

# Texas Open Carry 2016



## OPEN CARRY AND CAMPUS CARRY IN TEXAS



**Pflugerville ISD Police Department**

Revised: December 10, 2015

# Objectives

- **Understanding House Bill 910 – Open Carry Texas**
- **Understanding Senate Bill 11 – Campus Carry Texas**
- **Recognition of Tactical and Disarming considerations relating to Open Carry contacts**
- **Maintaining officer safety during open carry public contacts**
- **Awareness of other changes in the law established in the 84<sup>th</sup> Legislative session**

**House Bill 910  
&  
Senate Bill 11**

# House Bill 910 & Senate Bill 11

In its most recent session, the Texas legislature passed two bills related to handgun possession in Texas.

- **House Bill No. 910** legalizes open carry of handguns in Texas in all public locations with few exceptions. **Effective: January 1, 2016.**
- **Senate Bill No. 11** allows handgun license holders in some circumstances to carry a concealed handgun on college campuses in Texas. **Effective: August 1, 2016.**
  - ❖ Does not apply to public junior or community colleges until **August 1, 2017**

## House Bill 910 – Continued

- Authorizes individuals to obtain a license to openly carry a handgun in the same places where licenses to carry a concealed handgun were permitted prior to January 1, 2016 with some exceptions.
- Unconcealed handguns, loaded or unloaded, must be carried in a shoulder or belt holster (no specifications).
- Individuals who hold a valid CHL may continue to carry openly or concealed with valid existing license.
- A separate license will not be required to open carry. No additional fee will be required.
- The term “CHL” is changed to the term “HL” in statutes.

## House Bill 910 – Continued

- Permits license holders to carry inside city, county, and state government offices with exceptions to court offices or public meeting
- Requires Law Enforcement officers to adhere to the rights of license holders to openly carry in public areas within a building such as police department with exception to nonpublic secure areas
- Requires license holder to display handgun license upon demand by Law Enforcement (no penalty)
- Requires specific signage to prohibit open and/or concealed carry in accordance with PC 30.06 and 30.07



- House Bill 910 eliminates the distinction between concealed and open carry and creates a license to carry a handgun **openly** in a belt or shoulder holster or in a **concealed** manner.
- The statutes modify the word “**concealed**” and leave only the word “**handgun**”.
- Those who have an existing concealed handgun license or those who get a license to carry a handgun in Texas will be able to **openly carry** or **carry concealed**.
- A person with no handgun license may still carry a handgun in a car or watercraft as long as it is concealed.
- There is still no licensing requirement in order to openly carry a long gun.

## House Bill 910 - Continued

- In regards to where a person may openly carry will remain much the same as the former concealed carry law.
- Businesses will have the ability to post required signage prohibiting either open carry or concealed carry which will require identical language from the Texas Penal Code section 30.06(3)(A), and section 30.07(3)(A).

# “A Manner Calculated to Alarm”

- The City Attorney has deemed that “**a manner calculated to alarm**”, as an example, would be if a person had a finger on the trigger of the weapon, or
- The weapon is carried in a “ready” position, or
- The weapon is pointed at someone (PC 22.05 “Deadly Conduct”)
- The mere carrying of a weapon, whether it is slung or otherwise does not constitute “**a manner calculated to alarm**”
- Just because a citizen is “**alarmed**” by the sight of a person with a gun, does not necessarily mean that an offense has occurred.

**Penal Code 30.06  
&  
Penal Code 30.07**

# Trespass By License Holder With A Concealed Handgun

## Penal Code 30.06

A license holder commits an offense if the license holder:

- Carries a concealed handgun on the property of another without effective consent; and
- Received notice that entry on the property by a license holder with a concealed handgun was forbidden
- **Class C Misdemeanor** (Class A if shown at trial the person was given oral communication to depart and failed to do so)

# Trespass By License Holder With An Openly Carried Handgun

## Penal Code 30.07 – New Statute

A license holder commits an offense if the license holder:

- Openly carries a handgun on the property of another without effective consent; **and**
- Received notice that entry on the property by a license holder openly carrying a handgun was forbidden.
- **Class C Misdemeanor** (Class A if shown at trial the person was given oral communication to depart and failed to do so)

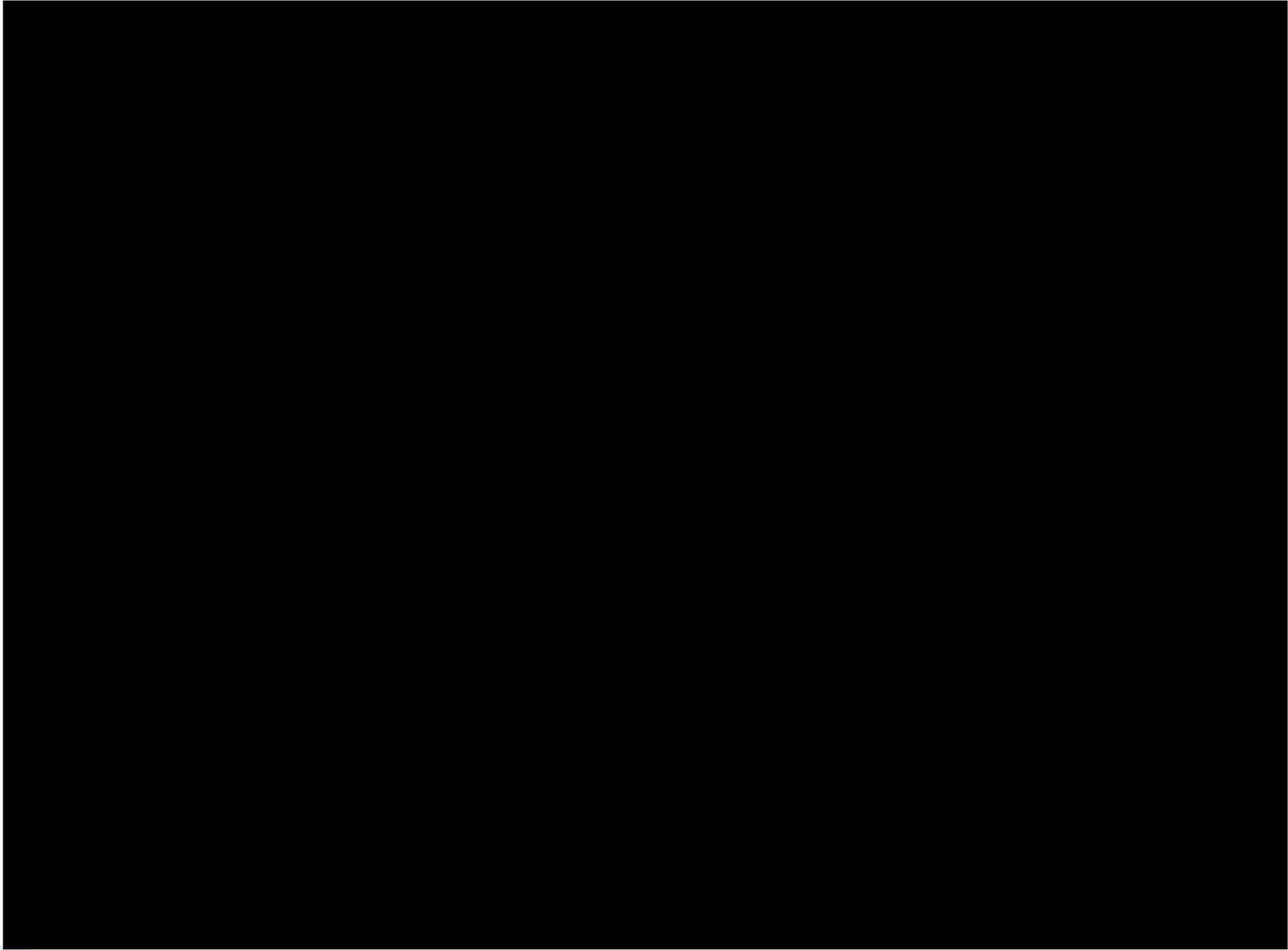
# Handgun Licensing

## General information

### House Bill 910 – Continued

- Individuals currently licensed will not be required to attend additional training. Training curriculum for new applicants will be updated to reflect the new training requirements related to the use of **restraint holsters** and methods to ensure the secure carrying of openly carried handguns.
- The new curriculum will be required for all classes beginning **January 1, 2016**.
- The eligibility criteria to obtain a license to carry do not change.

# Signage



# Signage



"PURSUANT TO SECTION 30.06, PENAL CODE (TRESPASS BY HOLDER OF LICENSE TO CARRY A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (CONCEALED HANDGUN LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN"

"DE ACUERDO CON LA SECCIÓN 30.06 DEL CÓDIGO PENAL (INGRESO SIN AUTORIZACIÓN DE UN PORTADOR DE UNA LICENCIA PARA LLEVAR UN ARMA CORTA OCULTA), UNA PERSONA CON LICENCIA SEGÚN EL SUBCAPÍTULO H, CAPÍTULO 411 DEL CÓDIGO DEL GOBIERNO (LEY PARA PORTAR ARMAS CORTAS OCULTAS), NO PUEDE INGRESAR A ESTA PROPIEDAD CON UN ARMA CORTA OCULTA"

- Private businesses may post signs to indicate entry on the property with a handgun by a license holder is forbidden
  - **Penal Code Section 30.06** provides the language to be included on signs to indicate license holders are forbidden to carry a concealed handgun.
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- **New Penal Code section 30.07** provides the language to be included on signs to indicate license holders are forbidden to open carry.
  - Posting of both signs is an indication by the business that license holders are forbidden to carry concealed or openly.

# **Unlawful Carrying of Weapon Relating to HB 910**

## 46.02 Unlawful Carrying of Weapon

**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.
- ▶ (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

**Note: Section (a-1)(1) does not apply to a license holder.**

## 46.02 Unlawful Carrying of Weapon

- (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

## 46.02 Unlawful Carrying of Weapon

- ▶ **HB 910** – the open carry bill amends (a-1)(1) to permit the carrying of a handgun in plain view in a motor vehicle/watercraft if the person has a handgun license and is carrying the handgun in a shoulder or belt holster.
- ▶ Outside of such a holster, the **plain view offense** still applies in those conveyances (Class A misdemeanor).
- ▶ A person can still openly carry a handgun without using a shoulder or belt holster on his own premises or inside of or directly enroute to his own vehicle or watercraft.

**Places Weapons Prohibited  
Penal Code 46.03  
Relating to  
HB 554, HB 910, SB 11**

# Important Definitions

## Definition:

- ❖ **Premises – Penal Code 46.035(f)(3)**  
"Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.
- ❖ **Educational Institution – Education Code 1.001**  
APPLICABILITY. (a) This code applies to all educational institutions **supported in whole or in part by state tax funds** unless specifically excluded by this code.

## 46.03 Places Weapons Prohibited

**Sec. 46.03. PLACES WEAPONS PROHIBITED.** (a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a **firearm**, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

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

## 46.03 Places Weapons Prohibited

- ▶ (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; **(AG Opinion filed July 2015, response expected January 2016)**
- ▶ (4) on the premises of a **racetrack**;
- ▶ (5) in or into a **secured area of an airport**;

## 46.03 Places Weapons Prohibited

- **HB 554** – adds subsections (e-1) and (e-2) to address the problem of someone unwittingly carrying a handgun through a secure checkpoint at an airport.
- (e-1) New defense for a license holder with a concealed (but not openly carried) handgun who exits the checkpoint area immediately upon notification that the actor possessed a handgun
- (e-2) prohibits a peace officer from arresting the actor unless the actor fails to leave the checkpoint area after being given the opportunity to do so.

## 46.03 Places Weapons Prohibited – Continued

**SB 11** (effective August 1, 2016) – the “**campus carry**” bill, amends subsection (a-1) to permit a person with a HL to have a **concealed handgun**:

- ❖ on the premises (“building or portion of a building”) of a college or university
- ❖ on any grounds or building on which a college or university sponsored activity is being conducted
- ❖ in a passenger transportation vehicle of that college or university

This privilege is limited to concealed handguns; **open carry is still prohibited on college campuses**, even if the person is licensed to do so elsewhere as of January 1, 2016.

**Unlawful Carrying of Handgun  
By License Holder  
Penal Code 46.035**

# 46.035 Unlawful Carrying of Handgun By License Holder

- **HB 910 – Effective : January 1, 2016**  
subsection (a) intentional display of handgun in public in plain view of another is amended to add an **exception if the visible handgun is carried in a shoulder or belt holster.**
- **New subsection (a-1) re-creates the offense in subsection (a) for a license holder who intentionally displays a handgun in plain view of another while on a college or university campus where **open carry is still prohibited.** Class A misdemeanor**
- **New subsection (a-2) creates an offense for a license holder who carries a handgun anywhere on the campus of a private or independent college or university that has prohibited concealed carry under Govt. Code 411.2031(e) “Carrying of Handguns By License Holders on Certain Campuses” if the license holder is given the appropriate notice under 30.06 “Trespass By License Holder With a Concealed Handgun**

## 46.035 Unlawful Carrying of Handgun By License Holder – Continued

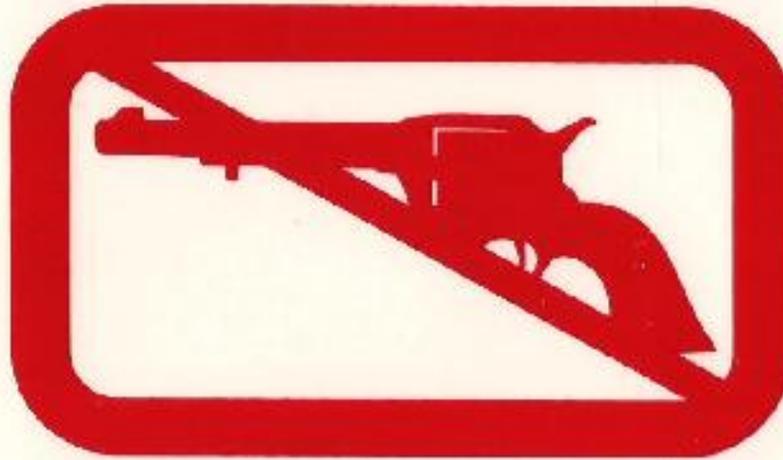
### Prohibited Places – Effective: January 1, 2016

- (b)(1) on the premises of a business where 51% or more of income is derived from alcoholic beverage sales (bars) – Felony 3<sup>rd</sup> degree
  - (b)(2) on the **premises** where a high school, collegiate, or professional sporting event or interscholastic event is taking place – Class A
  - (b)(3) on the premises of a correctional facility – Felony 3<sup>rd</sup> degree
  - (b)(4) on the premises of a hospital – Class A
  - (b)(5) on the premises of an amusement park – Class A
  - (b)(6) on the premises of a church, synagogue, or other place of religious worship – Class A
- ❖ **Is an offense regardless of whether the handgun is concealed or carried openly in a shoulder or belt holster.**

## 46.035 Unlawful Carrying of Handgun By License Holder – Continued

- **The second change to subsection (c) by HB 910 effective January 1, 2016 prohibits the carry of a handgun regardless of whether the handgun is **concealed** or **carried in a shoulder or belt holster**, in the room or rooms where a meeting of a governmental entity is held, and if the meeting is an open meeting subject to the Open Meetings Act (Govt. Code Chapter 551)**
- **Subsection (d) “Carrying While Intoxicated” is amended by HB 910 effective January 1, 2016 to apply to open or concealed carry.**
- **Subsection (i) is added effective January 1, 2016 creates a new defense to prosecution under subsection (b)(2) **high school, collegiate, or professional sporting events** or interscholastic events if the actor was not given proper notice under 30.06 “Trespass By License Holder With a Concealed Handgun”.**

# PFISD Adopted Sign



**NO FIREARMS**

**NO CONCEALED WEAPONS**

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**NO ARMAS DE FUEGOS**

**NO ARMAS OCULTAS**

# Pflugerville City Ordinance

## § 130.07 CARRYING OF FIREARMS

### (B) Carrying Firearms.

(1) Except as provided in this section, a person carrying a firearm, whether it is **concealed or unconcealed**, may not enter or remain on city premises. The city staff is directed to:

(a) Provide notice at all city premises that **entry is forbidden** to anyone carrying a firearm not permitted by this section; and

(b) Provide notice to depart to anyone found carrying a firearm not permitted by this section on city premises.

(2) A sign posted as notice under subsection (1)(a) of this division will include a statement, in English and Spanish, reading substantially as follows:

Entry onto these premises while carrying a firearm, whether it is concealed or unconcealed, is prohibited. Entry onto these premises while carrying a firearm may subject you to prosecution for Criminal Trespass under Section 30.05 of the Texas Penal Code.

- After January 1, 2016, **will this City Ordinance be in violation** of **Govt. Code 411.209 “Wrongful Exclusion of Concealed Handgun Holder”** and be subject to a civil penalty?

# Senate Bill 273

**Govt. Code 411.209 “Wrongful Exclusion of Concealed Handgun Holder”**  
Relating to certain offenses involving the carrying of handguns on property **owned or leased by a governmental entity**; providing a **civil penalty**.

- Prohibits a state agency or political subdivision from posting signs stating where handgun license holders are prohibited from carrying a handgun on the premises, **unless specifically prohibited by Texas Penal Code 46.03 and 46.035.**
- Provides a civil penalty to a state agency or political subdivision if falsely notifying a license holder that entering or remaining on certain governmental premises, leased or owned, is illegal.
- Limits the scope of the governmental meeting prohibition by restricting it to the specific **room or rooms** in which the meeting is being held, and to public meetings for which notice is required under the **Open Meeting Act**.

## Senate Bill 273 – Continued

- Provides an opportunity for the agency or subdivision to cure the violation within three business days of receipt of written notice from a citizen.
- Provides the Attorney General must give notice to the agency or subdivision and provide an opportunity to cure the violation within fifteen days before a civil penalty is imposed.

# **Rights of Employers & Employees**

# Business: Rights of Employers

## Govt. Code 411.203

- ▶ A Public or Private employer may prohibit the carrying of a handgun by a license holder from carrying the firearm on the premises of the business.
- ▶ Premise has the meaning defined in Section 46.035(f)(3), Penal Code.

# Carrying on the Premise of an Employers Business

- ▶ **Labor Code Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a firearm from carrying the firearm or ammunition on the premises of the employers business.**

# Rights of Employees

## Restriction on Preventing Employee Access to or Storage of Firearm or Ammunition

- ▶ **Labor Code 52.061** – a public or private employer may not prohibit an employee who holds a license to carry a handgun from transporting or storing a firearm or ammunition in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees.
- ▶ Except.....

# Exceptions: Labor Code 52.062

A person licensed to carry a handgun is **prohibited** from possessing a firearm or ammunition on:

- ▶ Any property prohibited by state or federal law or apply to a vehicle owned or leased by a public or private employer and used by an employee in the course of employment
- ▶ A School District (can prohibit employees from storing firearms or ammunition in a vehicle in their parking lots)
- ▶ An open enrollment Charter School
- ▶ Private School

# Campus Carry





# Campus Carry

## Senate Bill 11 – Effective : August 1, 2016

- Authorizes a license holder to carry a **concealed handgun** on or about the license holder's person while the license holder is **on the campus** of an **institution of higher education** or **private or independent institution** of higher education in this state.
- **Open carrying of handguns is still prohibited at these locations.**
- Authorizes an institution of higher education or private or independent institution of higher education in this state to establish rules, regulation, or other provisions concerning the **storage of handguns in dormitories** or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.



## Campus Carry – Continued

- Requires the president or other chief executive officer of an institution of higher education in this state to establish reasonable rules, regulations, or other provisions regarding the **carrying of concealed handguns** by license holders **on the campus** or on **specific premises** located on the campus.
- Authorizes posting of a sign under **Penal Code Section 30.06** with respect to any portion of a premises on which license holders may not carry.
- The effective date of this law for a public junior college is **August 1, 2017**.



## Campus Carry – Exceptions

Open carry is not permitted by a license holder regardless of whether the handgun is holstered:

- On the premises of an institution of higher education or private or independent institution of higher education
- On any public or private driveway, street, sidewalk or walkway, parking lot, parking garage or other parking area of an institution of higher education or private or independent institution of higher education.
- By an individual who is acting as a personal protection officer under Chapter 1702, Occupations Code and is **not** wearing a uniform.



# Campus Carry

## Govt. Code 411.2032(b)

Institutions of higher education or private or independent institutions of higher learning may not adopt or enforce any rule, regulation, or take any action, including posting notice under 30.06 or 30.07 that prohibits or places restrictions on the **storage or transportation** of a **firearm or ammunition** in a locked, privately owned or leased motor vehicle by a person, including a student enrolled at that institution who holds a license to carry a handgun and lawfully possesses the firearm or ammunition:

- On a street or driveway located on the campus of the institution; or
- In a parking lot, parking garage, or other parking area located on the campus of the institution

# **Display of License & Disarming License Holders**

# Display of License & Disarming



- There is no Constitutional Carry in the State of Texas
- A handgun license must be in a persons possession to open or conceal carry in Texas with a HL.

# Display of License & Disarming

## Texas Government Code

### Section 411.205. Requirement to Display License

- If a license holder is carrying a handgun on or about the license holder's person when a magistrate or peace officer demands that the license holder display identification, *the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license.*
- The statute does not provide a penalty for failing to display a handgun license. In 2009 section 411.205 was amended repealing the statutory penalty and the suspension of the license to carry.

# Display of License & Disarming

## Texas Government Code Section 411.205. Requirement to Display License – Amended in 2009

Sec. 411.205. REQUIREMENT TO DISPLAY [~~DISPLAYING~~]  
LICENSE [~~+PENALTY~~]. [~~(a)~~] If a license holder is carrying a handgun on or about the license holder's person when a magistrate or a peace officer demands that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license. [~~A person who fails or refuses to display the license and identification as required by this subsection is subject to suspension of the person's license as provided by Section 411.187.~~  
[~~(b) - - A person commits an offense if the person fails or refuses to display the license and identification as required by Subsection (a) after previously having had the person's license suspended for a violation of that subsection. An offense under this subsection is a Class B misdemeanor.~~]

- Transportation Code 521.025 “License to be Carried and Displayed on Demand” Class C misdemeanor pertains to drivers license only and does not include handgun licenses.

# Know The Law

## Important to Remember During a Contact with an Activist or Uncooperative License Holder:

- Penal Code 42.01(8) “Disorderly Conduct” governs disorderly conduct. A person commits a Class B misdemeanor offense if he or she intentionally or knowingly “displays a firearm or other deadly weapon in a public place in a manner calculated to alarm.”
- Penal Code 22.05 “Deadly Conduct”
  - (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.
  - (c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

# Know The Law

**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...**

**Knowledge of the laws is imperative regarding your authority to detain, investigate, and or effect an arrest.**

# Know The Law

## Ask Yourself These Questions:

- Do you have a legal right to be where you are?
- Do you have the right to conduct a temporary investigative detention to determine if a person violated a law based on a call for service or a personal observation of a suspected violation?
- Has the person given you probable cause to believe that they may not be a license holder by failing to display a Handgun License on demand as required by law? Government Code 411.205
- Do you have a right to investigate whether the person displayed a firearm in a manner calculated to alarm or committed the offense of deadly conduct or may be in violation of the UCW statute?

## Previous Open Carry Forum Discussions

- **Penal Code 38.15 “Interference with Public Duties”**(a) A person commits an offense if the person with criminal negligence interrupts, disrupts, **impedes**, or otherwise **interferes** with:  
(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;
  - ❖ **Prosecution may be problematic with this interpretation regarding failure to Display HL (Travis County Attorney – Assessment)**

# Travis County Attorney Assessment

- **Probable Cause exists** to believe that a person may be in violation of the UCW statute if the person fails to display a handgun license on demand by a magistrate or a peace officer in accordance with G.C. 411.205 “Requirement to Display”
- The peace officer must have a reason for the temporary detention, such as a call for service to investigate a reported incident or any other reason that warrants a temporary investigative detention
- If it cannot be determined that the person is a License Holder then the person may be arrested for UCW.

# Know Your Authority

## Discussion of Reasonable Suspicion & Frisk

- The new open carry law creates a license to carry a handgun openly in a belt or shoulder holster or in a concealed manner.
- If officers have reasonable suspicion for a stop and then has a, *“reasonable fear for his own or other’s safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search/frisk of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him”* (Terry v. Ohio, U.S. Supreme Court, 1968)

# Know Your Authority

## Definition of Reasonable Belief

Under the Texas Government Code 411.207 “Authority of Peace Officer to Disarm”, it uses the term *“reasonably believes”*.

- Texas Penal Code 1.07 section 42 defines “Reasonable Belief” as *“a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.”*

# Authority to Disarm

## Texas Government Code 411.207. Authority to Disarm

(a) A peace officer who is acting in the lawful discharge of the officer's official duties may disarm a license holder at any time the officer *reasonably believes* it is necessary for the protection of the license holder, officer, or another individual. The peace officer shall return the handgun to the license holder before discharging the license holder from the scene if the officer determines that the license holder is not a threat to the officer, license holder, or another individual and if the license holder has not violated any provision of this subchapter or committed any other violation that results in the arrest of the license holder.

# Authority to Disarm

## Texas Government Code 411.207. Authority to Disarm

(b) A peace officer who is acting in the lawful discharge of the officer's official duties may temporarily disarm a license holder when a license holder enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the license holder's handgun. The peace officer shall secure the handgun in the locker and shall return the handgun to the license holder immediately after the license holder leaves the nonpublic, secure portion of the law enforcement facility.

# Authority to Disarm

## Texas Government Code 411.207. Authority to Disarm

(c) A law enforcement facility shall prominently display at each entrance to a **nonpublic, secure portion of the facility** a sign that gives notice in both English and Spanish that, under this section, a peace officer may temporarily disarm a license holder when the license holder enters the nonpublic, secure portion of the facility. The sign must appear in contrasting colors with block letters at least one inch in height. The sign shall be displayed in a clearly visible and conspicuous manner.

# Authority to Disarm

## Texas Government Code 411.207. Authority to Disarm

(d) In this section:

(1) **“Law enforcement facility”** means a building or a portion of a building used exclusively by a law enforcement agency that employs peace officers as described by Articles 2.12(1) and (3), Code of Criminal Procedure, and support personnel to conduct the official business of the agency. The term does not include:

(A) any portion of a building not actively used exclusively to conduct the official business of the agency; or

(B) any public or private driveway, street, sidewalk, walkway, parking lot, parking garage, or other parking area.

(2) **“Nonpublic, secure portion of a law enforcement facility”** means that portion of the law enforcement facility to which the general public is denied access without express permission and to which access is granted solely to conduct the official business of the law enforcement agency.

# Display of Identification on School Property

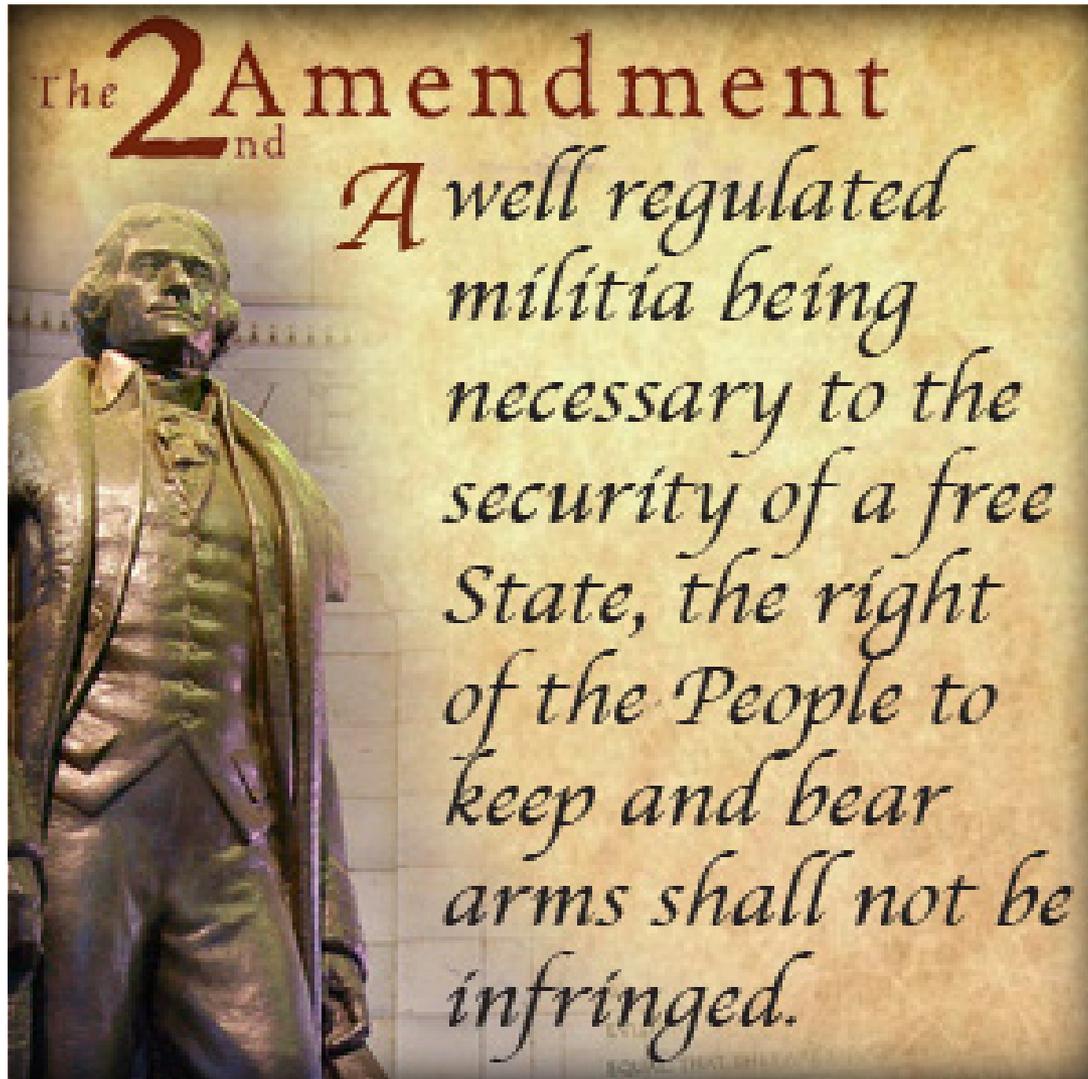
## TEDC 37.105 Unauthorized Persons: Refusal of Entry, Ejection, Identification

- The board of trustees of a school district or its authorized representative may refuse to allow a person without legitimate business to enter on property under the board's control and may eject any undesirable person from the property on the person's refusal to leave peaceably on request. Identification may be required of any person on the property.
  - ❖ There is no probable cause or reasonable suspicion requirement attached to this statute. Any person may be asked to identify themselves without cause.

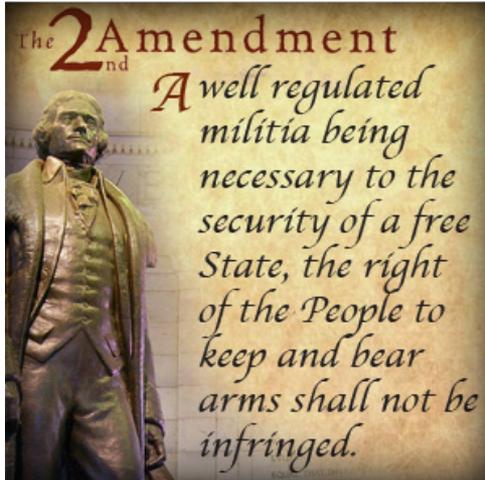
# **Tactics & Response**

**Officer Safety During Citizen Contacts**

# Know the Law & Your Authority



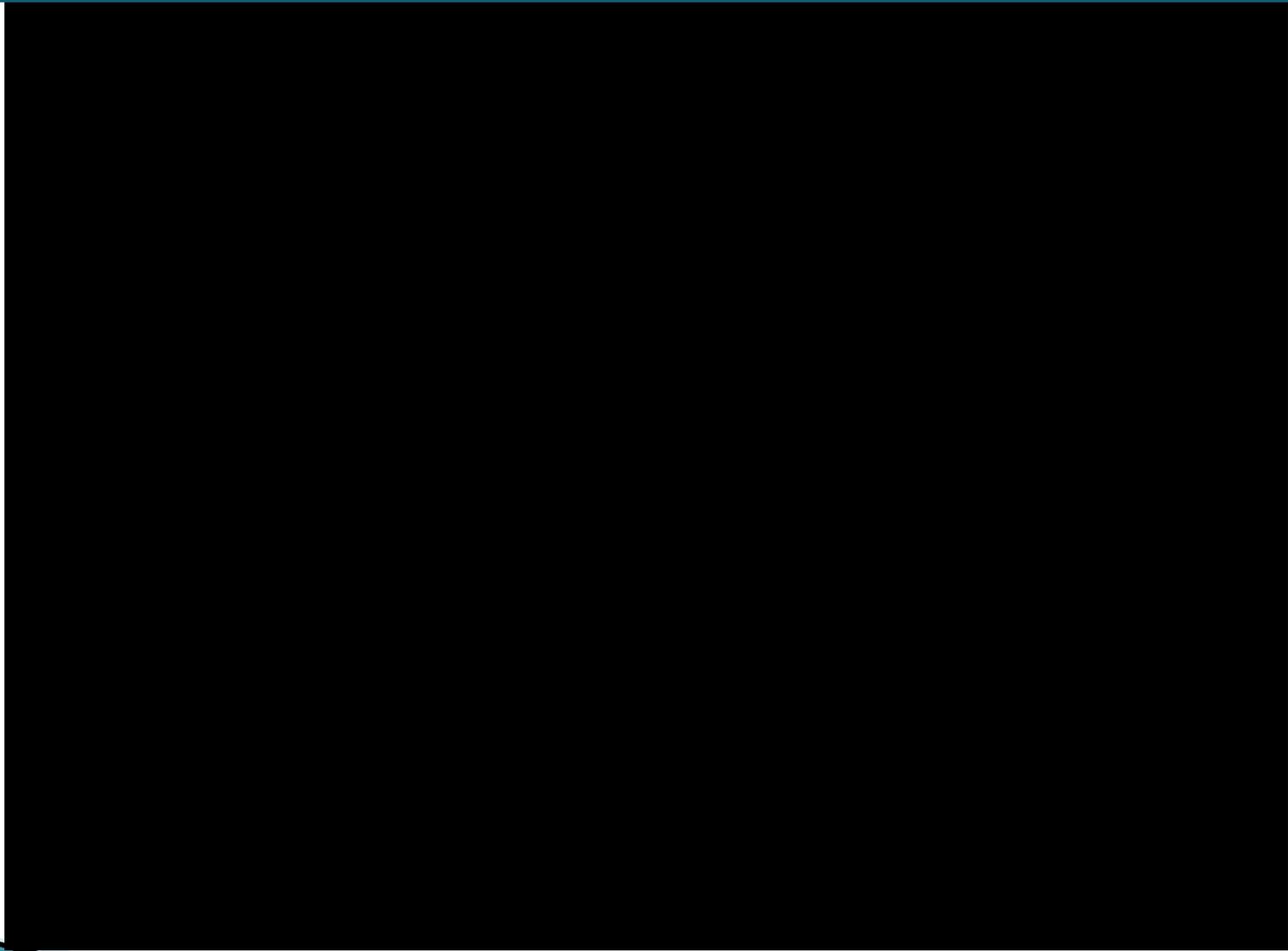
# Know the Law & Your Authority



## Penal Code 46.01 Definitions

- (3) “**Firearm**” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.
- 
- **Firearm does not include** a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:
    - ❖ (A) an antique or curio firearm manufactured before 1899 or,
    - ❖ (B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

# Texas State Capitol Incident

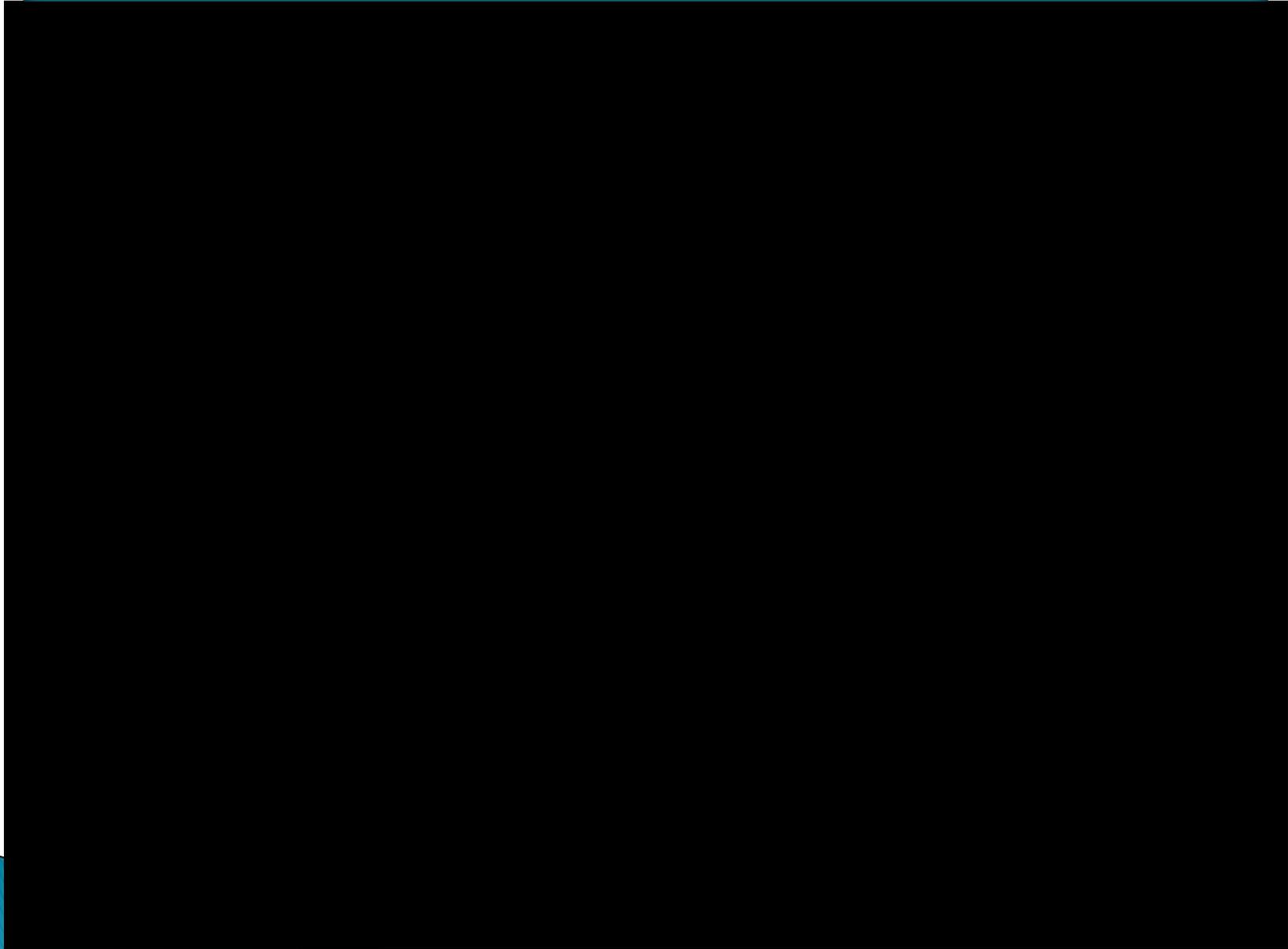


# Tactics & Response

If the officer needs to disarm a person who is openly carrying based on the fact that the officer “reasonably believes it is necessary for the protection of the license holder, officer, or other individual”, then there are several tactical considerations such as:

- Reason for the stop
- Backup present
- Demeanor (hostile/agitated)
- Type of holster (shoulder or belt)
- Whether or not to handcuff the subject
- Lethal Cover (hostile subject who is open carrying)
- Verbal Commands
- Environment
- Return of the weapon after disarming if no arrest is warranted

# Austin Police Encounter



# Response Considerations for LE

- Individual officers knowledge of HB 910 and statutes is essential
- Pertinent information received by dispatchers and relayed to officers is of the utmost importance
- Officers must re-think their mindset based on previous training
- Thorough understanding of reasonable suspicion and probable cause
- Tactical considerations and approach to armed citizens
- Professional and controlled response thru communication
- Evaluate and formulate the intent of the contact
- Determine if a violation of the law has occurred and act
- Documentation of open contacts is recommended (policy specific)

# Keep Officer Safety 1<sup>st</sup> in Mind

- Calm and balanced response
- Obtain all pertinent information possible
- Remain aware of your surroundings
- Maintain a safe distance before approach
- Evaluate visual threats
- Relay information to dispatch and other law enforcement units
- Wait for a secondary back-up unit, if possible
- Initiate a tactical approach
- Disarm if officer safety is a concern and have a plan of action
- Know your authority and why you are there
- Understand HB 910 and associated statutes before there is a need
- Respect the law and its requirements
- Weapon awareness
- Maintain fluid communication with partner and dispatch
- Video and audio record with no exceptions (policy specific)

# Change in the LE Officer Mindset

- Modify training of personnel from established traditional response to the new open carry response
- Develop an enhanced awareness of the situation versus over-reaction
- Knowledge is power, know the law as it relates to incident being encountered
- Ask the right questions
- Demeanor of the officer could determine the outcome
- Informing the public is our new responsibility
- Maintain professionalism even when tested
- Conclude and document the encounter (policy specific)

# Training and Procedures

- Modify the typical response to “Man with a Gun” calls
- Enhance and update tactical safety and apply new training methodology
- Ensure not only agency consistency, but regional as well
- Develop a fluid training segment and facilitate delivery to new and current officers
- Provide public information services to various citizenry and other stakeholders within the community
- Incorporate training on officer demeanor and conversational tactics when approaching persons who are openly carrying in order to positively direct the outcome

# **Federal Statute**

**Gun-Free Schools Act (GFSA)**

# Gun-Free Schools Act (GFSA)

- ▶ GFSA is a federal law that requires states receiving federal funds under the Elementary and Secondary Education Act to restrict firearms on school property. Under the GFSA, 18 U.S.C. § 922(q)(2)(A)

The federal law prohibition does not apply to the possession of a firearm:

- When the carrier is licensed: If the individual possessing the firearm is licensed to do so by the State in which the school zone is located or by a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

- **When the firearm is unloaded and locked up:** If the firearm is not loaded and is stored in a locked container or a locked firearms rack that is on a motor vehicle;
- **As part of an approved program:** If the firearm is carried by an individual for use in a program approved by a school in the school zone;
- **When authorized by written contract:** If the firearm is carried by an individual in accordance with a contract entered into between the school district and the individual or an employer of the individual; or
- **By law enforcement:** If the firearm is carried by a law enforcement officer acting in his or her official capacity. 18 U.S.C. § 922(q)(2)(B).

**Various Other Changes  
to be Aware of ...**

# IN Conclusion

- Law Enforcement leadership must educate and formulate tactics to implement HB 910 applicability in their jurisdictions.
- Department training mechanisms must focus on providing current information and direction to all officers.
- There must be a coordinated effort to align with other law enforcement agencies in the region to facilitate a consistent message to the public and officers where jurisdictions may align or overlap.
- Ensure that officer demeanors reflect the new right to Open Carry, even when challenged, to achieve positive interactions regarding the new handgun laws.
- Tactical safety and awareness should be the focus of each officer who may encounter varied challenges because of the legal right to openly carry a handguns.
- Video documentation is vitally important and officers should follow applicable department policy and procedures.

# Texas Open Carry 2016



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