

Basic Course Workbook Series



# Learning Domain 31

## Custody

*Version 7.0*

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

**Basic Course Workbook Series**  
**Student Materials**  
**Learning Domain 31**  
**Custody**  
**Version 7.0**

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## **THE MISSION OF POST**

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

## **THE ACADEMY TRAINING MISSION**

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

## **FOREWORD**

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.  
Executive Director

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### **Student Workbooks**

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

### **Regular Basic Course Training Requirement**

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

### **Student Workbook Elements**

The following elements are included in each workbook:

- Chapter contents, including a synopsis of key points,
- Supplementary material, and
- A glossary of terms used in this workbook.

## HOW TO USE THE WORKBOOK

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### Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning, for test preparation, and for remedial training.

### Workbook Format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Introduction and How to Use the Workbook, which provides an overview of how the workbook fits into the POST Basic Course Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the workbook learning activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. When first referenced these terms will be bolded and underlined (e.g., <b><u>term</u></b> ).



# Chapter 1

## Peace Officer Responsibilities in a Custodial Situation

### OVERVIEW

#### Learning Need

Peace officers must know their responsibilities and liabilities for the care, custody, and safety of prisoners while ensuring their constitutional and statutory rights.

#### Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none"><li>Recall the definition of custody</li></ul>	31.01.1
<ul style="list-style-type: none"><li>Recognize general responsibilities an officer has for the care and custody of an arrested person</li></ul>	31.01.2
<ul style="list-style-type: none"><li>Recognize the liabilities for an officer who shows callous disregard for an arrested person's safety</li></ul>	31.01.3
<ul style="list-style-type: none"><li>Recognize the circumstances that ensure a legal basis for commitment to custody including:<ul style="list-style-type: none"><li>Court documents (e.g., warrants, court orders, etc.)</li><li>Parole and probation commitments</li><li>Probable cause arrests</li><li>Prisoners in transit</li></ul></li></ul>	31.01.4

## Learning Objectives (Continued)

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none"><li>Recognize constitutional rights and protections afforded to an arrested person while in an officer's charge</li></ul>	31.01.5
<ul style="list-style-type: none"><li>Recognize fatal errors officers can make that jeopardize their safety while performing custodial duties</li></ul>	31.01.6

## In This Chapter

This chapter focuses on other background information pertaining to patrol strategies. Refer to the chart below for specific topics.

Topic	See Page
Peace Officers' Responsibilities in a Custodial Situation	1-3
Lawful Basis for Custody	1-5
Constitutional and Statutory Rights and Protections	1-9
Officer Safety	1-12
Chapter Synopsis	1-18
Workbook Learning Activities	1-19

# PEACE OFFICER RESPONSIBILITIES IN A CUSTODIAL SITUATION

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## Introduction

Peace officers who have custody of arrested persons are lawfully responsible for the care and safekeeping of those individuals.

## Ethics

The whole process of ensuring the well-being of the community at large by depriving an individual of freedom is one of great importance to American democracy. Misuse of this authority undermines the relationship between law enforcement and the community and undermines our fundamental belief in democratic government. The actions of an officer who takes someone into custody must always be accomplished using an agency's policy and commitment to unbiased policing. We must ensure that our enforcement activities are applied fairly and equitably throughout our communities.

## Custody

**Custody** refers to the immediate care or charge of an arrested person.

An **arrest** is the taking of a person into custody, in a case and manner authorized by law.

From the moment of a lawful arrest through the formal process of incarceration into a detention facility, the arrested person remains in the custody of peace officers.

## Custodial Personnel

There are numerous terms which refer to peace officers who are responsible for the care and custody of arrested persons.

At the time of the initial arrest, the *arresting officer* is responsible for the care and custody of an arrested person. The arresting officer may or may not also be the *transporting officer* responsible for transporting the arrested person to a local detention facility.

## Custodial Personnel (Continued)

As the arrested person moves through the formal process of incarceration into a local detention facility, the care and custody of that person is the responsibility of custodial personnel, including the *intake officers* or receiving officers.

## General Responsibilities

All peace officers have certain general responsibilities in a custodial situation. These general responsibilities include:

- Assuring that there is a lawful basis for custody
- Protecting the constitutional and statutory rights of the arrested person while that person is in the officer's charge
- Maintaining the care, custody, and safety of the arrested person until that person is processed into a local detention facility
- Maintaining officer and public safety
- Handling those responsibilities necessary to facilitate the processing of the arrested person into a detention facility

## Officer Liability

Peace officers who have responsibility for arrested persons are liable for the safekeeping and standard of care of those persons.

Failure to uphold the expected level of care under the provisions of state and federal laws or the **callous disregard** for an arrested person's safety will subject peace officers to:

- Departmental discipline (including termination)
- State prosecution for violation of penal code statutes
- Federal prosecution for violation of federal civil rights law, and/or
- Civil lawsuits which may include punitive damages levied directly against individual officers

## LAWFUL BASIS FOR CUSTODY

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### Introduction

Before an arrested person can be accepted by a local detention facility, the officer maintaining custody of that person must ensure that there is a legal basis for the arrest and commitment to custody.

**NOTE:** The specific procedures and commitment documents for the process of validating the legality of a commitment can vary greatly from one jurisdiction to another. It is each officer's responsibility to become familiar with the procedures and documents that are specific to their agencies.

### Leadership

Arresting or depriving a person of freedom in any capacity is one of the most serious and sensitive responsibilities that peace officers have. In depriving a person of freedom, officers must weigh the right of an individual to personal liberties against the right of the community at large to be safe and secure. Once a community member is taken into custody, a whole new set of responsibilities emerge. These include the care and safety as well as the constitutional and statutory rights of the prisoner.

### Legal Commitment to Custody

The circumstances that ensure a legal basis for commitment to custody include:

- An arrest warrant
- The existence of a valid *court commitment document*
- The existence of a valid *parole or probation commitment*
- *A probable cause arrest*
- *An enroute prisoner commitment*

## Court Commitment Documents

Court commitment documents generally direct a particular person to be confined. To be legally sufficient, they must contain:

- Signature of the magistrate or court clerk (signature of authority)
- Court case number/docket number
- Violation, *and*
- Bail or sentencing information

Examples of court commitment documents include, but are not limited to:

- Sentence orders
- Remanding orders

## Arrest warrants

An **arrest warrant** is a written order signed by a magistrate, directed to and commanding a peace officer to arrest the person named in the warrant for the offense named in the warrant.

Arrest warrants are required by *Penal Code Section 815* to contain specific information. This information includes the:

- Name of the defendant
- Crime that defendant is suspected of committing
- Date of the warrant
- City or county where the warrant is issued
- Signature of the issuing authority with the title of office
- Name of the court or other issuing agency
- Amount of bail

Before the arrested person can be committed for custody, the validity of the warrant must be confirmed. The officer who made the warrant arrest must be in possession of a valid arrest warrant or an abstract of the arrest warrant.

NOTE: Officers must become familiar with the requirements and procedures of their specific jurisdiction for confirming the validity of an arrest warrant.

### Parole Or Probation Commitment

Parole or probation commitment documents are submitted by parole or probation officers directing the confinement of a person in their charge. These documents may also be referred to as parole holds, parole detainers, flash incarcerations, or violations of probation.

The following table identifies a number of statutes that relate to the conditions under which a parole or probation commitment document could be issued.

Conditions	Code Section
Reimprisonment of a prisoner on parole	<i>Penal Code 3056</i>
Revocation of probation/flash incarceration (AB 109)	<i>Penal Code 1203.2</i>
Suspension of release for a person on an outpatient release status	<i>Welfare and Institutions Code 3151</i>
Suspension, cancellation, or revocation of parole related to a juvenile	<i>Welfare and Institutions Code 1767.3</i>

## Probable Cause Arrest

All arrests must be based on probable cause. A **probable cause arrest** is an arrest based on a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime.

When a person is brought to a local detention center after a probable cause arrest, that person must be accompanied with documentation that clearly states the set of facts that led to the arrest. Such documentation may be referred to as the:

- Arrest report or probable cause declaration
- Initial booking sheet

*Penal Code Section 836* establishes that, at a minimum, these documents must clearly identify:

- The name of the person to be held, *and*
- The crime that person was arrested for

## Transporting A Prisoner

Prisoner transportation occurs when prisoners are held in temporary custody while in transit from one facility or agency to another. Patrol officers usually do not handle enroute prisoner commitments.

After being presented with a legal enroute prisoner commitment document, a local detention facility can accept a person for temporary confinement.

NOTE: Documents related to enroute prisoner commitments can vary. Officers should become familiar with the standard forms used by their specific agencies and those of the detention facility.

NOTE: Peace officers should follow their departmental policies regarding the seat-beltting of prisoners during transportation.

NOTE: It is recommended that peace officers, when transporting prisoners, or detaining an individual in their patrol vehicle, turn the volume down or off on the patrol vehicle radio and turn off the screen to the MDT to avoid the prisoner from gaining intelligence on their crime or other sensitive information.



# CONSTITUTIONAL AND STATUTORY RIGHTS AND PROTECTIONS

## Introduction

Peace officers are bound to protect the rights of all persons as guaranteed in the Amendments to the Constitution referred to as the **Bill of Rights**. Although arrested persons no longer have the right to the freedom of movement, they do retain certain other rights and protections under the law.

## Constitutional Rights and Protections

The first 10 amendments to the Constitution, commonly referred to as the Bill of Rights, were written to ensure that certain rights of people cannot be infringed upon by the government.

Although a person who has been lawfully arrested and is under the custody of peace officers relinquishes the right to freedom of movement, certain other rights remain. The following table identifies the rights afforded to persons who are in the lawful custody of a peace officer.

	Rights and Protections	Application
First Amendment	• Freedom of religion	The right to worship or not worship, within reasonable limitations, cannot be denied to persons who are in custodial situations.
	• Freedom of speech	The right to free speech, within limits, is not denied to persons in custodial situations.
Sixth Amendment	• Right to a speedy trial	A person's rights concerning the due process of the law cannot be infringed upon even while that person is in a custodial situation.
	• Right to legal counsel	

## Constitutional Rights and Protections (Continued)

	Rights and Protections	Application
Eighth Amendment	<ul style="list-style-type: none"><li>• Protection from cruel and unusual punishment</li></ul>	Prisoners have the same legal rights as other persons to humane treatment. Unnecessary or inhumane force against prisoners is strictly prohibited.
Fourteenth Amendment	<ul style="list-style-type: none"><li>• The right to due process of the law</li></ul>	A person's right to due process under the judicial system begins at the time of the arrest and cannot be denied while that person is under the custody of peace officers.
	<ul style="list-style-type: none"><li>• Right to equal protection</li></ul>	Officers must apply the law equally to all persons regardless of race, creed, nationality, religious preference, or national origin.

## Statutory Rights and Protections

Persons under the custody of peace officers are also afforded a number of statutory rights and protections. The following table identifies a number of statutes related to such rights.

Right or Protection	Penal Code Section
<ul style="list-style-type: none"><li>• The reasonable opportunity to exercise religious freedom</li></ul>	4027
<ul style="list-style-type: none"><li>• The right of a prisoner's attorney to visit the prisoner</li></ul>	825
<ul style="list-style-type: none"><li>• The right to any physician, surgeon, psychologist or psychiatrist who is employed by the prisoner, or the prisoner's attorney, to visit the prisoner for the purpose of assisting in the prisoner's defense</li></ul>	825.5
<ul style="list-style-type: none"><li>• The right to make at least three local telephone calls within the first three hours of the arrest with an additional two phone calls if they are custodial parent with responsibilities</li></ul>	851.5
<ul style="list-style-type: none"><li>• The right to retain certain civil rights which include the right to:<ul style="list-style-type: none"><li>- Inherit, own, sell, or convey real or personal property</li><li>- Correspond confidentially with a member of the state bar or public office</li><li>- Purchase, receive, and read newspapers, periodicals, and books accepted for distribution by the U.S. Postal Service, with some limitations</li><li>- Initial civil actions</li><li>- Marry</li><li>- Create a power of appointment</li><li>- Make a will</li></ul></li></ul>	2601

## Agency Policies

Along with the constitutional and statutory protections, each agency will have its own specific policies and guidelines regarding rights and protections afforded to persons in the custody of peace officers. It is the responsibility of each officer to become familiar with and comply with their agency's policies.

### Introduction

Working with prisoners in a custodial environment can expose officers to a variety of hazards. Complacency and routine can lull officers into a false sense of security and errors can be made. When handling prisoners, errors can lead to assaults, serious injury, or even death for a peace officer.

### Fatal Errors

Experience has shown that there are a number of fatal errors that officers can make while working in a custodial situation. Committing any one can place an officer's safety in jeopardy.

The following table identifies the most common errors made by officers that place them at risk.

Error	Description	Example
"Tombstone Courage"	<ul style="list-style-type: none"><li>• Overly anxious to show courage</li><li>• Trying to handle dangerous situations beyond officer's ability or experience</li></ul>	A peace officer was serving an arrest warrant on a suspect charged with assault. When he located the suspect, he realized the person was under the influence of PCP and very agitated. Instead of calling for back-up, the officer decided he could handle the suspect on his own. The suspect, when confronted, became enraged and charged at the officer. During the fight the officer was severely injured.

## Fatal Errors (Continued)

Error	Description	Example
Fatigue	<ul style="list-style-type: none"><li>• Failure to get adequate rest</li><li>• Attention and reflexes are compromised</li></ul>	A peace officer worked five straight 12 hour days in order to earn some overtime hours. Near the end of his shift, the officer transported a prisoner to a local detention facility. The officer didn't notice when his prisoner reached under the seat for the backup weapon that the officer had forgotten to remove. The prisoner shot the officer in the back of the head.
Bad Position	<ul style="list-style-type: none"><li>• Failure to exercise caution</li><li>• Failure to call for back-up when handling an aggressive or agitated prisoner</li></ul>	An extremely aggressive arrestee refused to come out of the patrol car when ordered to do so. The arrestee threatened to strike the officer if the officer tried to take him from the car. The officer, thinking he could handle the situation, opened the car door and attempted to remove the arrestee, without requesting backup. The arrestee struck the officer and broke the officer's nose. In the ensuing struggle, another officer, who had come to the first officer's aid, was injured in the effort to subdue the arrestee.

## Fatal Errors (Continued)

Error	Description	Example
Bad Attitude	<ul style="list-style-type: none"><li>• Treating a prisoner disrespectfully</li></ul>	An arresting officer verbally taunted a prisoner about the prisoner's past arrests and the "big trouble" he was in. The prisoner became extremely irate and uncooperative, making the arrest and transporting process very difficult.
Ignoring Danger Signs	<ul style="list-style-type: none"><li>• Process becomes routine</li><li>• Ignoring signs that a prisoner is an immediate threat</li></ul>	Two officers transported a woman who was being admitted to a crisis unit. The woman talked incessantly, making threats against various family members and neighbors. She told the officers she had a gun, but the officers ignored her comments. An hour after she was dropped off at the crisis center, a staff member of the unit called dispatch asking if the officers would pick up the revolver the woman was carrying in her purse.

## Fatal Errors (Continued)

Error	Description	Example
Failure to Watch Hands	<ul style="list-style-type: none"><li>• Officers miss a prisoner reaching for a firearm or other deadly weapon</li></ul>	An officer on patrol detained a “three-strike” parolee to question him about a robbery that had been committed near the parolee’s home. The parolee became agitated and started reaching into his waist area. The officer ignored the movement and continued talking. The parolee pulled a pistol from his waistband and fled before the officer could take any action.
Relaxing too Soon	<ul style="list-style-type: none"><li>• Uneventful custody situations</li><li>• Officers become careless</li></ul>	An inmate being transferred to another facility asked the transporting officer to stop for a restroom break. The inmate had been quiet and complacent, so the officer decided to stop. The officer uncuffed the inmate and let him enter the restroom alone. The inmate fled through the window of the restroom.

## Fatal Errors (Continued)

Error	Description	Example
Use of Restraint Devices	<ul style="list-style-type: none"><li>• Failure to cuff or use other restraints when necessary</li><li>• Improperly cuffing a prisoner</li></ul>	Two officers were assigned to transport an elderly inmate with numerous health problems to a medical facility. The inmate asked to be cuffed with hands in front. The officers complied with the request, thinking the prisoner's age would prevent him from posing any threat to the officers. While officers were removing the inmate from the car after arriving at the second facility, the inmate turned on one of the officers and struck that officer in the face with his cuffed hands.
No Search or Poor Search	<ul style="list-style-type: none"><li>• Cursory search in the field or in a facility</li><li>• Failure to locate firearms, other deadly weapons, or contraband</li></ul>	A patrol deputy arrested and handcuffed a suspect but failed to search the suspect for weapons. After being transported to the patrol station, the suspect was uncuffed. When asked to hand over any personal property, the suspect removed a .22 automatic weapon from the small of his back and handed it to the deputy. The officer's failure to search the suspect at the time of the arrest placed that officer as well as the custodial personnel at great risk.



## Fatal Errors (Continued)

Error	Description	Example
Officers' Inoperative Weapons	<ul style="list-style-type: none"><li>Undependable weapon resulting in injury or death to officer</li></ul>	Peace officers arrested a suspect for armed robbery. They searched the suspect and found no weapons. While the suspect was being handcuffed, he lunged for one officer's firearm, knocking that officer down. The suspect was able to gain possession of the officer's weapon and began firing it randomly. When the second officer attempted to fire his own weapon, it jammed. The officer had failed to properly clean and maintain the firearm, causing it to jam.

### **Learning Need**

Peace officers must know their responsibilities and liabilities for the care, custody, and safety of prisoners while ensuring their constitutional and statutory rights.

### **Custody And Officer Responsibilities [31.01.1, 31.01.2]**

Custody refers to the immediate care or charge of an arrested person.

### **Officer Liability [31.01.3]**

Failure to uphold the expected level of care under the provisions of state and federal laws or the “callous disregard” for an arrested person’s safety will subject peace officers to discipline which may include termination and levied punitive damages.

### **Legal Commitment to Custody [31.01.4]**

The circumstances that ensure a legal basis for custody include an arrest warrant, the existence of a valid court commitment document, the existence of a valid parole or probation commitment, a probable cause arrest, or an en route prisoner commitment.

### **Constitutional Rights and Protections [31.01.5]**

The rights afforded to persons who are in the lawful custody of a peace officer are covered in the First, Sixth, Eighth, and Fourteenth Amendments.

### **Fatal Errors [31.01.6]**

Fatal errors made by peace officers can put them at risk while working in a custodial situation.

## WORKBOOK LEARNING ACTIVITIES

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### Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

### Activity Questions

1. Officers on patrol witnessed a street corner transaction in which a man, Kavakas, exchanged three small foil packets for cash. As officers approached, the buyer fled, dropping one of the three packets. Initial examination by the officers indicated that the packet contained heroin, and they arrested Kavakas for selling a controlled substance. The officers transported Kavakas to the local detention center and completed an arrest report. The arresting officer provided this report, but no warrant, to the intake officer at the detention facility. Can the facility accept custody of Kavakas? Explain.

### Activity Questions (Continued)

2. Phillips is in custody in a county detention facility after failing to make bail on battery charges related to a domestic violence case. On Saturday, Phillips tells the officer in charge that he is Catholic and wants to make arrangements to receive communion at the jail the next day. Are custodial personnel required to let Phillips use the telephone to make these arrangements? Are officers required to make the religious arrangements for Phillips if he desires? Explain your response.
  
3. Armed with a warrant, two officers arrest a local man at his home for a series of child molestations. They handcuffed the man and took him out the front door. A crowd of angry parents screamed at the man as he was escorted to the patrol car. Several stones were thrown by an unseen person at the rear of the crowd, and one struck the man in the head. The officers quickly placed the man in the car and left the scene, making no attempt to locate the rock thrower or control the crowd. After seeking medical attention, the officers took the man to the detention facility without further incident. Have officers exhibited a callous disregard for the man's safety? Why or why not? What, if anything, could they have done differently to better fulfill their responsibilities as custodial personnel? If a callous disregard is exhibited by officers, what penalties might they face?

### Activity Questions (Continued)

4. How do the rights of a person in custody for attempted murder differ from yours?
  
  
  
  
  
  
  
  
  
  
5. Two peace officers were serving an arrest warrant for child abuse on Suzanne, a 36-year-old mother, and her boyfriend. As they pulled up to Suzanne's home, the officers noticed several cars in the driveway. One officer covered the front entrance while the other took the back. As they announced themselves, the boyfriend attempted to flee out the back, but was apprehended. As the boyfriend was handcuffed, the officer asked him what type of scum he was for hurting a little girl and told him he hoped that he would enjoy prison. The man spat at the officer as he was placed in the patrol car. The officer in the front was overpowered by three of Suzanne's relatives and she escaped. Intake search of the boyfriend revealed a switchblade knife in his pocket. What fatal errors did the peace officers make, and what could they have done differently?
  
  
  
  
  
  
  
  
  
  
6. What is "tombstone courage?" What do you think might motivate an officer to exhibit this error?



# Chapter 2

## Crimes Involving the Treatment of Prisoners

### OVERVIEW

#### Learning Need

Peace officers must know the elements required to complete crimes involving the treatment of prisoners and to correctly categorize these crimes as misdemeanors or felonies.

#### Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none"><li>Recognize the crime elements required to complete the crime of:<ul style="list-style-type: none"><li>Assault of a prisoner under the color of authority</li><li>Cruel or unusual treatment of prisoners</li><li>Inhumane or oppressive treatment of a prisoner</li></ul></li></ul>	31.02.1 31.02.2 31.02.3
<ul style="list-style-type: none"><li>Identify the crime classification as a misdemeanor or felony</li></ul>	31.02.4
<ul style="list-style-type: none"><li>Recognize the crime of violation of a prisoner's civil rights</li></ul>	31.02.6

## In This Chapter

This chapter focuses on crimes relating to the treatment of prisoners. Refer to the chart below for a specific topic.

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## ASSAULT BY A PUBLIC OFFICER

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### Introduction

Peace officers are given a special position of trust by their authority to use force on others. When dealing with arrested persons under their care and custody, it is particularly important that officers use only an appropriate and necessary amount of force. Unreasonable force is punishable by law.

### Community Policing

Peace officers have three basic responsibilities when taking a community member into custody. The first concerns the discretionary decision that the community will be well served by the action, second is the lawful basis for the custody, and third is the obligation to ensure the safety and care of the person in custody. These three responsibilities begin at the moment of first contact and end only when the person is transferred to the care of another part of the criminal justice system.

### Penal Code Section

The crime of assault by a public officer is covered under *Penal Code Section 149*.

### Crime Elements

In order for the crime of assault by a public officer to be complete, the necessary crime elements include:

- Every public officer who
- Under color of authority
- Without lawful necessity
- Assaults or beats any person

NOTE: For the purpose of this crime, public officers includes both patrol officers and custodial personnel.

## Classification

The crime of assault by a public officer is a felony.

## Assault

An **assault** is an unlawful attempt, coupled with a present ability to commit a violent injury on another person.

**Present ability** is the present capability of the perpetrator to carry out the intended injury.

**Violent injury**, in the context of assault, means any act of trying to strike, kick, or otherwise harm someone; it does not require violence or actual injury.

## Color Of Authority

Under color of authority means a misuse of power. Officers acting under color of authority are using their positions as peace officers to commit acts that are not authorized.

## Lawful Necessity

In order for the crime of assault by a public officer to be complete, the act committed by the officer must be unlawful.

An officer would not be liable for any act that is considered lawfully necessary. However, if an officer acts in a manner that goes beyond what would be considered lawfully necessary, that officer has committed a crime.

Examples: The use of physical force to subdue a violent prisoner would be considered a lawfully necessary act and not an unlawful act.

The use of physical force on a prisoner who is non-resistant would not be considered lawfully necessary and would be an unlawful act.

## Examples

A prisoner sat handcuffed to a chair while the booking officer filled out the booking form. The officer asked the prisoner for his address. The prisoner answered, "Get lost, pig." The officer slapped the prisoner in the face and yelled, "Now answer the question." The officer's assault on the prisoner constituted the crime of assault by a public officer.

An inmate threw hot coffee through the porthole of the cell door onto a custodial officer. The officer took the inmate to an isolation cell and proceeded to beat the inmate. The officer has misused his power and is guilty of committing the crime of assault by a public officer.

## CRUEL AND UNUSUAL PUNISHMENT

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### Introduction

Law enforcement officers are specifically prohibited from applying cruel or unusual punishment to a person in custody. This protection applies to prisoners in jails, reformatories, state hospitals, or any other state, county, or city institution.

### Cruel And Unusual Punishment

**Cruel and unusual punishment** is generally considered any cruel and degrading punishment not known to the common law; also any punishment so disproportionate to the offense as to shock the moral sense of the community.

Courts have established limits to what is acceptable punishment, thereby defining cruel and unusual.

### Penal Code Section

The crime of cruel or unusual punishment to a person in custody is covered under *Penal Code Section 673*.

### Crime Elements

In order for the crime of cruel and unusual punishment to be complete, the necessary crime elements include:

- Any person who
- In a described location (i.e., a jail)
- Inflicts cruel, corporal, or unusual punishment (including certain specified acts, devices or lack of care)
- Which would injure or impair the health
- Upon a prisoner, inmate, or person confined

## Classification

The crime of cruel and unusual punishment is classified as a misdemeanor.

NOTE: Cruel and unusual punishment of persons in custody could also constitute a violation of federal law under the Eighth Amendment.

## Examples

A deputy had in her charge an inmate arrested for child molestation. Knowing that this inmate was very claustrophobic, the deputy placed him in a 3' x 5' holding cell for several hours, although larger cells were available. During this time the inmate screamed and begged to be removed. The deputy was guilty of violating Penal Code 673. The officer committed the crime of cruel and unusual punishment by using a punishment she knew to be cruel for this particular inmate.

A prisoner who had been extremely disruptive was refused access to a toilet for an extended period of time by custodial staff. He defecated on himself and was made to wear the soiled clothing for several hours before being allowed to shower. The officers committed the crime of cruel and unusual punishment to a person in custody.

An inmate, convicted of an especially perverted and violent crime, did not receive the maximum sentence. Custodial staff, responsible for the care and protection of the prisoner, decided to skip taking meals to his cell for a week as a form of added punishment. Custodial staff are guilty of violating the statute against cruel and unusual punishment.

## INHUMANE OR OPPRESSIVE TREATMENT

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### Introduction

Prisoners have the same legal rights to humane treatment as other citizens. Peace officers are prohibited from using inhumane or oppressive treatment against prisoners in their custody.

### Penal Code Section

*Penal Code Section 147* states: Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding four thousand dollars (\$4,000), and by removal from office.

### Crime Elements

In order for the crime of inhumane or oppressive treatment by a peace officer to be complete, the necessary crime elements include:

- Any officer who
- Willfully
- Inhumanely treats or oppresses
- Any prisoner under his/her care or custody

NOTE: Although this section addresses the specific violation of *Penal Code Section 147*, inhumane treatment of prisoners in custody could also be a violation of federal civil rights laws.

### Classification

A peace officer found guilty of this crime is subject to a fine and termination of employment.

## Willfully

The term **willfully** refers to the purpose or willingness to commit a specific act or omission. An act or omission is willful if done voluntarily, deliberately, and intentionally.

To be liable, officers must be guilty of *willful* inhumanity or oppression. In the case of inhumane treatment, officers act willfully when they

- Know the act or omission to act is inhumane or oppressive, **and**
- Have the specific intent to treat a prisoner inhumanely or oppressively.

NOTE:       Necessarily harsh conditions may be beyond an officer's control, and not a result of deliberate action or neglect.

## Inhumane Or Oppressive Treatment

There are many ways to subject a prisoner to inhumane or oppressive treatment. Such treatment might include any of the following:

- Withholding basic necessities such as food, water, or medical care
- Withholding privileges, without reason
- Taunting or other verbal abuse

## Examples

A peace officer apprehended and arrested a suspect who had jumped into a river to evade capture. The officer placed the prisoner in the squad car. The suspect was soaking wet and cold. To make the prisoner even more uncomfortable, the officer deliberately rolled down the windows and turned on the air conditioning before transporting the suspect to a detention facility. The officer was guilty of inhumane treatment of a prisoner.

A peace officer went to a suspect's home, arrested the suspect and took him into custody. The suspect was dressed only in boxer shorts. The officer did not allow the suspect to dress before transporting him to the patrol station. While held at the station, the suspect was not given clothing for 30 minutes until the officer had completed his questioning. The officer has committed the crime of willfully treating a prisoner inhumanely.

## VIOLATION OF A PRISONER'S CIVIL RIGHTS

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### Introduction

In addition to the statutes affording prisoners rights and protections, California has legislation that protects all persons' constitutional rights from abuse by the government.

Peace officers represent and symbolize the law. They have a special legal and professional responsibility to ensure that the civil rights of all citizens, including prisoners, are protected.

### Penal Code Section

The crime of depriving a person of their civil rights is covered under *Penal Code Section 422.6(a)*.

### Crime Elements

*Penal Code Section 422.6(a)* makes it a crime for:

- Any person,
- *Whether or not acting under color of law,*
- Who shall by force or threat of force
- Willfully deprive any person of any legal right
- Based on that person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation,
- Or because the person perceives that the other person has one or more of those characteristics



## Color Of Law

**Color of law** means an action carried out as if under the authority of law, but that is actually done in violation of the law.

This statute is broader than federal civil rights law. It does not limit the violation of civil rights to government agents, such as peace officers or magistrates. Anyone who violates another's civil rights can be held liable.

## Penalty

The penalty for violation of this statute is:

- Imprisonment in a county jail not to exceed one year
- A fine not exceeding \$5,000
- Both imprisonment and fine

## Federal Civil Rights Laws

There are several U.S. statutes that protect a person's civil rights. Peace officers are subject to these laws and can be prosecuted if they violate these federal statutes.

## Meaning For Peace Officers

Peace officers who are found guilty of violating the civil rights of prisoners may be subject to:

- Departmental discipline, up to and including termination
- State prosecution for violation of penal code statutes
- Federal prosecution for violation of federal civil rights law, and/or
- Civil lawsuits which may include punitive damages levied directly against individual officers

### Learning Need

Peace officers must know the elements required to complete crimes involving the treatment of prisoners and to correctly categorize these crimes as misdemeanors or felonies.

### Assault By a Public Officer [31.02.1, 31.02.4]

Every public officer, under color of authority and without lawful necessity, who assaults or beats any person is guilty of a felony.

### Cruel Or Unusual Punishment [31.02.2, 31.02.4]

Any person in a described location (i.e., a jail), who inflicts cruel, corporal, or unusual punishment (including certain specified acts, devices or lack of care), which would injure or impair the health upon a prisoner, inmate, or person confined is guilty of a misdemeanor.

### Inhumane Or Oppressive Treatment [31.02.3, 31.02.4]

Any officer who willfully, inhumanely treats or oppresses any prisoner under his/her care or custody is punishable by fine and by removal from office.

### Violation Of Civil Rights [31.02.6]

The crime of depriving any person, including prisoners, of their civil rights is covered under *Penal Code Section 422.6(a)*

## Introduction

## Activity Questions

1. How do you think cruel and unusual punishment differs from inhumane and oppressive treatment? Explain your response and give an example of each type of offense.
2. During questioning of a man suspected of abducting and murdering a child, an officer deliberately tried to antagonize the suspect to catch him off guard. The officer made several slurs against the suspect's manhood. When the nervous suspect asked for a glass of water, the officer threw it in his face. What, if any, crime has the officer committed? Explain.

### Activity Questions (Continued)

3. On your own, develop a list of three indicators that would help an officer know when an aggressive interrogation or confrontation is turning into verbal abuse or assault.
  
  
  
  
  
  
  
  
  
  
4. While patrolling on foot in a downtown business district, officers arrested a woman who was intoxicated and disorderly and blocking a public sidewalk. When handcuffing the woman, the officers witnessed an armed robbery of a convenience store in progress. They quickly placed her in the patrol car and responded to the robbery. Approximately 45 minutes passed before officers returned to transport the woman. Did the officers' treatment of the intoxicated woman complete the crime of cruel and unusual punishment? Oppressive treatment? Explain your response. Would it matter if this had occurred on a summer day when the temperature was in the 90-degree range?

### Activity Questions (Continued)

5. Once a month a gay and lesbian support group has an informal get together at a local coffee shop. Although they are well-behaved paying patrons, their presence disturbs the coffee shop owner. The coffee shop owner convinces his brother, a peace officer, to come to the coffee shop and confront the support group. The officer arrives in uniform at the coffee shop and tells the support group members, "We don't want your kind around here; this is a family place. Leave now, or I'll arrest you for lewd behavior." What, if any, crime has been committed and by whom?



# Chapter 3

## Care and Handling of Prisoners in a Local Detention Facility

### OVERVIEW

#### Learning Need

Peace officers must know they are legally responsible for the safety, well being, and level of care prisoners receive while those prisoners are held in a custodial facility.

#### Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none"><li>Recognize the crime elements for bringing a firearm, deadly weapon, or explosive into a detention facility</li></ul>	31.03.1
<ul style="list-style-type: none"><li>Identify the crime classification as a misdemeanor or felony</li></ul>	31.03.6
<ul style="list-style-type: none"><li>Recognize responsibilities of the arresting or transporting officer and custodial personnel regarding medical care prescreening of prisoners before being accepted into a local detention facility</li></ul>	31.03.8
<ul style="list-style-type: none"><li>Identify classes of prisoners who may require special care or protection</li></ul>	31.03.10

## In This Chapter

This chapter focuses on crimes related to the care and handling of prisoners in local detention facilities. Refer to the chart below for specific topics.

Topic	See Page
Securing Weapons in Detention Facilities	3-3
Medical Care and Prescreening of Prisoners	3-6
Chapter Synopsis	3-9
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## SECURING WEAPONS IN DETENTION FACILITIES

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### Introduction

All persons, including peace officers, are prohibited from bringing weapons into a local detention facility, except under certain specified conditions and as authorized by facility authorities.

### Penal Code Section

The crime of bringing a firearm, deadly weapon, or explosive into a local detention facility is covered in *Penal Code Section 4574(a)*.

### Crime Elements

In order to arrest a person for the crime of bringing a firearm, deadly weapon, or explosive into a local detention facility, the elements must include:

- Any person who **knowingly**:
  - Brings in or sends into
  - Assists in bringing into or sending into
- A local detention facility **any**:
  - Firearms
  - Deadly weapons
  - Explosives

**OR**

- Any person who *while lawfully confined* to a detention facility possesses any:
  - Firearm
  - Deadly weapon
  - Explosive
  - Tear gas or tear gas weapon

### Classification

The crime of bringing a firearm, deadly weapon, or explosive into a local detention facility is a felony.

## **Tear Gas**

Any person who knowingly brings or sends tear gas or a tear gas weapon into a local detention facility is guilty of a misdemeanor. (*Penal Code Section 4574(c)*)

If the tear gas is actually released or tear gas weapon used within the facility, the crime becomes a felony. (*Penal Code Section 4574(b)*)

## **Detention Facility**

For the purpose of *Penal Code Section 4574*, a detention facility can include:

- Jails (including local detention facilities)
- County road camps
- State prisons
- Prison road, forestry, or other camps
- Prison farms
- Any other place where prisoners of the state are located

## **Securing Peace Officers' Weapons**

Except when otherwise authorized by law or the person in charge of the prison or other institution. Peace officers are included in the prohibition against bringing weapons into a detention facility. Because of this, officers are required to secure their weapons outside the facility before entering.

Officers are required to secure other deadly weapons (back-up weapons, knives, etc.) outside the facility before entering. Non-lethal devices (ammunition, batons, chemical agents, pepper spray, etc.,) are also required to be secured unless specifically permitted by detention facility policies.

## Examples

Two patrol officers brought a very disruptive and irate prisoner into a county jail. They secured their sidearms in the trunk of the patrol car, according to agency policy. They decided, however, to bring their backup weapons into the facility, against facility policy, just in case they needed to subdue the prisoner. The officers knowingly brought a weapon into a local detention facility and committed a crime.

A woman visited her brother who was an inmate in a city jail. During the visit, she slipped him a knife which he had asked her to bring, because he needed protection from other inmates. The woman was guilty of bringing a deadly weapon into a local detention facility and the inmate was guilty of possession of a weapon in the facility.

# **MEDICAL CARE AND PRESCREENING OF PRISONERS**

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## **Introduction**

Officers are responsible for the security and well-being of all prisoners in their care. This includes seeking or providing medical care when necessary.

## **Medical Care Prior To Detention**

Certain medical conditions require specialized care or treatment beyond the capabilities of a local detention facility. Detention facilities may refuse to accept arrested persons for incarceration under such conditions. The arresting or transporting officer may be required to transport the arrested person to an agency-approved medical facility.

For this reason, officers should become familiar with the situations or conditions where it would be advisable to transport the arrested person to an agency approved medical facility first. Once that person is cleared by medical personnel and a medical release form has been obtained from the attending physician, the arrested person can be taken to the local detention facility.

Conditions requiring urgent medical care include but are not limited to:

- Diabetic shock
- Head injury
- Severe bleeding
- Drug overdose
- Unresponsiveness or unconsciousness
- Chest pain

**NOTE:** Peace officers should follow their agency's policies and the policies of the juvenile detention facility as it relates to medical clearance for minors. Some policies require medical clearance for alcohol or narcotics consumption, no matter the amount.

## **Ethical Consideration**

Officers must always remember that they have a responsibility to ensure that sick or injured persons receive appropriate medical attention.

It may be difficult for an arresting or transporting officer to determine if an arrested person's complaint of illness or injury is real. A complaint of illness or injury may be used by an arrested person as a means to improve the opportunity to escape or gain special attention/treatment.

In these situations, officers must weigh issues of:

- Officer safety
- Reasonableness of complaint/request
- The individual circumstances

## **Notifying Custody Personnel**

The arresting officer is responsible for informing custodial personnel and documenting any observable, known, or recognized signs of:

- Injury
- Illness
- Possible drug overdose
- Mental incapacitation
- Suicide risk
- Whether the person requires medication

Custodial personnel should also be informed if the arrested person had force used during their arrest (exposed to OC spray, tasers, or if a baton was used).

## Extended Hospitalization

In some instances, an arrested person may require extended hospitalization (e.g., traffic accident, head injury, shooting, drug overdose).

Peace officers must become familiar with their agency's procedures for processing prisoners who require extended hospitalization (e.g., cite and release, booking in absentia, booking into a hospital jail ward, constant monitoring, etc.).

## Prescreening

Arresting/custodial personnel are required to complete a prescreening medical questionnaire for each arrested person brought to a local detention facility. The purpose of performing a prescreening is to determine if the arrested person has any medical problems or conditions that need special care or attention.

Upon completion of this questionnaire, it will be determined whether or not the arrested person will be accepted for incarceration. The following table further describes these options.

If the arrested person is...	Then...
Cleared for incarceration,	<ul style="list-style-type: none"><li>• That person proceeds with the intake process, and</li><li>• The arresting or transporting officer is relieved of the responsibility for the care and custody of the arrested person.</li></ul>
<i>Not</i> cleared for incarceration,	<ul style="list-style-type: none"><li>• The arrested person remains the responsibility of the arresting or transporting officer, and</li><li>• The arresting or transporting officer may be required to transport the arrested person to an agency-approved medical facility for clearance.</li></ul>

### Learning Need

Peace officers must know they are legally responsible for the safety, well being, and level of care prisoners receive while those prisoners are held in a custodial facility.

### Bringing Weapons into A Detention Facility And Crime Classification [31.03.1, 31.03.6]

Any person who knowingly brings or sends into, or assists in bringing into or sending into, a local detention facility any firearms, deadly weapons, or explosives, or any person who, while lawfully confined to a detention facility, possesses any firearm, deadly weapon, explosive tear gas weapon is guilty of a felony.

### Medical Care and Prescreening [31.03.8, 31.03.10]

Prior to detention certain medical conditions of prisoners may require urgent medical care. The arresting officer is responsible for informing custodial personnel and documenting any observable, known, or recognized signs of injury, illness or other pertinent observations.

## WORKBOOK LEARNING ACTIVITIES

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### Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

### Activity Questions

1. Peace officers arrest an approximately 45-year-old woman for selling crack and carrying a concealed, unlicensed handgun. She is a repeat offender who had previously jumped bail. En route to the detention facility, the woman asks to stop at a gas station to use the restroom. The officers refuse, saying they are only five minutes from the station. A moment later, the woman begins complaining of chest pain. What actions do you think officers should take? Explain your rationale, including ethical and safety considerations.



### **Activity Questions** (Continued)

2. During a visit with her husband, who was incarcerated in the county jail, a woman forgot to deposit her pepper spray before entering the facility. When the husband became angry during the visit and tried to slap her, she remembered the canister and sprayed him in the face. Has the woman completed a crime? If so, is it a felony or misdemeanor?



# Glossary

## Introduction

The key vocabulary terms for Learning Domain 31: Custody are listed below with the definitions as they apply to this workbook.

## Arrest

The taking of a person into custody, in a case and manner authorized by law

## Arrest Warrant

A written order signed by a magistrate, directed to and commanding a peace officer to arrest the person named in the warrant for the offense named in the warrant

## Assault

An unlawful attempt, coupled with a present ability to commit a violent injury on another person

## Bill of Rights

The first 10 Amendments to the Constitution written to ensure that certain rights of people cannot be infringed upon by the government

## Callous Disregard

Willful insensitivity to the well-being, as well as the rights and privileges of others, that is so flagrant it rises to the level of negligence

### **Color Of Law**

An action carried out as if under the authority of law, but that is actually done in violation of the law (e.g., peace officers or magistrates using their position to act in an unlawful manner)

### **Cruel And Unusual Punishment**

Any cruel or degrading punishment not known to the common law; also any punishment so disproportionate to the offense as to shock the moral sense of the community

### **Custody**

The immediate care or charge of a prisoner

### **Present Ability**

The present capability of the perpetrator to carry out the intended injury

### **Probable Cause Arrest**

An arrest based on a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime

### **Under Color of Authority**

A misuse of power; officers acting under color of authority are using their positions as peace officers to commit acts that are not authorized

### **Violent Injury**

In the context of assault, means any act of trying to strike, kick, or otherwise harm someone; it does not require violence or actual injury (e.g., spitting, throwing water, verbal abuse)

**Willfully**

The voluntary, deliberate, or intentional commission or omission of a specific act