



# CALIFORNIA PEACE OFFICERS' ASSOCIATION

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## CASE ALERT MEMORANDUM

DECEMBER 4, 2008

Prepared by the firm of

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To: All Police Chiefs and Sheriffs

From: Paul R. Coble, Esq., The Law Firm of Jones & Mayer

## CITIZEN CARRYING FIREARM IN PLAIN VIEW

It has recently come to our attention from a variety of points around the State that officers are with increasing frequency encountering individuals carrying holstered pistols in plain view on a gun belt, but with ammunition close at hand either in bandolier fashion or a loaded magazine affixed to the gun belt. It is believed that these individuals are attempting to provoke a law enforcement response in order to test whether responding officers will take inappropriate action in the face of ostensibly lawful exercise of the right to bear arms.

The history of Penal Code §12031 is helpful to an understanding of this issue. Prior to 1967, it was lawful in California for an adult, not otherwise prohibited from possessing a firearm, to carry a loaded firearm in plain view in public and in an incorporated city. Only the carrying of a concealed firearm was proscribed. However, early in May of 1967, a group of Black Panthers marched into the California legislature fully armed. Shocked that this conduct was not, at the time, unlawful, the Legislature enacted Penal Code §12031, effective July 28, 1967, thereafter proscribing the carrying of a loaded firearm in public, even if not concealed.

With that background in mind, it is noted that Penal Code §12031 provides in pertinent part that:

(a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. (Emphasis added)

Subdivision (g) of §12031 provides that:

A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to,

In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

The end result of this analysis is to conclude that the conduct at issue is lawful, albeit alarming, and can only be regulated in a manner consistent with existing State law.

#### HOW DOES THIS AFFECT YOUR AGENCY?

Presentation of an individual walking down the street carrying a pistol in a holster raises obvious tactical issues, as well as safety concerns for both officers and the public. Other than to note these safety and tactical issues, we would urge that officers be alerted of this issue, that there is a possibility that they may encounter this behavior, and that they should be prepared to respond appropriately.

Field personnel should be made aware of the current state of the law as set forth above and cautioned that this is not behavior warranting arrest, but that they are legally entitled under §12031(e) to demand inspection of any such firearms in order to ascertain that the weapon is unloaded. If the firearm is unloaded, it should be returned and the subject released to go about his/her lawful business. Of course, if the firearm is loaded – as defined above – then an arrest is appropriate. Any refusal to allow inspection of the firearm constitutes cause for immediate arrest for a violation of §12031.

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