

Open Carry January 1st 2016



Open Carry. On January 1, 2016, “Open Carry” will become the law in Texas. In most cases, where it was legal for a concealed handgun license holder to carry a handgun in Texas, it will now be legal for that same individual to openly carry a handgun in Texas. If the handgun is not concealed, the handgun license holder will have to carry the handgun in a shoulder or belt holster.

Both today and after the effective date of the new law, law enforcement officers are able to approach and make a determination if a person who is carrying a handgun is in fact licensed to do so, whether or not the handgun is in a holster.



Harris County D.A.'s Stance

Just as case law and Section 411.205 of the Government Code permit today, it is the position of the Harris County District Attorney's Office that a peace officer may approach a person carrying a handgun and request that the person show the officer the person's handgun license. If that person does not comply, the person can be subject to further detention, so that the officer can determine if the individual has a license.

Section 411.207(a) of the Government Code also provides, “A peace officer who is acting in the lawful discharge of the officer’s official duties may disarm a license holder at any time the officer reasonably believes it is necessary for the protection of the license holder, officer, or another individual.

The peace officer shall return the handgun to the license holder before discharging the license holder from the scene if the officer determines that the license holder is not a threat to the officer, license holder, or another individual and if the license holder has not violated any provision of this subchapter or committed any other violation that results in the arrest of the license holder.”

Conclusion. Since it is usually an offense for a person, who is not a handgun license holder, to carry a handgun, *see* Tex. Penal Code Ann. § 46.02, a law enforcement officer is able to approach a person in public who is carrying a handgun and determine if that person has a handgun license. If the person produces his handgun license, there should be no need for the officer to detain the person.

However, if that person does not voluntarily produce a handgun license, that fact may give the officer reasonable suspicion to believe that the person might be committing the offense of illegally carrying a handgun under Section 46.02 of the Texas Penal Code. The officer could then detain the person and determine if the person does or does not have a handgun license.

30.06 & 30.07 Signs; What they mean

30.06 Concealed Carry

TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN. (a) A license holder commits an offense if the license holder:

(1) carries a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder with a concealed handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

30.07 Open Carry

TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (a) A license holder commits an offense if the license holder:

(1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart

46.02, Unlawful Carrying
Weapons
Effective Date: 01/01/2016

Subsection (a-1)(1) is amended to allow for the **holstered** open-carry, inside a motor vehicle or watercraft, of a handgun if the person is licensed to carry the gun. **If the person is not licensed to carry, the weapon must still be concealed as before.**

HB 910 & SB 273,

effective **January 1, 2016** (again, *emphasis* added): “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, *at any meeting of a governmental entity.*”

SB 273 says that carrying is illegal only at meetings subject to the Open Meetings Act; HB 910, though, says that all government meetings are protected.

Advice: contact Supervisor and/ or HCDA's Office for guidance!

Penal Code §46.03

Places Weapons Prohibited, which forbids carrying firearms “on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court[.]”

Premises means “a building or a portion of a building,” so the entire courthouse should be covered.



Questions

