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BASIC COURSE INSTRUCTOR UNIT GUIDE

NCJRS

DEC 14 1994

EXHIBITIONS

40

WEAPONS VIOLATIONS

September 1, 1994

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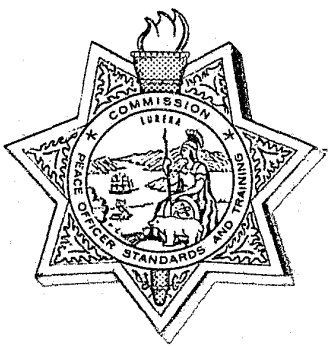
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

UNIT GUIDE 40

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Weapons Violations**

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SPECIFICATIONS FOR LEARNING DOMAIN #40: WEAPONS VIOLATIONS

July 1, 1994

I. INSTRUCTIONAL GOAL

The goal of instruction on **Weapons Violations** is to provide students with the ability to recognize when a weapons violation has occurred, to identify the crimes by their common names, and to classify them as misdemeanors or felonies.

II. REQUIRED TOPICS

The following topics shall be covered:

- A. Drawing or exhibiting a firearm or weapon
- B. Shooting at an inhabited dwelling
- C. Possession of a switchblade knife
- D. Manufacture, sale, possession or import of a deadly weapon
- E. Possession of a firearm by certain prohibited persons
- F. Carrying a concealed firearm
- G. Carrying a loaded firearm
- H. Altering identifying marks on a firearm
- I. Possession of tear gas/chemical agents
- J. Weapons on school grounds
- K. Exceptions to concealed firearm law
- L. Possession of a deadly weapon with intent to assault

DOMAIN #40: WEAPONS VIOLATIONS

- M. Unsafe storage of a firearm
- N. Possession of an assault weapon
- O. Definition of a firearm
- P. Possession of a weapon in a public building

III. REQUIRED TESTS

The POST-constructed knowledge test for Domain #40

IV. REQUIRED LEARNING ACTIVITIES

None

V. HOURLY REQUIREMENTS

Students shall be provided with a minimum of **4 hours** of instruction on weapons violations.

VI. ORIGINATION DATE

July 1, 1993

VII. REVISION DATES

June 1, 1994

CURRICULUM

I. POSSESSION OF TEAR GAS

A. Possession of tear gas (Penal Code Section 12420) - Misdemeanor

1. Corpus Delicti--key elements:
 - a. Any person, firm, or corporation who
 - b. knowingly sells, offers for sale, possesses or transports
 - c. tear gas or tear gas weapon
2. Tear gas defined (Penal Code Section 12401)
 - a. All liquid, gaseous, or solid substances intended to produce temporary discomfort or permanent injury through being vaporized or otherwise dispersed in the air. Does not apply to and shall not include any substance registered as an economic poison as specified in the Agriculture Code.
3. Tear gas weapon (Penal Code Section 12402)
 - a. Any shell, cartridge, or bomb capable of being discharged or exploded which allows the release of tear gas.
 - b. Any revolver, pistol, fountain pen gun or other device intended for the release of tear gas.
4. Exemptions
 - a. A peace officer who has completed an approved course of instruction on the use of tear gas (Penal Code Section 12403)
 - b. Members of the military or naval forces of California, the military or naval forces of the United States, or any federal law enforcement officers, when in the official performance of their duties (Penal Code Section 12403.1)
 - c. A licensed private investigator or private patrol officer who has completed an approved course of instruction on the use of tear gas (Penal Code Section 12403.5)
 - d. A person in possession of a card showing that he has completed a Department of Justice-certified course on the use of tear gas and tear gas weapons (Penal Code Section 12403.7)

NOTE: No persons shall possess tear gas weapons other than authorized by DOJ.

NOTE: Illegal to possess tear gas weapon with altered serial numbers (Penal Code Section 12422) - Felony

II. POSSESSION OF A SWITCHBLADE KNIFE

A. Possession of a switchblade knife (Pen. Code Section 653k)

Every person who possesses in the passenger compartment of any motor vehicle in any public place or carries upon his person a switchblade knife with a blade over two inches in length.

B. Elements:

1. Possession of a switchblade knife
2. with a blade **over** two inches in length
3. in the passenger compartment of any motor vehicle while in any public place or place open to the public, or
4. which is carried on the person

C. Crime Classification: Misdemeanor

D. Definitions:

1. A "switchblade knife" is a knife the blade of which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever.
2. This would include gravity knives, spring blade knives, snap blade knives and butterfly knives

E. Discussion:

1. For this section to apply, the vehicle must be in a public place or place open to the public.
2. Possession of a switchblade in a private residence would not be a crime unless it is carried on the person.
3. The knife must have a blade **over** two inches in length. A switchblade knife with a blade under two inches in length would not be illegal.
4. This section also applies to persons who sell, offers for sale, loans or transfers a switchblade knife as described in this section.

III. POSSESSION OF A DEADLY WEAPON

A. Possession of deadly weapons (Penal Code Section 12020)

Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any instrument, any cane gun, or wallet gun, any plastic firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy nunchaku, sandclub, sap or sandbag, or who carries concealed upon his person any explosive substance (other than fixed ammunition), or who (carries concealed) upon his person any dirk or dagger, is guilty of a felony. (See Penal Code Section 12020 for definition of weapons described in this section.)

B. Elements:

1. Manufacture, import, keeps for sale, offers for sale, gives, lends, or possesses
2. any:
 - a. firearm not immediately recognizable as a firearm
 - b. ballistic knife
 - c. Multiburst trigger activator
 - d. nunchaku
 - e. short barrel shotgun or rifle
 - f. metal knuckles
 - g. belt buckle knife
 - h. zip gun
 - i. shuriken (throwing star)
 - j. billy clubs and saps
 - k. dirk or dagger

NOTE: Penal Code Section 12020 includes a number of additional weapons, however those specifically listed above are the ones most likely to be encountered by a peace officer.

C. Classification: Felony

D. Discussion:

1. Possession, per se, of any of the listed weapons, whether in public or in private, is a crime because these weapons have no other legitimate purpose than to cause bodily injury.
2. Descriptions of weapons contained in Penal code Section 12020
 - a. any firearm not immediately recognizable as a firearm, e.g., pen gun, belt buckle gun, etc.
 - b. ballistic knife - a device that propels a knife like blade as a projectile by means of a coil spring, elastic material, or compressed gas. (does not include cross bows or spear guns)
 - c. multiburst trigger activator - a device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device
 - d. nunchaku - an instrument consisting of two or more sticks, clubs, bars, or rods to be used as handles, connected by a rope, cord, wire, or chain
 - e. short-barreled shotgun - a shotgun having a barrel or barrels of less than 18 inches or have been modified and the overall length is less than 26 inches.
 - f. short-barreled rifle - a rifle having a barrel or barrels less than 16 inches or has been modified and the overall length is less than 26 inches.
 - g. metal knuckles - any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and protects the wearer's hands or increases the force of impact.
 - h. belt buckle knife - a knife which is an integral part of a belt buckle and consists of a blade with a length of at least 2 1/2 inches.
 - i. zip gun - a weapon which is not imported, designed, or taxed as a firearm, which has been altered or made to expel a projectile by the force of an explosion or other combustion which has a barrel or barrels less than 18 inches in length or an overall length of less than 26 inches.
 - j. Shuriken - (throwing star) any instrument without handles, consisting of a metal plate having three or more radiating points, with one or more sharp edges and designed in a geometric shape for use as a weapon for throwing

- k. billy club and saps, e.g., wooden club, baton, bludgeon, weighted pool cue, weighted baseball bat, small leather covered club or billy weighted at one end and having an elastic shaft, etc.
- l. dirk or dagger - a knife or other instrument, with or without a hand guard, that is primarily designed, constructed, or altered, to be a stabbing instrument designed to inflict great bodily injury or death.
 - (1) Must be concealed upon the person to be illegal pursuant to Penal Code Section 12020
 - (2) Knives carried in sheaths openly suspended from the waist of the wearer are not concealed within the meaning of this section

NOTE: See Penal Code Section 12020 for definitions of other weapons which are illegal to possess.

E. Other related sections:

- 1. Authorization to carry wooden club or baton (Penal Code Section 12002)
 - a. Exceptions to 12020: Nothing in this chapter prohibits police officers, special police officers, peace officers, or law enforcement officers from carrying any wooden club, baton, or any equipment authorized for the enforcement of law by ordinance in any city or county.
 - b. Business and Professions Code Section 7539.3 requires private security officers carrying a baton to wear a shoulder patch which identifies them as security officers.
- 2. Authority to seize firearms and other weapons as public nuisances (Penal Code Section 12028 and 12029)
- 3. Authority to seize weapons at the scene of family violence (Penal Code Section 12028.5)

IV. POSSESSION OF DEADLY WEAPON WITH INTENT TO ASSAULT

A. Possession of a deadly weapon with intent to commit an assault (Penal Code Section 467)

B. Elements:

1. Person
2. having upon him or her
3. any deadly weapon
4. with intent to assault another

C. Crime classification: misdemeanor

V. **DEFINITION OF FIREARMS**

A. Definition of a firearm (Penal Code Section 12001(b))

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.

B. Definition of a concealable firearm (Penal Code Section 12001)

"Pistol," "revolver," and "firearms capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon from which is expelled a projectile by force of an explosion or form of combustion, having a barrel less than 16 inches in length. These terms also include any device which has a barrel of 16" or more in length which is designed to be interchanged with a barrel less than 16" in length. "Pistol," "revolver," and "firearms capable of being concealed upon the person" as used in Sections 12021, 12072, and 12073 include the frame or receiver of any such weapon.

NOTE: Refer to Penal Code Section 12001 for specified exceptions

VI. BRANDISHING A WEAPON

A. Drawing, exhibiting, or unlawfully using a deadly weapon (Penal Code Section 417(a)(1))

1. Defined: Every person who, except in self defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm in a rude, angry or threatening manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor. (417(a)(1))
2. Elements:
 - a. In the presence of any other person
 - b. draws or exhibits
 - (1) any deadly weapon **other than a firearm**,
 - (2) in a rude, angry, or threatening manner, or,
 - (3) unlawfully uses it in a fight or quarrel.
3. Crime classification: misdemeanor

B. Drawing, exhibiting or unlawfully using a firearm (Penal Code Section 417(a)(2))

1. Every person who, except in self defense, in the presence of another person, draws or exhibits any firearm, loaded or unloaded, whatsoever in a rude, angry or threatening manner, or who in any manner unlawfully uses the same in any fight or quarrel.
2. Elements:
 - a. Any person who
 - b. in the presence of any other person
 - c. draws or exhibits
 - d. a loaded or unloaded firearm
 - e. in a rude, angry, or threatening manner, or
 - f. uses the same in any fight or quarrel.
3. Crime classification: misdemeanor
4. Discussion:
 - a. Injury or assault is not required for this section to be violated.

- C. Exhibiting loaded firearm on daycare facilities (Penal Code Section 417(b))
1. Prohibits exhibition of a **loaded firearm** on the grounds of any day care center as described in Health and Safety Code Section 1596.76, or any center designed to provide recreation programs for persons under the age of 18 years, during the hours when such facilities are open for use.
 2. Elements:
 - a. Any person who
 - b. draws or exhibits
 - c. any **loaded** firearm
 - d. in a rude, angry or threatening manner, or unlawfully uses the firearm in a fight or quarrel.
 - e. on the grounds of any day care or recreational facility
 - f. during the hours when such facilities are open for use
 3. Crime classification: felony
- D. Exhibiting firearm in presence of peace officer (Penal Code Section 417(c))
1. Every person who in immediate presence of peace officer draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows, or reasonably should know, by the officer's uniformed appearance or other action of identification by the officer that he or she is a peace officer engaged in the performance of their duties.
 2. Elements:
 - a. Any person who
 - b. draws or exhibits any firearm
 - c. loaded or unloaded
 - d. in a rude, angry or threatening manner, and
 - e. knows or reasonably should know by the officer's uniformed appearance, or other action of identification that the victim is a peace officer
 - f. engaged in the performance of their duties
 3. Crime classification: felony

4. Discussion:

a. This section applies to peace officers described in the following Penal Code Sections:

- (1) 830.1
- (2) 830.2
- (3) 830.3(a)
- (4) 830.31
- (5) 830.32
- (6) 830.33
- (7) 830.5

E. Exhibiting firearm in the presence of a Reserve Peace Officer (Penal Code Section 417.1)

1. Defined: Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry or threatening manner, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties is guilty of a felony.

2. Elements:

- a. Every person who
- b. in the presence of a peace officer
- c. draws or exhibits
- d. any firearm
- e. in a rude, angry or threatening manner
- f. knowing it is a police officer

3. Crime classification: felony

4. Discussion:

- a. This section is specifically used when the victim is a **reserve** officer.
- b. The weapon does not have to be loaded and this section does not require an assault.

F. Drawing or exhibiting a firearm in the presence of a motor vehicle occupant (Penal Code Section 417.3)

1. Defined: Every person who, except in self defense, in the presence of any other person who is an occupant of a motor vehicle proceeding on a public street or highway, draws or exhibits any firearm, whether loaded or unloaded, in a threatening manner against another person in such a way as to cause a reasonable person apprehension or fear of bodily harm.
2. Elements:
 - a. Every person who, except in self defense
 - b. in the presence of another
 - c. who is an occupant of a motor vehicle
 - d. proceeding on a public street
 - e. draws or exhibits
 - f. any firearm
 - g. in a threatening manner
3. Crime classification: felony
4. Discussion:
 - a. The motor vehicle must be "**proceeding**" on a public street or highway.
 - b. A person in a vehicle parked in a driveway, at the curb or in a parking lot would not qualify under this section. The vehicle must be on the roadway (which would include stopping for lights, signs or other impediments in the flow of traffic.

G. Exhibiting an imitation firearm in a threatening manner (Penal Code Section 417.4)

1. Defined: Every person who, except in self defense, draws or exhibits an imitation firearm in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm.
2. Elements:
 - a. Every person who
 - b. Draws or exhibits
 - c. against another

- d. an imitation firearm
 - e. in a threatening manner
 - 3. Crime classification: misdemeanor
 - 4. Discussion:
 - a. An "**imitation**" firearm means a replica of a firearm that is so substantially similar to an existing firearm that a reasonable person would think that it was a real firearm.
 - H. Exhibiting a deadly weapon with the intent to resist arrest (Penal Code Section 417.8)
 - 1. Defined: Every person who draws or exhibits any firearm or other deadly weapon with the intent to resist or prevent the arrest of himself or another person by a peace officer.
 - 2. Elements:
 - a. Every person who
 - b. draws or exhibits
 - c. any firearm or other deadly weapon
 - d. with the intent
 - e. to resist or prevent
 - f. the arrest or detention
 - g. of himself or another
 - h. by a peace officer
 - 3. Crime classification: felony
 - I. Drawing or exhibiting laser scope (Penal Code Section 417.25)
 - 1. Every person who, except in self defense, knowingly draws or exhibits a laser scope, that projects a colored target on a person in a threatening manner with the specific intent to cause a reasonable person apprehension or fear of bodily harm.
 - 2. Elements:
 - a. Any person who, except in self-defense
 - b. knowingly

- c. draws or exhibits
- d. a laser scope
- e. with the intent to cause a reasonable person apprehension or fear of bodily harm

3. Definitions: a **laser scope** is defined as a portable battery powered device capable of being attached to a firearm and capable of projecting a laser light on objects at a distance.

4. Crime classification: misdemeanor

5. Discussion: The laser scope need not be attached to a firearm.

J. Discharging firearm from motor vehicle (Penal Code Section 12034)

1. Driver or owner knowingly permitting others to carry or bring firearms into motor vehicle (Penal Code Section 12034(a)) - misdemeanor

2. Driver or owner permitting others to discharge firearms from motor vehicle (Penal Code Section 12034(b)) - felony/misdemeanor

a. Owner need not be occupying vehicle
(Penal Code Section 12034(a) & (b))

3. Any person who willfully and maliciously discharges a firearm from a motor vehicle at another person other than an occupant of a motor vehicle. (Penal Code Section 12034(c)) - felony

K. Other related sections

1. Shooting at inhabited dwelling or occupied building or vehicle Penal Code Section 246 - felony

2. Shooting on public highways (Penal Code Section 374c) - misdemeanor

VII. CARRYING A LOADED FIREARM

A. Loaded firearms in public places (Penal Code Section 12031)

Makes it illegal for any person to carry a loaded firearm on his person or in a vehicle while in a public place.

B. Elements:

- a. Every person who
- b. carries a
- c. loaded firearm
4. on his person, or in a vehicle
5. in a public place or on any public street in an incorporated city or prohibited area of an unincorporated area

C. Crime classification: misdemeanor

D. Discussion:

1. A peace officer may make an arrest, without a warrant, when the person arrested has violated this section, although not in the officer's presence (Penal code Section 12031(2)(A).
2. For purposes of this section "loaded" means 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 if in or attached to the firearm. A muzzle loader is deemed to be loaded when capped or primed and has a powder charge and ball or shot in the barrel.
3. When an officer encounters any firearm in a public place the officer is authorized to examine the firearm to see if it loaded. Refusal to allow inspection of the firearm constitutes probable cause to arrest for a violation of this section.
4. Peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in a public place or public street. Refusal to allow inspection constitutes probable cause for arrest.
5. Prohibited areas mean any place where it is unlawful to discharge a weapon.
6. Exemptions:
 - a. Foregoing shall not apply to peace officers, etc.
 - b. Any officer, employee, agent, or employer within their place of business or any person in lawful possession of private property

- c. Hunters while engaged in hunting
- d. A person who reasonably believes that the property or person of another or himself is in danger and firearms are necessary for preservation
- e. Persons while making a lawful arrest
- f. Persons having firearm at residence, temporary residence, or campsite
- g. Persons who reasonably believe that their life is in grave danger because of circumstances forming the basis of a current restraining order
- h. Uniformed security guards allowed to carry loaded firearms to and from their residences or place of employment (Penal Code Section 12031(b)(5))

E. Other related sections:

- 1. Possession of certain controlled substances while armed with a loaded operable firearm (Health and Safety Code Section 11370.1 - felony)
- 2. Possession of a shotgun/rifle with an unexpended round in the chamber - (Fish and Game Code Section 2006) - misdemeanor

VIII. CARRYING A CONCEALED WEAPON

A. Carrying a concealed weapon (Penal Code Section 12025)

Makes it a crime for any person to carry concealed within any vehicle under their control or concealed on their person any pistol, revolver or other firearm capable of being concealed upon the person.

B. Elements:

1. Any person who
2. carries concealed within a vehicle or concealed on their person
3. any pistol, revolver or other firearm capable of being concealed (whether loaded or unloaded)
4. without a permit

C. Crime Classification:

1. Misdemeanor
2. Felony if the suspect had any prior felony conviction or a prior conviction for other crimes specified in this section.

D. Discussion:

1. The key here is that the firearm is concealed. For example, a firearm in plain view on the seat of a car would not be a violation.
2. Likewise a firearm carried openly in a belt holster would not be a violation of this section.
3. Definition of a concealable firearm (Penal Code Section 12001)
 - a. "Pistol," "revolver," and "firearms capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon from which is expelled a projectile by force of an explosion or form of combustion, having a barrel less than 16 inches in length. These terms also include any device which has a barrel of 16" or more in length which is designed to be interchanged with a barrel less than 16" in length. "Pistol," "revolver," and "firearms capable of being concealed upon the person" as used in Sections 12021, 12072, and 12073 include the frame or receiver of any such weapon.
 - b. Includes flare guns, rocket launchers, Tasers, for purposes of Penal Code Section 12025.

E. Other related sections:

1. Penal Code Section 12320 - Possession armor piercing handgun ammunition.
2. Penal Code Section 12321 - Manufacture or sale of armor piercing handgun ammunition.
3. Penal Code Section 12022.2 - Enhancement of felony regarding possession of armor piercing ammunition.
4. Penal Code Section 12023 - In the trial of a person charged under Penal Code Section 12022, the fact that he was so armed shall be prima facie evidence of his intent to commit the felony of Penal Code Section 12022
5. There are a number of exceptions to Penal Code Section 12025 which include Penal Code Section 12026, 12026.2, 12026.2, 12027 and 12050.
6. A minor may not possess a firearm without written permission from a parent or guardian or unless accompanied by a parent or guardian (Penal Code Section 12101) or possess live ammunition without written permission from parent or guardian or unless accompanied by them.

IX. EXCEPTIONS TO POSSESSION OF CONCEALED FIREARM

A. Exceptions to Penal Code Section 12025

1. Penal Code Section 12026 - Citizens over the age of 18 years (not within excepted classes of Section 12021) may own, possess, or keep a firearm capable of being concealed, either openly or concealed at their residence, place of business or on private property lawfully possessed by the resident.
2. Penal Code Section 12026.1 - 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, and who is not within the excepted classes prescribed by Section 12021, 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:
 - a. 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.
 - b. 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.
 - c. 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.
 - 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.
3. Penal Code Section 12026.2 - This section provides exceptions to Penal Code Section 12025 for persons involved in lawful activities as specified
 - a. Motion picture, television or video productions
 - b. Firearm club members while going to, coming from, and while attending firearm club meetings
 - c. Participants going to, or coming from a safety or hunter's safety class, or sporting event involving that firearm
 - d. Transportation by any person mentioned in Penal Code Section 12026 directly between any of the places mentioned in Penal Code Section 12026
 - e. Transportation while going directly to or coming from a fixed place of business or private residential property for the purpose of lawful repair or the lawful transfer of that firearm

- f. Transportation by a person going to or coming from a gun show, swap meet, or similar event which the public is invited for the purpose of displaying that firearm.
- g. Transportation by a person to or from a target range
- h. Transportation by a person to and from a place designated to issue licenses pursuant to Penal Code Section 12050
- i. Transportation by a person going to or from a lawful camping activity

NOTE: The above listed exceptions do not include all of exceptions listed in 12026.2.

4. Penal Code Section 12027

- a. Peace officers - Full-time, paid police officers of other states; federal government agents carrying out duties; those summoned to assist the above.
- b. Merchants transporting unloaded firearms.
- c. Active or retired officers (retired officers must renew permit every five years); Army, Navy, Marine Corps of United States or National Guard (when on duty); organizations authorized to purchase by law (from United States or California)

NOTE: Requires agency's identification certificate to be endorsed to carry a concealable firearm. Applies to officers retired after 1-1-81. Endorsement must also now state "ccw approved"

- d. Authorized military or civil organizations while parading and going to and from places of meetings (VFW, etc.)
- e. Guards and messengers of financial institutions (banks, transporting bullion, money, while actually employed in and about the shipment)
- f. Shooting clubs (going to and from)
- g. Licenses hunters and fishermen (going to or from)
- h. Collector clubs - meetings (going to or from)

Provided:

- (1) Firearms are kept in the trunk, or
- (2) If vehicle has no trunk, firearms are kept in a locked container other than the glove compartment and are unloaded.

X. POSSESSION OF A FIREARM BY A FELON

**A. Possession of any firearm by a felon
(Penal Code Section 12021(a) (1))**

1. Defined: Any person who has been convicted of a felony in California or any other state or who is addicted to any narcotic who owns, or has in his possession or under his control any firearm is guilty of a felony.
2. Elements:
 - a. Any convicted felon or narcotic addict who
 - b. owns or possesses
 - c. any firearm
3. Crime Classification: Felony

B. Possession of a firearm by a person convicted of specified misdemeanors (Penal Code Section 12021(c)(1))

1. Defined: Any person who has been convicted of any of the specified misdemeanors and who within ten years has in his possession or control any firearm is guilty of a felony.
2. Elements:
 - a. Any person convicted of a
 - b. specified misdemeanor who
 - c. within 10 years of the conviction
 - d. owns or possesses
 - e. any firearm
3. Crime classification: felony
4. Discussion:

The specified misdemeanors are Penal Code Sections:

- a. 136.5 (Intimidation of a victim or witness)
- b. 140 (Threatening a crime witness)
- c. 171b (Possession of weapons in a courtroom)
- d. 171c (Possession of weapons in State capitol building or legislative office)

- e. 171d (Possession of loaded firearm in the Governor's Mansion)
- f. 240 (Assault)
- g. 242 (Battery)
- h. 243 (Felony Battery)
- i. 244.5 (Assault with electrical charge)
- j. 245 (Assault with a deadly weapon)
- k. 245.5 (Assault on a school employee)
- l. 246.3 (Discharging a firearm in a negligent manner)
- m. 247 (Discharging a firearm at a unoccupied aircraft, vehicle, or building)
- n. 273.5 (Spousal Abuse)
- o. 273.6 (Violation of domestic violence restraining order)
- p. 417 (Brandishing a weapon)
- q. 417.2 (Brandishing a replica)
- r. 626.9 (Possession on firearms on school property)
- s. 646.9 (Stalking)
- t. 12034 (Discharging a firearm from a vehicle)
- u. 12100(a) (Sale of firearms to minors)
- v. 12320 (Possession of armor piercing ammunition)
- w. 12590 (Carrying a weapon while picketing)

C. Other related sections:

1. Carrying of a firearm during the commission or attempted commission of street gang crime (Penal Code Section 12021.5) - sentence enhancement
2. Persons prohibited from possessing a firearm or other deadly weapon because of mental disorder (Welfare and Institutions Code Sections 8100 and 8103) - Felony/Misdemeanor

XI. ASSAULT WEAPONS

A. An assault weapon is defined as a designated semi-automatic firearm specifically listed in Penal Code Section 12276.

B. Possession of assault weapons (Penal Code Section 12285)

Possession of specified assault weapons is prohibited, unless:

1. The weapon was obtained prior to June 1, 1989, **and**
2. The weapon is lawfully registered

NOTE: Instructors may wish to refer to the California Department of Justice Assault Weapon Guidebook for additional information and photographs of each of the designated weapons.

XII. ALTERING MARKS ON A FIREARM

A. Altering identification marks on a firearm (Penal Code Section 12090)

Illegal for any person to change, alter, remove or obliterate the name of the maker, model, manufacturers number, or other mark of identification on any firearm, without prior written permission of the Department of Justice

B. Elements:

1. Any person who
2. changes, alters, removes or obliterates
3. the name of the maker, model, manufacturers number or other mark of identification
4. of any firearm
5. without prior approval of the Department of Justice

C. Crime classification: felony

D. Discussion:

1. This section is to be used in conjunction with Penal Code Section 12091 which says:
 - a. The possession of any pistol or revolver (it does not include rifles) upon which ID numbers have been altered shall be presumptive evidence that the possessor did the alteration.
 - b. In other words whoever gets caught with a gun that has altered ID marks is subject to arrest.

XIII. UNSAFE STORAGE OF FIREARM

A. Criminal storage of a firearm (Penal Code Section 12035) - felony/Misdemeanor

1. A person commits the crime of criminal storage of a firearm in the **first degree** if he or she keeps any loaded firearm without any premises under their control and her or she knows that a child is likely to gain access to the firearm, the child obtains access to the firearm, and **causes death or great bodily injury** to himself or any other person.
2. A person commits the crime of criminal storage of a firearm in the **second degree** if he or she keeps any loaded firearm without any premises under their control and her or she knows that a child is likely to gain access to the firearm, the child obtains access to the firearm, and **causes injury other than great bodily injury** to himself or

any other person or exhibits the firearm in a public place or in violation of Penal Code Section 417

B. Elements:

1. First degree criminal storage of a firearm:
 - a. Any person who keeps
 - b. A loaded firearm
 - c. in any premises
 - d. under their control
 - e. knowing that a child is likely to gain access to the firearm, and
 - f. where the child obtains the firearm and
 - g. causes **death or great bodily injury**
2. Second degree criminal storage of a firearm:
 - a. Any person who keeps
 - b. A loaded firearm
 - c. in any premises
 - d. under their control
 - e. knowing that a child is likely to gain access to the firearm, and
 - f. where the child obtains the firearm and

g. causes an injury less than great bodily injury

C. Crime classification:

1. First Degree: felony
2. Second Degree: misdemeanor

D. Definitions:

1. **Locking device** means a device which temporarily prevents the firearm from functioning.
2. **Loaded firearm** has the same meaning as set forth in Penal Code Section 12031(g).
3. **Child** means a person under 14 years of age.
4. **Great Bodily Injury** has the same meaning as set forth in Penal Code Section 12022.7.
5. **Locked Container** has the same meaning as set forth in Penal Code Section 12026.2(d).

E. Exceptions:

1. The child obtains the firearm as a result of an illegal entry to any premises by any person.
2. The firearm is kept in a locked container or in a location which a reasonable person would believe to be secure.
3. The firearm is carried on the person or within such a close proximity that the individual can readily retrieve and use the firearm as if carried on the person.
4. The firearm is equipped with a locking device.
5. The person is a peace officer or a member of the armed forces or National Guard and the child obtains the firearm during or incidental to the performance of the persons duties.
6. The child obtains, or obtains and discharges the firearm in a lawful act of self-defense or defense of another person or persons.
7. The person who keeps a loaded firearm on any premise which is under his or her custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premise

XIV. WEAPONS ON SCHOOL GROUNDS

- A. Bringing or possessing a firearm upon the grounds of a school or college (Penal Code Section 626.9)
1. Makes it a crime to bring or possess a firearm on the grounds of or within a public or private school, including colleges and universities, without permission.
 2. Elements:
 - a. Brings or possesses
 - b. loaded or unloaded firearm
 - c. upon the grounds of or within
 - d. any public school, or specified private school
 - e. without the permission of the school district or other designated authority.
 3. Crime classification: felony
 4. Exceptions:
 - a. Peace officers
 - b. Armored vehicle guards while engaged in the performance of their duties
 - c. Members of the military forces of the United States in the performance of their duties
 - d. Persons licensed pursuant to Penal Code Section 12050
- B. Firearm violations upon grounds of playground or youth center (Penal Code Section 626.95)
1. Defined: extends the provisions of Penal Code Section 626.9 to any playground or youth center
 2. Elements:
 - a. Any person
 - b. who violates Penal Code Section 417 (2)(a) or (2)(b), or Penal Code Section 12025, or Penal Code Section 12031
 - c. upon the grounds of or within a playground or youth center
 - d. when the facility is open for business, classes, or school related

grams or

- e. any time minors are using the facility

3. Definitions

- a. **Playground** means any park or recreational area designed to be used by children that has play equipment installed including public grounds designed for athletic activities such as football, baseball, soccer or basketball, or any similar facility located on public or private school grounds, or on city or county parks.
- b. **Youth Center** means any public or private facility used to host recreational or social activities for minors while minors are present.

4. Crime classification: felony (wobbler)

C. Bringing or possessing other weapons on school grounds Penal Code Section 626.10

- 1. Defined: Makes it a crime to bring or possess specified weapons, other than firearms, on the grounds of or within a public or private school, including colleges and universities, without permission.

2. Elements

- a. Any person who
- b. brings or possesses
- c. dirk, dagger, knife having a blade longer than 2 1/2 inches, folding knife with a blade that locks into place, razor with an unguarded blade, Taser, or stun gun as defined in Penal Code Section 244.5 (a).
- d. upon the grounds of or within any public school kindergarten through 12,

OR

- e. Any person who
- f. brings or possesses
- g. dirk, dagger, or knife having a fixed blade longer than 2 1/2 inches
- h. upon the grounds of or within any University or community college

3. Exceptions:

- a. Peace officers
- b. Members of the military forces of the United States in the performance

of their duties

- c. At the direction of a school faculty member for use in a sponsored activity or class
- d. For the lawful use in or around school grounds within in the scope of employment

XV. POSSESSION OF WEAPONS/TEAR GAS IN STATE OR LOCAL PUBLIC BUILDINGS

A. Penal Code Section 171b: Possession of weapons/tear gas in state or local public buildings

1. Elements of §171b: (wobbler)

- a. Any person who brings or possesses
- b. firearm, deadly weapon, knife with blade in excess of 4 inches, tear gas weapon, taser, stun gun, instrument that expels a metal projectile such as a pellet or BB through the force of air pressure, CO2 gas pressure or spring action, and any spot marker gun or paint gun.
- c. within any state or local public building
- d. or at any meeting required to be open to the public
- e. guilty of public offense.

2. Weapons defined:

- a. Firearm: Any firearm
- b. Deadly weapon: Any deadly weapon described in Penal Code section 653k or 12020
- c. Knives with blade length of 4 inches or more: Any knife with a blade which is fixed or capable of being fixed in an unguarded position, by the use of one or two hands
- d. Tear gas weapon: Any tear gas weapon as defined in Penal Code section 12401 and 12402
- e. Taser or stun gun: Any Taser or stun gun as defined in Penal Code section 244.5
- f. Any instrument that expels a metallic projectile
 - 1) Pellet gun
 - 2) BB gun
 - 3) Through force of air pressure, CO2 gas pressure, or spring action
- g. Any spot marker gun or paint gun
 - 1) Livestock spot marker gun
 - 2) Commercially manufactured or modified paint pellet gun

3) Spot markers or paint guns must be of the type to expel or propel a paint or marking projectile

3. Penal Code section 171b is a general intent crime.

4. Lawful exemptions:

a. Duly appointed peace officers (includes federal government and out of state peace officers while carrying out official duties)

b. Persons summoned by an officer to assist in making arrests or for preserving the peace when actually engaged in assisting the peace officer

NOTE: §171b **does apply** to peace officers if they are within any courtroom where [he][she] is a party to any action pending before the court

c. Persons holding valid licenses to carry a firearm

d. Persons holding valid tear gas weapon cards

e. Persons who have permission to possess a weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building

f. Persons who lawfully reside in, lawfully own or are in lawful possession of the building with respect to those portions of the building that are not owned or leased by the state or local government

g. Persons who are licensed or registered in accordance with, and acting within the course and scope of Chapters 11.5 and 11.6 of the Business and Professions Code, who have been hired by the owner or manager of the building if the persons have permission granted pursuant to section d.

XVI. SHOOTING AT AN INHABITED DWELLING

- A. Discharge of firearm at an inhabited dwelling (Penal Code Section 246)
1. Defined: Any person who maliciously and willfully discharges a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, aircraft or inhabited housecar.
 2. Elements:
 - a. Malicious and wilful
 - b. discharge of a firearm at an
 - c. inhabited dwelling house, occupied building, occupied motor vehicle, aircraft, or inhabited housecar
 3. Definitions:
 - a. **"Inhabited"** means currently being used as a dwelling, a place where people live, whether or not they are currently in the structure.
 - b. **"Occupied"** means that there is currently someone in the structure.
 4. Classification: felony
 5. Discussion:
 - a. The shooting has to be **"at"** the specified structure.
 - b. The projectile does **not** have to go into the structure.
 - c. The intent in this section simply implies a purpose or willingness to commit the act with the intent to commit a wrongful act. It does not require any intent to injure another.
- B. Discharging a firearm in a negligent manner (Penal Code Section 246.3)
1. Defined: Any person who discharges a firearm in a grossly negligent manner which could result in injury or death to a person.
 2. Elements:
 - a. Willful discharge
 - b. of a firearm
 - c. in a grossly negligent manner
 - d. which could result in injury or death

3. Crime classification: felony
 4. Discussion:
- C. Discharging firearm at unoccupied aircraft or motor vehicle (Penal Code Section 247)
1. Defined: Any person who wilfully and maliciously discharges a firearm at an **unoccupied** aircraft, motor vehicle or **uninhabited** building or dwelling house.
 2. Elements:
 - a. Willful and malicious
 - b. discharge of firearms
 - c. at an unoccupied aircraft, unoccupied motor vehicle, uninhabited building, or uninhabited dwelling house
 3. Crime classification: felony
 4. Discussion:
 - a. This section does not apply to shooting at an abandoned vehicle or at an uninhabited building or dwelling house with the permission of the owner.
- D. Related section: Shooting at common carriers (Penal Code Section 219.2) - Felony

**PERFORMANCE OBJECTIVES FOR
LEARNING DOMAIN #40**

- 3.24.1 Given a word picture depicting the possible drawing or exhibiting a firearm or a replica, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 417, 417.1, 417.2(a), 417.3 and 417.8)
- 3.24.2 Given a word picture depicting the possible shooting at an inhabited dwelling, occupied building, inhabited house car, inhabited camper, vehicle, or aircraft, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 246, 246.3 and 247)
- 3.24.3 Given a word picture depicting a possible possession of a switch blade knife, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 653k)
- 3.24.4 Given a word picture depicting a possible manufacture, sale, possession, or import of the following dangerous weapons, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 12020)

Weapons include:

- A. Any firearm which is not immediately recognizable as a firearm e.g. pen gun, belt buckle gun
 - B. Ballistic knife
 - C. Multiburst trigger activator
 - D. Nunchaku
 - E. Short-barreled shotgun/rifle
 - F. Metal knuckles
 - G. Belt buckle knife
 - H. Zip gun
 - I. Shuriken (throwing stars)
 - J. Billyclubs and saps
 - K. Dirk or dagger
- 3.24.10 Given a word picture depicting a possible bringing, brandishing or possessing firearms or other weapons on school grounds, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 626.9, 626.95. and 626.10)
- 3.24.5 Given a word picture depicting a possible possession of a concealable firearm by a felon, a narcotic addict, a person who has been convicted within the past ten years of certain specified misdemeanors, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 12021 and 12021.5)
- 3.24.6 Given a word picture depicting a possible carrying of a concealed weapon, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 12025)

- 3.24.11 Given a word picture depicting a possible possession of a concealed firearm, the student will identify if the possession is a lawful exception to Penal Code Section 12025. The major exceptions are:
- A. Possession at residence, place of business, or private property owned or possessed by a legal resident over the age of 18 (Penal Code Section 12026)
 - B. Transportation in locked container or trunk of a motor vehicle (Penal Code Section 12026.1)
 - C. Transportation between specified destinations (Penal Code Section 12026.2)
 - D. Peace officer exemptions (Penal Code Section 12027)
 - E. Persons possessing a valid concealed weapon license (Penal Code Section 12050)
- 3.24.12 Given a word picture depicting a possible possession of a deadly weapon with intent to assault, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 467)
- 3.24.7 Given a word picture depicting a possible carrying of a loaded firearm, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 12031 and Health and Safety Code Section 11370.1)
- 3.24.8 Given a word picture depicting the possible altering of identifying marks ~~the serial numbers~~ on a firearm, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 12090)
- 3.24.9 Given a word picture depicting a possible possession of tear gas or a tear gas weapon, the student will identify if the possession is a lawful exception to Penal Code Section 12420. The major exceptions to the prohibition against possession are as follows.
- A. A peace officer who has completed an approved course of instruction on the use of tear gas (Penal Code Section 12403)
 - B. Members of the military or naval forces of California, the military or naval forces of the United States, or any federal law enforcement officers, when in the official performance of their duties (Penal Code Section 12403.1)
 - C. A licensed private investigator or private patrol officer who has completed an approved course of instruction on the use of tear gas (Penal Code Section 12403.5)
 - D. A person in possession of a card showing that he has completed a DOJ-certified course on the use of tear gas and tear gas weapons (Penal Code Section 12403.7)
- 3.24.13 Given a word picture depicting the possible unsafe storage of a firearm or a firearm which is accessible to children, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 12035)

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION

None included

ADDITIONAL REFERENCES

None