DISTRICT CONCEALED CARRY COMMITTEE FINAL REPORT

ISSUED: APRIL 19, 2017
EXECUTIVE SUMMARY

BACKGROUND

In 2015, the 84th Texas Legislature adopted Senate Bill 11 (S.B. 11), commonly referred to as the “campus carry” law. The Bill was signed into law by Governor Abbott on June 13, 2015. The law provides that a person who holds a license to carry a handgun—concealed—may carry same both on the grounds and in the buildings of an institution of higher education. S.B. 11 represents a significant departure from prior law in that it permits, for the first time, the concealed carry of a handgun in the buildings of an institution of higher education. The law was made applicable to 4-year public institutions of higher education on August 1, 2016, but provided that 2-year public institutions of higher education would have until August 1, 2017 to implement the provisions of the law.

S.B. 11 authorizes the president or other chief executive officer of an institution of higher education (in the case of the DCCCD, the Chancellor) to enact reasonable rules and regulations regarding the concealed carry of handguns on “the campus of the institution or on premises located on the campus of the institution.” The law further provides that these rules and regulations may neither generally prohibit nor have the effect of generally prohibiting license holders from carrying their concealed handguns on campus. During the same 2015 legislative session, the Texas Legislature passed House Bill 910 (H.B. 910), which permits license holders to openly display their handguns in a belt or shoulder holster. It is very important to note, however, that H.B. 910 or the “open carry” law expressly creates an exemption for institutions of higher education. Therefore, the open carry of handguns on District grounds and premises is now and will remain a crime.

In Spring 2016, Dr. Joe D. May, Chancellor of the Dallas County Community College District, directed the establishment of campus level committees, working in conjunction with a District Concealed Carry Committee, to make recommendations to him regarding the implementation of S.B. 11. Each of the Presidents of the seven colleges that comprise the DCCCD was asked to form a campus concealed carry committee for their campus and to designate a liaison from their campus to the District Concealed Carry Committee (the “District Committee”). The purpose of these committees was to gather input from those most impacted by the implementation of “campus carry,” the District’s students, staff, faculty and those members of the public who frequent our campuses, with respect to the implementation of campus carry and, as authorized by S.B. 11, to pay particular attention to the nature of the District’s student population, specific safety considerations, and the uniqueness of our campus environments, so that same could be taken into consideration in crafting reasonable rules and regulations for the implementation of campus carry.

THE INFORMATION-GATHERING AND DELIBERATIVE PROCESS

The District Committee, through its liaisons to the campus-specific committees, consulted extensively with the DCCCD community. In February 2017, two online surveys were generated and distributed, one to employees of the District, and one to students in the District, in an effort to develop information regarding implementation of concealed carry and issues identified by the survey respondents in connection with same. Response to the survey instruments was robust, with 1,721 employees providing a survey response and slightly more than 7,400 students responding to the survey. Dr. Richard Plott, District Director of Institutional Research deemed the survey response to be both reliable and statistically meaningful.
In addition, the District conducted approximately 40 public forums, hosted across the District’s colleges and other locations, in an effort to gather input from the DCCCD community about the implementation of campus carry. Many of the forums were recorded and/or live streamed, so that interested parties who could not attend would have the opportunity to see and hear what fellow members of the DCCCD community had to say about campus carry. The campus committees hosting the forums took notes or otherwise transcribed the proceedings, so that a record could be maintained of the comments made and information received. The input gathered at these public forums, along with the survey responses, were then collated and analyzed by the District’s Institutional Research personnel, so that they could be presented to, and considered by, the District Committee in arriving at the recommendations set forth in this report. Where possible, the recorded forums were posted on the District’s Concealed Carry Website, which also provided a calendar of events, FAQs, pertinent legal information, and a wealth of other valuable information concerning campus carry. In addition, the District Committee considered information received from other institutions, both in the State of Texas, and around the United States, in an effort to analyze the approach of others to this most important issue.

Although the District Committee heard from persons on both sides of the issue, both in response to the survey instruments and at the many public forums, a substantial majority of the comments received from the DCCCD community expressed adamant opposition to the implementation of campus carry. The vast majority of comments received and considered by the District Committee and the campus committees consisted of strong opposition to S.B. 11 and the authorization of license holders to carry a concealed handgun on District premises. A majority of respondents indicated that they believed the law to be “a mistake” and expressed a desire that the DCCCD undertake to prohibit concealed carry “wherever and whenever possible.” Many fears were repeatedly expressed: about handgun carriers going on rampages; about the risk of accidental discharges, especially in large crowds, labs or areas where harmful or dangerous materials might exist; that handgun carriers will make bad decisions when faced with an active shooter causing injury to innocent bystanders or themselves; and that more guns on campus will lead to confusion for campus law enforcement personnel in the instance of an active shooter incident or other disruption on a campus. Many of those who spoke at the public forums expressed real and genuine fear at the prospect of the presence of concealed carry handguns on the District’s campuses.

The forums also included participation by many of the District’s faculty who strongly objected to concealed carry on campus and, more importantly, in the District’s classrooms, citing an alleged adverse effect on classroom discussions and their academic freedom. Faculty members were heard to express their fear that the knowledge that one or more students might be carrying a concealed weapon would have a substantial chilling effect on class discussion. These comments were also echoed by many students and, the District Committee has noted, by numerous national organizations, such as the American Association of University Professors and the Association of American Colleges and Universities.

The District Committee also received comments and input from some, albeit a significantly smaller number, who favored campus carry. Those in favor indicated that they believed that license holders should be able to carry a concealed handgun without limitation, or with as little limitation as possible, when upon the property of the District, both for their own protection and for the protection of others. Those in favor of campus carry indicated that a person with a license to carry could respond more quickly in the event of an active shooter situation. They also rejected the notion that campus carry would cause an increase in campus violence, citing Texas Department of Public Safety data indicating that license holders are, as a group, generally law-abiding persons. Many of those in favor of campus carry cited the Second Amendment to the U.S. Constitution.
The District Committee did not undertake to estimate how many of the District’s students, faculty and staff presently have, or will undertake to obtain, a license to carry a handgun. The District Committee found that anecdotal evidence from 4-year institutions about estimates of the number of license holders on their campuses was not necessarily analogous to the District, given the inherent differences in student population between those institutions and the District, including, without limitation, the average age of students at those institutions. According to the most recent Texas DPS and census data considered by the District Committee, however, license holders comprise about 4.5% of the Texas population aged 21 and older. The average age of a District’s student is 26, leading some to suspect that license holders will be disproportionately represented on community college campuses, as opposed to 4-year institutions.

The University of Texas at Austin, in conducting its work in developing rules and regulations for campus carry on its campus, undertook to make a comprehensive examination of other states that have previously implemented some form of campus carry and the District Committee found that work to be relevant to its work on the issue. The University of Texas Campus Carry Policy Working Group found that those states that already have campus carry reported little evidence of campus violence that can be directly linked to campus carry, and none that involves an intentional shooting. The UT Group cited four accidental discharge incidents. Two involved a license holder who was openly displaying a handgun to another person; the other two involved license holders who were carrying their handguns unholstered in their pants pocket. The UT Group also could not find any evidence to support a causal link between campus carry and an increased rate of campus sexual assault or an increase in suicide rates on campus.

Beginning in the fall of 2016, the District Committee met regularly to consider the implementation of campus carry. The District Committee considered and discussed the vast amount of information gathered during the process and engaged in thoughtful and contemplative consideration of the issues and information adduced. The District Committee was chaired by Lauretta Hill, District Commissioner of Public Safety and Security, and consisted of 19 members who are representative of all of the District’s colleges and other locations. This Report, and the recommendations contained herein, are the product of substantial study, deliberation and debate among the members of the District Committee. Each of the members brought a wide range of experiences and expertise to the deliberations, which culminated in these recommendations. The District Committee was able to reach consensus on the recommendations contained in this Report, and believes the recommendations are not only fair and reasonable, but also representative of the information gathered during the process and consistent with applicable law.

**BRIEF SUMMARY OF THE RECOMMENDATIONS**

Although the District Committee commends to the reader the entirety of this Report for a full and complete understanding of the issues presented, the Recommendations generally address the following matters:

- The District Policy, and the reasonable rules and regulations that emanate from same, apply to all faculty, staff, students, guests, visitors and individuals and organizations doing business with, upon, or on behalf of the District on District property;

- A person licensed to carry a handgun by the Texas Department of Public Safety under Chapter 411 of the Texas Government Code may carry a concealed handgun on or about his or her person on District property, unless such carry is prohibited by applicable law or the District’s rules and regulations;

- License holders who carry a handgun on District property must carry it on or about their person at all times or secure their handgun in a locked, privately owned or leased motor vehicle. “On or about”
the person means that a license holder may carry a concealed handgun in such a manner and in such proximity that he or she can grasp it without materially changing position.

- In addition to those areas in which Texas law already prohibits the concealed carry of a handgun, to wit, child-care centers, polling locations, sporting or interscholastic events, and Board of Trustee meetings, it is recommended that a person licensed to carry a handgun be prohibited from carrying a concealed handgun in those areas of District property in which mental health counseling and/or healthcare services are provided; those areas where the discharge of a firearm might cause great harm such as where biological agents or substances immediately dangerous to life and health are stored or utilized or those areas where equipment that is incompatible with metallic objects is present; animal care and animal use facilities; pre-K-12 school or those District-sponsored programs or activities in which services to minors is exclusively provided; those areas in which formal institutional disciplinary and grievance proceedings are being conducted; fitness center facilities; and District vehicles.

Campus carry is a highly controversial issue. As such, it has provoked intense interest and passion among members of the DCCCD community. Campus carry has been widely covered in the press, both locally and nationally, and the District Committee understands well that many members of the DCCCD community strongly believe that S.B. 11 should never have been enacted. The District Committee is also acutely aware that no set of recommendations made will satisfy everyone. Nonetheless, we have made every effort to remain true to the charge Dr. May gave us: to recommend steps he can take that will promote safety and security for all members of the DCCCD community in a way that complies with the law. This Report represents months of work and the persons involved wish to thank all of those in the DCCCD community who contributed to or assisted in the work represented in this effort.
I. THE LAW

The District Committee believes that a complete understanding of the issues related to campus carry cannot be achieved without at least a rudimentary understanding of the complexities presented by Texas law on the issue of concealed carry of handguns. The appendices to this Report set forth in detail S.B. 11 and the relevant Texas statutes that are implicated by the legislation and therefore are commended to the reader. Set forth below, in summary fashion, is an overview of the pertinent points from applicable law.\(^1\)

SUMMARY OF KEY POINTS IN THE APPLICABLE LAWS

- The open carry of handguns on the campus of an institution of higher education is now and will remain a crime.

- The concealed carry of handguns by license holders on the grounds of a campus of an institution of higher education has been allowed since 1995.

- S.B. 11 authorizes license holders to carry concealed handguns on the campus (all lands and buildings owned or leased) of an institution of higher education, including the College District.

- S.B. 11 authorizes the Chancellor to establish reasonable rules and regulations “regarding the carrying of concealed handguns by license holders on the campus … or on premises located on the campus.”

- Prior to adoption of reasonable rules and regulations, there must first be consultation with students, staff, and faculty regarding “the nature of the student population, specific safety considerations, and the uniqueness of the campus environment.”

- The rules and regulations may not “generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus.”

- Effective notice must be provided with respect to any place where handguns may not be carried.

- Provisions in the Texas Penal Code that criminalize the carrying of handguns in certain areas remain in effect.

OPEN-CARRY REMAINS ILLEGAL ON DISTRICT PROPERTY

As the District Committee went about its work, it became clear that many people are confused about what S.B. 11 does and does not do. The most common misunderstanding is that S.B. 11 is an “open-carry” law that authorizes license holders to openly display their handguns. This is not true, and the District Committee wishes to make this abundantly clear.

S.B. 11 was one of two major handgun laws enacted by the 2015 Legislature. The other was House Bill 910. While H.B. 910 does generally authorize license holders to visibly carry handguns in a belt or shoulder holster, Section 47 of H.B. 910 expressly created an exception for institutions of higher education, including the DCCCD. It has always been a crime – and remains a crime today – for a license holder to openly carry a handgun on DCCCD premises as well as on any DCCCD driveway, street, sidewalk, walkway, or parking area.

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\(^1\) This summary draws largely upon the work of the University of Texas at Austin’s Campus Carry Policy Working Group and the excellent summary of Texas law contained in their Final Report of December 2015.
THE APPLICABLE LAW

The legal framework surrounding campus carry consists of a number of interrelated statutes in the Texas Penal and Government Codes. Before S.B. 11 was enacted, the laws governing the carrying of handguns by license holders on campus were found primarily in the Texas Penal Code (TPC) §§ 46.02, 46.03, 46.035, and 46.15. Essentially, §§ 46.02 and 46.15 together barred someone who did not have a license from carrying a handgun in any place other than his or her own premises and motor vehicle; while TPC § 46.03(a)(1) made it illegal, even for license holders, to carry a handgun “on the physical premises of a school or educational institution.”

From 1995 until the enactment of S.B. 11, “a school or education institution” under TPC § 46.03(a)(1) included institutions of higher education, such that license holders were prohibited from carrying a handgun “on the physical premises” of a college or other institution of higher education. “Premises” is defined in TPC § 46.035(f) as “a building or portion of a building.” Thus, prior to 2015, license holders were permitted to carry their concealed handguns on the grounds of an institution of higher education, but prohibited from carrying in college or university buildings. Finally, prior to the passage of SB 11, both TPC §§ 46.03(a) and 46.035(b) listed a number of other places in which even license holders were barred from carrying a concealed handgun. These provisions remain largely unchanged by S.B. 11.

S.B. 11 amended both the Texas Government and Penal Codes in several critical ways. S.B. 11 added a new section to the Texas Government Code (TGC) that authorizes campus carry of concealed handguns by license holders. TGC § 411.2031(b) states, “A license holder may carry a concealed handgun on or about the license holder’s person while the license holder is on the campus of an institution of higher education ….” Consistent with this allowance, the bill amended TPC § 46.03, which previously barred license holders from carrying handguns on the premises of a “school or educational institution,”3 to allow license holders to carry concealed handguns “on the premises of an institution of higher education.” TPC § 46.03(a)(1)(B). Put simply, S.B. 11 extended existing law, which permitted license holders to carry concealed handguns on the grounds of a college campus, by authorizing license holders to carry concealed handguns in college buildings.

In addition to the aforementioned changes, S.B. 11 also provides the Chancellor some discretion to regulate campus carry. First, TGC § 411.2031(d), although inapplicable to the District, provides that the chief executive officer of an institution of higher education (in the case of the DCCCD, the Chancellor) may establish rules and regulations “concerning the storage of handguns” in on-campus dormitories or other residential facilities. Second, TGC § 411.2031(d-1) provides that the chief executive officer shall establish reasonable rules and regulations “regarding the carrying of concealed handguns by license holders on the campus … or on premises located on the campus.” However, before establishing such rules and regulations, the chief executive officer must consult with students, staff, and faculty concerning “the nature of the student population, specific safety considerations, and the uniqueness of the campus environment.” Id. Finally, S.B.

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2 Eligibility for a Texas license is restricted to those who, among other things: are at least 21 years of age (except for members of the military or veterans); have not been convicted of felony; have not been convicted in the past five years of a Class A or Class B misdemeanor; are not presently charged with Class A or Class B misdemeanor or a felony; are not currently restricted under a court protective order or subject to a restraining order; are not chemically dependent; are not incapable of exercising sound judgment regarding the proper use and storage of a handgun; and are fully qualified under applicable federal and state law to purchase a handgun. Tex. Gov’t Code § 411.172. A license applicant must complete at least four hours of training taught by a certified instructor and pass a proficiency examination. Tex. Gov’t Code § 411.188. For a complete list of the eligibility requirements and other information about obtaining a license in Texas, see http://txdps.state.tx.us/RSD/CHL/index.htm.

3 TPC § 46.03(a).
11 prohibits the chief executive officer from enacting rules and regulations that “generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus.” Id.

Under S.B. 11, the Board of Trustees must review any rules or regulations that the Chancellor adopts under TGC § 411.2031(d-1). The Board may, by a two-thirds vote, amend those rules or regulations. TGC § 411.2031(d-2). Moreover, S.B. 11 requires the District to submit to the Legislature and its relevant committees a report that describes the rules and regulations the District has adopted and explains the reasons it has adopted them. This report must be submitted by September 1st of each even-numbered year. TGC § 411.2031(d-4).

S.B. 11 also contains two notice requirements. First, the District must widely distribute its rules and regulations to students, staff, and faculty, and prominently publish them on the District’s website. TGC § 411.2031(d-3). Second, TGC § 411.2031(d-1) requires the District to give “effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry.” Notice may be given by oral or written communication; written communication may take either of two forms: (1) it may be given individually on a card or document or (2) more generally through posted signage. For either form, TPC § 30.06 prescribes the precise language the written notice must contain:

“Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.” TPC § 30.06(c)(3)(A).

For posted signs, the above language must appear in both English and Spanish, in block letters at least one inch high. It is commonly recognized that this statutorily mandated signage will have to be at least two feet by three feet in dimension to accommodate the required statutory language.

Finally, S.B. 11 amended TPC § 46.035 (unlawful carrying of handgun by license holder). Most significantly, it added a provision that criminalizes a license holder’s concealed carry of a handgun on campus premises that the District’s rules and regulations have declared gun-exclusion zones, so long as the District gives effective notice under TPC § 30.06. TPC § 46.035(a-3). S.B. 11 also added another section to TPC § 46.035 (as did H.B. 910, the open carry law) that criminalizes the open carry of handguns on campus. TPC § 46.035(a-1). As indicated above, the open carry of handguns on campus is and will continue to be a crime.

II. THE DISTRICT CONCEALED CARRY COMMITTEE’S PROCESS

As indicated, S.B. 11 requires consultation with “students, staff, and faculty… regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment.” In order to meet this mandate, the Chancellor tasked the District Committee with gathering as much input as possible, not only from students, staff and faculty, but, also, from the entire DCCCD community. The District Committee established a website, to which each of the College websites were linked, to provide information about the District’s process toward implementation of concealed carry on campus and to be as transparent and communicative as reasonably possible as the process moved forward. The District Committee utilized two survey instruments, one directed toward employees and one directed toward students, as well as the larger DCCCD community, and received a robust response to each (1,721 employees responded to the employee survey and over 7,400 students and others responded to the other survey). The surveys posed a number of specific questions related to concealed carry on campus and provided
opportunities for the respondents to interpose narrative contributions, as well. All of the survey responses, including any comments provided by the respondents, were carefully considered and analyzed.

In addition, the District, in collaboration with the District Committee and the campus-specific concealed carry committees, conducted approximately 40 forums to receive information and input regarding the issue. Each District college or other location held at least one large public forum (and many locations held multiple public forums), as well as smaller forums tailored to a specific constituency (students, faculty, PSSA, etc.) and captured the input and comments received at those forums for consideration by the District Committee. Members of the District Committee, the Chair of the Committee, and representatives from the District’s Legal Department, fielded scores of questions from and had frequent informal communications with persons across the DCCCD who were interested in the issues or who wished to ensure that a particular concern or issue was being considered.

Representatives of the District’s Legal Department and Department of Public Safety & Security, interacted with their counterparts at peer institutions across the State of Texas and the United States, including the nine other states in which some form of campus carry has already been authorized, in order to gain insight and understanding with respect to the approach being taken at those institutions. The District Committee also considered the Attorney General Opinions issued by the Texas Attorney General’s Office in the months since approval of S.B. 11, for guidance and direction. The District Committee began meeting regularly in the fall of 2016 and met on a weekly basis in the spring 2017 semester in order to be in a position to make the recommendations contained in this Report. The assimilation and digesting of the voluminous comments made during the forums and survey, as well as the other communications and information received, would not have been possible without the tireless efforts of the District’s Institutional Research Department.

The District Committee’s consultations with students, staff, faculty, and others in the DCCCD community were immensely productive. The District Committee found participants to be serious about the issues, committed to participation in the process and reflective of a wide variety of experiences. Many expressed general opposition to campus carry without commenting on how it should be implemented. Many others expressed general opposition to, and some, although fewer in number, expressed support for the law and made suggestions regarding implementation. Some expressed neither support for nor opposition to the law, but nonetheless made suggestions regarding implementation.

It is fair to say that a substantial majority of the persons expressing an opinion, or providing input in one form or another as the process moved forward, were steadfastly opposed to the implementation of campus carry. The District Committee, and campus-specific committees, made it clear throughout the process that the District had always followed the law and will always continue to do so. The fact that the Legislature determined in 2015 to permit concealed carry on campus is not something that the District is empowered to change. The District is permitted, however, under the relevant statutes, to enact reasonable rules and regulations for the implementation of concealed carry on campus, something that could be achieved only with the contribution of those who chose to make their positions on the matter clear.

Those who were “opposed” to concealed carry on campus, tended to express many of the same concerns. Safety concerns were widespread. Many expressed fear about handgun carriers going on rampages, often citing the relative youth and immaturity of students as well as the stress that many students experience. Many respondents reported worry that accidents could easily occur, especially in large crowds or places where people tend to congregate. Many voiced anxiety that handgun carriers will make bad decisions when faced with an active shooter, or that law enforcement will be unable to distinguish between
the “good guys and the bad guys.” Many expressed fears that relate to gun violence generally – often citing mass shootings that have tragically occurred, but that have not been tied, at least directly, to campus carry or concealed handguns.

Those who expressed opposition to concealed carry on campus tended to urge that handguns be banned from as much of the campus environment as possible, including the frequently expressed opinion that handguns be banned from all classrooms, offices, places where students, faculty and/or staff receive counseling, public assembly areas and places where people tend to congregate. There was also a great deal of input received in opposition to handguns in places where harmful, incendiary or explosive materials might be located, as well as areas where emotions are known to run high, such as disciplinary proceedings and other similar venues. Another view, which was expressed by faculty (and many students), was the impact they believe concealed carry will have in the classroom. Substantial numbers of faculty expressed their belief that campus carry will have a significant, adverse effect on classroom discussions and their academic freedom. They expressed a committed and firmly held fear that the knowledge that one or more students might be carrying a concealed weapon would have a substantial chilling effect on class discussion, resulting in some students refraining from engaging in the passionate discussions that often occur in many classes. This is a view that has been expressed repeatedly at other institutions that have grappled with the issue, as well as numerous national organizations that have considered same.

Although as indicated, the substantial majority of persons, who undertook to participate, in one form or another, in the District’s quest for input and information related to concealed carry on campus, were in general opposition to the idea, the District Committee also heard from a number of persons who were in favor of campus carry. Many of those favoring campus carry stressed their desire to be able to defend themselves and others. Many asserted that they should be able to have a concealed handgun available for use in an active shooter situation. Others expressed their desire to be able to carry a concealed handgun as they walked at night to a parked car or to public transportation. Many opined that the fears voiced by campus carry opponents were unreasonable and that restrictions on campus carry would impede their rights under the Second Amendment. Many of those in favor of concealed carry pointed to places where conceal carry has long been legal with few obvious ill effects. A number of those in favor of campus carry also cited anecdotal evidence establishing that license holders, as a group, are typically law-abiding. Finally, many respondents contended that creating gun-free zones on campus would, if anything, be counterproductive, asserting that someone intent on bringing a gun into a classroom and opening fire would not be deterred by a sign that reads “no guns allowed.” To the contrary, they argued that such a person would find a gun-free zone the most attractive place to wreak havoc.

The District Committee also heard from those in favor of concealed carry that the experience of other locations where concealed carry has been authorized without incident, or with relatively few incidents, should be illuminating for those seeking to establish rules and regulations for implementation. To that end, the District Committee spent time analyzing, in particular, those other jurisdictions which have previously enacted some manner of concealed carry on college campuses, to see if competent evidence could be gleaned. Again, the D-CCC is appreciative of the efforts of the University of Texas at Austin, which assimilated much of the information that the District Committee relied upon in exploring the experience of other institutions and which is set forth in large part in this section of the Report.
However, no other state has a campus carry law like S.B. 11, and so it is not possible to find significant guidance in other states’ implementation schemes.

Some of the states that allow campus carry provide colleges very limited discretion. For example, Utah allows each public university to establish one secure area as a hearing room and to create a rule that allows dormitory residents to request only roommates who are not licensed to carry a concealed firearm.\(^5\) Idaho law prohibits public universities from regulating the carrying of handguns on campus by enhanced license holders, but prohibits handgun carry in dormitories and residence halls and in public entertainment facilities that seat at least 1,000 persons.\(^6\) The Colorado concealed carry law does not appear to give public universities the discretion to restrict license holders from carrying concealed handguns on campus.\(^7\) Despite this, the University of Colorado-Boulder has restricted concealed carry in its football stadium and other ticketed public performance venues\(^8\) and in dormitories.\(^9\) At the other end of the spectrum exists Wisconsin law, which allows the concealed carry of handguns on campus grounds, but also permits universities to prohibit the carrying of handguns into buildings, as long as there is proper signage.\(^10\) In Kansas, universities may ban handguns from campus only where “adequate security measures” are present.\(^11\)

The state of the law in Oregon is not particularly clear. Although one 2011 state court of appeals decision held that the University of Oregon’s complete ban on campus carry violated state law,\(^12\) an earlier court of appeals decision upheld a more limited restriction on concealed handgun carry imposed by a local school board.\(^13\) It is worth noting, however, that at the time of the October 2015 Umpqua Community College campus shooting in Roseburg Oregon, the College’s Student Code of Conduct prohibited the possession of firearms “on College premises, at College-sponsored or supervised functions or at functions sponsored or participated in by the College.” In analyzing the data assembled by the University of Texas and other entities which have extensively studied the issue, it appears that school shootings which have occurred in states in which campus carry laws were in effect at the time of the shooting incident either took place at campuses which prohibited concealed carry in buildings, or were the result of accidental discharges.

## III. RECOMMENDATIONS

The recommendations which follow are the product of all of the work described above which was undertaken by the District Committee, in conjunction with the campus and location-specific committees that were established in the DCCCD. The committees included people with a wide-range of experiences and expertise and included persons who self-identified as being a license holder, as well as persons who expressed opposition to the concept of concealed carry on campus. The discussions and deliberations were thoughtful and there was often disagreement among the members of the District Committee and the college-specific committees. Nonetheless, despite the presence of conflicting or opposing views, the members of

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\(^5\) Utah Code Ann. § 53B-3-103.

\(^6\) Idaho Code § 18-3309.


\(^8\) See https://police.colorado.edu/services/weapons-campus

\(^9\) As reported by University of Texas from conversation with Vice President, University Counsel and Secretary of the University of Colorado Board of Regents.


the District Committee were able to work collaboratively and collegially to reach consensus on thirteen recommendations.

The District Committee was guided in its work by the three factors mentioned in S.B. 11 – the nature of the student population, specific safety considerations, and the uniqueness of the campus environment. Each of those proved to be central to the discussions the District Committee had and the recommendations ultimately brought forth. The District Committee also looked at the already-existing statutory gun-exclusion zones and considered some in determining analogous places and activities in the DCCCD that were deserving of such treatment.

The District Committee’s recommendations are grouped in three categories: how handguns must be carried and stored; where handguns must not be carried; and implementation and proactive measures for the DCCCD community.

**HOW HANDGUNS MUST BE CARRIED AND STORED**

**Recommendation # 1:**

License holders who carry a handgun on campus must carry it on or about their person at all times or secure their handgun in a locked, privately owned or leased motor vehicle. In compliance with Texas Penal Code § 46.035(a-1), a license holder may not carry a partially or wholly visible handgun on campus premises or on any College District driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

**Recommendation # 2:**

A license holder must carry a handgun in a manner that the handgun is within such distance or proximity that the person could reach it without materially changing his or her position.

**Comment:** These recommendations are designed to ensure that handguns will be carried and stored on campus in the safest way possible. Recommendations # 1 and # 2 aim at minimizing the possibility of accidental loss or theft of a concealed handgun. License holders must either carry their handguns on or about their person or store them in their locked motor vehicle. TGC §411.2031(b) provides that a “license holder may carry a concealed handgun on or about the license holder’s person.” “On or about the person” means that a license holder must carry a concealed handgun in such a manner and in such proximity, that he or she can grasp it without materially changing position. A license holder who leaves a handgun out of immediate reach or stores it in an unsecure location risks losing it and having it wind up in the hands of someone who does not have and may be completely unqualified to obtain a license. Recommendation # 2 has its foundation in a Texas concealed carry court opinion from 1995. *Flores v. State*, 893 S.W.2d 435 (Tex. App. San Antonio 1995).

**Recommendation # 3:**

The District should not provide gun lockers for storing handguns when a license holder is unable to carry his or her concealed handgun on a portion of College District property that has been declared an exclusionary zone.

Recommendation # 3 received a great deal of consideration and discussion by the District Committee. While many who provided input at the various public forums questioned whether or not the District would provide
storage facilities for handguns on campus, the District Committee determined that provision of gun lockers around District facilities would not be advisable. The primary reason for this determination is that TGC 411.2031 requires a license holder to carry a handgun on or about his or her person, thereby precluding storage of a handgun in a locker or anywhere beyond the person of the license holder. Additionally, since the open display of a handgun on campus will remain a criminal offense, gun lockers would have to be located in places that allowed license holders to remove their handguns without displaying them in plain view of others. The District also would have to ensure that measures are taken to safeguard the lockers, limit accessibility only to the license holders who have stored their handguns there, and deal with handguns that are stored but not reclaimed. The presence of a large cache of weapons might prove to be an attractive target for a person bent upon doing harm, rather than providing a safe and secure area for storage of handguns. The District Committee also considered the possibility that license holders could be easily identified by anyone who chose to linger near the entrance to the gun lockers, thereby violating one of the fundamental premises of Texas’ concealed carry statute which prohibits the maintenance of a registry or mandating that license holders self-identify. Most compelling, however, is that it is axiomatic that the transfer of a handgun to a storage unit is always accompanied by the danger of an accidental discharge. A policy that increases the number of instances in which a handgun must be stored multiplies the danger of an accidental discharge. The District Committee believes this danger would be especially acute if gun lockers were placed around DCCCD facilities. These are most likely to be used when a license holder is attempting to store a handgun while heading to class. The possibility of an accidental discharge is exacerbated on days when a license holder is running a bit late and thus will be less cautious in storing the handgun. This substantially raises the risk of accidental discharges on campus. All license holders are charged with the responsibility of knowing and applying the law as it relates to the concealed carry of a handgun. To that end, since 1995, license holders have been required to secure their handgun in a locked, privately-owned or leased motor vehicle when they are not permitted by law to carry their handgun into an area on upon a premises. The District Committee believes that existing law affords license holders a method for securing their handgun and sees no reason to change or alter the methods which already exist. The District Committee therefore concluded that the risks to human life of placing gun lockers around the District would substantially outweigh any benefits that would accrue from banning concealed handguns in certain exclusionary zones. Recommending that the District install and operate gun lockers around the District would be inconsistent with the charge that the District Committee make recommendations that would promote safety and security for all members of the DCCCD community in a way that is fully compliant with the law.

WHERE LICENSE HOLDERS MUST NOT CARRY HANDGUNS

The District Committee has divided this section of the Recommendations into two (2) parts. In the first part, the District Committee references some already-existing statutory exclusion zones which will continue to exist, even with no action by the District. In the second part, the District Committee, under the authority of S.B. 11 has identified those areas which the District Committee believes should be designated as gun-exclusion zones in accordance with the authority vested in the Chancellor, with review authority vested in the Board of Trustees, after consideration of the student population, specific safety considerations, and the uniqueness of the DCCCD.

1. **Statutory Exclusion Zones**
   - The premises of a polling place on the day of an election or while early voting is in progress.
• The premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event.
• The premises of any facility licensed, certified, or registered by the Texas Department of Family and Protective Services in accordance with Chapter 746 of the Texas Administrative Code.
• In accordance with TPC § 46.035(c), any room or rooms where a meeting of the DCCCD Board of Trustees is held if the meeting is an open meeting subject to Chapter 551 of the Texas Government Code.

Other existing statutory exclusion zones that the District Committee believes must be replicated on DCCCD grounds and premises:

• The physical premises of a school or educational institution (not including a higher education institution),
• Any grounds or building on which an activity sponsored by a school or educational institution (not including a higher education institution) is being conducted; or
• A passenger transportation vehicle of a school or educational institution (not including a higher education institution).

**Recommendation # 4:**
The District should prohibit concealed carry of a handgun in any location of the District where a pre-K-12 school or District-sponsored program or activity is being conducted, or services are being provided, exclusively or predominantly to minors. This prohibition should include District-sponsored or sanctioned youth camps and programs for which specific objectives are designated for pre-K-12 students and which utilize District facilities that may include, but not be limited to, classrooms, dining, and meeting and recreation space. Designated employees or volunteers of the District who work in a pre-K-12 school or District-sponsored program or activity or District sponsored youth camp or program which is being conducted, or services are being provided, primarily for minors, should, as a condition of their participation in such program or activity, agree not to carry a concealed handgun on the grounds, premises, activity or camp is taking place.

**Comment:** This language for this exclusion has its genesis in TPC § 46.03(a)(1). The District Committee is well aware of the fact that since the passage of S.B. 11, “School or educational institution” does not include institutions of higher education. As it gathered input and comments from interested parties, the District Committee was frequently questioned about the impact of S.B. 11 on the proliferation of Early College and Dual Credit programs at its colleges, not to mention the presence of a charter high school at Richland College. The District Committee carefully considered the determinations made by Texas Attorney General Ken Paxton in his November 29, 2016 opinion (KP-0120). In that opinion, the Attorney General opined that the mere presence of minors, be they dual credit, early high school, collegiate high school or charter high school students, on the District’s campuses would not, in and of itself, be sufficient to generally prohibit the concealed carry of handguns. Notwithstanding that admonition, however, the Attorney General did opine that “a junior or community college is authorized to establish reasonable rules that take into account the ‘nature of the student population, specific safety considerations, and the uniqueness of the campus environment.’ TEX. GOV’T CODE § 411.2031 (d-1). Such rules could prohibit concealed handguns in
specific classrooms and campus areas at times where there may be a congregation of minors, as well as specific rooms where child-care services are provided, so long as those rules do not operate to "generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution." The District Committee believes that the District should undertake to prohibit concealed carry of handguns in those areas and activities where minors predominate, or are exclusively served, so long as such prohibition does not serve to generally prohibit the concealed carry of handguns on District premises. The Texas Penal Code prohibits the concealed carry of handguns in pre-K-12 schools and on the grounds or in buildings where a school-sponsored activity is being conducted. By analogy, places where children under the age of 18 participate in a campus program tailored exclusively for minors should be exclusion zones. Because providing signage in each such location would be impracticable in some cases, the District Committee also recommends that the exclusion be accomplished by means of contractual arrangements with the people who are most likely to be in contact with the minor participants.

2. **Exclusion Zones Recommended Under Section 411.2031(d-1)**

**Recommendation # 5:**
The concealed carry of handguns should be prohibited in healthcare and patient-care areas, including those in which professional mental health services are provided.

*Comment:* TPC § 46.035(b)(4) prohibits the concealed carry of handguns in hospitals licensed under Chapter 241 of the Texas Health and Safety Code. By analogy, the District Committee recommends that all healthcare and patient-care areas be excluded. This includes hospitals, clinics, and mental health treatment areas. A “patient-care area” should involve patients for whom a formal record of treatment is maintained or for which any healthcare services, basic, advanced, or traditional, as well as community healthcare, disease prevention, health awareness, health education, screenings, health counseling, allied health laboratories are provided or conducted and other areas of the District when and where, as part of the instruction, healthcare services are delivered by, or under the supervision of, a licensed healthcare provider. In addition, given the nature of the services being provided, the concealed carry of handguns should be prohibited in any area in which a person licensed as a licensed professional counselor, or a person who holds a license under Chapter 503 of the Texas Occupations Code, or an equivalent certification, engages in the practice of counseling as defined in Section 503.003 of the Texas Occupations Code.

**Recommendation # 6:**
The concealed carry of handguns should be prohibited in areas in which formal hearings or proceedings are being conducted in connection with student disciplinary matters, student grievances, or employee grievances or formal disciplinary proceedings.

*Comment:* TPC § 46.03(a)(3) bans the concealed carry of handguns “on the premises of any government court or offices utilized by the court.” By analogy, the District Committee recommends that the concealed carry of handguns be excluded from any areas in which a formal hearing is being conducted in accordance with the enumerated discipline and grievance procedures for students, faculty, and staff. Notice conforming to Texas Penal Code § 30.06 must be provided.
Recommendation # 7:
The concealed carry of handguns should be prohibited in areas where the discharge of a firearm might cause great harm, such as laboratories or facilities with extremely dangerous chemicals, biologic agents, or flammable and/or combustible materials, as well as in areas with equipment that is incompatible with metallic objects, such as magnetic resonance imaging machines.

Comment: The training required for handgun license holders does not include special training regarding the safe use of weapons in such facilities. The accidental or purposeful discharge of a weapon in such a facility could cause grave and catastrophic harm. In addition, handguns are inappropriate in the vicinity of some types of equipment, such as magnetic resonance imaging equipment, because of the presence of a very strong magnetic field. The District Committee believes “specific safety considerations” justify these exclusions. Notice conforming to TPC § 30.06 must be provided.

Recommendation # 8:
The concealed carry of handguns should be prohibited on District premises, when and where, as part of the instruction provided in a College Veterinary Tech Program, animals are used and/or cared for under the supervision or direction of a licensed veterinary technician.

Comment: Animal-care and animal-use areas typically have strict protocols for entering and exiting the facility, including requirements for the wearing of protective clothing. Compliance with these protocols by someone carrying a concealed handgun may have the effect of increasing the risk of accidental discharge or unanticipated separation from the license holder. In addition, animals have the ability to bite and kick objects in the possession of persons working with them. These potential hazards suggest that concealed weapons should be excluded from animal-care and animal-use facilities.

Recommendation # 9:
The concealed carry of handguns should be prohibited in fitness center facilities or other areas of the District that are used to facilitate, instruct, or provide a physical exercise program or activity. This prohibition should include, but not be limited to, gymnasiums, physical fitness centers or labs, swimming pools, shower areas, recreational and sport courts, saunas, whirlpool bath, locker rooms, weight rooms and equipment rooms in which physical exercise programs or activities may take place.

Recommendation # 10:
The concealed carry of handguns should be prohibited in any vehicle owned or leased by the District and used by the District in the course and scope of the employee’s employment, unless the employee is required to transport or store a firearm in the official discharge of the employee’s duties.

3. Implementation and Proactive Measure Recommendations

The process undertaken by the District Committee and the District’s colleges to gather input and advice regarding implementation of campus carry yielded a great many valuable considerations and advice. Some of that input resulted in the proposed District rules and regulations for campus carry, while other input,
although not specifically related to the rules and regulations governing campus carry, was nonetheless meritorious and deserving of mention. Those matters are highlighted in this section of the Report.

**Recommendation # 11:**

The District should amend its Student Code of Conduct, Student Grievance, and Employee Disciplinary and Grievance provisions in Board Policy as reasonably necessary to meet the requirements of the proposed campus carry policy.

**Recommendation # 12:**

Exclusion zones created by TPC §§ 46.03 and 46.035 as well as by the rules and regulations enacted under S.B.11 may sometimes comprise only a portion of a building. In some instances it may not be feasible to exclude concealed handguns only from the designated exclusion zones. The following factors and principles should govern the implementation of these rules and regulations in those buildings in which some, but not all parts are designated as exclusion zones.

**Governing factors:**

- The percentage of assignable space or rooms in a building that are designated as exclusion zones.
- The extent to which the area (or areas) designated as exclusion zones are segregable from other areas of the building.
- The extent to which use of the building, and hence its status as an exclusion zone, varies from day-to-day or week-to-week.

**Governing principles:**

- 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 should be excluded. Appropriate signage needs to be posted for rooms or areas that are excluded.
- If a significant fraction of the total building in terms of number of rooms or assignable space is subject to exclusion, or if the excludable space is not easily segregable from other space, then as a matter of practicality, the whole building should be excluded. Appropriate signage needs to be posted for any such building.

**Recommendation # 13:**

The District should develop additional training materials and opportunities for training of faculty, staff and students. These training opportunities and materials may take different forms, including online modules, live orientation sessions, and scheduled and on-demand presentations. Topics might include what students, faculty, and staff should do if they see an armed person; how to deescalate a tense situation; how to handle a disgruntled student or employee; how to facilitate debate on controversial topics; additional gun-safety training that could be made available on a voluntary basis to license holders; and specialized training for particular audiences such as faculty, academic counselors and human resources staff. These resources should be communicated effectively to the entire DCCCD community. The District should also ensure that its
training for faculty, staff and students in regard to active shooter situations is robust and communicated in modalities best anticipated to reach a broad audience.

**WHY IS THERE NOT A RECOMMENDATION THAT ALL CLASSROOMS AND OFFICES BE EXCLUSIONARY-ZONES?**

After careful consideration and deliberation, the District Committee has determined not to recommend that all classrooms and offices be designated as gun-exclusion zones. The District Committee is very aware of the fact that many persons within the DCCCD community wished to have a general prohibition against allowing handguns on District property. Many of those people also expressed the view that handguns do not belong in the classroom or in faculty offices. After careful deliberation and contemplation of the issue, the District Committee made the determination that a wholesale prohibition of handguns in all DCCCD classrooms and offices, although favored by many, would be tantamount to a general prohibition of concealed carry on campus and therefore insupportable. Rather, the District Committee determined to take a reasonable and measured approach to the implementation of concealed carry in the District that the members of the District Committee believe is consistent with the law.

**V. CONCLUSION**

For the past several months, the members of the District Concealed Carry Committee, with the advice and collaborative efforts of the campus-specific concealed carry committees, have judiciously undertaken and pursued a process aimed at arriving at recommendations for reasonable rules and regulations for the implementation of the concealed carry of handguns in the DCCCD. Throughout the process, we have been guided by one important tenet, to recommend steps that the Chancellor can take to promote the safety and security of the DCCCD community in a way that complies with the law. We know that many will think the recommendations do not go far enough in restricting the concealed carry of handguns in the District and others will think that the recommendations have gone too far. We trust, however, that all who review this Report will understand that it represents the best efforts of the District Committee to address issues about which people have deeply-held and passionate opinions and beliefs.
APPENDIX A
MEMBERS OF THE DISTRICT CONCEALED CARRY COMMITTEE

Committee Chair:

Lauretta Hill (Commissioner Public Safety and Security; District Office)

Committee Members:

Anderson, Jasmond (Facilities; District Service Center)
Scott, Branks (Faculty; Richland College)
Charles, Adai (Faculty; Cedar Valley College)
Faz, Issac (Associate Vice Chancellor; District Office)
Fox, Rusty (Dean of Student Success, Student Services; Mountain View College)
Hinckley, Matt (Faculty; Faculty Council President; Eastfield College)
Hitt, John (Faculty; North Lake College)
Horatio, Tricia (Assistant General Counsel; District Office)
Lonon, Justin (Executive Vice Chancellor and Chief of Staff; District Office)
Maxwell, Rick (Executive Dean; Brookhaven College)
Moss, Georgeann (District Director, Digital Communications Team; District Office)
Plott, Richard (District Director, Institutional Research; District Office)
Seaver, Kent (Director III; Administrative Council President; North Lake College)
Thames, Mark (Faculty; El Centro College)
Vance, Amy (Associate Dean; Eastfield College)
Welcome, Brenda (Instructional Web Manager, Catalog Publishing; PSS Exec. Council President; District Office)
Wendland, Robert (DCCCD General Counsel; District Office)
Wilcoxson, Brigham (District Emergency Manager; District Service Center)

Note: LCET and portions of BJP are represented by District Office
APPENDIX B
Text of Relevant Statutes

SENATE BILL 11
AN ACT
relating to the carrying of handguns on the campuses of and certain other locations associated with institutions of higher education; providing a criminal penalty.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.2031 to read as follows:

Sec. 411.2031. CARRYING OF HANDGUNS BY LICENSE HOLDERS ON CERTAIN CAMPUSES. (a) For purposes of this section:

(1) “Campus” means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education.

(2) “Institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education Code.

(3) “Premises” has the meaning assigned by Section 46.035, Penal Code.

(b) A license holder may carry a concealed handgun on or about the license holder’s person while the license holder is on the campus of an institution of higher education or private or independent institution of higher education in this state.

(c) Except as provided by Subsection (d), (d-1), or (e), an institution of higher education or private or independent institution of higher education in this state may not adopt any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution.

(d) An institution of higher education or private or independent institution of higher education in this state 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.

(d-1) 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 under Subsection (d-2). The institution must give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry.

(d-2) Not later than the 90th day after the date that the rules, regulations, or other provisions are established as described by Subsection (d-1), the board of regents or other governing board of the institution of higher education shall review the provisions. The board of regents or other governing board may, by a vote of not less than two-thirds of the board, amend wholly or partly the provisions established under Subsection (d-1). If amended under this subsection, the provisions are considered to be those of the institution as established under Subsection (d-1).

(d-3) An institution of higher education shall widely distribute the rules, regulations, or other provisions described by Subsection (d-1) to the institution’s students, staff, and faculty, including by prominently publishing the provisions on the institution’s Internet website.

(d-4) Not later than September 1 of each even-numbered year, each institution of higher education in this state shall submit a report to the legislature and to the standing committees of the legislature with
jurisdiction over the implementation and continuation of this section that:

(1) describes its rules, regulations, or other provisions regarding the carrying of concealed handguns on the campus of the institution; and

(2) explains the reasons the institution has established those provisions.

(e) A private or independent institution of higher education in this state, after consulting with students, staff, and faculty of the institution, may establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on the campus of the institution, any grounds or building on which an activity sponsored by the institution is being conducted, or a passenger transportation vehicle owned by the institution.

SECTION 2. Section 411.208, Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (f) to read as follows:

(a) A court may not hold the state, an agency or subdivision of the state, an officer or employee of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), a peace officer, or a qualified handgun instructor liable for damages caused by:

(1) an action authorized under this subchapter or a failure to perform a duty imposed by this subchapter; or

(2) the actions of an applicant or license holder that occur after the applicant has received a license or been denied a license under this subchapter.

(b) A cause of action in damages may not be brought against the state, an agency or subdivision of the state, an officer or employee of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), a peace officer, or a qualified handgun instructor liable for damages caused by:

(1) an act or a failure to act by the state, an agency or subdivision of the state, an officer of the state, an institution of higher education, an officer or employee of an institution of higher education, a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), an officer or employee of a private or independent institution of higher education that has not adopted rules under Section 411.2031(e), or a peace officer if the act or failure to act was capricious or arbitrary; or

(2) any officer or employee of an institution of higher education or private or independent institution of higher education described by Subdivision (1) who possesses a handgun on the campus of that institution and whose conduct with regard to the handgun is made the basis of a claim for personal injury or property damage.

(f) For purposes of this section:

(1) “Campus” has the meaning assigned by Section 411.2031.

(2) “Institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education Code.

SECTION 3. Sections 46.03(a) and (c), Penal Code, are amended to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a
passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(c) In this section:

(1) “Institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education Code.

(2) “Premises” has the meaning assigned by Section 46.035.

(3) “Secured area” means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

SECTION 4. Section 46.035, Penal Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (l) and amending Subsections (g), (h), and (i) to read as follows:

(a-1) Notwithstanding Subsection (a), a license holder 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 or knowingly displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) 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.

(a-2) Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns pursuant to Section 411.2031(e), Government Code, on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06.

(a-3) Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this
state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(g) An offense under Subsection (a), (a-1), (a-2), (a-3), (b), (c), (d), or (e) is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a), (a-1), (a-2), or (a-3) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9.

(j) Subsections (a), (a-1), (a-2), (a-3), and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.

(l) Subsection (b)(2) does not apply on the premises where a collegiate sporting event is taking place if the actor was not given effective notice under Section 30.06.

SECTION 5. Section 46.035(f), Penal Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) “Institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education Code.

SECTION 6. Section 411.208, Government Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. (a) Except as otherwise provided by this section, this Act takes effect August 1, 2016.

(b) Before August 1, 2016, the president or other chief executive officer of an institution of higher education, as defined by Section 61.003, Education Code, other than a public junior college as defined by that section, shall take any action necessary to adopt rules, regulations, or other provisions as required by Section 411.2031, Government Code, as added by this Act. Notwithstanding any other law, the president or other chief executive officer shall establish rules, regulations, or other provisions under Section 411.2031(d-1), Government Code, as added by this Act, that take effect August 1, 2016.

(c) Before August 1, 2016, a private or independent institution of higher education, as defined by Section 61.003, Education Code, may take any action necessary to adopt rules, regulations, or other provisions as authorized under Section 411.2031, Government Code, as added by this Act.

(d) This Act does not apply to a public junior college as defined by Section 61.003, Education Code, before August 1, 2017. Not later than August 1, 2017, the president or other chief executive officer of a public junior college shall take any action necessary to adopt rules, regulations, or other provisions as required by Section 411.2031, Government Code, as added by this Act. Notwithstanding any other law, the president or other chief executive officer shall establish rules, regulations, or other provisions under Section 411.2031(d-1), Government Code, as added by this Act, that take effect August 1, 2017.
TEXAS PENAL CODE § 46.03  
(as of August 1, 2016)

Sec. 46.03. Places weapons prohibited.

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section:

(1) “Institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education Code.

(2) “Premises” has the meaning assigned by Section 46.035.

(3) “Secured area” means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor’s place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Private Security Board if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(4) a security officer who holds a personal protection authorization under Chapter 1702, Occupations Code, provided that the officer is either:

(A) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer’s firearm in plain view; or
(B) not wearing the uniform of a security officer and carrying the officer’s firearm in a concealed manner.

(e) It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.

(f) It is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(g) An offense under this section is a third degree felony.

(h) It is a defense to prosecution under Subsection (a)(4) that the actor possessed a firearm or club while traveling to or from the actor’s place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:

(1) the actor is wearing a distinctive uniform; and
(2) the firearm or club is in plain view.

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

(1) while in a vehicle being driven on a public road; or
(2) at the actor’s residence or place of employment.
TEXAS PENAL CODE § 46.035  
(as of August 1, 2016)

Sec. 46.035. Unlawful Carrying of Handgun by License Holder  

(a) A license holder commits an offense if the license holder carries a handgun 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 in a public place. It is 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.

(a-1) Notwithstanding Subsection (a), a license holder 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 or knowingly displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) 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.

(a-2) Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns pursuant to Section 411.2031(e), Government Code, or on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06.

(a-3) Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on or about the license holder’s person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing facility administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other established place of religious worship.

(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the
handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.

(d) A license holder commits an offense if, while intoxicated, the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster.

(e) A license holder who is licensed as a security officer under Chapter 1702, Occupations Code, and employed as a security officer commits an offense if, while in the course and scope of the security officer’s employment, the security officer violates a provision of Subchapter H, Chapter 411, Government Code.

(f) In this section:

(1) “Amusement park” means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(1-a) “Institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education Code.

(2) “License holder” means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(3) “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.

(g) An offense under this section 2 is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a), (a-1), (a-2), or (a-3) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9.

(h-1) It is a defense to prosecution under Subsections (b) and (c) that the actor, at the time of the commission of the offense, was:

(1) an active judicial officer, as defined by Section 411.201, Government Code; or

(2) a bailiff designated by the active judicial officer and engaged in escorting the officer.

(h-1) It is a defense to prosecution under Subsections (b)(1), (2), and (4)-(6), and (c) that at the time of the commission of the offense, the actor was:

(1) a judge or justice of a federal court;

(2) an active judicial officer, as defined by Section 411.201, Government Code; or

(3) a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

(i) Subsections (b)(4), (b)(5), (b)(6), and (c) do not apply if the actor was not given effective notice under Section 30.06 or 30.07.

(j) Subsections (a), (a-1), (a-2), (a-3), and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.

(k) It is a defense to prosecution under Subsection (b)(1) that the actor was not given effective notice under Section 411.204, Government Code.

(l) Subsection (b)(2) does not apply on the premises where a collegiate sporting event is taking place if the actor was not given effective notice under Section 30.06.
December 21, 2015

The Honorable Brian Birdwell
Chair, Committee on Nominations
Texas State Senate
Post Office Box 12068
Austin, Texas 78701-2068

Opinion No. KP-0051

Re: Authority of an institution of higher education to establish certain rules regarding the carrying of handguns on campus
(RQ-0076-KP)

Dear Senator Birdwell:

You ask six questions related to the authority of a public institution of higher education to establish certain rules regarding the carrying of handguns on campus.1 Your questions arise from the Eighty-fourth Legislature’s passage of Senate Bill 11, commonly referred to as the “campus carry” law, which will take effect August 1, 2016. Request Letter at 1.2 S.B. 11 generally authorizes individuals licensed to carry concealed handguns to “carry a concealed handgun on or about the license holder’s person while the license holder is on the campus of an institution of higher education.” 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV’T CODE § 411.2031(b)). In addition, it authorizes the president or other chief executive officer of an institution of higher education to “establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders” on campus. Id. (to be codified at TEX. GOV’T CODE § 411.2031(d-1)). S.B. 11 also provides that “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.” Id.

Your first question asks whether an institution of higher education will violate the provisions of S.B. 11 if it “designates a meaningful number of classrooms as areas in which the possession of concealed handguns by Licensees is not allowed.” Request Letter at 4. S.B. 11 does not expressly address the extent to which the carrying of concealed handguns can be regulated specifically within classrooms. The carrying of concealed handguns in certain types of classrooms may pose heightened safety concerns such that the regulation of concealed handguns is authorized under S.B. 11. As an example, some institutions of higher education have grade school classrooms

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1See Letter from Honorable Brian Birdwell, Chair, Senate Comm. on Nominations, to Honorable Ken Paxton, Tex. Att’y Gen. at (Nov. 18, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs (“Request Letter”). You note that the “authority granted to public Colleges and private colleges are different,” and you limit your request to “deal solely with public Colleges.” Id. at 1.

on their campuses. Given that the Legislature has made it a criminal offense to carry a firearm on the physical premises of such a school, rules regulating the carrying of concealed handguns in such grade school classrooms would be consistent with the Legislature's intent. See TEX. PENAL CODE § 46.03(a)(1). That said, attending or teaching class is the primary reason most individuals are on campus. If an institution prohibited the carrying of concealed handguns in a substantial number of classrooms, a court would likely conclude that the effect would be to "generally prohibit" license holders from carrying concealed handguns on campus, contrary to the Legislature's express requirements.\(^3\)

Also related to regulation of handguns in the classrooms, your second question asks whether an institution of higher education will violate the provisions of S.B. 11 if it "allows individual professors to designate their classrooms as areas in which the possession of the concealed handguns by Licensees is not allowed." Request Letter at 4. While the Legislature has required that faculty be consulted prior to establishing the rules, S.B. 11 places the authority to make rules regarding the carrying of concealed handguns on campus with the "president or other chief executive officer." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d-1)). No provisions within S.B. 11 authorize a president or chief executive officer to delegate this authority to individual professors, and reading S.B. 11 as a whole suggests that the Legislature did not intend to allow such piecemeal regulation of handguns on campus. See TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011) (explaining that courts construe statutes as a whole rather than in isolation). Institutions of higher education are required to "widely distribute the rules . . . to the institution's students, staff, and faculty, including by prominently publishing the provisions on the institution's Internet website." 2015 Tex. Gen. Laws at 1723–74 (to be codified at TEX. GOV'T CODE § 411.2031(d-3)). Requiring that the rules be distributed to faculty suggests that the Legislature did not intend for the faculty members themselves to establish those rules. And, as a practical matter, if each faculty member could establish individualized rules, adequately publishing such rules and providing the notice required by S.B. 11 would be unmanageable.\(^4\) Thus, a court would likely conclude that S.B. 11 does not authorize a president or chief executive officer of an institution of higher education to delegate to

\(^3\)See Univ. of Tex. at Austin, Campus Carry Policy Working Group Final Report, at 6, Dec. 2015, available at http://campuscarry.utexas.edu/CCWorkingGroup-FinalReport.pdf (“The primary on-campus activity for most of our more than 50,000 students is going to class. Excluding handguns from classrooms would have the effect of generally prohibiting license holders from carrying their handguns and so would violate S.B. 11.”).

\(^4\)S.B. 11 requires institutions of higher education to "give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d-1)). Penal Code section 46.035(a-3) also provides that notwithstanding subsection (a) or section 46.03(a), "a license holder commits an offense if the license holder intentionally carries a handgun" in a location on campus where the institution has by rule prohibited the carrying of concealed weapons, "provided the institution gives effective notice under Section 30.06." 2015 Tex. Gen. Laws at 1726; see TEX. PENAL CODE § 30.06(b) (providing that notice under section 30.06 may be "oral or written communication"), (c)(3)(B)(iii) (providing that a sign displayed on the property constitutes notice if it "is displayed in a conspicuous manner clearly visible to the public").
individual professors the decision as to whether possession of a concealed handgun is allowed in the individual professor’s classroom.

Your third question asks whether an institution of higher education would violate S.B. 11 if it prohibited or effectively prohibited the possession of handguns in “dormitories and/or other college-owned or leased residential housing.” Request Letter at 5. S.B. 11 expressly prohibits an institution of higher education from adopting any rule, regulation, or other provision prohibiting license holders from carrying handguns on campus, except in limited circumstances. 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV’T CODE § 411.2031(c)). One of those exceptions is found in subsection (d), which provides that “[a]n institution of higher education . . . may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities . . . located on the campus of the institution.” 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV’T CODE § 411.2031(d)). This provision allows an institution to establish reasonable requirements related to the location and manner in which handguns are stored within its residential facilities on campus. What is reasonable in any given circumstance will involve questions of fact.5 If an institution placed a prohibition on handguns in the institution’s residential facilities, however, it would effectively prohibit license holders in those facilities from carrying concealed handguns on campus, in violation of S.B. 11.6 This is because “rules, regulations, or other provisions concerning the storage of handguns in dormitories” presupposes their presence in dormitories. 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV’T CODE § 411.2031(d)) (emphasis added); see BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “storage” to mean “[t]he act of putting something away for future use; esp., the keeping or placing of articles in a place of safekeeping, such as a warehouse or depository”).

Your fourth question asks whether an institution of higher education would violate S.B. 11 if it temporarily prohibited the carrying of handguns by license holders on either “all or most of the campus” or, alternatively, “on certain portions of the campus.” Request Letter at 5. The distribution and notice requirements discussed above suggest that the Legislature did not intend to allow frequent, temporary restrictions on the carrying of concealed handguns. S.B. 11 does, however, allow a president or officer to “amend the provisions as necessary for campus safety,” and to consider “specific safety considerations, and the uniqueness of the campus environment.” 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV’T CODE § 411.2031(d-1)). Pursuant to this language, a court could conclude that occasional, reasonable temporary restrictions that are prominently posted on the institution’s website clearly notify license holders of the restrictions, and do not amount to a general prohibition on the carrying of concealed handguns on campus.

Your fifth question asks whether a concealed handgun licensee has “standing to bring an action” if the licensee reasonably believes that the institution “has exceeded its authority . . ., or that it has taken regulatory action without meeting the procedural requirements” under S.B. 11. Request Letter at 5. While sovereign immunity protects the state from lawsuits for money

5See Campus Carry Policy Working Group Final Report, supra note 3, at 21 (establishing restrictions for gun safes used by license holders).

6See id. at 20–21 (“With three exceptions, the concealed carry of handguns should be prohibited in all on-campus residence halls.”).
damages, “suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity.” City of El Paso v. Heinrich, 284 S.W.3d 366, 372 (Tex. 2009). “Private parties may seek declaratory relief against state officials who allegedly act without legal or statutory authority.” Tex. Nat. Res. Conservation Comm’n v. IT-Davy, 74 S.W.3d 849, 855 (Tex. 2002). Thus, an individual whose legal rights have been infringed due to a president or chief executive officer of an institution adopting regulations that exceed the authority granted in S.B. 11 would have standing to bring an ultra vires cause of action against the president or chief executive officer. See Heinrich, 284 S.W.3d at 372; see also TEX. CIV. PRAC. & REM. CODE § 37.004(b) (providing that an individual whose legal rights are affected by a statute “may have determined any question of construction” of that statute). The remedy for such action would be limited to injunctive relief. See Heinrich, 284 S.W.3d at 376 (“[A] claimant who successfully proves an ultra vires claim is entitled to prospective injunctive relief.”).

Your final question asks whether the offense found in subsection 46.035(a-3) of the Penal Code would apply to a licensee carrying a concealed handgun if an institution of higher education has failed to comply with S.B. 11. Request Letter at 5. S.B. 11 amended section 46.035 of the Penal Code to add subsection (a-3), which will become effective August 1, 2016. 2015 Tex. Gen. Laws at 1726. At that time, subsection 46.035(a-3) will provide:

Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

Id. (to be codified at TEX. PENAL CODE § 46.035(a-3)). If a court concludes that the rules established by an institution of higher education with regard to where concealed handguns may be carried are not authorized by statute, “it would follow that any further enforcement of such provisions would be ultra vires.” Tex. Dep’t of State Health Servs. v. Balquinta, 429 S.W.3d 726, 751 (Tex. App.—Austin 2014, no pet.).

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7You do not ask whether institutions of higher education may establish policies regarding the manner in which license holders carry on campus, such as holster requirements or policies regarding the presence of a chambered round. See Campus Carry Policy Working Group Final Report, supra note 3 at 16 (preventing license holders from carrying a gun with a chambered round, requiring license holders to carry in a holster that completely covers the trigger and trigger guard area, and requiring sufficient tension on the handgun to retain it in the holster when subjected to unexpected jostling). Analyzing such restrictions would involve whether S.B. 11 delegated to public institutions of higher education the ability to restrict the manner in which license holders carry and whether state law restrictions on the manner of carrying preempts the field of such regulations. See, e.g., S. Crushed Concrete, L.L.C. v. City of Houston, 398 S.W.3d 676, 678 (Tex. 2013) (recognizing that state law may preempt local ordinances).
SUMMARY

A court would likely conclude that a public institution of higher education exceeds the authority granted under Senate Bill 11 if it prohibits the carrying of concealed handguns in a substantial number of classrooms or delegates to individual professors the decision as to whether possession of a concealed handgun is allowed in the individual professor’s classroom.

If a public institution of higher education placed a prohibition on handguns in the institution’s campus residential facilities, it would effectively prohibit license holders in those facilities from carrying concealed handguns on campus, in violation of the express terms of Senate Bill 11.

A court could conclude that occasional, reasonable, temporary restrictions that are prominently posted on the institution’s website clearly notify license holders and do not amount to a general prohibition on the carrying of concealed handguns on campus.

An individual whose legal rights have been infringed due to a president or chief executive officer of a public institution adopting regulations that exceed the authority granted in Senate Bill 11 would likely have standing to bring an ultra vires cause of action against the president or chief executive officer.

If a court concludes that the rules established by an institution of higher education with regard to where concealed handguns may be carried are not authorized by statute, it would follow that any further enforcement of such provisions would be ultra vires.

Very truly yours,

KEN PAXTON
Attorney General of Texas
CHARLES E. ROY  
First Assistant Attorney General  

BRANTLEY STARR  
Deputy Attorney General for Legal Counsel  

VIRGINIA K. HOELSCHER  
Chair, Opinion Committee
November 29, 2016

The Honorable Abel Herrero
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0120

Re: Authority of a junior or community college to prohibit the carrying of concealed handguns in classrooms or other areas where minors attend class or are routinely present (RQ-0109-KP)

Dear Representative Herrero:

You seek an opinion on several questions relating to the authority of a junior or community college to prohibit the carrying of concealed handguns in classrooms or other areas where minors attend class or are routinely present.\(^1\) Specifically, you ask:

**Question 1:** Can a junior/community college prohibit handguns in the classrooms on the college campus, if minor children may attend classes in any or all of the classrooms on that campus?

**Question 2:** May handguns be prohibited during special programs where minors will be present and in all areas where minors are expected to appear?

**Question 3:** For programs that take place over several weeks and are directed at minors (e.g., College for Kids), may handguns be prohibited in all areas where minors may congregate?

**Question 4:** May handguns be prohibited on campuses which offer childcare centers?

Request Letter at 2.

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Passed by the Eighty-fourth Legislature, Senate Bill 11 ("S.B. 11") amended provisions in chapter 411 of the Government Code and chapter 46 of the Penal Code. See Act of May 31, 2015, 84th Leg., R.S., ch. 438, §§ 1-6, 2015 Tex. Gen. Laws 1723, 1723-26. As added by S.B. 11, subsection 411.2031(b) of the Government Code expressly authorizes a license holder to carry a concealed handgun on the campus of an institution of higher education. See TEX. GOV'T CODE § 411.2031(b). Government Code subsection 411.2031(d-1) authorizes the president or other chief executive officer of an institution of higher education to "establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the campus of the institution or on the premises located on the campus of the institution." Id. § 411.2031(d-1); see also id. (requiring the president or other chief executive officer to consult with students, staff, and faculty about the "nature of the student population, specific safety considerations, and the uniqueness of the campus environment"). Yet, subsection 411.2031(d-1) expressly prohibits the president or chief executive officer of an institution of higher education from establishing any "provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution." Id.; see also Tex. Att'y Gen. Op. No. KP-0051 (2015) at 2 (concluding that "[i]f an institution prohibited the carrying of concealed handguns in a substantial number of classrooms, a court would likely conclude that the effect would be to 'generally prohibit' license holders from carrying concealed handguns on campus, contrary to the Legislature's express requirements"). Thus, as a junior or community college is subject to this provision, it may not adopt any rule or regulation that generally prohibits or has the effect of generally prohibiting a license holder from carrying a concealed handgun on campus. See TEX. GOV'T CODE § 411.2031(a)(2) (defining "institution of higher education" by reference to Education Code section 61.003), TEX. EDUC. CODE § 61.003(8) (defining "institution of higher education" to include a public junior college).

Your questions presuppose a different standard due to the presence of minors. Nothing in S.B. 11 expressly exempts from the concealed carry authorization areas of a campus of an institution of higher education in which minors may congregate. Relevant here, subsection 46.03(a) of the Penal Code generally prohibits a person from carrying firearms and other specified weapons on "the physical premises of a school or educational institution." TEX. PENAL CODE § 46.03(a); see id. § 46.01(3), (5) (defining "firearm" and "handgun"). Here, a "school or educational institution" is distinguished from an "institution of higher education" and does not include the premises of a community or junior college campus. See TEX. GOV'T CODE § 411.2031, TEX. EDUC. CODE § 61.003(8) (defining "institution of higher education" with definition that does not include primary or secondary schools); see also Tex. Att'y Gen. LO-92-42 at 2 n.2 (noting the term "school or educational institution" means a "public primary or secondary school or a primary or secondary private or parochial school"). This language of subsection 46.03(a) refers to the premises of particular schools without regard to the nature of the activity. See TEX. PENAL CODE § 46.03(a)(1). Thus, this part of subsection 46.03(a) does not operate to prohibit concealed handguns from the premises of a junior or community college campus.

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2S.B. 11 is generally effective as of August 1, 2016. See Act of May 31, 2015, 84th Leg., R.S., ch. 438, § 8(a), 2015 Tex. Gen. Laws 1723, 1726. For public junior colleges, it takes effect on August 1, 2017. See id. § 8(d).
Subsection 46.03(a) also prohibits a person from carrying firearms and other specified
weapons on “any grounds or building on which an activity sponsored by a school or educational
institution is being conducted.” Id. § 46.03(a)(1). This language is limited, not by location, but
rather by activity. See id. Such an activity is one sponsored by a school or educational institution,
which again does not include an activity sponsored by a junior or community college. Unless the
classes or special programs about which you ask are actually sponsored by a school instead of the
community or junior college, this phrase similarly does not prohibit concealed handguns on a
junior or community college campus. Cf. Request Letter at 1 (stating that “[m]any junior and
community colleges” have early college high school programs). By its plain language, subsection
46.03(a)’s prohibition is based on premises and activities, not on the demographics of the people
in those locations or on the people participating in those activities. See Kia Motors Corp. v. Ruiz,
432 S.W.3d 865, 869 (Tex. 2014) (“The plain language of a statute is the surest guide to the
Legislature’s intent.”).

Moreover, by specifically excluding from the firearm and weapons prohibition in
subsection 46.03(a)(1) the “premises of an institution of higher education or . . . any grounds or
building on which an activity sponsored by the institution [of higher education] is being
conducted,” the Legislature clearly reiterated its intent to allow concealed handguns on college
campuses. Tex. Penal Code § 46.03(a)(1)(B); see also Tex. Gov’t Code § 411.2031(b)
(authorizing a license holder to carry a concealed handgun on college campuses). Accordingly,
while section 46.03 prohibits firearms and other weapons from certain locations at which minor
children may be a predominant population, we cannot conclude the Legislature intended section
46.03 to impose a general prohibition against firearms and other weapons from a location,
particularly college campuses, due to the mere presence of minors. This is especially true given
that the Legislature has not prohibited in that section firearms in a number of locations where
minors may congregate, such as shopping malls, movie theaters, museums, and music venues. See
Tex. Penal Code § 46.03.

You raise Attorney General Opinion KP-0051, in which this office examined provisions of
S.B. 11, to determine the extent to which an institution of higher education may prohibit the
concealed carry of handguns on its campus. See Request Letter at 1. You tell us that your questions
KP-0051 (2015). As you point out, the opinion provided:

As an example, some institutions of higher education have grade
school classrooms on their campuses. Given that the Legislature
made it a criminal offense to carry a firearm on the physical
premises of such a school, rules regulating the carrying of concealed
handguns in such grade school classrooms would be consistent with
the Legislature’s intent.

Tex. Att’y Gen. Op. No. KP-0051 (2015) at 1–2. This statement serves to illustrate the point that
while S.B. 11 does not authorize an institution of higher education to enact rules that have the
effect of generally prohibiting license holders from carrying concealed handguns on campus, it
does allow such institutions to enact reasonable rules regarding certain types of classrooms and
other areas in certain circumstances. See id.
Thus, generally speaking, a junior or community college may not categorically prohibit concealed handguns from the junior or community college campus. But as authorized by Government Code subsection 411.2031(d–1), the president or other chief executive officer of the junior or community college may establish rules, regulations, and other provisions that accommodate the unique nature of a particular campus provided that such rules, regulations, or provisions do not “generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.” TEX. GOV’T CODE § 411.2031(d–1). Applying these principles to your specific questions, a junior or community college may not adopt a blanket prohibition against concealed handguns in all of its classrooms merely because minors may attend or be present in any or all classrooms. See Tex. Att’y Gen. Op. No. KP-0051 (2015) at 2. Nor may a junior or community college adopt a blanket prohibition against concealed handguns at all special programs simply because minors may be in attendance. Yet, a junior or community college is authorized to establish reasonable rules that take into account the “nature of the student population, specific safety considerations, and the uniqueness of the campus environment.” TEX. GOV’T CODE § 411.2031(d–1). Such rules could prohibit concealed handguns in specific classrooms and campus areas at times where there may be a congregation of minors, as well as specific rooms where child-care services are provided, so long as those rules do not operate to “generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.” Id.