



TRAINING BULLETIN

No. 08-007

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This information is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

OPEN CARRY OF A FIREARM IN WASHINGTON

Due to the recent U.S. Supreme Court Decision, District of Columbia v Heller, regarding the 2nd Amendment right to Bear Arms, there may be questions that arise when officers respond to calls of “A person openly displaying a firearm.” We have attached a summary of the Heller decision from Aug. LED, along with the applicable Laws for the State of Washington and City of Spokane (pages 4-9).

In the State of Washington it is not illegal to merely “open carry” a firearm in public, provided the firearm is holstered or somehow affixed to an individual’s person and not in their hand available, but not threatening to others.

ELEMENTS OF UNLAWFUL BEHAVIOR

The open carry of any firearm in one’s hand (holstered or not) creates a safety issue in an urban environment and will reasonably and immediately cause alarm and fear with most persons who are nearby. Because of the fear that a drawn firearm or a firearm in-hand creates in public spaces in the City of Spokane, a firearm in-hand should be analyzed under the “unlawful display of a weapon” RCW 9.41.270 or SMC 10.11.048 A, not as merely an “open carry” incident.

RESPONDING OFFICERS:

Officers who investigate the “unlawful display” of a weapon should:

- To support the inquiry, make sure to document the ID of the complainant in order to establish the reliability of the report of a weapon being displayed.
- Secure the weapon after contacting the subject, if necessary, during the active investigation/detention and place into evidence if an arrest is made.
- Consider and document any victim(s) who are reasonably fearful of the conduct of the suspect and/or the circumstances that warrant concern for the safety of others.

- Document the circumstances and duration of the display of the weapon and the demeanor of the suspect.
- If this is an on-view situation, document your own safety concerns and fears as well as the concerns of others and any threats made.
- If the unlawful display of a weapon is not on-view, a warrantless arrest can be made only if there is a specific, articulable threat (verbal or a specific act) made by a third party.
- Consider and document any claim of self-defense by the person with the firearm to determine whether it is reasonable or not under the circumstances.

NOTE: Citizens have recently contacted the City to argue that they can carry guns in city parks, because Washington Law does not automatically ban guns carried under “circumstances that warrant concern for the safety of others”. Regardless of the carrier’s lack of intent to intimidate others, the carrier can be ordered to immediately remove the gun from the park and/or face criminal charges, if the circumstances warrant. R.C.W.9.41.270 and SMC 10.11.048A.

CPL ISSUES:

Under state law pistols carried concealed in public places generally require a concealed pistol license (CPL). The same is true for loaded pistols carried or placed in vehicles.

An inquiry as to whether the subject has a CPL, permit is warranted if the suspect, in response to the officer’s arrival, conceals the firearm. If they have a valid CPL and no other crime has been committed and the display is over with no overt threat, checking the CPL is all that is needed. A report should be written documenting the CPL information.

TRESSPASS:

Under existing state statutes and a recent decision made by the WA State Supreme Court, managers of public and private buildings, as well as entrances and walkways immediately associated with these buildings, may adopt rules and enforce policies restricting the “open carry” of firearms. The enforcement of these rules/policies is civil trespass and potentially criminal trespass, providing the rule is posted or announced and the person who attempts “open carry” violates established rules by either refusing to leave or refusing to comply with the rule for entry.

These premises rules should be enforced: first by the building management, if it is safe to do so. If the person refuses to leave/comply or returns with a weapon a call to the police by the management could result in an arrest. At a minimum a police report should be taken and screened if the person is detained.

COMMUNICATIONS:

When a call of a person with a gun comes in to 911, the call taker should establish the specific circumstances being reported, particularly the behavior of the person with the gun:

Does it appear to be an open carry incident or an incident where the individual is threatening to use the weapon? Patrol officers are being instructed to work with

dispatch to determine/understand exactly what callers are reporting. Obviously, officers will continue to use caution when responding to all weapons calls, but specific details concerning the situation will assist them as they plan their approach and tactics, and provide specific and articulable facts to support an investigative Terry stop. Additionally, patrol sergeants are being instructed to respond on all open carry incidents.

Dispatch should, therefore, attempt to keep the caller on the line in order to receive updates on the incident being reported, and a supervisor should be dispatched to potential open carry incidents.

Officers do have some options on how to handle an open carry incident depending on the circumstances, e.g.. trespass, assault, intimidation, and unlawful display of a weapon. It is dispatch's responsibility to provide the officers in the field with the detailed information, including documentation of ID of the caller so that they can be contacted if possible, which will assist officers in their analysis of the call.

PLEASE NOTE that the City of Spokane is currently reviewing the ordinances that pertain to firearms and City Parks. When those changes are complete a new Training Bulletin will be forthcoming.

LED BRIEF NOTE FROM THE UNITED STATES SUPREME COURT

SECOND AMENDMENT OF U.S. CONSTITUTION APPLIED TO STRIKE DOWN BROAD DISTRICT OF COLUMBIA BAN ON HANDGUN POSSESSION – In District of Columbia v. Heller, 128 S.Ct. 2783 (2008) (decision filed June 26, 2008), the U.S. Supreme Court rules 5-4 that a broad ban on possession of handguns and on possession of immediately operable firearms in the home violates the Second Amendment of the U.S. constitution. This is the first time that the U.S. Supreme Court has held that the Second Amendment grants an individual right to keep and bear arms. The majority opinion in Heller appears to leave intact reasonable legislative restrictions on firearms, such as restrictions on 1) sensitive places of possession, such as schools and government buildings; 2) possession by felons and the mentally ill; 3) types of firearms that may be possessed; 4) carrying firearms concealed; and 5) conditions and qualifications on commercial sale. But exactly what is “reasonable” in these and other regards is left unclear, and future litigation will be required to sort this out.

Result: Affirmance of decision of District of Columbia Circuit Court decision granting injunctive relief to Dick Anthony Heller against enforcement of certain elements of the District of Columbia’s law.

Spokane Municipal Code

[Title 10](#) Regulation of Activities

Division I: Penal Code

[Chapter 10.11](#) Offenses Against the Person

[Section 10.11.042](#) Carrying Firearms

- A. Except in the person’s place of abode or fixed place of business, a person shall not carry a pistol concealed on his person without a license to carry a concealed pistol.
 1. Every licensee shall have his concealed pistol license in his immediate possession at all times that he is required by this section or RCW 9.41.050 to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (A)(1) shall be a class 1 civil infraction under [SMC 1.05.210](#) and shall be punished accordingly pursuant to [chapter 1.05 SMC](#) and the infraction rules for courts of limited jurisdiction.
- B. A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and the:
 1. pistol is on the licensee’s person,
 2. licensee is within the vehicle at all times that the pistol is there, or
 3. licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

- C. A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.
- D. Violation of any of the prohibitions of subsections (B) and (C) of this section is a misdemeanor.
- E. Nothing in this section permits the possession of firearms illegal to possess under state or federal law.
- F. The provisions of this section do not apply to:
 - 1. marshals, sheriffs, prison or jail wardens or their deputies, or other law enforcement officers of this state or another state;
 - 2. members of the armed forces of the United States or of the national guard or organized reserves, when on duty;
 - 3. officers or employees of the United States duly authorized to carry a concealed pistol;
 - 4. any person engaged in the business of manufacturing, repairing or dealing in firearms, or the agent or representative of the person, if possessing, using or carrying a pistol in the usual or ordinary course of the business;
 - 5. regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;
 - 6. regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;
 - 7. regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;
 - 8. any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;
 - 9. any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or
 - 10. law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has:
 - a. obtained documentation from a law enforcement agency within Washington State from which he retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and
 - b. not been convicted of a crime making him ineligible for a concealed pistol license.

Date Passed: Monday, June 4, 2007

Effective Date: Wednesday, July 11, 2007

Recodification ORD C34041 Section 1

[Chapter 10.11](#) Offenses Against the Person

[Section 10.11.044](#) Aiming or Discharging Firearms, Dangerous Weapons

- A. For conduct not amounting to a violation of chapter 9A.36 RCW, any person who:
1. aims any firearm, whether loaded or not, at or towards any human being;
 2. willfully discharges any firearm, air gun or other weapon, or throws any deadly missile in a public place, or in any place where any person might be endangered thereby. A public place shall not include any location at which firearms are authorized to be lawfully discharged; or
 3. except as provided in RCW 9.41.185, sets a so-called trap, spring pistol, rifle or other dangerous weapon;
- although no injury results, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.
- B. If an injury results from a violation of subsection (A) of this section, the person violating subsection (A) of this section shall be subject to the applicable provisions of chapter 9A.32 RCW and chapter 9A.36 RCW.

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Recodification ORD C34041 Section 1

[Chapter 10.11](#) Offenses Against the Person

[Section 10.11.046](#) Dangerous Weapons – Penalty

Every person who:

- A. manufactures, sells or disposes of or possesses any instrument or weapon of the kind usually known as slungshot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward or centrifugal thrust or movement;

- B. furtively carries with intent to conceal any dagger, dirk, pistol or other dangerous weapon; or
- C. uses any contrivance or device for suppressing the noise of any firearm;

is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

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Recodification ORD C34041 Section 1

[Chapter 10.11](#) Offenses Against the Person

[Section 10.11.048](#) Weapons Apparently Capable of Producing Bodily Harm – Unlawful Carrying or Handling – Penalty – Exceptions

- A. 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.
- B. Any person violating the provisions of subsection (A) of this section shall be guilty of a gross misdemeanor.
 - 1. If any person is convicted of a violation of subsection (A) of this section, the person shall lose his concealed pistol license, if any.
 - 2. The court shall send notice of the revocation to the department of licensing, and the city, town or county which issued the license.
- C. Subsection (A) of this section shall not apply to or affect the following:
 - 1. Any act committed by a person while in his place of abode or fixed place of business.
 - 2. Any person who by virtue of his 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.
 - 3. Any person acting for the purpose of protecting himself 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.
 - 4. Any person making or assisting in making a lawful arrest for the commission of a felony; or
 - 5. Any person engaged in military activities sponsored by the federal or state governments.

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Recodification ORD C34041 Section 1

RCW 9.41.040

UNLAWFUL POSSESSION OF FIREARMS — OWNERSHIP, POSSESSION BY CERTAIN PERSONS — PENALTIES.

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter [9A.20](#) RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW [26.50.060](#), [26.50.070](#), [26.50.130](#), or [10.99.040](#));

(ii) After having previously been involuntarily committed for mental health treatment under RCW [71.05.320](#), [*71.34.090](#), chapter [10.77](#) RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW [9.41.047](#);

(iii) If the person is under eighteen years of age, except as provided in RCW [9.41.042](#); and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW [9.41.010](#).

RCW 9.41.050 ***Carrying firearms.***

(1) (a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class 1 civil infraction under chapter [7.80](#) RCW and shall be punished accordingly pursuant to chapter [7.80](#) RCW and the infraction rules for courts of limited jurisdiction.

(2) (a) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) The pistol is on the licensee's person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(3) (a) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and

concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(4) Nothing in this section permits the possession of firearms illegal to possess under state or federal law.

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.

RCW 9.41.280

POSSESSING DANGEROUS WEAPONS ON SCHOOL FACILITIES — PENALTY — EXCEPTIONS.

(1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm;

RCW 9.41.300

WEAPONS PROHIBITED IN CERTAIN PLACES — LOCAL LAWS AND ORDINANCES — EXCEPTIONS — PENALTY.

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

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter [13.32A](#) or [13.34](#) RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW [70.74.010](#), or any weapon of the kind usually known as slung shot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public;

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW [9.41.070](#) or exempt from the licensing requirement by RCW [9.41.060](#); or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation

of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter [10.14](#), [10.99](#), or [26.50](#) RCW, or an action under Title [26](#) RCW where any party has alleged the existence of domestic violence as defined in RCW [26.50.010](#); or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW [9.41.070](#) who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

(8) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

(9) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

(10) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

(11) "Weapon" as used in this section means any firearm, explosive as defined in RCW [70.74.010](#), or instrument or weapon listed in RCW [9.41.250](#).