

2019 Regular Session

HOUSE BILL NO. 279

BY REPRESENTATIVE MARINO

1 AN ACT

2 To amend and reenact R.S. 14:95.1.4(B), R.S. 44:4.1(B)(38), and Code of Criminal
3 Procedure Articles 1001, 1002(A)(1)(introductory paragraph), (C)(2), (D), (E)(1),
4 and (F), and 1003(A), (B), (C), and (D)(2) and (4) and to enact Code of Criminal
5 Procedure Articles 1001.1, 1002(A)(1)(f) through (i), (G), (H), and (I), 1002.1,
6 1003(F) and (G), and 1003.1, relative to domestic abuse; to provide relative to
7 persons who are prohibited from possessing firearms in domestic abuse cases; to
8 provide relative to the convictions and injunctions or orders for which a person is
9 prohibited from possessing a firearm; to provide relative to criminal penalties; to
10 provide relative to the required transfer of firearms possessed by such persons; to
11 provide relative to the procedure by which such firearms are transferred; to provide
12 relative to the transfer or sale of firearms by a prohibited possessor prior to issuance
13 of a transfer order; to provide relative to the duties and authority of sheriffs relative
14 to firearms transfers; to provide relative to certain forms that are required to be
15 completed; to provide relative to the information contained in each form; to provide
16 consequences for persons who fail to comply with the transfer procedure
17 requirements; to provide relative to the procedure by which firearms are returned to
18 persons who are no longer prohibited from possessing a firearm; to provide relative
19 to the testing or examination of firearms for certain purposes; to provide for
20 confidentiality of records related to firearms transfers; to provide for an exception
21 for such records in the Public Records Law; and to provide for related matters.

22 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 14:95.1.4(B) is hereby amended and reenacted to read as follows:

2 §95.1.4. Illegal transfer of a firearm to a prohibited possessor

3 * * *

4 B. Whoever commits the crime of illegal transfer of a firearm to a prohibited
5 possessor ~~may~~ shall be fined not more than two thousand five hundred dollars,
6 imprisoned with or without hard labor for not more than one year, or both.

7 * * *

8 Section 2. R.S. 44:4.1(B)(38) is hereby amended and reenacted to read as follows:

9 §4.1. Exceptions

10 * * *

11 B. The legislature further recognizes that there exist exceptions, exemptions,
12 and limitations to the laws pertaining to public records throughout the revised
13 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
14 limitations are hereby continued in effect by incorporation into this Chapter by
15 citation:

16 * * *

17 (38) Code of Criminal Procedure Articles 103, 877, 894, Title XXXIV of the
18 Code of Criminal Procedure comprised of Articles 971 through 995, Title XXXV of
19 the Code of Criminal Procedure comprised of Articles 1001 through 1004

20 * * *

21 Section 3. Code of Criminal Procedure Articles 1001, 1002(A)(1)(introductory
22 paragraph), (C)(2), (D), (E)(1), and (F), and 1003(A), (B), (C), and (D)(2) and (4) are hereby
23 amended and reenacted and Code of Criminal Procedure Articles 1001.1, 1002(A)(1)(f)
24 through (i), (G), (H), and (I), 1002.1, 1003(F) and (G), and 1003.1 are hereby enacted to read
25 as follows:

26 Art. 1001. Definitions

27 As used in this Title:

28 (1) "Dating partner" shall have the same meaning as provided in R.S.
29 46:2151 or R.S. 14:34.9.

1 (i) A conviction of any felony crime of violence enumerated or defined in
 2 R.S. 14:2(B), for which a person would be prohibited from possessing a firearm
 3 pursuant to R.S. 14:95.1, and in which the victim of the crime was determined to be
 4 a family member, household member, or dating partner.

5 * * *

6 C. At the same time an order to prohibit a person from possessing a firearm
 7 or carrying a concealed weapon is issued, the court shall also cause all of the
 8 following to occur:

9 * * *

10 (2) Require the person to complete a firearm information form that states the
 11 number of firearms in ~~the person's~~ his possession, the ~~serial number~~ type of each
 12 firearm, and the location of each firearm.

13 * * *

14 D.(1) The court shall, on the record and in open court, order the person to
 15 transfer all firearms in his possession to the sheriff no later than forty-eight hours,
 16 exclusive of legal holidays, after the order is issued and a copy of the order and
 17 firearm information form required by Paragraph C of this Article is sent to the
 18 sheriff. If the person is incarcerated at the time the order is issued, he shall transfer
 19 his firearms no later than forty-eight hours after his release from incarceration,
 20 exclusive of legal holidays. At the time of transfer, the sheriff and the person shall
 21 complete a proof of transfer form. The proof of transfer form shall ~~not~~ contain the
 22 quantity of firearms transferred ~~or any identifying information about any firearm~~
 23 ~~transferred~~. The sheriff shall retain a copy of the form and provide the person with
 24 a copy. The proof of transfer form shall attest that the person is not currently in
 25 possession of firearms in accordance with the provisions of this Title and is currently
 26 compliant with state and federal law, but shall not include the date on which the
 27 transfer occurred.

28 (2) Within ~~five~~ ten days of transferring his firearms, exclusive of legal
 29 holidays, the person shall file the proof of transfer form with the clerk of court of the

1 parish in which the order was issued. The proof of transfer form shall be maintained
 2 by the clerk of court under seal.

3 E.(1) If the person subject to the order to transfer firearms and suspend a
 4 concealed handgun permit issued pursuant to Paragraph A of this Article does not
 5 possess ~~or own~~ firearms, at the time the order is issued, the person shall complete a
 6 declaration of nonpossession form which shall be filed in the court record and a copy
 7 shall be provided to the sheriff.

8 * * *

9 F. Notwithstanding the provisions of Paragraph E of this Article or any other
 10 provision of law to the contrary, if the person subject to the order to transfer firearms
 11 and suspend a concealed handgun permit issued pursuant to Paragraph A of this
 12 Article possessed firearms at the time of the qualifying incident giving rise to the
 13 duty to transfer his firearms pursuant to this Title, but transferred or sold his firearms
 14 to a third party prior to the court's issuance of the order, that third-party transfer shall
 15 be declared in open court. The person subject to the order to transfer firearms and
 16 suspend a concealed handgun permit shall within ten days after issuance of the order,
 17 exclusive of legal holidays, execute along with the third party and a witness a proof
 18 of transfer form that complies with the provisions of Paragraph D of this Article and
 19 with Article 1003(A)(1)(a) of this Code. The proof of transfer form need not be
 20 signed by the sheriff and shall be filed, within ten days after the date on which the
 21 proof of transfer form is executed, by the person subject to the order with the clerk
 22 of court of the parish in which the order was issued. The proof of transfer form shall
 23 be maintained by the clerk of court under seal.

24 F.G. The failure to provide the information required by this Title, the failure
 25 to timely transfer firearms in accordance with the provisions of this Title, or both,
 26 may be punished by as contempt of court. Information required to be provided in
 27 order to comply with the provisions of this Title cannot be used as evidence against
 28 that person in a future criminal proceeding, except as provided by the laws on
 29 perjury or false swearing.

1 H. On motion of the district attorney or of the person transferring his
2 firearms, and for good cause shown, the court shall conduct a contradictory hearing
3 with the district attorney to ensure that the person has complied with the provisions
4 of this Title.

5 I. For the purposes of this Title, a person shall be deemed to be in possession
6 of a firearm if that firearm is subject to his dominion and control.

7 Art. 1002.1. Designation of crime of violence against family member, household
8 member, or dating partner

9 Notwithstanding the provisions of Code of Criminal Procedure Articles 814
10 and 817 and any other provision of law to the contrary, when a person is charged
11 with any felony crime of violence enumerated or defined in R.S. 14:2(B), for which
12 the person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1
13 if convicted, the district attorney may allege in the indictment or bill of information
14 that the victim of the crime was a family member, household member, or dating
15 partner for the purpose of invoking the provisions of this Title, including Article
16 1002(A)(1)(i). If the person pleads guilty to the indictment or bill of information,
17 the fact that the victim was a family member, household member, or dating partner
18 shall be deemed admitted. If the matter proceeds to trial, the issue of whether the
19 victim was a family member, household member, or dating partner shall be
20 submitted to the jury and the verdict shall include a specific finding of fact as to that
21 issue in addition to a specification of the offense as to which the verdict is found.

22 Art. 1003. Transfer or storage of transferred firearms

23 A.~~(†)~~ The sheriff of each parish shall be responsible for oversight of firearm
24 transfers in his parish. For each firearm transferred pursuant to this Title, the sheriff
25 shall offer all of the following options to the transferor:

26 ~~(a)(†)(1)(a)~~ Allow a third party to receive and hold the transferred firearms.
27 The third party shall complete a firearms acknowledgment form that, at a minimum,
28 informs the third party of the relevant state and federal laws, lists the consequences
29 for noncompliance, and asks if the third party is able to lawfully possess a firearm.
30 No firearm shall be transferred to a third party living in the same residence as the

1 transferor at the time of transfer. The sheriff shall prescribe the manner in which
2 firearms are transferred to a third party.

3 ~~(ii)~~(b) If a firearm is transferred to a third party pursuant to the provisions
4 of this Subparagraph, the sheriff shall advise the third party that return of the firearm
5 to the person before the person is able to lawfully possess the firearms pursuant to
6 state or federal law may result in the third party being charged with a crime.

7 ~~(b)~~(2) Store the transferred firearms in a storage facility with which the
8 sheriff has contracted for the storage of transferred firearms or with the sheriff. The
9 sheriff may charge a reasonable fee for the storage of such firearms.

10 ~~(c)~~(3) Oversee the legal sale of the transferred firearms to a third party. The
11 sheriff may contract with a licensed firearms dealer for such purpose. The sheriff
12 may charge a reasonable fee to oversee the sale of firearms.

13 ~~(2) The sheriff may also accept and store the transferred firearms. The~~
14 ~~sheriff may charge a reasonable fee for the storage of such firearms.~~

15 B. The sheriff shall prepare a receipt for each firearm transferred and provide
16 a copy to the person transferring the firearms. The receipt shall include the ~~date the~~
17 ~~firearm was transferred,~~ the firearm manufacturer, and firearm serial number. The
18 receipt shall be signed by the officer accepting the firearms and the person
19 transferring the firearms. The sheriff may require the receipt to be presented before
20 returning a transferred firearm.

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

24 D.

25 * * *

26 (2) Upon reviewing the motion, if the court determines that the person is no
27 longer prohibited from possessing a firearm under state or federal law, the court shall
28 issue an order stating that the firearms transferred pursuant to the provisions of this
29 Title shall be returned to the person. The order shall include the date on which the
30 person is no longer prohibited from possessing a firearm and a copy of the order

1 shall be sent to the sheriff. However, all outstanding fees shall be paid to the sheriff
2 prior to the firearms being returned.

3 * * *

4 (4) ~~After a firearm is returned pursuant to the provisions of this Paragraph,~~
5 ~~the sheriff shall destroy the records pertaining to the returned firearms and instruct~~
6 ~~the clerk of court of that parish to destroy the pertinent records. If the person refuses~~
7 ~~to pay outstanding fees to the sheriff or fails to file a motion with the court seeking~~
8 ~~an order for the return of the transferred firearms within one year of the expiration~~
9 ~~of the prohibition on possessing firearms under state or federal law, the sheriff may~~
10 ~~send, by United States mail to the person's last known address, a notice informing~~
11 ~~the person that if he does not pay the outstanding fees to the sheriff or file a motion~~
12 ~~with the court seeking an order for the return of the transferred firearms within~~
13 ~~ninety days, the firearms shall be forfeited to the sheriff. If, after ninety days from~~
14 ~~the mailing of the notice, the person does not pay the outstanding fees to the sheriff~~
15 ~~or file a motion with the court seeking an order for the return of the transferred~~
16 ~~firearms, the sheriff may file a motion seeking a court order declaring that the~~
17 ~~firearms are forfeited to the sheriff, who may thereafter dispose of the firearms at his~~
18 ~~discretion.~~

19 * * *

20 F. Nothing in this Title shall be construed to prohibit the sheriff, consistent
21 with constitutional requirements, from obtaining a search warrant to authorize testing
22 or examination upon any firearm so as to facilitate any criminal investigation or
23 prosecution. Notwithstanding Code of Criminal Procedure Article 163(C) or any
24 other provision of law to the contrary, the testing or examination of the firearms
25 pursuant to the search warrant may be conducted at any time before or during the
26 pendency of any criminal proceeding in which the firearms, or the testing or
27 examination of the firearms, may be used as evidence, and shall not be subject to the
28 ten-day period in Code of Criminal Procedure Article 163(C).

29 G. Not sooner than three years after the date on which a firearm or firearms
30 are returned pursuant to the provisions of this Article, the person may file a motion

1 with the court requesting that the records relative to the firearm or firearms held by
 2 the clerk of court and by the sheriff be destroyed. After a contradictory hearing with
 3 the sheriff and the district attorney, which may be waived by the sheriff or the
 4 district attorney, the court, if the person is no longer prohibited from possessing
 5 firearms under state or federal law and if the firearm or firearms have actually been
 6 returned, shall order that the records held by the clerk of court and by the sheriff
 7 relative to the returned firearm or firearms be destroyed.

8 Art. 1003.1. Public records; exception

9 Notwithstanding any provision of law to the contrary, any records held by the
 10 sheriff or any other law enforcement agency pursuant to this Title shall be
 11 confidential and shall not be considered a public record pursuant to the Public
 12 Records Law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____