

## **Firearms on Community College Campuses**

### TASB Legal and Policy Services for Community Colleges

The issue of firearms on higher education campuses is a matter of perennial debate before the Texas Legislature and throughout the state. During the past session, the legislature propelled the issue forward, passing bills addressing firearms signs, Senate Bill 273 effective September 1, 2015; open carry of handguns, House Bill 910 effective January 1, 2016; and campus carry of handguns, Senate Bill 11 effective August 1, 2017. Each bill requires community college districts to take steps to respond to the evolving level of access granted handgun license holders to carry on college campuses.

This document addresses the law as it exists at the time of publication. For issues to consider in complying with campus carry legislation, Senate Bill 11 effective August 1, 2017, see the resource [Campus Carry](#).

Texas law regulates firearms primarily through criminal offenses described in Texas Penal Code chapter 30 and chapter 46 and handgun licensing restrictions found in Texas Government Code chapter 411, subchapter H.

### **Firearms Generally**

#### **What is a *firearm*?**

A *firearm* is a device made, designed, or adapted to expel, using energy from a burning substance or explosion, an object through a barrel or a device easily convertible to that use. The term does not include devices considered to be antique or curio firearms made before 1899 and some replicas of those firearms. Tex. Penal Code § 46.01(3). Possession of specified firearms, machine guns and short-barrel firearms, as well as certain related items, armor-piercing ammunition and firearm silencers, are prohibited outright by state law. Tex. Penal Code § 46.05(a).

#### **Who may carry a firearm?**

Possession of other types of firearms is limited to certain categories of individuals. For example, only those licensed under Texas Government Code chapter 411, subchapter H, or otherwise authorized, may carry a handgun outside of their homes, vehicles, and watercraft. Tex. Penal Code § 46.02. To be licensed, a person must meet the statutory eligibility requirements, including being at least 21 or, if the person served in the military, at least 18; satisfy the criminal background check requirements; attend an approved handgun proficiency course for four to six hours; and demonstrate a minimum level of

handgun proficiency. Tex. Gov't Code §§ 411.172, .176, .188-.1882. For more information regarding handgun licenses, see the Texas Department of Public Safety Handgun Licensing Website, available at [dps.texas.gov/RSD/CHL/index.htm](https://dps.texas.gov/RSD/CHL/index.htm).

Additionally, Texas law authorizes the following officials to bring firearms onto the premises of a community college district:

- on or off duty peace officers or special criminal investigators;
- authorized and on-duty parole officers;
- authorized and on-duty community supervision and corrections department officers;
- active judicial officers licensed to carry handguns;
- honorably retired peace officers, qualified retired law enforcement officers, federal criminal investigators, or former reserve law enforcement officers, with proper identification;
- district attorneys and assistant district attorneys, criminal district attorneys, county attorneys, or municipal attorneys licensed to carry handguns;
- bailiffs designated to escort active judicial officers and licensed to carry handguns; and
- juvenile probation officers authorized to carry firearms.

Tex. Penal Code § 46.15(a).

Possession is also restricted by the location on which the firearm is carried. With the exception of members of the military and court officers executing their duties, individuals, even handgun license holders, are prohibited by Texas Penal Code section 46.03 from intentionally, knowingly, or recklessly possessing or going with a firearm:

- On the premises of a school or an educational institution absent permission of the school or institution;
- On the grounds or in a building where an activity sponsored by a school or an educational institution is being held, absent permission of the school or institution;
- In the school or educational institution's passenger transportation, absent permission of the school or institution;
- At the premises of a polling place during early voting or on election day; and
- On the premises of or offices used by a court without the court's written authorization.

Tex. Penal Code § 46.03(a), (d). *See* Op. Tex. Att’y Gen. No. KP-50 (2015) (concluding that Section 46.03 prohibits firearms anywhere that a school activity occurs, even if that location does not meet the statutory definition of *premises*).

*Premises* is defined as a building or portion of a building. Tex. Penal Code §§ 46.03(c)(2), .035(f)(3).

In the case of the first three locations listed above, an educational institution may permit carry of firearms through a written regulation or through written authorization. Tex. Penal Code § 46.03(a)(1).

Violations of Section 46.03 are punishable as a third degree felony. Tex. Penal Code § 46.03(g).

Section 46.03 has traditionally been applied generally to community college districts as educational institutions. *See Dupree v. State*, 433 S.W.3d 788 (Tex. App.—Texarkana 2014) (reversing the conviction under Section 46.03 of an individual who carried a handgun on a college district campus because he did not carry the handgun within a college building). However, the Texas attorney general stated in a recent opinion that the reference to “school or educational institution” does not include community college districts. Op. Tex. Att’y Gen. No. KP-120 (2016). The college district should therefore consult with the college district’s attorney regarding the application of the criminal sanctions under Section 46.03 to those who carry on campus.

Firearms are also prohibited in licensed day care centers unless carried by a qualified law enforcement officer. 40 Tex. Admin. Code § 746.3707.

### **Open Carry of Handguns by License Holders**

#### **May a handgun license holder openly carry a handgun?**

For years, Texas prohibited the open carry of firearms. During the last legislative session, the prohibition was modified by House Bill 910, effective January 1, 2016, to permit handgun license holders to carry partially or wholly visible handguns stored in a shoulder or belt holster with certain exceptions in addition to those described above at Firearms Generally. Tex. Penal Code § 46.035(a).

**Texas Penal Code section 46.035:** A handgun license holder is prohibited by Texas Government Code section 46.035 from intentionally displaying a handgun in the plain view of a person:

- on the *premises*, defined as a building or portion of a building, of a higher education institution, such as a college district;

- on the institution’s public or private driveway, street, sidewalk, or walkway; and
- in the institution’s public or private parking lot, parking garage, or other parking area.

Tex. Penal Code § 46.035(a)-(a-1), (f)(3).

A handgun license holder, with the exception of certain judicial and court officers, is also prohibited from intentionally, knowingly, or recklessly carrying a handgun:

- on the *premises*, defined as a building or portion of a building, where a collegiate sporting event or interscholastic event is taking place, unless the person is a participant in an event where the handgun is used;
- in the room or rooms where a properly posted open meeting, subject to the Texas Open Meetings Act (OMA), of a governing body, including a college district board of trustees, is taking place as long as the entity provides the notice specified by Texas Penal Code section 30.07;
- on the premises of a place of religious worship; and
- on the premises of a business with a permit or license to sell alcohol if the majority of the business is the sale or service of alcohol for on-site consumption.

Tex. Penal Code § 46.035(b)-(c), (f)(3), (i).

A license holder is always prohibited from carrying when intoxicated. Tex. Penal Code § 46.035(d).

Violations of Section 46.035 are punishable as a Class A misdemeanor, with the exception of possession at a place selling or serving alcohol as described above, which is a third degree felony. Tex. Penal Code § 46.035(g).

### **Must a college district post notice of the prohibition on open carry?**

A college district need not post notice of the prohibition on open carry for Texas Penal Code section 46.03 or section 46.035 to apply. However, Texas Penal Code section 30.07 provides an additional offense that will apply upon proper notice. Section 30.07 provides that a handgun license holder commits a trespass offense if the person openly carries a handgun in violation of Section 46.03 or Section 46.035 despite notice open carry is prohibited by the college district.

To be effective, the notice must be communicated orally or in writing by the college district or a person acting under the apparent authority of the college district. If in writing, the communication must either be in the form of:

- a document, like a card, with the exact wording specified by Section 30.07; or
- a sign, posted conspicuously and clearly visible to the public at each entrance to the property, displaying the specified wording printed in both English and Spanish in contrasting colors and block letters at least one inch high.

Tex. Penal Code § 30.07(b)-(c).

*Entry* is defined as intrusion of the entire body. Tex. Penal Code §§ 30.05(b), .07(c)(1).

The license holder commits a Class A misdemeanor if the person openly carries a handgun onto college district property where open carry is prohibited and fails to depart upon being given personal, oral notice that open carry is forbidden. All other violations of Section 30.07 are classified as a Class C misdemeanor punishable by a fine of up to \$200. Tex. Penal Code § 30.07(d).

### **Concealed Carry by License Holders**

#### **May a handgun license holder carry a concealed handgun on campus?**

Pending the August 1, 2017 effective date of the campus carry law, discussed in the document entitled [Campus Carry](#), a handgun license holder's ability to carry a concealed handgun on college district property is quite limited.

**Texas Penal Code section 46.035:** In addition to the restrictions described above at Firearms Generally, a handgun license holder, with the exception of certain judicial and court officers, is prohibited from intentionally, knowingly, or recklessly carrying a handgun:

- on the *premises*, defined as a building or portion of a building, where a collegiate sporting event or interscholastic event is taking place, unless the person is a participant in an event where the handgun is used;
- in the room or rooms where a properly posted open meeting, subject to the OMA, of a governing body, including a college district board of trustees, is taking place as long as the entity provides the notice specified by Texas Penal Code section 30.06;
- on the premises of a place of religious worship; and
- on the premises of a business with a permit or license to sell alcohol if the majority of the business is the sale or service of alcohol for on-site consumption.

Tex. Penal Code § 46.035(b)-(c), (i).

A license holder is always prohibited from carrying when intoxicated. Tex. Penal Code § 46.035(d).

Violations of Section 46.035 are punishable as a Class A misdemeanor, with the exception of possession at a place selling or serving alcohol as described above, which is a third degree felony. Tex. Penal Code § 46.035(g).

As this restriction does not extend to concealed carry in parking areas, a college district may be tempted to invoke its authority as an employer to prohibit its employees from carrying concealed weapons in their personal cars parked on college property. However, the college district may not prohibit an employee who is a handgun license holder from storing lawfully possessed firearms or ammunition in the employee's locked vehicle in a parking area provided for employees. Tex. Lab. Code § 52.061.

Similarly, the college district may not prohibit or restrict any handgun license holder from storing or transporting lawfully-possessed firearms or ammunition in the person's locked car in a street, driveway, or parking area located on a college district campus. *Campus* is defined as all land and buildings owned or leased by the college district. Tex. Gov't Code § 411.2032.

Note, the Texas attorney general has concluded that employees and board members who lawfully possess a handgun license will not violate Section 46.035 if they carry at sporting and interscholastic events and at board meetings pursuant to written authorization granted by an educational institution under Texas Government Code section 46.03(a)(1) to carry at those events. Tex. Att'y Gen No. GA-1051 (2014).

### **Must a college district post notice that concealed carry is prohibited on campus?**

A college district need not post notice of the prohibition on concealed carry for Texas Penal Code section 46.03 or the majority of Texas Penal Code section 46.035 to apply. However, for the Section 46.035 prohibition on carry at the room where a board meeting is being conducted requires proper notice to apply. Further, Texas Penal Code section 30.06 provides an additional offense that will apply upon proper notice. Section 30.06 provides that a handgun license holder commits a trespass offense if the person carries a concealed handgun in violation of Texas Penal Code section 46.03 or section 46.035 despite notice concealed carry is prohibited by the college district. Tex. Penal Code § 30.06(a).

To be effective, the notice must be communicated orally or in writing by the college district or a person acting under the apparent authority of the college district. If in writing, the communication must either be in the form of:

- a document, like a card, with the exact wording specified by Section 30.06; or
- a sign, posted conspicuously and clearly visible to the public, displaying the specified wording printed in both English and Spanish in contrasting colors and block letters at least one inch high.

Tex. Penal Code § 30.06(b)-(c).

The license holder commits a Class A misdemeanor if the person carries a concealed handgun onto college district property where concealed carry is prohibited and fails to depart upon being given personal, oral notice that concealed carry is forbidden. All other violations of Section 30.06 constitute a Class C misdemeanor punishable by a fine of up to \$200. Tex. Penal Code § 30.06(d).

Note, the wording of the written communication was amended by House Bill 910. Therefore, the college should check that its signage and any form documents distributed under Section 30.06 matches the statutory language.

In addition, the college district should check the placement of its signage prohibiting concealed carry in response to Senate Bill 273, effective September 1, 2015, if it has not yet done so. A community college district may not post signs stating that a concealed handgun license holder is prohibited from entering or remaining on property owned or leased by the college district unless the prohibition is valid under state law. Upon the receipt of a complaint from a Texas citizen or a handgun license holder, the Texas attorney general will investigate and provide the college district an opportunity to cure any violations before filing suit against the college district. A college district that displays a sign in violation of this restriction is liable for a penalty of \$1,000 to \$1,500 for the first violation and \$10,000 to \$10,500 for every subsequent violation. Each day the sign is displayed is considered a separate violation. Tex. Gov't Code § 411.209.

For more information on this and other community college law topics,  
visit TASB Legal and Policy Services for Community Colleges online at [colleges.tasb.org](http://colleges.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the college district's own attorney in order to apply these legal principles to specific fact situations.*

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