

Regular Session, 2014

HOUSE BILL NO. 1142

BY REPRESENTATIVES BURRELL, BURFORD, HENRY BURNS, AND MORENO  
AND SENATORS DORSEY-COLOMB, MILLS, AND MORRELL

1 AN ACT

2 To amend and reenact R.S. 14:79(A)(1)(a) and (E), R.S. 46:2136.2(B), and Code of  
3 Criminal Procedure Article 335.1(A)(1) and to enact Code of Criminal Procedure  
4 Article 330.3, relative to bail; to provide relative to bail restrictions for offenses  
5 against a family or household member or dating partner; to provide for the issuance  
6 of a Uniform Abuse Prevention Order; to provide relative to the possession of  
7 firearms by persons subject to the order; to provide for the inclusion of such orders  
8 in the Louisiana Protective Order Registry; to provide relative to contradictory bail  
9 hearings for persons charged with certain felony offenses; and to provide for related  
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Article 335.1(A)(1) is hereby amended and  
13 reenacted and Code of Criminal Procedure Article 330.3 is hereby enacted to read as  
14 follows:

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

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

18 B. A contradictory bail hearing, as provided for in this Article, shall be held  
19 prior to setting bail for a person in custody who is charged with a felony offense  
20 against the defendant's family or household member, as defined in R.S. 46:2132(4),  
21 or against the defendant's dating partner, as defined in R.S. 46:2151.

1             C. The court shall order a contradictory hearing to be held within five days,  
2             exclusive of weekends and legal holidays.

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

6             E. In addition to the factors listed in Code of Criminal Procedure Article 334,  
7             the court shall take into consideration the previous criminal record of the defendant  
8             and any potential threat or danger the defendant poses to the victim, the family of the  
9             victim, or to any member of the public, especially children. The court also shall  
10            perform a risk assessment that will give ample consideration to risk factors including  
11            substance abuse, gun ownership, record of violence, employment status, prior threats  
12            with dangerous weapon, threats to kill, forced sex, choking, control of daily  
13            activities, threats of suicide, threats to harm children, and any other relevant factors.

14            F. Following the contradictory hearing, upon proof by clear and convincing  
15            evidence either that the defendant might flee, or that the defendant poses a threat or  
16            danger to the victim, or that the defendant poses an imminent danger to any other  
17            person or the community, the judge or magistrate may order the defendant held  
18            without bail pending trial.

19            G. If bail is granted following the contradictory hearing, as a condition of  
20            bail the court may require a defendant to wear an electronic monitoring device and  
21            to be placed under active electronic monitoring. The conditions of the electronic  
22            monitoring shall be determined by the court and may include, but not be limited to,  
23            limitation of the defendant's activities outside the home and a curfew. The defendant  
24            may be required to pay a reasonable supervision fee to the supervising agency to  
25            defray the cost of the required electronic monitoring. A violation of the conditions  
26            of bail may be punishable by the forfeiture of bail and the issuance of a bench  
27            warrant for the defendant's arrest or remanding of the defendant to custody or a  
28            modification of the terms of bail.

29                            \*            \*            \*

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

1 Art. 335.1. Offenses against a family or household member or dating partner;  
2 provisions for forfeiture, arrest, modification

3 A.(1)(a) In determining conditions of release of a defendant who is alleged  
4 to have committed an offense against the defendant's family or household member,  
5 as defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined  
6 in R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse  
7 battery under the provisions of R.S. 14:35.3, or who is alleged to have committed the  
8 offense of stalking under the provisions of R.S. 14:40.2, the court shall consider  
9 whether the defendant poses a threat or danger to the victim. If the court determines  
10 that the defendant poses such a threat or danger, it shall require as a condition of bail  
11 that the defendant refrain from going to the residence or household of the victim, the  
12 victim's school, and the victim's place of employment or otherwise contacting the  
13 victim in any manner whatsoever, and shall refrain from having any further contact  
14 with the victim.

15 (b) If, as part of a bail restriction, an order is issued pursuant to the  
16 provisions of this Paragraph, the judge shall cause to have prepared a Uniform Abuse  
17 Prevention Order, as provided in R.S. 46:2136.2, shall sign such order, and shall  
18 immediately forward it to the clerk of court for filing, on the next business day after  
19 the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse  
20 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court,  
21 for entry into the Louisiana Protective Order Registry, as provided in R.S.  
22 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously  
23 as possible, but no later than the end of the next business day after the order is filed  
24 with the clerk of court. The clerk of the issuing court shall also send a copy of the  
25 Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any  
26 modification thereof, to the chief law enforcement officer of the parish where the  
27 person or persons protected by the order reside. A copy of the Uniform Abuse  
28 Prevention Order shall be retained on file in the office of the chief law enforcement  
29 officer until otherwise directed by the court.

1           (c) If, as part of a bail restriction, an order is issued pursuant to the  
 2           provisions of this Paragraph, the court shall also order that the defendant be  
 3           prohibited from possessing a firearm for the duration of the Uniform Abuse  
 4           Prevention Order. For the purposes of this Subparagraph, "firearm" means any  
 5           pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon,  
 6           or assault rifle that is designed to fire or is capable of firing fixed cartridge  
 7           ammunition or from which a shot or projectile is discharged by an explosive.

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9           Section 2. R.S.14:79(A)(1)(a) and (E) are hereby amended and reenacted to read as  
10 follows:

11           §79. Violation of protective orders

12           A.(1)(a) Violation of protective orders is the willful disobedience of a  
 13 preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361  
 14 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564  
 15 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal  
 16 Procedure Articles 327.1, 335.1, 335.2, and 871.1 after a contradictory court hearing,  
 17 or the willful disobedience of a temporary restraining order or any ex parte protective  
 18 order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S.  
 19 46:2151, criminal stay-away orders as provided for in Code of Criminal Procedure  
 20 Articles 327.1, ~~and 335.1,~~ 335.2, Children's Code Article 1564 et seq., or Code of  
 21 Civil Procedure Articles 3604 and 3607.1, if the defendant has been given notice of  
 22 the temporary restraining order or ex parte protective order by service of process as  
 23 required by law.

\* \* \*

25           E. Law enforcement officers shall use every reasonable means, including but  
 26 not limited to immediate arrest of the violator, to enforce a preliminary or permanent  
 27 injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372, R.S.  
 28 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil  
 29 Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1,  
 30 335.1, 335.2, and 871.1 after a contradictory court hearing, or to enforce a temporary

1           restraining order or ex parte protective order issued pursuant to R.S. 9:361, R.S.  
 2           9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code  
 3           of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles  
 4           327.1, ~~and 335.1~~, and 335.2 if the defendant has been given notice of the temporary  
 5           restraining order or ex parte protective order by service of process as required by  
 6           law.

\*       \*       \*

Section 3. R.S. 46:2136.2(B) is hereby amended and reenacted to read as follows:

§2136.2. Louisiana Protective Order Registry

\*       \*       \*

11           B. The Louisiana Protective Order Registry encompasses temporary  
 12           restraining orders, protective orders, preliminary injunctions, permanent injunctions,  
 13           and court-approved consent agreements resulting from actions brought pursuant to  
 14           R.S. 46:2131 et seq., R.S. 46:2151, R.S. 9:361 et seq., R.S. 9:372, Children's Code  
 15           Article 1564 et seq., Code of Civil Procedure Article 3607.1, or peace bonds  
 16           pursuant to Code of Criminal Procedure Article 30(B), or as part of the disposition,  
 17           sentence, or bail condition of a criminal matter pursuant to Code of Criminal  
 18           Procedure ~~Article~~ Articles 327.1, 335.1, 335.2, or ~~Article~~ 871.1 as long as such order  
 19           is issued for the purpose of preventing violent or threatening acts or harassment  
 20           against, contact or communication with, or physical proximity to, another person to  
 21           prevent domestic abuse or dating violence.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_