Washington State
Law Enforcement Training Bulletins
regarding Open Carry of Firearms

BCW 9.41.270

Open carry is generally 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 or any other cutting or striking instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place where such act constitutes a clear threat to bring injury to, or the apprehension of injury to others.

(2) Any person convicted of a violation of subsection (1) of this section shall be guilty of violating a 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, and the court shall vacate the conviction, with prejudice, immediately prior to the issuance of 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 required by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duties;

(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 Bailey. The men are both armed with inside-the-waistband holsters and talking as they cross the street. One of the men tips his hat to a lady as she passes. Deputy Wrangler notices everyone is taking a second look to see what everyone is looking at. He sees both men arm, and both men are wearing holsters with handcuffs and revolvers on their belts. It doesn’t appear the men are trying to scare the people of the restaurant that serves alcohol and sit down for dinner.

QUESTION #1:
Have the men committed a crime by carrying their guns where anyone 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 in public is generally illegal without governmental authority.

QUESTION #2:
BCW 9.41.270 states “It shall be unlawful for any person to carry, exhibit, display, or draw any firearm or any other cutting or striking instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place where such act constitutes a clear threat to bring injury to, or the apprehension of injury to others.” Can the men be charged? Obviously, but only at that time, and that second time when they see the guns in plain view.

DETAILED ANSWER / EXPLANATION: (provide sources / references)
IIn 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 the specific facts that indicate that the person is subject to an imminent or present threat, and the circumstances and the person’s belief that the threat is imminent or present that cause the actor to believe that his or her life or the life of someone else would be in danger.

Source: Kent city training bulletin dated 02/14/2007
Web: http://www.washingtonceasefire.net/content/view/65/32/ SCENARIO: From time to time, police officers encounter people who choose to exercise their 2nd amendment privilege to possess or carry a firearm in an “unusual” manner. While not currently a crime, the behavior is unusual and unnecessary according to the circumstances. The person is carrying a pistol, not a “man with a gun” call. While enroute, officers are told that the man is walking through a local store, and is carrying a gun. The picture in the officers mind might be of a man, gun in hand, strolling through a local business or down a city street. Upon arriving the reality of a local resident shopping, with his weapon visibly displayed on his hip is the outcome. Is this legal?

DISCUSSION: We know from experience that this kind of occurrence is rare in your 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, BCW 9.41.050 requires only that a person carrying a firearm be licensed, but does not require a person to carry a concealed firearm license on their person to do so. Of course, we know that BCW 9.41.050 also identifies a host of prohibited behaviors regarding possessing firearms, but those will be the subject of another bulletins. So when does our legally gun toting citizen run afoul you ask? Well, let’s look at a hypothetical.

Joe lives 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. 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. At the two drivers exchange information, the second man glances inside Joe’s 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, carrying a gun. The officer looks toward Joe, and shoves both officers then contact Joe. They ask if he has any weapons, which he for the officer, and he is arrested, the second officer inquiry. Joe looks down to realize that his gun is now concealed by his coat.

Absent possessing a concealed pistol license, Joe has violated BCW 9.41.050. While he could argue that he had no intent to conceal his gun with his jacket, the fact that he possessed the gun and that it was concealed constitutes the crime. (Seattle V. Lee, 140 Wn. App. 461.) State law does not require a person to carry a concealed firearm license.

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.

Sincerely,

JAMES I. SCARP
Chief of Police
Source: Olympia PD training bulletin dated 10/24/2007, hand-transcribed
Web: http://opencarry.mwobb.com/forum55/5745.html

Instructive Olympia Police Department
Issue Date: October 24, 2007
Topic: Open carrying of firearms
RCW 94.21.70 and 94.36.900.

I. Background

The right to bear arms is guaranteed under the United States Constitution and Washington State constitutions. The State of Washington has recognized this right to bear arms as a fundamental right and the right of individuals to openly carry weapons. 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 94.21.70 reads in part...

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 conduct investigations with 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 be alert to anyone with open carry weapons to assure that neither they nor anyone else 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, chambered or drew a weapon was a moment that manifested intent to intimidate another person, circumstances that were warranted and for another’s safety. [RCW 94.270]
   b. Whether the time, place or circumstances of the presence of the weapon constitutes a violation. [RCW 94.21.70, RCW 94.36.900]

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 94.21.70, RCW 94.21.80 and RCW 94.36.900 are handled in the same manner as other violations.

2. In situations similar to the open carry situation, potential violation present, but where more intensive investigation or surveillance is necessary to make that determination, the incident is to be documented for follow-up, without 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 White has an agenda that deals with the peaceful open carrying of a weapon in a holster. He says that while doing research for a new information website, he was contacted by a number of RPO 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 arrested and charged with 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. Open carry is a defense to other prohibited places or carrying a weapon by most convicted felons or anyone convicted of a domestic violence.

2. Unlawful carrying or display, RCW 94.21.270 occurs when the person carried or displayed a weapon in a manner under circumstances at a time and place that makes it illegal.

3. Carrying without a Concealed Weapons Permit, RCW 94.21.050, 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. Citations 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. Of simply showed the rifle. ... purely because all the ‘victims’ were frightened does not mean that Craig necessarily committed assault. Unlawful display is defined by the BPD. Craig used the weapon, not by the victims’ responses.

State v. Craig, 2004

2. The court also found as the officer testified that Crabb had waved the tar as he passed him in the road. This was manifesting an intent to intimidate or warrant alarm for the safety of another.

State v. Crabb, 2003

3. Intimate is defined very narrowly, “To make timid or fearful by overpowering fear; frighten; terrify” to compel action or inaction (as by threats). The standard of criminality is displaying a weapon in a manner circumstances manifesting an ‘intimate’ 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 others then gives the phrase a narrow and definite focus and saves it from vagueness.

State v. Maciolk, 1984

4. Furthermore, all weapons referenced in the statute must be displayed in a manner that is offensive for the safety of others. The use of the word ‘warrants’ implies that there must be an objective basis, evidence, 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.

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

Corporal Patricia Simonson
Personnel Services Unit
(253) 397-7000
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Deputy

Source: Federal Way city training bulletin dated 06-04-04, 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 illegal. 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 94.41.040). 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 RCW and be familiar with the details of each.

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

RCW 94.21.70

RCW 94.21.70 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 specific symptoms or circumstances that reasonably cause alarm to the public. In either case, open carry in Washington is presently legal, the articulation must include something beyond mere, open carry.

• 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 and draws his firearm on the premises and responds the dispute, having a pistol openly carried in an exposed holster.

(RCW 94.21.70 exclusionary clauses omitted)

The training bulletin goes on to mention a Federal Way city code prohibiting possession of a firearm in a vehicle. This restriction may be unenforceable due to RCW 94.21.290 (State Preemption). Please consult a lawyer if you have a question about this.

Last updated 11/2007 by John Hardin <hardin@timpson.org>
Original available at:
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See the Washington State RCW website for the complete text of the relevant laws:
http://apps.leg.wa.gov/rcw/