

**HOUSE COMMITTEE AMENDMENTS**

2016 Regular Session

Substitute for Original House Bill No. 780 by Representative Moreno as proposed by the House Committee on Administration of Criminal Justice

**This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.**

To enact R.S. 14:35.3(N) and 95.10(F), R.S. 46:2136.3(C) and Title XXXV of the Code of Criminal Procedure, comprised of Articles 1001 through 1009, relative to firearms; to provide for the transferring of firearms by persons prohibited from possessing firearms due to convictions or restraining orders regarding domestic violence; to provide for the option to sell such firearms; to provide for time periods for the transfer or the sell of firearms; to provide definitions; to provide for a transfer of firearms hearing; to provide for procedures for the return of firearms which have been transferred; to provide for applicability; to provide for a limitation of liability; to provide for exceptions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:35.3(N) and 95.10(F) are hereby enacted to read as follows:

§35.3. Domestic abuse battery

\* \* \*

N. Any person prohibited from possessing a firearm pursuant to the provisions of this Section shall transfer all firearms in his possession or under his control to a court approved third party or entity not legally prohibited from possessing a firearm pursuant to the provisions of Code of Criminal Procedure Article 1001 et seq. Such person shall transfer the firearms immediately but not later than forty-eight hours of the issuance of the order by the court. If the person prohibited from possessing a firearm pursuant to the provisions of this Section is incarcerated at the time the order is issued, he shall transfer his firearms immediately but not later than forty-eight hours of release from incarceration.

\* \* \*

§95.10. Possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery

\* \* \*

F. Any person prohibited from possessing a firearm pursuant to the provisions of this Section shall transfer all firearms in his possession or under his control to a court approved third party or entity not legally prohibited from possessing a firearm pursuant to the provisions of Code of Criminal Procedure Article 1001 et seq. Such person shall transfer the firearms immediately but not later than forty-eight hours of the issuance of the order by the court. If the person prohibited from possessing a firearm pursuant to the provisions of this Section is incarcerated at the time the order is issued, he shall transfer his firearms immediately but not later than forty-eight hours of release from incarceration.

Section 2. R.S. 46:2136.3(C) is hereby enacted to read as follows:

§2136.3. Prohibition on the possession of firearms by a person against whom a protective order is issued

\* \* \*

C. Any person prohibited from possessing a firearm pursuant to the provisions of this Section shall transfer all firearms in his possession or under his control to a court approved third party or entity not legally prohibited from possessing a firearm pursuant to the provisions of Code of Criminal Procedure Article 1001 et seq. Such person shall transfer the firearms immediately but not later than forty-eight hours of the issuance of the order by the court. If the person prohibited from possessing a firearm pursuant to the provisions of this Section is incarcerated at the time the order is issued, he shall transfer his firearms immediately but not later than forty-eight hours of release from incarceration.

Section 3. Title XXXV of the Code of Criminal Procedure, comprised of Articles 1001 through 1009, is hereby enacted to read as follows:

TITLE XXXV. DOMESTIC VIOLENCE PREVENTION

TRANSFER AND DISPOSITION OF FIREARMS

Art. 1001. Short Title

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

Art. 1002. Definitions

(1) "Approved third party" means a person who does not reside with the defendant who may legally possess a firearm and is approved by the court to receive and hold firearms for the defendant.

(2) "Federally licensed firearms dealer" means any person, not a manufacturer or importer, licensed pursuant to 18 USC 923 to engage in the business of selling any firearm in this state. The term includes wholesalers, pawnbrokers, and other persons dealing in used firearms.

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

(4) "Law enforcement agency" means the Department of Public Safety and Corrections, office of state police, the sheriff of any parish, or the police department of any municipality that elects to receive and hold transferred firearms for the person prohibited from possessing firearms pursuant to the provisions of this Title.

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

A. Upon a conviction of an offense or court order issued against a person pursuant to the provisions of this Paragraph, a judge shall order the transfer of all firearms pursuant to the provisions of this Title owned or possessed by any 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 (R.S. 14:35.3).
- (2) Any person convicted of possession of a firearm or carrying a concealed weapon by a person convicted of domestic abuse battery (R.S. 14:95.10).
- (3) Any person against whom the court has issued a permanent injunction or a protective order pursuant to a court-approved consent agreement or pursuant to

the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Articles 30, 327.1, 335.1, 335.2, or 871.1 of this Code shall be prohibited from possessing a firearm for the duration of the injunction or protective order pursuant to the provisions of R.S. 46:2136.3.

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

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

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

D. Any person who has been ordered to transfer all firearms in his possession pursuant to the provisions of this Title shall transfer those firearms to a third party or law enforcement agency approved by the court immediately but not later than forty-eight hours of the issuance of the order by the court. In lieu of transferring a firearm pursuant to the provisions of this Paragraph, the person may elect to sell his firearms pursuant to the provisions of Article 1009 of this Code within the same period of time provided in this Paragraph. If the person is incarcerated at the time the order is issued, he shall sell or transfer his firearms immediately but not later than forty-eight hours of release from incarceration.

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

Art. 1004. Transfer of firearms hearing; approval of third party

A. The person ordered by the court to transfer his firearms may request that the third party the person surrendered his firearms to pursuant to the provisions of this Title be approved by the court. If the person requests that a third party be approved to hold firearms, the court shall schedule a firearms transfer hearing to

approve the third party within a week of issuing the order directing the person to transfer his firearms.

B. At the firearms transfer hearing, the court may approve a third party to serve as the agency to retain firearms transferred by the provisions of this Title if all of the following occur:

(1) The third party appears in court and is willing to accept the transfer of firearms.

(2) The third party does not reside with the person that is prohibited from possessing a firearm.

(3) The third party is not prohibited from possessing a firearm under state or federal law.

(4) The court informs the third party to whom firearms are transferred of the requirements and penalties regarding the possession of firearms under state and federal laws, and the penalties regarding the unlawful return of firearms to a prohibited possessor.

C. If the court cannot locate an approved third party, the court may designate a law enforcement agency or agencies to serve as the agency to retain firearms transferred by the provisions of this Title if that law enforcement agency agrees to be designated as the agency to retain firearms transferred by the provisions of this Title.

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

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

(1) The person transfers his firearms to a law enforcement agency as ordered by the court immediately but not later than forty-eight hours after the hearing ordering the person to transfer his firearms and provides a copy of the receipt to the clerk of court. If the person is incarcerated at the time the order is issued, he shall

transfer his firearms immediately, but not later than forty-eight hours of release from incarceration and provide a copy of the receipt to the clerk of court.

(2) The person transfers his firearms to another person immediately but not later than forty-eight hours after the hearing ordering the person to transfer his firearms and the court has approved that person as an approved third party to receive the firearms.

(3) The person sells his firearms to a federally licensed firearms dealer and provides the court with proof of the sale.

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

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

H. If the person has not transferred his firearms in accordance with the provisions of this Title, the court shall order him to transfer any firearms that the court finds he owns or possesses to the approved third party or law enforcement agency as authorized by the provisions of this Title. If the person has not provided to the court, within forty-eight hours of the hearing to transfer firearms, a receipt confirming the sale or transfer of all of the firearms that were subject to the order, the court shall presume the respondent is violating the order and may do either of the following:

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

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

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

Art. 1005. Approved third party duties

A. Any firearm transferred pursuant to the provisions of this Title shall be inventoried and retained by the designated law enforcement agency and must be returned to the person upon dismissal of the protective order or a finding pursuant to a rule to show cause that a protective order not be issued upon the person's acquittal, when charges are dismissed, or if no charges are filed unless otherwise prohibited by federal or state law.

B. When a person transfers a firearm pursuant to the provisions of this Title to an approved third party or law enforcement agency, the third party or law enforcement agency shall prepare a receipt for each firearm transferred to him. The receipt shall include the date on which the firearm was transferred and the manufacturer, model, and serial number of the firearm transferred to the law enforcement agency and shall be signed by the respondent and by the approved third party or the law enforcement officer to whom the firearm is transferred.

C. The approved third party or law enforcement agency shall maintain possession of the firearms until the court issues an order directing that the firearms be transferred and specifying the person to whom the firearms will be transferred.

D. Upon expiration of the Uniform Abuse Prevention Order, or completion of any sentence, if the court has not previously ordered the firearm be returned, the approved third party or law enforcement agency shall return the transferred firearm to the person ordered to transfer the firearm.

Art. 1006. Transfer of firearms; exception for antique firearms

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

B. For the purposes of this Article, "antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for

which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Art. 1007. Procedures for return of firearms

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

Art. 1008. Law enforcement option to participate; immunity from liability

A. Any law enforcement agency in the state may elect not to participate in the holding of court-ordered transferred firearms. If a law enforcement agency in a judicial district chooses not to participate in the storage of firearms which are transferred pursuant to this Title, the court shall determine an appropriate repository for the firearms until the court orders their return.

B. In the event that all law enforcement agencies in a judicial district elect not to participate pursuant to Paragraph A of this Article, the court shall approve a third party other than the designated law enforcement to receive and hold the firearms.

C. Any law enforcement agency or its agents shall be immune from civil liability for any actions taken in good faith regarding the storage of firearms which are transferred pursuant to this Title.

Art. 1009. Sale of firearms to federally licensed firearms dealer

A. Notwithstanding any other provision of law to the contrary, a person ordered to transfer his firearms pursuant to the provisions of this Title may sell his firearms to a federally licensed firearms dealer in lieu of transferring his firearms to an approved third party or law enforcement agency.

B. A person who sells his firearms pursuant to the provisions of this Article shall provide the court with documentation of sale for each firearm sold. The



documentation shall contain at a minimum the name of the federally licensed firearms dealer, the type of gun sold and the amount paid for each firearm.

---

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 Original

2016 Regular Session

**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 certain protective orders.

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, or if the person 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.

Proposed law provides for a limitation of liability for law enforcement agencies that do elect to participate in the storage of firearms which are transferred pursuant to proposed law.

Proposed law provides procedures for the person to elect to sell the firearms in lieu of transferring them pursuant to proposed law.

(Adds C.Cr.P. Arts. 1001 - 1009 and R.S. 14:35.3(N) and 95.10(F) and R.S. 46:2136.3(C))

