



SCHOOL OF LAW
TEXAS A&M UNIVERSITY

Texas Wesleyan Law Review

Volume 17 | Issue 2

Article 6

1-1-2011

Bull's-Eye: How the 81ST Texas Legislature Nearly Got It Right on Campus Carry, and the 82ND Should Still Hit the X-Ring

Riley C. Massey

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Available at: <https://doi.org/10.37419/TWLR.V17.I2.5>

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NOTES & COMMENTS

BULL'S-EYE: HOW THE 81ST TEXAS LEGISLATURE NEARLY GOT IT RIGHT ON CAMPUS CARRY, AND THE 82ND SHOULD STILL HIT THE X-RING

By Riley C. Massey†

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† Sincere thanks go to Professor Mark Edwin Burge for his constructive comments and tireless counseling, Professor Roger Simon for first introducing me to legal writing, and Brian Smith for his enormous effort and endless patience. Greatest thanks go to my wife, Jordan, for love and patience that made the whole effort worthwhile and to my family, whose support made it possible.

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I. INTRODUCTION

On January 16, 2002, the icy fingers of one of modern America’s least-understood and most-feared phenomena touched the halls of legal academia. A student named Peter Odighizuwa took a gun into the Appalachian School of Law in Grundy, Virginia, and started shooting.¹ Odighizuwa had been told that he was being suspended because he was failing, so he stormed through the law school with a handgun, killing a dean, a professor, and another student, as well as seriously injuring three more students.² A “school shooting” had finally occurred at the top of the academic food chain: a law school. Three students responded to the violence and subdued the killer.³ Mikael Gross and Tracy Bridges, both students at the school, as well as Virginia Concealed Handgun Licensees, rushed to their cars and retrieved their defensive handguns while Odighizuwa continued his rampage because *they* were prohibited from having *their* concealed handguns in the building, a law the killer was only too happy to ignore.⁴ Gross and Bridges returned, armed, and held the attacker at gunpoint while a third student, Ted Besen, helped disarm and immobilize him until police could arrive.⁵ “[T]he man who had already killed three people and wounded three others would probably have tried to kill a lot more if he had not been stopped by the other students who

1. Francis X. Clines, *3 Slain at Law School; Student Is Held*, N.Y. TIMES, Jan. 17, 2002, <http://www.nytimes.com/2002/01/17/us/3-slain-at-law-school-student-is-held.html>.

2. *Id.*; Notably, the professor who lost his life in the attack was Thomas Blackwell, formerly a faculty member of the Texas Wesleyan University School of Law.

3. *Id.*

4. *See id.*; David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 545 (2009).

5. Clines, *supra* note 1; Kopel, *supra* note 4, at 545.

themselves had guns.”⁶ Because, however, they followed the law⁷ and did not carry their concealed weapons inside, two trained and properly equipped individuals were unable to prevent the senseless shattering of six families.

This Comment examines recent legislative proposals for reform of the current limitations on concealed handgun licensees in Texas and their inability to readily defend themselves or others against armed attackers while on the premises of institutions of higher learning—both public and private—in this state.⁸ It suggests that the modifications to current law, as proposed by 2009’s Senate Bill 1164, set clear workable boundaries between balancing campus safety versus reduced intellectual freedom, and the necessary evolution of the law to answer the evils of our times.

Part I of this Comment frames the seriousness of the score of mass school shootings which have occurred across the United States during the past few decades within a context that legal academics may no longer conscientiously ignore. A school shooting on a law school campus should drive home the fact that no geographical area, nor level of esteem, can protect an institution from attack by a motivated, armed criminal, already willing to ignore the law. Part II of this Comment provides background information and the historical context of gun ownership rights in Texas, including the evolution of this state’s legal framework for addressing public violence by allowing citizens to bear arms (whether concealed or not). Part III presents a detailed review of the current concealed handgun licensing statutes in Texas, including what is required of an individual to obtain such a license, as well as the limitations placed upon that licensee with respect to where he may and may not have his gun under authority of the license. Part IV summarizes the current state of concealed carry laws in the forty-nine states other than Texas, explaining some of the nuances and development of differing statutory schemes. Part V of this Comment examines the school-shooting phenomenon as it occurs on the campuses of institutions of higher learning, including the reasons why these mass attacks occur, where, and how they do, as well as the disincentive

6. *Id.*

7. See VA. CODE ANN. § 18.2-308(O) (2009) (prohibiting the carry of concealed handguns under authority of a concealed handgun license on property or in places where such possession is otherwise prohibited by law or the property owner); see also *id.* § 18.2-308.1(B) (prohibiting possession of firearms on school grounds). But see Va. Op. Att’y Gen. No. 05-078 (2006), <http://www.vaag.com/OPINIONS/2006opns/05-078.pdf> (“Governing boards of colleges and universities may not impose a general prohibition on the carrying of concealed weapons by permitted individuals. Pursuant to specific grants of statutory authority, however, colleges and universities may regulate the conduct of students and employees to prohibit them from carrying concealed weapons on campus.”).

8. See Tex. S.B. 1164, 81st Leg., R.S. (2009) [hereinafter S.B. 1164 as Introduced] (first introduced Feb. 26, 2009, relating to the carrying of concealed handguns on the campuses of institutions of higher education); see also *infra* App. I.

value of armed students and faculties. Part VI discusses S.B. 1164 as proposed and identifies elements within it in an attempt to improve on the existing doctrine, including opposition against the legislation by the academic community, as well as considerations for institutions that prohibit otherwise lawful carry, which results in a shooting death. Finally, Part VII addresses some of the arguments for and against adoption of this legislation, including policy considerations, statistical analyses, and rationales. The next time Concealed Carry reform resurfaces in Austin will be an opportunity to improve on the rights of Texas citizens to defend themselves from armed assailants where they would otherwise be most vulnerable: the shooting galleries we call classrooms.

II. THE WILD, WILD WEST: A BRIEF HISTORY OF CARRY LAW IN TEXAS

The right of Texas citizens to carry a concealed handgun under the authority of a license issued by the state is derived from both the Texas Constitution and the Second Amendment to the United States Constitution.⁹ Development of state and federal regulatory “gun-control” schemes has further developed the right.¹⁰ This State’s concealed handgun law endeavors to preserve that right, as well as to further individuals’ interests in self-defense.¹¹

Until recently, concealed handgun laws were explained only as stemming “from implications derived under the United States Constitution and . . . various debates concerning Second Amendment rights.”¹² However, much of that debate was put to rest in 2008, when the United States Supreme Court rendered its opinion in *District of Columbia v. Heller*, where the Court held that “the Second Amendment confer[s] an individual right to keep and bear arms.”¹³ Subsequently, the old “collective-right” versus “individual-right” debate has become moot.¹⁴ The only Second Amendment disagreement remaining after *Heller* was its applicability to the states. Previously, it had not been incorporated to apply against the states under the Due Process Clause of the Fourteenth Amendment,¹⁵ though the National Rifle Association and others were vindicated when the Court handed

9. See U.S. CONST. amend. II; TEX. CONST. art. I, § 23; see also Nate G. Hummel, Comment, *Where Do I Put My Gun?: Understanding the Texas Concealed Handgun Law and the Licensed Owner’s Right-to-Carry*, 6 TEX. TECH J. TEX. ADMIN. L. 139, 140 (2005).

10. Hummel, *supra* note 9, at 140.

11. See generally U.S. CONST. amend. II; TEX. CONST. art. I, § 23.

12. Hummel, *supra* note 9, at 141.

13. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2799 (2008).

14. See *id.*

15. See, e.g., *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3025 (2010); *Palko v. State*, 302 U.S. 319, 323 (1937).

down *McDonald v. Chicago* in the early Summer of 2010, which incorporated the ownership right.¹⁶

Texas's long history of modern handgun law began in 1871 with a statute that prohibited the carrying of weapons in general, but specifically of a pistol at a public assembly, punishable by a \$25-\$500 fine.¹⁷ But the State's first legislative act related to guns was adopted in the Declaration of Rights of the Texas Constitution shortly after it declared independence from Mexico in 1836.¹⁸ For the duration of its involvement in the Civil War, Texas adopted the Constitution of the Confederacy, the arms provisions of which tracked those of the United States Constitution.¹⁹ Passage of Texas's first gun-control law as a State in the Post-Civil-War Union occurred on November 6, 1866.²⁰ Soon afterward, the Legislature prohibited the carrying of guns at polling places, public functions, and assemblies.²¹ In 1871, the Legislature enacted a statute prohibiting people from carrying pistols on their persons except in specific situations where they met certain conditions, such as militiamen, police, property owners while on their own premises, travelers, and persons in fear of unlawful immediate attack.²² This block of handgun control laws in 1871 shares strong similarities with modern statutes.²³ While there was some early disa-

16. See *McDonald*, 130 S. Ct. at 3050.

17. See Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, §§ 1, 3, 1871 Tex. Gen. Laws 25, 25–26, reprinted in 6 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 25–26 (Austin, Gammel Book Co. 1898) (outlawing carry of weapons in general and specifically criminalizing possession of a weapon at a church, school room, religious assembly or other public assembly).

18. Repub. Tex. Const. of 1836, Declaration of Rights § 14, reprinted in 1 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 1069, 1084 (Austin, Gammel Book Co. 1898).

19. Compare CONFEDERATE CONST. art. I, § 9(13) (1861), with U.S. CONST. amend. II.

20. See Act approved Nov. 6, 1866, 11th Leg., R.S., ch. 92, § 1, 1866 Tex. Gen. Laws 90, 90, reprinted in 5 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 1008, 1008–09 (Austin, Gammel Book Co. 1898) (making trespass with a firearm an offense punishable by a maximum ten-dollar fine and ten-day incarceration in the county jail).

21. See Act approved Aug. 12, 1870, 12th Leg., 1st C.S., ch. 46, § 1, 1870 Tex. Gen. Laws 63, reprinted in 6 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 237 (Austin, Gammel Book Co. 1898) (current version at TEX. GOV'T CODE ANN. § 411.202 (West 2005)).

22. See Act approved Apr. 12, 1871, § 1, 1871 Tex. Gen. Laws at 25; see also *Brownlee v. State*, 35 Tex. Crim. 213, 214, 32 S.W. 1043, 1044 (1895) (addressing the “immediate threat of attack” defense); *Baird v. State*, 38 Tex. 599, 601–02 (1873) (addressing property owners on their own premises); *Waddell v. State*, 37 Tex. 354, 356 (1873) (requiring a traveler's pistol be carried in his baggage).

23. Compare Act approved Apr. 12, 1871, § 1, 1871 Tex. Gen. Laws at 25 (setting out the qualifications; addressing militiamen, police, property owners while on their own property; and travelers), with TEX. PENAL CODE ANN. § 46.02 (West Supp. 2009) (carrying prohibited), and *id.* § 46.03(b) (defense of traveling, possession on own premises and by peace officer allowed). See generally Robert G. Newman, Comment, *A Farewell to Arms?—An Analysis of Texas Handgun Control Law*, 13 ST. MARY'S L.J. 601, 603 (1982) (noting substantial commonalities and stating that the 1871 laws were “the predecessor of our present law regulating the possession of handguns”).

greement about the constitutionality of such regulations, the 1872 case of *English v. State* and an 1875 amendment to the Texas Constitution put them to rest.²⁴

Over time, Texas has statutorily balanced the individual's right to carry a gun with the State's public safety interests.²⁵ Until 2009, the carrying of a concealed handgun without a CHL in one's vehicle in Texas was prohibited, unless he could show that he was en route to a target range, gun store, gun smith, gun show, or was "traveling."²⁶ That law has now been significantly clarified.²⁷ Previously, the defense of "traveling" was not defined by the legislature, but was considered a factual issue for juries to determine in court on a case-by-case basis.²⁸ In sum, Texas has long maintained stringent weapons laws. While it is true that God made all men, and Sam Colt made them equal, Texas is most certainly not the Wild West—at least not since 1866.

III. HOW THE WEST WAS WON: CURRENT CONCEALED CARRY LAW IN TEXAS

On May 26, 1995, the governor of Texas signed a right-to-carry bill that allows Texans to carry concealed weapons for personal protection for the first time since the 1870s. The Texas statute, considered one of the more restrictive laws [in the United States], allows Texans to carry guns in most public places if they obtain a permit to do so.²⁹

Texas has a "shall-issue" concealed handgun licensing law, which means that the Department of Public Safety ("DPS" or "Department") must issue a license to anyone who meets all the eligibility requirements and submits a complete application.³⁰ In his 2005 comment in the *Texas Tech Journal of Texas Administrative Law*, Nate

24. See TEX. CONST. art. I, § 23 ("[T]he legislature shall have the power, by law, to regulate the wearing of arms, with a view to prevent crime."); *English v. State*, 35 Tex. 473, 477 (1872). But see *Cockrum v. State*, 24 Tex. 394, 401–02 (1859) (prohibiting the passage of any law infringing on a Texan's right to keep and bear arms).

25. See Newman, *supra* note 23, at 604.

26. Compare Act of June 19, 1993, 73rd Leg., R.S., ch. 900, § 1.01, 1993 Tex. Gen. Laws 3586, 3687 (current version at TEX. PENAL CODE ANN. § 46.03(b)) (providing an exception to prohibition on carrying handguns for "traveling"), with Act of June 15, 2007, 80th Leg., R.S., ch. 693, § 1, 2007 Tex. Gen. Laws 1319 (current version at TEX. PENAL CODE ANN. § 46.02(a)) (clarifying definition of "traveling").

27. See § 46.02(a) ("[a] person commits an offense if [he] intentionally, knowingly, or recklessly carries on or about his . . . person a handgun . . . if [he] is not: (1) on [his] own premises . . . ; or (2) inside . . . a motor vehicle that is owned by [him] or under [his] control.").

28. See Newman, *supra* note 23, at 615; see also *Armstrong v. State*, 98 Tex. Crim. 335, 336, 265 S.W. 701, 701 (1924).

29. Robert A. McCulloch & Sandra G. Wilkinson, *Concealed Weapon Laws: Their Potential Impact on the Workplace*, 13 A.B.A. COMPLETE LAW LN2 (1996).

30. TEX. GOV'T CODE ANN. § 411.177(a) (West Supp. 2009); see also Hummel, *supra* note 9, at 139.

Hummel posed three important questions related to civilian concealed carry in Texas.³¹ First, “what happens when individuals are given the opportunity to lawfully carry?”³² Second, where should we draw the line between citizens’ right to carry and the reasonable social concern for public safety and crime prevention?³³ Finally, and perhaps most important, “[h]ow does a state like Texas regulate administration of concealed handgun permits?”³⁴ This Comment attempts to address the first two questions from a deeper, more statistical perspective, based on a novel application of established economic theory to the law. It seeks to answer the third question considering the changes to Texas law since 2005 and in light of the proposed changes under Senate Bill 1164 framed within the campus-carry debate.

A. *911 Is Nice, but 411 Is Faster: Government Code Ch. 411, Subchapter H*

Strict requirements are in place under the Texas statutory scheme to ensure only qualified persons are issued licenses to carry concealed handguns in this state. To be “eligible for a license to carry a concealed handgun,” the applicant must, among other things, be a legal resident of Texas for six months preceding the application;³⁵ be at least twenty-one years old;³⁶ have never been convicted of a felony;³⁷ not be charged with a class “A” or “B” misdemeanor at the time of the application; nor be under indictment for any felony at the time of the application.³⁸ Further, the applicant may not be a fugitive from justice;³⁹ chemically dependent;⁴⁰ incapable of exercising sound judgment with respect to a firearm;⁴¹ or within the last five years, been convicted of a class “A” or “B” misdemeanor.⁴² Moreover, the applicant cannot be behind on child support payments;⁴³ delinquent on any taxes;⁴⁴ under any restraining orders pertaining to a spousal relationship;⁴⁵ or have been diagnosed with a mental disorder which might

31. Hummel, *supra* note 9, at 139.

32. *Id.*

33. *Id.*

34. *Id.*

35. TEX. GOV'T CODE ANN. § 411.172(a)(1) (West Supp. 2009).

36. *Id.* § 411.172(a)(2).

37. *Id.* § 411.172(a)(3).

38. *Id.* § 411.172(a)(4).

39. *Id.* § 411.172(a)(5).

40. *Id.* § 411.172(a)(6); *see also id.* § 411.171(2) (defining “[c]hemically dependent person” as “a person who frequently or repeatedly becomes intoxicated by excessive indulgence in alcohol or uses controlled substances or dangerous drugs so as to acquire a fixed habit and an involuntary tendency to become intoxicated or use those substances as often as the opportunity is presented”).

41. *Id.* § 411.172(a)(7).

42. *Id.* § 411.172(a)(8).

43. *Id.* § 411.172(a)(10).

44. *Id.* § 411.172(a)(11).

45. *Id.* § 411.172(a)(12).

cause impairment of judgment, mood, impulse control or perception.⁴⁶ Psychological disqualifiers include any previous diagnosis of schizophrenia, delusions, bipolar disorder, chronic dementia, dissociative identity disorder, intermittent explosive disorder, or antisocial personality disorder.⁴⁷

Not only does the Texas CHL code require that applicants possess a sound mind and a clean criminal record, but it also contains strict proficiency and training requirements.⁴⁸ All applicants must attend and successfully complete a two-part training course.⁴⁹ One part of the course must include range instruction and a practical demonstration of the applicant's proficient and safe ability to operate the "applicable category of handgun" of .32 caliber or above.⁵⁰ The second course component must be classroom instruction including a written examination.⁵¹

Only a qualified handgun instructor may administer a handgun proficiency course. The handgun proficiency course must include at least 10 hours and not more than 15 hours of instruction on: (1) the laws that relate to weapons and to the use of deadly force; (2) handgun use, proficiency, and safety; (3) nonviolent dispute resolution; and (4) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.⁵²

A licensee's first license issued under this statute expires "on the first birthday of the license holder occurring after the fourth anniversary of the date of issuance," whereas renewal licenses thereafter expire on the holder's birth date, five years after expiry of the previous license.⁵³ Renewal licensees must successfully complete the proficiency course—both practical and classroom—for the same practical course of fire as first-time applicants and moderately reduced substantive classroom instruction to address changes in the law and to refresh the above-noted topic areas.⁵⁴

The course of fire for the on-range proficiency demonstration required for a Texas CHL is very rigorous. As defined by statute, it is a higher bar than the firearms proficiency requirement set out for peace-officer licensing by the Texas Commission on Law Enforcement

46. *Id.* § 411.172(d)(1).

47. *Id.* §§ 411.172(e)(5)(A)–(F).

48. *See generally id.* §§ 411.188, 411.1882 (setting out the requirements for handgun proficiency and describing the evidentiary process of proving handgun proficiency).

49. *Id.* § 411.188.

50. *Id.* § 411.188(a). "Applicable category" means either a semi-automatic action or other, which is most commonly a revolver. The license carries a restriction endorsed accordingly on the back.

51. *Id.* § 411.188(a), (d).

52. *Id.* §§ 411.188(b)(1)–(4).

53. *Id.* §§ 411.183(a)–(b).

54. *Id.* § 411.188(c).

Officer Standards and Education, and is the gold standard for commissioned security officer training.⁵⁵ During the CHL range demonstration, on a standard silhouette target, the shooter fires a total of twenty rounds at three yards in thirty-five seconds, twenty total rounds at seven yards in forty seconds, and ten total rounds at fifteen yards in thirty seconds (times are summed here, but actually fired in strings lasting a few seconds each).⁵⁶ This translates into fifty shots in one minute, forty-five seconds, or an average of 2.1 seconds per shot out to distances of forty-five feet, where a score of seventy percent is required to pass.⁵⁷ The applicant must then pass the written examination over classroom material with a score of 70% or better before the certified handgun instructor may issue a handgun proficiency certificate which allows the applicant to proceed to the next stage of the licensing process.⁵⁸ The course instructor may recommend at any time that the DPS deny the applicant's application, despite successful completion of the course, if he has a good-faith belief that the applicant lacks the required proficiency.⁵⁹ The DPS may then use the instructor's affidavit as a basis for denial only if it is made in good faith, and is supported by both personal knowledge and the preponderance of the evidence.⁶⁰

A lengthy background check is performed by the DPS on every applicant for a CHL. Among other documents, an applicant must submit to the DPS two signed fingerprint cards, prepared by a law enforcement agency or proper designee thereof, two recent color passport photographs, social security number, signature, and his or her Texas driver's license number.⁶¹ The DPS uses this information to perform a criminal history record search using its computerized criminal database.⁶² The DPS then forwards the information to law enforcement officials in the geographic area where the applicant resides, so a local criminal investigation may be performed, in addition to confirmation of the accuracy of each and every data point in the application.⁶³ This local background check may be of unlimited scope, but

55. Compare 37 TEX. ADMIN. CODE § 6.11 (West 2010) (Tex. Dep't Pub. Safety, Proficiency Requirements), with *id.* § 217.21(c)(1) (Tex. Dep't Pub. Safety, Firearms Proficiency Requirements). See also TEX. OCC. CODE ANN. § 1702.1675(i) (West Supp. 2009) (“[T]he board by rule shall establish minimum standards for handgun proficiency [for commissioned security officers] that are at least as stringent as the standards for handgun proficiency developed by the public safety director under Section 411.188, Government Code.”).

56. See 37 TEX. ADMIN. CODE § 6.11(a).

57. *Id.* § 6.11(b).

58. *Id.*

59. TEX. GOV'T CODE ANN. § 411.188(k).

60. *Id.*

61. 37 TEX. ADMIN. CODE § 6.12(2)–(5), (7) (West 2010) (Tex. Dep't of Pub. Safety, Basic Information to be Submitted with Application).

62. TEX. GOV'T CODE ANN. § 411.176(a) (West Supp. 2009).

63. *Id.* §§ 411.176(a)–(b).

may take no longer than sixty days.⁶⁴ Finally, the DPS sends the applicant's fingerprints to the Federal Bureau of Investigation so that it may conduct a national criminal history inquiry on the applicant.⁶⁵ Any additional background check or record check the DPS deems necessary may be performed, so long as the entire process takes no more than 180 days from receipt of the application.⁶⁶ As a result, it is extremely unlikely for an individual with a criminal record, chemical dependency (as defined in the statute), tax delinquency, child support delinquency, or spousal abuse history, to be issued a Concealed Handgun License in Texas. Moreover, it is highly unlikely that a license will be issued to a person "incapable of exercising sound judgment with respect to the proper use and storage of a handgun."⁶⁷

B. *Don't Leave Home Without It, but Don't Come in Here With It*

A Concealed Handgun License is a "benefit" to those Texans who hold it, conferring upon them both the right to bear a firearm in defense of their lives and the lives of the people around them, and the sobering responsibility that to use the tool they carry in defense of a life might mean the taking of another.⁶⁸ Licensees acting under the authority of their CHL may lawfully carry their concealed handgun anywhere not specifically prohibited by statute or properly posted with notice that their armed entry is a trespass.⁶⁹ Like many laws in Texas, the Concealed Carry statutes are only partially affirmative. While the licensing rules found in Section 411 of the Government Code and Title 37, Section 6 of the Administrative Code do set out affirmative instructions, the lion's share of licensee oversight is negative or prohibitory law scattered throughout the Penal Code, Health and Safety Code, Education Code, Family Code and Local Government Code.⁷⁰ These laws tell licensees where they cannot—rather than where they can—carry. Perhaps obviously, if a licensee fails to keep his gun concealed he may have breached the peace, but he has only violated the applicable penal statute if he does so intentionally.⁷¹ All that is required is the exposure of the gun in such a way or to a

64. *Id.* § 411.176(b).

65. *Id.*

66. *Id.* § 411.176(d).

67. *Id.* § 411.172(a)(7).

68. *Id.* § 411.202 (identifying the license as a benefit as defined in TEX. PENAL CODE ANN. § 1.07(a)(7) (West Supp. 2010) ("Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.")).

69. See discussion *infra* Part III.B.2.

70. See generally TEX. DEP'T OF PUB. SAFETY, TEXAS CONCEALED HANDGUN LAWS AND SELECTED STATUTES (INSTRUCTOR'S PAMPHLET) 1–2 (2009) (listing licensing rules found in the Penal Code, Health and Safety Code, Education Code, Family Code, and Local Government Code).

71. See TEX. PENAL CODE ANN. § 46.035(a) (West Supp. 2009).

sufficient degree that another can identify that it is a handgun.⁷² As long as the gun remains concealed, a Texas CHL holder can carry anywhere; at least anywhere except where he cannot.

1. Where Is It legal for a Texas Licensee to Carry?

Though the Texas body of law on the carrying of weapons is generally prohibitory in nature (i.e. laying out restrictions on the broad right defined by the Texas Constitution), over time it has been interpreted, and provisions added, to affirmatively allow the carrying of a firearm in numerous places. Long guns, such as rifles and shotguns, are allowed in a person's vehicle, so long as he does not run afoul of the "prohibited places" provisions laid out in Section 46.03 of the Penal Code.⁷³ Further, handguns may be carried openly on any premises a person owns or controls.⁷⁴ This includes one's home, property, business, or even a recreational vehicle while in use as a residence. As long as it is not in plain sight, a person may have a handgun in his or her car even without a CHL under the now-effective Penal Code, so long as he or she is neither a gang member nor engaged in criminal activity.⁷⁵

For those Texas residents who hold a Concealed Handgun License, the locales in which they may carry it are diverse, and in some cases quite interesting.⁷⁶ As mentioned in this Comment, a CHL holder may carry anywhere except where the law forbids it, either outright or via the criminal-trespass-posting provision allowing private property owners (or lessees) to forbid possession of a handgun on their premises under authority of a license.⁷⁷ The CHL holder may carry his handgun in the wide open spaces of all outside areas but for school functions, amusement parks and sporting events or racetracks, etc., and government meetings if held outside.⁷⁸

A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm . . . (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 educa-

72. *Spielman v. State*, No. 01-04-00692-CR, 2005 WL 1189698, at *2 (Tex. App.—Houston [1st Dist.] May 19, 2005, pet. ref'd) (mem. op., not designated for publication).

73. See TEX. PENAL CODE ANN. § 46.03(a)(1)–(c)(1) (West Supp. 2009); see also discussion *infra* Part III.B.2.

74. TEX. PENAL CODE ANN. § 46.02(a)(1) (West Supp. 2009).

75. *Id.* § 46.02(a)(2) to (a-1)(C).

76. See *Where Can You Take a Gun?*, TEX. CONCEALED HANDGUN ASS'N, <http://www.txchia.org/txcarry.htm> (last updated Apr. 26, 2009) (reproduced *infra* at App. III).

77. See TEX. PENAL CODE ANN. § 30.06 (West Supp. 2009).

78. None of these places would meet the statutory definition of "premises." See *infra* notes 79–81 and accompanying text.

tional institution is public or private, unless pursuant to written regulations or written authorization of the institution; In this section: “Premises” has the meaning assigned by Section 46.035.⁷⁹

A licensee may carry a handgun in outdoor spaces even though owned by or located on school property or private property posted under Penal Code Section 30.06, as these are not *premises* under the statutory definition, unless the area qualifies as *school grounds* where a school-sponsored activity is being conducted, as noted above.⁸⁰ “‘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.”⁸¹ As a result, the CHL holder may lawfully carry her concealed handgun while in the car in line to pick up her child outside the elementary school, may leave it in the car in the office parking garage, even though prohibited from carrying at work, and around the open areas of her college campus, but not into its buildings, be they classrooms or dormitories.

The holder of a Texas CHL may carry his or her handgun not only in Texas, but also in any state that reciprocates with Texas.⁸² At the time of this writing, the states allowing reciprocal recognition of the Texas license include most jurisdictions that have their own concealed carry laws. The list includes every state that borders Texas, as well as most of the states in the Midwest and Eastern regions of the United States.⁸³

Perhaps the two most interesting places in Texas where a CHL holder may carry his or her concealed handgun include the Capitol Building in Austin and the public schools in the city of Harrold, Texas. Because the Capitol Building is a government building, Texas CHL holders have been allowed to carry their handguns inside since 2003, when the blanket restriction against possession in “government buildings” was lifted.⁸⁴ However, the actual chambers where the House and Senate, or committees meet are off-limits as the premises of government entity meetings.⁸⁵ Further, and perhaps more notable, the Harrold Public School District began allowing its teachers to carry at its 110-student K-12 campus in 2008.⁸⁶ To carry a handgun at the

79. TEX. PENAL CODE ANN. § 46.03(a)(1), (c)(1) (West Supp. 2009).

80. *See id.*

81. TEX. PENAL CODE ANN. § 46.035(f)(3) (West Supp. 2009).

82. *See Texas Establishes Concealed Handgun License Agreements with Other States*, TEX. DEPT’ OF PUB. SAFETY, http://www.txdps.state.tx.us/administration/crime_records/chl/reciprocity.htm (last visited Aug. 21, 2010).

83. *See id.*

84. *See* TEX. PENAL CODE ANN. § 30.06(e) (West Supp. 2009) (making it a defense to prosecution if the premises is owned or leased by a governmental entity and not otherwise prohibited under §§ 46.03 or 46.035).

85. *See id.* § 46.035(c).

86. *Texas School District Will Let Teachers Carry Guns*, FOXNEWS.COM, Aug. 15, 2008, <http://www.foxnews.com/story/0,2933,404721,00.html>.

school, a teacher must have a Concealed Handgun License, must be trained in crisis management and carry ammunition designed to minimize ricochet, and must have the written authorization of the school district.⁸⁷ Written authorization is the critical component that allows a teacher to avoid prosecution under Penal Code Section 46.03(a)(1), and applies equally to institutions of higher learning, whether public or private.⁸⁸

2. Where Is a Licensee Prohibited from Carrying?

Regardless of an individual's status as a licensee, the Penal Code identifies a number of places where firearms are *always prohibited*:

[O]n the premises of a polling place on the day of an election or while early voting is in progress; on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court; on the premises of a racetrack; or in or into a secured area of an airport. [W]ithin 1,000 feet of premises the location of which is designated . . . as a place of execution . . . on a day that a sentence of death is set to be imposed "Premises" has the meaning assigned by Section 46.035.⁸⁹

Regardless of his or her status as a license holder, no person may have a gun, whether concealed or not, whether handgun or long gun, in any of these places.⁹⁰

The prohibited places which apply specifically to licensees have been changed over the years and are convoluted enough to comprise the subject matter of numerous websites and publications.⁹¹ It is a third-degree felony for a licensee to carry "on the premises of a business that has a permit or license issued under . . . [the] Alcoholic Beverage Code, if the business derives 51% or more of its income from the sale or service of alcoholic beverages for on-premises consumption."⁹² However, as of September 1, 2009, it is a defense to prosecution under this subsection if the licensee did not have effective notice according to Section 411.204 of the Government Code, which requires very specific signage.⁹³ For a licensee to carry his handgun "on the

87. *Id.*

88. See discussion *supra* note 79 and accompanying text.

89. TEX. PENAL CODE ANN. § 46.03(a)(2)–(c)(1) (West Supp. 2009).

90. See *id.*

91. See, e.g., CONCEALED CARRY.NET, <http://www.carryconcealed.net> (last visited Oct. 9, 2010).

92. TEX. PENAL CODE ANN. § 46.035(b)(1) (West Supp. 2009) (noting that the 51% threshold is calculated per TEX. ALCO. BEV. CODE ANN. § 104.06 (West 2007)).

93. *Id.* § 46.035(k). "A business . . . that derives 51 percent or more of its income from the sale of alcoholic beverages for on-premises consumption . . . shall prominently display at each entrance to the business premises a sign [that] must give notice in both English and Spanish that it is unlawful for a person licensed under this subchapter to carry a handgun on the premises. The sign must appear in contrasting colors with block letters at least one inch in height and must include on its face the number '51' printed in solid red at least five inches in height. The sign shall be dis-

premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place” is a class “A” misdemeanor, unless the event is a shooting match in which the licensee is a participant.⁹⁴ Also, it is a third-degree felony for a person to exhibit, threaten to exhibit, use or threaten to use a firearm “in or on any property, including a parking lot, parking garage, or other parking area, that is owned by a private or public school; or on a school bus being used to transport children to or from school-sponsored activities of a private or public school.”⁹⁵ If a licensee carries on the premises of a correctional facility, he has committed a felony of the third degree with no special statutory defense.⁹⁶ Hospitals and nursing homes are also prohibited premises, punishable as class “A” misdemeanors unless the licensee has written authorization from the institution’s administration.⁹⁷ However, here again it is a defense to prosecution if the licensee did not have effective notice of its prohibited status.⁹⁸ Entrance onto the premises of an amusement park by an armed licensee is also a class “A” misdemeanor; though, only if the licensee had notice under Section 30.06 and the park sits on seventy-five acres, in a county with a population of one million, has access only through controlled entries, has full-time security, and is open at least 120 days a year.⁹⁹ However, “[t]he term [amusement park] does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.”¹⁰⁰ Next, the premises of a “church, synagogue, or other established place of religious worship” is prohibited to the armed CHL holder as a class “A” misdemeanor . . . unless the lack-of-notice defense applies.¹⁰¹ “A license holder commits an offense [class “A” misdemeanor] if he intentionally, knowingly, or recklessly carries a handgun under the authority of . . . Chapter 411. . . at any meeting of a governmental entity.”¹⁰² This section also does not apply if the holder was not provided effective notice.¹⁰³ A licensee commits a class “A” misdemeanor offense if he or she carries a handgun while intoxicated, whether or not it is con-

played in a conspicuous manner clearly visible to the public.” TEX. GOV’T CODE ANN. §§ 411.204(a), (c) (West 2005).

94. TEX. PENAL CODE ANN. § 46.035(b)(2), (g).

95. TEX. EDUC. CODE ANN. § 37.125(a)–(b) (West Supp. 2009).

96. TEX. PENAL CODE ANN. § 46.035(b)(3), (g).

97. *Id.* § 46.035(b)(4), (g).

98. *Id.* § 46.035(i); *see also id.* § 30.06 (laying out the posting requirements that may be applied as notice against license holders); TEX. GOV’T CODE ANN. §§ 411.204(b)–(c) (requiring a conspicuous sign in both English and Spanish that “it is unlawful for a person licensed under this subchapter to carry a handgun on the premises”).

99. TEX. PENAL CODE ANN. §§ 30.06, 46.035(b)(5), (f)(1), (i).

100. *Id.* § 46.035(f)(1).

101. *Id.* §§ 30.06, 46.035(b)(6), (i).

102. *Id.* § 46.035(c).

103. *Id.* §§ 30.06, 46.035(i).

cealed.¹⁰⁴ A special defense is in place for violations of the prohibition of entrance to bars, school events, hospitals, amusement parks, places of worship and government meetings if the licensee is a judge, active judicial officer, or prosecutor.¹⁰⁵

The statutory provision that prevents CHL holders from carrying their handguns in the buildings of college campuses may be found in Penal Code Section 46.03(a)(1): “A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm . . . on the physical premises of a school or educational institution . . . whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution.” This provision applies to primary, secondary, and post-secondary schools, whether public or private, including universities, and is not specific to CHL holders.¹⁰⁶

IV. THE STATE OF THE UNION: CARRY LAWS ACROSS THE COUNTRY

The United States has experienced a substantial, though gradual, expansion of self-defense laws since 1985, when just eight states had “right-to-carry” statutes.¹⁰⁷ Before 1987, only six states had standards for statewide licenses to carry concealed handguns: Washington, South Dakota, North Dakota, New Hampshire, Indiana, and Maine.¹⁰⁸ Elsewhere, various law enforcement agencies were responsible for the issuance of permits at their discretion.¹⁰⁹ Alabama and Connecticut authorities could issue licenses at their discretion, and were relatively fair in doing so.¹¹⁰ Vermont had no prohibition or statutory regulation of concealed carry.¹¹¹ In other states, the carrying of concealed firearms was either flatly prohibited, or the issuance of a permit to do so was largely left to the discretion of law enforcement officials without clear standards requiring issuance, which resulted in permits being regularly denied to the general public through an abuse of that discretion.¹¹² In 1987, the state of Florida enacted what has since been known as a “shall-issue” or “right-to-carry” concealed-carry statute that became the tidewater model for other similar laws

104. *Id.* § 46.035(d).

105. *Id.* § 46.035(h-1).

106. *Compare id.* § 46.03(a)(1), with *id.* § 46.035.

107. JOHN R. LOTT, JR., *THE BIAS AGAINST GUNS: WHY ALMOST EVERYTHING YOU'VE HEARD ABOUT GUN CONTROL IS WRONG* 73 (2003).

108. McCulloch & Wilkinson, *supra* note 29, at LN1.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* (noting persons granted permits under discretionary systems are often “politically influential,” as in New York, where permits have been issued to Bill Cosby, Howard Stern and Laurence Rockefeller, yet New York City cab drivers are denied licenses).

across the country.¹¹³ In doing so, it “set off the wave of modern [concealed handgun license] reform by adopting a nondiscretionary concealed weapon permit law guaranteeing issuance of a concealed weapon permit to any Floridian” who met the statutory requirements, where the underlying reason for reform was the abuse of discretion.¹¹⁴

A. *Shall or May, Open or Concealed: How do the Other States Do It?*

The right-to-carry has reached almost every state in the Union. At the time of this writing, forty states observe the right-to-carry.¹¹⁵ Thirty-six of those states have non-discretionary “shall-issue” laws requiring licenses be granted to persons who satisfy the objective criteria set by the respective state’s legislature.¹¹⁶ Three have discretionary-issue systems that are considered fairly administered, and Vermont allows handgun carry without a permit.¹¹⁷ Of the ten states that do not observe the right-to-carry, eight maintain restrictively-administered discretionary-issue systems.¹¹⁸ The remaining two—Illinois and Wisconsin—have no concealed carry licensing systems and flatly prohibit it.¹¹⁹ Utah is currently the only state that has an appeal-tested right-to-carry for CHL license holders on public college campuses, though private universities may still lawfully prohibit it.¹²⁰

B. *Five Bullets in a Six-Shooter: Statistical Impacts of an Armed Citizenry*

Two major factions have argued for decades about whether or not so-called gun-control laws reduce shooting deaths and violent crimes involving handguns.¹²¹ Generally, “gun-control” laws are those that make it more difficult for individuals to acquire, own, or possess firearms. The commonly-called anti-gun community lobbies for more stringent restrictions on who may obtain a firearm; increased difficulty for those that qualify; or outright bans on private firearm ownership,

113. *Id.*

114. *Id.* (identifying the criteria as age 21, no physical infirmity that would impact safe weapons-handling, no felony convictions, no drug convictions within three years, no alcohol confinements within three years, completion of a firearms safety class, no mental commitments within five years).

115. *Right-to-Carry 2010*, NRA-ILA (Apr. 22, 2010), <http://www.nraila.org/Issues/factsheets/read.aspx?ID=18>.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Colorado State University Votes to Ban Guns on Campus*, FOXNEWS.COM, Dec. 4, 2009, <http://www.foxnews.com/story/0,2933,579374,00.html>. See generally *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 51, 144 P.3d 1109 (allowing students to carry concealed weapons on university’s campus).

121. See generally Lott, *supra* note 107 at 3–13.

including a firm opposition to any type of concealed-carry law.¹²² The “pro-gun” community tends to lobby for cessation of enactment of new gun laws, better enforcement of current ones, increased availability of firearms to law-abiding citizens, and the institution of effective concealed weapons carry statutes for self-defense.¹²³ Each supports its argument with various statistics on crime involving guns.¹²⁴

While the United States is a relatively recent casualty of the global terrorist threat, and a newcomer of sorts to the school-shooting phenomenon, also referred to as a “multiple victim public shooting,” other parts of the world have decades of experience. Israel, unlike the U.S. after September 11, 2001, encourages responsible, ordinary citizens to carry guns.¹²⁵ The Israelis have accepted the sad fact that police cannot always protect people from attack and acknowledge that when police are in the vicinity, attackers strike the police first (whom they identify by the officers’ unconcealed weapons).¹²⁶ As a result, Israeli civilians find protection in concealed carry.¹²⁷ Over 10% of adult Jewish Israelis are allowed to carry concealed handguns.¹²⁸ During waves of terrorist activity, Israel’s police inspector general calls on all concealed-carry permit holders to make sure they have their guns on them at all times.¹²⁹ According to him, “there’s no question that weapons in the hands of the public have prevented acts of terror or stopped them while they were in progress.”¹³⁰ The multiple victim public shooting in an American school is, in its execution and defense, no different than any other mass terrorist attack.

Right-to-carry laws empirically reduce crime rates in states that enact them. In the period from 1977 to 1997, the per capita rates of shootings and injuries were higher in states without right-to-carry laws in thirty-four out of forty-two annual comparisons.¹³¹ Anti-gun organizations like the Violence Policy Center often publish their own statistical analyses suggesting that granting carry permits is the equivalent of arming criminals and threatens public safety.¹³² Contrary to the Violence Policy Center’s suggestions, the likelihood of getting the aforementioned statistical result accidentally is approximately “equivalent to flipping a coin and getting five heads in a row.”¹³³ Concealed handgun laws lower deaths and injuries from multiple victim public shootings by 78% and the number of those shootings by

122. *See id.*

123. *See* Hummel, *supra* note 9, at 145–46.

124. *See id.*

125. Lott, *supra* note 107, at 65.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Lott, *supra* note 107, at 105.

132. Hummel, *supra* note 9, at 146.

133. Lott, *supra* note 107, at 105.

67%.¹³⁴ If we compare the time-trend measure of the annual change in crime rates before passage of the law with the time-trend measure of the annual change after the law, the impact of the law over time as more people obtain permits can be observed.¹³⁵ These trends indicate that deaths and injuries from multiple victim public shootings stay fairly constant over time before the passage of the right-to-carry law and then fall afterward by an approximate 15–22% per year decline between two measures.¹³⁶ The statistical significance of this result being coincidental (i.e. unrelated to passage of the carry law) approximates flipping a coin and getting nine heads in a row.¹³⁷

Adding additional variables into the analysis has no consistent statistically significant impact on mass shootings.¹³⁸ Generally, the other law-related variables, such as waiting periods, safe storage laws, additional penalties for using a gun in a crime, and higher death penalty execution rates have no significant impact on the number of attacks.¹³⁹ Notably, however, laws limiting purchasers to one gun a month have a statistically significant *increase* on the number of injuries.¹⁴⁰ The average number of people who die or are injured per multiple victim public shooting attack declines by about 50% in states that enact carry laws suggesting that armed citizens limit the amount of harm that still does take place in spite of the deterrent effects of the law.¹⁴¹ To be fair, statistics arising from independent research by anti-gun groups and media sources disagree on many points. The proponents of right-to-carry laws have studies completed by recognized, respected, independent leaders in the field like Dr. Lott. The detractors, however, tend to rely on studies like that performed by the L.A. Times, which stopped its research at samples merely because it was a “convenient number at which to stop searching.”¹⁴²

C. *Utah: Bringing the Campus-Carry Debate Into Reality*

As of January 2010, Utah stands as the only state that prohibits public institutions of higher education from precluding the carrying of concealed handguns on their premises by policy.¹⁴³ A series of 1995

134. *Id.* at 113–14.

135. *Id.* at 115.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 123.

142. *See id.* at 29; *see also Curriculum Vitae, JOHN LOTT’S WEBSITE* (Nov. 8, 2006), http://johnlott.tripod.com/Lott_CV_1-19-07.pdf (noting Dr. Lott is ranked fourth worldwide among economists in terms of total research output, eighty-sixth in terms of citations, and twenty-sixth in terms of quality-adjusted total academic journal output).

143. *Colorado State University Votes to Ban Guns on Campus, supra* note 120; *see also Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 51, 144 P.3d 1109.

amendments to Utah's firearms laws asserted strong legislative control over gun regulation; this led to a 1998 request from the Legislature that the Office of Legislative Research and General Counsel provide a formal opinion stating that the University of Utah's internal policy prohibiting students and faculty members from carrying on campus was contrary to the laws of the state.¹⁴⁴ In 2001, the Utah Attorney General advised the Governor that the University's policy was illegal, and that it had no authority to adopt such a prohibition against valid permit holders from carrying on its campus in accordance with the state statute.¹⁴⁵ By January 2002, the legislature's Administrative Rules Review Committee had voted to abolish the University's policy through its authority over state agency rules.¹⁴⁶ The University maintained that its policies constituted state agency rules and so maintained its gun ban, prompting the legislature to enact a law withdrawing the authority of the Board of Regents to "restrict the lawful possession or carrying of firearms" on college campuses.¹⁴⁷ In August of 2003, a state trial court agreed with the University and left its gun policy intact.¹⁴⁸ In 2006, the Utah Supreme Court reversed the lower court's decision, prohibiting the University from "enacting or enforcing any policy restricting the possession or use of firearms."¹⁴⁹ As the only available case study, the University of Utah lends itself to our purposes here, as not one murder, manslaughter, or robbery occurred on campus during the period after 2006 for which data is available.¹⁵⁰

V. THE SCHOOL-SHOOTING PHENOMENON ON COLLEGE CAMPUSES

School shootings are just one of many different types of mass killings that involve guns, also known as Multiple Victim Public Shootings (MVPS). While today's most infamous school shooting might be the one that occurred at Columbine High School in Littleton, Colorado on April 20, 1999,¹⁵¹ the shooting at Virginia Polytechnic Univer-

144. Kathy L. Wyer, Comment, *A Most Dangerous Experiment? University Autonomy, Academic Freedom, and the Concealed-Weapons Controversy at the University of Utah*, 2003 UTAH L. REV. 983, 987.

145. *Id.* at 988–89.

146. *Id.* at 988; UTAH CODE ANN. § 63G-3-102 (LexisNexis 2008); UTAH CODE ANN. §53B-3-103 (LexisNexis 2009); UTAH CODE ANN. § 76-8-311.1 (LexisNexis 2008).

147. Wyer, *supra* note 144, at 988.

148. *Id.*

149. *Univ. of Utah*, 2006 UT at ¶ 57.

150. See *Annual Security Report for 2009: Statistics of Security Act Offenses*, U. UTAH, <http://www.facilities.utah.edu/portal/site/facilities/> (follow "Crime Reports and Statistics" hyperlink; then follow "Crime Statistics" hyperlink) (noting latest available data is for year 2008) (last visited Sept. 4, 2010).

151. *List of School Shootings*, SCHOOLSHOOTING.ORG, <http://www.schoolshooting.org/attacks> (last visited Aug. 29, 2010).

sity in Blacksburg, Virginia on April 16, 2007 may most quickly come to mind.¹⁵² It is the latter and events like it, those on college and university campuses, upon which this Comment focuses, rather than the Columbine category involving primary through secondary schools. Though we tend to think only of these more recent events, it is notable that the first recorded school shooting was the 1966 attack carried out from the tower at the University of Texas in Austin. Sixteen people were killed at UT, compared to thirty-three dead (including the shooter) and twenty-three wounded at Virginia Tech.¹⁵³

A. *Shooting Galleries: Virginia Tech et al.*

On April 17, 2007, twenty-three year-old Seung-Hui Cho shot and killed thirty-two people and himself on the campus of Virginia Polytechnic University (“Virginia Tech”) in Blacksburg, Virginia. This massacre—the deadliest school shooting in American history—stunned the nation and reignited the gun control debate. Gun control proponents blamed easy access to guns and called for more regulations, while gun rights proponents equated fewer guns with fewer opportunities for self-defense. This latter group began a campaign to allow guns on college campuses, questioning the constitutionality of such “gun-free zones.”¹⁵⁴

Far more multiple victim public shootings have occurred on college campuses than most people know. A partial list must include Virginia Tech (2007, thirty-three dead), Shepherd University in Virginia (2006, three dead), University of Arizona College of Nursing (2002, four dead), University of Arkansas (2000, two dead), San Diego State University (1996, three dead), University of Iowa (1991, six dead), and the University of Texas at Austin (1966, sixteen dead).¹⁵⁵ Three were killed in 2008 at Louisiana Technical College, another six at Northern Illinois University in 2008, three in 2007 at Delaware State University, and two in 2000 at the University of Washington.¹⁵⁶ Most strikingly, three people were killed and three more wounded at the Appalachian School of Law in 2002.¹⁵⁷ The list goes on. “Each year, an estimated 21,000 college students are criminally assaulted in attacks ranging from robbery to murder, the equivalent of one violent act every 25

152. *Timeline: Shootings at U.S. College Campuses*, NPR (Apr. 16, 2007), <http://www.npr.org/templates/story/story.php?storyId=9603275>.

153. *Id.*

154. Cameron Desmond, Comment, *From Cities to Schoolyards: The Implications of an Individual Right to Bear Arms on the Constitutionality of Gun-Free Zones*, 39 *McGEORGE L. REV.* 1043, 1044 (2008) (citations omitted).

155. *List of School Shootings*, *supra* note 151; *Timeline: Shootings at U.S. College Campuses*, *supra* note 152.

156. *Id.*

157. Clines, *supra* note 1.

minutes.”¹⁵⁸ Yet Utah is the only state where they may lawfully defend themselves.¹⁵⁹

B. *Because Rough Men Stand Ready to Do Violence:
Disincentivising Attackers*

Guns are our friends, because in a world without guns I'm what is known as prey. Almost all females are. Any male – even the sickliest 98-pound weakling – could overpower me in a contest of brute force against brute force. For some reason, I'm always asked whether I wouldn't prefer a world without guns. No, I'd prefer a world in which everyone is armed, even the criminals who mean to cause me harm. Then I'd at least have a fighting chance.¹⁶⁰

During his tenure as chief economist at the United States Sentencing Commission, John R. Lott, Jr. noted a consistency across many criminal cases where accomplices testified against one another.¹⁶¹ When asked why they chose a particular victim, robbers explained how they considered several subjects, such as a drug dealer or cab driver, from whom they might take a lot of money.¹⁶² However, they would decide against those options, as the drug dealer would most likely be armed, and the taxi driver could possibly be.¹⁶³ Often, the criminals would explain how they had found a victim who made an easier target, such as a small man, a woman, or an elderly person—all less likely to be carrying a gun.¹⁶⁴ The economic concept of substitution, where consumers will switch between products of similar uses based on the relative costs of the alternatives, can be seen in the area of criminal activity: deterrence causes criminals to avoid targets that might be more able to defend themselves (i.e. armed with a concealed firearm), resulting in a substitution of different kinds of prey depending upon the cost of attacking.¹⁶⁵ In fact, because many Americans have guns at home, felons relate “that they avoid late-night burglaries because ‘that’s the way to get shot.’”¹⁶⁶ Likewise, increasing the percentage of the population with carry permits statistically reduces multiple victim public shootings.¹⁶⁷

Third parties who are not armed also prosper from the deterrent effect on criminals through their external benefits as “free riders” on

158. Arthur L. Bugay, *Civil Prosecution for Criminal Harm: Apportionment of Fault in Inadequate Security Cases*, 74 PENN. B. ASS'N Q. 93, 116 (2003).

159. See discussion *supra* at section IV.C.

160. Ann Coulter, *Annie's Got Her Gun*, GEORGE MAGAZINE (Aug. 1999), <http://seclists.org/politech/1999/Dec/27>.

161. Lott, *Supra* note 107, at 9.

162. *Id.*

163. *Id.*

164. *Id.* at 9–10.

165. *Id.* at 11.

166. *Id.* at 10.

167. *Id.* at 130.

the defensive efforts of their armed counterparts.¹⁶⁸ A concealed-carry law may deter crime primarily by increasing the likelihood that the perpetrator will engage an armed victim. The probability—and consequently, the deterrent effect—of the law causing a single-victim-attack target to be armed is relatively low, though still a negative in its deterrent effect.¹⁶⁹ If, however, the shooter engages a large group in a public place, the likelihood of one or more targets or bystanders being armed would be very large, despite the odds of any particular person having a gun being low.¹⁷⁰

The ultimate economic hypothesis is, therefore, that a law allowing concealed carry will have a larger deterrent effect on multiple victim public shootings than on more conventional crimes because “if you make something more difficult people do less of it.”¹⁷¹ But banning guns in a particular place, like a school, will defeat the law’s ability to deter or prevent an attack.¹⁷² Advocates who favor so-called gun-free zones suggest that guns lead to violence, escalate violence, and have no place on school property; their counterparts respond that a gun-free zone means that just the person intent on committing violence will be armed.¹⁷³ Those who obey the law will not arm themselves in such a zone and in turn have a bull’s-eye painted on their chests.¹⁷⁴ In short, the bad guys know where the good guys *cannot* shoot back.

VI. SENATE BILL 1164

A. Background

As noted above, concealed handguns are presently prohibited on Texas college and university campuses.¹⁷⁵ The modifications to the Texas CHL laws proposed in Senate Bill 1164 endeavor to allow persons licensed to carry a concealed handgun to do so on the premises of a college or university campus.¹⁷⁶ The author, Senator Wentworth, laid out the purpose of this act as to “aid student, faculty, and visitors on college campuses in protecting themselves not only from mass shootings like those that occurred on Virginia Tech University and Northern Illinois University campuses, but from other life-threatening situations that may occur on campus.”¹⁷⁷ In its original form, S.B.

168. *Id.* at 11.

169. *See id.* at 103.

170. *See id.*

171. *Id.* at 102–03.

172. *Id.* at 131–32 (discussing a study that listed fifty places licensees were prohibited from carrying, and finding that “the states with the fewest restrictions on where one can carry a gun have the greatest reductions in killings, injuries, and attacks.”).

173. *Id.* at 131.

174. *Id.*

175. *See* Senate Comm. on State Affairs, Bill Analysis, Tex. S.B. 1164 – Introduced Version, 81st Leg., R.S. (2009) (quoting “Author’s / Sponsor’s Statement of Intent”).

176. *Id.*

177. *Id.*

1164 proposed authorizing CHL holders to carry their concealed weapons on the campuses of public, private, or independent institutions of higher education.¹⁷⁸ Concessions were made within the text of the bill as introduced, however, authorizing institutions of higher learning to “establish rules, regulations, or other provisions, concerning the storage of handguns in dormitories or other residential buildings owned by the institution and located on campus.”¹⁷⁹ But these institutions would be prohibited “from adopting rules, regulations, or other provisions prohibiting license holders from carrying handguns on the campus.”¹⁸⁰ Senator Wentworth’s intent was that S.B. 1164 create an exception for those persons under the Penal Code.¹⁸¹ Wentworth’s Bill went to the Senate State Affairs Committee, but was heard on the last day a Senate Bill could be heard in committee.¹⁸² S.B. 1164 passed out of committee and passed on the Senate floor, was referred to and passed out of the House Public Safety Committee, but died in the Calendars Committee.¹⁸³

B. *Substantive Changes Proposed to the Current Law*

As S.B. 1164 was originally introduced, Subchapter H, Chapter 411, of the Government Code was to be amended by modifying/adding § 411.2031 to read as follows:

Sec. 411.2031. CARRYING OF HANDGUNS BY LICENSE HOLDERS ON CERTAIN CAMPUSES.

(a) For purposes of this section, “institutions of higher education” have the meanings assigned by Section 61.003, Education Code.

(b) A license holder may carry a concealed handgun on or about the 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) 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

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. See Alice Tripp, *More on the 2009 Texas Legislative Session*, TEX. STATE RIFLE ASS’N (Aug. 17, 2009, 6:00 PM), https://www.tsra.com/index.php?option=com_content&view=article&id=131:more-on-the-2009-texas-legislative-session&catid=55:tripp-talk&Itemid=113.

183. See *id.* (noting the Senate Bill moved further through the Texas process than any other state). Note also that S.B. 1164 had companion legislation in the House that also remained unenacted at Session’s end. See generally Tex. H.B. 1893, 81st Leg., R.S. (2009).

dormitories or other residential buildings that are owned or operated by the institution and located on the campus of the institution.¹⁸⁴

The new section would have positively authorized (as opposed to negatively prohibited) Texas license holders to carry their concealed handguns outdoors on campus as well as into college or university buildings defined as “premises” under Penal Code § 46.035 without fear of dismissal.¹⁸⁵ Additionally, defining an “institution of higher education” and “private or independent institution of higher education” in accordance with § 61.003 of the Education Code would have prevented both state and private colleges/universities from regulating concealed carry by policy.¹⁸⁶ Both state and private institutions would still have retained policymaking power over the storage of handguns in residential buildings.¹⁸⁷ This change would have been a material departure from the existing blanket policymaking power enjoyed by institutions of higher education under rulemaking authority previously defined only by the “written authorization” clause of Penal Code § 46.03(a)(1), and made their authority CHL-specific.¹⁸⁸

By adding a defense specific to licensees, S.B. 1164 as introduced would have addressed the global, non-CHL-specific prohibition against firearms on the physical premises of an educational institution as laid out in Penal Code § 46.03(a)(1). Section 46.03(a), criminalizing the possession of any prohibited weapon on the physical premises of an educational institution unless authorized in writing, was to be amended by adding subsection (B) to § 46.03(a)(1):

(B) [unless] the person possesses or goes on the physical premises of an institution of higher education or private or independent institution of higher education, or on any grounds or building on which an activity sponsored by the institution is being conducted, with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code.¹⁸⁹

By the time S.B. 1164 was engrossed, substantial changes had been made that are beyond the scope of analysis of this Comment. Essentially, the proposed legislation was weakened somewhat, but retained its primary components.¹⁹⁰ In the final analysis, S.B. 1164 would have

184. See S.B. 1164 as Introduced, *supra* note 8. See *infra* App. I for the complete text of S.B. 1164 as Introduced and *infra* App. II for the complete text of the Bill as Engrossed.

185. See Senate Comm. on State Affairs, Bill Analysis, Tex. S.B. 1164, 81st Leg., R.S. (2009).

186. *Id.*

187. *Id.*

188. See *id.* (noting modified rulemaking authority); see also *supra* note 106 and accompanying text (noting TEX. PENAL CODE ANN. § 46.03 (West Supp. 2009) is not specific to licensees).

189. S.B. 1164 as Introduced, *supra* note 8. See *infra* App. I for the complete text.

190. Compare S.B. 1164 as Introduced, *infra* App. I, with Tex. S.B. 1164, 81st Leg., R.S. (2009) (engrossed version) [hereinafter S.B. 1164 as Engrossed], *infra* App. II.

removed the authority of institutions of higher education to arbitrarily prohibit the lawful carry of handguns by persons licensed by the State to do so, but not taken away those institutions' ability to regulate how firearms are stored and maintained in living areas.¹⁹¹

C. *Not in My Back Yard: Opposition by the Academic Community*

Despite the compelling statistical and factual data in support of law-abiding CHL holders' right to carry on college campuses, there remains a staunch opposition in the academic field. One writer described opposition at the University of Texas as "overwhelming" from student government, campus safety officers, and UT and Texas State system administrations.¹⁹² Similar bills have met with consistent opposition from administrations and faculty virtually wherever they have been proposed.¹⁹³

VII. TO BE, OR NOT TO BE: SHOULD TEXAS ADOPT CAMPUS-CARRY?

A. *There Oughta be a Law: Supporting Precepts*

1. Concealed Handgun Licensees and Their Decidedly Un-criminal Natures.

CHL holders in Texas are generally far less likely to commit violent crimes, especially those involving a firearm, than the general population.¹⁹⁴ The Texas Department of Public Safety (DPS) can and does maintain statistics on most aspects of the licensing law, applicants, applications, revocations, and crimes committed by licensees. By statute, the DPS may maintain on its website statistics describing law-enforcement-agency responses to incidents in which a licensee is convicted of an offense prohibited by Subchapter H (the subchapter of Texas Government Code Chapter 411 governing the license to carry a concealed handgun), Section 30.02 of the Penal Code (burglary), or under Title 5 (homicide, kidnapping, human trafficking, sexual offenses and assaultive offenses), Chapter 29 (robbery) or Chapter 46 (all weapons offenses).¹⁹⁵ These statistics are drawn from the DPS computerized criminal history file for people twenty-one years old and

191. See generally S.B. 1164 as Engrossed, *supra* note 190, *infra* App. II.

192. Katherine Haenschen, *For Now, Texas Avoids Guns in Campus Buildings*, BURNT ORANGE REP. (June 3, 2009), <http://www.burntorangereport.com/diary/8801/texas-appears-to-avoid-guns-in-campus-buildings>.

193. See, e.g., Nathan Winters & Roberto Barros, *Concealed Weapons Bill Meets Objections on Campus*, COLUMBIA MISSOURIAN, Apr. 22, 2009, <http://www.columbia-missourian.com/stories/2009/04/22/concealed-weapons-bill-met-objections-campus/>.

194. *Conviction Rates for Concealed Handgun License Holders Reporting Period: 01/01/2007–12/31/2007*, TEX. DEP'T OF PUB. SAFETY, 1–4 (Apr. 9, 2009) [hereinafter *CHL Conviction Rates*], http://www.txdps.state.tx.us/administration/crime_records/ch/ConvictionRatesReport2007.pdf.

195. TEX. GOV'T CODE ANN. § 411.047(a) (West 2005).

older, and reported annually in graphical and numerical format compared to “all like offenses committed in the state for the reporting period as a percentage of the total of such reported offenses.”¹⁹⁶ The comparison between license holders and all others is, therefore, relatively easy.

As of 2007, the most recent reporting period, revealed 61,260 convictions across Texas, of which 160 were licensees.¹⁹⁷ At that time the total number of licensees in Texas exceeded 300,000. Thirty-four people were convicted of unlawfully transferring weapons; none were licensees.¹⁹⁸ Three thousand seven hundred thirty-eight people were convicted of unlawfully carrying a weapon, but only twenty-nine had CHLs (0.7758%).¹⁹⁹ Perhaps the worst discrete statistics are for convictions of deadly conduct where licensees still represented only fifteen of 1,432 (1.0475%), and criminally negligent homicide, where CHLs were two of forty-seven convictions (4.2553%).²⁰⁰ Still, total convictions of licensees for all reported crimes—including nonviolent ones like public lewdness—was merely 160 offenses across a population of over 300,000 licensees (less than one for every 1,900 CHLs).²⁰¹

2. Can Institutions of Higher Learning Validly Prohibit Self-defense?

One primary consideration in the argument for allowing concealed carry on the premises of public institutions of higher learning lies in the statutory conflict between prohibition of all weapons on school premises and permission of concealed carry by license holders on premises owned or leased by a governmental entity.²⁰² The defense available for carrying on a governmental entity’s premises specifically excludes any place otherwise prohibited in § 46.03 or § 46.035 of the Penal Code (like public schools), but the same logic may be applied here as was applied in creating the government-property defense in 2003. Specifically, public institutions of higher learning are created by Texas statute, and are therefore closely analogous to all other government agencies. Therefore, they should not be allowed to prohibit CHL holders from carrying their handguns onto what is truly public government “property based purely on rules, regulations, or policies created unilaterally within the walls of the various governmental agen-

196. *Id.* § 411.047(b).

197. *See CHL Conviction Rates*, *supra* note 194, at 4.

198. *Id.*

199. *Id.* at 3.

200. *Id.* at 2.

201. *See id.* at 4 (calculating 160 divided by 314,574).

202. *Compare* TEX. PENAL CODE ANN. § 46.03(a)(1) (West Supp. 2010) (prohibiting all firearms on the physical premises of a school or education institution, or its grounds during school-sponsored activity, without written authorization), *with id.* § 30.06(e) (providing the defense to a license holder if he carries his handgun on the premises of a governmental entity).

cies.”²⁰³ Just as proponents of the “government entity” defense suggested, regulation of the CHL falls under the control of the legislature itself, and “should not be delegated to government subdivisions or entities of the state through statute.”²⁰⁴ Like local control, University Autonomy may be a legitimate concept in Texas, but just as in Utah, it may not extend to constitutional rights; and a denial of Texans’ right to defend themselves in the college classroom or dormitory and may demonstrate a disregard for legislative intent.²⁰⁵

The statutory prohibition of carrying a concealed handgun on school premises may be overcome merely by the institution’s implementation of a written policy authorizing it. As a result, Texas college students are being put at risk of harm despite the reality that virtually no effort on the part of the institution would be required to simply let them protect themselves and their fellows.²⁰⁶ The Texas Department of Public Safety, with the full weight of the state’s criminal justice system behind it, already administers, regulates, and enforces the firearms laws in general, and the CHL laws in particular. Perhaps if university administrators and boards of regents were qualified to do so, the legislature would not have deemed it necessary to grant oversight of the CHL program to the DPS at the outset. When a state trusts its citizens enough to let them carry pistols in the Capitol, the state-funded universities might be well-advised to trust those same citizens to carry in the classroom. It might save a life—or thirty.

B. *Misfires and Ricochets: Irrational Objections*

Opponents of the “government entity” defense, those who argue against legislation like that proposed in Senate Bill 1164 likely believe universities should be free to decide for themselves whether to prohibit concealed handguns on public property.²⁰⁷ To do otherwise would result in treating universities, entities of their own right, differently from other property owners, which would run counter to the Texas Legislature’s intent as shown in 1997, when it gave all owners of property the right to exclude CHL holders as long as their exclusions

203. Hummel, *supra* note 9, at 159 (citing Tex. Att’y Gen. Op. No. JC-325 (2001) (stating that “a unit of government may not, merely by promulgating its own rules, regulations, or policies, bar the holder of a concealed handgun license from carrying his weapon onto property owned or controlled by the particular governmental unit”)).

204. *Id.* at 162.

205. *Id.* (“Under Article I, Section 23 of the Texas Constitution, the legislature maintains the exclusive right to regulate ‘wearing of arms.’ The supporters of Senate Bill 501 further argue that ‘Art. I, sec. 29 states that everything in the bill of rights is excepted out of the general powers of government and shall remain inviolate, and that all laws contrary to the provisions of the bill of rights shall be void.’”).

206. See *supra* notes 86–88 and accompanying text.

207. Cf. Hummel, *supra* note 9, at 161 (stating opponents of Senate Bill 501 believed local governments ought to be free to make their own decisions about concealed handguns on public property).

did not violate another provision of the relevant statutes.²⁰⁸ Thus, while they will likely fail now just as the government-entity-defense opponents failed in 2003, campus-carry opponents will argue that public institutions of higher learning are closely analogous to individual property owners and should be allowed to unilaterally decide whether concealed handguns will be permitted on their premises.

VIII. CONCLUDING COMMENTS

The Author does not advocate violence. If another means of defense were empirically shown to reduce violent crime, he would argue for legislation mandating such conduct on the part of each and every citizen. However, to date that is not the case, yet the society in which we live becomes ever-increasingly dangerous. In a time when the risk of being shot and killed in a law-school hallway is not only quite real, but is known to educational institutions because it has already occurred, there is simply no excuse for those institutions' administrations to arbitrarily decide that we should perish there unarmed and unable to do any more than observe our own mortality. Most likely, the students who stopped the carnage at Appalachian School of Law could teach our lawmakers and academics the value of "toting" a pistol when lives hang in the balance.

Statistically, CHL holders are not the problem but the empirical solution. They have the training, the numbers, and the invisibility to disincentivise attackers or reduce casualties in multiple victim public shootings. Texas has an experienced DPS agency administering a rigorous statutory scheme that governs the men and women it trusts to go about their days armed. Though both sides offer competing statistics and political pressure, the supporters of gun-free zones continue to paint a bull's-eye on every person on campus. The Texas Constitution allows the wearing of arms regulated by a view to prevent crime. All considered, the State should let its citizens protect themselves in the college classrooms in which it cannot. We should encourage our Texas Legislature to enact legislation like 2009's S.B. 1164 in its next session, because the arguments against it, while as valid as historical arguments against CHL laws in general, are just as easily overcome. The wearing of arms with a view to prevent crime may not get any simpler than letting the fish in the classroom barrel shoot back. For if there is no other certainty in life, the following is absolute: in a fight, an armed man will kill an unarmed man with monotonous regularity.

208. *Id.*

IX. APPENDIX I – S.B. 1164 AS INTRODUCED

81R5906 KCR-D

By: Wentworth, et al.

S.B. No. 1164²⁰⁹

A BILL TO BE ENTITLED

AN ACT

relating to the carrying of concealed handguns on the campuses of institutions of higher education.

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, “institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education 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) 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 buildings that are owned or operated by the institution and located on the campus of the institution.

SECTION 2. 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:

209. S.B. 1164 as Introduced, *supra* note 8.

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

(B) the person possesses or goes on the physical premises of an institution of higher education or private or independent institution of higher education, or on any grounds or building on which an activity sponsored by the institution is being conducted, with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code;

(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) [(4)] “Premises” has the meaning assigned by Section 46.035.

(3) [(2)] “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 3. Section 46.035, Penal Code, is amended by adding Subsection (k) to read as follows:

(k) 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 4. Section 46.11(c)(1), Penal Code, is amended to read as follows:

(1) “Premises” has the meaning [“Institution of higher education” and “premises” have the meanings] assigned by Section 481.134, Health and Safety Code.

SECTION 5. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by

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the law in effect when the offense was committed, and the former 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 6. This Act takes effect September 1, 2009.

X. APPENDIX II – S.B. 1164 AS ENGROSSED

By: Wentworth, et al.

S.B. No. 1164²¹⁰

A BILL TO BE ENTITLED

AN ACT

relating to the carrying of concealed handguns on the campuses of institutions of higher education.

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, “institution of higher education” and “private or independent institution of higher education” have the meanings assigned by Section 61.003, Education 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 (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 buildings that are owned or operated by the institution and located on the campus of the institution.

(e) A private or independent institution of higher education in this state may, after consulting with students, staff, and faculty of the institution, establish rules, regulations, or other provisions prohibiting license holders from carrying handguns on premises that are owned or operated by the institution and located on the campus of the institution. For purposes of this subsection, “premises” has the meaning assigned by Section 46.035, Penal Code.

(f) This section does not provide an exception to the application of or a defense to prosecution under Section 46.03(a)(2), 46.035(b)(1), or 46.035(c), Penal Code.

210. S.B. 1164 as Engrossed, *supra* note 190.

(g) This section does not permit a license holder to carry a concealed handgun on or about the premises of a hospital maintained or operated by an institution of higher education.

SECTION 2. Section 411.208, Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (e) 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 or a private or independent institution of higher education, an officer or employee of an institution of higher education or a private or independent institution of higher education, 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 or a private or independent institution of higher education, an officer or employee of an institution of higher education or a private or independent institution of higher education, a peace officer, or a qualified handgun instructor for any damage caused by the actions of an applicant or license holder under this subchapter.

(d) The immunities granted under Subsections (a), (b), and (c) do not apply to 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 or a private or independent institution of higher education, an officer or employee of an institution of higher education or a private or independent institution of higher education, or a peace officer if the act or failure to act was capricious or arbitrary.

(e) For purposes of this section, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 411.2031.

SECTION 3. Section 46.03, Penal Code, is amended by amending Subsections (a) and (c) and adding Subsection (j) 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 on the physical premises of an institution of higher education or private or independent institution of higher education, or on any grounds or building on which an activity sponsored by the institution is being conducted, with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code;

(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) [(2)] “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.

(j) Subsection (a)(1)(B) does not permit a person to possess a concealed handgun, or go with a concealed handgun, on the premises of a hospital maintained or operated by an institution of higher education.

SECTION 4. Section 46.035, Penal Code, is amended by adding Subsection (k) to read as follows:

(k) 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. Subdivision (1), Subsection (c), Section 46.11, Penal Code, is amended to read as follows:

(1) “Premises” has the meaning [“Institution of higher education” and “premises” have the meanings] assigned by Section 481.134, Health and Safety 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 September 1, 2010. A cause of action that accrued before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 7. Subsections (a) and (c), Section 46.03, Penal Code, as amended by this Act, and Subsection (k), Section 46.035, Penal Code, as added by this Act, apply only to an offense committed on or after September 1, 2010. An offense committed before September 1, 2010, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2010, if any element of the offense occurred before that date.

SECTION 8. This Act takes effect September 1, 2009.

XI. APPENDIX III – TEXAS CHL LOCALE REFERENCE CHART

Where can you take a gun?²¹¹

This chart looks simple. Texas law is not. Please click on the hot words for footnote information.

This chart is a guideline, not legal advice. Requires Javascript.

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This web media press kit won a first place award in the 1999 Texas Professional Communicators contest and advanced to win first place at the 1999 National Federation of Press Women contest.

<u>Civilian</u> Carry of Firearms in <u>Texas</u>	Nonlicensed Civilian		Licensed Civilian	
	Long gun	Handgun	Long gun	Handgun
Routine carry in public places not licensed to sell alcohol, and which are not posted with a <u>30.06</u> sign.	Legal	Misd.	Legal	Legal
A persons' own <u>premises</u> or premises under their control, including in their motor vehicle. (Handguns in a vehicle must be concealed.)	Legal	Legal	Legal	Legal
<u>Employees</u> at their <u>workplace</u> .	Policy	Policy	Policy	Policy
The <u>premises</u> of <u>businesses</u> licensed to sell alcohol.	Felony	Felony	Legal	Legal
A <u>business</u> receiving 51% of its income from serving alcohol.	Felony	Felony	Felony	Felony
<u>School premises</u> , without <u>permission</u> .	Felony	Felony	Felony	Felony
Professional <u>sporting event</u> .	Legal	Misd.	Legal	Misd.
<u>Premises</u> of a paramutual race track: horse or dog racing.	Felony	Felony	Felony	Felony
Voting place, including during early voting. Don't carry past the "No Campaigning" signs.	Felony	Felony	Felony	Felony
The <u>premises</u> of a courtroom, without <u>permission</u> .	Felony	Felony	Felony	Felony
<u>Secure</u> area of an <u>airport</u> , inside the metal detectors.	Felony	Felony	Felony	Felony
Correctional facility.	Felony	Felony	Felony	Felony
On another person's property, after effective <u>30.06</u> notification.	Legal	Misd.	Legal	Misd.
On another person's property where there is a <u>PC 30.05</u> 'no trespass with firearms' notification.	Misd.	Misd.	Misd.	Legal
In a hospital or nursing home, amusement park, established place of religious worship, or meeting of a governmental entity <u>where 30.06 is not posted</u> .	Legal	Misd.	Legal	Legal
On <u>Federal Property</u> .	This chart reflects <u>Texas</u> law; the Federal government sets its own rules on Federal property. Obey all signs and call for information before visiting.			

211. This table is presented for general reference and the purpose of interest, *not* legal precision. It is reproduced directly from <http://www.txchia.org/txcarry.htm>. See *Where Can You Take a Gun?*, *supra* note 76.

Persons who are not included in this chart:

- Under Texas law, law enforcement officers and CHL-licensed judges can carry firearms almost anywhere, whether they are on or off duty.
- On duty security officers must operate by security officer, not CHL, rules. An on-duty officer must be properly certified to carry a handgun or club. Except as provided by their written policies, they may not carry a handgun where a civilian is prohibited from carrying a long gun.
- Under Texas law parole and probation officers, in the actual discharge of official duties and as provided by their written policies, may carry a weapon almost anywhere in the state.
- A guard at a penal institution, in the actual discharge of official duties, may carry a handgun or club. Except as provided by their written policies, they may not carry a handgun where a civilian is prohibited from carrying a long gun.
- Military personnel in the actual discharge of official duties may carry a handgun or club. Except as provided by their written policies, they may not carry a handgun where a civilian is prohibited from carrying a long gun.

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Page updated 04/26/2009