

2015 Regular Session

ACT No. 439

HOUSE BILL NO. 841 (Substitute for House Bill No. 251 by Representative Lopinto)

BY REPRESENTATIVE LOPINTO

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AN ACT

To amend and reenact Code of Criminal Procedure Article 330.3, relative to bail for certain offenses involving domestic abuse; to provide relative to the contradictory hearing held prior to setting bail; to limit the types of offenses for which a contradictory hearing may be required prior to setting bail; to provide for the time period within which the hearing is required to be held; to provide relative to the factors the court shall consider in determining the conditions of bail and whether the defendant shall be held without bail; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 330.3 is hereby amended and reenacted to read as follows:

Art. 330.3. Bail hearing for ~~felony~~ certain offenses against a family or household member or dating partner; ~~detention~~

A. This ~~Section~~ Article may be cited as and referred to as "Gwen's Law".

B. A contradictory bail hearing, as provided for in this Article, ~~shall~~ may be held prior to setting bail for a person in custody who is charged with a domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon against upon the defendant's family or household member, as defined in R.S. 46:2132 or upon the defendant's household member as defined in R.S. 14:35.3, or against upon the defendant's dating partner, as defined in R.S. 46:2151.

~~C. The~~ If the court shall order orders a contradictory hearing, to the hearing shall be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays. At the contradictory hearing, the court

1 shall determine the conditions of bail or whether the defendant should be held
 2 without bail pending trial. If the court decides not to hold a contradictory hearing,
 3 it shall notify the prosecuting attorney prior to setting bail.

4 ~~D. At the contradictory hearing the court, in addition to hearing whatever~~
 5 ~~evidence it finds relevant, shall, with the consent of the prosecuting attorney,~~
 6 ~~perform an ex parte examination of the evidence against the accused.~~

7 E.C. In addition to the factors listed in Article 334 ~~of this Code, in~~
 8 determining whether the defendant should be admitted to bail pending trial, or in
 9 determining the conditions of bail, the court judge or magistrate shall take into
 10 consideration the consider the following:

11 (1) The previous criminal record history of the defendant.

12 (2) The and any potential threat or danger the defendant poses to the victim,
 13 the family of the victim, or to any member of the public, especially children. The
 14 court also shall perform a risk assessment that will give ample consideration to risk
 15 factors including substance abuse, gun ownership, record of violence, employment
 16 status, prior threats with a dangerous weapon, threats to kill, forced sex, choking,
 17 control of daily activities, threats of suicide, threats to harm children, and any other
 18 relevant factors.

19 (3) Documented history or records of any of the following: substance abuse
 20 by the defendant; threats of suicide by the defendant; the defendant's use of force or
 21 threats of use of force against any victim; strangulation, forced sex, or controlling the
 22 activities of any victim by the defendant; or threats to kill. Documented history or
 23 records may include but are not limited to sworn affidavits, police reports, and
 24 medical records.

25 F.D. Following the contradictory hearing and based upon the judge's or
 26 magistrate's review of the factors set forth in Paragraph C of this Article, the judge
 27 or magistrate may order that the defendant not be admitted to bail, upon proof by
 28 clear and convincing evidence either that the defendant might flee, or that the
 29 defendant poses a threat or danger to the victim, or that the defendant poses an

1 imminent danger to any other person or the community, ~~the judge or magistrate may~~
2 ~~order the defendant held without bail pending trial.~~

3 G.E. If bail is granted, with or without a ~~following the~~ contradictory hearing,
4 the judge or magistrate shall comply with the provisions of Article 335.1 or 335.2,
5 as applicable. The judge or magistrate shall consider, as a condition of bail, ~~the court~~
6 ~~may require a requirement that the~~ defendant ~~to~~ wear an electronic monitoring device
7 and ~~to~~ be placed under active electronic monitoring and house arrest. The conditions
8 of the electronic monitoring and house arrest shall be determined by the court and
9 may ~~include,~~ include but are not ~~be~~ limited ~~to,~~ to limitation of the defendant's
10 activities outside the home and a curfew. The defendant may be required to pay a
11 reasonable supervision fee to the supervising agency to defray the cost of the
12 required electronic monitoring and house arrest. A violation of the conditions of bail
13 may be punishable by ~~the forfeiture of bail~~ revocation of the bond and the issuance
14 of a bench warrant for the defendant's arrest or remanding of the defendant to
15 custody or a modification of the terms of bail.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____