

## **CHAPTER 11**

### **OFFENSES AGAINST PUBLIC MORALITY**

#### **CHAPTER OUTLINE**

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#### **LECTURE OUTLINE**

##### I. Introduction

Most crimes have specific and identifiable victims. However, crimes against public decency and morality are a category of social order offenses that have been termed “victimless” crimes. That is, the participants willingly engage in the criminal behavior, including prostitution, drug use, gambling, and crimes involving pornography and obscenity.

##### A. Prostitution

Prostitution is a crime in all states except Nevada, where counties with a population less than 400,000 are empowered to license houses of prostitution. Nevada has a comprehensive regulatory system and unlicensed prostitution is a misdemeanor in Nevada.

The elements of the offense are defined by the individual states, but generally entail the offering or receiving of sexual conduct (or sexual activity, sexual intercourse) for hire.

Soliciting prostitution is the act of asking, enticing or requesting another to commit the crime of prostitution. Promoting prostitution is a crime that intends to punish those who profit or attempt to profit by using others to engage in acts of prostitution. Keeping a place of prostitution occurs when the offender grants or permits the use of any place or conveyance for the purpose of prostitution.

States may also have laws such as the offense of pimping or pandering. Again, these involve the procurement, arranging, directing, receiving money, aiding or soliciting the act of prostitution.

## B. Pornography, Obscenity, and Lewdness

All jurisdictions have laws that punish the sale, possession and distribution of obscene material, and most have statutes that define lewdness or public indecency.

Pornography is defined as the depiction of sexually explicit material in way to sexually excite the viewer. Generally, obscenity is that which appeals to the prurient interest and lacking serious literary, artistic, political or scientific value.

Prurient interest means an obsession with lascivious and immoral matters.

One area of recent concern is that of the sexual exploitation of children, or child pornography. Child pornography may be regulated even if it doesn't rise to the level of obscenity—an exception of the First Amendment's protection of pornography.

Discuss the Constitutional implications of the government regulating what material a person may or may not read or view. The right of privacy under the First Amendment, however, does not protect the public exhibition of obscene material or that which involves minors. There is a growing concern over the availability of pornography over the internet accessible to minors, as well as the dissemination of child pornography over the internet.

Lewdness refers to behavior that is obscene. It consists of intimate activities, often involving a single individual, intended to be sexually arousing. This might include exposing the genitals or masturbating in a public place. Lascivious is that which is obscene or lewd, or which tends to cause lust.

## C. Other Consensual Sex Offenses

There are some laws that still exist in some jurisdictions that prohibit fornication, the sexual conduct between two unmarried persons, and adultery, a married person who has sexual intercourse with another, not his/her spouse. Laws against homosexuality have been ruled unconstitutional. Explain the evolution of these laws in the face of changing social values.

Crimes against nature may include buggery, bestiality, and even crimes where sexual intercourse occurs in something other than traditional positions by the man and woman.

Bigamy is the crime of marrying one person while still married to another. Polygamy is marrying or cohabiting with more than one spouse at a time in the purported exercise of a plural marriage.

Incest is the unlawful sexual intercourse with a blood relative, usually a brother, sister, mother or father. Some statutes expand the offense to include conduct between stepparents and stepchildren, half-siblings, grandparents and grandchildren, and other degrees of relationships.

#### D. Gambling and Gaming

Gambling is the wagering of money or something of value on the outcome or occurrence of an event. It may often include gaming, which involves a game of chance where the outcome is determined in part by luck or chance. Most states prohibit or restrict different forms of gambling, as well as several federal laws.

#### E. Controlled Substances

This refers to specifically defined bioactive or psychoactive chemical substances that are legislatively controlled or prohibited. All of these laws are the result of legislative action, as common law did not address any drug other than alcohol.

Briefly review the history of drug abuse legislation and the terminology. Remind students that this terminology may vary across the numerous jurisdictions and will depend upon how that particular legislature chooses to define the term.

Controlled substances are arranged by schedule as a result of The Controlled Substances Act of 1970. These schedules range from those substances that have no established medical use and have a great potential for abuse (e.g., heroin, LSD, and marijuana) to those which are prescription drugs with a low potential for abuse, and a limited possibility of psychological or physical dependence (e.g., cough medicines). Some of these may also be purchased over the counter with minimal control or restrictions.

Discuss and challenge students on how drug offenses may be classified as more or less serious offenses. Generally, the lower the scheduled substance, the more serious the offense. Next, the *actus reus* often determines the degree of the offense, such as possession being the least serious, then possession with intent to distribute, and then the sale, delivery, and manufacture of a controlled substance being classified as more serious offenses. Also, the amount of the substance involved, the number of doses, previous drug offenses, and the proximity of the criminal act to a minor, school, or day care facility, all may be elements of an offense or act as an enhancement.

Asset forfeiture and RICO are two measures aimed at waging the war on drugs. Asset forfeiture provides for either criminal or civil actions that divest a person of property when it could be established that the property was the product of illicit proceeds derived from a criminal offense. RICO was designed to prevent criminal infiltration into legitimate business activity.

#### F. A Critique of Law Regulating Public Morality

Discuss with students the criticism; that these offenses are an attempt to legislate morality. They criminalize what may be thought of as damaging to the health, safety, and morality of the community. These laws continue to exist and be passed by legislatures despite obvious violations of those individual rights protected by the Constitution.

Whether these are truly “victimless” crimes is open to debate. The marriage that is broken by the unfaithful spouse, the economic damage gambling activity can have on a family budget, and the untold repercussions that illegal drug activity has on individuals, families, employers, persons who are victimized by the drug addict to support a habit, and the expenses of public health treatment and rehabilitation, all lead to the conclusion that society is truly the victim in many of these offenses.

### RESEARCH PAPER TOPICS

1. Drug offenses have been called *mala prohibita*, unlike those inherently evil offenses that have long been recognized as wrongful (and illegal) conduct. What is the evolution of drug offenses in this country, and how did we arrive at the present where drug activity is the root of most other crimes?

### STUDENT ACTIVITIES

Have the students conduct an open forum to discuss which of the offenses in this chapter are most likely to be repealed or found to be constitutionally invalid, similar to those that prohibited homosexual activity and were overturned. Are these indications of a weakened morality in society, or are there other reasons?

### CASE STUDIES

1. After reading the case of *Lawrence v. Texas*, compare and contrast that with the court’s opinion in *McLaughlin v. Florida*, 379 U.S. 184 (1964).
2. Find a case where a U.S. citizen is arrested and prosecuted for a drug offense in a foreign country. How do our concept of due process compare to how drug cases are handled by a foreign government?

### REFERENCES AND RESOURCES

1. The foremost site for comprehensive information about drug-related crime in the United States is the Drug Enforcement Administration (DEA) website. The DEA publications page, which is the access point for information related to the “war on drugs:”

[www.usdoj.gov/dea/pubs/publications.html](http://www.usdoj.gov/dea/pubs/publications.html)