

# San Mateo County Sheriff's Office



## “UNLOADED OPEN CARRY”

### ISSUE

Several questions and concerns have risen due to recent incidents where citizens have called the police to report people openly carrying revolvers or semi-automatic hand guns on their persons. This potentially dangerous practice is ostensibly an “exercise of constitutional rights” and an apparent effort to “test” those rights with authorities. Our intent here is to provide you with an understanding of the laws that pertain to these situations.

### BACKGROUND

Penal Code Section 12025 makes it unlawful to carry a concealed firearm when he or she does any of the following: Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person. Firearms carried openly in belt holsters are not concealed within the meaning of this section.

Penal Code Section 12031 makes it unlawful to carry a loaded firearm on his or her person 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. A firearm shall be deemed to be loaded for the purposes 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.

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 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.

Penal Code Section 626.9 makes it unlawful to possess a firearm, loaded or unloaded, concealed or not concealed, within 1,000 feet of any public or private school, subject to exceptions when the firearm is being transported. The suspect must know, or reasonably should have known that they are within 1,000 feet of the school.

While individuals have the right to carry unloaded firearms that are in plain view and not concealed, it is within a law enforcement officer's right to inspect any weapon that is carried openly in public.

### CAUTION

Open carry advocates create a potentially very dangerous situation. When police are called to a “man with a gun” call they typically are responding to a situation about which they have few details other than that one or more people are present at a location and are armed. Officers may have no idea that these people are simply “exercising their rights.” Consequently, the law enforcement response is one of “hypervigilant urgency” in order to protect the public from an armed threat. Should the gun carrying person fail to comply with a law enforcement instruction or move in a way that could be construed as threatening, the police are forced to respond in kind for their own protection. It's well and good in hindsight to say the gun carrier was simply “exercising their rights” but the result could be deadly. Simply put, it is not recommended to openly carry firearms.

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