

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) and 95.10(A), R.S. 44:4.1(B)(38), and Code of

3 Criminal Procedure Articles 1001, 1002(A)(1), (C)(2), (D), (E)(1), and (F), and

4 1003(A), and (D)(2) and (4) and to enact Code of Criminal Procedure Article 1001.1,

5 1002(G), (H), and (I), 1002.1, 1003(F), and 1003.1, relative to domestic abuse; to

6 provide relative to persons who are prohibited from possessing firearms in domestic

7 abuse cases; to provide relative to the convictions and injunctions or orders for which

8 a person is prohibited from possessing a firearm; to provide relative to criminal

9 penalties; to provide relative to the required transfer of firearms possessed by such

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

11 to provide relative to the transfer or sale of firearms by a prohibited possessor prior

12 to issuance of a transfer order; to provide relative to the duties and authority of

13 sheriffs relative to firearms transfers; to provide relative to certain forms that are

14 required to be completed; to provide relative to the information contained in each

15 form; to provide consequences for persons who fail to comply with the transfer

16 procedure requirements; to provide relative to the procedure by which firearms are

17 returned to persons who are no longer prohibited from possessing a firearm; to

18 provide relative to the testing or examination of firearms for certain purposes; to

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

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. R.S. 14:95.1.4(B) and 95.10(A) are hereby amended and reenacted to read
6 as follows:

7 §95.1.4. Illegal transfer of a firearm to a prohibited possessor

8 * * *

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

12 * * *

13 §95.10. Possession of a firearm or carrying of a concealed weapon by a person
14 convicted of domestic abuse battery and certain offenses of battery of a
15 dating partner

16 A. It is unlawful for any person who has been convicted of any of the
17 following offenses to possess a firearm or carry a concealed weapon:

18 (1) ~~Domestic~~ A violation of any provision of domestic abuse battery (R.S.
19 14:35.3), whether a felony or a misdemeanor.

20 (2) A ~~second or subsequent offense~~ violation of any provision of battery of
21 a dating partner (R.S. 14:34.9) that is a felony.

22 (3) ~~Battery of a dating partner when the offense involves strangulation (R.S.~~
23 ~~14:34.9(K))~~.

24 (4) ~~Battery of a dating partner when the offense involves burning (R.S.~~
25 ~~14:34.9(L))~~.

26 * * *

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

28 §4.1. Exceptions

29 * * *

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

6 * * *

7 (38) Code of Criminal Procedure Articles 103, 877, 894, Title XXXIV of the
8 Code of Criminal Procedure comprised of Articles 971 through 995, Title XXXV of
9 the Code of Criminal Procedure comprised of Articles 1001 through 1004

10 * * *

11 Section 3. Code of Criminal Procedure Articles 1001, 1002(A)(1), (C)(2), (D),
12 (E)(1), and (F), and 1003(A), and (D)(2) and (4) are hereby amended and reenacted and
13 Code of Criminal Procedure Article 1001.1, 1002(G), (H), and (I), 1002.1, 1003(F), and
14 1003.1 are hereby enacted to read as follows:

15 Art. 1001. Definitions

16 As used in this Title:

17 (1) "Dating partner" shall have the same meaning as provided in R.S.
18 46:2151.

19 (2) "Family member" shall have the same meaning as provided in R.S.
20 46:2132.

21 ~~(1)~~(3) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,
22 submachine gun, black powder weapon, or assault rifle which is designed to fire or
23 is capable of firing fixed cartridge ammunition or from which a shot or projectile is
24 discharged by an explosive.

25 (4) "Household member" shall have the same meaning as provided in R.S.
26 46:2132.

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

1 ~~(2)(6)~~ "Sheriff" means the sheriff of the jurisdiction in which the order was
2 issued, unless the person resides outside of the jurisdiction in which the order is
3 issued. If the person resides outside of the jurisdiction in which the order is issued,
4 "sheriff" means the sheriff of the parish in which the person resides.

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

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

9 Art. 1002. Transfer of firearms

10 A.(1) When a person is convicted of any of the following, the judge shall
11 order the transfer of all firearms and the suspension of a concealed handgun permit
12 of the person:

13 (a) A ~~conviction~~ violation of any provision of domestic abuse battery (R.S.
14 14:35.3), whether a felony or a misdemeanor.

15 (b) A ~~second or subsequent conviction~~ violation of any provision of battery
16 of a dating partner (R.S. 14:34.9) that is a felony.

17 (c) ~~A conviction of battery of a dating partner that involves strangulation~~
18 ~~(R.S. 14:34.9(K)).~~

19 (d) ~~A conviction of battery of a dating partner when the offense involves~~
20 ~~burning (R.S. 14:34.9(L)).~~

21 (e) A ~~conviction~~ violation of possession of a firearm or carrying a concealed
22 weapon by a person convicted of domestic abuse battery and certain offenses of
23 battery of a dating partner (R.S. 14:95.10).

24 (d) A violation of domestic abuse aggravated assault (R.S. 14:37.7).

25 (e) A violation of aggravated assault upon a dating partner (R.S. 14:34.9.1).

26 (f) A violation of any felony crime of violence enumerated or defined in R.S.
27 14:2(B), for which a person would be prohibited from possessing a firearm pursuant
28 to R.S. 14:95.1, and which has as an element of the crime that the victim was a
29 family member, household member, or dating partner.

1 with the district attorney to ensure that the person has complied with the provisions
2 of this Title.

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

5 Art. 1002.1. Designation of crime of violence against family member, household
6 member, or dating partner

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

20 Art. 1003. Transfer or storage of transferred firearms

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

24 ~~(a)(i)(1)(a)~~ Allow a third party to receive and hold the transferred firearms.
25 The third party shall complete a firearms acknowledgment form that, at a minimum,
26 informs the third party of the relevant state and federal laws, lists the consequences
27 for noncompliance, and asks if the third party is able to lawfully possess a firearm.
28 No firearm shall be transferred to a third party living in the same residence as the

1 transferor at the time of transfer. The sheriff shall prescribe the manner in which
2 firearms are transferred to a third party.

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

7 (b)(2) Store the transferred firearms in a storage facility with which the
8 sheriff has contracted for the storage of transferred firearms or with the sheriff. The
9 sheriff may charge a reasonable fee for the storage of such firearms.

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

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

15 * * *

16 D.

17 * * *

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

25 * * *

26 (4) ~~After a firearm is returned pursuant to the provisions of this Paragraph,~~
27 ~~the sheriff shall destroy the records pertaining to the returned firearms and instruct~~
28 ~~the clerk of court of that parish to destroy the pertinent records. If the person refuses~~
29 ~~to pay outstanding fees to the sheriff or fails to file a motion with the court seeking~~

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 Original

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 state 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) Provide that any person convicted of any misdemeanor or felony violation of domestic abuse battery and any person convicted of any felony violation of battery of a dating partner shall be prohibited from possessing a firearm or carrying a concealed weapon.
- (3) 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 provide that the following persons are required to transfer any firearms pursuant to the procedures set forth in present law and proposed law:
 - (a) Any person convicted of any misdemeanor or felony violation of domestic abuse battery, any felony violation of battery of a dating partner, or the crime which prohibits possession of a firearm by a person who was convicted of domestic abuse battery or felony battery of a dating partner.
 - (b) Any person convicted of any of the following felony offenses that are defined as crimes of violence pursuant to present law:
 - (i) A violation of domestic abuse aggravated assault.
 - (ii) A violation of aggravated assault upon a dating partner.
 - (iii) A violation of any crime that has as an element of the offense that the victim was a family member, household member, or dating partner.
 - (iv) A violation 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.
- (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 five 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) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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 Public Records Law.

(Amends R.S. 14:95.1.4(B) and 95.10(A), R.S. 44:4.1(B)(38), and C.Cr.P. Arts. 1001, 1002(A)(1), (C)(2), (D), (E)(1), and (F), and 1003(A), and (D)(2) and (4); Adds C.Cr.P. Arts. 1001.1, 1002(G), (H), and (I), 1002.1, 1003(F), and 1003.1)