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AB-3083 Domestic violence: protective orders: background checks. (2023-2024)

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Assembly Bill No. 3083

CHAPTER 541

An act to amend Section 6306 of the Family Code, and to repeal Section 4 of Chapter 765 of the Statutes of 2012, relating to domestic violence.

[Approved by Governor September 24, 2024. Filed with Secretary of State September 24, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3083, Lackey. Domestic violence: protective orders: background checks.

The Domestic Violence Prevention Act requires the court, before a hearing on the issuance or denial of a protective order, to ensure that a search of specified records and databases is or has been made to determine if the proposed subject of the order has, among other things, a registered firearm. Existing law limits the implementation of the registered firearm search requirement to courts identified by the Judicial Council as having resources currently available for those purposes. Existing law also limits the implementation of the registered firearm search requirement in other courts to the extent that funds are appropriated for those purposes in the annual Budget Act.

This bill would instead require the court to determine if the subject of the proposed order owns or possesses a firearm as reflected in the Department of Justice Automated Firearms System. The bill would repeal the limitation on the firearm search requirement, thereby extending the firearm search requirement to all courts. The bill would make related findings and declarations.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) It is the intent of the Legislature that judges issuing domestic violence restraining orders determine if the subject of the order is known to own or possess firearms in all cases. Although Chapter 765 of the Statutes of 2012 required this, the requirement was made conditional on the issuance of a specified study by the Judicial Council and a specific appropriation of funds for this purpose, which never occurred. It is vital that firearms be kept out of the hands of known domestic abusers.

(b) Individuals who are prohibited due to issuance of restraining orders represented 16 percent of the backlog in the Department of Justice's Armed and Prohibited Persons System in 2022.

(c) Failure to remove firearms from domestic abusers can have tragic results. According to Attorney General Bonta, "The data is clear: Domestic violence abusers should not have firearms. When an abuser has access to a firearm, it endangers the safety and lives of those around them. Violence is not an accident. It is also not inevitable, and it can be prevented. Removing dangerous weapons from people who pose a danger to others is key to that goal."

(d) According to a November 2023 report by the California Department of Justice's Office of Gun Violence Prevention, "In the decade from 2013 to 2022, law enforcement agencies in California reported 1,254 gun homicides in which one or more suspected offenders were identified as a current or former intimate partner or family member of the victim."

(e) Therefore, it is the intent of the Legislature that, in all circumstances, judges who issue domestic violence restraining orders verify whether the subject of the order is known to own or possess one or more firearms and, if the subject of the order does, to demonstrate proof of surrender of the firearm or firearms in accordance with legal requirements.

SEC. 2. Section 6306 of the Family Code is amended to read:

6306. (a) (1) Before a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has a prior criminal conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; has a misdemeanor conviction involving domestic violence, weapons, or other violence; has an outstanding warrant; is currently on parole or probation; owns or possesses a firearm as reflected in the Department of Justice Automated Firearms System; or has a prior restraining order or a violation of a prior restraining order. The search shall be conducted of all records and databases readily available and reasonably accessible to the court, including, but not limited to, the following:

(A) The California Sex and Arson Registry (CSAR).

(B) The Supervised Release File.

(C) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.

(D) The Federal Bureau of Investigation's nationwide database.

(E) Locally maintained criminal history records or databases.

(F) The Department of Justice Automated Firearms System.

(2) However, a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database.

(3) If a court does not have electronic or other access to the Department of Justice Automated Firearms System and if there is no preexisting agreement between the court and a law enforcement agency that the law enforcement agency will conduct a search of the California Law Enforcement Telecommunications System in order to report to the court whether the subject of the proposed order owns or possesses a firearm, upon the request of the court, the sheriff shall access the California Law Enforcement Telecommunications System in order to search the Department of Justice Automated Firearms System for the purpose of determining whether the subject of the order owns or possesses firearms. The sheriff shall report the results of this search to the court.

(b) (1) Before deciding whether to issue an order under this part or when determining appropriate temporary custody and visitation orders, the court shall consider the following information obtained pursuant to a search conducted under subdivision (a): a conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; a misdemeanor conviction involving domestic violence, weapons, or other violence; an outstanding warrant; parole or probation status; a prior restraining order; and a violation of a prior restraining order.

(2) Information obtained as a result of the search that does not involve a conviction described in this subdivision shall not be considered by the court in making a determination regarding the issuance of an order pursuant to this part. That information shall be destroyed and shall not become part of the public file in this or any other civil proceeding.

(c) (1) After issuing its ruling, the court shall advise the parties that they may request the information described in subdivision (b) upon which the court relied. The court shall admonish the party seeking the proposed order that it is unlawful, pursuant to Sections 11142 and 13303 of the Penal Code, to willfully release the information, except as authorized by law.

(2) Upon the request of either party to obtain the information described in subdivision (b) upon which the court relied, the court shall release the information to the parties or, upon either party's request, to the party's attorney in that proceeding.

(3) The party seeking the proposed order may release the information to the party's counsel, court personnel, and court-appointed mediators for the purpose of seeking judicial review of the court's order or for purposes of court proceedings under Section 213.5 of the Welfare and Institutions Code.

(d) Information obtained as a result of the search conducted pursuant to subdivision (a) and relied upon by the court shall be maintained in a confidential case file and shall not become part of the public file in the proceeding or any other civil proceeding.

However, the contents of the confidential case file shall be disclosed to the court-appointed mediator assigned to the case or to a child custody evaluator appointed by the court pursuant to Section 3111 of this code or Section 730 of the Evidence Code. All court-appointed mediators and child custody evaluators appointed or contracted by the court pursuant to Section 3111 of this code or Section 730 of the Evidence Code who receive information from the search conducted pursuant to subdivision (a) shall be subject to, and shall comply with, the California Law Enforcement Telecommunications System policies, practices, and procedures adopted pursuant to Section 15160 of the Government Code.

(e) If the results of the search conducted pursuant to subdivision (a) indicate that an outstanding warrant exists against the subject of the order, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, with respect to the restrained person, as appropriate and as soon as practicable.

(f) If the results of the search conducted pursuant to subdivision (a) indicate that the subject of the order owns or possesses a firearm or if the court receives evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm or ammunition and provided proof of the required storage, sale, or relinquishment of the firearm or ammunition. If evidence of compliance with firearms prohibitions is not provided pursuant to subdivision (c) of Section 6389, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order, information about the firearm or ammunition, and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable.

(g) If the results of the search conducted pursuant to subdivision (a) indicate that the subject of the order is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of the issuance and contents of a protective order issued by the court and of any other information obtained through the search that the court determines is appropriate. That officer shall take all actions necessary to revoke parole or probation, or any other actions, with respect to the restrained person, as appropriate and as soon as practicable.

(h) This section shall not delay the granting of an application for an order that may otherwise be granted without the information resulting from the database search. If the court finds that a protective order under this part should be granted on the basis of the affidavit presented with the petition, the court shall issue the protective order and shall then ensure that a search is conducted pursuant to subdivision (a) before the hearing.

(i) It is the intent of the Legislature that, except with regard to a search whether the subject of a proposed order owns or possesses a firearm, this section shall be implemented in those courts identified by the Judicial Council as having resources currently available for these purposes. This act shall be implemented in other courts to the extent that funds are appropriated for purposes of the act in the annual Budget Act.

SEC. 3. Section 4 of Chapter 765 of the Statutes of 2012 is repealed.