

The Appropriateness of Open Carry Gun Laws in Texas

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The Texas Constitution states, *Every citizen shall have the right to keep and bear arms in lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.* (Tex. Const. art. I, § 23) (1876; previous versions 1868, 1845)

In Texas, it is generally illegal to carry a handgun outside of a person's own premises. However, a person may carry, either open or concealed, in a non-threatening or alarming manner, a shotgun or rifle. However even with a handgun, in Texas, there are several instances in which a person may possess a handgun legally without the benefit of a Texas Concealed Handgun License (CHL). These places include:

(a) A person's residence or other real property under their control, (b) a private motor vehicle or watercraft if the handgun is concealed, and the person can legally possess a firearm, (c) is not a member of a street gang, and is not engaged in the commission of a crime greater than a Class C misdemeanor traffic or boating violation, (d) when a person is engaged in lawful fishing, hunting, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the person's residence or motor vehicle, if the firearm is a type commonly used in the activity, and (e) when storing a loaded firearm, it must be in a place that cannot be accessed by a child under the age of 17, or secured with a trigger lock if there a child under 17 may gain access to the firearm.

"Open Carry" is shorthand for "openly carrying a firearm in public", as distinguished from concealed carry where firearms cannot be seen by a casual observer. The practice of open carry, where gun owners openly carry firearms while going about daily business, has increased in the U.S. in recent years.

The Texas Legislature adopted in 2009 a state statute to grant licenses to qualified residents and non-residents to carry concealed handguns. The Texas Department of Public Safety administers the Concealed Handgun Licensing (CHL) Program under the authority of the Texas Government Code Chapter 411, Subchapter H. DPS licenses individuals to carry concealed handguns within Texas, evaluates the eligibility of applicants through criminal history background checks and monitors those currently licensed to ensure their continued eligibility. All CHL applicants are required to submit fingerprints to DPS as part of the complete CHL application. To qualify for a Texas CHL you must:

1. Be 21 years old. (members and former members of the armed forces must be 18),
2. Have a clean criminal history, including military service and recent juvenile records,
3. Not be under a protective order,
4. Not be chemically dependent,
5. Not be of unsound mind,
6. Not be delinquent in paying fines, fees, child support, student loans, etc.,
7. Be eligible to purchase a handgun by completing the NICS check,
8. Complete required training.

In 2013 the Texas Legislature made revisions to the state's concealed handgun application process making it easier for gun-friendly Texans to obtain a CHL license—including a reduction in mandatory training hours and elimination of social security number requirements. For CHL holders caught brandishing a handgun in public, legislators softened language in the Texas Penal Code from "fail to conceal" to "unintentional display." One new feature of Texas law is a right to keep firearms in a locked motor vehicle while on an employers' parking area. However, some employers, including school districts, charter schools, chemical manufacturers and oil refiners that manufacture, use, transport or store hazardous materials, are excepted. Employees do not have the right to store loaded firearms in a vehicle owned or leased by their employer.

Texas lawmakers earned high praise from the National Rifle Association after passing a record number of pro-gun bills aimed at everything from lowering license prices to prohibiting colleges and universities from restricting students wishing to carry firearms in their vehicles.

Texas, however, has never passed an open-carry law, and gun rights advocates across the state have grown increasingly assertive in their campaign, carrying their rifles inside and outside of restaurants, police stations, malls and even the Alamo in San Antonio. One advocacy group, *Open Carry Texas*, encourages members to walk around openly displaying their weapons, part of a push to persuade state lawmakers and the public to support open-carry legislation for handguns. Recently, state officials have been reminding Texans that any business with a state permit to serve alcohol may not knowingly let people carry long guns on premises.

Laws approved by several state legislatures in the last two years to enact or expand "open carry" laws have led some places of worship and a number of retailers to ask patrons to leave their guns at home or in their vehicles to avoid upsetting other customers. The National Rifle Association has recently corrected what its leadership called an inappropriate policy statement criticizing open carry advocates and reaffirmed its position by stating, "Unequivocally, we support open carry. We've been the leader in open carry efforts across this country."

Some gun rights advocates have responded, in states where such actions are legal, by holding demonstrations in which they openly carry firearms, seeing this as a Second Amendment right provided for in the U.S. Constitution. They seek additional state legislation that would give those licensed to carry concealed handguns the option of wearing their guns in holsters at their hips in public. Several states, including Arizona, New Mexico and Oklahoma, allow people to openly carry handguns with or without a license. While Texas law does not explicitly prohibit the open carry of long guns in public, some urban areas have enacted ordinances restricting or banning the practice for the sake of public safety without the fear of guns being present.

Those in Texas who advocate for open carry laws often cite the right to carry and use firearms to protect ourselves from harm or criminal activity, which has been upheld in a Supreme Court decision (see *District of Columbia v. Heller* (2008)). Texas case law provides for several situations where a person is justified in using force or deadly force with a firearm when a person believes that it is reasonably necessary to protect themselves or a third person from the unlawful use of force by another. Deadly force is defined as the degree of force likely to cause death or serious bodily injury, which includes actually firing a gun. In Texas it is presumed that deadly force was reasonably necessary if it is used against an individual who was unlawfully or forcibly entering or entered into an occupied home, business, or vehicle or is attempting to forcibly remove another against his or her will from an occupied home, business, or vehicle. Deadly force is also presumed to be justified to prevent the commission or attempted commission of murder, aggravated kidnapping, sexual assault, aggravated sexual assault, robbery and aggravated robbery.

In Texas if a person is present in any place where they have a right to be, they have no duty to retreat and have the right to use force, including deadly force, if they reasonably believe that it is necessary to prevent death or serious bodily injury to themselves or to prevent the commission of murder, aggravated kidnapping, sexual assault, aggravated sexual assault, robbery or aggravated robbery. Texas law also allows a person to use force in the protection of property to prevent or terminate a trespass or other unlawful interference with the possession of real or personal property. Deadly force can be used in Texas when the crime against property is classified as arson, burglary, robbery, criminal mischief at night or theft at night. Deadly force may also be used to prevent a person from fleeing with property immediately after the commission of a burglary, robbery, aggravated robbery, or theft during the nighttime if the actor believes that the property cannot be recovered by any other means or the use of force other than deadly force would expose the person to a substantial risk of death or serious bodily injury.