



# Austin Police Department

House Bill 910 "Open Carry"

*Effective January 1, 2016*

House Bill 910 allows a license holder to “open carry” a handgun in a holster effective January 1, 2016. The following training outline for “open carry” will contain a summary of the following topics for police officers.

**I. House Bill 910  
("Open Carry")**

**II. Display of  
License and  
Disarming**

**a. Texas Government  
Code 411.205  
(Requirement to  
Display License)**

**b. Discussion of  
Reasonable  
Suspicion and Frisk**

**c. Texas Government  
Code 411.207  
(Authority of Peace  
Officer to Disarm)**

**d. Reasonable  
Belief**

**III. APD  
Communications-  
Protocol for Open  
Carry**

**IV. Tactics and  
Response**

**V. Reporting**



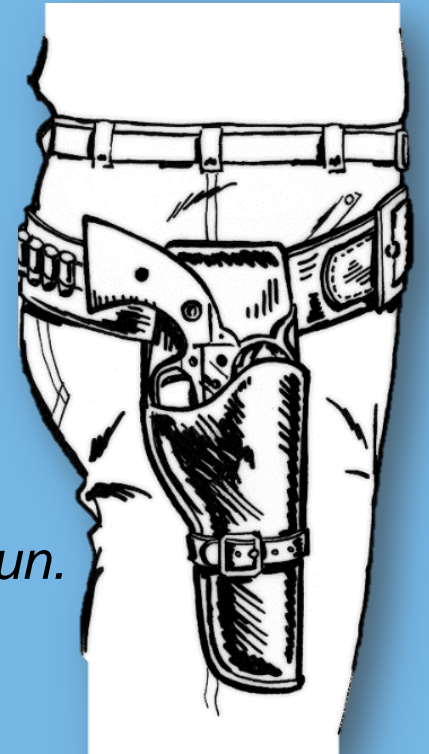
This outline mainly addresses a summary of the new law and detentions related to the law. If there is an arrest for a separate offense at the time the person is openly carrying, the same search incident to arrest rules still apply.

# I. House Bill 910 (“Open Carry”)

- House Bill 910 eliminates the distinction between concealed and open carry and creates a license to carry a handgun openly in a belt or shoulder holster or in a concealed manner. Those who have an existing concealed handgun license or those who get a license to carry a handgun in Texas will be able to openly carry, or carry concealed.

- ***It should be noted:***

- *A person with no handgun license may still carry a handgun in a car as long as it is concealed.*
- *There is still no licensing requirement in order to openly carry a long gun.*



# I. House Bill 910 (“Open Carry”)

The rules related to where and when a license holder may openly carry are essentially identical to where and when a concealed handgun license holder can carry under current law.

- Businesses will have the ability to post required signage prohibiting either open or concealed carry which will require identical language from the Texas Penal Code section 30.06(c)(3)(A), and section 30.07(c)(3)(A).
- *Penal Code Section 42.01 governs disorderly conduct. A person commits a Class B misdemeanor offense if he or she intentionally or knowingly “**displays a firearm or other deadly weapon in a public place in a manner calculated to alarm.**”*

## II. Display of License and Disarming

### Texas Government Code

#### Sec. 411.205. Requirement to Display License.



If a license holder is carrying a handgun on or about the license holder's person when a magistrate or a peace officer demands that the license holder display identification, *the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license.*

- This requirement to display a license has existed in the handgun licensing statute for years. The legislature did not change or amend this provision in HB 910. **Be advised that no criminal penalty exists in the licensing statute or in other state law if a license holder refuses to display the requested licenses.**

## II. Display of License and Disarming

### **(Topic of Discussion)**

What if an officer lawfully detains a subject, who is open carrying a handgun, and the subject refuses to display their handgun license upon the officer's request?

State law requires in 411.205 that the subject display his or her handgun license when a peace officer requests it. If the subject refuses to comply with state law, then the officer does not know if the subject is lawfully carrying or not, which could mean the subject is unlawfully carrying a weapon. If the officer chooses to make an arrest for UCW, then the subject is required to identify himself or herself; otherwise, the subject would be committing the offense of failure to identify. If it is determined that the subject does have a license to carry, then he or she would not be unlawfully carrying a weapon.

If the officer later determines the subject does have a handgun license that the subject refused to produce to the officer, then DPS can be notified of the non-compliance by the individual.

Also, the person could be failing to comply with a lawful order.



# II. Display of License and Disarming

## Discussion of Reasonable Suspicion and Frisk

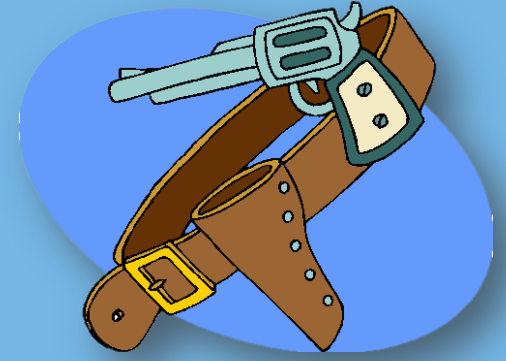
- The new open carry law creates a license to carry a handgun openly in a belt or shoulder holster or in a concealed manner.

- If an officer has reasonable suspicion for a stop and then has a,

*“reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search(frisk) of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him”(Terry v. Ohio, U.S. Supreme Court, 1968).*

## II. Display of License and Disarming

### Texas Government Code 411.207



#### **Sec. 411.207. Authority of Peace Officer to Disarm.**

*(a) A peace officer who is acting in the lawful discharge of the officer's official duties may disarm a license holder at any time the officer reasonably believes it is necessary for the protection of the license holder, officer, or another individual. The peace officer shall return the handgun to the license holder before discharging the license holder from the scene if the officer determines that the license holder is not a threat to the officer, license holder, or another individual and if the license holder has not violated any provision of this subchapter or committed any other violation that results in the arrest of the license holder.*

## II. Display of License and Disarming

### Texas Government Code 411.207

#### **Sec. 411.207. Authority of Peace Officer to Disarm.**

(b) A peace officer who is acting in the lawful discharge of the officer's official duties may temporarily disarm a license holder when a license holder enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the license holder's handgun. The peace officer shall secure the handgun in the locker and shall return the handgun to the license holder immediately after the license holder leaves the nonpublic, secure portion of the law enforcement facility.



## II. Display of License and Disarming

### Texas Government Code 411.207

#### **Sec. 411.207. Authority of Peace Officer to Disarm.**

(c) A law enforcement facility shall prominently display at each entrance to a nonpublic, secure portion of the facility a sign that gives notice in both English and Spanish that, under this section, a peace officer may temporarily disarm a license holder when the license holder enters the nonpublic, secure portion of the facility. The sign must appear in contrasting colors with block letters at least one inch in height. The sign shall be displayed in a clearly visible and conspicuous manner.



## II. Display of License and Disarming

### Texas Government Code 411.207

#### **Sec. 411.207. Authority of Peace Officer to Disarm.**

(d) In this section:

(1) "Law enforcement facility" means a building or a portion of a building used exclusively by a law enforcement agency that employs peace officers as described by Articles 2.12(1) and (3), Code of Criminal Procedure, and support personnel to conduct the official business of the agency. The term does not include:

(A) any portion of a building not actively used exclusively to conduct the official business of the agency; or

(B) any public or private driveway, street, sidewalk, walkway, parking lot, parking garage, or other parking area.

## II. Display of License and Disarming

### Texas Government Code 411.207

#### **Sec. 411.207. Authority of Peace Officer to Disarm.**



(2) "Nonpublic, secure portion of a law enforcement facility" means that portion of a law enforcement facility to which the general public is denied access without express permission and to which access is granted solely to conduct the official business of the law enforcement agency.

## **II. Display of License and Disarming**

### **d. Reasonable Belief**

Texas Government Code 411.207(a) uses the term “reasonably believes.” To establish a reasonable belief, an officer should be able to articulate observable facts and circumstances, known at the time of disarmament that led the officer to conclude that disarming the license holder was necessary for the protection of the holder, officer, or another person.



### III. APD Communications-Protocol for Open Carry

In September 2015, a committee was formed to create protocol for Departmental response when House Bill 910 (Open Carry law) becomes effective, January 01, 2016. As part of this committee, Emergency Communications has created new protocols to assist patrol with identifying and tracking calls from citizens regarding subjects openly carrying a handgun or a long gun. These new title codes may or MAY NOT involve an “open carry” situation.





# III. APD Communications-Protocol for Open Carry

- Officer can distinguish the criteria for each priority type:
  - **GUN – HS:** Any call where a gun is being handled, brandished, used in a threatening manner or the gun carrier is involved in a disturbance.
    - **NOTE:** This may or may not be an open carry scenario. The criteria does not consider or factor in whether the person is a license holder.
  - **GUN – Urgent:** Any call where a gun is being displayed openly; but,
    - 1.IS NOT being handled,
    - 2.IS NOT being brandished, or
    - 3.IS NOT being used in any other threatening manner; AND



# III. APD Communications-Protocol for Open Carry

## **GUN – Urgent: cont...**

4. the weapon holder IS NOT involved in a disturbance; BUT,
  - o the weapon holder may be near or on the property of a vulnerable facility<sup>1</sup> or critical infrastructure<sup>2</sup>.

Any call where a gun is being displayed openly; 1-4 above are true; the subject is NOT on or near a vulnerable facility or critical infrastructure; but, **the citizen is requesting a patrol officer.**



### III. APD Communications-Protocol for Open Carry

- <sup>1</sup> - Vulnerable facilities** are places such as schools (public and private), religious facilities (churches, mosques, etc.), governmental facilities, sport arenas, etc.*
- <sup>2</sup> - Critical infrastructure** is places such as transportation depots, chemical, electrical, water plants, and telecommunication facilities.*



# III. APD Communications-Protocol for Open Carry

- Officers encountering a true Open Carry scenario will be able to utilize the “final type” title code of **xOpen Carry** to make CAD notes and clear without a report (after completing a F.O.)
  - New “final type” title code: **xOpen Carry**
    - Officer can set the final type of a Gun-HS or Gun-Urgent to **xOpen Carry** (and clear 10-8-6, with an F.O.) ONLY if all of the below criteria are met:
      - Subject was openly carrying a long gun or a handgun, AND
        - Was NOT involved in a disturbance
        - Did NOT brandish the weapon or make any threatening statements
        - Was NOT on the grounds of a vulnerable facility or critical infrastructure
        - Did NOT violate any laws related to Open Carry

## IV. Tactics and Response

If the officer needs to disarm a person who is openly carrying based on the fact the officer “reasonably believes it is necessary for the protection of the license holder, officer, or another individual”, then there are several tactical considerations such as:

- Reason for the stop
- Backup present
- Demeanor (e.g., hostile/agitated)
- Type of holster (shoulder or belt)
- Whether or not to handcuff the subject
- Lethal Cover (e.g., hostile subject who is openly carrying)
- Verbal Commands
- Environment (e.g., crowded street or alley)
- Return of the weapon after disarming if no arrest is warranted

# V. Reporting

Every time an officer **DISARMS** a license holder they **WILL** write a report AND mark the newly created Study Flag of “**OC – Disarmed Open Carry Subject**”.

## **New “final type” title code: *xOpen Carry***

Officers can set the final type of a Gun-HS or Gun-Urgent to ***xOpen Carry*** (and clear 10-8-6, with an F.O.) **ONLY** if all of the below criteria are met:

- Subject was openly carrying a long gun or a handgun, *AND*
  - Was NOT involved in a disturbance
  - Did NOT brandish the weapon or make any threatening statements
  - Was NOT on the grounds of a vulnerable facility or critical infrastructure
  - Did NOT violate any laws related to Open Carry

Officers encountering a true Open Carry scenario will be able to utilize the “final type” title code of ***xOpen Carry*** to make CAD notes and clear without a report (after completing a F.O.)

**END**