

By: Gutierrez

S.B. No. 5

A BILL TO BE ENTITLED

1 AN ACT
2 relating to regulating certain firearm transfers, possession of
3 certain firearms, and protective orders prohibiting possession of a
4 firearm; creating criminal offenses; increasing criminal
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 ARTICLE 1. GENERAL PROVISIONS

8 SECTION 1.01. SHORT TITLE. This Act shall be known as the
9 Robb Elementary Firearm Safety Act.

10 SECTION 1.02. PURPOSE. The purpose of this Act is to ensure
11 the State of Texas is meeting its responsibility to protect the
12 health and safety of all Texans by enacting common sense,
13 evidence-based firearm safety laws. Texans deserve to live free
14 from the threat and fear of firearm violence.

15 SECTION 1.03. FINDINGS. The legislature finds that:

16 (1) the State of Texas mourns the loss of 19 innocent
17 children and two teachers in a senseless attack on Robb Elementary
18 School in Uvalde, Texas, on May 24, 2022;

19 (2) the shooting at Robb Elementary School is the
20 second deadliest school shooting in the history of the United
21 States;

22 (3) the victims of the attack are Makenna Lee Elrod,
23 10; Layla Salazar, 11; Maranda Mathis, 11; Nevaeh Bravo, 10; Jose
24 Manuel Flores, Jr., 10; Xavier Lopez, 10; Tess Marie Mata, 10;

1 Rojelio Torres, 10; Eliahna "Ellie" Amyah Garcia, 9; Eliahna
2 A. Torres, 10; Annabell Guadalupe Rodriguez, 10; Jackie Cazares, 9;
3 Uziyah Garcia, 10; Jayce Carmelo Luevanos, 10; Maite Yuleana
4 Rodriguez, 10; Jailah Nicole Silguero, 10; Amerie Jo Garza, 10;
5 Alexandria "Lexi" Aniyah Rubio, 10; Alithia Ramirez, 10; Irma
6 Garcia, fourth grade teacher; and Eva Mireles, fourth grade
7 teacher;

8 (4) three of the ten deadliest mass shootings in
9 modern United States history have occurred in Texas in the past five
10 years;

11 (5) the following mass shootings have occurred in
12 Texas:

13 (A) 26 people were killed in Sutherland Springs,
14 Texas, in 2017;

15 (B) 23 people were killed in Killeen, Texas, in
16 1991;

17 (C) 23 people were killed in El Paso, Texas, in
18 2019;

19 (D) 21 people were killed in Uvalde, Texas, in
20 2022;

21 (E) 17 people were killed at The University of
22 Texas at Austin in 1966;

23 (F) 13 people were killed in Killeen, Texas, in
24 2009; and

25 (G) 10 people were killed in Santa Fe, Texas, in
26 2018;

27 (6) firearm homicide rates for children under 18 have

1 more than doubled in Texas between 2014 and 2020;

2 (7) from 2015 to 2020, Texas lost 572 children to
3 firearm homicides, more than any other state; and

4 (8) overall firearm homicide rates in Texas have
5 increased 66 percent from 2014 to 2020.

6 ARTICLE 2. UNLAWFUL POSSESSION AND TRANSFER OF CERTAIN ASSAULT
7 WEAPONS

8 SECTION 2.01. Chapter 46, Penal Code, is amended by adding
9 Section 46.055 to read as follows:

10 Sec. 46.055. UNLAWFUL POSSESSION OF ASSAULT WEAPON. (a) In
11 this section, "assault weapon" means:

12 (1) a semiautomatic centerfire rifle that has the
13 capacity to accept a detachable magazine and has:

14 (A) a pistol grip that protrudes conspicuously
15 beneath the action of the firearm;

16 (B) a folding or telescoping stock;

17 (C) a thumbhole stock;

18 (D) a second handgrip or a protruding grip that
19 can be held by the non-trigger hand;

20 (E) a flash suppressor; or

21 (F) a grenade launcher or flare launcher;

22 (2) a semiautomatic centerfire rifle that has a fixed
23 magazine that holds more than 10 rounds of ammunition;

24 (3) a semiautomatic centerfire rifle that has an
25 overall length of less than 30 inches;

26 (4) a semiautomatic shotgun that has the capacity to
27 accept a detachable magazine;

1 (5) a semiautomatic shotgun that has a folding or
2 telescoping stock and has:

3 (A) a thumbhole stock; or

4 (B) a second handgrip or a protruding grip that
5 can be held by the non-trigger hand;

6 (6) a semiautomatic pistol that has the capacity to
7 accept a detachable magazine and has:

8 (A) a second handgrip or a protruding grip that
9 can be held by the non-trigger hand;

10 (B) an ammunition magazine that attaches to the
11 pistol outside of the pistol grip;

12 (C) a threaded barrel capable of accepting a
13 flash suppressor, forward handgrip, or silencer; or

14 (D) a shroud that is attached to or partially or
15 completely encircles the barrel and that permits the shooter to
16 hold the firearm with the non-trigger hand without being burned;

17 (7) a semiautomatic pistol that has a fixed magazine
18 that holds more than 10 rounds of ammunition;

19 (8) a revolving cylinder shotgun; or

20 (9) a conversion kit, part, or combination of parts
21 from which an assault weapon can be assembled or with which a
22 firearm may be converted into a weapon described by Subdivision
23 (1), (2), (3), (4), (5), (6), (7), or (8).

24 (b) A person who is younger than 21 years of age commits an
25 offense if the person knowingly possesses an assault weapon.

26 (c) An offense under this section is a state jail felony.

27 (d) It is a defense to prosecution under this section that:

1 (1) the actor possessed the assault weapon for the
2 actual discharge of official duties as:

3 (A) a peace officer, as defined by Section 1.07;
4 or

5 (B) a member of the armed forces or state
6 military forces, as defined by Section 431.001, Government Code; or

7 (2) the actor lawfully possessed the assault weapon on
8 August 31, 2023.

9 (e) This section does not apply to an assault weapon that
10 has been rendered permanently inoperable.

11 (f) If conduct that constitutes an offense under this
12 section also constitutes an offense under any other law, the actor
13 may be prosecuted under this section, the other law, or both.

14 SECTION 2.02. Section 46.06, Penal Code, is amended by
15 amending Subsections (a), (c), and (d) and adding Subsections (c-1)
16 and (e) to read as follows:

17 (a) A person commits an offense if the person:

18 (1) sells, rents, leases, loans, or gives a handgun to
19 any person knowing that the person to whom the handgun is to be
20 delivered intends to use it unlawfully or in the commission of an
21 unlawful act;

22 (2) intentionally or knowingly sells, rents, leases,
23 or gives or offers to sell, rent, lease, or give:

24 (A) a [~~to any child younger than 18 years of age~~
25 ~~any firearm,~~ club, [~~or~~] location-restricted knife, or firearm
26 other than an assault weapon to a person younger than 18 years of
27 age; or

1 (B) an assault weapon to a person younger than 21
2 years of age;

3 (3) intentionally, knowingly, or recklessly sells a
4 firearm or ammunition for a firearm to any person who is
5 intoxicated;

6 (4) knowingly sells a firearm or ammunition for a
7 firearm to any person who has been convicted of a felony before the
8 fifth anniversary of the later of the following dates:

9 (A) the person's release from confinement
10 following conviction of the felony; or

11 (B) the person's release from supervision under
12 community supervision, parole, or mandatory supervision following
13 conviction of the felony;

14 (5) sells, rents, leases, loans, or gives a firearm
15 [~~handgun~~] to any person knowing that an active protective order is
16 directed to the person to whom the firearm [~~handgun~~] is to be
17 delivered;

18 (6) knowingly purchases, rents, leases, or receives as
19 a loan or gift from another a firearm [~~handgun~~] while an active
20 protective order is directed to the actor; or

21 (7) while prohibited from possessing a firearm under
22 state or federal law, knowingly makes a material false statement on
23 a form that is:

24 (A) required by state or federal law for the
25 purchase, sale, or other transfer of a firearm; and

26 (B) submitted to a [~~licensed~~] firearms dealer
27 licensed under [~~as defined by~~] 18 U.S.C. Section 923.

1 (c) It is an affirmative defense to prosecution under
2 Subsection (a)(2)(A) [~~(a)(2)~~] that the transfer was to a minor
3 whose parent or the person having legal custody of the minor had
4 given written permission for the sale or, if the transfer was other
5 than a sale, the parent or person having legal custody had given
6 effective consent.

7 (c-1) It is a defense to prosecution under Subsection
8 (a)(2)(B), (a)(5), or (a)(6) that the transfer was to a person who
9 provided evidence to the actor that the person is:

10 (1) a peace officer, as defined by Section 1.07; or

11 (2) a member of the armed forces or state military
12 forces, as defined by Section 431.001, Government Code.

13 (d) An offense under this section is a Class A misdemeanor,
14 except that:

15 (1) an offense under Subsection (a)(2)(A) [~~(a)(2)~~] is
16 a state jail felony if the weapon that is the subject of the offense
17 is a handgun; [~~and~~]

18 (2) an offense under Subsection (a)(2)(B) or (a)(7) is
19 a state jail felony; and

20 (3) an offense under Subsection (a)(5) or (a)(6) is a
21 state jail felony if the weapon that is the subject of the offense
22 is an assault weapon.

23 (e) If conduct that constitutes an offense under this
24 section also constitutes an offense under any other law, the actor
25 may be prosecuted under this section, the other law, or both.

26 SECTION 2.03. Section 46.06(b), Penal Code, is amended by
27 adding Subdivision (3) to read as follows:

1 (3) "Assault weapon" has the meaning assigned by
2 Section 46.055.

3 SECTION 2.04. The change in law made by this article applies
4 only to an offense committed on or after the effective date of this
5 Act. An offense committed before the effective date of this Act is
6 governed by the law in effect on the date the offense was committed,
7 and the former law is continued in effect for that purpose. For
8 purposes of this section, an offense was committed before the
9 effective date of this Act if any element of the offense occurred
10 before that date.

11 ARTICLE 3. REGULATION OF FIREARM TRANSFERS

12 SECTION 3.01. Title 6, Business & Commerce Code, is amended
13 by adding Chapter 205 to read as follows:

14 CHAPTER 205. REGULATION OF FIREARM TRANSFERS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 205.001. DEFINITIONS. In this chapter:

17 (1) "Firearm" has the meaning assigned by Section
18 46.01, Penal Code.

19 (2) "Licensed firearms dealer" means a person who is
20 licensed as a firearms dealer under 18 U.S.C. Section 923.

21 SUBCHAPTER B. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK FOR

22 PRIVATE FIREARM TRANSFERS

23 Sec. 205.051. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
24 REQUIRED FOR PRIVATE TRANSFER OF FIREARM. A person may not sell or
25 otherwise transfer a firearm to another person unless:

26 (1) the person is a licensed firearms dealer;

27 (2) the person sells or transfers the firearm to a

1 licensed firearms dealer; or

2 (3) before the firearm is delivered to the person to
3 whom the firearm is being sold or transferred, the person selling or
4 transferring the firearm delivers the firearm to a licensed
5 firearms dealer to retain possession of the firearm until the
6 dealer conducts a national instant criminal background check in the
7 manner required by 18 U.S.C. Section 922 and verifies that the
8 person to whom the firearm is being sold or transferred may lawfully
9 possess a firearm.

10 Sec. 205.052. DUTIES OF LICENSED FIREARMS DEALER. (a) If a
11 licensed firearms dealer receives a firearm under Section
12 205.051(3), the dealer shall conduct a national instant criminal
13 background check in the manner required by 18 U.S.C. Section 922 to
14 verify that the person to whom the firearm is being sold or
15 transferred may lawfully possess a firearm.

16 (b) If a licensed firearms dealer determines that the person
17 to whom the firearm is being sold or transferred may not lawfully
18 possess a firearm, the dealer shall return the firearm to the person
19 selling or transferring the firearm.

20 (c) If a licensed firearms dealer determines that the person
21 to whom the firearm is being sold or transferred may lawfully
22 possess a firearm, the dealer shall transfer the firearm as
23 directed by the person selling or transferring the firearm.

24 (d) A licensed firearms dealer to whom a firearm is
25 delivered under Section 205.051(3) may collect a reasonable fee
26 from the person who is selling or transferring the firearm.

27 Sec. 205.053. EXCEPTION. This subchapter does not apply

1 to:

2 (1) a transfer of a firearm to a person by inheritance
3 or bequest on the death of the owner of the firearm; or

4 (2) a sale or other transfer of a firearm by the owner
5 of the firearm if the transferor and the transferee are related
6 within the third degree by consanguinity or within the second
7 degree by affinity as determined under Chapter 573, Government
8 Code.

9 Sec. 205.054. OFFENSE. (a) A person who violates this
10 subchapter commits an offense.

11 (b) An offense under this section is a Class A misdemeanor.

12 (c) If conduct that constitutes an offense under this
13 section also constitutes an offense under any other law, the actor
14 may be prosecuted under this section, the other law, or both.

15 SUBCHAPTER C. REQUIREMENTS FOR CERTAIN FIREARM SALES BY LICENSED
16 FIREARMS DEALERS

17 Sec. 205.101. WAITING PERIOD REQUIRED FOR CERTAIN SALES OF
18 FIREARMS; OFFENSE. (a) A licensed firearms dealer who sells a
19 firearm to a person in exchange for money or other consideration
20 commits an offense if the licensed firearms dealer delivers the
21 firearm to the person to whom the firearm is being sold before the
22 later of:

23 (1) the third business day after the date on which the
24 firearm was sold to the person; or

25 (2) the date on which the licensed firearms dealer
26 verifies, by conducting a national instant criminal background
27 check in the manner required by 18 U.S.C. Section 922, that the

1 person to whom the firearm is being sold may lawfully possess a
2 firearm.

3 (b) This section does not apply to the sale of a firearm to a
4 person who is:

5 (1) a peace officer, as defined by Section 1.07, Penal
6 Code; or

7 (2) a member of the armed forces or state military
8 forces, as defined by Section 431.001, Government Code.

9 (c) An offense under this section is a state jail felony.

10 (d) If conduct that constitutes an offense under this
11 section also constitutes an offense under any other law, the actor
12 may be prosecuted under this section, the other law, or both.

13 (e) A licensed firearms dealer shall make records of firearm
14 sales available for inspection by a law enforcement agency during
15 regular business hours.

16 ARTICLE 4. PROTECTIVE ORDERS

17 SECTION 4.01. Article 7B.005(a), Code of Criminal
18 Procedure, is amended to read as follows:

19 (a) In a protective order issued under this subchapter, the
20 court may:

21 (1) order the alleged offender to take action as
22 specified by the court that the court determines is necessary or
23 appropriate to prevent or reduce the likelihood of future harm to
24 the applicant or a member of the applicant's family or household; or

25 (2) prohibit the alleged offender from:

26 (A) communicating:

27 (i) directly or indirectly with the

1 applicant or any member of the applicant's family or household in a
2 threatening or harassing manner; or

3 (ii) in any manner with the applicant or any
4 member of the applicant's family or household except through the
5 applicant's attorney or a person appointed by the court, if the
6 court finds good cause for the prohibition;

7 (B) going to or near the residence, place of
8 employment or business, or child-care facility or school of the
9 applicant or any member of the applicant's family or household;

10 (C) engaging in conduct directed specifically
11 toward the applicant or any member of the applicant's family or
12 household, including following the person, that is reasonably
13 likely to harass, annoy, alarm, abuse, torment, or embarrass the
14 person; and

15 (D) possessing a firearm, unless the alleged
16 offender possesses the firearm for the actual discharge of the
17 alleged offender's official duties as:

18 (i) [is] a peace officer, as defined by
19 Section 1.07, Penal Code; or

20 (ii) a member of the armed forces or state
21 military forces, as defined by Section 431.001, Government Code
22 ~~actively engaged in employment as a sworn, full-time paid employee~~
23 ~~of a state agency or political subdivision].~~

24 SECTION 4.02. Article 7B.006(a), Code of Criminal
25 Procedure, is amended to read as follows:

26 (a) Each protective order issued under this subchapter,
27 including a temporary ex parte order, must contain the following

1 prominently displayed statements in boldfaced type, in capital
2 letters, or underlined:

3 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
4 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
5 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

6 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
7 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
8 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
9 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
10 UNLESS A COURT CHANGES THE ORDER."

11 "IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE
12 ORDER TO POSSESS A FIREARM OR AMMUNITION, OTHER THAN A PERSON WHO
13 POSSESSES A FIREARM FOR THE ACTUAL DISCHARGE OF THE PERSON'S
14 OFFICIAL DUTIES AS A PEACE OFFICER, AS DEFINED BY SECTION 1.07,
15 PENAL CODE, OR AS A MEMBER OF THE ARMED FORCES OR STATE MILITARY
16 FORCES, AS DEFINED BY SECTION 431.001, GOVERNMENT CODE [~~ACTIVELY~~
17 ~~ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE~~
18 ~~AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE~~
19 ~~ORDER TO POSSESS A FIREARM OR AMMUNITION~~]."

20 SECTION 4.03. Chapter 7B, Code of Criminal Procedure, is
21 amended by adding Subchapter D to read as follows:

22 SUBCHAPTER D. EXTREME RISK PROTECTIVE ORDER

23 Art. 7B.151. DEFINITIONS. In this subchapter:

24 (1) "Bodily injury" and "serious bodily injury" have
25 the meanings assigned by Section 1.07, Penal Code.

26 (2) "Family," "family violence," and "household" have
27 the meanings assigned by Chapter 71, Family Code.

1 (3) "Firearm" has the meaning assigned by Section
2 46.01, Penal Code.

3 Art. 7B.152. APPLICATION FOR EXTREME RISK PROTECTIVE ORDER.

4 (a) An application for a protective order under this subchapter may
5 be filed by:

6 (1) a member of the respondent's family or household;

7 (2) a parent, guardian, or conservator of a person who
8 is:

9 (A) under 18 years of age; and

10 (B) a member of the respondent's family or
11 household; or

12 (3) a peace officer.

13 (b) An application must:

14 (1) include:

15 (A) detailed allegations, based on personal
16 knowledge of a person described by Subsection (a), regarding any
17 dangerous behavior or conduct exhibited by the respondent,
18 including any behavior or conduct related to the respondent's use
19 of firearms;

20 (B) information concerning the quantity, type,
21 and location of any firearms the applicant believes to be in the
22 respondent's possession or control, if any;

23 (C) any other relevant facts indicating a need
24 for a protective order under this subchapter; and

25 (D) a statement that the applicant believes the
26 respondent poses an immediate and present danger of causing bodily
27 injury, serious bodily injury, or death to any person, including

1 the respondent, as a result of the respondent's access to firearms;
2 and

3 (2) be signed by the applicant under an oath that, to
4 the knowledge and belief of the applicant, the facts and
5 circumstances contained in the application are true.

6 (c) An application for a protective order under this
7 subchapter may be filed in a district court, juvenile court having
8 the jurisdiction of a district court, statutory county court, or
9 constitutional county court in the county in which the applicant or
10 the respondent resides.

11 Art. 7B.153. CONFIDENTIALITY OF CERTAIN INFORMATION. On
12 receiving an application containing specific health information
13 concerning the respondent, the court shall order the clerk to:

14 (1) strike the information from the public records of
15 the court; and

16 (2) maintain a confidential record of the information
17 for use only by the court.

18 Art. 7B.154. TEMPORARY EX PARTE ORDER. (a) If the court
19 finds from the information contained in an application for a
20 protective order under this subchapter that there is reasonable
21 cause to believe that the respondent poses an immediate and present
22 danger of causing bodily injury, serious bodily injury, or death to
23 any person, including the respondent, as a result of the
24 respondent's access to firearms, the court, without further notice
25 to the respondent and without a hearing, may issue a temporary ex
26 parte order prohibiting the respondent from purchasing, owning,
27 possessing, or controlling a firearm.

1 (b) In a temporary ex parte order, the court may order the
2 respondent to:

3 (1) not later than 24 hours after the time the order is
4 issued, relinquish any firearms owned by or in the actual or
5 constructive possession or control of the respondent to a law
6 enforcement agency for holding in the manner provided by Article
7 18.192; and

8 (2) if applicable, surrender to the court the
9 respondent's license to carry a handgun issued under Subchapter H,
10 Chapter 411, Government Code.

11 Art. 7B.155. HEARING; ISSUANCE OF PROTECTIVE ORDER. (a)
12 Not later than the 14th day after the later of the date an
13 application is filed or the date a temporary ex parte order is
14 issued, the court shall hold a hearing on the issuance of the
15 protective order.

16 (b) The court shall provide personal notice of the hearing
17 to the respondent.

18 (c) In determining whether to issue a protective order under
19 this article, the court:

20 (1) shall consider:

21 (A) any history of threats or acts of violence by
22 the respondent directed at any person, including the respondent;

23 (B) any history of the respondent using,
24 attempting to use, or threatening to use physical force against
25 another person;

26 (C) any recent violation by the respondent of an
27 order issued:

1 (i) under another provision of Chapter 7B
2 or under Article 17.292;
3 (ii) under Section 6.504 or Chapter 85,
4 Family Code;
5 (iii) under Chapter 83, Family Code, if the
6 temporary ex parte order has been served on the respondent; or
7 (iv) by another jurisdiction as provided by
8 Chapter 88, Family Code;
9 (D) any arrest or conviction of the respondent
10 for:
11 (i) an offense under Section 42.072, Penal
12 Code; or
13 (ii) an offense involving violence,
14 including family violence;
15 (E) any conviction of the respondent for an
16 offense under Section 42.09, 42.091, or 42.092, Penal Code; and
17 (F) evidence related to the respondent's current
18 or recent abuse of a controlled substance or alcohol, not including
19 any evidence of previous treatment for or recovery from abusing a
20 controlled substance or alcohol; and
21 (2) may consider any other relevant factor including:
22 (A) any previous violation by the respondent of
23 an order described by Subdivision (1)(C); and
24 (B) evidence regarding the respondent's recent
25 acquisition of firearms, ammunition, or other deadly weapons.
26 (d) At the close of the hearing, if the court finds by clear
27 and convincing evidence that the respondent poses an immediate and

1 present danger of causing bodily injury, serious bodily injury, or
2 death to any person, including the respondent, as a result of the
3 respondent's access to firearms, the court shall issue a protective
4 order that includes a statement of the required finding.

5 (e) If the court does not make the finding described by
6 Subsection (d), the court shall, as applicable, rescind any
7 temporary ex parte order issued under Article 7B.154 and return the
8 respondent's license to carry a handgun.

9 Art. 7B.156. CONTENTS OF PROTECTIVE ORDER. In a protective
10 order issued under Article 7B.155, the court shall:

11 (1) prohibit the person who is subject to the order
12 from purchasing, owning, possessing, or controlling a firearm for
13 the duration of the order;

14 (2) order the person to:

15 (A) not later than 24 hours after the time the
16 order is issued, relinquish any firearms owned by or in the actual
17 or constructive possession or control of the person to a law
18 enforcement agency for holding in the manner provided by Article
19 18.192; and

20 (B) if applicable, surrender to the court the
21 person's license to carry a handgun issued under Subchapter H,
22 Chapter 411, Government Code; and

23 (3) suspend a license to carry a handgun issued under
24 Subchapter H, Chapter 411, Government Code, that is held by the
25 person.

26 Art. 7B.157. DURATION OF PROTECTIVE ORDER. (a) A
27 protective order issued under Article 7B.155 is effective until the

1 first anniversary of the date the order was issued.

2 (b) The court may renew a protective order issued under
3 Article 7B.155 for a period not to exceed one year after the order's
4 original expiration date. Before renewing the order the court must
5 hold a hearing after providing personal notice of the hearing to the
6 person who is the subject of the order.

7 (c) A person who is the subject of a protective order may
8 file a motion not earlier than the 91st day after the date on which
9 the order was initially issued or renewed, as applicable,
10 requesting that the court review the order and determine whether
11 there is a continuing need for the order. After a hearing on the
12 motion, if the court fails to make the finding that there is no
13 continuing need for the order, the order remains in effect until the
14 date the order expires as provided by this article.

15 (d) At a hearing to renew or rescind a protective order
16 under this article, the court shall consider the factors described
17 by Article 7B.155(c).

18 Art. 7B.158. NOTICE TO DEPARTMENT OF PUBLIC SAFETY. (a)
19 Not later than 24 hours after the time a protective order is issued
20 under Article 7B.155, the clerk of the issuing court shall provide
21 the following to the Department of Public Safety:

22 (1) the complete name, race, and sex of the person who
23 is the subject of the order;

24 (2) any known identifying number of the person,
25 including a social security number, driver's license number, or
26 state identification number;

27 (3) the person's date of birth;

1 (4) if surrendered to the court, the person's license
2 to carry a handgun issued under Subchapter H, Chapter 411,
3 Government Code; and

4 (5) a copy of the order suspending the person's license
5 to carry a handgun under Subchapter H, Chapter 411, Government
6 Code.

7 (b) On receipt of an order suspending a license to carry a
8 handgun, the department shall:

9 (1) record the suspension of the license in the
10 records of the department;

11 (2) report the suspension to local law enforcement
12 agencies, as appropriate; and

13 (3) if the license was not surrendered to the court,
14 demand surrender of the suspended license from the license holder.

15 (c) Not later than the 30th day after the date the
16 protective order is rescinded or expires under Article 7B.157, the
17 clerk of the issuing court shall notify the Department of Public
18 Safety of the rescission or expiration, as applicable.

19 Art. 7B.159. APPLICATION OF OTHER LAW. To the extent
20 applicable, except as otherwise provided by this subchapter, Title
21 4, Family Code, applies to a protective order issued under this
22 subchapter.

23 SECTION 4.04. Articles 17.292(c) and (g), Code of Criminal
24 Procedure, are amended to read as follows:

25 (c) The magistrate in the order for emergency protection may
26 prohibit the arrested party from:

27 (1) committing:

1 (A) family violence or an assault on the person
2 protected under the order; or

3 (B) an act in furtherance of an offense under
4 Section 20A.02 or 42.072, Penal Code;

5 (2) communicating:

6 (A) directly with a member of the family or
7 household or with the person protected under the order in a
8 threatening or harassing manner;

9 (B) a threat through any person to a member of the
10 family or household or to the person protected under the order; or

11 (C) if the magistrate finds good cause, in any
12 manner with a person protected under the order or a member of the
13 family or household of a person protected under the order, except
14 through the party's attorney or a person appointed by the court;

15 (3) going to or near:

16 (A) the residence, place of employment, or
17 business of a member of the family or household or of the person
18 protected under the order; or

19 (B) the residence, child care facility, or school
20 where a child protected under the order resides or attends; or

21 (4) possessing a firearm, unless the person possesses
22 the firearm for the actual discharge of the person's official
23 duties as:

24 (A) [is] a peace officer, as defined by Section
25 1.07, Penal Code; or

26 (B) a member of the armed forces or state
27 military forces, as defined by Section 431.001, Government Code [7

1 ~~actively engaged in employment as a sworn, full-time paid employee~~
2 ~~of a state agency or political subdivision].~~

3 (g) An order for emergency protection issued under this
4 article must contain the following statements printed in bold-face
5 type or in capital letters:

6 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
7 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
8 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT
9 RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE
10 MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A
11 VIOLATION OF THIS ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE
12 FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT
13 LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER
14 THAN A PERSON WHO POSSESSES A FIREARM FOR THE ACTUAL DISCHARGE OF
15 THE PERSON'S OFFICIAL DUTIES AS A PEACE OFFICER, AS DEFINED BY
16 SECTION 1.07, PENAL CODE, OR AS A MEMBER OF THE ARMED FORCES OR
17 STATE MILITARY FORCES, AS DEFINED BY SECTION 431.001, GOVERNMENT
18 CODE [~~ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID~~
19 ~~EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION]~~, WHO IS
20 SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE
21 PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

22 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
23 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
24 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
25 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
26 UNLESS A COURT CHANGES THE ORDER."

27 SECTION 4.05. Chapter 18, Code of Criminal Procedure, is

1 amended by adding Article 18.192 to read as follows:

2 Art. 18.192. HOLDING AND DISPOSITION OF FIREARM
3 RELINQUISHED UNDER EXTREME RISK PROTECTIVE ORDER. (a) A law
4 enforcement officer who takes possession of a firearm from a person
5 who is the subject of an extreme risk protective order issued under
6 Subchapter D, Chapter 7B, shall immediately provide the person a
7 written copy of the receipt for the firearm and a written notice of
8 the procedure for the return of a firearm under this article.

9 (b) Not later than the seventh day after the date a firearm
10 subject to disposition under this article is received, the law
11 enforcement agency holding the firearm shall notify the court that
12 issued the extreme risk protective order that the person who is the
13 subject of the order has relinquished the firearm.

14 (c) Not later than the 30th day after the date the extreme
15 risk protective order is rescinded or expires, the clerk of the
16 court shall notify the law enforcement agency of the rescission or
17 expiration.

18 (d) Not later than the 30th day after the date the law
19 enforcement agency holding a firearm subject to disposition under
20 this article receives the notice described by Subsection (c), the
21 law enforcement agency shall conduct a check of state and national
22 criminal history record information to verify whether the person
23 may lawfully possess a firearm under 18 U.S.C. Section 922(g) and
24 under the law of this state.

25 (e) If the check conducted under Subsection (d) verifies
26 that the person may lawfully possess a firearm, the law enforcement
27 agency shall provide to the person by certified mail written notice

1 stating that the firearm may be returned to the person if the person
2 submits a written request before the 121st day after the date of the
3 notice.

4 (f) An unclaimed firearm that is received under an extreme
5 risk protective order issued under Subchapter D, Chapter 7B, may
6 not be destroyed or forfeited to the state.

7 (g) The law enforcement agency holding the firearm may
8 provide for the firearm to be sold by a firearms dealer licensed
9 under 18 U.S.C. Section 923 if:

10 (1) the check conducted under Subsection (d) shows
11 that the person may not lawfully possess a firearm; or

12 (2) the notice is provided under Subsection (e) and
13 the person does not submit, before the 121st day after the date of
14 the notice, a written request for the return of the firearm.

15 (h) The proceeds from the sale of a firearm under this
16 article shall be paid to the owner of the seized firearm, less the
17 cost of administering this article with respect to the firearm.

18 SECTION 4.06. Section 85.022(b), Family Code, is amended to
19 read as follows:

20 (b) In a protective order, the court may prohibit the person
21 found to have committed family violence from:

22 (1) committing family violence;

23 (2) communicating:

24 (A) directly with a person protected by an order
25 or a member of the family or household of a person protected by an
26 order, in a threatening or harassing manner;

27 (B) a threat through any person to a person

1 protected by an order or a member of the family or household of a
2 person protected by an order; and

3 (C) if the court finds good cause, in any manner
4 with a person protected by an order or a member of the family or
5 household of a person protected by an order, except through the
6 party's attorney or a person appointed by the court;

7 (3) going to or near the residence or place of
8 employment or business of a person protected by an order or a member
9 of the family or household of a person protected by an order;

10 (4) going to or near the residence, child-care
11 facility, or school a child protected under the order normally
12 attends or in which the child normally resides;

13 (5) engaging in conduct directed specifically toward a
14 person who is a person protected by an order or a member of the
15 family or household of a person protected by an order, including
16 following the person, that is reasonably likely to harass, annoy,
17 alarm, abuse, torment, or embarrass the person;

18 (6) possessing a firearm, unless the person possesses
19 the firearm for the actual discharge of the person's official
20 duties as:

21 (A) [is] a peace officer, as defined by Section
22 1.07, Penal Code; or

23 (B) a member of the armed forces or state
24 military forces, as defined by Section 431.001, Government Code [~~7~~
25 actively engaged in employment as a sworn, full-time paid employee
26 of a state agency or political subdivision]; and

27 (7) harming, threatening, or interfering with the

1 care, custody, or control of a pet, companion animal, or assistance
2 animal, as defined by Section 121.002, Human Resources Code, that
3 is possessed by or is in the actual or constructive care of a person
4 protected by an order or by a member of the family or household of a
5 person protected by an order.

6 SECTION 4.07. Section 85.026(a), Family Code, is amended to
7 read as follows:

8 (a) Each protective order issued under this subtitle,
9 including a temporary ex parte order, must contain the following
10 prominently displayed statements in boldfaced type, capital
11 letters, or underlined:

12 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
13 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
14 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

15 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
16 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
17 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
18 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
19 UNLESS A COURT CHANGES THE ORDER."

20 "IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE
21 ORDER TO POSSESS A FIREARM OR AMMUNITION, OTHER THAN A PERSON WHO
22 POSSESSES A FIREARM FOR THE ACTUAL DISCHARGE OF THE PERSON'S
23 OFFICIAL DUTIES AS A PEACE OFFICER, AS DEFINED BY SECTION 1.07,
24 PENAL CODE, OR AS A MEMBER OF THE ARMED FORCES OR STATE MILITARY
25 FORCES, AS DEFINED BY SECTION 431.001, GOVERNMENT CODE [~~ACTIVELY~~
26 ~~ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE~~
27 ~~AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE~~

1 ~~ORDER TO POSSESS A FIREARM OR AMMUNITION]~~."

2 "IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM
3 CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE
4 EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST
5 ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR
6 IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:

7 "(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS
8 RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR
9 IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR

10 "(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS
11 RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR
12 IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

13 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
14 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
15 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
16 RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE
17 MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A
18 SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON
19 FOR AT LEAST TWO YEARS."

20 SECTION 4.08. Subchapter D, Chapter 411, Government Code,
21 is amended by adding Section 411.0522 to read as follows:

22 Sec. 411.0522. INFORMATION CONCERNING EXTREME RISK
23 PROTECTIVE ORDER. (a) The department by rule shall establish a
24 procedure to provide information concerning a person who is the
25 subject of an extreme risk protective order to the Federal Bureau of
26 Investigation for inclusion in the National Instant Criminal
27 Background Check System.

1 (b) The procedure must require the department to provide any
2 information received under Article 7B.158, Code of Criminal
3 Procedure, to the Federal Bureau of Investigation not later than 24
4 hours after the time the department received the information.

5 SECTION 4.09. Section 411.172(a), Government Code, is
6 amended to read as follows:

7 (a) A person is eligible for a license to carry a handgun if
8 the person:

9 (1) is a legal resident of this state for the six-month
10 period preceding the date of application under this subchapter or
11 is otherwise eligible for a license under Section 411.173(a);

12 (2) is at least 21 years of age;

13 (3) has not been convicted of a felony;

14 (4) is not charged with the commission of a Class A or
15 Class B misdemeanor or equivalent offense, or of an offense under
16 Section 42.01, Penal Code, or equivalent offense, or of a felony
17 under an information or indictment;

18 (5) is not a fugitive from justice for a felony or a
19 Class A or Class B misdemeanor or equivalent offense;

20 (6) is not a chemically dependent person;

21 (7) is not incapable of exercising sound judgment with
22 respect to the proper use and storage of a handgun;

23 (8) has not, in the five years preceding the date of
24 application, been convicted of a Class A or Class B misdemeanor or
25 equivalent offense or of an offense under Section 42.01, Penal
26 Code, or equivalent offense;

27 (9) is fully qualified under applicable federal and

1 state law to purchase a handgun;

2 (10) has not been finally determined to be delinquent
3 in making a child support payment administered or collected by the
4 attorney general;

5 (11) has not been finally determined to be delinquent
6 in the payment of a tax or other money collected by the comptroller,
7 the tax collector of a political subdivision of the state, or any
8 agency or subdivision of the state;

9 (12) is not currently:

10 (A) restricted under a court protective order,
11 including an extreme risk protective order issued under Subchapter
12 D, Chapter 7B, Code of Criminal Procedure; or

13 (B) subject to a restraining order affecting the
14 spousal relationship, other than a restraining order solely
15 affecting property interests;

16 (13) has not, in the 10 years preceding the date of
17 application, been adjudicated as having engaged in delinquent
18 conduct violating a penal law of the grade of felony; and

19 (14) has not made any material misrepresentation, or
20 failed to disclose any material fact, in an application submitted
21 pursuant to Section 411.174.

22 SECTION 4.10. Sections 411.187(a) and (c), Government Code,
23 are amended to read as follows:

24 (a) The department shall suspend a license under this
25 section if the license holder:

26 (1) is charged with the commission of a Class A or
27 Class B misdemeanor or equivalent offense, or of an offense under

1 Section 42.01, Penal Code, or equivalent offense, or of a felony
2 under an information or indictment;

3 (2) fails to notify the department of a change of
4 address, name, or status as required by Section 411.181;

5 (3) commits an act of family violence and is the
6 subject of an active protective order rendered under Title 4,
7 Family Code; ~~or~~

8 (4) is arrested for an offense involving family
9 violence or an offense under Section 42.072, Penal Code, and is the
10 subject of an order for emergency protection issued under Article
11 17.292, Code of Criminal Procedure; or

12 (5) is the subject of an active protective order
13 issued under Subchapter D, Chapter 7B, Code of Criminal Procedure.

14 (c) The department shall suspend a license under this
15 section:

16 (1) for 30 days, if the person's license is subject to
17 suspension for a reason listed in Subsection (a)(2) [~~, (3), or (4),~~
18 ~~except as provided by Subdivision (2)];~~

19 (2) [~~for not less than one year and not more than three~~
20 ~~years, if the person's license:~~

21 [~~(A) is subject to suspension for a reason listed~~
22 ~~in Subsection (a), other than the reason listed in Subsection~~
23 ~~(a)(1), and~~

24 [~~(B) has been previously suspended for the same~~
25 ~~reason,~~

26 [~~(3)~~] until dismissal of the charges, if the person's
27 license is subject to suspension for the reason listed in

1 Subsection (a)(1); or

2 (3) [~~(4)~~] for the duration of or the period specified
3 by:

4 (A) the protective order issued under Title 4,
5 Family Code, if the person's license is subject to suspension for
6 the reason listed in Subsection (a)(3) [~~(a)(5)~~]; [~~or~~]

7 (B) the order for emergency protection issued
8 under Article 17.292, Code of Criminal Procedure, if the person's
9 license is subject to suspension for the reason listed in
10 Subsection (a)(4); or

11 (C) the extreme risk protective order issued
12 under Subchapter D, Chapter 7B, Code of Criminal Procedure, if the
13 person's license is subject to suspension for the reason listed in
14 Subsection (a)(5) [~~(a)(6)~~].

15 SECTION 4.11. Chapter 37, Penal Code, is amended by adding
16 Section 37.083 to read as follows:

17 Sec. 37.083. FALSE REPORT REGARDING REQUEST FOR EXTREME
18 RISK PROTECTIVE ORDER. (a) A person commits an offense if, with
19 intent to deceive, the person makes a statement that the person
20 knows to be false to a peace officer relating to a request that the
21 officer file an application for an extreme risk protective order
22 under Subchapter D, Chapter 7B, Code of Criminal Procedure.

23 (b) An offense under this section is a Class B misdemeanor.

24 (c) If conduct that constitutes an offense under this
25 section also constitutes an offense under another law, the actor
26 may be prosecuted under this section, the other law, or both.

27 SECTION 4.12. Section 46.04, Penal Code, is amended by

1 amending Subsections (c) and (e) and adding Subsections (c-1) and
2 (c-2) to read as follows:

3 (c) A person [~~, other than a peace officer, as defined by~~
4 ~~Section 1.07, actively engaged in employment as a sworn, full-time~~
5 ~~paid employee of a state agency or political subdivision,~~] who is
6 subject to an order issued under Section 6.504 or Chapter 85, Family
7 Code, under Article 17.292 or Subchapter A, Chapter 7B, Code of
8 Criminal Procedure, or by another jurisdiction as provided by
9 Chapter 88, Family Code, commits an offense if the person possesses
10 a firearm after receiving notice of the order and before expiration
11 of the order.

12 (c-1) It is a defense to prosecution under Subsection (c)
13 that the actor possessed the firearm for the actual discharge of
14 official duties as:

- 15 (1) a peace officer, as defined by Section 1.07; or
16 (2) a member of the armed forces or state military
17 forces, as defined by Section 431.001, Government Code.

18 (c-2) A person commits an offense if, after receiving notice
19 that the person is subject to an extreme risk protective order
20 issued under Subchapter D, Chapter 7B, Code of Criminal Procedure,
21 and before rescission or expiration of the order, the person
22 purchases, owns, possesses, or controls a firearm in violation of
23 the order.

24 (e) An offense under Subsection (a) is a felony of the third
25 degree. An offense under Subsection (a-1), (b), [~~or~~] (c), or (c-2)
26 is a Class A misdemeanor.

27 SECTION 4.13. Not later than October 1, 2023, the

1 Department of Public Safety shall adopt rules as required by
2 Section 411.0522, Government Code, as added by this article.

3 SECTION 4.14. The change in law made by this article
4 relating to the contents of a protective order or a magistrate's
5 order for emergency protection applies to an order issued on or
6 after the effective date of this Act. An order issued before that
7 date is governed by the law as it existed immediately before the
8 effective date of this Act, and the former law is continued in
9 effect for that purpose.

10 SECTION 4.15. Section 46.04, Penal Code, as amended by this
11 article, applies only to an offense committed on or after the
12 effective date of this Act. An offense committed before the
13 effective date of this Act is governed by the law in effect on the
14 date the offense was committed, and the former law is continued in
15 effect for that purpose. For purposes of this section, an offense
16 was committed before the effective date of this Act if any element
17 of the offense occurred before that date.

18 ARTICLE 5. EFFECTIVE DATE

19 SECTION 5.01. This Act takes effect September 1, 2023.