

2018 Regular Session

HOUSE BILL NO. 448

BY REPRESENTATIVE GARY CARTER

WEAPONS/FIREARMS: Provides for the seizure of firearms of persons who pose a risk of imminent personal 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 judge 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 procedure by which the seized firearms may be transferred to

13 another person who is eligible to possess them; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

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

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

18 A. Upon petition to a district court by any district attorney or assistant

19 district attorney or by any two peace officers, the judge may issue a warrant

1 authorizing the search for and seizure of any firearm of any person when the  
2 petitioner has probable cause to believe all of the following:

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

5 (2) The person possesses one or more firearms.

6 (3) The firearm or firearms are either within or upon a specific place, thing,  
7 or person.

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

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

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

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

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

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

26 (2) In evaluating whether any recent threats or acts or violence constitute  
27 probable cause to believe that the person poses a risk of imminent personal injury to  
28 himself or to another person or persons, the judge may consider other factors  
29 including but not limited to the following:

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

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

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

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

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

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

27           F.(1) No later than fourteen days after the execution of the warrant pursuant  
28 to the provisions of this Article, the district court for the judicial district where the  
29 person named in the warrant resides shall hold a hearing to determine whether the

1 seized firearms should be returned to the person named in the warrant or should  
2 continue to be held by the state.

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

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

14 (b) At any time prior to the expiration of the period of time the person is  
15 prohibited from possessing a firearm pursuant to the provisions of this Subparagraph,  
16 the person subject to the order may file a motion to modify the effective period of  
17 the prohibition. Upon proof, by clear and convincing evidence, that the person no  
18 longer poses a risk of imminent personal injury to himself or to another person or  
19 persons the court may modify the effective period of the order.

20 (4) If the court does not find, by clear and convincing evidence, that the  
21 person poses a risk of imminent personal injury to himself or to another person or  
22 persons, the court shall order the seized firearm or firearms be returned to the person  
23 named in the warrant.

24 (5) Upon a finding that the person poses a risk of imminent personal injury  
25 to himself or to another person or persons, the court shall provide notice to the  
26 Louisiana Department of Health, office of behavioral health which may take action  
27 pursuant to Title 28 of the Louisiana Revised Statutes as it deems appropriate.

28 G. Any person whose firearm or firearms have been ordered seized pursuant  
29 to the provisions of this Article, or such person's legal representative, may seek to

1        transfer such firearm or firearms in accordance with the provisions of state or federal  
 2        law, to a person who is eligible to possesses such firearm or firearms. Upon  
 3        notification in writing by the person, or the person's legal representative, and the  
 4        transferee, the head of the state agency holding the seized firearm or firearms shall  
 5        within ten days deliver the firearm or firearms to the transferee.

6                H. Except as otherwise provided by this Article, the provisions of Title IV  
 7        of the Louisiana Code of Criminal Procedure relative to the application, issuance,  
 8        and execution of search warrants and to the receipt and custody of seized property  
 9        shall 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 448 Original

2018 Regular Session

Gary Carter

**Abstract:** Provides for the issuance of a warrant for the search for and seizure of any firearm of 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 or any two peace officers to petition the court for the issuance of a warrant for the search for and seizure of any firearm of 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 specific 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, assistant district attorney, or peace officers have conducted an independent investigation and have 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 the additional factors in makings 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 used, 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 judge is satisfied that the grounds for the petition exist or that there is probable cause to believe that they exist, proposed law requires the judge 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 therein together with a notice informing the person that he has the right to a hearing, which shall occur no later than 14 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, 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 may modify the effective period of the order.
- (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 database pursuant to present law (R.S. 13:753) which requires courts to report such information.
- (4) Give notice to the La. Dept. of Health, office of behavioral health to take appropriate action.

Proposed law provides for a procedure by which the seized firearms may be transferred to another person who is eligible to possess them.

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