

- SUBJECT:** Determination of self-defense under certain circumstances
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Hughes
- SENATE VOTE:** On final passage, May 6 — 31-0
- WITNESSES:** For — (*Registered, but did not testify:* Steven Tays, Bexar County Criminal District Attorney's Office)

Against — Jorge Landivar; (*Registered, but did not testify:* Taylor Beckmeyer; Teresa Beckmeyer; Heather Fazio, Texans for Accountable Government; Lauren Landivar)

On — Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Texas Penal Code, sec. 9.31, regulates determination of self-defense. A person is justified in using force against another person if they reasonably believe the force is immediately necessary for protection against another person's use or attempted use of unlawful force.

The use of force for self-defense is not justified under the following circumstances:
- in response to verbal provocation alone;
 - to resist arrest or search under certain circumstances;
 - if the actor consented to the exact force used or attempted by the other person;
 - if the actor provoked the other person;
 - if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person

while unlawfully carrying a weapon or possessing or transporting a prohibited weapon.

Penal Code, sec. 46.04 governs unlawful possession of a firearm. Under this section, a felon commits an offense if he or she possess a firearm:

- in any location within five years of being released from confinement or supervision, whichever date is later.
- at any location other than the premises of his or her residence after that period.

A person convicted of an assault offense involving a family or household member that was punishable as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) commits an offense if he or she possesses a firearm within five years of being released from confinement or supervision. A person who was subject to a protective order, other than a peace officer, commits an offense if he or she possesses a firearm after receiving notice of the order and before expiration of the order.

The offense of possessing a firearm is not considered a felony under sec. 46.04 if, at the time of the offense, the state did not designate the offense as a felony and the offense did not contain all the elements of a felony offense under law.

DIGEST:

Under SB 1416, the use of force for self-defense would not be justified if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor possessed a firearm in violation of Penal Code, sec. 46.04, prohibiting:

- a person from possessing a firearm within five years of his or her release from confinement or supervision for a felony conviction, or outside the premises or his or her residence after that period;
- a person, other than a peace officer, from possessing a firearm while subject to a protective order; or
- a person convicted for a class A misdemeanor assault involving a family or household member from possessing a firearm within five years of his or her release from confinement or supervision.

This bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 1416 would prevent felons from claiming self-defense if they armed themselves with a firearm to pick a fight with someone. A person who had been convicted of a felony still would be able to claim self-defense while possessing a firearm on the premises of his or her residence, under existing law, if the person was not seeking an explanation from or a discussion with another person.

Current law already prohibits one person from picking a fight with another while unlawfully carrying, possessing, or transporting a weapon. The bill would fix the loophole that allows a felon to claim self-defense while carrying a firearm to pick a fight.

**OPPONENTS
SAY:**

SB 1416 would remove the right of someone convicted of a felony from exercising self-defense by possessing a firearm when needed. While the bill is well intentioned, many people become felons because they committed a non-violent crime, such as illegal downloading on the Internet. These individuals still need the right to defend themselves when necessary.