

SUBJECT: Prohibiting handgun sales to persons under family protective orders

COMMITTEE: Public Safety — favorable without amendment

VOTE: 6 ayes — Oakley, Bailey, Allen, Carter, Edwards, Luna

0 nays

3 absent — Driver, Madden, McCoulskey

SENATE VOTE: On final passage, April 11 — voice vote

WITNESSES: None

DIGEST: SB 130 would make it an offense to sell, rent, lease, loan or give a handgun to any person knowing that the person is under an active protective order involving the person's family. The offense would be a Class A misdemeanor, punishable by a maximum penalty of one year in jail and a \$4,000 fine. Temporary protective orders issued before the court holds a hearing would not be considered an active protective order.

SB 130 would require the Department of Public Safety (DPS) bureau of identification and records to collect information on the number and nature of protective orders and persons on active protective orders. The information would have to include:

- the name, physical description, address, social security number, driver's license number or other identifying number of the person under the order;
- name and county of residence of the person protected by the order and, if not excluded from the protective order, the address and employer of the person;
- the child-care facility or school of a child protected by the order unless excluded from the protective order; and
- the relationship or former relationship of the person protected by the order and the person under the order.

DPS would be authorized to adopt rules relating to reporting procedures for the protective order information to ensure the information is reported to the

local law enforcement agencies when an order is issued or dismissed and entered by the local law enforcement agency into state's law enforcement information system. DPS would have to develop rules by January 1, 1996. Court clerks would be required to send a copy of a protective order or a modification of one to the DPS on the date it is issued.

Law enforcement officers receiving a request from a firearm dealer for a law enforcement information system record check of a potential buyer under the federal "Brady Bill" would have to determine if DPS has a record that the purchaser is under an active protective order. If so, law enforcement authorities would have to immediately tell the firearm dealer that the transfer is prohibited.

The new offense and the requirement for law enforcement officers to check DPS records checks would take effect January 1, 1996. The rest of the bill would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

SB 130 would result in the creation of a statewide database on family protective orders, a crucial measure to assist law enforcement officials when entering a domestic situation, to be recognized by the federal government as participating in national checks on protective orders and to help prevent the illegal sale of firearms. The Senate Interim Committee on Domestic Violence recommended this change to the 74th Legislature.

A computerized database on family protective orders would allow police officers to check the data base when answering a domestic violence call. This could help officers assess a situation, let them know of any past violence and help protect them. In addition, Texas needs a statewide database so that it can be a part of nationwide checks on protective orders.

SB 130 would allow Texas law enforcement officers to more easily comply with federal law that prohibits the sale of handguns to persons under family protective orders. This would allow the check to be part of the background check done under the federal "Brady Law" to determine if a purchase would violate the law. The Brady Law, enacted in 1993, requires a five-day waiting period for completing a handgun purchase from a federally licensed dealer. Local law enforcement officials are supposed to use the waiting period to make a "reasonable effort" to check a purchaser's

criminal background and determine if the purchase would violate the law and if so, to notify the seller.

Currently, potential handgun buyers fill out a form at a store, and the dealer contacts local law enforcement authorities who conduct a criminal history check and tell the dealer whether the sale is illegal. SB 130 would allow local law enforcement authorities also to check a database for protective order information when the authorities check the statewide computerized criminal history information.

Currently checks into the existence of a protective order can only occur on a local basis. A statewide database is necessary to ensure a gun is not sold to a person under a family protective order in another locality.

DPS would be authorized to develop rules to ensure protective order information is reported to local law enforcement authorities who would be responsible for entering the information into the statewide database. This would not be a burden for local law enforcement agencies that already input information into in the statewide wanted persons database. SB 130 would not create a burden for DPS because it would simply have to create the file in its computerized criminal history information system. Efforts have been made to ensure SB 130 would be funded in the DPS appropriation.

By prohibiting gun sales to persons under family protective orders, SB 130 would simply make Texas law consistent with federal statutes. Federal law prohibits the selling of any firearm to a person who is subject to a court order that restrains the person from harassing, stalking or threatening an intimate partner or a child involved in the relationship or engaging in conduct that would place the intimate partner in reasonable fear of bodily injury to them or the child.

State law should reflect federal law and recognize the danger in selling a gun to a person under an active family protective order. SB 130 would apply only to final protective orders issued after a court hearing where it has been determined that family violence has occurred. Allowing a gun sale to such a person could have tragic results for the family of the purchaser.

Federal statistics reveal that firearms were used in 42 percent of family-related murders in a recent year. If the domestic violence has escalated to the point that a protective order has been issued by a court, victims should be afforded all protections, including being assured the person under the order would not be sold a handgun, especially in the heat of anger over a domestic dispute.

**OPPONENTS  
SAY:**

SB 130 would result in burdensome record keeping requirements for district courts, DPS and especially local law enforcement agencies, which would have to input and update information on protective orders. SB 130 would result in an unfunded mandate for local agencies and the DPS. There are no assurances that this information, which can change daily, would be kept up-to-date. Out-of-date information could result in a gun purchase being wrongly denied to someone.

SB 130 is unnecessary because sales of firearms to persons under this type of court order are already prohibited under federal law. Having a state law could prove unwieldy if federal law is changed.

Prohibiting gun sales to persons under family protective orders would not reduce domestic violence. Most domestic violence emerges gradually and should be quelled through law enforcement, the courts or social service agencies. These crimes are not premeditated and would not be affected by this state law.

**NOTES:**

The fiscal note estimates a first-year cost of \$100,933 and subsequent annual costs of \$72,477.