a suicide, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 401)
- 3.27.2 Given word-pictures or audio-visual presentations depicting possible murders, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 187 and 189)
- 3.27.3 Given word-pictures or audio-visual presentations depicting homicides, the student will determine if the homicide is excusable, Penal Code Section 195; justifiable, Penal Code Sections 196 and 197; or neither.
- 3.27.4 Given word-pictures or audio-visual presentations depicting possible manslaughter, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 191.5, 192, and 192.5)

Material/Equipment

Each training institution should develop its own list of equipment and materials for each unit. This list is dependent upon the instructional strategies methods/media considerations.

No special material or equipment needed.

Learning Goal 3.17.0: The student will understand and have a working knowledge of the crimes of assault and battery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>I. ASSAULT AND BATTERY LAW (3.17.0)</p> <p>A. Assault (P.C. 240)</p> <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> 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. <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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. 	<p>3.17.1 Given word-pictures or audio-visual presentations depicting possible assaults, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 240, 241, 241.1, 241.2, 241.4, 241.6, 241.7, and 243.5)</p>

Learning Goal 3.17.0 : The student will understand and have a working knowledge of the crimes of assault and battery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>a. For example, a person attempting to slap a bank teller who was behind a protective glass, would not have the present ability to complete the act.</p> <p>b. Additionally, anything that prevents the assault and is uncontrolled by any perpetrator does not reduce the status of the crime. If someone intervenes to prevent the assault the crime is complete. It is the assault which is the crime. There does not have to be contact.</p> <p>7. The third element does not necessarily mean that the victim must suffer some bodily harm.</p> <p>a. The mere act of <u>spitting at someone, squirting a hose at someone, or even trying to kiss someone against their will, satisfies the requirements for injury.</u></p> <p>b. Likewise, the act of trying to strike, kick or otherwise harm someone, but <u>missing</u>, also satisfies the requirement.</p> <p>8. Assault, then, simplified, is the act of trying to complete contact with someone with the idea of inflicting harm; or touching someone against his/her will while possessing the ability to do so. If the attempt to unlawfully contact someone is completed, then a different crime, "battery," is present.</p> <p>B. Battery (P.C. 242)</p> <p>1. Definition of Battery</p> <p>Battery defined is "any willful and unlawful use of force or violence upon the person of another."</p>	<p>3.17.2</p> <p>Given word-pictures or audio-visual presentations depicting possible batteries, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 242, 243 through 243.7)</p>

Learning Goal 3.17.0 : The student will understand and have a working knowledge of the crimes of assault and battery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>2. Corpus Delicti--Elements of the crime</p> <p>a. Willful and unlawful and,</p> <p>(1) The intent implies a purpose or willingness to commit the act.</p> <p>(2) A general INTENT crime.</p> <p>b. Any use of force or violence</p> <p>(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.</p> <p>(2) Every battery contains a lesser crime of assault.</p> <p>3. Penalties as defined in P.C. 243:</p> <p>a. Simple battery: punishment - misdemeanor</p> <p>b. Battery on a peace officer - misdemeanor</p> <p>c. Battery on a peace officer - felony</p> <p>(1) An injury requiring medical treatment.</p> <p>d. Battery "serious injury" - felony</p>	

Reference Notes

Other 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)

Learning Goal 3.18.0 : The student will understand and have a working knowledge of the crime of assault with a deadly weapon as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>II. ASSAULT WITH DEADLY WEAPON LAW (3.18.0) 245 P.C.</p> <p>A. Definition of Assault With a Deadly Weapon</p> <ol style="list-style-type: none"> 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. <p>B. <u>Corpus Delicti</u>--Elements of Assault With a Deadly Weapon</p> <ol style="list-style-type: none"> 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. <ol style="list-style-type: none"> 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. <p>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.</p> <p>C. <u>Intent</u></p> <ol style="list-style-type: none"> 1. General intent crime. 	<p>3.18.1</p> <p>Given word-pictures or audio-visual presentations depicting a possible assault with a deadly weapon, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 244, 244.5, and 245)</p>

Reference Notes

Other 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)

Learning Goal 3.18.0: The student will understand and have a working knowledge of the crime of assault with a deadly weapon as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>D. <u>Injury</u></p> <ol style="list-style-type: none"> 1. It is not necessary that an actual injury result from the assault. <p>E. The section is written with very broad elements.</p> <p>To illustrate, the following could be interpreted to be an assault committed under this section:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>F. Penalty (P.C. 245) Felony with enhanced penalty if committed upon peace officer, firefighter, emergency rescue personnel, transportation personnel, or custodial officer.</p> <ol style="list-style-type: none"> 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. <p>G. 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.</p>	

Reference Notes

Other 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

Learning Goal 3.20.0 : The student will understand and have a working knowledge of the crime of felonious assault as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>III. FELONIOUS ASSAULTS LAW (3.20.0)</p> <p>A. Definition of Section 220 P.C. states that every person who assaults another with <u>intent</u> to: commit mayhem, rape, sodomy, oral copulation or any violation of Section 264.1, 288, or 289.</p> <p>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.</p> <p>C. Corpus Delicti--Elements of Crime Section 220 P.C.</p> <ol style="list-style-type: none"> 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. <p>D. Examples of unlawful acts:</p> <ol style="list-style-type: none"> 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 (664/187). 	<p>3.20.2</p> <p>Given word-pictures or audio-visual presentations depicting possible assaults with the intent to commit certain felonies, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 220 and 261.4)</p>

Learning Goal 3.20.0 : The student will understand and have a working knowledge of the crime of felonious assault as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>E. Section 273.5 P.C. Spousal or Cohabitant Beating (Felony)</p> <ol style="list-style-type: none"> 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. <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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. 	<p>3.20.1 Given word-pictures or audio-visual presentations depicting the possible infliction of corporal injury upon spouse, child, or person with whom one is cohabiting, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 273.5 and 273d)</p> <p>NOTE: Government Code 6254 - Victims of 273.5 P.C. can have their names and addresses declared confidential.</p>

Learning Goal 3.19.0: The student will understand and have a working knowledge of the crime of mayhem as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>IV. MAYHEM LAW (3.19.0)</p> <p>A. Definition of Mayhem (P.C. 203)</p> <p>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.</p> <p>B. Corpus Delicti--Elements of the Crime (P.C. 203)-Felony</p> <ol style="list-style-type: none"> 1. Unlawful battery and maliciously 2. Inflicting or attempting to inflict violent injury 3. One or more described injuries as a result <p>C. Nature of Injuries</p> <ol style="list-style-type: none"> 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 use- less for practical purposes. 3. Disabling the tongue by biting. 4. Biting through the lip was a "slit" within the meaning of this section. <p>D. Intent</p> <ol style="list-style-type: none"> 1. Does not require specific intent to inflict the <u>resulting</u>-injury. <ol style="list-style-type: none"> a. An attempt to hit the head which results in knocking out an eye or tearing off an ear. 	<p>3.19.1</p> <p>Given word-pictures or audio-visual pre- sentations depicting a possible mayhem, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 203)</p>

Learning Goal 3.19.0 : The student will understand and have a working knowledge of the crime of mayhem as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>E. Aggravated Mayhem (P.C. 205)</p> <ol style="list-style-type: none">1. Extreme indifference to the physical or psychological well-being of another.2. Intentionally causes permanent disability or disfigurement.	

Learning Goal 3.25.0 : The student will understand and have a working knowledge of the crime of robbery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>V. ROBBERY LAW (3.25.0)</p> <p>Robbery is one of the major crimes. It is one of the crimes 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.</p> <p>A. Definition of Robbery (211 P.C.)</p> <ol style="list-style-type: none"> 1. 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. <p>B. Fear Defined (212 P.C.)</p> <ol style="list-style-type: none"> 1. 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, 2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person being robbed. <p>C. Robbery (212.5)</p> <ol style="list-style-type: none"> 1. 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. <p>The following is a breakdown of the elements of a robbery describing each element and what is necessary in each to constitute a robbery:</p> <ol style="list-style-type: none"> 1. Felonious taking (Asportation) <ol style="list-style-type: none"> a. Possession of the property must be accomplished. <ol style="list-style-type: none"> (1) Physical or Constructive b. The length of time that the suspect holds the property is not important as long as actual possession takes place. 	<p>3.25.1</p> <p>Given word-pictures or audio-visual presentations depicting possible robberies, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 211 and 212.5)</p>

Reference Notes

Degree of Robbery

- 212.5a P.C. Robbery of certain public transportation conveyances and passengers (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.

Learning Goal 3.25.0 : The student will understand and have a working knowledge of the crime of robbery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(1) 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.</p> <p>2. Property taken</p> <ul style="list-style-type: none"> a. The property taken in a robbery must be personal property. b. Property taken must have value. (fair market value) c. The actual value of the property is of no concern as long as it has some value. (intrinsic value) d. Property taken must be of another. e. 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. f. 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. g. 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. h. However, it is robbery if the intent can be shown that the person retaking the money intended to take more than he had lost. i. 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. 	<p>NOTE: People vs. Fain Cal 3rd 1983</p>

Learning Goal 3.25.0 : The student will understand and have a working knowledge of the crime of robbery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>3. From the person or immediate presence.</p> <ul style="list-style-type: none"> a. In robbery, the taking of property must either be from the person or the immediate presence of another. b. 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. c. The following are examples of what our courts hold to be immediate presence: <ul style="list-style-type: none"> (1) The term "from the person" is obvious. (2) 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. (3) Example--robbery: A night watchman is held in one room while property under his control is removed from an adjoining warehouse. (4) 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. <p>4. Must be against the will of the victim.</p> <ul style="list-style-type: none"> a. 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. 	<p>NOTE: People vs. Superior Ct. (Rodriquez) 159-C.A.3d 821 (1984)</p>

Learning Goal 3.25.0 : The student will understand and have a working knowledge of the crime of robbery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>5. Force</p> <ul style="list-style-type: none"> 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. <p>6. Fear</p> <ul style="list-style-type: none"> a. It is necessary that a reasonable apprehension of danger be felt. <ul style="list-style-type: none"> (1) 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. <p>7. Intent</p> <ul style="list-style-type: none"> a. Specific intent to steal is an essential element of larceny, and larceny is an essential element of robbery. b. Specific intent can be inferred from circumstances. c. 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. d. 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. <ul style="list-style-type: none"> (1) 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. 	

Learning Goal 3.25.0 : The student will understand and have a working knowledge of the crime of robbery as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>8. Asportation</p> <ul style="list-style-type: none"> a. 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. b. 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. <ul style="list-style-type: none"> (1) Example--A bank clerk is forced to give the money to another bank clerk on orders from the defendant. <p>9. A separate count of robbery can be charged for each victim.</p>	<p>NOTE: People vs. Powell 513 (1980) 101 Cal App 3rd</p> <p>People vs. Childs 112 Cal App 3rd 374 (1980) (five (5) different victims)</p>

Reference Notes

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.

Learning Goal 3.10.0 : The student will understand and have a working knowledge of the crime of extortion.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>VI. EXTORTION LAW (3.10.0)</p> <p>A. Extortion--Definition: 518 P.C.</p> <p>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.</p> <p>B. Corpus Delicti--Elements of the Crime</p> <ol style="list-style-type: none"> 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. <p>C. Punishment</p> <ol style="list-style-type: none"> 1. P.C. 520 - felony 2. P.C. 521--under color of official right -misdemeanor <p>D. Threats Which May Constitute Extortion (519 P.C.)</p> <p>Fear, sufficient to constitute extortion, may be induced by a threat either:</p> <ol style="list-style-type: none"> 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. 	<p>3.10.1</p> <p>Given word-pictures or audio-visual presentations depicting a possible extortion, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 518 and 520)</p>

Reference Notes

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)

Learning Goal 3.10.0 : The student will understand and have a working knowledge of the crime of extortion.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>E. Attempted Extortion - Punishment - Section 524 P.C. Felony/Misdemeanor</p> <ol style="list-style-type: none"> 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. <p>F. Differences Between Extortion and Robbery</p> <ol style="list-style-type: none"> 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. <p>G. Discussion:</p> <ol style="list-style-type: none"> 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 lessor of the two evils. <p><u>The force or fear</u> 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.</p>	

Learning Goal 3.26.0 : The student will understand and have a working knowledge of the crime of kidnapping and false imprisonment as defined in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>VII. KIDNAPPING/FALSE IMPRISONMENT LAW (3.26.0)</p> <p>A. False Imprisonment - Felony</p> <ol style="list-style-type: none"> 1. P.C. 236 Defined: False imprisonment is the unlawful violation of the personal liberty of another is designated as a a misdemeanor. P.C. 237 is a felony if committed by: <ol style="list-style-type: none"> a. Violence b. Menace c. Fraud, or d. Deceit <p>B. P.C. 207(a) Forcible Kidnap - Felony</p> <ol style="list-style-type: none"> 1. Defined: Kidnapping is the unlawful, forcible taking of a person against their will from one place to another. 2. The movement is not <u>unlawful</u> if accomplished by a peace officer pursuant to a legal arrest. The "unlawful" requirement means simply that neither the law nor the victim has <u>given consent</u> to the movement. 3. The <u>force</u> 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: <ol style="list-style-type: none"> a. Was the movement by compulsion? b. Was the movement substantial, as opposed to slight or trivial movement? 	<p>3.26.1 Given word-pictures or audio-visual presentations depicting possible kidnappings or false imprisonment, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 207, 208, 209, 210.5, 236, 237, 277, 278 and 278.5)</p> <p>AG Film Series Kidnapping Part I -II, 1978.</p> <p><u>People vs. Caudillo</u> (1978) 21c.3d 562 "Substantial move - ment"</p>

Reference Notes

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))

Learning Goal 3.26.0 : The student will understand and have a working knowledge of the crime of kidnapping and false imprisonment as defined in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
<ul style="list-style-type: none"> 5. Attempt Kidnapping - No movement required. 6. False imprisonment is always a lesser included offense in kidnapping. C. P.C. 207(b) Kidnapping with Intent to Commit 288 P.C. - Felony <ul style="list-style-type: none"> 1. Every person 2. Who hires, persuades, decoys, entices, seduces, by false promises, misrepresentations, or the like 3. A child under the age of 14 yrs. 4. To go from one place or another (substantial movement required) 5. With intent to commit 288 P.C. D. P.C. 207(c) Kidnapping with Intent to Take Out of This State <ul style="list-style-type: none"> 1. Forcible taking or arresting of another 2. Specific intent to remove from state 3. Absence of legal authority. <p>Note: This section punishes those peace officers who try to avoid the extradition laws.</p> <p>Example: Suspect is wanted by Arizona authorities on a very weak robbery case. Rather than risk being turned down on extradition, they attempt to kidnap him and take him out of the state.</p> E. P.C. 207(d) Kidnapping Victim Brought into This State <ul style="list-style-type: none"> 1. Abducting or taking in another state 2. Victim brought into this state. 	<p>People vs. Cole (1985) 165 C.A. 3d 41 attempt kidnap.</p>

Learning Goal 3.26.0 : The student will understand and have a working knowledge of the crime of kidnapping and false imprisonment as defined in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>F. P.C. 209(a) Kidnap for Ransom, Reward or Extortion - Felony</p> <ol style="list-style-type: none"> 1. Unlike forcible kidnapping (P.C. 207), which requires only a general intent on the part of the suspect, this crime requires that the act of kidnapping be done for the <u>specific purpose</u> of holding the victim for ransom, reward, or extortion. The specific intent to commit one of these acts must be present <u>at the time of the victim's original abduction</u>. 2. As opposed to 207 and 209b, no movement is required to complete this crime. Holding a person where captured, with intent to hold for ransom, is sufficient. <p>G. P.C. 209(b) Kidnap for Purpose of Robbery - Felony</p> <ol style="list-style-type: none"> 1. The <u>movement</u> required for conviction under this section is always more than an incidental movement or a mere detention during the commission of one of the named crimes. And, the <u>movement</u> need not relate to the same victim as does the crime. For example, if a suspect robs a liquor store, then runs out the door, jumps into a passing car, and forces the driver to help him escape, the kidnapping is one which has been accomplished for the purpose of completing a robbery. 2. If the victim suffers <u>significant bodily harm</u>, the statute provides that the suspect will be subjected to greater punishment. The bodily harm is significant wherever the victim suffers some sort of physical injury, though it need not be serious. When the victim is struck over the head, or raped, the harm is certainly sufficient. 3. The suspect should be arrested for the kidnapping <u>and</u> for the completed (or attempted) robbery or extortion. 	<p>NOTE: People vs. Daniels 71 Cal 2d 1119 (1969)</p>

Learning Goal 3.26.0 : The student will understand and have a working knowledge of the crime of kidnapping and false imprisonment as defined in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>4. Again, a two pronged test may be used for P.C. 209(b), Kidnap to Commit Robbery:</p> <p>(a) Substantial distance as opposed to merely incidental movement is necessary to commit the crime.</p> <p>(b) Movement involved subjected the victim to substantially increase risk of harm.</p> <p>H. Child Abduction</p> <p>1. P.C. 277 Maliciously Taking Child - Felony</p> <p>In the absence of a court order determining 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 of another person or a public agency also having a custody right to that child, shall be punished by imprisonment in the county jail or in State prison.</p> <p>a. This section is amended to define "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."</p> <p>2. P.C. 278 Unlawful Detention - Felony</p> <p>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.</p> <p>3. 278.5 P.C. Violation of custody decree (Felony)</p>	<p>NOTE: This section may be used as a substitute for kidnap, and also in some cases as a substitute for child molest, when the elements of a child molest or kidnap cannot be made.</p> <p>NOTE: See California Peace Officer's Source Book for updated information on T.R.O's.</p>

Learning Goal 3.26.0 : The student will understand and have a working knowledge of the crime of kidnapping and false imprisonment as defined in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>a. Every person who in violation of the physical custody or visitation provisions of a custody order, judgment, or decree takes, detains, conceals, or retains the child with the intent to deprive another person of his or her rights to physical custody or visitation shall be guilty of a felony.</p> <p>b. 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 that 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 shall be punished by imprisonment in the state prison or by imprisonment in a county jail.</p> <p>4. In <u>kidnapping</u>, the victim did not go willingly. Child stealing, on the other hand, is a crime against the parent or guardian, and consent of the child is irrelevant.</p>	

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>VIII. HOMICIDE LAW (3.27.0)</p> <p>A. Homicide</p> <ol style="list-style-type: none"> 1. Defined: Homicide is the killing of a human being or fetus by another human being. <p>B. Criminal Homicide</p> <ol style="list-style-type: none"> 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 <u>only</u> 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) <p>C. Criminal Homicide may be Classified as Either Murder or Manslaughter.</p> <ol style="list-style-type: none"> 1. Murder <ol style="list-style-type: none"> a. Murder First Degree b. Murder Second Degree 2. Manslaughter <ol style="list-style-type: none"> a. Voluntary b. Involuntary c. Vehicular <p>D. Murder Defined (P.C. 187)</p> <ol style="list-style-type: none"> 1. Murder is the unlawful killing of a human being, or a fetus, with malice aforethought. 	<p>3.27.2</p> <p>Given word-pictures or audio-visual presentations depicting possible murders, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 187 and 189)</p> <p>NOTE: Review causation Section -B.C.U.G. #8, 3.2.0 Introduction to Law.</p>

Reference Notes

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)).

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California

Unit Outline & Presentation	Objectives & Instructional Cues
<p>E. Malice Aforethought</p> <p>A predetermination to commit an act without legal justification or excuse; a purposeful action thought out in advance. It may be either <u>express</u> or <u>implied</u> malice.</p> <p>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:</p> <ol style="list-style-type: none"> 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). <p>(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.</p>	<p>3.27.3</p> <p>Given word-pictures or audio-visual presentations depicting homicides, the student will determine if the homicide is excusable, Penal Code Section 195; justifiable, Penal Code Section 196 and 197; or neither.</p>

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>F. Degrees of Murder - P.C. 189</p> <ol style="list-style-type: none"> 1. First Degree - all murder committed by means of . . . <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> 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. <p>Example: Sudden killing without adequate provocation and no evidence of premeditation.</p> b. Second degree felony murder - killing during commission or attempted commission of inherently dangerous felony not listed in 189 P.C. 	

Reference Notes

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.

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>G. Voluntary Manslaughter (P.C. 192(a)) Felony.</p> <ol style="list-style-type: none"> 1. Definition <p>The unlawful killing of a human being without malice upon a sudden quarrel or heat of passion.</p> 2. Sudden quarrel or heat of passion <ol style="list-style-type: none"> 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. <ol style="list-style-type: none"> 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. 	<p>3.27.4 Given word-pictures or audio-visual presentations depicting possible manslaughter, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 191.5, 192 and 192.5)</p>

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>H. Involuntary Manslaughter (P.C. 192(b)) - Felony</p> <p>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.</p> <p>Note: 192.b does not apply to acts committed in the driving of a vehicle.</p> <p>Two types:</p> <p>a. "Misdemeanor" manslaughter - unintentional killing during the commission of an unlawful act, not amounting to a felony, namely, a misdemeanor.</p> <p>Example: A strikes B with fist without cause; B falls to floor striking head and dies.</p> <p>b. Gross negligence - unintentional killing during the commission of a lawful act, in a criminally negligent manner.</p> <p>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.</p> <p>I. Vehicular Manslaughter - P.C. 192(c)</p> <p>1. Definition: The unlawful killing of a human being, without malice (unintentional), in the driving of a vehicle.</p> <p>a. Vehicular manslaughter.</p> <p>(1) Gross negligence - A showing of will-ful and wanton disregard for the life and safety of others. (felony)</p> <p>Example: Defendant speeding and runs stop sign; collision causes death of passenger in defendant's car.</p>	

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(2) Without gross negligence - negligently operating a vehicle in an unlawful manner. (misdemeanor)</p> <p>Example: Defendant fails to look at "blind spot" when making lane change from fast to slow lane forcing motorcyclist off road.</p> <p>(3) Without gross negligence - negligently operating an auto while under the influence, in an unlawful manner. (felony)</p> <p>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.</p> <p>b. Vehicular manslaughter involving drugs or alcohol. (191.5 PC)</p> <p>(1) With gross negligence - operation of an automobile while under the influence. (Felony)</p> <p>Example: Defendant while under the influence fails to stop for stop sign, is involved in a collision which causes death.</p> <p>2. Felony vs. misdemeanor</p> <p>As previously indicated, the degree of negligence present is the determining factor in deciding whether or not an act was committed with or without <u>gross negligence</u>. <u>Gross negligence</u> will elevate the crime to felony status.</p>	

Reference Notes

Justifiable Homicide by Peace Officer (P.C. 196)

An officer may be held civilly liable if he violates his department's "shooting policy" even though his act is justifiable under 196 P.C. Justifiable homicide (Peterson vs. Long Beach 1979)

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>3. Gross negligence defined</p> <p>Such a degree of negligence or carelessness as will amount to the want of even slight diligence; an entire failure to exercise care or the exercise of so slight a degree of care as to justify the belief that there was an entire indifference to the safety of the property and person of others and a conscious indifference to consequences.</p> <ul style="list-style-type: none"> a. Extremely difficult to say what is or isn't gross negligence. b. In speed violations, it might be just a matter of 15 mph. c. Simply failing to see a pedestrian has been held to be gross negligence. d. While operating a vehicle at high speed - colliding with another vehicle. <p>J. Aiding or Encouraging Suicide (P.C. 401)</p> <ul style="list-style-type: none"> 1. Definition <p>Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony.</p> 2. Corpus Delicti--Elements of the Crime (P.C. 401) <ul style="list-style-type: none"> a. Person <u>deliberately</u>--resulting from careful and thorough consideration. Intentionally, b. <u>Aids</u>--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. <p style="text-align: center;">or</p> c. <u>Advises</u>--To spur on; to give verbal help or assistance. 	<p>3.27.1</p> <p>Given word-pictures or audio-visual presentations depicting the possible aiding or encouraging of a suicide, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 401)</p>

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>d. <u>Another to commit suicide.</u></p> <p>e. Is guilty of a felony.</p> <p>K. Non-Criminal Homicides</p> <p>1. Excusable Homicide (P.C. 195)</p> <p>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.</p> <p>(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.</p> <p>If any intent to kill appears, the act would then immediately be elevated to at least voluntary manslaughter.</p> <p>2. Justifiable Homicide by Public Officer (P.C. 196)</p> <p>Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance either:</p> <p>a. In obedience to any judgement of a competent court; or</p> <p>(1) This section protects our executioners at a state penitentiary.</p> <p>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</p> <p>(1) Shooting a would-be assailant to save a person's life. This has to be a last-resort action.</p>	<p>3.27.3</p> <p>Given word-pictures or audio-visual presentations depicting homicides, the student will determine if the homicide is excusable, Penal Code Sections 196 and 197; or neither.</p> <p>NOTE: See: People v. Ceballos Kortum v. Alkire 69 CA3d 325 Peterson v. City of Long Beach (1979) (24 CA3d 238)</p> <p>See Unit Guide 16, Laws of Arrest.</p>

Learning Goal 3.27.0 : The student will understand and have a working knowledge of the crimes of homicide as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>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.</p> <p>(1) The use of deadly force against a fleeing felon, must pertain to a forcible and atrocious crime.</p> <p>3. Justifiable Homicide (General) P.C. 197</p> <p>Homicide is justifiable when committed by any person in any of the following cases:</p> <p>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</p> <p>(1) Shooting a neighbor when he attempts to kill his wife.</p> <p>(2) Killing a burglar who has just entered your bedroom and is attacking you with apparent deadly force.</p> <p>(3) Self-defense</p> <p>(4) Store owner who shoots a robber who is robbing him.</p> <p>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;</p> <p>(1) Shooting an apparent maniac trying to break into your home.</p>	<p><u>People v. Martin</u> (1985) 168C-A 3d 11 11</p> <p><u>Tenn. v. Garner</u> (1985) 105.5. Ct 1694</p>

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Unit Outline & Presentation	Objectives & Instructional Cues
<p>(2) Shooting someone in a car attempting to run you off the road.</p> <p>(3) Stabbing a rape suspect when he grabs you in a park.</p> <p>Defense of habitation alone is not sufficient. It must be shown that there was an intention to commit a felony or other violence.</p> <p>or</p> <p>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;</p> <p>(1) Killing a man attempting to kidnap your child.</p> <p>(2) Killing a man attempting to rape your wife in a parking lot.</p> <p>(3) The original aggressor in a fist fight withdraws. He is forced to kill the other party to stop great bodily injury.</p> <p>Fear is judged by the standards of the reasonable and prudent person. Threats alone do not justify homicide.</p>	

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Unit Outline & Presentation	Objectives & Instructional Cues
<p style="text-align: center;">or</p> <p>d. When necessarily committed to attempting, by lawful ways and means, to apprehend any person for any felony committed, or in law-fully suppressing any riot, or in lawfully keeping and preserving the peace.</p> <p style="padding-left: 40px;">(1) A man steals your wife's purse on the street. You chase him and tackle him. He strikes his head and dies.</p> <p>4. Self defense 198.5 P.C.</p> <p>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 house hold, 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.</p> <p>As used in this section, great bodily injury means significant or substantial injury.</p>	

SUPPORTING MATERIAL

AND

REFERENCES

Reference Materials

This section is set up as reference information for use by training institutions. These materials can be utilized for prime instruction; remediation, additional reading, viewing or for planning local units of instruction. They are presented here as instructional materials that may assist the learner or the academy staff in the teaching-learning process. Each training institution is encouraged to expand this list but only after careful viewing and reading to determine its acceptability.

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.

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.

Weekly Law Digest. California: J. Mason Wiegall, Publisher, 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.

In no way is this list an endorsement of any author, publisher, producer, or presentation. Each training institution must read or view these materials, and others to establish their own list of reference materials.