



GENERAL INFORMATION BULLETIN

GIB 09-097

Notices in this GIB:

Notice 09-202: Response Of Deputies To "Open Carry"

Notice 09-202: RESPONSE OF DEPUTIES TO "OPEN CARRY"

Washington is an "Open Carry" state. That means a person may openly carry a firearm (pistol, rifle or shotgun) in public without a concealed pistol license.

Of course, as with any other "right" there are exceptions. A firearm may not be taken into a courtroom, jail, school, bar, or parts of airports, for example.

In addition, there may be limits as to age, felon, DV conviction, protection order, or specific court order.

Lately, "open carry" advocates and organizations have been testing law enforcement response to persons carrying weapons, including bringing an open carry firearm into the King County Courthouse. Some of this testing seems to have been done in a manner to provoke an inappropriate response from the officer or deputy.

Therefore, if sent to a call of a person openly displaying a firearm in a public place, please be aware of the following statutes and court cases:

RCW 9.41.270 provides that it is unlawful for a person to carry, exhibit, display, or draw any firearm in a manner, under circumstances, and at a time and place that either manifests *intent to intimidate* another or *that warrants alarm for the safety of other persons*. A violation is a gross misdemeanor.

This statute is very fact-specific, but in general, **merely walking around in public with the gun properly secured in an exposed holster does not constitute a violation.**

A court will consider "time, place, manner" factors, such as the time of day, whether the area is residential, urban, or countryside, the manner in which the weapon is being carried, the size and type of weapon, whether the clip is visibly attached, high-crime area, whether the person waved it around, tossed it when stopped, etc.

In *State v. Spencer*, the court held upheld a conviction for RCW 9.41.270 when the person carried an AK-47 with the clip attached, on the person's shoulder, at 10 pm, while walking briskly through a residential area, with his head down and avoiding eye contact.

In *State v. Mitchell*, officers on night patrol saw the defendant and a companion walking down the street in a residential area in Seattle. The defendant was carrying a semi-automatic handgun and as officers passed, they observed him tuck it into his waistband. When the officers stopped them, the defendant tossed the gun into the bushes. The court held that openly carrying such a weapon at night in an urban residential area was sufficient to warrant reasonable suspicion that the crime of unlawful display of a firearm was being committed.

In *State v. Craig* the court held that an eye witness testimony that a person driving by in a car pointing a gun at the witness was sufficient to support a finding that officers had probable cause to believe that the person committed the crime of unlawfully displaying weapon.

What might be acceptable behavior on a country road in hunting season would be cause for alarm in an urban residential neighborhood in a high crime area at night. Nonetheless, again typically carrying a properly holstered gun openly will not pass sufficient muster for a violation.

RCW 9.41.230 prohibits a person from aiming any firearm, whether loaded or not, at or towards a human being. It also prohibits willfully discharging a firearm in a public place or in any place where a person might be endangered. Public places do not include locations where it discharging firearms is authorized.

RCW 9.41.250 prohibits "furtively carrying with intent to conceal any dagger, dirk, pistol, or other dangerous weapon."

While "open carry" is legal in public, private property is a different matter!

Private property owners may limit individual's right to carry on their property. This includes quasi-public property such as shopping malls, restaurants, and retail stores.

The notice may take two forms. First, if a property is clearly marked with very visible signs at all entrances that say "No Firearms Allowed", then it is illegal to bring a firearm onto the property, with or without a CPL. The crime would be Trespass.

If there is no signage and the person with the weapon is asked to leave by the owner or agent and the person refuses, you can also use the Trespass statute.

That being said, deputies should use discretion when deciding to warn, cite and release, or book.

For example, there have been instances when “open carry” advocates have shown up in groups at a mall or other entity with some of their members openly carrying firearms. Those members may appear with their guns properly holstered and with family members (including children), and then shop and perhaps eat.

Should a question arise as to the legality of actions taken or the appropriate enforcement action, please consult with your supervisor.

Finally, remember state law controls this area of the law and preempts local jurisdictions from passing more restrictive laws on carrying firearms.

Thank you.

Sue Rahr, Sheriff

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