

# **A Guide to Switchblades, Dirks and Daggers**

Second Edition

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How to tell if a knife is “illegal.”

An analysis of current California knife laws.

By:



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<http://bit.ly/knifeguide>

## **I. Introduction**

California has a variety of criminal laws designed to restrict the possession of knives. This guide has two goals:

- Explain the current California knife laws using plain language.
- Help individuals identify whether a knife is or is not “illegal.”

This information is presented as a brief synopsis of the law and not as legal advice. Use of the guide does not create a lawyer/client relationship. Laws are interpreted differently by enforcement officers, prosecuting attorneys, and judges. Dmitry Stadlin suggests that you consult legal counsel for guidance.

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## IV. About the Author

I wrote the first version of this guide when I was a post-bar law clerk at the Santa Clara District Attorney's Office in 2010. The impetus for writing a guide was that there were a lot of "knife" cases coming to the Misdemeanor team, and the Supervising Deputy District Attorney wanted to check if the knives were actually "illegal."

At the time, no pictures or video accompanied the police reports which were sent to the District Attorney's Office. I familiarized myself with the relevant laws and volunteered to go examine the knives at the San Jose Police Department's evidence warehouse. I took pictures and videos, then brought them back to the DA's office and explained my findings to the deputy district attorneys and their supervisor.

After examining more than 30 knives, I decided that a visual guide would enable others to benefit from my research and experience. The relevant penal code sections (at the time PC 653k and PC 12020) were quite technical and poorly worded, just as the relevant code sections are now. One of the issues was to determine what the current state of the law was. The other issue was to determine if a particular knife did or did not violate the law.

I believe that everyone benefits from a clearer understanding of the law, including charging prosecutors who must evaluate a case, prosecutors who must take the case to trial and be able to prove the "illegality" of the knife, law enforcement personnel who must make decisions in the field about the legality of a knife, defense attorneys who must investigate whether the knife is or is not actually "illegal," and everyday law-abiding citizens who want to know whether the knife they are carrying could subject them to criminal prosecution.

Currently, I am a criminal defense attorney in Santa Clara County.

### A. Qualifications to Write On This Subject

In addition to writing the first edition of this guide, I have conducted extensive research about this topic as it has become a personal interest of mine. In the last five years, I have spent numerous hours researching and reading appellate decisions about knives in California and other states. I have reviewed the legislative history behind the relevant penal code statutes and their amendments.

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I have previously worked at three different District Attorney's offices in the Bay Area, in Alameda, San Mateo and Santa Clara counties. At each of those offices, I read the office policies and guidelines about knife cases. I also spoke to deputies and charging deputies<sup>1</sup> specifically about knife cases, and about the difficulty sometimes present in making a factual determination regarding the legality of a certain knife.

As part of my research, I spoke with numerous law enforcement officers, from the following agencies: Alameda County Sheriff's Office (SO), San Mateo County SO, Santa Clara County SO, San Mateo County Gang Task Force, California Highway Patrol, Fremont Police Department (PD), Hayward PD, Oakland PD, Redwood City PD, Davis PD, East Palo Alto PD, Palo Alto PD, Mountain View PD, Santa Clara PD, Milpitas PD, San Francisco PD, Emeryville PD, Morgan Hill PD, Gilroy PD, Santa Cruz PD, and San Jose PD (including members of the Violent Crimes Enforcement Team (VCET – now defunct) and the Gang Investigations Unit (GIU)).

I found it crucial to listen to the officers as they make the initial "in-the-field" determination, often under difficult circumstances, as to whether a knife is or is not illegal. It is their determination that is the beginning of a criminal case. I have also spoken to numerous officers who have written to me after reading the first edition of this guide.

During my time at the Santa Clara DA's Office, I had made more than a dozen trips to the SJPd evidence warehouse. I made photographs and videos of the knives, and brought them back for prosecutors to examine. In some cases, I was accompanied by defense investigators whom I also consulted about the legality and features of the knives.

I made determinations as to whether a specific knife was or was not legal and then presented these determinations to prosecutors. The prosecutors relied upon my determination in dismissing over 30 cases because the knives were, in fact, legal. In over 10 cases, where the knife was illegal, the cases ended in a plea and the destruction of the knife.

I have also worked with defense attorneys, from the Santa Clara Public Defender's Office, through the Independent Defense Counsel Office (IDO) and with private attorneys. In the past five years, I've been consulted by

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<sup>1</sup> Charging Deputies are usually more senior Deputy District Attorneys assigned to review cases and make a determination as to whether to file charges or not.

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officers, defense attorneys and prosecutors to determine the legality of a particular knife.

As part of my research, I have contacted several knife manufacturers<sup>2</sup> to determine if their products have specific features, and to understand what kind of “wear and tear” was normal for their products.

I have personally handled and manipulated hundreds of knives, switchblades, dirks or daggers.

I have never had to testify as an expert witness in court. None of the cases where I gave my opinion went all the way to a jury trial.

### B. Contact Information

I am a graduate of U.C. Davis and U.C. Hastings. I live in Santa Clara County and enjoy discussing knife laws. Please feel free to contact me if you have questions. [ds@stadlinlaw.com](mailto:ds@stadlinlaw.com)

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<sup>2</sup> I have only successfully contacted US based manufacturers, though I have attempted to contact manufacturers in China as well.

## V. About the Second Edition

### A. Impact of First Edition and Changes

It has been five years since I wrote the first edition. At the time, I could not have anticipated the response that the guide would get, or that I would be writing a second edition. The guide has made its way around the Santa Clara District Attorney's Office, to the Santa Clara Public Defender's Office, to the San Jose Police Department, the Santa Clara Police Department and to the Santa Clara County Sheriff's Office. It has also made it into the hands of several private defense attorneys.

I never made any effort to distribute the guide and had only emailed it to a few people. I do not know how the guide was distributed, but am glad that it was useful to people. Several public defenders and district attorneys have mentioned that my guide is used at their offices. Sometimes, people may recognize me as the "knife guy" when I introduce myself, which has been delightful.

The first edition was meant to serve as a guide specific to the Santa Clara District Attorney's Office, and included a "Suggested Policy Changes" section. This edition is meant to appeal to broader audience, which includes not only prosecutors, but law enforcement officers, defense attorneys and regular people interested in the legality of knives. It also covers more content with regard to knife laws.



## B. Legislative Changes

In 2012<sup>3</sup>, the California Legislature changed the relevant Penal Code sections, and made “numerous technical, nonsubstantive revisions” to the penal code. (Senate Public Safety Committee, 08/24/2010) In other words, the numbers of the penal code sections changed, but the law did not. Presumably, the legislature enacted the changes to make the law clearer and easier to understand. Unfortunately, these well-intentioned revisions did not siphon through to the law enforcement community, who still regularly use the old code sections.<sup>4</sup>

For example, the former Penal Code § 653k was split into:

- Paragraph 1 > § 21510 (“restrictions relating to switchblades”).
- Paragraph 2 > § 17235 (“switchblade knife”).
- Paragraph 3 > § 16965 (“passenger’s or driver’s area”).

As another example, the “knife” related parts of former Penal Code § 12020 were moved to the new PC § 16000 et. seq. titled “Control of Deadly Weapons.”

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<sup>3</sup> Effective January 1, 2012. The actual amendment was passed in 2010.

<sup>4</sup> This is not a chastisement of law enforcement or the State Legislature, however, there is no “continuing legal education” requirement for officers. While training classes do exist, a lot of officers continue to rely on what they learned at the police academy.

## C. San Jose Police Department Changes

A lot has changed since December of 2010. The first edition of this guide discussed the fact that the San Jose Police Department did not document the “illegal” knives in police reports with a photo or with a video. This made it difficult for prosecutors to ascertain the legality of the knife, since they were in the dark. Additionally, a lot of the cases involving illegal knives were presented as a citation – a yellow traffic ticket type of paper – that had almost no details on it other than the charge.

As of December, 2015, almost all SJPd reports contain a color photo of the illegal knife<sup>5</sup>. A lot more officers are writing reports to document the possession of a potentially illegal knife. In reviewing police reports, I have seen a change since 2010 in the very language used in the reports. Officers now include facts about knives that are discovered in a person’s possession, adding for example whether the knife was in a “fully locked” position.

I do not know whether these changes are a result of the previous guide, an increase in the availability of digital recording equipment, other factors or all of the above. SJPd’s new policies increase the efficiency of the criminal justice system and I hope other police departments also document knife cases better.

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<sup>5</sup> Although by the time the photo is faxed to a defense attorney, the photo is pixelated and in black and white– re-raising the same issue.

## VI. Illegal Knives

### A. Switchblades

#### California Penal Code Section 21510: Possession, carrying, sale, loan or transfer of switchblade knife prohibited

Every person who does any of the following with a switchblade knife having a blade two or more inches in length is guilty of a misdemeanor:

- (a) Possesses the knife in the passenger's or driver's area of any motor vehicle in any public place or place open to the public.
- (b) Carries the knife upon the person.
- (c) Sells, offers for sale, exposes for sale, loans, transfers, or gives the knife to any other person.

[This misdemeanor is punishable by up to six months in the County Jail and a maximum fine of \$1,000.]

#### California Penal Code Section 17235: Switchblade knife defined

As used in this part, "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.

#### California Penal Code Section 16965: Passenger's or driver's area defined

As used in this part, "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.

## B. Butterfly Knives



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. If the police report indicates that the knife in question was a "butterfly" knife – it's illegal. (Pen. Code § 21510)

C. Button Operated Switchblade



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. (Pen. Code § 21510)

#### D. Gravity Operated Switchblade

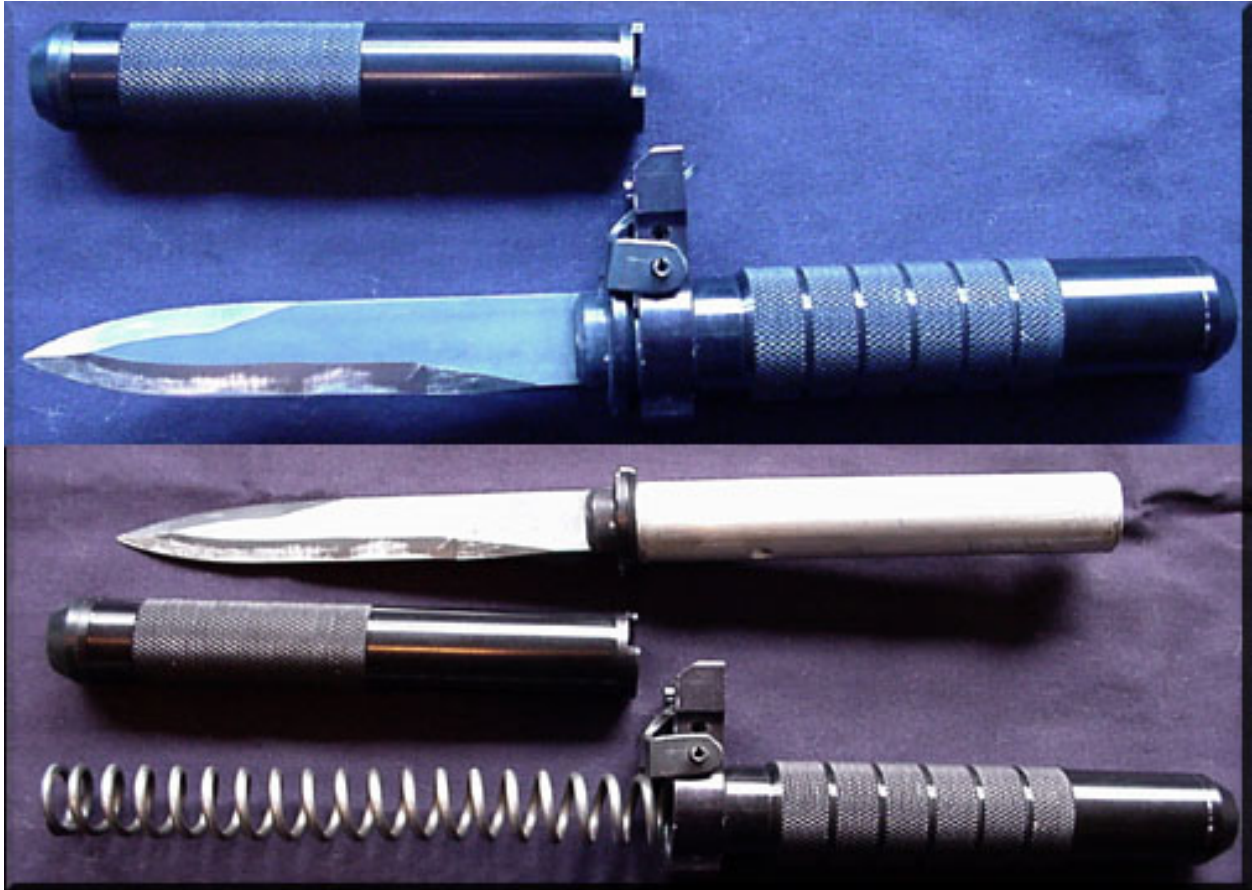


A gravity knife is a knife that opens by the force of inertia or gravity. It is made with a side-folding blade, or a telescoping blade. The gravity knife is different from a regular switchblade, which is spring-driven, in that it needs to be "flipped" out of the handle manually. Military gravity knives 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.

It can sometimes be difficult to tell from a photograph, so if you are writing a report or viewing it – take a video. Also, most police reports should indicate if it is a "gravity" knife. These knives are illegal. (Pen. Code § 21510)

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### E. Spring-Loaded Knife



If you look at the picture above, the spring is what pushes the blade out. These knives are considered "switchblades" and are illegal. (Pen. Code § 21510)

## F. Air Gauge Knife

### California Penal Code Section 16140: Air gauge knife defined

As used in this part, "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.



So if there was a little blade sticking out, instead of the plastic piece in this picture – it would be illegal.



However, the photo above is a legal knife – even though it's attached to an air gauge.



## G. Ballistic Knife

### California Penal Code Section 16220: Ballistic knife defined

As used in this part, "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device that propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater speargun.

These are illegal. Note the red button at the base of the handle.



## H. Belt Buckle Knife

### California Penal Code Section 16260: Belt Buckle knife defined

As used in this part, "belt buckle knife" is a knife that is made an integral part of a belt buckle and consists of a blade with a length of at least two and one-half inches.



These are illegal. But remember – the blade has to be at least 2.5 inches – otherwise it's just a cute and legal novelty.

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### I. Cane Swords

#### California Penal Code Section 16340: Cane sword defined

As used in this part, "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.



These are illegal – however, if they're worn on the waist and are visible – then they are not considered concealed and ARE legal to carry. (See Pen. Code § 20200)

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### J. Lipstick Case Knives

#### California Penal Code Section 16830: Lipstick case knife defined

As used in this part, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.



These are illegal.

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### K. Shobi-zue

#### California Penal Code Section 17160: Shobi-zue defined

As used in this part, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it, which may be exposed by a flip of the wrist or by a mechanical action.



These are illegal.

## L. Undetectable Knives

### California Penal Code Section 17290: Undetectable knife defined

As used in this part, "undetectable knife" means any knife or other instrument, with or without a handguard, that satisfies all of the following requirements:

- (a) It is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.
- (b) It is commercially manufactured to be used as a weapon.
- (c) It is not detectable by a metal detector or magnetometer, either handheld or otherwise, which is set at standard calibration.



If the knife is ceramic or made of some other material meant to evade a metal detector – it is illegal. Shanks made at home (or in the jail) don't qualify since these have to be "commercially manufactured."

## M. Writing Pen Knives

### California Penal Code Section 17350: Writing pen knife defined

As used in this part, "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.



These are illegal.

## N. Concealed Dirks or Daggers

### California Penal Code Section 21310: Carrying of concealed dirk or dagger; punishment

Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who carries concealed upon the person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

[If this offense is charged as a misdemeanor, it is punishable by up to one year in county jail. If charged as a felony, by 16 months, 2 years or 3 years in prison – to be served at the local jail pursuant to realignment (1170h) and a \$10,000 fine.]

### California Penal Code Section 16470: Dirk defined; dagger defined

As used in this part, "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 21510, 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.

### California Penal Code Section 20200: Knife carried in sheath worn openly deemed not concealed

A knife carried in a sheath that is worn openly suspended from the waist of the wearer is not concealed within the meaning of Section 16140, 16340, 17350, or 21310.





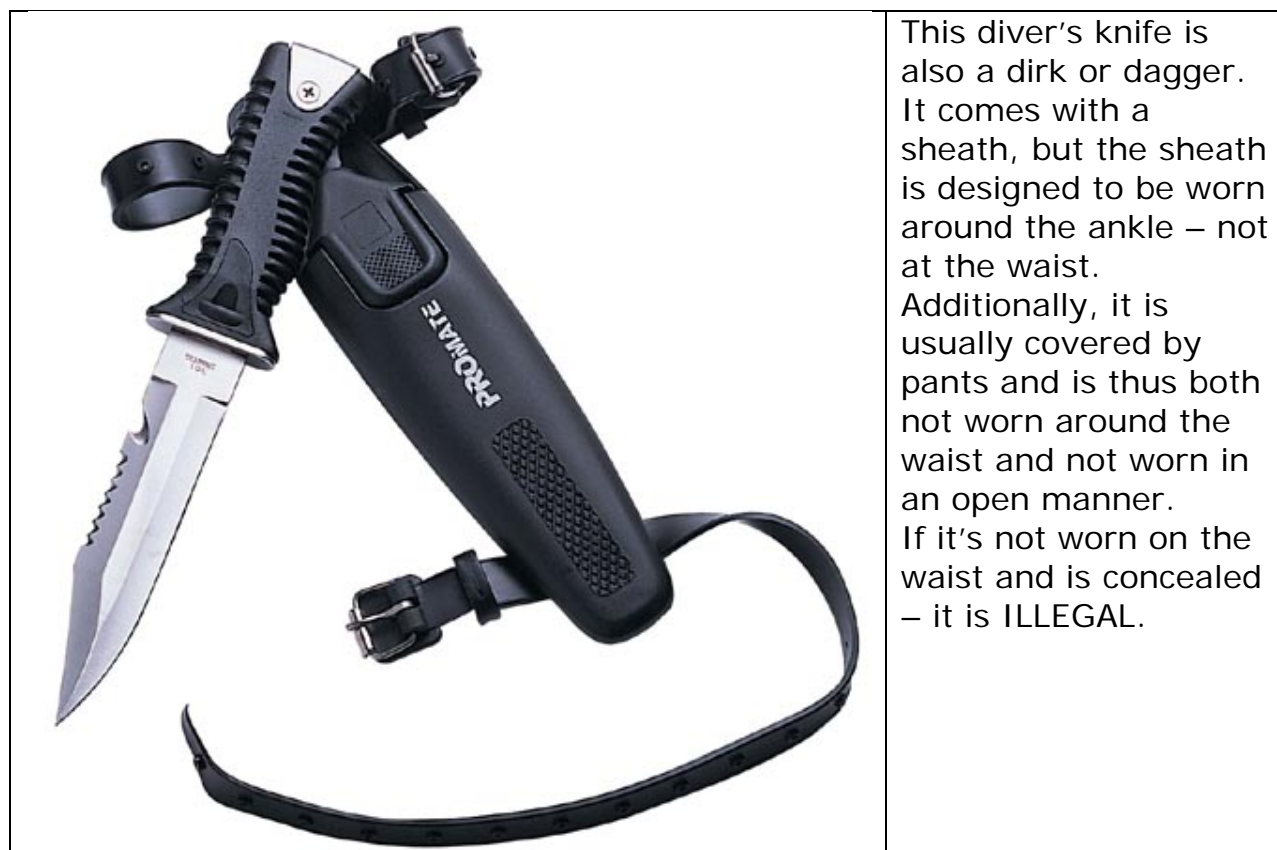
This knife is both a dirk and a dagger. It is illegal to carry **if it is concealed**. The dagger is a fixed-blade knife. The blade cannot be moved. The only way that is legal to carry this knife, would be for it to be visible in a sheath (also pictured) around a person's waist. If the knife is in the same sheath, but not on a person's waist or if it is hidden in a pocket, then it is concealed and illegal to carry.

When this offense is charged, it is very unlikely that the knife itself is at issue and there's less need for an evidence view by an expert. The knife – whatever kind it was – was either concealed or it was in a sheath on a person's waist and therefore legally being carried.

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Even a steak knife can be considered a hidden dirk or dagger as it is a fixed blade knife.



## VII. Legal Knives

### A. Regular Folding Knife



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 and officers. The knife was originally legal, its design is legal but because of wear and tear, it has become similar to a switchblade in that the knife can be released by the flick of the wrist. This is still a legal knife.

Previously, when the knife in question was old, I have suggested that the case be dismissed with a stipulation that the knife in question be destroyed. Additionally, new – but cheap – knives can be purchased which have a loose screw initially. Indigent defendants may purchase a knife for \$2 that is poorly made – and not even know they have something resembling an illegal knife.

## **Just because the blade can swing open with the flick of a wrist, does NOT mean it is an illegal knife.**

The California Court of Appeal, Fourth District, dealt with this issue in [\*In re Gilbert R.\*](#) (2012) [211 Cal.App.4th 514](#). The Court held that even though the knife could be opened with a wrist flip, since it had a detent mechanism it was legal to possess.

The knife in question had a "positive detent, a mechanism which holds the blade in the closed position and you have to provide enough resistance to overcome that for the blade to swing open." The detent feature was held in place by a "set screw" which had become "a little bit wobbly." "The knife did not open with the push of a button alone or in conjunction with a wrist flip." The knife was "designed to be held in one hand and opened with pressure to the thumb stud overcoming the positive detent mechanism."

Here's where the confusion comes from:

The "statute bars possession of a knife having (a) the appearance of a pocketknife and (b) a blade two or more inches in length that releases mechanically or automatically through pressure on the handle, a flip of the wrist, gravity or the weight of the blade, or in a similar manner. [\*In re Luke W.\*](#) (2001) [88 Cal.App.4th 650](#)." (*In re Gilbert R.* at 611.)

"The Legislature has provided as an express exception, however, that a "[s]witchblade 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." (Former [§ 653k](#), now codified at [§ 17235](#).)"

"As we explained in [\*In re Angel R.\*](#) (2008) [163 Cal.App.4th 905](#), for the exemption to apply, 'the knife must be one that 'opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade' and has the detent or resistance mechanism.' Nothing in these requirements prevents a user from more quickly opening a knife by employing a wrist flip in conjunction with pressure on the blade or its thumb stud and disengaging the detent or other resistance mechanism." (*In re Gilbert R.* at 611.)

"Before 2001, the switchblade exemption covered '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.' In 2001, the Legislature in Senate Bill

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No. 274 added to the exemption the current language requiring a detent or similar resistance mechanism.

The legislative history for Senate Bill No. 274 reflects its purpose was to “narrow[ ]” existing statutory “language to only allow knives to fall under the exemption from the switchblade law if that one-handed opening knife contains a detent or other 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.” (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 274 (2001–2002 Reg. Sess.) as introduced Feb. 16, 2001, pp. 1–2, italics added.) [This is Senator Karnette’s Amendment – previously referred to on Page 6 in the first edition of this guide.]” (*In re Gilbert R.* at 611-612.)

The Court of Appeal took judicial notice of the material published by the American Knife and Tool institute, in an article entitled *Understanding Bias Toward Closure and Knife Mechanisms*. The article is available at:

<http://www.akti.org/resources/additional-definitions>

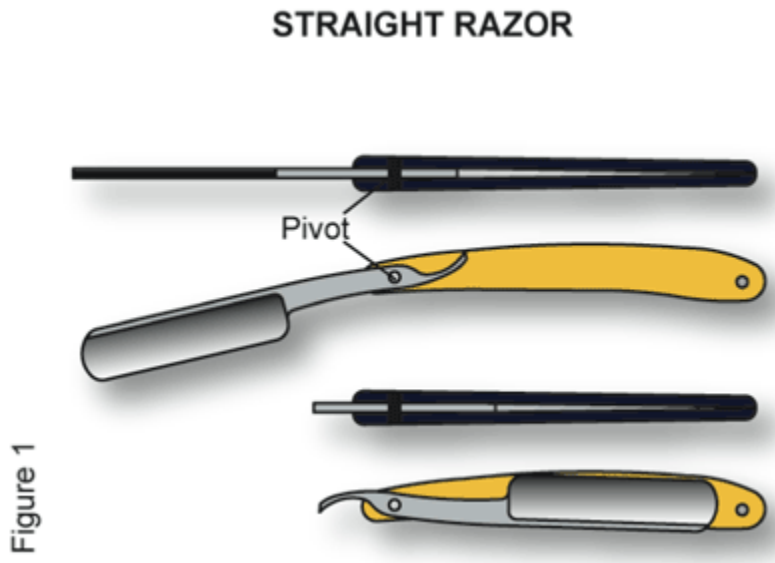
It is re-printed in the next section with permission from the American Knife and Tool Institute.

Additionally, I have learned of several “switchblade” cases going to jury trial in Santa Clara County over the past five years – resulting in acquittals.

## B. Understanding Bias Toward Closure and Knife Mechanisms

The basic design objective of a folding knife is something that will tend to remain closed unless the user desires or intends to expose the blade and that the blade will remain open until the user desires to fold or close the knife. Another design objective is that the knife will be convenient to employ, meaning that it can be opened easily. Many of the tasks for which a folding knife is employed involve holding some material or holding something in place or steady while the cut is made.

In the typical folding knife, the blade swings or pivots in an arc of approximately 180° from the closed position (within the handle) to the open position. Without some means of providing a bias or lock to the closed position, the knife could swivel open, or at least partially open, unexpectedly or unintended.



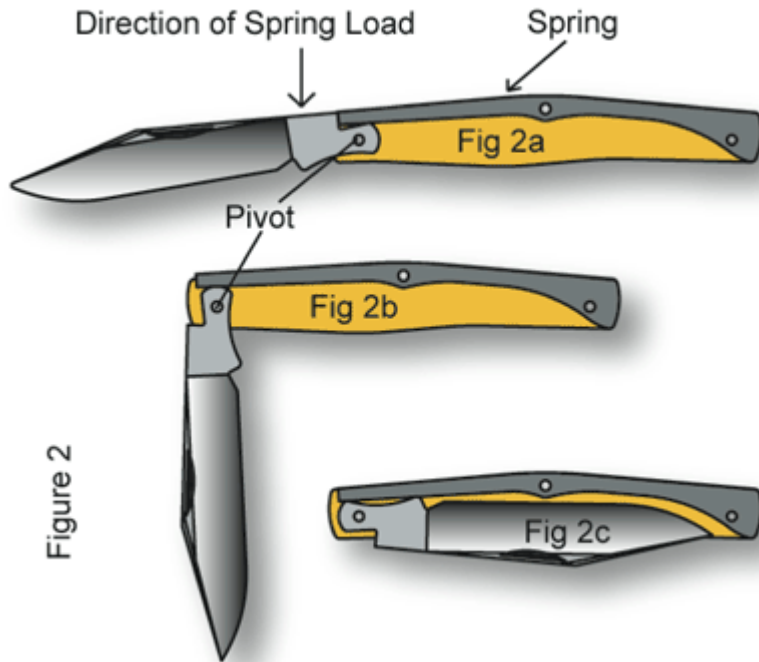
An old-fashioned "Straight Razor" is another example of a folding knife-like device with no bias or other such mechanism to hold it in either the closed, or for that matter, the open position. (See Figure 1) Most people would be very hesitant to carry a straight razor in a pocket unless it was also enclosed within a case or sleeve.

A common design for providing a spring-loaded bias to both the closed and fully open position utilizes a bar spring, which applies pressure, or a spring load, against the base of the blade near the pivot point. This design is referred to as the "Slip Joint Knife." (See Figure 2) The direction of the spring load is from the outer edge of the blade toward the center of the pivot hole. When the blade is in the fully open position, the force or load of the

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spring tends to keep the blade in that fully opened position. Folding or closing the knife requires a certain amount of exertion to overcome that bias and pivot the blade into the handle.

### **SLIP JOINT KNIFE**



When the blade is in the fully closed position (Figure 2C), the pressure of the back spring similarly tends to hold the blade closed within the handle of the knife.

In some respects, the bias on the blade is similar to the bias on a typical bicycle kickstand. The leg or strut that supports the bicycle is held in the up or retracted position by spring action. As one starts to lower the kickstand, typically by foot pressure, the bias toward the up position is overcome. As the leg or strut approaches the vertical, there is often a bias which tends to hold it in the down position. Some designs use an over-center. Others use variations on the detent design.

Opening the blade of a slip joint knife requires a force to overcome the camming action created by the eccentric tang or base end of the blade. For the first 45° (approximately) of pivot, there is a bias toward the closed position imposed by the spring load. After this 45-degree rotation, the spring load becomes neutral, and there is only friction resistance until the blade is pivoted in an arc of approximately 135°. At that point, the bias toward the



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fully open position is often capable of moving the blade to the fully open position.

The slip joint design has been in use for well over a century and has the advantage of providing both bias toward closure and bias toward the fully open position. In short, it is a time-tested, simple design that is reasonably effective in keeping the blade in either the fully open or fully closed position.

### **FOLDING KNIFE with LOCK FEATURE**

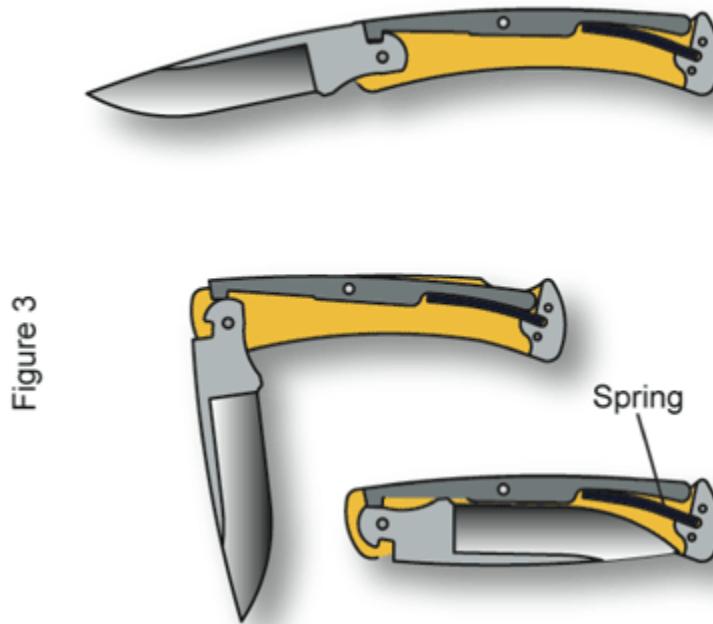


Figure 3

(Figure 3) shows a type of knife frequently referred to as the lock back. This design utilizes the same type of bar spring to provide the bias toward opening, as well as the bias toward closure. In that respect, it is similar to the slip joint design. It does have a design feature intended to enhance user safety by providing a positive lock mechanism to the fully open position. The lock back design utilizes a notch or mortise at the base of the blade into which a tenon or projection of the back spring locks when the blade is pivoted to the fully open position. Closing of the knife requires the user to depress the spring and release the lock.

A spring-loaded liner that shifts laterally behind the fully opened blade has also been used to achieve a positive lock to the open position. This particular design was often seen on the common "electrician's knife," where it was used to lock the screwdriver tipped "blade" into the open position. Without

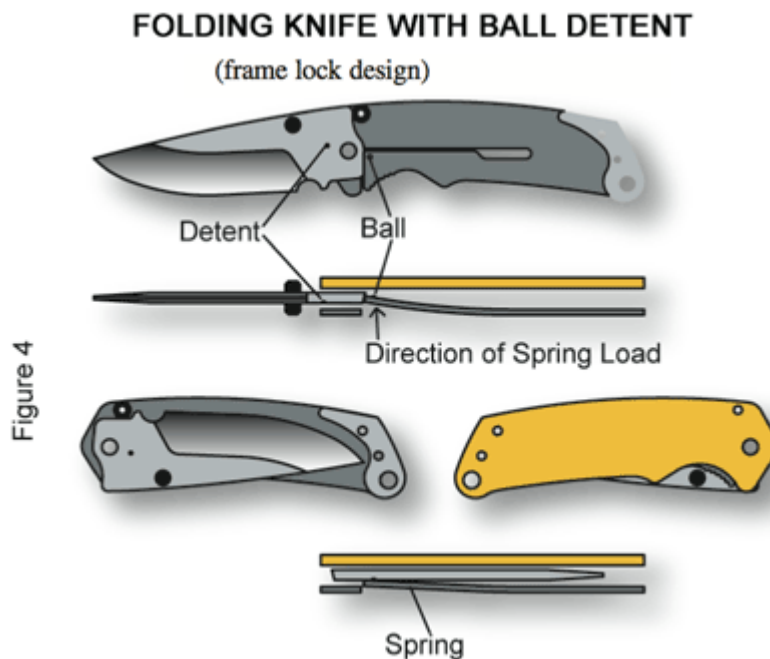


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such a lock, pushing on the handle while attempting to turn or drive a screw would allow the tool to fold.

In the 1970's, a knifemaker and designer named Michael Walker, developed a design which eliminated the back spring and used a spring-loaded liner to provide both a bias toward closure and a positive lock when the blade was in the fully open position. This was done by adding a ball detent mechanism. When the blade is in the fully closed position, a detent or depression in the blade is engaged by a ball partially embedded or set in the liner. The lateral spring load of the liner pushing the ball into the detent provides a way of keeping the blade in the fully closed position.

A ball detent mechanism is commonly used with socket wrenches, where the spring-loaded ball is fitted to the drive fitting. It is used to keep a socket "locked" onto the drive mechanism. In order to change sockets, the user must overcome the ball detent lock mechanism by pulling the socket off of the drive post.



Opening the blade of a liner-lock design knife requires sufficient force to overcome the spring load pushing the ball into the detent. Typically, only a few degrees of rotation is necessary to overcome the bias. In this regard, the liner lock is usually more easy to manipulate than the slip joint design.

Another significant development in the folding knife technology is attributed to knifemaker Chris Reeve, who developed a design which uses the handle or frame to take the place of the liner. Reeve has named it the integral lock.

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This design is sometimes also referred to as a frame lock. The ball detent mechanism is incorporated into part of the handle, which is spring loaded to shift the same manner as a liner lock. The ball detent mechanism is also much more easily observed in the integral lock design, although the principle of operation is the same as the liner lock. Figure 4 shows the Chris Reeve integral lock design.

There are other methods of achieving bias toward closure. There are other methods of creating a detent mechanism. For instance, most people are familiar with the detent feature on automobile doors. Typically a roller detent mechanism is used to create a detent that will hold the door in the open position. The Axis lock, a trademark of the Benchmade Knife Company, uses a variation of a roller detent design to create a bias toward closure.

The 2009 Amendment to the Federal Switchblade Act, 15 U.S. Section 1244(5) and the laws of several states, including California, Kansas and Texas, which incorporate the concept of bias toward closure, do not require or prescribe a particular mechanism. Rather all that is required is that the design provide some bias toward closure. Moreover, none of these laws specify a minimum measure of bias.

### **In Appreciation**

A special thanks to Daniel C. Lawson, Esquire, of Meyer, Darragh, Bucker, Bebenek & Eck, P.L.L.C, Pittsburgh, PA, for his authorship and revisions of the AKTI APPROVED KNIFE DEFINITIONS.

**Drawings provided by Buck Knives and are the property of AKTI.**

The article is available at:

<http://www.akti.org/resources/additional-definitions>

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### C. SARK Knives – Search and Rescue Knives



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.

These are LEGAL.

#### D. Folding Knife with Robotic Assist



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 17235, 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 may 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.

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### E. Box Cutters



Box cutters, even ones that open as shown above, are legal. Even if the blade is longer than 2 inches (2.3 inches in the version above).



These are legal.

## F. Swiss Army Type Knives



These are legal.

These knives cannot be “locked” into position as required by Penal Code Section 16470: “A nonlocking folding knife, a folding knife that is not prohibited by Section 21510, 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.”

The Fourth District Court of Appeal took up the issue of a Swiss Army Knife that was found in the defendant’s jacket. The police officer claimed that the knife was “in a locked, open position.” The Court found that while the blade is in some way fixed in the open position, there is no “locking” mechanism and so even if Swiss Army Knife were found with the blade open, it is not a violation of Penal Code Section 16470. (See [People v. Castellolopez](#) (2014) [225 Cal.App.4th 638](#) – currently un-citable as up on review in California Supreme Court - 174 Cal.Rptr.3d 640 (Mem) as of July 30, 2014.)

## G. Self-Defense Pens



These are legal to own. However – a prosecutor could make the case that this is an “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.” (See Penal Code Section 16470) The same argument can be made of any household screwdriver.

I have not run into a case where a self-defense pen was charged as a concealed dirk or dagger. This is up to the prosecutor’s discretion.

## VIII. California's Laws about Knives

### A. What Prosecutors Must Prove to get a Switchblade Conviction

If the case proceeds to a jury trial, the judge would instruct the jury on the law according to a set of jury instructions, prepared by the Judicial Council of California. The jury instructions are called CALCRIM.

#### [CALCRIM 2502: Possession, etc., of Switchblade Knife \(Pen. Code § 21510\)](#)

The defendant is charged [in Count ] with unlawfully (possessing in a vehicle/carrying on (his/her) person/selling/offering or exposing for sale/giving/lending/transferring) a switchblade knife [in violation of [Penal Code section 21510](#)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (possessed in the (passenger's/ [or] driver's) area of a motor vehicle in a (public place/place open to the public)/carried on (his/her) person/sold/offered or exposed for sale/gave/lent/transferred) a switchblade knife [to another person];

2. The blade of the knife was two or more inches long;

3. The defendant knew that (he/she) (possessed/carried/sold/offered or exposed for sale/gave/lent/transferred) it [to another person];

[AND]

4. The defendant knew that it had the characteristics of a switchblade(;/.)

*<Give element 5 only if defendant is charged with offering or exposing for sale.>*

[AND]

5. The defendant intended to sell it.]

A *switchblade* knife is a knife that looks like a pocketknife and has a blade that 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



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weight of the blade or any other mechanism. A *switchblade* includes a spring-blade knife, snap-blade knife, gravity knife, or any other similar type knife. A *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, if 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.

[The (*passenger's/ [or] driver's*) *area* means that part of a motor vehicle that is designed to carry the (driver/ [and] passengers), including the interior compartment or space within.]

The People do not have to prove that the defendant used or intended to use the alleged switchblade knife as a weapon.

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant (possessed in a vehicle/carried/sold/offered or exposed for sale/gave/lent/transferred) the following switchblade knives: *<insert description of each knife when multiple items alleged>*. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (possessed in a vehicle/carried/sold/offered or exposed for sale/gave/lent/transferred) at least one of these knives which was a switchblade and you all agree on which switchblade knife (he/she) (possessed in a vehicle/carried/sold/offered or exposed for sale/gave/lent/transferred).]

### **BENCH NOTES**

#### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple weapons and the possession was "fragmented as to time ... [or] space," the court has a **sua sponte** duty to instruct on unanimity. (See [People v. Wolfe \(2003\) 114 Cal.App.4th 177, 184–185 \[7 Cal.Rptr.3d 483\]](#).) Give the bracketed paragraph beginning "The People allege that the defendant possessed the following switchblade knives," inserting the items alleged.

## **AUTHORITY**

- • Elements. [Pen. Code, § 21510](#).
- • Need Not Prove Intent to Use. See [People v. Rubalcava \(2000\) 23 Cal.4th 322, 328 \[96 Cal.Rptr.2d 735, 1 P.3d 52\]](#); [People v. Mendoza \(1967\) 251 Cal.App.2d 835, 842–843 \[60 Cal.Rptr. 5\]](#).
- • Knowledge Required. See [People v. Rubalcava \(2000\) 23 Cal.4th 322, 331–332 \[96 Cal.Rptr.2d 735, 1 P.3d 52\]](#).
- • Specific Intent Required for Offer to Sell. [People v. Jackson \(1963\) 59 Cal.2d 468, 469–470 \[30 Cal.Rptr. 329, 381 P.2d 1\]](#).
- • Constructive vs. Actual Possession. [People v. Azevedo \(1984\) 161 Cal.App.3d 235, 242–243 \[207 Cal.Rptr. 270\]](#), questioned on other grounds in [In re Jorge M. \(2000\) 23 Cal.4th 866, 876, fn. 6, \[98 Cal.Rptr.2d 466, 4 P.3d 297\]](#).
- • Passenger's or Driver's Area Defined. [Pen. Code, § 16965](#).

## **Secondary Sources**

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 172.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][a] (Matthew Bender).

## **RELATED ISSUES**

### ***Butterfly and Tekna® Knives Included***

Butterfly and Tekna knives are prohibited switchblades under [Penal Code section 17235](#) [formerly section 653k]. ([People ex rel. Mautner v. Quattrone \(1989\) 211 Cal.App.3d 1389, 1395 \[260 Cal.Rptr. 44\]](#).)

### ***Broken-Spring Knife***

Where the spring mechanism on the knife did not work, the court found insufficient evidence that the knife was a prohibited switchblade under [Penal Code section 17235](#) [formerly section 653k]. ([In re Roderick S. \(1981\) 125 Cal.App.3d 48, 52 \[177 Cal.Rptr. 800\]](#).)

### ***Public Place***

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On the meaning of “public place,” see [In re Danny H. \(2002\) 104 Cal.App.4th 92, 98 \[128 Cal.Rptr.2d 222\]](#), discussing the meaning of public place in [Penal Code section 594.1](#). See also [CALCRIM No. 2966, Disorderly Conduct: Under the Influence in Public](#), and cases cited therein.

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Note that element 4 above: The defendant knew that it had the characteristics of a switchblade – is the most difficult to prove. This has often been the reason why cases are dismissed.

In preparing this guide, I personally went to numerous stores in Santa Clara County to see if they sold what could potentially be illegal switchblades. These knives are available for sale everywhere. It is extremely difficult to prove that someone knew that they knife they had in their possession “had the characteristics of a switchblade.”

## B. What Prosecutors Must Prove to get a Concealed Dirk or Dagger Conviction

If the case proceeds to a jury trial, the judge would instruct the jury on the law according to a set of jury instructions, prepared by the Judicial Council of California. The jury instructions are called CALCRIM.

[CALCRIM 2501 Carrying Concealed Dirk or Dagger \(Pen. Code, §§ 21310, 16470\)](#)

The defendant is charged [in Count ] with unlawfully carrying a concealed dirk or dagger [in violation of [Penal Code section 21310](#)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant carried on (his/her) person a dirk or dagger;
2. The defendant knew that (he/she) was carrying it;
3. It was substantially concealed on the defendant's person;

AND

4. The defendant knew that it could readily be used as a stabbing weapon.

The People do not have to prove that the defendant used or intended to use the alleged dirk or dagger as a weapon.

A *dirk or dagger* is 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. *Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

A (pocketknife/nonlocking folding knife/folding knife that is not prohibited by [Penal Code section 21510](#)) is not a *dirk or dagger* unless the blade of the knife is exposed and locked into position.

A knife carried in a sheath and worn openly suspended from the waist of the wearer is not *concealed*.

*<Give only if object may have innocent uses.>*

[When deciding whether the defendant knew the object could be used as a stabbing weapon, consider all the surrounding circumstances, including the time and place of possession. Consider also (the destination of the

defendant[,]/ the alteration of the object from standard form[,]) and other facts, if any.]

[The People allege that the defendant carried the following weapons: *<insert description of each weapon when multiple items alleged>*. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant carried at least one of these weapons and you all agree on which weapon (he/she) carried and when (he/she) carried it.]

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple weapons and the possession was “fragmented as to time ... [or] space,” the court has a **sua sponte** duty to instruct on unanimity.

(See [People v. Wolfe \(2003\) 114 Cal.App.4th 177, 184–185 \[7 Cal.Rptr.3d 483\]](#).) Give the bracketed paragraph beginning “The People allege that the defendant possessed the following weapons,” inserting the items alleged.

Give the bracketed paragraph that begins with “When deciding whether” only if the object was not designed solely for use as a stabbing weapon but may have innocent uses. ([People v. Fannin \(2001\) 91 Cal.App.4th 1399, 1404 \[111 Cal.Rptr.2d 496\]](#); [People v. Grubb \(1965\) 63 Cal.2d 614, 620–621, fn. 9 \[47 Cal.Rptr. 772, 408 P.2d 100\]](#).)

If the court gives the instruction on a “folding knife that is not prohibited by [Penal Code section 21510](#),” give a modified version of [CALCRIM No. 2502, Possession, etc., of Switchblade Knife](#).

## **AUTHORITY**

- • Elements. [Pen. Code, § 21310](#).
- • Need Not Prove Intent to Use. [People v. Rubalcava \(2000\) 23 Cal.4th 322, 328 \[96 Cal.Rptr.2d 735, 1 P.3d 52\]](#).
- • Knowledge Required. [People v. Rubalcava \(2000\) 23 Cal.4th 322, 331–332 \[96 Cal.Rptr.2d 735, 1 P.3d 52\]](#).
- • Substantial Concealment. [People v. Wharton \(1992\) 5 Cal.App.4th 72, 75 \[6 Cal.Rptr.2d 673\]](#); [People v. Fuentes \(1976\) 64 Cal.App.3d 953, 955 \[134 Cal.Rptr. 885\]](#).

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- • Dirk or Dagger Defined. [Pen. Code, § 16470](#).
- • Dirk or Dagger—No Length Requirement. [In re Victor B. \(1994\) 24 Cal.App.4th 521, 526 \[29 Cal.Rptr.2d 362\]](#).
- • Dirk or Dagger—Object Not Originally Designed as Knife. [In re Victor B. \(1994\) 24 Cal.App.4th 521, 525–526 \[29 Cal.Rptr.2d 362\]](#).
- • Dirk or Dagger—Capable of Ready Use. [People v. Sisneros \(1997\) 57 Cal.App.4th 1454, 1457 \[67 Cal.Rptr.2d 782\]](#).
- • Dirk or Dagger—Pocketknives. [In re Luke W. \(2001\) 88 Cal.App.4th 650, 655–656 \[105 Cal.Rptr.2d 905\]](#); [In re George W. \(1998\) 68 Cal.App.4th 1208, 1215 \[80 Cal.Rptr.2d 868\]](#).

### **Secondary Sources**

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 162.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][a] (Matthew Bender).

### **RELATED ISSUES**

#### **Knowledge Element**

“[T]he relevant language of section 12020 is unambiguous and establishes that carrying a concealed dirk or dagger does not require an intent to use the concealed instrument as a stabbing weapon.” ([People v. Rubalcava \(2000\) 23 Cal.4th 322, 328 \[96 Cal.Rptr.2d 735, 1 P.3d 52\]](#).) [interpreting now-repealed [Pen. Code, § 12020](#)].) However, “to commit the offense, a defendant must still have the requisite *guilty mind*: that is, the defendant must knowingly and intentionally carry concealed upon his or her person an instrument ‘that is capable of ready use as a stabbing weapon.’ ([now repealed] [§ 12020\(a\), \(c\)\(24\)](#).) A defendant who does not know that he is carrying the weapon or that the concealed instrument may be used as a stabbing weapon is therefore not guilty of violating [section 12020](#).” ([Id. at pp. 331–332](#) [emphasis in original]. [referencing repealed [Pen. Code § 12020](#); see now Pen. Code, §§ 16479, [21310](#)].)

***Definition of Dirk or Dagger***

The definition of “dirk or dagger” contained in [Penal Code section 16470](#) was effective on January 1, 2012. Prior decisions interpreting the meaning of “dirk or dagger” should be viewed with caution. (See [People v. Mowatt \(1997\) 56 Cal.App.4th 713, 719–720 \[65 Cal.Rptr.2d 722\]](#) [comparing old and new definitions]; [People v. Sisneros \(1997\) 57 Cal.App.4th 1454, 1457 \[67 Cal.Rptr.2d 782\]](#) [same]; [In re George W. \(1998\) 68 Cal.App.4th 1208, 1215 \[80 Cal.Rptr.2d 868\]](#) [discussing 1997 amendment].)

***Dirk or Dagger—“Capable of Ready Use”***

“[T]he ‘capable of ready use’ requirement excludes from the definition of dirk or dagger a device carried in a configuration that requires assembly before it can be utilized as a weapon.” ([People v. Sisneros \(1997\) 57 Cal.App.4th 1454, 1457 \[67 Cal.Rptr.2d 782\]](#).)

***Dirk or Dagger—“Pocketknife”***

“Although they may not have folding blades, small knives obviously designed to be carried in a pocket in a closed state, and which cannot be used until there have been several intervening manipulations, comport with the implied legislative intent that such knives do not fall within the definition of proscribed dirks or daggers but are a type of pocketknife excepted from the statutory proscription.” ([In re Luke W. \(2001\) 88 Cal.App.4th 650, 655–656 \[105 Cal.Rptr.2d 905\]](#).)

### C. Knives are Prohibited in Certain Places

Even otherwise legal knives are illegal when carried to certain places.

It is illegal to possess knives at any state or local public building, or at any meeting that is required to be open to the public, if the knife has:

“a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.” ([Pen. Code § 171b](#))

It is illegal to bring knives to schools – which include any public or private school from kindergarten to 12th grade; any private university, any University of California, any California State University and any California Community College. ([Pen. Code § 626.10](#))

The following types of knives are prohibited: any dirk, dagger, ice pick, knife having a blade longer than 2 ½ inches, box cutter, folding knife with a blade that locks into place, or razor with an unguarded blade. ([Pen. Code § 626.10](#))



D. Other Relevant California Laws:

- [§ 17710. Any other weapon in possession of person permitted under federal Gun Control Act of 1968; prohibited persons obtaining title to weapons by bequest or intestate succession; application of Section 16590](#)
- [§ 17715. Instrument or device possessed by historical society, museum, or institutional collection; application of Section 16590](#)
- [§ 17720. Instrument or device possessed or used during course of motion picture, television, video production, or entertainment event; application of Section 16590](#)
- [§ 17725. Persons in the business of selling instruments or devices listed in Section 16590 to specified entities; application of Section 16590](#)
- [§ 17730. Sale to, possession or purchase of weapon, device, or ammunition by law enforcement officer; persons in the business of selling weapons, devices, or ammunition listed in Section 16590 to specified entities; application of Section 16590](#)
- [§ 17735. Persons meeting specified criteria who possess an instrument, ammunition, weapon, or device that is not a firearm; application of Section 16590](#)
- [§ 17740. Firearms found and possessed by persons otherwise not prohibited during transport to a law enforcement agency; application of Section 16590](#)
- [§ 17745. Possession of weapon, device, or ammunition by forensic laboratory; application of Section 16590](#)
- [§ 17740. Firearms found and possessed by persons otherwise not prohibited during transport to a law enforcement agency; application of Section 16590](#)



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