

Regular Session, 2014

HOUSE BILL NO. 750

BY REPRESENTATIVES MORENO AND BROSSETT

FAMILY VIOLENCE: Provides relative to restraining orders, protective orders, and injunctions issued in conjunction with domestic abuse cases

1 AN ACT

2 To amend and reenact R.S. 9:366(A) and 372(B) and (C), R.S. 14:79(B), (C), (E), and (F),
3 R.S. 46:2135(G) and (H), 2136(E), (G), and (H), 2136.2(A) and (D), and 2140,
4 Children's Code Articles 1569(H) and (I) and 1570(E), (G), and (H), Code of Civil
5 Procedure Article 3607.1, and Code of Criminal Procedure Articles 30(B), 327.1,
6 335.2(C), and 871.1, relative to protective orders issued in conjunction with cases of
7 domestic abuse; to provide relative to the procedures for filing Uniform Abuse
8 Prevention Orders in the Louisiana Protective Order Registry; to provide relative to
9 the duties of judges, clerks of court, and the Judicial Administrator's Office of the
10 Louisiana Supreme Court relative to the issuance of temporary restraining orders,
11 preliminary or permanent injunctions, and protective orders; to provide relative to
12 the penalties for violations of protective orders; to provide relative to the duty of law
13 enforcement with regard to enforcing protective orders and violations of protective
14 orders; to provide relative to the determination by law enforcement of the
15 predominant aggressor in domestic abuse cases; to provide for a rebuttable
16 presumption regarding the predominant aggressor; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 9:366(A) and 372(B) and (C) are hereby amended and reenacted to
19 read as follows:

1 §366. Injunctions

2 A. All separation, divorce, child custody, and child visitation orders and
3 judgments in family violence cases shall contain an injunction as defined in R.S.
4 9:362. Upon issuance of such injunction, the judge shall cause to have prepared a
5 Uniform Abuse Prevention Order as provided in R.S. 46:2136.2(C), shall sign such
6 order, and shall immediately forward it to the clerk of court for filing, ~~all without~~
7 ~~delay on the day that the order is issued.~~ The clerk of the issuing court shall transmit
8 the Uniform Abuse Prevention Order to the Judicial Administrator's Office,
9 Louisiana Supreme Court for entry into the Louisiana Protective Order Registry, as
10 provided in R.S. 46:2136.2(A), by facsimile transmission, ~~mail,~~ or direct electronic
11 input, ~~where available,~~ as expeditiously as possible, but no later than the end of the
12 next business day after the order is filed with the clerk of court. The clerk of the
13 issuing court shall also send a copy of the Uniform Abuse Prevention Order, R.S.
14 46:2136.2(C), or any modification thereof, to the chief law enforcement official of
15 the parish where the person or persons protected by the order reside. A copy of the
16 Uniform Abuse Prevention Order shall be retained on file in the office of the chief
17 law enforcement officer until otherwise directed by the court.

18 * * *

19 §372. Injunction against abuse; form; central registry

20 * * *

21 B. Immediately upon rendering a decision granting relief provided in
22 Subsection A of this Section, the judge shall cause to have prepared a Uniform
23 Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and
24 shall immediately forward it to the clerk of court for filing, ~~all without delay on the~~
25 ~~day that the order is issued.~~

26 C. The clerk of the issuing court shall transmit the Uniform Abuse
27 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court
28 for entry into the Louisiana Protective Order Registry, as provided in R.S.
29 46:2136.2(A), by facsimile transmission, ~~mail,~~ or direct electronic input, ~~where~~

1 be fined not more than one thousand dollars and imprisoned for not less than
2 fourteen days nor more than six months. At least fourteen days of the sentence of
3 imprisonment imposed under this Paragraph shall be without benefit of probation,
4 parole, or suspension of sentence. If a portion of the sentence is imposed with
5 benefit of probation, parole, or suspension of sentence, the court shall require the
6 offender to participate in a court-approved domestic abuse counseling program,
7 unless the offender has previously been required to participate in such program and,
8 in the discretion of the judge, the offender would not benefit from such counseling.

9 C.(1) Whoever is convicted of the offense of violation of protective orders
10 where the violation involves a battery ~~to~~ or any crime of violence as defined by R.S.
11 14:2(B) against the person protected by the protective order, and who has not been
12 convicted of violating a protective order or of an assault or battery upon the person
13 protected by the protective order within the five years prior to commission of the
14 instant offense, shall be fined not more than five hundred dollars and imprisoned for
15 not less than fourteen days nor more than six months. At least fourteen days of the
16 sentence of imprisonment imposed under this Paragraph shall be without benefit of
17 probation, parole, or suspension of sentence. If a portion of the sentence is imposed
18 with benefit of probation, parole, or suspension of sentence, the court shall require
19 the offender to participate in a court-approved domestic abuse counseling program
20 as part of that probation.

21 (2) Whoever is convicted of the offense of violation of protective orders
22 where the violation involves a battery ~~to~~ or any crime of violence as defined by R.S.
23 14:2(B) against the person for whose benefit the protective order is in effect, and
24 who has been convicted not more than one time of violating a protective order or of
25 an assault or battery upon the person for whose benefit the protective order is in
26 effect within the five-year period prior to commission of the instant offense,
27 regardless of whether the instant offense occurred before or after the earlier
28 convictions, shall be fined not more than one thousand dollars and imprisoned for not
29 less than three months nor more than six months. At least fourteen days of the

1 sentence of imprisonment imposed under this Paragraph shall be without benefit of
2 probation, parole, or suspension of sentence. If a portion of the sentence is imposed
3 with benefit of probation, parole, or suspension of sentence, the court shall require
4 the offender to participate in a court-approved domestic abuse counseling program,
5 unless the offender has previously been required to participate in such program and,
6 in the discretion of the court, the offender would not benefit from such counseling.

7 (3) Whoever is convicted of the offense of violation of protective orders
8 where the violation involves a battery ~~to~~ or any crime of violence as defined by R.S.
9 14:2(B) against the person for whose benefit the protective order is in effect, and
10 who has more than one conviction of violating a protective order or of an assault or
11 battery upon the person for whose benefit the protective order is in effect during the
12 five-year period prior to commission of the instant offense, regardless of whether the
13 instant offense occurred before or after the earlier convictions, the offender shall be
14 fined not more than two thousand dollars and imprisoned with or without hard labor
15 for not less than one year nor more than five years. At least one year of the sentence
16 of imprisonment imposed under this Paragraph shall be without benefit of probation,
17 parole, or suspension of sentence.

18 * * *

19 E.(1) Law enforcement officers shall use every reasonable means, including
20 but not limited to immediate arrest of the violator, to enforce a preliminary or
21 permanent injunction or protective order obtained pursuant to R.S. 9:361 et seq., R.S.
22 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code
23 of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
24 327.1, ~~335.1~~ 335.2, and 871.1 after a contradictory court hearing, or to enforce a
25 temporary restraining order or ex parte protective order issued pursuant to R.S. 9:361
26 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564
27 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
28 Procedure Articles 327.1 and ~~335.1~~ 335.2 if the defendant has been given notice of

1 the temporary restraining order or ex parte protective order by service of process as
2 required by law.

3 (2) Law enforcement officers shall at a minimum issue a summons to the
4 person in violation of a temporary restraining order, a preliminary or permanent
5 injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
6 R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of
7 Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
8 30, 327.1, 335.2, and 871.1.

9 F. This Section shall not be construed to bar or limit the effect of any other
10 criminal statute or civil remedy.

11 * * *

12 Section 3. R.S. 46:2135(G) and (H), 2136(E), (G), and (H), 2136.2(A) and (D), and
13 2140 are hereby amended and reenacted to read as follows:

14 §2135. Temporary restraining order

15 * * *

16 G. Immediately upon entering a temporary restraining order, the judge shall
17 cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S.
18 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of
19 court for filing, ~~all without delay on the day that the order is issued.~~

20 H. The clerk of the issuing court shall transmit the Uniform Abuse
21 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court
22 for entry into the Louisiana Protective Order Registry, as provided in R.S.
23 46:2136.2(A), by facsimile transmission, ~~mail~~, or direct electronic input, ~~where~~
24 ~~available~~, as expeditiously as possible, but no later than the end of the next business
25 day after the order is filed with the clerk of court. The clerk of the issuing court shall
26 also send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any
27 modification thereof, to the chief law enforcement official of the parish where the
28 person or persons protected by the order reside. A copy of the Uniform Abuse

1 B. Whenever a law enforcement officer has reason to believe that a family
2 or household member or dating partner has been abused, and the abusing party is not
3 in violation of a restraining order, a preliminary or permanent injunction, or a
4 protective order, the officer shall immediately use all reasonable means to prevent
5 further abuse, including:

6 (1) Arresting the abusive party with a warrant or without a warrant pursuant
7 to Code of Criminal Procedure Article 213, if probable cause exists to believe that
8 a felony has been committed by that person, whether or not the offense occurred in
9 the officer's presence.

10 (2) Arresting the abusive party in case of any misdemeanor crime which
11 endangers the physical safety of the abused person whether or not the offense
12 occurred in the presence of the officer. If there is no cause to believe there is
13 impending danger, arresting the abusive party is at the officer's discretion.

14 (3) Assisting the abused person in obtaining medical treatment necessitated
15 by the battery; arranging for, or providing, or assisting in the procurement of
16 transportation for the abused person to a place of shelter or safety.

17 (4) Notifying the abused person of his right to initiate criminal or civil
18 proceedings; the availability of the protective order, R.S. 46:2136; and the
19 availability of community assistance for domestic violence victims.

20 ~~B.C.~~(1) When a law enforcement officer receives conflicting accounts of
21 domestic abuse or dating violence, the officer shall evaluate each account separately
22 to determine if one party was the predominant aggressor.

23 (2) In determining if one party is the predominant aggressor, the law
24 enforcement officer may consider any other relevant factors, but shall consider the
25 following factors based upon his or her observation:

26 (a) Evidence from complainants and other witnesses.

27 (b) The extent of personal injuries received by each person.

28 (c) Whether a person acted in self-defense.

29 (d) An imminent threat of future injury to any of the parties.

1 (e) Prior complaints of domestic abuse or dating violence, if that history can
2 be reasonably ascertained by the officer.

3 (f) The future welfare of any minors who are present at the scene.

4 (g) The existence of a temporary restraining order, a preliminary or
5 permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S.
6 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code
7 of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
8 30, 327.1, 335.2, and 871.1. There shall be a rebuttable presumption that the
9 predominant aggressor is the person against whom the order was issued.

10 (3)(a) If the officer determines that one person was the predominant
11 aggressor in a felony offense, the officer shall arrest that person. The arrest shall be
12 subject to the laws governing arrest, including the need for probable cause as
13 otherwise provided by law.

14 (b) If the officer determines that one person was the predominant aggressor
15 in a misdemeanor offense, the officer shall arrest the predominant aggressor if there
16 is reason to believe that there is impending danger or if the predominant aggressor
17 is in violation of a temporary restraining order, a preliminary or permanent
18 injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
19 R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of
20 Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
21 30, 327.1, 335.2, and 871.1. If there is no threat of impending danger or no violation
22 of a temporary restraining order, a preliminary or permanent injunction, or a
23 protective order, the officer may arrest the predominant aggressor at the officer's
24 discretion, whether or not the offense occurred in the presence of the officer. An
25 arrest pursuant to the provisions of this Subparagraph shall be subject to the laws
26 governing arrest, including the need for probable cause as otherwise provided by
27 law. The exceptions provided for in R.S. 46:2140 shall apply.

28 (4) As used in this Subsection:

29 (a) "Dating violence" has the meaning as defined in R.S. 46:2151(C).

1 (b) "Domestic abuse" has the meaning as defined in R.S. 46:2132(3).

2 Section 4. Children's Code Articles 1569(H) and (I) and 1570(E), (G), and (H) are
3 hereby amended and reenacted to read as follows:

4 Art. 1569. Temporary restraining order

5 * * *

6 H. Immediately upon rendering a decision granting the relief requested by
7 the petitioner, the judge shall cause to have prepared a Uniform Abuse Prevention
8 Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately
9 forward it to the clerk of court for filing, ~~all without delay on the day that the order~~
10 is issued.

11 I. If a temporary restraining order is issued or extended, the clerk of the
12 issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial
13 Administrator's Office, Louisiana Supreme Court for entry into the Louisiana
14 Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile
15 transmission, ~~mail~~, or direct electronic input, ~~where available~~, as expeditiously as
16 possible, but no later than the end of the next business day after the order is filed
17 with the clerk of court. The clerk of the issuing court shall also send a copy of the
18 Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof,
19 to the chief law enforcement official of the parish where the person or persons
20 protected by the order reside. A copy of the Uniform Abuse Prevention Order shall
21 be retained on file in the office of the chief law enforcement officer until otherwise
22 directed by the court.

23 Art. 1570. Protective orders; content; modification; service

24 * * *

25 E. A protective order made under this Chapter shall be served on the person
26 to whom the order applied in open court at the close of the hearing, or in the same
27 manner as a writ of injunction. ~~The clerk of the issuing court shall send a copy of~~
28 ~~the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof~~
29 ~~to the chief law enforcement official of the parish where the person or persons~~

1 cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S.
2 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of
3 court for filing, ~~all without delay on the day that the order is issued.~~

4 B. Where a temporary restraining order, preliminary injunction, or
5 permanent injunction relative to domestic abuse or dating violence is issued,
6 dissolved, or modified, the clerk of court shall transmit the Uniform Abuse
7 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court
8 for entry into the Louisiana Protective Order Registry, as provided in R.S.
9 46:2136.2(A), by facsimile transmission, ~~mail~~, or direct electronic input, ~~where~~
10 ~~available~~, as expeditiously as possible, but no later than the end of the next business
11 day after the order is filed with the clerk of court. The clerk of the issuing court shall
12 also send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any
13 modification thereof, to the chief law enforcement official of the parish where the
14 person or persons protected by the order reside. A copy of the Uniform Abuse
15 Prevention Order shall be retained on file in the office of the chief law enforcement
16 officer until otherwise directed by the court.

17 Section 6. Code of Criminal Procedure Articles 30(B), 327.1, 335.2(C), and 871.1
18 are hereby amended and reenacted to read as follows:

19 Art. 30. The peace bond

20 * * *

21 B. If the peace bond is for the purpose of preventing domestic abuse or
22 dating violence, the magistrate shall cause to have prepared a Uniform Abuse
23 Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall
24 immediately forward it to the clerk of court for filing, ~~all without delay on the day~~
25 ~~that the order is issued.~~ The clerk of the issuing court shall transmit the Uniform
26 Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme
27 Court for entry into the Louisiana Protective Order Registry, as provided in R.S.
28 46:2136.2(A), by facsimile transmission, ~~mail~~, or direct electronic input, ~~where~~
29 ~~available~~, as expeditiously as possible, but no later than the end of the next business

1 C. If, as part of a bail restriction, an order is issued pursuant to the provisions
 2 of this Article, the judge shall cause to have prepared a Uniform Abuse Prevention
 3 Order, as provided in R.S. 46:2136.2, shall sign such order, and shall immediately
 4 forward it to the clerk of court for filing, ~~all without delay on the day that the order~~
 5 is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention
 6 Order to the Judicial Administrator's Office, Louisiana Supreme Court for entry into
 7 the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by
 8 facsimile transmission, ~~mail~~, or direct electronic input, ~~where available~~, as
 9 expeditiously as possible, but no later than the end of the next business day after the
 10 order is filed with the clerk of court. The clerk of the issuing court shall also send
 11 a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any
 12 modification thereof, to the chief law enforcement official of the parish where the
 13 person or persons protected by the order reside. A copy of the Uniform Abuse
 14 Prevention Order shall be retained on file in the office of the chief law enforcement
 15 officer until otherwise directed by the court.

* * *

17 Art. 871.1. Sentencing orders to be sent to Louisiana Protective Order Registry

18 If part of the sentence contains an order for the purpose of preventing violent
 19 or threatening acts or harassment against, contact or communication with, or physical
 20 proximity to, another person in order to prevent domestic abuse or dating violence,
 21 the judge shall cause to have prepared a Uniform Abuse Prevention Order, as
 22 provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward
 23 it to the clerk of court for filing, ~~all without delay on the day that the order is issued~~.
 24 The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to
 25 the Judicial Administrator's Office, Louisiana Supreme Court for entry into the
 26 Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile
 27 transmission, ~~mail~~, or direct electronic input, ~~where available~~, as expeditiously as
 28 possible, but no later than the end of the next business day after the order is filed
 29 with the clerk of court. The clerk of the issuing court shall also send a copy of the

1 Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof,
 2 to the chief law enforcement official of the parish where the person or persons
 3 protected by the order reside. A copy of the Uniform Abuse Prevention Order shall
 4 be retained on file in the office of the chief law enforcement officer until otherwise
 5 directed by the court.

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)]

Moreno

HB No. 750

Abstract: Provides relative to restraining orders, protective orders, and injunctions issued in conjunction with domestic abuse cases.

Present law provides that the La. Protective Order Registry is a statewide registry for abuse prevention orders to prevent domestic and dating violence and to aid law enforcement, prosecutors, and the courts in handling cases of domestic violence.

Present law provides that any judge issuing any protective or restraining order shall cause to have prepared a Uniform Abuse Prevention Order, or "Uniform Order", which shall be forwarded to the clerk of court for filing.

Proposed law retains present law but adds the requirement that the judge who prepares the Uniform Abuse Prevention Order shall immediately forward it to the clerk of court for filing on the day that the order was issued.

Present law further provides that the clerk of court for the issuing court shall then transmit the Uniform Abuse Prevention Order to the La. Protective Order Registry by facsimile, mail, or direct electronic input no later than the end of the next business day after the order is filed with the clerk of court.

Proposed law amends present law to provide that the Uniform Abuse Prevention Order shall be provided to the registry by the clerk of the issuing court by facsimile or direct electronic input and further requires the clerk of the issuing court to provide a copy to the chief law enforcement official of the parish where the person or persons protected by the order reside.

Upon receipt of such orders, present law requires Judicial Administrator's Office to enter the information into the registry.

Proposed law requires the Judicial Administrator's Office to immediately enter such orders into the registry.

Present law 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.

Present law provides increased penalties for violations of protective orders which involve a battery against the person who is protected by the protective order.

Proposed law amends present law to provide that the increased penalties apply for violations of protective orders that involve a battery or any crime of violence as defined by present law against the person.

Present law provides that law enforcement officers shall use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent injunction, a temporary restraining order or ex parte protective order, or a protective order obtained pursuant to present law.

Proposed law retains present law but provides that law enforcement officers shall at a minimum issue a summons to any person in violation of a protective order.

Present law provides for the duties of law enforcement relative to domestic abuse and provides that when the officer has reason to believe that a family or household member or dating partner has been abused, the officer shall immediately use all reasonable means to prevent further abuse.

Proposed law retains present law and provides that whenever a law enforcement officer has reason to believe that a family or household member or dating partner has been abused and the abusing party is in violation of a protective order issued pursuant to present law, the officer shall immediately arrest the abusing party.

Present law provides guidelines for the law enforcement officer to determine which party in a domestic dispute is the predominant aggressor. In making this determination, present law requires law enforcement to consider certain factors.

Proposed law retains present law and requires the law enforcement to also consider the existence of a protective order and further provides that there shall be a rebuttable presumption that the predominant aggressor is the person against whom the order was issued.

Present law provides that when the officer determines that one person was the predominant aggressor in a misdemeanor offense, the officer shall arrest the predominant aggressor if there is reason to believe there is impending danger; otherwise, the officer has discretion in whether to make the arrest.

Proposed law retains present law and requires the officer to also make an arrest if the predominant aggressor is in violation of a protective order.

(Amends R.S. 9:366(A) and 372(B) and (C), R.S. 14:79(B), (C), (E), and (F), R.S. 46:2135(G) and (H), 2136(E), (G), and (H), 2136.2(A) and (D), and 2140, Ch.C. Arts. 1569(H) and (I) and 1570(E), (G), and (H), C.C.P. Art. 3607.1, and C.Cr.P. Arts. 30(B), 327.1, 335.2(C), and 871.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Amended the procedure by which a Uniform Abuse Prevention Order is provided by the judge to the clerk of court for filing and by the clerk of the issuing court to the La. Protective Order Registry and law enforcement.
2. Deleted the change to the crime of violation of protective orders that specifically added a violation of a Uniform Abuse Prevention Order in the La. Protective Order Registry as an element of the offense.

3. Amended the changes to the penalty provisions for violations of protective orders relative to "any act that is enumerated as a crime of violence" to refer to such acts as "any crime of violence as defined by R.S. 14:2(B)".
4. Amended the duty of law enforcement relative to violation of protective orders.
5. Made technical amendments to reflect these changes.