



# Seattle Police Department

## Legal Bulletin



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Bulletin: LB 07-003

### **Unlawful Display-Open Carry of a Firearm**

There have been local reports that certain individuals have carried, or are planning to carry, unconcealed firearms in urban public places. They recently described their planned activity as being done to exercise their "right to bear arms" and/or to seek an encounter with law enforcement that results in an illegal seizure and arrest.

In the State of Washington it is not illegal to merely "open carry" a firearm in public, provided the firearm is holstered or somehow affixed to an individual's person and not in their hand available, but not threatening to others.

#### **Elements of unlawful behavior:**

The open carry of any firearm in one's hand [holstered or not] creates a safety issue in an urban environment and will reasonably and immediately cause alarm and fear with most persons who are nearby. Because of the fear that a drawn firearm or a firearm in-hand creates in public spaces in the City of Seattle, a firearm in-hand should be analyzed under the "unlawful display of a weapon" **RCW 9.41.270** not as merely an "open carry" incident.

#### **Responding officers:**

Officers who investigate the "unlawful display" of a weapon should:

- To support the inquiry, make sure to document the ID of the complainant in order to establish the reliability of the report of a weapon being displayed.
- Secure the weapon after contacting the subject, if necessary, during the active investigation/detention and place into evidence if an arrest is made.
- Consider and document any victim(s) who are reasonably fearful of the conduct of the suspect.
- Document the circumstances and duration of the display of the weapon and the demeanor of the suspect.
- If this is an on-view situation, document your own safety concerns and fears as well as the concerns of others and any threats made.
- If the unlawful display of a weapon is not on-view, a warrantless arrest can be made only if there is a specific, articulable threat [verbal or a specific act] made to a third party.
- Consider and document any claim of self-defense by the person with the firearm to determine whether it is reasonable or not under the circumstances.

#### **CPL issues:**

Under state law pistols carried concealed in public places generally require a concealed weapons permit. The same is true for loaded pistols carried or placed in vehicles.

An inquiry as to whether the subject has a CPL permit is warranted if the suspect, in response to the officer's arrival, conceals the firearm. If they have a valid CPL and no other crime has been committed and the display is over with no overt threat, checking the CPL is all that is needed. A report should be written documenting the CPL information.

**Trespass:**

Under existing state statutes and a recent decision made by the WA State Supreme Court, the court was clear that managers of public and private buildings, as well as entrances and walkways immediately associated with these buildings, may adopt rules and enforce policies restricting the "open carry" of firearms. The enforcement of these rules/policies is civil trespass and potentially criminal trespass, providing the rule is posted or announced and the person who attempts "open carry" violates established rules by either refusing to leave or refusing to comply with the rules for entry.

These premises rules should be enforced: first by the building management, if it is safe to do so. If the person refuses to leave/comply or returns with a weapon a call to the police by the management could result in an arrest. At a minimum a police report should be taken and screened if the person is detained.

**Communications:**

**When a call of a man with a gun comes in to 911, the call taker should establish the specific circumstances being reported, particularly the behavior of the person with the gun:**

Does it appear to be an open carry incident or an incident where the individual is threatening to use the weapon? Patrol officers are being instructed to work with dispatch to determine/understand exactly what callers are reporting. Obviously, officers will continue to use caution when responding to all weapons calls, but specific details concerning the situation will assist them as they plan their approach and tactics. Additionally, patrol sergeants are being instructed to respond on all open carry incidents.

**Dispatch should, therefore, attempt to keep the caller on the line in order to receive updates on the incident being reported, and a supervisor should be dispatch to potential open carry incidents.**

Officers do have some options on how to handle an open carry incident depending on the circumstances, e.g., trespass, assault, intimidation, and unlawful display of a weapon. It is dispatch responsibility to provide the field units with the detailed information, including documentation of the ID of the caller so that they can be contacted if possible, which will assist officers in their analysis of the call.