

2018 Regular Session

SENATE BILL NO. 411

BY SENATOR WHITE

CRIMINAL PROCEDURE. Provides relative to persons found not guilty by reason of insanity. (8/1/18)

1 AN ACT  
2 To amend and reenact Code of Criminal Procedure Art. 655(A), the introductory paragraph  
3 of R.S. 13:753(A), the introductory paragraph of (B) and (B)(1), (C), and (E), and  
4 R.S. 14:95.1(A) and (C) and to enact R.S. 13:753(F), (G), (H), (I), (J), and (K),  
5 relative to persons found not guilty by reason of insanity; to provide relative to  
6 insanity proceedings; to provide relative to the discharge or release on probation of  
7 a defendant found not guilty by reason of insanity; to require the unanimous  
8 recommendation of a three-member panel before the court can release the defendant  
9 from a mental institution; to prohibit persons found not guilty by reason of insanity  
10 from possessing firearms or carrying a concealed weapon; to provide a procedure by  
11 which the person's firearm rights may be restored under certain circumstances; and  
12 to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Code of Criminal Procedure Art. 655(A) is hereby amended and reenacted  
15 to read as follows:

16 Art. 655. Application for discharge or release on probation; review panel

17 A.**(1)** When the superintendent of a mental institution is of the opinion that

1 a person committed pursuant to Article 654 can be discharged or can be released on  
 2 probation, without danger to others or to himself, he shall recommend the discharge  
 3 or release of the person in a report to a review panel comprised of the person's  
 4 treating physician, the clinical director of the facility to which the person is  
 5 committed, and a physician or psychologist who served on the sanity commission  
 6 which recommended commitment of the person. If any member of the panel is  
 7 unable to serve, a physician or a psychologist engaged in the practice of clinical or  
 8 counseling psychology with at least three years' experience in the field of mental  
 9 health shall be appointed by the remaining members.

10 (2) The panel shall review all reports received promptly. After review, the  
 11 panel shall make a recommendation to the court by which the person was committed  
 12 as to the person's mental condition and whether he can be discharged, conditionally  
 13 or unconditionally, or placed on probation, without being a danger to others or  
 14 himself. If the review panel recommends to the court that the person be discharged,  
 15 conditionally or unconditionally, or placed on probation, the court shall conduct a  
 16 contradictory hearing following notice to the district attorney.

17 (3) A recommendation that the person be discharged or released on  
 18 probation shall require a unanimous vote of the panel.

19 (4) The panel shall render specific findings of fact in support of its  
 20 recommendation.

21 \* \* \*

22 Section 2. The introductory paragraph of R.S. 13:753(A), the introductory paragraph  
 23 of (B) and (B)(1), (C), and (E) are hereby amended and reenacted and R.S. 13:753(F), (G),  
 24 (H), (I), (J), and (K) are hereby enacted to read as follows:

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

27 A. ~~Effective January 1, 2014, each~~ Each district clerk of court shall report to  
 28 the Louisiana Supreme Court for reporting to the National Instant Criminal  
 29 Background Check System database the name and other identifying information of

1 any adult who is prohibited from possessing a firearm pursuant to the laws of this  
2 state or 18 U.S.C. 922(d)(4) and (g)(4), (8), and (9), by reason of a conviction or  
3 adjudication in a court of that district for any of the following:

4 \* \* \*

5 B. ~~Effective January 1, 2017, each~~ **Each** city and parish clerk of court shall  
6 report to the Louisiana Supreme Court for reporting to the National Instant Criminal  
7 Background Check System database the name and other identifying information of  
8 any adult who is prohibited from possessing a firearm pursuant to the laws of this  
9 state or 18 U.S.C. 922(d)(4), (g)(4), (8), and (9), by reason of a conviction or  
10 adjudication in a court of that district for any of the following:

11 (1) A conviction for a violation of domestic abuse battery (R.S. 14:35.3)  
12 ~~which~~ **that** is a misdemeanor.

13 \* \* \*

14 C. The ~~report~~ **reports required by Subsections A and B of this Section**  
15 shall be submitted to the Louisiana Supreme Court, in the manner and form as  
16 directed by the supreme court, within ten business days of the date of conviction,  
17 adjudication, or order of involuntary commitment.

18 \* \* \*

19 E. **In accordance with rules promulgated pursuant to Subsection H of**  
20 **this Section, each district clerk of court and city and parish clerk of court**  
21 **reporting information pursuant to Paragraphs (A)(2), (A)(3), and (A)(4) and**  
22 **Paragraphs (B)(2) and (B)(3) of this Section shall notify each person for whom**  
23 **the information is reported that, as an adjudicated mental defective or as a**  
24 **person committed to a mental institution, the person is prohibited, pursuant to**  
25 **federal law, from receiving or possessing a firearm or ammunition.**

26 **F.(1) A person who has been adjudicated as a mental defective or**  
27 **committed to a mental institution and is therefore, pursuant to federal law,**  
28 **prohibited from receiving or possessing a firearm or ammunition or, pursuant**  
29 **to state law, is ineligible to possess a firearm or obtain a concealed handgun**

1 permit, may petition the court that originated the order, judgment, or verdict,  
2 or any other court of competent jurisdiction, to remove the person's  
3 firearm-related disabilities and restore the person's right to receive and possess  
4 a firearm and ammunition and the right to be eligible to obtain a concealed  
5 handgun permit.

6 (2) A copy of the petition seeking relief from disabilities shall be served  
7 upon the office of the attorney general and upon all parties to the proceeding  
8 that resulted in a court order, judgment, or verdict described in Paragraphs  
9 (A)(2), (A)(3), or (A)(4) or Paragraphs (B)(2) or (B)(3) of this Section.

10 (3) The court shall conduct a hearing and receive and consider evidence  
11 on a petition seeking relief from disabilities, including evidence offered by the  
12 petitioner concerning the following:

13 (a) The circumstances regarding the firearm disabilities from which  
14 relief is sought.

15 (b) The petitioner's mental health and criminal history record.

16 (c) The petitioner's reputation, developed, at a minimum, through  
17 character witness statements, testimony, or other character evidence.

18 (d) Changes in the petitioner's condition or circumstances since the  
19 original court order, judgment, or verdict that are relevant to the relief sought.

20 (4) After conducting a hearing on the petition, the court shall grant the  
21 petition for relief from the firearm-related disabilities if the court finds by a  
22 preponderance of the evidence that the petitioner will not be likely to act in a  
23 manner dangerous to public safety and that granting the relief will not be  
24 contrary to the public interest.

25 (5) A record shall be kept of the court proceedings held pursuant to this  
26 Subsection.

27 (6) The decision of the court on the petition for relief from disabilities  
28 shall be appealable as any civil judgment.

29 (7) Regardless of whether an earlier decision has been appealed, a person

1 may petition for relief pursuant to this Subsection not more than once every two  
2 years and, in the case of a person who has been committed to a mental  
3 institution, not before the person has been discharged from that commitment.

4 (8) Upon the entry of a court order granting relief from disabilities  
5 pursuant to this Subsection, and as soon as practicable but in no case longer  
6 than ten days from receipt of the court order granting relief, the clerk of court  
7 and any other state agency as applicable shall each be responsible for updating,  
8 correcting, modifying, or removing the petitioner's records from the respective  
9 databases that are used for transmitting information to the Louisiana Supreme  
10 Court for reporting to the National Instant Criminal Background Check System  
11 database.

12 (9) Each clerk of court or other state agency shall promptly notify the  
13 United States attorney general of the court order granting relief from  
14 disabilities for the purpose of reporting to the National Instant Criminal  
15 Background Check System that the basis for the petitioner being disabled  
16 pursuant to federal law from receiving or possessing a firearm or ammunition  
17 no longer applies.

18 (10) The clerk of court is prohibited from disclosing information  
19 regarding a court order, judgment, or verdict referred to in this Subsection, or  
20 regarding a petitioner or proceedings under this Subsection, except as otherwise  
21 provided by law.

22 G. Information compiled and transmitted under this Section is not a  
23 public record and is not subject to disclosure pursuant to the Public Records  
24 Law.

25 H. A person who is the subject of information compiled or transmitted  
26 by the clerk of court pursuant to this Section, or the person's authorized  
27 representative, shall have the right to obtain, inspect, or correct information  
28 compiled or transmitted.

29 I. Each clerk of court shall promulgate rules relating to the inspection

1 and correction of information contained in its records and relating to the  
2 transmission of corrected information to the Louisianan Supreme Court for  
3 inclusion in the National Instant Criminal Background Check System database,  
4 and other rules necessary to implement the provisions of this Section.

5 J. As used in this Section, the terms "adjudicated as a mental defective"  
6 and "committed to a mental institution" shall have the same meaning as those  
7 terms are defined in 27 C.F.R. Section 478.11.

8 K. Except in the case of willful or wanton misconduct or gross negligence,  
9 no city, parish, or district clerk of court shall be held civilly or criminally liable on  
10 the basis of the accuracy, availability, or unavailability of any information reported  
11 or required to be reported pursuant to this Section.

12 Section 3. R.S. 14:95.1(A) and (C) are hereby amended and reenacted to read as  
13 follows:

14 §95.1. Possession of firearm or carrying concealed weapon by a person convicted of  
15 certain felonies

16 A. It is unlawful for any person who has been convicted **or found not guilty**  
17 **by reason of insanity** of a crime of violence as defined in R.S. 14:2(B) which is a  
18 felony or simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling,  
19 unauthorized entry of an inhabited dwelling, felony illegal use of weapons or  
20 dangerous instrumentalities, manufacture or possession of a delayed action  
21 incendiary device, manufacture or possession of a bomb, or possession of a firearm  
22 while in the possession of or during the sale or distribution of a controlled dangerous  
23 substance, or any violation of the Uniform Controlled Dangerous Substances Law  
24 which is a felony, or any crime which is defined as a sex offense in R.S. 15:541, or  
25 any crime defined as an attempt to commit one of the above-enumerated offenses  
26 under the laws of this state, or who has been convicted under the laws of any other  
27 state or of the United States or of any foreign government or country of a crime  
28 which, if committed in this state, would be one of the above-enumerated crimes, to  
29 possess a firearm or carry a concealed weapon.

\* \* \*

C. The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of certain felonies **or found not guilty by reason of insanity** shall not apply to any person who has not been convicted of any felony **or found not guilty by reason of insanity** for a period of ten years from the date of completion of sentence, probation, parole, ~~or~~ suspension of sentence, **or discharge from a mental institution by a court of competent jurisdiction.**

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The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

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DIGEST

SB 411 Reengrossed

2018 Regular Session

White

Present law requires each district clerk of court and each city and parish clerk of court to report to the Supreme Court for reporting to the National Instant Criminal Background Check System (NICS) the name and other identifying information of any adult who is prohibited from possessing a firearm pursuant to federal or state laws, by reason of a conviction or adjudication in a court within their respective jurisdictions for a violation of domestic abuse battery.

Proposed law provides that in accordance with rules promulgated pursuant to proposed law, each district clerk of court and each city and parish clerk of court reporting information required by present law must notify each person for whom the information is reported that, as an adjudicated mental defective or as a person committed to a mental institution, the person is prohibited, pursuant to federal law, from receiving or possessing a firearm or ammunition.

Proposed law provides that any person who has been adjudicated as a mental defective or committed to a mental institution and is prohibited, pursuant to federal law, from receiving or possessing a firearm or ammunition, or pursuant to state law, is ineligible to possess a firearm or obtain a concealed handgun permit, may petition the court that originated the order, judgment, or verdict, or any other court of competent jurisdiction, to remove the person's firearm-related disabilities and restore the person's right to receive and possess a firearm and ammunition and the right to be eligible to obtain a concealed handgun permit. Proposed law requires a copy of such petition to be served upon the office of the attorney general and upon all parties to the original proceeding that resulted in the person being adjudicated mental defective or committed to a mental institution and therefore prohibited, pursuant to federal law, from receiving or possessing a firearm or ammunition.

Proposed law requires the court to conduct a hearing and receive and consider evidence on a petition seeking relief from disabilities, including certain evidence offered by the petitioner.

Proposed law provides that after conducting a hearing on the petition, the court shall grant the petition for relief from the firearm-related disabilities if the court finds by a

preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting the relief will not be contrary to the public interest.

Proposed law requires a record to be kept of the court proceedings.

Proposed law provides that a decision of the court on the petition for relief from disabilities shall be appealable as any civil judgment.

Proposed law provides that regardless of whether an earlier decision has been appealed, a person may petition for relief pursuant to proposed law not more than once every two years and, in the case of a person who has been committed to a mental institution, not before the person has been discharged from that commitment.

Proposed law provides that upon the entry of a court order granting relief from disabilities pursuant to proposed law, and as soon as practicable but in no case longer than 10 days from receipt of the court order granting relief, the clerk of court and any other state agency as applicable shall each be responsible for updating, correcting, modifying, or removing the petitioner's records from the respective databases that are used for transmitting information to the Louisiana Supreme Court for reporting to the NICS database.

Proposed law requires each clerk of court or other state agency to promptly notify the U.S. attorney general of the court order granting relief from disabilities for the purpose of reporting to the NICS that the basis for the petitioner being disabled pursuant to federal law from receiving or possessing a firearm or ammunition no longer applies.

Proposed law prohibits the clerk of court from disclosing information regarding a court order, judgment, or verdict, or regarding a petitioner or proceedings under proposed law, except as otherwise provided by present law or proposed law.

Proposed law provides that information compiled and transmitted under proposed law is not a public record and is not subject to disclosure pursuant to the Public Records Law.

Proposed law provides that a person who is the subject of information compiled or transmitted by the clerk of court pursuant to proposed law, or the person's authorized representative, has the right to obtain, inspect, or correct information compiled or transmitted.

Proposed law requires each clerk of court to promulgate rules relating to the inspection and correction of information contained in its records and relating to the transmission of corrected information to the Louisiana Supreme Court for inclusion in the NICS database, and other rules necessary to implement the provisions of proposed law.

Present law provides that except in the case of willful or wanton misconduct or gross negligence, no city, parish, or 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 that when a verdict of not guilty by reason of insanity is returned in a capital case, the court is to commit the defendant to a proper state mental institution or to a private mental institution approved by the court for custody, care, and treatment. Present law further provides that when a defendant is found not guilty by reason of insanity in any other felony case, the court is to remand him to the parish jail or to a private mental institution approved by the court and promptly hold a contradictory hearing at which the defendant will have the burden of proof, to determine whether the defendant can be discharged or can be released on probation, without danger to others or to himself. Present law further provides that if the court determines that the defendant cannot be released without danger to others or to himself, it must order him committed to a proper state mental institution or to a private

mental institution approved by the court for custody, care, and treatment.

Proposed law retains present law.

Present law provides that when the superintendent of a mental institution is of the opinion that a person committed pursuant to present law can be discharged or can be released on probation, without danger to others or to himself, he is to recommend the discharge or release of the person in a report to a review panel comprised of the person's treating physician, the clinical director of the facility to which the person is committed, and a physician or psychologist who served on the sanity commission that recommended commitment of the person. Present law further provides that after review, the panel is to make a recommendation to the court by which the person was committed as to the person's mental condition and whether he can be discharged, conditionally or unconditionally, or placed on probation, without being a danger to others or himself. Present law further provides that if the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court is to conduct a contradictory hearing following notice to the district attorney.

Proposed law retains present law and adds that a recommendation that the person be discharged or released on probation requires a unanimous vote of the panel. Proposed law further provides that the panel must render specific findings of fact in support of its recommendation.

Present law provides that a person committed pursuant to present law may apply to the review panel for discharge or for release on probation, but such application may not be filed until the committed person has been confined for a period of at least six months after the original commitment. Present law further provides that if the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court is to conduct a hearing following notice to the district attorney. Present law further provides that if the recommendation of the review panel or the court is adverse, the applicant cannot file another application until one year has elapsed from the date of determination.

Proposed law retains present law.

Present law provides that it is unlawful for any person who has been convicted of a crime of violence that is a felony, or certain other enumerated present law crimes, or any crime defined as a sex offense, or any crime defined as an attempt to commit one of the enumerated present law offenses, or who has been convicted under the laws of any other state or the U.S. or any foreign government or country of a crime that, if committed in this state, would be one of these enumerated present law crimes, to possess a firearm or carry a concealed weapon.

Proposed law retains present law and makes present law applicable to persons found not guilty by reason of insanity of the enumerated present law crimes.

Present law provides that present law prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of certain felonies does not apply to any person who 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 present law and adds that the 10-year "cleansing period" contained in present law applies to persons found not guilty by reason of insanity of the enumerated present law crimes.

Effective August 1, 2018.

(Amends C.Cr.P. Art. 655(A), R.S. 13:753(A)(intro para), (B)(intro para), (B)(1), (C), and

(E), and R.S. 14:95.1(A) and (C); adds R.S. 13:753(F)-(K))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Requires each district clerk of court and each city and parish clerk of court to report to the Supreme Court for reporting to the NICS database the name and other identifying information of any adult who is prohibited from possessing a firearm pursuant to federal or state laws, by reason of a conviction or adjudication in a court within their respective jurisdictions for a violation of domestic abuse battery.
2. Requires clerks to report the date of conviction, adjudication, or order of involuntary commitment within 10 days to the Supreme Court.
3. Requires clerks to notify each person for whom the information is reported that, as an adjudicated mental defective or as a person committed to a mental institution, the person is prohibited, pursuant to federal law, from receiving or possessing a firearm or ammunition.
4. Provides procedures for such person to petition the court to remove the person's firearm-related disabilities and restore that person's right to receive and possess a firearm and ammunition and the right to be eligible to obtain a concealed handgun permit.