

2019 Regular Session

HOUSE BILL NO. 279

BY REPRESENTATIVE MARINO

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

DOMESTIC ABUSE: Provides relative to the transfer of firearms of persons who are prohibited from possessing a firearm in domestic abuse cases

1 AN ACT

2 To amend and reenact R.S. 14:95.1.4(B), R.S. 44:4.1(B)(38), and Code of Criminal

3 Procedure Articles 1001, 1002(A)(1)(introductory paragraph), (C)(2), (D), (E)(1),

4 and (F), and 1003(A), (B), (C), and (D)(2) and (4) and to enact Code of Criminal

5 Procedure Article 1001.1, 1002(A)(1)(f) through (i), (G), (H), and (I), 1002.1,

6 1003(F) and (G), and 1003.1, relative to domestic abuse; to provide relative to

7 persons who are prohibited from possessing firearms in domestic abuse cases; to

8 provide relative to the convictions and injunctions or orders for which a person is

9 prohibited from possessing a firearm; to provide relative to criminal penalties; to

10 provide relative to the required transfer of firearms possessed by such persons; to

11 provide relative to the procedure by which such firearms are transferred; to provide

12 relative to the transfer or sale of firearms by a prohibited possessor prior to issuance

13 of a transfer order; to provide relative to the duties and authority of sheriffs relative

14 to firearms transfers; to provide relative to certain forms that are required to be

15 completed; to provide relative to the information contained in each form; to provide

16 consequences for persons who fail to comply with the transfer procedure

17 requirements; to provide relative to the procedure by which firearms are returned to

18 persons who are no longer prohibited from possessing a firearm; to provide relative

1 to the testing or examination of firearms for certain purposes; to provide for
2 confidentiality of records related to firearms transfers; to provide for an exception
3 for such records in the Public Records Law; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. R.S. 14:95.1.4(B) is hereby amended and reenacted to read as follows:

6 §95.1.4. Illegal transfer of a firearm to a prohibited possessor

7 * * *

8 B. Whoever commits the crime of illegal transfer of a firearm to a prohibited
9 possessor ~~may~~ shall be fined not more than two thousand five hundred dollars,
10 imprisoned with or without hard labor for not more than one year, or both.

11 * * *

12 Section 2. R.S. 44:4.1(B)(38) is hereby amended and reenacted to read as follows:

13 §4.1. Exceptions

14 * * *

15 B. The legislature further recognizes that there exist exceptions, exemptions,
16 and limitations to the laws pertaining to public records throughout the revised
17 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
18 limitations are hereby continued in effect by incorporation into this Chapter by
19 citation:

20 * * *

21 (38) Code of Criminal Procedure Articles 103, 877, 894, Title XXXIV of the
22 Code of Criminal Procedure comprised of Articles 971 through 995, Title XXXV of
23 the Code of Criminal Procedure comprised of Articles 1001 through 1004

24 * * *

25 Section 3. Code of Criminal Procedure Articles 1001, 1002(A)(1)(introductory
26 paragraph), (C)(2), (D), (E)(1), and (F), and 1003(A), (B), (C), and (D)(2) and (4) are hereby
27 amended and reenacted and Code of Criminal Procedure Article 1001.1, 1002(A)(1)(f)
28 through (i), (G), (H), and (I), 1002.1, 1003(F) and (G), and 1003.1 are hereby enacted to read
29 as follows:

1 Art. 1001. Definitions

2 As used in this Title:

3 (1) "Dating partner" shall have the same meaning as provided in R.S.
4 46:2151.

5 (2) "Family member" shall have the same meaning as provided in R.S.
6 46:2132.

7 ~~(1)~~(3) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,
8 submachine gun, black powder weapon, or assault rifle which is designed to fire or
9 is capable of firing fixed cartridge ammunition or from which a shot or projectile is
10 discharged by an explosive.

11 (4) "Household member" shall have the same meaning as provided in R.S.
12 46:2132.

13 (5) "Other law enforcement agency" shall include any local or municipal
14 police force, the constable, and state police.

15 ~~(2)~~(6) "Sheriff" means the sheriff of the jurisdiction in which the order was
16 issued, unless the person resides outside of the jurisdiction in which the order is
17 issued. If the person resides outside of the jurisdiction in which the order is issued,
18 "sheriff" means the sheriff of the parish in which the person resides.

19 Art. 1001.1. Duties of the sheriff; other law enforcement agencies

20 Notwithstanding any provision of law to the contrary, the sheriff may enter
21 into an agreement with any other law enforcement agency to have that law
22 enforcement agency assume the duties of the sheriff under this Title.

23 Art. 1002. Transfer of firearms

24 A.(1) When a person ~~is convicted of~~ has any of the following, the judge shall
25 order the transfer of all firearms and the suspension of a concealed handgun permit
26 of the person:

27 * * *

1 (f) A conviction of domestic abuse aggravated assault (R.S. 14:37.7).

2 (g) A conviction of aggravated assault upon a dating partner (R.S.
3 14:34.9.1).

4 (h) A conviction of any felony crime of violence enumerated or defined in
5 R.S. 14:2(B), for which a person would be prohibited from possessing a firearm
6 pursuant to R.S. 14:95.1, and which has as an element of the crime that the victim
7 was a family member, household member, or dating partner.

8 (i) A conviction of any felony crime of violence enumerated or defined in
9 R.S. 14:2(B), for which a person would be prohibited from possessing a firearm
10 pursuant to R.S. 14:95.1, and in which the victim of the crime was determined to be
11 a family member, household member, or dating partner.

12 * * *

13 C. At the same time an order to prohibit a person from possessing a firearm
14 or carrying a concealed weapon is issued, the court shall also cause all of the
15 following to occur:

16 * * *

17 (2) Require the person to complete a firearm information form that states the
18 number of firearms in ~~the person's~~ his possession, the ~~serial number~~ type of each
19 firearm, and the location of each firearm.

20 * * *

21 D.(1) The court shall, on the record and in open court, order the person to
22 transfer all firearms in his possession to the sheriff no later than forty-eight hours,
23 exclusive of legal holidays, after the order is issued and a copy of the order and
24 firearm information form required by Paragraph C of this Article is sent to the
25 sheriff. If the person is incarcerated at the time the order is issued, he shall transfer
26 his firearms no later than forty-eight hours after his release from incarceration,
27 exclusive of legal holidays. At the time of transfer, the sheriff and the person shall
28 complete a proof of transfer form. The proof of transfer form shall ~~not~~ contain the
29 quantity of firearms transferred ~~or any identifying information about any firearm~~

1 ~~transferred.~~ The sheriff shall retain a copy of the form and provide the person with
2 a copy. The proof of transfer form shall attest that the person is not currently in
3 possession of firearms in accordance with the provisions of this Title and is currently
4 compliant with state and federal law, but shall not include the date on which the
5 transfer occurred.

6 (2) Within ~~five~~ ten of transferring his firearms, exclusive of legal holidays,
7 the person shall file the proof of transfer form with the clerk of court of the parish
8 in which the order was issued. The proof of transfer form shall be maintained by the
9 clerk of court under seal.

10 E.(1) If the person subject to the order to transfer firearms and suspend a
11 concealed handgun permit issued pursuant to Paragraph A of this Article does not
12 possess ~~or own~~ firearms, at the time the order is issued, the person shall complete a
13 declaration of nonpossession form which shall be filed in the court record and a copy
14 shall be provided to the sheriff.

15 * * *

16 F. Notwithstanding the provisions of Paragraph E of this Article or any other
17 provision of law to the contrary, if the person subject to the order to transfer firearms
18 and suspend a concealed handgun permit issued pursuant to Paragraph A of this
19 Article possessed firearms at the time of the qualifying incident giving rise to the
20 duty to transfer his firearms pursuant to this Title, but transferred or sold his firearms
21 to a third party prior to the court's issuance of the order, that third-party transfer shall
22 be declared in open court. The person subject to the order to transfer firearms and
23 suspend a concealed handgun permit shall within ten days after issuance of the order,
24 exclusive of legal holidays, execute along with the third party and a witness a proof
25 of transfer form that complies with the provisions of Subsection D of this Article and
26 with Article 1003(A)(1)(a) of this Code. The proof of transfer form need not be
27 signed by the sheriff and shall be filed, within ten days after the date on which the
28 proof of transfer form is executed, by the person subject to the order with the clerk

1 of court of the parish in which the order was issued. The proof of transfer form shall
2 be maintained by the clerk of court under seal.

3 F.G. The failure to provide the information required by this Title, the failure
4 to timely transfer firearms in accordance with the provisions of this Title, or both,
5 may be punished by contempt of court. Information required to be provided in order
6 to comply with the provisions of this Title cannot be used as evidence against that
7 person in a future criminal proceeding, except as provided by the laws on perjury or
8 false swearing.

9 H. On motion of the district attorney or of the person transferring his
10 firearms, and for good cause shown, the court shall conduct a contradictory hearing
11 with the district attorney to ensure that the person has complied with the provisions
12 of this Title.

13 I. For the purposes of this Title, a person shall be deemed to be in possession
14 of a firearm if that firearm is subject to his dominion and control.

15 Art. 1002.1. Designation of crime of violence against family member, household
16 member, or dating partner

17 Notwithstanding the provisions of Code of Criminal Procedure Articles 814
18 and 817 and any other provision of law to the contrary, when a person is charged
19 with any felony crime of violence enumerated or defined in R.S. 14:2(B), for which
20 the person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1
21 if convicted, the district attorney may allege in the indictment or bill of information
22 that the victim of the crime was a family member, household member, or dating
23 partner for the purpose of invoking the provisions of this Title, including Article
24 1002(A)(1)(i). If the person pleads guilty to the indictment or bill of information,
25 the fact that the victim was a family member, household member, or dating partner
26 shall be deemed admitted. If the matter proceeds to trial, the issue of whether the
27 victim was a family member, household member, or dating partner shall be
28 submitted to the jury and the verdict shall include a specific finding of fact as to that
29 issue in addition to a specification of the offense as to which the verdict is found.

1 Art. 1003. Transfer or storage of transferred firearms

2 A.~~(+)~~ The sheriff of each parish shall be responsible for oversight of firearm
3 transfers in his parish. For each firearm transferred pursuant to this Title, the sheriff
4 shall offer all of the following options to the transferor:

5 ~~(a)~~(i)(1)(a) Allow a third party to receive and hold the transferred firearms.
6 The third party shall complete a firearms acknowledgment form that, at a minimum,
7 informs the third party of the relevant state and federal laws, lists the consequences
8 for noncompliance, and asks if the third party is able to lawfully possess a firearm.
9 No firearm shall be transferred to a third party living in the same residence as the
10 transferor at the time of transfer. The sheriff shall prescribe the manner in which
11 firearms are transferred to a third party.

12 ~~(ii)~~(b) If a firearm is transferred to a third party pursuant to the provisions
13 of this Subparagraph, the sheriff shall advise the third party that return of the firearm
14 to the person before the person is able to lawfully possess the firearms pursuant to
15 state or federal law may result in the third party being charged with a crime.

16 ~~(b)~~(2) Store the transferred firearms in a storage facility with which the
17 sheriff has contracted for the storage of transferred firearms or with the sheriff. The
18 sheriff may charge a reasonable fee for the storage of such firearms.

19 ~~(c)~~(3) Oversee the legal sale of the transferred firearms to a third party. The
20 sheriff may contract with a licensed firearms dealer for such purpose. The sheriff
21 may charge a reasonable fee to oversee the sale of firearms.

22 ~~(2) The sheriff may also accept and store the transferred firearms. The~~
23 ~~sheriff may charge a reasonable fee for the storage of such firearms.~~

24 B. The sheriff shall prepare a receipt for each firearm transferred and provide
25 a copy to the person transferring the firearms. The receipt shall include the ~~date the~~
26 ~~firearm was transferred,~~ the firearm manufacturer; and firearm serial number. The
27 receipt shall be signed by the officer accepting the firearms and the person
28 transferring the firearms. The sheriff may require the receipt to be presented before
29 returning a transferred firearm.

1 C. The sheriff shall keep a record of all transferred firearms including but not
2 limited to the name of the person transferring the firearm, ~~date of the transfer~~, the
3 manufacturer, model, serial number, and the manner in which the firearm is stored.

4 D.

5 * * *

6 (2) Upon reviewing the motion, if the court determines that the person is no
7 longer prohibited from possessing a firearm under state or federal law, the court shall
8 issue an order stating that the firearms transferred pursuant to the provisions of this
9 Title shall be returned to the person. The order shall include the date on which the
10 person is no longer prohibited from possessing a firearm and a copy of the order
11 shall be sent to the sheriff. However, all outstanding fees shall be paid to the sheriff
12 prior to the firearms being returned.

13 * * *

14 (4) ~~After a firearm is returned pursuant to the provisions of this Paragraph,~~
15 ~~the sheriff shall destroy the records pertaining to the returned firearms and instruct~~
16 ~~the clerk of court of that parish to destroy the pertinent records.~~ If the person refuses
17 to pay outstanding fees to the sheriff or fails to file a motion with the court seeking
18 an order for the return of the transferred firearms within one year of the expiration
19 of the prohibition on possessing firearms under state or federal law, the sheriff may
20 send, by United States mail to the person's last known address, a notice informing
21 the person that if he does not pay the outstanding fees to the sheriff or file a motion
22 with the court seeking an order for the return of the transferred firearms within
23 ninety days, the firearms shall be forfeited to the sheriff. If, after ninety days from
24 the mailing of the notice, the person does not pay the outstanding fees to the sheriff
25 or file a motion with the court seeking an order for the return of the transferred
26 firearms, the sheriff may file a motion seeking a court order declaring that the
27 firearms are forfeited to the sheriff, who may thereafter dispose of the firearms at his
28 discretion.

29 * * *

1 F. Nothing in this Title shall be construed to prohibit the sheriff, consistent
2 with constitutional requirements, from obtaining a search warrant to authorize testing
3 or examination upon any firearm so as to facilitate any criminal investigation or
4 prosecution. Notwithstanding Code of Criminal Procedure Article 163(C) or any
5 other provision of law to the contrary, the testing or examination of the firearms
6 pursuant to the search warrant may be conducted at any time before or during the
7 pendency of any criminal proceeding in which the firearms, or the testing or
8 examination of the firearms, may be used as evidence, and shall not be subject to the
9 ten-day period in Code of Criminal Procedure Article 163(C).

10 G. Not sooner than three years after the date on which a firearm or firearms
11 are returned pursuant to the provisions of this Article, the person may file a motion
12 with the court requesting that the records relative to the firearm or firearms held by
13 the clerk of court and by the sheriff be destroyed. After a contradictory hearing with
14 the sheriff and the district attorney, which may be waived by the sheriff or the
15 district attorney, the court, if the person is no longer prohibited from possessing
16 firearms under state or federal law and if the firearm or firearms have actually been
17 returned, shall order that the records held by the clerk of court and by the sheriff
18 relative to the returned firearm or firearms be destroyed.

19 Art. 1003.1. Public records; exception

20 Notwithstanding any provision of law to the contrary, any records held by the
21 sheriff or any other law enforcement agency pursuant to this Title shall be
22 confidential and shall not be considered a public record pursuant to the Public
23 Records Law.

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 279 Engrossed

2019 Regular Session

Marino

Abstract: Provides relative to persons who are prohibited from possessing a firearm pursuant to certain domestic abuse convictions or prevention orders, to the transfer of such firearms to the sheriff or a third party, and to the duties and authority of the sheriff in this regard.

Present law prohibits the following persons from possessing a firearm or carrying a concealed weapon:

- (1) Any person convicted of a felony crime of violence as defined by present law.
- (2) Any person convicted of any of the following for ten years from the date of completion of sentence:
 - (a) Domestic abuse battery (R.S. 14:35.3).
 - (b) A second or subsequent offense of battery of a dating partner (R.S. 14:34.9).
 - (c) Battery of a dating partner when the offense involves strangulation (R.S. 14:34.9(K)).
 - (d) Battery of a dating partner when the offense involves burning (R.S. 14:34.9(L)).
- (3) Any person against whom the court has issued a permanent injunction, protective order, or Uniform Abuse Prevention Order in domestic abuse cases for the duration of the injunction or order.

Present law further prohibits any person from intentionally giving, selling, donating, lending, delivering, or otherwise transferring a firearm to any person known to the offender to be a person prohibited from possessing a firearm under present law or federal law. Further provides that such person may be fined not more than \$2,500, be imprisoned for not more than one year, or both.

Present law, pursuant to an order issued by the court, requires any person prohibited from possessing a firearm pursuant to these provisions of present law to transfer any firearm possessed by the person to the sheriff of the parish or to a third party. In this regard, present law provides for the process by which the firearms are transferred including but not limited to provisions that do all of the following:

- (1) Require the person to complete a firearm information form that states the number of firearms in the person's possession, the serial number of each firearm, and the location of each firearm.
- (2) Require the sheriff and the person, at the time of the transfer, to complete a proof of transfer form that shall contain the quantity of firearms transferred or any identifying information about any firearm transferred.
- (3) Require the person, within five days of transferring his firearm, to file the proof of transfer form with the clerk of court for the parish in which the order was issued.
- (4) Provide that the failure to provide the information required by present law relative to the transfer of firearms may be punished by contempt of court.

- (5) Require the sheriff to either oversee the transfer of the firearms to a third party, to store the transferred firearms in a storage facility with which the sheriff has contracted for the storage of firearms, oversee the legal sale of the transferred firearms to a third party, or accept and store the transferred firearms.
- (6) Provide the process by which the transferred firearms are returned to the person when the person is no longer prohibited from possessing a firearm.
- (7) Require the sheriff, after the firearms are returned to the person pursuant to the provisions of present law, to destroy all records pertaining to the returned firearms and to instruct the clerk of court to do the same.

Proposed law amends present law to do all of the following:

- (1) Amend the penalties for the crime of illegal transfer of a firearm to a prohibited possessor to require instead of authorize the imposition of criminal penalties and to provide that the term of imprisonment shall be served with or without hard labor.
- (2) Retain the present law provision requiring the transfer of firearms of any person against whom the court has issued a permanent injunction, protective order, or Uniform Abuse Prevention Order in domestic abuse cases; and further require persons convicted of any of the following felony crimes of violence, for which the person is prohibited from possessing a firearm under present law, to transfer any firearms pursuant to the procedures set forth in present law and proposed law:
 - (a) A conviction of domestic abuse aggravated assault.
 - (b) A conviction of aggravated assault upon a dating partner.
 - (c) A conviction of any crime that has as an element of the offense that the victim was a family member, household member, or dating partner.
 - (d) A conviction of any crime in which the victim of the crime was determined to be a family member, household member, or dating partner. In such cases, proposed law provides that the district attorney may allege in the indictment or bill of information that the victim was a family member, household member, or dating partner.

Proposed law does all of the following with regard to procedure by which firearms are transferred:

- (1) Authorizes the sheriff to enter into an agreement with any other law enforcement agency, as defined by proposed law, to have that law enforcement agency assume the present law and proposed law duties of the sheriff.
- (2) No longer requires the firearm information form to include the serial number of each firearm transferred, and instead requires the type of each firearm transferred to be stated on the form.
- (3) Provides that the proof of transfer form shall contain the quantity of firearms transferred, but is not required to include identifying information about the firearms transferred. Further requires the proof of transfer form to attest that the person is not currently in possession of firearms and is currently compliant with state and federal law, but prohibits the form from including the date on which the transfer occurred.
- (4) Requires the proof of transfer form filed with the clerk of court to be maintained by the clerk of court under seal.

- (5) Provides certain requirements for persons who are required to transfer firearms pursuant to present law and proposed law and who transfer or sell such firearms to a third party prior to the court's issuance of the order to transfer firearms and suspend a concealed handgun permit. In such cases, the person shall declare such sale or transfer in open court and shall, within ten days after the issuance of the order, execute a proof of transfer form to be filed with the clerk of court in the parish in which the order was issued. The proof of transfer form shall be maintained by the clerk of court under seal.
- (6) Requires the receipt for each firearm transferred prepared by the sheriff and the records of all firearms transferred kept by the sheriff shall not include the date that the firearms were transferred.
- (7) Provides that the failure to provide the information required by present law and proposed law relative to the transfer of firearms and the failure to timely transfer firearms in accordance with the provisions of present law, may be punished by contempt of court and may establish a rebuttable presumption of a violation of present law provisions which prohibit the possession of firearms by persons convicted of certain felony crimes of violence, convicted of certain domestic abuse offenses, or subject to injunctions or orders relative to domestic abuse.
- (8) Authorizes the district attorney or the person transferring his firearms to file a motion requiring the court to conduct a contradictory hearing to ensure that the person has complied with present law and proposed law.
- (9) When the person is no longer prohibited from possessing a firearm, requires all outstanding fees to be paid prior to the return of any firearms to the person.
- (10) Provides a process by which the firearms may be forfeited to the sheriff if the outstanding fees are not paid or if the person does not seek return of the firearms within one year of the prohibition from possessing a firearm.
- (11) Provides that nothing in present law or proposed law prohibits a sheriff from obtaining a search warrant to test or examine any transferred firearm for the purpose of facilitating any criminal investigation or prosecution.
- (12) Provides that any records held by the sheriff or any other law enforcement agency pursuant to the provisions of present law and proposed law in this regard shall be confidential and shall not be considered a public record. Further adds such records to the list of exceptions to the present law (Public Records).

(Amends R.S. 14:95.1.4(B), R.S. 44:4.1(B)(38), and C.Cr.P. Arts. 1001, 1002(A)(1)(intro. para.), (C)(2), (D), (E)(1), and (F), and 1003(A), (B), (C), and (D)(2) and (4); Adds C.Cr.P. Arts. 1001.1, 1002(A)(1)(f) - (i), (G), (H), and (I), 1002.1, 1003(F) and (G), and 1003.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Delete changes made to present law provisions regarding the prohibition on possession of a firearm by persons convicted of felony crimes of violence and certain domestic abuse related offenses.
2. Require the proof of transfer form to attest that the person is not currently in possession of firearms and is currently compliant with state and federal law, but prohibits the form from including the date on which the transfer occurred.

3. In cases of third-party transfers, extends the time period within which the proof of transfer form is to be executed, and the time period within which the form is to be filed with the clerk of court, from five days to ten days.
4. Add that the receipt for each firearm transferred prepared by the sheriff and the records of all firearms transferred kept by the sheriff shall not include the date that the firearms were transferred.
5. Authorize the person, not sooner than three years after the date on which the firearms are returned, to file a motion requesting that the records relative to the firearms held by the clerk of court and the sheriff be destroyed.
6. Make technical corrections.