Open Carry in the USA
What You Need to Know
Open carry in the United States

In the United States, open carry is shorthand terminology for "openly carrying a firearm in public", as distinguished from concealed carry, where firearms cannot be seen by the casual observer.

The practice of open carry, where gun owners openly carry firearms while they go about their daily business, has seen an increase in the U.S. in recent years. This has been marked by a number of organized events intended to increase the visibility of open carry and public awareness about the practice. Proponents of open carry point to history and statistics, noting that criminals usually conceal their weapons. Encouraged by groups like OpenCarry.org, GeorgiaCarry.org and some participants of the Free State Project, open carry has seen a revival in recent years, but it is not yet clear if this represents just a short-term trend.

The gun rights community has been mixed in its response. Alan Gottlieb of the Second Amendment Foundation and the NRA have been cautious in expressing support, while special-interest groups such as the aforementioned OpenCarry.org and GeorgiaCarry.org, and certain national groups such as the Gun Owners of America (GOA) have been more outspoken in favor of the practice.

Open carry is strongly opposed by gun control groups such as the Brady Campaign and the Coalition to Stop Gun Violence.

Jurisdictions in the United States

In the United States, the laws concerning open carry vary by state and sometimes by municipality.

Definitions

Open carry

The act of publicly carrying a firearm on one's person in plain sight.

Plain sight

Broadly defined as not being hidden from common observation; varies somewhat from state to state.

Preemption

In the context of open carry: the act of a state legislature passing laws which limit or eliminate the ability of local governments to regulate the possession or carrying of firearms.

Prohibited persons

People prohibited by law from carrying a firearm. Typical examples are felons, those convicted of a misdemeanor of domestic violence, those found to be addicted to alcohol or drugs, and those who have been involuntarily committed to a mental institution.
Categories of law

Today in the United States, the laws vary from state to state regarding open carry of firearms. The categories are defined as follows:

Permissive open carry states

A state has passed full preemption of all firearms laws. They permit open carry to all non-prohibited citizens without permit or license. Open carry is lawful on foot and in a motor vehicle. It must be noted that while open carry may be legal in such jurisdictions per se, persons openly carrying firearms may be detained and cited by law enforcement officials for disorderly conduct or disturbing the peace in certain locations and circumstances where openly carrying could cause public alarm.

Licensed open carry states

A state has passed full preemption of all firearms laws. They permit open carry of a handgun to all non-prohibited citizens once they have been issued a permit or license. Open carry of a handgun is lawful on foot and in a motor vehicle.

Anomalous open carry states

In these states, open carry of a handgun is generally lawful, but the state may lack preemption or there may be other significant restrictions. The limitations and/or lack of pre-emption may mean that certain areas of these states are, in their judicial system and law enforcement societies, not very friendly towards the practice, although this is not true in all of these states.

Non-permissive open carry states

In these states, open carry of a handgun is not lawful, or is only lawful under such a limited set of circumstances that public carry is prohibited. Such limited circumstances may include when hunting, or while traveling to/from hunting locations, while on property controlled by the person carrying, or for lawful self-defense.

Rural open carry states

In these states, open carry is generally permitted only in unincorporated areas of counties where population densities are below statutorily-defined thresholds, and local authorities have enacted ordinances permitting open carry in such jurisdictions (California). As such, these states are also regarded as Non-Permissive open carry states.

Constitutional implications

Open carry has never been ruled out as a right under the Second Amendment of the U.S. Constitution by any court. In the majority opinion in the case of District of Columbia v. Heller (2008), Justice Antonin Scalia wrote concerning the entirety of the elements of the Second Amendment; "We find that they guarantee the individual right to possess and carry weapons in case of confrontation." However, Scalia continued, "Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[1]

Forty-three states' constitutions recognize and secure the right to keep and bear arms in some form, and none of those prohibit the open carrying of firearms. Five state constitutions provide that the state legislature may regulate the manner of carrying or bearing arms, and advocates argue that none rule out open carry specifically. Nine states' constitutions indicate that the concealed carrying of firearms may be regulated and/or prohibited by the state legislature. Open carry advocates argue that, by exclusion, open carrying of arms may not be legislatively controlled in these states. But this is not settled law.[citation needed]

Section 1.7 [9] of Kentucky's state constitution only empowers the state to enact laws prohibiting "concealed carry".
Open carry demonstrations and events

- May 2, 1967 openly armed members of the Black Panther Party marched on the California State capitol in opposition to the then-proposed Mulford Act prohibiting the public carrying of loaded firearms. After the march in the state capitol building, the law was quickly enacted.  

- On June 16, 2000, the New Black Panther Party along with the National Black United Front and the New Black Muslim Movement protested the death sentencing conviction of Gary Graham, by openly carrying shotguns and rifles at the Texas Republican National convention in Houston, Texas.

- In 2003, gun rights supporters in Ohio used a succession of Open Carry "Defense Walks" attempting to persuade the Governor to sign concealed carry legislation into law.

- The legality of open carry of certain firearms in Virginia was reaffirmed after several 2004 incidents in which citizens openly carrying firearms were confronted by local law enforcement. The Virginia law prohibits the open carry, in certain localities, of any semiautomatic weapon holding more than 20 rounds or a shotgun that holds more than seven rounds, without a concealed carry permit.

- In 2008, Clachelle and Kevin Jensen, of Utah, were photographed together openly carrying handguns in the Salt Lake City International Airport near a "no weapons" sign. The photo led to an article in The Salt Lake Tribune about the airport's preempted "no weapons" signs. After a few weeks, the city removed the signs.

- In 2008, Zachary Mead was detained in Richmond County, Georgia by law enforcement for openly carrying a firearm. The weapon was seized. The organization GeorgiaCarry.org filed a lawsuit on behalf of Mead. The court declared that the seizure was a violation of the Fourth Amendment to the United States Constitution, awarded court costs and attorney fees to Mead, and dismissed the remaining charges with prejudice.

- In 2008, Brad Krause of West Allis, Wisconsin was arrested by police for alleged disorderly conduct while openly carrying a firearm while planting a tree on his property. A court later acquitted him of the disorderly conduct charge, observing in the process that in Wisconsin there is no law dealing with the issue of unconcealed weapons.

- On April 20, 2009, Wisconsin Attorney General J.B. Van Hollen issued a memorandum to district attorneys stating that open carry was legal and in and of itself does not warrant a charge of disorderly conduct. Milwaukee police chief Ed Flynn instructed his officers to take down anyone with a firearm, take the gun away, and then determine if the individual could legally carry it until they could make sure the situation is safe.

- On May 31, 2009, Washington OpenCarry members held an open carry protest picnic at Silverdale's Waterfront Park, a county park. Attendees openly carried handguns in violation of posted regulations prohibiting firearms at the park. Washington state law allows the open carrying of firearms and specifically preempts local ordinances more restrictive than the state's, such as the one on the books for Kitsap county. Shortly after the protest Kitsap county commissioners voted to amend KCC10.12.080 to remove the language that banned firearms being carried in county parks. KCC10.12.080 Was amended on July 27, 2009 and as of May 31, 2012 most of the signs in the county still read that firearms are prohibited despite numerous attempts to get the county to update the signs. The amendment is listed as it reads in meeting minutes from July 2009.

  KCC10.12.080 Amendment: It is unlawful to shoot, fire or explode any firearm, firecracker, fireworks, torpedo or explosive of any kind or to carry any firearm or to shoot or fire any air gun, BB gun, bow and arrow or use any slingshot in any park, except the park director may authorize archery, slinging, fireworks and firing of small bore arms at designated times and places suitable for their use.

- In July 2009, an open carry event organized by OpenCarry.org took place at Pacific Beach, San Diego, California, where citizens carrying unloaded pistols and revolvers were subjected to Section 12031(e) inspections of their firearms on demand by police officers. The officers were obviously well-briefed on the details of the law, which allows Californians to openly carry only unloaded guns and allows carry of loaded magazines and speedloaders.
• On August 11, 2009, William Kostric, a New Hampshire resident, Free State Project participant, and former member of We The People's Arizona Chapter, was seen carrying a loaded handgun openly in a holster while participating in a rally outside a town hall meeting hosted by President Barack Obama at Portsmouth High School in New Hampshire. Kostric never attempted to enter the school, but rather stood some distance away on the private property of a nearby church, where he had permission to be. He held up a sign that read "It's Time to Water the Tree of Liberty!".

• On August 16, 2009, "about a dozen" people were noted by police to be openly carrying firearms at a health care rally across the street from a Veterans of Foreign Wars Convention in the Phoenix Convention Center, where President Barack Obama was giving an address. While the Secret Service was "very much aware" of these individuals, Arizona law does not prohibit open carry. No crimes were committed by these protesters, and no arrests were made. In an interview with Fox News, commentator James Wesley Rawles characterized the Phoenix protesters as "merely exercising a pre-existing right". When he was asked about open carry, "but...without a permit?" Rawles opined, "We have a permit--it is called the Second Amendment.

• On January 30, 2010 Members of Michigan Open Carry were eating at a local Ponderosa Steakhouse in Lansing, Michigan when local police responded and forced them to leave. A person rumored to be a United States Marine was carrying an AR-15 at this open carry event. A brief verbal argument ensued between the leader of the open carry group and the Lansing Police Department. No arrests were made; some of the law enforcement officers at the scene were given reprimands for their actions arising from the incident.

• In May 2010, Jesus C. Gonzalez was arrested and charged with homicide in a shooting which occurred while he was carrying a handgun. Gonzalez was involved in two prior arrests for disorderly conduct, based on his open carry practice. He filed a lawsuit claiming fourth and fourteenth amendment violations. His suit and appeal were both dismissed. Gonzalez was convicted on lesser charges, including reckless homicide.

• The Starbucks coffee chain has been the target of several boycotts arranged by gun control groups to protest Starbucks' policy of allowing concealed and open carry weapons in stores, if allowed by local laws. A counter boycott was proposed for Valentines Day of 2012 to show support from gun owners for Starbucks, with the use of two dollar bills to represent Second Amendment rights.

Diversity in State Laws

State laws on open carry vary widely. Six states and the District of Columbia fully prohibit the open carry of handguns. On the other side, twelve states permit open carry of a handgun without requiring the citizen to apply for any permit or license. Thirteen states require some form of permit (often the same permit as allows a person to carry concealed), and the remaining seventeen states, though not prohibiting the practice in general, do not preempt local laws or law enforcement policies, and/or have significant restrictions on the practice, such as prohibiting it within the boundaries of an incorporated urban area. Illinois allows open carry on private property only.

As of August, 2009, four states that currently restrict open carry as a remnant of the post-Civil war Reconstruction era (Texas, South Carolina, Oklahoma and Arkansas) are considering making it again legal. Bills were drafted in the Texas Legislature for the 2009 and 2011 sessions, backed by proponents such as OpenCarry.org, but did not make it to the floor.

On October 11, 2011, California Governor Jerry Brown signed into law that it would be a "misdemeanor to openly carry an exposed and unloaded handgun in public or in a vehicle." This does not apply to the open carry of rifles or long guns or persons in rural areas where permitted by ordinance.

On November 1st, 2011, Wisconsin codified open carry and recognized its legality by adding a sub section to its Disorderly Conduct statute (947.01). Subsection 2 reads "Unless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, a person is not in violation of, and may not be charged with a violation of, this section for loading, carrying, or going armed with a firearm, without regard to whether the
firearm is loaded or is concealed or openly carried.”

2012 May 15: Gov. Mary Fallin signed Senate Bill 1733, the Oklahoma Self Defense Act, which will allow people with Oklahoma concealed weapons permits to open carry if they so choose. The law took effect in November, 2012. "Under the measure, businesses may continue to prohibit firearms to be carried on their premises. SB 1733 prohibits carrying firearms on properties owned or leased by the city, state or federal government, at corrections facilities, in schools or college campuses, liquor stores and at sports arenas during sporting events.”[29]

Federal Gun Free School Zones Act

The Federal Gun Free School Zones Act limits where a person may legally carry a firearm by generally prohibiting carry within one-thousand (1000) feet of the property-line of any K-12 school in the nation with private property excluded.[30] A State-issued permit to carry may exempt a person from this restriction depending on the laws of the State, and most issuing States qualify for this exception. However, according to BATFE the exception in Federal law is only applicable to permit holders while in the State that physically issued their permit, and does not exempt people with out-of-state permits, even when their permit is recognized through State reciprocity agreements. BATFE letter explaining reciprocity of CCW permit holders and how it applies to Gun-Free School Zones.

Declared unconstitutional. "The Court today properly concludes that the Commerce Clause does not grant Congress the authority to prohibit gun possession within 1,000 feet of a school, as it attempted to do in the Gun-Free School Zones Act of 1990, Pub. L. 101-647, 104 Stat. 4844." [31]

References

[9] Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.
[20] (http://www.google.com/hostednews/ap/article/ALeqM5hctDBUKMR4V-lGBrEgQcYN0oosBQAD9A4TG402)

External links

• Alabama Open Carry - Alabama open carry laws, documents & tools, and user forums on open carry (http://www.alabamaoencarry.com)
• OpenCarry.org - site with state-by-state maps of open carry laws; and user forums on open carry (http://opencarry.org)
• LaOpenCarry.org - Louisiana Open Carry Awareness League (http://laopencarry.org)
• California Open Carry (http://californiaopencarry.org/)
• Responsible Citizens of California - A "Right-to-Carry" Non-Profit political organization (http://responsiblecitizensofcalifornia.org/)
• South Bay Open Carry - Southern California Open Carry Group (http://www.southbayopencarry.org/)
• Michigan Open Carry Inc. - Covering everything Open Carry in Michigan (http://www.michiganopencarry.org/)
• Strengthen gun laws, or weaken them? (http://moneyedpoliticians.net/2011/01/14/ strengthen-our-gun-laws-or-weakem-them/)
• Kids book on open carry - Great source on open carry info (http://www.myparentsopencarry.com/)
• (http://www.ohioopencarry.org/legality-open-carry-ohio)