

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 195, adding display of a firearm as an exception to reckless conduct.

Hearing Date: May 10, 2021

Time Opened: 1:40 p.m.

Time Closed: 2:22 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill inserts an exception to the crime of reckless conduct for the display of a firearm.

Sponsors:

Rep. Yakubovich
Rep. Rhodes

Rep. Roy
Rep. Aron

Rep. T. Lekas
Rep. DeSimone

Who supports the bill: 17 people signed up in support of the bill. Full sign in sheet available upon request.

Who opposes the bill: 218 people signed up in opposition to the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Yakubovich

- This is simple change to the law clarifying what is enshrined in the constitution, the right to bear arms.
- This inserts a paragraph to RSA 631:3 that states displaying a firearm does not constitute reckless conduct.
- Is a door knocker. If someone shows him their firearm, appreciates it because he would rather be shown a firearm than to be shot with it. A warning in plenty.

Honorable Joe Hannon (Gun Owners of NH)

- The mere display of a firearm is perfectly legal in NH, we are an open carry state and you do not need a permit to carry a concealed firearm.
- The allowing the mere display of a firearm is not giving someone license to threaten or point or fire a firearm.
- If someone is walking to their gun club with rifle over their shoulder or carrying it does not constitute as a crime.

- However, people may be charged with reckless conduct by certain individuals if they decide to stretch of the law.
- Just because something is being held does not mean it is reckless, unless they are pointing it at someone or threatening them.
- This does not apply to domestic violence situations because if someone has a history of domestic violence or abuse the victim can easily get an order to prohibit the abuser from possessing a firearm.
- There are still statutes for abusers to be charged if they are threatening someone.
- This is protecting people who are already exercising their rights.
- Senator Gannon stated that women who are domestic violence victims whose abuser puts a gun on the bedside table or a driver who is brandishing a weapon is putting someone in fear of imminent bodily harm. That is a very different thing than a firearm visible in a holster.
 - Agrees. The example of someone cleaning their firearms being a threat in their home is odd. It would have to be someone saying they will shoot the person if they don't get the eggs. If a person has a history of domestic violence the victim will be able to get an order against that person. This does not apply in those situations.
- Senator Gannon pointed out the pattern of behavior to use it as a threat is different then being down in the basement cleaning the gun.
 - That is a pattern of behavior that can be used to charge someone with domestic violence.
- Senator Kahn pointed out the word reckless is in the section that reads 'intimate partners, family, or household members the conviction under this section shall be recorded as reckless conduct'. This bill would say that it is not reckless. Asked why someone would display a firearm before a family member without it being threatening.
 - That section would still be part of the RSA. If someone is making a reckless display that is different than a mere display. Was a cub scout leader and was showing them the difference between real firearms and toy ones. That is not reckless display.
- Senator Kahn pointed out that this bill is not about displaying a firearm for educational purposes, this is displaying it before a family member or intimate partner.
 - It is not illegal to show someone a firearm in your home unless you are doing it in a threatening manner. The mere showing of a firearm in your home is not currently against the law. This bill is to protect people in a public place who are displaying a firearm.
- Senator Whitley asked for clarification about his statement regarding it being easy to get a domestic violence protective order.
 - Does not remember saying it was easy, but the victims can get one. The definition of 'reckless' is being utterly unconcerned about the

consequences of some actions without caution and being careless. There is a difference between displaying something and being reckless with an object.

- Senator Whitley pointed out that in a domestic violence situation there is an imbalance of power and therefore is it not so easy to just go and get a protective order.
 - Doesn't imagine it would be, but they are able to if they meet certain criteria according to the law.
- Senator Whitley asked if he understands that victims do not always feel safe enough to get a protective order.
 - Recognizes the balance of power. That is not an excuse for the current laws that allow people to do certain things. Being reckless or threatening is not being allowed under this. It is very black and white when it comes to the mere display of a firearm. If someone is threatening, they should pursue charges and get a protective order. Understands that may not be easy to do, but they are able to do it.

Honorable Danial Itse (NH Firearms Coalition)

- This has nothing to do with waving anything around, it has to do with displaying, allowing to be seen, showing.
- During his time in the legislature often carried a firearm and on occasion certain people could see it and complained to the Speaker.
- This is about protecting the ability of a firearm to be displayed in a holster or carrying it to and from the woods.
- Waving a firearm around or threatening people with it is clearly reckless conduct.
- This is about giving law enforcement clear and concise guidelines that simply allows a firearm to be seen and does not constitute reckless conduct.

Alan Rice (Gun Owners of America)

- Defensive display of a firearm within use of force common law is a valid and legitimate way to warn off a potential criminal attacker.
- The person displaying that firearm to warn off an attacker should not be subject to criminal prosecution for reckless conduct.
- Criminals have their own set of pride and hierarchy within their criminal gangs and activities.
- If someone says 'you need to drop the weapon, I am armed' the attacker may or may not drop it. But when someone points a gun at them, the firearm is a far superior weapon to a bat or a knife. Even a criminal, with a criminal mind, in most cases will drop the bat.
- Just carrying a gun in a holster or carrying a rifle in a sling, without words or other actions, is not a crime under current law.
- Those who choose to carry a gun in the open should not be threatened with prosecution for reckless conduct because someone else has an unfounded fear of an inanimate object.

- This is a simple housekeeping bill to bring the criminal code into conformity with the long accepted common law use of deadly force and of open carrying.

Summary of testimony presented in opposition:

Erin Jasina (NH Legal Assistance)

- On Saturday in Times Square there was a shooting. Witnesses reported that 2-4 males were in a dispute and at least one person displayed a firearm. Three innocent bystanders were shot, including a 4-year-old girl.
- This is the scenario we are inviting with the passage of this bill.
- The free pass this bill creates will bring more gun deaths to NH.
- Domestic violence can take many forms.
- Words and actions that seem harmless, might signal death for a victim.
- For a victim, a signal or a trigger may be their abuser displaying a firearm.
- An abuser making their victim watch the cleaning of their gun ever night, places the victim at risk of serious bodily injury.

Pamela Keilig (NHCADSV) (provided written testimony)

- Similar testimony to HB196.
- It is vital we are not giving abusers more opportunities to intimidate, threaten, or hold power over victims.
- Adding display of a firearm as a exception to reckless conduct would allow an abuser to use a firearm as a tool to coerce and intimidate their victim.
- An abuser displaying their gun is an intentional act aimed at sending a threatening message and cannot be interpreted as neutral or passive.
- A huge component of reckless conduct is based on whether a person's behavior places or may place another in danger of serious bodily injury.
- This could give abusers power to legally threaten victims without it being considered a form of coercion or abuse.
- This bill makes it okay to intentionally display your gun as a warning sign.

Lois Cote (provided written testimony)

- Volunteers with Moms Demand Action.
- This is a dangerous invitation to draw and brandish firearms recklessly including for the purpose of intimidation without fear of criminal consequences.
- The bill states that displaying a firearm can never be deemed as reckless conduct under the law.
- There are numerous examples in which drawing a firearm may place another in danger of serious bodily injury.
- A traffic dispute where one party draws a gun, prompting the other driver to veer off the road or brandishing a firearm in a crowd causing panic or drawing a firearm while intoxicated.
- The message this bill gives to gun owners is that they have no duty to others to safely and responsibly manage their firearms, and that drawing their gun no matter the context, cannot ever result in a criminal charge of reckless conduct.

Valerie Fagin

- Volunteers with Moms Demand Action.
- Research shows that visible guns have been found to make people more aggressive.
- Displaying a gun makes it more likely that disagreements will turn into violent conflicts.
- Holding a gun impacts various cognitive process, including a person's intentions, priorities, and abilities to judge if a person is armed or holding a neutral object.
- A gun does not need to be fired to inflict fear and abuse.
- Approximately 4.5million American women today have been threatened with a gun by an intimate partner.
- One study of domestic violence found that women who have been threatened with a gun or fear that their partner would use one against them had more severe psychological symptoms opposed to women who had endured other types of abuse.

Representative Horrigan

- This is a bad bill, and it makes no sense as written.
- A deadly weapon is specifically defined as gun, knife, or other substantive thing known to be capable of causing death or serious bodily injury.
- This bill is carving out a special exemption for firearms.
- In many situations merely displaying a gun is going to be perceived as a threat to the victim, and the law should respect the victims' point of view in that.
- Why not be able to display a knife under this?

Zandra Rice Hawkins (Gunsense NH)

- RSA 631:3 states a person is guilty of reckless conduct if they recklessly engage in conduct which places or may place another in danger of serious bodily injury.
- Reckless conduct is a class B felony if a person uses a deadly weapon or a misdemeanor for all of conduct.
- This statute is important to domestic violence protections because it goes on to say, 'upon proof that the defendant were intimate partners, family, or household members.'
- A conviction under this section is recorded as 'reckless conduct-domestic violence.'
- This bill gives a free pass to anyone who chooses to recklessly display firearms to harass, intimidate, coerce, control, or threaten others.
- This bill is completely unnecessary because RSA 627:4 already allows a person who responds to a threat that would be consider by a reasonable person as likely to cause serious bodily injury or death to a person or another, to display a firearm with the intent to warn away the person making the threat without having committed a criminal act.
- There is a reason this is being removed from this section of the law instead of RSA 627:4 which comes with some responsibilities and protections.

Representative Altschiller

- This bill seeks to add a new qualifier to RSA 631.

- RSA 625 defines deadly weapon as a firearm, knife, or other substance or thing which in the manner it is used, intended to be used, or threatens to be used, is known to be capable of producing death or serious bodily injury.
- If a person is walking through Market Basket carrying a baseball bat doing nothing else that will cause alarm because the baseball bat is something unusual to carry around the supermarket.
- If a person is at a restaurant and places a serrated hunting knife on to the table that is an alarming situation.
- Those instances are examples of coercive control.
- They are actions that are taken to send a message to the people around them that the balance of power is in favor of the person with the weapon.
- There are no campaigns by baseball bat coalitions or hunting knife companies to normalize these types of behaviors.
- This bill and others seek to normalize the presence of firearms everywhere.
- Coercive control creates unequal power dynamics in a relationship, and it is a form of violence.
- Article 2 of the Constitution ensures all persons have the right to keep and bear arms, but Article 1 is often glossed over which states that the government is founded in consent and for the general good.
- Living under the threat of coercive control in no way contributes to the common good.

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Date Hearing Report completed: May 18, 2021