

Washington State Law Enforcement Training Bulletins regarding Open Carry of Firearms

RCW 9.41.270

Weapons apparently capable of producing bodily harm - Unlawful carrying or handling - Penalty - Exceptions.

(1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments.

Source: King County training bulletin dated 11/07/2006
Web: <http://www.washingtonceasefire.net/content/view/67/32/>

NARRATIVE / SCENARIO:

Deputy Wrangler sees two men walking down the street in North Bend. The men are laughing and talking as they cross the street. One of the men tips his hat to a lady as he passes. Deputy Wrangler notices everyone is taking a second look at the men as they pass. Deputy Wrangler takes a closer look to see what everyone is looking at. He sees both men are carrying what appear to be long-barreled, pearl handled revolvers in holsters on their belts. It doesn't appear the men are trying to hide the guns. The men walk into a restaurant that serves alcohol and sit down for dinner.

QUESTION #1:

Have the men committed a crime by carrying their guns where everyone can see them while in public?

DETAILED ANSWER / EXPLANATION: (provide sources / references)
The correct answer is : No

Washington is an "open carry" state for firearms. This means there is a presumption that carrying a handgun in an exposed holster, for instance, is legal except where it is specifically prohibited. Open carry does not require a license. On the other hand, concealed carry of a firearm out in public is generally illegal without government authority.

QUESTION #2:

RCW 9.41.270 states "It shall be unlawful for any person to carry, exhibit, display, or draw any firearm or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of others." Can the men be charged? Obviously people are looking at them a second time when they see the guns in plain view.

DETAILED ANSWER / EXPLANATION: (provide sources / references)
The correct answer is: No

In this law, mere possession of an openly carried handgun is not prohibited. In order to support an enforcement action under this law the officer must be able to articulate (describe in a convincing manner) malicious intent by the suspect or circumstances that reasonably cause alarm to the public. In either case, because open carry in Washington is presumably legal, the articulation must include something beyond mere, open possession.

QUESTION #3:

Since the men went into an establishment that serves alcohol, can they be charged?

DETAILED ANSWER / EXPLANATION: (provide sources / references)
The correct answer is: No

This could be considered a trick question since many restaurants have lounges and it would depend on where the men sat. For this discussion we are assuming they sat in the eating area of the restaurant. RCW 9.41.300 in part reads:

(1) It is unlawful for a person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

- The restricted access areas of a jail, or of a law enforcement facility;
- Those areas in any building which are used in connection with court proceedings;
- The restricted access areas of a public mental health facility;
- That portion of an establishment classified by the state liquor board as off-limits to persons under twenty-one years of age; or
- The restricted access areas of a commercial service airport.

* This illegalizes mere possession at these places, including open carry, unless an exception applies.
Exceptions are spelled out in subsections 6-9.

Source: Everett city training bulletin 2007-06, dated 03/13/2007

Web: <http://www.washingtonceasefire.net/content/view/63/32/>

Background

There have been recent assertions that officers are giving conflicting advice regarding peaceable open carry of a firearm in a holster. Please note the following points regarding this topic:

General Rules for Possession of Firearms

Assuming there are no other prohibitions, e.g. (being a convicted felon:

* (A person) Can possess a firearm if 18 years old or older and a U.S. citizen.
Note: Non-U.S. citizens can possess if from some Canadian provinces or if the person has an Alien Firearm License.

* (A person) Cannot possess a machine gun, short-barreled shotgun or short-barreled rifle, or parts for these weapons.
Note: Exceptions are police officers, military, or federally licensed.

* (A person) Cannot possess a silencer.

Pistols

* (A person) Cannot possess a concealed pistol outside the home or fixed place of business without a concealed pistol license (CPL).

* (A person) Can possess a visible pistol without a CPL.

* (A person) Cannot have a loaded pistol in a car without a CPL and pistol is on the licensee's person, or licensee is in the car at all times with the pistol, or pistol is locked inside and out of view if licensee is out of the car.

* (A person) Cannot leave an unloaded pistol in a car unless it is locked inside and out of view.

Unlawful Use of Weapons to Intimidate Another

Notwithstanding a person's general ability to have a visible pistol or his/her person, officers should consider whether the person is carrying the weapon under circumstances warranting alarm for the safety of others.

The gross misdemeanor crime of Unlawful Use of Weapons to Intimidate Another (EMC 10.78.020) is committed when someone carries, exhibits, displays or draws any weapon apparently capable of producing bodily harm in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

Exceptions to EMC 10.78.020 are as follows:

The person is in his/her place of abode or fixed place of business;
The person has a legal duty to preserve public safety and is performing that duty;
The person is acting in defense of himself/herself or in defense of another;
The person is making or assisting in a lawful felony arrest;
The person is engaged in federal or state-sponsored military activities.

(Signed)
JAMES I. SCHARF
Chief of Police

Source: Kent city training bulletin dated 02/04/2007
Web: <http://www.washingtonceasefire.net/content/view/65/32/>

SCENARIO: From time to time, police officers encounter people that choose to exercise their 2nd amendment privilege to possess or carry a firearm in an "unusual" manner. While not common, there have been times when officers are dispatched to a "man with a gun" call. While enroute, officers are told that the man is walking through a local store, perhaps a restaurant, and is carrying a gun. The picture in the officers mind might be of a man, gun in hand, storming through a local business or down a city street. Upon arriving the reality of a local resident shopping, with his handgun (large or small) holstered, strapped and openly displayed on his hip is the outcome. Is this legal?

DISCUSSION: We know from experience that this kind of occurrence is rare in our community. In fact, it's a very rare occurrence in this part of the State. But does that mean it is illegal?

No. In general, Washington State law does not prohibit carrying an openly displayed firearm in public. In fact, RCW 9.41.050 requires only that a person carrying a firearm "concealed from the view of others" have a concealed pistol license on their person to do so. Of course, we know that RCW 9.41 also identifies a host of prohibited behaviors regarding possessing firearms, but those will be the subject of another bulletin. So when does our legally gun toting citizen run afoul you ask? Well, let's look at a hypothetical.

Joe leaves home with the intent of going to the local Fred Meyer. Joe straps a holstered small caliber handgun to his hip. It's a cold morning, so he also grabs a coat, being careful to pull his coat back behind the gun and holster, leaving them openly exposed. While in route to the store, Joe is involved in a minor traffic collision. As he exits his car to speak with the other driver, his coat inadvertently swings loose from it's tuck, and covers the still-holstered gun. As the two drivers exchange information, the second man glances inside Joes coat to see the holster and gun. This alarms him greatly, though Joe has made no mention of his weapon, nor has he done anything to manifest a threat with the weapon.

Minutes later the police arrive. The second driver motions for one of the officers, then takes him aside telling him that Joe is carrying a gun. The officer looks toward Joe, sees he is wearing a coat, but can not see any weapon. Both officers then contact Joe. They ask if he has any weapons, which he readily admits to. Somewhat surprised by their inquiry, Joe looks down to realize that his gun is now concealed by his jacket.

Absent possessing a concealed pistol license, Joe has violated RCW 9.41.050. While he could argue that he had no intent to conceal the gun with his jacket, the fact that he possessed the gun and that it was concealed constitutes the crime (Seattle V Briggs 109 WN App.484). State law does not require the Prosecution to show "intent as a mental state. In this case, Joe could be arrested under this fact pattern.

If you want to open carry, be aware of this nuance in the law and get and carry your CPL! It is very easy to inadvertently conceal your sidearm if you are wearing a jacket.

Source: Olympia PD training bulletin dated 10/24/2007, hand transcribed
Web: <http://opencarry.mywowbb.com/forum55/5745.html>

Instructive Olympia Police Department
Issue Date: October 24, 2007
Topic: Open carrying of firearms
Reference : Article 1, section 24 of the Washington State Constitution, RCW 9.41.270 and 9.41.300.

I Background

The right to bear arms is guaranteed under the United States and Washington State constitutions. The State Legislature recognizing this right created laws governing individual freedoms pertaining to personal conduct involving the carrying of firearms and other weapons.

Washington State is an "open carry" state for firearms. This means there is a presumption that carrying a handgun in an exposed holster, for instance, is legal except where it is specifically prohibited by law.

RCW 9.41.300 reads in part...
{omitted}

RCW 9.41.270 reads in part...

(1) It shall be unlawful for any person to carry, exhibit, display or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

RCW 9.41.280 reads in part...
{omitted}

II Policy

It is the policy of the Department that officers conduct safe and focused investigations of complaints involving weapons that are openly carried. In conducting these investigations, officers shall recognize both the right of individuals to openly carry weapons (as permitted by the Constitution and the law) and the public's right to feel safe.

III Procedures

A Assessment of open carry situations

1 Officers evaluate the facts, including witness information, as they pertain to the manner, circumstance, time and place of the conduct in question.

2 Officers shall use safe tactics when making contact with individuals who are openly carrying weapons to assure that neither they nor the public are in jeopardy.

3 Officers shall investigate the circumstances to determine the following:

a Whether a reasonable person would believe that the subject displayed, carried, exhibited or drew a weapon in a manner that manifested intent to intimidate another person or that warranted alarm for another person's safety. [RCW 9.41.270]

b Whether the time, place or circumstances of the presence of the weapon constitutes a violation. [RCW 9.41.280, RCW 9.41.300]

4 Officers should give priority to the interest of public safety when determining an appropriate course of action.

B Reporting Requirements

1 Clear violations of RCW 9.41.270, RCW 9.41.280 and RCW 9.41.300 are handled in the same manner as other violations.

2 In situations where an officer believes there is a potential violation present, but where more intensive investigation or a prosecutorial opinion is required to make that determination, the incident is to be documented for follow-up, without immediate enforcement action.

3 In situations where it is clear to an officer that no violation is present, no documentation is required.

By
William W. Wilson, Lieutenant

Source: Bellevue city training bulletin dated 01/09/2007
Web: <http://www.washingtonceasefire.net/content/view/62/32/>

To all,
SQUAD TRAINING

It has recently come to our attention that a group calling itself, "Pacific Northwest Open Carry" and with a spokesman named Lonnie Wilson, has an agenda that deals with the peaceable open carrying of a handgun in a holster. He says that while doing his research to write an informational bulletin for the public and for law enforcement, he asked a number of BPD officers if it was legal to carry a handgun in public, in the open, in a holster. He says he received a variety of answers, ranging from, it is legal, to, it is a felony, to, you will be stopped and arrested for brandishing.

As a refresher, the Corporals will go over the following:

1. Washington is an "open carry" state for firearms. This means a person may carry a firearm in an exposed holster unless there is something that makes it specifically illegal. For example, carrying a weapon onto school grounds or other prohibited places or carrying a weapon by most convicted felons or anyone convicted of a domestic violence crime.
2. Unlawful carrying or display. RCW 9.41.270 occurs when the person carries or displays a weapon in a manner under circumstances at a time and place that manifests alarm for the safety of persons or with an intent to intimidate. This is something more than just walking around with an exposed firearm. If there is a dispute for example and one person, while angry, displays the weapon to scare the other person.
3. Carrying without a Concealed Weapons Permit. RCW 9.41.050, occurs when a person carries a CONCEALED pistol on his person and does not have a CWP. A person with a CWP can carry a firearm in a vehicle without having the weapon on his person.

Citations of court cases provided by the BPD. Cites abridged here for brevity, some omitted. Please see the full document on the website.

1. The critical difference between assault and unlawful display is whether Craig pointed the rifle at the group or someone in the group, or simply showed the rifle. ... merely because all the victims were frightened does not mean that Craig necessarily committed assault. Unlawful display is defined by the way Craig used the weapon, not by the victims' responses.

State v. Craig, 2004

2. The court also found as the officer testified that Crabbs had waved the tazer at him in a threatening manner, thus manifesting an intent to intimidate or warrant alarm for the officer's safety.

State v. Crabbs, 2003

3. Intimidate is defined very narrowly. "To make timid or fearful inspire or affect with fear: frighten *** to compel to action or inaction (as by threats)". ... the standard of criminality is displaying a weapon in circumstances manifesting an "intent to intimidate another or which warrants alarm for the safety of another." If a weapon is displayed in a manner, under circumstances and at a time and place so that it poses a threat to another person, such a display would warrant alarm for the safety of another. Thus, narrowly construing the phrase to apply to only conduct that poses a threat to others gives the phrase a narrow and definite focus and saves it from vagueness.

State v. Maciolek, 1984

4. Furthermore, all weapons referenced in the statute must be displayed in a manner that 'warrants alarm' for the safety of others. The use of the word 'warrants' implies that there must be a sufficient objective basis for the alarm, or circumstances that would cause alarm in a reasonable person.

State v. Taylor, 2003

{Cite 5 omitted}

6. As the Superior Court found, the statute only prohibits the carrying or displaying of weapons when objective circumstances would warrant alarm in a reasonable person. Thus, the restriction applies only in a limited number of situations. Furthermore, the prohibition is not so vague that it would prevent persons of common intelligence from ever carrying a weapon on the street.

State v. Spencer 1994

{Cite 7 omitted}

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Personnel Services Unit
Bellevue Police Department
(425) 452-6942 Desk

Source: Federal Way city training bulletin 06-004, dated 07/14/2006
Web: <http://www.washingtonceasefire.net/content/view/64/32/>

Washington is an "open carry" state for firearms. This means there is a presumption that carrying a handgun in an exposed holster, for instance, is legal except where it is specifically illegalized. Open carry does not require a license. On the other hand, concealed carry of a firearm out in public is generally illegal without government authority (such as a state license or a police commission).

It is a felony crime to carry or possess any firearm (concealed or in the open) by most convicted felons and convicted domestic violence offenders (see RCW 9.41.040). In addition to that, below are portions of selected laws that specifically illegalize the carrying of firearms. Underlines were added for emphasis. In order to save space, several large portions of the laws were not included; therefore, officers should refer to the complete RCWs and be familiar with the details of each.

Except for possessing a firearm on school grounds, these misdemeanor crimes regarding possessing firearms are not exceptions to the misdemeanor presence rule. In other words, except for violations at schools, in order to arrest the suspect the violation must occur in the officer's presence. Non-presence violations can be written up and forwarded to the prosecutor.

(RCW 9.41.050 omitted)

RCW 9.41.270

(RCW 9.41.270 text omitted)

* In this law, mere possession of an openly carried handgun is not illegalized. In order to support an enforcement action under this law the officer must be able to articulate (describe in a convincing manner) malicious intent by the suspect or circumstances that reasonably cause alarm to the public. In either case, because open carry in Washington is presumably legal, the articulation must include something beyond mere, open possession.

* An example of illegal open carry under this law would be: a man argues with a store manager or at a meeting of the homeowner's association; he leaves angry; he returns to the premises and resumes the dispute, having a pistol openly carried in an exposed holster.

(RCW 9.41.270 exclusionary clauses omitted)

The training bulletin goes on to mention a Federal Way city code prohibiting possession of firearms in the council chambers of the city council, but this restriction may be unenforceable due to RCW 9.41.290 (State Preemption).

Please consult a lawyer if you have a question about this.

Last updated 11/2007 by John Hardin <jhardin@impsec.org>

Original available at:
http://www.impsec.org/~jhardin/open_carry_training_bulletins_washington.pdf
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See the Washington State RCW website for the complete text of the relevant laws:

<http://apps.leg.wa.gov/rcw/>