

## California Open Carry

This document is an abridged list of all relevant California laws for citizens who *do not have a CCW permit* but otherwise choose to legally **carry or transport** firearms. Most of the information here is copied directly from the Penal Code.

**12025.** (a) A person is guilty of **carrying a concealed firearm** when he or she does any of the following:

- (1) **Carries concealed** within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.
- (2) **Carries concealed** upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(f) Firearms **carried openly in belt holsters are not concealed** within the meaning of this section.

**12026.** (a) Section 12025 shall not apply to or affect any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state ... who carries, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state ... to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of Section 12031.

As long as one complies with 12025 (does not conceal), and 12031 (does not load the firearm under most circumstances), and avoids the other pitfalls (detailed on page 2), then he/she is legally open carrying, and sections 12026.1 and 12026.2 are unnecessary. However, quite often open carry is not practical or desired, or is restricted due to other obscure laws (see page 2), so an understanding of 12026.1 and 12026.2 is important.

12026.1 and 12026.2 are almost always misinterpreted, and in many ways. The most common misinterpretation is that these sections are restrictions. They are not. They are *exemptions to 12025*. You cannot be charged with 12026.x, only 12025. When you transport your firearms *concealed* (openly is legal) you must use one of the 12026.x exemptions.

The second common mistake is confusing or combining 12026.1 and 12026.2. 12026.1 simply states that 12025 does not apply when transporting a handgun in a motor vehicle's trunk, or in a locked container in or to/from a motor vehicle. **There are no location or deviation restrictions in 12026.1.** 12026.2 is *another (separate)* list of exemptions to 12025, all but one of which (motion picture) are transporting exemptions. Unlike 12026.1, 12026.2 is not specific to motor vehicles. It can therefore be applied to all other forms of transportation, e.g., walking, bicycling, public transportation. Unlike 12026.1, 12026.2 *does limit* the transport exemptions from any unnecessary deviations.

Another common misconception is the belief that ammunition cannot be stored in the same case as a firearm, or that it must be locked up separately somehow. This is not true. **There is no code to support this myth.** See the second page of this flyer for more information about loaded firearms.

**12026.1.** (a) Section 12025 shall not be construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state ... from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

- (1) The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle other than the utility or glove compartment.
- (2) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(b) The provisions of this section do not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(c) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

**12026.2.** (a) Section 12025 does not apply to, or affect, any of the following: ... (1) *through (20) omitted from this document.*

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

**Note:** PC 12025 and 12026 **apply only to concealed handguns.** There are no restrictions on carrying rifles or shotguns in these sections. They can be transported unlocked, openly or concealed. However 12031 and other restrictions do apply.

## California Open Carry, continued

**12031.** (a) (1) A person is guilty of **carrying a loaded firearm** when he or she carries a loaded firearm on his or her 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**.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "**prohibited area**" means any place where it is unlawful to discharge a weapon. \*

(g) **A firearm shall be deemed to be loaded** for the purposes 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 clip thereof attached to the firearm. \*\*

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(l) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

\* Most counties have ordinances prohibiting shooting near roads, residences, etc. This effectively makes carrying loaded illegal in all but the most remote areas of unincorporated territory.

\*\* In "People v. Clark" (1996), the California Court of Appeal clarified that in order to be "loaded" a firearm must have ammunition "placed into a position from which it can be fired". It even went so far as to point out as an example of what is **not loaded** to include **shells attached to a shotgun** inside a buttstock shell carrier.

\*\* There is a common misconception that merely possessing both a firearm and ammunition in close proximity legally equates to loaded. This mistake stems from several PC sections that **do not apply** to the **law-abiding** gun owner. 12001(j) only applies to 12023 (carry with intent to commit a felony). 12021.5 only applies to street gang crimes as defined in 186.22. 12022.2 only applies to armor piercing ammunition. 12025(b)(6)(A) is a sentence enhancement which only applies if one violates 12025 (carrying concealed). 171e only applies inside the State Capitol, legislative offices, or office or residence of the Governor.

In an emergency, 12031 includes additional limited exceptions, where loading is permitted:

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "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 assistance.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

### Other Restrictions:

**171 b,c,d** Cannot carry in any state or local public building or at any legislative meeting required to be open to the public. Cannot carry in the State Capitol, legislative offices, office of the Governor, Governor's residence, etc.

**626.9** Cannot carry "in a place that the person knows, or reasonably should know" is within 1000 feet of a K-12 school. Must be transported unloaded in a locked case or vehicle trunk. Cannot carry on the grounds of a university without written permission.

**36 CFR 2.4 (a)** Effective February 22, 2010, the Coburn Amendment (s512 of HR627) forces the National Parks to allow possession and carry of firearms in the Parks. However, in California, the Park Service believes that 36 CFR 2.4 (a) (iii) (prohibits the use of firearms) still applies, and that it triggers 12031(f) and therefore loading is not legal. While this appears to violate the intent of the Coburn Amendment, it would be wise to only carry unloaded at this time in the National Parks (accept in one's campsite, where 12031 does not apply).

**CCR Title 14, Div 3, Chap 1, s 4313 (a)** Cannot carry in a State Park. However firearms may be possessed within temporary lodging or a vehicle when unloaded and "packed, cased, or stored in a manner that will prevent their ready use."

**39 CFR 232.1 (I)** Cannot carry on U.S. Postal Service property.

**49 CFR 1540.111 and PC 171.5** Cannot carry in "sterile areas" (areas where access is controlled by security screening) of airports.

**Local Laws:** Cities and counties may have their own limits on possession or use of firearms. However these local laws **cannot** legally preempt State law. Contact your local government or local law enforcement agencies to determine what these limits may be.

**National Forest and BLM:** On these federal lands firearms are generally permitted, if carried and used in a safe manner, and if the users comply with state and county laws. Most of these lands qualify as "unincorporated territory", but there are some restrictions on shooting (near structures, developed areas, roads, bodies of water) so 12031(f) applies in these areas. Check with your local ranger station for any other local restrictions.