

TOPIC: Open Carry of a Firearm in Pennsylvania

PURPOSE: To provide guidance in calls for services that involve a person who is open carrying a pistol in a holster.

DATE: 7/1/07

Pennsylvania is an “open carry” state for firearms. That means that there is a presumption that carrying a loaded handgun in an exposed holster, for instance, is legal unless specifically *prohibited by statute*. Open carry of handgun while on foot does not require a license unless such person is in a City of First Class (18 Pa C.S. § 6108) or in areas of declared emergency. On the other hand, *concealed* carry of a handgun out in public, or any carrying of a handgun in any vehicle, is generally illegal without governmental authority (such as a license to carry firearms or a police commission, see RCW 18 Pa C.S. s. 6106(b) and 6109(a) for more information on those exceptions).

It is a felony crime to possess or carry any firearm (concealed or in the open) by convicted felons and convicted domestic violence offenders (see 18 Pa C.S. § 6105) and minors (see 18 Pa C.S. §6110.1) In addition to that, below are the portions of the selected laws that specifically *illegalize* the carrying of firearms. Underlines are added for emphasis. In order to save space, several large portions of the laws were not included; therefore, officers should refer to the complete Code and be familiar with the details of each. All sections are in chapter 18 unless otherwise noted.

Unless there is an actual possibility of threat against an officer or others (something besides the open carrying), taking someone's firearm and handling it should be taken only under dire circumstances. Due to unfamiliarity with the differing forms of actions on firearms, there is a possibility of accidental discharge.

Unless there is a direct danger or threat, the appropriate reaction to open carry in vehicles, in a declared emergency, or in a city of First Class is to ask for a carry license. Any form of felony stop procedure for open carry by itself is unwarranted. - <http://tinyurl.com/346wwr> Commonwealth v. Hawkins (1997)

Officers should not editorialize against open carry by private citizens in any way shape or form, or in any way suggest that a person should conceal their firearm. Suggestions and editorializing against lawful open carry may be interpreted as “commands” by civilians who are lawfully open carrying and may subject officers to complaints filed against them, as well as possible legal action against themselves and the department. The significance of this is borne in §5301.

§ 5301. Official oppression.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he: subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

ADVISORY NOTE: This advisory in its entirety serves as notice that open carry is lawful in Pennsylvania, and it is a right that is protected by state law, and by Article 1, Section 21 of the state constitution. Unless there is actual illegal conduct being committed, mistreatment by law enforcement officers of those who are lawfully open carrying may be subject to second degree misdemeanor charges. If you have a personal opinion against open carry by private civilians, there is no reason to share that opinion or belief with such a person that you are making contact with, as it is unprofessional. If a person is open carrying on foot, and unless such person is known to you for certain to not be allowed to possess firearms per §6105 or §6110.1, or is violating §912/§913, there is no reason for anything other than voluntary contact with said person, and even then must exercise their judgement to make said contact. If a person is doing so in a vehicle, or another time or place that requires a license or a statutory exemption, contact may be made specifically to ascertain if such person is exempted per §6106(b) or §6109. If they are determined to be licensed or exempted, the officer must allow the person to continue without delay. See: Commonwealth v. Hawkins.

§ 6106. Firearms not to be carried without a license.

(a) Offense defined.--Any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

(b) Exceptions.--The provisions of subsection (a) shall not apply to:

(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 or jurisdiction 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.

ADVISORY NOTE: This particular section lays out the exceptions besides having a license under §6109. Under subsection (b)(11), A person who has a license to carry from any state may carry, whether openly or concealed, a handgun in his or her vehicle. Under subsection (b)(15), a person who has a license to carry a firearm from another state which the Attorney General has determined that such other state recognizes licenses under §6109 and determined to have similar laws to the Commonwealth's, may carry a firearm concealed on his person on foot. These laws do not require that a person not be a Pennsylvania resident. Reciprocity information may be found here:

<http://www.attorneygeneral.gov/crime.aspx?id=184>

§ 6107. Prohibited conduct during emergency.

No person shall carry a firearm, rifle or shotgun upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

(1) Actively engaged in a defense of that person's life or property from peril or threat.

(2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

ADVISORY NOTE: Though open carry of a firearm on foot is not generally required to be licensed (unless in a city of First Class), during declared emergencies it is required that you have a license under §6109 or exempted under §6106(b).

§6108. Carrying firearms on public streets or public property in Philadelphia.

No person shall carry a firearm, rifle or shotgun at any time upon the public streets or upon any public property in a city of the first class unless:

1. such person is licensed to carry a firearm; or

2. such person is exempt from licensing under section 6106(b) of this title (relating to firearms not to be carried without a license).

ADVISORY NOTE: Like in a place of declared emergency under §6107, in a City of First Class, a license under §6109 or exception under §6106(b) is required to be able to carry openly on foot.

§6109. Licenses

(a) Purpose of license.--A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle throughout this Commonwealth.

ADVISORY NOTE: As stated, the purpose of a license to carry firearms is to allow a person to carry concealed on or about one's person, or in a vehicle throughout the commonwealth. A license under §6109 functions as an exception to §6106(a) in a similar fashion to the exceptions listed under §6106(b). There is no duty or requirement for one to conceal one's handgun, as Pennsylvania law has no law against open carry on foot, except where a license or exemption is required under §6107 (Declared Emergencies) and §6108 (Cities of First Class).

§ 6120. Limitation on the regulation of firearms and ammunition.

(a) General rule.--No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

"Firearms."

This term shall have the meaning given to it in section 5515 (relating to prohibiting of paramilitary training) but shall not include air rifles as that term is defined in section 6304 (relating to sale and use of air rifles).

"Political subdivision."

The term shall include any home rule charter municipality, county, city, borough, incorporated town, township or school district.

ADVISORY NOTE: Under no circumstances should any local laws or rules be enforced. All enforcement actions must be based on state law. Controlling case law: <http://tinyurl.com/2wtovz>. Commonwealth v. Ortiz (1996), decided by the Pennsylvania Supreme Court.

§ 912. Possession of weapon on school property.

(a) Definition.--Notwithstanding the definition of "weapon" in section 907 (relating to possessing instruments of crime), "weapon" for purposes of this section shall include but not be limited to any knife, cutting instrument, cutting tool, nun-chuck stick, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.

(b) Offense defined.--A person commits a misdemeanor of the first degree if he possesses a weapon in the buildings of, on the grounds of, or in any conveyance providing transportation to or from any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school.

(c) Defense.--It shall be a defense that the weapon is possessed and used in conjunction with a lawful supervised school activity or course or is possessed for other lawful purpose.

ADIVSORY NOTE: At the moment, there has been thus far no court cases interpreting "possessed for a lawful purpose" insofar as applied to those licensed under §6109, exempted under §6106(b), or open carrying on foot without the benefit of being licensed or exempted on school grounds. For the moment, until there is a controlling case law on whether or not being so licensed, exempted, or lawful is considered an "other lawful purpose", before you file a criminal complaint based only on this provision of the law, be sure you can commit yourself to a long drawn out legal process where you will be personally called upon to repeatedly defend your interpretation of what was specifically unlawful and why. it may be helpful for you to maintain a collection your department's training materials and policies which cover this. you can expect various levels of your department's management may not agree with your interpretation of unlawful use, be ready to counter their testimony

§ 913. Possession of firearm or other dangerous weapon in court facility.

(a) Offense defined.--A person commits an offense if he:

(1). knowingly possesses a firearm or other dangerous weapon in a court facility or knowingly causes a firearm or other dangerous weapon to be present in a court facility; or

(b) Grading.--

(1). Except as otherwise provided in paragraph (3), an offense under subsection (a)(1) is a misdemeanor of the third degree.

(2). An offense under subsection (a)(2) is a misdemeanor of the first degree.

(3). An offense under subsection (a)(1) is a summary offense if the person was carrying a firearm under section 6106(b) (relating to firearms not to be carried without a license) or 6109 (relating to licenses) and failed to check the firearm under subsection (e) prior to entering the court facility.

(d) Posting of notice.--Notice of the provisions of subsections (a) and (e) shall be posted conspicuously at each public entrance to each courthouse or other building containing a court facility and each court facility, and no person shall be convicted of an offense under subsection (a)(1) with respect to a court facility if the notice was not so posted at each public entrance to the courthouse or other building containing a court facility and at the court facility unless the person had actual notice of the provisions of subsection (a).

(e) Facilities for checking firearms or other dangerous weapons.--Each county shall make available at or within the building containing the court facility by July 1, 2002, lockers or similar facilities at no charge or cost for the temporary checking of firearms by persons carrying firearms under section 6106(b) or 6109 or for the checking of other dangerous weapons that are not otherwise prohibited by law. Any individual checking a firearm, dangerous weapon or an item deemed to be a dangerous weapon at a court facility must be issued a receipt. Notice of the location of the facility shall be posted as required under subsection (d).

ADVISORY NOTE: Under this section, it is generally illegal for someone to carry a firearm in a court facility. There are several exceptions. First, per subsection (d), there must be a posting of the prohibition at each public entrance unless the person is aware of subsection (a). There must also be storage facilities that are required per subsection (e), available to persons who have a license under §6109 or exempted under §6106(b). If there are no check in facilities, a person who attempts to check in their firearm and are refused to do so (even though subsection (e) requires the accommodation) has not committed a crime, as person who attempted to check in their firearm did not "fail" to check it in due to lack of compliance by the court facility.

§ 5503. Disorderly conduct.

(a) Offense defined.--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

1. engages in fighting or threatening, or in violent or tumultuous behavior;
2. makes unreasonable noise;
3. uses obscene language, or makes an obscene gesture; or
4. creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

ADVISORY NOTE: Though this section does not deal with firearms, due to the nature of this code, this law has been cited by officers to suppress or discourage lawful open carry. Since a person who is not licensed per §6109 or exempted by §6106(b) MUST open carry their firearms on foot in order to avoid criminal charge, nor is there any duty for anyone licensed to conceal their handgun, open carry is not disorderly conduct. The open carrying of firearms is not by itself threatening, nor does it cause a hazardous or physically offensive condition. There are also two cases that that specifically state that a person may carry a firearm openly: Commonwealth v. Ortiz and Commonwealth v. Hawkins.

§ 2706. Terroristic threats.

(a) Offense defined. A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to: commit any crime of violence with intent to terrorize another; cause evacuation of a building, place of assembly, or facility of public transportation; or otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

(e) Definition.--As used in this section, the term "communicates" means conveys in person or by written or electronic means, including telephone, electronic mail, Internet, facsimile, telex and similar transmissions.

ADVISORY NOTE: As with disorderly conduct, this code section has been used to suppress or discourage lawful open carry. "Convey" means to communicate, either orally or by written or electronic means. Because the open carry of firearms is not a communication as defined by this section, it cannot be terroristic threatening.