

CRIMINAL LAW: SHOULD IT BE A CRIME?



90 MINUTES

What Should Be a Crime? (40 minutes)

Ranking the Crimes (25 minutes)

Summary (10 minutes)

OUTCOMES

As a result of this lesson, participants will be able to:

- Identify criteria for deciding what should be a crime.
- Rank crimes in order of most serious to least serious.
- Make a decision with a rationale.
- Communicate effectively with others.

HANDOUT(S)

1. Should It Be a Crime?

REMINDER

If you are a law student, tell participants up front that you are not a lawyer and *cannot* give legal advice. Focus on teaching the general legal concepts, developing life skills, and directing participants to community and legal resources in the event they have a specific need. Know your state's unauthorized practice of law restrictions.

COMMUNITY RESOURCE PEOPLE

Invite a criminal attorney to assist with this lesson. Send a copy of the lesson and the "Suggestions for the Community Resource Person" (found in the front section of the manual) when confirming the date and location.

WEB RESOURCES

For more information about what constitutes a crime, visit:

http://nolo.com/encyclopedia/articles/crim/what_crime.html or
www.outpost-of-freedom.com/LawsVI.htm

PREPARING TO TEACH

- ☒ Copy **Handout**.
- ☒ Post the session outcomes.
- ☒ Write-up or make a transparency of the Rules for Take a Stand.
- ☒ Make two signs, "Should Be a Crime" and "Should Not Be a Crime" and post them on opposite sides of the room.
- ☒ Bring in different colored markers.
- ☒ Adapt the laws as indicated in the body of the lesson.

REVIEW TEACHING STRATEGIES

- ☐ Take a Stand
- ☐ Small Groups

If your participants enjoyed the **Should It Be a Crime** activity, you can access more scenarios for them to decide whether or not a crime has been committed at:

<http://crime.about.com/newissues/crime/library/blfiles/blcrimeornot.htm>

WHAT THE ICONS MEAN



Have the RESOURCE PEOPLE help you with this part of the lesson.



Adapt law, procedure, and/or community resources for your area.

WHAT SHOULD BE A CRIME? (40 MINUTES)

1

Introduce yourself and review session outcomes with participants.

2

Place the signs “Should Be a Crime” and “Should Not Be a Crime” on opposite sides of the room, if you have not done so already. Tell the participants that they are going to have the chance to **Take a Stand** (see “Teaching Strategies”) on whether certain behaviors should or should not be a crime. Emphasize that the question is not whether a certain behavior IS a crime, but whether they think it SHOULD be a crime. Explain that you will ask them to stand by the signs on the walls to discuss these behaviors, as soon as you give the rest of the instructions.

3

Inform participants that before beginning the activity, they need to develop a definition of what is a crime. Ask for ideas on what is a crime.

A crime is something one does or fails to do that is in violation of a law. It can also be defined as behavior for which a government has a set penalty. Decisions as to what constitutes crimes are made by legislatures, which try to protect the public based on what most people believe is right and necessary for the orderly conduct of society. Ideally, the goals of the law are to protect human rights for all and to regulate human conduct so people can live in harmony.

Follow-up by having participants differentiate between a crime and an action that violates a civil law.

If someone is guilty of a crime, he or she could face a fine or imprisonment; whereas people who violate civil laws face fines, monetary damages, or an order to do something (e.g., hire the person or stop the publication of the book).

4

Post and discuss the rules for the activity by reading the following:

Rules for Take A Stand

- Do not interrupt, wait for your turn.
- Do not argue, state your opinion. Give new reasons or ideas.
- Listen while others give their reasons and ideas.
- You may move at any time, if you change your mind.



TIP: It is a good idea to have copied and posted these rules on the flip chart, board, or transparency prior to the start of the session.

Ask participants:

- Does any one want to add any additional rules? If so, which ones?
- Can we all agree to these rules?

5

Explain to the participants that when the behavior or action is described, they can wait a minute and think about how they feel—**SHOULD** it be a crime or **SHOULD** it not? Then they must go and stand in front of the sign that describes their decision or opinion. They must be prepared to share or tell the rest of the group why they are standing there.

6

Read the first scenario on **Handout 1, Should It Be a Crime?** and allow participants to position themselves next to a sign. Then ask participants to share their reasons for taking that position. Give each participant a chance to talk. If they move, ask them to explain why they are moving. Ask some of the participants to discuss other opinions that make sense or make them think harder about their own opinion, even if it does not make them move.

Read the next scenario, again giving participants time to think about their opinions, and allowing time for participants to share their ideas. If time is running short for your session, select the scenarios that are most suitable for your group.

7

Encourage discussion of multiple opinions from the group. Facilitate the discussion by raising some of the issues set forth below after each of the questions. In several of the problems, the issue of victimless crimes should be discussed (i.e., whether crimes such as drug abuse and gambling which may not result in injury to a third person should be punished by society). Try to guide the discussion to incorporate some of the issues that follow each situation.



TIP: The goal of this activity is not to have a right or wrong answer but to get the participants to hear other opinions and understand that though people think differently they may have a valid opinion. It also can show them how they think alike.

Handout 1: SHOULD IT BE A CRIME?

1. Dwayne sells marijuana out of his home, but only to people over 21 years of age. He uses the earnings to support his family.

Reasons why it *should be* a crime include: selling drugs is never acceptable, regardless of the reason; and selling drugs contributes to a myriad of social ills, such as a high crime rate, increased violence against innocent people, increased school dropout rate, high medical costs, and the breakdown of the family and moral fiber of society.

Reasons why it *should not be* a crime include: the money is used to support his family (a weak argument but can be raised to get participants to counter with reasons why in this case the end does not justify the means or to discuss the problems of unemployment); people have the right to privacy in their homes, adults have individual rights and can make their own decisions; alcohol is dangerous and is legal for adults; and the legal use and sale of drugs will reduce the violence associated with drugs.

Sample questions to ask include:

- Do you think the government has a role in telling people what drugs they can and cannot consume?
- Who are the victims in this situation?

2. A factory dumps its toxic chemicals into a nearby stream killing all the local catfish. People who consume fish from the contaminated river are at a higher risk for cancer.

Reasons why it *should be* a crime include: laws are needed to protect the environment; fishermen could lose job and the local economy could suffer; factories should be expected to dispose of their waste in ways that do not cause harm; and people could suffer medical harm and die.

Reasons why it *should not be* a crime include: no people have died—just fish; maybe the factory did not know that the chemicals were going to harm the environment.

Sample questions to ask include:

- Does it make a difference whether the company knew about the toxic chemicals?
- Who are the victims in this situation?
- Does it matter that no people were harmed yet?
- What if some people ate the fish after knowing it was contaminated?

3. After staying-up all night to care for her sick grandmother, Liz falls asleep at the wheel on her way to work. She crashes into a car killing a 25 year-old man and his daughter.

Reasons why it *should be* a crime include: Liz is responsible for her actions even if she was asleep; she should not have driven if she was tired.

Reasons why it *should not be* a crime include: Liz did not fall asleep intentionally; this was a pure tragic accident.

Sample questions to ask include:

- Would you feel differently if Liz had stayed-up all night partying?
- Who are the victims in this situation?

4. Donald is a used car dealer who turns back the odometers on cars he sells.

Reasons why it *should be* a crime include: it is a fraudulent act; the car being sold is not what it seems; and people must be able to trust merchants.

Reasons why it *should not be* a crime include: “caveat emptor”—let the buyer beware; this is a capitalist system; the law shouldn’t care about regulating every instance of immoral behavior; and it is up to people to take care of themselves.

Sample questions to ask include:

- Would you feel the same way if the dealer put more mileage on the odometer?
- Who are the victims in this situation?

5. Latisha leaves a store with change for a \$10 bill after she realizes that she gave the cashier a \$5 bill.

Reasons why it *should be* a crime include: Latisha had knowledge of the mistake; she is leaving the store with something that belongs to the store; and it is the same as stealing.

Reasons why it *should not be* a crime include: it is the cashier's fault; Latisha should not pay for the mistake of another; the law shouldn't care about regulating every instance of immoral behavior; the store can afford it.

Sample questions to ask include:

- What if she knew the cashier?
- What if she realized the mistake five days later?
- Who are the victims?

6. Lily approaches a man for purposes of prostitution.

Reasons why it *should be* a crime include: prostitution is immoral; it leads to the breakdown of families and society; it contributes to the spread of sexually transmitted diseases and AIDS; prostitution is degrading to women; many prostitutes are in physical danger.

Reasons why it *should not be* a crime include: prostitution involves consenting adults who are not hurting anyone else; it's the world's oldest business and it's here to stay; if prostitution were legalized it would be healthier and safer and women could get more money instead of giving it to their pimps.

Sample questions to ask include:

- Who are the victims in this situation?
- What should happen to the man?

7. Rick has a baby boy he has never seen. He does not pay child support.

Reasons why it *should be* a crime include: he is responsible for any of his children; it is morally wrong not to care for your child; our culture is built on families.

Reasons why it *should not be* a crime include: he does not know the child; the mother is responsible; the mother can get more welfare without a father.

Sample questions to ask include:

- What if the child were 12 years old?
- What if Rick were a millionaire? Unemployed?
- Who are the victims?

8. Lotto tickets are available on every corner in an economically impoverished neighborhood.

Reasons why it *should be* a crime include: gambling is immoral; people might buy tickets instead of food for their families; poor people buy more tickets than the rich.

Reasons why it *should not be* a crime include: business is business; people don't have to buy the tickets; and the proceeds go to good causes, like education and hospitals.

Sample questions to ask include:

- Why are tickets sold primarily in economically disadvantaged areas?
- Who are the victims?

9. Ron and Loni see someone break into a car and steal it. They do not report it.

Reasons why it *should be* a crime include: they observed harmful behavior and have a moral duty to report it; reporting will help the police do their job and protect people.

Reasons why it *should not be* a crime include: the property was not theirs; they might be afraid; people should not be obligated to rat each other out.

Sample questions to ask include:

- Would it make a difference if a child had been in the car? How about if the crime had involved the use of a gun?

- Would it make a difference if Ron's car had been stolen the week before?

10. Ming plans to rob a convenience store with his friend and serve as a look-out person. After dropping his friend off at the store, he decides not to serve as the look-out. During the robbery, the store clerk is shot and killed by Ming's friend.

Reasons why it *should be* a crime include: Ming is accountable for all actions stemming from the robbery even if he backed out at the last moment; he knew that there was a chance that something could go wrong; he is at a minimum responsible for the robbery.

Reasons why it *should not be* a crime include: Ming should be responsible for the robbery but not for the murder; he did not know that his friend would do that.

Sample questions to ask include:

- What if Ming knew his friend had a gun?
- What if Ming had no idea that his friend would resort to killing?

8

After each participant has given his or her reasons and there has been reflection on the differences and similarities of the arguments, have the participants sit down. Wrap-up by having participants develop a list of what makes an action a crime.

RANKING THE CRIMES (25 minutes)

1

Distribute **Handout 1, Should It Be a Crime** and read the directions.

Handout 1: **SHOULD IT BE A CRIME?**

Directions: Read each situation described below. Decide if it is more serious, less serious, or not a crime. Then write the letter of each of the actions described below where you think it should go on this chart. For example, if you think situation # 1 is not a crime, put the number 1 above the line and above the words "not a crime".

**2**

Divide participants into small groups of three to five and distribute a different color marker to each group for use when each group reports its rankings. Allow about five minutes for the groups to rank the crimes from most serious to least serious.

3

While they are working copy the chart from **Handout 1, Should It Be a Crime?** on the flip chart, board, or transparency.

4

When all the groups have finished, have each group record their rankings (in different colors) on the continuum.

5

Compare the rankings of the different groups. Start with an act where they agreed on the placement, and then move onto actions that they placed in very different positions along the continuum. For example, most groups will agree that action #3 (a driver falling asleep at the wheel and killing two people) is serious, but may have different opinions about action #8 (a father failing to pay child support).

Ask them:

- What factors made you decide that actions were serious crimes?
- What made this action more/less serious than the one your group put it next to?
- What makes you think that this should/should not be something that the government regulates?

6

Conclude this section by reviewing whether the actions in the **Handout 1, Should It Be a Crime?** are crimes in your jurisdiction and if so, the corresponding penalties.



Research whether the actions described in Handout 1, Should It Be a Crime constitute crimes in your jurisdiction and if so, define the penalties.

Handout 1: SHOULD IT BE A CRIME?

1. Dwayne sells marijuana out of his home but only to people over 21 years of age. He uses the earnings to support his family.

It is a crime to sell marijuana. In a few states, doctors can prescribe marijuana as a treatment for certain illnesses.

2. A factory dumps its toxic chemicals into a nearby stream killing all the local catfish. People who consume fish from the contaminated river are at a higher risk for cancer.

This scenario could violate federal criminal laws as well as civil laws. It could violate state criminal laws as well depending on your state.

3. After staying-up all night to care for her sick grandmother, Liz falls asleep at the wheel on her way to work. She crashes into a car, killing a 25 year-old man and his daughter.

This could be the crime of vehicular homicide depending on your state's definition. It violates civil laws based on a negligence theory.

4. Donald is a used car dealer who turns back the odometers on cars he sells.

Donald is violating the Federal Odometer Act that could subject him to civil (monetary) damages. In some states, he could also be found guilty of committing the crime of fraud and civil consumer protection laws by deceiving those to whom he sells his cars.

5. Latisha leaves a store with change for a \$10 bill after she realizes that she gave the cashier a \$5 bill.

Latisha may be guilty of the crime of theft if she had the requisite intent to deprive the store of property. At the end of the day, if the cashier remembers she gave too much money to Latisha, the store clerk can ask Latisha to return it, but it would be difficult to prosecute this case because it would be hard to prove intent. To prove intent, the prosecutor would need proof that Latisha knew she was given too much change, but she is likely the only one who knows what she knew.

6. Lily approaches a man for purposes of prostitution.

Lily would be breaking the law in all but one state. In Nevada it is legal in very controlled situations.

7. Rick has a baby boy he has never seen. He does not pay child support.

Rick could be breaking a civil law if there is court-ordered child support and he does not pay. Depending on the circumstances, he could be guilty of a crime if a judge has held him in criminal contempt for not paying child support on repeated occasions.

8. Lotto tickets are available on every corner in a poor neighborhood.

Lotteries are legal in most states today but are highly regulated. In many states, it would be a crime to sell lottery tickets without government approval.

9. Ron and Loni see someone break into a car and steal it. They do not report it.

Generally, it is not a crime to fail to report a crime. However, if Ron and Loni are questioned by the police and lie then these actions could become the crime of obstruction of justice. It is a crime for certain professionals like teachers and doctors to fail to report suspicions of child abuse.

10. Ming plans to rob a convenience store with his friend and serve as a look-out person. After dropping his friend off at the store, he decides not to serve as the look-out. During the robbery, the store clerk is shot and killed by Ming's friend.

Ming could be charged with criminal conspiracy and he also could be charged with felony murder. The fact that he bailed out at the last moment would generally not immunize him from criminal activity.

SUMMARY (10 minutes)

1

After the activity is complete, you may want to discuss where laws come from and how you find out what the laws are. Discuss the following questions:

- Do different communities have different laws and why?

Yes. Each community (town, city, county) makes its own ordinances and laws to regulate how the community operates. These reflect the standards of that particular community. These ordinances or laws cannot conflict with any state or federal laws. Each state can have different laws and the state's elected officials decide how to regulate their state. Again, these laws cannot be in conflict with any federal laws or the U.S. Constitution. Congress makes federal laws for the whole country.

- Do laws change? What makes them change?

As communities change, grow larger and new people move in, the standards and expectations of the community may change. For example, most restaurants have signs in the doors that say everyone must wear shoes and shirts. In the past, many people went barefooted to stores and restaurants. The change is required by new standards for health and safety. What other examples can the class think of?

- What is the difference between something that is morally wrong and something that is a crime?

Not all immoral or socially unacceptable acts are crimes because there are no laws outlawing the behavior in question. This does not mean that it is acceptable to act in a particular way simply because there are no laws dictating that you shouldn't. For instance, the laws governing child abuse and neglect allow the state to intervene when the child is harmed or threatened to be harmed, but parenting that does not qualify as illegal is not necessarily good parenting. The law sets a floor (below which behavior should not fall) but not a ceiling.

2

Ask participants:

- What are some factors that make certain actions criminal?
 - What is the purpose of having criminal laws?
 - What reasons given by other participants did they think were good and made sense?
 - Did any of the reasons offered by other participants that they heard make them think harder about their own decisions?
 - Did they find out that other people had reasons just like their own?
 - Even if others had different reasons, could they see the merit in those reasons?
-

This activity was adapted from the following Street Law, Inc. materials:

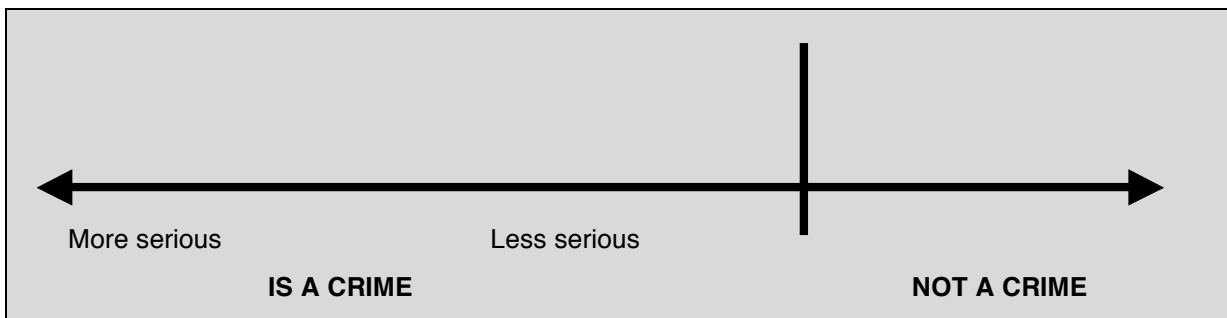
- Arbetman, Lee, and Edward O'Brien. *Street Law: A Course in Practical Law* (7th Edition). Columbus, Ohio: The McGraw Hill Companies, Inc. 2005.
- *Street Law for Juvenile Justice Programs*, © Street Law, Inc., 2002.

HANDOUT 1

SHOULD IT BE A CRIME?

(PAGE 1 OF 2)

DIRECTIONS: READ EACH SITUATION DESCRIBED BELOW. DECIDE IF IT IS MORE SERIOUS, LESS SERIOUS, OR NOT A CRIME. THEN WRITE THE NUMBER OF EACH OF THE ACTIONS DESCRIBED BELOW WHERE YOU THINK IT SHOULD GO ON THIS CHART. FOR EXAMPLE, IF YOU THINK SITUATION #1 IS NOT A CRIME, PUT A NUMBER 1 ABOVE THE LINE AND ABOVE THE WORDS "NOT A CRIME".



1. DWAYNE SELLS MARIJUANA OUT OF HIS HOME, BUT ONLY TO PEOPLE OVER 21 YEARS OF AGE. HE USES THE EARNINGS TO SUPPORT HIS FAMILY.

2. A FACTORY DUMPS ITS TOXIC CHEMICALS INTO A NEARBY STREAM KILLING ALL THE LOCAL CATFISH. PEOPLE WHO CONSUME FISH FROM THE CONTAMINATED RIVER ARE AT A HIGHER RISK FOR CANCER.

3. AFTER STAYING-UP ALL NIGHT TO CARE FOR HER SICK GRANDMOTHER, LIZ FALLS ASLEEP AT THE WHEEL ON HER WAY TO WORK. SHE CRASHES INTO A CAR KILLING A 25 YEAR-OLD MAN AND HIS DAUGHTER.

HANDOUT 1
SHOULD IT BE A CRIME?
(PAGE 2 OF 2)

4. DONALD IS A USED CAR DEALER WHO TURNS BACK THE ODOMETERS ON CARS HE SELLS.

5. LATISHA LEAVES A STORE WITH CHANGE FOR A \$10 BILL AFTER SHE REALIZES THAT SHE GAVE THE CASHIER A \$5 BILL.

6. LILY APPROACHES A MAN FOR PURPOSES OF PROSTITUTION.

7. RICK HAS A BABY BOY HE HAS NEVER SEEN. HE DOES NOT PAY CHILD SUPPORT.

8. LOTTO TICKETS ARE AVAILABLE ON EVERY CORNER IN AN ECONOMICALLY IMPOVERISHED NEIGHBORHOOD.

9. RON AND LONI SEE SOMEONE BREAK INTO A CAR AND STEAL IT. THEY DO NOT REPORT IT.

10. MING PLANS TO ROB A CONVENIENCE STORE WITH HIS FRIEND AND SERVE AS A LOOK-OUT PERSON. AFTER DROPPING HIS FRIEND OFF AT THE STORE, HE DECIDES NOT TO SERVE AS THE LOOK-OUT. DURING THE ROBBERY, THE STORE CLERK IS SHOT AND KILLED BY MING'S FRIEND.

TRANSPARENCY
TAKE A STAND

- **DO NOT INTERRUPT; WAIT FOR YOUR TURN.**
- **DO NOT ARGUE; STATE YOUR OPINION. GIVE NEW REASONS OR IDEAS.**
- **LISTEN WHILE OTHERS GIVE THEIR REASONS AND IDEAS.**
- **YOU MAY MOVE AT ANY TIME IF YOU CHANGE YOUR MIND.**