



Sample Firearm Procedures and Policies

Understanding the Laws:

Texas Firearm Licensure and Prohibited Possessors

Anyone 21 years of age or older,ⁱ or at 18 for a current or honorably discharged member of the militaryⁱⁱ can apply for a firearms license in Texas. A license shall be issued if the applicant meets all eligibility requirements and submits all application materials.ⁱⁱⁱ Persons prohibited from obtaining a license include anyone who has been convicted of a felony,^{iv} a family violence class A misdemeanor assault within the prior five years to application,^v or who is a respondent to a protective order.^{vi} A possessor previously convicted of a class A misdemeanor may be punished by up to one year in jail, a \$4,000 fine, or both.^{vii} Protective order respondents in possession may be punished similarly for their first offense and by two to ten years in prison, a \$10,000 fine, or both for subsequent offenses.^{viii} Judges must also suspend handgun licenses of anyone with a family violence protective order^{ix} or magistrates' order for emergency protection against them.^x A judge may suspend a license for respondents in sexual assault or abuse, stalking, trafficking protective orders.^{xi}

Federal Prohibitions

Federal law does not address licensure, leaving law-making authority on this issue to the states. However, federal law is very explicit about prohibited possessors, and differs from Texas law in some respects. Persons convicted of a qualifying misdemeanor of domestic violence are prohibited from possessing, shipping, transporting, or receiving firearms or ammunition.^{xii} Unlike Texas law, this is a lifetime prohibition.^{xiii} This is also the case for felony convictions.^{xiv} Respondents in protective orders are prohibited from possessing, shipping, transporting or possessing firearms or ammunition during the pendency of the protective order.^{xv} The penalty for violating these prohibitions is up to 10 years in federal prison, a \$250,000 fine, or both.^{xvi} It is also illegal to sell or otherwise dispose of a firearm or ammunition to a prohibited possessor, with a penalty the same as the underlying offense.^{xvii} It is important to remember that Texas and federal prohibitions both apply at all times, and a person can be charged and convicted under Texas law (by Texas District Attorney), federal law (by a United States Assistant District Attorney), or both.

Texas Prohibitions: General Public

Private citizens who are not employees can be prohibited from “intentionally, knowingly or recklessly” carrying firearms on program property, if they have either a concealed or open carry license. A person can be charged with criminal trespass if they have a concealed handgun and refuse to leave after receiving notice that entry on the property with a concealed handgun was forbidden.^{xviii} Generally, this is a class C misdemeanor (punishable by a fine of up to \$200), unless the license holder was given personal, oral notice and refused to leave. In those instances it is a class A misdemeanor.^{xix} They



could also be charged with criminal trespass if they possess a license, but carry an openly carried handgun without permission and after being told they cannot be there.^{xx} This carries the same penalties as with concealed weapons.^{xxi} It is important to note, however, that general trespass laws automatically increase the penalty from a class C to a class A misdemeanor if the person trespasses on the property of a family violence shelter.^{xxii} Notice of prohibition may be given by the owner or by someone with the “apparent authority to act as the owner.”^{xxiii}

Texas Prohibitions: Employees

Private and public property owners are prohibited from banning licensed employees from possessing a firearm in a “*locked, privately-owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for the employees,*” or transporting their firearm to their car.^{xxiv} This mandatory provision does not apply to vehicles owned or leased by the employer and used by the employee for work.^{xxv} Further, employers may prohibit employees from possessing firearms on the premises, premises being defined only as the building or portion of a building. “Premises” do not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.^{xxvi}

Considerations:

General Public

In addition to the obvious threat of physical danger posed to program clients and staff, survivors whose abuser used or threatened use of a gun could be significantly impacted if programs allow guns onsite. Further, the presence of children, and possibility that an abuser could come to the location, make it critical that programs prohibit firearms on their property.

Texas statute lays out very specific language describing what written firearm prohibition notice must contain, uses similar language for open and concealed carry. Programs can post notice prohibiting both, using the exact statutory language below, on signs at all entrances to the property. Staff should call law enforcement immediately if someone enters the property in violation of that notice. Staff should know that if they provide oral notice, the person with the firearm could be charged with a higher level offense. Staff should always take into account and prioritize the safety of themselves and others in deciding whether to provide oral notice.

Signs with the following language must be:

- Posted in both English and Spanish;
- Appear in contrasting colors with block letters at least one inch in height; and
- Be displayed in a conspicuous manner clearly visible to the public at each entrance to the property.^{xxvii}

Failure to follow these provisions precisely could result in a licensed handgun licensee legally entering the premises armed. In order to make sure this does not occur, post these notices immediately, even if written policies have not yet been developed.



Sample Policies and Procedures: General Public

"Pursuant to Section 30.06, Penal Code (trespass by holder of license to carry a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (concealed handgun law), may not enter this property with a concealed handgun."^{xxviii}

"Pursuant to Section 30.07, Penal Code (trespass by a 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."^{xxix}

Considerations:

Clients

Respecting clients' decision-making about how to best protect themselves and their children does not conflict with prohibiting firearms onsite. Program policies to help promote staff and survivor safety are paramount. Programs should make clear to potential clients that they prohibit firearms for this reason. Staff should address potential dangers posed by possession and access to firearms and ammunition directly with clients at intake and throughout their safety planning process. Staff should be trained on the law and the connections between firearms and victim safety. Advise clients that perpetrators' access to firearms is a lethality factor and of the serious safety risks associated with firearm possession. Staff should never make recommendations to clients about whether they should obtain a firearm when they leave shelter, but they should encourage them to receive training about firearm safety and licensure.

Advise all clients of the program's firearm policy orally and in writing during intake and make sure they understand the policy provisions.

Make sure to have a predetermined policy on how to respond if a potential client comes to shelter with a gun. The program should develop a relationship with law enforcement or a local firearms dealer to store clients' firearms safely, at no cost to the program or client. The potential client must agree to follow the procedures of that agency or dealer. Set and communicate a policy that they must relinquish firearms when they come onsite.

Programs must provide clients with options to comply with their firearms prohibitions policies, the safest of which is to require that clients store firearms with the predetermined community resource. Clients who decide not to comply with this policy and make a decision to seek shelter elsewhere should receive a referral and the opportunity to meet with a staff member to develop a thorough safety plan. Programs should advise clients in writing of firearm prohibitions and that they cannot allow prohibited possessors to possess a firearm. Anyone providing a firearm to a prohibited possessor violate state and federal law.^{xxx}

Staff should never attempt to disarm anyone with firearms onsite. Instead, they should call 911, and take staff and clients to the shelter safe room.



Sample Policies and Procedures: Clients

“Certain people are legally prohibited from possessing a firearm, including protective order respondents while the order is in effect, and people convicted of a felony or class A misdemeanor family violence assault, during certain periods of time. Such possession constitutes a separate crime. If staff has reason to believe that you are a prohibited possessor, they cannot give you firearms, even your own, or they would be committing state and federal crimes.

(Name of agency) prohibits firearms onsite. Any client who arrives with a firearm should store it off-site. Clients who choose to store the firearm in their personal vehicle should keep it hidden and locked in the vehicle at all times and know that (name of agency) is not liable for property lost or stolen from a private vehicle. Clients also have the option of storing their firearm with (agency with whom the program has developed a relationship and protocol), and must follow the written rules of that agency.

If a program allows storage in a safe onsite, add: “Alternatively, (name of agency) provides a gun safe onsite that can be used by clients. All clients shall follow the safe storage policy herein.”

(Name of agency) prioritizes the safety of our clients and staff. If a client or staff members is found in possession of a firearm in violation of agency policy, that person will be warned and given the opportunity to follow the agency’s rules for storage or leave the property. If that person refuses to do so, staff will call the police, and the other clients and staff will go to the safe room, and remain there until police arrive and secure the area.”

Considerations:

Employees

Employers have an affirmative duty to contribute to a professional environment that supports victim and staff safety. Although employees have rights regarding firearms in some places, strongly consider prohibiting them from bringing them into the building.

As noted above, employers cannot prohibit employees from having firearms in their personal vehicles, even onsite, but they should strongly consider prohibiting allowing firearms in program vehicles, as significant liability and increased danger may result from allowing this. Programs should develop a written policy and have the employee sign and date it, noting that they are aware of the program’s policies and that they have an affirmative duty to follow them. Keep this document in the employee’s file. Due to the nature of this issue, if an employee possesses a firearm in violation of program policy and after receiving notice and opportunity to comply, your program should be prepared to terminate employment.



Sample Policies and Procedures: Employees

“(Name of agency) prohibits firearms on the premises. Employees can choose to store the firearm in their personal vehicle, and should keep it hidden and locked in the vehicle at all times and know that (name of agency) is not liable for property lost or stolen from a private vehicle. Employees may not carry or store firearms in vehicles owned or leased by (name of agency).

If the agency allows storage in a safe onsite, add: Alternatively, (name of agency) provides a gun safe onsite that can be used by staff. As a condition of employment, all staff shall follow the gun safe policy herein.

As a condition of employment, all staff shall provide the following information, updating it whenever relevant circumstances arise:

- A signed statement as to whether or not you are legally prohibited from possessing a firearm and the reason for the prohibition;
- A copy of your firearms license, if you have one;
- A signed statement that your firearms license has not been suspended or revoked; and
- A signed statement that you will notify (name of agency) immediately if your firearms license is suspended or revoked, and the reason for suspension or revocation.

If you possess a firearm in violation of agency policy, our agency will warn you and given you the opportunity to remove the firearm from the premises. If you refuse to do so, you will be asked to leave the premises until instructed by the executive director that you can return. If you still refuse to leave, staff will call the police and may result in criminal charges. Failure to comply with this agency’s firearms policy may also be grounds for termination.”

Considerations:

Gun Safes

Programs should give strong consideration as to whether they will allow storage of firearms in a gun safe onsite. Gun safes do not guarantee the safety of staff, clients or their children, who could get access to firearms in violation of program policies. The presence of guns can affect clients’ sense of safety, so advise clients at the time of intake whether the program allows gun storage onsite. Programs using gun safes must set specific safety and procedural protocols, notice of which must be given to all staff and clients. Clients must sign a document identifying the firearms they intend to store, so staff release firearms to only the owner.

Sample Policies and Procedures: Clients

“(Name of agency) allows clients who arrive with a firearm to store it in their onsite gun safe. Only staff has access to the safe, and clients can only get the firearm immediately before they leave the premises. Upon return, the client must give the firearm to staff immediately to store in the safe. Clients wishing to use the gun safe must provide information to staff to identify the firearm as theirs, so staff can release the correct property, only to the owner. Clients will be asked to sign the firearm in



and out of the safe, to protect ownership. Staff have been instructed that they cannot return a firearm to anyone known to be prohibited from possessing a firearm under state or federal law.”

Sample Policies and Procedures: Employees

“(Name of agency) prohibits employees from possessing a firearm on their person onsite. Staff choosing to use (name of agency)’s gun safe shall lock the firearm in the safe immediately upon their arrival in the building, and leave the firearm in the safe until immediately before they leave. Staff may not remove their firearm from the safe at any other time or loan to any client any firearm owned by a staff member.

(Name of agency)’s onsite gun safe shall remain locked at all times. Before releasing a firearm to a client, staff must require the client to identify the firearm pursuant to information collected from the client, and shall release firearms only to the client identified as the owner of that firearm. Staff shall sign all firearms in and out of the safe immediately upon release and return. Staff members cannot return firearms to anyone they know to be prohibited from possession under state or federal law. Doing so would violate that staff member’s employment duties and put them in jeopardy of being prosecuted under state and/or federal firearms law.”

or

“(Name of agency)’s onsite gun safe shall remain locked at all times. Only (list name of agency staff position) may have access to the safe. Direct all clients and other staff requesting that the program to store or remove a firearm from the safe must be directed to (list name of agency staff position). Before releasing a firearm to a client, the (list name of agency staff position) must require the client to identify the firearm pursuant to information collected from the client, and shall release firearms only to the client identified as the owner of that firearm. (list name of agency staff position) shall sign all firearms in and out of the safe immediately upon release and return. Do not delegate these responsibilities another staff member without express permission from the Executive Director. Staff members cannot return firearms to anyone they know to be prohibited from possession under state or federal law. Doing so would violate that staff member’s employment duties and put them in jeopardy of being prosecuted under state and/or federal firearms laws.”

*For further information about family violence and firearms, including staff training,
please contact TCFV.*



Legal Citations:*

ⁱSection 411.172(a)(2), Texas Government Code

ⁱⁱSections 411.172 (g), Texas Government Code

ⁱⁱⁱSection 411.177(a), Texas Government Code

^{iv}Section 411.172(a)(3), Texas Government Code

^vSection 411.172(a)(8), Texas Government Code

^{vi}Section 411.172(a)(12), Texas Government Code

^{vii}Section 46.04(e), Texas Penal Code

^{viii} Section 25.07(g), Texas Penal Code

^{ix}Section 85.022(d), Texas Family Code

^xArticle 17.292(1), Texas Code of Criminal Procedure

^{xi}Article 7A.05(C), Texas Code of Criminal Procedure

^{xii} 18 U.S.C. 922(g)(9)

^{xiii} Id.

^{xiv} 18 U.S.C. 922(g)(1)

^{xv} 18 U.S.C. 922(g)(8)

^{xvi} 18 U.S. C. 922

^{xvii} 18 U.S.C. 922(D)

^{xviii}Section 30.06(a), Texas Penal Code

^{xix} Section 30.06(d), Texas Penal Code

^{xx} Section 30.07(a), Texas Penal Code

^{xxi} Section 30.07(d), Texas Penal Code

^{xxii} Section 30.05(d)(3), Texas Penal Code

^{xxiii}Section 30.06(b), Texas Penal Code (concealed carry); Section 30.07(b), Texas Penal Code (open carry)

^{xxiv}Section 52.061, Texas Labor Code

^{xxv}Section 52.062, Texas Labor Code

^{xxvi}Section 46.035(f)(3), Texas Penal Code

^{xxvii}Section 30.06(c)(3)(B), Texas Penal Code (concealed carry); Section 30.07(c)(3)(B), Texas Penal Code (open carry)

^{xxviii}Section 30.06(c)(3)(A), Texas Penal Code

^{xxix} Section 30.07(c)(3)(A), Texas Penal Code

^{xxx} Section 46.06, Texas Penal Code; 18 U.S.C. 922(D)

*All Texas Code citations are from O'Connor's (2016-2017).