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HB 545 (Nevarez) – OPPOSE

What the bill does:

- Criminalizes selling, giving, or loaning a firearm to someone with certain designations allegedly related to “mental health”

Why we oppose it:

- Does not honor due process
 - Includes everyone with in-patient mental health commitment ordered by Human Services Code Chapter 574
 - Several of those commitments only require a “probable cause” standard of evidence – that can be far less than 50% chance
- Only a “defense to prosecution” if the person has had their rights restored by a court (this means the burden of proof is on the person being tried, not on the prosecutor)
- Treats mentally ill on par with criminals

Background Information

Current Federal Law: [Title 18 U.S.C. Ch. 44 Firearms §922](#)

- It’s unlawful for sell or transfer guns or ammo to someone you have reasonable cause to believe is adjudicated as a mental defective or has been committed to any mental institution
- It’s unlawful for a person adjudicated as a mental defective or who has been committed to a mental institution to participate in interstate commerce relating to a gun or ammo

Current Requirements for Texas to report to NICS (National Instant Criminal Background Check System):

All Courts are required to enter the appropriate restrictions when a person has been convicted of domestic violence, been adjudicated incapacitated (mental defective) and in need of a guardian, been adjudicated to have a mental illness and Court ordered for involuntary inpatient mental health treatment.

Details on Reasons for Opposition

1. Violation of Due Process

The language in proposed section (A) “ordered by a court to receive inpatient mental health services under Ch. 574 Health and Safety Code” is **overly broad**.



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Only Orders under 574.034, 574.035, and 574.065 require full due process of law. They result in an inpatient order only after a full evidentiary trial with representation by Counsel, and expert witness testimony, with a clear and convincing evidence burden of proof. Subject to appellate review.

The Orders not triggering reporting for NICS are all issued on a probable cause standard, and do not meet the requirements for a full adjudication of mental illness.

2. “Defense to Prosecution”

- There is a defense to prosecution if you transferred a gun to someone who has had their rights restored (i.e. they have a court order rescinding the finding of mental incompetency or who have an official notice of relief of disability.)
- That means you could still be charged, taken to jail, prosecuted, and tried for the offense – and the burden of proof is on you to show that the person had their rights restored
- People whose rights have been restored should NOT be punished by leaving those who want to sell them guns open to prosecution.
- **More acceptable would be an “EXCEPTION TO PROSECUTION” requiring the State to negate the existence of the exception in the accusation and charging of the offense.** This would mean the state would have to prove that the defendant’s rights had not been restored beyond a reasonable doubt.
- This is especially true since any CJIS entries prior to an order restoring rights should have been removed or amended in light of the restoration and all fault would lay upon the government actors responsible for those entries, not on the accused, continuing the stigma and criminalization surrounding mental illness.

3. Treats mentally ill on par with criminals

- HB 545 treats the person suffering from an illness the same as a convicted felon.
- There is a difference between those having a disability and those having been convicted of criminal acts, and this bill yet again would group those affected by real illness and disabilities with criminals, adding legislative weight to the public stigma of mental illness or intellectual disability.
- In its strict interpretation this could prevent a father from taking his intellectually disabled but high functioning child with him hunting, or to the family farm to shoot.
- If the person is actually in a facility (for in-patient commitment), they already do not have legal access to firearms.
- Ownership and possession are two different things. A person can legally own a firearm while under a court order (for various offenses) as long as it is not in his possession.

We STRONGLY OPPOSE HB 545.