

2020 Regular Session

HOUSE BILL NO. 471

BY REPRESENTATIVE GARY CARTER

WEAPONS/FIREARMS: Provides for the seizure of firearms from persons who pose a risk of imminent injury to self or others

1 AN ACT

2 To enact Code of Criminal Procedure Article 168, relative to the seizure of firearms; to

3 provide relative to the seizure of firearms from persons who make threats of

4 violence; to provide for the issuance of a warrant authorizing the search and seizure

5 of any firearm of any person when certain circumstances exist; to provide for the

6 grounds for which the warrant may be issued; to provide procedures for the

7 application for and the issuance and execution of the warrant; to provide for a

8 hearing; to provide for the burden of proof; to provide for the factors the court is

9 required and authorized to consider in making its determination; to provide certain

10 requirements upon a court's finding that a person poses a risk of imminent harm; to

11 provide for the issuance of an order prohibiting the person from possessing a firearm;

12 to provide for the modification, termination, or extension of the order; to provide for

13 the reporting of information to the National Instant Criminal Background Check

14 System database; to provide for the return of the firearm upon termination or

15 expiration of the order; to provide for the procedure by which the seized firearms

16 may be transferred to another person who is eligible to possess them; and to provide

17 for related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. Code of Criminal Procedure Article 168 is hereby enacted to read as

20 follows:

1 Art. 168. Seizure of firearms from person posing risk of imminent harm

2 A. Upon petition to a district court by any district attorney or assistant
3 district attorney, the court may issue a warrant authorizing the search for and seizure
4 of any firearm from any person when the petitioner has probable cause to believe all
5 of the following:

6 (1) The person poses a risk of imminent personal injury to himself or to
7 another person.

8 (2) The person owns and possesses one or more firearms.

9 (3) The firearm or firearms are either within or upon a specified place, thing,
10 or person.

11 B. The district attorney or assistant district attorney who seeks to petition the
12 court pursuant to the provisions of this Article, shall not do so unless the district
13 attorney or assistant district attorney has conducted an independent investigation and
14 have determined that the probable cause set forth in Paragraph A of this Article
15 exists and that there is no reasonable alternative available to prevent the person from
16 causing imminent personal injury to himself or to others with such firearm.

17 C. The court may issue a warrant pursuant to the provisions of this Article
18 only upon the sworn affidavit of the petitioner before the court that includes the facts
19 establishing the grounds for the issuance of the warrant.

20 D.(1) In determining whether the grounds for the petition exist or whether
21 there is probable cause to believe that the grounds exist, the court shall consider the
22 following:

23 (a) Recent threats or acts of violence by the person directed toward another
24 person or persons.

25 (b) Recent threats or acts of violence by the person directed toward himself.

26 (c) Recent acts of cruelty to animals, as defined by R.S. 14:102 and 102.1,
27 committed by such person.

28 (2) In evaluating whether any recent threats or acts or violence constitute
29 probable cause to believe that the person poses a risk of imminent personal injury to

1 himself or to another person or persons, the court may consider other factors
2 including but not limited to the following:

3 (a) The reckless use, display, or brandishing of a firearm by the person.

4 (b) A history of the use, attempted use, or threatened use of physical force
5 by the person against another person or persons.

6 (c) Prior involuntary admission of the person to a treatment facility, as
7 defined in R.S. 28:2, for persons with mental illness or substance-related or addictive
8 disorders.

9 (d) The illegal use of controlled dangerous substances or abuse of alcohol
10 by the person.

11 (3) If the court is satisfied that the grounds for the petition exist or that there
12 is probable cause to believe that they exist, the court shall issue a warrant naming or
13 describing the person, place, or thing to be searched. The warrant shall be directed
14 to any peace officer and shall state the grounds or probable cause for its issuance,
15 and it shall command the peace officer to search within a reasonable time the person,
16 place, or thing named for any and all firearms and to seize any firearms found upon
17 the person, place, or thing named in the warrant. A copy of the warrant shall be
18 given to the person named in the warrant together with a notice informing the person
19 that he has the right to a hearing under this Article and the right to be represented by
20 counsel at such hearing.

21 E. The petitioner shall file a copy of the petition for the warrant and all
22 affidavits upon which the warrant is based with the clerk of court for the district
23 court of the judicial district in which the search will be conducted no later than the
24 next business day following the execution of the warrant. Prior to the execution and
25 return of the warrant, the clerk of the court shall not disclose any information
26 pertaining to the petition for the warrant or any affidavits upon which the warrant is
27 based. The warrant shall be executed and returned with reasonable promptness
28 consistent with due process of law and shall be accompanied by a written inventory
29 of all firearms seized.

1 F.(1) No later than seven days after the execution of the warrant pursuant to
2 the provisions of this Article, the district court for the judicial district where the
3 person named in the warrant resides shall hold a hearing to determine whether the
4 seized firearms should be returned to the person named in the warrant or should
5 continue to be held by the state.

6 (2) At the hearing, the state shall have the burden of proving all material
7 facts by clear and convincing evidence.

8 (3)(a) If, after the hearing, the court finds by clear and convincing evidence
9 that the person poses a risk of imminent personal injury to himself or to another
10 person or persons, the court shall order that the firearm or firearms seized pursuant
11 to the warrant continue to be held by the state and shall issue an order prohibiting the
12 person from possessing the seized firearm or firearms, or any other firearms, for a
13 period of time not to exceed one year. The court shall report the name and other
14 identifying information of the person to the Louisiana Supreme Court for reporting
15 to the National Instant Criminal Background Check System database pursuant to
16 R.S. 13:753. Upon expiration or termination of the order, the court shall inform the
17 Louisiana Supreme Court who shall cause the record to be removed from the
18 National Instant Criminal Background Check System.

19 (b) At any time prior to the expiration of the period of time the person is
20 prohibited from possessing a firearm pursuant to the provisions of this Subparagraph,
21 but no more than once annually, the person subject to the order may file a motion to
22 modify the effective period of the prohibition. Upon proof, by clear and convincing
23 evidence, that the person no longer poses a risk of imminent personal injury to
24 himself or to another person or persons the court may terminate the order and, upon
25 confirming that the person is not otherwise prohibited from possessing firearms by
26 any state or federal law, shall order any firearms seized returned to the person within
27 forty-eight hours.

28 (4) If the court does not find, by clear and convincing evidence, that the
29 person poses a risk of imminent personal injury to himself or to another person or

1 persons, the court shall order the seized firearm or firearms be immediately returned
2 to the person named in the warrant within forty-eight hours.

3 (5) Upon a finding that the person poses a risk of imminent personal injury
4 to himself or to another person or persons, the court may order that the person be
5 taken into protective custody and transported to a treatment facility pursuant to R.S.
6 28:53.2 for immediate examination.

7 (6) At any time prior to thirty days before the order ends, the district attorney
8 or assistant district attorney may by motion request to extend the order issued
9 pursuant to Subparagraph (F)(3) of this Article. Upon receiving a motion to extend,
10 the court shall schedule a hearing to be held no later than fourteen days after
11 receiving the motion. A copy of the hearing notice shall be given to the person
12 named in the order together with a notice informing the person that he has the right
13 to a hearing under this Article and the right to be represented by counsel at such
14 hearing. If at the hearing the court finds by clear and convincing evidence that the
15 person continues to pose a risk of imminent personal injury to himself or to another
16 person or persons, the court shall extend the order for a period not to exceed one
17 year.

18 G.(1) No later than thirty days prior to the expiration of the order prohibiting
19 the person from possessing a firearm or the extension of such order pursuant to the
20 provisions of this Section, the district attorney or assistant district attorney may
21 petition the court to extend the order prohibiting the possession of firearms by the
22 person if the district attorney or assistant district attorney has probable cause to
23 believe that the person continues to pose a risk of imminent personal injury to
24 himself or to another person.

25 (2) Taking into consideration the factors set forth in Paragraph D of this
26 Article, if the court finds that there is probable cause to believe that the grounds for
27 the petition exist, the court shall set a contradictory hearing to be held not later than
28 fourteen days prior to the expiration of the period of time the person is prohibited
29 from possessing a firearm.

1 (3) If, after the hearing, the court finds by clear and convincing evidence that
2 the person continues to pose a risk of imminent personal injury to himself or to
3 another person or persons, the court shall order that the order prohibiting the person
4 from possessing a firearm be extended for an additional period of time not to exceed
5 six months. The court shall report the extension of the order to the Louisiana
6 Supreme Court for reporting to the National Instant Criminal Background Check
7 System database pursuant to R.S. 13:753.

8 H.(1) Upon expiration of the order, and if the court does not extend the order
9 pursuant to Paragraph G of this Article, the person subject to the order may request
10 that the court issue an order directing that the seized firearm or firearms be
11 immediately returned to the person whose firearm or firearms were seized. A copy
12 of such order shall be given to the person and to the law enforcement agency with
13 possession of the seized firearm or firearms. Upon receipt of the order by the law
14 enforcement agency, or upon presentation of the order by the person to the law
15 enforcement agency, the seized firearm or firearms shall immediately be returned to
16 the person pursuant to the order.

17 (2) Upon termination of the order by the court pursuant to Subparagraph
18 (F)(3) of this Article, the court shall order that the seized firearm or firearms be
19 immediately returned to the person whose firearm or firearms were seized. A copy
20 of such order shall be given to the person and to the law enforcement agency with
21 possession of the seized firearm or firearms. Upon receipt of the order by the law
22 enforcement agency, or upon presentation of the order by the person to the law
23 enforcement agency, the seized firearm or firearms shall immediately be returned to
24 the person pursuant to the order. The court shall also immediately report the
25 termination of the order to the Louisiana Supreme Court for the purpose of reporting
26 to the National Instant Criminal Background Check System database that the court's
27 order prohibiting the person from possessing any firearm issued pursuant to the
28 provisions of this Article has terminated and the record should be removed from the
29 database pursuant to 25 CFR 25.9.

1 I. Any person whose firearm or firearms have been ordered seized pursuant
2 to the provisions of this Article, including the legal owner of such firearms, or such
3 person's legal representative, may seek to transfer such firearm or firearms in
4 accordance with the provisions of state or federal law, to a person who is eligible to
5 possess such firearm or firearms. Upon notification in writing by the person, or the
6 person's legal representative, and the transferee, the head of the state agency holding
7 the seized firearm or firearms shall within five days deliver the firearm or firearms
8 to the transferee, provided that any person taking possession of the firearms shall
9 certify in writing that they will not cause or allow the firearms to be accessed or
10 controlled by the person subject to an order issued under Paragraph F of this Article.

11 J. Except as otherwise provided by this Article, the provisions of Title IV of
12 the Louisiana Code of Criminal Procedure relative to the application, issuance, and
13 execution of search warrants and to the receipt and custody of seized property shall
14 apply.

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 471 Original

2020 Regular Session

Gary Carter

Abstract: Provides for the issuance of a warrant for the search for and seizure of any firearm from a person who poses a risk of imminent personal injury to himself or to others.

Proposed law authorizes a district attorney or assistant district attorney to petition the court for the issuance of a warrant for the search for and seizure of any firearm from any person when the petitioner has probable cause to believe all of the following:

- (1) That the person poses a risk of imminent personal injury to himself or to another person.
- (2) That the person possesses one or more firearms.
- (3) The firearm or firearms are either within or upon a specified place, thing, or person.

Proposed law provides as follows with regard to the procedures for the application for and issuance of the warrant:

- (1) Prohibits the filing of a petition until the district attorney or assistant district attorney has conducted an independent investigation and has determined that there is such

probable cause and that there is no reasonable alternative available to prevent the imminent harm.

- (2) Requires the court to consider certain factors in making its determination including any of the person's recent threats or acts of violence to himself or others and recent acts of cruelty to animals.
- (3) Authorizes the court to consider additional factors in making its determination, including but not limited to the following: the reckless use, display, or brandishing of a firearm by the person; the history of the use, attempted use, or threatened use of physical force by the person against another person or persons; prior involuntary admission of the person to a treatment facility for persons with mental illness or substance-related or addictive disorders; and the illegal use of controlled dangerous substances or abuse of alcohol by the person.

If the court is satisfied that the grounds for the petition exist or that there is probable cause to believe that they exist, proposed law requires the court to issue a warrant, directed to any peace officer, naming or describing the person, place, or thing to be searched and the grounds or probable cause for its issuance. Proposed law further requires the warrant to be executed and returned with reasonable promptness consistent with due process of law and to be accompanied by a written inventory of all firearms seized.

Proposed law provides that a copy of the warrant shall be given to the person named in the warrant together with a notice informing the person that he has the right to a hearing, which shall occur no later than seven days after the execution of the warrant, to determine whether the seized firearms should be returned to him. Proposed law provides that at the hearing, the state shall have the burden of proving all material facts by clear and convincing evidence.

If, after the hearing, the court determines that the person poses a risk of imminent personal injury to himself or to another person or persons, proposed law provides that the court shall do all of the following:

- (1) Order that the firearm or firearms seized pursuant to the warrant continue to be held by the state.
- (2) Issue an order prohibiting the person from possessing the seized firearm or firearms, or any other firearms, for a period of time not to exceed one year. In this regard, proposed law provides that at any time prior to the expiration of the order, but no more than once annually, the person subject to the order may file a motion to modify the effective period of the prohibition. Upon proof, by clear and convincing evidence, that the person no longer poses a risk of imminent personal injury to himself or to another person or persons, the court shall order the firearms returned to the person within 48 hours, if the person is not otherwise prohibited from possessing a firearm under state or federal law.
- (3) Report the name and other identifying information of the person to the La. Supreme Court for reporting to the National Instant Criminal Background Check System (NICS) database pursuant to present law (R.S. 13:753) which requires courts to report such information. Upon expiration of the order, the court is required to inform the La. Supreme Court who shall cause the record to be removed from the NICS database.
- (4) Determine if the person may be taken into protective custody and transported to a treatment facility pursuant to present law (R.S. 28:53.2) for immediate examination.

Proposed law further provides that at any time prior to 30 days before the order ends, the district attorney or assistant district attorney may request to extend the order. Upon receiving a motion to extend, the court shall schedule a hearing to be held no later than 14

days after receiving the motion. A copy of the hearing notice shall be given to the person named in the order. If at the hearing, the court finds by clear and convincing evidence that the person continues to pose a risk of imminent personal injury to himself or to another person or persons, the court shall extend the order for a period not to exceed one year.

Proposed law provides for a procedure by which the seized firearms may be transferred to another person who is eligible to possess them, provided that the person taking possession of the firearms shall certify that they will not cause or allow the firearms to be accessed or controlled by the person subject to the order.

(Adds C.Cr.P. Art. 168)