



- A public street in a prohibited area of an unincorporated area of a county or city and county; or
- A public place in a prohibited area of a county or city and county.

*Existing law* states that a person is guilty of carrying an unloaded firearm that is not a handgun (a long gun) in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun (or a long gun) outside a vehicle while in the incorporated city or city and county. (Pen. Code, § 26400.)

*Existing law* provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances: (Pen. Code § 26405.)

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property;
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;
- If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified;
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified;
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States;
- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business;
- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization;
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;

- Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- Within a licensed gun show;
- Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- By any person while engaged in the act of making or attempting to make a lawful arrest;
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- At any established public target range while the person is using that firearm upon the target range;
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- Complying with specified provisions of law relating to the regulation of firearms;
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training;
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;

- Incident to and at the request of a sheriff or chief or other head of a municipal police department;
- If all of the following conditions are satisfied:
  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
  - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
- By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;
- By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion;
- By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system;
- On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun;
- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;
- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training;
- By a person in compliance with specified provisions related to carrying a firearm in an airport; and
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

*This bill* would specify that it is a misdemeanor to openly carry a long gun in a public place in an area where discharge of a firearm is prohibited in an unincorporated area of a county.

## COMMENTS

### 1. Need for This Bill

According to the author:

Senator Portantino in 2011 and 2012 worked on legislation that banned open-carry in California. This legislation has widespread approval by the majority of Californians. Assembly Bill 7 will close a dangerous loophole that allows the open carry of long-guns in unincorporated areas. This is a completely unacceptable loophole because the flaunting of assault weapons invites mayhem, confusion, and fear. I will continue to stand with my colleagues in the legislature, gun safety advocates, and all of my constituents to reduce gun violence in California. I believe we have what it takes to rise above political division and enact laws that will strengthen public safety and reduce the plague of gun violence.

### 2. Open Carry in California

California has traditionally had some of the nation's strictest regulations of gun ownership. However, for many years the carrying of unloaded and unconcealed firearms remained unregulated. In 2004, 2005, and 2010 there were unsuccessful attempts to prohibit the practice of open carrying of handguns. (AB 2828 (Cohn) (2004); AB 2501 (Horton) (2004); AB 98 (Cohn) (2005), AB 1934 (Saldana) (2010).) Following these attempts, a new movement to promote the carrying of firearms in California and around the nation heightened debate around the issue. As reported by the New York Times in 2010:

For years, being able to carry a concealed handgun has been a sacred right for many gun enthusiasts. In defending it, Charlton Heston, the actor and former president of the National Rifle Association, used to say that the flock is safer when the wolves cannot tell the difference between the lions and the lambs.

But a grass-roots effort among some gun rights advocates is shifting attention to a different goal: exercising the right to carry unconcealed weapons in the 38 or more states that have so-called open-carry laws allowing guns to be carried in public view with little or no restrictions. The movement is not only raising alarm among gun control proponents but also exposing rifts among gun rights advocates.

The call for gun owners to carry their guns openly in the normal course of business first drew broad attention last summer, when opponents of the Obama administration's health care overhaul began appearing at town-hall-style meetings wearing sidearms. But in recent weeks, the practice has expanded as gun owners in California and other states that allow guns to be openly carried have tested the law by showing up at so-called meet-ups, in which gun owners appear at Starbucks, pizza parlors and other businesses openly bearing their weapons.

“ Our point is to do the same thing that concealed carriers do,” said Mike Stollenwerk, a co-founder of OpenCarry.org which serves as a national forum. “We’re just taking off our jackets.”

The goal, at least in part, is to make the case for liberalized concealed weapon laws by demonstrating how uncomfortable many people are with publicly displayed guns. The tactic has startled many business owners like Peet’s Coffee and Tea and California Pizza Kitchen, which forbid guns at their establishments. So far, Starbucks has resisted doing the same. (*Locked, Loaded, and Ready to Caffeinate*, New York Times, March 7, 2010.

[http://www.nytimes.com/2010/03/08/us/08guns.html?pagewanted=print.](http://www.nytimes.com/2010/03/08/us/08guns.html?pagewanted=print))

As a result of the movement, then Assemblyman Anthony Portantino introduced AB 144 (Portantino), Chapter 705, Statutes of 2011, which successfully banned the open-carrying of handguns in California subject to a number of enumerated exceptions. Then, AB 1527 (Portantino), Chapter 700, Statutes of 2012 successfully banned the open carrying of long guns in California. AB 1527 was passed in response to a movement by open carry advocates to carry rifles and shotguns in public due to the passage of AB 144 the year prior. In October of 201 the San Francisco Chronicle reported:

SAN LEANDRO -- Now that a new California law banning the open carrying of pistols is loaded for action, the big guns are coming out.

Rifles, that is. And shotguns.

Gun owners who are upset that the anti-carry state law will go into effect Jan. 1 intend to start packing their biggest heat in open as often and as visibly as they can, beginning with a gathering in San Leandro today.

They expect at least 50 gun-toting Second Amendment enthusiasts to show up on Hesperian Boulevard at Bayfair mall from noon to 1 p.m. From target-plinking .22-caliber rifles and .270-caliber deer-hunting weapons to 12-gauge shotguns that can blow a gaping hole in a wall - expect any or all long guns that are legal to own in California, organizers say.

The point is to be provocative enough to spur action by the courts or legislators to repeal the new law and restore the right to pack unloaded pistols in the open.

“People are really upset about this law, and if they won't let us carry handguns, we just have to defend ourselves with the next thing available,” said co-organizer Yih Chau Chang of Dublin, who intends to bring his unloaded pump-action shotgun to today's rifle meet-up. “This just shows that here in California, our gun-control laws have gotten out of control.”

Gun opponents say this new tactic, which follows last year's open-carry displays of handguns by many of those now promoting rifles, is reprehensible.

There will be change, all right, they say - but not the kind the gun advocates want.

*Alarms the public*

"Actually, this kind of event is an invitation to ban long rifles in public now," said Juliet Leftwich, legal director of Legal Community Against Violence, a gun-control group founded in San Francisco in response to the 101 California St. massacre of 1993 in which nine people died.

"Open carrying of any guns, pistols or rifles alarms the public and it wastes law enforcement resources while they have to monitor the people carrying them," Leftwich said. It would be best if it were totally banned.

*Motivation for tactic*

The law spurring this new tactic is AB144, which Gov. Jerry Brown signed Oct. 10. Introduced in January right after the shooting in Tucson that left six dead and 13 wounded including Rep. Gabrielle Giffords, D-Ariz., the law forbids anyone from openly carrying handguns in public.

Previously, Californians could tote handguns any way they wished, in holsters or in their hands, as long as they were unloaded. Violation of the new law is a misdemeanor punishable by up to a year in prison.

California is the fifth state, including Florida and Texas, to outlaw openly carrying pistols. The District of Columbia also forbids it. Thirty-three states allow unrestricted open carry, and 12 require permits.

Gun advocates say the California law is doomed whenever a lawsuit gets filed - and they say one will be - because two federal court rulings in the past year asserted the legality of open-carry rights. The rulings upheld rejections of several individual concealed-weapons-permit applications in San Diego and Yolo counties, saying the old open-carry law negated the need to pack a hidden gun.

Gun-control advocates say the gun-rights crowd shouldn't pin any hopes on those rulings.

They say the danger is too acute to play politics with, citing figures from the Brady Center to Prevent Gun Violence showing that America's annual toll of 30,000 gun-related deaths far outstrips those of any other Western country. Britain, for example, experiences about 50 gun-related deaths a year.

*Seal Beach rampage cited*

Gun advocates say those same statistics just prove their point.

"What you will see if you restrict people's gun rights is more of what happened in Seal Beach last week, where people don't have the right to defend themselves," said Jeff Dunhill, an open-carry organizer who spent this week hunting elk in

Colorado. He was referring to a rampage in which eight people were shot to death at an Orange County beauty salon, allegedly by a man involved in a child-custody battle with one of the victims.

“They are arguing that patrons at the nail salon in Seal Beach should have had firearms with them?” said Leftwich. “That's crazy.”

*(Handgun Law Riles Activists - They'll Carry Rifles, San Francisco Chronicle, Saturday, October 22, 2011, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/10/21/BAVU1LKGRM.DTL>)*

### **3. Unincorporated Areas and the "Doughnut Hole" Phenomenon**

When AB 1527 (Portantino) was passed it banned openly carrying a long gun in an incorporated area. At the time, the ban failed to include unincorporated areas. At the time it was thought that this would permit the carrying of firearms in areas which were less interested in prohibitions on open carrying of long guns. Additionally, the people were more likely to be carrying long guns in these areas for sporting or ranching purposes. However, the author and advocates of this legislation have indicated that there are areas within urban environments which are unincorporated. Large portions of Los Angeles County are actually unincorporated areas which are completely surrounded by incorporated areas. These areas are colloquially referred to as "doughnut holes." This bill would apply the ban on long guns to those areas as well.

### **4. Argument in Support**

The California Chapters of the Brady Campaign writes in support:

The California Chapters of the Brady Campaign to Prevent Gun Violence is a grassroots organization working to reduce firearm crime, injury, and death. There are 28 Brady Chapters throughout the state, many of whose members have lost a loved one to gunfire. In furtherance of our goal to reduce firearm violence in our communities, the California Brady Campaign supports AB 7, introduced by Assemblymember Mike Gipson.

Our California Brady Chapters worked hard in 2011 and 2012 to enact the laws that prohibit “open-carry” in public areas. Under existing statutes, exposed handguns cannot be carried in either incorporated or unincorporated areas in California and exposed long guns (rifles and shotguns) cannot be carried in incorporated areas. The Brady Campaign believes that carrying exposed firearms in crowded public places with ammunition readily available is inappropriate and risky behavior that threatens public safety and strains law enforcement resources.

Evidently, there are large, high crime urban neighborhoods (such as Compton and East Los Angeles) that are unincorporated and therefore the open carry of unloaded long guns in these areas is permissible under current law. The carrying of exposed rifles and shotguns in such urban settings is particularly inappropriate and threatening. AB 7 will rectify this situation by prohibiting the open carry of a long gun in a public place or public street in a prohibited area of an unincorporated area of a county. Since County Board of Supervisors currently determine prohibited areas

within their jurisdiction (areas in which it is unlawful to discharge a firearm), AB 7 leaves the decision on the carrying of exposed long guns in unincorporated areas to counties.

Those who carry exposed long guns in public are not required to undergo any special screening or clearance. In fact, there is no verification process to ensure that the person is not prohibited from possessing firearms. People who carry guns in urban public places may lack the skill, experience, judgment or moral character for safely carrying an exposed weapon, particularly when faced with a confrontational situation. Furthermore, a member of the public, when confronted by a person openly carrying a gun, has no way of knowing the intentions of that person.

## 5. Argument in Opposition

The National Rifle Association writes in opposition:

On behalf of the National Rifle Association (NRA) and its hundreds of thousands of members in California, I write to express our opposition to Assembly Bill 7 (AB 7).

AB 7 would prohibit the carrying of an unloaded firearm other than a handgun while in or upon a public place or public street within a prohibited area located within the unincorporated area of a county.

In 2011, California law allowed for the open carrying of unloaded firearms. Unfortunately due to the irrational 'gun-phobia' that the sight of a firearm frightens people and automatically stigmatizes a person as a criminal, the legislature decided to ban the open carrying of an unloaded handgun in a public place or street.

The 2011 ban was not enough and in 2012, the legislature passed another bill expanding the open carry ban of an unloaded handgun to include rifles and shotguns in an incorporated city and county.

Fast forward FIVE years and now the legislature feels that open carrying of a firearm in an unincorporated area of a county is necessary due to "gun-phobia." We are not aware of a person openly carrying an unloaded firearm in an unincorporated area being convicted of any crime between 2012 and now. With this being said, this is just another bill harassing law-abiding gun owners exercising their Second Amendment rights.

California has some of the most stringent laws regarding the ownership and possession of a firearm. A person who is openly carrying a firearm must still comply with all other California laws regarding firearm ownership, possession, and transport of firearms or risk losing their firearms and imprisonment for simple technical violations of the law.

California is already an outlier when it comes to openly carried firearms. 45 states allow open carry of a *loaded* firearm. 30 of these states do not require a permit and 15 states require a permit to open carry.

It is obvious that AB 7 is not about reducing California's firearm crime rate, but is simply another attempt to further strip the law-abiding citizens of the Golden State of their Constitutional right to self-defense.

**-- END --**