



# Training Bulletin

## LANSG POLICE



February 1, 2010

### OPEN CARRY

#### WHAT YOU NEED TO KNOW ABOUT "OPEN CARRY" OF FIREARMS

Open Carry: Openly carrying a handgun in public in Michigan.

As a police officer you may have the following initial thoughts about "open carry". You may think :

- Open Carry goes against society's culture.
- Flies in the face of all good judgment.
- Is against every officer's instinct of survival.
- Is contrary to every officer's safety principle that is taught when confronted with armed offenders.

You are absolutely right in your thinking. However, these thoughts aside, Michigan law allows a person to openly carry a handgun in Michigan.... as long as it is fully exposed and they comply with the law. There is no statute that specifically prohibits carrying a visible pistol or revolver. (Long guns should be treated in the same manner as handguns).

#### **Statement of the Law**

*Any 18-yr. old or older, law abiding citizen of the State of Michigan who owns a legally registered handgun may openly carry a firearm in a holster in all places not explicitly exempt by law.*

#### **The Core of An Officer's Ability to Detain A Person Who Openly Carries**

**Mere Possession of a handgun in a non-exempted place is NOT PROBABLE CAUSE or REASONABLE SUSPICION of a crime.**

**Unless a person who is openly carrying a handgun is engaged in activity which gives rise to a reasonable suspicion of criminal activity or probable cause, that person may not be detained by police.**

- **Do Not seize the handgun (s) for safekeeping without having a crime.**

## **What Open Carry Is Not**

Carrying a handgun itself does not support disorderly conduct. Brandishing occurs only when the person is waving the firearm around in a threatening manner. Another person's fear of the mere presence of a firearm does not make an assault. Also, do not rely on the enforcement of a local ordinance to trump the Constitution. If a person who is openly carrying a handgun is committing a crime or is in a prohibited place, or if the owner/agent of the premises wants the individual to leave, then officers have a legal reason to engage a subject and enforce the law which may be in process of being violated. Otherwise, a person carrying openly is no different from any other person in the same environment.

## **So how are we going to handle this type of call?**

### **RETHINK 'MAN WITH A GUN' CALL**

Historically the 'Man With a Gun Call' may have prompted a full court press that urgent police action was required. Not necessarily so anymore.

## **911 Center / Dispatch Considerations**

If a complaint comes through dispatch, staff needs to ask for more information than what has been asked in the past. At one end of the spectrum is the phrase "man with a gun". With the prevalence of Concealed Pistol Licenses and Open Carry laws, people may be seen in public with handguns. At the other end of the spectrum might be a call that there is an active shooter. The person *merely possessing* an open carry gun should prompt a very different police response than the call of an active shooter, for example.

### **KEY: THE FOCUS IS WHAT IS THE PERSON WITH THE GUN DOING WITH THE GUN??**

- Ask what the specific behavior the subject engaged in led to the complaint.
- Ask what the subject is specifically doing at the location.
- Ask if other people are with the subject.
- Ask if others are visibly armed.
- Ask if other people are behaving normally.
- Ask if the caller is on private property and are they the owner/agent.
- Ask the caller if the only reason for the call is that the subject is armed.
- If they are in a bank — ownership of the bank details are needed.

## **Officer Considerations On Scene**

When dispatched to a subject with a gun type call in a public place, business, etc.:

- If available, wait for a second or backup officer.
- Question the complainant to see if the only reason for the call is that the

subject is armed.

- From concealment, first observe the behavior of the subject.
- Contact the property owner/agent for their policy on firearms on the premises and their wishes regarding the open carry of firearms on their premises.
- If nothing seems suspicious, unusual or criminal then approach the person openly carrying in a normal manner but keeping aware of cover and a tactical advantage.
- With the aid of a second officer use Cover/Contact tactics.
- Be aware of others in close proximity of the subject.
- Identify yourself right away, even if in uniform, and explain why you are there.
- Remember the subject is not obliged to be cooperative.
- Be polite, ask questions, and make requests; do not give commands.
- Do not make the contact a test of will.
- Speak how you would like to be spoken to.
- Do not voice your political opinion or your view on open carry. Do not lecture or be judgmental.
- Remember many people openly carrying a firearm are making a political statement.
- Do not become a victim because you allowed your ego to override your good judgment.
- Always thank subjects for their cooperation.
- Do not seize any firearm(s) for safekeeping without having a crime.

#### **A Friendly Chat with the subject....**

**OFFICERS MAY APPROACH A SUSPECT TO ENGAGE IN A FRIENDLY CHAT. AND THE PERSON WHO IS OPENLY CARRYING MAY CHAT WITH THE OFFICER OR MAY SIMPLY WALK AWAY FROM THE OFFICER.**

Remember the courts have found that officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking them if they are willing to answer some questions. However, the courts have held - the person need not answer any question put to them; indeed, they may decline to listen to the questions at all and may go on their way. They may not be detained even momentarily without reasonable, objective grounds for doing so; and their refusal to listen or answer does not, without more, furnish those grounds. If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed. In short, a consensual encounter does not amount to a seizure, and a police officer does not need reasonable suspicion or probable cause before approaching a person to ask questions.

#### **THE PERSON MAY NOT BE DETAINED WITHOUT SUSPICION OR PROBABLE CAUSE.**

Officers need to remember that in Michigan, the subject does not have to answer the questions and can walk away and the officer cannot use that action as a reason to arrest. See, however, *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998) as a Michigan case that supports the concept that a general discussion with the subject could very well lead to reasonable suspicion if the subject's behavior is off or the subject is furtive or evasive while speaking with the officer. It does not violate a person's rights to stand around and ask occasional questions while watching what that person is doing.

The key is that the officer should never give the impression that the officer intends to detain or obstruct the free will of the person to move about.

### **Additional Legal Considerations**

- Remember that openly carrying a firearm is not by itself threatening, nor does it cause a hazardous or physically offensive condition under the law.
- Know the Michigan Statutes on Concealed Pistol License and what gun free or restricted areas are.
- Have a detailed understanding of Terry v Ohio.
  - Reasonable Suspicion
  - Probable Cause
  - Limitations of Search
  - Clearly defining a subject's actions that establish reasonable suspicion.
  - Report writing that requires officers
    - to use specific and plain language when defining probable cause.

#### Sources:

1. Audrey Forbush of Plunkett Cooney, PC.
2. Law Enforcement Action Forum (LEAF) of the Michigan Municipal League.

## QUICK CHART ON ACCEPTABLE LOCATIONS FOR OPEN CARRY (OC) AND CARRYING A CONCEALED PISTOL WITH A CONCEALED PISTOL LICENSE (CPL)

### *Concealed Carry without a CPL*

On subject's personal property:	No CPL needed
Off subject's personal property	CPL needed

### *Open Carry (OC) without CPL*

A bank or financial institution	Not allowed
A church or other house of religious worship	Not allowed
A court	Not allowed
A theatre	Not allowed
A sports arena	Not allowed
A day care center	Not allowed
A hospital	Not allowed
A school (K-12)	Not allowed
Casino	Not allowed

### *Concealed Carry with CPL*

A bank or financial institution	Not allowed
A privately owned bank or financial institution	Allowed
A church or other house of religious worship	Allowed (with prior permission)
A court	Not allowed
A theatre	Not allowed
A sports arena	Not allowed
A day care center	Not allowed
A hospital	Not allowed
A school (K-12)	Not allowed
Casino	Not allowed

### *Open Carry (OC) with CPL issued to subject*

A bank or financial institution	Allowed
A privately owned bank or financial institution	Allowed
A church or other house of religious worship	Allowed
A court	Not allowed
A theatre	Allowed
A sports arena	Allowed
A day care center	Allowed
A hospital	Allowed
A school (K-12)	Allowed
Casino	Not allowed