

2023 Regular Session

SENATE BILL NO. 212

BY SENATOR DUPLESSIS

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

WEAPONS. Provides for the seizure of firearms from persons who pose a risk of imminent injury to self or others. (8/1/23)

AN ACT

To enact Code of Criminal Procedure Article 168, relative to the seizure of firearms; to provide relative to the seizure of firearms from persons who make threats of violence; to provide for the issuance of a warrant authorizing the search and seizure of any firearm of any person when certain circumstances exist; to provide for the grounds for which the warrant may be issued; to provide procedures for the application for and the issuance and execution of the warrant; to provide for a hearing; to provide for the burden of proof; to provide for the factors the court is required and authorized to consider in making its determination; to provide certain requirements upon a court's finding that a person poses a risk of imminent harm; to provide for the issuance of an order prohibiting the person from possessing a firearm; to provide for the modification, termination, or extension of the order; to provide for the reporting of information to the National Instant Criminal Background Check System database; to provide for the return of the firearm upon termination or expiration of the order; to provide for the procedure by which the seized firearms may be transferred to another person who is eligible to possess them; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Code of Criminal Procedure Article 168 is hereby enacted to read as
3 follows:

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

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

9 **(1) The person poses a risk of imminent personal injury to himself or to**
10 **another person.**

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

12 **(3) The firearm or firearms are either within or upon a specified place,**
13 **thing, or person.**

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

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

24 **D.(1) In determining whether the grounds for the petition exist or**
25 **whether there is probable cause to believe that the grounds exist, the court shall**
26 **consider the following:**

27 **(a) Recent threats or acts of violence by the person directed toward**
28 **another person or persons.**

29 **(b) Recent threats or acts of violence by the person directed toward**

1 **himself.**

2 **(c) Recent acts of cruelty to animals, as defined by R.S. 14:102 and 102.1,**
3 **committed by the person.**

4 **(2) In evaluating whether any recent threats or acts of violence constitute**
5 **probable cause to believe that the person poses a risk of imminent personal**
6 **injury to himself or to another person or persons, the court may consider other**
7 **factors including but not limited to the following:**

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

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

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

14 **(d) The illegal use of controlled dangerous substances or abuse of alcohol**
15 **by the person.**

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

27 **E. The petitioner shall file a copy of the petition for the warrant and all**
28 **affidavits upon which the warrant is based with the clerk of court for the**
29 **district court of the judicial district in which the search will be conducted no**

1 later than the next business day following the execution of the warrant. Prior
2 to the execution and return of the warrant, the clerk of the court shall not
3 disclose any information pertaining to the petition for the warrant or any
4 affidavits upon which the warrant is based. The warrant shall be executed and
5 returned with reasonable promptness consistent with due process of law and
6 shall be accompanied by a written inventory of all firearms seized.

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

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

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

26 (b) At any time prior to the expiration of the period of time the person
27 is prohibited from possessing a firearm pursuant to the provisions of this
28 Subparagraph, but no more than once annually, the person subject to the order
29 may file a motion to modify the effective period of the prohibition. Upon proof,

1 by clear and convincing evidence, that the person no longer poses a risk of
2 imminent personal injury to himself or to another person or persons, the court
3 may terminate the order and, upon confirming that the person is not otherwise
4 prohibited from possessing firearms by any state or federal law, shall order any
5 firearms seized returned to the person within forty-eight hours.

6 (4) If the court does not find, by clear and convincing evidence, that the
7 person poses a risk of imminent personal injury to himself or to another person
8 or persons, the court shall order the seized firearm or firearms be immediately
9 returned to the person named in the warrant within forty-eight hours.

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

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

25 G.(1) No later than thirty days prior to the expiration of the order
26 prohibiting the person from possessing a firearm or the extension of such order
27 pursuant to the provisions of Subparagraph (F)(6) of this Article, the district
28 attorney or assistant district attorney may petition the court to extend the order
29 prohibiting the possession of firearms by the person if the district attorney or

1 assistant district attorney has probable cause to believe that the person
2 continues to pose a risk of imminent personal injury to himself or to another
3 person.

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

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

16 H.(1) Upon expiration of the order, and if the court does not extend the
17 order pursuant to Paragraph G of this Article, the person subject to the order
18 may request that the court issue an order directing that the seized firearm or
19 firearms be immediately returned to the person whose firearm or firearms were
20 seized. A copy of such order shall be given to the person and to the law
21 enforcement agency with possession of the seized firearm or firearms. Upon
22 receipt of the order by the law enforcement agency, or upon presentation of the
23 order by the person to the law enforcement agency, the seized firearm or
24 firearms shall immediately be returned to the person pursuant to the order.

25 (2) Upon termination of the order by the court pursuant to
26 Subparagraph (F)(3) of this Article, the court shall order that the seized firearm
27 or firearms be immediately returned to the person whose firearm or firearms
28 were seized. A copy of the order shall be given to the person and to the law
29 enforcement agency with possession of the seized firearm or firearms. Upon

1 receipt of the order by the law enforcement agency, or upon presentation of the
 2 order by the person to the law enforcement agency, the seized firearm or
 3 firearms shall immediately be returned to the person pursuant to the order. The
 4 court shall also immediately report the termination of the order to the
 5 Louisiana Supreme Court for the purpose of reporting to the National Instant
 6 Criminal Background Check System database that the court's order prohibiting
 7 the person from possessing any firearm issued pursuant to the provisions of this
 8 Article has terminated and the record should be removed from the database
 9 pursuant to 25 CFR 25.9.

10 I. Any person whose firearm or firearms have been ordered seized
 11 pursuant to the provisions of this Article, including the legal owner of the
 12 firearms or the person's legal representative, may seek to transfer the firearm
 13 or firearms in accordance with the provisions of state or federal law, to a person
 14 who is eligible to possess the firearm or firearms. Upon notification in writing
 15 by the person, or the person's legal representative, and the transferee, the head
 16 of the state agency holding the seized firearm or firearms shall within five days
 17 deliver the firearm or firearms to the transferee, provided that any person
 18 taking possession of the firearms shall certify in writing that they will not cause
 19 or allow the firearms to be accessed or controlled by the person subject to an
 20 order issued under Paragraph F of this Article.

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

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Dawn R. Watson.

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) The person poses a risk of imminent personal injury to himself or to another person.
- (2) 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.

Proposed law provides that if the court is satisfied that the grounds for the petition exist or that there is probable cause to believe that they exist, the court shall 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.

Proposed law provides that 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, 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.

Effective August 1, 2023.

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