

Open Carry Law in the State of Texas



Open Carry

Texas House Bill 910 signed by Governor Abbott in 2015 changed the already existing Texas Hand Gun license.





Wording in the Bill

The bill removed the wording “Concealed” from the statute and made Open Carry legal. No other changes were made to the old Statute. A person must have a Texas Handgun License in order to legally open or conceal carry.

Texas Govt. Code 411.172 lays out the eligibility requirements for a Texas Gun License.

Eligibility



Sec. 411.172. ELIGIBILITY. (a) A person is eligible for a license to carry a handgun if the person:

- (1) is a legal resident of this state for the six-month period preceding the date of application under this subchapter or is otherwise eligible for a license under Section 411.173(a);
- (2) is at least 21 years of age;
- (3) has not been convicted of a felony;
- (4) is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under **Section 42.01**, Penal Code, or equivalent offense, or of a felony under an information or indictment;
- (5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor or equivalent offense;
- (6) is not a chemically dependent person;
- (7) is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun;
- (8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense or of an offense under Section 42.01, Penal Code, or equivalent offense;
- (9) is fully qualified under applicable federal and state law to purchase a handgun;
- (10) has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;
- (11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision of the state, or any agency or subdivision of the state;
- (12) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;
- (13) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and
- (14) has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 411.174.

Eligibility



(b) For the purposes of this section, an offense under the laws of this state, another state, or the United States is:

(1) except as provided by Subsection (b-1), a felony if the offense, at the time the offense is committed:

(A) is designated by a law of this state as a felony;

(B) contains all the elements of an offense designated by a law of this state as a felony; or

(C) is punishable by confinement for one year or more in a penitentiary; and

(2) a Class A misdemeanor if the offense is not a felony and confinement in a jail other than a state jail felony facility is affixed as a possible punishment.

(b-1) An offense is not considered a felony for purposes of Subsection (b) if, at the time of a person's application for a license to carry a handgun, the offense:

(1) is not designated by a law of this state as a felony; and

(2) does not contain all the elements of any offense designated by a law of this state as a felony.

Eligibility



- (c) An individual who has been convicted two times within the 10-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a license under this subchapter. This subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to show that the person is a chemically dependent person.
- (d) For purposes of Subsection (a)(7), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person:
- (1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;
 - (2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:
 - (A) is in remission but is reasonably likely to redevelop at a future time; or
 - (B) requires continuous medical treatment to avoid redevelopment;
 - (3) has been diagnosed by a licensed physician, determined by a review board or similar authority, or declared by a court to be incompetent to manage the person's own affairs; or
 - (4) has entered in a criminal proceeding a plea of not guilty by reason of insanity.
- (e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):
- (1) involuntary psychiatric hospitalization;
 - (2) psychiatric hospitalization;
 - (3) inpatient or residential substance abuse treatment in the preceding five-year period;
 - (4) diagnosis in the preceding five-year period by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or
 - (5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:
 - (A) schizophrenia or delusional disorder;
 - (B) bipolar disorder;
 - (C) chronic dementia, whether caused by illness, brain defect, or brain injury;
 - (D) dissociative identity disorder;
 - (E) intermittent explosive disorder; or
 - (F) antisocial personality disorder.
- (f) Notwithstanding Subsection (d), a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subsection (d) or listed in Subsection (e) is not because of that disorder or condition incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides the department with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

Eligibility



(g) Notwithstanding Subsection (a)(2), a person who is at least 18 years of age but not yet 21 years of age is eligible for a license to carry a handgun if the person:

- (1) is a member or veteran of the United States armed forces, including a member or veteran of the reserves or national guard;**
- (2) was discharged under honorable conditions, if discharged from the United States armed forces, reserves, or national guard; and**
- (3) meets the other eligibility requirements of Subsection (a) except for the minimum age required by federal law to purchase a handgun.**

(h) The issuance of a license to carry a handgun to a person eligible under Subsection (g) does not affect the person's ability to purchase a handgun or ammunition under federal law.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 10.01(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 9.03(a), 9.04(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 255, Sec. 1, eff. Sept. 1, 2003.

Penal Code Chapter 46.02



Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not:

- (1) on the person's own premises or premises under the person's control; or
- (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

Text of subsection effective until January 01, 2016

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

- (1) the handgun is in plain view; or
- (2) the person is:
 - (A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating;
 - (B) prohibited by law from possessing a firearm; or
 - (C) a member of a criminal street gang, as defined by Section [71.01](#).

Text of subsection effective on January 01, 2016

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

- (1) the handgun is in plain view, unless the person is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a shoulder or belt holster; or
- (2) the person is:
 - (A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating;
 - (B) prohibited by law from possessing a firearm; or
 - (C) a member of a criminal street gang, as defined by Section [71.01](#).

(a-2) For purposes of this section, "premises" includes real property and a recreational vehicle that is being used as living quarters, regardless of whether that use is temporary or permanent. In this subsection, "recreational vehicle" means a motor vehicle primarily designed as temporary living quarters or a vehicle that contains temporary living quarters and is designed to be towed by a motor vehicle. The term includes a travel trailer, camping trailer, truck camper, motor home, and horse trailer with living quarters.

(a-3) For purposes of this section, "watercraft" means any boat, motorboat, vessel, or personal watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

Penal Code Chapter 46.03



Sec. 46.03. PLACES WEAPONS PROHIBITED.

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 pursuant to written regulations or written authorization of the institution;

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

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

(4) on the **premises of a racetrack**;

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

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

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

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



Penal Code Chapter 46.035



Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER.

Text of subsection effective until January 01, 2016

(a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place.

Text of subsection effective on January 01, 2016

(a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.

Penal Code Chapter 30.06



Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN. (a) A license holder commits an offense if the license holder:

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

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

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

(c) In this section:

(1) "Entry" has the meaning assigned by Section [30.05\(b\)](#).

(2) "License holder" has the meaning assigned by Section [46.035\(f\)](#).

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section [30.06](#), Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

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

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section [46.03](#) or [46.035](#).

Penal Code Chapter 30.07



Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (a) A license holder commits an offense if the license holder:

- (1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and
 - (2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.
- (b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.
- (c) In this section:
- (1) "Entry" has the meaning assigned by Section [30.05\(b\)](#).
 - (2) "License holder" has the meaning assigned by Section [46.035\(f\)](#).
 - (3) "Written communication" means:
 - (A) a card or other document on which is written language identical to the following: "Pursuant to Section [30.07](#), Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or
 - (B) a sign posted on the property that:
 - (i) includes the language described by Paragraph (A) in both English and Spanish;
 - (ii) appears in contrasting colors with block letters at least one inch in height; and
 - (iii) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.
- (d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.
- (e) It is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section [46.03](#) or [46.035](#).
- (f) It is not a defense to prosecution under this section that the handgun was carried in a shoulder or belt holster.

Private Property



Private property owner's can decide if they want to allow Open or Concealed carry, however if a property owner wishes to exclude either open or concealed carry, the proper signage must be posted at every entrance to the property.

2 Statutes allow Private Property Owners to exclude either Open Carry or Concealed Carry.

They are Texas Penal Code Statutes:

**30.06 Criminal Trespass by License Holder with a Concealed Handgun
And**

30.07 Trespass by license Holder with an Openly Carried Handgun



Oral Communication is sufficient

If a private property owner wishes to deny either open or concealed carry, oral communication of this is sufficient notice. A property owner does not have to post signs. A person with “apparent authority” and not the owner can give the oral notice.

This is a cultural change for Texas



The first Texas Concealed Carry law went into effect January 1, 1996. We have gotten used to the Concealed Carry laws. We will have to get used to the Open Carry laws as well.

Texas Government Code Section 411.209 Provides penalty for a Government to Exclude a Handgun License holder to any area not noted in Penal Code Section 46.03. This includes parks, recreation buildings, pools, or any public area of a government building.