

This memo originated at the Sacramento PD, but has been circulated to at least a dozen law enforcement agencies by 7/18/08, and has probably circulated to more since. The author has misstated the intent of the OC movement. It is not a goal to sue police. But most of the legal information is accurate, and it's a positive step that LEO are at least being made aware of the legality of OC in California.

Subject: FW: Sgt's (sic) please review at roll calls
Importance: High

This email has been approved by Capt.

** High Priority **

It has come to my attention that a gun rights group in the Sacramento area may attempt to test officers' knowledge on the firearms laws. Recently an individual called the Sacramento Police Department and inquired about carrying an unloaded handgun in a holster on his belt in public. The caller reported he was told it was illegal and could be arrested. Members of a group known as Open Carry have suggested going to a Sacramento restaurant wearing non-concealed pistols on their belts.

They have indicated someone will call the police and report a subject is wearing a firearm. When police arrive someone from the group will be secretly videotaping the police contact with the armed subject. It seems the group's goal is to have an officer arrest the person for 12025 or seize their firearm and then use the video in a civil law suit against the police officer.

The following are some firearms laws that may apply if confronted with a subject wearing a pistol in a belt holster:

PC 12025 (f), unloaded firearms carried openly in belt holsters are not concealed within the meaning of section 12025.

PC 12025 only applies to concealable firearms, which is defined in PC12001(a) as a pistol, revolver or firearm with a barrel less than 16 inches. There is nothing prohibiting someone from carrying an unloaded, concealed rifle or shotgun on their person or in their vehicle unless the barrel is less than 16 inches.

PC 12031(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. **Case law now states the ammunition must be in a position from which it can be fired (People. v. Clark)

PC 12031(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.

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 PC 12031. 12001(j) only applies to 12023 (carry with intent to commit a felony). 12025(b)(6)(A) is a sentence enhancement which only applies if one violates 12025 (carrying concealed).

Scenario: a person is walking down the street with an unloaded pistol carried openly on their belt. There is a loaded magazine for the pistol located next to the pistol in a magazine pouch. You run the pistol through the automated firearm system and there is no dealer record of sale. ** NOT a violation of PC 12025 or PC 12031.

Scenario: a person is walking down the street with a shotgun (18 inch barrel) under their coat. **NOT a 12025 violation.

Scenario: a person walking down the street has a pistol worn openly on their belt with a loaded magazine inserted into the pistol, but no round in the chamber. You run the firearm and there is a dealer record of sale to the suspect. Suspect has no criminal history. **misdemeanor violation of PC 12031. Note: If there is no dealer record of sale for the firearm or the dealer record of sale is not in the suspect's name the charge can be elevated to a felony PC 12031(a)(2)(f).

Remember that in any scenario PC 12031(e) gives you the authority to detain the person so you can inspect the firearm per PC 12031(e). Unless you develop additional probable cause, the length of the detention will be limited to the time required to inspect the firearm.

** With the exception of assault weapons, there is no law that requires a handgun or long gun to be registered with the California Department of Justice. The DOJ registration language found in PC 12025(b)(6) and 12031(a)(2)(f) is a sentencing enhancement if you already have a PC 12025 or PC 12031 violation.

Contact Detective [REDACTED] via [REDACTED] or [REDACTED]-[REDACTED]. Dispatch can also reach me after hours if needed.

Det. [REDACTED]
Sacramento Police Department
[REDACTED]
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