

Basic Course Workbook Series Student Materials

**Learning Domain 40
Weapons Violations
Version Five**

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Student Materials
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Weapons Violations
Version Five**

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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 worked with POST to develop this workbook. The Commission extends its heartfelt appreciation to the California law enforcement agencies who freely offered personnel who gave of their time to participate in the development of this training material.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides self-study documents for every learning domain that makes up the basic course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. Its objective is to improve learning and retention of information by a student attending the academy.

The content of each workbook is organized into sequenced learning modules to meet requirements as proscribed 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 book helps you, the student, to successfully complete the academy course, to advance to the Field Training Officer program and to enjoy a safe and rewarding career as a peace officer serving the communities of California.

A handwritten signature in black ink, appearing to read "Hal Snow". The signature is fluid and cursive, with a large initial "H" and "S".

HAL SNOW
Interim Executive Director

LD 40: Weapons Violations

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Preface

Introduction

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 Student Workbook

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. You may use the workbook 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: Preface and How to Use the Workbook, which provide an overview of how the workbook fits into the POST training program 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	Begin reading 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. The terms appear throughout the text and are bolded and underlined the first time they appear (e.g., <u>term</u>).

Chapter 1

Prohibited Weapons

Overview

Learning need Arrest and successful prosecution depends 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:	E. O. Code
<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 weapon,- possession of an illegal knife,- unlawful possession of tear gas weapon or chemical agent.	40.01.EO1 40.01.EO3 40.01.EO4
<ul style="list-style-type: none">• recognize the crime classification as a misdemeanor or felony.	40.01.EO6

Continued on next page

Overview, Continued

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

[40.01.EO1, 40.01.EO6]

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 12020*.

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, or
- imports into the state, or
- 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 prohibited.

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

Continued on next page

Prohibited Weapons, Continued

Specified prohibited weapons

Penal Code Section 12020 lists a number of weapons that are specified as **prohibited weapons**.

Although the following pages do not identify all the weapons specified under *Penal Code Section 12020*, 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 12020*.

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, or- an overall length of less than 26 inches, or- a modified or altered shotgun with one of the above characteristics, or- any device which can be readily restored to meet one of the above descriptions, or- 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

Continued on next page

Prohibited Weapons, Continued

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, or- an overall length of less than 26 inches, or- a modified or altered rifle with one of the above characteristics, or- any device which can be readily restored to meet one of the above descriptions, or- 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

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 flash suppressors.

Continued on next page

Prohibited Weapons, Continued

Additional firearms

The following table identifies additional firearms that are considered prohibited weapons under *Penal Code Section 12020*.

Firearm	Definition/Description
<u>Unconventional handgun</u>	A pistol or revolver that does not have a rifled bore and has: <ul style="list-style-type: none">• a barrel length of less than 18 inches, or• an overall length of less than 26 inches
<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 NOTE: Almost any homemade firearm can qualify as a zip gun.

Continued on next page

Prohibited Weapons, Continued

Unrecognizable firearms

Certain firearms that are not immediately recognizable as firearms are considered prohibited weapons under *Penal Code Section 12020*. 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.
<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.
<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.
<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.

Continued on next page

Prohibited Weapons, Continued

Undetectable firearms

Prohibited firearms also include **undetectable firearms** that are designed in such a way that one of the following is true:

- grips, stocks, and magazines have been removed and the firearm is not detectable by x-ray, or
 - any major component does not generate an image by x-ray.
-

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 12020*.

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.
<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.
<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.

Continued on next page

Prohibited Weapons, Continued

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 12020(a)(4) states that:

- any person who
 - carries concealed upon his or her person
 - any dirk or dagger
 - is guilty of a felony.
-

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.
-

Continued on next page

Prohibited Weapons, Continued

Unrecognizable blade weapons Certain blade weapons that are not immediately recognizable as weapons are identified as prohibited weapons under *Penal Code Section 12020*.

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.
<u>Lipstick case knife</u>	A knife enclosed within, and made part of, a lipstick case.
<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.
<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 and • locks into place when extended.
<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, or • mechanical action, or • gravity and • locks into place when extended.

Continued on next page

Prohibited Weapons, Continued

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>Nunchaku</u>	<p>An instrument:</p> <ul style="list-style-type: none"> • consisting of two or more sticks, clubs, bars, or rods to be used as handles • connected by a rope, cord, wire, or chain • in the design of a weapon • used in connection with the practice of a system of self-defense (e.g., karate or other forms of martial arts). <p>It is lawful to manufacture a nunchaku for sale to, or to sell to, a school which holds a regulatory or business license and teaches the art of self-defense. It is also lawful to possess a nunchaku on the premises of such a school.</p>
<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 or • 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, or • consist of projections or studs which would contact the individual receiving the blow.

Continued on next page

Prohibited Weapons, Continued

Striking
weapons
(continued)

Striking Weapon	Definition/Description
<u>Leaded cane</u>	A staff, crutch, stick, rod, pole, or similar device unnaturally weighted with lead.
<u>Blackjack</u>	A hard device usually consisting of leather-enclosed metal, with a strap or spring shaft for a handle.
<u>Billy</u>	Any device that is intended to be used as a striking device, (i.e., heavy club).
<u>Sandbag or Sandclub</u>	A bag or device filled with sand.
<u>Sap</u>	A device used to bludgeon.
<u>Slungshot</u>	A device consisting of a small mass of metal or stone fixed on a metal handle or strap.

Continued on next page

Prohibited Weapons, Continued

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 12002(a)*)

Private security guards may carry wooden clubs or batons only if they have completed specified training for 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 12002(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.

Continued on next page

Prohibited Weapons, Continued

Other prohibited devices

The following table identifies a number of other devices that are prohibited under *Penal Code Section 12020*.

Prohibited Device	Definition/Description
<u>Camouflaging firearm container</u>	A device: <ul style="list-style-type: none"> • not readily recognizable as containing a firearm, but • designed and intended to enclose a firearm, and • allows the firing of the firearm by external controls while the firearm is in the container.
<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.
<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 purchased, 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.

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 12020(b)(22)(B)*)

Continued on next page

Prohibited Weapons, Continued

Other prohibited devices (continued)

- NOTE: Any person possesses an assault weapon defined under *Penal Code Section 12276* unless:
- Weapon obtained prior to June 1, 1989,
 - Lawfully registered,
 - 50 cal. rifle of any type.
 - Exception lawfully possessed before Jan, 1 2005.
 - *Penal Code Section 12285(a)(2)* mandates registration by April 30, 2006
 - *Penal Code Section 12285* 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.
-

Concealed explosives

Penal Code Section 12020(a)(3) 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 12020(a)*. It must also be shown that the explosive substance was carried concealed on the individual's person.

Continued on next page

Prohibited Weapons, Continued

Examples

Example: 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.

Example: 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.

Example: 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.

Non-example: A teenage boy, fascinated by martial arts weapons, searched the Internet with his home computer and found instructions for making diamond shaped shurikens. He downloaded the instructions and passed them around to his friends the next day. Although shurikens are considered prohibited weapons, the boy had not manufactured, imported, sold, given, lent, or possessed the weapon itself, and a crime was not committed.

Illegal Knife

[40.01.EO3, 40.01.EO6]

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 653k*.

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, 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, or
- 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.

Continued on next page

Illegal Knife, Continued

Definition/ description of a switch- blade knife

A switchblade knife is a knife:

- having the appearance of a pocket knife, including:
 - spring-blade knives,
 - butterfly knives,
 - snap-blade knives,
 - gravity knives, or
 - any other similar type knife,
- with 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, or other mechanical device,
 - the weight of the blade, or
 - 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), or
 - 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).
-

Continued on next page

Illegal Knife, Continued

Examples

Example:

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.

Non-example:

Officers with a valid search warrant were searching a car in the owner's carport that was attached to the owner's residence. They found a switchblade knife in the unlocked glove compartment of the vehicle. Since the vehicle was parked in the area that was considered a private residence, possession of the weapon was not a crime.

Tear Gas Weapons

[40.01.EO4, 40.01.EO6]

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 12420*.

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, or
 - sells, offers for sale, exposes for sale, or
 - 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 12401*)

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.

Continued on next page

Tear Gas Weapons, Continued

Permitted use

Penal Code Section 12403.7 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, or
 - is addicted to narcotics, or
 - is attempting to sell or furnish the tear gas weapon to a minor, or
 - is under 16 years old, or
 - is 16 or 17 years old without written parental consent and not accompanied by a parent or guardian. (*Penal Code Section 12403.8*)
-

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 12403.7(g)*)

Continued on next page

Tear Gas Weapons, Continued

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, and the officers have satisfactorily completed a course of instruction approved by POST in the use of tear gas. 	12403
Military and Naval personnel	<ul style="list-style-type: none"> purchased, possessed, transported, or used in the discharge of their duties. 	12403.1
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, and if the individuals have satisfactorily completed a course of instruction approved by the Department of Consumer Affairs in the use of tear gas. 	12403.5
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 12422*)

Continued on next page

Tear Gas Weapons, Continued

Examples

- Example: 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.
- Example: 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 tool box 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.
- Non-example: A woman walking down a dark street from the bus stop to her apartment building was approached by an angry ex-boyfriend who had recently threatened her with physical harm. She pulled a two-ounce can of tear gas from her purse and sprayed the ex-boyfriend in the face just as he was trying to grab her. The ex-boyfriend then ran off. The woman committed no crime because she used the weapon in self-defense.
-

Chapter Synopsis

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.EO1, 40.01.EO6]

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.EO3, 40.01.EO6]

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, or 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.EO4, 40.01.EO6]

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 depends 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:	E. O. Code
<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 vehicle,- possession of a deadly weapon with intent to assault another person,- possession of a loaded firearm with intent to commit a felony, and- alteration or removal of identifying marks from a firearm.	40.02.EO1 40.02.EO2 40.02.EO3 40.02.EO4
<ul style="list-style-type: none">• recognize the crime classification as a misdemeanor or felony.	40.02.EO6

Continued on next page

Overview, Continued

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	2-15

Carrying a Loaded Firearm

[40.02.EO1, 40.02.EO6]

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

Ethics Officers have a responsibility to enforce all laws and also to follow laws regarding weapons while off-duty. Officers are not above the law and should not be in possession of illegal weapons. 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 12031*.

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, or
 - on any public street in an incorporated city, or
 - within a prohibited area of an unincorporated area.
-

Continued on next page

Carrying a Loaded Firearm, Continued

Classification

The crime of carrying a loaded firearm is a misdemeanor.

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, or a prior conviction under *Penal Code Section 12031*, or
 - knew or reasonably should have known the firearm was stolen, or
 - is an active participant in a criminal street gang, or
 - is not in lawful possession of the firearm, or
 - has been convicted of a crime against a person or property, or of a narcotics violation, or
 - 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.
-

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 12031(g)*)

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 12031(e)*)

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.

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Carrying a Loaded Firearm, Continued

Making an arrest

A peace officer may make an arrest without a warrant when the person arrested has violated *Penal Code Section 12031*, even if the crime was not committed in the officer's presence. (*Penal Code Section 12031(a)(5)(A)(i)*)

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 12031(a)(5)(A)(ii)*)

A peace officer may arrest a person for a violation of *Penal Code Section 12031(a)(2)(F)* 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 12031(a)(5)(B)*)

Immediate self defense

Penal Code Section 12031(j)(1) 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.

Continued on next page

Carrying a Loaded Firearm, Continued

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:	<i>Penal Code Section</i>
A duly authorized peace officer.	<i>12031(b)</i>
making or attempting to make a lawful arrest.	<i>12031(k)</i>
possessing the otherwise lawful firearm at a place of residence, temporary residence, or campsite.	<i>12031(l)</i>
an employee, agent, or employer within the place of a lawful business or any person in lawful possession of private property.	<i>12031(h)</i>
A uniformed security guard with the authority to carry a firearm traveling to and from the place of employment.	<i>12031(c)(5)</i>

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

Continued on next page

Carrying a Loaded Firearm, Continued

Examples

Example: 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 of the vehicle did not possess a Carry Concealed Weapons (CCW) license that allowed him to possess a loaded firearm. The driver committed the crime of carrying a loaded firearm.

Example: 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.

Non-example: A rural resident became suspicious and reported a sport utility vehicle that was sitting in an isolated wooded area on his neighbor's property. Upon investigation, officers found the owner of the vehicle nearby and noted that he and a companion had several loaded rifles in the vehicle. The men were hunting and were able to show that they had written permission by the owner of the property to enter the property. The crime of carrying a loaded firearm was not committed.

Possession of a Deadly Weapon with Intent

[40.02.EO2, 40.02.EO3, 40.02.EO6]

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 12024*)

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 deadly weapon with intent to commit a felony *Penal Code Section 12023* 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.
-

Classification Is guilty of armed action. Armed criminal action is punishable in a county jail not exceeding one year or in the state prison.

Continued on next page

Possession of a Deadly Weapon with Intent, Continued

Examples

- Example: 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.
- Example: 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.
- Non-example: A man had just had a fight with his girlfriend and left her apartment in a rage. Still angry, he found a baseball bat in a nearby park and started swinging it in the air and cursing her as he continued walking. Though a bat could become a deadly weapon under certain conditions, the man did not possess a deadly weapon with intent.
-

Altering Identification Marks on a Firearm

[40.02.EO4, 40.02.EO6]

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 12090*.

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, 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.
-

Classification

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

Handguns

Under *Penal Code Section 12091*, the mere possession of any pistol or revolver (but not a shotgun or rifle) with altered identification marks is presumptive evidence that the possessor of the handgun is the one who altered the mark.

Continued on next page

Altering Identification Marks on a Firearm, Continued

Knowledge of the alteration

Penal Code Section 12094 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, or
 - 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:

- peace officers,
- members of the military, or
- employees of a forensic laboratory.

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.

Continued on next page

Altering Identification Marks on a Firearm, Continued

Examples

Example: During a traffic stop, an officer noticed a pistol on the passenger seat of the car. While inspecting the weapon to see if it was loaded, the 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.

Example: While conducting a lawful pat search, an officer found a handgun in the person's coat pocket. On inspection, the officer noticed that the handgun was unloaded and that the suspect had a license to carry the weapon. The officer also noticed that all identification marks had been obliterated by file marks. Though he had no proof that the weapon's owner was the one who had removed the marks, the officer arrested the man for altering identification marks on a firearm. Because the weapon was a handgun, the law required the officer to presume the person was the one who had removed the identification marks.

Non-example: A hunter engraved his driver's license number on the barrel of his shotgun. Because he had not altered or hindered any of the weapon's identification marks, the owner's actions were legal.

Chapter Synopsis

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.EO1,
40.02.EO6]

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 12031*, felony conviction, or a prior conviction.

Possession of a deadly weapon with intent to assault another person

[40.02.EO2,
40.02.EO6]

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

Continued on next page

Chapter Synopsis, Continued

**Possession
of a loaded
firearm with
intent to
commit a
felony**
[40.02.E03,
40.02.E06]

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.E04,
40.02.E06]

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?

Continued on next page

Workbook Corrections

Suggested corrections to this workbook can be made by going to the POST website at: www.post.ca.gov

Continued to next page

Workbook Corrections, Continued

Student notes

Chapter 3

Concealment of Firearms

Overview

Learning need

Arrest and successful prosecution depends 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:	E. O. Code
• recognize the statutory definition of a concealed firearm.	40.03.EO1
• recognize the exceptions to the license requirement for possession of a concealable firearm.	40.03.EO2
• recognize the crime elements required to arrest for possession of a concealable firearm without a license.	40.03.EO3
• recognize the crime classification for possession of a concealable firearm without a license.	40.03.EO4

Continued on next page

Overview, Continued

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

[40.03.EO1, 40.03.EO2]

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 12001(a)(1) 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, and
- 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.

Continued on next page

Lawful Possession of a Concealable Firearm, Continued

Examples

- Example: A revolver lying on a table is considered a concealable firearm even though it is in plain view.
- Example: An automatic pistol would be a concealable firearm even when it is sitting on the passenger side of the front seat of a vehicle.
- Non-examples: A semiautomatic rifle that is being carried under a long overcoat would not be considered a concealable firearm as long as it has a barrel length of 16 inches or more.
-

CCW license

Penal Code Section 12050(a)(1) 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,
- they are of good moral character,
- good cause exists for them to be issued a license, and
- they have completed a specified training course.

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

Continued on next page

Lawful Possession of a Concealable Firearm, Continued

Persons exempt from CCW requirements

Penal Code Section 12026 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, and • 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, or • 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, or • 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 12026.1*.

Continued on next page

Lawful Possession of a Concealable Firearm, Continued

Possession for lawful activities

Penal Code Section 12026.2 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, • firearm safety or hunter’s safety classes, • sporting events involving firearms, • target range activities, • lawful camping activities, or • gun shows, swap meets, or similar events to which the public is invited, for the purpose of displaying that firearm.
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.
Other	Transporting a firearm to and from: <ul style="list-style-type: none"> • the possessor’s home and place of business, • a lawful weapon repair shop, • a location where a firearm was purchased or received to the possessor’s residence or place of business, or • a law enforcement agency to have a firearm registered.

Continued on next page

Lawful Possession of a Concealable Firearm, Continued

Transporting

The following table identifies the conditions for lawfully transporting a legally possessed concealable firearm as specified in *Penal Code Section 12026.1*.

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, and• 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 or• 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, or• in a locked container other than the glove compartment, or• is being carried directly to or from the vehicle (in a locked container) for a lawful purpose.

Continued on next page

Lawful Possession of a Concealable Firearm, Continued

**Possession
by
specified
individuals**

Penal Code Section 12027 also identifies certain specified individuals authorized to possess a concealable firearm without a CCW license.

Individuals	Conditions
Peace officers	<ul style="list-style-type: none"> • Full-time • From within California • From other states within the duties of employment
Federal government agents	<ul style="list-style-type: none"> • Within the scope of their employment • Assisting peace officers
Honorably retired peace officers	<ul style="list-style-type: none"> • Qualified for and accepted a service or disability retirement, and • Was authorized to carry and did carry firearms before retirement.
Military personnel	<ul style="list-style-type: none"> • While on duty
Guards or messengers of financial institutions	<ul style="list-style-type: none"> • While on duty, or • When transporting money or other valuables within the state
Authorized military or civil organizations	<ul style="list-style-type: none"> • While parading • Going to or from places of meetings
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
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

Continued on next page

Lawful Possession of a Concealable Firearm, Continued

Examples

Example: 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 truck. He lawfully possesses both concealable firearms as a function of his duties.

Example: An 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.

Example: 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 night stand 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

[40.03.EO3, 40.03.EO4]

Introduction

A CCW license is required to carry concealed any concealable firearm under any conditions other than those specified under *Penal Code Section 12026*.

Penal code section

The crime of unlawful possession of a concealable firearm without a license is covered under *Penal Code Section 12025*.

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, or
- 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 12025*).

A firearm carried openly in a belt holster is not considered to be concealed. (*Penal Code Section 12025(f)*)

Continued on next page

Unlawful Possession of a Concealable Firearm, Continued

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 firearms chapter in the Penal Code (*Penal Code Section 12025(b)(1)*), or
- the firearm is stolen and the person knew or had reasonable cause to believe it was stolen (*Penal Code Section 12025(b)(2)*), or
- the person is an active participant in a criminal street gang as defined in *Penal Code Section 186.22(a)*, (*Penal Code Section 12025(b)(3)*), or
- the person is not in lawful possession of the firearm (*Penal Code Section 12025(b)(4)*), or
- the person has been convicted of a crime against a person or property or of a narcotic or dangerous drug violation (*Penal Code Section 12025(b)(5)*), or
- 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 12031* and the person is not listed with the Department of Justice as the registered owner of the firearm. (*Penal Code Section (12025(b)(6)(A)(B)*)

NOTE: A peace officer may arrest a person for a violation of *Penal Code Section 12025(b)(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 12025(c)*)

Continued on next page

Unlawful Possession of a Concealable Firearm, Continued

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 12026.1*)

Possession by a minor

Penal Code Section 12101(c) states that minors may not possess a concealable firearm or live ammunition unless they are:

- actively engaged in, or going to or from, a lawful, recreational sport the nature of which involves the use of a firearm, and
- at least 16 years of age with written consent from a parent or legal guardian, or
- accompanied by a parent, legal guardian, or responsible adult with written consent from the parent while in possession of the firearm or ammunition.

A violation of *Penal Code Section 12101(c)* is a felony.

Continued on next page

Unlawful Possession of a Concealable Firearm, Continued

Examples

- Example: While on duty, an officer stopped a woman for drinking alcohol in public. When the woman opened her purse to find her identification, the officer saw a small pistol in her purse. During questioning, the woman told the 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.
- Example: While writing a traffic violation, an 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 officer determined that the driver had a number of outstanding warrants. The 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.
- Non-example: A man wearing no shirt, doing yard work in his front yard, was carrying an unloaded revolver in the waistband of his jeans. Since there was no attempt to conceal the firearm, no crime had been committed.
- Non-example: A man kept a loaded pistol in his briefcase whenever he traveled in a large city within the state. The man has a CCW license for the firearm and always kept the briefcase locked. Under these conditions, the man's carrying and concealment of the firearm was legal.
-

Chapter Synopsis

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.EO1]

Penal Code Section 12001(a)(1) 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.EO2]

Penal Code Section 12026 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.EO3, 40.03.EO4]

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 depends 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:	E. O. Code
<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 persons,- a firearm by a person convicted of a specified misdemeanor,- an unauthorized weapon in a prohibited location.	40.04.EO1 40.04.EO2 40.04.EO4
<ul style="list-style-type: none">• recognize the crime classification as a misdemeanor or felony.	40.04.EO7

Continued on next page

Overview, Continued

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	4-11
Chapter Synopsis	4-20
Workbook Learning Activities	4-21

Persons Convicted of Felonies

[40.04.EO1, 40.04.EO7]

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 12021(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 12021(a)(2)*)
- or two convictions of, (*Penal Code Section 417(a)(2)*)
- or offenses enumerated in *Penal Code Section 12001.6*.

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.

Continued on next page

Persons Convicted of Felonies, Continued

Juveniles convicted of violent offenses

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

- owning,
- possessing, or
- 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, or
 - 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.

Continued on next page

Persons Convicted of Felonies, Continued

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, or
- 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 12021(d)*)

Penal Code Section 12031(j)(1) 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*), or
- 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 12021(g)*)

Continued on next page

Persons Convicted of Specified Misdemeanors

[40.04.EO2, 40.04.EO7]

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 12021(c)(1)*.

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.

Continued on next page

Persons Convicted of Specified Misdemeanors, Continued

**Specified
misdemeanors**

The following table presents a partial listing of the misdemeanors that are specified under *Penal Code Section 12021(c)(1)*.

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	273.5
Drawing, exhibiting, or unlawful use of a firearm	417
Stalking	646.9

Continued on next page

Persons Convicted of Specified Misdemeanors, Continued

Examples

Example: 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 officers that he had a clean record, except for a conviction for battery seven years ago. After confirming the prior conviction, the officers arrested the man for possession of a firearm by a person convicted of a specified misdemeanor.

Example: An officer made a traffic stop and contacted the driver. While the driver was reaching to get the vehicle registration, the officer saw what appeared to be a pistol in the glove compartment. After conducting a records check, the officer found out that the driver had been convicted of stalking her ex-husband one year ago. The 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.

Non-example: An officer noticed that a woman was carrying a pistol in her handbag. When questioned, the woman told the officer that she had been found guilty of a misdemeanor assault 30 years ago during a college protest demonstration. Since the conviction took place more than ten years ago, the crime of possession of a firearm by a person convicted of a specified misdemeanor was not committed. However, she was guilty of carrying a concealed firearm.

Continued to next page

Persons Convicted of Specified Misdemeanors, Continued

Peace officers convicted of domestic violence offenses

Penal Code Section 12021(c)(2) 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 273.5*),
 - stalking (*Penal Code Section 646.9*), and
 - 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.

Example: Officers went to a specified address with a search warrant. While inside the apartment, they found drug paraphernalia. The 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.

Continued on next page

Persons Convicted of Specified Misdemeanors, Continued

Examples (continued)

- Example: An officer stopped a vehicle for a broken taillight. While checking the driver's license and registration, the 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 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 officer arrested the man for possession of a firearm by a convicted felon.
- Non-example: A young man who had been convicted of a felony two years ago accepted a ride to work from his neighbor. The young man was not aware that the neighbor kept a pistol in the glove compartment of her car. Since the man did not have custody or control of the firearm, the crime of possession of a firearm by a convicted felon did not take place.
-

Prohibited Location

[40.04.EO4, 40.04.EO7]

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 171(b)*.

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, or
 - 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)*)

Continued on next page

Prohibited Location, Continued

Specified weapons

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

Weapons	including...
Firearms	<ul style="list-style-type: none"> • handguns, • rifles, and • shotguns
Deadly weapons	<ul style="list-style-type: none"> • switchblade knives or • prohibited weapons (<i>Penal Code Section 12020</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 and - that is fixed in, or • 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, or • 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, or • commercially manufactured or modified paint pellet guns, • that are of the type to expel or propel a paint or marking projectile

Continued on next page

Prohibited Location, Continued

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

Continued on next page

Prohibited Location, Continued

Exemptions
(continued)

Authorized Person	Conditions
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

Continued on next page

Prohibited Location, Continued

Examples

- Example: 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.
- Example: 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.
- Non-example: A female lawyer, who often carried a canister of pepper spray in her briefcase for self-defense, leased office space in a building that also rented space to the local government. Since her office was not in a government office, no crime was committed.
-

Continued on next page

Prohibited Location, Continued

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 feet 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.
-

Continued on next page

Prohibited Location, Continued

Exceptions (continued)

- 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, or
 - carry concealed a loaded or unloaded firearm that is capable of being concealed, or
 - 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 are any public or private facilities that are used to host recreational or social activities for minors while minors are present.

Continued on next page

Prohibited Location, Continued

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), or
- university or college campuses including, but not limited to:
 - the University of California,
 - the California State University, or
 - 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, and
- 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.

Continued on next page

Prohibited Location, Continued

Non-firearms (continued) 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.

Example: 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.

Example: 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.

Non-example: A school custodian carried a pocket knife with him to use for small jobs he encountered where a sharp point or edge was necessary. Possession of the knife on school grounds for a lawful purpose was within the scope of the custodian's employment and, therefore, legal.

Chapter Synopsis

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.EO1, 40.04.EO7]

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.EO2, 40.04.EO7]

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.EO4, 40.04.EO7]

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.

Workbook Learning Activities, Continued

**Activity
questions**
(continued)

5. Describe three instances in which it would be legal for a private citizen to carry a handgun in a state building.

Continued on next page

Workbook Learning Activities, Continued

Student notes

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:	E. O. Code
<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),- firearm,- firearm in the presence of a motor vehicle occupant,- imitation firearm,- loaded firearm on the grounds of any daycare facility and,- firearm in the presence of a peace officer.	40.05.EO1 40.05.EO2 40.05.EO4 40.05.EO5 40.05.EO3 40.05.EO12
<ul style="list-style-type: none">• recognize the crime elements required to arrest for, and classification of unlawful discharging of a firearm.	40.05.EO6
<ul style="list-style-type: none">• recognize the classification of crimes related to unlawful use of weapons as misdemeanors or felonies.	40.05.EO10

Continued on next page

Overview, Continued

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	5-24
Workbook Learning Activities	5-26

Drawing, Exhibiting, or Unlawful Use of a Deadly Weapon (Other than a Firearm)

[40.05.EO1, 40.05.EO10]

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, or
- 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.

Continued on next page

Drawing, Exhibiting, or Unlawful Use of a Deadly Weapon (Other than a Firearm), Continued

Examples

Example: An officer responded to a call at a neighborhood bar. When the 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 officer arrested the man for exhibiting a deadly weapon in an angry and threatening manner.

Example: 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 officers entered the individuals' apartment, they found a man holding a kitchen chair over his head, ready to throw it at his roommate. The officers arrested the man for threatening to use a deadly weapon during the quarrel.

Non-example: An officer was called to a local park where a lone man was swinging a baseball bat in an angry manner and cursing. When the man saw the officer approach, he ceased swinging the bat and told the officer he was just trying to let off some steam regarding his former boss. Since no other person was present when the man was swinging the bat, the crime of drawing, exhibiting, or unlawful use of a deadly weapon (other than a firearm) did not take place.

Drawing, Exhibiting, or Unlawful Use of a Firearm

[40.05.EO2, 40.05.EO3, 40.05.EO4, 40.05.EO5, 40.05.EO10, 40.05.EO12]

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,
- 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.

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.

Continued on next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

A daycare center

A **day care 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 day care 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 day care 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, or
 - unlawfully uses a loaded firearm in a fight or quarrel on the grounds of a day care 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 day care center is a felony.

Continued on next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

**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, and
 - 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.

Continued on next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

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.

Continued to next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

**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 12034(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 12034(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 12031* or *Fish and Game Code Section 2006*.
-

Classification

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

Continued to next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

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 12550*)

NOTE: Per *Penal Code Section 12550* 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.

Continued on next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

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, or
 - 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.

Continued on next page

Drawing, Exhibiting, or Unlawful Use of a Firearm, Continued

Examples

Example: 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 officers intervened, they found that the firearm was not loaded. Though the weapon was not loaded, the officers arrested the man with the weapon for drawing and exhibiting a firearm in a threatening manner.

Example: 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.

Non-example: A man, who appeared to be “homeless,” approached a woman and asked for spare change while she was leaving her office and moving toward her car. After she told him to leave her alone, he kept approaching and became agitated that she would not give him anything. The woman became afraid, removed a lawfully possessed and licensed pistol, from her shoulder bag, and pointed it at the man. The woman’s actions were in self-defense; therefore, she was not guilty of drawing a firearm in a threatening manner.

Unlawfully Discharging a Firearm

[40.05.EO6, 40.05.EO10]

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.

Continued on next page

Unlawfully Discharging a Firearm, Continued

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, and
- 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 housecar,
 - inhabited camper
 - occupied building,
 - occupied motor vehicle, or
 - occupied aircraft.
-

Continued on next page

Unlawfully Discharging a Firearm, Continued

**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.

Continued on next page

Unlawfully Discharging a Firearm, Continued

Unlawfully discharging a firearm

It is unlawful to discharge a firearm in an unoccupied aircraft, motor vehicle or building/dwelling.

Penal code section

Unlawfully discharging a firearm is covered in *Penal Code Section 247*.

Crime elements

- any person
 - willfully and maliciously
 - discharges a firearm at an:
 - unoccupied aircraft,
 - unoccupied motor vehicle, or
 - uninhabited building or dwelling house.
-

Classification

The crime of unlawfully discharging at unoccupied space is a felony. 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.

Continued to next page

Unlawfully Discharging a Firearm, Continued

**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 12034(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.

Continued on next page

Unlawfully Discharging a Firearm, Continued

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 12034(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.

Continued to next page

Unlawfully Discharging a Firearm, Continued

**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 12034(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.

Continued on next page

Unlawfully Discharging a Firearm, Continued

Examples

Example: 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.

Example: 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.

Non-example: In the above example, since the vehicle's owner did not knowingly allow the vehicle to be used for this purpose, the owner was not guilty of the felony.

Continued on next page

Unlawfully Discharging a Firearm, Continued

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.

Housecar 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*).

Continued on next page

Unlawfully Discharging a Firearm, Continued

Examples

Example: 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.

Example: 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.

Non-example: A woman, who frequently had problems with her car, became angry one morning when the car once again would not start. The woman went back into her home and returned with her husband's revolver. She began firing the weapon into her vehicle which was parked in their private driveway. Because the vehicle was unoccupied and she was the owner, she has not committed the crime of discharging a firearm at a vehicle. (What crime did she commit?)

Continued on next page

Unlawfully Discharging a Firearm, Continued

Examples

- Example: 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.
- Example: 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.
- Non-example: A group of men set up a makeshift target shooting range with targets backed up with bales of straw in a rural area. They assumed that the barrier would stop any bullets that were fired. The men were mistaken though and the bullets easily passed through the bales of straw. Even though the men showed a mistake in judgment, their actions were not enough to constitute a flagrantly negligent or reckless act and, therefore, there was no gross negligence involved.
-

Chapter Synopsis

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.EO1, 40.04.EO10]

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.EO2, 40.04.EO10]

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.EO3, 40.04.EO10]

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.EO10, 40.04.EO12]

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.

Continued on next page

Chapter Synopsis, Continued

Firearm in presence of a motor vehicle occupant
[40.04.EO4, 40.04.EO10]

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.EO5, 40.04.EO10]

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.EO6, 40.04.EO10]

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.

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. After having several beers at a barbeque, a homeowner and a friend set up targets in the small suburban backyard where the barbeque is taking place. The two then take turns shooting a BB gun at the targets. BBs that miss the target sail into a neighbor's yard. The next door neighbor calls law enforcement. What crime or crimes, if any, have taken place?

2. While riding around in a rural area, three 18-year-olds take turns trying to shoot a revolver at mailboxes from the moving car. What crimes or crimes, if any, have taken place?

Continued on next page

Workbook Learning Activities, Continued

**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 following glossary terms apply only to Learning Domain 40:
Weapons Violations.**

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

ballistic knife A device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas

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

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

billy A heavy club

blackjack A hard device usually consisting of leather-enclosed metal, with a strap or spring shaft for a handle

Continued on next page

Glossary, Continued

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

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

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

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

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

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

Continued on next page

Glossary, Continued

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*

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 12001(b)*)

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

housecar 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

Continued on next page

Glossary, Continued

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 cal. ammunition feeding tube
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
lipstick case knife	A knife enclosed within and made part of a lipstick case
loaded firearm	Any firearm that has an unexpended cartridge or shell in or attached in any manner to the firearm (<i>Penal Code Section 12031(g)</i>)
metal knuckles	Any device or instrument made wholly or partially of metal held in or worn on the hand for offensive or defensive purposes

Continued on next page

Glossary, Continued

**multiburst
trigger
activator**

A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst

nunchaku

An instrument consisting of two or more handles (sticks, clubs, bars, or rods) connected by a rope, cord wire or chain, in the design of a weapon

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

**prohibited
area**

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

**prohibited
weapons**

Weapons specifically identified under *Penal Code Section 12020*

**public
place**

Any property that is open to the general public

**sandbag/
sandclub**

A bag or device filled with sand

sap

A device used to bludgeon

Continued on next page

Glossary, Continued

**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

**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

**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

shuriken

A metal plate having three or more points with one or more sharp edges and is designed as a throwing weapon

slungshot

A device consisting of a small mass of metal or stone fixed on a metal handle or strap

**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 pocket knife 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

Continued on next page

Glossary, Continued

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 (<i>Penal Code Section 12401</i>)
tear gas weapon	Any shell, cartridge, bomb, or device capable of being discharged or exploded which allows the release of tear gas
threatening manner	Any action that would cause a reasonable person apprehension or fear of bodily harm
unconventional handgun	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
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
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
writing pen knife	A device that appears to be a writing pen, but has concealed a pointed, metallic shaft used as a stabbing instrument
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
