



Open Carrying: Provocative Conduct, Dangerous Consequences

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Background

Americans have been shocked recently to see images of gun-toting individuals openly carrying firearms in public places like coffee shops, restaurants, and public parks, and at political rallies. Many of these individuals identify themselves as part of a growing “open carry movement,” a collection of grassroots groups nationwide whose confrontational style has drawn criticism even from the mainstream gun lobby.ⁱ

While most states have adopted licensing systems to regulate the concealed carrying of firearms, the recent surge in open carrying has exposed weak state laws around the country that permit this dangerous conduct. Only three states – Florida, Illinois, and Texas – and the District of Columbia prohibit the open carrying of handguns; another three, Florida, Massachusetts and Minnesota, prohibit the open carrying of long guns (rifles or shotguns). In a majority of states, it is legal for an individual to openly carry a loaded firearm in public without a permit.

The Dangers of Open Carrying

Open carry advocates seek to normalize the carrying of firearms in public places, and often use open carrying to protest what they see as unjust state firearms laws.ⁱⁱ While members of the open carry movement argue that they are just “exercising their rights,” the open carrying of firearms intimidates the public, wastes law enforcement resources, and creates opportunities for injury and death due to the accidental or intentional use of firearms.

Open carrying poses particular challenges for law enforcement officers who must respond to 911 calls from concerned citizens about people carrying guns in public. A press release issued by the San Mateo County, California, Sheriff’s Office described the significant challenges that open carrying creates:

Open carry advocates create a potentially very dangerous situation. When police are called to a “man with a gun” call they typically are responding to a situation about which they have few details other than that one or more people are present at a location and are armed. Officers may have no idea that these people are simply “exercising their rights.” Consequently, the law enforcement response is one of “hypervigilant urgency” in order to protect the public from an armed threat. Should the gun carrying person fail to comply with a law enforcement instruction or move in a way that could be construed as threatening, the police are forced to respond in kind for their own protection. It’s well and good in hindsight to say the gun carrier was simply “exercising their rights” but the result could be deadly. Simply put, it is not recommended to openly carry firearms.ⁱⁱⁱ

Claims that open carrying is needed for self-defense are belied by the available research. Even when a gun is used in self-defense, which is rare, research shows that it is no more likely to reduce a person's chance of being injured during a crime than various other forms of protective action.^{iv} One study suggests that carrying a firearm may actually increase a victim's risk of firearm injury during the commission of a crime.^v Instead of improving safety, open carrying needlessly increases the likelihood that everyday interpersonal conflicts will turn into deadly shootouts.

Moreover, studies show that much of what is claimed to be self-defense is actually criminal gun use. In one study, after individuals were asked to provide detailed descriptions of their alleged defensive gun use, a group of criminal court judges anonymously evaluated the responses. The judges concluded that at least half of the described uses were probably illegal.^{vi}

State laws that require openly carried firearms to remain unloaded do little to improve public safety. Although California law, for example, prohibits the carrying of a loaded firearm, it allows a person to carry an unloaded firearm and also possess ammunition on his or her person as long as the ammunition is not attached to the firearm.^{vii} The ability to carry firearms and ammunition makes the distinction between loaded and unloaded weapons almost meaningless, as open carry advocates have boasted about their abilities to load their weapons in "under 2 seconds."^{viii}

In states that allow open carrying without a permit, law enforcement officers may be prohibited from demanding identification when stopping an individual who is openly carrying a firearm. Without identification, law enforcement is unable to confirm whether the individual is eligible to possess a firearm under federal or state law.

The Second Amendment is Not an Obstacle to Laws Prohibiting Open Carry

The Second Amendment does not confer a right to openly carry a firearm in public. In *District of Columbia v. Heller*, the Supreme Court held for the first time that the Second Amendment guarantees an individual right to possess a firearm in the home for self-defense.^{ix} The Court struck down Washington, D.C.'s decades-old ban on handgun possession, and the requirement that firearms in the home be stored unloaded and disassembled or bound by a locking device (which had no exception for self-defense).

In *McDonald v. Chicago*, the Court held that the Second Amendment right to possess a firearm in the home for self-defense applies to state and local governments in addition to the federal government.^x As it held in *Heller*, the Court reiterated in *McDonald* that the Second Amendment permits a wide variety of gun laws that do not interfere with this right.

Because open carrying does not impact an individual's right to self-defense in the home — the core of the Second Amendment as interpreted in *Heller* and *McDonald* — and because there are significant public safety reasons to justify prohibiting this dangerous activity, a ban on open carrying would not conflict with the Second Amendment.

SUMMARY OF STATE OPEN CARRY LAWS

Only three states, Florida, Illinois, and Texas, and the District of Columbia prohibit the open carrying of handguns in public places. Thirty-five states allow the open carrying of a handgun without a permit or license, although three of these states, California, North Dakota, and Utah, require that the handgun be unloaded. The remaining twelve states allow the open carrying of a handgun with a license or permit; loaded carrying in California, North Dakota, and Utah is permissible with a permit or license.

Three states, Florida, Massachusetts, and Minnesota, prohibit the open carrying of long guns (rifles or shotguns) in public places. Of the remaining states, California, Iowa, New Jersey, Tennessee and Utah prohibit the open carrying of loaded long guns, but not unloaded ones.

Please note that open carry laws frequently have exceptions. In states that permit open carrying, most still prohibit possession in schools or school zones, and many states prohibit open possession in state-owned buildings, courthouses, places where alcohol is sold or served, and on public transportation, among other locations. States that restrict open carrying frequently exempt law enforcement and military personnel carrying firearms in the course of their official duties, as well as persons engaged in certain sport shooting and hunting activities.

States that Prohibit the Open Carrying of Handguns on the Person

Florida
Illinois
Texas
District of Columbia

States that Allow Open Carrying of Handguns on the Person or In a Vehicle – No Permit or License Required

On the Person:

Alabama	North Dakota (If unloaded, and only during the day; N.D. Cent. Code § 62.1-03-01(1)(a))
Alaska	
Arizona	Ohio
Arkansas	Oklahoma (While by statute the state prohibits the open carrying of handguns, Oklahoma has a litany of exceptions that render the prohibition meaningless, including the "use of guns...for hunting, fishing, educational or recreational purposes" and "carrying of weapons in a manner otherwise permitted by statute or authorized by the Oklahoma Self-Defense Act;" See Okla. Stat. tit. 21, § 1272(A); Okla. Stat. tit. 21, § 1289.6)
California (If unloaded; see Cal. Penal Code § 12031(a)(1))	
Colorado	
Delaware	
Georgia (See Ga. Code Ann. § 16-11-126(a), Ga. Code Ann. § 16-11-128(a))	

Idaho
Kansas
Kentucky
Louisiana
Maine
Michigan
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina

Oregon
Pennsylvania (Except for Philadelphia; 18 Pa. Cons. Stat. Ann. § 6108 (firearms licensees in Philadelphia are exempt from prohibition; 18 Pa. Cons. Stat. Ann. § 6109))
South Dakota
Utah (If unloaded; Utah Code § 76-10-505(1))
Vermont
Virginia (Open carrying of certain loaded handguns is prohibited in select cities; see Va. Code Ann. § 18.2-287.4)
Washington
West Virginia
Wisconsin
Wyoming

In a Motor Vehicle:

Alaska (See Alaska Stat. § 18.65.800)
Colorado (Generally lawful to carry in a private vehicle for hunting or lawful protection while traveling; See Colo. Rev. Stat. § 18-12-105.6(2)(a))
Delaware
Georgia (Does not prohibit any person who is not among the disqualifications for a CCW license from transporting a loaded firearm in any private passenger motor vehicle; Ga. Code Ann. § 16-11-126(e))
Idaho (See Idaho Code Ann. § 18-3302(9))
Louisiana (La. Rev. Stat. Ann. § 32:292.1)
Mississippi
Missouri (See Mo. Rev. Stat. § 571.030(3))
Montana
Nevada

New Mexico (If unloaded; See N.M. Stat. Ann. § 30-7-2(B))
North Carolina
Ohio (If unloaded; See Ohio Rev. Code Ann. § 2923.16(B), (C))
Oklahoma (If unloaded; Okla. Stat. tit. 21, § 1289.7)
Oregon
South Dakota
Utah (Utah Code § 76-10-505(1))
Vermont
Virginia
West Virginia (If unloaded; W.Va. Code § 20-2-5(9))
Wyoming

States that Allow Open Carrying of Handguns on the Person or In a Vehicle – Permit or License Required

On the Person:

California (See Cal. Penal Code § 12031(b)(6))	North Dakota (Permit holders are exempt from the nighttime and unloaded handgun open carrying restrictions; N.D. Cent. Code § 62.1-03-01(1), (2)(a))
Connecticut (Conn. Gen. Stat. § 29-35(a))	
Hawaii (Haw. Rev. Stat. Ann. § 134-9(c))	
Indiana (See Ind. Code Ann. § 35-47-2-1(a))	Rhode Island (R.I. Gen. Laws § 11-47-8(a))
Iowa (See Iowa Code § 724.4)	South Carolina (See S.C. Code Ann. § 16-23-20)
Maryland (Md. Code Ann., Crim. Law § 4-203(a), (b)(2))	Tennessee (Provides as a defense to open carry prohibition that the person have a valid handgun carry permit; See Tenn. Code §§ 39-17-1307(1), 39-17-1308(a))
Massachusetts (Mass. Gen. Laws ch. 140, § 129C)	
Minnesota (Minn. Stat. § 624.714, Subd. 1a)	Utah (See Utah Code §§ 76-10-505(1); 76-10-523(2))
New Jersey (See N.J. Rev. Stat. § 2C:39-5b)	
New York (Limited. Requires that possessor be licensed to carry a handgun, and licenses specific categories of persons (N.Y. Penal Law § 400.00(2)))	

In a Motor Vehicle:

Alabama (See Ala. Code § 13A-11-73)	Minnesota (Minn. Stat. § 624.714, Subd. 1a)
Arkansas (See Ark. Code Ann. § 5-73-120(a), (c)(8))	Nebraska (See Neb. Rev. Stat. § 69-2441(3))
California (See Cal. Penal Code § 12031(b)(6))	New Hampshire (See N.H. Rev. Stat. Ann. § 159:4)
Connecticut (Conn. Gen. Stat. § 29-38(a))	North Dakota (See N.D. Cent. Code § 62.1-02-10)
Hawaii (Haw. Rev. Stat. Ann. § 134-26(a))	Ohio (Handgun must be in a holster on the person if loaded; See Ohio Rev. Code Ann. § 2923.16(E))
Indiana (See Ind. Code Ann. § 35-47-2-1(a))	Pennsylvania (See 18 Pa. Cons. Stat. Ann. § 6106(a)(1))
Iowa (See Iowa Code § 724.4)	Rhode Island (R.I. Gen. Laws § 11-47-8(a))
Kentucky (Ky. Rev. Stat. Ann. § 527.020(4))	Tennessee (Provides as a defense to open carry prohibition that the person have a valid handgun carry permit; See Tenn. Code §§ 39-
Maine (Me. Rev. Stat. Ann. tit. 12, § 11212(1)(B))	
Maryland (Md. Code Ann., Crim. Law § 4-203(a), (b)(2))	
Massachusetts (Limited. Persons with a Class	

A license to carry, if the firearm is under possessor's direct control; Mass. Gen. Laws ch. 140, § 131C(a))

Michigan (Mich. Comp. Laws § 750.227(2))

17-1307(1), 39-17-1308(a))

Washington (Licensed possessor must be with the exposed, loaded handgun at all times while in the vehicle; Wash. Rev. Code Ann. § 9.41.050(2)(a))

States that Prohibit the Open Carrying of Long Guns (Rifles or Shotguns) in Public

Florida

Massachusetts

Minnesota

States that Allow Open Carrying of Long Guns in Public

Alabama

Alaska

Arizona

Arkansas

California (If unloaded; Cal. Penal Code § 12031(a)(1), with certain exceptions)

Colorado

Connecticut

Delaware

District of Columbia (Limited. Possessor must have a registration certificate for the firearm; D.C. Code § 7-2502.01(a))

Georgia

Hawaii (Only for target shooting purposes or while hunting with hunting license; Haw. Rev. Stat. Ann. § 134-5(a))

Idaho

Illinois (Limited. Anyone possessing a firearm or ammunition must have a Firearm Owner's Identification (FOID) card (430 Ill. Comp. Stat. 65/2(a)(1), (2)); While Illinois law significantly prohibits gun possession, exceptions exist for hunting with a valid hunting license and target shooting (720 Ill. Comp. Stat. 5/24-2(b))

New Hampshire

New Jersey (Limited. If unloaded (see N.J. Rev. Stat. § 2C:39-5c(2)) with valid permit to possess (N.J. Rev. Stat. § 2C:39-5c(1)))

New Mexico

New York

North Carolina

North Dakota

Ohio

Oklahoma (While a statute explicitly prohibits the open carrying of long guns, Oklahoma has a litany of exceptions that render the prohibition meaningless, including the "use of guns...for hunting, fishing, educational or recreational purposes" and "carrying of weapons in a manner otherwise permitted by statute or authorized by the Oklahoma Self-Defense Act;" See Okla. Stat. tit. 21, § 1272(A); Okla. Stat. tit. 21, § 1289.6))

Oregon

Pennsylvania (Except for Philadelphia; 18 Pa. Cons. Stat. Ann. § 6108 (firearms licensees in Philadelphia are exempt from prohibition; 18 Pa. Cons. Stat. Ann. § 6109))

Rhode Island

South Carolina

Indiana

Iowa (If unloaded; See Iowa Code § 724.4(1); Exceptions exist for lawful hunting and target shooting; see Iowa Code § 724.4(4))

Kansas

Kentucky

Louisiana

Maine

Maryland

Michigan

Mississippi

Missouri

Montana

Nebraska

Nevada

South Dakota

Tennessee (If unloaded; See Tenn. Code §§ 39-17-1307, 39-17-1308)

Texas

Utah (If unloaded; Utah Code § 76-10-505(1))

Vermont

Virginia (Open carrying of certain loaded long guns is prohibited in select cities; see Va. Code Ann. § 18.2-287.4)

Washington

West Virginia

Wisconsin

Wyoming

States that Allow Open Carrying of Long Guns in a Motor Vehicle

Alabama

Alaska (See Alaska Stat. § 18.65.800)

Arkansas

California (If unloaded; Cal. Fish & Game Code § 2006; See also Cal. Penal Code § 12031(a)(1))

Colorado (If unloaded; Colo. Rev. Stat. § 33-6-125)

Connecticut (If unloaded; Conn. Gen. Stat. § 53-205)

Delaware (If unloaded; see Del. Code Ann. tit. 7, § 708)

Florida (Permits the carrying of a firearm other than a handgun if possessed for lawful use; Fla. Stat. Ann. § 790.25(5))

Georgia (Does not prohibit any person who is not among the disqualifications for a CCW license from transporting a loaded firearm in any private passenger motor vehicle; Ga. Code

Montana

Nebraska (If a shotgun is possessed while on a highway, must be unloaded; Neb. Rev. Stat. § 37-522)

Nevada (If unloaded; See Nev. Rev. Stat. § 503.165.1)

New Hampshire (If unloaded; See N.H. Rev. Stat. Ann. § 207:7)

New Mexico (If unloaded; See N.M. Stat. Ann. § 30-7-2(B))

New York (If unloaded; N.Y. Env'tl. Conserv. Law § 11-0931(2))

North Carolina

North Dakota (If unloaded; N.D. Cent. Code § 62.1-02-10)

Ohio (If unloaded; See Ohio Rev. Code Ann. § 2923.16(B), (C))

Oklahoma (If unloaded; Okla. Stat. tit. 21, §

Ann. § 16-11-126(e))	1289.7)
Hawaii (Only if traveling to and from hunting locations with a valid hunting license (Haw. Rev. Stat. Ann. § 134-5(a)))	Oregon
Idaho (See Idaho Code Ann. § 18-3302(9))	Pennsylvania (If unloaded; see Pa. Cons. Stat. Ann. § 6106.1(a), Pa. Cons. Stat. Ann. § 2503(a))
Iowa	Rhode Island (If unloaded; See R.I. Gen. Laws §§ 11-47-51, 20-13-8)
Kentucky (If the person is licensed to carry a concealed deadly weapon; Ky. Rev. Stat. Ann. § 527.020(4))	South Carolina (If traveling on a public road while hunting; see 50-11-760(B)(3)(c))
Louisiana (La. Rev. Stat. Ann. § 32:292.1)	South Dakota
Maine (If unloaded; See Me. Rev. Stat. Ann. tit. 12, § 11212(1)(B))	Tennessee (If unloaded; possessor must have a handgun carry permit; Tenn. Code § 39-17-1307(e))
Maryland (If unloaded; Md. Code Ann., Nat. Res. § 10-410(c)(1))	Texas
Massachusetts (If unloaded; Mass. Gen. Laws ch. 131, § 63. The knowing possession of certain unloaded long guns pursuant to a license or permit is allowed; Mass. Gen. Laws ch. 269, § 10(a)(5)(1) – (5))	Utah (If unloaded; Utah Code § 76-10-505(3))
Michigan (If unloaded; Mich. Comp. Laws § 750.227c(1))	Vermont (If unloaded; may carry loaded in certain public areas; see Vt. Stat. Ann. tit. 13, § 4705(b))
Minnesota (If unloaded while at a shooting range, lawfully hunting or when traveling to or from a hunting site; Minn. Stat. § 97B.045, Subd. 3, (a))	Virginia
Mississippi	Washington (If unloaded; Wash. Rev. Code Ann. § 77.15.460(1), (3))
Missouri (May possess firearm for the lawful pursuit of game or if traveling in a continuous journey peaceably through the state; See Mo. Rev. Stat. § 571.030(3))	West Virginia (If unloaded; W.Va. Code § 20-2-5(9))
	Wyoming

ⁱ “‘I’m all for open-carry laws,’ said Alan Gottlieb, founder of the Second Amendment Foundation, a gun rights advocacy organization in Washington State. ‘But I don’t think flaunting it is very productive for our cause. It just scares people.’” Ian Urbina, *Locked, Loaded, and Ready to Caffeinate*, N.Y. Times, March 8, 2010, at A11.

ⁱⁱ According to CaliforniaOpenCarry.org:

“Why Open Carry?”

There are many reasons to Open Carry, and often the discussion becomes a philosophical debate between the merits of Open Carry vs. Concealed Carry. However, in California these discussions are moot, since California is not a Shall-Issue CCW state, and most residents cannot get a concealed carry permit.

Therefore, in California, there are three main reasons to Open Carry:

- For those choosing to carry a firearm for self-defense, it is the only legal means available.
- As a form of legal civil protest of unconstitutional firearms laws and CCW issuance policies.
- As a form of firearms community diplomacy, to dispel the myth that only cops and criminals carry guns, and to help reintroduce the general public and the law enforcement community to the reality that ordinary peaceful law-abiding citizens possess, use, and carry firearms.

Additional universal reasons to Open Carry:

- To exercise one's right.
- As a visible deterrent to crime.
- OC is often more comfortable than CC, and offers more ready access.”

California Open Carry Frequently Asked Questions, available at <http://www.californiaopencarry.org/faq.html>.

ⁱⁱⁱ San Mateo County Sheriff's Office, "Unloaded Open Carry," January 14, 2010, available at http://www.co.sanmateo.ca.us/Attachments/sheriffs/pdfs/Press%20Releases/20100114_opencarry.pdf.

^{iv} David Hemenway, *Private Guns, Public Health* 78 (2004).

^v Charles C. Branas, Therese S. Richmond, Dennis P. Culhane, Thomas R. Ten Have, and Douglas J. Wiebe, *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034 (2009).

^{vi} David Hemenway, Deborah Azrael, & Matthew Miller, *Gun use in the United States: results from two national surveys*, 6 Inj. Prevention 263, 265 (2000).

^{vii} Cal. Penal Code § 12031(g).

^{viii} "What good is an unloaded gun? Obviously, not much. However, with a little practice, one can easily load a handgun in under 2 seconds." California Open Carry Frequently Asked Questions, available at <http://www.californiaopencarry.org/faq.html>.

^{ix} *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).

^x *McDonald v. Chicago*, 2010 U.S. LEXIS 5523 (U.S. June 28, 2010).