

*** NEWS RELEASE ***

DISTRICT ATTORNEY COMPLETES REVIEW OF INCIDENT INVOLVING DISCHARGE OF A FIREARM IN A SEASIDE CLASSROOM

June 4, 2018

IMMEDIATE RELEASE

**CONTACT: Berkley Brannon Chief Assistant District Attorney
(831) 755-5253**

Monterey County District Attorney Dean D. Flippo announced today that Dennis Alexander will be charged solely with an infraction offense for leaving a handgun in an unattended vehicle. The District Attorney concluded that Dennis Alexander did not commit a criminal offense for discharging a firearm in a classroom. The District Attorney's review was narrow, to determine whether the elements for a crime, as defined by the legislature, could be proven beyond a reasonable doubt. The review did not address dangerousness, irresponsibility, or poor judgment untethered to a criminal statute, or matters which are the subject of civil lawsuits or administrative actions. The purview of a district attorney in this situation is limited solely to whether a crime occurred, supported by sufficient evidence.

On March 13, 2018, Dennis Alexander, a reserve Sand City police officer, was teaching a class at Seaside High School called Public Safety Fundamentals. He decided to demonstrate to his class that because a police officer's holster has a double lock, a perpetrator cannot disarm an officer by removing an officer's handgun from its holster. While standing in front of the class, Alexander explained to students what he was going to do, and at the same time attempted to unload his semi-automatic Glock handgun before the demonstration. To properly do so, Alexander needed to remove the magazine, then rack the slide to eject any round in the chamber. Instead, Alexander first racked the slide (which put a round in the chamber) and then removed the magazine. He inadvertently reversed the procedure. As he was talking to students (indicating a degree of divided attention) he pointed the gun toward the ceiling and pulled the trigger to ensure no round was in the chamber. Alexander was mistaken and the gun discharged. All witnesses described the discharge as accidental. Additionally, there was evidence that on previous occasions Alexander had passed his unloaded firearm around the class for students to handle.

The District Attorney considered the following crimes:

Penal Code section 246.3: This offense criminalizes the discharge of a firearm in a grossly negligent manner. Although Alexander may have acted with gross negligence, the offense also requires that a defendant intentionally shoot the firearm. According to the California Supreme Court, "a defendant who believed that the firearm he or she discharged was unloaded, for example, would not be guilty of a violation of section 246.3." It is undisputed that Alexander believed his

firearm was unloaded and accidentally discharged it. Therefore, Alexander did not commit this offense.

Penal Code section 626.9: The Gun-Free School Zone Act makes it a crime to possess a firearm in a school zone, with certain exceptions. Police officers are exempted from the act, regardless of whether they are on duty or off duty. This means the act's prohibitions do not apply to peace officers. Reserve peace officers are peace officers under California law. Dennis Alexander was employed by Sand City PD as a reserve peace officer. Therefore, he committed no violation of 626.9 by bringing a gun onto the school campus.

Penal Code section 273a (child endangerment): To criminally endanger a child, a defendant must willfully cause a child to be endangered under circumstances likely to produce great bodily injury or death. Someone commits an act willfully when he or she does it on purpose. Because Alexander did not fire his weapon on purpose, he did not willfully cause a child to be endangered and did not commit this offense.

Penal Code section 417 (misdemeanor brandishing a firearm): To brandish a firearm, a defendant must exhibit it in a rude, angry or threatening manner. Alexander clearly did not use the firearm to threaten any student, nor did he act rudely or with anger. An accidental discharge, without more, is not criminal brandishing. And no student reported to police feeling threatened. Therefore, Alexander did not commit this offense.

Penal Code section 29610: This section makes it a crime for a minor to possess a concealable firearm, unless the minor has written consent from a parent or legal guardian, or is accompanied by a parent or legal guardian. The statute targets minors who possess handguns; it does not target adults who provide handguns to minors. In the interests of justice the District Attorney declines to file charges against any minor because they handled Alexander's unloaded firearm on previous occasions. The legislature has promulgated no law prohibiting an adult from allowing a minor to inspect an unloaded handgun while under the adult's supervision. 29610, which punishes minors, is not intended to, and should not, reach that situation.

Penal Code section 27505: This section makes it a felony for a person to sell, loan, or transfer a firearm to a minor. Alexander did none of these things. An adult who allows a minor to handle an unloaded firearm does not commit a felony. If the legislature wished to prohibit adults from allowing minors to handle firearms, the legislature would have said so. A "loan" contemplates acquiring use or possession that is more than transitory. The statute describes several scenarios which serve to define the term "loan," and specifies time frames between 10 and 30 days and other durations of time accompanied by use of a firearm during the loan period. Neither the use of the term "loan" in the statute's context, or in English vernacular, resembles the situation here. And Alexander clearly did not sell or transfer his firearm to any student.

Penal Code section 25140 makes it an infraction to leave a handgun in an unattended vehicle, if it is not locked in a trunk or center console, or locked in a container out of plain view. There is sufficient evidence to support that charge.

In conclusion, the gravamen of Alexander's conduct was accidentally discharging his firearm in a classroom. No California law makes that act a crime. Similarly, no California law prohibits an adult from allowing a minor to handle an unloaded firearm. Under California law, because Alexander is a reserve peace officer, he could lawfully bring a firearm on to a school campus.

