

12.4: End-of-Chapter Material

12.4.1 Summary

States have an interest in protecting the quality of life of citizens, and therefore prohibit crimes against the public. Most jurisdictions criminalize disorderly conduct, which is making a loud and unreasonable noise, obscene utterance or gesture, fighting, threatening or stating fighting words, or creating a hazardous condition in public, with the specific intent or purposely or reckless intent to cause public inconvenience and alarm or a risk thereof. Disorderly conduct statutes target speech, so they are subject to constitutional challenges under the First and Fourteenth Amendments. Disorderly conduct is typically graded as a misdemeanor. Unconstitutionally vague statutes criminalizing vagrancy have been supplanted by precisely drafted statutes criminalizing loitering, which is loitering, wandering, or remaining with specific intent or purposely to gamble, beg, or commit prostitution in a specified area. Loitering is typically graded as a misdemeanor or a violation. Panhandling or begging is also criminal in many jurisdictions, and panhandling statutes should be narrowly tailored to target aggressive conduct or conduct that blocks public access or the normal flow of traffic. Sit-lie laws prohibit sitting or lying down with strict liability intent in public or on a sidewalk during specified times in certain areas. Sit-lie laws are subject to constitutional challenges as cruel and unusual punishment or void for vagueness and are typically graded as an infraction.

Group conduct tends to enhance the potential for force and violence. Most jurisdictions criminalize unlawful assembly, which is purposefully assembling or meeting to cause a breach of the peace, and failure to disperse, which is the knowing refusal or failure to disperse when ordered to by law enforcement. Both unlawful assembly and failure to disperse statutes are subject to constitutional challenges under the First Amendment or as void for vagueness and overbroad, require the attendant circumstance of a group minimum of two, three, or five, and are graded as a misdemeanor. Most jurisdictions also criminalize riot, which is group commission of an unlawful act of violence or a lawful act in an unlawful manner, with the specific intent or purposely to commit or facilitate a misdemeanor or felony or prevent official action, or the general intent or knowingly that one of the group plans to use a firearm or deadly weapon. In some jurisdictions, riot is a strict liability offense. A few jurisdictions require the defendants to be the factual and legal cause of riot harm, which is public terror and alarm. Riot typically requires the attendant circumstance of a group minimum of two, five, or six and is graded as a misdemeanor or a felony if a firearm is used or if there is property damage or physical injury to someone other than the defendants.

Gang conduct is prohibited federally and in state statutes. States either criminalize gang conduct as gang participation, enhance a penalty for a crime committed by a criminal gang or gang member, or both. Gang participation is generally furthering the commission of a felony for the benefit of a criminal gang with the general intent or knowingly that other members participate in gang activity and is a felony. Gang enhancement statutes enhance the penalty for the commission of a felony or misdemeanor at the direction of or to further a criminal gang. Civil responses to gang conduct are civil gang activity statutes providing for damages and civil gang injunctions, which prohibit gang association, hand signs, wearing of gang colors, and loitering in areas known for gang activity. Statutes regulating gangs are subject to constitutional challenges under the First Amendment and as void for vagueness or overbroad.

All states and the federal government criminalize specific controlled substances offenses. Jurisdictions classify drugs in schedules, based on their harmful or addictive qualities, and punish drug offenses accordingly. Common offenses are the manufacture, cultivation, possession for personal use or sale, sale, and use of scheduled drugs, with the grading ranging from a felony to an infraction, depending on the offense and the drug. Some jurisdictions provide rehabilitation combined with probation as a penalty for nonviolent offenders through a drug court procedure. Some jurisdictions also legalize marijuana for medical use, which could violate federal supremacy because the federal government does not legalize marijuana for this purpose.

All states except Nevada criminalize prostitution. In Nevada, only prostitution that occurs in a licensed house of prostitution is noncriminal. Prostitution is offering, agreeing, or engaging in specified sexual conduct for money or anything of value, with strict liability or general intent or knowingly in most jurisdictions, and is typically graded as a misdemeanor with sentencing enhancements for habitual offenders, prostitution that occurs near a school, or patronizing a juvenile prostitute. Pimping is generally receiving something of value from a prostitute, with general intent or knowingly that it was earned by prostitution, and is graded as a misdemeanor or a felony with sentencing enhancements if the defendant uses force or the prostitute is a juvenile. Pandering is generally procuring another for an act of prostitution with specific intent or purposely and is typically graded as a felony with sentencing enhancement if the pandering takes place near a school.

12.4.2 YOU BE THE LEGISLATOR

You are a legislator with a perfect record for voting on statutes that are constitutional. You have been presented with four proposed statutes. Read each one, and then read the case analyzing a replica statute for constitutionality. Decide whether you should vote **for** or **against** the proposed statute if you want to keep your perfect record. Check your answers using the answer key at the end of the chapter.

1. The proposed statute is *Disorderly Conduct* and reads as follows: It is a misdemeanor to engage in indecent or disorderly conduct in the presence of another in a public place. This statute was analyzed for constitutionality by *Satterfield v. State*, 395 S.E. 2d 816 (1990). The case is available at this link: http://scholar.google.com/scholar_case?case=8539981756406627329&q=Satterfield+v.+State+395&hl=en&as_sdt=2,5. Should you vote **for** or **against** the statute?
2. The proposed statute is *Loitering for prostitution* and reads as follows: It is unlawful for any person to loiter in or near any public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting for or procuring another to commit an act of prostitution. Among the circumstances that may be considered in determining whether such purpose is manifested are that such person repeatedly beckons to, stops, or attempts to stop or engages persons passing by in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture. This statute was analyzed for constitutionality by *Silvar v. Dist. Ct.*, 129 P.3d 682 (2006). The case is available at this link: http://scholar.google.com/scholar_case?case=15323479136078401167&q=Silvar+v.+Dist.+Ct.&hl=en&as_sdt=2,5. Should you vote **for** or **against** the statute?
3. The proposed statute is *Gang Violence and Juvenile Crime Prevention Act* and reads as follows: State Prosecutors are hereby authorized to bring specified crime charges against minors fourteen and older in the criminal division of adult court rather than in the juvenile division without a judicial determination that the minor is unfit for a juvenile court disposition. This statute was analyzed for constitutionality by *Manduley v. Superior Court*, 41 P.3d 3 (2002). The case is available at this link: http://scholar.google.com/scholar_case?case=14196981766707899172&q=Manduley+v.+Superior+Court&hl=en&as_sdt=2,5. Should you vote **for** or **against** the statute?
4. The proposed statute is *Mere Possession* and reads as follows: It is a crime to possess an unprescribed controlled substance. This statute was analyzed for constitutionality by *State v. Bradshaw*, 98 P.3d 1190 (2004). The case is available at this link: http://scholar.google.com/scholar_case?case=33245956757868529&q=State+v.+Bradshaw+98&hl=en&as_sdt=2,5. Should you vote **for** or **against** the statute?

12.4.3 Cases of Interest

- *Roulette v. City of Seattle*, 97 F.3d 300 (1996), discusses sit-lie laws: http://scholar.google.com/scholar_case?case=11766310634401293489&q=%22sit+lie+%22&hl=en&as_sdt=2,5.
- *Noy v. State*, 83 P.3d 538 (2003), discusses Alaska's possession of marijuana law: http://scholar.google.com/scholar_case?case=17763301345063946977&q=%22Noy+v.+State%22&hl=en&as_sdt=2,5.
- *Phillips v. State*, 25 So. 3d 404 (2010), discusses the right to participate in drug court: http://scholar.google.com/scholar_case?case=706671360238134410&q=%22drug+court%22&hl=en&as_sdt=2,5&as_ylo=2009.
- *In re BW*, 313 S.W. 3d 818 (2010), discusses juvenile prostitution: http://scholar.google.com/scholar_case?case=13593192130854531269&q=%22prostitution+statute%22&hl=en&as_sdt=2,5&as_ylo=2009.

12.4.4 Articles of Interest

- True threats and the First Amendment: works.bepress.com/cgi/viewcontent.cgi?article=1018&context=mark_strasser
- Gang injunctions: <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1736&context=ggulrev>
- Substance abuse in America: works.bepress.com/cgi/viewcontent.cgi?article=1000&context=edward_perez

12.4.5 Websites of Interest

- Information about the homeless: <http://www.nationalhomeless.org>
- Information about gangs: <http://www.nationalgangcenter.gov>
- Information about the legalization of prostitution: <http://prostitution.procon.org>

12.4.6 Statistics of Interest

- Homelessness: <http://www.nationalhomeless.org/factsheets>
- Gang violence: <http://www.ncjrs.gov/app/QA/Detail.aspx?Id=11&context=9>
- Drug crime: www.justice.gov/dea/statistics.html

12.4.7 Answers to Exercises

From Section 12.1

1. The ordinance can be challenged under the **First Amendment**, as **void for vagueness**, and as **overbroad**. A sign is expressive, so a First Amendment challenge is appropriate. The words “extended period” are vague, which can lead to uneven application by law enforcement and a failure to provide notice to the public of what behavior is criminal. Holding a sign such as a school crossing sign is protected activity, so an overbreadth challenge is also in order. The government has an interest in keeping the roadways *safe*, and in preventing dangerous distractions that could occur when drivers try to read signs while approaching a crosswalk.
2. The Supreme Court of Rhode Island held that the disorderly conduct statute was not vague or overbroad simply because it does not require conduct to occur in **public**, and therefore the defendant’s attack of his spouse in a private residence could be prosecuted as “creating a hazardous condition.”
3. The Supreme Court of New York held that “begging” is constitutionally protected expression under the First Amendment, and thereafter reversed the defendant’s conviction under New York’s loitering for the purpose of begging statute.

12.4.8 Answers to Exercises

From Section 12.2

1. The First Amendment protects an individual’s right to stand in a public place and hold a sign as long as the sign is not *obscene*, *fighting words*, or a *true threat*. Signs indicating a disbelief in the holocaust are most likely upsetting to Jewish individuals attending temple, but they must constitute fighting words or a true threat if they are to be constitutionally prohibited. If the law enforcement officer arrests the individuals for unlawful assembly pursuant to a statute that arguably prohibits such conduct, the statute is subject to constitutional attack under the **First Amendment** or for **overbreadth**.
2. The US Court of Appeals for the Second Circuit upheld the defendant’s conviction. The court held that the lower court’s interpretation of New York’s first-degree riot statute did not violate **due process** by denying the defendant notice that his conduct was criminal, even though the interpretation extended the statute’s reach by including conduct that occurred *after* the defendant left the scene of the riot.
3. The California Court of Appeal held that the defendant was not entitled to a jury trial on his gang membership for purposes of a civil gang injunction because of the **civil** nature of the action and the fact that his *physical liberty* was not directly at stake.

12.4.9 Answers to Exercises

From Section 12.3

1. Anita has committed the federal crimes of **possession** and **use** of marijuana. Although Anita’s state has legalized marijuana for medical use, and Anita complied with her state’s statutory requirements, the Federal Controlled Substances Act criminalizes the possession and use of marijuana, and there is no federal medical necessity exemption.
2. The Court of Criminal Appeals of Texas reversed, holding that evidence of the cocaine’s presence in a hidden location accessible only to someone exercising control over the house, the defendant’s ownership of the house, and evidence that the cocaine was conveniently accessible to the defendant was sufficient to convict the defendant of possession of cocaine.
3. The Court of Appeals of Ohio reversed, finding no evidence of force, duress, or coercion because the prostitute’s testimony indicated that “nothing would happen” if she refused to turn money earned from prostitution over to the defendant.

12.4.10 Answer to Law and Ethics Question

1. Combating a syndrome like AIDS is clearly a legitimate state concern, and, generally, individual protections can be sublimated constitutionally as long as they are outweighed by the government interest at stake. In this case, the individual interest in avoiding a potentially life-saving blood test is not nearly as paramount as the government interest in preventing the spread of a communicable disease. Neither the risk of a stigma nor the ethics involved in targeting prostitutes are outweighed by the government interest. It is reasonable to infer, as the court stated, that convicted prostitutes have been or will be sexually active with multiple partners. Thus the California statutory scheme appears to be a minimally invasive and reasonable method to protect the health and well-being of California citizens, which makes it as ethical as statutes targeting the homeless, for example, **sit-lie laws**.

12.4.11 Answers to You Be the Legislator

1. The Supreme Court of Georgia held that the statute fails to define in any manner what is meant by indecent or disorderly conduct, so it does not provide fair warning to persons of ordinary intelligence of what is criminal, gives too much discretion to law enforcement, and is therefore void for vagueness. Thus you should vote **against** the proposed statute if you want to keep your perfect record.
2. The Nevada Supreme Court held that the statute is void for vagueness because it does not adequately specify the circumstances for which a person could be arrested, thus failing to provide fair warning to persons of ordinary intelligence of what is criminal and giving too much discretion to law enforcement. The court also held that the statute is overbroad because it criminalizes protected conduct like waving and beckoning. Thus you should vote **against** the proposed statute if you want to keep your perfect record.
3. The California Supreme Court held that the statute did not violate separation of powers and was not unconstitutionally discriminatory pursuant to the equal protection clause, even though filing charges in adult court affects a juvenile's sentencing because this is incidental to the prosecutor's traditional role in charging individuals with crimes. In addition, the court held that juveniles were subject to concurrent jurisdiction between juvenile and adult court, so the statute did not deprive them of rights guaranteed by due process of law, nor did it subject them to cruel and unusual punishment. Thus you should vote **for** the proposed statute and you will keep your perfect record.
4. The Washington Supreme Court found that the legislature had revised the statute to omit a criminal intent requirement, and this revision is constitutional even though the law disfavors strict liability criminal statutes. Thus you should vote **for** the proposed statute and you will keep your perfect record.

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