



Fall

The BACKUP Newsletter

The Official Publication of the California Reserve Peace Officers Association



Search and Rescue
Trailblazer Retires



Reserve Coordinator
Training Opportunity



2021 CRPOA Awards
Announcement and Criteria



One Minute Brief

Fall 2020

Welcome to the Quarterly Newsletter of the
California Reserve Peace Officers Association



TSA Officers Detecting More Guns at Checkpoints
in Spite of Lower Passenger Throughput

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Chief Executive Officer's Report

By Mike Voorhees

This alarming news, “TSA seeing three times as many guns compared to last year” (National Press Release, Monday, August 10, 2020) could apply to one of us, if we’re not paying attention and inadvertently include something in our carry-on baggage that’s on the prohibited list. In addition to missing our flight, we might wind up in steel bracelets and have to pay a hefty fine. And that’s not to mention the rather substantial embarrassment and possible end of an avocation we all value. Please read the following articles from the TSA website which they have graciously allowed us to reprint:



TSA Officers Detecting More Guns at Checkpoints in Spite of Lower Passenger Throughput



This firearm was caught by TSA officers at the Ronald Reagan Washington National Airport checkpoint on July 30. (TSA photo)

WASHINGTON—Transportation Security Administration officers detected firearms in carry-on bags at a rate three times higher this past July than the same month in 2019, though passenger volume is significantly lower.

TSA officers detected 15.3 guns per million people last month compared to 5.1 guns per million people screened during July 2019. The rate is particularly alarming, given that TSA screened about 75% fewer passengers in July 2020, over the previous year's volume.

“TSA is diligently working to ensure our employees and passengers are safe and secure while traveling during a pandemic, and yet we are noticing a significant increase in loaded firearms coming into checkpoints,” said TSA Administrator David Pekoske. “Travelers must understand that firearms are prohibited items at airports and in the passenger cabins of aircraft. As hard as we are working to mitigate other risks at this time, no one should be introducing new ones.”

The potential Federal civil penalty for an unloaded firearm starts at \$2,050 and it starts at \$4,100 for a loaded gun. The penalty can go up to the current statutory maximum of \$13,669 per violation, depending on the circumstances. A case with substantial aggravating or mitigating factors may result in a sanction amount that falls outside the usual sanction ranges. The complete list of penalties is posted [online](#). (This paragraph has been edited from the original, which stated a current statutory maximum penalty of more than \$10,250. (This clarifies that the maximum penalty could reach \$13,669.)

In addition to financial civil penalties, individuals who violate rules regarding traveling with firearms will have their trusted traveler status and TSA PreCheck™ expedited screening benefits revoked for a period of time. The duration of the disqualification will depend upon the seriousness of the offense and if there is a repeated history of violations.

“Even more concerning is that 80 percent of the firearms coming into the checkpoint are loaded and it's just an accident waiting to happen. Travelers need to know that if they bring a gun to the security checkpoint, regardless of whether it is in a handbag, knapsack, roller-bag or strapped to their belt, it will be an inconvenient and expensive mistake on their part,” Pekoske said.

Nationwide last year, 4,432 firearms were discovered in carry-on bags at checkpoints across the country, averaging about 12.1 firearms per day, approximately a 5% increase nationally in firearm discoveries from the total of 4,239 detected in 2018. Eighty-seven percent of firearms detected at checkpoints last year were loaded.

Passengers are permitted to travel with firearms in checked baggage, if they are properly packaged and declared at check-in with the airline. Firearms must be unloaded, packed in a hard-sided case, locked, and packed separately from ammunition. Ammunition and firearm parts, including firearm frames, receivers, clips and magazines are also prohibited in carry-on baggage and must be checked. Any type of replica firearm is prohibited in carry-on baggage and must be transported in checked luggage. Firearm possession laws vary by state and locality; therefore, travelers should familiarize themselves with state and local firearm laws for each point of travel prior to departure.

TSA has details on how to properly travel with a firearm posted on its web site. Airlines may have additional requirements for traveling with firearms and ammunition. Travelers should also contact their airline regarding firearm and ammunition carriage policies.

To help avoid problems here are detailed rules, again from the TSA website:

Transporting Firearms and Ammunition

You may transport unloaded firearms in a locked hard-sided container as checked baggage only. Declare the firearm and/or ammunition to the airline when checking your bag at the ticket counter. The container must completely secure the firearm from being accessed. Locked cases that can be easily opened are not permitted. Be aware that the container the firearm was in when purchased may not adequately secure the firearm when it is transported in checked baggage.

Contact the [TSA Contact Center](#) with questions you have regarding TSA firearm regulations and for clarification on what you may or may not transport in your carry-on or checked baggage.

Firearms

- When traveling, comply with the laws concerning possession of firearms as they vary by local, state and international governments.
- If you are traveling internationally with a firearm in checked baggage, please check the U.S. Customs and Border Protection website for information and requirements prior to travel.
- Declare each firearm each time you present it for transport as checked baggage. Ask your airline about limitations or fees that may apply.
- Firearms must be unloaded and locked in a hard-sided container and transported as checked baggage only. As defined by [49 CFR 1540.5](#) a loaded firearm has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm. Only the passenger should retain the key or combination to the lock unless TSA personnel request the key to open the firearm container to ensure compliance with TSA regulations. You may use any brand or type of lock to secure your firearm case, including TSA-recognized locks.
- Firearm parts, including magazines, clips, bolts and firing pins, are prohibited in carry-on baggage, but may be transported in checked baggage.
- Replica firearms, including firearm replicas that are toys, may be transported in checked baggage only.
- Rifle scopes are permitted in carry-on and checked baggage.

United States Code, Title 18, Part 1, Chapter 44, firearm definitions includes: any weapon (including a starter gun) which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; and any destructive device. As defined by [49 CFR 1540.5](#) a loaded

firearm has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

Ammunition

- Ammunition is prohibited in carry-on baggage but may be transported in checked baggage.
- Firearm magazines and ammunition clips, whether loaded or empty, must be securely boxed or included within a hard-sided case containing an unloaded firearm. [Read the requirements](#) governing the transport of ammunition in checked baggage as defined by 49 CFR 175.10 (a)(8).
- Small arms ammunition (up to .75 caliber and shotgun shells of any gauge) must be packaged in a fiber (such as cardboard), wood, plastic, or metal box specifically designed to carry ammunition and declared to your airline.
- Ammunition may be transported in the same hard-sided, locked case as a firearm if it has been packed as described above. You cannot use firearm magazines or clips for packing ammunition unless they completely enclose the ammunition. Firearm magazines and ammunition clips, whether loaded or empty, must be boxed or included within a hard-sided, locked case.
- Please check with your airline for quantity limits for ammunition.

Finally, here's an abbreviated checklist:

Ammunition

- **Carry On Bags:** No
- **Checked Bags:** Yes (Special Instructions)

Check with your airline if ammunition is allowed in checked bags. Small arms ammunitions must be securely packed in fiber, wood or metal boxes or other packaging specifically designed to carry small amounts of ammunition. Ask the airline about limitations or fees.

Firearms

- **Carry On Bags:** No
- **Checked Bags:** Yes (Special Instructions)

Firearms carried in checked bags must be unloaded, packed in a locked hard-sided container, and declared to the airline at check-in. Check with your airline to see if they allow firearms in checked bags.

Holsters

- **Carry On Bags:** Yes
- **Checked Bags:** Yes

Parts of Guns and Firearms

- Carry On Bags: No
- Checked Bags: Yes (Special Instructions)

Firearm parts, including magazines, clips, bolts and firing pins, are prohibited in carry-on, but may be transported in checked bags. Check with your airline to see if they allow firearms in checked bags.

Rifle Scope (Scope Only)

- Carry On Bags: Yes
- Checked Bags: Yes

Shell Casings

- Carry On Bags: Yes (Special Instructions)
- Checked Bags: Yes

Empty shell casings are allowed in carry-on bag as long as the projectile is no longer intact. They are allowed only if the primer has been removed or has been discharged. If the projectile is attached & the powder has been drilled out, it is considered a replica and not allowed in carry-on.

So, in Conclusion ...

- *When traveling, be sure to comply with the laws concerning possession of firearms as they vary by local, state and international government.*
- *Remember that LEOSA does not preempt the laws of individual states concerning magazine capacity. Think about the airports you'll be traveling into and out of!*
- *TSA rules are what they are but their application may vary from agent to agent. For example, rifle scopes are, according to TSA rules, allowable in carry-on baggage. However, some agents in some airports may not allow them, even when shown a copy of the rules.*
- *Having said that, it's not a bad idea to carry a photocopy of the rules from the TSA website, which purport to allow what you're trying to carry-on.*
- *Be ready for heightened scrutiny in some jurisdictions where handgun ownership is comparatively rare (think New York City).*
- *If you get into a jam, maintain an even strain, be polite and cooperative. Ask for a supervisor.*

Mike Voorhees is a practicing attorney, the retired reserve assistant sheriff for his former department and the chief executive officer of CRPOA. He welcomes your questions and comments at voorhees@crpoa.org

Chief Executive Officer's Report - Part 2

By Mike Voorhees

How Your Department Can Hire and Retain More Reserve Officers

If your department says it wants to hire additional Reserve Officers or Deputies, is it doing all it can? Here are some suggestions for the Reserve Coordinator to increase the chances of getting quality applicants:

Think About the Benefits to the Department

- Sell the Reserve program to the Chief or Sheriff. Get buy-in from the top down. Word from the top **must** get to the agency personnel unit for it to be effective.
- You are training people who can greatly aid the department's capabilities in catastrophes and emergencies. Reserves who work regularly maintain their skills.
- Reserves mean nearly free **augmentation (not replacement)** of patrol and other services.
- Many new Reserves are "testing the waters" to see if they want to make a career change. Again, it's a **nearly free look** for the department to pick up full-time employees.

Get the Word Out

- Communicate in person or deliver flyers to the academies closest to your location. Some will let representatives from your agency make presentations to their classes.
- If the local colleges have criminal justice classes but not an academy, let them know too.
- Use social media. The department website is a start, but Facebook and Instagram get the word out to younger people.
- Contact large local companies. Many encourage their employees to get involved in the community. Some will sponsor or help with expenses of volunteering. And don't forget LinkedIn.
- Contact the "police reporter" for the local paper. Encourage a human-interest story about the existing program and its opportunities.

Treat Applicants with Respect

- If you're looking for Level I Reserves, your applicants have already spent a few thousand dollars and often close to a thousand hours of their time attending a modular or intensive Basic Academy. That demonstrates motivation!
- Promptly reply to their applications.
- Schedule an orientation and/or interview sooner rather than later.
- Let them know promptly whether they passed their interview or initial screening.
- Keep them informed monthly during the hiring process to let them know you are interested. If you have an eligibility list, let them know whether they're still on it.
- Prioritize them equally with paid positions. Reserve applicants have demonstrated their enthusiasm and commitment by attending the academy at their own expense and on their own time. **It is unreasonable to put them at a lower priority.**
- Consider recruiting additional background investigators from the Reserve ranks. There's nothing to preclude Reserves from conducting backgrounds.

Treat the New People with Respect

- Once they're in the background process, assign an experienced Reserve to be their mentor (not to be confused with their Field Training Officer).
- Arrange for the swearing-in promptly.
- Get their FTO program started promptly and work around their paid job. They have to support themselves and their family to be in a position to volunteer.
- Equip them as you would any new officer; no hand-me-downs.
- Follow the law: Active Reserves meeting the requirements of 18 USC §926B are entitled to the benefits of LEOSA!

Treat the Experienced People with Respect

- Make sure they get all of the CPT offered to or required of full-time officers.
- Encourage them to join CRPOA and attend ARPOC for additional training.
- Don't unnecessarily restrict Reserves to menial assignments. Many are well-educated and/or have unusual and valuable skills that can be a benefit outside patrol. Many are fluent in languages besides English. Utilize their skills!
- If your department contracts its services to 3rd parties for special events, consider part-time paid opportunities for the Reserves, with no FLSA complications.
- When your Reserves retire see that they are properly recognized and, again, follow the law. Reserves meeting the requirements of Penal Code §26300(c)(2) are entitled by law to a retired ID card with California CCW endorsement. Those meeting the requirements of 18 USC §926C are entitled to LEOSA privileges.
- Word gets around. If your department treats its Reserve Officers with respect, it will become the place to apply, perhaps even the place to lateral.

Mike Voorhees is a practicing attorney, the retired reserve assistant sheriff for his former department and the chief executive officer of CRPOA. He welcomes your questions and comments at voorhees@crpoa.org



CRPOA General Counsel

By Ed Obayashi, Esq.

A Word To The Wise

This is the time of year when we, as commentators, muse about the past year and the coming holiday season. As we have heard and read enough of about what this year has brought us, there is nothing I can or should say about it or the shape of things to come.

What I do want to talk about is what can probably save some of you from the sad fate which more and more officers are facing in California and nationwide.

Since I began conducting personnel investigations many, many years ago (too many to count) for law enforcement statewide, the one matter that dominated my attention by far has always been *Use of Force* allegations. But training requests for this issue has rocketed to the top of all the POST training courses my office offers.

However, in what seems like only yesterday, a totally unpredictable type of misconduct that no one saw coming has emerged out of nowhere and just keeps coming with no immediate end in sight. And unlike the familiar types of investigations, this one is navigating in uncharted waters.

A simple and everyday activity has now become the most serious and embarrassing act of misconduct that you, privately (on your own time) or as a cop, can commit and it is more (actually more so) career-ending than any other kind of misconduct. What is really scary is that the cops (both line and management) often do not realize or appreciate the dangers of this conduct.

Any Guesses? Paste this link in browser and open

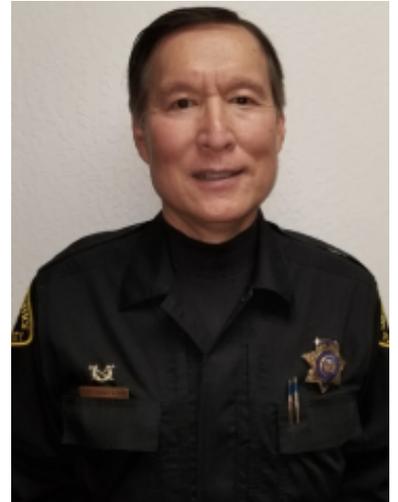
<https://riteacademy.com/wp-content/uploads/2020/02/social-media-mis.png>

For some examples of completely unacceptable such conduct (and there are many more), follow the links below and note my comments in the articles:

<https://www.latimes.com/local/lanow/la-me-chp-mark-garrett-caitlyn-jenner-facebook-20190604-story.html>

<https://www.latimes.com/local/lanow/la-me-deputy-lakewood-video-20170330-story.html>

Compared to all other personnel issues, I am dumbfounded by the sheer stupidity of cops who hit the “SEND” button. But, then again, who would have ever predicted “social media” and its consequences? Did you ever think that posting a Facebook comment could lead to any discipline, much less termination?



Please note these recent media articles on the dangerous consequences to officers' careers and reputation-particularly in California (again with my observations)

<https://www.latimes.com/california/story/2020-10-13/cops-social-media-dangerous-combo-era-racial-reckoning>

<https://www.latimes.com/california/story/2020-10-22/social-media-scandal-santa-clara-police-charges-dropped>

What is not known to those unfamiliar with this problem is that there can be very serious and very expensive liability exposure (not to mention extreme embarrassment) due this type of behavior, even when done "privately". One agency paid out \$2.4 million for its officers distributing photos of a deceased crash victim on the internet. Similarly, Kobe Bryant's widow has already filed a claim against the County of Los Angeles and the Sheriff's Office. As a result, this incident led to the enactment of the "Kobe Bryant" law (effective January 1, 2021) which criminalizes the unauthorized photographing by first responders of decedents at accident scenes.

The social media minefield goes on and on: sex, race, politics, religion, sexual orientation, etc.

Due to this most serious of current personnel misconduct issues, I have begun training cops statewide in POST's first training course addressing this problem.

In the meantime, think twice before hitting the "SEND" button.

*Ed Obayashi is a practicing attorney, a deputy sheriff, the legal advisor for his department and the general counsel for CRPOA. Note: **For those members seeking legal advice**, please contact your Association office by using this link: <https://crpoa.org/contact/>.*



Legislative Update

By Pete Downs

Vice-President for Legislative Affairs



The Legislature is now in adjournment for the 2-year session, 2019/2020. It was a very challenging year for law enforcement. Below I have listed some of the bills that were either chaptered (put into law) or vetoed.

All 80 seats in the Assembly were up for election and 20 seats in the Senate were on the ballot. The preliminary results, known as a semifinal official canvass, are updated until the vote is completed by each county. Official canvassing takes place between Nov. 5 and Dec. 3. The last day for vote-by-mail ballots to be counted is Nov. 20. Results are to be certified by the county and sent to the state by Dec. 4.

VETOED Bills

AB 1299

(Salas D) Peace officers: employment. Status: 9/30/2020-Vetoed by the Governor

Summary: Would require any agency that employs specified peace officers to provide a notification, as described, to the Commission on Peace Officer Standards and Training when a peace officer is terminated or, if an officer leaves the agency with a complaint, charge, or investigation of a serious nature, as defined, pending, would require the agency to complete the investigation as specified and notify the commission of its findings. The bill would require the commission to include this information in an officer's profile and make that information available to specified parties including any law enforcement agency that is conducting a preemployment background investigation of the subject of the profile. The bill would also allow a peace officer to have this information removed from their profile if a court subsequently finds that an allegation of a serious nature was improperly found to be sustained, as specified.

AB 2342 (McCarty D) Parole.

Status: 9/30/2020-Vetoed by the Governor

Summary: Would create a program under which the length of a parolee's period of parole could be reduced through credits earned by successfully completing specified education, training, or treatment programs, or by participating in volunteer service, while adhering to the conditions of parole. The bill would make this program inapplicable to a person who is required to register as a sex offender. The bill would, if AB 1304 is enacted, additionally require this program to award credits for participation in substance abuse treatment programs, as specified.

SB 629 (McGuire D) Public peace: media access. Status: 9/30/2020-Vetoed by the Governor

Summary: Would, if peace officers close the immediate area surrounding any emergency field command post or establish any other command post, police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged primarily in constitutionally protected activity, as described, require that a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network, as

described, be allowed to enter those closed areas and would prohibit a peace officer or other law enforcement officer from intentionally assaulting, interfering with, or obstructing a duly authorized representative who is gathering, receiving, or processing information for communication to the public.

SB 1220 (Umberg D) Peace and custodial officers. Status: 9/30/2020-Vetoed by the Governor
Summary: Current law provides discovery procedures for peace or custodial officer personnel records, and other records pertaining to peace or custodial officers, as specified. Current law defines a Brady list as a system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, as specified. This bill would require each prosecuting agency to maintain a Brady list. The bill would, on and after January 1, 2022, require any state or local law enforcement agency maintaining personnel records of peace officers and custodial officers to annually, to each prosecuting agency within its jurisdiction, and upon request to any prosecuting agency, provide a list of names and badge numbers of officers employed by the agency in the 5 years prior to providing the list who meet specified criteria, including, among other things, that the officer has had sustained findings for conduct of moral turpitude or group bias or that the officer is on probation for a criminal offense.

Now the CHAPTERED Bills:

AB 846 (Burke D) Public employment: public officers or employees declared by law to be peace officers. Status: 9/30/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 322, Statutes of 2020.

Summary: Current law establishes the Commission on Peace Officer Standards and Training within the Department of Justice to perform various functions involving the training of peace officers. Current law requires peace officers in this state to meet specified minimum standards, including, among other requirements, that peace officers be evaluated by a physician and surgeon or psychologist and found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer. This bill would require that evaluation to include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

AB 1506 (McCarty D) Police use of force. Status: 9/30/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 326, Statutes of 2020.

Summary: Current law requires law enforcement agencies to maintain a policy on the use of force, as specified. Current law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force. This bill would create a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations, as specified.

AB 2655 (Gipson D) Invasion of privacy: first responders. Chaptered: 9/29/2020 Status: 9/28/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 219, Statutes of 2020.

Summary: Would make it a misdemeanor for a first responder, as defined, who responds to the scene of an accident or crime to capture the photographic image of a deceased person for any purpose other than an official law enforcement purpose or a genuine public interest. By creating a new crime, the bill would impose a state-mandated local program. The bill would require an agency that employs first responders to, on January 1, 2021, notify those first responders of the prohibition imposed by the bill.

SB 145 (Wiener D) Sex offenders: registration. Chaptered: 9/11/2020 Status: 9/11/2020-Approved by the Governor. Chaptered by Secretary of State. Chapter 79, Statutes of 2020.

Summary: The Sex Offender Registration Act, requires a person convicted of one of certain crimes, as specified, to register with law enforcement as a sex offender while residing in California or while attending school or working in California, as specified. A willful failure to register, as required by the act, is a misdemeanor or felony, depending on the underlying offense. This bill would exempt from mandatory registration under the act a person convicted of certain offenses involving minors if the person is not more than 10 years older than the minor and if that offense is the only one requiring the person to register.

SB 480 (Archuleta D) Law enforcement uniforms. Chaptered: 9/30/2020

Status: 9/30/2020-Approved by the Governor. Chaptered by Secretary of State. Chapter 336, Statutes of 2020.

Summary: Current law prohibits the wearing of a military uniform, as specified, by any person not authorized to wear that uniform. This bill would prohibit, with certain exceptions, a law enforcement agency from authorizing or allowing its employees to wear a uniform that is made from a camouflage printed or patterned material or a uniform that is substantially similar, as described, to a uniform of the United States Armed Forces or state active militia.

SB 1159 (Hill D) Workers' compensation: COVID-19: critical workers. Current Text: Chaptered: 9/17/2020 Status: 9/17/2020-Approved by the Governor. Chaptered by Secretary of State. Chapter 85, Statutes of 2020.

Summary: Would define "injury" for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days.

Pete Downs is our Vice President for Legislative Affairs. He welcomes your questions. Please email him at downs@crpoa.org.

2021 CRPOA AWARDS ANNOUNCEMENT AND CRITERIA

The California Reserve Peace Officers Association is proud to announce the Annual Awards Program for 2021. We invite you to nominate a deserving member of your organization for one of several recognition awards. Because of the Coronavirus, this year's award recipients will receive:

The awards will be presented at the Annual Reserve Peace Officers Conference in Lake Tahoe/Stateline during the Awards Luncheon. The Luncheon is held in conjunction with ARPOC 2021, which offers 28 hours of POST approved training.

Do not miss out on an opportunity to honor a deserving individual within your organization.

Review the award nomination information to determine which award is best suited to your nominee. ***Along with the Award Nomination Application, a letter of nomination must be submitted detailing the nominee's qualifications and accomplishments. Documentation supporting the nomination letter must be included. Questions can be forwarded to nancy@crpoa.org. Nominations deadline is June 19, 2021.***

We look forward to receiving your nomination.

Award Criteria

Please note, in 2013 the CRPOA Board of Directors voted to modify the time restriction on awards to three years. You may now submit a nomination for events which occurred up to three years ago. The Board will also consider exceptions for older events on a case-by-case basis.

Award for Valor

For an act of conspicuous bravery in the line of duty, performed in conscious disregard of peril to the officer. To be awarded, all of the following criteria must exist:

- ◆ The bravery exhibited must be above and beyond that expected in the line of duty.
- ◆ Failure to take such action would not justify censure.

- ◆ The risk to the officer's life actually existed and the officer was able to perceive the risk and disregard it.
- ◆ The objective was of sufficient importance to justify the risk.
- ◆ The officer accomplished the objective or was prevented from accomplishing it by incurring serious injury or death.

Notes:

- ✓ *The criteria for this award include consciousness of the peril and the disregard thereof. Thus, merely finding oneself in the middle of a perilous situation and having to take action to get out of it would not qualify.*
- ✓ *There is no limit to the number of qualifying awards.*
- ✓ *May be awarded to a reserve peace officer, search and rescue member or volunteer in policing.*
- ✓ *The nominee does not need to be a CRPOA member.*
- ✓ *The act must have occurred between June 1, 2018 and May 31, 2021, inclusive.*

Award of Honor

Presented to the family of a reserve peace officer, search and rescue member or volunteer in policing whose life was given in the line of duty due to the action of a third party.

Notes:

- ✓ *This award recognizes supreme sacrifice in the line of duty. It does not require that the officer knowingly placed himself or herself in a perilous situation nor does it require an act of heroism to be awarded. It does require the action of a third party in causing the death.*
- ✓ *There is no limit to the number of qualifying awards. In an appropriate case, an Award for Valor and an Award of Honor could be made for the same action.*
- ✓ *May be awarded to a reserve peace officer, search and rescue member or volunteer in policing.*
- ✓ *The decedent need not have been a CRPOA member.*

- ✓ *The death must have occurred between June 1, 2018 and May 31, 2021, inclusive.*

Reserve Officer of the Year, Search and Rescue Member of the Year, and /or Volunteer in Policing of the Year

Awarded to the nominee excelling in all the qualifications for the Meritorious Service Award which place the reserve officer/search and rescue member/volunteer in policing clearly above all other candidates.

Notes:

- ✓ *Only one qualifying award shall be made each year for each of three categories: reserve peace officer, search and rescue member and volunteer in policing.*
- ✓ *The nominee must be a general member of CRPOA on the date the nomination is received.*
- ✓ *The qualifying actions must occur prior to May 31, 2021.*

Meritorious Service Award

For especially meritorious service to the department in a duty of great responsibility. The duty may be either assigned or self-initiated. Superior performance of the normal duties of the position will not alone justify the award.

Considerations for the award include all areas of:

- ◆ Outstanding performance of the officer's duties either in a single act or over time
- ◆ Extraordinary level of assistance to the reserve unit and/or the department
- ◆ Extraordinary level of service to the community
- ◆ Training or teaching within the department
- ◆ Longevity with the department.

Notes:

- ✓ *The nominee must be a general member of CRPOA on the date the nomination is received.*
- ✓ *There is no limit to the number of qualifying awards.*
- ✓ *The qualifying actions must occur between June 1, 2018 and May 31, 2021, inclusive.*

Distinguished Service Award

For distinguished service by a reserve officer, SAR member or volunteer in policing.

Considerations for the award include one or more of the following:

- ◆ Distinguished service either in a single act or over time
- ◆ Substantial assistance to the reserve unit and/or the department
- ◆ Substantial service to the community
- ◆ Training or teaching within the department
- ◆ Longevity with the department

Notes:

- ✓ *The nominee must be a general member of CRPOA on the date the nomination is received.*
- ✓ *There is no limit to the number of qualifying awards.*
- ✓ *The qualifying actions must occur between June 1, 2018 and May 31, 2021, inclusive.*

Award of Appreciation

For distinguished service to the members of the California Reserve Peace Officers Association.

Considerations for the award include:

- ◆ Distinguished service to the Association either in a single act or over time
- ◆ Substantial assistance or contribution to the Association

Notes:

- ✓ *There is no limit to the number of qualifying awards.*
- ✓ *The qualifying service must occur between June 1, 2018 and May 31, 2021, inclusive.*

Coordinator of the Year

Presented to the coordinator of reserve peace officers, search and rescue members or volunteers in policing who excels in:

- ◆ Displaying a strong commitment to the unit
- ◆ Dedication to the enhancement of the professionalism and training of the unit members
- ◆ Promoting a positive image of unit members within the department and the community
- ◆ Demonstrating efforts to use unit members in non-traditional roles or assignments

Notes:

- ✓ The nominee must be a full-time employee of the department in which he or she serves as the coordinator of a reserve peace officer, search and rescue or volunteer in policing unit.
- ✓ The nomination must be made from within the unit supervised by the nominee. It may not be made by the department or by another full-time employee of the department. Supporting letters from the department are encouraged.
- ✓ Only one qualifying award shall be presented.
- ✓ The qualifying service must occur prior to May 31, 2021

General Notes

Important info for nominators:

Nominators for any CRPOA award shall be:

- ✓ A chief executive of a law enforcement agency; or,
- ✓ A full-time officer who serves as a reserve coordinator; or
- ✓ A General Member of the Association.

When submitting a nomination please review the awards criteria thoroughly to assure that your nominee meets the criteria. You may submit a nomination for the highest possible award for which you believe your nominee meets the criteria. The Awards Committee may determine that your nominee qualifies for the category nominated or may select the nominee to be recognized in a different category. For example, a candidate nominated for Reserve Officer of the Year might receive that award or may be honored with the Meritorious Service Award or other qualifying award.

Nominations packets *must* include:

- ✓ **An application completed and legible.**
- ✓ **A letter of nomination on department letterhead summarizing the qualifications of the candidate for a specific award.**
- ✓ **Documentation supporting qualifications, such as awards, certificates, commendations, letters.**
- ✓ **If a specific event, copies of incident/police reports, news coverage, photos/video.**

Nominators must also assure that contact information for award notification is current.

Incomplete nominations packets may not be considered; however, the Awards Committee will notify nominators of incomplete nominations.

Nominations may be sent to the Awards Committee at:

**California Reserve Peace Officers
Association
P.O. Box 1238
Pacifica, CA 94044**

or scan and e-mail your nomination packet to nancy@crpoa.org.

If you do not receive confirmation of receipt of the nomination packet by the Awards Committee within 2 weeks of mailing or emailing documents, contact Nancy Elam by email.

Any questions about the nomination process can be forwarded to Nancy Elam, Awards Committee Chairman by email at nancy@crpoa.org

The deadline for the receipt of nominations is June 19, 2021



Search and Rescue Trailblazer Retires

Grandmother of six Roxanna “Rocky” Morton has retired after 30 years of saving lives in Malibu.

By Judy Abel / Special to The Malibu Times Oct 18, 2020

There’s really no other way to put it: Roxanna Morton is one bad grandma. Although her youthful appearance belies her age, the 70-year-old retired this week from Malibu Search and Rescue after 30 years on the team.

“Rocky,” as she’s known, has rappelled out of helicopters and down cliffs, climbed up mountains and waded through streams in all hours of the night in an effort to find missing or injured people and, unfortunately, sometimes to recover their bodies. But, as Morton pointed out, many rescues are successful “and the people are so happy to see you and you get them home safe to their families.”

As a reserve sheriff’s deputy, she’s had to draw her weapon once, but not use it—“which is nice,” according to grandmother of six.



Photos Courtesy of SAR Social Media

But now, after three decades of volunteering on MSAR, she is stepping down.

“I gave up all my peace officer standing,” she said. “I had to turn in all my gear, badge and gun.” When asked what her oldest grandsons think about their *bubbe* carrying a sidearm, Morton replied, “They love it.”

It was a big surprise to her husband and two nearly-grown children when the Thousand Oaks resident informed her family she would be attending the sheriff’s training academy, then at age 40.



“However, they were very supportive,” Morton said. “I think my husband didn’t know what hit him, but he wasn’t going to stop me from following my dream.” Morton was one of only two women at the time in her academy. Soon after making the force, she went to school for six years to become a nurse practitioner which came in handy during rescues.

Morton has no idea how many hours she’s served in three decades with MSAR. She typically worked 20 hours a month, which included keeping up to date on training, shooting skills and patrol—all unpaid volunteer hours. At times she was away from home for two- to three-day stretches. She worked nearly non-stop for the two-week period of the Woolsey

Fire, even though her own neighborhood was under evacuation.

Reflecting on her incredible career, Morton said she learned and experienced more than she ever thought possible.

“My time on MSAR was mindboggling,” she said. “It was nothing I had ever experienced before. It broadened my life beyond anything I could even comprehend. It gave me life experiences. I learned outdoor skills that were just not part of my environment. Nobody I knew did these things: search and rescue, driving a truck, carrying a gun. It was the people who kept me going because I felt so privileged to be part of the group. If you had a problem in the middle of the night, who would you call? I had a full team I could call. If I had an emergency in the middle of the night, I knew people who would come out and help me.” Morton laughed when reminded that she was one of those people who would be called in the middle of the night to help a stranger—a lost hiker or someone who had tumbled down a cliff.

Morton recalled one Christmas when she joined the rescue of a group of hikers in Malibu Creek State Park. After hours of searching well into the evening, the group was found, tired, grateful and hungry. But as a female on the rescue scene, Morton knew what was needed when she offered toilet paper: “You should’ve seen the smiles on everyone’s faces.”

Morton’s friend and MSAR team leader, David Katz, had nothing but praise for his co-worker.

“I have a close professional and personal connection to Rocky for many reasons, including that we graduated the academy together in 1990, we worked side by side together for 30 years, most recently on the Calabasas helicopter crash and we both lost our spouses to cancer within a year of each other,” Katz said. “Rocky is an amazing woman, a fearless deputy sheriff, a Billy Goat hiker, a trailblazing mentor and just a damn great human. We will miss her terribly.”

Katz added that Morton would be receiving a special honor from her longtime teammates.

“Rocky will be only the fourth Malibu SAR team member in our 43-year history to have his or her rescue designator retired by the team,” Katz said. “‘R08’ will never be used again by Malibu SAR for a rescue operator. It is a fitting honor for a deserving teammate who devoted three decades of life so others may live.”

Morton encouraged others who may be considering a call to service to join MSAR.

“It was amazing,” she said.



RESERVE COORDINATOR TRAINING OPPORTUNITY

Thursday December 17th at 8:30am POST will present a 4-hour on-line presentation of the abridged Reserve Coordinator **Introduction** course.

This 4hr. on-line class is designed to provide a brief overview of the reserve program to coordinators who are newly assigned or have limited experience in their positions. The subjects covered will include POST Regulations, reserve levels, reserve officer selection, entry level and in-service training requirements and reserve program management. As an introductory class it is preliminary in nature and is not intended to take the place of a POST-certified Reserve Coordinator Course.

There is **no cost** for this presentation and it provides 4-hours of CPT upon completion.

To register, use the link provided- <https://post.ca.gov/eventsView/eventId/583>



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[Click Here](#) to view our online store.

A Big Thank you...

The California Reserve Peace Officers Association would like to thank the following people and organizations for permission to reprint their articles:

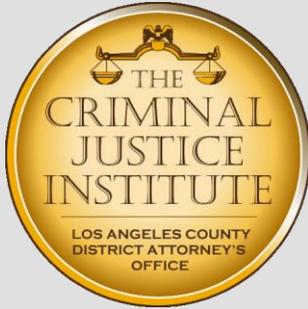
The Los Angeles County District Attorney's Office and Devallis Rutledge for their monthly edition of the One Minute Brief

Lorie Dankers, Transportation Security Administration - "TSA Officers Detecting More Guns at Checkpoints in Spite of Lower Passenger Throughput"

Judy Abel, Malibu Times - "Search and Rescue Trailblazer Retires"

Dan Piraro - Bizarro Comics - bizarro.com





LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

JACKIE LACEY
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NUMBER: 2020-38 **DATE:** 11-05-20 **BY:** Devallis Rutledge **TOPIC:** Attempted/Completed Crimes

ISSUE: Can a defendant be convicted of an *attempt* to commit a crime, even when the evidence establishes that the crime was in fact *completed*?

Per PC § 664, most attempts to commit crimes are punishable by **one-half** the sentence prescribed for the target crimes (except as provided in other statutes, and for attempted murders, which have specifically-prescribed punishments). But police officers, prosecutors, magistrates, judges or jurors may occasionally make the mistake of viewing the evidence as proving *only* an **attempt** to commit a particular crime, when the evidence as established clearly shows that the crime was **actually committed** by the defendant. In such circumstances, can a conviction for attempt be upheld? In most cases, the short answer is, “Yes.”

*“Any person **may be convicted** of an attempt to commit a crime, **although it appears on the trial that the crime intended or attempted was perpetrated** by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.”* PC § 663.

*“Under section 663, a defendant can be **convicted of an attempt** to commit a crime, even though **the crime was completed**. Further, evidence tending to prove that the crime was completed, even though not absolute proof of the crime of attempt, **gives rise to a reasonable inference** that the perpetrator **intended** to commit that crime.”* *People v. Rundle* (2008) 43 Cal.4th 76, 138, fn. 28, disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.

- For example: Wesley John Robins was the getaway driver for a woman who went into

a store and shoplifted “a large quantity of clothing.” When the woman was confronted outside by the store’s loss-prevention officer, both she and Robins used force or threats against the LPO to try to retain the clothing, which they ultimately discarded before jumping into their waiting vehicle and speeding away. This converted the theft into an “*Estes robbery*” (see 1MB 2008-04: the use of force to *retain* stolen property or to *escape* apprehension during asportation elevates a theft to a robbery. *People v. Estes* (1983) 147 Cal.App.3d 23).

The preliminary hearing magistrate mistakenly held Robins to answer only for **attempted** robbery (apparently because defendants were unsuccessful in escaping with the goods); the prosecutor tried Robins only for attempted robbery; and he was convicted of attempted robbery.

Affirming Robins’ conviction on appeal, the Court of Appeal first pointed out that the evidence actually showed a **completed** *Estes* robbery, because once force or fear is used in an effort to retain stolen property or to escape, the *Estes* robbery is **complete**, “**even if the thief is ultimately unsuccessful in escaping with the goods.**” *People v. Robins* (2020) 44 Cal.App.5th 413, 419.

Next, citing PC § 663, the court ruled that “*commission of the completed robbery does not preclude conviction of the attempted robbery....*” *Id.*, at 422.

- Courts are required to give jury instructions on attempt as a lesser-included offense of a charged crime if supported by the evidence. *People v. Breverman* (1998) 19 Cal.4th 142, 154; CALCRIM 460. However, courts **should not give jury instructions on attempts** where the nature of the charged crime precludes a viable attempt charge. *People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 (there is no such crime as “attempted involuntary manslaughter”); *People v. Bean* (1989) 213 Cal.App.3d 639, 642 (no such crime as “attempted petty theft with a prior”); *In re Kent W.* (1986) 181 Cal.App.3d 721, 724 (no such crime as “attempted reckless causing of a fire”); and *In re James M.* (1973) 9 Cal.3d 517, 522 (“no such crime as attempted assault”).

BOTTOM LINE: Except where an attempt to commit a crime is not a logical or legal possibility, a defendant may be convicted of an *attempt* to commit a crime, even though the evidence establishes a *completed* crime.

(Emphases added and citations omitted in quoted material.)

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NUMBER: 2020-37 **DATE:** 10-29-20 **BY:** Devallis Rutledge **TOPIC:** Hot Pursuit

ISSUE: When does the exception for “hot pursuit” allow police to make a warrantless entry into private premises to arrest a suspect?

*“Police officers may enter premises without a warrant when they are in **hot pursuit** of a fleeing suspect.”* *Kentucky v. King* (2011) 563 US 452, 460.

The exception has several features.

- “Hot pursuit” and “fresh pursuit” are used interchangeably to refer to the same exception. *People v. Superior Court (Dai-Re)* (1980) 104 Cal.App.3d 86, 89.
- Although this exception is sometimes **mischaracterized** as “hot pursuit of a fleeing **felon**,” notice that the exception was stated in *King*, above, as applying to a “fleeing **suspect**,” because there is “*no principle of law which says a fresh pursuit can be carried on in the case of a felony but not a misdemeanor.*” *People v. Lavoyne* (1990) 221 Cal.App.3d 154, 159. **This issue is pending further review at the US Supreme Court in Arthur Gregory Lange v. California, No. 20-18.** (Watch for a future 1MB on the decision in this case, once issued.)

- **If officers attempt** a lawful detention or arrest **while the suspect is in a public place**, they may enter to complete the detention or arrest, **regardless of the seriousness of the crime**. “[A] suspect may not defeat an arrest **which has been set in motion** in a public place ... by the expedient of escaping to a private place.” *US v. Santana* (1976) 427 US 38, 43. See also, *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1429 (entry OK in pursuit of a traffic-infraction suspect who parked and ran inside); and see *Stanton v. Sims* (2013) 571 US 3, 8-9 (pursuit of a noise-complaint suspect into the curtilage, after officer’s street command, “Stop! Police,” was held not to violate clearly-established Fourth Amendment law).

- On the other hand, **if** there has been **no attempt to detain or arrest** the suspect while s/he was in a public place, the “hot pursuit” exception permits entry **only** in cases where the suspect was (1) **continuously** pursued or tracked (2) **from the scene** of a (3) **recently-committed**, (4) **dangerous** crime, with the potential for further (5) **threat to public safety** if s/he is not quickly apprehended. In such a case, it is not necessary that police have even laid eyes on the suspect before entry:

“*[T]he claim of hot pursuit is unconvincing [whenever] there was no **immediate or continuous pursuit** of the petitioner **from the scene of a crime.**” *Welsh v. Wisconsin* (1984) 466 US 740, 753 (disapproving entry to initiate arrest for a **civil infraction**).*

“*[F]resh pursuit of a fleeing suspect who has committed a **grave offense** and **remains dangerous to life and limb** may constitute exceptional circumstances... [A]lthough fresh pursuit of a fleeing [suspect] must be **substantially continuous** and afford the law enforcement authorities no reasonable opportunity to obtain a warrant, it is **not necessary** that the suspect be kept physically in view at all times.” *People v. Escudero* (1979) 23 Cal.3d 800, 810 (entry OK where officers traced **residential burglar** from the scene to his residence within an hour, because burglary, which has a high potential for dangerous confrontation, is a grave offense).*

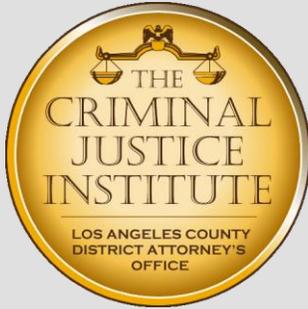
See also *Warden v. Hayden* (1967) 387 US 294, 298-99 (entry OK “*within minutes*” after **armed robber** went into residence); *People v. Johnson* (1981) 30 Cal.3d 444, 452 (entry OK into suspect’s girlfriend’s residence 75 minutes after street **shooting**); *People v. Superior Court (Dai-Re)*, *supra*, 104 Cal.App.3d at 91 (entry OK where officers continuously tracked **commercial burglars** from the scene to the residence).

- Before making a “hot pursuit” entry, police must have “**reasons to believe**” the **suspect is inside** when entry is made. *People v. White* (1986) 183 Cal.App.3d 1199, 1205-09 (e.g., observed entry; suspect vehicle with warm hood; suspicious noises/actions inside, etc.).

BOTTOM LINE: Officers who have attempted a lawful detention or arrest in public for any criminal offense may pursue a fleeing suspect into private premises, and may also make entry following continuous pursuit of a *dangerous* offender from the scene of a recent, grave crime, even if there has been no opportunity to apprehend in public.

(Emphases added and citations omitted from quoted material.)

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NUMBER: 2020-36 **DATE:** 10-22-20 **BY:** Devallis Rutledge **TOPIC:** Defense Delivery of Evidence

ISSUE: What if the defense attorney comes into possession of the fruits, instrumentalities or evidence of a crime?

Occasionally, a criminal defendant or a third party turns over weapons, stolen property, video, writings or other incriminating evidence of a crime to the defense attorney. Should the attorney *conceal* the evidence, to avoid helping the prosecution? (No.) Or must the defense attorney *deliver* the evidence to the prosecutor, or to the court to be disclosed to the prosecution? (Yes.)

*“A person who, knowing that any matter or thing is about to be produced in evidence upon a trial or investigation authorized by law, willfully destroys, erases or **conceals** the same, with the intent to prevent it from being produced, is guilty of a misdemeanor.”* PC § 135 (condensed).

PC § 32 provides that an **accessory** to another's felony is him/herself guilty of felony, and **“Concealment of a weapon used by the principal in the commission of a felony may constitute the actus reus of the offense.”** *People v. Wilson* (1993) 17 Cal.App.4th 271, 275.

In some circumstances, **withholding evidence** of a crime is a felony-wobbler. PC § 153.

*“It has been held an abuse of a lawyer's professional responsibility knowingly to take possession of and secrete the instrumentalities of a crime. **A defendant in a criminal case may not permanently sequester physical evidence** such as a weapon or other article used in the perpetration of a crime **by delivering it to his attorney.**”* *People v. Lee* (1970) 3 Cal.App.3d 514, 526 (citing PC § 135).

- The prosecutor need not (but may and sometimes should) make a formal request for disclosure of all physical evidence in the possession of defense counsel or his/her agents. The defense has an absolute, affirmative duty to take steps to deliver the evidence:

*“If counsel or an agent of counsel chooses to **remove, possess or alter** physical evidence pertaining to the crime, counsel must **immediately inform the court** of the action. The court ... must ... ensure that the prosecution has **timely access** to physical evidence possessed by the defense and timely information about alteration of any evidence.*

*“The obligation to provide the prosecution with access to physical evidence and information about its alteration is **absolute**. The legal obligations should be **self-executing** and **no motion** by the prosecution **or order** by the court should be required to enforce them.”* *People v. Superior Court (Fairbank)* (1987) 192 Cal.App.3d 32, 39-40.

- Neither the attorney-client privilege in Evidence Code § 954 nor either constitutional privilege against compelled self-incrimination justifies concealing non-testimonial evidence:

*“[W]e cannot extend the attorney-client privilege so far that it renders evidence immune from discovery and admission merely because the defense seizes it first. ... [W]henver defense counsel removes or alters evidence, **the statutory privilege does not bar** revelation of the original location or condition of the evidence in question.”* *People v. Meredith* (1981) 29 Cal.3d 682, 686, 695.

And see discussion and cases cited in *Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 365-72, explaining why neither the Fifth Amendment privilege nor its counterpart in California Constitution, Article 1, § 15, is violated by defense disclosure of nontestimonial evidence.

- Within the discovery statutes, PC § 1054.4 expressly provides that *“Nothing in this chapter shall be construed as limiting any law enforcement or prosecuting agency from obtaining **nontestimonial evidence** to the extent permitted by law on the effective date of this section.”* This statute has been held to require defense counsel to deliver physical evidence in his/her possession to the prosecution or to the court, as mandated by the various authorities cited above. *People v. Sanchez* (1994) 24 Cal.App.4th 1012, 1025-28. The refusal to do so upon court order is a punishable contempt. CCP § 1219(a); *Zimmerman v. Superior Court* (2013) 220 Cal.App.4th 389, 396-403 (upholding defense attorney’s sentence to custody).

BOTTOM LINE: Physical evidence of a crime that is removed, altered or held by defense counsel must be delivered to the prosecution, or to the court for timely disclosure.

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**NUMBER: 2020-35 DATE: 10-15-20 BY: Devallis Rutledge TOPIC: 2019 Crime Report
Graphics: Sudi Sahab & Janae Perkins**

In October of each year, the FBI releases its “Uniform Crime Report,” containing statistics on major violent and property crimes and clearances for the preceding year. The report for 2019 can be found here: <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019>

The California Department of Justice also reports annual statistics on state crimes and clearances. The 2019 report is here: <https://oag.ca.gov/crime>

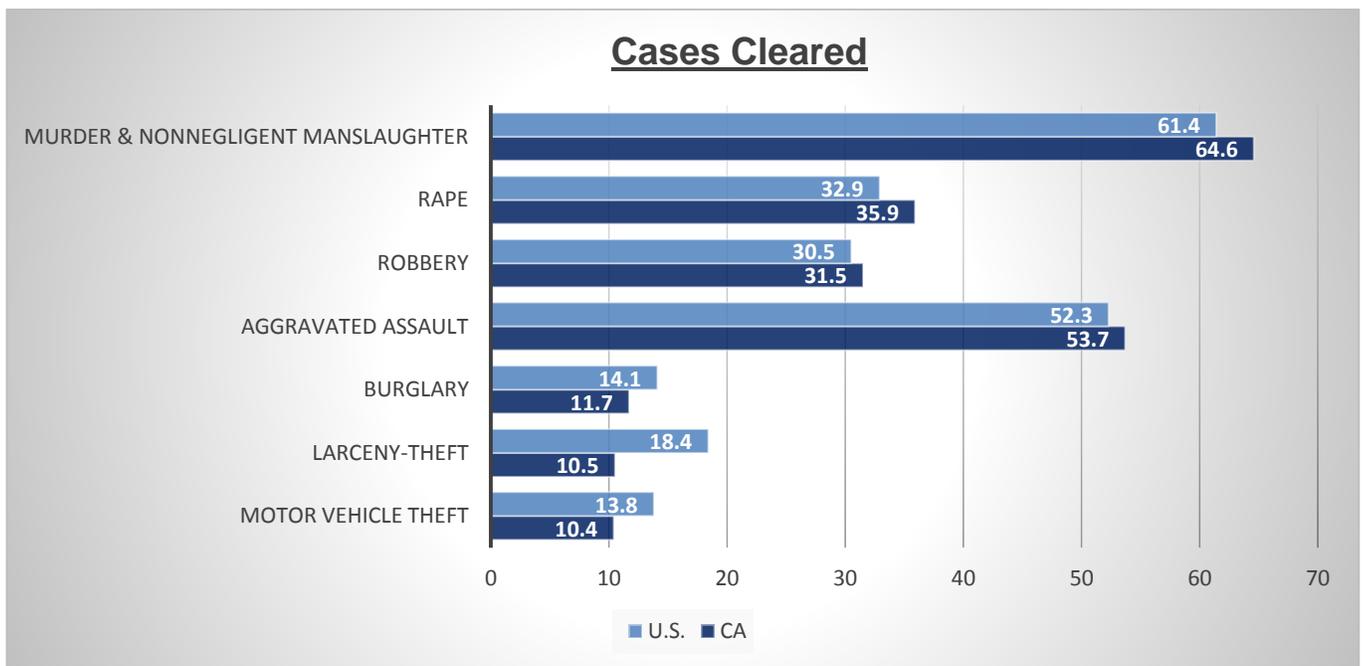
Below are highlights from both reports.

VIOLENT AND PROPERTY CRIME RATES (Per 100,000 Population)							
	Murder/ Manslaughter	Rape	Robbery	Aggravated Assault	Burglary	Felony Theft	Auto Theft
U.S.	5	42.6	81.6	250.2	340.5	1549.5	219.9
CA	4.2	36.8	130.3	262.2	379.4	1558.8	352.2

- As compared with 2018 **crime rates** in California, the 2019 rates changed as follows:

Violent crimes	-2.4 %
Property crimes	-3.1%
Homicides.....	-4.5%
Robbery.....	-4.5%
Rape.....	+6.3%
Burglary	-8.2%
Vehicle theft.....	-9.6%

- Percentages** of reported crimes that were cleared:



- The number of **adult felony arrests** in California in 2019 was 293,509 with **68.4% resulting in conviction**. The most frequent sentence for those adults convicted of a felony was **probation**, with some jail time as a condition of probation.

- In California in 2019, 5 law enforcement officers died in the line of duty, and 10,512 were assaulted. In the US, 135 officers were feloniously or accidentally killed in the line of duty.

<https://nleomf.org/facts-figures/officer-deaths-by-year>

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NUMBER: 2020-34 **DATE:** 10-08-20 **BY:** Devallis Rutledge **TOPIC:** Cell-phone Seizure
Thanks to: Mike Enomoto

ISSUE: When may law enforcement officers lawfully make a warrantless seizure of a person's cell phone to prevent the destruction or loss of evidence?

Law enforcement officers may not generally make a warrantless **search** of someone's cell phone in the absence of a recognized exception (such as consent, exigency or specific probation/parole/PRCS/supervision search term). *Riley v. California* and *US v. Wurie* (2014) 573 US 373; PC § 1546.1; see 1MBs 2014-13, 2016-X1. A warrantless **seizure** might also be justified by a recognized exception, including consent, search term, incident to arrest, instrumentality, or an **exigency**—such as **preventing the loss or destruction of evidence**.

- **Searches** and **seizures** implicate different Fourth Amendment interests. “Whereas a **search** implicates a person's right to keep the contents of his or her belongings **private**, a **seizure** only affects their right to **possess** the particular item in question. Consequently, the police generally have **greater leeway** in terms of conducting a warrantless **seizure** than they do in carrying out a warrantless **search**.” *People v. Tran* (2019) 42 Cal.App.5th 1, 8.

“We have found no case in which the Court has held unlawful a temporary **seizure** that was supported by **probable cause** and was designed to **prevent the loss of evidence** while the police diligently obtained a warrant in a reasonable period of time.” *Illinois v. McArthur* (2001) 531 US 326, 334.

“Where law enforcement authorities have **probable cause** to believe that a **container** holds contraband or **evidence** of a crime, ... the Court has interpreted the [Fourth] Amendment to permit **seizure** of the property, pending issuance of a warrant to examine its contents, **if the exigencies** of the circumstances demand it or some **other recognized exception** to the warrant requirement is present.” *US v. Place* (1983) 462 US 696, 701.

“[A] camera is a type of **container**. It contains digital images. ... Thus, **the threat that evidence will be destroyed or lost** before the officer can obtain a warrant is a valid **exigent circumstance** justifying the officer’s immediate **seizure** of the evidence.” *Tran, supra*, 42 Cal.App.5th at 9, 15 (upholding seizure of a dashcam from a suspect whose reckless driving caused a near-fatal crash, and who had removed the dashcam and hidden it in a backpack).

Even in *Riley-Wurie*, where the court invalidated the warrantless **search** of arrestees’ cell phones, the court noted that “*Both Riley and Wurie concede that officers could have seized and secured their cell phones [incident to arrest] to prevent the destruction of evidence while seeking a warrant. That is a sensible concession.*” *Riley, supra*, 573 US at 388.

And the court subsequently cited *Riley* for the proposition that “*police may seize and hold a cell phone to prevent the destruction of evidence while seeking a warrant.*” *Los Angeles v. Patel* (2015) 576 US 409, 422.

► **However**, before police may seize a cell phone to prevent the destruction or loss of evidence, there must be articulated **reasons to believe** that someone with access has a **motive or intention** to destroy what’s recorded there, or else there is no exigent need to prevent the destruction of evidence. *Tran, supra*, 42 Cal.App.5th at 10.

► Where cell phone video is being taken by a **detainee** or a **third-party bystander** who has **no apparent reason** to delete what s/he has just gone to the trouble of recording (presumably for the purpose of creating and **preserving** a lasting record of events), **a seizure could not be justified** on the ground of preventing the destruction of evidence.

- As long as individuals do not obstruct or delay official duty, they generally have both a First Amendment and a statutory **right to record** whatever they can see, while in a place where they have a right to be. *Fordyce v. Seattle* (9th Cir. 1995) 55 F.3d 436, 439; PC §§ 69(b), 148(g); see 1MB 2016-10. All the same, they have **no right to destroy evidence** in a criminal investigation. PC § 135; *People v. Fields* (1980) 105 Cal.App.3d 341, 346.

BOTTOM LINE: Warrantless seizure of a cell phone or other recording device may be justified by the exigent need to prevent the destruction or loss of evidence, only where a reasonable necessity for immediate seizure is shown by the facts.

(Emphases added and citations omitted in quoted material.)

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NUMBER: 2020-33 **DATE:** 10-01-20 **BY:** Devallis Rutledge **TOPIC:** "Mutual Combat"

ISSUE: What is "mutual combat," and how does it affect a claim of self-defense?

In California, fighting is generally unlawful. PC §§ 240, 242, 245 and 415, for example. Sometimes, law enforcement officers, prosecutors and judges may be inclined not to pursue criminal charges where two or more people may appear to have engaged in "mutual combat," **which would preclude either combatant claiming a right of self-defense.** But this is no ground for routinely rejecting arrests or charges, where there are no problems of proof. "*Voluntary mutual combat outside the rules of sport is a **breach of the peace**; mutual consent is no justification; and **both** participants are **guilty of criminal assault.**" *People v. Moore* (2011) 51 Cal.4th 1104, 1136.*

- However, every victim has a right of **reasonable self-defense**, which may sometimes involve "fighting back" when attacked. PC §§ 692, 693. "*California belongs to the majority of jurisdictions with a no-retreat rule, under which **the victim** of an assault is under no obligation to retreat to the wall before exercising the right of self-defense, but **is entitled to stand his ground.**" *People v. Ross* (2007) 155 Cal.App.4th 1033, 1044, fn. 13.*

This means that what may initially appear to be a mutual combat situation in which both combatants are unlawfully fighting with each other may instead be found, on investigation, to be a case of unlawful **assault** by one, provoking lawful **self-defense** by the other. *People v. Myers* (1998) 61 Cal.App.4th 328, 335 (victim of assault and battery has a right of self-defense). Writing off such an incident as "mutual combat" would be an injustice to the victim. The reported cases suggest that true mutual combat is less common than unlawful aggression followed by defensive reaction.

“Like many legal phrases, ‘mutual combat’ has a dangerously vivid quality. ... In ordinary speech, then, ‘mutual combat’ might properly describe any violent struggle between two or more people....

“[But] as used in this state’s law of self-defense, ‘mutual combat’ means not merely a reciprocal exchange of blows but one pursuant to mutual intention, consent, or agreement preceding the initiation of hostilities. ...

“In other words, it is not merely the combat, but the preexisting intention to engage in it, that must be mutual. ...

“[M]utual combat consists of fighting by mutual intention or consent, as most clearly reflected in an express or implied agreement to fight. ...[T]here must be evidence from which a jury could reasonably find that both combatants actually consented or intended to fight before the claimed occasion for self-defense arose.”

People v. Ross, supra, 155 Cal.App.4th at 1036, 1044-47.

- Evidence of an implied pre-existing intent to engage in mutual combat is most likely to be found where warring gangs have an ongoing feud. *People v. Nguyen* (2015) 61 Cal.4th 1015, 1044.

- A true mutual combat confrontation that results in the death of one of the combatants may sometimes, depending on the circumstances, mitigate a murder charge to manslaughter. PC § 197; CALCRIM 505, 3471; *People v. Whitfield* (1968) 259 Cal.App.2nd 605, 609.

BOTTOM LINE: *“A fight is mutual combat when it began or continued by mutual consent or agreement. That agreement may be expressly stated or implied and must occur before the claim to self-defense arose.” CALCRIM 3471.*

(Bold emphases added; citations and punctuation omitted from quoted material.)

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