

## 20-07 - Communicable Disease Crimes (Health & Safety Code 120290, Penal Code 245 and 422)

Los Angeles County Sheriff's Department

# NEWSLETTER

Field Operations Support Services, (323) 890-5411



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### Communicable Disease Crimes

(Health & Safety Code 120290, Penal Code 245 and 422)

The purpose of this newsletter is to identify applicable statutes related to suspects who commit criminal threats, assault, and/or battery via the transmission of a communicable or infectious disease. The below listed sections (**120290 H&S, 245 P.C. and 422 P.C.**) can be used for a person who uses the transmission of a communicable or infectious disease (threatened, attempted, or actual) against another person.

#### Health and Safety Code 120290

It is a crime for a person to intentionally transmit a communicable or infectious disease.

There are four elements of this statute. The suspect:

1. **Knew** that they, or a third party, had an **infectious or communicable disease**;
2. Acted with the **intent to transmit**, or cause a third party to transmit, that disease to another person;
3. Engaged in conduct that posed a **substantial risk** of transmission to another person; and
4. **Transmitted** (either by their own actions or those of a third party) the disease to the other person. If this element is not met but actions were taken to complete it, an attempt Transmission of Infectious or Communicable Disease may be charged.

**Infectious or communicable disease** is a disease that:

- Spreads from person to person (either directly or indirectly); and
- Has a significant public health implication.

**Conduct that poses a substantial risk of transmission** means an act that has a reasonable probability of disease transmission. Examples may include but are not limited to:

- Unprotected sex;

- Sharing a needle for drug injection; and
- Deliberately contaminating surfaces in order to infect other people.

**A Third party** transmission would occur if a person has knowledge a third party is infected with a communicable or infectious disease, care or control over the infected third party, and facilitated or allowed the transmission to occur. Examples of a third party relationship may include but are not limited to:

- parent/child; and
- pimp/prostitute.

### **Assault with a Deadly Weapon (ADW), Penal Code Section 245**

1. The suspect performed an act that, by its nature, would probably result in the **direct application of force** to someone else;
2. The suspect performed that act with either a **deadly weapon**, or with force that was likely to produce **great bodily injury**;
3. The suspect performed the act **willfully**;
4. When the suspect acted, they were aware of facts that would lead a **reasonable person** to believe that the act would directly and probably result in the **application of force** to the victim; and
5. When the suspect acted, they had the present ability to **apply force** with a deadly weapon, or force likely to produce great bodily injury.

*Note:* The victim of an ADW **does not** have to get injured for a crime to occur. The focus is on whether the suspect's act **could have** resulted in the application of force. It is not based on whether the force was **actually applied**. A suspect who has an infectious or communicable disease and is attempting to spit in someone's face, could be charged under this section.

### **Application of force**

The definition of **application of force**, under PC 245(a)(1), is any:

- Harmful, or offensive touching. The slightest touching will count if it is done in a **rude or offensive manner**.
- An assault with a deadly weapon can occur even if the touching **was not direct**. The touching can be done **indirectly**. For example, a person causing an object to touch the victim.

*Note:* It is not necessary that a suspect succeeded in applying force to the other person. All that is required is:

- They took some action; and
- That action would **probably have resulted** in force being applied to the other person.

### **Deadly weapon**

For purposes of this statute, a **deadly weapon** is:

- Any object or weapon, which is capable of producing **death or serious bodily injury**.

These include but are not limited to:

- Guns;
- Knives; and
- Any object that can (by its use) kill someone, or cause them substantial harm. \*COVID-19 fits this description.

### **Serious bodily injury**

California law defines serious bodily injury as:

- Significant; or
- Substantial physical injury.

*Note:* Serious Bodily Injury means something **greater than** minor harm.

### **Willfully**

A person acts **willfully** if he performs an action **willingly or on purpose**. It is not necessary that the person intended to:

- Break the law;
- Hurt anyone; or
- Gain any advantage.

The following are sample scenarios where either of the listed statutes could be charged:

- An arrested suspect who is infected with COVID-19 spits or attempts to spit in the face of arresting personnel; and
- A suspect at a transit terminal is seen deliberately wiping oral or nasal secretions on hand rails, door knobs or elevator buttons. When detained he states he wanted everyone to catch “the COVID-19 virus, in order to save the planet.”

### **Criminal Threats Penal Code Section 422**

It is a crime to:

1. Threaten to **cause serious bodily injury** or **kill** another person; and
2. The threats are intended to, and **actually** do, place the victims in **reasonable** and **sustained fear** for their safety or that of their family.

The threat must be specific and unequivocal. The threat is communicated verbally, in writing, or via an electronically transmitted device. Gestures by themselves do not qualify. Criminal threats can be charged whether or not the actual ability or intent to carry out the threat exists.

Someone threatening to infect another with the COVID-19 virus, where the victim is in actual, sustained fear for their safety would be a violation of this statute.

**All personnel should read and understand the cited Penal Code and Health & Safety Code sections before taking enforcement action.**

The use of these codes does not preclude additional charges which may apply. These may include violations of the County Health Order. All charges violating the County Health Order should be included on the complaint line of the SH-AD-49 utilizing a 399 statistical code. The suspect's specific actions which violated the County Health Order should be indicated in the narrative of the report. Please refer to [COVID-19 DOC Notice #42](#) for additional information.

If you have any questions regarding this newsletter, please call or email Field Operations Support Services at (323) 890-5411 or [foss@lasd.org](mailto:foss@lasd.org).

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