

2018 Regular Session

SENATE BILL NO. 231

BY SENATOR MORRELL

WEAPONS. Provides relative to the transfer of firearms for the violation of a protective order. (10/1/18)

1 AN ACT

2 To amend and reenact R.S. 14:95.1.3(D) and 95.10(B) and the introductory paragraph of

3 R.S. 46:2136.3(A), to enact R.S. 14:79(A)(4) and (C)(3), 95.1.3(E), R.S.

4 46:2136.3(C), and Title XXXV of the Code of Criminal Procedure, to be comprised

5 of Arts. 1000 through 1003, and to repeal R.S. 46:2137, relative to firearms; to

6 provide penalties for the violation of a protective order; to provide penalties for

7 fraudulent firearms purchases; to require certain reporting; to create a firearm

8 transfer program; to designate sheriffs as repository for firearms; to provide

9 procedure for storage and return of firearms; to require the development of forms,

10 policies, and procedures; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:95.1.3(D) and 95.10(B) are hereby amended and reenacted and

13 R.S. 14:79(A)(4) and (C)(3) and 95.1.3(E) are hereby enacted to read as follows:

14 §79. Violation of protective orders

15 A.(1)(a) * * *

16 * * *

17 **(4) Violation of protective orders shall also include the possession of a**

1 firearm or carrying a concealed weapon in violation of R.S. 46:2136.3, the
2 purchase or attempted purchase of a firearm, and the carrying of a concealed
3 weapon.

4 * * *

5 C.(1) * * *

6 * * *

7 (3) Whoever is convicted of the offense of violation of protective orders
8 where the violation involves the possession, purchase, or attempted purchase of
9 a firearm or the carrying of a concealed weapon shall be prosecuted pursuant
10 to the provisions of R.S. 14:95.1, 95.1.3, or 95.10, as is applicable.

11 * * *

12 §95.1.3. Fraudulent firearm and ammunition purchase; **mandatory reporting**

13 * * *

14 D. Whoever violates the provisions of this Section shall be fined not less than
15 one thousand dollars or more than five thousand dollars, or imprisoned, ~~with or~~
16 ~~without~~ **at** hard labor, for not less than ~~one year or~~ **five nor** more than ~~five~~ **twenty**
17 years, or both. ~~At least one year of the~~ **The** sentence imposed shall be served without
18 benefit of parole, probation, or suspension of sentence. **Notwithstanding the**
19 **provisions of R.S. 14:27, whoever is found guilty of attempting to violate the**
20 **provisions of this Section shall be imprisoned at hard labor for not more than**
21 **seven and one-half years and fined not less than five hundred dollars nor more**
22 **than two thousand five hundred dollars.**

23 **E.(1) If a person is reported ineligible to purchase firearms by the**
24 **National Instant Criminal Background Check System (NICS), the licensed**
25 **dealer shall report the denial to the sheriff of the parish in which the attempted**
26 **purchase occurred. The licensed dealer shall report the attempted purchaser's**
27 **name, sex, race, and date of birth within twenty-four hours of the attempted**
28 **purchase in a format prescribed by the sheriff.**

29 **(2) Within twenty-four hours of receiving notice of the denial, the sheriff**

1 shall search the Louisiana Protective Order Registry or any other database to
 2 determine if the attempted purchaser is prohibited from possessing a firearm
 3 or carrying a concealed weapon. If the attempted purchaser has a permanent
 4 injunction, a protective order pursuant to a court-approved consent agreement
 5 or pursuant to the provisions of R.S. 14:95.1 or 95.10 or R.S. 46:2136.3, the
 6 sheriff shall immediately seek to arrest the attempted purchaser.

7 (3) If the person has a permanent injunction or protective order issued
 8 against him, the sheriff shall attempt to notify the protected person using any
 9 information available in the Louisiana Protective Order Registry or any method
 10 that allows notification to be provided without unnecessary delay. If the
 11 protected person does not reside in the parish of the attempted purchase, the
 12 sheriff shall notify the sheriff of the parish where the protected person resides
 13 and that sheriff shall notify the protected person.

14 (4) If at any time a law enforcement agency discovers that a licensed
 15 dealer knew or should have known that a purchaser or attempted purchaser of
 16 a firearm was prohibited from possessing a firearm and the licensed dealer
 17 failed to report as required by this Section, the sheriff or law enforcement
 18 agency shall notify all state and federal licensing agencies of the licensed dealer.

19 * * *

20 §95.10. Possession of a firearm or carrying of a concealed weapon by a person
 21 convicted of domestic abuse battery and certain offenses of battery
 22 of a dating partner

23 * * *

24 B. Whoever is found guilty of violating the provisions of this Section shall
 25 be imprisoned ~~with or without~~ at hard labor for not less than ~~one year~~ five nor more
 26 than ~~five~~ twenty years without the benefit of probation, parole, or suspension of
 27 sentence, and shall be fined not less than ~~five hundred~~ one thousand dollars nor
 28 more than ~~one~~ five thousand dollars. Notwithstanding the provisions of R.S. 14:27,
 29 whoever is found guilty of attempting to violate the provisions of this Section

1 person pursuant to the provisions of this Paragraph, a judge shall order the
2 transfer of all firearms and the suspension of a concealed handgun permit of a
3 person who is prohibited from possessing a firearm or carrying a concealed
4 weapon pursuant to the laws of this state or by reason of any of the following:

5 (1) A conviction of domestic abuse battery (R.S. 14:35.3).

6 (2) A second or subsequent conviction of battery of a dating partner
7 (R.S. 14:39.9).

8 (3) A conviction of battery of a dating partner that involves strangulation
9 (R.S. 14:34.9(K)).

10 (4) A conviction of battery of a dating partner when the offense involves
11 burning (R.S. 14:34.9(L)).

12 (5) A conviction of possession of a firearm or carrying a concealed
13 weapon by a person convicted of domestic abuse battery and certain offenses of
14 battery of a dating partner (R.S. 14:95.10).

15 (6) The issuance of a permanent injunction or a protective order
16 pursuant to a court-approved consent agreement or pursuant to the provisions
17 of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code
18 Article 1570, Code of Civil Procedure Article 3607.1, or Articles 30, 320, or
19 871.1 of this Code.

20 (7) Pursuant to the terms of a Uniform Abuse Prevention Order.

21 B.(1) The order to transfer firearms and suspend a concealed handgun
22 permit shall be issued by the court at the time of conviction or at the same time
23 the court prohibits a person from possessing a firearm or carrying a concealed
24 weapon as provided in Paragraph A of this Article.

25 (2) In the order to transfer firearms and suspend a concealed handgun
26 permit the court shall inform the person subject to the order that he is
27 prohibited from possessing a firearm and carrying a concealed weapon
28 pursuant to the provisions of 18 U.S.C. 922(g)(8) and Louisiana law.

29 C. The court shall require the person to transfer all firearms in his

1 possession to the sheriff of the parish of his residence or the sheriff of the parish
2 in which the order was issued no later than forty-eight hours after the order is
3 issued, exclusive of legal holidays. If the person is incarcerated at the time the
4 order is issued, he shall transfer his firearms no later than forty-eight hours
5 after his release from incarceration, exclusive of legal holidays. At the time of
6 transfer, the sheriff and the person shall complete a proof of transfer form. The
7 sheriff shall retain a copy of the form and provide the person with a copy.

8 D. If the person prohibited from possessing a firearm or carrying a
9 concealed weapon pursuant to Paragraph A of this Article does not possess or
10 own firearms, he shall complete a declaration of nonpossession form with the
11 sheriff in a manner prescribed by the sheriff. The declaration of nonpossession
12 may be completed with the sheriff of the parish of the person's residence or the
13 sheriff of the parish in which the order was issued.

14 E. The person shall file with the clerk of court of the parish in which the
15 order was issued the proof of transfer form or the declaration of nonpossession
16 within five days of transferring his firearms, exclusive of legal holidays, or
17 within five business days of his conviction or order prohibiting possessing a
18 firearm, exclusive of legal holidays.

19 Art. 1002. Storage of transferred firearms

20 A. The sheriff of each parish shall be responsible for the acceptance and
21 storage of firearms transferred pursuant to this Title and may charge a
22 reasonable fee for the storage of such firearms. The sheriff may also:

23 (1) Contract with a storage facility for the storage of transferred
24 firearms.

25 (2) Allow a third party to receive and hold the transferred firearms. The
26 third party shall complete a firearms acknowledgment form that, at a
27 minimum, informs the third party of the relevant state and federal laws, lists
28 the consequences for noncompliance, and asks if the third party is able to
29 lawfully possess a firearm. The sheriff shall prescribe the manner in which a

1 third party is approved to receive and hold transferred firearms.

2 (3) Accept an irrevocable donation of the firearms.

3 (4) Oversee the legal sale of transferred firearms to a third party.

4 B. The sheriff shall prepare a receipt for each firearm transferred and
5 provide a copy to the person transferring the firearms. The receipt shall include
6 the date the firearm was transferred, the firearm manufacturer, and firearm
7 serial number. The receipt shall be signed by the officer accepting the firearms
8 and the person transferring the firearms. The sheriff may require the receipt
9 to be presented before returning a transferred firearm.

10 C. The sheriff shall keep a record of all transferred firearms including
11 but not limited to the name of the person transferring the firearm, date of the
12 transfer, the manufacturer, model, serial number, and the manner in which the
13 firearm is stored.

14 D. Firearms transferred under the provisions of this Title shall be
15 returned in a manner prescribed by the sheriff upon dismissal of the protective
16 order or a finding pursuant to a rule to show cause that a protective order not
17 be issued upon the person's acquittal, when charges are dismissed, or if no
18 charges are filed unless otherwise prohibited by federal or state law.

19 E. The sheriff shall exercise due care to preserve the quality and function
20 of all firearms transferred under the provisions of this Title. However, the
21 sheriff shall not be liable for damage to firearms except for cases of willful or
22 wanton misconduct or gross negligence.

23 Art. 1003. Implementation

24 The sheriff, clerk of court, and district attorney of each parish shall
25 develop forms, policies, and procedures no later than January 1, 2019,
26 regarding the communication of convictions and orders issued between
27 agencies, procedures for the acceptance of transferred firearms, procedures for
28 the storage of transferred firearms, return of transferred firearms, the proof of
29 transfer form, the declaration of nonpossession form, and any other form,

1 **policy, or procedure necessary to effectuate the provisions of this Title.**

2 Section 4. R.S. 46:2137 is hereby repealed in its entirety.

3 Section 5. This Act shall become effective on October 1, 2018.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Ashley E. Menou.

DIGEST

SB 231 Engrossed

2018 Regular Session

Morrell

Present law prohibits certain persons against whom a protective order is issued from possessing a firearm for the duration of the injunction or protective order.

Proposed law also prohibits certain persons against whom a protective order is issued from carrying a concealed weapon for the duration of the injunction or protective order and otherwise retains present law.

Proposed law clarifies present law by adding to the definition of the crime of violation of a protective order, the possession of a firearm, carrying of a concealed weapon, and the purchase or attempted purchase of a firearm by a person prohibited from possessing a firearm or carrying a concealed weapon pursuant to a protective order issued against him.

Proposed law further clarifies present law by adding to the crime of violation of a protective order the statutes to be used for penalties when a person is convicted of violation of a protective order and the conviction is related to certain domestic violence crimes.

Present law provides that when a person fraudulently purchases a firearm or ammunition he shall be fined not less than \$1,000 or more than \$5,000, or imprisoned, with or without hard labor, for not less than one year or more than five years, or both.

Proposed law changes the penalty for fraudulent purchase of a firearm or ammunition to imprisonment at hard labor for not less than five nor more than 20 years without the benefit of probation, parole, or suspension of sentence and fined not less than \$1,000 nor more than \$5,000.

Proposed law provides that when a person is found guilty of attempting to fraudulently purchase a firearm or ammunition he shall be imprisoned at hard labor for not more than seven and one-half years and fined not less than \$500 nor more than \$2,500.

Proposed law provides that if a person is reported ineligible by a background check while attempting to purchase a firearm, the licensed dealer must report the attempted purchaser's name, sex, race, and date of birth to the sheriff within 24 hours of the attempted purchase.

Proposed law provides that within 24 hours of receiving notification of the denial, the sheriff shall:

- (1) Search the Louisiana Protective Order Registry or any other database to determine if the person was denied because he is prohibited from possessing a firearm or carrying a concealed weapon.
- (2) Arrest the attempted purchaser if he is prohibited from possessing a firearm or carrying a concealed weapon.
- (3) Notify the protected person if the attempted purchaser has a permanent injunction or a protective order issued against him.

Proposed law also requires any law enforcement agency to report a licensed firearm dealer to all licensing agencies of the dealer if law enforcement learns that a dealer knew or should have known that a person was prohibited from possessing a firearm and the licensed dealer failed to notify the sheriff.

Present law provides the penalty for possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner is imprisonment, with or without hard labor, for not less than one year nor more than five years, and a fine of not less than \$500 nor more than \$1,000.

Proposed law changes the penalty for possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner to imprisonment at hard labor for not less than five nor more than 20 years without the benefit of probation, parole, or suspension of sentence and a fine of not less than \$1,000 nor more than \$5,000.

Proposed law provides the penalty for the attempted violation of possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner shall be imprisonment at hard labor for not more than seven and one-half years and a fine of not less than \$500 nor more than \$2,500.

Present law prohibits a person against whom a protective order or permanent injunction is issued from possessing a firearm.

Proposed law adds that such persons shall also be prohibited from carrying a concealed weapon and otherwise retains present law.

Proposed law provides that upon a conviction of certain domestic violence offenses or a permanent injunction or protective order issued against a person, the court shall suspend his concealed handgun permit and shall order the person to transfer all firearms in their possession.

Proposed law provides that the order to transfer firearms and suspend a concealed handgun permit is to be issued by the court at the time of conviction or at the same time the court issues a permanent injunction or protective order against a person.

Proposed law requires firearms to be transferred to the sheriff of the parish of the person's residence or the sheriff of the parish in which the order to transfer was issued no later than 48 hours after the order is issued. Proposed law provides if a person is incarcerated at the time the order is issued he must transfer his firearms no later than 48 hours after his release.

Proposed law requires the sheriff and the person transferring firearms to complete a proof of transfer form at the time a person transfers his firearms. The sheriff must retain a copy and provide the person with a copy.

Proposed law provides that if a person prohibited from possessing a firearm or carrying a concealed weapon does not possess or own firearms he shall complete a declaration of nonpossession with the sheriff of the parish of his residence or the parish in which the order was issued.

Proposed law requires persons ordered to transfer firearms to file the proof of transfer form or declaration of nonpossession with the clerk of court in the parish in which the order was issued within five days of a conviction or order issued against him.

Proposed law provides that the sheriff of each parish is responsible for the acceptance and storage of transferred firearms and allows the sheriff to charge a reasonable storage fee.

Proposed law allows the sheriff to contract with a storage facility for the storage of the

firearms, allows a third party to receive and hold the firearms, accept an irrevocable donation, or oversee the legal sale of the firearms.

Proposed law requires the sheriff to prepare a receipt for each firearm transferred and to provide a copy to the person transferring the firearm. Proposed law further provides that the sheriff may require receipt be presented before returning a firearm.

Proposed law requires the sheriff to keep records of all firearms transferred to his office.

Proposed law provides that the sheriff shall exercise due care to preserve the quality and function of transferred firearms, but will not be responsible for damage except in cases of willful or wanton misconduct or gross negligence.

Proposed law provides that transferred firearms shall be returned upon dismissal of the protective order or a finding that a protective order not be issued upon a person's acquittal, when charges are dismissed, or if no charges are filed.

Proposed law directs the sheriff, clerk of court, and district attorney of each parish to develop forms, policies, and procedures necessary to implement the provisions of proposed law no later than January 1, 2019.

Effective October 1, 2018.

(Amends R.S. 14:95.1.3(D), 95.10(B), and R.S. 46:2136.3(A)(intro para); adds R.S. 14:79(A)(4) and (C)(3), 95.1.3(E), R.S. 46:2136.3(C), and C.Cr.P. Arts. 1000-1003; repeals R.S. 46:2137)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Makes technical changes.
2. Changes "relinquishment" to "transfer" throughout proposed law.
3. Changes the method in which the sheriff may notify a protected person from the telephone number in the La. Protective Order Registry to any information in the La. Protective Order Registry.
4. Removes the requirement that a person must request that his firearms be transferred to a third person and allows the sheriff to oversee the transfer of firearms to a third person without a prior request.
5. Changes the effective date to October 1, 2018.