
DIGEST

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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 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 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)