



INFORMATION BULLETIN:

CARRYING AND POSSESSING FIREARMS IN PLACES OF WORSHIP

APRIL 17, 2019

The California Rifle & Pistol Association receives numerous questions from members concerning the legal requirements and restrictions for possessing a firearm at churches and schools located in California. The following provides a comprehensive, in-depth analysis of both federal and California law on these issues.

I. GENERAL RESTRICTIONS ON CARRYING IN “PUBLIC PLACES” IN CALIFORNIA

As a threshold matter, California law generally restricts the carrying of a firearm, either openly or concealed and regardless if it is loaded, in any “public place.”¹ The term “public place” is defined as any place that is accessible to the public, including any place open to “common” or “general use, participation, enjoyment, etc.”² Such places are not limited to publicly owned property. In fact, private property will be considered a “public place” if “reasonably accessible to the public without a barrier.”³

For this reason, places of business and parking lots that are open to the public have generally been labeled “public places,” even if located on privately-owned property.⁴ A driveway, lawn, or porch of a home may also constitute a “public place” if readily accessible without a barrier.⁵

Conversely, locations guarded by some type of barrier, such as a fence or locked door, are not considered readily accessible and therefore not a “public place.”⁶ The key is “whether a member of the public can access the place without challenge.”⁷ This won’t change simply because the place is visible to the public, or a door or gate is periodically left unlocked.⁸

¹ Cal. Penal Code §§ 25400, 25850, 26350, 26400.

² *In re Zorn*, 59 Cal.2d 650, 652 (1963).

³ *People v. Yarborough*, 169 Cal.App.4th 303 (2008).

⁴ *People v. Strider*, 177 Cal.App.4th 1393, 1402 (2009); *People v. Vega*, 18 Cal.App.3d 954, 958 (1971).

⁵ *Yarborough*, 169 Cal.App.4th at 315; *Strider*, 177 Cal.App.4th at 1402-03.

⁶ *People v. Krohn*, 149 Cal.App.4th 1294 (2007).

⁷ *Strider*, 177 Cal.App.4th at 1405.

⁸ *Id.*; *People v. White*, 227 Cal.App.3d 866, 891; *Krohn*, 149 Cal.App.4th at 1299.

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Ultimately, whether a location is a “public place” within the meaning of California law depends heavily on the “totality of the facts of the individual case.”⁹ But given the nature of schools and churches, both of which generally allow access to members of the public for various reasons, it is likely such places will be considered “public places” under California law. As a result, California’s restrictions against the carrying of a firearm openly or concealed, regardless if loaded, will apply.

a. Concealed Carry of Handguns

Pursuant to Penal Code section 25400, it is illegal to carry concealed any pistol, revolver, or other firearm capable of being concealed upon the person.¹⁰ While not specifically stated in the Penal Code, a “concealed” handgun is one that is carried by a person but not visible by ordinary observation, and concealing any part of the handgun is prohibited.¹¹

b. Open Carry of Handguns and Carrying Long Guns

As applied to handguns, California makes it illegal to openly carry an unloaded handgun upon one’s person or inside or on a vehicle in any of the following locations:

- A public place or public street in an incorporated city or city and county;
- A public street in a prohibited area of an unincorporated area of a county or city and county; or,
- A public place in a prohibited area of a county or city and county.¹²

It is also illegal to carry an unloaded firearm that is not a handgun upon one’s person while outside of a vehicle in any of the following areas:

- An incorporated city or city and county; or,
- A public place or a public street in a prohibited area of an unincorporated area of a county.¹³

For the purposes of both restrictions, the term “prohibited area” is defined as any place where it is unlawful to discharge a weapon.¹⁴ And while there is no specific definition for the term “public street” in the Penal Code, it is a good idea to consider any street to be “public” if it would otherwise meet the definition of a “public place” as described above.

⁹ *Strider*, 177 Cal.App.4th at 1401.

¹⁰ Cal. Penal Code § 25400(a)(2).

¹¹ Black’s Law Dictionary 1624 (8th ed. 2009); See also *People v. Hale*, 43 Cal.App.3d 353, 356 (1974) (finding defendant guilty even though only loaded magazine was concealed and handgun was in plain view).

¹² Cal. Penal Code § 26350(a)(1-2). For the purposes of this restriction, the term “handgun” is defined as “any pistol, revolver, or firearm capable of being concealed upon the person.” Cal. Penal Code § 16640(a).

¹³ Cal. Penal Code § 26400(a).

¹⁴ Cal. Penal Code § 17030.

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c. Carrying a Loaded Firearm

California also makes it illegal to carry a loaded firearm on one's person or in a vehicle 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.¹⁵

For the purposes of this restriction, a firearm is considered “loaded” when “there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm.”¹⁶ What's more, law enforcement officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place in order to determine whether or not a firearm is loaded.¹⁷

d. Exceptions to California's Carry Restrictions

There are numerous exceptions that apply to each of the above restrictions, some of which are substantively identical or closely mirror one another. For the purposes of this memorandum, however, they will not all be discussed in detail. Instead, this memorandum will focus on those exceptions that are generally applicable to members of the public. If you believe you may be subject to an exception not discussed here, such as those applicable to current law enforcement or licensed security personnel who are authorized to carry a firearm, you should consult with an experienced attorney to discuss your circumstances in more detail.

With that said, each of the above restrictions provide an exception for the carrying of a firearm at a place of business, residence, or private property.¹⁸ But only the actual owner or lawful possessor of the property may carry concealed.¹⁹ And for those who wish to openly carry at a residence, business, or other private property where they are not the lawful owner, they may only do so with the owner's permission.²⁰

All the restrictions allow for firearms to be transported in a locked container or locked trunk of a motor vehicle, but with one important distinction.²¹ When transporting pursuant to the exceptions for concealed carry

¹⁵ Cal Penal Code § 25850(a). In addition to this restriction, it is also illegal for a driver or owner of a motor vehicle (even if not occupying the vehicle at the time) to knowingly permit any other person to carry or bring into the vehicle a loaded firearm. Cal. Penal Code § 26100(a).

¹⁶ Cal. Penal Code § 16840(b)(1).

¹⁷ Cal. Penal Code § 25850(b).

¹⁸ See Cal. Penal Code §§ 25605(a), 26383, 26405(a-b).

¹⁹ Cal. Penal Code § 25605(a).

²⁰ Cal. Penal Code §§ 26383, 26405(b).

²¹ Cal. Penal Code §§ 25505, 26389, 26405(c). For the purposes of these exceptions, the term “locked container” has been defined as “a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device” but does not include “the utility or glove compartment of a motor vehicle. Cal. Penal Code § 16850.

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or open carry of long guns, the course of travel cannot deviate more than reasonably necessary.²² This restriction on unnecessary deviation is not found within the exception applicable to the open carry of handguns.²³

Both the concealed carry of handguns and long gun carry restrictions provide an exception for when a person reasonably believes they are in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another who poses a threat to life or safety.²⁴ But because a judge ultimately decides whether or not the person reasonably believed they were in grave danger, this exception should seldom be relied upon.²⁵

There is also, of course, the exceptions to the concealed and loaded restrictions for individuals who possess a valid license to carry a concealed firearm, current and honorably retired California peace officers who are authorized to carry a firearm, and honorably retired federal agents or law enforcement officers authorized to carry a firearm.²⁶ But as you will see below, these exceptions are now extremely limited in such areas for individuals other than current and retired California peace officers.

California recently enacted specific requirements regarding the storage of a handgun in an unattended vehicle.²⁷ While doing so is not technically considered “carrying” for the purposes of California law, it is an important consideration when leaving a handgun in a vehicle in an otherwise “public place.” To lawfully leave a handgun in an unattended vehicle, the handgun must either be 1) locked in the vehicle’s trunk; 2) stored in a locked container in the vehicle that is out of plain view; or 3) stored in a locked container that is permanently affixed to the vehicle’s interior and not in plain view.²⁸ For the purposes of this section, the term “locked container” has the same definition as applied to other California firearm transportation requirements.²⁹ Unlike other aspects of California transportation laws, however, the Legislature has clarified that the “trunk” of a vehicle is defined as “the fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger compartment” but does not include “the rear of a hatchback, station wagon, or sport utility vehicle, any compartment which has a window, or a toolbox or utility box attached to the bed of a pickup truck.”³⁰

²² Cal. Penal Code §§ 25505, 26405(c).

²³ Cal. Penal Code § 26389.

²⁴ Cal. Penal Code §§ 25600, 26405(d).

²⁵ *Id.*

²⁶ Cal. Penal Code §§ 25450(c-d), 25650, 25655, 25900(c-d), 26010, 26020.

²⁷ Cal. Penal Code § 25612. A vehicle is considered “unattended” when “a person who is lawfully carrying or transporting a handgun in a vehicle is not within close enough proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.” Cal. Penal Code § 25140(d)(2).

²⁸ Cal. Penal Code § 25140(a). The locked container will be considered in “plain view” in “any area of the vehicle that is visible by peering through the windows of the vehicle, including windows that are tinted, with or without illumination. Cal. Penal Code § 25140(d)(3).

²⁹ See Cal. Penal Code § 25140(d)(1)(A) (defining “locked container” as “a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device” but not “the utility or glove compartment of a motor vehicle”).

³⁰ Cal. Penal Code § 25140(d)(1)(C).

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With these general exceptions to California's carry restrictions in mind, we can now look to the specific restrictions relating to school zones.

II. FEDERAL LAWS REGARDING "GUN-FREE" SCHOOL ZONES

Federal law makes it "unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone."³¹ As used here, the term "school zone" is defined as "in, or on the grounds of, a public, parochial or private school; or within a distance of 1,000 feet from the grounds of a public, parochial or private school."³² And the term "school" is defined as "a school which provides elementary or secondary education, as determined under State law."³³ But there are several exceptions, including:

- Private property not part of school grounds;
- Individuals licensed by the State to possess the firearm in a school zone, provided that before the individual obtains such a license, law enforcement verify they are qualified under law to receive the license;
- Firearms that are unloaded and in a locked container (or on a locked firearms rack that is on a motor vehicle);
- Firearms for use in a program approved by the school;
- In accordance with a contract between the school and the individual or employer of the individual;
- While traversing the school premises for purposes of gaining access to public or private lands open to hunting, if entry is authorized and the firearm is unloaded.³⁴

III. CALIFORNIA'S "GUN-FREE SCHOOL ZONE ACT"

In addition to federal law, California has its own restrictions regarding the possession of firearms in school zones under the "Gun-Free School Zone Act of 1995" ("GFSZA").³⁵ One major distinction between state and federal law, however, is that California places restrictions on both K-12 schools *and* college campuses, regardless if public or privately owned.³⁶

³¹ 18 U.S.C. § 922(q)(2)(A).

³² 18 U.S.C. § 921(a)(25). Note the use of the word "parochial," which although not specifically defined in federal law, is generally defined as relating to a church parish.

³³ 18 U.S.C. § 921(a)(26).

³⁴ 18 U.S.C. § 922(q)(2)(B).

³⁵ Cal. Penal Code § 626.9(a).

³⁶ Cal. Penal Code § 626.9(f).

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a. K-12 Schools

It is a crime in California for any person to possess a firearm in a place that the person knows, or reasonable should know, is a school zone.³⁷ The term “school zone” has been defined as “an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.”³⁸ Exceptions applicable to members of the general public are as follows:

- Within a place of residence, business, or private property, if not part of the school grounds and the possession of the firearm is otherwise lawful;
- When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed and is in a locked container or within the locked trunk of a motor vehicle;
- Persons possessing the firearm out of a reasonable belief that they are in grave danger because of a current restraining order; or,
- Persons with a valid CCW carrying the firearm in an area that is not on the grounds of but within 1,000 feet of a public or private school.³⁹

b. Colleges and Universities

Notwithstanding the above, California also makes it a crime to bring or possess a firearm, either loaded or unloaded, “upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property.”⁴⁰ An exception to this restriction is provided for when the possession is “with the written permission of the university or college president, his or her designee, or equivalent university or college authority.”⁴¹

c. Exceptions Applicable to Both K-12 Schools and Colleges/Universities

In addition to the specific exceptions for K-12 schools and colleges discussed above, California’s GFSZA provides the following general exceptions which are applicable regardless of the type of school:

- Existing shooting ranges at a public or private school or university or college campus;
- Current and honorably retired peace officers authorized to carry a firearm;

³⁷ Cal. Penal Code §§ 626.9(b).

³⁸ Cal. Penal Code § 626.9(e)(4).

³⁹ Cal. Penal Code §§ 626.9(c)(1-5). As used here, the term “locked container” has the same meaning as given in section 16850. Cal. Penal Code § 626.9(e)(3). What’s more, the restriction “does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.” Cal. Penal Code § 626.9(c)(2).

⁴⁰ Cal. Penal Code §§ 626.9(h-i).

⁴¹ Cal. Penal Code §§ 626.9(h-i).

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- Activities of a program involving shooting sports that are sanctioned by the school or other governing body of the institution that occur on the grounds of the school;
- Activities of a state-certified hunter education program if all firearms are unloaded and participants do not possess live ammunition in a school building.⁴²

IV. APPLYING THE EXCEPTIONS TO PLACES OF WORSHIP

With the above exceptions to California’s general carry restrictions and federal and state restrictions against the possession of firearms in school zones in mind, we can now look to how those exceptions apply in places of worship.

a. Places of Worship Located Outside of School Zones

If the place of worship is located outside of a school zone, then the only general concern regarding the possession and carrying of firearms are California’s carry restrictions. This is because places of worship are not subject to special state or federal restrictions regarding the possession or carrying of a firearm. If an individual can satisfy any of the exceptions to California’s restrictions on concealed, open, and/or loaded carry, they may possess and carry a firearm pursuant to those exceptions while in a place of worship that is located outside of a school zone.

Individuals should be cautioned, however, that the distinction between a place of worship and school is often unclear. This is especially true for places of worship that offer “classes” that could potentially be viewed as “education” or “instruction” within the meaning of either state or federal law, thereby triggering the school zone restrictions. For this reason, if you are unsure if your particular place of worship could be classified as a “school zone” within the meaning of either state or federal law, you should consult with an experienced attorney before attempting to carrying a firearm on the property pursuant to a particular exception.

b. Places of Worship Located on or in a K-12 School Zone

When the place of worship is located in a K-12 school zone, the applicable exceptions are significantly narrowed because both federal and state restrictions come into play. As a threshold matter, there is no lawful means for a member of the general public (outside of honorably retired law enforcement) to “carry” a firearm on the grounds a K-12 school in California. This is because California recently amended its GFSZA to no longer allow individuals with a CCW to carry a firearm on the grounds of a K-12 school, even with written permission of an appropriate school authority.

There is no clear rule for when a particular location is considered to be on the “grounds” of a school. Some places of worship share the same city block as the school, while others may be across the street. Similarly, some schools may have a direct business or professional relationship with the place of worship, while others may not. Because the distinction between on or off the grounds of a school is unclear, CCW holders seeking to carry at a place of worship in a K-12 school zone should consult with an experienced attorney before attempting to do so.

⁴² Cal. Penal Code §§ 626.9(n-o), 626.9(q).

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Honorably retired law enforcement (including honorably retired federal law enforcement) who are authorized to carry a firearm are still exempt from California's GFSZA. And because federal law provides an exception for certain properly licensed individuals, they will also satisfy an exception pursuant to federal law.

The only remaining exceptions applicable in places of worship located on or in a K-12 school zone are for school sponsored programs relating to firearms, and for when the firearm is unloaded and in a locked container. Any school sponsored program is likely to be limited in nature, and as a result will serve little benefit to someone intended to carry or possess a firearm in a place of worship in a school zone. Possessing a firearm that is unloaded and in a locked container, however, will at least allow the individual to generally possess the firearm on the property.

c. Places of Worship Located on A College Campus or University

Federal law does not specifically restrict the possession of a firearm at a college campus or university. As a result, the only general concerns for such properties outside of California's general carry restrictions are the restrictions pursuant to California's GFSZA.

Unlike K-12 schools, a college campus or university is not subject to a 1,000 "buffer" zone. Instead, California's restriction only applies to the grounds of the campus itself, or buildings owned or operated by the university which are contiguous or clearly marked as university property and are used for student housing, teaching, research, or administration.⁴³ For this reason, the possession and carrying of a firearm at a church that is near a college campus or university and not actually on the grounds of the campus itself will not be subject to California's GFSZA restrictions.

What's more, unlike K-12 schools, college campus and university administrators retain their authority to issue written permission for individuals to possess firearms on the grounds of the campus. Thus, obtaining written permission of the university or college president, his or her designee, or equivalent authority to carry and possess a firearm on campus will allow a CCW holder to carry a firearm on campus pursuant to their CCW.

V. ADDITIONAL CONSIDERATIONS REGARDING AMMUNITION

Setting aside the restrictions against carrying or possessing a firearm in a school zone, California generally prohibits the possession of ammunition on the grounds of a school unless with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.⁴⁴ Violations are punishable as a misdemeanor.⁴⁵ But there are no federal restrictions against the possession of ammunition in a school zone.

⁴³ Cal. Penal Code § 626.9(h-i).

⁴⁴ Cal. Penal Code § 30310(a).

⁴⁵ Cal. Penal Code § 30310(c).

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Outside of obtaining written permission, the only exceptions generally applicable to members of the public are those for honorably retired law enforcement and for ammunition that is kept in a motor vehicle at all times and is within a locked container or within the locked trunk of the vehicle.⁴⁶

As a result, anyone who does not possess written permission from the appropriate school authority must generally keep their ammunition in a locked container in their vehicle when inside a school zone.

VI. CONCLUSION

Many places of worship in California are located on or near school zones. As a result, the recent changes to California's GFSZA have made it much more difficult for an individual to lawfully carry a firearm at their place of worship.

In any event, whether you may lawfully carry and/or possess a firearm at a place of worship will depend heavily on the facts and circumstances of the property in question. For this reason, we strongly advise anyone seeking to carry or possess a firearm at a place of worship that may or may not be in a school zone to consult with an experience attorney before attempting to do so. are located.⁴⁷

⁴⁶ Cal. Penal Code §§ 30310(b)(8-10). For the purposes of this exception, the term "locked container" has the same meaning as used in Penal Code section 16850.

⁴⁷ Cal. Penal Code § 30363.

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