

By: Moody

H.B. No. 131

A BILL TO BE ENTITLED

AN ACT

relating to extreme risk protective orders and the prosecution of the criminal offense of unlawful transfer of a firearm; 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 7C to read as follows:

CHAPTER 7C. EXTREME RISK PROTECTIVE ORDER

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

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

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

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

(4) "Local mental health authority" has the meaning assigned by Section 571.003, Health and Safety Code.

(5) "Serious mental illness" has the meaning assigned by Section 1355.001, Insurance Code.

Art. 7C.02. APPLICATION FOR EXTREME RISK PROTECTIVE ORDER.

(a) An application for a protective order under this chapter may be filed by:

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

(2) a parent, guardian, or conservator of a person who

1 is under 18 years of age and a member of the respondent's family or
2 household; or

3 (3) a prosecuting attorney acting:

4 (A) on behalf of a person described by
5 Subdivision (1) or (2); or

6 (B) at the request of a peace officer.

7 (b) An application must:

8 (1) include:

9 (A) detailed allegations, based on personal
10 knowledge of a person described by Subsection (a)(1) or (2) or of a
11 peace officer, regarding any dangerous behavior or conduct
12 exhibited by the respondent as a result of a serious mental illness,
13 including any behavior or conduct related to the respondent's use
14 of firearms;

15 (B) any relevant medical or mental health
16 information concerning the respondent, including copies of
17 relevant medical or mental health records, if available;

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

21 (D) any other relevant facts indicating a need
22 for a protective order; and

23 (E) a statement that the applicant believes the
24 respondent poses an immediate and present danger of causing bodily
25 injury, serious bodily injury, or death to any person, including
26 the respondent, as a result of the respondent's serious mental
27 illness and access to firearms; and

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

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

9 Art. 7C.03. CONFIDENTIALITY OF CERTAIN INFORMATION. On
10 receiving an application containing specific medical or mental
11 health information concerning the respondent, the court shall order
12 the clerk to:

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

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

17 Art. 7C.04. TEMPORARY EX PARTE ORDER. (a) If the court
18 finds from the information contained in an application for a
19 protective order under this chapter that there is reasonable cause
20 to believe that the respondent poses an immediate and present
21 danger of causing bodily injury, serious bodily injury, or death to
22 any person, including the respondent, as a result of the
23 respondent's serious mental illness and access to firearms, the
24 court, without further notice to the respondent and without a
25 hearing, may issue a temporary ex parte order prohibiting the
26 respondent from purchasing, owning, possessing, or controlling a
27 firearm.

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

3 (1) relinquish, without delay, any firearms owned by
4 or in the actual or constructive possession or control of the
5 respondent to a law enforcement agency for holding in the manner
6 provided by Article 18.192;

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

10 (3) for purposes of determining whether the respondent
11 has a serious mental illness, submit to an examination by the local
12 mental health authority or a disinterested expert who is qualified
13 to diagnose, and experienced in diagnosing, mental illness.

14 Art. 7C.05. HEARING; ISSUANCE OF PROTECTIVE ORDER. (a) Not
15 later than the 14th day after the later of the date an application
16 is filed or the date a temporary ex parte order is issued, the court
17 shall hold a hearing on the issuance of the protective order.

18 (b) The court shall provide personal notice of the hearing
19 to the respondent.

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

22 (1) shall consider:

23 (A) the results of any examination described by
24 Article 7C.04(b)(3);

25 (B) any relevant medical or mental health
26 information concerning the respondent;

27 (C) any history of threats or acts of violence by

1 the respondent directed at any person, including the respondent;
2 (D) any history of the respondent using,
3 attempting to use, or threatening to use physical force against
4 another person;
5 (E) any recent violation by the respondent of an
6 order issued:
7 (i) under Chapter 7A or Article 17.292;
8 (ii) under Section 6.504 or Chapter 85,
9 Family Code;
10 (iii) under Chapter 83, Family Code, if the
11 temporary ex parte order has been served on the respondent; or
12 (iv) by another jurisdiction as provided by
13 Chapter 88, Family Code;
14 (F) any arrest or conviction of the respondent
15 for:
16 (i) an offense under Section 42.072, Penal
17 Code; or
18 (ii) a misdemeanor offense involving
19 violence, including family violence;
20 (G) any conviction of the respondent for an
21 offense under Section 42.09, 42.091, or 42.092, Penal Code; and
22 (H) evidence related to the respondent's abuse of
23 a controlled substance or alcohol, including evidence of any
24 treatment for and recovery from abusing a controlled substance or
25 alcohol; and
26 (2) may consider any other relevant factor including:
27 (A) any previous violation by the respondent of

1 an order described by Subdivision (1)(E); and

2 (B) evidence regarding the respondent's recent
3 acquisition of firearms, ammunition, or other deadly weapons.

4 (d) At the close of the hearing, if the court finds by clear
5 and convincing evidence that the respondent poses an immediate and
6 present danger of causing bodily injury, serious bodily injury, or
7 death to any person, including the respondent, as a result of the
8 respondent's serious mental illness and access to firearms, the
9 court shall issue a protective order that includes a statement of
10 the required finding.

11 (e) If the court does not make the finding described by
12 Subsection (d), the court shall, as applicable, immediately rescind
13 any temporary ex parte order issued under Article 7C.04 and return
14 the respondent's license to carry a handgun.

15 Art. 7C.06. CONTENTS OF PROTECTIVE ORDER. In a protective
16 order issued under Article 7C.05, the court shall:

17 (1) prohibit the person who is subject to the order
18 from purchasing, owning, possessing, or controlling a firearm for
19 the duration of the order; and

20 (2) order the person to:

21 (A) relinquish, without delay, any firearms
22 owned by or in the actual or constructive possession or control of
23 the person to a law enforcement agency for holding in the manner
24 provided by Article 18.192;

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

1 (C) if applicable, receive outpatient mental
2 health services if recommended by the local mental health authority
3 or expert after the authority or expert performs an examination
4 described by Article 7C.04(b)(3).

5 Art. 7C.07. DURATION OF PROTECTIVE ORDER. (a) A protective
6 order issued under Article 7C.05 is effective until the first
7 anniversary of the date the order was issued.

8 (b) The court may renew a protective order issued under
9 Article 7C.05 for a period not to exceed one year after the order's
10 original expiration date. Before renewing the order the court must
11 hold a hearing and provide personal notice of the hearing to the
12 person who is the subject of the order.

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

21 (d) At a hearing to renew or rescind a protective order
22 under this article, the court shall consider the factors described
23 by Article 7C.05(c).

24 Art. 7C.08. NOTICE TO DEPARTMENT OF PUBLIC SAFETY REGARDING
25 ISSUANCE OR EXPIRATION OF ORDER. (a) Not later than the 30th day
26 after the date a protective order is issued under Article 7C.05, the
27 clerk of the issuing court shall provide the following to the

1 Department of Public Safety:

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

4 (2) any known identifying number of the person,
5 including a social security number, driver's license number, or
6 state identification number;

7 (3) the person's date of birth; and

8 (4) if applicable, the person's license to carry a
9 handgun issued under Subchapter H, Chapter 411, Government Code.

10 (b) Not later than the 30th day after the date the
11 protective order expires under Article 7C.07, the clerk of the
12 issuing court shall notify the Department of Public Safety of the
13 expiration.

14 Art. 7C.09. APPLICATION OF OTHER LAW. To the extent
15 applicable, except as otherwise provided by this chapter, Title 4,
16 Family Code, applies to a protective order issued under this
17 chapter.

18 SECTION 2. Chapter 18, Code of Criminal Procedure, is
19 amended by adding Article 18.192 to read as follows:

20 Art. 18.192. HOLDING AND DISPOSITION OF FIREARM
21 RELINQUISHED UNDER EXTREME RISK PROTECTIVE ORDER. (a) A law
22 enforcement officer who takes possession of a firearm from a person
23 who is the subject of an extreme risk protective order issued under
24 Chapter 7C shall immediately provide the person a written copy of
25 the receipt for the firearm and a written notice of the procedure
26 for the return of a firearm under this article.

27 (b) Not later than the seventh day after the date a firearm

1 subject to disposition under this article is received, the law
2 enforcement agency holding the firearm shall notify the court that
3 issued the extreme risk protective order that the person who is the
4 subject of the order has relinquished the firearm.

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

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

16 (e) If the check conducted under Subsection (d) verifies
17 that the person may lawfully possess a firearm, the law enforcement
18 agency shall provide to the person by certified mail written notice
19 stating that the firearm may be returned to the person if the person
20 submits a written request before the 121st day after the date of the
21 notice.

22 (f) An unclaimed firearm that is received under an extreme
23 risk protective order issued under Chapter 7C may not be destroyed
24 or forfeited to the state.

25 (g) The law enforcement agency holding the firearm may
26 provide for the firearm to be sold by a person who is a licensed
27 firearms dealer under 18 U.S.C. Section 923 if:

1 (1) the check conducted under Subsection (d) shows
2 that the person who was the subject of the extreme risk protective
3 order may not lawfully possess a firearm; or

4 (2) the notice is provided under Subsection (e) and
5 the person who was the subject of the extreme risk protective order
6 does not submit, before the 121st day after the date of the notice,
7 a written request for the return of the firearm.

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

11 (i) A law enforcement officer or other employee of a law
12 enforcement agency is subject to punishment for contempt of court
13 if the officer or employee violates this article with the intent to
14 withhold a firearm from a person who, at the time the violation
15 occurred:

16 (1) was the subject of an extreme risk protective
17 order that was rescinded or that expired; and

18 (2) may lawfully possess the firearm.

19 SECTION 3. Subchapter D, Chapter 411, Government Code, is
20 amended by adding Section 411.0522 to read as follows:

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

27 (b) The procedure must require the department to provide any

1 information received under Article 7C.08, Code of Criminal
2 Procedure, to the Federal Bureau of Investigation not later than
3 the 30th day after the date the department received the
4 information.

5 SECTION 4. Section 411.172(a), Government Code, is amended
6 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 Chapter 7C,
12 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 5. Chapter 37, Penal Code, is amended by adding
23 Section 37.082 to read as follows:

24 Sec. 37.082. FALSE REPORT REGARDING REQUEST FOR EXTREME
25 RISK PROTECTIVE ORDER. (a) In this section, "prosecuting
26 attorney" means a district attorney, criminal district attorney, or
27 county attorney.

1 (b) A person commits an offense if, with intent to deceive,
2 the person knowingly makes to a prosecuting attorney or peace
3 officer a false statement relating to a request that a prosecuting
4 attorney file an application for an extreme risk protective order
5 under Chapter 7C, Code of Criminal Procedure.

6 (c) An offense under this section is a Class B misdemeanor.

7 SECTION 6. Section 46.06(a), Penal Code, is amended to read
8 as follows:

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

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

14 (2) intentionally or knowingly sells, rents, leases,
15 or gives or offers to sell, rent, lease, or give to any child
16 younger than 18 years of age any firearm, club, or
17 location-restricted knife;

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

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

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

26 (B) the person's release from supervision under
27 community supervision, parole, or mandatory supervision following

1 conviction of the felony;

2 (5) sells, rents, leases, loans, or gives a handgun to
3 any person knowing that an active protective order is directed to
4 the person to whom the handgun is to be delivered;

5 (6) sells, rents, leases, loans, or gives a firearm to
6 any person knowing that an active extreme risk protective order
7 under Chapter 7C, Code of Criminal Procedure, is directed to the
8 person to whom the firearm is to be delivered; or

9 (7) [~~6~~] knowingly purchases, rents, leases, or
10 receives as a loan or gift from another a handgun while an active
11 protective order is directed to the actor.

12 SECTION 7. Section 46.06, Penal Code, as amended by this
13 Act, applies only to an offense committed on or after the effective
14 date of this Act. An offense committed before the effective date of
15 this Act is governed by the law in effect on the date the offense was
16 committed, and the former law is continued in effect for that
17 purpose. For purposes of this section, an offense was committed
18 before the effective date of this Act if any element of the offense
19 occurred before that date.

20 SECTION 8. Not later than October 1, 2019, the Department of
21 Public Safety shall adopt rules as required by Section 411.0522,
22 Government Code, as added by this Act.

23 SECTION 9. This Act takes effect September 1, 2019.