

- SUBJECT:** Prohibiting possession of firearms by people under protective orders
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Hinojosa, Dunnam, Talton, Garcia, Martinez Fischer, Shields
0 nays
3 absent — Keel, Green, Kitchen
- SENATE VOTE:** On final passage, February 22 — voice vote
- WITNESSES:** For — Bree Buchanan, Texas Council on Family Violence; Mark Clark, Houston Police Officers Union, Dallas Police Association, Harris County Deputies Organization, South Texas Organization of Police, Texas Union of Police and Sheriffs; Donald W. Dickson, Texas State Troopers Association; *Registered but did not testify:* Carl A. Parker and Froy Salinas, Texas State Troopers Association; Steve T. Lyons, Houston Police Department; Lesley Nicole Ramsey

Against — None
- BACKGROUND:** Federal law (18 U.S.C. 922(g)(8)) makes it illegal for a person under a protective order to possess a firearm, although sec. 925(a) makes an exception for a peace officer. The law also prohibits any person convicted of a misdemeanor crime of domestic violence from possessing a firearm (sec. 922(g)(9)). No similar provisions exist in Texas law.

Penal Code, sec. 25.07 states that a person commits an offense if he or she, in violation of a protective order, knowingly and intentionally commits family violence, stalks another, communicates in a threatening or harassing manner with a person under the order, or goes near a place, such as residence or place of employment, described in the order. The offense is a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) unless the person has been convicted of a similar offense at least twice before or violated the protective order by committing an assault or a stalking offense, in which case the penalty is a third-degree felony

(punishable by two to 10 years in prison and an optional fine of up to \$10,000).

Penal Code, sec. 46.01(3) defines a firearm as any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Exceptions are made for antique or curio firearms manufactured before 1899 that may have a folding knife blade as an integral part or replicas of those firearms, but only if the replica does not use rim-fire or center-fire ammunition.

Penal Code, sec. 46.04 makes it a third-degree felony for a convicted felon to possess a firearm after conviction and before the fifth anniversary of his or her release from confinement following conviction or of his or her release from probation, parole, or mandatory supervision, whichever date is later. After the fifth anniversary, the felon can possess a firearm only at his or her place of residence.

Family Code, sec. 85.022 sets the requirements for a protective order against a person who has committed family violence. Among other provisions, the order can prohibit the person from committing family violence; communicating directly with a member of the family or household in a threatening or harassing manner; communicating a threat to a family or household member through someone else; going near the residence, school, or place of employment of a person protected under the order; or engaging in harassing conduct toward a member of the family or household. Violation of the order is punishable by one year in jail and an optional fine of up to \$4,000. If the violation is an act of family violence, it can be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a felony offense, it is punishable by at least two years in prison.

Family Code, sec. 85.026 outlines the required statement that must appear on a protective order in boldfaced type or capital letters. The statement must include the punishment for violation of the order; give notice that no one, including the person protected by the order, can give permission to ignore or violate the order; and assert that it is unlawful for any person who is subject to a protective order to possess a firearm or ammunition.

Code of Criminal Procedure, art. 17.292 sets the requirements for an emergency protective order against a person who has committed an offense involving family violence or stalking. The provisions of the order and the penalty for breaking it are similar to those outlined in Family Code, sec. 85.022.

Code of Criminal Procedure, art. 2.12 defines peace officers as including sheriffs and their deputies, constables, marshals or police officers of an incorporated city, town, or village, rangers and officers commissioned by the Texas Department of Public Safety (DPS), and officers commissioned by various other state agencies.

DIGEST:

SB 199 would make it an offense for a person under a protective order to possess a firearm in violation of that order. Firearm would have the meaning assigned by Penal Code, chapter 46.

SB 199 would add to the list of those prohibited from possessing firearms a person convicted of Class A misdemeanor assault against a member of his or her family or household. Such a person could possess a firearm on or after the fifth anniversary of release from confinement or community supervision following conviction of the misdemeanor. The bill also would add a person who was subject to a protective order to the list of those prohibited from possessing a firearm. For such a person, possessing a firearm would be a Class A misdemeanor. An exception would be made for a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

SB 199 would amend the Family Code to prohibit a person under a protective order from possessing a firearm unless that person were a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. The bill would add the peace-officer exception to the statement that must appear on a protective order.

SB 199 would amend Code of Criminal Procedure, art. 17.292 to prohibit a person under an emergency protective order from possessing a firearm unless that person were a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Also, it would add to the required statement on an emergency protective order the

assertion that possession of a firearm by a person subject to the order may be prosecuted as a separate offense punishable by confinement or imprisonment. The statement would include notification of the peace-officer exception.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

SB 199 would make it easier to enforce current laws protecting the victims of domestic violence. Local law enforcement officials may not enforce federal law, and there are not enough federal law enforcement officials to protect Texans from those who possess guns after conviction of family violence or in violation of protective orders. Women protected by these orders have reported that their violent ex-husbands had arsenals of weapons that local police could do nothing about. By creating a Texas law similar to the federal statute, SB 199 would allow local police to arrest these violators.

SB 199 would reduce the likelihood that domestic violence would turn into murder by allowing local law enforcement officials to arrest a person who possessed a firearm after conviction of Class A misdemeanor domestic violence or in violation of a protective order. These people, who have shown themselves to be violent and irresponsible, are prohibited by federal law from possessing guns. In addition, current Texas law prohibits those convicted of a felony, including felony domestic violence, from possessing firearms. The Texas Council on Family Violence estimates that 72 of 102 women murdered by their domestic partners in 1997 were killed with guns. According to DPS, family violence resulted in 152 murders in 1999, the last year for which data are available. Also, 55 law enforcement officers across the nation were killed with firearms in 1997 while responding to scenes of domestic violence.

SB 199 would not infringe upon the Second Amendment rights of gun owners because it would criminalize possession of a firearm only for persons under a protective order or after a misdemeanor conviction of family violence, which already is a federal offense.

SB 199 would strike a balance between protecting those who file protective orders and allowing peace officers to continue to make a living. A law enforcement officer under a protective order could not carry a firearm

outside of work. This would allow officers who were accused but not convicted of family violence to maintain their livelihood. Federal law already makes this exception for law enforcement officials. The bill would not allow law enforcement officers convicted of Class A misdemeanor family violence to possess firearms, a stipulation that exists in federal law as well.

SB 199 would protect Texans from having their guns taken away when a restraining order was filed in a contentious divorce. The bill would require that a protective order prohibiting possession of guns be prompted by family violence or an attempt to do harm. In the rare event that the firearm restriction would apply to persons under an *ex parte* restraining order issued in another state (Family Code, chapter 88), those persons would have to be informed of the restraining order against them and have the opportunity for due process. In addition, the prohibition against possessing a firearm would last only for the duration of this temporary order.

OPPONENTS
SAY:

By making an exception for peace officers, SB 199 would hold them to a different standard from the standard for other people under protective orders. Peace officers, however, could be more dangerous because they have weapons training. In addition, they are sworn to uphold and enforce the law, and allowing them to keep a weapon after committing family violence would reward them for illegal behavior. A peace officer under a restraining order could continue to work at his or her job without a firearm, doing clerk or desk duty.

SB 199 could lead to Texans losing their Second Amendment rights when an *ex parte* restraining order was filed in another state during a divorce and enforced in Texas under Family Code, chapter 88. These orders are standard procedure during divorce proceedings, and no proof of family violence is necessary to obtain them. Texans who had no history of violence would be at risk of having their guns taken away because of a vengeful ex-spouse.

NOTES:

A similar bill, HB 600 by Goodman, was considered in a public hearing but left pending in the House Criminal Jurisprudence Committee. HB 600 would amend the Penal Code to make it a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for a person

under an active protective order to possess a firearm. The bill would make no exception for peace officers.