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**RQ-0598-KP**

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May 2, 2025

Honorable Ken Paxton  
Texas Attorney General  
Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: The carrying of concealed firearms in courtrooms by the District Attorney and Assistant District Attorneys under Texas Penal Code § 46.15(a)(6) and (a)(7)

Dear General Paxton:

Pursuant to Tex. Gov't Code § 402.043, I seek an opinion regarding the matter of carrying concealed firearms by certain members of the Office of the District Attorney in government courts. I respectfully request an expedited review.

I am licensed to carry a firearm, and I employ licensed assistant district attorneys. Certain district judges and county court-at-law judges have issued a policy that completely prohibits anybody who is not a bailiff or peace officer from carrying a firearm in government courts in Midland County. Additionally, the Court Security Committee is considering such a policy. I have provided further details in the attachment.

Questions Presented

Does Tex. Penal Code § 46.15(a)(6) and (a)(7) in the "Nonapplicability" Statute provide affirmative statutory authority for licensed prosecutors to carry concealed firearms in government courts in the ordinary course of their duties or is it simply a defense to criminal prosecution?

Does a district or county court-at-law judge have the authority to completely forbid the carrying of concealed firearms by licensed prosecutors in the ordinary course of the prosecutors' duties in the judge's respective court?

Does the Court Security Committee have the authority to completely forbid the carrying of concealed firearms by licensed prosecutors in all government courts in Midland County?

Respectfully submitted,

Glenn Harwood  
District Attorney

## **Factual Background**

Shortly after I was sworn in as District Attorney on January 1, 2025, judges in my jurisdiction became aware that I carry a firearm, including when I attend and appear in court. I am licensed to carry a firearm under the provisions of Subchapter H, Chapter 411, Government Code and my license is stamped Judge/Prosecutor. I carry the firearm in a belt holster, under a jacket, when I am in the courtroom.

During my first full week in office, as I was entering the County Court-at-Law 2 courtroom, two bailiffs met me at the entrance to the courtroom, located on the 6<sup>th</sup> floor of the Midland County Courthouse, and notified me that “the judge doesn’t allow firearms in his courtroom.” They said that the firearm could be locked in a gun locker in the judge’s hallway at a side entrance to the courtroom, from which it could be retrieved after court. I met with the judge in his chambers later that day to discuss the matter and he reiterated that he just did not allow anyone except bailiffs or peace officers to carry firearms in his courtroom, notwithstanding my position as District Attorney and my license to carry a firearm.

In February 2025, I met with all the judges during their judges’ meeting, and we discussed the matter of firearms in the courtrooms. I provided the relevant statutory authorities and a couple of AG Opinions that touch on the various legal issues involved, though none on point.

In March 2025, the Administrative Judge notified me that the judges had decided they were not going to change their “existing policy,” and she reiterated that the only people who could carry a firearm in the courtrooms in Midland County are bailiffs and peace officers. The judges did not provide any statutory authority or caselaw supporting the proposition that they could completely forbid the carrying of concealed firearms by licensed prosecutors in courtrooms.

The judges were unwilling to provide any written order or policy, although they have relayed it to me orally on several occasions.

On May 1, 2025, the Administrative Judge convened the Court Security Committee, pursuant to Tex. Gov’t. Code § 74.092(a)(13). She has expressed a desire for the Court Security Committee to enact a policy that completely forbids anyone who is not a bailiff or a licensed peace officer from carrying a firearm in courtrooms in Midland County. The Committee delayed that decision pending the outcome of this AG Opinion Request.

## **Statutory Framework**

It is generally illegal to carry firearms in certain specified locations in Texas, *e.g.* schools, **government courts**, polling places, certain hospitals, racetracks, and confinement facilities. *See* Tex. Penal Code § 46.03. In 1995, the Texas Legislature exempted peace officers, whether on or off duty, from that prohibition. 1995 Tex. ALS 318 (S.B. 15) at § 18; *see also*, Tex. Penal Code § 46.15(a)(1).

In 1997, the legislature exempted other categories of people from that general prohibition. Specifically, judges who were licensed to carry firearms under the provisions of Subchapter H, Chapter 411, Government Code were exempted; therefore, licensed judges can lawfully carry firearms in government courts. 1997 Tex. ALS 1261 (H.B. 2909) at § 28; *see also*, Tex. Penal Code § 46.15(a)(4).

In 2005, the Texas Legislature passed, and the Governor signed HB2110. In relevant part, this bill added, *inter alia*, district attorneys, to the list of categories of people who were permitted to carry firearms in prohibited places, if the district attorney is licensed to carry a concealed firearm. 2005 Tex. ALS 1093 (H.B. 2110) at § 1. This placed licensed district attorneys in the same category as peace officers and licensed judges, *vis-à-vis* the carry of firearms in prohibited places, including government courts. *Compare* Tex. Penal Code § 46.15(a)(1)(peace officers), *with* (a)(4)(licensed judges), *and* (a)(6)(licensed district attorneys).

In 2007, Tex. Penal Code § 46.15 was further amended to include, *inter alia*, assistant district attorneys, on the list of people who were permitted to carry firearms in prohibited places, conditioned on the same licensing requirement as district attorneys and judges. 2007 Tex. ALS 1222 (H.B. 2300) at § 6; *see also* Tex. Penal Code § 46.15(a)(7).

In debating this legislation in the law enforcement committee, concerns regarding the disparity in training between judges and prosecutors and peace officers were raised. However, the legislation passed out of committee, unanimously, under the prevailing view that judges and prosecutors should be able to carry firearms in places where peace officers can, and other licensed individuals cannot. “Obviously, judges and prosecutors should have the right to carry their weapons in the courthouse, and CSHB 2300 would allow them greater latitude as to where they could carry their concealed weapons.” House Research Organization bill analysis, 5/3/2007, HB 2300, sponsored by Paxton, *et. al.*

The attorney general and assistant attorneys general were included in 2017. 2017 Tex. ALS 1143 (H.B. 435) at § 13; *see also* Tex. Penal Code § 46.15(a)(6) and (a)(7).

The legislature has also amended the statute several other times to include retired peace officers and judges, certain bailiffs who were not peace officers, certain parole officers, certain juvenile probation officers, certain volunteer firefighters who are providing emergency services, and licensed district and county clerks. *See* Tex. Penal Code § 46.15(a).

Judges have also been granted statutory authority **to permit** other individuals to carry firearms in government courts. *See* Tex. Penal Code § 46.03(a)(3).

### **Analysis**

The judges generally view the “Nonapplicability” provision of Tex. Penal Code § 46.15 as simply a defense to criminal prosecution, rather than an affirmative statutory authority to carry firearms in government courts. Even if it is affirmative statutory authority to carry firearms, they believe that their inherent authority to control their individual courtroom includes the final authority to decide who does and does not carry firearms.

The justifications they give for their policy or rule reflect their concerns over general courtroom safety; the effects that a concealed weapon inadvertently seen by a witness or juror may have on fairness in a proceeding; and the potential volatile situations in which an armed individual may be a party or witness a case, such as in a divorce or child custody proceeding.

There may be extraordinary scenarios in which a judge may rightly exercise their inherent authority to prohibit an otherwise authorized individual to have a firearm in their courtroom, such as when a licensed prosecutor is a party in a divorce or custody dispute, or when a licensed judge or a peace officer is a defendant in a criminal case. However, a hypothetical extraordinary scenario should not form the basis for a complete prohibition in every scenario.

This policy or rule the judges have issued directly and adversely affects me and members of my office. Government courts are the very location my assistant district attorneys and I are most likely to encounter dangerous situations with defendants, their families, or disgruntled members of the public.

## **Conclusion**

The judges' interpretation of the law, and their resulting policy or rule, ignores the apparent legislative intent that licensed district attorneys and their licensed assistant district attorneys may carry concealed firearms in government courts, at the license holder's discretion as opposed to the courts' discretion. Additionally, the overarching principle of faithful statutory interpretation and application is at risk with such a strained interpretation of this law, as written. As Chief Justice Blacklock recently articulated to the Legislature during his State of The Judiciary in Texas,

“The courts also have a constitutional obligation to the Legislature to faithfully and consistently apply the laws you write. Our promise to you is to apply the laws you write based strictly on their text. We ask ourselves, what words have been enacted into law, and what do those words mean to an ordinary reader of English? That's it. We don't ask ourselves, did the Legislature really mean what they said? Or wouldn't something a little different be more sensible? And we certainly don't ask, do we like this law or not? The text of the statute is the law, whether the judges like it or not – and we are bound to follow it.” Remarks of Chief Justice Jimmy Blacklock, As Prepared for Delivery to the 89<sup>th</sup> Legislature, February 26, 2025, Austin, Texas.