

By: Goodwin

H.B. No. 2878

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.

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:

(A) under 18 years of age; and

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

(3) a peace officer.

1 (b) An application must:

2 (1) include:

3 (A) detailed allegations, based on personal
4 knowledge of a person described by Subsection (a), regarding any
5 dangerous behavior or conduct exhibited by the respondent,
6 including any behavior or conduct related to the respondent's use
7 of firearms;

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

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

13 (D) a statement that the applicant believes the
14 respondent poses an immediate and present danger of causing bodily
15 injury, serious bodily injury, or death to any person, including
16 the respondent, as a result of the respondent's access to firearms;
17 and

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

21 (c) An application for a protective order under this
22 subchapter may be filed in a district court, juvenile court having
23 the jurisdiction of a district court, statutory county court, or
24 constitutional county court in the county in which the applicant or
25 the respondent resides.

26 Art. 7B.153. CONFIDENTIALITY OF CERTAIN INFORMATION. On
27 receiving an application containing specific health information

concerning the respondent, the court shall order the clerk to:

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

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

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

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

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

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

Art. 7B.155. HEARING; ISSUANCE OF PROTECTIVE ORDER. (a) Not later than the 14th day after the later of the date an

application is filed or the date a temporary ex parte order is issued, the court shall hold a hearing on the issuance of the protective order.

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

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

(1) shall consider:

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

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

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

(i) under another provision of Chapter 7B or under Article 17.292;

(ii) under Section 6.504 or Chapter 85, Family Code;

(iii) under Chapter 83, Family Code, if the temporary ex parte order has been served on the respondent; or

(iv) by another jurisdiction as provided by Chapter 88, Family Code;

(D) any arrest or conviction of the respondent for:

(i) an offense under Section 42.072, Penal Code; or

1 (ii) a misdemeanor offense involving
2 violence, including family violence;

3 (E) any conviction of the respondent for an
4 offense under Section 42.09, 42.091, or 42.092, Penal Code; and

5 (F) evidence related to the respondent's current
6 or recent abuse of a controlled substance or alcohol, not including
7 any evidence of previous treatment for or recovery from abusing a
8 controlled substance or alcohol; and

9 (2) may consider any other relevant factor including:

10 (A) any previous violation by the respondent of
11 an order described by Subdivision (1)(C); and

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

14 (d) At the close of the hearing, if the court finds by clear
15 and convincing evidence that the respondent poses an immediate and
16 present danger of causing bodily injury, serious bodily injury, or
17 death to any person, including the respondent, as a result of the
18 respondent's access to firearms, the court shall issue a protective
19 order that includes a statement of the required finding.

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

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

26 (1) prohibit the person who is subject to the order
27 from purchasing, owning, possessing, or controlling a firearm for

1 the duration of the order;

2 (2) order the person to:

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

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

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

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

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

22 (c) A person who is the subject of a protective order may
23 file a motion not earlier than the 91st day after the date on which
24 the order was initially issued or renewed, as applicable,
25 requesting that the court review the order and determine whether
26 there is a continuing need for the order. After a hearing on the
27 motion, if the court fails to make the finding that there is no

continuing need for the order, the order remains in effect until the date the order expires as provided by this article.

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

Art. 7B.158. NOTICE TO DEPARTMENT OF PUBLIC SAFETY. (a) Not later than 24 hours after the time 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

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

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

7 Art. 7B.159. APPLICATION OF OTHER LAW. To the extent
8 applicable, except as otherwise provided by this subchapter, Title
9 4, Family Code, applies to a protective order issued under this
10 subchapter.

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

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

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

25 (c) Not later than the 30th day after the date the extreme
26 risk protective order is rescinded or expires, the clerk of the
27 court shall notify the law enforcement agency of the rescission or

1 expiration.

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

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

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

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

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

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

26 (h) The proceeds from the sale of a firearm under this
27 article shall be paid to the owner of the seized firearm, less the

1 cost of administering this article with respect to the firearm.

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

4 Sec. 411.0522. INFORMATION CONCERNING EXTREME RISK
5 PROTECTIVE ORDER. (a) The department by rule shall establish a
6 procedure to provide information concerning a person who is the
7 subject of an extreme risk protective order to the Federal Bureau of
8 Investigation for inclusion in the National Instant Criminal
9 Background Check System.

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

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

16 (a) A person is eligible for a license to carry a handgun if
17 the person:

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

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

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

23 (4) is not charged with the commission of a Class A or
24 Class B misdemeanor or equivalent offense, or of an offense under
25 Section 42.01, Penal Code, or equivalent offense, or of a felony
26 under an information or indictment;

27 (5) is not a fugitive from justice for a felony or a

1 Class A or Class B misdemeanor or equivalent offense;

2 (6) is not a chemically dependent person;

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

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

9 (9) is fully qualified under applicable federal and
10 state law to purchase a handgun;

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

14 (11) has not been finally determined to be delinquent
15 in the payment of a tax or other money collected by the comptroller,
16 the tax collector of a political subdivision of the state, or any
17 agency or subdivision of the state;

18 (12) is not currently:

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

22 (B) subject to a restraining order affecting the
23 spousal relationship, other than a restraining order solely
24 affecting property interests;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. Chapter [37](#), Penal Code, is amended by adding Section 37.083 to read as follows:

Sec. 37.083. FALSE REPORT REGARDING REQUEST FOR EXTREME RISK PROTECTIVE ORDER. (a) A person commits an offense if, with

1 intent to deceive, the person makes a statement that the person
2 knows to be false to a peace officer relating to a request that the
3 officer file an application for an extreme risk protective order
4 under Subchapter D, Chapter 7B, Code of Criminal Procedure.

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

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

9 SECTION 7. Section 46.04, Penal Code, is amended by adding
10 Subsection (c-1) and amending Subsection (e) to read as follows:

11 (c-1) A person commits an offense if, after receiving notice
12 that the person is subject to an extreme risk protective order
13 issued under Subchapter D, Chapter 7B, Code of Criminal Procedure,
14 and before expiration of the order, the person purchases, owns,
15 possesses, or controls a firearm in violation of the order.

16 (e) An offense under Subsection (a) is a felony of the third
17 degree. An offense under Subsection (b), ~~(c)~~ (c), or (c-1) is a
18 Class A misdemeanor.

19 SECTION 8. Not later than October 1, 2021, the Department of
20 Public Safety shall adopt rules as required by Section 411.0522,
21 Government Code, as added by this Act.

22 SECTION 9. This Act takes effect September 1, 2021.