

RETURNING A CASE FOR FOLLOW-UP

If you decide that the case needs to be sent back for follow-up you will need to change the case status from Review to Incomplete. To do this, click on the Case Info tab found at the top of the page. Click on the "Edit" button and go to case status summary and click on the "Add case status" box. Type in the letter "I" or scroll down to choose "incomplete" and put in the current date. Save that info and then scroll down to the bottom of the page and click "Save and Done."

Go to the notes tab and add a case note. Tell the agency that the case is being returned for follow-up and what you need done. Save and get the PDF. Print that note on yellow paper and attach to the front of the case. Put the case in the return/deny drawer (top drawer) located on the first floor outside Billie Jo's office.

ROUTING A CASE TO ANOTHER TEAM

If you need to route the case to a different team for review you will need to go to the Case Info tab and hit the Edit button. Go to Assigned Staff Summary and click on "Add assigned staff." Type in the team you are sending the case to and the name of the DA if known. Put in the current date for the begin date. You also need to edit the old info. Where you see the reviewing team and your name (if you already entered that info) as the reviewing DA you will see an edit button at the end of each line. Edit each to put an end date. Give the case to Denise to route to the appropriate person.

ISSUING A CASE

For felony cases, if you decide to issue the case, you must enter the facts and witnesses needed for prelim. This includes SDTs and certified copies of DMV, priors, lab results, etc.... To enter the facts you go to the Notes tab on the top of the page. Click on Add Note and select Case Facts. Enter all your facts and wits. Save when done. Print the facts out on yellow paper and attach to the case behind the issuing sheet. To print, go to the top and hit "Get PDF" – this will give you all notes. If the case has other notes that you do not want printed, go to Note topic search and choose case facts. Choose "Get PDF" and just the case facts will show up. You can now print.

To enter the charges click on the Case Charges tab at the top. The first box that appears is the Defendant List. Your def's name will appear in the box. Click on the "edit defendant number/status". You will put in a defendant number and a status. If you are charging the def, either type in the letter "A" or scroll down and choose "Approved" and save. You now have a def to charge. Now you can go to the "Charges Summary." This is where you add all charges, priors, clauses, enhancements, and allegations. First choose statute category then enter the charge with the offense date, and move the appropriate defs over from the "available" block to the "selected" block. Select the level of the offense if necessary – only need to make the selection on wobblers. If you have an attempt, check the attempt box. Click on "statute lookup" and your charge should appear at the bottom. There may be some questions you need to answer. For those questions the edit button will be in blue and you click that button. Answer the question and if there is another question hit the "next" button. Once you have answered all the questions, hit the save button if you are done. Hit the "Save and Add" button if you want to enter another charge, clause, allegation... Once you are done hit the "save" button and you will see "generate document". You are done. Put your initials, DA number, team designation, and date at the bottom. You do not need to enter a team

designation if you issue a misd. If you issue a misd on a case that came in as a felony make sure to cross out the word felony on top and write in "misd." Turn the entire packet in and the complaint will be generated by support staff. If the case is an in-custody it is placed in the basket in front of Denise on the first floor. If the case is out of custody it goes in the basket on top of the filing cabinet outside Billie Jo's office.

NOTE: Allegations and priors attach to a specific count. Def priors and clauses go at the end of a complaint and do not attach to a specific charge.

NOTE: Make sure you run all in process cases that appear on the local rap. Add a 12022.1 allegation if the def has an in process felony. You can usually get the information off CJIC, but if not you can run the CEN through Ciber to see if it has come to our office for review. If there is a pending case make sure to fill out the pink slip and attach it to the front of the case.

Adding Charges

Adding Assigned Team

1. Access the case
2. Select the “*Case Info*” tab and click “*Edit*” at the top of the screen
3. Select “*Add Assigned Staff*”
4. Set the “*Assigned Staff Type*” as “*Assigned Team*” from the list
5. Select the “*Assigned Staff*” team
6. Enter the “*Assignment Begin Date*”
7. Click “*Save*”
8. At the bottom of the “*Case Information*” screen click “*Save & Done*”

Adding Arraignment Date (If Applicable)

9. Go to the “*Events*” tab
10. Select “*Add Event*”
11. Enter “*Event Category*” as Court
12. Enter “*Event*” as “*Arrestment*”
13. Select the appropriate defendant(s) associated with the Event
 - Move the defendant(s) over to the selected pane
14. Enter the Arraignment Date as the “*Event Date*”
15. Enter the Arraignment Time as the “*Event Time*”
16. Enter the “*Court*” as Santa Clara County Superior Court
17. Select the appropriate Court Facility
18. Scroll to the bottom and select “*Save*”
19. Repeat steps 9-18 for each different Arraignment date

Approving Defendant(s)

20. Select the “*Case Charges*” tab
21. Click “*Edit Defendant Number/Status*”
22. Enter Defendant # and Defendant Status
23. All defendants should either be in “*Approved*” or “*Rejected*” status

Note: No defendant status should be incomplete

24. Click "Save"
 25. Select "Add Charge"
 26. Select the statute category
 - Charge
 - Allegation
 - Prior
 - Defendant prior
 - Clause
-

Charge

1. Select the statute category "Charges"
2. Enter the statute code (i.e. PC187, HS11357)
3. Enter the offense begin date
4. Click "Statue Lookup"
5. Select the appropriate charge

Note: *If there is only one (1) match for the statute code entered, the system will automatically return the charge without the displaying the select charge pop-up window*

6. Enter offense end date if applicable

Note: *The system will automatically enter count # and version #*

7. Select the appropriate defendant(s) associated with the charge
 - Move the defendant(s) over to the selected pane
8. Status: approved (for now)
9. Verify the level
10. Modifiers: If attempted select the "attempt" checkbox
11. Scroll down to the bottom of the screen and check for user questions
 - If there are any questions that need to be answered by the user the question type will be "USER"
12. To answer a "USER" question, select "Edit" on the question row to the right
13. Enter the appropriate answer or select the omit box
14. Click "Save" to save the question's answer

15. Repeat until all questions are answered
 16. Click “*Save*” or “*Save & Add*” to add more statutes
 17. If you are done and have no more Charges, Allegations, Priors, Defendant Priors, or Clauses to add, click “*Generate Charging Document*”
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Allegations

1. Select the statute category “*Allegation*”
2. Enter the statute code
3. Click “*Statue Lookup*”
4. Select the appropriate charge

Note: *If there is only one (1) match for the statute code entered, the system will automatically return the charge without the displaying the select charge pop-up window*

5. Select the appropriate charge(s) and the defendant(s) associated with the allegation
 - Move those charge(s) and defendant(s) over to the selected pane
 6. Scroll down to the bottom of the screen and check for user questions
 - If there are any questions that need to be answered by the user the question type will be “USER”
 7. To answer a “USER” question, select “*Edit*” on the question row to the right
 8. Enter the appropriate answer or select the omit box
 9. Click “*Save*” to save the question’s answer
 10. Repeat until all questions are answered
 11. Click “*Save*” or “*Save & Add*” to add more statutes
 12. If you are done and have no more Charges, Allegations, Priors, Defendant Priors, or Clauses to add, click “*Generate Charging Document*”
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Priors

1. Select the statute category “*Prior*”
2. Enter the statute code
3. Click “*Statue Lookup*”

4. Select the appropriate charge

***Note:** If there is only one (1) match for the statute code entered, the system will automatically return the charge without displaying the select charge pop-up window*

5. Select the appropriate charge(s) and the defendant(s) associated with the prior
 - Move those charge(s) and defendant(s) over to the selected pane
6. Scroll down to the bottom of the screen and check for user questions
 - If there are any questions that need to be answered by the user the question type will be "USER"
7. To answer a "USER" question, select "Edit" on the question row to the right
8. Enter the appropriate answer or select the omit box
9. Click "Save" to save the question's answer
10. Repeat until all questions are answered
11. Click "Save" or "Save & Add" to add more statutes
12. If you are done and have no more Charges, Allegations, Priors, Defendant Priors, or Clauses to add, click "Generate Charging Document"

Defendant Priors

1. Select the statute category "Defendant Prior"
2. Enter the statute code
3. Click "Statue Lookup".
4. Select the appropriate charge

***Note:** If there is only one (1) match for the statute code entered, the system will automatically return the charge without displaying the select charge pop-up window.*

5. Select the appropriate charge(s) and the defendant(s) associated with the defendant prior
 - Move those charge(s) and defendant(s) over to the selected pane.
6. Scroll down to the bottom of the screen and check for user questions
 - If there are any questions that need to be answered by the user the question type will be "USER"

7. To answer a "USER" question, select "*Edit*" on the question row to the right.
 8. Enter the appropriate answer or select the omit box.
 9. Click "*Save*" to save the question's answer
 10. Repeat until all questions are answered
 11. Click "*Save*" or "*Save & Add*" to add more statutes.
 12. If you are done and have no more Charges, Allegations, Priors, Defendant Priors, or Clauses to add, click "*Generate Charging Document*"
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Clause

Note: *Prop 115 & PC296(a) Clauses are now part of the template group*

1. Select the statute category "*Clause*"
2. Enter the statute code
3. Click "*Statue Lookup*"
4. Select the appropriate charge

Note: *If there is only one (1) match for the statute code entered, the system will automatically return the charge without the displaying the select charge pop-up window*

5. Select the appropriate charge(s) and the defendant(s) associated with the clause
 - Move those charge(s) and defendant(s) over to the selected pane
 6. Scroll down to the bottom of the screen and check for user questions
 - If there are any questions that need to be answered by the user the question type will be "USER"
 7. To answer a "USER" question, select "*Edit*" on the question row to the right
 8. Enter the appropriate answer or select the omit box
 9. Click "*Save*" to save the question's answer
 10. Repeat until all questions are answered
 11. Click "*Save*" or "*Save & Add*" to add more statutes
 12. If you are done and have no more Charges, Allegations, Priors, Defendant Priors, or Clauses to add, click "*Generate Charging Document*"
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Generating the Charging Document

1. Access the case
2. Select the “*Document Generation*” tab
3. Select “*Add Document*”
4. Select “*Single Template*” or “*Template Group*”
5. Select the “*Template Type*” as “*Charging*”
6. Select the appropriate “*Template Group Name*”
7. Click “*Add to “To Be Generated List”*”
8. Review “*Template Name*” column
 - If a template is missing click “*Add Document*” and repeat the process until all required documents have been added
9. Compare the “*Total Questions*” column to the “*Questions Answered*” column
 - If there are any questions that need to be answered by the user select “*Edit*” on the appropriate template name row in the “*Edit Answer*” column
10. Enter the appropriate answer for the current question(s)
11. Once all questions have been answered, select “*Save*”
12. Repeat until all template user questions have been answered

Note: *If you added additional documents to your Charging Template Group, you need to check the “Page Break Before” box associated with the new template you added*

13. Once all documents are added and all questions have been answered click “*Generate & Edit*”
 - A word document will be generated
14. Print and assemble the packet

Note: *Refer to unit procedures*

Saving your Document to the Case

1. Select on “*My Home*” in the left navigation menu
2. Select the “*Doc Bin*” tab
3. You can save a document to a case in three (3) different ways
 - Select “*Save*” on an individual document row in the “*Save*” column

- Select “*Print & Save*” on an individual document row in the “*Print & Save*” column
- Select all or multiple documents by checking their respective boxes on the far left column and then click “*Save Selected*” at the bottom of the screen

Note: By saving the document(s) one of these 3 ways you are moving it from your document bin into the case for everyone to view

Note: Once a document has been saved to a case it **CANNOT** be edited

DENYING A CASE

You need to go into the Case Charges tab. Click on the Edit defendant number/status and then insert a number for you defendant(s). Under defendant status you will choose one of the reject codes. Once you do that you will be asked to insert a primary charge – this is where you put the charge you are denying. Note: When looking up charges, some of them will have a period between the Code and the section and some don't. (Example: it might read HS.11377(a) or HS11377(a) – you will need to check both until you find the one you are looking for.)

Add a case note regarding your reason for the denial.

IN-CUSTODY FOLLOW-UP REQUEST

If you decide to issue an in-custody case but need follow-up done by the agency you can send a request at the time of issuing.

Go to the Document Generation tab at the top of the page. Select Single Template then select Letter Template. Scroll down and select LEA Follow-up Request. Click on Add to "To Be Generated List."

Click on edit and you will see there are 3 questions to be answered. Answer each question and then click on Save. Click on "Generate." The document will now be in your personal document bin. Go to My Home (found on the left side of the screen) and click on Doc Bin. Your document should be the top document on the list. Click on View to open the document. Make any changes you want to make and then print on RED paper. For SJPD cases make 3 copies, for all other agencies make 2 copies. When you are done, close the document and hit the Save button – this will save it to the case. One copy stays with the case. One copy goes to the investigating officer. Both copies are attached to the front of the case when you turn it in. For SJPF the 3rd copy goes to the Sgt of the assigned unit – place that copy in the appropriate mailbox located in the 1st floor.

DUI/14601 CASES

In DUI cases you need to add all allegations and priors. If def has 3 or more priors within the last 10 years, or has a felony DUI prior in the last 10 years the case is a felony. Those cases can be found under 23550VC and 23550.5VC. In all other cases it is a misdemeanor. Be sure to check for the under 21 allegation and the excessive use allegation. I have attached a copy of the court numbers so you can find the appropriate county for out of custody priors. Remember that the date of the prior is the offense date, not the conviction date. To issue the prior you first add both the 23152(a) and 23152(b) counts. Then add the priors by choosing Prior, then typing in 23152 for the charge. Select both the (a) and (b) counts and then do statute look up. The prior will be added to all the charges you selected (i.e. you don't need to add the priors separately). You must have the DMV in order to issue these cases. If the agency failed to send copy of the DMV, send it back. If you need it immediately, our records dept can run it for you, but this is a last resort.

In DUI with injury cases we generally issue a misd unless there is significant injury to the victim. The agencies do not generally get updates on injuries so you may need to send the case back for follow-up to get an update. If it appears the injury is minimal we issue the misd. If it appears there is no injury to a victim we issue the straight DUI. If you have more than one victim make sure to add the 23558 allegation for each additional victim. Also remember that you must have a CVC violation in these cases – speeding (22350), wrong side of the road (21650), stop sign (21801), red light violation (21453(a)), unsafe turning (22107) are some common violations. If the def was not at fault then it is a simple DUI.

If you deny a DUI case, you must fill out a DMV Administrative Per Se, Failure to File form. This form is attached to the front of the case and will be sent to DMV.

In 14601 cases you must have the copy of the DMV. Look for al 14601 violations. You might have a combination of reasons

for the suspension – we charge all of them. Look for 14601(a), 14601.1(a), 14601.2(a), and 14601.5(a).

Priors can get a little complicated with 14601s. For all 14601 cases, the priors are the date of offense, not the date of conviction. For 14601.1 and 14601.5 cases, the prior offense must be within 5 years. For 14601(a) and 14601.2(a) cases, the priors can either be under 5 years OR under 7 years but over 5 years. Sometimes you will have more priors for some of the 14601 counts. Remember, first enter all the charges and then add the priors to the appropriate charges. For priors under 5 years, select all the 14601 charges and add the priors. For priors between 5 – 7 years, select only the 14601(a) and 14601.2 charges. You will find the 14601 priors by selecting Prior as the charge type and then entering 14601PR for the prior.

PRE-FILING DIVERSION (PFD)

This program was instituted in July 2012 and applies to defs arrested for certain misds. The charges included are petty theft, misd 496(a), misd vandalism (PC594(a)(b)(2)), all trespass cases except for 602(u), PC602.5, and PC602.8. Most of these cases come in as citations. If you get a case with any of these charges you need to indicate if the person is eligible for PFD. The ineligibility clauses are located in clauses under 1001, forms 1 -8. In any misd in which you charge one of these charges you must add the appropriate ineligibility clause. If the def is ineligible it is issued as any other case and placed in the done basket. If the def is eligible for PFD you will deny the case and use "BX" as your denial reason in the charges section. In those cases there is no case filed in court. If the def is eligible, you deny the case and then go to Document Generation and choose single template. Next choose letter template and scroll down to PDF eligibility form. Choose that form and then you need to answer the questions – charge and restitution. If there is no restitution leave it blank. If you know the amount you can add that. If there is restitution, but the amount is unknown, enter \$.01. Once you are done, save the document and print out a copy. The copy is attached to the top of the case and the case is put in the basket on the top of the tall filing cabinet located across from Nina on the first floor. She will tack those cases. If a def fails PFD the case is then activated. If you get any of these cases you need to change the status from Denied to Approved in the charges section, add the charges and then add the 1001;f9 clause – that says def is not eligible for PFD because he/she already failed in this case.

From: Jeff Rosen
To: Office Bulletin; SCDANET
Date: 7/19/2012
Subject: Misdemeanor Pre-filing Diversion Program
Attachments: PFD Eligibility Form.pdf

Dear District Attorney Staff,

On Monday July 23, we will roll out a misdemeanor pre-filing diversion program for select low level offenders with little or no criminal history.

The Santa Clara County Community Accountability Program will hold individuals accountable without jail or court oversight. A person eligible for misdemeanor diversion must abide by the diversion plan, work with a case manager, pay a fee to enroll, attend a mandatory class, complete community service and make restitution.

Administrative fees for this program will not be held by the District Attorney's Office but rather will be banked for indigent persons who are otherwise eligible to benefit from the program.

The following three broad conditions describe the prerequisites for participation in Community Accountability Program:

1. A person was arrested, cited or investigated for a violation of one of the following misdemeanor charges:

- * Penal Code section 484-488
- * Penal Code section 490.1
- * Penal Code section 490.5
- * Penal Code section 496 - *misd*
- * Penal Code section 594(2)(A)
- * Penal Code section 602 subsections (a), (b), (c) (d), (e), (g) (h), (i), (j) (l), (m), (n), (o) (p), (q), (r), (s), (t), (w), or (y). [Note subsection (u) is not eligible for diversion.]
- * Penal Code section 602.5
- * Penal Code section 602.8

2. If the first condition is met, then the person will be eligible for pre-filing diversion only if the person's criminal history reflects the following:

- * There are no prior convictions for the same crime. In other words, if a person has suffered a petty theft conviction in the past, s/he is not eligible for diversion on a petty theft.
- * The person can not be on probation, court or formal.
- * The person can not have failed probation in the past.
- * The person has been free of any criminal convictions for five (5) years.
- * The presenting misdemeanor is not accompanied by an act of violence or an offense that does not qualify for diversion. In other words, if a person is cited for petty theft and vandalism, diversion is possible. If a person is cited for petty theft and resisting arrest, diversion is not an option.
- * The person has not received diversion in the past.

3. The District Attorney reserves the very rare option of not recommending pre-filing diversion if the investigation reveals aggravating factors which make diversion against the interests of public safety.

If a person successfully completes the prerequisites of his/her diversion plan then criminal charges will not be filed. If the person fails the diversion plan, then criminal charges will be filed.

Qualifying persons who currently have cases pending will be able to participate in the Santa Clara County Community Accountability Program. Successful completion of the program will result in a dismissal of charges.

CJIC has new entry codes for tracking diversion referrals and the success or failure of diversion participation:

- * "BX" means the District Attorney's Office deferred prosecution pending misdemeanor pre-filing diversion program. This code will be entered by the District Attorney's Office at the charging level. This code is not final and will be over-ridden by a subsequent disposition code.
- * "BY" means the suspect successfully completed a misdemeanor pre-filing diversion program. This code will be entered by the District Attorney's Office at the charging level. This is a final code and will reflect that no criminal prosecution.
- * "BZ" means the suspect did not successfully complete a misdemeanor pre-filing diversion program. This will be entered by the District Attorney's Office when the vendor provides notification of failure. This is a final code; another CJIC code will reflect that the case was either issued or denied by the District Attorney.

CIBERLaw has new forms to use when determining eligibility. The form is attached to this email.

The Santa Clara County Community Accountability Program will hold defendants accountable, provide restitution to victims, decrease taxpayer costs, and reduce recidivism through focused classes and community service.

If you have questions about the program, please contact SuDDA Maureen Williams, SuDDA James Gibbons-Shapiro, or ADA Karyn Sinunu-Towery.

Sincerely,

Jeff Rosen

Jeffrey F. Rosen
District Attorney
Santa Clara County
Tel. (408) 792-2855

GENERAL ISSUING GUIDELINES

GETTING STARTED

Every case that has been logged into Ciber by a support staff member will have a referral number at the bottom. The referral number tells the day the case was logged in. For example, RF-1301-22467 would refer to the year 2013 (13) and the month January (01). The 22 refers to the day of the month and the final 3 numbers refers to a chronological number for that day.

When you pull a case for issuing you need to enter the RF number to pull up the case. (If for some reason that doesn't work you can pull the case up using the PFN or CEN as well). At the top of the screen, next to Search, use the scroll down menu and select "Case #." Enter the referral number located at the bottom of the issuing sheet. (RF-____-____). You must enter the dashes.

You will get the Case at a Glance screen and mid-way down you will see "Add Assigned Staff" in red. Click on that and you will see some boxes that need to be filled in. The first is Assigned Staff type – type in the letter "R" and review DA will show up. Next you need to enter your name for Assigned Staff – start typing your last name and it should pop up. Last is the date – if you type in "t" and hit tab, today's date will appear. Click Save and then go to the bottom of the page and hit Save and Done.

MISC. ISSUES

In 666(a) cases you need to add the 3 priors. You will find the priors under 666PR.

Prison Priors: we have 2 forms. Form 1 is the prison prior where def went to CDC. Form 2 is for cases in which def was sentenced under PC1170(h). Both are found under Def Prior.

1170(h)(3) clauses need to be added whenever def has a prior strike or is a sex registrant. These are found under clause.

PC648: This is the charge involving counterfeit money. Officers will ask for a 475PC, but 648PC is specific to counterfeit bills used as money. There is no violation for mere possession – the def must put into circulation or use the fake bills. We often deny these cases since most involve possession only.

NARCO CASES

I have attached a basic narco charging guide. Make sure you add the appropriate clauses for DEJ and Prop 36. If the def is eligible for either/both make sure you stamp the issuing sheet with the appropriate tamp. You will each have a DEJ eligible stamp and a Prop 36 eligible stamp.

Consider BP4060 in cases involving possession of prescription pills without a prescription. We often get cases involving a couple of vicodin or oxycodone pills. We generally issue the 4060 rather than the 11350(a) in those cases. That charge is included in DEJ so you need to add the appropriate DEJ and Prop 36 clauses.

In 11377(a) cases involving methamphetamine if the amount of meth is less than .25 gram the case is usually issued as a misd. You can issue a felony if the def's rap is aggravated. Many reports don't tell you how much they recovered or they include the weight of the packaging. You can sometimes find the amount listed on the felony affidavit at the bottom. If you do not know the amount of meth and the case is out of custody, send the case back for the results. If it is in-custody and you want to issue the case go ahead and the narcotics calendar deputy will get the results and reduce the case if necessary.

If the officer recovers a loaded syringe the lab will not analyze the sample until they get a request from us. Fill out a Hypodermic Syringe Contents Analysis Request, attach it to the front of the case, and return the case for follow-up. The agency will submit the request and the lab will do the test. The case will be returned once the results are obtained.

If you get a case without lab results (either tox or solid substance) you might be able to get the results yourself. The lab case numbers will show up on the Case at a Glance screen. Scroll down and you will see a "Related Cases" box. The lab cases associated with the case are located here. For tox results you just need to open the window and click on Print results. For solid substance results you need to open the

window and then click on the Lab Case attachments tab at the top. This will open the results. Click on "view file" and the results will pop up if they are available. You can print the results.

ISSUING NARCO CASES

1. Possession: 11350 = cocaine, heroin, vicodin
11377 = meth, PCP, ecstasy
If drug is meth, it is usually a misd if amount is less than .25 grams. Def can earn a felony if he is currently on Parole or probation or has a bad record.
11370.1 = armed while in possession of cocaine, meth , heroin, PCP
2. Possession for Sale: 11351= cocaine, heroin, vicodin
11351.5 = cocaine base
11378 = meth, ecstasy
11378.5 = PCP
11359 = MJ

ENHANCEMENTS:

- 1) 1203.07(a): Mandatory prison, no discretion

- | | |
|-----------------|--|
| 1203.07(a)(11): | Applies to cocaine, cocaine base and meth.
Applies if def has a prior conviction for 11351, 11352, 11351.5, 11378, 11378.5, 11379 or 11379.5.
APPLIES FOR POSSESSION FOR SALE AND SALE ONLY –
NEW OFFENSE CANNOT BE TRANSPORTATION. |
| 1203.07(a)(1): | Applies when new charge is 11351 – 14.25 grams or more of heroin |
| 1203.07(a)(2): | Applies when new charge is sale/offer to sell 14.25 grams or more heroin. |
| 1203.07(a)(3): | New charge is possession for sale or sale of heroin and Def has a prior conviction of 11351 or 11352. |
| 1203.07(a)(4): | New charge is possession for sale (H&S 11378.5) of 14.25 grams or more of PCP or a precursor of PCP. |
| 1203.07(a)(5): | New charge is 11378.5H&S – transportation of PCP |
| 1203.07(a)(6): | New charge is 11379.5 – sale of PCP |
| 1203.07(a)(8): | New charge is 11380 involving meth |

1203.07(a)(9): New charge is 11380.5 – using a minor to commit 11378.5, 11379.5 or 11379.6 involving PCP

1203.07(a)(10): New charge is 11383(c) involving PCP

2) 1203.073PC: probation ineligible; court has discretion to grant probation

1203.073(b)(1): New charge is 11351 or 11352 (sales only) involving 28.5 grams of cocaine or 57 grams of a substance containing cocaine

1203.073(b)(2): New charge is 11378 or 11379 (sales only) involving 28.5 grams meth or 57 grams of a substance Containing meth

1203.073(b)(4): New charge is 11353 or 11380 – using minor to sell heroin, Cocaine, cocaine base or meth

1203.073(b)(5): New charge is 11351.5 involving 14.25 grams or more of cocaine base or 57 grams of a substance containing at least 5 grams of cocaine base

1203.073(b)(6): New charge is 11352 involving transportation for sale of cocaine base

1203.073(b)(7): New charge is 11352 – sale/offer to sell cocaine base

1203.073(b)(8): New charge is 11379.6, 11382 or 11383 involving meth and def has a prior 11378, 11379, 11379.6, 11382 or 11383 (prior must have involved meth)

PRIORS:

1) 11370.2: Three years for every prior conviction (every prior count)
Also applies to conspiracy if allege and prove def was substantially involved in the planning, execution or financing of the underlying offense

11370.2(a): New charge is 11351, 11351.5, 11352 and priors are 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6 or 11383

11370.2(b): New charge is 11378.5, 11379.5, 11379.6, 11380.5 or 11383 and priors are 11351, 11351.5, 11352, 11378, 11378.5, 11379,

11379.5, 11379.6 or 11383

11370.2(c): New charge is 11378 or 11379 involving meth or amphetamines and priors are 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6 or 11383

3. Sale/Transportation: 11352 = cocaine, cocaine base, heroin
11379 = meth, ecstasy
11379.5 = PCP
11360 = MJ (11360(b) = give away or transport less than one ounce MJ = misd)

ENHANCEMENTS:

- 1) 1203.07(a): Mandatory prison, no discretion

1203.07(a)(11): Applies to cocaine, cocaine base and meth.
Applies if def has a prior conviction for 11351, 11352, 11351.5, 11378, 11378.5, 11379 or 11379.5.
APPLIES FOR POSSESSION FOR SALE AND SALE ONLY –
NEW OFFENSE CANNOT BE TRANSPORTATION.

1203.07(a)(1): Applies when new charge is 11351 – 14.25 grams or more of heroin

1203.07(a)(2): Applies when new charge is sale/offer to sell 14.25 grams or more heroin.

1203.07(a)(3): New charge is possession for sale or sale of heroin and Def has a prior conviction of 11351 or 11352.

1203.07(a)(4): New charge is possession for sale (H&S 11378.5) of 14.25 grams or more of PCP or a precursor of PCP.

1203.07(a)(5): New charge is 11378.5H&S – transportation of PCP

1203.07(a)(6): New charge is 11379.5 – sale of PCP

1203.07(a)(8): New charge is 11380 involving meth

1203.07(a)(9): New charge is 11380.5 – using a minor to commit 11378.5, 11379.5 or 11379.6 involving PCP

1203.07(a)(10): New charge is 11383(c) involving PCP

2) 1203.073PC: probation ineligible; court has discretion to grant probation

1203.073(b)(1): New charge is 11351 or 11352 (sales only) involving 28.5 grams of cocaine or 57 grams of a substance containing cocaine

1203.073(b)(2): New charge is 11378 or 11379 (sales only) involving 28.5 grams meth or 57 grams of a substance Containing meth

1203.073(b)(4): New charge is 11353 or 11380 – using minor to sell heroin, Cocaine, cocaine base or meth

1203.073(b)(5): New charge is 11351.5 involving 14.25 grams or more of cocaine base or 57 grams of a substance containing at least 5 grams of cocaine base

1203.073(b)(6): New charge is 11352 involving transportation for sale of cocaine base

1203.073(b)(7): New charge is 11352 – sale/offer to sell cocaine base

1203.073(b)(8): New charge is 11379.6, 11382 or 11383 involving meth and def has a prior 11378, 11379, 11379.6, 11382 or 11383 (prior must have involved meth)

PRIORS:

1) 11370.2: Three years for every prior conviction (every prior count)
Also applies to conspiracy if allege and prove def was substantially involved in the planning, execution or financing of the underlying offense

11370.2(a): New charge is 11351, 11351.5, 11352 and priors are 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6 or 11383

11370.2(b): New charge is 11378.5, 11379.5, 11379.6, 11380.5 or 11383 and priors are 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6 or 11383

11370.2(c): New charge is 11378 or 11379 involving meth or amphetamines

and priors are 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6 or 11383

4. 11550(e) = U/I while armed.

5. 11550(a) = U/I

Charge priors only if there are 2 or more priors

Prior convictions must be within 7 years – the date of conviction is used, rather than the date of the prior offense.

Note: the 1203.07 and 1203.073 enhancements go with the individual counts. The 11370.2 priors go at the end of the complaint, just like the prison priors and strikes. Remember to charge a separate 11370.2 prior for every separate conviction, even if they were on the same complaint. For example, if def PG to 3 counts of sales in the prior case, he gets 3 x 11370.2 priors (possible 9 years added).

Remember also that for 1203.07 purposes, the prior cannot be for transportation - you will need to look the case up on CRIMES to confirm the wording in the prior charges.

For purposes of 11370.2, the prior can be for transportation.

You must fill out a DEJ form if def is eligible for DEJ and add the eligible clause to the complaint. All ineligible DJ forms are clauses located under 1000(a) – there are 6 separate forms for ineligibility. All applicable clauses need to be added to the complaint at the time of issuing.

Prop 36 clauses are located under 1210.1. There are 4 possible clauses. You need to add all applicable clauses to the complaint at the time of issuing.

def elig 1000(a)
def inelig 1000(a)
prop 36 1210.1

DETERMINING PROP 36 ELIGIBILITY

Charges covered by Prop 36: Penal Code Section 1210.1

- 1) possession of narcotics
- 2) under the influence of narcotics
- 3) transportation for personal use

Is a def eligible for Prop 36 in the current case?

- 11364-1 d/n
exclude
unless by
itself

1. Are there any charges other than the Prop 36 offenses? Any other misd or felony will exclude the def. Infractions do not exclude the defendant.
2. If case involves Prop 36 charges only:

a. Does the def have a strike prior?

If no, then def is eligible. Doesn't matter what other priors he/she has.

If yes, then look at the 5 years prior to the date of arrest
If the answer to any of the following is yes, def is ineligible.

1. Has def been in prison (for any reason)?
2. Has def been convicted of any felony other than a Prop 36 felony? This could be the strike itself.
3. Has the def been convicted of a misd involving physical injury or threat of physical injury?
4. Did def use a firearm while possessing or being U/I of drugs? There will usually be other charges involved in these cases (12025PC, 12031PC, ...)

DEJ

PROP 36

1.	Prior conviction for drug offenses	Never eligible	May be eligible
2.	Parole/probation revoked without being completed	Never eligible	May be eligible
3.	Prior DEJ completion/failure within last 5 years	Never eligible	May be eligible
4.	Prior felony conviction within 5 years of the new offense date	Never eligible	May be eligible
5.	Prior strike and not free of custody for last 5 years	May be eligible (if prior is >5 years)	Never eligible
	Prior strike and non-drug possession felony conviction within last 5 years	Never eligible	Never eligible
7.	Prior strike and misdemeanor conviction involving physical injury or threat of physical injury within the last 5 years	May be eligible (if no prior drug convictions)	Never eligible
8.	Convicted in same proceeding of non-drug use/possession misdemeanor or felony	May be eligible (can bifurcate charges)	Never eligible
9.	Use of firearm while in possession or under the influence of specific narcotics	Unsuitable	Never eligible
10.	Refuse drug treatment	Unsuitable	Never eligible
11.	Two separate courses of treatment and found unamenable to all treatment	May be eligible (if prior treatment pursuant to DEJ was more than 5 years ago and no narco convictions since then)	Never eligible

THINGS TO REMEMBER

We charge all charges, priors, enhancements, clauses, and allegations at the time of issuing. Watch for Prop 8 priors as well as strikes and prison priors. Also make sure to add probation ineligibility clauses.

If you are issuing an out on bail enhancement per 12022.1PC you need to fill out a pink sheet and make a note on your current rap sheet that you filled out the pink sheet. The pink sheet is attached to the front of the case and the case is put in the in-custody basket for immediate generation of the complaint.

If the case status is "In on Others" this is treated as an in-custody. If the case is issued it goes in the in-custody basket once you are done.

Make sure to fill out DEJ eligible forms and stamp the complaints in appropriate narco cases. Also make sure you added all the appropriate DEJ ineligibility and Prop 36 clauses.

We often have to look up old cases to see if they are strikes. The first place to look is in Ciber but if the case is too old or there are no notes telling you what happened with an allegation you can try webex. If that doesn't work you need to have Records pull the file. Once you have the information make sure to put a note in your case about what you determined and put a similar note in the old case if possible. This usually comes up in cases that would not be a strike but for an allegation of GBI or use of a weapon.

If you need to order a prior, you can now email the Prior Bank and they will order the prior. You need to provide the def's name, current case number, docket number for the prior, County of conviction, charge, date of conviction, what you are requesting, and where you want the records to go (case file, felony pretrial calendar, trial deputy).

In order to file multiple defs on one complaint there must be one common charge – in a felony case it must be a common felony. In 11550 cases, the defs must be on separate complaints unless they have another charge in common. You can add a connecting clause in some cases – for example a 10851 where one of the defs has a prior. One will be charged with 10851(a) and the other will be charged with 10851(a)/666.5. These would be issued together with the connecting clause (PC954)

If you get a case without lab results (either tox or solid substance) you might be able to get the results yourself. The lab case numbers will show up on the Case at a Glance screen. Scroll down and you will see a “Related Cases” box. The lab cases associated with the case are located here. For tox results you just need to open the window and click on Print results. For solid substance results you need to open the window and then click on the Lab Case attachments tab at the top. This will open the results. Click on “view file” and the results will pop up if they are available.

You need to be familiar with CJIC and webextender.

AMENDING COMPLAINTS

You can amend a complaint yourself if you want. You go into the charges tab and add or delete any charges, priors, enhancements... Once you have completed and saved the new charges you save the document. You will see the generate complaint tab at the bottom. Click on that and you will get a new screen. Choose group template and then charging template and then amended complaint. The new complaint will be generated. You can make copies for yourself, the defense and the court. Remember the court usually likes an extra copy. If you do not want to generate the amended complaint yourself you can add the charges and then give the case to the team secretary to do the amendment. If you are adding priors you can sign the amendment yourself or you can bring it to the first floor and ask Denise to have an officer from the appropriate agency sign it for you.

POST- PLEA

After you have taken a plea in any felony case you need to go into the "Case Charge Disposition" tab at the top of the Ciber screen. You will have a screen showing all the charges. You need to click on the Edit button and all the charges and allegations/enhancements will show up with a little box in front of each. You need to update the charge status on each entry. You put a check in all the boxes with similar outcomes. For example if def has 3 charges and PG to counts 1 and 3, put a check in the boxes for 1 and 3 and change the charge status. You will be asked to fill in the date and the dispo for each charge. Scroll down on the Dispo tab and choose the appropriate dispo. If you want to add info about the sentence or any notes about why the dispo was offered you do this in the notes tab under case disposition.

If you have multiple defendants, go to the left side of the screen and open up the case by clicking the + sign next to the case number. Click on each def and they each have their own charge disposition tab. Fill the information out on each.

Note: CJIC may fill in the dispos for the actual charges in the near future, but it will not provide the outcome on priors or allegations, so in cases where those are present you will need to finish the screen.

A Guide to Switchblades, Dirks and Daggers

Analysis of PC 653k and PC12020 – How to tell if a knife is “illegal.”

By: Dmitry Stadlin¹

12/28/2010

I. Introduction

I have been a post-bar law clerk with the Santa Clara District Attorney's Office since August, 2010. In the past five months, I have been asked to look at more than 20 knives which are in evidence, as well as numerous photographs, to determine if they were “illegal.” There are basically two penal code sections which address the legality of knives,² California Penal Code Section 653k and 12020.

The two sections are quite technical and poorly worded, which makes it hard for D.A.'s to determine if the knife in a specific case is “illegal.” (See section III below for an in-depth explanation.) I hope that this memorandum will help D.A.'s to identify whether the knife in their specific case is “illegal” or not.

¹ Please feel free to contact me if you have any questions.
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² Note that there are several other penal code sections which specifically refer to knives, but which are location dependent, such as PC § 626.10 – Knife on School Grounds. The same definitions apply to those offenses, but some of the elements are different. For example PC 626.10 requires a blade of 2.5 inches or more.

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III. My Qualifications to Write on this Subject

Why should you listen to a law clerk about this topic? While I have never (yet) testified as an expert in court on this topic, I do have a lot of experience and training in this specific area.

I have read both penal code sections (653k and 12020) several times, as well as their legislative history. I have also spent several hours researching the Karmette amendment to PC 653k. I have read as many appellate decisions on the topic as I can find, including *People v. Plumlee*³. I have also worked in three different district attorney's offices, on misdemeanor teams. I worked at the Alameda DA's office, at the San Mateo DA's office and now, here at the Santa Clara DA's office. I have read office materials and talked to several deputies, including charging deputies, specifically about this topic.

Additionally, I have spoken at length about the legality of certain knives with law enforcement personnel from the following agencies: Alameda County SO, Fremont PD, Hayward PD, Oakland PD, Davis PD, Redwood City PD, San Mateo County SO, San Mateo County Gang Task Force, East Palo Alto PD, Santa Clara SO, Santa Clara PD, Mountain View PD, and San Jose PD (Including members of the Violent Crimes Enforcement Team (VCET) and the Gang Investigations Unit (GIU)).

During the past five months, I have made about a dozen trips to the SJPD Evidence Warehouse to take photographs and videos of suspected illegal knives. In some cases I was accompanied by defense investigators, who I also consulted with regarding the legality and features of the knives. I have handled and manipulated more than 50 knives, dirks or daggers. Lastly, I have contacted several knife manufacturers in order to determine if their products had specific features and what kind of wear and tear was normal for their knives.

Perhaps most importantly, I have made determinations of whether a specific knife is legal which other deputies have relied upon in a number of cases, which were either dismissed because the knife was legal or continued through pre-trial because the knife was illegal.

³ *People v. Plumlee*, 166 Cal.App.4th 935 (2008) – Case which makes possession of an illegal switchblade the equivalent of possession of a dirk or dagger under PC 12020(a)(4). See section VI. d. 1. for more information.

IV. The Current Problems With Illegal Knife Possession Cases

The legislature enacted PC 653k and PC 12020 as a response to the popular perception that "switchblades" were used by gang members. Switchblades do continue to be carried by gang members and can be used to commit crimes. At the same time, folding knives are carried for legitimate use by craftsmen, plumbers and even law enforcement officers. The differences between the illegal knives and the legal ones are not clear cut.

The San Jose Police Department is the primary agency which issues PC 653k citations.⁴ This is easy to understand as San Jose is the largest city in Santa Clara County and has the most gang members. I have spoken with quite a few SJPd officers who have conveyed to me their department policy regarding switchblades. They make arrests and write citations whenever they see what they think are switchblades. I am unsure about the internal SJPd policy regarding PC 653k citations, and whether city-wide crime and arrest statistics play a role in the number of arrests.

Unfortunately, when a police officer does make the arrest and books the knife into evidence, there are no pictures of it, nor is there any video taken of the knife. The prosecutor receives a file with a copy of the citation which was issued to the defendant, and sometimes a short police report which states that the knife in question was a switchblade. The charging deputy then issues the case. At the pre-trial conference, a diligent defense attorney request to see the knife and then I am asked to go look at the knife at the evidence warehouse.

Since there is no documentation as to what the knife looks like in the file or police report, it is necessary to inspect the evidence in person. More than half of the knives that I have gone to look at have turned out to be legal folding knives and not "switchblades." The prosecution subsequently dismissed those cases.

In conclusion, it is difficult for the prosecutor to ascertain the legality of the knife because there are usually no pictures or video of the knife in either the police report or the district attorney's file.

⁴ I have come across several PC 12020 citations from other agencies, but PC 653k citations almost exclusively originate from the SJPd.

V. Statutory Language of Penal Code Sections
a. PC 653k

§ 653k. Switch-blade knife having blade longer than two inches; possession in motor vehicle; carrying; sale or disposition; definitions

Every person who possesses in the passenger's or driver's area of any motor vehicle in any public place or place open to the public, carries upon his or her person, and every person who sells, offers for sale, exposes for sale, loans, transfers, or gives to any other person a switchblade knife having a blade two or more inches in length is guilty of a misdemeanor.

For the purposes of this section, "switchblade knife" means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever. "Switchblade knife" does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position.⁵

For purposes of this section, "passenger's or driver's area" means that part of a motor vehicle which is designed to carry the driver and passengers, including any interior compartment or space therein.

The Karnette amendment to PC 653k is the primary reason for the disconnect between the police officers and the district attorney's office. The police officers are trained at the police academy that if the knife pops out, flips out, or can be opened by the flick of a wrist, then it is an illegal switchblade. The amendment lists specific objective criteria which can make the knife legal. It is because some police officers are not familiar with the Karnette amendment (2001) that legal knives are being charged as switchblades.

Also, knives must be LONGER THAN TWO INCHES to be switchblades.

⁵ This section was added as part of the Karnette Amendment. See next page for the Legislature's intent.

a. PC 653k – Karnette Amendment

The Senate Daily Journal for the 2001-2002 Regular Session, pages 2070-2071, contained the following letter dated July 18, 2001, from Senator Betty Karnette regarding the intent of S.B. 274 (Stats.2001, c. 128):

"Dear John: The purpose of this letter is to express the Legislature's intent in enacting my SB 274, which makes amendments to Penal Code Section 653k, dealing with switchblade knives.

"Section 653k makes it a misdemeanor to sell or possess upon one's person a switchblade in California. The statute was enacted in 1957 and provides a lengthy definition of a switchblade knife. In 1996, AB 3314 (Ch. 1054) created an exemption for one-handed folding knives. Recently there has been concern that the language of the exemption is broadly interpreted to apply to knives that are essentially switchblades, but that are designed to fall under the language of the exemption.

"In order to ensure that only legitimate one-handed opening knives are covered, SB 274 narrows the language to only allow knives to fall under the exemption from the switchblade law if that one-handed opening knife contains a detent or similar mechanism. Such mechanisms ensure there is a measure of resistance (no matter how slight) that prevents the knife from being easily opened with a flick of the wrist. Moreover, a detent or similar mechanism is prudent and a matter of public safety as it will ensure that a blade will not inadvertently come open.

"Although some one-handed opening knives can be opened with a strong flick of the wrist, so long as they contain a detent or similar mechanism that provides some resistance to opening the knife, then the exemption is triggered. These knives serve an important utility to many knife users, as well as firefighters, EMT personnel, hunters, fishermen, and others.

"The exemption created in 1996 was designed to decriminalize the legitimate use of these extremely functional tools by law-abiding citizens. SB 274 is not intended to interfere with those knife owners and users. The amendments to Section 653k accomplish this important purpose by establishing more objective criteria for determining whether a knife meets the intended exemption to the switchblade law."

b. PC 12020(a)(4)

§ 12020. Manufacture, import, sale, supply or possession of certain weapons and explosives; punishment; exceptions; definitions

(a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(4) Carries concealed upon his or her person any dirk or dagger.

(b) Subdivision (a) does not apply to any of the following:

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

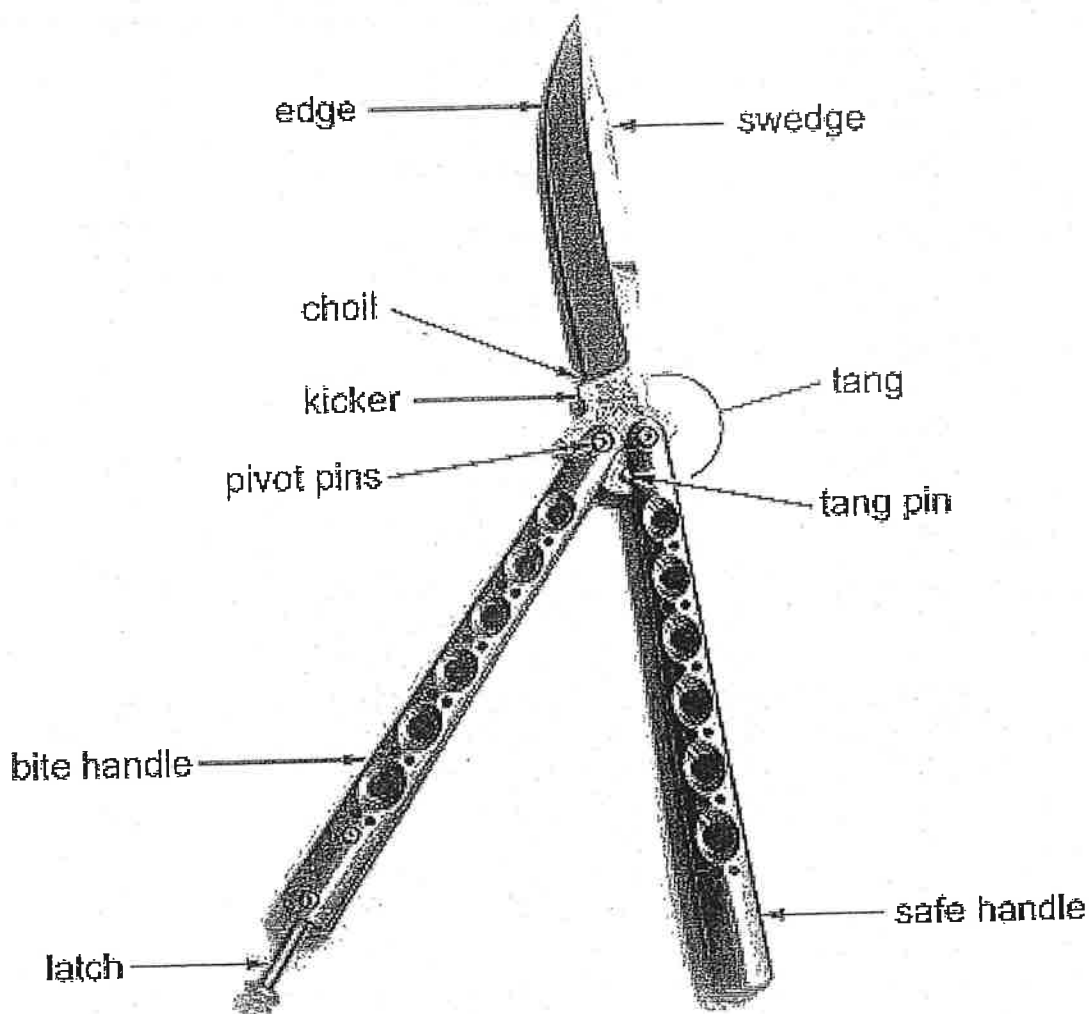
There are several important things to note about this section.

"Dirk" is Scottish for short dagger or a short sword blade. It is, for all intents and purposes the same thing as a dagger.

This section refers to fixed-blade knives, not folding knives. So even steak knives would be considered under this section, but a folding sword would not qualify.

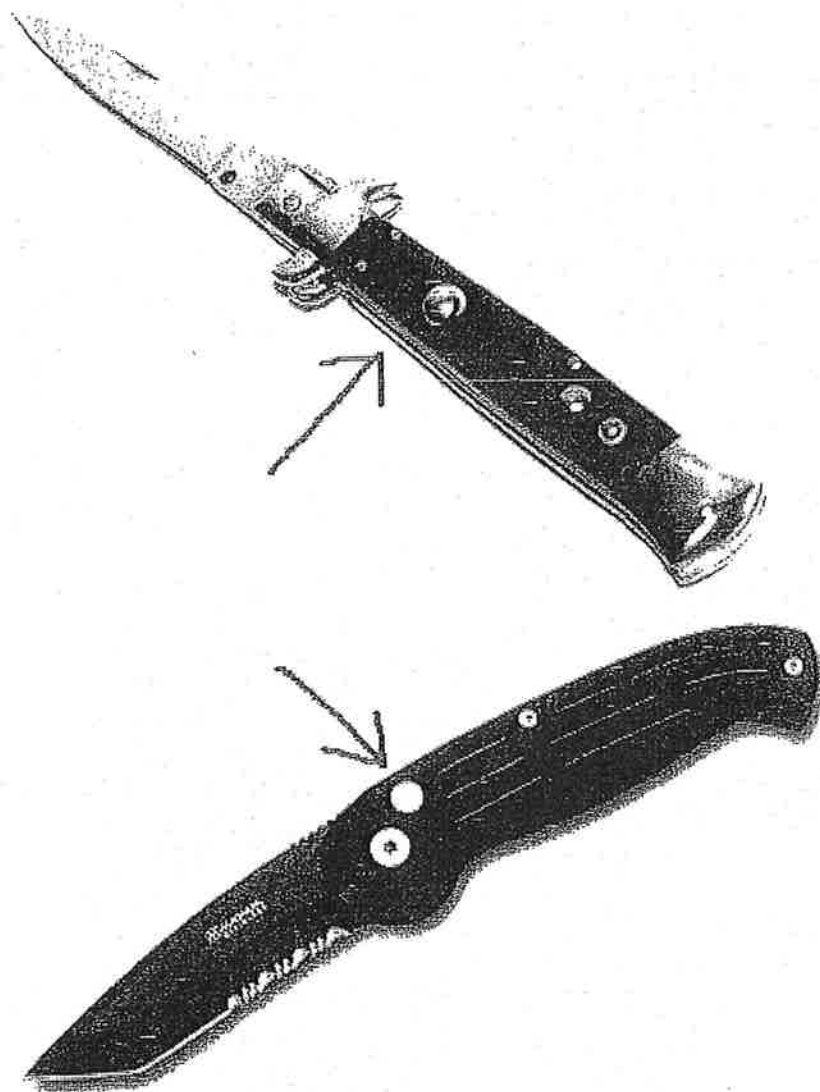
Section (a)(4) requires not only possession, but also concealment. And section (d) states that if the knife is in a sheath, worn openly (can be seen) then it is not concealed. First, gang members often carry knives in sheaths around their belt, however they also wear long shirts which cover the sheath – meaning it is not openly worn and thus concealed. Second, some police officers have not read PC 12020 all the way down to subsection (d) and are unaware that if the knife is carried in a sheath, around the waist, then it is legal. Police reports don't always say where the knife was, it is helpful to check with the officer as this is an element of the offense.

VI. Is it a Switchblade under PC 653k?
a. Butterfly Knife – Illegal



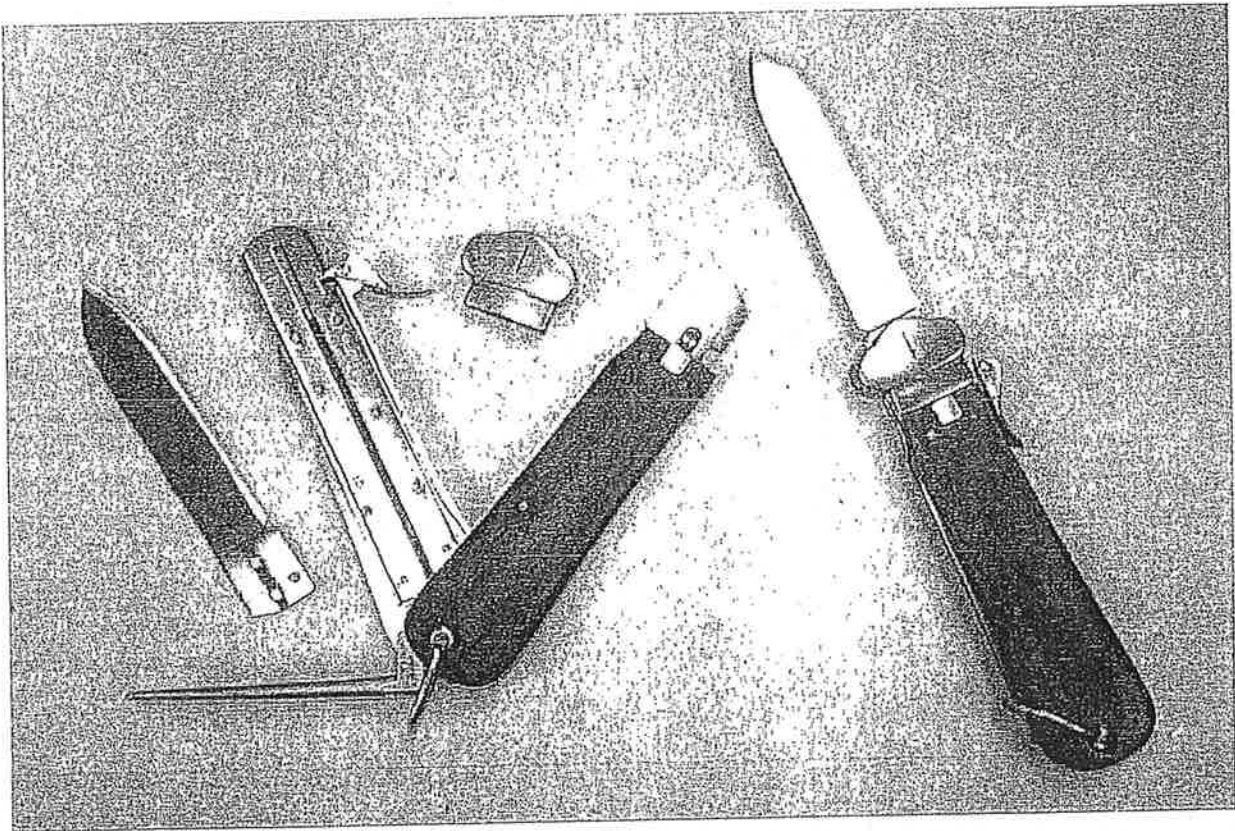
This type of knife is always illegal as it is opened by gravity. This is an easy call to make, if you see a knife like this – it's illegal. You often do not even have to go look at the knife, as the police report will indicate that the knife in question was a "butterfly" knife.

b. Button Operated Switchblade – Illegal



These knives are illegal switchblades because they open with the press of a button. The red arrows point to the buttons. If there is a button on the body of the knife, that when pressed, makes the blade swing open, then it is an illegal switchblade.

c. Gravity Operated Switchblade – Illegal

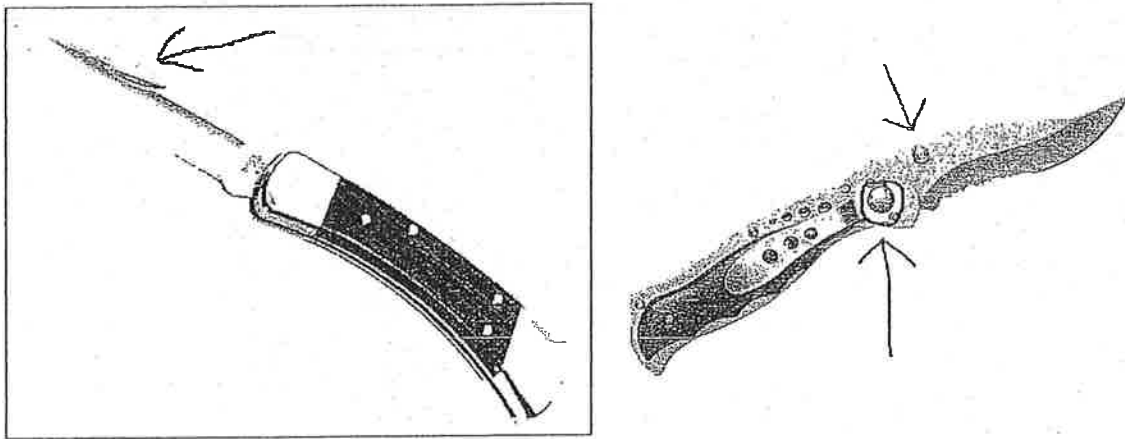


A gravity knife is a knife that opens by the force of inertia or gravity. Similar to a switchblade, it is made with a side-folding blade, or a telescoping blade. The gravity knife is different from the switchblade, which is spring-driven, in that it needs to be "flipped" out of the handle manually. Military gravity knives lock open. Some English and civilian gravity knives do not mechanically lock open but rely on a strong friction cam surface against the blade. Factory-made gravity knives have various types of buttons, triggers, and fulcrum levers, which usually are used to release the blade from both the open and the closed positions.⁶

These knives are illegal. It can sometimes be difficult to tell from a photograph, so if you are going to examine the knife, try to take a video. Also, most police reports will indicate if it is a "gravity" knife.

⁶ Description from Wikipedia.

d. Regular Folding Knife – Legal

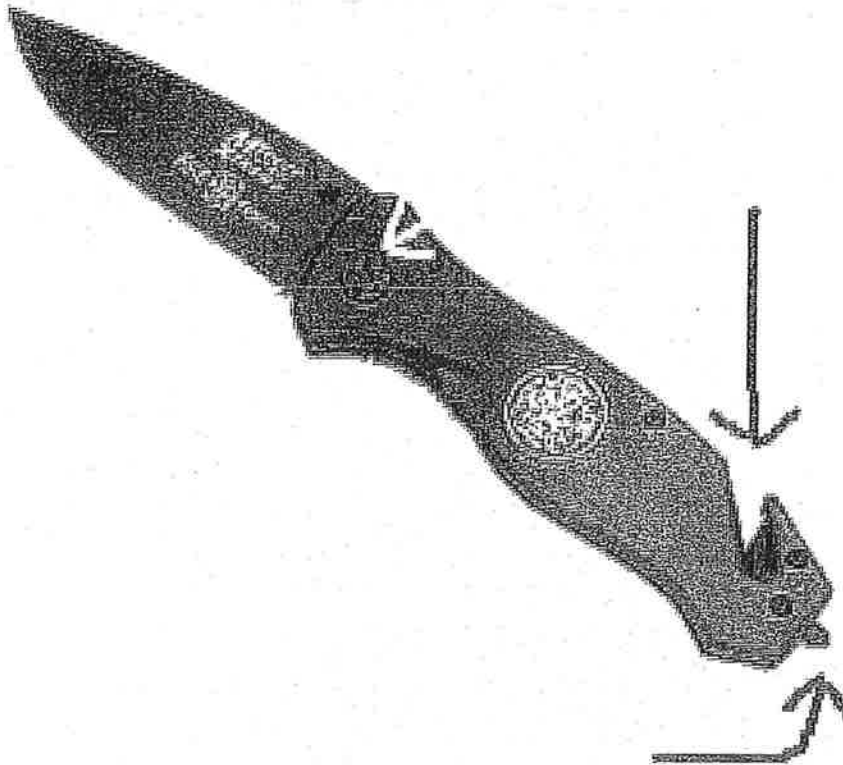


The first picture is a folding hunting knife, also known as a buck knife. It is opened by placing a nail into the groove to which the red arrow points and then pulling. This type of knife is legal.

The second picture is of a pretty nasty looking knife, but it too is legal. The knife is opened by applying thumb pressure to the stud, to which the red arrow points. Even though the blade is serrated, that is not one of the objective factors which determine the legality of the knife.

In the second picture, a blue arrow points to a screw, which is also circled in blue. This screw is what holds the knife either closed or open. In a lot of older knives, this screw eventually gets worn out. When that happens, the knife no longer stays closed, and may open even without pressure being applied to the thumb stud. It is these kinds of knives that are problematic for prosecutors. The knife was originally legal, it's design is legal but because of wear and tear, it has become similar to a switchblade. It is unlikely that a jury would find that an old screw was proof beyond a reasonable doubt. Thus, when the knife in question is old, I have suggested that the case be dismissed with a stipulation that the knife in question be destroyed.

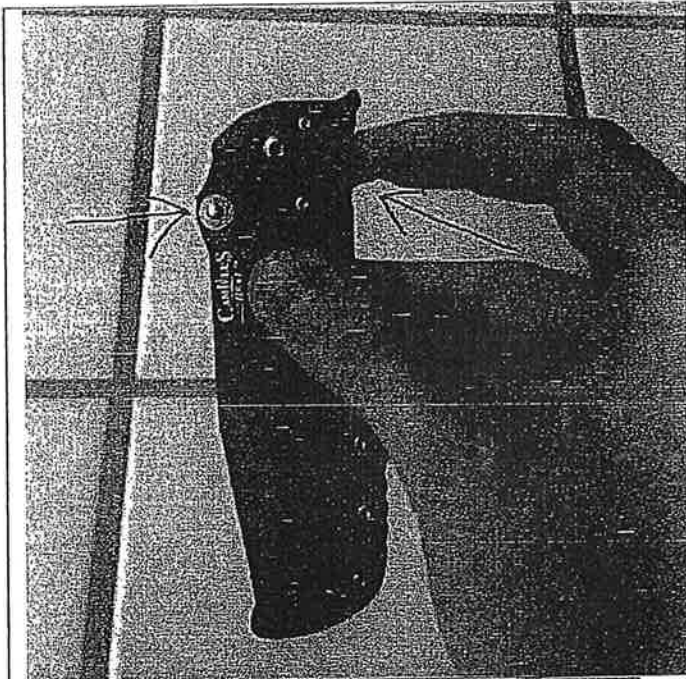
e. Folding Knife with Seatbelt Cutter – Legal



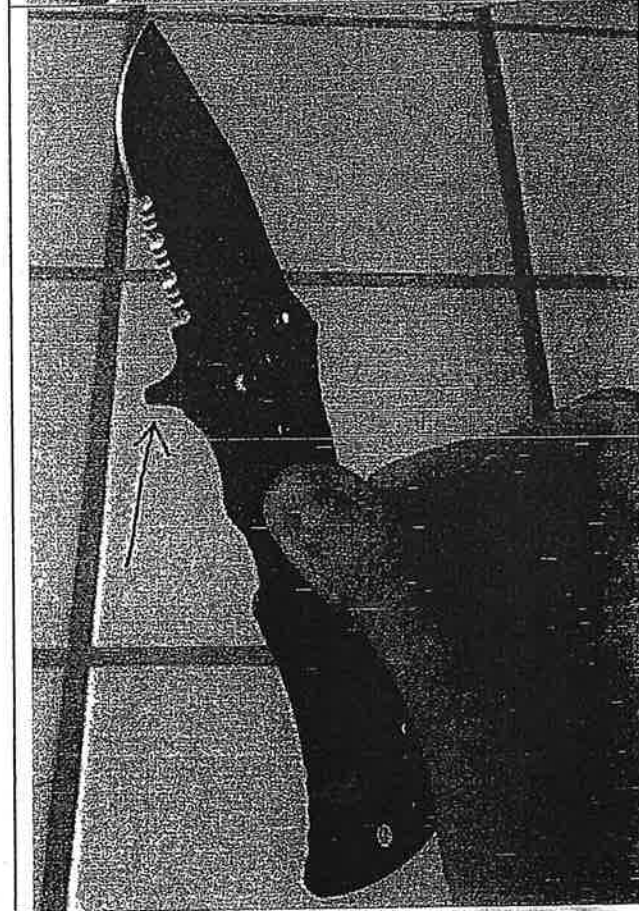
This is a "rescue" knife. The red arrow points to a metal point on the knife which is used to break the glass in the event of a car accident. The blue arrow is pointing to a secondary blade, which functions much like an letter opener and is designed to be a seatbelt cutter. This particular knife even has the logo of a fire department on it. Also note that it has a thumb stud on the blade which is used to open the knife. I have encountered numerous designs of this type of knife, from different manufacturers and every single one of them has not been an illegal switchblade.

If you see this type of "rescue" knife, it is almost certainly not a switchblade. But, the main screw to which the yellow arrow points, may be loose if it is an old knife. In that case, the blade may open with the flip of the wrist if swung hard enough.

f. Folding Knife with Robotic Assist – Legal



In this picture, the blue arrow points to the thumb stud. The red arrow is pointing to a lever, which is part of the blade itself. When downward pressure is applied to this part of the blade, the knife will swing open. This feature is called "robotic assist." This is exactly the type of knife which is now legal under the Karmette amendment, because pressure is only applied to the blade. Unlike the "illegal" switchblade, there is no button on the body of the knife.

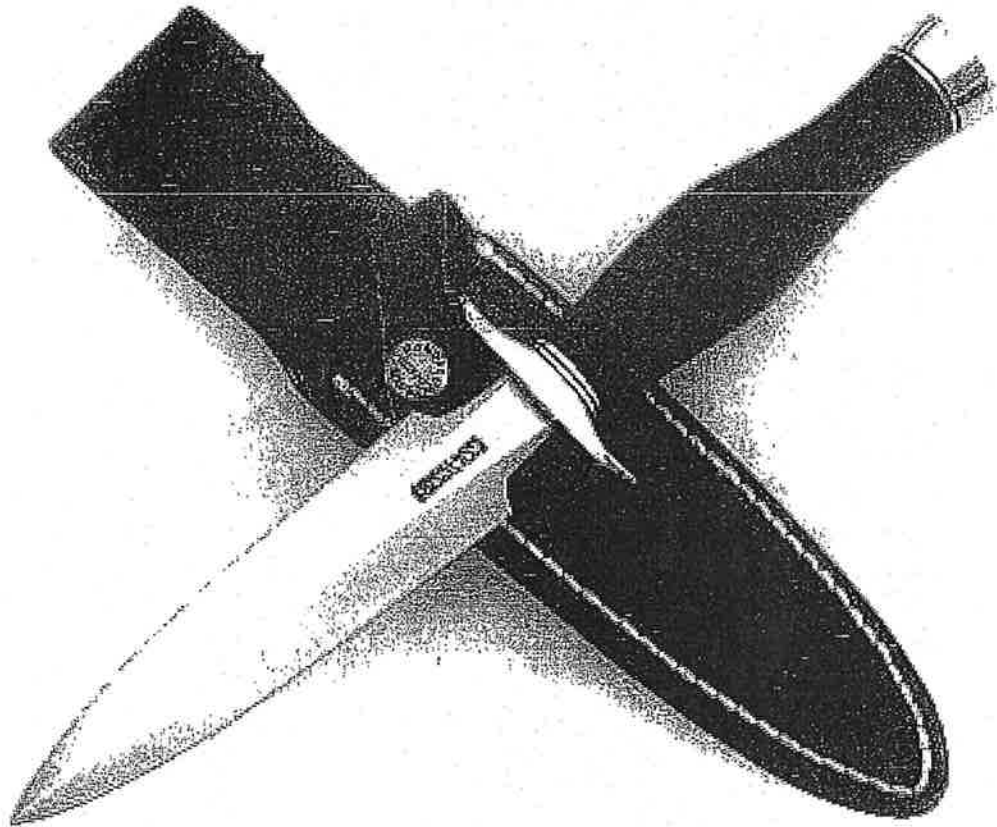


This picture shows the knife once it pops open. The red arrow is still pointing towards the same protrusion of the blade as it was pointing to in the first photo. This knife has the safety characteristics listed under PC 653k, it has a thumb stud and a propensity to stay closed. That is, it locks into both the open and the closed positions.

These types of knives are the most common mistakes. They look like switchblades, the blades spring open and so police officers believe in good faith that this is an illegal knife. However, the legislature clearly states that this type of knife is legal. The manufacturer specifically engineered the knife in this fashion, so that it is legal in CA.

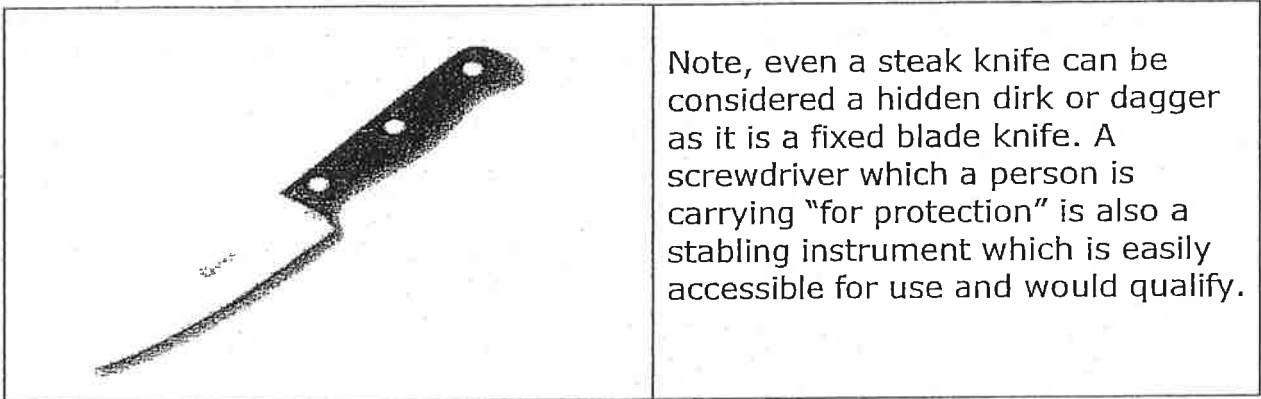
VII. Is it a "dirk or dagger" under PC 12020?

- a. Dirk**
- b. Dagger**

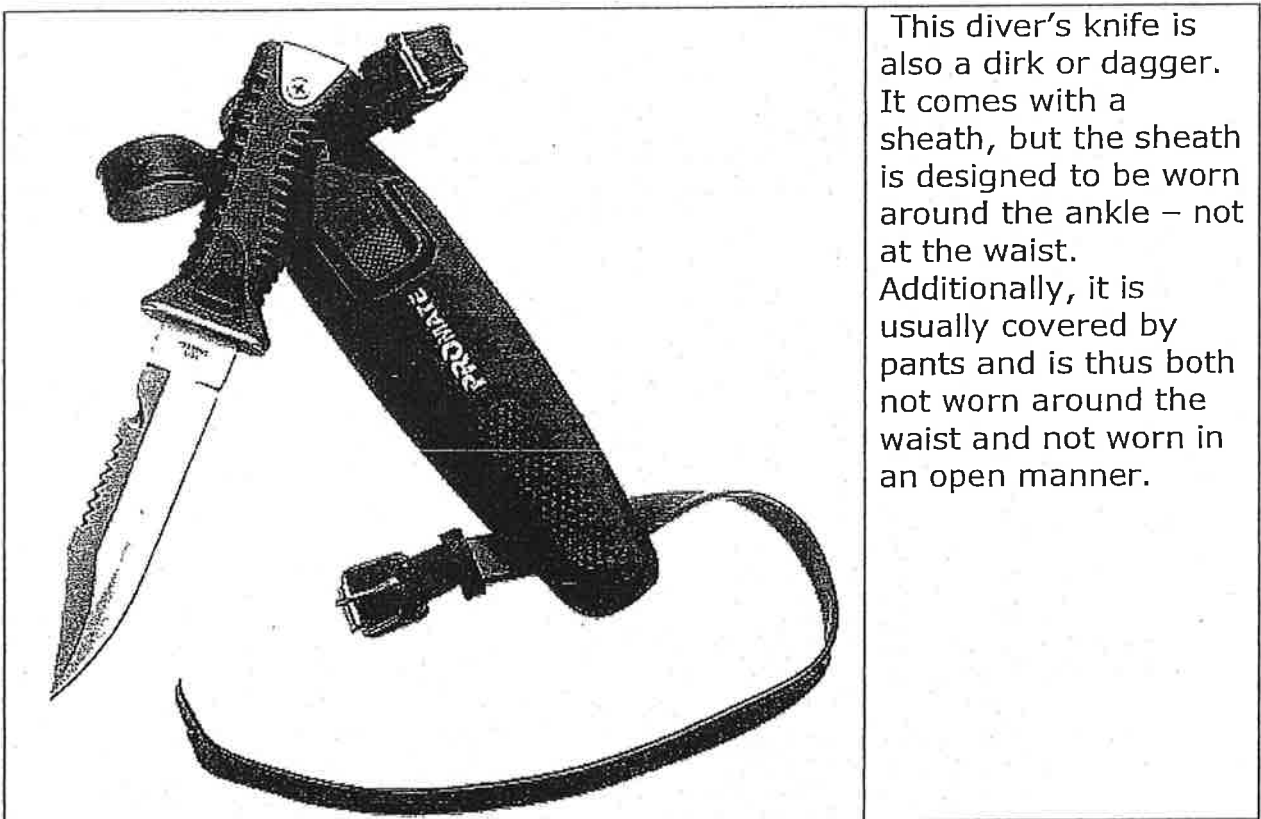


This knife is both a dirk and a dagger. It is illegal to carry if it is concealed. The dagger is a fixed-blade knife, notice that the blade cannot be moved. The only way that is legal to carry this knife, would be for it to be visible in a sheath (also pictured) around a person's waist. If the knife is in the same sheath, but not on a person's waist or if it is hidden in a pocket, then it is illegal under PC 12020. Note, that there is not as much of a need to view knives for this offense, as the type of knife itself is rarely at issue.

c. Fixed-blade Knife



d. Diver's Knife



e. Switchblade Dilemma
i. *People v. Plumlee*

The difference between PC 653k and PC 12020 is rather clear. The former applies to knives with folding blades, the latter to knives with fixed blades. If a folding blade knife is locked into its open position and carried around in a concealed matter, then it would also fall into PC 12020.

Recently, SJPd officers started charging PC 12020(a)(4) in their citations for switchblades, which are carried in the closed position. The Gang Investigations Unit at SJPd conducted a training for officers, in which they informed them of the decision in *People v. Plumlee*, 166 Cal.App.4th 935 (2008). The 5th District California Court of Appeal ruled that:

"Switchblade knife found in defendant's possession was a dirk or dagger within meaning of statute prohibiting carrying of a concealed dirk or dagger, even though it was concealed in its closed position, since statute stated that a knife that was not a switchblade could be a dirk or dagger only if the knife was open; by implication, a switchblade knife could be a dirk or dagger even in closed position."

The Court used some interesting logic and analysis by implication to arrive at its opinion. The issue of whether to charge PC 12020(a)(4) in cases where there is a clear violation of PC 653k is one that should be decided on a policy level at each district attorney's office. I leave that to the charging deputies. Nevertheless, some uniformity in charging would be a worthwhile goal.

VIII. Suggested Policy Changes

a. Initial Police Report Documentation

The SJPD and other departments currently have the technology to properly document the offenses. I am confident that officers on the street have access to a digital camera either in the field or at the evidence drop-off location. It would be very helpful if officers were required to take a picture of the knife for PC 653k offenses and at least write a brief police report. This would be similar to requiring DMV printouts for VC 14601.1 cases.

b. Citation Review / Charging

The district attorney's office could set up some sort of citation review, prior to charging. This would save both the arresting agency and the district attorney's office a lot of money and man hours on cases that should not have been charged in the first place. The charging deputy should at least have a photograph or a description of the illegal knife, prior to charging it. The current situation is one in which the police department does not provide enough information to the charging deputy. This would avoid the cases that make it all the way to pre-trial conferences, only to be dismissed.

c. Pre-trial Conference / Evidence Check

The current procedure for a member of the district attorney's office to look at evidence is medieval. It is necessary to schedule an appointment several days in advance and then go to the evidence warehouse at 1588b Monterrey Highway. The SJPD only has one person, Officer Guerrero, from the court liaison unit who is authorized to allow DA's to look at evidence. I realize that the district attorney's office cannot dictate policy to the SJPD, but at the same time the current policy only impedes the swift resolution of cases. Perhaps a weekly appointment time to view evidence for DA's could be set up. The officer could then be emailed the SJPD report numbers and gather the evidence ahead of time. A change in policy would benefit both members of the prosecution team.

d. Jury Trial

It is difficult to judge jury appeal without solid data. It would be of great use to take a PC 653k case to trial at least once to see what happens. This would provide a way to gauge the viability of cases and to fine-tune the pre-trial offers.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Appellant,

v.

GARY PLUMLEE,

Defendant and Respondent.

F054363

(Super. Ct. No. VCF175036)

OPINION

166 Cal App 4th 935 (2008)

APPEAL from a judgment of the Superior Court of Tulare County. Joseph Kalashian and Gary L. Paden, Judges.

Phillip J. Cline, District Attorney, Don H. Gallian and William E. Yoshimoto, Assistant District Attorneys, Barbara J. Greaver and John F. Sliney, Deputy District Attorneys, for Plaintiff and Appellant.

Susan D. Shors, under appointment by the Court of Appeal, for Defendant and Respondent.

A switchblade knife as defined in Penal Code section 653k¹ can also be a dirk or dagger concealed on the person as defined in section 12020, even if it is concealed in its closed position. The superior court erred when, taking the contrary view, it refused to hold defendant Gary Plumlee to answer to a charge of violating section 12020 and later

¹Subsequent statutory references are to the Penal Code unless otherwise noted.

denied the People's motion to reinstate the charge. The record reveals rational grounds for holding Plumlee to answer, so the charge must be reinstated.

FACTUAL AND PROCEDURAL HISTORIES

The district attorney filed a felony complaint against Plumlee on December 4, 2006, charging two counts: carrying a dirk or dagger concealed upon the person (§ 12020, subd. (a)(4)) and using or being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a)). For purposes of determining probation eligibility under section 1203, subdivision (e)(4), the complaint alleged that Plumlee had committed three prior felonies.

At the preliminary hearing on November 9, 2007, a sheriff's deputy testified that he saw Plumlee at the casino at the Tule River Indian Reservation on August 26, 2006. Plumlee was "constantly moving around, unable to stay still." Believing Plumlee was intoxicated, the deputy approached, obtained consent, and performed an evaluation. The deputy arrested and searched Plumlee after concluding that he was under the influence of an illegal stimulant. In the left front pocket of Plumlee's shorts was a folding knife in its closed position. There was a button on the knife which could be activated with a sliding motion of the thumb. The deputy tried it and found that the blade was spring-loaded and opened a fraction of a second after he pushed the button. The blade was about three inches long. The deputy described the knife as a switchblade. He also took a urine sample from Plumlee, which later tested positive for methamphetamine.

The People asked the court to hold Plumlee to answer to the two counts. Plumlee conceded that there was sufficient evidence to hold him on the drug charge. He argued that he should not be held to answer to the charge of possessing a dirk or dagger, however, because "folding knives are not dirk[s] or daggers unless they are carried in an open and locked position." He asserted that he could at most be charged with possessing a switchblade, a misdemeanor. The dirk-or-dagger offense is a wobbler; here it was charged as a felony.

The court accepted Plumlee's position after inquiring about the knife's operation:

"THE COURT: By operating with the thumb and pressing this lever or button, then did it come straight out of the handle or did it—
[¶] ... [¶]

"THE DEFENDANT: It comes sideways.

"THE COURT: It looks like it comes sideways. [¶] ... [¶]

"MR. SOLTESZ [defense counsel]: ... From the picture it looks like a sideways knife.

"THE COURT: It does. I'm going to find that it does not conform to the statutory language of a dirk or dagger. But he would—he could be found criminally liable as a misdemeanor."

The court held Plumlee to answer to the drug charge. It also held him to answer to a misdemeanor weapon charge, though the record is unclear regarding exactly which charge. At the hearing, the court said yes when defense counsel asked if it was "a 417 misdemeanor," but this cannot be correct, since section 417 requires drawing, exhibiting, or using a weapon, facts that are not at issue here. On appeal, the parties agree that the court must have intended a misdemeanor charge under section 653k.

The People filed a motion pursuant to section 871.5 to reinstate the section 12020 charge, which was heard on December 4, 2007. The parties agreed that the knife was a switchblade and was found in the closed position. The court found that, under those stipulated facts, the offense was a violation of section 653k, which makes it a misdemeanor to carry a switchblade knife. It ruled that, because section 653k is "a very specific statute," section 12020 "does not apply." The People's motion was denied and this appeal followed.

DISCUSSION

In reviewing the court's denial of the prosecution's section 871.5 motion to reinstate the charge, we disregard the ruling on the motion and directly examine the magistrate's decision to dismiss at the preliminary hearing. (*People v. Massey* (2000) 79

Cal.App.4th 204, 210.) We review the magistrate's legal conclusions de novo, but are bound by any factual findings the magistrate made if they are supported by substantial evidence. If the magistrate makes no controlling findings of fact, we review the record independently. If, in carrying out an independent review, we determine that the evidence supplied a rational ground for holding the defendant to answer, we must reinstate the charge. (*People v. Slaughter* (1984) 35 Cal.3d 629, 639-640.)

It is undisputed (1) that the knife had a three-inch blade which sprang open from the side of the handle when a button was activated with a thumb; (2) that this meant it was a switchblade; and (3) that it was found folded and closed inside Plumlee's front pants pocket. We must determine whether a knife of this description is a dirk or dagger within the meaning of section 12020. This is a question of law that we decide independently.

Section 12020 provides:

“(a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison: [¶] ... [¶]

“(4) Carries concealed upon his or her person any dirk or dagger.”

Section 12020, subdivision (c)(24), defines “dirk or dagger”:

“As used in this section, a ‘dirk’ or ‘dagger’ means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.”

Section 653k provides:

“Every person who ... carries upon his or her person ... a switchblade knife having a blade two or more inches in length is guilty of a misdemeanor.

“For the purposes of this section, ‘switchblade knife’ means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever. ‘Switchblade knife’ does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position.”

To determine whether the magistrate erred in this case, we must interpret these statutes. In interpreting a statute, our objective is “to ascertain and effectuate legislative intent.” (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007.) To the extent the language in the statute may be unclear, we look to legislative history and the statutory scheme of which the statute is a part. (*People v. Bartlett* (1990) 226 Cal.App.3d 244, 250.) We look to the entire statutory scheme in interpreting particular provisions “so that the whole may be harmonized and retain effectiveness.” (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 814.) “In the end, we “must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” [Citation.]” (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003.)

The meaning of the language in section 12020 is fairly straightforward. Subdivision (c)(24) of that section states that a folding knife *not* prohibited by section 653k—i.e., a knife that is not a switchblade—can be a dirk or dagger only if the knife is open. This implies that a folding knife that *is* prohibited by section 653k—a switchblade—can be a dirk or dagger even when it is closed. The reference to section 653k here would have no point if the Legislature did not intend to treat switchblades differently from other folding knives in exactly this respect. In reaching our

conclusion, we agree with the dictum in *In re Luke W.* (2001) 88 Cal.App.4th 650, 656, that “[s]ection 12020, subdivision (c)(24) does not exempt from the definition of ‘dirk or dagger’ folding knives prohibited by section 653k.”

Further, this is not a case in which a more specific statute with a lesser penalty prohibited the same conduct as a more general statute with a greater penalty, necessitating a charge under the more specific statute. This specific-over-general rule applies only where each element of the more general offense is also an element of the more specific offense, or it appears from the entire context that a violation of the more specific statute will result in a violation of the more general statute. (*People v. Walker* (2002) 29 Cal.4th 577, 585.) The dirk-or-dagger offense has an element not included in the switchblade offense: A defendant must *conceal* a dirk or dagger on his or her person to violate section 12020, but need only *carry* a switchblade to violate section 653k. As a result, a violation of section 653k will not always result in a violation of section 12020, subdivision (a)(4). The switchblade offense is therefore not more specific than the dirk-or-dagger offense for purposes of the specific-over-general rule. As a result, the choice between the two applicable statutes was within the prosecutor’s discretion. (See *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 81 [“District attorneys are continually faced with factual situations ... which would legally support the filing of either felony or misdemeanor charges” and must exercise discretion in choosing between them].)²

From all we have said, it follows that Plumlee’s switchblade was a dirk or dagger if it was capable of ready use as a stabbing weapon that could cause great bodily injury or death. The magistrate made no finding that it did not fit this description, so there is no factual finding to which we must defer. The question is whether a rational ground

²We are not presented with the situation in which the magistrate exercises his or her power to reduce a wobbler charged as a felony to a misdemeanor. (§ 17, subd. (b)(5); *People v. Wilkinson* (2004) 33 Cal.4th 821, 840.) Here, the court held that section 12020 did not apply at all—not that it applied but that the offense should have been charged as a misdemeanor.

existed for finding that it was such a weapon. We conclude that a ground did exist: The knife was found in Plumlee's front pants pocket, it could be opened in a fraction of a second with the push of a button, and it had a three-inch blade.

Defendant claims the court found that the knife was not capable of ready use as a stabbing weapon; however, we do not see any support in the record for his position. To the contrary, the court found that the knife was a "sideways knife" and "does not conform to the statutory language of a dirk or dagger." We do not read this statement as a finding that the knife was not capable of ready use as a stabbing weapon. In any event, even if the court had made that finding, it would not have been supported by substantial evidence. The fact the blade emerged from the side of the handle provides no support for the conclusion that the knife was not capable of ready use.

To summarize: The court's decision to dismiss was based on the mistaken view that a switchblade cannot be a dirk or dagger. It made no controlling findings of fact. The evidence presented at the preliminary hearing included a rational ground for believing Plumlee committed the charged offense, a violation of section 12020, subdivision (a)(4). Consequently, we conclude that the court erred as a matter of law and the charge may be reinstated.

DISPOSITION

The order denying the People's motion to reinstate the complaint is reversed. The trial court shall reinstate count one of the complaint, alleging that Plumlee violated section 12020, subdivision (a)(4).

Wiseman, Acting P.J.

WE CONCUR:

Levy, J.

Kane, J.

Old

New

20150 - Altering Imitation firearm
20170 - showing im. firearm in public place

653k	21510
12001.1	20810(a)
12020(a)(1) - handgrenade	19200(a)
12020(a)(1) - air gauge knife	20310
12020(a)(1) - belt buckle knife	20410
12020(a)(1) - cane sword	20510
12020(a)(1) - lipstick case knife	20610
12020(a)(1) - shobi-zue	20710
12020(a)(1) - writing pen knife	20910
12020(a)(1) - ballistic knife	21110
12020(a)(1) - metal knuckles	21810
12020(a)(1) - nunchaku	22010
12020(a)(1) - billy, leaded cane, sap, slungshot, sandbag, blackjack, sandclub	22210
12020(a)(1) - shuriken	22410
12020(a)(1) - camouflaging gun container	24310
12020(a)(1) - cane gun	24410
12020(a)(1) - unrecognizable firearm	24510
12020(a)(1) - undetectable firearm	24610
12020(a)(1) - wallet gun	24710
12020(a)(1) - flechette dart	30210(a)
12020(a)(1) - bullet with explosive agent	30210(b)
12020(a)(1) - unconventional pistol	31500
12020(a)(1) - multiburst trigger	32900
12020(a)(1) - short-barreled shotgun/rifle	33215 ³³²¹⁰ overall length is less than 2'
12020(a)(1) - zip gun	33600 OR barrel length less than 18"
12020(a)(2) - large capacity magazine	32310
12020(a)(3) - concealed explosive substance	19100
12020(a)(4) - dirk/dagger	<u>21310</u>
12020.1 - composite knuckles	21710
12021(a)(1)	29800(a)(1)
12021(a)(2)	29800(a)(2)
12021(c)(1)	29805
12021(d)(1)	29815(a)
12021(e)	29820
12021(g)(1)	29825(a)
12021(g)(2)	29825(b)
12021.1	29900(a)(1)
12023	25800

12024	17500
12025(a)(1) – (forms 1 – 7)	25400(a)(1) (forms 1 – 7) – vehicle
12025(a)(2) – (forms 1 – 7)	25400(a)(2) (forms 1 – 7) person
12025(a)(3) – (forms 1 – 7)	25400(a)(3) (forms 1 – 7)
12031(a)(1) (forms 1 – 5)	25850(a) (forms 1 – 7)
12034(a)	26100(a)
12034(b)	26100(b)
12034(c)	26100(c)
12034(d)	26100(d)
12035 – criminal storage of firearm	25100
12036 – child access to firearm	25200
12040	25300(a)
12070(a)	26500(a)
12072(a)(1)	27500(a)
12072(a)(2)	27500(b) (3 forms)
12072(a)(3)(A)	27505(a) (7 forms)
12072(b)	27510 (8 forms)
12076 (b)(1)	28210(b)
12076(c)(1)	28215(b)
12081(b)(6)	29525
12083(a)(3)	28455
12083(c)	28465
12085(a-d)	29010
12090	23900
12094	23920
12101(a)	29610
12101(b)	29650
12125	32000
12220(a)	32625(a)
12220(b)	32625(b)
12280(a)	30600(a)
12280(a)(2) – allegation	30600(b)
12280(b)	30605(a)
12280(b)	30605(b)
12280(c)	30610(a)
12280(c)	30610(b)
12280(d) - allegation	30615
12303	18710
12303.1(a)	18725(a)
12303.1(b)	18725(b)
12303.1(c)	18725(c)
12303.2	18715
12303.3	18740
12303.6	18730

12304	18735(a)
12308	18745
12309	18750
12310(a)	18755(a)
12310(b)	18755(b)
12312	18720
12316(a)(1)(A)	30300(a)(1)
12316(a)(1)(B)	30300(a)(2)
12316(a)(1)(C)	30300(a)(3)
12316(b)(1)	30305(a)(1)
12316(b)(4)	30305(b)(1)
12316(c)	30310
12317(a)	30306(a)
12318(a)	30312(a)
12320	30315
12321	30320
12355(a)	20110(a)
12355(b)	20110(b)
12370(a)	31360(a)
12403.7 – tear gas	22810
12422	22910
12520	33410
12551	19910
12552	19915
12553(a)	20150
12533(b)	20155
12582	20010
12651 – stun gun	22610
12655	19405
12802(b)	31620(b)

Mandatory Prison Enhancements

PC1203(k): 1) New offense = serious/violent felony AND
2) def is currently on felony probation

PC1203.06 1) Personal use of a firearm during specified crimes, or attempts:

Murder
Robbery (PC211)
Kidnapping (PC207, 209, 209.5)
PC 288
PC459/460(a)
Rape (PC 261, 262 or 264.1)
PC220
Escape (PC 4530 or 4532)
Carjacking (PC215)
Aggravated mayhem (PC205)
Torture (PC 206)
PC288.5
PC136.1 or 137 (felony)
PC 286
PC288a
PC 289 or 264.1
PC269
Aggravated arson (PC 451.5)

2) def has a previous conviction for one of the above charges and is charged with a new felony in which def was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of arrest for the new felony.

Must be charged and proven

"used a firearm" = display in a menacing manner, fire, intentionally strike or hit a person

"armed with a firearm" = knowingly carry or have available for use as a Means of offense or defense.

PC1203.075: Personal infliction of GBI during specified crimes:

Murder
Robbery (PC211)
Kidnapping (PC207, 209, 209.5)

PC 288
PC459/460(a)
Rape (PC 261, 262 or 264.1)
PC220
Escape (PC 4530 or 4532)
PC 289 or 264.1
PC 286
PC288a
Carjacking (PC215)
PC288.5
PC269

Must be charged and proven

PC1203.08: New charge = a designated felony AND
~~Priors = 2 or more separate designated felonies within 10 years.~~

Designated felonies: 197, 192, 207, 209, 209.5, 211, 215, 217, 245, 288,
261(a)(2), 261(a)(6), 261(a)(7), 262(a)(1), 262(a)(4),
262(a)(5), 459/460(a), 220 with GBI

PC1203.085:

- a) New offense = non-alternative felony AND
Def on parole for a violent/serious felony
- b) New offense = violent/serious felony AND
Def on parole for any felony

Must be charged and proven

PC 1203.09(a): Victim in new offense is 60 or older AND def inflicts GBI AND charge is
One of the following (or attempt to commit):
187, 211, 207, 209, 459/460(a), 261(a)(2), 261(a)(6), 262(a)(1),
262(a)(4), 220, 215, 209.5

PC 12022.53(g): Def used or discharged a gun during specified offense (or attempt) –
187, 203, 205, 207, 209, 209.5, 211, 215, 220, 245(d), 261, 262,
264.1, 286, 288, 288.5, 288a, 4500, 4501, 4503, any felony
Punishable by death or life imprisonment

Maureen Williams - Fwd: Re: List of frequently used/applicable probation ineligibility clauses

From: Lance Daugherty
To: Maureen Williams
Date: 4/26/2011 5:28 PM
Subject: Fwd: Re: List of frequently used/applicable probation ineligibility clauses

Maureen,

I had Kathy just send me this list and I thought I would pass it along to you just in case it is something your attorneys don't have, but would like. I am not trying to insinuate anything by sending it to you. Also, if you have any lists like this that you use on your team, I would love to get a copy.

Lance

>>> Kathy Storton 4/26/2011 4:22 PM >>>

Lance, here are two lists I put together in 2009. I'm sure neither is exhaustive.

- I. **PROBATION: Presumptive v. Absolute Ineligibility**
 Probation ineligibility is either presumptive (i.e., the judge has discretion to grant probation in an unusual case) or absolute (i.e., prison is mandatory).
 - A. **Absolute Probation Ineligibility:** Court has no discretion to strike, stay, or dismiss these allegations. Def must go to prison. Examples:
 1. P.C.1203(k): committing a serious or violent felony while on probation for any felony offense.
 2. P.C. 1203.06 ("use a gun, go to prison"): personal use of a firearm during specified crimes (e.g., robbery, carjacking, kidnapping, escape, residential burglary, threatening a witness).
 3. P.C. 1203.065(a): specified sex crimes
 4. P.C. 1203.066: specified sex crimes
 5. P.C. 1203.07: various drug offenses
 6. P.C. 1203.075: personally and intentionally inflicting GBI during specified crimes (e.g., robbery, carjacking, kidnapping, escape, residential burglary)
 7. P.C. 1203.08: conviction of a designated felony where def has two prior designated felonies within 10 years (designated felonies include kidnapping, robbery, carjacking, assault with a deadly weapon or firearm, and residential burglary)
 8. P.C. 1203.085: conviction of a nonalternative ("straight" felony) where def is on parole for a serious or violent felony; or, conviction of a serious or violent felony where def is on parole for any felony.
 9. P.C. 1203.09(a): specified crimes against vulnerable victims (the aged or the disabled)
 10. P.C. 12022.53(g): firearm use or discharge during specified crimes.
 - B. **Presumptive Probation Ineligibility:** Def is not eligible for probation except in an unusual case where the interests of justice would best be served if the person is granted probation. Examples:
 1. P.C. 462: first degree burglary

2. P.C. 1203(e): various crimes, including any felony where the def has two prior felony convictions of any type
3. P.C.1203.045: theft of an amount exceeding \$100,000
4. P.C. 1203.046: conviction of P.C. 653j (soliciting a minor to commit a specified felony).
5. P.C. 1203.048: computer-related crimes where the taking or damage exceeds \$100,000
6. P.C. 1203.049: food stamp fraud exceeding \$100,000
7. P.C.1203.065(b): specified sex crimes
8. P.C. 1203.073: various drug offenses
9. P.C. 1203.09(f): specified crimes against a victim age 60 or older

>>> Lance Daugherty 4/26/2011 2:26 PM >>>
Kathy,

I was hoping to give the BAT team a list of the frequently used or applicable probation ineligibility clauses so they can make sure all allegations are appropriately charged on their cases. Particularly the allegations that the court has to impose or follow. If you have a list let me know. Thank you.

Lance Daugherty
Supervising Deputy District Attorney
Santa Clara County District Attorney's Office
Burglary, Assault and Theft Team
70 West Hedding Street
San Jose, CA 95110
(408)792-2887

**HYPODERMIC SYRINGE
CONTENTS ANALYSIS REQUEST**

REQUESTING AGENCY: _____ DATE: _____

AGENCY CASE NO: _____ SUSPECT: _____

Please analyze the contents of the enclosed hypodermic syringe for possible controlled substances. If there is evidence that the following controlled substance(s) may be present, please circle below:

Heroin	Cocaine	Methamphetamine	Steroids	_____
				(Other)

NOTE: Because handling hypodermic syringes and removal of their contents is hazardous and exposes Crime Laboratory personnel to infectious diseases, such as HIV and Hepatitis B, Deputy District Attorneys should not sign this request for analysis form unless it is absolutely necessary for evidentiary purposes and not merely cumulative to other sufficient evidence in the case.

Requesting Deputy District Attorney _____ D.A. Number _____ Phone Ext. _____

(Attach this completed form to the outside of the properly packaged hypodermic syringe before submitting to the Crime Laboratory.)

DEPARTMENT OF MOTOR VEHICLES

LICENSING OPERATIONS DIVISION
 DRIVER SAFETY HEADQUARTERS
 P.O. BOX 187010, M/S J256
 SACRAMENTO, CA 95818-7010
 (916) 657-7730



FOR DMV USE ONLY

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**ADMINISTRATIVE PER SE
 NOTICE OF FAILURE TO FILE OR
 DISMISSAL OF CRIMINAL CHARGES
 (§§23140, 23152 or §23153 Vehicle Code (VC))
 §13353.2(e)(f) VC**

DRIVER'S NAME			CALIFORNIA DRIVER LICENSE NO.	
ADDRESS			OUT OF STATE DRIVER LICENSE NO.	STATE
CITY	STATE	ZIP CODE	DATE OF BIRTH	
TELEPHONE NO. Daytime () Residence ()			ARREST DATE	

DISTRICT ATTORNEY'S STATEMENT

Criminal charges related to the arrest of the above-named driver under §§23140, 23152, or §23153 VC have **not been filed** by the District Attorney or were dismissed by the court because of lack of evidence.

A driver has a renewed right to request a hearing on an Administrative Per Se (0.05% or 0.08% BAC) suspension by the department. §13353.2(f) VC requires a **detailed explanation** specifying which evidence was defective or lacking and why such evidence was considered defective or lacking. Attach a separate sheet, if necessary, and any relevant supporting documents. (This section **does not apply** if the driver refused to submit to or failed to complete a chemical test.)

CHECK THE APPROPRIATE BOX(ES) AND EXPLAIN FULLY BELOW:

- ☐ INSUFFICIENT PROBABLE CAUSE
☐ UNLAWFUL ARREST
☐ ACCURACY OF CHEMICAL TEST EQUIPMENT AND/OR COMPLIANCE WITH TESTING PROCEDURES
☐ OTHER

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DISTRICT ATTORNEY'S NAME		DISTRICT ATTORNEY OFFICE	TELEPHONE NO. ()
ADDRESS			
CITY	STATE	ZIP CODE	
DISTRICT ATTORNEY'S SIGNATURE			DATE

WHITE - DMV

YELLOW - DRIVER
 A Public Service Agency

PINK - DISTRICT ATTORNEY

NOTICE OF NEW FELONY IN ADDITION TO
PENDING FELONY CASE

Previously Filed Felony Case

Name: _____

Docket: _____

Next Court /Date/Time: _____

D.A. File No. (if known): _____

Newly Filed Felony Case

Charges: _____

12022.1 Alleged?
YES NO

D.A. File No. (if known) : _____

CEN (if applicable): _____

Status:
BAIL O.R. IN CUSTODY WARRANT

Notation on CJIC Rap of this Notice: _____
YES / NO

By: _____ Date: _____
DEPUTY D.A. / CLERK

***Please route this Notice to records for placement with
the Previously Filed Case.***