Date: April 1, 2016
To: Dr. W. David Watts, President
From: Campus Carry Committee
Subject: Concealed Handgun Carry on Campus

In the 84th Regular Legislative Session, the Texas Legislature passed Senate Bill 11, which allows licensed individuals to carry concealed handguns on public university campuses, effective August 1, 2016. The law allows institution presidents to “establish reasonable rules” and to evaluate “the nature of the student population, specific safety considerations, and the uniqueness of the campus environment.” However, a president “may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution.” The provisions established by the president take effect unless amended by the Board of Regents by not less than a two-thirds vote. Presidents may over time amend an institution’s rules, although amendments are subject to the same potential action by the Board of Regents.

Pursuant to SB11, institution presidents may establish exclusion zones as follows:

“After consulting with students, staff, and faculty of the institution regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment, the president or other chief executive officer of an institution of higher education in this state shall establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the campus of the institution or on premises located on the campus of the institution. The president or officer may
not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution. The president or officer may amend the provisions as necessary for campus safety. The provisions take effect as determined by the president or officer unless subsequently amended by the board of regents or other governing board.”

The law defines “campus” as all land and buildings owned or leased by an institution of higher education. By law, a license holder must, including but not limited to, be at least 21 years old (or be active military or a veteran), be a resident of Texas, meet other requirements such as no record of felony conviction, and be fully qualified under federal and state law to purchase a handgun. Per 18 USC § 922(g), aliens admitted to the U.S. under a nonimmigrant visa are prohibited from possessing, shipping, transporting, or receiving any firearm or ammunition. International students attending universities are typically in the U.S. with non-immigrant visas and therefore ineligible under federal law to possess any firearm or ammunition.

A committee, consisting of faculty, staff and students, was established to consider the interpretation and ramifications of the legislation and to provide a proposal to you, the president of the University. This committee met weekly for approximately 3 months. The committee considered implementation of the legislation from three angles, existing law or statute, the safety of the campus, and individual rights. An informational webpage was published. Two open forums were held to enable the community to voice concerns. Additionally, an online survey was posted and announced to the campus community. Input from all these means of student, faculty and staff were considered by the committee. A draft version of the committee’s final proposal was presented to the Student Senate on December 4, 2015.

Teresa Sewell, committee chair, or her designee, joined the UT System working group in weekly telephonic meetings. The guiding principles used by the working group were: 1) Follow the law, 2) Focus on safety and 3) Strive for a campus environment in which students, staff, and faculty can focus on their studies, research, and work with minimal distraction. The UTPB Campus Carry Committee recommendations are attached.
The University of Texas of the Permian Basin
Campus Carry Committee Recommendations
March 2016

Existing Law and Statutes

Texas Penal Code does not permit firearms and other specific weapons at the following locations relevant to campuses:

• “on the physical premises of a school ..., any grounds or building on which an activity sponsored by a school ... is being conducted” (46.03(a)(1)). The law does not define “school” for these purposes but the working group and the campus committee believe that a reasonable interpretation is pre-K through 12 as the meaning of “school.”

• “on the premises of any government court or offices utilized by the court” (46.03(a)(3)).

• “on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place” (46.035(b)(2)).

• “at any meeting of a government entity” (46.035(c)) “if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter” (amendment per HB 910).

• Child-Care Facilities. Rules of the Texas Department of Family and Protective Services prohibit the possession of firearms on the premises of licensed facilities with before- or after-school care and for licensed child-care centers (40 TAC Secs. 744.2607 and 746.3707). The UT System working group and the campus committee believe that the exclusion of concealed carry on the premises of child-care facilities at UT System institutions is sensible and recommends that the president consider excluding them.

Areas analogous to state law requirements that prohibit concealed handguns:

• Patient care areas. Section 46.035(b)(4) of the Penal Code excludes hospitals licensed under Chapter 241 – by analogy and extension, the committee recommends that
mental health treatment areas be designated exclusion zones.

- Premises in or on which a ticketed sporting event is taking place. Section 46.035(b)(2) of the Penal Code prohibits concealed handguns at collegiate sporting events.
- Areas where discharge of a handgun might cause widespread harm, such as laboratories with extremely dangerous chemicals, biologic agents, or explosive agents, or equipment that is incompatible with metallic objects such as magnetic resonance imagining machines. Training of concealed handgun license holders on safe use of handguns in such facilities is not practical. Accidental or purposeful discharge of a handgun in such areas could cause grave and catastrophic harm. Handguns are inappropriate in the vicinity of some types of equipment, e.g., magnetic resonance imaging equipment because of the very strong magnetic field present. Exclusion may be appropriate for these areas to ensure campus safety.

**Recommended Exclusion Zones**

The responsibility for establishing exclusion zones rests with an institution’s president. The UTPB Campus Carry Committee which was established as an advisory group to the president recommends the following areas be established as exclusion zones.

Based on Penal Code and analogous assumptions mentioned above, the committee recommends the following areas to be designated as exclusion zones:

1. UTPB STEM Academy
2. The presence of the Early College High School (ECHS) in wings A and B of the Founders Building will automatically be designated as an exclusion zone based on law.
3. The Counseling Center, which resides in wing C of the Founders’ Building, is recommended to be declared an exclusion zone based on analogous outside entities.
4. Based on licensing regulations by the State, the committee recommends that the Child Care Center be designated as an exclusion zone. Although the center is located inside the Student Activity Center (SAC), there is no traffic between the two facilities and therefore the SAC is not included in this recommendation.
5. Ticketed collegiate sporting events are excluded by law. Therefore, the
committee recommends that all locations of sporting events, collegiate or otherwise be designated as exclusion zones.

6. Research labs containing volatile chemicals are considered to be high risk in the risk management arena. The students using the labs have little to no supervision while they are in the labs. Spillage of chemicals could result in very dangerous conditions, requiring multiple experts to remediate chemical spills, fires, corrosive substances, and cancer causing organics in addition to EMT’s for personal physical injury. Some labs have chemicals that are highly corrosive and/or that could present serious inhalation dangers. Research labs containing volatile chemicals are high risk areas with periodic inspections by university safety officers and difficult enough to manage without adding factors. Research labs with volatile chemical should be designated as exclusion zones.

7. All chemistry and biology labs may not have volatile substances within them; however, the risk in this area is considered to be minimal. If the teaching science labs are used by the ECHS students, they will become an exclusion zone while in use by those students. Temporary signage should suffice as notice.

8. The committee respects the rights of individuals to protect their property such as their domicile. However, some of the UTPB student housing units include shared rooms and therefore these rooms that are shared are recommended to be exclusions zones. Family members of housing residents should be permitted to carry a concealed weapon while visiting. Also, staff members whose job responsibilities require them to enter student housing should be permitted to carry a gun on or about their person while present in student housing for business purposes.

Students who choose to carry their gun in student housing must provide a combination or biometric gun safe, acceptable to UTPB Police, in which the gun shall be stored when it is not on or about the person. Buildings utilized by minors attending camps should become exclusion zones during the times they are used by students of minor age. The committee highly recommends education for students which addresses accidental discharge, particularly while cleaning a gun, in addition to safe and prudent handling of a firearm. Student
Housing contracts should include a statement that a violation of the concealed carry license or of the university storage requirements could result in termination of the student’s contract.

9. The Student Testing and Accommodations Center is recommended to be an exclusion zone due to the stipulations established by certain testing agencies. For example, Educational Testing Service (ETS) mandates that weapons of any kind are prohibited from testing centers. Students taking other tests do so concurrently with students taking standardized tests. Rather than disrupt testing availability for students, the center should be designated as an exclusion zone.

**Notification and Signage**

Section 30.06 of the Texas Penal Code describes general requirements for notification where concealed carry is not permitted. The law states that, “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.” The written communication must state 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”.

Written communication may be conveyed in one of two ways:

- A card or other written document that contains the language above, or
- Signage in both Spanish and English displayed in a conspicuous manner clearly visible to the public, with contrasting colors and block letters at least one inch in height.

One option for informing the public of exclusion at ticketed events such as sporting events (football) might be the printing of exclusion information on the back of the ticket. Vendors and others who are permitted to enter the premises without a ticket should be provided written notice through other means.
Although temporary signage is welcome, no notification is required by statute for K-12 schools or school-sponsored activities. License holders are expected to know that these areas are excluded without specific notification. However, temporary signage could be displayed. Numerous events occur on campuses that are not sponsored by a school but, rather, are sponsored by the higher education institution or by others. By analogy and extension, events for children sponsored by or conducted in coordination with the institution should be considered for exclusion of concealed handguns. It is recommended that UTPB exclude concealed carry for parents, employees, or volunteers working with the children on a sponsored event while on campus.

**Items for Consideration**

- **Requirement for Holster.** Senate Bill 11 authorizes presidents to establish reasonable rules. Section 411.2031, Government Code, as added by SB 11, expressly authorizes an institution “to establish reasonable rules ... regarding the carrying of concealed handguns by license holders on the campus,” with specific regard to “safety considerations” and “campus safety.” Violations of campus rules about how to carry or store handguns may be acts subject to disciplinary action by an institution. There is concern regarding the potential for a handgun to discharge accidentally when carried in a purse or backpack. Therefore, the committee recommends that “a license holder who carries a handgun on campus must carry it in a holster that completely covers the trigger and the entire trigger guard area. The holster must have sufficient tension or grip on the handgun to retain it in the holster even when subjected to unexpected jostling.” The committee believes that SB 11 provides authority for presidents to establish such a requirement, which would minimize the potential for accidental discharge if the handgun is jostled about or if the purse or backpack is dropped.

- **Handgun Storage Facilities.** The law does not require campuses to provide handgun storage facilities. In general, license holders are responsible for safe storage such as by locking their handgun in their automobile or leaving their handgun at home. The committee believes it reasonable for campuses to function like other places in the
state, which typically do not have storage lockers for handguns.
Some staff and faculty members who work at a university have licenses to carry. When the law takes effect, they may wish to bring their concealed handgun to work. The committee recommends that persons who have an office assigned solely to them may lock their gun in their office but must have two methods of doing such. One method is to lock their office door. A second method, to be determined by the CHL licensee, can be to provide their own gun safe in their office or locking their gun in a desk drawer or filing cabinet.

• Reporting Requirements. Senate Bill 11 requires a report to the legislature each even-numbered year that “describes UTPB’s rules, regulations, or other provisions regarding the carrying of concealed handguns on the campus of the institution; and ... explains the reasons the institution has established those provisions.” Institutional reports to the UT System Board of Regents regarding exclusion zones should include a description of the areas which have been excluded and provide justification for those areas.

• Violations. If a person is believed to have improperly displayed a handgun or carried a handgun into a location where concealed carry is not permitted, the campus police should be contacted. The following guidance was provided regarding further penalties that might be considered:
  o The licensing statute, Chapter 411, Government Code, effectively requires that the handgun be “concealed,” meaning that the gun’s presence is “not openly discernable to the ordinary observation of a reasonable person.” Similarly, Section 46.035, Penal Code, on unlawful carry by a licensed holder, prohibits intentional display of the handgun in plain view of another person in a public place as well as possession, whether or not concealed, in specific areas.
  o Sections 46.03 and 46.035 address which violations are criminal. Both sections include “state of mind” requirements, and these state of mind requirements vary. Under section 46.03, it is a crime to “intentionally, knowingly, or recklessly” carry a handgun into in a place designated by that section as an exclusion zone (e.g., a pre-K through 12 school). Under section 46.035, however, it is a crime for a license holder to “intentionally” carry a concealed handgun into an area excluded under
the rules and regulations established by a university, provided proper notice is
given. With regard to the open display of a handgun on campus, section 46.035
makes it a crime for a license holder to “intentionally or knowingly” display the
handgun in plain view of another person on a university campus. Texas Penal Code
§ 6.03 assigns particular meaning to the terms “intentionally,” “knowingly,” and
“recklessly.” Under section 46.035, however, license holders do not commit a
crime if they mistakenly bring a concealed handgun into an exclusion zone – (e.g., if
the holder forgot they had the gun with them). As explained below, however,
individual institutions may provide that any violation of their concealed carry rules
and regulations constitutes a sanction-able offense under their institutional rules.

- Section 411.2031, Government Code, as added by SB 11, expressly authorizes an
institution “to establish reasonable rules ... regarding the carrying of concealed
handguns by license holders on the campus,” with specific regard to “safety
considerations” and “campus safety.” Violations of campus rules about how to
carry or store handguns may be acts subject to disciplinary action by an institution
and should be included in employee and student standards of conduct policies.

- Definition of “on or about.” Under Section 46.02, Penal Code, which prohibits the
carrying of certain weapons “on or about” a person. Texas courts have held that “on
or about” includes “the area nearby, close at hand, convenient of access, and within
such distance of the party so that, without materially changing his position, the party
could get his hand on it” and to include a portfolio or purse [Contreras v. State, 853
S.W. 2d 694 (Tex. App. Houston (1st Dist.), 1993]

- The UTPB Campus Carry Committee suggests that the following language be used:
  - ”License holders bear the responsibility for safeguarding their handguns at all
times, and must take all necessary precautions to ensure their handguns are
secured in a manner that is most likely to prevent theft, loss, damage or
misuse. License holders affiliated with UTPB who fail to use reasonable care in
securing their handguns or act negligently are subject to disciplinary action, up
to and including termination or non-renewal of appointment, or dismissal from
UTPB.”
• "A license holder fails to use reasonable care when he/she does not exercise the care which a reasonable or prudent person would exercise in similar circumstances, or takes action which a reasonable or prudent person would not take. Failing to secure or control a backpack or purse with a handgun at all times on the UTPB campus would be considered a failure to use reasonable care."

• Communications and Training. Once campus rules are established, communication and training will be crucial in order for all parties to understand the rules for CHL, how to respond to an inappropriate gun or display of a gun, and locations that have been designated as exclusion zones. Additionally, training regarding appropriate response in the case of an active shooter should be provided to campus community members every semester.

Concluding Remarks

In developing these recommendations, the committee recognized that the law empowers each institution president to make appropriate provisions. The committee hopes that these observations and recommendations will assist you in your decisions.
APPENDIX A

Members of the UTPB Campus Carry Committee

• Jaston Brink, Student Senator
• Dr. James Eldridge, Professor of Kinesiology, President of Faculty Senate
• Lail Grant, Safety Coordinator I, Environmental Health & Safety
• Tom Hain, Chief of Police
• Timothy Herrick, Operations Manager, Physical Plant
• Kelly Lease, Student Senator
• Erin Nance, Academic Advisor, Academic Advising
• Dr. Prakash Pai, Associate Professor of Finance, Faculty Senator
• John Roeber, Student Senator
• Teresa Sewell, Senior Associate Vice President, Student Services
• Dr. Jessica Staib, Professor of Educational Leadership and Counseling, College of Education
APPENDIX B

Members of the UT System Concealed Carry Working Group

Institutions

- U. T. Arlington: John Hall, Vice President for Administration
- U. T. Austin: Steven Goode, JD, Professor, Law
- U. T. Dallas: Alex Piquero, Professor, Criminology
- U. T. El Paso: Gary Edens, Vice President for Student Affairs
- U. T. Permian Basin: Teresa Sewell, Senior Associate Vice President for Student Affairs
- U. T. Rio Grande Valley: Ben Reyna, Associate Vice President for Security and Campus Affairs
- U. T. San Antonio: Kathy Funk-Baxter, Vice President for Business Affairs, and also Steve Barrera, Chief of Police
- U. T. Tyler: Tammy Cowart, JD, Associate Professor, Business Law
- U. T. Health – Houston: George Stancel, Executive Vice President for Academic and Research Affairs
- U. T. Medical Branch – Galveston: Michael Ainsworth, MD, Vice Dean for Academic Affairs, School of Medicine
- U. T. M. D. Anderson – Max Weber, JD, Associate Vice President and Deputy Chief Compliance Officer
- U. T. San Antonio HSC – Michael Parks, Chief of Police, and Dr. Jacqueline Lee Mok, Vice President for Academic, Faculty, and Student Affairs
- U. T. Southwestern – Charles Ginsburg, MD, Senior Associate Dean
- U. T. Tyler HSC – Robert Cromley, Chief of Police

U. T. System Administration

- Committee Chair: David E. Daniel, Deputy Chancellor
- Office of the Chancellor: Jana Pankratz, Executive Director
- Director of Police: Michael Heidingsfield
- Government Relations: Barry McBe, JD, Vice Chancellor and Chief Governmental Relations Officer, and Steve Collins, JD, Associate Vice Chancellor for Government and Special Counsel for Governmental Relations and Special Counsel to the Office of General Counsel
- Board of Regents: Kristy Orr, JD, Associate General Counsel
- Office of General Counsel: Tamra English, JD, Assistant General Counsel
- Office of Academic Affairs: Wanda Mercer, Associate Vice Chancellor
- Office of Health Affairs: Patrick Francis, Associate Vice Chancellor
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