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In the domestic abuse context in particular, reconciliation is to be carefully evaluated with a view toward appreciating potentially responsive actions by victims of domestic abuse. Because reconciliation is a juridical act, it may be conditional (and the condition may fail, as in *Tablada v. Tablada*, 590 So. 2d 1357 (La. App. 5th Cir. 1991)) and it may be affected by vices, including fraud and duress. See 2 Marcel Planiol & Georges Ripert, *Traité Pratique de Droit Civil Français: La Famille* no 534, at 414-15 (André Rouast rev., 1952) and Gabriel García Cantero, *El Vinculo De Matrimonio Civil en El Derecho Español* 298 (1959) (describing reconciliation as a juridical act). Further, in order to resume the marital relationship, the parties must have mutual intent to reconcile. Mutual intent must include the motivation and intention of each party to restore and renew the marital relationship. *Woods v. Woods*, 660 So. 2d 134 (La. App. 2d Cir. 1995).

Section 21. In the event of a conflict between any provisions of this Act and Sections 2 and 3 of the Act that originated as House Bill No. 544 of this 2020 Regular Session of the Legislature, the provisions of Sections 2 and 3 of that Act shall supersede and control.

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#### 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 727 Original

2020 Regular Session

White

**Abstract:** Provides for a single civil definition of domestic abuse.

Present law provides over 50 piecemeal provisions of law relative to domestic violence and family violence.

Proposed law provides a consistent and comprehensive definition of "domestic abuse" through all areas of civil law which includes both physical manifestations of abuse and patterns of assaultive or coercive behaviors, including but not limited to physical, sexual, and psychological threats and attacks and financial control.

Present law (C.C. Art. 103) provides for the granting of a divorce upon proof of physical or sexual abuse of a spouse or child of the spouse.

Proposed law provides for the granting of a divorce upon proof of domestic abuse.

Present law (C.C. Art. 104) provides for the extinguishment of a cause of action for divorce when the parties reconcile. A Comment is provided to explain that a reconciliation in the domestic abuse context should be carefully considered because the necessary mutual intent to reconcile may not be accurate.

Present law (C.C. Art. 112) requires the court to consider the existence, effect, and duration of domestic abuse in the determination of spousal support.

Proposed law retains present law and updates terminology.

Present law (C.C. Art. 134) requires the court to consider certain factors in determining the best interest of the child before making custody and visitation determinations.

Proposed law conforms the factors to the civil definition of domestic abuse and elevates the importance of those factors without excluding any other factor. Proposed law also refers the court to the Post-Separation Domestic Abuse Relief Act.

Present law (C.C. Art. 136) provides for the awarding of visitation when a parent is not granted

custody.

Proposed law changes a cross-reference.

Proposed law (C.C. Art. 162) defines "domestic abuse" to include a single act or a pattern of behavior, including physical abuse, coercion, control, punishment, intimidation, or exacting revenge upon, committed by one family member, current or former household member, or dating partner against another.

Present law (C.C. Arts. 2315.8 and 2362.1) provides liability for damages caused by domestic abuse and creates a separate obligation for the payment of attorney fees and costs incurred by a spouse who commits domestic abuse.

Proposed law retains present law, deletes an obsolete cross-reference, and updates terminology.

Present law (C.C.P. Arts. 891, 3603.1, 3604, 3607.1, 3610, and 3945) provides for the form of a petition and for the form, registry, and security for a temporary restraining order or preliminary injunction involving domestic violence.

Proposed law retains present law and updates cross-references and terminology.

Present law (Ch.C. Art. 652) provides for the confidentiality of certain identifying information regarding a victim of domestic abuse.

Proposed law retains present law and updates cross-references and terminology.

Present law (Ch.C. Arts. 1564-1573) provides, through a Domestic Abuse Assistance Act, a civil remedy in the juvenile courts for domestic abuse in homes where children reside. Present law provides for definitions, venue, form of the petition, temporary restraining orders and protective orders, costs, and law enforcement duties.

Proposed law provides a cross-reference to the Civil Code definition of "domestic abuse" and updates corresponding terminology.

Present law (C.E. Art. 412.5) provides for the admissibility of evidence of similar crimes, wrongs, or acts in civil cases.

Proposed law retains present law and updates cross-references and terminology.

Present law (C.Cr.P. Arts. 313, 320, 321, 893, 895, 899.2, 900, 1001, and 1002) provides for bail, suspension of sentence, probation, and the transfer of firearms in domestic violence cases.

Proposed law retains present law, provides a cross-reference to the Civil Code definition of "domestic abuse," and updates corresponding terminology and cross-references.

Present law (R.S. 9:314) permits a court to assess attorney fees and court costs against a person who commits domestic abuse.

Proposed law requires the court to assess attorney fees and court costs against a person who commits domestic abuse.

Present law (R.S. 9:345, 355.2, 358.2, 358.3, and 359.13) provides for the appointment of an attorney in child custody and visitation proceedings, the relocation of the residence of a child, parenting coordinators, and the Military Parent and Child Custody Protection Act.

Proposed law retains present law and updates cross-references and terminology.

Present law (R.S. 9:361-369) provides for the Post-Separation Family Violence Relief Act.

Proposed law renames the Act the "Post-Separation Domestic Abuse Relief Act," provides a cross-reference to the Civil Code definition of "domestic abuse" updates corresponding terminology and cross-references, and clarifies the presumption that a parent who has committed domestic abuse shall not be awarded joint or sole custody.

Present law (R.S. 9:372, 2603, 2800.9, 3261.1, and 4103) provides for injunctions, the Louisiana Uniform Electronic Transactions Act, actions against a person for the abuse of a minor, lease

agreements, and the referral of cases for mediation.

Proposed law retains present law and updates cross-references and terminology.

Present law (R.S. 13:621.21, 621.22, 721, 1802, 1819, 1821, 1830, 1852, 1856, 1857, 1858, 1859, 2106, and 5304) provides for jurisdiction of courts, powers of commissioners, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform International Child Abduction Prevention Act, the collection of a nonrefundable fee in certain cases in city court, and drug division probation programs.

Proposed law retains present law, provides a cross-reference to the Civil Code definition of "domestic abuse", and updates corresponding terminology and cross-references.

Present law (R.S. 14:79) provides for the violation of protective orders.

Proposed law retains present law and updates cross-references.

Present law (R.S. 15:257.1, 574.7, 574.9, and 587.8) provides an exception for material witness warrants for certain victims, violations of parole, and access to criminal history.

Proposed law retains present law and updates cross-references and terminology.

Present law (R.S. 17:7.2) establishes qualifications and requirements for teacher education programs.

Proposed law retains present law and updates terminology.

Present law (R.S. 22:1063 and 1078) prohibits insurance discrimination against certain persons including victims of domestic violence.

Proposed law retains present law, provides a cross-reference to the Civil Code definition of "domestic abuse", and updates corresponding terminology.

Present law (R.S. 33:9701) ensures access to emergency services for victims of domestic abuse.

Proposed law retains present law and provides a cross-reference to the Civil Code definition of "domestic abuse".

Present law (R.S. 37:2554) provides for the qualifications of short hand reporters and the use of electronic or audio recordings in hearings related to abuse.

Proposed law retains present law and updates cross-references.

Present law (R.S. 39:1619) provides for social services contracts.

Proposed law retains present law and updates terminology.

Present law (R.S. 40:506, 1379.3.2, 2405.8, and 2533) provides for housing authorities, concealed handgun permits, peace officer training requirements, and the rights of law enforcement officers while under investigation.

Proposed law retains present law, provides a cross-reference to the Civil Code definition of "domestic abuse", and updates corresponding terminology and additional cross-references.

Present law (R.S. 44:3) provides for the disclosure of public records.

Proposed law deletes definitions of "family member", "household member", and "dating partner" and updates cross-references.

Present law (R.S. 46:52.1, 236.5, 236.10, 1842, 1844, 1845, 1846, and 1861) provides for certain programs administered by the Department of Children and Family Services, rights of victims and witnesses of crime, and family justice centers.

Proposed law retains present law and updates corresponding terminology and cross-references.

Present law (R.S. 46:2131-2143) provides for the Domestic Abuse Assistance Act.

Proposed law defines "domestic abuse" to include a single act or a pattern of behavior, including physical abuse, coercion, control, punishment, intimidation, or exacting revenge upon, committed by one family member, current or former household member, or dating partner against another.

Proposed law also updates corresponding terminology and cross-references throughout the Act.

Present law (R.S. 9:341) provides restrictions on visitation whenever the court finds by a preponderance of the evidence that a parent has subjected any of his children or stepchildren to family violence.

Proposed law repeals present law but moves the provisions relative to supervised visitation when a parent has subjected his children to domestic abuse relative to R.S. 9:364 in the Post-Separation Domestic Abuse Relief Act.

Present law (R.S. 46:1844) cross-references existing definitions of "family member", "household member", and "dating partner".

Proposed law deletes present law.

Present law (R.S. 46:2121.1) defines "family or household members", "family violence", and "victim of family violence".

Proposed law deletes present law.

Present law (R.S. 46:2140) defines "dating violence" and "domestic abuse".

Proposed law deletes present law.

Present law (R.S. 46:2151) provides for the Protection From Dating Violence Act and defines "dating partner".

Proposed law repeals present law but includes dating partners within the definition of "domestic abuse" and in the Domestic Abuse Assistance Act.

(Amends C.C. Arts. 103(4) and (5), 112(B)(9), 134, 136(A), the heading of Title VI of Book I, and C.C. Arts. 2315.8(A) and 2362.1(B), C.C.P. Arts. 891(B), 3603.1(A) and (C)(1), 3604(C)(1), 3607.1, 3610, and 3945(G), Ch.C. Arts. 652(E)(2), 1564, 1565, 1566(C), 1567(A)(3) and (B), 1568(A)(1), (3), and (4) and (C), 1569(A)(intro. para.), (B), and (D), 1570(A)(intro. para.), 1570.1(A), and 1573(intro. para.) and (4), C.E. Art. 412.5(A), C.Cr.P. Arts. 313(A)(2), 320(G)(1) and (I)(1)(a), 321(C)(19), 893(A)(2), 895(M)(1), 899.2(D)(5) and (6), 900(A)(6)(d)(iii), the heading of Title XXXV, and C.Cr.P. Arts. 1001(1), (2), and (4) and 1002(A)(2)(a), R.S. 9:314, 345(B), 355.2(D)(2), 358.2, 358.3(B)(8), 359.13, the heading of Part IV of Chapter 1 of Code Title V of Code Book I of Title 9, and R.S. 9:361, 362(1), (3)(c), (4), (5), (6), and (7), 363, 364, 365, 366(A), 367, 369, 372(A) and (C), 2603(B)(4)(a), 2800.9(A), 3261.1(B)(2) and (C)(2) and 4103(B)(1), R.S. 13:621.21(B)(2) and (C)(2), 621.22(B)(3), 721(E)(2)(I), 1802(4), 1819(B)(1), 1821(A)(2), 1830(B)(3), 1852(4), 1856(4) and (5), 1857(A)(4), 1858(B), 1859(D), 2106(B) and 5304(B)(10) (intro. para.) and (b), R.S. 14:79(A)(1)(a) and (E), R.S. 15:257.1(C)(1)(c), 574.7(C)(2)(a)(x) and (4)(e) and (f), 574.9(H)(2)(c), 587.8(A) and (B)(3)(intro. para.), (a), (b), and (d) and (7), R.S. 17:7.2(A)(6), R.S. 22:1063(A)(1)(g) and 1078(A), R.S. 33:9701(C)(2), R.S. 37:2554(B)(2)(b), R.S. 39:1619(A)(3)(intro. para.), (a), (f), and (g), R.S. 40:506(D), 1379.3.2(A), 2405.8(E)(1)(intro. para.), (a), and (g) and (2) and (I)(3)(a)(i) and (b) and 2533(C)(1), R.S. 44:3(A)(6) and (J)(3), and R.S. 46:52.1(F)(3)(a)(v), 236.5(C)(1) and (3)(k), 236.10(C)(2)(d)(i), 1842(15)(d), 1844(C)(2), 1845(C)(2), 1846(A) and (C), 1861(A)(1)(a), 2131, 2132(3) and (4), 2133(B)(3) and (D), 2134(A)(1), (2), and (3) and (C), 2135(A)(intro. para.), (B), and (D), 2136(A)(intro. para.), 2136.1(A), 2136.2(A) and (B), 2136.3(A)(intro. para.), 2138(C), 2140(A), (B)(intro. para.) and (4), and (C)(1), (2)(intro. para.), (e), and (g), and (3)(b), and 2143(A), (B), and (C); Adds C.C. Art. 162; Repeals R.S. 9:341 and R.S. 46:1844(W)(5)(d), 2121.1, 2140(C)(4), and 2151)