
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.

SB 411 Reengrossed

DIGEST
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.