

## Attorneys at Law

A.F. Ringold  
John G. Moyer, Jr.  
John E. Howland  
Jerry L. Zimmerman  
Frederick J. Hegenbart  
Eric P. Nelson  
Karen L. Long  
John E. Priddy  
Bryan K. Drummond  
Kent "Bo" Rainey  
Eric D. Wade  
Matthew P. Cyran  
Jerry A. Richardson  
Cheryl A. Dixon  
Adam S. Breipohl  
Haley A. Drusen  
M. Scott Major  
  
C.H. Rosenstein  
(1893-1990)  
Henry L. Fist  
(1893-1976)  
David L. Fist  
(1931-2008)

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## Gun Free Schools? What the Constitutional Carry Bill Does (and Does Not) Change about School Weapons Policies

*by Haley A. Drusen*

On November 1, 2019, Oklahoma became a "constitutional carry" state for firearms after House Bill 2597 went into effect. This bill allows Oklahoma citizens age 21 or older to carry a firearm in public without a permit (with certain exceptions, including felons, illegal aliens and individuals with domestic violence convictions), and allows active duty military personnel or veterans age 18 or over to carry a firearm in public without a permit. Since this bill has come into effect, many Districts have raised questions about the impact constitutional carry has on schools and technology centers.

Overall, the amendments to the law did very little to change the status of guns on school districts and

technology centers. With limited law enforcement exceptions, individuals generally cannot lawfully carry firearms onto public school or technology center property. There are, however, some exceptions to this rule, which existed both under previous law and the constitutional carry provisions. These exceptions include:

- Guns used for the purpose of participation in a hunting, safety or firearms training course or a recognized sporting event or a living history reenactment, provided that the course or event is approved of by the school district's Superintendent and when not in use, the weapon is displayed or stored according to law;

- Unloaded and inoperable guns in possession of certain veterans and military groups for the purpose of participating in a ceremony, assembly, or education program approved of by the school district's Superintendent.
- Handguns carried onto public school property by properly licensed and authorized school personnel pursuant to a board of education policy.

However, one exception to possession of guns on school property was modified by the recent constitutional carry bill. Under the former law, individuals with a valid handgun license could keep a **handgun** in their motor vehicle on any property set aside by a public school for parking. The individual was required to lock his or her vehicle and hide the handgun from view when they left the vehicle unattended.

Under the new law, any individual<sup>1</sup> who is authorized to carry firearms may keep a **firearm** (which would include long guns) in their motor vehicle on any property set aside by a public school for parking. These individuals still must lock their vehicle and hide the firearm from view when they leave the vehicle unattended.

Under Oklahoma law, different exceptions apply to the possession of firearms on Technology Center property. Under **prior** Oklahoma law, handguns were (or could have been) permitted on Technology Center property for valid handgun licensees according to the following exceptions:

- Any property set aside for the use or parking of any vehicle, provided the handgun was not removed from the vehicle without the prior consent of the technology center school administrator while the vehicle is on any technology center school property;
- Any property authorized for possession or use of handguns by technology center school policy; and
- Any property authorized by the written consent of the technology center school administrator, provided the written consent is carried while on technology center school property.

The new law changed the exception by modifying what weapons were subject to these provisions. Though the prior law limited these exceptions to possession of handguns by licensee, **the**

Overall, the amendments to the law did very little to change the status of guns on school districts and technology centers.

**new law has expanded these exceptions to cover firearms, machetes, blackjacks, loaded canes, hand chains and metal knuckles carried by individuals authorized to carry those weapons.** Even under the new law, Technology Centers may take administrative action against any student that violates state law or their weapons policy (which cannot conflict with state law).

However, this change **does not** affect how school districts or technology centers should discipline K-12 students that bring guns on campus. Whether or not these firearms are in a student's car, under the federal Gun-Free Schools Act (20 U.S.C. § 7961) and the state statute on Out-of-School Suspensions (70 OKLA. STAT. § 24-101.3), any student found in possession of a firearm while on public school property or while in any school bus (or other vehicle used for public school transportation) **MUST** be suspended out-of-school for a period of not less than one (1) year. While the initial suspension must be for at least a year, the term of the suspension may be modified by the district superintendent (or board of education) on a case-by-case basis during the normal appeals procedure for out-of-school suspensions.

Additionally, the new constitutional carry provisions **should not** change how school district administrators react to individuals carrying firearms on their

campuses. If superintendents or school administrators see unauthorized individuals carrying firearms on their campus, their first response should be to call the police and initiate lockdown procedures.

*If you have questions about the new Constitutional Carry bill or other questions regarding regulations of firearms and other weapons, RFR is here to help. Your RFR attorney can guide you through the new legislation and the effects it has on public schools and technology centers.*

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<sup>1</sup> Please note that this does not include secondary students. As explained below secondary students who bring a firearm on campus **MUST** be suspended for no less than a calendar year.

## **Pre-Employment Background Checks and the Fair Credit Reporting Act**

*by Adam Breipohl*

While Oklahoma school districts routinely obtain national criminal history background checks on prospective employees from the Oklahoma State Bureau of Investigation ("OSBI"), districts seeking to fill certain positions with particularly sensitive job duties, particularly those involving stewardship of school funds, may wish to obtain a more detailed background check on applicants. Requesting such a

background check can allow districts to screen for potential risk factors that are not reflected in the OSBI's reports, such as large amounts of debt or out-of-state criminal convictions. This practice is generally lawful, but districts should be aware that employers that seek to obtain such reports are required to comply with the Fair Credit Reporting Act of 1970 ("FCRA") in doing so.

The FCRA is a federal statute that restricts the use of reports about an individual containing information related to his or her "credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living," which are referred to as "consumer reports." The FCRA requires an employer that requests a consumer report on an applicant for employment from a credit reporting agency must first (1) provide the applicant with "a clear and conspicuous disclosure ... in a document that consists solely of the disclosure" stating that the employer may obtain a consumer report on the applicant and use the report for purposes of making employment decisions, and (2) secure written consent from the applicant to obtain the report.

In the event that a district elects not to hire an applicant based on information contained in a consumer report, it is

required to provide the applicant with (1) a copy of the report, and (2) a "Summary of Consumer Rights," which is a document listing various rights granted to consumers under the FCRA. It is also important to note that in 2018, the FCRA's implementing regulations were amended to require the inclusion of a few additional disclosures in the Summary of Consumer Rights, so any district that uses such a form should make sure it has been updated accordingly.

In addition to the protections afforded by the FCRA itself, Oklahoma law provides consumers with a few further rights and protections. In Oklahoma, an applicant must be given an opportunity to elect to receive a copy of any report obtained on him or her, whether it is used as the basis for an adverse action against the applicant or not, and any Summary of Consumer Rights provided to the applicant must include certain additional language regarding their right to place a "security freeze" on their credit reports.

Finally, it is important to keep in mind that the FCRA only applies when an employer requests a consumer report from a third party "consumer reporting agency," not when the employer asks a prospective employee for information directly in its application materials, even if the information might also be found

in a consumer report. Similarly, the FCRA does not apply to the routine criminal history background checks provided by the OSBI, as the OSBI is not a “consumer reporting agency” nor are its reports “consumer reports” for purposes of the FCRA.

Overall, obtaining a consumer report regarding a prospective employee who would hold certain highly sensitive job duties if hired can be a prudent measure in some circumstances, but school districts that wish to do so should take

great care to ensure that the forms they provide to prospective employees meet the requirements of state and federal law. The best practice would be to have the district’s application materials reviewed by legal counsel to confirm that they are in compliance with the FCRA and other applicable law.

*If districts have questions about the Fair Credit Reporting Act, RFR is here to help. Your RFR attorney can guide you through crafting policies and practices that comply with the FCRA.*

Tulsa Office:  
525 S. Main, Suite 700  
Tulsa, Oklahoma 74103  
Phone: 918.585.9211  
Fax: 918.583.5617  
Toll Free: 800.767.5291



Oklahoma City Office:  
3030 NW Expressway  
Suite 200  
Oklahoma City, OK 73112  
Phone: 405.521.0202

**ROSENSTEIN FIST & RINGOLD**  
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*Chalkboard* is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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