

PENAL CODE

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

Sec. 46.01. DEFINITIONS. In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

- (A) blackjack;
- (B) nightstick;
- (C) mace;
- (D) tomahawk.

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means 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. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

(A) an antique or curio firearm manufactured before 1899; or

(B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Illegal knife" means a:

(A) knife with a blade over five and one-half inches;

(B) hand instrument designed to cut or stab another by being thrown;

(C) dagger, including but not limited to a dirk, stiletto, and poniard;

(D) bowie knife;

(E) sword; or

(F) spear.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

(12) "Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in

pistols and revolvers.

(13) "Hoax bomb" means a device that:

(A) reasonably appears to be an explosive or incendiary device; or

(B) by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

(14) "Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.

(15) "Racetrack" has the meaning assigned that term by the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 917, ch. 342, Sec. 13, eff.

Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, Sec. 1, eff.

Sept. 1, 1983; Acts 1983, 68th Leg., p. 4830, ch. 852, Sec. 1, eff.

Sept. 1, 1983; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(46),

eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 749, Sec. 1, eff.

Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 229, Sec. 1, eff. Sept. 1,

1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994;

Acts 1999, 76th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 12A.001, eff. September 1, 2007.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not:

(1) on the person's own premises or premises under the person's control; or

(2) inside of or directly en route to a motor vehicle that is owned by the person or under the person's control.

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle that is owned by the person or under the person's control at any time in which:

(1) the handgun is in plain view; or

(2) the person is:

(A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic;

(B) prohibited by law from possessing a firearm;  
or

(C) a member of a criminal street gang, as defined by Section 71.01.

(a-2) For purposes of this section, "premises" includes real property and a recreational vehicle that is being used as living quarters, regardless of whether that use is temporary or permanent. In this subsection, "recreational vehicle" means a motor vehicle primarily designed as temporary living quarters or a vehicle that contains temporary living quarters and is designed to be towed by a motor vehicle. The term includes a travel trailer, camping trailer, truck camper, motor home, and horse trailer with living quarters.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 109, ch. 49, Sec. 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, Sec. 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, Sec. 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1879, ch. 746, Sec. 26, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2273, ch. 552, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5113, ch. 931, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 262, Sec. 21, eff. Sept. 1,

1987; Acts 1987, 70th Leg., ch. 873, Sec. 25, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 168, Sec. 1, eff. Sept. 1, 1991. Redesignated from Penal Code Sec. 46.02, 46.03 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 16, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 754, Sec. 15, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 790, Sec. 16, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 998, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 1, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 24, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 1, eff. September 1, 2007.

Sec. 46.03. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure,

on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section:

(1) "Premises" has the meaning assigned by Section 46.035.

(2) "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(4) Deleted by Acts 1995, 74th Leg., ch. 318, Sec. 17, eff. Sept. 1, 1995.

(5) a security officer who holds a personal protection authorization under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes).

(e) It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.

(f) It is not a defense to prosecution under this section

that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code.

(g) An offense under this section is a third degree felony.

(h) It is a defense to prosecution under Subsection (a)(4) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:

(1) the actor is wearing a distinctive uniform; and

(2) the firearm or club is in plain view.

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

(1) while in a vehicle being driven on a public road;

or

(2) at the actor's residence or place of employment.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2962, ch. 508, Sec. 1, eff. Aug. 29, 1983; Acts 1989, 71st Leg., ch. 749, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, Sec. 2.79; Acts 1991, 72nd Leg., ch. 386, Sec. 71, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 433, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 554, Sec. 50, eff. Sept. 1, 1991. Renumbered from Penal Code Sec. 46.04 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 42, eff. May 30, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 790, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.03, 31.01(70), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 2, 3, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1060, Sec. 1, 2 eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1178, Sec. 3, eff. Sept. 1, 2003.

Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. (a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person

under the authority of Subchapter H, Chapter 411, Government Code, and intentionally fails to conceal the handgun.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, on or about the license holder's person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other established place of religious worship.

(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, at any meeting of a governmental entity.

(d) A license holder commits an offense if, while intoxicated, the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed.

(e) A license holder who is licensed as a security officer under Chapter 1702, Occupations Code, and employed as a security

officer commits an offense if, while in the course and scope of the security officer's employment, the security officer violates a provision of Subchapter H, Chapter 411, Government Code.

(f) In this section:

(1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(2) "License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(3) "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.

(g) An offense under Subsection (a), (b), (c), (d), or (e) is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of deadly force under Chapter 9.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1214,  
Sec. 2

(h-1) It is a defense to prosecution under Subsections (b) and (c) that the actor, at the time of the commission of the offense, was:

(1) an active judicial officer, as defined by Section 411.201, Government Code; or

(2) a bailiff designated by the active judicial

officer and engaged in escorting the officer.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1222,  
Sec. 5

(h-1) It is a defense to prosecution under Subsections (b)(1), (2), and (4)-(6), and (c) that at the time of the commission of the offense, the actor was:

(1) a judge or justice of a federal court;

(2) an active judicial officer, as defined by Section 411.201, Government Code; or

(3) a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.

(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.

(j) Subsections (a) and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.

Added by Acts 1995, 74th Leg., ch. 229, Sec. 4, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 10.04, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 26, 27, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.833, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 976, Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1214, Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1222, Sec. 5, eff. June 15, 2007.

Sec. 46.04. UNLAWFUL POSSESSION OF FIREARM. (a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community

supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

(1) the date of the person's release from confinement following conviction of the misdemeanor; or

(2) the date of the person's release from community supervision following conviction of the misdemeanor.

(c) A person, other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Chapter 7A, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(d) In this section, "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) or (c) is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 46.05 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 2001, 77th Leg., ch. 23, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 836, Sec. 4, eff. Sept. 1, 2003.

Sec. 46.041. UNLAWFUL POSSESSION OF METAL OR BODY ARMOR BY FELON. (a) In this section, "metal or body armor" means any body covering manifestly designed, made, or adapted for the purpose of protecting a person against gunfire.

(b) A person who has been convicted of a felony commits an offense if after the conviction the person possesses metal or body armor.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 452, Sec. 1, eff. Sept. 1, 2001.

Sec. 46.05. PROHIBITED WEAPONS. (a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife;
- (6) knuckles;
- (7) armor-piercing ammunition;
- (8) a chemical dispensing device; or
- (9) a zip gun.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a correctional facility.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio; or

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b).

(e) An offense under this section is a felony of the third degree unless it is committed under Subsection (a)(5) or (a)(6), in

which event, it is a Class A misdemeanor.

(f) It is a defense to prosecution under this section for the possession of a chemical dispensing device that the actor is a security officer and has received training on the use of the chemical dispensing device by a training program that is:

(1) provided by the Commission on Law Enforcement Officer Standards and Education; or

(2) approved for the purposes described by this subsection by the Texas Private Security Board of the Department of Public Safety.

(g) In Subsection (f), "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 918, ch. 342, Sec. 15, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, Sec. 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4831, ch. 852, Sec. 2, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(47), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 229, Sec. 2, eff. Sept. 1, 1991; Renumbered from Penal Code Sec. 46.06 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1071, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1035, Sec. 2.01, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1278, Sec. 7, eff. September 1, 2005.

Sec. 46.06. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. (a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child

younger than 18 years any firearm, club, or illegal knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; or

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.

(b) In this section:

(1) "Intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(2) "Active protective order" means a protective order issued under Title 4, Family Code, that is in effect. The term does not include a temporary protective order issued before the court holds a hearing on the matter.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor, except that an offense under Subsection (a)(2) is a state jail felony if the weapon that is the subject of the offense is a handgun.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1985, 69th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1985. Renumbered from Penal Code Sec. 46.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 324, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1193, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(f), eff. Sept. 1, 1999.

Sec. 46.07. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress. Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 46.08 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.08. HOAX BOMBS. (a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device; or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor. Added by Acts 1983, 68th Leg., p. 4831, ch. 852, Sec. 3, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 46.09 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.09. COMPONENTS OF EXPLOSIVES. (a) A person commits an offense if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 4832, ch. 852, Sec. 4, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 46.10 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.10. DEADLY WEAPON IN PENAL INSTITUTION. (a) A person commits an offense if, while confined in a penal institution, he intentionally, knowingly, or recklessly:

- (1) carries on or about his person a deadly weapon; or
- (2) possesses or conceals a deadly weapon in the penal institution.

(b) It is an affirmative defense to prosecution under this section that at the time of the offense the actor was engaged in conduct authorized by an employee of the penal institution.

(c) A person who is subject to prosecution under both this section and another section under this chapter may be prosecuted under either section.

(d) An offense under this section is a felony of the third degree.

Added by Acts 1985, 69th Leg., ch. 46, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 714, Sec. 1, eff. Sept. 1, 1987. Renumbered from Penal Code Sec. 46.11 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.11. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE SCHOOL ZONE. (a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

- (1) within 300 feet of the premises of a school; or
- (2) on premises where:
  - (A) an official school function is taking place;or
  - (B) an event sponsored or sanctioned by the University Interscholastic League is taking place.

(b) This section does not apply to an offense under Section

46.03(a)(1).

(c) In this section:

(1) "Institution of higher education" and "premises" have the meanings assigned by Section 481.134, Health and Safety Code.

(2) "School" means a private or public elementary or secondary school.

Added by Acts 1995, 74th Leg., ch. 320, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 10, eff. Sept. 1, 1997.

Sec. 46.12. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 46.11, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 1995, 74th Leg., ch. 320, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 16.004, eff. September 1,

2005.

Sec. 46.13. MAKING A FIREARM ACCESSIBLE TO A CHILD.

(a) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Readily dischargeable firearm" means a firearm that is loaded with ammunition, whether or not a round is in the chamber.

(3) "Secure" means to take steps that a reasonable person would take to prevent the access to a readily dischargeable firearm by a child, including but not limited to placing a firearm in a locked container or temporarily rendering the firearm inoperable by a trigger lock or other means.

(b) A person commits an offense if a child gains access to a readily dischargeable firearm and the person with criminal negligence:

(1) failed to secure the firearm; or

(2) left the firearm in a place to which the person knew or should have known the child would gain access.

(c) It is an affirmative defense to prosecution under this section that the child's access to the firearm:

(1) was supervised by a person older than 18 years of age and was for hunting, sporting, or other lawful purposes;

(2) consisted of lawful defense by the child of people or property;

(3) was gained by entering property in violation of this code; or

(4) occurred during a time when the actor was engaged in an agricultural enterprise.

(d) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(e) An offense under this section is a Class A misdemeanor if the child discharges the firearm and causes death or serious bodily injury to himself or another person.

(f) A peace officer or other person may not arrest the actor before the seventh day after the date on which the offense is

committed if:

(1) the actor is a member of the family, as defined by Section 71.003, Family Code, of the child who discharged the firearm; and

(2) the child in discharging the firearm caused the death of or serious injury to the child.

(g) A dealer of firearms shall post in a conspicuous position on the premises where the dealer conducts business a sign that contains the following warning in block letters not less than one inch in height:

"IT IS UNLAWFUL TO STORE, TRANSPORT, OR ABANDON AN UNSECURED FIREARM IN A PLACE WHERE CHILDREN ARE LIKELY TO BE AND CAN OBTAIN ACCESS TO THE FIREARM."

Added by Acts 1995, 74th Leg., ch. 83, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 15.02(g), eff. Sept. 1, 1999.

Sec. 46.15. NONAPPLICABILITY.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 1214, Sec. 1

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) a judge or justice of a federal court, the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 years of service as a commissioned officer; and

(B) is issued by a state or local law enforcement agency;

(6) a district attorney, criminal district attorney, municipal attorney, or county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code; or

(7) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch.

1222, Sec. 6

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) a judge or justice of a federal court, the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 years of service as a commissioned officer; and

(B) is issued by a state or local law enforcement agency;

(6) a district attorney, criminal district attorney, or county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code; or

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code.

Text of subsection as reenacted by Acts 2007, 80th Leg., R.S., Ch.  
647, Sec. 1

(b) Section 46.02 does not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) is on the person's own premises or premises under the person's control unless the person is an employee or agent of the owner of the premises and the person's primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event the person must comply with Subdivision (5);

(3) is traveling;

(4) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;

(5) holds a security officer commission issued by the Texas Private Security Board, if:

(A) the person is engaged in the performance of the person's duties as a security officer or traveling to and from the person's place of assignment;

(B) the person is wearing a distinctive uniform;  
and

(C) the weapon is in plain view;

(6) is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code, to

carry a concealed handgun of the same category as the handgun the person is carrying;

(7) holds a security officer commission and a personal protection officer authorization issued by the Texas Private Security Board and is providing personal protection under Chapter 1702, Occupations Code;

(8) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises; or

(9) is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is:

(A) on the immediate premises where the activity is conducted; or

(B) en route between those premises and the person's residence and is carrying the weapon unloaded.

Text of subsection as reenacted by Acts 2007, 80th Leg., R.S., Ch.  
693, Sec. 2

(b) Section 46.02 does not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) is traveling;

(3) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence or motor vehicle, if the weapon is a type commonly used in the activity;

(4) holds a security officer commission issued by the Texas Private Security Board, if:

(A) the person is engaged in the performance of the person's duties as a security officer or traveling to and from the person's place of assignment;

(B) the person is wearing a distinctive uniform;  
and

(C) the weapon is in plain view;

(5) is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun of the same category as the handgun the person is carrying;

(6) holds a security officer commission and a personal protection officer authorization issued by the Texas Private Security Board and is providing personal protection under Chapter 1702, Occupations Code; or

(7) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises.

Text of subsection as reenacted by Acts 2007, 80th Leg., R.S., Ch.  
1048, Sec. 3

(b) Section 46.02 does not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) is on the person's own premises or premises under the person's control unless the person is an employee or agent of the owner of the premises and the person's primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event the person must comply with Subdivision (5);

(3) is traveling;

(4) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;

(5) holds a security officer commission issued by the Texas Private Security Board, if the person:

(A) is engaged in the performance of the person's duties as an officer commissioned under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment; and

(B) is either:

(i) wearing the officer's uniform and carrying

the officer's weapon in plain view; or

(ii) acting as a personal protection officer and carrying the person's security officer commission and personal protection officer authorization;

(6) is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun of the same category as the handgun the person is carrying; or

(7) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises.

(c) The provision of Section 46.02 prohibiting the carrying of a club does not apply to a noncommissioned security guard at an institution of higher education who carries a nightstick or similar club, and who has undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this subsection, "nonviolent restraint" means the use of reasonable force, not intended and not likely to inflict bodily injury.

(d) The provisions of Section 46.02 prohibiting the carrying of a firearm or carrying of a club do not apply to a public security officer employed by the adjutant general under Section 431.029, Government Code, in performance of official duties or while traveling to or from a place of duty.

(e) The provisions of Section 46.02 prohibiting the carrying of an illegal knife do not apply to an individual carrying a bowie knife or a sword used in a historical demonstration or in a ceremony in which the knife or sword is significant to the performance of the ceremony.

(f) Section 46.03(a)(6) does not apply to a person who possesses a firearm or club while in the actual discharge of official duties as:

(1) a member of the armed forces or state military forces, as defined by Section 431.001, Government Code; or

(2) an employee of a penal institution.

(g) Repealed by Acts 2005, 79th Leg., Ch. 1093, Sec. 4, eff. September 1, 2005.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(1), eff. September 1, 2007.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(2), eff. September 1, 2007.

(j) The provisions of Section 46.02 prohibiting the carrying of a handgun do not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 18, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 1221, Sec. 4, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1445, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1060, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 325, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 421, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 795, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 288, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728, Sec. 23.001(78), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 976, Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1093, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1093, Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179, Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179, Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 647, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(1), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(2), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 17.001(62), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1048, Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1214, Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1222, Sec. 6, eff. June 15, 2007.