



TRAINING BULLETIN

TITLE: Roll Call Training – Open or Concealed Carry of a Firearm on Public and Private Property **No. 12-08**

Effective Date: May 1, 2012

Included in this training bulletin is the content of an April 30, 2012 email memorandum from Gerald McDonald, Vandalia law director. The law director's memo explains Ohio law regarding a citizen's right of open or concealed carry of a firearm on private and public property. In addition, the last two pages are VPD response guidelines for incidents that involve open carry of firearms. The training bulletin is supplemental information to Training Bulletin 12-06.

Training Bulletins 12-06 and 12-08 guide Vandalia police response to incidents involving open or concealed carry of firearms. Please direct any questions through the chain of command.

All personnel will review this posted training bulletin and initial the sign off sheets in the roll call room and in the communications center. This training must be accomplished by May 14, 2012.

Issued by: Chief Knight

Posted: May 1, 2012
Remove: May 14, 2012

The text below is an email memorandum from Gerald McDonald, Vandalia law director, to Vandalia's chief of police on April 24, 2012. The memorandum explains Ohio law regarding concealed or open carry of a firearm on private and public property in Ohio. The information is supplemental to VPD Training Bulletin 12-06.

[To:] Chief Knight:

In a recent telephone call you asked for some clarification on where a private person (i.e. not a police officer) can lawfully carry a weapon on their person in a public or private place. For purposes of this memo, I have broken your question down to two different situations. The first being, where can one carry a concealed weapon? The second being, where can one carry an open weapon?

CONCEALED WEAPONS:

In 2004 the General Assembly enacted a licensing procedure for handgun owners in Ohio. (See R.C. 2923.125). R.C. 2923.126(A) provides that a licensed handgun owner may carry a concealed handgun anywhere in this state except as provided in R.C. 2923.126(B) and (C). R.C. 2923.126(B) sets forth specific locations where certain licensed handgun owner may not carry a concealed handgun which include:

- (1) A police station, jail, workhouse, or other detention facility, or an airport passenger terminal, facilities for the care of mentally ill persons;
- (2) A school safety zone;
- (3) A courthouse or another building or structure in which a courtroom is located;
- (4) Any premises or open air arena for which a D liquor permit has been issued if the licensee carrying the concealed handgun is consuming beer or intoxicating liquor or under the influence of alcohol or a drug of abuse;
- (5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;
- (6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;
- (7) A child day-care center, and with certain exceptions, a type A family day-care home, a type B family day-care home, or a type C family day-care home;
- (8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;
- (9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;
- (10) A place in which federal law prohibits the carrying of handguns.

R.C. 2923.126(C) (1) and (C) (3) allow private employers and landowners to prohibit concealed weapons on their property as they deem fit by posting a sign. (subject to certain exception).

Thus, it appears that if a person has a license to carry a concealed weapon he can carry it anywhere except the ten (10) places designated above, and except for posted private property.

OPEN CARRY

For the most part the above law is specific to concealed carry. In other words, while a person may be prohibited from carrying a concealed weapon in a public building under 2923.126(B) (9), he would not necessarily be prohibited from having an open weapon in a public building. However, some sections of Chapter 2923 apply to open carry as well as concealed carry weapons. For example, R.C. 2923.126(C) allows private employers and landowner to prohibit persons "from carrying firearms or concealed firearms" on private land by posting a sign. (Subject to certain exceptions.) Likewise, 2923.123 makes it illegal to have a firearm in a courthouse, or in another building or structure in which a courtroom is located. (Based on this, it appears that one cannot carry a firearm, either concealed or open, into the Vandalia Justice Center).

While a private property owner can post a sign that prohibits that person from carrying such firearm on the private land, and the State can prohibit firearms in certain area, a City cannot prohibit open carry firearms on its property (public property).

In the 2008 case of *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96 the court looked at a municipality's ability to regulate handgun possession on its own property by persons possessing a valid permit to carry a concealed handgun. In 2004, the city of Clyde passed an ordinance that prohibited handguns in its parks, "irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to Ohio R.C. 2923.125". *Ohioans for Concealed Carry, Inc.* filed a law suit to strike down the ordinance and had some success in the lower courts. While the case was making its way through the courts, however, the General Assembly enacted R.C. 9.68, which emphasized the "fundamental individual right" to "keep and bear arms" and expressed the legislature's further desire to provide uniform laws throughout the state regulating the ownership and possession of firearms. R.C. 9.68(A) also provides that except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, may possess or keep any firearm. As pointed out by the State Supreme Court in the *Clyde* case, "the General Assembly, by enacting R.C. 9.68(A), gave persons in Ohio the right to carry a handgun unless federal or state law prohibits them from doing so. A municipal ordinance cannot infringe on that broad statutory right."

Thus, it is pretty well established that a local municipality cannot enact an ordinance that prohibits the open carry of weapons in public places. However, the "state" can impose laws restricting the open carry. In addition to the state law authorizing private parties to post no carry signs and prohibit firearms on private property, and the prohibition against firearms in buildings with courts, the state has also regulated possession of firearms in other specific places. For example, R.C. 1547.69 (vessels), R.C. 2921.36 (detention and mental health facilities), R.C. 2923.121 (liquor establishments), and R.C. 2923.122 (school zones).

Unless the state has specifically prohibited a person from having a firearm in a particular place, that person may openly carry a weapon. If the State has indicated that a person may not have a concealed weapon in a given area, then that person cannot have the weapon concealed, but presumably can carry the weapon openly.

Vandalia Division of Police

Response Guidelines for Incidents or Calls for Service Involving Open or Concealed Carry of a Firearm

Dispatcher Responsibility

- Do not communicate any bias, express personal opinion, or offer advice to citizens regarding concealed or open carry of firearms.
- Do not attempt to explain Ohio law regarding concealed or open carry of firearms.
- Gather [and communicate to the responding officer(s)] as much descriptive information as possible from the caller about the person and circumstances that prompted the call to police.
 - Make all reasonable efforts to obtain personal information from the caller
 - Obtain physical description and direction of travel of the person in question
 - Is the armed person acting abnormally, violently, or in a suspicious manner (if so, how)? Trespassing? Intoxicated? Accompanied by another person?
 - What kind of weapon? Long gun or handgun? How is the individual carrying the firearm?
 - Does the reporting person wish to be contacted?
- Ask whether the individual is on public or private property.
- Dispatch one officer and, whenever possible, the sergeant/AWS. The responding officer may request a back-up officer if the sergeant/AWS is unavailable.

Responding Officer Responsibility

- As always, be professional. Common sense, discretion and good judgment must prevail.
- Approach all calls for service with safety in mind.
- Open carry of a firearm in Ohio is legal absent a specific ORC prohibition.
- Some of the specific ORC firearm prohibitions include a person's possession of a weapon while under disability; use of a weapon while intoxicated; possession of a weapons in violation of a protection order; trespass with a firearm on private property when the property is posted to prohibit firearms; or improper handling of a firearm in a motor vehicle (unless the person has a concealed carry permit).
- Consensual conversation with a person engaged in open carry of a firearm is permitted.

- A non-consensual conversation, or *Terry* stop, is not justified unless an officer reasonably believes (and can articulate) from the totality of the circumstances that a crime has or is about to occur. Document all factors that provide the basis for a *Terry* stop.
- Do not communicate any bias, express personal opinion, or offer advice to citizens regarding concealed or open carry of firearms.
- A Vandalia police officer may not stop an individual solely for reason of the person's open carry of a firearm. Officer statements about possible charges of inducing panic and/or disorderly conduct to a person exercising a lawful right to openly carry a firearm are inappropriate.
- Seizing an individual's firearm when that person is not under arrest may be regarded as evidence of a non-consensual stop.
- An officer may ask someone for identification, but cannot demand such information unless the officer reasonably suspects (and can articulate) that the person has committed, is committing, or is about to commit a criminal offense [ORC 2921.29]. Otherwise the individual has a right to refuse to disclose personal information and may walk away.
- Activate the patrol car video/audio recorder during the contact with an armed citizen. Turn the patrol car's AM/FM radio off. Failure to silence the AM/FM radio may inadvertently diminish the quality and value of the audio recording.
- Be aware that an officer's words and actions are frequently recorded by others.
- As with every other call for service, add descriptive comments to the CFS record in the absence of an offense report.