

CRIMINAL LAW

Criminal law is an important topic about which students need to be aware. A criminal conviction may influence a student's ability and success in pursuing short and long-term goals. This section discusses areas of criminal law and procedure that particularly affect students.

ARREST

An officer must have "probable cause" to arrest a suspect. A police officer is said to have probable cause if the "facts and circumstances within [the police officer's] knowledge and of which [the officer] had reasonably trustworthy information were sufficient" for a reasonable person to believe that the suspect committed a crime. *Beck v. Ohio* (1964) 379 U.S. 89, 91. An officer must not use excessive force in making an arrest.

The Fourth Amendment to the U.S. Constitution guarantees citizens a right against unreasonable search and seizure. However, the degree of protection against search and seizure varies depending upon location and context. For example, individuals do not have the same level of protection in their vehicles as they do in their homes. An officer generally must have a warrant to arrest a suspect in the suspect's home but not to arrest a suspect in the suspect's car. An officer may stop a vehicle so long as probable cause exists that a crime or traffic violation has occurred. If an officer has probable cause to make an arrest, the officer may arrest a suspect without a warrant.

An individual has certain rights during and after an arrest, regardless of whether the arrest is based upon probable cause or is pursuant to an arrest warrant. An individual has the right (1) to remain silent and not say anything to police and (2) to have an attorney present to assist him or her. Individuals who are not U.S. citizens have the right to request (or refuse) the assistance of the consulate from their country of origin.

Individuals often wish to "explain what happened" to the officer to try to "make the officer understand." If you are ever arrested, you should not speak with the arresting officer or answer questions until you have had an opportunity to consult with an attorney.

CLASSIFICATION OF CRIMES AND PUBLIC OFFENSES

Crimes and public offenses are categorized as felonies, misdemeanors, or infractions. A felony is any crime which is punishable by death or imprisonment in state prison (*i.e.*, more than one year). Penal Code §17. A misdemeanor is a crime which is punishable by imprisonment not exceeding one year. Pen. C. §19.2. An infraction is an offense not punishable by imprisonment. Pen. C. §19.6.

CRIMES

It is important for students to have basic knowledge of crimes and criminal law in California so that they are aware of what behaviors and conduct are prohibited.

Assault and Battery

An assault is an attempt to violently injure another person by someone with a “present ability” to do so. Pen. C. §240. A battery is “the willful and unlawful use of force or violence” against another person. Pen. C. §242. An assault is thus an attempt to use violence against another, while a battery is the actual use of violence against another.

Alcohol-related Crimes

Minor in Possession (MIP)

Any person under 21 years of age who has an alcoholic beverage in his or her possession is guilty of a misdemeanor. Business & Professions Code §25662(a). Punishment typically includes a \$250 to \$500 fine and/or 24 to 48 hours of mandatory community service.

Furnishing Alcohol to a Minor

Any person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under 21 years of age is guilty of a misdemeanor. Bus. & Prof. C. §25658 (a), (c) and (e). Generally, punishment includes a fine of \$250 to \$500 and/or 24 to 48 hours of mandatory community service. If a person under age 21 is provided alcohol and suffers great bodily harm or death as a result, the punishment to the individual furnishing the alcohol may include a \$1,000 fine and/or six to 12 months imprisonment.

Driving under the Influence (DUI)

Person under 21 Driving with a Blood Alcohol Level of 0.01% or Higher (“Any Measurable Amount.”)

It is unlawful for a person under 21 years of age with a blood-alcohol concentration (BAC) of 0.01 percent or greater to drive a vehicle. Vehicle Code §23136(a). Punishment may include a \$250 to \$500 fine and/or 24 to 48 hours of community service, and a one-year driver’s license suspension, administrative fines, probation, and mandatory attendance at MADD/AA meetings.

Driving under the Influence/Driving with BAC of 0.08% or Higher.

It is unlawful for any person under the influence of an alcoholic beverage or drug to drive a vehicle. Veh. C. §23152(a). An individual can be prosecuted for being under the influence of legal or illegal drugs. It is unlawful for any person with a BAC of 0.08 percent or more to drive a vehicle. Veh. C. §23152(b).

A person arrested for DUI must submit to chemical testing. Punishment may among other things include the suspension of one’s driver’s license for 6 to 10 months. A second DUI conviction results in mandatory imprisonment of 90 days to one year. Defending a DUI claim may exceed \$5,000 in attorney’s fees alone.

Gambling

Casino-style gaming is illegal in California. Card rooms are legal and not considered casinos. Gaming on Native American reservations is permitted.

“It is unlawful for any person to knowingly permit any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.” Pen. C. §337j(b). “Controlled games” generally include games played with cards or tiles or any other games of chance played for money, credit, or thing of value. Pen. C. §337j. *Gambling of any kind is prohibited by the UCSD Student Conduct Code.*

Hazing

Hazing is defined as a school group initiation or pre-initiation activity that is likely to cause serious bodily injury to a prospective, current, or former student of any university or educational institution. Hazing may be a misdemeanor or a felony depending upon the circumstances. If no one is harmed, hazing is charged as a misdemeanor. Punishment may involve a fine (\$100 to \$5,000), incarceration of up to one year, or both. If someone is killed or suffers serious bodily injury due to hazing, the punishment is incarceration.

Property Crimes

Property crimes include a wide array of offenses. Theft, trespassing, and vandalism are discussed below.

Theft

Petty theft is the unlawful taking of an item or service which does not exceed \$400 in value. Penalties may include a fine (up to \$1,000), imprisonment (up to six months), or both. Pen. C. §490.

Grand theft is the unlawful taking of an item or service which exceeds \$400 in value, or the unlawful taking of an item or service that the California Penal Code has designated constitutes grand theft. Pen. C. §487. The penalty for grand theft is typically incarceration not exceeding one year.

Trespassing

Trespassing is defined as entering the property of another without his or her permission. Under certain circumstances, trespassing is deemed a criminal offense. When property is marked “No Trespass” or “Trespassing-Loitering Prohibited by Law” and an individual enters the property without written consent from the owner or someone else with authority to provide consent, the individual is guilty of a misdemeanor. It is also unlawful to deface the signs which mark a “No Trespassing” area. Pen. C. §§ 552 *et seq.*

Vandalism

Vandalism includes defacing, damaging, or destroying property that belongs to someone else. Penalties for vandalism may include incarceration for up to one year and fines ranging from \$1,000 to 50,000, depending on the extent of the damage. Pen. C. §594. An individual convicted of vandalism who is older than 13 years of age may have his or her driver’s license suspended for up to two years.

CONSEQUENCES UNDER CIVIL LAW FOR CRIMINAL ACTIONS

Many actions that could result in criminal punishment also expose an individual to civil liability. In other words, a person may be sued by another party in addition to facing criminal consequences. For example, striking a person may constitute criminal battery and may also constitute civil battery for which a person might be subject to suit in civil court.

INFORMATION FOR CRIME VICTIMS

Being the victim of a crime is a stressful experience. There are many campus, local, and state resources available to assist students with the process of reporting a crime and to provide further support and assistance. See below for more information.

Getting Help

General Legal

Student Legal Services, 858.534.4374 or <http://sls.ucsd.edu>

Court and Case Resources

Superior Court of California, County of San Diego – Criminal Division,
http://www.sdcourt.ca.gov/portal/page?_pageid=53,129764&_dad=portal&_schema=PORTAL

County of San Diego, Department of the Public Defender,
619.338.4700 or

http://www.sdcounty.ca.gov/public_defender/locations.html

Information and Services for Victims

UCSD Police Department,

858.534.4357 or

<http://police.ucsd.edu>

UCSD Psychological and Counseling Services,

858.534.3755 or

<http://psychservices.ucsd.edu>

UCSD Sexual Assault and Violence Prevention Center (SARC),

858.534.5793 or

<http://studentsafety.ucsd.edu>

County of San Diego, Office of the District Attorney – Victim Assistance,

619.531.4041 or

<http://www.sdcda.org/helping/vaphelp.php>

California Victims of Crime Compensation Board,

800.777.9229 or

<http://www.boc.ca.gov/Victims.htm>