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

AN ACT

To amend and reenact 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, Children's Code Articles 1569(H) and (I) and 1570(E), (G), and (H), Code of Civil Procedure Article 3607.1, and Code of Criminal Procedure Articles 30(B), 327.1, 335.2(C), and 871.1, relative to protective orders issued in conjunction with cases of domestic abuse; to provide relative to the procedures for filing Uniform Abuse Prevention Orders in the Louisiana Protective Order Registry; to provide relative to the duties of judges, clerks of court, and the Judicial Administrator's Office of the Louisiana Supreme Court relative to the issuance of temporary restraining orders, preliminary or permanent injunctions, and protective orders; to provide relative to the penalties for violations of protective orders; to provide relative to the duty of law enforcement with regard to enforcing protective orders and violations of protective orders; to provide relative to the determination by law enforcement of the predominant aggressor in domestic abuse cases; to provide for a rebuttable presumption regarding the predominant aggressor; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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§366. Injunctions

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

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§372. Injunction against abuse; form; central registry

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

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

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~~available,~~ as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Section 2. R.S. 14:79(B), (C), (E), and (F) are hereby amended and reenacted to read as follows:

§79. Violation of protective orders

* * *

B.(1) On a first conviction for violation of protective orders which does not involve a battery ~~to~~ or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, the offender shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(2) On a second conviction for violation of protective orders which does not involve a battery ~~to~~ or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not more than one thousand dollars and imprisoned for not less than forty-eight hours nor more than six months. At least forty-eight hours of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-approved domestic abuse counseling program.

(3) On a third or subsequent conviction for violation of protective orders which does not involve a battery ~~to~~ or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, regardless of whether the current offense occurred before or after the earlier convictions, the offender shall

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

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

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

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

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

* * *

E.(1) 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 or protective order obtained pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1, ~~335.1~~ 335.2, and 871.1 after a contradictory court hearing, or to enforce a temporary restraining order or ex parte protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1 and ~~335.1~~ 335.2 if the defendant has been given notice of

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

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

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

* * *

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

§2135. Temporary restraining order

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

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

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Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

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§2136. Protective orders; content; modification; service

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E. A protective order made under this Part shall be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction. ~~The clerk of the issuing court shall send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer as provided herein until otherwise directed by the court.~~

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G. Immediately upon granting a protective order or approving any consent agreement, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing~~, all without delay~~ on the day that the order is issued.

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

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Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

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§2136.2. Louisiana Protective Order Registry

A. In order to provide a statewide registry for abuse prevention orders to prevent domestic and dating violence and to aid law enforcement, prosecutors, and the courts in handling such matters, there shall be created a Louisiana Protective Order Registry administered by the Judicial Administrator's Office, Louisiana Supreme Court. The Judicial Administrator's Office shall collect the data transmitted to it from the courts of the state and shall immediately enter it into the Louisiana Protective Order Registry.

* * *

D. The clerk of the issuing court shall immediately send a copy of the order or any modification thereof to the Louisiana Protective Order Registry as expeditiously as possible but no later than by the end of the next business day after the order is filed with the clerk of court. Transmittal of the Uniform Abuse Prevention Order ~~may~~ shall be made by facsimile transmission~~, mail,~~ or direct electronic input~~, where available,~~ as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.

* * *

§2140. Law enforcement officers; duties

A. 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 temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.2, and 871.1, the officer shall immediately arrest the abusing party.

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B. 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 not in violation of a restraining order, a preliminary or permanent injunction, or a protective order, the officer shall immediately use all reasonable means to prevent further abuse, including:

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

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

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

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

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

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

(a) Evidence from complainants and other witnesses.

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

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

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

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

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

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

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

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

(4) As used in this Subsection:

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

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

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

Art. 1569. Temporary restraining order

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

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

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

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

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~~protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer as provided herein until otherwise directed by the court.~~

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

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

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Section 5. Code of Civil Procedure Article 3607.1 is hereby amended and reenacted to read as follows:

Art. 3607.1. Registry of temporary restraining order, preliminary injunction or permanent injunction~~, their dissolution or modification~~

A. Immediately upon rendering a decision granting the petitioner a temporary restraining order or a preliminary or permanent injunction prohibiting a person from harming a family or household member or dating partner, the judge shall

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

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

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

Art. 30. The peace bond

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

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day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

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Art. 327.1. Bail restrictions to be transmitted to Louisiana Protective Order Registry

If, as part of a bail restriction, an order is issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person for the purpose of preventing domestic abuse, stalking, or dating violence, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing~~, all without delay~~ on the day that the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission~~, mail,~~ or direct electronic input~~, where available,~~ as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

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Art. 335.2. Stalking; conditions of release

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

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

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

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

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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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.