

CHAPTER 52
PERJURY AND OFFENSE AGAINST THE INTEGRITY
OF OFFICIAL PROCEEDINGS

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COMMENT: Sections 52.10 through 52.35 treat a series a false statement offenses, ranging from the most serious -- perjury -- to a variety of other types of false statements which may affect public proceedings or private rights. These Sections provide a comprehensive, rational classification scheme and delineate between those false statement which should be treated as criminal offenses and those which should remain free from criminal sanctions.

Sections 52.40 through 52.65 consolidate a number of offenses designed to protect the integrity of official proceeding. These Sections are related to the former Section and deal with such matters as witness intimidation, bribery, tampering with physical evidence and jury tampering. (See California Joint Legislative Committee..., Penal Code Revision Project 26-53 (Tent. draft No. 38, July 1969).)

§ 52.10. Definitions.

As used in this Chapter:

(a) *official function* and *public servant* have the meanings provided for those terms by § 49.10.

(b) *material statement* means a statement which affected or could have affected the course or outcome of a proceeding, regardless of its admissibility under rules of evidence.

(c) *Official proceeding* means a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer an oath or cause it to be administered, including any referee, hearing officer, commissioner,

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notary or other person taking testimony or deposition in connection with any such proceeding.

(d) *public record* means any record, document, thing belonging to, or received or kept by the Government of Guam or any governmental instrumentality within the Territory.

(e) *statement* means any non-trivial representation, but a representation of opinion, belief or other state of mind is a statement only if it clearly relates to a state of mind apart from or in addition to the facts which it otherwise represents.

(f) *statement under oath* means

(1) a statement made pursuant to a swearing, an affirmation, or any other mode authorized by law of attesting to the truth of that which is stated; and

(2) a statement made on a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(3) testimony means oral or written statements, documents or any other material which may be offered by a witness in an official proceeding.

SOURCE: G.P.C. §§ 119, 120; See also § 124; M.P.C. §§ 240.0, 241.0; *Cal. § 1000 (T.D. 3, 1969); Cal. § 1100 (1971); Mass. ch. 268, § 1; N.J. § 2C:27-1, 2C:28-1.

COMMENT: Note that the definition of “statement” in § 52.10(e) would exclude many of the statements of opinion of witnesses at the recent hearings held by the Select Committee on Police Corruption where a person was reminded that he was “under oath” and then asked to subjective opinion about a subject.

§ 52.15. Perjury; Defined & Punished.

(a) A person is guilty of perjury if, under oath in an official proceeding, he makes a false statement which is material and which he does not believe to be true.

(b) Whether a statement is material is a question of law.

(c) Perjury is a felony of the third degree.

SOURCE: G.P.C. §§ 118, 118a, 123, 125, 126; See also §§ 127, 128; M.P.C. 241.1; *Cal. § 1030 (T.D. 3, 1969); Cal. § 1120 (1971); Mass. ch. 268, § 1; N.J. § 2C:28-1.

CROSS-REFERENCES: § 4.60 - Accomplice Liability.

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COMMENT: Section 52.15 continues the most serious of the false statement offenses -- perjury. Penal Code § 128 is eliminated as this Section relates to the death penalty which is no longer inflicted. Penal Code § 127 is eliminated, being an unnecessary statement of accomplice liability.

Penal Code § 119(a) touches on the problem of inconsistent statements. This Chapter reflects a decision not to adopt a special inconsistent statement provision on the ground that provision may operate to compel consistency rather than truth. Indeed, a witness may be warranted in refusing to testify at all at the second proceeding on the ground of self-incrimination, since if he changes his story he sets up a criminal case against himself under the special statute dealing with inconsistent statements. The threat that this presents to the production of truth outweighs the possible aiding of the prosecution for perjury under consistent statement provisions.

§ 52.20. False Statement Under Oath; Defined & Punished.

A person is guilty of a misdemeanor if he makes a false statement under oath which he does not believe to be true and:

- (a) the falsification occurs in an official proceeding; or
- (b) the falsification is intended to mislead a public servant in performing his official function.

SOURCE: G.P.C. § 129; M.P.C. § 241.2; *Cal. § 1040 (T.D. 3, 1969); Cal. § 1121 (1971); Mass. ch. 268, § 2; N.J. § 2C:28-2.

CROSS-REFERENCES: §§ 52.15(b) -- Materiality as a question of law § 52.25(d) -- Belief of Immateriality No Defense. § 47128, Govt. Code -- False Swearing before Customs Officials. (§ 235, P.L. 13-187); § 27124 -- False Swearing -- Misdemeanor.

COMMENT: Two separate offenses are defined in this Section, each of which differs from the crime of perjury. Section 52.20(1) creates perjury, except that materiality is not an element and, thus, the penalty is less. Likewise, § 52.20(2) creates perjury except that it occurs with an intent to mislead a public official in his duties, when such duties are not part of a formal hearing or proceeding. For example, a crime here would be the false swearing in a license application.

§ 52.25. Unavailability of Certain Defenses.

It is not a defense to any offense defined in § 52.15 or § 52.20 that:

- (a) the oath was administered or taken in an irregular manner;
- (b) the authority or jurisdiction of the person administering the oath was defective, if the defect was excusable under any statute or rule of law;
- (c) the statement was subject to a proper objection, whether or not such objection was made; or

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(d) the defendant mistakenly believed the falsification to be immaterial, where materiality of the statement is an element of the offense.

SOURCE: G.P.C. §§ 121, 122, 123; M.P.C. §§ 241.1(2) (3); 241.2(3); *Cal. § 1055 (T.D. 1969); Cal. § 1123 (1971); Mass. ch. 268, § 1(d) (2) (b); N.J. § 2C:28-(b)(c); 2C:28-2(c).

CROSS-REFERENCES: Penal Code §§ 121-123.

§ 52.30. Unsworn Falsifications; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to mislead a public servant in performing his official function, he makes, submits or uses:

(a) any written false statement of his own which he does not then believe to be true; or

(b) any physical object, exhibit, writing or drawing which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.

SOURCE: G.P.C. §§ 115a, 116, 430; See also §§ 429, 537; M.P.C. § 241.3; *Cal. § 1041 (T.D. 3, 1969); Mass. ch. 268, § 3; N.J. § 2C:28-3.

COMMENT: Section 52.30 makes criminal false statements which are written, but unsworn, made with intent to mislead a public servant. This Section would include under its scope the presentation of a friend's valid driver's license as the defendant's own; and written complaint to the police which is false and the writer believes them not to be true.

§ 52.40. Intimidation of Witnesses by Extortion; Defined & Punished.

A person is guilty of a felony of the third degree if, by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property, he:

(a) attempts to induce any person to refrain from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense; or

(b) attempts to induce any person who has been or may be properly called as a witness in any official proceeding to give false testimony in, to withhold testimony or information from, or to fail to attend, any such proceeding.

SOURCE: G.P.C. § 136; M.P.C. § 241.6(1); *Cal. § 1100 (T.D. 3, 1969); Cal. §§ 1130, 1132 (1971); Mass. ch. 268, § 5(a); N.J. § 2C:28-5(a).

CROSS-REFERENCES: § 52.45 -- Witness Bribery.

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COMMENT: Section 52.40 clears up anomalies in the Penal Code relative to sentencing contained in §§ 137 and 136. This Section places serious threats on the same plane with bribery -- third degree felony.

Note that conduct under this Section and § 52.45 may amount to attempt to commit, solicitation of, or complicity in a perjury offense. No problem is presented as all three are third degree felonies.

§ 52.45. Witness Bribery: Solicitation: Definitions; Punishment; Affirmative Defenses.

A person is guilty of a felony of the third degree if he:

(a) offers, confers upon, or agrees to confer upon, any person any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to any offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly offered or conferred as restitution or indemnification for harm done in the circumstances of the offense;

(b) offers, confers upon, or agrees to confer upon, any person who has been or may be properly called as a witness in an official proceeding any benefit as consideration for giving false testimony or information, for withholding testimony or information from, or for failing to attend, any such official proceeding;

(c) solicits, accepts or agrees to accept any benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information, relating to an offense; provided that it is an affirmative defense to a prosecution under this Subsection that the benefit was honestly claimed as restitution or indemnification for harm done in the circumstances of the offense; or

(d) solicits, accepts or agrees to accept, in connection with any official proceeding to which he has been or may be properly called as a witness, any benefit as consideration for giving false testimony or information in, for withholding testimony or information from, or for failing to attend, any such official proceeding.

SOURCE: G.P.C. §§ 136, 137, 138, 153; See also §§ 1377-1379 (Code of Cr. Proc. §§ 140.10 thru 140.20); M.P.C. § 241.6; *Cal. § 1101 (T.D. 3, 1969); Cal. § 1134, 1136, 1138 (1971); Mass. ch. 268, § 5; N.J. § 2C:28-5.

CROSS-REFERENCES: Code of Cr. Proc. §§ 140.10 - 140.20.

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COMMENT: Section 52.45 is a comprehensive Section, including bribery of an informant and witnesses. The interest in protecting the free flow of information about the commission of offenses seems to warrant extending the reach of the provision to this preliminary state of the official proceeding.

Section 52.45 also incorporates what has been called "compounding of crimes". (Penal Code § 153.) This crime consists of the receipt of consideration for failure to report the commission of a crime. The former law allowed compromise of only misdemeanors. The commission felt that no citizen should be placed in jeopardy because he accepted honest restitution for what would otherwise be a criminal act and thereafter, failed to report it. Thus, the affirmative defense contained in § 52.58 (a). This defense is available regardless of the seriousness of injury or crime inflicted upon the person receiving the restitution or benefit.

§ 52.50. Tampering with Witnesses: Defined and Punished.

A person is guilty of a misdemeanor if he attempts to induce any person to give false testimony in or to withhold testimony from any official proceeding to which he has been or may be properly called as a witness, or to fail to attend any official proceeding to which he has been lawfully called as a witness.

SOURCE: G.P.C. § 133, 136; M.P.C. § 241.6; *Cal. § 1102 (T.D. 3, 1969); Cal. § 1140 (1971); Mass. ch. 268, § 5; N.J. § 2C:28-5.

CROSS-REFERENCES: § 52.40; § 52.45 - Witness Bribery.

COMMENT: Section 52.50 is a general prohibition of improper attempt to affect witnesses. The crime is a misdemeanor. Unlike the previous two Sections, which can be violated only by prohibited kinds of inducements, threat or bribery, this Section is not limited respect to the means of inducement. On the other hand, this Section is more limited as to the objectives of the inducement, i.e., giving false testimony in; withholding testimony from or failing to attend at an official proceedings to which the witness has been or may be called. This is a lesser included offense to subornation of perjury and attempted witness intimidation or bribery.

§ 52.55. Falsifying Evidence; Defined & Punished.

A person is guilty of a felony of the third degree if, believing that an official proceeding has been or is about to be instituted, he prepares, offers in evidence or uses any record, document or thing, knowing it to be false and with intent to mislead a public servant who is or may be engaged in the proceeding.

SOURCE: G.P.C. §§ 132; 134; See also §§ 115a, 156; M.P.C.241.7; *Cal § 1103 (T.D. 3, 1969). Cal. § 1142 (1971); Mass. ch. 268, § 6; N.J. § 2C:28-6.

CROSS-REFERENCES: § 52.80 - Unsworn Falsification; § 52.50 -Witness Tampering.

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COMMENT: This Section is similar to, but more comprehensive than Penal Code §§ 132 and 134. Falsifying physical evidence is classified as a felony in that this is a direct attempt, without an intervening third person, by a defendant to directly influence the integrity of official proceedings.

§ 52.60. Destroying Evidence; Defined & Punished.

A person is guilty of a misdemeanor if, believing that an official proceeding has been or is about to be instituted, he destroys, conceals or removes any record, document or thing with intent to impair its availability in the proceeding.

SOURCE: G.P.C. § 135; See also § 115a; M.P.C. 241.7; *Cal. § 1104 (T.D. 3, 1969); Cal. § 1144 (1971); Mass. ch. 268, § 6; N.J. § 2C:28-6.

COMMENT: Section 52.60 is substantially the same as Penal Code § 135, although it brings the on-set of the crime back in time where the defendant believes that a proceeding is about to be instituted.

§ 52.65. Unlawful Communication With Jurors; Defined & Punished.

A person is guilty of a misdemeanor if, with intent to influence the outcome of an official proceeding, he communicates with a juror, except as may be authorized by law.

SOURCE: Cal. § 1105 (T.D. 3, 1969); Cal. § 1148 (1971).

CROSS-REFERENCES: §§ 49.10 (c) - Public Servant Including a juror; § 49.20 - Bribery of a Public Servant; § 49.30 - Public Servant Receiving Bribes; § 49.60 - Giving a gratuity to a public servant; § 49.70 - Public Servant Receiving an unlawful gratuity; § 49.50 - Threatening a juror.

COMMENT: This crime of "jury tampering" extends the policy beyond the deceptions dealing with unlawful activity towards jurors by insulating the juries from all improper communications, regardless of their intent or content.
