

By: West

S.B. No. 110

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

household; or

(3) a prosecuting attorney acting:

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

(B) at the request of a peace officer.

(b) An application must:

(1) include:

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

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

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

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

(E) a statement that the applicant believes 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 serious mental
illness and access to firearms; and

(F) for an applicant described by Subsection

1 (a)(3), a statement that the applicant provided notice under
2 Subsection (d) or that the applicant intends to provide that notice
3 promptly and indicating the manner in which the notice is to be
4 provided; and

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

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

13 (d) An applicant described by Subsection (a)(3), before
14 filing an application under this subchapter or promptly following
15 filing the application, shall make a good faith attempt to notify a
16 member of the respondent's family or household and any other person
17 that the applicant believes may be at risk as a result of the
18 respondent's dangerous behavior or conduct of:

19 (1) the application filed or the applicant's intent to
20 file an application under this subchapter; and

21 (2) available mental health, family violence, and
22 counseling resources.

23 Art. 7B.153. CONFIDENTIALITY OF CERTAIN INFORMATION. On
24 receiving an application containing specific medical or mental
25 health information concerning the respondent, the court shall order
26 the clerk to:

27 (1) strike the information from the public records of

1 the court; and

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

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

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

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

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

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

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

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

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

10 (1) shall consider:

11 (A) the results of any examination described by
12 Article 7B.154(b)(3);

13 (B) any relevant medical or mental health
14 information concerning the respondent;

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

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

20 (E) any recent violation by the respondent of an
21 order issued:

22 (i) under another provision of this chapter
23 or under Article [17.292](#);

24 (ii) under Section [6.504](#) or Chapter [85](#),
25 Family Code;

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

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

3 (F) any arrest or conviction of the respondent
4 for:

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

7 (ii) a misdemeanor offense involving
8 violence, including family violence;

9 (G) any conviction of the respondent for an
10 offense under Section 42.09, 42.091, or 42.092, Penal Code; and

11 (H) evidence related to the respondent's abuse of
12 a controlled substance or alcohol, including evidence of any
13 treatment for and recovery from abusing a controlled substance or
14 alcohol; and

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

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

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

20 (d) At the close of the hearing, if the court finds by clear
21 and convincing evidence that the respondent poses an immediate and
22 present danger of causing bodily injury, serious bodily injury, or
23 death to any person, including the respondent, as a result of the
24 respondent's serious mental illness and access to firearms, the
25 court shall issue a protective order that includes a statement of
26 the required finding.

27 (e) If the court does not make the finding described by

1 Subsection (d), the court shall, as applicable, immediately rescind
2 any temporary ex parte order issued under Article 7B.154 and return
3 the respondent's license to carry a handgun.

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

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

9 (2) order the person to:

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

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

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

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

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

27 (b) The court may renew a protective order issued under

1 Article 7B.155 for a period not to exceed one year after the order's
2 original expiration date. Before renewing the order the court must
3 hold a hearing and provide personal notice of the hearing to the
4 person who is the subject of the order.

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

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

16 Art. 7B.158. NOTICE TO DEPARTMENT OF PUBLIC SAFETY. (a)
17 Not later than the 30th day after the date a protective order is
18 issued under Article 7B.155, the clerk of the issuing court shall
19 provide the following to the Department of Public Safety:

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

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

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

26 (4) if surrendered to the court, the person's license
27 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 of Public Safety 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 expiration.

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

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

Art. 18.192. HOLDING AND DISPOSITION OF FIREARM RELINQUISHED UNDER EXTREME RISK PROTECTIVE ORDER. (a) A law enforcement officer who takes possession of a firearm from a person who is the subject of an extreme risk protective order issued under Subchapter D, Chapter 7B, shall immediately provide the person a

1 written copy of the receipt for the firearm and a written notice of
2 the procedure for the return of a firearm under this article.

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

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

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

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

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

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

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

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

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

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

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

21 (2) may lawfully possess the firearm.

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

24 Sec. 411.0522. INFORMATION CONCERNING EXTREME RISK
25 PROTECTIVE ORDER. (a) The department by rule shall establish a
26 procedure to provide information concerning a person who is the
27 subject of an extreme risk protective order issued under Subchapter

1 D, Chapter 7B, Code of Criminal Procedure, to the Federal Bureau of
2 Investigation for inclusion in the National Instant Criminal
3 Background Check System.

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

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

11 (a) A person is eligible for a license to carry a handgun if
12 the person:

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

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

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

18 (4) is not charged with the commission of a Class A or
19 Class B misdemeanor or equivalent offense, or of an offense under
20 Section 42.01, Penal Code, or equivalent offense, or of a felony
21 under an information or indictment;

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

24 (6) is not a chemically dependent person;

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

27 (8) has not, in the five years preceding the date of

1 application, been convicted of a Class A or Class B misdemeanor or
2 equivalent offense or of an offense under Section 42.01, Penal
3 Code, or equivalent offense;

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

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

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

13 (12) is not currently:

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

17 (B) subject to a restraining order affecting the
18 spousal relationship, other than a restraining order solely
19 affecting property interests;

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

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

26 SECTION 5. Sections 411.187(a) and (c), Government Code,
27 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~~

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

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

6 (3) ~~[(4)]~~ for the duration of or the period specified
7 by:

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

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

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

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

21 Sec. 37.083. FALSE REPORT REGARDING REQUEST FOR EXTREME
22 RISK PROTECTIVE ORDER. (a) In this section, "prosecuting
23 attorney" means a district attorney, criminal district attorney, or
24 county attorney.

25 (b) A person commits an offense if, with intent to deceive,
26 the person knowingly makes to a prosecuting attorney or peace
27 officer a false statement relating to a request that a prosecuting

1 attorney file an application for an extreme risk protective order
2 under Subchapter D, Chapter 7B, Code of Criminal Procedure.

3 (c) An offense under this section is a Class A misdemeanor.

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

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

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

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

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

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

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

23 (B) the person's release from supervision under
24 community supervision, parole, or mandatory supervision following
25 conviction of the felony;

26 (5) sells, rents, leases, loans, or gives a handgun to
27 any person knowing that an active protective order is directed to

1 the person to whom the handgun is to be delivered;

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

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

9 SECTION 8. Section 46.06, Penal Code, as amended by this
10 Act, applies only to an offense committed on or after the effective
11 date of this Act. An offense committed before the effective date of
12 this Act is governed by the law in effect on the date the offense was
13 committed, and the former law is continued in effect for that
14 purpose. For purposes of this section, an offense was committed
15 before the effective date of this Act if any element of the offense
16 occurred before that date.

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

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