

2018 Regular Session

SENATE BILL NO. 231

BY SENATOR MORRELL

WEAPONS. Provides relative to the transfer of firearms for the violation of a protective order. (10/1/18)

1 AN ACT

2 To amend and reenact R.S. 14:95.1.3(D) and 95.10(B) and the introductory paragraph of  
3 R.S. 46:2136.3(A), to enact R.S. 14:79(A)(4) and 95.1.3(E), R.S. 46:2136.3(C), and  
4 Title XXXV of the Code of Criminal Procedure, to be comprised of Arts. 1000  
5 through 1003, and to repeal R.S. 46:2137, relative to firearms; to provide penalties  
6 for the violation of a protective order; to provide penalties for fraudulent firearms  
7 purchases; to require certain reporting; to create a firearm transfer program; to  
8 designate sheriffs as repository for firearms; to provide procedure for storage and  
9 return of firearms; to require the development of forms, policies, and procedures; and  
10 to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:95.1.3(D) and 95.10(B) are hereby amended and reenacted and  
13 R.S. 14:79(A)(4) and 95.1.3(E) are hereby enacted to read as follows:

14 §79. Violation of protective orders

15 A.(1)(a) \* \* \*  
16 \* \* \*

17 **(4) Violation of protective orders shall also include the possession of a**

1 firearm or carrying a concealed weapon in violation of R.S. 46:2136.3, the  
 2 purchase or attempted purchase of a firearm, and the carrying of a concealed  
 3 weapon in violation of R.S. 14:95.1, 95.1.3, or 95.10.

4 \* \* \*

5 §95.1.3. Fraudulent firearm and ammunition purchase; mandatory reporting

6 \* \* \*

7 D. Whoever violates the provisions of ~~this~~ Subsection A of this Section shall  
 8 be fined not less than one thousand dollars or more than five thousand dollars, or  
 9 imprisoned, with or without hard labor, for not ~~less than one year~~ or more than five  
 10 twenty years, or both. ~~At least one year of the~~ The sentence imposed shall be served  
 11 without benefit of parole, probation, or suspension of sentence. Notwithstanding the  
 12 provisions of R.S. 14:27, whoever is found guilty of attempting to violate the  
 13 provisions of Subsection A of this Section shall be imprisoned at hard labor for  
 14 not more than seven and one-half years and fined not less than five hundred  
 15 dollars nor more than two thousand five hundred dollars.

16 E.(1) If a person is reported ineligible to purchase firearms by the  
 17 National Instant Criminal Background Check System (NICS), the licensed  
 18 dealer shall report the denial to the sheriff of the parish in which the attempted  
 19 purchase occurred and to the Louisiana Automated Victim Notification System  
 20 within seventy-two hours of the attempted purchase in a format prescribed by  
 21 the sheriff.

22 (2) If the person has a permanent injunction or protective order issued  
 23 against him, the sheriff shall notify state police who shall cause the person to be  
 24 flagged as prohibited from possessing a firearm pursuant to R.S. 14:95.1 or  
 25 95.10 or R.S. 46:2136.3 in the Louisiana Computerized Criminal History  
 26 database.

27 (3) If at any time a law enforcement agency discovers that a licensed  
 28 dealer knew or should have known that a purchaser or attempted purchaser of  
 29 a firearm was prohibited from possessing a firearm and the licensed dealer

1 **failed to report as required by this Section, the sheriff or law enforcement**  
2 **agency shall notify all state and federal licensing agencies of the licensed dealer.**

3 \* \* \*

4 §95.10. Possession of a firearm or carrying of a concealed weapon by a person  
5 convicted of domestic abuse battery and certain offenses of battery  
6 of a dating partner

7 \* \* \*

8 B. Whoever is found guilty of violating the provisions of this Section shall  
9 be imprisoned with or without hard labor for not less than one year nor more than  
10 ~~five~~ **twenty** years **without the benefit of probation, parole, or suspension of**  
11 **sentence**, and shall be fined not less than ~~five hundred~~ **one thousand** dollars nor  
12 more than ~~one~~ **five** thousand dollars. **Notwithstanding the provisions of R.S. 14:27,**  
13 **whoever is found guilty of attempting to violate the provisions of this Section**  
14 **shall be imprisoned at hard labor for not more than seven and one-half years**  
15 **and fined not less than five hundred dollars nor more than two thousand five**  
16 **hundred dollars.**

17 \* \* \*

18 Section 2. The introductory paragraph of R.S. 46:2136.3(A) is hereby amended and  
19 reenacted and R.S. 46:2136.3(C) is hereby enacted to read as follows:

20 §2136.3. Prohibition on the possession of firearms by a person against whom a  
21 protective order is issued

22 A. Any person against whom the court has issued a permanent injunction or  
23 a protective order pursuant to a court-approved consent agreement or pursuant to the  
24 provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's  
25 Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of Criminal  
26 Procedure Articles 30, 320, or 871.1 shall be prohibited from possessing a firearm  
27 **or carrying a concealed weapon** for the duration of the injunction or protective  
28 order if both of the following occur:

29 \* \* \*

1           **C. Whoever violates the provisions of this Section shall be in violation of**  
2           **and subject to the penalties set forth in R.S. 14:79.**

3           Section 3. Title XXXV of the Code of Criminal Procedure, comprised of Arts. 1000  
4 through 1003, is hereby enacted to read as follows:

5           **TITLE XXXV. DOMESTIC VIOLENCE PREVENTION FIREARM**

6                           **TRANSFER**

7           **Art. 1000. Definitions**

8                           **As used in this Title "firearm" means any pistol, revolver, rifle, shotgun,**  
9                           **machine gun, submachine gun, black powder weapon, or assault rifle which is**  
10                           **designed to fire or is capable of firing fixed cartridge ammunition or from**  
11                           **which a shot or projectile is discharged by an explosive.**

12           **Art. 1001. Transfer of firearms**

13                           **A. Upon a conviction for an offense or a court order issued against a**  
14                           **person pursuant to the provisions of this Paragraph, a judge shall order the**  
15                           **transfer of all firearms and the suspension of a concealed handgun permit of a**  
16                           **person who is prohibited from possessing a firearm or carrying a concealed**  
17                           **weapon pursuant to the laws of this state or by reason of any of the following:**

18                                   **(1) A conviction of domestic abuse battery (R.S. 14:35.3).**

19                                   **(2) A second or subsequent conviction of battery of a dating partner**  
20                                   **(R.S. 14:34.9).**

21                                   **(3) A conviction of battery of a dating partner that involves strangulation**  
22                                   **(R.S. 14:34.9(K)).**

23                                   **(4) A conviction of battery of a dating partner when the offense involves**  
24                                   **burning (R.S. 14:34.9(L)).**

25                                   **(5) A conviction of possession of a firearm or carrying a concealed**  
26                                   **weapon by a person convicted of domestic abuse battery and certain offenses of**  
27                                   **battery of a dating partner (R.S. 14:95.10).**

28                                   **(6) The issuance of a permanent injunction or a protective order**  
29                                   **pursuant to a court-approved consent agreement or pursuant to the provisions**

1 of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code  
2 Article 1570, Code of Civil Procedure Article 3607.1, or Articles 30, 320, or  
3 871.1 of this Code.

4 (7) Pursuant to the terms of a Uniform Abuse Prevention Order.

5 B.(1) The order to transfer firearms and suspend a concealed handgun  
6 permit shall be issued by the court at the time of conviction or at the same time  
7 the court prohibits a person from possessing a firearm or carrying a concealed  
8 weapon as provided in Paragraph A of this Article.

9 (2) In the order to transfer firearms and suspend a concealed handgun  
10 permit the court shall inform the person subject to the order that he is  
11 prohibited from possessing a firearm and carrying a concealed weapon  
12 pursuant to the provisions of 18 U.S.C. 922(g)(8) and Louisiana law.

13 C. The court shall require the person to transfer all firearms in his  
14 possession to the sheriff of the parish of his residence or the sheriff of the parish  
15 in which the order was issued no later than forty-eight hours after the order is  
16 issued, exclusive of legal holidays. If the person is incarcerated at the time the  
17 order is issued, he shall transfer his firearms no later than forty-eight hours  
18 after his release from incarceration, exclusive of legal holidays. At the time of  
19 transfer, the sheriff and the person shall complete a proof of transfer form. The  
20 proof of transfer form shall not contain the quantity of firearms transferred or  
21 any identifying information about any firearm transferred. The sheriff shall  
22 retain a copy of the form and provide the person with a copy.

23 D. If the person prohibited from possessing a firearm or carrying a  
24 concealed weapon pursuant to Paragraph A of this Article does not possess or  
25 own firearms, he shall complete a declaration of nonpossession form with the  
26 sheriff in a manner prescribed by the sheriff. The declaration of nonpossession  
27 may be completed with the sheriff of the parish of the person's residence or the  
28 sheriff of the parish in which the order was issued.

29 E. The person shall file with the clerk of court of the parish in which the

1 order was issued the proof of transfer form or the declaration of nonpossession  
2 within five days of transferring his firearms, exclusive of legal holidays, or  
3 within five business days of his conviction or order prohibiting possessing a  
4 firearm, exclusive of legal holidays.

5 Art. 1002. Transfer or storage of transferred firearms

6 A.(1) The sheriff of each parish shall be responsible for oversight of  
7 firearm transfers in his parish. For each firearm transferred pursuant to this  
8 Title, the sheriff shall offer all of the following options to the transferor:

9 (a) Allow a third party to receive and hold the transferred firearms. The  
10 third party shall complete a firearms acknowledgment for that, at a minimum,  
11 informs the third party of the relevant state and federal laws, lists the  
12 consequences for noncompliance, and asks if the third party is able to lawfully  
13 possess a firearm. No firearm shall be transferred to a third party living in the  
14 same residence as the transferor at the time of transfer. The sheriff shall  
15 prescribe the manner in which firearms are transferred to a third party.

16 (b) Store the transferred firearms in a storage facility with which the  
17 sheriff has contracted for the storage of transferred firearms. The sheriff may  
18 charge a reasonable fee for the storage of such firearms.

19 (c) Oversee the legal sale of the transferred firearms to a third party. The  
20 sheriff may contract with a licensed firearms dealer for such purpose. The  
21 sheriff may charge a reasonable fee to oversee the sale of firearms.

22 (2) The sheriff may also accept and store the transferred firearms. The  
23 sheriff may charge a reasonable fee for the storage of such firearms.

24 B. The sheriff shall prepare a receipt for each firearm transferred and  
25 provide a copy to the person transferring the firearms. The receipt shall include  
26 the date the firearm was transferred, the firearm manufacturer, and firearm  
27 serial number. The receipt shall be signed by the officer accepting the firearms  
28 and the person transferring the firearms. The sheriff may require the receipt  
29 to be presented before returning a transferred firearm.

1           **C. The sheriff shall keep a record of all transferred firearms including**  
2           **but not limited to the name of the person transferring the firearm, date of the**  
3           **transfer, the manufacturer, model, serial number, and the manner in which the**  
4           **firearm is stored.**

5           **D. Firearms transferred under the provisions of this Title shall be**  
6           **returned in a manner prescribed by the sheriff upon dismissal of the protective**  
7           **order or a finding pursuant to a rule to show cause that a protective order not**  
8           **be issued upon the person's acquittal, when charges are dismissed, or if no**  
9           **charges are filed unless otherwise prohibited by federal or state law. After a**  
10           **firearm is returned pursuant to this Subsection, the sheriff shall destroy the**  
11           **records pertaining to the returned firearm and shall notify the clerk of court of**  
12           **the parish that the transferred firearm has been returned and instruct the clerk**  
13           **of court to destroy the pertinent record.**

14           **E. The sheriff shall exercise due care to preserve the quality and function**  
15           **of all firearms transferred under the provisions of this Title. However, the**  
16           **sheriff shall not be liable for damage to firearms except for cases of willful or**  
17           **wanton misconduct or gross negligence.**

18           **Art. 1003. Implementation**

19           **The sheriff, clerk of court, and district attorney of each parish and state**  
20           **police bureau of criminal identification and information shall develop forms,**  
21           **policies, and procedures no later than January 1, 2019, regarding the**  
22           **communication of convictions and orders issued between agencies, procedures**  
23           **for the acceptance of transferred firearms, procedures for the storage of**  
24           **transferred firearms, return of transferred firearms, the flagging of prohibited**  
25           **possessors of firearms in the Louisiana Criminal History Database, the proof**  
26           **of transfer form, the declaration of nonpossession form, and any other form,**  
27           **policy, or procedure necessary to effectuate the provisions of this Title.**

28           Section 4. R.S. 46:2137 is hereby repealed in its entirety.

29           Section 5. If any provision or item of this Act, or the application thereof, is held

1 invalid, such invalidity shall not affect other provisions, items, or applications of the Act  
 2 which can be given effect without the invalid provision, item, or application and to this end  
 3 the provisions of this Act are hereby declared severable.

4 Section 6. This Act shall become effective on October 1, 2018.

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The original instrument was prepared by Ashley Menou. The following digest, which does not constitute a part of the legislative instrument, was prepared by Nancy Vicknair.

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DIGEST

SB 231 Reengrossed

2018 Regular Session

Morrell

Present law prohibits certain persons against whom a protective order is issued from possessing a firearm for the duration of the injunction or protective order.

Proposed law also prohibits certain persons against whom a protective order is issued from carrying a concealed weapon for the duration of the injunction or protective order and otherwise retains present law.

Proposed law clarifies present law by adding to the definition of the crime of violation of a protective order, the possession of a firearm, carrying of a concealed weapon, and the purchase or attempted purchase of a firearm by a person prohibited from possessing a firearm or carrying a concealed weapon pursuant to a protective order issued against him and in violation of certain domestic violence crimes.

Present law provides that when a person fraudulently purchases a firearm or ammunition he shall be fined not less than \$1,000 nor more than \$5,000, or imprisoned, with or without hard labor, for not less than one year nor more than five years, or both.

Proposed law retains present law but changes the imprisonment penalty for fraudulent purchase of a firearm or ammunition to imprisonment to not more than 20 years without the benefit of probation, parole, or suspension of sentence.

Proposed law provides that when a person is found guilty of attempting to fraudulently purchase a firearm or ammunition he shall be imprisoned at hard labor for not more than seven and one-half years and fined not less than \$500 nor more than \$2,500.

Proposed law provides that if a person is reported ineligible by a background check while attempting to purchase a firearm, the licensed dealer must report the attempted purchaser to the sheriff and to the Louisiana Automated Victim Notification System within 72 hours of the attempted purchase.

Proposed law requires a sheriff to notify state police if a person has a permanent injunction or protective order issued against him. Requires state police to flag such person as prohibited from possessing a firearm as provided in present law.

Proposed law also requires any law enforcement agency to report a licensed firearm dealer to all licensing agencies of the dealer if law enforcement learns that a dealer knew or should have known that a person was prohibited from possessing a firearm and the licensed dealer failed to notify the sheriff.

Present law provides the penalty for possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner is imprisonment, with or without hard labor, for not less than one year nor



more than five years, and a fine of not less than \$500 nor more than \$1,000.

Proposed law provides that the penalties for possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner is imprisonment, with or without hard labor for not less than one year nor more than 20 years without the benefit of probation, parole, or suspension of sentence, and a fine of not less than \$1,000 nor more than \$5,000.

Proposed law provides the penalty for the attempted violation of possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner is imprisonment at hard labor for not more than seven and one-half years and a fine of not less than \$500 nor more than \$2,500.

Present law prohibits a person against whom a protective order or permanent injunction is issued from possessing a firearm.

Proposed law adds that such persons shall also be prohibited from carrying a concealed weapon and otherwise retains present law.

Proposed law provides that upon a conviction of certain domestic violence offenses or a permanent injunction or protective order issued against a person, the court shall suspend his concealed handgun permit and shall order the person to transfer all firearms in his possession.

Proposed law provides that the order to transfer firearms and suspend a concealed handgun permit is to be issued by the court at the time of conviction or at the same time the court issues a permanent injunction or protective order against a person.

Proposed law requires firearms to be transferred to the sheriff of the parish of the person's residence or the sheriff of the parish in which the order to transfer was issued no later than 48 hours after the order is issued. Proposed law provides if a person is incarcerated at the time the order is issued he must transfer his firearms no later than 48 hours after his release.

Proposed law requires the sheriff and the person transferring firearms to complete a proof of transfer form at the time a person transfers his firearms. Such form shall not contain the quantity of firearms transferred or any identifying information about such firearms. The sheriff must retain a copy and provide the person with a copy.

Proposed law provides that if a person prohibited from possessing a firearm or carrying a concealed weapon does not possess or own firearms he shall complete a declaration of nonpossession with the sheriff of the parish of his residence or the parish in which the order was issued.

Proposed law requires persons ordered to transfer firearms to file the proof of transfer form or declaration of nonpossession with the clerk of court in the parish in which the order was issued within five days of a conviction or order issued against him.

Proposed law provides that the sheriff of each parish is responsible for oversight of firearm transfers in his parish and requires certain options be offered by the sheriff to the transferor of such firearms.

Proposed law requires the sheriff to prepare a receipt for each firearm transferred and to provide a copy to the person transferring the firearm. Proposed law further provides that the sheriff may require receipt be presented before returning a firearm.

Proposed law requires the sheriff to keep records of all firearms transferred to his office.

Proposed law provides that the sheriff shall exercise due care to preserve the quality and

function of transferred firearms, but will not be responsible for damage except in cases of willful or wanton misconduct or gross negligence.

Proposed law provides that transferred firearms shall be returned upon dismissal of the protective order or a finding that a protective order not be issued upon a person's acquittal, when charges are dismissed, or if no charges are filed.

Proposed law provides that after a firearm is returned pursuant to proposed law, the sheriff is required to destroy the records pertaining to the returned firearm and notify the clerk of court of the parish that the transferred firearm has been returned and instruct the clerk of court to destroy the pertinent record.

Proposed law directs the sheriff, clerk of court, and district attorney of each parish, and state police bureau of criminal identification and information, to develop forms, policies, and procedures necessary to implement the provisions of proposed law no later than January 1, 2019.

Effective October 1, 2018.

(Amends R.S. 14:95.1.3(D), 95.10(B), and R.S. 46:2136.3(A)(intro para); adds R.S. 14:79(A)(4) and 95.1.3(E), R.S. 46:2136.3(C), and C.Cr.P. Arts. 1000-1003; repeals R.S. 46:2137)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Makes technical changes.
2. Changes "relinquishment" to "transfer" throughout proposed law.
3. Changes the method in which the sheriff may notify a protected person from the telephone number in the La. Protective Order Registry to any information in the La. Protective Order Registry.
4. Removes the requirement that a person must request that his firearms be transferred to a third person and allows the sheriff to oversee the transfer of firearms to a third person without a prior request.
5. Changes the effective date to October 1, 2018.

##### Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Provides that fraudulent firearm and ammunition purchases require imprisonment, with or without hard labor, for not more than 20 years.
3. Requires that if a person is declared ineligible to purchase a firearm by the NICS, such ineligibility must be reported to the Louisiana Automated Victim Notification System, in addition to the sheriff, and changes the time frame for reporting such ineligibility from 24 hours to 72 hours.
4. Removes the requirement that a sheriff perform certain duties within 24 hours of receiving a notice of denial pertaining to a person who has been

deemed ineligible to purchase a firearm.

5. Requires a sheriff to notify state police if a person has a permanent injunction or protective order issued against him and requires state police to flag such person as prohibited from possessing a firearm as provided in present law.
6. Changes the imprisonment penalty for possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner from imprisonment at hard labor for not less than five nor more than 20 years to imprisonment, with or without hard labor for not less than one year nor more than 20 years without the benefit of probation, parole, or suspension of sentence.
7. Changes the fine for possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner from not less than \$500 nor more than \$1,000 to not less than \$1,000 nor more than \$5,000.
8. Requires that the proof of transfer form not contain the quantity of firearms transferred or any identifying information about such firearms.
9. Establishes oversight procedures for firearm transfers in each parish and provides that certain options be provided by the sheriff to the transferor.
10. After a firearm is returned, requires that records pertaining to the returned firearm be destroyed by the sheriff and the clerk of court.
11. Adds a severability clause.