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BASIC COURSE INSTRUCTOR UNIT GUIDE

8

GENERAL CRIMINAL STATUTES

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UNIT GUIDE 8

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General Criminal Statutes**

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CURRICULUM

I. SOLICITATION TO COMMIT CERTAIN CRIMES

A. Penal Code Section 653(f) et seq. defines the crime of solicitation as follows:

1. Every person who
2. with the intent that the crime be committed
3. solicits another
4. to join in the commission of crimes specified below:
 - a. Bribery
 - b. Murder
 - c. Carjacking
 - d. Robbery
 - e. Burglary
 - f. Grand theft
 - g. Receiving stolen property
 - h. Extortion
 - i. Perjury
 - j. Subordination of perjury
 - k. Forgery
 - l. Kidnapping
 - m. Arson
 - n. Assault with a Deadly Weapon
 - o. Dissuading a witness
 - p. Certain sex crimes (e.g., sodomy by force, etc.)
 - q. Certain drug offenses

B. Crime classification: Felony

- C. Solicitation is a specific intent crime.
- D. Discussion regarding solicitation to commit certain crimes
 - 1. The proposal completes the crime - no overt act toward the crime is necessary.
 - 2. The crime is complete whether the person being solicited agrees or not, or whether or not the person solicited previously contemplated the crime himself.
 - 3. Conviction requires two witnesses or one witness and other corroborating evidence.
 - a. The witnesses may include the person(s) who were solicited.
 - b. Corroboration is required at the trial only - the solicited person's testimony can be sufficient for everything short of conviction.
 - 4. Other definitions of solicit
 - a. Approach with a request
 - b. Tempt
 - c. Lure
 - d. Entreat
 - e. Plea
 - f. Appeal

II. CONSPIRACY TO COMMIT A CRIME

A. Conspiracy defined (Penal Code Section 182):

A conspiracy occurs when two or more persons agree to commit any crime, and either one of them does an overt act in furtherance of the **conspiracy**.

B. Elements of conspiracy

1. Two or more persons
2. Agree to commit any crime
3. An overt act in furtherance of the conspiracy

C. Crime Classification: Felony

D. Conspiracy is a specific intent crime.

1. Conspiracy is a specific intent crime, requiring the accused to have specific intent to do an unlawful act or do a lawful act by unlawful means.
2. It must be proved that the accused entered into a criminal agreement with specific intent to commit a crime or perform an act prohibited by the conspiracy statute.
3. Normally, the overt act is used - along with other factors - to establish the intent to commit a specific crime (i.e., procuring a gun to commit robbery or murder, procuring burglary tools to commit a burglary, etc.)

E. Terminology

1. "Overt act" as used in Penal Code Section 184 requires that an overt act be taken beyond the agreement and/or planning stage, by one or more of the conspirators.
 - a. The overt act must be more than mere planning, but need not amount to an attempt to commit the crime or even be unlawful in nature.
 - b. The overt act, must however, be in furtherance of the conspiracy and must take place within California.

F. Discussion regarding conspiracy

1. The two or more persons involved in the conspiracy may be husband and wife.
 - a. The persons must be legally able to testify (not be lunatics, etc.).
 - b. If any undercover officer is involved, there must be at least two other persons who are defendants.

2. It is not necessary that the accused know one or all the parties to the conspiracy.
 - a. Each accused must know and enter into the unlawful agreement with at least one other member of the conspiracy.
 - b. All parties to the conspiracy are equally responsible for the actions of all other parties taken in furtherance of the conspiracy.
3. Conspiracy includes those crimes committed in preparation for, during, commission of, and during escape and arrest, whether planned or not.
4. Conspiracy does not include independent crimes, not in furtherance of the conspiracy by individual members of the conspiracy.
5. Crimes committed before a conspirator joined in the conspiracy cannot be charged against him or her.
6. The planned crime does not have to be completed or even attempted. The criminal agreement and the overt act constitute the offense of conspiracy.
7. Abandonment of conspiracy - In order to avoid criminal liability, a conspirator must
 - a. withdraw from all aspects of the conspiracy
 - b. remain away from the scene at time of crime
 - c. make abandonment known to all confederates known to the person prior to crime.

NOTE: Although not technically required, the person should also tell authorities about the conspiracy - otherwise, it is extremely difficult to establish abandonment.

III.

ATTEMPTS TO COMMIT CRIMES

A. Attempt defined (Penal Code Section 664):

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is guilty of an attempt to commit the crime.

B. Elements of an attempt

1. Specific intent to commit the planned crime
2. Direct, ineffectual, overt act toward the commission of the crime
3. Ability or apparent ability to commit a crime
4. The attempted crime must have been legally possible of commission.

C. Attempt is a specific intent crime.

D. Crime classification: Felony or Misdemeanor based upon the classification of the crime attempted.

E. Discussion regarding attempts to commit a crime

1. Overt acts

- a. In addition to requiring specific intent, there must exist a direct, ineffectual overt act.
- b. Mere preparation is not a sufficient overt act.
- c. The act must come dangerously close to completion of the crime (i.e., "a substantial step forward")

2. Completion of the crime

- a. The fact that the conditions rendered the actual completion of the crime impossible, does not prevent the accused from being guilty of an attempt.
- b. For example, where a pickpocket reaches into the victim's pocket but finds the pocket empty.

3. Ability to complete the crime

- a. There can be no crime of attempt if there is a legal impossibility of completion.
- b. For example, it would be impossible to attempt a murder on a corpse.

4. Abandonment

- a. Once the overt act towards the commission of the crime has been performed, that crime is complete.
- b. Abandonment is a defense only and does not relieve criminal liability.
- c. Abandonment may be used as a defense when it is free and voluntary and abandoned before the act is put into final execution, and when there is no outside cause prompting such abandonment.

IV. DISTURBING THE PEACE

A. Disturbing the Peace defined (Penal Code Section 415): Disturbing the Peace is committed by:

1. fighting or challenging to fight in a public place
2. making loud and unreasonable noise, or
3. using offensive words which are inherently likely to provoke an immediate violent reaction.

B. Disturbing the peace by unlawful fighting or challenging to fight in a public place (Penal Code Section 415(1))

1. Elements
 - a. Fighting or
 - b. challenging to fight
 - c. in a public place (or place open to public view or access)
2. Crime classification: Misdemeanor
3. This is a general intent crime.

C. Disturbing the peace by making loud and unreasonable noises (Penal Code Section 415(2))

1. Elements
 - a. Purposely
 - b. disturbs another person
 - c. by loud and unreasonable noise
2. Crime classification: Misdemeanor
3. This is a general intent crime.
4. Discussion
 - a. Loud and unreasonable noise
 - (1) In determining what constitutes a loud and unreasonable noise, the first step should be to decide if it is a communication.
 - (2) Communications are words, shouting, or cheering that are intended to get ideas across. They are protected by the First Amendment, freedom of speech. On the other hand, a loud

noise such as a motorcycle revving at 3 a.m. is not communication. Neither is shouting, etc., which is done for purposes of disruption.

(3) A family fight at 3 a.m. would also fit in this category. Although it technically involves communication, it is not the important type protected by the First Amendment. If the noise is not a communication and, based on the time, place and manner in which it is made, it is the kind of noise that would disturb a reasonable person, an arrest is justified if someone was disturbed by it.

(4) If the noise is a communication, it can still be unreasonable based on time, place or manner in which the ideas are expressed. To justify an arrest in this situation, the person or persons disturbed by the communication must be so angry that violence is about to occur.

D. Disturbing the peace by using offensive words inherently likely to provoke an immediate a violent reaction (Penal Code Section 415(3))

1. Elements

- a. Using offensive words
- b. in a public place (or place open to public view or access)
- c. which are inherently likely to provoke an immediate violent reaction

2. Crime classification: Misdemeanor

3. This is a general intent crime.

4. Discussion

- a. The utterance must be "inherently likely to provoke an immediate violent reaction" based on the circumstances then present. This reaction applies to anyone.
- b. It now is necessary for reports to illustrate the existent circumstances in which the utterance was made. Any violent reaction which did not occur as a result of the utterance should be illustrated.

c. Free speech considerations

- (1) This statute has lost much of its effectiveness against a defense that the defendant was exercising a right of free speech.
- (2) The high tolerance of the courts to the right to voice one's opinion reduces this statute to a device available to control

disruptive conduct in public, bearing no relationship to the exercise of First Amendment Rights.

V. **DISORDERLY CONDUCT**

A. Disorderly conduct defined (Penal Code Section 647):

Disorderly conduct is a group of crimes that tend to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality.

B. Lewd Conduct (Penal Code Section 647(a))

1. Elements

- a. Solicit or engage
- b. in lewd conduct
- c. in a public place
- d. or a place open to public view

2. Crime classification: Misdemeanor

3. Disorderly conduct by lewd conduct is a specific intent crime

4. Terminology

- a. "Lewd" means the touching of the genitals, the buttocks or the female breast in a public place with the intent to sexually arouse, gratify, annoy or offend.
- b. "Public Place"
 - (1) "Public place" means any park, street, building open to the public, movie theaters, department stores, or public offices.
 - (2) A public place is any area that is accessible to the general public (i.e., delivery person, meter reader, mail carrier, salesperson, etc.) This would not hold true, however, if a yard is fenced, blocked off, or entry is restricted in some way.
- c. "Public view" means an area that can be seen by others

C. Prostitution (Penal Code Section 647(b))

1. Elements

- a. Solicit or
- b. agree to engage in or
- c. engage in
- d. any act of prostitution

2. Crime classification: Misdemeanor
3. Prostitution of a specific intent crime
4. Terminology
 - a. "Solicit" means to strongly urge, to entice, to attempt to seduce or to accost for immoral purpose
 - b. "Agree to engage"
 - (1) "Agrees to engage" means showing acceptance of an offer with specific intent to complete the act
 - (2) No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, besides the agreement, be done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act.
 - c. "Prostitution" means any lewd act between persons for money or other consideration
5. Related offenses
 - a. Penal Code Section 266: Seduction for purposes of prostitution (female under 18) - felony
 - b. Penal Code Section 266a: Taking a person for prostitution without consent or by false representation - felony
 - c. Penal Code Section 266h: Pimping - felony
 - d. Penal Code Section 266i: Pandering (obtaining another person to be prostitute) - felony
 - e. Penal Code Section 647f: Prostitution with a prior positive AIDS test - felony

D. Begging (Penal Code Section 647(c))

NOTE: This section was declared unconstitutional - Refer to local ordinances for related crimes (i.e., "aggressive panhandling")

E. Loitering about a public toilet (Penal Code Section 647(d))

1. Elements
 - a. Loitering in or about
 - b. any toilet facility

- c. open to the public
 - d. for the purpose of soliciting or engaging
 - e. in a lewd act
- 2. Crime classification: Misdemeanor
 - 3. Loitering about a public toilet is a specific intent crime

F. Refusal to Identify (Penal Code Section 647(e))

NOTE: This section has been declared unconstitutional - Refer to related statutes (i.e., Vehicle Code Sections 40302(a) and 31, Penal Code Sections 148.9 and 529)

G. Public Intoxication (Penal Code Section 647(f))

- 1. Elements
 - a. In a public place
 - b. under the influence
 - c. of alcohol or drugs
 - d. unable to care for self or others or
 - e. obstructing public way
- 2. Crime classification: Misdemeanor
- 3. Public intoxication is a general intent crime
- 4. Discussion regarding arrests for public intoxication
 - a. Arrests cannot be lawfully made on private property unless public view applies
 - b. Neither field sobriety tests nor chemical tests are required.
 - c. Refer to Penal Code Section 647(ff) regarding civil protective custody for inebriates.

H. Prowling (Penal Code Section 647(g)):

- 1. Elements
 - a. Loiters, prowls or wanders
 - b. on private property
 - c. of another

- d. at anytime
 - e. without visible or lawful business with the owner or occupant thereof
 - f. for the purpose of committing a crime
2. Crime classification: Misdemeanor
 3. Prowling is a general intent crime
 4. Discussion regarding the crime of prowling
 - a. "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.
 - b. the owner or occupant does not have to be present.
- I. Peeping (Penal Code Section 647(h))
 1. Elements
 - a. Loitering, prowling or wandering
 - b. on the property of another
 - c. at any time
 - d. peeking in the door or window of any inhabited building or structure
 - e. without lawful business with the owner or occupant
 2. Crime classification: Misdemeanor
 3. Peeping is a general intent crime
 4. Discussion regarding peeping
 - a. Must meet all of the elements of prowling (Penal Code Section 647(g)) in addition to violating the aforementioned elements relating to peeping
 5. Related sections
 - a. Penal Code Section 459 - burglary
 - b. Penal Code Section 602.5 - trespassing
 - c. Penal Code Sections 212.5 - (residential) robbery
 - d. Penal Code Section 488 - petty theft
 - e. Penal Code Section 314.1 - indecent exposure

J. Illegal Lodging (Penal Code Section 647(i))

1. Elements

- a. Lodging
- b. without permission
- c. in any building, structure, vehicle or place

2. Crime classification: Misdemeanor

3. Illegal lodging is a general intent crime

4. Discussion regarding illegal lodging

- a. Merely sleeping in a place is not enough to support this violation.
- b. "Lodging" means actually using the place as a residence.

K. Bathroom peepholes (Penal Code Section 647(j))

1. Elements

- a. Looking through
- b. A hole into a bathroom
- c. with the intent to invade the privacy of persons therein

2. Crime classification: Misdemeanor

3. This is a specific intent crime.

VI. DISTURBING A PUBLIC MEETING

A. Disturbing a public assembly or meeting defined (Penal Code Section 403):

Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in Section 302 of the Penal Code and Section 18340 of the Election Code, is guilty of a misdemeanor.

B. Elements

1. Without legal authority
2. willfully disturbs or breaks up
3. A lawful public assembly or meeting

C. Crime classification: Misdemeanor

D. Disturbing a public assembly or meeting is a general intent crime.

E. Discussion

1. Not every interruption of a speaker is a disturbance.
2. The meeting itself must be thrown into such disorder that the business under discussion cannot effectively continue. The character and nature of the meeting are relevant in determining whether the disturbance is violative of this section.

EXAMPLE: An extemporaneous "soapbox" speaker should expect to be interrupted from time to time. Free speech cannot be used as an excuse to justify converting an orderly meeting into bedlam, but some assemblies can be expected to be somewhat disorderly, e.g., political conventions, etc.

F. Related sections.

1. Penal Code Section 302 - Disturbing Religious Meetings
 - a. This section involves the willful disturbing or disquieting of any assemblage of people who meet for religious worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting
 - b. Violation of Penal Code Section 302 is a misdemeanor.
2. Election Code - 29440 - Disturbing political meetings. (Misdemeanor)

NOTE: In essence, the Penal Code has used two sections of the code to describe similar violations. The only difference in the two sections is in the types of meetings disturbed.

VII.

OBSTRUCTION OF STREETS, SIDEWALKS OR OTHER PLACES OPEN TO THE PUBLIC

- A. Obstruction of street, sidewalk or other places open to the public places defined (Penal Code Section 647c):
 - 1. Every person who willfully and maliciously obstructs the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public.
 - 2. Nothing in this section affects the power of a county or a city to regulate conduct upon a street, sidewalk, or other public places or on or in a place open to the public."
- B. Elements
 - 1. Willful and maliciously obstructs
 - 2. The free movement of any person
 - 3. On any street, sidewalk, or other public place or any place open to the public
- C. Crime classification: Misdemeanor
- D. This is a general intent crime

NOTE: Jennings vs. San Francisco Superior Court 104 CA3d 50 (1980) Local blocking sidewalk ordinance unconstitutional.

VIII. GAMING VIOLATIONS

A. Gaming defined (Penal Code Section 330)

Every person who deals, plays, or carries, opens, or causes to be open, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, fan, fantan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of said prohibited games...

B. Elements of Gaming

1. Every person who
2. Deals, plays, bets, or carries on, opens, or causes to be opened, or who conducts
3. Either as owner, employee or player
4. Whether for hire or not
5. Any of the games specified in the section

C. Crime classification: Misdemeanor

D. Gaming is a general intent crime

E. Terminology

1. **Faro** is a game of chance in which cards, chips, and a green cloth layout, and a dealing box is used. The game is based on 13 cards of the spade suit. Present at a game are players, dealer, and a casekeeper who keeps track of cards played. Players bet that any of two, three or more cards will win by placing chips upon the playing cloth.
2. **Monte or Monte Bank** is a game of chance that is very similar to lansquenet. It is played by any number of persons with a deck of cards from which the 8's and 10's have been removed. Chips or money are placed as bets. The banker places cards face up on the table. Plays bet on cards laid by the Banker.
3. **Roulette** is a game of cancel. Any number of players can play roulette. All bets are placed against the house. Equipment is a "wheel", at either end of which there is a layout on which bets are placed by players. The wheel turns on a spindle and is divided into 37 or 38 sections in which a small ivory ball (which is spun in the wheel) may come to rest and designate a winning number. A "tourneur" spins the wheel. A "Croupier" pays off and collects bets.

4. **Lansquenet** is a card game of chance. The banker uses a 52 card deck and places the two top cards of the pack face upwards on the table. One card is dealt face up by the banker to himself and each of the players. Players place their bets and the banker covers them. Chips or money are used as bets.
5. **Rouge et Noire** (trente et quarante) is a game of chance and is essentially a casino game as is baccarat. It is played on a long table on top of which is a specifically marked layout. The banker sits midway down one of the sides. The players sit, and some stand behind them, at each end. Six packs of cards are used. Cards are dealt by the banker. Players bet on the outcome of the deal.
6. **Rondo** is a card game of chance played by a deck of 52 cards by several players.
7. **Fan Tan** (Tan, Card Dominoes, Parliament, and Sevens) is a game of chance and is played with a standard 52 card deck ranked in order from king (high) to ace (low). Bets are placed into a pool (kitty) before cards are dealt. The game is won by the player who is the first to get rid of his cards. Chips or money are used as bets.
8. **Twenty-One** is a game of chance played with either one or two decks of cards with jokers removed. Player bet against the house (dealer). Two cards each are dealt to the players and to the dealer himself. Additional cards may or may not be dealt. The object of the game is to attain the score of 21. Money is used for bets. The game is very fast.

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**

Conspiracy

Disturbing the Peace

CONSPIRACY

A. Penal Code Section 182 says:

1. If two or more persons conspire
 - a. To commit any crime.
 - b. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
 - c. Falsely to move or maintain any suit, action or proceeding.
 - d. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform such promises.
 - e. To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.
 - f. To commit any crime against the person of the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

Objective of the Conspiracy Statute:

1. The conspiracy statute is extremely broad in scope; so broad, in fact, that the statute could be held unconstitutional if it is misused.
2. The primary objective of this statute is to provide a tool for prosecuting organized crime, especially those members so removed from the actual commission of the crime as to make prosecution under other statutes impossible.
3. A conspiracy to commit a crime outside of California is not punishable under California law, even when the overt acts were committed in California, unless the overt acts amount to one or more specific crimes and are prosecuted under the specific crime statutes.
4. A conspiracy entered into outside of California to commit a crime in California can be prosecuted under California law provided the overt act takes place in California. (Penal Code Section 27.3)

Prosecution:

1. It is very difficult to prove the agreement.
 - a. Although the agreement can legally be inferred from the circumstances of the crime or overt act, it frequently is not.
 - b. Frequently, the prosecution must provide evidence of the agreement in addition to the above inference.

DISTURBING THE PEACE

Cohen v. California, supra, is an illustration. The defendant walked through Los Angeles County Courthouse, in presence of women and children, with "F... the Draft" plainly visible on his jacket. The court held the conduct to be constitutionally protected. Likewise, in Lewis v. City of New Orleans, supra, a woman in a public place, while her husband was getting a ticket, said, "You god damn m.f. police." The court held the ordinance prohibiting cursing or obscene language towards police officers performing their duties was invalid because it was overbroad.

In re: John V., 167 Cal APP 3rd 761 (1985), Words screamed by the defendant, "F..... Bitch", at his neighbor as she drove by were found to be sufficient to violate this statute. (Penal Code Section 415.3)

Callahan 168 Cal APP 3rd 631 (1985) "F..... asshole", directed at peace officer was held insufficient to violate this section.

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