

License to Carry a Handgun

What is a handgun?



Texas Penal Code § 46.01(5) defines **handgun** as:

“any firearm that is designed, made, or adapted to be fired with **one hand**.”

Texas Penal Code § 46.01(3) defines **firearm** as:

“any device designed, made, or adapted to expel a projectile through a barrel

by using the energy generated by an explosion or burning substance or

any device readily convertible to that use.”

Requirements for a License to Carry

1. Eligibility (GC § 411.172)

A person is eligible for a license to carry a handgun if the person:

- (1) is a legal resident of this state for the six months period preceding the date of application;
- (2) is at least 21 years of age;
(Unless an honorably discharged US armed forces member, veteran, national guard or reserves, who meets all other requirements.)
- (3) has not been convicted of a felony;
- (4) is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense of Disorderly Conduct, or equivalent offense, or of a felony under an information of indictment;
- (5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor or equivalent offense;
- (6) is not a chemically dependent person;
- (7) is not capable of exercising sound judgment with respect to the proper use and storage of a handgun;
- (8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense;
- (9) is fully qualified under applicable federal and state law to purchase a handgun;
- (10) has not been finally determined to be delinquent in making child support payment administered or collected by the attorney general;

- (11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision or the state, or any agency or subdivision of the state;
- (12) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;
- (13) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and,
- (14) has not failed to disclose a material fact or misrepresentations in the application.

2. Application (GC § 411.174)

An applicant must submit an application to the director's designee in Austin as follows:

- (1) completed application on a form provided by the department;
- (2) one or more approved photographs;
- (3) certified birth certificate / certified proof of applicant's age;
- (4) proof of residency in this state;
- (5) two complete sets of legible fingerprints taken by law enforcement or their authorized private party;
- (6) \$140 non-refundable application fee;
- (7) evidence of handgun proficiency;
- (8) applicant's affidavit confirming eligibility and knowledge of relevant laws regarding application and use of deadly force;
- (9) applicant's form authorizing inquiries into noncriminal history records necessary to determine eligibility.

An applicant must also provide statements of the applicant's:

- (1) full name and place and date of birth;
- (2) race and sex;
- (3) residence and business address for the past five years;
- (4) hair and eye color;
- (5) height and weight;

- (6) DL or ID number issued by the department;
- (7) criminal history record information of the type maintained by the department, including a list of offenses for which the applicant was arrested, charged, or under information or indictment and the disposition of the offenses; and,
- (8) history, if any, of treatment received by, commitment to, or residence in:

A drug or alcohol treatment center licensed to provide drug or alcohol treatment under the laws of this state or another state, but only if the treatment, commitment, or residence occurred during the preceding five years; or,

A psychiatric hospital.

HB 190, Effective January 1, 2016

Persons licensed to carry a handgun, under Subchapter H, Chapter 411, Texas Government Code,

may now ***openly*** carry a handgun in the same places that allowed the licensed carrying of a concealed handgun with some exceptions:

the handgun **MUST** be carried in a shoulder or belt **holster**;

Texas license holders can carry openly or concealed in any place not expressly prohibited by law.

License holders may be subject to criminal charges for carrying a handgun in plain view unless carried in a shoulder or belt holster.



Administrative Hearings - Handgun License

GC § 411.177 - The department **shall**, not later than the 60th day after the date of the receipt by the director's designee of the completed application materials:

- (1) issue the license; *or*
- (2) notify the applicant that the application was denied.

GC § 411.180 – The department **shall** give written notice to each applicant for a handgun license of any denial, revocation, or suspension of that license.

Not later than the 30th day after the notice is received by the applicant, the applicant may request a hearing by writing to the department in Austin.

Upon receipt of the written request for a hearing,

the department shall promptly schedule a hearing in the appropriate justice court in the county of residence of the applicant or license holder.

The justice court shall conduct a hearing to review the denial, revocation, or suspension of the license.

For this hearing, the justice of the peace shall act as an **administrative hearing officer**.

A district attorney, county attorney, attorney general, or designated member of the department may represent the department.

The department shall file the appropriate petition in the justice court selected for the hearing and send a copy to the applicant or license holder.

A hearing must be scheduled within 30 days of receipt of the request for a hearing.

The hearing shall be held expeditiously, but in no event, more than 60 days after the date that the applicant or license holder requested the hearing.

The hearing date may be reset on the motion of either party, by agreement of the parties, or by the court as necessary to accommodate the court's docket.

The justice court shall determine if the denial, revocation, or suspension is supported by **a preponderance** of the evidence.

Both the applicant or license holder and the department may present evidence. The department may use certified copies.

The court shall affirm the denial, revocation, or suspension if the court determines the denial, revocation, or suspension is supported by a preponderance of the evidence.

If the court determines the burden is not met, the court shall order the department to immediately issue or return the license to the applicant or license holder.

A suspension of a handgun license **may not be probated**.

Either party may appeal an adverse ruling to the county court, or county court at law, by filing an **appeal** with the **appeal court** within 30 days after the ruling.

A person appealing must send by certified mail a copy of the person's petition,

certified by the clerk of the court where the petition is filed,

to the appropriate division of the department at its Austin headquarters.

The appeal shall be de novo without a jury.

Signage Requirements for Court Buildings

Wrongful Exclusion of a Handgun Holder (GC § 411.209)

A state agency or political subdivision of the state may **NOT** post a sign expressly prohibiting a licensed handgun holder from entering or remaining on the premises.

If a sign is posted, a civil penalty may be imposed of:

Between \$1000 and \$1500 for the 1st violation, and

Between \$10,000 and \$10,500 for the 2nd or subsequent violation.

Each day of a continuing violation constitutes a separate violation.

A citizen of this state or person licensed to carry may send a written notice to the state agency whose signs are not in compliance with the sign statute.

The agency has until the end of the third day after receiving a written notice to cure the problem before they are in violation.

If the violation is not cured a complaint may be filed with the attorney general.

The attorney general will send notice of the proposed penalty giving the agency 15 days to remove signs or cure the violation. Sovereign immunity to suit is waived.

Penal Code § 46.03(a)(3) says a person may not carry a firearm **on the premises of any government court or offices utilized by the court,** unless pursuant to written regulations or written authorization of the court.

Penal Code § 46.03 and 46.035 define the term “premises”

Premises' means **a building or a portion of a building.**

The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage; or other parking area.

If “premises” means a “building **or** a portion of a building,” then a literal construction of Section 46.03 would seem to permit the exclusion of handguns from the entire building in which the court is located.

[Tex. Atty. Gen. Op. No. KP-0047 \(2015\)](#), Attorney General Paxton construed the term “*premises*” to mean only “*a portion of a building*,” so that if there are government offices in a building other than a court or offices utilized by a court, handguns may not be prohibited from the entire building.

In this Attorney General opinion it states:

“[W]e construe subsection 46.03(a)(3) to encompass **only** government **courtrooms** and those offices essential to the operation of the government **court**.” (KP-0047 at 5.)

The Attorney General opinion concluded with:

“[I]t is **only the courtrooms**, and those offices determined to be essential to their operations, from which Hays County may prohibit concealed handguns without risk of incurring a civil penalty under section 411.209 of the Government Code.”

Bell County was found to be in violation of these signage rules by the AG on Nov. 9, 2016,

Even though **Bell County** argues their facility is *NOT* a multi-use facility.

If the Attorney General's office sends **Bell County** a notice of **fine/sanctions**, then **Bell County** will have **15 days** to cure the violation. (*Go to [kdhnews.com](#) and search “open carry” to pull up and read the article*)

District Court Ruling: Waller County, Texas Vs. Terry Holcumb, Sr.

In the 506 Judicial District Court on the 28th of November, 2016

Judge Albert M. McCaig, Jr. **denied sanctions** against Waller County for not removing its signs, after Waller County received a threat of sanctions from the Attorney General, and also

Granted a Motion for Summary Disposition for Waller County *against* Terry Holcumb, Sr. allowing Waller County to keep its signs posted by stating:

“The legislative history of the provision of § 46.03(a)(3) establishes as a matter of law that the phrase ‘on the premises of a court or offices utilized by the court’ means an entire courthouse or building housing a court.”

The court effectively told Terry Holcumb, Sr. and the Attorney General that they **misinterpreted** the law, so it seems for now, the courts may lean toward a literal construction, as they should, when interpreting the relevant statutes regarding signage.

This will protect those courts and court offices located in a government building sharing offices with other government departments.

Keep your eyes open for future developments...