

Regular Session, 2013

HOUSE BILL NO. 717 (Substitute for House Bill No. 21 by Representative Henry Burns)

BY REPRESENTATIVE HENRY BURNS

WEAPONS/HANDGUNS: Provides with respect to the reporting of certain judicial proceedings regarding the possession of firearms

1 AN ACT

2 To amend and reenact R.S. 28:54(B) and R.S. 40:1379.3(C)(13), and to enact R.S. 13:752

3 and 753 and R.S. 28:57, relative to firearms; to require clerks of court to provide

4 certain information to the Louisiana Supreme Court; to provide for mandatory

5 reporting of convictions of certain offenses and judicial determinations which would

6 prohibit persons from possessing, shipping, transporting, or receiving firearms

7 pursuant to state and federal law; to provide relative to permits to carry a concealed

8 weapon; to provide procedures by which such information shall be reported to the

9 Louisiana Supreme Court and to the National Instant Criminal Background Check

10 System database; to provide procedures by which certain persons may file a civil

11 petition seeking adjudicated restoration of certain rights relative to the possession

12 and carrying of certain firearms; to provide procedures by which such petitions shall

13 be filed, heard, recorded, and reported to the Louisiana Supreme Court and to the

14 National Instant Criminal Background Check System; to provide for the effects of

15 judgments in such proceedings; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 13:752 and 753 are hereby enacted to read as follows:

18 §752. Legislative findings

1           (1) The Second Amendment of the United States Constitution provides that,  
2           "[a] well regulated Militia, being necessary to the security of a free State, the right  
3           of the people to keep and bear Arms, shall not be infringed".

4           (2) Article I, Section 11 of the Louisiana Constitution provides that "The  
5           right of each citizen to keep and bear arms is fundamental and shall not be infringed.  
6           Any restriction on this right shall be subject to strict scrutiny".

7           (3) Federal law (18 U.S.C. 922(g)) prohibits a person from purchasing a  
8           firearm who has been convicted of a crime punishable by imprisonment exceeding  
9           one year.

10          (4) Federal law (18 U.S.C. 922(g)) further prohibits any person from  
11          purchasing a firearm that the court has determined to have certain mental conditions.

12          (5) Based upon the successful interfacing of state law enforcement agencies  
13          with the Federal Bureau of Investigation criminal databases, information regarding  
14          a person's criminal convictions is available at the point of sale.

15          (6) However, the reporting of judicial decisions which would, in effect,  
16          prohibit a person from being eligible to purchase a firearm under federal law has not  
17          been consistent nor has the information been uniformly reported to the Federal  
18          Bureau of Investigation.

19          (7) The state of Louisiana has a compelling interest in protecting and  
20          preserving the fundamental rights of its citizens to keep and bear arms while also  
21          ensuring the timely reporting of information to the Federal Bureau of Investigation  
22          regarding court decisions which would prohibit the purchase of a firearm.

23          (8) It is the express intention of the legislature that the provisions of this  
24          Section and R.S. 13:753 are enacted to provide for the collection of information and  
25          to facilitate the reporting of information which would prohibit the purchasing of  
26          firearms while preserving the constitutional rights of Louisiana citizens to keep and  
27          bear arms.

28          §753. Reporting of information to Louisiana Supreme Court for NICS database;  
29          possession of a firearm

1           A. Each district clerk of court shall report to the Louisiana Supreme Court  
2           for reporting to the National Instant Criminal Background Check System database  
3           the name and other identifying information of any adult who is prohibited from  
4           possessing a firearm pursuant to the laws of this state or 18 U.S.C. 922(d)(4) and  
5           (g)(4), by reason of a conviction or adjudication in a court of that district for any of  
6           the following:

7                   (1) A conviction of a crime listed in R.S. 14:95.1(A).

8                   (2) A verdict of an acquittal of a crime listed in R.S. 14:95.1(A) by reason  
9           of insanity pursuant to the provisions of Chapter 2 of Title XXI of the Code of  
10           Criminal Procedure.

11                  (3) A court determination that a person does not have the mental capacity to  
12           proceed with a criminal trial for a crime listed in R.S. 14:95.1(A) pursuant to the  
13           provisions of Chapter 1 of Title XXI of the Code of Criminal Procedure.

14                  (4) A court order requiring that a person be involuntarily committed to an  
15           inpatient mental health treatment facility pursuant to R.S. 28:54.

16                  (5) A court order prohibiting a person from possessing a firearm or  
17           restricting a person in the use of a firearm.

18           B. The report shall be submitted to the Louisiana Supreme Court, in the  
19           manner and form as directed by the Supreme Court, within ten business days of the  
20           date of conviction, adjudication, or order of involuntary commitment.

21           C. The Louisiana Supreme Court shall within fifteen business days of receipt  
22           of the report submit the information in the report to the National Instant Criminal  
23           Background Check System database.

24           D. Except in the case of willful or wanton misconduct or gross negligence,  
25           no district clerk of court shall be held civilly or criminally liable on the basis of the  
26           accuracy, availability or unavailability of any information reported or required to be  
27           reported pursuant to this Section.

28           Section 2. R.S. 28:54(B) is hereby amended and reenacted and R.S. 28:57 is hereby  
29           enacted to read as follows:

1 §54. Judicial commitment; procedure

2 \* \* \*

3 B.(1) The petition shall contain the facts which are the basis of the assertion  
4 and provide the respondent with adequate notice and knowledge relative to the nature  
5 of the proceedings.

6 (2)(a) In addition, the petition shall contain the following information  
7 regarding the respondent:

8 (i) Name.

9 (ii) Date of birth.

10 (iii) Alias names, if any.

11 (iv) Social security number.

12 (v) Sex.

13 (vi) Race.

14 (b) If the petitioner is unable to provide any of the information listed in this  
15 Subparagraph, the petitioner shall include in the petition the reasons why that  
16 information cannot be provided.

17 \* \* \*

18 §57. Petition for restoration of right to possess a firearm and to apply for permit for  
19 concealed handgun; procedures

20 A. A person who is prohibited from possessing a firearm or is ineligible to  
21 be issued a concealed handgun permit pursuant to the provisions of 18 U.S.C.  
22 922(d)(4) and (g)(4) or of R.S. 40:1379.3(C)(13) because of an adjudication or  
23 commitment that occurred under the laws of this state may, upon release from  
24 involuntary commitment, file a civil petition seeking judgment ordering the removal  
25 of that prohibition.

26 B. The petition for restoration shall be filed in the form of a rule to show  
27 cause and shall be filed in the district in which the adjudication or order of  
28 commitment occurred.

1           C. The hearing on the petition shall be a contradictory proceeding with the  
2           attorney who represented the state in the original proceedings, or the attorney's  
3           successor, who shall represent the interests of the state and be served with a copy of  
4           the petition and citation to answer same not less than thirty days prior to the hearing.

5           D. The hearing shall be in chambers, unless the court determines that it is in  
6           the best interest of the public that the hearing be in open court.

7           E. At the hearing, the court shall consider evidence concerning all of the  
8           following:

9           (1) The circumstances which prohibit the person from possessing a firearm  
10          or which render the person ineligible to receive a concealed handgun permit.

11          (2) The petitioner's mental health and criminal history records, if any.

12          (3) The petitioner's reputation, developed at a minimum through character  
13          witness statements, testimony, or other character evidence.

14          (4) Changes in the petitioner's condition or circumstances since the original  
15          adjudication or commitment relevant to the relief sought. If the court determines the  
16          hearing should be open to the public, upon motion by the petitioner for restoration,  
17          the court may allow for in camera inspection of any mental health records.

18          F. The court shall grant the relief requested if it finds, by a preponderance  
19          of the evidence, that the petitioner's record and reputation are such that he will not  
20          be likely to act in a manner dangerous to public safety and that the granting of the  
21          relief requested would not be contrary to the public interest. A record of the  
22          proceedings shall be maintained.

23          G. In the event of a closed hearing, the record of the proceedings shall  
24          remain under seal and be disclosed only to an appellate court or the parties. The  
25          district court order may be reviewed on appeal to the court of appeal under a *de novo*  
26          standard of review. The appellate court shall maintain the confidentiality of the  
27          records.

28          H. The petitioner for restoration in all cases shall pay the costs of the  
29          proceedings.



Present law (R.S. 14:95.1) provides that it is unlawful for any person to possess a firearm or to carry a concealed weapon who has been convicted of a crime of violence which is a felony or simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling, unauthorized entry of an inhabited dwelling, felony illegal use of weapons or dangerous instrumentalities, manufacture or possession of a delayed action incendiary device, manufacture or possession of a bomb, or possession of a firearm while in the possession of or during the sale or distribution of a controlled dangerous substance, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony, or a sex offense, or any crime defined as an attempt to commit one of the above-enumerated offenses under the laws of this state, or who has been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be one of the above-enumerated crimes.

Present law provides that this prohibition shall not apply if the person has not been convicted of any felony for a period of 10 years from the date of completion of sentence, probation, parole, or suspension of sentence.

Proposed law retains these provisions of present law.

Proposed law provides for a new reporting requirement for district clerks of court, effective January 1, 2014. Requires that each district clerk of court shall report to the Louisiana Supreme Court for reporting to the National Instant Criminal Background Check System (NICS) database the name and other identifying information of an adult who is prohibited from possessing a firearm under the laws of this state or under 18 U.S.C. 922(d)(4) and (g)(4), by reason of one of the following convictions or adjudications in a court of that clerk's district:

- (1) A conviction of a crime listed in R.S. 14:95.1(A).
- (2) A verdict of an acquittal of a crime listed in R.S. 14:95.1(A) by reason of insanity.
- (3) A court determination that a person does not have the mental capacity to proceed with a criminal trial for a crime listed in R.S. 14:95.1(A).
- (4) A court order requiring that a person be involuntarily committed to an inpatient mental health treatment facility.
- (5) A court order prohibiting a person from possessing a firearm or restricting a person in the use of a firearm.

Proposed law requires the clerk of court to submit this report to the La. Supreme Court within ten business days of the date of conviction, adjudication, or order of involuntary commitment, and requires the Supreme Court to, within 15 business days of the receipt of that report, submit that information to the NICS database. Proposed law further provides that, except in the case of willful or wanton misconduct or gross negligence, no district clerk of court shall be held civilly or criminally liable on the basis of the accuracy, availability, or unavailability of any information reported or required to be reported.

Present law provides for the manner in which a civil petition may be filed to have a person judicially and involuntarily committed to an inpatient mental health treatment facility, upon certain findings by the court. Provides for the information required to be included in that petition.

Proposed law adds additional information to be included in such petition, including the respondent's name, date of birth, alias names (if any), social security number, sex, and race. Further provides that if the petitioner is unable to provide any of the information listed, the petitioner shall include in the petition the reasons why such information cannot be provided.

Proposed law provides a process for a person to petition for restoration of his rights to possess, ship, transport, or receive a firearm or apply for a permit to carry a concealed handgun. Provides that such a person may, upon release from involuntary commitment, file a civil petition seeking judgment ordering the removal of such disability.

Proposed law provides that the petition for restoration shall be filed in the form of a rule to show cause in the district in which the adjudication or order of commitment occurred. Proposed law further provides that the hearing on the petition for restoration shall be a contradictory proceeding. Proposed law further provides that the hearing shall be in chambers, unless the court determines that it is in the best interest of the public that the hearing be in open court.

Proposed law further provides that at the hearing on the petition for restoration, the court shall consider evidence concerning all of the following:

- (1) The circumstances prohibiting the possession of a firearm or rendering the person ineligible to receive a concealed handgun permit.
- (2) The petitioner's mental health and criminal history records, if any.
- (3) The petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence.
- (4) Changes in the petitioner's condition or circumstances since the original adjudication or commitment relevant to the relief sought.

Proposed law provides that if the court determines that the hearing shall be open to the public, upon motion by the petitioner for restoration, the court may allow for in camera inspection of any mental health records.

Proposed law provides that the court shall grant the relief requested if it finds, by a preponderance of the evidence, that the petitioner's record and reputation are such that he will not be likely to act in a manner dangerous to public safety and that the granting of the relief requested would not be contrary to the public interest.

Proposed law provides that after a judgment granting restoration of rights has been issued and becomes final and definitive, the clerk of court in the district where the judgment was rendered shall within ten business days after receipt of the final and definitive judgment, forward a copy of the judgment to the Supreme Court. Further provides that the Supreme Court shall within 15 business days after receipt of the judgment revise the person's record in any information database that the Supreme Court makes available to the National Instant Criminal Background Check System, and shall notify the United States Attorney General.

Present law provides that one qualifying factor in a Louisiana resident's application to state police for a concealed carry permit is that the person shall not have been adjudicated to be mentally deficient or have been committed to a mental institution.

Proposed law provides that, to qualify for a concealed handgun permit, a Louisiana resident shall not have been adjudicated to be mentally deficient or been committed to a mental institution, unless the resident's right to possess a firearm has been restored pursuant to the petition for restoration process in the proposed law.

Effective Jan. 1, 2014.

(Amends R.S. 28:54(B) and R.S. 40:1379.3(C)(13); Adds R.S. 13:752 and 753 and R.S. 28:57)