

IX. UNIFORM FIREARMS ACT UPDATE: "OPEN CARRY"



Question #1 - What is "open carry"?

Answer #1 - Open carry can be defined as carrying a legal firearm, loaded or unloaded, on your person unconcealed, with or without a valid and lawfully issued license to carry a firearm.

Question #2 - Is "open carry" legal in Pennsylvania?

Answer #2 - Yes, but with several exceptions: The Pennsylvania Uniform Firearms Act is silent on the specific issue of open carry. §6106 only prohibits carrying a

firearm in a vehicle or concealed on or about one's person, except in the person's place of abode or fixed place of business, without a license and when no exemption applies.

Carrying a firearm unconcealed on one's person does not violate §6106. However, a person who is engaging in "open carry" of a firearm violates §6106 when that person enters a vehicle with the gun in his possession and the person does not possess a valid and lawfully issued license to carry a firearm and is not exempt from licensing. Also, a firearm cannot be open carried in an area where firearm possession is generally restricted (i.e. courts, schools, state parks or where restricted federally).

The exceptions to open carry are as follows:

There is a restriction on open carry during a declared state of emergency. In this situation the person must be actively engaging in a defense of that person's life or property from peril or threat and possesses a valid and lawfully issued license to carry a firearm or is exempt from licensing. (§6107).

There is a restriction on open carry in a City of the First Class (Philadelphia). (§6108).

PENNSYLVANIA CRIMES CODE - SELECTED SECTIONS

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

(1) Except as provided in paragraph (2), 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.

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Instructor Note:

There is a hyperlink to the District of Columbia et al. v. Heller, from Washington, D.C. in the event that you get questions from the class on this recent U.S. Supreme court case.

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Instructor Note:

General firearms restrictions under §912 and §913 will be covered later in this lesson plan.

Instructor Note:

Philadelphia is the only City of the First Class in Pennsylvania.

(2) A person who is otherwise eligible to possess a valid license under this chapter but 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 and has not committed any other criminal violation commits a misdemeanor of the first degree.

LICENSING EXEMPTIONS UNDER §6106

(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, marine corps, air force or coast guard 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 firearms from the United States or from this Commonwealth.

(4) Any persons engaged in target shooting with a firearm, 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.

(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 or 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.

Instructor Note: Because of the specific language used in §6106, carrying a firearm concealed or in a vehicle requires a license or an exemption from licensing, except in a person's home or fixed place of business. In the absence of an express prohibition in §6106, the law presumes that unconcealed or open carry is lawful except to the degree regulated by §6107 and §6108.

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Instructor Note:

"LOADED." A firearm is loaded if the firing chamber, the nondetachable magazine or in the case of a revolver, any of the chambers of the cylinder contain ammunition capable of being fired. In the case of a firearm which utilizes a detachable magazine, the term shall mean a magazine suitable for use in said firearm which magazine contains such ammunition and has been inserted in the firearm or is in the same container or, where the container has multiple compartments, the same compartment thereof as the 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.

§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).

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Question #3- What can police legally do when they observe a person engaging in open carry?

Answer #3- In most cases, the police cannot engage the person in anything other than a mere encounter. Unless the person engaged in lawful open carry is in violation of a specific State or Federal firearm prohibition or is carrying in a restricted area (For example: prohibitions contained in §6105, possession by a minor §6110.1, possession on school property §912, possession in a court facility §913, carrying in Philadelphia §6108, carrying in a vehicle, carrying during a declared state of emergency §6107), the officer would not have specific reasonable suspicion of criminal activity merely based on observing a person engaged in open carry. Therefore, a stop and frisk or any other seizure would not be legally justified.

§ 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, nunchuck 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.

§ 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

(2) knowingly possesses a firearm or other dangerous weapon in a court facility with the intent that the firearm or other dangerous weapon be used in the commission of a crime or knowingly causes a firearm or other dangerous weapon to be present in a court facility with the intent that the firearm or other dangerous weapon be used in the commission of a crime.

(b) **GRADING.**-

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

Instructor Note:
See hyperlinks to:
§ 912 and § 913.

(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.

(c) EXCEPTIONS. - Subsection (a) shall not apply to:

(1) The lawful performance of official duties by an officer, agent or employee of the United States, the Commonwealth or a political subdivision who is authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of any violation of law.

(2) The lawful performance of official duties by a court official.

(3) The carrying of rifles and shotguns by instructors and participants in a course of instruction provided by the Pennsylvania Game Commission under 34 Pa.C.S. 2704 (relating to eligibility for license).

(4) Associations of veteran soldiers and their auxiliaries or members of organized armed forces of the United States or the Commonwealth, including reserve components, when engaged in the performance of ceremonial duties with county approval.

(5) The carrying of a dangerous weapon or firearm unloaded and in a secure wrapper by an attorney who seeks to employ the dangerous weapon or firearm as an exhibit or as a demonstration and who possesses written authorization from the court to bring the dangerous weapon or firearm into 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 a 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).

(f) DEFINITIONS.-As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"COURT FACILITY." The courtroom of a court of record; a courtroom of a community court; the courtroom of a magisterial district judge; a courtroom of the Philadelphia Municipal Court; a courtroom of the Pittsburgh Magistrates Court; a courtroom of the Traffic Court of Philadelphia; judge's chambers; witness rooms; jury deliberation rooms; attorney conference rooms; prisoner holding cells; offices of court clerks, the district attorney, the sheriff and probation and parole officers; and any adjoining corridors.

"DANGEROUS WEAPON." A bomb, grenade, blackjack, sandbag, metal knuckles, dagger, knife (the blade of which is exposed in an automatic way by switch, push-button, spring mechanism or otherwise) or other implement for the infliction of serious bodily injury which serves no common lawful purpose.

"FIREARM." Any weapon, including a starter gun, which will or is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas. The term does not include any device designed or used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition.

Act 1995-66 (S.B. 282), § 2, approved Nov. 22, 1995; Act 1995 Special Session-17 (H.B. 110), § 1, approved June 13, 1995, eff. in 120 days; Act 1999-59 (S.B. 167), § 1, approved Dec. 15, 1999, eff. in 60 days; Act 2004-207 (S.B. 904), § 2, approved Nov. 30, 2004, eff. in 60 days.

If an officer can develop reasonable suspicion that criminal activity is afoot, by a person engaged in open carry, then the temporary seizure of the person and confiscation of the firearm would be justified, because the person is known to be armed and dangerous based on the suspected criminal activity and visible possession of a firearm. A further frisk would also be warranted to ensure the person was not in possession of any other weapons. If the officer's investigatory detention leads to probable cause, then the person may be placed under arrest for the crime that has been committed. However, if the officer's suspicion is allayed then any seized firearms must be returned to the citizen and the citizen must be released from the investigatory detention. A firearm may be seized from a person who the officer knows to be prohibited from possessing a firearm under State or Federal law.

Officers should be aware that citizens may become alarmed or concerned when they witness persons engaged in open carry. This may be due in part to individual sensibilities regarding firearms and the fact that persons engaged in open carry are infrequently encountered in Pennsylvania. However, a citizen's alarm or concern does not alone negatively impact the rights of a person engaging in the lawful open carrying of a firearm. Officers receiving citizen reports of a "man with a gun" would be prudent to respond to determine the nature of the report. However, the rights of any person engaged in the lawful open carrying of a firearm must be carefully considered when interacting with such person. Persons engaged in the lawful open carrying of a firearm are not subject to seizure of their person or property based solely on the fact that they are engaging in open carry, nor may they

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be required to produce identification or other documents. A person who is engaging in open carry in Philadelphia or in an area of declared emergency may be required to produce a valid and lawfully issued license to carry a firearm or establish an exemption. Of course, a person engaged in the open carrying of a firearm may engage in violations of other laws or handle the firearm in an inappropriate manner which could constitute offenses such as: disorderly conduct, reckless endangerment, simple assault by physical menace, etc. However, merely engaging in the open carrying of a firearm would not necessarily constitute such an offense.

An officer who observes a person who is engaged in the open carrying of a firearm in the vicinity of a public event attended by the President or other persons under the protection of the Secret Service must consider whether any violation of Pennsylvania law is occurring. If there is not a clear violation of the law, it would be prudent to bring the presence of this person to the attention of the Secret Service who is empowered under various federal statutes to regulate the possession of firearms in the vicinity of persons under Secret Service protection.

X. Course Summary

Course Summary and Testing

- A. Conduct a Review Session
- B. Allow time for student questions
- C. Administer test in accordance with MPOETC MIST Testing procedures.

Testing shall be conducted outside the three instructional hours established for this course.

Thank the course participants for attending and for their attention during this MPOETC program.

Instructor Note:

When conducting a review, instructors are expected to teach to the instructional objectives, conduct a brief review of the major topic areas and re-emphasize the main ideas of the course.

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