

SPECIAL OPERATIONS BUREAU

NOTICE

1.16

July 28, 2009

**TO:** All Concerned Commanding Officers

**FROM:** Commanding Officer, Special Operations Bureau

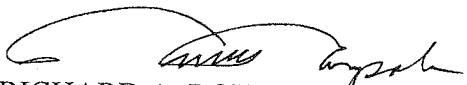
**SUBJECT:** PRIVATE PERSONS OPENLY CARRYING FIREARMS

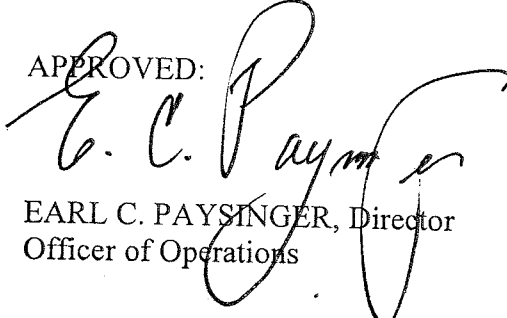
Recent information has revealed that a group of individuals associated with the California Rifle & Pistol Association, via Calguns.net, is in the planning stages of an organized "Open Carry" day in the City of Los Angeles. The group's mission is to promote awareness of the right of private persons to openly carry unloaded firearms in public places. The group intends to gather in downtown, near Parker Center, during the month of August. The exact date and location are not known at this time. During that time, they plan to carry holstered unloaded firearms, on their person, in plain view. They may or may not carry ammunition pouches.

This notice is a reminder that the law clearly states there is not a violation of Penal Code section 12031 (Possession of a loaded firearm) for openly carrying a holstered unloaded firearm, even when the person possesses ammunition on or near his/her person. **All Department personnel** are reminded to use extreme caution if and when they encounter a person armed with a firearm, regardless of whether it's an individual person or a group of people actively involved in a pre-planned organized event, such as the "Open Carry." Officers are authorized by Penal Code section 12031(e), and have a duty to, "*examine any firearm carried by anyone on his/her person or in a vehicle while in a public place. Refusal to allow a peace officer to inspect a firearm carried openly in public constitutes probable cause for arrest for violation 12031 of the Penal Code.*"

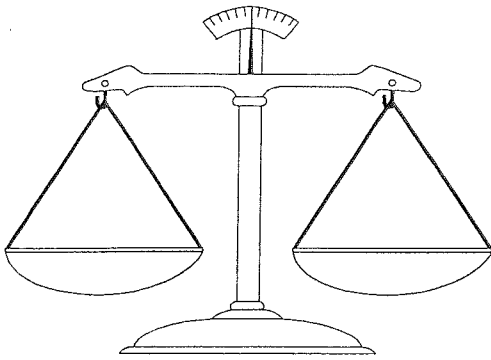
Attached is Legal Bulletin, Volume 33, Issue 1, dated January 7, 2009, PRIVATE PERSONS OPENLY CARRYING FIREARMS and the Los Angeles County District Attorney's Office, ONE MINUTE BREIF, dated December 23, 2008. Please encourage your personnel to review the documents and become familiar with the firearm laws described therein.

If there are any questions regarding this Notice, please contact Sergeant Gisselle Espinoza, SOB, at (213) 485-2985.

  
RICHARD A. ROUPOLI, Deputy Chief  
Commanding Officer  
Special Operations Bureau

APPROVED:  
  
EARL C. PAYSINGER, Director  
Officer of Operations

Attachments



# LEGAL BULLETIN

LOS ANGELES POLICE DEPARTMENT  
RISK MANAGEMENT GROUP-LEGAL UNIT

Volume 33, Issue 1

January 7, 2009

## PRIVATE PERSONS OPENLY CARRYING FIREARMS

A recent trend spreading throughout the United States has arrived in California. A movement called "Open Carry" advocates individuals to carry firearms openly in public places. The risk associated with persons carrying a firearm in public creates major concerns to law enforcement personnel, especially as an officer safety issue. However, California law is clear in this regard, and as you will see, it will not please most of the law enforcement community.

California Penal Code Section 12031 prohibits the carrying of a *loaded firearm* on the person, or in a vehicle while in any public place, or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. Subdivision (g) of Penal Code Section 12031 provides that: "A firearm shall be deemed to be loaded for the purpose 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."

California Penal Code Section 12025 prohibits the carrying of *concealed weapons*, whether loaded or unloaded, in a vehicle or upon the person. However, firearms carried openly in belt holsters are *not* concealed within the meaning of the Penal Code.

There is no violation of Penal Code Section 12031 for openly carrying a firearm in a holster even when the person possesses ammunition on or near his/her person, unless the ammunition is attached in any manner to the firearm. The firearm is *not* considered loaded even if the person has a loaded clip of ammunition on his/her person or nearby, despite the relative ease with which the weapon can become loaded. If the weapon is carried concealed from view, there is a violation in all instances whether the weapon is loaded or unloaded.

Officers who observe persons who are openly carrying firearms in belt holsters should understand that unless the weapon is loaded, there is *no* violation of California law.

What should officers do when confronted with such circumstances? California and Federal law afford peace officers the ability to determine the lawfulness of these persons' conduct. Officers may take any reasonable investigative steps to determine if any of the following crimes are being committed.

- Peace officers are authorized to examine any firearm carried by anyone on his/her person or in a vehicle while in a public place. Refusal to allow a peace officer to inspect a firearm carried openly in public constitutes probable cause for arrest for violation of 12031 of the Penal Code. Penal Code §12031(e).
- Persons convicted of felonies may not carry weapons, and doing so is a felony. Penal Code §12031(a)(2)(A)
- Possession of a stolen firearm by a person who knew or had reason to know the firearm was stolen constitutes a felony. Penal Code §12031(a)(2)(B)
- Persons who are active participants in criminal street gangs, as defined in Penal Code Section 186.22(a), under the Street Terrorism Enforcement and Prevention Act may not carry weapons and doing so is a felony. Penal Code §12031(a)(2)(C)
- Persons who may not lawfully possess firearms or are within a class of persons prohibited from possessing or acquiring a firearm pursuant to Penal Code Sections 12021, 12021.1 or Welfare and Institutions Code Sections 8100, 8103, commit felonies by carrying firearms. Penal Code §12031(a)(2)(D)
- Openly carrying a loaded firearm without being listed as the registered owner of that weapon with the Department of Justice is a felony. Penal Code §12031(a)(2)(F)

Officers who observe persons who openly carry holstered weapons should proceed with due caution and should be prepared to act appropriately and within the established parameters of the law.

Legal Unit  
Risk Management Group



STEVE COOLEY  
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# ONE MINUTE BRIEF

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NUMBER: 2008-22    DATE: 12-23-08    BY: Devallis Rutledge    TOPIC: Crimes

**ISSUE:** What investigative steps may law enforcement officers take when confronting a person who is carrying a firearm openly, in a belt holster?

The Second Amendment protects a right to keep handguns in the home for self-defense, at least in federal jurisdictions. *DC v. Heller* (2008) 128 S.Ct. 2783. The Second Amendment **does not preclude enforcement** of statutes making it unlawful to carry concealed or loaded handguns in public, or for specified convicts to possess firearms. *People v. Flores* (2008) \_\_\_ Cal.App.4<sup>th</sup> \_\_\_, DJDAR 18615, WL 5265343.

California selectively prohibits possession of firearms. Prohibitions generally apply to drug addicts and those convicted of felonies and specified misdemeanors, or subject to probation orders or restraining orders that prohibit possession (PC §§ 12021, 12021.1), and those with histories of making deadly threats or receiving mental treatment for dangerous proclivities. (W&I §§ 8100, 8103). Minors may not generally possess **concealable** firearms. (PC § 12101)

In addition, individuals generally may not possess firearms in certain places, such as public buildings (PC § 171b), airport and passenger vessel terminal "sterile areas" (PC § 171.5), or on the grounds or **within 1000 feet** of a public or private school, or on a college campus or property. (PC § 626.9) Possession during specified crimes increases the punishment. (Exs: PC §§ 12021.5, 12022, 12022.3, 12022.5, 12023 and 12024)

It is generally unlawful to carry **concealed** on the person or in a vehicle a handgun or other firearm capable of being concealed on the person (whether it is loaded or not). (PC § 12025) This section is not violated by carrying an unloaded firearm openly, in a

belt holster. (PC § 12025(f))

It is also generally unlawful to carry a **loaded** firearm (whether concealed or not) in a **public place** in incorporated cities and in prohibited areas of unincorporated territory. (PC § 12031) Because "prohibited area" includes any place where it is unlawful to discharge a firearm, this includes all public streets. (PC § 374c)

Peace officers are authorized to **inspect** any firearm carried in prohibited public areas to determine whether or not it is loaded; refusal to permit inspection is probable cause for arrest for violation of § 12031. (PC § 12031(e)) If the serial number of the weapon comes into plain view during inspection, it may be noted and run against data bases. *Arizona v. Hicks* (1987) 480 US 321, 324. The incidental detention of the armed individual justifies a demand for ID, allowing age verification and a data-base check for information about any disqualification to possess firearms. *Hiibel v. Sixth Judicial District* (2004) 542 US 177, 187.

Per PC § 12031(g) (also for H&S § 11370.1—possession of certain drugs while armed with a loaded firearm, and for PC § 12035—criminal storage), a firearm is "loaded" if there is matching ammunition **in or attached to** the weapon in such a way that **it can be fired**. *People v. Clark* (1996) 45 Cal.App.4<sup>th</sup> 1147. ***Under this definition, neither § 12025 nor § 12031 is violated merely because a person openly carrying an unloaded firearm in a belt holster has matching ammunition on him, or close at hand.*** (Contrast: PC §§ 171c and 171d—"loaded" at the state capitol/offices and governor's mansion, and § 12023—"loaded" with intent to commit a felony, all of which define "loaded" as being in possession of the firearm and matching ammunition; F&G § 2006—"loaded" rifle or shotgun in a vehicle on public road, requires chambered shell).

**BOTTOM LINE:** Police may stop a person who is openly carrying a firearm in a belt holster and may inspect to see if the firearm is loaded. Prompt incidental checks on the person and the weapon may provide probable cause for arrest; however, the person may not be arrested for violating PC § 12031 if ammunition is not **in or attached to** the weapon so as to allow it to be fired, even though the person may have access to matching ammunition.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.