86R8070 TSS-F

By:  Moody H.B. No. 3191

A BILL TO BE ENTITLED

AN ACT

relating to requiring a person who is the subject of a family violence protective order or arrested for or charged with an offense involving family violence to surrender firearms owned by the person.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 236, Local Government Code, is amended by adding Section 236.004 to read as follows:

Sec. 236.004.  COUNTY TASK FORCES FOR SURRENDER AND RETURN OF FIREARMS DUE TO FAMILY VIOLENCE. (a) In this section:

(1)  "Family violence center" means a public or private nonprofit organization that provides, as its primary purpose, services to victims of family violence, including the services under Section 51.005(b)(3), Human Resources Code.

(2)  "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(3)  "Task force" means a task force for the surrender and return of firearms due to family violence, as created by a county under this section.

(4)  "Victim of family violence" has the meaning assigned by Section 51.002, Human Resources Code.

(b)  Each county commissioners court shall establish a task force for the surrender and return of firearms due to family violence, including the following members if applicable for the county:

(1)  the chief administrative officer of a family violence center or the chief administrator's designee;

(2)  the chief of police of the municipality having the largest population in the county or the chief's designee;

(3)  the sheriff of the county or the sheriff's designee;

(4)  a judge of a court in the county with jurisdiction over cases involving family violence; and

(5)  a prosecutor with jurisdiction in the county over cases involving family violence.

(c)  The county commissioners court shall call the first meeting of the task force at which the members shall elect a presiding officer. All subsequent meetings shall be held at the call of the presiding officer.

(d)  The presiding officer may appoint additional members to the task force if necessary for the task force to complete its duties under Subsection (g).

(e)  The task force may consult with individuals or organizations having knowledge and experience in the issues of firearms and family violence.

(f)  A vacancy for a member of the task force shall be filled immediately and in the same manner as the original appointment.

(g)  The task force shall develop policy recommendations, model forms, and guidelines for best practices related to the surrender, receipt, storage, return, and disposal of firearms due to an order prohibiting a person from possessing a firearm following a finding of family violence entered by a court or an arrest or charge for an offense involving family violence, including:

(1)  a protective order issued under Title 4, Family Code, or Chapter 7A, Code of Criminal Procedure;

(2)  a magistrate's order of emergency protection issued under Article 17.292, Code of Criminal Procedure;

(3)  an order setting the conditions of bond for a defendant charged with an offense involving family violence under Article 17.49, Code of Criminal Procedure; and

(4)  an order granting community supervision to a defendant as described by Article 42A.504, Code of Criminal Procedure.

(h)  In developing the recommendations, forms, and guidelines required under this section, the task force shall:

(1)  consult with a family violence advocacy organization that provides services throughout the state;

(2)  prioritize the safety of victims of family violence and law enforcement personnel;

(3)  ensure due process is provided;

(4)  provide specific guidance on the surrender, receipt, and storage of a firearm and the return or disposal of a firearm;

(5)  require proof of compliance with orders requiring the surrender of a firearm; and

(6)  provide for an enforcement option if compliance is not proven within 48 hours of the issuance of an order requiring surrender of a firearm.

(i)  The task force shall make available all recommendations, forms, and guidelines developed under this section to all judges with jurisdiction over cases involving family violence in the county and all law enforcement agencies with jurisdiction in the county.

(j)  The task force shall meet not later than the 90th day following the end of each regular legislative session to review and amend any recommendations, forms, or guidelines developed under this section.

(k)  Not later than December 1 of each odd-numbered year, the task force shall provide the county commissioners court a report including:

(1)  a list of task force members;

(2)  a summary of all recommendations, forms, and guidelines developed under this section;

(3)  a description of practices and procedures in the courts and law enforcement agencies within the county in regard to the surrender, receipt, storage, return, and disposal of firearms due to family violence; and

(4)  a description of potential sources of funding available to implement recommendations.

(l)  The commissioners courts of multiple counties may agree to form a regional task force under this section to serve the needs of all counties in the agreement.

SECTION 2.  Article 7A.05, Code of Criminal Procedure, is amended by adding Subsection (b-2) to read as follows:

(b-2)(1)  In an order under Subsection (a)(2)(D), if the applicant's relationship to or association with the alleged offender is described by Section 71.0021(b), 71.003, or 71.005, Family Code, the court may also order the alleged offender to surrender all firearms owned by the offender.

(2)  Any order entered under this subsection must:

(A)  provide notice to the alleged offender;

(B)  provide for the receipt and storage of and for the return or disposal of a surrendered firearm; and

(C)  require proof of compliance.

(3)  When entering an order under this subsection, the court may adopt a recommendation, model form, or guideline developed by a task force under Section 236.004, Local Government Code, for the county in which the court is located.

SECTION 3.  Article 17.292, Code of Criminal Procedure, is amended by adding Subsection (l-1) to read as follows:

(l-1)(1)  If an order for emergency protection issued under this article prohibits the defendant from possessing a firearm and if the defendant was arrested for an offense involving family violence, the magistrate may also order the defendant to surrender all firearms owned by the defendant.

(2)  Any order entered under this subsection must:

(A)  provide notice to the defendant;

(B)  provide for the receipt and storage of and for the return or disposal of a surrendered firearm; and

(C)  require proof of compliance.

(3)  When entering an order under this subsection, the magistrate may adopt a recommendation, model form, or guideline developed by a task force under Section 236.004, Local Government Code, for the county in which the court is located.

SECTION 4.  Article 17.49, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c-1) to read as follows:

(b)  A magistrate may require as a condition of release on bond that a defendant charged with an offense involving family violence:

(1)  refrain from going to or near a residence, school, place of employment, or other location, as specifically described in the bond, frequented by an alleged victim of the offense;

(1-a)  refrain from possessing a firearm, unless the defendant is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision;

(2)  carry or wear a global positioning monitoring system device and, except as provided by Subsection (h), pay the costs associated with operating that system in relation to the defendant; or

(3)  except as provided by Subsection (h), if the alleged victim of the offense consents after receiving the information described by Subsection (d), pay the costs associated with providing the victim with an electronic receptor device that:

(A)  is capable of receiving the global positioning monitoring system information from the device carried or worn by the defendant; and

(B)  notifies the victim if the defendant is at or near a location that the defendant has been ordered to refrain from going to or near under Subdivision (1).

(c-1)(1)  If the magistrate imposes a condition described by Subsection (b)(1-a), the magistrate may also enter an order requiring the defendant to surrender all firearms owned by the defendant.

(2)  Any order entered under this subsection must:

(A)  provide notice to the defendant;

(B)  provide for the receipt and storage of and for the return or disposal of a surrendered firearm; and

(C)  require proof of compliance.

(3)  When entering an order under this subsection, the magistrate may adopt a recommendation, model form, or guideline developed by a task force under Section 236.004, Local Government Code, for the county in which the court is located.

SECTION 5.  Article 42A.504, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (e) and (f) to read as follows:

(c)  If the court grants community supervision to a defendant convicted of an offense involving family violence, the court may require the defendant, at the direction of the supervision officer, to:

(1)  attend a battering intervention and prevention program or counsel with a provider of battering intervention and prevention services if the program or provider has been accredited under Section 4A, Article 42.141, as conforming to program guidelines under that article; [~~or~~]

(2)  if the referral option under Subdivision (1) is not available, attend counseling sessions for the elimination of violent behavior with a licensed counselor, social worker, or other professional who has completed family violence intervention training that the community justice assistance division of the Texas Department of Criminal Justice has approved, after consultation with the licensing authorities described by Chapters 152, 501, 502, 503, and 505, Occupations Code, and experts in the field of family violence; or

(3)  refrain from possessing a firearm, unless the defendant is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(e)  If the court under Subsection (c)(3) requires the defendant to refrain from possessing a firearm, the court may also enter an order requiring the defendant to surrender all firearms owned by the defendant. Any order entered under this subsection must:

(1)  provide notice to the defendant;

(2)  provide for the receipt and storage of and for the return or disposal of a surrendered firearm; and

(3)  require proof of compliance.

(f)  When entering an order under Subsection (e), the court may adopt a recommendation, model form, or guideline developed by a task force under Section 236.004, Local Government Code, for the county in which the court is located.

SECTION 6.  Section 85.022, Family Code, is amended by adding Subsections (c-1) and (c-2) to read as follows:

(c-1)  In an order under Subsection (b)(6), the court may also order the person to surrender all firearms owned by the person. Any order entered under this subsection must:

(1)  provide notice to the person;

(2)  provide for the receipt and storage of and for the return or disposal of a surrendered firearm; and

(3)  require proof of compliance.

(c-2)  When entering an order under Subsection (c-1), the court may adopt a recommendation, model form, or guideline developed by a task force under Section 236.004, Local Government Code, for the county in which the court is located.

SECTION 7.  Notwithstanding the requirement in Section 236.004, Local Government Code, as added by this Act, that a report be submitted by December 1 of each odd-numbered year, a task force created under that section shall submit its first report to the county commissioners court not later than June 1, 2020.

SECTION 8.  The changes in law made by this Act apply only to a protective order, magistrate's order of emergency protection, order granting community supervision, or order releasing a defendant on bond entered on or after the effective date of this Act. A protective order, magistrate's order of emergency protection, order granting community supervision, or order releasing a defendant on bond entered before the effective date of this Act is governed by the law in effect on the date the order was entered, and the former law is continued in effect for that purpose.

SECTION 9.  This Act takes effect September 1, 2019.