GUNS ON CAMPUS

A look at the first year of concealed carry at Texas universities.

BY ARIC SHORT

Few topics generate more passion than whether guns should be allowed on university campuses. Opponents raise a variety of concerns: colleges, already filled with stressed and anxious students, could become scenes of deadly violence if guns are allowed; armed students will dissuade faculty from teaching controversial subjects or challenging perspectives; and armed good Samaritans could complicate and delay the work of trained first responders if violence does erupt. Proponents argue that license holders—by statute at least 21 years old and having undergone firearms training—are unlikely to commit violent acts. They also stress that the right to carry on campus flows logically from the Second Amendment and that students should have the same ability to protect themselves in a college classroom as they have on a public street.

August 1, 2017, marked the one-year anniversary of Texas wading into this policy debate, becoming one of a handful of states to allow "campus carry." The law, passed by the Texas Legislature in 2015 and effective in 2016, requires all public universities, and private universities that opt into the law, to allow on their premises the concealed carrying of handguns by license holders.[1] The lead-up to implementation in Texas was emotional and dramatic: lawsuits were filed to block the law; at least one university dean resigned rather than implement it; and colorful protests were organized. While Texas was not the first state to adopt campus carry, it chose a unique and flexible structure for its law. In balancing the right of license holders to carry firearms on campus with the ability of universities to customize implementation, the law may serve as a blueprint for other states considering the sensitive topic of guns on campus.

THE ROAD TO CAMPUS CARRY IN TEXAS

Texas laws prohibiting the carrying of weapons in certain areas, such as polling places, date back to 1866, and an 1875 constitutional amendment recognized the state's power to prevent crime through firearm regulation.

But beginning in 1995, the state allowed residents satisfying statutory requirements for licensing to carry concealed handguns in public for personal protection.[2] Minor adjustments were made to this concealed carry law over the years, but its basic framework remained in place until 2015 when the Texas Legislature authorized open carry by license holders.[3] This broad right to carry weapons in public was not absolute, however. In particular, license holders were prohibited from bringing their weapons into buildings on college campuses.[4]

The university became a focus in the gun rights debate following the massacre of 32 students and faculty by a student gunman at Virginia Tech in 2007. Serious legislative efforts in Texas to authorize the concealed carrying of guns on college campuses began during the following legislative session in 2009, but through 2013, proponents fell short of passing some version of the law.

The 2015 legislative session proved more successful for gun rights advocates for two primary reasons. First, guns were a hot topic during the 2014 Texas gubernatorial race, with both major party candidates voicing support for expanded gun rights.[5] Second, in 2015, a rule change in the Texas Senate favored gun rights advocates. Until 2014, the Senate required two-thirds support, or 21 senators, to bring a bill up for debate on the floor. In 2015, however, the Senate changed its rules to require the support of only three-fifths of the 31 members, or 19 senators, to discuss a bill.[6] That year, 19 of the Senate's 20 Republican members signed on as authors of a draft campus carry bill, allowing it to be considered by the full body. With this final hurdle cleared, campus carry was approved by the Legislature and signed into law by Gov. Greg Abbott in 2015.[7]

CAMPUS CARRY STATUTE

The core right granted by the Texas law is simple: a license holder may carry a concealed handgun on the premises of any public, and any opting-in private, educational institution.[8] To date, only one private college in Texas has implemented campus carry: Amberton University, which limits enrollment to "mature, working adult[s]" and provides no student housing, recreational facilities, or dining halls.[9]

Recognizing the unique nature of the student-housing environment, the Texas law allows colleges to establish rules relating to the storage of handguns in residential facilities. But the law makes clear that in regulating such storage, a university may not effectively prohibit concealed carry. It also specifies the type of notice required to alert the public that concealed carry is not allowed in areas that are gun-free under state or federal law or by virtue of a university's implementing rules.

A distinctive aspect of the Texas law is that university presidents are given limited discretion to customize campus

carry for their communities. Before presidents may enact implementing rules on campus carry, they are required to consult with students, staff, and faculty about three topics specific to their institutions: (1) the "nature of the student population," (2) "specific safety considerations," and (3) the "uniqueness of the campus environment."[10] Whatever rules a university president implements following such consultations, they cannot have the effect of generally prohibiting campus carry.[11]

UNIVERSITY IMPLEMENTATION

Once passed, the campus carry law gave Texas universities one year from the legislation's effective date to consult stakeholders and draft and enact implementing rules. The relevant board of regents for each university could amend a president's draft rules, in whole or in part, on a two-thirds vote.[12]

Viewing the resulting rules across the state, the picture that emerges is one the Legislature likely intended: the broad right to carry concealed weapons on campuses customized with limited exceptions for each university's unique operations. No university prohibits guns in classrooms, consistent with advice in a recent opinion from the Office of the Texas Attorney General.[13] And the ability to ban weapons from offices is not widespread. The limited gun-free zones established by universities include sensitive areas such as mental health treatment facilities, locations where elementary students might be present, and areas where formal disciplinary adjudications of students take place. Universities also developed processes to identify additional locations that might be designated as gun-free if the need arises.[14]

Significant differences also exist among the universities' implementing rules. For example, the issue of weapon storage in dorms is handled in different ways. At least six universities provide storage safes for their students,[15] while 16 appear to require students to provide their own safes.[16] At least nine universities prohibit possession and/or storage in certain dorms where there may be a high percentage of younger residents.[17]

The university rules have created uncertainty in some important areas. For instance, at least 26 universities have been silent on the issue of employee storage of handguns.[18] When an employee carrying a concealed weapon moves into an area where weapons are not allowed, what should the employee do? Store the weapon in her car or desk? Is she required to buy and install a gun safe in her office? What if the employee shares the space with other co-workers?

Other inconsistencies arise on topics such as university space leased from a third party, the process and criteria for determining which additional areas will be designated gun-free, whether university employees (other than police) may ask if someone on campus is a license holder, and whether written or verbal notice is sufficient to satisfy state notice requirements for areas designated as gun-free.

MOVING FORWARD

Similar to the experience in other states, the first year of campus carry implementation in Texas was uneventful. Despite fears of violent confrontations between students and professors or dangerous inadvertent discharges of firearms, there was only one report of a student accidentally firing his weapon, and with only minimal property damage.[19]

But compared to those other states, the Texas statutory scheme is unique, providing a useful balance between ensuring the underlying right to carry and allowing universities to craft implementation rules that are specific to their operations. One cost of flexibility is a lack of uniformity across campus rules, which we have seen this year in Texas. But as universities continue to refine and sharpen their rules, they have the ability to create policies that are carefully tailored to meet the needs of their communities. As other states evaluate whether campus carry should be adopted, the Texas statutory framework could be a possible model to consider. **TBJ**

NOTES

1. 84th Leg., R.S., ch. 438, § 1, sec. 411.2031, 2015 Tex. Sess. Law Serv. (codified at Tex. Gov't Code § 411.2031).
2. 74th Leg., R.S., ch. 229, § 1, art. 4413(29ee), 1995 Tex. Sess. Law Serv. (amended and re-codified) (current version at Tex. Gov't Code §§ 411.171–411.209).
3. 84th Leg., R.S., ch. 437, § 1, sec. 11.041(a), 2015 Tex. Sess. Law Serv. (codified at Tex. Alco. Bev. Code § 11.041(a)).
4. *Id.* at § 28, sec. 411.2032(b), 2015 Tex. Sess. Law Serv. (codified at Tex. Gov't Code Ann. § 411.2032(b)).
5. Tom Benning, *Abbott reiterates support for campus carry, notwithstanding 'State of the State' snub*, Dallas Morning News: BLOG (February 18, 2015, 8:55 a.m.) https://www.dallasnews.com/news/politics/2015/02/18/abbott-reiterates-support-for-campus-carry-notwithstanding-state-of-the-state-snub.
6. S.J. of Tex., 84th Leg., R.S. 50-86 (2015).
7. Act effective August 1, 2016 (codified at Tex. Gov't Code § 411.2031).
8. Tex. Gov't Code Ann. § 411.2031(b)–(c), (e) (West, Westlaw through 2017 Reg. Sess.).
9. *Campus Carry (Senate Bill 11)* http://www.amberton.edu/help-and-advice/campus-carry.html (last visited June 16, 2017).
10. Tex. Gov't Code Ann. § 411.2031(d-1).
11. *Id.*
12. *Id.* at (d-2).
13. Tex. Att'y Gen. Op. No. KP-0051 (2015).
14. *E.g.*, University of North Texas at Dallas, *12.006 Carrying of Concealed Handguns on Campus* (2016); Midwestern State University, *Carrying Concealed Handguns on Campus* (2016); Angelo State University, *Concealed Carry of Handguns on Campus* (2017).
15. *E.g.*, Texas A&M University, *Carrying Concealed Handguns on Campus* (2016); Texas A&M University at Texarkana, *Carrying Concealed Handguns on Campus* (2016); Texas A&M University at Kingsville, *Carrying Concealed Handguns on Campus* (2016); West Texas A&M University, *Carrying Concealed Handguns on Campus* (2016); Midwestern State University, *Carrying Concealed Handguns on Campus* (2016); Texas A&M University at Galveston, *Carrying Concealed Handguns on Campus* (2016).
16. *E.g.*, Texas A&M University at Commerce, *Carrying Concealed Handguns on Campus* (2016); Stephen F. Austin State University, *Campus Carry Quick Information* (2016); Sam Houston State University, *Concealed Carry Campus Policy* (2016); The University of Texas at Austin, *Handbook of Operating Procedures: Campus Concealed Carry* (2016); Texas Tech University, *Concealed Carry of Handguns on Campus* (2016); University of Texas at Dallas, *Carry of Concealed Handguns* (2017).
17. *E.g.*, Texas Tech University, *Concealed Carry of Handguns on Campus* (2016); University of Texas at Dallas, *Carry of Concealed Handguns* (2017); The University of Texas at Austin, *Handbook of Operating Procedures: Campus Concealed Carry* (2016); University of Houston, *Manual of Administrative Policies and Procedures* (2016); Lamar University, *Concealed Handgun Policy* http://facultystaff.lamar.edu/policy/campus-carry/provisions-and-justifications.html (last visited July 17, 2017).
18. *E.g.*, Stephen F. Austin State University, *Campus Carry Quick Information* (2016); Sam Houston State University, *Concealed Carry Campus Policy* (2016); Lamar University, *Concealed Handgun Policy* http://facultystaff.lamar.edu (last visited July 17, 2017); West Texas A&M University, *Carrying Concealed Handguns on Campus* (2016); The University of Texas at Austin, *Handbook of Operating Procedures: Campus Concealed Carry* (2016).
19. Claire Z. Cardona, *Tarleton State student accidentally fires gun in campus dorm*, Dallas Morning News (Sept. 15, 2016) https://www.dallasnews.com/news/higher-education/2016/09/15/tarleton-state-student-accidentally-discharges-gun-campus-dorm.

Elizabeth Spencer Berthiaume provided valuable research assistance for this article.

ARIC SHORT

is vice dean of Texas A&M University School of Law, where he assisted in the implementation of campus carry. The views expressed in this article are his alone and do not represent those of Texas A&M University.