

BASIC COURSE INSTRUCTOR UNIT GUIDE

10

SEX CRIMES

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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.

The training specifications referenced herein express the required minimum content of this domain.

UNIT GUIDE 10

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Sex Crimes**

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ASSAULT/INTENT TO COMMIT CERTAIN FELONIES

Given a word picture depicting possible assault with the intent to commit certain felonies, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 220)

Performance Objective 3.20.2

CURRICULUM

- A. Assault with intent to commit rape and other specified crimes (Penal Code Section 220)

Every person who assaults another with the intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Sections 264.1 (rape in concert), 288 (child molest) or 289 (penetration with a foreign object)

- B. Elements

1. Assault
2. Specific intent
3. To commit mayhem, rape, sodomy, oral copulation, or any violation of Sections 264.1 (rape in concert), 288 (child molest) or 289 (penetration with a foreign object)

- C. Crime classification: Felony

- D. Examples

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

- E. Other related facts

1. Attempts to commit other crimes not included in this section are charged Penal Code Section 664 - attempt
2. Assault with the intent to commit murder is treated as attempted murder

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INDECENT EXPOSURE

Given a word picture depicting possible indecent exposure, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 314.1) is of

Performance Objective 3.28.1

CURRICULUM

- A. Definition - Lewd or obscene conduct/indecent exposure (Penal Code Section 314.1)
 - 1. Every person who willfully and lewdly
 - a. Exposes their person, or the private parts thereof, in any public place, or in any place where are present other persons to be offended or annoyed thereby
- B. Elements of crime
 - 1. Exposure of person or private parts
 - 2. Where other persons are present to be annoyed
 - 3. With willful and lewd intent
- C. Crime classification
 - 1. Indecent exposure is an offense which is normally punishable as a misdemeanor
 - 2. Indecent exposure is a felony under the following conditions:
 - a. Prior conviction of Penal Code Section 288, Crimes against Children or a prior conviction of Penal Code Section 314, Indecent Exposure
 - b. When indecent exposure occurs in an inhabited dwelling house, trailer coach, or inhabited portion of any building when entry was made without consent.
- D. Definitions
 - 1. Both willfulness and lewdness are requisites of this offense, although no movement or manipulation of the body or parts thereof are necessary to the establishment of a prima facie case.
 - 2. Lewd or obscene conduct as used in this section means: Every person who willfully and lewdly, either exposes his person, or

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

3. Intent is a vital element of this crime.

E. Other related statutes

1. Education Code, Section 13207, requires a mandatory revocation of a teaching credential for cases involving convictions under Penal Code Section 647(a) and (d), Penal Code Section 272, and this section.
2. Must register as a sex offender under Penal Code Section 290 after a conviction of Penal Code Section 314. (Read Penal Code Section 290 for students.)

ORAL COPULATION

Given a word picture depicting possible oral copulation, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 288a(b)(1), 288a(c), 288a(f), 288a(g), and 288a(i))

Performance Objective 3.28.3

CURRICULUM

A. Oral copulation (Penal Code Section 288a)

Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person under the following circumstances:

1. 288a(b)(1): Any person who participates in an act of oral copulation with another person who is under 18 years of age
2. 288a(c): Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she, or when the act is accomplished against the victim's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury of the victim or another person or the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person
3. 288a(f): Victim is at the time unconscious of the nature of the act and this is known or reasonably should be known to the person committing the act
4. 288a(g): The victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act
5. 288a(i): Where the victim is prevented from resisting by any intoxicating substance administered by or with privity of the accused

B. Elements

1. Act of copulating the mouth

NOTE: Just the touching of the mouth to the sexual organ or anus of another completes the offense. There need be no penetration. People vs. Bennett 119 Cal. App 2nd 224

2. Of one person with the sex organ or anus of another person

a. Under any of the following conditions:

- (1) Where the victim is under 18 years of age
- (2) When the act is accomplished against the victim's will by means of force or fear
- (3) When the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person
- (4) Where the victim is incapable of mental disorder, or developmental or physical disability of giving legal consent and this is known or reasonably should be known by the person committing the act
- (5) The victim is unconscious of the act, which is known or reasonably should be known by the perpetrator
- (6) The victim is prevented from resisting by any intoxicating substance administered by or with the privity of the accused

NOTE: In determining whether or not a sex crime has been committed, it must be determined whether the victim: (a) Could consent under the law, and (b) If so, whether the victim, in fact, consented.

In prosecutions under 288a (as well as 261, 286, and 289) in which consent is at issue, "consent" means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved (Penal Code Section 261.6)

C. Classification: Felony

D. Definition

1. Threatening to retaliate: a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury or death

E. Punishment/statute:

1. State prison: 1 to 9 years dependent upon the subsection violated
2. Statute of limitations: 3 to 6 years dependent upon the subsection violated

F. Other related statutes:

1. Penal Code Section 288a(b)(2): oral copulation where the victim is under 16 years and the suspect is over 21 years of age

2. Penal Code Section 288a(d): oral copulation in concert
3. Penal Code Section 288a(e): oral copulation where the victim is confined in state prison or local facility
4. Penal Code Section 288a(h): oral copulation where both the victim and perpetrator are confined in a mental hospital
5. Penal Code Section 288a(j): where the victim submits under the belief that the person committing the act is their spouse
6. Penal Code Section 288a(k): act is committed by public official under threat of incarceration, arrest or deportation of victim or another person
7. Penal Code Section 293 victims of sex offense; officer must inform the victim of their right to have their name withheld, and document the admonishment in the police report.

SODOMY

Given a word picture depicting possible sodomy, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 286(b)(1),286(c),286(f),286(g) and 286(i))

Performance Objective 3.28.4

CURRICULUM

A. Sodomy (Penal Code Section 286)

Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. with any penetration, however slight, and under any of the following conditions:

1. Penal Code Section 286(b)(1): Where the victim is under 18 years
2. Penal Code Section 286(c): Where the victim is under 14 years and the person committing is 10 years older or against victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or any other person
3. Penal Code Section 286(f): Where the victim is unconscious of the nature of the act and this is known to the perpetrator
4. Penal Code Section 286(g): Where a victim is incapable, because of mental disorder or developmental or physical disability of giving legal consent, and this is known or reasonably should be known to the person committing the act
5. Penal Code Section 286(i): Where a victim is prevented from resisting by any intoxicating or anesthetic substance or any controlled substance administered by or with the privity of the perpetrator

B. Elements

1. Sexual penetration, however slight
2. Penis of one person,
3. Anus of another person
4. Without consent
 - a. Under any of the following conditions:
 - 1) Where a person is incapable of giving consent because of mental disorder or developmental or physical disability

- 2) By means of force or fear of immediate bodily injury
 - 3) By use of intoxicating substance administered by or with the privity of the accused
 - 4) When the person is unconscious of the act which is known to accused
5. General intent (the mere act of doing the act is sufficient to fulfill these elements)

NOTE: In determining whether or not a sex crime has been committed, it must be determined whether the victim could consent under the law and if so, whether the victim, in fact, consented.

In prosecutions under 286 (as well as 261, 288a and 289) in which consent is at issue, "consent" means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved (Penal Code Section 261.6)

C. Classification: Felony

D. Definitions:

1. **Duress:** A direct or implied threat of force, violence, danger, hardship or retribution sufficient to coerce a reasonable person of ordinary susceptibility to perform an act to which one would otherwise not have submitted the total circumstances, including the age of the victim, and his or relationship to the defendant are factors to consider in appraising the existence of duress

E. Punishment/statute:

1. State prison - 3, 6, 8 years
2. Statute of limitations - 5 years from date of crime

F. Other related offenses:

1. Penal Code Section 286(d): sodomy in concert
2. Penal Code Section 286(e): sodomy while imprisoned
3. Penal Code Section 286(h): sodomy in mental hospital
4. Penal Code Section 286(j): sodomy by inducing belief that the person is the victim's spouse
5. Penal Code Section 286(k): sodomy under color of authority
6. Penal Code Section 293: victims of sex offense; officer must inform

the victim of their right to have their name withheld and document
the admonishment in the police report.

INCEST

Given a word picture depicting possible incest, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 285)

Performance Objective 3.28.9

CURRICULUM

A. Incest (Penal Code Section 285)

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other or who commit fornication or adultery with each other

B. Elements of crime

1. Persons being within the degrees of consanguinity
2. Who intermarry or have sexual intercourse

C. Punishment

1. Incest is a felony punishable by imprisonment in state prison.

D. Definitions

1. Consanguinity: related by blood
2. California Civil Code Section 4400 specifies these relationships as consanguineous:
 - a. Natural father-daughter
 - b. Natural mother-son
 - c. Uncle-niece
 - d. Aunt-nephew
 - e. Any degree of grandparent-grandchild
 - f. Whole blood brother-sister
 - g. Half-blood brother-sister

E. Other related information

1. The spirit behind incest law is to prevent interbreeding within a blood line.

2. Consanguinity does not apply to first cousins, or foster, adopted, or stepparents and children
3. The only sexual act which constitutes incest is sexual intercourse. For instance, oral copulation would not complete the act.

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REGISTERED SEX OFFENDER

Given a situation where an officer encounters a person who is required to register as a sex offender, the student will identify if the offender is registered as required by Penal Code Section 290(a). These requirements are: (Penal Code Section 290(a))

- A. Registration with chief of police or sheriff within 14 days of moving to a new jurisdiction
- B. Registration with the chief of police or sheriff within 10 days of changing addresses within same jurisdiction

Performance Objective 3.28.12

CURRICULUM

- A. Registration (Penal Code Section 290)
 - 1. Persons convicted of specified sex-related offenses are required to register within specific times with the chief of police or sheriff of any jurisdiction in which they reside either permanently or for a period of at least fourteen days.
 - B. Elements
 - 1. Conviction for specified sex crimes
 - 2. Failure to register:
 - a. Within 14 days of moving to new jurisdiction
 - b. Within 10 days of moving to new residence within same jurisdiction
- NOTE: Penal Code Section 290 requires a person to re-register even if temporary residence is established (e.g. visit for over fourteen days). As a result, a Penal Code Section 290 registrant on a three-week vacation to another city would be required to register in that jurisdiction.
- C. Crime classification
 - 1. Misdemeanor - 1st and 2nd conviction
 - 2. Felony - Upon 3rd conviction
 - D. Definition
 - 1. Registration requirements
 - a. Statement in writing, signed by person giving information required by the Department of Justice

b. Fingerprints

c. Photographs

E. Punishment

1. 1st and 2nd conviction - minimum 90 days
2. 3rd conviction - will depend upon whether the offense is tried as a misdemeanor or a felony

RAPE

Given a word picture depicting a possible rape, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 261(a)(1),261(a)(2), 261(a)(3), 261(a)(4))

Performance Objective 3.29.1

CURRICULUM

A. Rape (Penal Code Section 261)

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

1. Penal Code Section 261(a)(1): where a person is incapable, because of a mental disorder or developmental or physical disability of giving legal consent, and this is known or reasonably should be known to the person committing the act
2. Penal Code Section 261(a)(2): where it is accomplished against a person's will by means of force or fear of immediate and unlawful bodily injury on the person or any other person
3. Penal Code Section 261(a)(3): where a person is prevented from resisting by any intoxicating or anesthetic substance or any controlled substance administered by or with the privity of the accused
4. Penal Code Section 261(a)(4): where a person is at the time unconscious of the nature of the act and this is known to the accused

B. Elements

1. An act of sexual intercourse (penetration, however slight, as defined in Penal Code Section 263)
2. With a female not the spouse of the perpetrator
3. Without consent
 - a. Under any of the following conditions:
 - 1) Where a person is incapable of giving consent because of mental disorder or developmental or physical disability
 - 2) By means of force or fear of immediate bodily injury
 - 3) By use of intoxicating substance administered by or with the privity of the accused

- 4) When the person is unconscious of the act which is known to accused

NOTE: In determining whether or not a sex crime has been committed, it must be determined whether the victim could consent under the law, and if so, whether the victim, in fact, consented.

In prosecutions under 261 (as well as 286, 288a and 289) in which consent is at issue, "consent" means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved (Penal Code Section 261.6)

C. Classification: felony

D. Definitions

1. Duress: a direct or implied threat of force, violence, danger, hardship or retribution sufficient to coerce a reasonable person of ordinary susceptibility to perform an act to which one would otherwise not have submitted the total circumstances, including the age of the victim, and his or her relationship to the defendant are factors to consider in appraising the existence of duress
2. Menace: means any threat, declaration, or act which shows an intention to inflict an injury upon another

E. Punishment/statute

1. State prison - 3,6,8 years
2. Statute of Limitations - 6 years from date of crime

F. Other related statutes

1. Penal Code Section 261 (a)(5) rape: under the belief that the person committing the act is the victim's spouse
2. Penal Code Section 261(a)(6) rape: accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person
3. Penal Code Section 261 (a)(7) rape: by use of authority of a public official to incarcerate, arrest or deport the victim or another
4. Penal Code Section 263 rape, essentials, sufficiency of crime: the essential guilt of rape consists in the outrage of the person and feelings of the victim of the rape. Any penetration, however slight, is sufficient to complete the crime
5. If penetration was not completed, the crime is "assault with intent to commit rape." Penal Code Section 220

- 6: Penal Code Section 293 victims of sex offense: officer must inform the victim of their right to have their name withheld and document the admonishment in the police report

SPOUSAL RAPE

Given a word picture depicting a possible spousal rape, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 262)

Performance Objective 3.29.2

CURRICULUM

A. Spousal rape (Penal Code Section 262)

Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished against the will of the spouse by means of force or fear of immediate and unlawful bodily injury on the spouse or another, or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat.

B. Elements

1. Act of sexual intercourse
2. Against the will of the spouse
3. By means of force or fear of unlawful bodily injury on the spouse or another person, or
4. Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or another and there is a reasonable possibility that the perpetrator will execute the threat

NOTE: A specific condition of Penal Code Section 262 is that the offense be reported to law enforcement or the district attorney within 90 days of the occurrence.

C. Crime classification: Felony

D. Definitions

1. Threatening to retaliate: A threat to kidnap or falsely imprison or to inflict extreme pain, serious bodily injury or death

E. Statute of limitations

1. Six years providing it was reported within 90 days from date of occurrence

F. Other related offenses:

1. Penal Code Section 261: rape

2. Penal Code Section 264.1: rape in concert
3. Penal Code Section 263: sufficiency of penetration
4. Penal Code Section 293: victims of sex offense; officer must inform the victim of their right to have their name withheld and document the admonishment in the police report

PENETRATION WITH FOREIGN OBJECT

Given a word picture depicting a possible penetration of genital or anal openings by foreign object, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 289(a),(b),(d),(e),(j))

Performance Objective 3.29.2

CURRICULUM

A. Penetration of genital or anal openings (289(a),(b),(d),(e),(j))

Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification or abuse by any foreign object, substance, instrument, or device and one of the following circumstances:

1. Penal Code Section 289(a): against victim's will by force, fear or retaliation
2. Penal Code Section 289(b): victim incapable of consent due to mental/physical development
3. Penal Code Section 289(d): victim unconscious
4. Penal Code Section 289(e): victim drugged/intoxicated
5. Penal Code Section 289(j): victim under 14 years and perpetrator 10 or more years older

B. Elements:

1. Foreign object
2. Penetration, however slight
3. Genital or anal openings
4. Specific intent to cause sexual arousal, gratification or abuse
5. Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

C. Classification: Felony

D. Definitions:

1. Foreign object: Includes all instruments, substances, devices or parts

of the body except sexual organs (Penal Code Section 289)

2. Threat to retaliate: A threat to kidnap or falsely imprison or inflict extreme pain, serious bodily injury or death (Penal Code Section 289(1))
 3. Consent: Positive cooperation in act or attitude pursuant to an exercise of free will (Penal Code Section 261.6)
 4. Menace: Any threat, declaration, or act which shows an intention to inflict an injury upon another (Penal Code Section 261)
 5. Duress: A direct or implied threat of force, violence, danger, hardship, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted (Penal Code Section 261)
- E. Punishment:
1. 3, 6, 8 years
- F. Statute of limitations: 6 years
- G. Other related statutes:
1. Penal Code Section 289(c): suspect and victim in state hospital
 2. Penal Code Section 289(f): inducing the belief that the person is the victim's spouse
 3. Penal Code Section 289(g): under color of authority
 4. Penal Code Section 289(h): victim under 18 years of age
 5. Penal Code Section 289(i): victim under 16 years of age
 6. Penal Code Section 289.5: whether penetration was by a penis or by a foreign object was unknown at time of incident
 7. Penal Code Section 293 victims of sex offense; officer must inform the victim of their right to have their name withheld and document the admonishment in the police report

SEXUAL BATTERY

Given a word picture depicting a possible sexual battery, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 243.4(a) and 243.4(d))

Performance Objective 3.29.4

CURRICULUM

A. Sexual battery (Penal Code Section 243.4(a)- Felony)

Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery.

1. Elements

- a. Victim is restrained
- b. Skin of victim's intimate part is touched
- c. Without victim's consent
- d. Specific intent to achieve sexual arousal, sexual gratification, or sexual abuse

2. Crime classification: Felony

3. Definitions

- a. Intimate part: the sexual organ, anus, groin, or buttocks of any person, and the breast of a female
- b. Touches: physical contact with the skin of the victim, directly or through the clothing of the perpetrator

B. Sexual battery (Penal Code Section 243.4(d)(1) - Misdemeanor)

1. Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery

2. Elements

- a. Touches an intimate part of victim
- b. Without victim's consent

- c. Specific intent to achieve sexual arousal, sexual gratification, or sexual abuse
- 3. Crime classification - misdemeanor
- 4. Definitions
 - a. Intimate part: the sexual organ, anus, groin, or buttocks of any person, and the breast of a female
 - b. Touches: physical contact with another person directly through the clothing of the victim or the suspect

NOTE: The distinction between felony and misdemeanor sexual battery is that in a felony there must be both restraint and contact with the victim's skin. If either of these elements is not present, it is a misdemeanor.

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

None included

ADDITIONAL REFERENCES

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

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

California Jury Instructions, Criminal (CALJIC).

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

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

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

POST Video Catalog, (916) 227-4889

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