



FAIRFIELD POLICE DEPARTMENT

“Electronic Bulletin”

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OPEN CARRY RESOLVED

SUMMARY: The “Open Carry” movement has tested the waters for years, challenging law enforcement to handle armed individuals in public. With the recent adoption of PC 26350, openly carrying an unloaded handgun on your person or in a vehicle is now a misdemeanor.

DETAILS:

In December of 2008, and August of 2011 our office published a series of Client Alert Memorandums to address potential issues with "open carry" under then-Penal Code § 12031(repealed January 1, 2012; now § 25850).

Recently, the California Legislature addressed the issue of "open carry" of handguns(1), specifically, or firearms(2 generally, through certain amendments to portions of the newly structured and numbered weapons laws chapters of the Penal Code. These amendments radically alter the landscape for "open carry" of handguns and all officers will want to become familiar with their new authority in addressing handgun "open carry" situations.

First, the legislature added Penal Code § 26350 to address the carrying of unloaded handguns. Former §12031 (now §25850) makes it unlawful to carry a "loaded" firearm (not limited simply to handguns) in a public place or in a car; and, permits any peace officer to stop the person carrying the firearm in order to determine the load status of the weapon. (§25850(b))

Penal Code §26350 now addresses the issue of "open carry" of an unloaded handgun in public or in a vehicle.

Penal Code § 26350(a) (1) provides that:

(1) A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

[Emphasis added]

As to "open carry" in a vehicle, §26350(a) (2) provides that:

(2) A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

The offense in either instance is a misdemeanor.
(§26350(b) (1))

There are a number of exceptions to the general rule of no "open carry" of a handgun:

- Peace officers and honorably retired peace officers are allowed to carry a concealed weapon or a loaded firearm. (Penal Code §26361)
- Military personnel engaged in the performance of their duties and military personnel participating and/or preparing for a parade. (Penal Code § 26000 and §26364)
- People who are using their guns at a target range. (Penal Code §26005(a) and §26365)
- Members of a shooting club while hunting on the premises of the shooting club. (Penal Code § 26005(b)).
- Armored vehicle guard while on duty. (Penal Code §26015(a)-(b)).
- Honorably retired federal officers and agents. (Penal Code §26020 and § 26368).
- On duty animal control officers or zookeepers. (Penal Code §26025(b)).
- Gun dealer, manufacturer or distributor may

openly carry within their place of business. (Penal Code §26363 and § 26369).

- Licensed hunter while engaged in hunting or going or returning from hunting trip. (Penal Code §26366).

HOW DOES THIS AFFECT YOUR AGENCY?

What was for so many of us the incongruity of a person being able to openly carry a handgun down "Main Street"; while strolling through the shopping mall; or, while sipping a latte in a Starbucks (our homage to the cartoonist Gary Trudeau and his "open carry" cartoons), has been eliminated.

Penal Code § 25850 still makes it a public offense to carry a loaded firearm (not simply a handgun, but any firearm) in plain view in specified areas, and empowers officers to stop and inspect to determine the load status of the firearm.

Of course, it must be anticipated that Second Amendment activists will almost certainly challenge the new state of the law. However, in light of existing state and federal appellate cases, we believe such an appeal would have an uphill fight in the courts. Still, it is their right to pursue such an appeal, and it is for the courts to ultimately determine.

As always, you are encouraged to consult with your designated legal counsel for further advice on this or any other matter. As always however, if you wish to discuss this matter in greater detail, please feel free to contact me at (714) 446-1400 or email me at prc@jones-mayer.com.

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1. Penal Code §16640 - "handgun" means any pistol, revolver, or firearm capable of being concealed upon the person.
 2. Penal Code §16520 - "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

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