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LT. ENEA

CITY OF PLEASANT HILL POLICE DEPARTMENT



TRAINING BULLETIN

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Unloaded Open Carry (UOC) Movement

Due to one of our local citizen's calling in and asking questions about carrying an unloaded handgun on his waist as part of the UOC movement, it was decided to revisit this topic. A training bulletin was previously issued in September 2008 about the UOC movement but a year later, the movement is starting to surface more in the Bay Area.

It is not illegal to openly carry an unloaded firearm in California. As stated in the prior training bulletin, the primary group, OpenCarry.org encourages people to carry unloaded and unconcealed firearms as their "constitutional right".

The Contra Costa County DA's office was contacted regarding their stance on this issue and the legal actions that can be taken. Since it has not yet become a big issue in Contra Costa County, the DA's office is still examining the legalities.

The main questions about contacting someone openly carrying a firearm are:

- 1) whether or not an officer can make the person provide identification
 - **The answer currently is "NO". The officer may ASK, but refusal to provide ID does not constitute a violation of 148 PC.**
- 2) can the serial number be run on the firearm
 - **Only if it is within plain view and does not prolong the detention beyond determining if the firearm is loaded or unloaded. Officers may not "search" for the serial number.**
- 3) where can the ammunition be kept
 - **In close proximity to the firearm as long as it's not placed into a firing position, i.e. the chamber or attached to the firearm**

In reviewing the multiple court cases that discuss the Open Carry issue, it appears that the actions of police extend to:

- 1) A check of the firearm to determine if it is loaded pursuant to PC 12031(e)
- 2) The serial number of the firearm can only be run if you happen to see it during the PC 12031(e) check. But you cannot search for the serial number, **People v. DeLong** (1970) 11 Cal.App.3d 786
- 3) Once the firearm is determined to be unloaded, there is no further law enforcement action called for.

- (a) While *Hibel v. Sixth Judicial District* allows for a demand for ID, this case was in Nevada which has a "Stop and ID" statute. California has no requirement for ID, so the question of identifying someone is not clear. **The Contra Costa County DA's position has not been formally decided but currently the position is not to detain or arrest for failure to provide ID.**
- (b) U.S. Supreme Court held that law enforcement cannot stop and frisk a citizen based solely on an anonymous tip describing only innocent behavior and which also does not sufficiently predict the future actions of a subject. *Florida v. J.L.* 529 U.S. 266 (2000).
- (c) U.S. Supreme Court *Arizona v. Hicks* 480 U.S. 321 (1987), held that the 4th Amendment requires the police to have probable cause to search items in plain view.

Related Penal Code sections and Other Information

- PC §12025(f) states, "Firearms carried openly in belt holsters are not concealed within the meaning of this section." In other words, in order for a citizen to be in possession of a **concealed** firearm on his / her person [PC § 12025(a)(2)] the firearm must be concealed.
- PC § 12031(g) states, "A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell consisting of a case that holds a charge of powder and a bullet or shot, in or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder."

In *People v. Clark* (1996), the court held even though ammunition was in close proximity to a firearm the firearm was not considered "loaded" since it was not yet placed in a firing position. As a result, **citizens may lawfully carry ammunition on their person when they are carrying an unloaded firearm in a belt holster and the firearm is not concealed.**

- PC § 12031(e) states, "In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section."
- PC § 626.9 makes it unlawful to possess a firearm within 1,000 feet of any public or private school. There are exceptions to this rule when transporting a firearm.
- PC § 12090 Tampering with marks on firearms. It is illegal to possess a firearm in which the serial number has been altered, covered, or obliterated. (FEL)

If Dispatch receives a phone call about a person(s) openly carrying firearms, they will need to obtain as much information as possible about the demeanor, behavior, and activities of the people carrying the firearms to help determine if this is an "open carry" situation. This information is critical to determine the appropriate tactics.

The goal will be to balance officer safety and the safety of others while still doing our job within the law so as to not violate anyone's rights and expose ourselves to criminal or civil litigation. Members of the Open Carry movement often have video recorders, audio recorders, and cameras. Therefore, conduct yourself with professionalism. Remember it is someone's **constitutional right** to carry an unloaded gun in plain view in public.

Refer to the attached flyer and pamphlet from the CaliforniaOpenCarry.org website.