

Under the Gun: How Texas Open Carry Legislation Affects Your Library



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Open Carry Legislation: A Growing Trend



50 State Survey



- Some form of Open Carry is permitted in 45 states.
 - Only California, Florida, Illinois, New York & South Carolina prohibit open carry.
- During the last decade many states, including Texas, have enacted laws giving licensed gun owners the affirmative right to open carry.

Recent Gun Legislation in Texas



- **HB 910**
 - Allows a license holder to “open carry” a handgun in a holster.
 - Went into effect January 1, 2016.
- **SB 11**
 - Allows a license holder to carry a concealed handgun on a college campus.
 - Private universities may opt out.
 - Goes into effect August 1, 2016.



Exceptions



- Polling place on election day or during early voting
- Court or offices utilized by the court
- Place of governmental meeting—if the meeting is subject to the Texas Open Meetings Act
- Building where activity sponsored by a school is being conducted



What is Prohibited by Texas Law?



- **Brandishing**

- Illegal to display a firearm or other deadly weapon in a public place in a manner calculated to alarm. Tex. Penal Code Ann. § 42.01 (a)(8).

- **Deadly conduct**

- Illegal to place someone else at risk of suffering serious bodily injury. Pointing a gun at someone is deadly conduct even if the gun is not fired and there is not intention to fire. Tex. Penal Code Ann. § 22.05(c).

- **Assault**

- Illegal to intentionally or knowingly threaten another person with imminent bodily injury. Tex. Penal Code Ann. § 22.01,
- Illegal to use or exhibit a deadly weapon in the course of committing any assault crime, including threatening another with bodily injury or engaging in conduct that the victim likely will find offensive. Tex. Penal Code Ann. 22.02.

Open Carry Legislation: What Does it Mean for Libraries?



School Libraries



- No carry

A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm . . . on the physical premises of a school whether the school . . . is public or private, unless pursuant to written regulations or written authorization of the institution.

Tex. Penal Code Ann. § 46.03



University Libraries



- **Campus Carry**
 - Only concealed weapons allowed.
 - Applies to buildings; concealed carry on open campus grounds already permitted. Guns in vehicles already permitted.
 - Effective Aug. 1, 2016 for 4-year institutions, Aug. 1, 2017 for 2-year institutions.
- **Public Institutions**
 - UT Policies—libraries not mentioned.
- **Private Institutions**
 - So far, all private universities have opted out.



Public Libraries



- **Open Carry and Concealed Carry**
 - Since 1996, Texas has had laws allowing for concealed carry.
 - In 2003, government agencies were prohibited from banning CHL holders.
 - Beginning January 1, 2016, CHL holders may openly carry.



Employees



- **Libraries may prohibit their employees and volunteers from bringing handguns into the workplace and from carrying in employer-owned or leased vehicles used for work (Texas Labor Code §52.062(a)(b)). This is the case whether or not the employee is licensed to carry a handgun.**
- **Libraries may not restrict staff who are licensed to carry a handgun from having the weapon in a locked personal vehicle in the employer's parking lot (Texas Labor Code §52.061).**

Open Carry Legislation: Strategies to Avoid Legal Claims



Litigation Threats Against Libraries



- **Michigan 2012: Library forced to change policy**
 - Mich. Ct. of Appeals: “Our job is not to determine who has the better moral argument regarding when and where it is appropriate to carry guns. Instead, we are obligated to interpret and apply the law, regardless of whether we personally like the outcome.”
- **Colorado 2014: Library voluntarily changed policy**
 - 8/20/14: Public library staff requested patron with a gun to leave the premises.
 - 8/22/14: Gun lobbying group served written threat to initiate suit against the library & vigorously encouraged gun owners to take their weapons to the library.
 - 8/29/14: County announces that library will change policy.

Litigation Threats Against Libraries (cont'd)



Georgia: Safe Carry Protection Act—gives licensed gun owners right to openly carry in government buildings. Effective July 1, 2014

- Many public libraries sought guidance on policy creation to prohibit firearms on the premises.
- At least one librarian has been approached by gun lobbying group indicating intent to test rights by bringing guns to the library.
- A handful of library patrons have complained or become alarmed at the sight of guns in the library.
- No litigation.

Open Carry Legislation: Training Staff & Alerting Patrons



Library Employees



- **Reacting to visible handguns**
 - What is allowed by the law?
 - When to call law enforcement?
 - Many municipalities are offering information to educate the public.



Library Patrons



- **Inform**—let patrons know what the law requires of the library.
 - Have text of the applicable code section available for patrons to read.
- **Offer assurance**—help patrons understand that the library has sought guidance on how to comply with the law.
- **Avoid political posturing**—the legislature has determined the legality of open carry in Texas.
 - Arguing the pros and cons of the decision is a waste of time.

Additional Resources



Library Literature



- Can I Bring My Gun to the Library? Voliva, Carrie O'Maley July 29, 2015, *Public Libraries Online*. <http://publiclibrariesonline.org/2015/07/can-i-bring-my-gun-to-the-library/>
- The Open Carry Library: Navigating gun policies in the age of open carry laws and mass shootings. Lyles, Mary Beth Chappell. Feb. 2015 American Association of Law Libraries.
- Taking Aim at the Reality of Guns in Libraries. Goldberg, Beverly Jan. 14, 2014 *ALA Magazine*. <http://americanlibrariesmagazine.org/2014/01/14/taking-aim-at-the-reality-of-guns-in-libraries/>
- Gun Toting as a Teachable Moment? Davidson, Tanya. Dec. 3 2012 *Public Libraries Online*. <http://publiclibrariesonline.org/2012/12/gun-toting-as-a-teachable-moment/>

Texas-Specific Resources



- *FAQ: Handguns in Texas Libraries.* Texas State Library and Archives Commission. <https://www.tsl.texas.gov/ld/pubs/opencarry.html>
- *Cities and Firearms: Legal Q&A.* Houston, Scott: Texas Municipal League.
- *Video: Dallas Open Carry Rules and Restrictions Outlined.* <http://www.dallascitynews.net/opencarry>.
- *Campus Carry Policies and Implementation Strategies.* The University of Texas at Austin. <https://campuscarry.utexas.edu/>

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