
CHARGE 2

Monitor the impact of current Texas laws banning the carrying of firearms by holders of concealed carry licenses on the premises of educational institutions.

BACKGROUND

The tragic school shootings that occurred at Virginia Tech and other educational institutions around the country during the last legislative session sparked a debate in the media and among Texas lawmakers on the general issue of campus safety, as well as the more specific topic of state law that currently limits the possession of firearms on school campuses. It is this more specific issue area that the Speaker tasked this committee with studying over the interim.

TEXAS LAW

There are a number of existing statutes in Texas that affect the policy area this committee has been charged with examining.

Section 46.03(a)(1) of the Texas Penal Code prohibits the possession or carrying of a firearm on the physical premises of a public or private school or educational institution, on any grounds or building upon which an activity sponsored by a public or private school or educational institution is being conducted, or on a passenger transportation vehicle of a school or educational institution. An exception is made in cases where a person receives written authorization from the school or educational institution, or written regulations permit such possession or carrying of a firearm. In this Section, “premises” means “building or portion of a building” and does not include driveways, walkways or parking areas. It is *not* a defense to prosecution that an individual possessing or carrying a firearm in these circumstances has been issued a valid license to carry a concealed handgun by the Texas Department of Public Safety (hereafter referred to as a “Concealed Handgun Licensee” or “CHL”).

Section 46.035(b)(2) of the Penal Code creates an offense for a Concealed Handgun Licensee to intentionally, knowingly or recklessly carry a handgun on the premises where a high school, collegiate or professional sporting event or interscholastic event is taking place, unless the CHL is a participant in the event and a handgun is required to be used in the event. The definition of “premises” is also limited in this Section to “building or portion of a building.”

Section 37.125(a) of the Texas Education Code creates an offense for a person to intentionally exhibit, use or threaten to exhibit or use a firearm in a manner intended to cause alarm or personal injury to another or to cause damage to school property in or on a property or parking area owned by a public or private school, or on a school bus. The committee addressed amendments to this Section in House Bill 2112 last session, which was subsequently passed by the 80th Legislature and became law on September 1, 2007.

Texas law does not prohibit the possession of firearms within “school zones”. Instead, Section 46.11 of the Penal Code increases the punishment to the next highest category of offense for a crime committed within 300 feet of the premises of a school or where a school function is taking place.

FEDERAL LAW

The Federal Gun-Free School Zones Act, 18 U.S.C. Section 922(q), prohibits the possession of firearms within 1,000 feet of a school, but provides for a number of exceptions, including law

enforcement officers acting in their official capacities, the possession of firearms in motor vehicles or on private property not part of school grounds, and for concealed carry permit holders licensed by the state in which the school is located. (Note that the term “school” in federal law applies to elementary and secondary-level educational institutions; the law is silent on postsecondary educational facilities.)

OTHER STATE LAWS

States take a wide range of approaches in addressing the issue of firearms possession on school grounds. Some regulate the possession of handguns by concealed carry license holders less stringently than the possession of firearms by non-licensees in these areas. Others impose different restrictions on firearms possession based on the type of campus: elementary or secondary schools versus postsecondary educational institution grounds. And some state laws are silent on the topic altogether. For the purposes of this report, we will list state laws affecting the possession of firearms by concealed carry permit holders on college and university campuses, which most closely follows the focus of and direction taken by committee members and witnesses who participated in the interim hearing.

Twenty-three states with concealed carry laws do not prohibit the possession of firearms by licensees on college and university campuses – Alabama, Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Montana, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, Washington and West Virginia. However, in many of these states, postsecondary educational institutions impose bans on the possession of firearms through administrative regulation; this was the case in the Commonwealth of Virginia and at Virginia Tech. While a license holder may not be committing a crime by bringing a firearm onto the property, he or she could risk dismissal from a position with the institution (in the case of an employee), suspension or expulsion from the school (in the case of an adult student), or forcible removal from the property (in the case of a visitor).

Twenty-four states expressly forbid the possession of firearms by licensees on the campuses of postsecondary institutions – Arizona, Arkansas, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas and Wyoming. As mentioned before, many public and private institutions in these states have administrative policies in place which ban the possession of firearms, in addition to restrictions in law.

Illinois and Wisconsin have no legal provision for concealed carry, and Vermont does not require a person to be licensed to carry a firearm.

RECENT ACTIONS BY STATES

Utah is the only state to recently address the issue of firearms possession by concealed carry license holders on college and university campuses. In 2006, the Utah Supreme Court struck down a University of Utah ban, affirming the Legislature’s sole authority under the state firearms preemption law to regulate gun possession in such cases. The Utah Legislature subsequently

passed legislation prohibiting public universities from enacting their own restrictions on the carrying of firearms by licensees (although provisions were included to allow dormitory residents to request non-licensees as roommates and to permit administrators to designate “firearm free” areas for certain scheduled demonstrations and presentations.)

The American Legislative Exchange Council, a national organization comprised of state lawmakers and private sector industry and trade association members, adopted model legislation in 2008 entitled the “Campus Personal Protection Act”. The model bill removes state restrictions on the possession of firearms by valid concealed carry license holders on college and university campuses and preempts the authority of public and private institutions to adopt administrative rules or regulations to prohibit such activity. A copy of that bill is attached and may provide a starting point for drafting legislation to be introduced in the 81st Legislature.

HEARING

As mentioned before, the members of the committee and witnesses who participated in the interim hearing focused primarily on how current Texas laws impact the possession of firearms by Concealed Handgun Licensees (CHLs) on the campuses of postsecondary educational institutions in the state.

Those appearing as witnesses or offering written testimony *against* changing Texas law to allow the possession of firearms on college and university campuses included the president of the Texas Association of College and University Police Administrators (who also serves as the Chief of Police for Rice University). A representative from the Texas Association of School District Police stressed to the committee that the group opposed allowing concealed carry on elementary and secondary school campuses, but did not take a position on the issue as it pertained to postsecondary educational institutions.

Representatives from the campus law enforcement community expressed strong concerns about arming a large number of college students who may lack the maturity and judgment that must accompany having a CHL. Additional concerns about other common aspects of college life – drinking and drug usage, the emotional stress of studies and living away from home for the first time – were raised. They also raised hypothetical questions about how officers could distinguish between a legally-armed CHL and a violent attacker when responding to a crime-in-progress or mass shooting scenario. Lastly, a comparison was drawn between the significant training peace officers receive and the 10-15 hour classroom requirement that civilian CHLs must successfully complete in order to qualify for an original license.

Those appearing as witnesses or offering written testimony and information in support of changing Texas law to allow Concealed Handgun Licensees to carry on college and university campuses included: faculty members from community colleges in North Texas and the Houston area; individual students from different campuses across Texas, as well as members of the group Students for Concealed Carry on Campus; a DPS-approved Concealed Handgun Instructor; the Chief of Police for the San Marcos Police Department (home of Texas State University); and representatives from the Texas Concealed Handgun Association, the Texas State Rifle

Association and the National Rifle Association.

Proponents of such a change pointed out that CHLs, as a population, are remarkably law-abiding and responsible. According to the Texas Department of Public Safety, between September 1, 2006-August 31, 2007, more than 90,000 licenses were issued and only 422 (less than ½ of 1 %) were revoked for any reason. They argued that amending the law would not likely result in a large number of college students being armed. An applicant for a CHL must be 21 or older (except for military personnel), which would weed out most underclassmen. And according to DPS, between September 1, 2006-August 31, 2007, just 5% of the more than 90,000 of licenses issued were to individuals between the ages of 21-25.

Supporters further pointed out that at 11 U.S. universities which currently allow concealed carry on campus – all nine Utah public schools, Colorado State University, and Blue Ridge Community College in Virginia – there have not been any incidents of gun violence or accidents by license holders. Concerns were presented regarding police response time to a crime-in-progress (11 minutes at Virginia Tech) and the often-small ratio of campus peace officers to student population (25 licensed/commissioned police officers and 4 security guards covering 285 acres and 7,000 students at Rice University, which operates its own police department.) They argued that a CHL is a civilian personal protection option, and that licensees do not wish to – nor should they be – trained in the same manner as police officers.

RECOMMENDATIONS

Texas' concealed carry law has been in effect for over a dozen years, and statistics show that Concealed Handgun Licensees have amassed an impressive track record of law-abiding and responsible behavior over that time period. The committee does not believe that eliminating a geographical boundary beyond which they cannot currently go legally armed – in this case, college and university campuses – will suddenly transform them into dangerous and irresponsible individuals. Moreover, we do not believe that campuses will become overwhelmed by a new population of armed students: the minimum age requirements established in law serve to limit the number of adult students who would actually qualify for a license. And again, statistics provided to the committee indicate that individuals who fit into the age group most closely associated with the typical adult college student account for a very small fraction of the CHL population overall.

We strongly support the efforts of campus peace officers to keep our college and university grounds safe, but we realize that police simply cannot be everywhere at all times. Law-abiding Texans who visit, live or work on college and university campuses deserve the same legal option to protect themselves that exists almost everywhere else in the Lone Star State for CHLs. We are confident that campus police officers can learn to successfully carry out their duties and peacefully co-exist with civilian CHLs in their jurisdictions, just as their counterparts in other departments have done for years.

It is the recommendation of this committee that the 81st Legislature adopt legislation to lift the bans currently in place in Texas Penal Code Sections 46.03 and 46.035 to allow valid Concealed

Handgun Licensees to possess handguns on the campuses of public and private colleges and universities in the State of Texas. Language should be included that preempts the authority of these postsecondary educational institutions to adopt policies imposing administrative bans on said campuses, which would have effect of circumventing the intent of the aforementioned legislative proposal. It is the opinion of the committee that these institutions should continue to retain some authority to regulate the possession of firearms by CHLs in certain on-campus housing and athletic event venues, leaving specifics to the will of the Legislature.