New Texas Gun Laws & Religious Properties

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Distinct Categories

- Carrying in public vs. possession in home
- Handguns vs. Long guns
  - Carrying Shotguns, rifles, antiques made before 1899, & black powder not prohibited
  - Changes to laws affect handgun only
- Handgun License Holders vs. Police/Private Security
  - Peace Officers (on and off-duty; local, state and federal), Private Security, Judges, Prosecutors, and retired officers current on certification
  - No such thing as a “gun-free zone”
  - Only handgun license holders from the general public
Legislative History

• 1995 – Concealed Carry
  ○ SB 60
  ○ Originally, houses of worship off-limits

• 1997 Amendment
  ○ HB 2909
  ○ Floor Amendment added Subsection (i)
  ○ Houses of worship must post a sign

• 2015 – Open Carry
  ○ HB 910
  ○ Open carry or concealed carry
Section 46.035, Penal Code

- Unlawful Carrying of Handgun by License Holder
- 46.035(b) “A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun...on or about the license holder’s person...
  - (6) on the premises of a church, synagogue, or other established place of religious worship.”
- “(i) Subsections (b)(4), (b)(5), (b)(6), and (c) do not apply if the actor was not given effective notice under Section 30.06 or 30.07.”
What is Effective Notice? (PC 30.06 & 30.07)

- **3 Kinds**
  - Oral
  - Written — card or other document
  - Written — Posted Sign

- **Written necessitates “magic words”**

- **If a sign:**
  - English and Spanish
  - One inch block letters
  - “Conspicuous manner”
Concealed Carry “Magic Words”

- "Pursuant to Section 30.06, Penal Code (trespass by license holder with [of license to carry] a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code ([concealed handgun licensing law]), may not enter this property with a concealed handgun”
- HB 910’s new language for concealed signs
- Old signage not “identical,” thus probably unenforceable.
Open Carry “Magic Words”

- "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"

- Can prevent open, concealed, or both.

- Statute says “identical.” Legal experts say:
  - Do not combine or condense the “magic words”
  - Need two signs to prevent both.
Signage vs. Other Notice

- Signage avoids confrontation & argument
- Signage allows immediate enforcement by police
- Oral = “apparent authority to act for the owner”
  - In a church setting, who has it?
    - Employees? Yes. *Winkley v. State, 123 S.W.3d 707*
    - Ushers, greeters, volunteers? Can be given, but do you want to put them in this role? *Williams v. State, 138 S.W.3d 43*
  - Conflicting What if Betty Sue says yes, but Jim Bob says no?
    - Defendant will argue “effective consent”
    - Clouds the required elements of trespass.
- Appropriate to call 911 immediately regardless
“Received Notice” & “Conspicuous Manner”

• In this scenario, one set of signs should do.

• Are these doors always locked from outside? Probably don’t need a sign.

• Examine security procedures – which doors really need to remain unlocked?

• Check doors often to make sure no one has propped open.
Differences: 46.035 vs. 30.06 & 30.07

- **Mental state**
  - 46.035 = showing of reckless
  - 30.06 & 30.07 = entry + received notice + without effective consent

- **Penalty**
  - 46.035 = class A misdemeanor (up to 1 yr jail; $4,000 fine; handgun license revocation)
  - 30.06 & 30.07 = class C misdemeanor (fine only, up to $500)
    - Penalty was a Class A
    - Deceased in a floor amendment to HB 910

- “Place of religious worship” vs. other properties?
Just a Few Properties to Think About...

Sanctuaries; Parsonages; Seminaries; Seminary housing; Private colleges; Private college dormitories; President’s house; Children’s homes; Group homes; Foster homes; Subsidiary nonprofits; Independent nonprofits; Halfway houses; Addiction treatment facilities; Mobile ministries; Refugee Services; Hospice; Hospitals; Nursing Homes; Community Clinics; Pregnancy crisis centers; Homes for unwed mothers; domestic violence shelters; administrative buildings; foundations; camps; community development corporations; conference centers; student centers...
“Premises” Definition

“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.” [PC 46.035(f)(3).]
“Premises” Implications

- Building only
- Basketball courts, playgrounds, courtyards?
- Sections of a building? Ok
- Fence with a gate? No.
- Is this constitutional?
  - Lutherans challenged in Minnesota.
  - Minnesota court said unconstitutional as applied to a church.
  - Rationale: violated state constitution’s religious freedom
  - Edina Community Lutheran Church v. State, 745 N.W.2d 194
What about those long guns?

- The Katy Trail in Dallas (DMN: 10/7/15).
  - Flood of 911 calls about these two guys
  - 8 Units Dispatched/more than 12 officers + 1 off-duty officer responded
  - Toy rifles. Released without charge.
  - Same result had they been real.

- **Long guns** (rifles and shotguns), “antiques” made before 1899, and “black powder” (fires non-cartridge rounds) all not illegal to carry.
So Someone Wants to Make a Statement?

- The “Open Carry Movement” is intentionally challenging improper 30.06 & 30.07 handgun signs.
- Work with local law enforcement. It’s still your private property.
  - If a handgun, police can deliver notice.
  - If a long gun, the general trespass statute in §30.05 Penal Code still applies.
Regular Trespass (PC 30.05)

- Entry + notice + without effective consent
- 30.05(f) – need a reason other properly licensed concealed handgun.
  - Says “handgun.” Presumably long gun is a reason to exclude
  - When in doubt, call the police.
- Work with police
  - Church staff and volunteers do not need to confront
  - Telling police a person was not wanted on the property, and having the police issue the notice to depart, was legally sufficient for conviction. *Williams v. State, 138 S.W.3d 43*
May 30, 2015 in Phoenix, Arizona outside a Mosque
Deadly Conduct (PC 22.05)

- (a) “A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.”

- (c) “Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.”

- “In the direction of”?
  - Could not find case law defining
  - Up to a jury
Terroristic Threats (PC 22.07)

(a) “a person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

1. (2) “place any person in fear of imminent serious bodily injury” (class B misdemeanor)
2. (3) “prevent or interrupt the occupation or use of a building, room, place of assembly,...or other public place;” (Class A misdemeanor. If loss more than $1500, then state jail felony)
3. (5) “place the public or a substantial group of the public in fear of serious bodily injury;” (3rd degree felony)
What is a threat?

- Difficult question. Hundreds of cases. Work with police.
- Examples
  - Threatening to release snakes into a building was sufficient to get a conviction. “Apprehension of bodily harm” was enough. *Redfearn v. State, 738 S.W.2d 28*
  - Conviction sustained for writing in a brief to a court “Will I have to exercise my Right to Keep and Bear Arms to obtain these rights? If so, I will fight, kill and die to obtain them! This is not a threat it is a FACT! I will have this grade changed no matter the cost in life, money and time and yes after eight years and $50,000 dollars, I am prepared to use gun point and death if needed! But before I resort to guns I will file at least two more suits.” *Tobias v. State, 884 S.W.2d 571.*
Civil Liability

- **Hiring Private Security?**
  - Generally, not liable for actions of an independent contractor

- **Off-Duty Officers or Officers in the Congregation?**
  - Law permits them to carry.
  - See Penal Code 46.15

- **Arming Pastors/staff?**
  - Employer/employee relationship significantly complicates
  - Vicarious liability exposure
Premises Liability

- No precedent for posting or not posting
- General Rule: No legal duty to protect against criminal acts of a third party. *Walker v. Harris*, 924 S.W.2d 375
- However, duty to use ordinary care to protect invitees from foreseeable criminal acts of third parties if one knows or has reason to know of an unreasonable and foreseeable risk of harm. *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749
What is Foreseeable?

- Not the worrier’s wildest imagination.

- Were there any previous criminal acts on the premises?

- If so
  - How recent?
  - How frequent?
  - Were they similar in nature?
  - Publicity (did the owner know or have reason to?)
Examples of not foreseeable

- Sexual assault in a bathroom of a church’s 3rd floor gymnasium not foreseeable despite testimony that staff broke up scuffles at athletic events. *Doe v. Pilgrim’s Rest Baptist Church, 248 S.W.3d 831*


- Shooting in a shopping center parking lot not foreseeable despite many other crimes and provision of security. *Trammel Crow Cent. Texas, Ltd. V. Gutierrez, 267 S.W.3d 9*
Example of Foreseeable

- A string of assaults and armed robberies at an apartment complex does make risk of murder foreseeable. *Timberwalk Apartments, Partners, Inc. v. Cain, 972 S.W.2d 749*

- Takeaway?
  - Do not do nothing.
  - Doing something does not mean arming CHL holders.
  - Lighting, security cameras, calling the local police or Department of Homeland Security to do a security assessment of facilities, creating a preparedness plan, hiring security — all evidence ordinary care.
Retention Holsters

- Police use to slow down assailants.
- Hunters use to keep gun from falling out while hiking.
- HB 910 – Rejected an amendment to require them.
- North Carolina church – gun fell out in bathroom stall. Four year old found it. Luckily, no one hurt.
Church-specific Inoculation

- Courts cannot get involved in deciding theological questions. *(See Hosanna Tabor v. EEOC, 565 U.S. ___ (2012); Watson v. Jones, 80 U.S. 679 (1872) for more on the Church Autonomy Doctrine.)*

- Whatever policy you decide, entangle it with a theological justification. The more theological, the more the courts refrain from second guessing.

- Provides a First Amendment claim in the unlikely event of a tragedy and subsequent lawsuit.
Check your Liability Insurance Coverage

- Do you have it?
- If not, get it — a “slip and fall” is far more likely
- Unknown if HB 910 will affect rates
  - Texas Impact inquired
  - Companies do not know
- When renewed, make sure gun-related incidents are not written out.
  - Like mold coverage
  - Please monitor and let us know
Thank You!

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