



Sheriff's Office Training Bulletin

Volume 24 Issue 1

January 2022

IMPORTANT NEW LEGISLATION EFFECTIVE IN THE YEAR 2022.

Here are some of the highlights of the new legislation in California taking effect on January 1, 2022. These highlights are a few of the new laws taking effect:

- **Fish and Game Code section 2024** was added to make it a misdemeanor to uproot, harvest or cut dudleya from state or local government property or from private property without permission and to sell, export, or purchase dudleya that was taken illegally. "Dudleya" means a succulent plant that belongs to the genus *Dudleya* and is referred to commonly as "live-forevers" or "dudleya" that is native to California and grows in natural habitats.
- **Government Code section 1029** was amended to disqualify any person from holding a position as a peace officer if he or she has been convicted of a felony, with new restrictions on what is considered to be a felony. It also is amended to disqualify any person from holding a position as a peace officer if he or she has had POST

See "Legislation" continued on page 2

INSIDE THIS ISSUE

- p. 1** Important new legislation effective in the year 2022.
- p. 3** An officer was not justified in searching a vehicle after a traffic stop even though the driver had a suspended license, and the officer detected an odor of burned marijuana.

California State Capitol



FROM THE TRAINING MANAGER

In previous Training Bulletins, the difference between POST and STC training cycles was discussed. POST affects Deputies and above for sworn staff, and STC affects staff assigned to Corrections.

As a refresher, the POST training cycle is two years beginning on January 1st of each odd year. Our current POST training cycle ends 12/31/2022. The STC training cycle is only one year, but it's based on the fiscal year and not the calendar year. Our current STC training cycle will end on 6/30/2022.

For both training cycles, we have a set number of mandatory training hours staff members need to complete within their respective training cycle. These hours are unrelated to the County's required annual LMS training hours. Since both POST and STC training cycles are concluding in 2022, you may be assigned mandatory training by the Training Unit if you're in need of required training (to be POST or STC compliant).

- Sgt. Jason Leone

CODE OF ETHICS

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

"Legislation" continued from page 1

certification revoked, or voluntarily surrendered, or denied issuance.

- **Government Code section 7286** was amended to require law enforcement agency policies include a requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the

circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject. In addition, agency policies must require that an officer that has received all required training on the requirement to intercede and fails to act, be disciplined up to and including in the same manner as the officer that committed the excessive force. The amendment to Section 7286 contains numerous other requirements, including a policy prohibiting retaliation against the reporting officer.

- **Government Code section 7286.5** was amended to prohibit a law enforcement agency from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia, which is "situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing."
- **Penal Code section 262** was repealed and the provisions of the law relating to spousal

SAN MATEO COUNTY SHERIFF'S OFFICE TRAINING BULLETIN

The San Mateo County Sheriff's Office Training Bulletin is published monthly by the San Mateo County Sheriff's Office Training Unit, 400 County Center, Redwood City, California 94063.

Carlos G. Bolanos, Sheriff

Sergeant Jason Leone, Training Manager

Lance Bayer, Editor

For further information, please contact the Training Unit at Sheriffs_TrainingUnit@smcgov.org

rape were incorporated into other provisions of the law relating to rape.

- **Penal Code Section 409.7** was added to provide that news reporters may access areas shut off by police for a command post or similar situation during a protest, march, rally, etc.
- **Penal Code section 487m** was added to make it a felony or a misdemeanor for the intentional theft of wages by an employer, punishable as either a felony or a misdemeanor. Defines "theft of wages" as the intentional deprivation of wages, as defined, benefits, or other compensation, by fraudulent or other unlawful means, with the knowledge that such wages, benefits or other compensation is due to the employee under the law.
- **Penal Code section 13652** was added to prohibit the use of kinetic energy projectiles, such as less lethal devices launching rubber bullets, beanbag rounds, and foam tipped plastic rounds, and chemical agents, such as tear gas, CS gas, or pepper spray, to disperse any assembly, protest, or demonstration. **Section 13652** provides exceptions to the prohibition when the officer has received POST-certified training, is defending against a threat to life or serious bodily injury or to bring a dangerous and unlawful situation under control, as long as multiple requirements are met.
- **Penal Code section 13670** was added to require all law enforcements agencies to maintain a policy that prohibits participation in a law enforcement gang and makes a violation of that policy grounds for termination.

Please consult the full text of these new code sections for their complete content. The code sections can be found here:

<https://leginfo.legislature.ca.gov/faces/codes.xhtml>.

☆

AN OFFICER WAS NOT JUSTIFIED IN SEARCHING A VEHICLE AFTER A TRAFFIC STOP EVEN THOUGH THE DRIVER HAD A SUSPENDED LICENSE AND THE OFFICER DETECTED AN ODOR OF BURNED MARIJUANA.

Two peace officers were assigned to a gang suppression unit. One day, while they were patrolling in a marked patrol car, they spotted a car with tinted windows that violated the provisions of the Vehicle Code. Before initiating a traffic stop, the officers ran a records check. The registered owner, whose description matched the driver, had his driving privilege suspended. The officers also determined that the registered owner had a previous firearms arrest.

The officers initiated a traffic stop due to the tinted windows and the suspended license. The driver took his time before pulling over into a parking lot. The driver parked his vehicle in a legal parking space. Because the car's windows were partially rolled down, the officers could observe the driver before and after the car stopped.

The officers made contact with the driver. One of the officers smelled the odor of burned marijuana coming from the interior of the vehicle. The officer did not know if it was freshly burned or whether the burning marijuana had been extinguished during the time it took to pull over.

The officers discussed the situation and decided to tow the car. They called for a tow. Their department's policy for vehicle tow in that situation was that the officer make the determination on a case-by-case basis. In some cases, the officers would allow the person detained to retrieve their vehicle at the scene, but the officers did not do so with this vehicle

"Marijuana" continued on page 4

because the totality of the circumstances caused the officers to believe that "something was going on besides just a suspended license."

An officer told the driver that he would be searching the interior of the car because he smelled burnt marijuana coming from inside the car and because his license was suspended. The officer who conducted the search later testified that the smell of the burnt marijuana weighed heavily in his decision to search, but that the officers would be conducting an "inventory search incident to a tow." The officer believed he had probable cause to search due to the marijuana, but the driver showed no signs of impairment and the officer was unable to calculate how recently the marijuana had been burned.

During the search, the officer found the burned marijuana cigarette. It was sticking out of the trash receptacle in the center console. The officer removed the trash receptacle and lid and found more marijuana cigarettes in a trash can below. The officer then went on to locate a digital scale with green and white residue, prescription bottles, a glass jar containing marijuana with a bag tied in a knot, an empty gun holster, and then the gun that went with it. A further search of a backpack located multiple identification cards, driver's license, and credit cards for a number of different people.

In the case of People v. Blakes, the California Court of Appeals ruled that the search of the vehicle violated the driver's Fourth Amendment rights against unreasonable searches and seizures.

In its written decision, the Court first stated, "The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. When police conduct a search or seizure without a warrant, the prosecution has the burden of showing the officers' actions were justified by an exception to the warrant requirement. . . . One exception to the warrant requirement is where an officer has probable cause to believe contraband or evidence of a crime is in an automobile. Another exception is for inventory searches of an impounded vehicle."

The Court looked at the probable cause exception to the warrant requirement and stated, "The automobile exception provides police who have probable cause to believe a lawfully stopped vehicle contains evidence of criminal activity or contraband may conduct a warrantless search of any area of the vehicle in which the evidence might be found. Once an officer has probable cause to search the vehicle under the automobile exception, an officer may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. Probable cause to search exists where the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that contraband or evidence of a crime will be found."

The Court then looked at the effect of recent changes in the laws relating to marijuana, and stated, "In 2016, the voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, which legalized the possession of up to 28.5 grams of cannabis by individuals 21 years or older. The use and possession of cannabis is not unconditional, however; there are various statutory provisions proscribing such use and possession in certain circumstances. Notwithstanding any other proscription by law, Health and Safety Code section 11362.1(c) provides that '[c]annabis and cannabis products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.' Thus, this provision does not apply when the totality of the circumstances gives rise to a fair probability that an existing cannabis regulation was violated when the search occurred."

The Court continued, "The fact that there was a smell of burnt marijuana emanating from the car was insufficient to support either theory of probable cause in this case. Neither [officer] could determine if the marijuana was freshly burnt, removing any support for an inference

MISSION STATEMENT

The San Mateo County Sheriff's Office is dedicated to protecting lives and property and is committed to providing the highest level of professional law enforcement and correctional services. We pledge to promote public trust through fair and impartial policing and will treat all persons with dignity, compassion, and respect.

COMMITMENT

We are committed to protecting life and property and preserving the public peace by acting professionally, with integrity, and without prejudice, even in the most challenging circumstances, when no one is watching, and on and off duty. We hold others accountable to the same standards and challenge any inappropriate behavior.

INTEGRITY

We are committed to ethics, equity and excellence. We understand that making a difference in the quality of life is an opportunity that policing and correctional services provides. We provide excellent service by respecting and upholding the rights and freedoms of all people in all our interactions, free from bias or stereotype, seeking to understand and help others by making a difference.

COMPASSION

We understand that sometimes we interact with the community during their most trying times. We are committed to treating all people with compassion, empathy, and respect; going the extra mile to ensure others feel safe, supported, included, engaged, and valued; standing up for those who cannot stand up for themselves; and valuing others' life experiences.

INNOVATION

We promote an environment that encourages continuous improvement and innovation. We strive to be leaders in modern policing, acting on input and feedback from our communities and colleagues; constantly implementing best-practices; and exploring alternative solutions to current issues.

"Marijuana" continued from page 4

that petitioner was smoking the marijuana while driving. . . . The totality of these circumstances did not amount to a fair probability that contraband or evidence of a crime would be found in defendant's car."

The Court then looked at the inventory search justification given for the warrantless search. The Court stated, "Inventory searches of police-impounded cars are a well-defined exception to the warrant requirement of the Fourth Amendment. The Supreme Court has recognized that police officers have a legitimate interest in taking an inventory of the contents of vehicles they legally impound to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger. Nonetheless, it is well established that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence."

The Court continued, "To determine whether a warrantless search is properly characterized as an inventory search, we focus

on the purpose of the impound rather than the purpose of the inventory. An inventory search conducted pursuant to an unreasonable impound is itself unreasonable. The decision to impound the vehicle must be justified by a community caretaking function other than suspicion of evidence of criminal activity because inventory searches are conducted in the absence of probable cause. Whether impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."

The Court looked at the facts of the case and stated, "What is not present is an adequate community caretaking function served by the impound here. There was no evidence [the driver]'s car blocked traffic or was at risk of theft or vandalism; the [car] was legally parked in a parking space in a public parking lot. Although the [officers] testified it was common (and thus part of the policy) to tow when the driver had a suspended license to prevent more driving under

"Marijuana" continued on page 5

a suspended license, this policy does not provide a community caretaking function for the tow. The [officers] did not afford petitioner the opportunity to call someone to drive his car to another location. More importantly, the evidence shows the impound decision was motivated by an investigatory purpose."

The Court found that the impound search was a pretext for an investigatory search, which

was the actual purpose of the search. The Court noted that the United States Supreme Court has invalidated impound searches based on the officer's subjective motivations for the impound even though objective grounds to impound the vehicle may exist. ☆

FROM THE RANGEMASTER'S OFFICE

Accuracy. If you have to shoot, don't miss.

We all realize that diligent de-escalation techniques and tactical communication are necessary during critical incidents, or during potentially dangerous encounters. Sometimes, Crisis Intervention techniques are ineffective, and negotiations break down with violent suspects. In some cases, this ultimately results in the use of deadly force by law enforcement when a situation requires it.

At the shooting range, instructors are constantly harping on students "not to miss" during a course of fire. If we take a typical paper bullseye target used in training, we strive for accuracy in the zone being targeted within a specific course of fire. For example, let's assume a perfect score is 10 rounds in the "A" zone (a high scoring region in the center of the target) and you as the shooter land seven rounds out of 10 in that zone. With that scoring example, one might say, "That's 70%. That's passing. Not bad eh?" Well, let's translate that 70% accuracy training score to a real-world scenario.

In the real-world, we may find ourselves in a critical incident that requires us to take one precision shot in defense of innocent life or in self-defense. Perhaps it's a hostage scenario with an armed suspect closely holding onto a hostage, in which we may be called upon to use deadly force. When that moment arrives, it should become clear that the 70% shooting accuracy standard we accepted in training is not a desirable standard when innocent life is in the balance. The hostage relies on you to take that precisely aimed, well pressed shot. Would "not bad" accuracy end that deadly situation with a positive outcome? Could "not bad," mean you missed and now struck an innocent bystander, or the violent suspect has now shot you or the hostage?

There are numerous real-life stories of Officers and Deputies being faced with difficult violent situations when the use of deadly force was necessary. Unfortunately, some of these stories end tragically. With the newly issued red dot sight systems and training being offered at the range, you can take more accurate, well placed shots, if you must shoot. However, increasing your shooting accuracy takes training and time (effort and repetitions). At the range, our goal is to train our Deputies to be well prepared and disciplined for stressful situations. This is why Range Instructors do more than qualify students that come for training. We harp on you to make accurate shots, to remedy a malfunction efficiently, or to use verbal commands because all these things matter. They matter to you, and to the public we serve. We strive to provide you with the proper modern equipment and training you need to perform your duties at the highest level.

Next time you're training on the shooting range, think beyond the paper target in front of you and the passing accuracy standard. We are responsible for every round we fire, regardless of the situation. In training, having the right mindset is crucial to understanding how your training supports the missions we might have to conduct on behalf of the public. If you have to shoot, don't miss. Please stay safe and train often.

- Guest contributor, Sgt. Phil Hallworth