

Regular Session, 2011

SENATE BILL NO. 244

BY SENATOR PERRY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MENTAL HEALTH. Provides relative to court proceeding regarding firearms disabilities.
(8/15/11)

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AN ACT

To amend and reenact R.S. 40:1379.3(C)(13) and to enact R.S. 40:1379.3.2, relative to firearms; to provide relative to statewide permits for concealed handguns; to provide for court proceeding for firearm deficiencies; to provide for reporting of mental health adjudications or commitments to authorities; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1379.3(C)(13) is amended and reenacted and 1379.3.2 is hereby enacted to read as follows:

§1379.3. Statewide permits for concealed handguns; application procedures; definitions

* * *

C. To qualify for a concealed handgun permit, a Louisiana resident shall:

* * *

(13) Not have been adjudicated to be mentally deficient or been committed to a mental institution, **unless a petition for relief has been granted pursuant to R.S. 13:1379.3.2.**

1 * * *

2 **§1379.3.2. Relief from firearms disabilities**

3 **A. When a court orders a commitment or makes a finding or**
4 **adjudication by which a person becomes subject to the provisions of 18 U.S.C.**
5 **§922(d)(4) and (g)(4), the clerk of court shall forward the person's name to the**
6 **Department of Public Safety and Corrections, which shall forward the**
7 **information to the Federal Bureau of Investigation, or its successor agency, for**
8 **inclusion in the National Instant Criminal Background Check System database.**
9 **The court shall also notify the person of the prohibitions provided in 18 U.S.C.**
10 **§922(d)(4) and (g)(4).**

11 **B. Any person who is subject to the provisions provided in 18 U.S.C.**
12 **§922(d)(4) and (g)(4) may petition the court that issued the judgement or a**
13 **district court of competent jurisdiction for relief by issuing a new order**
14 **declaring that the person's mental deficiency no longer exists or does not rise**
15 **to the level of making such person a danger to himself or others. A copy of the**
16 **petition for relief shall be served upon the prosecuting attorney for the original**
17 **adjudication. The prosecuting attorney may appear to support or object to**
18 **relief sought by the petitioner and present evidence relevant to the relief sought**
19 **by the petitioner. The court shall receive and consider evidence in a closed**
20 **proceeding, including evidence offered by the petitioner, concerning the**
21 **following:**

22 **(1) The petitioner's record, which shall include, at a minimum, the**
23 **petitioner's mental health records and criminal history records, if any.**

24 **(2) The petitioner's reputation.**

25 **(3) The petitioner's development, at a minimum, through character**
26 **witness statements.**

27 **(4) The circumstances regarding the original order or judgement that**
28 **led to the firearm disabilities imposed by 18 U.S.C. §922(d)(4) and (g)(4).**

29 **(5) Changes in the petitioner's condition or circumstances since the**

1 original adjudication or commitment relevant to the relief sought.

2 (6) Testimony from a mental health professional who has examined the
3 petitioner.

4 C. The court shall grant the petition for relief filed pursuant to
5 Subsection B of this Section if it finds by a preponderance of the evidence that
6 the petitioner will not likely act in a manner dangerous to the public safety and
7 that the granting of the relief would not be contrary to the public interest. A
8 record shall be kept of the proceeding, but it shall remain confidential and be
9 disclosed only to a court in the event of an appeal. The petitioner may appeal
10 a denial of the request and the review on appeal shall be de novo. A person may
11 file a petition for relief under this Section no more than once every two years.

12 D. If a court issues an order granting a petition for relief filed under
13 Subsection B of this Section, the clerk of court shall promptly notify the
14 Department of Public Safety and Corrections of such order. The department
15 shall as soon as practicable, but in no case later than ten business days, update,
16 correct, modify, or remove the person's record from any database that the
17 department makes available to the National Instant Criminal Background
18 Check System or to any official issuing a permit pursuant to R.S. 40:1379.3. The
19 department shall also notify the United States Attorney General that the basis
20 for such record being made available no longer applies.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Present law provides that no resident of Louisiana who has been adjudicated to be mentally deficient or committed to a mental institution shall meet the qualifications for a concealed handgun permit in Louisiana.

Proposed law retains present law and provides that if a petition for a new order declaring that mental deficiencies no longer exists or does not rise to the level of making such person a danger to himself or others is granted a Louisiana resident shall not be subject to the prohibition in present law.

Proposed law provides that when a court orders a commitment or makes a finding or adjudication by which a person becomes subject to certain federal prohibitive firearm provisions, the clerk of court shall forward the person's name to the Department of Public

Safety and Corrections ("DPS&C"), which shall forward the information to the Federal Bureau of Investigation, or its successor agency, for inclusion in the National Instant Criminal Background Check System database. The court shall also notify the person of the federal prohibitions regarding firearms.

Proposed law provides that any person who is subject to certain federal prohibitive firearm provisions may petition the court that issued the judgement or a district court of competent jurisdiction for a new order declaring that the person's mental deficiencies no longer exist. Proposed law provides that a copy of the petition for relief shall be served upon the prosecuting attorney for the original adjudication. The prosecuting attorney may appear to support or object to relief sought by the petitioner and present evidence relevant to the relief sought by the petitioner.

Proposed law requires that the court receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning the following:

1. The petitioner's record, which shall include, at a minimum, the petitioner's mental health records and criminal history records, if any.
2. The petitioner's character.
3. The petitioner's development, at a minimum, through character witness statements.
4. The circumstances regarding the original order or judgement that led to the firearm disabilities imposed by federal law.
5. Changes in the petitioner's condition or circumstances since the original adjudication or commitment relevant to the relief sought.
6. Testimony from a mental health professional who has examined the petitioner.

Proposed law provides that the court shall grant the petition for relief filed pursuant to proposed law if it finds by a preponderance of the evidence that the petitioner will not likely act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest.

Proposed law requires that a confidential record of the proceeding be kept and be disclosed only to a court in the event of an appeal.

Proposed law allows the petitioner to appeal a denial of the request and such appeal shall be by de novo review. A person may file a petition for relief no more than once every two years.

Proposed law provides that if a court issues an order granting a petition for relief filed under proposed law, the clerk of court shall promptly notify DPS&C of the order granting relief. Proposed law mandates DPS&C to update, correct, modify, or remove the person's record from any database that DPS&C makes available to the National Instant Criminal Background Check System or to any official issuing a permit pursuant to law. DPS&C shall also notify the United States Attorney General that the basis for such record being made available no longer applies.

Effective August 15, 2011.

(Amends R.S. 40:1379.3(C)(13); adds R.S. 40:1379.3.2)