



Knives on School District Property

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In 2017, the Texas Legislature passed House Bill 1935, to change state-law restrictions on the possession of certain knives. The bill was effective on September 1, 2017, and changed references to an *illegal knife* throughout the Texas Family Code and Texas Penal Code to refer instead to a *location-restricted knife*.

The bill simplified the definition of a prohibited knife. Texas Penal Code section 46.01 defined an *illegal knife* as a knife with a blade of over five and one-half inches, a hand instrument designed to cut or stab another by being thrown, a dagger, dirk, stiletto, poniard, bowie knife, sword or spear. Now a *location-restricted knife* is simply a knife with a blade of over five and one-half inches.

In addition, the bill created the following Class C misdemeanor offenses related to location-restricted knives:

- A minor intentionally, knowingly, or recklessly carrying a location-restricted knife on or about his or her person, while not on the minor's own premises or inside or directly en route to a motor vehicle or watercraft under the minor's control, and not under direct supervision of a parent or legal guardian; and
- A person intentionally, knowingly, or recklessly possessing or going with a location-restricted knife in certain places, including on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a location-restricted knife is used in the event.

Although it is still a felony to bring a location-restricted knife to a school building or school event, the bill reduced the penalty for other knife-related weapons offenses to a Class C misdemeanor. The bill also made conforming changes to Texas Family Code provisions regarding disposition of a child for a weapons offense under a juvenile board's first offender program.

Impact on school discipline

Although House Bill 1935 did not amend the Texas Education Code, the legislation impacted school disciplinary decisions because statutes in Chapter 37 of the Education Code regarding expulsion and placement in a disciplinary alternative education program (DAEP) refer to the amended Penal Code provisions.

Mandatory Expulsion

For example, under Texas Education Code section 37.007(a)(1), a district must expel a student who unlawfully carries a weapon on school property or at a school-related activity. As amended by House Bill 1935, Texas Penal Code section 46.02 now makes it an offense (Class C misdemeanor) for a minor to intentionally, knowingly, or recklessly carry on or about the minor's person a location-restricted knife if not on the minor's premises, inside or en route to the minor's vehicle or boat, or under the supervision of a parent or guardian.

This means that expulsion is mandatory only for a minor student carrying a location-restricted knife on school property or a school-related activity. (And not if the minor is in or en route to the minor's vehicle, or under parent/guardian supervision.)

Permissive Expulsion

The same conduct is subject to permissive expulsion if it occurs within 300 feet of school property or on the property or at an event of another district in Texas. This applies equally to a minor student. Tex. Educ. Code § 37.007(b)(3).

Mandatory DAEP

Any student, including adult students, may still be subject to mandatory DAEP under Texas Education Code section 37.006(a)(2)(A), which provides that a district must place in DAEP a student who engages in conduct punishable as a felony on or within 300 feet of school property or while attending a school-related activity. It is a felony offense to intentionally, knowingly, or recklessly possess or go with a location-restricted knife on the premises of a school or educational institution, any grounds or building where an activity sponsored by the school or institution is being conducted, or on a passenger vehicle of the school or institution, whether public or private, unless pursuant to written authorization. Tex. Pen. Code § 46.03(a)(1), (g-1).

Did a student commit **unlawful carrying of a weapon**?

- Was the knife blade over five and one-half inches long?
- Was the student a minor?
- Was the knife on or about the minor's person?
- Was the knife carried away from the minor's home or vehicle and without parental supervision?
- Was this on school property or at a school event?

If yes, the punishment is mandatory expulsion.

Did a student commit **unlawful carrying of a weapon** within 300 feet of school property or at another school's event? If so, the punishment is permissive expulsion.

Did a student commit **felony weapons possession**?

- Was the knife blade over five and one-half inches long?
- Was it possessed in a school building, any grounds or building where a school activity is taking place, or on a passenger vehicle of the school?

If yes, the punishment is mandatory DAEP.

Premises means a 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 area. Tex. Pen. Code § 46.035(f)(3); see Tex. Att’y Gen. Op. KP-50 (2015) (interpreting Texas Penal Code § 46.03 as prohibiting weapons from places on which a school-sponsored activity is occurring, which places can include grounds excluded from the Penal Code definition of premises, such as a public or private driveways, streets, sidewalks, or walkways, parking lots, parking garages, or other parking areas.)

This means a district must place in DAEP any student who goes with or possesses a location-restricted knife in a school building, any grounds or building where a school activity is taking place, or on a passenger vehicle of the school.

The traditional legal definition of *possession* is broader than “carrying on or about one’s person”; a person has possession of an item as long as the item is under the person’s ownership or control. For example, the TASB Model Student Code of Conduct defines *possession* as “to have an item on one’s person or in one’s personal property, including, but not limited to, clothing, purse, or backpack; a private vehicle used for transportation to or from school or school-related activities, including, but not limited, to an automobile, truck, motorcycle, or bicycle . . .” Therefore, a student with a location-restricted knife in his or her vehicle is subject to mandatory DAEP to the extent that the parking lot is being used for school-sponsored activities.

Did a student possess a location-restricted knife at a time or place that did not violate the Penal Code? If so, the punishment is determined by the local SCOC.

Student Code of Conduct

In accordance with a district’s local student code of conduct, students may be placed in DAEP for possession of knives even when state law does not make the decision mandatory. If a district has opted in the code of conduct to make general conduct violations subject to placement in DAEP, then a student may be placed in DAEP for having a location-restricted knife in the student’s vehicle even when a school-sponsored activity is not taking place there. The 2017 TASB Model Student Code of Conduct also contains optional prohibitions on possessing pocketknives or other smaller knives.

Did a student possess a knife with a blade shorter than five and one-half inches? If so, the punishment is determined by the local Student Code of Conduct.

The chart below discusses knife restrictions before and after House Bill 1935.

	Before 9/1/17	After 9/1/17
Prohibited Weapon	<p><i>Illegal knife</i></p> <p>Knife with a blade of over five and one-half inches, a hand instrument designed to cut or stab another by being thrown, a dagger, dirk, stiletto, poniard, bowie knife, sword or spear</p> <p>Tex. Penal Code §46.01(6)</p>	<p><i>Location-restricted knife</i></p> <p>Knife with a blade of over five and one-half inches</p> <p>Tex. Penal Code §46.01(6)</p>
Prohibited Conduct	<p>Possessing an illegal knife outside of one’s own premises, vehicle, or watercraft</p> <p>Tex. Penal Code §46.02(a)</p>	<p>A minor intentionally, knowingly, or recklessly <i>carrying</i> on or about the minor’s person a location-restricted knife outside of the minor’s own premises, vehicle, or watercraft, or not under the direct supervision of a parent or guardian</p> <p>Tex. Penal Code §46.02(a-4)</p> <p>Any person <i>possessing or going with</i> a location-restricted knife in a prohibited location</p> <p>Tex. Penal Code §46.03</p>
Locations Allowed	<p>A person’s own premises or premises under the person’s control; or inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person’s control</p> <p>Tex. Penal Code §46.02(a)</p>	<p>All locations except prohibited locations</p> <p>Tex. Penal Code §46.02, .03</p>

	Before 9/1/17	After 9/1/17
Offense of Possession	<p>Class A misdemeanor for a person of any age</p> <p>Tex. Penal Code §46.02(b)</p>	<p>Class C misdemeanor if a minor intentionally, knowingly, or recklessly is <i>carrying</i> on or about the minor’s person a location-restricted knife outside of the minor’s own premises, vehicle, or watercraft, and is not under direct supervision of a parent or guardian</p> <p>Tex. Penal Code §46.02(a-4), (d)</p> <p>The offense does not apply if the knife is used in a historical demonstration or in a ceremony in which the knife [or sword] is significant to the performance of the ceremony</p> <p>Tex. Penal Code §46.15(e)</p>
Locations Prohibited— Third Degree Felony	<p>Physical premises of a school or educational institution, any grounds or building on which a school- or institution-sponsored activity is taking place, or a school or institution vehicle, whether the school or institution is public or private, unless pursuant to written authorization; numerous other non-school locations, including polling places</p> <p>Tex. Penal Code §46.03</p>	<p>Physical premises of a school or educational institution, any grounds or building on which a school- or institution-sponsored activity is taking place, or a school or institution vehicle, whether the school or institution is public or private, unless pursuant to written authorization</p> <p>Tex. Penal Code §46.03</p>
Locations Prohibited— Class C Misdemeanor		<p>Premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a location-restricted knife is used in the event; numerous other non-school locations, including polling places</p> <p>Tex. Penal Code §46.03</p>

	Before 9/1/17	After 9/1/17
School Consequence— Student	Expulsion for unlawfully carrying weapon under Texas Penal Code section 46.02 or prohibited weapons offense under Texas Penal Code section 46.05; see local student code of conduct for DAEP placement, related definitions, and procedures Tex. Educ. Code §37.007	Expulsion for unlawfully carrying weapon under Texas Penal Code section 46.02 or prohibited weapons offense under Texas Penal Code §46.05; see local student code of conduct for DAEP placement, related definitions, and procedures Tex. Educ. Code §37.007
School Consequence— Employee	Use, possession, or display of illegal knife prohibited at all times on district property unless part of district-approved activity supervised by proper authorities TASB Policy DH(LOCAL)	Use, possession, or display of location-restricted knife prohibited at all times on district property unless part of district-approved activity supervised by proper authorities TASB Policy DH(LOCAL)
School Consequence— Visitor	Unlawful use, possession, or display of illegal knife prohibited at all times on district property unless part of district-approved activity supervised by proper authorities TASB Policies FNCG(LOCAL) & GKA(LOCAL)	Unlawful use, possession, or display of location-restricted knife prohibited at all times on district property unless part of district-approved activity supervised by proper authorities TASB Policies FNCG(LOCAL) & GKA(LOCAL)

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/knives-on-school-district-property.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawsource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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