



**SCHOOL OF LAW**  
TEXAS A&M UNIVERSITY

Texas A&M University School of Law  
**Texas A&M Law Scholarship**

---

Faculty Scholarship

---

7-2019

## Sane Gun Policy from Texas? A Blueprint for Balanced State Campus Carry Laws

Aric Short

Texas A&M University School of Law, [ashort@law.tamu.edu](mailto:ashort@law.tamu.edu)

Follow this and additional works at: <https://scholarship.law.tamu.edu/facscholar>



Part of the [Constitutional Law Commons](#), [Education Law Commons](#), [Law and Politics Commons](#), [Law and Society Commons](#), and the [Second Amendment Commons](#)

---

### Recommended Citation

Aric Short, *Sane Gun Policy from Texas? A Blueprint for Balanced State Campus Carry Laws*, 11 Ne. U. L. Rev. 401 (2019).

Available at: <https://scholarship.law.tamu.edu/facscholar/1325>

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Texas A&M Law Scholarship. For more information, please contact [aretteen@law.tamu.edu](mailto:aretteen@law.tamu.edu).

**Sane Gun Policy From Texas?  
A Blueprint For Balanced State Campus Carry Laws**

*By Aric Short\**

---

\* Professor of Law and Director, Professionalism and Leadership Program, Texas A&M University School of Law. J.D., The University of Texas School of Law; A.B., Georgetown University. I served as the law school's designee on the Texas A&M University's Campus Carry Policy Task Force. All opinions herein are my own and do not necessarily represent those of Texas A&M University. I am grateful for helpful comments on ideas expressed in this article from Andrew P. Morriss, Lynne Rambo, and Meg Penrose, and I received extraordinary research assistance from Elizabeth Spencer Berthiaume. And none of this would have been possible without the love and support of my family.

## Table of Contents

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>403</b>
<b>II.</b>	<b>CAMPUS CRIME, RELAXED GUN LAWS, AND PUBLIC SAFETY .....</b>	<b>411</b>
<b>III.</b>	<b>GUNS ON CAMPUS IN AMERICA .....</b>	<b>418</b>
	<b>A. <i>Virginia Tech Rampage and its Aftermath</i> .....</b>	<b>418</b>
	<b>B. <i>Snapshot of State Campus Carry Laws</i>.....</b>	<b>420</b>
<b>IV.</b>	<b>TEXAS CAMPUS CARRY .....</b>	<b>430</b>
	<b>A. <i>Context of Texas Gun Laws</i> .....</b>	<b>430</b>
	<b>B. <i>Legislative Battle to Enact Campus Carry in Texas</i>.....</b>	<b>432</b>
	<b>C. <i>Framework of the Texas Campus Carry Law</i>.....</b>	<b>445</b>
	1. <i>General Structure</i> .....	445
	2. <i>Individualized University Implementation Rules</i> .....	452
	<b>D. <i>Observations on Early Implementation of Texas’s Campus Carry Law</i>.....</b>	<b>456</b>
	1. <i>Public Sentiment Divided but Universities Generally Opposed</i> .....	457
	2. <i>Customized University Rules</i> .....	459
	3. <i>Potential Free Speech Issues</i> .....	466
	4. <i>Post-Implementation Reaction</i> .....	467
<b>V.</b>	<b>CONCLUSION .....</b>	<b>473</b>

*American universities are caught in the crosshairs of one of the most polarizing and contentious gun policy debates: whether to allow concealed carry on campus. Ten states have implemented “campus carry” in some form. Sixteen new states considered passage in 2017, and a growing wave of momentum is building in favor of additional adoptions. Despite this push towards campus carry, most states adopting the policy fail to strike an effective balance between the competing rights and interests involved. When states give universities the option to opt out of the law, for example, they almost always do. Other states impose a rigid campus carry framework on universities, denying them the ability to customize implementation. The recent Texas campus carry law, in contrast, carves out a unique and effective middle ground: it requires public universities to allow concealed handguns on campus, but it empowers each university to adopt meaningful firearms policies, including the identification of campus-specific gun-free zones, based on that school’s unique operations and safety concerns.*

*This article explores the Texas law as a model for other states considering campus carry. First, as context, the Article examines recent data on campus crime and the impact of liberalized gun laws on crime rates. Notwithstanding the safety arguments of gun-rights advocates, studies within the past year have proven that a proliferation of guns results in increased crime rates. Second, this article surveys the other nine states that have adopted some form of campus carry, highlighting the flexibility and rigidity of each state’s approach. Third, the article explores the Texas law, in particular: its history, structural framework, and implementation by Texas universities. Finally, the article closes with conclusions from the early stages of adoption in Texas, emphasizing that the Texas law and its implementation provide a valuable blueprint for other states choosing campus carry.*

## I. INTRODUCTION

At 2:21 p.m. on February 14, 2018, a 19-year-old, carrying an AR-15 assault rifle and a backpack full of ammunition, walked into the Parkland, Florida high school that had recently expelled him and opened fire.<sup>1</sup> Six minutes later, the slaughter was over. Twelve victims died inside the school building; two just outside; one in a nearby street; and two at a local hospital.<sup>2</sup> In all, 17 students,

---

1 Richard Fausset et al., *On a Day Like Any Other at a Florida School, 6 Minutes of Death and Chaos*, N.Y. TIMES (Feb. 16, 2018), <https://www.nytimes.com/2018/02/16/us/stoneman-douglas-shooting.html>.

2 Oliver Laughland et al., *Florida School Shooting: At Least 17 People Dead on “Horrific, Horrific Day”*, GUARDIAN (Feb. 15, 2018, 3:53 AM), <https://www.theguardian.com/us-news/2018/feb/14/florida-shooting-school-latest-news->

teachers, and staff were dead, and many more were injured.<sup>3</sup> The Parkland, Florida attack is the eighth deadliest school shooting in U.S. history,<sup>4</sup> and it was the sixth school shooting in 2018 resulting in either physical injury or death.<sup>5</sup>

The Parkland shooting revived a number of challenging gun policy debates, most of which focus on campus safety. The President of the United States rushed into the fray by arguing that school teachers should receive pay bonuses for carrying firearms in the classroom.<sup>6</sup> Teachers with guns, he maintained, would step in to save their students by confronting and killing any violent intruder.<sup>7</sup> With armed teachers randomly scattered around schools, campuses would transform from soft targets into fortified compounds, and criminals would consciously avoid them.<sup>8</sup> The State of Florida apparently agreed, enacting a state law after the Parkland shooting that required all schools to have armed guards or police on site when classes resumed in the fall of 2018.<sup>9</sup> Florida and the President took these positions despite the fact that an armed security guard employed by the high school, as well as at least three Broward County Sheriff's deputies, were present on campus at the time of the shooting.<sup>10</sup>

---

stoneman-douglas.

- 3 Kaitlyn Schallhorn, *Parkland Shooting Victims Include Young Students, Coach Who Saved Others in Florida High School*, FOX NEWS (Feb. 20, 2018), <https://www.foxnews.com/us/parkland-shooting-victims-include-young-students-coach-who-saved-others-in-florida-high-school>.
- 4 Laughland et al., *supra* note 2.
- 5 John McCarthy, *Florida School Shooting: Worst School Shootings in U.S. History*, NAPLES DAILY NEWS (Feb. 15, 2018, 10:28 AM), <https://www.naplesnews.com/story/news/2018/02/15/florida-school-shooting-worst-school-shootings-u-s-history/340493002/>.
- 6 Julie Hirschfield Davis, *Trump Suggests Teachers Get a "Bit of a Bonus," to Carry Guns*, N.Y. TIMES (Feb. 22, 2018), <https://www.nytimes.com/2018/02/22/us/politics/trump-guns-school-shootings.html>.
- 7 *Id.*
- 8 *Id.*
- 9 Brittany Wallman et al., *School District Came Up Short with School Guards, Needed Assist from Fort Lauderdale*, S. FLA. SUN SENTINEL (Aug. 15, 2018, 6:15 PM), <https://www.sun-sentinel.com/local/broward/parkland/florid-school-shooting/fl-sb-school-security-lauderdale-20180814-story.html>.
- 10 Daniella Silva, *Parkland Shooting: Armed School Resource Officer "Never Went In" to School During Shooting*, NBC NEWS (Feb. 22, 2018, 7:53 PM), <https://www.nbcnews.com/news/us-news/parkland-shooting-armed-school-resource-officer-never-went-school-during-n850441>; Jake Tapper, *Sources: Coral Springs Police Upset at Some Broward Deputies for Not Entering School*, CNN (Feb. 24, 2018, 10:01 AM), <https://www.cnn.com/2018/02/23/politics/parkland-school-shooting-broward-deputies/index.html>.

The President's comments on arming teachers represent the latest version of statements made in 2012 by the president of the National Rifle Association (NRA) following the killing of 26 people at a school in Newtown, Connecticut. Resisting calls for increased gun regulations in response to that tragedy, the NRA president stated, "The only way to stop a bad guy with a gun is with a good guy with a gun."<sup>11</sup> In particular, he advocated for the hiring of armed security guards at schools across the United States.<sup>12</sup> Since then, the "good guy with a gun" has been a powerful image invoked to support a particular position on addressing violent crime. We become safer, the argument goes, if we put more guns in the hands of more people who are law-abiding and trustworthy; they will react quickly and effectively if confronted with an armed assailant.

The "good guy with a gun" approach to safety has been applied in a wide range of settings outside the elementary or high school context. Perhaps nowhere has this argument been advanced more passionately or successfully than in the context of debates over "campus carry," or the carrying of concealed firearms on college campuses. Those advocating for campus carry point to a fundamental right in the Second Amendment to have a firearm in their possession wherever they go, including on campuses. But the real heart of the pro-campus carry argument typically lies in the concept of safety: acts of violence on campus occur frequently and quickly, with no time for even fast-reacting first responders to defuse the situation. Instead, law-abiding citizens should be allowed to carry their weapons into classrooms, dormitories, cafeterias, and faculty offices so they are ready to respond immediately when a threat arises, thereby protecting themselves and all of the potential victims around them.<sup>13</sup>

---

11 Meghan Keneally, *Breaking Down the NRA-Backed Theory that a Good Guy with a Gun Stops a Bad Guy with a Gun*, ABC NEWS (Oct. 29, 2018, 2:03 PM), <https://abcnews.go.com/US/breaking-nra-backed-theory-good-guy-gun-stops/story?id=53360480>.

12 Mark Berman & David Weigel, *NRA Goes on the Offensive After Parkland Shooting, Assailing Media and Calling for More Armed School Security*, WASH. POST (Feb. 22, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/02/22/after-silence-on-parkland-nra-pushes-back-against-law-enforcement-the-media-and-gun-control-advocates/>.

13 See, e.g., Erik Gilbert, *Campus Carry is Not About Preventing Mass Shootings*, INSIDE HIGHER ED (June 12, 2017), <https://www.insidehighered.com/views/2017/06/12/campus-carry-about-right-individual-self-defense-not-preventing-mass-shootings> (discussing various reasons why advocates for campus carry support this position).

Texas governor Greg Abbott made this point recently after an Ohio State University student, thought to have been inspired by ISIS terrorist propaganda, careened his Honda Civic onto a university sidewalk filled with people in Columbus, Ohio.<sup>14</sup> After crashing into the crowd, the driver began attacking terrified students with a butcher knife.<sup>15</sup> At least one bystander tried and failed to disarm the attacker, getting slashed in the process.<sup>16</sup> Soon after, the perpetrator of these crimes was shot and killed by a policeman who was fortuitously in the area on another call,<sup>17</sup> but not before thirteen people were injured in an attack that lasted approximately two minutes.<sup>18</sup> In response to this attack, Gov. Abbott remarked, “It’s instances like this where kids on campus can have guns [so] they could have been able to respond initially . . . [O]n a college campus [] here in Texas, people will think twice before waging an attack like this knowing that they could be gunned down immediately.”<sup>19</sup>

- 
- 14 Kathy Lynn Gray et al., *Ohio State Student Identified as Campus Attacker; Nearly a Dozen Hospitalized*, WASH. POST (Nov. 28, 2016), [https://www.washingtonpost.com/news/grade-point/wp/2016/11/28/ohio-state-university-warns-of-active-shooter-on-campus/?utm\\_term=.588c8a0ee7d7](https://www.washingtonpost.com/news/grade-point/wp/2016/11/28/ohio-state-university-warns-of-active-shooter-on-campus/?utm_term=.588c8a0ee7d7); Mitch Smith et al., *Suspect Is Killed in Attack at Ohio State University That Injured 11*, N.Y. TIMES (Nov. 28, 2016), <https://www.nytimes.com/2016/11/28/us/active-shooter-ohio-state-university.html>.
- 15 Tracy Connor, *Ohio State Victim Says Attacker Vowed to Kill Her*, NBC NEWS (Dec. 1, 2016, 10:39 AM), <http://www.nbcnews.com/news/us-news/ohio-state-victim-says-attacker-vowed-kill-her-n690306>.
- 16 Michele Newell, *Army Vet Fought Ohio State Attacker as He Tried to Help Others After Car Crash*, ABC 6 NEWS (Nov. 29, 2016), <https://abc6onyourside.com/news/local/victim-grabbed-knife-as-he-tried-to-help-others>.
- 17 Andrew Welsh-Huggins & Julie Carr Smyth, *Terrorism Suspected in Car-and-Knife Attack at Ohio State*, U.S. NEWS & WORLD REP. (Nov. 28, 2016, 10:42 PM), <https://www.usnews.com/news/us/articles/2016-11-28/ohio-state-tweets-that-active-shooter-is-on-campus>.
- 18 Jackie Borchardt, *11 Injured, Suspect Dead After Attack on Ohio State University Campus*, CLEVELAND.COM (Nov. 28, 2016), [https://www.cleveland.com/metro/2016/11/ohio\\_state\\_university\\_attack.html](https://www.cleveland.com/metro/2016/11/ohio_state_university_attack.html).
- 19 Lauren McGaughy, *Abbott Says Campus Carry Will Make Attackers “Think Twice” About Targeting Texas Schools*, DALL. NEWS (Nov. 29, 2016), <https://www.dallasnews.com/news/guns/2016/11/29/texas-gov-greg-abbott-ohio-state-campus-carry-will-make-shooters-think-twice-attacking-colleges>. The Governor’s provocative comments received immediate attention, including from J. Blair Blackburn, then-President of East Texas Baptist University: “We cannot assume that the mere possession of a concealed carry weapon is going to prevent someone from launching a terrorist attack or an isolated active shooter situation.” Christina Lane, *ETBU President Responds to Governor’s Statement About Ohio State*, MARSHALL NEWS MESSENGER (Nov. 30, 2016), <https://www.marshallnewsmessenger.com/news/etbu-president-responds->

The Texas law that would force would-be attackers to “think twice,” according to Gov. Abbott, was less than four months old at the time. Effective August 1, 2016 for four-year universities and August 1, 2017 for community colleges, this new law was the most recent state-level victory for gun rights advocates in an ongoing battle that has placed college campuses in the crosshairs.<sup>20</sup> Under the Texas version of “campus carry,” all individuals who hold state-issued handgun licenses, which allow them to carry their weapons openly in public, are also authorized to carry their weapons in a concealed manner on public college campuses.<sup>21</sup> The new law was controversial, and it passed the Texas Legislature in 2015 after years of failed attempts to enact similar bills.<sup>22</sup>

When that law went into effect, fifty years after the first U.S. campus mass shooting at the University of Texas in Austin (UT Austin),<sup>23</sup> Texas was the eighth state to explicitly authorize campus carry by statute or court decision.<sup>24</sup> Two additional states have followed since then, and now over 200 universities across the country allow campus carry.<sup>25</sup> In addition, the last several years have seen a flurry of legislative efforts to pass similar laws in other states, with a clear wave of momentum in favor of campus carry.<sup>26</sup> With the recent one-year anniversary of full enactment of the Texas law, it is useful to reflect on the law’s impact and how it has been implemented.

There is particular value in analyzing the Texas statutory framework because of its unique structure. In other states that have adopted campus carry, the framework is usually rigid and standardized, sometimes allowing entire campuses to opt out, but providing little, if any, flexibility in implementation for individual

---

to-governor-s-statement-about-ohio-state/article\_e4f4e4b5-4363-5cf2-8a1e-889503b79c9a.html.

20 Trymaine Lee, *New Texas Law Allows College Students to Carry Guns on Campus*, NBC NEWS (Aug. 1, 2016, 12:51 PM), <https://www.nbcnews.com/news/us-news/new-texas-law-allows-college-students-carry-guns-campus-n620911>.

21 *See id.*

22 *See infra* notes 195–298 and accompanying text.

23 Ben Wofford, *Inside the Fight Over Guns on Campus*, ROLLING STONE (Mar. 30, 2017, 2:24 PM), <https://www.rollingstone.com/politics/politics-features/inside-the-fight-over-guns-on-campus-126622/>.

24 Matthew Watkins, *With Texas Now a Campus Carry State, Here’s What You Need to Know*, TEX. TRIB. (Aug. 1, 2016), <https://apps.texastribune.org/guns-on-campus/texas-now-campus-carry-state-what-you-need-to-know/>.

25 Wofford, *supra* note 23.

26 *See infra* notes 126–31 and accompanying text.

campuses.<sup>27</sup> In Texas, by contrast, the president of each university is empowered to promulgate firearms regulations, including the creation of handgun exclusion zones, based on that campus's unique operations, population, and safety considerations.<sup>28</sup> By including this flexibility, Texas introduced a degree of balance and discretion absent in other states' campus carry schemes. This approach provides an intriguing middle ground in the contentious debate about guns on college campuses.

However, a middle ground may not be palatable to all. Those strongly opposed to guns on campus will reject even customizable concealed carry at universities, and those who argue for unfettered campus carry bridle at what might appear to others to be reasonable restrictions.<sup>29</sup> This article does not take a normative position on whether allowing concealed carry on campus is good policy, although it does open with a brief discussion of data addressing whether campus carry, in particular, and more relaxed gun laws, in general, result in increased safety.<sup>30</sup>

27 See *infra* notes 132–76 and accompanying text.

28 TEX. GOV'T CODE § 411.2031(d-1) (West 2019). As described below, this discretion is not absolute. The Board of Regents for each university must review the president's implementation rules and has the power to revise those rules, in whole or in part, by a two-thirds vote. See *infra* notes 359–61 and accompanying text.

29 See ADAM WINKLER, *GUN FIGHT: THE BATTLE OVER THE RIGHT TO BEAR ARMS IN AMERICA* 8–12 (2013) (describing the extreme polarization of gun debate in the United States).

30 Arguments in favor of and in opposition to relaxed gun laws, in general, and campus carry, in particular, have been extensively explored in other contexts. See, e.g., Nate G. Hummel, Comment, *Where Do I Put My Gun?: Understanding the Texas Concealed Handgun Law and the Licensed Owner's Right-to-Carry*, 6 TEX. TECH J. TEX. ADMIN. L. 139, 143 (2005); Brian J. Siebel, *The Case Against Guns on Campus*, 18 GEO. MASON U. C.R.L.J. 319, 323–36 (2008); Brian Vasek, Note, *Rethinking the Nevada Campus Protection Act: Future Challenges & Reaching a Legislative Compromise*, 15 NEV. L.J. 389, 399–406 (2014). In addition, a large number of organizations and associations have taken positions on this issue, both officially and unofficially. See, e.g., Joint Statement from the Am. Ass'n of Univ. Professors, Opposing "Campus Carry" Laws (Nov. 12, 2015), <https://www.aaup.org/file/CampusCarry.pdf> (signed also by the American Federation of Teachers, the Association of American Colleges and Universities, and the Association of Governing Boards of Universities and Colleges) (opposed); Position Statement from the Nat'l Behavioral Intervention Team Ass'n, Concealed Carry Legislation Related to Mass Shootings, <https://cdn.nabita.org/website-media/nabita.org/wordpress/wp-content/uploads/2018/01/2016MarchNaBITA-GunsPositionStatement.pdf> (opposed); Position Statement from the Int'l Ass'n of Campus Law Enf't

Instead, it takes as a given that the campus carry movement has been in full swing for the past ten years, and that interest group pressure and the political will are generating what seems to be an unavoidable march towards new campus carry bills in a number of states.<sup>31</sup> Furthermore, because no federal law governs this issue, each state choosing to implement campus carry is left to navigate its own way.<sup>32</sup> The question, then, may not be whether campus carry will continue to expand across the country, but what form it should take when it does expand.

Standing in the middle of emotionally charged debates about guns on campus, universities confront entrenched and unyielding interests on all sides.<sup>33</sup> Chancellors, faculty, parents, administrators, and most students usually strongly oppose campus carry,<sup>34</sup> as do many police officers.<sup>35</sup> Opponents cite concerns about accidental gun discharges; the danger of mixing firearms with the high stress of

---

Adm'rs, Inc., *Concealed Carrying of Firearms Proposals on College Campuses* (Aug. 12, 2008), <https://www.okhighered.org/campus-safety/resources/CBP-guns-iaclea-statement.pdf> (opposed); Position Statement from the Am. Psychiatric Ass'n, *Proposed Legislation Permitting Guns on College and University Campuses* (July 2011), <https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2011-gun-college-campus.pdf> (opposed).

31 See *infra* notes 126–31 and accompanying text.

32 Kerry Brian Melear & Mark St. Louis, *Concealed Carry Legislation and Changing Campus Policies*, in *COLLEGE IN THE CROSSHAIRS: AN ADMINISTRATIVE PERSPECTIVE ON PREVENTION OF GUN VIOLENCE* 59, 61 (Brandi Hephner LaBanc & Brian O. Hemphill eds., 2015).

33 *Id.*

34 See, e.g., *id.* at 59 (citing data that approximately 80% of students at Midwestern universities oppose campus carry). One of the more colorful student campaigns opposing campus carry was “Cocks Not Glocks,” organized by students at UT Austin. The campaign encouraged students, faculty, and staff to publicly carry dildos on campus, offering “a multicolored counterpoint to the concealed weapons” that can also be carried on campus. See Alex Samuels, *UT-Austin Students Snatch Up Free Dildos for Gun Protest*, TEX. TRIB. (Aug. 23, 2016, 7:00 PM), <https://www.texastribune.org/2016/08/23/students-distribute-4500-sex-toys/> (reporting on an event in Austin that distributed 4,500 free dildos). *Rolling Stone* described one protest: “Students gathered under the UT Tower, as young women tossed dildos with the frenzy of a humanitarian mission. ‘If they’re packing heat,’ one sophomore protester yelled, hoisting a giant dildo with both hands, ‘then we’re packing meat!’” Wofford, *supra* note 23.

35 Melear & St. Louis, *supra* note 32 (noting that in 2013, 95% of university presidents opposed campus carry); Wofford, *supra* note 23; see Dave Philipps, *What University of Texas Campus is Saying About Concealed Guns*, N.Y. TIMES (Aug. 27, 2016), <https://www.nytimes.com/2016/08/28/us/university-of-texas-campus-concealed-guns.html>.

college, even without the addition of drugs, alcohol, depression, and anxiety, which are widespread in college; the chilling of academic freedom caused by guns in the classroom; and the problems that “good guys with guns” pose for first responders in an active shooter scenario. On the other hand, universities, through their state legislatures, are facing increasing pressure from powerful gun lobby groups and some gun owners who cite a concern about personal safety and demand that their Second Amendment rights be respected on college campuses.<sup>36</sup> All of these pressures make the college campus, according to one expert, “the fundamental battleground over guns and self-defense.”<sup>37</sup> In the face of these seemingly irreconcilable and hopelessly entrenched positions, perhaps an all-or-nothing approach to guns on campus does not adequately balance the rights and interests involved. Instead, a more nuanced approach to campus carry, one that allows for discretion and flexibility in implementation, may be a productive way forward.

This article analyzes the new Texas law as just such a potential model for other states considering the implementation of campus carry. As context, Part II provides a brief overview of the current state of campus safety in the United States, as well as a look at recent studies analyzing the actual safety impact of relaxed gun possession laws. As this recent data demonstrates, liberalized gun laws undermine public safety. Part III traces the development of campus carry laws and describes their legal structure in states that allow it. Part IV discusses the Texas law: the overall context of gun rights in Texas, a historical look at enactment of campus carry in the state, and the details of the Texas campus carry law. Part IV also looks at which Texas universities have opted out of the law and how other universities have implemented it, focusing on common themes and areas of disagreement. Part IV concludes with observations about the early stages of campus carry adoption in Texas. As described in more detail below, the Texas version of campus carry provides a useful blueprint for other states that will be adopting legislation to allow firearms on campus. Texas universities have implemented the new law with regulations that customize campus carry for their unique campus needs and operations. In doing so, they have successfully created firearms policies that respect the underlying right of license holders to carry concealed weapons on campus while, at the same

---

36 See, e.g., Melear & St. Louis, *supra* note 32, at 59.

37 Wofford, *supra* note 23 (quoting Adam Winkler).

time, regulating firearms, including the creation of gun-free zones based on each university's unique operations. What is more, Texas universities have struck this delicate balance with relatively little administrative expense or difficulty.

## II. CAMPUS CRIME, RELAXED GUN LAWS, AND PUBLIC SAFETY

The campus carry movement has taken place against a backdrop of generally decreasing crime rates on university campuses.<sup>38</sup> Between 2001 and 2006, the year before the campus shootings at Virginia Tech University, which served as the primary impetus for campus carry legislation,<sup>39</sup> the total number of on-campus crimes increased across the country by seven percent.<sup>40</sup> In 2006, however, the total number of reported crimes on college campuses began a significant decline.<sup>41</sup> From 2006 to 2014, the number of reported campus crimes decreased 39%, from 44,500 incidents in 2006 to 27,000 in 2014.<sup>42</sup> That represented a drop in criminal incidents per 10,000 students from 35.6 in 2001 to 17.9 in 2014.<sup>43</sup> This overall reduction from 2006 to 2014 held true across all types of higher education institutions.<sup>44</sup> And from 2001 to 2014, the rate of all crime, other than forcible sex offenses and negligent homicide, decreased on college campuses.<sup>45</sup> Simple assaults are typically the most common offense committed on college campuses,

---

38 THE NAT'L CTR. FOR EDUC. STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2016, at vii, ix (2017).

39 See *infra* notes 106–11, 126, 198 and accompanying text.

40 THE NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 38, at 122. During this time period, total enrollment on college campuses also increased, and at a higher rate than the growth in reported crimes. See *id.* at 123. As a result, the number of reported crimes per 10,000 students decreased from 35.6 in 2001 to 33.3 in 2006. See *id.*

41 *Id.* at 122–23.

42 *Id.* at 122. Although the total number of reported crimes declined during this timeframe, overall enrollment increased, affecting the statistic of reported crimes per 10,000 students. See *id.* at 123.

43 *Id.* at 123.

44 *Id.* at 124. During this period, on-campus crime decreased from 35.5 to 19.5 per 10,000 students at public four-year institutions; from 57.7 to 30.1 per 10,000 students at nonprofit four-year institutions; and from 15.4 to 7.7 per 10,000 students at public two-year institutions. *Id.*

45 *Id.* at 122. During that timeframe, the rate of forcible sex offenses on campus climbed from 1.9 to 3.3 per 10,000 students, and the number of negligent homicides remained the same (two incidents). See *id.* at 112; THE NAT'L CTR. FOR EDUC. STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2015, at 112 (2016).

with their rates much higher than those of sexual assault, robbery, or aggravated assault.<sup>46</sup> Homicide rates, in particular, are extremely low on college campuses as compared to the overall homicide rate in society, with .007 homicides per 100,00 students, compared to 5.7 per 100,000 individuals in general society, and 14.1 per 100,000 individuals age 17 to 29 in general society.<sup>47</sup>

Despite these overall reductions in crime rates, gun violence in higher education has increased in recent years, from ten incidents in 2001–2002 to 29 incidents in 2015–2016.<sup>48</sup> The total number of victims killed or wounded in these gun attacks grew substantially, as well, from 20 in 2001–2002 to 78 in 2015–2016.<sup>49</sup>

This general timeframe also saw a “professionalization” of campus police departments,<sup>50</sup> as universities expended significant resources to keep their student, staff, and faculty populations safe, adding armed officers and police departments, establishing formal relationships with municipal police departments, installing safety equipment throughout campuses, and actively engaging in community awareness and education programs.<sup>51</sup> In the most recent data available, 95% of all four-year campuses with 2,500 or more students operated their own campus law enforcement office,<sup>52</sup> and those offices have been increasingly active. In contrast to the declining rate of crime on college campuses, the number of on-campus arrests between 2001 and 2011 increased from 40,300 to 54,300.<sup>53</sup> The rate of weapons arrests per 10,000 students has remained relatively unchanged from 2001 to 2014, but the rate of arrests for drug law

46 Bonnie S. Fisher & John J. Sloan, III, *Campus Crime Policy: Legal, Social, and Security Contexts*, in *CAMPUS CRIME: LEGAL, SOCIAL, AND POLICY PERSPECTIVES* 3, 10 (Bonnie S. Fisher & John J. Sloan III eds., 3d ed. 2013).

47 *Guns on Campus' Laws for Public Colleges and Universities*, ARMED CAMPUSES, <http://www.armedcampuses.org/> (last updated 2016) (citing 1999 data).

48 ASHLEY CANNON, *CITIZENS CRIME COMM. OF N.Y.C., AIMING AT STUDENTS: THE COLLEGE GUN VIOLENCE EPIDEMIC 2* (2016).

49 *Id.*

50 Fisher & Sloan, *supra* note 46, at 17.

51 BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, *CAMPUS LAW ENFORCEMENT, 2011–12* (2015); see generally Max L. Bromley, *The Evolution of Campus Policing: An Update to “Different Models for Different Eras”*, in *CAMPUS CRIME: LEGAL, SOCIAL, AND POLICY PERSPECTIVES*, *supra* note 46, at 293, 297–99.

52 REAVES, *supra* note 51, at 21.

53 THE NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 38, at 124 (noting that since 2011, however, the number has decreased).

violations has increased from 10.2 to 12.8.<sup>54</sup>

In addition to university police involvement, higher education institutions have been actively using their internal administrative procedures to deal with university rule violations. From 2001 to 2014, the number of referrals for disciplinary actions related to weapons, drugs, and liquor violations rose 140% from 23,900 to 57,400.<sup>55</sup> Importantly, as schools consider how to regulate campus carry, 90% of the referrals from 2014 related to rule violations occurring in residence halls, with over half involving alcohol.<sup>56</sup> To some extent, these increases in raw numbers are attributable to increases in overall student populations on campus over the years, but the timeframe 2001 to 2014 saw a significant jump in the rate of disciplinary referrals per 10,000 students for drug violations (20.5 to 38.1) and liquor violations (111.3 to 141.6).<sup>57</sup>

Against a general backdrop of decreasing crime rates on college campuses, the total number and rate of forcible sex crimes are clear outliers. The raw number of forcible sex crimes reported between 2001 and 2014 rose from 2,200 to 6,700, an increase of 205%.<sup>58</sup> Reports of these crimes jumped 34% in just one year from 5,000 in 2013 to 6,700 in 2014.<sup>59</sup> Whether these numbers represent an actual increase in sexual assaults on college campuses or an increased willingness to report such crimes, or some combination of those factors, is unclear. However, 26.1% of college female seniors in a recent study reported having been the victim of sexual contact by force or incapacitation during their undergraduate years.<sup>60</sup> Other studies have found the rate of sexual assault as high as 38% among college females at some schools.<sup>61</sup>

---

54 *Id.* at 124.

55 *Id.* at 125.

56 *Id.*

57 *Id.*

58 *Id.* at 122.

59 *Id.* Beginning in 2014, data on “forcible sex crimes” were reported in a more granular way than in prior years. In particular, those crimes were broken down between rape and fondling incidents in 2014, whereas data before 2014 did not include that distinction. In 2014, approximately 4,400 rapes and 2,300 fondling incidents were reported to police. *See id.*

60 DAVID CANTOR ET AL., REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT, at xiii (2015).

61 CHRISTOPHER KREBS ET AL., CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT 73 (2016). Beyond actual assault, 47.7% of college students report being the victim of sexual harassment while in school. *See* CANTOR ET AL., *supra* note 60, at xvi.

In light of decreasing reported crime on college campuses, increased campus safety measures being implemented by universities, and increasing numbers of both arrests and disciplinary adjudications by schools, do we have reason to believe that campus carry will make our universities even safer? This may be a difficult question to answer, in part, because of a 1996 amendment to a Congressional spending bill that prohibited the Centers for Disease Control (CDC) from spending money to “advocate or promote gun control.”<sup>62</sup> Although the CDC was not barred from studying gun violence, per se, its funding was reduced by Congress in the amount it had spent on that research.<sup>63</sup> As a result, there has been little public research into this general topic since 1996.<sup>64</sup> However, research conducted outside the CDC may prove informative.

In considering whether campus carry makes our universities safer, it may be useful to look briefly at three of the primary arguments advanced by gun advocates in light of available data: that campus carry should be allowed to harden colleges as targets, because mass shootings often take place in softer-target areas that have been designated “gun free zones”; that civilians with firearms are likely to stop an armed attacker; and that more relaxed gun laws lead, in general, to lower crime rates.<sup>65</sup>

First, do mass shooters frequently seek out targets that are gun-free zones to maximize the damage they inflict or decrease the chances that they will be apprehended? A study of the 111 “high-fatality mass shootings,” which involved six or more murdered victims, that have taken place in the United States since 1966 found that only 18 occurred in a gun-free or gun-restricted zone.<sup>66</sup> Nearly 90% of these mass attacks took place in areas where civilians were allowed to carry firearms or where armed security guards were

---

62 Sarah Zhang, *Why Can't the U.S. Treat Gun Violence as a Public-Health Problem*, ATLANTIC (Feb. 15, 2018), <https://www.theatlantic.com/health/archive/2018/02/gun-violence-public-health/553430/>.

63 *Id.*

64 Research by the CDC prior to 1996 had suggested certain connections between guns and violence, such as increased rates of suicide in homes with guns. *See id.*

65 DANIEL W. WEBSTER ET AL., FIREARMS ON COLLEGE CAMPUSES: RESEARCH EVIDENCE AND POLICY IMPLICATIONS 9–15 (2016) (citing LOUIS KLAREVAS, RAMPAGE NATION: SECURING AMERICA FROM MASS SHOOTINGS (2016)).

66 *Id.* at 9.

present.<sup>67</sup> This should not be surprising, as studies usually find that those perpetrating mass shootings are motivated by a desire to lash out because of a specific grievance with individual victims, institutions, or groups of people.<sup>68</sup> In the university mass shooting context—which is extremely rare, in comparison to overall crime rates on college campuses—reports of the motivations of shooters bears this out, as shooters often have a troubled history with the school itself or particular students enrolled there.<sup>69</sup>

Second, are civilians with concealed weapons likely to stop an armed attacker on campus? Beyond the campus environment, concealed permit holders almost never use their weapons to stop a criminal attack. In a Federal Bureau of Investigation (FBI) report from 2014 analyzing 160 active shooter incidents between 2000 and 2013, armed civilians intervened just once to end the attack, and that situation involved intervention by a U.S. Marine.<sup>70</sup> In comparison, 21 of the incidents ended when unarmed citizens safely and successfully restrained the shooter.<sup>71</sup>

Furthermore, another recent study found that in a country with over 300 million guns, victims of violent crime fail to defend themselves or threaten the perpetrator with a weapon 99.2% of the time.<sup>72</sup> In the context of school shootings, that number rises even higher. There has not yet been a school shooting stopped by

---

67 *Id.*

68 *Id.* at 10; see N.R. Kleinfeld, et al., *Mass Murderers Fit Profile, as Do Many Others Who Don't Kill*, N.Y. TIMES (Oct. 3, 2015), <https://www.nytimes.com/2015/10/04/us/mass-murderers-fit-profile-as-do-many-others-who-dont-kill.html>.

69 Stephanie A. Miller, *School Shootings Perpetrators' Self-Reported Motives: A Qualitative Analysis of Manifestos and Other Writings 27–31* (Apr. 2017) (unpublished B.A. thesis, Georgia Southern University), <https://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=1327&context=honors-theses> (reviewing literature and concluding that a significant number of school shooters felt bullied, harassed, or rejected by fellow students).

70 WEBSTER ET AL., *supra* note 65, at 11 (citing J. PETE BLAIR & KATHERINE W. SCHWEIT, FED. BUREAU OF INVESTIGATIONS, *STUDY OF ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES BETWEEN 2000 AND 2013* (2013)).

71 *Id.*

72 JOHN J. DONOHUE ET AL., *RIGHT-TO-CARRY LAWS AND VIOLENT CRIME: A COMPREHENSIVE ASSESSMENT USING PANEL DATA, THE LASSO, AND A STATE-LEVEL SYNTHETIC CONTROLS ANALYSIS 5* (2017) (citing MICHAEL PLANTY & JENNIFER TRUMAN, *FIREARM VIOLENCE, 1993-2011* (2013)).

an armed civilian.<sup>73</sup> One reason more civilians do not respond to violent crime by brandishing a weapon is that doing so effectively, in the heat of emotional chaos, is incredibly difficult, even for trained professionals. Hormones surge, vision narrows, and hearing becomes impaired.<sup>74</sup> The situation is further complicated by factors like distance from the target, lighting, and the mental state of the license holder.<sup>75</sup> When trained law enforcement officers respond with gunfire in the context of a violent crime, they are rarely accurate. In a 2008 RAND Corporation study of the New York Police Department, it was determined that between 1998 and 2006, the hit-rate by officers in gunfights was 18%; when the target did not return fire, the hit-rate rose to only 30%.<sup>76</sup> There is little reason to believe that college students, staff, and faculty will respond effectively and with accuracy in an active shooter situation with only minimal state-required training.<sup>77</sup>

Finally, from a macro perspective, is there reason to believe that campus carry, as an example of more relaxed gun laws, may reduce crime rates? One recent comprehensive report, which confirms findings in prior studies, strongly suggests that more relaxed gun laws do not lead to a reduction in crime; instead, and in contradiction to earlier, less-complete reports, they appear to correlate with increased crime over time.<sup>78</sup> That recent report, a working paper published in June of 2017 and revised in November of 2018 by the National Bureau of Economic Research (NBER) looked at whether “right to carry” laws decrease crime rates.<sup>79</sup> A state is considered to be a “right to carry” (RTC) state or a “shall issue”

73 Wofford, *supra* note 23.

74 Nate Rawlings, *Ready, Fire, Aim: The Science Behind Police Shooting Bystanders*, TIME (Sept. 16, 2013), <http://nation.time.com/2013/09/16/ready-fire-aim-the-science-behind-police-shooting-bystanders/>; Wofford, *supra* note 23 (reporting on a police study simulating armed assailants entering a classroom with armed students; the students were “consistently mowed down in seconds . . . often before [any student] could unholster a gun”).

75 WEBSTER ET AL., *supra* note 65, at 10.

76 Rawlings, *supra* note 74.

77 *Id.*

78 See Maura Ewing, *Do Right-to-Carry Gun Laws Make States Safer?*, ATLANTIC (June 24, 2017), <https://www.theatlantic.com/politics/archive/2017/06/right-to-carry-gun-violence/531297/>; Evan Defilippis & Devin Hughes, *Gun-Rights Advocates Claim Criminals Don't Follow Gun Laws. Here's the Research that Shows They're Wrong*, TRACE (Sept. 8, 2015), <https://www.thetrace.org/2015/09/gun-control-criminals-research/>.

79 DONOHUE ET AL., *supra* note 72.

state if its requirements for gun possession do not leave discretion with the permitting agency; that is, a state falls into this category if an applicant for a handgun license must be issued a license if she satisfies all of the statutory requirements in the jurisdiction.<sup>80</sup> Texas is an RTC state.<sup>81</sup>

The NBER study used new analytical methods to assess a longer and deeper set of data, from 1979 to 2014 and covering 33 states, than had earlier studies that purported to show a decrease in crime in RTC states.<sup>82</sup> Those earlier conclusions, in papers and books, may have helped fuel the initial legislative push for states to adopt RTC laws.<sup>83</sup> In summary, the recent NBER study found that RTC states had aggregate crime rates seven percent higher after five years and 14% higher after ten years than they would have been without the laws.<sup>84</sup> Texas was a special focus in the report, though its results were consistent with the overall findings. Ten years after adopting its RTC law in 1996, violent crime in the state was nearly 17% higher than it would have been without the law.<sup>85</sup> While Texas experienced a drop in its violent crime rate of 19.7% during the same period, the new modeling in the NBER study concluded that without the RTC law, Texas would have experienced a decrease in violent crime of 31%.<sup>86</sup>

Little data exists to support the argument that mass shooters seek out gun-free zones for attack, that civilians are likely to be successful as a “good guy with a gun,” or that more relaxed gun laws lead to lower crime rates. In fact, recent data and studies strongly suggest that states enacting more liberalized gun laws experience higher crime rates than they would otherwise.<sup>87</sup> Nevertheless, emotions to the contrary run strong. In particular, there is widespread sentiment that guns on campus make those communities safer. One UT Austin student personalized this view: “I’ll feel much safer after the implementation of [c]ampus [c]arry. . . . I’ll be able to protect myself if the occasion ever arose where I needed a gun in a potentially

---

80 *Concealed Carry*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/concealed-carry/> (last visited Apr. 15, 2019).

81 DONOHUE ET AL., *supra* note 72, at 37.

82 *Id.* at 2–3.

83 *Id.*

84 *Id.* at 42.

85 *Id.* at 29.

86 *Id.* at 30.

87 *See id.*, *supra* note 72.

life or death situation. Being a female, and with the stigma of the high number of sexual assaults on college campuses, I'll definitely feel much safer with a gun, especially if I'm by myself."<sup>88</sup>

### III. GUNS ON CAMPUS IN AMERICA

Despite an apparent lack of safety-related data to support the value of campus carry laws, they continue to proliferate. While campus carry began in Utah in 2004, the movement had its emotional genesis several years later following a mass shooting in Virginia. Since then, it has spread to ten states, from coast to coast, and is being actively considered for adoption in many more.

#### A. *Virginia Tech Rampage and its Aftermath*

In April 2007, a senior at Virginia Polytechnic Institute and State University killed two fellow students in a dormitory at 7:15 a.m.<sup>89</sup> During the following two hours,<sup>90</sup> the shooter returned to his dorm room, changed clothes, traveled to a nearby post office, mailed a package containing a manifesto, letter, and video clips to NBC News, and then returned to campus.<sup>91</sup> At approximately 9:15 a.m., he traveled to an engineering building on campus, carrying with him two handguns and hundreds of rounds of ammunition.<sup>92</sup> After entering the building, the shooter used chains to lock the three main entrances from inside.<sup>93</sup> He then proceeded classroom-to-classroom, shooting professors and students, including through barricaded doors.<sup>94</sup> He lined up some of his victims against classroom walls and shot them one at a time.<sup>95</sup> The shooter continued his slow march

88 Kris Seavers & Ashika Sethi, *We Asked Eight UT Students What They Think About Campus Carry*, AUSTIN MONTHLY (Aug. 1, 2016), <http://www.austinmonthly.com/Austin-Amplified/August-2016/We-Asked-Eight-UT-Students-What-They-Think-About-Campus-Carry/>.

89 VIRGINIA TECH REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH APRIL 16, 2007: REPORT OF THE REVIEW PANEL 22–25 (2007).

90 The ensuing two hours appear to have been filled with frustratingly slow and confused responses from law enforcement. *See id.* at 25–26. The first Virginia Tech email to the campus community, notifying them of the dorm shootings, was sent at 9:26 a.m. *Id.* at 26. First period classes began at 8:00 a.m., and second period classes started at 9:05 a.m. *Id.* at 25–26.

91 *Id.*

92 *Id.* at 26, 89.

93 *Id.*

94 *Id.* at 26–27.

95 Christine Hauser & Anahad O'Connor, *Virginia Tech Shooting Leaves 33 Dead*, N.Y. TIMES (Apr. 16, 2007), <http://www.nytimes.com/2007/04/16/>

through the building, sometimes returning to classrooms he had already attacked, shooting more victims.<sup>96</sup>

Police<sup>97</sup> used a shotgun to blast open a fourth entrance to the building at 9:50 a.m.<sup>98</sup> The shooter killed himself one minute later.<sup>99</sup> During that 11-minute attack on the students and faculty of Virginia Tech, the shooter fired 174 rounds of ammunition, killed 30 students and faculty, and wounded 17 more people.<sup>100</sup> In total, 33 individuals, including the gunman, died.<sup>101</sup> The Virginia Tech massacre remains the deadliest school shooting in U.S. history, and the third overall deadliest shooting in the United States.<sup>102</sup>

While there had been prior incidents of university shootings, including shootings that resulted in multiple fatalities, the massacre at Virginia Tech in 2007 was “the first rampage in higher education to result in official public scrutiny.”<sup>103</sup> Official commissions at the federal, state, and university levels investigated all aspects of the shootings and identified the various circumstances and failings that existed to allow the tragedies to occur.<sup>104</sup> Beyond official investigations, the Virginia Tech massacre “touched off an intense debate over whether colleges should remain gun-free zones, or whether allowing students and faculty to carry concealed weapons

---

us/16cnd-shooting.html?\_r=0.

96 VIRGINIA TECH REVIEW PANEL, *supra* note 89, at 27–28.

97 The university police force had in place a mutual aid agreement with the Blacksburg Police Department and operated an emergency response team. *Id.* at 11.

98 *Id.* at 28.

99 *Id.*

100 *Id.*

101 *Id.* at 28–29.

102 *Deadliest Mass Shootings in U.S. History Fast Facts*, CNN (Dec. 15, 2018), <http://www.cnn.com/2013/09/16/us/20-deadliest-mass-shootings-in-u-s-history-fast-facts/>.

103 Helen Hickey de Haven, *The Elephant in the Ivory Tower: Rampages in Higher Education and the Case for Institutional Liability*, 35 J. C. & U. L. 503, 554 (2009).

104 VIRGINIA TECH REVIEW PANEL, *supra* note 89, at 19–20; *see* U.S. DEP'T OF HEALTH & HUMAN SERVS. ET AL., REPORT TO THE PRESIDENT ON ISSUES RAISED BY THE VIRGINIA TECH TRAGEDY (June 13, 2007), [https://www.justice.gov/archive/opa/pr/2007/June/vt\\_report\\_061307.pdf](https://www.justice.gov/archive/opa/pr/2007/June/vt_report_061307.pdf); SEC. INFRASTRUCTURE WORKING GRP., PRESIDENTIAL WORKING PAPER (Aug. 17, 2007), [https://vtnews.vt.edu/content/dam/vtnews\\_vt\\_edu/documents/2007-08-22\\_security\\_infrastructure.pdf](https://vtnews.vt.edu/content/dam/vtnews_vt_edu/documents/2007-08-22_security_infrastructure.pdf); INTERFACE WORKING GRP., PRESIDENTIAL INTERNAL REVIEW PAPER (Aug. 17, 2007), [http://www.vtnews.vt.edu/documents/2007-08-22\\_internal\\_communications.pdf](http://www.vtnews.vt.edu/documents/2007-08-22_internal_communications.pdf).

might have resulted in fewer deaths.”<sup>105</sup>

As the country reeled from the horrors of Virginia Tech, Republican presidential candidate Fred Thompson stated that same year that he would support arming students on college campuses to avert future attacks.<sup>106</sup> While the NRA shied away from this idea,<sup>107</sup> a small group of conservative college students from the University of North Texas picked it up and ran, launching a Facebook group called “Students for Concealed Carry on Campus” (SCCC).<sup>108</sup> The group’s prominence increased after it was covered by Glenn Beck on CNN and following another campus shooting several months later in Illinois.<sup>109</sup> After Virginia Tech and the establishment of SCCC, the campus carry movement accelerated.<sup>110</sup> Its growth following Virginia Tech would be ironic, no doubt, to the drafters of the official university investigative report following that tragedy. In its Recommendation VI-5, that panel encouraged that “guns be banned on campus grounds and in buildings unless mandated by law.”<sup>111</sup>

### **B. Snapshot of State Campus Carry Laws**

Describing the current state of campus carry is challenging, as the number of states considering some version of the law shifts every year. Nevertheless, this section provides a brief snapshot of campus carry across the country, including some detail on how the law is being implemented in the states where it has been adopted. This perspective allows a more thoughtful consideration of the Texas law in later sections.

105 Will Buchanan, *Three Years After Virginia Tech Shooting, College Gun Bans Prevail*, CHRISTIAN SCI. MONITOR (Apr. 16, 2010), <http://www.csmonitor.com/USA/Education/2010/0416/Three-years-after-Virginia-Tech-shooting-college-gun-bans-prevail>; see also U.S. DEPT OF EDUC., HIGHER EDUC. CTR. FOR ALCOHOL, DRUG ABUSE, & VIOLENCE PREVENTION, GUNS ON CAMPUS: A CURRENT DEBATE (Jan. 2010), <https://files.eric.ed.gov/fulltext/ED538206.pdf>.

106 *Fred Thompson: Interview with Tim Russert on NBC News’ “Meet the Press”*, AM. PRESIDENCY PROJECT (Nov. 4, 2007), <https://www.presidency.ucsb.edu/documents/interview-with-tim-russert-nbc-news-meet-the-press-5>.

107 Wofford, *supra* note 23.

108 FAQ, STUDENTS FOR CONCEALED CARRY, <http://concealedcampus.org/faq/>; see Wofford, *supra* note 23.

109 Wofford, *supra* note 23.

110 Abby Jackson & Skye Gould, *10 States Allow Guns on College Campuses and 16 More are Considering It*, BUS. INSIDER (Apr. 27, 2017), <http://www.businessinsider.com/states-that-allow-guns-on-college-campuses-2017-4>.

111 VIRGINIA TECH REVIEW PANEL, *supra* note 89, at 76.

As a starting point, each of the 50 states allows certain individuals to carry concealed handguns in particular circumstances, assuming that state requirements are satisfied.<sup>112</sup> States diverge significantly, however, when it comes to whether concealed handguns may be carried on college campuses. As of the time of this article, 16 states, including California, Florida, Massachusetts, New Jersey, and New York, prohibit the carrying of weapons on university campuses.<sup>113</sup> Twenty-three states give discretion to the individual university whether to allow concealed handguns on campus.<sup>114</sup> Among states in this second category are Alabama, Maryland, Pennsylvania, Virginia, and Washington.<sup>115</sup>

In 2004, three years before Virginia Tech, Utah became the first state to allow the concealed carry of handguns on public college campuses.<sup>116</sup> Prior to 2004, Utah had in place a prohibition that barred state entities from excluding weapons from their property.<sup>117</sup> In that year, the state extended its prohibition to explicitly include “state institutions of higher education”<sup>118</sup> and prohibited those entities from enacting or enforcing any rule that

---

112 *Guns on Campus: Overview*, NAT'L CONF. ST. LEGISLATURES (Aug. 14, 2018), <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx>.

113 *Id.*; Neal H. Hutchens & Kerry B. Melear, *More States Are Allowing Guns on College Campuses*, CONVERSATION (Aug. 17, 2017), <https://theconversation.com/more-states-are-allowing-guns-on-college-campuses-81791>.

114 Teri Lyn Hinds, *Campus Carry: 2017 State Legislation Round-Up*, NAT'L ASS'N STUDENT PERSONNEL ADMIN. (July 13, 2017), <https://www.naspa.org/rpi/posts/campus-carry-2017-state-legislation-round-up>; *Guns on Campus: Overview*, *supra* note 112. Within this category, states have adopted a sometimes-confusing mixture of rules. In Minnesota, for example, public universities may adopt rules prohibiting their students or employees—but not members of the public—from carrying concealed weapons on campus, but these universities may not regulate firearm possession by anyone in the universities' parking areas. *See* MINN. STAT. ANN. § 624.714, subd. 18(a)–(c) (West 2019).

115 *Guns on Campus: Overview*, *supra* note 112.

116 Hutchens & Melear, *supra* note 113; Associated Press, *Utah Only State to Allow Guns at College*, NBC NEWS (Apr. 28, 2017), [http://www.nbcnews.com/id/18355953/ns/us\\_news-life/t/utah-only-state-allow-guns-college/#.WnoxIUtMFBx](http://www.nbcnews.com/id/18355953/ns/us_news-life/t/utah-only-state-allow-guns-college/#.WnoxIUtMFBx) [hereinafter *Utah Only State to Allow Guns at College*].

117 *Utah Only State to Allow Guns at College*, *supra* note 116. The Utah Supreme Court includes a discussion of the disagreements surrounding the University of Utah's weapons policy in its decision ultimately finding that policy inconsistent with state law. *See* *Univ. of Utah v. Shurtleff*, 144 P.3d 1109, 1112 (Utah 2006).

118 Uniform Firearm Laws, ch. 264, § 63-98-102(6)(b) (2004) (codified as amended at UTAH CODE § 53-5a-102(6)(b)).

“in any way inhibits or restricts the possession or use of firearms on either public or private property.”<sup>119</sup> That extension conflicted with a long-standing University of Utah rule that prohibited, for safety reasons, the carrying of weapons on campus.<sup>120</sup> Litigation ensued following passage of the 2004 amendment.<sup>121</sup> Two years later the Utah Supreme Court ruled that the University of Utah was subject to the new law and was required to lift its weapons ban.<sup>122</sup> Under current Utah law, individual universities are authorized by statute, through the state’s educational board, to designate one room on campus as a gun-free “hearing room” and to allow students living in dormitories to request roommates who are not licensed to carry firearms.<sup>123</sup> Outside of these very narrow exceptions, universities are not authorized to regulate firearms on their campuses;<sup>124</sup> instead, that right is explicitly reserved for the state legislature.<sup>125</sup>

Since 2004, nine states have followed in Utah’s footsteps, authorizing campus carry in some capacity, and all following the Virginia Tech massacre.<sup>126</sup> The other states falling into this category are Arkansas, Colorado, Georgia, Idaho, Kansas, Mississippi, Oregon, Texas, and Wisconsin.<sup>127</sup> An additional state that is sometimes included in that general category, Tennessee, allows faculty members who have received a license from the state to carry their weapons on campus, but that same right does not extend to members of the general public or students.<sup>128</sup>

Even beyond the states that allow campus carry, there has been a significant legislative push at the state level to enact similar laws. In 2017, at least 16 additional states considered campus carry bills,<sup>129</sup> but none of these were enacted. New York was one of

119 *Id.* § 63-98-102(5).

120 Gregory T. Croft, *University of Utah Can’t Ban Firearms on Campus*, ABC NEWS (Sept. 20, 2006), <http://abcnews.go.com/US/LegalCenter/story?id=2469016&page=1>.

121 *Utah Only State to Allow Guns at College*, *supra* note 116.

122 *Shurtleff*, 144 P.3d, at 1121.

123 UTAH CODE ANN. § 53B-3-103 (West 2019).

124 *Id.* §§ 63-98-102(6)(b), 53B-3-103 (2004). The University of Utah’s weapons policy simply states that the university enforces state law regulating firearms on campus. See *Policy 1-003: Firearms on Campus (Interim Policy)*, U. OF UTAH (Sept. 24, 2007), <http://regulations.utah.edu/general/1-003.php>.

125 UTAH CODE ANN. § 53B-3-103(2)(a)(ii).

126 *Guns on Campus: Overview*, *supra* note 112.

127 *Id.*

128 *Id.*

129 Hutchens & Melear, *supra* note 113.

the most surprising states to consider a new campus carry law in 2017.<sup>130</sup> 2015 and 2016 saw a similar number of campus carry bills introduced and debated in other states, most of which were never passed into law.<sup>131</sup> Among the ten states, other than Texas, that have enacted campus carry, the details of the laws vary dramatically.

In Idaho, for example, public universities may not prohibit the carrying of firearms on university property, including within all campus buildings, with exceptions only for student residence halls and arenas or stadiums seating at least 1,000 persons.<sup>132</sup> However, the right to carry on campus applies only to individuals who have obtained an “enhanced license to carry concealed weapons,”<sup>133</sup> which requires additional training beyond the traditional concealed carry license issued by the state.<sup>134</sup> While the governing boards of public universities in Idaho have the power to “prescribe rules and regulations relating to firearms,”<sup>135</sup> that power explicitly does not extend to prohibiting firearms on campus.<sup>136</sup>

In Kansas, the “Personal and Family Protection Act” mandates that the concealed carrying of handguns may not be prohibited in state or municipal buildings, which include those of public universities.<sup>137</sup> The only major exception to this general rule is for areas where “adequate security measures [are in place] to ensure that no weapons are permitted,” as long as proper notice is posted.<sup>138</sup> Adequate security measures, by statute, include the use of electronic equipment and armed staff to detect and restrict the carrying of weapons into the building through public entrances.<sup>139</sup> The Kansas statutory framework also lists additional limited

---

130 Jackson & Gould, *supra* note 110.

131 *2015 Guns on Campus Bill Status*, CAMPAIGN TO KEEP GUNS OFF CAMPUS (Sept. 9, 2015), <https://keepgunsoffcampus.org/wp-content/uploads/2013/03/2015-guns-on-campus-bills1.pdf>; *2016 State Legislation – Guns on Campus Bills*, CAMPAIGN TO KEEP GUNS OFF CAMPUS (Aug. 1, 2016), <https://keepgunsoffcampus.org/wp-content/uploads/2013/03/2016-State-Legislation-%E2%80%93Guns-on-Campus-Bills1.pdf>.

132 IDAHO CODE ANN. § 18-3309(2) (West 2019).

133 *Id.* § 18-3302K.

134 The enhanced license in Idaho requires, among other things, a training course of at least eight hours taught, in person, by a certified instructor and including the firing of at least 98 rounds by the student. *See id.* § 18-3302K(4)(c).

135 *Id.* § 18-3309(1).

136 *Id.* § 18-3309(2).

137 KAN. STAT. ANN. § 75-7c20(a), (j) (West 2019).

138 *Id.* § 75-7c20(a).

139 *Id.* § 75-7c20(m)(1).

exceptions, including hospitals associated with the University of Kansas.<sup>140</sup> Universities are not, however, granted any other flexibility in their implementation of concealed carry, including the ability to create limited gun-free zones within their campus communities.

In Wisconsin, concealed weapons license holders may carry their handguns, as a general matter, on public or private property.<sup>141</sup> That broad authority would extend to all premises of Wisconsin universities. However, Wisconsin also grants all universities, public and private, the power to opt out of the default law.<sup>142</sup> As a result, if a university posts notice that handguns are not allowed in specific areas of campus, up to and including all areas of campus, then campus carry is not lawful.<sup>143</sup> In practice, no private or public university in Wisconsin allows the carrying of weapons inside buildings, and no private university allows weapons on campus grounds.<sup>144</sup> As a result, while Wisconsin is technically within the group of states that has authorized campus carry, that right does not exist in practice at any university in the state.

The state of Arkansas requires individuals who wish to carry concealed weapons onto university campuses to undertake training beyond that required of ordinary license holders.<sup>145</sup> Persons completing that enhanced training may possess concealed handguns “on the grounds of a public university, public college,

140 *Id.* § 75-7c20(k)(6). Other areas specifically exempted by the Kansas statute include state-owned hospitals, adult care homes, mental health facilities, and indigent health care facilities. *Id.* § 75-7c20(k)(2)–(5).

141 WIS. STAT. ANN. § 175.60 (West 2019).

142 *Id.* § 943.13(1m)(c)5.

143 *Id.*

144 *Laws Concerning Carrying Concealed Firearms on Campus in Wisconsin*, ARMED CAMPUSES, <http://www.armedcampuses.org/wisconsin/> (citing data as of October 1, 2016); see *Concealed Carry*, U. WIS. ALUMNI ASS'N, <https://www.uwalumni.com/support/advocate/current-issues/concealed-carry/> (last visited Apr. 17, 2019) (stating that The University of Wisconsin-Madison “has designated all campus buildings as weapon-free facilities”); *Weapons Policy*, MARQUETTE U., <http://www.marquette.edu/weapons-policy/> (last visited Apr. 17, 2019) (explaining that the university prohibits weapons in all university buildings, including academic, residence, and office areas); *Firearms and Dangerous Weapons*, U. WIS.-MILWAUKEE, <http://uwm.edu/legal/firearms-and-weapons/> (last visited Apr. 17, 2019) (stating that weapons are prohibited in all university buildings, residence halls, vehicles, and special events).

145 ARK. CODE ANN. § 5-73-322(g)(1) (West 2019) (requiring, among other things, training of a maximum of eight hours, four of which may be waived if the licensee has undergone prior training within at past ten years).

or community college, whether owned or leased” by the school.<sup>146</sup> Private universities may opt out of the law by adopting a policy to that effect and posting appropriate notices,<sup>147</sup> but the Arkansas statute creates only limited exceptions to the default campus carry rule for public universities. For example, license holders may not store their handguns in university-operated dormitories.<sup>148</sup> In addition, license holders may not carry their concealed weapons into a location where a disciplinary or grievance procedure is taking place.<sup>149</sup> Beyond those limited exceptions that apply to all universities, the Arkansas law does not allow universities to establish firearms regulations.

In Colorado, the state legislature enacted the Concealed Carry Act in 2003, which allows a license holder to carry a concealed handgun “in all areas of the state.”<sup>150</sup> Specific limited exceptions are recognized by statute, including the premises of a public elementary, middle, junior high, or high school;<sup>151</sup> public buildings where permanent screening devices are installed and security personnel screen all persons entering the building so that weapons can be left with the security staff;<sup>152</sup> and private property where the owner has chosen to exclude weapons.<sup>153</sup> An explicit exemption for college campuses was considered and rejected by the legislature.<sup>154</sup> When this law was enacted, Colorado State University immediately complied and allowed concealed carry throughout the campus, other than in residence halls and dining facilities.<sup>155</sup> The University of Colorado at Boulder, however, refused to comply with the law and was supported by the state’s Attorney General. That office issued an opinion in 2003 stating that the university was, despite the broad concealed carry law, authorized to prohibit weapons throughout the university’s premises.<sup>156</sup> A lawsuit brought by SCCC followed

---

146 *Id.* § 5-73-322(b).

147 *Id.* § 5-73-322(c)(2).

148 *Id.* § 5-73-322(d).

149 *Id.* § 5-73-322(e)(1).

150 COLO. REV. STAT. ANN. § 18-12-214(1)(a) (West 2019).

151 *Id.* § 18-12-214(3).

152 *Id.* § 18-12-214(4).

153 *Id.* § 18-12-214(5).

154 David Kopel, *Guns on University Campuses: The Colorado Experience*, WASH. POST (Apr. 20, 2015), [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/?utm\\_term=.033ba9fc867d](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/?utm_term=.033ba9fc867d).

155 *Id.*; *Weapon Storage and Information*, COLO. ST. U., <https://police.colostate.edu/weapon-storage-and-information/>.

156 Regents Control of CU Weapons Control Policy, No. 03-03 Opp. Att’y Gen. of

several years later, which worked its way up to the Colorado Supreme Court. In 2012, that court ruled that the broad language of the concealed carry statute, combined with the narrow exceptions carved out in the statute, reflected the clear legislative intent to divest the University of Colorado's authority to regulate the possession of concealed handguns on campus.<sup>157</sup> As a result, the University of Colorado now allows the carrying of concealed weapons by license holders throughout its premises, with the exception of ticketed public performance venues, dining halls, and residence halls.<sup>158</sup>

Mississippi is one of currently 11 states that has authorized "constitutional carry," or the right of individuals to carry a concealed weapon in public without receiving any governmental license.<sup>159</sup> Although that general right does not extend to the unlicensed carry of concealed weapons on university campuses, Mississippi offers an Enhanced Carry Permit, which does.<sup>160</sup> As a result, individuals who satisfy the heightened license requirements for this enhanced permit have the right to carry their concealed weapons onto the premises of all colleges and universities in Mississippi.<sup>161</sup> Despite that authorization, Mississippi universities continue to implement regulations that restrict the carrying of concealed weapons on their

---

Colo. 6 (June 17, 2003).

157 *Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, LLC*, 271 P3d 496, 497 (Colo. 2012).

158 *Weapons on Campus*, U. COLO. BOULDER, <https://www.colorado.edu/police/services-faqs/weapons-campus> (last visited Apr. 17, 2019). The exceptions to campus carry carved out by both The University of Colorado Boulder and Colorado State University appear to be based on the general idea that the universities may regulate weapons in limited circumstances in contractual or licensor-licensee arrangements, such as in the dining hall, residence hall, or sports arena context. See generally *Laws Concerning Carrying Concealed Firearms on Campus in Colorado*, ARMED CAMPUSES, <http://www.armedcampuses.org/colorado/> (last visited Apr. 17, 2019); see also *Policy on Firearms, Explosives, and Other Weapons* § 2.5, COLO. SCH. MINES (Oct. 1, 2013), [https://inside.mines.edu/UserFiles/File/PoGo/Policies/STU/STU\\_Firearms\\_Policy.pdf](https://inside.mines.edu/UserFiles/File/PoGo/Policies/STU/STU_Firearms_Policy.pdf) (recognizing the broad right to concealed carry on campus for license holders, but reserving the right to prohibit weapons in any buildings where access is granted pursuant to a contractual relationship, such as in the housing context).

159 See MISS. CODE ANN. § 45-9-101(24) (West 2018); Geoff Pender, *How to Carry a Gun in Mississippi: New Laws Explained*, CLARION-LEDGER (May 14, 2016), <https://www.clarionledger.com/story/news/politics/2016/05/14/mississippi-gun-laws/84164140/>.

160 Re: City Ordinance Prohibiting the Carrying of Firearms, 2013-00217 Opp. Att'y Gen. of Miss. 4 (Dec. 2, 2013).

161 *Id.*; Pender, *supra* note 159.

campuses. For example, both the University of Mississippi and Mississippi State University prohibit concealed carry, despite the existence of Enhanced Carry Permits, in all academic buildings, classrooms, laboratories, administrative offices and buildings, athletic facilities, residence halls, and other areas where university events are scheduled.<sup>162</sup> The universities appear to base these exclusions on the fact that the no-weapons areas are not open to the public and are sensitive in nature.<sup>163</sup> As a result, it appears that some confusion currently exists around the topic of campus carry in Mississippi. Reflecting one aspect of that confusion, the Mississippi Legislature considered, but did not pass, a bill that would have allowed holders of Enhanced Carry Permits the right to sue to enforce their right to carry weapons onto university property.<sup>164</sup>

Despite vetoing a similar bill in 2016, Georgia's governor made that state the most recent to authorize campus carry on July 1, 2017.<sup>165</sup> That enactment occurred despite the unified opposition of school presidents, university police chiefs at the University system

---

162 *Weapons on Campus*, U. MISS., [https://secure24.olemiss.edu/umpolicyopen/GetPdfActive?pol=12092519&ver=active&file=12092519\\_active\\_20160902.pdf](https://secure24.olemiss.edu/umpolicyopen/GetPdfActive?pol=12092519&ver=active&file=12092519_active_20160902.pdf) (last visited Apr. 17, 2019); *OP 91.20: Possession of Firearms, Explosives, or Other Devices, Substances, or Weapons*, MISS. ST. U. 1–2 (2016), <http://www.policies.msstate.edu/policypdfs/91120.pdf>.

163 *Weapons on Campus*, *supra* note 162 (stating that Enhanced Carry Permit holders may not bring concealed weapons into the listed areas, which have been “designated as sensitive or non-public areas”). A similar distinction was made by the Mississippi Attorney General’s Office in the context of analyzing whether the state’s weapon permitting scheme allowed for the carrying of concealed weapons onto the premises of public schools. Re: Concealed Weapon on a Public School Campus, 2013-00023 Opp. Att’y Gen. of Miss. 4 (Oct. 1, 2013). The Attorney General explained that, “[a]lthough an enhanced licensee may carry into the public areas of a school facility, the enhanced license does not authorize him to enter onto parts of property where the public is not generally allowed.” *Id.* That opinion also cited *Digiacinto v. Rector and Visitors of George Mason University*, 704 S.E. 2d 365, 370 (Va. 2011) for the proposition that, “[a] university, unlike a public street or park, is not traditionally open to the public.” *Id.*

164 H.B. 1083, 2018 Reg. Sess. (Miss. 2018), <http://billstatus.ls.state.ms.us/2018/pdf/history/HB/HB1083.xml>.

165 Kathleen Foody, *Georgia Governor Approves Concealed Guns on Campus*, U.S. NEWS & WORLD REP. (May 4, 2017), <https://www.usnews.com/news/best-states/georgia/articles/2017-05-04/georgia-governor-approves-carrying-concealed-guns-on-campus>; Ramsey Touchberry, *What Georgia’s New Concealed Campus Carry Law Means for Students and Faculty*, USA TODAY COLLEGE (July 12, 2017), <http://college.usatoday.com/2017/07/12/what-georgias-new-concealed-campus-carry-law-means-for-students-and-faculty/>.

of Georgia's 28 educational institutions, and the Atlanta Chief of Police.<sup>166</sup> Under the new campus carry law in Georgia, handgun license holders may carry their weapons in a concealed manner in any building or on the real property of any public college or university.<sup>167</sup> The statutory scheme specifies several limited exception areas where concealed carry is prohibited at all public colleges and universities, including in buildings used for sporting events; student housing, including fraternity and sorority houses; areas where childcare is provided; rooms where high school students are enrolled in dual credit programs; faculty, staff, and administrative offices; and rooms where disciplinary proceedings are conducted.<sup>168</sup> Georgia does not include in its statutory framework any discretion for universities in implementing the new law or in promulgating rules to regulate campus carry. The University System of Georgia's Chancellor made this point clear in his Guidelines for the Implementation of House Bill 280: "Institutions . . . may not place additional restrictions or prohibitions on the carrying of handguns beyond those contained in the law."<sup>169</sup>

In Oregon, the state of campus carry is a confused mix of state statutory law, judicial opinions, and contradictory but apparently unenforced university and board of education policies. In 2011, the Oregon Court of Appeals struck down a board of education regulation<sup>170</sup> that banned guns on university campuses as inconsistent with the state's law reserving all power to regulate firearms to the legislature.<sup>171</sup> Following this decision, the Oregon

166 Foody, *supra* note 165; Lisa Hagen, *Flipping on the Issue, Georgia Governor Signs Campus Carry Bill*, NPR (May 4, 2017), <https://www.npr.org/2017/05/04/526971357/flipping-on-the-issue-georgia-gov-signs-campus-carry-bill>.

167 GA. CODE ANN. § 16-11-127.1(20)(A) (West 2019).

168 *Id.* § 16-11-127.1(20)(A)(i), (ii), (iv), (v). The law also does not require posting of notice outside areas where weapons are prohibited, thereby putting the burden of knowing where weapons are allowed squarely on the license holder. Chancellor Steve Wrigley, *Guidelines for the Implementation of House Bill 280*, U. Sys. GA., [https://www.usg.edu/news/release/guidelines\\_for\\_the\\_implementation\\_of\\_house\\_bill\\_280](https://www.usg.edu/news/release/guidelines_for_the_implementation_of_house_bill_280) (May 24, 2017).

169 Wrigley, *supra* note 168.

170 The rule in question was promulgated by the Oregon State Board of Higher Education and the Oregon University System. *See Or. Firearms Educ. Found. v. Bd. of Higher Educ.*, 264 P.3d 160, 161 (Or. Ct. App. 2011).

171 *Id.*; *see also* OR. REV. STAT. ANN. § 166.170 (1) (West 2019) ("Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage,

University System issued a new “policy” in 2012 that had the same impact as its prior “rule”: a prohibition, citing security concerns, on the carrying of firearms on university property by students, employees, anyone attending events on campus, and anyone renting university property, “whether or not that person possesses a concealed handgun license.”<sup>172</sup> Although the Oregon University System disbanded in 2015,<sup>173</sup> individual universities had already adopted internal policies consistent with that 2012 state-wide policy. For example, The University of Oregon prohibits firearms on campus, referencing the 2012 State Board of Higher Education policy.<sup>174</sup> In the face of these contradictory policies and rulings, at least some Oregon university students are choosing to carry concealed weapons on campus, in defiance of their schools’ prohibitions.<sup>175</sup> It is unclear whether Oregon universities are enforcing their individual prohibitions on firearms at this time, thus making the current state of campus carry in Oregon uncertain.<sup>176</sup>

In summary, the status of campus carry in the nine states that currently allow it is confused, inconsistent, and dominated by polarized positions. At the very least, these states have done a poor job balancing the right of license holders to carry firearms on

---

transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.”).

- 172 *Policy on Firearms*, U. OR. POLICE DEP’T (Mar. 2, 2012), <http://police.uoregon.edu/sites/police.uoregon.edu/files/OUS-Policy-on-Firearms.pdf>. The prior board of education “rule” authorized sanctions against any person who possessed or used firearms on university property. See *Or. Firearms Educ. Found.*, 264 P.3d at 161 (referencing State Board of Higher Education rule OAR 580-022-0045(3)).
- 173 Dash Paulson, *The End of the Oregon University System*, EUGENE WEEKLY (July 9, 2015), <https://eugeneweekly.com/2015/07/09/the-end-of-the-oregon-university-system/>.
- 174 *Firearms*, U. OR. POLICE DEP’T, <https://policies.uoregon.edu/vol-4-finance-administration-infrastructure/ch-5-public-safety/firearms>. Other Oregon universities follow suit. See also *Drug, Alcohol, and Weapons Policies*, FAD.025, S. OR. U. (Oct. 5, 2015), <https://inside.sou.edu/assets/policies/docs/drug-alcohol-weapons.pdf> (prohibiting all weapons on campus); *Firearms Policy*, O.S.U. (Mar. 2, 2012), <https://policy.oregonstate.edu/policy/firearms> (prohibiting the carrying of weapons by students, employees, contractors, and event attendees).
- 175 Alex Yablon & Olivia Li, *Oregon Colleges Ban Guns. Students Tote Them Anyway. Here’s Why*, TRACE (Oct. 7, 2015), <https://www.thetrace.org/2015/10/oregon-community-college-gun-free-zone/>.
- 176 *Id.* (Oregon universities “would likely see their policies regulating guns on campus get overruled in court should they ever try to enforce them.”).

campus with the need to provide individual flexibility to universities in implementation.

#### IV. TEXAS CAMPUS CARRY

Against this backdrop of U.S. campus carry laws, the following section looks in more depth at Texas: the general structure of guns laws in the state, a brief history of the enactment of campus carry in Texas, the framework of the state's campus carry law, and how universities have implemented it.

##### A. *Context of Texas Gun Laws*

Although Texas has a reputation as being a bastion for gun rights,<sup>177</sup> it also has a long history of regulating firearm possession, dating to at least 1866.<sup>178</sup> Then in 1870, the Texas Legislature limited the carrying of firearms in a variety of settings, including at polling places and public assemblies.<sup>179</sup> A broader framework limiting the carrying of firearms in public was enacted in 1871, with exceptions for militiamen, police, property owners on their premises, travelers, and persons in fear of unlawful immediate attack.<sup>180</sup> Although challenges to these laws were brought on constitutional grounds,<sup>181</sup> such concerns were largely resolved by case law the following year<sup>182</sup>

177 Mike Ward, *Gun-Related Bills Are Moving Slowly*, AUSTIN AM.-STATESMAN, May 1, 2013, at A1.

178 Hummel, *supra* note 30, at 143; Riley C. Massey, *Bull's-Eye: How the 81st Texas Legislature Nearly Got it Right on Campus Carry, and the 82nd Should Still Hit the X-Ring*, 17 TEX. WESLEYAN L. REV. 199, 203 (2011) (citing Act of Nov. 6, 1866, 11th Leg., R.S., ch. 92 § 1, 1866 Tex. Gen. Laws 90, *reprinted in* 5 H.P.N. Gammel, *The Laws of Texas 1822-1897*, at 1008, 1008-09 (Gammel Book Co. 1898) (making trespass with a firearm an offense punishable by a maximum ten-dollar fine and ten-day incarceration in the county jail)).

179 Massey, *supra* note 178, at 203 (citing Act of Aug. 12, 1870, 12th Leg., 1st C.S., ch. 46 § 1, 1870 Tex. Gen. Laws 63, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas 1822-1897*, at 237 (Gammel Book Co. 1898) (codified as amended at TEX. GOV'T CODE § 411.202)).

180 *See* Massey, *supra* note 178, at 203 (citing Act of Apr. 12, 1871, § 1, 1871 Tex. Gen. Laws 25); *Brownlee v. State*, 32 S.W. 1043, 1044 (Tex. Crim. App. 1895) (addressing the "immediate threat of attack" defense); *Baird v. State*, 38 Tex. 599, 601-02 (1873) (addressing property owners on their own premises); *Waddell v. State*, 37 Tex. 354, 356 (1873) (requiring a traveler's pistol be carried in his baggage); *see generally* Robert G. Newman, *A Farewell to Arms?—An Analysis of Texas Handgun Control Law*, 13 ST. MARY'S L.J. 601, 603 (1982).

181 Hummel, *supra* note 30, at 143; Massey, *supra* note 178, at 204.

182 Massey, *supra* note 178, at 204 (citing *English v. State*, 35 Tex. 473, 477 (1872)).

and an amendment to the Texas Constitution in 1875 that expressly recognized the State's power to prevent crime through the regulation of an individual's right to carry firearms.<sup>183</sup>

For the first time in over 100 years, the Texas Legislature passed a bill in 1995 allowing concealed carry of handguns (CCH) for self-protection.<sup>184</sup> The Texas CCH law created a non-discretionary right to a CCH license for individuals who met all statutory application requirements, making Texas an RTC state.<sup>185</sup> The Texas CCH law, which was considered relatively restrictive when compared to those of other states, allowed CCH license holders to carry their weapons in a concealed manner in public locations, with certain limitations.<sup>186</sup> The Texas Legislature enacted various amendments to the CCH law over the years for clarity and to promote the uniform application of the law.<sup>187</sup> The CCH framework remained in Texas until January 1, 2016, when the State's new "open carry" law, passed in the spring of 2015, went into effect.<sup>188</sup> Under that new law, the open carry of firearms is allowed by handgun license holders, with generally the same limitations that existed under the prior CCH statutory scheme.<sup>189</sup> No additional training or license was required of CCH license holders—now simply referred to as license holders—to be allowed to open carry after enactment of the new law.<sup>190</sup>

---

183 Hummel, *supra* note 30, at 143; Newman, *supra* note 180, at 603–04 (citing TEX. CONST. art. I, § 23: “[T]he legislature shall have the power, by law, to regulate the wearing of arms, with a view to prevent crime.”); Massey, *supra* note 178, at 204.

184 Concealed Handgun Act, 74th Leg., R.S., ch. 229, § 1, 1995 TEX. GEN. LAWS 1998; Massey, *supra* note 178, at 204 (citing Robert A McCulloch & Sandra G. Wilkinson, *Concealed Weapon Laws: Their Potential Impact on the Workplace*, 13 A.B.A. COMPLETE LAWYER LN1, LN2 (1996)).

185 TEX. GOV'T CODE ANN. § 411.172 (West 2019).

186 Hummel, *supra* note 30, at 144; McCulloch & Wilkinson, *supra* note 184, at LN3.

187 Hummel, *supra* note 30, at 144 (citing Act of Apr. 3, 2003, 78th Leg., R.S., ch. 1178, § 1, 2003 TEX. GEN. LAWS 3364).

188 H.B. 910 § 49, 84th Leg., Reg. Sess. (Tex. 2015), <https://capitol.texas.gov/tlodocs/84R/billtext/pdf/HB00910I.pdf>.

189 See *id.* Texas accomplished this outcome largely by striking the word “concealed” in the various statutory provisions that had referenced “concealed handguns.” *Id.*; Eduardo F. Cuaderes Jr., et al., *Open Carry and Campus Carry: Expanded Handgun Rights in Texas in 2016 and Beyond*, LITTLER INSIGHT (Aug. 7, 2015), <https://www.littler.com/publication-press/publication/open-carry-and-campus-carry-expanded-handgun-rights-texas-2016-and/>.

190 H.B. 910 made no changes to the Texas handgun licensing requirements found in TEX. GOV'T CODE § 411.172 other than deleting the word “concealed.” See

One of the few exceptions to the state's concealed and then open carry laws has been the college campus, where weapons were generally not allowed.<sup>191</sup> In reality, though, weapons were only prohibited within buildings on college campuses. Since 1995, license holders in Texas have been authorized to carry their handguns in outdoor areas of colleges, including sidewalks, parking lots, and breezeways.<sup>192</sup> However, because license holders were not allowed to carry their weapons into college buildings, the number of weapons being carried on sidewalks between buildings was likely low prior to the enactment of campus carry.<sup>193</sup> In 2013, Texas loosened its gun laws slightly by prohibiting universities from regulating the storage of lawfully-possessed firearms in motor vehicles located on college campuses.<sup>194</sup>

### **B. Legislative Battle to Enact Campus Carry in Texas**

Serious efforts to enact campus carry in Texas began in 2009 and were ongoing through eventual passage of the law in 2015. Even in a state as gun-friendly as Texas, campus carry took six years to pass and faced considerable opposition and split public opinion along the way.

In 2009, companion bills S.B. 1164 and H.B. 1893 were introduced in the Texas Legislature to authorize campus carry on the premises of both public and private institutions, with no opt-outs.<sup>195</sup> Official motivations underlying these bills focused on personal safety and logistical challenges posed to license holders from the patchwork of conflicting rules related to carrying handguns across Texas.<sup>196</sup> The Legislature's Bill Analysis of H.B. 1893 noted that the pre-campus carry legal landscape created "legal and geographical barrier[s] for concealed handgun licensees who visit or who live,

---

H.B. 910 § 17, 84th Leg., Reg. Sess. (Tex. 2015).

191 See TEX. PENAL CODE § 46.035(a-1) (West 2019).

192 *Id.* § 46.035(a-1)(2); see Lee, *supra* note 20.

193 *Campus Carry General Information: Facts*, U. TEX. AUSTIN, <http://campuscarry.utexas.edu/> (last visited Apr. 17, 2019).

194 See GOV'T § 411.2032(b).

195 S.B. 1164, 81st Leg., Reg. Sess. (Tex. 2009), <http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/SB01164I.pdf#navpanes=0>; H.B. 1893, 81st Leg., Reg. Sess. (Tex. 2009), <http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/HB01893I.pdf#navpanes=0>.

196 DRIVER, PUBLIC SAFETY COMMITTEE REPORT (SUBSTITUTED), H. 81-22633, 81st Leg., Reg. Sess., at 1 (Tex. 2009), <http://www.capitol.state.tx.us/tlodocs/81R/analysis/pdf/HB01893H.pdf#navpanes=0>.

work, or study on a college or university campus, denying them the right to protect themselves in these settings.”<sup>197</sup> The right of self-protection on a college campus was viewed as especially important given the attacks at Virginia Tech just two years earlier, which were explicitly referenced.<sup>198</sup> The Legislature’s analysis also noted that concealed license holders go through extensive handgun training and are usually law-abiding and responsible citizens, further justifying the proposed law.<sup>199</sup> Despite having 75 primary, joint, and co-authors, and being voted out of the House Committee on Public Safety, H.B. 1893 was never voted on by the full House.<sup>200</sup> S.B. 1164, with 13 primary and co-authors, was approved by the Senate and voted out of the House Committee on Public Safety, but it died before being considered by the full House.<sup>201</sup>

The push to allow handgun carry on Texas campuses gained momentum in 2011. In that legislative session, at least five proposed campus carry bills were introduced.<sup>202</sup> Although they all sought to authorize the concealed carry of handguns throughout college campuses, they varied on topics such as storage of handguns in dormitories;<sup>203</sup> whether private universities would be obligated to comply;<sup>204</sup> and whether hospitals operated by universities would be

---

197 *Id.*

198 HOUSE RESEARCH ORG., BILL ANALYSIS OF H.B. 1893, 81st Leg., Reg. Sess., at 3 (Tex. 2009), <https://capitol.texas.gov/billookup/Text.aspx?LegSess=81R&Bill-HB1893#>.

199 DRIVER, PUBLIC SAFETY COMMITTEE REPORT (SUBSTITUTED), H. 81-22633, 81st Leg., Reg. Sess., at 1 (Tex. 2009).

200 *H.B. 1893: History*, TEX. LEG. ONLINE, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=81R&Bill=HB1893> (last visited Apr. 17, 2019).

201 *S.B. 1164: History*, TEX. LEG. ONLINE, <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=81R&Bill=SB1164> (last visited Apr. 17, 2019).

202 *See, e.g.*, H.B. 86, 82nd Leg., Reg. Sess. (Tex. 2011), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=HB86>; H.B. 750, 82nd Leg., Reg. Sess. (Tex. 2011), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=HB750>; H.B. 1167, 82nd Leg., Reg. Sess. (Tex. 2011), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=HB1167>; H.B. 2178, 82nd Leg., Reg. Sess. (Tex. 2011), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=HB2178>; S.B. 354, 82nd Leg., Reg. Sess. (Tex. 2011), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=SB354>.

203 For example, H.B. 86 and H.B. 750 both would have given universities the power to regulate some aspects of handgun storage, while H.B. 1167 and H.B. 2178 would not. *See supra* note 202.

204 H.B. 1167 would not have applied to private universities, but the remaining bills would have, and all would have applied to public universities. *See supra*

exempt.<sup>205</sup>

The most promising of those 2011 legislative efforts was originally S.B. 354, co-authored by Sen. Wentworth and endorsed by the Texas Governor.<sup>206</sup> Sen. Wentworth's motivation was avoiding another school massacre: "to give faculty, staff and students a way to defend themselves when some deranged person comes on campus intending to commit suicide and take as many people with him as he can like they did at Virginia Tech several years ago."<sup>207</sup> By empowering law-abiding citizens to carry a firearm on a university campus, Wentworth hoped to "put an element of doubt in a potential shooter's mind."<sup>208</sup> Without that protection, students, faculty, and staff would be easy targets for a campus shooter: "A [gun-free zone] means it's a victim zone."<sup>209</sup>

S.B. 354 would have barred public universities from implementing rules that prohibited concealed carry of handguns on campus by license holders, although private universities would have had the choice of opting out of the law.<sup>210</sup> Other than granting public universities a limited right to regulate firearm storage in university-owned dormitories on campus, the proposed bill did not authorize universities to regulate weapons on campus.<sup>211</sup> In committee, Sen. Wentworth's bill was amended in various ways, including insertion of a prohibition on concealed carry in hospitals operated by a college or university.<sup>212</sup> He fought off other attempted modifications of his bill in committee, including a push to allow public universities to

---

note 202.

205 The Senate Committee Substitute for S.B. 354 explicitly excluded hospitals operated by a university. See S.B. 354, 82nd Leg., Reg. Sess. (Tex. 2011) (Senate Committee Substitute, as introduced Apr. 5, 2011), <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=82R&Bill=SB354>.

206 See S.B. 354, 82nd Leg., Reg. Sess. (Tex. 2011); William James Gerlich, *Survivors Decry Campus Gun Legislation*, DAILY TEXAN (Feb. 18, 2011), <https://www.dailytexanonline.com/news/2011/02/18/survivors-decry-campus-gun-legislation>.

207 Melissa Ayala, *Legislators Push for Guns on Campus*, DAILY TEXAN (Feb. 4, 2011), <http://www.dailytexanonline.com/news/2011/02/04/legislators-push-for-guns-on-campus>.

208 Ayala, *supra* note 207.

209 See Gerlich, *supra* note 206.

210 S.B. 354, 82nd Leg., Reg. Sess. (Tex. 2011).

211 *Id.*

212 S.B. 354: *History*, TEX. LEG. ONLINE, <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=82R&Bill=SB354> (last visited Apr. 17, 2019).

opt out of the law altogether.<sup>213</sup>

The real battle over S.B. 354 was not in the detail of its content; it was whether, and if so, how, the bill would even make it out of the Texas Senate. Chamber rules required a two-thirds Senate vote to bring a bill up for debate.<sup>214</sup> Although Sen. Wentworth made multiple attempts to garner the necessary votes to have his bill considered by the Senate, he was unsuccessful each time.<sup>215</sup> That difficulty was “surprising in a Republican-controlled legislative chamber that generally is friendly to gun-rights legislation and approved a similar bill two years ago by a 20-11 vote.”<sup>216</sup> If the bill could somehow pass the Senate, it faced a less rocky future in the House, where it had 80 co-authors and Republicans held a 101-member supermajority.<sup>217</sup> Unable to bring his bill up for debate on its own, Sen. Wentworth attempted a different procedural tack: he tried to attach S.B. 354 as an amendment to another Senate bill with more support.<sup>218</sup> Bringing a bill up for debate in the Senate would have required 21 votes.<sup>219</sup> An amendment would require only 16 votes.<sup>220</sup> Rep. Wentworth had 20.<sup>221</sup>

Rep. Wentworth’s new approach targeted the legislative efforts of Sen. Zaffirini, who was Chairman of the Senate Higher Education Committee. He first tried to attach his campus carry language to an uncontroversial but important college administration bill sponsored by Sen. Zaffirini.<sup>222</sup> Sen. Zaffirini was so opposed to campus carry that she ultimately chose to withdraw and kill S.B. 5 rather than allow it to be amended to include Sen. Wentworth’s

---

213 *College Liberals Attempt to Gut Campus Carry Bill*, AMMOLAND (Apr. 8, 2011), <https://www.ammoland.com/2011/04/college-liberals-attempt-to-gut-campus-carry-bill/#axzz5j8gqktvx>.

214 See SENATE OF TEX., SENATE RULES, S. 82-36, Reg. Sess., at 24, 26 (2011); *College Liberals Attempt to Gut Campus Carry Bill*, *supra* note 213.

215 Mike Ward, *Campus-Carry Bill in Trouble*, AUSTIN AM.-STATESMAN, Apr. 12, 2011, at A1.

216 *Id.*

217 *Id.*

218 Mike Ward, *Campus-Carry Bill Gambit Stalls*, AUSTIN AM.-STATESMAN, Apr. 28, 2011, at B1.

219 See SENATE OF TEX., SENATE RULES, S. 82-36, Reg. Sess., at 24, 26 (2011) (requiring a two-thirds majority of those present in order to bring a bill up for debate), <https://lrl.texas.gov/collections/rulesandprecedents.cfm>.

220 See *id.* at 107–08.

221 Ward, *supra* note 218.

222 *Id.*

proposed language.<sup>223</sup> Undaunted, Sen. Wentworth sought other bills that could help him move campus carry forward: “There are several ways to skin a cat in this legislative body,” he told reporters.<sup>224</sup> Several days later, Sen. Wentworth was successful in attaching his language to a higher-education finance amendment sponsored by Sen. Zaffirini. Republican Sen. Ogden, author of the underlying S.B. 1581, accepted Sen. Wentworth’s proposed amendment.<sup>225</sup> With a vote of 19-11, the Texas Senate approved campus carry.<sup>226</sup> After weeks of political wrangling—labeled “Groundhog (With a Gun) Day” by Sen. Patrick<sup>227</sup>—it appeared that campus carry was headed for smooth sailing in the more conservative-leaning House.

Even so, guns on campus had “quickly boiled into one of [the] most controversial issues of the session,”<sup>228</sup> and the fight was not over. After reviewing S.B. 1581, the Texas House of Representatives declared that Sen. Wentworth’s amendment to the finance bill was procedurally improper, and the House returned the bill to the Senate for removal of the campus carry language.<sup>229</sup> Proponents of campus carry in the Senate scrambled to respond to this surprise move, attempting passage of campus carry as a stand-alone bill.<sup>230</sup> As with similar attempts earlier in the session, that effort failed.<sup>231</sup> When it did, campus carry in 2011 was dead in the Texas Legislature.

While it is unclear exactly why Sen. Wentworth was unable to garner the necessary support for campus carry in the conservative Texas Legislature in 2011, it is apparent that significant opposition to

---

223 *Id.*

224 Mike Ward, *Campus-Carry Revived*, AUSTIN AM.-STATESMAN, May 4, 2011, at B1.

225 Mike Ward, *Campus Guns Bill Receives New Life*, AUSTIN AM.-STATESMAN, May 10, 2011, at A1; S.B. 1581: *History*, TEX. LEG. ONLINE, <https://capitol.texas.gov/billlookup/History.aspx?LegSess=82R&Bill=SB1581> (last visited Apr. 17, 2019).

226 See S. JOURNAL, 82nd Leg., Reg. Sess., 2687 (Tex. 2011).

227 Joe Holley, *The 82nd Legislature: Senate Oks Bill for Guns on Campuses*, HOUS. CHRON., May 10, 2011, at A1.

228 Jim Vertuno, *Republicans in Texas Senate Approve Guns on Campus*, NBC DFW (May 9, 2011), <https://www.nbcdfw.com/news/local/Republicans-in-Texas-Senate-Approve-Guns-on-Campus-121533294.html>.

229 See H. JOURNAL, 82nd Leg., Reg. Sess., 4301 (Tex. 2011) (sustaining the point of order that H.B. 1581 violated the one subject rule and returning the bill to the Senate); Mike Ward, *Campus Gun Bill’s Chances Look Bleak*, AUSTIN AM.-STATESMAN, May 21, 2011, at A1.

230 Ward, *supra* note 229.

231 *Id.*

the measure came from certain constituent groups.<sup>232</sup> In particular, the University of Texas System Chancellor, Francisco Cigarroa, vocally opposed campus carry in a letter to Gov. Perry: “I must concur with all the concerns and apprehensions expressed to me, that the presence of concealed weapons, on balance, will make a campus a less-safe environment.”<sup>233</sup> The UT Austin Faculty Council and the Texas A&M University Faculty Senate also opposed campus carry in 2011.<sup>234</sup> Pressure also came from outside Texas, including from the national press<sup>235</sup> and organizations such as the Brady Campaign to Prevent Gun Violence.<sup>236</sup>

After coming so close to passage in 2011, campus carry in Texas appeared poised for adoption during the 2013 Legislative Session.<sup>237</sup> However, while the arguments swirling around campus carry were not new, the overall societal context had changed. Less than a month before the start of the 2013 regular session, the Newtown, Connecticut school shooting left 26 people dead, including 20 children between the ages of five and ten years old.<sup>238</sup> The horror of this monstrous violence against children in the school setting, committed with a rifle and two handguns, appears to have subdued at least some of the pro-gun members of the Texas Legislature in 2013.<sup>239</sup>

---

232 *Id.*

233 Ben Wermund, *Chancellor Says Guns on Campus a Bad Idea*, AUSTIN AM.-STATESMAN, Feb. 26, 2011, at B1.

234 Alex Hannaford, *The Campus Carry Movement Stutter-Steps Across America*, ATLANTIC (May 10, 2011), <https://www.theatlantic.com/politics/archive/2011/05/the-campus-carry-movement-stutter-steps-across-america/237915>.

235 *Guns on Campus Could Cause More Tragedy Than They Avert*, USA TODAY, Mar. 1, 2011, at 6A.

236 See Hannaford, *supra* note 234.

237 Other bills relating to guns on campus were considered in 2013, including one that would have allowed for “secret ‘school marshals’ with concealed-handgun licenses and 80 hours of special training” and one that would have allowed teachers to be specially trained to deal with school shooting incidents before law enforcement arrived on the scene. Mike Ward, *Emotional Divide Over Weapons on Campus*, AUSTIN AM.-STATESMAN, Mar. 15, 2013, at A01.

238 James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES, Dec. 14, 2012; Steve Vogel et al., *Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say*, WASH. POST, Dec. 14, 2012 (putting the death toll at 28, to include the shooter and his mother, who he shot before going to the school).

239 While an aversion to introducing guns into schools following Sandy Hook may be reasonable, that same tragedy could have rallied further support for

Nevertheless, Texas legislators filed almost 100 bills related to guns during the 2013 session, twice the number filed in the prior session,<sup>240</sup> including bills that would have allowed school teachers designated as marshals to carry weapons in classrooms.<sup>241</sup> And when legislative hearings on campus carry rolled around, passionate standing room only crowds showed up and were vocal.<sup>242</sup>

Supporters often referenced the importance of personal safety in the classroom and the fundamental right to bear arms.<sup>243</sup> Sen. Birdwell, who introduced a campus carry bill in 2013, said that the issue was not simply about guns: “It’s about trusting citizens with their God-given, constitutional rights.”<sup>244</sup> Another pro-campus carry legislator looked forward to a time when his 23-year-old son

---

campus carry and reinvigorated the Legislature’s desire to enact universal concealed carry for protection. Ward, *supra* note 237 (stating that, “This year, with the Connecticut school massacre in December heightening public fears about school security, supporters hope they stand a better chance” of seeing campus carry legislation passed); David Below, *Texas Campus-Carry New Gun Bill Filed by State Senator Brian Birdwell*, TEX. CONSERVATIVE REPUBLICAN NEWS (Jan. 21, 2013) (stating that “[g]un-rights advocates hope that tragedy will lead lawmakers and the public to view allowing guns at colleges as making campuses safer”), <http://www.texasconservativerepublicannews.com/search?q=Texas+Campus-Carry+New+Bill+Filed>. In fact, some evidence suggests that state legislative activity on campus carry increased immediately following this attack. See Melear & St. Louis, *supra* note 32, at 61.

240 Ward, *supra* note 177.

241 See H.B. 1009, 83rd Leg., Reg. Sess. (Tex. 2013), <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=83R&Bill=HB1009>.

242 The first legislative hearing on campus carry in 2013 drew dozens of supporters and opponents. Ward, *supra* note 237. Later public hearings were also well-attended with high emotions on both sides of the issue. Mike Ward, *House Tentatively Oks a Dozen Pro-Gun Bills*, AUSTIN AM.-STATESMAN, May 5, 2013, at B1; see also Claire Cardona, *Committee Hears Testimony from Both Sides of Guns on Campus Debate*, DALL. MORNING NEWS, Mar. 14, 2013.

243 State Representative Dan Flynn explained the reason for a 2013 committee hearing to consider campus carry: “The Second Amendment was not created for the purpose of allowing people the opportunity to hunt, fish[,] or collect firearms; the purpose of the Second Amendment was to grant each and every individual the right to protect themselves from whoever and whatever they felt were a threat to their wellbeing. That fundamental right is why we were here today discussing these issues.” Representative Dan Flynn, *Committee on Homeland Security and Public Safety Hears Controversial Gun Legislation*, TEX. HOUSE OF REPRESENTATIVES (Mar. 15, 2013), <https://house.texas.gov/news/press-releases/?id=4429>.

244 Kolten Parker, *Legislature Might Revisit Issue of Guns on Campus; Bill Wouldn’t Let Colleges Prohibit Weapons*, SAN ANTONIO EXPRESS-NEWS, Jan. 18, 2013, at B1.

in college could defend himself if needed: “I’d love to know if some lunatic gets loose on campus with an AK-47 in his classroom, it’s going to be a short-lived episode.”<sup>245</sup> Many university administrators were opposed, citing safety concerns with having more guns on campus and the poor fit of a one-size-fits-all approach in a state as geographically diverse as Texas.<sup>246</sup> Officials from UT Austin, in particular, strongly opposed the proposed campus carry measure.<sup>247</sup> Policy and lobbying groups also became involved in the debate over guns on campus, including the Texas State Rifle Association (TSRA),<sup>248</sup> Students for Gun-Free Schools in Texas,<sup>249</sup> and Texas Gun Sense.<sup>250</sup> Officials at universities in Texas and throughout the country were also asked about their positions on campus carry and were forced to formulate and issue public statements.<sup>251</sup> While many universities were noncommittal and simply stated their plan to follow whatever law was enacted,<sup>252</sup> two private universities, Wayland Baptist University and Lubbock Christian University, came out early in the 2013 legislative session opposed to campus carry.<sup>253</sup>

Despite public rhetoric and engagement on the issue, the primary campus carry bill in the Senate quickly became stuck in the Senate Criminal Justice Committee. The chair of that committee,

---

245 Brittany Hoover, *Area Legislators Share Thoughts on Higher Education Issues*, LUBBOCK AVALANCHE-J., Jan. 8, 2013.

246 Some university administrators were not opposed to the general idea of allowing concealed carry on campus, but believed that the decision whether to allow guns should be made on a campus-by-campus basis. See Parker, *supra* note 244.

247 Mike Ward, *House Tentatively Oks a Dozen Pro-Gun Bills*, AUSTIN AM.-STATESMAN, May 5, 2013, at B1.

248 Ben Kamisar, *Senator Files Campus Gun Bill*, AUSTIN AM.-STATESMAN, Jan. 18, 2013, at B01 (quoting Alice Tripp, legislative director for the TSRA as stating that, “There’s a more compelling reason than ever for adults with a concealed handgun license attending a college or university (to) be allowed to have that personal protection option”).

249 *Id.*

250 Kolten Parker, *Campus Gun Bill is Declared Dead*, Hous. CHRON., Apr. 25, 2013.

251 In an attempt to sway policymakers, university presidents from across the country signed a letter at [www.collegepresidentsforgunsafety.org](http://www.collegepresidentsforgunsafety.org) opposing campus carry legislation. Several Texas universities, including Austin College, Trinity University, the University of Dallas, and Southwestern University, signed the letter. See Brittany Hoover, *Area University, College Leaders React to Planned Campus Carry Bill*, LUBBOCK AVALANCHE-J., Jan. 19, 2013.

252 *Id.* (citing Texas Tech University, South Plains College, Western Texas College, and Howard College as examples of Texas colleges that had not taken a stance on campus carry early in the 2013 legislative session).

253 *Id.*

John Whitmire, called campus carry “a very divisive issue”<sup>254</sup> and publicly voiced opposition to the bill: “After Sandy Hook and all the other tragedies we’ve seen in recent months, we need a cooling off period before we start approving guns in a lot of other public places. . . . I respect the status quo right now.”<sup>255</sup> On the other hand, the House version of campus carry, H.B. 972, passed out of committee to the full House.<sup>256</sup> It was approved by the House on a 102-41 vote, with supporters fending off various attempted amendments, including one that would have exempted universities within 75 miles of the Texas-Mexico border.<sup>257</sup>

The Senate Criminal Justice Committee did ultimately pass the House version of campus carry contained in H.B. 972 on May 14, 2013.<sup>258</sup> That version would have allowed public universities to opt out of campus carry and private universities to opt in, and all campuses covered by the law would have been required to reapprove their policies each year.<sup>259</sup> Prohibitions to campus carry would have existed for sporting events, elementary schools on college campuses, official mass gatherings, and at campuses that included “biocontainment” laboratories.<sup>260</sup> Sen. Whitmire, Chairman of the committee, urged passage of the bill and warned that failure to do so would result in a “more stringent” campus carry bill during a special

---

254 Mike Ward, *Bill Lets Older Students Keep Guns in Cars*, AUSTIN AM.-STATESMAN, Apr. 15, 2013, at B6.

255 *Id.*

256 H. JOURNAL, 83rd Leg., Reg. Sess. 2501 (Tex. 2013), <https://journals.house.texas.gov/HJRNL/83R/PDF/83RDAY66FINAL.PDF>; Parker, *supra* note 250, at A1.

257 See H. JOURNAL, 83rd Leg., Reg. Sess. 2501 (Tex. 2013), <https://journals.house.texas.gov/HJRNL/83R/pdf/83rday66final.pdf>; Ward, *supra* note 247; Kolten Parker et al., *Legislative Notebook*, HOUS. CHRON., May 7, 2013, at B3; Mike Ward, *Weaker Campus Carry Measure Passes House*, AUSTIN AM.-STATESMAN, May 7, 2013, at B3.

258 See S. JOURNAL, 83rd Leg., Reg. Sess. 1869 (Tex. 2013), <https://journals.senate.texas.gov/sjrnl/83r/pdf/83rsj05-15-f.pdf>; Mike Ward, *Senate Panel Passes Gun Legislation*, AUSTIN AM.-STATESMAN, May 14, 2013, at B5.

259 See H.B. 972, 83rd Leg., Reg. Sess. (Tex. 2013), <https://capitol.texas.gov/tlodocs/83R/billtext/pdf/HB00972E.pdf#navpanes=0> (amending Chapter 411 of the Tex. Gov’t Code); Ward, *supra* note 258, at B5; Mike Ward, *Weaker Campus Carry Measure Passes House*, AUSTIN AM.-STATESMAN, at B3 (May 7, 2013).

260 See H.B. 972, 83rd Leg., Reg. Sess. (Tex. 2013), <https://capitol.texas.gov/tlodocs/83R/billtext/pdf/HB00972E.pdf#navpanes=0>; Ward, *supra* note 259, at B5.

session in the summer of 2013.<sup>261</sup> Although the bill was passed out of committee,<sup>262</sup> it came up two votes short in the full Senate.<sup>263</sup>

Supporters of campus carry urged the Texas Governor to add the topic to the agenda for a summer special legislative session, in part because the threshold for allowing Senate consideration of a bill would have been lower.<sup>264</sup> Despite pressure from various legislators and interest groups, including the TSRA and SCCC, the subject was not added to any of the three special sessions called by the Governor.<sup>265</sup>

Campus carry ultimately passed in the 2015 Texas legislative session, but the process was not without some political drama and wrangling. Emotions on this issue remained high, and it became caught up in the broader “open carry” debate that took center stage that year. During the early stages of the 2015 session, “the behavior of some gun rights activists led to the installation of new panic buttons in legislative offices.”<sup>266</sup> One Democratic lawmaker added a security detail after receiving death threats following his decision to “kick a group of open carry advocates out of his office.”<sup>267</sup> One organization, Moms Demand Action for Gun Sense in America, confirmed that because of death threats before a public hearing in 2015, it had hired armed security for its testimony.<sup>268</sup>

Texas voters were split on campus carry in 2015, with 47% in favor and 45% opposed.<sup>269</sup> Beyond the usual personal safety arguments that had always been made in favor of campus carry, a related argument, made with increasing frequency, began to resonate

---

261 H.B. 972, 83rd Leg., Reg. Sess. (Tex. 2013), <https://capitol.texas.gov/tlodocs/83R/billtext/pdf/HB00972E.pdf#navpanes=0>; Ward, *supra* note 258, at B5.

262 See S. JOURNAL, 83rd Leg., Reg. Sess. 1869 (Tex. 2013), <https://journals.senate.texas.gov/SJRNL/83R/PDF/83RSJ05-15-F.PDF>.

263 Eva Ruth Moravec & Kolten Parker, *Legislative Notebook: Whitmire Calls ‘Campus Carry’ Dead this Session*, SAN ANTONIO EXPRESS-NEWS, May 22, 2013, at A6.

264 David Saleh Rauf & Kolten Parker, *Pushing Campus Carry: Gun Rights Backers Eye Special Session*, SAN ANTONIO EXPRESS-NEWS, Aug. 5, 2013, at A3.

265 Mike Ward & Tim Eaton, *Campus Carry Backers Upset*, AUSTIN AM.-STATESMAN, July 13, 2013, at B1.

266 Morgan Smith, *Gun Control Group Hires Security for Capital Hearing*, TEX. TRIB. (Feb. 11, 2015), <https://www.texastribune.org/2015/02/11/pro-gun-control-group-gets-security-capitol-hearin/>.

267 *Id.*

268 *Id.*

269 Chuck Lindell, *Texas Voters Split Over Campus Guns*, AUSTIN AM.-STATESMAN, Feb. 25, 2015, at A11.

with lawmakers: arming female students would help reduce sexual assaults.<sup>270</sup>

University leaders also became more vocal that year, with the UT Austin faculty and administration firmly opposed to campus carry yet again.<sup>271</sup> In contrast, the Chancellor and student body at Texas A&M University were supportive of the proposed law.<sup>272</sup>

Possible administrative challenges to implementation were also raised in 2015, with The University of Texas and University of Houston systems estimating that it would cost nearly \$47 million over six years to implement campus carry through updated security systems, the construction of gun storage facilities, and bolstering campus police units.<sup>273</sup> The sponsor of S.B. 11, Sen. Birdwell called the prospect of such efforts and expenses, “patently absurd.”<sup>274</sup>

On January 26, 2015, legislators in both the Texas House and Senate filed identical campus carry bills, which became the basis for the law ultimately enacted in Texas: H.B. 937 and S.B. 11.<sup>275</sup> The general framework of both initial bills was similar to prior efforts. They barred public and private universities from adopting rules that prohibited license holders from carrying their weapons on campus in a

---

270 Alan Schwarz, *A Bid for Guns on Campuses to Deter Rape*, N.Y. TIMES (Feb. 19, 2015), <https://www.nytimes.com/2015/02/19/us/in-bid-to-allow-guns-on-campus-weapons-are-linked-to-fighting-sexual-assault.html>; Jackson & Gould, *supra* note 110.

271 See Eleanor Dearman, *UT Students and Professors Testify Against Campus Carry*, DAILY TEXAN, Mar. 17, 2015, at 1 (recounting public testimony of faculty and students at a House committee meeting on campus carry); Samantha Ketterer, *Student Government Votes to Oppose State Senate “Campus Carry” Proposal*, DAILY TEXAN, Feb. 18, 2015, at 1 (noting that 21 of the UT student government organization’s 27 members voted to oppose campus carry); Ralph K.M. Haurwitz, *UT Faculty Panel Unanimous in Opposing Guns on Campus*, AUSTIN AM.-STATESMAN, Feb. 17, 2015, at A4 (reporting that UT Faculty Council voted unanimously to oppose campus carry); *Colleges Need Last Say on Campus Carry*, AUSTIN AM.-STATESMAN, Jan. 29, 2015 (noting that the Chancellor of the University of Texas System and the UT Austin President “have publicly opposed efforts to allow students, faculty and the public to carry guns on campus.”).

272 Haurwitz, *supra* note 271.

273 Lauren McGaughy, *Campus Carry Would Cost Texas Colleges Millions*, HOUS. CHRON. (Feb. 21, 2015), <https://www.houstonchronicle.com/news/houston-texas/texas/article/Campus-carry-would-cost-Texas-colleges-millions-6094445.php>.

274 *Id.*

275 Eleanor Dearman, *Republicans Fire First Shot in Campus Carry Debate*, DAILY TEXAN, Jan. 27, 2015, at 1.

concealed manner.<sup>276</sup> The draft bills did provide administrators some flexibility, however. Guns could be prohibited in various specified areas, including residence halls, sporting events, university-operated hospitals, and on-campus preschools.<sup>277</sup> However, no general right to create gun-free zones was accorded to universities.<sup>278</sup> In addition, private universities were given the power to opt out of the proposed law altogether.<sup>279</sup>

While the basic approach of these bills was similar to earlier failed attempts, there were at least two reasons to predict a higher likelihood of passage at the beginning of the 2015 legislative session. First, gun rights were a hot topic in the 2014 Texas gubernatorial election, with both major party candidates announcing their support for the open carry of weapons.<sup>280</sup> Greg Abbott, who won a resounding victory in that election, came out during the campaign strongly in favor of expanded rights for gun owners, including the right to carry concealed weapons on college campuses.<sup>281</sup>

Second, the Texas Senate changed a critical procedural rule in 2014. The prior rule, which had been in place for nearly seventy years,<sup>282</sup> had played a major role in the stalling of earlier campus carry efforts.<sup>283</sup> The revised rule, effective for the first time during the 2015 session,<sup>284</sup> appeared to significantly increase the chances

---

276 See H.B. 937, 84th Leg., Reg. Sess. (Tex. 2015), <https://capitol.texas.gov/tlodocs/84R/billtext/pdf/HB00937H.pdf#navpanes=0>; S.B. 11, 84th Leg., Reg. Sess. (Tex. 2015), <https://capitol.texas.gov/tlodocs/84R/billtext/pdf/SB00011E.pdf#navpanes=0>.

277 See *id.*

278 See *id.*

279 See *id.*

280 Jim Vertuno, *Wendy Davis Joins Greg Abbott in Supporting "Open Carry" Gun Law*, DALL. MORNING NEWS (Feb. 6, 2014), <https://www.dallasnews.com/news/local-politics/2014/02/06/wendy-davis-joins-greg-abbott-in-supporting-open-carry-gun-law>.

281 *Abbott Strongly Believes in Second Amendment*, PRAIRIE: W. TEX. A&M U., Oct. 29, 2014, at 1 (quoting Gov. Abbott's tweet during a Twitter Town Hall discussion on October 17, 2014: "Yes, I'll sign campus carry & open carry into law").

282 See SENATE OF TEX., SENATE RULES, S. 82-36, Reg. Sess., at 24, 26 (2011); Morgan Smith, *Dan Patrick and the Two-Thirds Rule: A Primer*, TEX. TRIB., Jan. 10, 2015.

283 See Chuck Lindell, *Early Senate Vote Oks Campus Carry Measure*, AUSTIN AM.-STATESMAN, Mar. 19, 2015, at A1.

284 Compare SENATE OF TEX., SENATE RULES, S. 82-36, Reg. Sess., at 24, 26 (2011) (requiring 2/3 vote) with SENATE OF TEX., SENATE RULES, S. 84-39, Reg. Sess., at 24, 27 (2015) (requiring 3/5 vote).

of similar legislation passing in the Senate. In 2013, Senate rules required two-thirds support, or 21 senators, to bring a bill up for debate on the Senate floor.<sup>285</sup> That year, campus carry advocates were able to muster the support of only 19 senators, and the bill stalled before being considered by the full Senate.<sup>286</sup> Just prior to the 2015 session, the Senate changed its rules to require the support of only three-fifths of the 31 senators, or 19 senators, to bring a bill up for discussion in the full Senate.<sup>287</sup> In the 2015 legislative session, there were 20 Republican members of the Senate, and 19 of them had signaled their support for campus carry by signing on as authors of two draft bills.<sup>288</sup>

The initial public hearing on S.B.11 was long and heated, and lasted nine hours with testimony from more than 100 witnesses.<sup>289</sup> The Senate State Affairs Committee then voted along party lines to pass the bill out of committee to the full Senate.<sup>290</sup> The only change made to the bill was to clarify that even if open carry legislation passed in Texas, S.B.11 would authorize only concealed carry on college campuses.<sup>291</sup> S.B.11 then passed out of the Texas Senate, over the objections of various groups, including law enforcement officials.<sup>292</sup>

Although it appeared headed for uneventful passage in the

285 See SENATE OF TEX., SENATE RULES, S. 83-4, Reg. Sess., at 24, 27 (2013) (requiring 2/3 vote).

286 See *supra* notes 237–65 and accompanying text; see also Dearman, *supra* note 275; Mike Ward, *Campus-Carry Falls Short Despite Dewhurst Push*, AUSTIN AM.-STATESMAN, May 23, 2013, at B5 (citing Sen. Birdwell as saying that the proposed campus carry bill fell two votes short from being considered by the full Senate).

287 Dearman, *supra* note 275.

288 See H.B. 937, 84th Leg., Reg. Sess. (Tex. 2015), <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=84R&Bill=HB937>; S.B. 11, 84th Leg., Reg. Sess. (Tex. 2015), <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=84R&Bill=SB11>.

289 Chuck Lindell, *Open Carry, Campus Carry Bills Move Ahead in Senate*, AUSTIN AM.-STATESMAN, Feb. 13, 2015, at A1 (reporting that, among those testifying against campus carry were the Austin Police Chief, the first victim shot by Charles Whitman from the UT Austin tower in 1966, and a student shot four times during the 2007 Virginia Tech massacre).

290 BIRDWELL, S. COMM. ON STATE AFFAIRS, COMM. SUBSTITUTE FOR S.B. NO. 11, 84th Leg., Reg. Sess. (Tex. 2015), <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=84R&Bill=SB11>.

291 *Id.*

292 See *S. Journal*, 84th Leg., Reg. Sess. 506 (Tex. 2015); see also *Listen to All Texans on Gun Rights Bills*, AUSTIN AM.-STATESMAN, Mar. 20, 2015.

House, campus carry stalled there for several weeks as legislators worked through a number of behind-the-scenes issues, including who would get credit for the bill.<sup>293</sup> Near the midnight end of the legislative session, it appeared that Democrats had lined up enough potential amendments to the bill to delay its consideration beyond the legislative deadline, effectively killing it;<sup>294</sup> however, an overwhelming number of Republican members had coalesced in support of the bill, and the Democratic opponents were forced to withdraw their proposed amendments at the last minute.<sup>295</sup> Campus carry was then passed by the Texas House<sup>296</sup> and signed into law by Gov. Abbott.<sup>297</sup> The ultimate version of the bill included critical language not present in its original version, including an opt-out provision for private universities, the ability of all universities covered by the law to regulate implementation, including the creation of gun-free zones, and the requirement that each university's board of directors approve or modify the university's rules by a two-thirds vote.<sup>298</sup>

### C. *Framework of the Texas Campus Carry Law*

The novel aspect of the Texas law is the discretion it gives to individual universities to create campus-specific implementation rules, including regulation of handgun carry and the establishment gun-free zones—language that was added in the final stages of the law's passage. The following two subsections explore, first, the overall structure of Texas's new law as context, and second, the unique flexibility it provides in implementation.

#### 1. *General Structure*

The Texas campus carry law is situated within a broader new statutory scheme for firearms in the state. Beginning August 1, 2016, "open carry" of firearms by license holders became the default

---

293 Chuck Lindell, *Deal Revives Campus Carry Bill*, AUSTIN AM.-STATESMAN, May 7, 2015.

294 Chuck Lindell, *Democrats Poised to Kill Campus Carry Bill*, AUSTIN AM.-STATESMAN, May 27, 2015.

295 Keith Herman, *Even Time Abandons Outgunned Democrats*, AUSTIN AM.-STATESMAN, May 28, 2015.

296 S. JOURNAL, 84th Leg., Reg. Sess. 3616 (Tex. 2015).

297 See S.B. 11: *History*, TEX. LEG. ONLINE, <https://capitol.texas.gov/billlookup/History.aspx?LegSess=85R&Bill=SB11> (last visited Apr. 19, 2019).

298 See *id.*; Chuck Lindell, *Guns-on-Campus Bill Given Senate Approval*, AUSTIN AM.-STATESMAN, May 31, 2015.

background law, with limited exceptions for areas where weapons could not be carried.<sup>299</sup> Among the areas excluded from open carry are the “physical premises of [] school[s] [and] educational institution[s].”<sup>300</sup> While open carry of firearms is not allowed in those locations, they were singled out for special treatment in the campus carry legislation that passed the same year.<sup>301</sup>

Under this new campus carry law, covered Texas universities—all public universities and private universities that do not opt out—may not prohibit the carrying of concealed handguns by license holders on their campuses.<sup>302</sup> Four-year universities were required to implement the law on August 1, 2016,<sup>303</sup> and junior colleges had one year longer, until August 1, 2017,<sup>304</sup> for implementation. All individuals, including students, staff, faculty, and guests who have been issued a license to carry by the Texas Department of Public Safety, fall within the scope of the statute.<sup>305</sup> Their weapons must

299 See TEX. PENAL CODE § 46.03(a)(1)(b) (West 2019).

300 *Id.* § 46.03(a)(1)(b) (making it an offense to intentionally, knowingly, or recklessly carry a firearm onto the premises of an educational institution). Other areas where open carry of firearms is not allowed include polling places on election day, racetracks, secure areas of airports, and near official places of execution on the days of scheduled execution. *Id.* § 46.03(a)(2)–(6).

301 *Id.* § 46.03(a)(1)(b) (exempting from the penal code provisions an individual who possesses a license to carry under Texas law and carries his weapon in a concealed manner onto the premises of an educational institution).

302 GOV'T § 411.2031(c). Although the default open carry law in Texas extends to all firearms, including rifles and pistols, the campus carry law only covers handguns. As a result, rifles and shotguns are prohibited on university campuses in Texas.

303 S.B. 11, 84th Leg., Reg. Sess. (Tex. 2015) (Engrossed Version), <https://capitol.texas.gov/tlodocs/84R/billtext/html/sb00011f.htm>.

304 *Id.* One of the reasons community colleges may have been given an additional year to implement the new law is because of complex issues relating to their student populations, including the large number of underage students who study at two-year institutions as part of dual credit programs with participating high schools. Mathew Watkins, *Most Community Colleges Won't Ban Guns in Classrooms with Minors*, TEX. TRIB., Mar. 2, 2017.

305 A person is entitled to receive a license to carry a firearm under Texas law if various statutory requirements are met. Specifically, an individual must: be a legal resident of the state for at least six months prior to application; be at least 21 years old; not be convicted of a felony; not have been charged with certain misdemeanors or their equivalents; not be a fugitive from justice; not be chemically dependent; not be incapable of exercising sound judgment with respect to the proper use and storage of a handgun; not have been convicted of committing certain misdemeanors within the past five years; qualified under federal and state law to purchase a firearm; not be delinquent in the payment of child support or taxes; not be restricted under a court protective order or

be kept “on or about the license holder’s person” and concealed at all times.<sup>306</sup> An individual loses the protection of the statute if her handgun becomes even partially visible, regardless of whether it is holstered.<sup>307</sup>

“[C]ampus” has a broad meaning in the new law, including all land and structures owned or leased by the university.<sup>308</sup> Prior to August 1, 2016 and since 1995, holders of concealed carry licenses in Texas could carry their weapons on outdoor property of universities, including sidewalks, breezeways, and parking lots.<sup>309</sup> The campus carry law extends the areas for concealed carry to all other non-excluded areas of campus, including classrooms,<sup>310</sup> faculty and staff offices,<sup>311</sup> cafeterias, hallways, lounges, libraries, conference and meeting rooms, and administrative areas. In other words, the concealed carry of handguns by license holders is allowed throughout all locations of college campuses implementing the law, unless the area is covered by some university exclusion or other limitation imposed by state or federal law.

Both Texas and the federal government do, in fact, prohibit

---

subject to a restraining order affecting the spousal relationship; and have not, within the past ten years, “been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony.” Gov’t § 411.172(a)(1)–(12).

306 *Id.* § 411.2031(b).

307 PENAL § 46.035(a-1).

308 Gov’t § 411.2031(a)(1).

309 Lee, *supra* note 20; Ruby Samuels, *Texas College Students are Planning on Protesting ‘Campus Carry’ Laws by Carrying Sex Toys*, BUS. INSIDER (Aug. 3, 2016), <https://www.businessinsider.com/texas-students-to-protest-gun-laws-by-carrying-dildos-2016-8>.

310 While there may have been some disagreement among legislators about whether the Texas law allows universities to generally prohibit weapons in classrooms, the Texas Attorney General’s Office has taken the position that it does not. *See* Authority of an Institution of Higher Education to Establish Certain Rules Regarding the Carrying of Handguns on Campus, KP-0051 Op. Att’y Gen. of Tex. 2 (2015). Although recognizing that particular classrooms might be used for sensitive purposes such that weapons should be prohibited in those areas, it also made clear that if a university banned weapons in a “substantial number” of classrooms, the campus carry law would likely be violated. *See id.* at 1–2.

311 Although the Texas law does not expressly include an exclusion for offices, UT Austin has implemented a rule that allows employees who are “solely assigned to an office” to prohibit concealed carry in those areas, assuming that oral notice is provided to anyone who enters. *See Campus Carry: Information for Faculty*, U. TEX. AUSTIN, <http://campuscarry.utexas.edu/faculty> (last visited Apr. 9, 2019).

the carrying of weapons in various locations and settings, including some that might overlap with college campuses. Under Texas law, for example, weapons are not allowed at polling places on election day;<sup>312</sup> on the premises of government courts or offices used by courts;<sup>313</sup> at racetracks;<sup>314</sup> in the secured areas of airports;<sup>315</sup> within 1,000 feet of premises designated as places of execution on the day of execution;<sup>316</sup> at a correctional facility<sup>317</sup> and on the premises of a civil commitment facility.<sup>318</sup> Beyond those areas where firearms are flatly prohibited, Texas also allows the exclusion of properly licensed weapons in other specific settings if the license holder has been given proper notice,<sup>319</sup> including on the premises of a business authorized to sell alcohol;<sup>320</sup> at a collegiate sporting event;<sup>321</sup> on the premises of a state-licensed hospital or nursing home;<sup>322</sup> at amusement parks;<sup>323</sup> at a place of religious worship;<sup>324</sup> and at meetings subject to the state's Open Meetings Act.<sup>325</sup> Federal law creates additional exclusion areas, prohibiting weapons at any "federal facility," including presidential libraries, nuclear facilities, and multi-program research facilities.<sup>326</sup> Furthermore, in addition to all of these areas of exclusion, a license holder in Texas commits a criminal offense if he carries a handgun in any location, regardless of whether it is concealed, while intoxicated.<sup>327</sup> All these state and federal prohibitions trump the default right to campus carry in Texas.

The new Texas law affords universities the power to treat certain living areas differently, although the exact scope of that power

312 PENAL § 46.03(a)(2).

313 *Id.* § 46.03(a)(3).

314 *Id.* § 46.03(a)(4).

315 *Id.* § 46.03(a)(5).

316 *Id.* § 46.03(a)(6).

317 *Id.* § 46.035(b)(3).

318 *Id.* § 46.035(b)(7).

319 *Id.* §§ 30.06, 30.07.

320 *Id.* § 46.035(b)(1), (k).

321 *Id.* § 46.035(b)(2), (l). An exception exists if the handgun is used by a competitor as a normal part of the sporting event. *Id.* § 46.035(b)(2).

322 *Id.* § 46.035(b)(4), (i).

323 *Id.* § 46.035(b)(5), (i).

324 *Id.* § 46.035(b)(6), (i).

325 *Id.* § 46.035(c), (i).

326 18 U.S.C. § 930 (2017). "Federal facility" is defined as any building or part of a building "owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties." *Id.* § 930(g)(1).

327 PENAL § 46.035(d).

may be uncertain.<sup>328</sup> Universities may now enact rules relating to the storage of handguns in residential facilities, including dormitories, owned or leased by the institution and located on campus.<sup>329</sup> The Texas Attorney General's Office has interpreted this statutory language as empowering universities to regulate, short of prohibiting, gun storage in on-campus housing.<sup>330</sup> However, in implementation, universities have split on this issue. Schools including UT Austin, the University of Houston, Texas Tech University, and Texas Southern University have enacted rules prohibiting gun storage in dormitories.<sup>331</sup> Others, including Texas A&M University, Texas State University, the University of North Texas, and Stephen F. Austin State University, allow gun storage but take various approaches to regulation, including whether students must provide their own gun safes.<sup>332</sup> At least one university has remained silent on the issue of handgun storage or possession in student housing.<sup>333</sup> Student housing facilities owned and operated by third parties, such as certain sorority- and fraternity-owned housing, fall outside the campus carry law and are exempt from university regulation.<sup>334</sup>

The concept of notice to license holders is critical in understanding the Texas campus carry law. Sometimes referred to as "30.06 notice" because of its location in the Texas Penal Code, proper notice must be given to license holders in at least two categories of situations. First, as described above, Texas law identifies a variety of locations, such as collegiate sporting events and places of religious worship, where weapons may be excluded, but only if proper notice

---

328 See *infra* notes 352–53 and accompanying text.

329 GOV'T § 411.2031(d).

330 Authority of an Institution of Higher Education to Establish Certain Rules Regarding the Carrying of Handguns on Campus, KP-0051 Op. Att'y Gen. of Tex. 3 (2015).

331 Watkins, *supra* note 24; see *infra* notes 405–13 and accompanying text.

332 Watkins, *supra* note 24.

333 See Memorandum from Michael A. Olivas, Interim President, Univ. of Houston-Downtown, to All UH-Downtown/PS Holders on Campus Carry Policy (Aug. 1, 2016), <https://www.uhd.edu/administration/employment-services-operations/resources/Documents/PS01A16.pdf>.

334 See, e.g., *Campus Carry: Facts*, U. TEX. AUSTIN, <http://campuscarry.utexas.edu/> (last visited Apr. 9, 2019) (explaining that "S.B. 11 'covers concealed carry only on campus and the buildings owned or leased by the University. Fraternity and sorority houses are neither on campus nor owned or leased by the university . . . and the University is not authorized to enact rules or regulations regarding concealed carry' in these locations)."

has been given to license holders.<sup>335</sup> Notice is proper if it complies with section 30.06.<sup>336</sup>

Second, whenever a university implements regulations that create areas on campus where concealed weapons may not be carried, thereby modifying the background rule of concealed carry on campus, proper notice under section 30.06 must be provided.<sup>337</sup> Although such notice may technically be oral in nature,<sup>338</sup> the most efficient way for universities to provide notice is through signage that complies with the statute's very particular requirements: it must include the specific wording contained in the statute in both English and Spanish; it must be printed in block letters at least one-inch high with contrasting colors; and it must be displayed in a conspicuous manner that is easily viewable by the public.<sup>339</sup>

Without 30.06 notice, a license holder's concealed carry in that area is not criminal.<sup>340</sup> However, if a license holder brings a concealed weapon into an area where the weapon is lawfully prohibited, and proper notice of that prohibition has been provided orally or in writing complying with the statutory requirements, the individual commits a Class C Misdemeanor and is subject to a fine of up to \$200.<sup>341</sup>

In contrast, and providing an insight into gun priorities in Texas, a state entity that posts signage prohibiting concealed carry where it is legally allowed violates state law and is subject to a fine

---

335 According to the Texas Government Code, a university "must give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry." TEX. GOV'T CODE § 411.2031(d-1) (West 2019).

336 See, e.g., PENAL § 46.035(l), (i) (requiring 30.06 notice if firearms are prohibited at collegiate sporting events, hospitals, nursing homes, places of religious worship, and at a location of any meeting subject to Texas's Open Meetings Act).

337 GOV'T § 411.2031(d-1) (requiring that a university "give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry").

338 PENAL § 30.06(b). Although written and posted notice appears to be the norm, UT Austin requires oral notice where a sole occupant of an office chooses to exclude handguns. See *Campus Carry: Information for Faculty*, *supra* note 311.

339 PENAL § 30.06(c)(3)(B).

340 *Id.* § 46.035(l), (i) (requiring 30.06 notice if firearms are prohibited at collegiate sporting events, hospitals, nursing homes, places of religious worship, and at a location of any meeting subject to Texas's Open Meetings Act).

341 *Id.* § 30.06(d). The offense rises to a Class A Misdemeanor if the individual is given oral notice of the prohibition after entering the property but fails to leave. See *id.*

of at least \$1,000 on the first day and up to \$10,500 per day after that, with each day of wrongful posting a separate violation of the law.<sup>342</sup> State law also allows individuals who believe that exclusion signage has been wrongfully posted to file complaints with the Texas Attorney General's Office, which can then assess fines against the government entity if the signage defects exist and are not cured.<sup>343</sup> Not surprisingly, a significant number of complaints have been filed with the Attorney General's Office alleging improper exclusion of handguns, and that office has actively sought the removal of signs it believes were wrongfully posted at various locations across the state, including at the City of Austin's City Hall and the Fort Worth Zoo.<sup>344</sup> There are currently no reports of Attorney General investigations into allegedly defective 30.06 notices on college campuses in Texas, but universities must ensure that their exclusion signage is accurate and consistent with state law or risk significant fines.

Finally, the new Texas law extends previously existing qualified immunity to universities and university employees adopting campus carry. Section 411.208 of the Texas Government Code now grants immunity from civil suit to those entities and individuals, shielding them from any damages associated with the actions of a handgun license holder.<sup>345</sup> Consistent with preexisting law, that

---

342 GOV'T § 411.029(a)–(c). The statutory language creates two areas of potential notice jeopardy for universities. First, civil damages are triggered if a university attempts to prohibit handguns in areas where they may not be lawfully prohibited. *See* Questions regarding a notice prohibiting entry with a handgun onto certain premises under section 30.06 of the Penal Code and section 411.209 of the Government Code, KP-0049 Opp. Att'y Gen. of Tex. 4 (2015) (opining that “a court would likely construe section 411.209 to be implicated by any type of notice that seeks to improperly prohibit handguns”). Beyond civil damages, notice that does not comply with the Texas Penal Code would appear to be defective and, as a result, ineffective in prohibiting concealed carry in the relevant location. PENAL §§ 30.06(b), (c)(3).

343 GOV'T § 411.029(d)–(g).

344 Matt Largey, *Texas Attorney General Sues City of Austin Over City Hall Gun Ban*, AUSTIN AM.-STATESMAN (July 28, 2016), <http://kut.org/post/texas-attorney-general-sues-city-austin-over-city-hall-gun-ban>; Anna M. Tinsley, *New Texas Law Takes Aim at Erroneous Gun-Ban Signs*, FORT WORTH STAR-TELEGRAM (Sept. 1, 2015), <http://www.star-telegram.com/news/politics-government/article32747301.html>; *see also* *Guns at Zoos? Texas Says No as It Sorts Out Concealed Carry Law*, CBS NEWS (Dec. 3, 2016), <https://www.cbsnews.com/news/guns-at-zoos-texas-says-no-as-it-sorts-out-concealed-carry-laws/> (noting that as of the time of the date of the article, more than 120 complaints had been filed with the Office of the Attorney General of Texas).

345 GOV'T §§ 411.208(a)–(b).

immunity does not extend to acts committed by a state employee that are arbitrary or capricious or to an official's conduct involving his or her own handgun.<sup>346</sup>

## 2. Individualized University Implementation Rules

At the heart of the Texas law is the power it gives university presidents to create and implement a regulatory plan for concealed carry on campus, up to and including the establishment of limited handgun exclusion areas. Rather than a one-size-fits-all approach, the law provides flexibility to each university to consider whether, and if so, how, the concealed carry of handguns is consistent with all aspects of each university's operations. While the flexible implementation structure of the Texas law is unique and noteworthy, it is also circumscribed in a number of important ways.

The power to establish implementing regulations rests with each university president, rather than with other actors, such as individual staff or faculty members or an assigned committee.<sup>347</sup> A recent Texas Attorney General's opinion supports this reading of the new law, concluding that it does not allow faculty members or others to promulgate implementing rules. Rejecting the alternative of what it labeled potential "piecemeal" regulation of handguns on campus,<sup>348</sup>

346 *Id.* § 411.208(d). The immunity provisions of the new law have been critiqued as still allowing suits for damages caused by individuals who do not possess licenses to carry, as well as negligence suits under the Clery Act. See Shaundra K. Lewis & Daniel Alejandro De Luna, *Symposium on "Texas Gun Law and the Future": The Fatal Flaws in Texas's Campus Carry Law*, 41 TEX. MARSHALL L. REV. 135, 146–48 (2016).

347 GOV'T § 411.2031(d-1) (vesting the power to establish implementing rules with the "president or other chief executive officer" of each university and stating that "[t]he president or officer may amend the provisions as necessary for campus safety"). This rule promulgation structure, driven by university presidents, presumably extends to the creation of all campus carry-related regulations, even where the new law is not entirely clear. See, e.g., *id.* § 411.2031(d) (stating that "[a]n institution of higher education or private or independent institution of higher education in this state may establish rules, regulations, or other provisions" relating to handgun storage in certain residential facilities). Nevertheless, this ambiguity leaves open the possibility that certain types of campus carry rules could be promulgated by another authority, such as a campus carry taskforce chairperson.

348 Authority of an Institution of Higher Education to Establish Certain Rules Regarding the Carrying of Handguns on Campus, KP-0051 Op. Att'y Gen. of Tex. 2 (2015). The reasoning of the Attorney General's Office is unconvincing. The Office explains that the law's requirement that implementation rules be distributed to all faculty, among others, suggests that the Legislature

the Attorney General's Office did not read into the law any discretion to delegate each president's rule-making power. As a result, while committees or taskforces formed to consider campus carry rules may operate in an advisory capacity, final responsibility for those rules rests with each university's president.<sup>349</sup> Any implementation discretion that other individual actors may exercise must flow from the university's rules, established by the president.<sup>350</sup>

The Texas law also identifies the stakeholder groups that must be consulted and the specific subjects that should be addressed in those consultations. In particular, the statute specifies that input should be solicited from students, staff, and faculty.<sup>351</sup> Presumably, the Legislature intended this to be a listing of the stakeholders that *must* be consulted in some way, but other interested groups, including alumni, a community board of advisors, campus security staff, and local law enforcement personnel could and should also provide input during the rule formulation stage.

---

did not intend faculty to actually draft any of those rules. *See id.* In other contexts, faculties are tasked with promulgating all manner of rules relating to their schools' academic programs and operations, and those rules are routinely distributed to all members of the faculty once they are finalized. There is no objective policy reason why rules relating to handguns should be treated differently. The Office also states that, "as a practical matter," if individual faculty members could establish "individualized" campus carry rules, adequately providing 30.06 notice would be "unmanageable." *Id.* It is unclear why this is necessarily so. The new law allows oral notice of handgun exclusion areas, and any faculty members choosing, for example, to exclude guns from their offices could post signage complying with the new law. UT Austin's rules require similar notice to be provided by officeholders wishing to ban concealed carry in their offices. *See infra* note 401 and accompanying text.

349 In fact, it appears that most Texas universities covered by the new law followed a similar pattern of creating an advisory committee of stakeholders that recommended a set of campus carry rules to the university president for consideration. *See, e.g., Campus Carry Policy Working Group, Final Report*, U. TEX. AUSTIN 3 (Dec. 2015), <https://utexas.app.box.com/v/CCWorkingGroup-FinalReport> (describing the establishment of the university's Campus Carry Policy Working Group to provide policy recommendations); Michael K. Young, *Update from President Michael K. Young on Campus Carry*, TEX. A&M U. (Apr. 13, 2016), <http://www.tamu.edu/statements/campus-carry.html> (explaining the process of receiving recommendations from his university's Campus Carry Policy Task Force).

350 Authority of an Institution of Higher Education to Establish Certain Rules Regarding the Carrying of Handguns on Campus, KP-0051 Op. Att'y Gen. of Tex. 2 (2015).

351 GOV'T § 411.2031(d-1).

With guidance from students, faculty, and staff from their institutions, university presidents may consider three factors in evaluating possible regulations: the “nature of the student population, specific safety considerations, and the uniqueness of the campus environment.”<sup>352</sup> The Legislature did not provide guidance about what these areas of inquiry were intended to encompass. As a result, and because the language chosen by the Legislature is relatively generic, these factors may be too vague to be of much assistance during the rule formulation process. For example, it may be difficult to understand how the creation of specific gun rules might be guided in any meaningful way by evaluating the “nature of the student population” at most universities.<sup>353</sup>

However, at the very least, these factors do emphasize that each university’s rules must focus on the actual operations, students, and safety issues relevant to that particular institution. This focus excludes broader arguments, for instance, about whether guns should generally be allowed on university campuses. And by focusing on university-wide considerations, this statutory language appears to also exclude from consideration any personal arguments a student, staff member, or faculty member might raise seeking individualized treatment, most likely in the form of an exclusion, from a university’s general gun rules.<sup>354</sup>

The broad but university-specific factors that must be considered by each president provide universities significant flexibility to implement rules specific to their operations. Indeed, as discussed below, universities have used that flexibility to craft a wide range of gun-related regulations under the new law, addressing topics such as the proper storage of handguns in dormitories;<sup>355</sup>

---

352 *Id.*

353 *But see* Lewis & De Luna, *supra* note 346, at 144 (arguing that factors such as an unusually high level of stress on a university campus should justify stringent handgun limitations).

354 Some universities nevertheless see in the new law sufficient flexibility to allow the creation of individualized exclusion areas by employees, such as in the context of faculty offices that are assigned to one individual and not open to the public. *See, e.g., Campus Concealed Carry*, U. TEX. AUSTIN, at VII.(c)(1) (Aug. 1, 2016), <https://policies.utexas.edu/policies/campus-concealed-carry> (stating that “[t]he occupant of an office to which the occupant has been solely assigned and is not generally open to the public is permitted, at the occupant’s discretion, to prohibit the concealed carry of a handgun in that office.”).

355 *See, e.g., Possession and Storage of Handguns in Tarleton State University On-Campus Residential Housing Facilities*, TARLETON ST. U., <https://www.tarleton.edu/>

the types of laboratories weapons may be carried into;<sup>356</sup> whether handguns may be stored on campus overnight by faculty and staff;<sup>357</sup> and areas of animal care facilities where weapons are prohibited.<sup>358</sup>

Although university presidents have the power to promulgate campus carry rules for their schools, the Texas law subjects those rules to an additional level of scrutiny. Within 90 days of the establishment of a university's campus carry regulations by its president, the board of regents of that university must review the provisions.<sup>359</sup> By a vote of two-thirds, the board may amend the university's regulations in whole or in part.<sup>360</sup> A university's final regulations are those that are amended by its board of regents<sup>361</sup> or, if no amendments exist, the set of rules promulgated by the university's president.<sup>362</sup> This layer of evaluation above the university level provides at least two benefits. First, it builds into the system an additional review of each university's regulations to ensure compliance with the relevant statutes. Second, it allows the governing body for the university to review consistency of that school's regulations with any other universities that are joined within a system of educational institutions under that board's purview.<sup>363</sup>

The most significant limitation on a university's

---

finadminweb/safety/handgun-policy.html (last visited Apr. 20, 2019).

356 See, e.g., *Procedures for Implementation of Campus Carry*, TEX. A&M U. (Oct. 27, 2016), <http://rules-saps.tamu.edu/PDFs/34.06.02.M1.01.pdf>.

357 See, e.g., *Manual of Procedures 07.01.05: Campus Carry Policy*, U. HOUS., at § V.A. (Dec. 15, 2017), <http://www.uh.edu/af/universityservices/policies/mapp/07/070105.pdf>.

358 See, e.g., *Concealed Handguns and Weapons Policy, App. A (Exclusion Areas)*, U. TEX. EL PASO, <https://www.utep.edu/vpba/hoop/section-9/ch-10.html> (last visited Apr. 20, 2019).

359 TEX. GOV'T CODE § 411.2031(d-2) (West 2019). For universities that do not have a formal board of regents, the statute gives the oversight power to whatever "governing board" might exist. See *id.*

360 *Id.*

361 *Id.*

362 *Id.* § 411.2031(d-1).

363 The Texas structure of higher education includes six multi-university systems: The Texas A&M University System, The Texas State University System, The Texas Tech University System, The University of Texas System; The University of Houston System; and the University of North Texas System. See Texas Higher Education Coordinating Board, *Public Universities*, TEX. HIGHER EDUC. DATA, <http://www.txhighereddata.org/Interater/Institutionsshow.cfm?Type=1&Level=1> (last visited Mar. 30, 2019). The requirement for board of regents approval was apparently a last-minute amendment to the bill, offered by Democrats seeking to "water[] . . . down" the campus carry law. See Herman, *supra* note 295.

implementation of campus carry regulations is the statute's admonition that those regulations may not generally prohibit or have the effect of generally prohibiting campus carry.<sup>364</sup> The law is silent on where the line is between permissible regulation of weapons on campus, including the prohibition of concealed carry in certain locations, and regulations that go too far, resulting in the effective prohibition of campus carry. Certain activities and areas are likely to be considered at the core of a university's operations and mission and may receive more careful scrutiny. Classrooms, for example, appear particularly sensitive for the Texas Attorney General's Office. "[A]-ttending or teaching class is the primary reason most individuals are on campus."<sup>365</sup> As a result, if a university prohibits concealed carry in a "substantial number of classrooms," the Office of the Attorney General believes that a court would likely conclude that the school's regulations would violate the campus carry law.<sup>366</sup> Even in that context, however, the Attorney General's Office recognized that the concealed carrying of weapons in certain classrooms, such as ones where grade school children are present, "may pose heightened safety concerns" justifying regulation of handguns in those areas.<sup>367</sup>

Once a university promulgates its campus carry rules through its president's office, and its board of regents amends or approves those rules, the Texas statutory scheme provides one additional requirement. Every two years, each university must compile a concealed handgun report for the Texas Legislature. Each report must include an explanation of the university's handgun regulations and an explanation of the "reasons the institution has established those provisions."<sup>368</sup> Presumably this mechanism allows the Legislature to monitor implementation of campus carry to ensure that each university's rules do not have the effect of generally prohibiting concealed carry.

#### ***D. Observations on Early Implementation of Texas's Campus Carry Law***

Campus carry in Texas has been implemented in a staged

---

364 GOV'T § 411.2031(c), (d-1).

365 See Authority of an Institution of Higher Education to Establish Certain Rules Regarding the Carrying of Handguns on Campus, KP-0051 Op. Att'y Gen. of Tex. 1-2 (2015).

366 *Id.*

367 *Id.* at 1.

368 GOV'T § 411.2031(d-4).

manner, with four-year colleges subject to the law's provisions as of August 1, 2016, and community colleges as of August 1, 2017. A more complete perspective on the law's implementation will be possible with time. However, below are several initial observations that flow from the first two years of the law's enactment.

### 1. *Public Sentiment Divided but Universities Generally Opposed*

Despite its general reputation as a gun-friendly state, polling from 2015 found that only 47% of those surveyed in Texas supported campus carry, and 45% opposed it, with eight percent undecided.<sup>369</sup> Polling from 2013 found a similar split in responses.<sup>370</sup> Republican males were most likely to support concealed carry on campus, with respondents self-identifying as Tea Party members by far the strongest supporters.<sup>371</sup> Other polls suggest even less support for campus carry in the state.<sup>372</sup> In 2016, following passage of both the Texas campus carry law, as well as the broader open carry law in effect outside the campus context, 22% of Texans reported feeling more safe, while 37% reported feeling less safe, and 34% of respondents reported no change.<sup>373</sup> In addition, most university chancellors and presidents, parents, students, professors, and campus security staff remain opposed to campus carry.<sup>374</sup>

---

369 Jim Henson & Joshua Blank, *Reviewing Texas Attitudes Toward Campus Carry as Law Goes into Effect*, TEX. POL. PROJECT U. TEX. AUSTIN (Aug. 1, 2016), <https://texaspolitics.utexas.edu/blog/reviewing-texas-attitudes-toward-campus-carry-law-goes-effect>; Ross Ramsey, *UT/TT Poll: Voters Less Open to Open Carry*, TEX. TRIB. (Feb. 24, 2015), <https://www.texastribune.org/2015/02/24/utt-poll-voters-less-open-open-carry/>.

370 Henson & Blank, *supra* note 369 (reporting that 48% of respondents supported campus carry in 2013, and 47% opposed it).

371 *Id.* (reporting that 55% of those strongly supporting campus carry affiliated with the Tea Party).

372 SURVEY USA, RESULTS OF SURVEY USA NEWS POLL #22139 (2015), <http://progresstexas.org/poll/tx-poll-campus-carry> (finding that 72% of respondents opposed students bringing concealed handguns to class in a March 2015 poll); Tom Benning, *Group Opposed to 'Campus Carry' Says its Polling Shows Most Texans Do Too*, DALL. MORNING NEWS (Mar. 17, 2015), <https://www.dallasnews.com/news/politics/2015/03/17/group-opposed-to-campus-carry-says-its-polling-shows-most-texans-do-too> (reporting opposition to campus carry at 63% in Texas).

373 Henson & Blank, *supra* note 369.

374 Michael S. Rosenwald, *Guns Go to College: Everything You Need to Know About Campus Carry*, WASH. POST (July 31, 2016) (reporting significant opposition to campus carry among staff and students at Texas Tech University), <https://>

Beyond polls, another way to gauge the popularity of a law is in the details of its implementation. In Texas, as in some of the other states that have adopted campus carry, the law applied to all public universities, but private universities were given the option to opt out.<sup>375</sup> If they did not formally opt out, private universities in Texas would have been bound by the law. When given that option, private universities in Texas overwhelmingly rejected campus carry. Out of 38 private universities in Texas,<sup>376</sup> only one adopted campus carry: Amberton University.<sup>377</sup> All of the other private universities in Texas, which include major research institutions such as Rice University and small, religiously affiliated schools like Lubbock Christian University, took affirmative steps to avoid campus carry.<sup>378</sup> In the words of Rice University President, David Leebron, “there is no evidence that allowing the carrying of guns on our campus will make the campus safer.”<sup>379</sup>

Amberton University, it is worth noting, is a relatively unusual university. This small, nonprofit school states that its enrollment is “limited to the mature, working adult” who seeks to complete an undergraduate degree or begin a graduate program.<sup>380</sup> Many, if not most, of its courses are online, and the university offers “no campus housing, no sporting events, no social clubs, and no dining facilities.”<sup>381</sup> Furthermore, alcohol consumption on campus is prohibited.<sup>382</sup> In light of “the unique nature of the Amberton student and the campus environment,” Amberton University chose to be covered by the campus carry law.<sup>383</sup> Two additional schools, East Texas Baptist University and Southwestern Assemblies of God

---

[www.washingtonpost.com/news/local/wp/2016/07/30/everything-you-need-to-know-about-campus-carry/?utm\\_term=.504e72c5fb06](http://www.washingtonpost.com/news/local/wp/2016/07/30/everything-you-need-to-know-about-campus-carry/?utm_term=.504e72c5fb06); see also Wofford, *supra* note 23.

375 See *supra* notes 142, 147, 279 and accompanying text.

376 Texas Higher Education Coordinating Board, *supra* note 363.

377 *Amberton University’s Position on Campus Carry (Senate Bill 11)*, AMBERTON U., <http://www.amberton.edu/help-and-advice/campus-carry.html> (last visited Apr. 20, 2019) [hereinafter *Amberton*].

378 Mathew Watkins & Madeline Conway, *Only One Private Texas University Adopting Campus Carry*, TEX. TRIB. (July 29, 2016), <https://www.texastribune.org/2016/07/29/all-one-private-university-texas-are-opting-out-ca/>.

379 *Id.*

380 *Amberton*, *supra* note 377. Enrollment at Amberton University is limited to adults 21 and older. See Watkins & Conway, *supra* note 378.

381 *Amberton*, *supra* note 377.

382 See *id.*

383 *Id.*

University, allow some faculty or staff to carry concealed weapons, but firearms are otherwise prohibited.<sup>384</sup>

While the general sentiment on Texas university campuses is opposed to concealed carry, there are exceptions. For instance, the Texas A&M University Student Senate “overwhelmingly supports” the policy,<sup>385</sup> and the Chancellor of the Texas A&M University System agrees. Explaining that campus carry “does not raise safety concerns for me personally,” the Chancellor said the issue boils down to a simple question: “Do I trust my students, faculty and staff to work and live responsibly under the same laws at the university as they do at home? Of course I do!”<sup>386</sup>

As a result, even in a gun-friendly state, public opinion polls suggest tepid support, at most, for campus carry. Although some pockets of support exist for concealed carry within Texas universities, those with the option have overwhelmingly chosen to exclude themselves from the law.

## 2. Customized University Rules

The beginning stages of campus carry implementation across Texas public universities appear consistent with the legislature’s likely intent in this area. License holders have the general right to carry concealed weapons throughout the premises of public universities, but each institution has carved out exclusion areas and promulgated other regulations that reflect that school’s unique operations and priorities.<sup>387</sup>

One broad area of uniform treatment is the traditional learning environment. No university generally prohibits guns in classrooms, despite the fact that the prospect of guns in the classroom generates significant concern among those opposed to campus carry.<sup>388</sup> This

---

384 Watkins & Conway, *supra* note 378.

385 Sam Peshek, *Aggies, Texas A&M Faculty, Staff Split on Campus Carry Laws*, EAGLE (Mar. 6, 2015), [https://www.theeagle.com/news/local/aggies-texas-a-m-faculty-staff-split-on-campus-carry/article\\_b227aa1b-59e9-5dc4-86c2-cb7c900cb227.html](https://www.theeagle.com/news/local/aggies-texas-a-m-faculty-staff-split-on-campus-carry/article_b227aa1b-59e9-5dc4-86c2-cb7c900cb227.html).

386 Lauren R. McGaughy, *A&M Chancellor Backs Campus Carry Bill*, HOUS. CHRON. (Feb. 12, 2015), <https://www.chron.com/about/article/A-M-chancellor-backs-campus-carry-bill-6078017.php>.

387 See Aric K. Short, *Guns on Campus: A Look at the First Year of Concealed Carry at Texas Universities*, 80 TEX. B.J. 516 (2017).

388 See Colleen Flaherty, *Not in My Classroom*, INSIDE HIGHER ED (Apr. 28, 2017), <https://www.insidehighered.com/news/2017/04/28/study-professors-widely-oppose-campus-carry-inimical-academic-freedom-fewer-would-discussing-faculty-concerns-with-allowing-guns-in-college-classrooms>.

approach tracks the opinion of the Texas Attorney General's Office, which concluded that, with limited exceptions, prohibiting concealed carry in classrooms would violate the Texas law.<sup>389</sup> A number of universities have built limited classroom exclusion zones into their implementation rules, prohibiting concealed carry in classrooms where elementary or high school students may be present.<sup>390</sup>

University policies differ, however, when addressing the private office. Most universities do not give office occupants the ability to exempt themselves from general campus carry rules.<sup>391</sup> This fact has caused significant concern among some faculty members who have expressed anxiety at the prospect, for example, of meeting individually in an office with a student who is upset about a grade, never knowing if the student might be carrying a weapon.<sup>392</sup> That fear has led some faculty members and graduate students to consider online office hours<sup>393</sup> or to hold them in off-campus locations that do not allow concealed weapons, such as restaurants and bars.<sup>394</sup>

While some universities explicitly prohibit the creation of gun-free zones in offices,<sup>395</sup> a number of universities, most notably

389 See *supra* note 310 and accompanying text.

390 See, e.g., *Manual of Procedures 07.01.05: Campus Carry Policy*, *supra* note 357, at V.L.1.; *Concealed Carry on Campus*, STEPHEN F. AUSTIN ST. U., <http://www.sfasu.edu/campuscarry/> (last visited Mar. 31, 2019).

391 See, e.g., *Carrying Concealed Handguns on Campus*, TEX. A&M U. (Aug. 1, 2016), <http://rules-saps.tamu.edu/PDFs/34.06.02.M1.pdf>; *Policy 04.001: Carrying Concealed Handguns on Campus*, U.N. TEX. (Aug. 1, 2016) 3, [http://policy.unt.edu/sites/default/files/04.001\\_CarryingOfConcealedHandgunsOnCampus\\_2016.pdf](http://policy.unt.edu/sites/default/files/04.001_CarryingOfConcealedHandgunsOnCampus_2016.pdf).

392 See Ian Bogost, *The Armed Campus in the Anxiety Age*, ATLANTIC, Mar. 9, 2016. While this general concern is understandable, to the extent a university did not screen for weapons at its entrances before campus carry went into effect, it has always been possible for someone to illegally enter a Texas university with a handgun.

393 Anna M. Tinsley, *Concealed Handguns Allowed at Many Texas Colleges Starting Aug. 1*, FORT WORTH STAR-TELEGRAM (July 30, 2016), <https://www.star-telegram.com/news/politics-government/article92804247.html> (stating that some UTA professors may conduct "virtual" office hours after implementation of campus carry).

394 Lindsay Ellis, *Austin Bars Provide Gun-Free Haven for UT Grad Students and Platform for Protest*, HOUS. CHRON. (Feb. 14, 2017), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Campus-carry-dissent-Austin-bars-provide-10932176.php> (describing UT graduate students moving their office hours to the Cactus Café, which serves alcohol and, as a result, does not allow guns).

395 See, e.g., *Campus Carry: Frequently Asked Questions*, U. TEX. ARLINGTON,

UT Austin, do allow office occupants to prohibit concealed carry.<sup>396</sup> Under that institution's rules, a faculty or staff member who is solely assigned to a particular office may choose to prohibit the concealed carry of handguns there.<sup>397</sup> For office occupants exercising that right to exclude, UT Austin requires that they provide oral, not written, notice to all guests.<sup>398</sup> Other University of Texas System schools, including The University of Texas at Dallas, the University of Texas at El Paso (UTEP), and the University of Texas at San Antonio (UTSA) follow a similar approach to that of UT Austin, allowing sole occupants of offices to provide oral notice excluding concealed carry in those locations.<sup>399</sup> UTSA also states that notice, "[w]hen feasible," should also be provided in writing;<sup>400</sup> however, UT Austin and UTEP clearly state that written notice is inadequate to effectively ban handguns from offices.<sup>401</sup> UTEP adds a unique detail to its policy, stating that if the excluding office occupant has as a part of his or her duties the regular interaction with individuals who may be license holders, the office occupant "must make reasonable arrangements to meet them in another location" other than the gun-free office.<sup>402</sup> Texas Southern University also allows office occupants to ban handguns, assuming the office is "generally not open to the public."<sup>403</sup> Acceptable notice for that university includes written notice satisfying the statutory requirements.<sup>404</sup>

Texas universities also approach the topic of gun storage in various ways. A significant number of universities explicitly require that licensed students in campus housing store their weapons in

---

<https://www.uta.edu/news/info/campus-carry/faqs.php> (explaining that individual offices are not gun-free zones).

396 *Campus Carry: Information for Faculty*, *supra* note 311.

397 *Id.*

398 *Id.*

399 *Campus Carry Home*, U. TEX. DALL., <http://www.utdallas.edu/campuscarry/> (last visited Apr. 20, 2019); *Campus Concealed Carry Information for Faculty*, U. TEX. EL PASO, [https://www.utep.edu/campuscarry/\\_Files/docs/CC\\_Faculty.pdf](https://www.utep.edu/campuscarry/_Files/docs/CC_Faculty.pdf) (last visited Apr. 20, 2019); *Campus Carry Policy*, U. TEX. SAN ANTONIO, <https://www.utsa.edu/campuscarry/policy.html> (last visited Apr. 20, 2019).

400 *Campus Carry Policy*, *supra* note 399.

401 *Campus Carry: Information for Faculty*, *supra* note 311; *Campus Concealed Carry Information for Faculty*, *supra* note 399.

402 *Campus Concealed Carry Information for Faculty*, *supra* note 399.

403 *Campus Carry Policy*, TEX. S. U. (Aug. 1, 2016), at (IV)(A)(4.1)(x), <http://www.tsu.edu/mapp/pdf/operations-services/040629-campus-carry-policy.pdf>.

404 *Id.* at (V)(B)(4.2).

an appropriately secure safe.<sup>405</sup> Six of those universities, such as Texas A&M University, require those students to rent or purchase gun safes from the university,<sup>406</sup> presumably ensuring an acceptably secure gun safe for each gun-toting resident. An additional 16 universities requiring gun safes for campus residents with licenses allow students to acquire their safes from other sources.<sup>407</sup> Midwestern State University, for example, imposes the requirement that any gun safe acquired and used by a student to store a weapon in a campus residence must comply with federal law on what constitutes “secure gun storage.”<sup>408</sup> Lamar University explicitly requires students to store handguns in gun safes in dormitories, and those safes must be approved by the university.<sup>409</sup>

Other universities limit the presence of licensed handguns to areas where younger students are not present. For example, the University of Houston has identified all residential facilities as exclusion areas, other than one: Calhoun Lofts.<sup>410</sup> That residence is available only to college juniors or other students who are at least 21 years old.<sup>411</sup> One university, Texas Southern University, prohibits

405 See, e.g., *Carrying Concealed Handguns on Campus*, MIDWESTERN ST. U. (Aug. 5, 2016), <https://msutexas.edu/human-resources/policy/4-general-university-policies/4.116-Carrying-Concealed-Handguns-On-Campus.asp>; *Carrying Concealed Handguns on Campus*, *supra* note 391 (describing concealed campus policy for Texas A&M, including Galveston campus); *Carrying Concealed Handguns on Campus*, TEX. A&M U. TEXARKANA (Aug. 1, 2016), <http://assets.system.tamus.edu/files/communications/pdf/ccrules/TAMU-T.PDF>; *Carrying Concealed Handguns on Campus*, TEX. A&M U. KINGSVILLE (Feb. 8, 2018), <https://www.tamuk.edu/policy/rules/pdf/34-06-02-K1.pdf>; *Carrying Concealed Handguns on Campus*, W. TEX. A&M U. (Aug. 1, 2016), [https://www.wtamu.edu/webres/File/About/Administration/Rules/34\\_06\\_02\\_W1-Carrying-Concealed-Handguns-on-Campus.pdf](https://www.wtamu.edu/webres/File/About/Administration/Rules/34_06_02_W1-Carrying-Concealed-Handguns-on-Campus.pdf).

406 See, e.g., *Carrying Concealed Handguns on Campus*, *supra* note 391.

407 See, e.g., *Campus Carry Rules/Policies*, MIDWESTERN ST. U., <https://mwsu.edu/campus-carry/rules-policies> (last visited Apr. 20, 2019). Texas Tech University follows a similar policy. *Concealed Carry of Handguns on Campus*, TEX. TECH U. (May 23, 2016), at § 4, <http://www.ttu.edu/campuscarry/op10.22.pdf>.

408 *Campus Carry Rules/Policies*, *supra* note 407 (citing 18 U.S.C. § 921(a)(34)(c) (2017)).

409 *Concealed Handgun Policy*, LAMAR U., at (V)(1), <https://www.lamar.edu/faculty-staff/policy/campus-carry/concealed-handgun-policy.html> (last visited Mar. 25, 2019).

410 *Campus Carry—S.B. 11 Frequently Asked Questions*, U. HOUS. POLICE DEPT., <http://www.uh.edu/police/campus-carry/faq.html> (last visited Apr. 20, 2019).

411 See *University Lofts*, U. HOUS., <http://www.uh.edu/housing/housing-options/university-lofts%20/> (last visited Apr. 20, 2019).

firearms in all residential facilities.<sup>412</sup> Finally, if a university does not provide campus housing for students, the decision on whether firearms are allowed in student housing rests with the private company supplying that service.<sup>413</sup>

Beyond classrooms, offices, and residential areas, Texas universities have promulgated rules regulating, or more accurately prohibiting, handguns in a variety of settings. Those regulations reflect each university's determination of when campus carry is consistent with its operations and when an exclusion area must be carved out. For example, some but not all universities exclude weapons from athletic facilities such as gyms and practice fields.<sup>414</sup> Although there is little clear consistency to their rules, Texas public universities have identified gun-free zones in a number of other areas associated with especially sensitive locations or activities, including mental health treatment facilities;<sup>415</sup> locations where elementary students might be present;<sup>416</sup> places of religious worship;<sup>417</sup> health care facilities;<sup>418</sup> areas where the board of regents meets;<sup>419</sup> dining halls;<sup>420</sup> museums;<sup>421</sup> counseling centers;<sup>422</sup> the university post

---

412 *Campus Carry Policy*, *supra* note 403, at (IV)(A)(4.1)(h).

413 *See, e.g., Carrying Concealed Handguns on Campus*, TEX. A&M U. CORPUS CHRISTI, at 2 (Aug. 1, 2016), [http://academicaffairs.tamucc.edu/rules\\_procedures/assets/34.06.02.C1\\_carrying\\_concealed\\_handguns\\_on\\_campus.pdf](http://academicaffairs.tamucc.edu/rules_procedures/assets/34.06.02.C1_carrying_concealed_handguns_on_campus.pdf).

414 *Compare id.* at 2–3 (prohibiting concealed carry at the university tennis center, baseball and softball fields, gym, wellness center, locker rooms, sports building, and field house) *with Campus Carry: Information for Students*, U. TEX. AUSTIN, <http://campuscarry.utexas.edu/students> (prohibiting weapons at intercollegiate sporting events but silent on whether weapons in general athletic facilities are prohibited) (last visited Apr. 20, 2019).

415 *Campus Concealed Carry: Exclusion Zones*, U. TEX. EL PASO, <https://www.utep.edu/campuscarry/exclusion-zones/index.html> (last visited Apr. 20, 2019).

416 *See, e.g., Campus Carry Home*, *supra* note 399.

417 *Carrying of Concealed Handguns on Campus*, U. N. TEX. 3 (Aug. 1, 2016), [http://policy.unt.edu/sites/default/files/04.001\\_CarryingOfConcealedHandgunsOnCampus\\_2016.pdf](http://policy.unt.edu/sites/default/files/04.001_CarryingOfConcealedHandgunsOnCampus_2016.pdf).

418 *See, e.g., Concealed Handguns and Other Weapons on Campus*, U. TEX. RIO GRANDE VALLEY (Aug 1, 2016), [http://www.utrgv.edu/campuscarry/\\_files/documents/campus-carry-policy.pdf](http://www.utrgv.edu/campuscarry/_files/documents/campus-carry-policy.pdf).

419 *See Gun Free Zones (Campus Carry) Policy*, TEX. WOMAN'S U. (Feb. 14, 2019), <https://servicecenter.twu.edu/TDClient/KB/ArticleDet?ID=34877>.

420 *See, e.g., Campus Carry Policy*, *supra* note 399.

421 *Id.*

422 *See, e.g., Carrying Concealed Handguns on Campus*, *supra* note 413, at 2–3.

office;<sup>423</sup> animal care facilities;<sup>424</sup> a law school clinic;<sup>425</sup> portions of libraries;<sup>426</sup> university-owned automobiles;<sup>427</sup> storage buildings where combustible items are stored;<sup>428</sup> areas where alcohol is served;<sup>429</sup> marine vessels;<sup>430</sup> playgrounds;<sup>431</sup> “[a]reas containing critical university infrastructure”;<sup>432</sup> certain laboratories;<sup>433</sup> and areas where formal disciplinary adjudications of students take place.<sup>434</sup>

Universities have also developed processes to identify additional locations that might be designated, on either a permanent or temporary basis, as gun-free if the need arises.<sup>435</sup> In particular, a number of universities allow their presidents to create temporary exclusion zones, sometimes with rule-based guidance on what circumstances would warrant such designations<sup>436</sup> and sometimes without such guidance.<sup>437</sup> While initial promulgation of firearm

423 See *Carrying Concealed Handguns on Campus*, TEX. A&M U. COM. (Aug. 1, 2016), <https://www.tamuc.edu/aboutUs/policiesProceduresStandardsStatements/rulesProcedures/34SafetyOfEmployeesAndStudents/34.06.02.R1.pdf>.

424 See *Campus Concealed Carry: Exclusion Zones*, *supra* note 415.

425 See *Carrying Concealed Handguns on Campus*, *supra* note 391.

426 *Campus Carry Policy*, *supra* note 399.

427 See *Campus Carry Policy*, *supra* note 403, at (IV)(A)(4.1)(t).

428 See *Campus Carry Policy*, *supra* note 399.

429 See *id.*

430 See *Carrying Concealed Handguns on Campus*, *supra* note 391.

431 See *Gun Free Zones*, TARLETON ST. U., <https://www.tarleton.edu/finadminweb/safety/documents/campus-carry/campuscarry-rackcard.pdf>.

432 See *Campus Carry—S.B. 11 Frequently Asked Questions*, *supra* note 410.

433 See *Campus Concealed Carry Information for Faculty*, *supra* note 399.

434 See *Campus Carry Policy*, U. HOUS. CLEAR LAKE 3 (July 7, 2016), <https://www.uhcl.edu/policies/documents/administration/campus-carry-policy.pdf>.

435 See *Carrying of Concealed Handguns on Campus*, U. N. TEX. DALL. (Aug. 8, 2017), [https://www.untDallas.edu/sites/default/files/12.006\\_carrying\\_of\\_concealed\\_handguns\\_on\\_campus.pdf](https://www.untDallas.edu/sites/default/files/12.006_carrying_of_concealed_handguns_on_campus.pdf); *Carrying Concealed Handguns on Campus*, MIDWESTERN ST. U. (Aug. 5, 2016), <https://msutexas.edu/human-resources/policy/4-general-university-policies/4.116-Carrying-Concealed-Handguns-On-Campus.asp>; *Concealed Carry of Handguns on Campus*, ANGELO ST. U. (May 4, 2018), <https://webstage.angelo.edu/content/files/22963-op-0210-concealed-carry-of-handguns-on-campus>.

436 See, e.g., *Carrying of Concealed Handguns on Campus*, U. N. TEX. DALL. (Aug. 8, 2017), [https://www.untDallas.edu/sites/default/files/12.006\\_carrying\\_of\\_concealed\\_handguns\\_on\\_campus.pdf](https://www.untDallas.edu/sites/default/files/12.006_carrying_of_concealed_handguns_on_campus.pdf) (giving factors that should be considered in determining whether a 72-hour exclusion zone should be established by the president, including whether the activity has a history of violence).

437 See *Concealed Handgun Policy*, *supra* note 409, at V.6. (stating that at the discretion of the president, “other Lamar University premises associated with temporary events involving safety considerations” may be designated gun-free zones).

regulations under the law requires board of regent's approval, it does not appear that any later safety-related designations must necessarily be approved beyond the level of the university's president.<sup>438</sup> This power to promulgate additional exclusion zones and handgun regulations appears based in the language of Texas's campus carry law, which states that "the president may amend [the university's campus carry rules] as necessary for campus safety."<sup>439</sup>

While the discretion given by the law to universities allows a more customized implementation of campus carry, it also leads to an inconsistent web of handgun regulations across public universities. However, the obligation that universities must provide statutory notice of any exclusion zones<sup>440</sup> helps mitigate concerns about inconsistent rules between university campuses.

Comparison of campus-specific implementation rules also helps identify areas where uncertainty has been created. For instance, at least 26 universities are silent on the topic of whether, and if so, how, employees may store handguns on campus.<sup>441</sup> A number of practical challenges arise because of this omission. For example, if a licensed employee moves into a campus location where guns are excluded, what should the employee do? Should the employee store the weapon in a gun safe in her office? In her desk drawer? If so, may she store it there overnight? Is she required to purchase a gun safe for her office? What if she shares office space with other co-workers who object to concealed carry? Because the basic structure of the new law puts the burden on the license holder to comply with properly-posted exclusion notices,<sup>442</sup> presumably the general response to the above questions is simply, "The employee must figure out a way not

---

438 See TEX. GOV'T CODE § 411.2031(d-1) (West 2019).

439 *Id.*

440 *Id.* (requiring that a university "give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry").

441 See, e.g., *Campus Carry Quick Information*, STEPHEN F. AUSTIN ST. U., [http://www.sfasu.edu/campuscarry/images/Campus\\_Carry\\_Quick\\_Info\\_Sheet\\_A.pdf](http://www.sfasu.edu/campuscarry/images/Campus_Carry_Quick_Info_Sheet_A.pdf) (last visited Apr. 20, 2019); *Concealed Carry Campus Policy*, SAM HOUSTON ST. U., <https://www.shsu.edu/dept/dean-of-students/guidelines/concealed-carry> (last visited Apr. 20, 2019); *Concealed Handgun Policy*, *supra* note 409; *Carrying Concealed Handguns on Campus*, W. TEX. A&M U. (Aug. 1, 2016), [https://www.wtamu.edu/webres/File/About/Administration/Rules/34\\_06\\_02\\_W1-Carrying-Concealed-Handguns-on-Campus.pdf](https://www.wtamu.edu/webres/File/About/Administration/Rules/34_06_02_W1-Carrying-Concealed-Handguns-on-Campus.pdf); *Campus Concealed Carry*, *supra* note 354 (imposing storage requirements only for full time employees who are required to live on campus).

442 See *supra* note 168 and accompanying text.

to carry a concealed weapon into excluded areas.” That response does not address security and safety concerns that might arise for the broader university community, however, depending on how an employee chooses to comply with the university’s regulations.

In all, however, a detailed look at how Texas’s public universities have initially implemented campus carry reflects that universities have, for the most part, thoughtfully assessed their student populations, safety concerns, and campus environments, and then determined how to overlay concealed carry onto their operations. In doing so, they have created firearm regulations, including exclusion zones, that fit their needs, while not “generally prohibiting license holders from carrying concealed handguns.”<sup>443</sup>

### 3. *Potential Free Speech Issues*

Crafting gun policy frequently brings competing rights and freedoms into conflict. Navigating that tension can be an enormous challenge. One area where such conflict may exist under current university rules relates to free speech. Under Texas law, license holders are required to present both their official identification, such as their driver’s license, and their handgun license if they are requested by a peace officer to provide identification when they are carrying their weapon.<sup>444</sup> Because Texas law is silent on whether license holders are obligated to disclose their licensee status in any other setting or to any other person, it is assumed that no such obligation exists.

Several Texas schools have addressed this topic in their campus carry rules, specifically limiting inquiries into individuals’ status as license holders. For example, Texas Tech University states that employees, other than members of law enforcement “may not, under any circumstances, require students or employees to disclose their concealed carry license status.”<sup>445</sup> The University of Texas–Rio Grande has adopted a rule with similar language.<sup>446</sup> Texas A&M University’s version states that “[u]niversity administrators, faculty, staff and students should not request individuals to indicate whether they have a license.”<sup>447</sup>

Without an official explanation of these policies, it is unclear

443 Gov’t § 411.2031(d-1) (West 2019).

444 *Id.* § 411.205.

445 *Concealed Carry of Handguns on Campus*, *supra* note 407, at § 2(e).

446 *Concealed Handguns and Other Weapons on Campus*, *supra* note 418.

447 *Procedures for Implementation of Campus Carry*, *supra* note 356.

exactly what concern is motivating the universities. Perhaps because license holders are not legally required to disclose their status other than to peace officers, and because the possibility exists that license holders might feel singled out or intimidated if they were asked to voluntarily identify themselves, the universities have adopted policies that limit such inquiries.<sup>448</sup> But in doing so, the universities may be seen as proscribing or discouraging, depending on the rule, speech that is not prohibited by law. These policies target content-based expression, and may, at the very least, have a chilling effect on the free speech of employees or students.<sup>449</sup> To the extent there is a compelling governmental interest involved, which seems doubtful, it appears likely that more narrowly tailored means to achieve those goals are possible.<sup>450</sup> For example, a university concerned about intimidation of license holders could prohibit any adverse impact on a student or employee because of her status as a license holder.

#### 4. *Post-Implementation Reaction*

Prior to the initial implementation of campus carry in Texas on August 1, 2016, significant concerns existed about the new law. On the legal front, three UT Austin professors filed suit against their university and the state, arguing that the law was an “overly solicitous, dangerously-experimental gun polic[y],” and that it violated both the First and Second Amendments to the U.S. Constitution.<sup>451</sup> The American Association of University Professors, joined by the Giffords Law Center to Prevent Gun Violence and the Brady Center to Prevent Gun Violence, filed an amicus brief in support of the plaintiffs’ claims.<sup>452</sup> Among the arguments made by

---

448 License status is also exempt from disclosure under the Public Information Act. *Frequently Asked Questions*, TEX. DEP’T OF PUBLIC SAFETY, <https://www.dps.texas.gov/RSD/LTC/faqs/index.htm> (last visited Apr. 20, 2019).

449 Content-based restrictions are presumptively unconstitutional. *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1991).

450 *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45–46 (1983); *see generally* Azhar Majeed, *Defying the Constitution: The Rise, Persistence, and Prevalence of Campus Speech Codes*, 7 *GEO. J.L. & PUB. POL’Y* 481, 497–500 (2009) (discussing content-based discrimination in, as well as the chilling effect of, campus speech codes).

451 Matthew Watkins, *Three UT Professors Sue to Block Campus Carry Law*, TEX. TRIB. (July 6, 2016), <https://www.texastribune.org/2016/07/06/3-ut-austin-professors-sue-state-over-campus-carry/>.

452 Brief of American Ass’n of Univ. Professors et al. as Amici Curiae in Support of Plaintiffs-Appellants, *Glass v. Paxton*, 900 F.3d 233 (2018) (No. 17-50641), available at [https://www.aaup.org/file/Glass\\_campus\\_carry\\_0.pdf](https://www.aaup.org/file/Glass_campus_carry_0.pdf).

the plaintiffs in that case was that the “possibility of the presence of concealed weapons in a classroom impedes [their] ability to create a daring, intellectually active, mutually supportive, and engaged community of thinkers.”<sup>453</sup> In his ruling, Judge Lee Yeakel of the Western District of Texas described the plaintiffs’ standing claim as one “based on their self-imposed censoring of classroom discussions caused by their fear of the possibility of illegal activity by persons not joined in this lawsuit.”<sup>454</sup> Concluding that the professors had not provided any “concrete evidence to substantiate their fears,” and because any alleged injury to them was not traceable to any conduct by the defendants, Judge Yeakel dismissed the lawsuit for lack of standing.<sup>455</sup> Judge Yeakel’s opinion did not address the plaintiffs’ Second Amendment or Equal Protection claims.<sup>456</sup>

Among the concerns raised by plaintiffs in their case was the chilling effect that campus carry would have on class content and discussions: that professors would avoid controversial subjects or points of view, fearful that a student upset with the discussion might draw a concealed weapon.<sup>457</sup> Professors also frequently deal with students in emotional crisis because of school problems, failed exams, cheating allegations, or general life pressures, and the dangers associated with those crises become heightened in a world of concealed carry.<sup>458</sup> Many faculty members report being anxious or fearful of how the new law will impact them personally and professionally, as well as how it will affect their classrooms and student interactions.<sup>459</sup> The faculty senate of the University of Houston, apparently in response to that anxiety, created a presentation for faculty there suggesting that they “may want to” take various steps in response to the new campus carry law, including

453 *Glass, et al. v. Paxton, et al.*, No. 1 :16-CV-845-LY, 2017 WL 4506806, at \*3 (W.D. Tex. July 6, 2017) (order granting motion to dismiss).

454 *Id.*

455 *Id.*

456 *See id.*; Mathew Watkins, *Federal Judge Throws Out Effort by UT Professors to Overturn Campus Carry*, TEX. TRIB. (July 7, 2017), <https://www.texastribune.org/2017/07/07/federal-judge-dismisses-ut-professors-attempt-overturn-campus-carry/>.

457 Brief of American Ass’n of Univ. Professors, et al. as Amici Curiae in Support of Plaintiffs-Appellants, *supra* note 452, at 3–4.

458 Steven J. Friesen, *I’m a Professor in Texas and I’m Worried About Students Who Can Now Carry Guns in My Class*, PUB. RADIO INT’L (Aug. 18, 2016), <https://www.pri.org/stories/2016-08-18/im-professor-texas-and-im-worried-about-students-who-can-now-carry-guns-my-class>.

459 *See id.*; Flaherty, *supra* note 388.

“drop[ping] certain topics from [the] curriculum”; and only meeting “‘that student’ in controlled circumstances.”<sup>460</sup>

Preliminary information is now available regarding the impacts, if any, that might be felt on academic freedom as a result of campus carry. In a study performed by Joslyn Krismer, a Ph.D. candidate at UT Austin, faculty members at a “large Southern research university” were polled about their attitudes towards campus carry and how the prospective law would affect their teaching.<sup>461</sup> Seventy-one percent of faculty agreed that campus carry laws “will have a negative impact on the free and robust exchange of ideas at the my university [sic].”<sup>462</sup> However, 53% of professors reported that their approach to teaching controversial or emotional topics would not change,<sup>463</sup> and 58% reported that they would not omit course content because of the new law.<sup>464</sup> Forty percent of professors reported that they would “tone down” their normal approach when dealing with sensitive or controversial subjects.<sup>465</sup> Female professors were slightly more opposed to campus carry than their male colleagues, and Asian professors were more likely to report that they would change their course coverage or teaching style because of the law.<sup>466</sup>

Superficially, these data may suggest that concerns voiced by campus carry opponents about its impact on the classroom environment, course content, or teaching style may be overblown. However, there are reasons not to draw too many definitive conclusions from this preliminary information. First, assuming the survey was conducted at a Texas university, it was administered just before the new law went into effect.<sup>467</sup> As a result, while the survey may reflect what faculty members expected the impact of

---

460 Sharon Grigsby, *Response at University of Houston is Exactly Why We Feared Campus Carry*, DALL. MORNING NEWS (Feb. 23, 2016), <https://www.dallasnews.com/opinion/opinion/2016/02/23/university-of-houston-response-is-exactly-why-we-feared-campus-carry-in-texas>.

461 It is unknown whether this survey was definitely conducted in Texas, but the location of the researcher and the timing of the study, just as campus carry became law in Texas, strongly suggest that it was. Flaherty, *supra* note 388 (the actual study has been presented at two conferences but is not publicly available for citation).

462 *Id.*

463 *Id.*

464 *Id.*

465 *Id.*

466 *Id.*

467 The survey appears to have been distributed to faculty members in the spring of 2016, before the law went into effect on August 1, 2016. *See id.*

campus carry would be on their teaching and course coverage, it may not reflect what the effect actually was. In addition, while there was a relatively even split between faculty members who believed that campus carry would change their coverage and teaching and those who did not, there was also a significant number of “unsure” responses.<sup>468</sup> Approximately 14-18% of respondents were uncertain whether, and if so, how, campus carry might impact their classrooms.<sup>469</sup> In addition, further research should be conducted about the impact of campus carry on the classrooms of minority and female teachers to better understand the law’s effects. Finally, the question of whether a professor’s course coverage changes after implementation of campus carry is separate from the question of whether the law creates concern and worry on the part of professors.<sup>470</sup> The answer to the latter question is clearly yes for many faculty members. Countless faculty members have expressed significant apprehension about allowing guns into their classrooms and offices, and many have talked and written about the combustible environment they inhabit in higher education, one in which high student pressure often mixes with depression, anxiety, and alcohol and drug use.<sup>471</sup> Inserting more guns into that environment, they argue, is a recipe for disaster.<sup>472</sup> The anxiety those faculty members feel every day walking into a campus carry environment is real.

Beyond potential and actual impacts on the classroom learning environment, the Texas campus carry law has led to faculty resignations, withdrawals of candidates for teaching and administrative positions, decisions by prospective students not to apply, and rescission of acceptances by visiting faculty and guest speakers.<sup>473</sup> The most well-known example was Fritz Steiner,

468 See *id.* (finding 46% of professors surveyed would not change, 40% would, and 14% were unsure).

469 *Id.*

470 One professor explained that professors may be “scared stiff” about the prospect of having guns in their classrooms, but “on principle refuse to change” their interactions with students. *Id.*

471 See *supra* notes 451–60 and accompanying text.

472 See Flaherty, *supra* note 388.

473 See generally Eleanor Dearman & W. Gardner Selby, *Professor: ‘Concrete examples’ of Teachers, Students Spurning University of Texas Due to Gun Law*, POLITIFACT TEX. (Aug. 26, 2016), <http://www.politifact.com/texas/statements/2016/aug/26/lisa-moore/professor-concrete-examples-teachers-students-spur/>; *The Impact of Campus Carry: Recruitment, Retention, Reputation Damage*, GUN FREE UT, <http://gunfreeut.org/resources/impact-of-campus-carry/> (listing a variety of harms that have flowed from Texas’s adoption of campus carry,

who resigned after fifteen years as dean of UT Austin's College of Architecture.<sup>474</sup> According to Dean Steiner, who then accepted a deanship at the University of Pennsylvania, "I would have never applied for another job if not for campus carry."<sup>475</sup> In another well-publicized example, Siva Vaidhyanathan, a professor of media studies at The University of Virginia, withdrew from being considered as a finalist for the position of dean at the Moody College of Communication at UT Austin.<sup>476</sup> Describing the "chilling effect" that campus carry would have on the classroom learning environment, Prof. Vaidhyanathan said he would likely side with concerned faculty members who wanted guns excluded from their classrooms.<sup>477</sup> Because in that case he anticipated that he would be "fired immediately,"<sup>478</sup> he withdrew his name for further consideration in the dean search process at UT Austin.<sup>479</sup> Among the other lost candidates for faculty or administrative positions in Texas as a result of campus carry are Thomas C. Sudhof, a Stanford University Nobel Laureate who declined a position at UT-Southwestern; Robin Bernstein, a professor and chair at Harvard University, who declined a senior chair position at UT Austin; Daniel Hammermesh, economics professor emeritus at UT Austin, who resigned that position and moved to the Royal Holloway University of London; and Kimberly Tallbear-Dauphine, associate professor of anthropology at UT Austin, who resigned and took a position on the faculty at the University of Alberta.<sup>480</sup>

Aside from these challenges with recruitment and retention, the first stages of campus carry implementation have gone smoothly and have had relatively little impact on campuses across the state. During the first year of campus carry, there were no intentional

---

including impacts on hiring and retention at universities and decisions by guest lecturers and performers to decline invitations to appear at Texas schools) (last visited Apr. 20, 2019).

474 Matthew Watkins, *UT Architecture Dean Cites Campus Carry as a Reason for Departure*, TEX. TRIB. (Feb. 25, 2016), <https://www.texastribune.org/2016/02/25/ut-architecture-dean-cites-campus-carry-reason-dep/>.

475 *Id.*

476 Ralph K.M. Haurwitz, *Campus Carry Law Kept This Scholar from Pursuing a Deanship at UT*, LOWDOWN ON HIGHER EDUC. (Feb. 18, 2016), <http://highered.blog.statesman.com/2016/02/18/campus-carry-law-kept-this-scholar-from-pursuing-a-deanship-at-ut/>.

477 *Id.*

478 *Id.*

479 Dearman & Selby, *supra* note 473.

480 *The Impact of Campus Carry: Recruitment, Retention, Reputation Damage*, *supra* note 473.

shootings on university property by any license holders, and just one accidental discharge that occurred at Tarleton State University, with only minor property damage.<sup>481</sup> The first year of campus carry saw, in general, no significant increase in gun violence, or violence at all, on university property. For example, at Texas Tech University in the year prior to campus carry, there were five gun-related incidents on campus; there were six in the twelve months following implementation of campus carry.<sup>482</sup> University officials overseeing implementation of the new law voiced nearly identical reactions to the first year of allowing concealed carry on campus: “very smooth[] and without incident”;<sup>483</sup> “[v]irtually no impact at all”;<sup>484</sup> “[a]mazingly quiet”;<sup>485</sup> “I expected it to be largely uneventful, and those expectations have been pretty much borne out.”<sup>486</sup> These Texas experiences are consistent with those of other states, where campus carry implementation has been relatively quiet with “little noticeable impact.”<sup>487</sup> In addition, while there had been some initial estimates that complying with the law might cost around \$50 million across Texas universities, the actual cost appears dramatically lower.<sup>488</sup> For example, the estimated cost of implementing campus carry in Tarrant County, Texas, has been just \$20,000.<sup>489</sup> And a spokesman for The University of Texas System, which had projected campus carry costs of approximately \$39 million, described the system’s

---

481 Emma Platoff, *After a Quiet Year of Campus Carry, Community Colleges Get Guns Next*, TEX. TRIB. (Aug. 1, 2017), <https://www.texastribune.org/2017/08/01/campus-carry-one-quiet-year/>.

482 *Id.*

483 *Id.* (quoting Harry Battson, Tarleton State University Assistant Vice President for Marketing and Communications).

484 *Id.* (quoting Chris Meyer, Texas A&M University).

485 *Id.* (quoting Lawrence Schovanec, Texas Tech University president).

486 *Id.* (quoting Phillip Lyons, Dean of the Sam Houston State University College of Criminal Justice).

487 Dave Phillips, *What University of Texas Campus is Saying About Concealed Guns*, N.Y. TIMES (Aug. 27, 2016), <https://www.nytimes.com/2016/08/28/us/university-of-texas-campus-concealed-guns.html>.

488 Anna M. Tinsley, *Campus Carry in Texas: At What Cost?*, FORT WORTH STAR-TELEGRAM (Sept. 28, 2016), <http://www.star-telegram.com/news/politics-government/article102651657.html>.

489 *Id.* (discussing costs incurred by Tarrant County universities implementing campus carry or providing notice that the campus is exempt, including at Texas Christian University, Texas A&M University School of Law, the University of North Texas Health Science Center, the University of Texas at Arlington, Northwestern Baptist Theological Seminary, and Tarleton State University – Fort Worth).

actual costs as “minimal.”<sup>490</sup>

## V. CONCLUSION

Recent data show that liberalized gun laws do not increase public safety; just the opposite. Nevertheless, a clear wave of momentum exists across the country in favor of campus carry. While various options exist for states considering implementation of campus carry, the extremes are problematic. Statutes that allow universities to completely opt out of the law will result, experience across the country shows, in the vast majority of schools not allowing guns on campus. On the other hand, statutes that impose a rigid framework on universities do not allow for exceptions based on each school's operations. The recent Texas campus carry law is an exception to these extreme approaches and embodies a compromise: the underlying right to concealed carry exists on university premises, but each school has the power to create a customized implementation plan that identifies areas where handguns are not allowed. Early stages of implementation in Texas show that this model is working well: universities have promulgated reasonable regulations, including establishing limited gun-free zones, that reflect their unique operations, campus populations, and safety concerns. They have done so with little administrative difficulty or financial expenditure, although there have been losses of small numbers of talented faculty and administrators opposed to the law. At a time of entrenched, polarizing opinions about gun policy, the Texas statutory framework provides a balanced middle-ground that should serve as a blueprint for other states planning to adopt campus carry.

---

490 *Id.*