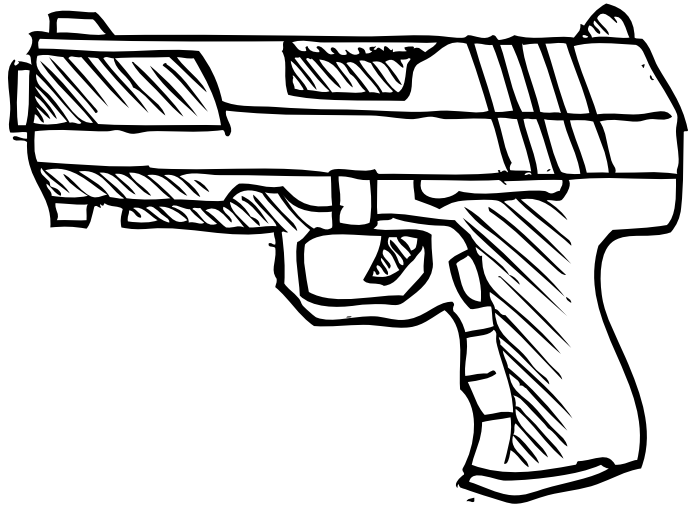


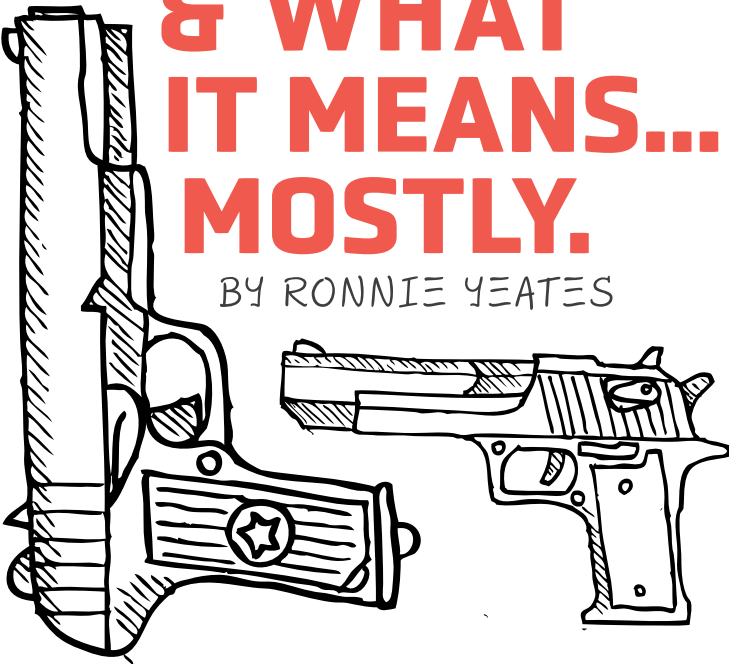
NEW HANDGUN LAWS IN TEXAS

& WHAT IT MEANS... MOSTLY.

BY RONNIE YEATES



Effective September 1, 2021, the bulk of HB927 affected Texas Penal Code, hereinafter referred to as TPC, Chapter 46, and amended it to allow certain persons to carry a handgun, under certain potential restrictions, on their person without a license. This change was designed to treat handguns somewhat similarly to long guns – which traditionally had fewer restrictions. Generally, permit-less carry means if a person is not otherwise prohibited from owning a firearm, they should be able to carry a handgun openly or concealed without fear they'll be prosecuted for exercising a Constitutional right. So, what all did the wise legislators do?



THAT'S A LOT OF BILLS!

Wow! I have received quite a few questions over the past few months from lawyers, weapons dealers, friends, and strangers regarding the new gun laws the Texas Legislature passed and went into effect just over a month ago. I will explain some of the changes, cover the laws now, and how different ones affect individuals. This is by no means an exhaustive treatise. In September of this year, several bills went into effect including HB1927, the "Constitutional Carry" or "Permit-less" Carry Bill, HB 957 affecting Silencers, HB1069 adding defenses for certain classes of individuals, HB2112 and SB550 dealing holsters, HB1920 affecting areas, HB1407 changing the offense of display of a weapon (which was superseded by HB1927 repealed by 1927 and therefore moot and was duplicated by HB1927 in another section). So, as usual, the Legislature made some drastic changes all over the place, and HB1927 changed roughly 30 different code sections in 10 different areas. It was far-reaching. So, let's cover quite a bit of it.

WHAT'S A HANDGUN, OPEN CARRY OR CONCEALED?

Since we are discussing changes in Licenses to Carry (LTC) and the new permit-less carrying of handguns, we need to know what a handgun is. Handguns are defined in both state and federal law. The Definitions are identical. A handgun is defined in §46.01(5) as "any firearm that is designed, made, or adapted to be fired with one hand." As before, the new law allows specific individuals to carry a handgun on their person in one of two ways, concealed or open. Concealed carry means hidden, and no part of the handgun is visible in regular use. §46.035 was repealed and parts are now included in §46.03. According to §46.03 and §46.02(a-1), a handgun must be in a holster if carried openly. As an aside, there is growing popularity with pistols made from an AR15 receiver, which is legal, but the most recent changes still govern it.

IF ONE DOES HAVE AN AR PISTOL, THE CARRYING RESTRICTIONS IN A MOTOR VEHICLE OR ON ONE'S PERSON STILL APPLY REGARDING CONCEALMENT AND OPEN CARRY.

WHO CAN'T CARRY A HANDGUN?

So, who qualifies to carry a handgun without an LTC? If someone wants to carry a handgun using the authority granted them in Texas' new permit-less carry law (HB1927), they must be at least 21, cannot be a prohibited person under State and federal law from possessing/carrying a firearm, and they can't be prohibited from possessing a firearm in a public place in Texas.

As to the second requirement, it is essential to understand who is a "prohibited person" when possessing a firearm in a public place in Texas. The following groups are prohibited under State and federal law from possessing a weapon:

- 1** persons who have been convicted of a felony. (TPC §12.04 & §46.04(a) See also 18 U.S.C. §922(g)(1));
- 2** persons who have been convicted of a misdemeanor crime of assault involving a family or household member before the 5th anniversary or release from confinement or community supervision (whichever is later). (TPC §46.04(b) (effective September 1, 2021); 18 U.S.C. §922(g) (9) states it is "unlawful" for anyone "convicted in any court of a misdemeanor crime of domestic violence" to possess a weapon, regardless of the time since the conviction);

- 3** persons, other than a peace officer, who are subject to a protective order, who received notice of the order and before the order's expiration. TPC §46.04(c); in U.S.C. §922(g)(8), there is no carve-out for a peace officer;
- 4** persons who have been convicted (a final judgment of guilt) within the past five years (more on this later):
 - A** of an Assault Causing Bodily Injury TPC §22.01(a)(1) & §46.02(a)(2)(B)),
 - B** Deadly Conduct, TPC §22.05 & TPC §46.02(a)(2)(B),
 - C** Terroristic Threat, TPC §22.07 & TPC §46.02(a)(2)(B),
 - D** Disorderly Conduct-Discharging a Firearm, TPC §42.01(a)(7) & TPC §46.02(a)(2)(B), and
 - E** Disorderly Conduct-Displaying a Firearm, TPC §42.01(a)(8) & TPC §46.02(a)(2)(B));
- 5** someone who is a fugitive from justice. 18 U.S.C. §922(g)(2);
- 6** someone who unlawfully uses or is addicted to a controlled substance. 18 U.S.C. §922(g)(3);
- 7** someone "who has been adjudicated as a mental defective or who has been committed to a mental institution." 18 U.S.C. §922(g)(4);
- 8** an alien illegally in the United States or who has been admitted into the United States under a nonimmigrant visa. 18 U.S.C. §922(g)(5);
- 9** anyone who "has been discharged from the Armed Forces under dishonorable condition." 18 U.S.C. §922(g)(6);
- 10** and anyone who was a citizen of the United States but has renounced his or her citizenship. 18 U.S.C. §922(g)(7).

REMEMBER WHEN I SAID MORE ON THAT LATER...

Well, HB1927 also made changes to TPC §46.02 wherein the Unlawful Carrying of a Weapon (Handgun) in subsection (a) for carrying in a place other than one's home, vehicle, or boat is now limited to a person younger than 21 years of age OR to someone of any age who has been convicted of one of the following offenses;

- 1** TPC §22.01(a)(1) Assault Bodily Injury,
- 2** TPC §22.05 Deadly Conduct,
- 3** TPC §22.07 Terroristic Threat,

4 TCP §42.01(a)(7) or (8) Disorderly Conduct Involving a Firearm

But, since the charge requires a "conviction" and is not explicitly defined, **it requires a "final conviction," meaning paid a fine or did time.** Deferred doesn't count. And, just like the DWI super fines, probation doesn't count as a "final conviction" either. Also, the five-year period is based on the commission date of the previous offense, not the conviction date.

HOW AND WHERE CAN I CARRY?

Ok, now we have the reasoning and some definitions, let's move to the changes. As stated earlier, a person openly carrying a handgun **MUST** keep the handgun holstered. There is no holster definition in the code, and HB1927, HB2112, and SB550 removed the "shoulder or belt" modifiers from the code altogether. So, those magnetic under dash mounts I previously told everyone not to use may now work as a holster in Texas. A person should never draw their weapon from their holster unless acting in one of the justified defenses listed in Chapter 9 of the TPC or another lawful activity. A person cannot flash or "brandish" a weapon to alarm or threaten someone as the person could be charged with Disorderly or Deadly Conduct.

SOME OF THE NEW CHANGES ARE:

- 1 TPC § 46.02(a-1)(1) If one is allowed to carry, the person may not openly carry a handgun in plain view under Texas' new gun laws while in a motor vehicle or watercraft under the person's ownership or control, unless the person is 21 years of age or older or has an LTC, and the handgun is in a holster.
- 2 TPC § 46.02(a-1)(2) A person may not carry, in plain view or otherwise, a handgun in a motor vehicle or watercraft under the person's ownership or control if the person is engaged in criminal activity, prohibited by law from possessing a firearm. (or a member of a criminal street gang has been moved to TPC §46.04(a-1).
- 3 TPC§46.02(a-5) A person commits an offense if they intentionally display a handgun in a public place and not in a holster.
- 4 TPC § 46.02(a-6) A person commits an offense if they carry a handgun while intoxicated AND
 - A The person isn't on their own property or property under their control or on private property with the consent of the owner of the

property, or inside or directly en route to a motor vehicle or watercraft:

- i that is owned by the person or under their control; or
- ii with the consent of the owner or operator of the vehicle or watercraft.

UNDER TEXAS' NEW GUN LAW, THERE IS NO REQUIREMENT THAT A PERSON CARRYING A HANDGUN BE A TEXAS RESIDENT.

WHERE CAN SOMEONE WHO CAN LEGALLY CARRY A HANDGUN, WELL, CARRY IT?

Generally speaking, a person can carry a handgun in non-prohibited, public areas or a public place without "effective" notice given.

WHAT ARE SOME OF THE FORBIDDEN LOCATIONS FOR HANDGUNS WHERE NOTICE IS NOT NEEDED FOR PROHIBITION TO CARRY?

There are several listed in the TPC. There need not be a sign or any markers, and the possession of a firearm is specifically disallowed...except for specific individuals like law enforcement. They are as follows:

- 1 Schools or educational institutions, a transportation vehicle of the school or educational institution, or the grounds where a school sponsored activity is taking place, TPC 46.03(a) (1) (Third Degree);
- 2 Polling places including places offering early voting, TPC §46.03 (a)(2) (Third Degree);
- 3 Courts or offices utilized by a court, TPC §46.03(a)(3) (Third Degree);
- 4 Racetracks where pari-mutuel wagering takes place (horse or dog racing), TPC §46.03(a)(4) (Third Degree);
- 5 The secured areas of an airport. TPC §46.03(a)(5) (Third Degree);

- 6** Within 1,000 feet of locations designated by TDCJ as a place of execution on the day a death sentence is to be imposed (does not include a person's home or place of employment), TPC §46.03(a)(6) (Third Degree);
- 7 NEW** Locations deriving more than 51% of their income from the sale of alcohol for on site consumption, TPC §46.03(a)(7) (Third Degree);
- A NEW** Defense if LTC and no effective notice TPC §46.15(p)
- 8 NEW** Highschool, Collegiate, or Professional sporting events, TPC §46.03(a)(8) (Class A);
- A NEW** Defense if LTC and no effective notice TPC §46.15(q)
- 9 NEW** Correctional facilities, TPC §46.03(a)(9) (Third Degree);
- 10** Civil commitment facilities, TPC §46.03(a)(10) (Class A);
- 11 NEW** Hospitals or nursing homes, TPC §46.03(a)(11) (Class A);
- A NEW** Defense if LTC and no effective notice TPC §46.15(p)
- 12 NEW** Mental hospitals, TPC §46.03 (a)(12) (Third Degree);
- 13 NEW** Amusement parks, TPC §46.03 (a)(13) (Third Degree);
- A NEW** Defense if LTC and no effective notice TPC §46.15(p)
- 14 NEW** A room or rooms of an open meeting of a governmental entity. TPC §46.03(a)(14) (Third Degree)
- A** It doesn't apply to LTC holders under TPC §46.15(b)(6) **BIG CHANGE**
- B** A felony for an unlicensed person to carry

Oh, and now that all the restrictions in the now repealed TPC §46.035 (UCW by LTC) have been moved to TPC§46.03 (Places Weapons Prohibited), the restrictions are now **APPLICABLE** to long guns where they previously were not. **HUGE CHANGE.**

NOTICE?

What is notice? Persons who wish to prevent licensed or permit-less individuals from carrying a handgun on their premises must issue warnings. The ultimate warning is a verbal one issued by the owner or someone with authority to deny the entrance. There are now three

different signs an owner can display. These all carry the same punishment... If a person enters the property and is found out and told to leave, it is a Class C offense if they do. If they don't, the offense is a Class A under the following:

- 1** The original TPC §30.06(c)(3), which prohibits the entry of LTC holders from entering with a concealed handgun
- 2** TPC §30.07(c)(3) prohibiting entry of an LTC holder from entering with an openly carried handgun.
- 3** Now, we have a third option in TPC §30.05(c) stating "a person may not enter this property with a handgun."

There is another sign most have seen...It is the big red "51%" sign prominently displayed at bars and other places making 51% or more of their income from location consumable alcohol sales. This last one is a third-degree felony (remember it is a prohibited place under TPC §46.03(7)), and only an LTC holder could use the defense if they did not receive effective notice (meaning no signage was posted) ...the defense is not applicable for a permit-less carrier.

Building on notice, HB1927 gave us TCP §46.15(m), a defense to carry a handgun on premises or other property where prohibited under §46.03 if the person leaves when they personally receive notice from the owner or someone acting with apparent authority for the owner. However, HB1927 also provided section (n) of the same code where the defense is not applicable if clear, proper signage is posted at **EACH** entrance.

EXTRAS!

That's quite a lot to take in. But, I will give you a little more from some other bills and their changes elsewhere in the code.

- 1** HB957 removed silencers from the definitions of a prohibited weapon in TPC §46.05. So even though silencers are no longer prohibited weapons under Texas law, the items still are regulated under federal law and have to be registered with the ATF. However, this bill also allows Texas to withhold state funds for enacting rules or laws to help the feds enforce any federal statute regarding silencers. This subject is a whole other paper.
- 2** SB162 added a state offense in TPC §46.06(a)(7) for a prohibited person to lie on federal forms (4473) to get a gun where it was only a federal offense before. It is a State Jail Felony.

3 HB1927 struck the concealed modifier to handgun in subsection (e-1) and (e-2) 's reference to LTC carrying in certain parts of airports. The defense now applies to open carry, too.

4 HB1927 enhanced possession penalties

A Convicted felon (except the at home condition) is now a 2nd-degree felony with a five-year minimum (TPC §46.04(a))

B Class A FV conviction is now a 3rd-degree felony (TPC §46.04(b))

C Subject to FV protective orders, magistrate's orders for emergency protection, dissolution protective order, or an out-of-state FV protective order are 3rd-degree felonies. (TPC §46.04(c))

5 HB1927 changed expunction law regarding UCW (TPC §46.02) **HUGE CHANGE.**

A If a person was/is convicted of Unlawfully Carrying a Weapon under the prior TPC §46.02(a)(1)(A), the conviction can be expunged. If someone was tried and convicted, pleaded guilty, etc., to the charge alleged to

HAVE BEEN COMMITTED BEFORE
September 1, 2021, it can be wiped from their record. (Texas CCP §55.01(a)(1)(iii))

WELL, THESE ARE MOST OF THE CHANGES IN HB1927 & MORE FROM OTHER BILLS.

It is apparent the Legislature was throwing things together and hoping it would all sort itself out. Keep a close eye out when you see a handgun charge, as the law probably changed September 1.



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RE-ELECT
ANDREW A.
WRIGHT
DEMOCRAT
for JUDGE

HARRIS COUNTY CRIMINAL COURT NO. 7

POL. AD. PAID BY ANDREW A. WRIGHT FOR JUDGE CAMPAIGN, IN COMPLIANCE WITH THE VOLUNTARY LIMITS OF JUDICIAL CAMPAIGN FAIRNESS ACT. JUAN J. AGUIRRE TREASURER.