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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michael Bell.

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DIGEST

SB 327 Original

2022 Regular Session

Carter

Proposed law authorizes a district attorney or assistant district attorney to petition the court for the issuance of a warrant for the search for and seizure of any firearm from any person when the petitioner has probable cause to believe all of the following:

- (1) That the person poses a risk of imminent personal injury to himself or to another person.
- (2) That the person possesses one or more firearms.
- (3) The firearm or firearms are either within or upon a specified place, thing, or person.

Proposed law provides as follows with regard to the procedures for the application for and issuance of the warrant:

- (1) Prohibits the filing of a petition until the district attorney or assistant district attorney has conducted an independent investigation and has determined that there is such probable cause and that there is no reasonable alternative available to prevent the imminent harm.
- (2) Requires the court to consider certain factors in making its determination including any of the person's recent threats or acts of violence to himself or others and recent acts of cruelty to animals.
- (3) Authorizes the court to consider additional factors in making its determination, including but not limited to the following: the reckless use, display, or brandishing of a firearm by the person; the history of the use, attempted use, or threatened use of physical force by the person against another person or persons; prior involuntary admission of the person to a treatment facility for persons with mental illness or substance-related or addictive disorders; and the illegal use of controlled dangerous substances or abuse of alcohol by the person.

If the court is satisfied that the grounds for the petition exist or that there is probable cause to believe that they exist, proposed law requires the court to issue a warrant, directed to any peace officer, naming or describing the person, place, or thing to be searched and the grounds or probable cause for its issuance. Proposed law further requires the warrant to be executed and returned with reasonable promptness consistent with due process of law and to be accompanied by a written inventory of all firearms seized.

Proposed law provides that a copy of the warrant shall be given to the person named in the warrant together with a notice informing the person that he has the right to a hearing, which shall occur no later than seven days after the execution of the warrant, to determine whether the seized firearms

should be returned to him. Proposed law provides that at the hearing, the state shall have the burden of proving all material facts by clear and convincing evidence.

If, after the hearing, the court determines that the person poses a risk of imminent personal injury to himself or to another person or persons, proposed law provides that the court shall do all of the following:

- (1) Order that the firearm or firearms seized pursuant to the warrant continue to be held by the state.
- (2) Issue an order prohibiting the person from possessing the seized firearm or firearms, or any other firearms, for a period of time not to exceed one year. In this regard, proposed law provides that at any time prior to the expiration of the order, but no more than once annually, the person subject to the order may file a motion to modify the effective period of the prohibition. Upon proof, by clear and convincing evidence, that the person no longer poses a risk of imminent personal injury to himself or to another person or persons, the court shall order the firearms returned to the person within 48 hours, if the person is not otherwise prohibited from possessing a firearm under state or federal law.
- (3) Report the name and other identifying information of the person to the La. Supreme Court for reporting to the National Instant Criminal Background Check System (NICS) database pursuant to present law (R.S. 13:753) which requires courts to report such information. Upon expiration of the order, the court is required to inform the La. Supreme Court who shall cause the record to be removed from the NICS database.
- (4) Determine if the person may be taken into protective custody and transported to a treatment facility pursuant to present law (R.S. 28:53.2) for immediate examination.

Proposed law further provides that at any time prior to 30 days before the order ends, the district attorney or assistant district attorney may request to extend the order. Upon receiving a motion to extend, the court shall schedule a hearing to be held no later than 14 days after receiving the motion. A copy of the hearing notice shall be given to the person named in the order. If at the hearing, the court finds by clear and convincing evidence that the person continues to pose a risk of imminent personal injury to himself or to another person or persons, the court shall extend the order for a period not to exceed one year.

Proposed law provides for a procedure by which the seized firearms may be transferred to another person who is eligible to possess them, provided that the person taking possession of the firearms shall certify that they will not cause or allow the firearms to be accessed or controlled by the person subject to the order.

Effective August 1, 2022.

(Adds C.Cr.P. Art. 168)