

1 California Criminal Law (3d), Crimes Against the Person

I. ASSAULT AND BATTERY

A. In General.

1. Nature of Crimes.

- (a) [§1] Definitions.
- (b) [§2] Relationship Between Assault and Battery.
- (c) [§3] Classification of Offenses.
- (d) [§4] Similar Offenses.
- (e) [§5] Offenses Against Public Safety Providers.

2. Assault.

- (a) [§6] Unlawful Attempt.
- (b) Present Ability.
 - (1) [§7] Necessity.
 - (2) [§8] Present Possibility Distinguished.
 - (3) [§9] Unloaded Gun.
- (c) [§10] Identifiable Victim Not Required.
- (d) [§11] No Crime of Attempted Assault.

3. Battery.

- (a) Force or Violence.
 - (1) [§12] In General.
 - (2) [§13] Direct or Indirect.
- (b) [§14] Wilful and Unlawful.

B. Misdemeanors.

1. [§15] Simple Assault or Battery.

2. Offenses by or Against Specific Persons.

- (a) Offenses Against Public Safety Providers.
 - (1) [§16] Nature of Offense.
 - (2) [§17] Peace Officer Acting as Security Guard.
 - (3) [§18] Injury Not Required.
- (b) [§19] Battery on Spouse, Cohabitant, or Other Intimate.
- (c) [§20] Offenses Against Other Specified Persons.
- (d) [§21] Offenses by Youth Authority Inmate.

3. Offenses Committed at Specific Places.

- (a) [§22] School or Park.
- (b) [§23] Hospital.

4. Offenses Committed by Specific Means.

- (a) [§24] Putting Offensive Substance in Public Place.
- (b) [§25] Shining Bright Device at Aircraft.
- (c) [§25A] (New) Discharge of BB Device in Grossly Negligent Manner.

5. [§26] Sexual Battery.

C. Felonies and Felony-Misdemeanors.

1. [§27] In General.

2. Assault With Intent To Commit Felony.

- (a) [§28] In General.

- (b) [§29] Attempt Distinguished.
- (c) Intent To Rape.
 - (1) [§30] In General.
 - (2) [§31] Resistance.
 - (3) [§32] Voluntary Abandonment.
 - (4) [§33] Showing Sufficient.
 - (5) [§34] Showing Insufficient.
- 3. Assault With Force Likely To Produce Great Bodily Injury.
 - (a) [§35] In General.
 - (b) [§36] Nature of Offense.
 - (c) [§37] Relevance of Victim's Injuries.
 - (d) [§38] Simple Battery Distinguished.
- 4. [§39] Battery With Serious Bodily Injury.
- 5. Assault Committed by Specific Means.
 - (a) Assault With Deadly Weapon.
 - (1) [§40] In General.
 - (2) [§41] Nature of Offense.
 - (3) What Intent Is Necessary.
 - (aa) [§42] General Rule.
 - (bb) [§43] General Intent Sufficient.
 - (cc) [§44] Negligence Not Sufficient.
 - (dd) [§44A] (New) Knowledge Requirement.
 - (4) [§45] What Constitutes Attempt.
 - (5) What Constitutes Deadly Weapon.
 - (aa) [§46] Determination of Issue.
 - (bb) [§47] Illustrations.
 - (b) Discharge of Firearm, Laser, Taser, or Stun Gun.
 - (1) [§48] Discharge of Firearm in Grossly Negligent Manner.
 - (2) [§49] Discharge of Firearm at Building or Vehicle.
 - (3) [§50] Discharge of Firearm From Vehicle.
 - (4) [§51] Discharge of Firearm or Laser at Aircraft.
 - (5) [§52] Assault With Stun Gun or Taser.
 - (c) Assault With Chemicals or Drugs.
 - (1) [§53] Caustic Chemicals.
 - (2) [§54] Stupefying Drugs.
 - (d) [§55] Putting Offensive Substance in Public Place.
- 6. Offenses by Specific Persons.
 - (a) [§56] Assault by Public Officer.
 - (b) Assault or Battery by Convict.
 - (1) [§57] Assault Against Noninmate.
 - (2) Assault by Life Prisoner.
 - (aa) [§58] In General.
 - (bb) [§59] Definition of Life Prisoner.
 - (cc) [§60] Malice.
 - (3) [§61] Assault by Prisoner for Less Than Life.
 - (4) [§62] Battery by Gassing.

7. Offenses Against Specific Victims.
 - (a) Injury to Spouse, Cohabitant, or Fellow Parent.
 - (1) [§63] In General.
 - (2) [§64] Definitions.
 - (b) Offenses Against Public Safety Providers.
 - (1) [§65] Assault on Peace Officer or Firefighter.
 - (2) [§66] Battery on Public Safety Provider.
 - (3) [§67] Assault or Battery on Other Providers.
 - (4) Performance of Duty.
 - (aa) [§68] As Element of Offense.
 - (bb) [§69] Effect of Unlawful Arrest.
 - (c) Offenses Against Other Specified Persons.
 - (1) [§70] Governmental Officers.
 - (2) [§71] Jurors.
 - (3) [§72] Transportation Personnel and Passengers.
 - (4) [§73] School Employees.
8. Sexual Battery.
 - (a) [§74] In General.
 - (b) [§75] Definitions.
 - (c) [§76] Unlawful Restraint.

II. FALSE IMPRISONMENT

- A. In General.
 1. [§77] Nature of Crime.
 2. [§78] Similar Offenses.
 3. [§78A] (New) Human Trafficking.
- B. Felony False Imprisonment.
 1. [§79] In General.
 2. [§80] Means.
 3. [§81] False Imprisonment of Hostage.
 4. [81A] (New) Human Trafficking.
- C. Confinement.
 1. [§82] In General.
 2. [§83] Unlawfulness of Confinement.

III. MAYHEM

- A. [§84] In General.
- B. [§85] Malice.
- C. [§86] Permanent Maiming or Disfigurement.
- D. [§87] Aggravated Mayhem.

IV. TORTURE

- A. [§88] In General.
- B. [§89] Intent.
- C. [§90] Constitutionality.

V. HOMICIDE

A. In General.

1. Nature and Classification.
 - (a) [§91] Crimes Included.
 - (b) [§92] Reason for Distinctions in Degrees of Murder.
 - (c) [§93] Causation.
2. [§94] Determination of Death.
3. [§95] Termination of Life Support.
4. Killing of Unborn Child.
 - (a) [§96] In General.
 - (b) [§97] Definition of Fetus.
 - (c) [§98] No Manslaughter of Fetus.
5. [§99] Killing of Child by Custodian.
6. [§100] Murder by Life Prisoner.
7. [§101] Suicide.

B. First Degree Murder.

1. [§102] In General.
2. Premeditation and Deliberation.
 - (a) [§103] Nature of Requirement and Earlier Cases.
 - (b) [§104] Intent Alone Is Not Sufficient.
 - (c) [§105] Mature Reflection Requirement Eliminated.
 - (d) Anderson Case.
 - (1) [§106] Anderson Standards.
 - (2) Standards as Guides to Analysis.
 - (aa) [§107] In General.
 - (bb) [§108] Illustrations.
 - (e) Evidence To Negate Mental State.
 - (1) [§109] General Principles.
 - (2) [§110] No Reduction to Nonstatutory Manslaughter for Mental Disorder or Voluntary Intoxication.
 - (3) [§111] Burden of Proof.
 - (f) Showing Sufficient.
 - (1) [§112] Decisions Before Anderson.
 - (2) [§113] Decisions After Anderson.
 - (g) [§114] Showing Insufficient.
3. Killing by Lying in Wait.
 - (a) [§115] Form of Premeditated Murder.
 - (b) Concealment.
 - (1) [§116] In General.
 - (2) [§117] Concealment by Disguise.
 - (3) [§118] Concealment of Purpose.
 - (4) [§119] Showing Insufficient.
 - (c) [§120] Period of Waiting.
 - (d) [§121] Surprise Unnecessary.
4. Killing by Torture.
 - (a) Nature of Crime.

- (1) [§122] Intent Required.
 - (2) [§123] Classification as First Degree Murder.
 - (b) What Constitutes Killing by Torture.
 - (1) Necessary Elements.
 - (aa) [§124] In General.
 - (bb) [§125] Probability of Death.
 - (2) [§126] Necessary Proof.
 - (3) [§127] Nonelements.
 - (c) [§128] Showing Sufficient.
 - (d) [§129] Showing Insufficient.
5. [§130] Killing by Poison.
6. [§131] Killing by Destructive Device or Explosive.
- 6A. [§131A] (New) Killing by Weapon of Mass Destruction.
7. [§132] Killing by Armor-Piercing Ammunition.
8. [§133] Drive-by Murder.
9. Killing by Perpetration of Felony.
 - (a) Nature of Felony-Murder Doctrine.
 - (1) [§134] In General.
 - (2) [§135] Proof Required.
 - (3) [§136] Application of Doctrine.
 - (4) [§137] Criticism of Doctrine.
 - (b) [§138] Specific Intent To Commit Felony.
 - (c) Connection Between Felony and Killing.
 - (1) [§139] Continuous Transaction.
 - (2) Killing While Attempting To Escape.
 - (aa) [§140] General Rule.
 - (bb) [§141] Place of Temporary Safety.
 - (cc) [§142] Rule Extended to Burglary.
 - (dd) [§142A] (New) Rule Extended to Other Offenses.
 - (3) [§143] Death Need Not Be Foreseeable.
 - (4) [§144] Connection Insufficient.
 - (5) [§145] Felony That Is Integral Part of Homicide.
 - (d) [§146] Victim Not Object of Felony.
 - (e) Killer Other Than Defendant.
 - (1) [§147] Limited Application of Felony-Murder Doctrine.
 - (2) Liability Independent of Felony-Murder Doctrine.
 - (aa) [§148] Governing Principles.
 - (bb) [§149] Jury Instruction.
 - (cc) [§150] Where Conduct of Defendant or Accomplice Provokes Resistance.
 - (dd) [§151] Sufficient Showing of Provocative Act.
 - (ee) [§152] Insufficient Showing of Provocative Act.
 - (ff) [§153] Where Accomplice Is Responsible for Own Death.
 - (gg) [§154] Liability for Death of Coconspirator.
 - (hh) [§155] Use of Victim as Shield.
 - (3) [§156] Where Defendant Joins Felonious Enterprise After Killing.
 - (f) Illustrations.

- (1) [§157] Rape.
- (2) [§158] Robbery.
- (3) [§159] Burglary.
- (4) [§160] Mayhem.
- (5) [§161] Arson.
- (6) [§162] Lewd Act With Child.

C. Second Degree Murder.

1. [§163] In General.
2. [§164] Punishment.
3. Malice Aforethought.
 - (a) [§165] Difficulty of Definition.
 - (b) Elements and Distinctions.
 - (1) [§166] In General.
 - (2) [§167] Qualifying States of Mind.
 - (3) [§168] Application.
 - (c) Evidence To Negate Mental State.
 - (1) [§169] In General.
 - (2) [§170] Restrictions on Evidence.
4. Intent To Kill.
 - (a) [§171] Insufficient Proof of Premeditation.
 - (b) [§172] Insufficient Provocation or Passion.
5. [§173] Intent To Injure.
6. Killing in Perpetration of Felony.
 - (a) [§174] In General.
 - (b) [§175] Restrictions on Scope of Doctrine.
 - (c) Felony Inherently Dangerous to Life.
 - (1) Nature of Requirement.
 - (aa) [§176] In General.
 - (bb) [§177] High Probability of Death.
 - (2) Felony Evaluated in the Abstract.
 - (aa) [§178] In General.
 - (bb) [§179] Statute Including Multiple Offenses.
 - (3) [§180] Inherently Dangerous Felonies.
 - (4) Felonies Not Inherently Dangerous.
 - (aa) [§181] Escape.
 - (bb) [§182] False Imprisonment.
 - (cc) [§183] Unlicensed Practice of Medicine.
 - (dd) [§184] Grand Theft From the Person.
 - (dd-1) [§184A] (New) Fleeing Police Officer With Wilful or Wanton Disregard for Safety of Persons or Property.
 - (ee) [§185] Other Felonies.
 - (d) Merger Doctrine.
 - (1) [§186] Application in Assault Cases.
 - (2) [§187] Rejection in Nonassault Cases.
 - (3) [§188] Child Abuse Cases.
 - (4) Decisions Allowing Application of Felony-Murder Doctrine.

- (aa) [§189] Narcotics.
 - (bb) [§190] Poisons.
 - (cc) [§191] Kidnaping.
 - (e) Liability Independent of Felony-Murder Doctrine.
 - (1) Provocative Act Murder.
 - (aa) [§192] Underlying Felony Is Provocative Act.
 - (bb) [§193] Gun Battle.
 - (2) [§194] Killing by Unconscious Agent.
- 7. Act Involving Risk of Injury or Death.
 - (a) [§195] Theory of Unintentional Murder.
 - (b) [§196] Nature of Implied Malice.
 - (c) [§197] Homicide by Omission.
 - (d) [§198] Test for Foreseeability of Consequences.
 - (e) [§199] Malice Implied From Commission of Act.
 - (f) [§200] Weapon Likely To Produce Death.
 - (g) [§201] Battery With Fists.
 - (h) Vehicular Homicide.
 - (1) [§202] In General.
 - (2) [§203] No Preemption by Vehicular Manslaughter Statute.
 - (3) [§204] Evidence of Voluntary Intoxication.
 - (4) [§205] Showing Sufficient.
 - 8. [§206] Unlawful Killing Under Uncertain Circumstances.
- D. Manslaughter.
 - 1. [§207] In General.
 - 2. Voluntary Manslaughter.
 - (a) Nature of Crime and Distinctions.
 - (1) [§208] In General.
 - (2) Murder and Voluntary Manslaughter.
 - (aa) [§209] Absence of Malice.
 - (bb) [§210] Imperfect Self-Defense.
 - (bb-1) [§210A] (New) Imperfect Defense of Others.
 - (cc) [§211] Diminished Capacity.
 - (3) [§212] Voluntary Manslaughter and Excusable Homicide.
 - (b) Provocation.
 - (1) [§213] Nature of Requirement.
 - (2) [§214] Acts Constituting Provocation.
 - (3) [§215] Acts Rarely Constituting Provocation.
 - (4) [§216] Words or Gestures.
 - (c) Heat of Passion.
 - (1) [§217] Nature of Requirement.
 - (2) [§218] Illustrations.
 - (3) [§219] When Passion Has Cooled.
 - 3. Involuntary Manslaughter.
 - (a) Killing in Commission of Misdemeanor.
 - (1) [§220] In General.
 - (2) [§221] Limitations.

- (3) [§222] Illustrations.
 - (4) [§223] Necessity of Criminal Intent.
- (b) [§224] Killing in Commission of Nondangerous Felony.
- (c) [§225] Killing in Commission of Dangerous Felony Without Malice or Intent.
- (d) Negligent Killing: Nonvehicle Cases.
 - (1) Necessity of Criminal Negligence.
 - (aa) [§226] Lack of Due Caution and Circumspection.
 - (bb) [§227] Ordinary Negligence Test Rejected.
 - (2) Negligent Handling of Firearms.
 - (aa) [§228] In General.
 - (bb) [§229] Giving Gun to Another.
 - (cc) [§230] Illustrations.
 - (3) [§231] Other Negligent Acts.
 - (4) Negligent Omissions.
 - (aa) [§232] In General.
 - (bb) [§233] Conviction Affirmed.
 - (cc) [§234] Conviction Reversed.
- 4. Vehicular Homicide.
 - (a) [§235] Former Law of Negligent Homicide.
 - (b) Manslaughter Statute.
 - (1) [§236] In General.
 - (2) [§237] Punishment.
 - (b-1) [§237A] (New) Vehicular Manslaughter While Intoxicated.
 - (c) Gross Vehicular Manslaughter While Intoxicated.
 - (1) [§238] In General.
 - (2) [§239] Gross Negligence.
 - (3) [§240] Punishment.
 - (d) [§241] Causation and Contributory Negligence.
 - (e) Gross Negligence.
 - (1) [§242] Jury Instruction.
 - (2) [§243] Mental State.
 - (3) [§244] Illustrations.
 - (f) [§245] Unlawful Act or Unlawful Manner.

VI. KIDNAPING

- A. Simple Kidnaping.
 - 1. [§246] Nature of Crime.
 - 2. [§247] Punishment.
 - 3. Elements of Basic Offense.
 - (a) [§248] In General.
 - (b) Asportation.
 - (1) [§249] Nature of Requirement.
 - (2) [§250] Movement Incidental to Another Crime.
 - (3) [§251] Movement Required.
 - (c) [§252] Intent.
 - (d) Force or Fear.

- (1) [§253] Element of Offense.
- (2) [§254] Subsequent Restraint Sufficient.
- 4. [§255] Other Kinds and Related Offenses.
- B. Aggravated Kidnaping.
 - 1. [§256] In General.
 - 2. Kidnaping for Robbery.
 - (a) [§257] In General.
 - (b) Specific Intent.
 - (1) [§258] In General.
 - (2) [§259] Kidnaping To Escape.
 - (c) Asportation.
 - (1) Former Law.
 - (aa) [§260] Detention Without Asportation.
 - (bb) [§261] Short Distance Sufficient.
 - (2) Substantial Movement With Increased Risk of Harm Required.
 - (aa) [§262] Daniels Case.
 - (bb) [§263] Later Developments.
 - (3) [§264] Evidence Sufficient.
 - (4) [§265] Evidence Insufficient.
 - 3. Kidnaping for Extortion or Ransom.
 - (a) [§266] In General.
 - (b) Bodily Harm.
 - (1) [§267] Serious Harm Present.
 - (2) [§268] Injury Not Constituting Bodily Harm.
 - (3) [§269] Causation.
 - (4) [§270] Intent.
 - (c) [§271] Substantial Likelihood of Death.
 - (d) [§272] Detention Without Asportation.
 - (e) [§273] Distinction: Restraint Incidental to Robbery.
 - 4. Kidnaping To Commit Sex Offense.
 - (a) [§274] In General.
 - (b) [§275] Substantial Movement Increasing Risk of Harm Required.
 - 5. [§276] Kidnaping To Facilitate Carjacking.
- C. [§277] Attempted Kidnaping.
- D. [§278] Representations To Obtain Ransom.

VII. CHILD ABDUCTION

- A. [§279] In General.
- B. [§280] Nature of Crimes.
- C. [§281] Proof of Intent.
- D. [§282] Bases for Jurisdiction.
- E. [§283] Protective Custody.
- F. [§284] Bail.
- G. Abduction by Person Without Right of Custody.
 - 1. [§285] Statutory Provision.
 - 2. [§286] Taking by Parent.

- 3. [§287] Taking by Unwed Father.
- H. Deprivation of Custody or Visitation.
 - 1. [§288] Former Law.
 - 2. [§289] Current Statute.
 - 3. [§290] Deprivation of Custody or Visitation Required.
 - 4. [§291] Exceptions.
- I. [§292] Factors in Aggravation and Mitigation.
- J. [§293] Removing or Concealing Child During Adoption Proceeding.

VIII. STALKING

- A. [§294] In General.
- B. [§295] Definitions.
- C. [§296] Punishment.
- D. [§297] Protective Order.
- E. [§298] Notification of Release or Escape.