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## DIGEST

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HB 279 Engrossed

2019 Regular Session

Marino

**Abstract:** Provides relative to persons who are prohibited from possessing a firearm pursuant to certain domestic abuse convictions or prevention orders, to the transfer of such firearms to the sheriff or a third party, and to the duties and authority of the sheriff in this regard.

Present law prohibits the following persons from possessing a firearm or carrying a concealed weapon:

- (1) Any person convicted of a felony crime of violence as defined by present law.
- (2) Any person convicted of any of the following for ten years from the date of completion of sentence:
  - (a) Domestic abuse battery (R.S. 14:35.3).
  - (b) A second or subsequent offense of battery of a dating partner (R.S. 14:34.9).
  - (c) Battery of a dating partner when the offense involves strangulation (R.S. 14:34.9(K)).
  - (d) Battery of a dating partner when the offense involves burning (R.S. 14:34.9(L)).
- (3) Any person against whom the court has issued a permanent injunction, protective order, or Uniform Abuse Prevention Order in domestic abuse cases for the duration of the injunction or order.

Present law further prohibits any person from intentionally 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 present law or federal law. Further provides that such person may be fined not more than \$2,500, be imprisoned for not more than one year, or both.

Present law, pursuant to an order issued by the court, requires any person prohibited from possessing a firearm pursuant to these provisions of present law to transfer any firearm possessed by the person to the sheriff of the parish or to a third party. In this regard, present law provides for the process by which the firearms are transferred including but not limited to provisions that do all of the following:

- (1) 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.
- (2) Require the sheriff and the person, at the time of the transfer, to complete a proof of transfer

form that shall contain the quantity of firearms transferred or any identifying information about any firearm transferred.

- (3) Require the person, within five days of transferring his firearm, to file the proof of transfer form with the clerk of court for the parish in which the order was issued.
- (4) Provide that the failure to provide the information required by present law relative to the transfer of firearms may be punished by contempt of court.
- (5) Require the sheriff to either oversee the transfer of the firearms to a third party, to store the transferred firearms in a storage facility with which the sheriff has contracted for the storage of firearms, oversee the legal sale of the transferred firearms to a third party, or accept and store the transferred firearms.
- (6) Provide the process by which the transferred firearms are returned to the person when the person is no longer prohibited from possessing a firearm.
- (7) Require the sheriff, after the firearms are returned to the person pursuant to the provisions of present law, to destroy all records pertaining to the returned firearms and to instruct the clerk of court to do the same.

Proposed law amends present law to do all of the following:

- (1) Amend the penalties for the crime of illegal transfer of a firearm to a prohibited possessor to require instead of authorize the imposition of criminal penalties and to provide that the term of imprisonment shall be served with or without hard labor.
- (2) Retain the present law provision requiring the transfer of firearms of any person against whom the court has issued a permanent injunction, protective order, or Uniform Abuse Prevention Order in domestic abuse cases; and further require persons convicted of any of the following felony crimes of violence, for which the person is prohibited from possessing a firearm under present law, to transfer any firearms pursuant to the procedures set forth in present law and proposed law:
  - (a) A conviction of domestic abuse aggravated assault.
  - (b) A conviction of aggravated assault upon a dating partner.
  - (c) A conviction of any crime that has as an element of the offense that the victim was a family member, household member, or dating partner.
  - (d) A conviction of any crime in which the victim of the crime was determined to be a family member, household member, or dating partner. In such cases, proposed law provides that the district attorney may allege in the indictment or bill of information that the victim was a family member, household member, or dating partner.

Proposed law does all of the following with regard to procedure by which firearms are transferred:

- (1) Authorizes the sheriff to enter into an agreement with any other law enforcement agency, as defined by proposed law, to have that law enforcement agency assume the present law and proposed law duties of the sheriff.
- (2) No longer requires the firearm information form to include the serial number of each firearm transferred, and instead requires the type of each firearm transferred to be stated on the form.
- (3) Provides that the proof of transfer form shall contain the quantity of firearms transferred, but is not required to include identifying information about the firearms transferred. Further requires the proof of transfer form to attest that the person is not currently in possession of firearms and is currently compliant with state and federal law, but prohibits the form from including the date on which the transfer occurred.
- (4) Requires the proof of transfer form filed with the clerk of court to be maintained by the clerk of court under seal.
- (5) Provides certain requirements for persons who are required to transfer firearms pursuant to present law and proposed law and who transfer or sell such firearms to a third party prior to the court's issuance of the order to transfer firearms and suspend a concealed handgun permit. In such cases, the person shall declare such sale or transfer in open court and shall, within ten days after the issuance of the order, execute a proof of transfer form to be filed with the clerk of court in the parish in which the order was issued. The proof of transfer form shall be maintained by the clerk of court under seal.
- (6) Requires the receipt for each firearm transferred prepared by the sheriff and the records of all firearms transferred kept by the sheriff shall not include the date that the firearms were transferred.
- (7) Provides that the failure to provide the information required by present law and proposed law relative to the transfer of firearms and the failure to timely transfer firearms in accordance with the provisions of present law, may be punished by contempt of court and may establish a rebuttable presumption of a violation of present law provisions which prohibit the possession of firearms by persons convicted of certain felony crimes of violence, convicted of certain domestic abuse offenses, or subject to injunctions or orders relative to domestic abuse.
- (8) Authorizes the district attorney or the person transferring his firearms to file a motion requiring the court to conduct a contradictory hearing to ensure that the person has complied with present law and proposed law.
- (9) When the person is no longer prohibited from possessing a firearm, requires all outstanding fees to be paid prior to the return of any firearms to the person.

- (10) Provides a process by which the firearms may be forfeited to the sheriff if the outstanding fees are not paid or if the person does not seek return of the firearms within one year of the prohibition from possessing a firearm.
- (11) Provides that nothing in present law or proposed law prohibits a sheriff from obtaining a search warrant to test or examine any transferred firearm for the purpose of facilitating any criminal investigation or prosecution.
- (12) Provides that any records held by the sheriff or any other law enforcement agency pursuant to the provisions of present law and proposed law in this regard shall be confidential and shall not be considered a public record. Further adds such records to the list of exceptions to the present law (Public Records).

(Amends R.S. 14:95.1.4(B), R.S. 44:4.1(B)(38), and C.Cr.P. Arts. 1001, 1002(A)(1)(intro. para.), (C)(2), (D), (E)(1), and (F), and 1003(A), (B), (C), and (D)(2) and (4); Adds C.Cr.P. Arts. 1001.1, 1002(A)(1)(f) - (i), (G), (H), and (I), 1002.1, 1003(F) and (G), and 1003.1)

#### Summary of Amendments Adopted by House

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

1. Delete changes made to present law provisions regarding the prohibition on possession of a firearm by persons convicted of felony crimes of violence and certain domestic abuse related offenses.
2. Require the proof of transfer form to attest that the person is not currently in possession of firearms and is currently compliant with state and federal law, but prohibits the form from including the date on which the transfer occurred.
3. In cases of third-party transfers, extends the time period within which the proof of transfer form is to be executed, and the time period within which the form is to be filed with the clerk of court, from five days to ten days.
4. Add that the receipt for each firearm transferred prepared by the sheriff and the records of all firearms transferred kept by the sheriff shall not include the date that the firearms were transferred.
5. Authorize the person, not sooner than three years after the date on which the firearms are returned, to file a motion requesting that the records relative to the firearms held by the clerk of court and the sheriff be destroyed.
6. Make technical corrections.

