

Henry Burns (HB717)**Act No. 403**

Existing law (R.S. 14:95.1) provides that it is unlawful for any person to possess a firearm or to carry a concealed weapon who has been convicted of a crime of violence 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 a sex offense, 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 other 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.

Existing law provides that this prohibition shall not apply if the person 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.

New law provides for a new reporting requirement for district clerks of court, effective Jan. 1, 2014. Requires that, notwithstanding certain provisions of existing law governing sealing of records of mentally ill persons coming before a court, each district clerk of court shall report to the La. Supreme Court for reporting to the National Instant Criminal Background Check System (NICS) database the name and other identifying information of an adult who is prohibited from possessing a firearm under the laws of this state or under certain federal provisions by reason of one of the following convictions or adjudications in a court of that clerk's district:

- (1) A conviction of a crime listed in R.S. 14:95.1(A), which includes a felony crime of violence, 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, possession of a firearm while in the possession of or during the sale or distribution of a controlled dangerous substance, any felony violation of the Uniform Controlled Dangerous Substances Law, 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 these offenses.
- (2) A verdict of an acquittal of a crime listed in R.S. 14:95.1(A) by reason of insanity.
- (3) A court determination that a person does not have the mental capacity to proceed with a criminal trial for a crime listed in R.S. 14:95.1(A).
- (4) A court order finding a person dangerous to self or others and requiring that a person be involuntarily committed to an inpatient mental health treatment facility.
- (5) A court order prohibiting a person from possessing a firearm or restricting a person in the use of a firearm.

New law requires the clerk of court to submit this report to the La. Supreme Court within 10 business days of the date of conviction, adjudication, or order of involuntary commitment, and requires the court to, within 15 business days of the receipt of that report, submit that information to the NICS database. New 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.

Existing 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.

New 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 judgment does not contain any of the information required by new law, it must include the reasons why the information cannot be provided.

New law provides a process for a person 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.

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

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

- (1) The circumstances prohibiting the possession of a firearm or rendering the person ineligible to receive a concealed handgun permit.
- (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.
- (4) Changes in the petitioner's condition or circumstances since the original adjudication or commitment relevant to the relief sought.

New law provides that if the court determines that 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.

New law 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.

New 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 ten business days after receipt of the final and definitive judgment, forward a copy of the judgment to the supreme court. Further provides that the supreme court shall within 15 business days after receipt of the judgment revise the person's record in any information database that the supreme court makes available to the National Instant Criminal Background Check System, and shall notify the U.S. Attorney General.

Existing law provides that one qualifying factor in a La. 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.

New law provides that, to qualify for a concealed handgun permit, a La. resident shall not have been adjudicated dangerous to self or others pursuant to existing law unless the resident's right to possess a firearm has been restored pursuant to existing law.

Effective January 1, 2014.

(Amends R.S. 40:1379.3(C)(13); Adds R.S. 13:752 and 753 and R.S. 28:57)