

Regular Session, 2013

HOUSE BILL NO. 717 (Substitute for House Bill No. 21 by Representative Henry Burns)

BY REPRESENTATIVES HENRY BURNS, BADON, BROADWATER, BROWN,  
CARMODY, GREENE, HOFFMANN, IVEY, JONES, MORENO, JAY MORRIS,  
RICHARD, SCHRODER, SEABAUGH, THIBAUT, AND WHITNEY AND  
SENATOR THOMPSON

1 AN ACT

2 To amend and reenact R.S. 28:54(B) and R.S. 40:1379.3(C)(13) and to enact R.S. 13:752  
3 and 753 and R.S. 28:57, relative to firearms; to require clerks of court to provide  
4 certain information to the Louisiana Supreme Court; to provide for mandatory  
5 reporting of convictions of certain offenses and judicial determinations which would  
6 prohibit persons from possessing, shipping, transporting, or receiving firearms  
7 pursuant to state and federal law; to provide relative to permits to carry a concealed  
8 weapon; to provide procedures by which such information shall be reported to the  
9 Louisiana Supreme Court and to the National Instant Criminal Background Check  
10 System database; to provide procedures by which certain persons may file a civil  
11 petition seeking adjudicated restoration of certain rights relative to the possession  
12 and carrying of certain firearms; to provide procedures by which such petitions shall  
13 be filed, heard, recorded, and reported to the Louisiana Supreme Court and to the  
14 National Instant Criminal Background Check System; to provide for the effects of  
15 judgments in such proceedings; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 13:752 and 753 are hereby enacted to read as follows:

18 §752. Legislative findings

19 (1) The Second Amendment of the United States Constitution provides that,  
20 "[a] well regulated Militia, being necessary to the security of a free State, the right  
21 of the people to keep and bear Arms, shall not be infringed".

1           (2) Article I, Section 11 of the Louisiana Constitution provides that "The  
2           right of each citizen to keep and bear arms is fundamental and shall not be infringed.  
3           Any restriction on this right shall be subject to strict scrutiny."

4           (3) Federal law (18 U.S.C. 922(g)) prohibits a person who has been  
5           convicted of a crime punishable by imprisonment exceeding one year from  
6           purchasing a firearm.

7           (4) Federal law (18 U.S.C. 922(g)) further prohibits any person who the  
8           court has determined to have certain mental conditions from purchasing a firearm.

9           (5) Based upon the successful interfacing of state law enforcement agencies  
10           with the Federal Bureau of Investigation criminal databases, information regarding  
11           a person's criminal convictions is available at the point of sale.

12           (6) However, the reporting of judicial decisions which would, in effect,  
13           prohibit a person from being eligible to purchase a firearm under federal law has not  
14           been consistent nor has the information been uniformly reported to the Federal  
15           Bureau of Investigation.

16           (7) The state of Louisiana has a compelling interest in protecting and  
17           preserving the fundamental rights of its citizens to keep and bear arms while also  
18           ensuring the timely reporting of information to the Federal Bureau of Investigation  
19           regarding court decisions which would prohibit the purchase of a firearm.

20           (8) It is the express intention of the legislature that the provisions of this  
21           Section and R.S. 13:753 are enacted to provide for the collection of information and  
22           to facilitate the reporting of information which would prohibit the purchasing of  
23           firearms while preserving the constitutional rights of Louisiana citizens to keep and  
24           bear arms.

25           §753. Reporting of information to Louisiana Supreme Court for NICS database;  
26           possession of a firearm

27           A. Each district clerk of court shall report to the Louisiana Supreme Court  
28           for reporting to the National Instant Criminal Background Check System database  
29           the name and other identifying information of any adult who is prohibited from  
30           possessing a firearm pursuant to the laws of this state or 18 U.S.C. 922(d)(4) and

1            (g)(4), by reason of a conviction or adjudication in a court of that district for any of  
2            the following:

3                     (1) A conviction of a crime listed in R.S. 14:95.1(A).

4                     (2) A verdict of an acquittal of a crime listed in R.S. 14:95.1(A) by reason  
5                     of insanity pursuant to the provisions of Chapter 2 of Title XXI of the Code of  
6                     Criminal Procedure.

7                     (3) A court determination that a person does not have the mental capacity to  
8                     proceed with a criminal trial for a crime listed in R.S. 14:95.1(A) pursuant to the  
9                     provisions of Chapter 1 of Title XXI of the Code of Criminal Procedure.

10                    (4) A court order requiring that a person be involuntarily committed to an  
11                    inpatient mental health treatment facility pursuant to R.S. 28:54.

12                    (5) A court order prohibiting a person from possessing a firearm or  
13                    restricting a person in the use of a firearm.

14                    B. The report shall be submitted to the Louisiana Supreme Court, in the  
15                    manner and form as directed by the Supreme Court, within ten business days of the  
16                    date of conviction, adjudication, or order of involuntary commitment.

17                    C. The Louisiana Supreme Court shall, within fifteen business days of  
18                    receipt of the report, submit the information in the report to the National Instant  
19                    Criminal Background Check System database.

20                    D. Except in the case of willful or wanton misconduct or gross negligence,  
21                    no district clerk of court shall be held civilly or criminally liable on the basis of the  
22                    accuracy, availability, or unavailability of any information reported or required to be  
23                    reported pursuant to this Section.

24                    Section 2. R.S. 28:54(B) is hereby amended and reenacted and R.S. 28:57 is hereby  
25                    enacted to read as follows:

26                    §54. Judicial commitment; procedure

27   \*       \*       \*

28                    B.(1) The petition shall contain the facts which are the basis of the assertion  
29                    and provide the respondent with adequate notice and knowledge relative to the nature  
30                    of the proceedings.

1                   (2)(a) In addition, the petition shall contain the following information  
2                   regarding the respondent:

3                   (i) Name.

4                   (ii) Date of birth.

5                   (iii) Alias names, if any.

6                   (iv) Social security number.

7                   (v) Sex.

8                   (vi) Race.

9                   (b) If the petitioner is unable to provide any of the information listed in this  
10                   Subparagraph, the petitioner shall include in the petition the reasons why that  
11                   information cannot be provided.

12   \*           \*           \*

13                   §57. Petition for restoration of right to possess a firearm and to apply for permit for  
14                   concealed handgun; procedures

15                   A. A person who is prohibited from possessing a firearm or is ineligible to  
16                   be issued a concealed handgun permit pursuant to the provisions of 18 U.S.C.  
17                   922(d)(4) and (g)(4) or of R.S. 40:1379.3(C)(13) because of an adjudication or  
18                   commitment that occurred under the laws of this state may, upon release from  
19                   involuntary commitment, file a civil petition seeking judgment ordering the removal  
20                   of that prohibition.

21                   B. The petition for restoration shall be filed in the form of a rule to show  
22                   cause and shall be filed in the district in which the adjudication or order of  
23                   commitment occurred.

24                   C. The hearing on the petition shall be a contradictory proceeding with the  
25                   attorney who represented the state in the original proceedings, or the attorney's  
26                   successor, who shall represent the interests of the state and be served with a copy of  
27                   the petition and citation to answer same not less than thirty days prior to the hearing.

28                   D. The hearing shall be in chambers, unless the court determines that it is in  
29                   the best interest of the public that the hearing be in open court.

1           E. At the hearing, the court shall consider evidence concerning all of the  
2           following:

3           (1) The circumstances which prohibit the person from possessing a firearm  
4           or which render the person ineligible to receive a concealed handgun permit.

5           (2) The petitioner's mental health and criminal history records, if any.

6           (3) The petitioner's reputation, developed at a minimum through character  
7           witness statements, testimony, or other character evidence.

8           (4) Changes in the petitioner's condition or circumstances since the original  
9           adjudication or commitment relevant to the relief sought. If the court determines the  
10          hearing should be open to the public, upon motion by the petitioner for restoration,  
11          the court may allow for in camera inspection of any mental health records.

12          F. The court shall grant the relief requested if it finds, by a preponderance  
13          of the evidence, that the petitioner's record and reputation are such that he will not  
14          be likely to act in a manner dangerous to public safety and that the granting of the  
15          relief requested would not be contrary to the public interest. A record of the  
16          proceedings shall be maintained.

17          G. In the event of a closed hearing, the record of the proceedings shall  
18          remain under seal and be disclosed only to an appellate court or the parties. The  
19          district court order may be reviewed on appeal to the court of appeal under a *de novo*  
20          standard of review. The appellate court shall maintain the confidentiality of the  
21          records.

22          H. The petitioner for restoration in all cases shall pay the costs of the  
23          proceedings.

24          I. After a judgment granting restoration of rights pursuant to the provisions  
25          of this Section has become final and definitive, the clerk of court in the district where  
26          the judgment was rendered shall, as soon as is practicable, but in no case later than  
27          ten business days after receipt of the final and definitive judgment, forward a copy  
28          of the judgment to the Louisiana Supreme Court. The Louisiana Supreme Court  
29          shall, within fifteen business days after receipt of the judgment, revise the person's  
30          record in any information database that the Louisiana Supreme Court makes

1           available to the National Instant Criminal Background Check System, and shall  
2           notify the United States Attorney General for the purpose of reporting to the National  
3           Instant Criminal Background Check System that the basis for the prohibitions  
4           imposed by 18 U.S.C. 922(d)(4) and (g)(4) no longer applies.

5           Section 3. R.S. 40:1379.3(C)(13) is hereby amended and reenacted to read as  
6 follows:

7           §1379.3. Statewide permits for concealed handguns; application procedures;  
8                           definitions

9   \*           \*           \*

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

11   \*           \*           \*

12                           (13) Not have been adjudicated to be mentally deficient or been committed  
13 to a mental institution, unless the resident's right to possess a firearm has been  
14 restored pursuant to R.S. 28:57.

15   \*           \*           \*

16           Section 4. This Act shall become effective on January 1, 2014.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_