

## CALEXICO POLICE DEPARTMENT TRAINING BULLETIN ON FIREARM RELATED ISSUES

With increasing frequency, officers are encountering individuals carrying holstered pistols and long-guns in plain view on a gun belt. Individuals participating in these actions have dubbed their actions the “open carry” movement. Frequently, ammunition is close at hand either in a bandolier fashion or a loaded magazine affixed to the gun belt. While open carrying of firearms in California has not been practiced in recent years, it is regulated under California law. The background and legal issues that the open carry movement presents are discussed in this training bulletin as well as other issues pertaining to California firearm laws. It is important to note that this bulletin covers the most common issues pertaining to open carrying of firearm and is not designed to be exhaustive in all firearms related crimes.

### HISTORY

The history of Penal Code §§16750(b), 16840(b), 17030, 25850, 25900-25925, 26000-26060 (formerly<sup>1</sup> §12031) offers guidance in understanding this issue. Prior to 1967, it was lawful in California for an adult, not otherwise prohibited from possessing a firearm, to carry a loaded firearm in plain view in public and in an incorporated city. Only the carrying of a concealed firearm was restricted – subject to a Concealed Carry Weapons permit. In 1967, the legislature enacted Penal Code §12031, effective July 28, 1967, which restricted the carrying of a *loaded* firearm in public, even if not concealed – but preserved the ability to carry an *unloaded* firearm if carried in plain view and/or in a holster.

After the legislation was enacted, carrying firearms in plain view rarely occurred until 2004, when the website, OpenCarry.org, was established. Since then, unloaded open carry groups and events have been occurring with an increased frequency throughout the state and the nation. Beginning in 2012, the open carrying of handguns, but not rifles, was restricted, but permitted under certain exemptions described herein.

It is important to note that members of the Open Carry movement appear to be exercising the full scope of the laws available to carry concealable firearms exposed on their persons. Some of these individuals record video and audio of encounters with law enforcement for later broadcast on the internet. Officers need to be fully knowledgeable and tactically prepared to safely and legally address these issues.

### SECOND AMENDMENT PROTECTIONS

The Second Amendment to the United States Constitution provides: “A well-regulated Militia, being necessary to the security of a Free State, the right of the people to keep and Bear Arms, shall not be infringed.” This right was found to be a *fundamental* and *individual* right by the Supreme Court in 2008. (*District of Columbia v. Heller*, 554, U.S. \_\_\_, 128 S. Ct. 2783 (2008).) In June of 2010, a plurality of the Supreme Court found that the *fundamental* Second Amendment right to Keep and Bear Arms was incorporated and made applicable to the states by the Due Process Clause of the Fourteenth Amendment. (*McDonald v. City of Chicago*, 561 U.S. \_\_\_(2010).)

The Second Amendment does not preclude otherwise lawful enforcement of statutes making it unlawful to carry concealed or loaded handguns in public, or for specified convicts to possess firearms. (*People v. Flores*, \_\_\_ Cal.App. 4th , DJDAR 18615, WL5265343 (2008).) It is, however, a fundamental right that may create federal and state liability if otherwise *unlawful* enforcement of statutes is effectuated. (42 U.S.C. §1983.)

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<sup>1</sup> Beginning January 1, 2012, all previous citations to firearm related laws relating to the Control of Deadly Weapons have non-substantively amended and renumbered in accordance with the California Law Revision Commission’s recommendations. See <http://clrc.ca.gov/pub/Printed-Reports/Pub233.pdf>.

## INITIAL CALL

California does not ban firearm possession, but regulates firearm possession *ad hoc*; as such it is important to document a number of factors. Dispatch will process firearms calls using current procedures. Upon receiving a phone call regarding people carrying firearms, dispatch will attempt to obtain as much information as possible about the demeanor, behavior, and activities of the people carrying the firearms, including, if possible, whether the suspect is in a prohibited area, and whether the suspect is engaged in, or about to be engaged in, any criminal activity. Dispatch will attempt to determine whether there is any brandishing, assault, or other unlawful activity in progress. Dispatch will attempt to determine whether or not the firearms are concealed and the location of the firearms. Typical information regarding the Reporting Person, descriptions, does the caller have any safety concerns, etc. will be gathered and relayed to the officers.

The intent is not to change the current practices/procedures of how we gather information or what information to gather, rather, the intent is to emphasize the importance of obtaining as much information as possible. Obviously this information is critical to determine the appropriate tactics. A supervisor shall be assigned to all firearm calls.

## INITIAL CONTACT

Safety of all involved should be the primary concern when making the initial contact with a person carrying a may be carrying the firearm lawfully.

### Handguns v. Long Guns

**Handguns** Penal Code §§16750(a) & 25400 (formerly §12025) applies to firearms capable of being concealed upon the person, which is limited to “handguns” per Penal Code §16530(a) & 16640(a)(formerly §12001(a)). There is no requirement that all handguns must be registered to the owner in California. California only requires handguns *transferred* from 1991 to the present be registered to their owners, with some exceptions.

**Long Guns** Non-concealable firearms (rifles and shotguns) are not covered within the provisions of California Penal Code §§16750(a) & 25400 and therefore are *not* required to be transported in a locked container. In general, they may be carried openly or concealed. Non-concealable firearms must generally be unloaded while they are being transported. However, a rifle or shotgun that is defined as an “assault weapon” (see below) pursuant to Penal Code §§30510 & 16170(a), 16350, 16890, 30515 (formerly §§12276 or 12276.1) must be transported in accordance with Penal Code §§ 16850 & 25610 (formerly § 12026.1). Unless the firearm is an “assault weapon” or “.50 BMG Rifle,” there is no requirement that the firearm be registered or otherwise appear in the AFS.

### Search & Seizure Cautions

**4<sup>th</sup> Amendment** The Fourth Amendment, applied to the states through the Fourteenth Amendment, provides, in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." (U.S. Const. amend. IV.)

**Michigan v. Chesternut** A seizure under the Fourth Amendment occurs when "a reasonable person would have believed that he was not free to leave." (*Michigan v. Chesternut*, 486 U.S. 567, 573 (1988) (quoting *United States v. Mendenhall* 446 U.S. 544, 554 (1980) (opinion of Stewart, J.)).

**Terry v. Ohio** “There are well-defined limits on what police officers may do in discharging their duties, and police may be held liable for acting outside these limits. Perhaps the most fundamental of these

is the requirement that the police not interfere with the freedom of private persons unless it be for specific, legitimate reasons. (See *Terry v. Ohio*, 392 U.S. 1, 21 (1968), 20 L. Ed. 2d 889, 88 S. Ct. 1868.)

***Duran v. Douglas*** “In the absence of a valid warrant, the police may generally not stop and detain an individual for investigation absent a reasonable belief that criminal or otherwise dangerous activity is afoot.” (*Duran v. City of Douglas, Arizona*, 904 F.2d 1372, 1377 (9th Cir. 1989).)

***Florida v. J.L.*** 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 does not sufficiently predict the future actions of a suspect. (*Florida v. J.L.*, 529 U.S. 266 (2000).)

### **Contact Advisory**

**Contact** Officers are expected to appropriately assess each situation and respond in a safe manner that respects the citizens’ rights. We are required to respect the rights of others and impartially enforce the law. Demonstrate the utmost professionalism in your conduct. Assess the situation and monitor the subjects prior to making contact. “Contact and cover” protocols should be fully utilized. Clear verbal commands regarding the weapon inspections should be given *with the Officer retrieving the weapon from the holster*.

**Supervisor** If possible, a supervisor should be present when contact is made with the individuals or groups.

### **Identification of Individual Not Required**

**PC§148** Unloaded Open Carry enthusiasts most likely will not produce identification, even if requested. It is their stance that they are complying with all laws and are not compelled to identify themselves. In short, there is no authority that requires them to identify themselves. Do not enforce the PC§148 solely under this circumstance. Absent any other reasonable suspicions of articulable facts (e.g. Vehicle Code §12951), we cannot arrest for failure to provide Identification.

## **INSPECTION OF FIREARM**

### **Limited Authority to Inspect**

**PC§25850(b)** (Formerly §12031(e).) In order to determine whether or not a firearm is loaded for the purpose of enforcing PC§25850(b), 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 25850.

It is important to note that the authority granted by this provision does not permit any search or seizure beyond mere inspection of the firearm to determine whether the firearm is loaded. It does not, without additional factors, give you the right to prolong the contact beyond inspection to run computer checks or complete an FI. **To do this you must have consent or additional factors that justify a reasonable suspicion detention.**

**PC§833.5** In addition to any other detention permitted by law, if a peace officer has *reasonable cause to believe that a person has a firearm or other deadly weapon with him or her in violation of any provision of law relating to firearms or deadly weapons* the peace officer may detain that

person to determine whether a crime relating to firearms or deadly weapons has been committed. For purposes of this section "reasonable cause to detain" requires that the circumstances known or apparent to the officer must *include specific and articulable facts causing him or her to suspect that some offense relating to firearms or deadly weapons has taken place* or is occurring or is about to occur and that the person he or she intends to detain is involved in that offense. The circumstances must be such as would cause any reasonable peace officer in like position, drawing when appropriate on his or her training and experience, to suspect the same offense and the same involvement by the person in question.

If the serial number of the weapon comes into *plain view* during inspection, you may conduct a records check.

***People v. DeLong*** You cannot search for the serial number.  
**PC§23900** Makes it unlawful to alter, remove, change, or obliterate a firearms serial number; it does *not*,  
(Formerly §12090) however, criminalize covering of serial numbers.

**PC§8571.5** Officers may not seize or confiscate any firearm or ammunition from an individual who is lawfully carrying or possessing the firearm or ammunition. Officers may temporarily disarm an individual, however, if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. An officer who disarms an individual is to return the firearm before discharging the individual unless the officer arrests the individual or seizes the firearm as evidence of the commission of a crime.

### **Loaded v. Unloaded**

**PC§16840(b)** A firearm is loaded “when there is an unexpended shell . . . in, or attached in any manner to, the  
(Formerly §12031(g)) firearm.”

***People v. Clark*** Interpreting PC§12031, the courts have found that 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 into a firing position. (*People v. Clark*, 45 Cal.App.4<sup>th</sup> 1147, 1153 (1996).)

**Conversely, a firearm is not loaded if ammunition is not placed into a firing position.**

### **Restricted Locations**

**PC§171b** **Public Buildings:** This section prohibits any person from possessing a firearm within public buildings.

**PC§171.5** **Sterile Areas:** This section prohibits any person from possessing a firearm in a “sterile area” of an airport or passenger vessel terminal.

**PC§626.9** **School Grounds:** This section prohibits any person from possessing a handgun 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

**Playground/Youth Center:** Pursuant to this section, violation of PC§25400, 25850, 417(a)(2), or 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 the 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 facility that is used to host recreational or social activities for minors while minors are present. (PC§626.95(c)(2).)

## UNLOADED FIREARM LAWS

### Carrying Concealed Firearms on the Person

#### PC§25400(a)

(Formerly 12025(a))

This section prohibits carrying a concealed handgun upon the person without a license to carry such a firearm. It does not apply to rifles or shotguns. (Penal Code §16750((a) & 25400)

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

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

**Inoperable Firearm:** It is not a defense to PC§25400(a) that the firearm is inoperable. (*People v. Marroquin*, 210 Cal.App.3d 77, 82.)

#### PC§ 25400(b)

(Formerly §12025(f))

**Firearms carried openly in belt holsters are not concealed.**

### Firearms Concealed in a Vehicle by Driver

#### PC§25400(a)(1)

(Formerly 12025(a)(1))

This section prohibits carrying concealed handguns within a vehicle by the person controlling or directing the vehicle.

**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. 4<sup>th</sup> 322, 331-32 (2000).)

**Possession & 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 the 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).)

**Unlocked Carrying Case:** If a firearm is transported in a vehicle in a manner that it is invisible unless its carrying case is opened, it’s concealed. (*People v. Hodges*, 70 Cal.App.4<sup>th</sup> 348, 1355 (1999).)

#### PC§25610(a)(1)

(Formerly §12026.1(a)(1))

**Trunk:** it is lawful to transport an unloaded firearm in a vehicle’s trunk.

**Locked Container:** It is lawful to transport an unloaded firearm in a vehicle if it is in a locked container. A “locked container” is a secure container which is fully enclosed and locked by a padlocked, key lock, combination lock, or similar locking device. (PC§16850 (formerly 12026.1(c).))

### Firearm Concealed in Vehicle by Occupant

#### PC§25400 (a)(3)

(Formerly §12025 (a)(3))

This section prohibits any person to cause to be carried concealed a handgun within any vehicle in which he or she is an occupant.

**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 intentionally bring the gun into the car. (*People v. Padilla*, 98 Cal.App.4th 127, 134 (2002).)

**EXPOSED AND UNLOADED *HANDGUN* LAWS**  
**AB144 HANDGUN OPEN CARRY CHANGES TAKING EFFECT 2012**

As a result of a AB144, which created a new crime pursuant to Penal Code §26350 *et seq.*, there has been discussion regarding its applicability and scope of application. As such, the following FAQs and list of exemptions is provided to facilitate an understanding of exposed and unloaded handgun laws.

**General Overview**

**Date in Effect**            January 1, 2012.

**Does not Apply to Long Guns**    AB144's open carry restrictions only apply to handguns and have no application to long-guns such as rifles and/or shotguns. See PC §26350.

**Does Not Ban Open Carry**        AB144 regulates who may carry exposed and unloaded handguns in certain locations. Specifically, AB144 creates a general prohibition against openly carrying a handgun in public places and public streets, while simultaneously creating exemptions for openly carrying handguns (See Below.)

**Specific Restrictions**            AB144 adds Penal Code §26350, making it a misdemeanor for a person to carry an exposed and unloaded handgun while in certain locations, but provides exceptions to the restrictions. (See below.)

AB144 adds Penal Code §17512, making it a misdemeanor for any driver of a motor vehicle to knowingly permit any other person to openly carry into or openly bring into a vehicle a handgun in violation of PC §26350.

AB144 adds Penal Code §17512, making it a misdemeanor for the owner of any motor vehicle (whether or not the owner is occupying the vehicle) to knowingly permit any other person to openly carry into or openly bring into a vehicle a handgun in violation of PC §26350.

**Restricted Locations**            The general restriction only applies to a specific set of eight (8) locations:

**Specific Public Places**

- A public place in an incorporated city.
- A public place in an incorporated city and county.
- A public place in a prohibited area of a county.
- A public place in a prohibited area of a city and county.

**Specific Public Streets**

- A public street in an incorporated city.
- A public street in a city and county.
- A public street in a prohibited area of an unincorporated area of a county.
- A public street in a prohibited area of an unincorporated area of a city and county.

If an individual is carrying an exposed and unloaded firearm in a location that is not listed above, then the restrictions created by AB144 do not apply. (Penal Code §26350(a).) For example, a person is not

in violation of Penal Code §26350 if they carry an exposed and unloaded firearm in a holster within an unincorporated area of a county where the county has not prohibited the discharge of a firearm.

**Not Presumptively Unlawful** AB144 does not address the exposed carrying of unloaded firearms that are not handguns (i.e. rifles/shotguns.)

Nor does it ban the exposed carrying of unloaded handguns. In order for there to be a violation of the exposed and unloaded restrictions added by AB144, the carrying of the exposed and unloaded handgun must be within one of the eight (8) locations where unloaded open carrying of handguns is prohibited AND the person carrying the exposed and unloaded firearm must not be exempt from the general restrictions of Penal Code §26350 (discussed below.)

### **Persons Exempt**

AB144 provides at least 116 exemptions for their general prohibition on the exposed and unloaded carrying of handguns within the eight (8) restricted areas. Specifically, AB144 exempts the open carrying of an unloaded handgun by:

- Peace Officers**
1. Any peace officer (active or honorably retired) listed in Section 830.1. (Penal Code §26361.)
  2. Any peace officer (active or honorably retired) listed in Section 830.2. (Penal Code §26361.)
  3. Any peace officer (active or honorably retired) listed in Section 830.33(a). (Penal Code §26361.)
  4. Any honorably retired peace officer listed in PC 830.5. (Penal Code §26361.)
  5. Any other duly appointed peace officer. (Penal Code §26361.)
  6. Any other honorably retired peace officer who during the course and scope of their employment as a peace officer was authorized to, and did, carry a firearm.
  7. Any full-time paid peace officer of another state or the federal government who is carrying out their official duties while in California. (Penal Code §26361.)
  8. Upon approval from the sheriff of the County in which the retiree resides, any honorably retired federal officer or agent of any federal law enforcement agency, including but not limited to, the Federal Bureau of Investigations, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and any officer or agent of the Internal Revenue Service authorized to carry weapons while on duty, who was assigned to duty within the state for a period of not less than one year, or who retired from active service in the state. (Penal Code §§26362 & 26020.)
  9. Any patrol special peace officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, satisfy specific criteria – if they have also completed a regular course in firearms training approved by Peace Oficere Standards and Training (POST). (Penal Code §26362 & 26025.)
  10. Any harbor police officers. (Penal Code §26362 & 26025.)
  11. Any person openly carrying an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by POST. (Penal Code §26380.)
  12. Any person openly carrying an unloaded handgun incident to and at the request of a sheriff or chief or other head of a municipal police department. (Penal Code §26382.)

- Animal Control / Zookeepers**
13. Any POST certified Animal Control officers or zookeepers, regularly compensated in that capacity by a governmental agency, when carrying weapons while acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by resolution, either individually or by class, to carry the handgun – if they have also completed a regular course in firearms training approved by POST. (Penal Code §§26362 & 26025.)
14. Level 1 Humane Officers authorized to carry the handgun pursuant in the performance of their duties. (Penal Code §§26362 & 26025.)
- Military Forces**
15. Any members of the military forces of this state or of the United States engaged in the performance of their duties. (Penal Code §§26362 & 26000.)
- Shooting Ranges / Clubs**
16. Any persons using target ranges for the purpose of practicing shooting with a firearm. (Penal Code §§26362 & 26005.)
17. Members of shooting clubs while hunting on the premises of those clubs. (Penal Code §§26362 & 26005.)
18. Any member of any club or organization for the purpose of practicing shooting at targets upon established ranges, whether public or private, while the members are using those handguns upon the target ranges or incident to the use of the handgun at that target range. This exemption does not apply to openly and carried unloaded handguns within vehicles. (Penal Code §26365.)
19. Any person possessing an unloaded openly carried handgun at any established target range, whether public or private, while the person is using the handgun upon the target range. This exemption does not apply to openly carried and unloaded handguns within vehicles. (Penal Code §26377.)
- Carriers**
20. Any person operating a licensed common carrier when transported in conformance with applicable federal law. (Penal Code §26367.)
21. Any authorized agent of a licensed common carrier when transported in conformance with applicable federal law. (Penal Code §26367.)
22. Any employee of a licensed common carrier when transported in conformance with applicable federal law. (Penal Code §26367.)
- Security**
23. Armored vehicle guard, as defined in the CA Business and Professions Code if the guard was hired prior to January 1, 1977 and is acting within the course and scope of employment.
24. Armored vehicle guard, as defined in the CA Business and Professions Code if the guard was hired on after January 1, 1977, has received a firearms qualifications card from the department of Consumer Affairs, and is acting within the course and scope of employment. (Penal Code §§26362 & 26015.)
25. Guards or messengers of common carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state, provided they are certified by the CA Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
26. Any guards of contract carriers operating armored vehicles to California Highway Patrol and Public Utilities Commission Authority, if they were hired prior to January 1, 1977, provided they are certified by the CA Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)



27. Any guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority, if they were hired on or after January 1, 1977, provided they are certified by the CA Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
28. Any licensed patrol operators, while acting in the scope and course of their employment, provided they are certified by the CA Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
29. Any uniformed employee of licensed patrol operators, while acting in the scope and course of their employment, provided they are certified by the CA Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
30. Any licensed alarm company operators, while acting within the course and scope of their employment, uniformed employees of licensed patrol operators, while acting in the scope and course of their employment, provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
31. Any uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment, provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
32. Any uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, while actually engaged in protecting and preserving the property of their employers, or while on duty or en route to or from their residences or place of employment and security guards and alarm agents en route to or from their residences or employer-required range training provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
33. Any uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers, or while on duty or en route to or from their residences or place of employment provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
34. Any security guards en route to or from their residences or employer-required range training provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
35. Any alarm agents en route to or from their residences or employer-required range training, provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
36. Any licensed private investigators, while acting within the course and scope of their employment provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)

**Private  
Investigators**

37. Any uniformed employee of licensed private investigators, while acting in the course and scope of their employment, provided they are certified by the Department of Consumer Affairs as having completed a course in the carrying and use of firearms and a course in the exercise of the powers of arrest. (Penal Code §§26362 & 26030.)
- California  
CCW Holders**
38. Any person issued a Concealed Carry License under California law. (Penal Code §§26362 & 26010.)
39. Any person openly carrying an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become licensed to carry a handgun as part of a course of study necessary or authorized by the person authorized to issue the carry license. (Penal Code §26381.)
- Firearms  
Business Activities**
40. Any person licensed and engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms carrying the unloaded handgun as merchandise in the lawful course of the business. (Penal Code §26363.)
41. Any authorized representative of a licensed person engaged in the business of manufacturing, importing, wholesaling, repairing, or dealer of licensed firearms business carrying the unloaded handgun as merchandise in the lawful course of the business. (Penal Code §26363.)
42. Any authorized agent of a licensed person engaged in manufacturing, importing, wholesaling, repairing, or dealer of a licensed firearms business carrying the unloaded handgun as merchandise in the lawful course of the business. (Penal Code §26363.)
43. Any person engaged in firearm-related activities, while on the premises of a fixed place of business that is licensed to conduct, and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related firearms training. (Penal Code §26374.)
- Gun Show**
44. Any persons openly carrying an unloaded handgun within a gun show. (Penal Code §26369.)
- Movie, Television,  
Video Productions  
& Entertainment  
Events**
45. Any authorized participant in a motion picture when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at the production or event, or rehearsal or practice for that production or event. (Penal Code §26375.)
46. Any authorized employee for a motion picture when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at the production or event, or rehearsal or practice for that production or event. (Penal Code §26375.)
47. Any agent of a supplier of firearms for a motion picture when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at the production or event, or rehearsal or practice for that production or event. (Penal Code §26375.)
48. Any authorized participant in a television production when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that event, as part of rehearsing or practicing for participation in that



- School Zones**
57. Persons carrying an unloaded handgun within a school zone with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority. This exemption does not apply to openly carried unloaded handguns within vehicles. (Penal Code §26370.)
- State or Local Public Buildings**
58. Any person at a state or local public building or meeting which is required to be open to the public who possesses the handgun in, or transports a handgun into, a court of law to be used as evidence. (Penal Code §26370.)
59. A duly appointed peace officer, retired
60. Any California CCW holder at a state or local public building or meeting which is required to be open to the public. (Penal Code §26370.)
61. Any person at a state or local public building or meeting required to be open to the public who has permission to possess that handgun granted in writing by a duly authorized official who is in charge of the security of the state or local government building. (Penal Code §26370.)
62. Any person at a state or local public building or meeting which is required to be open to the public, who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to those portions of the building that are not owned or leased by the state or local government. (Penal Code §26370.)
63. Any person at a state or local public building or meeting which is required to be open to the public who, for the purposes of sale or trade, brings a handgun that may be otherwise lawfully transferred, into a gun show conducted pursuant to Article 1. (Penal Code §26370.)
64. Any person at a state or local public building or meeting which is required to be open to the public, who, for the purposes of an authorized public exhibition, brings any weapon that may otherwise be lawfully possessed within a gun show conducted pursuant to Article 1. (Penal Code §26370.)
65. Any person within the State Capitol, legislative offices, etc, who possesses an unloaded and openly carried handgun and has permission to do so granted to them by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess the handgun upon the premises. (Penal Code §§26385 & 171c(b)(3).)
66. Any person within the Governor's Mansion or residence of other constitutional officer who possesses an unloaded and openly carried handgun and is one of the following: a duly appointed peace officer, a full-time peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by that officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States engaged in the performance of his or her duties, a person holding a valid California carry license, the Governor or a member of his or her immediate family or a person acting with his or her permission with respect to the Governor's Mansion, or any other residence of the Governor, or any other constitutional officer or a member of his or her immediate family or a person acting with his or her permission with respect to the officer's residence, or a Member of the Legislature or a member of his or her immediate family, or a person acting with his or her permission with respect to the Member's residence. (Penal Code §§26386 & 171d.)

- Airports and Passenger Vessel Terminals Security** 67. Any person who is responsible for the security of the public transit system and who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon. (Penal Code §§26385 & 171.7(c)(1)(F).)
- Places of Business** 68. Any person engaged in any lawful business, within the person's place of business. (Penal Code §26362 & §26035.)
69. Any person openly carrying an unloaded handgun when done within a place of business with the permission of a person who may openly carry within that place of business owned or lawfully possessed by that person pursuant to Penal Code §25605. (Penal Code §26383.)
70. Any officer of a person engaged in any lawful business, within the person's place of business. (Penal Code §§26362 & 26035.)
71. Any agent of a person engaged in any lawful business, within the person's place of business. (Penal Code §§26362 & 26035.)
72. Any employee of a person engaged in any lawful business, within the person's place of business. (Penal Code §§26362 & 26035.)
- Private Property** 73. Any person in lawful possession of property from having the handgun on that property. (Penal Code §26362 & 26035.)
74. Any person carrying a handgun incident to loaning that handgun in accordance with specified laws, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property. (Penal Code §26372.)
75. Any person carrying a handgun incident to selling that handgun in accordance with specified laws, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property. (Penal Code §26372.)
76. Any person carrying a handgun incident to transferring that handgun in accordance with the specified laws, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property. (Penal Code §26372.)
77. Any person openly carrying an unloaded handgun when done within a place of residence with the permission of a person who may openly carry within that place of residence owned or lawfully possessed by that person pursuant to Penal Code §25605. (Penal Code §26383.)
78. Any person openly carrying an unloaded handgun when done on private property with the permission of a person who may openly carry within that private property owned or lawfully possessed by that person pursuant to Penal Code §25605. (Penal Code §26383.)
- Place of Residence /Campsite** 79. Any person having a handgun at the person's place of residence, including temporary residence or campsite. Penal Code §§26362 & 26055.)
- Grave Danger** 80. A person who reasonably believes that any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person. Immediate means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its officers. (Penal Code §§26362 & 26045.)
81. Any person who reasonably believes that property is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that property. Immediate means the brief interval before and after the local law enforcement agency,

when reasonably possible, has been notified of the danger and before the arrival of its officers. (Penal Code §§26362 & 26045.)

82. A person who reasonably believes that they are in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another who has been found to pose a threat to the life or safety of the person who possesses the firearm. This may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 of the Family code absent a factual finding of a specific threat to the person's life or safety. (Penal Code §§26362 & 26045.)

**Citizens Arrest**

83. Any person while engaged in the act of making or attempting to make a lawful arrest. (Penal Code §§26362, 26050 & 26364.)
84. Any person openly carrying an unloaded handgun when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer. (Penal Code §26378.)

**Parades  
& Ceremonies**

85. Any duly authorized military organization while parading at the meeting place of the organization. (Penal Code §26364.)
86. Any duly authorized civil organization while parading at the meeting place of the organization. (Penal Code §26364.)
87. Any member of an authorized military organization while parading at the meeting place of the organization. (Penal Code §26364.)
88. Any member of an authorized civil organization while parading at the meeting place of the organization. (Penal Code §26364.)
89. Any duly authorized military organization while rehearsing or practicing parading at the meeting place of the organization. (Penal Code §26364.)
90. Any duly authorized civil organization while rehearsing or practicing parading at the meeting place of the organization. (Penal Code §26364.)
91. Any member of an authorized military organization while rehearsing or practicing parading at the meeting place of the organization. (Penal Code §26364.)
92. Any member of an authorized civil organization while rehearsing or practicing parading at the meeting place of the organization. (Penal Code §26364.)
93. Any member of an organization chartered by the Congress of the United States while on official parade duty of that organization. (Penal Code §26368.)
94. Any member of an organization chartered by the Congress of the United States while rehearsing or practicing for official parade duty of that organization. (Penal Code §26368.)
95. Any member of an organization chartered by the Congress of the United States while on ceremonial occasions of that organization. (Penal Code §26368.)
96. Any member of an organization chartered by the Congress of the United States while rehearsing or practicing for ceremonial occasions of that organization. (Penal Code §26368.)
97. Any member of a nonprofit mutual benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty of that organization. (Penal Code §26368.)
98. Any member of a nonprofit mutual benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while practicing or rehearsing official parade duty of that organization. (Penal Code §26368.)
99. Any member of a nonprofit mutual benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on ceremonial occasions of that organization. (Penal Code §26368.)

100. Any member of a nonprofit mutual benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while practicing or rehearsing ceremonial occasions of that organization. (Penal Code §26368.)
101. Any member of a nonprofit public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty of that organization. (Penal Code §26368.)
102. Any member of a nonprofit public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while practicing or rehearsing official parade duty of that organization. (Penal Code §26368.)
103. Any member of a nonprofit public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on ceremonial occasions of that organization. (Penal Code §26368.)
104. Any member of a nonprofit public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while practicing or rehearsing ceremonial occasions of that organization. (Penal Code §26368.)
- Hunting** 105. Any licensed hunter while engaged in hunting or while transporting a handgun when going to that hunting expedition. (Penal Code §26366.)
106. Any licensed hunter while engaged in hunting or while transporting a handgun when returning from that hunting expedition. (Penal Code §26366.)
- Possession for Identifying Marks** 107. Any person possessing an unloaded and openly carried handgun incident to obtaining an identification number or mark assigned for that handgun from the CA Department of Justice pursuant to Section 26910. This exemption does not apply to unloaded handguns openly carried in vehicles. (Penal Code §26376.)
- Publicly Owned Land** 108. Any person carrying an unloaded handgun on publicly owned land, if the possession and use is specifically permitted by the managing agency of the land and the person carrying the handgun is in lawful possession of the handgun. (Penal Code §26388.)
- Locked Container / Trunk** 109. Any person carrying an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container. (Penal Code §26389.)
- Handgun Importation** 110. Any person openly carrying an unloaded handgun incident to importing a handgun into the state and complying with California's personal handgun importer registration requirements. (Penal Code §§26379 & 27560, 27565.)
- Voluntary Reporting of Transactions to DOJ** 111. Any person openly carrying an unloaded handgun incident to the voluntary reporting of a transaction involving said handgun to the California Department of Justice. (Penal Code §§26379 & 28000.)
- Transactions Government Agencies** 112. Any person openly carrying an unloaded handgun incident to the sale, delivery or **with** transfer of that handgun to an authorized representative of a government entity as part of an authorized program. (Penal Code §§26379 & 27850.)
113. Any person openly carrying an unloaded handgun incident to the sale, delivery or transfer of that handgun to an authorized representative of a government entity as part of a firearm buy-back program. (Penal Code §§26379 & 31725.)
- Gifts or Bequests** 114. Any person openly carrying an unloaded handgun incident to compliance with the gift or bequest requirements for that handgun. (Penal Code §§26379, 27870 & 27875.)

**Taking Title Via Operation of Law** Any person openly carrying an unloaded handgun incident to compliance with the requirements for taking title of that handgun by operation of law. (Penal Code §§26379, 27915, 27920 & 27925.)

**Auctions** Any person openly carrying an unloaded handgun at an auction or similar event of a nonprofit public benefit or mutual benefit corporation, at which the handgun is auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation and subsequently delivered in accordance with specified laws. (Penal Code §26383.)

## **LOADED FIREARM LAWS**

### **Loaded Firearm on Person or in Vehicle**

**PC§25850(a) & 167502** (Formerly §12031(a)) This section prohibits carrying a loaded firearm in public in a vehicle or on one's person. This section applies to 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 43f2, 437 (1984).)

## **LAW ENFORCEMENT OFFICER SAFETY ACT**

On July 22, 2004, the Law Enforcement Officers Safety Act (LEOSA) of 2004, also commonly called "HR 218," became law. (18 U.S.C. §§, 926B, 926C.) This federal law allows "a qualified law enforcement officer" or "a qualified retired law enforcement officer" with identification that meets specified criteria to carry a concealed firearm<sup>2</sup> anywhere in the nation, notwithstanding most other state and local laws which restrict the possession of concealed weapons.

The Calexico Police Department has their own standards and policies as to which of its officers may be issued proper identification pursuant to LEOSA, but the following is provided to assist in identifying those individuals who are permitted by other law enforcement agencies and departments to carry a firearm pursuant to LEOSA:

### **Active Qualified Law Enforcement Officers**

In order to be "a qualified law enforcement officer" under the LEOSA, a person must meet the following requirements:

1. Be an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for any violation of law;
2. Have the statutory powers of arrest;
3. Be authorized by the agency to carry a firearm;

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<sup>2</sup> "Firearm" includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act, but does not include any machinegun, any firearm silencer; or any destructive device. 18 U.S.C. §926B(e).



4. Not be the subject of any disciplinary action by the agency;
5. Meet the standards, if any, established by the agency that require employees to regularly qualify in the use of a firearm;
6. Not be under the influence of alcohol or any intoxicating or hallucinatory drug;
7. Not be prohibited by federal law from possessing firearms;
8. Be carrying photographic identification issued by the governmental agency.

Regarding the requirement that the individual have the statutory power of arrest to be a “qualified law enforcement officer,” California law allows “a peace officer” to make an arrest. (Pen. Code, § 834.) Penal Code §830.1 through 832.6 specify the persons who are peace officers and when and where they may use their authority. No one else is considered a peace officer under California law. (Pen. Code, § 830.) Certain federal officers, however, have been deemed to have LEOSA application. For example, A law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, and a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest. See 18 U.S.C. §926B. Also, LEOSA applies to members of the Coast Guard. *See People v. Booth*, 20 Misc. 3d 549, 552-53, 862 N.Y.S.2d 767, 770 (N.Y. Co. Ct. 2008) (member of Coast Guard covered by section 926B held to be exempt from prosecution for Criminal Possession of Weapon in the Second Degree); (See also *LaFontaine v. City of New York* (2009) 2009 U.S. Dist. LEXIS 105838. As such, LEOSA is likely to also apply to Navy Shore Patrol, Air Force Law Enforcement, and Military Police.

There is *no* requirement that the law enforcement officer be on duty in order to carry a firearm under LEOSA. Further, the only documentation that a law enforcement officer must carry for LEOSA to apply is photographic identification issued by the government agency identifying the individual as a law enforcement officer or the proper credential carried by the retired law enforcement officer.

### **Qualified Law Enforcement Officers**

In order to be “a qualified retired law enforcement officer” under the LEOSA, a person must meet the following criteria:

1. Be retired in good standing from service with a public agency as a law enforcement officer for reasons other than mental instability;
2. Prior to retirement, was authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for any violation of law;
3. Prior to retirement, had the statutory powers of arrest;
4. Prior to retirement, was either
  - (1) regularly employed as a law enforcement officer for an aggregate of 15 years or more; or
  - (2) retired from service after completing any applicable probationary period of such service, due to a service-connected disability, as determined by the agency;
5. Has a non-forfeitable right to benefits under the retirement plan of the agency;
6. Has met, within the past 12 months, the state’s standards for training and qualification for active law enforcement officers to carry firearms;
7. Not be prohibited by federal law from possessing firearms;
8. Be carrying identification that meets specified criteria (see below).

In order to qualify as “identification” under the LEOSA, a credential that is carried by a retired law enforcement officer must meet one of the following criteria:

1. A photographic identification issued by the agency from which the law enforcement officer retired that indicates the retired law enforcement officer has, not less recently than one year prior, been

tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm;

OR

2. A photographic identification issued by the agency from which the law enforcement officer retired;

AND

A “certification issued by the State in which the individual resides that indicates that the individual has, not less than one year [prior] . . . been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.”

### **Limits of LEOSA**

The LEOSA has limits and exceptions. It does not apply to all firearms and weapons. For example, it does not authorize either qualified law enforcement officers, or qualified retired law enforcement officers, to carry any of the following: machineguns, silencers, or destructive devices. Likewise, the LEOSA does not supersede all state laws regarding the possession of concealed firearms. The LEOSA states that it “shall not be construed to supersede or limit the laws of any State that (1) allow *private* persons . . . to prohibit or restrict the possession of concealed firearms on *their property*; or (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base or park.”

### **ON LOCATION RETURN OF A FIREARM**

If a firearm is determined to be lawfully carried at the time of a Penal Code §25850(b) inspection, the firearm must be immediately returned to the individual. If the firearm was removed from an individual’s holster, the officer shall return the firearm to the holstered position for the individual so as to not place the individual in a position of brandishing a firearm in a public place.

### **BOTTOM LINE FOR CARRYING ISSUES**

Law abiding citizens are carrying firearms in compliance with California laws with increased frequency. Police may stop a person who is openly carrying a firearm within view and may inspect the firearm to see if it is loaded; however, the person may not be arrested solely for violating carrying a loaded firearm if ammunition is not in such a position from which it can be fired, even though the person may have immediate access to matching ammunition. Upon a determination that the firearm is unloaded (and subject to one of the permitted exemptions for carrying an unloaded handgun) should be returned and the person in possession advised that he or she is free to leave. Further questioning may be done on a voluntary basis.

### **ASSAULT WEAPONS**

#### **Assault Weapons**

The term “assault weapon” means any designated semiautomatic firearms as defined by Penal Code §§30510, 30515, & 30520 (formerly §§12276, 12276.1, 12276.5).

“Assault weapons” are divided into three categories. These are:

**Category 1** Firearms specifically listed in Penal Code §30510 (formerly 12276 subdivision (a), (b), and (c)) (Roberti-Roos Assault Weapons Act of 1989). If the specific make and model is not on the list of firearms in Penal Code §30510, then the firearm is not a Category 1 “assault weapon.” (*Harrott v. County of Kings* (2001) 25 Cal. 4<sup>th</sup> 1138.)

**Category 2** Additional firearms specifically listed by make and model expanding on the AR and AK “series” firearms in Penal Code §30510 (e)-(f)

(formerly §12276 subdivision (e) and (f)) (*Kasler v. Locker* (2000) 23 Cal. 4th 472, AK and AR-15 series weapons). If the specific make and model is not on the list of firearms in 11 C.F.R. §5499, then the firearm is not a Category 2 “assault weapon.” (*Harrott v. County of Kings* (2001) 25 Cal. 4<sup>th</sup> 1138.)

**Category 3** Firearms that are defined by the generic characteristic features of the firearm in Penal Code §§30515 (formerly §12276.1 (Senate Bill 23 or “SB 23 features.”).)

**Generic Features** Under Category 3, PC 30515(a) “assault weapon” is defined as the following firearms:

**Rifles**

- (1) A rifle with the following features: semiautomatic, centerfire, rifle, with the capacity to accept a detachable magazine, *and* any one of the following:
  - (A) A pistol grip that protrudes conspicuously beneath the action of the weapon,
  - (B) A thumbhole stock,
  - (C) A folding or telescoping stock,
  - (D) A grenade launcher or flare launcher
  - (E) A flash suppressor, or
  - (F) A forward pistol grip.
- (2) A semiautomatic, centerfire, rifle, that has a fixed magazine with the capacity to accept a more than 10 rounds.
- (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

**Pistols**

- (4) A semiautomatic, pistol, that has the capacity to accept a detachable magazine and any one of the following:
  - (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer,
  - (B) A second and grip,
  - (C) A shroud that is not attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel,
  - (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (5) A semiautomatic pistol fixed magazine that has the capacity to accept more than 10 rounds.

**Shotguns**

- (6) A semiautomatic shotgun that has both of the following:

- (A) A folding or telescoping stock,
- (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

- (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
- (8) A shotgun with a revolving cylinder.

### Notes

- Bayonets and bayonet lugs are not considered characteristics of “assault weapons” under California law.
- A “detachable magazine” for the purposes of the “assault weapon” laws is defined as “any ammunition feeding device that can be removed readily from the firearm with the neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. (11 C.C.R. §5469(a).)
- There has been an increase of AR-15, AK-47, and other firearms sold and possessed in California that at first glance appear to be “assault weapons,” but these firearms have a device installed called magazine locks. Brands of magazine locks include, but are not limited to: “Bullet-Buttons,” “Prince 50 kits,” Raddlock, Arsenal, & Solar Tactical. These devices prevent the shooter from depressing the magazine release button with a finger. The magazine can quickly be released by using a “tool” to depress the enclosed magazine release button. Once a magazine lock device is installed and there is an attached magazine capable of holding only 10 rounds or less, the firearm no longer has a “detachable magazine” as required for a Category 3 type of “assault weapon.”
- Companies have become creative and have manufactured “10/30 round magazine.” These magazines look just like a 30 round magazine, but have been permanently altered to only hold 10 rounds. If you are basing an “assault weapons” charge on the fact that a rifle has a fixed magazine with the capacity to accept more than 10 rounds, make sure you can in fact load more than 10 rounds into the magazine. Note in your report that you were able to load more than 10 rounds into the magazine.

### AW Dispatch

No peace officer or dispatcher shall broadcast over a police radio that an individual has registered, or has obtained a permit to possess, an “assault weapon,” unless there exists a reason to believe in good faith that one of the following conditions exist:

- (1) The individual has engaged, or may be engaged, in criminal conduct.
- (2) The police are responding to a call in which the person allegedly committing a criminal violation may gain access to the assault weapon or .50 BMG rifle.

- (3) The victim, witness, or person who reported the alleged criminal violation may be using the assault weapon or .50 BMG rifle to hold the person allegedly committing the criminal violation or may be using the weapon in defense of himself, herself, or other persons.  
(Penal Code §31105 (formerly Penal Code §12288.5).)

**Exception** This shall not prohibit a peace officer or dispatcher from broadcasting over a police radio that an individual has not registered, or has not obtained a permit to possess, an assault weapon or .50 BMG rifle pursuant to this chapter. This does not limit the transmission of an assault weapon or a .50 BMG rifle ownership status via law enforcement computers or any other medium that is legally accessible only to peace officers or other authorized personnel.

**LEO Exemption**

These restriction on “assault weapons” shall not prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member provided that:

- (1) The peace officer is authorized by his or her employer to possess or receive the assault weapon or the .50 BMG rifle. Required authorization is defined as **verifiable written certification from the head of the agency**, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon.
- (2) **The officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. The officer shall register the .50 BMG rifle not later than one year after possession or receipt.** The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.  
(Penal Code §30630(b) (formerly Penal Code §12280(f)(2)).)

**RESOURCES**

Included are links to resources that should help personnel determine issues not addressed in this memorandum.

- For general information on California firearm laws, see California Firearms Laws 2007 (The latest edition at this time): <http://ag.ca.gov/firearms/forms/pdf/cfl2007.pdf>
- For California Attorney General’s “Assault Weapon Identification Guide, 3rd Edition, Nov. 2001 (The latest edition at this time): <http://ag.ca.gov/firearms/forms/pdf/awguide.pdf>
- The “California Assault Weapon Flowchart and Guide” is an easy to follow flowchart listing yes/no questions showing the characteristics and related penal code sections of “assault weapons” and .50 BMG Rifles.” The flowcharts list all of the banned “assault weapons” by make and model (Category 1 and 2) and lists the characteristics (Category 3) of “assault weapons.” This is a resource only, much like a “quick code” and not to be used for official citation. <http://www.calgunsfoundation.org/resources/downloads/category/7-aw.html>