



United States Department of the Interior

NATIONAL PARK SERVICE UNITED STATES PARK POLICE

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IN REPLY REFER TO:

January 26, 2010

TO: SFFO

From: Commander, SFFO

Subject: Open Carry of Firearms in GOGA.

Legislation (Public Law 111-23 Section 512) that allows lawful possession of firearms in National Parks, consistent with state law in the state in which the park area is located, will go into effect on February 22, 2010. No doubt that one of our biggest challenges, pertaining to this, will be the way we deal with lawfully armed citizens, particularly those who openly carry unloaded firearms as permitted under California law. There is current discussion as to the applicability of this new legislation to Area B of the Presidio.

Since 2004, there has been a growing unloaded open carry (UOC) movement across the country. There have been instances where members of this movement have "tested the waters" here in the San Francisco Bay Area. Safety for officers and the public is always our highest priority. However, California law is very clear when addressing the specific instances for which a citizen may lawfully carry an unloaded gun and in plain view in public. This is a constitutional right, and we must adjust our responses accordingly in light of the above legislation.

OPERATIONAL CONSIDERATIONS:

UOC enthusiasts insist they are exercising their state and federal constitutional rights to bear arms, and they may want to provoke an incident with police so they could potentially take civil actions against the government for violating their rights. UOC encounters in Turlock, Sacramento, and recently in Livermore and Sunnyvale, CA found said members to be polite and respectful, but they had on hand recording devices and attorneys to capture any illegal actions on the part of the police.

Since lawful UOC is legal in California, citizens are not required to produce identification when contacted by the police for the purpose of determining if firearms are loaded or not. Officers *may* request identification but do not have the authority to compel identification if the contact is strictly for UOC.

UOC contact needs to be a brief, unobtrusive interaction as we do not have the authority to detain anyone beyond inspecting firearms.

WHAT TO EXPECT:

- UOC enthusiasts openly carrying holstered firearms
- UOC enthusiasts likely will not identify themselves
- UOC enthusiasts will know the law regarding carrying firearms
- UOC contacts will be recorded (camera, audio, etc) by the enthusiasts.
- Officers will not be able to persuade them to leave or put their firearms away
- UOC enthusiasts perceive themselves as law abiding citizens exercising their rights.

GUIDELINES:

Pursuant to 12031(e) PC, officer can INSPECT the weapon in UOC situations to determine if it is loaded or not. Citizens must comply. Failure to comply can result in arrest for 12031(e) PC. If the serial number is in plain view, officers may conduct a records check. Officers cannot search for the serial number. Officer can also arrest for 537(e) PC or 12090 PC if applicable.

Since the only public/private school adjacent to GOGA/SAFR areas is Galileo High School, officers should be cognizant of 626.9 PC. Officers may arrest if UOC is within 1000 feet of school and if it is reasonable that the UOC subjects know or should have known that they are within 1000 feet. This does not pertain to lawful transport of firearms. If it does not meet those criteria, officers should admonish regarding the 1000 feet. Officers may treat the above like any probable cause/reasonable suspicion contact as there may be a crime that has occurred. Officers need to use discretion and take appropriate investigative steps.

Absent of any other reasonable suspicion or articulable facts, officers cannot arrest for failure to provide ID if the contact is merely for UOC.

DISPATCHERS:

Upon receiving a phone call regarding people openly carrying firearms, dispatchers will obtain as much information as possible to assist responding units in determining whether this is a UOC type call or a "10-32" type call so appropriate actions can be taken. This information should include the behavior, conduct, demeanor, and activities of the subjects to help officers determine if this is a lawful UOC situation. Dispatchers will confirm if brandishing, assault, or other unlawful activities are in progress. Dispatchers will confirm the location of the firearms and whether or not the firearms are concealed. Typical information regarding the Reporting Party, descriptions, their safety concerns, etc shall be gathered and relayed to the officers. Shift supervisors shall be alerted to all UOC calls.

SUPERVISORS:

Ensure your officers are familiar with applicable state and federal laws regarding the carrying of firearms. Share any training materials pertaining to UOC and other firearm laws, rules, and regulations. Ideally, supervisors should be present when contact is made with UOC subjects.

OFFICERS:

Officers are expected to appropriately assess each situation and respond in a safe manner that respects citizens' right to UOC.

In UOC situations, the primary tool will be 12031(e) PC as it provides officers with the inspection authority of firearms carried in public to determine if they are loaded. Detention under this authority is limited and must conclude upon establishing that the UOC is lawful.

Assess the situation and monitor the UOC subject prior to making contact. Clear verbal instructions regarding the weapon inspection shall be given with the OFFICER retrieving the weapon from the holster.

These types of contacts present challenges to responding officers. It is difficult to determine the intent of the armed person. Good judgment and understanding the law are keys to making a safe UOC contact. Officers are required to respect the rights of others and impartially enforce the law. Demonstrate the utmost professionalism in your conduct.

RELATED STATUTES AND OTHER INFORMATION:

- 12031(e) PC – “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 a 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.”
- 12025(f) PC – “Firearms carried openly in a belt holsters are not concealed within the meaning of this section.” In other words, in order for a citizen to be in violation, the firearms must be concealed upon a person [12025(a)(2) PC] or in a vehicle [12025(a)(1) PC].
- 12031(g) PC – “A firearm shall be deemed to be loaded for the purpose of this section when there is an unexpended cartridge or shell...in or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clips thereof attached to the firearms....

In **People v. Clark** (1996), the CA Appellate Court held even though ammunition was in close proximity to the 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.

- 626.9(b) PC – Makes it unlawful to possess a firearm within 1000 feet of any public or private school. There are exceptions to this rule when lawfully transporting a firearm.

- 537e(a) PC – “Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacture’s serial number, identification number, electronic serial number, or any other distinguishing number, or identification mark, has been removed, defaced, covered, altered, destroyed, is guilty of a public offense.”
- 12090 PC – “Any person who changes, alters, removes or obliterates the names of the maker, model, manufacturer’s number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice on any pistol, revolver, or any other firearm, without having secured written permission from the department to make such change, alteration or removal shall be punished by imprisonment in the state prison.
- 12001(a) PC – A firearm “capable of being concealed upon a person” is one which has a barrel less than 16 inches long.

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 12031(e) PC.
- 2) The serial number of the firearms can only be run if you happen to see it during the inspection; however, you cannot search for the serial number. *People v. Delong* (1970).
- 3) Once the firearm is determined to be unloaded, there is no further law enforcement action called for.
 - a) While *Hibel v. 6th Judicial District* allows for a demand for identification, this 9th Circuit case was in Nevada which as a “Stop and ID” statute. California has no requirement for ID unless pursuant to 40302 VC or 853.6(j) PC.
 - 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 a subject. *Florida v. J.L.* (2000).
 - c) U.S. Supreme Court *Arizona v. Hicks* (1987) held that the 4th Amendment requires the police to have probable cause to search items in plain view.