

## **Open Carry in Pennsylvania - A Guidance Document for Local Law Enforcement**

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### **What is the legal basis for Open Carry in Pennsylvania?**

“Open Carry” is a term referring to the right of law abiding citizens 18 or older to display their firearm in public spaces without the need for a permit. The legal basis for this right can be found in the 2<sup>nd</sup> Amendment of the US Constitution. This federal right has been further defined by the Pennsylvania Uniform Firearms Act of 1995 which places restrictions on firearms owned by citizens of the Commonwealth.

### **What weapons are eligible for Open Carry?**

§ 6102. Definitions.

...*"Firearm."* --Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

§ 6106.1. Carrying loaded weapons other than firearms.

(a) *General rule.* --Except as provided in Title 34 (relating to game), no person shall carry a loaded pistol, revolver, shotgun or rifle, other than a firearm as defined in section 6102 (relating to definitions), in any vehicle. The provisions of this section shall not apply to persons excepted from the requirement of a license to carry firearms under section 6106(b)(1), (2), (5) or (6) (relating to firearms not to be carried without a license) nor shall the provisions of this section be construed to permit persons to carry firearms in a vehicle where such conduct is prohibited by section 6106.

(b) *Penalty.* --A person who violates the provisions of this section commits a summary offense.

### **When is Open Carry prohibited by law?**

Open carry by law-abiding citizens is prohibited under the following circumstances:

- Within the city limits of Philadelphia
- In any school

- In any courthouse
- In any federal facility
- In any state park
- In any adult and juvenile detention facilities
- In a motor vehicle (car/truck/boat/airplane?)
- (Whether worn by the driver or the passenger, openly displayed firearms must be removed prior to entering any vehicle and stored unloaded in the trunk of the vehicle).
- In a private business where that private business forbids it

Note: Prohibition of Open Carry must be communicated by the establishment verbally or via posted signage, before an individual may be considered a defiant trespasser.

**Under what circumstances may individuals carry a concealed weapon without a permit or openly carry a weapon in an otherwise prohibited location?**

Entities exempt from the firearm licensing requirements can be found in 18 Pa. C.S. § 6106(2)(b) and are summarized below:

- 1) Constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.
- 2) Members of the army, navy or marine corps of the United States or of the National Guard or organized reserves when on duty.
- 3) The regularly enrolled members of any organization duly organized to purchase or receive such weapons from the United States or from this Commonwealth.
- 4) Any persons engaged in target shooting with rifle, pistol, or revolver, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the firearm is not loaded.
- 5) Officers or employees of the United States duly authorized to carry a concealed firearm.
- 6) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property in the discharge of such duties. (Individuals carrying a firearm as an incidence of their employment are required to be certified through the Lethal Weapons Training Act requirements set forth in 22 P.S. § 44(b).
- 7) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person, having in his possession, using or carrying a firearm in the usual or ordinary course of such business.
- 8) Any person while carrying a firearm which is not loaded and is in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair, sale or appraisal or back to his home or place of business, or in moving from one place of abode or business to another or from his home to a vacation or recreational home or dwelling or back, or to recover stolen property under section 6111.1(b)(4) (relating to Pennsylvania State Police) or to a place of instruction intended to teach the safe handling, use or maintenance of firearms, or back to a location to which the person has been directed to relinquish firearms under 23 Pa.C.S. § 6108 (relating to relief) or back upon return of the relinquished firearm or to a licensed dealer's place of business for relinquishment pursuant to 23 Pa.C.S. § 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or back upon return of the relinquished firearm or to a location for safekeeping pursuant to 23 Pa.C.S. § 6108.3 (relating to relinquishment to third party for safekeeping) or back upon return of the relinquished firearm.
- 9) Persons licensed to hunt, take furbearers or fish in this Commonwealth, if such persons are actually hunting, taking furbearers or fishing or are going to the places where they desire to hunt, take furbearers or fish or returning from such places.

10) Persons training dogs, if such persons are actually training dogs during the regular training season.

11) Any person while carrying a firearm in any vehicle, which person possesses a valid and lawfully issued license for that firearm which has been issued under the laws of the United States or any other state.

12) A person who has a lawfully issued license to carry a firearm pursuant to section 6109 (relating to licenses) and that said license expired within six months prior to the date of arrest and that the individual is otherwise eligible for renewal of the license.

13) Any person who is otherwise eligible to possess a firearm under this chapter and who is operating a motor vehicle which is registered in the person's name or the name of a spouse or parent and which contains a firearm for which a valid license has been issued pursuant to section 6109 to the spouse or parent owning the firearm.

14) A person lawfully engaged in the interstate transportation of a firearm as defined under 18 U.S.C. § 921(a)(3) (relating to definitions) in compliance with 18 U.S.C. § 926A (relating to interstate transportation of firearms).

15) Any person who possesses a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state, regardless of whether a reciprocity agreement exists between the Commonwealth and the state under section 6109(k), provided:

(i) The state provides a reciprocal privilege for individuals licensed to carry firearms under section 6109.

(ii) The Attorney General has determined that the firearm laws of the state are similar to the firearm laws of this Commonwealth.

### **How should law enforcement conduct themselves upon encountering an Open Carrier?**

- Regardless of your opinion on open carry, recognize that it is a constitutional citizen right.
- Law enforcement officers remain permitted to engage in a mere encounter with someone who is open carrying. If they choose not to speak to you, and you have no articulatable reasonable suspicion of a crime, you do not have a reason to detain them further. Give them a nod and wish them a good day.
- Recognize that the open carrier may be an activist looking to entrap you into a constitutional confrontation. Don't take the bait! Keep your views on open carry to yourself. Otherwise, you are inviting an escalation, and doing so unnecessarily. On the other side of the coin, beyond the decorum associated and expected of a professional police officer, you are not obligated to listen to a speech from an open carry advocate, or to answer a pre-planned series of questions on your understanding of the law. Again, absent any aggravating circumstances (e.g., terroristic threats, being spit upon, being pushed, etc.) give them a nod and wish them a good day.
- If you are called to a business establishment about a patron who is open carrying, inquire first as to whether their policy is to not allow firearms inside. If there is no policy, no action is required on your part. If there is a policy, make sure you identify the manager or owner who said so (it does NOT have to be a written policy), and ask if they have informed the patron. If they have not, you can feel free to be the one to do so. Again, absent some reasonable suspicion of a crime, your job will be to tell the patron that the store prohibits firearms, and they will have to leave. If they refuse to do so, it becomes a defiant trespass offense. Even so, a fair amount of common sense and discretion on your part will be expected.

## **Are there any other considerations with respect to Open Carry?**

- The legal open carrying of a firearm is NOT, by itself, a terroristic threat.
- The case law in Pennsylvania does not support drawing your weapon on someone who is open carrying if they are not committing other offenses.
- Carrying a concealed firearm still requires a permit. Note: Claiming that their shirt blew over their weapon making it momentarily concealed is not in and of itself probable cause to affect an arrest.
- Carrying a firearm in a vehicle requires a permit, no matter where you are, subject to the exceptions mentioned earlier (to and from the range, unloaded; etc.).
- Great deference should always be given to the men and women who serve in the military. However, a military exception for firearms only applies while carried as part of their military duties.
- Open carrying in an establishment that sells alcohol is not, in and of itself, a violation of the law.
- Remember, disorderly conduct is not your friend! Charging DC because an open carrier refuses to engage in a discussion of the 2<sup>nd</sup> Amendment with you is a lawsuit waiting to happen.

## **Any good websites where I can get more information on Open Carry?**

There is some good information on open carry, including copies of relevant sections of the law, at [www.paopencarry.org](http://www.paopencarry.org). The site's author, however, is not 100% accurate on the law. Specifically, the Ortiz case says that state law takes precedence over local law on open carry, and should not be read as any more expansive than that. Similarly, the Hawkins case says that an anonymous description alone is not sufficient reasonable suspicion for a Terry stop, not that open carry is ok. Despite these exceptions, the site provides some good information for LEO's and non-LEO's alike.

## **Whom should I talk to if I have additional question regarding Open Carry?**

Contact the District Attorney, your Solicitor, or other legal counsel.

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