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Guns in Schools and Chapter 37 Changes

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Effective January 1, 2016, Texas moved from not only permitting individuals to carry a concealed handgun with the appropriate license issued by the State, but now allows for “open carry” of handguns. What does this mean for you as a school attorney?

To understand the impact of open carry on school districts, you must examine the interplay between both federal and state laws and regulations. While both begin with a presumption of prohibiting firearms on school property, to the surprise of many, there are instances where firearms are permissible.

What does the federal law say about firearms on school district property?

The presumption that firearms are not permitted on school property or at school-related events comes from federal law, Gun-Free Schools Act, which Congress enacted in 1994. Under the Gun-Free Schools Act, Elementary and Secondary schools (that receive federal funding) are required to restrict firearms from school property. Specifically, 18 U.S.C. § 922(q)(2)(A) states:

“[i]t shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.”

Of course, this begs the question of what is a school zone. A **school zone** is defined by 18 U.S.C. § 921(a)(25) as:

“in, or on the grounds of, or within 1,000 feet from the grounds of a public, parochial or private school.”

Additionally, a **firearm** is defined by federal law as “any weapon, including a starter gun, which will or is designed to or which may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler, a firearm silencer, or any destructive devise such as an incendiary, any explosive, or poison gas.”

In accordance with 18 U.S.C. § 922(q)(2)(B), there are exceptions that apply to the prohibition of guns on school property. Those exceptions include the following:

- (i) on private property not part of school grounds;
- (ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State,

and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

The exception we see most often in school districts applies to law enforcement officers, but a new issue in the State is when individuals that are licensed to carry (“LTC”) come on school property with their handgun either concealed or holstered.

What is the current law in Texas regarding handguns on school district property?

Before we consider the changes to the license to carry law, you must know that a **firearm** is defined under Texas Penal Code § 46.01(3) as 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. Under subsection (5), a **handgun** is limited to any firearm that is designed, made, or adapted to be fired with one hand.

A person unlawfully carries a weapon when, as defined by Texas Penal Code § 46.02, if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not:

(1) on the person's own premises or premises under the person's control; or

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