

# Triggering the Statutes

## How Texas Gun Laws Affect Visitors to Public Schools

An administrator recently called TASB legal Services to ask a common question: "May a parent have a gun in the car when the parent comes to pick up his child at school?" For such a common question, the answer is actually rather complicated.

Many in the school community have heard the phrase "gun-free schools" and therefore assume firearms are completely prohibited in the school environment. Others may believe that guns are legally prohibited because certain signs have been posted on school district property. This is not always the case, however.

According to Texas Land Commissioner Jerry Patterson, "Merely posting a sign does not create an enforceable law. School administrators, teachers, and parents should be aware of the laws affecting the rights of citizens to possess guns on Texas public school property."

Generally speaking, gun laws in Texas cover two broad categories of firearms: (1) concealed handguns carried under the authority of a proper license, and (2) all other firearms, including long guns. Both categories of firearms are restricted in the public school setting.

Whether a firearm is permitted somewhere on school property depends on who is carrying it and where that person is going.

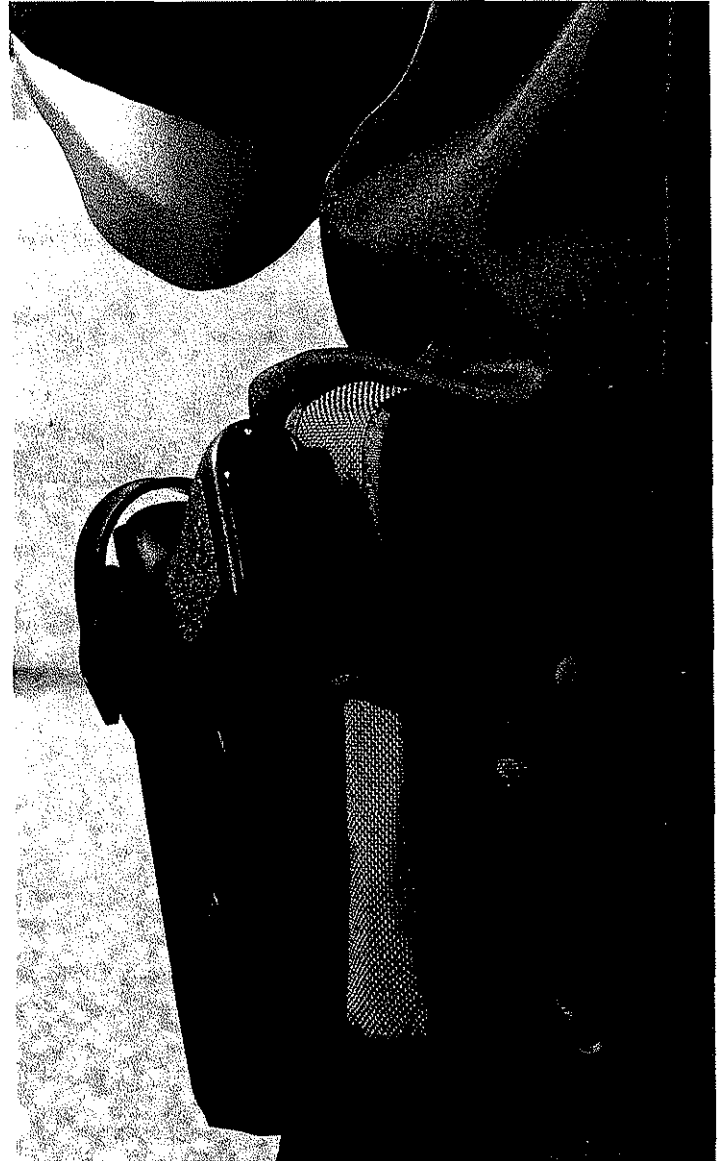
### Who Is Carrying the Firearm?

**Authorized by law.** Some individuals are authorized by law to carry firearms with very few restrictions. For example, peace officers and special investigators are allowed to bring firearms and other weapons on school premises, regardless of whether they are engaged in the discharge of their official duties at the time. Tex. Penal Code § 46.15(a)(I).

Consequently, a peace officer may carry her weapon anywhere on campus, regardless of whether she is there on duty pursuant to a memorandum of understanding (MOU) with the district, responding to a call from the school, or simply visiting her child.

Other officials, including community supervision and corrections officers, members of the armed forces or National Guard, prison guards, and officers of a court, may carry firearms on school premises during the discharge of their duties. Tex. Penal Code § 46.15(a)(3); Tex. Penal Code § 46.03(b). Still others, such as judges and district attorneys, may carry firearms on school premises if they are licensed to carry concealed handguns. Tex. Penal Code § 46.15(a)(4), (6).

Also, a number of officials, including judges and district attorneys, who are licensed to carry concealed handguns, are authorized to bring those handguns on the premises



where a board meeting, high school sporting event, or other interscholastic event is taking place. Tex. Penal Code § 46.035(h-1).

**Authorized by local policy.** In addition to those persons authorized by law to carry

firearms on campus, local school districts can grant permission to certain persons to possess otherwise prohibited weapons by passing written regulations or isSUsing written authorization. See Tex. Penal Code § 46.03(a)(I)

(prohibiting possession of any firearm or other prohibited weapon on the premises of a school "unless pursuant to written regulations or written authorization of the [school district]").

Most Texas school districts have a statement at TASB Policy GKA(LOCAL) that **prohibits certain weapons**, then provides the following **exception**:

#### EXCEPTION

No violation of this policy **occurs when the use**, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities.

Texas school districts often authorize the possession of **firearms or other weapons on campus** for approved activities such as gun safety or hunter **training, historical reenactments, and JROTC**. School districts have also authorized bringing firearms on campus for special events such as guest speakers, theatrical performances, and PTA or booster club fundraising raffles where **a rifle or other weapon was offered as the prize**.

**Authorized school employees.** Under the authority of the Texas Penal Code, school districts can grant written **permission for anyone** including certain employees, **to carry firearms on campus**. Tex. Penal Code § 46.03(a)(1). In most cases, school districts limit employee authorization **to commissioned peace officers**. In some districts, however, authorization has been granted to other school officials or even classroom teachers. While state law gives school districts broad discretion to authorize the possession of firearms and other **weapons on school premises**,

granting such authority brings a host of practical concerns, including safety, liability, and **insurance**.

School districts considering expanding the authority of employees to bring weapons on campus should discuss the decision with their school **attorney and insurance provider**.

*Students?* Together, state and federal laws impose a mandatory disciplinary scheme on public school students who carry firearms on campus. These laws are independent legal requirements, separate from the criminal statutes that regulate visitors on school grounds. These disciplinary requirements will be the subject of a follow-up article in the next edition of *Texas Lone Star*.

#### Where on School Property Is the Visitor Carrying the Firearm?

For visitors other than those with a special authorization to carry a firearm, whether the visitor may enter parts of school property with a firearm varies by location.

*School buildings.* Unless a person has special authorization, **a person commits an offense** (third-degree felony) if the person intentionally, knowingly, or recklessly **possesses or goes with a firearm, illegal knife, club, or other prohibited weapon**, as defined by state law, on the physical premises of a school **or educational institution**. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a concealed handgun. Tex. Penal Code § 46.03(f).

*Physical premises* means a building or portion of a building. Tex. Penal Code § 46.035(e)(3).

*Parking lots and sidewalks.* Premises do not include public or private driveways,

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streets, sidewalks, walkways, parking lots, parking garages, or other parking areas. Tex. Penal Code § 46.035(1)(3). Consequently, it is not a criminal offense to possess a firearm in a school parking lot, for example.

In years past, many school districts posted written notice at the edge of school property stating that concealed handguns were forbidden on campus and failure to comply could result in a charge of criminal trespass (Class A misdemeanor). See Tex. Penal Code § 30.06 (permitting private property owners to prohibit concealed handgun license holders from bringing guns on their property).

However, in 2003, state law was amended to clarify that public property owners, like school districts, cannot use **this provision to restrict** concealed handgun license holders from bringing guns on **campus, except to the extent** the guns are already prohibited by other law—specifically, Texas Penal Code sections 46.03 and 46.035.

What does this mean for Texas school districts? It means that school districts lack the legal authority to criminalize (either as a felony under Section 46.03 or as a criminal trespass under Section 30.06) the possession of firearms on school property other than in school buildings. If school districts attempt to use their local authority, such as local policy, to restrict the possession of firearms on other parts of school property, school districts will not be able to call **upon law enforcement to assist** them in enforcing the rule. (See Posting Signs on Campus at right.)

**To the extent visitors are** permitted to bring guns on the parts of school property that are outside of school buildings, **are there any limitations on**

## POSTING SIGNS ON CAMPUS

Because more than one statute regulates the possession of firearms on school property and at school events, deciding where and when to post signs prohibiting firearms can be tricky. No postings regarding weapons are required by law; all such postings are optional. Here is a list, by location, of the types of signs that might be appropriate for your district.

LOCATION	TEXT	EFFECT
Entrance to school buildings	Notice prohibiting all weapons, including licensed concealed handguns. An offense is a felony under Texas Penal Code Section 46.03.	Entry with a weapon is a felony with or without the sign; the sign is simply a deterrent.
Entrance to school buildings	Notice prohibiting concealed handguns in the form prescribed by Texas Penal Code Section 30.06.	If the sign is properly posted, entry with a concealed handgun will also be misdemeanor criminal trespass.
Perimeter of school property	Notice prohibiting concealed handguns in the form prescribed by Texas Penal Code Section 30.06.	The sign will be ineffective to uphold a criminal trespass charge and may be misleading to your visitors.
Perimeter of school property	General notice stating "no unlawfully carried weapons"	Provides a reminder that weapons are prohibited in some locations for some visitors without misstating the law.
Entrance to school events, including board meetings, regardless of whether indoor or outdoor, on or off school property	Notice prohibiting all weapons, including licensed concealed handguns. An offense is a felony under Texas Penal Code Section 46.03.	Entry with a weapon is a felony with or without the sign; the sign is simply a deterrent.
Entrance to school events, including board meetings, regardless of whether indoor or outdoor, on or off school property	Notice prohibiting concealed handguns in the form prescribed by Texas Penal Code Section 30.06.	If the sign is properly posted, entry with a concealed handgun will also be misdemeanor criminal trespass.
School buses and other passenger vehicles	Notice prohibiting all weapons, including licensed concealed handguns. An offense is a felony under Texas Penal Code Section 46.03.	Entry with a weapon is a felony with or without the sign; the sign is simply a deterrent.

how visitors transport or display their firearms? Yes. A concealed handgun license holder may legally transport a handgun in or en route to a personal motor vehicle or a motor vehicle under that persons control. Tex. Penal Code § 46.02(a)(2). Failure to keep the handgun hidden from plain view while in the vehicle or on the license holders person is a Class A misdemeanor. Tex. Penal Code § 46.02 (a-1)(1), (b); 46.035(a), (g). A license holder is permitted to display his gun only when the use of deadly force would be justified under Texas Penal Code chapter 9. Tex. Penal Code § 46.035(h).

In addition, a person commits an offense (third-degree felony) if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally exhibits, uses, or threatens to use a fireann in or on any school property; including parking areas, or on a school bus. Tex. Educ. Code § 37.125.

Finally, the Texas Penal Code contains a provision enhancing the degree of a weapons-related offense if the offense occurs within 300 feet of school premises or the premises where a school function or UIL event is taking place. Tex. Penal Code §46.11.

*School events held on and off campus.* Unless a person has special authorization, a person commits an offense (third-degree felony) if the person intentionally, knowingly; or recklessly possesses or goes with a firearm, illegal knife, club, Or other prohibited weapon, as defined by state law, on any grounds or building on which a school-sponsored activity is being conducted. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the

person holds a license to carry a concealed handgun. Tex. Penal Code § 46.03(1).

This prohibition applies to all school-sponsored events, regardless of whether the events happen on or off school property. For example, a school-sponsored softball game may take place on school property but in an outdoor facility that would not meet the statutory definition of *premises*. Nevertheless, this law would prohibit all firearms at the softball game. Similarly, a high school theater performance may take place in a city auditorium not owned or leased by the school district, but this law would still prohibit firearms at the performance.

In addition, a concealed handgun license holder commits an offense (Class A misdemeanor) if he or she intentionally, knOwingly, or recklessly carries a handgun on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event. Tex. Penal Code § 46.035(b)(2), (g).

*Buses.* Unless a person has special authorization, a person commits an offense (third-degree felony) if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or other prohibited weapon, as defined by state law, on a passenger transportation vehicle of a school. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a concealed handgun. Tex. Penal Code § 46.03(1).

*Board meetings.* Assuming a school board meeting is "an activity sponsored by a school or educational institution," a

person commits a third-degree felony if he or she possesses a firearm or other prohibited weapon at a board meeting. Tex. Penal Code § 46.03(a)(1), (g). It is not a defense to prosecution that the person holds a license to carry a concealed handgun. Tex. Penal Code § 46.03(1).

In addition, a concealed handgun license holder commits an offense (Class A misdemeanor) if he intentionally, knowingly; or recklessly carries a handgun at any meeting of a governmental entity, including a school board, if he was given effective notice of the prohibition under Section 30.06. Tex. Penal Code § 46.035(c), (g), (l). (See Posting Sigrts on Campus, previous page.)

*Polling places.* Unless the person is authorized by state law to carry the weapon, a person commits an offense (third-degree felony) if the

person intentionally; know- ingly; or recklessly possesses or goes with a firearm, illegal knife, club, or other prohibited weapon, as defined by state law, on the premises of a polling place on the day of an election or while early voting is in progress. Tex. Penal Code § 46.03(a)(2), (g). It is not a defense to prosecution that the person holds a license to carry a concealed handgun. Tex. Penal Code § 46.03(f).

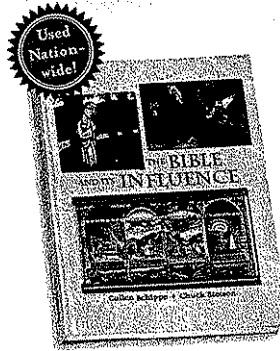
## Conclusion

The legal restrictions on firearms on school property and at school events are more complex than many people realize. We hope this article offers some clarification by providing a general overview of the laws affecting visitors to Texas public school districts.

For answers to specific legal questions, please consult your school attorney or TASB Legal Services.

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