

CHAPTER 10

OFFENSES AGAINST PUBLIC ORDER AND THE ADMINISTRATION OF JUSTICE

CHAPTER OUTLINE

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LECTURE OUTLINE

I. Introduction

Discuss the First Amendment right of free speech and the “fighting words” exception.

II. Crimes Against Public Order

These are offenses that disturb the peace and tranquility of society, and include breach of the peace, disturbing the peace, disorderly conduct, fighting, affray, vagrancy and loitering offenses, and offenses involving public intoxication. These offenses are premised on the assumptions that a safe and orderly society must be maintained for the good of the public in general.

A. Breach of Peace and Disorderly Conduct

At common law, breach of the peace was used to include any unlawful activity that disturbed the peace and tranquility of the community. In today’s statutes, it is used to define a great variety of conduct that infringes upon that peace and tranquility, and in some jurisdictions it is referred to as disorderly conduct.

Breach of the peace is a more general term, while disorderly conduct is more specific, with elements of the offense defined by statute.

B. Fighting and Affray

Fighting in public is a crime when it is a mutual occurrence (contrasted with a battery). Affray is fighting in public causing the disturbance of those persons who may be present.

C. Public Intoxication

The presence of a person in a public place who is under the influence of alcohol (and or drugs, in some statutes) constitutes the crime of public intoxication.

D. Alcohol and Drug Laws

The two most common offenses involving the use of alcohol are public intoxication and driving under the influence of alcohol. In most modern statutes, driving under the influence includes being under the influence of drugs.

Most jurisdictions call these offenses by different names (DWI, DUI, OMVI, etc.) but they generally entail the same prohibited conduct. In every state, as a result of Congress's control of federal highway funds, the presumptive level for being under the influence is .08 blood alcohol content. Chemical tests requested by a police officer who arrests a suspect for driving under the influence must be taken or severe suspension and criminal penalties may be involved.

Most statutes also include the alternative prohibition of driving under the influence of drugs. This does not necessarily imply controlled substances only. Discuss with students those types of narcotics and medications that may render someone under the influence.

Also, even if a chemical test is refused, a person may be charged under a general provision of being under the influence. Here, the arresting officer's observations of impairment would be the basis of charging a suspect even in the absence of a chemical test.

Public intoxication consists of being in a public place and being intoxicated to such a degree that the person poses a danger to himself or others.

E. Riot and Unlawful Assembly

Unlawful assembly is the gathering of a defined number of persons for the purpose of committing an unlawful act. It requires proof of specific intent to commit the act, though actual completion is not required.

Rout is when the unlawful assembly makes the advancement toward the commission of an act that would entail a riot. Again, the number of persons required is usually defined by statute, but a single individual can act alone to urge or incite a riot. This is done by the use of words or other means to provoke other persons to act unlawfully.

F. Vagrancy and Loitering

At common law, vagrancy was the going about without any visible means of support and living by the charity of others. Loitering means to delay or linger without a lawful purpose. Both types of offenses have been scrutinized by the courts for being void, vague, or unconstitutional as they are applied.

G. Teenage Curfew

Laws that restrict, limit, or curtail the activities of minors to certain time periods are seen as effective means of dealing with various nuisance and vandalism offenses. However, these have also been challenged in the courts as being vague. The minor who is with a parent or guardian, going to or from employment, or to or from a school function, is generally exempt from the restrictions imposed by these laws.

H. Weapons-Carrying

Gun control is a controversial issue in today's society. The U.S. Supreme Court has fueled that controversy with a recent ruling on the Second Amendment. Every state has laws that intend to restrict gun ownership, possession, use and the carrying of a concealed weapon.

Generally, these laws make it a crime to carry a concealed weapon. Weapons may be defined as firearms and other deadly weapons. Many states have laws that allow certain persons to carry a concealed weapon, but they exclude convicted felons, persons currently under indictment (charges are pending), persons adjudicated as being drug dependent or mentally incompetent.

I. Illegal Entry into the United States

Today's interest in national security has resulted in numerous and complex laws dealing with the status of aliens in this country and the controls that have been implemented to prevent illegal entry.

A contested contemporary question is how much authority states have over immigration. Although it is clear that the federal government has the authority to decide who may be admitted, it is unclear whether the states share the authority with the federal government to enforce immigration laws when they are impacted by immigration.

Some states and localities have become aggressive in this area under the theory that authority over immigration is cooperatively shared. Discuss with the students how the state of Arizona has done such a thing.

III. Crimes Against the Administration of Government

These classes of offenses that violate the social order are crimes against the administration of government. Many prosecutors see these offenses, which attack the very foundation of the legal system, as some of the most serious crimes worthy of diligent enforcement and prosecution efforts.

A. Treason

At common law, this was an attempt to kill the king or promote revolution. It is a crime defined in the Constitution as the attempt to overthrow the federal government or aid its enemies. Treason requires the commission of an overt act to that extent, and thoughts that are contrary to the loyalty of the government are not sufficient. Misprision of treason is the concealment or nondisclosure of known treason.

Espionage entails the collection, destruction, or transmission of classified information relative to the national defense. Sedition consists of communicating or agreeing to defame the government for the purpose of inciting treason.

B. Perjury and Contempt

Perjury is the making a false statement under oath. At common law, it required the giving of false testimony in a judicial proceeding. Modern statutes have expanded this to include any false statement that is material to the proceeding that is made under oath. Subornation of perjury occurs when a person procures another to commit perjury. Criminal contempt is any conduct that is intended to obstruct or embarrass a court of law or degrade the role of a judicial officer in the administration of a judicial proceeding.

C. Obstruction of Justice

This is the unlawful attempt to interfere with the administration of the courts, legal system, or law enforcement officers in the performance of their official duties. Discuss the similarities to persons who aid or abet the parties of a crime after the crime has been committed. (Accessories after the fact.)

D. Escape

The unlawful breaking of official custody or detention, or the failure to return to custody or confinement following temporary leave. The distinction between a resisting arrest charge and escape would depend upon whether the person was in actual custody or detention, or was simply attempting to resist the efforts of law enforcement to be taken into custody.

E. Misconduct in Office and Bribery

Probably no other offenses exist that usurp the public trust in government. Misconduct in office occurs when a public official, in his/her official capacity and under color of that authority, exceeds those bounds by acts of misfeasance (the improper performance of official acts), or nonfeasance (the failure to perform official acts).

Bribery consists of receiving a gift or reward intended to influence a public official's course of conduct. Although the crime concerns public officials, the person who offers the gift or reward can also be prosecuted for this offense.

IV. Environmental Crimes

Crimes where criminal penalties are imposed, generally upon a business or corporation, for violating standards established to regulate any business, industry, manufacturer, etc., for the public good (e.g., pollution control, biohazard disposal, etc.)

STUDENT ACTIVITIES

1. Research the website for the Department of Homeland Security. What is its mission, how is it run, and how many administrative agencies come under the auspices of this department?
2. In your state, what is the blood alcohol level upon which a presumption arises that a person is under the influence of alcohol? What does that presumption mean, and how can it be overcome? What other types of impairment are included that result in a violation of the statute? What are the degrees of these offenses, and how and why do they increase the penalty?

CASE STUDIES

1. Review the case of *District of Columbia v. Heller*, 554 U.S. 290 (2008), a landmark legal case in which the Supreme Court of the United States held that the Second Amendment to the United States Constitution protects an individual's right to keep a loaded handgun for defense of the home.

REFERENCES AND RESOURCES

1. U.S. Supreme Court website:
<http://www.scotusblog.com/wp/wp-content/uploads/2008/06/07-2901.pdf>
2. Visit the website for the National Rifle Association's powerful lobbying arm called the Institute for Legislative Action, aimed at the continued advocacy of Second Amendment rights:
<http://www.nraila.org/>
3. U.S. Customs and Border Protection (CBP). This unified border agency within the U.S. Department of Homeland Security combines the authority of the U.S. Customs, U.S. Immigration, the Animal and Plant Health Inspection Service, and the U.S. Border Patrol, working to manage, control, and protect U.S. borders at and between official ports of entry: