

TEXAS WEAPONS LAWS

Among the more frequently asked questions of the District Attorney's Office are those that relate to the possession or carrying of weapons. All persons are presumed to know the law and most citizens abide by the law, but the following summary of laws in Texas relating to the possession or carrying of weapons is offered to assist the public in following the law. Generally the penal provisions related to possession of weapons are found in Chapter 46, Penal Code of Texas. The following material in black type is taken from the Penal Code of Texas. The material in blue type is taken from cases decided by the Courts of Appeal and the Court of Criminal Appeals of the State of Texas which interpret the statutes. The material in red type contains commentary. It is important to note that when the statutes prohibit the possession or carrying of "firearms" they are referencing any firearm. When the reference is to a pistol it will say handgun.

Sec 46.01 Definitions

In this chapter:

(1) "**Club**" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

- (A) blackjack;
- (B) nightstick;
- (C) mace;
- (D) tomahawk.

Tatom v. State, 555 S.W.2d 459 (Tex. Crim. App. 1977) "The pair of nun-chucks in question are in the record. One of the alleged weapons consists of two pieces of laminated wood. Each piece is over eleven inches long and is an inch in diameter. Holes have been drilled in the center of an end of each piece and at an inch below. The rope connecting the two pieces of wood is threaded through the four holes and knots tied on the side of each piece. There is three inches of rope between the ends of each piece of wood. Observing them, we hold that the trial judge had before him sufficient evidence to conclude that they were designed for the purpose of inflicting serious bodily injury or death upon a person by striking him. Whether the weapon was used solely for karate

practice or not, or whether it was used solely for defensive purposes, the evidence sufficiently demonstrated that it was a club as defined in the statute.”

Alexander v. State, 617 S.W.2d 269 (Tex. Crim. App. 1981) “The fact that an object is capable of inflicting serious bodily injury or death alone does not bring the object within the definition of club.” “Instruments readily capable of inflicting serious bodily injury but not specifically designed to do so, such as baseball bats and rolling pins, are excluded, if a person carrying one of them has intent to use them to inflict injury and his criminal design progresses far enough, however, he can be prosecuted for an attempted or completed assault.” The court then found a nylon cord attached to a twelve-inch motorcycle chain was insufficient adaptation to find it to be a club under the statute. Same result in a case where defendant possessed a “tire knocker” (18 inch long piece of hickory with a leather thong tied through handle) used to check air pressure in truck tires. It was not specially designed, made or adapted for the purpose of inflicting death or serious bodily injury by striking a person. *Coleman v. State*, 790 S.W.2d 369 (Tex. App.-Dallas 1990).

Items that can be used to commit assault such as baseball bats are not clubs because they are not adapted for the purpose. However a sock with a roll of coins in it has been adapted for the purpose so could be a club.

(2) “**Explosive weapon**” means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made or adapted for delivery or shooting an explosive weapon.

(3) “**Firearm**” means any device designed made, or adapted to expel a projectile through a barrel 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

Cantu v. State, 802 S.W.2d 1 (Tex. App.-San Antonio 1990, pet. ref'd) Illegal characteristic of firearm manufactured prior to 1899 must have been an integral part of the weapon as manufactured.

- (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.

Several defendants have sought to defend weapons cases or other cases involving use of weapons by arguing that the weapons was made before 1899, therefore are antiques. The courts have rejected this approach saying in effect that the antique or curio exception applies to treating the items as antiques, not to using them as weapons.

(4) “**Firearm silencer**” means any device designed, made, or adapted to muffle the report of a firearm.

(5) “**Handgun**” means any firearm that is designed, made, or adapted to be fired with one hand.

This definition applies to what everyone refers to as a pistol. A cut off rifle or shotgun is still a rifle or shotgun and is illegal if shorter than the statutory lengths set out below.

- (6) “**Illegal Knife**” means a:

- (A) knife with a blade over five and one half inches;

Rainer v. State, 763 S.W.2d 615 (Tex. App.-Eastland 1989, pet. ref'd) To determine length, measure entire length of blade past handle, not just the sharpened portion of the blade. Same result in *McMurrough v. State*, 995 S.W.2d 944 (Tex. App.-Ft. Worth 1999).

(B) hand instrument designed to cut or stab another by being thrown;
Albert v. State, 659 S.W.2d 41 (Tex. App.-Houston [14th Dist.] 1983, pet. ref'd) Martial arts throwing star qualifies as “a hand instrument designed to cut or stab another by being thrown”.

(C) dagger including but not limited to a dirk, stiletto, and poniard;
Armendariz v. State, 396 S.W.2d 132 (Tex. Crim. App. 1965) A knife slightly over seven inches in length when open, equipped with a double guard, blade that locks open and is sharpened on both sides of blade for over an inch meets the definition of a dagger.

- (D) bowie knife;

Mireles v. State, 192 S.W. 241 (Tex. Crim. App. 1917) A knife in a scabbard with a blade nine inches long and a handle four or five inches long described as a butcher knife was embraced in the term “bowie knife” as defined by the Penal Code.

(E) sword; or

(F) spear.

(7) “**Knife**” means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) “**Knuckles**” means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) “**Machine Gun**” means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) “**Short-barrel firearm**” means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) “**Switchblade knife**” means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

This definition includes a “butterfly knife”.

(12) “**Armor-piercing ammunition**” means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.

(13) “**Hoax bomb**” means a device that:

(A) reasonably appears to be an explosive or incendiary device; or

(B) by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

(14) “**Chemical dispensing device**” means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.

Briggs v. State, 746 S.W.2d 331 (Tex. App.-Dallas 1988, pet ref’d) Tear gas grenade manufactured for United States Armed Forces for use as a riot control device, activated by pulling pin, with no user control over direction of spray, not sold for personal protection violates statute. This does not apply to the small “key chain” type sprayers designed for personal protection.

(15) “**Racetrack**” means a facility licensed under the Texas Racing Act for the conduct of pari-mutuel wagering on greyhound racing or horse racing.

(16) “**Zip gun**” means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

46.02 Unlawfully Carrying Weapons

(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife or club.

Masters v. State, 685 S.W.2d 654 (Tex. Crim. App. 1985) The prohibition against carrying weapons does not violate the Federal or State Constitutional right to bear arms.

Crain v. State, 153 S.W. 155 (Tex. Crim. App. 1913) It is a violation of the law to carry a pistol, even though one should place one part of it in one pocket and another part in another pocket.

Spears v. State, 17 S.W.2d 809 (Tex. Crim. App. 1929) “Officers searched an automobile driven by appellant and found therein a pistol in the pocket of the door on the right-hand side.” “The Legislature must have meant something when it used the words ‘on or about the person,’ and on principle using the word ‘about’ in its ordinary meaning, taking into consideration the context and subject matter relative to which it is employed, the word, not being specially defined, must, as we believe, be held to mean, within the pistol statute, near by, close at hand, convenient of access, and within such distance of the party

so having it as that such party could without materially changing his position get his hand on it.”

Franklin v. State, 183 S.W.2d 573 (Tex. Crim. App. 1944) “Peace officers apprehended appellant driving his automobile along a public highway. In the glove compartment of the car they found a pistol, This is the State’s testimony and is sufficient to show a prima facie case of guilt.”

Hutspeth v. State, 254 S.W.2d 130 (Tex. Crim. App. 1953) “Proof that appellant carried a pistol in the glove compartment of his car warranted conviction of carrying on or about his person a pistol.” Same result in *Courtney v. State*, 424 S.W.2d 440 (Tex. Crim. App. 1968)

Allen v. State, 259 S.W.2d 225 (Tex. Crim. App. 1953) Pistol found on seat of truck was sufficient to sustain conviction for carrying pistol on or about person.

Tunnell v. State, 263 S.W.2d 776 (Tex. Crim. App. 1954) Pistol found on floorboard of appellant’s car sufficient to sustain conviction.

Booth v. State, 344 S.W.2d 885 (Tex. Crim. App. 1961) Pistol in locked glove compartment sufficient to sustain conviction.

Welch v. State, 262 S.W. 485 (Tex. Crim. App. 1924) Pistol in handbag on floor of vehicle driven by appellant sufficient to sustain conviction. Same for pistol in briefcase inside car. *Freeman v. State*, 864 S.W.2d 757 (Tex. App.-Houston [1st District] 1993, pet ref’d)

Thibodeaux v. State, 628 S.W.2d 485 (Tex. App-Texarkana 1982) “The State is not required to prove an unlawful purpose or intent. The statute makes the carrying unlawful unless the defendant brings himself within one of the exceptions to the offense.”

Christopher v. State, 819 S.W.2d 173 (Tex. App.-Tyler 1991, pet. ref’d) “The fact that the gun was unloaded is not a defense.”

Contreras v. State, 853 S.W.2d 694 (Tex. App.-Houston [1st District] 1993) “The statute requires only a particular form of possession: carrying on or about the person, which includes, in our modern view, the interior of one’s vehicle.”

Under the statutes and the case law interpreting the statutes it is illegal to carry a pistol, club or illegal knife on your person or generally inside the passenger compartment of your vehicle including the glove compartment. This applies even though the weapon is

taken apart or unloaded. If you need to transport a handgun you may do so in the trunk of a vehicle.

(b) Except as provided by subsection (c), an offense under this section is a Class A misdemeanor. (up to a year in jail and/or a fine not to exceed \$4000.00)

(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. (2 to 10 years in prison and a fine not to exceed \$10,000.00)

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):

Note: this includes any firearm not just a pistol. Therefore a rifle or shotgun that might otherwise be legally carried is prohibited at any of the listed places.

- (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 institutional 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;
- (6) within 1000 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.

(b) It is a defense to prosecution under subsections (a)(1) through (4) that the actor possessed a firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section:

(1) "Premises" has the meaning assigned by Section 46.035.

(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.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or a club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view

(4) (*Blank*)

(5) a security officer who holds a personal protection authorization under the Private Investigators and Private Security Agencies Act (Article 4413(29BB), Vernon's Texas Civil Statutes).

(e) It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.

- (f) It is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code. **Persons with a permit to carry a concealed handgun are subject to this statute and may not carry the handgun in the described places.**
- (g) An offense under this section is a third degree felony.
- (h) It is a defense to prosecution under Subsection (a) (4) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:
 - (1) the actor is wearing a distinctive uniform; and
 - (2) the firearm or club is in plain view.
- (i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:
 - (1) while in a vehicle being driven on a public road; or
 - (2) at the actor's residence or place of employment.

46.035 Unlawful carrying of handgun by license holder

(a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under authority of Subchapter H, Chapter 411 Government Code, and intentionally fails to conceal the handgun.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, on or about the license holder's person:

- (1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69 or 74 Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

- (2) on the premises where a high school, collegiate or professional sporting event or interscholastic event is taking place unless the license holder is a participant in the event and a handgun is used in the event;
 - (3) on the premises of a correctional facility;
 - (4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;
 - (5) in an amusement park; or
 - (6) on the premises of a church, synagogue or other established place of religious worship.
- (c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, at any meeting of a governmental entity. **Includes any level of state, county or local government.**
- (d) A license holder commits an offense if, while intoxicated, the license holder carries a handgun under authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed. **This statute is not talking about only driving a vehicle, but any circumstance of intoxication.**
- (e) A license holder who is licensed as a security officer under Chapter 1702, Occupations Code, and employed as a security officer commits an offense if, while in the course and scope of the security officer's employment, the security officer violates a provision of Subchapter H, Chapter 411, Government Code.
- (f) In this section:
- (1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any

public or private driveway, street, sidewalk or walkway, parking lot, parking garage or other parking area.

(2) “License holder” means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(3) “Premises” means a building or 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.

(g) An offense under Subsection (a), (b), (c), (d), or (e) is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a) that the actor, at the time of the commission of the offense, displayed the handgun under the circumstances in which the actor would have been justified in the use of deadly force under Chapter 9.

(i) Subsections (b)4, (b)5, (b)6, and (c) do not apply if the actor was not given effective notice under Section 30.06.

30.06 Trespass by Holder of License to Carry Concealed Handgun

(a) A license holder commits an offense if the license holder:

(1) 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:

(A) entry on the property by a license holder with a concealed handgun was forbidden; or

(B) remaining on the property with a concealed handgun was forbidden and failed to depart.

(b) For the 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 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”; 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 A misdemeanor.

Note: under the regular trespass statute the punishment is increased for anyone who trespasses while armed with a deadly weapon.

(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.

46.04 Unlawful Possession of Firearm

(a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person’s release from confinement following conviction of the felony or the person’s release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

Shepperd v. State, 586 S.W.2d 500 (Tex. Crim. App. 1979) The statute prohibiting possession of firearms by a felon does not violate the Constitutional right to keep and bear arms.

Senters v. State, 648 S.W.2d 30 (Tex. App-Dallas 1983, pet ref'd, untimely) There is no moving defense to felon in possession of a firearm.

Nesbit v. State, 720 S.W.2d 888 (Tex. App-Austin 1986) A pickup truck will not qualify as premises where one lives.

Thomas v. State, 36 S.W.3d 709 (Tex. App.-Houston [1st District] 2001, pet. ref'd) Fact that pistol not operable is no defense under felon in possession of a firearm statute.

This statute was changed. Prior law prohibited possession of a firearm by a felon away from the premises where he lived by one who had been convicted of a felony involving violence to persons or property. Now the statute prohibits possession of a firearm by any felon at any location for five years after confinement, parole or supervision whichever is later, then away from the premises where he lives forever.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

- (1) the date of the person's release from confinement following conviction of the misdemeanor; or
- (2) the date of the person's release from community supervision following conviction of the misdemeanor.

(c) A person, other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(d) In this section, "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) or (c) is a Class A misdemeanor.

46.041 Unlawful Possession of Metal or Body Armor by Felon

(a) In this section, “metal or body armor” means any body covering manifestly designed, made, or adapted for the purpose of protecting a person against gunfire.

(b) A person who has been convicted of a felony commits an offense if after the conviction the person possesses metal or body armor.

(c) An offense under this section is a felony of the third degree.

46.05 Prohibited Weapons

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;

Vasquez v. State, 649 S.W.2d 647 (Tex. App- Corpus Christi 1982, pet ref’d) Rifle that has barrel and stock sawn off does not thereby become a pistol. “The definition referred to the design of the weapon, not to its present state after modifications.”

Ford v. State, 868 S.W.2d 875 (Tex. App.-Houston [14th District] 1994) “The mere fact that a weapon may be defined as a handgun does not disqualify it from also being a short-barrel firearm. A weapon under twenty-six inches in length adapted from a shotgun makes it a short-barrel firearm regardless of whether it can be fired with one hand.”

Lewis v. State, 852 S.W.2d 667 (Tex. App.-Houston [14th District] 1993) No requirement that short-barrel firearm be operable.

- (4) a firearm silencer;

Huffines v. State, 646 S.W.2d 612 (Tex. App.-Dallas 1983, pet. ref’d) Statute prohibiting possession of a silencer is constitutional and applies to a device that muffles the report of a firearm to any degree.

(5) a switchblade knife

Flores v. State, 716 S.W.2d 505 (Tex. Crim. App. 1986) When seized from appellant switchblade knife was broken so that would not lock closed, therefore could not be operated as a switchblade. It had, however, a rubber band around it so that it would operate as a switchblade. As such it was a prohibited weapon.

(6) knuckles;

Flores v. State, 934 S.W.2d 858 (Tex. App.-Corpus Christi 1996) Martial arts device known as a “ninja key ring” consisting of a metal rod fitting in palm of hand with metal prongs that protrude at a ninety-degree angle so that they would extend out of the palm of the hand between the fingers constitute prohibited “knuckles”.

Maldonado v. State, 887 S.W.2d 508 (Tex. App.-San Antonio 1994) Knuckles that had rings for three fingers broken and a fourth ring intact sufficient for jury to find to be prohibited weapon.

(7) armor-piercing ammunition;

(8) a chemical dispensing device; or

(9) a zip gun.

(b) It is a defense to prosecution under this section that the actor’s conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a correctional facility.

(c) It is a defense to prosecution under this section that the actor’s possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor’s conduct:

(1) was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio; or

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b).

(e) An offense under this section is a felony of the third degree unless it is committed under Subsection (a)(5) or (a)(6), in which event, it is a Class A misdemeanor.

(f) It is a defense to prosecution under this section for the possession of a chemical dispensing device that the actor holds a security officer commission issued by the Texas Commission on Private Security and has received training on the use of the chemical dispensing device by a training program that is :

- (1) provided by the Commission on Law Enforcement Officer Standards and Education; or
- (2) approved for the purposes described by this subsection by the Texas Commission on Private Security.

46.06 Unlawful Transfer of Certain Weapons

(a) A person commits an offense if the person:

- (1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;
- (2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm, club, or illegal knife;
- (3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated
- (4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:
 - (A) The person's release from confinement following conviction of the felony; or
 - (B) The person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;
- (5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; or

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.

(b) In this section;

(1) “Intoxicated” means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(2) “Active protective order” means a protective order issued under Chapter 71, Family Code, that is in effect. The term does not include a temporary protective order issued before the court holds a hearing on the matter.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor, except that an offense under Subsection (a)(2) is a state jail felony if the weapon that is the subject of the offense is a handgun.

46.07 Interstate Purchase

A resident of this state, may if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress.

46.08 Hoax Bombs

(a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device;

or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor.

46.09 Components of Explosives

(a) A person commits an offense if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.

(b) An offense under this section is a felony of the third degree.

46.10 Deadly Weapon in Penal Institution

(a) A person commits an offense if, while confined in a penal institution, he intentionally, knowingly, or recklessly:

(1) carries on or about his person a deadly weapon; or

(2) possesses or conceals a deadly weapon in the penal institution.

Thomas v. State, 821 sw2d 616 (Tex. Crim. App. 1991) A “shank” designed to cause death or serious bodily injury is a deadly weapon in a penal institution.

(b) It is an affirmative defense to prosecution under this section that at the time of the offense the actor was engaged in conduct authorized by an employee of the penal institution.

(c) A person who is subject to prosecution under both this section and another section under this chapter may be prosecuted under either section.

(d) An offense under this section is a felony of the third degree.

46.11 Penalty if Offense Committed Within Weapon-Free School Zone

(a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

(1) within 300 feet of the premises of a school; or

(2) on premises where:

- (A) an official school function is taking place; or
- (B) an event sponsored or sanctioned by the University Interscholastic League is taking place

(b) This section does not apply to an offense under Section 46.03(a)(1).

(c) In this section:

- (1) “Institution of higher education” and “premises” have the meanings assigned by Section 481.134, Health and Safety Code.
- (2) “School” means a private or public elementary or secondary school.

46.12 Maps as Evidence of Location or Area

(a) In a prosecution of an offense for which punishment is increased under Section 46.11, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

- (1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or
- (2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

46.13 Making A Firearm Accessible To A Child

(a) In this section:

- (1) “Child” means a person younger than 17 years of age.
- (2) “Readily dischargeable firearm” means a firearm that is loaded with ammunition, whether or not a round is in the chamber.
- (3) “Secure” means to take steps that a reasonable person would take to prevent the access to a readily dischargeable firearm by a child, including but not limited to placing a firearm in a locked container or temporarily rendering the firearm inoperable by a trigger lock or other means.

(b) A person commits an offense if a child gains access to a readily dischargeable firearm and the person with criminal negligence:

- (1) failed to secure the firearm; or
- (2) left the firearm in a place to which the person knew or should have known the child would gain access.

(c) It is an affirmative defense to prosecution under this section that the child’s access to the firearm:

- (1) was supervised by a person older than 18 years of age and was for hunting, sporting, or other lawful purposes;
- (2) consisted of lawful defense by the child of people or property;
- (3) was gained by entering property in violation of this code; or
- (4) occurred during a time when the actor was engaged in an agricultural enterprise.

(d) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(e) An offense under this section is a Class A misdemeanor if the child discharges the firearm and causes death or serious bodily injury to himself or another person.

(f) A peace officer or other person may not arrest the actor before the seventh day after the date on which the offense is committed if:

- (1) the actor is a member of the family, as defined by Section 71.01, Family Code, of the child who discharged the firearm; and

- (2) the child in discharging the firearm caused the death of or serious injury to the child.

This time period is to allow the family to conduct funeral services and start the grieving process before the intervention of the criminal justice system.

g) A dealer of firearms shall post in a conspicuous position on the premises where the dealer conducts business a sign that contains the following warning in block letters not less than one inch in height: "IT IS UNLAWFUL TO STORE, TRANSPORT, OR ABANDON AN UNSECURED FIREARM IN A PLACE WHERE CHILDREN ARE LIKELY TO BE AND CAN OBTAIN ACCESS TO THE FIREARM."

46.14 [*Blank*]

46.15 Nonapplicability

(a) Sections 46.02 and 46.03 do not apply to:

- (1) peace officers, including commissioned peace officers of a recognized state, or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;
- (2) parole officers and neither section prohibits an officer from carrying a weapon in this state of the officer is:
 - (A) engaged in the actual discharge of the officer's duties while carrying the weapon; and
 - (B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;
- (3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

- (A) engaged in the actual discharge of the officer's duties while carrying the weapon; and
 - (B) authorized to carry a weapon under Section 76.0051, Government Code;
- (4) a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code; or
- (5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under section 1701.357, Occupations Code, and is carrying a photo identification that:
- (A) verifies that the officer honorably retired after not less than 20 years of service as a commissioned officer; and
 - (B) is issued by the agency from which the peace officer retired or, for a federal criminal investigator, by a state law enforcement agency.

This section applies only to retired peace officers who were employed as sheriffs, deputy sheriffs, constables, deputy constables, marshals or police officers of an incorporated city, town or village or law enforcement officers commissioned by the Parks and Wildlife Commission. The only retired federal criminal investigators to whom it applies are retired Special Agents of the Federal Bureau of Investigation and retired Special Agents of the Federal Drug Enforcement Agency.

- (b) Section 46.02 does not apply to a person who:
- (1) is in the actual discharge of official duties as a member of the armed forces of state military forces as defined by Section 431.001, Government Code or as an employee of a penal institution who is performing a security function.
 - (2) is on the person's own premises or premises under the person's control unless the person is an employee or agent of the owner of the premises and the person's primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event the person must comply with Subdivision (5);

Mireles v. State, 192 S.W. 241 (Tex. Crim. App. 1917) The law is that it is no offense for a man to carry a bowie knife or a pistol about his person on his own premises.

Bryant v. State, 508 S.W.2d 103 (Tex. Crim. App. 1074) Citing *Wilson v. State*, 418 S.W.2d 687 (Tex. Crim. App. 1967), the court holds that a person located on the common areas of an apartment complex such as the parking lot is not on his own premises for purposes of the statute prohibiting carrying a pistol.

Roy v. State, 552 S.W.2d 827 (Tex. Crim. App. 1977) Ones vehicle are not considered “premises” under ones control for purposes of this statute.

(3) is traveling;

Colson v. State, 105 S.W. 507 (Tex. Crim. App. 1907) One who on a trip, after spending the night at a hotel, went to a saloon, carrying his pistol, was not, at such time, a “traveler” within the exception of the statute as to carrying weapons.

Hunt v. State, 107 S.W. 842 (Tex. Crim. App. 1908) Held a person to be a traveler when “(h)e stopped on his journey, not at his own volition, but at the request of another in respect to a business matter. The delay was incidental, brief, and transitory, and was a mere incident of the journey, which was resumed as soon as the matter in hand had been briefly discussed.”

Ballard v. State, 167 S.W. 340 (Tex. Crim. App. 1914) “It is true that one who leaves San Augustine and travels to Teneha, in another county, would be a traveler, and he could carry a pistol while engaged on such a trip, But when he arrived at his destination, and put up at a house, there he should leave his pistol, and if he does not do so, but keeps it on his person while knocking about the town and hunting for another person, he violates the law.”

Pecht v. State, 199 S.W. 290 (Tex. Crim. App. 1917) “(E)ven though he may be a traveler, where he deflects and turns aside from his journey on business or pleasure disconnected with his journey, the fact that he may be a traveler originally does not exempt him from punishment.”

Birch v. State, 948 S.W.2d 880 (Tex. App-San Antonio 1997) “The traveling defense provided by statute has remained unchanged since its promulgation...” “Traveling has never been defined by statute and the precise meaning of the term has been the subject of much debate.” “In fact, the decisions have been described as being in a state of hopeless

confusion.” “There is no bright line test for determining when one is “traveling” for the purpose of the statute and the standards that have evolved from the case law are not models of clarity.” “In applying the term “traveling”, Texas courts have generally considered distance, time, and mode of travel.” “The question of whether one is a traveler is a fact-driven determination that is not dependent upon any one particular situation.” *Armstrong v. State*, 265 S.W. 701 (Tex. Crim. App. 1924) “This court has refused on former occasions, upon similar facts, to hold as a matter of law, that one who is engaged in the jitney business or business of running a service car for hire is a traveler.” *Allen v. State*, 422 S.W.2d 738 (Tex. Crim. App. 1967) Appellant who was traveling 120 miles from air force base to home for weekend was traveler within statute permitting carrying pistol if traveler.

- (4) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor’s residence, if the weapon is a type commonly used in the activity;
- (5) holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies if; (a) the person is engaged in the performance of the person’s duties as a security officer or traveling to and from the person’s place of assignment; (b) the person is wearing a distinctive uniform; and (c) the weapon is in plain view;
- (6) is carrying a concealed handgun and a valid license issued under Article 4413(29ee), Revised Statutes, to carry a concealed handgun of the same category as the handgun the person is carrying;
- (7) holds a security officer commission and a personal protection authorization issued by the Texas Board of Private Investigators and Private Security Agencies and who is providing personal protection under the Private Investigators and Private Security Agencies Act (Article 4413 (29bb), Vernon’s Texas Civil Statutes); or

(8) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises.

(c) The provisions of Section 46.02 prohibiting the carrying of a club does not apply to a noncommissioned security guard at an institution of higher education who carries a nightstick or similar club, and who has undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this subsection, “nonviolent restraint” means the use of reasonable force, not intended and not likely to inflict bodily injury.

(d) The provisions of Section 46.02 prohibiting the carrying of a firearm or carrying of a club do not apply to a public security officer employed by the adjutant general under Section 431.029, Government Code, in performance of official duties or while traveling to or from a place of duty

(e) The provisions of Section 46.02 prohibiting the carrying of an illegal knife do not apply to an individual carrying a bowie knife or a sword used in a historical demonstration or in a ceremony in which the knife or sword is significant to the performance of the ceremony.

(f) Section 46.03 (a) (6) does not apply to a person who possesses a firearm or club while in the actual discharge of official duties as:

(1) a member of the armed forces of state military forces, as defined by Section 431.001, Government Code; or

(2) an employee of a penal institution.

(g) In this section, “recognized State” means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(1) has firearm proficiency requirements for peace officers; and

(2) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

(g) For the purpose of Subsection (b) (2), premises includes a recreational vehicle that is being used by the person carrying the handgun, illegal knife, or club as living

quarters regardless of whether that use is temporary or permanent. In this subsection, “recreational vehicle” means a motor vehicle primarily designed a