

Frequently Asked  
Questions About  
Campus Carry

**TSUS OFFICE OF GENERAL COUNSEL  
RESPONSES TO CHANCELLOR'S  
CAMPUS CARRY TASK FORCE QUESTIONS  
October 7, 2015**

*The following responses are for the purpose of providing legal guidance and statutory interpretation. The responses are not intended and should not be viewed as commentary on campus carry policy. Please keep in mind that each campus will have to provide its justification for implementation of gun-free zones to the legislature in the next even-numbered calendar year.*

- 1. Under SB 11 (codified as Government Code § 411.2031), what constitutes a school bus or "passenger transportation vehicle" – where concealed carry is prohibited?**

RESPONSE: This section does not apply to public institutions of higher education but only to private or independent institutions. Even if it were applicable to a TSUS component, the section does not prohibit concealed weapons on passenger transportation vehicles.

Additionally, Texas law does not define the term "passenger transportation vehicle."

- 2. What does "on premises" mean in legislation where concealed carry is prohibited? (SB 11 References -Penal Code - Title 10 Chpt. 46 Sec. 46.03)**

RESPONSE: SB 11 provides or incorporates by reference the following definitions:

- *"Premises" means a building or a 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. (See Penal Code § 46.035(f) (3).)*
- *"Campus" means all land and buildings owned or leased by an institution of higher education . . . . (See Government Code §411.2031(a)(1).)*

Making reference to both statutes, "premises" means land or a building or portion of a building owned or leased by an institution of higher education. Excluded from the definition are streets, sidewalks, and parking areas.

- 3. Does the law prohibit guns (concealed carry) in university owned parking lot areas when lot is being used for tailgating prior to an athletic sporting event?**

RESPONSE: No, as stated in our response to Item 2 above, the law defines premises as a building or portion of a building, specifically excluding parking lots, parking garages, or other parking areas.

**4. Can the university require expert gun training (or make it voluntary for students with CHL?)**

RESPONSE: A university may not require expert gun training. The law places responsibility on the director of DPS to establish the minimum requirements for handgun proficiency. OGC's best advice is not to offer essentially duplicate voluntary training. (See *Government Code § 411.188.*)

**5. Is there a reporting mechanism under the CHL laws that will allow and/or require the university to report students that have substance abuse issues, mental health issues, or are involved in some sort of judicial proceeding on-campus?**

RESPONSE: Neither *SB 11* nor *Texas Government Code §411* contains a reporting requirement that would permit a university to report students with substance abuse problems, mental health issues or who are involved in judicial proceedings. University disclosure of such information would likely violate federal and state privacy laws and judicial rulings, including the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act (HIPAA)*.

**6. What is the obligation of the CHL permit holders to properly store their weapons? Should the University take on the storage of weapons responsibility since it is already the responsibility of the license holder?**

RESPONSE: *Government Code §411.188 (b)(4)* requires instruction for conceal carry applicants on handgun proficiency which includes:

*proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.*

*SB 11* allows a university to provide storage for weapons, but it does not require a university to do so. If a university decides to provide for such storage, it may be exposing itself to certain legal risks that it would not otherwise have if it did not provide the storage. For example, the doctrine of sovereign immunity protects every TSUS component from certain personal injury and property damage claims. There is a possibility that this protection would be waived by a university that provides a faulty or defective storage unit and an injury or property damage ensued as a result.

If a university decides to provide storage facilities, OGC's recommendation is that such storage be in a central location on campus with 24/7 access.

**7. As the University begins to carve out areas where guns will not be allowed, may the University carve out areas where a program accreditation requires a no guns policy (like a state or federal grant that requires no guns; or the Child Development Center that is classified as a school and its accreditation requires no guns)?**

RESPONSE: Yes, but the university should cite the specific language in the accreditation documents prohibiting guns and refrain from suggesting to accrediting agencies that a gun prohibition be included in their accreditation requirements.

- 8. As the University begins to carve out areas where guns will not be allowed, can the university make one area of a building a gun-free zone or part of a building a gun-free zone? For example, the 1st floor of the Education building houses the CARES clinic where minor autistic children receive assessment and treatment.**

RESPONSE: Yes, but the carve-out area must be workable. For example, strong justification may exist for declaring an entire floor of a multi-story building as a gun-free zone; however, this would not be workable if the gun-free floor is the entire first floor of the building as this would effectively deny access to the floors in the building that are not so designated.

Also, carving out portions of buildings throughout the campus may make it difficult for Concealed Handgun Holders (CHLs) to know which areas are prohibited and may have the effect of rendering it difficult to navigate the campus, effectively impeding the right to carry.

- 9. What is the definition of a "child," "school" as relates to concealed carry of handguns?**

RESPONSE: With exceptions, a "child" or "minor" is "a person under 18 years of age." (See *Education Code* §33.051, adopting *Family Code* §101.003(a) definition.)

School is not defined in the *Education Code* but it is defined in *Texas Penal Code* §46.11 (c)(2) as "a private or public elementary or secondary school."

- 10. In a survey, can we ask a survey participant to self-identify as a CHL holder if it is an optional response?**

RESPONSE: Yes, but the optional language of the survey should be prominent and conspicuous, informing those who are being surveyed that the law does not require self-identification.

- 11. Can we penalize the *unintentional* display by the license holder through the student code of conduct or employee regulations? The penal code makes such conduct an offense only if engaged in intentionally. Can we subject a student, faculty member, or staff person who is a license holder to administrative discipline for reckless or negligent display?**

RESPONSE: No, especially for negligent display. However, should this become a routine problem with a singular individual and there are documented warnings, the

institution may conclude that grounds exist to consider the individual's actions to be intentional and institute appropriate disciplinary proceedings.

**12. Can the President declare the Coliseum, Stadium, and similar sporting venues, along with the Gaertner Performing Arts Center and other UIL event venues permanently off limits to license holders and provide notice of same under § 30.06 of the Texas *Penal Code*? Or does the statute only allow such prohibition while such sporting or UIL events are underway?**

RESPONSE: Yes, however, in OGC's opinion, doing so is inadvisable unless the institution can provide persuasive reasons justifying the total ban at times the facilities are closed to students, faculty, staff, or members of the general public. It is advisable to keep in mind that the legislature will expect reasons justifying the creation of all campus gun-free zones. We believe the better practice is not to focus upon the venues but instead upon the nature of the activities that take place in these venues.

**13. If the statute does allow for prohibition only while such events are underway, is adequate notice given to license holders if they are informed such an event is underway? (Or do they have to receive the notice outlined in § 30.06?)**

RESPONSE: As currently written, the statute prohibits carrying a weapon on the premises of an institution of higher education while a sponsored event is taking place. However, *SB 11* creates an exception for licensed CHLs. What the president must decide is which activities or venues will be prohibited to CHLs and provide appropriate notice as follows.

Oral or written notice must be given as to where CHLs may not carry. Notice that is given on a card or document must contain the following language:

*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.*

Alternatively, notice may be posted on a sign at the entrance of a gun-free zone. The sign must conform to the requirements of the *Penal Code*, in format and content, as follows:

- Include the above italicized language in both English and Spanish;
- Use contrasting colors, block letters, at least 1 inch in height; and
- Be displayed in a conspicuous manner clearly visible to the public.

- 14. The College of Education operates a Charter school. Although the physical schools housing the children are not on SHSU campuses, administrative offices are on the main campus. Those administrative offices may be visited by parents and students. Can they be declared off limits to license holders?**

RESPONSE: Yes, but see Response 8 regarding the workability of carve-out locations in academic buildings.

- 15. Can the President declare all of the following locations off limits without “hav[ing] the effect of generally prohibiting license holders from carrying concealed handguns on the campus....?”**

RESPONSE: Yes, assuming a valid justification exists for designating each of the areas as gun-free zones. See below for specific responses to each identified location. As a qualifier, OGC is not taking a position as to each proposed location but is simply assessing the proffered reason(s) for legal persuasiveness.

- a. The Student Health Center

The health center serves students in crisis who should not have ready access to weapons and also has students disrobing and robing as part of medical examinations increasing the risk a gun may be left behind or dropped and accidentally discharged.

RESPONSE: The articulated justification, which focuses on the mishandling or misplacement of a gun, would not appear to be more likely here than at any other location.

- b. The student Counseling Center

The student counseling center serves students in crisis who should not have ready access to weapons.

RESPONSE: Because of the student population served by the counseling center, fear of injury to self or others seems reasonable. We suggest that your counseling professionals assist in writing your justification.

- c. The Psychological Services Center

The psychological services center not only serves students in crisis who should not have access to weapons, but also conducts evaluations of offenders who are actively in police custody (i.e., wearing belly chains and in stripes with a custody officer nearby).

RESPONSE: Because of the student and other populations served by the psychological services center, fear of injury to self or others seems reasonable. We suggest that your psychological professionals assist in writing your justification.

- d. The Jack S. Staggs Counseling Center  
The Jack S. Staggs Counseling Center serves students in crisis who should not have access to weapons.

RESPONSE: Because of the student population served by the counseling center, fear of injury to self or others seems reasonable. We suggest that your counseling professionals assist in writing your justification.

- e. The Community Counseling Center (The Woodlands Center)  
The Community Counseling Center serves students in crisis who should not have access to weapons.

RESPONSE: Because of the student population served by the counseling center, fear of injury to self or others seems reasonable. We suggest that your counseling professionals assist in writing your justification.

- f. A specific laboratory in Lee Drain which houses particularly hazardous materials/dangerous substances which would significantly jeopardize public safety if activated by gunfire.

RESPONSE: The articulated justification assumes that firing a weapon will trigger an explosion, which appears to beg the question. Additional justification should be provided.

- g. The sporting and UIL venues identified in question 2, above (at all times or while those events are underway).

RESPONSE: Designation of such venues as gun-free zones should be permitted only while events are occurring. Statutory notice should be given.

- h. The Charter School Offices referenced in question 3, above.

RESPONSE: If the Charter School Offices are not on university owned or leased property, the campus should not be implementing a gun-free designation. Such a decision would be the Charter school's responsibility and concern.

- i. Residence halls during certain times of the summer when they are occupied chiefly by children without parental supervision attending various summer camps.

RESPONSE: Yes, but only during the limited period of the summer camps for minors. Because of the student population being served during the summer camps, fear of injury to self or others seems reasonable justification.

- j. Any other areas of campus which you believe should be given consideration by the Concealed Carry Committee as “off limits” to licensees.

Other possible gun free areas might include offices where cash or negotiable instruments are stored or handled; Board of Regents meetings; student, faculty, or staff disciplinary hearings, President’s house (including grounds). Each Component that selects one or more of these restrictions should provide a justification. To start, OGC notes that, except for the cash handling areas, each of the areas listed involve situations in which people may be angry, agitated, perturbed, depressed, or stressed out by decision(s) made by the individuals or entities listed.