Essentials of
Senate Bill 11
Texas State University System

Essentials of Senate Bill 11 (Campus Carry)

Effective Date: August 1, 2016.

Carrying of Handguns by Concealed Handgun License Holders

1. Campus Carry Lawful. A concealed handgun license holder (CHH) may carry a concealed handgun on campus, meaning all lands and buildings owned or leased by an institution of higher education.

2. Exceptions. An institution may not pass rules prohibiting a CHH from carrying, except as follows:
   - Storage in Dormitories. Rules may be established regarding storage in dormitories or other residential facilities; and,
   - May Designate No-Handgun Areas. Reasonable rules may be established, limiting CHH's carrying in some parts of campus, provided the rules do not have the effect of generally prohibiting CHHs from carrying.

Notices Required as to Prohibited Carry Areas

3. Oral or Written. Oral or written notice must be given as to where CCHs may not carry.

4. Specific Language Required. Notice that is given on a card or document must contain the following language:

   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 this property with a concealed handgun.

5. Posting Notice on a Sign. Alternatively, notice may be posted on a sign, which must:
   - Bilingual Notice. Include the above italicized language in both English and Spanish;
   - Appearance of Sign. Use contrasting colors, block letters, at least 1 inch in height; and,
   - Publicly Visible Sign. Be displayed in a conspicuous manner clearly visible to the public.

President's Responsibilities

6. Direct Oversight of Implementation. The law specifically directs each president to:
Consult with students, staff, and faculty regarding:

- The nature of the student population;
- Specific safety considerations; and,
- The uniqueness of the campus environment;

Establish reasonable rules regarding the carrying of concealed handguns by CHHs;
Not subvert the law by establishing rules that prohibit or effectively prohibit carrying;
Provide notice as to where carrying is not permitted (see prior section);
Widely distribute rules, including prominent display on institution's Internet Website.

7. Submission to Board of Regents. Timely submit rules to Board of Regents for review and possible amendment.

8. Report to the Legislature. By September 1 of each even-numbered year, the institution must report to the legislature and to its standing committees on this subject:

- Describing its rules, regulations or other provisions on carrying of concealed handguns;
- Explaining the reasons it established those provisions.

Immunities of the Institution, its Officers and Employees

9. No Liability. The institution, its officers and employees may not be held liable because of:

- Their actions or omissions under this law, including failure to pass rules, unless the failure was capricious or arbitrary; or,
- The conduct of the person possessing the handgun is the basis of a personal injury or property damage claim; or,
- Actions of a CHH or an applicant for a concealed handgun.

Offenses Under this Law

10. Prohibited Weapons. Carrying a firearm or other prohibited weapon on campus.

11. No License. Carrying a concealed handgun on campus without a license.

12. Carrying in Prohibited Areas by CHH; provided the institution has given notice (see above).

13. Display by CHH. Knowing and intentional display by a CHH of a handgun on the premises, streets, or parking facilities.

House Bill 910,
Section 28
(Open Carry)
SECTION 28. Section 411.2032(b), Government Code, is amended to read as follows:

(b) An institution of higher education or private or independent institution of higher education in this state may not adopt or enforce any rule, regulation, or other provision or take any other action, including posting notice under Section 30.06 or 30.07, Penal Code, prohibiting or placing restrictions on the storage or transportation of a firearm or ammunition in a locked, privately owned or leased motor vehicle by a person, including a student enrolled at that institution, who holds a license to carry a [concealed] handgun under this subchapter and lawfully possesses the firearm or ammunition:

(1) on a street or driveway located on the campus of the institution; or

(2) in a parking lot, parking garage, or other parking area located on the campus of the institution.
Frequently Asked Questions About Campus Carry
October 7, 2015

The following responses are for the purpose of providing legal guidance and statutory interpretation. The responses are not intended and should not be viewed as commentary on campus carry policy. Please keep in mind that each campus will have to provide its justification for implementation of gun-free zones to the legislature in the next even-numbered calendar year.

1. Under SB 11 (codified as Government Code § 411.2031), what constitutes a school bus or "passenger transportation vehicle" – where concealed carry is prohibited?

RESPONSE: This section does not apply to public institutions of higher education but only to private or independent institutions. Even if it were applicable to a TSUS component, the section does not prohibit concealed weapons on passenger transportation vehicles.

Additionally, Texas law does not define the term “passenger transportation vehicle.”

2. What does "on premises" mean in legislation where concealed carry is prohibited? (SB 11 References - Penal Code - Title 10 Chpt. 46 Sec. 46.03)

RESPONSE: SB 11 provides or incorporates by reference the following definitions:

- "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. (See Penal Code § 46.035(f)(3).)

- "Campus" means all land and buildings owned or leased by an institution of higher education... (See Government Code § 411.2031(a)(1).)

Making reference to both statutes, "premises" means land or a building or portion of a building owned or leased by an institution of higher education. Excluded from the definition are streets, sidewalks, and parking areas.

3. Does the law prohibit guns (concealed carry) in university owned parking lot areas when lot is being used for tailgating prior to an athletic sporting event?

RESPONSE: No, as stated in our response to Item 2 above, the law defines premises as a building or portion of a building, specifically excluding parking lots, parking garages, or other parking areas.
4. Can the university require expert gun training (or make it voluntary for students with CHL?)

RESPONSE: A university may not require expert gun training. The law places responsibility on the director of DPS to establish the minimum requirements for handgun proficiency. OGC’s best advice is not to offer essentially duplicate voluntary training. (See Government Code § 411.188.)

5. Is there a reporting mechanism under the CHL laws that will allow and/or require the university to report students that have substance abuse issues, mental health issues, or are involved in some sort of judicial proceeding on-campus?

RESPONSE: Neither SB 11 nor Texas Government Code §411 contains a reporting requirement that would permit a university to report students with substance abuse problems, mental health issues or who are involved in judicial proceedings. University disclosure of such information would likely violate federal and state privacy laws and judicial rulings, including the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA).

6. What is the obligation of the CHL permit holders to properly store their weapons? Should the University take on the storage of weapons responsibility since it is already the responsibility of the license holder?

RESPONSE: Government Code §411.188 (b)(4) requires instruction for conceal carry applicants on handgun proficiency which includes:

> proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

SB 11 allows a university to provide storage for weapons, but it does not require a university to do so. If a university decides to provide for such storage, it may be exposing itself to certain legal risks that it would not otherwise have if it did not provide the storage. For example, the doctrine of sovereign immunity protects every TSUS component from certain personal injury and property damage claims. There is a possibility that this protection would be waived by a university that provides a faulty or defective storage unit and an injury or property damage ensued as a result.

If a university decides to provide storage facilities, OGC’s recommendation is that such storage be in a central location on campus with 24/7 access.

7. As the University begins to carve out areas where guns will not be allowed, may the University carve out areas where a program accreditation requires a no guns policy (like a state or federal grant that requires no guns; or the Child Development Center that is classified as a school and its accreditation requires no guns)?

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RESPONSE: Yes, but the university should cite the specific language in the accreditation documents prohibiting guns and refrain from suggesting to accrediting agencies that a gun prohibition be included in their accreditation requirements.

8. As the University begins to carve out areas where guns will not be allowed, can the university make one area of a building a gun-free zone or part of a building a gun-free zone? For example, the 1st floor of the Education building houses the CARES clinic where minor autistic children receive assessment and treatment.

RESPONSE: Yes, but the carve-out area must be workable. For example, strong justification may exist for declaring an entire floor of a multi-story building as a gun-free zone; however, this would not be workable if the gun-free floor is the entire first floor of the building as this would effectively deny access to the floors in the building that are not so designated.

Also, carving out portions of buildings throughout the campus may make it difficult for Concealed Handgun Holders (CHLs) to know which areas are prohibited and may have the effect of rendering it difficult to navigate the campus, effectively impeding the right to carry.

9. What is the definition of a "child," "school" as relates to concealed carry of handguns?

RESPONSE: With exceptions, a "child" or "minor" is "a person under 18 years of age." (See Education Code §33.051, adopting Family Code §101.003(a) definition.)

School is not defined in the Education Code but it is defined in Texas Penal Code §46.11 (c)(2) as "a private or public elementary or secondary school."

10. In a survey, can we ask a survey participant to self-identify as a CHL holder if it is an optional response?

RESPONSE: Yes, but the optional language of the survey should be prominent and conspicuous, informing those who are being surveyed that the law does not require self-identification.

11. Can we penalize the unintentional display by the license holder through the student code of conduct or employee regulations? The penal code makes such conduct an offense only if engaged in intentionally. Can we subject a student, faculty member, or staff person who is a license holder to administrative discipline for reckless or negligent display?

RESPONSE: No, especially for negligent display. However, should this become a routine problem with a singular individual and there are documented warnings, the
institution may conclude that grounds exist to consider the individual’s actions to be intentional and institute appropriate disciplinary proceedings.

12. Can the President declare the Coliseum, Stadium, and similar sporting venues, along with the Gaertner Performing Arts Center and other UIL event venues permanently off limits to license holders and provide notice of same under § 30.06 of the Texas Penal Code? Or does the statute only allow such prohibition while such sporting or UIL events are underway?

RESPONSE: Yes, however, in OGC’s opinion, doing so is inadvisable unless the institution can provide persuasive reasons justifying the total ban at times the facilities are closed to students, faculty, staff, or members of the general public. It is advisable to keep in mind that the legislature will expect reasons justifying the creation of all campus gun-free zones. We believe the better practice is not to focus upon the venues but instead upon the nature of the activities that take place in these venues.

13. If the statute does allow for prohibition only while such events are underway, is adequate notice given to license holders if they are informed such an event is underway? (Or do they have to receive the notice outlined in § 30.06?)

RESPONSE: As currently written, the statute prohibits carrying a weapon on the premises of an institution of higher education while a sponsored event is taking place. However, SB 11 creates an exception for licensed CHLs. What the president must decide is which activities or venues will be prohibited to CHLs and provide appropriate notice as follows.

Oral or written notice must be given as to where CHLs may not carry. Notice that is given on a card or document must contain the following language:

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 this property with a concealed handgun.

Alternatively, notice may be posted on a sign at the entrance of a gun-free zone. The sign must conform to the requirements of the Penal Code, in format and content, as follows:

- Include the above italicized language in both English and Spanish;
- Use contrasting colors, block letters, at least 1 inch in height; and
- Be displayed in a conspicuous manner clearly visible to the public.
14. The College of Education operates a Charter school. Although the physical schools housing the children are not on SHSU campuses, administrative offices are on the main campus. Those administrative offices may be visited by parents and students. Can they be declared off limits to license holders?

RESPONSE: Yes, but see Response 8 regarding the workability of carve-out locations in academic buildings.

15. Can the President declare all of the following locations off limits without “hav[ing] the effect of generally prohibiting license holders from carrying concealed handguns on the campus....?”

RESPONSE: Yes, assuming a valid justification exists for designating each of the areas as gun-free zones. See below for specific responses to each identified location. As a qualifier, OGC is not taking a position as to each proposed location but is simply assessing the proffered reason(s) for legal persuasiveness.

a. The Student Health Center
   The health center serves students in crisis who should not have ready access to weapons and also has students disrobing and robing as part of medical examinations increasing the risk a gun may be left behind or dropped and accidentally discharged.

   RESPONSE: The articulated justification, which focuses on the mishandling or misplacement of a gun, would not appear to be more likely here than at any other location.

b. The student Counseling Center
   The student counseling center serves students in crisis who should not have ready access to weapons.

   RESPONSE: Because of the student population served by the counseling center, fear of injury to self or others seems reasonable. We suggest that your counseling professionals assist in writing your justification.

c. The Psychological Services Center
   The psychological services center not only serves students in crisis who should not have access to weapons, but also conducts evaluations of offenders who are actively in police custody (i.e., wearing belly chains and in stripes with a custody officer nearby).

   RESPONSE: Because of the student and other populations served by the psychological services center, fear of injury to self or others seems reasonable. We suggest that your psychological professionals assist in writing your justification.
d. The Jack S. Staggs Counseling Center
The Jack S. Staggs Counseling Center serves students in crisis who should not have access to weapons.

RESPONSE: Because of the student population served by the counseling center, fear of injury to self or others seems reasonable. We suggest that your counseling professionals assist in writing your justification.

e. The Community Counseling Center (The Woodlands Center)
The Community Counseling Center serves students in crisis who should not have access to weapons.

RESPONSE: Because of the student population served by the counseling center, fear of injury to self or others seems reasonable. We suggest that your counseling professionals assist in writing your justification.

f. A specific laboratory in Lee Drain which houses particularly hazardous materials/dangerous substances which would significantly jeopardize public safety if activated by gunfire.

RESPONSE: The articulated justification assumes that firing a weapon will trigger an explosion, which appears to beg the question. Additional justification should be provided.

g. The sporting and UIL venues identified in question 2, above (at all times or while those events are underway).

RESPONSE: Designation of such venues as gun-free zones should be permitted only while events are occurring. Statutory notice should be given.

h. The Charter School Offices referenced in question 3, above.

RESPONSE: If the Charter School Offices are not on university owned or leased property, the campus should not be implementing a gun-free designation. Such a decision would be the Charter school’s responsibility and concern.

i. Residence halls during certain times of the summer when they are occupied chiefly by children without parental supervision attending various summer camps.

RESPONSE: Yes, but only during the limited period of the summer camps for minors. Because of the student population being served during the summer camps, fear of injury to self or others seems reasonable justification.
j. Any other areas of campus which you believe should be given consideration by the Concealed Carry Committee as “off limits” to licensees.

Other possible gun free areas might include offices where cash or negotiable instruments are stored or handled; Board of Regents meetings; student, faculty, or staff disciplinary hearings, President’s house (including grounds). Each Component that selects one or more of these restrictions should provide a justification. To start, OGC notes that, except for the cash handling areas, each of the areas listed involve situations in which people may be angry, agitated, perturbed, depressed, or stressed out by decision(s) made by the individuals or entities listed.
The following responses, representing the collective opinions of Texas State University System Office of General Counsel attorneys and PIA Coordinator, are for the purpose of providing legal guidance and statutory interpretation to System Components and are not intended and should not be viewed as commentary on campus carry policy. Please keep in mind that each campus will have to provide its justification for implementation of gun-free zones to the legislature in even-numbered calendar years.

1. There have been recent articles suggesting that guns have been allowed on university campuses in Texas for almost twenty years. Is that true?

RESPONSE:

No. Suggestions that guns have been allowed on university campuses in Texas for 19 years is misleading and inaccurate. Penal Code 46.03 decriminalized carrying concealed handguns; however, the law did not prohibit universities and colleges from passing rules banning anyone, including concealed handgun license holders, from carrying on campus. While concealed handgun license holders could not be arrested or prosecuted for carrying on campus, they could be removed from campus, disciplined, terminated or expelled as appropriate. On August 1, 2016, Senate Bill 11 becomes the law, and TSUS will abide by its directives.

2. As the campus prepares to consult with students, faculty and staff for town hall meetings, may these meetings be closed to the public and media and limited only to the constituents (faculty/staff and students)?

RESPONSE:

Yes. Government Code § 411.2031(d-1) requires the campuses to consult with students, staff and faculty. While permitting the media in these meetings is not required, campuses are cautioned not to exclude students, staff or faculty who are affiliated with campus radio stations or student newspapers.

3. A request was received very recently through email for the names of the members of the component’s Campus Carry committee members. Can that information be released?
RESPONSE:

Yes. Pursuant to a valid open records request, that information is public and names of committee members may be released to the requestor. The component’s Public Information Coordinator should consult with the TSUS Office of General Counsel if there are concerns with any such request.

4. If concealed carry is permitted in classrooms/offices and a faculty member observes a student/employee with a visible weapon or has reason to believe that a student/employee is in violation of the law, is it the faculty member’s responsibility to confront the student/employee? If I see a gun in the jacket of a student in my class, can I ask them if they are licensed to carry the gun?

RESPONSE:

No to both questions! The TSUS Office of General Counsel does not recommend that faculty/staff confront any person believed to be in violation of the law. Rather, faculty/staff should report the matter to the University Police Department (if the component has an on-campus police department) or the appropriate campus security.

5. What are the consequences/penalties for offenders for violations of the law?

RESPONSE:

Violations of the law are serious and can include imprisonment and/or fines. Further, employees and students may be disciplined in accordance with applicable Component and System policies and student codes of conduct.

6. A request has been received for the FAQ’s prepared by the Office of General Counsel. Can the FAQ’s be shared with component Campus Carry committees?

RESPONSE:

Yes. The FAQs may be shared with campus carry committees and with members of campus communities as the committees deem necessary. However, please keep in mind that the legal guidance and statutory interpretation in the FAQs is intended for the TSUS System Universities and Colleges.

7. Does a gun-free zone mean law enforcement can’t carry in that zone?

RESPONSE:

No. Police Officers are not prohibited from carrying weapons in areas designated as gun-free zones.
8. A) Can I ask students on the first day of class for a list of all who are CHL’s? B) May the school obtain/maintain a list of CHL holders affiliated with the component? C) May a CHL holder request/receive a list of the other CHL holders either from the component (if the component has the list) or from DPS?

RESPONSE:

A. No. The law does not require self-identification/disclosure unless requested by a police officer.

B. No. As the law considers this information to be confidential and not a matter of public record, campuses should not maintain such lists.

C. Such information is not subject to public disclosure.

9. In class, can you ask students who are CHL’s to have their safety on their guns (to prevent accidental discharges)?

RESPONSE:

The TSUS Office of General Counsel recommends against such an inquiry as it may be viewed as an attempt to identify concealed handgun license holders.

10. Can the university require certification (in particular a mental health screening) over and above what the CHL laws mandate?

RESPONSE:

No. A university may not require such certification. The law places the responsibility on the director of the Texas Department of Public Safety to establish the requirements for securing a Concealed Handgun License.

11. How can faculty members in classrooms be prepared for protection (i.e., class doors that only lock from the outside)?

RESPONSE:

This question should be directed to campus carry committees for discussion as it is not a legal question. It is advisable for a Component to work with UPD or local police department (or outside entities) for planning, safety training, and other related matters.

12. Can the Spindletop Museum be designated gun free since it hosts tours with lots of children/students?
RESPONSE:

Yes. Because of the student population served by the Spindletop Museum, fear of injury to self or others seems reasonable.

13. Will student conduct codes and emergency procedures be revised?

RESPONSE:

In light of this statute, it is expected that component campus carry committees will review and appropriately revise student conduct codes and emergency procedures. Under System Rules and Regulations, proposed revisions must be reviewed by the TSUS Office of General Counsel.

15. Will the university provide training for what to do in the event of active shooters, etc?

RESPONSE:

This question should be directed to campus carry committees for discussion as it is not a legal question. It is advisable for a Component to work with UPD or local police department (or outside entities) for planning, safety training, and other related matters.

16. May a component rely upon other laws that designate certain areas as gun-free zones (such as sporting events)? Does a campus need to take action to specifically carve out such areas when concealed carry laws already do so?

RESPONSE:

Senate Bill 11 requires Components to establish rules governing the carrying of concealed handguns by license holders. While other laws related to concealed carry may help a Component make informed decisions, the legal obligation to establish component rules is independent of any other law.

By establishing Component rules, even when those rules may mirror other gun-related law, an institution has the flexibility to impose discipline in situations where a police department or district attorney elects not to pursue criminal penalties.

17. Since CHL holders should be aware of their responsibilities not to carry in a collegiate or UIL sporting event, may the campus simply add a sign on those days that states “Collegiate or UIL Sporting Event” instead of the 30.06 notice?
RESPONSE:

No. Components are required to provide the detailed notice specified in Penal Code 30.06 for any portion of their premises where licenses holders may not carry.

The notice must state:

[Provided 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 this property with a concealed handgun].

The notice may be provided to individuals on a card, document or sign. If notice is provided through signage, it must:

- Include the language italicized above in both English and Spanish,
- Use contrasting colors, block letters at least 1 inch in height; and,
- Be displayed in a conspicuous manner clearly visible to the public.

18. May a campus make rules governing rifles and long guns in the residence halls?

RESPONSE:

Yes. The new legislation governs concealed carry handguns only by CHL holders. We note that House Bill 910, Section 28 (Open Carry legislation), effective January 1, 2016, does permit possessing or storing a firearm in a locked, privately owned vehicle on a campus street or parking facility.

As to the rest of the campus or premises, Components are free to continue to enforce (or establish as the component deems necessary) rules related to rifles and long guns in university housing.

19. How is an athletic or sporting event defined? Does it, for instance, include athletic summer camps?

RESPONSE:

Weapons may be prohibited at activities sponsored by the Component, including sporting events. S.B. 11 does not define sporting event. The term indicates a competition or game, and not a training or practice setting.

However, OGC's advice regarding dorms and summer camps in the initial FAQ distributed on October 7, 2015, is applicable here: “Because of the student population being served during the summer camps, fear of injury to self or others seems reasonable justification” for a gun-free carve out.
20. May a component designate a building or location used primarily for athletic events as a gun free zone, even though the facility may occasionally host non-sporting events that are open to the public? For instance, if component arena is used for sporting events 90% of the time, but 10% of the time hosts concerts, graduations, and other public events, can the component still designate the area as a gun free zone?

RESPONSE:

Yes, however, in OGC’s opinion, doing so is inadvisable unless the Component can provide persuasive reasons justifying the total ban at other times when the facilities are open to members of the general public. Relatedly, if the facilities are closed most of the time, a total ban would seem to make no sense. It is advisable to keep in mind that the legislature will expect reasons justifying the creation of all campus gun-free zones. We believe the better practice is not to focus upon the venues but instead upon the nature of the activities that take place in these venues.

21. How can a component build flexibility into the rules established to manage presently unforeseen circumstances or events that may require restricting additional areas of campus? For instance, if a component has the opportunity to host a court of appeals and/or a foreign diplomat with particular security requirements.

RESPONSE:

Under SB 11, a Component may amend the institution’s reasonable rules and provisions regarding the carrying of concealed handguns by license holders, only the extent a Component finds the change “necessary for campus safety.” (See, Enrolled Bill, Section 1, d-1).

22. Can the component or its police department offer CHL classes for students interested in obtaining their CHL?

RESPONSE:

The law places responsibility on the director of DPS to establish requirements for proficiency for handgun instructors. The TSUS Office of General Counsel believes that is best left to the agency charged by the Government Code with such licensing.