

San Diego Police Department

TRAINING BULLETIN

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CALIFORNIA OPEN CARRY

**I. PURPOSE**

It is illegal to carry and/or transport a loaded firearm concealed or unconcealed on your person or in a vehicle in California. It is legal to carry and/or transport an unloaded firearm on your person or in a vehicle. Legal issues must be clarified and tactical issues must be considered when dealing with such contacts in the field.

**II. BACKGROUND**

Officers at Northern Division contacted a person who is a member of "Open Carry" ([www.opencarry.org](http://www.opencarry.org)). Members of "Open Carry" advocate carrying exposed, unloaded firearms in a hip holster with loaded magazines in the magazine pouch on the opposite side. They are operating in San Diego County testing police officers' response when being contacted. They often have other members close by to witness and to videotape the contact, which is later downloaded on their website. It is important that police officers know the long list of applicable laws, and to take the necessary safety precautions as they develop during the contact.

**III. APPLICABLE STATE AND CASE LAWS**

**CONCEALED FIREARMS GENERALLY**

Definition: A firearm "capable of being concealed upon a person" is one which has a barrel less than 16 inches long. PC § 12001(a).

Rifle: A rifle does not qualify as capable of being concealed upon a person.

Only Substantial Concealment is Required: The mere fact that some portion of the weapon may be visible does not make it any less a concealed weapon, whether on a person or within a vehicle. *People v. Wharton*, 5 Cal. App. 4<sup>th</sup> 72, 75 (1992); *People v. Fuentes*, 64 Cal. App. 3d 953, 955 (1976).

Inoperable firearm: It is not a defense to PC § 12025 that the firearm is inoperable. *People v. Marroquin*, 210 Cal. App. 3d 77, 82 (1989).

Open carry: Firearms carried openly in belt holsters are not concealed.

### **CONCEALED FIREARM ON A PERSON**

#### **PC § 12025(a)(2) – Firearm Concealed on Person**

This section prohibits carrying a concealed pistol or other firearm capable of being concealed upon the person without a license to carry such a firearm.

Knowledge: The person must know he was carrying a firearm.

Suitcase: A handgun concealed in a suitcase carried by a person is sufficiently “upon his person” to constitute a violation. *People v. Dunn*, 61 Cal. App. 3d Supp. 12 (1976).

### **CONCEALED FIREARM IN A VEHICLE**

#### **PC § 12025(a)(1) – Firearm Concealed in Vehicle by Driver**

This section prohibits carrying concealed within a vehicle, by the person controlling or directing the vehicle, a pistol or other firearm capable of being concealed upon the person without having a license to carry such firearm.

Knowledge: The person must know the gun was in the car. *People v. Jurado*, 25 Cal. App. 3d 1027, 1030-31 (1972); *People v. Rubalcava*, 23 Cal. 4th 322, 331-32 (2000).

Gun in Unlocked Carrying Case is Concealed: If a firearm is transported in a vehicle in such a manner as to be invisible unless its carrying case is opened, it is concealed. *People v. Hodges*, 70 Cal. App. 4th 348, 1355 (1999). Thus, carrying a firearm in an unlocked case in a vehicle violates this section. However, PC § 12026.1 makes it lawful to transport a firearm in a vehicle if it is in a locked case.

Possession and Control: The statute does not require that the person have exclusive possession and control of the firearm. It is enough that the person owned and controlled the car, and knew a gun was below the seat, even though the gun was placed there by someone else and belonged to someone else. *People v. Davis*, 157 Cal. App. 2d 33, 36 (1958).

#### **PC § 12025(a)(3) – Firearm Concealed in Vehicle by Occupant**

This section prohibits any person to cause to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

Knowledge: The person must know that he caused the firearm to be concealed in the car (concealing a gun between the seats), even if he did not initially bring the gun into the car. *People v. Padilla*, 98 Cal. App. 4<sup>th</sup> 127, 134 (2002).

#### **PC § 12026.1(a)(1) – Authority to Transport Concealable Firearms in Vehicles**

It is lawful to transport a concealable firearm in a vehicle if the firearm is locked in the vehicle’s trunk or in a locked container in the vehicle other than the utility or glove compartment.

Locked container: Defined as a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. PC § 12026.1(c).

### **LOADED FIREARMS**

#### **PC § 12031(a)(1) – Loaded Firearm on Person or in Vehicle**

This section prohibits carrying a loaded firearm in public in a vehicle or on one’s person. This section applies in any public place, on any public street, or in any place where it is unlawful to discharge a firearm.

Knowledge: The person must know that he was carrying a firearm. But knowledge that the firearm is loaded is not an element of the offense of carrying a loaded firearm in a public place. *People v. Dillard*, 154 Cal. App. 3d 261 (1984).

Inoperable firearm: A firearm does not need to be in working order if it was designed to shoot and appears capable of shooting. *People v. Taylor*, 151 Cal. App. 3d 432, 437 (1984).

**PC § 12031(g) – Statutory Definition of “Loaded”**

A firearm is deemed to be loaded when there is an unexpended shell ... in, or attached in any manner to, the firearm. PC § 12031(g). Legislative history: The Legislature’s use of the phrase “attached in any manner” to the firearm was intended to encompass a situation where a shell or cartridge might be attached to a firearm or “loaded” for firing by some unconventional method. The phrase does not demonstrate a clear Legislative intent to deem a firearm loaded no matter how a shell is attached to a firearm, even when shells are placed in a separate storage compartment at the rear of a shotgun’s stock. *People v. Clark*, 45 Cal. App. 4th 1147 (1996).

**Case Law Definition of “Loaded” = Ready for Firing**

For purposes of PC § 12031, a firearm is loaded when a shell or cartridge has been placed into a position from which it can be fired. A firearm is not loaded if the shell or cartridge is stored elsewhere and not yet placed in a firing position. *People v. Clark*, 45 Cal. App. 4th 1147, 1153 (1996).

**PC § 12031(e) – Peace Officer Authority to Examine Firearm**

In order to determine whether or not a firearm is loaded for the purpose of enforcing PC § 12031, 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, or in any prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section is, in itself, probable cause for arrest for violation of this section.

**FIREARMS PROHIBITIONS**

**PC § 626.9(b) – Possession on School Grounds**

This section prohibits any person from possessing a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, designee, or equivalent school authority.

School zone: Defined as an area in, or on the grounds of, a public or private school providing instruction in K-12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school. PC § 626.9(e)(1).

**PC § 626.95 – Possession on Playground or Youth Center**

Pursuant to this section, violations of PC 12025, PC 12031, PC 417(a)(2), or PC 417(b) while on the grounds of a playground, or youth center during hours when it is open for business, classes, or school-related programs, or at a time when minors are using the facility, when the person knows that he or she is on or within those grounds, are felony wobblers.

Playground: Defined as any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic

activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city or county parks. PC § 626.95(c)(1).

Youth Center: Defined as any public or private facility that is used to host recreational or social activities for minors while minors are present. PC § 626.95(c)(2).

#### **IV. TACTICAL CONSIDERATIONS**

Officer safety is paramount and takes precedence over the apprehension of any subject. Good judgment is the key to making a successful field contact with an "Open Carry" subject. If possible, officers should assess the situation from a distance prior to making contact with the subject. Isolating the subject is the optimal circumstance for contact. If necessary, officers should request other units to assist. Contact and cover is the standard protocol for contacting subjects in the field and should be employed in this circumstance as well. The contact officer should give clear directions to the subject and advise the subject that they are going to inspect his/her firearm to determine if it is loaded. The contact officer should tell the subject to put his/her hands up above their head (away from the weapon) and to not move. The officers will communicate which officer will retrieve the weapon from the subject. The subject's actions and behavior before and during the contact will determine the appropriate response by the officers.

Officers may opt to make a "low-key" contact or conduct a high risk pedestrian hot stop. Officers should take into consideration bystanders, surroundings, location of contact and the subject's companions. Officers should continue their vigilance and assess if a greater or lesser response is required.