



January 11, 2016

MEMORANDUM

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Presidents, The University of Texas System

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From: Concealed Carry Working Group

Subject: Recommendations Regarding Concealed Carry on Campuses

Executive Summary

The Texas Legislature recently passed Senate Bill 11, which permits license holders to carry concealed handguns in public university buildings beginning August 1, 2016. License holders must be at least 21 years old (unless active duty military or a veteran) and meet certain requirements. The law allows institution presidents to “establish reasonable rules” and to evaluate “the nature of the student population, specific safety considerations, and the uniqueness of the campus environment.” However, a president “may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.” The provisions established by the president take effect unless amended by the institution’s Board of Regents by not less than a two-thirds vote. Presidents may over time amend an institution’s rules, although amendments are subject to the same potential action by the Board of Regents.

To assist in the implementation process, a working group was formed that consists of at least one representative from each institution and representatives of U. T. System administration. The charge was to discuss the law and its interpretation, share information and perspectives, and develop recommendations for facilities common to many campuses. The guiding principles used by the working group were:

1. Follow the law.
2. Focus on safety.
3. Strive for a campus environment in which students, staff, and faculty can focus on their studies, research, and work with minimal distraction.

Decisions about rules, regulations, and exclusion zones are the responsibility of an institution's president. This report is advisory to presidents. The working group's objective was to facilitate discussion and to assist campus consultative groups and presidents as they evaluate their campus requirements. Recommendations are not intended to constitute a complete list of exclusion zones or areas to be considered by an institution's president.

Existing state laws exclude certain areas from concealed carry including schools, collegiate sporting events, and premises on which school sponsored activities are taking place. No further action appears to be necessary to exclude these from U. T. System campuses. The working group recommends that presidents consider, as a starting point, the following exclusion zones:

1. Areas for which state or federal law, licensing requirements, or contracts require exclusion exclusively at the discretion of state or federal government, or in which handguns are prohibited by an accrediting authority, such as child-care facilities.
2. Patient care areas, including those where mental health care services are provided.
3. Premises in or on which a ticketed sporting event is taking place.
4. Areas in which discharge of a handgun might cause widespread harm, such as laboratories with extremely dangerous chemicals, biologic agents, or explosive agents, or areas with equipment that is incompatible with metallic objects such as magnetic resonance imagining machines.

5. Animal care areas and vivaria in which protocols increase the risk of discharge or contamination of a concealed handgun, or its unanticipated separation from the license holder.

The working group offers comments on other issues that were discussed:

- Mixed use buildings. Buildings may have some excludable space. The decision about whether to exclude the entire building rather than just certain areas should be made on a case-by-case basis considering the practicality of limiting only certain areas.
- Notification. Notification that concealed handguns are not permitted in a building or area must be provided in writing, orally, or with prominent signage. The working group believes that the law ordinarily requires signage at the entrances to areas excluded by an institution (buildings or areas within a building). The working group noted that signage all over the place could create a false impression that concealed carry is common on campus and run counter to the goal of continuing the work of the university with as little distraction as possible.
- Handgun storage. The law does not require institutions to have handgun storage facilities – the law simply requires that a license holder be permitted to carry their handgun on or about their person. Institutions should take note that handgun storage facilities are not required elsewhere in Texas.
- Residential facilities. The law provides that institutions may establish rules for storage of handguns in dormitories or other residential facilities. Some people believe that this language reinforces an opinion that the intent of the law is to permit concealed carry in residential facilities. Others believe that the law empowers presidents to exclude concealed carry without limitation, other than the requirement that the president “may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.”
- Classrooms. Some people believe that the intent of the law is to allow concealed carry in classrooms (consistent with making concealed carry generally available on a campus). Others believe that the law authorizes presidents to exclude handguns from classrooms based on consideration of “the nature of the student population ... and the uniqueness of the campus environment.” The working group had a range of opinion about these differing perspectives and did not reach consensus.

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Introduction

In the 84th Regular Legislative Session, the Texas Legislature passed Senate Bill 11, which allows licensed individuals to carry concealed handguns on public university campuses, effective August 1, 2016. The law defines “campus” as all land and buildings owned or leased by an institution of higher education. By law, a license holder must be at least 21 years old (or be active military or a veteran), be a resident of Texas, meet other requirements such as no record of felony conviction, and be fully qualified under federal and state law to purchase a handgun. Per 18 USC § 922(g), aliens admitted to the U.S. under a nonimmigrant visa are prohibited from possessing, shipping, transporting, or receiving any firearm or ammunition. International students attending universities are typically in the U.S. with non-immigrant visas and therefore ineligible under federal law to possess any firearm or ammunition.

Senate Bill 11 permits institution presidents to exclude certain zones as follows:

“After consulting with students, staff, and faculty of the institution regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment, the president or other chief executive officer of an institution of higher education in this state shall establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the campus of the institution or on premises located on the campus of the institution. The president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution. The president or officer may amend the provisions as necessary for campus safety. The provisions take effect as determined by the president or officer unless subsequently amended by the board of regents or other governing board.”

To facilitate the establishment of rules by presidents of U. T. System institutions, a working group was formed consisting of at least one representative from each institution and representatives of U. T. System administration (Appendix A). The charge to the working group was to discuss the law and its interpretation, share information and perspectives, and develop recommendations for facilities common to many campuses.

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Each institution has unique programs, facilities, and operations. The observations and recommendations presented herein are advisory and are not intended to constitute a complete list of exclusion zones or areas to be considered for exclusion by an institution's president. The working group's objective was to facilitate discussion and to assist presidents as they evaluate their campus requirements.

Decisions about establishment of rules and exclusion zones are the responsibility of institution presidents. Senate Bill 11 requires that an institution's Board of Regents review the provisions established by a president within 90 days of establishment. The institution's Board of Regents may by not less than a two-thirds vote to amend those provisions. Over time, a president may revise rules; such revisions are also subject to amendment by the Board of Regents by not less than a two-thirds vote.

Coordinated and consistent policies, where appropriate, facilitate consistency in enforcement, which benefits both the campuses and holders of licenses to carry a concealed handgun.

Guiding Principles

Three over-arching principles guided the working group:

1. Follow the law.
2. Focus on safety.
3. Strive for a campus environment in which students, staff, and faculty can focus on their studies, research, and work with minimal distraction.

Locations Excluded by Law or Rule

The Texas Penal Code does not permit firearms and other specific weapons at the following locations relevant to issues of carrying concealed handguns on campuses:

- “on the physical premises of a school ..., any grounds or building on which an activity sponsored by a school ... is being conducted” (46.03(a)(1). The law does not define “school” for these purposes but the working group believes that a reasonable interpretation is pre-K through 12 as the meaning of “school.”
- “on the premises of any government court or offices utilized by the court” (46.03(a)(3)).
- “on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place” (46.035(b)(2)).
- “on the premises of a hospital licensed under Chapter 241, Health and Safety Code” (46.035(b)(4)).
- “at any meeting of a government entity” (46.035(c)) “if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter” (amendment per HB 910).

The working group believes that because law excludes concealed carry from schools, collegiate sporting events, and school-sponsored activities, no further action is needed to exclude concealed handguns from these already-excluded locations.

As a matter of information, the working group understands that U. T. System hospitals are not licensed under Chapter 241 of the Health and Safety Code. Thus, the exclusion provided by the Texas Penal Code for hospitals is not directly applicable to U. T. System institutions, although by analogy and extension, U. T. System institutions might exclude their hospitals and other patient treatment locations.

There may be certain areas on some campuses where handguns are prohibited by federal law or other licensing requirements. It seems reasonable to provide an exclusion where required by law, licensing rules, or an accrediting authority.

Recommended Exclusion Zones

The responsibility for establishing exclusion zones rests with an institution's president. The campus advisory groups, U. T. System Administration, and this report are advisory to presidents.

Certain areas are already excluded by law, e.g., schools and activities sponsored by schools, and, thus, apparently need not be specifically identified as exclusion zones by campus presidents. The working group did not attempt to develop a complete list of exclusion zones that institutions might want to consider. The working group recommends that presidents consider the following exclusion zones among others that might be unique to a particular campus:

1. **Areas for which state or federal law, licensing requirements, or contracts require exclusion exclusively at the discretion of the state or federal government, or in which handguns are prohibited by an accrediting authority.** The working group has not attempted to identify all such areas. Certain licensing agencies prohibit handguns, such as for nuclear research reactors. Certain contracts- required for hosting the administration of a college entrance examination- might require no handguns. Perhaps the main example of a type of facility in this category is:
 - **Child-Care Facilities.** Rules of the Texas Department of Family and Protective Services prohibit the possession of firearms on the premises of licensed facilities with before- or after-school care and for licensed child-care centers (40 TAC Secs. 744.2607 and 746.3707). However, because there is no enforcement mechanism in the Penal Code other than possibly suspension or revocation of the child-care center's license, the law may be viewed as not specifically prohibiting the carrying of concealed handguns in such locations. The working group believes that the exclusion of concealed carry on the premises of child-care facilities at U. T. System institutions is sensible and recommends that presidents consider excluding them.

2. **Areas analogous to state law requirements that prohibit concealed handguns:**
 - **Patient care areas.** Section 46.035(b)(4) of the Penal Code excludes hospitals licensed under Chapter 241 – by analogy and extension, the working group recommends that patient care areas be excluded including hospitals, clinics, and mental health treatment areas. The working group suggests that “patient care area” could be restricted to patients for whom a formal record of treatment is maintained.
 - **Premises in or on which a ticketed sporting event is taking place.** Section 46.035(b)(2) of the Penal Code prohibits concealed handguns at collegiate sporting events. The working group recommends that by analogy and extension, any ticketed sporting event be excluded on U. T. System campuses, whether an intercollegiate event or not.
3. **Areas where discharge of a handgun might cause widespread harm, such as laboratories with extremely dangerous chemicals, biologic agents, or explosive agents, or equipment that is incompatible with metallic objects such as magnetic resonance imagining machines.** Training of concealed handgun license holders on safe use of handguns in such facilities is not practical. Accidental or purposeful discharge of a handgun in such areas could cause grave and catastrophic harm. Handguns are inappropriate in the vicinity of some types of equipment, e.g., magnetic resonance imaging equipment because of the very strong magnetic field present. Exclusion may be appropriate for these areas to ensure campus safety.
4. **Animal care areas and vivaria in which protocols increase the risk of discharge or contamination of a concealed handgun, or its unanticipated separation from the licensed holder.** Some animal care facilities have strict protocols for entering and exiting the facility, including requirements for protective clothing and sterile gloves. Animals may carry viruses and bacteria that can be pathogenic to humans, which may require careful control over objects that are brought into or leave a facility. In large animal care facilities, primates, if present, have the ability to grab and manipulate objects. The many safety risks associated with such facilities give cause to recommend that concealed handguns be excluded.

Discussion of Various Topics

Working group discussions touched on many topics of interest. Key elements from these discussions are summarized as follows.

Mixed-Use Buildings. Many buildings have mixed use in terms of potential exclusion zones. The question is: when is the proportion of excluded area sufficiently large to warrant exclusion of the whole building? The working group offers the following observations:

- If a small number of rooms or a small fraction of assignable space in a building is subject to exclusion, only the rooms or areas that qualify for exclusion could be excluded. Appropriate notice such as signage needs to be provided for those rooms or areas that are excluded.
- If a significant fraction of the building in terms of number of rooms or assignable space is subject to exclusion, or if the excludable space is not separable from other space, then as a matter of practicality, the whole building could be excluded. Appropriate notice such as through signage must be provided for the building.
- There is a “gray area” in which the excludable space within a building is neither minimal nor obviously dominant. The decision of whether to exclude the entire building should be made on a case-by-case basis, based on how practical it is to exclude only certain rooms or areas of the building.

Some spaces have mixed use in terms of when space is used for certain purposes. For example, some areas are excluded only when a ticketed sporting event is taking place. Thus, signage indicating exclusion may need to be temporary and removable in some cases.

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Requirement for Holster. Senate Bill 11 authorizes presidents to establish reasonable rules. One concern expressed within the working group is the potential for a handgun to discharge accidentally when carried in a purse or backpack. One requirement that UT Austin is considering that the working group recommends for consideration by all presidents is a safety requirement that could something similar to the following:

- “A license holder who carries a handgun on campus must carry it in a holster that completely covers the trigger and the entire trigger guard area. The holster must have sufficient tension or grip on the handgun to retain it in the holster even when subjected to unexpected jostling.”

The working group believes that SB 11 provides authority for presidents to establish such a requirement, which would minimize the potential for accidental discharge if the handgun is jostled about or if the purse or backpack is dropped.

Notification and Signage. Section 30.06 of the Texas Penal Code describes general requirements for notification where concealed carry is not permitted. The law states that, “a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.” The written communication must state the following:

- "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".

Written communication may be conveyed in one of two ways:

- A card or other written document that contains the language above, or
- Signage in both Spanish and English displayed in a conspicuous manner clearly visible to the public, with contrasting colors and block letters at least one inch in height.

The best option for informing the public of exclusion at ticketed events such as sporting events might be the printing of exclusion information on the back of the ticket. In situations where an individual must review and sign a form (such as a consent form signed by parents for their children), written notification might be provided on the form.

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No notification is required by statute for schools or school-sponsored activities. License holders are expected to know that these areas are excluded without specific notification.

Oral notification is a permitted means of notification under the law. Although oral notification may be impractical in regards to entry to many areas, there may be certain areas or situations in which oral notification is effective. Moreover, Section 30.06 also criminalizes remaining on property after being advised that concealed handguns are not permitted; that is an example of a situation when oral notice becomes practical.

The working group addressed the question of whether signage is needed on each excluded building or excluded area, or whether a few generic signs at strategic locations would suffice. The prevailing legal opinion is that signage must be on each building or area within a building, in large part because the law requires the signage to state, "... may not enter this property with a concealed handgun." If there were only a few generic signs on campus, "this property" would seem to imply the whole campus. Even if "this property" pointed to specific buildings or areas within a building, the requirements of the law for signage displayed in a "conspicuous manner" with large-block letters seems to require signage at the entrance to excluded buildings or areas within a building.

Residential Facilities. Senate Bill 11 provides that, "An institution of higher education ... may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution."

On-campus housing takes many forms across U. T. System institutions, including residences in which one or more people live in a single room, multi-room units that may have a common living room area and several bedrooms, and apartments. Students are the dominant occupants of residential facilities, but in some cases faculty and staff members live in university owned or leased residential facilities. Some U. T. System institutions host summer camps for children and house the children in residence halls.

The working group addressed the question of whether the law permits exclusion of concealed carry in residential facilities. Two opinions were expressed. One opinion is that most legislators who supported SB 11 intended for concealed handguns to be permitted in dormitories and residential facilities, and that the language of the statute allowing storage in residential settings reinforces this view. However, the law also says that presidents may take into account “the nature of the student population, specific safety considerations, and the uniqueness of the campus environment”; thus, if a campus has residential facilities for which exclusion is judged by a president to be appropriate, one might opine that the law permits exclusion.

Because residential facilities cover such a broad spectrum of circumstances across U. T. System institutions, no across-the-board recommendations are offered.

The working group discussed whether an individual could request a roommate who is not a license holder for residential facilities that permit concealed carry. Such a request is problematic because a license holder is not compelled to respond to an inquiry about status as a licensed carrier except when the query comes from a law enforcement officer. The working group suggests that campuses that wish to provide an opportunity for residents to self-select a non-license holder as a roommate be asked to indicate on the residential application form something along the lines of, “I voluntarily disclose that I am not licensed to carry a concealed handgun, and I request a roommate who has made this same voluntary disclosure.”

Handgun Storage Facilities. The law permits license holders to carry their concealed handgun on or about their person, but it does not compel institutions to provide or allow storage of handguns when the licensees do not have the handgun on or about their person. The working group could not identify any legal requirement to provide storage, nor could it identify any restriction on an institution’s authority to prohibit storage. Should an institution choose to permit storage of handguns within university buildings, the establishment of minimum storage requirements is reasonable. If a particular campus chooses to provide for handgun storage, the working group notes that issues of safety, security, accessibility, and privacy will likely need to be addressed.

Classrooms. The working group discussed the subject of excluding concealed handguns from classrooms. Different schools of thought were expressed. One opinion is that the law intends if not outright requires allowance of concealed carry in classrooms through the requirement that rules may not “have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.” Meeting this requirement might be a challenge especially if the classroom exclusion is coupled with the exclusion of concealed handguns broadly or in numerous buildings. In addition, several legislators have said that the intent of the law is to allow concealed carry in classrooms.

Some members of the working group expressed the opinion that a president has the latitude and authority to establish rules that prohibit concealed handguns from classrooms. The law allows presidents to establish reasonable rules taking into consideration “the nature of the student population, specific safety considerations, and the uniqueness of the campus environment.” From this point of view, a decision to exclude concealed handguns from classrooms appears to be allowable under the law. Some legislators have expressed the opinion that institution presidents have ultimate authority over campus carry policy, including decisions about classrooms.

The working group members discussed the varying points of view, but did not reach consensus. Ultimately, the decision is up to each institution president, subject to potential amendment by the U. T. System Board of Regents.

The working group members agree that excluding concealed handguns from classrooms would introduce complicating questions such as:

- Is it feasible to exclude classrooms without excluding the entire building that contains classrooms?
- Would exclusion of classrooms have the effect of generally prohibiting license holders from carrying concealed handguns on the campus?
- If classrooms are excluded, must one consider handgun storage lockers for times when students are in class?
- Would the signage that might be required give people the false impression that concealed handguns are widespread on campus and run counter to the objective of striving for a campus environment in which students, staff, and faculty can focus on their studies, research, and work with minimal distraction?

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Leased Space. Senate Bill 11 permits the carry of concealed handguns on the premises of campuses, and defines campus as “all land and buildings owned or leased by an institution of higher education.” The law does not expressly distinguish between property “leased” as a lessor (in which the higher education institution owns the property but leases it to a third party for other uses) or “leased” as a lessee (in which the higher education institution does not own the property but leases it for university use). The common meaning of “campus” would include only the geographic boundaries of the buildings and grounds used for university purposes, and there is no indication of a legislative intent to include property outside those boundaries that is owned by the university but leased to a third party for other uses.

For property within the boundaries of a campus, such as campus bookstore, a lessee may have property rights under the lease. However, in some cases a private entity may not have private property rights, such as might be the case for a food-service provider in a dining hall, because they are an agent of the university providing a service that the university could provide.

There is no indication that the legislature intended the campus carry legislation to override private property rights. In fact, the Senate author of the legislation made the point during debate that private institutions of higher education were given an opt-out because of respect for private property rights. Even for property within the geographic boundaries of a campus, it seems reasonable to conclude that private property rights are paramount. Section 30.06 of the Penal Code allows an entity (other than a governmental entity) to exclude concealed carry by giving notice, usually through signage. In addition, 411.203, Government Code, provides that the licensing statute does not limit the right of a private employer to prohibit concealed carry license holders from carrying on the premises of the business. AG Op. No. DM-363 determined that an employer could restrict the carrying of concealed handguns on property it controls by posting notice.

Chancellor William H. McRaven
Presidents, The University of Texas System
January 11, 2016

The power of the lessee on the campus to exclude concealed handguns is, of course, subject to the terms of the lease. Assuming that the lease is silent on the subject, the working group believes the lessee may have the power to exclude concealed handguns without regard to the exclusion zones adopted by the campus, provided adequate notice is given, for example, via signage. By this same token, if the university leases space from a private entity and that entity wishes concealed carry to be excluded, the president of an institution appears to be on solid ground in establishing the leased space as an exclusion zone on the basis of the preference of the private property owner.

Parking areas are expressly different. Section 46.035 of the Penal Code, by means of defining “premises,” has always permitted licensed concealed carry on public or private parking lots, garages, or other parking areas. Parking facilities are especially important to a licensee because the licensee’s handgun may be stored in a locked vehicle. It appears that SB 11 does not change that, so the private operator of a parking facility on space leased from a university likely lacks the authority to exclude concealed handguns under any circumstances. However, some parking garages have retail space, often leased to a private entity that has nothing to do with parking, such food service. In such situations, where there is no parked car in the leased space, it may be possible to consider exclusion.

Formal Hearing Areas. Section 46.03(a)(3) of the Penal Code excludes “any government court or offices utilized by the court.” By analogy and extension, an institution could exclude any facility used as a hearing room that operates similar to a court, i.e., where an individual or panel is designated under institutional policy to adjudicate the rights or privileges of a student or an employee of the institution. This does not cover a non-hearing environment such as processing of forms or claims. There are many nuances and complications regarding such interpretation, such as what constitutes a formal hearing. The working group recommends that this potential type of exclusion be handled at the institutional level, considering the unique circumstances at each campus. It may help to clarify in an institution’s rules which hearings are excluded for concealed carry.

Chancellor William H. McRaven
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January 11, 2016

Areas in which Sponsored Activities Are Conducted for Persons under 18 years of Age Who Are Not Enrolled at the Institution. Section 46.03(a)(1) of the Penal Code prohibits the carrying of handguns on “any grounds or building on which an activity sponsored by a school ... is being conducted.” All U. T. System institutions host events for school-age children. If the activity is sponsored by a school, the carrying of handguns is automatically excluded per 46.03(a)(1) of the Penal Code. Nothing further is required from an institution to exclude concealed carry for activities sponsored by a school. No specific notification is required under the law, although an institution might consider signage stating something to the effect of, “School-Sponsored Activity in Progress.”

Numerous events occur on campuses that are not sponsored by a school but, rather, are sponsored by the higher education institution or by others. By analogy and extension, events for children sponsored by or conducted in coordination with the institution could be considered for exclusion of concealed handguns. However, institutional discretion will likely be needed to determine which sponsored events rise to a level appropriate for exclusion. Institutions may choose to exclude concealed carry for parents, employees, or volunteers working with the children on a sponsored event while on campus. Exclusion may not be practical for everyone on campus during the transit of children from one location on campus to another, or for informal gatherings such as lunch in a cafeteria.

Sponsored events cover such a broad array of potential activities that no blanket recommendations are appropriate, except as required by law for school sponsored events. The working group recommends that each institution consider possible exclusion for times and locations when non-school-sponsored events are taking place for persons under the age of 18 who are not enrolled on campus.

Temporal Exclusions. Senate Bill 11 allows presidents to establish rules, and these could be for certain times. For example, an area might be excluded only when there is a ticketed sporting event. The working group did not discuss broader temporal exclusions, such as during final exam week and would note the significance of notification requirements.

The group briefly discussed the special case of a situation in which a student is not allowed to bring anything into the classroom besides a pencil (no purses, backpacks, hats, etc.) when a test is given. The question raised is: may the institution exclude concealed handguns? No definitive answer was provided, but the issue raised reinforces the unique circumstances of college campuses.

Reporting Requirements. Senate Bill 11 requires a report to the legislature each even-numbered year that “describes [the institution’s] rules, regulations, or other provisions regarding the carrying of concealed handguns on the campus of the institution; and ... explains the reasons the institution has established those provisions.” The reporting requirements to the legislature appear not to require a building-by-building accounting but, rather, a more general description.

For institutional reports to the Board of Regents regarding exclusion zones, campuses are expected to explain which areas have been excluded and why, and are not expected to provide a building-by-building explanation. Further consideration will be given to guidelines for institutions in reporting to the Board of Regents.

Violations. The working group discussed how to handle violations of concealed carry provisions. If a person is believed to have improperly displayed a handgun or carried a handgun into a location where concealed carry is not permitted, the campus police should be contacted. The question of what further penalties might be permissible was discussed and the following guidance developed:

- The licensing statute, Chapter 411, Government Code, effectively requires that the handgun be “concealed,” meaning that the gun’s presence is “not openly discernable to the ordinary observation of a reasonable person.” Similarly, Section 46.035, Penal Code, on unlawful carry by a licensed holder, prohibits intentional display of the handgun in plain view of another person in a public place as well as possession, whether or not concealed, in specific areas.
- Sections 46.03 and 46.035 address which violations are criminal. Both sections include “state of mind” requirements, and these state of mind requirements vary. Under section 46.03, it is a crime to “intentionally, knowingly, or recklessly” carry a handgun into in a place designated by that section as an exclusion zone (e.g., a pre-K through 12 school). Under section 46.035, however, it is a crime for a license holder to “intentionally” carry a concealed handgun into an area excluded under the rules and regulations established by a university, provided proper notice is given. With regard to the open display of a handgun on campus, section 46.035 makes it a crime for a license holder to “intentionally or knowingly” display the handgun in plain view of another person on a university campus. Texas Penal Code § 6.03 assigns particular meaning to the terms “intentionally,” “knowingly,” and “recklessly.” Under section 46.035, however, license holders do not commit a crime if they mistakenly bring a concealed handgun into an exclusion zone –

(e.g., if the holder forgot they had the gun with them). As explained below, however, individual institutions may provide that any violation of their concealed carry rules and regulations constitutes a sanctionable offense under their institutional rules.

- Section 411.2031, Government Code, as added by SB 11, expressly authorizes an institution “to establish reasonable rules ... regarding the carrying of concealed handguns by license holders on the campus,” with specific regard to “safety considerations” and “campus safety.” Violations of campus rules about how to carry or store handguns may be acts subject to disciplinary action by an institution.
- Under Section 46.02, Penal Code, which prohibits the carrying of certain weapons “on or about” a person, Texas courts have held that “on or about” includes “the area nearby, close at hand, convenient of access, and within such distance of the party so that, without materially changing his position, the party could get his hand on it” and to include a portfolio or purse [Contreras v. State, 853 S.W. 2d 694 (Tex. App. Houston (1st Dist.), 1993}] The working group was not able to identify any cases under Sec. 46.035, Penal Code, that have specifically considered the meaning of “on or about” in the context of that Penal Code provision governing unlawful carry by a concealed handgun holder.
- The following language is offered to campuses for consideration as they establish rules:
 - "License holders bear the responsibility for safeguarding their handguns at all times, and must take all necessary precautions to ensure their handguns are secured in a manner that is most likely to prevent theft, loss, damage or misuse. License holders affiliated with [institution] who fail to use reasonable care in securing their handguns or acts negligently are subject to disciplinary action, up to and including termination or non-renewal of appointment, or dismissal from [institution]."

Chancellor William H. McRaven
Presidents, The University of Texas System
January 11, 2016

- "A license holder fails to use reasonable care when he/she does not exercise the care which a reasonable or prudent person would exercise in similar circumstances, or takes action which a reasonable or prudent person would not take. Failing to secure or control a backpack or purse with a handgun at all times on the [institution's] campus would be considered a failure to use reasonable care."

Institutional Rules. Institutions may wish to modify certain institutional rules and procedures in an effort to minimize any ambiguity regarding concealed carry. For example, an institution might exclude concealed carry from a room in which a formal hearing under a specific provision in the code of student discipline and conduct. Such specific provisions might remove any possible ambiguity about whether a certain type of hearing is meant to constitute a formal proceeding for which concealed carry is not allowed.

Communications and Training. Once campus rules are established, there may be an important role for the U. T. System and the campuses to play in sharing information related to communicating to campus communities and training of individuals.

Concluding Remarks

The members of the concealed carry working group benefited from the sharing of information, discussion of the law and its interpretation, and sharing of best practices taking place at each campus. In developing these recommendations, the working group recognized that the law empowers each institution president to make appropriate provisions. The working group hopes that these observations and recommendations will assist campus presidents.

The working group stands ready to assist the System and institution presidents as needed or desired, and will be happy to answer questions or address additional issues.

DED/jlb

cc: Raymond S. Greenberg, M.D., Ph.D.
Dr. Steven W. Leslie

APPENDIX A

Members of the Concealed Carry Working Group

Institutions

- U. T. Arlington: John Hall, Vice President for Administration
- U. T. Austin: Steven Goode, JD, Professor, Law
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