

SUBJECT: Intentional display of a handgun by a concealed handgun license holder

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

1 absent — Cortez

WITNESSES: For — Charles Cotton; Mike Cox; Rachel Malone; (*Registered, but did not testify:* Dennis Allen; Michael Cargill; Lon Craft, Texas Municipal Police Association; Angel Gonzalez; Amy Hedtke; Joe Palmer; Alice Tripp, Texas State Rifle Association)

Against — (*Registered, but did not testify:* David Albert; Grace Chimene; Susan Morrison; Joanne Richards; Heather Ross, Gun and Mental Health Action Group; Bridget Wiedenmeyer, Moms Demand Action Texas Chapter; John Woods, Texas Gun Sense)

On — (*Registered, but did not testify:* Steve Moninger, Department of Public Safety)

BACKGROUND: Under Penal Code, sec. 46.035 it is an offense if a concealed handgun license holder carrying a handgun on or about his or her person intentionally fails to conceal the gun. Under sec. 46.035(h), it is a defense to this crime if the actor, at the time of the offense, would have been justified in the use of deadly force under Penal Code, ch. 9.

DIGEST: HB 1304 would make it an offense under Penal Code, sec. 46.035 for a concealed handgun license holder to intentionally display his or her handgun, rather than intentionally failing to conceal it.

The defense under sec. 46.035(h) would be available if the actor would have been justified in the use of force, rather than the use of deadly force.

The bill would take effect September 1, 2013, and would apply only to an offense committed on or after that date.

SUPPORTERS
SAY:

HB 1304 would clarify ambiguous statutory language to make the law easier to understand and apply. The phrase “intentionally fail to conceal” is difficult to interpret and often is misconstrued because intending to do something and failing to do something are conflicting standards. This ambiguity has led to the prosecution and harassment of concealed handgun license holders for accidentally or inadvertently displaying their guns, which might happen, for example, when a piece of clothing shifted and revealed the firearm. By changing the language to “intentionally displays,” the bill would clarify the intent required by the actor under this offense.

The bill would ensure that license holders were held to the same standard of law as people who did not hold concealed handgun licenses. The provisions in Penal Code, ch. 9 governing justified threat of force allow a person to produce a weapon to create apprehension in an aggressor that the person producing the weapon would use deadly force if necessary. This law has been applied inconsistently for different defendants because license holders have a duty to conceal their weapons under Penal Code, sec. 46.035. By striking “deadly” from the language in the defense, the bill would clarify that both people with and without concealed handgun licenses could produce a weapon as a threat of force under Penal Code, ch. 9.

HB 1304 would prevent the escalation of violence. Threatening force by producing a weapon has been shown to decrease crime, even when a shot is not fired. Sixty percent of convicted felons have admitted that they avoided committing a crime when they knew the victim was armed. The bill would discourage aggressors and criminals from carrying out violent crimes or escalating potential altercations.

OPPONENTS
SAY:

HB 1304 would change the nature of a concealed handgun license holder’s duties under the law. The name of the license makes it clear that it should be incumbent upon a license holder to attempt to conceal the handgun. The current language is clear, and changing the code to require intentional display would set too low a bar and would be inconsistent with the purpose of the license.

HB 1304 would weaken standards in the law and allow license holders to brandish their weapons even when use of deadly force was not justified. Handguns are a deadly force, killing hundreds of Texans every year. There is an extreme range of circumstances under which use of any force could

be justified, so the standard for allowing a license holder to display his or her weapon as a threat to another person should remain high. If the weapon produced in response to a threat were to be discharged it would constitute deadly force, so that level of force should be justified before a weapon could be displayed as a threat.

The bill would invite escalation of violence. When a firearm is produced, any person present could reasonably be expected to react to it in turn with deadly force. Because the bill would weaken standards for the display or production of a concealed handgun, it would increase the number of situations in which these weapons were displayed or brandished, which in turn would lead to an increase in violent altercations.