

Possession of Contraband for K-9 Training Purposes

By Terry Fleck

Historically, the issue of a handler possessing contraband, such as narcotics, explosives, cadaver, etc, in order to train a police service dog, has been relatively ignored by our industry. Handlers routinely possess contraband for K-9 training purposes throughout the United States.

LETTER of the LAW:

In most states the letter of the law does not address this issue of possession of contraband for K-9 training purposes. Therefore, in these states, under letter of the law, it is illegal for a handler to possess contraband for K-9 training purposes.

There are some states that do address this issue by letter of the law. As an example, here are the laws from the State of California:

Possession of Narcotics:

California Health & Safety Code Section 11367.5:

Controlled substances for substance abuse training; Immunity from prosecution; Custody and control

(a) Any sheriff, chief of police, the Chief of the Bureau of Narcotic Enforcement, or the Commissioner of the California Highway Patrol, or a designee thereof, may, in his or her discretion, provide controlled substances in his or her possession and control to any duly authorized peace officer or civilian drug detection canine trainer working under the direction of a law enforcement agency, provided the controlled substances are no longer needed as criminal evidence and provided the person receiving the controlled substances, if required by the Drug Enforcement Administration, possesses a current and valid Drug Enforcement Administration registration which specifically authorizes the recipient to possess controlled substances while providing substance abuse training to law enforcement or the community or while providing canine drug detection training.

(b) All duly authorized peace officers, while providing substance abuse training to law enforcement or the community or while providing canine drug detection training, in performance of their official duties, and any person working under their immediate direction, supervision, or instruction, are immune from prosecution under this division.

(c) (1) Any person receiving controlled substances pursuant to subdivision (a) shall maintain custody and control of the controlled substances and shall keep

records regarding any loss of, or damage to, those controlled substances.

(2) All controlled substances shall be maintained in a secure location approved by the dispensing agency.

(3) Any loss shall be reported immediately to the dispensing agency.

(4) All controlled substances shall be returned to the dispensing agency upon the conclusion of the training or upon demand by the dispensing agency.

Possession of Explosives:

California Penal Code Section 12302:

Sale to, or purchase, possession, transportation, storage, or use of, by, law enforcement officers, military personnel, or firefighters

Nothing in this chapter shall prohibit the sale to, purchase by, or possession, transportation, storage, or use of, destructive devices or explosives by:

(a) Any peace officer listed in Section 830.1 or 830.2, or any peace officer in the Department of Justice authorized by the Attorney General, while on duty and acting within the scope and course of his or her employment.

(b) Any member of the Army, Navy, Air Force, or Marine Corps of the United States, or the National Guard, while on duty and acting within the scope and course of his or her employment.

Nothing in this chapter prohibits the sale to, or the purchase, possession, transportation, storage, or use by any person who is a regularly employed and paid officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, while on duty and acting within the scope and course of his or her employment, of any equipment used by that department or agency in the course of fire suppression.

Possession of Cadaver:

California Government Code Section 27491.45:

Retention of tissues removed at autopsy; Removal of parts for transplant, or therapeutic, or scientific purposes

(a) (1) The coroner shall have the right to retain parts of the body, as defined in subdivision (g) of Section 7150.1 of the Health and Safety Code, removed at the time of autopsy or acquired during a coroner's investigation as may, in the opinion of the coroner, be necessary or advisable for scientific investigation and training. The coroner may employ or use outside laboratories, hospitals, or research institutions in the conduct of the coroner's scientific investigation or

training.

(2) Parts of the body retained pursuant to paragraph (1) may be released by the coroner to hospitals, medical educational research institutions, and law enforcement agencies for noncoroner training, educational, and research purposes, either upon consent of the decedent or other person, as specified in Section 7151 of the Health and Safety Code, or after a reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of the Health and Safety Code of their option to consent or object to the release, and the appropriate person consents or that effort has been unsuccessful. A reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151 of the Health and Safety Code.

SPIRIT of the LAW:

As most states do not have law(s) allowing possession of contraband for K-9 training purposes, these states are operating under spirit of the law.

When one obeys the spirit of the law but not the letter of the law, he is doing what the authors of the law intended, though not adhering to the literal wording.

Historically, this is where the issue of a handler possessing contraband for K-9 training purposes under spirit of the law, has been relatively ignored.

Although rare, there have been handlers that were confronted by their own agency, or another agency, regarding possession of contraband for K-9 training purposes. In fact, one State's POST (Peace Officers Standards and Training), has verbally advised / warned their state's K-9 handlers regarding this issue.

LOSS of a CONTRABAND "TRAINING AID":

Unfortunately, numerous contraband training aids have been left behind at training locations, resulting in their loss.

In order to prevent the loss of these aids, I recommend a primary and secondary custodian of all contraband training aids:

- There should be a "primary custodian" and a "secondary custodian" of the training aids. The primary would be the handler and the secondary would be the trainer or secondary person on-scene. Both custodians are tasked with training aid recovery and accountability.

- All training aids should be clearly marked “Training Aid; Agency name; If Found Call Agency Phone Number; Reward If Found”.
- Lock boxes, built to nationally recognized standards, should be mounted in all K-9 vehicles to safely and securely transport training aids to prevent theft or loss.

COMPLIANCE with OTHER STATE LAWS or INDUSTRY BEST PRACTICE STANDARDS:

With possession of contraband for K-9 training purposes, there are other laws or industry best practice standards considerations that should be addressed:

- **Narcotics:**
Typically, there are no other issues in possession of narcotics for K-9 training purposes.
- **Explosives:**
Due the safety concerns in the handling and transportation of explosives, there is a nationally recognized standard, ATFE (Bureau of Alcohol, Tobacco, Firearms and Explosives). I recommend that all agencies be in compliance with ATFE guidelines.
- **Cadaver:**
There may be state law regarding the pathogen issues of cadaver handling and transportation. I recommend that all handlers / agencies be in compliance with their State Health Law(s).

SOURCES of CONTRABAND TRAINING AIDS:

- **Narcotics:**
DEA (Drug Enforcement Administration):
DEA will issue a law enforcement agency narcotics training aids. The aids consist of twenty-eight (28) grams of each substance. To apply, register at www.deadiversion.usdoj.gov. Register by filling out the DEA-225 form. Law enforcement agencies are registration fee exempt. There is a toll free phone number for assistance: 1-800-882-9539.

Agency Evidence / Property Section:

Once narcotics have been released by the Court, many agencies will dedicate the narcotics as K-9 training aids. If an agency does this, the narcotics should be tested in order to verify the type of narcotic and the percentage of the narcotic.

- **Explosives:**
Explosive Manufacturers:
There are several explosive manufacturers nationwide that sell explosives training aids specifically developed for K-9 teams. As an example, Alpha Explosives in Lincoln, California, sells these K-9 training aids.

- **Cadaver:**

- Coroner:

- As stated above, the Coroner is typically the person who releases cadaver training aids.

POSSESSION SOLUTIONS:

Letter of the Law:

If you are from a state with no law exemption for possession of contraband for K-9 training purposes, I suggest addressing it by proposed law. You may simply copy an existing state's law(s) as a model and have a law enforcement friendly legislator sponsor it.

Spirit of the law:

If you are operating under spirit of the law, although rare, there have been a few issues as stated above.

Letter of the Law and Spirit of the Law:

Handlers and agencies should be aware of the issues stated above, loss of a contraband training aid, and compliance with other state laws or industry best practice standards. I suggest not only awareness, but compliance with these issues as well.