

2018 Regular Session

SENATE BILL NO. 411

BY SENATOR WHITE

CRIMINAL PROCEDURE. Provides relative to persons found not guilty by reason of insanity. (8/1/18)

1 AN ACT  
2 To amend and reenact Code of Criminal Procedure Art. 655(A) and R.S. 14:95.1(A) and (C),  
3 relative to persons found not guilty by reason of insanity; to provide relative to  
4 insanity proceedings; to provide relative to the discharge or release on probation of  
5 a defendant found not guilty by reason of insanity; to require the unanimous  
6 recommendation of a three-member panel before the court can release the defendant  
7 from a mental institution; to prohibit persons found not guilty by reason of insanity  
8 from possessing firearms or carrying a concealed weapon; and to provide for related  
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Art. 655(A) is hereby amended and reenacted  
12 to read as follows:

13 Art. 655. Application for discharge or release on probation; review panel

14 A.(1) When the superintendent of a mental institution is of the opinion that  
15 a person committed pursuant to Article 654 can be discharged or can be released on  
16 probation, without danger to others or to himself, he shall recommend the discharge  
17 or release of the person in a report to a review panel comprised of the person's

1 treating physician, the clinical director of the facility to which the person is  
2 committed, and a physician or psychologist who served on the sanity commission  
3 which recommended commitment of the person. If any member of the panel is  
4 unable to serve, a physician or a psychologist engaged in the practice of clinical or  
5 counseling psychology with at least three years' experience in the field of mental  
6 health shall be appointed by the remaining members.

7 (2) The panel shall review all reports received promptly. After review, the  
8 panel shall make a recommendation to the court by which the person was committed  
9 as to the person's mental condition and whether he can be discharged, conditionally  
10 or unconditionally, or placed on probation, without being a danger to others or  
11 himself. If the review panel recommends to the court that the person be discharged,  
12 conditionally or unconditionally, or placed on probation, the court shall conduct a  
13 contradictory hearing following notice to the district attorney.

14 (3) A recommendation that the person be discharged or released on  
15 probation shall require a unanimous vote of the panel.

16 (4) The panel shall render specific findings of fact in support of its  
17 recommendation.

18 \* \* \*

19 Section 2. R.S. 14:95.1(A) and (C) are hereby amended and reenacted to read as  
20 follows:

21 §95.1. Possession of firearm or carrying concealed weapon by a person convicted of  
22 certain felonies

23 A. It is unlawful for any person who has been convicted or found not guilty  
24 by reason of insanity of a crime of violence as defined in R.S. 14:2(B) which is a  
25 felony or simple burglary, burglary of a pharmacy, burglary of an inhabited dwelling,  
26 unauthorized entry of an inhabited dwelling, felony illegal use of weapons or  
27 dangerous instrumentalities, manufacture or possession of a delayed action  
28 incendiary device, manufacture or possession of a bomb, or possession of a firearm  
29 while in the possession of or during the sale or distribution of a controlled dangerous

1 substance, or any violation of the Uniform Controlled Dangerous Substances Law  
 2 which is a felony, or any crime which is defined as a sex offense in R.S. 15:541, or  
 3 any crime defined as an attempt to commit one of the above-enumerated offenses  
 4 under the laws of this state, or who has been convicted under the laws of any other  
 5 state or of the United States or of any foreign government or country of a crime  
 6 which, if committed in this state, would be one of the above-enumerated crimes, to  
 7 possess a firearm or carry a concealed weapon.

8 \* \* \*

9 C. The provisions of this Section prohibiting the possession of firearms and  
 10 carrying concealed weapons by persons who have been convicted of certain felonies  
 11 **or found not guilty by reason of insanity** shall not apply to any person who has not  
 12 been convicted of any felony **or found not guilty by reason of insanity** for a period  
 13 of ten years from the date of completion of sentence, probation, parole, or suspension  
 14 of sentence, **or discharge from a mental institution by a court of competent**  
 15 **jurisdiction.**

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Alden A. Clement Jr.

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SB 411 Engrossed

DIGEST  
 2018 Regular Session

White

Present law provides that when a verdict of not guilty by reason of insanity is returned in a capital case, the court is to commit the defendant to a proper state mental institution or to a private mental institution approved by the court for custody, care, and treatment. Present law further provides that when a defendant is found not guilty by reason of insanity in any other felony case, the court is to remand him to the parish jail or to a private mental institution approved by the court and promptly hold a contradictory hearing at which the defendant will have the burden of proof, to determine whether the defendant can be discharged or can be released on probation, without danger to others or to himself. Present law further provides that if the court determines that the defendant cannot be released without danger to others or to himself, it must order him committed to a proper state mental institution or to a private mental institution approved by the court for custody, care, and treatment.

Proposed law retains present law.

Present law provides that when the superintendent of a mental institution is of the opinion that a person committed pursuant to present law can be discharged or can be released on probation, without danger to others or to himself, he is to recommend the discharge or release of the person in a report to a review panel comprised of the person's treating

physician, the clinical director of the facility to which the person is committed, and a physician or psychologist who served on the sanity commission that recommended commitment of the person. Present law further provides that after review the panel is to make a recommendation to the court by which the person was committed as to the person's mental condition and whether he can be discharged, conditionally or unconditionally, or placed on probation, without being a danger to others or himself. Present law further provides that if the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court is to conduct a contradictory hearing following notice to the district attorney.

Proposed law retains present law and adds that a recommendation that the person be discharged or released on probation requires a unanimous vote of the panel. Proposed law further provides that the panel must render specific findings of fact in support of its recommendation.

Present law provides that a person committed pursuant to present law may apply to the review panel for discharge or for release on probation, but such application may not be filed until the committed person has been confined for a period of at least six months after the original commitment. Present law further provides that if the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court is to conduct a hearing following notice to the district attorney. Present law further provides that if the recommendation of the review panel or the court is adverse, the applicant cannot file another application until one year has elapsed from the date of determination.

Proposed law retains present law.

Present law provides that it is unlawful for any person who has been convicted of a crime of violence that is a felony, or certain other enumerated present law crimes, or any crime defined as a sex offense, or any crime defined as an attempt to commit one of the enumerated present law offenses, or who has been convicted under the laws of any other state or the U.S. or any foreign government or country of a crime that, if committed in this state, would be one of these enumerated present law crimes, to possess a firearm or carry a concealed weapon.

Proposed law retains present law and makes present law applicable to persons found not guilty by reason of insanity of the enumerated present law crimes.

Present law provides that present law prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of certain felonies does not apply to any person who 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.

Proposed law retains present law and adds that the 10-year "cleansing period" contained in present law applies to persons found not guilty by reason of insanity of the enumerated present law crimes.

Effective August 1, 2018.

(Amends C.Cr.P. Art. 655(A) and R.S. 14:95.1(A) and (C))