
DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1026 Original

2022 Regular Session

Amedee

Abstract: Provides for civil definitions of "domestic abuse", "domestic violence", "household member", "family member", "dating partner", and "dating violence" for use throughout La. codes and statutes.

Proposed law (C.C. 86.1 and 162(A)) provides for the public policy of the state.

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

Proposed law (R.S. 9:1061) provides a consistent and comprehensive definition of "domestic abuse" through all areas of civil law which includes a non-physical offense that is defined as a criminal offense by the Criminal Code, except for defamation, regardless of whether a person was prosecuted when the non-physical offense is committed against a spouse, other family member, or a household member.

Proposed law (R.S. 9:1061) provides a consistent and comprehensive definition of "domestic violence" through all areas of civil law which includes physical or sexual abuse and any offense against the person, defined as a crime of violence, regardless of whether the perpetrator was prosecuted but such a finding must be by clear and convincing evidence if he has not been prosecuted for the criminal act. "Domestic violence" shall not mean those reasonable acts of self-defense utilized by one parent to protect himself or herself or a child in the family from the family violence of the other parent. "Domestic violence" applies when the crime of violence is committed against a spouse, other family member, or household member.

Proposed law (R.S. 9:1061) provides a consistent and comprehensive definition of "family members" to include spouses, former spouses, parents, children, stepparents, stepchildren, foster parents, foster children, other ascendants, and other descendants. The term "family member" shall include the defendant's child regardless of where the child resides.

Proposed law (R.S. 9:1061) provides a consistent and comprehensive definition of "household members" to include a person presently or formerly living in the same residence with the defendant and who is involved or has been involved in a sexual or intimate relationship with the defendant. The term also includes a child presently or formerly living in the same residence with the defendant other than the child of the defendant.

Proposed law (R.S. 9:1062) defines "dating partner" as any person who is involved or has been

involved in a sexual or intimate relationship with the perpetrator characterized by the expectation of affectionate involvement independent of financial considerations, who does not presently live with or did not formerly live with the defendant in the same residence. "Dating partner" shall not include a casual relationship or ordinary association between persons in a business or social context.

Proposed law (R.S. 9:1062) defines "dating violence" as physical or sexual abuse and any offense against the person, defined as a crime of violence, regardless of whether the perpetrator was prosecuted.

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

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

Present law (C.C. Art. 112) requires the court to consider the existence, effect, and duration of domestic abuse when the other spouse physically or sexually abused the claimant spouse (C.C. Art. 103) who is in need and qualifies for spousal support, formerly referred to as "alimony". Present law also provides that a court may order spousal support to a claimant spouse, who is free from fault, if the divorce court judge accepts the findings of physical or sexual abuse issued by the judge who heard a case regarding a protective order against domestic abuse. (C.C. Art. 103 and R.S. 46:2133(E)) Present law provides that a finding that physical or sexual abuse occurred during a marriage can increase the limit on spousal support beyond the normal limit of the one-third maximum amount that a payor spouse would be required to pay from his income.

Proposed law retains present law updates the term to "domestic violence".

Present law provides for the form of a petition and for the form, registry, and security for a temporary restraining order or preliminary injunction involving domestic violence, domestic abuse, and dating violence.

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

Present law (C.C. Art. 104) provides that reconciliation by married spouses ends a petition of divorce.

Proposed law provides that all ancillary matters related to divorce are also extinguished by reconciliation of the parties.

Present law (C.C. Art. 112) provides that when a spouse is awarded a judgment of divorce and the court determines the party or a child was the victim of domestic abuse committed by the other party during the marriage, the spouse is presumed to be entitled to final periodic support, which may exceed one-third of the obligor's net income.

Proposed law instead require the court find the party or child was the victim of domestic violence and the claimant spouse meet criteria set forth in present law and has not committed an act of

domestic violence. Further conditions an award exceeding one-third of the obligor's net income on the party meeting the criteria set forth in present law and not committing an act of domestic violence.

Present law (C.C. Art. 136) provides factors for determining the best interest of the child.

Proposed law adds as a factor the potential for the child to be a victim of domestic violence.

Proposed law (C.C. Art. 162) provides for instances in which an allegation of domestic violence or domestic abuse is alleged in any action of divorce or any ancillary proceeding and requires the court to take certain actions under certain circumstances.

Present law (C.C. Art. 2315.8) provides for liability for damages caused by violence.

Proposed law retains present law and updates terminology.

Present law (C.C. Art. 2362.1) provides for the payment of attorney fees and costs by a perpetrator of abuse.

Proposed law retains present law and updates terminology.

Present law (C.C.P. Art. 891) provides for the form of a petition involving domestic violence.

Proposed law retains present law and updates terminology.

Present law (C.C.P. Arts. 3603.1, 3604, 3607.1, 3610) provides for procedural requirements regarding protective orders and restraining orders.

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

Present law (C.C.P. Art. 3945) provides for incidental orders of temporary child custody.

Proposed law retains present law and updates terminology.

Present law (Ch.C. Art. 652) provides for discovery.

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

Present law (Ch.C. Arts. 1564-1573) provides, through the Domestic Abuse Assistance Act, a civil remedy in the juvenile courts for domestic abuse in homes where children reside.

Present law further provides for definitions, venue, form of the petition, temporary restraining orders and protective orders, costs, and law enforcement duties.

Proposed law provides a cross-reference to the definition of "domestic abuse" and "domestic violence" and updates corresponding terminology depending on whether present law indicates that

physical abuse or sexual abuse are prerequisites for certain acts.

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

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

Present law (R.S. 46:2136.3(A)) requires a hearing and notice to be given to prohibit a person against whom a permanent injunction or a protective order has been issued from possessing a firearm or carrying a concealed weapon while under an injunction or protective order. Present law (C.Cr.P. Arts. 313, 320, 893, 895, 899.2, 900, 1001, and 1002) provides for bail, suspension of sentence, probation, and the transfer of firearms in domestic violence cases.

Proposed law retains present law relative to due process and provides a cross-reference to the definition of "domestic violence", and updates corresponding terminology and cross-references. Proposed law provides a cross-reference to present law provisions regarding grounds for the issuance of a permanent injunction or protective order.

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

Proposed law retains present law and updates cross-references and terminology and provides that, if both parties engaged in domestic violence or domestic abuse, the court may assess attorney fees and court costs in an equitable manner between the parties.

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

Proposed law maintains present law but updates terminology and cross-references.

Present law (R.S. 9:3261.1) provides that a lease agreement on a house or apartment be terminated without penalty or loss of deposits if the lessee has been a victim of physical violence, in the form of domestic abuse battery.

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

Present law (R.S. 13:621.21, 621.11, 721, 1802, 1819, 1821, 1830, 1852, 1856, 1857, 1858, 1859, 2106, and 5304) makes various provisions related to the operation and procedure of courts.

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

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

Proposed law retains present law and updates cross-references.

Present law (R.S. 15:257.1, 574.7, 574.9, and 587.8) provides for criminal procedure.

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

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

Proposed law retains present law and adds dating violence to the requirements for teacher education.

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

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

Present law (R.S. 33:9701) provides for access to emergency services for victims of domestic abuse and other crimes.

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

Present law (R.S. 39:1619) provides for social service contracts regarding protection for adults and children.

Proposed law retains present law and updates terminology.

Present law (R.S. 40:506) provides for the termination of tenancy by a local housing authority.

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

Present law (R.S. 40:1379.3.2) provides for temporary concealed handgun permits for persons subject to a protective order.

Proposed law retains present law and updates terminology.

Present law (R.S. 44:3) provides for the disclosure of information in the records of law enforcement agencies.

Proposed law retains present law and updates cross-references.

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

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

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

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

(Amends C.C. Arts. 103(4) and (5), 104, 112(B)(9), (C) and (D), 2315.8(A) and 2362.1(B), C.C.P. Arts. 891(B), 3603.1(A) and (C), 3604(C)(1), 3607.1, 3610, and 3945(G), Ch.C. Arts. 652(E)(2), 1564, 1565, 1566(C), 1567(A)(3) and (B), 1568(A)(1), (3), and (4), and (C), 1569(A)(intro. para.), (B), and (D), 1570(A)(intro. para.) and (5)(a) and (I), and 1573(intro. para.) and (4), C.E. Art. 412.5(A), C.Cr.P. Arts. 313(A)(2), 320(G)(1), 893(A)(2), 895(M)(1), 899.2(D)(5) and (6), 900(A)(6)(d)(iii), 1001(1), (2), and (4), 1002(A)(2), R.S. 9:314, 361, 362(1), (3)(intro. para.) and (a), and (4), 364(A),(D),(E), and (F), 365, 366(A), 367, 369, 372(A) and (C), 3261.1(B), (C), (D), (E), (F)(2) and (3), (G), (H), (I), and (K), and 4103(B)(1), R.S. 13:621.21(B)(2) and (C)(2), 621.22(B)(3), 721(E)(2)(l), 1802(4), 1819(B)(1), 1821(A)(2), 1830(B)(3), 1852(4), 1856(4) and (5), 1857(A)(4), 1858(B), 1859(D), 2106(B), and 5304(B)(10)(intro. para.) and (b), R.S. 14:79(E), R.S. 15:257.1(C)(1)(c), 574.7(C)(2)(a)(x) and (4)(e) and (f), 574.9(H)(2)(c), 587.8(A) and (B)(3)(intro. para.), (b), and (d) and (7), R.S. 17:7.2(A)(6), R.S. 22:1063(A)(1)(g) and 1078(A), R.S. 33:9701(C)(2), R.S. 37:2554(B)(2)(b), R.S. 39:1619(A)(3)(intro. para.), (a), (f), and (g), R.S. 40:506(D) and 1379.3.2(A), R.S. 44:3(J)(3), and R.S. 46:52.1(F)(3)(a)(v), 1842(15)(d), 1846(A) and (C), 1861(A)(1)(a), 2131, 2132, 2133(B)(3) and (D), 2134(A)(1), (2), and (3) and (C), 2135(A)(intro. para.), (B), and (D), 2136(A)(intro. para.), 2136.1, 2136.2(A) and (B), 2136.3(A), 2138(C), 2140(A), (B)(intro. para.) and (4), and (C)(1), (2)(intro. para.) (e) and (g), and (3)(b), 2141, and 2151(B) and (C); Adds C.C. Arts. 86.1, 136(D)(6), and 162, Ch.C. Art. 1569(J), and R.S. 9:1061 and 1062)