

By: Moody

H.B. No. 395

A BILL TO BE ENTITLED

AN ACT

relating to extreme risk protective orders; creating criminal offenses.

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

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

SUBCHAPTER D. EXTREME RISK PROTECTIVE ORDER

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

(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. 7B.152. APPLICATION FOR EXTREME RISK PROTECTIVE ORDER.

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

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

(2) a parent, guardian, or conservator of a person who is under 18 years of age and a member of the respondent's family or

1 household; or

2 (3) a prosecuting attorney acting:

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

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

6 (b) An application must:

7 (1) include:

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

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

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

20 (D) any other relevant facts indicating a need
21 for a protective order under this subchapter; and

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

27 (2) be signed by the applicant under an oath that, to

1 the knowledge and belief of the applicant, the facts and
2 circumstances contained in the application are true.

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

8 Art. 7B.153. CONFIDENTIALITY OF CERTAIN INFORMATION. On
9 receiving an application containing specific medical or mental
10 health information concerning the respondent, the court shall order
11 the clerk to:

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

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

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

27 (b) In a temporary ex parte order, the court may order the

1 respondent to:

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

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

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

13 Art. 7B.155. HEARING; ISSUANCE OF PROTECTIVE ORDER. (a)
14 Not later than the 14th day after the later of the date an
15 application is filed or the date a temporary ex parte order is
16 issued, the court shall hold a hearing on the issuance of the
17 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 7B.154(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 another provision of this chapter
8 or under Article 17.292;
9 (ii) under Section 6.504 or Chapter 85,
10 Family Code;
11 (iii) under Chapter 83, Family Code, if the
12 temporary ex parte order has been served on the respondent; or
13 (iv) by another jurisdiction as provided by
14 Chapter 88, Family Code;
15 (F) any arrest or conviction of the respondent
16 for:
17 (i) an offense under Section 42.072, Penal
18 Code; or
19 (ii) a misdemeanor offense involving
20 violence, including family violence;
21 (G) any conviction of the respondent for an
22 offense under Section 42.09, 42.091, or 42.092, Penal Code; and
23 (H) evidence related to the respondent's abuse of
24 a controlled substance or alcohol, including evidence of any
25 treatment for and recovery from abusing a controlled substance or
26 alcohol; and
27 (2) may consider any other relevant factor including:

1 (A) any previous violation by the respondent of
2 an order described by Subdivision (1)(E); and

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

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

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

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

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

21 (2) order the person to:

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

26 (B) if applicable, surrender to the court the
27 person's license to carry a handgun issued under Subchapter H,

1 Chapter 411, Government Code; and

2 (C) if applicable, receive outpatient mental
3 health services if recommended by the local mental health authority
4 or expert after the authority or expert performs an examination
5 described by Article 7B.154(b)(3); and

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

9 Art. 7B.157. DURATION OF PROTECTIVE ORDER. (a) A
10 protective order issued under Article 7B.155 is effective until the
11 first anniversary of the date the order was issued.

12 (b) The court may renew a protective order issued under
13 Article 7B.155 for a period not to exceed one year after the order's
14 original expiration date. Before renewing the order the court must
15 hold a hearing and provide personal notice of the hearing to the
16 person who is the subject of the order.

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

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

Art. 7B.158. NOTICE TO DEPARTMENT OF PUBLIC SAFETY. (a)

Not later than the 30th day after the date a protective order is issued under Article 7B.155, the clerk of the issuing court shall provide the following to the Department of Public Safety:

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

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

(3) the person's date of birth;

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

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

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

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

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

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

(c) Not later than the 30th day after the date the protective order expires under Article 7B.157, the clerk of the issuing court shall notify the Department of Public Safety of the

1 expiration.

2 Art. 7B.159. APPLICATION OF OTHER LAW. Except as otherwise
3 provided by this subchapter and to the extent applicable, Title 4,
4 Family Code, applies to a protective order issued under this
5 subchapter.

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

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

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

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

24 (d) Not later than the 30th day after the date the law
25 enforcement agency holding a firearm subject to disposition under
26 this article receives the notice described by Subsection (c), the
27 law enforcement agency shall conduct a check of state and national

1 criminal history record information to verify whether the person
2 may lawfully possess a firearm under 18 U.S.C. Section 922(g) and
3 under the law of this state.

4 (e) If the check conducted under Subsection (d) verifies
5 that the person may lawfully possess a firearm, the law enforcement
6 agency shall provide to the person by certified mail written notice
7 stating that the firearm may be returned to the person if the person
8 submits a written request before the 121st day after the date of the
9 notice.

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

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

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

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

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

26 (i) A law enforcement officer or other employee of a law
27 enforcement agency is subject to punishment for contempt of court

1 if the officer or employee violates this article with the intent to
2 withhold a firearm from a person who, at the time the violation
3 occurred:

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

6 (2) may lawfully possess the firearm.

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

9 Sec. 411.0522. INFORMATION CONCERNING EXTREME RISK
10 PROTECTIVE ORDER. (a) The department by rule shall establish a
11 procedure to provide information concerning a person who is the
12 subject of an extreme risk protective order issued under Subchapter
13 D, Chapter 7B, Code of Criminal Procedure, to the Federal Bureau of
14 Investigation for inclusion in the National Instant Criminal
15 Background Check System.

16 (b) The procedure must require the department to provide any
17 information received under Article 7B.158, Code of Criminal
18 Procedure, to the Federal Bureau of Investigation not later than
19 the 30th day after the date the department received the
20 information.

21 SECTION 4. Section 411.172(a), Government Code, is amended
22 to read as follows:

23 (a) A person is eligible for a license to carry a handgun if
24 the person:

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

- 1 (2) is at least 21 years of age;
- 2 (3) has not been convicted of a felony;
- 3 (4) is not charged with the commission of a Class A or
4 Class B misdemeanor or equivalent offense, or of an offense under
5 Section 42.01, Penal Code, or equivalent offense, or of a felony
6 under an information or indictment;
- 7 (5) is not a fugitive from justice for a felony or a
8 Class A or Class B misdemeanor or equivalent offense;
- 9 (6) is not a chemically dependent person;
- 10 (7) is not incapable of exercising sound judgment with
11 respect to the proper use and storage of a handgun;
- 12 (8) has not, in the five years preceding the date of
13 application, been convicted of a Class A or Class B misdemeanor or
14 equivalent offense or of an offense under Section 42.01, Penal
15 Code, or equivalent offense;
- 16 (9) is fully qualified under applicable federal and
17 state law to purchase a handgun;
- 18 (10) has not been finally determined to be delinquent
19 in making a child support payment administered or collected by the
20 attorney general;
- 21 (11) has not been finally determined to be delinquent
22 in the payment of a tax or other money collected by the comptroller,
23 the tax collector of a political subdivision of the state, or any
24 agency or subdivision of the state;
- 25 (12) is not currently:
- 26 (A) restricted under a court protective order,
27 including an extreme risk protective order issued under Subchapter

1 D, Chapter 7B, Code of Criminal Procedure; or

2 (B) subject to a restraining order affecting the
3 spousal relationship, other than a restraining order solely
4 affecting property interests;

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

8 (14) has not made any material misrepresentation, or
9 failed to disclose any material fact, in an application submitted
10 pursuant to Section 411.174.

11 SECTION 5. Sections 411.187(a) and (c), Government Code,
12 are amended to read as follows:

13 (a) The department shall suspend a license under this
14 section if the license holder:

15 (1) is charged with the commission of a Class A or
16 Class B misdemeanor or equivalent offense, or of an offense under
17 Section 42.01, Penal Code, or equivalent offense, or of a felony
18 under an information or indictment;

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

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

24 (4) is arrested for an offense involving family
25 violence or an offense under Section 42.072, Penal Code, and is the
26 subject of an order for emergency protection issued under Article
27 17.292, Code of Criminal Procedure; or

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

3 (c) The department shall suspend a license under this
4 section:

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

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

10 [~~(A) is subject to suspension for a reason listed~~
11 ~~in Subsection (a), other than the reason listed in Subsection~~
12 ~~(a)(1), and~~

13 [~~(B) has been previously suspended for the same~~
14 ~~reason,~~

15 [~~(3)~~] until dismissal of the charges, if the person's
16 license is subject to suspension for the reason listed in
17 Subsection (a)(1); or

18 (3) [~~(4)~~] for the duration of or the period specified
19 by:

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

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

27 (C) the extreme risk protective order issued

1 under Subchapter D, Chapter 7B, Code of Criminal Procedure, if the
2 person's license is subject to suspension for the reason listed in
3 Subsection (a)(5) [~~(a)(6)~~].

4 SECTION 6. Chapter 37, Penal Code, is amended by adding
5 Section 37.083 to read as follows:

6 Sec. 37.083. FALSE REPORT REGARDING REQUEST FOR EXTREME
7 RISK PROTECTIVE ORDER. (a) In this section, "prosecuting
8 attorney" means a district attorney, criminal district attorney, or
9 county attorney.

10 (b) A person commits an offense if, with intent to deceive,
11 the person knowingly makes to a prosecuting attorney or peace
12 officer a false statement relating to a request that a prosecuting
13 attorney file an application for an extreme risk protective order
14 under Subchapter D, Chapter 7B, Code of Criminal Procedure.

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

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

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

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

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

27 (3) intentionally, knowingly, or recklessly sells a

1 firearm or ammunition for a firearm to any person who is
2 intoxicated;

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

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

8 (B) the person's release from supervision under
9 community supervision, parole, or mandatory supervision following
10 conviction of the felony;

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

14 (6) sells, rents, leases, loans, or gives a firearm to
15 any person knowing that an active extreme risk protective order
16 under Subchapter D, Chapter 7B, Code of Criminal Procedure, is
17 directed to the person to whom the firearm is to be delivered; or

18 (7) [~~6~~] knowingly purchases, rents, leases, or
19 receives as a loan or gift from another a handgun while an active
20 protective order is directed to the actor.

21 SECTION 8. Section 46.06, Penal Code, as amended by this
22 Act, applies only to an offense committed on or after the effective
23 date of this Act. An offense committed before the effective date of
24 this Act is governed by the law in effect on the date the offense was
25 committed, and the former law is continued in effect for that
26 purpose. For purposes of this section, an offense was committed
27 before the effective date of this Act if any element of the offense

1 occurred before that date.

2 SECTION 9. Not later than October 1, 2021, the Department of
3 Public Safety shall adopt rules as required by Section 411.0522,
4 Government Code, as added by this Act.

5 SECTION 10. This Act takes effect September 1, 2021.