

RÉSUMÉ DIGEST

ACT 367 (SB 231)

2018 Regular Session

Morrell

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

New 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 prior law.

New law includes in 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.

Prior law provided 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.

New law retains prior 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.

New law creates the crime of illegal transfer of a firearm to a prohibited possessor as the intentional giving, selling, donating, lending, delivering, or otherwise transferring a firearm to any person known to the offender to be a person prohibited from possessing a firearm under state or federal law. Provides for a fine of not more than \$2,500 or imprisoned for not more than one year, or both for violations.

New 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.

New 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.

New 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.

Prior law provided 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.

New 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.

Prior law prohibited a person against whom a protective order or permanent injunction is issued from possessing a firearm. New law adds that these persons shall also be prohibited from carrying a concealed weapon.

New 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.

New 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, new 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.

New law requires the court, in open court and on the record, to order the person to transfer all firearms to the sheriff 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. New 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, exclusive of legal holidays.

New law requires the sheriff and the person transferring firearms to complete a proof of transfer form at the time a person transfers his firearms. This 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. Within five days of the transferring his firearm, the person is to file a proof of transfer form with the clerk of court of the parish in which the order was issued.

New law provides for completion of a nonpossession form by one who is the subject of an order to transfer firearms and suspension of a concealed handgun permit but who does not possess or own a firearm at the time the order is issued.

New 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 of order issued against him.

New 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 the firearms.

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

New law authorizes transfer or storage of a transferred firearm to a third party who completes a firearm acknowledgment form that informs the third party of the relevant state and federal laws and lists the consequences of noncompliance. Prohibits transfer of the firearm to a third party living in the same residence as the transferor at the time of the transfer. Requires that the sheriff advise the third party that return of the firearm to the person before the person is able to lawfully possess the firearms pursuant to state or federal law may result in the third party being charged with a crime.

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

New 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.

New law authorizes a person to file a motion with the court seeking an order for the return of the transferred firearm if the person is no longer prohibited from possessing a firearm. Provides for a court to issue an order for the return of firearm upon a determination that the person is no longer prohibited from possessing a firearm. Requires the sheriff to destroy the records pertaining to the returned firearm and instruct the clerk of court to destroy the pertinent records.

Provides that the sheriff is not liable for damage caused by the third party to whom the firearm was transferred.

New 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 new 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), 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)