



**OFFICE OF THE DIRECTOR OF POLICE  
THE UNIVERSITY OF TEXAS SYSTEM  
TRAINING BULLETIN 001**

**FIREARMS ON CAMPUS**

**OCTOBER 2, 2015**

(replaces version originally issued November 18, 2013)



**I. Purpose**

The purpose of this training bulletin is to provide guidance to officers and supervisors on the topic of firearms carried on campus. Given the increasing frequency of individuals publicly exercising their gun rights, it is important to maintain a thorough understanding of the laws which impact a citizen's ability to bring firearms onto campus and their ability to openly display firearms in the areas around campus.

New laws were enacted by the 84<sup>th</sup> Legislature pertaining to firearms and are scheduled to take effect in 2016. The first law to take effect will be HB 910, which, when effective on January 1, 2016, will permit both open and concealed carry of a handgun by a license holder (excluding campuses). The "Campus Carry" bill, SB 11, will take effect on August 1, 2016 and permit the carrying of concealed weapons in certain areas on campus property. This revised training bulletin addresses only those changes mandated by HB 910.

These new laws will further expand the carry rights of citizens both on and off campus. It is important to be aware of both the timing and scope of these new laws, as the likelihood of encountering an armed citizen on or around campus will increase once these laws take effect.

Below is a compilation of information from state statutes and Regent Rules, as well as general guidance that will help officers make sound, informed decisions when dealing with situations involving firearms.

When responding to such situations, officers should keep the following in mind:

- 1) Our primary mission is to provide a safe and secure environment conducive to education. This requires that we uphold the law in a manner that is respectful of the rights of individual citizens.
- 2) The University of Texas System Police shall, as a matter of policy, ensure that the firearms laws of the State of Texas are recognized, acknowledged, upheld and enforced.
- 3) While officers should respond to calls for service involving firearms with appropriate caution, they should recognize that most citizens who openly carry a firearm do so out of a desire to generate attention toward and discussion about the 2<sup>nd</sup> Amendment; a goal they typically accomplish through the peaceful and lawful exercise of their rights.

- 4) Citizens may lawfully carry firearms under certain circumstances. For example, the mere possession of a rifle or shotgun on campus will not generally constitute a violation of law unless entry into a building occurs. Therefore, while officers have a duty to investigate reports of persons possessing or displaying a firearm, they must understand that the mere presence of a firearm does not automatically create a violation of the law or a breach of the peace. In fact, federal case law (United States vs Black) states that merely carrying a firearm openly, as permitted by law, is insufficient grounds to support a detention.

## II. Definitions

- A. Armor-piercing ammunition means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers. (PC 46.01)
- B. Campus means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education. (Gov. 411.2031)
- C. Firearm means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. (PC 46.01)
  1. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by chapter 46 Penal Code and that is:
    - a) an antique or curio firearm manufactured before 1899; or
    - b) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.
- D. Handgun means any firearm that is designed, made, or adapted to be fired with one hand. (PC 46.01)
- E. Machine gun means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger. (PC 46.01)
- F. Premises means a building or 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. (PC 46.035)
- G. Public Place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops. (PC 1.07)
- H. Short-barrel firearm means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches. (PC 46.01)
- I. Zip gun means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance. (PC 46.01)



### III. State Law

- A. There are a number of statutes that may have relevance when encountering an individual with a firearm. Officers should understand the elements of each statute and use good judgment in their application. Furthermore, officers should recognize that like the “concealed carry” law before it, the bill which created “open carry” resulted in changes to dozens of laws across a variety of Texas Codes. This means officers may need to reference multiple statutes before arriving at a decision on a particular case or circumstance.
1. Note: The information presented below represents a paraphrased or partial version of the referenced statute.
  2. Note: This update does not reflect changes in the law as a result of the “Campus Carry” Bill (SB 11), which does not take effect until August, 2016. Additionally, the full impact of the law cannot be known until the development and submission of rules and regulations by UT System institutions regarding areas on campus where one will not be permitted to possess a weapon.
  3. Penal Code Statutes
    - a) Terroristic Threat (22.07)
      - (1) The key element here is that the person must threaten to commit an offense involving violence to any person or property. Merely possessing a firearm is not sufficient to satisfy this element.
    - b) Criminal Trespass (30.05)
      - (1) One key element to consider here is the effective consent of the owner. As the sidewalks, streets and parking lots of University of Texas campuses are public places, the ability to withdraw effective consent for the person to be on property will hinge on behavior that violates some rule or law. If a person is merely on UT property with a rifle, shotgun, or licensed and concealed (in the case of campus property) handgun and has not entered into an area defined as premises (PC 46.035), they are not engaging in behavior which warrants the issuance of a criminal trespass warning.
      - (2) Another key element to consider is that of notice. If the behavior of a person who is lawfully carrying a firearm does violate a rule or law, they should be provided notice to depart or notice that entry onto the property is forbidden prior to an arrest for Criminal Trespass being made.
      - (3) Efforts to bar entry onto public property by threatening arrest for Criminal Trespass when the elements to substantiate such an arrest are absent is not permitted.
    - c) Trespass by License Holder with a Concealed Handgun (30.06)
      - (1) The key element here is whether the subject is carrying a concealed handgun under the authority of CH 411 Government Code:
        - (a) on property of another
        - (b) without effective consent; and

- (c) after receiving notice to depart or that entry was forbidden
- d) Trespass by License Holder with an Openly Carried Handgun (30.07)
  - (1) The key element here is whether the subject is openly carrying a handgun under the authority of CH 411 Government Code:
    - (a) on property of another
    - (b) without effective consent; and
    - (c) received notice that entry by a license holder openly carrying a handgun was forbidden
- e) Failure to Identify (38.02)
  - (1) The key element here is whether the subject has been arrested. It is only a crime to refuse to give biographical information to an officer when under arrest. If the subject is detained, the subject commits an offense if the subject gives false information.
  - (2) While an officer has an obligation to document certain information about the persons with whom they interact, officers should not portray this obligation as a mandate that the person identify themselves.
  - (3) Efforts to obtain identification by threatening arrest for Failure to Identify when the elements to substantiate such an arrest are absent are not permitted.
  - (4) There is a provision within the Education Code which requires persons to produce identification upon request. See Education Code 51.209.
  - (5) There is a provision in the Government Code (411.205) which states that if a license holder is carrying a handgun on or about the license holder's person when a magistrate or a peace officer demands that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license.
- f) Disorderly Conduct (42.01(a)(8))
  - (1) The key element here involves the display of a firearm in a manner calculated to alarm.
  - (2) "Manner calculated to alarm" will be defined by the totality of the circumstances. Case law stipulates that the mere fact that the police were called does not satisfy this element.
  - (3) To satisfy the element of "displayed in a manner calculated to alarm," the officer will likely have to articulate some kind of threat to a person or property.
  - (4) Under the open carry provisions, a handgun must generally be in a shoulder or belt holster.

- g) Unlawful Carrying Weapons (46.02)
  - (1) This statute does not apply to rifles or shotguns. It applies to handguns, illegal knives and clubs.
  - (2) A subject may possess a handgun in their vehicle unless the handgun is in plain view or the subject is engaged in criminal activity above the level of a class C traffic violation.
    - (a) However, a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, may have the weapon in plain view if the handgun is carried in a shoulder or belt holster.
- h) Places Weapons Prohibited (46.03)
  - (1) This statute applies to firearms (rifles, shotguns and handguns), illegal knives, clubs and prohibited weapons (46.05).
  - (2) The key element here is that the subject must enter into the building of an educational institution for the violation to occur (see definition of premises), unless:
    - (a) School sponsored activities are being conducted in or around the building, in which case the prohibition would extend to the grounds immediately surrounding the building.
    - (b) The subject boards a passenger transportation vehicle of a school or educational institution, an act which would also create a violation.
- i) Unlawful Carrying of Handgun by License Holder (46.035)
  - (1) One offense involves the carrying of a handgun under the authority of CH 411 Government Code when the subject intentionally displays the handgun in plain view of another person in a public place.
    - (a) It is now an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.
    - (b) Despite Subsection (a) above, a license holder still commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person:
      - (i) on the premises of an institution of higher education or private or independent institution of higher education; or
      - (ii) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or



other parking area of an institution of higher education or private or independent institution of higher education.

(2) Another offense under this statute involves the carrying of a handgun under the authority of CH 411 Government Code regardless of whether the handgun is concealed or carried in a shoulder or belt holster, when the subject enters into a building:

- (a) where a high school, collegiate, or professional sporting event or interscholastic event is taking place.
- (b) of a hospital.
- (c) where any meeting of a governmental entity is taking place.

(3) The final applicable offense under this statute involves the carrying of a handgun under the authority of CH 411 Government Code when the subject is intoxicated.

j) Unlawful Possession of a Firearm (46.04)

(1) One key element is possession of a firearm by a convicted felon at any place other than their residence.

(2) A separate offense involves the possession of a firearm by a subject who has been convicted of Class A Misdemeanor Assault against a member of their family when the possession occurs within 5 years of their release from confinement or supervision.

(3) Additionally, it is an offense for a person who has been served with a protective order to possess a firearm.

k) Prohibited Weapons (46.05)

(1) It is a crime to possess:

- (a) An explosive weapon
- (b) A machine gun
- (c) A short-barrel firearm
- (d) A firearm silencer
- (e) Armor piercing ammunition (pistol)
- (f) A zip gun

(2) As of September 1, 2015 this section contains an exception for an item registered in the National Firearms Registration and Transfer Record maintained by the BATFE or classified as a curio or relic<sup>21</sup> by the U.S. DOJ from the items the intentional or knowing possession, manufacture, transport, repair, or sale of which constitutes a prohibited weapons offense.

- (a) This means that the possession of properly registered machine guns, short-barrel firearms and firearms silencers is not punishable under 46.05.

- l) Unlawful Transfer of Certain Weapons (46.06)
    - (1) This statute involves an assortment of offenses involving the sale, lease, loan, rental or gift of a firearm to persons who are:
      - (a) Intending to commit a crime
      - (b) Under the age of 18
      - (c) Intoxicated (includes ammunition)
      - (d) Felons within the period of prohibition (includes ammunition)
      - (e) Subject to a protective order
  - m) Penalty if Offense Committed Within Weapon-free School Zone (46.11)
    - (1) This is an enhancement provision for weapon related offenses that occur within 300 feet of the premises of a school (excluding the offense listed under Places Weapons Prohibited which involves the premises of an educational institution),
    - (2) However, this statute only applies to a private or public elementary or secondary school.
  - n) Making a Firearm Accessible to a Child (46.13)
    - (1) The key elements here involve making a weapon with ammunition available to a child who is 16 or younger.
    - (2) However, if the child is under supervision from a person who is 18 years old or older and the child possessed the firearm for a lawful purpose, an affirmative defense is available.
  - o) Non-applicability 46.15
    - (1) 46.02 and 46.03 do not apply to:
      - (a) Peace Officers or Special Investigators
      - (b) Parole Officers
      - (c) Community Supervision and Corrections Officers
      - (d) Judges licensed to carry a handgun
      - (e) District, county or municipal attorneys licensed to carry a handgun
      - (f) Bailiffs licensed to carry a handgun
      - (g) Juvenile Probation Officers
4. Government Code Statutes
- a) Suspension of License (411.187)
    - (1) DPS shall suspend the license of a license holder who is charged with:
      - (a) a Class A or B Misdemeanor;
      - (b) an offense under Penal Code 42.01;
      - (c) a felony
    - (2) An officer must submit an affidavit to DPS stating the reasons for the suspension.

b) Transportation and Storage of Firearms and Ammunition by License Holders in Private Vehicles on Certain Campuses (411.2032)

(1) This statute bars campuses from making rules or taking action against persons who lawfully possess a firearm or ammunition in their vehicle on campus and are licensed to carry a concealed handgun.

(2) This includes streets, parking lots and parking garages on campus.

c) Seizure of Handgun and License (411.206)

(1) If a peace officer arrests and takes into custody a license holder who is carrying a handgun under the authority of this subchapter, the officer shall seize the license holder's handgun and license as evidence.

d) Authority of Peace Officer to Disarm (411.207)

(1) A peace officer may disarm a license holder at any time the officer reasonably believes it is necessary for the protection of the license holder, officer, or another individual.

(2) The peace officer shall return the handgun to the license holder before discharging the license holder from the scene if the officer determines that the license holder is not a threat to the officer, license holder, or another individual

(a) and if the license holder has not violated any provision of this subchapter or committed any other violation that results in the arrest of the license holder.

(3) A peace officer may temporarily disarm a license holder when a license holder enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the license holder's handgun.

(a) The peace officer shall secure the handgun in the locker and shall return the handgun to the license holder immediately after the license holder leaves the nonpublic, secure portion of the law enforcement facility.

5. Education Code Statutes

a) Exhibition of Firearm (37.125)

(1) This offense applies to public and private primary and secondary schools, not institutions of higher education.

(2) This statute addresses the exhibition or threatened exhibition of a firearm in a manner intended to cause alarm, personal injury or damage to property.

b) Rules and Regulations; Penalty (51.202)

(1) The governing board of each state institution of higher education may promulgate rules and regulations for the safety and welfare of students, employees, and property.



- (2) A person who violates any rule or regulation promulgated under the authority of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.
  - c) Unauthorized Persons; Refusal of Entry, Ejection, Identification (51.209)
    - (1) Authorized representatives of an institution of higher education (this includes UT System Police officers) may:
      - (a) refuse to allow persons having no legitimate business to enter on property;
      - (b) eject any undesirable person from the property on his refusal to leave peaceably on request.
    - (2) Identification may be required of any person on the property.
    - (3) This statute, which is supported by Section 3 of Regent Rule 80101, is criminally enforceable. However, taking routine criminal enforcement action based upon this statute is not recommended.
  - d) Enforcement of Rules and Regulations (51.210)
    - (1) All officers commissioned by the governing board of a state institution of higher education may be empowered by the board to enforce rules and regulations promulgated by the board.
  - e) Disruptive Activities (51.935)
    - (1) This statute addresses persons who intentionally engage in disruptive activity on property of institutions of higher education.
    - (2) Disruptive Activity is defined as:
      - (a) obstructing or restraining the passage of persons onto or out of campus or into or out of buildings;
      - (b) seizing control of a building or portion of a building;
      - (c) preventing, attempting to prevent or disrupting by force or violence or the threat of force or violence a lawful assembly.
    - (3) It is a Class B misdemeanor
    - (4) This statute is not intended to infringe on an individual's right to free speech.
  - f) Risk Management Programs for Members and Advisors of Student Organizations (51.9361)
    - (1) This statute requires annual risk management program presentations to members of student organizations.
    - (2) The program must address safety issues, including the possession and use of firearms, weapons and explosive devices.
6. Labor Code Statutes
- a) Restriction on Prohibiting Employee Access to or Storage of Firearm or Ammunition (52.061)

(1) A public or private employer may not prohibit an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees.

7. Law Pertaining to Weapons in Private Residences

- a) Further guidance will provided on firearms in dorms and other types of on-campus student housing once institutional rules have been adopted by the Board of Regents in compliance with SB 11..

**IV. Municipal Ordinances**

- A. UTSP officers will not enforce municipal ordinances unless there is an existing mutual aid agreement authorizing them to do so, or state law or local ordinance specifically allows officers not commissioned by the municipality to enforce that ordinance.

**V. Regent Rules**

A. Regent Rule 30103

1. Section 1

- a) Every employee is expected to obey all Federal, state, and local laws, and particularly Texas Penal Code, Chapter 42 and Section 46.03 and Texas Education Code Section 51.935.
- b) Any employee who violates any provision of these statutes is subject to disciplinary action, including dismissal.

2. Section 2

- a) Any employee who obstructs, disrupts, or interferes with any teaching, educational, research, administrative, disciplinary, public service, or other activity, meeting, or event authorized to be held on campus is subject to disciplinary action, including dismissal.
- b) Obstruction or disruption includes but is not limited to any act that interrupts, modifies, or damages:
  - (1) utility service or equipment,
  - (2) communication service or equipment,
  - (3) university computer programs, records or networks

3. Section 5

- a) The Board of Regents recognizes the right of employees to participate in political activities provided:
  - (1) The employee is not scheduled to work;

- (2) The activities do not interfere with the discharge and performance of an employee's duties and responsibilities;
- (3) The activities do not involve the use of University equipment or unauthorized use of facilities;
- (4) The activities do not involve the attempt to coerce students, faculty, or staff to participate in or support the political activity.

B. Regent Rule 40501

1. Section 1

- a) The University has the right to regulate the time, place and manner of free speech and assembly.
- b) Institution may designate one or more appropriate areas on the campus where students, faculty, and staff may engage in rallies, group demonstrations, or public oratory without prior administrative approval.

2. Section 3.1

- a) Only registered student organizations, faculty or staff organizations, System-owned dormitories, and Student Government may present off-campus speakers on the campus.

3. Section 3.6

- a) No person shall be permitted on any campus of the System to engage in speech, either orally or in writing, which is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

C. Regent Rule 50101

1. Student Conduct and Discipline - Model Policy 2.11 - Use of Explosives, Weapons or Hazardous Chemicals

- a) Unless authorized by federal, State, or local laws, a student who possesses or uses any type of explosive, firearm, imitation firearm, ammunition, hazardous chemical, or weapon as defined by State or federal law, while on campus or on any property or in any building or facility owned or controlled by the U. T. System or institution, is subject to discipline.

2. This would not apply to handgun licensees who are on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an educational institution with a concealed handgun.

D. Regent Rule 80101

1. Section 1

- a) The property or buildings, owned or controlled by The University of Texas System are not open for assembly, speech, or other activities.



- b) The need for effective and efficient operations requires that the time, place, and manner of assembly, speech, and other activities on the grounds and in the buildings of the U. T. System or any of the institutions be regulated.
- c) The Board adopts and promulgates rules related to the use of buildings and grounds for purposes other than programs and activities related to the role and mission of the U. T. System and the institutions.

2. Section 2

- a) Persons and organizations must have permission to use university property or buildings for purposes other than programs and activities related to the role and mission of the U. T. System and the institutions.
- b) Any authorized use must be conducted in compliance with Regent's Rules and the law.

3. Section 3

- a) Pursuant to Education Code 51.209, it shall be unlawful for any person who is on any property or in a building owned or controlled by the U. T. System or any of the institutions to refuse to identify himself to a UT System Police Officer.
- b) a person identifies himself by:
  - (1) giving his or her name and complete address substantiated by a current driver's license, voter registration card, or other official documentation; and
  - (2) stating truthfully whether he is a student or employee of the U. T. System or any of the institutions.

4. Section 4

- a) Refusal to identify under this section is a misdemeanor punishable by a fine of not more than \$200.
- b) Students, faculty, or staff who refuse to identify themselves in accordance with this Rule are also subject to disciplinary action.

E. Regent Rule 80103

1. Section 1

- a) No solicitation shall be conducted on any property, street, or sidewalk, or in any building, structure, or facility owned or controlled by the U. T. System or any of the institutions unless permitted by the Regents' Rules and Regulations.

2. Section 4

- a) Solicitation includes:
  - (1) an oral statement or the distribution or display of printed material, or

(2) the request to support or oppose or to vote for or against a candidate, issue, or proposition appearing on the ballot at any election held pursuant to State or Federal law or local ordinances.

F. Regent Rule 80104 Use of Facilities

1. Section 3

- a) Students, Faculty, Staff and organizations may petition, post signs, distribute literature, set up tables and exhibits, or peacefully demonstrate on property owned or controlled by the U. T. System or any of the institutions, but the posting of signs and the setting up of tables and exhibits may require prior authorization.

2. Section 4

- a) No person, including a student or employee of an institution, shall distribute any petition, handbill, object, or piece of literature; post or carry any sign, placard, or banner; or engage in speech or conduct on property or in buildings or facilities owned or controlled by the U. T. System or any of the institutions if it is obscene, libelous, or directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- b) Violation of this rule is a misdemeanor subject to a fine of not more than \$200 under Education Code 51.202.

**VI. Situational Considerations**

A. Video Recordings

- 1. There is no law which prohibits the recording of a police officer in the discharge of their official duties.
- 2. Penal Code 38.15 permits the arrest of an individual for interrupting, disrupting, impeding or interfering with a peace officer who is performing a duty or exercising an authority.
- 3. Mere speech or simply video recording should not be interpreted as interfering.

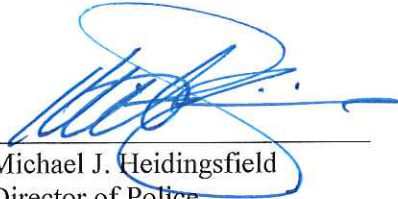
B. Seizure of Weapons

- 1. If an officer can articulate a safety concern or imminent danger, the officer has the right to take temporary possession of a firearm during an encounter.
- 2. Lawful possession of a weapon by itself may not rise to the level of an officer safety concern justifying temporary seizure of a weapon.
- 3. Officers may ask for consent to take temporary possession of the weapon.

C. Exhibition of Firearm by Officers

- 1. The decision to exhibit a firearm as a show of force should be based on the totality of the circumstances encountered by an officer.

2. Officers who encounter individuals who are armed with a firearm should approach the situation cautiously, using sound tactics and judgment. This includes the use of sound contact/cover principles.
3. Officers shall not, as a matter of routine practice or policy, exhibit their firearm simply because they encounter someone wearing a firearm. The decision to exhibit a firearm as a show of force should be based on articulable facts indicating the existence of a threat or imminent danger.



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Changes/Amendments Since Last Publication

Changes throughout to reflect new laws enacted by the 84<sup>th</sup> Legislature, including:

Revisions to Paragraph I, Paragraph I (2) and (4), the addition of Paragraph II B., revisions to Paragraph III A., addition of Paragraph III A. 2., revision of Paragraph III A., 3, b), c), addition of Paragraph III A., 3 d), revisions to Paragraph III A., 3 e) f), g), i), k), o), Paragraph III A., 4, Paragraph III A. 6 & 7, revisions to Paragraph V.C. 2, and V. D. 4