

2016 Regular Session

HOUSE BILL NO. 780

BY REPRESENTATIVE MORENO

WEAPONS/FIREARMS: Provides relative to the transfer of firearms by person prohibited from possessing firearms

1 AN ACT

2 To enact Title XXXV of the Code of Criminal Procedure, comprised of Articles 1001
3 through 1009, relative to firearms; to provide for the transferring of firearms by
4 persons prohibited from possessing firearms due to convictions or restraining orders
5 regarding domestic violence; to provide for time periods for the transfer of firearms;
6 to provide definitions; to provide for a transfer of firearms hearing; to provide for
7 designated law enforcement agencies to serve as repository for transferred firearms;
8 to provide for procedures for the return of firearms which have been transferred; to
9 provide for applicability; to provide for exceptions; to provide for the adoption of
10 policies by law enforcement agencies; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Title XXXV of the Code of Criminal Procedure, comprised of Articles
13 1001 through 1009, is hereby enacted to read as follows:

1 TITLE XXXV. DOMESTIC VIOLENCE PREVENTION2 TRANSFER AND DISPOSITION OF FIREARMS3 §1001. Short Title

4 This Title shall be known and cited as the Domestic Violence Prevention and
5 Transfer and Disposition of Firearms Law.

6 Art. 1002. Definitions

7 (1) "Designated law enforcement agency" means the Department of Public
8 Safety and Corrections, office of state police, the sheriff of any parish, or the police
9 department of any municipality selected by the court to be the agency to receive
10 transferred firearms pursuant to the provisions of this Title.

11 (2) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,
12 submachine gun, or assault rifle, which is designed to fire or is capable of firing
13 fixed cartridge ammunition or from which a shot or projectile is discharged by an
14 explosive.

15 Art. 1003. Transfer of firearms; order for persons prohibited from possessing
16 firearms

17 A. Upon a conviction of an offense or court order issued against a person
18 pursuant to the provisions of this Paragraph, a judge shall order the transfer of all
19 firearms pursuant to the provisions of this Title owned or possessed by any person
20 who is prohibited from possessing a firearm pursuant to the laws of this state by
21 reason of any of the following:

22 (1) Any person convicted of domestic abuse battery R.S. 14:35.3.

23 (2) Any person convicted of possession of a firearm or carrying a concealed
24 weapon by a person convicted of domestic abuse battery R.S. 14:95.10.

25 (3) Any person against whom the court has issued a permanent injunction
26 or a protective order pursuant to a court-approved consent agreement or pursuant to
27 the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173,
28 Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Articles
29 30, 327.1, 335.1, 335.2, or 871.1 of this Code shall be prohibited from possessing a

1 firearm for the duration of the injunction or protective order pursuant to the
2 provisions of R.S. 46:2136.3.

3 (4) Any person prohibited from possessing a firearm pursuant to a Uniform
4 Abuse Prevention Order.

5 B. The order transferring the firearms shall be issued at time of conviction
6 or at the same time the court prohibits the person from possessing a firearm as
7 enumerated in Paragraph A of this Article.

8 C. The order to transfer firearms shall inform the person subject to the order
9 that he is prohibited from possessing a firearm pursuant to the provisions of 18
10 U.S.C. 922(g)(8) and the relevant provisions of Louisiana law.

11 D. The court shall also order that if the defendant possesses a concealed
12 handgun permit, the permit shall be suspended.

13 Art. 1004. Designated law enforcement agency

14 The court may designate the law enforcement agency within the judicial
15 district of the court to serve as the agency to retain firearms transferred by the
16 provisions of this Title. If the law enforcement agency elects not to be the repository
17 of transferred firearms as provided for in this Title, the court shall designate another
18 law enforcement agency to retain firearms transferred by the provisions of this Title.

19 Art. 1005. Transfer of firearms hearing; time period to transfer

20 A. The owner of a firearm who has been ordered to transfer all firearms in
21 his possession pursuant to the provisions of this Title shall transfer those firearms to
22 the designated law enforcement agency immediately but not later than forty-eight
23 hours of the issuance of the order by the court. If the offender is incarcerated at the
24 time the order is issued, he shall transfer his firearms immediately but not later than
25 forty-eight hours of release from incarceration.

26 B. The person ordered by the court to transfer his firearms may request that
27 the court approve a third party other than the designated law enforcement to receive
28 and hold the firearms. If the person requests that a third party receive and hold the

1 firearms, the court shall schedule a firearms transfer hearing within a week of issuing
2 the order directing the person to transfer his firearms.

3 C. The court may schedule a firearms transfer hearing for any reason the
4 court deems relevant to the transfer of firearms. The court shall consider all relevant
5 factors and any input from the petitioner in determining whether to approve the
6 transfer of firearms.

7 D. The court shall dismiss the hearing to transfer firearms if the respondent
8 transfers his firearms in one of the following manners:

9 (1) The person transfers his firearms to the law enforcement officer as
10 ordered by the court immediately but not later than forty-eight hours after the hearing
11 ordering the person to transfer his firearms and provides a copy of the receipt to the
12 clerk of court. If the offender is incarcerated at the time the order is issued, he shall
13 transfer his firearms immediately, but not later than forty-eight hours of release from
14 incarceration and provide a copy of the receipt to the clerk of court.

15 (2) The person transfers his firearms to another person and all of the
16 following apply:

17 (a) The respondent and the person to whom the respondent is transferring his
18 firearms appear at the hearing ordering the transfer of firearms.

19 (b) At the hearing, the court determines that the person receiving the firearms
20 is not prohibited from possessing a firearm.

21 (c) The court informs the person to whom firearms are transferred of the
22 requirements and penalties under state and federal laws.

23 E. Unless the court dismisses the hearing to transfer firearms, a person for
24 whom a hearing to transfer firearms has been scheduled shall attend the hearing. If
25 the person fails to attend the hearing to transfer firearms, the court shall issue an
26 arrest warrant for that person.

27 F. At the hearing, if the person claims to have transferred his firearms to the
28 law enforcement officer in accordance with the provisions of this Title, the court
29 shall verify that the respondent has transferred all such firearms.

1 G. If the person has not transferred his firearms in accordance with the
2 provisions of this Chapter, the court shall order him to transfer any firearms that the
3 court finds he owns or possesses to the law enforcement officer as authorized by the
4 provisions of this Title. If the person has not provided to the court, within forty-eight
5 hours of the hearing to transfer firearms, a receipt confirming the transfer of all of
6 the firearms that were subject to the order, the court shall presume the respondent is
7 violating the order and may do either of the following:

8 (1) Notify the law enforcement officer of the violation for investigation and
9 appropriate action.

10 (2) Issue a warrant to the sheriff ordering that the respondent be brought
11 before the court to show cause why the respondent should not be held in contempt.

12 H. If the person states that he does not possess a firearm, and the court, after
13 an inquiry, is satisfied that the respondent does not possess a firearm, the court shall
14 dismiss the order of transfer of firearms.

15 Art. 1006. Designated law enforcement agency duties

16 A. Any firearm transferred under the provisions of this Title shall be
17 inventoried and retained, with due care to preserve its quality and function, by the
18 designated law enforcement agency, and must be returned to the person upon
19 dismissal of the protective order or a finding pursuant to a rule to show cause that a
20 protective order not be issued upon the person's acquittal, when charges are
21 dismissed, or if no charges are filed unless otherwise prohibited by federal or state
22 law.

23 B. When a person transfers a firearm pursuant to the provisions of this Title
24 to a law enforcement officer employed by the designated law enforcement agency,
25 the officer shall prepare a receipt for each firearm transferred to him. The receipt
26 shall include the date on which the firearm was transferred and the manufacturer,
27 model, and serial number of the firearm transferred to the sheriff and shall be signed
28 by the respondent and by the law enforcement officer to whom the firearm is
29 transferred.

1 C. The designated law enforcement agency shall maintain possession of the
2 firearms until the court issues an order directing that the firearms be relinquished and
3 specifying the person to whom the firearms will be relinquished.

4 D. Upon expiration of the Uniform Abuse Prevention Order, or completion
5 of any sentence, if the court has not previously ordered the firearm be relinquished
6 to another party and if the owner may lawfully possess the transferred firearm, the
7 law enforcement agency shall return the transferred firearm to the owner.

8 Art. 1007. Transfer of firearms; exception for antique firearms

9 A. The provisions of this Title providing for the transfer of firearms shall not
10 include the transfer or seizure of antique firearms.

11 B. For the purposes of this Article, "antique firearm" means a firearm or
12 replica of a firearm not designed or redesigned for using rim fire or conventional
13 center fire ignition with fixed ammunition and manufactured in or before 1898,
14 including any matchlock, flintlock, percussion cap, or similar type of ignition system
15 and also any firearm using fixed ammunition manufactured in or before 1898, for
16 which ammunition is no longer manufactured in the United States and is not readily
17 available in the ordinary channels of commercial trade.

18 Art. 1008. Procedures for return of firearms

19 A. All designated law enforcement agencies shall develop policies and
20 procedures by January 1, 2017 regarding the acceptance, storage, and return of
21 firearms transferred pursuant to the provisions of this Title.

22 B. By January 1, 2017, the Louisiana Judicial Administrator's Office shall
23 develop a proof of transfer and receipt pattern form to be used to document that a
24 respondent has complied with a requirement to transfer firearms and his concealed
25 carry permit as ordered by a court. The office shall also develop a declaration of
26 transfer pattern form to document compliance when the respondent has no firearms
27 or a concealed carry permit.

28 §1009. Law enforcement option to participate

- 1 A. Any law enforcement agency in the state may elect not to participate in
2 the holding of court-ordered transferred firearms. If a law enforcement agency in a
3 judicial district chooses not to participate in the storage of firearms which are
4 transferred pursuant to this Title, the court shall determine an appropriate repository
5 for the firearms and order the firearms be maintained until the court orders their
6 return.
- 7 B. In the event that all law enforcement agencies in a judicial district elect
8 not to participate pursuant to Paragraph A of this Article, the court shall approve a
9 third party other than the designated law enforcement to receive and hold the
10 firearms.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 780 Original

2016 Regular Session

Moreno

Abstract: Establishes court procedures for the transfer of firearms following certain criminal convictions or the issuance of a protective order where possession of firearms is prohibited.

Present law provides that a person shall not possess firearms upon conviction of certain offenses involving domestic violence or the issuance of a protective order.

Proposed law retains present law.

Proposed law provides that the court shall order the transfer of firearms possessed by a person who is prohibited from possessing a firearm pursuant to the laws of this state by reason of any of the following:

- (1) Any person convicted of domestic abuse battery.
- (2) Any person convicted of possession of a firearm or carrying a concealed weapon by a person convicted of domestic abuse battery.
- (3) Any person against whom the court has issued a permanent injunction or a protective order.
- (4) Any person against whom the court has prohibited from possessing a firearm pursuant to a Uniform Abuse Prevention Order.

Proposed law provides that the person shall transfer firearms in their possession immediately but not later than 48 hours of the issuance of the court order, if the offender is incarcerated then immediately but not later than 48 hours of release.

Proposed law authorizes the court to designate a law enforcement agency in each judicial district, or a third party in some cases, to be the agency to receive the weapons which are transferred.

Proposed law provides procedures for a hearing if the person transferring the guns wishes to designate a third party to receive the guns, or if the court decides to have a hearing for any other reason.

Proposed law provides procedures for those firearms transferred regarding the transfer and return of the firearms.

(Adds C.Cr.P. Arts. 1001 - 1009)