INCHOATE CRIMES

MATERIALS

1) Enough handouts for each student (provided in the PICC).
2) Re-useable white board, markers, eraser – if you want one (provided in the PICC).

TAKEAWAYS

- Students will understand what “inchoate” means.
- Students will have a basic grasp of the elements of attempt, solicitation, threat, possession, and accessory.

QUICK INTRO
(Time Check: 1 minute)

Tell the class: Your names, that you’re law students from Stanford Law School, and you’re there to teach a StreetLaw class.

- Remind the students about StreetLaw rules: don’t talk about the specifics of your case, respect your classmates and your teachers.
ICEBREAKER: The Crime Line  
(Time Check: 10 minutes)

Tell the class that we’re going to start off with a short exercise to get everyone on their feet and thinking. Ask the class to stand in a group on one side of the room (move desks if necessary). Once everyone is in place, draw an imaginary line across the room as you explain to students that we are going to tell them a story. At the beginning of the story, no crime has occurred. As they listen, they should decide when they think a crime has taken place. As soon as they think there’s been a crime, they should cross over the line and stand on the other side of the room.

Teaching Tip – Depending on class size, classroom arrangements, etc., may want to have the kids raise their hands instead.

Read the following story, pausing between lines to give students a chance to decide. Note: if you don’t have a full hour, feel free to shorten/simplify this story to save time!

1) Andrew and David are hanging out at David’s house, bored, when Andrew asks David go buy some weed for the two of them, but David says he doesn’t feel like it.

2) Andrew then suggests they play video games, but David’s bored of all the ones he has. He decides they should go to Best Buy and steal some new games, and tells Andrew. Andrew says he doesn’t want to, because it’s stupid and he doesn’t want to get into trouble for doing something stupid.

3) David calls Andrew a coward and a loser, and tells Andrew that if he doesn’t at least give him a ride over to the store (since Andrew has a car and David doesn’t) he’s going to beat the crap out of him for being such a wuss. Andrew, a little unnerved, agrees.

4) David gets together a bunch of stuff—a big jacket with lots of pockets, a hat, some sunglasses, and a magnet (for demagnetizing the merchandise). He puts on the clothes and sticks the magnet in his pocket. They get in the car and go.

5) When they get there, Andrew tells David he’ll wait in the car. David goes into the store.

6) Fifteen minutes go by, then David comes back...with nothing. “I couldn’t do it!” he says. “Store security was all over me from the minute I got in there.” Andrew tells him that this was a stupid idea and a waste of time, and they drive off.

7) On the way home, David suggests they get that weed Andrew was talking about before. David says he knows a guy who they can buy some from, and directs Andrew to a house in the neighborhood. David tells Andrew to wait in the car, and again gets out and goes in.

8) He comes back about five minutes later and gets in the car, smiling, having bought a back of weed. They head back to David’s house.
9) On the way back, they get pulled over for rolling through a stop sign. The police ask to search the car and Andrew consents. In the glovebox, the police find an unregistered handgun. They also find the burned end of a joint wedged in between the cushions of the backseat.

Discuss for a moment with the class why they crossed the line when they did. What crime did they believe to have occurred? Why? Do others agree? Disagree? Thank the class for participating, ask them to take their seats.

LECTURE: Inchoate Crimes
(Time Check: 25 minutes)

Ask the class what they think is necessary for a crime to be committed. Prompt and guide a discussion of what makes a crime—is it injury to another person? To their property? Harm of some sort? Fear? Money lost? Unfair gain? Try to get the class to come up with a definition of what makes a crime a crime—probably, this definition will involve something bad happening, whether to someone or something.

Once you’ve gotten the class to settle on what a crime is, explain that a crime doesn’t always have to involve an injury or loss to be a crime. Unfinished crimes, for example, can be charged as attempts. Making a threat—even if the person making the threat doesn’t mean it and never intends to follow through—can be a crime. Having something illegal, like drugs or a weapon, can be a crime even if you never use it or intend to use it—the crime of possession.

Tell the class that in the exercise we just did, a crime actually took place in the very first line. Ask if anyone remembers what the first line of the story was, if they do, have them tell the class (and if they don’t just tell 'em yourself). Explain that just by asking David for some weed, Andrew committed the crime of solicitation, because Andrew was asking David to do something illegal. Did David actually do anything illegal? No. So Andrew didn’t manage to make anything illegal happen—but just asking is enough.

Explain that crimes like these—the crimes we’re going to be discussing today—are called “Inchoate Crimes.” Write it on the board. Define inchoate for the class as meaning incomplete or unfinished, and tell the class that you’re going to explain the crimes we just mentioned in a little bit more detail, and then come back to discuss why they are considered crimes at all.

Teaching Tip – Write down the crimes on the board as you go along.

(1) Attempt

Use arson as an example: the crime of arson is only arson once there’s a fire. Planning to burn a house down, going to the hardware store and getting a gas can and some matches, going to the gas station and getting gasoline, loading the supplies into the car, going to the scene, entering the structure, spreading the gasoline around, making some
kind of fuse or trail of gas leading to the structure, and lighting a match are all steps leading up to arson, and somewhere in those steps the behavior becomes an attempt.

Begin going through the steps leading up to the crime, going back in time and asking students after each step if there had been an attempt (i.e. do you think it was an attempt when she lit the match? What about when she drove to the house? What about when she bought the gas can?). Try to get students to understand the vagueness and difficulty determining with certainty when an attempt has happened.

Tell the class that attempt is all about FAILURE. If a crime is completed, then the person gets charged with the completed crime. But if, for some reason, the crime goes wrong and fails to reach its intended end—i.e. the shooter misses the victim, the burglar falls and breaks his leg before he gets into the house, the shoplifter takes a CD out of its case in Best Buy and shoves it down his pants only to have it break in half before he gets out of the store—then it can be charged as an attempt.

To have an attempt, you need:

(1) The intent to commit the crime AND

(2) A direct but ineffectual act done towards the commission of the crime.¹

Basically, for there to be an attempt a person needs to mean to commit a crime and almost get it done but fail for whatever reason.

Discuss the elements of the offense with the students.

Note for teachers: an explanation of the elements and the relevant quirks of California law regarding each are included below. This information is provided for your preparation, so that you can answer any questions and get a feel for what’s important about each element. Explain these points to the class, but please feel free to simplify as much as you feel is necessary.

- Intent must be specific—to attempt a crime, a person has to intend to commit that crime. For example, even though the crime of murder does not require that a person intend to kill, the crime of attempted murder does require intent to kill.² So a person couldn’t be charged with attempt for a crime that is by definition unintentional, like involuntary manslaughter.
  - A good example: (a-la-To Catch a Predator): in People v. Reed, 53 Cal. App. 4th 389 (1996) the defendant was charged with (and found guilty of) attempted molestation of a child under 14 years old. But the “children” did not exist at all—they were made up by undercover detectives who were investigating child predators. Even though the children didn’t exist (and thus the defendant could never had committed the crime), because he

¹ Cal. Penal Code §§ 21(a), 664.
went to a motel with supplies to engage in sexual acts with the children, he had the intent to commit the crime, and could be charged with attempt.

- Another (gross) example — **USE WITH CAUTION** (be sure your class is mature enough for this example): If you want a really gross example for your class, this one is fun: In *People v. Thompson*, 12 C.A.4th 195 (1993) the defendant was charged with murder and attempted rape. But the victim was actually dead when the rape occurred, and the dead can’t give or refuse consent, so you can’t actually rape a dead body (although I’m pretty sure it’s illegal anyway—it’s just not rape). The court held that a person having intercourse with a dead body is guilty of attempted rape if he intended to rape a live victim and did not know that the victim was dead. If he knew that the victim was dead and his intent was to have sex with the dead body, then it wouldn’t be rape at all.

- The act has to be more than just preparation—it has to be an unequivocal step towards the completion of the crime that, but for interruption or interference, would have resulted in the commission of the offense.\(^3\) There’s no set definition for when exactly preparation ends and attempt begins—the court considers the circumstances of the case, the history of the defendant, evidence of the defendant’s intent, etc.

- **NOTE:** that if the showing of intent is strong enough, then less might be required of the act for a finding of attempt—i.e. a guy who has never raped anyone pointing a gun at a girl and saying “I want to rape you” might not be attempt, but a convicted rapist doing the same would definitely be considered an attempt.\(^4\)

**Emphasize** that **to have an attempt, the crime must not be completed.**

In other words, if a person completes the crime, they get charged with the crime itself. Usually, attempts happen when someone

(a) is prevented from completing their intended crime
   (i) by luck, or
   (ii) by a flaw in the plan, or
   (iii) by the intervention of another person, etc

(b) or they decide not to go through with it.

A few more points about attempt:

- **Ask** the students if they think it matters if the crime would actually not be possible, so long as that is not apparent to the person attempting it—i.e. trying to poison someone with pills that aren’t actually poisonous is still attempted murder, and picking a pocket that turns out to be empty is still attempted theft.

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\(^3\) *People v. Miller* 2 Cal. 2d 527, 530-31 (1935).

\(^4\) *People v. Carpenter*, 15 Cal. 4th 312, 387 (1997).
Inchoate Crimes

- Ask the students if they think voluntarily abandoning the crime matters. Voluntarily abandoning the crime doesn’t make it not an attempt so long as a person goes far enough towards finishing the crime. For example, a guy whose wife left him decided to rob a bank. He got an apartment above the bank and drilled holes into the floor (although he didn’t get all the way through). His wife came back, though, and he decided the plan was stupid, so he stopped paying rent on the office but left his tools behind. Still an attempt.\(^5\)

(2) Solicitation

Introduce solicitation by reminding the class that Andrew solicited David when he asked David to buy weed. Note that attempt involves (1) a planned crime and (2) action taken towards completing it. That’s actually more than some other inchoate crimes require:

Solicitation only requires words:

It is solicitation to

(1) ask someone else to commit a crime, with

(2) the intent that the crime be committed.

Explain that it doesn’t matter if the other person refuses, nor does it matter if it was very unlikely that they would have agreed. It’s solicitation just to ask.\(^6\)

Note that solicitation is usually only charged when a person is asking another to commit a fairly serious crime.

(3) Threat

Remind the class of how David got Andrew to drive him to the store—he told Andrew he’d kick his ass—and tell the class that this constitutes the crime of making a threat, sometimes called “criminal threats” or even “terrorist threats” in California.

Elements of a threat:

(1) Threatening to cause great bodily injury or death to another person

(2) With the specific intent that the person take it as a threat, and

(3) Causing the threatened person to feel sustained fear.

Discuss these elements briefly (students should have a pretty good handle on what intent means by now, so just quickly make sure they’ve got it). Note that threats don’t have to be verbal—written threats count too, so emails, text messages, notes can all be threats. Note that “sustained fear” means fear that is not momentary or fleeting—so fifteen minutes of fear counts.\(^7\)


\(^6\) People v. Wilson, 36 Cal. 4th 309, 327-28 (2005).

Ask the class whether it matters if the person making the threat intends to follow through—i.e. does it matter if David has no intention of actually beating Andrew up?

(No. All that matters is that David intend Andrew take his statements as a threat).

Ask whether it matters if a person makes the threat conditional—i.e. “I’ll kick your ass unless you drive me to the store.”

(No. Conditional threats don’t matter if they’re not so conditional that they don’t seem serious—i.e. “if you turn out to be a Martian, I will kill you.”)

Ask whether it matters if the intended recipient of the threat never received it—like, if a threat was sent in the mail but got lost.

(Yes. If they never got the threat, they couldn’t be in sustained fear).

Point out that this is an attempted criminal threat. (If a person makes a threat and the other person doesn’t care, this is also an attempted criminal threat.)

(4) Possession

Review that attempt requires intent and action, solicitation only requires words, threat is also just words, but you don’t even have to really mean those words. Introduce possession by noting that possession requires nothing more than having something you’re not supposed to.

Possession requires:

1. Having dominion and control over
2. An illegal thing

Points

- Ask the class if they think intent is required (NOTE: make sure they know what “intent” means).

  There is no intent required.

  This means that a person who has no intention of doing anything illegal with the thing they possess—i.e. doesn’t plan to use or sell the drugs, fire or carry the gun, sell the fake IDs, etc—is still guilty of possession so long as they have control over the thing.

- Dominion and control

  Demonstrate this with any item, say a ball of paper. Hold the ball and ask the class if you have possession of it. You do. Drop it. You still have

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possession. Hide it. You still have possession. Keep this up with as many different constructive possessions as you can think up.

Explain that an item can be possessed as long as it’s accessible to you—i.e. in the glovebox of a car you’re driving. Ask if something in the trunk would be in your possession—yes, because you can access it, even if you have to park to do so—and then ask if it would still be in your possession if the car you’re driving isn’t yours and you don’t have access to the trunk (No.)

Ask the class if they think an item can be possessed by more than one person.

An item can be possessed by one person, two people, or multiple people. If there’s a kilo of coke in a hotel room, everyone in the hotel room has possession. 9 Furthermore, if one person is carrying something for someone else, both may be considered in possession, even if the other person isn’t even there.

Note that a person can be in possession of something they don’t even know is there—i.e. if a person is driving a car with a gun in the glovebox, they’re possessing the gun whether or not they know it is there.

(If you have the time) Ask the class why these things are crimes—what is it about the above behaviors that makes them dangerous enough to criminalize? There’s no real right answer here, but the general idea is that some things so reliably lead to harmful behavior that they’re worth criminalizing, even though they’re not harmful themselves. For example, we believe that possession almost never happens without use or sale of harmful stuff, so we make possession itself a crime. What if I wanted to possess a bag of heroin, but just hang it on my wall and look at it, and never use it? Should that be a crime? Etc.

(5) Aiding and Abetting

Introduce the topic by connecting it to possession—a person can be guilty of possession just by being near enough (and in control of) an illegal thing, and a person can also be charged criminally just for being near illegal activity.

Anyone who, “in any way, directly or indirectly, aided the perpetrator by acts or encouraged him by words or gestures” can be charged with aiding and abetting. 10

The elements:

1. Instigated or advised or was present for the purpose of assisting in
2. A crime.

Explain: That means that a person who comes up with an idea for a crime but doesn’t participate themselves could be aiding and abetting the crime. A person who watches a

9 People v. Valot, 33. Mich. App. 49 (1971) (Note: this is a Michigan state case, but it is the case to which these facts refer).
fight and cheers on the people in the fight, for example, could be aiding and abetting the crime.

Example: “If I know that [other teacher] is going to go rob a convenience store, and I loan him/her my car to do it, that’s aiding and abetting the robbery.”

(6) Accessory

Introduce by explaining that while someone who is involved in a crime before it happens, or during the crime, can be aiding and abetting the crime, a person can be an accessory even if they weren’t involved when the crime happened, so long as they become involved after the crime happened.

Elements: To be an accessory, all a person has to do is

(1) After a felony has been committed
(2) harbor, conceal or aid the person who committed the felony,
(3) knowing that the person committed a felony or has been charged with committing a felony
(4) with the intent that the person who committed the felony may avoid or escape arrest or punishment.\(^{11}\)

Note that one can only be an accessory to a felony—there are no accessories to misdemeanors.

Explain that just lying to police about whether you’ve seen someone is enough to make you an accessory—\textit{but} a person is usually within their rights to refuse to speak to police, so saying nothing is usually OK. Telling lies is not OK.

Example: “If [other teacher] comes to my house and asks if he/she can stay there for a few days, because of some trouble, and I know he/she committed a felony, I become an accessory if I let him/her hide in my house. BUT if I don’t know what he/she has done, or why he/she needs to hide in my house, then I’m \textit{not} an accessory.”

\(^{11}\) Cal. Penal Code § 32.
ACTIVITY: The Crime Line Revisited
(Time Check: 15 minutes)

Hand out copies of the story from the icebreaker (included at end of lesson).

Tell the class that they are now going to break into small groups and play a game (Make sure at least one teacher is in each group).

- Each group will have ten minutes to decide what crimes Andrew and David might be charged with. The group with the most charges at the end of class wins. The only rule is that the charges have to be based on something—they have to be able to point to some fact in the story that supports the charge. They may use the crimes we learned about today, or any other crimes we have discussed in past classes. If they have any ideas for charges of crimes we haven’t talked about in class, ask one of the teachers if it’s a plausible charge and we’ll discuss.

- At the end of ten minutes, each group will share their charges and the facts that support those charges with the whole class. We will count up who has the most—note that the charges are counted, not the crimes, so charging both Andrew and David with, say, solicitation would count as two, not one.

***If there’s time, add in one more twist: after each group shares their charges, let the other groups try to “take back” those points from the group. If someone in another group can successfully argue that another group’s charge is crappy—i.e. find some way that the facts make the charge invalid—then they win double the points for their own group. i.e. showing that Group A’s charge of threat lacks the element of intent (as in, there’s no intent it be taken as a threat) then the group that points that out gets two points.

CONCLUSION
(Time Check: 2 minutes)

Summarize the Activity: This week, we talked about Inchoate Crimes. You came up with great questions about the law and worked hard to understand some of the more difficult types of crimes.

If you have time, go around the room and ask students to name one thing they learned in the course of the lesson, for purposes of review.

Thank the students for their participation.

(Optional): Ask what the students’ opinion about what they might like to learn about next week.
Inchoate Crimes

**Aim:**
How can understanding the law behind “inchoate crimes,” help us avoid trouble *before* it starts?

**Objectives:**
Students will be able to define *inchoate*.

Students will be able to categorize crimes of *attempt, solicitation, threat, possession,* and *accessory*.

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**I. The Crime Line**

*Directions:* Consider the following “Crime Line.” Read the story below, pausing between each step to consider what, if any, crimes have been committed by Andrew or David? If you were a police officer, what would you charges would you bring?

1) Andrew and David are hanging out at David’s house, bored, when Andrew asks David go buy some weed for the two of them, but David says he doesn’t feel like it.

2) Andrew then suggests they play video games, but David’s bored of all the ones he has. He decides they should go to Best Buy and steal some new games, and tells Andrew. Andrew says he doesn’t want to, because it’s stupid and he doesn’t want to get into trouble for doing something stupid.

3) David calls Andrew a coward and a loser, and tells Andrew that if he doesn’t at least give him a ride over to the store (since Andrew has a car and David doesn’t) he’s going to beat he crap out of him for being such a wuss. Andrew, a little unnerved, agrees.

4) David gets together a bunch of stuff—a big jacket with lots of pockets, a hat, some sunglasses, and a magnet (for demagnetizing the merchandise). He puts on the clothes and sticks the magnet in his pocket. They get in the car and go.

5) When they get there, Andrew tells David he’ll wait in the car. David goes into the store.
6) Fifteen minutes go by, then David comes back...with nothing. “I couldn’t do it!” he says. “Store security was all over me from the minute I got in there.” Andrew tells him that this was a stupid idea and a waste of time, and they drive off.

7) On the way home, David suggests they get that weed Andrew was talking about before. David says he knows a guy who they can buy some from, and directs Andrew to a house in the neighborhood. David tells Andrew to wait in the car, and again gets out and goes in.

8) He comes back about five minutes later and gets in the car, smiling, having bought a back of weed. They head back to David’s house.

II. NOTES

*Directions:* Use the template below to take notes on the different types of *inchoate* crimes.

<table>
<thead>
<tr>
<th>Crime</th>
<th>Description</th>
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<tbody>
<tr>
<td>Attempt</td>
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</tr>
<tr>
<td>Solicitation</td>
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<tr>
<td>Threat</td>
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<td>Possession</td>
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<tr>
<td>Aiding and abetting</td>
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<tr>
<td>Accessory</td>
<td></td>
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</tbody>
</table>
HANDOUT – THE CRIME LINE

DIRECTIONS: Decide what crimes Andrew and David might be charged with. Under each step in the story, write down what you would charge Andrew with, and what you would charge David with (if you would charge them with anything at all). The group with the most charges at the end of class wins. Your charges must be based on facts in the story. Remember that you will get a point for each charge, not each crime.

Good luck!!

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