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## **I. PROLOGUE (OR HOW PEOPLE IN THE MIDWEST VIEW TEXAS GUN LAWS – A JUDGE’S PERSPECTIVE)**

We have assumed ... that the police, who did not know [Defendant’s] name and therefore did not know that he was a felon, knew, or at least had reason to believe, that if he was carrying a concealed firearm he was violating the law. They did know. It is a crime in Illinois to carry a concealed gun.... Even if this were Texas rather than Illinois, and carrying a concealed weapon was lawful ... the police would have been entitled to accost [Defendant] and ask him whether he was carrying a gun.... But if the asking crossed over to commanding, so that [Defendant] was stopped, then it would be essential that the officers have a reasonable belief ... that if he was carrying a gun he was violating the law. But they would have a reasonable belief, because this is Illinois rather than Texas.

*U.S. v. DeBerry*, 76 F.3d 884, 886-87 (7<sup>th</sup> Cir. 1996) (Posner, C.J.)

## **II. INTRODUCTION**

Over the past 20 years, gun laws across the country, and particularly in Texas, have substantially expanded the rights of gun owners, particularly with respect to where firearms can be carried, which particular kinds of firearms can be carried, and how they can be carried by the common citizen. Since first permitting concealed carry in public (including on college campuses) in 1995, Texas has significantly expanded the places where an average Texan should expect to encounter a person with a gun, or even catch a glimpse of the gun itself, as the Legislature finally sanctioned open carry in 2015.

It hasn’t always been this way. Texas was actually the first state in the U.S. to ban the open carry of handguns, all the way back in 1871, when the Legislature first outlawed the carrying of pistols outside of the home: “If any person in this state shall carry on or about his person, saddle, or in his saddle-bags, any pistol ... he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.”<sup>1</sup> And prior to the 2015 session of the Legislature, Texas was one of only six states that continued to ban the open carry of handguns.

This paper will highlight the existing state of gun laws in Texas, with special focus on recently-implemented and soon-to-be-implemented changes relating to open carry and campus carry, as well as the way in which those laws affect employers.

## **III. CURRENT TEXAS LAWS RELATING TO THE POSSESSION OF FIREARMS**

### **A. Timeline**

1995 – Concealed carry first permitted by non-law enforcement. Significant restrictions still apply: a license is required and citizens are prohibited from carrying firearms in many places.

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<sup>1</sup> <http://www.houstonchronicle.com/news/politics/texas/article/First-to-ban-open-carry-Texas-could-be-one-of-5974401.php> As the Houston Chronicle notes, that maximum fine would be roughly \$2,000 in today’s dollars.

2007 – A person who is permitted to possess a gun at home may now also do so while inside or directly en route to that person’s car.

2011 – A person who is permitted to possess a gun at home may now also do so while inside or directly en route to that person’s watercraft.

2011 – Employers may not prohibit employees from storing firearms in their locked personal vehicles parked in employer-provided parking areas.

2016 – Open carry permitted (January 1); campus carry expanded to include some buildings (August 1).

## **B. Open Carry**

Texas’s “open carry” law went into effect January 1, 2016, and implemented the following:

- Current CHL (“concealed handgun license”) holders are authorized to open carry effective January 1, 2016, without any additional training;
- Other individuals may obtain a license to carry a handgun (“LTC”) openly in all of the same places that currently allow the licensed carrying of a concealed handgun;
- Unconcealed handguns (loaded or unloaded) must be carried in a shoulder or belt holster;
- Eligibility requirements for a license to carry do not change; and
- Training curriculum for new applicants will be updated regarding the use of restraint holsters and methods to ensure the secure open carrying of handguns effective January 1, 2016.<sup>2</sup>

## **C. Location Restrictions**

Texas law restricts license holders from carrying handguns in certain places, with some restrictions being automatic and others requiring particular notice in order to prohibit handguns. The below table summarizes these locations:

<b>Location</b>	<b>Automatically Prohibited<sup>3</sup></b>	<b>Prohibited Only With “Effective Notice”<sup>4</sup></b>
Federal building	X	
Business that derives 51% or more of income from on-premises alcohol sales	X	

<sup>2</sup> House Bill 910, available at <http://www.legis.state.tx.us/tlodocs/84R/billtext/pdf/HB00910F.pdf#navpanes=0>.

<sup>3</sup> Texas Penal Code §46.035.

<sup>4</sup> Texas Penal Code §46.03, §46.035(b)(4)-(6), (i).

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