**Criminal Law**

***Teaching Guide***

**Students will :**

* Understand the steps in a criminal case
* Understand the laws concerning search and arrest
* Understand concepts of punishment and how the Sentencing Guidelines work
* Understand elements and definitions of crimes and the process of charging a crime
* Learn the elements of self defense
* Understand the function of plea bargaining

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| **Lesson Grid** | **Individual** | **Small Group** | **Large Group** |
| **Lesson 1: Criminal Law** | | | |
| * The Law |  |  |  |
| * Activity: Matching | X | X |  |
| **Lesson 2: Investigation and Arrest:** | | | |
| * The Law |  |  |  |
| * Questions | X | X |  |
| * Activity: Police role-play |  | X | X |
| * Activity: Case study | X | X |  |
| **Lesson 3: Search and Seizure** | | | |
| * The Law |  |  |  |
| * Questions | X | X |  |
| * Activity: What do you think? | X | X |  |
| **Lesson 4: Common Felonies** | | | |
| * The Law |  |  |  |
| * Activity: Charging a crime | X | X |  |
| **Lesson 5: Steps in a Criminal Case:** | | | |
| * The Law |  |  |  |
| * Activity: Creating a flow chart | X | X |  |
| * Activity: Mock trial |  |  | X |
| Lesson 6: Self Defense |  |  |  |
| * The Law |  |  |  |
| * Questions | X | X |  |
| * Activity: Case study | X | X |  |
| * Activity: What do you think? | X | X |  |

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| **Lesson Grid** | **Individual** | **Small Group** | **Large Group** |
| **Lesson 7: Plea Bargaining** | | | |
| * The Law |  |  |  |
| * Activity: Role-play |  | X | X |
| **Lesson 8: Punishment** | | | |
| * The Law |  |  |  |
| * Activity: Ranking | X | X | X |
| * Activity: Opinion/Continuum | X | X | X |
| **Lesson 9: Sentencing** | | | |
| * The Law |  |  |  |
| * Activity: Using the Sentencing Guidelines Grid | X | X |  |

Teaching Tips

#### Outside Resource People

The lessons in this unit will be enhanced by the participation of prosecutors and defense lawyers (for investigation and arrest and search and seizure lessons) and judges (particularly important in the sentencing lessons), victim’s advocates (particularly in lessons on self- defense, in reference to domestic abuse cases, plea bargaining, and punishment), and police officers (for the lessons on investigation and the police role-play activity).

**Lesson 1: Criminal Law**

Definitions of crime, felony, misdemeanor, and status offenses are the topics of this lesson. The “Matching” activity reinforces student’s understanding of the definitions. This lesson, although simple, provides basic information that is necessary for the next lessons. For expanded learning in this lesson and in the other lessons in this unit, ask students to read the newspaper. On any given day, up to one-half of the local news section will be devoted to stories about crimes. Use the “Case Study” strategy to debrief the news stories.

**Lesson 2: Investigation and Arrest**

The most common questions regarding investigation and arrest are the focus of this lesson including police stops, searches, probable cause, arrest, and the constitutional rights of the accused.

The “Police Role-play” activity provides the students with an opportunity to apply their knowledge and for them to review and reflect with a police officer.

Remind students that the information provided is basic and that it does not include the many small exceptions and interpretations that exist. Students should not attempt to answer specific individual legal problems with the information provided.

##### Steps in Police Role-Play

1. The police officer (or defense lawyer) should observe the students as they role-play stops by the police.
2. After each role-play, the police officer evaluates the role-play, reflecting on how a police officer would handle the situation and on the best strategy for the citizens being stopped. This lesson presents the chance to practice polite behavior and to discuss ways of making certain that the police respect constitutional rights.
3. At the next meeting, a defense lawyer could enhance the lesson by offering practical steps to prevent escalation of the problem and harm to the persons being stopped. The perspective of a defense lawyer might be different and might be better heard by the students.

In the “Case Study,” students are asked to apply their knowledge about interrogation and Miranda rights in a slightly different setting, the principal’s office in a school. This activity is based on a 1998 Minnesota case (In the Matter of the Welfare of J.J.C.). The issue was whether a student is “in custody” when called to the principal’s office and questioned by the police. If the student is in custody, the Miranda rule requires that the student be told of his or her right to a lawyer, right to remain silent, etc. and that without this warning, evidence gathered would be inadmissible. The Court of Appeals ruled that the student was not in custody and therefore not entitled to the Miranda warning, allowing his confession to be admitted. The court said that the defendant’s liberty was not restrained to the degree associated with a formal arrest and therefore did not rise to the level of “in custody.” The court also ruled that any coercive element to the questioning was caused by the principal and not by the police.

**Lesson 3: Search and Seizure**

This lesson examines more closely the issues surrounding search and seizure. The warrant requirement is explained and exceptions are described. The students are asked to apply their knowledge and understanding to five hypothetical cases in the “What do you think?” activity. Defense lawyers would be very helpful in this lesson because the students are likely to have very specific questions that require knowledge of search law.

**Case 1.**

1. The officer is always justified in questioning potential suspects and witnesses concerning a crime. Remember that citizens do not need to answer the questions. The police were just doing their jobs.
2. The police officer needed probable cause to believe that the suspect committed the crime. Is the metal bar enough? Probably. Once arrested, the officer may conduct a search to make certain that the suspect is not armed and to gather evidence that the suspect might try to destroy. The search would be legal.

###### Case 2

1. Yes, this was a legal search. The police officer was in hot pursuit of the suspect. Public safety demands that this type of search be legal. Otherwise, the officers would have to get a search warrant before they could enter the house, providing ample time for many more crimes to occur.

Case 3

1. This search would not be legal. A search of a home requires a search warrant unless it is hot pursuit or an emergency.
2. You should refuse to let them enter if they don’t have a warrant. If you consent, say “ok” to the search, any evidence seized may be used against you. However, never try to physically interfere with the police. Note the police badge numbers and write down what happens.

**Case 4**

1. Yes, the search is legal if the police were searching in places that marijuana and other illegal drugs could be found.
2. Any evidence of illegal activity found during a valid search can be used and in this case would be probable cause for an arrest.

###### Case 5

1. Yes, the staff at the correctional facility may search your room because there is no expectation of privacy in a correctional facility. This is necessary to protect the safety of everyone in the facility.

**Lesson 4: Common Felonies**

This lesson is a look at the most common felonies. The materials include a simplified description of the crimes. The activity “Charging a Crime” asks the students to look at seven cases, list all crimes that were committed, and then using a series of considerations, decide which crimes to charge. This activity will help students understand elements of a crime and the function of prosecutors. It is useful as a tool to help the students look closely at the definitions of the crimes. A prosecuting lawyer would be helpful in this lesson by reacting to the student’s work, talking about the considerations in charging a crime, and answering specific questions.

**Case 1 Possible crimes:** Assault, fifth degree; Aggravated Robbery, first degree

There is also a law that states any time a gun is used in the commission of a crime there is a mandated minimum penalty of three years. This might be a consideration in this case.

**Case 2 Possible crimes:** Robbery; Assault, first degree; Attempted Murder, second degree

**Case 3 Possible crimes:** Attempted Murder, first degree; Assault, second degree

**Case 4 Possible crimes:** Assault, fifth degree; Damage to Property, second degree

**Case 5 Possible crimes:** Assault, second degree; Assault, fourth degree

**Case 6 Possible crimes**: Boyfriend: Theft. Tanya: Aiding an Offender or Liability for the Crimes of Another. However, this situation may not warrant a charge of any kind unless the prosecution can prove that Tanya took specific steps to further the crime (hid the jewelry chest, helped identify targets for the theft ring, etc.) A prosecutor could talk about the acts that constitute aiding, advising, hiring, counseling, and conspiring.

**Case 7 Possible crimes:** Crime committed for the Benefit of a Gang, Harassment (but would there be the required intent?)

**Lesson 5: Steps in a Criminal Case**

This lesson focuses on the procedure followed in a criminal case. In the activity “Creating a Flow Chart” the students can work individually or in small groups. It requires that the students use their knowledge from “Investigation and Arrest” and “Your Right to an Attorney” in addition to the information in this lesson. By asking them to add pieces of information they think are important, the students reflect on their learning. This lesson is designed for the computer. However, it can be accomplished with posterboard and markers.

The “Mini-Mock Trial” is a two-hour activity. The leader instructions are included in the Overview section of this curriculum. This activity benefits greatly by having a lawyer or judge serve as the judge for the mock trial. (If there are enough students, one can assist the judge, serving as a co-judge.)

**Lesson 6: Self-Defense**

This lesson explores the types of self-defense, deadly and non-deadly, and the issues that arise in efforts to assert the defense. The “Case Study” considers a Minnesota case Minnesota v. McCulston, in which the Supreme Court said that the killing of the neighbor was not reasonable given the facts. The defendant had other options available including the duty to retreat if it did not put him at greater risk. Because the assault in this case was occurring outside of the house on the porch and in the front yard, it was reasonable for the defendant to go into the house. If the neighbor followed or attempted to follow Mr. McCulston into his home, using force, the defendant would have been justified in using deadly force.

The “You Decide” activity asks the students to apply their knowledge to four cases.

**Case 1** Lamont’s response was probably not reasonable. In addition, Lamont started the incident.

**Case 2** Judy was justified in using force in this situation. In fact, in this case, Judy would probably have been justified in using deadly force.

**Case 3** Gil was not justified in using deadly force because Peggy was not longer trying to hurt him.

**Case 4** Harris’s action was not reasonable given the facts.

**Lesson 7: Plea Bargaining**

The process and purpose of plea bargaining is the focus of this lesson. The activity “Role-play” helps the students develop an understanding of the tensions involved in plea bargaining. A prosecuting or defense lawyer would help the students understand the perspectives involved, and a victim’s advocate would encourage the students to consider the impact of plea bargaining on victims.

The Activity: Divide the students into a minimum of three groups (defense lawyers, prosecuting lawyers, judges). A fourth group representing the victim is also helpful. Have each group meet together to discuss the facts and prepare their case. Next, form different groups with one prosecutor, one defense lawyer, one judge, and one victim’s advocate. Ask them to complete the role-play. Compare results.

**Lesson 8: Punishment**

The goal of this lesson is to introduce the students to the terms used in sentencing and to the concepts of punishment—retribution, restitution, and rehabilitation. In the activity “Ranking, You Decide” the students must determine which of the offenses are more serious, etc. and what the appropriate penalties might be. The students are given a series of considerations to think about. A person familiar with restorative justice would enhance this lesson by talking about improving the sentencing system by adding the victim’s voice and the goal of restoring the victim and the community.

An additional step that can be taken with this lesson is the comparison of the students’ rankings. One tool that can be used is called “Vote with your Feet” or “Weighted Voting.” To do this, write each crime on piece of 8 ½ x 11 paper. Tape the pieces of paper around the room. Give each student 10 votes. Instruct the students that they can use their votes as they wish (for example: one vote for each crime; five votes for one crime, two for another and three for another: all ten votes for one crime). Tell them that the more votes a crime receives, the more serious an offense it is. Total the votes and announce the class ranking, most serious to least serious. Ask students to compare the class ranking with their individual or small group ranking.

Activity: Opinion Continuum asks students to think about whether or not someone should be punished for their crime. Place “Throw the book at them” at one end of the room and “Give the person a break” at the other end. For each statement ask the students to stand where they think they are on the continuum. Note that many of the mitigating and aggravating circumstances provided can be used by judges when they are departing from the sentencing guidelines. This will be discussed more in Lesson 9 “Sentencing.”

**Lesson 9: Sentencing**

The Sentencing Guidelines are the focus of this activity. The method of computing a person’s criminal history score is explained. The activity “Using the Sentencing Guidelines Grid” asks the students to compute the sentence for a number of crimes.

The answers:

* **Christine**—48 months (the range the judge may use is 44-52 months, more or less is a departure and requires written explanation);
* **Alex**—38 months, Simple Robbery is a Level V offense, 4 prior Level V offenses equal 4 points on the criminal history score.
* **Amy**—98 months, First Degree Assault is a Level VIII offense, 2 prior juvenile felonies equal 1 point on the criminal history score.
* **Alisha**—165 months, Second Degree Murder is a Level IX offense, five prior misdemeanors equal 1 point (no partial points given) on the criminal history score.

This is a simplified use of the Sentencing Guidelines. For the guidelines and complete offense list, see the Minnesota Sentencing Guidelines Commission website.

**Vocabulary**

**Arrest**: When a suspect is taken into custody against his or her will for purposes of criminal prosecution or interrogation.

**Clear and convincing**: A legal proof standard where the plaintiff’s version of the facts is much more likely to be true that the defendant’s version of the facts, more than preponderance of the evidence, less that beyond a reasonable doubt.

**Community service**: Criminal is required by judge to perform service in the community.

**Complaint:** A written statement of the charges against the defendant, made under oath.

**Crime**: Conduct prohibited by statute with a possible penalty of a sentence in jail or prison and a fine.

**Departure**: When judge either gives a greater or lesser sentence than the one recommended in the sentencing guidelines.

**Detention**: Stop of a person for a short investigation.

**Dwelling:** Home or place where a person lives.

**Element**: Each part of the law that must be proved before a person can be convicted of the crime.

**Exclusionary rule:** Evidence obtained in violation of the Constitution is excluded from the trial.

**Felony:** Crime that can be punished by a sentence of more than one year and a fine.

**Fine:** Amount of money stated in the statutes as the maximum penalty for certain behavior.

**Great bodily harm**: Bodily injury which creates a high probability of death, or which causes serious permanent disfigurement or which causes a permanent loss or impairment of the function of any body part.

**Gross Misdemeanor**: Crime that can be punished by a sentence of up to one year in jail and a fine up to $3,000.

**In custody**: When all the circumstances make a person feel that he or she is restrained to a degree similar to that associated with formal arrest.

**Intent**: The defendant had a purpose to do the act and cause the result or believed that the act, if successful, would cause the result.

**Interrogation:** Questioning, in this case by police officers.

**Jail or prison**: Place to confine the criminal. A criminal can be sentenced by the judge to spend up to one year in jail or more than one year in prison.

**Misdemeanor**: Crime that can be punished by a sentence of up to 90 days and a fine up to $1,000.

**Motions**: Requests made to the court by the lawyers asking that the court do a particular thing.

**Petty Misdemeanor**: Offenses that are not technically a crime, carry a maximum fine of $300.

**Plea bargain** (plea negotiation, plea agreement): An agreement by the prosecutor and the defendant where the defendant pleads guilty and the prosecutor accepts the plea. The judge accepts or rejects the plea bargain. Usually results in a lower sentence or crime for the defendant.

**Premeditation**: To consider, plan and prepare to commit the crime.

**Preponderance of the evidence**: Plaintiff’s version of the facts more likely occurred than the defendant’s version.

**Presumptive sentence**: The sentence you will serve unless there are aggravating or mitigating circumstances that persuade the judge to depart upward or downward from the sentencing guidelines.

**Probable cause**: When there is enough evidence for a reasonable police officer to think that a crime was committed and that the person in question committed the crime.

**Probation**: Criminal is allowed to function in society but must obey certain restrictions including reporting to a probation officer.

**Proof beyond a reasonable doubt**: Proof that leaves the jury firmly convinced that the defendant is guilty of the crime charged.

**Reasonable suspicion**: Some proof of wrongdoing, more than a hunch, facts must suggest criminal activity.

**Reasonable doubt**: When an ordinary person has reason to believe the person might not have committed the crime.

**Rehabilitation**: To restore a person to non-criminal behavior.

**Restitution**: Criminal is required to repay the victim of the crime or to restore or fix the damage or problem in some other way.

**Restorative Justice:** A relatively recent initiative that focuses on restoring the victim and damage done rather than penalizing the criminal. Some examples are community conferencing and circle sentencing.

**Retribution**: Revenge, retaliation, serves as an example.

**Search**: Any governmental intrusion into an area where a person has a reasonable expectation of privacy.

**Seizure**: Control by the government over a person or thing.

**Self-defense**: The process of defending yourself against an attack. Two types, deadly and nondeadly.

**Status Offense**: Conduct that is illegal only because the person committing it is under a certain age.

**Substantial bodily harm**: Bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any body part, or which causes a fracture of any body part.

**Summons**: A notice to the defendant that he or she is being charged with a crime; requires a response at a stated time and place.

**Warrant**: A legal document issued by a judge that authorizes the police to conduct a search or seizure or to arrest someone.