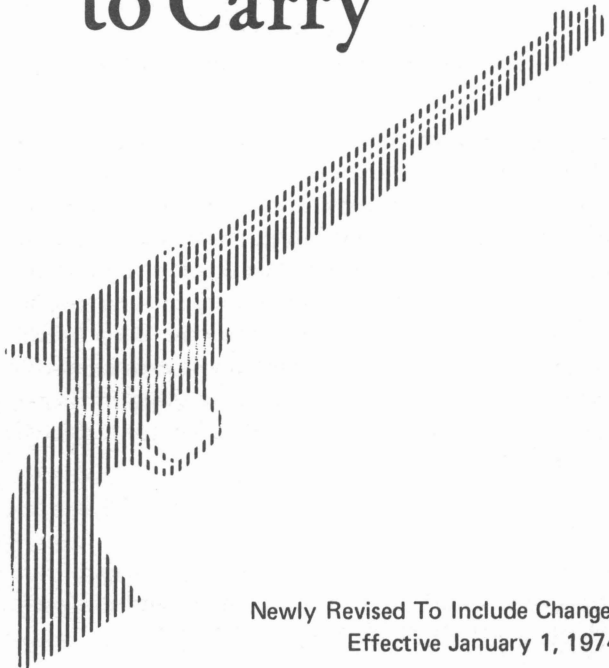


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# PISTOLS in Texas: to Carry or Not to Carry



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JOHN E. HUTCHISON, DIRECTOR, COLLEGE STATION, TEXAS

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# PISTOLS IN TEXAS: TO CARRY OR NOT TO CARRY

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Helping citizens more clearly understand laws which govern their lives is a matter of interest and concern to elected county officials of Texas. County officials frequently receive inquiries concerning laws on various subjects. Texas laws regulating ownership and use of pistols are sometimes misunderstood and subject to popular misconceptions. This leaflet provides some answers to common questions about pistols. Encouraging more understanding of Texas laws is one vital service provided by your elected county officials.

## *What is a pistol?*

A pistol is a short firearm or handgun capable of being aimed and fired from one hand and designed for the purposes of offense and defense.

## *Is it illegal to carry a pistol in Texas?*

Section 46.02 of the Texas Penal Code makes it unlawful for a person to intentionally, knowingly or recklessly carry on or about his person a handgun.

## *Are there any exceptions to that law?*

The provisions of Section 46.02 do not apply to persons in the actual discharge of their official duties as a peace officer or as a member of the armed forces or national guard or as a guard employed by a penal institution. Gun owners may bear arms on their own premises or on premises under their control, while traveling and when engaging in lawful hunting or fishing or other lawful sporting activities.

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*Does this statute provide penalties for those who violate its provisions?*

Yes, a person who violates this statute commits a misdemeanor and may be punished by a fine not to exceed \$2,000 or by confinement in jail for a term not to exceed one year; or by both such fine and imprisonment. If the offense is committed while on any premises licensed or issued a permit by the state for the sale or service of alcoholic beverages, it is a felony punishable by imprisonment for 2 to 10 years. In addition a fine not to exceed \$5,000 may also be assessed.

*Are there any other particular places where weapons may not be taken?*

Yes, Article 46.04 of the Texas Penal Code says that if a person, with a firearm of any type, intentionally, knowingly or recklessly goes on the premises of a school or educational institution, whether public or private, without written authorization or on the premises of a polling place on a day of election, he commits a misdemeanor punishable by fine not to exceed \$2,000 or by jail confinement not to exceed one year or by both fine and imprisonment.

*May a person obtain a permit from the sheriff or other county official to carry a pistol?*

There is no permit law in Texas. The statutes set forth circumstances under which one may carry a pistol and no county official can authorize another citizen to violate the law.

*Is it legal to carry a pistol to or from a place of purchase or repair?*

Generally, yes; however, Texas courts have held that an unreasonable delay in carrying a pistol from the place of purchase to one's home is sufficient to sustain a conviction for violation of the law. *Henson v. State*, 252 SW2d 711.

*Is having a pistol in the glove compartment or under the front seat of an automobile considered having it "on or about" one's person?*

Yes, the term "on or about person" has been expanded to include persons occupying vehicles. Convictions on these points were upheld in *Hutspeth v. State*, 254 SW2d 130 and *Garrett v. State*, 370 SW2d 270.

*Is it permissible to carry a pistol that is unloaded or lacks a part essential to make it fire?*

No, it is just as unlawful to carry an unloaded pistol as it is to carry one loaded and capable of being fired. It is not unlawful to carry a pistol which has been sufficiently disassembled to the point it is incapable of being fired or used in a threatening manner. The ultimate decision as to its operability or use belongs to a trial court judge or jury.

*Is it permissible to carry a pistol between one's residence and place of business?*

Texas courts have held that ordinarily one is authorized to carry a pistol from his place of business to his home when he is carrying a considerable sum of money and is traveling the shortest and most practical route home. See cases cited in *Boyett v. State*, 319 SW2d 106.

*When would a person be considered a "traveler" entitled to carry a pistol?*

Each case must be determined on its particular facts, but the following qualifications of a traveler are factors which courts sometimes use as guidelines in determining the issue.

1) A traveler generally is one who travels across a county line.

2) A traveler must be on the most direct route from origination to destination without deviating.

3) Momentary stopping before, during or after a trip will not cause one to lose a traveler's status, but such status can be lost by unreasonable delays.

4) Distance traveled may determine whether one is a traveler, but distance must be considered along with mode of travel.

*Who determines whether a person is in fact a traveler?*

This is a question of fact for a trial court judge or jury to decide. The practical disadvantage in relying upon this provision to justify carrying a pistol is the potential risk of being arrested, jailed and subjected to trial and possible punishment in establishing one's status as a traveler. A similar risk is involved when one must prove any set of circumstances entitling him to possess a pistol.

*Is there any difference in Texas when carrying a pistol if one conceals it or displays it openly?*

No, a person may not carry a pistol from place to place idly, or habitually or for an unlawful purpose. *Deuschle v. State*, 4 SW2d 559. Unless authorized by some other provision of the law, a person carrying an unconcealed pistol is in open violation of the law.

*Do these statutes apply to persons traveling beyond the boundaries of Texas?*

No, each state has its own laws governing the possession of weapons, and Texas laws have no extra-territorial effect for Texans traveling in other states.

*Are honorary constables entitled to carry pistols?*

Honorary constables who have not been officially appointed as deputy constables in the manner required by law and have no official duties in such capacity are not permitted to carry a pistol.

*Are any other weapons considered prohibited weapons under Texas laws?*

It is unlawful according to Section 46.04 of the Texas Penal Code to intentionally or knowingly possess, manufacture, transport, repair or sell an explosive weapon, a machine gun, a short-barrel firearm, a firearm silencer, a switchblade knife or knuckles. Certain types of clubs and knives are also illegal to possess including a blackjack, night stick, mace, tomahawk, knife with a blade over five and one-half inches in length, throw-blade knife, dagger including a dirk, stiletto and poniard, bowie knife, sword or spear.

*May persons who have been convicted of certain felony offenses possess a pistol or other prohibited weapon?*

Section 46.05 of the Texas Penal Code states that no person who has been convicted of a felony involving an act of violence may possess, away from the premises on which he lives, a firearm of any type. Violation constitutes a felony punishable by imprisonment up to 10 years. In addition a violator may be fined not to exceed \$5,000.

*Does Texas have a general gun ownership registration law?*

No.

*Where may a person obtain information about the federal laws governing the purchase, use and possession of pistols and other firearms?*

The Alcohol, Tobacco and Firearms Division of the Internal Revenue Service can furnish this information.

*Do federal laws require record keeping on pistol purchases?*

Certain federal laws require licensed gun dealers to record and report their pistol sales transactions listing the name, address and other data about the purchaser. Federal laws prohibit gun ownership to certain disqualified classes of persons such as felons and insane persons.

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