

BILL ANALYSIS

S.B. 1362
By: Hughes
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that banning the recognition or enforcement of red flag orders, also called extreme risk protective orders, would safeguard Texans' constitutional rights and reinforce the state's commitment to protecting the rights of law-abiding citizens while ensuring due process for all Texans. S.B. 1362, the Anti-Red Flag Act, seeks to address this issue by prohibiting all governmental entities in Texas from recognizing or enforcing extreme risk protective orders unless explicitly authorized by state law, prohibiting such entities from accepting federal funds to enforce extreme risk protective orders, and creating an offense for the unlawful enforcement of extreme risk protective orders.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1362 amends the Code of Criminal Procedure to prohibit the following entities from adopting or enforcing a rule, ordinance, order, policy, or other similar measure relating to an extreme risk protective order unless state law specifically authorizes the adoption and enforcement of such a rule, ordinance, order, policy, or measure:

- the State of Texas, including an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the state constitution or state statute, including a university system or a system of higher education;
- the governing body of a municipality, county, or special district or authority;
- an officer, employee, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and
- a district attorney or criminal district attorney.

The bill also prohibits any such entity from accepting federal grant funds for the implementation, service, or enforcement of a federal statute, order, rule, or regulation purporting to implement or enforce an extreme risk protective order against a person in Texas. The bill defines "extreme risk protective order" as a written order, warrant, or executive order issued by a court or signed by a magistrate or other court officer that is not issued on the basis of conduct that resulted in a criminal charge for the person who is the subject of the order and that has the primary purpose of reducing the risk of death or injury related to a firearm by prohibiting the person from owning,

possessing, or receiving a firearm or requiring the person to surrender a firearm or otherwise removing a firearm from the person.

S.B. 1362 establishes that a federal statute, order, rule, or regulation purporting to implement or enforce an extreme risk protective order against a person in Texas that infringes on the person's right of due process, keeping and bearing arms, or free speech protected by the U.S. Constitution or the Texas Constitution is unenforceable as against the public policy of the state and has no effect.

S.B. 1362 creates a state jail felony offense for a person who serves or enforces or attempts to serve or enforce an extreme risk protective order against a person in Texas, unless the order was issued under state law.

EFFECTIVE DATE

September 1, 2025.