

Regular Session, 2013

SENATE BILL NO. 135

BY SENATOR RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL COMMITMENT. Provides relative to possession of weapons and certain judicial proceedings and reports. (1/1/14)

AN ACT

To amend and reenact R.S. 28:54(B) and R.S. 40:1379.3(C)(13), and to enact R.S. 13:752 and R.S. 28:57, relative to possession of weapons and permits to carry concealed weapons; to provide relative to certain judicial proceedings and reports; to provide for mandatory reporting of certain information regarding persons ineligible to possess, ship, transport or receive firearms or to apply for a permit to carry a concealed weapon by virtue of certain state and federal law; to provide for mandatory reporting of involuntary judicial commitments or certain adjudications for certain offenses; to provide procedures by which such information shall be reported to the Louisiana Supreme Court and to the National Instant Criminal Background Check System database; to provide procedures by which certain persons may file a civil petition seeking adjudicated restoration of rights; to provide procedures by which such petitions shall be filed, heard, recorded and reported to the Louisiana Supreme Court and to the National Instant Criminal Background Check System; to provide for the effects of judgments in such proceedings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 13:752 is hereby enacted to read as follows:

2 **§752. Reporting of information to Louisiana Supreme Court for NICS**
3 **database; possession of firearm**

4 **A. Effective January 1, 2014, each district clerk of court shall report to**
5 **the Louisiana Supreme Court for reporting to the National Instant Criminal**
6 **Background Check System database the name and other identifying**
7 **information of an adult who is prohibited from possessing a firearm pursuant**
8 **to the laws of this state or 18 U.S.C. §922(d)(4) and (g)(4), by reason of a**
9 **conviction or adjudication in a court of that district for any of the following:**

- 10 **(1) Guilty of a crime listed in R.S. 14:95.1(A).**
- 11 **(2) Not guilty by reason of insanity for a crime listed in R.S. 14:95.1(A).**
- 12 **(3) Lacking mental capacity to proceed to trial for a crime listed in R.S.**
13 **14:95.1(A).**
- 14 **(4) Ordered to be involuntarily committed to an inpatient mental health**
15 **treatment facility pursuant to R.S. 28:54.**

16 **B. The report shall be submitted to the Louisiana Supreme Court, in the**
17 **manner and form as directed by the Supreme Court, within ten business days**
18 **of the date of conviction, adjudication or order of involuntary commitment.**

19 **C. The Louisiana Supreme Court shall within fifteen business days of**
20 **receipt of the report submit the information in the report to the National**
21 **Instant Criminal Background Check System database.**

22 **D. Except in the case of willful or wanton misconduct or gross**
23 **negligence, no district clerk of court shall be held civilly or criminally liable on**
24 **the basis of the accuracy, availability or unavailability of any information**
25 **reported or required to be reported pursuant to this Section.**

26 Section 2. R.S. 28:54(B) is hereby amended and reenacted to read as follows:

27 §54. Judicial commitment; procedure

28 * * *

29 B.(1) The petition shall contain the facts which are the basis of the assertion

1 and provide the respondent with adequate notice and knowledge relative to the nature
2 of the proceedings.

3 **(2) In addition, the petition shall contain the following information**
4 **regarding the respondent:**

5 **(a) Name.**

6 **(b) Date of birth.**

7 **(c) Alias names, if any.**

8 **(d) Social security number.**

9 **(e) Sex.**

10 **(f) Race.**

11 **If the petitioner is unable to provide any of the information listed in this**
12 **Subparagraph, the petitioner shall include in the petition the reasons why that**
13 **information cannot be provided.**

14 * * *

15 Section 3. R.S. 28:57 is hereby enacted to read as follows:

16 **§57. Petition for restoration of right to possess firearm and to apply for permit**
17 **for concealed handgun; procedure**

18 **A. A person who is subject to the disabilities of 18 U.S.C. §922(d)(4) and**
19 **(g)(4) or of R.S. 40:1379.3(C)(13) because of an adjudication or commitment**
20 **that occurred under the laws of this state may, upon release from involuntary**
21 **commitment, file a civil petition seeking judgment ordering the removal of such**
22 **disabilities.**

23 **B. The petition for restoration shall be filed in the form of a rule to show**
24 **cause and shall be filed in the district in which the adjudication or order of**
25 **commitment occurred.**

26 **C. Hearing on the petition shall be a contradictory proceeding with the**
27 **attorney who represented the state in the original proceedings, or the attorney's**
28 **successor, who shall represent the interests of the state and be served with a**
29 **copy of the petition and citation to answer same not less than thirty days prior**

1 to the hearing.

2 D. The hearing shall be in chambers, unless the court determines that
3 it is in the best interest of the public that the hearing be in open court.

4 E. At the hearing, the court shall consider evidence concerning:

5 (1) The circumstances regarding the firearm disabilities from which
6 relief is sought.

7 (2) The petitioner's mental health and criminal history records, if any.

8 (3) The petitioner's reputation, developed at a minimum through
9 character witness statements, testimony, or other character evidence; and

10 (4) Changes in the petitioner's condition or circumstances since the
11 original adjudication or commitment relevant to the relief sought. If the court
12 determines the hearing should be open to the public, upon motion by the
13 petitioner for restoration, the court may allow for in camera inspection of any
14 mental health records.

15 F. The court shall render such judgment as the nature of the relief and
16 the law and evidence shall justify. The court shall grant the relief requested if
17 it finds, by a preponderance of the evidence, that the petitioner's record and
18 reputation are such that he will not be likely to act in a manner dangerous to
19 public safety and that the granting of the relief requested would not be contrary
20 to the public interest. A record of the proceedings shall be kept.

21 G. In the event of a closed hearing, the record of the proceedings shall
22 remain under seal and be disclosed only to an appellate court or the parties. The
23 district court order may be reviewed on appeal to the court of appeal under a
24 de novo standard of review. The appellate court shall maintain the
25 confidentiality of the records.

26 H. The petitioner for restoration in all cases shall pay the costs of the
27 proceedings.

28 I. After a judgment granting restoration of rights under this Section has
29 become final and definitive, the clerk of court in the district where the judgment

- (2) Not guilty by reason of insanity for a crime listed in R.S. 14:95.1(A).
- (3) Lacking mental capacity to proceed to trial for a crime listed in R.S. 14:95.1(A).
- (4) Ordered involuntarily committed to an inpatient mental health treatment facility pursuant to R.S. 28:54.

[NOTE: 18 U.S.C. §922 (d)(4) prohibits the selling or otherwise disposing of any firearm or ammunition to a person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution". 18 U.S.C. §922(g)(4) prohibits a person who "has been adjudicated as a mental defective or who has been committed to any mental institution" to "ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce".]

[NOTE: R.S. 14:95.1(A) states, "A. It is unlawful for any person who has been convicted of a crime of violence as defined in R.S. 14.2(B) which is a felony or simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling, unauthorized entry of an inhabited dwelling, felony illegal use of weapons or dangerous instrumentalities, manufacture or possession of a delayed action incendiary device, manufacture or possession of a bomb, or possession of a firearm while in the possession of or during the sale or distribution of a controlled dangerous substance, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony, or any crime which is defined as a sex offense in R.S. 15:541, or any crime defined as an attempt to commit one of the above-enumerated offenses under the laws of this state, or who has been convicted under the laws of any state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be one of the above-enumerated crimes, to possess a firearm or carry a concealed weapon."]

Proposed law provides that the clerk of court shall submit this report to Louisiana Supreme Court, in the manner and form as directed by the Supreme Court, within ten business days of the date of conviction, adjudication or order of involuntary commitment, and that the Louisiana Supreme Court shall, within 15 business days of the receipt of that report, submit that information to the NICS database. Proposed law further provides that, except in the case of willful or wanton misconduct or gross negligence, no 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 for the manner in which a civil petition may be filed to have a person judicially and involuntarily committed to an inpatient mental health treatment facility, upon certain findings by the court. Provides for the information required to be included in that petition.

Proposed law adds additional information to be included in such petition, including the respondent's name, date of birth, alias names (if any), social security number, sex, and race. Further provides that if the petitioner is unable to provide any of the information listed, the petitioner shall include in the petition the reasons why that information cannot be provided.

Proposed law provides for a process for a person subject to the disabilities of 18 U.S.C. §922(d)(4) and (g)(4) to petition for restoration of his rights to possess, ship, transport or receive a firearm or apply for a permit to carry a concealed handgun. Provides that such a person may, upon release from involuntary commitment, file a civil petition seeking judgment ordering the removal of such disability.

Proposed law provides that the petition for restoration shall be filed in the form of a rule to show cause and shall be filed in the district in which the adjudication or order of commitment occurred. Proposed law further provides that hearing on the petition for

restoration shall be a contradictory proceeding with the attorney who represented the state in the original proceedings, or the attorney's successor, who shall represent the interests of the state and be served with a copy of the petition and citation to answer same not less than 30 days prior to the hearing. Proposed law further provides that the hearing shall be in chambers, unless the court determines that it is in the best interest of the public that the hearing be in open court.

Proposed law further provides that at the hearing on the petition for restoration, the court shall consider evidence concerning the following:

- (1) The circumstances regarding the firearm disabilities from which relief is sought.
- (2) The petitioner's mental health and criminal history records, if any.
- (3) The petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence; and
- (4) Changes in the petitioner's condition or circumstances since the original adjudication or commitment relevant to the relief sought.

Proposed law provides that if the court determines the hearing shall be open to the public, upon motion by the petitioner for restoration, the court may allow for in camera inspection of any mental health records.

Proposed law provides that the court shall render such judgment as the nature of the relief and the law and evidence shall justify. Provides that the court shall grant the relief requested if it finds, by a preponderance of the evidence, that the petitioner's record and reputation are such that he will not be likely to act in a manner dangerous to public safety and that the granting of the relief requested would not be contrary to the public interest. Provides that a record of the proceedings shall be kept. Proposed law further provides that, in the event the hearing on the petition is closed, the record of the proceedings shall remain under seal and be disclosed only to an appellate court or the parties. Proposed law provides that the district court order may be reviewed on appeal to the court of appeal under a *de novo* standard of review. Further provides that the appellate court shall maintain the confidentiality of the records. Proposed law provides that the petitioner for restoration shall in all cases pay the costs of the proceedings.

Proposed law provides that after a judgment granting restoration of rights has been issued and becomes final and definitive, the clerk of court in the district where the judgment was rendered shall within 10 business days after receipt of the final and definitive judgment, forward a copy of the judgment to the Louisiana Supreme Court. Further provides that the Louisiana Supreme Court shall within 15 business days after receipt of the judgment revise the person's record in any information database that the Louisiana Supreme Court makes available to the National Instant Criminal Background Check System, and shall notify the United States Attorney General that the basis for the disabilities imposed by 18 U.S.C. §922(d)(4) and (g)(4) no longer applies.

Present law provides that one qualifying factor in a Louisiana resident's application to state police for a concealed carry permit is that the person shall not have been adjudicated to be mentally deficient or have been committed to a mental institution.

Proposed law provides that, to qualify for a concealed handgun permit, a Louisiana resident shall not have been adjudicated to be mentally deficient or been committed to a mental institution, unless the resident's right to possess a firearm has been restored pursuant to the petition for restoration process in the proposed law.

Effective January 1, 2014.

(Amends R.S. 28:54(B) and R.S. 40:1379.3(C)(13); adds R.S. 13:752 and R.S. 28:57)