

2015 Regular Session

HOUSE BILL NO. 842 (Substitute for House Bill No. 488 by Representative Moreno)

BY REPRESENTATIVES MORENO, BURRELL, GUILLORY, HONORE, TERRY
LANDRY, NORTON, AND WOODRUFF

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DOMESTIC ABUSE: Provides relative to domestic abuse

1 AN ACT

2 To amend and reenact R.S. 14:35.3(A), (B)(3)(introductory paragraph), (4), (5), and (6), and

3 (G), 37.7(A) and (B), 40.2(A), and 79(B)(2) and (3), (C)(1) and (2), and (H), R.S.

4 15:590(introductory paragraph), and R.S. 46:2136.3(A)(introductory paragraph) and

5 to enact R.S. 14:35.3(B)(7), R.S. 15:590(8), and Code of Criminal Procedure Article

6 387, relative to domestic abuse; to provide relative to criminal offenses and

7 procedures involving domestic abuse; to amend the crimes of domestic abuse battery

8 and domestic abuse aggravated assault to include family members as possible

9 victims; to define "family member"; to amend the definition of "household member"

10 and "court-monitored domestic abuse intervention program"; to expand the crime of

11 stalking to specifically include written threats; to provide relative to the crime of

12 violation of protective orders; to amend and provide relative to the penalties for

13 certain offenses of violation of protective orders; to prohibit certain persons subject

14 to a permanent injunction or protective order, issued pursuant to a court-approved

15 consent agreement or certain provisions of law, from possessing a firearm for the

16 duration of the injunction or order; to provide relative to the obtaining and filing of

17 fingerprint and other identification information of persons arrested, or issued a

18 summons and subsequently convicted, for certain domestic abuse-related offenses;

19 to provide relative to the type of information that a prosecutor is required to provide

20 for certain domestic abuse-related offenses; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 14:35.3(A), (B)(3)(introductory paragraph), (4), (5), and (6), and (G),
3 37.7(A) and (B), 40.2(A), and 79(B)(2) and (3), (C)(1) and (2), and (H) are hereby amended
4 and reenacted and R.S. 14:35.3(B)(7) is hereby enacted to read as follows:

5 §35.3. Domestic abuse battery

6 A. Domestic abuse battery is the intentional use of force or violence
7 committed by one household member or family member upon the person of another
8 household member or family member.

9 B. For purposes of this Section:

10 * * *

11 (3) "Court-monitored domestic abuse intervention program" means a
12 program, comprised of a minimum of twenty-six in-person sessions occurring over
13 a minimum of twenty-six weeks, that follows a model designed specifically for
14 perpetrators of domestic abuse. The offender's progress in the program shall be
15 monitored by the court. The provider of the program shall have all of the following:

16 * * *

17 (4) "Family member" means spouses, former spouses, parents, children,
18 stepparents, stepchildren, foster parents, and foster children.

19 ~~(4)(5)~~ "Household member" means any person of the opposite sex presently
20 or formerly living in the same residence ~~or living in the same residence within five~~
21 ~~years of the occurrence of the domestic abuse battery with the defendant~~ offender as
22 a spouse, whether married or not, or any child presently or formerly living in the
23 same residence ~~or living in the same residence within five years immediately prior~~
24 ~~to the occurrence of domestic abuse battery with the offender~~, or any child of the
25 offender regardless of where the child resides.

26 ~~(5)(6)~~ "Serious bodily injury" means bodily injury that involves
27 unconsciousness, extreme physical pain, or protracted and obvious disfigurement,
28 or protracted loss or impairment of the function of a bodily member, organ, or
29 mental faculty, or a substantial risk of death.

1 ~~(6)(7)~~ "Strangulation" means intentionally impeding the normal breathing
 2 or circulation of the blood by applying pressure on the throat or neck or by blocking
 3 the nose or mouth of the victim.

4 * * *

5 G.(1) For purposes of determining whether a ~~defendant~~ an offender has a
 6 prior conviction for violation of this Section, a conviction under this Section, or a
 7 conviction under the laws of any state or an ordinance of a municipality, town, or
 8 similar political subdivision of another state which prohibits the intentional use of
 9 force or violence committed by one household member or family member upon
 10 another household member or family member ~~of the opposite sex presently or~~
 11 ~~formerly living in the same residence with the defendant as a spouse, whether~~
 12 ~~married or not~~, shall constitute a prior conviction.

13 (2) For purposes of this Section, a prior conviction shall not include a
 14 conviction for an offense under this Section if the date of completion of sentence,
 15 probation, parole, or suspension of sentence is more than ten years prior to the
 16 commission of the crime with which the ~~defendant~~ offender is charged, and such
 17 conviction shall not be considered in the assessment of penalties hereunder.
 18 However, periods of time during which the offender was incarcerated in a penal
 19 institution in this or any other state shall be excluded in computing the ten-year
 20 period.

21 * * *

22 §37.7. Domestic abuse aggravated assault

23 A. Domestic abuse aggravated assault is an assault with a dangerous weapon
 24 committed by one household member or family member upon another household
 25 member or family member.

26 B. For purposes of this Section, ~~"household"~~:

27 (1) "Family member" means spouses, former spouses, parents, children,
 28 stepparents, stepchildren, foster parents, and foster children.

1 (2) "Household member" means any person of the opposite sex presently or
 2 ~~formerly~~ living in the same residence, ~~or living in the same residence within five~~
 3 ~~years of the occurrence of the domestic abuse aggravated assault, with the defendant~~
 4 ~~offender~~ as a spouse, whether married or not, or any child presently or formerly
 5 living in the same residence ~~or living in the same residence within five years~~
 6 ~~immediately prior to the occurrence of the domestic abuse aggravated assault~~ with
 7 ~~the offender~~, or any child of the offender regardless of where the child resides.

* * *

9 §40.2. Stalking

10 A. Stalking is the intentional and repeated following or harassing of another
 11 person that would cause a reasonable person to feel alarmed or to suffer emotional
 12 distress. Stalking shall include but not be limited to the intentional and repeated
 13 uninvited presence of the perpetrator at another person's home, workplace, school,
 14 or any place which would cause a reasonable person to be alarmed, or to suffer
 15 emotional distress as a result of verbal, written, or behaviorally implied threats of
 16 death, bodily injury, sexual assault, kidnaping, or any other statutory criminal act to
 17 himself or any member of his family or any person with whom he is acquainted.

* * *

19 §79. Violation of protective orders

* * *

21 B.

* * *

23 (2) On a second conviction for violation of protective orders which does not
 24 involve a battery or any crime of violence as defined by R.S. 14:2(B) against the
 25 person protected by the protective order, regardless of whether the second offense
 26 occurred before or after the first conviction, the offender shall be fined not more than
 27 one thousand dollars and imprisoned for not less than forty-eight hours nor more
 28 than six months. At least forty-eight hours of the sentence of imprisonment imposed
 29 under this Paragraph shall be without benefit of probation, parole, or suspension of

1 sentence. If a portion of the sentence is imposed with benefit of probation, parole,
2 or suspension of sentence, the court shall require the offender to participate in a
3 ~~court-approved~~ court-monitored domestic abuse ~~counseling~~ intervention program as
4 defined by R.S. 14:35.3.

5 (3) On a third or subsequent conviction for violation of protective orders
6 which does not involve a battery or any crime of violence as defined by R.S. 14:2(B)
7 against the person protected by the protective order, regardless of whether the current
8 offense occurred before or after the earlier convictions, the offender shall be fined
9 not more than one thousand dollars and imprisoned with or without hard labor for not
10 less than fourteen days nor more than ~~six months~~ one year. At least fourteen days
11 of the sentence of imprisonment imposed under this Paragraph shall be without
12 benefit of probation, parole, or suspension of sentence. If a portion of the sentence
13 is imposed with benefit of probation, parole, or suspension of sentence, the court
14 shall require the offender to participate in a ~~court-approved~~ court-monitored
15 domestic abuse ~~counseling~~ intervention program as defined by R.S. 14:35.3, ~~unless~~
16 ~~the offender has previously been required to participate in such program and, in the~~
17 ~~discretion of the judge, the offender would not benefit from such counseling.~~

18 C.(1) Whoever is convicted of the offense of violation of protective orders
19 where the violation involves a battery or any crime of violence as defined by R.S.
20 14:2(B) against the person protected by the protective order, and who has not been
21 convicted of violating a protective order or of an assault or battery upon the person
22 protected by the protective order within the five years prior to commission of the
23 instant offense, shall be fined not more than five hundred dollars and imprisoned
24 with or without hard labor for not less than fourteen days nor more than six months.
25 At least fourteen days of the sentence of imprisonment imposed under this Paragraph
26 shall be without benefit of probation, parole, or suspension of sentence. If a portion
27 of the sentence is imposed with benefit of probation, parole, or suspension of
28 sentence, the court shall require the offender to participate in a ~~court-approved~~ court-

1 monitored domestic abuse ~~counseling~~ intervention program as defined by R.S.
2 14:35.3 as part of that probation.

3 (2) Whoever is convicted of the offense of violation of protective orders
4 where the violation involves a battery or any crime of violence as defined by R.S.
5 14:2(B) against the person for whose benefit the protective order is in effect, and
6 who has been convicted not more than one time of violating a protective order or of
7 an assault or battery upon the person for whose benefit the protective order is in
8 effect within the five-year period prior to commission of the instant offense,
9 regardless of whether the instant offense occurred before or after the earlier
10 convictions, shall be fined not more than one thousand dollars and imprisoned with
11 or without hard labor for not less than three months nor more than ~~six months~~ one
12 year. At least ~~fourteen~~ thirty days of the sentence of imprisonment imposed under
13 this Paragraph shall be without benefit of probation, parole, or suspension of
14 sentence. If a portion of the sentence is imposed with benefit of probation, parole,
15 or suspension of sentence, the court shall require the offender to participate in a
16 ~~court-approved~~ court-monitored domestic abuse ~~counseling~~ intervention program as
17 defined by R.S. 14:35.3; ~~unless the offender has previously been required to~~
18 ~~participate in such program and, in the discretion of the court, the offender would not~~
19 ~~benefit from such counseling.~~

20 * * *

21 H. An offender ordered to participate in a court-monitored domestic abuse
22 ~~counseling~~ intervention program under the provision of this Section shall pay the
23 cost incurred in participating in the program, unless the court determines that the
24 offender is unable to pay. Failure to make payment under this Subsection shall
25 subject the offender to revocation of probation.

26 Section 2. R.S. 15:590(introductory paragraph) is hereby amended and reenacted and
27 R.S. 15:590(8) is hereby enacted to read as follows:

1 §590. Obtaining and filing fingerprint and identification data

2 The bureau shall obtain and file the name, fingerprints, description,
3 photographs, and any other pertinent identifying data as the deputy secretary deems
4 necessary, of any person who meets any of the following:

5 * * *

6 (8) Has been arrested, or has been issued a summons and subsequently
7 convicted, for a violation of any state law or local ordinance that prohibits the use
8 of force or a deadly weapon against any family member as defined by R.S. 14:35.3
9 or any household member as defined by R.S. 14:35.3.

10 Section 3. R.S. 46:2136.3(A)(introductory paragraph) is hereby amended and
11 reenacted to read as follows:

12 §2136.3. Prohibition on the possession of firearms by a person against whom a
13 protective order is issued

14 A. Any person against whom the court has issued a permanent injunction or
15 a protective order pursuant to a court-approved consent agreement or pursuant to the
16 provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, ~~or~~ 2151, or 2173,
17 Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of
18 Criminal Procedure Articles 30, 327.1, 335.1, 335.2, or 871.1 shall be prohibited
19 from possessing a firearm for the duration of the injunction or protective order if
20 both of the following occur:

21 * * *

22 Section 4. Code of Criminal Procedure Article 387 is hereby enacted to read as
23 follows:

24 Art. 387. Additional information required when prosecuting certain offenses

25 A. When instituting the prosecution of an offense involving a violation of
26 any state law or local ordinance that prohibits the use of force or a deadly weapon
27 against any family member as defined by R.S. 14:35.3 or any household member as
28 defined by R.S. 14:35.3, the district attorney, or city prosecutor for criminal

1 prosecutions in city court, shall include the following information in the indictment,
2 information, or affidavit:

3 (1) Date of the arrest.

4 (2) Relationship of the defendant to the victim.

5 (3) The state identification number of the defendant, if one has been assigned
6 to the defendant for this offense or for any prior offenses.

7 B. Failure to comply with the provisions of this Article shall not constitute
8 grounds for a motion to quash.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 842 Engrossed

2015 Regular Session

Moreno

Abstract: Provides relative to criminal offenses involving domestic abuse, provides for procedures following an arrest and initiation of prosecution for such offenses, and provides relative to the imposition of criminal penalties for and other effects that result from a conviction of such offenses.

Present law provides for all of the following:

- (1) Defines the crime of domestic abuse battery as the intentional use of force or violence committed by one household member upon the person of another household member and provides a definition for "household member".
- (2) Requires any offender placed on probation for domestic abuse battery to participate in a court-monitored domestic abuse intervention program and provides that such program shall be comprised of a minimum of 26 in-person sessions.
- (3) Provides that for the purpose of determining whether an offender has a prior conviction of domestic abuse battery, a conviction under the laws of any state statute or ordinance that prohibits the intentional use of force or violence committed by one household member upon another household member shall constitute a prior conviction.
- (4) Defines the crime of domestic abuse aggravated assault as an assault with a dangerous weapon committed by one household member upon another household member and provides a definition of "household member".
- (5) Defines the crime of stalking as the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress and provides that stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnaping, or any other statutory

criminal act to himself or any member of his family or any person with whom he is acquainted.

- (6) Provides that the crime of violation of protective orders includes the willful disobedience of an order issued to require a defendant to stay away from a specific person or persons as a condition of his release on bond, probation, or parole. Further provides for increased penalties for violations of protective orders which involve a battery or crime of violence against the person who is protected by the protective order.
- (7) Prohibits any person against whom the court has issued a permanent injunction or a protective order relative to domestic abuse from possessing a firearm for the duration of the injunction or protective order if it includes a finding that the person subject to the permanent injunction or protective order represents a credible threat to the physical safety of a family member or household member and the permanent injunction or protective order informs the person subject to the permanent injunction or protective order that the person is prohibited from possessing a firearm pursuant to both state and federal law.
- (8) Requires the La. Bureau of Criminal Identification and Information to obtain and file the name, fingerprints, description photographs, and any other pertinent identifying data of certain persons, including but not limited to any person who was arrested for certain offenses, who is incarcerated, who is a fugitive from justice, or who is a habitual offender.

Proposed law provides for all of the following:

- (1) Expands the crimes of domestic abuse battery and domestic abuse aggravated assault to include family members as possible victims.
- (2) Defines "family member" and amends the definition of "household member" for the crimes of domestic abuse battery and domestic abuse aggravated assault.
- (3) Amends the definition of "court-monitored domestic abuse intervention program" to require that the 26 in-person sessions occur over a minimum of 26 weeks.
- (4) Amends present law to provide that a prior conviction of domestic abuse battery also includes a conviction under the laws of any state or ordinance that prohibits the intentional use of force or violence committed against a family member.
- (5) Expands the crime of stalking to specifically include written threats.
- (6) Increases the maximum term of imprisonment from six months to one year for a third or subsequent conviction for the crime of violation of protective orders that does not involve a battery or crime of violence against the person protected by the protective order. Further provides that the sentence shall be served with or without hard labor.
- (7) Provides that the sentence imposed for a first offense violation of a protective order that involves a battery or crime of violence against the person protected by the protective order shall be served with or without hard labor.
- (8) Increases the maximum term of imprisonment from six months to one year and increases the minimum mandatory sentence from 14 days to 30 days for a second conviction that involves a battery or crime of violence against the person protected by the protective order. Further provides that the sentence shall be served with or without hard labor.

- (9) Amends all references of "court-approved domestic abuse counseling program" in the present law crime of violation of protective orders to provide that the offender shall participate in a "court-monitored domestic abuse intervention program" as defined in the crime of domestic abuse battery.
- (10) Expands the present law prohibition on the possession of firearms for the duration of a permanent injunction or protective order to any person against whom a protective order or permanent injunction was issued pursuant to a court-approved consent agreement, pursuant to the Protection from Stalking Act, or as a condition of release on bail for an offense against a family or household member or dating partner.
- (11) Amends present law to require the La. Bureau of Criminal Identification and Information to obtain and file the name, fingerprints, description photographs, and any other pertinent identifying data of any person who has been arrested, or has been issued a summons and subsequently convicted, for a violation of any state law or local ordinance that prohibits the use of force or a deadly weapon against any family member or household member.
- (12) When instituting the prosecution of an offense involving the use of force or a deadly weapon against any family member or household member, requires the prosecutor to include the following information in the indictment, information, or affidavit: date of the arrest, relationship of the defendant to the victim, and the state identification number of the defendant if one has been assigned to the defendant for this offense or for any prior offenses. Provides that the failure to comply with these provisions of proposed law shall not constitute grounds for a motion to quash.

(Amends R.S. 14:35.3(A), (B)(3)(intro. para.), (4), (5), and (6), and (G), 37.7(A) and (B), 40.2(A), and 79(B)(2) and (3), (C)(1) and (2), and (H), R.S. 15:590(intro. para.), and R.S. 46:2136.3(A)(intro. para.); Adds R.S. 14:35.3(B)(7), R.S. 15:590(8), and C.Cr.P. Art. 387)