

By: Rodríguez

S.B. No. 1006

A BILL TO BE ENTITLED

AN ACT

relating to gun violence restraining orders and gun seizure warrants; creating a criminal offense.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 7B to read as follows:

CHAPTER 7B. GUN VIOLENCE RESTRAINING ORDERS

AND GUN SEIZURE WARRANTS

Art. 7B.01. DEFINITIONS. In this chapter:

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

(2) "Gun seizure warrant" means a written order issued by a judge and directed to a peace officer commanding the officer to seize any firearms that are purchased, owned, possessed, or controlled by a person who is subject to a gun violence restraining order and to bring the firearms before the judge.

(3) "Gun violence restraining order" means a court order prohibiting a person from purchasing, owning, possessing, or controlling a firearm.

Art. 7B.02. ISSUANCE OF GUN VIOLENCE RESTRAINING ORDER.

(a) Any person may submit to a court an application requesting the issuance of a gun violence restraining order. A judge shall issue a gun violence restraining order if the judge determines that the order is necessary to prevent a significant risk of personal injury

1 to any person, including the person who is the subject of the order.

2 (b) In determining whether to issue a gun violence  
3 restraining order to prohibit the purchase, ownership, possession,  
4 or control of a firearm by a person, the judge:

5 (1) may examine, under oath, any witnesses the judge  
6 considers necessary; and

7 (2) shall consider:

8 (A) recent threats or acts of violence by the  
9 person directed toward any person;

10 (B) prior violations of any type of restraining  
11 order by the person;

12 (C) prior history of use, attempted use, or  
13 threatened use of violence by the person against any person;

14 (D) prior criminal history of the person;

15 (E) evidence of recent or ongoing abuse of  
16 controlled substances or alcohol by the person; or

17 (F) evidence of recent acquisition of a firearm  
18 or other deadly weapon.

19 (c) A judge may not issue a gun violence restraining order  
20 for a period that exceeds one year.

21 (d) A gun violence restraining order must include:

22 (1) the date and time the order expires; and

23 (2) a statement that:

24 (A) the person may not purchase, own, possess,  
25 control, or attempt to purchase, own, possess, or control a firearm  
26 while the order is in effect; and

27 (B) the person is entitled to submit one written

1 request for a hearing at any time during the effective period of the  
2 order to determine whether the order will be terminated before its  
3 expiration date.

4 Art. 7B.03. ISSUANCE OF GUN SEIZURE WARRANT. (a) If there  
5 is probable cause to believe that a person who is the subject of a  
6 gun violence restraining order has violated the terms of the order,  
7 the judge shall issue a gun seizure warrant directing a peace  
8 officer to seize and retain any firearm specified in the warrant.

9 (b) A peace officer may seize a firearm specified in a gun  
10 seizure warrant from any place or from any person in possession or  
11 control of the firearm. A peace officer who seizes a firearm shall  
12 give a receipt for the firearm to the person from whom the firearm  
13 was taken. In the absence of a person, the officer shall leave the  
14 receipt in the place where the firearm was located.

15 (c) A peace officer may not seize a firearm that is located  
16 on property under the control of a person named in the gun seizure  
17 warrant if:

- 18 (1) the property is occupied by multiple parties; and  
19 (2) the firearm is lawfully owned by a person other  
20 than the person named in the warrant, and the person named in the  
21 warrant does not have access to or control of the firearm.

22 (d) A peace officer may not search, without consent, a gun  
23 safe that is located on property under the control of a person named  
24 in the gun seizure warrant if:

- 25 (1) the property is occupied by multiple parties; and  
26 (2) the gun safe is owned by a person other than the  
27 person named in the warrant.

1       Art. 7B.04. HEARING. (a) Not later than the 14th day after  
2 the date of issuance of a gun violence restraining order or gun  
3 seizure warrant, or a seizure made pursuant to a gun seizure  
4 warrant, as applicable, the court shall hold a hearing on the  
5 issuance of the order or warrant or the seizure made pursuant to the  
6 warrant.

7       (b) At the hearing the state must prove by clear and  
8 convincing evidence that the purchase, ownership, possession, or  
9 control of a firearm by the person named in the gun violence  
10 restraining order or gun seizure warrant poses a significant risk  
11 of personal injury to any person.

12       (c) If the court finds that the state has not met the burden  
13 of proof, the court shall, as applicable:

14               (1) rescind the gun violence restraining order or gun  
15 seizure warrant; or

16               (2) issue an order for the return of any firearm seized  
17 pursuant to the gun seizure warrant.

18       (d) A person who is the subject of a gun violence  
19 restraining order may submit one written request at any time during  
20 the effective period of the order to determine whether the order  
21 will be terminated before its expiration date.

22       Art. 7B.05. REQUEST FOR RENEWAL OF ORDER. A judge may renew  
23 a gun violence restraining order for one or more periods, the total  
24 of which may not exceed one year. Before renewing the order the  
25 court must hold a hearing and provide notice of the hearing to the  
26 person named in the order.

27       SECTION 2. Chapter 46, Penal Code, is amended by adding

1 Section 46.025 to read as follows:

2 Sec. 46.025. VIOLATION OF GUN VIOLENCE RESTRAINING ORDER.

3 (a) A person commits an offense if the person purchases, owns,  
4 possesses, or controls a firearm in violation of a gun violence  
5 restraining order issued under Article 7B.02, Code of Criminal  
6 Procedure.

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

8 SECTION 3. This Act takes effect September 1, 2015.