



Sheriff's Office Training Bulletin

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SWORN PERSONNEL SHALL UNDERSTAND THE PROVISIONS OF THE POLICY MANUAL PERTAINING TO CUSTODIAL SEARCHES.

Sworn personnel must have a complete understanding of Sheriff's Office policy regarding custodial searches. All personnel shall be familiar with the policy and what it contains. Policy 902 establishes the Sheriff's Office policy regarding custodial searches. The following are excerpts from that policy. *Sworn personnel must be familiar with the entire Policy as stated in the Policy Manual.*

DEFINITIONS

Definitions related to this policy include:

- ✓ Custody search - An in-custody search of an individual and of his/her property, shoes and clothing, including pockets, cuffs and folds on the clothing, to remove all weapons, dangerous

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Millbrae Lunar New Year Parade



FROM THE TRAINING MANAGER:

POST has been updating the Learning Portal website (lp.post.ca.gov). You probably noticed a major overhaul that was completed a few weeks ago.

One of the new features is the Update Center. The Update Center is intended to provide timely information on different topics regarding legislative changes, POST guidelines, resources, and associated training. As of now, the Update Center has DV and GVRO information, and more topics will be added in the future.

To access the Update Center, simply log onto the POST Learning Portal. On the top navigation bar (the white bar along the top of the page), you will see the link for the Update Center. Hover your pointer over the Update Center, and it will give you a dropdown of topics to choose from.

Given the recent amount of change, this will be an important resource going forward.

items and contraband.

SEARCHES AT SHERIFF'S FACILITIES

Custody searches shall be conducted on all individuals in custody, upon entry to the San Mateo County Sheriff's Office facilities. Except in exigent circumstances, the search should be conducted by a member of the same sex as the individual being searched. If a member of the same sex is not available, a witnessing member must be present during the search.

Custody searches should also be conducted any time an individual in custody enters or re-enters a secure area, or any time it is reasonably believed that a search is necessary to maintain the safety and security of the facility.

PROPERTY

Members shall take reasonable care in handling the property of an individual in custody to avoid discrepancies or losses. Property retained for safekeeping shall be kept in a secure location until the individual is released or transferred.

Some property may not be accepted by a facility or agency that is taking custody of an individual from this Office, such as weapons or large items. These items should be retained for safekeeping in accordance with the Property and Evidence Policy.

All property shall be inventoried by

objective description (this does not include an estimated value). The individual from whom it was taken shall be required to sign the completed inventory. If the individual's signature cannot be obtained, the inventory shall be witnessed by another Office member. The inventory should include the case number, date, time, San Mateo County Sheriff's Office member's identification number and information regarding how and when the property may be released.

VERIFICATION OF MONEY

All money shall be counted in front of the individual from whom it was received. When possible, the individual shall initial the dollar amount on the inventory. Additionally, all money should be placed in a separate envelope and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope with the amount indicated but not added to the cash total. All envelopes should clearly indicate the contents on the front. The Office member sealing it should place his/her initials across the sealed flap. Should any money be withdrawn or added, the member making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope should always be totaled and written on the outside of the envelope. ☆

SAN MATEO COUNTY SHERIFF'S OFFICE TRAINING BULLETIN

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FROM THE TRAINING MANAGER:

All sworn staff will be receiving email notifications to acknowledge high-liability policies. Please look for these emails since they resemble the notifications for Lexipol Daily Training Bulletins (DTBs).

You will be getting a series of notifications to read and acknowledge groups of high-liability policies. These are spaced out so that you will have enough time to read, understand, and discuss these policies before you acknowledge them and move on to the next.

These are important policies, and we are all responsible for being familiar with them. If you have any problems, please feel free to contact the Training Unit for assistance.

THE FELONY CRIME OF THEFT OF ACCESS CARD INFORMATION REQUIRES A SHOWING THAT THE VALUE OF THE INFORMATION WAS \$950 OR MORE.

A woman advertised loan services. This business operation was a complete fraud. The woman used the front of a loan operation to obtain sensitive information from her potential “borrowers”—information such as driver’s license numbers and social security numbers as well as credit and debit card information. After gathering the information, the woman went on spending sprees, sometimes by opening new lines of credit in the victims’ names, but most often by simply charging purchases to her victims’ credit or debit card accounts.

In the case of People v. Liu, the California Supreme Court ruled that the prosecution has the burden to establish that the value of the access card information is \$950 or more in order to constitute a felony.

California Penal Code section 484e(d) states, “Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder’s or issuer’s consent, with the intent to use it fraudulently, is guilty of grand theft.” An “access card” means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access card, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by a paper instrument.

In its written decision, the Court first stated, “Because theft of access card information in violation of section 484e(d) is a theft offense under section 490.2(a), we [have held] that courts must value stolen access card information just as they would any stolen property in a theft case. They must determine a reasonable approximation of the stolen information’s value, rather than the value of what (if anything) a defendant obtained using that information.”

The Court noted that the “fair market value” of stolen access card information will not always be clear, particularly considering that such information is generally traded in an illicit underground marketplace.

The Court stated, “Unlike everyday retail products such as shoes or electronics, or data about human behavior harvested from the online activity of consenting users, unlawfully obtained access card information cannot be bought and sold legally. The utility of such information for obtaining merchandise or services, moreover, tends to be contingent rather than certain. As with the prize money one may glean from an earlier purchased lottery ticket, the ultimate worth of stolen access card information often depends on facts not known at the time of acquisition. Access card information can nonetheless be sold in illicit markets, and, with disturbing frequency, it is. That there exists no lawful market for this information, and often no clear sense of what it will purchase or for how long, may complicate the calculation of its fair market value.”

The Court further stated, “Where the facts otherwise presented to the trial court don’t already offer some bearing on this question, the best place to start may be consulting, perhaps with help from an expert witness, the current trends in illicit markets for stolen access card information and the prevailing price of illegally obtained comparable information. Such an expert might help identify what considerations are relevant to the fair market value analysis in any given case.”

The Court concluded by stating, “Courts must assess how much such [access card] information would sell for, even though it cannot be sold legally. In conducting that inquiry, the value of what a defendant obtained using stolen access card information may be somewhat relevant. But if so, it must be considered along with potentially more probative pieces of the pricing puzzle, such as: (1) the access card’s credit limit or the account balance, if knowable when the defendant engages in the acquisition or retention of

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information that serves as the basis for criminal liability under section 484e(d); (2) the amount of account information possessed by the defendant; (3) how much the value of the information has been diminished because of its sale in illicit markets; (4) how recently the information was stolen; and (5) the prevalence of comparable information on the illicit market." ☆

A SUSPECT WHO ATTEMPTED TO OBTAIN CASH FROM AN ATM BY EXPLODING A BOMB COMMITTED BURGLARY AND NOT THE CRIME OF SHOPLIFTING.

A suspect caused a bomb to explode at a bank ATM machine. A side of the bank was damaged and a portion of the ATM machine was blown apart. The steel frame of the ATM machine was found in a nearby parking lot. There was a crater in the cement wall near the machine.

The suspect was convicted of burglary of the ATM. After Proposition 47 was enacted, the suspect filed a petition to have his felony conviction for burglary reduced to the crime of shoplifting—a reduction from a felony to a misdemeanor.

In the case of People v. Osotonu, the California Court of Appeal ruled that the burglary conviction should stand.

In its written decision, the Court first stated, ". . . Proposition 47 added section 459.5, which establishes the offense of shoplifting, defined as 'entering a commercial establishment with intent to commit larceny [theft] while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950).' The statute further provides that any other entry into a commercial establishment with intent to commit larceny is burglary."

The Court then looked at a landmark decision of the California Supreme Court interpreting the shoplifting statute. The Supreme Court ruled that entering an interior room that is

objectively identifiable as off-limits to the public with intent to steal therefrom is not shoplifting, but instead remains punishable as burglary. The Supreme Court noted that a primary purpose of the burglary statute is to protect against the increased risk to personal safety that attends the commission of a felony in such locations as well as to prevent the invasion of an owner's or occupant's possessory interest in a space against a person who has no right to be in the building. The focus is on the danger caused by an unauthorized entry.

The Supreme Court made a distinction between burglary and shoplifting because the shoplifting statute typically applies where a person has been invited to enter. The Supreme Court noted that the core of the crime of burglary is not theft but the physical intrusion. The Supreme Court stated, ". . . [I]t is different when members of the public venture into private back offices, employee locker rooms, or other interior rooms that are objectively identifiable as off-limits. The nature of the intrusion, and the potential risk to personal safety, when a person exceeds the physical scope of his or her invitation to enter are not dissimilar from those associated with exceeding the temporal scope of the invitation by entering after regular business hours—conduct that clearly remains punishable as burglary after the enactment of section 459.5."

The Court then stated, "Here, it cannot be seriously disputed that [the suspect]'s use of explosives to access the inside of the ATM posed a serious danger to personal safety to anyone in the vicinity of the ATM. Indeed, the force of the explosives was enough to break apart the steel frame and cause a crater in the cement wall near the machine. By using explosives, as opposed to a stolen debit card, [for example, the suspect] unquestionably exceeded the physical scope of his invitation when he blew open the ATM. The interior of an ATM, like a locked vault inside a bank, was objectively identifiable as off-limits. For these reasons. . . , we conclude that using explosives to blow open an ATM is not punishable as shoplifting under section 459.5." ☆