

Basic Course Workbook Series



Learning Domain 40

Weapons Violations

Version 7.2

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

**Basic Course Workbook Series
Student Materials
Learning Domain 40
Weapons Violations
Version 7.2**

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THE MISSION OF POST

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.
Executive Director

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Student Workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course Training Requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student Workbook Elements

The following elements are included in each workbook:

- Chapter contents, including a synopsis of key points,
- Supplementary material, and
- A glossary of terms used in this workbook.

HOW TO USE THE WORKBOOK

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning, for test preparation, and for remedial training.

Workbook Format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Introduction and How to Use the Workbook, which provides an overview of how the workbook fits into the POST Basic Course Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. When first referenced these terms will be bolded and underlined (e.g., <u>term</u>).

Chapter 1

Prohibited Weapons

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to the possession of prohibited weapons and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the crime elements required to arrest a person for:<ul style="list-style-type: none">Possession of a prohibited weaponPossession of an illegal knifeUnlawful possession of tear gas weapon or chemical agent	40.01.1 40.01.3 40.01.4
<ul style="list-style-type: none">Recognize the crime classification as a misdemeanor or felony	40.01.6

In This Chapter

This chapter focuses on crimes associated with prohibited and assault weapons. Refer to the following chart for specific topics.

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PROHIBITED WEAPONS

Introduction

Certain weapons have no legitimate purpose other than to cause serious bodily injury or death. The mere possession alone of such weapons, whether in public or private, is sufficient to constitute a crime.

Leadership

Firearms are a class of weapons that require special attention. They have the capacity to inflict multiple, severe or fatal wounds from great distances. Laws have been enacted regulating the place and manner in which firearms may be carried and who may carry them. Rules have been set in place regarding firearm registration. By knowing these laws and rules, law enforcement can work to reduce illegal possession of firearms and the devastating effect their use has on the community.

Penal Code Section

The crime of possession of a prohibited weapon is generally covered under *Penal Code Section 16590*.

Crime Elements

To arrest a person for the possession of a prohibited weapon, the necessary crime elements are:

- Any person who
- Manufactures or causes to be manufactured
- Imports into the state
- Sells, offers for sale, exposes for sale, keeps for sale
- Gives, lends, or possesses
- Any weapon that has been specified within this penal code section as prohibited

Classification

The crime of possession of a prohibited weapon is a felony.

Specified Prohibited Weapons

Penal Code Section 16590 lists a number of weapons that are specified as **prohibited weapons**.

Although the following pages do not identify all the weapons specified, they do identify those weapons most commonly encountered by peace officers.

Rifles and Shotguns

If a shotgun or rifle does not meet the minimum barrel and overall length requirements, it is considered a prohibited weapon. The following table identifies the requirements for rifles and shotguns based on *Penal Code Section 33210*.

Weapon	Definition/Description
<u>Short-barreled shotgun</u>	<ul style="list-style-type: none">• A <u>firearm</u> designed or redesigned to fire a fixed shotgun shell and has one of the following characteristics:<ul style="list-style-type: none">- A barrel length of less than 18 inches- An overall length of less than 26 inches- A modified or altered shotgun with one of the above characteristics- Any device which can be readily restored to meet one of the above descriptions- Any part(s) designed to convert a device into meeting one of the above descriptions• Any firearm that can be assembled to fit this description (<i>Penal Code Section 33215</i>)

Rifles and Shotguns (Continued)

Weapon	Definition/Description
<u>Short-barreled rifle</u>	<ul style="list-style-type: none"> • A firearm designed or redesigned to fire a fixed cartridge and has one of the following characteristics: <ul style="list-style-type: none"> - A barrel length of less than 16 inches - An overall length of less than 26 inches - A modified or altered rifle with one of the above characteristics - Any device which can be readily restored to fire a fixed cartridge which, when so restored • Any part, or any combination of parts, designed and intended to convert a device into a device defined in subdivision (a) to (c) inclusive, or any combination of parts may be readily assembled if those parts are in the possession or under the control of the same person • Any firearm that can be assembled to fit this description (<i>Penal Code Section 33215</i>)

NOTE: When measuring the overall length of a shotgun or rifle, the officer should ignore any removable or folding shoulder-stock or shoulder-rest, as long as the weapon is capable of being fired in the shortened configuration. The barrel length is measured from the closed breach face to the tip of the muzzle excluding any removable flash suppressors.

Additional Firearms

The following table identifies additional firearms that are considered prohibited weapons under *Penal Code Section 16590*.

Firearm	Definition/Description
<u>Unconventional pistol</u>	A firearm with both of the following characteristics: <ul style="list-style-type: none">• Does not have a rifled bore• A barrel length of less than 18 inches or an overall length of less than 26 inches (<i>Penal Code Section 31500</i>)
<u>Zip gun</u>	A non-commercially produced weapon (i.e., not imported, designed, or taxed as a firearm) capable of firing a projectile by the force of an explosion or other form of combustion (<i>PC 33600</i>) NOTE: Almost any homemade firearm can qualify as a zip gun.

Unrecognizable Firearms

Certain firearms that are not immediately recognizable as firearms are considered prohibited weapons under *Penal Code Section 16590*. A number of such weapons are identified below.

Firearm	Definition/Description
<u>Pen gun</u>	A firearm enclosed within what appears to be a writing pen (<i>Penal Code Section 20910</i>)
<u>Belt buckle gun</u>	A firearm mounted on, or that appears to be an integral part of, a belt buckle that can be detached from the buckle and used as a weapon (<i>Penal Code Section 31500</i>)
<u>Cane gun</u>	A firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device designed to be, or capable of being, used as a walking aid and that can be fired while mounted or enclosed (<i>Penal Code Section 24410</i>)
<u>Wallet gun</u>	A firearm mounted or enclosed in a case resembling a wallet designed to be, or capable of being, carried in a pocket or purse, and that can be fired while mounted or enclosed (<i>Penal Code Section 24710</i>)

Undetectable Firearms

Prohibited firearms also include **undetectable firearms**. This means any weapon that meets either of the following requirements:

- After removal of grips, stocks, and magazines, and the weapon is not detectable by the security exemplar by walking through metal detector
- Any major component of the weapon when subjected to the inspection by the type of x-ray machines commonly used at airports, does not generate an image that does not accurately depict the shape of the component (*penal code section 24610*)

Blade Weapons

The following table identifies a number of weapons other than firearms that incorporate blades, sharpened edges or points, and are specified as prohibited weapons under *Penal Code Section 16590*.

Blade Weapon	Definition/Description
<u>Ballistic knife</u>	A device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. This does not include any device that propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun (<i>Penal Code Section 21110</i>)
<u>Shuriken</u>	An instrument without handles, that is used as a throwing weapon. A shuriken consists of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a star, polygon, trefoil, cross, diamond, or other geometric form (<i>Penal Code Section 22410</i>)

Blade Weapons (Continued)

Blade Weapon	Definition/Description
<u>Shobi-zue</u>	A staff, crutch, stick, rod, or pole, concealing within it a knife or blade which may be exposed by a flip of the wrist or by a mechanical action (<i>Penal Code Section 20710</i>)
<u>Undetectable knife</u>	Undetectable knife or other instrument, with or without a handguard, that satisfies all of the following requirements: <ul data-bbox="594 667 1417 961" style="list-style-type: none">• It is capable of ready use as a stabbing weapon that may inflict great bodily injury or death• It is commercially manufactured to be used as a weapon• It is not detectable by a metal detector or magnetometer, either handheld or otherwise, which is set at standard calibration (<i>Penal Code Section 20810</i>)

Dirks and daggers

A **dirk** or **dagger** is:

- A knife or other instrument
- With or without a hand guard
- Capable of ready use as a stabbing weapon
- That may inflict **great bodily injury** or death

Penal Code Section 21310 states that:

- Any person who
- Carries concealed upon his or her person
- Any dirk or dagger
- Is guilty of a misdemeanor, or a felony pursuant to subdivision (h) of *Penal Code Section 1170*

Concealment of a Dirk or Dagger

The mere possession of a dirk or dagger alone is not a crime. It must also be shown that the weapon was carried concealed on the individual's person.

A dirk or dagger is not considered to be concealed if it:

- Is carried in a sheath which is worn openly suspended from the waist of the wearer
- Is folded or closed and is not capable of "ready use"
- Consists of a cylindrical device which would have to be unscrewed, turned around, and then screwed back on before it could be used as a knife

Unrecognizable Blade Weapons

Certain blade weapons that are not immediately recognizable as weapons are identified as prohibited weapons under *Penal Code Section 16590*.

Blade Weapon	Definition/Description
<u>Belt buckle knife</u>	A knife which is an integral part of a belt buckle and consists of a blade with a length of at least 2½ inches (<i>Penal Code Section 20410</i>).
<u>Lipstick case knife</u>	A knife enclosed within, and made part of, a lipstick case (<i>Penal Code Section 20610</i>).
<u>Cane sword</u>	A cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device with a concealed blade that may be used as a sword or stiletto (<i>Penal Code Section 20510</i>).
<u>Air gauge knife</u>	<p>A device that appears to be an air gauge with a concealed pointed, metallic shaft used as a stabbing instrument.</p> <p>The knife is:</p> <ul style="list-style-type: none"> - Exposed by mechanical action, or gravity - Locks into place when extended (<i>Penal Code Section 20310</i>)
<u>Writing pen knife</u>	<p>A device that appears to be a writing pen, but has concealed a pointed, metallic shaft used as a stabbing instrument.</p> <p>The knife is exposed by:</p> <ul style="list-style-type: none"> - Removal of the device's cap or cover - Mechanical action - Gravity - Locks into place when extended (<i>Penal Code Section 20910</i>)

Striking Weapons

Several prohibited devices are used as clubs or striking weapons. The following table identifies some of these devices.

Striking Weapon	Definition/Description
<u>Metal knuckles</u>	<p>Any device or instrument:</p> <ul style="list-style-type: none">- Made wholly or partially of metal- Which is held in or worn on the hand- For offensive or defensive purposes <p>Metal knuckles:</p> <ul style="list-style-type: none">- Protect the wearer's hand while striking a blow- Increase the force of impact from the blow or injury to the individual receiving the blow <p>The metal contained in the device may:</p> <ul style="list-style-type: none">- Help support the hand or fist- Provide a shield to protect the user's hand or fist- Consist of projections or studs which would contact the individual receiving the blow (<i>Penal Code Section 21810</i>)

Striking Weapons (Continued)

Striking Weapon	Definition/Description
<u>Composite knuckles</u>	Any device or instrument: <ul style="list-style-type: none"> - Made wholly or partially of composite materials, other than a medically prescribed prosthetic - That is not metal knuckles are worn for purposes of offense or defense in or on the hand - That either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow <i>(Penal Code Section 21710)</i>
<u>Leaded cane</u>	A staff, crutch, stick, rod, pole, or similar device unnaturally weighted with lead <i>(Penal Code Section 22210)</i>
<u>Blackjack</u>	A hard device usually consisting of leather-enclosed metal, with a strap or spring shaft for a handle <i>(Penal Code Section 22210)</i>
<u>Sandbag or Sandclub</u>	A bag or device filled with sand <i>(Penal Code Section 22210)</i>
<u>Sap</u>	A device used to bludgeon <i>(Penal Code Section 22210)</i>
<u>Slungshot</u>	A device consisting of a small mass of metal or stone fixed on a metal handle or strap <i>(Penal Code Section 22210)</i>

Authorized Possession of a Striking Weapon

Peace officers and other law enforcement officers may lawfully carry wooden clubs, batons, or striking weapons that are authorized for the enforcement of law or ordinance in any city or county. (*Penal Code Section 17515*)

Private security guards may carry wooden clubs or batons only if they have completed specified training for the use of such weapons, are regularly employed and compensated as private security guards, and are actually engaged in protecting property or life within the scope of their employment. (*Penal Code Section 22295(b)*)

Private security officers who are authorized to carry a baton must wear a shoulder patch which identifies them as security officers. (*Business and Professions Code Section 7539.3*)

Animal control officers, as described in *Penal Code Section 830.9*, may carry any wooden club or baton after successful completion of a use of baton or club course.

Other Prohibited Devices

The following table identifies a number of other devices that are prohibited under *Penal Code Section 16590*.

Prohibited Device	Definition/Description
<u>Camouflaging firearm container</u>	A device: <ul style="list-style-type: none"> - Not readily recognizable as containing a firearm - Designed and intended to enclose a firearm - Allows the firing of the firearm by external controls while the firearm is in the container (<i>Penal Code Section 24310</i>)
<u>Multiburst trigger activator</u>	A device designed or redesigned to be attached to a semiautomatic firearm that allows the firearm to discharge two or more shots in a burst, or a manual or power-driven, trigger-activating device constructed and designed so that when attached to a semi-automatic firearm it increases the rate of fire of that firearm. (<i>Penal Code Section 32900</i>)
<u>Large capacity magazine</u>	Any ammunition-feeding device which has the capacity to accept more than ten rounds: <ul style="list-style-type: none"> - May not be manufactured, imported, kept or exposed for sale, given or loaned except by law enforcement agencies, California peace officers, or licensed dealers - Importation not continuously possessed by the same owner prior to January 1, 2000. (<i>Penal Code Section 32310</i>)

NOTE: The loan of the larger-capacity magazine occurs at a place or location where the possession of the large capacity magazine is not otherwise prohibited and the person who lends the larger capacity magazine remains in the accessible vicinity of the person to whom the large capacity magazine is loaned. (*Penal Code Section 32415*)

Other Prohibited Devices (Continued)

NOTE: Any person possesses an assault weapon defined under *Penal Code Section 30510* unless:

- Weapon obtained prior to June 1, 1989
- Lawfully registered
- 50 cal. rifle of any type that can fire a .50 BMG cartridge (*Penal Code Section 30530(a)*)
 - Exception lawfully possessed before January, 1 2005
 - Penal Code Section 30905 mandates registration by April 30, 2006
 - Penal Code Section 30900 defines registration

Specialty Ammunition

Certain types of specialty ammunition are also prohibited by law. These include:

- Ammunition containing or consisting of a flechette dart (a dart capable of being fired from a firearm) which:
 - Measures approximately 1 inch in length
 - With tailfins which take up 5/16 of an inch of the body
- Bullets which contain or carry explosive agents (*Penal Code Section 30210*)

Concealed Explosives

Penal Code Section 19100 provides that:

- Any person
- Who carries concealed upon his or her person
- Any explosive substance (other than fixed ammunition)
- Is guilty of a felony

The mere possession of an explosive substance alone is not a crime under *Penal Code Section 19100*. It must also be shown that the explosive substance was carried concealed on the individual's person.

Examples

A hunter sawed down the barrel of a hunting rifle to a length of 15 inches. Even though the overall length of the rifle was still over 26 inches, a rifle with a barrel length that is less than 16 inches qualifies as a prohibited weapon. The hunter possesses a prohibited weapon.

A jogger fashioned a leather strap with a stone attached to its end that he could carry with him in his pocket. He intended to use it as a weapon against any dog that tried to attack him during his morning run. The device that the man manufactured meets the definition of a slungshot. Although the man intended to use the device in self-defense, he has manufactured and now possesses a prohibited weapon.

A woman was concerned for the safety of her college age daughter who rode the subway to and from college classes. The woman gave her daughter a lipstick case that had a knife enclosed in it. By giving a prohibited weapon to another person, the woman committed the crime of possession of a prohibited weapon. If the daughter then carried the lipstick case knife in her backpack as her mother suggested, the daughter would possess a prohibited weapon.

Introduction

It is a crime to furnish or possess a **switchblade knife** on one's person or within the passenger compartment of a vehicle.

Penal Code Section

The crime of possession of a switchblade knife is covered under *Penal Code Section 21510*.

Crime Elements

To arrest a person for the possession of a switchblade knife, the necessary crime elements are:

- Any person who
- Possesses
 - On one's person
 - In the passenger's or driver's area of any motor vehicle in any public place or place open to the public
- Sells, offers for sale, exposes for sale
- Loans, transfers, or gives away
- A switchblade knife
- With a blade two or more inches in length

The passenger's or driver's area of a motor vehicle includes an area designed to carry the driver and passengers and any interior compartment spaces (i.e., glove compartment, door compartments, etc.).

Classification

Possession of a switchblade knife is a misdemeanor.

Definition/Description of a Switchblade Knife

A switchblade knife is a knife:

- Having the appearance of a pocketknife, including:
 - Spring-blade knives
 - Snap-blade knives
 - Gravity knives
 - Any other similar type knife
- A blade two or more inches long which can be released automatically by:
 - A flick of a button
 - Pressure on the handle
 - Flip of the wrist (butterfly knives) or other mechanical device
 - The weight of the blade
 - Any other mechanism

This definition does not include knives designed to be opened with one hand utilizing thumb pressure applied solely to the blade or a thumb stud attached to the blade.

Private Property

The possession of a switchblade knife is not a crime if the knife is located:

- In a private residence (other than carried on a person)
- In a vehicle that is not in a public place or a place that is open to the public (e.g., parked in a garage that is attached to a private residence)

Examples

A man kept a switchblade knife locked in the glove compartment of his truck. While working, he drove the truck to numerous construction sites. At night, the truck was parked on the street in front of the house. The man believed since he was not carrying the weapon on his person, it was all right to keep it locked in his truck. Possession of the weapon under such conditions was not legal because when the truck was parked on the street or during the day while at work, the vehicle is still accessible to the general public.

TEAR GAS WEAPONS

Introduction

Only specified individuals can lawfully possess a tear gas weapon.

Penal Code Section

The crime of possession of **tear gas** or a **tear gas weapon** is covered under *Penal Code Section 22810*.

Crime Elements

To arrest a person for the crime of possession of tear gas or a tear gas weapon, the necessary crime elements are:

- Any person, firm, or corporation who knowingly:
 - Possesses
 - Sells, offers for sale, exposes for sale
 - Transports
- Any prohibited tear gas or tear gas weapons
- Except when otherwise permitted

Classification

The crime of possession of tear gas or a tear gas weapon is a misdemeanor.

Related Terms

In order to understand the crime of possession of tear gas or a tear gas weapon, peace officers need to become familiar with the following terms.

Tear gas means all liquid, gaseous, or solid substances intended to produce temporary physical discomfort or permanent injury by being vaporized or otherwise dispersed in the air. (*Penal Code Section 17240*)

A tear gas weapon is any shell, cartridge, or bomb capable of being discharged or exploded which allows the release of tear gas. It also includes any revolver, pistol, fountain pen gun, or other device intended for the projection or release of tear gas. (*Penal Code Section 17250*)

Permitted Use

Penal Code Section 22810 states that it is lawful to purchase, possess, or use tear gas in the form of an aerosol spray with a net weight of 2.5 ounces or less, solely for self-defense.

Exceptions to the lawful possession of a tear gas weapon include any person who:

- Has been convicted of a felony, or a crime involving assault
- Is addicted to narcotics
- Is attempting to sell or furnish the tear gas weapon to a minor
- Is under 16 years old
- Is 16 or 17 years old without written parental consent and not accompanied by a parent or guardian (*Penal Code Section 22815*)

Unlawful Use for Purposes Other Than Self-Defense

Any person who uses tear gas for any purpose other than self-defense has committed a felony. (*Penal Code Section 22810(g)(1)*)

Possession by Professionals

A number of professions may lawfully possess tear gas or a tear gas weapon. The following table identifies such professions.

Possession of Tear gas by:	Is considered lawful when:	Penal Code Section
Peace Officers	<ul style="list-style-type: none"> The weapon is certified as acceptable The officers have satisfactorily completed a course of instruction approved by POST in the use of tear gas 	22820
Military and Naval Personnel	<ul style="list-style-type: none"> Purchased, possessed, transported, or used in the discharge of their duties 	22830
Federal Law Enforcement Officers		
Private Investigators	<ul style="list-style-type: none"> The tear gas is used solely for defensive purposes In the course of the activity for which their licenses were issued If the individuals have satisfactorily completed a course of instruction approved by the Department of Consumer Affairs on the use of tear gas 	22835
Private Patrol Operators		

Related Crime

The possession of a tear gas weapon with altered or obliterated serial numbers is presumptive evidence that the possessor altered or obliterated those serial numbers. Any person who changes, alters, removes, or obliterates the manufacturer's name, serial number, or any other mark of identification on any tear gas weapon has committed a felony. (*Penal Code Section 22910(a)*)

Examples

Officers stopped and pat searched a man who was loitering around the entrance of a shopping mall. The lawful search for weapons revealed that the man was carrying a two-ounce aerosol can of tear gas. Although the man claimed that he kept it only for his own self-protection, the man had a prior felony conviction. It is unlawful for a person who has been convicted of a felony to possess tear gas.

On a traffic stop, officers saw an eight-ounce canister of tear gas in the cab of a man's pick-up truck. The man told the officers that he was employed by a building cleaning and maintenance business and often worked at night. He intended to keep the can in his toolbox for self-defense and thought it would be safer than a firearm. The man committed the crime of unlawful possession of tear gas because the container was larger than the 2.5-ounce limit.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to the possession of prohibited weapons and to correctly categorize these crimes as misdemeanors or felonies.

Prohibited Weapons [40.01.1, 40.01.6]

Any person who manufactures or causes to be manufactured, imports into the state, sells, offers for sale, exposes for sale, keeps for sale, or gives, lends, or possesses any weapon that has been specified within this Penal Code section as being prohibited is guilty of a felony.

Possession of an Illegal Knife [40.01.3, 40.01.6]

Any person who possesses, on one's person, or in the passenger's or driver's area of any motor vehicle in any public place or place open to the public, sells, offers for sale, exposes for sale, loans, transfers, or gives away, a switch blade knife with a blade two or more inches in length is guilty of a misdemeanor.

Unlawful Possession of Tear Gas/Tear Gas Weapon [40.01.4, 40.01.6]

Any person, firm, or corporation who knowingly possesses, or sells, offers for sale, exposes for sale, or transports any prohibited tear gas or tear gas weapons, except when otherwise permitted is guilty of a misdemeanor.

Chapter 2

Possession of Firearms

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to the possession of firearms and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the crime elements required to arrest for:<ul style="list-style-type: none">Carrying a firearm in a public place or within a vehiclePossession of a deadly weapon with intent to assault another personPossession of a loaded firearm with intent to commit a felonyAlteration or removal of identifying marks from a firearm	40.02.1 40.02.2 40.02.3 40.02.4
<ul style="list-style-type: none">Recognize the crime classification as a misdemeanor or felony	40.02.6

In This Chapter

This chapter focuses on crimes associated with the possession of firearms. Refer to the following chart for specific topics.

Topic	See Page
Carrying a Loaded Firearm	2-3
Possession of a Deadly Weapon with Intent	2-8
Altering Identification Marks on a Firearm	2-10
Chapter Synopsis	2-13
Workbook Learning Activities	2-14

CARRYING A LOADED FIREARM

Introduction

It may be *unlawful* to carry a loaded firearm on one's person in a public place or in a vehicle.

Ethics

Peace officers have a responsibility to enforce all laws and also to follow laws regarding weapons while off-duty. Peace officers are not above the law and should not be in possession of illegal weapons. Peace officers must also comply with agency policy.

Penal Code Section

The crime of carrying a loaded firearm in a public place or in a vehicle is covered under *Penal Code Section 25850(a)*.

Crime Elements

To arrest a person for carrying a loaded firearm, the necessary crime elements are:

- Any person who
- Carries a loaded firearm
- On one's person or
- In a vehicle in:
 - A public place
 - On any public street in an incorporated city
 - Within a prohibited area of an unincorporated area

Classification

The crime of carrying a loaded firearm is a misdemeanor. (*Penal Code Section 25850(c)(7)*)

The crime of carrying a loaded firearm may also be classified as a felony, if the person carrying the firearm:

- Has a prior felony conviction *Penal Code Section 25850(c)(1)*, or of any crime made punishable by a provision listed in *Penal Code Section 16580*
- Knew or reasonably should have known the firearm was stolen *Penal Code Section 25850(c)(2)*
- Is an active participant in a criminal street gang *Penal Code Section 25850(c)(3)*
- Is not in lawful possession of the firearm *Penal Code Section 25850(c)(4)*
- Has been convicted of a crime against a person or property, or of a narcotics violation *Penal Code Section 25850(c)(5)*
- Is not listed with the Department of Justice as the registered owner of the pistol, revolver, or firearm capable of being concealed upon the person *Penal Code Section 25850(c)(6)*

Related Terms

To understand the crime of carrying a loaded firearm, peace officers need to become familiar with the following terms.

Loaded firearm means any firearm that has an unexpended cartridge or shell in or attached in any manner to the firearm. (*Penal Code Section 16840(b)(1)*)

Public place means any property that is open to the general public.

Prohibited area means any area where local authorities have deemed it unlawful to discharge or carry a firearm.

Examining a Firearm

When an officer encounters a firearm on a person or in a vehicle in a public place, the officer is authorized to examine the weapon to see if it is loaded. (*Penal Code Section 25850(b)*)

Refusal to allow a peace officer to inspect a firearm constitutes probable cause to arrest the person for violation of the crime of carrying a loaded firearm.

Making an Arrest

A peace officer may make an arrest without a warrant when the person arrested has violated *Penal Code Section 25850(a)*, even if the crime was not committed in the officer's presence. (*Penal Code Section 25850(g)(1)*)

Whenever the officer has reasonable cause to believe that the person to be arrested has committed the crime of carrying a loaded weapon, an arrest can be made whether or not this section has, in fact, been violated. (*Penal Code Section 25850(g)(2)*)

A peace officer may arrest a person for a violation of *Penal Code Section 25850(c)(6)* if the peace officer has probable cause to believe that the person carrying a loaded firearm capable of being concealed upon the person is not listed with the Department of Justice as the registered owner. (*Penal Code Section 25850(h)*)

Immediate Self Defense

Penal Code Section 26045(a) allows that individuals who reasonably believe that the property or person of another or of themselves is in immediate grave danger may be exempt from the crime of carrying a loaded firearm, and the carrying of the weapon is necessary for the preservation of that person or property. The perceived danger must be immediate. "Immediate" means a brief interval before and after the local law enforcement agency has been notified of the danger and before the arrival of its assistance.

Hunting

Hunters may possess and carry a loaded firearm while engaged in legal hunting as long as the hunting is in a lawful area. Possession of a shotgun or rifle with an unexpended cartridge or shell in the chamber, in or around a vehicle on a public highway, is a misdemeanor. (*Fish and Game Code Section 2006*)

NOTE: The legislative intent of the section is the safety of hunters.

Additional Exemptions

The following table identifies a number of additional conditions where the carrying or possession of a loaded firearm may be considered lawful.

It may be lawful to possess or carry a loaded firearm when the person is:	Penal Code Section
A duly authorized peace officer	25900(b)
Making or attempting to make a lawful arrest	26050
Possessing the otherwise lawful firearm at a place of residence, temporary residence, or campsite	26055
An employee, agent, or employer within the place of a lawful business or any person in lawful possession of private property	26035
A uniformed security guard with the authority to carry a firearm while actually engaged in protecting and preserving the property of their employers, or on duty or enroute to or from their residences or their places of employment	26030(a)(10)

NOTE: Unless the camp site is in a prohibited area.

Examples

While making a stop for a traffic violation, an officer saw, in plain view, a handgun on the seat next to the driver. Upon further inspection, the officer discovered that the handgun was loaded. The driver committed the crime of carrying a loaded firearm.

While on patrol, two officers noticed a man standing on the sidewalk in front of his home and showing a rifle to a group of people. When one of the officers asked to inspect the firearm, the man refused. Though the crime of carrying a loaded firearm may not have been committed, the man was lawfully arrested.

POSSESSION OF A DEADLY WEAPON WITH INTENT

Introduction

If a person intends to assault another person, and possesses a deadly weapon, he has committed the crime of possession of a **deadly weapon** with intent to assault another person.

Penal Code Section

Possession of deadly weapon with intent to commit assault. (*Penal Code Section 17500*)

Crime Elements

To arrest a person for possession of a deadly weapon with the intent to assault another person, the necessary crime elements are:

- Every person
- Having upon him or her person
- Any deadly weapon
- With intent to assault another

NOTE: A deadly weapon is any weapon that when used offensively or defensively is capable of producing and is likely to produce, death or great bodily injury.

Classification

The crime of possession of a deadly weapon with the intent to assault another person is a misdemeanor.

Possession Of Loaded Firearm with Intent to Commit a Felony

Penal Code Section 25800(a) also makes it a felony to possess a loaded firearm with the intent to commit a felony. The elements for this crime include:

- Every person who
- Carries a loaded firearm
- With the intent to commit a felony

NOTE: A firearm shall be deemed to be “loaded” (*Penal Code Section 25800*) whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person *Penal Code 16840(a)*.

Classification

Armed criminal action is punishable in a county jail not exceeding one year or in the state prison.

Examples

A man reported that his former girlfriend had called and told him she was on her way with a knife and was going to “get even with him for dumping her.” Officers were able to intercept the woman before she reached the man’s apartment and found that the woman possessed a sharp kitchen knife. When questioned, the angry woman admitted that she intended to use the knife on her former boyfriend. She has committed the crime of possession of a deadly weapon with intent to assault another person.

Officers stopped a speeding vehicle and found the driver agitated, not just from being stopped, but also because he had just found out that his ex-wife was suing him for additional spousal support. When questioned about the ax in the vehicle’s rear seat, the man said he was going to use it to “whack her a good one so she would listen up and drop the suit.” The man was guilty of possessing a deadly weapon with the intent to assault another person.

ALTERING IDENTIFICATION MARKS ON A FIREARM

Introduction

The firearm **identifying mark** includes any manufacturer mark or number assigned by the Department of Justice which has been engraved or affixed to the firearm. In order to lawfully alter the identifying mark on a firearm, a person must first obtain written permission from the Department of Justice.

Penal Code Section

The crime of the alteration or removal of identifying marks from a firearm is covered under *Penal Code Section 23900*.

Crime Elements

To arrest a person for the alteration or removal of identifying marks from a firearm, the necessary crime elements are:

- Any person who
- Changes, alters, removes or obliterates the
 - Name of the maker
 - Model
 - Manufacturer's number
 - Other mark of identification including any distinguishing number or mark assigned by the Department of Justice
- On any firearm
- Without having secured written permission from the Department of Justice to make such a change, alteration, or removal

Classification

The crime of the alteration or removal of identifying marks from a firearm is a felony.

Knowledge of the Alteration

Penal Code Section 23920 states that it is a misdemeanor for any person with knowledge of the alteration to the identification marks of a firearm to:

- Buy
- Receive
- Dispose of
- Sell or offer for sale
- Possess that weapon

Exemptions

Exceptions to this law include individuals while on duty and acting within the scope and course of their employment, such as:

- Members of the military *Penal Code Section 23925(a)*
- Peace Officers *Penal Code Section 23925(b)*
- Employees of a forensic laboratory *Penal Code Section 23925(c)*

Any person who is lawfully transporting the firearm to deliver it to a law enforcement agency for that agency's disposition of the weapon is also exempt.

Examples

During a traffic stop, a peace officer noticed a pistol on the passenger seat of the car. While inspecting the weapon to see if it was loaded, the peace officer saw that the identification numbers had been removed and a name had been stamped in that location on the firearm. The man explained that the handgun had belonged to his grandfather who had given it to him as a special keepsake. The man went on to explain that he had removed the numbers and replaced them with his grandfather's name as a tribute. The man committed the crime of altering identification marks on a firearm.

While conducting a lawful pat search, a peace officer found a handgun in the person's coat pocket. On inspection, the peace officer noticed that the handgun was unloaded and that the suspect had a license to carry the weapon. The peace officer also noticed that all identification marks had been obliterated by file marks. The suspect stated he purchased the firearm and was unaware of the altered identification marks. The peace officer could not demonstrate the suspect had knowledge therefore was unable to make an arrest.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to the possession of firearms and to correctly categorize these crimes as misdemeanors or felonies.

Carrying a Loaded Firearm in a Public Place or Within a Vehicle [40.02.1, 40.02.6]

Any person who carries a loaded firearm on one's person, in a vehicle, in a public place, on any public street in an incorporated city, or within a prohibited area of an unincorporated area can be guilty of a misdemeanor or a felony (if previous felony conviction, stolen weapon, use by criminal street gang member). If a previous conviction for *Penal Code Section 25850(a)*, felony conviction, or a prior conviction.

Possession of a Deadly Weapon with Intent to Assault Another Person [40.02.2, 40.02.6]

Any person having upon one's person, any deadly weapon with intent to assault another is guilty of a misdemeanor.

Possession of a Loaded Firearm with Intent to Commit a Felony [40.02.3, 40.02.6]

Any person having upon one's person any loaded firearm with intent to commit a felony is guilty of a misdemeanor or felony.

Altering Identifying Marks on a Firearm [40.02.4, 40.02.6]

Any person who changes, alters, removes or obliterates the name of the maker, model or manufacturer's number, or other mark of identification including any distinguishing number or mark assigned by the Department of Justice, on any firearm without having secured written permission from the Department of Justice to make such a change, alteration, or removal is guilty of a felony.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text you should be able to prepare a response.

Activity Questions

1. A man with a current hunting license, is taking his 10-year-old son on the boy's first hunting trip. The man is carrying two weapons on the back seat of their car. One is a standard rifle, approximately 30 inches in overall length. The other rifle is 24 inches in overall length so it can be fired more easily by a smaller person. On their way, the man is stopped for a traffic violation. The officer notices the guns and when he inspects them, he discovers an unspent round in the larger rifle. What crime(s) have been committed, if any?

Activity Questions (Continued)

2. A parent discovered that her 16-year-old son was in possession of a semi-automatic pistol with the serial number scratched off. She took the weapon away from her son, but decided to keep the loaded gun hidden in her bedroom for self-protection. The weapon was later discovered by the boy's father who suspected his son was involved in gang activity. The man decided to take the gun to the local precinct station, but while enroute, he ran a stop sign and was stopped for the traffic violation. The officer discovered the loaded handgun sitting on the passenger's seat within the vehicle. What crime(s) have been committed and by whom?

Activity Questions (Continued)

3. What is required for the crime of possession of a deadly weapon with intent to assault? How does this affect the officer's investigation and collection of evidence to support an arrest?

Chapter 3

Concealment of Firearms

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to unlawful concealment of firearms and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the statutory definition of a concealed firearm	40.03.1
<ul style="list-style-type: none">Recognize the exceptions to the license requirement for possession of a concealable firearm	40.03.2
<ul style="list-style-type: none">Recognize the crime elements required to arrest for possession of a concealable firearm without a license	40.03.3
<ul style="list-style-type: none">Recognize the crime classification for possession of a concealable firearm without a license	40.03.4

In This Chapter

This chapter focuses on crimes associated with concealment of firearms. Refer to the following chart for specific topics.

Topic	See Page
Lawful Possession of a Concealable Firearm	3-3
Unlawful Possession of a Concealable Firearm	3-10
Chapter Synopsis	3-14
Workbook Learning Activities	3-15

LAWFUL POSSESSION OF A CONCEALABLE FIREARM

Introduction

Concealable firearms may be lawfully possessed under certain specified conditions.

Community Policing

Over the years, for the protection and safety of the community, government has enacted laws regulating the manufacture, sale, possession, and use of weapons. Law enforcement, in partnership with other agencies, is required to enforce those laws.

Statutory Definition

Penal Code Section 16530(a) defines a pistol, revolver, and firearm 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 other form of combustion
- That has a barrel less than 16 inches in length

Whether or not a firearm is actually physically concealed has little to do with whether it meets the statutory definition of a concealable firearm. Based on this definition, handguns are concealable. Shotguns and rifles, with barrel lengths greater than 16 inches, are not concealable.

Any device which has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length may also be considered a concealable firearm.

Concealable firearms also include flare guns, rocket launchers, and some tasers for the purpose of this section.

Examples

A revolver lying on a table is considered a concealable firearm even though it is in plain view.

An automatic pistol would be a concealable firearm even when it is sitting on the passenger side of the front seat of a vehicle.

CCW License

Penal Code Section 26150(a) authorizes the chief law enforcement officer of the local law enforcement agency (i.e., county sheriff, chief of police) to issue a **CCW (Carry Concealed Weapon) license**.

Individuals applying for the license must show that:

- They are residents of the county or a city within the county
- They are of good moral character
- Good cause exists for them to be issued a license
- They have completed a specified training course

NOTE: A CCW license issued in California is valid in all California jurisdictions.

Persons Exempt from CCW Requirements

Penal Code Section 25605 identifies specific conditions under which a person is exempt from the license requirement for the possession of a concealable firearm.

Who	What	Specified Conditions
<p>Any citizen or legal resident of the United States who:</p> <ul style="list-style-type: none"> • Is over the age of 18 years • Resides or is temporarily within the state of California • Is not prohibited by law (e.g., convicted felon, mental patient, etc.) 	<p>May, without a permit or license:</p> <ul style="list-style-type: none"> • Purchase • Own • Possess • Keep • Carry, either openly or concealed • Any firearm that is capable of being concealed upon that person 	<p>Within that person's:</p> <ul style="list-style-type: none"> • Place of residence • Place of business • On private property that is owned or lawfully possessed by that person

NOTE: To qualify for the exceptions noted in this section, all firearms must be unloaded and transported under the conditions identified under *Penal Code Section 25505*.

Possession for Lawful Activities

The Penal Code identifies numerous activities that involve the lawful possession of a firearm that is capable of being concealed. Individuals involved in such activities are not required to have a CCW license.

Activity	Conditions
Recreational Events	Transporting a firearm directly to, directly from, or while participating in: <ul style="list-style-type: none"> - Firearm club meetings (<i>Penal Code Section 25515</i>) - Firearm safety or hunter's safety classes (<i>Penal Code Section 25520</i>) - Sporting events involving firearms (<i>Penal Code Section 25520</i>) - Target range activities (<i>Penal Code Section 25540</i>) - Lawful camping activities (<i>Penal Code Section 25550</i>) - Gun shows, swap meets, or similar events to which the public is invited, for the purpose of displaying that firearm (<i>Penal Code Section 25535</i>)
Media Productions	Transporting a firearm to, from, or while participating in: <ul style="list-style-type: none"> - Motion picture, television, or video productions, or entertainment events (<i>Penal Code Section 25510</i>)
Other	Transporting a firearm to and from: <ul style="list-style-type: none"> - The possessor's home and place of business (<i>Penal Code Section 25525(a)</i>) - A lawful weapon repair shop (<i>Penal Code Section 25530</i>) - A location where a firearm was purchased or received to the possessor's residence or place of business (<i>Penal Code Section 25525(b)</i>) - A law enforcement agency to have a firearm registered (<i>Penal Code Section 25545</i>)

Transporting

The following table identifies the conditions for lawfully transporting a legally possessed concealable firearm as specified in *Penal Code Section 25610*.

Who	What	Specified Conditions
<p>Any citizen or legal resident of the United States who:</p> <ul style="list-style-type: none"> - Is over the age of 18 years - Resides or is temporarily within the state of California - Is not prohibited by law (e.g., convicted felon, mental patient, etc.) 	<p>May, without a permit or license:</p> <ul style="list-style-type: none"> - Transport - Carry - Any concealable firearm concealed 	<p>Provided that the firearm is carried:</p> <ul style="list-style-type: none"> - Locked in the motor vehicle's trunk - In a locked container other than the glove compartment - Is being carried directly to or from the vehicle (in a locked container) for a lawful purpose

Possession by Specified Individuals

The Penal Code identifies certain specified individuals authorized to possess a concealable firearm without a CCW license.

Individuals	Conditions	Penal Code Section
Peace Officers	<ul style="list-style-type: none"> • Full-time • From within California • From other states 	25450(a)
Federal Government Agents	<ul style="list-style-type: none"> • Within the scope of their employment • Assisting peace officers 	25450(e)

Possession by Specified Individuals (Continued)

Individuals	Conditions	Penal Code Section
Honorably Retired Peace Officers	<ul style="list-style-type: none">• Qualified for and accepted a service or disability retirement• Was authorized to carry and did carry firearms before retirement	25650
Military Personnel	<ul style="list-style-type: none">• While on duty	25620
Guards or Messengers of Financial Institutions	<ul style="list-style-type: none">• While on duty• When transporting money or other valuables within the state	25630
Authorized Military or Civil Organizations	<ul style="list-style-type: none">• While parading• Going to or from places of meetings	25625
Sportsmen	<ul style="list-style-type: none">• With proper hunting or fishing licenses• While engaged in hunting or fishing• While going to or coming from hunting or fishing activities	25640
Members of Shooting Clubs or Organizations	<ul style="list-style-type: none">• Public or private• For the purpose of shooting at targets at established target ranges• While transporting firearms to and from events	25635

Examples

While on duty, a uniformed bank guard carried a handgun on his person and kept another one concealed within the driver's area of his armored truck. He lawfully possesses both concealable firearms as a function of his duties.

A peace officer noticed that a man was carrying a handgun in a holster underneath his sports jacket. Upon questioning, the man produced identification showing that he was an honorably retired sheriff's deputy with an endorsement to carry a concealed firearm. The man's possession of the concealed firearm was lawful.

A graduate student from another state was staying with her cousin who lived near campus for a semester. She kept a pistol in the apartment in the nightstand near her bed. Though she was not from California, she was temporarily residing here. Since the firearm was kept at her residence, no license was required to possess or conceal the handgun.

UNLAWFUL POSSESSION OF A CONCEALABLE FIREARM

Introduction

A CCW license is required to carry any concealable firearm under any conditions other than those specified under *Penal Code Section 25525*.

Penal Code Section

The crime of unlawful possession of a concealable firearm without a license is covered under *Penal Code Section 25400*.

Crime Elements

To arrest a person for unlawful possession of a concealable firearm without a license, the necessary crime elements are:

- Any person who
- Carries concealed
- A firearm that is capable of being concealed (loaded or unloaded)
- Upon one's person
- Within any vehicle under that person's control or direction
- Without a license or permit

A key element of this crime is that the firearm is carried concealed. A firearm in plain view where there is no intent to conceal it would not be in violation of (*Penal Code Section 25400*).

A firearm carried openly in a belt holster is not considered to be concealed. (*Penal Code Section 25400(b)*)

Classification

The crime of unlawful possession of a concealable firearm without a license is a misdemeanor unless certain specified conditions pertain to the person.

The crime is a felony if any of the following is true:

- The person previously has been convicted of any felony or of any crime made punishable by the provisions listed in *Penal Code Section 16850 (Penal Code Section 25400(c))*
- The firearm is stolen and the person knew or had reasonable cause to believe it was stolen (*Penal Code Section 25400(c)(2)*)
- The person is an active participant in a criminal street gang as defined in (*Penal Code Section 25400(c)(3)*)
- The person is not in lawful possession of the firearm (*Penal Code Section 25400(c)(4)*)
- The person has been convicted of a crime against a person or property or of a narcotic or dangerous drug violation (*Penal Code Section 25400(c)(5)*)
- The concealable firearm and the unexpended ammunition are either in the immediate possession of the person or readily accessible to that person or the firearm is loaded as defined in *Penal Code Section 25850* and the person is not listed with the Department of Justice as the registered owner of the firearm. (*Penal Code Section (25400(c)(6)(A)(B)*)

NOTE: A peace officer may arrest a person for a violation of *Penal Code Section 25400(c)(6)* if the peace officer has probable cause to believe that the person is not listed with the Department of Justice as the registered owner. (*Penal Code Section 25400(f)*)

Concealment in a Vehicle

A firearm is considered concealed in a vehicle if it is stored:

- In a glove compartment (locked or unlocked)
- Under the seat
- In a door or center console compartment
- Under another object (e.g., clothing), etc.

A concealable firearm may be transported within a vehicle as long as it is locked in the vehicle's trunk or in a locked container (other than the glove compartment). (*Penal Code Section 25610*)

Possession by a Minor

Penal Code Section 29610 and 29615 state that minors may not possess a concealable firearm unless they:

- Are accompanied by a parent, legal guardian, or responsible adult with written consent from a parent, and are actively engaged in or are in transit to or from a lawful shooting or hunting activity or
- Are at least 16 years of age with prior written consent of a parent or legal guardian and are actively engaged in or are in transit to or from a lawful shooting or hunting activity or
- Have written consent of a parent or legal guardian, and on lands owned or lawfully owned or lawfully possessed by the parent or legal guardian, and are actively engaged in or are in transit to or from a lawful shooting or hunting activity

Penal Code Section 29650 and 29655 state that minors may not possess live ammunition unless they:

- Are accompanied by a parent or legal guardian or
- Have written consent of a parent or legal guardian, or
- Are actively engaged in or are in transit to or from a lawful shooting or hunting activity

A violation of *Penal Code Sections 29610 and 29650* is a felony.

Examples

While on duty, a peace officer stopped a woman for drinking alcohol in public. When the woman opened her purse to find her identification, the peace officer saw a small pistol in her purse. During questioning, the woman told the peace officer that she kept the firearm for her own protection and since it was so small, she didn't think it was necessary to get a license for it. The woman committed the crime of unlawful possession of a concealable firearm without a license.

While writing a traffic violation, a peace officer noticed the driver reaching into the back seat and moving what appeared to be items of clothing. While verifying the driver's license, the peace officer determined that the driver had a number of outstanding warrants. The peace officer asked the driver to step out of the car and placed him under arrest. During the subsequent search of the vehicle, the arresting officer's partner found a semiautomatic pistol under a pile of clothing in the rear seat of the vehicle. The crime of unlawful possession of a concealable firearm has been committed.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to unlawful concealment of firearms and to correctly categorize these crimes as misdemeanors or felonies.

Concealable Firearm [40.03.1]

Penal Code Section 16530 defines a pistol, revolver and firearm capable of being concealed upon a person as any device designed to be used as a weapon, from which is expelled a projectile by force of an explosion or other form of combustion, and that has a barrel less than 16 inches in length.

Exemptions to CCW License Requirement [40.03.2]

Penal Code Section 25525 identifies specific conditions under which a person may be exempt from the license requirement for the possession of a concealable firearm.

Unlawful Possession of Concealable Firearm [40.03.3, 40.03.4]

To arrest a person for carrying a concealed firearm without a license, certain crime elements must be present.

Chapter 4

Possession of Firearms by Restricted Persons or Within Restricted Locations

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to possession of firearms by restricted persons or within restricted areas and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the crime elements required to arrest for possession of:<ul style="list-style-type: none">A firearm by a convicted felon, narcotic addict, or other restricted personsA firearm by a person convicted of a specified misdemeanorAn unauthorized weapon in a prohibited location	40.04.1 40.04.2 40.04.4
<ul style="list-style-type: none">Recognize the crime classification as a misdemeanor or felony	40.04.7

In This Chapter

This chapter focuses on crimes associated with the possession of firearms by restricted persons or within restricted areas. Refer to the following chart for specific topics.

Topic	See Page
Persons Convicted of Felonies	4-3
Persons Convicted of Specified Misdemeanors	4-6
Prohibited Location	4-10
Chapter Synopsis	4-18
Workbook Learning Activities	4-19

PERSONS CONVICTED OF FELONIES

Introduction

Persons who have been convicted of any felony, or who are addicted to a narcotic drug, are prohibited from possessing any type of firearm.

Penal Code Section

The crime of possession of a firearm by a convicted felon narcotic addict or other restricted person is covered under *Penal Code Section 29800(a)(1)*.

Crime Elements

To arrest a person for possession of a firearm by a convicted felon or a narcotic addict, the necessary crime elements include:

- Any person who has been convicted of a felony
- Or is addicted to any narcotic drug (*Penal Code Section 29800(a)(1)*)
- Or two convictions of (*Penal Code Section 29800(a)(2)*)
- Or offenses enumerated in *Penal Code Section 23515*

NOTE: The conviction may be based on the laws of the United States, the State of California, or any other state, government, or country.

Classification

The crime of possession of a firearm by a convicted felon or narcotics addict, or restricted persons, is a felony.

Juveniles Convicted of Violent Offenses

Any juvenile who has been convicted of a violent offense is prohibited from:

- Owning
- Possessing
- Having custody or control of any firearm
- Until the age of 30

Violent offenses include, but are not limited to:

- Murder
- Attempted murder
- Arson
- Armed robbery
- Rape
- Kidnapping
- Assault by means of force or with a firearm
- Carjacking

Classification

Juveniles who under such conditions are found to own, possess, or have custody or control of any firearm are guilty of a felony. (*Penal Code Section 29800(b)*)

Persons on Probation

Probation is a sentencing alternative for a person convicted of a criminal offense and is granted at a judge's discretion. Rather than incarceration in prison, the individual must serve a period of supervised freedom, under the authority of a probation officer.

As an expressed condition of probation, probationers may be prohibited or restricted from:

- Owning
- Possessing
- Having custody or control of any firearm

Individuals who have such restrictions to their probation and are found to own, possess, or have custody or control of any firearm are guilty of a felony. (*Penal Code Section 29815(a)*)

Penal Code Section 26045(a)-(c) may exempt individuals who reasonably believe that the property or person of another or of themselves is in immediate grave danger.

Persons Under Restraining Orders

Individuals who are subject to temporary restraining orders or injunctions issued for a specified circumstance are prohibited from purchasing or receiving a firearm. Specified circumstances include restraining orders:

- To protect a person from harassment (*Code of Civil Procedure 527.6*)
- Involving domestic violence (*Family Code Section 6211*)
- On behalf of an employee who has received threats or has been a target of violence (*Code of Civil Procedure 527.8*)

Individuals under such restrictions who are found to have purchased or received, or attempted to purchase or receive, a firearm may be guilty of a felony. (*Penal Code Section 29825*)

PERSONS CONVICTED OF SPECIFIED MISDEMEANORS

Introduction

Individuals who have committed certain specified misdemeanors are prohibited from possessing a firearm within 10 years of the conviction.

Penal Code Section

The crime of possession of a firearm by a person convicted of a specified misdemeanor is covered under *Penal Code Section 29805*.

Crime Elements

To arrest a person for possession of a firearm by a person convicted of a specified misdemeanor, the necessary crime elements are:

- Any person who
- Has been convicted of a specified misdemeanor and
- Within ten years of the conviction
- Owns or has possession, custody, or control of
- Any firearm

Classification

The crime of possession of a firearm by a person convicted of a specified misdemeanor is a felony.

Specified Misdemeanors

The following table presents a partial listing of the misdemeanors that are specified under *Penal Code Section 29805*.

Description	<i>Penal Code Section</i>
Assault	240
Battery	242
Assault with a deadly weapon, or by means likely to produce great bodily injury	245
Spousal abuse	243(e)(1)
Drawing, exhibiting, or unlawful use of a firearm	417
Stalking	646.9

Examples

Peace officers responded to a call of suspected domestic violence. When they arrived at the home, they disarmed a man of a semiautomatic handgun. Upon questioning, the man told the peace officers that he had a clean record, except for a conviction for battery seven years ago. After confirming the prior conviction, the peace officers arrested the man for possession of a firearm by a person convicted of a specified misdemeanor.

A peace officer made a traffic stop and contacted the driver. While the driver was reaching to get the vehicle registration, the peace officer saw what appeared to be a pistol in the glove compartment. After conducting a records check, the peace officer found out that the driver had been convicted of stalking her ex-husband one year ago. The peace officer arrested the driver for possession of a firearm by a person convicted of a specified misdemeanor. The driver was also guilty of carrying a firearm concealed within a vehicle.

Peace Officers Convicted of Domestic Violence Offenses

Penal Code Section 29855(a) specifies that individuals employed as peace officers who have been convicted of specified domestic violence offenses may petition the court only once for relief from this prohibition.

Specified domestic violence offenses are:

- Spousal abuse (*Penal Code Section 243(e)(1)*)
- Stalking (*Penal Code Section 646.9*)
- Violating a protective order (*Penal Code Section 273.6*)

Examples

The following examples illustrate the crime of possession of a firearm by a convicted felon, narcotic addict, or other restricted persons.

Peace officers went to a specified address with a search warrant. While inside the apartment, they found drug paraphernalia. The peace officers also found in plain view a loaded revolver. Upon questioning, the resident admitted that he was a heroin addict. Because he considers the neighborhood to be rough, he kept the firearm nearby for self-defense. They arrested him for possession of the firearm by a narcotic addict.

A peace officer stopped a vehicle for a broken taillight. While checking the driver's license and registration, the peace officer noted in plain view a rifle in the back seat of the vehicle. The driver explained that he was on the way to a firing range to participate in an activity sponsored by his shooting club. When the peace officer ran a check on the driver's license, she learned that the driver had been convicted of a felony 18 years ago in Maryland. The peace officer arrested the man for possession of a firearm by a convicted felon.

PROHIBITED LOCATION

Introduction

Unless otherwise authorized, it is unlawful for a person to possess certain specified weapons (firearms and weapons other than firearms), while in a state or public building. It is also unlawful to possess a firearm on or within a specified area of a school.

Penal Code Section

The crime of possession of an unauthorized weapon in a state or public building is covered under *Penal Code Section 171b*.

Crime elements

To arrest a person for possession of an unauthorized weapon in a state or public building, the necessary crime elements are:

- Any person who
- Brings or possesses
- A specified weapon
- Within any state or local public building
- To any meeting required to be open to the public

Classification

The crime of possession of an unauthorized weapon in a state or public building is a felony.

State or Public Buildings

State or public building refers to any building or part of a building owned or leased by the state or local government in which state or public employees are regularly present for the purpose of performing their official duties. (*Penal Code Section 171b(c)*)

Specified Weapons

The following table identifies the specified weapons that are prohibited under *Penal Code Section 171b*.

Weapons	Including:
Firearms	<ul style="list-style-type: none"> • Handguns • Rifles • Shotguns
Deadly Weapons	<ul style="list-style-type: none"> • Switchblade knives • Prohibited weapons (<i>Penal Code Section 16590(a)-(z)</i>)
Knives	<ul style="list-style-type: none"> • Any knife: <ul style="list-style-type: none"> - With a blade length of four inches or more - That is fixed in - Is capable of being fixed in an unguarded position by the use of one or two hands
Tear Gas Weapons	<ul style="list-style-type: none"> • Any shell, cartridge, or bomb capable of being discharged or exploded which allows the release of tear gas
Tasers or Stun Guns	<ul style="list-style-type: none"> • Any weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge
Metal Projectile Instruments	<ul style="list-style-type: none"> • Pellet guns • BB guns • Any other instrument that expels a metallic projectile through force of air pressure, carbon dioxide gas pressure, or spring action
Marker or Paint Guns	<ul style="list-style-type: none"> • Livestock spot marker, guns • Commercially manufactured or modified paint pellet guns • That are of the type to expel or propel a paint or marking projectile

Exemptions

Certain individuals are exempt from the law prohibiting the possession of weapons in state or public buildings. The following table identifies such individuals.

Authorized Person	Conditions
Peace Officers	<ul style="list-style-type: none"> • Duly appointed <p>NOTE: Exemption does not apply to officers who are within any courtroom as a party to any action pending before the court.</p>
Federal Government Officers or Out-of-State Officers	<ul style="list-style-type: none"> • Carrying out official duties
Personnel Assisting Peace Officers	<ul style="list-style-type: none"> • Summoned by peace officers • Assisting in making arrests or preserving the peace
Private Citizens	<ul style="list-style-type: none"> • Holding valid licenses to carry a firearm or with written permission by a duly authorized official in charge of security of the building
Building Residents or Owners or Possessors	<ul style="list-style-type: none"> • Restricted to those portions of the building that are <i>not</i> owned or leased by the state or local government
Lawfully Hired, Licensed or Registered Security Personnel	<ul style="list-style-type: none"> • As required in accordance with their employment
Evidence Transportation	<ul style="list-style-type: none"> • A person who possesses weapons in, or transports weapons to, a court of law for use as evidence
Gun Show	<ul style="list-style-type: none"> • A person who possesses weapons in a gun show for purposes of sale or public exhibition

Examples

Three members of a local street gang entered a county courthouse to attend a hearing of a fellow gang member. One of the young men was found to have a switchblade knife in his pocket. He committed the crime of possession of a specified weapon in a prohibited location.

An off-duty security guard, on his way home after work, decided to stop by the county courthouse to renew his dog's license. He forgot that he was still wearing his work-related revolver when he entered the building. Since he was not on duty at the time, he committed the crime of possession of a specified weapon in a prohibited location.

School Safety Zones

It is unlawful for any person to be in possession of a firearm within a school safety zone or on school grounds unless specifically stated in *Penal Code Section 626.9*.

Penal Code Section

The crime of possession of a firearm in a **school safety zone** or on school grounds is covered under *Penal Code Section 626.9*.

Crime Elements

To arrest a person for possession of a firearm in a school safety zone or on school grounds, the crime elements include:

- Any person who
- Possesses a firearm (loaded or unloaded)
- In a place that the person knows or reasonably should have known
- Is a school safety zone
- Without written permission of the school district superintendent or designee or equivalent school authority

Classification

The crime of possession of a firearm in a school safety zone or on school grounds is a felony.

Exceptions

Certain exceptions are allowed to the prohibition of possessing a firearm within a school safety zone. These include:

- Residences, places of business, or private property not part of the school that are within the 1,000 foot area of the school
- Individuals who possess an unloaded firearm that is locked in a secure container or locked in the trunk of a motor vehicle
- Peace officers
- Members of the United States military forces in performance of their duties
- Individuals who possess the firearm at the direction of a school faculty member for use in a sponsored activity or class
- Individuals who have a lawful use for the firearm in or around the area within the scope of their employment

Playgrounds and Youth Centers

Penal Code Section 626.95 specifies that it is a felony for:

- Any person to
- Carry a loaded firearm
- Carry concealed a loaded or unloaded firearm that is capable of being concealed
- Draw or exhibit a firearm in a threatening manner or uses it in a fight or quarrel
- Upon the grounds of or within a playground or youth center any time minors are in the area or using the facility or during hours of operation

Definitions

A **playground** can include any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic activities. Playgrounds may be located on public or private school grounds, city parks, or county parks.

School safety zone means an area in, on, or within a distance of 1,000 feet of the grounds of a public or private school providing instruction in kindergarten through grade 12. (*Penal Code Section 626.9(e)*)

Youth centers, or any public or private facilities that are used to host recreational or social activities for minors while minors are present.

Non-Firearms

Penal Code Section 626.10 also makes it unlawful to possess certain specified weapons other than firearms upon the grounds of or within any:

- Public school (kindergarten through 12)
- University or college campuses including, but not limited to:
 - The University of California
 - The California State University
 - California Community Colleges

Specified weapons other than firearms include:

- Dirks/daggers
- Knives having a blade length longer than 2.5 inches
- Folding knives with a blade that locks into place
- Razors with an unguarded blade
- Tasers
- Stun guns
- Instruments expelling a metal projectile by air pressure or carbon dioxide pressure or spring action, unless the possessor has written permission from the school principal or his or her designee
- Spot marker guns, unless the possessor has written permission from the school principal or his/her designee

NOTE: Exceptions to *Penal Code 626.10* include individuals who are providing instruction with the specified weapon, individuals in the scope of their employment at the school, individuals involved in food preparation.

NOTE: Additional exceptions to *Penal Code Section 616.10* are peace officers and individuals helping peace officers or military personnel in the course of their duties.

NOTE: Unlike other crimes involving such weapons, *Penal Code Section 626.10* does not require that the weapon be concealed as an element of the crime.

Classification

Anyone who possesses an identified weapon other than a firearm in the restricted areas is guilty of a felony.

Examples

The following examples illustrate crimes involving the unlawful possession of firearms or weapons other than firearms in school safety zones, on playgrounds, or youth facilities.

While in the locker room preparing for football practice after school, a boy reached into his gym bag and brought out a new six-inch hunting knife his grandfather had given him. Though the boy intended no harm and only wanted to show the knife off to his friends, possession of the knife on the school grounds was a crime.

A high school student carried an unloaded revolver in his backpack to class. He was planning to go to a private firing range to practice immediately after class. Though the firearm was not loaded, the student committed a felony by possessing the firearm on school property.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to possession of firearms by restricted persons or within restricted areas and to correctly categorize these crimes as misdemeanors or felonies.

Firearm Possession by Restricted Persons [40.04.1, 40.04.7]

Persons who have been convicted of any felony, or who are addicted to a narcotic drug, are prohibited from possessing any type of firearm. Being found in possession is guilty of a felony.

Firearm Possession by a Person Convicted of a Specific Misdemeanor [40.04.2, 40.04.7]

Persons who have been convicted of a specific misdemeanor, and within ten years of the conviction, owns or has possession, custody, or control of any firearm is guilty of a felony.

Unauthorized Weapon in a Prohibited Location [40.04.4, 40.04.7]

Unless otherwise authorized, it is unlawful for a person to possess certain specified weapons (firearms and weapons other than firearms), while in a state or public building. It is also unlawful to possess a firearm on or within a specified area of a school.

Chapter 5

Unlawful Use of Weapons

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to the drawing, exhibiting, or unlawful use of weapons and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the crime elements required to arrest for drawing, exhibiting or unlawful use of a(n):<ul style="list-style-type: none">Deadly weapon (other than a firearm)FirearmFirearm in the presence of a motor vehicle occupantImitation firearmLoaded firearm on the grounds of any daycare facilityFirearm in the presence of a peace officer	40.05.1 40.05.2 40.05.4 40.05.5 40.05.3 40.05.12
<ul style="list-style-type: none">Recognize the crime elements required to arrest for, and classification of unlawful discharging of a firearm	40.05.6
<ul style="list-style-type: none">Recognize the classification of crimes related to unlawful use of weapons as misdemeanors or felonies	40.05.10

In This Chapter

This chapter focuses on crimes associated with the drawing, exhibiting, or unlawful use of firearms or weapons other than firearms. Refer to the following chart for specific topics.

Topic	See Page
Drawing, Exhibiting, or Unlawful Use of a Deadly Weapon (Other than a Firearm)	5-3
Drawing, Exhibiting, or Unlawful Use of a Firearm	5-5
Unlawfully Discharging a Firearm	5-13
Chapter Synopsis	5-21
Workbook Learning Activities	5-23

DRAWING, EXHIBITING, OR UNLAWFUL USE OF A DEADLY WEAPON (OTHER THAN A FIREARM)

Introduction

Unless it is for the purpose of self-defense, it is unlawful to draw, exhibit, or use a deadly weapon (other than a firearm) in a rude, angry, or **threatening manner**.

Threatening Manner

Threatening manner means any action that would cause a reasonable person apprehension or fear of bodily harm.

Penal Code Section

The crime of drawing, exhibiting, or unlawful use of a deadly weapon (other than a firearm) is covered under *Penal Code Section 417(a)(1)*.

Crime Elements

To arrest a person for drawing, exhibiting, or unlawful use of a deadly weapon (other than a firearm), the necessary crime elements are:

- Any person who
- Except in self-defense
- In the presence of any other person
- Draws or exhibits any deadly weapon in a rude, angry, or threatening manner
- Unlawfully uses a deadly weapon in any fight or quarrel

Actual injury or assault is not required for the crime to be complete.

Classification

The crime of drawing, exhibiting, or unlawful use of a deadly weapon (other than a firearm) is a misdemeanor.

Examples

A peace officer responded to a call at a neighborhood bar. When the peace officer arrived, she saw an intoxicated man waving a broken beer mug at the bartender. The man was obviously angry after being told by the bartender that he would no longer be served and he should go home. The peace officer arrested the man for exhibiting a deadly weapon in an angry and threatening manner.

Neighbors called peace officers when they heard the two roommates next door arguing over the rent. The neighbors also reported hearing loud crashing noises coming from the apartment. When the peace officers entered the individuals' apartment, they found a man holding a kitchen chair over his head, ready to throw it at his roommate. The peace officers arrested the man for threatening to use a deadly weapon during the quarrel.

DRAWING, EXHIBITING, OR UNLAWFUL USE OF A FIREARM

Introduction

Unless for the purpose of self-defense, it is unlawful for anyone to draw or exhibit a firearm (loaded or unloaded) in a rude, angry, or threatening manner.

Penal Code Section

The crime of drawing, exhibiting, or unlawful use of a firearm is covered under *Penal Code Section 417(a)(2)*.

Crime Elements

To arrest a person for drawing, exhibiting, or unlawful use of a firearm, the necessary crime elements are:

- Any person who while in the presence of another person, except in self-defense
- Draws or exhibits any firearm (loaded or unloaded) in a rude, angry, or threatening manner
- Unlawfully uses a firearm in any fight or quarrel

Actual injury or assault is not required for the crime to be complete.

Classification

The crime of drawing, exhibiting or unlawful use of a firearm is a misdemeanor.

A Daycare Center

A **daycare center** is any facility designed to provide recreational programs for anyone under the age of 18 years. (*Health and Safety Code Section 1596.76*)

Penal Code Section

The crime of drawing or exhibiting a loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses in any loaded firearm in a fight or quarrel on the grounds of any daycare center is covered under *Penal Code Section 417(b)*.

Crime Elements

To arrest a person for drawing or exhibiting a firearm in a rude, angry, or threatening manner, or for unlawfully using it in any fight or quarrel on the grounds of any daycare center, the necessary crime elements are:

- Any person who, while in the presence of another, except in self-defense
- Draws or exhibits any loaded firearm in a rude, angry, or threatening manner
- Unlawfully uses a loaded firearm in a fight or quarrel on the grounds of a daycare center when that center or facility is open for use

Classification

The crime of drawing or exhibiting a firearm in a rude, angry, or threatening manner, or when unlawfully used in any fight or quarrel on the grounds of any daycare center is a felony.

In Presence of a Peace Officer

It is unlawful to draw, exhibit or unlawfully use a firearm in the presence of a peace officer.

Penal Code Section

The crime of drawing, exhibiting, or unlawful use of a firearm in the presence of a peace officer is covered under *Penal Code Section 417(c)*.

Crime Elements

To arrest a person for drawing, exhibiting, or unlawful use of a firearm in the presence of a peace officer, the necessary elements are:

- Any 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
- Who knows or reasonably should know, by the officer's appearance, action, or identification that he or she is a peace officer engaged in his or her performance of their duty

Classification

The crime of drawing, exhibiting or unlawful use of a firearm in the presence of a peace officer is a felony.

Presence of Occupants in a Motor Vehicle

It is unlawful to draw or exhibit a firearm in a motor vehicle. The person who has drawn or is exhibiting the firearm is not required to be the owner of the vehicle.

Penal Code Section

The crime of drawing or exhibiting a firearm to a person in a motor vehicle is covered in *Penal Code Section 417.3*.

Crime Elements

Penal Code Section 417.3 specifies that it is also a felony for:

- Any person
- Except in self-defense
- To draw or exhibit any firearm (loaded or unloaded)
- In a threatening manner such as to cause a reasonable person apprehension or fear of bodily harm
- In the presence of another person who is the occupant of a motor vehicle proceeding on a public street or highway

This law applies only to vehicles that are on public streets, roadways or highways (including stopping for lights, signs, or other impediments in the flow of traffic). It does not apply to vehicles that are parked in a driveway, at the curb, or in a parking lot.

Classification

For a person to be in violation of *Penal Code Section 417.3* the person is not required to be an owner of the motor vehicle. The crime of drawing or exhibiting a firearm in a motor vehicle is a felony.

Bringing a Firearm into a Vehicle

If a driver or owner of a vehicle allows another person to carry or bring a firearm into their vehicle has committed a firearm violation.

Penal Code Section

The crimes of firearms offenses involving vehicles are covered under *Penal Code Section 26100(a)*.

Crime Elements

To arrest a person for the crime of permitting any person to bring a firearm into a vehicle in violation of Penal Code Section 26100(a), the necessary crime elements are:

- Any driver or owner of any motor vehicle
- Who permits any person
- To carry into, or bring into the vehicle
- A firearm in violation of *Penal Code Section 25850(a)* or *Fish and Game Code Section 2006*

Classification

The crime of permitting any person to bring a firearm into a vehicle is a misdemeanor.

Definition of Imitation Firearms

An **imitation firearm** is a replica of a firearm that is so substantially similar to an existing firearm that a reasonable person would think that it is a real firearm. (*Penal Code Section 16700*)

NOTE: *Per Penal Code Section 16700* a BB gun is considered an imitation firearm for the purpose of this section.

Penal Code Section

An imitation firearm is defined in *Penal Code Section 417.4*.

Crime Elements

Any person, except in self-defense,

- Draws or exhibits
- An imitation firearm
- In a threatening manner against another person
- In such a way as to cause a reasonable person apprehension or fear of bodily harm

Classification

The classification for drawing or exhibiting an imitation firearm is a misdemeanor.

Laser Scopes

A **laser scope** is a portable battery-powered device capable of being attached to a firearm and of projecting a laser light on objects at a distance.

A **laser pointer** is a handheld device that emits a single point of light amplitude by the stimulated emission of radiation that is visible to the human eye.

The laser scope does not have to be attached to a firearm for the crime to be complete.

Penal Code Section

Any person who aims or points a laser scope or laser pointer, with the intent to cause apprehension or fear is covered under *Penal Code Section 417.25*.

Crime Elements

Any person who:

- Aims
- Points
- A laser scope or laser pointer
- Except in self defense
- In a threatening manner with intent to cause a reasonable person apprehension or fear

Classification

Causing a reasonable person apprehension or fear of bodily harm is a misdemeanor.

Examples

Two men were fighting in a public parking lot. One of the men reached into his car, pulled out a firearm, and yelled “Get out of here!” When peace officers intervened, they found that the firearm was not loaded. Though the weapon was not loaded, the peace officers arrested the man with the weapon for drawing and exhibiting a firearm in a threatening manner.

During heavy traffic, two vehicles collided while both drivers were trying to change into the same lane at the same time. No one was injured, but there was extensive damage to both vehicles. When the drivers began to argue over who was at fault, one of the drivers pulled his jacket back, deliberately showing that he had a handgun in the waistband of his pants. Though he never removed the weapon, the man was exhibiting it in a threatening manner during the argument and, therefore, guilty of the misdemeanor offense.

UNLAWFULLY DISCHARGING A FIREARM

Introduction

Any person who discharges a firearm recklessly, with such disregard for the safety of another that it could result in injury or death, is guilty of a crime.

Penal Code Section

The crime of discharging a firearm in a grossly negligent manner is covered under *Penal Code Section 246.3*.

Crime Elements

To arrest a person for discharging a firearm in a grossly negligent manner, the necessary crime elements include:

- Any person who
- Except as otherwise authorized by law
- Willfully discharges
- A firearm
- In a grossly negligent manner
- Which could result in injury or death to a person

Classification

The crime of discharging a firearm in a grossly negligent manner is a felony.

Gross Negligence

For the purposes of this section, **gross negligence** means conduct which is more than ordinary negligence (i.e., failure to exercise ordinary or reasonable care).

Gross negligence refers to negligent acts which are:

- Aggravated
- Reckless or flagrant
- A departure from the conduct of a careful person under the same circumstances

For actions to be considered grossly negligent, it must be shown that the circumstances that lead to injury or death could have been reasonably foreseen and were the result of an aggravated, reckless, or flagrantly negligent act.

Penal Code Section

The crime of discharging a firearm at an inhabited or occupied dwelling, vehicle, or aircraft is covered under *Penal Code Section 246*.

Crime Elements

To arrest a person for discharging a firearm at an inhabited or occupied dwelling, vehicle, or aircraft, the necessary crime elements are:

- Any person who
- Maliciously and willfully
- Discharges a firearm
- At an:
 - Inhabited dwelling house
 - Inhabited house car
 - Inhabited camper
 - Occupied building
 - Occupied motor vehicle
 - Occupied aircraft

Crime Elements (Continued)

The intent associated with this crime simply implies a purpose or willingness to commit a wrongful act. There is no requirement that there be any intent to actually cause injury to another.

NOTE: The person only has to be shooting at the specified structure. It is not necessary for the projectile to actually go into the structure. *Penal Code Section 246* does not apply if the firearm is discharged from within the specified structure.

Classification

The crime of discharging a firearm at an inhabited or occupied dwelling, vehicle or aircraft is a felony.

Unlawfully Discharging a Firearm

It is unlawful to discharge a firearm at an unoccupied aircraft, motor vehicle or an uninhabited building or dwelling house.

Penal Code Section

Unlawfully discharging a firearm at an unoccupied aircraft is covered in *Penal Code Section 247(a)*.

Unlawfully discharging a firearm at an unoccupied motor vehicle or an uninhabited building or dwelling house is covered in *Penal Code Section 247(b)*.

Crime Elements

Penal Code Section 247(a) specifies that:

- Any person
- Willfully and maliciously
- Discharges a firearm at an:
 - Unoccupied aircraft

Penal Code Section 247(b) specifies that:

- Any person
- Who discharges a firearm at an:
 - Unoccupied motor vehicle
 - Uninhabited building or dwelling house

Classification

The crime of unlawfully discharging at an unoccupied aircraft is a felony.

The crime of unlawfully discharging at an unoccupied motor vehicle or an uninhabited building or dwelling house can be either a felony or a misdemeanor. These subdivisions do not apply to shooting at an abandoned vehicle, unoccupied vehicle, uninhabited building, or dwelling house if the shooter has the permission of the owner.

Discharging a Firearm in a Vehicle

It is unlawful for an owner or driver of a vehicle to allow the discharge of a firearm from a vehicle.

Penal Code Section

The crime of permitting a person to discharge a firearm from a vehicle is covered under *Penal Code Section 26100(b)*.

Crime Elements

To arrest a person for permitting any person to discharge a firearm from a vehicle, the necessary crime elements are:

- Any driver or owner of a vehicle
- Who knowingly permits any person
- To discharge any firearm from the vehicle

Classification

The crime of permitting any person to discharge a firearm from a vehicle is a felony.

Discharging a Firearm from a Vehicle at a Person

It is unlawful to discharge a firearm at a person other than an occupant of a motor vehicle.

Penal Code Section

The crime of discharging a firearm from a motor vehicle at a person other than an occupant of a motor vehicle is covered under *Penal Code Section 26100(c)*.

Crime Elements

To arrest a person for discharging a firearm from a motor vehicle, the necessary crime elements are:

- Any person who willfully and maliciously
- Discharges a firearm
- From a motor vehicle
- At any person other than an occupant of a motor vehicle

Classification

The crime of discharging a firearm from a motor vehicle at a person other than the occupant of a motor vehicle is a felony.

Discharge a Firearm from a Vehicle

It is unlawful to discharge a firearm from a vehicle unless expressly stated in the Fish and Game code.

Penal Code Section

The crime of discharging a firearm from a motor vehicle is covered under *Penal Code Section 26100(d)*.

Crime Elements

To arrest a person for discharging a firearm from a motor vehicle, the necessary crime elements are:

- Except as provided in *Fish and Game Code Section 3002*
- Any person who willfully and maliciously discharges a firearm
- From a motor vehicle

Classification

The crime of discharging a firearm from a motor vehicle is classified as a felony.

Examples

After an athletic victory over a long-time rival, a carload of college students celebrated by driving around an empty shopping mall parking lot late at night, shooting into the sky through the vehicle's open windows. Even though their intent was to make noise and not to cause any harm or damage, the shooters, as well as the driver/owner of the vehicle who was in on the prank, committed the crime of discharging a firearm from a motor vehicle.

A vehicle owner let his roommate borrow his car for an evening. During the evening, the roommate parked the car across the street from the home of his ex-girlfriend. When she came home later that evening, the roommate fired two shots from the parked vehicle at the woman's date. The roommate committed the crime of discharging a firearm from a motor vehicle.

Related Terms

To understand the crime of discharging a firearm at an inhabited dwelling, vehicle or aircraft, peace officers need to become familiar with the following terms.

Occupied means that there is currently someone in the structure, vehicle, or aircraft.

Inhabited means currently being used for dwelling purposes, whether presently occupied or not.

Aircraft means any mechanical device intended for, and capable of, transporting individuals through airspace.

House car means any motor vehicle originally designed, or permanently altered, and equipped for human habitation to which a camper has been permanently attached (*Vehicle Code Section 362*).

Camper means a structure designed to be mounted upon a motor vehicle and to provide facilities for human habitation or camping purposes (*Vehicle Code Section 243*).

Examples

A man who had recently been fired from a small business went to the store late at night when he knew no one would be there and fired a number of shots at the front of the building. Although the building was not occupied at the time, the man's act constituted the crime of discharging a firearm at an unoccupied building.

A man who owned several acres of private, unposted, wooded property became angry at a number of campers parked on the property. The man began firing a shotgun at the campers. Though the man had no intent to cause any type of injury and, in fact, was not even aware if the campers (vehicles) were even inhabited at the time, he committed the crime of discharging a firearm at an inhabited dwelling.

An officer observed two men standing in the street in front of the row of houses where they lived, pointing rifles into the sky, and discharging them several times. When questioned, the men told the officer that they weren't shooting at anything; they were just bored and wanted to "liven up the neighborhood." Both men were arrested for discharging a firearm in a grossly negligent manner.

After a day of hunting, two men began cleaning their firearms and were consuming a number of beers at the same time. While joking and drinking his beer, one of the men discharged his firearm, seriously wounding his hunting partner. The owner of the handgun was guilty of discharging a firearm in a grossly negligent manner.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers must know the elements required to arrest for crimes related to the drawing, exhibiting, and unlawful use of weapons and to correctly categorize these crimes as misdemeanors or felonies.

Deadly Weapons (Other Than Firearms) [40.05.1, 40.04.10]

Any person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon in a rude, angry, or threatening manner, or unlawfully uses a deadly weapon in any fight or quarrel is guilty of a misdemeanor.

Firearms [40.04.2, 40.04.10]

Any person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm (loaded or unloaded) in a rude, angry, or threatening manner, or unlawfully uses a firearm in any fight or quarrel is guilty of a misdemeanor.

Loaded Firearms on Any Daycare Center Grounds [40.04.3, 40.04.10]

Any person who while in the presence of another, except in self-defense, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or unlawfully uses a loaded firearm in a fight or quarrel on the grounds of a daycare center when that center or facility is open for use is guilty of a felony.

Firearm in Presence of a Peace Officer [40.04.10, 40.04.12]

Any 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, by the officer's appearance, action, or identification, that he or she is a peace officer is guilty of a felony.

Firearm in Presence of a Motor Vehicle Occupant [40.04.4, 40.04.10]

Any person who, except in self-defense, draws or exhibits any firearm (loaded or unloaded) in a threatening manner such as to cause a reasonable person apprehension or fear of bodily harm in the presence of another person who is the occupant of a motor vehicle proceeding on a public street or highway is guilty of a felony.

Imitation Firearm [40.04.5, 40.04.10]

Any person who, except in self-defense, draws or exhibits an imitation firearm in a threatening manner against another person in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor.

In a Grossly Negligent Manner [40.04.6, 40.04.10]

Any person who, except as otherwise authorized by law who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a felony.

Activity Questions (Continued)

5. In frustration, a developer fires several shots into an abandoned office building that she owns. One of the bullets grazes a homeless woman who, unbeknown to the developer, was sleeping in the building for the night. What crime(s) have been committed? Explain. Is the abandoned office building an inhabited dwelling in this instance? Why or why not?

Glossary

Introduction

The key vocabulary terms for Learning Domain 40: Weapons Violations are listed below with the definitions as they apply to this workbook

Aircraft

Any mechanical device intended for, and capable of, transporting individuals through air space

Air Gauge Knife

A device that appears to be an air gauge with a concealed pointed, metallic shaft used as a stabbing instrument (*Penal Code Section 16140*)

Ballistic Knife

A device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas (*Penal Code Section 16220*)

Belt Buckle Gun

A firearm mounted on, or appears to be, an integral part of a belt buckle; it can be detached from the buckle and used as a weapon see *unconventional pistol* (*Penal Code Section 17270*)

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 2½ inches (*Penal Code Section 16260*)

Blackjack

A hard device usually consisting of leather-enclosed metal, with a strap or spring shaft for a handle (*Penal Code Section 16760*)

Camouflaging Firearm Container

A device not readily recognizable as containing a firearm but designed and intended to enclose a firearm; it allows the firing of the firearm by external controls while the firearm is in the container (*Penal Code Section 16320*)

Camper

A structure designed to be mounted upon a motor vehicle and to provide facilities for human habitation or camping purposes (*Vehicle Code Section 243*)

Cane Gun

A firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device designed to be, or capable of being, used as a walking aid (*Penal Code Section 16330*)

Cane Sword

A cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device having concealed within it a blade that may be used as a sword or stiletto (*Penal Code Section 16340*)

CCW (Carry Concealed Weapon) License

License issued by the chief law enforcement officer of the local law enforcement agency authorizing a person to carry a concealed weapon (*Penal Code Section 26150*)

Composite Knuckles

Any device or instrument made wholly or partially of composite materials other than a medically prescribed prosthetic that is worn for purposes of offense or defense in or on the hand (*Penal Code Section 16405*)

Dagger

A knife or instrument, with or without a hand guard, capable of ready use as a stabbing weapon, that may inflict great bodily injury or death (*Penal Code Section 16470*)

Daycare Center

Any facility designed to provide recreational programs for persons under the age of 18 years (*Health and Safety Code Section 1596.76*)

Deadly Weapon

Any weapon, when used in such a manner (offensively or defensively) capable of producing, and likely to produce, death or great bodily injury

Dirk

See dagger (Penal Code Section 16470)

Firearm

Any device designed to be used as a weapon from which a projectile is expelled through the barrel, by force of any explosion or other form of combustion (*Penal Code Section 16520*)

Great Bodily Injury

Significant or substantial physical injury

Gross Negligence

Any negligent acts which are aggravated, reckless or flagrant, and a departure from the conduct of a careful person under the same circumstances

House Car

Any motor vehicle originally designed, or permanently altered, and equipped for human habitation, to which a camper has been permanently attached (*Vehicle Code Section 362*)

Identifying Mark

Any manufacturer mark or number assigned by the Department of Justice which has been engraved or affixed to the firearm

Imitation Firearm

A replica of a firearm so similar to an existing firearm that a reasonable person would think that it is a real firearm (*Penal Code Section 16700*)

Inhabited

A structure used for dwelling purposes, whether presently occupied or not

Large Capacity Magazine

Any ammunition-feeding device with the capacity to accept more than ten rounds, excluding a 22 caliber ammunition feeding tube (*Penal Code Section 16740*)

Laser Pointer

A handheld device capable of projecting a laser light on objects at a distance

Laser Scope

A portable battery-powered device capable of being attached to a firearm and projecting a laser light on objects at a distance

Leaded Cane

A staff, crutch, stick, rod, pole, or similar device unnaturally weighted with lead (*Penal Code Section 16760*)

Lipstick Case Knife

A knife enclosed within and made part of a lipstick case (*Penal Code Section 16830*)

Loaded Firearm

Any firearm that has an unexpended cartridge or shell in or attached in any manner to the firearm (*Penal Code Section 16840(b)*)

Metal Knuckles

Any device or instrument made wholly or partially of metal held in or worn on the hand for offensive or defensive purposes (*Penal Code Section 16920*)

Multi-Burst 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 (*Penal Code Section 16930*)

Occupied

Someone in a structure, vehicle, or aircraft

Playground

Any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic activities

Pen Gun

A firearm enclosed within what appears to be a writing pen (*Penal Code Section 17270*)

Prohibited Area

Any area where local authorities have deemed it unlawful to discharge a firearm

Prohibited Weapons

Weapons specifically identified under (*Penal Code Section 16590*)

Public Place

Any property that is open to the general public

Sandbag/Sand Club

A bag or device filled with sand (*Penal Code Section 16760*)

Sap

A device used to bludgeon (*Penal Code Section 16760*)

School Safety Zone

An area in, on, or within a distance of 1,000 feet of the grounds of a public or private school providing instruction in kindergarten through grade 12

Shobi-Zue

A staff, crutch, stick, rod, or pole concealing a knife or blade which may be exposed by a flip of the wrist or by a mechanical action (*Penal Code Section 17160*)

Short-Barreled Rifle

A firearm designed or redesigned to fire a fixed cartridge; it has a barrel length of less than 16 inches or an overall length of less than 26 inches (*Penal Code Section 17170*)

Short-Barreled Shotgun

A firearm designed or redesigned to fire a fixed shotgun shell; it has a barrel length of less than 18 inches or an overall length of less than 26 inches (*Penal Code Section 17180*)

Shuriken

A metal plate having three or more points with one or more sharp edges and is designed as a throwing weapon (*Penal Code Section 17200*)

Slungshot

A device consisting of a small mass of metal or stone fixed on a metal handle or strap (*Penal Code Section 16760*)

State or Public Building

Any building or part of a building owned or leased by the state or local government in which state or public employees are regularly present for the purpose of performing their official duties (*Penal Code Section 171b(c)*)

Switchblade Knife

A knife with the appearance of a pocketknife and with a blade two or more inches long which can be released automatically by the weight of the blade or by any other mechanism or manner (*Penal Code Section 17235*)

Tear Gas

All liquid, gaseous, or solid substances intended to produce temporary physical discomfort or permanent injury by being vaporized or otherwise dispersed in the air (*Penal Code Section 17240*)

Tear Gas Weapon

Any shell, cartridge, bomb, or device capable of being discharged or exploded which allows the release of tear gas (*Penal Code Section 17250*)

Threatening Manner

Any action that would cause a reasonable person apprehension or fear of bodily harm

Unconventional Pistol

A pistol or revolver that does not have a rifled bore and has a barrel length of less than 18 inches or an overall length of less than 26 inches (*Penal Code Section 17270*)

Undetectable Firearms

A firearm designed in such a way that when the grip, stock, and magazine have been removed, it is not detectable by x-ray (*Penal Code Section 17280*)

Undetectable Knife

A knife designed in such a way that it is undetectable by x-ray and capable of ready use as a stabbing weapon (*Penal Code Section 17290*)

Wallet Gun

A firearm mounted or enclosed in a case resembling a wallet designed to be, or capable of being, carried in a pocket or purse (*Penal Code Section 17330*)

Writing Pen Knife

A device that appears to be a writing pen, but has concealed a pointed, metallic shaft used as a stabbing instrument (*Penal Code Section 17350*)

Youth Centers

Any public or private facility used to host recreational or social activities for minors while minors are present

Zip Gun

A noncommercially produced weapon capable of firing a projectile by force of an explosion or other form of combustion (*Penal Code Section 17360*)