

# **HANDGUN LEGISLATION**

## **Information, Guidelines and Recommendations**

### **For Institutions of the Texas Tech University System**

Following the enactment of recent legislation by the 84<sup>th</sup> Texas Legislature, the Chancellor requested that a small committee be created to provide guidelines and recommendations for the universities as each university seeks to separately comply with legislative mandates regarding handgun policies. This document is a product of the work of that committee which included representatives of each university's administration.

#### **Summary of Recent Legislation**

##### **“Open Carry”**

The Texas Penal Code generally regulates when and where handguns may be carried; that is to say that, where Texas law or regulation prohibits possession of firearms on particular premise, the prohibitions are enforced as a matter of criminal law. Prior to the changes made in the 84<sup>th</sup> Legislature (2015), the extensive provisions covering for concealed handgun licenses (the “CHL”) provided the most extensive exceptions to general prohibitions in the Penal Code. In large part, the “Open Carry” legislation simply provides that holders of the CHL may now carry their handgun visibly in a waist belt holster or a shoulder holster. Prior legislation, however, provided a number of locations where the carrying of a concealed handgun, notwithstanding licensure, was prohibited. See Tex. Penal Code sections 46.03 & 46.035. Appendix 1, attached, is a list of those premises which are relevant to the Texas Tech University System. Under the new “Open Carry” legislation, those premises continue to be “off limits” for concealed and open carry. Appendix 1 also lists some TTUS functions, activities and locations to which these prohibitions could apply.

##### **“Campus Carry”**

Prior to changes made in the 84<sup>th</sup> Legislature (2015) individuals, with certain exceptions, such as law enforcement personnel, were prohibited from

carrying handguns inside any TTUS buildings, even if the individual held a CHL. Senate Bill 11, the so called “Campus Carry” bill, mandates that, pursuant to a prescribed process, institutions of higher education alter their rules governing handgun possession. After completion of the process required under S.B. 11, individuals holding a handgun license will be able to carry a concealed handgun on TTUS campuses and into many TTUS buildings. While the “Open Carry” legislation allows license holders, starting January 01, 2016, to openly carry their handguns in various locations in the State of Texas, the “Campus Carry” legislation only broadens the right for license holders to carry handguns in a concealed manner on university campuses.<sup>1</sup> “Open Carry” will still be prohibited on TTUS campuses and on “...any public or private driveway, street, sidewalk or walkway, parking lot, parking garage or other parking area of an institution of higher education...”<sup>2</sup>

## **Other Weapons**

Each of our universities may currently have existing policies in Operating Policies, Codes of Student Conduct or Housing Contracts and student, faculty and employee handbooks which prohibit “illegal possession” of “weapons,” including handguns, on campus or in certain premises. (For ease of reference, attached Appendix 2 lists current locations of some of those references.)The recent work of the 84<sup>th</sup> Legislature addressed handguns extensively but did not enact any special provisions for other weapons. To our knowledge there is no provision of the Texas Penal Code which explicitly establishes criminal liability for individuals openly displaying a rifle or other “long-gun”. In our opinion, therefore, existing policies may still prohibit long-guns and non-handgun weapons. It should be noted, however, that enforcement of these policies is not, in the first instance, a criminal matter at all. Rather, these policies would be enforced like other disciplinary policies.

## **Handgun Licensure**

The licensing of handguns in Texas is regulated under statutes and rules administered by the Texas Department of Public Safety. In order to be eligible for

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<sup>1</sup> “Campus” is defined to mean “... All land and buildings owned or leased by an institution of higher education.” Govt. Code §411.2031(a)(1).

<sup>2</sup> Penal Code Section 46.035 (a-1).

a license, an applicant must be at least 21 years of age<sup>3</sup>, not have a criminal record of a felony conviction or conviction of certain classes of misdemeanors, and meet other requirements listed in the statute (Texas Govt. Code section 441.172). If eligible to apply for a license, an applicant must further complete education and proficiency requirements and pass a background check.

### **“Campus Carry” and the Mandate to the Universities of the Texas Tech System**

As a part of the legislative process which led to the eventual passage of the “Campus Carry” legislation, some unique provisions were provided to allow universities to have some discretion in tailoring handgun rules for their respective campuses. Senate Bill 11 describes limitations on universities’ discretion with enactment of a new section of the Government Code, specifically section 411.2031, a copy of which is attached as Appendix 3. The key points are:

1. Subject to rules adopted by the university, individuals holding a valid Texas handgun license will be allowed to carry their handgun, concealed on their person on the campus.
2. The President of each university shall establish “reasonable rules” regarding the carrying of handguns on the campus.
3. The rules so established may not “...generally prohibit or have the effect of generally prohibiting license holders [from carrying on the campus]”.<sup>4</sup>
4. The rules are to be established after consultation with students, staff and faculty.
5. The consultations should take into account the student population, specific safety considerations for that campus, and the “uniqueness of the campus environment.”
6. With respect to the rulemaking process prescribed by Senate Bill 11, the legislature did not specifically authorize universities to prohibit handguns in university living facilities. However, the law provides that the university”... may include in its rules provisions concerning the

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<sup>3</sup> Members of the military services, or veterans, may be eligible to obtain a license if they are over 18 years of age

<sup>4</sup> In further emphasis of intent, the Legislature passed a new provision in the Government Code, Section 411.209, which creates a potential civil (monetary) liability for any state agency which, by signage, overstates its prohibitions; e.g., if a university claims prohibitions which are not authorized in the “Campus Carry” legislation.

- storage of handguns in dormitories or other residential facilities....”. For implications of this provision, please see recommendations below.
7. At any campus location that is “off limits” for concealed carry, notice must be given by signage meeting the requirements of Texas Penal Code section 30.06 described below.
  8. Rules adopted by the university are subject to review at two levels:
    - a. Not later than 90 days after the institution president adopts the rules, they must be reviewed by the Board of Regents. The Board may modify the rules, but only by a two-thirds majority vote.
    - b. By September 1<sup>st</sup> of each even-numbered year, the university must submit a report to the Legislature and standing committees describing the rules adopted and explaining the “...reasons the institution has established those provisions.”
  9. Once established, the university must “widely distribute” its rules and regulations to students, staff and faculty.

## Signage

In order to provide the “effective notice” required by the new campus carry legislation, signs must be conspicuously posted and visible to the public, must be in English and Spanish, and must be printed in black letters of one inch or more on a contrasting background. The content of the sign is also prescribed. As more fully described below, some locations on TTUS campuses will require that signage address both open carry and concealed carry prohibitions.

## Schedule for Compliance

**January 1, 2016**—Effective date of Texas’ new Open Carry provisions. This means that appropriate signage giving notice that TTUS campuses are “off limits” for open carry by license holders must be in place in conspicuous locations on campus perimeters.

**February 25-26, 2016**—Meeting of the Board of Regents to review each institution’s proposed rules

**August 1, 2016**—Individual campus rules must be in place for campus carry, having been reviewed by the Board of Regents, and ready to be reported to the Legislature by September 1, 2016.

## Recommendations

- A. We suggest that, as the Universities proceed to establish specific rules regarding handguns, committees contemporaneously examine changes which will need to be made to Operating Policies, Codes of Student Conduct and Housing Contracts.
- B. Although “Open Carry Prohibited” signage must be installed by January 01, 2016, the universities should start planning immediately for the placement of Campus Carry signage. During the period of January 1, 2016 through August 1, 2016, all of our campus buildings continue to be “off limits” for concealed carry by license holders and open carry as well. We recommend that signage during this interim period include two signs on campus perimeters as follows:
- 1) The following signage under the current statute, and possibly already in place at some campus perimeters regarding “concealed carry”, which signage would be removed when new university rules become effective:

Pursuant to Section 30.06, Penal Code (trespass by holder of license to carry a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (concealed handgun law) may not enter a premises<sup>5</sup> on this campus with a concealed handgun.

2)Beginning January 01, 2016 and remaining thereafter, the following signage:

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code

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<sup>5</sup> “Premises” is defined as follows:”....building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking are.” Penal Code §46.035(f)(3).

(handgun licensing law), may not enter this property with a handgun that is carried openly.

C. Before launching the process of receiving public comment, university leadership should consider adopting some working assumptions for policies under consideration for adoption. We submit the following for your consideration:

- 1) Adoption of an exclusion for a premises must be reasonably justified. That justification must rest on something other than assumptions or bias regarding handgun license holders. Justification should be based on some higher standard. Is there some reason that a concealed weapon on a particular premise creates some special danger? Under this rationale, it is our expectation that very few buildings on our campuses will be “off limits” in their entirety.
- 2) The university will affirm and enforce the seven premises exclusions described in Appendix 1. Although, as a matter of statutory law some of the premises/situations described in Appendix 1 are “off limits” to all handguns even without signage, we recommend that the universities use signage to alert individuals with respect to all the Appendix 1 premises/situations.
- 3) Any policy will include a provision expressly providing that only the university president may establish gun free zones. This is to preclude individual office occupants or departments from creating unauthorized small islands of restriction.
- 4) The development of policies should be done with regular consultation with the respective police departments at all TTUS components and the Office of the General Counsel. Ultimately, the enforcement of any handgun regulation is only as a matter of “criminal trespass” which is a matter for law enforcement.

- D. The universities need to make decisions with respect to how to treat the seven categories of statutory prohibitions noted in Appendix 1, and in part B(2), above. As noted, some of these categories are “self-executing” while other categories (hospitals, government meetings and religious facilities) are “off limits” to handgun licensees only if signage is present. We recommend, however, that signage be prepared for all seven of the Appendix 1 categories. We fully understand that, in many of these situations, this suggestion will require the preparation of portable signage, and, as events come and go, attention will have to be given to one more detail of event hosting protocols. For example, temporary signage would be needed for venues hosting the meetings of the Board of Regents. However, we believe that use of signage may help avoid public misunderstandings. Again, for example, although the general prohibition of handguns at a UIL competition may be “self executing,” universities should consider whether temporary signage at a building hosting such a competition may be appropriate. Any use of portable signage for temporary “off limits” areas should be done only after consultation with campus law enforcement.
- E. We do not recommend that universities enact a general prohibition of licensed handguns on the premises of housing facilities unless the university is prepared to provide a system for secure storage on the premises. We believe this to be the intent expressed in the statute. We further note that, in order to hold a handgun license, the holder must be, in most instances, aged 21 years or older.
- F. We recommend that universities prohibit faculty from including mandatory or precatory language regarding handguns in course syllabi<sup>6</sup>.

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<sup>6</sup> Our recommendation on this issue is based on two factors. First, recall that handgun prohibitions only exist as a function of the criminal law provisions. A faculty member’s

- G. We recommend that universities prohibit all employees, including faculty, from compiling, maintaining or publishing a list of licensees.<sup>7</sup>
- H. We suggest that the universities begin now to plan how to educate the many campus constituencies on these issues. As the “vetting” process begins, campus constituencies must understand some of the nuances and tensions that are obvious in the laws and the legislative history. Prior to January 1, 2016, the universities may want to disseminate early information designed to be sure individual license holders are informed that, while “open carry” may be permissible in some Texas locations, university campuses are not included. Then, as the universities begin to put specific policies in place for concealed carry, universities must “widely distribute” information on their respective policies. Obviously, new student and new employee orientation programs should be updated to include information on these rules. Operating policies, student conduct codes, and student, faculty, and employee handbooks also need to be updated. In addition, information also should be prominently featured on the institution’s website. As much as possible, education and information programs should be fully planned and

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classroom rule will not carry any force of law. A faculty member, therefore, could only enforce his/her rule by available classroom discipline methods. To preclude a student, otherwise entitled to attend class, from participation because of exercise of his/her licensure right suggests many potential legal difficulties. A second issue is the statutory admonition that universities may not “generally prohibit” the exercise of the license right on university campuses. At some point, the wide spread use of syllabi prohibitions may become such a general prohibition.

<sup>7</sup> We should note that any list of current CHL holders at the Texas Department of Public Service is protected from public disclosure by Govt. Code §411.192. While relevant, Section 411.192, as such, is not the basis for this recommendation. Rather, our recommendation is based on the fact that licensees will view a list as evidence that the university or individual faculty intend to punish them at some point. Consequently, if proof of a list were discovered, it might unnecessarily complicate disciplinary actions as listed licensees may use the list to argue that any disciplinary measures taken against them are predicated on the university’s (or faculty member’s) desire to deny them their rights and remove them from the campus.



ready for implementation by the date of presentation of new policies by the February 2016 meeting of the Board of Regents.