



HARRIS COUNTY DISTRICT ATTORNEY
DEVON ANDERSON

December 21, 2015

ADVISORY – OPEN CARRY

On January 1, 2016, it will be legal for Texas citizens with handgun licenses to carry those handguns openly—in either a shoulder holster or a belt holster. In most situations in which a handgun license holder in Texas could carry a handgun concealed, that same handgun license holder will be legally permitted to carry the handgun openly. The purpose of this advisory is to provide guidance to law enforcement officers insofar as their ability to determine if a person is lawfully carrying a handgun.

It is the position of the Harris County District Attorney's Office that law enforcement officers should be able to approach and make a determination if a person who is carrying a handgun in public is in fact licensed to do so, whether or not the handgun is in a holster. Notwithstanding an officer's right to approach an individual for this purpose, the specific circumstances of any situation and/or department policy may obviously affect an officer's decision whether to actually do so.

Section 411.205 of the Government Code provides, "If a license holder is carrying a handgun on or about the license holder's person when . . . a peace officer demands that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license." Texas courts have also routinely permitted law enforcement officers to approach or even detain persons if they are observed to be in possession of a handgun. See, e.g., *Chiarini v. State*, 442 S.W.3d 318 (Tex. Crim. App. 2014); *Ramirez v. State*, 672 S.W.2d 480 (Tex. Crim. App. 1984).

A law enforcement officer can approach a person in public who is carrying a handgun and determine if that person has a handgun license. If that person does not voluntarily produce a handgun license, that fact should give the officer reasonable suspicion to believe that the person might be committing the offense of illegally carrying a handgun under Section 46.02 of the Texas Penal Code. The officer could then detain the person and determine if the person does or does not have a handgun license. If that person does not voluntarily produce verifiable identification, that fact—coupled with the person's failure to produce a handgun license—should give the officer probable cause to believe that the person is committing the offense of illegally carrying a handgun under Section

46.02. Such a person will be subject to criminal charges for illegally carrying a handgun. If a person in possession of a handgun has not produced a handgun license, but it is subsequently determined that the person was in fact licensed to carry a handgun, the Harris County District Attorney's Office will typically not file criminal charges against that person under Section 46.02 of the Texas Penal Code.

A handwritten signature in black ink, appearing to read "Devon Anderson", with a long horizontal flourish extending to the right.

Devon Anderson
District Attorney