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Criminal Justice, Judiciary

Debate continues on guns in buildings that contain courtrooms

[September 13](#) — Some Texas cities and counties have lifted bans on handguns in multi-use government buildings that house courtrooms after individuals complained that the bans were too broad and therefore illegal. At least two challenges to local bans have moved to the courts.

In 2015, the Texas Legislature enacted [SB 273](#) by Campbell, creating a process to challenge local handgun bans on certain government premises. The bill gave the attorney general authority to investigate citizen complaints and to sue local governments if a ban was believed to be unlawfully restrictive.

Two lawsuits have been filed by the attorney general against local governments alleging that their bans are illegal. Another lawsuit was filed by a county against an individual making a complaint and asks the court to declare the county's ban legal.

The debate over local authority to ban handguns from government buildings and courthouses centers on whether bans may be applied to an entire building if part of it contains courts and court offices, along with other government offices, or whether the bans must be more limited. As courts weigh in, the 85th Legislature could address the issue during its regular session in 2017.

Current law

Under current law, several statutes affect whether local governments may exclude handguns from certain premises. Penal Code, [sec. 30.06](#) prohibits concealed handgun license holders from carrying a handgun on another's property without consent but does not apply if the property is owned or leased by a government entity and if the premises are not places where they otherwise are statutorily prohibited from carrying a handgun.

Penal Code, [sec. 46.03](#) prohibits individuals, including handgun licensees, from carrying firearms and other weapons

on the "premises of any government court or offices utilized by the court" unless under the court's authorization or written regulations. [Sec. 46.035\(c\)](#) prohibits license holders from carrying handguns in certain government meetings if proper notice is given.

Sec. 46.035(f)(3) defines "premises" as a building or portion of a building. The attorney general said last year in opinion [KP 0047 \(2015\)](#) that the premises of, or offices used by, a court include only government courtrooms and offices essential to their operation.

Enforcement mechanism. Government Code, [sec. 411.209](#), created by SB 273 in 2015, prohibits state agencies and local governments from posting signs banning handgun licensees from carrying guns on property owned or leased by the entity unless carrying a handgun is prohibited under Penal Code, sec. 46.03 or sec. 46.035. Prohibited signs include those described by Penal Code, sec. 30.06 and signs referring to that law or to a concealed handgun license.

Entities that violate this provision are liable for civil penalties of \$1,000 to \$1,500 per day for a first violation and \$10,000 to \$10,500 per day for subsequent ones. Texas citizens and handgun license holders may file complaints with the attorney general after giving the entity notice describing the violation and three days to correct it. The attorney general must investigate before suing for penalties. If a suit is warranted, the state must give the entity 15 days to remove the sign before proceeding.

Challenges to local policies

Many complaints about local policies have been resolved after an initial complaint or after the attorney general's office conducted an initial investigation or [sent a letter](#) to the entity. As

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of early September, about 40 cases remained pending after an initial letter. Fewer than 20 second letters have been issued, but in four of those cases, the disputes remain unresolved. Cases can be resolved either by the city or county complying or the attorney general closing the complaint for other reasons. Two challenges have gone to court.

In August, Waller County responded to a complaint about signs banning handguns from its courthouse by filing a lawsuit against the person making the complaint. The suit asks the district court to declare that Penal Code, sec. 46.03(a)(3) prohibits individuals from carrying firearms throughout the entire Waller County Courthouse and that the county's signs are legal. In response to the same complaint, the attorney general sent a letter to the county saying it was violating the law and in late August filed a lawsuit asking a court to require the county to comply and to award penalties of \$1,500 per day, beginning on August 29.

A suit filed in July by the attorney general against the city of Austin says that Austin continues to wrongfully ban handguns from city hall based on the presence of a court within the building. The lawsuit arose from a citizen complaint in fall 2015, which was closed when the city removed its signs. Another citizen filed a complaint in April 2016 accusing the city of continuing to violate the law by displaying different signs banning guns and by giving verbal notice to visitors that handguns were prohibited in city hall. The suit asks the court

to force Austin to comply with state law and to assess civil penalties. In a response indicating its intent to defend the suit, the city said it believed it was acting within the law based on the presence of court proceedings and office space for court personnel within the building.

Debate

Those challenging broad handgun bans in buildings that house courtrooms say government entities may prohibit handguns only from courtrooms themselves and from certain court offices but not from entire buildings that also house other government activities unrelated to the courts. The law allows only limited bans, they say, and local governments should not infringe on 2nd Amendment rights by overextending this authority.

Others say that when the Legislature in 2003 amended Penal Code, sec. 46.03, it allowed prohibitions of handguns from entire buildings, not just courtrooms or court offices. They say it is not always possible to separate non-court areas from those associated with courts and that entire buildings may need to be secure. They say the potentially volatile nature of many court proceedings can make it necessary for bans to include common areas in which prosecutors, clerks, witnesses, and others associated with legal or government proceedings may be working or assembled.

— *Kellie A. Dworaczyk*