

2015 Regular Session

HOUSE BILL NO. 842 (Substitute for House Bill No. 488 by Representative Moreno)

BY REPRESENTATIVES MORENO, ADAMS, BADON, BARROW, BILLIOT, WESLEY BISHOP, BOUIE, BROADWATER, HENRY BURNS, TIM BURNS, BURRELL, GISCLAIR, GUILLORY, HONORE, HOWARD, NANCY LANDRY, TERRY LANDRY, MONTOUCET, NORTON, PIERRE, REYNOLDS, THIERRY, WILLMOTT, AND WOODRUFF

1 AN ACT

2 To amend and reenact R.S. 14:35.3(A), (B)(3)(introductory paragraph), (4), (5), and (6), and  
3 (G), 37.7(A) and (B), 40.2(A), and 79(B)(2) and (3), (C)(1) and (2), and (H), R.S.  
4 15:590(introductory paragraph), and R.S. 46:2136.3(A)(introductory paragraph) and  
5 to enact R.S. 14:35.3(B)(7), R.S. 15:590(8), and Code of Criminal Procedure Article  
6 387, relative to domestic abuse; to provide relative to criminal offenses and  
7 procedures involving domestic abuse; to amend the crimes of domestic abuse battery  
8 and domestic abuse aggravated assault to include family members as possible  
9 victims; to define "family member"; to amend the definition of "household member"  
10 and "court-monitored domestic abuse intervention program"; to expand the crime of  
11 stalking to specifically include written threats; to provide relative to the crime of  
12 violation of protective orders; to amend and provide relative to the penalties for  
13 certain offenses of violation of protective orders; to prohibit certain persons subject  
14 to a permanent injunction or protective order, issued pursuant to a court-approved  
15 consent agreement or certain provisions of law, from possessing a firearm for the  
16 duration of the injunction or order; to provide relative to the obtaining and filing of  
17 fingerprint and other identification information of persons arrested, or issued a  
18 summons and subsequently convicted, for certain domestic abuse-related offenses;  
19 to provide relative to the type of information that a prosecutor is required to provide  
20 for certain domestic abuse-related offenses; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 14:35.3(A), (B)(3)(introductory paragraph), (4), (5), and (6), and (G),  
3 37.7(A) and (B), 40.2(A), and 79(B)(2) and (3), (C)(1) and (2), and (H) are hereby amended  
4 and reenacted and R.S. 14:35.3(B)(7) is hereby enacted to read as follows:

5 §35.3. Domestic abuse battery

6 A. Domestic abuse battery is the intentional use of force or violence  
7 committed by one household member or family member upon the person of another  
8 household member or family member.

9 B. For purposes of this Section:

10 \* \* \*

11 (3) "Court-monitored domestic abuse intervention program" means a  
12 program, comprised of a minimum of twenty-six in-person sessions occurring over  
13 a minimum of twenty-six weeks, that follows a model designed specifically for  
14 perpetrators of domestic abuse. The offender's progress in the program shall be  
15 monitored by the court. The provider of the program shall have all of the following:

16 \* \* \*

17 (4) "Family member" means spouses, former spouses, parents, children,  
18 stepparents, stepchildren, foster parents, and foster children.

19 ~~(4)~~(5) "Household member" means any person of the opposite sex presently  
20 or formerly living in the same residence ~~or living in the same residence within five~~  
21 ~~years of the occurrence of the domestic abuse battery with the defendant~~ offender as  
22 a spouse, whether married or not, or any child presently or formerly living in the  
23 same residence ~~or living in the same residence within five years immediately prior~~  
24 ~~to the occurrence of domestic abuse battery~~ with the offender, or any child of the  
25 offender regardless of where the child resides.

26 ~~(5)~~(6) "Serious bodily injury" means bodily injury that involves  
27 unconsciousness, extreme physical pain, or protracted and obvious disfigurement,  
28 or protracted loss or impairment of the function of a bodily member, organ, or  
29 mental faculty, or a substantial risk of death.

1           ~~(6)(7)~~ "Strangulation" means intentionally impeding the normal breathing  
2           or circulation of the blood by applying pressure on the throat or neck or by blocking  
3           the nose or mouth of the victim.

4                           \*         \*         \*

5           G.(1) For purposes of determining whether a ~~defendant~~ an offender has a  
6           prior conviction for violation of this Section, a conviction under this Section, or a  
7           conviction under the laws of any state or an ordinance of a municipality, town, or  
8           similar political subdivision of another state which prohibits the intentional use of  
9           force or violence committed by one household member or family member upon  
10          another household member or family member ~~of the opposite sex presently or~~  
11          ~~formerly living in the same residence with the defendant as a spouse, whether~~  
12          ~~married or not~~, shall constitute a prior conviction.

13          (2) For purposes of this Section, a prior conviction shall not include a  
14          conviction for an offense under this Section if the date of completion of sentence,  
15          probation, parole, or suspension of sentence is more than ten years prior to the  
16          commission of the crime with which the ~~defendant~~ offender is charged, and such  
17          conviction shall not be considered in the assessment of penalties hereunder.  
18          However, periods of time during which the offender was incarcerated in a penal  
19          institution in this or any other state shall be excluded in computing the ten-year  
20          period.

21                           \*         \*         \*

22          §37.7. Domestic abuse aggravated assault

23          A. Domestic abuse aggravated assault is an assault with a dangerous weapon  
24          committed by one household member or family member upon another household  
25          member or family member.

26          B. For purposes of this Section, ~~"household":~~

27          (1) "Family member" means spouses, former spouses, parents, children,  
28          stepparents, stepchildren, foster parents, and foster children.

29          (2) "Household member" means any person of the opposite sex presently or  
30          formerly living in the same residence, ~~or living in the same residence within five~~

1           ~~years of the occurrence of the domestic abuse aggravated assault, with the defendant~~  
 2           ~~offender~~ as a spouse, whether married or not, or any child presently or formerly  
 3           living in the same residence ~~or living in the same residence within five years~~  
 4           ~~immediately prior to the occurrence of the domestic abuse aggravated assault with~~  
 5           the offender, or any child of the offender regardless of where the child resides.

6                               \*       \*       \*

7           §40.2. Stalking

8                               A. Stalking is the intentional and repeated following or harassing of another  
 9           person that would cause a reasonable person to feel alarmed or to suffer emotional  
 10          distress. Stalking shall include but not be limited to the intentional and repeated  
 11          uninvited presence of the perpetrator at another person's home, workplace, school,  
 12          or any place which would cause a reasonable person to be alarmed, or to suffer  
 13          emotional distress as a result of verbal, written, or behaviorally implied threats of  
 14          death, bodily injury, sexual assault, ~~kidnaping~~ kidnapping, or any other statutory  
 15          criminal act to himself or any member of his family or any person with whom he is  
 16          acquainted.

17                              \*       \*       \*

18          §79. Violation of protective orders

19                              \*       \*       \*

20                              B.

21                              \*       \*       \*

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

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

1 ~~court-approved~~ court-monitored domestic abuse ~~counseling~~ intervention program as  
2 defined by R.S. 14:35.3.

3 (3) On a third or subsequent conviction for violation of protective orders  
4 which does not involve a battery or any crime of violence as defined by R.S. 14:2(B)  
5 against the person protected by the protective order, regardless of whether the current  
6 offense occurred before or after the earlier convictions, the offender shall be fined  
7 not more than one thousand dollars and imprisoned with or without hard labor for not  
8 less than fourteen days nor more than ~~six months~~ two years. At least fourteen days  
9 of the sentence of imprisonment imposed under this Paragraph shall be without  
10 benefit of probation, parole, or suspension of sentence. If a portion of the sentence  
11 is imposed with benefit of probation, parole, or suspension of sentence, the court  
12 shall require the offender to participate in a ~~court-approved~~ court-monitored  
13 domestic abuse counseling intervention program as defined by R.S. 14:35.3, ~~unless~~  
14 ~~the offender has previously been required to participate in such program and, in the~~  
15 ~~discretion of the judge, the offender would not benefit from such counseling.~~

16 C.(1) Whoever is convicted of the offense of violation of protective orders  
17 where the violation involves a battery or any crime of violence as defined by R.S.  
18 14:2(B) against the person protected by the protective order, and who has not been  
19 convicted of violating a protective order or of an assault or battery upon the person  
20 protected by the protective order within the five years prior to commission of the  
21 instant offense, shall be fined not more than five hundred dollars and imprisoned for  
22 not less than fourteen days nor more than six months. At least fourteen days of the  
23 sentence of imprisonment imposed under this Paragraph shall be without benefit of  
24 probation, parole, or suspension of sentence. If a portion of the sentence is imposed  
25 with benefit of probation, parole, or suspension of sentence, the court shall require  
26 the offender to participate in a ~~court-approved~~ court-monitored domestic abuse  
27 counseling intervention program as defined by R.S. 14:35.3 as part of that probation.

28 (2) Whoever is convicted of the offense of violation of protective orders  
29 where the violation involves a battery or any crime of violence as defined by R.S.  
30 14:2(B) against the person for whose benefit the protective order is in effect, and

1 who has been convicted not more than one time of violating a protective order or of  
 2 an assault or battery upon the person for whose benefit the protective order is in  
 3 effect within the five-year period prior to commission of the instant offense,  
 4 regardless of whether the instant offense occurred before or after the earlier  
 5 convictions, shall be fined not more than one thousand dollars and imprisoned with  
 6 or without hard labor for not less than three months nor more than ~~six months~~ two  
 7 years. At least ~~fourteen~~ thirty days of the sentence of imprisonment imposed under  
 8 this Paragraph shall be without benefit of probation, parole, or suspension of  
 9 sentence. If a portion of the sentence is imposed with benefit of probation, parole,  
 10 or suspension of sentence, the court shall require the offender to participate in a  
 11 ~~court-approved~~ court-monitored domestic abuse ~~counseling~~ intervention program as  
 12 defined by R.S. 14:35.3, ~~unless the offender has previously been required to~~  
 13 ~~participate in such program and, in the discretion of the court, the offender would not~~  
 14 ~~benefit from such counseling.~~

\* \* \*

16 H. An offender ordered to participate in a court-monitored domestic abuse  
 17 counseling intervention program under the provision of this Section shall pay the  
 18 cost incurred in participating in the program, unless the court determines that the  
 19 offender is unable to pay. Failure to make payment under this Subsection shall  
 20 subject the offender to revocation of probation.

21 Section 2. R.S. 15:590(introductory paragraph) is hereby amended and reenacted and  
 22 R.S. 15:590(8) is hereby enacted to read as follows:

23 §590. Obtaining and filing fingerprint and identification data

24 The bureau shall obtain and file the name, fingerprints, description,  
 25 photographs, and any other pertinent identifying data as the deputy secretary deems  
 26 necessary, of any person who meets any of the following:

\* \* \*

1           (8) Has been arrested, or has been issued a summons and subsequently  
 2           convicted, for a violation of any state law or local ordinance that prohibits the use  
 3           of force or a deadly weapon against any family member as defined by R.S. 14:35.3  
 4           or any household member as defined by R.S. 14:35.3.

5           Section 3. R.S. 46:2136.3(A)(introductory paragraph) is hereby amended and  
 6 reenacted to read as follows:

7           §2136.3. Prohibition on the possession of firearms by a person against whom a  
 8           protective order is issued

9           A. Any person against whom the court has issued a permanent injunction or  
 10          a protective order pursuant to a court-approved consent agreement or pursuant to the  
 11          provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, ~~or~~ 2151, or 2173,  
 12          Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of  
 13          Criminal Procedure Articles 30, 327.1, 335.1, 335.2, or 871.1 shall be prohibited  
 14          from possessing a firearm for the duration of the injunction or protective order if  
 15          both of the following occur:

16   \*           \*           \*

17          Section 4. Code of Criminal Procedure Article 387 is hereby enacted to read as  
 18          follows:

19          Art. 387. Additional information required when prosecuting certain offenses

20          A. When instituting the prosecution of an offense involving a violation of  
 21          any state law or local ordinance that prohibits the use of force or a deadly weapon  
 22          against any family member as defined by R.S. 14:35.3 or any household member as  
 23          defined by R.S. 14:35.3, the district attorney, or city prosecutor for criminal  
 24          prosecutions in city court, shall include the following information in the indictment,  
 25          information, or affidavit:

26   (1) Date of the offense.

27   (2) The state identification number of the defendant, if one has been assigned  
 28          to the defendant for this offense or for any prior offenses.

1                    B. Failure to comply with the provisions of this Article shall not constitute  
2                    grounds for a motion to quash.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

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