
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Riser (SB 135)

Proposed law provides for a new reporting requirement for district clerks of court, effective January 1, 2014. Requires that each district clerk of court shall report to the Louisiana Supreme Court for reporting to the National Instant Criminal Background Check System (NICS) database the name and other identifying information of an adult who is prohibited from possessing a firearm under the laws of this state or under 18 U.S.C. §922(d)(4) and (g)(4), by reason of one of the following convictions or adjudications in a court of that clerk's district:

- (1) Guilty of a crime listed in R.S. 14:95.1(A).
- (2) Not guilty by reason of insanity for a crime listed in R.S. 14:95.1(A).
- (3) Lacking mental capacity to proceed to trial for a crime listed in R.S. 14:95.1(A).
- (4) Ordered involuntarily committed to an inpatient mental health treatment facility pursuant to R.S. 28:54.

[NOTE: 18 U.S.C. §922 (d)(4) prohibits the selling or otherwise disposing of any firearm or ammunition to a person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution". 18 U.S.C. §922(g)(4) prohibits a person who "has been adjudicated as a mental defective or who has been committed to any mental institution" to "ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce".]

[NOTE: R.S. 14:95.1(A) states, "A. It is unlawful for any person who has been convicted of a crime of violence as defined in R.S. 14.2(B) which is a felony or simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling, unauthorized entry of an inhabited dwelling, felony illegal use of weapons or dangerous instrumentalities, manufacture or possession of a delayed action incendiary device, manufacture or possession of a bomb, or possession of a firearm while in the possession of or during the sale or distribution of a controlled dangerous substance, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony, or any crime which is defined as a sex offense in R.S. 15:541, or any crime defined as an attempt to commit one of the above-enumerated offenses under the laws of this state, or who has been convicted under the laws of any state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be one of the above-enumerated crimes, to possess a firearm or carry a concealed weapon."]

Proposed law provides that the clerk of court shall submit this report to Louisiana Supreme Court, in the manner and form as directed by the Supreme Court, within ten business days of the

date of conviction, adjudication or order of involuntary commitment, and that the Louisiana Supreme Court shall, within 15 business days of the receipt of that report, submit that information to the NICS database. Proposed law further provides that, except in the case of willful or wanton misconduct or gross negligence, no district clerk of court shall be held civilly or criminally liable on the basis of the accuracy, availability or unavailability of any information reported or required to be reported.

Present law provides for the manner in which a civil petition may be filed to have a person judicially and involuntarily committed to an inpatient mental health treatment facility, upon certain findings by the court. Provides for the information required to be included in that petition.

Proposed law adds additional information to be included in such petition, including the respondent's name, date of birth, alias names (if any), social security number, sex, and race. Further provides that if the petitioner is unable to provide any of the information listed, the petitioner shall include in the petition the reasons why that information cannot be provided.

Proposed law provides for a process for a person subject to the disabilities of 18 U.S.C. §922(d)(4) and (g)(4) to petition for restoration of his rights to possess, ship, transport or receive a firearm or apply for a permit to carry a concealed handgun. Provides that such a person may, upon release from involuntary commitment, file a civil petition seeking judgment ordering the removal of such disability.

Proposed law provides that the petition for restoration shall be filed in the form of a rule to show cause and shall be filed in the district in which the adjudication or order of commitment occurred. Proposed law further provides that hearing on the petition for restoration shall be a contradictory proceeding with the attorney who represented the state in the original proceedings, or the attorney's successor, who shall represent the interests of the state and be served with a copy of the petition and citation to answer same not less than 30 days prior to the hearing. Proposed law further provides that the hearing shall be in chambers, unless the court determines that it is in the best interest of the public that the hearing be in open court.

Proposed law further provides that at the hearing on the petition for restoration, the court shall consider evidence concerning the following:

- (1) The circumstances regarding the firearm disabilities from which relief is sought.
- (2) The petitioner's mental health and criminal history records, if any.
- (3) The petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence; and
- (4) Changes in the petitioner's condition or circumstances since the original adjudication or commitment relevant to the relief sought.

Proposed law provides that if the court determines the hearing shall be open to the public, upon motion by the petitioner for restoration, the court may allow for in camera inspection of any mental health records.

Proposed law provides that the court shall render such judgment as the nature of the relief and the law and evidence shall justify. Provides that the court shall grant the relief requested if it finds, by a preponderance of the evidence, that the petitioner's record and reputation are such that he will not be likely to act in a manner dangerous to public safety and that the granting of the relief requested would not be contrary to the public interest. Provides that a record of the proceedings shall be kept. Proposed law further provides that, in the event the hearing on the petition is closed, the record of the proceedings shall remain under seal and be disclosed only to an appellate court or the parties. Proposed law provides that the district court order may be reviewed on appeal to the court of appeal under a *de novo* standard of review. Further provides that the appellate court shall maintain the confidentiality of the records. Proposed law provides that the petitioner for restoration shall in all cases pay the costs of the proceedings.

Proposed law provides that after a judgment granting restoration of rights has been issued and becomes final and definitive, the clerk of court in the district where the judgment was rendered shall within 10 business days after receipt of the final and definitive judgment, forward a copy of the judgment to the Louisiana Supreme Court. Further provides that the Louisiana Supreme Court shall within 15 business days after receipt of the judgment revise the person's record in any information database that the Louisiana Supreme Court makes available to the National Instant Criminal Background Check System, and shall notify the United States Attorney General that the basis for the disabilities imposed by 18 U.S.C. §922(d)(4) and (g)(4) no longer applies.

Present law provides that one qualifying factor in a Louisiana resident's application to state police for a concealed carry permit is that the person shall not have been adjudicated to be mentally deficient or have been committed to a mental institution.

Proposed law provides that, to qualify for a concealed handgun permit, a Louisiana resident shall not have been adjudicated to be mentally deficient or been committed to a mental institution, unless the resident's right to possess a firearm has been restored pursuant to the petition for restoration process in the proposed law.

Effective January 1, 2014.

(Amends R.S. 28:54(B) and R.S. 40:1379.3(C)(13); adds R.S. 13:752 and R.S. 28:57)