

DIGEST

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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 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.

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.

Proposed law creates the crime of illegal transfer of a firearm to a prohibited possessor and provides that persons convicted of the offense may be fined not more than \$2,500, imprisoned for not more than one year, or both.

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.

At the same time an order to prohibit a person from possessing a firearm or carrying a concealed weapon is issued, proposed law requires the court to cause all of the following to occur:

- (1) Require the person to state in open court or complete an affidavit stating the number of firearms in his possession and the location of all firearms in his possession.
- (2) Require the person to complete a firearm information form that states the number of firearms in the person's possession, the serial number of each firearm, and the location of each firearm.
- (3) Transmit a copy of the order to transfer firearms and a copy of the firearm information form to the sheriff of the parish or the sheriff of the parish of the person's residence.

Proposed law requires the court, in open court and on the record, to order the person to transfer all firearms 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. Further requires a copy of the order and a copy of the firearm information form to be sent to the sheriff. 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 proof of 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. Further provides that such proof shall be a certified copy of the dismissal of a protective order or other documentation indicating the date on which the person is no longer prohibited from possessing a firearm.

Proposed law prohibits a sheriff from returning a transferred firearm prior to receiving the required documentation.

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 to develop forms, policies, and procedures necessary to implement the provisions of proposed law no later than Jan. 1, 2019.

Effective Oct. 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), 95.1.3(E), and 95.1.4, 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.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Remove the time limit within which a licensed dealer is required to report to the sheriff an attempted purchase that results in a NICS denial and the requirement that the report be made in a format prescribed by the sheriff.
2. Remove the requirement that the sheriff notify state police of an attempted purchase that results in a NICS denial and the requirement that state police "flag" the person as prohibited from possessing a firearm in the La. Computerized Criminal History Database.
3. Require the court's order that a person transfer his firearms to the sheriff be on the record and in open court.
4. At the same time an order to prohibit a person from possessing a firearm or carrying a concealed weapon is issued, require the court to cause the person to state the number of firearms in his possession and to complete a firearm information form and to cause a copy of the order and a copy of the firearm information to be transmitted to the sheriff of the parish or the sheriff of the parish of the person's residence.
5. Provide that the return of the firearm is upon proof of dismissal of the protective order instead of upon dismissal of the protective order.
6. Add that the proof shall include a certified copy of the dismissal of a protective order or other documentation indicating the date on which the person is no longer prohibited from possessing a firearm or carrying a concealed weapon.

7. Provide that no sheriff shall return a transferred firearm prior to receiving the required documentation from either the court or the person and verifying that such information was sent to state police.
8. Add a new crime for the illegal transfer of a firearm to a prohibited possessor and provide penalties for the offense.